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QUESTION, *Professor King*: In connection with the Agreement, as I gathered, if Mexico wanted to reduce its labor laws in terms of standards, it is perfectly privileged to do so, but it is the question of enforcing the standards; is that it?

ANSWER, *Mr. McKennirey*: This is the question which was an essential question during the negotiations. Mexico is committed, just as is Canada and the United States, to promoting the language and labor principles of the Agreement to the maximum extent possible. But how that is expressed within a country's legislative framework is that country's business. I think it is fair to say that if a country was about to do something that was totally contrary on the face of it, like eliminate all child labor protection or something like that, the other parties would have the right under the Agreement to take issue with you, to have consultations with you, and to question whether this is consistent with the overall objective of the Agreement. So it is a political reality but not, as you say, a technical or legal reality under the disciplines of the Agreement.

QUESTION, *Professor King*: Regarding the administration, it says in the Agreement that you have fifteen people to administer it, which is not very many. I am concerned that is not an adequate staff to do the job.

ANSWER, *Mr. McKennirey*: An important aspect of the Agreement is the staff in each country's national administrative office. The labor agreement is unlike the environmental agreement, which did not create these national administrative offices to respond to the public. This is, in fact, the job of the secretariat in Montreal. However, that same work is delegated to the national level in our Agreement. So there is a need for a significantly large work force.

Second, those offices also run a very important cooperative program between the two governments. Moreover, each of these offices has five or ten people. We will just have to wait and see whether our office is the right size.

QUESTION, *Professor King*: Let me ask you about a typical case. One case that drew some attention in the United States was the Sony case. Do you want to describe how that operated, and what exactly happened in that case?

ANSWER, *Mr. McKennirey*: What we are seeing is cross-border communication and cooperation among workers and unions in order to make the Agreement work. Here the problem arose within Mexico. A group of workers was attempting to organize an up-start union within a company, which was already unionized. The workers were very frus-

trated in their efforts in getting their new union registered under the Mexican registration system. They contacted fellow union members in the United States and informed them that they were unable to form a free union in Mexico and that it could have implications for industrial relations in North America.

The American unions brought the case to their government, public interest groups, and their national administrative office in Washington. The American union informed these bodies that the labor law in Mexico was not being applied as it should be in this particular case and that this was part of a general problem.

The U.S. National Administrative Office held hearings and received briefs on the issue and recommended to the U.S. Secretary of Labor that he request consultations on this matter with the Mexican Secretary of Labor.

That is as far as you could take this particular issue under the Agreement. This issue has to do with union formation and freedom of association. Matters relating to freedom of association, the right to bargain, and the right to strike can only go to the level of ministerial consultations in that Agreement.

The next level that you could go to in a different area of labor law would be to call for an independent evaluation committee, which would conduct a tri-national study on the particular matter. And in areas related to safety and health and child labor and minimum wage, you could go further to international dispute resolution and international arbitration.

Backing up, in this case you could only go to ministerial consultations. So the Secretary of Labor of the United States and the Secretary of Labor of Mexico held consultations on the question. And those consultations took about three, four, or five months.

Out of that process came the public action plan, which included: first, sending a team from the Mexican headquarters of the Mexican Labor Department out to the local area to explain to the workers their rights and the proper procedures to apply for union registration; second, holding three public forums, one in each country. As it ultimately evolved, two were held in Mexico and one was held in the United States on the question of union formation and union registration in Mexico, Canada, and the United States. The first forum in Mexico City was very highly publicized and had a great deal of media attention.

In addition to that, a special study was commissioned by the Mexican government of independent academics to report back to them on this problem. That public report has not been published, but should be published shortly. That was the outcome.

QUESTION, *Professor King*: Let me ask you another question on the dispute resolution provisions. Suppose you get a real issue. Mexico

is not enforcing its labor laws. Do you want to take us through in rather brief fashion how that dispute will be resolved and what the eventual teeth in the Agreement are?

ANSWER, *Mr. McKennirey*: If we are going to use the dental analogy, the best way to begin is to suggest a dispute related to occupational safety, which is a matter that can go all the way. This argument suggests that one country was not enforcing occupational safety and health standards.

The first stage would be ministerial consultations. It would originate as a complaint within one country regarding the conditions in another country. That would go to the desk of the Secretary of Labor and the Minister of Labor in the country where the complainants were residing. For example, the Canadian complaint would state that the Americans were not enforcing their safety and health standards and that this is a big advantage. The Canadian Minister may decide right away to ask for consultations with the Secretary of Labor. If the consultations are unsatisfactory and the U.S. Secretary of Labor finds that there is no problem, then the Canadian government could ask for an evaluation committee of experts. That decision can be made by one government. It is not required that you have two agree, which is an interesting feature of the labor Agreement. Any one country can act unilaterally on this matter.

It will then land on my desk at that point in time, and I have to organize this evaluation committee of experts. They have a very short time frame in which to produce a report — when I say short, I mean about six months, so they have about six months to produce a tri-national report on the administration of labor law in that particular area of concern in the three countries.

Part of the reason for this is that you need to establish a base line for what is meant by "administration." No law is perfectly enforced, whether it is a traffic law or anything else. So you need some kind of base-line study in order to evaluate whether or not a country is really out of line or not. So this evaluation committee reviews what is being done in all three countries and examines the particular process of the health and safety standard and whether one country is seriously deficient. In the end, the committee reports back to the ministers, and the problem may be solved there.

If on the basis of this report two countries are now convinced that the third country really is remiss, they may want to initiate dispute resolution. Again, dispute resolution begins with consultations in an effort to resolve this dispute. What you are asking the third country to do is to recognize the problem and to do something about it. This could mean using more inspectors or whatever administrative procedure you want to use to rectify the situation. If, however, the country is unwilling to recognize the problem or is unwilling to fix the problem, then an

arbitral panel could be created at the request of the parties. They would review the situation again based on the evaluation committee's report and additional information and would come up with a prescribed plan of action for the offending country to fix the problem.

There would be further consultations on the prescribed plan of action. Then if a party refused to accept the decision of the arbitral panel and refused to accept the prescribed plan of action, the arbitral panel could impose a fine of up to twenty million dollars.

What if the country refuses to pay the fine? If the country refuses to pay the fine, then the lawyers take over at this point. If the country refuses to pay the fine, Mexico and the United States can collect the fine at the border. In Canada, they cannot collect the fine at the border, but the Canadian government can collect it through the Canadian court system.

QUESTION, *Professor King*: Why is it different in Canada?

ANSWER, *Mr. McKennirey*: Politics, pure politics. And then once we get the money in our hands, we give it back to the offending nation and we say you must use this money for the administration of your labor laws.

COMMENT, *Professor King*: I think it is a fascinating story.

QUESTION, *Mr. Kasoff*: Given this very simple process that you have just outlined, and there is a similar process for the environmental secretary as well, it is no surprise that there has not been a ground swell of complaints under these procedures. I think the total number of environmental complaints is five and perhaps you said two that only were being actually looked at.

Now, the first question is do you get a lot more types of inquiries that never end up in formal complaints that you can get them to redress at a much lower level and, if not, how do you answer the cynics who say, this is really just camouflage; these side agreements were just done for domestic politics. The bureaucratic procedure is so monumental that it will never amount to anything.

ANSWER, *Mr. McKennirey*: The government-to-government procedures are complex. They are no more complex than Chapter 20 of the NAFTA. And if you look at the NAFTA, there have been very few complaints under Chapter 20. I think there was only one. Government-to-government disputes are a lot more rare than private party disputes, and that is what you would expect.

The procedures are there because the objective is to avoid rushing to a judgment. These problems are extremely difficult matters to fix. They are not even easy to define. When you get into the way in which a union gets registered in Mexico, it is a very subtle, complex, politically motivated issue. It is a question of expanding the transparency of that process, developing a broader consensus, and understanding where the problem areas are, with the government beginning to develop a public

position on some of these issues. This is the nature of the issues with which you are dealing. They are not simply private disputes or the fixing of a particular situation where a particular person feels the labor law does not apply to him. I think that is part of the reason that there is so much process, and part of the reason that you would not expect hundreds of cases a year. Just like Chapter 20 of the NAFTA, countries do not take dispute with each other or dispute resolutions between nations unless they really have to, and unless they have worked through the issues very carefully first.

In terms of whether it is weak or strong, my own view is that it is very strong. When you have a situation, for instance, which we had, where the Secretary of Labor of the United States can contact the Secretary of Labor in Mexico and say, "I do not think your labor laws are being enforced, I have had a public process and a public hearing on this." I think that is very strong. It is completely unprecedented, and there is an extraordinary degree of openness between countries to engage in such a dialogue like this, and to actually have obligations between each other to deal with these matters, which are matters that have been part of the private domain of domestic policy and domestic law for all these years. To say, or at least enable each country to raise issue regarding these matters in a public way is very strong and very substantial. Furthermore, when you look at those who say that the Agreement is weak because it does not contain enforceable international standards, my answer to that usually is, take a look at what enforcement of international standards would involve. First of all, you have to legislate those international standards. Second of all, you have to have an enforcement capacity, an enforcement agency. Finally, you have to have courts to interpret them and to enforce them. The implications of enforcing international standards leads you down the road towards the European model with all the structures that go with it. The ILO has international standards, but they are voluntary. There is a very major difference there. I think some of the feeling that this Agreement is weak comes from an antiquated view of what internationalization of labor standards entails. When I see the kind of thinking that is going on in the ILO now about the connection between labor standards and trade, people are beginning to come to grips with the problematical aspects of this thing, which are very difficult to resolve. I also think the labor agreement has actually gotten very serious regarding substantial obligations between Parties, even though they are based on domestic law.