FREE TRADE AND OCCUPATIONAL HEALTH POLICY: 
AN ARGUMENT FOR HEALTH AND SAFETY ACROSS 
THE NORTH AMERICAN WORKPLACE

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ABSTRACT

This article considers the argument that the North American Free Trade Agreement (NAFTA) would encourage US and Canadian industry to relocate their hazardous manufacturing operations to Mexico. Proponents of this view believe that this industrial flight south would worsen working conditions in Mexico as well as lower occupational health and safety standards in the US and Canada. In evaluating this argument, the article examines working conditions in US-owned factories in the Mexican maquiladora zone, reviews the current occupational health and safety regulatory structure in Mexico, and considers those institutions established by the European Community to protect workers against the flight of hazardous industries. The article concludes that the harmonization of labor norms throughout North America and the establishment of a functional North American regulatory structure following the precedents set by the European Community are necessary steps to ensure that NAFTA does not produce the feared flight of hazardous indus-

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Critics of the global manufacturing operations of large multinational corporations fear that these businesses export only the most hazardous portions of their production processes to the developing world. Owners of these "runaway shops" avoid having to meet the cost of complying with the stringent workplace health and safety regulations encountered in their own country by transferring their operations to developing nations which lack a strict regulatory culture. These critics warn that such industrial flight reinforces two current trends: 1) the transformation of developing nations without an effective regulatory structure into "dumping grounds" for the hazardous manufacturing processes of developed nations, a trend that has serious health consequences for their working population; 2) the weakening of the competitive position of complying manufacturers who incur occupational health and safety control costs in the developed world, a development that threatens to lower health and safety standards in strictly regulating nations with health consequences for all working populations.

The broad contours of this criticism have surfaced in recent debate over the North American Free Trade Agreement (NAFTA). Critics from environmental, civic, and labor groups have faulted the Agreement for its lack of social protections and guarantees. These commentators have argued that in Mexico manufacturers can easily avoid such social mandates as unemployment insurance, worker’s compensation, workplace safety and environmental regulation, due to the lack of a well-developed Mexican regulatory structure. Under NAFTA, they argue, US and Canadian industry would move operations to Mexico in order to escape the stringent occupational health and safety standards set in their respective countries. An expansion of free trade in North America, then, would mean a degradation of worker health in Mexico as well as a deterioration of occupational health and safety standards in the US and Canada.

The following presentation will examine this general argument that the passage of NAFTA will motivate US and Canadian industry to move to Mexico in order to escape occupational health and regulatory controls at home and that this practice will have a detrimental effect on the health of Mexican workers. The first section of this paper will review the studies reported in the literature of occupational health and safety conditions along Mexico’s northern border. Multinational corporations have invested heavily in the development of manufacturing operations in this industrial strip often referred to as the Maquiladora Zone. The possibility that a study of occupational health conditions in this area may be used to predict the potential impact, under the provisions of NAFTA, that foreign investment will have on worker health throughout Mexico warrants further investigation.

The second section will add to the analysis of the current occupational health and safety conditions in the Maquiladora Zone a short review of the government regulatory structure that offers protection to Mexican workers. This structure and its supposed deficiencies have received much press attention, but little scientific analysis. The discussion in this section will focus on the inspection processes central to the success of any occupational health and safety regulatory system.

A study of the characteristics of the North American Agreement on Labor Cooperation signed by the three countries

*For a more detailed review of the arguments of these critics see references 2 and 3
NAFTA nations will appear in the third section. This analysis will pay particular attention to whether this side agreement remedies the perceived deficiencies in the occupational health regulatory structure in Mexico that may encourage manufacturers seeking to avoid occupational health and safety regulation to transfer their operations to Mexico.

The fourth and final section turns to the experience of the European Community to find a model of integration for a new North American Community. Here, particular attention will be paid to the role of European Community institutions in ensuring health and safety in the European workplace and to the historical development of this continental enterprise.

Through the analysis contained in these four sections, this paper will examine current criticisms of NAFTA that allege this treaty will have a negative impact on occupational health and safety in Mexico. In doing so, the paper will advance an argument for the development of a North American policy that establishes both occupational health and safety standards at a continental level and an international structure for the enforcement of these standards. In the advent of NAFTA, such measures will be necessary to protect the health of workers across the continent.

**Occupational Health and Safety in Mexico: The Case of the Maquiladora Zone**

The Maquiladora Zone, one of the most prominent manufacturing zones in Latin America, runs along the length of Mexico’s northern border, counting almost 1,800 foreign-owned plants within its perimeter. Special provisions of US and Mexican commercial law instituted in 1964 allow foreign-owned industries to manufacture within Mexican territory.* Critics of the Maquiladora Zone, however, argue that such special legal provisions are not the only force driving the development of the Maquiladora Zone. They assert that foreign corporations manufacture in Mexico in order to take advantage not only of tariff provisions but also the lax occupational health and safety regulatory apparatus that leaves workers, consumers, and the local environment unprotected. These assertions, especially in light of recent approval of NAFTA, merit consideration.

Numerous news accounts and newspaper articles have indeed reported disturbing descriptions of the dark side of the Maquiladora Zone. These narratives characterize the northern border of Mexico as a place where foreign capitalists arrive eager to exploit Mexican workers desperate for a job; where workplace health and safety regulations are no more than paper standards; where tired workers return each night to squalid living conditions. The body of work by anthropologists, sociologists, and public health advocates who have studied the Maquiladora workers, however, complicates this common vilification of the Maquiladora Zone.5,6

A population which is largely female (nearly 60%), young (between 17 and 25), single (with little support from either a spouse or parent), and poorly-educated (only six years of schooling) constitutes the workforce of the foreign-owned Maquiladora plants. Commentators have attributed the characteristics of this group to the preferences of Maquiladora employers, preferences that favor young, single females because they are docile and willing to adhere to the strict hierarchical structuring of their work routines and to labor without complaint in the poor work conditions they encounter. Young women are chosen over the available male work pool because men, in the eyes of the employers, are more restless and rebellious than women, less patient, more willing to unionize and perhaps, most importantly, less resigned to tolerate rigorous work practices and inadequate working conditions for a low wage.5

The workplaces commonly described in these ethnographic writings contain excessive levels of noise, airborne particles from textiles, gases, vapors, highly toxic chemical substances and contaminants. The workers exposed continuously to such aggravants report a common universe of symptoms: headaches, exhaustion, sprains, coughs, inflammations, pain and swelling of the eyes, difficulty breathing, itching and rashes, irregularities in their menstrual cycle, irritability and insomnia. These symptoms arise out of the workers’ consistent, unprotected exposure to environmental stressors and the oppressive labor culture inherent to the workplace.
Elements of this ethnographic description of the “dark side” of the Maquiladora industry, though based on the limited observations of single researchers and exaggerated in press accounts, have been confirmed by a recent survey report conducted by the University of Lowell Work Environment Program in the border cities of Matamoros and Reynosa. The study, titled Back to the Future: Sweatshop Conditions on the Mexico-US Border, quantifies the poor working conditions encountered in the Maquiladora industry and their effect on the labor force, conditions described above in more humanistic terms by anthropologists and sociologists.

Using an occupational health questionnaire, this community-based survey of 267 Maquiladora workers found strong evidence that Maquiladora workers commonly suffer from musculoskeletal disorders related to the rapid pace of work, poor workplace design and other ergonomic hazards. They further concluded that workers suffer acute health problems from chemical exposure that have the potential to develop into a variety of chronic medical conditions. Most importantly, the study correlated health risks reported as present in the workplace to their related impact on the health status of the worker.

Of those workers interviewed, over half reported contact with gas or vapor during part of their day. The following health complaints were common among this group of respondents: headache (55%), unusual fatigue (53%), depression for non specific reason (51%), forgetfulness (41%), chest pressure (41%), difficulty in falling asleep (39%), stomach pain (37%), dizziness (36%), and numbness or tingling (33%). Those respondents who reported exposure to some airborne substance during all of their shift had additional health problems with 41 per cent experiencing nausea or vomiting and 29 per cent eye or nose secretions.

A significant number of workers complained of exposure to noxious physical agents or ergonomic stressors: noise (67%), heat (27%), vibration (48%), bad lighting (27%), intense visual demands (37%), uncomfortable work posture (32%), repetitive movements (66%), forceful manual work (32%), and a heavy physical work load (17%). A significant number of those exposed to vibration reported nausea or vomiting (39%), stomach pain (40%), headaches (62%), loss of sensation (23%) and urinary problems (9%) as regular health complaints. Those continuously exposed to heat also experienced nausea or vomiting (47%), headaches (63%), and urinary problems (12%).

The study’s disturbing correlation of the risks present in the workspace to the health complaints common among laborers supports the belief that the Maquiladora industry places its workers in danger and that such treatment has tangible health consequences for the workforce. Though this study is complicated by its small universe, representing fewer than 300 respondents, and the inability of its researchers to gain access to an actual workplace, it is one of only a few important documents that quantify and evaluate the Maquiladora workers’ experience of health and safety conditions at work. Combined with ethnographic accounts of the lives of female Maquiladora workers, the survey responses paint a dark portrait of the Maquiladora Zone.

Despite the harsh assessment of its negative impact on the health of its workers described above, the Maquiladora industry has its defenders. Recent studies published by research teams working on the Maquiladora problematic, as well as on more general issues related to occupational health and free trade, question the validity of claims that a) Maquiladora manufacturers are guilty of the gross exploitation of the Mexican worker and abuse of her health and b) Mexico is the recipient of hazardous industries driven from the US by stringently regulating government agencies.

Recent analysis in the US of the effectiveness of the Occupational Safety and Health Administration (OSHA), the principal government agency responsible for the enforcement of health and safety standards in the workplace, has cast doubt on the argument that US occupational health standards will cause a “wholesale exodus of major industries” to the Maquiladora Zone in order to avoid the large costs imposed by regulation in the US. These studies have ranged from outright attacks on the incompetent administration of the agency, stinging condemnations of the weakness of the federal law that they supposedly uphold, to less virulent suggestions that the work of OSHA has had no discernible impact on occupational injury or disease rates. If it is true that OSHA has had no discernible impact on the overall US occupational injury and disease rates, then it becomes more difficult to maintain that US industry will move south to Mexico for the purpose of avoiding stringent occupational health and safety controls.

Proponents of the idea that industries will move to areas simply to take advantage of lax regulatory controls also fail to understand the complexity of motives driving the relocation of industry around the world. Several commentators have argued that in corporate decisions...
concerning whether to build abroad or continue operating a facility in the US. Differentials in environmental controls and occupational health costs are generally outweighed by production and other capital costs. Further, other traditional locational factors such as access to markets, proximity of supplies and natural resources, political stability, availability of infrastructure and skilled labor are almost always far more important than environmental and occupational health standards.

These studies problematize the argument of NAFTA opponents that US and Canadian industries relocate to Mexico specifically to avoid occupational health regulations. In light of such work, one should reconsider the role of the Maquiladora industry in the health and life of its workers. Two recent studies suggest that the negative image of the Maquiladora Zone, considered the “ugly duckling” of Mexican development, is undeserved.

Researchers studying female Maquiladora laborers administered a health status questionnaire in 1988 to 108 residents of Tijuana between the ages of 18 and 35. The members of the study population were employed either in the maquiladoras, in alternative sectors of the economy, or in their own homes. The survey measured self-reported worker health complaints in nine areas, including: mental health, general gastrointestinal/urinary symptoms, general respiratory difficulties, general musculoskeletal complaints, difficulty breathing with mild exertion, coughing, sore throat, discolored eyes, and traumatic injury. Results in the nine measures of health status among the three work groups demonstrated that in seven out of the nine categories (not including general gastrointestinal/urinary symptoms and general respiratory difficulties), Maquiladora workers “appear to be healthier than those who work in other occupations and those who work in the home”.

A more recent study produced roughly equivalent results. In 1993, 480 female Maquiladora laborers were interviewed with a 45-minute standardized questionnaire. The questionnaire sought to measure the presence of functional impediments (presence of at least one physical health problem that impedes daily activities), depression, nervousness, tension or anxiety, and sense of control, confidence and optimism, in the respondent population. The researchers found that, in terms of overall health, Maquiladora workers are not worse off than service employees or non-wage earners. In fact, the results of the survey suggest that with respect to functional impediments and nervousness, Maquiladora workers—particularly women working in electronics—are better off than service workers.

Researchers on both studies took pains to implement a scientific methodology and to maintain their neutrality. The conclusion of the most recent study openly recognizes that their results may not be a “positive evaluation” of the Maquiladora industry but rather “a reflection of the inferiority of existing alternatives for women”. Whatever the true limits of their scope, the surveys challenge the negative stereotype of the Maquiladora Zone that dominates press and academic findings.

This short review has perhaps only served to establish the inconclusive nature of the available studies on occupational health and safety in the Maquiladora workforce. Depending upon which set of studies you consult, your view of industry along the northern border of Mexico could adhere to either of two very different descriptions of social reality: a) an industrial strip where US industry, hoping to escape stringent worker health and safety standards in the US, preys upon vulnerable Mexican women and b) a development zone where foreign employers offer laborers improved working conditions. In concluding, it is worth making three comments concerning health and safety conditions in the Maquiladora Zone and the literature that describes these conditions.

First, though the number of negative portrayals of the Maquiladora factories far outnumber those of its defenders, the speculative and methodologically —soft nature of much of these accounts renders them less effective. Often, they are tainted by political rhetoric and put forward claims that are difficult to substantiate. The quantitative study conducted by the University of Lowell stands as both an exception to this rule and an exemplary piece of investigative research with results that, surprisingly, have been unanswered by those researchers who claim contrary findings.

Second, those studies which place the Maquiladora industry in a better light base their conclusions upon comparisons between Maquiladora workers and workers in other Mexican industries or workers only informally employed. Such comparisons essentially say nothing more about working conditions in the Maquiladora industry than that they are no worse than those seen in other

*The project researchers claim the differences in health status can be related neither to the demographics of the survey population nor to differences in their life-styles.
sectors of the Mexican economy. It would be hard to argue that the health conditions for domestic workers or service workers in Mexico set a reasonable standard by which we can judge the behavior of US and Canadian multinationals in Mexico. The real comparison should not be between Mexican Maquiladora workers and Mexican service sector employees but rather between Mexican laborers and US and Canadian laborers employed by the same multinationals and performing similar tasks.

Third, though the studies reviewed all make important contributions to our understanding of occupational health and safety conditions in the Maquiladora industry, they alone cannot resolve the debate concerning the impact of foreign industry and investment on worker health in Mexico. As this review has suggested, no representation of the Maquiladora industry has a monopoly on the truth. Several new avenues of research should be undertaken in order to deepen our understanding of working conditions in the Maquiladora Zone and their role in the current Mexican development scheme:

1. Research that assesses and compares the working conditions encountered in manufacturing plants owned by multinationals operating in both the US and Mexico.

2. Research on foreign firms manufacturing outside of the Maquiladora Zone. Since 1984 there has been a growing contingent of foreign industry located in other poles of development than those encountered along the US-Mexico border (Monterrey, Guadalajara, Mexico City) that have a better-developed regulatory organization and sounder infrastructure than do the border cities. The activities of foreign firms in this different regulatory environment would make an enlightening comparison to the activities of similar firms along the US-Mexico border.

3. Research on the export and transfer of technology to Mexico. The type and level of technology, even more than investment, can determine the course of Mexico’s future development. The lack of significant infrastructural transfer of technology to Mexico through the Maquiladora Zone has been noted and decried as a serious shortcoming of the Border Industrialization Program. The positive impact of advanced technology in certain manufacturing industries on worker health, and the potential negative impact of dirty technology on worker health, have been noted by occupational health physicians and academics and should be incorporated into the Mexican Development Plan and its agenda for free trade.

Though the study of current published material on conditions in the Maquiladora Zone cannot help to predict the potential impact of NAFTA on worker health in Mexico, reference to the health and safety regulatory structure in Mexico, and current regulatory practices in this field, may give us a clearer predictive capacity. Analysis of the weaknesses and strengths of the Mexican regulatory system outside the Maquiladora Zone may reveal the real latitude that US and Canadian corporations might enjoy in avoiding health and safety regulations and placing Mexican workers at risk.

Government Regulation of Health and Safety in the Mexican Workplace

Article 123 of the Mexican Constitution of 1917 serves as the foundation for Mexican labor law, establishing the basic principles of an eight-hour work day, a seven-hour shift for night work, and a maximum work week of six days for all Mexican laborers. It also provides for mandatory maternity leave (six weeks prior to the approximate date of childbirth and six weeks after the child is born), equal pay for equal work, a minimum wage, and freedom of association, including the right to form unions and to strike in order to improve working conditions controlled under collective bargaining.

Primarily concerned with ensuring that all workers enjoy “dignified work,” Article 123 also establishes the principal guidelines for safety and health in the workplace. The Article obligates the employer to both provide employees with a safe workplace and carry the responsibility for accidents and illnesses related to normal work or negligence. Further, it clearly places the onus upon the employers to implement federal constitutional and legislative guarantees concerning safety and health in the workplace.

Modern Mexican Federal worker health and safety law finds its antecedents in the 1931 Federal Labor Act which defined, for the first time, a list of 161 pathological entities to be controlled in the workplace. The 1970 Federal Labor Act elaborated upon this initial effort, reaffirming constitutional guarantees to a safe and healthy working environment as well as providing workers with additional rights, including the right to medical aid and

NOVIEMBRE-DICIEMBRE DE 1994, VOL 36, No 6

583
surgery, hospital rehabilitation, pharmaceutical and medical materials, prosthesis and orthopedic intervention.\textsuperscript{14} Building on this set of worker protections, the 1978 General Law on Safety and Hygiene at Work established programs to orient employers and workers together towards preventive measures designed to avoid risk.\textsuperscript{12}

Article 33 of the Federal Public Administration Act established the Secretaría del Trabajo y Previsión Social (Ministry of Labor) and charged this Ministry with the implementation of all Federal labor law, including that inscribed in the various Acts related to occupational health and safety described above.\textsuperscript{14} The Ministry of Labor currently carries out the following functions:

1. regulates all existing labor standards;
2. monitors the development of all new labor standards, including health and safety standards;
3. conducts initial, periodic verification, and special inspections as required;
4. collaborates with local Safety and Health Mixed Commissions (Comisiones Mixtas de Seguridad e Higiene) not only in activities related to inspection but also in those that reduce worker exposure to risk;
5. sanctions those who violate existing labor standards;
6. publishes and distributes information on labor standards to all interested parties.

The variety of inspection powers conferred upon the Ministry constitute its most important tool for ensuring that businesses comply with labor regulations. These inspections should include a tour of the factory; analysis of employer salary, benefit and insurance records; interviews with workers to verify the content of these basic records; and review of the journals maintained by the joint labor-management safety committees (Comisiones Mixtas).\textsuperscript{14} Through these inspection efforts, the Ministry attempts to prevent accidents, regulate standards, and promote occupational health and safety, especially in coordination with the members of the "Comisiones Mixtas."

The members of these safety commissions have the responsibility of making monthly tours of the work site, formulating recommendations to improve working conditions, and verifying the implementation of both the safety and health measures mandated by law and the technical improvements dictated by health inspectors during their initial inspection.\textsuperscript{12} The commissions keep a journal record of their activities that serves as background information and as verification of employer compliance with labor standards for the labor inspectors from the Ministry.

Mexican labor inspectors exercise their duties through two inspection visits. During the initial inspection, the labor inspector will often outline recommendations in areas where the employer has failed to comply with Federal law, establishing a time table for implementation of corrective measures. If the labor inspector, upon his return for the verification inspection, finds that the employer has failed to comply with the recommended measures, he can assess fines that range from 15 to 315 times the minimum wage, depending on the number of violations and the gravity of such infractions. This is a noteworthy departure from OSHA enforcement philosophy in the US, which identifies those employers that have violated safety and health standards and fines these parties as a strategy to discourage other employers from also violating such norms. US inspectors can and do fine employers on their initial inspection.

According to official government statistics, labor inspectors from the Ministry conducted 35 451 inspections between 1988-89. During this time, 46 000 corrective measures were prescribed for 3 293 businesses.\textsuperscript{14} During 1989-90 witnessed another 40 000 inspections carried out and sanctions levied against over four thousand businesses (30% for noncompliance with safety and health standards).\textsuperscript{14} In 1990-91, labor inspectors from the Ministry applied over twenty three thousand corrective measures. Despite this impressive array of inspection activities, a variety of critical commentaries have questioned the effectiveness of the Ministry of Labor and Social Welfare’s inspection efforts.

Recent research by A.C. Laurell and Mariano Noriega has highlighted the lack of technical resources available to inspectors.\textsuperscript{15} According to their review of the situation in the steel industry, labor inspectors do not have access to basic occupational health inspection equipment (sound level meter, dosimeter, thermometer, light meter, and apparatus to measure dust and gases). Further, the lack of a sophisticated laboratory makes any chemical samples irrelevant.

A recent working paper published by the US-Mexico Committee on Occupational and Environmental Health also notes this lack of technical equipment for inspection and its impact on the capacity of labor inspectors to determine and correct workplace health risks. The lack of technical resources is not limited to sampling equipment but includes a deficit of computers, vehicles, and financial
resources. The absence of these resources hinders the inspection process, but a variety of other human resource and training difficulties have a severer impact on the overall inspection effort, including:

1. a lack of medical professionals working at the worksite;
2. a lack of professional inspectors;
3. the prevalence of bribes;
4. a lack of structure in the inspection program;
5. a heavy work agenda for inspectors (private consultation with employers, talks, document review, administrative tasks) in addition to their actual inspection duties;
6. a lack of an industrial census necessary to program inspections,
7. a lack of systematic information on the current safety and health conditions in the workplace in Mexico (discussed in previous section).14

These shortcomings of the direct enforcement capacity of the regulatory infrastructure detract from the efforts of the Ministry of Labor to exact compliance from private firms and protect laborers from workplace health risks.

Fieldwork conducted by the author in collaboration with a group of technical consultants from the Mexico City office of the International Labor Organization (ILO) further documents the lack of technical and human resources available to labor inspectors.16 Cooperating with state administrators at the state Ministry of Labor and Social Welfare in Monterrey, Nuevo Leon, this group of researchers accompanied state labor inspectors as they reviewed workplace conditions. A week of observation yielded a variety of important observations concerning the inspection process.

First, though members of “Comisiones Mixtas” theoretically assist in the inspection process, the labor inspectors in Monterrey did not use the commission members as a reliable resource. Without the collective expertise of the members, inspectors could not tailor their efforts to the particular safety and health “risks” present in each plant. Further, the inspections carried out lacked a rigid protocol. The inspectors did not apply the existing protocol systematically, mainly concentrating on those material conditions that were the most evident. In general, inspectors made only a visual analysis of safety and hygiene conditions, consulting neither workers present in the factory nor the "Comisiones Mixtas". During plant tours, no technical measuring equipment was used.

The flaws in this inspection system cannot be attributed to poor inspector training. They arise principally from the structure of the current inspection schedule. This schedule allows state inspectors only one hour to inspect small businesses (less than fifty employees), two hours for medium business (50-500 employees), and three hours for large businesses (500-1,000 employees). It includes all the time invested in travel, inspection of facilities, review of appropriate documentation and interviews with management and workers. It does not account for other obligations that consume the time of the inspectors, including follow-up, re-inspection, public presentation, consultation, etc. This over-burdening of the inspector’s time schedule is further complicated by a department policy prohibiting inspectors from sanctioning businesses that do not comply with existing labor standards. This policy has transformed labor inspection into a state-funded consultant service that ultimately cannot compel employer compliance with labor and health codes.16

A second International Labor Organization document indirectly questions the Ministry of Labor’s ability to regulate national health codes and, thus, promote a safe workplace. The organization’s 1987 Statistical Abstract on Deaths due to Work Risks compared the workplace safety and health conditions encountered in Mexico to those seen in the other ILO signatory member countries. The report ranked countries according to four levels: high security (for those with few deaths); acceptable security (for those with an average number); deficient security (for those with rates higher than average); and low security (for those with indiscriminately high rates of death due to work risks). Applying these rankings to Mexico, the report found that:

1. Mexico had low security in the following industries:
   agriculture, fishing, mining, transport and communications.
2. Mexico had the lowest security among ILO member nations in the electrical, gas, water and construction industries.14

Such low rankings do not correlate with Mexico’s current socioeconomic standing among the ILO member countries, a fact that urges reform of Mexico’s enforce-
ment capacity, both regionally and nationally. The preceding review has made it clear that to improve the enforcement of safety and health standards and protect the health of Mexican laborers, the Ministry of Labor needs to hire more inspectors, to acquire more technical aid and equipment, to modify schedules to allow adequate inspection time, and to give labor inspectors larger latitude to enforce standards through economic penalties. It would, however, be wise to touch briefly upon the actual regulatory codes whose enforcement is the focus of the inspection process before closing this section.

A recent study, conducted and published jointly by the US Department of Labor and the Mexican Ministry of Labor, reviews the technical safety and health standards in Mexico and the US. This binational report places emphasis on the fact that Mexico has established exposure limits for 562 toxic substances and airborne contaminants, a number close to US standards which cover 582 chemical agents. The report, however, fails to mention that there are substantial differences in the actual limits controlling for workplace exposure. Consider the following array of values in US and Mexican standards outlined in Table 1; each of these chemical agents has carcinogenic effects due to airborne contacts.

The significant technical variance in norms related to these chemicals has motivated fear in the US, especially in organized labor, that US industry, hindered by stricter regulations at home, will be motivated to relocate south of the border. Certainly, such differences warrant discussion and binational efforts to remedy this problem, especially when considering continental free trade.

This short review suggests three areas of concern in the Mexican system for the regulation of safety and health in the workplace: 1) the demonstrated inspection capacity of the Ministry of Labor is not sufficient to enforce workplace safety and health standards; 2) this general incapacity is related to a shortage of personnel, training, and financial resources; and 3) Mexican standards for certain airborne contaminants are not as strict as those instituted north of the border. All of these elements should be considered in relation to NAFTA. Though easy solutions to the difficulties they present will not be available, efforts to remedy these deficiencies will be essential to the success of NAFTA.

One important way to address such deficiencies in the advent of NAFTA would be to work towards harmonizing occupational safety and health regulatory codes, particularly in relation to those potentially carcinogenic elements that have a greater permitted regulatory presence in the Mexican than in the US workplace. Another important issue is the regulatory problematic, here seen in the inspection process, that is worrying to labor, environmental, and civic groups in Canada and the US. If NAFTA is to succeed, regulation of the multinational workplace in Mexico cannot remain a domestic concern. As I have stated earlier, Mexico must find ways to strengthen its own overall inspection capacity in the workplace. The regulation of foreign industry, however, will take on a new meaning with the advent of NAFTA and the ensuing expansion of intercontinental trade and investment Mexico, as well as the US and Canada, must, therefore, decide how to integrate regulatory efforts at a North American level so that workers are safe and healthy and businesses can compete on a level playing field in all three nations. The side agreements to NAFTA were designed as a partial solution to these problems. The following section will analyze their success in bringing North

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* United Auto Workers, Health and Safety Department, 1992
American Community together on issues of occupational health.

**THE NORTH AMERICAN AGREEMENT ON LABOR COOPERATION**

The drafters of the text of the supplemental accords, attached to NAFTA on September 13, 1993, designed these agreements to respond to criticism that, under current investment and trade provisions of NAFTA, US and Canadian industry will abandon the industrialized northern nations of North America for Mexico, where environmental and labor regulatory control is weaker, labor costs cheaper, and workers poorly organized. The supplemental accord on Labor Cooperation signed by the US, Mexico, and Canada establishes a tri-national regulatory scheme, seeking specifically to redress differences in labor regulation throughout North America.

In its mission statement, the labor agreement recognizes that the overall goal is to stimulate economic development and productivity in North America. To accomplish this goal, the three signatory nations agree to promote higher standards of living for workers, foster investment that abides by the principles of labor law, and encourage both employers and employees “to work together in maintaining a progressive, fair, safe and healthy working environment” (Preamble). Despite the expansive tone of this mission statement, the labor scheme provided for in this agreement does not supersede domestic labor standards in any of the three nations. Each party to the agreement carries the responsibility of determining and enforcing those labor laws and standards if it feels are necessary to abide by the mission statement (Article 2). Article 42 further safeguards the sovereignty of each signatory nation, guaranteeing that, “Nothing in this Agreement shall be construed to empower a Party’s authorities to undertake labor law enforcement activities in the territory of another Party.”

Under the agreement, however, nations are expected to make a consistent effort to incorporate the following principles into their labor law and practices: freedom of association and protection of the right to organize; the right to bargain collectively; the right to strike, prohibition of forced labor; labor protections for children and young persons, minimum employment standards; elimination of employment discrimination; equal pay for women and men; prevention of occupational injuries and illnesses; and protection of migrant workers (Annex 1) **. A “persistent pattern of failure” by any nation “to effectively enforce its occupational safety and health, child labor or minimum wage technical labor standards” related to trade under NAFTA can lead to the initiation of enforcement proceedings against this nation. Within the text of the agreement, the Commission for Labor Cooperation, a tri-national organization, carries the responsibility of overseeing these proceedings.

The Commission is comprised of a Ministerial Council, an International Coordinating Secretariat, and three National Administrative Offices. The Council, comprised of the three labor ministers of the North American Nations, acts as the governing body of the Commission, directing the investigative activities of the Secretariat, overseeing the implementation of the Labor Agreement, and addressing any controversies that might arise concerning the application of the principles of the Agreement (Article 10). The Secretariat, under supervision of the Council, publishes reports on the labor law, the administrative procedures, and the enforcement strategies encountered in each nation in relation to the Labor Agreement (Article 14). National Administrative Offices for the Commission at the federal government level in each of the three nations serve as a point of contact and source of information to assist the efforts of the Council and Secretariat (Article 15). This administrative structure carries the responsibility for setting disputes and enforcing decisions concerning the infraction of occupational safety and health, child labor, or minimum wage technical standards in North America.

If one party feels that another party has demonstrated a “persistent pattern of failure” to enforce the provisions of this Agreement, the Council, by two thirds vote, can appoint an arbitral panel ** composed of five experts representing all five experts representing all three nations to resolve the dispute (Article 29). After no more than 240 days of investigation, the panel will submit a final report to the Council summarizing its “findings of fact,” its evaluation as to whether there has been a “pattern of persistent

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* The principles declared here are no great departure from the guarantees contained in the Mexican Constitution of 1917, later reaffirmed in the 1970 Federal Labor Act

** Panelists are normally selected from a previously agreed roster of experts, including experts on labor matters
failure”, and, if there is an infraction, its recommendations for the remedying of the failure (Article 36). Sixty days after the publication of the report, the Commission may begin to review the implementation of these measures by the nation that is the subject of the proceedings. If the Commission determines that the party remains in a “pattern of persistent failure,” it can assess a monetary fine, related to the seriousness of the infraction, the resources of the nation, and the volume of total trade between the three signatory nations* (Article 39). If the nation refuses to pay this financial sanction, collection can be exacted through a suspension of treaty benefits and an increase on the rates of duty levied against the goods originating from the non-complying Party (through trade sanctions Article 41B)**. All “Monetary Enforcement Assessments” will be pooled in a fund established by the Commission “to improve or enhance the labor law enforcement in the Party complained against, consistent with its labor law” (Annex 39).

The Commission on Labor Cooperation acts as the center-piece of the North American Agreement on Labor Cooperation. The Commission possesses the authority both to review labor, including occupational health and safety, practices related to free trade in each member country and to impose financial sanctions where non-compliance exists. In many respects, the activities of the Commission in this area may help Mexico resolve difficulties that it currently encounters in regulating foreign industry. Non-compliance by these industries can no longer be viewed simply as a Mexican problem but is more appropriately characterized as an impediment to free trade in North America and therefore a North American problem. Through its evaluation and sanctioning procedures, the Commission should seek to promote fair labor practices among those businesses that wish to relocate to Mexico, encouraging the arrival of clean, socially-responsible industry. The results of Commission activities in this respect could be a boon for Mexico during the early years of the North American free trade zone.

This Agreement also goes some way to alleviating the worries of labor and civic groups in the US and Mexico. A movement towards higher labor and wage standards in Mexico and increased international pressure for the enforcement of these standards (potential indirect results of the Agreement) may reduce the incentive for industry to leave the North for the wrong reasons, that is to escape the guarantees ensured to US and Canadian workers and exploit the weak bargaining position of Mexican workers in their current labor market. The Agreement, then, is at least a partial effort at establishing a fair playing field in North America and resolving the potential problems related to industrial flight under NAFTA due to differences in technical labor and health standards.

Unfortunately, the Labor Agreement does little to aid Mexico’s internal regulatory problems. The Agreement does not create new funding sources, inspection protocols, or opportunities for tri-national training of those responsible for administering the technical labor standards in Mexico. The Secretariat, the investigative arm of the Commission, is currently staffed by only fifteen professionals. In the years to come, this staff will be too overwhelmed by developments occurring throughout the largest trading block in the world to lend much aid to Mexico’s resource-poor regulatory structure. Ironically, a possible result of the Commission’s activities may be to pressure an already over-extended Mexican inspection system without resolving the underpinning causes of the situation. Further, since the Agreement shies away from any involvement in the harmonization of technical labor standards at the North American level, Mexican laborers may continue to work under chemical exposure limits that are significantly more lenient than US and Canadian standards. These limits should be incorporated into a North American Schedule committed to upwards harmonization.

The Agreement is a welcome beginning to North American cooperation on labor and occupational health matters. It is, however, a limited response to the significant differences in technical standards and enforcement capacity that exist between the three members of an integrated trade community. The next section will look to the European experience of regulating safety and health conditions at the regional level in order to contemplate a new model for North America. The short review will

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* The fine limit for the first year of this Agreement will be 20 million dollars. Thereafter, the monetary sanction shall be no greater than .007 per cent of the total trade in goods between the three parties (Annex 39).

** For sanctions against Canada, the Commission collects the monetary enforcement assessment through summary proceedings before a Canadian court. For sanctions against the US or Mexico, the complaining Party may suspend NAFTA benefits based on the amount of the assessment.
suggest certain additions that should be made to the current labor agreement in order to promote the health of workers in Mexico as well as throughout North America.

**The Logic of Integration: Europe in Review**

The European Community (EC) currently includes 345 million citizens, 138 million workers, and twelve Member States. A political will as expansive as the geography of the Community itself has driven its development, creating a series of powerful institutions to promote growth and to ensure fair conditions for competition. At the heart of the EC lie four Community institutions.

First, there is the Commission of the European Communities, designed both to ensure that Community rules and the principles of the common market are correctly applied and to initiate Community policy measures. The seventeen member Commission, and its administrative staff of over 2,000, have the authority to investigate individual and private parties found to be in breach of Community rules. The Commission can also bring Member States which fail to adhere to Community standards before the European Court of Justice.

Second, there is the European Parliament which delivers opinions on proposals for Community directives, regulations and decisions and exercises a supervisory capacity over the Commission. In addition to approving the Community budget, the European Parliament can dismiss the entire European Commission through a motion of censure by a two-thirds majority, though it has never used this power. Currently, 518 members, elected every five years by universal suffrage and distributed proportionally throughout the community, compose the current Parliament. The Socialist Group holds 179 of 518 seats, making the Parliament the most progressive Community institution.

Third, The Council of Ministers, formed by 78 cabinet-ranking ministers drawn from each Member State and representing diverse policy backgrounds (agriculture, employment, economy, and foreign affairs), exercises the final review of all Community legislative measures.

Finally, it is the role of the European Court of Justice, in coordination with the European Commission, to ensure that all Member States observe the Community Law given final approval by the Council of Ministers. The Court can declare void any legal instruments adopted by the Commission, the Council of Ministers or national governments incompatible with Community Law. Further, the judgments of the Court in the field of Community Law overrule those of national courts.

These four institutions employ the following legal instruments to apply Community policy to Member States:

1. Regulations: binding measures that apply to all Member States.
2. Decisions: binding measures that apply only to the Member States, firms or individuals to whom they are addressed.
3. Directives: measures that establish compulsory objectives, but leave it to the Member States to transpose them into national legislation.
4. Recommendations, communications and opinions: measures which have no binding force yet act as interpretive guidelines concerning Community policy.

Depending on the objectives of the Community, any one of these measures or combination of measures may be used.

EC serves as the largest example of regional economic integration. Further, the well-developed community financial instruments and common market produced by such integration have led to a developing social policy that extends to the occupational realm, in particular to the regulation of safety and health conditions in the workplace. A brief analysis of the workings of this social policy, particularly in relation to occupational health and safety, will shed light on the possibilities for North American economic and social cooperation.

At the inception of the Community in 1950s, European leaders considered social policy to be a low priority. The oil crisis and the end of the post-war economic boom in the 1970s, however, led to attempts to develop a coordinated European Social Policy, including the expansion of the European Social Fund and the development of the European Regional Development Fund. These early measures were supported by the lobbying efforts of fiscal and political moderates. In the late 1970s and early 1980s, these moderates viewed the role of the Community to be primarily concerned with economic

* For a more detailed review of the institutions of the European Community, see reference 20.
matters, but they also believed that the Community should take action in the social field to prevent distortions of competition arising out of differences in national social standards and levels of health and safety protection.19

This group was, and today still is, largely motivated by fears of "social dumping," that is fears that companies will "invest where the wages and conditions are the cheapest and thereby force the workers in other countries with higher standards to accept lower standards and consequently down-grade the employment conditions".20

The European Commission has recognized that regions (especially those in the southern portions of the Community) have introduced sophisticated "inducement packages" in an effort to attract relocating businesses and that certain Member States, particularly Spain and Portugal, have experienced a boom in foreign investment.21

Although to some extent this boom is more related to the enormous pent-up demand in these countries' economies rather than the enticing inducements that have been offered, foreign firms have also been attracted by the comparatively low wage costs —resulting in lower production costs—and the comparatively lax rules governing working hours and environmental responsibilities encountered in these less-favored regions of the Community.22 The fears of "social dumping," and the social reality upon which they feed in Europe, have a remarkable similarity to current fears in the US and Canada that industries there will abandon their home regions to manufacture in Mexico, where labor costs, government regulations, and unions are more manageable.

In Europe, the Member States of the industrialized north fear that this form of "social dumping" in Portugal, Spain, and Greece will carry jobs out of their nations and weaken the collective bargaining position of their working population. These fears are most pronounced in Germany where workers enjoy the highest pay and the best fringe benefits in Europe and, consequently, have the most to lose from the mobility of capital. Though most analysts remain confident that Germany will keep most of the skilled labor and high-value-added jobs, they fear that hundreds of thousands of semi-skilled jobs will disappear, relocating to relatively low labor cost countries such as Spain and Portugal.21 This fear could also be generalized to Belgium and Denmark, who also have strong union bodies and collective agreements granting generous social provisions to their workers Community-wide labor costs partially confirm the fears of these groups. The average wage cost per worker in Denmark is six times what it is in Portugal, three times that in Greece.22

Responding to such concerns over "social dumping," the European Commission has placed the technical harmonization of health and safety standards at work as a high Commission priority in order to enable firms to trade and compete on an equal basis.23 Such efforts rely on the belief that community-wide, European standards will prevent firms from locating their most dangerous facilities in the countries with the most lenient rules, turning certain regions of Europe into the dumping grounds of multinational enterprises.23 Certainly, this fear of "social dumping," and the need for some sort of response on a regional scale, has resonances in the current debate over NAFTA. Analysis of the European response may clarify the direction that North America must take.

Five recent European Community legal events have given a legislative voice to the movement to establish a European Community Social Policy and to curb "social dumping" within the Community a) the Single European Act of 1987, b) the doctrine of Community Pre-emption of National Law, c) the Community Charter of Fundamental Social Rights for Workers of 1989, d) the Action Programme of the European Commission of 1989, and e) the controversial Maastricht Treaty of 1992:

1. The Single European Act of 1987. The passage of the Single European Act in 1987 marked the beginning of a new Social Policy for Europe. The text of this revision of the Treaty of Rome described several measures to harmonize regulatory norms for the protection of workers, consumers, and the environment across the European Community and, for the first time, committed the Community to harmonizing technical safety and health standards for the workplace.

The Single European Act forwards the social agenda in the workplace basically through legal and policy innovation. Article 118a directs the Council of Ministers to adopt directives and regulations that better the "protection of the health and safety of workers" and encourage "the improvement of the working environment" for the European working population.23 Under the direction of this mandate, the Council of Ministers and its supervisory arm, the Commission, have the responsibility of overseeing the development of technical standards at a European level, the incorporation of these standards into national legislation, and the effective enforcement of these standards at the regional level.22
To achieve this end, Article 118a of the Single European Act permits the Council to adopt, by a “qualified majority,” those EC directives that “pay particular attention to encouraging improvements, especially in the working environment, as regards the health and safety of workers”. Social legislation can be processed more efficiently under this voting system since a proposal can pass the Council against the opposition of even two of the largest Member States.24

2. The Doctrine of Community Pre-emption of National Law Though not contained in the text of the Single European Act, the judicial doctrine of the pre-emption of national law has emerged concurrently with this most recent revision of the Rome Treaty. Along with “qualified majority voting,” pre-emption represents one of the most important legal instruments being used to implement Community social legislation.

The doctrine’s development has spanned three decades. When, in the 1970’s the Community was contemplating the sphere in which it should act, the Member States decided upon the principle of subsidiarity. According to this principle, the Community needed to defer to national and local regulation where it could not be shown that the objectives of policy could be better achieved at the Community level.25 The doctrine of pre-emption has emerged in recent rulings of the European Court of Justice to amend this principle.

Following this doctrine, Community legislation can pre-empt national legislation in any of the following contexts:

1. where national law affects a matter which is already regulated exhaustively by the Community;
2. where national law is contrary to the provisions of Community Law or extends to a subject that is reserved clearly to the Community under its Treaties;
3. where national legislation interferes with the proper functioning of the common market.26

Under any of the conditions specified in these three contexts, the European Court can render national law “inapplicable”.27

This evolving legal doctrine clearly has significant implications for the application of social policy. It facilitates the community-wide application of European health and safety standards where it can be established that these regulations come under the competence of the European Court. The Single European Act places the protection of worker health and the continuing improvement of the working environment within its revision of the Treaty of Rome.26 Community legislation that seeks to affect such conditions, then, could pre-empt national legislation under the second part of the doctrine of pre-emption. Though the doctrine of pre-emption remains to be applied to the occupational health field, we will see later in this discussion that the threat of pre-emption has had clear effects on national safety, health, and labor law.

The third part of this doctrine which allows for pre-emption on the basis that the rule or legislation interferes with the proper functioning of the common organization of the single market merits consideration. This principle is sufficiently broad to justify almost any harmonization in health and safety law. Fears concerning “social dumping” have already made workplace safety concerns, issues of “fair competition,” and thus related to a free common market. Disparities in national legislation on worker health could be seen as inhibiting free trade and investment and, therefore, in need of pre-emption to ensure the functioning of the common market. The doctrine of pre-emption, then, could have enormous ramifications for the development of an integrated occupational health and safety policy in the EC.

3. The Community Charter of Fundamental Social Rights for Workers. Two years after amending the Treaty of Rome and launching a new campaign for an integrated European Social Policy, the EC published the Community Charter of Fundamental Social Rights for Workers. This Charter placed a number of rights under the protection of the Community, including the right to work in the EC country of one’s choice, to a fair wage, to improved living and working conditions, to social protection under prevailing national systems, to freedom of association and collective bargaining, to vocational training, to equal pay for equal work, and to health protection and safety at work.27,28

In essence, the Charter is a “solemn declaration [that] lays down the broad principles underlying [the] European model,” a reflection of a common European identity and common European aspirations.29 Quixotically, this broad expression of a European will has no constitutional or legislative authority. Aware of this deficiency, the drafters of this document built in a legislative mandate, calling upon the Council, in Article 28, to adopt a programme of initiatives for the “effective implementation” of the rights...
outlined in the Charter. Those rights related to improvements in the living and working environment of EC citizens, also protected under Articles 118a and 118b of the Single European Act, received a special priority for implementation in the Council’s Action Programme.

4. The 1989 Action Programme of the European Commission. The measures included in the Commission’s Action Programme to implement the Community Charter constitute three regulations, three decisions, seventeen directives (10 dealing with worker safety and health), and five recommendations. Most relevant to this discussion, the measures establish legislative directives mandating the following set of objectives related to occupational health and safety:

1. the application of minimum health and safety requirements in the following industrial sectors: transport, shipping and fisheries, drilling, quarrying and open-cast mining;
2. the enforcement of minimum limits for exposure to certain physical hazards: vibration, electromagnetic radiation, heat, etc.;
3. the imposition of limits on exposure to asbestos at work;
4. the posting of safety and health signs at work;
5. the distribution of information to workers exposed to dangerous chemical substances explaining the nature of the risks encountered in the workplace,
6. the development of a European schedule of industrial diseases;
7. the creation of a special European Agency to provide scientific and technical support to workers, health professionals, and employers concerning safety and health in the workplace.27,30

These binding directives adhere to the principle of subsidiarity, permitting national systems and practices to function where Community goals cannot be better met by Community-wide action. Nonetheless, with regard to matters of occupational health and safety, the legislative mechanism of qualified majority voting, the doctrine of community pre-emption of national law, and the moral mandate of the Community Charter effectively ensure the completion and enforcement of this European social agenda. The Action Programme remains the most important legislative document to emerge from the recent efforts to forge a European Community Social Policy.

5. The Maastricht Treaty. This treaty, the most recent and most controversial affirmation of the European economic and social project, commits the community for the first time to a formal and direct involvement in public health. Article 129 of this document outlines the objectives of the new European public health policy which will emphasize the “development of healthy schools, hospitals, and workplaces; programmes of harm reduction for drug and alcohol misuse; the promotion of sexual health and the prevention of HIV infection and AIDS; and the community-based approach to health nutrition and the prevention of heart disease”.31

Though this newly approved treaty includes but does not emphasize workplace health initiatives, it promotes public health concerns that will have a positive impact on the European worker. The development of a coherent environmental policy aimed at more effective implementation of Community legislation, the fostering of a nutrition plan for all of Europe based in preventive medical theory, and the establishment of anti-smoking and diet campaigns to curb the occurrence of cancer are all parts of this plan that indirectly impact the health of workers and the well-being of their families.

These five great events, the passing of the Single European Act, the development of the doctrine of community pre-emption of national law, the publication of the Community Charter of Fundamental Social Rights for Workers, the promulgation of the Commission’s Social Action Programme, and the design of the recent Maastricht Treaty have all impacted European policy related to the improvement of the working conditions that European laborers encounter day to day. Evaluating the exact impact of these enormous policy developments does, however, pose some difficulty.

The implementation of black letter law, official statutes and regulations is a lengthy process. Normally, Member States are notified within two months of the adoption of a directive. The Member States must then incorporate the content of the directive into national law and create an administrative structure to ensure the implementation of this law within a fixed period of time (normally two to three years). If they fail to do so, the
Commission can begin formal "infringement proceedings" before the European Court of Justice. The Commission has, in recent years, become more confident on legal grounds that Member States must transpose the directives into national legislation not into ad hoc administrative arrangements, with the European Court showing "little sympathy for any excuses made by Member States on internal political or constitutional grounds". Despite a stricter enforcement of Community law, it remains true that the Community has no post-judgment means of enforcement after the infringement proceedings are carried to termination. The Community relies on political and moral persuasion rather than administrative force to bring refractory nations into line. It is interesting to note here, that the enforcement structure established in the labor agreement of NAFTA provides for stricter post judgment enforcement procedures.

Despite the lack of post-judgment enforcement procedures, several commentators have spoken to the success of the activities of the European Court of Justice. Dean Robert Hepple of University College, London, a prominent scholar of European Law, has commented on the efficacy of "infringement proceedings." In one article, he describes how the EC brought infringement proceedings against the UK for failure to fulfill Community guarantees of "equal pay for equal work" within national legislation. The proceedings resulted in the introduction of regulations in 1983 to amend British legislation. As Dean Hepple notes, this represents only one case of various modifications of British legislation that find their origin in the "mismatch between British labor legislation and Community obligations," a mismatch which has forced UK courts and tribunals to confront the difficult task of abiding by the supremacy of EC law.

Adding to Dean Hepple's analysis a manufacturing perspective, Kenneth Smith studies the effect that recent European legislation has had on the British paint industry. In his work, Smith documents the relationship between the series of new UK laws and European Community mandates. He states that, over the last 15 years, the UK paint industry has had to contend with European directives establishing labeling requirements, limiting workforce exposure to dangerous emissions and substances, and requiring new European safety and health standards. In all these cases, the UK has replaced national norms with those developed at the European level.

Smith concludes that since failure to produce national legislation in accordance with an EC Directive can and does result in "infringement proceedings" before the European Court of Justice, there is little point in Member States pushing through their own rules in advance of a European directive which could force them to change again. The result, notes Smith, is that the bulk of national legislation in the areas of health, safety, and the environment is tied to European directives. The effect of this trend will not be limited to the paint industry. The emerging EC Social Policy has given significant impetus to the rationalization of regulations in health, safety and the environment across Europe, and such a movement, predicts Smith, will have a profound effect on European industry in the years to come.

Certainly, the application of a European Social Policy to 12 Member States, with a working population of nearly 140 million, is an awesome task. The Community, at times, will fall short of its goals and will have to be satisfied with imperfect measures that do not resolve all social differences but do maintain a moral consensus for the Community's overall social project.

This short review of the European experience has suggested by analogy the broad outlines of a future North American Social Policy. The European Community, a much more mature regional zone, makes use of several institutions that have neither been contemplated nor included in the text of NAFTA. Policy makers in Canada, the US, and Mexico might consider adding some of the legislative and judicial institutions used to promote European integration to those measures, primarily the activities of

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** NAFTA permits monetary sanctions against non-complying parties see page 588

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* Dr. Haigh of the Commission of the European Communities clarified Smith's argument in an interview September 21, 1993, Washington, D.C. Under the current system, representatives of all 12 Member States participate in the development of European norms for the Coating Industry. The product of these international consultations is driving national standard making throughout Europe.
** For more discussion concerning the delicate balance between Community-wide regulation and national sovereignty struck by Community measures, see reference 35.
the North American Labor Commission, already established by the text of NAFTA and its side agreements.

The movement to harmonize workplace health and safety laws and regulations as demonstrated by the recent EC Action Programme is a necessary first step towards building this North American Social Policy. This measure would help North America develop a level playing field on the continental level, free from distortions created by differing social conditions such as labor costs, regulatory structures, and trade union organization. The side agreements on Labor Cooperation place national laws and standards outside of the bounds of NAFTA, relying on the expression of general principles in Annex I to the Labor Agreement to guide the implementation of labor standards in all three countries. The lack of harmonized regulations will hinder any administrative efforts to determine whether one nation is guilty of undercutting the efforts of another by providing a laxer regulatory environment in the workplace. The NAFTA nations should adopt a framework of legislative instruments similar to those used by the EC to harmonize regulatory norms at the continental level.

The enforcement of a group of regional laws, norms, and regulations, would require the functions of a North American Court of Justice. The Arbitral Panels of the Agreement on Labor Cooperation fall far short of the judicial authority granted to the European Court of Justice. Though these panels theoretically have the right to impose economic and trade sanctions against infractors, they do little to establish the relation of national law to those regional interests that will be created by increased trade and investment relations at the continental level. Without reliable North American laws, a court system with the authority to enforce such standards, and a judicial philosophy such as the doctrine of community pre-emption to guide the development of continental law, the dream of an even playing field in North America driven by closer ties of integration will remain only partially fulfilled.

Most importantly, the leaders and citizens of North America must recognize the value of a social agenda to the development of free trade. Concerns over "social dumping" in Europe have produced a more profound social integration, while, in North America, fears of industrial flight and the export of hazardous industries to Mexico threaten to cut short the life of NAFTA and the project for North American regional integration contemplated in its clauses. The success of NAFTA will depend upon our acknowledgment of the lessons suggested by the European experience and our willingness to apply these lessons to the development of an integrated North American social agenda.

CONCLUSION: TOWARDS A NORTH AMERICAN CONSENSUS FOR HEALTH AND SAFETY IN THE WORKPLACE

As demonstrated in the first section of this paper, a review of the published materials on the Maquiladora Zone does little to resolve debate concerning the true impact of foreign industry manufacturing in Mexico on occupational health and safety conditions. Depending on which group of writings are selected, views as to the nature of the Maquiladoras will differ greatly. It is, then, a complicated task to draw any real conclusions from experience in the Maquiladora Zone concerning the potential impact of NAFTA on worker health in Mexico.

Evidence as to the structural weakness of Mexico's regulatory system, with regard to its resource-poor inspection process and sometimes dangerous exposure limits, lends focus to the study. Here, one can see that foreign investors who wish to manufacture in Mexico will encounter a different regulatory structure (especially in terms of occupational health and safety) from that seen in a developed nation. Recent studies on the impact of regulatory agencies in the US, however, have cast doubt on their "supposed" efficacy and on the proposition that these agencies drive manufacturing industries out of the developed world. Such studies question whether a lax regulatory structure in Mexico does indeed act as a magnet attracting foreign manufacturing operations, suggesting that corporate decisions to relocate operations to Mexico are, in fact, based on a wide variety of production factors unrelated to health and safety regulation in the workplace. The second section, then, recognizes the existing deficiencies in Mexico's regulatory structure while also questioning the general premise that industries will leave Canada and the US to escape stringent occupational health and safety standards, relocating in Mexico where these norms and their enforcement are weaker.

Though the first two sections of this paper yield no concrete conclusions, they problematize the belief that NAFTA will encourage the export of dirty industries to Mexico, degrading both its environment and working conditions. The evidence in section II suggests that laxer regulations in Mexico may not have as large an effect on corporate decisions as currently believed, and section I
demonstrates that current debate over the effect of the Maquiladora industry on worker health is both inconclusive and ideological. Despite the uncertainty established in these two sections, section III advances the argument that, though a well-intentioned first step, the North American Agreement on Labor Cooperation does not sufficiently address current differences in social standards and regulatory codes. Such differences may affect the free movement of goods as well as production operations across the continent in the advent of NAFTA, and measures to remedy them are necessary to the development of a social consensus as well as to the leveling of the North American playing field. Although the Agreement on Labor Cooperation establishes several worthwhile administrative ventures, it does not approach the vexing problems of technical standard harmonization and regional regulation of the workplace, problems partially solved by the actions of Community institutions and policies in Europe. The Agreement should be amended with the European model in mind, if North America is to consider seriously a continental scheme for free trade.

As demonstrated in the fourth and final section, the experience of the European Community offers an important lesson. Discussion, here, highlighted both the fears of "social dumping" encountered in the more industrialized nations of the EC that enjoy higher wages and stricter regulation of the workplace and the activities of Community institutions designed to remedy the social differences in the 12 European nations that give rise to such fears. Policy makers and leaders in the US, Canada, and Mexico would be wise to attend to similar fears of "social dumping" through the development of strategies drawn from detailed study of the experience of the European Community.

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