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The Evolution of Auto and Labor Provisions in North American Free Trade Agreements

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Abstract

One of the most significant events for U.S. international trade over the last few years has been the renegotiation of the North American Free Trade Agreement. Within this renegotiation, the auto industry and the protection of the labor force have become important topics for the terms of the new United States-Mexico-Canada Agreement. This paper explores the evolution of labor provisions in North American trade agreements, with particular emphasis on the auto industry. Beginning with the Canada – United States Automotive Products Agreement and the Canada – US Free Trade Agreement, as well as Mexico’s maquiladora program, the first section of this paper explores the factors that contributed to the creation of NAFTA. The second reviews the specific provisions for automobiles in that agreement in conjunction with the provisions of the North American Agreement on Labor Cooperation, focusing on specific studies of cases brought before the dispute settlement system. Finally, this paper assesses the new provisions of the USMCA and its expected impact on the labor force and auto industries of North America.

SETTING THE STAGE FOR NAFTA AND THE USMCA

NAFTA was preceded by two major trade agreements between the United States and Canada: the Canada – United States Automotive Products Agreement and the Canada – US Free Trade Agreement. While Mexico’s maquiladora program was not directly a trade program, it still served the same purpose. All of these projects laid the foundation for NAFTA and for USMCA.

THE CANADA – UNITED STATES AUTOMOTIVE PRODUCTS AGREEMENT

The first step towards North American economic integration was taken in 1965 with the creation of the Canada – United States Automotive Products Agreement. This agreement, also known as the Auto Pact, drew the American and Canadian auto sectors closer together and was influenced by a number of factors. In the years leading up to the agreement, Canada had struggled with overwhelming trade deficits and chose to focus on a single industry – automotive production – in an attempt to bring itself back above water.¹ The Canadian and U.S. auto sectors were already deeply integrated; many of the production plants in Canada were subsidiaries of American companies. The parts themselves were built in the U.S. and then shipped to Canada for assembly and sale, whether domestically or back to the U.S.² In addition, the Canadian auto market was so small that the cars it did produce entirely within its borders covered so large a range that they could not be produced efficiently. The wide variety available hampered specialization and, in return, resulted in the inefficient allocation of resources.³ Canada was also realizing diminishing economic usefulness from its ties to the British Commonwealth.

On the other side of the border, General Motors (GM), the Chrysler Corporation, and Ford Motor Company wielded such political clout, especially in Michigan, that they came to be known as the “Big Three.”⁴ These auto manufacturers, among others, searched for ways to cut costs and came to the conclusion that freer trade with their northern neighbors would allow for the most efficient allocation of their savings.⁵

The Auto Pact laid down a set of asymmetrical obligations. In order to receive duty-free entry into the U.S. before 1968, at least 60% of the aggregate value of an automotive must have been added in either Canada or the U.S.; on January 1, 1968, this requirement was lowered to 50%.⁶ The Auto Pact also provided waivers to a limited list of manufacturers to allow their products duty-free entry into Canada. However, these vehicles were only eligible under two conditions: firstly, the ratio of production in Canada must have been equal to at least 75% of their Canadian sales, and secondly, the dollar value of the content level added in Canada must have stayed equal to that of the Canadian content level for the model year 1964.⁷

The U.S. and Canadian auto sectors evolved to keep pace with the new demands of the Auto Pact; however, the agreement benefited Canada significantly more than it did the U.S. Given the freer access to American automobiles, the Canadian sector quickly specialized to meet the demands of a larger market:

¹ David Crane, “Canada-US Auto Pact,” *The Canadian Encyclopedia*, 12 June 2017.

² “The Canada-US auto pact created the modern Canadian auto industry,” Canadian Labour Congress, 16 Jan. 2018.

³ Jack L. Hervey, “Canadian-U.S. auto pact – 13 years after,” *Economic Perspectives* (Jul-Aug 1978), Federal Reserve Bank of Chicago, 19.

⁴ Michael Hart, “The Auto Pact: Forerunner of Free Trade,” *Policy Options*, Institute for Research on Public Policy, 1 Dec. 2002.

⁵ Hart, “The Auto Pact...”

⁶ Hervey “Canadian-US auto pact...” 19.

⁷ Hart, “The Auto Pact...”

Canadian auto producers focused on smaller vehicles and produced more of them overall.⁸ Rather than producing a few models of a wide variety of options, the industry focused on maximizing the production of certain models; this specialization allowed for a more efficient allocation of resources. In the years leading up to the adoption of the Auto Pact, a surplus of American parts had overwhelmed the Canadian auto industry; however, with the liberalization of trade between the two countries, the Canadian surplus of financial products quickly caught up. In order to address the dependency on American parts manufacturers, Canadian auto producers also began to make their own parts.⁹

In terms of employment, the Auto Pact's results largely favored Canada over the U.S. In 1975, ten years after the agreement's adoption, Canadian auto employment was 22% higher than it had been in 1965. However, in the U.S., employment had only risen 1% when comparing the periods 1965-1970 and 1971-1975.¹⁰ By 1980, the agreement had been directly responsible for the creation or maintenance of 100,000 U.S. jobs, excluding those in other sectors that it had indirectly fueled.¹¹ The average wage for Canadian auto workers was lower than that of their American counterparts, but by 1978, the gap was rapidly diminishing. However, rising employment meant more wages to be paid; even though the wage itself was lower, the total labor costs of Canadian vehicles was still higher than that of American vehicles.¹²

THE CANADA – UNITED STATES FREE TRADE AGREEMENT

In 1989, the Auto Pact was replaced by the Canada – United States Free Trade Agreement, or CUSFTA. This effectively extended trade privileges beyond the limits of the auto industry into all other sectors, with particular emphasis on agriculture, wine, and energy. With regards to the auto sector, the new agreement was little more than a reworded Auto Pact, as many of the old requirements were kept. The rules of origin requirement from the Auto Pact remained at 50%; however, the new agreement required that 50% of the direct production costs be incurred within the trade area, whereas the original agreement included indirect costs. The CUSFTA states that this was the equivalent of 70% under the old rules.¹³ In addition, the waiver program under the Auto Pact was both phased out and grandfathered in; it was retained for certain manufacturers and the parties continued to be able to extend waivers to companies with new manufacturing facilities. However, new requirements were added for waiver eligibility. In particular, these benefits could not be conditioned on performance or on the value added in Canada.¹⁴ Finally, the agreement bound Canada to reduce its import restrictions.¹⁵ While the CUSFTA itself made little visible change for the auto industry, it laid a foundation for the trade agreements to follow.

MEXICO'S MAQUILADORA PROGRAM

From the 1960s until 2006, many foreign-owned assembly plants in Mexico were referred to as maquiladoras. These plants, whose name springs from the Spanish word *maquila* or processing fee, would import foreign parts and assemble products for immediate re-export to the parts' country of origin. During this process, duty was only assessed on the value added in Mexico. Formalized with the 1989 Maquiladora Decree, which simplified the paperwork and licensing process, this program was intended to

⁸ Hervey, "Canadian-US auto pact..." 21.

⁹ Ibid., 21.

¹⁰ Ibid., 22.

¹¹ Hart, "The Auto Pact..."

¹² Hervey, "Canadian-US auto pact..." 22.

¹³ "Free Trade Agreement Between the Government of Canada and the Government of the United States of America," 1 Jan. 1989, 2316 U.N.T.S. 3, 27 I.L.M. 293 (1988).

¹⁴ Ibid.

¹⁵ Ibid.

attract investment and foreign currency to encourage the growth of Mexico's economy.¹⁶ However, these factories often resulted in a "race to the bottom" in terms of labor rights; multinational corporations were more concerned with the cheap labor than with working conditions. Maquiladoras often faced complaints of barriers to worker organization. Many of these factories had signed protection contracts with unions, under which these unions were no longer representative of their workers but rather had begun to extract concessions from the very workers they were meant to defend, rather than from the corporations from which they were intended to protect these employees. As such, workers in many maquiladoras attempted to form independent unions. Maquiladoras also faced complaints over worker discrimination, particularly against pregnant women, and over safety concerns. This paper discusses specific examples of complaints associated with maquiladoras following an explanation of the dispute settlement system under which they were addressed.¹⁷

NAFTA, THE NAALC, AND THE AUTO INDUSTRY

The struggles of workers under the NAFTA/NAALC system are particularly visible in the auto industry. This section explores how the introduction of both NAFTA and the North American Agreement on Labor Cooperation, or NAALC, aided or complicated workers' efforts to address their concerns. The wider impact of NAFTA and the NAALC on the auto industry is also examined.

NAFTA'S AUTO PROVISIONS

Annex 300-A discusses the agreements' longevity and addresses the member countries' auto policies at the time. It provides for a review of the sector's status and the agreement's effectiveness within 10 years to determine how to strengthen and improve the agreement; it also lays out specific requirements for each country's auto policies. With regards to Canada, many of the provisions in NAFTA carried over from the CUSFTA, which, in turn, had included provisions from the Auto Pact. In particular, Canada retained its list of manufacturers who would be ineligible for waivers. In addition, these waivers are still only permissible until they resulted in an "adverse impact" on another manufacturer.¹⁸

NAFTA includes a number of provisions specific to Mexico. First, it permits Mexico to retain its 1989 Auto Decree, provided that Mexico brings all measures into consistency with the rest of NAFTA. In addition, NAFTA broadens the definition of national supplier status to allow more foreign enterprises to register as such. Annex 300-A provides for a gradual lowering of the required national value added and a steeper decline in the value of imported parts that must be included in a manufacturer's trade balance calculations, as discussed in Box 1.¹⁹

¹⁶ Editors of *Encyclopaedia Britannica*, "Maquiladora," *Encyclopaedia Britannica*, accessed at <https://www.britannica.com/technology/maquiladora>.

¹⁷ Norman Caulfield, *NAFTA and Labor in North America*, (Chicago: University of Illinois Press, 2010), 76.

¹⁸ North American Free Trade Agreement," Can.-Mex.-U.S., Dec. 17, 1992, 32 I.L.M. 289 (1993). Accessed at <https://www.nafta-sec-alena.org/Home/Texts-of-the-Agreement/North-American-Free-Trade-Agreement>.

¹⁹ Ibid.

Box 1:

The concept of “national value added,” in this context, refers to a requirement to qualify as a national supplier. This status was associated with additional benefits under Mexico’s Auto Decree. In order to meet this requirement, a manufacturer must attain a certain percentage of value added from suppliers (VANp) as a percentage of its reference value or its total national valued (VANt). This percentage would decrease as time passed, as visible below.

Year	Required VANp
1994-1998	34%
1999	33%
2000	32%
2001	31%
2002	30%
2003	29%

Mexico was permitted to restrict exports from Canada and the U.S. until 1999, provided that manufacturers were allowed to import “a quantity of originating autotransportation vehicles equal to at least 50 percent of the number of vehicles of the number of vehicles of such type that the manufacturer produced in Mexico in that year” with a similar requirement for persons other than manufacturers.²⁰ Finally, Mexico was permitted to maintain its import licensing process unless these measures had restrictive effects.²¹

The agreement also includes provisions for the U.S., but significantly fewer than for the other two parties. Under Annex 300-A, an automobile is considered domestically produced if 75% of the cost to the manufacturer arises from value added in any of the three parties and if the vehicle has been exported to the U.S. before the 30 days following the end of its model year.²²

Annex 300-A also sets out requirements for Canada and Mexico with regards to used vehicle imports. Canada was required to phase out its restrictions on used vehicles from Mexico. In 2009, it could no longer restrict vehicles older than 10 years; in 2011, it could no longer restrict vehicles older than 8 years, and so on until all Canadian restrictions on Mexican used vehicles were meant to be phased out by 2019. The same schedule for the removal of restrictions applied to Mexico for used vehicles imported from the U.S. and from Canada.²³

In addition to the obligations laid out in Annex 300-A, the NAFTA agreement contains a special rules of origin section for the automobile sector. For vehicles intended to carry 15 or fewer people, the regional value content (RVC) requirement was set at 56% until 2002; thereafter, it would be increased to 62.5%. For vehicles intended to carry more people, the RVC requirement increased from 55% to 60%. Finally, if a recently built plant with new machinery or a recently refitted plant’s first product was a different type of

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

²³ Ibid.

vehicle than had been produced in that country or that plant before, the RVC requirement was lowered to 50% for the first five years of production.²⁴

THE NORTH AMERICAN AGREEMENT ON LABOR COOPERATION

The NAALC was signed in September 1993 and designed to be NAFTA's labor supplement. Its overarching objective is to address labor-related concerns arising from the liberalization of trade, while NAFTA draws Canada, the United States, and Mexico into closer economic ties.²⁵ Annex 1 lays out 11 specific "guiding principles that the Parties are committed to promote, subject to each Party's domestic law," referring to them as "broad areas of concern where the Parties have developed, each in its own way, laws, regulations, procedures and practices that protect the rights and interests of their respective workforces."²⁶ These principles are as follows: freedom of association and the right to organize, the right to collective bargaining, the right to strike, the prohibition of forced labor, child labor protections, minimum employment standards, the elimination of employment discrimination, equal pay for men and women, the prevention of occupational injuries and illnesses, compensation in the case of such incidents, and the protection of migrant workers.²⁷ In order to promote these principles, the NAALC established a system of collaboration to hear and redress grievances.

Structure

The NAALC laid a foundation for cooperation upon which member states would be able to address labor issues in a collaborative rather than adversarial fashion. The first mechanism for this collaboration is the Commission for Labor Cooperation, a trilateral organization composed of a council and a secretariat. The council, consisting of delegates from each member state, addresses occupational health and safety, worker benefits, child labor, industrial relations, minimum wage requirements, union legislation, and labor dispute resolution. The multilateral nature of the council was intended to allow harmonization of domestic labor laws. As the states collaborated on acceptable policies, they would ideally each implement these same measures.²⁸ The secretariat operates separately from but provides technical support for and periodic reports to the council. The executive director is appointed by trilateral consensus.²⁹

In addition to the Commission for Labor Cooperation, the NAALC mandates that each member state establishes a National Administrative Office, or NAO. Each NAO is responsible for its country's implementation of NAALC mandates. NAOs are also designed as a point of contact for concerns about labor issues or actions inconsistent with NAALC requirements.³⁰ These offices are the public face of the NAALC. Unions, workers, NGOs, and enterprises may file complaints with an NAO over labor rights abuses. Complainants are not only able but required to present their concerns to an NAO in a country other than their own; this was designed to reassure complainants that their concerns would be heard.³¹ Potential complainants may be reluctant to present concerns over labor policy to the people responsible for those same policies for fear of retaliation. The ability to report these concerns to third-party actors

²⁴ Ibid.

²⁵ United States Department of Labor, Bureau of International Labor Affairs, "North American Agreement on Labor Cooperation: A Guide," October 2005.

²⁶ "North American Agreement on Labor Cooperation," Sept. 14, 1993, Can.-Mex.-U.S., 32 I.L.M. 1499.

²⁷ United States Department of Labor, "North American Agreement..."

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

³¹ Emily Massengill, "Labor Standards for Mexican Workers: The Failure of the North American Agreement on Labor Cooperation," University of Tennessee Honors Program, May 2017.

and to see these concerns addressed was intended to ease the reporting process. The NAALC sets out specific guidelines for reporting requirements. For example, submissions must contain an explanation of the matter at hand: specifically, any harm caused by that issue, whether the issue was part of a pattern, and whether the issue was under review by any domestic body or another international body. However, the grounds upon which an NAO could reject a report made it exceptionally easy for an NAO to deny a complainant the improvements they demanded. A report could be rejected, for example, if it were dated incorrectly or if it was too similar to another recently filed report.³²

Dispute Settlement

NAOs are also the main actors in dispute settlement through the NAALC. The NAALC created a dispute settlement process through which NAOs would communicate with each other to resolve differences of opinion. The first step in any dispute would be ministerial consultations between NAOs. If the consultations could not resolve the dispute, any party may request an Evaluation Committee of Experts, or ECE, to examine the issue and relevant factors including patterns of practice and to determine and provide policy recommendations to ameliorate concerns. ECEs would focus on the implementation of policies on a range of topics: forced labor, child labor, minimum employment standards, employment and pay discrimination, occupational health and safety, and specific concerns with regards to migrant workers.³³ However, this does not encompass all 11 of the NAALC's guiding principles; the right to organize, the right to bargain collectively, the right to strike, and the requirement for appropriate compensation for occupational injuries and illnesses are omitted.

ECE studies focus on comparing conditions and policies across the three member states and report to the council. If, after NAO consultations and the ECE report, one party is still concerned about another's implementation of labor standards with regards to child labor, occupational safety and health, or minimum wage, that party would be able to call for the establishment of an arbitral panel. After the panel's determination, the recompense could be payment, as well as the suspension of trade benefits.³⁴ The narrowing of topics eligible to be addressed by later stages of the process indicates the decreasing ability of the NAALC system to respond to these concerns. In addition, the ability of member states to block the creation of these panels through the refusal to appoint members effectively stifled the functionality of the system.³⁵

The NAOs are also responsible for collaborative initiatives between the three member parties. These cover a wide range of issues relating to labor and were designed to provide preventative communication between the three parties to stop problems before they began. These initiatives were designed to facilitate exchange of policies, expertise, and training among the three parties. Activities typically focus on the types of concerns that had been brought up in recent complaints. These activities were not restricted to the government agencies themselves but rather also permit the participation of businesses, organized labor, non-governmental organizations, and academic institutions.³⁶ By creating another avenue for the public's input, the NAOs ensure that the voices of everyday people affected by the policies in question may be heard and addressed.

³² United States Department of Labor, "North American Agreement..."

³³ Ibid.

³⁴ Ibid.

³⁵ U.S. House of Representatives, House Committee on Ways and Means, "Improvements to the USMCA," December 2019.

³⁶ "United States Department of Labor, "North American Agreement..."

Evaluating the NAALC's Impact on the Auto Industry

The NAALC has been neither fully successful nor fully incapable of realizing its goals. While it did facilitate communication and cooperation on labor issues among the three member countries, it was not entirely able to ensure the improvement of labor conditions among the three countries.

The NAO system was certainly successful in creating an avenue for the filing of labor complaints. By 2010, 35 complaints had been filed; this number had grown to 39 by 2017.^{37, 38} The requirement that reports be submitted to NAOs other than one's own likely facilitated some of these reports. By reporting to a separate country's office, a complainant could recruit an advocate on a comparable level with their own country's responsible parties. An NAO would theoretically be more likely to address concerns from another equivalent organization than from a sole union or other group of workers. However, of these 39 complaints, none had passed beyond ministerial consultations, and the majority were dismissed even before that stage.³⁹ As such, although the process is in place, it has not been effective at ensuring that concerns are addressed, only that they can be voiced.

With the ability to dismiss reports for numerous administrative regions, the NAOs have avoided taking meaningful action to address the complaints presented. Some of the reluctance to respond to complaints may have been related to questions of sovereignty; despite the goals behind their creation, NAOs may have felt that labor questions were domestic issues and that to interfere with the actions of a company in another country would have been a violation of the latter country's sovereignty. Even if the complaints had been addressed, the result would likely have been disappointing to the complainant. Despite the intentions behind the creation of the system, the only result of ministerial consultations could have been an ECE; the ECE's only result, in turn, would have been a set of policy recommendations. Neither of these steps gave the NAALC system to ability to enact meaningful change in a country's labor policies or to require a specific factory or company to comply with these policies.

In addition, the parties' ability to block the formation of a panel could prevent the escalation of a dispute. Even the final step in the process – the request for financial compensation and permission to rescind concessions – was likely to be ineffective in convincing a company to change its actions; determined by the company's cost-benefit analysis of continuing its practices versus complying with expectations or moving its manufacturing.⁴⁰

The NAALC and Maquiladoras

The maquiladoras of the pre-NAFTA era persisted even after the introduction of NAFTA and the NAALC, and many of their labor issues continued as well. As previously discussed, the system contained certain fundamental flaws; as such, NAO complaints were often unsuccessful in causing effective change through formal avenues; the maquiladoras were no exception. Of the 35 NAO complaints filed prior to 2010, 19 were against Mexico, the majority of which involved maquiladoras.⁴¹

The original purpose of the maquiladoras was to provide cheap labor for exports; in the early 2000s, this was demonstrated by the acceptance of the "twin plant" system. Under the twin plant system, the capital-intensive services remained in the U.S., while the labor-intensive manufacturing was performed in

³⁷ Caulfield, *NAFTA and Labor...* 70.

³⁸ Massengill, "Labor Standards for..." 11.

³⁹ Cody Jacobs, "Trade We Can Believe In: Renegotiating NAFTA's Labor Provisions To Create More Equitable Growth In North America," *Georgetown Journal On Poverty Law & Policy* 17.1 (2010), 136.

⁴⁰ "North American Agreement..."

⁴¹ Caulfield, *NAFTA and Labor...* 69-70.

Mexico.⁴² This concentration of low-cost, low-skill Mexican labor providing manufacturing services for American companies represented a de facto core-periphery system. The American core controlled the flow of resources and capital necessary for manufacturing; the Mexican periphery became dependent on U.S. companies in order to stay in business.⁴³ This system also resulted in the intensification of Mexico's comparative advantage in cheap labor.

After NAFTA's entry into force, Mexico and its maquiladoras carved out a niche for themselves as the workshop of North America. In the five years leading up to NAFTA's entry into force, maquiladora employment had grown at a rate of 47%; in the five years following, this percentage leapt to 87%.⁴⁴ The freer trade allowed Mexico to exploit its competitive advantage in cheap labor compared to the two other NAFTA signatories; however, this was accompanied by the exploitation of those workers.

The maquiladoras had also initially been required to comply with an export minimum for their product; this restriction was removed in 2001, allowing these factories to sell their products domestically.⁴⁵ With the removal of this requirement, the maquiladora program and the PITEX program, which provided import support for domestically owned companies to produce exports, were merged into a single program in 2006.⁴⁶ This merger erased the distinction between foreign owned factories, which had previously fallen under the maquiladora program, as compared to Mexican-owned production facilities aided by the PITEX program. The new IMMEX program, or *Industria Manufacturera, Maquiladora, y de Servicios de Exportación*, provides financial aid for companies, foreign or domestically owned, to import intermediate goods and raw materials in order to transform them into export commodities.⁴⁷

However, as maquiladora employment and production rose, so too did complaints over worker treatment, especially in the automotive sector.

⁴² Ibid., 83.

⁴³ Ibid., 83.

⁴⁴ William C. Gruben, "Was NAFTA Behind Mexico's High Maquiladora Growth?" *Economic and Financial Review*, 2001, 11.

⁴⁵ Caulfield, *NAFTA and Labor*... 83.

⁴⁶ "IMMEX: Manufacturing, Maquila and Export Service Industry," Ministry of Economy, Government of Mexico. Accessed at <http://www.2006-2012.economia.gob.mx/industry/foreign-trade-instruments/immex>.

⁴⁷ Ibid.

Box 2:

In June 1997, employees at the Han Young plant in Tijuana, Mexico, which produced truck trailer chassis for the Korean auto manufacturer Hyundai, struck in protest of low wages and dangerous conditions. An additional emphasis for this wildcat strike was the allegation of discrimination based on union membership. Like many other maquiladoras, the Tijuana plant had a protection agreement with a particular union; however, workers had attempted to form an independent union and alleged that the associated union had mismanaged the election.¹ When the strike was declared illegal, this independent union, the *Sindicato de Trabajadores de la Industria Metalica, Acero, Hierro, Conexos, y Similares* (STIMAHCS), filed a report with the U.S. NAO alongside three other organizations.² In April 1998, the NAO recommended ministerial consultations, which were scheduled for 2000.³ In response, in June 1998, the Mexican government hosted a Seminar of Union Freedom and invited members of Han Young's leadership and associated union; however, when strikers attempted to attend the meeting, they were brutally beaten by police. The meeting continued as planned with no objection by the four representatives from the U.S. Department of Labor.⁴ Despite the efforts of the NAO, the workers were never able to organize and many were fired; the factory was also moved to a different part of Tijuana.⁵ The Han Young case highlighted the inability of the NAALC to effect meaningful change on companies' actions; even the agreement of both the U.S. and Mexican governments that Han Young had violated the law and its workers' rights was unable to stop the company's abusive practices. The restrictions on the topics that later stages of the dispute settlement process may address throttle the NAO's abilities to appropriately address grievances.

However, the Han Young case was not the only example of the NAALC's impotence. In 1997, STIMAHCS led a separate organizing campaign at an Echlin auto parts factory in Mexico City. When the company and government retaliated, STIMAHCS asked the trinational Echlin Workers Alliance for assistance. The complaint, accepted by the U.S. NAO in January 1998, alleged that the Echlin company had fired STIMAHCS members and intimidated other workers into avoiding this same union. It also reported that the company failed to provide its workers with appropriate protection from asbestos.⁶ The Canadian NAO received parallel complaints from the Canadian labor Congress and the ALF-CIO; as a result, the Echlin complaint was notable as the first instance of a complaint with participants from all three member states.⁷ Upon investigation, the U.S. NAO found the company guilty of retaliation against employees for union membership and of election disruption. As with the Han Young case, the NAO ultimately recommended ministerial consultations.⁸ In May 2000, in response to both the Han Young and Echlin complaints, the Secretaries of Labor of the U.S and Mexico signed an agreement that Mexico would hold a public seminar in June on freedom of association and the right to collective bargaining.⁹

¹ Norman Caulfield, *NAFTA and Labor in North America*, 76.

² "The Case of Han Young de Mexico, S.A. de C.V. in Tijuana, Mexico," October 28, 1997. U.S. National Administrative Office, Bureau of International Labor Affairs, United States Department of Labor.

³ United States Department of Labor, Bureau of International Labor Affairs, U.S. National Administrative Office, "US NAO Submission 9702 (Han Young)."

⁴ Caulfield, *NAFTA and Labor...* 76.

⁵ David Bacon, "Testing NAFTA's Labor Side Agreement," *NACLA*, September 25, 2007.

⁶ Robert G. Finbow, *The Limits of Regionalism: NAFTA's Labour Accord*, (Vermont: Ashgate Publishing Company, 2006).

⁷ Caulfield, *NAFTA and Labor...* 76.

⁸ *Ibid.*, 77.

⁹ *Ibid.*, 77.

Unfortunately for maquiladora employees, the Echlin case would not be the last. In July 2000, only a month after Mexico's freedom of association seminar, employees of Auto Trim and Custom Trim/Breed Mexicana, along with several other unions and NGOs in all three member states, filed a submission with the U.S. NAO. The complaint alleged not only that the company had ignored occupational safety and health guidelines at the Auto Trim of Mexico and Custom Trim/Breed Mexicana plants in Tamaupalis but, significantly, that the government had failed to respect the principles laid out in the NAALC preamble. This complaint became the first to extend beyond a company and bring into question a member state's governance.⁴⁸ As with the Han Young and Echlin cases, the only response available to the NAO was to suggest ministerial consultations.⁴⁹

The Sunshine Effect and Cross-Border Solidarity

The futility of reporting and fear of retaliation may have dampened the results of many potential complaints. Nevertheless, the NAALC complaint reporting process did result in what some scholars refer to as a "sunshine effect." Complaints filed publicly even with little official administrative result nevertheless caused informal improvements.⁵⁰ The primary result was greater awareness of labor rights violations. As the public face of the NAALC process, NAOs are required to make public the complaints they decide to address, as well as hold a public hearing to ensure that plaintiffs with additional information will have the opportunity to make their voices heard.⁵¹ As such, the general public and specific organizations such as NGOs have been able to apply pressure through informal channels on the companies that are reported to be in violation of labor rights.

Perhaps the most demonstrative example of this sort of pressure involves the five-year struggle for rights of workers in Continental Tire's Euzkadi plant in Jalisco. In 1999, Continental Tire fired 18 long-term employees for protesting the company's 24-hour, 365-day work schedules, mandatory overtime, wage givebacks, and increased production quotas. In response, the workers' union, the Revolutionary National Union of Euzkadi Workers (SNRTE) attempted to bargain for improvements to the labor agreement. In 2002, after three unsuccessful years and Continental Tire's shuttering of the plant, the SNRTE organized a strike, which the Mexican government declared illegal. This decision was later overturned in 2004; however, as conditions had not improved by 2005, members from Euzkadi unions in Argentina, Brazil, Mexico, and the U.S. pledged to exert international pressure on Continental Tire to change its policies.⁵² The union efforts involved in the Continental Tire-Euzkadi complaint indicate that although the NAALC process may not have been able to produce change through a formal process, it nevertheless opened the door for cross-border solidarity between workers as an effective method for creating meaningful improvement in labor conditions.

The NAALC and Unions

The advent of NAFTA and the NAALC intensified long-running union struggles in the North American auto sector. In Mexico, the division between workers and the unions that claimed to represent them deepened. As mentioned in discussions of the export program, the leadership of many maquiladoras had signed protection contracts with particular unions.⁵³ This about-face of intentions was the impetus behind a push for independent unions of the kind demanded in the Han Young, Echlin, and Continental Tire

⁴⁸ Caulfield, *NAFTA and Labor...* 77.

⁴⁹ *Ibid.*, 78.

⁵⁰ *Ibid.*, 79.

⁵¹ United States Department of Labor, "North American Agreement..."

⁵² Caulfield, *NAFTA and Labor...* 79-82.

⁵³ *Ibid.*, 79.

cases. The NAALC system provided an outlet for worker frustrations with the contracted unions and helped them make a case for independent unions; however, it was unable to end the practice of protection contracts. When the initial push for independent unions failed, international pressure and cross-border solidarity was generally able to provide some small relief; however, it simply highlighted the inability of Mexican unions to protect their workers.⁵⁴

Union struggle extended beyond the borders of Mexico. Auto union difficulties in Canada and the United States preceded the creation of even the CUSFTA. With the 1935 Canadian UAW charter, Canadian and American auto labor forces integrated under the umbrella of the United Automobile Workers.⁵⁵ This conglomeration presented a massive force of organized labor on behalf of employees, particularly of the Big Three auto makers. The inclusion of both Canadian and American employees aided the union's efforts, as companies could not simply lower conditions in one country to meet the demands of the other. However, the relationship between the two parties began to crumble in 1979 when UAW president Douglas Fraser promised concessions to the Chrysler Corporation. In particular, he offered to return worker pensions to Chrysler as a loan and agreed that workers would submit to a pay decrease if the alternative was a shutdown.⁵⁶

This episode of labor tensions, reminiscent of the concessions extracted from Mexican workers by unions associated with their corporations, sparked the separation of the UAW's Canadian delegation.⁵⁷ The divide grew with time, as U.S. workers agreed to measures that Canadian workers opposed, such as profit-sharing with GM and Ford in 1982 and acceptance from Chrysler in 1984 of lump sum payments rather than an increased base rate for future pay raises. This distinction in priorities between Canadian workers and American employees culminated with the election of Owen Bieber as UAW president in 1983.⁵⁸ The following year, the Canadian delegation began its formal exit from the UAW and the creation of a separate union by the name of the Canadian Auto Workers.⁵⁹

The factionalism of the UAW showcased the struggles of auto unions preceding the introduction of NAFTA and the NAALC. These difficulties remained under the new system. Labor unions opposed the creation of NAFTA, fearing that it would export jobs and that displaced workers would mean a loss of union membership. They were right. As organized labor struggled more and more to gain concessions from corporations and extracted them instead from their members, auto workers grew increasingly disillusioned with the organized labor that claimed to represent them.⁶⁰ In turn, union membership plummeted under NAFTA. Total union membership across all U.S. industries dropped from 15.5% of employed workers in 1994 to 10.5% in 2018.⁶¹ Union density in U.S. auto manufacturing dropped from 44.4% to 18.2% in 2013.⁶² In 2001, UAW membership numbered 701,818; by 2018, that number had fallen to 395,703 – a decrease of 43.6%.⁶³

⁵⁴ Ibid., 79-82.

⁵⁵ United Press International, "Canadian UAW Driven Away From U.S.," *Chicago Tribune*, 2 June 1985.

⁵⁶ Judith Miller, "U.A.W. President Promises Concessions to Chrysler," *New York Times*, 20 Oct. 1979.

⁵⁷ Ibid.

⁵⁸ "UAW History," *UAW*, United Automobile, Aerospace, and Agricultural Workers of America, 13 Oct. 2015.

⁵⁹ United Press International, "Canadian UAW Driven..."

⁶⁰ Caulfield, *NAFTA and Labor...* 56.

⁶¹ U.S. Department of Labor, Bureau of Labor Statistics, "Union membership rate 10.5 percent in 2018, down from 20.1 percent in 1983," *The Economics Daily*, 25 Jan. 2019.

⁶² Gary Clyde Hufbauer, Cathleen Cimino, and Tyler Moran, "NAFTA at 20: Misleading Charges and Positive Achievements," Peterson Institute for International Economics, May 2014.

⁶³ Ashlyn Still, "UAW faces membership challenge," *Reuters Graphics*. Accessed at <https://fingfx.thomsonreuters.com/gfx/editorcharts/USA-AUTOS-TOLEDO/0H001PBN55NP/index.html>.

The decline in union membership was in part due to a lack of faith in the union's ability to advocate for its workers. However, several other factors may also have contributed to this decline, including the introduction of right-to-work laws in Midwestern states at the heart of the American auto industry, such as Michigan, Ohio, and Wisconsin. A corruption scandal involving 10 of the UAW's top leadership weakened the union, as well as the difficult fact that the UAW officially supported the Democratic Party while many of its members vote Republican.⁶⁴ All of these factors have contributed to the decline in UAW membership and union membership more generally; however, the role of union failure in preventing the entry into force of NAFTA in the decline in membership cannot be denied.

REPLACING NAFTA: THE UNITED STATES-MEXICO-CANADA AGREEMENT

Throughout the campaigns for the 2016 U.S. presidential elections, Donald Trump integrated a demand for a renegotiated NAFTA into his platform. He frequently commented that NAFTA was a "bad deal," referring to it during a presidential debate as "the worst trade deal maybe ever signed anywhere, but certainly ever signed in this country."⁶⁵ President Trump, among others, blamed NAFTA for pushing manufacturing jobs out of the U.S. into Mexico. In April 2017, President Trump threatened to pull the U.S. out of NAFTA but agreed to renegotiate it instead.⁶⁶ The new agreement carries a different name in each country: in the United States, the agreement is referred to as the United States – Mexico – Canada Agreement, or USMCA. In Canada, it is the Canada – United States Mexico Agreement, or CUSMA, in English, and the *Accord Canada – États-Unis – Mexique*, or ACEUM, in French. In Mexico, it is the *Tratado entre México, Estados Unidos y Canadá*, or T-MEC. The version of the agreement signed by all three countries on November 30, 2018 was ratified by Mexico in June 2019; however, when the agreement reached the U.S. House of Representatives, portions of the agreement were adjusted before it was sent to the full House for a vote. This amended version was signed by representatives of all three governments on December 10, 2019 and approved by the U.S. House on December 17, 2019.^{67, 68} The U.S. Senate will vote on the agreement in the new year.⁶⁹ The Canadian government has stated that they will address ratification in tandem with the U.S.⁷⁰

TRANSITIONING FROM NAFTA TO THE USMCA

The USMCA has often been called "NAFTA 2.0," and this moniker is not entirely inaccurate. Most of the former trade deal remains intact, albeit with certain specific changes and additions. Generally speaking, the provisions of USMCA strengthen and reinforce those of NAFTA.

Auto Provisions of the USMCA

In the realm of the auto industry, the USMCA increases the RVC rule from 62.5% under NAFTA to 75%. Annex 4-B retains much of the same text as the original agreement but provides a broader definition of

⁶⁴ Jarrett Skorup and James M. Hohman, "Auto Workers Are Free From UAW," *Wall Street Journal*, 19 Sept. 2019.

⁶⁵ Patrick Gillespie, "Trump hammers America's 'worst trade deal,'" *CNN Business*, 27 Sept. 2016.

⁶⁶ "What is NAFTA and why does Trump want it renegotiated?" *Al Jazeera*, 19 Aug. 2017.

⁶⁷ Maham Abedi, "Canada, U.S., Mexico sign amended CUSMA trade pact," *Global News*, 10 Dec. 2019.

⁶⁸ Jacob Pramuk, "House majority backs USMCA trade deal after more than a year of talks, sending it to Senate," *CNBC*, 19 Dec. 2019.

⁶⁹ Sabrina Rodriguez, "Moderate Democrats call out McConnell on vote delay on Mexico-Canada trade deal," *Politico*, 18 Dec. 2019.

⁷⁰ Jacob Pramuk, "House Democrats and the White House have a deal to move forward with USMCA trade agreement," *CNBC*, 10 Dec. 2019.

the concept of “wholly obtained.”⁷¹ The USMCVA also increases individual RVC requirements for three separate categories of parts: “core parts” at 75%, “principal parts” at 70%, and “complementary parts” at 65%.⁷² In addition, it requires that producers must purchase 70% or more of their steel and aluminum as originating products.⁷³ Origin procedures remain effectively the same.⁷⁴ As previous trade agreements also increased the RV rules, this is not particularly notable for North American trade agreements. However, the USMCA also introduces a new labor value content (LVC) rule, the first of its kind. Under this rule, 40% of the value of a car must be manufactured in a facility whose employees are paid at least \$16 per hour.⁷⁵ This new rule was designed to protect workers in Mexican maquiladoras and to preserve the jobs of Canadian and American manufacturing workers by slowing or preventing the movement of employment to Mexico. The new agreement also contains “specific production of both U.S. vehicles and core parts, increase purchases of U.S.-produced steel and aluminum, and advance U.S. leadership in automotive research and development” that, according to the U.S. Trade Representative, did not have a comparable counterpart under NAFTA.⁷⁶

Labor Provisions of the USMCA

The USMCA retains many of the obligations laid out under the NAALC but also fundamentally changes the way many of these issues are discussed. Additional provisions are added by the new LVC and other requirements to address forced labor, protection of migrant workers, and violence against workers. In particular, the agreement refines and clarifies parties’ obligations to match those under the International Labor Organization’s *Declaration on Rights at Work*.⁷⁷

Many of the dispute settlement provisions laid out in the May 2019 version of the agreement remain the same as under NAFTA, albeit renamed. In particular, Article 23.14’s creation of a Labor Council akin to the Commission for Labor Cooperation and the obligation of each country under Article 23.15 to form a “contact point” reminiscent of an NAO show little meaningful change.⁷⁸ However, the new agreement reached in the House Ways and Means Committee is said to strengthen enforcement mechanisms and decreased the ability to parties to block the formation of panels. The new version also includes rules of evidence for labor disputes previously unseen in the NAALC or in the original version of the USMCA.⁷⁹ At the time of writing in December 2019, these rules of evidence were not yet published.

Enhancing worker protection, the revised Article 23.7 recognizes the importance of a “climate that is free from violence, threats, and intimidation, and the imperative of governments to effectively address

⁷¹ The concept of “wholly obtained” plays a role in determining whether or not a good meets the requirements to be considered originating. Generally speaking, anything wholly obtained under NAFTA was grown or extracted within the territory of a party; USMCA extends this requirement with regards to aquaculture. Office of the United States Trade Representative, Executive Office of the President, “Agreement between the United States of America, the United Mexican States, and Canada 12/13/19 Text,” 13 Dec. 2019.

⁷² Office of the United States Trade Representative, Executive Office of the President, *Estimated Impact of the United States – Mexico – Canada Free Trade Agreement (USMCA) on the U.S. Automotive Sector*, 18 Apr. 2019, 7.

⁷³ Office of the United States Trade Representative, Executive Office of the President, *The United States – Mexico – Canada Free Trade Agreement Fact Sheet: Automobiles and Automotive Parts*, n.d.

⁷⁴ United States Trade Representative, “Agreement between the...”

⁷⁵ Ibid.

⁷⁶ United States Trade Representative, *Estimated Impact of...*, 7.

⁷⁷ United States International Trade Commission, *U.S. – Mexico – Canada Trade Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors*, 4889 (April 2019), 216.

⁷⁸ United States Trade Representative, “Agreement between the...”

⁷⁹ U.S. House of Representatives, “Improvements to the...” 1.

incidents of violence, threats, and intimidation against workers.”⁸⁰ This article of the USMCA, among others, is designed to prevent the states from turning a blind eye to company violations of regulations. The measures relating to forced labor and to this commitment to protect workers from violence have been updated by the House Ways and Means Committee, removing language that lowers the standard of proof necessary to claim that a partner is failing to appropriately protect its workers and to facilitate the enforcement of regulations regarding forced labor.⁸¹ The major contribution of the USMCA to the protection of labor falls under the obligation of states to enforce labor laws and the creation of a monitoring system to ensure that this requirement is met.⁸²

WHAT HAPPENS NEXT? POTENTIAL OUTCOMES OF THE USMCA

Opinions on the impact of the new USMCA are divided. While some parties feel that the agreement will greatly benefit American workers, others feel that the impact may be overstated or that the agreement may simply have the opposite effect.

GOVERNMENT EXPECTATIONS

United States

The U.S. Trade Representative has released several white papers on the impact of the USMCA. One anticipates that over the next five years, the USMCA is expected to bring \$34 billion of new investments, \$23 billion of new annual auto part purchases, and 76,000 new automotive jobs.⁸³ The information supporting these estimates was collected from surveys of U.S. auto manufacturers, all of whom felt that they would benefit from the agreement given a transition period to adjust their supply chain and operations. Of the \$34 billion in new investments, \$15.3 billion has already been publicly announced by six auto makers: Ford, Fiat Chrysler Automobiles (formerly known as the Chrysler Corporation), GM, Toyota Motor Corporation, the Volkswagen Group, and SK Innovation. In comparison, overall auto investment in the U.S during the first 24 years of NAFTA totaled over \$70 billion.⁸⁴

The U.S. Trade Representative has also posited that the USMCA will encourage increased auto part purchases. Of this increase, auto makers have estimated that they expect to buy \$9 billion more in parts to account for the increased rules of origin requirements for their existing models alone. They expect another \$8.3 billion to account for the new RVC rules: \$5.2 billion will be invested in batteries, and the remaining \$600 million is necessary for the new steel and aluminum content requirements.⁸⁵ Part of these purchases will also stem from the new requirement that batteries originate within the trade area.⁸⁶ In addition, this estimate only includes direct purchases by car manufacturers; it does not account for purchases by parts suppliers.⁸⁷ Finally, the U.S. government hopes that the tightened intellectual property provisions in the agreement, based in large part on those of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, will encourage innovation and production of high-value

⁸⁰ United States Trade Representative, “Agreement between the...”

⁸¹ David A. Wemer, “Ratified USMCA key to unlocking Mexican growth,” *New Atlanticist*, Atlantic Council, 18 Oct. 2019.

⁸² *Ibid.*

⁸³ United States Trade Representative, *Estimated Impact of...*, 2.

⁸⁴ “International Automakers and Dealers in America,” *Here for America*, 2018, 11.

⁸⁵ United States Trade Representative, *Estimated Impact of...*, 4.

⁸⁶ *Ibid.*, 5.

⁸⁷ *Ibid.*, 5.

autonomous vehicles.⁸⁸ This technological progress will both require and generate investment, which is not accounted for in the \$23 billion expectation.

The final major statistic published by the U.S. trade representative is the anticipated 76,000 jobs generated by the agreement. 22,800 of these will be automotive assembly jobs, based on information from auto manufacturers and 8,000 will be involved with the new battery requirements.⁸⁹ The remainder of these positions spring from the assumption that each manufacturing job generates 2 supplier jobs; this number has also been estimated at closer to 7.⁹⁰ When jobs in other industries are accounted for, the number grows further: for each assembly line job, 10 more are created upstream and downstream.⁹¹ However, this statistic must be considered in relation to the U.S. manufacturing jobs lost under NAFTA. In 1994, the U.S. auto manufacturing sector employed 1,168,000, compared with 128,000 in Canada and 122,000 in Mexico. By 2013, U.S. auto employment had fallen to 820,000 and Canadian auto employment had dropped to 115,000. In the meantime, Mexican auto employment had risen to 552,000.⁹² To attribute this change entirely to the decrease in trade restrictions ignores the role of other factors that affect the market, such as technological advancement. However, the point remains that a total of 76,000 jobs generated in 5 years, even if repeated for the first 20 years of the USMCA, does not exceed or even meet the jobs lost under NAFTA. As such, while the 76,000-job statistic is optimistic, the fact remains that it is simply not enough to cover the losses over the first 20 years after the introduction of NAFTA. In addition, the U.S. Trade Representative makes no claim about wages associated with these positions or pay improvements for preexisting employment.

The U.S. International Trade Commission (USITC) has also issued a report on its expectations for the new deal. It highlights potential private sector responses to the increased RVC and new LVC rules, dividing businesses into three groups: those who already meet the requirements, those who would be willing and able to do so after a transition period, and those who would choose not to at the expense of their tariff privileges. However, while it addresses the fact that responses may vary, it lays down no expectations for how much of the industry will choose one course of action over another and what the overall results may be. While the USITC report avoids the use of statistics, it backs up the U.S. Trade Representative about the benefits for U.S. auto manufacturing employment.

With regards to the more general provisions for labor, the USITC argues that the clear expectations laid out under the USMCA set achievable goals for the three parties and strong enforcement mechanisms to ensure their completion. With these clear goals, both the USITC and the U.S. Trade Representative conclude that the labor standards laid out under the USMCA and the new auto requirements will ultimately benefit American workers.

Mexico

The Mexican government considers the USMCA absolutely crucial to its nation's economic development. Mexico's comparative advantage has historically been its cheap labor force. However, as previously discussed, it has faced numerous criticisms over the exploitation of this labor force. To show its commitment to the USMCA, the Mexican Congress passed in April 2019 an overhaul of its labor code

⁸⁸ Ibid., 6.

⁸⁹ Ibid., 5.

⁹⁰ Kim Hill et al., "Contribution of the Automotive Industry to the Economies of All Fifty States and the United States," Center for Automotive Research, January 2015, 31.

⁹¹ Ibid., 31.

⁹² Hufbauer, Cimino, and Moran, "NAFTA at 20," 9.

that U.S. House Democrats had deemed necessary for them to consider approving the deal.⁹³ In particular, the new laws permit employees to form and to vote for independent labor unions to negotiate with companies on their behalf: the same independent labor unions that were so difficult to form in the maquiladoras under previous administrations.⁹⁴ This commitment to reforming these factories, which Mexico was so hesitant to make under the previous arrangement, highlights the belief that the new trade agreement will be beneficial for the country, as it resolves many of the issues. Recognizing that not passing such reforms would impede the ratification of the agreement by the other parties, a government that believed the agreement would not benefit its country would not be so hasty to meet the conditions of its two partners.

The Mexican government also feels that the new agreement will spur investment and, in turn, economic development within its borders. The government believes that the new agreement will help minimize the development disparity between its cities and rural areas. Recognizing the importance of private sector investment, the Secretary of Finance Arturo Herrera has stated that more stable macroeconomic growth under the USMCA will encourage companies to invest in Mexico.⁹⁵ The Mexican government opposed the addition of compliance monitoring for labor provisions and was especially anxious during the renegotiations in the U.S. House. However, as the government signed the agreement, it seems that these concerns have been mitigated.⁹⁶ Overall, Mexico anticipates positive outcomes from the USMCA.

Canada

Compared to the U.S. and Mexico, the Canadian government has been less forthcoming with its expectations for the USMCA's impact. After the signing of the most updated version of the agreement, Deputy Prime Minister Chrystia Freeland addressed attendees at the event, referring to the deal as a “win-win-win agreement which will provide stability for workers in all three of our countries for many years to come” and as “something we can all be proud of.”⁹⁷ As Mexican officials had, she stressed the importance of the agreement to the Canadian economy, referring to the potential for failure of negotiations as an “existential crisis” for Canada.⁹⁸

However, as with the U.S. and Mexico, it is important to consider the role that Canada's democracy plays in its government's statements about the trade deal. While Canada's next election is not until 2023, it is necessary to account for the consistent campaigning demanded of democratically elected officials.⁹⁹ As such, the statements of all three governments must be considered through this lens rather than taken as the simple truth.

INTERGOVERNMENTAL ORGANIZATIONS

The International Monetary Fund has issued a working paper anticipating the impact of USMCA. In the auto sector, it projects a welfare loss of \$700 million across the region. The IMF believes Canada will benefit from the RVC through a rising export price but lose as the result of a rising import price from the LVC requirement. Mexico may see a rise in welfare as the LVC's rising export prices, despite a

⁹³ Eric Martin, “Mexican Congress Passes Labor Law Tied to USMCA Trade Agreement,” *Bloomberg*, 29 Apr. 2019.

⁹⁴ *Ibid.*

⁹⁵ Wemer, “Ratified USMCA key...”

⁹⁶ Pramuk, “House Democrats and...”

⁹⁷ Catharine Tunney, “Canada signs revised North American trade deal, clearing way for ratification,” *CBC*, 10 Dec. 2019.

⁹⁸ *Ibid.*

⁹⁹ Elections Canada, *FAQs on Elections*, 14 Dec. 2019.

quantitative decline in the vehicles exported. While the other two parties gain, the U.S. is expected to lose as import prices rise.¹⁰⁰ The IMF also anticipates the stagnation of wages in the U.S. and in Canada, paired with a decrease in Mexico, as the result of the new RVC and LVC requirements; it also expects auto makers to cut wages in factories other than those paying \$16 per hour to meet the LVC obligation.¹⁰¹ This pessimistic view of the outcomes of the USMCA stand in stark contrast to the rosy expectations of the three governments. However, it is worth considering again that these governments often find it necessary to paint their actions as beneficial for their constituents' welfare, especially as the 2020 presidential election approaches. If these governments revealed the potential downsides of the trade agreement, they may face substantial voter backlash.

ORGANIZED LABOR

Organized labor is divided on the potential outcomes of the USMCA, particularly in the United States. Until the revision by the House of Representatives, both the UAW and the AFL-CIO were opposed to the deal. AFL-CIO President Richard Trumka cited a lack of enforcement protocol as the major source of concern over the deal. He and his organization felt that without stricter enforcement of labor laws, Mexico would continue to depress its wages and, in turn, drain American manufacturing jobs.¹⁰² His statements were echoed in November 2019 by AFL-CIO Secretary-Treasurer Liz Shuler when she called for evidence of a Mexican commitment to allowing free and independent unions and to eliminating the protection contracts that constrained worker organization and restricted membership to certain unions.¹⁰³ These concerns over commitment stand in stark contrast to the statements and actions of the Mexican government, which many feel clearly demonstrated its commitment to the new agreement with the passing of labor law reforms less than a month before this statement. However, with the Democratic revisions to the USMCA in December 2019, the AFL-CIO reversed its stance, citing the new enforcement provisions as the reason for its about-face. While it recognized that the deal still had shortcomings with regards to labor protection, the organization believed that trade rules would be fairer under the new agreement, which it referred to as a "new standard for future trade negotiations."¹⁰⁴

However, while the AFL-CIO has thrown its support behind the USMCA after the most recent update, the UAW remains pessimistic about the potential outcomes. Like the AFL-CIO, the UAW opposed NAFTA from the beginning but takes the opposite stance on the new deal from the other union. The UAW believes that it will not stop the shift of American jobs south of the border; however, like the AFL-CIO, it does find the revised language of the December 2019 version a vast improvement over the November 2018 deal.¹⁰⁵ However, even after the update, the UAW remains skeptical that Mexico will meet its commitments under the deal to protect workers' rights and believes that the enforcement of the USMCA will be an ongoing struggle rather than a settled fact.¹⁰⁶

PRIVATE SECTOR: THE BIG THREE

¹⁰⁰ Mary E. Burfisher, Frederic Lambert, and Troy D. Matheson, "NAFTA to USMCA: What is Gained?" International Monetary Fund, 26 Mar. 2019, 12.

¹⁰¹ *Ibid.*, 19.

¹⁰² Julian Resendiz, "Labor unions turn their back on U.S.-Mexico-Canada trade agreement," *KVEO*, 4 Nov. 2019.

¹⁰³ *Ibid.*

¹⁰⁴ "AFL-CIO Endorses USMCA After Successfully Negotiating Improvements," American Federation of Labor – Congress of Industrial Organizations, 10 Dec. 2019.

¹⁰⁵ Rory Gamble, "Statement of UAW President Rory Gamble on the Need to Monitor and Enforce the USMCA as Proposed Before Congress," United Automobile, Aerospace, and Agricultural Implement Workers of America, 18 Dec. 2019.

¹⁰⁶ *Ibid.*

In contrast to organized labor, many auto makers stand firmly behind the USMCA. Some of this support is evident in the \$13.7 billion in new investments announced by auto makers since the original USMCA was signed. This figure rises to the \$15.3 billion stated in the U.S. Trade Representative report when it includes a \$1.6 billion investment in an Alabama Mazda Toyota plant announced two weeks before the original signing date.¹⁰⁷

The American Automotive Policy Council, or AAPC, represents all three of the major American auto firms. The AAPC has issued a number of statements in support of the USMCA. On December 10, 2019, former Missouri governor and AAPC President Matt Blunt issued a statement that the USMCA “allows the U.S. auto industry to remain globally competitive by ensuring vehicles and auto parts are able to move freely across country lines.” He also stated that the group “urge[s] Congress to leverage this momentum and accelerate passage of the USMCA.”¹⁰⁸ Upon the passage of the USMCA by the U.S. House of Representatives, Blunt stated that the new agreement will “strengthen the U.S. auto industry and the auto manufacturing supply chain” and considered it a “blueprint for future trade agreements.”¹⁰⁹ Given the focus on the auto industry in the agreement, it is unsurprising that the Big Three would be so heavily invested in the USMCA’s evolution. It is also to be expected that corporations and unions would stand on opposite sides of the issue, yet it is worth noting that unlike unions, the AAPC has made no statement on which it considers most significant other than the rules of origin.

While Chrysler and GM have not made separate statements on the agreement, Ford has dedicated significant time and energy to explaining its support for the USMCA. The motor company argues that the agreement provides “confidence in the future,” as it “strengthens competitiveness” of American auto makers. Ford feels particularly optimistic about the benefits of the increased RVC rule and believes that the agreement will allow them to offer a large range of vehicles to American consumers. The auto maker also states that the new deal is good for both dealers and the communities in which they reside.¹¹⁰

OTHER VOICES

Numerous think tanks, lobbying organizations, and other groups have issued their expectations for the USMCA’s impact. In February 2019, over 200 businesses and associations launched the USMCA Coalition to advocate for the passing of the deal by the U.S. Congress. Members of this coalition include the Motor & Equipment Manufacturers Association, as well as the National Association of Manufacturers.¹¹¹ The coalition argued strongly that the USMCA will bring stability and security to U.S. businesses and their employees and stands firm behind the estimated outcomes of the U.S. Trade Representative.¹¹²

At the other end of the spectrum, the scholars at the Brookings Institute have voiced concerns over the long-term effects of taking a firm stance against our trading partners and allies. The Brookings analysis warns that strong-arming Canada and Mexico into renegotiating a 20-year-old trade deal demonstrates to U.S. allies that the country will extract any concession it can from others – even those it considers close partners.¹¹³ This will, in turn, damage U.S. soft power and its ability to conduct meaningful and

¹⁰⁷ United States Trade Representative, *Estimated Impact of...*, 8.

¹⁰⁸ “AAPC Statement on USMCA Breakthrough with Key Congressional Leaders and Administration,” American Automotive Policy Council, 10 Dec. 2019.

¹⁰⁹ “AAPC Statement on House Passage of USMCA,” American Automotive Policy Council, 19 Dec. 2019.

¹¹⁰ “Support the New USMCA,” Ford Motor Company, n.d.

¹¹¹ “Resources: Statements of Support,” USMCA Coalition, n.d.

¹¹² “USMCA,” USMCA Coalition, n.d.

¹¹³ Geoffrey Gertz, “5 things to know about USMCA, the new NAFTA,” Brookings Institute, 2 Oct. 2018.

responsible negotiations with its trading partners and allies. The Center for Strategic and International Studies continues this analysis of U.S. soft power, considering it especially threatened by the USMCA's termination clause, under which two parties may elect to terminate the agreement and enter into a bilateral partnership if the third party enters into a free trade agreement with a non-market economy.¹¹⁴ This backdoor exit for the United States shows a lack of the very commitment it expects from Mexico and Canada and may, in turn, damage U.S. soft power even further.

The Peterson Institute for International Economics takes a stronger stance against the USMCA, which it calls "terribly flawed."¹¹⁵ It argues that the growth from tighter e-commerce and intellectual property regulations is more accurately attributed to Canadian and Mexican membership in the CPTPP, especially given that many of these regulations are simply borrowed from that agreement. The PIIE also points to a major concern over the possibility that manufacturers may decide that producing their wares overseas and paying the low tariff for entry is preferable to production within the free trade area. While manufacturers adore the increased RVC regulation, the PIIE feels that it is more likely to harm than to help the U.S. auto industry.¹¹⁶

CONCLUSION

The evolution of North American free trade agreements has also meant the evolution of labor protection across the continent. As each agreement tightens the rules of origin for products, they have also encouraged a closer look at labor issues in North America. While the NAALC began the creation of a dispute settlement system for labor, this system in its original form faced fundamental flaws that rendered it incapable of appropriately addressing the concerns brought forth. Under the USMCA, the well-being of labor is likely to improve. However, the continued employment of these laborers and the overall economic outlook of the new deal is as yet unclear. Governments, organized labor, private sector entities, and think tanks have all expressed various expectations ranging from extremely beneficial to disastrous. At this time, the only way to determine the USMCA's true outcome will be to follow the ratification processes closely and to see where the new deal drives these three countries. However, all parties agree on one outcome: the settling of a new agreement will lead to increased stability as uncertainty over trade policy diminishes.

¹¹⁴ Jack Caporal, "The Road to Ratification: The USMCA's Last Lap," Center for Strategic and International Studies, 11 Dec. 2019.

¹¹⁵ Jeffrey J. Schott, "Five Flaws in the USMCA and How to Fix Them," *Trade and Investment Policy Watch*, Peterson Institute for International Economics, 6 Aug. 2019.

¹¹⁶ *Ibid.*