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CALLING MAGGIE'S BLUFF: THE NAFTA LABOR AGREEMENT AND THE DEVELOPMENT OF AN ALTERNATIVE TO NEOLIBERALISM*

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HERZENBERG

It is now three years since the implementation of the North American Free Trade Agreement (NAFTA) and its labor and environmental side accords. In the United States the second Clinton administration is underway. Canada recently initialed free trade, labor and environmental agreements with Chile which may intensify pressure for Chilean accession to NAFTA and the side accords, necessitating at least technical changes to these agreements. The NAFTA labor agreement itself contains a provision requiring a review of its effectiveness within four years. After reviewing the negotiation and implementation of NAFTA's labor agreement, this essay argues that the free market/free trade model now guiding North America's economic integration is not working and that the NAFTA labor agreement, for all its limitations, could be an important vehicle

*A list of acronyms used in this article is provided on page 29.

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for promoting more equitable, productive, and socially sustainable continental development.

As NAFTA enters its third year, evidence accumulates of the disastrous outcomes of the current "neoliberal" model.¹ For a decade or more, opportunity and living standards have stagnated or declined for most of the U.S., Canadian, and Mexican population. Mexico has suffered a prolonged economic crisis since the early 1980s, with the fall in wages that began following the late 1994 collapse of the peso just the latest episode. Despite the predictions of the economic theory of comparative advantage, even traditional labor-intensive manufacturing in Mexico has failed to adapt successfully to NAFTA and the preferential access to the U.S. market that preceded it. Mexico's foreign-linked export sector, including some capital-intensive production, continues to expand, driving the U.S. trade deficit with Mexico in 1996 to near \$20 billion (the auto and auto parts industry alone accounts for almost three quarters of it). U.S.-Mexico trade patterns intensify the pressure on high-wage, blue-collar U.S. and Canadian workers but without creating jobs or spurring backward linkages and a domestic Mexican market that would generate self-sustaining development.

In the debate over NAFTA, the decision to negotiate a labor side agreement (officially named the North American Agreement on Labor Cooperation or NAALC) represented the only concession to critics of unfettered markets. The NAALC, however, has always

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been something of an orphan (or, if it owes its paternity to Clinton, an abandoned child). NAFTA's neoliberal champions viewed the negotiation of NAALC as an irritant, a source of delay, and, like virtually all labor market regulation from their perspective, bad policy. Most trade unions and other NAFTA skeptics still see the NAALC as a political fig leaf for a trade agreement too flawed and reflective of corporate priorities to be worth swallowing at any price. International and human rights groups are the organizations most actively using NAALC instruments. While their efforts have been invaluable, their moral advocacy for rights and standards does not fundamentally challenge the *economic* case for deregulation.² Nor do these organizations have the resources necessary to build by themselves the most politically powerful case against neoliberalism--its failure as economic policy.

Despite its orphan status and its weakness, the NAALC itself hints at the need for an alternative to neoliberalism. It could be used to create a much richer debate about continental economic and labor policy. Aiming at policymakers, government, labor and NAALC staff, trade unionists, other progressives, and academics, this paper outlines specific ways of using the current NAALC to build understanding of the case for a more egalitarian North American development pattern. Such activity would represent a step towards convincing the public that, *pace* Margaret Thatcher, there *is* an alternative (Thatcher liked to taunt critics of deregulation by referring to their so-called TINA -- There Is No Alternative --problem) to neoliberal policies.

The paper begins with a sketch of the institutional perspective on the current period of economic restructuring. After analyzing how this perspective might have been used to reconceive NAFTA when U.S. President Clinton took office in 1993, the paper describes the NAALC and the activities pursued under it over the past three years. The penultimate section of the paper outlines a range of specific ways the agreement might be used more effectively to open up public debate about North American development. The paper closes with a discussion of ways the agreement might be changed and the political prospects for a tri-national move away from neoliberalism.

I. AN INSTITUTIONAL PERSPECTIVE

The argument of this paper requires a brief introduction to the institutional economic perspective from which the paper is written,

and to the institutionalist emphasis on the search for a new integrated socio-economic system to replace the national systems that collapsed in the United States, Mexico, and Canada over the past quarter century.

Neoclassical economists understand firms, and other economic actors, to make choices from a range of alternatives known fully in advance.³ Firms, for example, are considered to be able to produce windshield wipers with infinitely possible combinations of capital and labor, the particular combination chosen being driven by the relative price of the two inputs. The kind of specialization between countries predicted by the theory of comparative advantage is one application of the general neoclassical approach. The existence of two countries with different relative prices of capital and labor drives the reallocation of production under free trade.

By contrast, institutional economists think that firms, and other economic actors, make choices among discrete alternatives which are not fully worked out in advance. Among other things, this prohibits the decision from being made by an "optimizing" calculation. Particularly in periods of institutional flux and uncertainty like the present, the basic challenge economic actors face is divining a way of thinking – a cognitive framework -- about the problems that they face that permits intelligent deliberation. An understanding of the decisions people make and the way that actors frame the problems they face, making them amenable to analysis, cannot be grasped by sitting in the library, or in front of the computer, or by talking only to other professional economists. It relies, instead, on case study and interview methods that give researchers direct access to how people think.

Economic flux and uncertainty about firm behavior at the present stem from the decay of the inward-focused national development that delivered prosperity in each NAFTA signatory for three decades beginning in the 1940s. Built on the application of scientific management (Taylorism) to the manufacturing heart of each economy and on the steady rise of domestic wages and consumption, the national post-World War II institutional system began to fray in the 1970s and collapsed in the 1980s. The ingredients of the decay in the United States included stagnation of consumer durable markets, increasing international trade that made employers see rising wages as a threat to competitiveness more than a way of sustaining domestic demand, and a slowing of productivity growth for reasons poorly

understood, but including more gradual demand expansion, the transition to services, and diminishing returns to traditional scientific management approaches.

In Mexico, low productivity growth associated with a less well-managed and selective ISI strategy than pursued in parts of Asia created underlying weakness. The debt crisis in the early 1980s grew out of the boom in Mexican short-term borrowing after the 1979 oil price hike and then the dramatic rise in real interest rates when the U.S. Federal Reserve Bank sought to contain inflation. An IMF structural adjustment program, a move away from state regulation, and an opening of the economy to attract capital inflows followed.

In Canada, the depreciation of the Canadian dollar in the 1980s, stronger trade unions, and a more deeply rooted welfare state delayed the decay of the institutional structures of the post-World War II era. More than in the United States, trade opening, especially the U.S.-Canada Free Trade Agreement, is seen by its critics as the chief culprit in the ascendancy of a U.S.-style deregulatory approach. Abrogation of NAFTA retains significant support in Canada as a prerequisite for constructing a more egalitarian path.

In the context of confusion and ambiguity in all three signatories about what a development path adapted to contemporary economic and technological conditions might look like, one appeal of neoliberalism is its simplicity and internal coherence. For corporate actors and policymakers insulated from its social ravages, embracing neo-liberalism often induces less *anomie* than having no organizing cognitive framework at all.

II. THE HIGH ROAD AND THE LOW ROAD

Rather than join the general embrace of deductive neoclassical theory unencumbered by empirical knowledge of the actual economy, institutionalists in the past fifteen years have conducted case studies to elaborate alternative directions in which business and economic development might evolve. Out of these studies, and the interviews that they entailed, two possible paths have been abstracted, "the low road" and "the high road." These terms are used here to refer to both individual business strategies and to economic systems within which different business strategies would predominate.

The low road relies on a reassertion of managerial authority within the workplace, production relocation to low-wage areas, and hard bargaining over price between dominant firms and suppliers.

Among some large employers, even a low road trajectory may deliver improvements in quality and more active cooperation from a subset of the workforce (e.g., team leaders), as within Japanese lean production. In smaller employers, workplace relations would look more primitively autocratic, similar to Ford in the 1920s in capital-intensive, volume production.

The low road in manufacturing often boils down to traditional mass production but with much lower wages and benefits. It does not break with traditional hierarchy, tight managerial control, or the extraction of effort through the exercise of power. Nor does it break with the scientific management focus on lowering the cost of individual operations. The lack or fragility of cooperation impedes intra- and inter-organizational (e.g., Big Three-supplier) cooperation and learning necessary to continuously reevaluate the relationship among discrete operations.

The high road would focus on quality, service, and raising productivity. Achieving this would depend on less coerced cooperation from workers -- "negotiated flexibility."⁴ More pervasive intra- and inter-organizational cooperation would permit more gains based on reorganization above the level of discrete operations. The high road would also depend on better trained workers. Since individual firms today appear unable to supply the investment in workers and employment security that high road workplaces demand, strengthening of career ladders and training institutions that cut across firms is needed. Constructing these two elements is likely to require cooperation between labor organizations and industry associations and networks of the type happening now, for example, through the Wisconsin Regional Training Partnership.⁵ Such cooperation could also overcome "free rider" problems that inhibit investment in technology development and industrial extension (analogous to agricultural extension).

The contrasts between the high road and low road both derive from and can be illustrated more concretely through industry studies. My own research has elaborated alternative "sectoral patterns of development" in the auto industry. Empirical evidence points towards a low road or "segmented" development path in the North American auto industry. In this sector, high productivity and quality are confined to auto assembly plants and a few first-tier suppliers.⁶ Even in this core, the weakness of worker representation and high levels of work intensity limit worker cooperation. Outside the

industry core, competition appears to be driven more by a search for low-wage, non-union workers. Estimates of value-added per worker in U.S. auto supplier plants show essentially no improvement from 1978 to the early 1990s even though the same measure in assembly plants rose around seven percent. Moreover, since relatively lower productivity labor-intensive production drifted over this period to Mexico, a calculation controlling for product might show declining productivity for suppliers within North America serving the U.S. market.

In the apparel industry within the Americas, standardized production, such as blue jeans and underwear, has migrated increasingly to low-wage countries like Mexico.⁷ Within the United States and Canada, in lower-volume, non-premium markets in which fashion cycles favor domestic production, "sweating" business strategies (in which employers paying very low per piece rates, sometimes to homeworkers, and worry little about productivity because piece rates insulate them from its consequences⁸) appear to have resurfaced on a large scale. In some plants and production chains, team-based production in "modules," just-in-time inventory, and electronic link-ups between retailers, manufacturers, and subcontractors have elevated quality and productivity while shortening turn-around time. Even in these cases, no productivity gains from work reorganization accrue to workers. And there seems little reason to think that organizational innovations will spread, or be sustainable, in light of accessible low-wage, traditional approaches and the resurgence of sweating.⁹

Despite Mexico's differences with the United States and Canada, the high and low road dichotomy captures the flavor of the divergent possibilities implied by Mexican case research. This dichotomy also captures how Mexican institutionalists perceive the nation's national development alternatives. Transformed in more productive and less political directions, and in the context of democratization, Mexico's corporatist ideology and institutions might support high road strategies. The perception of labor, collectively, as an organic component of society, and the presumption that it is natural for workers to have collective representation also appear more resonant with negotiated flexibility than U.S. individualist, "anti-union" traditions. Mexico's industrial chambers might be adapted to promote technological learning and human resource development within networks of small and medium-sized firms. A "corporatist" development plan, the

Mexican Accord on Raising Productivity and Quality, signed on May 25, 1992, by President Salinas and representatives of business, labor, and peasant organizations, reads like a high road blueprint. While Mexican authoritarian and low-wage practice often appear closer to the worst of U.S. traditions, its ideology remains an untapped resource in debates about continental restructuring.

The details of the high road necessarily remain unclear. They would be fully worked out as firms shift directions and during the consolidation of local and industry structures into a national and continental institutional system (or general equilibrium). For example, the developmental logic at the heart of the high road -- the notion of "continuous improvement" in which all participants in production are involved -- has not been crystallized in the way scientific management was almost a century ago. Throughout the continent, it remains unclear how to achieve macroeconomic balance and a social wage adequate to prevent joblessness from undercutting high road strategies in labor-intensive production. In Mexico, the informal and agricultural sectors pose particular challenges in this respect.

III. WHAT MIGHT HAVE BEEN: THE NEGOTIATION OF THE NAFTA LABOR AGREEMENT

As framed by U.S. President George Bush, NAFTA was understood to be an expression of a free market philosophy. The public economic case made by Bush for NAFTA was strictly neoclassical. NAFTA would promote specialization by each signatory in its comparative advantage plus additional gains from economies of scale in a larger, more integrated market.

For institutionalists, by contrast, NAFTA negotiations were a symptom of an ongoing process of economic integration that so far pointed towards the low road. It represented an opportunity to begin managing that process to promote more productive restructuring.

The election of Democratic President Bill Clinton raised the possibility of recasting NAFTA in ways that would support high road adjustment.¹⁰ In an October, 1992, campaign speech, Clinton argued that NAFTA could reinforce a "high-wage, high-skill" path if done right. Otherwise, it might make matters worse. Clinton called negotiation of side agreements on labor and the environment essential to insuring that broad benefits would derive from NAFTA. The

new administration might have made NAFTA the "symbol and substance" of a switch to a Clinton-initiated high road strategy from a Bush-initiated low road strategy.¹¹ In addition to side agreements, this might have been done through domestic changes implemented in each country within the agreement, linking the minimum wage in each country to national productivity growth, or strengthening domestic labor rights to complement the protection of "capital rights" within NAFTA. A high road NAFTA package might have included limited renegotiation of the trade agreement itself, possibly under the guise of additional "side agreements" (for example, a "North America-Japan Auto Pact" to manage interbloc trade in the auto industry and to create space to foster dynamic adjustment, including by suppliers, in all three NAFTA countries¹²; or establishment of continental fair labor standards to discourage sweating and low-wage mass production in apparel.)

President Clinton had political as well as substantive reasons for attempting to change the symbolism of NAFTA. While he had campaigned on the slogan that "people are tired of working longer for less," pictures of *maquila* communities generated visceral fears that U.S. workers' downward slide was just beginning. The combination of first-world productivity and third-world wages in plants clustered south of the U.S.-Mexico border led many Clinton supporters to interpret NAFTA as "working even longer for even less" for them.

Second, unlike narrower legislation affecting specific sectors, NAFTA frightened not just auto unions or apparel unions or other so-called special interests, but a broad cross-section of union and non-union workers, African-Americans, environmental, consumer, and farm groups. If one viewed the U.S. as following the low road because of the weakness of its likely victims to prevent it -- an inference consistent with the writings of Labor Secretary Robert Reich about the political power and secession of the "Fortunate Fifth" -- NAFTA's mobilization of a broad coalition might have seemed a blessing in disguise.¹³

Third, major American corporations wanted NAFTA. They wanted the specific gains embedded in particular chapters (e.g., on intellectual property and investment rights) and the negotiated transitions to free trade shaped by their lobbying in Congress. They also wanted a stable regulatory framework and protection against a Mexico which might choose to return to its more statist past. Had

business been forced to the negotiating table against a powerful coalition of NAFTA skeptics, and with the Clinton administration as broker, corporations might have accepted provisions in the side agreements and domestic U.S. legislation unlikely in other contexts.

President Clinton could have insulated himself against the inevitable charges that he was an old Democrat by pointing to business opponents of social measures as the real prisoners of the past. They favored a return to autocratic Taylorism and 19th century sweatshops. A self-conscious effort to split business into high and low road contingents seemed at the time -- and still seems -- a prerequisite for legislative coalitions with the power to rule out the low road.

Mexico's President Salinas would have been irritated by a more substantial reorientation of NAFTA after two years of betting his country's future and his presidential legacy on the accord. Yet Salinas would have had little choice but to accept a reorientation. He might have sought concrete gains through more recognition of Mexico's developing country status in a supplemental agreement, or through greater regional development assistance. Going along with a shift to the high road could have been sold within Mexico as more consistent with corporatist ideology and traditions, and as a relief from the neoliberalism imposed by Bush.

Within the first four months of 1993, it became apparent that the new U.S. administration would not rethink NAFTA in a fundamental way. In interagency debates within the government, absent clear directions from above, underlying disagreements about how to think about NAFTA remained submerged. The dominant view remained that this was a "free trade" agreement. While the labor and environmental agreements were something the administration was politically committed to, they would not be permitted to alter the basic economic philosophy of the agreement.

Most of the anti-NAFTA U.S. coalition, for its part, sought to derail the agreement rather than to force the administration to rethink it. It framed its demands in terms of forcing Mexico to change its labor law, or wages, as it would its intellectual property and investment regime. Under pressure from the United States, Salinas did ostensibly link the Mexican real minimum wage to productivity growth in May of 1993. The anti-NAFTA coalition did not see an opportunity to foster changes within the United States. So suggestions within the administration to link all three nations' minimum

wage to national productivity growth, or to speed up a U.S. commission on labor law reform (the "Dunlop Commission") in time to implement some of its recommendations with NAFTA, didn't even make it out of the Department of Labor.

Without a recasting of the agreement, more and more liberal Democrats decided to vote against NAFTA. By summer 1993, it became clear that NAFTA could only pass Congress with roughly two-thirds Republican votes, rather than two-thirds Democratic. U.S. negotiators increasingly saw a *weak* side agreement as the way to get NAFTA through this hurdle.

Canada proved a constructive force in the labor side agreement negotiations despite its Progressive-Conservative government, and except for its adamant opposition to using trade sanctions to enforce NAALC dispute settlement. For example, once it became clear that labor rights would not be under the jurisdiction of the last two procedures established by the side agreement, Canadian labor negotiators and the Canadian trade minister suggested establishing a wage-productivity monitoring system. Language for a quasi-independent "Equitable Growth Board" that would monitor wage, productivity, and income inequality trends was drafted and passed informally to the Canadians. But top U.S. negotiators paid no attention.

IV. THE NORTH AMERICAN AGREEMENT ON LABOR COOPERATION IN ACTUALITY

Despite the Clinton Administration's mechanical implementation of its NAFTA campaign commitments, the labor side agreement is framed in broad terms as a means of promoting development along the lines of something like a high road path. NAALC does not simply focus on better enforcement of existing national labor standards, but is described as a tool for shaping the way firms restructure and compete in a more integrated international economy.¹⁴

A. Preamble and Objectives

NAALC's little-noticed Preamble speaks of the United States, Canada, and Mexico

- recognizing that their mutual prosperity depends on the promotion of competition based on innovation and rising levels of productivity and quality,"

- “seeking to complement the economic opportunities created by the NAFTA with the human resource development, labor-management cooperation, and continuous learning that characterize high-productivity economies,”
- and “acknowledging that protecting basic workers’ rights will encourage firms to adopt high-productivity competitive strategies.”

It then notes additional ways the three countries might promote “high-skill, high-productivity economic development,” including:

- “investing in continuous human resource development,” “promoting employment security and career opportunities for all workers through referral and other employment services,” thereby compensating for the apparent insufficiency today of training and job security within firm-specific internal labor markets.¹⁵
- “promoting higher living standards as productivity increases,” a diluted reference to the need to reestablish a link between real wages and productivity growth.
- and “encouraging consultation and dialogue between labor, business, and government both in each country and in North America.”

The objectives of the NAALC include:

- improving working conditions and living standards in each country;
- promoting, “to the maximum extent possible,” eleven basic labor rights and standards;
- encouraging cooperation to promote innovation and rising levels of productivity and quality.

To pursue the mission outlined in the preamble and objectives, the NAALC created a trilateral secretariat, based in Dallas, with an initial staff set of fifteen. The secretariat conducts research and reporting on comparative labor law and labor market issues and must staff any *ad hoc* advisory groups and committees of experts. The NAALC also requires the establishment of National Administrative Offices (NAOs) within each country.

The NAOs serve as points of contact for the other countries when they want information on “labor law matters.” The NAOs also receive complaints (“submissions”) from their own citizens about

labor developments in the other two countries. The existence of NAOs owes to Mexico’s discomfort with having the tri-national secretariat granted limited autonomy to review complaints on labor matters submitted by private parties, the approach employed in the environmental side agreement. Reading between the lines, placing Mexicans protected by international civil servant status in a body with review capacity over national Mexican domestic policy felt to Mexican NAALC negotiators like a more substantial loss of domestic sovereignty and political control than giving “foreign” NAOs similar powers.

The NAALC provides for a broad program of trilateral cooperative research and other activities on labor law and labor market (see NAALC Article 11). It also provides for a four-stage review and public reporting process triggered by “public submissions” to an NAO or, in theory, by an NAO decision to initiate a review. Many consider this review process to be the heart of the side agreement. The four-stage review has also been interpreted as concerned solely with scrutinizing the adequacy of national enforcement of national law. But this is a restrictive reading inconsistent with the expressed intent of the NAALC to promote information sharing and comparative policy analysis.

Each of the stages is defined in the NAALC charter. *First-level review* consists of reports on any labor matter by an NAO. *Second-level review* focuses on ministerial consultations between the labor ministers of the three countries or their designees to a “council of ministers.” Ministerial consultations may also be initiated without an NAO report. NAO reports and ministerial consultations may address any labor law matter, including the rights to associate and organize, bargain collectively, or strike. They are not restricted to enforcement issues. *Third-level review* consists of *ad hoc* independent committees, called evaluation committees of experts (ECE), which cannot directly address labor rights issues. The *fourth* level is dispute settlement panels. These have jurisdiction to consider whether a country has evidenced a “persistent failure” to effectively enforce its minimum wage, child labor, or health and safety laws.

Each country retains authority over its own NAO. The U.S. NAO is a small office within the Bureau of International Labor Affairs of the U.S. Department of Labor. Consistent with the NAALC, the procedural guidelines governing the U.S. NAO allow the Office broad latitude to accept submissions and publicly report on the

issues raised by them. The U.S. NAO guidelines also provide for hearings as one means of collecting information for NAO reports.

At this time the ability of Canadian labor advocates to promote creative use of the side agreement is circumscribed by the fact that only Alberta has ratified it. Since provinces have jurisdiction over labor law governing 90 percent of Canadian workers, the NAALC requires high levels of provincial ratification before Canada can request ECEs or dispute panels on industry-specific matters under provincial jurisdiction. Quebec is expected to ratify the agreement soon. Canada can conduct NAO reports on any matter. The U.S. and Mexico NAOs need not comply with requests for information if the matter is raised by parties in a province that has not acceded to the NAALC. Only if Ontario ratifies NAALC will Canada gain access to, and become subject to, ECEs and dispute settlement on most issues outside federal jurisdiction.

B. Implementation

Since NAALC's implementation the U.S. NAO has accepted four submissions (another submission was subsequently withdrawn) for review. The Mexican NAO has written one report in response to the only submission received. Canada's NAO has received no submissions.

The three cases on which the *U.S. NAO* has reported as of this date involved alleged interference with independent union organizing at Mexican *maquilas* owned by General Electric, Honeywell, and Sony.¹⁶ The NAO report on the Sony case in April, 1995, recommended ministerial consultations after finding a number of reasons for concern, including workers' discharges which may have occurred for union activity, allegations of police violence in suppressing industrial disputes which raised questions about the enforcement of Mexican law, dubious union activities (such as giving workers less than a day's notice about union elections, and union intimidation) which were questionable, and Mexican authorities who may have used technicalities to prevent independent union formation.

While none of these cases has yet led to the recognition of an independent union, Compa reports that the publicity surrounding the GE and Honeywell cases prompted reinstatement of several workers. GE agreed to the first secret-ballot vote for union representation in Mexico, although the union lost the election. The U.S. NAO reporting on these cases has also recognized each of the major ways

in which Mexican law and practice frustrate union organizing -- e.g., denial of registration to unions independent of the governing party, the partiality of tripartite labor boards, composed of government, business and official union representatives with oversight over union formation disputes and other labor matters, and the firing and blacklisting of union activists. Ministerial consultations in the Sony case led to a number of tri-national public events on labor law in the three NAALC countries. One compared Mexico's union registration system, the U.S. NLRB election system, and the card-check system in place in several Canadian provinces.

The existence of labor rights problems in Mexico is not news, but the acknowledgment of potential problems by the U.S. government is new. Moreover, some observers see the NAALC cases as part of the context for two potentially significant events on labor matters in Mexico. On May 21, 1996, the Supreme Court of Mexico, in two unanimous decisions, ruled state prohibitions on having more than one union at a workplace to be unconstitutional. While not an automatic precedent under Mexico's legal system, it could expand the space for independent unions to challenge existing unions imposed or controlled from above. Later, on August 13, Mexican government, labor, and business representatives signed a tripartite agreement called "Principles of the New Labor Culture." This document calls for making career judges, rather than executive branch members, the government representative on tripartite labor boards.

The U.S. is now reviewing a fourth case involving a union representation dispute in the government. It is considering whether to accept a submission in which, to block a legitimate organizing effort by the Mexican telephone workers' union, a "protection union" allegedly was formed at a formerly non-union *maquila*. Protection unions are created without the knowledge or assent of workers.

The Mexican NAO reviewed a case brought before it by the Mexican Telephone Workers' Union on behalf of the Communication Workers of America because Sprint closed a Spanish-language operator service in California (Las Connexion Familiar) one week before a union representation vote. The submission claimed that the closing represented part of a pattern by which U.S. employers frustrate organizing. It also criticized delays in NLRB review of unfair labor practices and failure of small fines to deter violations of U.S. workers' rights to organize. "After studying matters related to

U.S. labor legislation, particularly under the rubric of freedom of association and the right of workers to organize," the NAO of Mexico expressed concern "about the effectiveness of certain measures intended to guarantee these fundamental principles." Ministerial consultations ensued, following which the U.S. and Mexican labor secretaries agreed that a comparative study would be conducted by the NAALC secretariat on the effects of sudden plant closings on associational and organizing rights in the three countries.

The Sprint case and the most recent submission to the U.S. NAO (the "protection union" case) represent the first example of cooperation between major U.S. and Mexican unions to use the side agreement as one component of a corporate and legal campaign associated with organizing. The GE, Honeywell, and Sony cases involved cooperation between smaller U.S. and Mexican unions, the United Electrical (UE) workers and the independent Authentic Front of Workers (or FAT, to use the Spanish acronym).

In activities unrelated to submissions, the secretariat has released preliminary findings from a forthcoming "comparative profile" on "North American labor markets." It includes data on average weekly earnings that declined in real terms in all three countries from 1984 to 1995 (real earnings in the Mexican private formal sector dropped 12 percent in the twelve months from August 1994 to 1995). In February, 1997, the Dallas secretariat will hold the first of an anticipated series of seminars on wages and productivity and the relationship between these variables.

In regard to cooperative programs, extensive information sharing and reporting is taking place in areas such as health and safety, labor law, and employment and training. The most innovative study, overseen by the secretariat, is a tri-national examination of production and labor practices in the apparel industry. Drawing on company cases, the study will analyze "standard" practice in each country and then contrast it with examples of "above standard" and "below standard" practice. Such an approach could help make more concrete the differences that exist in business practices within North America and begin to lay the groundwork for analysis of how labor policy, tri-nationally and within each country, might contribute to the spread of "above standard" practice.

In its various activities the secretariat is establishing a meaningful role in cooperative research and in analysis prompted by submissions. Former Canadian negotiator for the NAALC John McKenirrey

heads the secretariat, assisted by Lance Compa, a longstanding proponent of international labor rights, who is director for labor law and economic research, and Leoncio Lera, and experienced labor law administrator and professor. While its actions now require the consent of all three governments, the secretariat's civil servants are explicitly required not to take instructions from any single government. Once removed from national political calculations, and with a developing body of expertise on the strengths and weaknesses of all three labor systems, the secretariat may have the capacity, especially should its powers be enhanced, to become a unique voice for an alternative North American development strategy.

The U.S. NAO, anticipated by this observer to be the driving force of the NAALC, has been somewhat hamstrung by its lack of independence within the Clinton administration. Absent strategic interest at the top in advancing an alternative to neoliberalism, the NAO plays a valuable but largely reactive role. It slips towards a legalistic conception of its role, rather than one framed in terms of economic development strategy.

V. THE NAALC AS A TOOL FOR PROMOTING THE HIGH ROAD

Our argument so far has four parts: first, North America's basic problem is adherence to neoliberalism; second, while continental negotiations might have addressed this problem, NAFTA instead reinforced it; third, the labor side agreement, for all its weakness, could help advance debate about the need for, and nature of, an alternative; and fourth, the scope of the agreement for promoting a change in development strategy has not yet been fully utilized. All of the private submissions to the U.S. and Mexican NAOs under the NAALC have focused on labor rights. No submissions have yet addressed the "technical" labor standards issues which can be the subject of ECEs or the three issues that could go to dispute settlement. No ECE or dispute settlement panel has been created. In addition, the three governments and NAALC institutions have been left to their own devices in implementing cooperative programs.

This section outlines specific ideas for more fully exploiting the scope of the agreement, primarily through the creation of *ad hoc* tri-national expert committees (none of which have yet been formed) and additional cooperative programs. The specifics below are illustrative: ECEs, cooperative programs, and dispute panels could, in

principle, address a limitless number of broad and narrow problems that manifest the need for a new development path in North America. The high road direction at which these topics hint will be fleshed out in greater detail in the process of creating it.

A. Evaluation Committees of Experts

Articles 23-26 of the NAALC provide for the creation of evaluation committees of experts. ECEs are normally three-person committees of experts set up to analyze and report publicly on issues that cannot be resolved through ministerial consultation. The most critical advantage of ECEs is their accessibility -- if the topic satisfies specified other criteria, an ECE *must* be established when any one of the three NAFTA signatories requests it. ECEs cannot be created explicitly to address labor rights issues.

Other criteria that topics for ECEs must satisfy are not onerous: they can be established on any "trade-related," "mutually recognized," "technical labor standards" issue. "Trade-related" is defined broadly, to encompass both directly traded products and goods and services that compete with those produced in the two other countries. This should include non-traded inputs to traded goods (e.g., janitorial and food services to a factory which competes indirectly with the same service input in the other two countries) and all services to tourists and international business travelers. "Mutually recognized" is also defined broadly. It requires that the country requesting an ECE and the country with which it requested. Ministerial consultations each have laws "that address the same subject matter in a manner that provides enforceable rights, protections, or standards." Mexican severance pay and U.S. and Canadian insurance for unemployed workers are mutually recognized, for example, because each addresses the "general subject matter" of cushioning workers from layoffs. Technical labor standards include forced labor, child labor, minimum wages, overtime and other hours regulations, employment discrimination, equal pay, health and safety, workers' compensation, and protection of migrant workers.

In addition to being accessible to one country, the potential of ECEs as a vehicle for fueling policy debate, not as a trilateral labor court, stems from their terms of reference. Their mandate is to analyze "in light of the objectives of this Agreement, patterns of practice by each Party in the enforcement of its...technical labor standards." As noted earlier, NAALC objectives range far beyond

the question of enforcement of existing law to improving living standards, promoting innovation, and raising productivity and quality. The requirement to examine the ECE topic as it is dealt with in each country contributes another element of breadth.

In its draft final report, each ECE must not only comparatively assess the matter under consideration, but also "where appropriate, [make] practical recommendations that may assist the Parties in respect of the matter." In preparing its report, the ECE may "invite written submissions from the public" and may also consider any information provided by organizations, institutions, and persons with relevant expertise, and the public" (thus hearings are not precluded).

In sum, broad-minded ECE members have the scope to address the underlying issues raised by particular "patterns of enforcement practice," including whether they suggest that North America is traveling down the wrong development path, thereby undercutting the potential to achieve the objectives of the agreement cited earlier. To make the same point in reverse, in any case in which pursuit of the low road manifests itself in the form of a failure to enforce technical labor standards, which encompasses virtually all cases, ECEs can be used as a vehicle for creating an expert committee with a mandate to explore this connection.

A lot depends on who is on the ECE. The chairs will come from a roster developed in consultation with the ILO, the other members from rosters developed by the signatories. At present, the U.S. list is made up of a subset of Federal Mediation and Conciliation Service arbitrators. In response to external pressure, lists could be expanded to include progressive economists and industrial relations experts.

For unions and NGOs to use ECEs effectively requires the cooperation, willing or coerced, of at least one of the three countries. At least one country has to request the ECE, to advocate selection of forward-looking committee members, and to prevent a unanimous vote of the council from blocking the release of a good report. Examples of some possible topics for ECEs follow.

Labor Standards and the High Road in the Apparel Industry An ECE on this topic might build on recent publicity about oppressive working conditions within sweatshops in the United States and Latin America. Widespread failure to enforce "technical" labor standards in apparel in all three countries supply a clear basis for creating an

ECE.¹⁷ An ECE might be initiated through a request from concerned parties (trade unions, rights activists, possibly "high road" employers) in all three countries. Alternatively, until more Canadian provinces accede to the agreement, a request could focus on poor Mexican enforcement or on problems documented by a recent U.S. Department of Labor anti-sweatshop campaign.

An ECE could examine the patterns of wage, health and safety, and child labor enforcement problems observed in the apparel industry, and how industrial development and labor policy might reduce them. It could consider how much North American wage, hour, safety, and child labor violations stem from the renewed viability of low-productivity sweatshops. It could also consider whether low standards impede the spread of more productive organizational methods and technologies. Its recommendations might propose national and continental standards, plus support for new methods within geographic concentrations of apparel production, that would spread above-average practice and stamp out its opposite.

Since small shops and homework make regular state inspection of each worksite impossible, an ECE might recognize the need for encompassing worker organizations to effectively enforce standards – in effect, recognizing that labor rights are inseparable from technical labor standards. To contain cut-throat, low-road competition in small shops, an ECE might also note the importance of sectoral standards setting, through such means as the Quebec decree system, which extends the economic terms of bargained contracts throughout a designated sector, including non-union firms, or Mexico's sectoral bargaining in designated sectors (or "contracto ley" system).

A trilateral coalition of labor and allied organizations might also use the apparel sector to test NAALC's dispute settlement procedure. Once Canada fully accedes to the agreement, creating dispute settlement panels requires support from two out of three countries. Until then, on industry-specific issues in which most production takes place in provinces not under the agreement (such as apparel), a consensus decision to create a dispute panel might be needed.¹⁸ If a dispute panel is formed, all three countries might be found to exhibit a "persistent pattern" of failure to effectively enforce standards. Under the NAALC, money collected by penalties (fines or trade sanctions) for this failure would go back to the offending country to address the problem. Penalties on all three countries

might create a fund to establish a high road national and continental regulatory structure and to promote advocacy in international fora to extend such a structure beyond North America.

Health and safety in the auto industry Restructuring and the introduction of "lean production" appear to have increased injury rates in the North American auto assembly industry.⁷ One could interpret this as a consequence of union representation weakened through "whipsawing" (playing off plants within and across countries against one another) and, in Mexico, through the frustration of efforts to create more responsive and independent unions. More accidents in smaller suppliers, along with wage and hour violations, probably result from less sophisticated attempts to raise work standards and cut costs. Among both assemblers and suppliers, injuries and the conditions that give rise to them threaten the cooperation within the workplace and across organizational boundaries conducive to performance improvement. Low road restructuring, in sum, manifests itself again in particular kinds of labor standards violations under the jurisdiction of ECEs.

An ECE formed on injury and illness problems in the auto industry might thus be used to get at the larger question of how to achieve more productive restructuring. Similarly, what role would better protection of labor rights, continental labor standards (starting in the health and safety area), additional investment in training for front-line workers, and continental works councils all play?

Agriculture An ECE on labor conditions among migrant farmhands might provide an avenue for publicizing extreme abuses of child labor and basic health and safety laws. It might consider as well whether low or unenforced standards retard productivity growth. Since immigrant Mexican labor contributes to low standards and poor enforcement in the United States and Canada, a study might underscore the need for continental regional development funds to create employment in the source regions of migrant workers.

Trucking In the trucking industry, violation of maximum hours regulations within the United States is a symptom of proliferating low road "sweatshops on wheels" (I owe this phrase to Michael Belzer) since deregulation almost two decades ago. The problem could be made worse if the current barriers on Mexican truckers' access to the U.S. market were lifted.

Telecommunications and banking are undergoing radical restructuring in all three countries and are under federal jurisdiction in Canada, so that they may be the subject of a request by Canada or based on developments in Canada.

Janitorial services In the United States, falling union density and the use of immigrant labor have driven wages towards and sometimes below the legal minimum. Some janitors are illegally classified as independent contractors or paid cash to escape labor and tax authorities. As in the agricultural case, an ECE on janitorial services in the United States might demonstrate concretely the link between the failure to create employment in immigrant-sending regions and the erosion of U.S. labor standards outside manufacturing.

The Minimum Wage In promoting NAFTA to congressional Democrats, Trade Representative Mickey Kantor made much of Mexico's domestic commitment to raise its minimum wage with future productivity. He argued that this provision, ostensibly rigid linkage of higher wages to the minimum, plus dispute settlement on the minimum wage in the NAALC amounted to a Mexican commitment to link average wages to productivity growth. Since the outbreak of the most recent crisis in Mexico, of course, the Mexican actual minimum wage has lost real value again. An ECE formed to consider this sequence of events might be used to create an expert committee on the role of minimum wages generally.

B. Cooperative Programs

Relative to ECEs, the advantage of cooperative programs, including special secretariat studies, is that they can focus on any topic, including labor rights and development strategy. The disadvantage is that they require consensus from the three governments (although the governments could, by consensus, give *ad hoc* committees independence). The challenge is thus to persuade or pressure government officials to use cooperative programs creatively. This might develop a more detailed map of the high road and bring business into a dialogue framed in terms of the general interest.

Sectoral development studies with tripartite participation Labor representatives in all three countries could request support from their government or NAALC institutions for tripartite, trinational

studies of development in particular sectors. This would be consistent with the NAALC preambular resolution to encourage "consultation and dialogue between labor, business and government in each country and in North America." Dialogue along these lines would follow the example of labor-business dialogue with the sectoral committees created with the support of the European Commission and under the auspices of the Europe-wide labor and business federations (the European Trade Union Confederation and UNICE, the employers federation).

Complementing dialogue in particular sectors, labor could also advocate broader tripartite dialogue, funded by or through the secretariat, on "the redefinition of corporate responsibility" in the continental economy. Such broader dialogue might foster more attention to the adverse social and economic consequences of the deregulatory view that corporations have no responsibility.

Tracking Progress towards the High Road One way to bring more public attention to North American progress, or lack of it, towards a high road would be to develop explicit measures of such progress. This might be done through the establishment of a quasi-independent equitable growth committee (EGC) that includes the head of the main labor statistical agency and one academic from each country. Staffed by adding three economists to the secretariat and building on the upcoming secretariat seminar on wages and productivity, such a board could have responsibility for defining wage, benefit, productivity, and inequality (including wealth) statistics that could be collected in common for all three countries and compared with other countries at similar levels of development; proposing additional data collection necessary to improve the comparability of statistics; and for issuing an annual report that would include the latest statistics. Inequality should be tracked for its own sake as well as because high levels of inequality correlate with slower productivity growth rates in cross-national data.¹⁹ One reason for this may be the political instability common in economically polarized nations. A second reason may be the unwillingness of dominant elites in countries with high levels of inequality to pay taxes that would finance education and training for the rest of the population.²⁰

Such an EGC might also develop novel indicators to capture, as well as possible, whether North America is following the high road. Although not generally recognized, the current debate about the

measurement of the Consumer Price Index in the United States points to the increasing inadequacy of the GDP as a proxy for social progress. The GDP has always been a conceptual fiction because of the impossibility of accurately measuring changes in prices due to quality and new goods and services (the focus of the U.S. debate), as well as because of the omission of non-market production and the failure to account for environmental externalities. The arbitrary and subjective nature of GDP accounting is simply more apparent as we move further away from an economy focused on producing more black Model T's per worker each year towards one dominated by intangible services as well as higher quality and more rapidly evolving products. To know how we are doing as national economies and as a North American continent, it makes sense to incorporate social outcomes directly into a proxy for general well-being -- health, education, poverty and inequality, low crime rates, etc. Along these lines, Statistics Canada is doing exploratory work on a measure called the "General Progress Indicator."²¹ The United States and Mexico should do the same, as should the continent as a whole. This suggestion will be resisted by economists as well as by those who fear that a new indicator may suggest that all is not well in North America. Such resistance demonstrates the virtue of the idea.

Michael Piore has also suggested the development of a hierarchy of standards assessing organizational competence along the lines of the ISO 9000 standards developed in Europe as one means to measure and sustain progress towards the high road. In conjunction with national statistical authorities and in dialogue with industry associations, the secretariat might be asked to consider the feasibility of surveys to assess progress according to production standards, starting within manufacturing.

A trinational commission on North American labor law for the 21st century All three countries of North America have recently debated the need to reform their labor law and labor market institutions to adapt to the changes since each national framework was put in place roughly 50-60 years ago. The U.S. did this through the Dunlop Commission; several Canadian provinces have had vigorous debates about labor law and changes of the law in pro-union and anti-union directions; Mexico's tripartite "Principles of the New Labor Culture" is the latest manifestation of an on-again, off-again discussion about labor law reform since shortly after President Salinas took power in 1988.

In light of this mutually recognized need, the three countries could establish an independent tri-national commission on labor law, including industrial relations. Rather than enforcement of existing law, the terms of reference for the commission should explicitly ask how law needs to be changed to serve economic and social goals in the contemporary economy: e.g., the relationship between labor policy and the "promotion of competition based on innovation and rising levels of productivity and quality," the link between labor rights and enduring workplace cooperation, the role of substantive standards in discouraging sweating (in services as well as manufacturing), and how training and employment security can be achieved if workers have weak attachments to individual firms. Adequate language for the terms of reference could be taken straight from the preamble to the NAALC.

Bringing the three countries together to address these issues would encourage cross-fertilization and lead to more focus than earlier national or sub-national analyses on the governance of the most interdependent sectors and labor markets linked by trade, labor mobility, or both.

C. Changing the Agreement

In principle, the NAALC might be strengthened through changes to the agreement itself. Facilitating this possibility, the agreement contains a provision requiring a review of its effectiveness in the light of experience by the end of 1997. In the United States, NAFTA itself is also due this year for a congressionally-mandated review of its effects in the United States. One option would make labor rights subject to ECEs. According to staff in the Office of the U.S. Trade Representative (USTR) at the time, this could have been achieved in the initial negotiations. When Mexican negotiators gave USTR chief Mickey Kantor a choice between having labor rights subject to ECEs or the minimum wage subject to dispute settlement, Kantor chose the latter.

A second way to strengthen the agreement would be to give the secretariat more independence, including the authority to conduct and make public independent studies or form expert advisory committees on topics of its own choosing. An expanded role makes sense in light of the secretariat's concentration of knowledge on all three countries, and its policy as opposed to adversarial enforcement orientation. The secretariat would not gain any power to change

domestic policies through this modification; it would gain the capacity to make proposals relevant to the promotion of the high road.

A third change would eliminate the Annex that restricts Canada's full incorporation into the NAALC until further provincial accession takes place. Since the NAALC essentially contains no enforcement power, this does not represent a delegation of provincial authority to a supra-national body. Moreover, as Robinson has pointed out, NAFTA itself trampled on provincial authority (e.g., in the area of government procurement, in which real penalties do exist) without the federal government requiring an explicit provincial opt in.²² Full Canadian incorporation into NAALC might accelerate the development of a tri-national critique of U.S. labor law analogous to that now developing on Mexico. It would build international pressure in favor of modernizing U.S. labor law to resurrect the right to organize and enable U.S. workers to share equitably in -- and contribute more towards -- prosperity.

VI. THE POLITICS OF A CONTINENTAL HIGH ROAD: MAGGIE'S "NINA" PROBLEM

Significant political obstacles remain to making NAALC a central component of a push towards a continental high road path. Reasons exist for believing that progress is, nonetheless, possible.

Despite the inability, any longer, to threaten to withhold NAFTA, the U.S. retains more than enough leverage over Mexico to negotiate a stronger labor agreement and the gradual adoption of reforms and upward harmonization of labor standards. From Mexico's own perspective, since it has been most victimized by neoliberalism, it stands to gain the most from negotiating new trade-offs consistent with a move towards an alternative. These trade-offs might include development funds and greater recognition of Mexico's need for temporary protection to permit domestic adjustment.

The labor movements in Canada and the United States now show signs of focusing more attention on strengthening social provisions in NAFTA and any more encompassing hemispheric trade agreements. While it criticizes NAALC sharply, the Canadian Labour Congress is on record as saying that NAALC should not be weakened in any expansion of NAFTA to incorporate additional countries. During the negotiation of the Canada-Chile FTA, which includes a bilateral labor agreement, the CLC sought specific improvements in a framework based on the NAALC. But the Canadian government

followed the NAALC to the letter as much as possible to ensure easy harmonization of the Chile-Canada labor agreement with NAALC in the event of Chilean accession to NAFTA. The CLC then reiterated its view of NAALC's inadequacy. It argued instead for a "social charter" which would incorporate international standards (as opposed to respect for national law) "within" a Chile-Canada agreement.

In the United States, AFL-CIO president John Sweeney, elected in 1995, has now appointed Barbara Shailor as the new head of international affairs. In the past, the AFL-CIO left the utilization of the NAALC and other international labor rights instruments substantially up to the human rights and labor rights communities. Now the possibility exists that the federation will more strategically seek to adopt the orphan NAALC, relieving its foster parents, the international labor rights community.

An emerging small group of "high road" proponents within the U.S. labor movement might equip it to more effectively advocate an alternative continental development strategy. Members of this group have gained understanding of corporate strategy and business operations through participation in joint labor-management programs at individual plants, and through participation with regional consortia created to promote reorganization and upskilling consistent with high-productivity development. They have an understanding of industrial development uncommon within U.S. and Canadian unions during the industrial union era and not possessed by traditional advocates for international labor standards. They should thus be able to make a more concrete and compelling economic case for the international institutional complements to a domestic high road. U.S. labor's attempts to reestablish links with academia may also give it new capacity to frame a convincing economic case for standards. Such links might take the form of a group of economists and industrial relations specialists equivalent to the volunteer lawyers group, "Labor Advocates." Labor Advocates, a spin off of the International Labor Rights Fund in the United States, has provided critical support to normative and legal advocacy for international rights and standards (e.g., doing much of the work to file NAALC submissions).

As in the negotiation of the side agreement initially, the biggest short-run political obstacle to progress on NAALC and towards a continental high road stems from the interaction of the

Clinton administration, Republicans in the U.S. Congress, and U.S. business interests. To try to persuade the Clinton administration to depart from a neoliberal strategy, U.S. labor leaders or congressional Democratic opponents of NAFTA, such as Richard Gephardt, might propose a joint trip with administration representatives to the border area. By confronting cabinet officials with the devastation wrought by neoliberalism, similar trips contributed to the closeness of the original U.S. vote on NAFTA. A trip might be part of the politicking in relation to the NAFTA review and to possible changes to the NAALC. Perhaps U.S. secretary of the treasury Robert Rubin, the new labor secretary, Alexis Herman, and Hillary Clinton could be persuaded to lead a delegation.

U.S. business lobbyists in Washington already perceive the NAALC to be too strong. Under business pressure, some Republicans in Congress want to condition a grant of authority to negotiate a Chile accession agreement on a commitment not to extend NAALC to Chile. But this recalcitrance opens these Republicans up to isolation as enemies of hard-working Americans in the same way as did their opposition to a U.S. minimum wage increase last year. The minimum wage passed despite a Republican Congress because it tapped surprisingly strong grass roots sentiment that lower-wage workers deserved better.

The most effective argument to business and the Clinton administration may be that trade expansion will stall unless trade agreements contain social and development provisions sufficient to discourage the low road. Rather than legitimizing neoliberalism, as some fear, engaging with NAALC to elaborate the high road could make the threat to stall trade expansion more credible. Once it becomes clear that a far superior practical alternative to neoliberalism exists, whether its implementation begins with NAFTA abrogation or NAFTA and NAALC revision seems almost like a technical detail. Once it becomes clear that there is an alternative, Margaret Thatcher and other zealous advocates of deregulation may find themselves confronting their own NINA problem – after all, when you weigh its social of economic consequences, Neoliberalism Is No Alternative (NINA).

ACRONYMS

CLC	Canadian Labour Congress
ECE	evaluation committee of experts
EGC	equitable growth committee
GDP	gross domestic product
ILO	International labour Organization
IMF	International Monetary Fund
ISI	import substitution industrialization
NAALC	North American Agreement on Labor Cooperation
NAFTA	North American Free Trade Agreement
NAO	national administrative office (of NAALC)
NGOs	non-governmental organizations
NLRB	(U.S.) National Labor Relations Board
OTA	(U.S.) Office of Technology Assessment
USTR	United States trade representative
USDOL	United States Department of Labor

NOTES

¹ For a harrowing depiction of conditions just south of the US.-Mexico border, see Charles Bowden, "While You Were Sleeping: In Juarez, Photographers Expose the Violent Realities of Free Trade," *Harper's*, (December 1996): 44-52. For a critical review of NAFTA's impacts which includes a sketch of an alternative, see Sarah Anderson, John Cavanagh, and David Ranney eds., "NAFTA's First Two Years: The Myths and the Realities," available from the Institute for Policy Studies, Washington D.C.

² On the distinction between a normative and economic case for standards, see Michael J Piore, "Labor Standards and Business Strategies," in Stephen Herzenberg and Jorge F. Perez-Lopez, eds., *Labor Standards and Development in the Global Economy* (Washington, D.C.: U.S. Department of Labor, Bureau of International Labor Affairs, 1990). For an application of this distinction to current debates about international labor standards, see Stephen Herzenberg, "In from the Margins: Morality, Economics, and International Labor Rights." In Lance Compa and Stephen Diamond, eds., *Labor Rights, Human Rights, and International Trade* (Philadelphia, PA: University of Pennsylvania Press, 1996).

³ The contrast between institutional and neoclassical economics here draws from Michael Piore, "Trade and the Social Structure of Economic Activity (Trade, Restructuring, and the Work Place)," paper prepared for the Brookings Conference on Imports, Exports and the American Worker, Brookings Institution, Washington, DC., February 2-3, 1995.

⁴ For the empirical basis and analytics underlying the distinctions between negotiated, lean, and autocratic variants of shop floor relations, see Stephen Herzenberg, *Toward A Cooperative Commonwealth? Labor and Restructuring in the US and Canadian Auto Industries*, unpublished PhD dissertation, MIT Department of Economics, 1991. For an abbreviated version of the argument, see the discussion of work organization in Stephen Herzenberg, "Whither Social Unionism? Labor and Restructuring in the U.S. Auto Industry," in Jane Jenson, ed., *Canadian and American Unions Respond: Economic Restructuring and Union Strategies* (Philadelphia, PA.: Temple University Press, 1993). For another analysis of the distinction between lean production and negotiated flexibility (which they call the American Model), see Eileen Appelbaum and Rosemary Batt, *High Performance*

Work Systems: American Models of Work Place Transformation (Ithaca: Cornell University Press, 1994).

⁵ Phil Neuenfeldt and Eric Parker, *Wisconsin Regional Partnership: Building the Infrastructure for Workplace Development* Washington DC: AFL-CIO Human Resources Development Institute, January 1996.

⁶ Stephen Herzenberg, "Regulatory Frameworks and Development in the North American Auto Industry," in Frederick Deyo, ed, *Social Reconstructions of the World Automobile Industry: Competition, Power, and Industrial Flexibility*, (New York: St. Martins, 1996), 261-294. For detailed analysis of the productivity data, see Stephen Herzenberg and David Campbell, "Productivity in U.S. Auto Suppliers," draft working paper, MIT International Motor Vehicle Program, revised December, 1993. While the data in this last reference stop in 1988, data through the early 1990s for the major U.S. auto parts industry classification as a whole show a continuation of productivity stagnation.

⁷ OTA, *US.-Mexico Trade*, chapter 9, 174-193. The discussion of apparel in the text also draws from case study and survey research by Eileen Appelbaum, Tom Bailey, and Peter Berg. This research has analyzed modular production and its impact on performance and jobs.

⁸ For a detailed analysis of "sweating" with an illustration through an apparel example, see Piore, "Labor Standards and Business Strategies," *op cit*.

⁹ Initial research suggests the relevance of the high road and low road dichotomy in services. In services, low-productivity sweating rather than low-wage mass production more commonly characterizes work organization along the low road. See John Alic, Stephen Herzenberg, and Howard Wial, *Better Jobs for More People: A New Deal for the Service Economy*, a Twentieth Century Fund book, forthcoming. For a detailed analysis of the low road and high in long-term care, see Susan Eaton, "Beyond Unloving Care: Achieving Quality Care and Quality Jobs in the Pennsylvania Long-term Care Industry" (Harrisburg, PA: Keystone Research Center, High Road Industry Series #1, forthcoming 1997).

¹⁰ Most Canadian social organizations would have regarded this as impossible, by definition, because of NAFTA's restrictions on governmental authority to regulate the economy in ways consistent with

more autarkic egalitarian development. In the United States, many government authorities restricted by NAFTA (investment regulations, government procurement, local content provisions) have rarely been used. In addition, although the anti-NAFTA coalition ultimately came close to derailing the agreement, early on in the Clinton administration efforts to vote NAFTA down seemed like a long shot. Canadian and some U.S. progressives also tended to see any attempt to transform NAFTA as futile because they saw Clinton, from the beginning, as beholden to the "corporate agenda."

¹¹ The next several paragraphs summarize arguments that I made in early 1993 within the US. Labor Department and the interagency process, including an opportunity to present these overarching strategic arguments directly to U.S. Labor Secretary Robert Reich at a one-hour briefing and in a memo given to him prior to the meeting. Subsequent memos to Reich, transmitted by chief economist Larry Katz of the U.S. Department of labor, generally took for granted that there would be no substantial recasting of the agreement. Given this basic U.S. position, they made the case for as strong a side agreement as possible.

¹² On this notion, see Herzenberg, "Regulatory Frameworks," *op cit.*, 285-287.

¹³ Robert Reich, *The Work of Nations: Preparing Ourselves for 21st Century Capitalism* New York: Knopf, 1991

¹⁴ On this distinction, see again Piore, "Labor Standards and Business Strategies."

¹⁵ The initial draft of this language was intended to point more clearly to the possible need for occupational forms of trade unionism to bolster training, multi-employer career ladders, and wage and benefit regulation in small enterprise and unstable sectors (eg., most of the low-wage service sector). The point proved difficult to capture in a simple, unthreatening phrase. For more on such forms of trade unionism, see Howard Wial, "Emerging Forms of Trade Unionism in the Low-wage Service Sector," *Rutgers Law Review*, (Summer 1993); and Stephen Herzenberg, "Worker Identity, Union Structure, and the Clerical Occupation," forthcoming, *Workplace Topics*.

¹⁶ For discussion of the first two cases, see Lance Compa, "The First NAFTA Labor Cases: A New International Labor Rights Regime Takes Shape," *US.-Mexico Law Journal*, 3 (Symposium 1995): 159-181.

For an update and discussion of the Sony case, see Lance Compa, "Another Look at the NAFTA Labor Accord," unpublished paper, NAALC Labor Secretariat, Dallas, Texas. For additional detail and a Canadian perspective, see Roy J. Adams and Parbudyal Singh, "Early Experience with NAFTA's Labour Side Accord," paper presented at the 33rd Annual Conference of the Canadian Industrial Relations Association, Brock University, St. Catherines, Ontario, Canada, May 29-31, 1996.

¹⁷ In Canada, for example, a recent study of garment homework and small shops in Ontario reports an "abysmal failure to enforce..basic employment standards." See Ontario District Council and Intercede, "Meeting the Needs of Vulnerable Workers: Proposals for Improved Employment Legislation and Access to Collective Bargaining for Domestic Workers and Industrial Homeworkers," Toronto, Ontario, February, 1993.

¹⁸ When they concern sectors under provincial jurisdiction in Canada, the rules governing dispute panel creation for problems originating in the US. and Mexico are not spelled out in the NAALC.

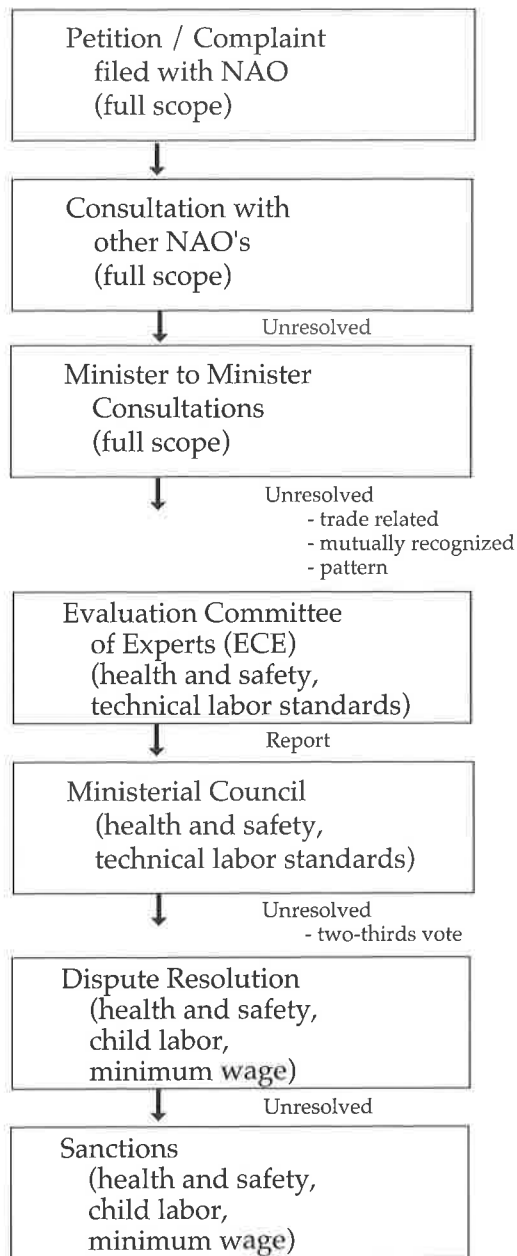
¹⁹ For a brief summary of some of the empirical results on inequality and growth, see Michael Bruno, Martin Ravallian, and Lyn Squire, "Equity and Growth in Developing Countries" Washington, DC.: World Bank Policy Research Working Paper No. 1563, January, 1996.

²⁰ For an institutional perspective on polarization and development, see Tarig Banuri, "Comments," in Herzenberg and Perez-Lopez eds, *Labor Standards and Development in the Global Economy*.

²¹ Clifford Cobb, Ted Halstead, and Jonathon Rowe, "If the GDP is Up, Why is America Down? *Atlantic Monthly*, (October 1995): 59-78

²² Ian Robinson, "The NAFTA Labour Accord and the Canadian Labour Movement," paper presented to the Symposium on International Labor Rights and Standards After NAFTA, Rutgers University, May 2-3, 1996, and revised in November, 1996.

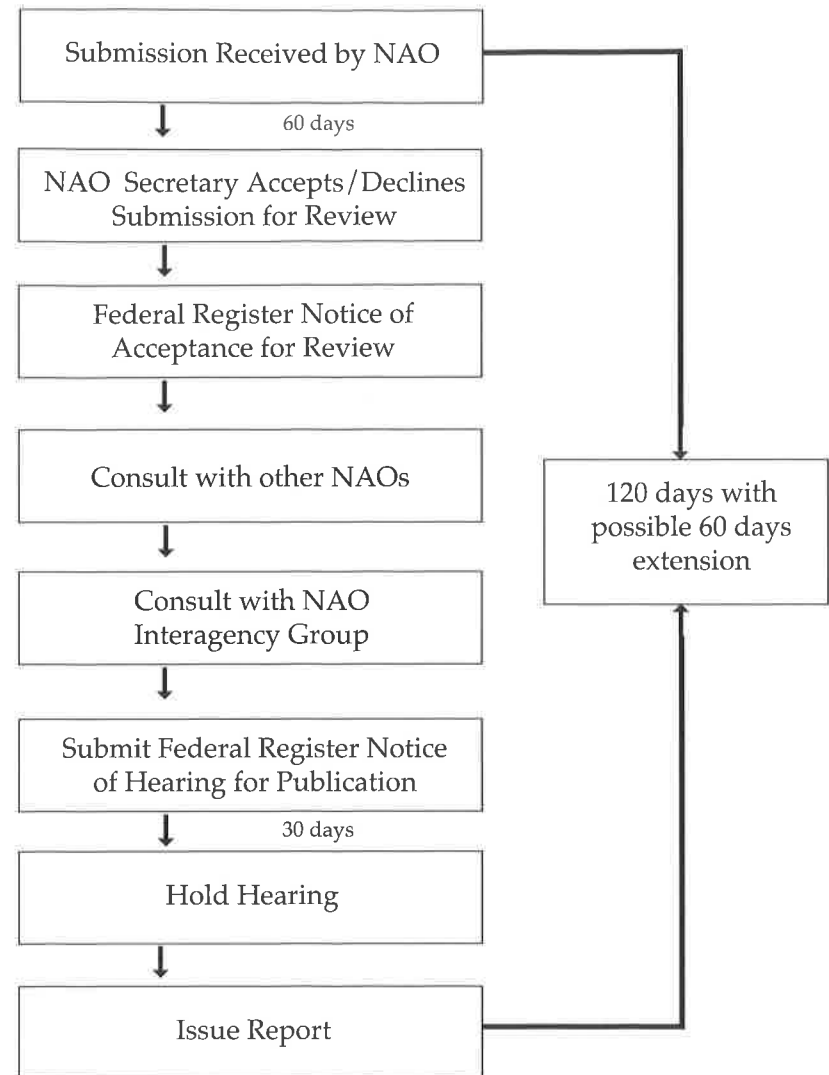
Appendix 1 NAALC Process



Secretariat
- publications
- staff/technical
assistance to
Min. Council

SOURCE: U. S. National Administrative Office

Appendix 2 Submissions Timeline



SOURCE: U. S. National Administrative Office

CANADIAN-AMERICAN PUBLIC POLICY

Occasional papers on a wide range of issues in U.S.-Canadian relations

- CAPP 1: April 1990 — **Canada-U.S. Relations in the Bush Era**
Joseph T. Jockel
- CAPP 2: July 1990 — **Transboundary Air-Quality Relations: The Canada-United States Experience**
John E. Carroll
- CAPP 3: October 1990 — **Canadian Culture, the Canadian State, and the New Continentalism**
Allan Smith
- CAPP 4: December 1990 — **Forests, Timber, and Trade: Emerging Canadian and U.S. Relations under the Free Trade Agreement**
Thomas R. Waggener
- CAPP 5: March 1991 — **Change and Continuity in Canada-U.S. Economic Relations**
William Diebold
- * CAPP 6: June 1991 — **Trade Liberalization and the Political Economy of Culture: An International Perspective on FTA**
Graham Carr
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