

THE NORTH AMERICAN AGREEMENT ON LABOR COOPERATION A Non-Governmental View

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It is a distinct pleasure to participate in this important forum on the role of social clauses in international trade. For a number of years, the International Labor Rights Fund has been working to establish a linkage between the way goods are produced and the trade in those goods, arguing from the common sense awareness that gave birth to the ILO in 1919, namely, that "failure of any nation to adopt humane conditions of labor is an obstacle in the way of other nations which desire to improve the conditions in their own countries." (ILO Constitution, Preamble)

In the arcane world of trade dominated today by practitioners of extreme laissez-faire economic theories, this effort has met with unyielding resistance, buttressed by every possible use of econometric analysis to demonstrate the folly of tinkering with the free flow of goods and investment for social reasons. Governments of some developing countries have seized the initiative to condemn the notion of a "social clause" as the latest effort by more powerful trading nations to undermine their cheap-wage competitive advantage, and ironically, in some countries, their claims have been echoed by trade union centers who seem to be unaware that it is their own standards and wage levels that are being undermined by the globalization of their economies. Even efforts to slow the trade in goods made under conditions of child servitude have been labeled protectionist, as though the competitive advantage of any country depended on the employment of children rather than adults.

The issue of trade related standards has thus become highly polarized, charged more with invective and accusation than with efforts to strengthen the quality of life for workers and communities as a result or condition of trade growth.

In this climate of non-dialogue, it may be useful to examine the North American Free Trade Agreement's negotiated side-pact on labor, for it represents the first effort by countries of greatly different levels of development to establish -- ever so gingerly -- an instrument to push forward labor standards deliberately as an aspect of trade liberalization. Whether the instrument is sufficient to this task, or whether it is sufficient only to create the appearance of progress, are appropriate questions to ask. We would argue that the jury is still out on that question, but that there are important lessons to be learned already from the experience of the first two years.

From the day that the negotiation of a U.S.-Mexico Free Trade Agreement was announced in 1990, trade unions, human rights organizations and environmental groups realized we faced a huge challenge, to create a space within the trade debate where the people of the U.S. and Mexico could work together to make certain that increased economic integration contributed to broadly-based development rather than the exploitation of the weaknesses and vulnerabilities of each country's economy. In early January, 1991, as Canada was being drawn into the trade talks, this challenge was taken up by a tri-national conference in Washington DC. There, to an audience of 500 trade lawyers and Congressional staff, environmental, labor and agricultural activists and academics from the three countries issued a challenge to the negotiators to "Open Up the Debate." Shortly thereafter, a tri-national network of organizations was born to monitor the official negotiations and propose to each of the governments elements of a trade agreement that would strengthen, rather than weaken the ability of each country to preserve or achieve high environmental standards, labor rights and sovereign agricultural and rural development policy.

For three years, this network, comprised of 120 Mexican organizations in the Mexican Action Network on Free Trade, more than 100 organizations in two U.S. groupings, the Alliance for Responsible Trade and the Citizens Trade Campaign, and some 40 or more Canadian member groups in the Action Canada Network, worked together to argue in every possible forum for an alternative to the neo-liberal market-driven approach of the three governments. It was a remarkable effort, primarily because it was the first broadly-based social movement in the three countries to work toward a common agenda and approach to the problems of an extremely diverse region. Canada, by virtue of its small population scattered along three thousand miles of border with the United States, has long felt the cultural and economic dominance of its neighbor to the south. On the other hand, Mexico and the U.S. , joined by a two thousand mile-long border, have historically been divided by vast differences of culture, language and economic development. Seldom in the past had activists in the United States focused seriously on the problems of its neighbors on either side. Thus, social organizations of the three countries had much to overcome as well as to accomplish to achieve consensus about the character and future of regional economic integration.

While this campaign was ultimately unsuccessful in changing the terms of the North American Free Trade Agreement that was signed by President Bush shortly before leaving office, it did have the effect of awakening a massive public debate in all three countries over the potential costs of free trade: pressures to transfer production to Mexico

to take advantage of cheap wages and low environmental regulation, the intensification of private economic and political power in Mexico to the detriment of democratic development, the bargaining down of wages and working conditions among companies that did not actually transfer production, and pressure on countries to eliminate social programs that are attacked as unfair trade benefits or barriers, in the name of remaining competitive. The debate highlighted also the potentially damaging effect of agricultural policy changes in Mexico to prepare for NAFTA that were causing a massive rural exodus that threatened to increase the migration pressures on the U.S. border.

The impact of this debate was such that in the 1994 presidential campaign, Democratic candidate Bill Clinton, who had long supported free trade in principle, was obliged to put some social conditions around his backing for NAFTA. In his speech at Raleigh, North Carolina, on October 4, 1992, Clinton warned, "For a high wage country like ours, the blessings of more trade can be offset at least in part by the loss of income and jobs as more and more multi-national corporations take advantage of their ability to move money, management, and production away from a high wage country to a low wage country... We can also lose income because those companies who stay at home can use the threat of moving to depress wages as many do today." (Clinton p. 3). And with respect to Mexico, he observed, "There is certainly cause for concern. We can see clearly there that labor standards have been regularly violated So there is some reason to fear that there are people in this world and in our country who would take advantage of any provisions insuring more investment opportunities simply to look for lower wages without regard to the human impact of their decisions." (Id at 5).

In his campaign speeches, Clinton observed that the NAFTA negotiated by Carla Hills on behalf of the Bush Administration, "does nothing to affirm our right to insist that the Mexicans follow their own labor standards," which, he noted, were "now frequently violated." "Perhaps the toughest issue of all," he said, "is how to obtain better enforcement of laws already on the books on environment and worker standards. It's interesting that the agreement negotiated by the Bush team goes a long way to do this in protecting intellectual property rights and the right to invest in Mexico, but is silent with respect to labor laws and the environment." (Clinton P. 15).

Accordingly, Clinton indicated that if elected he would send the NAFTA agreement to Congress for ratification only after he had negotiated two side agreements, one on environment and one on labor. On labor, his proposed solution, which with some changes after nine months became the North American Agreement on Labor Cooperation (NAALC), was to ensure that Mexican workers would have a fair chance to bargain for a greater share of productivity gains, thus narrowing, over time, the wage gap with American workers, and deepening the Mexican domestic market for goods and services, including, potentially, those from the United States. And the key to ensuring that opportunity was to require Mexico to enforce its own constitution and labor laws. Article 123 of the Mexican constitution and the Mexican Labor Law, on their face, assure the right of free association, to bargain collectively and to strike. If the constitution and the Mexican labor law were respected in practice, then, presumably, Mexican workers would be enabled to form truly independent labor unions and these unions would be capable of

bargaining effectively for a fairer share of productivity gains. Each agreement, Clinton said, "should contain a wide variety of procedural safeguards and remedies that we take for granted here in our country, such as easy access to the courts, public hearings, the right to present evidence, streamlined procedures and effective remedies..." (Id).

Following his inauguration in early 1993, President Clinton authorized the negotiation of these two agreements. Talks began with Mexico in March, and the two partners were joined by Canada shortly thereafter. The talks concluded in September, 1993 in an agreement which bore only partial resemblance to the lofty goals Candidate Clinton had articulated the previous year.

Citizens groups in the coalitions mentioned above differed in their approach to the side agreements. On the whole, Canadian and some U.S. groups were skeptical that any side agreement could be negotiated which would have any positive effect; rather, they feared, the labor and environmental agreements would simply add an acceptable aura of responsibility to the basic trade agreement without altering any of the basic standard-lowering elements of NAFTA itself. Others, including the ILRF, pressed for the best possible outcome in the belief that, with or without a labor side agreement, the economic integration that NAFTA codified was underway. Even if such a labor agreement were weaker than desired, it would be preferable to having no agreement at all. We proposed seven elements of a successful agreement:

1. An Agreement on base-line regional minimum labor standards.

The U.S., Canada and Mexico all have extensive and progressive labor legislation in place, albeit with differing lacunae in each country, and with quite differing levels of enforcement. As ILRF noted in the study we commissioned of labor rights in Mexico, (*Mask of Democracy: Labor Suppression in Mexico Today* by Dan La Botz, South End Press, 1992) Mexico's labor law, enshrined in the Constitution itself and in Federal Law No. 123, provides a higher degree of protection of the livelihood and collective rights of workers, in principle, than do the laws of either the United States or Canada. However, Mexican labor laws are subject to very spasmodic and politically-determined enforcement as a result of 60 years of one-party rule and a captive state-party-controlled labor movement. For example, Mexico's constitution mandates a minimum wage which is adequate for an adult worker to provide for food, shelter and clothing for a five-member family. However, in a country in which almost half the population is considered by the World Health Organization to be malnourished, where as the New York Times noted, (March 9, 1993, p. D2) it took nearly four times the minimum wage for a small Mexican household to survive, it is easy to see that the minimum wage law is not observed. During the last decade before NAFTA, the minimum wage had declined by about 60 percent in real purchasing value.

In a conflict situation arising under NAFTA, it would be very difficult for the U.S. to insist on the enforcement in Mexico of Mexican laws that exceed actual standards in U.S. law. By the same token, it would be difficult for Mexico to insist on enforcement of elements of U.S. law that exceed Mexican practice. Canadians, who have already

complained that U.S. "Right to Work" laws constitute an unfair trade subsidy to cheap-labor garment factories in the American South, would have a hard time getting U.S. courts to enforce Canadian standards, which for the most part bar such practices.

Therefore, we argued, it was important that a regional agreement establish which labor rights and standards are to be observed by all parties in connection with cross-border trade, as the basis for any actions that became necessary to root out unacceptable labor practices under NAFTA. Simply insisting on "national enforcement of national laws" would lead to a morass of conflicts and confusion.

We proposed that all three countries accept as a basic floor of standards the key ILO Conventions. There was a singular advantage in this approach, namely, that Mexico has ratified a majority of these basic conventions, while Canada has ratified more than half of them. In Mexico the ratified ILO Conventions are given self-executing status as national law. To any ratifying nation, each Convention carries an obligation to bring national law into compliance. The United States has long resisted ratification of most ILO Conventions, for dubious reasons of constitutional law, but, we contended, it would be to our national advantage to do so at that time in order to establish a basis for agreement with Mexico and Canada on the basic definitions of the labor standards to be incorporated into NAFTA.

2. An Agreement on the level of violation that constitutes an actionable unfair trade practice.

It was very important, we contended, that the negotiations establish as a matter of agreement among the three party states that *violations of labor rights are unfair trade practices, subject to demands for correction or, failing that, to countervailing actions within the framework of trade.* How to characterize the level of violations which are sufficient to trigger a countervailing action, however, would require careful negotiation. We believed there should be a range of sanctions available to cope with increasingly serious or systemic violations, in which the level of distortion of trade is one factor. The driving principle in determining actions should be the correction of the offending practice, not the cutoff of trade, which should be reserved for the most serious offenses or those which offending states fail to correct after a reasonable period of time. In the establishment of sanctions, the principle of proportionality should be carefully maintained.

3. An Agreement on complaint procedures that includes access, standing and freedom of choice of venue.

We argued it should be agreed by all parties that any person who believes labor rights as defined by this agreement have been violated in cases involving cross-border transactions should have the right to file complaints directly to the dispute resolution mechanism established therein. This access should not be contingent on asking that person's government to file the complaint on his or her behalf.

4. An Agreement to Form a Tri-National Labor Standards Commission which is democratic in its selection and open in its proceedings.

We believed that for such a commission to be significant, it would need to have both a developmental and dispute resolution role. It should be tasked both with furthering the development of common standards in North America within the parameters established in the agreement, and adjudicating complaints brought under the terms of those agreed-upon standards. In resolving disputes, it is necessary that the parties agree that the Commission's findings have the force of law.

5. Establishment of a Process and Timetable to Harmonize Wage and Health and Safety Standards Upward.

There needed to be included in these supplementary negotiations a commitment to development mechanisms that would both mandate and assist Mexico to raise its wages, at least to the 1982 comparative level, over the next period of years. This could be through tax relief measures linked to higher wages, to development bank funds targeted at wage enhancement, through negotiated requirements to raise the minimum wage by a certain percentage of average industrial wages per year, or by a combination of these and other mechanisms. The primary point was that there needed to be a deliberate effort outlined in the agreement which had real, as well as realistic goals to achieve during the ten years or so that the trade agreement is being phased in.

6. Agreement on certain kinds of products which each country could prevent from entering into its territory.

This should in our opinion include:

1. products that are made, harvested or processed by child labor (defined in accordance with ILO Convention 138 as children under 15, not including children working under the direct supervision of their own immediate family members.)
2. products made, harvested or processed by prisoners or under conditions of forced or compulsory labor.
3. products made under conditions or with processes that are banned in its own territory due to the deleterious effects of that process on workers' health or safety.

7. Agreement on a process to negotiate particular protocols for protecting the rights of immigrant workers and indigenous workers and tribal populations.

Mexico rightly expressed the need for a regularization of immigration and protection for the rights of immigrant workers, as a part of the economic integration underway among our countries. Under pressure from the Bush Administration, these demands were dropped from the agenda of NAFTA itself. However, the problems had not gone away and, if anything, would be exacerbated by the economic changes caused by and accompanying NAFTA. The outset of NAFTA implementation, we believed, was the

correct time to recognize these issues and put into effect a process to assure protection of the rights of immigrant workers and indigenous peoples.

The Resulting Agreement

NAALC, as finally negotiated, referenced no international code of standards such as ILO conventions. It established no machinery by which a dispute could be investigated to uncover information not in the public record or to subpoena reluctant witnesses. It did not provide an effective trade sanctions remedy for violation by any of the signatory states of the core worker rights of free association, collective bargaining or the right to strike. The Clinton Administration conceded to Mexican objections and deleted from the final draft the possibility of such sanctions for violation of core worker rights. Where violations are alleged, the only remedy under the NAALC is the possibility of "consultations" at the ministerial level. Nor did it establish any regular or systematic program for the upward harmonization of wages and health and safety standards.

However, the agreement did establish a set of eleven agreed-upon "labor principles" to which each party indicated its commitment. (See Appendix I) It set up an open process for receiving and adjudicating complaints about non-compliance with a country's own labor law, in connection with all eleven principles. A Commission was formed, made up of the labor ministers of the three countries, with a small secretariat limited to fifteen professional staff. That commission has the task of fostering, not harmonization of standards, but the betterment of basic protections for labor in each of the eleven areas of labor principles. Protection of immigrant workers' rights was included as one of the eleven principles, although indigenous people were given no mention. Nor was the principle of allowing the banning of specific products, e.g. those made by child or prison labor, accepted.

In sum, the NAALC spoke to virtually all of our concerns, although in a weakened and less ideal format which preserved national sovereignty over labor law matters at every point.

This was in sharp contrast to provisions in NAFTA relating to intellectual property or investment, where national sovereignty yielded almost without a whimper to the demands of international capital.

Nevertheless, NAALC did create a structure whereby issues of labor rights and standards could be discussed comparatively and linked to trade, where the trade effects of widely variant practices could be assessed and where complaints about non-compliance by a country with its own labor law could be, if not adjudicated to everyone's satisfaction, at least exposed and discussed. It also created a set of obligations that the labor law enforcement mechanisms be transparent, and without partiality.

It is this complaint mechanism and this obligation to non-biased labor courts that I want to discuss in some detail, for it is our view that this is the heart of the agreement. If it

succeeds, NAALC succeeds. If it fails, no amount of joint research or comparative analysis or technical assistance will make much difference.

The agreement creates a three-tiered structure.

1. National Administrative Offices (NAOs) were established in each country's labor ministry to serve as a conduit between that national government, the NAALC Commission and the other NAFTA parties.
2. The labor ministers jointly form a Commission which meets at least annually, or on the request of any of the ministers.
3. The Commission is served by a Secretariat, composed of a maximum of 15 professional staff. These are chosen from names selected by the three countries but constitute an international body that can act independent of any one of the governments.

The complaint process is also three-tiered. Anyone may bring a complaint to one of the NAOs charging that one of the other parties is failing to enforce its labor law. Complaints -- or submissions, as they are called in order to avoid the appearance of a judicial process -- are reviewed by the NAO along procedural guidelines established by that NAO. If the submission is found to have merit, a hearing may be called within a set period of time. Finally, a decision will be issued, with recommendations to that country's labor minister regarding resolution of the issue.

At this point, the process gets differentiated, depending on the "Labor Principle" under discussion. If the matter has to do with the first three labor principles, freedom of association, collective bargaining or the right to strike, an NAO can only recommend, in addition to more study, that the ministers of Labor hold a consultation on the subject. If the matter is in the area of the other eight principles - called "technical standards" in the jargon of the agreement, then a ministerial consultation may be followed, if the matter remains unresolved, by the convening of an "Evaluative Committee of Experts" (ECE), chosen from a roster of names provided by each country. If the issue relates to persistent violations of minimum wage law, child labor or health and safety in an area where the complaining country and the country complained against have parallel laws, and the matter concerns a trade-related sector of the economy and is unresolved by the work or recommendation of the ECE, then one of the parties in the case may request an arbitration panel be convened.

Only on these last three issues can an arbitration panel decide, if its efforts to resolve the issue fail, to levy either a fine or a trade sanction in an amount established in the agreement at \$20 million maximum in 1994. The fine is collected from the country complained against, and then turned over to that same country to remedy the problem!

This process, from complaint to fine, can take upwards of three years! Clearly, "swift" and "effective" were not words that leapt to the minds of the negotiators. In fact, it was reported the Mexican Secretary of Commerce, Jaime Serra-Puche, reported to the

Mexican Congress that they need not fear. The process was so convoluted that nothing would ever reach a punitive conclusion.

Clearly, if the NAALC dispute resolution has merit, it is not due to the force of the agreement's trade sanctions. I believe, however, that there is merit to the process, and, although only a few cases have been brought by either Mexico or the U.S., and none so far by Canada, it is possible to see the agreement having some positive effect.

Three cases have been filed in the U.S., and one in Mexico, all having to do with the rights of association and collective bargaining. The first two cases, against General Electric in Ciudad Juarez and Honeywell in Tijuana, Mexico, had to do with company actions to fire unions organizers and manipulate union elections to prevent the collective bargaining rights from being transferred to a new unions from the existing government-party related union, the Confederation of Mexican Workers (CTM).

Both these cases were dismissed by the US-NAO after a hearing, on the grounds that they had failed to demonstrate sufficiently that the Mexican government had been remiss.

The third complaint, brought by the ILRF together with the Mexican Democratic Lawyers Association and several border groups, was similar in content. The Sony Corporation's subsidiary in Nuevo Laredo, Magneticos de Mexico, changed work rules in late 1993 to require illegally long overtime work. When workers complained to their union, which was a CTM -based sweet heart union, it refused to negotiate a change in work rules. When workers tried to elect new union officers, the union expelled them from its membership and the company then fired the workers, under the closed shop rules in place. When other workers protested against these firings, they too were fired. When they appealed to the local labor court (Conciliation and Arbitration Board - CAB) made up of government, employers and CTM representatives, their complaints were dismissed. A CTM-called union election, held with less than six hours notice, resulted in a mass walk out by two thirds of the workforce, followed by a sit-down strike at the factory gate that was suppressed by extreme police violence.

When the workers then tried to organize an independent union, the Tamaulipas State CAB rejected their application on flimsy and spurious technical grounds.

At that point in the saga we filed a complaint with the U.S. NAO, alleging government-company collusion to prevent freedom of association.

This complaint was accepted for review, and, in our opinion, given a fair hearing by the US-NAO. At the conclusion of the review, the NAO recommended a ministerial consultation to be held on the subject of union registration, and for several unilateral studies to be conducted. The ministerial process, which concluded in June, 1995, decided to hold three public fora on union registration - one in Mexico, one in the U.S. and one in Canada, and to hold discussions with the Sony workers, management and local CAB officials. These fora were completed in March, 1996, and a final report is now being drafted. (For text of the Ministerial Decision, see Appendix II.)

The Sony workers still do not have an effective or representative union.

Why, it might well be asked, do we believe this process has merit, if it is unable to bring any justice in a matter so transparently and flagrantly in violation of the legal rights of Mexican workers.

Tentatively, I would answer that the process has created an opening, for the first time, for public discussion in Mexico about the impunity of the country's corporatist union structure and its failure to provide for fair representation for workers. It allowed a large and angry audience in the Mexico City forum to challenge openly, in front of U.S. and Canadian officials and the international press, the collusion of government officials, companies and a kept union. It placed Mexican government officials on the defensive in an international forum for the first time in recent years, making it impossible to hide behind the splendid rhetoric of Mexico's Article 123.

Secondly, it indirectly created political space within a mildly reformist government for other changes to take place. This was most dramatically seen just one week ago when the Mexican Supreme Court ruled that a law allowing only one union by name in the federal sector was unconstitutional. This ruling, reversing a 1984 law of the state of Jalisco and a local CAB ruling in Oaxaca in 1994, declared that Article 123 of the Constitution and ILO Convention 87, which Mexico signed in 1950, overrode any laws that limited the right of workers to join an existing union, form a new one or a right to refuse to be part of any labor organization.

This historic ruling is, according to press reports "seen as indirectly responding to criticism from U.S. and Canadian labor unions aired at forums held under the auspices of the North American Free Trade Agreement . . . The issue came up during discussions of a 1994 case involving former Sony Corporation workers in the state of Tamaulipas who were fired after trying to form a union independent of the existing one" (Dora Delgado, Daily Labor Report, May 28, 1996)

The ILO has long complained, through rulings by the Freedom of Association Committee and the Committee of Experts, that Mexico's laws creating a single union for federal workers violate its obligations under convention 87. However, the public spot light and criticism brought through the NAFTA complaint process appear to have trumped the ILO in generating a positive response.

All this notwithstanding, the Sony workers are still without an independent union. Armed with this Supreme Court decision, however, they stand a stronger chance at success when they refile their application, even in Tamaulipas where the CTM has been the most powerful political force for half a century.

To undergird that effort, ILRF has formally requested that the Sony case ministerial consultation be reopened, specifically on the question of Article 4 and 5 of NAALC.⁽¹⁾ These articles create an obligation to administer labor law fairly, without bias, and in transparent and accessible proceedings. In the state of Tamaulipas -- and other states --

the body that accepts or rejects union registration requests is comprised of representatives of the union which the applicants are challenging. To fail to recuse members of the CAB with a conflict of interest undermines the treaty obligation to have labor court proceedings without bias or without interested persons making rulings.

This request, which if rejected will become the basis for a new submission, will test the very heart of Mexico's corporatist labor structure. With a Supreme Court decision having overturned state law relating to government employees, and the right of employees not to join a union having been reasserted, the legal basis for the rejection of the Sony workers' registration has narrowed considerably.

A complaint based on a failure to meet a treaty obligation of NAALC rather than on failure to enforce specific labor laws raises an interesting set of questions. No procedure has been established to adjudicate charges of treaty violations themselves. Does this mean such a case could if unresolved through dialogue go before an international trade court? Frankly, it is not certain, but the implications of a complaint of this nature are immense, inasmuch as the efficacy of all other aspects of the labor agreement are contingent on meeting the obligation to fair processes. We will be pursuing this matter intently over the next several months.

Finally, it should be noted that Mexico has filed one complaint against the United States. The issue relates to the Sprint Company's closing of a Spanish-language phone facility in San Francisco allegedly to avoid a union organizing drive. That complaint, which was brought to the Mexican NAO by the telephone workers union of Mexico in conjunction with the Communication Workers of America and the Postal, Telephone and Telegraph International (PTTI) resulted in a hearing conducted in San Francisco in February, 1996. The matter is currently awaiting a decision by the National Labor Relations Board in the United States before it is resolved by the Mexican NAO. While the gravamen of this case is on company actions rather than failure of the U.S. to enforce labor law, the bringing of this complaint by Mexico has had the salutary effect of solidifying Mexican government commitment to the NAALC process, which can now be seen as an instrument available to all the NAFTA partners and not just a means of badgering Mexico.

The conference planners asked me to speak to two other questions regarding NAALC:

How have Corporations responded? And what is the impact on this process of a more conservative Congress since 1994?

U.S. companies exerted considerable effort to redefine the agreement to exclude all activity that does not consist of "labor cooperation". The U.S. Council for International Business, the lobbying wing of the 400 largest U.S. based multinational corporations, protested during the discussion period for establishing regulations to govern the activities of the U.S.-NAO that allowing complaints to be filed and reviewed would undermine the 'cooperative' character of the agreement, which, they maintained, limited activities to sharing information among the NAFTA signatories about labor markets, labor laws and employment matters.

Having failed in the attempt to limit NAALC in this way, USCIB has vociferously protested every occasion when an individual company is named in any NAO document, insisting that the agreement does not allow corporations to be mentioned or criticized since it is focused on country not company practices. You will see the effect of this pressure in the early reports on the Sony case, which do not mention the Sony Corporation by name.

Finally, USCIB, Business Round Table and other corporate lobby groups have set as a high priority prevention of any further labor side agreements from being negotiated with countries such as Chile seeking accession to NAFTA. While this issue is currently off the table due to a failure of the Republican-dominated Congress to grant "fast-track" negotiating authority to the Clinton Administration, after the next election, regardless who wins, the question of the terms of accession to a NAALC will become a heated controversy.

Conclusions

Has the North American Agreement on Labor Cooperation made a difference in the quality of labor rights protection in any of the three countries?

The short answer is not much. I have gone into this level of detail regarding the Sony case because it demonstrates the weaknesses as well as the strengths of the complaint machinery of NAALC.

First the weaknesses:

- There are no means in this agreement to bring effective pressure to correct the most prevalent problems of labor relations in Mexico, namely freedom of association, the right of collective bargaining and the right to strike. The instrument of "ministerial consultation" has proved to be inadequate to the task of motivating genuine reform.
- The adjudication process for labor disputes is unduly long. Workers challenging the infringement of their rights have in all cases so far been unable to withstand the varieties of governmental, company and political pressures mounted against them long enough for the NAALC process to come to their assistance.
- The sanctions at the end of the process are inadequate to coerce better behavior. Should a case ever go all the way to arbitration, it would still result in such a nominal fine or trade sanction as to be of little or no coercive effect. Further, since sanctions are levied, not against the violator, a company suppressing labor rights, but against the country which has tolerated that suppression, there is little incentive for companies to comply, except in order to avoid a certain amount of negative publicity.
- There are no common standards. If Chile should accede to NAALC, it would in several areas of labor law be held to a considerably lower level of protection of workers' rights than the other NAFTA partners, since Chile's labor law--enacted

during the Pinochet regime--remains one of the weakest systems of legal protection of workers in the Americas.

- Finally, the principle of "national enforcement of national law" provides an open invitation to lower the standards of national legislation. NAALC provides no assurance that current levels of labor rights protection will be sustained into the future by national law in any of the countries, nor does it provide for renegotiation of the terms of the agreement in the event any country should weaken its current labor law.

The strengths of the agreement, on the other hand include the following:

- NAALC recognizes the legitimate linkage between the conditions of labor and trade in goods produced by that labor.
- The submissions filed so far have significantly improved dialogue and mutuality among the party states on matters of labor relations and labor law.
- The agreement has provided a public forum for debate regarding the adequacy of existing law and administration, and a certain consequent level of transparency in the administration of labor law. While this has not resulted in direct gains for the persons most directly affected, it has, according to Mexican government officials, resulted in a level of caution by both companies and administrators regarding actions elsewhere that might subject a company or an administrative organ to public scrutiny through the NAALC process.

While the process is young, experimental and fraught with the limitations mentioned above, there are also several lessons that might be drawn for the broader, global debate about labor standards and trade. First, the importance of common standards, rather than national enforcement of national law, is underscored by the NAFTA experience. Second, trade sanctions, which in NAALC have not yet been invoked, are an important element of an overall enforcement regime but are probably best reserved for the most pernicious and persistent cases of violations. The experience thus far suggests a need for a wide spectrum of instruments, measures and devices to secure compliance with standards prior to invoking of trade sanctions.

Third, the NAALC demonstrates the importance of public access to the process, whether in the bringing of complaints or in the monitoring of the official actions. The most effective pressures brought to bear on the cases before NAALC thus far have been those created by public exposure to problems that the governments have hitherto dealt with behind closed doors.

Finally, experience in North America demonstrates that sanctions and moral suasion are not polar opposites or mutually exclusive options. Rather they are parts of a spectrum of measures that are available to nations and international organizations. The existence of the trade sanctions, even as limited as they are in NAALC, would have seemed from the experience thus far to have been a positive incentive to the participant nations to resolve

conflicts without recourse to them. This would suggest that the ILO, long the advocate of moral suasion as the only acceptable means to bring countries back into compliance with the requirements of their convention ratifications, might well be advanced in its moral tasks by the existence of WTO-related trade sanctions available for use against countries with persistent levels of refusal to honor their moral and legal commitments to the ILO.

1. NAALC, Part Two: Obligations. Art.5: Procedural Guarantees

1. Each Party shall ensure that its administrative, quasi-judicial and labor tribunal proceedings for the enforcement of its labor law are fair, equitable and transparent and, to this end, each Party shall provide that:

(a) such proceedings comply with due process of law;

(b) any hearings in such proceedings are open to the public, except where the administration of justice otherwise requires;

(c) the parties to such proceedings are entitled to support or defend their respective positions and to present information or evidence; and

(d) such proceedings are not unnecessarily complicated and do not entail unreasonable charges or time limits or unwarranted delays.

....

4. Each Party shall ensure that tribunals that conduct or review such proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter.