Public Version

UNITED STATES – SAN MARTÍN MINE

(MEX-USA-2023-31A-01)

REPLY SUBMISSION OF THE UNITED STATES OF AMERICA

CONTAINS CONFIDENTIAL INFORMATION ON PAGE 16 AND IN ANNEXES USA-3 AND USA-4

October 31, 2023

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Abbreviation	Definition
AFL-CIO	American Federation of Labor and Congress of Industrial Organizations
AMC	Americas Mining Corporation
CBA	Collective Bargaining Agreement
CFCRL	Federal Center for Conciliation and Labor Registration
Coalition	Los Trabajadores Coaligados
FCAB	Federal Conciliation and Arbitration Board
FLL	Federal Labor Law
Grupo Mexico	Grupo México, S.A.B. de C.V.
ILO	International Labor Organization
IMMSA	Industrial Minera México, S.A. de C.V.
Los Mineros or SNTMMSSRM	Sindicato Nacional de Trabajadores Mineros, Metalúrgicos, Siderúgicos y Similares de la República Mexicana
Mexico	United Mexican States
Minera Mexico	Minera México, S.A. de C.V.
RRM	Facility-Specific Rapid Response Labor Mechanism
SCJN	Suprema Corte de Justicia de la Nación
SEC	United States Securities and Exchange Commission
SNTEEBMRM	Sindicato Nacional de Trabajadores de la Exploración, Explotación y Beneficio de Minas en la República Mexicana
Southern Copper	Southern Copper Corporation
U.S.	United States of America
USMCA	United States – Mexico – Canada Agreement
USMCA Implementation Act or the Act	United States – Mexico – Canada Agreement Implementation Act
USW or United Steelworkers	United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union

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I. Introduction

1. The United States offers this reply submission to the Panel pursuant to Article 31-A.7.2 of the United States – Mexico – Canada Agreement (USMCA or the Agreement) in response to Mexico's submission of the results of its investigation and conclusions in this matter.[1]

2. This panel dispute involves a straightforward application of the Facility-Specific Rapid Response Labor Mechanism (RRM) set forth in Annex 31-A to the USMCA. Unionized workers at a mine in Mexico went on strike, and their employer is now unlawfully continuing to operate the mine during the strike. The employer is also collectively bargaining with an unauthorized group of workers in violation of Mexican law. The United States considered these circumstances to constitute a Denial of Rights under the USMCA and requested that Mexico review the situation.

3. Mexico does not appear to disagree that the actions identified by the United States are currently occurring; nor does it appear to contest that these actions violate current Mexican law. Rather, Mexico argues that the situation is not reviewable under the RRM because Mexico claims the United States is in fact challenging other actions that preceded the entry into force of the USMCA, and because the facility in question is not a "Covered Facility" as defined in the Agreement. Mexico is incorrect on both issues.

4. In this submission, we will demonstrate both that the RRM applies in this case, and that a Denial of Rights is presently occurring at the facility. The Panel is not being asked to conclude that any stage of the litigation between the employer and the union was appropriately decided or not. The sole responsibility of the Panel is to make a finding on whether the current circumstances at the San Martín Mine constitute an ongoing Denial of Rights.[2]

5. Specifically, in this reply submission, the United States will show that Grupo Mexico is actively denying its workers their freedom of association and collective bargaining rights by operating the San Martín Mine during an ongoing strike and bargaining over working conditions with an unauthorized group of workers known as the Trabajadores Coaligados (the Coalition).[3] The Mexican labor laws regulating strikes and union representation are legislation that complies with Annex 23-A of the USMCA because the legislation is consistent with the requirements of the Annex. Further, the facility at issue is a "Covered Facility" because it is a mine and because the ores and concentrates it produces are both: (a) imported into the United States; and (b) sold within Mexico where they compete with U.S. exports into the country. The labor conditions at the mine are therefore covered by the RRM. Mexican courts have concluded that there is an

[1] All references to the translated copy of Mexico's written submission herein are designated as "Mexico's Initial Written Submission," with a corresponding page number in the format in which it was received. Any references to exhibits provided by Mexico are designated as "MEX" followed by their appropriate number. Attached to this submission are a series of "Annexes" which have been pre-marked as "Annex USA" followed by an annex number.
[2] USMCA Article 31-A.8.1 ("The panel shall make a determination, consistent with paragraphs 5, 7, and 8 of Article 31.13 (Function of Panels), as to whether there is a Denial of Rights . . . .").
[3] For expediency, at times, the terms "Grupo Mexico" and its subsidiary "IMMSA" are used interchangeably in this submission in light of their common corporate ownership.

ongoing strike at the facility and confirmed the Sindicato Nacional de Trabajadores Mineros, Metalúrgicos y Similares de la República Mexicana (Los Mineros) as the official union of workers at the mine.[4] Consequently, the continued operation of the mine during the strike and unlawful bargaining with the Coalition are an ongoing denial of the right to freedom of association and collective bargaining.

II. Procedural History

6. On May 15, 2023, Los Mineros, the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (the United Steelworkers or USW) filed a petition with the United States under the RRM alleging "systematic and continuing" Denials of Rights at the San Martín Mine.[5] After the petition was filed, the United States notified Mexico it was processing the petition on May 18, 2023 to determine whether there was sufficient, credible evidence of an ongoing Denial of Rights at a "Covered Facility."[6] The petition asserted that Los Mineros is the lawful holder of the "title" to collectively bargain (i.e., a term that describes a union that is the certified and exclusive collective-bargaining representative for workers under law) for workers at the San Martín Mine and that they have been engaged in an ongoing strike at the facility since 2007.[7]

7. According to the petition, on or about August 22, 2018, a group of workers approached Mexico's Federal Conciliation and Arbitration Board (FCAB) and sought to have the strike "declared non-existent[.]"[8] The FCAB approved the request shortly thereafter.[9] Although the FCAB's decision was later rejected and vacated through judicial review, the mine reopened immediately and has remained open continuously to this day.[10] During that time, the petition alleges that Grupo Mexico also began to flagrantly and unlawfully engage in collective bargaining directly with workers at the facility and "signed an agreement with [a] supposed 'coalition' of workers, notwithstanding the existence of the collective bargaining agreement" that Grupo Mexico signed with Los Mineros.[11] Based on these allegations, the petitioners contend there is a systematic and continuing Denial of Rights that is ongoing at the facility.[12]

8. After investigating these allegations and reaching the conclusion that there was sufficient credible evidence of an ongoing Denial of Rights, on June 16, 2023, the United States requested, pursuant to Article 31-A.4.2 of the USMCA, that Mexico conduct its own review of the

[4] The full name of the union is the Sindicato Nacional de Trabajadores Mineros, Metalúrgicos y Similares de la República Mexicana, which is abbreviated at times in documents as "SNTMMSSRM," but more commonly as "Los Mineros."
[5] Annex USA-1 (Petition) at 1.
[6] Annex USA-2 (Notification E-mail to Mexico) at 1.
[7] Annex USA-1 at 6. The petition lists the original year of the strike as 2006 due to an apparent typographical error.
[8] Annex USA-1 at 8.
[9] Annex MEX-39 (Appearance resolution by the 10th Special Board of the Federal Conciliation and Arbitration Board) at 1.
[10] Annex USA-1 at 8.
[11] Annex USA-1 at 8-9.
[10] Annex USA-1 at 11.

situation.[13] Mexico agreed to conduct the requested review on June 26, 2023.[14] In response to the request for review, on July 31, 2023, Mexico sent a report to the United States in which it concluded no Denial of Rights to exist.[15]

9. On August 22, 2023, the United States communicated its reasons for disagreement with Mexico's conclusions to Mexico in writing in accordance with Article 31-A.4.5 of the Agreement.[16] Shortly thereafter, on August 22, 2023, the United States filed the panel request in this case seeking an independent review of the situation.[17]

10. For the reasons set forth in greater detail below, the United States disagrees with both the procedural and substantive arguments made by Mexico in its Initial Written Submission and continues to have a good faith basis to believe that an ongoing Denial of Rights is occurring at a Covered Facility.[18] In support of our request and position, we submit: (1) a review of the factual record, with references to supporting documentation attached hereto as "Annex" exhibits; and (2) an overview of the legal basis for the United States' position in this matter.[19]

III. Factual Background

A. The San Martín Mine is a mine operated by Grupo Mexico in Zacatecas, Mexico.

11. The Covered Facility at issue, the San Martín Mine in Zacatecas, Mexico, is a mine operated by Industrial Minera México, S.A. de C.V. (IMMSA), producing copper, lead, and zinc ore and concentrates for sale in the United States, Mexico, and other regions. IMMSA is a subsidiary of Minera México, S.A. de C.V. (Minera Mexico).[20] Minera Mexico's parent company is Southern Copper Corporation (Southern Copper), which is in turn a subsidiary of Americas Mining Corporation (AMC). AMC is owned and operated by Grupo México, S.A.B. de C.V. (Grupo Mexico).[21]

[13] Annex MEX-01 (United States' Request for Review) at 1.
[14] Annex USA-3 (Mexico Letter Accepting Review) at 1.
[15] Annex MEX-03 (Internal Investigation Results) at 20; Annex USA-4 (Mexico's Results of the Internal Investigation (Courtesy Translation)) at 20.
[16] Annex MEX-04 (U.S. Communication to Mexico Providing Its Reasons for Disagreement with Mexico's Determination of No Denial of Rights) at 1-2.
[17] Annex MEX-05 (Request for the Establishment of a Panel) at 1-3.
[18] USMCA Article 31-A.4.5 provides: "If the respondent Party has determined that there is no Denial of Rights, the complainant Party may agree that the issue is resolved or it may communicate in writing its reasons for disagreement with the respondent Party's determination and immediately may request a panel verification and determination pursuant to Article 31-A.5."
[19] If the Panel requires additional information to reach its conclusions, we anticipate the verification stage of the RRM process serving as an appropriate venue for developing or otherwise clarifying the record.
[20] Minera Mexico refers to IMMSA as its "IMMSA Unit," which includes three operational facilities owned by IMMSA. These include the San Martín Mine in Zacatecas, Mexico, the Santa Bárbara Mine in Chihuahua, Mexico, and the Charcas Mine in San Luis Potosí, Mexico, along with two other non-operational facilities. Annex USA-5 (Southern Copper Corporation - 10-K Filing) at 83.
[21] Annex USA-6 (Southern Copper Corporation - 10-K Filing Addendum – San Martín Mine) at 1. This document was prepared by Southern Copper as an attachment to what is known as a "Form 10-K" filing that is provided annually to the U.S. Securities and Exchange Commission (SEC).

12. The San Martín Mine is a mining facility where workers drill for ore deposits. After the product is mined, the ore deposits are moved through the stages of production: first, transportation to a crusher and mill whereby the ore is converted into smaller pieces; second, placing that product into a concentrator or extraction process whereby ore deposits such as copper are separated from the sample; and third, the resulting copper, lead, and zinc concentrate are then either sold directly to customers or sent to an offsite smelter for further processing into copper cathode or rod products for sale.[22] The San Martín Mine has two processing plants or concentrators where it produces copper, lead, and zinc concentrates.[23] Grupo Mexico currently employs approximately 596 employees at the facility.[24]

B. Historical events at the San Martín Mine.

13. As Mexico describes in its Initial Written Submission, the current situation at the San Martín Mine has a long factual and procedural history, most of which is not relevant for the Panel to make its determination of an ongoing Denial of Rights. On June 28, 2007, Los Mineros, which has represented workers at the facility for many years, called for a strike at the San Martín Mine and provided Grupo Mexico with a list of demands, including a demand for compliance with the existing collective bargaining agreement (CBA) at the facility.[25] Los Mineros had an established bargaining history with IMMSA and had recently negotiated a CBA at the facility in 2006.[26] The list of demands presented by Los Mineros at the beginning of its strike and during the conciliation hearing included wage and hour concerns like paying bonuses to employees, reinstating fired workers, and paying workers "100% of lost wages and other bonuses" to which they were entitled under the CBA.[27] The union raised concern about retaliation against workers for union activity, demanded workplace safety measures, and expressed a desire to see the company recover the bodies of workers who died in a tragic safety failure in Grupo Mexico's 2006 "Pasta de Conchos" mine disaster.[28] After failing to reach any agreement the strike officially began on July 30, 2007.[29]

14. After workers walked out of the facility, Grupo Mexico challenged the strike in court on July 31, 2007. After losing an initial court ruling, Los Mineros appealed the decision, and their appeal was returned successfully on May 28, 2009.[30] In an important procedural confirmation regarding the formation of the strike, the reviewing agency issued a decision declaring that the

[22] Annex USA-5 at 27-28.
[23] Annex USA-6 at 21.
[24] Annex USA-6 at 20.
[25] Annex MEX-10 (Bill of Petitions and Union Strike Notice) at 6-22; Annex USA-7 (Los Mineros Conciliation Hearing) at 1-2; Annex USA-8 (Los Mineros Conciliation Hearing (Courtesy Translation)) at 1-2. The strike covered three facilities operated by Grupo Mexico at Cananea, San Martín, and Taxco.
[26] Annex MEX-09 (Collective Bargaining Agreement between IMMSA and the Sindicato Minero, CC-87/86-VI-ZAC) at 1; Annex USA-9 (2006 Collective Bargaining Agreement) at 1.
[27] Annex MEX-10 at 6-22; Annex USA-7 at 1-2.
[28] Annex USA-7 at 1-2. On February 19, 2006, 65 mine workers died in an explosion at a coal mine operated by Grupo Mexico near Nueva Rosita, San Juan de Sabinas, Mexico. This event is contextual background for the workplace safety and health concerns raised in this instance. *See* "Desastre minero de Pasta de Conchos," CNDH Mexico: Defendemos al Pueblo, 2023, at 1 (available at https://www.cndh.org.mx/noticia/desastre-minero-de-pasta-de-conchos) (background information).
[29] Annex USA-7 at 11.
[30] Annex MEX-17 (Third Strike Qualification Judgment, 10th Special Board of the Federal Conciliation Arbitration Board) at 64.

strike was "legally in existence" at the facility since July 30, 2007, and that it was ongoing "for all legal purposes that may apply."[31]

15. On August 21, 2018, while Los Mineros' strike continued, a group of 253 workers calling themselves "Los Trabajadores Coaligados" or the "Coalition" held a meeting at the San Martín Mine. The group claimed to reach an agreement amongst its supporters to end the strike, resume mining operations at the facility, and end their union representation by Los Mineros.[32] While excluding Los Mineros from its communications, the Coalition contacted Human Resources at the company directly and sought their assistance to reopen the mine.[33] A day later, on August 22, 2018, the Coalition and Grupo Mexico went to the FCAB and claimed that the mine should be reopened based on the results of the workers' meeting.[34] On that basis, the FCAB wrongfully approved the termination of the strike and the resumption of work one day later, on August 23, 2018.[35] The mine began normal operations at the facility the same day the decision issued, operations have remained ongoing from August 23, 2018 to 2023, and all public statements by the company reflect ongoing operations to date.[36]

16. Although not relevant for this matter, for completeness we note that, around this same time period, in a decision that was also subsequently overturned, another union was also briefly awarded "titularidad" status at the facility based on a ruling by the FCAB on April 2, 2019.[37] The term titularidad is used as a shorthand expression for titularidad sindical, which means the title or authority for collective-bargaining.[38] Los Mineros challenged this award, and the reviewing court vacated the prior decision, subsequently returning titularidad to Los Mineros on October 31, 2019.[39]

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[31] Annex MEX-17 at 64 ("Se declara legalmente existente la huelga estallada por el Sindicato Nacional de Trabajadores Mineros, Metalurgicos y Similares de la Republica Mexicana, a las 12:00 horas, del dia 30 de julio de 2007, en las instalaciones de la empresa INDUSTRIAL MINERA MEXICO, SA de CV (Unidad San Martín), para todos efectos legales a que haya lugar.").

[32] Annex USA-7 at 12.

[33] Annex MEX-38 (Minutes of the Assembly held by the Coalition Workers) at 1-4; Annex USA-10 (Coalition Letter to Human Resources) at 1.

[34] Annex MEX-37 (Appearance by IMMSA and the Coalition Workers) at 1-2.

[35] Annex MEX-39 at 20.

[36] Annex USA-6 at 22.

[37] The union is called the Sindicato Nacional de Trabajadores de la Exploración, Explotación y Beneficio de Minas en la República Mexicana (SNTEEBMRM). Annex MEX-32 (Second ownership award of the CBA, 10th Special Board of the Federal Conciliation and Arbitration Board) at 38.

[38] Both the "Trabajadores Coaligados," which operates as a union despite having no discernable legal status as a union in Mexico, and the SNTEEBMRM, which does have a formal union status, are affiliated with the confederation known as "La Federacion Nacional de Sindicatos Independientes" or "FNSI," which scholars have described as a non-representative protectionist union confederation. *See* Miguel Angel Ramirez Sanchez, "Los sindicatos blancos de Monterrey (1931-2009)", Frontera Norte, vol. 23, núm. 46, julio-diciembre, 2011 (2011) at 1, 194 (available at: https://www.redalyc.org/pdf/136/13619212007.pdf) (discussing FNSI and noting that "[i]n Mexico, 'white unions' are the equivalent to the so-called yellow unions of Spain and France and employee representation plans ('company unions') in the United States and Canada").

[39] Annex MEX-33 (Judgment on Amparo Directo 511/2019, First Collegiate Labor Court of the First Circuit) at 332-333 ("La justicia de la Union AMPARA y PROTÉGÉ al Sindicato Nacional de Trabajadores Mineros, Metalurgicos, Siderurgicos y Similares de la Republica Mexicana, contra el acto de la Junta Especial Numero Diez de la Federal de Conciliacion y Arbitraje, integrada con su Presidente Titular, que hizo consistir en el laudo dictado el dia dos de abril de dos mil diecinueve[.]").

17. After the FCAB's August 23, 2018, decision to terminate the strike at the request of the Coalition, Los Mineros filed an "amparo" lawsuit in response to the FCAB ruling.[40] On May 31, 2019, the court agreed with Los Mineros that they were the only party entitled to exercise or terminate a strike, and the union was relieved from complying with the prior decision from the FCAB.[41]

C. The current status of the strike and operations at the San Martín Mine.

18. These general disputes over the status of the ongoing strike and over titularidad status for collective-bargaining at the facility were continuously contested by the parties and remained under either direct appeal or some other legal review until June 23, 2021, when Mexico's highest court, the Suprema Corte de Justicia de la Nación (SCJN) unequivocally held in favor of Los Mineros and confirmed the lawful status of the strike.[42] Shortly thereafter, on December 9, 2021, a Mexican court also resolved a related amparo lawsuit by again finding that the prior judgment referenced above on May 31, 2019, was correct, declaring inadmissible the pending appeals from IMMSA and the Coalition, and vacating the FCAB's resolution from August 23, 2018.[43] As a consequence, the court confirmed Los Mineros' current status as the titleholder of bargaining rights at the facility.[44]

19. Parallel to this process, on June 19, 2023, the FCAB also found that the culpability for causing the strike was "imputed" to IMMSA. This "imputability" finding was meaningful because it confirmed the legality of the strike. It also contained an order to Grupo Mexico to pay back wages to 209 workers, and attempted to address a return to work at the facility by striking miners—a return to work that is presently enjoined pursuant to a court order due to concerns raised by the union.[45] As a result of these rulings and the injunction, the strike remains ongoing and lawful, and therefore requires the cessation of regular operations at the mine under Mexican law until it is resolved.[46]

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[40] The term amparo is shorthand for a "juicio de amparo" or writ of "shelter" or "protection," which is a constitutional legal challenge filed in the Mexican court system to contest a government action.
[41] Annex MEX-43 (Judgment on Amparo 1729/2018 issued by the Third District Labor Court in Mexico City) at 9.
[42] Annex MEX-34 (Judgment on Amparo Directo 118/2020, Second Chamber of the Supreme Court of Justice of the Nation) at 41-42; Annex USA-11 (SCJN Decision (Courtesy Translation)) at 35-36. The table of exhibits in Mexico's Initial Written Submission incorrectly lists the date of Annex MEX-34 as June 23, 2023. The correct date is June 23, 2021.
[43] Annex MEX-42 (Judgment on Amparo in Review 78/2019, Fifth Collegiate Labor Court of the First Circuit) at 274-278.
[44] Annex MEX-42 at 274-278.
[45] Annex MEX-47 (Imputability Award, 10th Special Board of the Federal Conciliation and Arbitration Board) at 82-85 ("Se declara que los motivos que originaron le huelga estallada por el Sindicato Nacional de Trabajadores Mineros, Metalurgicos y Similares de La Republica Mexicana, hoy denominado Sindicato Nacional de Trabajadores Mineros, Meturgicos, Siderurgicos y Similares de la Republica Mexicana, en las instalaciones de la empresa emplazada a las 12:00 horas del dio 30 de julio de 207, son imputables a la moral demandada Industrial Minera Mexico, S.A. de C.V. (Unidad San Martín), por lo que se le CONDENA para que, SE REANUDEN Y NORMALICEN LAS LABORES en sus instalaciones, para lo cual, se le CONCEDE EL TERMINO DE QUINCE DIAS, el cual correra a partir de la notificacion de la presente resolucion.").
[46] Annex MEX-47 at 82-85; Annex MEX-49 (Injunction in Amparo 634/2023, Federal Conciliation and Arbitration Board) at 7-8.

20. Despite these rulings, Grupo Mexico has not ceased operations at the facility. The available record reflect that the mine has been "continuously" in production from August 21, 2018, through 2023.[47] In its imputability decision, the FCAB noted IMMSA's ongoing operations at the facility and the company's decision to continually hire workers to the present.[48] The employer credited the mine recently in a pair of 2022 and 2023 press releases as enjoying "higher production" than anticipated.[49] Shortly thereafter, in its press release for the second and third quarters of 2023, respectively, San Martín Mine operations were described as having "lower production" than anticipated, all of which reflect ongoing current mining operations.[50]

21. As further confirmation of the ongoing strike under Mexican law, on February 28, 2018, the union known as the SNTEEBMRM, filed a request to hold a union representation vote at the facility. After receiving the request, the FCAB improperly conducted the requested vote despite the ongoing strike.[51] Los Mineros briefly lost their titular status at the facility to the SNTEEBMRM on April 2, 2019. Los Mineros filed a lawsuit against the FCAB alleging that the law was not followed in conducting the vote. The lawsuit challenged the decision to run the election on multiple grounds, including voting irregularities and because it was conducted during an ongoing strike which is directly prohibited under Mexican law.[52]

22. After a series of decisions and appeals, the SCJN issued its decision on June 23, 2021 overturning the FCAB decision and affirming Los Mineros' position as the titleholding union at the facility.[53] Los Mineros continues to hold this status to the present day as a result of the court's conclusions.[54]

23. Despite Los Mineros' status as the exclusive collective bargaining representative for workers at the San Martín Mine, Grupo Mexico has been collectively bargaining with the Coalition.[55] On February 11, 2020, IMMSA signed an agreement with the Coalition covering their wages, hours, and working conditions.[56] Again, on February 9, 2021, IMMSA reached another wage agreement with the Coalition to change the wage rate at the facility for all unionized workers.[57] Los Mineros was not part of the bargaining process nor notified of it. In 2022, even after the ruling by the SCJN, IMMSA signed its current wage agreement with the Coalition agreeing to increase employees' wages and stating that the increase would be effective

[47] Annex USA-6 at 2, 22.
[48] Annex MEX-47 at 83.
[49] Annex USA-12 (Press Release: Results, Third Quarter and Nine Months 2022) at 1; Annex USA-13 (Press Release: Results, First Quarter 2023) at 1.
[50] Annex USA-14 (Press Release: Results, Second Quarter and Six Months 2023) at 1; Annex USA-15 (Press Release: Results, Third Quarter and Nine Months 2023) at 1.
[51] Mexico's Initial Written Submission, para.57.
[52] FLL, Article 447-448 (striking suspends both "the effects of labor relations for the whole time it may last," as well as "the processing of collective disputes of an economic nature before [a court].").
[53] Annex MEX-34 at 41-42; Annex USA-11 at 35-36.
[54] *See, e.g.,* Annex MEX-46 (Legal Capacity Motion Resolution, 10th Special Board of the Federal Conciliation and Arbitration Board) at 17-19 (court reaffirming status of Los Mineros as titular union at the facility).
[55] *See* Annex USA-6 at 16 (the employer describes its own practice of bargaining directly with unauthorized groups as "since the reopening of the unit in 2018 to date, [IMMSA] has signed agreements ([IMMSA]-group of affiliates) to obtain benefits and benefits for employees, which have helped the stability of today's operations in the [mining unit].").
[56] Annex USA-16 (2020 Agreement Between the Coalition and IMMSA) at 1.
[57] Annex USA-17 (2021 Agreement Between the Coalition and IMMSA) at 1-4.

February 11, 2023.[58] These "agreements" between IMMSA and the Coalition directly state that they cover "unionized personnel" and often use the CBA between the company and Los Mineros as their foundational text, with IMMSA and the Coalition then agreeing to amend or alter the document through their unauthorized negotiations.

24. As recently as July 19, 2023, Los Mineros has been in contact with the Federal Center for Conciliation and Labor Registration (CFCRL), which has recognized their present status as the titleholding union at the facility.[59] Nonetheless, Grupo Mexico and IMMSA continue to fail or refuse to bargain in good faith with Los Mineros.

IV. Argument I – Coverage of the Agreement, Procedural Compliance, and Covered Facility Analysis

A. Any argument these Denials of Rights are not covered by the RRM fails because the United States challenges current and ongoing conduct by the employer, and because the actions of the employer violate laws that comply with Annex 23-A.

25. In its submission, Mexico argues that the Denials of Rights identified in the U.S. panel request are outside the Panel's jurisdiction because they relate to actions predating the entry into force of the USMCA, and because the laws applicable in the context of the related Mexican judicial proceedings are those in force at the time the proceedings were initiated, which also pre-dates the entry into force of the USMCA. Mexico argues the United States is attempting to apply current Mexican law "retroactively." Mexico's arguments fail, however, because (1) the United States has challenged only those actions ongoing at the time of the U.S. requests for review and for a panel, and (2) the laws currently in force in Mexico do in fact apply to the employer, the workers, the union, and other entities involved in the ongoing situation at the San Martín Mine. Contrary to the claims made by Mexico in its submission, the United States is not arguing that current law should be applied to past events, nor does it argue that current law should be applied in the context of related Mexican judicial proceedings.

26. First, the United States is not challenging any actions that took place prior to the entry into force of the USMCA.[60] The Denials of Rights identified in the U.S. panel request are denials of rights that are currently occurring at the San Martín Mine.[61] As described in the U.S. request for review, they include the following:

> The United States is concerned that workers at the Facility are being denied the right of free association and collective bargaining in relation to the Facility's ongoing operations and the negotiation and implementation of various collective bargaining agreements. It appears that the Facility is engaging in normal production during an ongoing strike, without waiting for appropriate authorization from the Mexican courts. It also appears that the Facility is collectively

[58] Annex USA-18 (2022 Agreement Between the Coalition and IMMSA) at 3; Annex USA-23 (2022 Agreement Between the Coalition and IMMSA (Courtesy Translation)) at 3.
[59] Annex USA-19 (CFCRL Communication to Los Mineros) at 1-3.
[60] The USMCA entered into force on July 1, 2020.
[61] Annex MEX-05 at 1-3.

> bargaining with a labor organization not lawfully authorized to represent workers for the purposes of collective bargaining and is applying the agreements they negotiate with this organization at the Facility.[62]

27. Contrary to Mexico's representations, the United States is not claiming that the actions of IMMSA in 2007 or at any other point prior to the entry into force of the USMCA constitute a Denial of Rights. Rather, the United States has identified IMMSA's *current* activities as the basis for its finding of an *ongoing* Denial of Rights at the present time. At the time of the U.S. panel request on August 22, 2023, and continuing forward, IMMSA was and is continuing to operate its facility despite an ongoing legal strike. Further, IMMSA was and is unlawfully bargaining over the wages, hours, and working conditions of workers at the facility with a group that is not their lawful collective bargaining representative. The facility's ongoing operations are confirmed by Grupo Mexico's own documents, which state that the mine has been "continuously" operating through 2023, with quarterly updates issued as recently as October 24, 2023.[63] Likewise, the ongoing bargaining with the Coalition is reflected in the most recent agreement with that group.[64]

28. Second, the Denials of Rights identified in the U.S. panel request are unquestionably within the scope of the RRM because they violate laws that are currently in force in Mexico and cover the subject-matter of Annex 23-A of the Agreement. Article 31-A.2 states that the RRM "shall apply" whenever a Party has a good faith basis to believe 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[.]"[65]

29. With respect to Mexico, such 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)."[66] Annex 23-A provides that Mexico shall adopt and maintain measures that are necessary for the effective recognition of the right to collective bargaining, including:

> Provide in its labor laws the right of workers to engage in concerted activities for collective bargaining or protection and to organize, form, and join the union of their choice, and prohibit, in its labor laws, employer domination or interference in union activities, discrimination, or coercion against workers for union activity or support, and refusal to bargain collectively with the duly recognized union.[67]

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[62] Annex MEX-01 at 1.
[63] Annex USA-6 at 2, 22; Annex USA-12 at 1; Annex USA-13 at 1; Annex USA-14 at 1; Annex USA-15 at 1.
[64] Annex USA-18 at 1-3; Annex USA at 1-3.
[65] USMCA Article 31-A.2. "Party" or "Parties" is defined to mean Mexico and the United States, singly or collectively. USMCA Article 31-A.15.
[66] USMCA Article 31-A.2 n.2.
[67] USMCA Article 23-A.2(a). Article 23.3 provides additional clarity on the intent of the Parties, noting that both Parties shall ensure the right to "freedom of association and the effective recognition of the right to collective bargaining," under its laws and practices, and that "for greater certainty," the Parties acknowledge that "the right to strike is linked to the right to freedom of association, which cannot be realized without protecting the right to strike." USMCA Article 23.3 fn. 6.

30. Article 23-A.2(a) of the Agreement establishes the substantive scope of relevant laws for the RRM, and, therefore, any Mexican laws that "comply" with Article 23-A.2(a) can give rise to a Denial of Rights within the scope of the mechanism. The word "complies" means "to act in accordance with, and fulfillment of, wishes, desires, requests, demands, conditions, or regulations[.]"[68] Each of the provisions of Mexican law identified in the U.S. panel request fulfills the conditions set out in Annex 23-A.

31. In the U.S. panel request, we referenced several sections of Mexico's Federal Labor Law (FLL) to illustrate the current laws that are not being enforced at the facility. This includes Article 449 of the FLL, which requires that "the tribunal and the corresponding civil authorities shall enforce the right to strike, granting workers the necessary guarantees and providing them with the assistance that they request in order to suspend work," and Article 935, which requires that "prior to the suspension of work, the tribunal, with a hearing of the Parties, shall establish the indispensable number of workers who must continue working so that the work continues to be carried out, whose suspension seriously prejudice the safety and conservation of the premises, machinery and raw materials or the resumption of work."

32. The request also references Article 133.IV of the FLL, which restricts companies from "forcing workers by coercion or by any other means, to join or withdraw from the union or group to which they belong, or to vote for a certain candidacy, as well as any act or omission that infringes their right to decide who should represent them in the collective bargaining," and Article 133.VII of the FLL, which prohibits employers or their representatives from "executing any act that restricts the rights granted to the workers by the laws[.]"

33. These laws fall squarely within the laws covered by the Agreement. A clear example of this coverage is Article 133.VII of the FLL, which prohibits employers or their representatives from "executing any act that restricts the rights" of workers. Annex 23-A provides an equivalent protection where it states that employers must not be allowed to engage in any "interference" or "coercion" with union activity. Similarly, the "enforcement of the right to strike" in Article 449 of the FLL – a right the Parties agree is foundational to the freedom of association – and the court's role established in Article 935 offer the same protection as the rule against "interference in union activity" listed in Annex 23-A.

34. Annex 23-A also expressly requires Mexico to prohibit companies from any "refusal to bargain collectively with the duly recognized union." In clear terms, Article 133.IV covers this same concept and prohibits employers from taking "any act or omission that infringes [the] right [of workers] to decide who should represent [them] in collective bargaining." Consequently, the content of Articles 133.IV and VII, and Articles 449 and 935, are the same as Annex 23-A, and these laws comply with Annex 23-A.

35. Indeed, Mexico does not claim that Mexican labor law does not comply with Annex 23-A. Instead, Mexico attempts to argue that the United States is asking the Panel to apply Mexican law retroactively to actions occurring prior to entry into force of the USMCA. Again, that is

[68] The standard definition of the term "complies" is to act in accordance with, and fulfillment of, wishes, desires, requests, conditions, or regulations[.]" "Complies." *Oxford English Dictionary.* Oxford University Press, 2023 (https://www.oed.com/dictionary/comply_v1?tab=meaning_and_use#8843613).

incorrect. The United States has identified *current* conduct at the facility and is challenging these ongoing actions as a breach of *current* Mexican law that complies with Annex 23-A.

36. Mexico also asserts that, under the 2019 labor reform, judicial proceedings initiated prior to the entry into force of the USMCA will continue to be decided based on the laws in force at the time the proceedings were initiated. The United States does not dispute that the ongoing judicial proceedings relating to the San Martín Mine will be decided based on the laws in force at the time of their initiation. Nor does the United States challenge any decisions of those courts. Rather, those court decisions are exactly what is being relied upon to establish the two principal legal facts on which this case is based: (1) the lawful and ongoing status of the strike; and (2) the right of Los Mineros, and not the Coalition, to legally and exclusively represent the workers at the mine. The United States is challenging the employer's failure to respect the ongoing strike at the facility as required under current Mexican law and the employer's decision to collectively bargain with the Coalition instead of Los Mineros, also in contravention of current Mexican law.

37. In its submission, Mexico also argued that only laws that it specifically chose to amend in its 2019 labor reform in anticipation of the passage of the USMCA can be considered legislation that "complies with" Annex 23-A. However, neither the text of the USMCA nor the standard usage of the phrase "complies with" support this argument. As previously referenced, the word "complies" means "acting in accordance with [certain] conditions" or standards. Existing Mexican laws that provided some of the protections required by Annex 23-A at the time the Agreement was signed were not nullified by the Agreement or removed from coverage under the RRM. In fact, such a supposition would serve only to undermine the very purpose of the RRM, by excluding some of the laws that were already in place to protect the right to freedom of association and collective bargaining in Mexico.

38. Annex 23-A, paragraph 1, expressly states that Mexico must both "adopt and maintain" the measures set out in paragraph 2 of Annex 23-A. By using the term "maintain", the text indicates that the scope of Annex 23-A was inclusive of existing laws. Paragraph 2 of Annex 23-A confirms this understanding. For example, subparagraph (a) states that Mexico shall "[p]rovide in its labor laws" various collective bargaining and free association rights, subparagraph (c) states that Mexico shall "[p]rovide in its labor laws" an effective system relating to union votes, subparagraph (d) states that Mexico shall "[p]rovide in its labor laws" union representation challenges through Labor Courts, and subparagraph (g) states that Mexico shall "[p]rovide in its labor laws" public access to collective bargaining agreements. By contrast, subparagraphs (e) and (f) state that Mexico shall "adopt legislation in accordance with Mexico's Constitution" to accomplish other goals. Thus, paragraph 2 of Annex 23-A contemplates that it would not be necessary to "adopt legislation" in all cases to ensure recognition of the right to freedom of association and collective bargaining.

39. In addition, there are numerous collective-bargaining provisions in the FLL that remained in place both before and after the 2019 labor reform without amendment, including such basic topics as the prohibitions on blacklisting workers,[69] interference with internal union affairs,[70] and carrying out retaliation by "implicit or explicit reprisals" against workers for union activity,[71] all

[69] FLL, Article 133.IX.
[70] FLL, Article 133.V.
[71] FLL, Article 133.V.

of which are required to be prohibited in order to meet the conditions and standards of Annex 23-A. Consequently, the topics covered in Annex 23-A are clearly encompassed within this dispute. A finding that such laws were not compliant with Annex 23-A would not be supported by the text.

40. Mexico raised at least two other baseless claims in its submission: that their unilateral inclusion of an argument in a report established a binding precedent on the United States, and that the imputability ruling that found IMMSA liable for causing the strike and ordering the payment of back pay renders any Denial of Rights moot. Both arguments fail immediately in light of the fact that: (a) the U.S. is simply not bound by a position taken by Mexico in a report; and (b) the imputability finding has not resolved the ongoing Denial of Rights at the facility because the facility continues to operate during the ongoing strike, and because Grupo Mexico continues to unlawfully bargain with the Coalition. In addition, the United States has not challenged IMMSA's culpability in the strike. The imputability decision is thus relevant to the Denials of Rights the United States presented in the panel request only in that it confirms the legal and ongoing status of the strike.

41. Therefore, Mexico has not argued, much less shown, that current Mexican law does not apply to the present conduct of IMMSA at the San Martín Mine. Mexico has only argued that current Mexican law may not be applied in connection with the ongoing judicial proceedings regarding the strike. Given that we are not challenging the application of Mexican law in the judicial proceedings, or challenging the decisions of any of those courts, Mexico's arguments are misplaced. Consequently, the United States respectfully requests that the Panel find that the allegations presented to the Panel are within the scope of the RRM.

B. The United States complied with the procedures in Annex 31-A and provided Mexico with sufficient information to perform its investigation.

42. Mexico's contention that the United States did not provide sufficient information for Mexico to conduct its review is simply inconsistent with the facts and procedures established in Annex 31-A. Article 31-A.4.2 of the Agreement states that when "requesting review" a Party will provide the other with "sufficient information for the respondent Party to conduct its review."[72] "Sufficient" means "of a quantity, extent, or scope adequate to a certain purpose or object[.]"[73] As the Agreement indicates, the purpose is "for the respondent Party to conduct its review." Sufficiency will vary depending on the facts of each case, but would generally require information that is "adequate" for the purpose of allowing the respondent Party to investigate the matter and respond to the request for review.

43. Here, the United States sent Mexico a request to review the situation at the San Martín Mine on June 16, 2023. In this document, the United States provided the following information:

> The United States requests, pursuant to Article 31-A.4.2 of the United States-Mexico-Canada Agreement (USMCA), that Mexico conduct a review of whether

[72] USMCA Article 31-A.4.2.
[73] "Sufficient." *Oxford English Dictionary.* Oxford University Press, 2023 (available at https://www.oed.com/dictionary/sufficient_adj?tab=meaning_and_use#19865383).

> a Denial of Rights is occurring at the San Martín Mine, located in the vicinity of Sombrerete, Zacatecas (the Facility).
>
> […]
>
> The United States is concerned that workers at the Facility are being denied the right of free association and collective bargaining in relation to the Facility's ongoing operations and the negotiation and implementation of various collective bargaining agreements. It appears that the Facility is engaged in normal production during an ongoing strike, without waiting for appropriate authorization from the Mexican courts. It also appears that the Facility is collectively bargaining with a labor organization [known as Los Trabajdores Coaligados] not lawfully authorized to represent workers for the purposes of collective bargaining and is applying the agreements they negotiate with this organization at the Facility.[74]

44. That is, the United States provided Mexico with the specific name and location of the facility, the nature of the Denials of Rights at issue (i.e., operating during an ongoing strike and negotiating with an unauthorized union), the name of the representative union of the workers, and the name of the group with which Grupo Mexico was negotiating illegally.[75] This information was "sufficient" for its purpose under the RRM, because it told Mexico: (1) which facility was at issue and where it was located; (2) what the issues were that needed to be investigated; and (3) which entities were involved in the identified Denial of Rights. Such information was sufficient to allow the Mexican government to identify and contact the relevant facility and entities, and to make inquiries or otherwise investigate the Denials of Rights. And in fact, this information did allow Mexico to evaluate the situation and issue a detailed report.

45. As evidenced in Mexico's report, [[]][78]

46. Therefore, Mexico's claim that the United States failed to provide Mexico with sufficient information to allow it to investigate the denials of rights identified is simply not accurate. Consequently, we ask that the Panel find that the United States provided Mexico with sufficient information to proceed under the mechanism, consistent with Article 31-A.4.2 of the USMCA.

[74] Annex MEX-01 at 1.

[75] In addition to the text of the USMCA, the domestic protocols adhered to by the United States are set forth in the United States-Mexico-Canada Agreement Implementation Act (USMCA Implementation Act or the Act). The Act requires that the Interagency Labor Committee or "ILC" review information submitted to the United States "within 30 days of submission and shall determine whether there is sufficient credible evidence of a denial of rights (as so defined) enabling the good-faith invocation of enforcement mechanisms." USMCA Implementation Act, 19 U.S.C. § 4646(b)(1).

[76] Annex USA-7 at 8.

[77] Annex USA-7 at 8-10.

[78] [[]]

C. The San Martín Mine is a "Covered Facility" within the meaning of the USMCA because the facility produces ores and concentrates such as copper, lead, and zinc that are traded between the United States and Mexico and because its products also compete in the territory of Mexico with copper, lead, and zinc exports from the United States into Mexico.

47. The San Martín Mine meets the definition of a "Covered Facility" established in Annex 31-A of the Agreement as a result of its ongoing business activity. Under Article 31-A.15 of the Agreement:

> "Covered Facility" means a facility in the territory of a Party 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[.]"[79]

48. The "Covered Facility" definition in the Agreement also requires the facility at issue to be in a "Priority Sector," which is defined as "a sector that produces manufactured goods, supplies services, or involves mining."[80] In this case, the San Martín Mine is in a Priority Sector because it falls within the mining category.

49. Under element (i) of the definition of "Covered Facility", a good must be produced at the facility in question and then "traded" between the Parties, i.e., exported from one Party to the other. Here, the San Martín Mine is a "Covered Facility" within the meaning of element (i), because it produces a "good", including copper, lead, and zinc ore and concentrates that are exported into the United States.

50. Under element (ii) of the definition, the good may also "compete[] in the territory of a Party with a good … of the other Party." The ordinary meaning of the term "compete" is "*esp.* in commercial relations: To strive with others in the production and sale of commodities, or command of the market."[81] Therefore, a good "competes" with a good of another Party if they both strive in the sale of commodities, or for command of the market." In this case, the San Martín Mine is a "Covered Facility" within the meaning of element (ii) because it produces copper, lead, and zinc ore and concentrates that are sold within Mexico where they "compete" with U.S. exports of the same products.

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[79] Mexico raises the question of how to define the term "facility" in its Initial Written Submission. *See* Mexico's Initial Written Submission, pg. 44 at ¶ 144. The term "facility" means "a service or feature of a specified kind" or "a building or establishment that provides such a service." "Facility." *Oxford English Dictionary.* Oxford University Press, 2023 (available at https://www.oed.com/dictionary/facility_n?tab=meaning_and_use#4935835). The United States considers this definition, used as part of the phrase "Covered Facility," to be acceptable in this context.

[80] USMCA Article 31-A.15. The definition of "Covered Facility" in Article 31-A.15 also includes locations that produce goods or supply services traded between the Parties. A facility only needs to fall within one of the listed categories defined in Article 31-A.15 as a Covered Facility to pass the test for coverage under the Annex.

[81] "Compete." (verb[2], meaning 2.b). *Oxford English Dictionary*. Oxford University Press, 2023 (available at https://www.oed.com/dictionary/facility_n?tab=meaning_and_use#4935835).

51. According to Grupo Mexico's press releases and publicly available SEC filings submitted by Southern Copper, the San Martín Mine produces copper, lead, and zinc ore and concentrates for sale in the United States and Mexico.[82] On February 21, 2023, as part of its 2022 "10-K" filing, which is the most current filing available, Minera Mexico's corporate parent Southern Copper submitted an assessment of mineral resources at the San Martín Mine.[83] A summary table of the ores and concentrates produced at the mine is available within the report.[84] The mine produced a total of 1,413,207 milled tons of material during this period. From that material, in 2022, the mine produced 19,091 tons of copper concentrate, 41,320 tons of zinc concentrate, and 3,540 tons of lead concentrate.[85]

52. In its reporting of these sales figures, Southern Copper combines all of its sales information as aggregate data from its "IMMSA Unit," which includes the San Martín Mine and two additional mines.[86] The first is the Charcas Mine, which in 2022 produced a total of 1,191,000 tons of milled material. From that material, in 2022, the Charcas Mine produced 14,001 tons of copper concentrate, 43,025 tons of zinc concentrate, and 1,745 tons of lead concentrate.[87] The second additional site is the Santa Bárbara Mine, which from January 2022 through June 2022 produced a total of 758,161 tons of milled material. From that material, for the same time period, the Santa Bárbara Mine produced 13,316 tons of lead concentrate, 4,225 tons of copper concentrate, and 20,366 tons of zinc concentrate.[88] These three facilities are described as the "three active mines" owned by IMMSA, and the San Martín Mine produced a majority (i.e., 51.15%) of IMMSA's total output of copper concentrate in 2022 in the available production data.[89]

i. Element (i) of the "Covered Facility" definition

53. With respect to element (i) of the definition, for the year ending December 31, 2022, Southern Copper's SEC filings document that Grupo Mexico took those copper, lead, and zinc ores and concentrates that IMMSA produced at the San Martín Mine and the other two facilities and recorded aggregate sales totaling $54.0 million dollars within the territory of the United States.[90] This means that IMMSA exported products from these facilities into the United States for sale. In 2021, the IMMSA unit recorded sales within the territory of the United States in the amount of $52.3 million dollars.[91] In 2020, the IMMSA unit recorded sales within the territory of the United States in the amount of $27.2 million dollars.[92]

54. The United States does not have access to disaggregated sales data that separates out the export information for each mine, but the combined data declared by IMMSA shows large

[82] As previously referenced, IMMSA is a subsidiary of Minera Mexico and of Southern Copper. Southern Copper is itself a subsidiary of Americas Mining Corporation and Grupo Mexico.
[83] Annex USA-5 at 1.
[84] Annex USA-5 at 23.
[85] Annex USA-5 at 23.
[86] Annex USA-5 at 75, 83.
[87] Annex USA-20 (Southern Copper Corporation - 10-K Filing Addendum – Charcas Mine) at 20.
[88] Annex USA-21 (Southern Copper Corporation - 10-K Filing Addendum – Santa Bárbara Mine) at 90.
[89] Annex USA-6 at 23; Annex USA-12 at 20; Annex USA-13 at 90.
[90] Annex USA-5 at 174.
[91] Annex USA-5 at 174.
[92] Annex USA-5 at 175.

amounts of exports into the U.S. from the IMMSA mines during this period. This consequently satisfies the test under element (i) of the definition because these ores and concentrate products are goods that are "traded between the Parties," under the definition in Annex 31-A.

ii. Element (ii) of the "Covered Facility" definition

55. Relevant for the analysis under element (ii) of the "Covered Facility" standard, Grupo Mexico also recorded domestic sales of these copper, lead, and zinc ores and concentrates within the territory of Mexico in 2022, 2021, and 2020.[93] In 2022, the IMMSA unit recorded $464.7 million dollars in sales specifically within the territory of Mexico.[94] The company had sales of $387.6 million in the territory of Mexico in 2021.[95] In 2020, Grupo Mexico had a total of $341.1 million dollars in sales within the territory of Mexico.[96] These domestic sales of copper, lead, and zinc ores and concentrates within Mexico "compete" with exports of those products by other countries into Mexico, including U.S. exports into Mexico.

56. The United States actively exports copper, lead, and zinc ores and concentrates into Mexico. As documented in the United States' attached table, in the first 8 months of 2023, the United States exported approximately $1.098 billion dollars of copper ore and concentrates into Mexico.[97] In the first 8 months of 2023, the United States also exported approximately $37.5 million dollars in lead ores and concentrates to Mexico, along with an additional $181,203 in zinc ores and concentrates.[98] The United States has consistently recorded substantial exports of these ores and concentrates for the sample five-year time period reflected in the attached table.[99] "Data Mexico," an online data project of the Mexican government, also lists its own record of the total volume of trade exchange (including purchases and sales) in "Copper Ores and Concentrates" in Mexico in 2022 at $5.52 billion dollars.[100] This included approximately $1.21 billion dollars of goods in 2022 whose "main commercial origin" was the United States.

57. As just one example, economic data from the State of Arizona provides a clear illustration of these copper exports from the United States into Mexico. Arizona companies exported $1.74 billion dollars in copper ores and concentrates into Mexico in 2022.[101] Grupo Mexico's own reports acknowledge this direct competition. Southern Copper's "10-K" report notes that "we face competition from other copper mining and producing companies around the world," and that "global and local market conditions, including the high competitiveness in the copper mining industry, may adversely affect our profitability."[102]

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[93] Annex USA-5 at 174-175.
[94] Annex USA-5 at 174.
[95] Annex USA-5 at 174.
[96] Annex USA-5 at 175.
[97] Annex USA-22 (Appendix: U.S. Exports of Copper Ores and Concentrates to Mexico) at 1-2.
[98] Annex USA-22 at 1-2.
[99] Annex USA-22 at 1-2.
[100] *See* "Data Mexico – Copper Ores and Concentrates," Secretaria de Economia, Gobierno de Mexico, at 1-2 (available at: https://www.economia.gob.mx/datamexico/en/profile/product/copper-ores-and-concentrates?importsGeoSelector=1) (describing bilateral trade in copper ores and concentrates).
[101] *See* University of Arizona, Eller College of Management, Arizona-Mexico Economic Indicators, at 1 (available at: https://azmex.eller.arizona.edu/exports/exports-to-mexico) (trade data).
[102] Annex USA-5 at 22.

58. The United States' exports of copper, lead, and zinc ores and concentrates into Mexico "compete" with the copper, lead, and zinc ores and concentrates produced and sold from the San Martín Mine within Mexico. Therefore, under element (ii) of the Covered Facility definition the San Martín Mine also qualifies as a "Covered Facility" within the meaning of Annex 31-A.

59. Consequently, we ask that the Panel reach the conclusion that the mine is a "Covered Facility" under the Agreement. The facility is involved in mining and the evidence supports finding that the mine produces goods that are traded between the Parties. Through its mining and domestic sale of copper, lead, and zinc ores and concentrates, the San Martín Mine's products also compete in Mexico with U.S. exports of copper, lead, and zinc products. Meeting either of these standards under element (i) or (ii) of the Covered Facility definition is sufficient to render the mine a "Covered Facility"; the San Martín Mine meets both of the standards.

V. Argument II – Denial of Rights

A. Workers are currently being denied the effective right to strike at the facility because the company is operating the mine during an ongoing strike.

60. Grupo Mexico's continued operation of the San Martín Mine constitutes an ongoing Denial of Rights because the company is maintaining full operations during a strike in violation of Mexican law. As defined in Article 31-A.2 of the USMCA, a "denial of rights" occurs when "workers at a Covered Facility are being denied the right of free association and collective bargaining under laws necessary to fulfill the obligations" of Mexico. Specifically, Grupo Mexico is violating the following provisions of the FLL due to its ongoing operations at the San Martín Mine:

i. Article 449, which requires that "the tribunal and the corresponding civil authorities shall enforce the right to strike, granting workers the necessary guarantees and providing them with the assistance that they request in order to suspend work."

ii. Article 935, which requires that "prior to the suspension of work, the tribunal, with a hearing of the parties, shall establish the indispensable number of workers who must continue working so that the work continues to be carried out, whose suspension seriously prejudice the safety and conservation of the premises, machinery, and raw materials or the resumption of work. For this purpose, the tribunal may order the performance of the diligences as it deems appropriate."

iii. Article 133.VII, which prohibits employers or their representatives from "executing any act that restricts the rights granted to the workers by the laws."

61. Under Mexican law, when a lawful strike by a union occurs the employer must "temporarily suspend work" at the facility in question.[103] After having done so, courts must "enforce the right to strike, granting workers the necessary guarantees and giving them the

[103] FLL, Article 440 ("the strike is the temporarily suspension of work created by a coalition of workers"); FLL, Article 441 ("for the effects of this [provision in the law], the employee unions are permanent coalitions").

assistance that they request in order to suspend the work."[104] A strike is considered "justified" if the responsibility of the strike is assigned or imputed to the employer.[105] With respect to the enforcement of a strike, under Mexican law, courts are designated as holding the sole discretion to determine what number of workers – if any – are allowed on the property during the strike for minimal non-operational maintenance tasks.[106]

62. Importantly, an employer's obligation to engage in collective bargaining in Mexico is enforced not only by a duty to bargain in good faith, but primarily through the right to strike and to affect business operations at a facility.[107] Accordingly, the right to strike is central to the right of workers in the Mexican system to have the freedom of association and collective bargaining. The use of strikebreakers to unlawfully resume operations during a strike denies workers their right to engage in union activity without interference and means that their right to freedom of association "cannot be realized" in such circumstances.[108] The FLL is very clear on this point, noting that "the rights of society are abused" when "a strike has been declared under the terms established by law and an attempt is made to replace a striker or a striker is replaced before the conflict is resolved[.]"[109]

63. In addition to these laws, Mexico has also ratified two important and relevant International Labor Organization (ILO) conventions relating to the freedom of association and collective bargaining. Mexican employers are required to respect such rights due to their incorporation under the Constitution of Mexico.[110] Those conventions, including ILO Convention 87 (Freedom of Association and Protection of the Right to Organize) and ILO Convention 98 (Right to Organize and Collective Bargaining) set forth the principles that employers should refrain from, including strikebreaking activity of the kind that Grupo Mexico

[104] FLL, Article 449 (the authorities will "enforce the right to strike, granting workers the necessary guarantees and giving them the assistance that they request in order to suspend the work").
[105] FLL, Article 446 ("a justified strike is that in, which the reasons for the strike are the responsibility of the employer.").
[106] FLL, Article 935 (the authorities "will establish the indispensable number of workers who will continue working so that the work continues to be carried out, whose suspension seriously damages the safety and conservation of the premises, machinery and raw materials or the resumption of work.").
[107] FLL, Article 387 (requiring that employers must engage in collective bargaining with unionized workers); FLL, Article 450 (when an employer is asked by a union to sign a collective contract and refuses to do so, the workers may lawfully exercise the right to strike).
[108] USMCA Article 23.3 fn. 6 ("for greater certainty, the right to strike is linked to freedom of association, which cannot be realized without protecting the right to strike.").
[109] FLL, Article 4(II)(a). This provision notes that it applies "except for the exceptions taken in Article 468," which is no longer relevant as it is an article that has since been repealed.
[110] Article 1 of Mexico's Constitution requires Mexico to respect international treaties that it has ratified, including ILO conventions.

is now engaged in at the San Martín Mine.[111] These conventions are directly incorporated into the text of the FLL.[112]

64. Under the facts at issue here, Los Mineros is presently engaged in a lawful strike at the facility. The status of the strike was confirmed by the SCJN on June 23, 2021, thereby requiring that business operations at the mine must cease.[113] While it is true that the FCAB recently issued an order imputing culpability for the strike to IMMSA and ordering back pay and a return to work, that decision does affect the analysis of the violation, which concerns the continued operation of the facility despite an ongoing, legally valid strike.[114] The facility should not be operating under normal conditions until the court system fully adjudicates these issues.

65. Rather than comply with the law, Grupo Mexico admits to operating the San Martín Mine "continuously" since August 21, 2018, and their most recent press release confirms current work occurring at the facility.[115] Mexico does not dispute that facility operations are ongoing at the present time, and the available reports and records support that conclusion.[116] Grupo Mexico admitted operating the mine in a recent filing.[117]

66. Therefore, the facts demonstrate a breach of the FLL. Grupo Mexico has not "suspended work" at its facility during the strike as required under Article 449. Mexican law states that only a court can determine "the indispensable number of workers" who may continue to work at a facility during a strike, and there is no evidence that any court made such a finding here.[118] The mine has been in operation and produced over a million tons of bulk ore during the past reporting year, resulting in thousands of tons of ore and concentrate production. It is currently employing approximately 596 employees at the facility.[119] This activity also breaches Article 935 of the FLL, because Grupo Mexico is not acting under a *current* lawful order of a court to operate its mine; nor are the current operations merely activities to "conserve the premises" as described in the FLL. All of these actions by the company are also the "execution of acts that restrict the rights granted to workers by the laws," in breach of Article 133, because they prevent workers from the effective use of the right to strike.

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[111] On April 1, 1950, Mexico ratified ILO Convention 87 on the freedom of association and protection of the right to organized. On November 23, 2018, Mexico ratified ILO Convention 98 on the right to organize and collectively bargain. Specifically with regard to an employer's use of replacement workers to operate in violation of laws concerning strikes, the ILO Committee on Freedom of Association has held that using workers "to break a strike in a sector which cannot be regarded as an essential sector in the strict sense of the term, and hence one in which strikes might be forbidden, constitutes a serious violation of [the] freedom of association." *See* ILO Compilation of decisions of the Committee on Freedom of Association, Sixth Edition, 2018 at 172 (available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_632659.pdf).

[112] FLL, Article 6 ("the respective laws and the treaties made and approved under the terms of Article 133 of the Constitution will be applicable to the labor relations in everything that benefits the worker, from the date of them taking effect.").

[113] Annex MEX-34 at 41-42; Annex USA-11 at 35-36.

[114] Annex MEX-49 at 7-8.

[115] Annex USA-6 at 2, 22; Annex USA-15 at 1.

[116] Annex MEX-47 at 83 (referencing the employer's current practice of employing non-union workers at the facility); Annex USA-18 at 2 (noting that the six Coalition workers who met with the employer were employees).

[117] Annex MEX-51 (Lawsuit document of Amparo Directo 635/2023, IMMSA) at 6.

[118] FLL, Article 935.

[119] Annex USA-5 at 20.

67. Consequently, the United States respectfully requests that the Panel find that Grupo Mexico's present operation of the San Martín Mine, through its subsidiary IMMSA, constitutes an ongoing denial of rights at a Covered Facility.

B. Workers are currently being denied their right to representation by their legally designated union because the company is unlawfully bargaining with a group that is not legally authorized to do so.

68. Grupo Mexico is also violating Mexican law by collectively bargaining with the "Coalition," a group not lawfully authorized to represent the mine's employees, and then applying those agreements at the San Martín Mine and thereby interfering with their employees' right to freedom of association and collective bargaining.[120] Specifically, Grupo Mexico is violating the following provisions of Mexico's FLL, which provide a guarantee that employees should have the right to lawfully choose their bargaining representative:

i. Article 133.IV, which prohibits employers or their representatives from "forcing workers by coercion or by any other means, to join or withdraw from the union or group to which they belong, or to vote for a certain candidacy, as well as any act or omission that infringes their right to decide who should represent them in the collective bargaining."

ii. Article 133.VII, which prohibits employers or their representatives from "executing any act that restricts the rights granted to the workers by the laws."

69. The rights granted to workers by law on this topic also include ILO Convention 98, which prohibits "acts of interference" by employers in the "establishment, functioning or administration" of a union.[121] In terms of the USMCA, Annex 23-A of the Agreement specifically states that Mexico shall provide in its labor laws a prohibition on "employer domination or interference in union activities," and prohibit companies from refusing "to bargain collectively with the duly recognized union."[122] Within Mexico, the "duly recognized union" for bargaining purposes is the one that is the designated "titleholder" for collective bargaining.

70. The SCJN has concluded that Los Mineros is the "titleholding" union that represents workers at the San Martín Mine. Consequently, any bargaining over the wages, hours, or other terms or conditions of employment of workers at the San Martín Mine may only occur with Los Mineros because they are the "duly recognized union." The negotiated wage agreements between IMMSA and the Coalition are therefore direct evidence of unlawful conduct. The record provides clear documentation that this occurred in 2020, 2021, and 2022, and is ongoing at the present time.[123] The most recent of these wage agreements was put into effect on February

[120] The United States is providing the Panel with three representative exhibits that reflect these unlawful agreements between Grupo Mexico and the Coalition. Annex USA-16 at 1; Annex USA-17 at 1-4; Annex USA-18 at 1.
[121] ILO, C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98), 1949, Article 2, ¶ 2 (available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C098); FLL, Article 357 (unions "must enjoy adequate protection against any act of interference by some with respect to the others, either directly or through their representatives, in their constitution, operation or administration.").
[122] USMCA Article 23-A.2(a).
[123] Annex USA-16 at 1; Annex USA-17 at 1; Annex USA-18 at 1.

11, 2023 and is currently being applied to employees at the facility.[124] The most-recent agreement states that the Coalition and Grupo Mexico agree to increase wages at the facility and that the increase will be effective February 11, 2023.[125] Los Mineros was not present for any meetings between IMMSA and the Coalition nor are they signatories to any agreement between those two groups.

71. As referenced above, Article 133.IV of the FLL prohibits employers from "forcing workers by coercion or by any other means, to join or withdraw from the union or group to which they belong, or to vote for a certain candidacy" and "any act or omission that infringes their right to decide who should represent them in the collective bargaining." IMMSA's decision to circumvent Los Mineros and collectively bargain with the Coalition over workers' wages at the facility and then to implement those new terms is an "act that infringes their right to decide who should represent them in collective bargaining." Similarly, because of the lawful titular status of Los Mineros, entitling them to be the bargaining representative for workers, IMMSA circumventing them in favor of the Coalition is evidence that the company is executing actions "that restricts the rights granted to the workers by the laws," as prohibited by Article 133.VII. Therefore, these agreements are direct evidence of unlawful collective bargaining occurring with an unauthorized group at the facility, and Mexico has presented no argument in its Initial Written Submission to the contrary.

72. Consequently, the facts demonstrate that Grupo Mexico is engaging in unlawful collective bargaining with the Coalition over wages and working conditions covering workers at the San Martín Mine, despite the fact that the Coalition is not the authorized bargaining representative of the workers at the facility. These actions violate the FLL and Mexico's obligations under the USMCA and thus constitute an ongoing denial of rights at the facility. We ask that the Panel reach the same conclusion and issue a finding on that basis.

VI. Conclusion

73. For the reasons set forth above, the United States respectfully requests that the Panel, after conducting its verification, issue a report and make a determination that: (1) the San Martín Mine is a Covered Facility within the meaning of Annex 31-A of the USMCA; (2) that the substantive Denials of Rights presented to the Panel are within the scope of the RRM; and (3) that an ongoing Denial of Rights has occurred at the San Martín Mine based upon Grupo Mexico's continued operations of the facility during a strike and because it is collectively bargaining with an unauthorized group of workers at the facility.

[124] Annex USA-18 at 1; Annex USA-23 at 1-3.
[125] Annex USA-18 at 3.