

USTR's 301 review on forced labor casts shadow over USMCA

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The Trump administration's sweeping Section 301 trade investigation into forced labor will cast a shadow over the upcoming talks for the review of the United States-Mexico-Canada Agreement and throws a wrench into negotiations to reduce US tariffs on its top trading partners. It's unclear how much the Section 301 case concerning unfair trading practices that allegedly burden US commerce will affect negotiations with Canada and Mexico, for talks either within or outside of the USMCA. But the 301 case, set for an April 28 hearing, will likely pose new challenges for negotiators to reach an agreement.

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The Office of the US Trade Representative is investigating 60 countries in the forced labor probe, including Canada and Mexico, which already have significant labor commitments within the USMCA.

President Donald Trump has made clear he wants to maintain tariffs on most trading partners and has so far not reached a substantial agreement with Mexico and Canada to lower duty rates and defuse trade tensions.

The USMCA negotiation process, which started this week between the US and Mexico, is due for its review in July, when all three countries must decide whether to renew the agreement or phase it out in 2036.

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But the 301 case, set for an April 28 hearing, will likely pose new challenges for negotiators to reach an agreement.

Jennifer Smith-Veluz, a trade attorney at Butzel Long, said the 301 probe will generate a lot of "rhetoric," but the USMCA could still get renewed with higher labor commitments within the pact along with Washington's push for more US content requirements in goods.

Still, she added that the 301 case could lead to legal challenges if USTR fails to provide sufficient evidence and if courts decide it runs afoul of the major questions doctrine that says Congress must provide clear authorization for broad executive branch actions.

"The new investigations are applying Section 301 in a way that the statute has never been used before," she said. "It's previously only been done for like, a single country, or just like a single narrow issue, maybe covering a small number of countries, but it's never been just so broadly."

President Donald Trump imposed a 25 percent tariff on Mexico and a 35 percent duty on Canada last year, with certain exemptions, including for the USMCA, under the 1977 International Emergency Economic Powers Act, which the US Supreme Court overturned in February.

Trump has pushed to recreate those IEEPA tariffs, which allowed him to enact sweeping duties on most countries in the world, including on Mexico and Canada, indicating that Section 301 and Section 232 for national security protections could make up the loss. The US already has significant 232 duties on key sectors impacting Canada and Mexico, including steel and aluminum and cars and car parts.

The big question in USTR's 301 probe is what the government is investigating, particularly since forced labor is not considered a major problem with Canada. USTR has indicated it is investigating not domestic forced labor but imports of forced labor in the investigated countries.

"We're talking, of course, about an investigation of 60 countries to take place in a few months. And to be precise, the US Trade Representative's office would not have the personnel that is necessary to do a proper job of that many investigations," said David Gantz, the Will Clayton Fellow in Trade and International Economics at Rice University's Baker

Institute for Public Policy.

Gantz noted that China's absence from that list raises major questions about its legitimacy, adding that the administration is likely seeking to avoid retaliatory barriers on rare earth mineral exports from China.

The US works with the Uyghur Forced Labor Prevention Act to prevent forced labor used in China's Xinjiang region from ending up in US supply chains. But the US remains concerned that other countries import goods from the region or in other forced labor countries.

Canadian Prime Minister Mark Carney told reporters last week that he was encouraged by the US focusing on labor practices but said there are stronger provisions in Canada's law than in the USMCA.

"Canada has a comprehensive legal framework around that," he said. "We stand by our adherence to Canadian law."

USTR, however, could cherry-pick evidence and find some minor concerns regarding imported forced labor products.

"Canada, Mexico and the European Union have adopted measures intended to stop the importation or sale of products produced using forced labor," the USTR claims in the official notice for the 301 investigation. "However, none of the economies subject to these investigations appears to have both adopted and effectively enforced a forced labor import prohibition to date."

But skeptics of the probe point to the US enabling the use of prison labor in its supply chains, generally frowned upon in the international community. The US also has some weaker labor laws than the International Labor Organization guidelines, while US Customs and Border Protection is sometimes criticized for its infrequent and lax withhold release orders on forced labor findings for countries, which are primarily from China and southeast Asia.

What the USTR means when it asks for forced labor import bans to be "effectively enforced" is not clear, whether it is supposed to match US laws or provide some other mechanism. The European Union, which is subject to the 301 probe, has stronger labor laws and is implementing next year a law to improve an import ban on forced labor significantly.

Azim Essaji, an associate professor in economics and trade at Ontario's Wilfrid Laurier University, said the Trump administration is less concerned with labor rights than fishing for a path to implement a new tariff regime.

"Canada has fairly red line laws on the use of forced labor that is prohibited. That doesn't mean that that is necessarily enforced, but it is something that Canada prohibits," he said, adding the probe "smells a lot more like a desperation tactic."

Essaji said the 301 case "injects more uncertainty" into US-Canada relations with the USMCA review around the corner but added he does not believe the Trump administration can use the investigation as significant leverage or "force any kind of concessions" from Ottawa.

"I personally wouldn't agree to any side deals, unless you're willing to talk about the whole package," he said of Canadian negotiators, and "force [the US] to actually debate concrete issues [and not] validate some fishing expedition on Section 301."

— The RRM effect —

Mexico, however, remains a bigger question, though the USMCA's Rapid Response Labor Mechanism (RRM) provides an outlet to resolve labor and union disputes in the country.

The RRM is a mechanism which allows the US and Canada to enforce the labor-related obligations set forth in the USMCA that guarantee workers' rights to freedom of association and collective bargaining. It is enforced at a facility level and is meant to hold Mexico, a country with a long history of state-controlled labor unions and employer associations, accountable to the labor protection terms of the USMCA.

The RRM covers companies providing goods or services considered to be in priority sectors, which include several sectors such as mining, auto parts and many consumer goods. But absent from the list are farms, orchards, ranches and other facilities involved in raw agricultural production, with some exceptions such as food manufacturing and value-added agricultural processing covered.

"The Mexican government, while remaining committed to the [RRM], is also increasingly pushing back on US claims of

labor rights violations by demanding more evidence and requesting the US to use the [mechanism] as a tool of 'last resort,'" wrote Mark Anner, dean and distinguished professor of the School of Management and Labor Relations at Rutgers University, in an article published by the Brookings Institution earlier this month.

According to a 2024 analysis by international law firm Covington & Burling, "Mexico has stated that the RRM should not be used to undermine Mexico's sovereignty by going beyond what USMCA requires and replacing or interfering with its domestic enforcement labor laws, including in cases that are being reviewed by local courts."

Antonio Ávila, a foreign trade partner at Guadalajara-based firm JA Del Río, said Mexico has improved its labor conditions but still struggles to enforce rights in the agricultural sector, where workers can sometimes be coerced into not receiving payments unless they meet a quota.

Ávila said Mexico is working to pass a new policy by July that would restrict exports unless they are certified to meet labor rights. But he said the US is still likely to impose tariffs first, while Mexico would seek to remove them when labor conditions are reviewed.

"It's part of the negotiation of this review of the USMCA, they [the US] want more. They want to push in order to obtain more clarity of the status of the labor issues in Mexico," he said, adding that Mexico will need to "prove with this new regulation that we are in compliance."

Ávila added that Mexico also has no system in place to track imports that may have been used with forced labor.

"If we don't have enough pressure [from] USTR in this regulation, we are not going to change," he said. "It is not in the list of principal topics."

— A possible exception —

With USMCA review negotiations set to begin this summer, the investigations are a major wild card.

"The US has so much clout with Mexico, 80 percent of Mexican goods are still coming here, and how this will figure into the negotiations between now and July, I think is very speculative, since at this point, they've just been initiated," Gantz said.

Further complicating matters is the fact that in court, "301 cases tend to be judgment-proof," Gantz added, but the sheer scope and limited time of the cases may make these cases an exception.

"It's been very hard to challenge them [but] if it looks like, despite the hearings, despite the comment period, all of that stuff, that this is a sham, you might get a court to say, 'Wait a minute. This is not the way 301 is supposed to be used. You have to have a legitimate investigation,'" he said. "And you can't possibly have 60 legitimate investigations in a month or two. USTR just isn't big enough."

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