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The Race to the Bottom: The United States' Influence on Mexican Labor Law Enforcement

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The Race to the Bottom: The United States’ Influence on Mexican Labor Law Enforcement*

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* J.D. expected May 2004, University of San Diego School of Law. Dedicated to the loving memory of my mother and to my stepfather, without whom none of this would have been possible.
I. INTRODUCTION

"Poor Mexico, so far from God and so near to the United States."

- Porfirio Diaz

The Mexican Revolution of 1910 was a turning point in the history of Mexican labor. The once exploited working class of Mexico was given a written document defining the social rights of workers and protecting the working class. The laws announced in the 1917 Mexican Constitution afford enormous protections to the people of the working class and may, in some cases, exceed the current labor laws that exist in the United States. Although Mexican labor laws are an excellent source of

1. Ruler of Mexico from 1876 to 1910.
2. CONSTITUCION POLITICA DE LOS ESTADOS UNIDOS MEXICANOS art. 123 [hereinafter The Mexican Constitution].
protection for the working class on paper, in reality, the lack of enforcement by the federal and state governments substantially hinders the effect of such laws.5

There are several theories why the Mexican government has refused to enforce the stringent laws enumerated in the Mexican Constitution. For example, the North American Social Dumping Theory6 and Mexico’s desire to retain foreign direct investment from foreign countries as a source of revenue and employment.7 This comment seeks to analyze and expound on these theories and to develop two additional theories that have only been discussed in passing.8

Part II begins with a brief look at the history of Mexican labor, including pre and post-Revolution working conditions. Part II also details the various components of Mexico’s 1917 Constitution, the policies behind its passage, and provisions for its statutory enforcement. A summary description of Mexico’s Federal Labor Law follows, including a brief overview of the Federal Labor Law inspection process.

Part III discusses Mexico’s encouragement and protection of foreign direct investment and the impact that this has on how labor laws are containing stringent laws that even the United States does not have, including right to share in employer’s profits and dismissal only for cause).

5. See, e.g., id. (arguing that despite laws allowing such activities as the right to associate and minimum wages, in practice, Mexican workers do not have the benefit of such rights); see also, Barry LaSala, NAFTA and Worker Rights: An Analysis of the Labor Side Accord After Five Years of Operation and Suggested Improvements, 16 LAB. LAW. 319, 334 (2001) (explaining how the laws of Mexico are sufficient to protect worker’s rights, there continue to be frequent and continuing violations of these laws due to non-enforcement).


7. See, e.g., John P. Isa, Testing the NAALC’s Dispute Resolution System: A Case Study, 6 AM. U.J. GENDER & L., 615, 632–33 (1998) (arguing that Mexico sees the benefits of foreign direct investment as outweighing the costs of enforcement since foreign direct investment contributes to employment, technology, and diversity).

enforced in Mexico. Part III seeks to prove that the Mexican government has been willing to take drastic measures to ensure continued flow of foreign investment into Mexico, including changing existing laws and policies and ignoring historic legislation designed to protect the working class. Part III also seeks to expound on the North American Social Dumping Theory and prove why there may be some merit to the argument that the United States and other countries exploit Mexico as a cheap source of labor.

Part IV discusses the politics behind the passage of the North American Free Trade Agreement and seeks to explain how the political pressures surrounding the passage of the agreement led to criticism and created downfalls in the drafting process. Part IV also summarizes some of NAFTA’s main provisions and discusses how the weaknesses in this agreement, created between two developed and one developing nation, are adversely affecting the Mexican working class.

Part V concludes by exploring the political controversy surrounding the passage of the North American Agreement on Labor Cooperation. It will be explained how the Agreement that was designed to save NAFTA from its downfalls of excluding labor and environmental issues from its text has failed to fulfill this objective. Part V also seeks to prove the failure of the NAALC to impose adequate means to influence Mexico to comply with its labor laws, evidenced by cases that have been brought against Mexico under the NAALC statutory regime.

II. MEXICAN LABOR LAWS

A. The Past Revealed

1. Pre-1910 Conditions of the Working Class

The typical day for an individual working in Mexico before 1910 consisted of backbreaking work performed with no safety or health regulations for long hours with minuscule amounts of compensation.9 The factories would open early in the morning, lock their doors, and not allow any of the workers to leave until late in the evening.10 The factories and mining operations regarded injury, even death, as an


10. RAMON EDUARDO RUZ, TRIUMPHS AND TRAGEDY: A HISTORY OF THE MEXICAN PEOPLE 281 (Norton & Company 1992) (describing the condition of Mexico in industrial sectors as factories opening at five or six in the morning and not closing until eight or nine at night).
everyday occurrence and did not seek to prevent such tragedies.\textsuperscript{11} Housing conditions were atrocious, consisting of caves, shacks, or huts made of mud.\textsuperscript{12} These bleak conditions led to the inevitable result that hundreds of thousands of Mexicans became ill and died.\textsuperscript{13} Strikes were illegal, and rulers of the industry made it perfectly clear that workers were not allowed to “take the law into their own hands.”\textsuperscript{14} The only thing that could help was a revolution of dramatic proportions.

2. Post 1910: The Paternalistic State of Mexico

a. Constitucion Politicas de los Estados Unidos Mexicanos: The Mexican Constitution\textsuperscript{15}

The Mexican Revolution of 1910 was a struggle to obtain political reform.\textsuperscript{16} Mexican workers’ organizations and unions joined the fight to overthrow the political regime to protect the rights of the Mexican working class.\textsuperscript{17} In the wake of the Revolution, Mexico’s founders saw laborers as a vulnerable group in need of State protection from the abuse of wealthy capitalists.\textsuperscript{18} Relying on the concept of paternalism,\textsuperscript{19} the framers of the Mexican Constitution took responsibility for individual citizen affairs by providing full protection of worker’s rights, a commitment to improve citizen’s living and working conditions, and to respect human dignity.\textsuperscript{20} Regarded as the fruit of the Revolution, the 1917 Constitution sought to express the popular will, guarantee civil rights, and improve working and living conditions.

\textsuperscript{11} Id. (citing that in one mine there were over five hundred deaths within a four-year time span).
\textsuperscript{12} Id. at 282.
\textsuperscript{13} Id.
\textsuperscript{14} Id. at 283 (the \textit{codigo penal} of 1872 levied a fine or jail sentence on anyone who tried to force a modification of wages or impede the free exercise of labor).
\textsuperscript{15} The Mexican Constitution, art. 123; MEXICO: A COUNTRY STUDY 234 (Tim L. Merrill & Ramon Miro eds., Library of Congress 1997) (Mexico’s first constitution was the Acta Constitutiva de la Federation Mexicanca (Constituent Act of the Mexican Federation). Created in 1824, this charter-like document established a federal republic with a divided central government consisting of a bicameral congress and federal judiciary).
\textsuperscript{17} DAN LA BOTZ, MASK OF DEMOCRACY: LABOR SUPPRESSION IN MEXICO TODAY 62 (South End Press 1992).
\textsuperscript{18} McGuinness, supra note 9, at 370.
\textsuperscript{19} Id.
\textsuperscript{20} The Mexican Constitution, art. 123.
rights, and protect citizens from foreign and domestic exploitation. The groundwork for Mexico’s current labor laws are found in Title VI, Article 123 of the Mexican Constitution. Described as one of the “most advanced labor codes in the world at its time,” various sections of Article 123 combine to describe an employment regime that mirrors utopia. The maximum workday for a Mexican worker is eight hours and the minimum wage must be “sufficient to satisfy the normal material, social, and cultural needs of heads of a family and provide for the compulsory education of his children.” Each worker is granted the right to organize by forming unions and a right to strike. The Constitution, however, is not the only protection that is afforded Mexican workers.

b. Ley Federal de Trabajo: The Federal Labor Law

Pursuant to Article 123, the original Federal Labor Law (“FLL”) was enacted in 1931 to carry out the policies and principles announced in the Mexican Constitution by choosing labor standards that would ensure social justice and a balance of power between labor and management. AS delineated below, the FLL has since been amended and reflects the status of Mexican labor laws that currently exist.


Title I addresses the general principles of labor laws and their purpose to “seek to achieve balance and social justice in relations between workers and employees.” Article 3 defines the right to work as a “social right and obligation” that “requires the respect for the rights and dignity of those who may provide it.” Article 3 also prohibits

21. See MEXICO: A COUNTRY STUDY, supra note 15 at 41; id. at 236 (the 1917 Constitution has been referred to as the most radical and comprehensive constitution in modern political history and closely replicates the liberal principle and concepts in the United States Constitution, including federalism, separation of powers, and a Bill of Rights).
22. Id. at 237.
23. The Mexican Constitution Title VI, art. 123(I).
24. Id. art. 123(VI).
25. Id. art. 123(XVI).
26. Id. art. 123(XVII).
28. McGuinness, supra note 9, at 371.
29. OJEDA & BOTTONI, supra note 3, at 156 (the FLL has been amended numerous times with the most recent FLL (1990 amendment) composed of sixteen titles).
31. Id. art. 2.
32. Id. art 3.
discrimination, encourages training of employees, and provides for safe
conditions in the workplace and a "decent standard of living."  

Other relevant sections within Title I include Article 5, which provides
for a minimum wage and a workday that is not "unreasonably excessive," and
Article 7, which guarantees that the labor force in any establishment
shall be composed of at least 90 percent Mexican workers. Title III
regulates individual labor conditions. In general, these articles include
the number of days in a workweek, vacation pay, and compulsory
profit sharing.

Title IV imposes certain obligations on behalf of Mexican employers.
Some of these include observing current labor standards, providing
employees with the instruments necessary to carry out their jobs,
"abstain[ing] from ill-treatment", and abiding by the safety regulations
to prevent illness and injury. Also, employers are assigned certain
prohibitions, including the strict prohibition to compel or refrain
employees from joining a labor organization. The language of Title IV
also requires employers to provide housing for their employees and
train employees so that they can raise their standard of living.

Title VII of the Federal Labor Law of Mexico identifies collective

33. Id. ("[Work] must be conducted under conditions which assure the life, health,
and a decent standard of living of the worker and his family. There may be no difference
established between workers on the basis of race, sex, age, religious creed, political
philosophy, or social condition. In addition, it is in society’s best interest to promote and
oversee the education and training of workers").

34. F.L.L. art. 5. (other provisions include: gender equality, regulating child labor
under the age of fourteen, and time of payment).

35. Id. art. 7 ("In any enterprise or establishment, at least 90% of workers hired by
the employer must be Mexican").


37. Id. art. 61 (the standard work week is comprised of six days with one day off
for rest).

38. Id. arts. 76–81 (entitled to six days paid vacation in the first year of service).

39. OJEDA & BOTTONI, supra note 3, at 164 (stating that a percentage of the gross
profits of a company will be set by the National Commission for Workers’ Profit-
Sharing in Enterprises, currently set at ten percent).

40. F.L.L. Title IV. arts. 132-163.

41. Id. art. 132.

42. Id. art. 134–35; (Title IV, article 136 also contains employee obligations and
prohibitions, including compliance with labor standards, safety regulations, and
refraining from any behavior that could endanger the safety of the employee or other
employees).

43. Id. art. 136.

44. Id. art. 153.
labor relations. \(^{45}\) Collective labor agreements, entered into by either employers or workers, govern Mexico and have led to the unionization of about twenty-five percent of the labor force in Mexico. \(^{46}\) Title VII requires an employer who hires union workers to enter into a collective labor agreement, \(^{47}\) but even where there is no agreement, the Federal Labor Law will continue to control the relationship. \(^{48}\) Workers are free to associate and to form trade unions, but are not obligated to join or prevented from joining. \(^{49}\)

Title IX of the Federal Labor Law requires employers to comply with safety and health regulations to prevent occupational injuries and diseases and to inform employees of these regulations by displaying them at the workplace. \(^{50}\) Title IX’s general principles promoting workplace health and safety is implemented through the General Regulations Governing Workplace Safety and Hygiene. \(^{51}\) These regulations provide the necessary link between workplace safety and health to standards established by the Federal Law of Measurement and Standards under the Official Mexican Standards. \(^{52}\)

The Mexican Constitution sets forth the general principle that every Mexican worker is to be given the social right to work and to be treated in a dignified and non-exploitive manner. \(^{53}\) The Federal Labor Law complemented the Mexican Constitution by further providing regulations on the relationship that must exist between an employer and his

\(^{45}\) F.L.L. arts. 354-471.

\(^{46}\) Id. art. 386 ("A collective labor agreement is the agreement entered into by one or more unions and one or more employers, or one or more employer’s unions, for the purpose of establishing employment conditions in one or more enterprises or establishments."); see id. art. 391 (detailing what a collective labor agreement must contain, including: workdays, vacation days, wages, training, and the duration of the agreement); available at www.state.gov/g/drl/rls/hrrpt/2000/wha/index.cfm, as of 2000.

\(^{47}\) Id. art. 387 (describing how an employer is obligated to enter into a collective labor agreement if a union member requests and if such request is denied, then the members has a right to strike).

\(^{48}\) OJEDA & BOTTONE, supra note 3, at 172.

\(^{49}\) F.L.L. arts. 386-489.

\(^{50}\) F.L.L. arts. 472-515.


\(^{52}\) Ley Organica De La Administracion Publica Federal 1976 (referred to as Normas Oficiales Mexicanas or OMS’s, this regime defines standards such as the appropriate amount of noise (NOM-010-STPS-1993), vibration (NOM-011-STPS-1993), temperature (NOM-012-STPS-1993), and chemicals in the workplace (NOM-025-STPS-1993)).

\(^{53}\) The Mexican Constitution, art. 123 (establishing fundamental labor standards that assure dignified working conditions, including: a mandatory minimum wage, an eight-hour workday, a maximum six-day work week, and the freedom to associate, form unions, and strike).
Neither the Constitution nor the Federal Labor Law, however, provide mechanisms to enforce the enumerated principles and policies.\textsuperscript{55}

**B. Statutory Enforcement of Mexico's Labor Principles**

The Mexican Constitution provides that state and local government personnel have exclusive authority to enforce federal labor law.\textsuperscript{56} Despite giving the authority to the state and local governments, the Constitution does not provide any guidance on how to go about enforcing the stringent laws contained in its text.\textsuperscript{57}

The 1993 Foreign Investment Law delegates enforcement of Mexican labor laws to the Ministry of Labor and Social Welfare.\textsuperscript{58} The Ministry's responsibilities include enforcing existing labor standards, developing new standards, organizing inspections of workplaces, reducing work risks, imposing employer sanctions, and disseminating information.\textsuperscript{59} The most important Ministerial weapon to enforce the policies and principles created in the Mexican Constitution and the Federal Labor Law is the inspection of workplaces.

\textsuperscript{54} F.L.L. Title I, art.1 ("The present law is of general observance throughout the Republic and governs the employment relations included within article 123, Section A, of the Constitution.").

\textsuperscript{55} See, e.g., LaSala, supra note 5, at 320 (noting that Mexico has adequate labor standards, but lacks the necessary mechanisms to enforce its laws).

\textsuperscript{56} The Mexican Constitution, Title VI, Article 123(XXXI) (State and local governments have exclusive authority to enforce labor laws except in three instances: (1) where enforcement relates to one of those twenty-two industries historically considered to be strategic; (2) where enforcement relates to any industry which is administered directly or indirectly by the federal government, administered directly or indirectly by the federal government, functions by virtue of a federal contract or concession, or operates in a federal zone; (3) where enforcement involves any of the following legal issues: (a) conflicts between two or more federal entities; (b) collective contracts obligatory in more than one federal entity; (c) employer obligations for worker training and education or employer obligations for workplace health and safety).

\textsuperscript{57} See McGuinness, supra note 6, at 4 (describing Mexico's labor laws enforcement practices as "disorganized, ineffectual, and corrupt.").

\textsuperscript{58} L.I.F art. 523.

\textsuperscript{59} Ley Organica De La Administracion Publica Federal 1976, art. 40 [hereinafter F.P.A.A.].

Inspections have been used throughout history to verify employer compliance with federal and state labor laws. English law was the first to require inspectors to enter factories, conduct investigations, and report to the appropriate governmental authority. Inspections became an important tool to verify compliance with labor laws, became a fixture in international law, was mentioned in several International Labor Office conventions, and remains a prominent weapon in Mexico's artillery to enforce federal labor law.

Inspections of Mexican industrial sectors are conducted bi-annually via the General Division for Federal Labor Inspection ("GDFLI"). The GDFLI conducts investigations of general work conditions and workplace safety and health. The Ministry creates official Inspection Protocols detailing the inspection procedure to assist the inspectors, which consists of interviewing the employer and at least three employees. After the inspection, the inspector writes up an official Inspection Report containing his findings. This report is then considered in the decision whether to impose sanctions on the employer for violations of federal labor law.

The inspection process appears to be an efficient and effective tool utilized in Mexico to force employers to comply with federal and state labor laws.

60. All information contained in this comment regarding Mexican labor law inspections, unless otherwise specified, derives from Michael J. McGuinness who spent nearly two years conducting research on the inspection process in Mexico City. Given the label of quasi labor inspector, Michael participated in federal labor inspections throughout Mexico and extensive questioning of federal labor law inspectors. Michael Joseph McGuinness, The Landscape of Labor Law Enforcement in North America: An Examination of Mexico's Labor Regulatory Policy and Practice, 29 LAW & POL'Y INT'L BUS. 365 (1998).

61. Id. at n.3.

62. Id. (The Treaty of Versailles states, "[e]ach State should make provision for a system of inspection in order to ensure the enforcement of the laws and regulations for the protection of the employed," § 2 art. 427, June 28, 1919).

63. F.L.L. Title XI art. 541 (explaining that the powers of the inspectors include ensuring that the labor norms are observed, the inspection of establishments, the questioning of workers and employers, and to suggest any non-observance be corrected).

64. McGuinness, supra note 60, at 385.

65. Id. at 380 (the work conditions compliance inspection consists of verifying compliance with such things as contracts, holidays, vacations, and profit-sharing, while the safety and health inspection verify compliance with fire prevention measures, handling of toxic substances, and environmental conditions).

66. McGuinness, supra note 6, at 12.

67. McGuinness, supra note 60, at 387 (the report may include such things as a review of business documents, first-hand observations of conditions, declarations made by workers, and improvements suggested by the inspector. This report is then used to decide whether to impose sanctions on the employer for violations of federal labor law).

68. McGuinness, supra note 6, at 14 (stating that Ministry officials based their decision to begin a sanctioning procedure based on an evaluation of the official Inspection Report.).
labor laws. In reality, the process has its weaknesses. Federal labor law requires employers to admit inspectors and to provide them with any documentation necessary to conduct a thorough inspection. Once inside the factory, most inspectors have to take on not only the employer, but also resistant employees and managers. There are five potential barriers that frustrate the efficient and effective inspection process laid out by the Ministry of Labor.

a. The Barriers to Effective Investigations

The three most applicable barriers that prevent explicit objectives from becoming effective enforcement procedures are (1) employer resistance, (2) inspector corruption, and (3) labor union indifference.

i. Employer Resistance

Inspectors are met with fierce employer resistance. Such resistance can be attributed to four kinds of employers. Employers who are incapable of complying with the inspection, disinclined employers who are uncooperative and often abusive, outraged employers who use intimidation, and sometimes physical force against inspectors, or corrupt employers who use illegal means to sway the results of the inspection process.

ii. Inspector Corruption

Some inspectors are willing to extort money from employers to cast the employer’s factory in a more favorable light. Corrupt inspectors force employers to illicit money by threatening to write up a bad inspection

69. F.P.A.A. art 40. (putting the organizing of initial, periodic, verification, and special inspections in the hands of the Ministry of Labor and Social Welfare).
70. McGuinness, supra note 60, at 401.
71. Id. (the barriers are theorized by Michael J. McGuinness. Only three barriers are relevant to the discussion and therefore only three will be discussed).
72. Id. (the other two barriers are joint commission apathy and the over-documentation of inspection procedure).
73. Id. (noting that at least one-third of employers block or unnecessarily complicate the efforts of labor law inspectors).
74. Id. at 402.
75. Id. at 404 (stating that some inspectors rely on intimidation, fabrication, and omission to meet their ultimate objective of extorting money from employers or will offer to omit violations on their reports).
report, waste Ministry resources, and decrease the effectiveness of government regulatory efforts. Corrupt inspectors, however, may simply be the product of a hostile and poverty-stricken environment. Inspectors are not paid well, so they are given an incentive to take a payoff to report that employer's businesses are in full compliance with applicable laws. If reports continually come back to the Ministry of Labor and Social Welfare stating that factories are in full compliance, actual conditions will never be known, and will never be corrected. The solution to this problem is for the Ministry to open its eyes, realize the corruption that is taking place and remedy the situation by increasing the wages of inspectors to make them more loyal to their employer. This would essentially require government support of the inspections with the goal of improving conditions in the workplace. However, this is unlikely to happen if Mexico continues to place reliance on foreign direct investment because higher standards in the workplace means higher operating costs, which could drive foreign investors to a country that does not impose such high standards.

iii. Labor Union Indifference

Unions in Mexico are closely connected to the Mexican government because they are subject to the jurisdiction of the Confederation of Mexican Laborers, an extension of the Mexican government. This interdependent relationship between unions and the government has deferred any major union organization and has led to inadequate representation of worker's rights. The fact that union leaders are not willing to fight for union members has a strong impact on the federal labor law inspection process.

Without the protection of a union, the workers fear retaliation from...
employers for statements said during an inspection and will refuse to make disparaging comments. With no documentation of the conditions inside a factory from the individuals who are working there day to day, it is impossible for the conditions to be known and remedied. Again the vicious cycle of corruption continues, where nothing gets settled and workers are the worse for it. The interdependent relationship that exists between the Mexican government and labor unions has been proven not to be in the best interests of the Mexican working class and no matter how hard workers struggle to gain union representation, it will never be accomplished if the relationship is allowed to continue. The potential, but unlikely, solution to this problem is for citizens of the Mexican working class to join and become a strong and prominent force with the ultimate goal to dissolve this long-term relationship and gain the recognition that they deserve. Another potential solution is for foreign corporations doing business in Mexico to realize the injustice that occurs to workers who are not adequately represented by a union and assist in making Mexico a unionized country by demanding union workers to be the only workers who will be hired in their factories. In order for this to be accomplished, international corporations need to be less attuned to self-interest and maximizing profits and more attuned to human interests. Perhaps this could be accomplished by giving monetary incentives to complying foreign corporations, provided by their home country. This would benefit the Mexican working class, the Mexican economy, and the foreign country because they would be able to continue to reap the benefits of manufacturing in Mexico.

b. The Issuance of Monetary Sanctions

If an employer is found to be in violation of federal labor law, the Ministry of Labor issues monetary sanctions, which are imposed to try to discourage further violations. However, the sanctions are minute and ineffectual when imposed upon large corporations doing business in Mexico.

83. See id. (stating that only five to ten percent of workers will ever make declarations against the employer during worker interviews).
84. Crandall, supra note 4, at 178 (explaining how union leaders are more loyal to the Mexican government, the ruling party, and the desire to appease foreign manufactures than to the workers they are hired to represent).
85. F.P.A.A. art 40 (describing the Ministry of Labor and Social Welfare's job as “application of sanctions to those employers who violate existing labor standards.”).
Factories located in Mexico can afford to pay a minuscule amount for violations of Mexican labor laws and are not dissuaded from continuing their current illegal operations when they are part of a larger, highly recognized international corporation that has multiple factories employing thousands of people and grossing millions of dollars. Millions of dollars saved and earned by locating their factories on Mexican soil is more than enough incentive to violate federal labor laws when the sanction only amounts to 1/10,000 of the money earned. If the Ministry of Labor is serious about doing away with federal labor law violations, it is imperative that the sanctions imposed be increased. Not only will this help to stop violations, but it will also give the Ministry of Labor more money to compensate its inspectors and remedy factory conditions.

Perhaps Mexico has legitimate reservations about imposing greater sanctions on businesses that fail to comply with federal labor law while conducting business on Mexican soil. If higher sanctions are administered, foreign businesses may find it more profitable to run their factories in a different country. Factually, the Mexican government has an economic incentive not to impose greater sanctions on international businesses because foreign direct investment provides the Mexican economy with much needed employment, technology, and diversity. But, the exploitation of Mexican workers is not the only alternative available to attain these goals.

86. McGuinness, supra note 6, at 15 (noting that the average sanction in 1996 was equal to US$100).
87. McGaughey, supra note 81, at 60 (describing list of United States companies in the Maquiladora region, including General Motors, Ford, Chrysler, Zenith, and General Electric); GM generated more than $32 billion in cash in 2002 available at www.gm.com/company/investor_information/fin_res/?Section=company&layer=Investor&action=open&page=4 (last visited Jan. 21, 2004).
88. Calculation performed using US$ 1 million dollars divided by 100, the average sanction for violation of labor laws, to obtain 1/10,000.
90. Laurie J. Bremer, Pregnancy Discrimination in Mexico's Maquiladora System: Mexico’s Violation of its Obligations Under NAFTA and the NAALC, 5 NAFTA: L. & BUS. REV. AM. 567, 583 (1999) (listing the benefits of foreign direct investment as diversifying the market place, advancing technology, and increasing employment and cost efficiency).
III. FOREIGN DIRECT INVESTMENT AND THE NORTH AMERICAN SOCIAL DUMPING THEORY

A. Legislation Protecting Foreign Direct Investment

Mexico has adopted legislation that encourages foreign direct investment and allows foreign corporations easy access into Mexico. It was not always this way. In 1973 the Law to Promote Mexican Investment and to Regulate Foreign Investment ("The Law") was adopted with the purpose to avoid the sale of already established Mexican companies to foreign investors, to generally restrict foreign participation in Mexican companies to a maximum of forty-nine percent, and, in some sectors, to keep foreign investment out of the Mexican economy altogether. The Law allowed the Mexican government to retain a sufficient amount of control over foreign investors because The Law contained a detailed list of conditions that had to be followed and the appropriate Mexican authorities analyzed each step made by a foreign investor.

In order to police The Law, Regulations to The Law to Promote Mexican Investment and to Regulate Foreign Investment were created in May of 1989. The Regulations represented a more liberal interpretation of The Law and a more lenient attitude towards foreign investing. The Regulations liberalized more economic activities and allowed foreign ownership without the need of prior authorization from authorities.

91. See upcoming discussion on the FOREIGN INVESTMENT LAW (1993), 33 I.L.M. 605.
92. See, e.g., Brandon W. Freeman, Comment, An Overview of Foreign Direct Investment in Mexico, 3-AUT NAFTA: L. & BUS. REV. AM. 123, 123–24 (listing several policies that have discouraged foreign direct investment in Mexico for over seventy years, including: restraints on the transfer of Mexican stock, prohibiting majority ownership and control by foreigners, discriminatory taxation, currency inconvertibility, and political insurrection).
95. REGULATIONS TO THE LAW TO PROMOTE MEXICAN INVESTMENT AND TO REGULATE FOREIGN INVESTMENT IN MEXICAN LAW LIBRARY VOLUME 1 169 (William D. Signet ed., West Publishing 1997) [hereinafter the Regulations].
97. Id. at 127 (stating that as a result of the provision in the Regulations allowing
order to incorporate the changing attitude observed in the Regulations, as well as to satisfy the United States and other foreign investors that such laws were not going to restrain business options, the Law was repealed in 1993 and replaced with the Foreign Investment Law.\(^9\)

It is significant that the law, which once referred distinctly to regulating foreign investment and was called the Law to Promote Mexican Investment and to Regulate Foreign Investment, now is simply called the Foreign Investment Law. Nowhere in its new goal, “to formulate the rules to channel foreign investment into the Nation and to ensure that [foreign] investment contributes to the national development,”\(^9\) does it mention regulating foreign investors. Not only does the new law governing foreign investment contradict the original law designed to regulate foreign investment, but also one of the most significant aspects of the Foreign Investment Law is that some of its provisions directly contradict the Mexican Constitution.

1. The Mexican Constitution Versus the Foreign Investment Law

The Mexican Constitution states that only Mexicans, by birth or naturalization, are permitted to acquire land or water ownership\(^10\) and foreigners are prohibited from owning real property within 100 kilometers of Mexican borders and within 50 kilometers of Mexican coastline.\(^11\) These provisions were included to give significance to the Mexican Revolution and to implement one of the purposes of the Mexican Constitution, to protect citizens “from foreign and domestic exploitation to all Mexicans.”\(^12\) The Foreign Investment Law, however, dramatically alters these provisions.

The text of the Foreign Investment Law allows foreign investors to control 100 percent of the capital stock in a Mexican enterprise\(^13\) and allows a foreigner to own property in the “restricted zone” if the real estate is used for nonresidential purposes and the purchase is registered.

\(^10\) Id.
\(^11\) The Mexican Constitution, art. 27 (stating that a foreigner can acquire land and water ownership only if they agree before the Ministry of Foreign Relations to be nationals and not to invoke the protections of their governments relating to the issue).
\(^12\) Id. art. 27 (referred to as the restricted zone).
\(^13\) See MEXICO: A COUNTRY STUDY, supra note 15, at 41.
with the Secretariat of the Foreign Investment Commission. The Foreign Investment Law and the social policies of the Salinas administration have also allowed foreign investment in areas that were once adamantly restricted to Mexican control. Through the enactment of the Foreign Investment Law and the direct contradiction of the Mexican Constitution designed to free Mexican citizens from exploitation, the Mexican government has encouraged and protected foreign corporations and their investments.

B. The North American Social Dumping Theory

It is a maxim of every prudent master of a family, never to attempt to make at home what will cost him more to make than to buy.

- Adam Smith

Many foreign businesses see Mexico as a source for manufacture, offering a cheap workforce and flexible labor standards. Mexico continues to give rise to a young population of workers and an attractively low average level of earnings. The attraction that businesses have in transferring operations from developed nations to developing nations to take advantage of low wages and labor standards is referred to as social dumping. The theory that the United States and Canada will use...
Mexico as their social dumping grounds, which will result in grievous working conditions for Mexicans, is called the North American Social Dumping Theory.\textsuperscript{110} The Maquiladora sector located on the border between Mexico and the United States is considered one of the most important sources of cheap labor and foreign direct investment in Mexico and provides a dramatic illustration of the North American Social Dumping Theory.\textsuperscript{111}

1. The Maquiladora Industry: An Example of Social Dumping

Created in 1965 by Mexico as a source to increase capital, technology, and employment, Maquiladora plants are one hundred percent foreign-owned corporations.\textsuperscript{112} Located close to the Mexican/United States border, the factories operate to import raw materials into Mexico for assembly and then exporting the finished product out of Mexico to a designated foreign country.\textsuperscript{113} Mexico relies on the foreign direct investment that arises from the operations of the Maquiladora industry to provide the economy with employment opportunities, technology, and diversity.\textsuperscript{114} However, despite the fact that multinational companies have been investing in the Maquiladora industry for over thirty years, this has not led to an increase in wages or better working conditions within Mexico.\textsuperscript{115}

a. The Minimum Wage

The Mexican Constitution states that the minimum wage of an employee must be "sufficient to satisfy the normal material, social, and cultural needs of heads of a family and provide for the compulsory
education of his children." The Federal Labor Law also states "[the] minimum wage must be sufficient to satisfy the normal necessities of the head of a family, physically, socially, and culturally, and to provide for the obligatory education of his children." United States companies that build their factories in the Maquiladora sector of Mexico do not provide their workers with the sufficient minimum wage called for in the Mexican Constitution. The minimum wage varies depending on the region of Mexico, but the average hourly wage in 2002 was 40.10 pesos. This roughly calculates to about U.S.$ 4.46 for harder, and sometimes, life threatening work that does not provide a Mexican family with enough food to keep from starving. Why would the Mexican government keep its citizens living in poverty when all that is required is to pass a law mandating a raise in the minimum wage? It appears that the Mexican government has the philosophy that any job is better than no job, even a low-paying one. Wages are kept low by the Mexican government to attract foreign businesses looking to decrease their operating costs and increase their profits. Over one million Mexican citizens enter the workforce each year. In order to accommodate the demand for jobs, wages are kept low so that businesses will invest in Mexico and decrease Mexico's overall unemployment rate. Foreign investment does increase jobs, but this is of no benefit when both parents and children work to support a family and are still living in poverty. One reason for low wages has been connected to the influence that the Mexican

116. The Mexican Constitution, art. 123(VI).
117. F.L.L. art. 90.
120. Vega, supra note 107, at 144–45.
121. Isa, supra note 7, at 634 (stating that the Mexican government's fear is that companies located in Mexico will no longer find it cost efficient to remain in Mexico if labor costs are increased).
123. Isa, supra note 7, at 633 (stating that for every US$ 1 billion in exports, 20,000 jobs are created).
government has over workers’ primary instrument for obtaining relief, unions.  

b. Unionization

“If I went to work in a factory, the first thing I would do is join a union.”

– Franklin D. Roosevelt

The ability to organize was not always an option for the Mexican working class, but because of the Revolution, the right was granted to avoid the exploitation of citizens.  

This does not mean, however, that, in practice, Mexican workers are given such a right.  

In August of 1991, a political agreement between the Institutional Revolutionary Party that rules Mexico, and the Confederation of Mexican Laborers was signed to confirm the direct relationship between union organization and the Mexican government.  

One result of this relationship is that union registry is controlled by government authorities who decide which unions will be recognized and which ones will not.  

The relationship that exists between the Mexican government and workers’ unions has created employer resistance and inadequate government support of unions.  

This relationship has also created a work force where over 75 percent of workers are not represented by a union.  

Unions can provide numerous benefits for its members.  

Unions are created to provide equality between a worker and his/her employer. A working relationship that would otherwise be a fight over superior versus inferior becomes a common enterprise with the goal of getting the job done accurately and efficiently when a union is involved. One of the

125. See, e.g., BOTZ, supra note 17, at 20.
126. Thirty-second President of the United States of America.
127. The Mexican Constitution art. 123; F.L.L. arts. 134–35 & 354–55 (allowing employers and workers the freedom to associate, meaning the joining of a group of workers or employers in a temporary agreement for the defense of their common interests).
128. See generally LaSala, supra note 5, at 327–35 (noting that the US NAO has found continuing violations of Mexican worker’s right to unionize).
129. See MEXICO: A COUNTRY STUDY, supra note 15, at 256.
130. See BOTZ, supra note 17, at 35 (registering occurs with the Federal Labor Secretariat who has often withheld or delayed registration to unions hostile to government policies); www.state.gov/g/drl/rls/hrrpt/2000/wha/index.cfm.
131. McGuinness, supra note 60, at 405 (suggesting the interdependent relationship between the Mexican government and union leaders creates corrupt leaders who are engaged in self-interest, and not in the protection of workers).
133. The ensuing discussion on union benefits derives from the website of the American Federation of Labor and Congress of Industrial Organizations, available at www.aflcio.org/aboutunions.
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major reasons for joining a union is to obtain higher wages and better health and pension benefits.\textsuperscript{134} In 2001, full-time wage and salary United States union members had median weekly earnings of U.S.$ 718, compared with a median of U.S.$ 575 for wage and salary workers who were not represented by unions.\textsuperscript{135} This is over a twenty-five percent increase in wages. Unions are able to hold employers accountable for actions that are in violation of worker’s rights and remedy any discrimination that occurs against a union member. Unions have also been shown to help increase productivity because union members obtain better training, work under regulated conditions, and can have a voice in decision-making or complain about management.\textsuperscript{136} This makes for a happier, healthier employee who takes pride in their work because they realize the benefits that flow from union membership.\textsuperscript{137}

Many members of the Mexican working class fail to see the benefits of unionization, even when they are part of a union.\textsuperscript{138} Unions are too closely correlated with the Mexican government for any adequate union representation to take place.\textsuperscript{139} Mexican unions look out for what is good for the government, not what is good for its people.\textsuperscript{140} This lack of union representation for workers creates two situations. The first being a docile worker who fears to speak up about harsh labor conditions and low wages because he or she knows there will be no recourse and no support from fellow workers.\textsuperscript{141} The second situation is the worker who was fired for his or her involvement in trying to organize a union and left to support his family and fend for himself in a hostile labor environment.\textsuperscript{142} With no one to fight for their rights and the fear of losing one’s job for asserting their rights, the members of the Mexican workforce are forced to accept low wages and hazardous working conditions. There must be a division between the Mexican government and the creation and maintenance of labor unions. Without this division,

\begin{footnotesize}
\begin{enumerate}
\item[134.] \textit{Id.}
\item[136.] \textit{Available at} www.aflcio.org/aboutunions.
\item[137.] \textit{Id.}
\item[138.] \textit{Available at} www.state.gov/g/drl/rls/hrrpt/2000/wha/index.cfm, as of 2000 (noting that many unions are not organized effectively to provide training, promote safety incentives, encourage participation, or insist on rights).
\item[139.] McGuinness, \textit{supra} note 60, at 405.
\item[140.] \textit{Id.}
\item[141.] \textit{Id.}
\item[142.] NAO Submission No. 940002.
\end{enumerate}
\end{footnotesize}
conditions will never change and workers will not receive the compensation deserved and the benefits that derive from being a member of an efficient and successful union.

c. Occupational Safety and Health

Article 3 of the Mexican Constitution demands that work be conducted under conditions that assure the life and health of employees.\textsuperscript{143} More specifically, the Mexican Constitution requires an employer to adopt adequate measures to prevent accidents in the use of materials for labor and to organize the workplace such that "the greatest guaranty compatible with the nature of the business may result for the life and health of the workers."\textsuperscript{144} The Federal Labor Law provides that the regulations adopted under the law shall have the purpose of preventing employment injuries and insure work performed under conditions guaranteeing worker's safety of life and limb.\textsuperscript{145}

The regulations adopted to implement the principles in the Federal Labor Law are the General Regulations Governing Workplace Safety and Hygiene ("The Regulations").\textsuperscript{146} The Regulations create provisions for the execution of the Federal Labor Law with the intent to reduce accidents and illnesses in the workplace.\textsuperscript{147} The provisions within The Regulations call for buildings and work sites to have safety and hygiene conditions adequate to the type of activity conducted there.\textsuperscript{148} Other provisions include maintaining fire-fighting equipment,\textsuperscript{149} employers providing protection adequate to safeguard employees from injury and accidents,\textsuperscript{150} and in cases where workers are exposed to varying temperatures; employers must modify equipment, adjust the temperature through technological devices, or reduce labor time.\textsuperscript{151}

Despite these strict provisions regarding safety and health, for all intents and purposes, the Mexican government does not recognize the existence of occupational illnesses.\textsuperscript{152} If illnesses are ignored and/or

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\textsuperscript{143} The Mexican Constitution, art. 123.
\textsuperscript{144} Id.
\textsuperscript{145} F.L.L. art. 512.
\textsuperscript{146} General Regulations Governing Workplace Safety and Hygiene, in MEXICAN LAWS AND REGULATIONS GOVERNING OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION 81 (U.S. Department of Labor Jan. 1993) [hereinafter “General Regulations”].
\textsuperscript{147} Id. at art. 1.
\textsuperscript{148} Id. at art. 9 (including, roofs, walls, floors, patios, ramps, ladders).
\textsuperscript{149} Id. at art. 52.
\textsuperscript{150} Id. at art. 45.
\textsuperscript{151} Id. at art. 152.
\textsuperscript{152} See, e.g., Botz, supra note 17, at 22 (discussing how known carcinogens are present in many working environments on a regular basis, but there have been no cases of occupational cancer in Mexico, suggesting a cover-up exists to deflect
attributed to something other than working conditions, the public and 
other nations will be unaware of the epidemic and no pressure will be 
felt by the Mexican government to comply with the General Regulations 
Governing Workplace Safety and Hygiene.\footnote{153} Conditions, therefore, 
will stay the same and occupational illnesses will continue to be chalked 
up to coincidence or bad luck.

It is probably the case that Mexico lacks the financial ability to train 
personnel and acquire the equipment needed to accomplish. The Regulations’ 
strict provisions, but why is this not allotted for in the annual budget? 
The cause for non-compliance can be linked to the competitive pressure 
felt by the Mexican government to offer cheap wages and low health 
standards as an incentive for foreign investment.\footnote{154} If wages and standards 
are kept low, businesses will be more inclined to maintain their 
operations in a country that increases their profits. But bringing in 
foreign investment to support the Mexican economy is no reason to risk 
the health and well being of thousands of citizens. In order to maintain 
the balance between foreign investment and occupational health and 
safety, the Mexican government needs to impose sanctions on violators 
and use the money to improve conditions. In the short term this solution 
may run off some investors, but in the long term, will entice more 
corporations to invest in a safe environment that still offers hard working 
individuals for lower wages than their home country.

d. Child Labor

The Constitution, the Federal Labor Law, and various other acts of 
legislation prohibit child labor in Mexico.\footnote{155} However, because most 
families in Mexico live in poverty and cannot afford to raise a 
family,\footnote{156} children are forced to enter the workforce at a young age.\footnote{157} The Mexican government largely ignores the provisions of the 
Constitution and the FLL and an estimated five to ten million children 
are employed illegally in jobs involving the exposure to dangerous

\footnote{153}{Id. 
154. Isa, supra note 7, at 634. 
155. The Mexican Constitution art. 123; F.L.L. art.5. 
156. The average monthly salary for workers in the Maquiladora sector of the Mexican economy was 3,652 pesos or about U.S.$ 400, available at http://www.nmsu.edu/~fontera/sep00/feat1.html (last visited Jan. 23, 2004). 
157. Botz, supra note 17, at 28.}

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chemicals or machinery. 5

Mexico draws in foreign investment by offering employees who will work hard for low wages and labor standards that are not enforced. 5

Women and men who accept these wages as the only alternative to complete poverty are not bringing in enough economic subsistence to care for their families. Therefore, the only solution to the atrocity of child labor is an increase in the standard of living, requiring a higher wage for each worker and government enforcement of the words in the Mexican Constitution requiring a sufficient minimum wage and a decent standard of living. But because the benefits of foreign investment strongly outweigh the benefits of enforcement, Mexico continues to ignore the provisions of its laws and indirectly encourages the exploitation of its citizens. A growing relationship between the United States and Mexico, including the North American Free Trade Agreement designed to benefit both countries, has not helped Mexico's labor force, but instead has worsened the situation by failing to address it.

IV. THE POLITICALS OF THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA)


Prior to 1988, Mexico had already reduced wages to promote the Maquiladora program, but had kept most of the economy restricted to local control. President Salinas changed this when he came in power in 1988. His policy was to alter economic reforms to accelerate foreign investment in Mexico. In order to accomplish these reforms, countries wanted to be assured that they would be protected while on Mexican lands and would be guaranteed access to the United States'.

158. Id.
159. Vega, supra note 107, at 144 (stating that businesses see Mexico as a source of cheap labor.
160. See supra note 156 (Average monthly employee compensation).
161. The Mexican Constitution art. 123(VI); F.L.L. art.5.
162. Isa, supra note 7, at 641 (attributing Mexico's failure to protect worker rights to internal economic pressure of promoting foreign direct investment at the expense of human rights).
163. North American Free Trade Agreement, Dec. 17, 1992, Can.-Mex.-U.S., 32 I.L.M. 296 [hereinafter NAFTA] (stating one of the resolutions of NAFTA to be the creation of new employment opportunities and improvement of working conditions and living standards in each country, but then failing to implement any means to accomplish this resolve).
165. Id.
market. President Salinas began negotiations with President Bush to establish a free trade and investment agreement that would open all of Mexico to foreign investment.

The main goal of NAFTA is to promote economic development by making the free trade of goods more accessible between Mexico, Canada, and the United States. It accomplishes this by phasing out tariffs in the textile, automobile, and agricultural industries over a fifteen-year period and provides for nondiscriminatory foreign investment in any of the three countries. The United States' objective under NAFTA was to remove existing barriers to foreign investment in Mexico. It is relevant to this objective, that the current Mexican Foreign Investment Law replaced the former Law to Promote Mexican Investment and to Regulate Foreign Investment during the same year that NAFTA was being negotiated (1993). Under pressure to make sure NAFTA was passed, Mexico adopted this less stringent law to assure the United States that foreign investment in Mexico would be readily available without the formerly imposed restrictions.

B. The Passage of NAFTA

NAFTA was passed following an enormous political struggle. The discussion of free trade began during the Reagan administration where Reagan was adamant about creating a united Western alliance through free trade policy. These discussions continued into the Bush administration where the controversy of NAFTA's passage began. President Bush

166. See, e.g., PEROT, supra note 122, at 13.
167. ROTHGEB, supra note 164, at 203.
168. See John P. Isa, supra note 7, at 618 (stating the main goal of NAFTA is to promote economic development by eliminating impediments to free trade in goods, capital, and services among its signatory countries).
169. NAFTA, supra note 163.
170. Andrea E. Migdal, The North American Free Trade Agreement: An Engine for Investment Within the Americas in Mexican Law: A Treatise for Legal Practitioners and International Investors 386 (Jorge A. Vargas ed., West Publishing 1998) (listing the nondiscrimination provisions that were included in NAFTA to ensure the objective of United States foreign investment, including treating foreign investors in the same manner as domestic investors).
171. See Comment Section III (A)(i).
172. See, e.g., Herzstein, supra note 8, at 124 (noting that NAFTA was the first instance where one President had signed the agreement, President George Bush, but another President had to present the agreement before Congress, President Bill Clinton).
173. ROTHGEB, supra note 164, at 177.
174. See PEROT, supra note 122, at 15 (discussing how President Bush tried to fast
was feeling the pressure from President Salinas to pass NAFTA because the Mexican president was at the end of his term, and fearing lame-duck status, wanted to be assured that the agreement would be put into place.\textsuperscript{175} Between U.S.$ 30 to 50 million was spent by the Mexican government to lobby for the passage of NAFTA.\textsuperscript{176} NAFTA continued to be a major issue in the presidential election of 1992 and was used as a tool for both parties in their political strategies.\textsuperscript{177} The strongest proponents of NAFTA were highly influential U.S.-based multinational corporations who were eager to compete with foreign countries by utilizing NAFTA to set up factories in Mexico that would lower operating costs and increase profits.\textsuperscript{178} One of the strongest objectors to the passage of NAFTA was the American labor movement composed of laborers who feared that the agreement would eliminate the opportunity for jobs in the United States.\textsuperscript{179} Because there were no standards in NAFTA addressing environmental issues, environmental groups objected and created a group that would rally against NAFTA and convince others not to vote for the agreement.\textsuperscript{180} Clinton eventually took a stance to support NAFTA, but in order to gain the support needed to win the election, Clinton conditioned his backing on the creation of labor and environmental side agreements that would supplement NAFTA.\textsuperscript{181}

The political pressures felt by two presidents and the pressure exerted by Mexican President Salinas were the forces behind the creation of one of the most influential and significant agreements involving three countries, their economies, and their people. It is impossible to suppose

\textsuperscript{175} WILLIAM A. ORME, JR., UNDERSTANDING NAFTA: MEXICO, FREE TRADE AND THE NEW NORTH AMERICA, 78–79 (1996) (stating that President Salinas met with President Bush eight times and was pushing to accelerate the talks because a “premature act was preferable to no agreement at all”).

\textsuperscript{176} \textit{Id.}

\textsuperscript{177} See, \textit{e.g.}, MAYER, \textit{supra} note 8, at 207 (discussing how NAFTA was used to assemble a coalition to win the election by gaining the support of labor unions and blue collar workers); \textit{see also} James Shoch, \textit{Organized Labor Versus Globalization, in Rekindling the Movement: Labor’s Quest for Relevance in the Twenty-First Century} 282 (Lowell Turner, et al. eds., ILR Press 2001) (noting how NAFTA was used by President George Bush as a campaign tool to woo Hispanic voters and business interests in Texas and California).

\textsuperscript{178} Shoch, \textit{supra} note 177, at 280.

\textsuperscript{179} \textit{Id.} at 281.

\textsuperscript{180} \textit{Id.} at 282.

\textsuperscript{181} Speech by President Bill Clinton, \textit{WASHINGTON POST}, Nov. 20, 1992, at A37 (NAFTA is a priority, but “there are other things that have to be done before the treaty should be implemented by Congressional legislation.”).
that such an important agreement could be adequately drafted under such political strain and critics have argued against NAFTA on that basis.

C. Criticisms of NAFTA

Arguments have taken the form of Ross Perot’s “giant sucking sound,” where it is believed that NAFTA has caused businesses to relocate to Mexico because of lower operating costs and has therefore relocated employment opportunities as well.\textsuperscript{182} Other arguments focus on the impact of NAFTA on the Mexican workforce and the complete disregard of the agreement to mention labor rights, work standards, or pollution abatement goals.\textsuperscript{183}

Article 105 of NAFTA defines the obligations of the United States, Canada, and Mexico stating that each government “shall ensure that all necessary measures are taken in order to give effect to the provisions of the Agreement.”\textsuperscript{184} Therefore, under NAFTA, only laws and practices considered illegal trade barriers are subject to challenge.\textsuperscript{185} Laws or practices that are immoral or inhumane are allowed to remain even if directly related to trade, since one country does not possess the authority to impose its principles on another if the law does not inhibit trade.\textsuperscript{186} This issue was the main controversy that was ignited when NAFTA was proposed and which eventually led to the creation of the labor side agreement, the North American Agreement on Labor Cooperation.\textsuperscript{187}

\textsuperscript{182} See \textsc{Perot, supra} note 122, at 41 (discussing Ross Perot’s controversial theory that NAFTA will cause American jobs to be lost to a country that can offer more workers at lower costs).

\textsuperscript{183} See, e.g., \textsc{Gary Clyde Hufbauer and Jeffrey J. Schott, NAFTA: An Assessment} 7 (Institute for International Economics Press 1993) (stating that some critics referred to NAFTA as the meet and greet variety, rather than an agreement for progressively upgrading standards and enforcement).

\textsuperscript{184} NAFTA, \textit{supra} note 163, art. 105.

\textsuperscript{185} Id., \textit{supra} note 7, at 619 (stating that NAFTA was designed to be a trade agreement, not a treaty of association, so its drafters restricted it to facilitate trade only).

\textsuperscript{186} Crandall, \textit{supra} note 4, at 171 (stating that NAFTA could not be used to force social change on Mexico by imposing United States laws).

\textsuperscript{187} Id.
V. THE POLITICS SURROUNDING THE PASSAGE OF THE NORTH AMERICAN AGREEMENT ON LABOR COOPERATION (NAALC)

A. The Supplemental Agreement That Won an Election and Passed NAFTA

During his run for president, Bill Clinton promised the American public a NAFTA with agreements that would protect the working class and the environment.\(^8\) Clinton envisioned an ambitious document that would provide for international standards that each country would apply and enforce.\(^9\) What was created instead was a toothless agreement calling for "national enforcement of national laws."\(^10\)

Mexico was not overly enthusiastic to accept new agreements to a document that was, for all intents and purposes, completed.\(^11\) When Mexico realized that NAFTA would probably not pass in the United States without these side agreements, Mexico folded and grudgingly entered into negotiations to add the agreements.\(^12\) Mexico, however, was cautious about voluntarily surrendering their sovereignty and came to the negotiations table with three noes: no reopening of NAFTA to change any of its provisions, no hidden protectionism of Mexico and its citizens, and absolutely no compromise of Mexican sovereignty.\(^13\) The three demands by Mexico meant that there could be no interference by the United States or Canada with Mexico’s enforcement of labor laws without compromising Mexican sovereignty.\(^14\) President Clinton’s idea of uniformity was crushed and replaced with a document that contained

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8. Mayer, supra note 8, at 168 (stating Clinton’s promise to the American public to be that if he were elected, he would not sign NAFTA until effective supplemental agreements on labor and environmental issues were negotiated and adopted).

9. Shoch, supra note 177, at 283 (stating that the original proposal called for formation of independent commission that would have the power to ensure that its countries enforced their labor and environmental laws).

10. Testimony of Ambassador Michael Kantor, United States Trade Representative, Before the Committee on Ways and Means, U.S. House of Representatives (Sept. 14, 1993), in NAFTA & THE ENVIRONMENT: SUBSTANCE AND PROCESS (Daniel McGraw ed., ABA Press 1996); see also, Mayer, supra note 8, at 168–69 (discussing the belief of Clinton’s drafting team that Mexican laws were strong enough and that international standards would not be in the best interest of the United States to impose because the laws could be used against the United States).

11. Mayer, supra note 8, at 168.

12. Id. at 208 (noting how Mexico wanted the NAALC to be as weak as possible, but was willing to make the agreement because it was eager to enter into NAFTA with Canada and the United States).

13. Id. at 168 (stating the three noes of Mexico and also commenting on how Canada used the similar strategy to negotiate NAFTA’s supplemental agreements).

14. Id. at 169 (stating the promise that Clinton made to President Salinas that there was no intention of using the supplemental agreements to undermine Mexican sovereignty).
its own set of noes: no obligation to have the same standards in every
country, no obligation to have the same enforcement procedures in every
country, and no authority of any country to have a say in how any other
country should implement the NAALC.\textsuperscript{195} Clinton was convinced to sign
the agreement, despite the lack of national standards, based on assurances
that Mexico had adequate labor and environmental laws on the books
that provided for sufficient protection.\textsuperscript{196}

The desire for Mexico to be able to control its future led to the broad
provisions in the labor side agreement and resulted in a document that
has been referred to as the "toothless tiger."\textsuperscript{197} Influential Democrat, Senator
Richard Gephardt, who was a prominent voice during the passage of
NAFTA, stated that he would vote for NAFTA if the labor side agreement
was sufficient.\textsuperscript{198} During the Congressional vote for the passage of
NAFTA, Gephardt did not vote for NAFTA, blue-collar workers did not
vote for NAFTA, unions did not vote for NAFTA,\textsuperscript{199} but Republicans
overwhelmingly voted for NAFTA.\textsuperscript{200}

\section*{B. The NAALC and Its Provisions}

The North American Agreement on Labor Cooperation preamble
states that its main objectives are to expand the market for goods and
services, create jobs, improve working conditions, enhance worker's

\begin{thebibliography}{9}
\bibitem{195} North American Agreement on Labor Cooperation, Sept. 8, 1993, Can.-Mex.-
U.S., 32 I.L.M. 1499, 1513 [hereinafter NAALC] ("Nothing in this Agreement shall be
construed to empower a Party's authorities to undertake labor law enforcement activities
in the territory of another party.").
\bibitem{196} Id.
\bibitem{197} See, e.g., Bremer, \textit{supra} note 90, at 575.
\bibitem{198} See \textit{MAYER}, \textit{supra} note 8, at 180 (noting that Gephardt wanted an agreement
that would improve Mexican labor standards, govern business practices, and provide for
worker training).
\bibitem{199} Id. at 204 (quoting Jim Jontz, Citizen's Trade Campaign chair "These side
deals aren't half a loaf. In fact, they aren't even half a slice. NAFTA is fundamentally
an agreement to protect investors, to encourage them to go to Mexico to take advantage
of low wages and lax environmental standards and enforcement. And nothing in the side
agreements announced this morning will fundamentally change that. NAFTA is still a
bad agreement for workers. It's still a bad agreement for the environment, it's still a bad
agreement for family farmers, it's still a bad agreement for consumers.").
\bibitem{200} Shoch, \textit{supra} note 177, at 284 (stating the ending vote in Congress as 234–200
in the House and 61–38 in the Senate and noting that the higher the percentage of blue-
collar workers and union members in a district, the more likely the representative was
likely to vote against the passage of NAFTA); see also Herzstein, \textit{supra} note 8, at 125
(noting that NAFTA had strong support from the business community and 130
Republican members of the House of Representatives).
\end{thebibliography}
rights, and encourage employers to comply with labor laws to maintain a healthy work environment. Reaffirming the demand for Mexican sovereignty, Article 2 provides that each party can establish its own labor standards limited only by the statement that they have to be "high labor standards" and Article 42 makes each country's sovereignty perfectly clear by stating that "[n]othing in this Agreement shall be construed to empower a Party's authorities to undertake labor law enforcement activities in the territory of another." In Annex 1 of the NAALC, there are eleven principles that each country must promote, including freedom of association, the right to strike, minimum employment standards, and prevention of occupational injuries and illnesses. But these principles are all subject to each country's own domestic labor laws.

If Mexico did not enforce the labor laws that existed before the NAALC was put into effect and was resistant to the idea of a supplemental NAFTA agreement on labor, it is unlikely that a promise to promote eleven labor principles subject to its own laws will compel Mexico to change its ways. This is particularly true when the United States continues to invest American money into Mexican corporations based on the abundant source of cheap labor. What is needed is a labor agreement that imposes equal standards on the nations involved. This way, by comparison to a country's own laws, there would be a clear determination of when labor laws were being violated without having to delve into the language of a foreign nation's laws.

202. Id. at 1502 ("Affirming full respect for each party’s constitution and recognizing the rights of each party to establish its own domestic labor standards, and to adopt or modify accordingly its labor laws and regulations, each party shall ensure that its labor laws and regulations provide for high labor standards, consistent with high quality and productivity in workplaces, and shall continue to improve those standards in that light."); see also id. at 1513 (Article 43: "no party may provide for a right of action under its domestic law against any other party on the ground that another party has acted in a manner inconsistent with this Agreement.").
203. Id. at 1515-16 (naming the complete list of guiding principles that each party is to promote, including: freedom of association, right to bargain collectively, right to strike, prohibition of forced labor, child labor protections, minimum employment standards (including minimum wage), employment discrimination, equality of pay among men and women, prevention of occupational injuries and illnesses, compensation for on the job injuries and illnesses, and protection of migrant workers).
204. Id. at 1515 (stating that the guiding principles that the parties are committed to promote are all subject to each party’s domestic law and do not establish common minimum standards for domestic laws).
205. Mayer, supra note 8, at 208.
206. Vega, supra note 107, at 144.
1. The Dispute Resolution Process

The general idea of the NAALC was to encourage the exchange of information between the three countries and try to rectify situations that had already occurred, not to ensure that present standards were adequate or being enforced. This is most dramatically illustrated in the general language of the agreement and the procedural operation of the NAALC.

The NAALC creates a Commission for Labor Cooperation, which consists of cabinet level officials from the United States, Canada, and Mexico. This Commission oversees the implementation of the NAALC, facilitates the exchange of information, and promotes cooperative activities between the countries, including occupational safety, labor statistics, and work benefits. Article 15 states that each country shall create a National Administrative Office ("NAO") at the federal level. The NAO is the body responsible for collecting complaints that allege labor law abuses. The Office assembles information on the complaint and issues a public report discussing the facts and findings. If the matter is not resolved after the NAO investigations, the Ministerial Council ("the Council") may convene to examine the matter and determine, through the exchange of public information, whether or not there is a labor law violation. If the matter is not resolved after the Council has convened, an Evaluation Committee of Experts ("ECE") will be established to analyze the situation and compose a final report to be presented to the Council for review.

The final step afforded a NAALC party, if the ECE report is not

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207. Mayer, supra note 8, at 208 (noting that Mexico wanted a weak agreement, strongly resisting an independent international institution and subjection of domestic practices to international review. The United States and Canada agreed, worrying that international standards would be used against them).

208. NAALC, supra note 201, at 1504 (the Commission is composed of two bodies, the Ministerial Council and the Secretariat, each having their own duties and obligations outlined in Articles 10 and 12, respectively).

209. Id. at 1505; see also id. at 1504 (Article 9, outlining the structure and procedure of the Ministerial Council).

210. Id. at 1506–07 (explaining that as well as creating the federal NAO, each country must designate a NAO Secretary and be responsible for the operation and costs of the NAO).

211. Id.


213. NAALC, supra note 201, at 1508.

214. Id.
adequate to resolve the dispute, is the gathering of an arbitration panel.\textsuperscript{215} If the panel finds a violation, the parties themselves may initiate an action plan to remedy the violation.\textsuperscript{216} If the party in violation refuses, the arbitration panel is reconvened and a fine is assessed.\textsuperscript{217} On its face, the NAALC represents a straightforward approach to dispute resolution, but in reality, because of its hasty drafting, the political pressures surrounding its passage, and Mexico's demand for sovereignty, the NAALC is a "toothless tiger" that does not achieve its goal of enhancing worker's rights.

\textit{a. Weaknesses Revealed}

The NAALC has been viewed as having no real authority because there is no mechanism to guarantee performance; it is simply an agreement that relies on the spirit of cooperation by allowing a country enormous discretion in its implementation.\textsuperscript{218}

\textit{i. Discretion of the NAO}

The first weakness in the NAALC is the ability of a party to have complete control over its own NAO.\textsuperscript{219} Each NAO is created at the federal level and controlled by federal officials.\textsuperscript{220} As previously discussed,\textsuperscript{221} the involvement of the Mexican government in the issues of labor has not led to increased worker's rights. The NAO also has the final word on a majority of cases and if it does not find a violation, their decision is final.\textsuperscript{222} It is fundamental for the successful enactment of the NAALC that the NAO be free from corruption and independent of any pressures that may exist that could alter the goal of enhancing worker's rights.

Related to the first weakness, the second weakness of the NAALC is

\textsuperscript{215} Id. at 1509 ("If the matter has not been resolved within sixty days after the Council has convened, the Council shall, on the written request of any consulting party and by 2/3 vote, convene an arbitration panel.").

\textsuperscript{216} Id. at 1511.

\textsuperscript{217} Id. at 1516 (Annex 39: the fine is referred to as a monetary enforcement assessment and can be no greater than U.S.$ 20 million during the first year of operation or no greater than .007 percent of the total trade in goods between the parties during recent recorded years).

\textsuperscript{218} Vega, supra note 107, at 144 (describing the NAALC as a document based on cooperation, not punishment).

\textsuperscript{219} NAALC, supra note 201, at 1507 ("Each party shall be responsible for the operation and costs of its NAO.").

\textsuperscript{220} Id.

\textsuperscript{221} See Comment Section III (B)(1)(b) (discussing how unions are controlled by the Mexican government).

\textsuperscript{222} LaSala, supra note 5, at 322 (describing the discretionary procedures of the NAO if no violation is found).
the discretion of the Secretary of the NAO to deny complaint submissions under certain circumstances. The circumstance that has the most impact is the denial of a submission if the parties have failed to demonstrate that appropriate relief has been sought under the domestic laws of the individual’s country. This guideline assumes that a party has the amount of time and money to take his/her case through the court system and then proceed to take the complaint to the NAO, not to mention the psychological stress that can come from the fear of retaliation. If a complaint is filed it is likely that the complainant will no longer be employed by the entity who the complaint is filed against and is missing the income from that source. In addition, after going through the court system and getting nowhere, it is unlikely that a complainant will have the resources, time, patience, or faith to try a different method of resolution. The requirement that relief be thoroughly sought by domestic means is impracticable and only perpetuates the current conditions.

**ii. The Evaluation Committee of Experts and the Arbitration Panel**

The following flaws in the NAALC deal with the Evaluation Committee of Experts and the arbitration panel. The ECE consists of three members that possess expertise in labor matters, but are not affiliated with any

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223. The Guidelines *supra* note 212, at 16661 (Section G. Acceptance of Submissions:

1. Within 60 days after the filing of a submission, the Secretary shall determine whether to accept the submission for review.

2. In general, the Secretary shall accept a submission 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.

3. The Secretary 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 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 Part II of this 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.).

224. *Id.*

225. *See, e.g.*, NAO Submission No. 940001.
party to the NAALC agreement. This means that the only opportunity for a member of the ECE to be unaffiliated with a party to the NAALC agreement would be for the member to be from a country other than the United States, Canada, or Mexico. Therefore, three countries that entered into an agreement dealing exclusively with the activities between those three countries are having this agreement implemented by three independent individuals who do not reside in either country and are supposed to be experts in the labor matters of the NAALC and each country’s own labor laws. It appears to be impossible for this to occur and a just outcome to follow. The individuals who evaluate the actions of the NAALC nations should be representatives from the three nations that negotiated and signed the agreement. If the NAALC remains an agreement that only seeks to simply exchange information, not enforce a country’s labor laws, there needs to be an understanding between the three nations of law and policy. If there is a complaint filed against Mexico, a representative who resided in Mexico for his/her life can bring to the ECE a background of information on what has been done and what can be done to remedy the problem. Three unattached individuals who simply look at the information that has been collected without a sense of kinship to the United States, Canada, or Mexico, are likely to make suggestions to the Council that are impracticable and impossible to implement.

A second flaw is that if a complaint does not involve occupational safety and health, child labor, or minimum wage standards that are “trade-related and covered by mutually recognized labor laws”, a complaint will never get to the stage of arbitration because a panel is limited to these three issues. This leaves issues of unionization, striking, unlawful termination, and employment discrimination at the initial stages of dispute resolution, at the whim of the discretion of the NAO and not available for any type of sanction. Unionization should be included in the arbitration list of issues, if only for the hope that unionization would ensure sufficient wages, benefits, and humane working conditions by allowing the worker’s to have a voice and to stand up for their rights.

### iii. Inadequate Worker Remedies

The NAALC does not accomplish the goal of enhancing worker’s

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226. NAALC, supra note 201, at 1508 (ECE members shall have expertise or experience in labor matters, shall be chosen on the basis of objectivity, comply with a code of conduct established by the Ministerial Council, and “be independent of, and not be affiliated with or take instructions from, any party or the Secretariat”).

227. Id. at 1509 (Article 29); see also LaSala, supra note 5 at 341 (listing the other shortcomings of the arbitration process, including requiring a “persistent pattern of non-enforcement of a labor law” and a two-thirds vote to commence an arbitration proceeding).
rights because it denies the complainant any adequate recourse for labor law abuse. The three most compelling reasons for inadequate recourse are the long and tedious dispute resolution process, limited sanctions imposed, and existing loopholes.\(^{228}\)

In order for a complaint to be considered thoroughly, it must go through four levels of treatment.\(^{229}\) At the NAO level, the NAO has sixty days to determine if a complaint will be accepted.\(^{230}\) After a complaint has been accepted, the NAO has four months to thoroughly investigate the claim and issue a report to the Council.\(^{231}\) The ECE gets another four months to conduct their investigation and present a report to the Council and an arbitration panel can take up to eight months to decide whether or not to impose a sanction.\(^{232}\) If a complaint makes it to the arbitration level of treatment, it has been in the NAALC dispute resolution process for a minimum of 1,225 days.\(^{233}\) This is a long time for a complainant to wait for an outcome. In situations involving occupational health and safety, the delay could mean the difference between life and death. If the NAALC is to be effective, it must resolve complaints in a timelier manner to encourage aggrieved workers to bring their complaints with the knowledge that the process will be fast and efficient.\(^{234}\)

The fact that the NAALC is based on a method of cooperation and a process of information exchange also makes the process tedious and inefficient.\(^{235}\) The exchange of information about a country's labor laws

\(^{228}\) See generally Crandall, supra note 4, at 188–92; Isa, supra note 7, at 630, 648.

\(^{229}\) NAALC, supra note 201, at 1507-13 (the four levels of treatment consist of: the NAO review and consultation, Ministerial Consultations, Evaluation Committee of Experts, and an arbitration panel).

\(^{230}\) The Guidelines, supra note 212, at 16662.

\(^{231}\) Id.

\(^{232}\) LaSala, supra note 5, at 324-25.

\(^{233}\) See Isa, supra note 7, at 648; see also, LaSala, supra note 5, at 340–41 (stating that some cases that have been filed under the NAALC have taken anywhere from eight months to three years and still remain unresolved).

\(^{234}\) LaSala, supra note 5, at 338 (describing how in one NAO submission it took 21 months for the case to conclude and the only outcome was the suggestion that information be exchanged to apprise the countries of their obligations with no direct restitution to the aggrieved complainants).

\(^{235}\) See generally Crandall, supra note 4, at 188 (describing the complaint process, in summary, as passing through the NAO, through Ministerial Consultations, party consultations, special council session, and an arbitration panel); but see Herzstein, supra note 8, at 129 (explaining by demanding cooperation and requiring numerous consultations and evaluation stages, the agreement is an important tool for enforcement of national laws because it effectively thrusts an issue into discussion before the issue
does not address the complaint directly. Through this process, it is possible to learn that Mexico has a law requiring an employer to have cause for termination, but it does not return the complainant's status to that of an employee. If an individual not only loses his only source of income, but also risks mental, and perhaps physical harm, to himself for filing a complaint against his employer, it is likely that the individual will not bother to file a complaint if he can expect that he will not regain his job position. Taken in this light, the NAALC perpetuates the labor problems existing in Mexico by providing workers with the only process for resolution that fails to resolve anything. The NAALC involves a tremendous amount of talking between countries, but what is needed is less talk and more responsive action to prove to workers that the NAALC is more than a piece of paper, it is an agreement with the capacity to solve problems.

The NAALC imposes monetary sanctions for violations of the NAALC of “no greater than .007 percent of the total trade in goods between the parties” during the most recent recorded year. Sanctions for violating a provision of the NAALC, however, are hardly ever imposed. Imposing a sanction comes at the end of a very long process where there are numerous chances for the complaint to be resolved before retribution occurs. Because of this long process, complaints are thrown out or “resolved” before they have the ability to impose a sanction. This leaves many complainants in a static position and employers free to continue to violate labor laws without fear of sanction. Because of sanctions’ limited applicability, many labor-related violations remain a permanent fixture in labor operations because there is no fear that the violator will have to pay a monetary sanction. Sanctions need to be increased to levels where large corporations can feel the financial blow when imposed. The sanctions could then be used to compensate inspectors who will be more inclined to issue sanctions, which will lead becomes highly politicized).

236. NAALC, supra note 201, at 1516 (Annex 39: the fine is referred to as a monetary enforcement assessment and can be no greater than U.S.$ 20 million during the first year of operation or no greater than .007 percent of the total trade in goods between the parties during recent recorded years).

237. See Isa, supra note 7, at 649 (explaining that the negotiators of the NAALC did not want to ruin the good relations with Mexico and Canada that had developed under NAFTA by imposing strict sanctions for a failure to comply with the terms of the NAALC).

238. Crandall, supra note 4, at 188.

239. NAALC, supra note 201, at 1511-12 (If the arbitration panel concludes that there has been a persistent pattern of failure of a party to effectively enforce its occupational safety and health, child labor, or minimum wage technical labor standards then the panel can impose a monetary enforcement assessment in accordance with Annex 39).
to better conditions in Mexican factories.

The major issue that should be entitled to all the levels of treatment and to monetary sanctions is the constitutional right to organize and form a union. The chance to form a union, without significant government interference, could provide the Mexican working class with the ability to fight for their rights and finally obtain the employee benefits that they deserve for their hard work. However, with both NAFTA and the NAALC providing no relief for this issue, Mexico’s continuing reliance on foreign direct investment, and foreign corporations desire for increasing profits, the future seems dim.

2. Loopholes

Several loopholes have been discovered in the text of the NAALC that allow Mexico to avoid its stringent domestic labor laws. One such loophole is contained in the language of Article 49, which states that a party has not failed to effectively enforce its domestic labor laws in the issues of occupational safety and health, child labor, and minimum wage standards if the government can defend its inaction by a reasonable exercise of discretion or by allocating resources to other labor matters that are considered to have higher priorities. This provision provides a party to the NAALC with a tremendous amount of discretion and no standards with which to limit that discretion. Consequently, the Mexican government could deem any domestic labor law violation excusable if discretion was exercised or if their limited resources were utilized in a different area of labor law. What is the purpose of this provision? Although its probable purpose during the drafting of the NAALC was to ensure President Salinas that Mexico was not losing its right to enforce its own labor laws, and therefore losing its sovereignty, it creates a large potential for abuse by sidestepping the agreement all together. If the NAALC wants to be a document with teeth, it cannot leave matters of labor law violations to the discretion of the Mexican government.

A second loophole revealed in the NAALC is the fact that a claim that

240. NAALC, supra note 201, at 1513; see also, Crandall, supra note 4, at 188–89 (arguing this same criticism, stating that one critic suggested the exception to be so broad that it “virtually guarantees that sanctions can never be invoked.”).

241. Mayer, supra note 8, at 169 (describing the NAALC as a document that was created to not undermine Mexican sovereignty).

242. It has already been demonstrated throughout this comment that the government is likely to abuse this discretion for the sake of obtaining foreign investment.
has been filed with the NAO can be denied dispute resolution, even if proven valid, if it does “not constitute a failure of another party to comply with its obligations under the NAALC.”\textsuperscript{243} This means that if the NAALC does not mention a violation specifically, a party to the NAALC can continue to violate its own domestic labor laws as long as it does not violate their obligations under the NAALC. The NAALC was designed to be a document of generality and permissibility to allow the Mexican government to maintain its sovereignty;\textsuperscript{244} therefore, it is unlikely that the NAALC is able to cover every situation that may arise.

The third loophole that allows Mexico to avoid enforcement of its domestic labor laws is the ability to unilaterally withdrawal at any time from the obligations of the NAALC.\textsuperscript{245} Not only can a country withdraw from the terms of the NAALC, but its withdrawal has no adverse consequences, including the ability of the country to remain as a party to NAFTA.\textsuperscript{246} This entails that the Mexican government can withdrawal from the NAALC at any time if the pressure to enforce labor laws becomes too great and continue to ignore violations without interference from the United States. However, being that the NAALC was a necessity to the passage of NAFTA, the United States would most likely be unwilling to continue NAFTA,\textsuperscript{247} as it exists now, and a new agreement would be enacted, which might not be such a bad idea.

\textbf{C. Cases Brought Against Mexico for Violations of the NAALC}

The text of this comment so far has sought to prove that the language of the NAALC is inefficient and does not help, but rather condones, the treatment of the Mexican working class. The following discussion on the submissions that have been filed under the NAALC will prove that the NAALC is also inefficient when implemented. This inefficiency not only arises from the broad language of the NAALC, but also from Mexico’s disregard of the NAALC’s terms.

Implementing the NAALC fully would have a disastrous effect on the Mexican economy because it would require Mexican employers to

\begin{itemize}
\item \textsuperscript{243} The Guidelines, supra note 212, at 16661-62.
\item \textsuperscript{244} NAALC, supra note 201, at 1513 (“Nothing in this Agreement shall be construed to empower a Party's authorities to undertake labor law enforcement activities in the territory of another party.”); Herzstein, supra note 8, at 128 (describing NAALC's objective as promotion of cooperation, not confrontation or accusation).
\item \textsuperscript{245} NAALC, supra note 201, at 1514 (Article 54: “a party may withdraw from this Agreement six months after it provides written notice of withdrawal to the other parties.”); see also Crandall, supra note 4, at 191 (arguing that the withdrawal clause actually condones the continued violation of worker's rights by permitting withdrawal without any adverse consequences.).
\item \textsuperscript{246} Crandall, supra note 4, at 191.
\item \textsuperscript{247} Id. at 192.
\end{itemize}
comply with the stringent labor laws outlined in the Mexican Constitution and the Federal Labor Law.\textsuperscript{248} This would require Maquiladoras to pay their employees a much higher wage, coerce all employers to comply with occupational health and safety standards, and restrict the government from interfering in employee unionization.\textsuperscript{249} Strict compliance would make Mexico a less attractive place to invest foreign monies, which would cause unemployment, and the possibility of greater poverty than what exists currently. These are the reasons why twelve complaints have been filed under the terms of the NAALC\textsuperscript{250} with six of those complaints against companies being run as United States-based Maquiladoras on Mexican soil.\textsuperscript{251}

On February 14, 1994, two submissions were filed with the U.S. NAO against Honeywell and General Electric.\textsuperscript{252} Both submissions complained that employers were violating the NAALC provision requiring each party to promote the freedom of association and protect the right to organize.\textsuperscript{253} The Honeywell complaint alleged that 20 workers were dismissed and threatened for their union organizing activities.\textsuperscript{254} The General Electric complaint also alleged a dismissal of 20 workers from union organizing activities and the thwarting of union organizing through non-dissemination of critical information.\textsuperscript{255} Both cases were accepted by the U.S. NAO and investigated for validity. A report was made to the Council stating that there were some coincidences regarding the timing of the dismissals and the union organizing, but declined to

\textsuperscript{248} See Comment Section II.
\textsuperscript{249} NAALC, supra note 201, at 1515 (naming the eleven guiding principles as: freedom of association, right to bargain collectively, right to strike, prohibition of forced labor, protection of children, minimum employment standards, eliminating discrimination, equal pay for both sexes, prevention of occupational illnesses and injuries, worker compensation in cases of illnesses and injuries, and protection of migrant workers).
\textsuperscript{251} NAO Submission Nos. 940001, 940002, 9701, 9703, 2000-01(2).
\textsuperscript{252} NAO Submission No. 940001 and 940002, respectively; see also, Leoncio Lara, The NAALC’s Consultations and Evaluations: The First Labor Cases, 4-Sum NAFTA: L. & BUS. REV. Am. 95, 101 (discussing the first nine labor submissions, including those brought against the United States).
\textsuperscript{253} NAALC, supra note 201, at 1515 (Annex 1: Listing the eleven guiding principles that each party to the agreement must promote).
\textsuperscript{254} NAO Submission No. 940001 (the complaint also alleged a significant depression of worker wages).
\textsuperscript{255} NAO Submission No. 940002 (the complaint also alleged the violation of several health and safety regulations).
take further action on behalf of the dismissed workers and instead recommended that joint cooperative programs be instituted to discuss the issues of right to organize and associate. The NAO seemed to only focus on whether Mexico was enforcing its own labor laws and not whether the company was involved in unlawful conduct. Consequently, the case was dismissed and the 20 unemployed workers had no reprisal simply because the NAALC only calls for an investigation into enforcement and an exchange of information, not the authority to enforce a country's own labor laws.

The most recent submission involved Autotrim and Customtrim, two subsidiaries of Breed Technologies, a Florida-based corporation where workers sew and glue leather covers on steering wheels and gearshifts. In a petition to the U.S. NAO, the complainants alleged that the Mexican government had persistently failed to enforce occupational and safety laws in violation of the Federal Labor Law by conducting inefficient inspections, not investigating reports of violations, failure to ensure training, and failing to assess fines for apparent violations. Wages were also exceptionally low and a majority of the workers experienced muscular-skeletal injuries and toxic exposure illnesses. Mexican workers reluctantly filed the submission after two years of pleading with and receiving no response from the Mexican government. The U.S. NAO accepted the submission and an investigation was conducted validating the claims, however, the only action taken was a Ministerial Declaration that a group should be gathered to talk about the health and

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256. LaSala, supra note 5 at 327–28.
257. Id.
258. NAALC, supra note 201, at 1503 (stating the objectives of the NAALC to be improvement of working conditions, promotion of labor principles, and the publication and exchange of information); see also NAO Submission No. 940003 (discussing a complaint filed alleging employers of a subsidiary of the Sony Corporation had fired workers because of union activities. Similarly, as in the Submissions discussed in the text, the U.S. NAO’s investigation focused on whether Mexico enforced its labor laws, not whether the subsidiary had actually violated those laws. The case, however, was taken to the Ministerial Councils and the Council mandated an inspection in Mexican labor laws. The terminated employees, however, were never returned to their former employment positions).
259. NAO Submission No. 2000-01; see also id. (a companion case to the discussed Submissions. DuroBag, a Kentucky-based corporation responsible for the production of high-quality shopping bags that moved operations to Mexico to take advantage of low wage labor for high volume production. This complaint alleged the firing of key leaders in organizing a union, low wages, and hazardous working conditions).
260. Id. (workers testified that the Maquiladora gave them no instruction on how to handle tools, such as sharp scalpels, and how to avoid toxic inhalation of the glue).
261. Id. (noting that workers average salary was U.S.$ 3 to 5 per day).
262. Id.
263. Id.
safety problems that had been discovered.\textsuperscript{264} In a letter written by Rosario Ortiz, the president of the Coalition for Justice in the Maquiladoras, to U.S. Secretaries Chao and Abascal she expressed her extreme disappointment in the handling of the case.\textsuperscript{265}

Various other submissions include a complaint filed against a subsidiary of the Han Young Corporation\textsuperscript{266} alleging various violations of Mexican labor laws, including harassment of employees attempting to unionize and occupational health and safety issues\textsuperscript{267} and complaints in a Connecticut-based Maquiladora of low wages, abusive supervisors, sexual harassment, daily and handling of asbestos.\textsuperscript{268} One submission alleged pregnancy-based discrimination in the Maquiladora sector,\textsuperscript{269} where women applying for jobs were routinely submitted to pregnancy exams through urine samples, inquiries about menses schedules, sexual activities, and birth control.\textsuperscript{270} If the women were found to be pregnant, they were denied the opportunity of employment.\textsuperscript{271}

V. CONCLUSION: A RACE TO THE BOTTOM

The history of Mexico illustrates the reason why the Mexican Revolution was fought; generally, Mexico and its citizens did not want to be dominated by a class that took unfair advantage of their human resources. Almost one hundred years later, it appears that Mexico may

\textsuperscript{264} Letter from Rosario Ortiz to Labor Secretaries Chao and Abascal (Sept 6, 2002), available at http://mhssn.igc.org/nafta13.htm. (the Declaration only gathered a group to talk about incidents of health and safety that had already been documented. There was no plan or action created to ameliorate the problems. The Declaration ignores the worker's complaints and provides no recourse for workers who risked their jobs to bring violations to the attention of the NAFTA parties. “A set of discussions without public commitment to action cannot lead to a real change.”).

\textsuperscript{265} Id. (stating that more than a dozen workers testified to the incapacitating illnesses and injuries at Autotrim and Customtrim and the overall failure of the Mexican government to assist in making any improvements).

\textsuperscript{266} NAO Submission No. 9702 (the Han Young plant produces trailer platforms for Hyundai Precision of America, a subsidiary of the Korean Hyundai Corporation).

\textsuperscript{267} Id.

\textsuperscript{268} NAO Submission No. 9703.

\textsuperscript{269} NAO Submission No. 9701; See also, Lance Compa, Free Trade, Fair Trade, and the Battle for Labor Rights, in REKINDLING THE MOVEMENT: LABOR’S QUEST FOR RELEVANCE IN THE TWENTY-FIRST CENTURY 325 (Lowell Turner et al. eds., ILR Press 2001) (discussing the discriminatory pregnancy testing case in detail).

\textsuperscript{270} U.S. companies engaged in such conduct: Sunbeam-Oster (FL), General Motors (MI), Carlisle Products (AZ), Coyote Pet Products (CA), Johnson Controls (WI), GENICOM (VA).

\textsuperscript{271} NAO Submission No. 9701.
be repeating history. Mexico’s desire to improve its economy has led to dependency on other nations to bring in foreign corporations looking to cut operating costs and boost profits by lowering the working conditions in their factories located on Mexican soil. The desire for foreign investment forces the government to make Mexico as attractive as possible by conveniently looking the other way and failing to adequately enforce laws enshrined in the Mexican Constitution. Agreements designed to entice Mexico to recognize worker’s rights are poorly drafted and incapable of preventing such behavior. A new agreement must be created between Mexico and the countries that are utilizing Mexico’s workforce in their operations.

It would not be enough to create a new agreement between Mexico, the United States, and Canada because other countries utilize Mexico’s labor force as well. What is needed is an international agreement that must be signed by foreign countries wanting to locate their manufacturing operations in Mexico. This would ensure that foreign corporations who were not from the United States or Canada were not given an unfair advantage in the market place because they were immune from such an agreement. The agreement would put all corporations in Mexico on the same footing and force them to compete through quality products, safe working environments, and union benefits, not human rights violations. Mexico would still have a competitive edge against other countries that offer a cheap workforce and less stringent labor and environmental laws because of its location; it is in close proximity to two highly developed nations who are heavily involved in importing and exporting. The United States and Canada would still have a neighbor to the South who continued to offer cheaper labor, a hardworking labor force, and quality products made by happy, healthy employees.

The new agreement must thoroughly address the issues of labor law enforcement and impose standards that are adequate, yet distinct for each country. It is impossible to create an agreement that would impose uniform standards for all countries involved. Not only would Mexico refuse to adhere to this agreement because of the fear of losing its sovereignty, it would be impracticable to impose the same standards on developed nations that have a different history and legal system, and developing nations that require a competitive edge to thrive. The agreement must be free of loopholes that would allow governments room for abuse of discretion and must provide for a timely and efficient dispute resolution process that gives workers retribution and faith in a system that works. Although an agreement between all countries requiring each one to create, maintain, and enforce adequate labor laws would be the solution to solving the problem; it is highly implausible that such a feat could ever be accomplished without destroying
sovereignty among nations. For now, Mexico and the foreign countries doing business in Mexico will have to be the trendsetters.

Thorough negotiations and careful drafting of the revised labor agreement is essential to its success. The agreement should be drafted during a time when it is not essential to the passing of another major agreement and should not be used as a political tool to win a presidential election. Overall, this new agreement must be lenient enough to recognize Mexican sovereignty, but also recognize the rights that the Mexican working class obtained from fighting and winning a revolution.

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