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I. Introduction

No recent trade policy initiative of the United States has generated as high a degree of public interest and debate as the North American Free Trade Agreement (NAFTA). Beginning in June 1990, when the Presidents of the United States and Mexico announced their intention to negotiate a free trade agreement,[1] through the extension of fast track negotiating authority[2] and signing of a trinational agreement (also including Canada) in December 1992,[3] to this day, a vigorous debate has occurred in the United States about the benefits and costs of the agreement.

One of the key battlegrounds in this domestic debate has been the affect of the agreement on U.S. Workers. Certain groups in the United States have argued that the agreement will have an adverse effect on U.S. workers.[4] As recently as mid-February 1993, the AFL-CIO Executive Council adopted a resolution characterizing the agreement as "a disaster for millions of working people in the United States, Canada and Mexico," and calling for its rejection and

1. *Mexico-United States Joint Statement on Negotiation of a Free Trade Agreement*, 26 WKLY. COMP. OF PRESIDENTIAL DOCUMENTS 933 (June 18, 1990).

2. The so-called fast track procedures, which have been used for trade negotiations since 1974, give Congress the assurance of meaningful participation throughout the negotiation of an agreement and the Administration the guarantee that legislation implementing a trade agreement will be voted upon within a certain period of time, and without amendments. The fast track procedures are contained in Sections 1102(d) and 1103 of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100-418, 19 U.S.C. 2903) and §§ 151-54 of the Trade Act of 1974 (Public Law 93-618, 19 U.S.C. 2191).

3. The agreement was signed on December 17, 1992 in separate ceremonies by President Bush, President Salinas, and Prime Minister Mulroney. The text of the agreement has been published as *North American Free Trade Agreement*, 5 volumes (Washington: U.S. Government Printing Office, 1992).

4. Groups opposing NAFTA in the United States have tended to be composed primarily, although not exclusively, of labor unions. *See, e.g.*, Thomas R. Donahue, Statement before the Committee on Finance, United States Senate, on the Proposed U.S.-Mexico Free Trade Negotiations (Feb. 6, 1991); William J. Cunningham, Testimony before the Subcommittee on International Economic Policy and Trade, and Subcommittee on Western Hemisphere Affairs, Committee on Foreign Affairs, on the North American Free Trade Agreement (Apr. 9, 1991); AFL-CIO, *Exploiting Both Sides* (Washington, 1991); and Thomas R. Donahue, *The Case Against a North American Free Trade Agreement*, 26 COLUM. J. OF WORLD BUS. 92-96 (1991).

renegotiation.[5]

Two general concerns regarding the labor implications of the agreement have dominated the discussions:

- Mutual elimination of tariffs and non-tariff barriers would lead to surges in disruptive imports from Mexico and loss of U.S. jobs; U.S. workers who would be dislocated as a result of the NAFTA would not have access to adequate services to readjust to new jobs.
- Labor rights, labor standards (including wages), and environmental standards in Mexico either do not exist or their enforcement is very lax, thereby keeping production costs in that country very low. A free trade agreement between the U.S. and Mexico would lead to the erosion of U.S. labor and environmental standards and/or flight of U.S. investment to Mexico to capitalize on the lower labor and environmental standards there, creating disinvestment and loss of jobs in the United States.

That these concerns are not trivial is evident by the attention that they received in the negotiation of the NAFTA and in other actions being undertaken by the Executive Branch in support of the agreement.

Part II of the paper focuses on the first of the concerns expressed about the NAFTA, that it would lead to increases in disruptive imports and job dislocation. It discusses provisions within the NAFTA to facilitate adjustment and approaches to deal with potential worker dislocations. Part III examines concerns that have been expressed about labor standards in Mexico and the public policy response to these concerns.

II. The NAFTA and Adjustment Issues

The preponderance of economic studies conducted by academics, research institutions, and the U.S. Government have suggested that the NAFTA is likely to have a positive, albeit modest, impact on the U.S. economy and U.S. employment.[6] Nevertheless, the studies have also recognized that the effect of the agreement is not likely to be uniform across all sectors of the economy.

Many of the sectors of the U.S. economy identified through economic analysis as likely to be adversely affected by a NAFTA are

5. "Statement by the AFL-CIO Executive Council on The North American Free Trade Agreement," Bal Harbour, Florida (Feb. 17, 1993), p. 1.

6. For a summary of several of the economic impact studies of NAFTA see Gregory Schoepfle and Jorge Perez-Lopez, *U.S. Employment Effects of a North American Free Trade Agreement: A Survey of Issues and Estimated Employment Effects*, Economic Discussion Paper No. 40 (Washington: Bureau of International Labor Affairs, U.S. Department of Labor, 1992).

labor-intensive and have a history of import sensitivity, particularly with regard to imports from developing countries. As such, they may have relatively high tariff protection because they received special treatment in prior rounds of multilateral tariff-cutting. Reduction or elimination of these tariffs, if done suddenly, could generate significant rises in imports that could injure domestic producers and workers.

To reduce the likelihood of potential disruptive surges in imports in trade sensitive sectors, while ensuring that the benefits of the NAFTA accrue to U.S. workers, the United States sought certain provisions within the NAFTA that would avert injurious worker dislocations that might arise as a result of trade liberalization. In addition, the Administration has expressed a strong commitment to an effective worker adjustment program that would provide employment services to workers who might become dislocated as a result of the implementation of the agreement.

A. Adjustment Provisions Within the NAFTA

Certain provisions within the NAFTA were designed to promote orderly adjustment to changed trade and investment flows associated with the implementation of the agreement. These provisions include transition rules governing the elimination of tariff and nontariff measures, safeguards, and rules of origin.

1. Transition Rules: To allow concerned industries and farmers sufficient time to adjust to potential increased competition from Mexico, the United States sought in the NAFTA a transition period over which high duties and other barriers on import-sensitive products would be phased out in small increments. As in the case of the U.S.-Canada FTA (CFTA), the longest transition would be provided for those products most sensitive to competition from Mexico. In exceptional cases, transition periods beyond those provided in the U.S.-Canada FTA (10 years) would be considered.[7]

In the NAFTA, the United States and Mexico agreed to eliminate most tariffs and non-tariff barriers over a ten-year period. The agreement also provided for long—and extra-long—transition periods for U.S. tariff reductions to facilitate adjustment in sensitive sectors. Ten-year phase-out periods were negotiated on manufactured products such as dyes and pigments, some footwear items, ball bearings, bicycles, leather goods, certain chemicals, crude oil, fuels, men's wool suit coats, and rayon fabrics, and on agricultural products such as certain onions, tomatoes, eggplant, chili peppers,

7. *Response of the Administration to Issues Raised in Connection with the Negotiation of a North American Free Trade Agreement*, mimeographed (May 1, 1991), Tab 2, p. 2.

squash, and watermelons. A limited number of products were granted extra-long phase-out periods—up to 15 years. Manufactured products subject to extra-long tariff phase-out periods include certain household glassware products, certain footwear products, ceramic tiles, broomcorn brooms, and certain watches and watch movements, and agricultural and fisheries items include organge juice, peanuts, sugar, sprouting broccoli, cucumbers, asparagus, dried onion power, dried onions, dried garlic, canned tuna, cantaloupes, and other melons.[8]

2. *Safeguard Mechamism*: To allow the United States to respond effectively and quickly to any injurious increases in industrial or agricultural imports from Mexico or Canada that might result from a NAFTA, the United States sought the ability, during a transition period, to act quickly against imports from Mexico or Canada if injury to some sector was caused by a tariff reduction agreed to in the NAFTA. Such a safeguard mechanism would allow the United States to suspend temporarily preferential tariff reductions agreed under the NAFTA or reimpose most-favored-nation (MFN) duties. In addition, the United States sought to include imports from Mexico or Canada in a relief action if imports from those countries were partly responsible for injury arising from a general import increase.[9]

Chapter 8 of the NAFTA, titled "Emergency Actions," establishes a bilateral safeguard mechanism that permits the "snap-back" to pre-NAFTA or MFN tariff rates for up to three years—or four years for extremely sensitive products—if increased imports from Mexico resulting from the elimination of a U.S. tariff constitute a substantial cause of serious injury, or threat thereof, to a U.S. domestic industry.[10]

It also allows the imposition of tariffs or quotas on imports from Mexico and/or Canada as part of a multilateral safeguard action when imports from either or both countries are a substantial cause of serious injury, or threat thereof, to a domestic industry. Imports from NAFTA partners may be excluded from global safeguard actions, however, based on: (1) a country's ranking among all suppliers; and (2) whether imports from a NAFTA country individually or from all NAFTA countries collectively contribute importantly to the

8. *Report of the Administration on the North American Free Trade Agreement and Actions Taken in Fulfillment of the May 1, 1991 Commitments*, mimeographed (Sept. 18, 1992), at 70-71.

9. *Response of the Administration to Issues Raised in Connection with the Negotiation of a North American Free Trade Agreement*, mimeographed (May 1, 1991), at 3-4.

10. Article 801.1 of the NAFTA provides that the bilateral safeguard mechanism of the U.S.-Canada FTA remains in effect regarding potential safeguards on trade between the two nations that might be associated with tariff phase-outs.

serious injury.[11]

3. Rules of Origin: The United States sought strict rules of origin in the NAFTA. The rationale for this position was that the benefits of the NAFTA should flow to products of countries in North America rather than to those of other countries which were only slightly processed in North America. In particular, U.S. negotiators were mindful of the need to craft rules of origin to ensure that Mexico would not become a platform for third-country exports to the United States.

For the most part, the United States sought to build on the strong rules of origin in the U.S.-Canada FTA, while recognizing that some changes might be necessary to meet trade conditions in Mexico. One specific way in which improvement of the rules of origin in the U.S.-Canada FTA was sought was to increase the required North American content under the rule of origin for assembled automotive products. In addition, the United States sought to eliminate duty "drawback" schemes, whereby manufacturers received rebates or waivers of duties paid on imports used in the production of products that were exported. Because this practice in effect turned *maquiladoras* into export platforms and allowed non-North American products to pass through to the American market, the United States sought its termination.[12]

NAFTA clarifies and strengthens the rules of origin contained in the CFTA. Only North American-made products can obtain the benefits of the tariff preferences guaranteed under the NAFTA. Non-NAFTA origin goods must be transformed or processed significantly in Mexico before they can receive NAFTA's lower duties when shipped to the United States. Most rules of origin—specified at the level of Harmonized System tariff classification—require only a specified tariff classification change. NAFTA simplifies rule-of-origin calculations by giving producers a choice of methods (transaction value method or net cost method) to determine whether a product qualifies for NAFTA tariff preferences; the calculation underlying each method is more clearly defined. NAFTA also eliminates current practices that distort trade and investment flows in Mexico, such as export-conditioned duty remission programs.

For automotive products, NAFTA changes the accounting methodology and explicitly lists eligible costs to provide greater pre-

11. *Report of the Administration on the North American Free Trade Agreement and Actions Taken in Fulfillment of the May 1, 1991 Commitments*, mimeographed (Sept. 18, 1992), at 71-73.

12. *Response of the Administration to Issues Raised in Connection with the Negotiation of a North American Free Trade Agreement*, mimeographed (May 1, 1991), Tab 2, at 4-5.

dictability for producers. The level of North American content for passenger vehicles to qualify for NAFTA tariff preferences is 62.5 percent, compared to 50 percent under the CFTA provisions. For high-technology products, such as computers, semiconductors, and other electronic components, NAFTA requires that significant components be produced in North America, rather than simply assembled here.[13]

B. Worker Adjustment Assistance

In spite of the above provisions within the NAFTA to promote its orderly operation, it is nevertheless likely that some U.S. workers may be adversely affected by the implementation of the agreement. In a communication sent to the Congress on May 1, 1991, the Bush Administration indicated it was

> firmly committed to a worker adjustment program that is adequately funded and ensures that workers who may lose their jobs as a result of an FTA with Mexico will receive prompt, comprehensive, and effective services. Worker adjustment services, whether provided through the improvement or expansion of an existing program or through the creation of a new program, should be targeted to provide dislocated workers with appropriate services in a timely fashion.[14]

The Clinton Administration is similarly committed to providing adequate support to workers who might be adversely affected by the NAFTA. In a campaign speech in North Carolina in October 1992, then-Presidential candidate Clinton expressed his views on the NAFTA and set forth a number of conditions and qualifications for his support of the agreement. He stated that his Administration would provide workers affected by the NAFTA with "[t]rade adjustment assistance that includes training, health care benefits and income supports, and assistance to communities to create jobs."[15] The Department of Labor is currently working on the design of such a program.

III. Labor Standards Issues

During the NAFTA debate, concerns were expressed that disparities between labor and environmental standards in the United

13. *Report of the Administration on the North American Free Trade Agreement and Actions Taken in Fulfillment of the May 1, 1991 Commitments*, mimeographed (Sept. 18, 1992), at 74-76.

14. *Response of the Administration to Issues Raised in Connection with the Negotiation of a North American Free Trade Agreement*, mimeographed (May 1, 1991), pp. 6-7.

15. President Bill Clinton, Expanding Trade and Creating American Jobs (Oct. 4, 1992).

States and Mexico would lead to the loss of jobs and the erosion of labor and environmental standards in the United States. Several provisions of the NAFTA, discussed briefly below, recognize these potential problems; the emphasis here is on provisions that deal with labor standards rather than with environmental standards.

The Bush Administration's primary response to disparities in labor standards between the United States and Mexico was to engage in a collaborative program with Mexico, on a parallel track to the NAFTA, aimed at raising labor standards in that country. The Clinton Administration's approach is to deal with deal with labor standards issues through supplemental agreements to the NAFTA.

A. Labor Standards Within the NAFTA

Three sections of the NAFTA deal explicitly with labor standards: the Preamble, Chapter 11 (Investment), and Chapter 9 (Technical Standards).

1. Preamble. The NAFTA's Preamble sets out the principles and aspirations on which the Agreement is predicated. It pledges all three signatories to engage in certain forms of conduct, laid out in the form of resolutions. These resolutions include contributing to closer political and economic relations, strengthening multilateral institutions, and engaging in economic development supportive of a number of societal goals such as the promotion of innovation, protection of the environment, and conservation of natural resources. Through these resolutions, the NAFTA signatories set out that their objective in entering into the Agreement is not promoting the liberalization of trade and investment for its own sake, but rather because of the positive contribution that it can make to each of their societies.

Two of the resolutions in the Preamble deal directly with labor standards. The first states that the governments of the three countries resolve to "create new employment opportunities and improve working conditions and living standards in their respective territories." The wording of this resolution parallels closely that in the Preamble to the General Agreement on Tariffs and Trade (GATT), which states:

> Recognizing that their [the Contracting Parties'] relations in the field of trade and economic endeavor should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand . . .[16]

16. *Text of the General Agreement on Tariffs and Trade* (Geneva: General Agreement on Tariffs and Trade, 1986), at 1.

A second resolution states that the three countries resolve to "protect, enhance and enforce basic workers' rights." This resolution goes to the very heart of the labor standards concerns identified by NAFTA critics in the United States—the enforcement of labor standards in Mexico. Significantly, the preambular resolution uses the term "worker rights," which in U.S. trade jurisprudence goes beyond the narrower notion of workplace standards ("working conditions" in the NAFTA preambular resolution discussed above and in the GATT Preamble) and also includes the more politically-oriented labor standards of freedom of associations and right to organize and bargain collectively.[17]

Although these preambular resolutions are hortatory and not enforceable, their inclusion recognizes the importance that each country attributes to labor standards issues in the design and implementation of the Agreement. Actions by signatories that run counter to these resolutions could be deemed to be inconsistent with the objectives (i.e., the intent) of the NAFTA. The Preamble is supportive of the ways and means of the parallel process on labor issues in which the Bush Administration engaged and also of the supplemental labor standards agreement proposed by President Clinton.

2. Investment. Chapter 11 of the NAFTA removes significant investment barriers, ensures basic protections for NAFTA investors, and provides a mechanism for the settlement of disputes between such investors and a NAFTA country. Pursuant to this Chapter, each country will treat NAFTA investors and their investments no less favorably than its own investors (i.e., national treatment) and investors of other countries (i.e., most-favored-nation treatment). NAFTA countries may not impose specified "performance require-

17. The U.S. trade and economic statutes that condition U.S. trade benefits or investment guarantees on the extent to which foreign countries afford their workers certain worker rights include the Caribbean Basin Economic Recovery Act, Title II, P.L. 98-67; the Generalized System of Preferences Renewal Act, Title V of the Trade and Tariff Act of 1984, P.L. 98-573; the Overseas Private Investment Corporation Amendments Act, P.L. 99-204; Continuing Appropriations, Fiscal Year 1988, P.L. 100-202 (authorizing funding for the Multilateral Investment Guarantee Agency); the Omnibus Trade and Competitiveness Act of 1988, P.L. 100-418; the Andean Trade Preference Act, P.L. 102-182; the legislation making appropriations for foreign appropriations, export financing, and related programs for Fiscal Year 1993, P.L. 102-391; and the Jobs Through Exports Act of 1992, P.L. 102-549 (authorizing funding for the Overseas Private Investment Corporation). For commentary on U.S. trade and economic legislation incorporating worker rights conditionality see, e.g., Jorge F. Perez-Lopez, *Conditioning Trade on Foreign Labor Law: The U.S. Approach*, 9 COMP. LAB. L. J. (1988); Lawyers Committee for Human Rights, *Worker Rights under the U.S. Trade Laws* (New York: Lawyers Committee, 1989); Jorge F. Perez-Lopez, *Worker Rights in the U.S. Omnibus Trade and Competitiveness Act*, 41 LAB. L. J. (1990); James M. Zimmerman, *The Overseas Private Investment Corporation and Worker Rights: The Loss of Role Models for Employment Standards in the Foreign Workplace*, 14 HASTINGS INT'L & COMP. L. REV. (1991). Karen F. Travis, *Women in Global Production and Worker Rights Provisions in U.S. Trade Laws*, 17 YALE J. INT'L L. 8 (1992); ZIMMERMAN, EXTRATERRITORIAL EMPLOYMENT STANDARDS OF THE UNITED STATES (1992).

ments" (specified export levels, minimum domestic content, preferences for domestic sourcing, trade balancing, technology transfer) in connection with any investments in its territory. NAFTA also provides rules guaranteeing the transfer of funds and proceeds of a sale, setting conditions under which expropriation might occur, and establishing a detailed mechanism for the resolution of investment disputes involving the breach of the NAFTA investment rules by the host country.

Article 1114, "Environmental Measures," deals with conflicts that may arise between efforts of a country to attract investment and its measures to protect the environment, where environment is defined broadly to include also health and safety standards. Paragraph 2 provides that NAFTA signatories should not lower their domestic health, safety, or environmental standards in order to attract investment and that the countries will consult on the observance of this provision. It states:

> The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, a Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor. If a Party considers that another Party has offered such an encouragement, it may request consultations with the other Party and the two Parties shall consult with a view to avoiding any such encouragement.

The provision is intended to ban "pollution havens," geographic locations that allegedly are willing to offer lower environmental standards as a way to compete for incoming foreign investment. Article 1114 proscribes such practices, broadening the inappropriate conduct to include possible relaxation of health and safety standards as an inducement to incoming foreign investment. In the case of disputes, the countries are called upon to consult with a view to eliminating the practice.

3. Technical Barriers to Trade. Chapter 9 of the NAFTA, titled Technical Barriers but generally known as Standards, applies to standards-related measures, namely standards and governmental technical regulations and the procedures used to determine that these standards and regulations are met. It recognizes the crucial role of standards and regulations in promoting safety and protecting human, animal and plant life and health, the environment, and consumers. NAFTA signatories have agreed not to use standards-related measures as unnecessary obstacles to trade, and to cooperate

toward the enhancement and compatibility of such measures within the continent.

The thrust of the NAFTA is on *product-related standards*, since these are the ones that are generally believed to affect trade in goods and services directly or indirectly. Domestic standards that regulate the process through which goods and services are produced (i.e., *process-related standards*) tend to be out of the scope of the agreement. For this reason, most labor standards, which tend to pertain to work practices and therefore are process related, are not addressed by NAFTA.

However, there are certain standards-related activities conducted by the U.S. Department of Labor that fall under the purview of the agreement. The most prominent example is standards issued by the Occupational Safety and Health Administration (OSHA) and the Mine Safety and Health Administration (MSHA) requiring approval or certification of certain devices (e.g., respiratory protective devices, rubber protective equipment for electrical workers, ladders, safety footwear, mining equipment) by the U.S. Government or an accredited laboratory.

The NAFTA does not affect these regulations. It affirms the right of each signatory to adopt, apply, and enforce standards-related measures, to choose the level of protection it wishes to achieve through such measures, and to conduct assessments of risk to ensure that those levels are achieved. The obligation incurred by each of the signatories is to ensure that goods or specified services from the other two countries are treated no less favorably than like goods or services of national origin, and like goods or services from non-NAFTA countries.

B. Labor Standards Outside of the NAFTA

The primary response of the United States to deal with labor standards issues raised by the NAFTA during the Bush Administration was to engage in discussions and collaborative activities with Mexico to improve standards in that country. A deliberate policy decision was made to deal with labor standards in a parallel process to the NAFTA rather than within the agreement itself. The Clinton Administration has also sought to address labor standards issues outside of the NAFTA, through the negotiation of a supplementary agreement on this subject.

1. Parallel Discussions on Labor Standards: On May 3, 1991, the Secretaries of Labor of the United States and Mexico signed a Memorandum of Understanding (MOU) Regarding Cooperation between the U.S. Department of Labor (DOL) and Mexico's Secreta-

riat of Labor and Social Welfare (Secretaría del Trabajo y Previsión Social, STPS). The MOU called for cooperative activities in various areas such as health and safety measures, general working conditions, including labor standards and their enforcement, and resolution of labor conflicts. At the same time, the two institutions also agreed to a series of detailed cooperative activities for 1991-92, particularly in the areas of occupational safety and health, child labor, and labor statistics.[18]

During the first two years of operation of the MOU, the thrust of cooperative activities was on the development of comparative studies in the areas of worker safety and health, child labor, labor law and worker rights, and the informal sector.[19] At the same time, the United States and Mexico also collaborated on a number of other concrete activities, foremost in the area of safety and health (e.g., a tripartite conference on "what works" to prevent accidents in the iron and steel industry, technical assistance and training to Mexico in developing an improved health enforcement program for its workforce, exchanges of information on the potential hazards and uses of specific chemicals), child labor (development of a common set of goals on child labor), and labor statistics (training courses and seminars designed to improve the collection and analysis of social and economic data in Mexico).

2. Supplemental Agreement on Labor Standards: In a major speech delivered in October 1992, in the midst of the U.S. Presidential campaign, then-Presidential candidate Clinton spoke at length about the NAFTA. He stated:

> I came here to tell you why I support the North American Free Trade Agreement. If it is done right, it will create jobs in the United States and in Mexico, and if it is done right and it is part of a larger economic strategy, we can raise our incomes and reverse the awful trend of now more than a decade in which most Americans are worker harder for less money. If it is not done right, however, the blessings of the agreement are far less clear, and the burdens can be significant. I'm convinced that I

18. The MOU and the action plan of cooperative activities are reproduced in *Response of the Administration to Issues Raised in Connection with the Negotiation of a North American Free Trade Agreement*, mimeographed (May 1, 1991), Tab 3, at 17-19. ff.

19. *See* U.S. Department of Labor, Occupational Safety and Health Administration and Mexican Secretariat of Labor and Social Welfare, *A Comparison of Occupational Safety and Health Programs in the United States and Mexico: An Overview* (Washington: U.S. Government Printing Office, 1992); U.S. Department of Labor and Mexican Secretariat of Labor and Social Welfare, *A Comparison of Labor Law in the United States and Mexico: An Overview* (Washington: U.S. Department of Labor, 1992); Mexican Secretariat of Labor and Social Welfare, *The Informal Sector in Mexico* (Washington: U.S. Department of Labor, 1992); and U.S. Department of Labor, *The Underground Economy in the United States* (Washington: U.S. Department of Labor, 1992).

will do it right. I am equally convinced that Mr. Bush won't.[20]

Specifically, he spoke about a number of domestic steps that would need to be taken in order to improve the context for the agreement and three supplemental agreements that should be negotiated with Canada and Mexico—in the areas of environmental standards, labor standards, and import surges—to achieve an acceptable package.

Because the North Carolina speech contains President Clinton's most clearly articulated position on the NAFTA to date, it is used here as a basis for discussing his Administration's approach to the Agreement. As the process of negotiations with Mexico and Canada on the supplemental agreements unfolds, more specificity may be provided by Administration officials on some of the elements of the supplemental agreements.[21]

One of the main themes of then-Presidential Candidate Clinton's assessment of the NAFTA in October 1992 was that the Bush Administration had not used all available tools outside of the NAFTA to protect U.S. workers and the environment. He pledged to "aggressively pursue the remedies available in our current trade laws and in the proposed agreement to protect our jobs, our businesses and our environment from unfair practices."[22] In addition, he outlined five unilateral steps that the United States should take to make the Agreement more acceptable: 1) provide meaningful assistance to domestic workers and communities who are vulnerable to the NAFTA; 2) protect the environment; 3) provide some assistance to domestic farmers who are at risk in the NAFTA; 4) public participation in the implementation of the NAFTA regarding the environment; and 5) proper implementation of NAFTA provisions allowing foreign workers to cross the borders and enter the United States.

In addition to the five domestic actions listed above, he sketched the contents of a trinational (United States, Canada, and Mexico): (1) establishment of a trinational commission on labor matters; and (2) a trinational agreement to ensure that each country enforces its own labor standards.

3. Trinational Commission: The trinational commission on worker standards and safety should have extensive powers to educate, train, develop minimum standards, and have dispute resolution powers and the ability to provide remedies. The powers of the commission would be similar to those of the environmental commission:

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20. President Bill Clinton, Expanding Trade and Creating American Jobs (Oct. 4, 1992).

21. *See, e.g.*, Ambassador Mickey Kantor, Testimony before the Senate Committee on Finance (Mar. 9, 1993).

22. President Bill Clinton, Expanding Trade and Creating American Jobs (Oct. 4, 1992).

> The commission should also encourage the enforcement of the country's own environmental laws through education, training, and commitment of resources, and provide a forum to hear complaints. Such commission would have the power to provide remedies, including money damages and the legal power to stop pollution. As a last report, a country could even be allowed to withdraw.

4. Enforcement of Domestic Laws: There should also be a trinational agreement requiring each country to enforce its own environmental and worker standards. Candidate Clinton stated that the agreement should

> contain a wide variety of procedural safeguards and remedies that we take for granted here in our country, such as easy access to the courts, public hearings, the right to present evidence, streamlined procedures and effective remedies. I will negotiate an agreement among the three parties that permits citizens of each country to bring suit in their own courts when they believe their domestic environmental protections and worker standards aren't being enforced.

IV. Concluding Observations

Speaking at American University in February 1993, President Clinton amplified his views on NAFTA, stressing the labor implications of the agreement:

> The North American Free Trade Agreement . . . began as an agreement with Canada, which I strongly supported, which has now led to a pact with Mexico as well. That agreement holds the potential to create many, many jobs in America over the next decade if it is joined with others to ensure that the environment, that living standards, that working conditions, are honored—that we can literally know that we are going to raise the condition of people in America and in Mexico. We have a vested interest in a wealthier, stronger Mexico, but we need to do it on terms that are good for our people.[23]

Ambassador Mickey Kantor has indicated that the negotiations with Mexico and Canada on the supplemental agreement on labor standards will begin on March 17 and that the Administration will not ask for Congress to vote on legislation implementing the NAFTA until the negotiations "result in comprehensive, enforceable agreements."[24] Given the important role that labor issues have played

23. President Bill Clinton, Remarks by the President at American University Centennial Celebration (Feb. 26, 1993).

24. Ambassador Mickey Kantor, Testimony, before the Senate Committee on Finance (March 9, 1993).

throughout the NAFTA negotiations, it is perhaps fitting that the final episode of the agreement will again revolve around them.