

The Toxic Border

By David Bacon | December 2004

In early September 2002, the Coalition for Justice in the Maquiladoras (CJM) put out a call to border activists, urging them to act quickly to salvage one of the few remaining complaints filed under the North American Agreement on Labor Cooperation (NAALC)—the case of mistreated workers at Customtrim/Autotrim. Inside the cavernous San Diego Convention Center, the CJM had learned, the temporary Binational Working Group on Occupational Safety and Health was holding a secret discussion between U.S. and Mexican government officials, supposedly to find ways of protecting the safety and health of maquiladora workers.

What followed that call, and the ultimate fate of the Customtrim/Autotrim complaint, is not only a stark illustration of the failure of the NAALC, but also a grim warning. A second Bush administration has already begun a hard push for the Central American Free Trade Agreement (CAFTA) and the Free Trade Area of the Americas (FTAA). Free trade's defenders argue that the rights of workers in Central and South America under these agreements can be protected in much the same way that the NAALC protected the rights of workers in Mexico. The bitter experience of the workers at Customtrim/Autotrim and their supporters, however, indicates that exactly the opposite is true. Labor protections embodied in the NAALC not only failed in this one case, but in every other effort made by workers to use the same mechanism to protect their health, their safety and their rights at work. Basing protection for workers in future agreements on this experience condemns them to the same fate.

The labor cooperation agreement is usually referred to as the labor side-agreement to the North American Free Trade Agreement, or NAFTA. It set up a process that free trade supporters argued would protect the labor rights and health and safety of workers in the three NAFTA countries—the United

States, Mexico, and Canada. Under the side-agreement, workers, unions, and community organizations could file complaints if worker protection or health and safety laws were not being enforced. NAFTA also had a second side-agreement, the North American Agreement on Environmental Cooperation. Its process, similar to that of the labor side-agreement, supposedly allowed communities to file complaints over cases of environmental contamination.

Both agreements were crucial to residents of the U.S.-Mexico border, since violations of labor rights, dangers to worker health and safety, and extreme cases of environmental contamination have been commonplace in this region since long before the agreements were proposed. These problems are a result of a longstanding development policy in which both the Mexican and U.S. governments encouraged corporations to relocate production to border factories, or maquiladoras, by creating a border zone within which labor protection, health and safety, and environmental laws were essentially not enforced. By 2001, more than 2000 such factories were employing more than 1.3 million people, and border cities like Tijuana and Juarez had mushroomed into industrial urban centers with over a million residents each.



Han Young striker Miguel Angel Solorzano's right arm was injured in an industrial accident in a fall at the plant. The fractures weren't set properly, and he was forced to return to work ten days later. He still can't close his fist completely. One of the main reasons Han Young workers organized an independent union and went on strike was to improve safety conditions at the factory.



The Coalition for Justice in the Maquiladoras began bringing together unions, churches, and community groups in all three countries in the years just before NAFTA went into effect in 1994. From the perspective of these organizations, the secret meeting in the San Diego Convention Center highlighted just how empty the promises of the side-agreements have been.

The first problem with the secret meeting was that the workers themselves, the very victims of the conditions that the side-agreements were intended to remedy, were excluded from the process. Workers at two Customtrim/Autotrim plants, owned by the U.S. auto parts giant Breed Technologies, had filed a complaint that they had been systematically exposed to toxic chemicals at work in violation of Mexican health and safety laws. The sickest ones were referred to by management as “junked workers” and were forced to labor in a special area. When workers began organizing an independent union to protest, the most active participants were fired, a violation of Mexican labor law. Complaints to the authorities went nowhere, and workers filed a case under the labor side-agreement, assisted by the CJM along with U.S. health and safety activists.

The San Diego meeting was organized by the body responsible for resolving the workers’ complaint—the Binational Working Group on Occupational Safety and Health—but the discussion inside the convention center was really about dumping the workers’ case, not protecting their rights. Outside, health and safety activists taped their mouths shut to dramatize the fact that the process had effectively silenced them. The workers who made the complaint would have found it very difficult to attend in any case; they live in Matamoros, on the Mexican side of the border and at its other end—2000 miles away. For them, the location of the exclusive meeting in San Diego was an even more effective barrier to participation than secrecy.

A year before, a report issued by the National Administrative Office of the U.S. Department of

Labor concluded that extensive violations of Mexican health and safety laws had taken place in the two Breed Technologies plants in Matamoros and Valle Hermosa. Workers testified at the hearing that prompted the report, risking their jobs and ensuring that they would be blacklisted for years. Independent health and safety experts from both countries had also submitted massive documentation. Despite previous bitter experiences, their hopes were still alive. Workers and their supporters thought there was yet a chance that, for the first time, monetary penalties

would be imposed on Mexico, since the side-agreement allows for heavy fines in cases of health and safety violations.

In the end, however, the secret and exclusive San Diego meeting proved to be the only actual outcome of the NAFTA process. The meeting was “a charade and a disgrace,” fumed CJM director Martha Ojeda. “Instead of specific, effective action to improve conditions at Autotrim/Customtrim, and throughout the maquiladora

industry along the border, the injured workers are promised ‘chats’ between government officials whose refusal to listen and to act was the exact basis of the complaint in the first place,” she railed.

Environmental activists participated in the protest outside the convention center as well. The process under NAFTA’s environmental side-agreement, they explained, was just as ineffective and corrupt as the labor accord. As proof, they pointed to one of the worst cases of pollution on the border and the failure of the side-agreement to provide any remedy.

Metales y Derivados is an abandoned battery recycling plant sitting on the lip of Otay Mesa adjoining Tijuana. Standing outside the plant walls on the chemical-encrusted ground, it’s possible to look over the mesa’s edge and see people moving about in the working-class barrio of Chilpancingo below. There, six years earlier, the Border Region Workers’ Support Committee (CAFOR) and the Citizens Committee for the Restoration of Cañon del Padre had documented the growing number of children born with



Francisco Ortiz and his son sit in the room in which they live with Francisco’s two other sons. They all work in the maquiladoras in Tijuana. Their whole extended family, including aunts, uncles and cousins, live in this house.

anencephaly; i.e., without brains. Two of CAFOR's Mexican organizers, Eduardo Badillo and Aurora Pelayo, along with their U.S. supporters were stopped from making annual counts of the growing number of cases after the issue began to appear in the press. But enough data had been accumulated, they believed, to cite Metales y Derivados as a likely source of the pollution causing the horrific birth defects.

In 1998 the Environmental Health Coalition (EHC) in San Diego and the Citizen's Committee in Tijuana filed a case under the environmental side-agreement. They alleged that Mexican authorities hadn't enforced environmental laws against the plant's owners, the New Frontier Trading Corporation, located in San Diego. Staff working for the North American Commission for Environmental Cooperation (NACEC) investigated the complaint and reported their findings in February 2002. Their study documented the illegal storage of 7,000 tons of toxic waste and the presence of lead, arsenic, and heavy metals in the soil surrounding the defunct plant. It also mentioned an inconclusive survey of lead contamination among Chilpancingo residents conducted by a team from the University of California at Irvine. Cesar Luna, the lawyer who headed the EHC's border project at the time the case was filed, documented one case of anencephaly himself and heard reports from residents of at least half a dozen others.

But NACEC staff had no power to investigate the actual health conditions in Chilpancingo, and no official record of contamination existed, because Mexican authorities never conducted a health survey in the barrio. They had good reason not to do so. Reports of anencephaly had been increasingly frequent in industrial communities all along the border, but the lax enforcement of environmental laws is an important, albeit unspoken, means for attracting new factories. A scandal about children without brains might discourage any future flow of investment.

So just as in the labor case, that was it. "All we got was a report, and an incomplete one at that," grumbled EHC policy advocate Connie Garcia. "Nothing changed on the ground. NAFTA provides for no cleanup plan or enforcement mechanism, and the community continues to be poisoned," she charged. "These two landmark cases argue convincingly that NAFTA fails to protect workers or the environment," added Garcia. The move to hold a secret hearing surprised no one, and most border activists saw it for what it was—a last gasp of the NAFTA side-agreement process sputtering to a halt.



Outside a closed battery recycling plant on Otay Mesa in Tijuana, Mexico, open pits of toxic waste pit the landscape, and chemicals leaching up from the ground form a crust on the ground. In the barrio of Chilpancingo, below the mesa, 19 children were born with no brains in 1993 and 1994, because of pollution from this and other maquiladoras on top of the mesa.

The much-touted side-agreements, heralded as protection for labor and environmental rights as the border was opened to the flow of capital and production, had already served their purpose long before. In 1993, their promise of protection provided political cover for a few liberal Democrats who wanted to vote with President Clinton. The addition of these few votes to those of almost the entire Republican congressional delegation produced the slim

margin needed to approve NAFTA. Making the appeal process work, however, was never a genuine concern. Concrete results from the many cases subsequently filed under the side-agreements were virtually invisible to workers who provided the testimony and evidence at great risk to themselves.

Just months before the secret hearing on Customtrim/Autotrim, the U.S.-based United Electrical Workers (UE) and the Mexican Authentic Labor Front (FAT) had branded the NAFTA labor side-agreement a farce. The two unions had forged a strategic relationship to try to organize the Mexican work force of large U.S. corporations. They had filed a complaint under the labor side-agreement after workers at the ITAPSA brake plant, belonging to the Dana auto parts giant, were exposed to asbestos and were terrorized when they tried to join the FAT in response.

The governments of the United States and Mexico agreed to settle the ITAPSA case by holding a seminar on union rights. Adding insult to injury, that seminar was moved from Mexico City, where the workers lived and the FAT has its offices, to Monterrey, the hometown of the head of Mexico's national labor board. The United Electrical Workers Union only discovered by accident that the seminar had been moved and that UE suggestions for the agenda had been trashed. The only presenters scheduled were government officials.

The charade was too much for UE President John Hovis. In a letter to U.S. Labor Secretary Elaine Chao, he bitterly declared that "given this history, we believe the process has deteriorated into a farce, and under these circumstances we see no value in participating further." Hovis acidly concluded, "We do not choose to lend any further credibility to a process which has so totally failed to protect workers' rights."

By 2002, the number of new complaints filed under the labor side-agreement had slowed to a trickle and finally to none at all. Under President Clinton, appointees to the National Administrative Office of the Department of Labor, which is responsible for hearing evidence on complaints, often tried to maintain at least the appearance of a commitment to workers' rights. For some judges, like Irasema Garza, who took testimony from Customtrim/Autotrim workers, that commitment was more than just appearance. Once George Bush became president, however, the U.S. administration ceased to even bother with pretense. Bush's unmistakable message was that any effort to restrain trade and investment

was politically wrong-headed. And for his part, Mexican President Vicente Fox did nothing to change the basic hostility to the appeal process evidenced by the administrations that preceded him.

The problem with the side-agreement process, however, isn't the attitude of the public officials responsible for administering it, although they often make it clear that even an appearance of fairness depends on the political will of the administration in power. Whether liberals or conservatives hold office, in Washington, Mexico City, or Toronto, they are all committed to corporate-defined free trade. Enforcing labor rights and environmental protections runs contrary to the purpose for which NAFTA was negotiated—creating conditions favorable to investment.

The Bush administration is simply more open in its embrace of this goal and sees nothing wrong with making money from low wages and relaxed controls over pollution. This attitude will also be the hallmark of the agreements designed to extend NAFTA southward—the CAFTA and the FTAA. Mindful of the Customtrim/Autotrim and Metales y Derivados cases, those considering their positions relative to CAFTA and the FTAA should heed the warning by Connie Garcia as she stood outside the closed San Diego meeting: "These two landmark cases argue convincingly that NAFTA fails to protect workers or the environment. Its terms should not be reproduced in new agreements."

(David Bacon is a reporter and photographer specializing in labor issues and a regular contributor to Foreign Policy In Focus, online at www.fpif.org.)

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