2

Labor

Proponents of NAFTA in the United States, who claimed that opening up the Mexican market to US exports and investment would create thousands of jobs, magnified the importance of labor issues. During NAFTA negotiations, however, virulent opposition centered on threatened job losses and feared deterioration of wages and working conditions in the United States—stemming from intense low-wage competition south of the Rio Grande and lax enforcement of Mexican labor standards. Yet after NAFTA was ratified, Ross Perot's "giant sucking sound" was never heard. Instead, the United States created more than 2 million jobs per year between 1994 and 2000. The employment boom, however, had little to do with NAFTA and everything to do with the "new economy."

This is not to suggest that NAFTA was of no consequence. It simply puts the economic dimensions of NAFTA in proper perspective. US trade with Mexico is growing fast and is far from negligible, but two-way trade is marginal for the United States when compared with the economic size of the United States. US-Mexico two-way merchandise trade (exports plus imports) in 2004 reached $267 billion, or about 2.3 percent of US GDP in 2004.[1] Much of the two-way trade would have occurred without NAFTA. Even if additional US exports and imports created by NAFTA altered labor conditions in particular industries, the overall impact on a labor force of 147 million Americans was small.

One reason is that the initial impact of NAFTA trade was small. Another reason is that the ripple effects of trade impacts originating in Texas

1. Trade data are from the USITC Interactive Tariff and Trade Dataweb, 2005. GDP data ($11.7 trillion) are from the US Bureau of Economic Analysis (BEA 2005).

or the auto industry get quickly dampened as they move through the vast US labor market. In this respect, the market for US labor differs enormously from the market for 10-year treasury bonds. The labor market is highly segmented, unlike the bond market. In the bond market, additional demand or supply of $20 billion instantly ripples through, changing the price of all bonds. In the labor market, additional demand or supply of a few percentage points in one segment affects the wages in other segments slowly, if at all.

While forces external to NAFTA shaped the overall contours of the Canadian and US labor markets, it remains important for political economy reasons to evaluate the impact of North American trade on labor conditions. Labor concerns remain the rallying point of opposition not only against any deepening of NAFTA but also against new trade pacts promoting "NAFTA-like" conditions in the Western Hemisphere (the Free Trade Area of the Americas [FTAA] and the Central American Free Trade Agreement [CAFTA]) and agreements aimed at broad multilateral trade reforms under the auspices of the World Trade Organization.

Critics often ascribe to NAFTA the economic developments that have taken place since the pact entered into force, whether NAFTA caused them or not. Caveats must thus be recited before quantifying the impact of NAFTA on jobs and labor demand. First, trade is only one among many factors affecting labor. Business cycles, technological change, and macroeconomic policies are all more important (Baily 2002). Second, it is difficult to separate the effects of a particular trade agreement, NAFTA in this case, from the effect of increased global trade. With these caveats, what can be said about NAFTA's impact?

Facts about Fears

Labor issues were important in all three North American countries while NAFTA was being negotiated, but for different reasons. In the United States, employment and wages became a primary measuring rod for evaluating NAFTA. Ross Perot famously asserted that a "giant sucking sound" would be heard as US jobs migrated south of the border; the Clinton administration countered by claiming that hundreds of thousands of jobs would be created on balance if NAFTA were ratified. For better or for worse, how a proposed trade agreement will affect employment is probably the most often asked question in the United States.

In Canada, labor issues were important but less important than questions of sovereignty. NAFTA itself did not generate a great deal of labor concerns in Canada because Canada had very little exposure to Mexico. Rather, debates within Canada over labor have evolved as Canada has become more integrated with the United States. At first, some Canadians

were concerned that their publicly funded social programs would be at risk if Canadian firms were exposed to US competitors that had lower corporate taxes. This fear has turned out to be largely unfounded, and Canadian attention has shifted to emigration, cross-border labor mobility of highly skilled workers, and whether the most productive Canadian workers are being lured to the United States.[2]

In Mexico, labor-related issues were less contentious than in the other two countries and at the same time more diffused. Some employees in the state sector feared layoffs, but most recognized that the potential trade and investment NAFTA generated would boost Mexican employment. Ironically, most of the attention to labor issues in Mexico came not from Mexicans but from opponents of NAFTA in the United States who claimed that NAFTA would exacerbate already bad labor practices in Mexico. This strain of opposition led to the creation of the labor side agreement to NAFTA.

United States

Job Losses

"Job counting" has become a popular, if misinformed, way to evaluate NAFTA. From the start, most serious economists emphasized that the net effect on employment would be very small relative to the size of the US economy. As table 2.1 indicates, unemployment in the United States fell after NAFTA was signed, but macroeconomic factors affect unemployment much more than trade agreements.

Before the agreement was ratified, several studies attempted to predict the impact of NAFTA on employment. Predictions ranged from a net gain of 170,000 US jobs by 1995—calculated by multiplying projected US net exports to Mexico by Department of Commerce estimates of jobs supported per billion dollars of exports—to as many as 490,000 US jobs lost between 1992 and 2000, resulting from an expected $20 billion reduction in the US capital stock provoked by a shift of investment from the United States to Mexico (Koechlin and Larudee 1992).

2. According to Richard Harris, labor-market integration for skilled workers under NAFTA could bring significant efficiency gains to Canada. Cross-border labor mobility between the United States and Canada, for example, would create knowledge spillovers between the two countries. "Brain circulation," or the idea that rapid international knowledge spillovers would recirculate and increase the rate of knowledge diffusion through a two-way flow between Canada and the United States, would replace the fear of "brain drain." Given that proportionately more Canadians choose knowledge occupations, firms and organizations in knowledge-intensive sectors will have more incentives to locate in Canada. See Harris (2004), Harris and Schmitt (2001), and Mercenier and Schmitt (2003). We thank Wendy Dobson for this observation and for providing written comments to an earlier draft.

Table 2.1 Annual average US employment, 1990–2004
(millions of workers)

Year	Total workforce	Employed	Of which: Part time	Unemployed	Unemployment rate (percent)
1990	125.8	118.8	25.4	7.0	5.6
1991	126.3	117.7	27.2	8.6	6.8
1992	128.1	118.5	27.7	9.6	7.5
1993	129.2	120.3	27.9	8.9	6.9
1994	131.1	123.1	26.6	8.0	6.1
1995	132.3	124.9	26.4	7.4	5.6
1996	133.9	126.7	26.1	7.2	5.4
1997	136.3	129.6	26.0	6.7	4.9
1998	137.7	131.5	25.5	6.2	4.5
1999	139.4	133.5	25.2	5.9	4.2
2000	142.6	136.9	24.9	5.7	4.0
2001	143.7	136.9	26.0	6.8	4.8
2002	144.9	136.5	27.0	8.4	5.8
2003	146.6	137.8	28.1	8.8	6.0
2004	147.4	139.3	28.2	8.1	5.5

Source: US Department of Labor (2005a).

A crude and misleading interpretation of these estimates would regard them as jobs gained or lost in the overall labor force. A more nuanced interpretation would regard them as jobs directly affected by additional imports or exports, even if (as most studies emphasized) the direct impact would be neutralized by offsetting forces in the US economy—creating or displacing jobs in other sectors.

Estimates of NAFTA's impact on US jobs continue to be far apart. On the negative side, one study claimed that "NAFTA eliminated 879,280 actual and potential jobs between 1994 and 2002," an assertion that amounts to around 110,000 US jobs lost on account of NAFTA each year (Scott 2001). This study uses three-digit Standard Industrial Classification (SIC) trade data and the Bureau of Labor Statistics (BLS) 192-sector employment table to estimate the impact of changes in merchandise trade flows on labor requirements in these 192 industries. The figure of 879,280 jobs lost was allocated to individual states on the basis of their share of industry-level employment in each three-digit industry.

On the positive side, another study found that new exports to Canada and Mexico during NAFTA's first five years created 709,988 jobs, or about 140,000 jobs annually. This number was calculated by multiplying increased merchandise exports to Mexico and Canada during NAFTA's first five years by the Department of Commerce average figure of jobs sup-

ported per billion dollars of exports (Bolle 2000).[3] Another group of researchers likewise concluded that trade with Mexico has a net positive effect on US employment (Hinojosa-Ojeda et al. 2000). Box 2.1 provides a comparison between the two sides and highlights criticisms of each.

Against these estimates, the NAFTA-Transitional Adjustment Assistance (NAFTA-TAA) program, created as part of NAFTA-implementing legislation, provided actual data about workers adversely affected by trade with and investment in Mexico and Canada. "Adversely affected" means workers "who lose their jobs or whose hours of work and wages are reduced as a result of trade with, or a shift in production to, Canada or Mexico" (US Department of Labor 2002c). "Secondary workers" (upstream and downstream workers who are indirectly affected by trade with or shifts in production to Canada and Mexico) are eligible as well. NAFTA does not have to be the cause of the job loss for a worker to qualify for NAFTA-TAA. Through 2002, when the NAFTA-TAA program was consolidated with general Trade Adjustment Assistance (TAA), the US Department of Labor had certified 525,000 workers (about 58,000 workers per year) as adversely affected.[4] Of the total number of workers certified under NAFTA-TAA, over 100,000 are from the apparel industries. Another 130,000 certifications are concentrated in fabricated metal products, machinery, and transport equipment.

NAFTA-TAA certification may have overestimated the pain of job losses because not all workers certified actually lost their jobs, and some who did lose their jobs were quickly reemployed. On the other hand, the NAFTA-TAA figures probably underestimated the number of job losses because the program was unknown to many workers, because workers indirectly displaced often were unaware that NAFTA was at the origin of their woes, and because the application process was cumbersome. Despite these limitations, NAFTA-TAA is probably the best record of the direct impact of additional NAFTA imports on US labor. No comparable certification process exists for the direct impact of additional NAFTA exports on US employees.

Despite the heated debate over the numbers, the reality is that the effect of NAFTA is small compared with the turnover of the US labor market. Even in a year like 2000, when unemployment was at a 30-year low, the

3. The number of jobs supported by new exports was calculated by multiplying the value of export growth each year expressed in billions of dollars by the corresponding estimate for the number of workers supported by each additional billion dollars of exports, correcting for productivity changes and inflation. In 1994, the number of workers supported by an additional billion dollars in exports was estimated at 14,361 jobs; in 1995, 13,774 jobs; in 1996, 13,258 jobs; and so on. The number declines each year because of productivity gains and inflation.

4. Data are from Public Citizen's NAFTA-TAA database, 1994–2002, www.citizen.org/trade/forms/taa_info.cfm (accessed on May 26, 2005).

Box 2.1 What job losses from NAFTA?

The *most extreme* estimate of job losses from NAFTA is 879,280 actual and potential jobs lost between 1994 and 2000, according to Robert E. Scott (2001) of the Economic Policy Institute. Scott's estimate is based on his calculations of how many more jobs there would be if the US trade deficit with Canada and Mexico were the same in 2002 as it was in 1993, adjusting for inflation.

Blaming NAFTA for 100 percent of the growth in the US trade deficit with Canada and Mexico ignores the macroeconomic determinants of these two bilateral trade deficits. The growth in the US trade deficit with Canada and Mexico is in line with, but slightly *lower* in percentage terms than, the growth in the total US trade deficit.

Even assuming Scott's estimates were plausible, over half of the alleged job loss comes from the growth in the US trade deficit with Canada, which competes with high-value US products. Scott concedes that the US economy created 20.7 million jobs between 1992 and 1999, or *27 times* the number of jobs allegedly lost due to NAFTA. The estimated 879,280 jobs lost over seven years due to NAFTA is less than 15.2 million US workers displaced during seven years.[1]

A group led by Raúl Hinojosa-Ojeda makes a much better estimate of jobs at risk due to imports from NAFTA countries. They estimate that imports from NAFTA countries put at risk *at most* 94,000 jobs per year. Under more realistic assumptions, only 50,625 jobs per year are at risk due to imports from NAFTA countries. US exports to NAFTA countries provide 73,845 jobs per year, for a *net effect* of 23,220 jobs created per year due to trade with NAFTA partners.

Furthermore, Hinojosa-Ojeda et al. (2000) make their calculations *disregarding* whether NAFTA caused the change in trade and in employment. Thus, the actual effect of NAFTA on both jobs created and jobs at risk is much lower.

Overall, even under the most extreme assumptions, the effect of NAFTA on US employment is small relative to the size of the US economy and macroeconomic forces.

1. Data are based on US Department of Labor biennial surveys of worker displacement, featured in supplements to the Current Population Survey (CPS). CPS Displaced Worker Surveys focus on workers who lost or left jobs they held for at least three years, also known as long-tenured workers. See Helwig (2004) and Hipple (1999).

US economy displaced 2.5 million workers (Kletzer 2001).[5] Even if the most pessimistic estimate is correct—an adverse NAFTA impact (considering only imports) of 110,000 jobs lost annually—the figure comes to less than 5 percent of total annual displacement in the labor force, which is tiny compared with annual gross job creation turnover. For example, in 2003 some 22.9 million American workers left their old jobs, while some 2.4 million workers found new jobs.

Stagnant Real Wages and Rising Inequality

NAFTA opponents contend that competition from cheap unskilled Mexican labor will depress real wages of unskilled American workers and

5. Displacement is defined as a layoff resulting from the closure or substantial restructuring of a plant.

widen the earnings gap between skilled and unskilled workers. NAFTA supporters discount this effect, arguing that the higher productivity of US workers, unskilled as well as skilled, largely or entirely offsets the nominal cost advantage of low Mexican wages.

Data on US real wages show that compared with high-skilled workers, unskilled workers did poorly during most of the past 30 years. As a result, average real wage growth in the United States was sluggish between the 1970s and the mid-1990s. This trend changed in the mid-1990s, when economic expansion started translating into significant real-wage growth for unskilled workers and a sustained rise in the average real wage. Indeed, between 1993 and 2004, 81 percent of the newly created US jobs were in industry and occupation categories paying above-median wages (Council of Economic Advisers 1999, 2004).

Technological change is the major force driving both relative and average real wages in the United States. US output per worker in the 1950s and 1960s grew at an average annual rate of 2.8 percent but slowed to only 1.2 percent between the 1970s and the early 1990s. This sluggish performance came to an end in the mid-1990s, and US labor productivity grew at around 2.4 percent a year from 1995 through 2000, increasing to 5.4 percent a year in 2002 (Council of Economic Advisers 2004). The spurt reflected information technology (IT) and other "new economy" forces (Baily 2001).

To the extent that higher output per worker determines real-wage gains (a very good long-term explanation), weaker increases in productivity, not an expansion of trade, would explain the slower growth of real wages between 1970 and the mid-1990s (Scheve and Slaughter 2001). Buttressing the productivity explanation, real-wage stagnation was most pronounced in the services sectors, which are mostly nontradables and which historically attracted little foreign direct investment (FDI).[6]

In addition to average trends, there were notable changes in relative wages. Earnings inequality in the United States is strongly associated with skill differences, and the growth of the US skill premium was a major feature of the wage story between 1970 and 2000. In the early 1980s, nonproduction (more-skilled) workers earned 50 percent more than production (less-skilled) workers; by the mid-1990s, the skill premium was over 70 percent (Scheve and Slaughter 2001, figure 4.1). Most economists agree that technological change explains about half of the rising US skill premium while trade and immigration forces account for around 10 and 5 percent, respectively.[7]

6. FDI in finance, telecommunications, retailing, and other services sectors picked up sharply in the 1990s.

7. Data are from the *Economic Report of the President 1997*, as quoted in Scheve and Slaughter (2001). See also Cline (1997), who finds slightly different sensitivities of the skill premium to trade and immigration.

US data on relative product prices support the hypothesis that trade was *not* a major factor driving relative wages. According to trade theory, if trade were the explanation for changing relative wages,[8] either between industries or between skill categories, relative product prices in the United States should have fallen in import-competing sectors, especially those that employ large numbers of low-skilled workers. Research a decade ago could uncover no such movement in US relative product prices (Lawrence and Slaughter 1993).

Other data confirm the small impact of NAFTA on US wages and inequality. Wage levels in the four states with the most NAFTA-TAA certifications (as a percentage of the state labor force)—namely North Carolina, Arkansas, Tennessee, and Alabama—do not differ significantly from wages in the four states with the fewest NAFTA-TAA certifications—Maryland, Nevada, Nebraska, and Oklahoma (see tables 2.2 and 2.3). Furthermore, the wage gap between the highest and lowest percentiles in the labor force is similar for the two groups of states.

Despite the small overall effect of NAFTA on wages, the effect on those directly affected by increased trade is not negligible. About a quarter of manufacturing workers displaced by trade suffer considerable wage losses—not unlike other manufacturing workers separated from their jobs for reasons having nothing to do with trade. Against popular myth, not all trade-displaced workers end up in low-paying retail jobs. According to a recent study of US manufacturing workers, only about 10 percent of reemployed displaced workers go into retail trade. Although the average wage loss of reemployed displaced workers is sizable (about 13 percent), there are great disparities within the group: 36 percent of displaced workers find new jobs with equal or higher levels of earnings; at the other extreme, 25 percent suffer wage losses of over 30 percent. Workers with lower skill levels suffer the largest percentage losses (Kletzer 2001).

Maquiladora Industry and US Labor. Several studies have examined the effect of imports on US employment and earnings, but no one has tried to rigorously assess the effect of maquiladora growth on US employment and earnings. Since maquiladoras are a sensitive issue in the US labor movement, we thought the connection ought to be explored. To do so, we constructed a dataset of maquiladora employment by four-digit SIC

8. Stolper and Samuelson spelled out the relationship between goods prices and factor prices in their landmark 1941 article, "Protection and Real Wages." According to the Stolper-Samuelson theorem, trade liberalization should raise wages of workers employed relatively intensively in sectors where relative prices are rising (export sectors) and reduce wages for workers employed relatively intensively in sectors with declining prices (import-competing sectors).

Table 2.2 NAFTA-TAA certifications by US state, 1994–2002
(thousands of workers)

State	NAFTA-TAA	Labor force	Percent of labor force affected by NAFTA
Texas	34.7	10,641	0.33
North Carolina	32.2	4,014	0.80
Pennsylvania	27.4	6,096	0.45
California	22.4	17,421	0.13
New York	19.9	8,950	0.22
Tennessee	18.4	2,866	0.64
Georgia	18.1	4,192	0.43
Michigan	12.5	5,236	0.24
Indiana	12.4	3,115	0.40
Alabama	11.4	2,168	0.53
Illinois	11.2	6,396	0.17
Wisconsin	10.8	3,049	0.35
Virginia	10.7	3,746	0.29
Missouri	10.2	2,957	0.35
Arkansas	10.2	1,277	0.80
Washington	10.1	3,020	0.33
New Jersey	9.0	4,254	0.21
Ohio	8.1	5,911	0.14
Florida	7.7	7,800	0.10
South Carolina	7.5	2,015	0.37
Kentucky	7.4	1,994	0.37
Oregon	7.3	1,817	0.40
Louisiana	7.0	2,048	0.34
Arizona	4.3	2,446	0.18
Massachusetts	3.9	3,368	0.11
Colorado	3.8	2,335	0.16
Minnesota	3.5	2,827	0.12
Idaho	3.4	688	0.49
Utah	3.2	1,134	0.28
Maine	2.9	690	0.42
Mississippi	1.8	1,308	0.14
Connecticut	1.7	1,716	0.10
Kansas	1.6	1,441	0.11
West Virginia	1.3	811	0.17
Montana	1.0	473	0.21
South Dakota	0.9	407	0.23
Alaska	0.9	328	0.28
Wyoming	0.7	270	0.25
Iowa	0.7	1,606	0.04
New Mexico	0.7	858	0.08
Oklahoma	0.6	1,662	0.03
Vermont	0.4	3433	0.12
North Dakota	0.4	337	0.12
New Hampshire	0.4	704	0.06
Maryland	0.4	2,884	0.01
Puerto Rico	0.4	1,317	0.03
Nebraska	0.3	949	0.03
Nevada	0.3	1,035	0.02
Total	366.0	142,917	0.26

Note: NAFTA-TAA certification requires a connection to any Mexico or Canada trade, not necessarily trade induced by NAFTA. NAFTA-TAA represents the total number of certifications during 1994–2002. Labor force figures are based on 2002 data.

Sources: Public Citizen's NAFTA-TAA database, 2005; and US Department of Labor (2002a).

Table 2.3 Wages and wage inequality in selected US states

State	Percent of labor force affected by NAFTA	Low wages, 10th percentile (dollars/hour)	High wages, 90th percentile (dollars/hour)	High/ low wages
States most affected by NAFTA				
North Carolina	0.80	6.54	25.04	3.8
Arkansas	0.80	5.91	21.93	3.7
Tennessee	0.64	6.30	24.49	3.9
Alabama	0.53	5.94	23.47	4.0
States least affected by NAFTA				
Oklahoma	0.03	6.14	22.70	3.7
Nebraska	0.03	6.48	23.58	3.6
Nevada	0.02	6.53	25.00	3.8
Maryland	0.01	7.16	34.27	4.8

Sources: Public Citizen's NAFTA-TAA database, 2005; US Department of Labor (2002a); and Rassell and Pho (2001).

industry in 1992 and 1997. Then we matched the maquiladora employment data with data on US employment and compensation.[9]

Table 2.4 shows the results of "fixed-effects" regressions. After allowing for inherent differences between industries (the fixed effects), this analysis determines whether changes in the independent variables (sales, imports, maquiladora employment, and a dummy variable for productivity gains) explain changes in the dependent variable (US employment). The US economic census was taken in 1992 and 1997, which are fairly representative of pre-NAFTA and post-NAFTA time periods. As expected, employment increases with sales. The dummy variable for the 1997 observations, interpreted as a productivity effect, is negative and significant (higher productivity reduces employment). Global imports reduce employment, but the magnitude of the effect is very small. However, employment in maquiladoras shows no statistically significant effect on US employment.

This finding should not come as a great surprise. Before NAFTA, US firms used maquiladoras to take advantage of cheap labor without paying tariffs at the border. NAFTA actually makes maquiladoras less economically important because almost all manufactured goods can now be traded duty-free. Furthermore, maquiladoras use inputs that are pro-

9. Data on maquiladora employment are from various issues of *Complete Twin Plant Guide* (a publication of Solunet). Because our data lacked complete coverage, we estimated maquiladora employment by determining the ratio of employment in each industry to the total number of maquiladora workers accounted for by Solunet and multiplied these ratios by the total number of maquiladora workers reported by INEGI (2002a). Data on imports are from the USITC Interactive Tariff and Trade Dataweb, 2002, and data on sales and employment are from the US Census Bureau (1997).

Table 2.4 Effect of maquiladora employment on US employment and worker compensation

Independent variable	Coefficient	t-stat
US employment (dependent variable)		
US sales	0.783	43.4
US imports	–0.027	–3.6
Maquiladora employees	0.000	0.1
Year 1997	–0.043	–7.8
Number of SIC industries: 772		
Number of observations: 1,544		
Within R-squared:[a] 0.73		
US worker compensation (dependent variable)		
US sales	0.052	5.3
US imports	–0.007	–1.6
Maquiladora employees	0.000	0.2
Year 1997	0.018	5.9
Number of SIC industries: 772		
Number of observations: 1,544		
Within R-squared:[a] 0.14		

a. Within R-squared is the percentage of explained time-series variation in the dependent variable, as opposed to the percentage of explained total variation. Most of the total variation is attributable to differences between industries and is controlled.

Note: All variables are in natural logarithm form except the 1997 dummy variable.

duced in the United States, which reduces the overall effect of maquiladoras on US employment. Critics of NAFTA seem to believe that if maquiladoras did not exist, the entire manufacturing process would take place in the United States and thus generate more US jobs. The economic reality is that if maquiladoras did not exist, the entire manufacturing process, in many cases, would take place outside the United States, and the finished product would be imported.

The fixed-effects model of US employment shows a reasonably good fit to the data. By contrast, a similar model for total compensation per worker in each industry does not perform well. The model for compensation is the same as the model for employment, except for a different dependent variable (real US compensation rather than US employment). The signs are the same as in the employment model, except for the 1997 dummy variable, which is positive (real compensation increases with productivity). While the independent variables in the model do not perform well as a group at explaining real compensation, the significance of the maquiladora variable is the question of greatest interest. The estimates indicate that the level of maquiladora employment does not appear to reduce real compensation in US industries.[10] These results suggest that the

10. To be sure, total US imports are partly a function of maquiladora activity, and therefore the effect of maquiladoras may be partly subsumed into the import variables. However, even if the import variables are omitted, the maquiladora coefficient is still insignificant.

feared effect of maquiladoras on US jobs and earnings has been greatly exaggerated.

In sum, while NAFTA plays a very limited role in the overall determination of real and relative wages in the United States, some unskilled workers who are laid off as a consequence of trade with Mexico and Canada suffer a significant loss of earnings. The solution for these individuals lies not in rolling back NAFTA nor in stopping other trade negotiations but in policies that directly address the problems—such as wage insurance and other adjustment programs.[11] In fact, Congress and the president embraced this core solution in the Trade Act of 2002. The Act roughly tripled the level of adjustment assistance (from $400 million to $1.2 billion annually), extended coverage to some secondary workers (those indirectly affected), and provided a health insurance subsidy for laid-off workers. As an alternative to trade adjustment assistance, older dislocated workers can claim wage insurance for up to 50 percent of the wage gap between old and new jobs (with a $5,000 cap per worker).

Deterioration of Labor Conditions

NAFTA skeptics argue that the agreement will eventually translate into a convergence of North American labor practices toward the lowest common denominator—a slow march to the bottom. Jurisdictions with better labor regulations will supposedly lose investment and eventually cut their regulatory standards to keep business from relocating.

The AFL-CIO claims that liberal trade and investment rules not only weaken the bargaining power of workers in wage negotiations but also undermine workplace health and safety regulations (AFL-CIO 1999) and that "NAFTA's main outcome has been to strengthen the clout and bargaining power of multinational corporations, to limit the scope of governments to regulate in the public interest, and to force workers into more direct competition with each other—reinforcing the downward pressure on their living standards, while assuring them fewer rights and protections" (AFL-CIO 2002).

The linchpin of this argument is a tide of investment toward Mexico and away from the United States. While investment flows to Mexico have been strong since NAFTA negotiations began, the flows are primarily not at the expense of investment in the United States. The United States remains among the top FDI destinations in the world and was a net receiver of FDI during 1996–2001.[12] Total FDI inflows as a percentage of GDP in

11. Hufbauer and Rosen (1986) advocated these ideas. For a modern restatement, see Kletzer and Litan (2001) and Kletzer (2001).

12. In other words, FDI inflows to the United States have exceeded FDI outflows in recent years. Since 2001, however, the United States has not been a net receiver of FDI.

the United States increased from under 1 percent in the early 1990s to 3 percent in 2000.[13]

Meanwhile, average annual US FDI flows to Mexico rose from $2 billion during the pre-NAFTA period (1990–93) to $5.7 billion during the post-NAFTA decade (1994–2003).[14] While the rise is significant, the level is very modest compared with $1.7 trillion of US gross private domestic investment in 2003. After NAFTA was enacted, from 1994 to 2002, 1,351 businesses relocated from the United States to Mexico and 334 relocated to Canada, according to Public Citizen's NAFTA-TAA database.[15] This represents less than 200 annually, or about 4 percent of total annual US business relocations. By comparison, between 1996 and 1999, about 4,000 firms on average moved between states each year.[16]

Mexico has been the main target of criticism regarding labor standards. However, the United States is not free from criticism. The US record is particularly faulted on freedom of association, child labor, and migrant worker protection.[17] The International Labor Organization (ILO) has often pointed out inconsistencies between US labor law and the ILO concept of freedom of association. First, the ILO argues, employer "free speech" allows firms to mount unfair campaigns against union organization (Gross 1995). A 1996 study commissioned by the Labor Secretariat of the Commission for Labor Cooperation (created under the North American Agreement on Labor Cooperation [NAALC]) found that plant-closing threats are often used as an antiunion strategy (Bronfenbrenner 1997). An update of that study using data from surveys of National Labor Relations Board (NLRB) certification elections in 1998 and 1999 found that 51 percent of firms used plant-closing threats during organizing campaigns (Bronfenbrenner 2000).[18]

13. FDI inflows to the United States topped $300 billion in 2000. They dropped to $159 billion in 2001 along with a slowdown in the worldwide FDI boom (BEA 2004b), reaching just $29.8 billion by 2003. As a result, total FDI inflows as a percentage of GDP in the United States declined from 1.6 percent in 2001 to 0.27 percent in 2003.

14. Based on US Bureau of Economic Analysis data for US direct investment abroad, capital outflows during 1990–2003, available at www.bea.doc.gov/bea/di/di1usdbal.htm#link1 (accessed on May 30, 2005).

15. See Public Citizen's NAFTA-TAA database, 1994–2002, www.citizen.org/trade/forms/taa_info.cfm (accessed on May 26, 2005).

16. See Brandow Company Releases US Business Migration Report, press release, September 3, 1999. www.prweb.com/releases/1999/9/prweb9093.php (accessed on June 24, 2002).

17. Human Rights Watch (2000) called for congressional legislation to address weak enforcement of labor standards and legal obstacles that hinder freedom of association, by comparison with international standards.

18. The survey data cover more than 5 percent of the 6,207 NLRB union certification elections in 1998 and 1999. This is the largest comprehensive database on private-sector union certification election campaigns to date.

Although some safeguards exist, the US "permanent replacement" doctrine poses a risk to employees who go on strike. Under this doctrine, new hires may permanently replace workers on strike. Moreover, statutory exclusions of the National Labor Relations Act (NLRA) mean that federal labor legislation does not cover millions of workers (agriculture workers, domestic employees, and independent contractors).

Regarding child labor, a Human Rights Watch report denounced both legislated standards and weak enforcement of child labor legislation on US farms. The Fair Labor Standards Act allows children to be employed in farms from a younger age than in other jobs (12 versus 14); there is no limit on the hours children may work in agriculture; and the Act does not require overtime pay for agricultural work.

Finally, the rights of migrant workers are often abused. Those holding a work permit seldom report an abuse, since their visa status depends on continued employment. Illegal immigrant workers are in constant fear of deportation. Making a fuss on the job can trigger a report to the US Citizenship and Immigration Services (USCIS).

Deunionization

The labor movement in the United States has had a dismal run over the last 25 years.[19] Union membership as a percentage of the US workforce has steadily fallen from 23 percent in 1977 to 13 percent in 2003. The total number of union members decreased by 4 million, despite the creation of over 50 million new jobs since the mid-1970s.

Popular explanations for the deunionization trend include increased domestic and international competition, structural changes in the labor force, deregulation of highly unionized sectors, declining recruiting efforts of unions, and decreasing interest of workers. Labor unions cite international trade as the key reason for their demise. Baldwin (2003) analyzed the role of international trade and other factors in US deunionization between 1977 and 1997. Following is a summary of his main findings:

- The decline in unionization is not exclusive to manufacturing, the sector of the economy most involved in international commerce. The proportion of unionized workers declined in primary industries, construction, and services as well. Exceptions to the downward trend in union membership are in services supplied by federal, state, and local governments. Even so, unionization rates fell among more-educated workers.
- Structural change in industry composition was not a major factor explaining deunionization. Only about a fifth of the decrease in the overall unionization rate can be attributed to shifts in the industry distribution of workers from highly unionized to less unionized industries.

19. This section draws from Baldwin (2003).

- A small drop in the earnings premium of union over nonunion workers accompanied deunionization. The ratio of average weekly earnings of union members to nonunion workers fell from 1.4 to 1.3 overall and from 1.19 to 1.16 in manufacturing.
- From 1977 to 1987, union workers (mostly with 12 years or less of schooling) suffered more job displacement pressure from imports and gained less from the employment-creation effects of exports than could be expected given their relative importance in the respective labor forces. The net employment impact during the period was a loss of 690,000 union jobs, about 24 percent of the total union jobs lost during the period.
- From 1987 to 1997, however, union workers faced less job displacement pressure from imports and enjoyed more job creation from exports than could be expected on the basis of their numbers in the respective labor forces. The net employment impact of trade on union workers was a gain of 387,000 jobs.

Canada

Canada experienced two key changes in the labor market during the 1990s: (1) industrial restructuring that followed the economic crisis of the late 1980s and early 1990s and (2) rationalization of Canadian social programs, which, among other things, reformed the unemployment program. Industrial restructuring, combined with the IT revolution and economic boom in the United States, spurred Canadian employment. Employment increased from 12.8 million to 16 million between 1993 and 2004, and the unemployment rate fell from 11 to 7 percent. Against this larger economic backdrop, the Canada-US Free Trade Agreement (CUSFTA) and NAFTA created a certain amount of political noise.

Erosion of Social Safety Nets

Canadian fears about competing with the United States echo US fears about competing with Mexico. One fear some Canadians hold is that increased integration with the United States will undermine the Canadian social safety net and put downward pressure on labor standards through scaled-back government programs. A particular worry is that provincial governments will not be able to maintain their universal healthcare programs (Helliwell 2000).

Canadian labor markets are highly unionized, and government standards play a bigger role than in the United States. Unemployment benefits, social welfare programs, and minimum wages are more generous. Canadian health care is also universally available and provided to a national standard. Since access to health care, along with healthcare stan-

Table 2.5 Healthcare spending in North America, 1990 and 2002 (percent of GDP)

Country	1990	2002
Canada	9.0	9.6
Mexico	4.4	6.1
United States	11.9	14.6

Source: OECD (2004c).

dards, are particular worries, the comparative statistics are worth noting. The Canadian federal and provincial governments have provided universal health insurance since 1960. In the United States, government-assured health insurance covers only 33 percent of the population, while private insurance brings the US total coverage up to 85 percent of the population. On the basis of these differences, some Canadians fear that economic pressures will threaten their universal healthcare system.

These fears are overblown, as Canadians increasingly recognize. If the Canadian healthcare system were more costly than the US system, there would be reason to worry. However, the public system in Canada consumes 9.6 percent of GDP while the mixed public/private system in the United States consumes 14.6 percent of GDP (see table 2.5). In Canada, publicly funded health care enables employers to avoid costly private systems. To the extent healthcare costs figure in business location decisions, Canada is a cheaper place to do business. Furthermore, as table 2.6 indicates, total public spending on labor-market programs is much higher (relative to GDP) in Canada than in the United States or Mexico.

Canada's large public deficit in the early 1990s (8 percent of GDP) prompted a political reaction that led to substantial cuts in spending on health and education. By 2004, Canada featured one of the best public budget positions among developed countries (a general government surplus of 1.8 percent of GDP) (IMF *World Economic Outlook* 2002). Yet, the Canadian healthcare system still provides universal coverage, and despite budget cuts, real public spending per capita on health care in Canada rose 1.8 percent annually between 1990 and 2000 (OECD 2004c).

Changes in the social safety net will come about if Canadians lose faith in their system and turn to the US model. The opposite could also happen. In the larger scheme of things, deeper economic integration is a comparatively weak force. If economic integration determined the size of social safety nets, Nevada and California would have similar systems. So would Alberta and British Columbia. They do not.

Increased economic integration with the United States does not force any country to adopt US-style social policies.[20] Countries choose their

20. There is concern, however, that Wal-Mart, the giant US retailer, might stifle the establishment of unions in Canada. Since 1994, Wal-Mart has acquired more than 100 outlets from

Table 2.6 Active and passive labor-market public spending, 2001 (percent of GDP)

Country	Active spending	Passive spending
Mexico	0.06	n.a.
United States	0.14	0.57
Canada	0.42	0.80

n.a. = not available

Note: Active spending includes public employment, adult job training, youth job training, subsidized private employment, and measures for the disabled. Passive spending includes unemployment compensation and compensation for early retirement.

Source: OECD (2004b).

own social programs and adjust their resources to the program and vice versa. Canadians can have as much welfare state as they are willing to pay for. The benefits of trade and financial globalization include faster GDP growth, which can make available more resources for safety net spending, if that's what a country chooses.

Brain Drain

The social safety net is Canada's yesteryear worry. The worry now is the loss of high-skilled workers to the United States. Migration from Canada to the United States is not a new phenomenon. At the beginning of the 20th century, Canadian-born individuals living in the United States represented 20 percent of the Canadian population. At the beginning of the 21st century, the percentage was down to about 2 percent (Helliwell 2000, 2001). The Canadian concern today, however, is not numbers but quality—some of the best may be moving south.

Statistics Canada reports that 22,000 to 35,000 Canadians—or 0.1 percent of the population—moved to the United States annually during the 1990s. While this rate is lower than historical levels, it increased after the mid-1990s and involved mostly high-tech and highly skilled workers. While 21 percent of Canadians have a university degree, 94 percent of Canadians working in the United States were university graduates.[21] As these num-

a Canadian retailer and currently owns 262 stores across Canada. Among these, the Wal-Mart store in Quebec was unionized in August 2004. In February 2005, the store was shut down because, according to Wal-Mart, declining store revenue and escalating union demands forced the first Wal-Mart closing in Canada. See Clifford Kraus, "For Labor, A Wal-Mart Closing in Canada is a Call to Arms," *New York Times*, March 10, 2005.

21. The all-Canada statistic is based on the share of Canadian adult population (aged 25 to 64 years old) that completed a university degree in 2001. See OECD (2004d). The proportion of Canadians working in the United States with university degrees is based on beneficiaries of H-1B work visas in 2001. See US Department of Homeland Security, Office of Immigration, *Statistical Yearbook 2004*.

bers increase, so do fears that Canada will face a shortage of skilled labor and eventually lose out in the "new economy." Before the dotcom bubble burst, the debate centered on high-tech Canadians headed for Silicon Valley.

On the other side of the ledger, Canada is a net receiver of immigrants. Four times as many university graduates entered Canada from abroad as left for the United States. According to the Canadian census, from 1998 to 2003, around 71,000 degree holders entered Canada annually. During the same period, the annual average of Canadian university graduates leaving for the United States was about 12,000.[22]

High Canadian taxes, better US job opportunities, and higher salary levels are among the causes most cited for Canadian emigration. A survey in 2000 shows that migrants rank these factors as follows: first, job opportunities; second, better salaries; and third, lower taxes (Helliwell 2000). Income tax differences are estimated to account for about 10 percent of Canadian migration to the United States—a small proportion, but the only factor public policy can directly influence (Wagner 2000).

There are also some signs of a shortage of skilled labor in Canada. While hiring difficulties that Canadian employers experienced in the late 1990s were the result of a tight labor market at the end of a prolonged boom, Canada will face an increasing shortage of skilled labor, including in construction, energy, and healthcare sectors.[23] The Conference Board of Canada estimates that Canada faces a shortfall of nearly one million workers by 2020.[24] As a result, immigration fulfills most of the shortages in high-skilled professions and trades.[25]

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22. Data on immigrants to Canada who hold university degrees are based on Citizenship and Immigration Canada (CIC) estimates of immigrants holding a bachelor's degree or higher. Canadian university graduates working in the United States are based on the number of Canadian beneficiaries under the US nonimmigrant temporary work program known as the H-1B program. See US Department of Homeland Security, Office of Immigration, *Statistical Yearbook* 2001 and 2004; and CIC (2000, 2003).

23. For an empirical analysis, see Gingras and Roy (2000). As more Canadian nurses reach retirement age, the Canadian government expects to have a shortage of more than 100,000 nurses by 2011. See Conference Board of Canada (2004). Labor shortage also forced Petro Canada to suspend an oil sands project in May 2003 and gradually led major Canadian energy companies to secure government approval to import nearly 700 skilled foreign workers for oil sands projects. See James Stevenson, "Foreign Labor Stirs Up Political Passions," *Canadian Press,* March 29, 2005; and Deborah Yedlin, "Labor Shortage Threatens Oil Patch," *Globe and Mail,* May 2, 2003. We thank Wendy Dobson for this observation and for providing written comments to an earlier draft.

24. According to Watson Wyatt human resources consultants, demographic changes, including rising life expectancy and lower fertility rates, will inflict a severe labor shortage on Canada by 2030. The number of workers for every retiree in Canada is projected to decline from 3.7 in 2000 to 2 by 2030. See Elizabeth Church, "Serious Labor Shortage Looms," *Globe and Mail,* January 27, 2004, B2; and Government of Canada (2001).

25. Immigrants represent a growing share of highly skilled professions in Canada and are often overrepresented in engineering and natural science occupations. Immigrants generally have a higher level of education than native Canadians. See Conference Board of Canada (2004).

Table 2.7 Flow of nonimmigrant professional workers to the United States, 1989–2003

	Under CUSFTA		Under NAFTA	
Year	Total number of workers (TC visa)	Of which: Spouses and children (TB visa)	Total number of workers (TN visa)	Of which: Spouses and children (TD visa)
1989	2,677	140		
1990	5,293	594		
1991	8,127	777		
1992	12,535	1,274		
1993	16,684	2,408		
1994	5,031	498	19,806	5,535
1995			23,904	7,202
1996			26,987	7,694
1997			n.a.	n.a.
1998			59,061	17,816
1999			68,354	19,087
2000			91,279	22,181
2001			95,479	21,447
2002			73,699	15,331
2003			59,446	12,436

n.a. = not available

Source: US Department of Homeland Security, Office of Immigration, *Statistical Yearbook 2004.*

NAFTA's contribution to Canada's brain drain was unintended and unanticipated. NAFTA temporary visas (TN visas) were designed to facilitate the mobility of professional workers in North America as an adjunct to cross-border business. The number of immigrants holding TN visas increased rapidly, peaking at over 95,000 in 2001 before falling sharply in the post–September 11 era (table 2.7). Most are Canadians; just over 2,500 came from Mexico. However, the rapid growth of TN visas primarily reflected the greater ease of obtaining a TN visa relative to other types of visas, rather than increased trade and investment resulting from the CUSFTA and NAFTA. In our recommendations, we propose an expansion of the TN program, but this recommendation has more consequence for Mexico than Canada.

NAFTA seems to be a secondary factor in the recent increase in Canadian migration to the United States. Incentives to migrate are tied to labor-market conditions, especially relative salaries. A shortage of high-tech and healthcare workers in the United States drove the high mobility in the 1990s. Other, more permanent, institutional characteristics (higher salaries, lower taxes) probably played a lesser role.

Mexico

The most significant event for Mexican labor markets in the 1990s was the 1994–95 peso crisis. The Mexican economy contracted by over 6 percent in 1995, slashing Mexican employment and wages. Employment creation picked up by mid-1996; overall employment numbers increased from 31.3 million in 1993 to 39.7 million in 2003. Real wages for the majority of workers have largely recovered. Against this difficult background, NAFTA has mainly had a positive impact on the Mexican labor ledger.

One of the NAFTA promises to Mexican workers was more and better jobs. Table 2.8 indicates that between 1993 and 2003, the number of employed workers increased by more than 8 million, and the percentage of the working-age population that is employed increased from 84 to almost 98 percent. Some of those workers have their jobs because of increased trade and investment induced by NAFTA. While there were large net job losses in 1995 due to the recession in Mexico, and a small downturn in 2001, for the period as a whole Mexico averaged annual employment growth of 3.3 percent.[26]

Over 1994–2004, the average annual growth of the Mexican economy was 2.9 percent. Nearly one-third of this growth came from export activities.[27] Mexican firms with FDI, which are mostly exporting firms, generally pay higher wages. Average salaries in foreign-funded companies are 48 percent higher than the national average, and employment in foreign-funded companies accounts for about 25 percent of jobs created in Mexico (Lustig 2001). Contrary to the expectation that foreign investment would be concentrated in the lowest-skilled activities, the principal impact of FDI in manufacturing was to raise the demand for semi-skilled workers and the wage premium paid to them.[28] Moreover, after liberalizing trade through NAFTA, the percentage of electronic components produced domestically in the Mexican computer industry increased. In 2005, private developers were building a new $1 billion industrial park, "Silicon Border," to compete directly with Chinese manufacturers and lure semiconductor manufacturers with the help of a 10-year tax break.[29]

26. Mexican annual employment growth is based on the average annual growth of formal-sector employment during 1994–2004. See IMSS (2005) and table 8.4 in chapter 8 on migration.

27. Based on World Bank *World Development Indicators* 2005 data for Mexican exports of goods and services as a share of GDP during 1994–2003.

28. According to Gordon Hanson, US manufacturing firms in Mexico raised the average skill intensity of production in both the United States and Mexico, thereby raising the demands and earnings of relatively higher-skilled workers in both countries. See Hanson (2003) and Feenstra and Hanson (2001).

29. Modeled after other Asian industrial parks, the key advantages of the Silicon Border include a parallel supply chain that is closer to West Coast manufacturing than are Asian suppliers. See "Despite Obstacles, Silicon Border Stands Good Chance of Success," *Miami Herald*, March 19, 2005. In 2000, the "Little Silicon Valley" cluster near Guadalajara reached 125 com-

Table 2.8 Labor force in North America, 1993 and 2003 (in millions)

	Canada		Mexico		United States		Total	
	1993	2003	1993	2003	1993	2003	1993	2003
Population	28.7	31.6	94.2	102.3	258.1	291.0	381.0	425.0
Labor force (working age 15–65)	14.6	17.0	37.2	40.7	131.0	146.5	182.8	204.3
Percent of total population	51	54	40	40	51	50	48	48
Official unemployment rate (percent)	11.4	7.6	3.2	2.6	6.9	6.0		
Employed	12.9	15.7	31.3	39.7	120.3	137.7	164.5	193.2
Percent of working-age population	88.2	92.4	84.2	97.5	91.8	94.0	90.0	94.6
Agriculture	.6	.4	8.0	6.5	3.3	2.3	11.9	9.2
Percent in sector	4	3	26	16	3	2	7	5
Industry	2.8	3.5	7.0	9.9	28.9	16.9	38.7	30.4
Percent in sector	22	22	22	25	24	12	24	16
Services	9.5	11.8	16.0	23.2	88.1	103.5	113.6	138.5
Percent in sector	74	75	51	58	73	75	69	72

Source: OECD (2004a).

Financial crises have significant and persistent effects on real wages.[30] The financial crisis of 1982 burst the economic bubble that Mexico enjoyed after the oil shocks of the 1970s. As an oil exporter, Mexico enjoyed lush revenues until the early 1980s and was able to borrow freely in the New York capital markets. The drastic fall in oil prices in the early 1980s triggered a financial meltdown; in the aftermath, real wages in the Mexican manufacturing sector plummeted to a much lower equilibrium. The center column of table 2.9 shows that the same thing happened after the 1994–95 peso crisis. Mexican manufacturing wages fell over 20 percent in real terms from 1994 to 1997. In 2003, average real wages in the manufacturing sector were still 5 percent below 1994 levels, although wages had gained 22 percent from their postcrisis trough in 1997.[31] In contrast, real

panies, including Mexican-owned companies, employing 90,000 workers. See Diane Lindquist, "Guadalajara is Mexico's 'Silicon Valley'," *San Diego Union Tribune*, October 23, 2000.

30. The primary example is the Mexican "tequila crisis" of 1994–95, when the breakdown of the peso fixed exchange rate against the dollar caused the currency to drop by about 50 percent in six months. In turn, real wages declined, and thousands of Mexicans defaulted on credit card and other loans in the wake of sharply higher interest rates. We thank Wendy Dobson for this observation.

31. Our calculations use the raw series "Remuneraciones" divided by "Persona Ocupada" (both series are from STPS 2005c), deflated by the consumer price index. The Banco de Mexico (2004) publishes a productivity series based on employment rather than hours worked. This series also corresponds roughly to the one we have constructed.

Table 2.9 Real wages in manufacturing in Mexico

	Nonmaquiladora[a]		Maquiladora	
Year	Real monthly income per worker (1994 = 100)	Real wages (1994 = 100)	Real monthly income per worker (1994 = 100)	Real wages (1994 = 100)
1987	71.3	72.1	—	—
1988	71.0	70.8	—	—
1989	77.3	76.8	—	—
1990	80.0	79.2	96.2	99.7
1991	84.9	83.7	94.2	100.2
1992	92.3	90.8	95.9	99.9
1993	96.5	96.1	95.8	98.7
1994	100.0	100.0	100.0	100.0
1995	87.5	88.5	94.0	93.9
1996	78.8	79.0	88.8	87.1
1997	78.3	77.9	90.4	75.4
1998	80.5	80.1	94.0	78.8
1999	81.8	80.9	96.0	80.1
2000	86.6	85.7	100.3	83.7
2001	92.4	91.7	109.4	92.2
2002	94.1	93.5	115.5	97.4
2003	95.3	94.8	115.5	96.5

— = not applicable

a. Pre-1994 statistics correspond to the 129 classification system, which was discontinued in 1995. Post-1994 statistics correspond to the 205 classification system.

Source: INEGI (2005a, 2005b).

monthly income per worker in maquiladoras actually increased by 15 percent over the decade and by 30 percent after the peso crisis (see table 2.9). Other salient features of the Mexican labor market are summarized below:

- Mexican statistics show about a 4 percent unemployment rate in 2004, which sounds pretty good, but the definition of Mexican unemployment includes only those who have worked *less than one hour* in the past week.
- The percentage of employed working 35 or more hours a week (indicating full-time employment) increased from 71 to 77 percent between 1993 and 2002, then declined to 71 percent in 2004. Meanwhile, the percentage of workers with no pay dropped from 14 percent in 1993 to 8 percent in 2004.

- The percentage of workers earning less than one minimum salary (many workers in Mexico work more than one job) is down to 24 percent (from 35 percent), and the percentage of workers with social security and related coverage rose to 33 percent (from 29 percent) for 1993–2004.

Compared with the United States and Canada, there were few fears about the effect of NAFTA on labor conditions in Mexico. Labor conditions in Mexico are so poor that most analysts believed that NAFTA could only help by creating jobs and attracting foreign investment. However, three Mexican fears are worth mentioning. First, some observers were concerned that NAFTA (and globalization in general) would worsen income inequality in Mexico. Second, workers in small Mexican firms feared that their employers would not be able to compete against large multinational firms. Finally, workers in the state sector feared that they would lose their jobs as state-owned enterprises were privatized.

Income Inequality and Labor Conditions

Income inequality is severe in Mexico, which had a Gini index of 51.4 in 2002. By comparison, the most recent US Gini index was 45 and the Canadian Gini index was 42 (World Bank 2002).[32] Furthermore, the economic security of Mexican workers has episodically dropped during the last decade, primarily as a result of the peso crisis in 1994–95 and more recently due to the US economic slowdown between 2000 and 2002.

Child labor remains one of the most serious problems in Mexico. The United Nations Children's Fund (UNICEF) estimates that 16 percent of the child population (or 3.6 million children) works in Mexico, often in conditions that lack basic health and safety measures.[33] Few NAFTA opponents claimed that NAFTA would make a bad child labor scene worse. Since ratification, however, events indicate that the scene remains bad. NAFTA cannot be the cure for abysmal child labor practices. In Mexico, as in most other countries, child labor has little connection with multinational firms, or firms involved in international trade. Child labor is largely a phenomenon of rural life and low-end service-sector activities.

32. The Gini index measures income inequality within a country, with higher values indicating more inequality. The maximum value of the Gini index is 100, corresponding to a state where one person has all the income. African countries generally have the highest income inequality (Gini indices in the 60s). The minimum value is 0, corresponding to an equal income for everyone. European countries generally have the least inequality (Gini indices in the 20s).

33. Based on the UNICEF definition of child labor (children between the ages of 5 and 14) and Mexican Secretaría del Trabajo y Previsión Social (STPS) estimates for the population of children (between the ages of 5 and 14). See STPS (2005a) and UNICEF (2004, 2005).

Table 2.10 Department of Labor and unemployment insurance spending in North America, 1994–2003
(billions of dollars)

	Canada		Mexico		United States	
Year	Amount	Percent of GDP	Amount	Percent of GDP	Amount	Percent of GDP
Department of Labor spending						
1994	24.6	4.4	0.1	0.02	37.8	0.5
1995	25.3	4.4	0.1	0.02	32.8	0.4
1996	25.7	4.3	0.1	0.02	33.2	0.4
1997	18.6	3.0	0.1	0.02	31.1	0.4
1998	17.7	3.0	0.0	0.01	30.6	0.3
1999	18.3	2.9	0.0	0.01	33.0	0.4
2000	18.6	2.7	0.1	0.01	31.9	0.3
2001	19.4	2.7	n.a.	n.a.	39.8	0.4
2002	19.7	2.7	n.a.	n.a.	64.7	0.6
2003	20.5	2.4	n.a.	n.a.	70.7	0.6
Unemployment insurance spending						
1994	14.2		—		21.6	
1995	12.0		—		21.3	
1996	11.0		—		21.8	
1997	10.3		—		19.8	
1998	8.4		—		19.6	
1999	8.9		—		20.6	
2000	8.6		—		20.6	
2001	8.3		—		31.7	
2002	9.7		—		41.7	
2003	10.8		—		41.3	

n.a. = not available
— = Mexico does not have an explicit unemployment insurance program. Partial alternatives to unemployment compensation are social security and other pension programs (IMSS and ISSTE). In 2003, these programs distributed $22 billion, mostly for old-age support.

Sources: Treasury Board of Canada Secretariat (2004), Fox (2001), US Government Printing Office (2004), US Department of Labor (2004a), Mexican Federal Government (2004), and personal communication with Carlota Serna, 2001. Canadian and Mexican values converted to US dollars using annual exchange rates reported by the International Monetary Fund.

While the Mexican government has tried to address enforcement problems for child labor and other abuses, the budget of the Secretaría de Trabajo y Previsión Social (STPS), the Mexican Labor Department, is insufficient to enforce existing labor standards (see table 2.10). More important, Mexico does not have an explicit government program of unemployment insurance.[34] On the bright side, spending on social security and the num-

34. While social security and pension programs (IMSS and ISSTE) provide partial alternatives to unemployment compensation in Mexico, it is unknown how much these programs are used to alleviate unemployment.

ber of workers covered have increased significantly since 1994. In addition, Mexico implemented a new program for employment, training, and defense of labor rights—the Programa de Empleo Capacitación y Defensa de los Derechos Laborales 1995–2000.

Furthermore, the STPS signed agreements with all of the state labor authorities in 1998 to implement new regulations on workplace inspections and provide federal training of state inspectors. STPS officials report that compliance is reasonably good at most large companies. Problems are concentrated in small companies, and federal inspectors are stretched too thin for effective enforcement when companies do not comply voluntarily.

The Maquiladora Sector

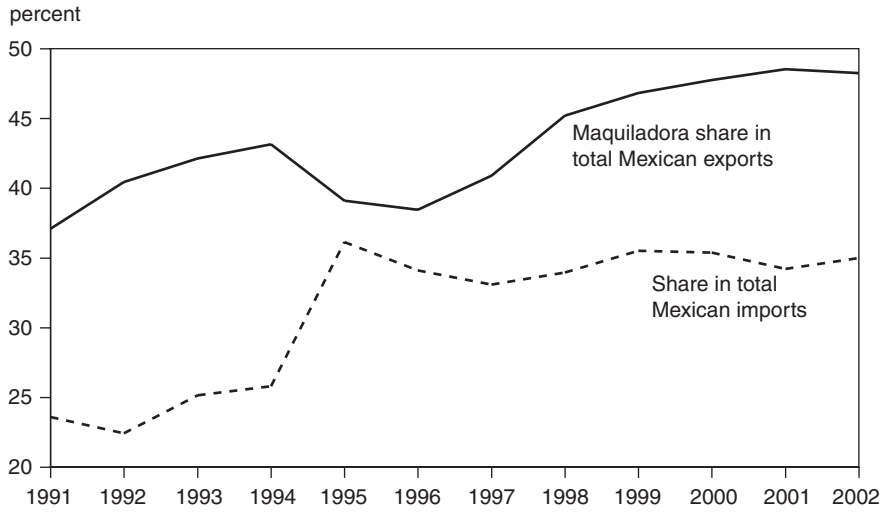
Maquiladoras are another hot-button issue. The Mexican maquiladora program started in 1965 and allowed multinational corporations to ship US inputs to Mexico for further processing before being reimported into the United States. Under the maquiladora program, the value of US inputs is not subject to US tariffs when the finished goods are reimported to the United States.

NAFTA did not enhance the maquiladora program and in fact made it less relevant. Before NAFTA, the US content of some products was not subject to tariffs under the maquiladora program. After NAFTA, the US content of those products is still not subject to tariffs, but the tariffs against Mexican value added are phased out as well. Not surprisingly, one researcher found that NAFTA has had no effect on maquiladora employment. Gruben (2001) finds that US industrial production and relative wage levels adequately explain maquiladora employment and that the existence of NAFTA does not add explanatory power to the model.

Continuing prior trends, however, maquiladoras have become a more important component of Mexican trade since NAFTA. As figure 2.1 indicates, in 1993 maquiladoras accounted for about 25 percent of total Mexican imports and a little more than 40 percent of total Mexican exports. Following the 1994–95 financial crisis and subsequent depreciation of the peso, nonmaquiladora imports into Mexico contracted faster than maquiladora imports, and exports diversified into new product lines. The share of total imports into Mexico purchased by maquiladoras has stayed near 35 percent since 1995 while the maquiladora share in total Mexican exports has grown to almost 50 percent.

If NAFTA has not had much of a causal effect on maquiladora trade, how has tighter integration with the United States affected maquiladoras? In 1994, the Mexican border states accounted for 82 percent of the maquiladora plants and 85 percent of the maquiladora value added. By 2004, there had been a small relative shift inland, with border states accounting for 79 percent of the plants and 79 percent of the value added (figure 2.2).

Figure 2.1 Maquiladoras and Mexican trade, 1991–2002



Note: Shares are calculated by first aggregating monthly data. 2002 ratio is based on data from January through June.

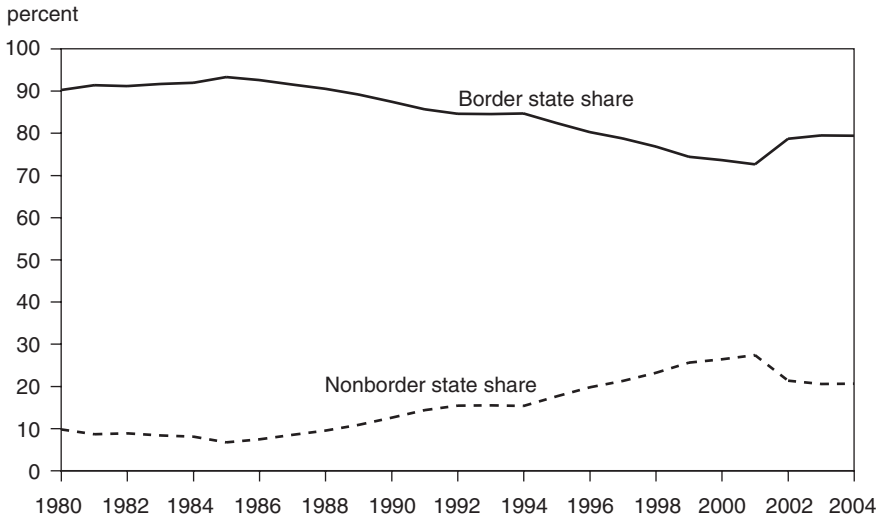
Source: INEGI (2002a).

This inland shift has many explanations. Traditionally, maquiladoras have been concentrated in northern Mexico because the roads in Mexico were poor, particularly in central and southern Mexico. Recently, the roads have been improved somewhat, but modest infrastructure improvement is not the main explanation. There are reports that wages along the border are getting too high and that plant managers become frustrated when a large number of employees work only for a short period in the maquiladora and then depart to illegally enter the United States.

Little evidence suggests that the maquiladora program has helped or hurt wages in Mexico. Maquiladora workers are paid less than manufacturing workers as a whole, but the average skill requirements for maquiladora workers are lower. Table 2.9 does show, however, that real wages in the maquiladora sector were close to their pre-1995 levels by 2003. Within the maquiladora sector, the ratio of wages in the border states to wages in other states has shrunk since 1996, after rising sharply at the onset of NAFTA. The trend in the relative wage ratio, which is illustrated in figure 2.3, may reflect the decision of some maquiladora firms to move farther inland.

Despite the sharp increase in real wages, the post-2000 period was not particularly good for the maquiladora sector. Maquiladora employment peaked at 1.35 million in October 2000 and declined to 1.14 million by October 2004, a decline of almost 16 percent (INEGI 2005a). Based on general

Figure 2.2 Value added in maquiladoras, 1980–2004



Note: Shares are calculated by first aggregating monthly data. 2004 shares are calculated based on data from January through October.

Source: INEGI (2005c).

trends, 2005 looks to be a better year for maquiladoras, but continued growth depends heavily on the US economy's strength.

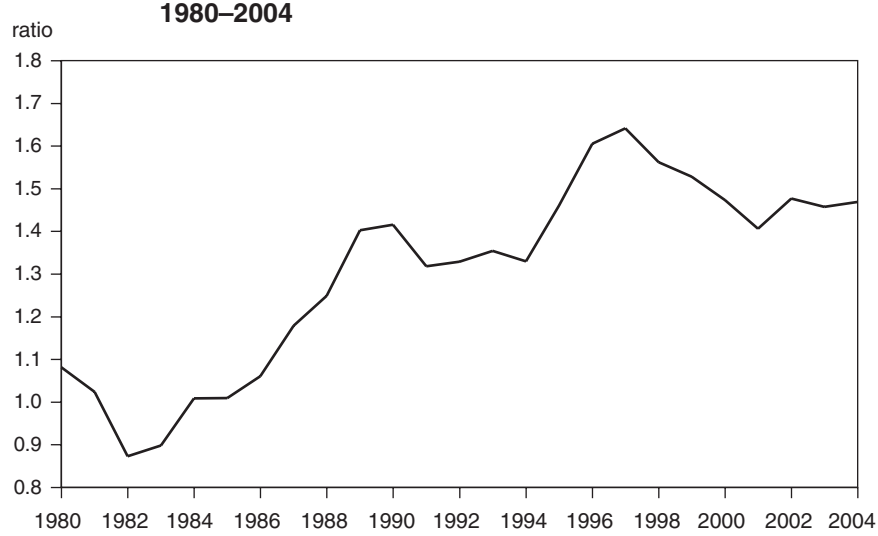
Small Firms and the State Sector

NAFTA has supported Mexican employment on balance by attracting foreign investment and promoting trade. However, many small and medium-sized Mexican firms have gone out of business both because of the 1994–95 financial crisis and because they could not compete with multinational firms. Between 1993 and 2000, the number of manufacturing firms operating in Mexico fell by 9.4 percent, while employment rose by 11.5 percent (Calderon-Madrid and Voicu 2004, table 3).[35] Overall, according to official statistics, unemployment is low in Mexico, only 2.6 percent at the end of 2004 (STPS 2005b). While official figures are understated, the downside of NAFTA on the Mexican labor force has been temporary dislocation rather than persistent unemployment.

NAFTA may have accelerated the process of "sifting and sorting" within Mexican manufacturing, forcing less productive firms out of busi-

35. Calderon-Madrid and Voicu (2004) analyze the Mexican manufacturing sector using data from the Encuesta Industrial Anual (EIA); therefore their analysis excludes maquiladora and other "in-bond" firms.

Figure 2.3 Relative hourly wages within the maquiladora industry, 1980–2004



Note: Ratio is calculated by first averaging monthly data. 2004 ratio is based on data from January through October.

Source: INEGI (2005c).

ness, thereby freeing resources for more productive firms. On the basis of firm-level data covering all sectors of Mexican manufacturing, Calderon-Madrid and Voicu (2005) conclude that total factor productivity (TFP) was a dominant indicator of company survival. Depending on the sector, a firm that was 20 percent less productive than its own industry average was between 15 and 27 percent more likely to exit the marketplace.[36] Furthermore, the authors found that productivity growth was strongest in firms that engage in external commerce. Greater use of intermediate imports and a higher proportion of exports to sales were both associated with higher productivity growth.

Mexican workers in the state sector were at best lukewarm about NAFTA. In the past 15 years, Mexico has undergone a wave of privatization, and NAFTA accelerated a larger trend. Workforce reduction usually accompanies privatizations, obviously unpopular among separated employees. While Mexico has made enormous progress in shifting from a state-dominated to a market-dominated economy, the state sector is still substantial. NAFTA has had little effect on Petróleos Mexicanos (Pemex), the state-owned petroleum company, and Comisión Federal de Electricidad (CFE), the state-owned electricity company. Mexico essentially opted out of liberalizing the energy sector when NAFTA was negotiated. Mexico

36. This estimate controls for import penetration, size, age, and liquidity. Interestingly, import penetration was a significant factor only within the textiles industry.

has delayed an inevitable dose of political pain yet still faces the persistent reality that the country will eventually need to reform Pemex and CFE. When reforms happen, they will surely include a downsizing of bloated labor forces in the energy sector.

Independent Unions in Mexico

Mexican labor organization practices are changing as a delayed feature of the liberalization movement that started in the 1980s. Following were the landmarks in this process:

- ***The debt crisis of 1982.*** International financial institutions insisted on a degree of liberalization in exchange for loans and aid.
- ***GATT accession in 1986.*** This definitively ended the period of import substitution industrialization.
- ***Economic reform between 1988 and 1994.*** President Carlos Salinas de Gortari increased openness to international trade and investment.
- ***The peso crisis of 1994–95.*** Sharp devaluation of the peso sparked militant mass movements in rural areas and a political shift that increased votes for the Partido Acción Nacional (PAN) and the Partido de la Revolución Democrática (PRD).
- ***Two landmark events in 1997.*** In July, the Partido Revolucionario Institucional (PRI), Mexico's ruling party since 1929, lost control of the Mexican Congress. In August, the death of Fidel Velazquez, the long-serving and powerful leader of the Confederación de Trabajadores Mexicanos (CTM), punctuated the difference between old and new relations between labor and government.
- ***The election of Vicente Fox in 2000.*** The democratization process ended 71 years of PRI rule and opened the way for further changes in the corporatist relationship between labor and government.

Greater political openness has translated into a more open approach to labor organization in Mexico. This new approach is reflected in the following events:

- Creation of an independent organization of workers in 1997. The Unión Nacional de Trabajadores (UNT) is a breakaway coalition of 200 Mexican unions comprising between 1 million and 2 million workers (La Botz 1998).
- Decrease in the ranks of the official unions, the Congreso del Trabajo (CT) and the CTM. In the early 1990s, the CT claimed to represent over 10 million workers. Today, government statistics estimate its membership at about 1 million. Similarly, the number of CTM members de-

clined from over 5 million to around half a million.[37] While early numbers were almost certainly inflated, the official unions are surely losing members.

- The Mexican Supreme Court ruling in April 2001 that obligatory union membership was unconstitutional.[38]

No one expected NAFTA to be a boon for unions, but the new environment in Mexico is opening the door for greater cooperation between labor unions in the NAFTA countries. Leadership changes within the US labor movement have also increased interest in forging cross-border alliances. Until the 1990s, US labor unions had little interest in organizing across borders (with the notable exception of Canadian auto workers). During the NAFTA debate, US labor opposition focused on winners (Mexican workers) and losers (US workers), stressing job competition rather than workplace cooperation. US labor leaders often portrayed Mexican workers as desperate, abused, and compliant—a portrait that insulted Mexico. Since the debate, practical cooperation has begun to replace rhetorical combat.

Contacts between Mexican and US unions are still low but have gone beyond the "meet and greet" level. Cross-border exchanges have increased, especially in the automotive, textile, and telecom industries. As the Mexican independent labor movement grows, US and Canadian unions are increasingly willing to establish relationships with Mexican labor groups. Mexico's Frente Auténtico del Trabajo, for example, has open relationships with more than a dozen labor unions and federations from the north. A decade ago, Francisco Hernandez, leader of the Mexican telephone workers union, proposed the creation of a trinational labor coalition (Sosa 1995), and US unions are increasing their permanent representation in Mexico.

The United Auto Workers (UAW) and the AFL-CIO have supported maquiladora workers in litigation against US corporations for violating Mexican labor law. In one of these legal battles, a US court granted standing to Mexican workers, a decision that led to a settlement favorable for the workers. While the case did not establish a legal precedent—it was settled before reaching the appellate court—it showed Mexican workers that they can pursue legal remedies in the United States and revealed the potential benefit of cross-border organizing (Browne 1995).

37. Data are from the United Electrical, Radio, and Machine Workers of America (2000). According to the CTM Secretariat, membership in 2001 was 493,000.

38. Historically, Mexican unions, especially the CTM, had a close affiliation with the PRI as well as overwhelming control over company workforces. One consequence of the Mexican Supreme Court ruling is that more than one union can now represent a company's employees. See Jose de Cordoba, "Labor Decision Strikes at Mexico's PRI," *Wall Street Journal,* April 19, 2001; and Andrea Mandel-Campbell, "Campaigners Seek to Loosen Grip of Company Unions," *Financial Times,* May 1, 2001.

Table 2.11 Population distribution in Mexico, 1980–2000
(millions, percent of total in parentheses)

	1980	1990	1995	2000	Percent born in-state (as of 1995)
Mexico federal district	8.8 (13)	8.2 (10)	8.5 (9)	8.6 (9)	76
Border states	10.7 (16)	13.2 (16)	15.2 (17)	16.6 (17)	74
Other states	47.3 (71)	59.8 (74)	67.4 (74)	72.2 (74)	81
Total	66.8	81.2	91.1	97.5	80

Sources: INEGI (2005b) and www.citypopulation.de/Mexico.html (accessed in January 2005).

Other examples show that assistance works both ways. The United Electrical Workers called on Mexican organizers to help mobilize the vote of Mexican immigrants in a labor campaign in Milwaukee (Moberg 1997). Furthermore, coalitions of nongovernmental organizations (NGOs) and labor organizations from all three NAFTA countries have brought forward most citizen claims under the North American labor side agreement.

Internal Migration

Although international migration (the subject of the next section) is probably the most salient issue in US-Mexico relations, internal migration within Mexico is related and also important. As table 2.11 shows, only about three-quarters of Mexican federal district and border state residents were born in that state; by comparison, in other states, about 81 percent of the residents were born within the state. Movement from one border state to another could account for some of this difference, but most of it probably reflects migration northward within Mexico. However, the share of the total Mexican population that lives in the border states has remained almost constant since 1980, suggesting that the inward internal migration is largely offset by emigration to the United States.

The economic base in Mexico was shifting northward well before NAFTA went into effect. Table 2.12 indicates that the share of GDP from border states had increased to nearly 24 percent in 2002, up from 19 percent in 1980. This relatively sharp increase in production, combined with a more moderate increase in population growth, reflects growth in per capita income in the border states (table 2.13). Between the financial crisis in 1995 and 2000, real per capita income rose 17 percent in the border states compared with 13 percent in other states.[39] This difference will continue to at-

39. In fact, wage growth has been much higher in regions with higher levels of FDI and higher exposure to foreign trade. See Hanson (2003).

Table 2.12 Contribution of border states and Mexico federal district to Mexican GDP, 1970–2002 (percent)

Year	Border states	Mexico federal district
1970	21.1	27.6
1975	20.3	26.1
1980	19.0	25.2
1985	19.4	21.0
1993	21.5	23.8
1995	23.2	22.8
2000	24.2	22.5
2002	23.6	23.2

Source: INEGI (2005a).

Table 2.13 Per capita income in Mexico (in 2000 pesos)

	1995	2000	Growth (percent)
Border states	25,577	29,845	17
Mexico federal district	45,123	53,723	19
Other states	13,443	15,148	13
Total	18,424	21,062	14

Source: INEGI (2005a).

tract Mexicans from poorer regions, but the promise of even higher incomes in the United States will tempt many to continue their journey north.

As the economic base has gravitated toward northern Mexico, it has also gravitated toward the cities, especially cities in the border region. As table 2.14 illustrates, in 1950, 57 percent of the Mexican population lived in rural areas. By 2000, that share had fallen to 25 percent, while 26 percent now live in cities of 500,000 or more. In the border states, the percentage of people living in urban and semiurban settings is over 86 percent compared with 73 percent in other states (table 2.15). Between 1990 and 2000, the total population of Mexico grew about 20 percent, but seven cities in the border region have grown much faster over the same period (table 2.16). Cities like Juárez and Tijuana have grown more than 50 percent in the last decade, causing congestion and pollution but also soaring property values (see chapter 3 on environment).

In conclusion, substantial evidence documents the phenomenon of internal migration within Mexico. The dominant features are migration from southern Mexico and movement from rural to urban areas (especially in the border region). These movements correspond with the greater role that

Table 2.14 Population concentration in Mexico, 1950–2000
(percent of total population)

	1950	1970	1990	1995	2000
Rural (less than 2,499 people in town)	57	41	29	27	25
Semiurban (2,500 to 14,999 people in town)	17	22	14	14	14
Urban (more than 15,000 people in city)	26	37	58	60	61
Of which:					
Less than 100,000 people in city	11	14	13	14	14
Less than 500,000 people in city	7	12	23	21	21
More than 500,000 people in city	9	11	21	26	26

Source: INEGI (2002a).

border states have claimed in the Mexican economy and the better opportunity that the border states offer to escape poverty. For many migrants, however, northern Mexico is just a stop on the way to the United States.

International Migration

Two issues strongly color popular US perceptions of NAFTA: one is migration, the other is the 1994–95 peso crisis. Unlike the impending peso crisis, the problems surrounding Mexican migration to the United States were very familiar to NAFTA negotiators in the early 1990s. At the time, they were seen as "too hot to handle" in a trade agreement. Beyond some verbal fencing and a very limited TN visa program, the NAFTA text steered clear of immigration questions.[40]

Ducking immigration issues did not, of course, put an end to the debate. Indeed, perhaps the most vexing question between Mexico and the United States is the issue of undocumented workers. Legal immigration from Mexico numbered between 130,000 and 200,000 persons annually in the past few years (compared with a total figure from all countries of 737,000 annually on average between 1997 and 2000). Over 95 percent of legal Mexican immigrants enter under family reunification visas. Within the undocumented category are two groups: those who already reside in the United States, a group whose number reached nearly 8 million in 2004, and those who come to the United States to work, a number running about 275,000 per year.[41] While important distinctions can be made be-

40. President Carlos Salinas, in pushing NAFTA, once remarked that the United States had a choice: either import Mexican tomatoes or accept Mexican tomato pickers. In reality, the United States does both.

41. See US Department of Homeland Security, Office of Immigration, *Statistical Yearbook* 2003. In 2000, the unauthorized resident population born in Mexico accounted for 69 percent of the total.

Table 2.15 Urbanization in Mexico, 2000 (percent)

	Percent urban
Border states	86.2
Other states	72.9
Total	74.6

Source: INEGI (2002a).

tween the two groups, the whole issue of unauthorized immigration is highly charged. On the Mexican side, the government considers the legalization of immigrant workers a matter of human rights and social justice—and a necessary step in the economic integration of North America. In terms of economic benefits, legalization would help ensure that the Mexican economy receives a growing flow of worker remittances. (In 2004, Mexican remittances totaled $17 billion, some 2.6 percent of Mexican GDP.)[42] Moreover, the legalization of millions of Mexicans working in the United States would improve their economic prospects and enable many to return to Mexico as successful entrepreneurs.

Feelings are equally strong on the US side. Some Americans flat-out oppose any increase in immigration. More immediately, the attack on September 11 and the deterioration of the US economy dampened the serious consideration that had been given to Mexican immigration in the fall of 2001. The fact that many of the terrorists overstayed their visas cast a huge shadow over any legalization initiative. The recession and rising unemployment gave fresh impetus to groups that oppose the opening of the border to migrant workers. According to polls, after September 11, the American people grew more apprehensive about what they perceive as weak border control and voiced stronger support for enforcing immigration laws.

Against this background, NAFTA contained a small initiative: the TN visa program. TN visas are issued to professionals for "temporary" work assignments. To get a TN visa, the applicant must qualify within designated job categories, meet the education or professional criteria, and have a sponsoring letter from his US employer. The number of TN visas for Mexico was initially capped at 5,500 annually, but the number of TN visas for Canadians is potentially unlimited.

As table 2.17 demonstrates, in fiscal 2003, the USCIS recorded just 1,269 TN visa entrants from Mexico, well under the already low annual ceil-

42. Banco de Mexico Governor Guillermo Ortiz estimated that Mexican remittances would reach $20 billion in 2005. In 2003, remittances surpassed foreign investment to become Mexico's second largest source of revenue after oil. The International Monetary Fund (IMF) recognizes the growing importance of remittances for developing countries and argues that remittance-financed consumption in Mexico exerts a significant multiplier effect on the economy. "Mexico's Central Bank Predicts Remittances Will Reach $20 Billion for 2005," *Associated Press*, May 23, 2005; IMF (2005); and "Monetary Lifeline," *The Economist,* July 29, 2004.

Table 2.16 Population growth in Mexican cities near the US border

City	State	Population			Growth, 1990–2000 (percent)
		1990	1995	2000	
Ciudad Juárez	Chihuahua	798,499	1,011,786	1,218,817	52.6
Tijuana	Baja California	747,381	991,592	1,210,820	62.0
Mexicali	Baja California	601,938	696,034	764,602	27.0
Chihuahua	Chihuahua	530,783	627,662	671,790	26.6
Reynosa	Tamaulipas	282,667	337,053	420,463	48.7
Matamoros	Tamaulipas	303,293	363,487	418,141	37.9
Nuevo Laredo	Tamaulipas	219,468	275,060	310,915	41.7
Nogales	Sonora	107,936	133,491	159,787	48.0

Sources: INEGI (2002a).

ing for TN visas.[43] The likely reason for low utilization is that alternative H-1B (temporary worker) visas require approximately the same documentation and offer better terms. Like TN visas, H-1B visas are issued on the basis of employer letters, but H-1B visas are not limited to a detailed job list. Moreover, the initial term for an H-1B visa is three years (renewable for another three years), whereas TN visas have an initial term of one year (but can be renewed every year if the person maintains a residence abroad). In 2004, the cap of 5,500 on Mexican TN visas was abolished, and the application process simplified. These changes may eventually increase the number of TN visa entrants.

TN visas are given to skilled workers, and most research shows that immigration exerts no perceptible impact on the earnings of skilled citizens. However, immigration does have negative consequences for the wages of low-skilled workers in the United States because immigration substantially increases the supply of low-skilled labor. One study finds that for citizens without a college degree, immigration reduces wages by $1,915 (12 percent) per year (Camarota 1998). Fear of reduced wages is one of the driving forces against liberalization of immigration in North America. Nevertheless, in an attempt to enlist them as union members, the AFL-CIO has endorsed amnesty for illegal immigrants currently in the United States. It is difficult to isolate the effects of immigration on wages without detailed data on workers, wages, and immigration. However, we can generate some ideas about these effects by looking to aggregated wage data along the southern US border. We picked seven US cities along the border (Brownsville, El Paso, Laredo, Las Cruces, Tuscan, Yuma, and San Diego) that presumably have experienced a good deal of legal and illegal immigration from Mexico. We then compared the average wage and wage

43. The term "visa entrants" refers to persons entering the United States. Many TN visa holders may enter more than once within a year.

Table 2.17 Legal migration into the United States, fiscal 2003

	Total	Family-sponsored preferences	Employment-based preferences	Relatives of US citizens	Other
Immigrants					
World	705,827	158,894	82,137	332,657	132,100
Canada	16,555	1,730	6,328	7,785	712
Mexico	114,984	29,526	3,151	78,200	4,107

	Total	Specialty workers (H-1B visa)	Other temporary workers (H2 visa)	Intracompany transferees (L1 visa)	NAFTA workers (TN visa)	Other
Nonimmigrants						
World	1,269,840	360,498	116,927	298,054	59,446	434,915
Canada	116,563	20,947	5,213	15,618	58,177	16,608
Mexico	130,327	16,290	75,802	15,794	1,269	21,172

Source: US Department of Homeland Security, Office of Immigration, *Statistical Yearbook* 2004.

growth in these cities with the overall average for cities in the respective states. Table 2.18 indicates that the average wage is lower than the state city average in all seven cases, in both 1993 and 2003.

Does this mean NAFTA is in fact hurting US wages? No—NAFTA did not liberalize immigration law or inhibit its enforcement. Table 2.19 shows that wages in these seven cities have remained below the state city averages ever since 1970, long before NAFTA. Between 1970 and 1995, six of the seven cities fell further behind; however, between 1995 and 2003, only four of the cities continued their relative descent. These tables suggest that cities with an abundance of low-skilled labor attract firms that need low-skilled labor and pay wages that correspond to skills required. The pull on illegal migration is part of this labor-market mix. The consequent industry structure in these US cities limited their participation in the boom of the 1990s and more broadly in US economic development over the past 30 years. The long-term solutions are faster growth and better worker skills in Mexico, thereby curbing the supply of low-skilled labor on both sides of the border.

NAFTA's Labor Provisions

A Sketch of North American Labor Law

The heated NAFTA debate and the ensuing negotiation of a labor side agreement created a misleading sense that North American labor standards might be on the political agenda. But the NAALC, the side agreement on labor, was no more than a quarter-step toward common North American

Table 2.18 Average annual wage per job in border cities pre- and post-NAFTA (current dollars)

Area	1993	2003	Growth (percent)
Texas MSA average	27,264	37,517	38
Brownsville-Harlingen-San Benito	17,414	23,181	33
El Paso	20,144	27,228	35
Laredo	17,762	24,951	40
Three-city average	18,440	25,120	36
Three-city average as percent of Texas MSA average	68	67	
New Mexico MSA average	22,349	31,556	41
Las Cruces	19,029	25,597	35
Las Cruces as percent of New Mexico MSA average	85	81	
Arizona MSA average	23,634	35,268	49
Tucson	21,878	32,510	49
Yuma	18,396	25,451	38
Two-city average	20,137	28,981	44
Two-city average as percent of Arizona MSA average	85	82	
California MSA average	28,985	42,056	45
San Diego	26,013	39,299	51
San Diego as percent of California MSA average	90	93	
Seven–border city average	20,091	28,317	41
Four-state MSA average	25,558	36,599	43
Seven–border city average as percent of four-state MSA average	79	77	

MSA = metropolitan statistical area

Source: Bea (2004c).

labor rights. Given the economic disparity between Mexico and its northern partners, and given sovereignty concerns in all three countries, common standards are not a realistic possibility. Each of the NAFTA countries has its own long history of labor regulations, legislative processes and procedures, and unique approaches to enforcement. There was no chance that NAFTA would suddenly supersede decades of domestic political compromise on labor legislation in each country.

Canada

The Canadian Constitution does not address labor rights or minimum labor standards.[44] As a general rule, in Canada, federal labor law does not

44. The Canadian Charter of Rights and Freedoms guarantees freedom of association, freedom of expression, and the right to assembly. However, in *Re Public Service Employee Relations Act* (1987), the Canadian Supreme Court ruled that "freedom of association" does not include collective bargaining or the right to strike.

Table 2.19 Average wage per job as a percent of state MSA average

Area	1970	1975	1980	1985	1990	1995	2000	2003	Change 1970–95	Change 1995–2003
Brownsville-Harlingen-San Benito, TX	69	73	70	66	67	67	60	62	–2	–5
El Paso, TX	88	85	79	79	78	77	71	73	–10	–5
Laredo, TX	73	73	71	67	66	69	66	67	–4	–3
Las Cruces, NM	95	91	86	85	83	81	79	81	–14	0
Tucson, AZ	96	97	97	94	92	92	87	92	–4	1
Yuma, AZ	83	90	91	84	79	76	68	72	–7	–4
San Diego, CA	90	92	90	90	90	90	90	93	0	3

MSA = metropolitan statistical area

Source: BEA (2004c).

supersede provincial labor law. The federal government has primary labor jurisdiction over a few sectors, namely federal government employees and workers in activities of "national, international, and interprovincial importance." These sectors account for about 10 percent of the workforce. Provincial labor legislation covers the remaining 90 percent of workers. As a result, Canada has 11 labor legislation systems, one for the federal sector and territories and one for each of the 10 provinces.

Administrative labor boards (composed of worker, employer, and provincial government representatives) oversee enforcement of labor legislation in most provinces. Quebec has a labor commissary and a labor tribunal for this purpose. Employer-employee joint committees develop and supervise work safety and health standards. Inspections can be carried out without prior notice or warrants. Abatement orders are frequently issued for violations, but fines are uncommon.[45] Canadians favor cooperation and voluntary compliance when it comes to enforcement.

Legislation in Canada is much more union-friendly than in the United States, and unionization levels are higher in Canada. Union density in Canada reached 30 percent of the labor force in 2004 (72 percent in the public sector, 18 percent in the private sector overall, and over 30 percent in the manufacturing sector) (Statistics Canada 2004). By contrast, in the United States, under 13 percent of workers were union members in 2003 (42 percent of government workers, 9 percent in the private sector overall, and 15 percent in manufacturing) (US Department of Labor 2002b). In other words, the role of unions is about twice as great in Canada as in the United States.

45. See the NAALC Web site, www.naalc.org/english/pdf/canada.pdf (accessed on June 24, 2002).

Mexico

Mexican labor law is based on Article 123 of the 1917 Constitution, which gives the federal Congress exclusive authority to enact labor laws. All Mexican workers are subject to the minimum employment standards set forth in the Constitution and the 1970 Ley Federal del Trabajo (LFT). The LFT is enforced in the 33 national jurisdictions (31 states, the federal district, and the federation of federal government). Enforcement of the LFT is divided between federal, state, and local authorities. The STPS is responsible for ensuring enforcement at the federal level. Mexico has three review mechanisms for compliance with safety and health standards: government inspection, private-sector verification, and joint committees. Penalties are not frequently imposed.

Mexican labor law is highly progressive, but its enforcement is very weak. On paper, Mexico's protection of workers' rights is greater than in Canada or the United States, but reality is another story. The gap between theory and practice underscores the point that new standards at the NAFTA level might have little effect in Mexico. Besides, the deeper NAFTA gets into labor issues, the more important sensitive enforcement issues will become.

In Mexico, more than 30 percent of the labor force is unionized, including half of the workers under federal jurisdiction. The Mexican government and the labor unions have traditionally had a close political relationship, and the government is often involved in settling disputes. Indeed, the Mexican Constitution requires that labor arbitration boards include a government representative, and traditional ties between government and unions historically allowed the government to control the vote of the union representative (Ruhnke 1995).

As the poorest country in North America, Mexico has more limited social programs than the United States or Canada. Mexico has no unemployment insurance program and has a large informal labor sector, where wages and working conditions are usually poor and where labor protection does not exist. While there are plans to grant universal health care under the Mexican Popular Health Insurance Program by 2010, it remains an aspiration.[46]

The United States

The US Constitution does not specifically address labor rights or standards, but constitutional interpretation has had a major impact on US

46. Currently, under the Mexican Popular Health Insurance Program, families pay fees on a sliding scale based on income and location; the poorest people do not pay. Under Article 4 of the Mexican Constitution, "every person has a right to receive medical treatment when deemed necessary." See Adrienne Bard, "National Healthcare Plan Would Insure the Poor," *Miami Herald*, January 8, 2005.

labor law. The First Amendment to the Constitution, protecting freedom of assembly, has been extended by Supreme Court decisions to cover related labor rights (pickets, leafleting, boycotts, and political participation). The Constitution gives Congress the power to regulate trade between states, and this power has been extended by additional Supreme Court decisions to cover labor legislation. As a consequence, a mixture of federal and state laws, judicial decisions, and administrative regulations governs US labor law. Under the Supremacy Clause of the US Constitution, federal laws or regulations preempt state laws when they conflict. Workplace safety and health are regulated by the Occupational Safety and Health Administration (OSHA) and enforced mainly through federal inspections. These require either employer consent or a warrant. Fines are frequently imposed for violations.

The NLRA mainly regulates employer-employee relations. The NLRA established the NLRB to hear disputes between employers and employees. The NLRB's general counsel can independently investigate and prosecute cases. If not subject to the NLRA, then other federal or state statutes cover employers and employees.[47]

How does NAFTA fit in? Given this mosaic, it is unrealistic to expect detailed harmonization of labor standards at the North American level. But much can be done to agree on core labor standards and enforce their compliance. We offer some proposals in the final section.

The NAFTA Text

The original NAFTA included several environmental provisions but hardly any clauses regarding labor rights. After reviewing the legislative record, the Bush administration concluded that Mexican labor standards are comparable to those in the United States. On paper, this is true: Article 123 of the Mexican Constitution, the cornerstone of Mexican labor legislation, gives Mexican workers the right to organize unions and to strike, and it guarantees a wide range of basic labor standards—from minimum wage to worker housing (Human Rights Watch 2001, 14). The Bush administration further argued that NAFTA would stimulate economic growth and thereby facilitate funding for adequate enforcement of existing labor laws.

This stance permitted the Bush administration to sidestep enforcement questions, and with enforcement put to one side, the NAFTA text made few references to labor issues. The preamble of the main agreement includes two general objectives regarding labor:

47. The Railway Labor Act governs labor relations in the railway and airline industries. Employees and agencies in the federal public sector are subject to the Federal Service Labor-Management Relations Act (FSLMRA), which is administered by the Federal Labor Relations Authority.

- "create new employment opportunities and improve working conditions and living standards" and
- "protect, enhance, and enforce basic workers' rights."

As a free trade agreement, NAFTA generally precludes governments from using trade protection to shield specific sectors from North American imports or to promote domestic employment and output (Campbell et al. 1999). Explicit provisions, however, ease the pressure on workers in vulnerable sectors. Fifteen-year transition periods on the road to free trade were stipulated for the most sensitive sectors; safeguard mechanisms (an "escape clause") can be invoked for injured industries; and strict rules of origin are supposed to "ensure that free-trade benefits of a NAFTA accrue to North American products and their workers."[48]

The "escape clause" in NAFTA, written at US insistence, allows tariffs to snap back to the most-favored nation (MFN) level when a domestic industry is severely injured. Additionally, the three countries can continue to impose antidumping and countervailing duties against imports from each other.[49] To prevent abuses of trade remedies, Chapter 19 of NAFTA includes a special dispute settlement procedure to contest final decisions of national authorities.[50]

The Labor Side Agreement

Introduction

Fear that free trade would worsen labor conditions did not originate with the negotiation of NAFTA. Indeed, "pauper labor" arguments were a staple of tariff debates throughout the 19th century. The novelty in NAFTA was the fierce resistance mounted by the US labor movement to an agreement with Mexico (compared with other postwar trade agreements), and the subsequent attempt to address labor issues within the framework of a trade agreement.

In 1991, organized labor fired its opening shot with a campaign against congressional authorization of fast track for NAFTA negotiations. Against this assault, President George H. W. Bush promised attention to environment and labor issues to win congressional votes for extension of fast-track procedures until June 1993. NAFTA negotiations were substantially

48. Testimony of Lynn Martin, US Secretary of Labor, before the Senate Finance Committee, Washington, September 10, 1992.

49. Antidumping and countervailing duties are not permitted on intraregional trade in some FTAs and customs unions, including the European Union and the Australia–New Zealand and Canada-Chile FTAs.

50. See chapter 4 on dispute settlement.

completed in August 1992, and the agreement was signed in December 1992 (Destler and Balint 1999, 9).

However, President-elect Bill Clinton vowed to delay ratification of the pact until new rights and obligations on labor and the environment supplemented it, as he had promised during the election campaign. Speaking in North Carolina in October 1992, Clinton argued that the basic trade agreement signed by President Bush did nothing to ensure that Mexico would enforce its own labor standards and that new "side agreements" were needed to forcefully correct these shortcomings. Only then would NAFTA reinforce a "high-wage, high-skill" path for America and merit ratification. Negotiations were reengaged in early 1993, and the side agreements were signed in August 1993 (Hufbauer and Schott 1993).

The labor side agreement has three specific objectives: First, the pact monitors implementation of *national* labor laws and regulations in each country, performing a watchdog role to alert countries about abuses of labor practices within each country. Second, the pact provides resources for joint initiatives to promote better working conditions and labor practices. Third, the pact establishes a forum for consultations and dispute resolution in cases where domestic enforcement is inadequate.

Despite a slow and cumbersome start, the pact has achieved modest results. Policy efforts have focused on oversight of national laws and practices, comparative studies, training seminars, and regional initiatives to promote cooperative labor policies. These efforts seem small in relation to the magnitude of labor problems, but they have directed additional attention and resources to identified issues.

Dispute settlement provisions were a major objective of the US initiative for the labor side agreement. In this area, the record has been mixed. Most cases are still under review—indeed a slow, deliberative process is by design. Mexico and Canada resisted the incorporation of dispute provisions and only accepted a compromise that was long on consultation and short on adjudication.

Disputes concerning unfair labor practices (primarily denial of the right of association) have benefited from the glare of publicity. Thirty-one cases have been submitted to the national administrative offices (NAOs) as of May 2005 (19 in the United States, 8 in Mexico, and 4 in Canada).[51] Nearly two-thirds of these cases were filed since 1998, and most of these new cases are still under review. Trade sanctions have not been a factor in any of the cases.[52]

51. Complete details of labor complaints filed under NAALC are available at www.dol.gov/ilab/programs/nao/status.htm (accessed on May 16, 2005).

52. In the Han Young case (1998), Mexican workers at the Han Young Hyundai maquiladora plant alleged that the Mexican government failed to protect the workers' right to freedom of association. Workers wanted a union to address occupational and safety violations, and the company was eventually fined as the result of STPS labor inspections under Mexican law and not pursuant to the NAFTA labor side agreement. See US Department of Labor (1998).

Differences Between the Labor and Environment Side Agreements

The labor side accord initially proposed by the United States mirrored the environmental side agreement. It contemplated the creation of an independent secretariat with the power to investigate citizens' complaints and with remedies for persistent nonenforcement of existing laws.[53] However, pressure from the US business community and unwavering opposition from Canada and Mexico resulted in significant differences between the environmental and labor texts as finally negotiated—the North American Agreement on Environmental Cooperation (NAAEC) and the NAALC.

First and foremost, labor-related issues are more politically charged than environmental matters. Consequently, the NAFTA members were more reluctant to cede authority over labor questions to supranational institutions. This was particularly true for Mexico, where union power played a key role in the traditional political game.[54] However, the United States was no exception; at home, US business was more concerned about lurking dangers in the labor side agreement than in the environment side agreement.

Secondly, the domestic political climate in the three countries influenced the ultimate outcome. In the United States, President Clinton was able to enlist the support of environmental NGOs for his side agreement. The labor constituency, on the other hand, adamantly opposed NAFTA. Nothing in a side agreement—short of a European-style social charter setting common standards, enforceable through domestic courts and international sanctions—would satisfy organized labor in the United States (Mayer 1998).

The Mexican government strongly opposed enforcement tools that could be used to restrict trade or compromise Mexican sovereignty. However, as the side agreement negotiations stretched, public support within Mexico for NAFTA eroded. Fearing a domestic backlash and complications for the 1994 presidential election, Mexican negotiators were willing to search for a face-saving compromise, one that did not erode traditional government control over the labor unions.

Canada also opposed the US side agreement proposal. While Canada's position was closer to that of the United States, Canada's new liberal government, fresh from a constitutional crisis, was not willing to "sell out" to the United States and allow for new trade sanctions in the side agreements (Mayer 1998).

The biggest contention was the establishment of a supranational institution. While Canada, Mexico, and the United States agreed on the need

53. For details on the environmental side agreement, see Hufbauer et al. (2000) and chapter 3 on environment.

54. The PRI, in power in Mexico for over 70 years, relied heavily on its special relationship with official trade unions and the business world to maintain its rule.

for an international body to oversee the agreement, they differed sharply on the power, independence, and enforcement mechanisms available to the new institution.

The Mexican government disliked the notion that an international institution might review Mexican labor questions given the special relationship between unions and the PRI. Canadians adamantly opposed the use of trade sanctions as an enforcement mechanism. US business and even some labor groups were uneasy with the idea of a powerful international institution.

To paper over these differences, the United States proposed that NAOs handle citizen complaints. The NAOs would be located within each member's department of labor. With national governments deciding whether claims merited international consultation, the idea of an independent supranational body was quietly buried. Thus the scope of the NAALC was limited to ensuring that each country followed its own laws. Enforcement questions were resolved on a bilateral basis. Between the United States and Mexico, fines and suspension of trade benefits are the potential enforcement mechanisms. Trade sanctions do not apply to Canada, and Canadian courts will impose fines (if at all).[55]

All this was accompanied by the usual solemn promises from each government to improve labor standards, increase cooperation, and enhance domestic enforcement of existing labor legislation.

The NAO in each country has the power to review labor law matters in the other NAFTA members. However, NAOs are national institutions, and any decision to "meddle" in the labor affairs of another NAFTA member would be approached with great caution. In sum, despite the labor side agreement, labor matters are still essentially a national issue.

Labor advocates did not favor NAFTA with or without a side agreement. They feared job losses, worsening of labor conditions, and lower wages. From the outset, organized labor in the United States denounced the NAALC as inadequate and correctly recognized that the lofty stated goals would not be achieved. However, based on the more limited standards set out in the NAALC text, there has been some success in terms of consultation on labor issues. The biggest payoff from the labor side agreement was that it enabled NAFTA to pass the US Congress. However, this gain was tarnished because critics were able to disrupt trade liberalization efforts for the rest of the 1990s by claiming that NAFTA had made inadequate progress on labor issues.

The North American Agreement on Labor Cooperation

The NAALC aims to promote labor rights by obliging parties to enforce their domestic labor laws. Additionally, the agreement obliges govern-

55. For a detailed analysis of the negotiation process of the labor side agreement, see Mayer (1998).

ments to ensure public access to administrative and judicial enforcement procedures.

Part one of the NAALC contains an ambitious list of objectives: improving working conditions, promoting labor principles, exchanging information, cooperating in labor-related activities, furthering effective enforcement of labor laws, and fostering transparency in labor law administration. Part two gives each party the right to establish its own domestic labor standards qualified by a commitment to high labor standards. Each party shall promote adequate enforcement and guarantee due consideration to alleged violations of labor law.

Part three of the NAALC establishes the Commission for Labor Cooperation (CLC) and the NAOs, defines their structure, powers, and procedures. Part four establishes the mechanisms for cooperation and evaluation. Finally, part five provides a mechanism for resolution of disputes over "persistent" nonenforcement of select labor standards.

The side agreement identifies 11 labor principles and divides them into three tiers. Access to remedies for inadequate enforcement varies according to the tier:

- The first tier is limited to NAO review and ministerial oversight. A committee of experts cannot evaluate the enforcement of labor principles in this tier, and no penalties are provided for noncompliance. This tier applies to matters concerning freedom of association, collective bargaining, and the right to strike.
- In the second tier are principles subject to NAO review, ministerial consultations, and evaluation by a committee of experts—but still no arbitration of disputes and no imposition of penalties. This tier covers principles concerning forced labor, gender pay equity, employment discrimination, compensation in case of injury or illness, and protection of migrant labor.
- Principles in the third tier get the full treatment: NAO review, ministerial consultations, evaluation and arbitration, and ultimately monetary penalties. This tier is limited to child labor, minimum wages, and occupational safety.

Institutions under the NAALC

Commission for Labor Cooperation. The labor side agreement created the CLC to oversee the implementation of the NAALC and promote cooperation. This commission is made up of a ministerial council, consisting of each country's top labor official; a trinational secretariat that provides technical support to the council and reports on labor law and enforcement issues; and an NAO in each of the three NAFTA countries. The NAO, which operates at the federal level, gathers and supplies information on

labor matters, and provides a review mechanism for labor law issues in the territory of the other parties. Additionally, the three countries can call on national advisory committees representing labor and business organizations and governmental committees representing federal, state, and provincial governments.

The Secretariat. The CLC Secretariat was initially established in 1995 in Dallas and later moved to Washington, DC. Its functions are to assist the council on the implementation of the agreement, promote cooperative activities, and prepare reports on North American labor issues. However, the budget of the CLC Secretariat is extremely limited, about $2 million annually. The secretariat can do little more than pay office rent and staff salaries. Within its tight budget, the secretariat has produced comparative studies on North American labor markets and labor laws and several reports on specific labor issues: plant closings, labor practices in the apparel industry, and employment of women. Additionally, the secretariat has supported working groups focusing on income security, worker compensation, and productivity trends.

National Administrative Offices. The NAOs provide a point of contact between labor ministries in the three countries and with the CLC Secretariat. The primary function of the NAOs is to provide information for reports and evaluations of labor matters and receive complaints regarding another country's failure to enforce its domestic labor laws. The NAOs can initiate their own investigations and accept citizen submissions. To date, the NAOs of the three countries have been shy in using their authority (Human Rights Watch 2001). The NAALC gives the labor departments of each of the NAFTA signatories freedom to define the role of its NAO. Consequently, the NAOs differ in important aspects.

The Canadian NAO, for example, has tried to extend the reach of the NAALC with a proposal that national labor tribunals take into account the aspiration to high labor standards agreed in the NAALC. Mexico's NAO, on the other hand, has limited its role to presenting the facts included in public submissions, without further investigation or findings. The US NAO tries not to interpret the NAALC but instead provides detailed analyses of citizen complaints (Human Rights Watch 2001). The US Department of Labor has limited its NAO to cases citing inadequate national enforcement of labor laws, thereby avoiding any investigation of labor conditions in specific companies operating in Canada and Mexico. This limitation reduces conflicts, but it also precludes the NAO from getting to the root of many labor problems (Lopez 1997).

Citizen Submissions and Dispute Settlement. The NAALC provides a government-to-government dispute settlement mechanism for cases where cooperative efforts fail. Before reaching the arbitration stage, dis-

putes must pass through cooperative consultation and evaluation procedures. A party may request ministerial consultations with another party regarding any matter within the scope of the agreement. But higher levels of review apply only to enforcement of the 11 labor principles covered by the NAALC (following the three-tier system explained above)—when the matter is trade-related and covered by mutually recognized labor laws.

One NAO can initiate consultations with the NAO of another country regarding labor law, labor law administration, and labor-market conditions. Additionally, citizens and NGOs can file submissions, with their respective NAOs, regarding labor law enforcement in other countries. After reviewing the submission, if the domestic NAO determines the submission merits action, it may request consultations with the foreign NAO. Once the NAOs have consulted, ministerial consultation may be recommended.[56]

If the matter remains unresolved after ministerial consultations, any party can request the establishment of an Evaluation Committee of Experts (ECE) to analyze the matter and issue a report. For matters unresolved by an ECE, disputing parties can request consultations and eventually the formation of an arbitration panel. Ultimately, arbitration can lead to monetary fines (see box 2.2). However, to date, the remedy of arbitration and monetary fines remains untested. Through May 2005, the NAOs created by the NAALC had received 31 citizen submissions (see appendix table 2A.1). Nineteen were filed with the US NAO (17 involved allegations against Mexico and two against Canada), eight with the Mexican NAO (all eight regarding US labor practices), and four with the Canadian NAO (two raised allegations against Mexico and two raised allegations against the United States).

Most submissions have focused on the enforcement of obligations relative to the 11 labor principles agreed upon in the NAALC. However, a few submissions have raised questions about other articles of the NAALC, namely Article 4 "appropriate access to labor tribunals" and Article 5 "fair, equitable and transparent labor proceedings."

Twenty-four of the citizen submissions referred to freedom of association issues (15 filed in the United States, six filed in Mexico, and three filed in Canada). Most of these cases alleged violations of other labor rights as well, mostly health and occupational safety and minimum employment standards. The remaining citizen submissions addressed issues dealing with child labor, gender discrimination, protection of immigrant workers, and the right to strike.

Of the 31 distinct cases filed with the NAOs (two cases were filed with two NAOs at the same time), seven were denied review, three were withdrawn, and one was settled before completion of the review process. The re-

56. Any party may request ministerial consultations with another party regarding any matter within the scope of the agreement without first receiving an NAO recommendation to do so.

Box 2.2 NAALC part V dispute resolution timeline and procedures

The North American Agreement on Labor Cooperation (NAALC) provides a government-to-government dispute settlement mechanism for cases where cooperative efforts fail. Following the final report of the Evaluation Committee of Experts, a NAFTA member government can initiate consultations with another NAFTA member if the government lodging the dispute believes the other country has persistently failed to effectively enforce its labor laws regarding child labor, minimum wage standards, or workplace safety. If the disputing parties fail to reach agreement within 60 days of the request for consultations, either party may request a special session of the council (comprising labor ministers from each NAFTA country). The council must convene within 20 days of the request and try to mediate the dispute. The council may call upon technical advisers and make recommendations. If the council cannot resolve the dispute within 60 days, an arbitral panel may be convened at the request of either party, with a two-thirds vote of the council.

The arbitral panel examines whether the party complained against has shown a persistent pattern of failure to effectively enforce occupational safety, child labor, or minimum wage labor standards. The disputants are allowed to make initial and rebuttal written submissions and are entitled to at least one hearing before the panel. The panel may seek advice from experts, with the consent of the disputing parties. Within 180 days after the first panelist is selected, the panel must submit an initial report containing its findings. If the country is found to exhibit a persistent pattern of failure to enforce its labor standards, the report will make recommendations, normally in the form of an action plan. The disputants have 30 days to submit written comments on the report, and the panel must issue a final report to the disputants within 60 days of the release of the initial report. The disputing parties must give the report to the council within 15 days after it is presented to them. The final report will be published five days after it is submitted to the council.

(box continues next page)

maining 20 resulted in 14 case reports, 13 of which recommended ministerial consultations. The outcome of the consultations was six ministerial agreements between Mexico and the United States, one ministerial agreement between Canada and Mexico, plus several studies and outreach sessions.

To date no submission has progressed beyond the consultation stage. Submissions regarding access to fair tribunals, freedom of association, and the right to strike only warrant review and consultation. However, even submissions covering rights that warrant access to arbitration mechanisms have ended with ministerial consultations. The ultimate solution coming out of consultations appears to be workshops or conferences.

Four-Year Review of the NAALC. Article 10 of the NAALC requires the Council of Ministers, the governing body of the CLC, to review the "operation and effectiveness" of the NAALC "within four years after the date of entry into force of this Agreement." In September 1997, in accordance with this requirement, the council appointed a Review Committee of Experts, issued an invitation to the public to submit written comments, and

Box 2.2 *(continued)*

The disputing parties will then agree on an action plan, which "normally shall conform with the determinations and recommendations of the panel" (Article 38). If an agreement cannot be reached on an action plan, a complaining party may request that the arbitral panel be reconvened, though no earlier than 60 days or later than 120 days after the date of the panel's final report. The panel will either approve an action plan proposed by the party complained against, create its own action plan, or impose a monetary fine. If an action plan is not agreed upon, and a panel solution has not been requested within the required time frame, the last action plan submitted by the offending party will be used.

If the complainant believes that the offending country is not fully implementing the agreed action plan, it may request that the labor panel be reconvened, though no earlier than 180 days after the action plan was decided upon. The panel shall determine within 60 days of being reconvened whether the action plan is being fully implemented. If the panel determines that the action plan is not being fully implemented, a monetary fine may be imposed of up to 0.007 percent of total trade in goods between the disputing parties during the most recent year for which data are available. If the complaining party believes that the offending party is still not complying with the determinations after 180 days, it may request that the panel be reconvened. The panel must determine whether the party is complying within 60 days of being convened. In the case of the United States and Mexico, if the panel determines that there is still no compliance, the country filing the complaint may impose tariffs equal to the monetary fine. Trade sanctions, however, cannot be imposed against Canada. Instead, Canada has agreed to make the panel determination legally binding under the Canadian courts—an "order of the court."

Source: McFadyen (1998).

consulted with advisory bodies.[57] A summary report with the results was published at the end of 1998, accompanied by conclusions and recommendations of the council along the following lines:[58]

- The NAALC is relatively new and untried. A second review, promised in 2002, should provide a clearer picture of its effectiveness. (As of 2005, the second review was still a work in progress.)
- The NAALC institutions have followed their mandate, but they have not been fully utilized. NAOs should launch their own evaluations and not rely solely on public submissions to trigger investigations.

57. The advisory bodies that contributed to the review process were the national advisory committees of Mexico and the United States and the national governmental committees of Canada and Mexico.

58. See the NAALC Web site, www.naalc.org/english/publications/review.htm (accessed on June 24, 2002).

- Given the size and diversity of the North American labor market, and the limited resources available to the secretariat, the secretariat should formulate a long-term plan and resource requirements.
- Greater uniformity in consultations and evaluation procedures among the three NAOs would improve public communications. NAOs should develop a multiyear work plan for their cooperative initiatives.

These recommendations remain to be implemented. While the CLC has developed a long-term plan, the three governments have yet to approve it.

Effects of the NAALC on North American Labor

The NAALC does not enforce labor standards. Instead, the agreement relies on each country to enforce its own labor laws. The function of the NAALC is to provide a forum for cooperation and a limited mechanism to evaluate labor issues. Under the NAALC, instances of noncompliance can be investigated following a citizen's complaint or a party's request.

Since the CLC Secretariat does not have the power to develop factual records (unlike the Commission for Environmental Cooperation), submissions have to be filed with the NAO of each country. To bring a case against his own country, a citizen must file with another country. Ultimately, the NAO civil servants investigate the performance of bureaucrats abroad, not the actions of the employers or unions involved in the complaint.[59] With all these limitations, perhaps it is not surprising that since NAFTA took effect, only 31 citizen complaints have been filed in a North American labor market of 200 million workers.

The NAALC has been criticized for its limited scope. To be blunt, the NAALC does not envisage a supranational tribunal to judge alleged violations, nor does it provide remedies for workers whose rights are violated. What the NAALC does provide is a meeting place for governments and labor organizations from the three NAFTA members, a consultation and cooperation mechanism, and a constrained dispute settlement arrangement. What has been achieved with such tools?

Cooperation has provided technical assistance to government officials and promoted interaction between labor representatives in the three countries. However, the NAALC has had practically no impact on North American labor-market conditions. The sheer size and complexity of the North American labor market are daunting, sovereignty concerns are overriding, and very little can be done to overcome enforcement shortcomings on an annual budget under $2 million.

59. See "Nafta's Do-Gooder Side Deals Disappoint: Efforts to Protect Labor, Environment Lack Teeth," *Wall Street Journal*, October 15, 1997.

Labor Adjustment Programs in North America

There is ample evidence that trade in general and NAFTA in particular play a limited role in shaping US labor markets. NAFTA's impact on labor markets is proportionally greater in Canada and Mexico, but the labor backlash is by far greatest in the United States.

Labor-market churning is part of economic progress. Workers quit their jobs all the time in search of better prospects. Even during periods of rapid economic growth, workers lose their jobs involuntarily. Job losses impose substantial costs on workers in terms of forgone income during the unemployment period and even after, if finding new employment means a lower salary. These costs exist whether the cause of the job loss is technological change, economic downturn, or increased trade. To ease worker concerns, governments can promote programs that reduce the economic hardship by providing temporary income support, wage insurance, health coverage assistance, and incentives for rapid reemployment.

The three North American countries address the needs of unemployed workers in their own way. Canada regards NAFTA adjustment as part of the continuing process of restructuring caused by technological change and globalization. Canadian employment insurance provides 14 to 45 weeks of benefits per year. Unemployed workers receive 55 percent of average earnings to a maximum of $277 a week (workers in low-income families may receive up to 80 percent of their average earnings). Mexico does not have specific programs for trade-related displacement nor does it provide employment insurance. However, displaced workers have the right to receive severance pay in the amount of three months of salary plus 20 days per year worked.

Employers in the United States are not required to provide healthcare benefits for employees. However, if health coverage is provided, dismissed employees can pay the group rate premiums and receive group health coverage for 18 months. In the United States, each state determines unemployment payments and duration of benefits. Maximum benefits range between $180 and $359 per week.

The United States is the only NAFTA party with specific programs for trade-displaced and NAFTA-displaced workers. Since 1962, US workers affected by increased imports have been eligible for supplemental unemployment insurance under TAA. Benefits are provided for a maximum of 52 additional weeks if the worker is enrolled in a training program. A similar program, the NAFTA-TAA, was established under the North American Free Trade Agreement Implementation Act of 1993. The Department of Labor's NAFTA-TAA program provided assistance to workers displaced by imports from Canada and Mexico or a shift of production to Canada and Mexico (e.g., production for consumption in those countries or for export to third countries). Eligibility for NAFTA-TAA did not depend on a demonstrated link to NAFTA trade concessions. All that was re-

quired was a connection to trade or investment in Mexico or Canada. Workers under this program are entitled to federal training programs up to two years, income support while training (equivalent to their unemployment insurance), job search allowances, and relocation assistance.

In fiscal 2001, Congress appropriated $407 million for TAA and NAFTA-TAA programs. On average, since fiscal 2001, 163,000 workers have been certified annually for assistance under these two trade adjustment programs.[60] By comparison, in 2001, federal funding for nontrade job loss assistance amounted to $1.6 billion and provided support to an estimated 927,000 workers.[61] State unemployment insurance benefit outlays were estimated at $42 billion for fiscal 2003 (US Department of Labor 2004b).

In August 2002, President Bush signed into law the Trade Act of 2002, which inter alia contained new trade promotion authority and an expansion of the TAA program, tripling the amount of money available for TAA programs. This act folded NAFTA-TAA into the broader TAA program. Highlights of the new TAA include

- coverage of some "secondary workers" who are dislocated when their companies lose sales to firms that are adversely affected by imports;
- a 65 percent refundable tax credit to pay for health insurance of participants in the TAA program;
- coverage of slightly more workers who are displaced when their firms shift production to a country that has a preferential trade agreement with the United States or (at the discretion of the department of labor) other countries as well; and
- wage insurance for workers over the age of 50. This five-year program will pay part of the difference in wages when older workers are displaced by trade and take a new job that pays less than the previous job. Wage insurance is available only after the worker starts the new job—the idea is to encourage laid-off workers to find a new position rather than subsist on unemployment benefits and questionable training programs.

The new TAA is clearly a step in the right direction. However, much more needs to be done in order to allay workers' fear of trade. We make recommendations on adjustment assistance in the concluding section of this chapter.

60. To prevent job churning, workers are eligible for these benefits once every four years.

61. See Trade Adjustment Assistance: Improvements Necessary, but Programs Cannot Solve Communities' Long-Term Problems, testimony by Loren Yager before the Senate Finance Committee, July 20, 2001, www.senate.gov/~finance/072001lytest.pdf (accessed on June 24, 2002).

Conclusion and Recommendations

Reform of the NAALC

We advocate a *smaller*, but more focused, mandate for the NAALC. The starting point for reform is candid recognition that the NAALC was designed as a political mechanism to ensure US ratification of NAFTA.[62]

Since the NAALC has failed to persuade labor opponents—either before or after the NAFTA vote—to support regional trade integration, one could question whether it should be continued. But international institutions, once created, are hard to eradicate, no matter how ineffective. Moreover, in the spirit of eventually creating a "North American Community"—broader in scope than trade and investment issues—a North American mechanism should exist for addressing labor issues.[63]

In this spirit, we recommend the way to start is with a very severe pruning of the NAALC's mandate. Our goal is to trim the NAALC back to its most effective branches and then to strengthen those branches.

Recommendations for the NAALC

- Provide the CLC with adequate funding. To date, the three countries have contributed equal amounts to the meager CLC budget (about $700,000 each). The vast difference in the size of the three North American economies would justify scaling the contributions to the size of North American merchandise trade flows. Under such a formula, the United States would increase its share of the CLC budget.
- Canada, Mexico, and the United States should agree to revamp the labor review process into a monitoring system based on agreed labor standards in four areas: discrimination, child labor, coerced labor, and workplace health and safety standards. An independent board that both reports to the CLC and publishes its findings should do the monitoring. By focusing on the four core areas, the CLC will avoid diluting its impact with forays into subjects where there is no prospect of agreement on appropriate standards (e.g., freedom of association).

62. There is extensive debate in the economic literature on the suitability of incorporating and enforcing labor standards through international trade agreements. See, for example, Maskus (1997). NAFTA and more recent FTAs contain labor-related provisions that go far beyond what is covered in multilateral trade negotiations. Indeed, WTO members excluded labor standards from the Doha Round negotiations. Paragraph 8 of the Doha declaration mentions labor but only to "reaffirm our declaration made at the Singapore Ministerial Conference regarding internationally recognized core labour standards. We take note of work under way in the International Labour Organization (ILO) on the social dimension of globalization."

63. For the concept of a community, see Pastor (2001).

- Workers are entitled to know in advance if a plant might be relocated because of labor cost, tax cost, or other cost differences. In the context of labor negotiations, however, such threats can be and are idly made. Our recommendation is that the relocation "threats" should be subject to a "false advertising" test. When the relocation issue is raised in labor negotiations, companies should be required to furnish detailed comparative cost figures in a format approved by the NLRB and labor boards in Canada and Mexico.
- The US Worker Adjustment and Retraining Notification Act of 1988 generally entitles workers—with significant exceptions—to 60 days' advance notice of plant closings or mass layoffs, and the workers are entitled to back pay if the firm fails to provide sufficient notice. Our recommendation would strengthen this provision by requiring documentation of comparative cost differences, if a firm raises the prospect of international relocation in labor negotiations.[64]

Temporary Visas

Under Chapter 16 of NAFTA, temporary entry is available for business persons provided that they do not pose a threat to public health and safety or national security and provided that they meet the eligibility requirements. The eligibility requirements state that the person must be a citizen of a North American country, have a letter indicating that he or she is crossing the border to temporarily work in a business activity that is international in scope, fall within one of the 63 enumerated high-skilled professions, and meet the minimum educational or licensing requirements or both for that profession. Liberalizing the requirements so that blue-collar workers also are eligible would increase the integration of the North American labor market and provide an alternative to cyclical illegal immigration.

Recommendations for the TN visa program

- Any legal resident of a country in North America should be eligible for temporary entry rather than just citizens.
- Temporary entrants should specify in their applications the date they will return to their home country. If a temporary entrant needs to stay longer than originally anticipated, he or she can file another application.

64. All firms should be required to adhere to this documentation regulation without exception. Unlike the Worker Adjustment and Retraining Notification Act, exceptions are not needed because firms that are seriously considering international relocation will have already spent considerable resources investigating cost differentials before the labor negotiations.

- Any worker that meets the basic eligibility criteria should be permitted to apply for a temporary entry visa, regardless of occupation or level of education. In other words, the list of 63 enumerated professions and associated requirements should be discarded. However, to discourage abuse, employers should be required to guarantee a job for the duration of the visa and pay a salary at least 5 percent above the prevailing wage. A fine should be levied against any host firm that files a fraudulent letter on behalf of the applicant.
- The spouses and dependents of persons who are granted temporary entry should be permitted temporary entry for the same duration and should be permitted to work, without having to meet additional eligibility requirements.

International Migration

US-Canada and US-Mexico migration issues are entirely different. For Canadians, a more liberal TN visa program, without job restrictions, could make a major difference in some occupations. The United States and Canada should permit the free flow of labor, just as Australia and New Zealand do. While TN visa terms are also important to Mexico, they are not at the heart of the US-Mexico migration problem.[65] Other visa questions are more critical.

Recommendations on Migration from Mexico

The place to start is with the ongoing flow of migrant workers arriving in the United States. The United States should take up President Fox's challenge—put forward shortly before the September 11 attacks—to substantially enlarge the annual quota of Mexicans legally authorized to enter the United States on temporary (but renewable) work permits.

The way to tackle the flow problem is to expand the number of legal visas to, say, 300,000 persons from Mexico annually. These additional visas should be issued on a work skill basis (including unskilled workers), not on a family reunification basis (the dominant test for current visas). For this purpose, we would mesh the TN and H1-B visa programs. However (and this is where security is underlined), to obtain a temporary work permit, the Mexican applicant should undergo a background check designed to avert security threats. Once inside the United States, temporary permit holders would need periodically to inform the USCIS, using the Internet, of their address and place of employment. Permit holders could renew their permits as long as they were employed a certain number of months (say eight months) in each rolling 12-month period, had

65. The numerical limit on TN visas for Mexicans was abolished on January 1, 2004. However, other conditions severely limit the use of TN visas.

no felony convictions, and reported regularly to the USCIS. They could apply for US citizenship after a certain number of years (say a cumulative five years as temporary permit holders). In the meantime, they should accumulate public Social Security and Medicare rights, as well as any private health or pension benefits.

Coupled with this substantial, but closely regulated, increase in temporary work permits, the United States and Mexico should embark on a joint border patrol program to reduce the flow of illegal crossings. The program should include features such as enhanced use of electronic surveillance, ineligibility for a temporary work permit for three years after an illegal crossing or an illegal overstay, and short-term misdemeanor detention (say 30 days) in Mexico following an illegal crossing. No border patrol program will eliminate illegal crossings, but a joint program, coupled with a substantial temporary work permit initiative, could reduce the flow.

That leaves the very difficult question of perhaps 8 million undocumented immigrants, many of them Mexicans, who live and work in the United States. We do not have a magic solution. The foundation for our recommendations is the proposition that undocumented Mexicans have made permanent homes in the United States and are not going to pick up their lives and return to Mexico. Under a set of appropriate circumstances, therefore, they should be granted residence permits with eligibility for citizenship. The appropriate circumstances we envisage have two components—a threshold related to illegal crossings and standards for individual applicants.

- The resident permit program would be launched when the presidents of the United States and Mexico could jointly certify that the annual rate of illegal crossings of the southern border does not exceed 50,000 persons. This would entail a reduction of more than four-fifths in illegal crossings by Mexican nationals observed in recent years and a significant reduction in illegal crossings by Central and South Americans who enter the United States through Mexico. The residential permit program would be suspended in years when the presidents could not make this certification.

- Individual eligibility would require evidence that the person resided in the United States before the *announcement* of the program. Otherwise, eligibility standards would parallel those for temporary work permits.

- An applicant for a residence permit who could provide satisfactory evidence of residence in the United States before the announcement of the program would not be subject to deportation (whether or not he met other eligibility requirements) so long as the entrant periodically reports a place of residence to the USCIS and commits no felony after the issuance of the residence permit.

- Holders of residence permits would be immediately eligible for public Social Security and Medicare benefits, as well as private health and pension benefits. They could apply for citizenship after five years.

Labor Standards

Labor standards have become a prominent part of the political debate surrounding free trade agreements, but trade by itself will improve labor standards only in the long run. In the meantime, the governments in North America need to take proactive measures to ensure that appropriate labor standards are set and enforced.

Our recommendations key off the ILO's Declaration of Principles Concerning Multinational Enterprise and Social Policy and the OECD Guidelines for Multinational Enterprise. We recognize that while Canada, Mexico, and the United States officially endorsed the declaration and guidelines, endorsement came only after heated battles and over the opposition of many in the business community.[66] In practice, as surveys reported by the Manufacturers Alliance show, US manufacturing firms generally exceed local labor, environmental, and ethical standards (Preeg 2001a and 2001b). The business community objects as much to prospective regulatory burdens as to costs incurred in meeting labor and environmental norms.

Recommendations for Improving Labor Standards

- Businesses with operations in two or three NAFTA countries should adopt common labor codes of conduct. These codes should reflect the OECD guidelines and the ILO declaration. Companies would self-certify their compliance. Randomly selected companies (say 10 percent per year) should submit to an independent audit to ensure that they observe the code.
- The self-certification program should be gradually extended to smaller companies that do business in two or more NAFTA countries. Oversight from both private-sector interest groups and the CLC would back up these self-regulatory efforts.

66. The four principles reflected in the ILO declaration are freedom of association and collective bargaining, no forced labor, no child labor, and nondiscrimination. While the United States endorses the ILO declaration, since 1984 the United States has unilaterally defined workers' rights in a fashion that differs from core labor standards enumerated in the ILO's 1998 Declaration on Fundamental Principles and Rights at Work. Specifically, the United States defines "internationally recognized" workers' rights to include freedom of association and collective bargaining, freedom from forced labor, freedom from child labor, and "acceptable conditions of work." So far, the United States has ratified only two core conventions—105 on forced labor and 182 on child labor. See Elliott and Freeman (2003) and Elliott (2004).

Worker Adjustment

Canada already has sufficient mechanisms to address displaced workers. Health insurance is universal in Canada, and Canadian unemployment programs are relatively generous. Mexico simply cannot afford a broad-based unemployment program. Consequently, our recommendations for worker adjustment focus on the United States, which has both the need and the resources for more comprehensive worker adjustment programs. However, we do have recommendations for specific sectors within Mexico.

Recommendations for Worker Adjustment

The existing safety net system for displaced US workers has done little to relieve anxiety among US workers about losing their jobs and does nothing to diminish their opposition to international trade. Despite the fact that a significant expansion of the TAA program was packaged with Trade Promotion Authority in 2002, few Democrats in the House of Representatives supported the final bill.

As Rosen (2002) notes, support for free trade agreements in opinion polls goes up if the question is framed to include the possibility of government support for workers who lose their jobs. While the new TAA program was widely described as a short-term way of "buying" congressional votes for TPA, its supporters see the new TAA as a way of reducing the distress of dislocated workers and building public support for more trade liberalization in the long run.

While the 2002 version of TAA (which folds in the NAFTA-TAA program) is an improvement, considerable scope exists for further expansion. For example, the arbitrary provision should be eliminated that restricts coverage to workers adversely affected by a shift in the firm's production to a country that has a free trade agreement with the United States (and not a shift to any other country). The TAA program should include workers, both upstream and downstream, regardless of where the imports come from, where production shifts to, or how old they are. Alleged budget constraints were cited as a justification for limiting the health insurance subsidy to 65 percent. There is room to increase the generosity of the subsidy and increase funding for other aspects of the TAA program as well. The limit on wage insurance to workers over 50 and the $5,000 per worker cap are just stingy. Improving the 2002 TAA program would help to further reduce the fear of imports in the United States.[67]

In Mexico, a very special problem arises in Pemex and the CFE. Labor opposition within these two state-owned companies severely hampers privatization reform in the energy sector. Because the energy sector is so crucial to North America (see chapter 7 on energy), we recommend a spe-

67. See Kletzer and Rosen (2005) for a more detailed discussion of TAA reform.

cial adjustment program for workers in this sector. In conjunction with reform in the sector, workers 55 years and older should be offered full pensions for early retirement.

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Appendix 2A

Table 2A.1 National Administrative Office (NAO) submissions on enforcement matters, 1996–2005

Submission	Filed	Claimant	Defendant	Claim	Status
Canada					
98-1	April 6, 1998	Canadian Office of the United Steelworkers of America et al.	Itapsa	Substantially same as US NAO submission no. 9703, including denial of freedom of association and lax enforcement of labor legislation covering occupational health and safety standards	Canadian NAO accepted submission for review in June 1998. Public meetings held in September and November 1998. The first part of the report addressing the freedom of association issues was released in December 1998. The second part of the report, released in March 1999, addressed the health and safety claims. Canada requested ministerial consultations with Mexico in March 1999. Consultations are pending.
98-2	September 28, 1998	Yale Law School Workers' Rights Project et al.	US government	Replicates Mexican NAO submission no. 9804	Canadian NAO, in light of a US Department of Labor and the Immigration and Naturalization Service memorandum of understanding, considered a review inappropriate and closed the file in April 1999.
99-1	April 14, 1999	LPA, Inc. and EFCO Corp.	US government	Failure to review labor law matters arising in another party's territory. Failure to effectively enforce domestic labor laws. (Section 8(a)(2) of the National Labor Relations Act)	Canadian NAO declined to accept the submission for review. The claimants filed an appeal in June 1999.
03-1	October 3, 2003	United Students Against Sweatshops (USAS) and Centro de Apoyo al Trabajador	Puebla	Replicates US NAO submission no. 2003-01	Canadian NAO accepted submission for review in March 2004. Public meeting held in May 2004. Canada requested ministerial consultations with Mexico in May 2005. Consultations are pending.

Mexico					
9501	February 9, 1995	Mexican Telephone Workers' Union	Sprint Corporation in the United States	Workers deprived of their freedom of association and the right to organize due to closure of Sprint subsidiary in San Francisco shortly before a union representation election	Ministerial consultations held. Resulted in: (1) A public forum held in San Francisco and (2) Initiation of Secretariat special study on "Plant Closings and Labor Rights." The Communications Workers of America filed an unfair labor practice case with the National Labor Review Board (NLRB). On December 27, 1996, the NLRB ordered Sprint to reinstate the dismissed workers and awarded backpay. Sprint filed an appeal with the US federal courts. In November 1997, the US federal courts reversed the NLRB ruling and ruled that Sprint closed its plant because the plant was losing money, not because the company feared the workers would vote to join a union.
9801	April 13, 1998	Oil, Chemical, and Atomic Workers' International Union (Local 1-675), Industrial and Commercial Workers' Union ("October 6"), the Labor Community Defense Union, and the Support Committee for Maquiladora Workers	Solec, Inc., California (manufacturer of solar panels)	Workers denied freedom of association, occupational safety, and health issues	Mexican NAO accepted submission for review in July 1998. In August 1999, a public report was issued requesting ministerial consultations. In May 2000, a ministerial agreement was signed by Mexico and the United States to address submissions 9801-02-02. As part of the agreement, the US Department of Labor will host government-to-government meetings to discuss the issues in review.

(table continues next page)

Table 2A.1 National Administrative Office (NAO) submissions on enforcement matters, 1996–2005 *(continued)*

Submission	Filed	Claimant	Defendant	Claim	Status
9802	May 27, 1998	National Union of Workers; the Authentic Workers' Front; the Metal, Steel, Iron, and Allied Industrial Workers' Union, and the Democratic Farm Workers' Front	State of Washington, US government (apple industry)	Issues of freedom of association, safety and health, employment discrimination, minimum employment standards, protection of migrant workers, and compensation in cases of occupational injuries/illness	Mexican NAO accepted submission for review in July 1998, and held a hearing in December 1998. A report was issued in August 1999, recommending ministerial consultations. In May 2000 US and Mexican labor secretaries signed a ministerial agreement for Mexican NAO submissions 9801-02-03. As a result of the agreement, a public outreach session was held in Washington state in August 2001. As part of the agreement, the US Department of Labor also hosted government-to-government meetings to discuss the issues in review.
9803	August 4, 1998	Mexican Confederation of Labor	Decoster Egg, US government	Issues of freedom of association, protection for migrant workers, employment discrimination, safety and health, and workers' compensation	Submission accepted for review by the Mexican NAO in August 1998. In December 1999, a report recommended ministerial consultations. A ministerial agreement followed in May 2000 covering submissions 9801-02-03. The US Department of Labor hosted a public meeting in June 2002 to discuss working conditions and treatment of migrant and agricultural workers in the state of Maine.

9804	September 22, 1998	Yale Law School Workers' Rights Project et al.	US government	The United States fails to enforce its existing minimum wage and overtime protections in workplaces employing foreign nationals due to the memorandum of understanding between the US Department of Labor and the Immigration and Naturalization Service	Mexican NAO accepted the submission for review in November 1998. In October 2000, the Mexican NAO report recommended ministerial consultations. A report was issued in August 1999, recommending ministerial consultations. In June 2002, US and Mexican labor secretaries signed a ministerial agreement for Mexican NAO submissions 9804.
2001-01	October 24, 2001	Chinese Staff and Workers' Association, National Mobilization Against Sweatshops, Workers' Awaaz, Asociación Tepeyac et al.	US government	The United States fails to enforce its existing minimum standards for worker protection and workers' compensation in workplaces employing foreign nationals due to the memorandum of understanding between the US Department of Labor and the Immigration and Naturalization Service	Mexican NAO accepted the submission for review in November 2001. In November 2002, the Mexican NAO public report requested further consultations with the United States. By December 2004, the Mexican secretary of labor formally requested ministerial consultations.
2003-01	February 11, 2003	Farmworker Justice Fund, Inc., and Mexico Independent Agricultural Workers Central	US government	Issues concerning rights of migrant workers under the H-2A visa program in North Carolina, including freedom of association, right to organize and bargain collectively, right to minimum employment standards, safety and health, employment discrimination, protection of migrant workers, and compensation in cases of occupational injuries/illness	Mexican NAO accepted the submission for review in September 2003.

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Table 2A.1 National Administrative Office (NAO) submissions on enforcement matters, 1996–2005 *(continued)*

Submission	Filed	Claimant	Defendant	Claim	Status
2005-01	April 13, 2005	Northwest Workers' Justice Project, Brennan Center for Justice (New York University School of Law), and Andrade Law Office	US government	Issues concerning rights of migrant workers under the H-2B visa program in Idaho, including freedom of association, right to organize and bargain collectively, right to minimum employment standards, safety and health, employment discrimination, protection of migrant workers, and compensation in cases of occupational injuries/illness	Not determined yet.
United States					
940001 and 940002	February 14, 1994	International Brotherhood of Teamsters and United Electrical, Radio, and Machine Workers of America, respectively	Honeywell Corporation and General Electric Corporation in Mexico	Workers deprived of their freedom of association and the right to organize into unions of their choice	Process terminated in October 1994 at NAO review stage due to insufficient evidence. US NAO recommended the development of trilateral programs addressing freedom of association and the right to organize and for public information and education regarding the North American Agreement on Labor Cooperation (NAALC).

940003	August 16, 1994	International Labor Rights Education and Research Fund Corporation, the National Association of Democratic Lawyers of Mexico, the Coalition for Justice in the Maquiladoras, and the American Friends Service Committee	Sony Corporation in Mexico	Workers deprived of their freedom of association, the right to organize, and minimum employment standards relating to hours of work and holiday work	Ministerial consultations held. Resulted in a two-year program of activities including seminars, workshops, meetings, and studies to address union registration and its implications. The US NAO issued a report in December 1996 based on a follow-up review of the issues and a related Mexican Supreme Court decision. (Allegations concerning minimum employment standards were not accepted for review.)
940004	September 12, 1994	United Electrical, Radio, and Machine Workers	General Electric Corporation in Mexico	Workers deprived of their freedom of association and the right to organize	Withdrawn in January 1995 before completion of review process.
9601	June 13, 1996	International Labor Rights Fund, Human Rights Watch/ Americas, and the National Association of Democratic Lawyers of Mexico	Mexican government	Federal workers denied freedom of association and the right to organize (among other reasons cited: Mexican government failure to comply with international labor organization conventions to which it is a signatory). Questioned whether labor tribunals reviewing these issues are impartial	Ministerial consultations held on the status of international treaties, constitutional provisions, and protecting freedom of association. Resulted in NAFTA members agreeing to exchange information to permit a full examination of the issues raised. A seminar, open to the public, was held in Baltimore in December 1997. The allegation of impartiality of labor tribunals for the federal sector was found to be ungrounded. In December 1997, claimants requested reopening of the submission, asserting that some issues raised in the original submission were not adequately addressed. Finding that these issues had been sufficiently reviewed, the NAO declined the request.

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Table 2A.1 National Administrative Office (NAO) submissions on enforcement matters, 1996–2005 *(continued)*

Submission	Filed	Claimant	Defendant	Claim	Status
9602	October 11, 1996	Communications Workers of America, Union of Telephone Workers of Mexico, and Federation of Goods and Services Companies of Mexico	Maxi-Switch in Mexico	Workers denied freedom of association and the right to organize	In April 1997, submitters withdrew the submission after the federal government instructed the local authorities to certify the independent union. The local authorities have not complied, and the dispute has been taken to the Mexican courts.
9701	May 16, 1997	Human Rights Watch, the International Labor Rights Fund, and the National Association of Democratic Lawyers of Mexico	Mexican government	Failure to enforce Mexican labor law prohibitions on discrimination against pregnant women. Also alleges that Mexico denies victims of sex discrimination access to impartial tribunals	In January 1998, the US NAO requested ministerial consultations on the effectiveness of Mexican laws and law enforcement in protecting against pregnancy-based gender discrimination. A ministerial consultations implementation agreement was signed in October 1998, and a conference on protecting the labor rights of working women was held March 1999. Outreach sessions in August 1999 and May 2000 followed the conference.

9702	October 30, 1997	Support Committee for Maquiladora Workers; the International Labor Rights Fund; the National Association of Democratic Lawyers of Mexico; and the Union of Metal, Steel, Iron, and Allied Workers' Union of Mexico. (Amendment filed by Maquiladora Health and Safety Support Network, Worksafe! Southern CA, the United Steelworkers of America, the United Auto Workers, and the Canadian Auto Workers)	Han Young factory in Mexico and Mexican government	Workers denied freedom of association and the right to organize. Also raises issues of failure by Mexico to enforce its laws on safety and health, wages, dismissal from employment, and profit sharing	The Mexican government recognized the results of a second election (secret ballot election held on December 12, 1997), which was won by the independent union. However, Han Young has subsequently refused to negotiate with the new union, and the responsible labor tribunal has permitted another election at the plant to challenge the representation by the independent union. The Mexican government levied a $9,000 fine against Han Young for health and safety violations. Following ministerial consultations between Mexico and the United States, a public seminar was held in June 2000 to promote freedom of association.
9703	December 15, 1997	Echlin Workers Alliance, the Teamsters, the United Auto Workers, the Canadian Auto Workers, UNITE, the United Electrical, Radio and Machine Workers of America, the Paperworkers, the Steelworkers et al.	Itapsa export processing plant in Mexico	Workers denied freedom of association and the right to organize	The US NAO held a public hearing in March 1998, and issued its public report in July 1998 recommending ministerial consultations. In May 2000, the United States and Mexico signed a ministerial agreement for submissions 9702 and 9703. Under this agreement, the Mexican government held a public seminar in June 2000 to promote freedom of association and the right to collective bargaining.

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Table 2A.1 National Administrative Office (NAO) submissions on enforcement matters, 1996–2005 *(continued)*

Submission	Filed	Claimant	Defendant	Claim	Status
9801	August 17, 1998	Association of Flight Attendants and AFL-CIO	Aerovías de Mexico (Aeromexico), Mexican government	Workers denied freedom of association and the right to organize	NAO declined acceptance of the submission in October 1998 in accordance with procedural guidelines. NAO agreed to launch research evaluating how the three NAALC parties could reconcile national interests with the right to strike.
9802	September 28, 1998	Florida Tomato Exchange	Mexican government	Failure to enforce labor protection for children	NAO held submission in abeyance waiting for further information from claimants. No additional information was provided, and the case was closed in October 1999.
9803	October 19, 1998	International Brotherhood of Teamsters, Teamstérs Canada, the Quebec Federation of Labor, Teamsters Local 973 (Montreal), and the International Labor Rights Fund	McDonald's, Canadian government	Workers denied freedom of association and the right to organize	NAO accepted submission for review in December 1998. The claimants requested the end of NAO review and in April 1999, claimants and the government of Quebec reached an agreement to have the issue evaluated by a provincial council.
9804	December 2, 1998	Organization of Rural Route Mail Couriers, Canadian Union of Postal Workers, National Association of Letter Carriers et al.	Canadian government	Workers deprived of the right to organize	In accordance with procedural guidelines, in February 1999, the NAO declined to accept the submission for review.

9901	November 10, 1999	Association of Flight Attendants and Association of Flight Attendants of Mexico	Executive Air Transport, Inc., Mexican government	Workers deprived of the right to organize, bargain collectively, and minimum labor standards	In January 2000, the NAO accepted the submission for review. A hearing was held in March 2000 and a report issued in July 2000, recommending ministerial consultations. Ministerial consultations held in June 2002. Resulted in plans for a public seminar in Mexico to discuss different unions in each country and their relevant collective bargaining rights.
2000-01	July 3, 2000	Coalition for Justice in the Maquiladoras	Auto Trim and Custom Trim, Mexican government	Occupational safety and health issues	NAO accepted submission for review in September 2000. A public hearing was held in December 2000. In April 2001, a report was issued recommending ministerial consultations. Ministerial consultations held in June 2002. Resulted in the establishment of a bilateral working group on occupational safety and health issues. To date, the bilateral working group has focused on occupational safety and health management systems and voluntary protection programs, handling of hazardous substances, inspector and technical assistance staff training, and the development of the trinational web page.
2001-01	June 29, 2001	AFL-CIO and PACE	Duro Bag Manufacturing Corporation, Mexican government	Workers deprived of the right to organize and bargain collectively	NAO declined acceptance of the submission in February 2002 in accordance with procedural guidelines.

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Table 2A.1 National Administrative Office (NAO) submissions on enforcement matters, 1996–2005 *(continued)*

Submission	Filed	Claimant	Defendant	Claim	Status
2003-01	September 30, 2003	United Students Against Sweatshops and Centro de Apoyo al Trabajador	Puebla, Mexican government	Workers deprived of the right to organize, freedom of association, bargain collectively, minimum labor standards, and access to fair and transparent labor tribunal proceedings	In February 2004, the NAO accepted the submission for review. A hearing was held in April 2004 and a public report issued in August 2004, recommending ministerial consultations. In October 2004, the US secretary of labor formally requested ministerial consultations and in November 2004, the Mexican secretary of labor agreed to hold ministerial consultations.
2004-01	July 12, 2004	UNITE-HERE and Centro de Apoyo a los Trabajadores de Yucatán	Merida Yucatán, Mexican government	Workers' rights violations concerning minimum employment standards and safety and health standard issues	Withdrawn in August 2004 before completion of review process.
2005-01	February 17, 2005	Washington Office on Latin America and 22 labor unions from Mexico, Canada, and United States	Mexican government	Mexican labor law reform proposal would weaken existing labor protections, including the right of free association, the right to organize and bargain collectively, the right to strike, and core labor rights protected by the Mexican Constitution, International Labor Organization conventions ratified by Mexico and the NAALC	Not determined yet.

Source: US Department of Labor (2005b).