

Public Version

*UNITED STATES – ATENTO SERVICIOS*

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

**CLOSING STATEMENT**  
**OF THE UNITED STATES OF AMERICA**

**May 16, 2025**

1. Thank you very much, Mr. Chair, members of the Panel. I realized I failed to answer one of the panel’s questions that I did want to give you a little bit of information on. I’ll do it as part of my closing. The panel asked the parties about the definition of covered facility and the role of the two different definitions in that provision.

2. I think one of the questions for the panel is to what degree there is overlap or distinction between the two definitions, for example. One way you can think of these definitions is that the first definition, “traded between the parties,” refers to trade moving, in this case, from Mexico to the United States. The second definition refers to the opposite, trade moving from the United States to Mexico. The reason the covered facility requirement is in the agreement, is because it’s a *trade* agreement. So, as important as understanding what *is* covered by the RRM, is a third category that would exist, which is what is *not* covered.

3. What would not be a covered facility is activity at a facility that is not involved in trade. The definitions of the covered facility come from a footnote clarifying the meaning of the phrase, “in a manner affecting trade” in the labor chapter of the USMCA, Chapter 23. During the negotiation of the USMCA, the Parties clarified this definition. The footnote indicates that, if there is a dispute, and the complainant is trying to show that there has been a failure to comply with one of the provisions that has this clause in it – in a manner affecting trade – that they would have to show that the entity, person, or industry is involved in producing a good or supplying a service that is traded between the parties, or, the parallel to the second definition, that it competes with a product or service in the territory of the party.

4. This footnote provides context for the understanding that the covered facility definitions don’t so much try to identify the specific types of trade that are relevant for the purposes of the RRM; but confirm that there *is* trade. What we’re concerned with is trade, and the impact of – in

this case – reducing the level of labor protections and artificially suppressing the cost of doing business for a company. So, in a way, you’re looking at the latent competition in the labor market that affects competition in the actual market. Therefore, the coverage is somewhat broad. Its purpose is to ensure that you are not covering labor activities or labor violations that do not have a relationship to trade. An example of that would be if a case was brought to us about government workers or workers in a hospital; a facility that doesn’t do anything affecting trade. The workers in a Covered Facility are working in a sector or industry that is involved in North American trade, and therefore have this necessary link to the trade agreement. So, with that, I hope I answered that one question, which I failed to answer before.

5. Moving to my prepared statement. Thank you all again for all your time and careful attention this week. It has been something of a long week, with the verification and all of the people that you have talked to throughout, trips you have taken to the facility for your verification. I think everyone has learned a lot. I certainly have. I am not a labor expert, so it was very useful for me to be able to hear your questions and concerns, and understand your expectations for how freedom of association and collective bargaining would work in practice in Mexico and in particular at Atento.

6. One point in the verification particularly struck me and strikes me as particularly important for understanding this dispute more generally. You all were asking a Mexican government official about the trainings provided at Atento during the RRM process, and whether, after the workers were given this one-hour training, there was any sort of assessment to see whether they had absorbed the information. Because the supposition would be that after having received a training in freedom of association and collective bargaining rights, the workers

would then understand their rights to freedom of association and collective bargaining. And you were asking essentially: *did* the workers understand their rights?

7. That's a very good question. And it's an important one to ask more generally in light of what has happened at Atento over the last few years. What have the workers at Atento learned about their rights to freedom of association and collective bargaining? If the workers *did* understand – if they do understand their rights to freedom of association and collective bargaining after receiving that training, for example – that might only serve to teach them that they did not *receive* these rights. One worker at the verification, in fact, said as much. They relayed that during the training done by labor authorities, they were told about Atento's Neutrality Statement. The worker apparently asked the labor authorities whether the company knew that they had these obligations; because, she told them, the company violated all of these things.

8. So, what did the workers learn from their experience at Atento over the past few years? Workers may have learned one of two things. They either don't know or understand their rights, which a government official during the verification suggested was the case for most workers in Mexico, that they aren't generally aware of their rights to freedom of association and collective bargaining. Or, they *know* their legal rights, in which case they also know they did not receive them, as this worker told us. They did not receive them *yet*. That's where we are now.

9. We have talked about the amount of time that has passed since the certification vote, and it's true some time has passed. But in the scheme of things, the workers' campaign for the free exercise of their rights has really just begun. Three years ago, the workers had a CBA that they likely weren't even aware of, and apparently a union representative that everyone seems to agree didn't really exist in practice. The workers mobilized and voted down the CBA under their new

rights in the labor reform. This was the beginning of the labor reform at Atento. It wasn't that long ago. And it was a huge step.

10. We all know what happened after this first vote. There was significant interference, and a campaign by Atento to install the union of its choice as the workers' representative. That is the reason we are here.

11. But it is equally important what happens next. What happens *now*. Because the workers at Atento are still learning. And what they are waiting to find out is: Was any of it worth it? Did it matter that they organized? Did it matter that they *tried* to exercise their new rights? Did it matter that, even after all the illegal actions of Atento, the intimidation and threats workers experienced, that *twenty percent* of the workers *still* risked their jobs and their livelihoods to vote for STRM in the representation vote, instead of the Benito Juarez union that their employer preferred?

12. Ultimately, it will be up to Mexico to answer that question. But this Panel also has an important role to play. Mexico has emphasized that this is not a supranational court. And it's true that this Panel can't review Mexico's actions as if it were an appellate or other domestic court. But this Panel does have the authority to determine whether or not Mexico has complied with its obligations under the USMCA. That is its role. Mexico has also emphasized the burden of proof of the United States contained in the Procedural Rules. Yes, that provision is there. But it is a general provision, which applies to all disputes under the USMCA, not just RRM cases. And this provision cannot, as Mexico suggests, operate to nullify core functions of the RRM process. Importantly, this includes the Panel's verification. The panel is tasked with *verifying* the facts of the case.

13. Mexico clearly does not like the format of the factual evidence provided by the United States. Yes, it still has comment bubbles in it even. We thought about that, and Mexico may be surprised to learn that submitting it in that form was not a mistake or an oversight. The United States provided to the Panel its contemporaneous notes made during our interviews with workers. We didn't want to change anything so it was as faithful to the conversations we had at the time as possible. This is what the United States is able to do as a foreign government that does not have investigative authority in Mexico. These notes, and the other facts presented by both the United States and Mexico, form part of what the Panel is tasked with *verifying*. The Panel has the authority to do that, and also the responsibility. That is why we are here.

14. The goal of the United States in this dispute is the goal of the labor law reform itself, and the goal of Mexico: to help the reform of the labor *laws* in Mexico to grow into the reform of labor *practices* in Mexico. The stated purpose of the RRM is to ensure that denials of the rights to freedom of association and collective bargaining are remediated. It's a fact of life that in the context of arbitration like this, we are sitting at separate tables and seem to be on opposing sides. But when it comes to whether we want compliance with Mexican law and protection of workers' rights, in our experience with our Mexican colleagues, and our experience in these RRM processes, we know that we are not on different sides. We all here want to see that Mexican law is followed and that workers are protected. We are grateful that the Panel has this opportunity now to affirm that shared interest, with their own views and determinations on these issues.

15. We thank the Panel again so much for their tremendous work in this dispute. We thank the Secretariat assisting them for their tireless efforts in making sure this proceeding runs smoothly. We thank the interpreters for the same and we thank our Mexican colleagues for

continuing to engage with us on these issues under the USMCA. This is important work, and we look forward to our continued efforts together.