

**The implication of the new labor clauses in the USMCA on labor
market and trade between the United States, Mexico and
Canada**

**Bachelor Project submitted for the degree of
Bachelor of Science HES in International Business Management**

by

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Executive Summary

The North American continent has implemented different free trade agreements throughout the years. From the Canadian-United States Free Trade Agreement (CUSFTA) reached in 1989, between Canada and the United States and quickly replaced by the North American Free Trade Agreement (NAFTA) in 1994 with the addition of Mexico to the agreement. After 26 years of existence and divergent opinions about its success or not, NAFTA was replaced by the United States – Mexico – Canada Free Trade Agreement (USMCA) in July 2020.

This bachelor thesis aims at developing an understanding of the current knowledge regarding the labor clauses between NAFTA and USMCA and analyze the evolution of the labor markets and trade relation between the Parties. Moreover, and throughout defined indicators, this bachelor thesis will compare the labor and economic differences within the region and identify the key challenges faced by North America during the implementation of these regional free trade agreements.

The first part of this research paper will present an overview of NAFTA and its labor-related side-agreement, as well as an overview of USMCA, the Chapter 23rd, the Annex 23-A, a new dispute settlement mechanism and the increased labor value content rule. Since the clauses stated in this chapter are being addressed to the member states, this bachelor thesis will study what are the new challenges of the Annex 23-A and how the Mexican government is establishing new institutions that will innovate the dispute resolution on labor-related matter.

Further than increase on trade and investments in the region, the findings show that the renegotiation enhanced the social aspect of the agreement which principal objective is to set on an equal footing the labor regulations in each country's legislation.

Furthermore, this bachelor thesis will discuss what are the main expected effects on labor market and trade after the implementation of USMCA and understand how the new labor chapter may impact industries located in those countries.

Finally, a case study will illustrate the current challenges of the Mexican agricultural sector with regards to the working conditions, migration pattern, forced labor and child labor.

Contents

| | |
|---|------------|
| <i>The implication of the new labor clauses in the USMCA on labor market and trade between the United States, Mexico and Canada</i> | <i>1</i> |
| <i>Disclaimer</i> | <i>ii</i> |
| <i>Acknowledgements</i> | <i>iii</i> |
| <i>Executive Summary.....</i> | <i>iv</i> |
| <i>Contents</i> | <i>v</i> |
| <i>List of Tables</i> | <i>vi</i> |
| <i>List of Figures</i> | <i>vi</i> |
| 1. Introduction..... | 2 |
| 1.1 Literature review..... | 3 |
| 1.2 Research Methodology..... | 4 |
| 1.3 Objectives..... | 5 |
| 2. Analysis..... | 6 |
| 2.1 Overview of the North American Free Trade Agreement (1994-2020)..... | 6 |
| 2.1.1 North American Agreement on Labor Cooperation (NAALC)..... | 7 |
| 2.2 Overview of the USMCA Agreement (from 2020) | 10 |
| 2.2.1 Chapter 23: Labor Provisions..... | 11 |
| 2.2.2 Annex 23-A: Worker Representation in Collective Bargaining in Mexico | 15 |
| 2.2.3 Chapter 31: Dispute Settlement..... | 16 |
| 2.2.4 Labor value content rule and the new rule of origin | 18 |
| 2.3 Labor Market and Trade in North America | 19 |
| 2.3.1 Labor Market and Trade Relations | 19 |
| 2.3.2 Automotive industry in Mexico | 27 |
| 2.3.3 Maquiladoras | 29 |
| 2.3.4 Labor Unions..... | 33 |
| 2.3.5 Federal minimum wage..... | 35 |
| 2.3.6 Unemployment | 39 |
| 3. Discussion | 42 |
| 3.1 Effects of USMCA labor chapter on labor market and trade | 42 |
| 3.1.1 Case Study 1: Migrant Farm Workers in Mexico | 46 |
| 4. Conclusion..... | 49 |
| Bibliography | 50 |
| Appendix 1: Interview of Dr. Lorenzo Roel Hernández..... | 57 |
| Appendix 2: Interview of Luis Rodrigo Morales Vélez..... | 65 |
| Appendix 3: Interview of Eulalio Cerda Delgadillo | 70 |
| Appendix 4: Distribution of Mexican geographical areas in 2012 | 77 |

List of Tables

| | |
|--|----|
| Table 1: US Employment by sector, 2005-2018 (measured in millions of people) | 22 |
| Table 2: North America's light vehicle share production in the region, by country, (1990-2016) | 29 |
| Table 3 Federal minimum wages per hour in the United States (1991-2009)..... | 35 |
| Table 4: Federal daily minimum wages in Mexico (2013-2015)..... | 37 |
| Table 5: Federal daily minimum wages in Mexico (2015-2017)..... | 38 |
| Table 6: Federal daily minimum wages in Mexico (2019-2020)..... | 38 |

List of Figures

| | |
|---|----|
| Figure 1: Rapid Response Mechanism | 17 |
| Figure 2: U.S. Manufacturing jobs (1993-2016) | 21 |
| Figure 3: U.S. Automotive and Textile jobs (1993-2016) | 23 |
| Figure 4: Mexican Foreign Direct Investment (1984-2019) | 25 |
| Figure 5: Mexican Temporary Foreign Workers in Canada 1998-2018 | 26 |
| Figure 6: Mexico's light vehicle production and share of North America's production, 1990-2016 | 28 |
| Figure 7: Employment in Maquiladoras (1990 – 2006) | 31 |
| Figure 8: Real monthly wage of low-skilled production workers, technicians and non-production workers in Maquiladoras (1990 – 2006) | 32 |
| Figure 9: Minimum wage by U.S. states versus the Federal Minimum Wage as of July 1st, 2019 | 36 |
| Figure 10: Federal minimum daily wage in Mexico (1994-2012) | 37 |

| | |
|---|----|
| Figure 11: Minimum wage in Ontario, Quebec, British Columbia and Alberta (1990-2020) | 39 |
| Figure 12: Unemployment rate in the United States, Mexico, Canada | 40 |
| Figure 13: Informal Employment in Mexico (2010-2018) | 41 |
| Figure 14: Population of farmworkers earning up to 2 Minimum Wages (176.72 Mexican Pesos) in 2018..... | 46 |
| Figure 15: Population of farmworkers earning 3 Minimum Wages and above (265.08 Mexican Pesos) in 2018 | 47 |

1. Introduction

The implementation of the United States – Mexico – Canada Free trade agreement (USMCA) represents an important milestone in the economic development of the region. The Parties have agreed to undertake the necessary actions in order to improve labor standards and foster mutual investment and cooperation. The objectives set are ambitious, principally regarding the rules of origin and the labor value content rule. In this process, the involvement of all stakeholders in the public and private sector is essential in order to reach the objectives set in the agreement.

The renegotiation of the North American Free Trade Agreement (NAFTA) was one of the promises held by Donald Trump during his 2016 presidential campaign. Due to the relocation of several manufacturing industries, particularly the assembly plants in the automotive and textile industry to Mexico, the region has been subject to numerous controversies during the last 26 years.

Overall, working conditions in Mexico differed from those in the United States and Canada and, under NAFTA, industries that relocated to Mexico could benefit from a preferential trade tariff and lower labor costs. This practice was received as a betrayal by the U.S. and Canadian working class while the Mexican economy enjoyed an increase in employment and trade.

After the renegotiation of the free trade agreement, some of the new provisions agreed were related to environmental and labor regulations and expected to reduce the wage gap prevalent in the region.

This situation could be interpreted as being similar to the NAFTA agreement in 1994, with the addition of a side-agreement to NAFTA that stipulated eleven labor guiding principles. However, compared to its predecessor, the new free trade agreement includes a specific chapter on labor which requires Mexico to reform their national labor law. It also forces the Parties to endorse the rights defined by the International Labor Organization and create institutions that will oversight the correct enforcement of the new labor laws.

1.1 Literature review

North America's labor market is currently facing several long-term challenges that have been considered within the renegotiation of the NAFTA and introduction of the 23rd Chapter in the new free trade agreement.

A key challenge for the member states has been to coordinate their national legislation and their different government bodies to negotiate and agree on the regulations that must be adopted in the labor chapter and translate them into national laws (Countryman, 2019). The U.S. House of Representatives has worked for more than one year in order to resolve the concern from the democratic party about the enforcement of the labor standard. Finally, the provisions settled by the democrats were included in the new 23rd chapter of USMCA (Pramuk, 2019).

Some business groups, union leaders and government officials from the three member states have approved the modification of the labor chapter and nearly everyone is celebrating this victory (Heather, 2019). However, contrasting with the public sector, many Mexican business leaders have shared their concerns regarding the absence of clarity on how the new regulation would be enforced under this revised agreement (Esposito, 2019). Mexico's current economic recession has been a difficult counterargument while negotiating with the United States and Canada. Due to several protectionist measures, principally in the automotive industry, the agreement is now making it harder for companies to offshore their production to Mexico.

Moreover, contrasting with its partners, Mexican worker's freedom to association and collective bargaining have been subject to multiple scandals. The corruption prevalent between union leaders and the government is considered as an illness for Mexico (El Universal, 2019).

Despite the economic and political differences between the three countries, the North American labor market has record low levels of unemployment rate in the region that has continued to decrease (Macrotrends, 1991-2020). A report presented by the OECD in the 2016 North American Leaders Summit highlights the important efforts already made by the United States, Canada and Mexico in this issue but does not take into consideration the effects that the new labor chapter may have in the labor market in this region (Broecke, 2016).

1.2 Research Methodology

The research methodology of this Bachelor Thesis will be conducted according to various methods and channels in order to support the analysis and the discussion. Firstly, the Research Proposal was submitted on December 16, 2019 in order to define the scope of the Bachelor Thesis. After approval, several academic articles on the topic were analyzed and included in the literature review in order to present the current knowledge on the subject.

From NAFTA to USMCA, the first part of this thesis will give an overview of the negotiation process of both free trade agreements, what their labor clauses were, and which mechanisms were implemented.

The second part will present, through defined indicators, the development of labor market and trade of the United States, Mexico and Canada. The information will be retrieved from research papers, government reports and data from the International Labor Organization and government entities such as the U.S. Bureau of Labor Statistics and the Mexican National Institute of Statistics and Geography. The selected economic indicators are intended to present a global picture of the situation in North America.

The discussion section will consist of the information extracted from three interviews conducted by:

- **Dr. Lorenzo Roel Hernández**, President of the Labor Commission of the Confederation of Mexican Employers.
- **Luis Rodrigo Morales Vélez**, former Minister for Labor Affairs in Europe who represented the Mexican Labor Ministry at the International Labor Organization (2013-2019) and current Senior Advisor at the International Organization of Employer.
- **Eulalio Cerda Delgadillo**, former Co-Chairman of the Human Resources Committee of the Coca-Cola Company Worldwide (1996-2014), current member of the tripartite commission representing Mexico at the International Labor Organization and Advisor at the Presidency of the Corporate Coordinating Council (CCE).

All interviews were realized in Spanish in order to facilitate communication and then translated for the purpose of the bachelor thesis publication guidelines. The Spanish transcript is available upon request.

1.3 Objectives

Labor clauses in free trade agreements are relatively new. According to the International Labor Organization, the linkage between trade and worker's right was included in free trade agreement for the first time in early 1990 and aimed to safeguard against social dumping¹. This period matches with the implementation of the NAFTA side-agreement on labor cooperation which could be considered as the first trade agreement that listed minimum commitments for the protection of worker's rights².

These clauses are complex and involves the retrospective analysis of each article taking into account the different political context within each Party and their respective stakeholders such as government, labor unions, employers, society and non-governmental organizations. For this reason, this bachelor thesis principal objective is to facilitate the understanding of labor clauses to a broader audience and develop the current knowledge on the subject.

Moreover, by identifying which aspects of the labor chapter may represent challenges for a party, this report will discuss whether future free trade agreements shall include labor chapters or not and determine the importance of them.

Finally, by achieving the above-mentioned objectives, this bachelor thesis will answer the following question: To what extent the labor clauses in the USMCA may impact labor market and trade in the United States, Mexico and Canada?

¹ ILO, *Free Trade Agreements and Labour Rights*. Available from: <https://www.ilo.org/global/standards/information-resources-and-publications/free-trade-agreements-and-labour-rights/lang--en/index.htm>

² CÉLINE CARRÈRE, 2017, *Labor Clauses in Trade Agreements: worker protection or protectionism?* Available from: https://www.wto.org/english/res_e/reser_e/gtdw_e/wkshop17_e/rass_e.pdf

2. Analysis

2.1 Overview of the North American Free Trade Agreement (1994-2020)

The North American Free Trade Agreement was a trilateral free trade agreement between the United States, Mexico and Canada which came into effect in 1994.

The then-U.S. President Ronald Reagan suggested in 1979 during his Political Campaign for Presidency, to create a free trade zone between Canada, Mexico and the United States. However, without interest shown by the other Parties to join and create a free trade bloc, no agreement was reached. With the arrival of the Progressive-Conservative Party at the head of the Canadian government, Prime Minister Brian Mulroney, the idea of creating a free trade zone re-emerged and negotiation started between the United States and Canada in 1984 until reaching an agreement that was implemented in 1989: the Canada-United States Free Trade Agreement (CUSFTA).

After experiencing a debt crisis between 1981 and 1982³, Mexico started to seek an alternative to update their nationalist economic model and foster foreign investment. As a result of opening their economy, Mexico decided to join in 1986 the General Agreement on Tariffs and Trade (GATT). Even though Mexico opened up its market for foreign investment, European countries and investors showed no interest. Therefore, under the Mexican presidency of Carlos Salinas de Gortari, his government approached President George H.W Bush in order to negotiate a free trade agreement between both countries. Canada decided to join the negotiation at a later stage due to the low level of trade between Mexico and Canada.

In 1992 an agreement was reached and signed by the three heads of government. The next step was the ratification of the agreement by each national legislative entity.

Due to the reluctance from the United States Senate and the Canadian parliament to ratify the Agreement, two side-agreements were added to NAFTA: The North American Agreement on Labor Cooperation (NAALC) and the North American Agreement on Environmental Cooperation (NAAEC). NAALC aimed to improve labor conditions in each country and NAAEC to establish objectives and principles that would reinforce the

³ The Mexican 1982 debt crisis, *RaboResearch - Economic Research* [online]. Available from: <https://economics.rabobank.com/publications/2013/september/the-mexican-1982-debt-crisis/>

cooperation between the Parties to protect the environment. Finally, the North American Free Trade Agreement entered into force on January 1st, 1994.

The objectives of implementing a free trade zone between the three countries were to facilitate cross-border movement of goods and services, promote fair competition within the free trade area and foster regional investment. Many elements from CUSFTA were included in NAFTA and some were extended in specific areas such as the automobile sector where, for example, CUSFTA required at least 50 percent of automobile components to be manufactured in North America to qualify for zero tariffs while NAFTA increased that percentage to 62.5 percent.

In 2016, the merchandise trade between the member states represented US\$ 1.0 trillion, a three-fold increase since 1993, and represented 28 percent of the world's gross domestic product (Government of Canada, 2018).

2.1.1 North American Agreement on Labor Cooperation (NAALC)

The North American Agreement on Labor Cooperation (NAALC) was signed in 1993 by the three Parties head of government and aimed to ensure each country was complying with and enforcing their labor laws. In order to reach this objective, the agreement implemented an oversight mechanism that would ensure the correct implementation of eleven guiding principles on worker rights which the Parties agreed to promote. However, these guiding principles do not establish common minimum standards for their respective domestic law. These following guiding labor principles, stipulated in the Annex 1 "Labor Principles" of the "North American Agreement on Labor Cooperation" indicate areas of concern, where the Parties have developed regulations and procedures that protect the rights and interests of their national workforce:

1. Freedom of association and protection of the right to organize

The right of workers exercised freely and without impediment to establish and join organizations of their own choosing to further and defend their interests

2. The right to bargain collectively

Parties shall protect the right of organized workers to freely engage in collective bargaining on matters concerning the terms and conditions of employment.

3. The right to strike

In order to defend their collective interest, all workers have the right to strike.

4. Prohibition of forced labor

All form of forced or compulsory labor shall be eradicate. Exceptions are possible for types of compulsory work generally considered acceptable by the Parties, such as compulsory military service, certain civic obligations, prison labor not for private purposes and work exacted in cases of emergency.

5. Labor protections for children and young persons

Children and young persons shall be subjected to restrictions on employment that may vary taking into consideration relevant factors that may jeopardize the full physical, mental and moral development of young persons, including schooling and safety requirements.

6. Minimum employment standards

Parties shall establish minimum employment standards, such as minimum wages and overtime pay, for all employees, including those not covered by collective agreements.

7. Elimination of employment discrimination

Employment discrimination shall be eliminated on such grounds as race, religion, age, sex or other grounds.

8. Equal pay for women and men

Parties shall advocate for equal wages for women and men by applying the principle of equal pay for equal work in the same establishment.

9. Prevention of occupational injuries and illnesses

In order to minimize the causes of occupational injuries and illness, Parties shall prescribe and implement standards within all industries.

10. Compensation in cases of occupational injuries and illnesses

Parties shall establish a system providing benefits and compensation to workers or their dependents in cases of occupational injuries, accidents or fatalities due to the employment.

11. Protection of migrant workers

Migrant workers must be provided with the same legal protection as the Party's nationals in respect of working conditions.

The side-agreement also created two mandatory structures at an international and national level.

1. The **Commission for Labor Cooperation** was composed by a **Ministerial Council** and a **Secretariat**. The purpose of the Council was to work as a single entity and ensure the compliance and enforcement of the agreement. It was composed by the U.S. Secretary of Labor, the Mexican Secretary of Labor and the Canadian Minister of Labor. Under the supervision of the Council, the Secretariat role was to generate reports on the labor laws and labor markets of the three countries and support the Council with administrative tasks.
2. The **National Administrative Offices** (NAOs) served as domestic institution within the labor department of each member state. The primary function of the NAO was to serve as point of contact between Commission entities and national government. Each National Administrative Office were responsible for the development, reception and investigation of complaints about alleged violation of the agreement. There are three levels of complaints:

- a. **Review / Consultation:**

Any individual may submit a complaint to the NAO of a country not involved in the complaint. After reviewing and reporting on the complaint, the NAO may suggest ministerial consultations.

- b. **Evaluation Committee of Experts (ECE)**

Complaints that involved a frequent failure of effective enforcement of labor laws and that are related to one of the following labor guiding principles:

- Prohibition of forced labor
- Labor protections for children and young persons
- Minimum employment standards
- Elimination of employment discrimination
- Equal pay for women and men
- Prevention of occupational injuries and illnesses
- Compensation in cases of occupational injuries and illnesses
- Protection of migrant workers

c. Arbitration

In case of no resolution after an ECE investigation, a five-person panel made up by outside experts, issue an action plan. In case of no enforcement of the action plan, fines and suspension of NAFTA trade benefits could be applied against the offending government. The only guiding labor principles that were subject to arbitration were:

- Labor protections for children and young persons
- Minimum employment standards
- Compensation in cases of occupational injuries and illnesses

2.2 Overview of the USMCA Agreement (from 2020)

The United States – Mexico - Canada Free Trade Agreement (USMCA) is the result of three years of negotiation between the United States, Mexico and Canada. The new free trade agreement replaced the North American Free Trade Agreement, beginning on July 1st, 2020. USMCA will last for a period of 16 years. In 2026, the 16-year old clause can be revisited and extended if agreed by the Parties. In 2036, the United States, Mexico and Canada will decide whether to renegotiate the agreement or withdraw altogether.

During the 2016 U.S. presidential campaign, the republican candidate Donald Trump promised to renegotiate NAFTA or withdraw from it if Mexico and Canada refused to renegotiate. After the election, President Trump announced that the United States will withdraw from the Paris Agreement (2016) and from the negotiation of the Trans-Pacific Partnership Agreement (2017). The different actions taken by the government of the United States reinforce the idea of a soon renegotiation of NAFTA which President Trump qualified as the worst trade deal ever made (Donald Trump, 2017).

On May 2017, Robert Lighthizer, U.S. Trade Representative, announced to the U.S. Congress his intention to renegotiate the North Free Trade Agreement and delivered on July 2017 a document with the objectives he intended to reach at the end of the negotiation. After eight meetings between the different representatives of the United States, Mexico and Canada that lasted until May 2018, no deal was reached. According to Robert Lighthizer, negotiation of the updated agreement would recommence in 2019 after the election of a new president in Mexico. However, a first deal was reached with Mexico on August 2018 in which Canada was not yet included.

Sixty days were required as a review period of the agreement and the Mexican President Enrique Peña Nieto's mandate terminated on December 1st, 2018. Therefore,

negotiators needed to agree on a deal on September 30 at the latest. During this period of time, negotiators from the three Parties met and negotiated the different clauses of the agreement and on September 30 2018, a few hours before midnight, an agreement was reached between the United States, Mexico and Canada who, after much negotiation on preserving the Chapter regarding dispute-resolution provision, agreed to join the agreement. On October 1, 2018, the agreement was published as an agreed-to document.

After the required sixty days of revision, USMCA was signed by U.S. President Trump, Mexican President Peña Nieto and Canadian Prime Minister Justin Trudeau on November 30, 2018 during the G20 Summit held in Buenos Aires. After ratification by the legislative bodies of each country, the agreement entered into force on July 1, 2020.

The final version of the agreement was published in three different versions: in English, as “USMCA”, in French “ACEUM” (*Accord Commercial Canada, États-Unis, Mexique*) and in Spanish “T-MEC” (*Tratado de Libre Comercio entre Mexico Estados Unidos y Canadá*). All of them are considered as an official version and contain 34 Chapters and 12 side letters in which a wide range of provisions are covered. Those related to trade concern steel and aluminum tariffs, dairy products, the automobile industry (and more particularly its rules of origin), the *de minimis* shipment value levels and digital trade, among other subjects. Compared to its predecessor, USMCA increases environmental and working regulations and include a specific chapter on labor regulations (chapter 23).

2.2.1 Chapter 23: Labor Provisions

The labor-related section of the USMCA is a key chapter in the new free trade agreement. Chapter 23 regulates the working standards and includes dispute settlement mechanisms on labor matters. Throughout the negotiation process, the United States Congress shared, on repeated occasions, their concern about the labor clauses in the agreement and specifically on the lower wages and working regulation in Mexico. The office of the United States Trade Representative (USTR) have sought to strengthen the working conditions prevalent in the agreement and include the Annex 23-A that requires Mexico to enforce laws that will improves the collective bargaining capabilities of labor unions.

A key difference between the North American Agreement on Labor Cooperation (NAALC) and the Chapter 23 in USMCA is that under NAFTA, the guiding labor provisions were stipulated in a side agreement while the USMCA dedicates a specific

chapter to the subject. Under NAFTA, the oversight mechanism allowed a Party to submit a complaint against another Party only when persistent failure patterns to enforce labor laws were detected. USMCA requires the Parties to enforce the labor provisions and imply them to adopt and maintain laws present in the 1998 Declaration on Fundamental Principles and Rights at Work from the International Labor Organization.

Moreover, the Free trade Agreement commits the Parties to not fail to implement in an effective manner the labor provisions and prove, through independent investigation, that they are complying with the laws. They must not derogate from labor statutes or regulation in order to promote trade and investment.

The following section explains the main articles in the 23rd Chapter of USMCA:

“Article 23.1: Definitions” Defining the term “labor laws” employed in the agreement as the status and regulations that each Party must adopt and implement into their national labor law. These regulations are

- the freedom of association and collective bargaining,
- the abolition of all forms of forced labor,
- the prohibition of any form of child labor,
- the elimination of discrimination and
- The assurance of acceptable working conditions that respect the minimum wage, hours of work, occupational safety, and health. The agreement defines “acceptable working conditions” when the Party’s labor law provide wage-related benefits such as profit sharing, bonuses, retirement and healthcare on behalf of workers.

All goods and services trade between the Parties must be produced in compliance with the 23rd Chapter of USMCA. Moreover, each Party reaffirms their commitment as members of the International Labor Organization at the Declaration on Rights at Work and the Declaration on Social Justice for Fair Globalization (2008).

Under **“Article 23.4: Non-Derogation”**, the Parties commit to not encourage trade or investment at the expense of weakening labor standards and under **“Article 23.5: Enforcement of Labor Laws”** no party shall fail to enforce the labor regulation in an effective manner. Therefore, each government is entitled to take the necessary actions to promote compliance with the new labor regulations. Those actions may include the

un-announced on-site appointment of inspectors when there is suspicion of violation of a labor law within an industry or company. All investigations must keep a record and include a report of the findings and encourage solution through mediation and conciliation. Sanctions can be imposed for non-compliance of the labor laws.

The articles “**23.6: Forced or Compulsory Labor**”, “**23.7: Violence Against Workers**”, “**23.8: Migrant Workers**” and “**23.9: Discrimination in the Workplace**” are closely linked since they aim to protect the integrity of the worker, ensure acceptable working conditions, eradicate certain form of labor and discrimination and take into consideration the migration flow within the area.

Under article “**23.6: Forced or Compulsory Labor**”, the importation of goods produced by forced labor is forbidden and the article requires each Party to identify the production of such goods into their territory and to take the necessary actions to eradicate them. Migrant worker regulations are also part of the agreement under article “**23.8: Migrant Workers**” where the Parties must protect them under its labor laws without any form of discrimination. The agreement also commits each Party under article “**23.7: Violence Against Workers**” to forbid violence in any form against labor organizations and workers and allowing them to exercise in a climate free of intimidation of their labor rights.

The purpose of article “**23.9: Discrimination in the Workplace**” is to guarantee a workplace free of discrimination for everyone. No worker should be discriminated based on sex, pregnancy, sexual orientation, gender identity, and caregiving responsibilities. Each Party should provide job-protected leaves and protect against wage discrimination.

The articles “**23.10 Public Awareness and Procedural Guarantees**”, “**23.11: Public Submissions**”, “**23.15: Contact**” and “**23.16: Public Engagement**” are intended to promote public awareness of the new labor regulations by making available the information and how the enforcement and compliance of the labor laws must be applied. It also entitles each Party to consult with a labor advisory body (labor representatives or business organizations) in order to provide their view on matters regarding the Chapter.

In case of submission of evidence related to a complaint from one Party, the access to all kind of tribunal must be ensured and the trial must be fair, transparent and opened to the public. As of September 1st, 2020, the government of the United States, Mexico and Canada must have designated an office or representative within its labor ministry as a point of contact to address labor-related matters. Moreover, the designated responsible party must provide for the receipt and consideration of written submissions from persons

of a Party on matters related to Chapter 23. All procedures must be accessible and publicly available.

A Labor Council made up of senior governmental representatives from trade and labor ministries must be established as of July 1st, 2021 and renewed every two years unless decided otherwise. On July 1st, 2025, the Labor Council will evaluate the effectiveness of Chapter 23 and decide whether it is necessary to undertake a revision of estimated inefficient regulations or renew the Chapter. At the outcome of each meeting, a report with the statement made by consensus or decision taken will, unless otherwise agreed by the Parties, be available to the Public. The establishment of the Labor Council is under the article **“23.14: Labor Council”**.

Finally, the agreement encourages the Parties to work in a cooperative manner in order to reach common objectives. They shall exchange information to jointly develop best practices that aim to improve labor standards and promote labor dialogues. These dialogues are initiated by the delivery of a written request from a Party to another Party on any matter related to Chapter 23 and must be addressed to the contact point designated under Article 23.15. Although article **“23.13: Cooperative Labor Dialogue”** indicates a 30 days deadline to start the dialogue, Parties can decide otherwise and jointly agree on a later date. However, the article requests the Parties to dialogue in good faith and address all of the issues raised in the request considering all available options. In case of resolution, a document must be published with the course of action and include the specific steps and timelines agreed. Regarding the labor consultations indicated in article **“23.17: Labor Consultations”**, the Parties must, through cooperative dialogue, make all efforts to reach satisfactory resolution for both. The agreement authorizes a Party to request labor consultations with another Party, a third Party in case of substantial interest in the matter and upon written notice⁴.

If the Parties fail to resolve the matter within the agreed period, the requesting Party may use the mechanism established under article 31.6 and make use of a Panel to resolve the dispute.

⁴ Pursuant to Article 23.17.2 and 23.17.3 in USMCA

2.2.2 Annex 23-A: Worker Representation in Collective Bargaining in Mexico

Annex 23-A is a side letter from Chapter 23 that is directed to the Mexican government in which they are required to implement new laws into their national legislation that will improve labor standards and address the issue of the collective bargaining capabilities of labor unions. Moreover, the side-agreement requires Mexico to comply with the standards detailed in the *98th Convention on Freedom of Association and Collective Bargaining of the International Labor Organization* (ILO).

The U.S. House of Representatives conditioned the ratification of the USMCA in exchange for the Mexican Parliament first complying with the changes stated in Annex 23-A. Therefore, in order to comply with Annex 23-A, an initiative to adapt the Federal Labor Law was presented on December 23, 2018 at the Mexican parliament and approved on April 11, 2019 by the Chamber of Deputies. After two weeks of revision, the Chamber of Senators voted 120 to 0 to pass the Labor Reform Decree on April 29 and on May 1st, 2019, the Official Gazette of the Federation published the 2019 Mexico Labor Reform. As an element for further discussion, it is important to mention that the United States has not ratified this convention.

The labor reform addressed all of the changes required by Annex 23-A and ensured Mexico's compliance with the above-mentioned Convention No. 98 of the International Labor Organization, ratified by the government on November 2018. Overall, the labor reform outlined the rights of Mexican workers to engage in collective bargaining, join the union of their choice and forbid employer domination or interference in union activities. It does also ensure all union members the right to a personal, free and secret vote. It is important to understand that the purpose of requiring these changes were due to the fact that Mexican labor unions were largely controlled by companies (Proskauer, 2019).

Annex 23-A also includes an obligation of gender equality. The companies are required to have a protocol in order to avoid discrimination, worker violence and harassment. Each company must define which sanctions must be undertake in case of a sanction in such cases (El Universal, 2019).

The regulations of Annex 23-A adopted in the Mexican legislation also improved the Mexican labor justice system. Beforehand, the labor disputes were resolved by a Conciliation and Arbitration Board. The Conciliation and Arbitration Board were administrative tribunals under the federal executive power which operated under a tripartite resolution formula: those who represent the government, those who represent

the workers and those who represent the employers. This mechanism distinguished Mexico worldwide by its nature and composition, there were no similar mechanisms for conflict resolution that functioned in a tripartite manner. Some “hybrids” and similar formulas were used in Panama or France but the exact mechanism under which conciliation and arbitration boards functioned did not exist elsewhere⁵.

With the implementation of the side-agreement, the resolution of labor dispute between employer and employee will be resolved by state and federal specialized labor courts that will depend on the judiciary. However, before courts, the Parties will have to seek a solution to labor-related disputes by means of preliminary ruling conciliation and the conciliatory efforts will take place in a single and mandatory hearing.

The Federal Conciliation and Labor Registration Center will be the instance where the resolution of conflicts between employee and employer will be sought. Its purpose will be to preside over conciliatory procedures, register labor organizations, union contracts and internal work rules. At the state level, conciliation centers will only preside over the conciliation procedures. This new justice system will be implemented within the next three years.

Before a worker presents his claim, he / she will be required to exhaust a conciliation procedure. This system is intended to avoid the large number of conflicts that currently exist in the Mexican courts. The purpose of this formula is to resolve the dispute throughout the conciliation process without a claim being made through a legal complaint and avoid judicial proceedings. The interest of the worker should not be accompanied by the personal interest of an adviser or lawyer⁶. This new mechanism will allow a conciliation between the employer and the worker with the intervention of fellow officials from the conciliation center and reach an agreement between both Parties.

2.2.3 Chapter 31: Dispute Settlement

This chapter provides a General Dispute Settlement Mechanism which is a copy to the one provided by NAFTA under Chapter 20 and in which the activation can be requested by any individual who has knowledge of any kind of labor-related violence in a covered

⁵ Interview with Mr Morales, Senior Advisor at IOE, Geneva, 14 August 2020 (cf appendix 2).

⁶ Interview with Dr Lorenzo Roel Hernandez, President of the Laboral Commission of the Confederation of Mexican Employers, Geneva, 3 July 2020 (cf appendix 1).

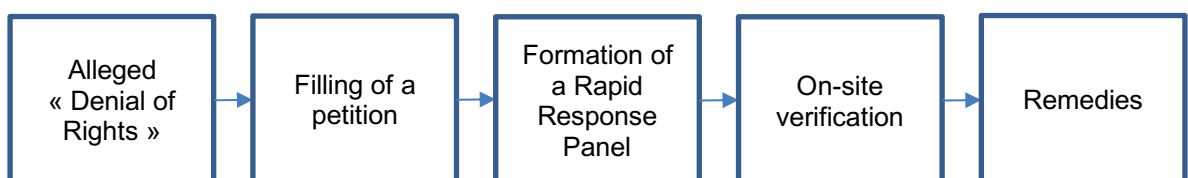
facility. The approximative duration for dispute resolution using this mechanism is 320 days.

A valuable asset of this chapter under USMCA is the establishment of an innovative dispute settlement mechanism: the Rapid Response Mechanism. It is addressed to resolve labor-related disputes within 125 days. This mechanism can be activated when denial of right of association and collective bargaining are presumed in a covered facility. The Rapid Response Mechanism enables the government of the United States, a labor union, non-governmental organization or affected worker to file a complaint against a covered facility in Mexico for possible violations of the above-mentioned rights (Annex 31-A). The same mechanism applies for Canada (Annex 31-B). For its part, the Mexican government may also file a complaint against the United States or Canada but only under certain restrictive circumstances⁷. Canada and the United States cannot invoke the mechanism for dispute against each other.

A “covered facility” is defined as a company which is established in a Party’s territory that either produces a good or supplies a service traded between Parties or that is in direct competition with the production of a good or service in the territory of the other Party. Moreover, the chapter indicates that the covered facility must be in a “priority sector” which takes into account sectors that manufacture goods, supply services or involve mining. It does not include agriculture.

Mexican companies are the most vulnerable to confront legal challenges and particularly in the auto and auto parts sector (Akin Gump, 2020). Figure 1 is representative and aims to facilitate the understanding of the different steps involved in the Rapid Response Mechanism.

Figure 1: Rapid Response Mechanism



To ensure the enforcement of labor rights between Parties, this mechanism allows a Party to request a review by an independent panel composed by an American, Mexican and a third country expert. After the on-site verification, and if the Panel determines that

⁷ The facility involved must be under an enforced order of the National Labor Relations Board or the Canada Industrial Relation Board

there has been indeed a labor right violation, the Party may impose tariff barriers for the goods manufactured or service provided until resolution. Under the Annex 31-B, a Canadian expert must be present in the independent panel instead of an American expert.

2.2.4 Labor value content rule and the new rule of origin

The new labor value content rule and the increased new rule on origin will principally impact the supply chain and cost management of the automotive industry. Companies will have to adapt themselves to the new regulation or evaluate the potential incorporation of new suppliers or new processes that allow the accreditation of origin content rules without raising costs for the final customer.

The provision on origin under NAFTA required 62.5 percent of automobile component to be manufactured in Mexico, Canada or the United States to qualify for zero tariffs. The renegotiated agreement increased this percentage up to 75 percent. Moreover, the agreement contains a Labor Value Content (LVC) clause⁸ that requires that by 2023, 40 percent of an automobile and 45 percent of a light truck must be produced by workers earning at least US \$16 per hour.

In the United States, companies in the automotive sector such as General Motors pay an average wage of US \$16.67 per hour for temporary workers and US \$32.32 for permanent employees. Canadian wages in this industry are similar to those in the U.S. while in Mexico the average hourly wage for workers is US \$7.34.

The Labor Commission of the Confederation of Mexican Employers have discussed this matter for several years with the U.S. embassy in Mexico as the overall industry could not comply with the regulation in terms of salary⁹. One of the proposed solutions was the creation of a micro-site in a specific area, most probably in northern Mexico, where the assembly companies could offer a minimum salary of US \$16 per hour. The idea of creating this micro-site would allow the assembly companies to stay in Mexico while complying with the regulation on the regional content. However, the required US \$16 per hour outweigh the local economy and this alternative would ultimately create more complex effects.

⁸ USMCA, Chapter 4, Appendix, Article 7

⁹ Interview with Dr. Lorenzo Roel Hernandez, President of the Laboral Commission of Mexican Employers, Geneva, 3 July 2020 (cf appendix 1)

2.3 Labor Market and Trade in North America

2.3.1 Labor Market and Trade Relations

Now that we have reviewed and compared the different labor-related regulations under NAFTA and USMCA, as well as their terms of implementation, the purpose of the following section is to understand through different indicators how the labor markets and trade between partners have developed during the last 26 years.

Under the assumption that job creation is tightly tied with trade, Hufbauer and Schott forecasted in their book entitled *“NAFTA An Assessment”* published in 1993 that NAFTA would have a modest but positive effect on the labor market. The agreement was expected to create a total of 316 000 jobs while relocating 145 000 jobs, resulting in a net gain of 171 000 jobs; exports from the U.S. to Mexico were forecasted to increase by US \$16.7 billion and imports to increase by US \$7.7 billion. Therefore, the trade balance was expected to improve by US \$9 billion. Under the Hufbauer-Schott model, improvement in the trade balance would have supported the creation of jobs while a decline would have led to the relocation of domestic jobs.

According to the research paper *“A Budgetary and Economic Analysis of the North American Free Trade Agreement”* from the U.S. Congressional Budget Office published in 1993, the agreement would have relatively little impact on American jobs and the relocation of manufacturing companies. When addressing this issue, the public opinion was divided between the opponents of the free trade agreement who shared their concern about the likelihood of a largely negative impact on the American labor market and the “pro-NAFTA” that claimed the multiple benefits the agreement could generate on the U.S. soil. The assumptions from the opponent group were based on the effects that trade liberalization might have on illegal migration from Mexico to the United States. The Mexican average hourly wage accounted for US \$2.17 in the manufacturing sector compared to US \$15.45 in the United States (Hufbauer and Scott, 1993). This wage gap would also make it more difficult for U.S. workers to compete against the Mexican low wages. According to the 1992 U.S. Presidential Candidate Ross Perot, the implementation of the free trade agreement would send jobs overseas. During the Second Presidential Debate in 1992, he argued that:

“We have got to stop sending jobs overseas. It’s pretty simple: If you’re paying US \$12, US \$13, US \$14 an hour for factory workers and you can move your factory

South of the border, pay a dollar an hour for labor [...] there will be a giant sucking sound going south”
(Ross Perrot, 1992)

Throughout the years, different analytical approaches have been conducted in order to find what have been the real effect on the American labor market. On an article entitled “*Did NAFTA Cause a ‘Giant Sucking Sound?’*” published in 2002, the economist William Thorbecke and Christian Eigen Zucchi affirmed that the measurable effects of the trade agreement have resulted on a stable Mexican economy and increased bilateral trade relation but have had small effects on the U.S. labor market. Indeed, the total amount of Mexican exportation to the United States amounted for US\$ 340 billion in 2018. The principal merchandise exported regrouped cars for US\$ 34.8 billion, computers for US\$ 26.3 billion and vehicle parts for US\$ 25 billion. In comparison, Mexico exported a total amount of US\$ 62.1 billion in 1995, more than a five-time increase during the last 23 years.

In 2014, the Office of Economics Working Paper from the U.S. International Trade Commission published a report that indicated the impact of NAFTA on U.S. Labor Markets. The research paper had similar conclusion than in 2002: several effects on trade flows between the United States and Mexico and no or little effects on the aggregate U.S. labor market.

All the above-mentioned assumptions could let us presume that NAFTA really did not affected the U.S. labor market. However, if the overall view is compared with the analysis of employment in specific sectors or within an industry some researchers conclude the opposite.

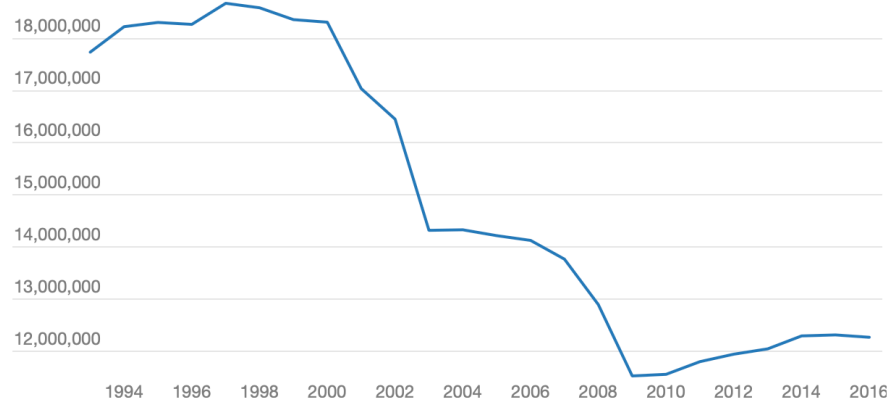
Jeff Faux, founder of the Economic Policy Institute, suggested that the principle under which NAFTA allowed U.S. companies to relocate their production to other location from where they could sell back to the United States affected in four different ways the American labor market. Firstly, when production moved to Mexico, the job loss was estimated at 700,000 jobs, principally in the manufacturing states such as California, Texas and Michigan. Second, the agreement strengthened the bargaining power of American employers and forced workers to accept lower wages and benefits under the threat of relocating the company to Mexico unless the cost of labor dropped. According to Jeff Faux, while negotiating with labor unions, some companies would have threatened workers to start loading machinery into trucks to send them to Mexico. Thirdly, the illegal migration from Mexican agricultural workers to the United States increased the pressure on lower U.S. wages in this sector. Finally, Jeff Faux concludes

that NAFTA became a model for the new global economy where profits are shifted to capital and costs to work. This approach would prioritize the economic aspect of the agreement whether than the social aspect.

The first part of a briefing paper wrote in 2006 by Robert Scott from the Economic Policy Institute “Revisiting NAFTA: Still Not Working for North America’s Workers” concluded that the effects of NAFTA on the U.S. labor force reduced the high-wage employment and increased the wage inequalities while decreasing the demand for workers without a college education. The trade deficit with Mexico and Canada caused the relocation, in the period from 1994 to 2006, of 1 million U.S jobs from which 660,000 were from U.S. manufacturing companies.

According to the data available from the Organization for Economic Co-operation and Development (OECD), the service sector has been the sector with the highest number of employees in the United States since 2005. An increase of 12.87 percent in this sector has been recorded for 13 years between 2005 and 2018 as well as a 10 percent increase in the agriculture sector. The construction sector experienced a decrease in its workforce until 2012 and employs a similar number of workers in 2018 than in 2005. The manufacturing sector has lost 690'000 jobs in 13 years. Overall, employment in this sector declined by 30 percent between 1993 and 2016 (Figure 2).

Figure 2: U.S. Manufacturing jobs (1993-2016)



Source: Investopedia [online]. [Viewed 07 July 2020]. Available from: <https://www.investopedia.com/articles/economics/08/north-american-free-trade-agreement.asp>

The growing U.S. trade deficit with Mexico and Canada and the relocation of U.S. jobs to low-wage countries such as Mexico are factors that can explain this trend. After the implementation of the agreement, each U.S company had to strategically think about the opportunity of relocating in order to reduce costs and become more competitive. This

cost efficiency strategy would enable U.S manufacturing companies to produce more products and generate more revenues at a lower cost while enjoying all the benefits of a free trade zone.

Table 1: US Employment by sector, 2005-2018 (measured in millions of people)

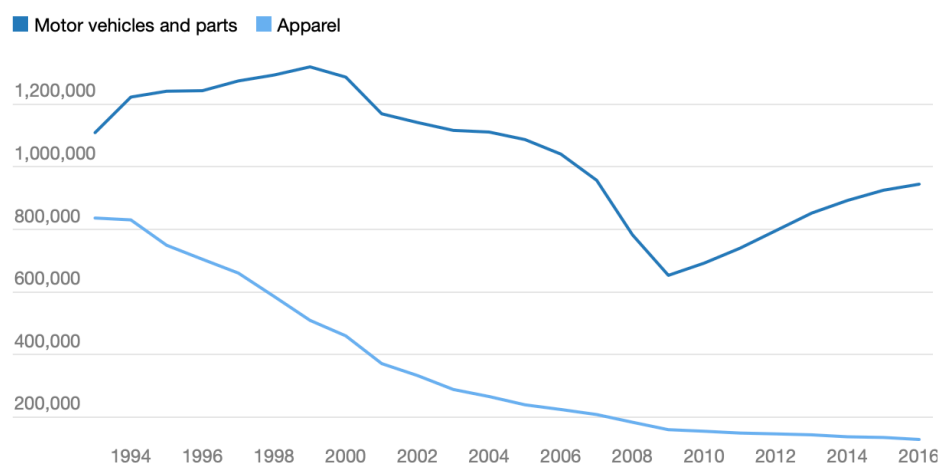
| Year | Agriculture | Construction | Manufacturing | Service |
|-------------|--------------------|---------------------|----------------------|----------------|
| 2005 | 2.20 | 11.20 | 16.25 | 111.46 |
| 2006 | 2.21 | 11.75 | 16.38 | 113.41 |
| 2007 | 2.09 | 11.86 | 16.30 | 115.06 |
| 2008 | 2.17 | 10.97 | 15.90 | 115.50 |
| 2009 | 2.10 | 9.70 | 14.20 | 113.16 |
| 2010 | 2.21 | 9.08 | 14.08 | 112.97 |
| 2011 | 2.25 | 9.04 | 14.34 | 113.42 |
| 2012 | 2.19 | 8.96 | 14.69 | 115.68 |
| 2013 | 2.13 | 9.27 | 14.87 | 116.59 |
| 2014 | 2.24 | 9.81 | 15.10 | 118.07 |
| 2015 | 2.42 | 9.94 | 15.34 | 120.22 |
| 2016 | 2.46 | 10.33 | 15.41 | 122.45 |
| 2017 | 2.45 | 10.69 | 15.41 | 124.03 |
| 2018 | 2.42 | 11.18 | 15.56 | 125.81 |

Source: Employment Rate – Organization for Economic Co-operation and Development. [online]. [Viewed 04 July 2020]. Available from: <https://data.oecd.org/emp/employment-by-activity.htm>

Within the U.S manufacturing industry, employment in the automotive and textile sector has suffered since the implementation of the agreement. During the first years of NAFTA, the automotive sector experienced an increase in employment and reached a workforce of 1.3 million people at its peak in 2000. Between 2000 and 2009, employment dropped by 52 percent and represented 623 000 jobs in 2009, a total of 677'000 jobs lost in one of the most important industries for the country (Figure 3). While that number has increased up to 948,000 in 2016, the level remains 27 percent below the situation before NAFTA.

The textile sector includes the production of yarn or thread and the production of fabrics from these materials while the apparel industry includes the fabrication of clothes. The textile industry required high investment in technologies, capital and skilled workers. On the other hand, the apparel industry is labor-intensive. Under NAFTA, this industry recorded a decline of 85 percent of its employment.

Figure 3: U.S. Automotive and Textile jobs (1993-2016)



Source: Investopedia [online]. [Viewed 07 July 2020]. Available from: <https://www.investopedia.com/articles/economics/08/north-american-free-trade-agreement.asp>

In order to qualify for trade with NAFTA partners, companies were required to focus on rules of origin and use material made in the region. The agreement was supposed to strengthen each country's industries and leverage them to maximize benefits. For example, to encourage garment production in Mexico in order to take advantage of the country's lower labor cost and export garments to the United States, while promoting the use of U.S. made yarns and fabrics. In Mexico, the average hourly wage for a textile or apparel worker represents between US \$1.5 and US \$2 while it is US \$8.59 for an American worker.

Even though the North America Free Trade Agreement aimed to guarantee sustained economic growth of the member states and implemented regulations that would give workers opportunities to enjoy better working conditions and better wages, the wage gap between the United States and Mexico pushed companies to rethink their operating model in a cost-effective strategy and rebuild their supply chain. As a result of this evaluation, many companies decided to relocate part of their production to Mexico.

The Mexican labor force increased from 33.1 million in 1993 to 56.2 million in 2018 (ILOSTAT database, 2020). This represents a growth of almost 1 million people per year meaning Mexico needed the same increase in jobs per year to absorb the growth in labor supply.

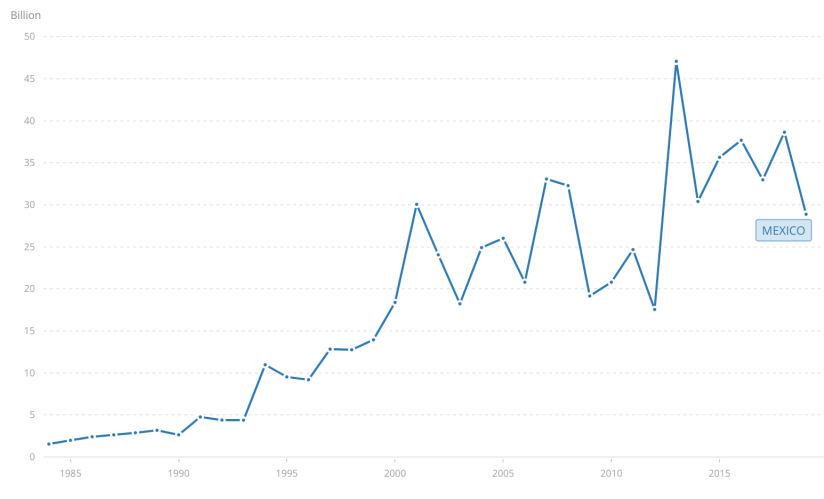
After joining the General Agreement on Tariffs and Trade (GATT) in 1986, Mexico aimed to open up its economy. The implementation of NAFTA in 1994 consolidated the Mexican government objectives to create better working conditions for the Mexican workers. Mexican President Carlos Salinas de Gortari (1988-1994) argued that by accessing the foreign markets, Mexico would ascend into the First World¹⁰. By opening the Mexican market to trade, one of the effects desired by the Mexican government was to create a demand for labor and increase the number of national jobs.

Contrasting with what occurred in the United States, the manufacturing sector in Mexico enjoyed an increase in employment and investment, particularly under the Maquiladoras program and in the automotive industry. The argument of reduced labor costs and preferential tariffs convinced companies to relocate their manufacturing plants overseas. Further analysis of both topics will be covered in the section 2.4.2 Automotive Industry and 2.4.3 Maquiladora.

With the implementation of NAFTA, the objective set by the Mexican government of creating a demand for labor was reached and foreign direct investment (FDI) grew in Mexico (Figure 4) becoming the world's fifteenth largest FDI recipient. Largest investments mostly come from the United States, Spain and Canada.

¹⁰ ORGAMBIDES, Fernando, 1992. México llega al primer mundo. El País [online]. Madrid, 12 August 1992. Available from: https://elpais.com/diario/1992/08/13/economia/713656802_850215.html

Figure 4: Mexican Foreign Direct Investment (1984-2019)



Source: International Monetary Fund, Balance of Payments database, supplemented by data from the United Nations Conference on Trade and Development and official national sources. [online]. [Viewed 13 July 2020]. Available from: <https://data.worldbank.org/indicator/BX.KLT.DINV.CD.WD?end=2019&locations=MX&start=1984>

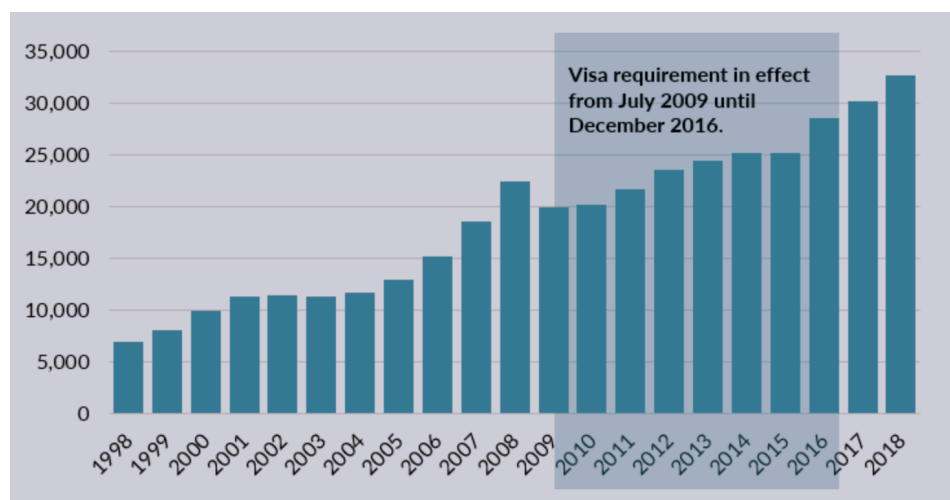
Canada's role in the North American Free Trade Agreement begins 5 years earlier with the Canada-United States Free Trade Agreement (CUSFTA). The impact of both trade agreements on the Canadian trade relation resulted in an increased number of good exchanges with its partners and by 2016 77.8 percent of Canada's total merchandise exports were sent to the United States or Mexico. In 2018, Canada's exports to the United States amounted up to US\$ 314 billion from which the principal products exported were crude petroleum for US\$ 63.5 billion, cars for US\$ 38.4 billion and refined petroleum for US\$ 10.8 billion. In comparison, in 1995 the total amount of goods exchanged were valued at US\$ 141 billion.

The United States became by far Canada's most important trading partner where 75 percent of their export are sent. NAFTA consolidated and reinforced the trade relation between both countries while creating an important interdependency from Canada on the United States regarding trade. Other countries tend to be much more diversified with their trade relation and try to not rely on a single partner.

The trade relation between Canada and Mexico kept growing since the entry into force of NAFTA. Even though, if compared with the United States, the trade relation between both countries could be interpreted as "only significant". In 2019, Canadian trade and investment with Mexico represented US\$ 44 billion in two-way merchandise trade and ranked as the third largest trading partner after the United States and China.

One effect regarding the North American labor market was the increased number of Mexican workers entering the country and who benefited from the International Mobility Program established under Chapter 16 of NAFTA (Figure 5).

Figure 5: Mexican Temporary Foreign Workers in Canada 1998-2018



Source: Migration Policy Institute. [online]. [Viewed 19 March 2020]. Available from: <https://www.migrationpolicy.org/article/mexican-migration-canada>

These provisions allowed professionals to work legally in Canada after receiving a job offer and were granted access to the labor market without the habitual immigration procedures where employers must demonstrate their need to hire someone from another country. The agreement provided this mechanism to American, Canadian and Mexican businesspeople to have temporary access to each other's labor market. A total of 63 different professions were allowed to apply for the temporary entry as NAFTA Professionals. Each Party was required to grant temporary entry to businesspersons that qualify into one of the different categories.

There are three categories for different types of worker:

| Categories | Requirements |
|-------------------------|--|
| The NAFTA Professionals | <ul style="list-style-type: none"> - Mexican, Canadian or American citizenship - Working in a profession identified in the list - Must have a qualification to work in the profession - Pre-arranged employment contract with an employer in the destination country |

| | |
|---------------------|--|
| The NAFTA Investors | <ul style="list-style-type: none"> - Mexican, Canadian or American citizenship - Company is Mexican, Canadian or American - An investment must have been made or is being made in the destination country - The unique valid reason to entry is related to developing and directing business - The role of the investor in the company must be executive or supervisory |
| The NAFTA Traders | <ul style="list-style-type: none"> - Mexican, Canadian or American citizenship - Company is Mexican, Canadian or American - The activities involve trade in goods or services - Trade is between the Parties |

2.3.2 Automotive industry in Mexico

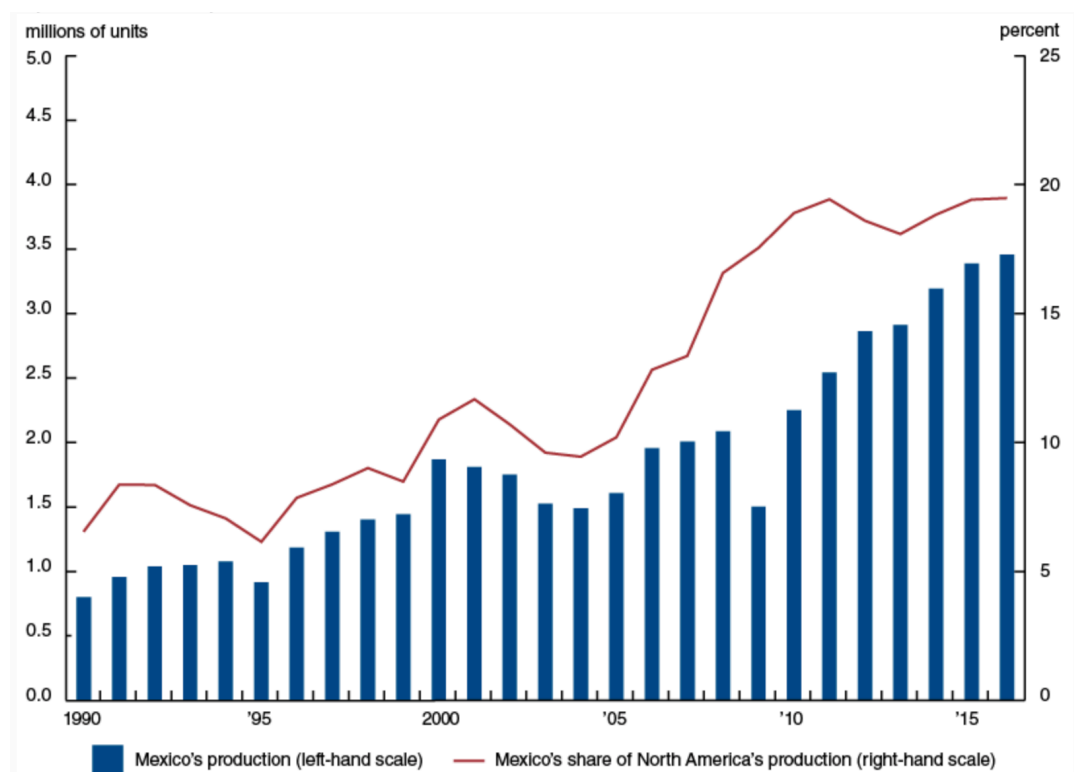
In North America, the organization of regional supply chains has overcome traditional domestic supply chains. This integration has allowed suppliers from the region to provide vehicle parts which are manufactured in different places and that cross the border several times. After China and the European Union, North America is the third largest motor vehicle manufacturer Worldwide. In 2018, the continent produced 17.4 million vehicles from which 11.3 million were assembled in the United States, 4.1 million in Mexico and 2 million in Canada.

In Mexico, this industry has been an important asset for the development of the local economy. In 2018, Mexico's principal merchandise exported to the United States was cars for a value of US\$ 34.8 billions. The increasing volume of trade between the United States and Mexico is predominant in the border area and has resulted in the creation of vertical supply relationships. Industries such as automotive, machinery and electronics rely on the manufacturing companies in Mexico, called "Maquiladoras" in order to finish the intermediate inputs and return them at a finished stage. The Maquiladora sector will be analyzed in the following sub-chapter of this bachelor thesis.

The Senior Economist and Research Advisor, Thomas Klier, argue that as a result of NAFTA, the automobile manufacturing companies relocated their production from the

United States and Canada to Mexico (Thomas Klier, 2017). Even though Mexico does not have its own automakers, the country was in the 6th position of the world's leading car producers (OICA, 2019). In 2016, Mexican car production amounted for 3.5 million units contrasting with 1994 production of 1.1 million. During the same period, 2.8 million units were exported, a five-time increase from the 570'000 units exported in 1994. Under NAFTA, Mexico increased the production of light vehicles at an average annual rate of 13 percent.

Figure 6: Mexico's light vehicle production and share of North America's production, 1990-2016



Source: Thomas H. Klier calculations based on data from WardsAuto InfoBank [online]. [Viewed 05 July 2020]. Available from: <https://www.chicagofed.org/publications/economic-perspectives/2017/6>

In Mexico, the automotive sector generated 735,000 jobs in 2016. Compared to its neighbors, Mexico has the lower wages in the region and the labor costs represent 10 percent of the operating costs in the automotive assembly plants (Juan Arvila, 2018). Due to the relocation of the automotive manufacturing companies to Mexico, the production of light vehicles in the United States and Canada declined between 1990 and 2016. The table below shows how the Mexican automotive production share increased from 6.5 percent in 1990 up to 19.5 percent in 2016.

Table 2: North America's light vehicle share production in the region, by country, 1990-2016

| | 1990 | 1995 | 2000 | 2005 | 2010 | 2016 |
|---------------|-------|-------|-------|-------|-------|-------|
| Mexico | 6.5% | 6.1% | 10.9% | 10.2% | 18.9% | 19.5% |
| United States | 77.9% | 78% | 72.1% | 73.2% | 63.8% | 67.2% |
| Canada | 15.6% | 15.9% | 17.0% | 16.7% | 17.3% | 13.3% |

Source: Thomas H. Klier calculations based on data from WardsAuto InfoBank [online]. [Viewed 05 July 2020]. Available from: <https://www.chicagofed.org/publications/economic-perspectives/2017/6>

Between 2007 and 2014, the average salary of a Mexican worker in motor vehicle assembly lines represented 20 percent of the average salary of an American worker and 12.5 percent in the production of motor vehicle parts.

In 2017, the automobile production factories paid, on average, an hourly wage of US \$7.3 in final assembly and US\$ 3.4 in subcontracting to Mexican workers. In the United States and Canada, the average hourly wage is over US \$20.

2.3.3 Maquiladoras

The term “Maquiladora” represents the factories that assemble, manufacture or process raw materials and export the finished products under preferential tariff. The Maquiladora Program, established in 1964 by the Mexican government under the Border Industrialization Program (“*Programa de Industrialización Fronteriza*”), regroups foreign owned, controlled or subcontracted manufacturing plants that assemble, for a temporary period, duty free imported components in Mexico that will be manufactured and then exported. These components benefit from a special treatment regarding tariffs and fiscal exemption. Maquiladoras do not represent an “industry” in itself but manufacturing plants that operate in different industrial branches. The most important sectors that established Maquiladoras in Mexico are companies that manufacture electronic components, transportation equipment, electrical machinery and apparel and textiles.

This program aimed to increase employment in the northern Mexican region while offering better taxes regulation to foreign investors. All production materials associated with the Maquiladora arrived in Mexico without paying taxes and were sent back at a

lower tariff. The program did not include any restriction regarding the manufacture, assembly or production (total or in part) of a product.

Most of these plants' production was exported to the United States. However, during the decade of the 1990s, several plants from Asia (principally Japan) and Europe started establishing Maquiladoras in the region. Foreign companies such as General Motors, Ford, Samsung, Sony and Toshiba operates their manufacturing under the Maquiladoras Program. After several reforms to the program, rules in Maquiladoras were gradually relaxed until 1994 with the entry into force of NAFTA.

Under the "Decree for Development and Operation of the Maquiladora Industry" that regulated the legal requirement for foreign operations in Mexico, the benefits of Maquiladoras extended to all producers regardless of nations' origin and allowed foreign companies to operate factories in the entire Mexican territory¹¹. Additionally, they benefited from the duty-free importation of raw materials and were allowed to sell half of their total output to the Mexican market.

Regarding the labor conditions of the Maquiladoras' employees, the Mexican Constitution and the Federal Labor Law requires that all Mexican corporations, whether foreign or Mexican owned and part or not of a Maquiladora program, are subject to the same regulation. The basic provisions include the following provisions:

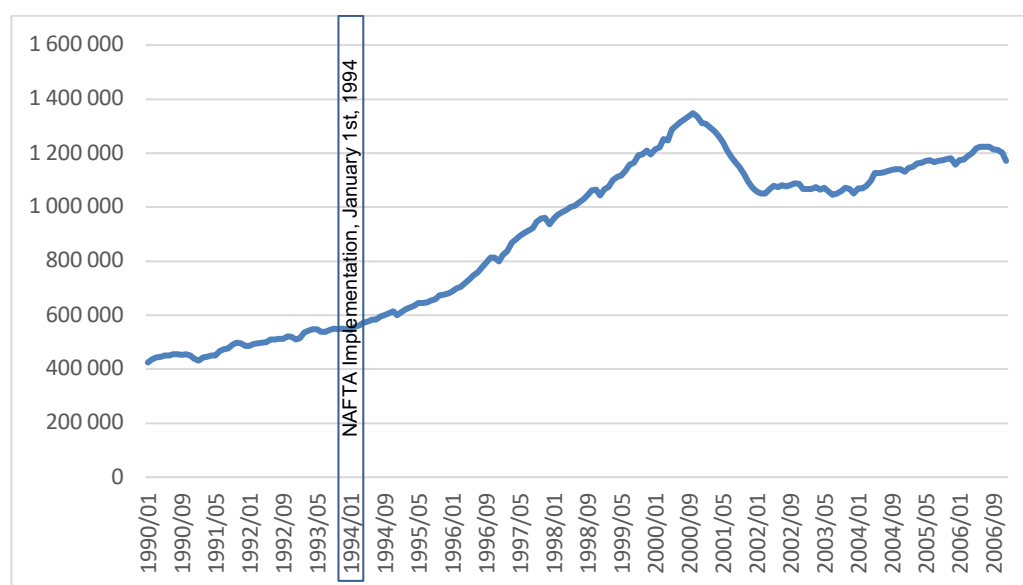
- Written employment contract
- 48 working hours per week
- Wages are based on a daily rate and must be in accordance with the Federal Labor Act and the National Commission on Minimum Wages
- Employees must be enrolled with Social Security and the company must contribute to the National Workers Housing Fund
- Benefits such as a vacation period, Christmas bonus and employee's profit-sharing are provided on an annual basis.

The maquiladora sector has become a vital facet of the Mexican economy. In 1998, the International Labor Organization estimated that the Maquiladora sector benefited, for the last 25 years, of an annual growth rate of 10 per cent versus the national average of 2

¹¹ Limitation on the location of the Maquiladoras: Not allowed in Mexico City, Guadalajara or Monterrey urban areas due to the congestion and industrial concentration already present

percent. In 1985, 800 Maquiladoras were established in Mexico versus over 2000 maquiladoras factories in 1995. Between 1990 and 1994 the maquiladora sector grew by 121'781 jobs, a 28.68 percent increase for the period and employed a total of 546'433 workers as of January 1994. After the implementation of NAFTA, the maquiladoras employment level grew by 667'172 jobs between 1994 and 2000, an average monthly increase of 9'266 jobs. Total employment represented 1'213'605 workers as of January 2000.

Figure 7: Employment in Maquiladoras (1990 – 2006)



Source : Instituto Nacional de Estadística y Geografía. [online]. [Viewed 13 July 2020]. Available from: <https://www.inegi.org.mx/programas/indmag/default.html#Tabulados>

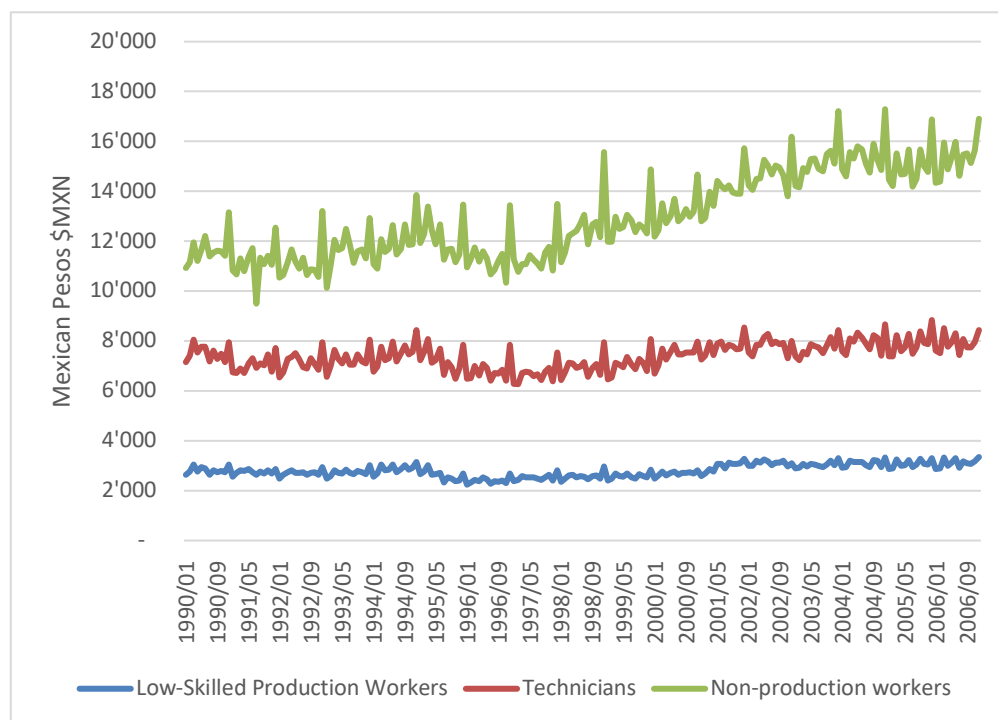
Due to the 2000's global recession and increasing competition with other low-wage countries such as India, China and Pakistan, Maquiladoras suffered a decline in employment between 2000 and 2002¹². During the following years, the growing trade relation with Mexican trade partners and the establishment of new Maquiladoras in the region helped to increase employment in this sector.

A very critical aspect of the Maquiladora Program was the low-wage level of production workers but this was also the principal reason for foreign companies to establish their manufacturing operations in Mexico. The real monthly wage of a production worker in a Maquiladora has increased by 712 Mexican pesos (US\$ 237) from 1990 to 2006. In

¹² GALHARDI, Regina M. A. A, INTERNATIONAL LABOUR OFFICE and EMPLOYMENT AND TRAINING DEPARTMENT, 1998. Maquiladoras prospects of regional integration and globalization. Geneva: Employment and Training Department, International Labour Office. ISBN 978-92-2-110955-6.

comparison, technicians real wage has improved by 1'264 Mexican pesos (US\$ 421) and non-production workers by 5'972 (US\$ 1'990) for the same period of time.

Figure 8: Real monthly wage of low-skilled production workers, technicians and non-production workers in Maquiladoras (1990 – 2006)



Source : Instituto Nacional de Estadística y Geografía. [online]. [Viewed 13 July 2020]. Available from: <https://www.inegi.org.mx/programas/indmaq/default.html#Tabulados>

The right to unionize in the Maquiladoras sector is guaranteed by the Constitution but the interest in forming part of one may varies between regions. Certain Mexican regions have an historical tradition of unionization and even though the principal objective of labor unions is to improve the working conditions of workers, most of the Maquiladoras factories provide better benefits than those required by law. Therefore, according to Aureliano Gonzalez Baz and its research paper entitled “*Manufacturing in Mexico: The Mexican In-Bond Maquila Program*” workers will probably have little interest in unionizing. The existing unions worked with management and participated in administrative tasks such as hiring.

On the other hand, due to the corruption in some federal entities of the Mexican government, many labor union leaders were government-appointed and did not support the interest of the workers. This trend resulted in multiple complaints from the workers side that demanded independent unions. Many protests were organized where workers

required their rights to be respected. However, Maquiladoras' high turn-over rate prevented workers to organize properly.

2.3.4 Labor Unions

Labor unions are organizations that represent the collective interests of employees in specific industries. They operate under the supervision of a representative, elected by the union members who take decisions on behalf of the members in order to increase benefits and improve labor conditions. Their main purpose is to protect the workers' rights set in the national labor laws and different international conventions ratified by the country they are operating in. Most of the time, labor unions are specific to an industry and unionized employees pay a quota to labor unions in exchange of them acting as advocate when bargaining with employers over wages, hours, benefits and working conditions.

In Mexico, 90 percent of production employees that work in industrial companies employing at least 25 people are unionized (Jose Grajeda, 2014). The country has over 11,000 labor unions. Most of them are members of the Confederation of Mexican Workers, better known as CTM (*Confederacion de Trabajadores Mexicanos*).

The CTM was founded in 1936 and represented an essential pillar of the Institutional Revolutionary Party (PRI) which, for more than 70 years, governed Mexico. The PRI had a very important relationship with the CTM, that comprised between 60 to 70 percent of all unionized workers in the country.

In order to foster a good relationship with the CTM, the Mexican government prevented and restricted other independent unions that were threatening the power of the CTM. Moreover, the PRI ensured that the labor-related decision taken would be favorable for the organization and rewarded union leaders with political positions at all levels of government granting them at least one seat in the Senate. The important developments in the relationship between the PRI and the CTM generated a phenomenon named "Charismo" where the leader of labor unions was designated by the government.

At the regional level of the party, 38% of the top positions were held by union leaders. Occasionally when the government feared that Labor was getting too powerful relative to the other pillars (agriculture, military and the popular sector), they would allocate more resources to other groups or support other labor unions to reduce CTM's influence.

For many years the Mexican workers did not have access to fundamental workers' rights. There was no democratic election held in labor union and the labor contract negotiated with the leader of the union represented the interest of companies instead of the interest of workers.

After several labor reforms and in order to regulate the trade union relationship, the Mexican government ratified on November 23rd, 2018 the Convention 98th of the International Labor Organization on Employee's Right to Organize and Collective Bargaining. This convention implies that the employee is free to decide whether joining a trade union or not. Moreover, all trade unions must be recognized by the employers and the authorities.

In the United States, American employees have the right to approach and join a labor union in order to increase their bargaining power when negotiating an employment contract, this right is guaranteed by the National Labor Relations Act of 1935 and since the Civil Right Act of 1964 all employees must be treated equally without discrimination by their employer or labor union.

There are two main labor organization in the United States:

1. The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)

The AFL-CIO was founded in 1955 after the merger between the American Federation of Labor and the Congress of Industrial Organization. Nowadays, the organization regroups 55 national and international labor unions and represent more than 12.7 million workers (U.S. Bureau of Labor Statistics, 2014). The American Federation of Teachers is the largest labor union affiliated to the AFL-CIO with 1.7 million members followed by the American Federation of State, County and Municipal Employees that register 1.4 million members.

2. Change to Win Federation (CtW)

The CtW was founded in 2005 as a coalition of different American labor unions, after several of them disaffiliated from the AFL-CIO. As of 2016, the Change to Win Federation regrouped more than 3.4 million workers. Principal affiliates to the CtW are the Service Employees International Union and the United Farm Workers.

In 2019, 7.5 million U.S employees were affiliated to a labor union in the private sector and 7.1 million workers in the public sector.

In Canada, 30 percent of workers are affiliated to a labor union. Overall, the country has 776 labor unions from which most of them are national. Canadian labor unions can be categorized into four main types: national, international, independent local organization, and directly chartered local.

Almost 70 percent of unionized workers were affiliated to a national union in 2015. International labor unions represented about a fourth part, independent local organizations and directly chartered locals accounted for 5.5 percent for both.

2.3.5 Federal minimum wage

In the United States, federal minimum wage is set by the United States Labor Law. The Fair Labor Standards Act of 1938 is one instrument that set the right to a minimum wage and in 2007, a new provision named “The Fair Minimum Wage Act” amended the Fair Labor Standards Act by fixing federal minimum wage at US\$ 7.25 per hour.

Moreover, the labor law on minimum wages can also be regulated by each State but must comply with the minima set at the federal level. Each employer is entitled to pay the worker the highest minimum wage when the employee is subject to both.

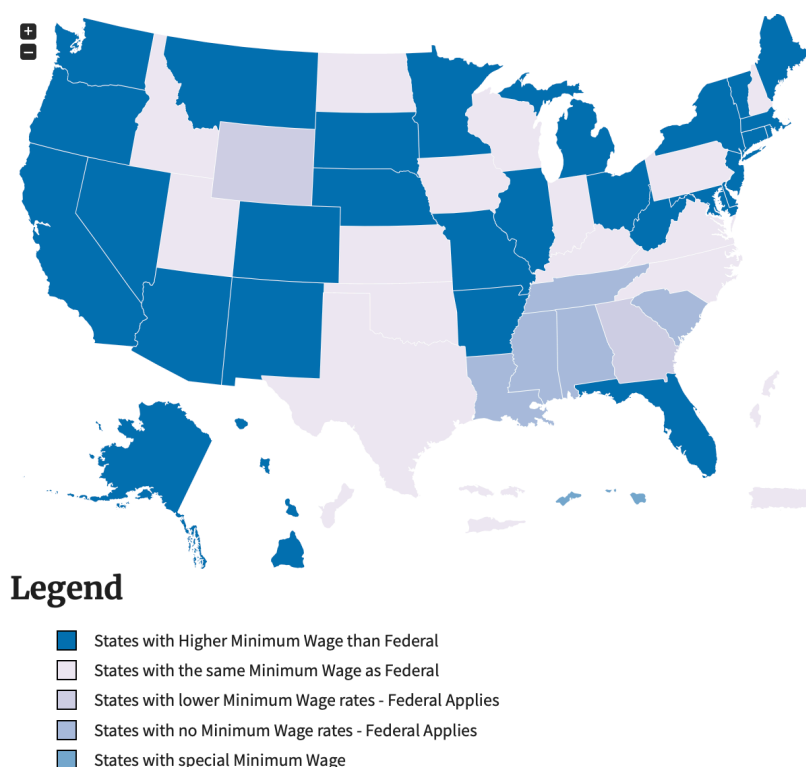
Table 3: Federal minimum wages per hour in the United States (1991-2009)

| Year | Federal Minimum Wage |
|-------------|-----------------------------|
| 1991 | US\$ 4.25 |
| 1996 | US\$ 4.75 |
| 1997 | US\$ 5.15 |
| 2007 | US\$ 5.85 |
| 2008 | US\$ 6.55 |
| 2009 | US\$ 7.25 |

Source: U.S. Department of Labor [online]. [Viewed 18 July 2020]. Available from: <https://www.dol.gov/agencies/whd/minimum-wage/history/chart>

Even though there has been no increase on federal minimum wage since 2009, most U.S States apply higher wages than the minimum required by the The Fair Minimum Wage Act (Figure 9). In 2019, The United States House of Representatives passed a bill named “Raise the Wage Act” which purpose is to raise federal minimum wage gradually to US\$ 15 per hour by 2025. This increase is not yet a certainty since it still has to pass by the Senate and the President.

Figure 9: Minimum wage by U.S. states versus the Federal Minimum Wage as of July 1st, 2019.



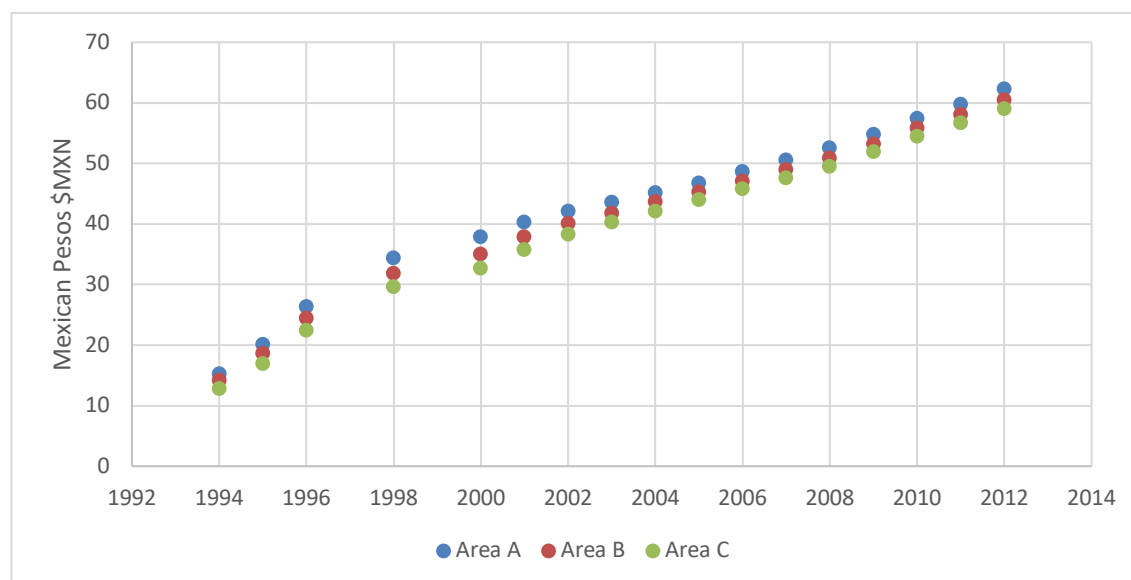
Source: U.S. Department of Labor [online]. [Viewed 18 July 2020]. Available from: <https://www.dol.gov/agencies/whd/minimum-wage/state>

In Mexico, the distribution of the federal minimum wage is regulated under the Federal Labor Act and is the responsibility of the National Commission on Minimum Wages. This commission is a tripartite body composed by eleven representatives for each party. Labor unions, government and employers meet annually in order to set the federal minimum wage which is distributed according to a classification that takes into account the geographical location of each state and municipality. This classification includes

three geographical areas, "A", "B" and "C". The list of the municipalities that correspond to each area is available in the Appendix 4.

From 1994 until 2012, the minimum wage increased in an average of 9.64 percent for Area A, 9.93 percent for Area B and 10.44 percent for Area C (Figure 10).

Figure 10: Federal minimum daily wage in Mexico (1994-2012)



Source : Comision Nacional de los Salarios Minimos [online]. [Viewed 20 July 2020]. Available from: <https://www.gob.mx/conasami/documentos/tabla-de-salarios-minimos-generales-y-profesionales-por-areas-geograficas?idiom=es>

In 2013, the National Commission on Minimum Wage reorganized the distribution of geographic areas. This decision reduced the number of geographic areas to two instead of three until October 2015 where a single minimum wage was approved at the national level.

Table 4: Federal daily minimum wages in Mexico (in Mexican Pesos) (2013-2015)

| Year | Area A | Area B |
|------|--------|--------|
| 2013 | 64.76 | 61.38 |
| 2014 | 67.29 | 63.77 |
| 2015 | 70.1 | 66.45 |

Source : Comision Nacional de los Salarios Minimos [online]. [Viewed 20 July 2020]. Available from: <https://www.gob.mx/conasami/documentos/tabla-de-salarios-minimos-generales-y-profesionales-por-areas-geograficas?idiom=es>

Table 5: Federal daily minimum wages in Mexico (in Mexican Pesos) (2015-2017)

| Year | National |
|------|----------|
| 2015 | 70.1 |
| 2016 | 73.04 |
| 2017 | 88.36 |
| 2018 | 88.36 |

Source : Comision Nacional de los Salarios Minimos [online]. [Viewed 20 July 2020]. Available from: <https://www.gob.mx/conasami/documentos/tabla-de-salarios-minimos-generales-y-profesionales-por-areas-geograficas?idiom=es>

Finally, in 2019, distribution of federal minimum wage was divided in two areas:

1. The Northern Border Area, which includes 43 municipalities in 6 different states that share boarder with the United States
2. The national area

Table 6: Federal daily minimum wages in Mexico (in Mexican Pesos) (2019-2020)

| Year | National | Northern Border Area |
|------|----------|----------------------|
| 2019 | 102.68 | 176.72 |
| 2020 | 123.22 | 185.56 |

Source : Comision Nacional de los Salarios Minimos [online]. [Viewed 20 July 2020]. Available from: <https://www.gob.mx/conasami/documentos/tabla-de-salarios-minimos-generales-y-profesionales-por-areas-geograficas?idiom=es>

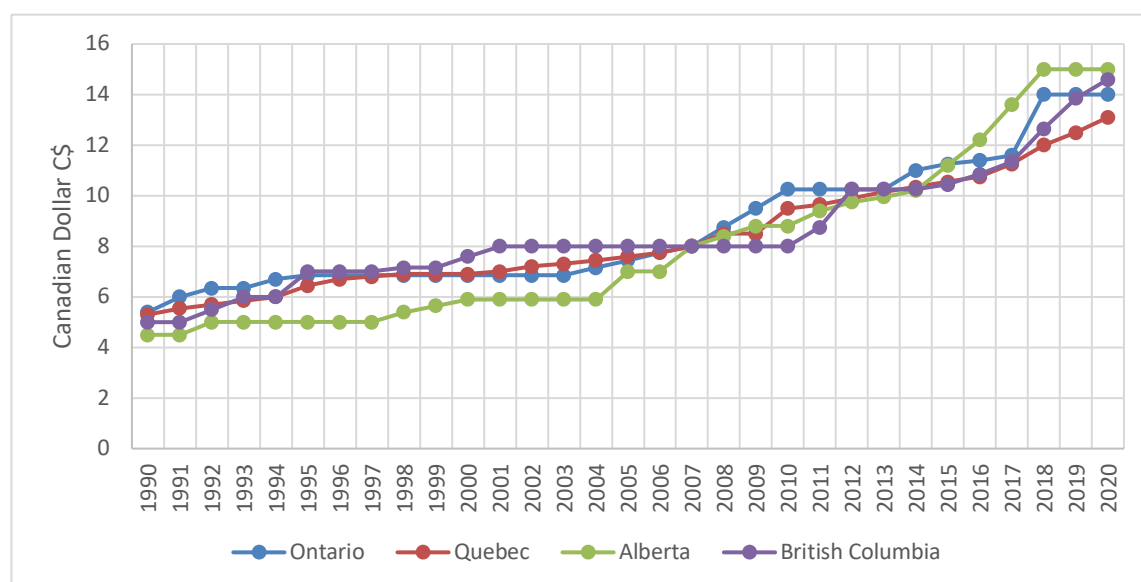
In a hypothetical scenario, on a working day of 9 hours in 1996, the U.S. worker that is being paid the federal minimum wage would earn US \$42.75 per day. In Mexico, under the same circumstances, the worker would earn US \$3.28 per day. The same situation in 2020 would represent US \$65.25 for a U.S. worker and US \$9.27 for a Mexican worker earning the federal minimum wage under the Northern Border Wage (see Table 6). Even

though the wage gap is still significant, improvements have been made in this direction. If compared, the wage gap represented a difference of about 13 times the wages applied in Mexico in 1993 while half of it in 2020.

Regarding Canada, the government do not regulate the minimum wage at a federal level. Instead, this responsibility was granted to the different provinces and territories.

In order to have an overview of the evolution on minimum wages in Canada, the figure below shows the evolution of minimum salaries in the states and territories which population represents 75 percent of Canadian total population (Ontario, Quebec, British Columbia and Alberta)

Figure 11: Minimum wage in Ontario, Quebec, British Columbia and Alberta (1990-2020).



Source: Historical minimum wage rates in Canada - Open Government Portal [online]. [Viewed 10 July 2020]. Available from: <https://open.canada.ca/data/en/dataset/390ee890-59bb-4f34-a37c-9732781ef8a0>

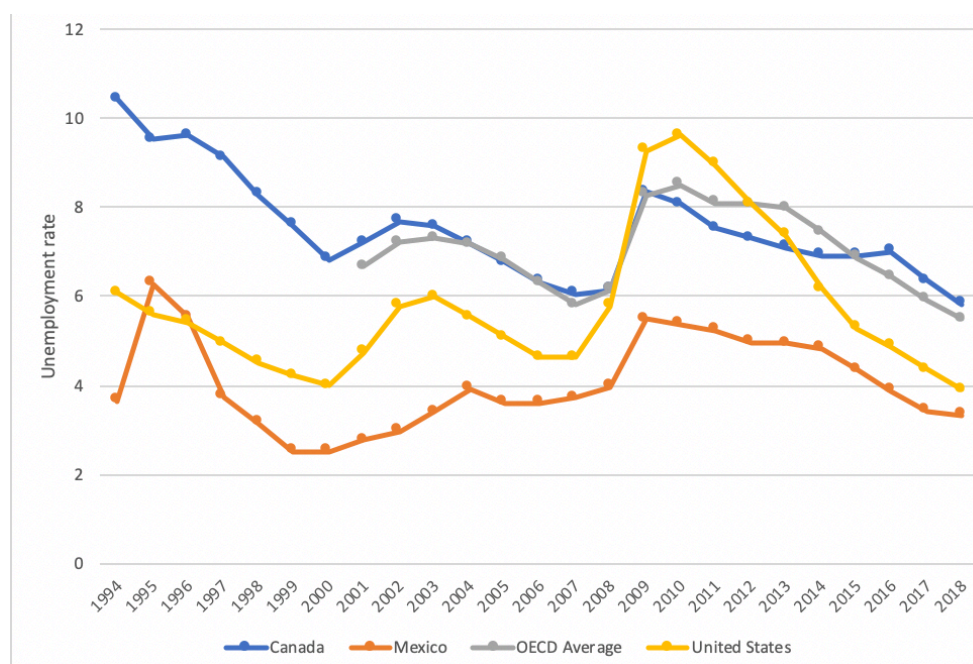
2.3.6 Unemployment

According to the International Labor Organization (ILO), the unemployment rate is defined as the number of unemployed as a percentage of labor force. Those who are taken into account as unemployed are persons of working age who are not employed, currently looking for employment and available to take up employment given a job opportunity.

The World Employment and Social Outlook report from ILO published in 2020 indicated that the unemployment rate in the United States and Canada remain low and stable compared to other countries and has decreased gradually since the Great Recession caused by the financial crisis between 2007 and 2008. After the crisis, both countries experienced an important increase in their unemployment rate which took several years to return to pre-crisis levels.

From 1994 to 2018, when most of the OECD countries persistently experienced high unemployment rates, Mexico kept recording lower rates than the United States and Canada (Figure 12). Such low rates could be interpreted as a sign of full employment. However, one factor that helps to understand the Mexican low level of unemployment is the high levels of informal employment that exists in the country.

Figure 12: Unemployment rate in the United States, Mexico, Canada



Source: Unemployment Rate – Organization for Economic Co-operation and Development. [online]. [Viewed 04 July 2020]. Available from: <https://data.oecd.org/unemp/unemployment-rate.htm>

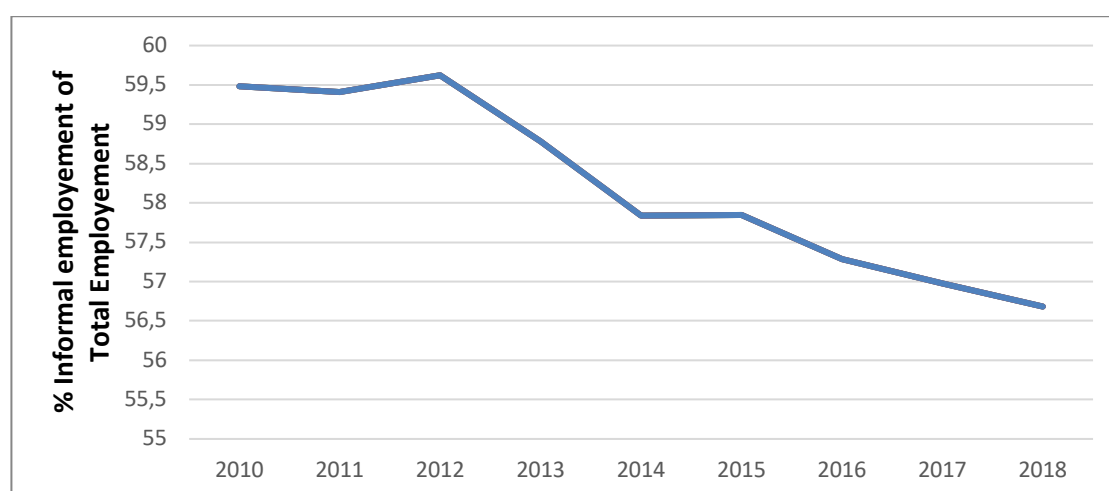
The informal economy involves a large number of persons in unstable jobs and represents a significant barrier to the development of skills. Moreover, the non-existence of unemployment insurances force unemployed people into informal activities.

In Mexico, the informal economy represents an important part of the country's economic structure. It was estimated that by 2017, the informal economy accounted up to 25 percent of the country's GDP.

In order to analyze what the consequences of informal economy are, we must firstly understand its characteristics. The activities involved in the informal economy are small-scaled, with limited use of technology and low-skilled labor, and in a family- or small community-owned structure. The low profit margin of these activities only allows their beneficiaries to subsist to their principal needs.

Informality makes modernization and competitiveness projects at the country's global level unviable. It does also limit economic growth making it impossible to have a more egalitarian society. Moreover, it is considered that informal enterprises have 50 percent less production capacity than enterprises in the formal economy (Vertigo, 2013). The informal employment in Mexico accounted up to 59 percent of total employment at its highest in 2012 and decreased to 56 percent in 2018 (Figure 13)

Figure 13: Informal Employment in Mexico (2010-2018)



Source: Instituto Nacional de Estadística y Geografía. [online]. [Viewed 03 July 2020]. Available from: <https://www.inegi.org.mx/rnm/index.php/catalog/INEGI>

3. Discussion

3.1 Effects of USMCA labor chapter on labor market and trade

After analyzing the different indicators in the North America region, the following section aims to discuss what the potential effects on labor market and trade are, after the implementation of USMCA. Additionally, thanks to the interviews realized, we will discuss their feasibility and the opportunities the USMCA creates in the region. To this end, a case study will be presented in order to illustrate what challenges Mexico is facing in the agriculture industry.

The renegotiation of the North American Free Trade Agreement has been very controversial and the uncertainty with regards to the implication of Canada in the agreement resulted in an increased media focus on the relationship between the U.S. and Mexico. Moreover, the particularity of this regional free trade agreement is that it is formed by two countries (United States and Canada) considered as industrialized countries, with an emerging market in which the implementation and enforcement of the new labor regulations aims to put on an equal footing the Parties.

Since the United States is known as the largest consumer society in the world, it is understandable that Mexico and Canada's principal interest in maintaining a good trade relation with the U.S.A ends up in renegotiating a free trade agreement and conceding on some aspects. In Mexico, the large investments in assembly plants and in auto parts activities are American while investments in the mining industry come principally from Canada.

Canada is certainly a very important partner for Mexico although their trade relationship is not comparable to that of the U.S.-Canada or U.S.-Mexico. The geographical aspect of border sharing between the U.S. and Mexico strengthens the mutual access of both markets and the advantage of the immediate neighbor led the industries to trade with the United States for the most part.

Nevertheless, the three countries are part of a bloc where Canada remains and will continue to be an important ally and commercial partner. With this renegotiated agreement, the free trade bloc has the opportunity to become one of the best regional economies worldwide.

It is likely that the development of regional supply chains has increased integration across the continent and could be considered as one of the most important economic effects. Manufacturing processes were carried out in different locations where the production process was considered as more efficient.

Labor clauses under the North American Agreement on Labor Cooperation had a cooperative approach. The purpose of this side-agreement was to improve labor standards only through cooperation. Even though the side-agreement established mechanisms for dispute resolution they do not had the coercive approach that is meant under chapter 23. The NAALC could be perceived as a failure in terms of implementation of labor standards. As of 2017, 39 cases were submitted to the National Administrative Offices regarding labor disputes and none of them went further in the dispute-resolution process than ministerial-consultations (Massengill, 2017)

Compared to its predecessor, USMCA put at the core of the agreement the social aspect and took into consideration the differences prevalent among the Parties regarding the workers' freedom to exercise their rights. With the implementation of Chapter 23 and the Annex 23-A, USMCA transformed what was negotiated previously as a side agreement, into a chapter with obligations and a set of rules that will equilibrate the working standards in the Parties while advocating for the measures a Party can require in case of suspicion of non-compliance from another Party. The threat of economic sanctions taken against a country will encourage the industries and the government to work together in order to comply with the regulation. We could also wonder if the new trade measures could be interpreted as protectionist and constrain growth. The increased restrictions on auto trade and investment may damage the overall economy.

The challenges imposed by the new agreement make this an optimum time for a company's supply chain models to change their operational approach. Under NAFTA, one aspect that was, in repeated occasion, criticized was the relocation of manufacturing industries to Mexico due to the lower cost. The new Labor Value Content rule aims to reduce the level of wage disparity between the member states through the implementation and enforcement in Mexico of new labor laws. Even though it is not conceivable as of today to reach a value of US 16\$ per hour in all Mexican assembly plants, the Mexican economist Luis de la Calle is confident that carmakers in North America will conform to the 40 percent rule. Semi-automated companies with a reduce number of staff and where quantities produced are important could perhaps envisage to reach the minimum wage required. Recently, Honda Motor affiliated parts maker Keihin

and auto component maker Piolax have increased their hourly wage up to US \$16 and are the only two factories in Mexico that comply with this provision (Nikkei Asian Review, 2020). In general terms however, in activities where labor is still required, it will be difficult to fulfill as a labor product of Mexico.

Automakers will probably not shift manufacturing operations back to the United States. What is most likely to happen is that the Mexican assembly plants that cannot reach the required minimum salary will opt to pay the 2.5 percent tariff to export the automobiles to the United States. On the other hand, the automobile industry is fast-moving and some of these regulations may be obsolete in the following years.

“These rules are designed to protect the cars of the past. The cars of the future will be electric with software sourced globally.”
(Luis de la Calle, 2018)

This situation is very similar to what happen with the negotiation of NAFTA in 1994 where in order to qualify for zero tariffs, televisions needed to have a picture tube manufactured in the region. This regulation became outdated with the arrival of flat-screen TVs.

It's undeniable that several U.S. auto workers have lost their jobs as a result of NAFTA. However, workers may have fared worse without it. The integration of supply chains across the continent kept an important share of production in the United States and Canada whereas the relocation of some assembly plants to Mexico were exclusively destined to labor intensive activities. In a hypothetical scenario, without NAFTA, Asian automakers could have increased competition.

“Without the ability to move lower-wage jobs to Mexico, we would have lost the whole industry.”
(Gordon Hanson, 2016)

Despite the skeptical opinion of several economists regarding the effect of USMCA on Mexican wages, the arrival of left-wing President Lopez Obrador has resulted in a new wage increase of 16 percent at a national level in 2019 and the implementation of a Northern Border Area wage. In 2020, an increase of 20 percent in the national minimum wage and 5 percent increase in the northern border area could be considered as a first step towards better working conditions and competitiveness in terms of salary.

In the United States, the reduction of wage disparity between U.S and Mexican workers aims to drive back investment. For example, in the U.S. Automobile industry, the expected investment amounts up to US \$34 billion by 2025 according to the United States Trade Representative. They also expect to promote the annual purchase of U.S. produced automobiles for a value of US\$ 23 billion and encourage automakers and

suppliers to locate future production of new energy and autonomous vehicles in the United States that will generate the creation of more than 76,000 jobs in the sector by 2025 (USTR, 2019). With the implementation of the agreement, the required improvement of the Mexican labor laws may result in creating a similar labor environment than in the United States or Canada.

In Mexico, the agreement effects are intended to increase worker participation in labor unions and would ultimately create a climate of freedom where the leaders of labor unions will be elected through a democratic process and represent the interest of the workers. Moreover, in this section, it is important to highlight the incongruence from the United States with regards of the 98th Convention of ILO. The Annex 23-A required Mexico to reform its labor laws in order to comply with the convention while the United States has not even ratified it¹³.

However, with a better regulated access to labor market and with the incentive of increasing minimum wages, Mexico could highlight with outside trading partners their high percentage of productivity, update their image of “low-wage” country and become more competitive, reinforcing their advantage of border sharing with the United States

Regarding the Rapid Response Mechanism, because of the asymmetry in its application, the mechanism will principally impact Mexican companies. However, as a result, American, European and Asian companies with affiliates in Mexico or that rely on a Mexican company for their supply chain could also be impacted

An economic problem that may result from the use of this dispute settlement mechanism is the preliminary sanctions taken against the covered facility that may forbid the exportation of goods or services. What are the guarantees, in the case of export sales losses, that the employer may not take the decision to reduce its production volume and therefore employment?

Likewise, we can question whether the panels formed under this mechanism can resolve, within the expected period of time, disputes with high complexity levels such as those involving violation of freedom of association and collective bargaining. This explain the on-site visits required by the mechanism but the declaration of large number of workers versus the employer may take more time of inspection by a panel than expected.

¹³ Canada ratified the 98th Convention of ILO in June 14th, 2017

These questions may remain unanswered within the implementation-period of the agreement. Time and the development of disputes using this mechanism will allow us to retrospectively judge if it can be considered as innovative or not.

3.1.1 Case Study 1: Migrant Farm Workers in Mexico

The purpose of the following case study is to illustrate the current situation in a specific area and understand why the enforcement of the Chapter 23 is important.

According to an article published in 2019 by the Inter Press Service (IPS), workers in the Mexican agricultural sector were in repeated occasions involved in situations where their labor rights were violated. In order to understand the context, it is important to mention that farm workers in the Mexican agricultural sector are principally workers from southern Mexican States that migrate temporarily to northern States with the incentive of earning higher wages. As shown in Figure 14 and Figure 15, farm workers from south States earn lower wages on average than farm workers from northern States. 58 percent of farm workers from Campeche, Tabasco and Veracruz earn less than twice the minimum wage while in Sinaloa and Sonora, both States that share border with the United States, a larger number of farm workers earned more than three times the minimum wage. A similar situation is observed in Jalisco and Michoacán.

Figure 14: Population of farmworkers earning up to 2 Minimum Wages (176.72 Mexican Pesos) in 2018



Source: Migration Dialogue. [online]. [Viewed 28 July 2020]. Available from: <https://migration.ucdavis.edu/farm-labor/events/2018/10/15/farm-workers-in-mexicos-export-agriculture/report/>

Figure 15: Population of farmworkers earning 3 Minimum Wages and above (265.08 Mexican Pesos) in 2018



Source: Migration Dialogue. [online]. [Viewed 28 July 2020]. Available from: <https://migration.ucdavis.edu/farm-labor/events/2018/10/15/farm-workers-in-mexicos-export-agriculture/report/>

As specified by the National Institute of Statistics and Geography (INEGI) Mexican migrant farm workers accounted up to 2.9 million people in 2017. These workers frequently suffer from bad labor conditions and instability from their employer. A member of the Mixteco Yosonuvico of Sonora Cerró Nublado cooperative shared in the interview published by IPS that some employers in the Mexican farms do not provide social security and working contracts and the working time of the farmers can amount up to fifteen hours a day. The National Network of Agricultural Day Labourer (*Red Nacional de Jornaleros y Jornaleras Agrícolas*) backed up this accusation and published a report entitled “Violations of the rights of agricultural day laborers in Mexico” where it is mentioned that this situation is a common practice in the Mexican agricultural sector.

The researcher Mayela Blanco from the Center for Studies in International Cooperation and Public Management explain the recruitment process of the migrant farm workers in which the employer promises an advance payment when in reality there is no contract between the parties and on most of the occasions the workers do not get paid until the end of the work period.

An additional problem is that several products that are grown in these farms are destined for exportation. The U.S. Bureau of International Labor Affairs published a report where they attributed the production of chile peppers and tomatoes in some small

to medium-sized Mexican farms to child labor and forced labor. These farms were established mostly in northern States such as Baja California, Chihuahua, Jalisco and San Luis Potosi. Moreover, products such as beans, coffee, cucumbers, eggplants, melons, onions, sugarcane and tobacco are also subject to child labor in some Mexican farms.

In this case study, the following articles under USMCA were violated: **“23.6: Forced or Compulsory Labor”**, **“23.7: Violence Against Workers”** and **“23.8: Migrant Workers”**. In a hypothetical case where a Party submit a complaint against Mexico for violation of the above-mentioned rights. The General Dispute Settlement Mechanism would run since the Rapid Response Mechanism do not include agriculture as a “priority sector”. Therefore, the enforcement of the Chapter 23rd is fundamental to ensure the labor rights in this sector.

4. Conclusion

This bachelor thesis has considered what could be the possible impact on labor market and trade as a response to the implementation of the new free trade agreement between the U.S.A, Mexico and Canada. The discussions held with Dr. Lorenzo Roel Hernandez, Luis Rodrigo Morales Vélez and Eulalio Cerda Delgadillo helped to determine that positive effects on labor market and trade could occur, but only if industries, employers, labor unions, workers and government work together.

The expected effects on trade and on the labor markets may be highly beneficial to all industries and sectors. Government representatives are confident that under the renegotiated agreement, all industries and sectors will experience growth and benefit from a more integrated supply chain. Moreover, this bachelor thesis highlighted the important interdependency on the United States by Canada and Mexico, while the relation between both partners is only significant. The implementation of the new agreement could be the perfect occasion for both countries to reinforce their own trade relationship and foster an increase in mutual investment.

On the other hand, it is complex to define what the precise effects of the agreement will be on trade and labor markets. Other sources, such as globalization, future technological changes and political decisions make it even more difficult to distinguish the real impact of USMCA in the region of North America. Throughout this research paper, we discussed and contrasted different elements that allowed us to contemplate the extent to which labor markets and trade could be impacted.

While NAFTA prioritizes the economic development of the region, USMCA acknowledges the importance of integrating a social aspect in the agreement and to boost the Mexican labor market in order to face the challenges and problems the country has encountered regarding their working conditions. Taking into account this aspect in a treaty which principal purpose is to regulate trade is a very important step toward a more equalitarian and humanitarian society.

Finally, regarding a key challenge of this agreement, all interviewees were unanimous: the Mexican industries will be under pressure and complaints from the United States and Canada regarding the labor clauses of the agreement and particularly regarding the denial of freedom of association and collective bargaining are expected. Therefore, companies shall comply with the regulation as quickly and efficiently as possible in order to diminish the risk of facing legal complaint and avoid interrupting their business.

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Appendix 1: Interview of Dr. Lorenzo Roel Hernández

Role: President of the Labor Commission of the Confederation of Mexican Employers.

Date: 03.07.2020

The objective of this interview is mainly to have a talk and to know your opinion and experience about the labor issue in Mexico.

With the implementation of the T-MEC, what are the main challenges that the Mexican labor market will face?

More than challenges, it is simply to fulfill the obligations in a special way, in this treaty they are unique and exclusive to Mexico. Annex 23-a is the annex to labor chapter 23; it brings obligations that are unique and exclusive to Mexico as a country. In one part, the implementation of labor reform is an obligation of the country. In this regard, we are in the process of implementing the conciliation and arbitration boards that are currently the courts that resolve individual problems between workers and employers, and collective problems between union bodies and employers or between union bodies themselves.

Currently, the conciliation and arbitration boards are administrative tribunals that depend on the federal executive branch and have a special tripartite resolution formula because it resolves three parties: who represents the government, who represents the workers and who represents the employers; it is a formula that has been criticized for many years in Mexico. Since the constitutional reform that entered into force in 2017, this obligation has been included in our constitution to migrate from these conciliation and arbitration boards to courts that will depend on the federal judicial power in federal matters and the judicial power of the states, which will also establish local courts in local matters.

In a complex area, collective bargaining agreements in Mexico conform to current legislation and, although the law was reformed as of May 2, 2019 in this transition process, collective bargaining agreements are registered at the federal level with the federal labor board and at the local level with the various states. Union bodies in federal matters are registered with the general directorate of association registration, which reports to the federal labor secretary, and in local matters, these registrations are made at the conciliation and arbitration boards.

The new formula derived from the constitutional reform of the labor reform and in accordance with the obligation that was confirmed in Annex 23-a of the T-MEC, will no

longer have these registration procedures for CCTs and union bodies and as of October a body will be in place that will be called the Federal Center for Labor Conciliation and Registration that will be responsible for these types of registrations and will have an additional function in relation to the new formula for the administration of justice, since it will intervene in a conciliatory part of both individual issues between the worker and employer and collective issues between union bodies and employers.

It is a previous function according to the constitutional and labor reform that came into force in May 2019, it is a mandatory pre-judicial procedure. Before a worker files his claim, he will have to exhaust a conciliation procedure. This is an idea that is intended to work in Mexico to avoid the large number of conflicts that currently exist in the courts.

The formula is that this conciliatory process is initiated without the existence of a specific claim through a lawsuit, the idea is that the worker no longer arrives with the personal interest of an advisor or a lawyer, but with his own interests and that allows the employer with the worker with the intervention of conciliatory officials that the idea is that they are people very prepared to reach an agreement between the parties and avoid a jurisdictional procedure.

In general terms, the challenge for Mexico is to carry out this part of the transition as soon as possible, we are only in the first stage, the idea is that between now and October 10 states will comply with the process of having new courts and the federal center will be constituted, they will begin with the functions of these 10 states, one of them is already down, there are only 9 states and that is the part of the obligation of the Mexican government through the judicial powers, federal and local on the part of the employers. The primary obligations that are related to a new issue in our treaty are the rapid response labor mechanisms, which are mechanisms that are primarily directed at Mexico's obligations; although, Mexico can also activate the mechanisms against the U.S. and Canada, since they are directed at claims made for two primary concepts: for the denial of union rights for workers and collective bargaining rights. These are practically the only two aspects that can be dealt with in these new procedures, and the challenge at the end of the day for companies that is a bit complex is through the union bodies that are directly obliged in terms of the rights to organize and collective bargaining without intervening with the union bodies which is a prohibition by international agreements where companies cannot intervene in the activities of the union bodies and which is also a special burden, because in that responsibility of the union bodies if there

is a denial of the rights to organize and collective bargaining, the problem is with the company with a possible economic sanction as established in the treaty.

I understand that the U.S. and Canada can take action to limit trade with Mexico in the event that a violation of freedom of association is confirmed in an industry. How are Mexican industries preparing for the application of the Rapid Response mechanism in labor matters?

In that sense, what we have today is an open dialogue table for the exchange of information. The business sector led by the CCE with the secretaries of the economy and labor; to analyze on the labor side with the secretary of labor regarding compliance with these obligations, the criteria and the part of the implementation processes, because there are parts contained in Annex 23-a that cannot be complied with as long as the Federal Center for Labor Conciliation and Registration is not in operation, but in a preventive manner there is this permanent dialogue table, which is in charge of coordinating this permanent dialogue work group, almost every third day we have talks. Of course, we are also aware of some signs that some companies have made in recent years due to processes, and the idea is precisely to prepare the companies through this dialogue to carry out a preventive self-evaluation precisely on the issues of unionization and collective bargaining rights, and precisely in this aspect, with the support of specialists from the other organizations that are part of the CCE, we are preparing a list or protocol for self-analysis so that the companies have a tool to determine which aspects they need to consider and be certain that they are fulfilling these obligations and are not denying or violating workers' rights.

In this sense, as a preventive measure, we will be talking through our President Carlos Salazar with companies and groups that already have certain records simply to support them in this preventive part and in the dialogue also with the Secretary of Labor and the Secretary of Economy because in this function this table exists as an inter-institutional agreement because these processes what is defended at the end of the day is still and when it is a company or an establishment covered as defined in the mechanisms, here it is a matter of defending the country in the trade that it has.

This is one of the aspects where we have a good relationship with both secretaries, precisely to work in a preventive way and also when some procedure comes to be learned within these new mechanisms and to be prepared to carry within the best way without getting to give some mechanism.

If it is foreseen today that the USA or Canada will file a lawsuit against Mexico?

In the United States it has been said that there are lawsuits coming. In the past few days, the rules for receiving this type of complaint have been issued in the United States and, at the end of the day, they are advertising that anyone who has a question or complaint should carry out the procedures. In this part, unfortunately, the United States is entering a very complex political process so unfortunately, we also hope that because of political issues there are some claims simply to motivate those issues so politically marked in the U.S. How much can come the number of claims? We don't know, that's simply why this permanent institutional group exists, so that as soon as we know of any action, we can work as a country to prepare ourselves to try to avoid the installation of a mechanism.

The treaty specifies that forced labor should be eradicated, migrant workers protected, and child labor eliminated, issues of great importance to Mexico. However, in Mexico, every 56 people out of 100 workers (according to the INEGI) generate an income in the informal economy, an aspect that is not taken into account by the TMEC. How can Mexico justify an improvement in these three issues if more than half of the workforce is not working legally?

First, one of the things that is of great concern to Mexico as a country is that both forced labor and child labor are practically related to agribusiness in Mexico. In that part, Consejo Nacional Agropecuario, which is one of the organizations participating in the CCE, has been working permanently to ensure that within export activities or products competing with products imported into Mexico have no signs related to forced labor or child labor. In addition, in this part, in the case of forced labor, no procedure or mechanism is required, if there is any indication of forced labor simply block trade, then in that part National Agricultural Council is also working and we are supporting them as a technical group in a self-evaluation for companies. Simply to avoid all the conditions that the International Labour Organization requires.

In child labor, it is an even more complex issue that has much to do with culture, on the one hand, with Mexicans in the countryside by culture of many years, not by formulas of the employers but, simply culture in the countryside children or young people from very early ages participate in collaborating with their family in these activities. Here we have worked permanently with the ILO, especially with the ILO office for Mexico and Cuba, to support the areas where this may exist, because in addition, within the commitments of Mexico, the 2030 agenda is one of the important issues to combat: both forced labor and child labor. So that's what we're working on.

The issue of informal work is a serious problem in Mexico, and of course it is not included in the treaty, but we are working in a tripartite way, also with the ILO office in Mexico on the program that most countries have on the agenda of decent work, and in one of the areas we have been analyzing ways and formulas to bring informality to formality, unfortunately, because in Mexico over the years, without trying to avoid it, what has been done has been rewarded for informality. The government itself in its social programs by supporting people who are in the informal in one way or another prevents them from worrying about entering into formality.

We began last year with an analysis in small businesses of what the expectations of micro and small traders are for moving into formality. One of the very complex issues we have in Mexico and we have to work on the administrative procedures for registering an employer. In Mexico there is already a law on regulatory improvement, with the issues we are dealing with now in Mexico and with the government, which has other obligations, and so on. We are working on this; it is a very complex task and worse in these times of health and economic contingencies.

One of the issues regarding the labor revolution that the T-MEC will bring is in the new regulations in the supply chains, and especially the automotive one, the regional content should represent 75% in a few years compared to 62.5% with NAFTA.

One of the problems that companies that produce parts or manufacturing companies have the most, that is, assembly companies, is due to the content of the rule of origin that is known in the treaty. This growth, in terms of rules of origin, has a problem, which is the value of production in terms of wages. There is no way that in these years that are taking place, no company can reach values of 16 dollars an hour, there is no way.

We have been discussing this with the U.S. embassy for some years, how Mexico can comply with the rules of origin in terms of wages. A microsite would have to be set up in a specific area, but we do not really think it is feasible for these pieces to be sold for \$16 an hour, and we certainly discussed this with the U.S. shipowners when the decision was made. These parts will be imported with American or Canadian manufacturing, there is no way in these years to increase wages to that, because in the end what you end up with is not that the bosses can't force themselves to pay those types of wages, but they are wages that far exceed a local economy and that in the end would have more complex effects.

Perhaps, in semi-automated companies with few personnel, perhaps at some point a company that produces a lot but only has 15 workers instead of 500, could comply with this rule. But in general terms, in activities where labor is still required, it will be difficult to comply with this rule as a Mexican labor product.

Do you consider that this measure is protectionist on the part of the U.S. government, or does it involve a political or campaign background?

No. At the end of the day, at the beginning of President Trump's administration, what he wanted was to return to the United States all the manufacturing that is currently in Mexico, and the reality is that what also happens is that some manufacturing, not in those that have the rules of origin, but according to international business, some companies that due to some obligations or circumstances cannot continue in Mexico, are going to go to another latitude, they are not going to return to the United States. In this specific part, it was simply a formula to return certain manufacturing to the United States speaking only and exclusively of the rules of origin.

What are the expected effects on the U.S. labor market in the long term?

I think that for Mexico, regardless of the crisis, one of the issues that unfortunately we still do not have in Mexico is the tripartite dialogue, which as you know the ILO within the 5 pillars that it recommends in this crisis that is suffering in the world is precisely that there be a tripartite dialogue simply to agree on the best ways to overcome the crisis, because in the end no government in the world alone can overcome this type of crisis, and only then what has been lacking in Mexico, and this is a comment on the margin, is for our President to open this tripartite dialogue simply to help find better ways to overcome the crisis. Among these opportunities that we have as a country is the conflict between the United States and China, which as an expectation, I believe that we have many expectations of carrying out more productive activities in Mexico for commercial exchange, which at the end of the day all crises imply challenges that we have now in the reactivation of better practices and at the end of the day in how to reinvent ourselves.

I believe that these are the challenges we have in the activities of goods and services that, in the end, I believe that we have a sea of possibilities, simply the investor or the companies. Currently, we are a little bit adrift or alone because the government has not wanted to participate in this tripartite dialogue, but I think that with good projects and hand in hand with the productive force that are the workers, there is a lot of opportunity to first increase our activities and productivity again and then grow, because in the end

the crises that have occurred in the world always generate opportunities, so I think that if we put our hands on that part we can grow and take advantage of this important force. At the end of the day, with these great opportunities that can exist in trade, primarily with the United States and of course with Canada.

I would like to return to the comment you mentioned regarding the trade war that is going on between the United States and China. Do you think that Mexico, being a country where labor is not as expensive as in the United States or Canada, can not only for North America but for the world, be a country in which there can be more foreign investment taking advantage of a market like the United States that consumes a lot and become the door to North America?

Well, first Mexico is the door. I believe that it should not be seen as cheap labor, but rather as a first opportunity for our trading partners. I believe that this is the first aspect and simply to take advantage of these trade opportunities with our partners and I believe that the issue of "cheap labor" is not one that is biased, but I believe that Mexico will have to grow little by little in this area.

I insist that we need social dialogue between the government and workers on how to achieve more and better wages and job growth, but we also have other obligations on the sidelines. We have a problem at the door of a low possibility of a decent retirement for workers, the very informality of how you know in the world the proposal of the ILO in the coming years tends to universal social assistance, we have many challenges but simply with the business opportunity I think we can grow, but I insist, I believe that we should rather talk about competitiveness and opportunities in the neighborhood because, at the end of the day, we have many examples in the industry. The automotive industry itself is one of the plants, and when we talk about productivity, it is even better than some plants in the United States.

One last question: there has been a lot of comment in various media about the relationship that Mexico will have with the United States. However, there has not been as much comment on the labor and trade relationship with Canada. What is your opinion?

No, I think that of course within this commercial relationship there is a lot of Canada-Mexico business vision. Specific data: mining as an industry. The largest investments in Mexico are Canadian. The problem is that it is a different business partner; Canada, to put it another way, is a peaceful partner. Of course, the United States is the most

consumerist society in the world, so in this part of the world perhaps the interests of trade with the United States are more important, but I believe that in equal circumstances it exists with the three countries, not in equal terms of trade because in the end, consumption in the United States attracts more attention and in the end many of the large investments in these areas are suddenly identified or classified as the automotive industry.

The big investments are American, both in assembly plants and in auto parts activities, but I believe that at the end of the day in Mexico we have the opportunity to fight to be one of the best economies in terms of units under agreement and above all with the problems that you know Europe currently has, so there is simply a great opportunity that is not just for Mexico. I believe that while political issues are being discussed and removed, you know the big attacks on labor come from very aggressive American union organizations, where the United States itself, especially in the southern part of the United States, has no participation, or because in the United States, contrary to what we are told in Mexico, there is the possibility of practicing "non-union", so these are issues that must be addressed, Why then the problem is that the political part of the union unfortunately in Mexico should not exist a person with some political weight this because it supports such situations and does not support the situation as a country.

Appendix 2: Interview of Luis Rodrigo Morales Vélez

Role: Former Minister for Labor Affairs in Europe who represented the Mexican Labor Ministry to the International Labor Organization (2013-2019) and current Senior Advisor at the International Organization of Employer.

Date: 14.08.2020

With the implementation of the T-MEC, what are the main challenges that the Mexican labor market will face?

The first thing I can tell you is that if the challenges already existed, with the pandemic everything changes and there is a lot of uncertainty about what is going to happen in terms of trade. On the one hand, the constant disputes between the United States and China impact the international global market, and Mexico, as its largest trading partner, will obviously be affected by this whole dispute and trade policy of the United States.

Now, focusing on the T-MEC and landing it in the legal sphere, I would say that the main challenge of this great reform is that it moves federal measures to the local level. In Mexico, all collective labor matters were being resolved through conciliation and arbitration boards, although the historical mechanism distinguished Mexico, even in the world and the region, due to its nature and tripartite composition, since there were no mechanisms for conflict resolution at the global level that would function in a tripartite manner as the labor boards did. If there were some hybrids or similar cases in Panama or France but the way the conciliation and arbitration boards worked did not exist.

So the disappearance of these conciliation and arbitration boards and the transfer to the new federal mechanisms is certainly a challenge. The situation faced by the government with a reduced budget and a lack of experience in some of the areas undoubtedly represents significant challenges. I would hope that they will do so with the help of the ILO for the implementation of this reform because, as you know, any serious violation of the labor provisions of the T-MEC and especially of the guarantee of collective bargaining could jeopardize the pact that governs this trade block, which is one of the most important in the world.

There is a great challenge and not only the labor field because of the general issue that refers to the rule of law and to have jurisdictional mechanisms, reliable, effective and expeditious and it is something that especially in labor matters is very evident.

The delay in the resolution of conflicts, some cases of corruption must be recognized and for many vices in the mechanisms and exercise of both the unionism and the mechanisms of collective bargaining that had vices and traditions that were not necessarily the cleanest I would say.

All these well-known problems of labor protection contracts undoubtedly contaminate and have been contaminating labor relations and affecting both workers and companies, and the eradication of these customs is a great challenge. The effort that the States will have to learn is a great challenge. One part is the reforms that have been taking place, which is a formal challenge that is being overcome, but the biggest challenge will be the effective implementation of all these reforms and the guarantee of the rule of law.

Annex 23-A required a labor reform in the country in order to comply with the provisions of the T-MEC. What were the main challenges with respect to freedom of association in Mexico?

I think we're back to the same thing: the rule of law. The rule of law, the amount of lagging effective rule of law respect for collective bargaining and freedom of association are the big challenges. The new mechanisms, ensuring that these new mechanisms, which are something new - they have not been tested, they do not exist in other parts of the world - are going to test Mexico's ability to appropriate the mechanism.

There is an establishment of procedures for workers to know the content of the bargaining agreements and to request collective bargaining which is one of the most important changes and here I think that one of the challenges will be also to make effective this transparency on the one hand, and on the other hand to ensure that this does not result in an interruption of trade or production that impacts mostly the economy of the country or affects the labor market.

A major impact on the country's economy or on certain sectors of production would likely have an impact on the labor market in terms of both employment generation and productivity. A balance must be found between ensuring these principles of collective bargaining and the continuity of supply chain production. There are industries that are most impacted by this reform, such as the automotive industry, which is emblematic of the Mexican-US trade relationship, but also of global supply chains. So there is a disruption in some parts of the supply chain because the impact does not only reach some company that is affected by a collective bargaining process but can also impact the entire supply chain of the industry and with that there can be a significant impact on

the business sector and especially on small and medium enterprises that are part of this supply chain, which are fragile and have been proven to be fragile and are now suffering more impact from the pandemic so we have to be very careful about that.

It's certainly a big step forward that there are now mechanisms for verification of the election processes, for example of the union leader, which had also been subject in some cases to malfunctioning and abuse. Trying to ensure that the mechanisms, solutions and registration flow properly to avoid delay in all processes in the bureaucratic part through the establishment of infractions for delaying obstruction of union registration processes and collective collection are certainly advances but also constitute important challenges.

One of the important aspects of the reforms is the creation of the Federal Center for Labor Conciliation and Registration, which regulates Chapter 23. This body, which is now in charge of the conciliation function and the registration of union contracts and regulations, is also new, so it will be necessary to see how it works, and it will be necessary to provide it with technical budgetary capacity so that it can function adequately. The new administration has made great efforts to reduce spending but this is the type of exercise in which spending reduction is not appropriate.

The end of the conciliation boards is facing the same fate. This whole process of transitioning the boards will now fall to the courts of the Federal Judicial Branch, and the states will have to deal with labor conflicts, as it implies a great challenge. The federal courts, at present, do not have the technical expertise in labor matters, so they will have to be provided with this expertise and through it, transfer experts who have been familiar with the cases of the conciliation boards. However, I believe that we must also take advantage of this to clean up the system, if you are creating a mechanism, you must have new elements or rescue those valuable elements that were being dealt with in the previous jurisdictional body.

What were the successes/errors of the North American Agreement on Labor Cooperation, negotiated under NAFTA, and how will Chapter 23 of the T-MEC improve them?

It's a very interesting question, but I wouldn't talk about mistakes. You have to think about the time in 1993 when the NAFTA was signed, and you have to recognize that it was a very successful and innovative free trade agreement, and for that time the most appropriate decision made by the federal government.

If you look at Mexico before the free trade agreement and after it, there is a difference. Having signed this treaty was very important. The commercial and economic issues were fundamental tools for surviving crises and Mexico's development in modern times is strongly linked to the signing of NAFTA and, without a doubt, in labor matters, NAALC was a very important and innovative aspect, also in line with the ambitions that were in place at that time and which are still in force, and that respect for fundamental principles.

What is the big difference between the NAALC and now Chapter 23 of the T-MEC? It is the coercive aspect, the NAALC had more of a 100% cooperative approach. This cooperative aspect was primarily to improve the lives of Mexicans in the labor market and respect labor rights through cooperation and that was the fundamental axis of the entire NAALC treaty is based on cooperation. Although there is a provision that talks about other mechanisms, it does not really have a coercive scope, or we could say that it has a chapter 23. This new chapter now provides for much more restrictive, specific, coercive measures and the establishment of specific mechanisms, but it really has a scope that has already established what reforms should be implemented, and it even talks about constitutional reforms.

From a personal and legal point of view, I think it went too far but at the end of the day it was probably what Mexico needed to make these reforms effective, but it was very out of the ordinary. It is something uncommon in commercial treaties and international treaties where provisions are required that go far beyond what the federal Executive can effectively implement. Talking about a constitutional reform does not only lead to committing the legislature, but also the state legislature, so here we are forcing ourselves to try something that was achieved because it was necessary, but it was not the way to legally commit it. The reforms in federal matters have also been made in the Federal Labor Law.

So I would say that the NAALC was right at the time and that the T-MEC is a necessary evolution that is reflected in the improvement or progress to overcome the gap that Mexico is in respect to labor rights in general and modernize its system of collective bargaining and establish tools to ensure access to the rule of law.

Without a doubt, the new T-MEC maintains this aspect in comparison. In one of its parts, and I believe that it will be something that Mexico will have to come to terms with or seek to use mostly in order not to fall into any violation that may arise from any other of the provisions, because there are many, the risks for Mexico of committing a violation are enormous and there must be a certain concern in Mexico and globally there is also

concern that this will not be used for inadequate competition and an inadequate affectation of the mechanisms will affect the Mexican commercial part and with it the Mexican labor market. That effectively results in an improvement in Mexico's standards and not just for the benefit of its trade counterpart.

It has to be proved, there are things that are still not very clear that are in the implementation as for example this fast mechanism of conflict resolution. The United States is still establishing the basis on which companies can send or trigger a case by using this rapid dispute resolution mechanism, so decisions that are also beyond Mexico's control are careful and I would not call them errors, but there are gaps that are beyond Mexico's reach and we will see how it works because the ease with which a state-owned company can bring another company to a dispute resolution will impact it economically. Not only with the irruption of the temporary commercial exchange but also because of the cost that a conciliation exercise implies, you are going to have to use lawyers. In the end I would say that it was not a mistake but a gap that was left there that could be a contingency for Mexico.

One last question, there has been much comment in various media about the relationship that Mexico is going to have with the United States. However, there has not been as much comment on the labor and commercial relationship with Canada. What is your opinion?

Canada is undoubtedly a very important partner for Mexico. There are very important commercial and political ties with Canada and more so in labor matters, for example, where historical mechanisms are established to benefit Mexico with all the temporary worker programs.

In commercial matters, the geographical aspect that is natural being an immediate neighbor and the industries have naturally led to trade being mostly with the United States. The commercial part with the United States weighs much more on one hand because of the nature of the industries, their size and the geographical aspect but it is part of a block in which Canada continues and will continue to be an important ally and partner and I believe that we should also seek and strengthen the alizanas and commercial exchanges with Canada. Besides, I believe that diversifying the commercial partners has always resulted in the economic growth of the country and it is without a doubt important and it is like for example for Canada, the United States is a more important partner than Mexico. I wouldn't say that it's simply that the exchange in this industry has been neglected.

Appendix 3: Interview of Eulalio Cerda Delgadillo

Role: former Co-Chairman of Human Resources Committee of the Coca-Cola Company Worldwide (1996-2014), current member of the tripartite commission representing Mexico at the International Labor Organization and Advisor at the Presidency of the Corporate Coordinating Council (CCE).

Date: 15.08.2020

What is your opinion about the T-MEC and precisely about Annex 23-A, with respect to freedom of association in Mexico?

I'm telling you, there are several initiatives that are underway. One of them is very political and economic, which in the past, well still present, and I think that countries in general are doing the same, is the support, coordination, in some cases even submission (in the past) of unions to the political class in power. Because this ensured that they had a generation of votes, we decided on the influence of the unions on their members: the workers eh and so the CTMs and the CROC were born.

I would say that we have been balancing, refining the issue and it has had much to do with the influence of northern Mexico in having neutral unions that later have been confused with company unions. If you take it to one extreme, I am now on the other side, the company that controls the unions, and there is a dichotomy between the government and the pseudo-entrepreneur who wants to have the benefits so that his company can do well, and in some cases, what the workers should be receiving in salary and benefits. So in that half-polarized mirror, that's where all this history is, that's the mental map that we have to have. Now what happens? Without a doubt, on the one hand, we seek to improve the quality of life of workers, and on the other hand, the poverty rate that countries have. I had to be a member of the national minimum wage commission for 4 or 5 years, which is a tripartite body: union, government and employers. We sat down at the final table, and I didn't forget 11 or 12 union representatives, and the same number of employers, the government was the mediator.

So in that context there has always been the issue of whether there are well paid wages or not. It also crosses over with another issue which is the cost of living of countries. The cost of living in Switzerland is not the same as the cost of living in Mexico. If you go to the surveys, you will see a 30-40-50 percent difference in the cost of living. Now, that's going to set another pattern for you. The other axis is competitiveness where, due to the

trade agreements in the world, if someone is more efficient and effective from a productive point of view, that is, I assemble more parts of a component per hour than other countries, well, that gives you competitiveness, but if I also add the unit cost of labor, it may give you more or less competitiveness. What happens in the case of Mexico? The labor force in Mexico, in industries that are already well dominated, is very productive. Even better than many countries, better than the United States!

I open parenthesis, it takes you to a cultural issue: also in the most developed economies, already by profile the worker wants to do less and earn more, I do not speak of exploiting it but simply because by profile. If in addition the cost of labor is cheaper, well, obviously you have a much more attractive offer. What are the limits? That you're under-paying people and then that's where all this discussion is centered. What has happened in Mexico? Given the context of the 4-5 variables I am describing, making agreements that are non-binding, that do not force you, does not commit you, but it is a good sign and since then they have been raising the issue of whether Mexico should participate in labor reforms. Colombia did it, but Colombia made a copy-paste, that is, as they said, it led to their collective contracts and a real complication arose. In Mexico, they were thinking about and finally decided to incorporate what happened in the last six years, which is good, what it means to ratify the freedom of union association and not interference by employers, bosses, businessmen.

That started before T-MEC and has been working. What has happened in Mexico? As you know, this new labor legislation is being implemented, where the scope of dispute decisions in what were already the conciliation and arbitration boards, which depended on the Ministry of Labor, are now going to the Judicial Branch and even taking away much of the procedural part that was there. And as a foundation of this new legislation is, really declare the freedom of union membership. Let there be no corporatist unionism, which is evidently the big unions that when a company is going to open, well, it has already been decided which union is going to be there, as happens in the United States and Canada and in Europe I also know it quite well. But now it is ensured that the worker has the freedom to decide if he or she has joined the union, or if another one joins or does not join any union.

In Mexico there has not been the figure of duality, that there are two unions in one company. Also, another element is that a secret vote was taken on who would vote for such an agreement or not from the members of the union organization. Now this has been opened up in such a way that it is possible to make the decision transparent: a

union voted by the supposed allies enters a company before; it was the other way around for the union to go and do as it could, which gave it the right to a collective contract.

Well, with all this, now it's really coming to Mexico? Well, the agreement of an important labor law makes this type of account review even more transparent. I pay competitive salaries in the industry that I am exporting? That, in parenthesis, is what it is right now, but I should also think about whether it will later stop all local operations in the country. Two, if you have freedom of association? are you joining without any pressure? Three, the employers or businessmen who allow freedom of decision?

These are the big elements that are now left in the T-MEC agreements, there are many lines and between lines that still need to be clarified. If some of the agreements asked for the participation of the unions, I'm talking about Mexico, which had to participate, to see how it is implemented and these observers of the labor issue will be there, through the embassies, to make sure that this happens. Obviously, where this was most emphasized is for Mexico, if you get involved in the practical aspects of the application, well, yes, there is, but we are not going to have an army of observers seeing if the labor conditions are respected in the United States in Detroit for making cars, or in Canada for the aluminum industry. If I explain myself? It's going more this way towards Mexico, which is good. But there are always other intentions, in my previous experience in the Coca-Cola system, there has been a lot of the tendency for international unions to have global contracts, and they have done it with many companies, supposedly to ensure that there are equal conditions. The saying sounds good, but it doesn't follow that decision to respect and take into account local functions. I have always said that labor issues are local because they are subject to an impressive amount of particularities, which you cannot generalize. Issues of dialogue and legal-labor discussion are arranged locally. I have always maintained that position. If in a big framework, in the beverage industry, in the steel industry or whatever there is.

Is there going to be strong pressure for Mexico? Without a doubt, from pressing hard for which the cost of labor beyond that is the right one is due more so that then we are no longer so competitive. There is a fine line that has to be taken care of there, it's an axis. The second axis is to seek to sign global collective agreements, a single global contract. Some companies made global agreements, implementation was not easy, complicated in my opinion it brought more complications than benefits. Because it cannot recognize global situations for London than for Bangladesh. Well those are the big challenges.

The third challenge is going to be the more political issue or interference of sovereignty in countries that obviously Mexico has the greatest challenge for obvious reasons, an excellent labor capacity, innovative, productive, willing to work. Some could criticize, half oppressed if you like because that's how history has been, they if work 48-50 hours and here in the United States or in Europe we work 36 or even 30 and we are going to earn double. Well, the question of what is worthwhile through the embassies is now a very elegant term, observers, which then leads us to another question of the sovereignty of countries. How much can I go to Canada or the United States and begin to give my opinion on national issues while I am a foreigner?

Those are the challenges. Now, inwardly, the unions and the position of the employers, undoubtedly the first position of the employers and the unions that although they come from a very corporate history but have understood this better because they have to adapt, are working hand in hand. We are working hand in hand with the employers and the unions. There are already other unions that want to take control of these unions and they are going to want to. What is going to happen? You are going to see this kind of struggle, like what happened at the border, now that the new president has arrived, we are going to raise the minimum wage and charros union leaders have come in who are called to simply want to get personal benefit. There's going to be this whole internal issue. There will be a willingness on the part of the employers to have better conditions, but he did not rule out that as always, one or another employer will not want to do it as it is. There will be pressure from external unions, through a scheme through their embassy of their observers of the relationship and that if they pass beyond a certain border that is that of national sovereignty. Now all this put into an equation that is going to be? The ideal for Mexico is: One, that it remains competitive but not at the expense of the workers make sacrifices they must make. What does this mean? Adequate working hours and if they are extended they should be in accordance with the law. Two, a correct remuneration, taking into account the cost of living of the countries.

All of this will now bring about a very interesting dynamic. What has been done in my opinion? Because here comes another dichotomy, when you are looking at issues within the country, you certainly have on the one hand the representative part of the government, the authorities, unions and employers. And in the middle of all that, society. Normally, there are issues that, above all, business people and the government, but because of what you are experiencing, it has not been easy to find similarities. It has been easier between unions and employers without that implying that they are doing strange things. And paradoxically, when we look together as a country to see the

implications of TCM, we see an excellent harmony, a very appropriate orchestration, a lineup. We are very much ahead of the curve in turning around as we pro-actively lead to a very good level of success in the management of the T-MEC operation. So this last part I think is working well, of course suddenly we forget we are exporting and we have no other internal issues and here there may be other unions that are going to want to have or take this implications towards their own style. And you also have the external unions that are very strong that are going to want to have a participation. I was in that situation with the food and beverage unions. So that's what I see, I like to talk to you like this, what pieces are happening because there are many particularities.

I would like to return to the aspect of competitiveness that you mentioned earlier, one of the hypotheses that I advance in my thesis is that the treaty, one of its objectives is to put the three countries on an equal footing in labor matters and give a certain boost to the Mexican labor market so that it increases its wages. This is done by the private sector, and as an argument I am using that in the public sector, that is, the government, I have an analysis of minimum wages by the National Commission of Minimum Wages of Mexico, where we see a constant evolution of wages in the nineties, constant in the first decade of 2000 and 2010 to 2018 and suddenly, 2019, 2020 has an increase of 16% respectively in 2019 and 20% for 2020. That aspect of competitiveness where you say: well if you can increase the minimum wage but maintaining an aspect of competitiveness. How can Mexico be competitive today in the automotive sector, for example, when the free trade agreement requires that 40% of automotive parts be manufactured by workers with a minimum wage of \$16 dollars? On the one hand, there is this public sector initiative, which you say we are going to increase, since 16 and 20%, respectively, are important increases in minimum wages, but how and where is competitiveness going to fall? On the one hand, the treaty demands wages that Mexico cannot reach and on the other hand, the government increases wages every year with great force, where is this competitiveness cushion?

It's all about productivity. Productivity for me has several components but two very important ones are investment in infrastructure and training. And two, the attitude and skill per se of the Mexican worker's culture. Just as the Swiss watchmakers are excellent and nobody beats them, it's something that is said a lot about culture. In Mexico one is extremely creative, perhaps ironically this is because in the past, above all, one did not always have the right resources, as this inventiveness has been further developed. How well directed it gives you a lot of productivity. Badly directed, because doing things there

is half done, as they say, badly done. So the concrete answer is yes, I am going to raise the labor costs but in the end it is via productivity how I have to ensure that it is offset is kept in a correct balance and obviously on the other side that is the selling price or the transfer cost that I have to the global supply chain. So that's the equation, it's pretty simple. Making it happen is more complicated. Technology, innovation and training.

How do you think the Mexican labor market will be able to compete with the Asian labor market? What are two markets where labor is cheaper than in the United States, what are the arguments for Mexico to compete with this market?

In fact, as you mentioned, there is a very important competition in Asia because they have invested in technology and in recruitment. Japan, South Korea and China are already beginning to do so, and the combination of higher labor costs in Japan, which is higher, and then in South Korea and China, which is lower. The other component is tariffs, which is what is going to come and now the circumstantial issue between the United States and China that is making it an opportunity for companies to export to Mexico and from Mexico to the United States and Canada. In a perfect world, without a doubt, Asia is a super competitor because it has labor costs, we are more standardized, a super investment capacity that can give it very good productivity against Mexico that has a good level of investment and perhaps that labor cost offset can be quickly replaced by the best productivity for technological investment that Asia has against Mexico which represents a challenge for Mexico to continue investing which is another variable in the equation. You have to invest more in Mexico, if you are going to increase labor costs you have to make more investment in technology. Not to lay off more people, no, but so that those same people with more

I would like to address now a rather important and very interesting topic to study in fact, the rapid response mechanism that this new treaty implements. I understand that before, under NAFTA, there was a mechanism for resolving disputes between parties, but now this mechanism is faster, more efficient. I saw in an analysis that in about 80 days you can resolve disputes on the violation of rights, on freedom of association, but when I went deeper into the issue I realized that in this mechanism only the demands that are presented can be under certain sectors that are called priority sector in which agriculture is not part. Knowing that in Mexico there has been and sadly still is a violation, especially by small and medium enterprises, a violation of the labor rights of migrants and children,

because this very efficient mechanism is only going to be used for a certain sector and cannot be used more widely?

This way, in my opinion, for a topic of prioritizes and also to give stages. On the issue of human rights, which has a lot to do with all this, or on environmental issues as well, what the world community expects, and that is something that has been established, I think that intelligently, it is not that overnight, be careful, what I am going to say may sound controversial, it is that you recognize that you are making an omission and that you commit yourself to correct it in an adequate time. Then you give it time, it is a very fine line, that is, if there is a flagrant abuse of human rights, then that is corrected immediately, in agricultural issues where it is cultural and everything, that is, as if I go to my beloved Switzerland and I see the farmer's son feeding the cow because it is a family tradition and so I took the love for all that, that is child labor? I am teaching my son and I want you to pass it on. Or the fisherman, I have a photo here of a statue of a fisherman with his son, a little boy of 5 years old and the boy with a fish in his hand and I have always wanted to take it as a photo to Geneva, why do I know what that is? It's child labor or it's the father teaching his son how to be a better citizen. There is a fine line between one thing and the other. My position and business position is, there should be no children working in the fields. What do we do about it? The National Agricultural Commission, the CNA, is making very important efforts and work on them. Which are more in the central southeast of the country.

Appendix 4: Distribution of Mexican geographical areas in 2012

| ÁREA GEOGRÁFICA A | ÁREA GEOGRÁFICA B | ÁREA GEOGRÁFICA C |
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| BAJA CALIFORNIA: Todos los municipios del Estado | Municipios del Estado de JALISCO: Guadalajara Tlaquepaque El Salto Tonalá Tlajomulco de Zúñiga Zapopan | Todos los municipios de los Estados de: AGUASCALIENTES NAYARIT CAMPECHE OAXACA COAHUILA DE PUEBLA ZARAGOZA QUERÉTARO DE COLIMA ARTEAGA CHIAPAS QUINTANA ROO DURANGO SAN LUIS POTOSÍ GUANAJUATO SINALOA HIDALGO TABASCO MICHOACÁN DE TLAXCALA OCAMPO YUCATÁN MORELOS ZACATECAS |
| Municipios del Estado de CHIHUAHUA: Guadalupe Praxedis G. Guerrero Juárez | Municipios del Estado de NUEVO LEÓN: Apodaca Monterrey San Pedro Garza García San Nicolás de los General Escobedo Garza Guadalupe Santa Catarina | Más todos los municipios de los Estados de: CHIHUAHUA, GUERRERO, JALISCO, MÉXICO, NUEVO LEÓN, SONORA, TAMAULIPAS y VERACRUZ DE IGNACIO DE LA LLAVE no comprendidos en las áreas A y B. |
| DISTRITO FEDERAL Municipio del Estado de GUERRERO: Acapulco de Juárez | Municipios del Estado de SONORA: Altar Imuris Atil Magdalena Bácum Navojoa Benito Juárez Opodepe Benjamín Hill Oquitoa Caborca Pitiquito Cajeme San Ignacio Carbó Río Muerto La Colorada San Miguel de Cucurpe Horcasitas Empalme Santa Ana Etchojoa Sáric Guaymas Suaqui Grande Hermosillo Trincheras Huatabampo Tubutama | |
| Municipios del Estado de MÉXICO: Atizapán de Zaragoza Ecatepec de Morelos Coacalco de Berriozábal Naucalpan de Juárez Cuautitlán Tlalnepantla de Baz Cuautitlán Izcalli Tultitlán | Municipios del Estado de SONORA: Agua Prieta General Plutarco Cananea Elías Calles Naco Puerto Peñasco Nogales San Luis Río Colorado Santa Cruz | |
| Municipios del Estado de TAMAULIPAS: Camargo Miguel Alemán Guerrero Nuevo Laredo Gustavo Díaz Ordaz Reynosa Matamoros Río Bravo Mier San Fernando Valle Hermoso | Municipios del Estado de TAMAULIPAS: Aldama González Altamira El Mante Antigua Morelos Nuevo Morelos Ciudad Madero Ocampo Gómez Farías Tampico Xicoténcatl | |
| Municipios del Estado de VERACRUZ DE IGNACIO DE LA LLAVE: Agua Dulce Minatitlán Coatzacoalcos Moloacán Cosoleacaque Nanchital de Lázaro Las Choapas Cárdenas del Río Ixhuatlán del Sureste | Municipios del Estado de VERACRUZ DE IGNACIO DE LA LLAVE: Coatzintla Tuxpan Poza Rica de Hidalgo | |

Source : Comision Nacional de los Salarios Minimos [online]. [Viewed 20 July 2020]. Available from:
<https://www.gob.mx/conasami/documentos/tabla-de-salarios-minimos-generales-y-profesionales-por-areas-geograficas?idiom=es>