1. INTRODUCTION: SOCIAL DUMPING IN NORTH AMERICA

The advancement of the international trade regime has witnessed rising concern over "social dumping;" social dumping takes place when industrialists, in an attempt to avoid stringent labor and environmental regulations in the developed world, transfer their operations to the developing world. The assumption is that the developing world offers these industrialists a more lax regulatory climate. Critics of social dumping argue that this sort of industrial movement transforms developing nations into "dumping grounds" for the dirty industries of developed nations. This industrial movement also hurts companies which incur the additional costs of complying with environmental protection and worker health regulations in the developed world.¹

¹ Ph.D., Harvard University, 1997; J.D., Stanford Law School, 1996; B.A., University of California, Berkeley, 1989. Associate, Shearman & Sterling, New York. I am deeply in debt to MaryannSurrick, Scott Cunningham, Michael Chien, and all the editors at the University of Pennsylvania Journal of International Economic Law for their diligent work on this article for publication in the Journal. The views and opinions expressed in this article are solely those of the author and do not reflect the views and opinions of his employer or any other institution with which he has been associated.

¹ See Barry I. Castleman, The Export of Hazardous Factories to Developing Nations, 9 INT'L J. HEALTH SERVICES 569, 569-70 (1979) (establishing a theoretical baseline for identifying social dumping); see also David Michaels et. al., Economic Development and Occupational Health in Latin America: New Directions for Public Health in Less Developed Countries, 75 AM. J. PUB. HEALTH 536 (1985) (documenting the lax occupational health and safety regulatory culture encountered in some developing nations).
The concern over social dumping has led to renewed efforts to link national labor conditions to trading privileges under international free trade agreements. Take for example the negotiation of regional free trade agreements, such as the European Union Treaty ("Maastricht"),\(^2\) as well as the formation of global arrangements such as the World Trade Organization ("WTO").\(^3\)

\(^2\) Citizens of the European Community feared that the social dumping created by this industrial flight to the South would "force the workers in other countries with higher standards to accept lower standards and consequently downgrade the employment conditions." Roger Blanpain, 1992 and Beyond: The Impact of the European Community on the Labour Law Systems of Member Countries, 11 COMP. LAB. L.J. 403, 404 n.3 (1990). The European Community responded to such concerns of social dumping in Europe through the harmonization of national labor standards under the rubric of Community Law and the development of a judicial doctrine of pre-emption to deal with any conflicts between national and Community labor legislation. See id. (discussing how the Member States of the industrialized north fear that social dumping in Portugal, Spain, and Italy will carry jobs out of northern European nations and weaken the collective bargaining position of the working population of northern European nations); see also Commission of the European Communities, Health and Safety at Work in the European Community at 8-9 (1990) (outlining how the 1987 Single European Act harmonizes labor regulatory norms and directs the Commission of the European Communities to oversee the development of technical labor standards at a European level, the incorporation of these standards into national legislation, and the effective enforcement of these standards at the regional level); Eugene Daniel Cross, Pre-emption of Member State Law in the European Economic Community: A Framework for Analysis, 29 COMMON MKT. L. REV. 447, 449-50 (1992) (reviewing the landmark European Court of Justice decisions outlining the Court's rationale for pre-empting Member States' right to regulate in certain spheres).

\(^3\) Similar concerns over the potentially damaging effects of global social dumping and the need to fashion a legislative and judicial response to this threat led a diverse coalition of labor organizations, political leaders, and trade experts from the developed world to fight unsuccessfully to include a "social clause" in the final text of the WTO Charter. See, e.g., Hans-Goran Myrdal, Social Clause Issue "Practically Dead," FIN. TIMES, May 4, 1995, at 16. The proposed social clause would have tied national labor standards to WTO directives, linking WTO trading privileges to compliance with such directives. Under such a system, nations failing to comply in their treatment of workers with labor standards established by the WTO—standards guaranteeing workers freedom of association, the right to collective bargaining, and safe work conditions—could be the subject of trade sanctions. See, e.g., Shada Islam, Tough Talk: The WTO Gears up for a Contentious Conclave, FAR EASTERN ECON. REV., Jan. 11, 1996, at 76. The object of the proposed social clause was to tie economic integration and trade liberalization to improvements in global environmental and labor conditions. See id. The fierce resistance of developing nations to the proposed social clause defeated this proposal in the eleventh hour. These nations resisted the proposal on the grounds that it could too easily serve as a protectionist tool used to deny developing nations fair access to first world markets. See Singapore Warns Against Linking Labour Standards to Trade,
Debate concerning the negative impact of free trade on labor conditions, the social dumping it would give rise to, and the appropriate political response necessary to control such social dumping was particularly fierce during negotiation of the North American Free Trade Agreement ("NAFTA"). Critics of NAFTA from environmental, civic, and labor groups faulted the agreement for its lack of social protections and labor rights guarantees. These commentators argued that manufacturers would easily avoid such social mandates as unemployment insurance, workers' compensation, and workplace safety and health requirements due to Mexico's lack of a well-developed labor regulatory structure. According to such reasoning, NAFTA would pave the way for social dumping by U.S. and Canadian industrialists who would relocate their manufacturing operations to Mexico in order to escape the stringent workplace standards set in the U.S. and Canada. An expansion of free trade in North America, then, would mean a degradation of worker health in Mexico.

I would characterize the above posture as the "North American Social Dumping Theory," which is founded on the basis of the following three arguments. First, Mexico, like most developing nations, suffers from a disorganized and ineffective labor regulatory structure. Second, due to the weakness of its labor regulatory policy and practice, Mexico will be the victim of wide-scale social dumping by NAFTA partners. Third, the Mexican government is willing to concede social rights and standards in order to attract foreign investment. Despite defeat of the "social clause" in the opening negotiations of the WTO, the issue of social dumping pervades debate over the future structure of the WTO. See Islam, supra, at 78.


5 For a more detailed review of the arguments of these critics, see Donahue, supra note 4; Michael J. McGuinness, Hacia una Política Social para América del Norte: Ensayo sobre la Importancia de la Carta Social y el Fondo Estructural Europeos para el TLCAN, in MÉXICO, ESTADOS UNIDOS, CANADÁ, 1991-92, 131 (Gustavo Vega Cánovas ed., 1993); see also NATIONAL SAFE WORKPLACE INSTITUTE, CRISIS AT OUR DOORSTEP: OCCUPATIONAL AND ENVIRONMENTAL HEALTH IMPLICATIONS FOR MEXICO-U.S.-CANADA TRADE NEGOTIATIONS 5-12 (1991).
social dumping by U.S. and Canadian industries. Third, this social dumping will degrade workplace safety and health conditions in Mexico, thus harming Mexican workers. This article examines in a critical light the soundness of each of these three arguments.

To lay a foundation for this analysis, I begin with a description of Mexico’s labor regulatory structure based both on existing literature and the results of three years of field research that I conducted in Mexico City, Mexico. This review includes a discussion of the administrative procedures used to sanction employers in violation of Mexico’s labor law. As my discussion demonstrates, Mexico’s labor regulatory structure is essential to the protection of Mexican workers from illness or injury caused by workplace conditions.

Building on this review of Mexico’s labor enforcement structure, I consider the argument, taken as an operating premise by NAFTA critics, that Mexico’s labor regulatory structure is incapable of maintaining or enforcing current labor standards. According to this argument, Mexico’s labor law enforcement practices are described as disorganized, ineffectual, and corrupt. A comparison of these accounts to my initial review of Mexico’s labor law structure, however, leads to the conclusion that Mexico’s labor regulatory structure and its supposed deficiencies have re-

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6 This research included four principal components conducted over the three years from 1994 to 1997. First, I conducted a review of Mexico’s formal labor code and the regulatory structure used to enforce it in the workplace. I did this through analysis of the relevant policy, administrative, and legal documents. This review also included multiple interviews with administrators and policy officials in Mexico’s Ministry of Labor and Social Welfare (Secretaría del Trabajo y Previsión Social). Second, I participated in 38 labor inspections, observing the actual enforcement techniques used by inspectors and the array of obstacles to such enforcement activities encountered by inspectors in the Mexican workplace. Third, I solicited the responses of these inspectors to a formal questionnaire and conducted in-depth, directed interviews with a sample of inspectors. The purpose of the questionnaire and directed interviews was to give labor inspectors a chance to document their actual inspection practices in their own words. Fourth, and finally, I interviewed labor union officials, non-governmental health researchers, and representatives of the business community. These concerned parties possess an important, critical view of the development and application of labor norms. Their comments balance the “official” reports of government workers and, in this way, have assisted me in documenting the actual form of Mexico’s labor regulatory structure and suggesting refinements to this model. The results of this research are located in Michael Joseph McGuinness, The Landscape of Labor Law Enforcement in North America: An Examination of Mexico’s Labor Regulatory Policy and Practice, 29 LAW & POL’Y INT’L Bus. 365 (1998) [hereinafter Summary Article].
ceived much public attention but little rigorous analysis. Further, such accounts do not recognize the significant monitoring systems used to supervise enforcement activities and combat any acts of corruption by government officials.

Proceeding from accounts of Mexico’s current labor enforcement practices, I examine the second argument inherent in the North American Social Dumping Theory—the position that in a free trade environment Mexico would be the recipient of wide-scale social dumping. My examination of the argument begins by analyzing the ability of the U.S. Occupational Safety and Health Administration to enforce U.S. labor standards strictly, thereby creating a regulatory environment which would give U.S. corporations an incentive to engage in social dumping in Mexico. This discussion also includes a brief consideration of literature examining the relatively insignificant role that environmental and labor regulation plays in corporate decisions concerning the relocation of manufacturing operations. The effect of this review is to question the underlying premise that Mexico will have great potential to become a victim of wide-scale social dumping.

In conclusion, I consider those studies reported in the literature on workplace health and safety conditions along Mexico’s northern border in connection with the third argument supporting the North American Social Dumping Theory. For more than thirty years, multinational corporations have invested heavily in the development of manufacturing operations in the industrial strip referred to as the Maquiladora Zone. Thus, an analysis of current occupational health conditions in this area might tell us whether U.S. and Canadian investment in Mexico has had a negative effect on working conditions in Mexico, particularly on the health of Mexican workers. The results of this analysis, however, are inconclusive with respect to the negative or positive impact of foreign manufacturing operations in Mexico.

The larger purpose of this article is to present an alternative description of Mexico’s labor regulatory structure, one that, while recognizing that Mexico’s enforcement practices suffer from a number of shortcomings, is based on a detailed field examination of its actual form and functioning and an appreciation for the significant obstacles that make it so difficult to protect the well-being of laborers both in Mexico and elsewhere in North America. To this end, my discussion will reveal that relatively little is known about either actual workplace conditions or regulation in
Mexico, despite extensive and negative accounts that describe Mexico's labor regulatory structure as disorganized and ineffectual.

2. **MEXICO’S LABOR REGULATORY STRUCTURE: A BRIEF REVIEW**

It is important to note that, although the North American Agreement on Labor Cooperation (“NAALC”) does not create a harmonized regime of North American labor standards, it does require all NAFTA members to enforce their domestic labor laws. In this way, the NAALC places labor regulation on the North American labor policy agenda, giving national labor enforcement schemes and their alleged deficiencies a central role in debates over the importance of free trade in the Americas. Thus, in the wake of the passage of the NAALC, the labor regulatory structures employed by the United States, Canada, and Mexico have become the objects of international scrutiny.

Mexico’s federal labor law draws its life from the well-spring of the 1917 Political Constitution, a far-reaching and historic effort to define the social rights of Mexico's workers. In this declaration of rights, the Mexican state carries responsibility for protecting workers through laws guaranteeing them a minimum level of economic, social, and cultural well-being. Devoted to this ideal of the paternalistic State, the framers of the Constitution attempted to provide the fullest protection possible to the Mexican worker, expressing an explicit commitment to improve the living and working conditions of Mexican workers and to honor their inherent rights and respect their human dignity. Article 123 of the Constitution establishes a number of fundamental labor standards in order to ensure dignified work for Mexican laborers, in-

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7 Mexico’s Political Constitution was the first constitution in the world to include social rights in its text. MARIO DE LA CUEVA, EL NUEVO LEY LABORAL 22 (1985); EMILIO O. RABASA & GLORIA CABALLERO, MEXICANO: ESTA ES TU CONSTITUCIÓN 359 (1994).

8 An abridged discussion of Mexico’s Labor Regulatory Structure can be found in Summary Article, supra note 6.


10 Constitución Política de los Estados Unidos Mexicanos art. 123 (1917).
cluding standards controlling the work day, working conditions, and the Mexican laborer’s right to organize.\textsuperscript{11}

These broad declarations are given more specific form by an array of federal laws and regulations, the most important of these being Mexico’s 1970 Federal Labor Act. To implement Mexico’s constitutional mandates, this Act establishes labor standards in a number of areas, including employment relations,\textsuperscript{12} general work conditions (work turns, rest days, vacations, and compensation), wages, employee profit sharing,\textsuperscript{13} work conditions for special classes—such as women and qualified minors (ages 14-16), work risks and employer compensation requirements for work accidents and illnesses,\textsuperscript{14} the enforcement role of the State;\textsuperscript{15} and the employer’s responsibility to provide workers with a safe and hygienic work environment.\textsuperscript{16} For special industries, such as the airline or train industries,\textsuperscript{17} this Act established standards including those dealing with employee organizations, labor unions, collective bargaining, and strikes.\textsuperscript{18}

Mexico’s Federal Regulation on Workplace Safety, Hygiene, and Environment complements the occupational safety and health standards set out by the Federal Labor Act. This Regulation establishes the framework for those safety and health standards and preventive measures necessary to protect and promote the well-being of the Mexican worker.\textsuperscript{19} More specifically, the

\textsuperscript{11} Specifically, the Mexican Constitution sets an eight-hour work day and a maximum work week of six days for all Mexican laborers. \textit{Id.} art. 123(1, IV). It restricts the labor of minors. \textit{Id.} art. 123(III). It mandates three-month maternity leave, equal pay for equal work, and a minimum wage organized by region and industry. \textit{Id.} art. 123(V-VII). And it guarantees freedom of association, including the right to form unions and to strike in order to improve working conditions. \textit{Id.} art. 123(XVI-XIX). Article 123 further places the onus upon the employers to provide workers with a safe workplace and to implement constitutional and legislative guarantees concerning safety and health in the workplace. \textit{Id.} art. 123(XV). Thus, this legal regime holds the employer responsible for work accidents and illnesses. \textit{Id.} art. 123(XIV).

\textsuperscript{12} \textit{Id.} arts. 20-55.

\textsuperscript{13} \textit{Id.} arts. 56-131.

\textsuperscript{14} \textit{Id.} arts. 472-522.

\textsuperscript{15} \textit{Id.} arts. 523-1010.

\textsuperscript{16} \textit{Id.} arts. 164-180, 472-522.

\textsuperscript{17} \textit{Id.} arts. 164-353.

\textsuperscript{18} \textit{Id.} arts. 354-471.

Regulation focuses on: prevention and protection against fires; operation, modification, and maintenance of industrial equipment; use of power tools; handling, transport and storage of flammable, corrosive, or toxic substances; environmental conditions; personal safety equipment; general hygiene conditions; and internal safety and health programs. Most importantly, this regulation links workplace safety and health conditions to those limits established by Official Mexican Standards.

The Federal Law of Measurement and Standards creates a regime of Official Mexican Standards ("OMSs") which give specific form to the broad occupational safety and health mandates in the Federal Labor Act and the General Regulation on Workplace Safety and Health. Of the existing 104 OMSs, the first thirty are the most generally applicable. These first thirty standards define the legal workplace exposure limits for noise, vibration, temperature, ventilation, illumination, radiation, and toxic chemical substances. In addition, they establish provisions for the prevention of fires, the use of personal protective equipment, and the posting of warning signs concerning workplace safety and health. The remaining OMSs prescribe specific procedures for evaluating and limiting exposure to eighty-two dangerous chemical substances.

Although Mexico’s 1917 Constitution makes no mention of a specific labor regulatory structure to enforce the labor standards it sets forth, the 1976 Federal Public Administration Act (Ley Orgánica de la Administración Pública Federal) entrusts implementation of federal labor law in Mexico’s workplaces to the Ministry of Labor and Social Welfare (Secretaría del Trabajo y Previsión Social). To carry out its mandate, the Ministry has

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20 Id. arts. 26-94, 101-113.
organized a labor regulatory structure dedicated to a number of enforcement activities. Specifically, this enforcement structure:

1) implements all existing labor standards;

2) monitors the development of all new labor standards, including health and safety standards;

3) organizes labor inspections;

4) collaborates with local Workplace Safety and Health Commissions (Commissiones Mixtas de Seguridad e Higiene) in activities related to inspection as well as those that reduce worker exposure to risk;

5) sanctions employers who violate labor standards; and

6) disseminates information on labor standards to workers and employers.26

The labor inspections organized by the Ministry of Labor are the Ministry’s most important tool for ensuring that employers comply with labor standards. Consistent with the requirements of federal labor law, the Ministry schedules bi-annual inspections at each factory within its jurisdiction.27 The Ministry may increase or decrease the frequency of these periodic inspections based on its evaluation of the business establishment’s risk class, factory size, and compliance history.28 These inspections generally result in twin verification inspections.29 Thus, in any given year, the average manufacturing operation receives four federal labor inspections.

During each year, the Ministry performs these inspections by industrial sector. Each month a battery of inspections is scheduled in one or two pre-selected industrial sectors. For example, labor inspections in November of 1995 concentrated almost ex-

26 Id.
27 REGLAMENTO DE INSPECCIÓN FEDERAL DEL TRABAJO art. 27 (1983) [hereinafter Inspection Law].
28 Id.
clusively on the food industry. During the preceding month, the mining sector was the focus of the Ministry’s enforcement activities.

In 1995, the Ministry of Labor conducted 48,711 labor inspections throughout Mexico using 276 federal labor inspectors. In Mexico City and the outlying industrial valleys alone, seventy-seven federal inspectors carried out 20,500 labor inspections, with each inspector averaging 267 labor inspections for the year. In 1996, the GDFLI carried out 47,255 federal labor inspections in Mexico. In Mexico City and its outlying industrial areas, eighty-eight federal inspectors carried out 20,751 inspections, with each inspector averaging 236 inspections for the year.

Two specific types of labor inspection—the general work conditions inspection and the workplace safety and health inspection—verify employer compliance with a major portion of Mexico’s labor law. Inspections of general work conditions verify employer compliance with mandatory federal standards concerning employment contracts, salary scales, internal factory regulations, work shifts, over-time, federal holidays, vacations, seniority, employee profit-sharing, the work of women and minors, employer contributions to social security and public housing programs, worker training and education, promotion practices, and employee cultural and social benefits. Inspections of workplace safety and health conditions examine actual working conditions on the plant floor. These inspections confirm employer compliance with workspace structure, fire prevention facilities, the use of industrial equipment, handling of corrosive, toxic, and explosive substances, environmental conditions (noise, vibration, illumination, etc.), personal protective equipment, plant medical services, the activities of the Workplace Safety and Health Com-

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31 The total inspections in Mexico City and the outlying industrial valleys represents a twenty-five percent increase from the year before. Id.
32 See id.
33 See CATALOGO DE CONCEPTOS QUE REQUIERE LA INSPECCION DE LAS CONDICIONES GENERALES DE TRABAJO 1-5 (1994) [hereinafter CATALOG OF CONCEPTS]; MANUAL PARA LA INSPECCION DE LAS CONDICIONES GENERALES DE TRABAJO 11-16 (1994) [hereinafter MANUAL FOR INSPECTION]. Cultural and social benefits include the employer's provision of educational grants, literacy programs, and sports facilities to workers. CATALOG OF CONCEPTS, supra, at 43.
mission, preventive occupational health services, safety and health warnings, and employer reports on work-related accidents and illnesses.\textsuperscript{34}

To assist inspectors in their review of employer compliance, the Ministry of Labor publishes a number of official Inspection Protocols which prescribe the procedure for each type of inspection. Since labor inspectors employ these protocols religiously in their inspection practices,\textsuperscript{35} they play a central role in defining how actual labor inspections unfold. Specifically, these protocols control how the labor inspector enters the workplace and assembles those persons necessary for the inspection to go forward (including the employer or the employer's representative, the union delegate, representatives of the Workplace Safety and Health Commission, and two witnesses). They direct the inspector's examination of the variety of books, records, and additional business documents which the Federal Labor Act requires the employer to present during an inspection.\textsuperscript{36}

\begin{itemize}
\item \textsuperscript{34} See \textit{CATALOG OF CONCEPTS}, \textit{supra} note 33, at 1-5; \textit{MANUAL FOR INSPECTION}, \textit{supra} note 33, at 11-16.
\item \textsuperscript{35} The field survey found that 97% of federal labor inspectors relied on the Ministry's Official Inspection Protocols during their inspection visits. See MICHAEL J. MCGUINNESS, ENCUESTA PARA LOS INSPECTORES FEDERALES DEL TRABAJO DE LA SECRETARIA DEL TRABAJO Y PREVISION SOCIAL 120 (1995) [hereinafter FIELD SURVEY].
\item \textsuperscript{36} See \textit{SECRETARIA DEL TRABAJO Y PREVISION SOCIAL, LEY FEDERAL DEL TRABAJO} art. 804 (1970) [hereinafter L.F.T.] (listing items such as individual contracts, collective contracts, salary schedules, time cards, and pay stubs). See Inspector's Manual, \textit{supra} note 29, for a complete list of the documents required in a General Work Conditions Inspection; see also L.F.T., \textit{supra}, arts. 541 and 804(V).
\end{itemize}

The number and content of documents reviewed is extensive, ranging from simple documents which verify the business's name, address, and Treasury registration number to the complex and confidential documents which reveal the intimate details of the plant's production process, collective contract, employee compensation plan, worker accident reports, and internal safety programs. The inspector must not only verify the existence of the documents, but also examine their content. The content review is demanding. For example, in any inspection, the inspector must read through the articles of incorporation not only to confirm the business' name and address but also to check that the name of the legal representative and correct power of attorney for administrative acts appear. The inspector must also examine the promotion procedures and provisions for employee training and continuing education contained in the plant's collective contract. The inspector must scrutinize a random sample of pay stubs to verify that they: correspond to the collective contract; clearly state overtime, vacation, and Sunday work pay; and are signed by the worker receiving the pay. All work accident and illness reports and the documents concerning the Workplace Safety and Health Commission need to be authent-
These Protocols also control the form of the labor inspector’s tour of factory facilities. An essential component of the workplace safety and health inspection, the factory tour seeks to detect and remedy dangerous work conditions and practices. It usually involves interviews by the inspector with at least three workers. Each worker interview usually lasts about ten minutes during which the labor inspector questions the worker about factory work conditions, the employer’s conduct, and the plant work culture in general. Finally, these Protocols determine the order in which the inspector prepares, revises, and distributes the official and then evaluated to see if they reflect a serious effort to combat unsafe work conditions. This description covers but a small sample of the demanding “content” review that the inspector makes each day. In one day, during a nine hour inspection, the labor inspector will examine more than sixty separate documents for both content and form.

37 The tour generally begins with the area where raw materials arrive and are stored, and follows these materials as the production process transforms them. This initial portion of the tour concludes with the shipping point where the finished product leaves the factory. The inspector checks each area for safe and healthy work conditions. Having reviewed the actual production areas, the inspector examines the factory’s maintenance facilities, fire safety equipment and fire exits, bathrooms, lockers, cafeteria, first-aid stations and medical facility, and any other factory areas that support production. The tour requires a slow, methodical process, focused on the end result, the inspector’s list of suggested measures. These measures seek to modify work processes, conditions, and installations to the extent that such modifications can improve workplace safety and health. They are formalized in the Inspection Report and thus become the basis for required workplace safety and health measures issued by the Ministry of Labor at a later date.

38 See FIELD SURVEY, supra note 35, at #23.

39 Though official inspection policy is to question the workers on those declarations by employers which appear specious, neither Inspection Protocols nor Ministry policy dictate the subject matter to be covered during a worker interview. Several common themes, however, arise during these interviews. With respect to workplace safety and health, inspectors usually inquire about the quality of environmental conditions and the safety of the machinery with which the worker comes in contact. The worker is encouraged to divulge any known work risks or recent accidents or illnesses in the plant. The inspector asks the laborer about the adequacy and comfort of the employer-provided safety equipment. On the subject of general work conditions, the inspector questions the worker concerning any irregularities in the method of his payment, in the allocation of his vacation, or the provision of legally-required work benefits. The inspector also often interrogates the worker about the adequacy of on-the-job and continuing training. Often, the inspector questions the employee about the general work culture of the business and whether he considers it abusive in any way. The inspector concludes each interview by allowing the worker to make any comments or observations he considers relevant.
cial Inspection Report to the employer and the Ministry of Labor.40

The official Inspection Report— and its preparation, revision, and distribution— is one of the most difficult and important parts of the entire inspection.41 A number of requirements shape the Inspection Report. Generally, the material content of the Inspection Report varies with each type of inspection (initial, periodic, verification, or extraordinary) and the inspection subject matter (general work conditions, workplace safety and health, steam generators and pressure vessels). The inspector gathers the raw material for each Inspection Report from the review of documentation related to employer compliance as well as direct observation of workplace conditions. In the Inspection Report, the inspector describes all of the documents reviewed, the results of the review, and first-hand observations of workplace safety and health conditions in the plant.42 Also included are the formal declarations of the worker representatives and employer concerning the content of the official Inspection Report.43 Further, while conducting the factory tour, the labor inspector records a number of suggested measures to enhance worker safety. Such measures normally recommend improvements to the business' installations, machinery, or equipment.44 The labor inspector includes suggested measures in his Inspection Report.

This Inspection Report is not only important as a record of the inspection but also as a tool for the Ministry to compel em-

40 Once the Official Inspection Report is prepared, the labor inspector invites the employer and worker representatives to review it for any errors. Following this review, the inspector incorporates any declarations, comments, or observations that any representative wishes to include in the final text of the Inspection Report. The employer's representative, labor representative, two witnesses, and two members of the Workplace Safety and Health Commission are required to sign the Inspection Report.

41 See L.F.T., supra note 36, art. 542(IV); Inspection Law, supra note 27, art. 38.

42 See L.F.T., supra note 36, art. 541(III).


44 L.F.T., supra note 36, art. 512-D. Only these measures will be reviewed by the Division of Labor Standards. The employer's failure to present a required document— e.g., a license, register, or authorization required by the law— leads to an immediate sanction. The Division of Labor Standards sends notice of such violations directly to the General Division of Legal Affairs who will initiate the sanctioning procedure. See SECRETARIA DEL TRABAJO Y PREVISION SOCIAL, MANUAL INTERNAL DE LA DIVISION GENERAL DE INSPECCION FEDERAL DEL TRABAJO (1995) [hereinafter INTERNAL MANUAL].
employers to improve workplace conditions. In fact, Ministry officials base their decision to begin the Administrative Sanctioning Procedure—the procedure which sanctions employers in violation of federal labor law—against a particular employer on an evaluation of the official Inspection Report and the labor law violations reported therein. Before the employer is sanctioned, the Ministry notifies the employer of the sanctionable labor violations through a summons and advises him of the period of time in which he must respond in writing. In this response, the employer has the right to assert defenses or request exceptions and to offer evidence with respect to the alleged non-compliant behavior. Generally, about forty percent of employers choose to respond in writing to the Ministry’s summons. If the Ministry

45 As the above discussion demonstrates, during the factory tour, the labor inspector records a number of suggested measures meant to enhance worker safety. See L.F.T., supra note 36, art. 512-D. The labor inspector includes his suggested measures for the improvement of workplace health and safety conditions in his Official Inspection Report. The inspector’s recommendations, however, remain non-binding until they receive the approval of Ministry of Labor administrators, an approval that follows review of 1) the object and context of the measure, 2) its legal foundation, and 3) the inspector’s statement of the recommended measures. Ministry officials approve the majority of the measures suggested by labor inspectors, transforming such measures into binding legal obligations. Once a universe of recommended measures has been set, the Ministry establishes a Compliance Calendar and notifies the employer of the terms of this Calendar. Generally, the Compliance Calendar requires the employer to implement the obligatory measures within fifteen to thirty days, though, in cases of imminent danger, the Calendar may assign certain measures for immediate implementation. See L.F.T., supra note 36, arts. 512, 541(VI); Inspection Law, supra note 27, art. 12. The Ministry of Labor then schedules a verification inspection to check the employer’s adherence to the Compliance Calendar. If the employer fails to comply with the assigned obligatory measures, the labor inspector will record this failure in his Inspection Report and administrative sanctioning procedures against the employer will commence.

46 See Sanctions Regulation, supra note 45, arts. 21-22, 30-38.
47 See id. arts. 31-32.
48 See id. art. 35.
49 In 1996, forty-one percent of the employers who received General Division of Legal Affairs (“GDLA”) summons submitted written responses offering proof of compliance or asserting legal defenses. See SECRETARIA DEL TRABAJO Y PREVISION SOCIAL, DIRECCION GENERAL DE ASUNTOS JURIDICOS, RESUMEN DE PRODUCTIVIDAD CORRESPONDIENTE AL AÑO DE 1996 [herein-
finds the employer’s response compelling, it terminates the Administrative Sanctioning Procedure against the employer. Only about six percent of employers’ responses, however, halt the sanctioning procedure in this manner.\textsuperscript{50} If the Ministry finds this response unpersuasive—which is the case in more than 90% of the submitted responses—it drafts a Sanction Order describing the amount of, and legal basis for, each aspect of the total fine. The employer can choose to ignore the Summons, as do almost 60% of the employers in receipt of this document.\textsuperscript{51} In such a case, the Ministry assumes that the allegations contained in the Summons are true and drafts the relevant Sanction Order.\textsuperscript{52}

On a yearly basis, the Ministry begins the Administrative Sanctioning Procedure for 5,500 to 6,000 employers. Between 85\% and 90\% of these requests result in Sanction Orders.\textsuperscript{53} In 1995, the Ministry issued sanctions to 5,485 employers, with the

\textsuperscript{50} In 1996, fewer than six percent of the employers’ written responses successfully terminated the Administrative Sanctioning Procedure. \textit{See} GDLA Year-End Report, \textit{supra} note 49.

\textsuperscript{51} In 1996, 2,458 employers chose not to respond to the GDLA’s summons. \textit{See} id.

\textsuperscript{52} Sanctions Regulation, \textit{supra} note 45, art. 32.

\textsuperscript{53} An employer who disagrees with the Sanction Order has the right of appeal. In fact, employers contest thirty percent of the Ministry’s Sanction Orders, using one of three available avenues of appeal. First, the employer may exercise his “right of review” (Recurso de Revisión) at the Ministry of Labor within fifteen working days of notification of the Sanction Order. \textit{See} LEY FEDERAL DE PROCEDIMIENTO ADMINISTRATIVO arts. 83 and 85 (1992). One third of total appeals take advantage of this right of review, though only about five percent of these appeals prevail. Interview, General Division of Legal Affairs, Ministry of Labor and Social Welfare, 1996. Second, the employer may appeal to Mexico’s lower federal court (Tribunal Fiscal) for a reversal (Juicio de Nulidad) within 45 days of the Sanction Order. \textit{See} Codigo Fiscal (C.F.F.), art. 207 (1981). Nearly two thirds of total appeals are heard by this court, which reverses about 25\% of Ministry Sanction Orders contested before it. \textit{See} Interview, General Division of Legal Affairs, \textit{supra} note 49. Third, in those rare cases where the employer can claim that the provision of labor legislation controlling his case violates Mexico's constitution, he/she may make a “constitutional appeal” (juicio de amparo indirecto) before Mexico’s federal court of appeals (Tribunal Colegiado). \textit{See} Ley de Amparo, arts. 114, 115. Such constitutional appeals represent fewer than twelve cases a year and only have a ten percent success rate. \textit{See} Interview, \textit{supra} note 49. Thus, given the above figures, only about 18\% of employer appeals of Sanction Orders are successful, which means only 6\% of the total number of Sanction Orders emitted by the Ministry of Labor are ultimately reversed. \textit{See} GDLA Year-End Report, \textit{supra} note 49.
average sanction being New Mexican Pesos $622.65 (about U.S. $75). The number of sanctioned employers decreased to 4,735 in 1996, while the average sanction increased by 23% to New Mexican Pesos $762.82 (about U.S. $100). This reflects a policy trend in the Ministry towards levying fewer, but higher, fines.

As this brief review has demonstrated, Mexico does have a labor regulatory structure characterized by strong legislative mandates, rigorous inspection procedures, and a functioning sanctioning mechanism. This is the case even though a number of news and academic commentaries paint a sad picture of a disorganized and ineffectual enforcement structure, corrupt and incompetent inspectors, and aloof and indifferent government functionaries. In the following section, I consider in more detail the negative portrayal of Mexico's labor law enforcement practices which has become such common currency in the United States and Canada.

3. Critical Commentaries on Mexican Labor Law Enforcement

Common descriptions of Mexico's labor regulatory structure support the view that Mexico's labor regulatory structure is disorganized and ineffectual and that such weakness invites social dumping in Mexico (i.e., the southern migration of dirty U.S. and Canadian industries). This view, which is summed up by the first and second arguments of the North American Social Dumping Theory, can be quite damning. During the negotiation of NAFTA, several U.S. lawmakers described Mexican workplace safety and health standards in particular as "much weaker than their U.S. counterparts" and Mexican labor law in general as "generations, decades, and maybe centuries" behind U.S. stan-

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54 In 1995, the Ministry reviewed 6,069 cases for potential sanction. It chose to process 5,635 (93%) of these requests through the Administrative Sanctioning Procedure. As a result of this procedure, it absolved 150 employers after reviewing the contents of their written responses to the Ministry Summons and emitted 5,485 Sanction Orders for the year. In 1996, the Ministry received 5,544 sanction requests, processing 4,860 (88%) of these requests, absolving 125 employers, and emitting 4,735 Sanction Orders. GDLA Year-End Report, supra note 49. In 1996, the average fine was N$762.82 (about U.S. $100), a 23% increase from the 1995 figure (N$622.65). As well, the total amount of fines assigned in 1996 was N$3,611,995.07, a 6% increase from the 1995 figure (N$3,415,258.20). See id. This assumes an exchange rate of $8.00 Mexican Pesos to the U.S. Dollar.
According to such accounts, Mexican labor law, which provides an inferior legislative structure to that in place in the U.S. and Canada, is incapable of protecting Mexico's laborers in the workplace. Lane Kirkland, the former president of the AFL-CIO, even went so far as to compare the problem of child labor in Mexico to "any of the well-publicized disasters of the worst Stalinist regimes." More reasonable criticism, even where it acknowledges the strength of Mexico's statutory labor law, argues that such law is rarely enforced. One attorney has described in general terms the "massive and pervasive trend in... [Mexico]... of de facto failure to enforce labor law rights and standards," a trend that threatens to eliminate entirely worker rights and standards in the near future. Certain of these critics have rendered precise estimates of the enforcement capacity of the Mexican government, with one U.S. writer describing enforcement of constitutionally guaranteed worker rights in Mexico as "reasonably adequate" for only 15% of the companies in the private sector.

Explanations of the underlying causes of Mexico's poor enforcement practices vary. According to a study conducted by Human Rights Watch, the violation of anti-sex-discrimination laws in Mexico arises largely as a result of the failure of state regulatory efforts to monitor employer compliance with Mexico's law in this area; specifically, labor inspectors at the state level were either unwilling or, due to poor training, incapable of investigating claims of sex discrimination. Other commentators attribute

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56 Id. at 270 n.8.


such lax enforcement practices to corrupt labor inspectors or a disorganized inspection system.\textsuperscript{61}

Another explanation for poor enforcement is a lack of political will, common among Mexico's labor administrators. Some argue that, in order to encourage foreign investment and manufacturing in Mexico, the Mexican government has adopted a "hands-off" approach to labor law enforcement.\textsuperscript{62} In their eyes, the Mexican government is more interested in attracting and then appeasing foreign investors than in aggressively protecting the rights of Mexican workers.\textsuperscript{63} To cultivate foreign manufacturing operations, Mexican labor authorities thus ignore or even condone violations of labor law.\textsuperscript{64} According to Susanna Peters, because of the potential for economic growth in the Maquiladora Zone and in an attempt to entice foreign investors, the Mexican government is slow to apply its labor law.\textsuperscript{65} Other commentators have attributed the lack of enforcement they find to the pervasive co-optation and corruption of labor union leaders.\textsuperscript{66}

Such negative characterizations of Mexico's labor regulatory structure find reinforcement in recent press accounts concerning political corruption in Mexico. In a string of news stories, the North American public has read of evidence linking former President Salinas de Gortari, several of his family members (particularly his father and older brother), two former directors of Mexico's National Institute for Combating Drugs, and several prominent Mexican politicians (including Mexico's former Deputy Attorney General, the former Secretary General of PRI, and


\textsuperscript{65} See Peters, supra note 63, at 234-35.

two current state governors), to Mexican and Latin American
drug dealers. According to the testimony of FBI, DEA, and
Mexican federal agents reported in these news articles, these
prominent political figures have received massive monthly
pay-offs, some totaling U.S. $100 million, in exchange for their
protection of the flourishing drug trade in the Americas; this tes-
imony also implicates several of these government officials in ac-
tual drug dealing activities, political assassination, money launder-
ing, and other unseemly abuses of political office such as the
trafficking of influence, the misappropriation of government
funds, and the obstruction of criminal justice.

This litany of alleged abuses by Mexico's political elite makes
it easier to believe those accounts of Mexico's labor regulatory
structure which maintain this structure is a disorganized failure,
staffed by dishonest inspectors, organized by indifferent political
appointees, and characterized by massive and pervasive corrup-
tion. A number of considerations argue against such a quick con-
clusion. Specifically, current accounts of Mexico's labor regula-
tory enforcement practices need to be reconsidered within the
context of: 1) unfair stereotypes of Mexico's workers and public
officials, 2) the incomplete nature of many of these reports, 3) al-
ternative explanations for the shortcomings of Mexico's regula-
tory practices, and 4) current anti-corruption programs at Mex-
ico's Ministry of Labor.

First, a number of commentators have argued that common
negative depictions of Mexico's labor regulatory structure repre-
sent "Mexico bashing and race baiting." As these commentators
have pointed out, much of the rhetoric used during the 1993
NAFTA debate was "based on stereotypes about Mexico" and on
the assumption that the Mexican government deliberately carries
out a policy of non-enforcement of its labor law. In this sense,
representations of Mexico's labor regulatory structure which
paint it as a disorganized failure, staffed by dishonest inspectors,
organized by indifferent political appointees, and characterized by massive and pervasive corruption and which describe work conditions in Mexico as squalid, exploitive, and beyond the pale, even for a poor country, have an underpinning political motivation.

According to such a reading, opponents of NAFTA have found one of their “weapons of choice” for their campaign against continental trade and integration in their criticism of Mexico’s labor regulatory practices.\(^{70}\) It is no accident that the majority of the complaints which have come before the U.S. National Administrative Office alleging Mexico’s incomplete enforcement of its labor law are sponsored by U.S. unions, one of the chief opponents to expanded trade and economic relations between the United States and Mexico. Unions worry that low wages for semi-skilled workers in Mexico will reduce the wages of their own workers. This concern manifests itself in persistent calls for legislative limits to control social dumping as well as current representations of Mexico’s labor regulatory efforts. By portraying Mexico’s labor regulatory structure as founded on weak standards and plagued by incompetence, indifference, and corruption, opponents of NAFTA are able to diminish the stature of Mexico as a trading partner. The objective is to cause a reconsideration of the merits of the original NAFTA free trade agenda and stall any further improvements in bilateral relations.

Supporting these efforts are broad and pervasive cultural stereotypes about Mexico and the Mexicans. The image of the lazy Mexican worker or the corrupt government official has occupied the imagination of the U.S. public since before the Treaty of Guadelupe, regardless of its connection to social reality. This is not to deny reports of official Mexican corruption emerging from all sides, particularly in light of recent disclosure concerning the abuses of Mexico’s anti-narcotic officials, but rather to clarify that much of this reporting is speculative, based on undisclosed informants and documents, and thus difficult to assess objectively. The natural tendency, however, is to assume the worst about Mexico’s public officials. This tendency plays out in the continued representation of Mexico’s labor regulatory structure as ineffective and corrupt.

Second, the majority of those who criticize Mexico’s labor law enforcement lack any significant knowledge of the federal in-

\(^{70}\) *Hispanic Leader*, supra note 68.
spection structure, the heart and soul of Mexico’s labor regulatory structure. Further, authors who describe the poor performance and general corruption of labor inspectors often base their conclusions on anecdotal evidence and on underdeveloped references, or on superficial interviews with a limited sample of state labor inspectors, and not on serious policy analysis. Given their scant treatment of actual enforcement practices in Mexico, these negative accounts should be attributed more to extrapolation from Mexico’s troubled political scene than rigorous empirical research.

Third, alternative explanations based on a more intimate understanding of the workings of Mexico’s labor regulatory structure give a more generous account of Mexico’s enforcement practices. These accounts generally recognize that Mexico’s labor regulatory structure provides Mexico’s workers with legal rights and protections similar to their counterparts in Canada and the United States and attribute existing flaws in Mexico’s labor enforcement structure to limited economic resources rather than a lack of political will on the part of the Mexican government, corruption on the part of government inspectors, or inefficacy at the enforcement level. A number of careful examinations of Mex-

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71 See ORTEGA, supra note 61; Smith, supra note 59, at 57; Crandall, supra note 62; Solomon, supra note 60. These studies rely heavily on three law student notes to support their descriptions of Mexico’s labor regulatory structure. See generally Ann M. Bartow, Comment, The Rights of Workers in Mexico, 11 COMP. LAB. L.J. 182 (1990); Goldin, supra note 66, at 203; Peters, supra note 63, at 226. Though these three law student notes are an extensive review of existing literature, their analyses do not benefit from first-hand observation of the actual workings of Mexico’s labor enforcement apparatus. This shortcoming in their analyses needs to be taken into account when examining their broad assertions with respect to the inadequacies of Mexico’s labor policy and practice.

72 State inspectors technically have the right to enforce federal labor law, but can only do so in those industries that lie outside of federal jurisdiction. All the important, strategic industries in Mexico are under federal jurisdiction. In addition, state labor inspectors do not formulate federal labor policy.


74 See Befort & Cornett, supra note 55, at 269, 306.
ico’s labor inspection and labor law enforcement systems support this assessment.

In their review of the steel industry, A.C. Laurell and Mariano Noriega have highlighted the lack of technical resources available to inspectors. The labor inspectors responsible for monitoring this industry lack the basic equipment necessary to conduct an occupational health inspection (sound level meters, dosimeters, thermometers, light meters, and apparatus to measure dust and gases). Further, the lack of a sophisticated laboratory at the offices of such inspectors makes it difficult to correctly characterize any samples actually taken. The observations of the author during field research with inspection teams confirms this assessment. Labor inspectors arrive at the factory and conduct the inspection visit without the benefit of scientific measurement equipment.

In a working paper published by the U.S.-Mexico Committee on Occupational and Environmental Health, the members of the Committee also note the lack of technical equipment available to inspectors and the negative impact that the absence of such equipment has on the capacity of labor inspectors to determine and correct workplace health risks. According to this paper, the lack of technical resources is not limited to sampling equipment but includes a deficit of computers, vehicles, and financial resources.

An International Labor Organization (“ILO”) report further documents the limited technical and human resources available to state labor inspectors in Monterrey, Nuevo Leon, one of the strongest industrial states in Mexico. This ILO report, based on two weeks of field research with state labor inspectors in Monterrey, attributes the principal flaws in the inspection system to inadequacies in the inspection schedule rather than poor inspector

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76 See id.
77 See id.
78 See ORTEGA, supra note 61.
79 See id.
training, attitude, or performance. The inspection schedule allows state inspectors only one hour to inspect small businesses (less than 50 employees), two hours for inspections of medium-sized businesses (50-500 employees), and three hours for inspections of large businesses (500-1,000 employees). Such an unrealistic schedule barely allows for the travel time between factories, let alone a comprehensive inspection of workplace facilities, review of appropriate documentation or interviews with management and workers. Further, it does not account for other obligations that consume the time of labor inspectors, including follow-up, re-inspection, public presentation, and consultation. The over-burdening of the inspectors' schedule in this way reduces the inspectors' ability to enforce work standards and workplace norms.

This ILO direct observational research paints a picture of a labor enforcement system that, though over-burdened, seeks to protect Mexico's laborers. The report recognizes that limitations in technical and financial resources hamper the effective functioning of Mexico's labor regulatory structure. Other ILO reports have considered the importance of these sorts of limitations to labor inspection worldwide. The 1992 World Labour Report attributes difficulties in effective enforcement of workplace safety and health standards throughout the developing world to a lack of resources rather than an absence of political commitment to the enforcement of such standards. Mexico's enforcement problems can be viewed from such a position. As Stephen Zamora notes,

[i]t should not surprise U.S. citizens that labor conditions in Mexico are often below the standards of those enjoyed in the United States. The same is true, unfortunately, of many other conditions of life in Mexico, including housing, public health, streets and highways, transportation—the list is a long one. Mexican citizens routinely endure

81 See id.
82 See id.
83 See id.
84 See id.
85 See id.
86 See INT'L LABOUR OFFICE, WORLD LABOUR REPORT 5, 81 (1992) (noting that many developing countries' governments lack resources to tackle such problems as inadequate infrastructure and lack of housing planning).
The list is a long one. Mexican citizens routinely endure conditions that would be considered intolerable in the United States.87

Zamora concludes that "[d]espite cynical views to the contrary, the Mexican government is trying to improve these conditions."88 Mexico's relative poverty (its per capita income is about one-tenth of that of the United States) provides the background to the government's lack of resources, the inspectors' inabilities to conduct more thorough investigations of such workplace conditions, and the Mexican workers' tolerance of workplace conditions considered intolerable in the United States and elsewhere.

Fourth, and finally, current accounts of the corruption and dishonesty of labor administrators and personnel in Mexico (particularly inspectors) fail to consider anti-corruption programs in place at the Ministry of Labor. Specifically, the Ministry of Labor supervises the work of labor inspectors in four manners. First, Ministry administrators evaluate the accuracy and legality of each official Inspection Report submitted by a labor inspector for any irregularities. Second, the Ministry's Department of Internal Affairs carries out investigations following an employer complaint concerning a specific labor inspector and labor inspection.89 Third, the Ministry of Labor's Comptroller dispatches auditors each year to review the quality of federal labor inspection practices. Fourth, the General Division of Federal Labor Inspection organizes internal supervisory inspections to verify that inspectors carry out their work effectively and honestly and to eliminate inspection practices that contravene the mission of inspection.90 In fact, these supervisory inspections represent about three percent of the total inspections conducted by the Ministry of Labor, and inspection administrators consider these inspections

87 Zamora, supra note 73, at 432.
88 Id.
89 Sources within the Dirección General de Inspección Federal del Trabajo ("DGIFT") however, commented that these inspections were not part of a coherent, formal supervisory inspection program. Instead, in the previous inspection administration, they were invoked infrequently when the Director General wanted to gather the information needed to fire an incompetent or corrupt inspector.
90 See INTERNAL MANUAL, supra note 44, at 1.
to be the most important manner for monitoring the work of Ministry of Labor inspectors.

A number of general goals orient the Supervisory Inspection Program. First, and most importantly, it seeks to improve labor inspection by detecting improper inspection practices. In this sense, supervisory checks allow inspection administrators to deal with labor inspectors whose inspection practices, due either to plain error or illegal intent, diverge from Ministry policy. Second, supervisory inspections attempt to ferret out and correct inspection reports flawed by improper inspection practices. Where such inspection reports contain serious errors, the Ministry annuls their legal effect. Third, supervisory inspections alert inspection administrators of labor inspectors who are in need of additional training, and, thus, they serve an in-house training purpose. Finally, such supervisory efforts to detect improper and illegal practices have an indirect deterrence function. In the exercise of their duties, labor inspectors are aware that their inspection practices might be the subject of a supervisory inspection. Thus, at least in theory, they are less likely to commit errors or fall into corrupt practices. To reinforce this deterrence factor, the results of each supervisory inspection are recorded in the inspector's personnel file.

On the surface, supervisory inspections resemble ordinary labor inspections, in that the supervisory inspectors enter factories, conduct plant tours and document reviews, and submit written reports concerning their findings. The supervisory inspection procedure is relatively straightforward and rapid. The inspector usually begins the inspection by questioning the employer about the conduct of the previous labor inspector: was the labor inspector's conduct professional? Did he try to pressure the employer in any way? Was he unfair or incompetent? Did any problems arise during the labor inspection? After taking informal notes on the employer or representative's comments, criticisms, or doubts, the supervisory inspector moves on to his evaluation of the previous inspection.

92 See id. § 2(III).
93 See id. § 2(VI); Confidential Interview, Government Official in the General Division of Federal Labor Inspection (Dec. 1996).
The formal Supervisory Inspection Program examines all types of inspections: periodic safety, health, and general work conditions inspections; verification inspections; and machinery and equipment inspections, among others. Thus, the evaluation stage of the supervisory inspection varies according to the subject matter and type of inspection being reviewed. In essence, the supervisory inspector attempts to repeat as much of the previous labor inspection as possible without abusing the employer’s good will. For example, if the inspection was a safety and health conditions inspection, then the supervisory inspector reviews a selection of the pertinent safety and health documents and conducts a brief plant tour as if he were carrying out an abbreviated version of the previous safety and health inspection. If he is supervising a periodic general work conditions inspection, the inspector will examine a sample of the employer’s payroll, especially with respect to overtime and vacation pay, paying close attention to any differences in his review and the review recorded in the previous inspection report.

By redoing at least part of the previous inspection, the supervisory inspector is able to assess whether the previous inspection report, and thus the work of the previous labor inspector, represents the actual conditions encountered in the factory. In this way, the supervisory inspector can discover omissions or misrepresentations committed by the previous labor inspector. For example, the supervisory inspector may detect safety and health measures recorded as fully completed in the inspection report which actually remain partial, egregious payroll violations ignored, and authorized safety procedures which should have been declared incomplete.

The supervisory inspector records all of his observations in a brief, one page Supervisory Inspection Report. In this report, any omissions or misrepresentations made by the previous inspector are highlighted in the official Inspection Report under supervision. The supervisory inspector submits the Supervisory Inspection Report on the next working day to Ministry administrators. If the Supervisory Inspection Report serves to underscore any irregularities, these administrators review the case in order to determine whether or not the responsible inspector should be sanc-

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94 The inspector purposefully limits the scope of his evaluation of periodic inspections. Only the most tolerant employer would allow a supervisory inspector to repeat a complete periodic inspection.
tioned. In this review, the ministry administrators consider the seriousness of the inspector’s violation, the inspector’s record, and whether this matter constitutes a repeat violation in the inspector’s record, the inspector’s seniority, the size of the economic benefit or harm created by the violation, and, most importantly, the sanctions allowed by federal labor law. Potential sanctions range from a warning, censure, suspension, fine, or dismissal to temporary prohibition from public service.

In 1996, the General Division of Federal Labor Inspection conducted 561 supervisory inspections in Mexico City and the surrounding metropolitan area, in total representing 2.7% of the 20,751 inspections conducted in this zone. Forty-seven of these 561 supervisory inspections (just over 8%) uncovered inconsistencies or omissions warranting further investigation by Ministry officials. These forty-seven investigations resulted in the sanction-
The above examination explains how the Supervisory Inspection Program serves to discipline corrupt inspectors and to deter future improper acts as well as to alert administrators to the need for further training of inspectors who unintentionally commit errors. All of these activities seek to improve the performance and public image of the Ministry of Labor’s inspections and should be considered in any balanced account of Mexico’s labor law enforcement practices.

The discussion in this section has highlighted four major facets of the current international view of Mexico’s labor regulatory structure. First, the commonly held view often arises from speculative accounts that struggle to describe the “massive and pervasive” non-enforcement of labor standards in Mexico based on speculative accounts that struggle to describe the “massive and pervasive” non-enforcement of labor standards in Mexico based on

100 Secretaría del Trabajo y Previsión Social (Dirección General de Inspección Federal del Trabajo), Nota Informativa (1997). Last year, inspectors were given warnings for the following failures in their duties:

1) omission of information relating to factory over-time, work shift, and cultural activities in the official Inspection Report;

2) verification of a workplace safety and health remediation measure—the placement of anti-slip tape across the steps of certain factory stairways—as fully implemented in the official Inspection Report, when this measure was only partially completed;

3) description of the Factory’s Internal Regulation as published and posted in the administrative offices of the factory in the official Inspection Report, though this Regulation was neither published nor posted.

Inspectors were suspended for the following transgressions:

1) verification of two workplace safety and health remediation measures—the placement of anti-slip tape on the stairs and ramp leading to the factory cafeteria and correction of several cracks and holes in the forklift lane in the factory warehouse—as implemented in the official Inspection Report, when neither measure had been completed by the factory management (warranting a three day suspension without salary);

2) verification of four workplace safety and health remediation measures—the replacement of safety warning signs, the repair of several broken lights, the placement of covers on toilets, and the painting of tubing with the appropriate safety colors throughout the factory—as implemented in the official Inspection Report, when none of these four measures had been completed by the factory management (warranting a five day suspension without salary);

3) failure to carry out an inspection duly ordered by the General Division of Federal Labor Inspection (warranting a five day suspension without salary).

The above six cases of warnings and suspensions are recorded in official, but confidential, Ministry of Labor documents.

101 Helfeld, supra note 58, at 368.
both a loose reading of Mexico’s chaotic political scene and common stereotypes of Mexicans and their public officials. Second, these commentaries lack a substantive understanding of the heart and soul of Mexico’s labor law enforcement structure—federal labor inspection—and, thus, present an imperfect picture of labor law enforcement in Mexico. Third, those research studies that benefit from an understanding of actual workplace regulation paint a more realistic picture. According to this view, Mexican officials may inadequately enforce Mexico’s labor law, but this inadequacy is generally a function of scarce resources rather than of a lack of political will, a structureless inspection system, or corruption and incompetence on the part of government administrators and inspectors. Fourth, Mexico’s Ministry of Labor is aware of and concerned about the threat that official corruption poses to the vitality of Mexico’s labor regulatory structure. Thus, to protect its enforcement practices against the scourge of bad acts by government officials, it has created a number of internal mechanisms to monitor the activities of the labor inspectors who enforce Mexico’s labor law in the workplace.

These four observations taken together question the validity of the idea that Mexico bears the burden of an ineffective and disorganized labor regulatory structure (the first component of the North American Social Dumping argument). The above discussion reveals the dearth of actual research that exists concerning the workings of Mexico’s labor regulatory structure or the monitoring system it employs to combat corrupt enforcement practices. In this light, many of the shortcomings ascribed to Mexico’s enforcement apparatus are perceived rather than real. Such a position, however, should not ignore the fact that Mexico’s inspection system falls short of its own ideal of perfect employer compliance. The limitations of this system, however, are more properly explained by the technical and economic limitations characteristic of most developing economies, rather than by the view of Mexico’s enforcement structure as an administrative disaster, staffed by corrupt inspectors and unconcerned administrators. Despite such resource limitations, Mexico’s labor regulatory structure still works to protect Mexico’s workers from illness and injury, organizing nearly 50,000 workplace inspections and sanctioning nearly 5,000 employers for the violation of Mexico’s demanding labor standards each year.
4. A STRAW DOG: THE SPECTER OF SOCIAL DUMPING IN MEXICO

In the preceding section, the discussion questioned the first argument underpinning the North American Social Dumping Theory, which maintains that Mexico lacks a well-developed and effective labor regulatory structure. The second argument of the North American Social Dumping Theory suggests that such weak labor regulation (and the stricter regulation found in the United States and Canada) promotes social dumping in Mexico. Recent analysis of the effectiveness of the U.S. Occupational Safety and Health Administration ("OSHA"), the principal government agency responsible for the enforcement of health and safety standards in the workplace in the United States, casts doubt on the second argument of the social dumping theory. Specifically, this research suggests that the enforcement of U.S. occupational health standards does not create a regulatory environment that causes the "wholesale exodus" of major U.S. and Canadian industries to Mexico. Such studies of labor regulation in the United States range from outright attacks on the incompetent administration of OSHA and stinging condemnations of the weakness of the U.S. federal laws that the agency supposedly upholds, to less virulent suggestions that the work of OSHA has no discernible impact on occupational injury or disease rates. If it is true, as


103 See John Hood, OSHA's Trivial Pursuit, 73 POL'Y REV. 59, 60-61, 64 (1995) (arguing that what little value OSHA adds as a regulatory agency is far outweighed by the loss in productivity and wages and the increase in taxes and prices that its regulatory practices create); THOMAS O. MCGARITY & SIDNEY A. SHAPIRO, WORKERS AT RISK: THE FAILED PROMISE OF THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION vii, viii (1993) [hereinafter WORKERS] (recognizing that OSHA's ability to fulfill its mandate has been crippled by poor administration of the agency); Kitty Calavita, The Demise of the Occupational Safety and Health Administration: A Case Study in Symbolic Action, 30 SOC. PROBS. 437, 447 (1983) (analyzing how OSHA was designed largely as a "symbolic message" rather than a politically committed regulatory agency).

104 See WORKERS, supra note 103, at 13 (recognizing the failure of OSHA to promulgate "adequate regulations" for a number of health hazards, most particularly occupational diseases); Levenstein & Eller, supra note 102, at 304.
these studies argue, that OSHA has little to no impact on the overall U.S. occupational injury and disease rates, the argument that U.S. industry will move south to Mexico for the purpose of avoiding stringent occupational health and safety controls is untenable.

In addition, proponents of the idea that manufacturers will move to areas simply to take advantage of a lax regulatory environment fail to appreciate the complexity of motives currently driving the relocation of industry around the world. Several commentators have demonstrated that, in corporate decisions concerning whether to build abroad or continue operating a facility in the United States, differences in environmental and labor regulations and occupational health costs are generally outweighed by the consideration of production and other capital costs. Further, other traditional regional factors such as access to markets, proximity of supplies and natural resources, political stability, wage differentials, corporate tax rates, availability of infrastructure, and skilled labor are almost always more important than the differences in environmental and labor regulatory structures.106

These studies thwart the argument made by NAFTA critics (described here as part of the North American Social Dumping Theory) that U.S. and Canadian industry will relocate to Mexico specifically to avoid workplace standards and regulations. Given that current research neither demonstrates the alleged endemic weakness of Mexico’s labor law enforcement structure (the first component of the North American Social Dumping Theory) nor establishes that companies seek to relocate to Mexico specifically to escape workplace regulation (the second component of the North American Social Dumping Theory), one questions the third component of the same argument. This third component

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105 See Robert Stewart Smith, The Impact of OSHA Inspections on Manufacturing Injury Rates, 14 J. HUM. RESOURCES 145, 146-52 (1979) (arguing that OSHA has not reduced work injuries or improved plant safety and health in any measurable way); W. Kip Viscusi, The Impact of Occupational Safety and Health Regulation, 10 BELL J. ECON. 117 (1979) (attributing the relatively insignificant role of OSHA in reducing occupational injury and disease to the fact that OSHA's sanctioning capacity is so low as to make the cost of non-compliance negligible for employers).

106 See CHRISTOPHER J. DUERKSEN, ENVIRONMENTAL REGULATION OF INDUSTRIAL PLANT SITING: HOW TO MAKE IT WORK BETTER (1983); see also Levenstein & Eller, supra note 102, at 303-04.
asserts that the presence of U.S. and Canadian industry in Mexico reflects social dumping which has degraded the working conditions of Mexican workers.

To evaluate the effect of U.S. and Canadian manufacturing operations on worker health and safety in Mexico, one should consider the role of such operations in the Maquiladora Zone and the work conditions recorded in this area. The results of research examining the workplace safety and health conditions in U.S.-owned factories in the Mexican Maquiladora Zone would confirm or dispute the third component of the North American Social Dumping Argument. In addition, examination of this zone would demonstrate, through indirect evidence, the efficacy of Mexico’s labor regulatory structure in preventing the degradation of its workers’ labor conditions by U.S. and Canadian industry.

5. REALITY OR RHETORIC: WORKER HEALTH AND SAFETY IN U.S.-MEXICO BORDER INDUSTRIES

The Maquiladora Zone, one of the most prominent manufacturing zones in Latin America, runs the length of Mexico’s northern border and includes almost 1,800 foreign-owned plants within its perimeter. Special provisions of U.S. and Mexican commercial law have allowed foreign-owned industries to manufacture within Mexican territory since the law was enacted in 1964. Critics of the Maquiladora Zone argue that such special commercial provisions are not the only force driving the development of

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107 The Maquiladora Zone agreement facilitates cross-border trade and investment in this small strip of Mexico’s border. See NATIONAL SAFE WORKPLACE INSTITUTE, supra note 5.

108 For an earlier, abridged version of this discussion, see Michael J. McGuinness, Free Trade and Occupational Health Policy: An Argument for Health and Safety Across the North American Workplace, 36 REVISTA SALUD PÚBLICA DE MÉXICO 8 (1994).

109 See NATIONAL SAFE WORKPLACE INSTITUTE, supra note 5.

110 The Mexican Tariff code allows for the duty-free importation of equipment and raw materials to supply foreign manufacturing operations along the Mexican border, so long as the finished products are exported out of Mexico. The U.S. Harmonized Tariff Schedule, articles 9802.00.60 and 9802.00.80, permit goods, 80% assembled from U.S. components, to be re-imported for sale with taxes paid on only the value added during assembly. This value added is calculated on the basis of the cost of domestic Mexican wages (which constitute about one-seventh of the cost of U.S. wages) and not on the product’s market value. See id. This combination of U.S. and Mexican law minimizes the tariffs incurred in crossing the border in each direction. See id.
the Zone. In a version of the North American Social Dumping Theory, they assert that foreign corporations manufacture in Mexico in order to take advantage not only of tariff provisions but also of the lax occupational health and safety regulatory apparatus that leaves workers, consumers, and the local environment unprotected. These assertions merit consideration in light of the preceding discussion.

Numerous accounts have described a “dark side” of the Maquiladora Zone. These narratives characterize the northern border of Mexico as a place where foreign capitalists arrive eager to exploit Mexican workers desperate for a job, where workplace health and safety regulations are no more than paper standards, where overworked workers return each night to squalid living conditions. The workplaces commonly described in these writings contain excessive levels of noise, airborne particles from textiles, gases, vapors, highly toxic chemical substances, and contaminants. The workers exposed continuously to such aggravants report a common universe of symptoms: headaches, exhaustion, sprains, coughs, inflammations, pain and swelling of the eyes, difficulty breathing, itching and rashes, irregularities in their menstrual cycle, irritability, and insomnia. According to these descriptions, these symptoms arise out of the workers’ consistent, unprotected exposure to environmental stressors and the oppressive labor culture inherent in the Maquiladora Zone.

Elements of this ethnographic description of the “dark side” of the Maquiladora Industry, though based on the limited observations of single researchers and exaggerated in press accounts, have been confirmed by a survey report conducted by the University of Lowell Work Environment Program in the border cities of Matamoros and Reynosa. The study, entitled Back to the
Future: Sweatshop Conditions on the Mexico-U.S. Border, quantifies the poor working conditions encountered in the Maquiladora industry and their effect on the labor force, conditions described in more narrative accounts by the studies reviewed above.

Using an occupational health questionnaire that asked workers to describe workplace hazards as well as to report symptoms of their physical condition, the Lowell Study surveyed 267 Maquiladora workers and gave evidence that Maquiladora workers commonly suffer from musculoskeletal disorders related to the rapid pace of work, poor workplace design, and other ergonomic hazards. The Lowell researchers concluded that workers suffer acute health problems from chemical exposure that have the potential to develop into a variety of chronic medical conditions. Most important, the study correlated health risks that respondents to the questionnaire reported as present in the workplace to their related impact on the health status of the worker, as defined by the worker’s self-reported health symptoms.

Of those workers interviewed, over half reported contact with gas or vapor during part of their day. The following self-reported health complaints were common among this group of respondents: headache (55%), unusual fatigue (53%), depression for no specific reason (51%), forgetfulness (41%), chest pressure (41%), difficulty in falling asleep (39%), stomach pain (37%), dizziness (36%), and numbness or tingling (33%). Those respondents who reported exposure to some airborne substance during all of their shift had additional health problems, with 41% experiencing nausea or vomiting and 29% experiencing eye or nose secretions. A significant number of workers complained of exposure to noxious physical agents or ergonomic stressors: noise (67%), heat (27%), vibration (48%), bad lighting (27%), intense visual demands (37%), uncomfortable work posture (32%), repetitive movements (66%), forceful manual work (32%), and a heavy physical work load (17%). A significant number of those exposed to vibration reported nausea or vomiting (39%), stomach pain

114 RAFAEL MOURE, FINAL REPORT: BACK TO THE FUTURE: SWEATSHOP CONDITIONS ON THE MEXICAN-U.S. BORDER (1991) [hereinafter Lowell Study].
115 See id. at ii.
116 See id. at 31.
117 See id. at 32.
118 See id. at 34.
(40%), headaches (62%), loss of sensation (23%), and urinary problems (9%) as regular health complaints. Those continuously exposed to heat also experienced nausea or vomiting (47%), headaches (63%), and urinary problems (12%).

The study's disturbing correlation of the risks present in the workplace to the health complaints common among laborers supports the belief that the Maquiladora industry places its workers in danger and that such treatment has tangible health consequences for the workforce. Combined with ethnographic accounts of the lives of female Maquiladora workers, the survey responses paint a dark portrait of the Maquiladora Zone.

Despite the harsh assessment of its negative impact on the health of its workers described above, the Maquiladora Industry has its defenders. Recent studies published by research teams working on the Maquiladora problem question the validity of claims that Maquiladora manufacturers are guilty of gross exploitation of the Mexican worker and abuse of his or her health. Two recent studies suggest that the negative image of the Maquiladora Zone, considered the "ugly duckling" of Mexican development, is undeserved.

Researchers studying female Maquiladora laborers administered a health status questionnaire in 1988 to 108 residents of Ti-
juana between the ages of 15 and 35. The members of the study population were employed either in the Maquiladoras, in alternative sectors of the economy, or in their own homes. The survey based its conclusions on self-reported worker health complaints in nine areas, including: general gastrointestinal/urinary symptoms, general respiratory difficulties, general musculoskeletal complaints, difficulty breathing with mild exertion, coughing, sore throat, and discolored eyes. Results in the nine measures of health status among the three work groups demonstrated that in seven out of the nine categories (not including general gastrointestinal/urinary symptoms and general respiratory difficulties), Maquiladora workers "appear to be healthier than those who work in other occupations and those who work in the home." A more recent study which relied less wholly on self-reported symptoms produced roughly equivalent results. In 1990, 480 female Maquiladora laborers were interviewed with a 45-minute standardized questionnaire. The questionnaire sought to measure the presence of: 1) functional impediments (presence of at least one physical health problem that impedes daily activities); 2) depression; 3) nervousness, tension, or anxiety; and 4) sense of control, confidence and optimism, in the respondent population. The researchers found that, in terms of mental health, Maquiladora workers were not worse off than service employees or non-wage earners. In fact, the results of the survey suggest that with respect to functional impediments and nervousness,

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123 See id. at 620.
124 See id. at 621.
125 See id. at 622-24. These conclusions, based entirely on self-reported symptoms are subject to the same qualification listed earlier—that educational and social factors greatly influence a respondent’s self-reporting of health symptoms. See Sen, supra note 121.
126 This questionnaire was a composite of a number of epidemiological instruments, including the Hispanic Health and Nutrition Examination, the Center for Epidemiological Studies Depression Scale, Cohen's Perceived Stress Scale, and the Karasek Scale. See Sylvia Guendelman & Monica Jasis-Silberg, The Health Consequences of Maquiladora Work: Women on the U.S.-Mexican Border, 83 AM. J. PUB. HEALTH 37, 38 (1993).
127 See id.
128 See id. at 42.
Maquiladora workers—particularly women working in electronics—are better off than service workers. 129

The conclusion of the more recent study openly recognizes that their results may not be a “positive evaluation” of the Maquiladora industry but rather “a reflection of the ... inferiority of existing alternatives for women.”130 Whatever the true limits of their scope, the surveys challenge the negative stereotype of the Maquiladora Zone that dominates press reports and academic findings.

This short review has perhaps only served to establish the inconclusive nature of the available studies on occupational health and safety in the Maquiladora workforce. Depending upon which set of studies you consult, your view of industry along the northern border of Mexico could adhere to either of two very different descriptions of social reality: 1) an industrial strip where workplace health and safety regulations are no more than paper standards, where workers are permanently harmed by their constant exposure to dangerous levels of toxic chemical substances and the oppressive production conditions they labor under all day in U.S. factories;131 or 2) a developing industrial zone where Mexican workers employed in U.S. factories enjoy healthier lives than those employed in comparable domestic industries.132 In concluding, it is worth making four comments concerning health and safety conditions in the Maquiladora Zone and the accounts that describes these conditions.

First, although the number of negative portrayals of the Maquiladora factories far outnumber the positive portrayals, the speculative and methodologically-soft nature of many of these accounts renders them less than conclusive. Often, they put forward claims that are difficult to substantiate. The quantitative study conducted by the University of Lowell employs a more sophisticated, albeit flawed, methodology to support its negative characterization of the Maquiladora Zone’s effect on worker health and, thus, stands as an exception to this judgment.133

129 See id. at 41-42.
130 Id. at 43.
131 See generally FERNÁNDEZ-KELLY, supra note 112; IGLESIAS PRIETO, supra note 112; Lowell Study, supra note 114.
132 See Hovell, supra note 122, at 623-24; see also Guendelman & Jasis-Silberg, supra note 126, at 41-44.
133 See Lowell Study, supra note 114.
Second, those studies which place the Maquiladora industry in a better light base their conclusions upon comparisons between Maquiladora workers and workers in Mexican-owned industries or workers only informally employed. Such comparisons essentially say nothing more about working conditions in the Maquiladora industry than that they are no worse than those seen in other sectors of the Mexican economy. It would be hard to argue that the health conditions for domestic workers or service workers in Mexico set a reasonable standard by which we can judge the behavior of U.S. and Canadian multinationals in Mexico with regard to worker health and safety. The real comparison should not be between Mexican Maquiladora workers and Mexican service sector employees but rather between Mexican laborers and U.S. and Canadian laborers employed by the same multinationals and performing similar tasks.

Third, a number of the studies that consider the health status of Maquiladora workers employ questionnaires that rely on self-reported health complaints. Differentials in educational level as well as other social factors, as compelling research has recently demonstrated, can easily distort the results of such questionnaires.

Fourth, though the studies reviewed all make important contributions to our understanding of occupational health and safety conditions in the Maquiladora industry, they alone cannot resolve debate concerning the impact of foreign industry and investment on worker health in Mexico. As this review has suggested, no representation of the Maquiladora industry has a monopoly on the truth. Thus, review of current evidence does not lead to any solid determination as to whether U.S. and Canadian industry are guilty of social dumping in Mexico. This review does, however, serve to temper criticism of working conditions in this area and questions the foundation for the third argument of the North American Social Dumping Theory.

6. CONCLUSION

As the introduction explained, three separate arguments serve as the underpinnings of the North American Social Dumping Theory. The first argument asserts that Mexico lacks an effective

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134 See Hovell, supra note 122, at 619.
135 See Guendelman & Jasis-Silberg, supra note 126.
labor regulatory structure. The second maintains that because of its weak regulatory structure, Mexico is the recipient of heavy social dumping— in this case, the site of U.S. and Canadian "dirty" manufacturing industry. The third explains how this social dumping has degraded workplace safety and health conditions, causing harm to Mexican workers.

As demonstrated in Section 5, review of the published materials on the Maquiladora Zone does little to resolve debate concerning the impact of foreign corporations manufacturing in Mexico on workplace health and safety conditions. Depending on the group of writings selected, views as to the nature of the Maquiladoras differ greatly. It is, then, a complicated task to draw any real conclusions from experience in the Maquiladora Zone concerning the current impact of foreign manufacturing on worker health in Mexico. Thus, the validity of the third and final argument of the North American Social Dumping Theory, that NAFTA will lead to the degradation of workplace conditions in Mexico, cannot be resolved by reference to existing scientific literature. This argument, then, constitutes the only component of the North American Social Dumping Theory that is not openly questioned by the available empirical data.

The recent studies reviewed in Section 4 considering the impact of regulatory agencies in the United States do, however, cast doubt on their "supposed" efficacy and on the proposition that these U.S. agencies drive manufacturing industries out of the developed world and into the regulatory ambit of developing nations. Such studies also question whether there is a lax regulatory structure in Mexico that serves as a magnet attracting foreign manufacturing operations, as the second component of the anti-NAFTA social dumping argument maintains. These studies suggest that corporate decisions to relocate operations to Mexico, are, in fact, based on a wide variety of production factors unrelated to health and safety regulation in the workplace.

Finally, Sections 2 and 3 of this article question the veracity of current assessments of Mexico's labor regulatory structure. My discussion here willingly recognizes the resource and technical limitations plaguing the enforcement of the Ministry of Labor efforts as well as the corruption and abuse of political office extending into the highest echelons of Mexico's government. It is less disposed, however, to accept recent characterizations of Mexico's labor inspection structure as a disorganized and ineffective system.
without clear procedures, a political commitment to labor law enforcement objectives, or professional and honest inspectors. Such commentaries lack a firm scientific basis.

The incompleteness of such negative commentaries is further highlighted by Section 2's brief review of Mexico's labor regulatory structure and the enforcement efforts organized by this structure. The picture of Mexico's labor regulatory structure drawn here in this section is not one of a perfectly-functioning system. The efforts of federal labor inspectors in Mexico are hampered by that lack of financial, technical, and human resources common in developing economies. Often, Inspection Protocols are only partially applied. And, although most inspectors are honest and diligent, inspector corruption continues to constitute an obstacle to the enforcement of labor law and the professionalization of the federal inspector corps, although to a lesser extent than NAFTA opponents would have us believe. Despite these shortcomings, this labor regulatory structure serves to protect Mexico's laborers from accident, injury, or illness at work, and deserves more careful consideration and study than it receives from those critics who describe it as a disorganized failure and argue that it will create wide-scale social dumping in North America.