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NAFTA'S LABOR SIDE AGREEMENT:

Fading into Oblivion?

An Assessment of Workplace Health & Safety Cases

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Executive Summary

NAFTA's Labor Side Agreement, officially called the North American Agreement for Labor Cooperation (NAALC), "represents the first instance in which the United States has negotiated an agreement dealing with labor standards to supplement an international trade agreement."¹ As such, careful evaluation of its effectiveness is warranted on its 10th anniversary and in the context of current negotiations to expand trade agreements throughout the hemisphere.

The NAALC provides a mechanism for the public to submit a complaint to any of the three participating countries alleging failure of one of the others to enforce its labor standards. Most studies to date have examined the effectiveness of the NAALC at addressing violations of workers' right to organize. The NAALC process allows those cases to proceed only to the level of government-to-government consultations. By contrast, violations of worker health and safety, child labor, and minimum wage standards could ultimately result in fines and trade sanctions.

This study is unique in its focus on the seven cases that involve worker health and safety violations, over one third of all cases reviewed under the agreement.² Four cases were filed with the U.S. or Canadian National Administrative Office alleging failure of the Mexican government to enforce its regulations; three were filed in Mexico against the U.S. government. Results of this investigation are based on a review of relevant documents and on in-depth interviews and focus groups with 47 people involved in the submission process – workers, representatives of unions and non-governmental organizations (NGOs), health and legal experts, and government representatives.

Key Findings

- The NAALC has failed to protect workers' rights to safe jobs and is in danger of fading into oblivion.
- The NAALC has exposed violations of worker health and safety regulations – the sunshine effect – and the impact on the health of immigrant workers in the U.S. and on that of Mexican maquiladora workers.

Han Young maquiladora in Tijuana, Mexico

Water would come into the plant during the rainy season and some of the electrical cables had little or no insulation . . . And the cranes they used to lift the chassis would lose power and the whole thing would come crashing down and there was a distinct risk that you could get crushed . . . And the company would

¹ North American Agreement on Labor Cooperation: A Guide, U.S. National Administrative Office, Bureau of International Labor Affairs, U.S. Dept. of Labor, Washington D.C. April 1998.

² The seven cases are: Han Young (9702), ITAPSA/Echlin (9703), SOLEC (9801), Washington State Apple Industry (9802), Decoster Egg Farm (9803), TAESA (9901), and Autotrim/Customtrim (2000-01). For more information, visit: <http://www.naalc.org/english/publications/summarymain.htm> and <http://www.hrw.org/reports/2001/nafta/>

take injured workers to the hospital and demand that they be back there the next day or they'd get fired.³ (U.S. occupational health professional)

ITAPSA/Echlin maquiladora in Ciudad de los Reyes, Mexico

The NAO report confirmed high levels of asbestos dust, noise, inadequate protection, chemical labeling, ventilation or medical exams, no access to results of the medical exams, and no written safety information for workers...and government fines totaled less than \$200. (U.S. union representative)

Washington State Apple Industry, U.S.

They use chemicals in the plant so the fruit is clean when its packed and shipped overseas, and there's no ventilation. Once more than 100 people were poisoned and desgradiadamente what the boss did afterwards was call immigration so everyone was sent back to Mexico. (Immigrant packinghouse worker)

[In the fields] there's a lack of water, lack of protection against pesticides, many people injured because they had to work so quickly with no time to rest or eat because they were paid by how many apples they picked. (U.S. NGO representative)

Decoster Egg Farm in Maine, U.S.

There are about 350 workers; in 1996 Carlos got his hand caught in an unguarded machine and lost 4 fingers. [In the chicken barns] workers breathed in dust full of feces, they were pecked when they had to pull out dead birds, there was a tremendous noise level, fear and intimidation from the dictator management style . . . [Injured workers] were just put on a bus and shipped out . . . (U.S. NGO representative, U.S. government representative, Maine)

Autotrim/Customtrim, Tamaulipas, Mexico:

My job is to stretch and glue leather covers onto steering wheels, and clean excess glue with solvents . . . The constant physical stresses and repetition in my work causes a lot of pain in my back, shoulders, neck, my arms, wrists, and hands. I'm also losing my grip . . . (Mexican worker, NAO Submission 2000-01, Affiant W)

Some [injured workers] were called junked workers. They just put them aside . . . that in my opinion is a terrible inhumanity. (Mexican worker)

Problems highlighted have not been resolved due to: 1) Limitations inherent in the NAALC as negotiated, 2) Lack of political will to address the problems that have come to light and, 3) Refusal to include workers and their advocates in discussions to improve workplace conditions.

➤ **Limitations inherent in the NAALC:**

³ Interviews were conducted between July 13, 2001, and February 11, 2002, and subsequently transcribed for analysis. Many people interviewed requested anonymity; accordingly, we do not attribute quotes to specific individuals.

The NAALC focuses on government failure to enforce worker safety regulations, not on the companies that violate those regulations. The NAALC has no mechanism to sanction companies directly or to ensure that government agencies effectively enforce regulations.

The agricultural industry is one of the strongest in the nation and they have a strong lobby . . . sometimes our hands are tied. (Washington State government representative)

The federal and local governments don't have power anymore; the people running the show are the companies. They say I'm going to set up here and the most screwed up won't be us but our children and grandchildren. (Mexican worker and NGO activist)

The NAALC created a lengthy, bureaucratic process with no ability to protect workers from reprisal. To date, none of the seven cases has advanced through the first stage of the process in less than 1½ years from the time the case was submitted and two were still pending after 2½ years.

The process doesn't give instant gratification . . . the bottom line is – it's a slow process. (U.S. Government)

It's a very long, difficult process; meetings after meetings after meetings . . . years for the whole process . . . and then people give up in despair . . . There's not even a way to protect workers afterwards who face repression; here they could kill you and it means nothing . . . We're living with a lot of fear because the newspapers have attacked us, they call us terrorists, destabilizers of the maquila, against the government, they watch us and call us on the phone . . . We have the right to take care of our own health. (Mexican workers)

At the stage of ministerial consultations, one of the reasons they can sit there till hell freezes over is that there is no deadline. If you had a deadline . . . you'd have a default; presumably the default would be that the case would automatically proceed to the next level in the cases where it could. That would create some incentive to reach agreements. (U.S. lawyer and former National Advisory Committee member)

➤ **Lack of political will to pursue cases:**

Despite government fact-finding reports that document significant problems, none of the cases to date have proceeded further than the first of four steps⁴ in the NAALC process - consultations between the labor ministers in the affected countries. Government officials have denied numerous requests to take the well-documented Autotrim/Customtrim case

⁴ Steps in the NAALC process include: 1) Cooperative Consultations, 2) Evaluation by a Committee of Experts (ECE), 3) Resolution of Disputes through consultations and an arbitral panel, and 4) Fines backed by a suspension of trade benefits (NAALC: A Guide, April 1998)

to the next level, that of convening an objective, tri-national, Evaluation Committee of Experts to further examine worker safety issues that have come to light.

There's no political will for an ECE . . . The governments are reluctant to proceed to an ECE . . . The criterion that's used is – “is this in the best interest in the larger context of the relationship between the countries?” . . . The government sees an ECE as ‘scary stuff,’ maybe because it involves outsiders . . . And our view is that we should resolve things cooperatively. Only when that fails would we seek an ECE. And governments don't want to acknowledge that they've failed. (U.S. government representatives)

The ECE involves an independent body looking at the issue in dispute in all three countries, it doesn't just look at the one country that's under the gun . . . But just getting the initial willingness to do it is . . . hard. (U.S. lawyer)

I don't think there's any question about whether they could take these [health and safety cases] forward . . . if they wanted to be aggressive these would be very good vehicles for an ECE . . . It's just a question of what it takes in terms of political pressure . . . Instead you see people wringing their hands and saying, “we don't know what to do now.” (U.S. lawyer and former National Advisory Committee member)

➤ **Refusal to include workers:**

The NAALC has no criteria to meaningfully include workers and their advocates in the process. For example, Mexican maquila workers from Autotrim/Customtrim submitted detailed recommendations and asked to be involved in governmental consultations to resolve the health and safety problems they had documented.⁵ Their requests were ignored and they ultimately learned the results of consultations when a government press release noted that an agreement had been reached to “close the Autotrim/Customtrim case” by establishing “a bilateral working group of government experts on occupational health and safety issues⁶ . . .” likewise excluding their participation.

There's no formal mechanism [for workers to participate in ministerial consultations]. We're happy to discuss [workers' issues] with the Mexican government but it's hard to say what the outcome will be. (U.S. government representative)

- One government representative expressed an optimistic long-term view of the NAALC: “this may be a step towards different types of agreements in the future if we look at it as part of an ongoing evolution.” (Canadian government representative)
However, this potential evolution has been stymied by the governments' failure to use

⁵ See the website of the Maquiladora Health and Safety Support Network for letters and documents regarding the Autotrim/Customtrim case: <http://mhssn.igc.org/#hea>

⁶ U.S.-Mexico Joint Declaration, publicized in a June 12, 2002, News Release, U.S. Department of Labor, Office of Public Affairs.

the agreement to its full potential. With the transfer of the Autotrim/Customtrim and other cases to a government-to-government Working Group, the partner governments have themselves effectively abandoned the NAALC submission process.

- Submitters likewise are abandoning the process. They are disillusioned and frustrated by the weak outcomes of ministerial consultations and the governments' refusal to further pursue even the best-documented cases.

How many of these cases can you file. . . When something's new it has a lot of attention . . . but if you have another case filed. . . they're going to get the same experts to write the same report . . . With the first cases, there was scrutiny and energy about whether this thing was going to be effective but how many times can you keep doing it? (U.S. union representative)

Unfortunately you need a lot of time and money to use these tools [the NAALC] . . . participating in the hearing [in Mexico] was very expensive . . . you lose days from work, so economically it affects each worker because unfortunately we live day to day. . . the complaints are very costly because you have to travel, have to collect all the information . . . (Mexican immigrant packinghouse worker, Washington State Apple case)

- The political, historic moment for using the NAALC as leverage to improve workers' conditions appears to have passed. The limited positive outcomes from previous NAALC cases – the sunshine effect and cross-border dialogue – have been undermined by a lack of political will to resolve the problems identified and by a refusal to include workers in government dialogue to resolve those problems.
- The NAALC is no longer a viable tool under the current political climate and is in danger of fading into oblivion if lessons learned are not applied to improve the NAALC and future agreements.

Recommendations:

Political will to improve the NAALC as follows is critical if it is to function as a viable tool:

- Streamline the process by incorporating deadlines.
- Establish an Evaluation Committee of Experts (ECE), the next step in the NAALC process, to examine the Autotrim/Customtrim case.⁷
- Openly evaluate the NAALC's effectiveness at 10 years, actively soliciting written input and testimony from submitters, with a commitment to improve the current NAALC process and future trade agreements.⁸

⁷ An ECE was requested by submitters on December 12, 2001, and by Congressional representatives on May 7, 2002. See <http://mhssn.igc.org/#hea> for copies of the letters requesting an ECE.

⁸ A four-year review consisting of public hearings and testimony was conducted in 1998. The eight-year review scheduled for 2002 has, to date, consisted of a review of the literature.

Lessons from the NAALC have important implications for trade negotiations and for global activists:

- Build workers' rights into trade agreements rather than attaching them as a side agreement with no enforcement mechanism.
- Expand cross-border solidarity efforts:

If the maquiladoras go [from here] to another country, we ought to tell them what happened here, what they too can expect . . .to begin to spread the struggle to the whole world. (Mexican workers)

[We need] an international pact between workers. We would not handle goods unless they met the labor standards and child labor laws of the country of origin . . . This pact would be enforced by an international delegation of workers to certify goods and if goods that aren't certified come into a port, we would just leave them on the dock or the truck. We don't need any big complicated bureaucracy to administer that... (U.S. union representative)

- Provide resources to build government infrastructures and the ability to enforce health and safety and other labor standards. The proposed Tobin tax (of financial transactions worldwide)⁹ is a potential source of funds.
- Establish a mechanism to sanction companies that violate internationally recognized workers' rights.
- Include worker health and safety as one of the ILO's core worker rights.

The history of the NAALC to date highlights the limitations of a process - allegedly one designed to protect workers - that excludes those very workers from meaningful participation. Workers and their advocates were excluded from initial NAFTA negotiations, are prevented from participating in the NAALC process beyond presenting the initial submission, are not provided with results of ministerial consultations designed to resolve their own case, and have been excluded from the newly formed government-to-government health and safety working group. FTAA negotiations¹⁰ to date follow this same exclusionary trend and are a step backwards in an evolutionary process to protect workers' rights.

The NAALC is headed towards oblivion unless there are drastic efforts in the very near future to meaningfully examine and learn from the first ten years of experience and to apply those lessons to the NAALC itself and to future trade agreements.

⁹ See website <http://www.ceedweb.org/iirp/>

¹⁰ Free Trade Area of the Americas (FTAA)

NAFTA's Labor Side Agreement: Fading into Oblivion?

Introduction

In this paper, we examine the NAFTA labor side agreement as a tool to address the problem of work-related injuries and illnesses among Mexican workers in foreign-owned companies and among immigrant workers in the United States. We first briefly discuss the context and controversies surrounding the history of the side agreement, we describe its structure and process using examples from two of the most recent cases submitted, and we summarize seven cases dealing with worker health and safety. We discuss our research methods and the results of interviews with forty-seven key informants and conclude with an assessment of the agreement's effectiveness, posing questions about the potential for public participation and its future viability as a tool to protect workers' health and safety.

This report is not meant to be exhaustive, rather to contribute to the growing body of research evaluating the side agreement, officially known as the North American Agreement on Labor Cooperation or the NAALC. We focus on health and safety cases since workplace hazards can cause long-term health effects and because health and safety is one of only three issues with the potential to reach the level of fines or trade sanctions under the labor side agreement's procedures.¹¹

The Context

We would apply the leather to stick shifts in cars, using a brush to apply the glue, then sewing it on. Each person sewing had to meet a quota of 172 stick shifts a day. And for one (stick shift), you had to make 44 repetitive movements. So, to meet their quota, that's 3,568 movements per shift, (Pablo,¹² Mexican worker at Custom Trim, owned by Florida-based Breed) (NAO Hearing transcript).

My job is to stretch and glue leather covers onto steering wheels, and clean excess glue with solvents. I have to stretch the leather very tautly to get it to fit over the wheel. Doing this over and over again puts a lot of stress on my hands, wrists, shoulders, neck, and back . . . The constant physical stresses and repetition in my work causes a lot of pain in my back, shoulders, neck, my arms, wrists, and hands. I am also losing my grip; it has become much weaker, (Juan, Mexican Worker at Autotrim, owned by Florida-based Breed) (U.S. NAO 2000).

¹¹ In addition to health and safety, the two other issues that could reach the level of trade sanctions concern violations of child labor and minimum wage laws. The NAALC limits many other issues such as freedom of association from proceeding further than consultations. Failure of health and safety cases to proceed beyond the level of consultations cannot therefore be attributed to inherent constraints of the agreement as written; an evaluation of these cases will shed light on how effectively the agreement is being implemented.

¹² Names used are pseudonyms to protect those interviewed

These quotes from Mexican workers involved in a case submitted under the NAALC illustrate the nature of work in the foreign-owned maquiladora factories in Mexico – repetitive, assembly line work producing one part of a larger product, in this case steering wheels for automobiles designed for the U.S. consumer market.

Even prior to NAFTA, the North American Free Trade Agreement that went into effect in 1994, Canadian and U.S.-owned companies had begun to close shop, moving south in search of cheaper labor and lax enforcement of worker and environmental regulations. The Border Industrialization Program (BIP), established by Mexico in 1965, laid the foundation for the maquiladora industry. It offered incentives for foreign companies operating in Mexico, such as allowing them to import raw materials and machinery without paying tariffs (Schwartz 1987). NAFTA’s economic incentives accelerated the growth of the maquiladora industry. Employment more than doubled between 1994 and 2001, with nearly 1.3 million workers employed as of May 2001 (Faux 2001).

A. Globalization and Workers’ Health

The effect of maquila jobs on workers’ health has not been extensively researched, but results of several studies of occupational exposure indicate a potentially serious problem, especially when compounded with environmental exposures to industrial hazardous wastes. Since many maquila jobs involve repetitive assembly line work, carpal tunnel syndrome and related injuries are of particular concern as described by Pablo above; and the common use of solvents and other chemicals present occupational as well as environmental health hazards (Brenner et al. 2000; Levy 1995; Kourous 1998; Merideth and Brown 1995; Moure-Eraso et al. 1997; Moure-Eraso et al. 1994; Ostrosky-Wegman 1996; Sanchez 1990).

The impact of globalization on workers health in the North American continent extends beyond Mexico’s maquiladora sector. Workers who migrate north in search of jobs are disproportionately exposed to hazards in U.S. industries (Fried 1992; Greenhouse 2001; Lopez and Feliciano 2000; Friedman-Jimenez 1989; U.S. DOL 2000; U.S. GAO 1992).¹³ Yolanda, a Mexican immigrant packinghouse worker in Washington State’s apple industry involved in another case submitted under the NAALC described her working conditions:

It is primarily a job that requires movement of the wrist . . . One of my coworkers who was injured went to the nurse who gave her only two pills and said, “go and

¹³ Lopez and Feliciano (2000) provide evidence that Latino immigrants in southern California abound in the “low-paying, low-status dirty-work jobs” and a Los Angeles Times investigative series highlighted their disproportionate exposure to unsafe equipment, chemicals and other hazards (Fried 1992). Nationwide, the rate of on-the-job deaths for all Hispanics has been 20% higher than for Whites or Blacks in recent years, with those in construction work taking a particularly high toll (Greenhouse 2001). U.S. DOL (2000) statistics indicate that U.S. farm workers, many of whom are immigrant workers, accounted for only 1 percent of the workforce, but represented 6% of the occupational deaths. And the EPA (1992) estimates that nationally farm workers suffer up to 300,000 acute illnesses each year as a result of pesticide exposure.

continue your work,” and they even took the time off her salary because she was ill.

According to Yolanda,

There was only one lavatory, for men as well as women . . .for 800 persons and you have to ask to borrow a key in order to go to the bathroom, so that causes problems because you’re reprimanded if you take longer than two minutes. And you’re suspended if you get to work a little late, five minutes or two minutes. They leave you standing for an hour so the rest can see that you came late and that you’re being punished. (U.S. immigrant worker, 1)

B. Globalization and Worker Protection

Pablo and Yolanda, both quoted above, worked for employers cited in two of the most recent cases submitted under the NAALC. The synopses below illustrate the global economic scope of those industries.

Pablo worked for Custom Trim, a subsidiary of Breed Technologies, Inc. One of the largest conglomerates of auto-part makers in the world, Breed Technologies is headquartered in Florida and incorporated in Delaware. It specializes in automobile safety equipment including airbag modules, seatbelt systems and steering wheels and employs more than 11,100 people at its 57 facilities worldwide. Breed Technologies reported approximately 183 million dollars in profit for the fiscal year ending 1998.¹⁴ Customtrim and Autotrim are subsidiaries located in Tamaulipas, Mexico, where, in the late 1990’s, approximately 1500 workers assembled and sewed leather covers onto steering wheels and automobile gearshift knobs. These two maquiladora plants supply steering wheels and gearshift knobs to some of the largest companies in the world such as General Motors, Ford and Daimler-Chrysler.

Pablo was employed by an auto parts company that was given incentives to move to the Mexican side of the border. Yolanda is one of his many *paisanos* who obtained employment in the apple industry by crossing to the U.S. side of the border.

Yolanda was a packinghouse worker in the Washington State apple industry. Agriculture is a major industry in Washington State in terms of production and number of farm workers employed. In 1999, they were the leading crop with a value of \$849.6 million¹⁵ (Washington Agricultural Statistics Service). In the same year, farm workers in the state earned an average \$6,671¹⁶ (Washington

¹⁴ Breed Technologies Report at www.breedtech.com

¹⁵ Washington State agricultural production statistics as cited in the submission of the United Farm Workers of America and the National Employment Law Project for Public Forum on Public Communication No. 9802.

¹⁶ Washington State workforce statistics as cited in the submission of the United Farm Workers of America and the National Employment Law Project for Public Forum on Public Communication No. 9802.

State Employment Security 2000). State agricultural workforce statistics indicate that the majority of those farm workers (77.4%) are Hispanic (Washington State Employment Security 2003).

The unregulated movement of companies and the lack of protection for workers who cross borders seeking work are two core aspects of globalization that affect labor rights and workers' health and safety.

Movement of companies:

Described by NAFTA opponents as a "race to the bottom," resistance to NAFTA was based on the premise that free trade would allow companies to locate where conditions permit them to assemble their products most cheaply. When coupled with the need for capital investment and the lack of resources to enforce labor laws in poorer, less economically developed nations such as Mexico, (Schwartz 1987; Dicken 1998; Sklair 1993) opponents asserted that NAFTA's incentives to companies that expanded maquila operations would only hurt workers' wages and working conditions and limit workers' ability to exercise their rights in all three of the NAFTA countries. An AFL-CIO official interviewed for this report was involved in early discussions about NAFTA. He clearly stated his opinion about the potential effects of the agreement:

It [NAFTA] had a clear bias towards rules that favored corporations but did not consider the impact on workers. It did not address the fundamental problems of economic development in Mexico and we analyzed at the time that there was just going to be a race to lower standards in all 3 countries. (U.S. union representative, 2)

Movement of workers:

NAFTA's impact on worker migration was hotly debated. Some NAFTA proponents advocated for its passage as a way to reduce Mexican migration north through job creation south of the border. But NAFTA's advocates failed to acknowledge that job creation in Mexico's manufacturing sector would also come at a cost: the displacement of many workers in other sectors including agriculture (Aponte 1996).

While companies moved south in search of cheap labor, many Mexican farmworkers displaced by trade policies moved north in search of jobs.¹⁷ A worker advocate described the discrimination and poor working conditions facing Mexican migrant workers in the Washington State apple industry:

Low salaries, lack of respect, sexual abuse, discrimination and the potential to be laid off or fired at any time . . . many times people were laid off for nothing more

¹⁷ Since the early 1990's, about 600,000 Mexican farm jobs have been lost due to lower import barriers on agricultural products, a figure that is expected to grow as tariffs on imported corn are eliminated in 2010. Job losses in agriculture have fueled migration to Mexican cities, the border and the U.S. (Zapata 2002).

than asking how much they would be paid or for complaining that there were no bathrooms . . . A lack of water, lack of protection against pesticides, many people injured because they had to work so quickly with no time to rest or eat because they were paid by how many apples they picked. And when they were injured, there were lots of problems with the compensation system. (U.S. NGO, 1)

While the NAFTA labor side agreement was presumably designed to minimize adverse effects on workers resulting from the trade agreement, well placed U.S. and Mexican government officials intimately involved the negotiations themselves expressed considerable skepticism about its ability to do so¹⁸ (Cameron and Tomlin 2000). Worker advocates we interviewed echoed that cynical perspective.

The side agreements were nothing more than an effort, a political maneuver to get approval for NAFTA and fast track . . . to counteract opposition from the environmental and labor groups in the U.S. and in Mexico. (Mexican lawyer, 2)

I think the labor side agreement was designed to fail. It was designed to do as little as possible to provide a certain amount of publicity value for the governments involved and an escape valve to shuttle discontent through . . . (U.S. health professional, 1)

The Free Trade Area of the Americas (FTAA), currently under debate, would extend a trade agreement throughout Central and South America. The potential impact on workers and society as a whole is enormous. It is in this context that an evaluation of experiences with NAFTA's labor side agreement can contribute to our knowledge of how workers' rights can better be protected in an era of globalization.

NAALC Process, Structure And Submissions

The North American Agreement for Labor Cooperation was signed in September of 1993.¹⁹ The NAALC "represents the first instance in which the United States has negotiated an agreement dealing with labor standards to supplement an international agreement," (U.S. NAO 1998). Despite the historic significance of the agreement, there were few avenues for public participation in the process of creating the NAALC.

¹⁸ Robert Reich, Clinton's labor secretary said that the purpose of negotiating these accords was to ensure passage of the NAFTA through the legislature and a Mexican negotiator stated, "Mexican officials regarded the outcome of the side deal negotiations as a bit of a joke. . . The system is not worth a damn. It is a forum for complaints and at the end of the day everyone says, 'Nice to talk with you, good luck.' Basically, it is to be used by the U.S. against Mexico. But themes of unionism cannot go to the panels, only consultations. Lots of public discourse, nothing more. This is the result we wanted." Cameron and Tomlin (2000, 200-201).

¹⁹ In 1989, President George Bush and Mexican President Salinas de Gortari first discussed a free trade agreement between the United States and Mexico. In 1992, Bush signed NAFTA but was defeated by Bill Clinton before he could send it to Congress for approval. Labor and environmental side agreements were added under the Clinton administration to garner broader support.

Clinton's efforts to involve the labor movement were limited to input into the labor and environmental side agreements and were met with cynicism, as many observers believed worker and environmental protections would only be meaningful if they were included in NAFTA itself.

The Clinton administration made some efforts to engage the labor movement to get their support when the vote was going to come on NAFTA . . . [under the condition that] what was already negotiated [by Bush] was not going to be reopened - so the only thing that he offered to engage us on was the side agreement which already in our view was unacceptable. We did not support it as solving the problem with the core of NAFTA. (U.S. union representative, 2)

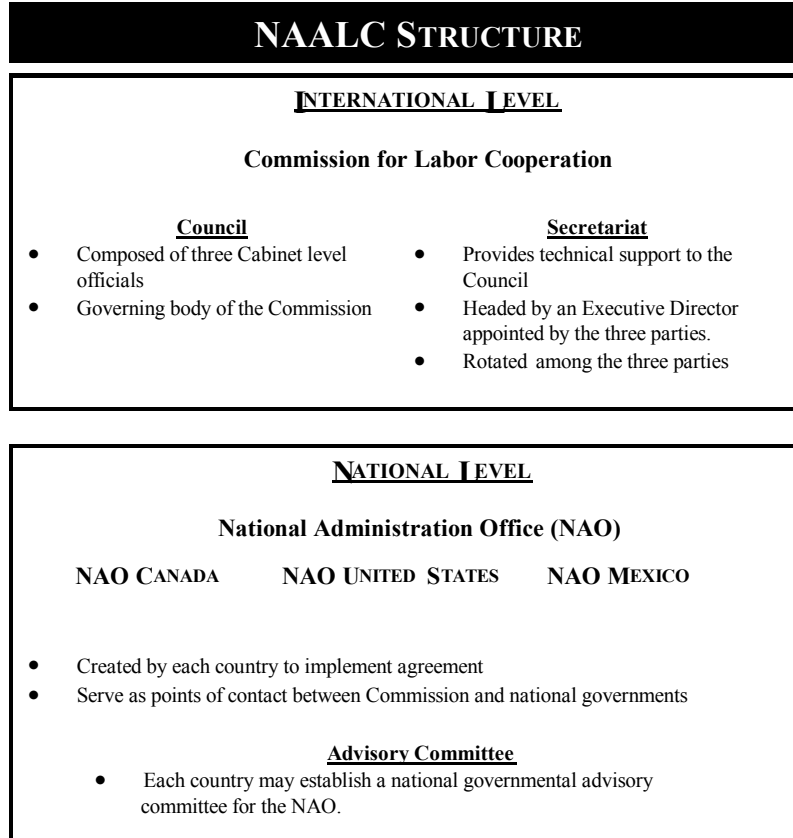
Labor and environmental side agreements²⁰ were signed by Canada, Mexico and the United States in 1993 and, along with NAFTA, went into effect on January 1, 1994.

A. NAALC Objectives & Structure

The three signatory countries agreed to improve working conditions and living standards through cooperative activities and to promote eleven basic labor principles. The NAALC recognizes each country's sovereignty and its right to establish its own labor laws and regulations. It was not designed to improve or create standards where none existed and it established no enforcement mechanism to ensure that these principles were promoted. The NAALC also created new organizations as illustrated in Figure 1.

²⁰ Cameron and Tomlin (2000) note that, "Paradoxically, the labor side deal turned out to be weaker than the environmental one." They attribute it to a greater willingness of environmentalists to compromise and support the deal, which gave them more leverage, and to the desire of the Mexicans to preserve their system of labor relations. (p. 297)

Figure 1: NAALC Structure



B. Process for Raising Labor Law Matters

“Labor law matters arising in the territory of another Party” may be raised by the National Administrative Offices or by members of the public through the submission of a complaint or public communication.²¹ To date, 28 have been submitted, primarily from labor unions and advocacy organizations, 15 have undergone complete review, and none have proceeded further than consultations. Early submissions focused on the Mexican government’s failure to allow workers to organize independent unions; since then, they have also addressed a variety of other labor principles including health and safety, discrimination against pregnant workers, treatment of migrant workers, etc.²²

Consultation: The first stage in the process involves cooperative consultations between the NAO of the country receiving the complaint and the country where the issue arose. As the final step in this stage, NAO representatives may ask for ministerial consultations where the labor ministers of each country involved meet and “make every attempt to

²¹ No NAO has raised any issue on its own; rather they have only responded to submissions from the public.

²² Of the 28 submissions filed as of March 2004, 15 have undergone complete review. Six were not accepted for review, submitters withdrew another three before they could be reviewed, and four are pending.

resolve the matter through consultations.” Violations of workers’ right to organize, bargain and strike cannot proceed further than this level of review and resolution.

Evaluation Committee of Experts: If the issue is not resolved at the level of consultations, and concerns occupational health and safety or other technical labor standards, an Evaluation Committee of Experts can be established to conduct an objective review. To date, no submissions have reached this level of review.

Dispute Resolution: If not resolved, violations of three principles may proceed to the level of Dispute Resolution - occupational safety and health, child labor and minimum wage laws. Either governmental Party may request that the Council convene an Arbitral Panel²³ to resolve the dispute.

Fines or Trade Sanctions: If the Arbitral Panel determines that its report and action plan to resolve the issues has not been implemented, the Complaining Party may ask for fines and/or sanctions.

Violations of any of the eleven labor principles can be submitted to the NAO for review; however, not all labor principles are eligible for review and resolution at all four stages of the process. The NAALC’s three-tiered structure is illustrated in Figure 2.

Figure 2: Three-tiered Structure of the NAALC

	Stages of the NAALC Process			
Group 1 (Labor Principles 1-3) -Freedom of association and right to organize -Right to bargain collectively -Right to strike	Ministerial Consultations			
Group 2 (Labor Principles 4-8) -Prohibition of forced labor -Elimination of employment discrimination -Equal pay -Compensation for occupational injuries and illnesses -Protection of migrant workers	Ministerial Consultations	Evaluation Committee of Experts (ECE)		
Group 3 (Labor Principles 9-11) -Child labor protections -Minimum wage technical standards -Prevention of occupational injuries	Ministerial Consultations	Evaluation Committee of Experts (ECE)	Dispute Resolution	Fines and Sanctions

The NAALC process is illustrated below using the Autotrim/Customtrim and Washington Apple Industry submissions, the two most recent healths and safety related submissions that we examined in this study.

²³ The Arbitral Panel must be approved by two of the three countries.

<i>Autotrim/Customtrim</i>	<i>Washington Apple Industry</i>
<p data-bbox="224 262 803 730"><i>The AT/CT case was submitted to the U.S. NAO in July 2000, by a coalition of Mexican, U.S. and Canadian organizations alleging failure of the Mexican government to enforce workplace health and safety regulations and to adequately compensate injured workers. The U.S. NAO held a hearing in San Antonio, Texas in December 2000, and issued a report in April 2001, in which it confirmed that workers were suffering from exposure to hazardous solvents and glues and from repetitive stress injuries. The report called for ministerial consultations between the U.S. and Mexican government secretaries of labor.</i></p> <p data-bbox="224 730 803 1060"><i>After receiving no information about the progress of the consultations despite requests from workers to be included in those discussions, submitters requested in December 2001, that an Evaluation Committee of Experts (ECE) be convened to examine the issues raised in the submission. This request was reiterated in May 2002, when U.S. members of Congress urged the Department of Labor to create an ECE.</i></p> <p data-bbox="224 1060 803 1396"><i>Instead of proceeding with the stages of the NAALC process as designed, the U.S. and Mexican Labor Secretaries issued a Joint Declaration in June 2002, effectively concluding the NAALC process by creating a bilateral working group of government experts on occupational safety and health issues (U.S. DOL 2002). A September 2002, request from submitters to participate in the Working Group was denied.</i></p>	<p data-bbox="917 262 1404 598"><i>In May 1998, the United Farm Workers and the Teamsters in conjunction with the Frente Autentico de Trabajo and the Unión de Trabajadores filed the Apple Industry case with the Mexican NAO. The submission raised issues of freedom of association, labor standards enforcement, occupational health and safety, and workers' compensation.</i></p> <p data-bbox="917 598 1404 997"><i>The Mexican NAO heard worker testimony in Mexico City in December 1998, and issued a report in August 1999, recommending ministerial consultations between the governments of Mexico and the United States. In May 2000, both governments signed a ministerial agreement that provided for a public outreach session with workers, employers and government representatives which was conducted in Yakima, Washington in August 2001.</i></p> <p data-bbox="917 997 1404 1270"><i>Still pending is a government-to-government meeting and public forums with migrant workers, community groups and governmental officials.²⁴ Submitters stated that they would evaluate the effectiveness of changes and might request that the case proceed to the level of an ECE.²⁵</i></p>

Like the rest of the NAALC submissions, these two went no further than the level of Ministerial Consultations despite the potential for these and other health and safety related cases to proceed to the final stage of the NAALC process, that of fines or sanctions.

²⁴ The NAO website, updated on February 5, 2004 states that a government-to-government meeting was held but does not specify the date or the location. A public forum was held in Maine on June 5, 2002. www.dol.gov/ilab/programs/nao/status.htm

²⁵ Rebecca Smith, personal communication with staff attorney at National Employment Law Project, April 4, 2002. Dan Ford, of Columbia Legal Services, since stated that they have pursued other avenues to resolve some of the health and safety issues highlighted through this case. Based on the outcome of the Autotrim/Customtrim case, the submitters agreed that pursuing an ECE was a “bleak prospect.” Personal communication, March 9, 2004.

Literature Review

Given the stated significance of the NAALC, representing “the first instance in which the United States has negotiated an agreement dealing with labor standards to supplement an international agreement,” (U.S. NAO 1998) how effective has it been to date?

Results of studies evaluating the NAALC have been mixed. Investigators who cite primarily positive results also include qualifiers while many that highlight negative aspects also acknowledge that it represents an unprecedented inclusion of labor rights in a trade agreement.

Those investigators who claim relative success of the NAALC acknowledge some weaknesses but stress its potential within the context of trade agreements (Perez-Lopez 1996; Bolle 1997; Schultz 1998). For example, Schultz is critical of some provisions of the NAALC, but concludes that it represents an important shift from agreements such as the GATT, which characterize any regulations addressing labor, health and the environment as trade barriers.

Investigators who claim mixed results measure the NAALC’s effectiveness against the constraints inherent in a compromised agreement. They cite the value of increased attention to labor rights violations and heightened cross-border solidarity. While they acknowledge the need for improvements,²⁶ some warn against unrealistic expectations of international bodies given that respect for sovereignty is a fundamental NAALC principle. They advocate against abandoning the NAALC process and for creative uses of the NAALC as a tool in a broader strategy that combines cross-border solidarity, legal, media, lobbying and organizing efforts (Compa 1995; Compa 1998; Compa 2001; Adams and Singh 2001; Graubart 2002; Damgaard 2000; Chew 2002; Summers 1999).

On the other end of the spectrum are those who believe that the NAALC is inherently flawed and therefore "designed to fail." While some attribute minor gains to use of the NAALC, they claim that the NAALC incorrectly presumes that current labor standards are sufficient rather than harmonizing them upwards or aligning them with the NAALC’s eleven principles. Others cite the NAALC’s inability to address violations of fundamental worker rights to organize, bargain and strike as a basic flaw, the length of the process, and it’s inaccessibility to workers. Finally, the absence of enforcement mechanisms coupled with the "escape" valve in the sanctions process only compounds the NAALC's inability to address workers rights²⁷ (Dombois 2002; Smith 2002; LaSala 2001; Taylor 2000; Levinson 1993 and 1996).

²⁶ Lance Compa, for example, argues that all levels of the NAALC process, including sanctions, should apply to violation of any of the eleven labor principles, not just three. He also notes the need for mechanisms to hold both governments and companies responsible and the creation of sanctions for governments and companies that are repeat violators of their own laws.

²⁷ The NAALC justifies exceptions to the enforcement of trade sanctions when lack of enforcement is due to a "reasonable exercise of discretion regarding law enforcement and the allocation of resources to higher priorities."

Most authors across the spectrum agree on two points. First, the NAALC has provided little or no concrete benefit to affected workers, although some would argue that it was not designed to do so and therefore is not a flaw in the agreement. Second, the NAALC has at least provided a mechanism to increase public scrutiny of labor violations. Not all agree however that increased scrutiny has been effective. Instead, it has been useful to the extent that it has converged with the political will of the nations involved.

In this paper, we evaluate the NAALC's effectiveness empirically from the perspective of workers and worker advocates who have submitted cases alleging violations of worker health and safety regulations. Where relevant, we contrast those perspectives with the opinions of government agency representatives. We began with the premise that the NAALC has both limitations and potential.

Methods

Our analysis consisted of seven case studies, all submissions as of July 2001 that addressed worker health and safety.²⁸ These cases represent over one third of the cases reviewed under the NAALC. As noted above, a limitation of the NAALC process is its three-tiered nature, whereby only violations of health and safety, minimum wage and child labor laws can advance to the level of fines and trade sanctions. Evaluating only health and safety cases circumvents this structural limitation, allowing us to better assess whether the NAALC has been implemented to its full potential.

For each case, we reviewed documents from the relevant government agencies and from the submitters, and conducted in-depth interviews or focus groups with the parties involved.²⁹ We supplemented this information by reviewing literature on the NAALC in general and by interviewing a few key NAALC experts. In addition, one author participated in the U.S. NAO Autotrim/Customtrim hearing in San Antonio Texas in December 2000. Field notes provided additional information about the NAALC process as implemented. All together, we spoke with 47 people to obtain their opinions of the NAALC process or of specific cases.

A. Document review

²⁸ Two additional submissions addressed health and safety and/or compensation for injured workers. Submission 98-04 was filed with the U.S. NAO in December 1998, alleging violations of Canadian rural route mail carriers' right to protection under Canada's collective bargaining and occupational health and safety laws. The U.S. NAO declined to accept the submission on the basis that the mail carriers were mail contractors, not employees entitled to these rights under the law. Submission 2001-01, New York State was filed with the Mexican NAO in October 2001 after we had started this project. A public report was issued in November 2002, recommending appropriate action based on domestic law and increased awareness and resources about migrant worker rights. Ministerial consultations were not recommended in the report.

²⁹ Although we focused specifically on health and safety cases, many people interviewed had experience with other previous NAALC cases and drew on those experiences when responding to our questions about the process.

We reviewed all relevant documents available on the U.S. NAO website,³⁰ requested copies of submissions not available on the website and received additional information by mail from the Mexican NAO. Ultimately we obtained the submission and the NAO report for each case and, in some cases, the testimony transcribed from the hearings. We also reviewed the government-issued report from the 1998 four-year review of the NAALC (Commission for Labor Cooperation 1998).

B. In-depth interviews and Focus Groups

For each submission, we attempted to interview or hold focus groups with representatives from as many of the following five stakeholder groups as possible:

- Workers
- Non-governmental Organizations (NGOs)
- Unions
- Health/Legal experts
- Government agencies

Representatives from the National Administrative Offices provided additional information about the submissions and about the process as a whole as did representatives from relevant health and safety enforcement agencies, in this case OSHA in the U.S. and the STPS in Mexico.³¹

We selected individuals to interview from the list of submitters' names and organizations for each case, referrals from those individuals, and referrals from key organizations or experts involved in more than one submission. We held focus groups in conjunction with the August 2001, meeting of the Coalition for Justice in the Maquiladoras, an organization that has been a co-submitter on numerous NAALC cases.

Ultimately, we interviewed 47 people as summarized in Attachment A. Four Mexican Autotrim/Customtrim workers were part of a focus group as were four STPS representatives. Interviews and focus groups were conducted between July 13, 2001 – February 11, 2002

Interviews and focus groups lasted an average of 1 – 1 ½ hours and were conducted by two Labor Center staff in the language preferred by the interviewee. Each interview and focus group included the following standard questions as well as questions specific to any submission(s) the interviewee was involved with:

- 1) What were your expectations of the NAALC process?
- 2) What is your overall evaluation of the process?
- 3) What are specific examples of limitations and positive outcomes?

³⁰ <http://www.dol.gov/ILAB/media/reports/nao/main.htm>

³¹ OSHA is the Occupational Safety and Health Administration; STPS is the Secretaría del Trabajo y Previsión Social.

4) What would you recommend to improve the NAALC and trade agreements in general to more effectively protect workers' rights?

Additional questions were developed using an iterative process, whereby information obtained from previous interviews informed the development of questions to validate that information and to determine whether different respondents held similar or different opinions.

All interviews and focus group discussions were transcribed and reviewed by two staff to identify common themes. From that list of themes, transcripts were coded and key points or quotes extracted from the interviews to illustrate common perspectives or differences in opinion.

C. Challenges

It was not easy to reach workers to get their perspectives in all cases. Ultimately, we were only able to interview workers from two of the cases: Autotrim/Customtrim in Mexico and the Washington State Apple Industry in the United States. For the others, we relied on information from unions and NGO representatives and from legal and health advocates who had direct involvement with the workers.

We initially planned to interview employer representatives for each of the cases, but realized, based on the response of a key industry representative, that the effort needed to identify and locate the appropriate individuals willing to be interviewed would likely be futile and a waste of limited resources.

Results

Of the seven submissions alleging failure to enforce health and safety regulations or inadequacies in compensating injured workers, four were against Mexico and three against the U.S. The chart in Attachment B is a summary of those submissions based on a review of documents available from the National Administrative Offices and from submitters.

Several points are noteworthy based on a cursory review of the chart:

- 1) The NAALC process is slow; none have taken less than 1 ½ years from the time of submission to the signing of a ministerial agreements and two have lasted longer than 2 ½ years,
- 2) None have proceeded further than the level of ministerial consultations, the first stage in the process, and
- 3) Ministerial agreement outcomes consist of forums, other cooperative activities or vaguely defined government-to-government meetings and some are still pending.

Themes identified from the interviews and focus groups fell into four broad categories:

- 1) Motivation for filing submissions & expectations of the process,
- 2) Outcome of submissions,
- 3) Overall assessment of the NAALC
- 4) Recommendations

A. Motivation and Expectations

Respondents' expectations varied according to category of respondent and previous experience with the process. Although some respondents expressed considerable cynicism about the NAALC as noted above, these views most likely do not represent the most cynical perspectives given that we interviewed people who were at least optimistic enough to use the process.

A1. Last Resort for Workers

Workers from both the Washington State Apple and the Autotrim/Customtrim cases saw the NAALC process as a last resort:

[Re Washington Apple] We had a meeting [to discuss submitting the complaint] of about 120 people from four different plants . . .and we, the workers, said ' we don't have any other way out; this is a window that is opening, lets try to achieve what we want, health in our work environment . . .legally we knew there wasn't any hope, but we hoped the community would support us so the plants would stop violating the regulations. (U.S. immigrant worker, 1)

Here in Mexico, they [STPS] didn't listen to us, so we wanted to see if there [the NAO] they would listen. (Mexican workers, 1)

A2. Pressure for Government and Company Changes

Workers and worker advocates hoped the process would exert pressure to change government policies and enforcement practices and, ultimately, company practices. AT/CT workers hoped for specific policy changes that would change the day-to-day reality of workers' lives by compensating injured workers and making agencies function to accurately identify workplace hazards:

[Re AT/CT] Our objective was to change the reality that we're living . . .to change the situation so the government truly pays attention to workers and so the agencies will begin to function . . .

[We wanted to] see whether the NAO can pressure Social Security for wage compensation for persons who were injured . . .and ensure that worker re-evaluations are conducted by medical personnel that aren't connected with the company in order to avoid conflicts of interest. And [they should] establish a criterion or public rules for the evaluations and ensure that the persons being

evaluated receive in writing clear and detailed reasons for the decisions . . .and give us copies of our files that they keep under lock and key. (Mexican workers, 1)

The STPS ought to be more loyal to their work and not sell themselves to the companies. They come to the companies and say, “Look, fill out the report for me,” and they sign it and that’s it . . .The only thing they’ll check are the proofs of training that are a couple of sheets, that sometimes the company gives to the workers to sign blank . . .They should issue corrective orders, lots of them . . .This document (inspection checklist) that they use seems very simplified because whatever isn’t written there doesn’t get into this report . . .And they should ensure that everyone receives copies of the reports and inspections, orders, and fines . . .

Other respondents submitted cases to the NAO to pressure the Mexican government on behalf of both Mexican maquila workers and Mexican immigrant workers in the U.S.

[Re Han Young] Why? First, to pressure the Mexican authorities. We know perfectly well that the Mexican government is terrified of international organizations and tribunals and of the opinions outside of Mexico because it diminishes the prestige of the country, Second publicity, worldwide attention [to the problems] from groups in the U.S., Canada (Mexican lawyer, 3)

[Re Washington Apple] We hoped to bring attention to the problems and force changes, and we hoped to pressure the Mexican government to take interest in workers here [in the U.S.], at the same time, embarrass the state of Washington. We knew it wasn’t a legal complaint. (U.S. NGO, 1)

Some respondents had higher expectations for the outcome of these health and safety cases compared to others since the NAALC allows for health and safety cases to advance to the final stage of sanctions or fines.

[Re ITAPSA] We thought that it [filing the case and documenting asbestos exposure] could have an effect because it’s a health and safety issue, one of the issues that can reach [the level of] sanctions . . .(Mexican union representative, 1)

This [AT/CT] was the first complaint filed with the U.S. NAO devoted exclusively to occupational health and safety issues. It was the first complaint that seriously asked questions of the Department of Health in addition to the STPS and we wanted to have as much documentation as possible, both for improving chances for success on this complaint and . . .to set a really good foundation for future cases. (U.S. lawyer, 3)

A3. Test the NAALC Process

Several U.S. union, legal and health professional were explicit about their goal to test the process – to either use it to its full potential or to denounce it.

. . . Getting an ECE is really critical to show the possibilities and the limitations because in the long run we need something better. (U.S. lawyer, 4)

. . . We might as well use it and try to make it as good as it can possibly be. I think there are some people who believe that because it is so flawed, by using it you're lending legitimacy to it and I can understand that feeling, but my own thought is . . . if something is set up you push it and push it so it becomes better. Or so that you can at least prove authoritatively that it's a joke . . . let's push it as hard as we possibly can and maybe something will actually work and if it doesn't then I think we stand on much firmer ground saying this is ridiculous. (U.S. lawyer, 3)

B. Outcome of Submissions

In considering criteria to measure the success of submission outcomes, we encountered difficulties inherent in the NAALC itself. NAALC objectives are so general that it is difficult to develop specific criteria to evaluate results against its stated purpose.³² Effective enforcement is not defined, nor are high labor standards; in fact the NAALC does not even establish common minimum standards. Also notable is the lack of resources and mechanisms to conduct an evaluation.

Because of limited resources, we can't really set up a supervision system to monitor or follow what happens after an activity . . . and beside respect of sovereignty is really important . . . I can't say to any degree of certainty whether the NAALC has had an impact on health and safety. (Canadian government representative, 1)

I think the impact has been positive. But this is a bit like trying to determine whether nuclear deterrence has been effective or not . . . when it fails, then you know that it has not worked. But when it works, you don't know about it . . . There might be several companies in the 3 countries that have changed their ways. (Canadian government representative, 2)

A four-year review of the NAALC was conducted in 1998. Volumes of testimony from the NAOs in each country and from interested parties were submitted demonstrating divergent views of the NAALC's effectiveness. A second four-year review was scheduled for 2002. It consisted of a literature review, conducted in 2003, and did not include a forum for comments from the public or for feedback from the submitters themselves.

The ministers voted unanimously to do another four-year review four years later [2002]. It would be very useful to have another four-year review report. At the time we wrote the first one, there hadn't been many submissions . . . one of the issues to address is some of the procedures and delays in resolving submissions. (U.S. lawyer, 5)

³² Reza et al. (1996) discuss the difficulties of evaluating the vague NAALC goals as written.

We purposely did not limit the scope of our evaluation to the stated purpose of the NAALC but allowed respondents to define their own evaluation measures. In addition to being vague, the NAALC's objectives were defined without input from representatives of most of the people we interviewed – worker, union, NGO, health professional or worker legal advocates. Limiting evaluation measures to the NAALC's objectives would further exclude respondents' opinions of what they consider important.

We asked respondents to evaluate the process based on their personal experience with specific cases and to provide examples of both limitations and positive outcomes. We categorized responses by level of impact in reaching the ultimate goal of providing a safe work environment:

- Effect on **individual workers'** health and safety
- Changes in **company or industry practices**
- Changes in **government policies or enforcement of policies**

B1. Impact at the Individual Worker Level

Workers described the empowering effect of being heard but Mexican workers also discussed the longer-term negative repercussions of participating in the process:

Empowerment

The (apple) workers were very interested that the Mexican government was paying attention and taking their case seriously. (U.S. NGO, 1)

After so much time and energy, after knocking on so many doors and not being heard, finally the NAO has heard our testimony . . .

It was good that everyone learned from the voice of the workers about our experiences . . .and that for the first time we were being heard, listened to, even if by foreigners. (Mexican workers, 1)

Fear and repression

There's not even a way to protect workers who face repression. We're living with a lot of fear because the newspapers have attacked [workers and organizers from our NGO] and they call us terrorists, destabilizers of the maquila, against the government and they call us on the phone . . .Here they could kill you and it means nothing . . .We have the right to take care of our own health. (Mexican workers, 1)

Cynicism

Although most union and NGO representatives did not have expectations of legal remedies for workers based on experiences with previous NAALC cases, several were

critical of the ability of the NAALC process to make changes that would ultimately affect workers' lives:

I saw that in reality the workers didn't receive anything, it wasn't worth the trouble to have taken the risks . . .so that two years later they tell you, 'how interesting but one must consider sovereignty of the countries and the whole world focuses on political issues and forgets about the labor issues. (Trinational NGO, 1)

There is a big gap when you're talking to workers . . .it's a leap of faith for them to say sure [to filing a case] especially when you start saying it will take two years and there won't be any results . . .By the time . . .people have seen how many people get fired and how many people get blacklisted and how many people can't feed their kids, you get people steered off joining such movements . . .in practical terms nothing has come out of it because by the time it happens the movement has played itself out so if the NAALC has done anything it has done it in gradual incremental improvements in the legal processes and hasn't really translated into concrete results and that's what workers need because they live day to day. (U.S. union representative, 4 and former Trinational NGO representative)

B2. Change in company or industry practices

A NAO representative described the limitations of the NAALC's ability to address the practices of a specific company:

We [the NAO] went to visit the plant [ITAPSA] . . . but in our minds we went not to inspect the company – because our view is that this is not a complaint against a specific company but rather we are presented with a case that will help us answer questions about the overall application of Mexican labor law . . .the recommendations in the report are directed at the Mexican government, not the company. (Canadian government representative, 2)

One legal advocate described how the NAALC process does provide a potential remedy against companies, but asserted that it does not pose a credible threat due to the delays in reaching that step of the process.

They could impose a tariff barrier on the products, you know the Washington State apple industry had to pay a 20% penalty or something to import into Mexico . . . that could help with some of the workers' rights problems if it was not something that took you 10 years to get to. (U.S. lawyer, 6)

In the U.S., the apple industry implemented some specific changes. Based on the following worker's comment, the publicity associated with the submission and worker militancy may have been more of a stimulus for change than the cooperative nature of the NAALC process.

Thanks to this complaint and the publicity surrounding it workers in the field now are earning \$14-22 for each time they harvest instead of \$10 . . .And in another plant there was a strike . . .They had to ask permission to go to the bathroom, and they allowed only three minutes; if they took longer than that they gave them a warning. They went on strike and got quite a few changes in the plant . . .They made more lavatories in the plants. Yes, there have been changes. (U.S. worker, 1)

Both U.S. and Mexican worker advocates decried the NAALC's lack of ability to change company policy, stating that any changes were in response to negative publicity or political pressure, not to the NAALC process itself.

The negative part is that the side agreements don't sanction specific companies. (Mexican union representative, 1)

As a means of improving health and safety conditions in any given workplace, that is going to be solely a result of a political campaign and publicity because the NAALC process deliberately excludes that kind of activity in terms of specific workplaces. (U.S. health professional, 1)

To the extent that it [NAALC process] can generate political pressure and scrutiny and damage a corporation's public image . . .that is where it does its real work and of course it's not doing the work, it's the organizations that are trying to push it that are doing the work. (U.S. union representative, 4 and former Trinational NGO representative)

B3. Change in Government Policies or Enforcement

Respondents from different categories mentioned positive changes by Washington State government agencies. This appears to be related to the high profile nature of the case and to the pressure exerted on government agencies as part of the campaign.

A Washington state government agency representative had mixed feelings about the NAALC complaint as a tool, defending the existing agency mechanisms as adequate to resolve problems but understanding that he needed external pressure to do his job:

[Re Washington Apple] I was surprised that the complaint was filed. I think filing individual complaints against companies would be the way to go . . .filing an overall complaint against the state government, I didn't think was the right way to go . . .there are some improvements that need to be done but nothing we can't work out ourselves if we had some better communication . . .[but] there's definitely no negative outcomes . . .with a group putting pressure on the state government it definitely makes my job easier . . .the agricultural industry is one of the strongest in the nation and they have a strong lobby . . .sometimes our hands are tied . . .Now we're having stakeholder meetings to look at enforcement of

employment standards, health and safety training for inspectors, outreach, perhaps increasing the random inspection programs. (U.S. government representative, 4)

After returning from [the hearing about Washington Apple] in Mexico, we had three press conferences on the results of the trip and meetings with workers about it . . . (U.S. union representative, 6)

In the state (of Washington), yes, they have begun to make more inspections since we held the forum. (U.S. NGO, 1)

Other worker advocates were much more cynical about the ability of government agencies to enforce regulations.

The federal and local governments don't have power anymore; the people running the show are the companies, they say I'm going to set up here and the most screwed up won't be us but our children and grandchildren. (Mexican NGO, 1)

Other respondents gave examples of the limitations government agencies face with company compliance. Despite one of the largest OSHA fines in history and significant publicity, a notorious U.S. company still found ways to get around regulations requiring them to provide safe and sanitary housing conditions for migrant workers.

[After our OSHA investigation of Decoster – in which worker housing conditions were found to be abysmal], Jack, the owner, broke the company up into about 7 companies so he could avoid the requirement to provide migrant housing. (U.S. government representative, 3)

And a Mexican occupational health expert succinctly described the limitations of the NAALC's focus on government enforcement of labor law:

All the emphasis is on the governments to enforce in times of budget cutbacks. In other words, it is getting more difficult for the governments to monitor if they themselves have to tighten their belts, have to cut their budgets. (Mexican health professional, 1)

The same NAO representative who had mentioned the NAALC's inability to promote change at the company level also highlighted the limitations of the NAALC in promoting legislative or regulatory change.

Our report was simply recommending that our minister engage the Mexican Sec of Labor in a dialogue on the responsible use of asbestos . . . we did not suggest or intend to force Mexico to change its norms. (Canadian government representative, 2)

Both the U.S. and Canadian NAO mentioned as positive the fact that Mexico is now working on labor law reform. But, not everyone considers that positive; independent

Mexican organizations have been struggling to have a seat at the table during discussions of labor law reform.

[Mexican] law is very protective; it's a question of performance, not a question of reform. What happened is that it's been abandoned . . .and I am very afraid that the little we have in matters of assessment and of specifications of workman's compensation is going to disappear. (Trinational NGO, 1)

C. Overall Assessment of the NAALC

Most submitters acknowledged the NAALC's limitations in achieving positive change at the level of workers, companies or government policies as a result of the submission itself. They criticized both the inherent weaknesses in the NAALC as written and the manner in which it has been implemented. They did, however, recognize its value in publicizing health and safety problems and in stimulating cross-border dialogue and solidarity. Their overall assessment is that the NAALC itself is only useful when used as a tool in a larger strategy.

C1. Positive Outcomes

Despite limited outcomes for many individual submissions, respondents expressed cautious optimism about the NAALC's potential as a tool to lay a foundation for future change by stimulating:

:

- Government to government dialogue
- Cross-border solidarity and organizing
- Awareness of problems – “the sunshine effect”

Government to government dialogue

Part of what consultations are about is getting more information; it gives us the opportunity to meet face to face. We have no authority to go to a government agency directly. Under NAALC, the government must make publicly available information available to the NAOs in other countries – but what is publicly available is subject to interpretation . . .Now there's more dialogue; 3-4 years ago, migrant worker issues were not on the table; now they're a big issue in DOL . . .Dialogue, discussion, awareness help create political will. (U.S. government representative, 1)

A Mexican health professional notes both the value and the limitations of dialogue without economic incentives.

The fact that they are talking government-to-government and that all of a sudden OSHA will collaborate in training [in Mexico] is because there have been complaints, because they've had to meet several times, and because the officials from there have realized that something must be done here, otherwise nothing's

going to change . . . I see it as a positive thing . . . but we have to think more about how to handle safety and hygiene in such a way that it becomes a standard among competitors . . . If you put it in a commercial agreement that it could, at some point in time, hurt this commercial rivalry, then there's really pressure for change. (Mexican health professional, 1)

Cross-border Solidarity and Organizing

Many respondents agreed that the NAALC played a role in strengthening cross border connections although with some qualifiers. The agreement itself requires government agencies to communicate across borders and the structure of the submissions process, whereby a complaint must be submitted in another country, facilitates cross border links between unions and community groups. Respondents gave examples from the Washington State Apple Industry, Han Young, Autotrim/Customtrim and ITAPSA submissions.

It's pretty fair to say that the NAALC has created an environment where people have had a purpose to work together . . . when we received the ITAPSA public communication; there were 48 signatories from the three countries. So that's a very positive development . . . in strengthening and creating transnational linkages between NGOs and unions. (Canadian government representative, 1)

[The AT/CT case resulted in] contact with people from other places . . . and with international organizations. The cooperation of everyone, the fact that we've worked a long time on this, was good for us. (Mexican workers, 1)

Ironically, the only positive thing that NAFTA has brought us [the UE] is our relationship with the FAT . . . The AFL-CIO, CLC and UNT signed the ITAPSA submission – it was the first time any of the three labor federations had participated in a NAALC complaint.³³ (U.S. union representative, 7)

Cross-border solidarity efforts did not originate with the NAALC; several organizations had previous relationships that aided in the development of health and safety cases and that were further strengthened in the NAALC process.

A U.S. union representative described how his union's cross border support for maquila workers led to the identification of health and safety problems at Han Young, to organizing efforts and, ultimately, to filing a complaint.

In fall of '96, our international union (OCAW) and delegates to our western union meeting contributed about \$5,000 to fund a woman's center and workers' center in Maclovio Rojas Tijuana. Later in the spring a Han Young worker came to the worker center asking for assistance . . . he was about thirty and his basic problem

³³ UE is United Electrical Workers; FAT is Frente Autentico de Trabajo; AFL-CIO is the American Federation of Labor-Congress of Industrial Organizations; CLC is the Canadian Labour Congress; UNT is the Unión de Trabajadores.

was from welding with no safety glasses. So he had flash burns in the retina and his co-worker had to quit because he was going blind and had gotten screwed out of his severance pay. So the worker wanted to make sure he got his severance pay but he was convinced by the organizer at the center to take a shot at trying to organize a union . . .so in about June of '97 the workers went on a one day strike . . . (U.S. union representative, 8)

And the AT/CT complaint was initiated as a result of a trinational coalition campaign that involved a corporate campaign and worker health and safety education:

There was a long period of education, preparation; we made contacts with the unions of the Canadian ironworkers because the business was Canadian and it was a Canadian campaign. Now U.S. members [of the Coalition] are participating at all levels, experts in health and safety, from the unions, from the churches; but they also unite with Mexican organizations. The workers are starting to have the knowledge they need with respect to chemicals, solvents, but they are also starting to recognize the steps they have to take from the point of view of the STPS . . . (Trinational NGO, 1)

Part of the [AT/CT] NAO complaint came directly out of the CJM Health and Safety workshops. They educated the workers about what to look for, how to document, and how to analyze workplace hazards. I think that's another really positive way that various advocacy pieces interacted well together . . .the workshops were critical . . .and CILAS [a Mexico City NGO] was helpful reviewing the NAALC submission draft and they made the suggestion to add the Department of Health and pointing out the correct areas of law to look at, then reviewed our analysis. (U.S. lawyer, 3)

Some respondents stated that cross-border relationships are important, but limited – possibly limited to having value at a particular point in time or with certain groups.

We never thought the [NAALC] process was going to win us anything . . .the process created an environment that made it easier to win. Part of that environment was people getting to know each other that didn't know each other before but I think that was then; now there are a lot of people that have these relationships whether or not there's a NAALC process. (U.S. union representative, 2)

The NAALC has brought together lawyers at least. I don't think it's brought unions together too much . . .where there was cross border solidarity before, there's cross border solidarity after. (U.S. union representative, 1)

I know that the combination of all the NAALC cases has created a network of activists and labor lawyers and scholars and trade unionists in all three countries that just didn't exist before. And now that network exists and there are regular

meetings and strategic planning sessions . . .it's hard to pinpoint exactly where that will go. Because so much depends on the political context. (U.S. lawyer, 4)

The only respondents who did not think cross-border solidarity was positive were Mexican government agency representatives whose perspectives reflected historic concerns about meddling from their more economically powerful neighbors to the north. From their perspective, the Mexican workers who participated in cross-border efforts to file the Autotrim/Customtrim submission did not exercise their own autonomy and should not be taken seriously.

This complaint was made by external agitators; the company and workers are fine; the people who are complaining are people on the outside or external agitators from the U.S., the people who submitted the complaint, but the plants are clean . . .and the workers are working normally and like their jobs and say they aren't in favor of the complaint. (Mexican government representatives, 2)

Awareness of the Problems – The Sunshine Effect

Press value of the NAALC complaints was a strategy employed by many of the submitters, used to highlight the health and safety problems facing maquiladora and immigrant workers.

Are there any benefits? It depends what kind of evaluation you want to use. There are no direct benefits for workers. But it's helped bring to light things that before were hidden – the deficiencies in the Mexican government and how the maquilas function. (Trinational NGO, 1)

The way that the complaint mechanism was set up sort of naturally lent itself to communication and dialogue between unions in at least two if not three of the countries and more communication between especially U.S. and Mexican labor movements . . .It also meant that it was not going to be that difficult to get press . . .there was very little chance of getting a real concrete resolution to the problems, but because it was an officially sanctioned process you could at least bring these issues up and could bring press attention to them. (U.S. union representative, 2)

[The process is more effective] in the cases that link the countries on various levels . . .for example, Mexican companies that were multinationals that also had locations or production in the U.S. and in Canada was one level of linkage that made them more effective. In the U.S. cases, when you were dealing with problems that involved Mexican heritage workers, I think that increased the effectiveness. The increase in effectiveness is not because the legal process was better necessarily but because it meant that the press value increased because it was more interesting . . .and it created more public awareness that put more pressure on the companies. (U.S. union representative, 2)

C2. Limitations of the NAALC

Some government representatives interviewed expressed initial optimism about the use of the NAALC despite the controversies and cynicism surrounding the NAALC's negotiation: "When we negotiated the NAALC, it was a new idea and we didn't have a good feel for it. We thought there would be hundreds of cases." (U.S. government representative, 1).

Why has use of the NAALC been limited? People who did not use the NAALC were excluded from our investigation, but those we did interview described their frustration with the NAALC as designed and as implemented.

Although the NAALC as negotiated imposes limits on its ability to protect workers,³⁴ Human Rights Watch argues that governments do not use it as effectively as it could be, even given the limitations (Solomon 2001). Weak implementation of the NAALC is demonstrated by delays in handling cases, which, according to respondents, is largely due to the political nature of the process. Some government agency respondents we interviewed blamed labor for not investing more to make the process work; workers and labor representatives interviewed in turn discussed the resource drain imposed on them when they take on a lengthy NAALC case that will result in only questionably beneficial outcomes.

Lack of procedures for NAALC process and worker participation

All respondents agreed that the lack of procedures for implementing the NAALC resulted in an unduly long process and a limited ability for workers to participate.

The process doesn't give instant gratification . . . the bottom line is – it's a slow process . . . And there's no formal mechanism [for workers to participate in ministerial consultations]. We're happy to discuss [workers' issues] with the Mexican government but it's hard to say what the outcome will be. (U.S. government representative, 1)

It's a very long process, a process of hard tough meetings after meetings after meetings . . . 3-4 years for the whole process; it's a lot of time and then people give up in despair. (Mexican workers, 1)

There are no deadlines . . . at the stage of ministerial consultations; one of the reasons they can sit there till hell freezes over is that there is no deadline. If you had a deadline, several things would happen. One, you'd have a default, presumably the default would be that the case would automatically proceed to the next level in the cases where it could. That would create some incentive to reach agreements. (U.S. lawyer, 5)

³⁴ For example, the three-tiered structure of the agreement limits the potential steps available to resolve violations of workers' right to organize.

One of the things that totally floored me was how loose all the procedures are and the NAO says that's a good thing because we want it to be a flexible process and each case is different . . .but there's got to be some kind of bottom line because otherwise nobody knows what to expect. (U.S. lawyer, 3)

[Re AT/CT] We're waiting on ministerial consultations; trying to push so they happen quickly, trying to establish the procedural rules and the criteria for the consultations because they don't exist. (Mexican lawyer, 2)

[An AT/CT worker activist reacting in frustration to the ministerial consultation process] So then they're going to meet whenever they damn well please? (Mexican worker, 1)

[Re Han Young] The NAO report was pretty good and then they proposed ministerial consultations and that is the last I ever heard of it . . .I've never been officially informed of anything that happened following the issuance of the report in August of '98 . . .The whole setup is so bizarre and Byzantine and drawn out and with so many drop dead spots in it that it will never result in any kind of improvements. (U.S. health professional, 1)

Depends on political will

Respondents attributed slow or weak implementation of the process to a lack of political will.

That's been one of the real failings of this whole process – that the governments have been so afraid, so weak. (U.S. lawyer, 4)

The Department of Labor's needs are constrained by the priorities of the State Department needs and the Commerce Department's needs and the trade needs so you're not supposed to create a big diplomatic incident over minor issues . . .everything considered, they've (NAO) done a better job than could be expected. They've actually created a pattern of doing a reasonable job of attempting to understand what's going on and writing reports which at least are public documents of a sort of lower level of fact finding . . .the Department of Labor is always going to be captive to diplomatic interests. (U.S. lawyer, 5)

Some respondents saw the potential for results when there are openings in the political climate.

[Unlike Bush,] President Fox has started to say that emigrants are the heroes of Mexico, and he seems to be putting more emphasis on those points now . . .We're negotiating with the state of Washington so that they enforce the laws about health and safety and reform the process of compensation for injured workers . . .and the Mexican consul is taking part in this. He has attended the meetings with the director of Labor and Industry, and he's also held meetings with the governor of Washington, where he indicated that the Mexican government is very

concerned and wants to reach an agreement. We think this has helped us a lot, because now we're not the only ones doing the work, but we also have the support of the Mexican government, which is critical, because here almost all the workers of the industry are from Mexico, and also Mexico is a big consumer of apples; it brings over one hundred million dollars of apples from Washington each year . . . (NAALC) is a weapon that can be used as part of the campaign. (U.S. NGO, 1)

Fear of taking cases to the next level

Lack of political will is demonstrated in the failure to use the NAALC process to its full potential. No cases to date have gone beyond the level of ministerial consultations to the next level, that of convening an Evaluation Committee of Experts, or ECE. Government and legal professionals stated the reasons they believe the governments have not used the process as designed, despite requests from submitters in the Autotrim/Customtrim case to convene an ECE.

The ECE involves an independent body looking at the issue in dispute in all three countries; it doesn't just look at the one country that's under the gun. There is a way to shape it as a less threatening state in the process. But just getting the initial willingness to do it is I think a big step. And it's hard and I think it's even harder now in a Republican administration. (U.S. lawyer, 4)

There's no political will for an ECE . . . The governments are reluctant [to proceed to an ECE] . . . The criterion that's used is – 'is this in the best interest in the larger context of the relationship between the countries?' . . . The government sees an ECE as 'scary stuff,' maybe because it involves outsiders . . . And our view is that we should resolve things cooperatively. Only when that fails would we seek an ECE. And governments don't want to acknowledge that they've failed. (U.S. government representative, 1)

I don't think there's any question about whether they could take these [health and safety cases] forward . . . if they wanted to be aggressive these would be very good vehicles for an ECE . . . It's just a question of what it takes in terms of political pressure . . . The pregnancy issue could have gone to the next stage, the ECE stage. They could have said, it appears that the government has failed to abide by its promises under the agreement, therefore we're going to take this matter to an ECE . . . But you don't ever see that. Basically you see people wringing their hands and saying, 'we don't know what to do now.' It's another piece of the problem of lack of deadlines and lack of leverage. (U.S. lawyer, 5)

No enforcement mechanism for ministerial consultation agreements

Thirteen of the cases have reached the level of ministerial consultations with some resulting in ministerial agreements. With the exception of cautious optimism about potential changes that might result from the Washington State Apple agreement,

respondents uniformly expressed frustration that the ministerial consultations lacked meaningful outcomes.

[Re outcome of ITAPSA case] They meet and they tell you nice things, that the officials here respect the law and that everything is okay, the law functions well, the law is the most advanced in the world, but here nothing happens. (Mexican union representative, 1)

A significant number of the ministerial consultation agreements have in one way or another involved basically more education in which case what they're doing is indistinguishable from the cooperative activities [which are established separately from the public submissions] . . . [Re the pregnancy testing case] You got something that looked pretty decent in the Ministerial Agreement but what ended up happening in practice highlights this structural problem which is that even when you have a Ministerial Agreement it may not ever be realized. The agreements don't have teeth in them so there's there isn't any vehicle to make them happen. (U.S. lawyer, 5)

[Re ITAPSA] Given the substance of both the U.S. and Canadian decisions [in NAO reports], the Petitioners were somewhat optimistic that ministerial consultations might actually result in some positive changes in Mexico. We were sorely disappointed . . . The U.S. NAO decision [report] was handed down July, 1998 and the agreement between the U.S. and Mexican governments was not reached until May of 2000 – almost 2 years later . . . [When we reviewed the agreement that came out of consultations] it left us convinced of the ineffectiveness of the NAO process. Instead of firm commitments regarding changes in policies and practices which constitute major violations of Mexican and international law, we found platitudes, commitments only to 'promote' change, rather than to change itself, and more seminars, when we had made it very clear from the beginning that we were not interested in discussion, that we wanted serious change. (U.S. union representative, 7)

C3. It's not the Agreement that has the power

One motivation for using the NAALC process was to test its effectiveness. Based on the responses of those interviewed, it is fair to say that respondents' overall assessment of the NAALC's effectiveness was mixed but that most agreed that it was limited.

Respondents generally agreed that the NAALC process strengthened cross-border networking and solidarity and that those efforts facilitated media attention, bringing to light the health and safety problems facing maquiladora workers in Mexico and immigrant workers in the United States. As noted in other studies of the NAALC's effectiveness, respondents also generally agreed that the NAALC did not result in individual remedies for workers involved in the submissions.

There was less agreement about the role of the NAALC in changing company practices or in improving enforcement of government policies. Specific examples of changes in company and government practices were cited, most notably for the Washington Apple case; what is not clear is the specific role of the NAALC in bringing about those changes. Government-to-government dialogue, publicity, solidarity and organizing efforts may have influenced political will and thereby helped change company and government practices - or publicity and organizing strategies, apart from the NAALC process per se, may have directly influenced company and government practices.

It is clear from workers and worker advocates interviewed that the NAALC itself has limited power and is only useful when used as a tool in a larger strategy.

If there's not support from the press, if there's not support from the community, a [NAALC] complaint isn't worth anything. If we hadn't had support from the press and everyone, filing the [Washington Apple] case would have definitely not been worth the trouble. (U.S. worker, 1)

A case has to be just a part of a broader strategic campaign. And it can be the centerpiece or it can be a side feature of a campaign. I don't want to do a technical exercise in filing a complaint and then waiting around. The cases that got filed and then nobody stayed with them will probably be the least effectively used. (U.S. lawyer, 4)

I think it has the potential to be a useful tool if it's used in conjunction with other advocacy approaches. Viewing it as something that's going to solve problems on its own is a complete waste of time and will only lead to frustrations . . . (U.S. lawyer, 3)

In both Han Young and AT/CT, you are able to collect info in a systematic way and produce reports, testimony, documentation and supportive testimony which indicates that conditions are bad . . . But if you simply keep it in the sort of quasi-legal enterprise where you are providing info to some government agency in Mexico City or the U.S., very little is going to come of it. The only way anything is going to come of it is if you have some comprehensive or integrated campaign where you follow all the legal procedures required by the NAALC or the NAO but also have it connected to a public education campaign and to things such as consumer boycotts or religious shareholders or the political process. (U.S. health professional, 1)

D. Recommendations

Respondents gave recommendations about continued use of the NAALC, building greater solidarity and approaches to future trade agreements.

D1. To use the NAALC or not

Given the external political constraints, the limitations of the process as structured and implemented, and the constraints on time and resources of worker advocacy organizations, the wisdom of allocating scarce resources for the NAALC process was questioned by some respondents.

We knew there wouldn't be a solution, but [the complaint] was a tool. Unfortunately you need a lot of time and money to use these tools . . . participating in the hearing [in Mexico] was very expensive . . . you lose days from work, so economically it affects each worker because unfortunately we live day to day . . . the complaints are very costly because you have to travel, have to collect all the information, publicize . . . (U.S. worker, 1)

The process is just window dressing. Potentially with health and safety complaints you could put sanctions on a country . . . but I don't see them ever doing that . . . in terms of actually helping workers, I don't think the process does much good. If you had the choice of whether to put your resources into organizing the workers directly to confront the company and the union buster in the plant or spending your resources on a lawyer to file an NAO complaint, I definitely would not recommend filing. (U.S. union representative, 8)

These cases are costly in terms of time and money. This serves as a real disincentive, especially given the lack of relief. Consequently, it would seem appropriate to file only the most significant cases, which are illustrative of and related to larger struggles, especially where the cases may serve to strengthen bi-national and tri-national alliances. (U.S. union representative, 7)

D2. Solidarity and Organizing

The Mexican workers interviewed expressed an interest in organizing with workers and submitters from other NAALC cases in a final attempt to pressure the NAO:

We ought to begin to get together; there was the case of Han Young in Tijuana, there was another about Duro in Rio Bravo, there was the case in ITAPSA . . . To get together and tell the NAO, there are already four cases; you have to respond—it's like political pressure. Another idea is to generate an exchange, so that a worker goes there to talk about the problems of the NAO; and another is to make a document of our experiences. (Mexican workers, 1)

They also recognized the global nature of the problem and suggested expanding worker networks to follow the movement of companies:

If [the maquiladoras] go to another country, we ought to tell them what happened here, what they, too, can expect . . . to begin to spread the struggle [by email] to the whole world. (Mexican workers, 1)

The NAALC may have spurred some networking but there is now a need to proceed to the next step and bring the gains of networking to worker organizing and to building a stronger labor movement:

[Re strategy for cases] – we need to maintain a continuous involvement and contact with active workers, we haven't done enough of it . . .the big priority has to be the organizing of the workers and then after that is done or as that is being achieved, you can begin to contemplate the public and political and legal maneuvers to support that. (U.S. union representative, 1)

Another U.S. union representative proposed international solidarity efforts to enforce workers' rights protections in trade agreements:

[Trade agreements] should include an international pact between workers. That we would not handle goods unless it was marked from the port of origin that it met the labor standards and child labor laws and so on of that particular country . . . This pact would be enforced by an international delegation of workers to certify goods and if goods come into a port that don't have certification, then just not handle them and they're just left on the dock or the truck or whatever. I don't think we need any big complicated bureaucracy to administer all of this . . . We need to repeal that aspect of the 1948 Taft-Hartley amendment (to the NLRA) to make it legal for unions not to handle struck goods. And if we can do that, we can simply enforce our own treaties. (U.S. union representative, 8)

D3. Approach to future trade agreements

Several respondents advocated for an approach that protects workers' rights in the context of the entire agreement; an approach that ensures that workers' rights are protected in the workplace, but that also sees workers as the individuals that inhabit communities, that use services; an approach that examines the impact of privatization measures on the availability of the day to day services workers use.³⁵

NAFTA is more of an investment agreement than a trade agreement which has more impact on worker rights in a practical sense . . . We have to look at the impact of other aspects besides just worker rights and those mechanisms – the impact of gas, trade services, the investor clause which is potentially more damaging to trade unions than whether or not there is a kind of supernatural worker rights mechanism. (U.S. union representative, 9)

³⁵ Efforts are under way to put forward an alternative vision for the future. La Red Mexicana de Accion proposes the inclusion of social clauses in trade agreements (Lujan 1999). A hemispheric coalition of civil society activists has drafted an alternative for the Americas (Anderson 2002). Others have critiqued what little information is publicly available about the FTAA and have begun to organize to influence negotiations (Anderson 2002).

Others provided recommendations to address the lack of resources to improve workers' rights including the need for a broader, unified approach to trade agreements that equalizes development opportunities among the participating countries, an insurance policy to protect workers from abuses by companies that move, and a proposal to back current efforts to organize for an international tax.

In a trade agreement or treaty . . .it would first of all be necessary to give an advantage to these disadvantaged countries to be able to make a treaty—for example that Mexican industries also actually develop so that other countries also have their own capital. (U.S. immigrant worker, 1)

[Recommendation re companies that move from one country to another.] Here in this state we have the problem that the companies don't pay the workers when they leave. The union is now asking the companies to come and leave a guarantee, a security deposit, so that the day they leave the worker is covered . . .I think it's a good rule . . .You can't keep them from emigrating—they are the owners; but they should assure the worker his payment . . .It ought to be done at an international level . . .The workers come to us, and what can we do? Nothing. (Mexican government representative, 2)

They're [Mexico] heavily indebted to the IMF, the World Bank and other financial institutions . . .so any policy that would have the impact of discouraging foreign investment is a political impossibility and economic suicide. So on a policy level it's virtually impossible for Mexico to enforce their regulations and on a practical level there's a complete lack of human, financial or technical resources to make an enforcement program viable . . .There's the Tobin tax idea – one quarter of one percent of every financial transaction around the world would be taxed. It would generate an immense amount of money - tens of millions of dollars which proponents say would go towards social development, infrastructure, human development, etc. It's a good idea. Unless you have some sort of financial resources like that to fund enforcement and development of occupational and environmental health regulations, it's hard to see how it would change.³⁶ (U.S. health professional, 1)

Discussion

Is the NAALC fading into oblivion or is it a step in an evolution towards greater worker protection? To answer this question necessitates examining trends over time in use of the NAALC and posing critical questions about the political will to improve the NAALC and to include workers' rights in future trade agreements.

A. Limited Success within a Historical Political Context

³⁶ For information about the Tobin tax, see: www.tobintax.org

Our review of health and safety submissions indicates that these submissions follow the trend identified in other analyses of NAALC cases (Damgaard 1999 and Graubart 2002); specifically that since the inauguration of the NAALC and the disappointing outcomes of the initial cases, submitters have expanded the strategies they have employed in their use of the NAALC process.

As a result of these strategies and of openings in the political arena, recent cases have achieved some positive results. However those results may be limited to a given historical moment, with larger political and economic constraints now limiting the NAALC's effectiveness at successfully resolving workplace health and safety problems.

A1. Trends in use of the NAALC

Increasingly, submitters have used broad strategies in efforts to achieve real change in workplace health and safety conditions in the U.S. and Mexico. These strategies include 1) combining dramatic facts with evidence of structural problems, 2) building strong cross-border campaigns, and 3) linking NAALC cases to the larger political context.

Evidence of structural problems

Submitters combined evidence of specific company violations of health and safety regulations with evidence of structural problems. This approach focuses the complaints on government enforcement practices - as required by the NAALC - versus focusing on individual workers and on demands for legal remedies. For example, the AT/CT case included evidence of the failure of three separate government agencies and linked workplace problems with the need for structural change. Han Young and AT/CT workers provided specific examples to document how the continued existence of workplace health and safety problems was the result of inadequate government agency inspections.

[Evidence presented at the Han Young hearing] There were at least 11 inspections reportedly done at Han Young but they didn't follow up on many of the problems and some of them were imminent hazards, life and death situations . . .(U.S. health professional, 1)

AT/CT worker testimony presented at the NAO hearing: "When I was working there, I saw some outside people visiting the plant. We think they were inspectors because our supervisors kept telling us to keep working and to clean the floors. They went to see only one or two production lines very quickly and then left or went to the manager's office . . .They left, but did not really do any inspection at all."³⁷ (Mexican workers, 1)

AT/CT workers also submitted a detailed list of recommendations for government agencies at the request of the U.S. NAO and requested that a worker representative

³⁷ Transcript from December 12, 2000, hearing conducted by the U.S. National Administrative Office, San Antonio, Texas

participate in ministerial consultations to discuss the recommendations, a request that was ignored.

Cross-border campaigns

Submitters increasingly demonstrated strong cross-border networking as discussed above. For example, the ITAPSA submission was linked to a trilateral corporate campaign, and the list of 48 submitters included for the first time the recognized labor federations of the U.S. and Canada and a national labor federation in Mexico.

Links to larger political strategies

Submissions were increasingly linked with larger political strategies. The Decoster and Washington State Apple cases leveraged a political interest in improving binational relationships between the U.S. and Mexico by focusing the Mexican government's attention on Mexican migrant workers' conditions in the U.S. In addition, the Washington Apple case focused on an entire industry, linking the submission to an organizing campaign and highlighting state policy changes needed to protect migrant workers. And the Han Young campaign used a high profile media campaign to leverage changes during the time that fast track was under debate and the effectiveness of the NAALC was questioned.

A2. Limitations of the current context

Despite the use of increasingly sophisticated strategies and recent NAO reports that have substantiated the problems identified by submitters, it appears that the NAALC may be useful only at certain political historical junctures when its effectiveness is subject to political and public scrutiny.

Fast track was up for review so [Han Young] was in the spotlight; the NAALC process played some role because it's political – the free trade Democrats had a real interest in making sure the side agreements work and Clinton/Gore folks wanted it to be effective so in the context of fast track authority, NAALC became an important element . . .but how many of these cases can you file . . .when something's new it has a lot of attention . . . but if you have another case filed . . .they're going to get the same experts to write the same report . . .with the first cases, there was scrutiny and energy about whether this thing was going to be effective but I would wonder how many times you can keep doing it. (U.S. union representative, 4)

The NAALC was a tool in a larger strategy to improve conditions of Mexican workers in the U.S. when Bush was first elected and potentially vulnerable to criticism from the Mexican government. This opening rapidly closed after Bush refocused his attention to his "war on terrorism" after September 11, 2001.

Under the Clinton administration we had at least a certain amount of room to push and there was some ability to make things happen and you could leverage contacts with the Mexican government. Now the situation is quite different and I think it has to be looked at different than if you were doing this analysis just two years ago . . . If we can't get press value because the governments don't handle them [submissions] in the same ways they did before or don't handle them at all which is a possibility under the Bush administration, then you have to question what reason you would do it [file a submission]. (U.S. union representative, 2)

Factors that will determine whether the NAALC is a useful tool at a given political juncture include:

- Domestic political issues such as the interests of the current political administration and their foreign policy agenda.
- Domestic economic issues – Mexico in particular is constrained by its desire to attract companies that will invest and provide jobs. Budgetary resources also influence the success of efforts to pressure for stronger enforcement in all three countries.
- Strength of domestic and cross-border organizing and grassroots movements - The ability to create and sustain movements which can develop comprehensive campaigns is critical to supporting workers involved in the submissions process and to translating any gains from the “sunshine effect” of the NAALC process into political or policy change.
- Globalization trends – The ability of companies to move from one country to another undermines governments' ability to effectively enforce standards.

B. Future of the NAALC

Two key criteria can assist in determining whether the NAALC will fade into oblivion or be a step in an evolution towards greater worker protection:

- 1) Does the political will exist to improve the NAALC by addressing the problems that have come to light in these cases?
- 2) Does the political will exist to meaningfully evaluate the NAALC and apply lessons learned from experiences with the NAALC to future trade agreements?

B1. Political will to improve the NAALC?

NAALC cases have had a positive “sunshine effect” but the critical question becomes – now that problems have come to light (worker abuses, structural deficiencies and problems with the NAALC itself), what is the political will at the domestic and international level to address the limitations of the NAALC identified by respondents in this study?

Possible changes fall into two categories - the first requires political will to more effectively use the NAALC to its full potential as currently structured; the second requires agreement among the three countries to restructure the NAALC.

Effective implementation of the NAALC to reach its full potential

More effective implementation of the NAALC would require streamlining the inordinately slow process and adding deadlines, taking the step to proceed to the next level of an ECE, and providing a more open and participatory process.

They should make a plan that has time limits for the ministerial consultations . . . They are public, no? They should notify us when they're going to make their consultations, and we may be able to send one or two persons to these consultations. (Mexican workers, 1)

Willingness to restructure the NAALC

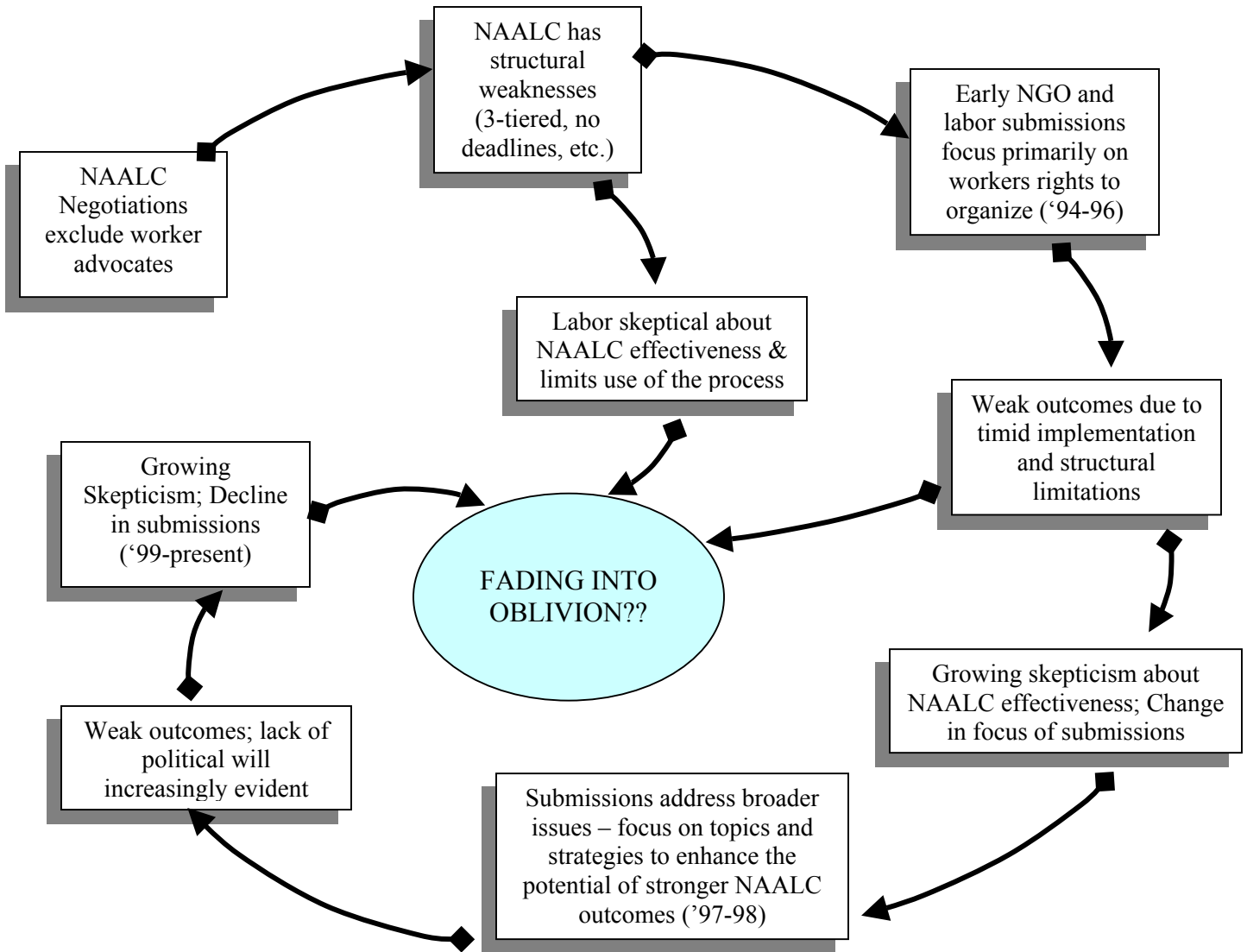
Restructuring the NAALC to make it more effective would include developing mechanisms to give recommendations meaning and to directly focus on companies that violate regulations and abuse workers.

You can't really have a right without a remedy and the preamble and the NAALC talks about what it wants for workers' rights and so forth but it doesn't provide any kind of remedy . . . I'd focus on the corporations themselves . . . the fact that the process only kicks into place when the government has violated workers' rights makes it another step removed from where the violations are really happening . . . I would concentrate on the people who are violating rights. I'm sure it could get quite complicated cause then you'd have some sort of jurisdictional body that can come in and step in front of the local legal processes but seems like they're doing that anyway . . . for example, there are all kinds of arbitration dispute mechanisms that bypass the local laws altogether when it comes to other parts of NAFTA . . . but when it comes to the labor stuff you have to go through all these steps. So I would make it more direct. (U.S. union representative, 4)

If there is no political will to address some of the problems with the NAALC as evidenced in our research and in other studies, the NAALC is in danger of losing all credibility and fading into oblivion as an effective tool to address workers' rights as portrayed in Figure 3.³⁸

³⁸ Figure 3 illustrates the following trends in use of the NAALC: The first seven submissions filed in 1994-96 addressed violations of the right to freedom of association and the right to organize, which could only proceed to the level of ministerial consultations. In 1997-98, 13 submissions were filed; all but one included violations of additional labor principles mentioned in the NAALC, most of which could proceed further than the level of ministerial consultations and some as high as fines and sanctions (See Figure 2). In 1998, submitters also began to address violations of migrant worker rights in the U.S. In summary, 20 of the 28 submissions were filed in the first five years; only eight have been filed in the last five years. (See www.naalc.org for a summary of submissions.)

Figure 3: Experience with the NAALC Public Submissions Process



B2. Political will to evaluate the NAALC and apply lessons to future trade agreements?

Some proponents of the NAALC do not view it as perfect but do consider it a realistic step in the direction of greater worker protection in an era of globalization.

We need to take a long-term view . . .this may be a step towards different types of agreement in the future if we look at it as part of an ongoing evolution. (Canadian government representative, 1)

The development in the European union has taken 50 years to get to the point where it is now of actually having a European trade union federation that sits

down with European employers and governments and hashes out European labor law for a number of topics. We're not even close to that in the North American context or the Western hemisphere context. But the NAALC took shape in 1994, and the European union started in 1957, so maybe there will be an evolutionary process but it's too early to say. (U.S. lawyer, 4)

However, the NAALC can only serve as a step in that direction if there is a serious, transparent effort to evaluate the NAALC and to structure future trade agreements in a way that will correct the deficiencies of the NAALC.

Evaluation of the NAALC

A four-year review consisting of public hearings and testimony was conducted in 1998. The eight-year review scheduled for 2002 has, to date, consisted only of a review of the literature. An honest evaluation process should include participation from the public, in particular those who've had experience with NAALC submissions and their results.

The ministers voted unanimously to do another four-year review four years later [2002]. It would be very useful to have another four-year review report. At the time we wrote the first one, there hadn't been many submissions . . . one of the issues to address is some of the procedures and delays in resolving submissions. (U.S. lawyer, 5)

Implementation and structure of the NAALC should be compared to that of the NAAEC, the North American Agreement on Environmental Cooperation also known as the environmental side agreement. Wilson, Tollefson and Ortega (2002) each discuss problems that have arisen with the NAAEC's citizen submission process. While some of the problems are similar to those identified here (slow and inefficient process, lack of transparency, desire for results) the NAAEC and the NAALC differ with respect to structure and mechanisms for public participation, providing a useful contrast for evaluation purposes.

Future trade agreements

An open process for applying lessons from the NAALC to other trade agreements such as the FTAA is needed; not the closed process that brought about NAFTA and the NAALC nor the obliqueness that characterizes the submissions process.

Workers, along with the rest of society, need to be able to participate in the development of these mechanisms – FTAA, WTO, and NAFTA – and that's been a big problem . . . exclusion. It's well known that within the FTAA there's a business forum and business representatives get to participate in the negotiating group that contributes to the actual text, and labor and the rest of society are not invited. (U.S. union representative, 9)

Future prospects for the NAALC

The prospects for improving the NAALC or involving workers in the resolution of NAALC cases and future trade agreements seems rather dismal, especially given the recent track record of resolving pending cases. Rather than involve workers and other submitters in resolving the Autotrim/Custom Trim case as requested by submitters,³⁹ rather than establish an objective trilateral ECE to examine health and safety in all three countries, the AT/CT case was ‘resolved’ by establishing a Working Group, which includes only government experts and has no established mechanism to solicit public input.

A U.S.-Mexico Joint Declaration issued June 11, 2002 states the intent to “close the Autotrim/Customtrim case” by “the establishment of a bilateral working group of government experts on occupational safety and health issues . . .”

With the transfer of the Autotrim/Customtrim and other unresolved cases from the established NAALC submission process to a newly created government-to-government Working Group, the partner governments have circumvented the NAALC process and have effectively abandoned it as a useful tool to resolve worker health and safety problems. They have also ignored the extensive efforts of AT/CT workers who developed specific recommendations for improved government functioning at the request of the NAO.

If after dotting every ‘i’ and crossing every ‘t’ these Mexican workers [from AT/CT], who have suffered serious health problems due to conditions at their plants, can’t get the company or the Mexican and U.S. governments to correct the serious health and safety hazards documented by [DOL and NIOSH] investigations, what does this mean for the enforcement of labor rights under NAFTA or the proposed Free Trade Agreement of the Americas? (U.S. lawyer, 3)⁴⁰

Conclusion

The political, historic moment for using the NAALC as a tool to improve workplace health and safety conditions appears to have passed. Media and political attention focused scrutiny on past NAALC cases, highlighting previously unknown problems. However, lack of political will to resolve problems brought to light and refusal to use the process to its full potential nullifies the effectiveness of the NAALC.

³⁹ See the website of the Maquiladora Health and Safety Support Network for letters and documents regarding the Autotrim/Customtrim case: <http://mhssn.igc.org/#hea>

⁴⁰ Quoted in May 13, 2002, *Inside OSHA* article, “House Lawmakers ask DOL for status of Mexican Workers’ NAFTA Claim.”

Above all, the history of the NAALC to date highlights the limitations of a process – allegedly one designed to protect workers – that excludes those very workers from participating in the process in any meaningful way. Workers and their advocates were excluded from initial NAFTA negotiations, from any further step in the NAALC process beyond presenting the initial submission, from participating in or even learning the outcome of ministerial consultations designed to resolve specific cases, and from meetings of the newly formed government-to-government working group established to address worker health and safety problems that were not resolved through the NAALC process. Given the reliance of the National Administrative Offices on public submissions to highlight violations, the NAALC will only function if workers and their advocates are encouraged to participate and if mechanisms are in place to protect workers who do participate from reprisals. Negotiations of the Free Trade Area of the Americas (FTAA) to date follow this same exclusionary trend and are a step backwards in the evolutionary process of effectively protecting workers' rights.

The NAALC is headed towards oblivion unless there are drastic efforts in the very near future to meaningfully examine the first ten years of experience and to apply lessons learned to the NAALC itself and to future trade agreements.

References

- Adams, R. J., and P. Singh. 2001. Neither a gem nor a scam: The progress of the North American Agreement on labor cooperation. *Labor Studies Journal* 26 (2).
- Adams, R. J. and P. Singh. 1997. Early experiences with NAFTA's labor side accord. *Comparative Labor Law Journal* 18 (2): 161.
- Anderson, S., editor. 2002. *Competing visions for the hemisphere: The official FTAA draft versus alternatives for the Americas*. Hemispheric Social Alliance/Alianza Social Continental. <http://www.art-us.org/docs/ftaa%20chart%20eng.pdf>
- Aponte, R. 1995. NAFTA and Mexican migration to Michigan and the U.S. Working paper, Julian Samora Research Institute. <http://www.Jsri.msu.edu/RandS/research/wps/wp25.html>
- Bacon, D. 1998. Testing NAFTA's labor side agreement. *North American Congress on Latin America* 4.
- Banks, K. 2002. Civil society and the North American agreement on labor cooperation. In *Linking trade, environment, and social cohesion: NAFTA experiences, global challenges*, edited by J. J. Kirton and V. W. Maclaren. Burlington, VT: Ashgate Publishing. 195-202.
- Bazar, J. S. 1995. Is the North American agreement on labor cooperation working for workers' rights? *California Western International Law Journal* 25.
- Bierman, L. and R. Gely. 1995. Symposium: NAFTA at age one: A blueprint for hemispheric integration? II. The labor side agreement: The North American agreement on labor cooperation; A new frontier in North American labor relations. *Connecticut Journal of International Law* 10: 533.
- Brenner, J., J. Ross, J. Simmons, and S. Zaidt. 2000. Neoliberal trade and investment and the health of Maquiladora workers on the U.S.-Mexico border. In *Dying for growth: Global inequality and the health of the poor*, edited by J. Gershman, A. Irwin, J. Y. Kim, and J. V. Millen. Monroe, ME: Common Courage Press, 261-290, 478-486.
- Cameron, M. A. and B. W. Tomlin. 2000. *The making of NAFTA – How the deal was done*. Ithaca, NY: Cornell University Press.
- Chew, D. and R. Posthuma. 2002. International employment dispute resolution under NAFTA's side agreement on labor. *Labor Law Journal* 53: 38-45.
- Commission for Labor Cooperation. 1998. Review of the North American agreement on labor cooperation, 1994-1997. Commission for Labor Cooperation. <http://www.naalc.org/english/review.shtml>

- Compa, L. 1995. The first NAFTA labor cases: A new international labor rights regime takes shape. *United States-Mexico Law Journal* 3.
- Compa, L. 1998. A fast track for labor. *American Prospect* 9 (40): 60-64.
- Compa, L. 2001. NAFTA's labor side agreement and international labor solidarity. *Antipode* 33 (3): 451-467.
- Compa, L. 2003. Justice for all: the struggle for worker rights in México. Solidarity Center.
<http://www.solidaritycenter.org/docUploads/Solidarity%20Mexico%20final%20pdf%201-17-03.pdf?CFID=1165299&CFTOKEN=82992828>
- Damgaard, B. 1999. Cooperación laboral transnacional en America del Norte a finales de los noventa. *El Cotidiano: Revista de la Realidad Mexicana Actual* 94: 23-37.
- Dicken, P. 1998. *Global shift: Transforming the world economy*. 3d Ed. New York: Guilford Press.
- Dickey, S. 2000. The free trade area of the Americas and human rights concerns. *Human Rights Brief* 8 (3): 26-28.
- Dombois, R. 2002. The North American agreement on labor cooperation: Designed to fail? *Perspectives on Work* 6 (1): 19-21.
- Erickson, C. L. and D. J. B. Mitchell. 1999. The American experience with labor standards and trade agreements. *The Journal of Small and Emerging Business Law* 3 (1): 41-92.
- Faux, J. 2001. NAFTA at seven: its impact on workers in all three nations. Economic Policy Institute. <http://www.epinet.org/briefingpapers/nafta01/nafta-at-7.pdf>
- Favilla-Solano, T. R. 1996. Legal mechanisms for enforcing labor rights under NAFTA. *Hawaii Law Review* 18.
- Fried, D. 1993. Sweat and blood: Latinos in the factories; A three part series. *Los Angeles Times*. September 5-7.
- Friedman-Jimenez, G. 1989. Occupational disease among minority workers: A common and preventable public health problem. *American Association of Occupational Health Nurses Journal* 37: 64-70.
- Graubart, J. 2002. Giving teeth to NAFTA's labor side agreement. In *Linking trade, environment, and social cohesion: NAFTA experiences, global challenges*, edited by J. J. Kirton and V. W. Maclaren. Burlington, VT: Ashgate Publishing: 203-224.

- Greenhouse, S. 2001. Hispanic workers die at higher rate. *New York Times*. July 16.
- Kletzer, L. G. 2002. Globalization and American job loss: Public policy to help workers. *Perspectives on Work* 6 (1): 28-30.
- Kourous, G. 1998. Occupational health and safety in the Maquiladoras. *Borderlines* 6 (6): 1-4, 11.
- LaSala, B. 2001. NAFTA and worker rights: An analysis of the labor side accord after five years of operation and suggested improvements. *The Labor Lawyer* 16 (3): 319-348.
- Levinson, J. I. 1993. The labor side accord to the North American free trade agreement: An endorsement of abuse of worker rights in Mexico. Economic Policy Institute. <http://www.lights.com/epi/virlib/BriefingPapers/1993/labors.PDF>
- Levinson, J. I. 1996. *NAFTA's labor side agreement: Lessons from the first three years*. Washington, D.C.: Institute for Policy Studies.
- Levy, B. S. 1995. Health and social effects of worldwide economic transformation: Focus on occupational and environmental health. *Social Justice* 22: 77-8.
- Lopez, D. 1997. Dispute resolution under NAFTA: Lessons from the early experience. *Texas International Law Journal* 32.
- Lopez, D. and C. Feliciano. 2000. Who does what? California's emerging plural labor force. In *Organizing immigrants: The challenge for unions in contemporary California*, edited by R. Milkman. Ithaca, NY: Cornell University Press. 25.
- Lujan, B. E. 1999. Estandares laborales y globalizacion: El caso del ACLAN. *El Cotidiano: Revista de la Realidad Mexicana Actual* 94: 13-22.
- Merideth, E. and G. Brown. 1995. The Maquiladora health and safety support network: A case study of public health without borders. *Social Justice* 22: 85-88.
- Moure-Eraso, R. Copeland, C. Levenstein, L. Punnett, and M. Wilcox. 1994. Back to the future: Sweatshop conditions on the Mexico-U.S. border. I. Community health impact of Maquiladora industrial activity. *American Journal of Industrial Medicine* 25 (3): 311-324.
- Moure-Eraso, R., C. Levenstein, L. MacDonald, L. Punnett, and M. Wilcox. 1997. Back to the future: Sweatshop conditions on the Mexico-U.S. border. II. Occupational health impact of Maquiladora industrial activity. *American Journal of Industrial Medicine* 31 (5): 587-599.

Muniz, M. F. 1995. Symposium: NAFTA at age one: A blueprint for hemispheric integration? II. The labor side agreement: The NAFTA labor side accord in Mexico and its repercussions for workers. *Connecticut Journal of International Law* 10.

Murphy, B. S. 1995. Symposium: NAFTA at age one: A blueprint for hemispheric integration? II. The labor side agreement: NAFTA's North American agreement on labor cooperation; The Present and the Future. *Connecticut Journal of International Law* 10.

National Employment Law Project and United Farm Workers of America. 2001. Submissions for public forum on public communication number 9802. Presented at Public Forum on Mexico NAO Submission no. 9802, August 8, in Yakima, WA.

Ortega, G. A. 2002. Public participation within NAFTA's environmental agreement: The Mexican experience. In *Linking trade, environment, and social cohesion: NAFTA experiences, global challenges*, edited by J. J. Kirton and V. W. Maclaren. Burlington, VT: Ashgate Publishing. 183-186.

Ostrosky-Wegman, M. E. Gonsebatt, and P. Gonsebatt. 1996. Environmental toxicants in developing countries. *Environmental Health Perspectives* 104 (Supplement 3): 599-602.

Ostry, S. 2002. Fix it or nix it? Will the NAFTA model survive? In *Linking trade, environment, and social cohesion: NAFTA experiences, global challenges*, edited by J. J. Kirton and V. W. Maclaren. Burlington, VT: Ashgate Publishing. 319-324.

Perez-Lopez, J. F. 1995. Symposium: NAFTA at age one: A blueprint for hemispheric integration? II. The labor side agreement: The promotion of international labor standards and NAFTA; Retrospect and Prospects. *Connecticut Journal of International Law* 10.

Perez-Lopez, J. F. 1996. Conflict and cooperation in U.S.-Mexican labor relations: The North American agreement on labor cooperation. *Journal of Borderlands Studies* 11 (1): 43-58.

Pomeroy, L. O. 1995. The labor side agreement under the NAFTA: Analysis of its failure to include strong enforcement provisions and recommendations for future labor agreements negotiated with developing countries. *George Washington Journal of International Law & Economics* 29.

Reza, E. M., H. Dyck, and L. Peake. 1996. Observations on the implementation of the North American agreement on labor cooperation: Emerging issues and initial impacts on United States-Mexico labor relations. *Journal of Borderlands Studies* 11 (1): 59-72.

Sanchez, R. A. 1990. Health and environmental risks of the Maquiladora in Mexicali. *Natural Resources Journal* 30: 163-186.

Schwartz, S. 1987. The border industrialization program of Mexico. *Southwest Journal of Business and Economics* 4: 1-51.

Shultz, J. 1995. Trade law and quality of life--dispute resolution under the NAFTA side accords on labor and the environment. *The American Journal of International Law* 89: 439-453.

Sklair, L. 1993. *Assembling for development: The maquila industry in Mexico and the United States*. 2d Ed. San Diego: University of California, San Diego, Center for U.S.-Mexican Studies.

Smith, R. E. 2002. NAFTA and industrial relations in Mexico: What's important now? *Perspectives on Work* 6 (1): 25-27.

Solomon, J. 2001. Trading away rights: The unfulfilled promise of NAFTA's labor side agreement. *Human Rights Watch*. 13 (2).

<http://www.hrw.org/reports/2001/nafta/index.htm#TopOfPage>

Summers, C. 1999. NAFTA's labor side agreement and international labor standards. *The Journal of Small and Emerging Business Law* 3 (1): 173-187.

Taylor, C. 2000. NAFTA, GATT, and the current free trade system: A dangerous double standard for workers' rights. *Denver Journal of International Law and Policy* 28 (fall 2000): 401-435.

Tollefson, C. 2002. Stormy weather: The recent history of the citizen submission process of the North American agreement on environmental cooperation. In *Linking trade, environment, and social cohesion: NAFTA experiences, global challenges*, edited by J. J. Kirton, and V. W. Maclaren. Burlington, VT: Ashgate Publishing: 153-182.

U.S. Congressional Research Service. Foreign Affairs, Defense, and Trade Division. 2002. *NAFTA labor side agreement: Lessons for the worker rights and fast-track debate*. Washington, D.C.: GPO. <http://fpc.state.gov/documents/organization/8118.pdf>

U.S. Department of Labor. Bureau of Labor Statistics. 2000. *National census of fatal occupational injuries, 1999*. Washington, D.C.: GPO. <http://www.bls.gov/iif/oshwc/foi/cfnr0006.pdf>

U.S. Department of Labor. Bureau of International Labor Affairs. National Administrative Office. 1998. *North American agreement on labor cooperation: A guide*. Washington, D.C.: GPO. <http://www.dol.gov/ILAB/media/reports/nao/naalcgd.htm>

U.S. Department of Labor. Bureau of International Labor Affairs. National Administrative Office. 2000. *Public report of review of NAO submissions no. 2000-01*. Washington, D.C.: GPO. <http://www.dol.gov/ILAB/media/reports/nao/pubrep2000-1.htm>

U.S. Department of Labor. Office of Public Affairs. 2002. Joint declaration. News release. June 11. <http://www.dol.gov/ilab/media/reports/nao/jointdeclar061102.htm>

U.S. Environmental Protection Agency. 1992. *Summary of risk-benefit analysis for worker protection standard*. 57 Federal Register 38105.

U.S. General Accounting Office. 1992. *Hired farmworkers: Health and well being at risk*. Washington, D.C.: GPO. <http://161.203.16.4/t2pbat7/145941.pdf>

United Electrical, Radio, and Machine Workers of America. 2000. Experience and reflections on the use of the NAALC. Paper presented by Robin Alexander at Wellesley College, November 4, in Wellesley, MA.

Washington Agricultural Statistics Service. Washington Agricultural Statistics Service. <http://www.nass.usda.gov/wa/>

Washington State Employment Security. 2000. *Agricultural workforce in Washington state, 1999*. Washington. http://www.workforceexplorer.com/admin/uploadedPublications/683_ag99.pdf

Washington State Employment Security. 2003. *Agricultural workforce in Washington state, 2002*. Washington. http://www.workforceexplorer.com/admin/uploadedPublications/1372_Ag02R.pdf

Wilson, S. 2002. Article 14-15 of the North American agreement on environmental cooperation: Intent of the founders. In *Linking trade, environment, and social cohesion: NAFTA experiences, global challenges*, edited by J. J. Kirton and V. W. Maclaren. Burlington, VT: Ashgate Publishing: 187-191.

Zapata, F. 2002. NAFTA: Few gains for Mexico's workers. *Perspectives on Work* 6 (1): 22-24.

Attachments

Attachment A – Overview of Respondents

Summary of Respondents (N=47) Interviews conducted between July 13, 2001 – February 11, 2002
A.1. Health & Legal Professionals: United States (n=7) <ul style="list-style-type: none"><input type="checkbox"/> 2 industrial hygienists<input type="checkbox"/> 5 lawyers, one formerly with the Secretariat, another formerly on the U.S. NAO Advisory Committee<input type="checkbox"/> Experience with Health and Safety Cases: Han Young, Autotrim/Customtrim, Washington Apple Industry, ITAPSA, Decoster
A.2. Health & Legal Professionals: Mexico (n=3) <ul style="list-style-type: none"><input type="checkbox"/> 1 industrial hygienist<input type="checkbox"/> 2 lawyers<input type="checkbox"/> Experience with Health and Safety Cases: Autotrim/Customtrim, Han Young
B.1. Union Representatives: United States (n=8) <ul style="list-style-type: none"><input type="checkbox"/> 3 from AFL-CIO; one formerly on the U.S. NAO Advisory Committee, 2 formerly AFL-CIO representatives to Mexico<input type="checkbox"/> Unions represented: Steelworkers, Teamsters, United Electrical Workers, PACE<input type="checkbox"/> 5 involved with the Coalition for Justice in the Maquiladoras<input type="checkbox"/> Experience with Health and Safety Cases: ITAPSA, Washington State Apple, Han Young, SOLEC<input type="checkbox"/> Unsuccessful attempt to interview U.S. flight attendants union re TAESA
B.2. Union Representatives: Mexico (n=1) <ul style="list-style-type: none"><input type="checkbox"/> 1 from FAT<input type="checkbox"/> Experience with Health and Safety Cases: ITAPSA<input type="checkbox"/> Unsuccessful attempts to interview CTM re Decoster and Mexican flight attendants union re TAESA
C.1. Workers: United States (n=1) <ul style="list-style-type: none"><input type="checkbox"/> Former apple packinghouse worker – Washington State Apple Industry
C.2. Workers: Mexico (n=5) <ul style="list-style-type: none"><input type="checkbox"/> Former Autotrim/Customtrim Workers (focus group)<input type="checkbox"/> Unsuccessful attempts to contact former Han Young workers
D.1. Non-governmental/Community-based Organizations: United States (n=2) <ul style="list-style-type: none"><input type="checkbox"/> Organizations represented: Maine Rural Workers' Coalition, Farm Workers<input type="checkbox"/> Experience with Health and Safety Cases: Washington State Apple Industry, Decoster<input type="checkbox"/> Unsuccessful attempt to contact Maquila Support Committee re Han Young

<p>D.2. Non-governmental/Community-based Organizations: Trinational (n=3)</p> <ul style="list-style-type: none"> <input type="checkbox"/> Pastoral Juvenil Obrero and Autotrim/Customtrim case
<p>D.3. Non-governmental/Community-based Organizations: Trinational (n=2)</p> <ul style="list-style-type: none"> <input type="checkbox"/> Coalition for Justice in the Maquiladoras <input type="checkbox"/> Experience with Han Young, ITAPSA and Autotrim/Customtrim cases
<p>E.1. Government Representatives: United States (n=6)</p> <ul style="list-style-type: none"> <input type="checkbox"/> 4 from U.S. National Administrative Office – experience with all cases <input type="checkbox"/> 1 from OSHA (Maine) – experience with Decoster <input type="checkbox"/> 1 from Washington State OSHA – experience with Washington State Apple Case
<p>E.2. Government Representatives: Mexico (n=5)</p> <ul style="list-style-type: none"> <input type="checkbox"/> 1 from Tijuana STPS <input type="checkbox"/> 4 from Tamaulipas STPS <input type="checkbox"/> Experience with Han Young, Autotrim/Customtrim <input type="checkbox"/> Unsuccessful attempt to interview Mexican NAO representative
<p>E.3. Government Representatives: Canada (n=2)</p> <ul style="list-style-type: none"> <input type="checkbox"/> Canadian NAO
<p>E.4. Government Representatives: Trinational (n=1)</p> <ul style="list-style-type: none"> <input type="checkbox"/> Secretariat

Attachment B – Summary of NAALC Health and Safety Submissions

Submission	Health and Safety (H&S) Issues	Results and Status**
<p>Han Young * (9702) Located in Tijuana, Mexico</p> <p>Make chassis for Hyundai</p> <p><u>Submitted in:</u> The United States against Mexico.</p> <p><u>Submitted by:</u> Support Committee for Maquiladora Workers, International Labor Rights Fund, and the National Association of Democratic Lawyers of Mexico, et al.</p>	<ul style="list-style-type: none"> • Burns • Broken bones • Respiratory illnesses • Hearing loss • Inadequate protective equipment • Open electric cables in puddles of water • Lack of clean water <p>“Water would come into the plant during the rainy season and some of the electrical cables had little or no insulation. And it was a distinct possibility that workers could get electrocuted . . . And the cranes they used to lift the chassis would lose power and the whole thing would come crashing down and there was also a distinct risk that you could get crushed . . . And the company would take the injured workers to the hospital and demand that they be back there the next day or they’d get fired.” (A1.1)</p>	<ul style="list-style-type: none"> • Submission filed October 1997; H&S addendum filed Feb 1998 • Public Hearing, Feb 1998 • NAO H&S Report issued August 1998 <p>Governmental response:</p> <ul style="list-style-type: none"> • Ministerial consultations • Ministerial agreement signed for Han Young & ITAPSA • (May 2000) <p>Outcome:</p> <ul style="list-style-type: none"> • Gov’t to gov’t meeting to be held re H&S issues raised in Han Young and ITAPSA submissions • Han Young transferred operations to another location
<p>ITAPSA / Echlin * (U.S. NAO 9703) (Canadian NAO 98-1) Echlin Inc., Connecticut, USA <i>Located in Ciudad de los Reyes, México, México</i></p> <p><u>Submitted in:</u> Canada and the United States against Mexico.</p> <p><u>Submitted by:</u> Echlin Workers Alliance, Teamsters, 26 other organizations.</p>	<ul style="list-style-type: none"> • High levels of asbestos • Lack of protective equipment • Lack of training for handling chemical substances • Toxic warnings not labeled in Spanish <p>“The plant manufactures brakes and the workers had originally begun to organize because of health and safety problems such as asbestos and solvent exposure, the lack of protective equipment and malfunctioning equipment . . . the NAO report confirmed high levels of asbestos dust, noise, inadequate protection, chemical labeling, ventilation or medical exams, no access to results of the medical exams, and no written safety information for workers . . . and the fines totaled less than \$200. (B.1.7)</p>	<ul style="list-style-type: none"> • Submission filed: December 1997 (U.S.) April 1998 (Canada) • U.S. NAO sponsored Public Hearing March 1998 • Canadian NAO sponsored Public meetings Sept & Nov 1998 • U.S. NAO report issued July 1998 • Canadian NAO Report issued March 1999 <p>Governmental response:</p> <ul style="list-style-type: none"> • May 2000 U.S.-Mexico ministerial agreement signed for Han Young & ITAPSA • Canadian-Mexican consultation concluded Dec 2002 <p>Outcome:</p> <ul style="list-style-type: none"> • Gov’t to gov’t meeting to be held re H&S issues raised in Han Young and ITAPSA submissions • Canada will participate in the Working Group of Government Experts on Occupational Safety and Health

<p>SOLEC (9801) Located in Carson, California</p> <p>Make solar panels</p> <p><u>Submitted in:</u> Mexico against the United States</p> <p><u>Submitted by:</u> Local 1-675 OCAW, et al.</p>	<ul style="list-style-type: none"> • Inadequate training for handling chemical substances • Lack of protective equipment • Inadequate ventilation <p>“They make solar panels and use chemicals in the process; I remember the lack of ventilation and the hazardous waste stored there. There was heavy metal contamination and we filed on them dumping hazardous waste in a city sewer . . . There were about 100 workers, mostly immigrants from a lot of countries – Serbians, Pakistanis, Vietnamese, Guatemalans, Mexicans, other Latinos, Cambodians, Filipinos . . . in terms of who got to be lead people there was quite a bit of discrimination . . . basically the boss picked whoever he liked and almost all the lead people were white (B.1.8)</p>	<ul style="list-style-type: none"> • Submission filed April 1998 • NAO Report issued August 1999 <p>Governmental Response:</p> <ul style="list-style-type: none"> • Ministerial consultations • Ministerial agreement for Solec, Apple, and Decoster, May 2000 <p>Outcome:</p> <ul style="list-style-type: none"> • U.S. Dept. of Labor will host a government-to-government meeting to discuss H&S and other issues raised in the Solec, Apple and Decoster cases.
<p>Washington State Apple Industry (9802)</p> <p><u>Submitted in:</u> Mexico against the United States</p> <p><u>Submitted by:</u> FAT, Metal, Steel, Iron and Allied Industrial Workers Union, Democratic Farm Workers Front</p>	<ul style="list-style-type: none"> • No protection against ergonomic hazards • Repetitive movement injuries • Lack of state and federal laws regulating work with pesticides and protective equipment • Inadequate treatment for occupational injuries <p>Packing House: They use chemicals in the plant so the fruit is clean when its packed and shipped overseas, and there’s no ventilation. Once, more than 100 people were poisoned and <i>desgradiadamente</i> what the boss did afterwards was call immigration so everyone was sent back to Mexico (C.1.1)</p> <p>Field workers: Many times people were laid off for nothing more than asking how much they would be paid or for complaining that there were no bathrooms . . . A lack of water, lack of protection against pesticides, many people injured because they had to work so quickly with no time to rest or eat because they were paid by how many apples they picked. (D.1.1)</p>	<ul style="list-style-type: none"> • Submission filed May 1998 • NAO Report issued August 1999 • May 2000 ministerial agreement signed including Solec, Apple and Decoster <p>Outcome:</p> <ul style="list-style-type: none"> • August 2001 U.S. DOL held a public outreach session in Yakima regarding migrant worker rights and health and safety issues • U.S. – Mexican government to government meeting held, unspecified date and location **
<p>Decoster Egg Farm Decoster Family (9803) Located in Maine</p> <p><u>Submitted in:</u> Mexico against the United States</p> <p><u>Submitted by:</u> Mexican Confederation of Labor</p>	<ul style="list-style-type: none"> • Failure to prevent injuries and illnesses • Inadequate reporting of accidents • Unsanitary living conditions <p>“There are about 350 workers; in 1996 Carlos got his hand caught in an unguarded machine and lost 4 fingers. [In the chicken barns] workers breathed in dust full of feces, they were pecked when they had to pull out dead birds, there was a tremendous noise level, fear and intimidation from the dictator management style . . . [injured workers] were just put on a bus and shipped out . . . and the housing was provided as part of their employment – it was overcrowded, unsanitary with constant sewage backup, raw sewage in the bathtubs and under the trailers, no screens so children would be sleeping with a thousand flies on their bodies (A.1.7, D.1.2, E.1.3)</p>	<ul style="list-style-type: none"> • Submission filed August 1998 • NAO Report issued December 1999 • May 2000 ministerial agreement signed including Solec, Apple and Decoster • U.S. Dept. of Labor hosted a public forum in Augusta, Maine on working conditions of migrant and agricultural workers in the state of Maine.

<p>TAESA (9901) Transportes Aereos Ejecutivos, México <i>Located in México, D. F.</i></p> <p><u>Submitted in:</u> United States against Mexico</p> <p><u>Submitted by:</u> Association of Flight Attendants, Association of Flight Attendants of Mexico</p>	<ul style="list-style-type: none"> • Lack of training for handling airplane safety equipment • Inoperative safety equipment • Exhaustive working hours prevented workers from responding to dangers and emergencies 	<ul style="list-style-type: none"> • Submission filed November 1999 • Hearing March 2000 • NAO Report July 2000 <p>Governmental response:</p> <ul style="list-style-type: none"> • July 2001 ministerial consultations • June 2002 Joint Declaration established bilateral working group of government experts to discuss occupational H&S issues raised in TAESA, AT/CT and New York State submissions
<p>Autotrim/Customtrim * (2000-01) Breed Technologies, Florida <i>Located in Valle Hermoso, Tamaulipas, Mexico</i></p> <p><u>Submitted in:</u> United States against Mexico</p> <p><u>Submitted by:</u> Coalition for Justice in the Maquiladoras, current and former workers, 22 other unions and NGOs.</p>	<ul style="list-style-type: none"> • Repetitive motion injuries • No protective equipment for handling toxic glue • Respiratory illnesses • Skin damage • Concern about birth defects • Lack of ventilation <p>Some [injured workers] were called junked workers. They put them aside so they wouldn't (para no podrir politica de la empresa al resto), or so they could display them as though they were an embarrassment in the company; that in my opinion is a terrible inhumanity. (C.2.1)</p>	<ul style="list-style-type: none"> • Submission filed July 2000 • Public Hearing, Dec 2000 • NAO Report (including report from NIOSH) April 2001 <p>Governmental response:</p> <ul style="list-style-type: none"> • Ministerial consultations • Joint Declaration June 2002 <p>Outcomes:</p> <ul style="list-style-type: none"> • June 2002 Joint Declaration established bilateral working group of government experts to discuss occupational H&S issues raised in TAESA, AT/CT and New York State submissions • Mexican gov't to conduct public outreach efforts about gov't legal advice and assistance available to workers in cases related to prevention and compensation of occupational injuries and illnesses

*Contrast the descriptions of maquiladora health and safety conditions with the description from several STPS personnel: *"The maquiladoras are very compliant companies, they're clean and most of the time when they're fined it's because they didn't know there was a regulation . . .there's huge economic development that benefits the population on the part of the companies that set up here and provide employment."* (Mexican Gov't, 2)

Some of the discrepancy between workers and government agency perspectives may relate to the conduct of inspections; whereas workers see the day to day reality, inspectors may see the plant after changes have been made: *"We let the companies know the day before that we're coming. We leave a document with them for the next day so they know what it is that we're going to review. They have 24 hours to get ready and to (preparar las cuentas) . . ."*(Mexican Gov't, 2)

** Information from the NAO site (www.naalc.org) last updated February 5, 2004. Website information is supplemented with information from other sources for some cases.