

Testimony of Mr. Alfonso **Oñate** Laborde, Executive Director, Secretariat of the Commission for Labor Cooperation, before the United States Trade Deficit Review Commission, Dallas, Texas, January 21, 2000

Good afternoon, ladies and gentlemen, members of the Commission. I would like to begin by thanking you for this opportunity to appear before you.

First, I will attempt to provide you with a brief sketch of the North American Agreement on Labor Cooperation (which I will generally refer to by its acronym the "NAALC" in the interests of saving time), the institutions established and under the Agreement, international activity related to it, and some thoughts on what has been accomplished. In so doing, I hope to contribute to your understanding of the NAALC as an aspect of the system of economic and political relationships between NAFTA trading partners, thus shedding some background light on the trade relationship between the U.S. and Mexico, a theme closely related with the one selected for today's hearings. A more detailed discussion of the points that I will address can be found in the paper accompanying my presentation.

Secondly, in keeping with the specific theme of this afternoon's session ("Trade, Economic Development, and Labor Markets") I will present a summary of some of the recent findings of our economic research staff in its ongoing investigation of labor market trends in North America. There is no attempt to establish a

causal relationship between the NAFTA and changes in the labor market, since multiple factors have also influenced the evolution of employment since the coming into force of that Agreement. Nonetheless, I hope that this part of the presentation will provide you with background information useful to the tasks that you have been charged with.

The North American Agreement on labor Cooperation -An Overview of the Institutions. Activity and Accomplishments

I would like to begin with an introductory outline of the basic structure of the NAALC and its institutions. Then I will briefly reflect on the NAALC both as a framework for international cooperation, and as a forum for addressing concerns communicated by members of the public to the governments of the NAALC member countries.

The NAALC came into force on the same day as the NAFTA. It is the first international labor agreement linked to trade treaty. Unlike the longstanding I.L.O. model for international labor agreements, it does not create specific international labor standards. Rather, it ~~create~~s obligations on each of the member countries to effectively enforce their own labor laws, leaving the formulation of those laws to domestic political processes. NAALC obligations include: effective government enforcement of labor laws; ensuring that persons with a legal interest under labor laws have access to courts and tribunals for the enforcement of their rights; ensuring that detailed procedural due process guarantees apply to enforcement proceedings; and providing remedies to ensure the enforcement of labor rights. The parties to the NAALC also undertake

a general obligation to ensure that their laws provide for high labor standards consistent with high quality and productivity workplaces. NAALC obligations cover nearly all aspects of labor and employment standards.

In addition to establishing labor law enforcement obligations between governments, the NAALC seeks to foster coordination and cooperation among governments in developing and improving basic information on North American labor affairs and addressing issues of common concern. It also seeks to create mechanisms open to the public whereby the private persons can bring matters within the Agreement's scope to the attention of the governments, and to permit to orderly resolution of disputes between governments under the Agreement.

To do all of this, the Agreement establishes a set of institutions: Commission for Labor Cooperation, National Administrative Offices, and National Advisory Committees and Governmental Committees. The Commission for Labor Cooperation is comprised of a Ministerial Council (composed of the Minister of Labor of Canada and the Secretaries of Labor of Mexico and the United States) and the Secretariat, which I head up. The Council oversees the implementation of the NAALC. The Secretariat provides support to the Council and to any independent Evaluation Committees of Experts or Arbitral Panels which may be established under the Agreement. Under Article 14 of the NAALC the Secretariat is also required to undertake research and analysis and prepare public reports and studies on labor law and administrative procedures, trends and

administrative strategies related to the enforcement of labor law, labor market conditions (such as employment rates, wages, and productivity), human resource development, and such other matters as the Council may direct.

The National Administrative Offices are located within the government of each country. They serve as points of contact between governments, receive and review communications from interested members of the public, and coordinate inter-governmental cooperative activities.

The NAALC as a Framework for International Cooperation

During 1998 the Ministerial Council undertook a four year retrospective review of the NAALC, as required by Article 10 of the Agreement. The review took into account numerous public submissions, direct consultations with special advisory bodies, and an extensive literature review by the Secretariat. The full report, together with background documents, can be found on the Secretariat's web site. A key theme of the review was the extent to which the NAALC had created a framework for international cooperation in labor matters. A summary of some important aspects of that discussion is set out in the paper accompanying this presentation. I will briefly touch upon two key themes highlighted by the review.

- First, the NAALC institutions have contributed substantially to the development of the basic technical and comparative information necessary to understanding labor issues across the borders of the NAFTA region. The Secretariat has published and is about to publish a number of substantial comparative reports on the legal and regulatory systems and labor market

performance of the three countries. These are detailed in my paper. Over 40 international cooperative meetings, conferences and courses have **been** organized, focusing particularly on improving occupational safety and health, employment and job training, and understanding the labor law and industrial relations systems of the three countries. The Secretariat has also established an important international conference series on incomes and productivity in the NAFTA region. There is a broad consensus of opinion that the NAALC has established a much needed and important new institutional framework for cooperation in the labor area. At the same time, observers have noted a number of areas of potential that remain to be developed, including improving the comparability of labor market data and the availability of administrative data on labor law enforcement.

- Secondly, the NAALC has also provided a framework for tri-national action by the governments of the three countries on areas of common concern. I have already noted the extensive set of cooperative activities designed to share information on best practices with respect to occupational safety and health. The Secretariat has assisted a tri-national group of administrators of workers' compensation systems in a systematic effort to identify and report on issues that may arise with increased cross-border movements of workers in the NAFTA region. The NAOs have recently organized a conference bringing together government, worker and industry representatives to identify issues faced by migrant agricultural workers in North America. At the same time, the Review of the NAALC recognized that the view of many observers is that more could be done jointly by the three countries to jointly address such

matters as cross-border labor issues and the implementation of employment standards. It is early in the development of the NAALC institutions and the countries are of course still learning how to work together in labor matters.

Co-operative *Consultations, Evaluations* and *Dispute Resolution*

It hardly needs mentioning that labor matters are politically sensitive. Labor policy is often the subject of contentious debate within the domestic politics of all three NAALC countries. It would be most surprising if difficult issues did not arise in the context of the NAALC, and if members of the public did not seek to bring matters which they see as problematic to the attention of the three governments, and by extension to the public at large. The NAALC creates a set of mechanisms for receiving and evaluating public communications on labor matters, for co-operative consultation between the three governments, for impartial expert evaluation of many of these potential issues, and if necessary for dispute resolution with respect to some of them.

Briefly, the NAALC instructs the NAOs to provide for the receipt and evaluation of public communications with respect to labor matters arising in other NAALC countries. Each NAO has done so, adopting its own procedures and guidelines. This mechanism creates a type of political accountability of each government to respond to the public communications that it receives, and places a similar onus on all the NAALC parties to work together to respond to each other in the process of reviewing the communications. Thus far there have been 21 public

communications and most have generated a great deal of public interest and considerable attention by the media. Thirteen of these have been received by the U.S. NAO, two of which relate to issues arising in Canada, the remainder relating to issues in Mexico. The Mexican NAO has received five communications, all relating to labor law issues in the United States. The Canadian NAO has received three, one relating to issues arising in Mexico, and two relating to issues arising in the United States. A number of communications have led directly to consultations between the Secretaries or Minister of Labor of the three countries, and to subsequent action programs designed to improve labor rights awareness, or to investigate issues related to labor law enforcement in greater depth. Activity related to each of the 21 communications is summarized in an annex to our paper.

The consultation, evaluation and dispute resolution mechanisms of the NAALC and the threshold requirements for their use are briefly described at the end of our paper. Neither the Evaluation Committee of Experts nor the Arbitral Panel mechanism has yet been invoked.

The NAALC does not create a mechanism for private parties to pursue personal remedies for alleged labor rights violations it does not give rise to a sort of international judicial review of resolutions adopted by domestic tribunals. The focus of the NAALC procedures is to provide a forum for international relations to address systemic issues relating to each government's administration of labor law. Addressing such issues is by its nature a longer term process. While in some

public communication cases changes similar to those sought by the submitters have taken place relatively quickly, I think it would be a mistake to look to such developments alone in evaluating ability of the NAALC processes to serve the Agreement's objectives.

labor Markets and Trade in the Four Years After NAFTA

As promised earlier, I will take a few minutes of your time to outline some key findings with respect to trade patterns and labor markets. For brevity, I will focus on the United States and Mexico only.

Economic Growth

Trade and labor market figures need to be interpreted in the context of information on the strength of the overall economy. The United States began an economic recovery in 1993 and has seen consistent GDP growth since that time. In 1997 real GDP increased by 3.9%, the highest annual rate since 1984. In 1998 the U.S. economy grew at a similar rate. By contrast, during the same time period Mexico has experienced a deep recession followed by a recovery. The Mexican financial crisis of 1994 led to 6.2 per cent decrease in real GDP in 1995. The Mexican economy began to recover in the second quarter of 1996. From that year to 1998 real GDP grew at an annual average rate of 5.8 per cent. Figures for the first nine months of 1999 show that growth continued its trend for both countries.

Intra-Regional Trade

The post NAFTA period has seen a growth in intra-regional trade. Between 1994 and 1998 US merchandise exports to Mexico rose from 9.9 per cent to 11.6 per cent of total merchandise exports. During that period the Mexican share of total imports increased from 6.9 per cent to 10.4 per cent. During the same period US merchandise trade with Mexico has gone from a 5.1 billion dollar surplus to a 9.8 billion dollar deficit.

United States exports to Mexico grew more concentrated in certain sectors, such as automobile engines and bodies, semiconductors, electronic computers, plastic products and materials. Imports from Mexico also grew more concentrated in sectors such as motor vehicles and car bodies, car parts, accessories and engines, audio and video equipment, computers, and furniture.

Employment

The number of workers insured by the Instituto Mexicano del Seguro Social (Mexican Social Security Institute – IMSS), an indicator of the behavior of employment in the private formal sector dropped by 3 per cent in 1995. This decline was even more acute than in the 1982 crisis. Only the export in-bond industry maintained a high employment growth rate, which in 1995 stood at 11.2 per cent. The deterioration in the formal sector led to an increase in informal employment, with the share of people occupied in the informal sector rising from 52.8 per cent in 1993 to 57.8 per cent in 1995. Once the economy began to recover, employment grew rapidly, with formal sector employment increasing 16

per cent between 1996 and 1998. The manufacturing sector led the way, with a handful of key sectors accounting for 74.2 per cent of total employment growth.

During the 1994-1998 period employment in the U.S. increased at an annual average rate of 1.7 per cent. Ninety eight per cent of employment growth was in full-time employment. Employment trends in the manufacturing sector were mixed however, with many durable product sectors showing strong increases, while the garment and textiles industries showed significant employment reductions.

Thank you for your attention. I have asked Ms. Maria Elena Vicario and Mr. Kevin Banks our senior Economist and Labor Law advisors respectively to assist me during the questioning period. I am sure that their expertise could be helpful in meeting your information requirements. Any one of us would be pleased to answer any questions that you may have,