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Implementation of the North American Agreement on Labor Cooperation:

A Perspective from the Signatory Countries

Jorge F. Perez-Lopez¹

Introduction

The North American Agreement on Labor Cooperation (NAALC), the labor supplemental agreement to the North American Free Trade Agreement (NAFTA), was signed by the Presidents of the United States and Mexico, and the Prime Minister of Canada, in September 1993. The NAALC became effective on January 1, 1994, the same date on which the three countries began to implement the NAFTA.

The main objective of the NAALC is to improve working conditions and living standards in the United States, Canada, and Mexico as the NAFTA promotes more trade and closer economic ties among the three countries. As the very name of the Agreement implies, the preferred approach to reach this objective is through cooperation — exchanges of information, technical assistance, consultations. The Agreement also provides mechanisms to oversee the obligation of each country to enforce its labor law, including the receipt of submissions from the public alleging failure by a government to enforce its labor law.

In the eighteen months that the NAALC has been in force, the United States, Canada, and Mexico have made vigorous efforts to implement it. This paper describes implementation progress to date from the perspective of the signatory countries, as a companion paper does, the same with regard to the trilateral Secretariat created by the NAALC. The paper is divided into three parts. Part I describes actions taken by the signatory countries to establish, and develop procedures for, the national institutions created by the Agreement. Part II describes cooperative activities undertaken in 1994 and completed or planned in 1995. Part III does the same with regard to the use to date of the enforcement oversight mechanisms foreseen by the Agreement.

Institutional Framework

The NAALC requires each Party to establish a National Administrative Office (NAO) at the federal government level and to notify the Secretariat of the Commission for Labor Cooperation and the other Parties of its location.² The Agreement further provides that

1. Jorge F. Perez-Lopez is with the Bureau of International Labor Affairs, U.S. Department of Labor. Prepared for presentation at a session of the International Labor Law Program, Section of Labor and Employment Law, American Bar Association Annual Meeting, Chicago, Illinois, August 5-9, 1995. The paper is based on public documents and materials issued by the Governments of the United States, Canada, and Mexico regarding implementation of the North American Agreement on Labor Cooperation [hereinafter *NAALC*] and expresses only the personal views of the author.
 2. *NAALC* art. 15.
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each Party will designate a Secretary to administer and manage its NAO and be responsible for its operation and costs.³

Pursuant to the NAALC, each NAO is charged with being the point of contact with governmental agencies of its own country, the NAOs of the other countries, and the Secretariat. Each NAO shall promptly provide publicly available information requested by the Secretariat, another NAO, or an Evaluation Committee of Experts established by the Council. Finally, each NAO "shall provide for the submission and receipt, and periodically publish a list, of public communications on labor law matters arising in the territory of another Party. Each NAO shall review such matters, as appropriate, in accordance with domestic procedures."⁴

The Agreement also provides for each signatory country to establish national committees to advise on the implementation and further elaboration of the Agreement. Specifically, each signatory country may establish a National Advisory Committee consisting of public members, including representatives of its labor and business organizations and other persons,⁵ and a Governmental Committee, consisting of representatives of federal and state or provincial governments.⁶

A. NATIONAL ADMINISTRATIVE OFFICES

The United States, Canada, and Mexico each established a NAO, as required by the Agreement, effective January 1, 1994. The United States and Mexico have set out procedures for the operation of their respective NAOs, including procedures for the acceptance of communications from the public.

1. United States

The United States established its NAO within the Bureau of International Labor Affairs, U.S. Department of Labor, pursuant to a Notice of Establishment issued on December 30, 1993.⁷ A revised Notice of Establishment and Procedural Guidelines was issued in April 1994.⁸

The procedural guidelines for the U.S. NAO became effective on April 1, 1994. The guidelines cover, among others, the following areas.

Functions: The functions of the U.S. NAO include:

- (a) providing assistance to the Secretary of Labor on all matters concerning the Agreement, including the development and implementation of cooperative activities under Article I 1;
- (b) serving as a point of contact with agencies of the United States Government, the NAO of the other Parties, the Secretariat, and the Council;
- (c) promptly providing publicly available information requested by the Secretariat for

3. *Id.*

4. NAALC art. 16.

5. NAALC art. 17.

6. NAALC art. 18.

7. 58 Fed. Reg. 69,410 (1993).

8. 59 Fed. Reg. 16,660 (1994).

reports and studies under Article 14 of the Agreement, by another NAO, or by an ECE;

- (d) receiving, accepting for review, and reviewing submissions on labor law matters arising in the territory of another Party;
- (e) at the discretion of the Secretary of the U.S. NAO, initiating a review of any matter covered by the Agreement;
- (f) requesting consultations with another Party's NAO in relation to that Party's labor law, its administration of labor law, or labor market conditions in its territory and responding to requests for consultations made by another Party;
- (g) publishing periodic and special reports, collecting and maintaining information on labor law matters involving other Parties, and compiling materials concerning labor law and legislation in another Party;
- (h) considering the views of advisory committees established pursuant to Articles 17 or 18 of the NAALC; and
- (i) consulting with the appropriate entities within the United States Government.

Cooperation: The procedural guidelines of the U.S. NAO state clearly that the Office shall conduct at all times its activities in accordance with the principles of cooperation and respect embodied in the NAALC. Moreover, the guidelines provide that when dealing with NAOs of the other Parties and other persons, the U.S. NAO shall endeavor to the maximum extent possible to resolve matters through consultation and cooperation. The U.S. NAO shall consult with NAOs of the other Parties during the process of receipt and review of submissions. The U.S. NAO shall advise the Secretary of Labor on the implementation of cooperative activities pursuant to Article II of the NAALC and receive and consider suggestions from any person for cooperative activities.

Information: An important duty of the U.S. NAO is to provide information to the public, while respecting confidentiality. The guidelines require the U.S. NAO to maintain a reading room where submissions, public files, transcripts of hearings, Federal Register notices, reports, advisory committee information, and other public information is available for public inspection during normal working hours, subject to the terms and conditions of the Freedom of Information Act. Information submitted by a person in confidence shall be treated in such manner by the U.S. NAO provided it meets the requirements of the Freedom of Information Act; each page of each document requesting such treatment should be clearly marked "submitted in confidence."

Submissions: The guidelines provide that any person may file a submission with the U.S. NAO regarding labor law matters arising in the territory of another Party; a single copy is satisfactory for filing. The filing may be by hand delivery, mail delivery, or facsimile transmission.

Submissions shall identify clearly the person filing the submission and shall be signed and dated. They shall state with specificity the matters that the submitter requests the U.S. NAO to consider and include supporting information available to the submitter. To the fullest extent possible, submissions shall address and explain whether:

- (a) the matters complained of appear to demonstrate action inconsistent with another Party's obligations under the NAALC;

- (b) there has been harm to the submitter or other persons, and if so, to what extent;
- (c) the matters complained of appear to demonstrate a pattern of non-enforcement of labor law by another Party;
- (d) relief has been sought under the domestic laws of another Party, and, if so, the status of any legal proceedings; and
- (e) the matters complained of are pending before an international body.

Acceptance of Submissions: The Secretary of the U.S. NAO shall determine whether or not to accept a submission for review within 60 days after filing. In general, the Secretary of the U.S. NAO shall accept a petition for review if it raises issues relevant to labor law matters in the territory of another Party and if a review would further the objectives of the Agreement. The Secretary of the U.S. NAO may decline to accept a submission for review if:

- (a) the submission does not identify clearly the person filing the submission, is not signed and dated, or is not sufficiently specific to determine the nature of the request and permit an appropriate review;
- (b) the statements contained in the submission, even if substantiated, would not constitute a failure of another Party to comply with its obligations under the Agreement;
- (c) the statements contained in the submission or available information demonstrates that appropriate relief has not been sought under the domestic laws of another Party, or that the matter or a related matter is pending before an international body; or
- (d) the submission is substantially similar to a recent submission and significant, new information has not been made available.

Upon accepting a submission for review, the Secretary of the U.S. NAO shall publish promptly a notice in the Federal Register specifying why review is warranted and the terms of the review and notify in writing such persons as may be appropriate. Where the decision is to decline a submission for review, the Secretary of the U.S. NAO shall notify promptly in writing the submitter and provide the reasons for the determination.

Reviews and Public Reports: Upon acceptance of a submission for review, the U.S. NAO shall conduct such further examination of the submission as may be appropriate to assist the Office to better understand and publicly report on the issues raised. The Secretary of the U.S. NAO shall hold promptly a public hearing on the submission, unless the Secretary determines that a hearing would not be a suitable method for carrying out the review. Within 120 days of acceptance of a submission for review, unless circumstances require an extension of time of up to 60 additional days, the Secretary of the U.S. NAO shall issue a public report, which shall include a summary of the proceedings and any findings and recommendations.

Recommendations to the Secretary of Labor: The Secretary of the U.S. NAO is empowered to advise the Secretary of Labor on whether to request consultations at the ministerial level pursuant to Article 22 of NAALC, the establishment of an ECE under Article 23, or the pursuit of dispute resolution.

Periodic and Special Reports: The U.S. NAO is required to publish annually a list of submissions on labor law matters, including a summary of the disposition of the submissions, and make available to the public similar lists published by the NAOs of the other Parties. The U.S. NAO may conduct and publish special reports on any topics under its purview on its own initiative, or upon request from the Secretary of Labor, including reviews of the effectiveness of labor law enforcement in the territories of the other Parties.

2. Canada

Canada established its NAO, effective January 1, 1994, within the Labour Program of the federal department of Human Resources Development Canada.⁹ While Canada has not published formal procedures for the operation of its NAO, the mandate of the NAO is to carry out the obligations of the NAALC as outlined earlier.¹⁰ Its creation was officially reflected in the reorganization of the Labour Program within the department of Human Resources Development Canada in June 1995.¹¹

The Canadian NAO is the point of contact with:

- (a) the Canadian public: the NAO responds to general and specialized information requests and queries as well as calls from the media, academics, and writers;
- (b) government: other federal departments in Canada and the ten provinces and two territories;
- (c) counterpart NAOs in the United States and Mexico; and
- (d) the Secretariat of the Commission for Labour Cooperation.

The NAO is also responsible for receiving and reviewing public submissions related to the effectiveness of labor law enforcement of labor law in the other two countries, reporting to the Minister.¹²

3. Mexico

Mexico created its NAO within the Secretariat of Labor and Social Welfare (Secretaría del Trabajo y Previsión Social, STPS). In July 1994, STPS's internal regulations were modified to recognize, among others, the establishment of the NAO and its functions.¹³ The amendments were incorporated into the revised internal regulations of STPS issued in July 1994.¹⁴

Pursuant to the internal regulations, the responsibilities of the Mexican NAO are:

9. May Morpaw, *The Canadian National Administrative Office of the North American Agreement on Labour Cooperation*, paper presented at a Conference on NAFTA and the North American Agreement on Labour Cooperation, Section of Labour and Employment Law, International Labour Law Committee, American Bar Association, Montreal (Oct. 31, 1994), at 2.

10. *Id.*

11. "Labour Branch Structure," June 1995.

12. *Id.* at 3.

13. *Decreto que reforma y adiciona diversas disposiciones del Reglamento Interior de la Secretaría del Trabajo y Previsión Social*, Diario Oficial (Jun. 5, 1994), at 23-25.

14. Secretaría del Trabajo y Previsión Social, *Reglamento Interior*, Serie Documentos Básicos No. 1, Tercera Edición (México, 1994).

- (a) To carry out the functions for each NAO set out in the NAALC; and
- (b) To carry out whatever other duties may be assigned to it by other laws and regulations or by the Minister of Labor and Social Welfare.¹⁵

In carrying out its responsibilities, the NAO will be assisted by other entities within the STPS.¹⁶

Effective in February 1995, the Mexican NAO developed a set of procedural guidelines for communications received from the public regarding labor law matters in the other signatory countries.¹⁷ (The term "public communication" used by Mexico follows Article 16 of the NAALC and is equivalent to "public submission" in the procedures of the U.S. NAO.) The guidelines set out the following:

Requirements of Communications: Public communications before the Mexican OAN must:

- (a) be sent to the NAO at its office within STPS;
- (b) be written in the Spanish language;
- (c) identify the petitioner, including his or her address and telephone number;
- (d) indicate whether they contain confidential information, in which case the OAN will treat such information confidentially; and
- (e) set out in detail the labor law matters arising in the territory of the other Parties (Canada and the United States).

Acceptance for Review: The NAO will notify each petitioner whether his or her communication has been accepted for review. A public communication will be accepted if it meets the requirements set out above; where some of the requirements have not been met, the NAO will notify the petitioner about the missing information.

Reviews: In conducting reviews of public communications, the Mexican NAO may consult with NAOs of the other Parties. The request for consultations will be transmitted to NAOs of the other Parties and to the Secretariat. Consultations between the NAOs on labor law matters will be conducted pursuant to Article 21 of the NAALC and will consist of descriptions of laws, regulations, procedures, policies, or practices, proposed changes to such procedures, policies, or practices, as well as relevant clarifications and explanations. The NAO may also obtain additional information from experts and consultants as well as from interested parties. The NAO may also organize information sessions to gain a better understanding and more information with regard to a public communication under review. The NAO may also request additional information from the petitioner. The NAO may combine different public communications into a single review provided the communications refer to related matters and they arise in the territory of the same Party.

15. *Id.*, art. II-bis.

16. *Id.*

17. *Reglamento de la Oficina Administrativa Nacional (OAN) de México sobre las Comunicaciones Públicas a que se refiere el artículo 16(3) del Acuerdo de Cooperación Laboral de América del Norte (ACLAN)*, Diario Oficial (28 Apr. 1995), at 51.

Reports: Within a reasonable period of time, depending on the nature and complexity of each communication, the NAO will issue a report addressing:

- (a) issues related to labor law matters arising in the territory of the other Parties;
- (b) the relationship between such matters and the obligations of the NAALC;
- (c) a recommendation on whether or not to request Ministerial Consultations pursuant to Article 22 of the NAALC; and
- (d) any other action that might strengthen the achievement of the objectives of the NAALC.

The report is made available to the petitioner and, at the same time, also made part of the file on the case accessible to the public.

The NAO will publish periodically a list of public communications that it has reviewed. The list will be posted for viewing within the premises of the Mexican NAO and will identify, for each communication, the petitioner, the Party in whose territory the labor matters subject of the review arose, and a summary of labor law matters raised by the communication. The NAO will make available for public inspection, within its premises, a record on each communication that has been reviewed, excluding from such record confidential information.

B. NATIONAL COMMITTEES

All three countries have established national advisory committees pursuant to the NAALC. The United States and Mexico have established private sector committees, while Canada has taken the necessary steps to create a governmental committee.

1. United States

In December 1994, the Secretary of Labor issued a notice of establishment of a private sector advisory committee.¹⁸ The National Advisory Committee for the North American Agreement on Labor Cooperation will provide advice to the Department of Labor on a number of matters pertaining to the administration and implementation of NAALC. These matters include, but are not limited to, the following: (1) improving working conditions and living standards in each signatory's territory; (2) encouraging cooperation to promote innovation and rising levels of productivity and quality; (3) encouraging the publication and exchange of information to enhance the understanding of laws and institutions governing labor in each signatory's territory; and (4) promoting compliance with, and effective enforcement by each signatory of, its labor laws.

The Committee will meet at least two times a year, and more often if necessary. It will comprise 12 members, 4 representing the labor community, 4 representing the business community, two representing academia, and two representing the public. The Committee will report to the Deputy Under Secretary for International Affairs and will operate in compliance with the Federal Advisory Committee Act.

On June 26, 1995, the Secretary of Labor announced the appointment of the 12 individuals who will serve initially on the National Advisory Committee to the U.S. National

18. 59 Fed. Reg 64,713 (1994).

Administrative Office.¹⁹ One of the members was also appointed as chair of the committee. The committee met for the first time in the summer of 1995.²⁰

2. Canada

In Canada, over 90 percent of the labor force is under provincial or territorial, rather than federal, jurisdiction. Each of the 10 provinces has its own set of labor laws and enforcement practices; the federal government is responsible for such sectors as transportation, communications, and banking.²¹

In the NAALC, the Government of Canada undertook obligations with regard to legislation under the federal jurisdiction. With regard to labor legislation under provincial or territorial jurisdiction, the Federal Government undertook the obligation to "use its best efforts to make the Agreement applicable to as many of its provinces as possible."²²

Since the NAALC was negotiated, one of the major initiatives of the Government of Canada has been to encourage provincial and territorial participation in the Agreement. In the first half of 1994, Canadian federal labor authorities negotiated with representatives of the provinces a framework agreement governing provincial participation in the NAALC.²³ In May 1995, the Province of Alberta became the first Canadian province to announce its intention to sign on to the Canadian Intergovernmental Agreement Regarding the North American Agreement on Labour Cooperation.²⁴ The Agreement came into force at the end of May upon signature by the federal Minister of Labour and the Minister of Labour of the Province of Alberta.²⁵ Alberta will be listed in the Canadian declaration under Annex 46 of the NAALC as soon as it adopts required legislation, expected in the fall of 1995.

One of the key provisions of the Canadian Intergovernmental Agreement is the establishment of a Governmental Committee to develop and manage Canada's involvement in the NAALC including "the establishment of Canada's positions and approaches as well as the preparation for, participation at and follow-up to meetings of the Council of the Commission for Labour Cooperation."²⁶

Structure: Among others, the Governmental Committee will:

- (a) be composed of the ministers responsible for labor, or their designees, from each signatory government; it will be co-chaired by the federal minister and a minister from one of the provincial signatory governments, the latter serving for a one-year period;
- (b) meet at the ministerial level at least once per year and as necessary;

19. *Labor Secretary Reich Appoints NAO Advisory Panel*, News Release USDL 95-245 (Jun. 26, 1995).

20. *Id.*

21. *Supra* note 9, at 7.

22. NAALC Annex 46.

23. *Supra* note 9, at 8.

24. *Alberta Will Sign Agreements on Environmental Protection and Labour*, Government of Alberta News Release (May 12, 1995).

25. Canadian Intergovernmental Agreement Regarding the North American Agreement on Labour Cooperation, art. 13.

26. *Id.*, art. 3.

- (c) be supported by a Committee of Senior Officials composed of representatives from each government;
- (d) function on the basis of consensus, unless otherwise specified in the Agreement; and
- (e) cooperate with the appropriate intergovernmental committee on international trade when addressing trade-related matters under the NAALC or the NAFTA.

Representatives of governments that have not signed the Agreement will have the opportunity to participate in meetings of the Governmental Committee and to present comment. Representatives of governments that have not signed the Agreement normally will be allowed to participate in cooperative activities and, as appropriate, in other activities under the NAALC.²⁷

Functions: Among the functions of the Governmental Committee are:

- (a) determining Canadian delegations to meetings of the Commission for Labour Cooperation and participation by Canada in Council working groups and other bodies of the Commission for Labour Cooperation;²⁸
- (b) providing a forum for the on-going mutual exchange of information between and among the federal government and the provincial and territorial governments regarding issues related to the NAALC;²⁹
- (c) guiding Canadian participation in cooperative consultations, evaluations, and resolution of disputes;³⁰ and
- (d) establishing and appointing members to a private sector national advisory committee.³¹

The private sector advisory committee will be established once several provinces have signed the internal agreement. In the interim, the NAO consults with interested representatives of labor, business, and academia in developing its annual cooperative work program.

3. Mexico

Mexico has established a National Consultative Committee on July 14, 1994. The Committee is composed of representatives of the labor and business sectors of the nation.

Cooperative Activities

Cooperative activities between the U.S. Department of Labor and Mexico's Secretaría del Trabajo y Previsión Social (STPS) began in 1991 pursuant to a Memorandum of Under-

27. *Id.*

28. *Id.* art. 4.

29. *Id.* art. 5.

30. *Id.* arts. 6-9.

31. *Id.* art. 10.

standing (MOU) between the two ministries signed on May 3, 1991.³² The MOU was accompanied by an Action Plan for Cooperation, which detailed specific activities to be jointly undertaken in the areas of occupational safety and health, child labor, labor statistics, training, and productivity and quality.³³ Cooperative activities between Labour Canada and STPS were predicated on a similar bilateral MOU between the two ministries signed in May 1992.³⁴

With the entry into force of the NAALC, bilateral labor cooperation programs between the United States and Mexico and Canada and Mexico were combined into a trilateral program. Consistent with the program of cooperative activities adopted by the Council at its March 21, 1994 meeting,³⁵ cooperative activities in 1994 focused on safety and health in the workplace; labor law/worker rights; employment and job training; and productivity and quality. At its April 28, 1995 meeting, the Council approved for public distribution a report on cooperative activities for 1994 entitled *Highlights of the 1994 Cooperative Work Program* and adopted a work program for 1995 focusing on labor law and industrial relations, workplace safety and health, employment and training, and productivity and quality in the three NAFTA countries.³⁶

A. 1994 COOPERATIVE ACTIVITIES³⁷

1. Safety and Health in the Workplace

Training: In the area of training, experts from the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) conducted training courses for their Mexican counterparts on topics such as sampling and laboratory analysis of airborne contaminants, ergonomics, biohazards, and industrial hygiene issues. Meanwhile, Canada donated air sampling equipment to STPS for a new industrial hygiene laboratory and Canadian specialists provided training on the use of the equipment; Canada also trained STPS inspection personnel on sampling techniques as part of a workshop on sampling of environmental contaminants.

High Hazard Industry Conferences: The United States, Mexico, and Canada each hosted one of three international technical seminars on safety and health in key North American industries:

32. *Report of the Administration on the North American Free Trade Agreement and Actions Taken in Fulfillment of the May 1, 1991 Commitments*, Washington: U.S. Dept. of Labor (Sept. 18, 1992), at 92.

33. *Id.* at 92-97.

34. *Supra* note 9, at 2.

35. *Press Communiqué: First Meeting of the Ministerial Council, Commission for Labor Cooperation, North American Agreement on Labor Cooperation*, News Release USDL 94-193 (Mar. 21, 1994).

36. *Ministerial Council of Commission for Labor Cooperation Meets in Ottawa*, News Release USDL 95-146 (28 Apr. 1995).

37. This section of the paper is based on *Highlights of the 1994 Cooperative Work Program-North American Agreement on Labor Cooperation*, Washington: U.S. Dept. of Labor (Apr. 1995).

- On June 13-16, 1994, the U.S.-Mexico-Canada Joint Technical Seminar on Safety and Health in the Electronics Industry was held in Albuquerque, New Mexico, in cooperation with the Los Alamos National Laboratory. The primary purpose of the seminar was to create a forum for the exchange of information and experiences on improving workplace safety and health and reducing safety and health hazards in the electronics industry. Representatives from government, industry, and labor in the three countries participated in the seminar.
- The Trilateral Seminar on Safety and Health in the Construction Industry was held in Mexico City on September 27-30. The seminar was hosted by STPS' Directorate General of Safety and Health in the Workplace. It brought together nearly 300 leaders of labor, industry, and government from the three countries to exchange ideas and information on construction safety and health issues.
- The Canada-U.S.-Mexico Technical Seminar on Safety and Health in the Petrochemical Industry was held on September 14-17 in Edmonton, Alberta, Canada. Entitled "Working Together Towards a Greater Understanding," the seminar was co-hosted by Human Resources Development Canada and Alberta Labour. About 150 participants from the three countries attended the seminar, representing the academic and medical communities, industry, labor, and government.

Safety and Health Statistics: Government representatives from Canada, Mexico, and the United States participated in a seminar on occupational safety and health statistics held in Mexico City on September 12-13. The purpose of the seminar was to examine and compare how each country gathered and analyzed its data on occupational safety and health, to look at methodology and best practices, and to determine if there exist sufficient standard procedures to permit future comparative discussions.

2. Labor Law/Worker Rights

A set of Workshops on Labor Law and Practice were held in La Jolla, California, on June 26-30. The workshops were organized around three general industrial relations topics: "From Crisis to Cooperation," "Labor-Management Cooperation," and "Innovations in Collective Bargaining." At the workshops, representatives from government, labor, business, and academia from the United States, Canada, and Mexico examined case studies of best practices in labor-management relations.

Summary papers prepared by moderators from academia at the La Jolla workshops formed the basis for the U.S.-Mexico-Canada Conference on Labor Law and Industrial Relations, held in Washington September 19-20. An audience of over 200 invited representatives of labor, management, government, the legal community, and academics from the three countries attended.

3. Employment and Job Training

On June 2-3, government representatives from the United States, Canada, and Mexico met in Mexico City to exchange information and statistics about microenterprises and the informal sector. The seminar, which was hosted by STPS, built on a bilateral exchange of information and on a seminar on the informal economy in Mexico and the underground economy in the United States held earlier between the U.S. Department of Labor and STPS. In addition, the three countries discussed programs to assist displaced workers, particularly

the NAFTA Transitional Adjustment Assistance Program in the United States and Mexico's training program for unemployed workers.

4. Productivity and Quality

On October 24-25, a trilateral workshop on the measure of productivity was held in Mexico City. The workshop studied methodological and statistical foundations of productivity measurement, practical applications in the measurement of productivity, and international comparisons of productivity. The objectives of the workshop were to examine different approaches for measuring productivity; to become familiar with the indicators and methods to advance their comparability and analysis, to promote an exchange of information on, and the development and coordination of, productivity statistics and their measurement; to pursue cooperative activities in productivity on mutually beneficial terms; and to indicate the scope and limitations of available statistics used to measure productivity, in order to make full use of those that already exist, or to determine the possibility of creating new information sources. There was general agreement that there should be a continuing dialogue between the respective statistical agencies concerning the measurement and interpretation of productivity measures.

B. 1995 COOPERATIVE ACTIVITIES

The cooperative activities program for 1995, approved by Ministers at the April 28 Council meeting, focuses on four areas: occupational safety and health, labor law/worker rights, productivity and quality, and employment and job training.

1. Occupational Safety and Health

In this area, the cooperative activities program for 1995 calls for the development of education and training materials, technical seminars on workplace hazards, and an ongoing information exchange project. In particular, the 1995 program calls for follow-up activities to the three trilateral technical seminars (on the electronics, construction, and petrochemical industries) held in 1994.

2. Labor Law/Worker Rights

Activities in this area include a trilateral government-to-government workshop on the Right to Organize/Freedom of Association was held in Washington in March 1995; the Third Labor Law Conference will be held in Canada in October. Also planned are exchanges of information on labor law.

3. Productivity and Quality

In this area, the work program calls for research — leading to trilateral workshops — on linkages between workplace innovation and productivity. A related set of activities deals with trilateral efforts to examine and compare national statistics on wages, incomes, and productivity.

4. Employment and Training

Cooperative activities in this area include a government-to-government workshop on equality issues in the workplace, held in Mexico City in June 1995, and continuing

exchanges of information on education and training issues, as well as on worker adjustment programs.

Enforcement Oversight

The NAOs of the United States and of Mexico have each received communications from their public raising concerns about labor law enforcement in other signatory countries, have conducted reviews, and issued reports. The U.S. and Mexican NAOs have consulted on specific matters raised by public communications received by their respective NAOs. Ministerial-level consultations have also been requested with regard to two of these cases.

Canada's participation in the enforcement oversight mechanisms of the NAALC is limited until certain thresholds regarding provincial participation are reached.³⁸ Thus, unless a public communication received by the Canadian NAO regarding labor law in another Party relates to a matter that would be under federal jurisdiction if it were to arise in Canada or is authored by the resident of a province or territory that has accepted the obligations of the NAALC, the NAOs of the other two parties are not obliged to consult on the matter.³⁹ Canada may not request ministerial consultations (Article 22), the establishment of an Evaluation Committee of Experts (Article 23), consultations prior to the start of dispute resolution procedures (Article 27), the initiation of dispute resolution procedures (Article 28), or the establishment of a dispute resolution panel, or join as complaining party (Article 29), at the instance, or primarily for the benefit of, the government of a province that has not accepted the obligations of the NAALC.⁴⁰ Moreover, Canada can only initiate the aforementioned processes of the NAALC if: (a) the matters are under federal jurisdiction in Canada; or (b) 35 percent or more of Canada's labor force (federal and provincial jurisdiction combined) is subject to the obligations of the NAALC; the corresponding threshold is 55 percent of the labor force for cases concerning a specific industry or sector.⁴¹

A. SUBMISSIONS

1. United States

In 1994, U.S. NAO received four submissions regarding labor law matters in Mexico.⁴² On April 15, 1994, the NAO initiated reviews of two of the submissions. The first, filed by the International Brotherhood of Teamsters, concerned the operations of an employer in Chihuahua, Mexico; the allegations in the submission related principally to the right of freedom of association and the right to organize.⁴³ The second submission, filed by the United Electrical, Radio, and Machine Workers of America, concerned the operations of an

38. May Morpaw, *The North American Agreement on Labour Cooperation: Highlights, Implementation and Significance*, address to the 1995 Conference of the Canadian Industrial Relations Association, Montreal (May 29, 1995), at II.

39. NAALC Annex 46, para. 2.

40. NAALC Annex 46, para. 3.

41. NAALC Annex 46, para. 4.

42. U.S. National Administrative Office, *1994 Annual Report*.

43. 59 Fed. Reg. 18,832 (1994).

employer in Juarez, Mexico; this submission also dealt principally with the right of freedom of association and the right to organize.⁴⁴ A public hearing in connection with these submissions was held on September 12, 1994.⁴⁵

The U.S. NAO issued a public report of the review of the two submissions on October 12, 1994.⁴⁶ The NAO did not recommend that the U.S. Secretary of Labor request ministerial consultations (under Article 22 of the NAALC) on the matters addressed in the two submissions. However, the report made several suggestions for cooperative activities under Article 11 of the NAALC on the issues of freedom of association and the right to organize and for public information and education programs regarding the NAALC. The recommendation not to request ministerial consultations was accepted by the U.S. Secretary of Labor. The three countries agreed in their cooperative activities program for 1995 to step up the dialogue on the specific areas of freedom of association and the right to organize.⁴⁷

The third submission, filed by the International Labor Rights Education and Research Fund, the Asociación Nacional de Abogados Democráticos (National Association of Democratic Lawyers), the Coalition for Justice in the Maquiladoras, and the American Friends Service Committee, was received on August 16, 1994 and accepted for review on October 13, 1994; the allegations in the submission concerned the operations of an employer in Nuevo Laredo, Mexico, and involved freedom of association, the right to organize, and minimum employment standards relating to hours of work and holiday work.⁴⁸ An information gathering hearing was held in San Antonio, Texas, on February 13, 1995.⁴⁹

The U.S. NAO issued a public report of the review of the submission on April 11, 1995.⁵⁰ The NAO recommended trinational cooperative programs under the NAALC emphasizing exchanges on laws and procedures to protect workers from dismissal for exercising their right to organize and the conduct of a study to explore the practices and findings of local Conciliation and Arbitration Boards with respect to workers' complaints of

44. 59 Fed. Reg. 18,833 (1994).

45. 59 Fed. Reg. 38,492 (1994) and 59 Fed. Reg. 41,511 (1994). The hearing procedures were spelled out in the July 28, 1994 Federal Register notice. In the notice, the Secretary of the NAO stated that the reviews of the two submissions would be consolidated for purposes of a public hearing since the subject matter of both submissions related principally to the right of freedom of association and the right to organize.

46. U.S. National Administrative Office, North American Agreement on Labor Cooperation, *Public Report of Review--NAO Submission #940001 and NAO Submission #94002* Washington: Bureau of Int'l Labor Affairs, U.S. Dept. of Labor (Oct. 12, 1994).

47. *Testimony of Labor Secretary Robert B. Reich before the Committee on Banking and Financial Services, U.S. House of Representatives*, (Feb. 9, 1995), at 5.

48. 59 Fed. Reg. 52,992 (1994). In accordance with NAO procedural guidelines, the allegations in the submission pertaining to minimum employment standards were not accepted for review because appropriate relief was not sought under the laws of Mexico.

49. 60 Fed. Reg. 2,988 (1995). The hearing was also intended to receive information from the public on the fourth NAO submission. However, as indicated below, the submitters withdrew their case prior to the time the hearing was held.

50. U.S. National Administrative Office, North American Agreement on Labor Cooperation, *Public Report of Review--NAO Submission #940003*, Washington: Bureau of Int'l Labor Affairs, U.S. Dept. of Labor (Apr. 11, 1995).

unjustified dismissals.⁵¹ The NAO also recommended that ministerial consultations be held to address the operation of the union registration process. The NAO recommendations were accepted by the U.S. Secretary of Labor.⁵²

The fourth submission, also filed by the United Electrical, Radio, and Machine Workers of America, was received on September 12, 1994 and accepted for review on November 4, 1994.⁵³ The allegations concerned the same employer in Juarez, Mexico, involved in the earlier submission by the United Electrical, Radio, and Machine Workers of America and related principally to the freedom of association and the right to organize. The submission was withdrawn by the submitter by letter dated January 19, 1995.⁵⁴

2. Mexico

On February 9, 1995, Mexico's NAO received a public communication from the Telephone Workers Union of the Republic of Mexico (Sindicato de Telefonistas de la República Mexicana, STRM). The public communication alleged that U.S. labor laws protecting freedom of association and the right to organize were violated by a U.S. employer who fired nearly 200 workers shortly before union elections were held.⁵⁵

On May 31, 1995, Mexico's NAO issued a report on its review of the public communication.⁵⁶ The NAO recommended deeper analysis of the effects of the sudden closure of a workplace on the workers' ability to exercise the rights of freedom of association and the right to organize. It also recommended ministerial consultations on the matter.⁵⁷

B. MINISTERIAL CONSULTATIONS

1. United States

Pursuant to the recommendation of the U.S. NAO, the U.S. Secretary of Labor requested consultations with the Mexican Secretary of Labor and Social Welfare regarding union registration on April 10, 1995.⁵⁸

On June 26, 1995, Secretaries Reich and Oñate, with the concurrence of Canadian Minister of Labour Robillard, announced that they had reached a consensus on the consultations and released to the public the text of the agreement that sets out specific courses of action to be taken by their two governments, following a specific time table, to effect the consultations (Appendix A).⁵⁹ The main elements agreed to by the Ministers are:

- A joint work program to be carried out by the NAOs of the three countries to better explain and improve implementation and public understanding of procedures

51. *Id.* at 27-28.

52. *Id.* at 32.

53. 59 Fed. Reg. 56,094 (1994).

54. *Supra* note 42.

55. *Complaint Against Sprint Filed by Mexican Telephone Workers Union*, Daily Labor Report (Feb. 10, 1995), at E6-E7.

56. *Oficina Administrativa Nacional de México para el Acuerdo de Cooperación Laboral de América del Norte*, Informe sobre la Revisión de la Comunicación Pública 9501/OANMEX (May 31, 1995).

57. *Id.* at 19.

58. Letter from Secretary Reich to Secretary Oñate, in U.S. NAO public files.

59. *U.S.-Mexico Agreement on Ministerial Consultations*, News Release USDL 95-244 (Jun. 26, 1995).

regarding union registration and certification at the federal and state levels in the United States and Mexico. The NAOs will develop a work program within 90 days and complete their work within one year.

- The Mexican NAO will be directed to bring together a group of independent experts to conduct a study of labor law dealing with union registration and its implementation. The study will be completed within 6 months.
- STPS officials will meet with workers at the plant which was the subject of the submission to inform them of remedies available to them under Mexican law regarding union registration; with local labor authorities to discuss union registration; and with management of the affected plant to discuss the contents of the report by the U.S. NAO. All of these meetings will be held within 4 months.

According to the agreement, the outcome of each of the actions will be made public.

2. Mexico

On May 31, 1995, Mexican Secretary of Labor and Social Welfare Oñate wrote to Secretary of Labor Reich requesting ministerial consultations, pursuant to Article 22 of the NAALC, regarding the case that had been brought before the Mexican NAO by the Telephone Workers Union of the Republic of Mexico.⁶⁰ Secretary Reich formally accepted the request for ministerial consultations by letter dated June 23, 1995.⁶¹ Detailed information on the conduct of the ministerial consultations has not yet been made available.

Concluding Observations

The experience of the first eighteen months of implementation of the NAALC has been very positive. The three countries have taken the necessary steps to create the national institutions required by the agreement. In 1994, the three countries carried out an active program of cooperative activities, covering areas such as worker safety and health, labor law/worker rights, employment and training, and productivity and quality; the same high level of intensity in cooperative activities has been maintained in 1995.

The publics of the United States and Mexico have begun to avail themselves of the enforcement oversight mechanisms established in the NAALC. Public communications presented before the U.S. and Mexican NAO have focused attention on freedom of association and the right to organize. Ministerial consultations on these subjects have raised to a higher plane the importance of these issues and have opened a trilateral dialogue that is bound to have a positive impact on the workers of the region.

60. Letter from Secretary Oñate to Secretary Reich, in U.S. NAO public files.

61. Letter from Secretary Reich to Secretary Oñate, in U.S. NAO public files. The letter is also an attachment to *Secretary of Labor Accepts Ministerial Consultations*, News Release USDL 95-240 (Jun. 26, 1995).

Appendix

Ministerial Consultations — Submission 940003

Agreements on Implementation

The Secretary of Labor of the United States, and the Secretary of Labor and Social Welfare of Mexico, in accord with the provisions of the NAALC, have agreed to carry out consultations regarding labor law dealing with union registration, a subject matter to which both governments lend the greatest importance, and have reached the following agreement:

1. The Secretaries of Labor of the United States and Mexico and the Minister of Labour of Canada will instruct their respective National Administrative Offices (NAOs) to carry out a joint work program to better explain and improve implementation and public understanding of procedures regarding union registration and certification at the federal and state levels in both countries.

- The NAOs shall develop a work program within 90 days. The work program could consist of workshops, seminars, meetings, and studies.
- Implementation of the work program shall be completed within one year.

2. The Mexican Secretary of Labor and Social Welfare will direct the Mexican NAO to bring together a group of independent experts to conduct a study of labor law dealing with union registration and its implementation. The NAO will invite the local authorities to participate in the study.

- The study shall be completed within 180 days.

3. As directed by the Secretary of Labor and Social Welfare, officials of that Department shall:

- a) Meet with workers at Magneticos de Mexico, S.A. de C.V., mentioned in the NAO public report on submission 940003 to inform them of remedies available to them under Mexican law regarding union registration;
 - b) Meet with local labor authorities to discuss matters regarding union registration raised by the public report on submission 940003 prepared by the U.S. NAO;
 - c) Meet with representatives of Magneticos de Mexico, S.A. de C.V., to discuss the public report on submission 940003.
- The meetings shall be held within 120 days.

4. The outcome of each of the agreed actions will be promptly made available to the public. The two Parties shall decide on the form and timing of the public announcements.

5. All completion dates are effective from the date of agreement.

Source: "U.S.-Mexico Agreement on Ministerial Consultations," U.S. Department of Labor News Release (June 26, 1995).