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The Labor Cooperation Agreement among Mexico, Canada and the United States: Its Negotiation and Prospects

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THE LABOR COOPERATION AGREEMENT AMONG MEXICO, CANADA AND THE UNITED STATES: ITS NEGOTIATION AND PROSPECTS

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I. INTRODUCTION

The North American Agreement on Labor Cooperation (NAALC)[1] represents the first time in the modern trading era (i.e., the period since the General Agreement on Tariffs and Trade (GATT)[2] was adopted) that an international agreement on labor has been linked to a trade agreement, both politically and legally. The labor agreement was negotiated entirely after the North American Free Trade Agreement (NAFTA)[3] was signed, with a different President and negotiating team on the United States side. It sets up some novel institutions and commits the three governments—United States, Mexico and Canada—to a program of cooperation on some of the most novel issues presently faced by international economic policymakers and politicians. These issues are likely to be the subject of serious attention for international businessmen, labor unions and political leaders during the next five to ten years.

The labor side agreement has the potential for significant achievements, but also for creating some of the more serious difficulties in the U.S.-Mexico trading relationship. Yet it was drafted rather rapidly and under conditions of intense political controversy. Thus, it is useful to have a brief understanding of its historical and political context.

II. HISTORICAL BACKGROUND OF THE NAALC

The idea of using a trade agreement between countries to influence labor policies was raised in the early decades of this century.[4] However, by and large, the international institutions and agreements for regulating trade and for regulating labor matters developed on separate tracks. On one track is the GATT, and on another is the International Labor

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1. North American Agreement on Labor Cooperation, Sept. 14, 1993, U.S.-Can.-Mex., 32 I.L.M. 1499 [hereinafter NAALC or "the Agreement"].

2. General Agreement on Tariffs and Trade, April 10, 1947, 55 U.N.T.S. 194, *reprinted in* 1 BASIC DOCUMENTS OF INTERNATIONAL ECONOMIC LAW 9 (Stephen Zamora & Ronald A. Brand, eds., 1990).

3. North American Free Trade Agreement, Dec. 17, 1992, U.S.-Can.-Mex., H.R. Doc. No. 103-159 (effective Jan. 1, 1992) [hereinafter NAFTA].

4. *See generally* Lance Compa, *Labor Rights and Labor Standards in International Trade*, 25 LAW & POL'Y INT'L BUS. 165 (1993).

Organization (ILO)[5] and the many agreements it sponsored. Another example is the United States-Canada Free Trade Agreement,[6] negotiated only eight years ago, in which there was no suggestion of a labor side agreement.

The impact of trade liberalization on workers during the GATT era (i.e., since World War II) was not neglected. It was addressed in all the trade negotiations by putting transitional measures into trade-liberalizing agreements. Tariffs were lowered gradually, allowing adjustment of workers and firms before the full impact of competition created by the trade liberalizing agreement was felt. The impact of trade liberalization on workers was also often addressed in the domestic adjustment programs of individual countries that were parties to trade agreements, through labor retraining programs and other adjustment measures.

The suggestion of a free trade agreement between the United States and Mexico, which arose in 1989 and 1990 in early meetings between President Carlos Salinas de Gortari and President George Bush, also contained no reference to inclusion of labor or environmental issues in the agreement.[7]

The issue was first raised in the spring of 1991, when President Bush had to obtain congressional acquiescence for a two-year extension of the so-called fast track authority, thus allowing time for him to negotiate NAFTA. His fast track negotiating authority was coming to an end, and there was a provision in the law allowing a two-year extension if it was not disapproved by Congress within a certain period of time.[8] When he made that request in early spring of 1991, a number of members of Congress supported the concerns expressed by labor unions and environmental organizations that free trade with Mexico would expose U.S. industry and workers to competition from companies in Mexico which did not have to comply with standards applicable to United States-based companies. House Majority Leader Richard Gephardt articulated these views as the Democratic leader,[9] and they were widely shared among members of Congress.

On March 7, 1991, Senator Lloyd Bentsen, then Chairman of the Finance Committee and the Senate leader on trade matters, wrote President Bush a carefully prepared letter.[10] In this letter, Senator Bentsen expressed

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5. The ILO is a United Nations-related body that fashions labor rights and labor standards by government, business and labor. For a concise history of the ILO, see DAVID A. MORSE, THE ORIGIN AND EVOLUTION OF THE ILO AND ITS ROLE IN THE WORLD COMMUNITY (1969).

6. The United States-Canada Free Trade Agreement, Jan. 2, 1988, U.S.-Can., *reprinted in* 2 BASIC DOCUMENTS OF INTERNATIONAL ECONOMIC LAW 359 (Stephen Zamora & Ronald A. Brand, eds., 1990).

7. *See Understanding between the Government of the United Mexican States and the Government of the United States of America Regarding Trade and Investment Facilitation Talks, Action Plan for Implementation of the October 3 Mandate to Initiate Trade and Investment Facilitation Talks, & Joint Communique on Trade and Investment, reprinted in* 6 Int'l Trade Rep. (BNA) 1325 (1989).

8. *See* Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, 102 Stat. 1107, *reprinted in* 28 I.L.M. 15 (1989).

9. Congressman Richard Gephardt, Statement on Fast-Track Authority (May 9, 1991).

10. *Bentsen, Rostenkowski Urge Bush to Address Environment, Labor & RTA Talks*, 109 U.S. TRADE, Mar. 8, 1991, at 21-26.

various concerns that were circulating in Congress and asked President Bush to give assurances to Congress on how he would handle these concerns in the course of negotiating a free trade agreement with Mexico.[11] Of course, what Senator Bentsen had in mind was, "Let's take care of these issues early. Give them your attention and give the Congress the kind of reassurances it needs so that in the approval of the fast track authority for the negotiation with Mexico, we can know that those issues are going to be adequately taken care of and we can smooth the way for negotiation of a trade agreement and for eventual approval of it by Congress." One of the prominent issues identified in Senator Bentsen's letter was, of course, the adequacy of labor standards and worker rights in Mexico.[12]

A little less than two months later, on May 1, 1991, President Bush sent a carefully crafted response to Senator Bentsen,[13] which was circulated throughout Congress. On the labor issue President Bush wrote, "President Salinas has . . . made it clear to me that his objective in pursuing free trade is to better the lives of Mexican working people. Mexico has strong laws regulating labor standards and worker rights. Beyond what Mexico is already doing, we will work through new initiatives to expand U.S.-Mexico labor cooperation."[14] The phrase, "U.S.-Mexico labor cooperation," signaled a commitment by the President to the Congress. In the appendices to his response, President Bush reported that the U.S. and Mexican Secretaries of Labor were prepared to sign a memorandum of understanding regarding cooperation and joint action on a series of concerns of workers, including health and safety measures, labor standards and enforcement, labor conflicts, exchange of statistical information, and various other areas of concern.[15]

On May 9, 1991, Majority Leader Gephardt announced that he would support the fast track extension on the basis of President Bush's commitment.[16] He did make clear that he reserved the right to oppose the agreement when it came back to Congress after being negotiated if it did not achieve certain goals.[17] With that kind of support, the fast track extension that President Bush requested was granted and the negotiations began.

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11. *Id.*
12. *Id.*
13. President George Bush, Response of the Administration to Issues Raised in Connection with the Negotiation of a North American Free Trade Agreement, 27 WEEKLY COMP. PRES. DOC. 536-37 (May 1, 1991).
14. President George Bush, Letter Accompanying the Response of the Administration to Issues Raised in Connection with the Negotiation of a North American Free Trade Agreement, 27 WEEKLY COMP. PRES. DOC. 537 (May 1, 1991).
15. Memorandum of Understanding Regarding Cooperation between the Department of Labor of the United States of America and the Secretariat of Labor and Social Welfare of the United Mexican States, *attached to* Response of the Administration to Issues Raised in Connection with the Negotiation of a North American Free Trade Agreement, 27 WEEKLY COMP. PRES. DOC. 536-37 (May 1, 1991).
16. *Gephardt Supports Fast Track But Leaves Door Open for Future Amendments*, 9 INSIDE U.S. TRADE, May 10, 1991, at 18-19.
17. *Id.*

When the NAFTA negotiations were completed in the fall of 1992, the Bush Administration gave a further report to Congress on progress under the Memorandum of Understanding on Labor Cooperation.[18] That report describes extensive cooperative activities and improvements achieved in labor standards and enforcement in Mexico. It details how there had been improvement in Mexico's own administration of its laws. It also reported on the establishment of a new Consultative Commission on Labor Matters to oversee joint activities and to serve as a forum for continued consultation.[19] It announced the formation of a U.S. working group to receive complaints from U.S. labor unions and others which could be taken up in the Consultative Commission.[20] Thus President Bush, in effect, satisfied—or sought to satisfy—the concerns of Congress through what he called a "program on labor cooperation." This was not a binding agreement, but rather a memorandum of understanding and a program worked out between the Secretaries of Labor of the two countries.

President Bush signed NAFTA on December 17, 1992.[21] President Bush's plan had been to present NAFTA to Congress along with a report on progress under the program on labor cooperation, to fulfill his May 1, 1991, commitment to congressional leaders. The President would have sought to sell NAFTA and the labor program to Congress in that fashion, but for a very important intervening development—the electoral defeat of President Bush one month earlier. When Bush signed NAFTA in 1992, he was a "lame duck" and was not in a position to send NAFTA to Congress. That would be a task for the new President.

This was the first instance, since the establishment of our modern trading system, in which a trade agreement signed by one President had to be presented to Congress by a different President. This situation put President Bill Clinton in a tight political spot.

Clinton had been, during the campaign, quite ambivalent about his support for NAFTA. In early October 1992, he gave a campaign speech in which he announced his support for NAFTA.[22] But his support was qualified. He said, in effect, that free trade has brought big economic benefits and free trade with Mexico is very promising, but NAFTA fails to address important potential adverse consequences of free trade with Mexico, one of them being certain impacts on workers.[23] Therefore, he called for negotiation of supplemental agreements, requiring each country to enforce its own laws on environment and worker standards. He stated

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18. *Bilateral Cooperation on Labor Issues: Labor Standards, Worker Health and Safety, and Worker Rights, printed in* Report of the Administration on the North American Free Trade Agreement and Actions Taken in Fulfillment of the May 1, 1991 Commitments (Sept. 18, 1992).

19. *Id.*

20. *Id.* at 16-17, app. A.

21. *President Bush Signs NAFTA at Ceremony; Clinton to Meet with Salinas in January*, 9 Int'l Trade Rep. (BNA) 2162 (Dec. 23, 1992).

22. Governor Bill Clinton, Expanding Trade and Creating American Jobs, Address at North Carolina State University (Oct. 4, 1992).

23. *Id.*

that NAFTA would be bad for the United States if implemented as Bush had planned, but good for the country if implemented with the proposed supplemental agreements.[24] This rhetoric focused the political attention, including the debate about the desirability of NAFTA, not on NAFTA itself (a 2,000-page, painfully negotiated document), but on the proposed side agreements on labor and environmental consequences of NAFTA. President Clinton thus raised high expectations for what he could achieve on these issues.

Clinton took office in January 1993, and the negotiation of the side agreements started in late spring.[25] There was intense pressure from some members of Congress, who urged President Clinton to obtain very strong agreements, i.e., "with teeth." This became the fashionable test of whether they would be "good" agreements. The separate agreements on labor and on the environment[26] were signed by the member countries in September 1993, and the NAFTA package was then presented to Congress. It was approved in November 1993, in a dramatic and very close vote.[27]

Despite the labor side agreement, Majority Leader Gephardt had decided not to support NAFTA; he became the principal leader of the opposition.[28] The labor unions continued to oppose NAFTA, declaring that they were not satisfied with the side agreement. Indeed, a majority of Democrats in the Congress did not support it. NAFTA was approved only by virtue of the strong support of the business community and some 130 Republican members of the House of Representatives, who joined the 100 supportive Democrats.[29]

III. OVERVIEW OF THE PROVISIONS OF THE NAALC

The NAALC seeks, first, to establish a broad cooperative program,[30] building on the Bush-Salinas memorandum of understanding and the Bush program of cooperation. But then it goes further and establishes certain obligations. The fundamental obligation is that each of the three parties—the United States, Canada and Mexico—is to ensure that its own labor laws provide for "high labor standards,"[31] while recognizing that each has the right to establish its own standards. In other words, the Agreement does not set a uniform standard on labor practices; it says

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24. *Id.*

25. *Negotiations of NAFTA Side Pacts Set Timetable to Finish Work by Summer*, 11 INSIDE U.S. TRADE, Mar. 19, 1993, at 1-2.

26. North American Agreement on Environmental Cooperation, Sept. 14, 1993, U.S.-Can.-Mex., 32 I.L.M. 1480 (1993).

27. *See* 139 CONG. REC. S16,712 (daily ed. Nov. 20, 1993); 139 CONG. REC. H10,048 (daily ed. Nov. 17, 1993).

28. Dan Balz, *Gephardt's "Quiet" Crusade Against NAFTA*, WASH. POST, Oct. 6, 1993, at A6.

29. *House Passes NAFTA With Ease, Giving Clinton a Major Policy Victory*, 46 INSIDE U.S. TRADE, Nov. 19, 1993, at 51-52; Kenneth J. Cooper, *Backers Claim Momentum to Carry NAFTA in House; Trade Pact Split Parties, Crossed Political Lines*, WASH. POST, Nov. 18, 1993, at A1, A10.

30. NAALC, *supra* note 1, art. 1.

31. *Id.* art. 2.

that the parties recognize that each country is in charge of its own labor law programs, but each will attempt to achieve a high level of protection.[32] The agreement does set forth some labor principles which were endorsed by all three countries as a sort of guideline for defining "high labor standards."[33]

The Agreement also calls on each government to promote compliance and to effectively enforce its own laws.[34] That is perhaps the central legal obligation of the Agreement. The Agreement also provides that each party will provide an opportunity for private persons to submit complaints to the government concerning lapses of labor law observance,[35] along with an opportunity for access to administrative and judicial tribunals for enforcing the labor law rights of individuals.[36]

It is important to note the kinds of obligations that were not included in the Agreement. There is no obligation to have the same rights in every country. There is also no obligation to have the same institutions or procedures for enforcing them, nor is there an obligation to have the same quality or style of labor management relations. Finally, there is explicit rejection of the notion of extraterritorial enforcement by any party in the jurisdiction of another.[37]

The processes the Agreement establishes for achieving compliance with the obligations can be confusing. Table 1, shown below, is an effort to outline these procedures. The chart does not include the whole affirmative cooperation program, but only the procedures designed to achieve compliance with the obligations each party has undertaken.

First, there is a category of activities which are called "Cooperative Consultations."[38] A National Administrative Office (NAO) is established in each country.[39] The NAO of any one country may request consultations with its counterpart in relation to the other party's "labor law" or its "administration," or "labor market conditions" in its territory.[40] This provision establishes a broad opportunity for the three NAOs to interact with each other and learn about each country's system.

If a problem arises on a particular matter, the Agreement then allows a party to request a Ministerial Consultation with another party on any matter within the scope of the Agreement.[41] That is the initial and primary way to take up a problem. If this Consultation does not take care of an issue, the Agreement moves on to a process called "Evaluations."[42] But, as the chart shows, the universe of topics that can be taken

32. *See id.*
33. *Id.* annex 1.
34. *Id.* art. 3.
35. *Id.*
36. *Id.* art. 4.
37. *Id.* art. 42.
38. *Id.* arts. 20-22.
39. *Id.* art. 15.
40. *Id.* art. 21.
41. *Id.* art. 22.
42. *Id.* art. 23.

TABLE 1

NORTH AMERICAN AGREEMENT ON LABOR COOPERATION
Cooperative Consultations, Evaluations and Dispute Resolution

I. COOPERATIVE CONSULTATIONS	II EVALUATIONS	III RESOLUTION OF DISPUTES
a. A NAO may request consultations with another NAO in relation to the other Party's labor law, its administration, or labor market conditions in its territory. (Art. 21)	If matter not resolved through ministerial consultations, a Party may request formation of Evaluation Committee of Experts (ECE). ECE may analyze only enforcement of laws relating to: • occupational safety and health • prohibitions on forced labor • protection for children • minimum wages • employment discrimination • equal pay for men and women • migrant worker protection Any matter reviewed by an ECE must be trade-related and covered by mutually-recognized labor laws in the disputing countries. (Art. 23)	a. After ECE report presented, a Party may request consultation regarding whether there has been a persistent patter of failure by another Party to enforce its laws on: • occupational safety and health • child labor • minimum wage. (Art. 27)
b. A Party may request consultations at the ministerial level on any matter within scope of the agreement. (Art. 22)		b. If consulting Parties fail to resolve the dispute, either may request special session of Council of Ministers, which will attempt to mediate. (Art. 28)
	ECE consists of outside neutral persons selected from a roster developed by the parties. "The ECE shall analyze, in the light of the objectives of this agreement and in a non-adversarial manner, patterns of practice by each party in the enforcement of [the standard in question] as they apply to the matter under consultation." (Art. 23)	c. If matter not resolved, a Party can request formation of arbitral panel. The complaint must be: • trade-related; and • relate to matter covered by mutually recognized laws. Panel will prepare initial and final report with opinion and recommendations. (Art. 29)
		d. If panel finds failure to enforce, parties have 60 days to agree on action plan; if no agreement, the panel can be reconvened and may approve a plan submitted by a party or establish its own. (Art. 38)
		e. If party fails to implement an action plan, the panel can impose a monetary assessment against the government. (Art 39)
		f If U S. or Mexico fails to pay fine, other parties may withdraw trade benefits equivalent in value; Canada will allow enforcement of fine in domestic courts. (Art. 41)

up in an Evaluation is not as broad as it is for Ministerial Consultations. The Ministerial Consultation can be on any matter within the scope of the Agreement,[43] but the Evaluations can only cover the enforcement of laws relating to the topics listed at the top of the middle column on the chart.[44]

If the United States, for example, feels that Mexico is not properly enforcing an occupational safety or health law, the United States may call for an Evaluation. This is accomplished by forming an Evaluation Committee of Experts (ECE).[45] An ECE is drawn from a roster, previously prepared by the parties, of independent outside persons with expertise in the matters that might come up under the list of laws that are subject to Evaluations. When a particular issue is ready for consideration, the ECE is picked (by a process set forth in the Agreement)[46] and asked to investigate.

An important and interesting feature of this evaluation process is that the ECE analyzes not just the practices of the complained-of party; it is directed to analyze, in light of the objectives of the Agreement and in a non-adversarial manner, patterns of practice by *each* party in the enforcement of the standard in question.[47] For example, if the formation of the ECE is stimulated by the fact that the United States has a concern about Mexico's enforcement of its occupational and safety and health laws in a particular context, the ECE will look into how *each* of the parties is handling that matter. The objective was to promote cooperation and a help-each-other approach to these issues, rather than a confrontational and accusatory approach.

The ECE issues an evaluation report;[48] then there are further consultations in an effort to resolve the issue.[49] If the issue is not resolved at that stage and it falls under one of three kinds of laws[50] (which are indicated at the top of the third column in Table 1), then it may be made the subject of dispute resolution. So the universe of topics covered by the processes of the Agreement narrows as the parties move from column 1 to column 2 on the chart, and then it narrows further as they move from column 2 to column 3. A controversy reaches the end of the road with an ECE, at column 2, unless the matter of concern to one party involves "occupational safety and health," "child labor," or "minimum wage[s]."[51] If it involves one of those categories, it can move

43. *Id.* art. 22.
44. *Id.* art. 23.
45. *Id.*
46. *Id.* art. 24.
47. *Id.* art. 23.
48. *Id.* arts. 25-26.
49. *Id.* art. 27.
50. *Id.* These are occupational safety and health, child labor and minimum wage laws.
51. *Id.*

on to dispute resolution under column 3 if certain other conditions are also present: the dispute has to be "trade-related," and must also relate to a matter covered by mutually-recognized laws.[52] It cannot, for example, be a problem of nonenforcement of occupational, safety and health laws in a situation with no impact on trade between the three countries. Moreover, as indicated at the very top of column 3, the topic going to dispute resolution must involve a "persistent pattern" of failure by another party to enforce its laws.[53]

This completes an overview of the processes that the Agreement establishes for achieving compliance with the commitments, aspirations and obligations contained in the Agreement.

Does the Agreement create a risk that its processes will be used by labor unions, who sought to defeat NAFTA, to pursue protectionist objectives? That is the topic of debate, at least in Washington, at the present time for those who are following the Agreement and its potential impact on NAFTA. On its face, the Agreement appears to raise no opportunity for that. It stresses cooperation, even in its title, and it requires an effort to resolve problems about labor law enforcement through several stages of consultation and evaluation. In addition, it puts the NAO of each government in a position to filter out complaints that are lacking in substance under the Agreement, or that seem to be filed for publicity or harassment or for the purpose of achieving protection against import competition. Moreover, it provides for early consultation at the ministerial level. The Agreement deliberately attempts to thrust an issue to the top at an early stage, to enable the issue to be dealt with quickly before it becomes politicized.

Another feature of the Agreement that is designed to guard against protectionist abuse is that the first investigation of a matter is undertaken by neutral outsiders selected from a panel—the ECE.[54] As noted, the ECE looks at the complaint in light of the practices of each country.[55] This procedure recognizes the reality that on any given day there are probably many labor law violations in each of the three countries and that if mere accusations of violations can be the subject of examination in the Agreement, the Agreement could become a vehicle for unending disputes, creating an ongoing controversial relationship rather than a cooperative one. So instead of asking what went wrong, the ECE is encouraged to ask how the three countries are doing with regard to the standard in question and how they can work together better. Thus, the ECE process aims at maximizing the opportunity to improve labor law enforcement throughout North America.

The Agreement reserves the ultimate sanction of tariff increases[56] for use as a last resort—only on the most serious problems when, as shown

52. *Id.* art. 29.
53. *Id.* art. 27.
54. *Id.* art. 24.
55. *Id.* art. 23.
56. *Id.* annex 41B.

at the bottom of column 3 of Table 1, (i) there is a persistent pattern by one country of failure to enforce one of those three categories of laws on a trade-related matter;[57] (ii) a panel has set up a proposed remedy, or an action plan;[58] (iii) the party concerned has failed to implement the action plan;[59] and (iv) the party concerned has failed to pay a penalty.[60] Only at that time could a trade sanction be imposed.[61] So here, too, the effort of the negotiators was to minimize the use of sanctions and the resulting injury to the good relationships under NAFTA.

IV. RECENT EVENTS

As of August 1994, three petitions have been filed with the U.S. NAO by U.S. labor unions, making allegations against three different companies operating in Mexico: General Electric, Honeywell and Sony.[62] The allegations against General Electric and Honeywell relate to the right of workers to freely organize, the assertion being that the companies punished or fired workers who sought to organize their co-workers.[63] The U.S. NAO agreed to consider those two petitions and held a public hearing on September 12, 1994.[64] The United States business community argued that the petitions should not have been accepted because they did not allege the kind of enforcement shortcomings that the Agreement is designed to examine. They also argued that (1) the NAO should not have held a hearing; (2) that an NAO hearing is not the process contemplated by the Agreement; (3) that the NAO is supposed to be a filter and not a tribunal; and (4) that the first step in actually trying to resolve an issue should be Ministerial Consultations (or possibly consultations between the NAOs) and not a public and rather confrontational hearing.[65] Finally, the business community argued that the public hearing lends itself to abuses of the Agreement by unions that, having unsuccessfully opposed NAFTA, now want to use the side agreement to harass companies

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57. *Id.* art. 38.
58. *Id.*
59. *Id.* art. 39.
60. *Id.* art. 41.
61. *See id.*
62. *First Complaints Filed Under Labor Side Accord*, 1 INSIDE NAFTA, Feb. 23, 1994, at 3; *NAO Delays Hearings on Worker Rights at GE, Honeywell Plants*, 1 INSIDE NAFTA, Aug. 24, 1994, at 5.
63. *See* Complaint Before the United States National Administrative Office, In Re: Honeywell, Inc. (Feb. 14, 1994); Submission and Request for Review, In Re: General Electric Company (Feb. 14, 1994). Styled as "complaints" by the submitting labor organizations, the Teamsters' submission against Honeywell is Case No. 940001 (on file with U.S. NAO) and the Electrical Workers' submission against General Electric is Case No. 940002 (on file with U.S. NAO). *See also First Complaints Filed Under Labor Side Accord*, 1 INSIDE NAFTA, Feb. 23, 1994, at 3.
64. *U.S. Office to Hold Hearings, Issue Report in NAFTA Labor Complaints*, 1 INSIDE NAFTA, Apr. 20, 1994, at 8; *NAO Delays Hearings on Worker Rights at GE, Honeywell Plants*, 1 INSIDE NAFTA, Aug. 24, 1994, at 7-8.
65. *See, e.g.*, Statement by Edward E. Potter, U.S. Council for International Business, to U.S. NAO (Aug. 31, 1994) (on file with U.S. NAO).

investing in Mexico in order to discourage such investment and, therefore, to undermine NAFTA.[66]

V. IMPLICATIONS OF THE LABOR CHALLENGES

How these complaints and others are handled will have important implications for this Agreement, for NAFTA and, perhaps more importantly, for the entire way in which the United States pursues international agreements on important social issues in connection with trade negotiations.

The idea of linking trade liberalization with achievement of social goals is a subject of continuing controversy. Recently, for example, there was much debate about whether to deny most-favored-nation tariff treatment to China because of its human rights record.[67] Linkage has also come up with the U.S. proposal that the new World Trade Organization be active on labor and environmental issues.[68] And the recent Congressional debate on extension of fast track negotiating authority for the President has turned decisively on whether future trade agreements will be linked to agreements on labor, the environment and possibly other social issues.[69] The result of this controversy was the end of the fast track, at least for the time-being.

VI. CONCLUSION

We are at a crucial stage, in which the legitimacy of linking agreements on labor, the environment and perhaps other social questions to trade agreements is in question. If the NAALC does not function as it was designed, and promotes confrontation rather than cooperation, this will lead the community that supports trade liberalization to conclude that side agreements are a bad idea. If the NAALC is implemented in a way that fosters cooperative problem-solving, it will demonstrate to both the skeptics (of whom there are many) and to the believers that side agreements make sense and should be adopted as an integral part of U.S. international economic policy.

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66. *See* David R. Sands, *New Panel Hears NAFTA Labor Disputes*, WASH. TIMES, Sept. 13, 1994, at B7.

67. *Loan Signals China Close to Meeting Human Rights Conditions*, 12 INSIDE U.S. TRADE, Apr. 22, 1994, at 14-15.

68. *House Bill Calls for WTO Committee on Trade's Labor Rights*, 12 INSIDE U.S. TRADE, Apr. 22, 1994, at 11-12.

69. *Pro-Labor, Environment Democrat, Seek to Exclude Fast Track*, 12 INSIDE U.S. TRADE, Sept. 2, 1994, at 5-6.