

**STUDY ON THE
MEXICAN LABOR AGREEMENT
WITH THE UNITED STATES AND CANADA,
PARALLEL TO NAFTA**

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TABLE OF CONTENTS

I	JUSTIFICATION OF THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA)	Page
I.1	What is NAFTA?	
II	FRAME OF REFERENCE OF THE LABOR AGREEMENT PARALLEL TO THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA)	
II.1	United States	
II.2	Canada	
III	ADVANTAGES EXPECTED FROM NAFTA	
IV	PARALLEL AGREEMENT OF LABOR COOPERATION	
IV.1	Sovereignty	
IV.2	Quality and Productivity	
IV.3	Purposes of the Parallel Labor Agreement	
V	OBLIGATIONS OF SIGNATORY COUNTRIES	
V.1	Labor suits	
V.2	Difusion of Labor Norms	
VI	COMMISSION OF LABOR COOPERATION	
VI.1	Ministerial Board	
VI.2	Secretariat	
VI.3	National Administrative Offices (NAO)	
VI.4	National Committees	
	a) Advisory Committees	
	b) Government Committees	
VI.5	Official languages	
VII	CONSULTATIONS FOR COOPERATION	
VII.1	Consultations on Labor Laws	
VII.2	Consultation at the Ministerial Level	
VII.3	Committee for Evaluation of Experts	
VIII	RESOLUTION OF CONFLICTS	
VIII.1	Arbitration panel	
VIII.2	Integration of panel	
VIII.3	Selection of panel	
VIII.4	Rules of procedure	
VIII.5	Compliance with recommendations	
IX	FINES AND SANCTIONS	
IX.1	Trade Sanctions	
X	CONCLUSIONS	

I. JUSTIFICATION OF THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA)

International events of paramount importance such as the unification of Germany further to the destruction of the Berlin Wall, the fall of Socialism and the disintegration of the former Soviet Union, including naturally the end of the famous Cold War, were some of the significant occurrences which favored the creation of a new economic model called Neo-liberalism which consequently led to the world globalization, characterized by the division of the world in huge blocks mainly grouped for trade purposes. We have therefore the Asian block made up by the countries of the Pacific Rim, the European Economic Community block, reorganized under the Treaty of Maastricht, and the American block which originated the Free Trade Agreement entered into in 1994 between the governments of our country, Canada and the United States of America.

In view of the foregoing, our country, facing the impossibility to avoid the developments and innovations of the world, executed the International Trade Agreement with Canada and the United States of America.

Additionally, our government has entered into International Trade Agreements with Costa Rica, Colombia and Venezuela, among many others.

I.1 What is NAFTA?

We should bear in mind that NAFTA is an international treaty entered into by Mexico, the United States of America and Canada, which contains a body of norms regulating trade and foreign investments between said countries.

In the trade area, NAFTA eliminates obstacles and barriers, by such means as:

I) The banning of customs tariffs on products proceeding from each one of the three countries.

II) The removal of other kinds of barriers in the free trade zones, such as the elimination of import permits.

The customs tariff is the tax imposed on foreign commodities imported into the national territory of a given country. In Mexico this tax is established in the Import General Tax Law, which classifies all the commodities which may be traded.

The removal of customs tariff includes only the products meeting the rules of origin established in NAFTA, while the products which do not fulfill them must pay the respective taxes.

Said rules of origin are the minimum manufacturing requirements compulsory for the products.

For example: Agricultural and other products fully processed within the country, and some regulations on the raw materials and components of said products.

The rules of origin have been made to prevent other countries alien to NAFTA from unduly profiting from the removal of the customs tariffs.

II. FRAME OF REFERENCE OF THE LABOR AGREEMENT PARALLEL TO THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA)

The immediate frame of reference from the Labor Cooperation Agreement, also known as parallel to NAFTA, is made up by the two International Agreements of Labor Understanding and Cooperation executed by Mexico and the United States of America, as well as with the International Labor Understanding and Cooperation Agreement executed with Canada, respectively in 1991 and 1992.

Already before the signature of the Free Trade Agreement, the United States had underlined its concern for matters regarding safety at the working place and health standards in the labor field.

II.1 UNITED STATES OF AMERICA

The first one of said agreements, entered into in May 1991 with the United States, has the main purpose of exchanging information in labor matters, specially with respect to safety and health, training and social security systems between both countries.

This understanding agreement was executed for the study and analysis of the labor laws of both countries, in order to learn during the stage of negotiation and signature previous to the approval of NAFTA, the differences between both legislations.

II.2 CANADA

The document entered into between the Mexican Labor Secretaries and Canada in May 1992, was a Memorandum of Understanding on Cooperation in Labor Matters, wherein various labor rights are acknowledged, among them the rights on labor safety and health.

Said Memorandum of Understanding has the main purpose of exchanging information to promote a better labor cooperation and understanding between both countries; the main activities contemplated in that agreement are the exchange of publications, research works, monographies, technical manuals and training seminars, as well as the exchange of experts and technicians.

III. ADVANTAGES OF NAFTA

The advantages pleaded by the Mexican authorities for the execution of NAFTA and of the parallel labor agreement were as follows:

- Increase in foreign investment
- Creation of new jobs
- Improvement of quality and productivity
- Improvement of the workers' living conditions

- Establishment of international commitments to strengthen cooperation in labor matters.

IV. "PARALLEL" LABOR COOPERATION AGREEMENT

The main purpose of the Labor Cooperation Agreement is to support the workers' well-being in the three countries and it includes norms to facilitate the actual enforcement of the labor laws of each country in its own territory.

Said Agreement will also assist in the exchange of information on labor matters, and the establishment of tripartite mechanisms to solve the conflicts in this area.

IV.1 SOVEREIGNTY

We must point out that the Labor Agreement fully respects the national sovereignty. It consequently expressly acknowledges that the right to establish and apply the labor laws pertains solely and exclusively to each nation, that the extraterritorial application of the laws is not permitted, and that no alien organization is allowed to perform any verification.

Said Labor Cooperation Agreement, parallel to NAFTA is an international treaty subscribed by the Government of Mexico, of the United States of America and of Canada; it has been effective in the three countries since the 1st of January 1994 and is compulsory under the terms of Article Six of the Federal Labor Law, which establishes that the respective laws and the international treaties entered into and approved under the terms of Article 133 of the Constitution, shall be applicable to the labor relationships for everything benefiting the worker. On the other hand, that same Constitutional Article states that the Constitution itself and the laws of the Mexican Congress, as well as the international treaties in agreement therewith and entered into by the President of Mexico with the approval of the Senate, shall be the supreme law for Mexico.

Last year marked the 10th anniversary of this international treaty which is still little known. Said treaty acknowledges in the field of activities linked to foreign trade between the three countries, several basic labor principles and norms, and wherein various

commitments are assumed to improve the labor laws and the workers' standard of living, as well as the quality and productivity, and it establishes methods to resolve conflicts, including the imposition of sanctions.

IV.2 QUALITY AND PRODUCTIVITY

The contracting states commit themselves to take, within the frame of their own laws, the following steps to improve the levels of quality and productivity:

1. The implementation of a permanent investment in human resources.
2. To promote the stability of employment and the opportunity to make a career in the corporation, as well as the promotion of employment referral services.
3. To strengthen the labor-management relations through the dialogue and joint actions between the labor organizations and the employers' associations.
4. Improvement of the workers' standard of living tied to the increasing productivity and improvement of quality.
5. Furtherance of consultations addressed by the labor and corporate sectors to the labor authorities.
6. Encouragement to the investments within the frame of attention to, and respect of, the Labor Law and principles.
7. Improvement of the fulfillment of laws between the subjects of the labor relationships, by seeking a healthy and safe labor environment.

IV.3 PURPOSES OF THE PARALLEL LABOR AGREEMENT

The general purposes of this Labor Agreement are:

The improvement of labor status and of the workers' standards of living in the signatory countries.

1. To further the enforcement of the respective Labor Laws of the contracting countries.
2. To encourage cooperation in order to promote the increase of the levels of productivity and quality.
3. To foster the publication and exchange of information and statistics, as well as of studies to disseminate the knowledge and understanding of the labor laws and institutions in each country.
4. To further the observance and effective application of the labor legislation.
5. To promote the transparency in the management of labor laws.

V. OBLIGATIONS OF THE SIGNATORY COUNTRIES

Each party to that treaty will, with full respect of its respective Constitution and the acknowledgment of its rights to establish its own domestic labor norms, guaranties that its laws and regulations contain labor norms consistent with workplaces of high quality and productivity.

Besides, the countries commit themselves to watch the observance and fulfillment of their respective labor laws, by adopting therefor the following measures:

1. The appointment of a sufficient number of inspectors duly trained and hopefully well paid in order to avoid corruption.
2. To watch the fulfillment of the laws and to investigate the denunciations by means of timely domiciliary inspections.

3. To foster plans of self-correction and voluntary compliance with the labor obligations.
4. The timely implantation of procedures for the enforcement of sanctions and of systems for the fulfillment of labor norms.

As far as we are concerned, the Governments of the contracting countries commit themselves to attend, within the frame of their respective legislation, any request of the employers, the workers or their representatives as well as of any interested person, to investigate the supposed breaches to the labor laws.

V.1 LABOR SUITS

The parties will additionally guaranty, in their respective countries, free access to the courts, pursuant to their own laws, for their application and fulfillment of the labor laws. Besides, each country will guaranty that the labor proceedings will be fair, equitable and transparent.

V.2 DISSEMINATION OF LABOR NORMS

The Agreement establishes that the parties shall ascertain the publication of their labor laws and other provisions, including general government resolutions.

The parties also bind themselves to disclose their labor norms to the public, including the proceedings for their application and enforcement, by promoting the education of the population in general with respect to the labor norms, especially those concerning health and safety as well as training and instruction.

VI. COMMISSION OF LABOR COOPERATION

A new concept is created without any precedent in the history of the Mexican Law, named Commission for Labor Cooperation; which is made up of the Ministerial Board, a Secretariat and a National Administrative Office in each of the signatory countries.

The main functions of the Commission for Labor Cooperation consist of:

1. Supervising the fulfillment and application of the parallel Agreement and the preparation of the recommendations for their applications and future development.
2. Approval for the publication of the reports and studies prepared by the Secretariat and the independent labor experts.
3. To facilitate the inter consultations of the participating countries, including the exchange of labor information.
4. Resolution of the differences and conflicts which can arise between the parties on the interpretation and application of the Labor Parallel Agreement.
5. Establishment of cooperation measures, consisting of technical assistance plans, such as: seminars, conferences, preparation of joint investigations and of training courses.

VI.1 MINISTERIAL BOARD

The Ministerial Board is made up of the labor state-secretaries or ministers of each country, or of the persons designated by them.

This Board shall meet at least once a year in regular sessions and, upon the request of any of its parties, in special sessions as many times as needed. This Board may delegate powers to committees, work groups or experts.

The resolutions and recommendations of the Ministerial Board will be adopted by the consensus of the parties.

V.2 SECRETARIAT

The Secretariat shall be chaired by an Executive Director designated by the Ministerial Board for a period of three years. Such period may be renewed for a term of up to three other years. Later on, the position of Executive Director will be successively rotated among the members of each one of the signatory countries. Said Director may only be removed for justified reasons.

The Secretariat will prepare the studies requested by the Ministerial Board. To this end, the Secretariat may examine all the relevant information; when the Secretariat lacks specific knowledge on the matter in question, it will be authorized to request the assistance of independent experts with a recognized expertise in said field.

V.3 NATIONAL ADMINISTRATIVE OFFICE (NAO)

Each one of the countries will set up a National Administrative Office and will notify its integration and location to the Secretariat, each one of the parties shall designate a Secretary who will be responsible for the management and operation of this National Administrative Office.

The duties of the National Administrative Office will be as follows:

1. To work as a liaison center with the government agencies of its own country, with the National Administrative Offices of the other countries, as well as with the Secretariat.
2. To provide without delay the information requests by the Secretariat, by the National Administrative Offices of the other countries, as well as by the Committee of Evaluation of Experts.
3. To establish rules for the request and reception of communications and studies concerning the labor legislation of each one of the participating countries.

VI.4 NATIONAL COMMITTEES

It is foreseen to create National Committees which may be Advisory and Government Committees:

- **NATIONAL ADVISORY COMMITTEES**

Each contracting country may call a National Advisory Committee made up of members of the national community, including representatives of the workers' and employers' organizations, in order to receive advice on the labor legislation and the interpretation of the Parallel Labor Agreement.

- **NATIONAL GOVERNMENT COMMITTEES**

The contracting countries may also call a Government Committee made up of representatives of the federal and state governments and of the municipal authorities, to receive advice on the labor legislation, the application and development of the Parallel Labor Agreement.

VI.5 OFFICIAL LANGUAGES

Spanish, English and French are the official languages of the Commission of Labor Cooperation. The Ministerial Board will establish the rules and proceedings for the translation and interpretation of the Parallel Labor Agreement.

VII. CONSULTATIONS FOR COOPERATION

The parties will endeavor at all times to reach a consensus on the interpretation and application of the Parallel Labor Agreement, and they will do their best to solve through cooperation and consultations any conflict on its interpretation and operation.

VII. CONSULTATIONS ON LABOR LAWS (NAO)

Any National Administrative Office of the signatory countries may consult the Administrative Office of another country with respect to its labor legislation, its management or conditions of the labor market in its own territory.

Any consulted national administrative office shall provide the requested information as soon as possible.

VII.2 MINISTERIAL CONSULTATIONS

Any contracting country may also request in writing advice and cooperation to any other contracting country(ies) at the level of Labor State Secretary or Minister, on any labor matter, provided said matter is related to NAFTA.

The parties will do their best to solve the consulted matter by means of the respective consultations and dialogue through the information supplied by each country, which should be sufficient to allow and exhaustive examination of the consulted matter.

VII.3 COMMITTEE OF EVALUATION OF EXPERTS

When some matter is not resolved by the National Administrative Offices nor by the consultations at the Ministerial level, any party may request the establishment of a Committee of Evaluation of Experts to solve the conflicts.

The Committee of Evaluation of Experts will examine in the light of the purposes of the Parallel Agreement and in a non-contentious way, the origin and the reasons of each party concerning the omission of the Labor Standards, especially of safety and health at work, as far as they are related to the Parallel Agreement and to trade activities under NAFTA.

It will not be possible to call a Committee of Evaluation of Experts if it is ruled that the matter is not related to commercial activities between the parties or, if the matter is not

covered by the mutually recognized labor laws. Alto, it will not be possible to call a Committee of Evaluation of Experts for a matter which has already been the subject-matter of a report by a Committee of Evaluation of Experts, as long as there is no new information justifying another report.

The Experts' Committees will observe the following conditions:

- a) They will be made up of 3 members.
- b) Each Chairman will be chosen by the Ministerial Board out of a list of experts prepared by the contracting countries, in consultation with the International Labor Organizations (ILO).
- c) The members of the Experts Committee shall have the required knowledge and experience in the labor field or other similar disciplines, and they will be elected strictly on the basis of their impartiality, reliability and wisdom. Said experts must also be independent and not linked to the government of the countries of any of the parties-

The Experts' Committee will present no later than 120 days after its establishment, a report which it will submit to the attention of the Ministerial Board. Said report will contain an appraisal of the matter in question as well as the Experts' conclusions, and, when appropriate, the practical recommendation which can prove useful for the parties to solve the matter in question.

VIII. RESOLUTION OF CONFLICTS

If a party of the contracting countries persists in violating its own standards of labor safety and health, child labor or minimum wages, any one of the parties may request in writing consultations or explanations on said violations.

The participant countries to a consultation will do their best to reach a mutually satisfactory solution by means of consultation; however, if they do not reach a solution in this way, they may request a special session of the Ministerial Board.

The plaintiff party will indicate in its request to the Ministerial Board the reason for its complaint, with delivery of a copy thereof to the other parties and to the Secretariat. To attend this request, the Board will meet no later than 20 days after the delivery of the request and will undertake to solve the conflict.

To this end, the Ministerial Board may call the technical advisors or create the work groups of experts it deems necessary, it may also resort to the good offices, conciliation, mediation or any other proceeding for the solution of conflicts and, as the case may be, prepare the recommendations it deems convenient.

VIII.1 ARBITRATION PANEL

If the above-mentioned means are not sufficient to resolve a consultation or conflict on the failure to comply with the labor, safety and health standards, minimum wages or child labor, the Ministerial Board will decide by the vote of two thirds of its members, to call an arbitration panel to examine the supposed violation, provided such a matter is related to trade among the contracting parties and covered by the mutually recognized labor laws.

When a third country deems that it is interested in the conflict, such country will have the right to take part as a plaintiff party therein, further to notifying its intention of participation.

VIII.2 INTEGRATION OF PANEL

The Ministerial Board will prepare a list including a maximum number of 45 labor experts. The experts designated as panel members will hold their positions for 3 years, and may be reelected.

The panel members must meet the following requirements:

- a) To have the specialized knowledge and experience in labor law, in its application or in the solution of conflicts deriving from international agreements.
- b) To be elected strictly on the basis of their impartiality, reliability and wisdom.
- c) To be independent and not be linked to any of the parties and to fulfill the Code of Conduct established by the Ministerial Board.

VIII.3 SELECTION OF PANEL

When there are two conflicting parties, the panel will be made up of five members, and the same parties will endeavor to designate the chairman of the panel. If the conflicting parties do not reach an agreement to designate the chairman, lots will be drawn between both parties and the winning side will elect the chairman of the panel, who must not be a citizen of the country of the designing party.

Each one of the conflicting parties will choose two panel members who must have the same citizenship as the other conflicting party. Should one party not choose its panel members, those will be elected by drawing lots between the members of the list of 45 experts, who must have the same citizenship as the adverse party.

If there are more than two contending parties, five members will also be designated, with the parties also seeking to elect the chairman, and if they do not reach an agreement, the plaintiff party or parties will choose the chairman, who must not be citizen of the country or countries of the plaintiff(s).

Within the 30 days following the election of the chairman, the defendant party will designate two panel members who must be citizens of the countries of each one of the plaintiff parties.

The plaintiff parties will in turn chose two panel members who must both be citizens of the country of the defendant party.

VIII.4 RULES OF PROCEDURE

This Labor Agreement establishes that the Ministerial Board will prepare the rules of procedure, which will guarantee at least the right to be heard before the panel, as well as the opportunity to produce pleadings and replies in writing, on the following bases:

1. Said Board will examine whether under the Parallel Agreement the defendant party has constantly and repeatedly failed to apply the labor standards related to international trade between the parties and covered by the mutually recognized labor laws, exclusively in matters of:
 - a) Safety and health at the workplace
 - b) Child labor
 - c) Minimum wages
2. To issue the conclusions stating if there has been a persisting behavior of violations of the labor standards.
3. In the event of repeated violations in the labor field, to issue the recommendations to solve the conflicts, so that the defendant parties adopt a plan of action sufficient to correct the omissions

VIII.5 FULFILLMENT OF RECOMMENDATIONS

When a Panel of Experts in Labor Law has ascertained in its report the existence of a party's repeated behavior of failures to comply with the labor standards of safety and health, child labor or minimum wages of its respective country, the contending parties may agree upon a mutually satisfactorily plan of action which shall be adjusted to the recommendations of the Panel of Experts.

If the contending parties do not reach an agreement for a plan of action to observe the recommendations of the Panel of Experts, or if further to agreeing to such a plan, the defendant party does not fulfill the agreed acts, the plaintiff party may request a new meeting of the Panel of Experts.

Upon holding a new meeting on this matter, the Panel of Experts will decide if the plan of action offered by the defendant party is sufficient to correct the omissions or violations to the Labor Laws, and if the Panel decides that such plan is sufficient, it will be approved by the Panel. However, if the Panel deems that the plan is not sufficient, the Panel itself will prepare a new plan based on the labor legislation of the country of the defendant party.

IX. FINES AND PENALTIES

The party refusing to fulfill the recommendations of the Panel of Experts or to comply with the agreed plan of action, will be subjected, further to the evidence of the seriousness and recidivism of failure to comply with the labor laws of its respective country, to a monetary fine imposed by the Panel of Experts on the following bases:

1. During the first year of life of the Parallel Agreement, the fine may not exceed twenty million dollars USCy or its equivalent in the currency of the party's country. After this first year, the fine may not exceed .007% of the amount of the total trade of commodities between the countries, corresponding to the latest year for which information is available.
2. The fines must be paid in the national currency of the country of the penalized party, and they will be deposited in a fund to be used under the supervision of the Ministerial Board to strengthen the enforcement of the labor legislation of the country of the defendant party.

IX.1 COMMERCIAL PENALTIES

If the defendant party has not paid the fine within a period of 180 days after the date of its ruling, the country of the plaintiff party may suspend against the defendant party the tariff benefits under NAFTA, up to the amount of the fine, by increasing the tariff on the commodities coming from the defendant party.

X. CONCLUSIONS

In summary, the most important conclusions can be:

1. The Labor Agreement does not violate the national sovereignty, nor does it allow the intervention of other countries in domestic matters.
2. Increase in foreign investment will lead to the creation of more jobs.
3. A better labor cooperation and understanding among the countries.
4. Improvement of quality and productivity, leading to the improvement of Mexican workers' salaries and standard of living.
5. A better and more efficient protection for Mexican migrant workers in the United States and Canada.
6. The solution of conflicts is based on team work and cooperation.
7. In the event of failure, the resolutions and recommendations are established by the labor experts of the country of the infringing party.
8. The amount of the fines will be used to promote the enforcement of the labor legislation in the country of the penalized party.

9. The Mexican Government adopts significant commitments for the benefit of the Mexican workers, among which the following should be pointed out:

- a) Improvement of labor standards.
- b) A more precise and transparent supervision of the enforcement of the labor laws, especially for safety and health at the workplace.
- c) More equitable and transparent proceedings before the labor authorities and courts.
- d) Appointment and training of a sufficient number of inspectors to watch the enforcement of the labor laws, as well as the establishment of self-correction plans.

10. Finally, the Mexican Government commits itself to promote the labor education of the population through the dissemination of information on the norms purporting to decrease the labor accidents and diseases, and in general to promote the fulfillment of the norms related to training and guidance, especially because education is considered as a basic component for the reduction of the unfortunate labor risks, now so costly for the whole society.

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