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1660 L Street, NW • Suite 1200 • Washington, D.C. 20036 • 202/775-8810

The Labor Side Accord to the North American Free Trade Agreement

An Endorsement of Abuse of Worker Rights in Mexico

By Jerome I. Levinson

Introduction

On October 4, 1992 in Raleigh, North Carolina, Presidential candidate Bill Clinton succinctly stated the case for a supplemental labor agreement to the North American Free Trade Agreement (NAFTA): "This agreement does nothing to reaffirm our right to insist that the Mexicans follow their own labor standards, now frequently violated--this is a very important issue--and not aggravating the wage differentials which already exist." (Clinton p. 11) The speech called for the establishment of an independent commission to deal with worker rights. "It ... should have extensive powers to educate, train, develop minimum standards and have ... dispute resolution powers and remedies. We have got to do this. This is a big deal," said Clinton.

There were solid grounds for Clinton's concerns. Traditional economic theory holds that low wages are a consequence of low productivity. As productivity rises, so should wages. This is not true in the Mexican case. As House Majority Leader Richard Gephardt observed in a recent speech, "I was taught. ..that wage and productivity growth go hand-in-hand. The problem that we now confront is that this linkage is broken. .." (Gephardt 1993). Today, labor productivity in Mexico's export industries is typically 80 to 100 percent of U.S. levels (Shaiken 1993a). Wages and benefits are 10 to 15 percent of U.S. levels. Mexican workers earn less (including benefits) in U.S. dollars per hour ($2.35) than workers in Hong Kong ($3.89), Korea

($4.931, Singapore ($5.00) and Taiwan ($5.19). (U.S. Department of Labor 1993).

Mexico has been able to follow a low wage strategy designed to attract foreign investment because Mexican workers cannot defend their own economic interests. Trade unions independent of government control are discouraged. The Mexican government intimidates union leaders and workers who do not toe the government line. The minimum wage has lost more than half its purchasing power during the past twelve years. The consequence has been an increasingly unequal distribution of income in Mexico. According to official Mexican government sources, real wages for production workers in Mexico's manufacturing sector are still 40 percent below their 1980 value (INEGI 1992, p. 65).

Child labor standards are substantially below those prevailing in the United States and Canada. Health and safety standards have not been vigorously enforced by the Mexican authorities. Foreign investors, two-thirds of whom are based in the United States, have been able to reap the benefits of the increased productivity of the Mexican worker, particularly in the export sector. At the same time, they have benefitted from the low-wage, low-standard strategy enforced by the Mexican government.

Candidate Clinton's speech did not deal in detail with these problems, but implicit in the speech was a commitment to address the underlying issues. Indeed, candidate Clinton specifically noted that the NAFTA protected the property rights of American corporations but did not address worker rights and environmental issues. (The Bush administration negotiators, Carla Hills, the U.S. Trade Representative (USTR), and Lynn Martin, the Secretary of Labor, merely agreed to consult, exchange information and study labor issues with the Mexican Minister of Labor). This discrepancy in treatment, as much as anything else, occasioned Clinton's insistence upon effective side agreements on labor and the environment (Clinton 1992, p. 15).

Unfortunately, the labor side agreement negotiated by the Clinton administration does not address the fundamental issues that occasioned the need for such an agreement. It leaves in place the mechanisms by which the Mexican government has prevented the emergence of independent trade unions. There is no effective remedy for the abusive labor practices that are endemic in Mexico. No attempt was made to harmonize standards upward in such important areas as

minimum wage and child labor. The agreement represents a retreat from the draft put on the table by the USTR in May. And it stands in striking contrast to the detailed protection of the property rights of American companies that candidate Clinton noted in his Raleigh speech.

The Labor Side Agreement: Real Teeth or False Teeth?

The labor side agreement has two main components. First, it establishes a new set of councils, committees, and commissions that will meet regularly to consult on labor issues. Second, it sets up a dispute settlement procedure to adjudicate conflicts not resolvable through consultation.[1]

The new Commission of Labor Cooperation created by the side agreement has three components: (1) a Ministerial Council, with each country represented by its top, cabinet-level labor official: (2) an International Coordinating Secretariat (ICS); and (3) National Administrative Offices (NAOs) within each country.

During the course of negotiations, the functions of the Secretariat were substantially curtailed. In the original U.S. negotiating position, hereafter referred to as the May 13 draft (Inside U.S. *Trade* May 21, 1993), the Secretariat could: (a) receive complaints directly from any party relating to a labor matter (May 13 draft, Article 12 (3)); or (b) initiate an investigation and prepare a report, subject to certain criteria (May 13 draft, Article 12 (8)). Each of the parties (to the side agreements) were obligated to make information available to the Secretariat (May 13 draft Article 12 (5a and b)). The Secretariat could make a report based upon the "best credible information available to it." And it could publicize the fact that information had not been provided by one of the governments.

This independent function of the Secretariat has now been abandoned. The Secretariat cannot, on its own initiative, prepare reports or examine a labor matter. It must prepare reports only "upon the request of and under terms of reference established by the Council" (August 12 draft, Article 12 (7)). The council may reject

[1] The analysis contained herein is based upon: (a) the briefing and accompanying documentation by the USTR on August 13. 1993: (b) the draft text [May 13 and August 12 versions] of the labor side agreement as published by Inside U.S. *Trade* on May 21 and August 20. 1993 respectively.

the Secretariat's report if it considers the report "materially inaccurate or otherwise deficient" (August 12 draft, Article 12 (8)). (The Council functions by consensus.) The Secretariat is designed to function only as a support service of the Council. In contrast to the powers granted it in the original U.S. negotiating position, it is now devoid of any independent decision-making authority.

The National Administrative Offices are to be established in each country for the purpose of exchanging information and to act as points of contact. The design, staffing, and funding of NAOs are completely under the jurisdiction of each government.

The Process

There is a five-tier procedure for handling complaints:

(i) A complaint can be brought to the NAO by any interested party --an individual, union, or other non-governmental organization. Only if the NAO determines that the complaint is "serious," may it proceed to next level.

(ii) Representatives from the three countries at the Ministerial Council level would try to resolve the matter by negotiation among themselves (no time limit).

(iii) If the matter is not resolved by negotiation, the complaining country can demand the appointment of an Evaluation Committee of Experts (ECE), composed of independent experts, to make a report and recommendations. If the panel rules against a country, it has 60 days to develop a plan that enforces the law and satisfies the complaining country. (Note that each time period here is twice that allocated in Chapter 20 of NAFTA, the main dispute resolution section. Apparently, disputes over investment rules and technical standards are twice as urgent as those over labor or the environment.)

(iv) If no agreement is reached in 60 days by negotiation among the parties, any party may request an arbitral panel, but establishing such a panel requires a two-thirds vote of the Council. If a panel is convoked and determines that a party has engaged in a persistent pattern of failure to effectively enforce its labor laws with respect to health and safety, child labor, or the minimum wage, and that such failure is related to trade and mutually recognized labor laws, the parties have 60 days to agree on a mutually satisfactory action to remedy the non-enforcement. If there is no agreed action plan, then between 60 and 120 days after the final panel report, the

panel may be reconvened. It can then consider an action plan formulated by the party complained against and make a determination on the amount of "monetary enforcement assessment" or fine on the government up to a maximum of $20 million (to be adjusted over time as the volume of trade rises).

(v) If Mexico or the United States refuses to pay the fine and correct the problem, the complaining party can deny the NAFTA tariff benefits to the offending country. If Canada declines to comply with a panel recommendation, the panel must ask a Canadian court to enforce the recommendation. Canadian law, according to the USTR, requires the Canadian court to enforce the recommendation.

Key Labor Rights Issues Excluded from Full Process

Alleged failure to enforce health and safety standards, child labor laws and minimum wage can be carried through all five tiers of the process. However, industrial relations matters, including alleged violations of the right to organize independent trade unions, bargain collectively and strike, can be taken no further than the second tier: consultation at the ministerial level. These rights are guaranteed by Article 123 of the Mexican constitution: the right to organize free trade unions is also guaranteed by convention 87 of the International Labor Organization (ILO), to which Mexico nominally adheres.

In explaining why "persistent" violations of these rights are excluded from tiers three through five of the process, the USTR explained (at a press conference on August 13) that the parties feared that making them subject to investigation and possible sanction by arbitral panels could interfere with individual collective bargaining between unions and companies. This explanation is not convincing. What distinguishes the Mexican situation from the U.S. and Canadian labor relations system is the persistent intervention of the Mexican government to deny Mexican workers the rights that are taken for granted in both Canada and the United States. By taking the violation of these rights, no matter how persistent they may be, out of the jurisdiction of the grievance procedure, the Clinton administration has implicitly endorsed the abuses inherent in the Mexican labor relations system.

The Broken Link Between Wages and Productivity

The result of the Mexican government's deliberate policies to repress wages has been a dramatic divergence between productivity and wages. In the export sector

labor, increasingly, is highly productive, but the productivity is not proportionately reflected in higher wages. Professor Harley Shaiken, the author of a new Democratic Study Center report on Mexican wages and productivity, notes, "Although productivity rose by 41 percent between 1980 and 1992, the wages and benefits of a Mexican manufacturing worker last year were only 68 percent of what they were in 1980, a low level to start with. Average compensation totaled $2.35 an hour last year, one-seventh of U.S. earnings" (Shaiken 1993b).

To maintain this low-wage, high-productivity policy, the Mexican government has made it virtually impossible to organize trade unions independent of its control. Where union leaders or workers depart from the government policy, the Salinas government has intervened directly or has sanctioned strong-arm tactics by the companies.

The acid test for the Clinton administration, which would have distinguished it from its predecessor, the Bush administration, was whether it would force a change in the Mexican government's labor relations policy and practices in exchange for the improved access to the US. consumer market granted by NAFTA.

The Clinton administration flunked the test. It left in place the labor relations status quo; in so doing, it has implicitly endorsed the low-wage, labor-repression strategy of the Mexican government.

Nothing in the Labor Side Agreement Requires Mexico to Allow the Organization of Independent Trade Unions.

The deck is stacked against Mexican workers. Unions must be registered with the Ministry of Labor. If a non-registered union calls a strike or tries to organize a plant, it will not be recognized by Conciliation and Arbitration Boards (Labor Boards) that administer the labor laws in Mexico. The workers are vulnerable to being dismissed and losing all accumulated benefits. Hence, registration is crucial to effective union representation. What should be a routine administrative procedure has been turned into an obstacle course for registering unions which do not belong to the government-dominated official union confederations, notably, the Confederation of Mexican Workers (CTM) (Golden 1990).

Even if the obstacles to registration are eventually overcome, labor disputes must still be adjudged by the Labor Boards. These Boards are composed of government, labor and industry representatives. The labor members are invariably affiliated with official unions. The Labor Boards are not independent bodies for the purpose of adjudicating labor disputes. They are an arm of the Mexican government that is used to enforce the government's tough anti-independent union and low wage policy.

Employers use Article 923 of the Mexican Labor Law to avoid having to negotiate with unions that aggressively protect the rights of their members. This provision provides that, if a collective bargaining agreement has been deposited with the Labor Board, the Board will not accept the petition of a rival union for a strike call related to negotiation of a collective bargaining agreement. However, many companies, taking advantage of Article 923, have signed a collective bargaining agreement with a "friendly" union, in some cases representing one employee. Even if the employee with whom the agreement was signed has left the employ of the company, so long as the agreement is kept up to date in wages and fringe benefits through registry in the Labor Board, no other union can file a strike call against the employer. These phantom collective bargaining agreements are thus an obstacle to effective union representation.

So long as these conditions persist, it is difficult to see how Mexican workers are going to be able to bargain effectively for a fair share of productivity gains. They are at the mercy of arbitrary government decisions. During the 1980s, the government has repeatedly chosen to repress wages: first, to help repay the debt: second, to attract foreign investment: and third, to fight inflation.

Contrast With Protections for Property Interests

The failure of the Clinton administration negotiators to address these issues is in striking contrast with the protection obtained by the Bush administration in NAFTA for the property interests of American corporations. Mexico had previously required foreign investors to incorporate a certain percentage of domestically produced goods in their products. Additionally, in some industries, Mexico had required investors to export a certain percentage of their production. Chapter 11 of NAFTA prohibits these and many other mechanisms governments have used

successfully to regulate foreign investment. Similarly, the Bush negotiators required Mexico to change its intellectual property laws (protecting copyrights and patents) to conform to an international standard more acceptable to the United States (NAFTA, Chapter 17). Thus, in the area of intellectual property rights, NAFTA negotiators did explicitly seek upward harmonization. The Mexican and Canadian negotiators were apparently willing to compromise their national sovereignty in this area, while expressing outrage at the very idea of enforceable labor and environmental standards.

No such solicitude for the rights of American and Mexican workers is evident in the side agreement negotiated by the Clinton administration. The USTR made no effort to get the Mexican side to relax the registration requirements that inhibit the formation of independent trade unions. No commitment was obtained to prevent the abuses inherent in section 923 of the labor law.

Nor does the agreement commit the Mexican government to change its policy and allow wages to grow as productivity rises. On the contrary, the labor side agreement does not even acknowledge an explicit connection between productivity growth and wage increases. The May 13 draft declared in principle that growth in productivity should be matched by increased wages, and "in particular," the minimum wage (May 13 draft, Statement of Labor Principles, p. S-2). This linkage of wages with productivity growth has been dropped from the final version of the labor side agreement, which now refers blandly to "promoting higher living standards as productivity increases" (August 12 draft, preamble, p.7). Every instance in which the original U.S. negotiating position referred to a "high-wage, high-skill economy" has been altered to refer ONLY to high skills and high productivity.

The failure to obtain binding commitments from Mexico that would both permit the organization of independent trade unions and explicitly link wages and productivity growth ensures that American workers will have to compete with a continued low wage strategy in Mexico.

Redress for Abusive Labor Practices by the Mexican Government is Illusory.

The abusive labor practices by the Mexican government, acting in collusion with private companies, are illustrated by two notorious recent incidents. In 1992, Volkswagen, anticipating the enactment of the NAFTA, determined that in order to be competitive it needed to lower wages and revise work rules, measures it unilaterally proceeded to impose. Without any consultation with the membership, the union leadership acceded to the company's actions. The workers reacted with work stoppages and demands for the creation of an independent union.

Business *Week* magazine, reporting on the controversy, observed, "After weeks of a bitter strike, [President] Salinas gave permission to rip up the contract. The company promptly fired 14,000 workers and rehired all of them minus some 300 dissidents, under a new contract. Within days, Volkswagen revamped its entire Mexico operation--the German carmaker's first such experiment anywhere" (April 19, 1993, p 90).

In Matamoros, Mexico, across the border from Brownsville, Texas, Agapito Gonzalez Cavazos, the head of the Day Laborers and Industrial Workers Union, had succeeded in organizing workers in the *Maquiladora* plants, virtually all of them owned by American companies. Gonzalez aggressively negotiated with the companies for wage increases that would have reflected increases in the companies' productivity. But the settlement Gonzalez proposed exceeded the Government's official wage guidelines, which interfere with the market by limiting wage increases by executive fiat.

The U.S. factory owners, unhappy with the union's tough negotiating tactics, sent their Mexican lawyer to complain to President Salinas. Within days of the complaint, the Federal Police picked up Gonzalez one night in a parking lot on his way to his car. He was bundled on a plane to Mexico City and questioned through the night by two Mexican magistrates with respect to a four-year-old charge of tax evasion. Isolated from friends, family and union associates, he was not allowed to have a lawyer present. This 76-year-old man began to wheeze and hyper-ventilate. He was transferred to a hotel and subsequently to a hospital, where he remained under house arrest for several months (Cody 1992).

The feature that distinguishes both the Volkswagen and Agapito Gonzalez cases from ordinary labor disputes between companies and unions is the direct

intervention by the Mexican government in support of the companies. The Volkswagen intervention by President Salinas permitting the company "to rip up the contract" with the union and unilaterally impose reduced wages and benefits and revised work rules constitutes a violation of the Mexican constitution (Article 123), which gives Mexican workers the right to organize unions and bargain collectively. It is also a violation of IL0 convention 87.

If the company can unilaterally abrogate the contract, the fruit of the union organization and collective bargaining, with the sanction of the President of the country, then the right to unionize and bargain collectively is rendered meaningless. Similarly, if in the midst of collective bargaining negotiations, the Mexican government intervenes, as it did in the Gonzalez case, to intimidate a union leader who has the audacity to bargain aggressively with the employers, then collective bargaining has been effectively neutralized.

These are not isolated cases. Volkswagen's unilateral change in work rules and wages in violation of an existing collective bargaining contract is consistent with the practices of the Mexican government in dealing with workers in state-owned enterprises. It is also similar to the Ford Motor Company unilateral imposition of changes in contract conditions.

In the Ford Motor case, the workers occupied the factory. In scenes straight out of the 1930s in the United States, hired outside strikebreakers stormed the factory: one worker was killed and many injured (La Botz 1992, pp. 148-58). The Salinas administration has refused to authorize an independent investigation to fix responsibility for the death and injuries. The Agapito Gonzalez experience follows a long line of intimidation of dissident Mexican workers and union leaders.

Under the labor side agreement, the Volkswagen and Ford workers, Agapito Gonzalez and others like them have no effective remedy. Despite the fact that in the Volkswagen and Agapito Gonzalez cases, Mexico has almost certainly violated its own constitution and IL0 convention 87, that fact alone would not be enough to justify an action against Mexico.

The NAFTA side agreement on labor excludes all laws pertaining to union organization and collective bargaining from any dispute settlement procedures that might end in fines or sanctions. The most that can be expected

under the labor side agreement is that the U.S. Secretary of Labor, Robert Reich, will consult with his counterpart, the Mexican Minister of Labor, Arsenio Fare11 Cubillas. According to the U.S. Embassy in Mexico City, Fare11 "has maintained pressure on the labor sector in an effort to hold the line on wage demands" (Foreign Labor ***Trends*** 1989-90, p. 2). Non-binding consultations between Reich and Farell (or their successors) are unlikely to result in major policy changes.

In an acknowledgement that the labor side accords have no real teeth to force reform of labor practices, some NAFTA proponents are now arguing that "sunshine is the best disinfectant," expressing the naive faith that exposing labor abuses in Mexico will create an incentive for the government to discontinue such practices (Schott, as cited in Rowan 1993). But this is no answer. The Volkswagen and Agapito Gonzalez cases took place in 1992, precisely the time when the NAFTA was being negotiated and Mexico was under close scrutiny. The resulting "sunshine" did not deter the Mexican government from acting as it did. Indeed, there is evidence that the need to keep the lid on labor discontent in anticipation of the NAFTA is leading to more labor oppression than in previous years (Acosta 1993).

By limiting remedies for the violation of industrial relation laws to consultation at the Ministerial level, the agreement implicitly places the U.S. government squarely behind the abusive labor practices of the Mexican government. The message that it communicates to the Mexican authorities is that abusive labor practices do not concern us. The US. side is satisfied with a cosmetic solution.

The Prospect of Trade Sanctions for Failure to Enforce Health and Safety, Child Labor and Minimum Wage Laws is More Apparent than Real.

Unlike industrial relations matters, if there is a "persistent pattern" of a failure of a party to enforce its health and safety, child labor and minimum wage laws, fines or trade sanctions can theoretically be applied. First, a panel of independent experts can be convoked at the request of any Party. It is to review the alleged violations and can make recommendations.

The experts' independence, however, is severely circumscribed. The Ministerial

Council may block the ECE from releasing any report it finds unsatisfactory.

To proceed to the next tier, the convocation of an arbitral panel, with the possibility of fines or sanctions, requires a two-thirds vote of the Council. The U.S. representative, the Secretary of Labor, would need to persuade his Canadian counterpart to pursue further a Mexican violation, for example. Canada, however, from the outset of the negotiations, has opposed the use of trade sanctions for violations of worker rights: it is unlikely that Canada would routinely accede to U.S. wishes on this subject. Yet the U.S. negotiators have given Canada an effective veto over U.S. freedom of action with respect to alleged violations by Mexico of its own laws relating to health, safety, child labor and minimum wages.

The arbitral panel is made up of five members chosen from a pre-agreed "roster." The current draft gives no indication of the qualifications required of roster candidates.

But even if it were possible to traverse this tortuous procedural road, the final text provides an escape hatch that is so broad it virtually guarantees that sanctions can never be invoked. In the definition of effective enforcement, the draft excuses inaction when such failure "(a) reflects a reasonable exercise of the agency's or the official's discretion with respect to investigatory, prosecutorial, regulatory, or compliance matters: or (b) results from bona fide decisions to allocate enforcement resources to violations determined to have higher priorities" (August 12 draft, Article 5 (3)). In other words, a government may defend itself against a charge of "failure to enforce" simply by arguing that it had higher enforcement priorities elsewhere.

It is difficult to envision any alleged violation that could not be neutered by this escape clause. In reporting on the reaction in Mexico to the labor supplemental agreement, the New ***York Times*** correspondent observed, "the side accords to the trade agreement seemed to trouble the Mexican businessmen who might face sanctions little, if at all" (Golden 1993). It is with good reason that the chief Mexican negotiator, Secretary of Commerce Jaime Serra Puche, assured Mexican legislators that the lengthy and complex process required by the side agreements "makes it very improbable that the stage of sanctions could be reached" (Negrete 1993).

Again, the contrast with the dispute settlement procedures concerning intellectual property rights is revealing. An individual violation of a copyright or a

patent is immediately actionable. There is no need to demonstrate a "persistent pattern" of failure to enforce the law. The offending property can be immediately confiscated and even destroyed, as can the materials used to produce it (NAFTA, Article 1715, par. 5). If a right holder has "valid grounds" to suspect that counterfeit or pirated goods are about to cross the border, he or she can ask the customs authorities to seize the goods until the matter is cleared up (NAFTA, Article **1718,** par. 1). The penalties laid out in NAFTA for violation of intellectual property rights are deliberately strict, "in order to create an effective deterrent to infringement" (NAFTA, Article 17 15, par. 5). Unfortunately, the negotiators of the side accords seemed to go out of their way to assure investors that penalties for violating labor or environmental laws will be mild. And there is no escape clause enabling a Party to avoid responsibility for enforcing its intellectual property laws, no matter how pressing its priorities elsewhere may be.

The Agreement Does Nothing to Establish Harmonization Upwards of Labor Standards.

Candidate Bill Clinton called for an independent commission to deal with worker rights that would have extensive powers, among other things, to "develop minimum standards." And he expressed a sense of urgency about the importance of this task. Bill Clinton's presidential administration made no attempt to develop such minimum standards. There was no attempt to set a timetable, even an approximate one, for harmonizing Mexico's minimum wage and child labor laws with those of the United States and Canada.

Mexico's constitution provides for a minimum wage that "must be sufficient to satisfy the normal material, social, and cultural needs of the head of a family and to provide for the mandatory education of his children" (Starr 198 l, p. 3). The Salinas government has ignored this constitutional provision. The increase in the minimum wage has fallen far behind the rate of domestic price inflation, thereby inflicting a fall in real wages over the past decade on the poorest Mexican workers. A higher minimum wage in the traded goods sector would create some upward pressure on Mexico's average wages, improving income distribution and purchasing power for

workers throughout the Mexican economy. A specific agreement on narrowing the disparity between the Mexican and U.S. minimum wages over the next decade would have sent a powerful message that the parties to the NAFTA were, indeed, serious about closing the wage gap. Periodic review could have been built into the process to avoid rigidity. Instead, Clinton has relied on verbal assurances of good faith by President Salinas.

Minimum Wage and Productivity

The day the side accords were announced, President Salinas pledged that in the future minimum wage increases would be linked to growth in average productivity (Duncan 1993). Salinas's vague declaration is an open admission that the government has stood in the way of such a linkage previously. President Clinton welcomed Salinas's assurances, but apparently misunderstood their relation to the side agreements. In his speech to the National Governors' Association on August 16, Clinton lauded "the agreement by the government of Mexico to tie their minimum wages to productivity and economic growth." He went on to say that Mexico's compliance with that pledge was subject to review, and that violations "can be subject to fine, and ultimately that trade sanctions can be imposed" (Clinton 1993). But President Salinas's pledge remains outside of the labor side agreement. It can be reversed by Salinas or by a future Mexican president without violating any provision of the labor side agreement. And Salinas's presidential term ends in 1994. Reneging on this promise could not be punished by fines or trade sanctions. At most, it would occasion ministerial consultations.

In an interview with the *Wall Street Journal*, Salinas made clear that he intended to retain his prerogative to alter or not alter Mexico's minimum wage. When the *Journal* reporters suggested that U.S. officials might add language to U.S. legislation allow the US. officials might add language to U.S. legislation allowing the U.S. to pull out of the agreement if Mexico failed to raise its wages on schedule, "President Salinas rejected that posiblility out of hand" (Carroll and Solis 1993).

Again, the double standard recurs. Before the negotiation of the NAFTA, Mexico, by administrative fiat, had begun to relax the restrictions on foreign investments. However, those changes could have been reversed by future Mexican administrations. They thus created uncertainty as to the permanence of the

changes. The NAFTA chapter on investment rules now incorporates those prohibitions of restrictions on foreign investment.

What was not acceptable with respect to assuring the permanence of changes in investment rules that protect corporate property interests--accomplishing those changes by voluntary administrative actions--is acceptable with respect to an important element of worker rights: the linkage of minimum wage increases to gains in productivity.

Chitd Labor

The same indifference to basic worker rights is evident with respect to child labor law standards. It is baffling that no attempt was made to reach an agreement that would implement candidate Clinton's commitment to establish new minimum standards in at least this one area. Mexico's labor law prohibits employment of children below the age of 14 but allows **14** and 15-year-old children to work up to 36 hours a week, even during the school year. Child labor in the export sector serves only to depress wages and deny employment to better-paid adults. Rothstein has argued:

> the Mexican labor force is expected to grow by 1 million workers per year, while even the most optimistic projections of 4 percent growth will create employment for only two-thirds of that number. In this context, continued employment of child labor in the export sector needlessly serves to depress wages. Conversely, if the Mexican minimum wage is increased by a supplemental agreement, then adults will be better able to provide for their families and children will be under less pressure to work (Rothstein 1993, p. 15).

The importance of harmonizing wage and work-place standards upwards, over time, cannot be overstated, especially when it is proposed to integrate two economies which are at such different stages of development as those of Mexico and the United States. Eleven of the twelve members of the European Community (EC) recognized this necessity when they determined to negotiate a social charter to harmonize work-place standards and minimum wage levels. (The only member country that declined to participate was the United Kingdom.) The intent, as described by the President of the Commission of the European Communities, Jacques Delors, was to provide "a formal reminder that the Community has no intention of sacrificing fundamental rights on the altar of economic efficiency" (Delors 1989).

It is true that the NAFTA does not propose to establish an economic community among the three signatory countries. But it is also true that the NAFTA is more than a trade agreement. It is a trade *and* investment agreement. Indeed, the proponents of NAFTA never tire of reminding us that companies can already ship goods into the United States under relatively low tariffs and that therefore, with respect to tradeable goods, it will not make that much difference. But Carla Hills did not spend 14 months negotiating a 2,000 page agreement that is meaningless. The greater significance of the NAFTA is that it locks Mexico into an international agreement that limits its freedom of action to change the rules governing foreign direct investment in that country.

Without an equally clear and unambiguous agreement to harmonize upward wages and work-place standards, what the NAFTA will do is institutionalize social dumping: the deliberate maintenance by the Mexican government of low wages and work-place standards for the purpose of attracting foreign direct investment. It thus becomes the expression of a strategy on the part of American multinational corporations which enables them to permanently marry American capital with low wage Mexican labor and degraded work-place standards. Instead of competing on the basis of an agreed harmonization upward over time of wages and standards, it is a strategy to ratchet down both wages and work-place standards.

That is what is fundamentally wrong about the labor side agreement as negotiated by the USTR: it convinces the Mexican authorities that it matters not whether there is a Republican or Democratic administration in Washington. In either case, the priority is the protection of the property rights of the corporations: the protection of worker rights, both Mexican and American, is relegated to symbolic gestures, gestures that are without substantive content.

Conclusion

The labor side agreement proposes to create an enormous superstructure: a Ministerial Council; an International Coordinating Secretariat: National Administrative Offices: Evaluation Committees of Experts. But this superstructure has been built upon a foundation of sand:

(i) Industrial relations matters--the right to organize, to bargain and to strike--are subject only to ministerial consultations. Yet, the denial of these rights is the heart of the labor relations problem in Mexico.

(ii) The Secretariat has been stripped of the independent powers with which it was invested in the original U.S. negotiating draft.

(iii) The Committee of independent experts is not independent.

(iv) The convocation of an arbitral panel to consider a country's "persistent pattern" of failure to enforce its labor laws, safety and health, child labor, and minimum wages, has been made subject to a veto by the non-participating country.

(v) Any country charged with a "persistent pattern of failure to effectively enforce" its own law may defend itself by arguing that it had higher priorities elsewhere. This creates an escape clause so broad that a Mack truck can be driven through it, and guarantees that no enforceable action can ever be effectively pursued.

(vi) The language in the original U.S. negotiating draft linking wages and productivity growth has been abandoned: there is no binding commitment on the Mexican government to re-establish that traditional linkage.

(vii) No attempt has been made to harmonize standards upwards by obtaining specific enforceable commitments from the Mexican government with respect to increases of the minimum wage over time and the upgrading of child labor standards.

Each of these individual retreats by the American side in the negotiations, cumulatively, amount to a rout in the American negotiating position. The recurrent theme of the negotiation of the labor side agreement, is that, for the Clinton administration, like the predecessor Bush administration, protection of the property rights of American corporations is more important than the protection of worker rights, Mexican Canadian and American. What was not tolerated in the NAFTA in protecting corporate interests--vague standards, blatant loopholes, aborted remedies--is embraced in the labor side agreement.

The Clinton administration has accepted the status quo in the Mexican labor relations system, a system that candidate Bill Clinton said would have to change before he would submit the implementing legislation of the NAFTA to the Congress.

As negotiated, the labor side agreement is little more than a warmed over version of the Memorandum of Understanding negotiated by Carla Hills and Lynn Martin with the Mexican Minister of Labor to exchange information, consult and study labor issues. There is no kinder, more diplomatic way to sum it up.

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