

3-1-1995

The Institutional Framework of the North American Agreement on Labor Cooperation

Jorge F. Perez-Lopez

Follow this and additional works at: <http://digitalrepository.unm.edu/usmexlj>

Recommended Citation

Jorge F. Perez-Lopez, *The Institutional Framework of the North American Agreement on Labor Cooperation*, 3 U.S.-Mex. L.J. 133 (1995). Available at: <http://digitalrepository.unm.edu/usmexlj/vol3/iss1/15>

This Article is brought to you for free and open access by the Law Journals at UNM Digital Repository. It has been accepted for inclusion in United States - Mexico Law Journal by an authorized editor of UNM Digital Repository. For more information, please contact disc@unm.edu.

THE INSTITUTIONAL FRAMEWORK OF THE NORTH AMERICAN AGREEMENT ON LABOR COOPERATION

JORGE F. PÉREZ-LÓPEZ*

I. INTRODUCTION

This paper focuses on the institutional framework created by the North American Agreement on Labor Cooperation (NAALC).¹ Specifically, it discusses institutions created by the NAALC, their structure, functions, and status. Part II provides some essential background on the NAALC and discusses tri-national institutions. Part III deals with national institutions. Part IV discusses the status of the establishment of tri-national and national institutions. Finally, Part V provides a preliminary assessment of the institutions created and their prospects.

II. TRI-NATIONAL INSTITUTIONS

Part II of the NAALC contains the core obligations that each signatory to the Agreement undertakes. They are to:

- (a) ensure that its labor laws and regulations provide for high labor standards and that the countries strive to improve those standards;²
- (b) promote compliance with and effectively enforce its labor laws through appropriate government action;³
- (c) ensure that persons with a legally recognized interest under its laws have appropriate access to administrative, judicial, and labor tribunals for the enforcement of labor laws;⁴
- (d) ensure that its administrative, quasi-judicial, judicial, and labor tribunal proceedings for the enforcement of its labor law are fair, equitable, and transparent;⁵
- (e) ensure that labor laws, procedures, and administrative rulings are promptly published and are available in such a manner to enable interested persons and parties to become acquainted with them;⁶ and

* Director, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor.

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. *Id.* art. 2.

3. *Id.* art. 3.

4. *Id.* art. 4.

5. *Id.* art. 5.

6. *Id.* art. 6.

- (f) promote awareness of the country's labor laws.⁷

A very important point with respect to this section of the Agreement is that the obligation undertaken in Article 3 by each signatory is to "promote compliance with and effectively enforce" its own labor law.⁸ That is, while the Agreement requires each signatory to enforce all labor laws it has in place, the obligation does not extend to enforcing the laws of another Party.

"Labor law" is defined as laws and regulations, or provisions therefor, of each country that are related to eleven labor law principles set out in Annex 1.⁹ These principles are:

- (1) freedom of association and protection of the right to organize;
- (2) the right to bargain collectively;
- (3) the right to strike;
- (4) prohibition of forced labor;
- (5) labor protection for children and young persons;
- (6) minimum employment standards;
- (7) elimination of employment discrimination;
- (8) equal pay for men and women;
- (9) prevention of occupational injuries and illnesses;
- (10) compensation in cases of occupational injuries and illness; and
- (11) protection of migrant workers.¹⁰

Moreover, "technical labor standards" are defined as laws and regulations, or specific provisions therefor, that are directly related to the eleven labor law principles, with the exception of those related to freedom of association and the right to organize, the right to bargain collectively, and the right to strike.¹¹

Responsibility for the implementation of the Agreement rests with a tri-national Commission for Labor Cooperation.¹² The Commission comprises a Council and a Secretariat, and is to be assisted by the National Administrative Office (NAO) of each Party.¹³ The Agreement also provides for the establishment by the Council, subject to certain conditions, of *ad hoc* bodies (Evaluation Committees of Experts and Arbitral Panels) for carrying out enforcement oversight functions.¹⁴

A. Council

The Council is composed of the labor ministers of the Parties or their designees.¹⁵ It shall meet at least once a year in regular session and in

7. *Id.* art. 7.

8. *Id.* art. 3.

9. *Id.* art. 49.

10. *Id.* annex 1.

11. *Id.* art. 49.

12. *Id.* art. 8.

13. *Id.*

14. *Id.* arts. 9, 23, 29.

15. *Id.* art. 9.

special session at the request of any Party.¹⁶ All decisions and recommendations of the Council shall be taken by consensus, except as the Council may otherwise decide or as otherwise provided in the Agreement.¹⁷

The Council is the governing body of the Commission.¹⁸ Its functions are to:

- (a) oversee the implementation and develop recommendations on the further elaboration of the Agreement;
- (b) direct the work and activities of the Secretariat and of any committees or working groups convened by the Council;
- (c) establish priorities for cooperative action and, as appropriate, develop technical assistance programs on appropriate cooperative matters;
- (d) approve the annual plan of activities and budget of the Commission;
- (e) approve for publication, subject to terms and conditions it may impose, reports and studies prepared by the Secretariat, independent experts, or working groups;
- (f) facilitate Party-to-Party consultations, including thorough exchange of information;
- (g) address questions and differences that may arise between the Parties regarding the interpretation or application of the Agreement; and
- (h) promote the collection and publication of comparable data on enforcement, labor standards, and labor market information.¹⁹

One of the key functions of the Council is promoting cooperative activities in the following areas:

- (a) occupational safety and health;
- (b) child labor;
- (c) migrant workers of each country;
- (d) human resource development;
- (e) labor statistics;
- (f) work benefits;
- (g) social programs for workers and their families;
- (h) programs, methodologies, and experiences regarding productivity improvement;
- (i) labor-management relations and collective bargaining procedures;
- (j) employment standards and their implementation;
- (k) compensation for work-related injury or illness;

16. *Id.*

17. *Id.*

18. *Id.* art. 10.

19. *Id.*

- (l) legislation relating to the formation and operation of unions, collective bargaining and the resolution of labor disputes, and its implementation;
- (m) the equality of women and men in the workplace;
- (n) forms of cooperation among workers, management and government;
- (o) the provision of technical assistance, at the request of a signatory, for the development of labor standards; and
- (p) such other matters as the signatory countries may agree.²⁰

Cooperative activities may be carried out through different means: seminars, training sessions, working groups and conferences; joint research projects; technical assistance; and any other means as the Parties may agree.²¹

B. Secretariat

The Secretariat is headed by an Executive Director, appointed by the Council for a three-year term, which may be renewed for one additional three-year term.²² Initially, the Secretariat will employ fifteen staff members.²³

The Secretariat assists the Council in performing its functions and provides any other support requested by the Council.²⁴ Among the specific functions of the Secretariat is the preparation of periodic background reports²⁵ setting out publicly available information supplied by each Party on:

- (a) labor law and administrative procedures;
- (b) trends and administrative strategies related to the implementation and enforcement of labor law;
- (c) labor market conditions such as employment rates, average wages and labor productivity; and
- (d) human resource development issues such as training and adjustment programs.²⁶

The Secretariat shall also prepare studies on any matter as the Council may request, in accordance with terms of reference established by the Council.²⁷

C. Ad Hoc Bodies

One of the cornerstones of the Agreement is a graduated series of processes aimed at providing oversight of labor law enforcement by each

20. *Id.* art. 11.

21. *Id.*

22. *Id.* art. 12.

23. *Id.*

24. *Id.* art. 13.

25. *Id.* art. 14.

26. *Id.*

27. *Id.*

of the Parties. The thrust of these processes is on cooperation and resolution of differences through consultation. However, in exceptional circumstances, the Agreement provides for resolution of disputes back-stopped by the possibility of trade sanctions.

Two *ad hoc* bodies are created to assist the Council in resolving differences regarding enforcement of labor law: (1) Evaluation Committees of Experts (ECEs)²⁸ and (2) Arbitral Panels.²⁹ Unlike the Council and the Secretariat, which are permanent institutions, these *ad hoc* bodies are temporary. Established only to address specific labor matters,³⁰ they cease to exist once their work is completed.

Evaluation Committees of Experts (ECEs): If, after bilateral contacts or ministerial consultations, there are differences between Parties regarding a labor law matter within the scope of the Agreement, a Party can request that the Council establish an ECE.³¹ A Party has the right to have an ECE established on any subject matter dealing with enforcement of occupational safety and health and other technical standards,³² provided:

- (a) the country can point to patterns of practice that require analysis;³³
- (b) a ruling has not been obtained from an independent expert that the matter: (1) is not trade-related; or (2) is not covered by mutually recognized labor law;³⁴ and
- (c) the requested ECE does not deal with a matter that was previously the subject of an ECE, in the absence of new information that would warrant a further report.³⁵

The purpose of an ECE is to “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 its occupational safety and health or other technical labor standards as they apply to the particular matter considered by the Parties under Article 22 [Ministerial Consultations].”³⁶ ECEs shall normally comprise three members.³⁷ The Chair shall be selected by the Council from a roster of experts developed in consultation with

28. *Id.* art. 23.

29. *Id.* art. 29.

30. *See also id.* art 26. An Arbitral Panel, unless reconvened, concludes its work upon presentation of its final report. *See also id.* art. 37.

31. *Id.* art. 23.

32. *Id.*

33. *Id.* Article 49 defines a “pattern of practice” as “a course of action or inaction beginning after the date of entry into force of the Agreement, and does not include a single instance or case.” *Id.* art. 49.

34. *Id.* art. 23. Article 49 defines “mutually recognized labor laws” as “laws of both a requesting Party and the Party whose laws were the subject of ministerial consultations . . . that address the same general subject matter in a manner that provides enforceable rights, protections or standards.” *Id.* art. 49.

35. *Id.* art. 23.

36. *Id.*

37. *Id.* art. 24.

the International Labor Organization (ILO)³⁸ and, where possible, other members shall be selected from a roster developed by the Parties.³⁹ ECE members shall have expertise or experience in labor matters or other appropriate disciplines; be chosen strictly on the basis of objectivity, reliability and sound judgment; be independent of, and not be affiliated with or take instructions from, any Party or the Secretariat; and comply with a code of conduct established by the Council.⁴⁰ The Secretariat and the NAOs will provide administrative assistance to ECEs.⁴¹

Within 120 days of its establishment, the ECE shall produce a draft report for the consideration of the Council⁴² that contains:

- (a) a comparative assessment of the matter under consideration;
- (b) its conclusions; and
- (c) where appropriate, practical recommendations that may assist the Parties in respect of the matter.⁴³

The Parties may submit written views to the ECE on the draft report; the ECE shall take such views into account in preparing its final report.⁴⁴ The ECE shall submit its final report to the Council within sixty days after presenting the draft report, unless the Council otherwise decides.⁴⁵ With the submission of its final report to the Council, the ECE completes its work and is dissolved.⁴⁶

Highlighting the deliberate and cooperative nature of the enforcement oversight processes, reports prepared by ECEs are the subject of discussion by the Ministerial Council prior to their publication.⁴⁷ Moreover, before proceeding to dispute resolution, and subject to other considerations, the NAALC calls for consultations at the Ministerial Council level on ECE reports; at these consultations, the "consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter through consultations under this Article."⁴⁸

If the dispute is still not resolved through such consultations, a meeting of the Ministerial Council may be convened to "endeavor to resolve the dispute promptly."⁴⁹ To reach a mutually satisfactory solution, the Council

38. The ILO is a United Nations-related entity that fashions labor rights and labor standards adopted by government, business and labor delegates to its annual conference. 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).

39. NAALC, *supra* note 1, art. 24.

40. *Id.*

41. *Id.*

42. *Id.* art. 25.

43. *Id.*

44. *Id.*

45. *Id.* art. 26.

46. *See also id.*

47. *Id.*

48. *Id.* art. 27.

49. *Id.* art. 28.

may, at this point, call on technical advisers or experts; have recourse to good offices, conciliation, mediation or other dispute resolution procedures; or make recommendations.⁵⁰

Arbitral Panels: If, at the end of the lengthy and intensive process of cooperative evaluation involving the ECEs, a matter is still not resolved, a signatory country may request the formation of an Arbitral Panel provided:

- (a) the matter refers to "an alleged persistent pattern of failure by the Party complained against to effectively enforce its occupational safety and health, child labor or minimum wage technical labor standards,"⁵¹ and
- (b) the matter is trade-related and covered by mutually-recognized labor laws.⁵²

The Council is required to establish and maintain a roster of up to forty-five individuals who are willing and able to serve as panelists.⁵³ Roster members will be appointed by consensus for three-year terms, and may be reappointed.⁵⁴ Roster members shall:

- (a) have expertise or experience in labor law or its enforcement, or in the resolution of disputes arising under international agreements, or other relevant scientific, technical, or professional expertise or experience;
- (b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;
- (c) be independent of, and not be affiliated with or take instructions from, any Party or the Secretariat; and
- (d) comply with a code of conduct to be established by the Council.⁵⁵

Individuals may not serve as panelists in a dispute where they have participated as experts in ECEs or Ministerial Consultations or if they, or persons or organizations with whom they are affiliated, have an interest in the matter.⁵⁶

Arbitral Panels are comprised of five members.⁵⁷ The disputing Parties shall endeavor to agree on the chair of the panel within fifteen days after the Council votes to convene the panel; if the disputing Parties are unable to agree on the chair, one of the Parties, chosen by lot, selects a chair who is not a citizen of that Party.⁵⁸ The remaining members of

50. *Id.*

51. *Id.* art. 29. Article 49 defines a "persistent pattern" as "a sustained or recurring pattern of practice." *Id.* art. 49.

52. *Id.* art. 29.

53. *Id.* art. 30.

54. *Id.*

55. *Id.*

56. *Id.* art. 31.

57. *Id.* art. 32.

58. *Id.*

the Arbitral Panel are chosen using a similar system.⁵⁹ Panelists are normally selected from the roster.⁶⁰

The Arbitral Panel reviews the matter and issues an initial report within 180 days after the last panelist is selected.⁶¹ The report shall contain:

- (a) findings of fact;
- (b) the panel's determination as to whether there has been a persistent pattern of failure by the Party complained against to effectively enforce its occupational safety and health, child labor or minimum wage technical labor standards in a manner that is trade-related and covered by mutually recognized labor laws, or any other determination requested in the terms of reference; and
- (c) in the event the panel makes an affirmative determination, its recommendations, if any, for the resolution of the dispute, which normally shall be that the Party complained against adopt and implement an action plan sufficient to remedy the pattern of nonenforcement.⁶²

The final report of the Arbitral Panel is transmitted to the Council for its consideration and becomes public five days after formal transmittal.⁶³ The disputing parties may agree to a different action plan than that recommended by the Arbitral Panel, in which case the mutually-agreed action plan becomes the operable one.⁶⁴

Failure of a signatory country to fully implement the action plan recommended by the Arbitral Panel or a mutually-agreed action plan could lead to the reconvening of the panel and the imposition of a monetary enforcement assessment.⁶⁵ If a country fails to pay a monetary enforcement assessment, the complaining country may suspend North American Free Trade Agreement⁶⁶ benefits in an amount no greater than that sufficient to collect the monetary enforcement assessment.⁶⁷

This last provision is not applicable to situations where it has been determined that Canada shall pay a monetary enforcement assessment.⁶⁸ The Commission will be able to collect the monetary enforcement assessment and enforce the action plan in summary proceedings before a Canadian court of competent jurisdiction.⁶⁹

59. *Id.*

60. *Id.*

61. *Id.* art. 36.

62. *Id.*

63. *Id.* art. 37.

64. *Id.* art. 38.

65. *Id.* art. 39.

66. North American Free Trade Agreement, Dec. 17, 1992, U.S.-Can.-Mex., H.R. Doc. No. 103-159 (effective Jan. 1, 1994) [hereinafter NAFTA].

67. NAALC, *supra* note 1, art. 41.

68. *Id.* annex 41A.

69. *Id.*

III. NATIONAL INSTITUTIONS

The Agreement requires that each signatory country establish an NAO to assist the Commission.⁷⁰ It also provides for each signatory to establish national committees to assist each government in the implementation of the Agreement.⁷¹

In contrast with the multilateral institutions, whose structure and functions are spelled out in considerable detail, the Agreement is very brief with respect to the national institutions.⁷² Thus, the Agreement grants wide discretion to each signatory nation to establish these institutions in accord with national legislation and practice.

A. *National Administrative Offices*

Pursuant to Article 15 of the Agreement, each Party is required to establish an NAO at the federal government level and designate an official, called the Secretary, to be responsible for its administration and management.⁷³ The operation and costs of the NAO are the responsibility of each Party.⁷⁴

The NAOs shall serve as a point of contact with governmental agencies of its own country, the NAOs of the other Parties, and the Secretariat.⁷⁵ The NAOs shall provide publicly available information requested by the Secretariat for various reports and studies, as well as information requested by the NAOs of the other Parties and ECEs.⁷⁶ Each NAO shall also provide a mechanism to receive and review submissions from its respective public regarding labor law matters arising in the territories of the other countries; the design of review processes is left to each Party to assure consistency with domestic procedures.⁷⁷

B. *National Advisory Committees*

The Agreement also provides for each signatory to establish national committees to advise on the implementation and further elaboration of the Agreement.⁷⁸ Specifically, each signatory may establish a National Advisory Committee consisting of public members, including representatives of its labor and business organizations and other persons,⁷⁹ and a Governmental Committee, consisting of representatives of federal and state or provincial governments.⁸⁰

70. *Id.* art. 15.

71. *Id.* arts. 17-18.

72. *See id.* art. 16.

73. *Id.* art. 15.

74. *Id.*

75. *Id.* art. 16.

76. *Id.*

77. *Id.*

78. *Id.* art. 17.

79. *Id.*

80. *Id.* art. 18.

IV. STATUS OF ESTABLISHMENT OF INSTITUTIONS

Significant progress has been made to date on the establishment of the NAALC-created institutions. More visible progress has been made with regard to the establishment of national institutions than tri-national ones.

A. *Council*

The Council of the Commission for Labor Cooperation held its first meeting in Washington, D.C. on March 21, 1994.⁸¹ The meeting was chaired by U.S. Secretary of Labor Robert B. Reich and attended by both Canadian Minister of Human Resources Development Lloyd Axworthy and Mexican Secretary of Labor and Social Welfare Arsenio Farell Cubillas.⁸²

The Council members discussed how they intended to achieve the objectives of the Agreement and reviewed a number of measures required to launch the Commission for Labor Cooperation.⁸³ These measures included:

- (1) an organization structure for the tri-national Secretariat, to be located in Dallas;
- (2) a process for hiring the Executive Director of the Secretariat;
- (3) a process for selecting and hiring Secretariat staff from lists of candidates submitted by the three countries;
- (4) the salary structure for staff of the tri-national Secretariat;
- (5) a budget and workplan for calendar year 1994;
- (6) a program of tri-national cooperative activities for 1994; and
- (7) a set of financial procedures and guidelines for the Secretariat and the Commission.⁸⁴

Subsequently, rules and procedures for the Council have been developed.

B. *Secretariat*

Although the Secretariat of the Commission for Labor Cooperation is not operational at this time, senior officials from the three nations have been meeting regularly to advance the myriad issues that must be addressed in creating a new international organization.

Among the issues which have been resolved, or are substantially advanced and close to final resolution, are:

81. *First Meeting of the Ministerial Council, Commission for Labor Cooperation, North American Agreement on Labor Cooperation*, NEWS OF THE UNITED STATES DEPT. OF LABOR (Mar. 21, 1994).

82. *Id.*

83. *Id.*

84. *Id.*

- (a) that a Canadian national will be the first Executive Director of the Secretariat (Canada is currently in the process of identifying candidates for this position);
- (b) the specific location of the Secretariat in Dallas; and
- (c) employment rules for Secretariat staff, salary scales and financial rules, as well as privileges and immunities for Secretariat staff.

C. National Administrative Offices

Each signatory country to the Agreement established an NAO, as required by the Agreement,⁸⁵ effective January 1, 1994.

The United States established its NAO within the Bureau of International Labor Affairs, U.S. Department of Labor, pursuant to a Notice of Establishment issued on December 30, 1993.⁸⁶ A revised Notice of Establishment and Procedural Guidelines was issued in April 1994.⁸⁷

The procedural guidelines for the U.S. NAO became effective on April 1, 1994.⁸⁸ They were developed taking into consideration timely received public comments.⁸⁹ The guidelines cover, *inter alia*, the following areas:

Functions of the Office: The functions of the U.S. NAO include:

- (1) providing assistance to the Secretary of Labor on all matters concerning the Agreement, including the development and implementation of cooperative activities under Article 11;
- (2) serving as a point of contact with agencies of the United States Government, the NAO of the other Parties, the Secretariat, and the Council;
- (3) promptly providing publicly available information requested by the Secretariat for reports and studies under Article 14 of the Agreement, by another NAO, or by an ECE;
- (4) receiving, accepting for review, and reviewing submissions on labor law matters arising in the territory of another Party;
- (5) at the discretion of the Secretary of the U.S. NAO, initiating a review of any matter covered by the Agreement;
- (6) requesting consultations with another Party's NAO in relation to that Party's labor law, its administration of labor law, or labor market conditions in its territory and responding to requests for consultations made by another Party;
- (7) publishing periodic and special reports, collecting and maintaining information on labor law matters involving other Parties, and compiling materials concerning labor law and legislation in another Party;

85. NAALC, *supra* note 1, art. 15.

86. Notice of Establishment, 58 Fed. Reg. 69,410-11 (1993).

87. Revised Notice of Establishment of United States National Administrative Office and Procedural Guidelines, 59 Fed. Reg. 16,660-62 (1994).

88. *Id.* at 16,660.

89. *Id.* Timely comments were received from the International Labor Rights Education and Research Fund and the Industrial Relations Committee of the U.S. Council for International Business. The Business Roundtable's Task Force on Human Resources and International Trade and Investment concurred in the latter comments, and they were also endorsed by the international labor affairs group of the National Association of Manufacturers. *Id.*

- (8) considering the views of advisory committees established pursuant to Articles 17 or 18 of the Agreement; and
- (9) consulting with the appropriate entities within the United States Government.⁹⁰

Cooperation: The procedural guidelines of the U.S. NAO state clearly that the Office shall conduct its activities in accordance with the principles of cooperation and respect embodied in the Agreement.⁹¹ Moreover, the guidelines provide that when dealing with NAOs of the other Parties and other persons, the U.S. NAO shall endeavor to the maximum extent possible to resolve matters through consultation and cooperation.⁹² The U.S. NAO shall consult with NAOs of the other Parties during the process of receipt and review of submissions.⁹³ The U.S. NAO shall also advise the Secretary of Labor on the implementation of cooperative activities pursuant to Article 11 of the Agreement and receive and consider suggestions from any person for cooperative activities.⁹⁴

Information: The U.S. NAO is required to maintain a reading room where submissions, public files, transcripts of hearings, *Federal Register* notices, reports, advisory committee information, and other public information is available for public inspection during normal working hours, subject to the terms and conditions of the Freedom of Information Act.⁹⁵ Information submitted by a person in confidence shall be treated in such manner by the U.S. NAO provided it meets the requirements of the Freedom of Information Act; each page of each document requesting such treatment should be clearly marked "submitted in confidence."⁹⁶

Submissions: The guidelines provide that any person may file a submission with the U.S. NAO regarding labor law matters arising in the territory of another Party; a single copy is satisfactory for filing.⁹⁷ The filing may be by hand delivery, mail delivery or facsimile transmission.⁹⁸

Submissions shall identify clearly the person filing the submission, and shall be signed and dated.⁹⁹ They shall state with specificity the matters that the submitter requests the U.S. NAO to consider and include supporting information available to the submitter.¹⁰⁰ To the fullest extent possible, submissions shall address and explain whether:

- (a) the matters complained of appear to demonstrate action inconsistent with another Party's obligations under the Agreement;
- (b) there has been harm to the submitter or other persons, and if so, to what extent;

90. *Id.* § C.

91. *Id.* § D(1).

92. *Id.*

93. *Id.* § D(2).

94. *Id.* § D(3)-(4).

95. *Id.* § E(1).

96. *Id.* § E(2).

97. *Id.* § F(1).

98. *Id.*

99. *Id.* § F(2).

100. *Id.*

- (c) the matters complained of appear to demonstrate a pattern of non-enforcement of labor law by another Party;
- (d) relief has been sought under the domestic laws of another Party, and if so, the status of any legal proceedings; and
- (e) the matters complained of are pending before an international body.¹⁰¹

Acceptance of Submissions: The Secretary of the U.S. NAO shall determine whether or not to accept a submission for review within sixty days after filing.¹⁰² In general, the Secretary of the U.S. NAO shall accept a petition for review if it raises issues relevant to labor law matters in the territory of another Party and if a review would further the objectives of the Agreement.¹⁰³ The Secretary of the U.S. NAO may decline to accept a submission for review if:

- (a) the submission does not identify clearly the person filing the submission, is not signed and dated, or is not sufficiently specific to determine the nature of the request and permit an appropriate review;
- (b) the statements contained in the submission, even if substantiated, would not constitute a failure of another Party to comply with its obligations under the Agreement;
- (c) the statements contained in the submission or available information demonstrate that appropriate relief has not been sought under the domestic laws of another Party, or that the matter or a related matter is pending before an international body; or
- (d) the submission is substantially similar to a recent submission and significant new information has not been made available.¹⁰⁴

Upon accepting a submission for review, the Secretary of the U.S. NAO shall publish promptly a notice in the *Federal Register* specifying why review is warranted and the terms of the review, and notify in writing such persons as may be appropriate.¹⁰⁵ Where the decision is to decline a submission for review, the Secretary of the U.S. NAO shall notify promptly in writing the submitter and provide the reasons for the termination.¹⁰⁶

Reviews and Public Reports: Upon acceptance of a submission for review, the U.S. NAO shall conduct such further examination of the submission as may be appropriate to assist the Office to better understand and publicly report on the issues raised.¹⁰⁷ The Secretary of the U.S. NAO shall hold promptly a public hearing on the submission, unless the Secretary determines that a hearing would not be a suitable method for

101. *Id.* § F(2)(a)-(e).

102. *Id.* § G(1).

103. *Id.* § G(2).

104. *Id.* § G(3)(a)-(d).

105. *Id.* § G(4).

106. *Id.* § G(5).

107. *Id.* § H(1).

carrying out the review.¹⁰⁸ Within 120 days of acceptance of a submission for review, unless circumstances require an extension of time of up to sixty additional days, the Secretary of the U.S. NAO shall issue a public report, which shall include a summary of the proceedings and any findings and recommendations.¹⁰⁹

Recommendations to the Secretary of Labor: The Secretary of the U.S. NAO is empowered to advise the Secretary of Labor on whether to request consultations at the ministerial level pursuant to Article 22 of Agreement, the establishment of an ECE under Article 23, or the pursuit of dispute resolution.¹¹⁰

Periodic and Special Reports: The U.S. NAO is required to publish annually a list of submissions on labor law matters, including a summary of the disposition of the submissions, and make available to the public similar lists published by the NAOs of the other Parties.¹¹¹ The U.S. NAO may conduct and publish special reports on any topics under its purview on its own initiative, or upon request from the Secretary of Labor, including reviews of the effectiveness of labor law enforcement in the territories of the other Parties.¹¹²

To date, the U.S. NAO has received three submissions regarding labor law matters in Mexico. The U.S. NAO initiated a review of two of the submissions on April 15, 1994;¹¹³ a public hearing in connection with these submissions was held on September 12, 1994.¹¹⁴ The third submission was received on August 16, 1994; pursuant to the guidelines, the U.S. NAO has sixty days to decide whether or not it will conduct a review pursuant to the submission.¹¹⁵

The governments of Mexico and Canada also established their NAOs, effective January 1, 1994.¹¹⁶ Mexico has amended the internal regulations of the Secretariat of Labor and Social Welfare to recognize the establishment of the NAO and its functions.¹¹⁷ To date, Canada has not issued any legal documents formalizing the establishment of its NAO.

D. National Committees

Internal procedures to create national committees are ongoing in all three countries, but formal establishment of these committees has not occurred in any of the three nations.

108. *Id.* § H(3).

109. *Id.* § H(8).

110. *Id.* § I.

111. *Id.* § J(3).

112. *Id.*

113. 59 Fed. Reg. 18,832-34 (1994).

114. 59 Fed. Reg. 38,492-93 (1994); 59 Fed. Reg. 41,511 (1994).

115. Revised Notice, *supra* note 87, § G(1).

116. See NAALC, *supra* note 1, art. 57.

117. *Decreto que reforma y adiciona diversas disposiciones del Reglamento Interior de la Secretaría del Trabajo y Previsión Social* [Decree that reforms and supplements diverse dispositions of the Internal Regulations of the Secretariat of Labor and Social Welfare], DIARIO OFICIAL DE LA FEDERACIÓN [OFFICIAL GAZETTE OF THE FEDERATION], at 23-25 (June 5, 1994) (Mex.).

V. PRELIMINARY ASSESSMENT AND PROSPECTS

According to Nobel Laureate in Economics Douglass C. North, institutions are:

the humanly devised constraints that structure political, economic and social interaction Throughout history, institutions have been devised by human beings to create order and reduce uncertainty in exchange They evolve incrementally, connecting the past with the present and the future; history in consequence is largely a story of institutional evolution in which the historical performance of economies can only be understood as a part of a sequential story. Institutions provide the incentive structure of an economy; as that structure evolves, it shapes the direction of economic change toward growth, stagnation, or decline.¹¹⁸

The Agreement has only been in effect for a few months. Implementation of the Agreement is proceeding smoothly and significant progress has been made in building the institutional structure it creates. Some of these institutions have already been established and have already begun to carry out their functions. To the extent that the institutions created by the Agreement can creatively address labor concerns and contribute to the well-being of workers in all three signatory countries, they could be a model for similar arrangements connected to agreements to promote free trade throughout the hemisphere.

118. Douglass C. North, *Institutions*, 5 J. ECON. PERSP. 97 (1991). While the thrust of North's work has been on national institutions and their effect on economic performance, his observations are also applicable to institutions that are created as a result of international agreements.

