

PUBLIC REPORT OF REVIEW OF NAO SUBMISSION NO. 2000-01

U.S. National Administrative Office
Bureau of International Labor Affairs
U.S. Department of Labor

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EXECUTIVE SUMMARY

PURPOSE OF THE REPORT

Submission No. 2000-01 was filed pursuant to the North American Agreement on Labor Cooperation (NAALC) on July 3, 2000, by Current and Former Workers at Auto Trim and Custom Trim/Breed Mexicana, Coalition for Justice in the Maquiladoras (CJM), and more than 20 additional unions and nongovernmental organizations in Canada, Mexico, and the United

States.

The submission was accepted for review on September 1, 2000, as it raised issues related to labor law matters in Mexico and because a review would further the objectives of the NAALC. In accordance with its procedural guidelines, the U.S. NAO completed its review of the case, which included a public hearing on December 12, 2000.

SUMMARY OF THE SUBMISSION

Submission 2000-01 raises concerns about occupational safety and health and compensation in cases of occupational injuries and illnesses at Auto Trim of Mexico in Matamoros, Tamaulipas, and at Custom Trim/Breed Mexicana in Valle Hermoso, Tamaulipas.

According to the submitters, workers at Auto Trim and Custom Trim/Breed Mexicana approached management and union representatives with concerns about safety and health conditions and workers' compensation starting in 1992. These concerns were included in demands made by workers at Custom Trim/Breed Mexicana who engaged in work stoppages in May 1997.

In May 1998, current and former workers of Auto Trim and Custom Trim/Breed Mexicana sent a petition to the Secretariat of Labor and Social Welfare (STPS) regional offices in Ciudad Victoria requesting an inspection of the plants. In April 1999, the same group of workers sent petitions and made visits to STPS, the Mexican Social Security Institute (IMSS), and the Secretariat of Health (SSA) again requesting that inspections be carried out. The submitters claim that they received a letter from SSA stating that an inspection would be carried out on a certain date, but are not aware that any such inspection occurred. The submitters also state that they did not receive responses from STPS or IMSS and that, to their knowledge, these agencies have not conducted inspections at either facility.

The submitters assert that workers at Auto Trim and Custom Trim/Breed Mexicana suffer skin, respiratory, eye, central nervous system, and reproductive health problems due to their exposure to chemicals in their work. They also assert that workers suffer ergonomic ailments such as carpal tunnel syndrome and back and shoulder pain due to the repetitive nature of their work. Furthermore, the submitters claim that workers who suffer these conditions are not properly treated and compensated.

The submitters claim that the Government of Mexico failed to enforce its law by not conducting inspections at and imposing sanctions on Auto Trim and Custom Trim/Breed Mexicana. They assert that the government failed to ensure that workers received training in safety and health, medical exams, and adequate personal protective equipment; the plant had adequate ventilation and properly functioning safety and health committees; the plants conducted risk assessments and monitoring; and the plants properly reported workplace accidents and illnesses.

ANALYSIS AND FINDINGS

The U.S. NAO review determined that STPS and IMSS have carried out periodic inspections and

verification visits at the facilities during the period of 1991-2000. The U.S. NAO has no information concerning SSA inspections of the facilities. There have been STPS inspections indicating review of equipment and safeguards, ventilation and temperature control systems, handling of chemicals and other hazardous materials, and training requirements. IMSS has reviewed the reporting and treatment of work place accidents and illnesses. It also is evident that in the course of conducting inspections, inspectors met with safety and health committee members and interviewed workers at the facilities and that inspection reports were provided to the unions.

Although the U.S. NAO finds that the Government of Mexico conducted inspections and verification visits, the review raises questions regarding the efficacy of these processes. Inspection reports indicate that worker interviews are not confidential, which raises a concern as to whether a worker is likely to feel free to provide any information critical of the employer. Inspectors appear to use a checklist approach in their inspections, noting the existence of work place systems and documents, without actually testing and monitoring to assure compliance. Additionally, the procedures for certifying third party monitors, which are relied on by employers and the governmental authorities, are not clear.

STPS and IMSS appear to have generally enforced applicable laws and regulations with respect to monitoring and reporting of work place accidents and illnesses. Inspection reports examined by the U.S. NAO also reveal that STPS and IMSS coordinated their activities in specific cases and that reports of work-related injuries and illnesses to IMSS were examined and verified in follow-up inspections. However, the submitters raised legitimate concerns regarding the transparency, independence, and fairness of such processes.

Workers offered credible testimony about the unwillingness of medical staff at the facilities to send workers to IMSS and of IMSS doctors to diagnose injuries as work-related. Certain physicians apparently work for both employers and IMSS, which creates a concern about conflicts of interest and a physician's credibility in reporting, diagnosis, and valuation of work place injuries and illnesses. An appearance of impropriety created by potential conflicts of interest impacts workers' perception of the fairness and transparency of the process.

Mexican law, as reflected in LFT Article 132 and RFSH Article 102, encourages an ergonomically sound work environment and requires employers to take ergonomic practices into account in the workplace. Inspection reports examined by the U.S. NAO do not include specific information or references to ergonomic conditions, which leaves it unclear as to how the Government of Mexico enforces the principles enunciated in LFT article 132 and RFSH Article 102.

There is evidence that STPS responded to a request for inspection from the Auto Trim union in 1995 and the submitters' petition for inspection in 1998. However, there is no indication that STPS officials ever communicated their efforts to the workers who submitted the 1998 petition despite numerous inquires by the workers and their representatives. With regard to the 1999 petitions to STPS, IMSS, and SSA, the Government of Mexico indicated that it has no record of their receipt. This contrasts with credible information gathered by the U.S. NAO that indicates

all three agencies received the petitions.

The failure of the Government of Mexico to communicate to the workers about its efforts undertaken in response to the 1998 petition, the lack of records on the 1999 petitions, and the failure to respond to workers' inquiries about the petitions are inconsistent with the Government of Mexico's obligations under the NAALC, which obligate the government to require record keeping; to give due consideration to any request for an investigation of suspected violations of labor law; to ensure that persons have appropriate access to administrative proceedings for the enforcement of labor law; to ensure that proceedings are transparent; to provide for procedural guarantees in those proceedings; and to promote public awareness of labor law.

RECOMMENDATION

The U.S. NAO recommends ministerial consultations pursuant to Article 22 of the NAALC on the occupational safety and health and workers' compensation issues raised in this submission.

PUBLIC REPORT OF REVIEW OF U.S. NAO SUBMISSION NO. 2000-01

1. Introduction

The U.S. National Administrative Office (U.S. NAO) was established pursuant to the North American Agreement on Labor Cooperation (NAALC), the supplemental labor agreement to the North American Free Trade Agreement (NAFTA). The NAALC provides for the review of submissions concerning labor law matters arising in Canada or Mexico by the U.S. NAO. Article 16(3) of the NAALC states:

[e]ach NAO shall provide for the submission and receipt, and periodically publish a list, of public communications on labor law matters arising in the territory of another Party. Each NAO shall review such matters, as appropriate, in accordance with its domestic procedures.

Labor law is defined in Article 49 of the NAALC as follows:

laws and regulations, or provisions thereof, that are directly related to (a) freedom of association and protection of the right to organize; (b) the right to bargain collectively; (c) the right to strike; (d) prohibition of forced labor; (e) labor protections for children and young persons; (f) minimum employment standards, such as minimum wages and overtime pay, covering wage earners, including those not covered by collective agreements; (g) elimination of employment discrimination on the basis of grounds such as race, religion, age, sex, or other grounds as determined by each Party's domestic laws; (h) equal pay for men and women; (i) prevention of occupational injuries and illnesses; (j) compensation in cases of occupational injuries and illnesses; and (k) protection of migrant workers.

Procedural guidelines governing the receipt, acceptance for review, and conduct of review of submissions filed with the U.S. NAO were issued pursuant to Article 16(3) of the NAALC. The

U.S. NAO's procedural guidelines were published and became effective on April 7, 1994 in a Revised Notice of Establishment of the U.S. National Administrative Office and Procedural Guidelines.^{1[1]} Pursuant to these guidelines, once a determination is made to accept a submission for review, the U.S. NAO shall conduct such further examination of the submission as may be appropriate to assist the U.S. NAO to better understand and publicly report on the issues raised therein. The Secretary of the U.S. NAO shall issue a public report that includes a summary of the review proceedings and findings and recommendations. The review must be completed and the public report issued within 120 days of acceptance of a submission for review, unless circumstances require an extension of time up to 60 additional days.

Submission No. 2000-01 was filed with the U.S. NAO on July 3, 2000, by current and former workers at Auto Trim and Custom Trim/Breed Mexicana, Coalition for Justice in the Maquiladoras (CJM), and several other nonprofit organizations, unions, and religious groups. The submission raises concerns about occupational safety and health and compensation in cases of occupational injuries and illnesses at Auto Trim of Mexico in Matamoros, Tamaulipas, and at Custom Trim/Breed Mexicana at Valle Hermoso, Tamaulipas. It was accepted for review on September 1, 2000, and a notice of acceptance of review was published in the Federal Register on September 7, 2000.^{1[2]}

The submitters argue that Mexico has shown disregard for the principles set out in the preamble to the NAALC to protect, enhance, and enforce basic workers' rights and to promote high-skill, high productivity economic development in North America by *inter alia*, encouraging employers and employees in each country to comply with labor laws and to work together in maintaining a progressive, safe, and healthy working environment. Specifically, the submitters maintain that Mexico is in violation of NAALC Articles 1, 3, 4, 5, and 7. They also assert Mexico's failure to comply with the Political Constitution of the United Mexican States (hereinafter the Mexican Constitution), the Federal Labor Law (*Ley Federal del Trabajo*) (hereinafter LFT), the General Health Law (*Ley General de Salud*) (hereinafter LGS), the Social Security Law (*Ley de Seguro Social*) (hereinafter LSS), and the current and former Federal Regulation on Safety, Health and the Workplace (*Reglamento Federal de Seguridad, Higiene y Medio Ambiente de Trabajo*) (hereinafter RFSH). Additionally, they assert Mexico's failure to comply with the Medical Services Regulations (*Reglamento de Servicios Médicos*) (hereinafter RSM) as well as the Official Mexican Standards (*Normas Oficiales Mexicanas*) (hereinafter NOMs) of the Secretariat of Labor and Social Welfare (*Secretaría del Trabajo y Previsión Social*) (hereinafter STPS) and the NOMs of the Secretariat of Health (*Secretaría de Salud*) (hereinafter SSA). Furthermore, the submitters argue that Mexico is in violation of Conventions 155, 161 and 170 of the International Labor Organization (ILO), as well as the International Covenant on Economic, Social and Cultural Rights, the Universal Declaration of Human Rights, the American Declaration of the Rights and Duties of Man, the Protocol of San Salvador, the Constitution of the World Health Organization (WHO), and the Constitution of the Pan American Health Organization (PAHO).

2. Summary of Submission

2.1 Case Summary

Auto Trim and Custom Trim/Breed Mexicana are owned by Breed Technologies, Inc., a supplier

of automotive parts headquartered in Lakeland, Florida. Breed Technologies acquired the facilities from the Canadian firm Custom Trim Limited in 1997. Up until that time, Custom Trim Limited operated the facilities as Auto Trim Limited in Matamoros, Tamaulipas, and Custom Trim Limited in Valle Hermoso, Tamaulipas. Among other activities, Auto Trim workers leather wrapped and sewed steering wheels, and Custom Trim workers leather wrapped and sewed gear shifts. According to Breed management, the Custom Trim facility in Valle Hermoso was renamed Breed Mexicana Number 2 in 1998.^{1[3]} According to management, most of the leather wrapping functions previously performed at Breed Mexicana have since been moved to Auto Trim and other Breed-owned facilities in the Matamoros area.

According to the submitters, workers at Auto Trim and Custom Trim/Breed Mexicana have suffered illnesses and injuries related to exposure to toxic substances and muscular-skeletal disorders caused by ergonomically unsound practices. Problems cited by the petitioners include failure to provide information and training about occupational hazards, pressure on workers to meet excessively high production quotas, poorly designed work stations, inadequate personal protective equipment, lack of properly functioning safety and health committees, failure to stock medical supplies on-site, failure to institute workplace monitoring, and substandard ventilation. The submitters also maintain that occupational illnesses and injuries are often unreported or under-reported and that workers are inadequately treated and compensated.

According to the submitters, inadequate enforcement on the part of the Mexican government, namely the failure to conduct inspections and impose sanctions or fines, has led to the unsafe work conditions at the two plants, and to the failure to properly compensate workers for illnesses and injuries.

According to the submitters, in 1992, workers began complaining to Auto Trim and Custom Trim/Breed Mexicana management about work conditions. Over the next few years, workers approached the unions at the two plants for additional assistance. The collective bargaining contract at Auto Trim in Matamoros has been held by a Mexican Confederation of Workers (*Confederación de Trabajadores de México*) (hereinafter CTM) affiliate, the Union of Day Workers, Industrial Workers, and Workers of the Maquiladora Industry (*Sindicato de Jornaleros, Obreros Industriales y de la Industria Maquiladora*) (hereinafter SJOIIM), for approximately 15 years. The collective bargaining contract at Custom Trim/Breed Mexicana in Valle Hermoso has also been held by a CTM affiliate, the Union of the Maquiladora Industry of Valle Hermoso (*Sindicato de la Industria Maquiladora de Valle Hermoso*) (hereinafter SIMVH), for several years. In April and May 1997, workers and union representatives at Custom Trim/Breed Mexicana entered into contract negotiations with plant management. According to the submitters, workers requested wage increases and improvements in safety and health conditions, and when Custom Trim management suspended negotiations in mid-May, workers engaged in work stoppages and sit-ins. At the end of May, these workers discovered that a collective bargaining agreement had been signed by the union and management. Employees who had engaged in the sit-ins agreed to return to work, but on June 2, 1997, 28 of these workers were fired. The employees filed a complaint with Special Conciliation and Arbitration Board No. 8 (CAB) in the state of Tamaulipas challenging their dismissals and in December 1998, the CAB ordered the workers to be reinstated. Custom Trim/Breed Mexicana appealed the decision, and

to date the workers have not been reinstated.

On May 19, 1998, current and former employees of Auto Trim and Custom Trim/Breed Mexicana filed a petition with the STPS Regional Office in Ciudad Victoria, Tamaulipas requesting that STPS conduct inspections of both plants.^{1[4]} The petition also alleged numerous violations of Mexico's occupational safety and health laws and regulations.

On April 15, 1999, current and former workers at Auto Trim and Custom Trim/Breed Mexicana filed three additional petitions.

^{1[5]} Workers filed a second petition with STPS in Ciudad Victoria in which they requested that STPS conduct plant inspections. Workers also filed a petition with the Mexican Social Security Institute (*Instituto Mexicano del Seguro Social*) (hereinafter IMSS) regional headquarters in Ciudad Victoria, requesting investigations of local IMSS offices and doctors that refused to provide proper medical attention and benefits to workers at both plants. Workers further filed a petition with the SSA regional office in Ciudad Victoria in which they requested that SSA carry out verification visits and inspections of both plants. The submitters claim that workers and lawyers assisting them visited the offices of STPS, IMSS, and SSA both in Ciudad Victoria and Mexico City to press their case. Submitters allege that workers received a letter from SSA stating that an inspection would be scheduled, but by the time the letter was received, the scheduled date had already passed. The submitters state that workers were not aware of such an inspection being conducted. The submitters state that they have received no other responses to their petitions.^{1[6]}

2.2 Issues

2.2.1 Occupational Safety and Health

The submitters argue that Mexico is in violation of various NAALC objectives as laid out in Article 1 of the agreement. Article 1(a) commits signatories to improve working conditions and living standards; Article 1(b) commits the NAALC countries to promote, to the maximum extent possible, the labor principles set out in Annex 1; Article 1(f) calls on signatories to promote compliance with, and effective enforcement by each Party, of its labor law; and Article 1(g) commits signatories to foster transparency in the administration of labor law.

The submitters also assert that Mexico has violated NAALC Articles 3(1)(b) by failing to monitor compliance and investigate suspected violations; Article 3(1)(c) by failing to seek assurance of voluntary compliance; Article 3(1)(d) by failing to enforce required record keeping and reporting; Article 3(1)(e) by encouraging the establishment of worker-management committees to address labor regulation of the workplace; and Article 3(1)(g) by failing to initiate proceedings in a timely manner to seek appropriate sanctions or remedies for violation of labor law. The submitters likewise argue that Mexico is out of compliance with Article 3(2) by failing to require that due consideration be given to a request for an investigation of an alleged violation of the Party's labor law.

In addition, the submitters assert that Mexico is in violation of Article 4(1) by failing to ensure

that persons have appropriate access to administrative and labor tribunals, as well as Article 4(2) by failing to ensure that persons have recourse to procedures by which rights arising under its labor law and collective agreements can be enforced. Also questioned is Mexico's compliance with its commitment under Article 5(1)(d) to provide that legal proceedings are not unnecessarily complicated and do not entail unreasonable charges or time limits or unwarranted delays, and under Article 5(2)(a) to provide decisions on cases in writing. Submitters also assert that Mexico has failed to promote public awareness of its labor law as called for in Article 7.

The submitters assert that the Mexican government, in failing to enforce safe and healthy working conditions, is in violation of several national laws, regulations, and standards. They charge the government has neglected to enforce the Mexican Constitution, the LFT, the LGS, the RFSH, and several NOMs of STPS and SSA.

Finally, the submitters argue that Mexico is in violation of ILO Convention 155 on occupational safety and health, Convention 161 on occupational health services, and Convention 170 on chemicals. The Mexican government is also said to be in violation of the International Covenant on Economic, Social and Cultural Rights, the Universal Declaration of Human Rights, the American Declaration of the Rights and Duties of Man, the Protocol of San Salvador, the Constitution of the World Health Organization (WHO), and the Constitution of the Pan American Health Organization.

2.2.2 Compensation in Cases of Occupational Illnesses and Injuries

In relation to workers' compensation, the submitters claim that Mexico is in violation of NAALC Articles 1(a), 1(b), 1(f), 1(g), 3(1), 3(2), 4(1), 4(2), 5(1), and 7. The submitters also argue that the Mexican government failed to enforce relevant provisions of the Mexican Constitution, the LFT, the LSS, the LGS, the RFSH, and RSM. The submitters likewise assert that Mexico has failed to uphold the International Labor Organization's Convention 17 on workers compensation in cases of occupational accidents and Convention 42 on workers compensation in cases of occupational illnesses.

2.3 Action Requested

The submitters requested the U.S. NAO:

1. To investigate and examine the serious health and safety violations at Auto Trim and Custom Trim/Breed Mexicana and the persistent pattern of failure by the Mexican government to enforce Mexican laws designed to improve workplace health and safety conditions.
2. To request the U.S. Secretary of Labor to consult with her Mexican counterpart to secure the expeditious remedy of the health and safety violations in both plants through bilateral ministerial consultations between both the U.S. NAO and the Mexican NAO pursuant to NAALC articles 22 and 27.

3. To call for a public hearing in San Antonio or Brownsville, Texas, making the necessary arrangements for visas and simultaneous translators for witnesses.
4. To convene an inspection and fact-finding commission of health and safety experts from all NAALC member states to thoroughly evaluate and assess the serious allegations raised in this complaint.
5. To report and make public the conclusions of the fact-finding commission with the appropriate recommendations as per NAALC article 21.2.b.
6. To hold hearings whereby workers or their designated representatives, Mexican government officials from the STPS, IMSS, and SSA, plant managers, and independent health and safety experts from the NAALC member states will testify to determine the full scale of the violations of labor, health and safety laws at Auto Trim and Custom Trim/Breed Mexicana, and the extent of the negligence and lack of enforcement by the Mexican government of Mexico's occupational health and safety laws, regulations, and norms, the NAALC, and international treaties to which Mexico is a party.
7. To compel the Mexican government to abide by Mexican occupational health and safety laws, regulations; (sic) and norms, as well as the principles of the NAALC; (sic) relevant ILO Conventions, and international human rights law.
8. To determine the required fines and penalties for each health and safety violation at Auto Trim and Custom Trim/Breed Mexicana according to the conclusions of the fact-finding commission.
9. To establish an inspection commission to verify and oversee that Auto Trim and Custom Trim/Breed Mexicana comply with health and safety regulations, and assume responsibility for work-related accidents and illnesses.
10. Should these violations remain uncorrected 30 days after the commission's recommendations have been made public, to request the convening of an Evaluation Committee of Experts (ECE), as per NAALC article 23 for the enforcement of Mexico's health and safety regulations. After receipt of the ECE report, and if the recommendations for corrective actions have not been implemented within 30 days, to request the U.S. [Secretary of Labor]for ministerial consultations with regard to the continued

pattern of failure by the Mexican government to enforce its labor laws and health and safety regulations at Custom Trim/Breed Mexicana and Auto Trim as per NAALC article 28.

11. Finally, if the matter has not been successfully resolved by the aforementioned ministerial consultations, that the U.S. NAO request the Council to constitute an arbitral panel in order to determine the appropriate actions to be taken in view of the continued failure by the Mexican government to enforce its labor laws and health and safety regulations, including pursuant to Annex 39 the assessment of monetary sanctions.^{1[7]}

3. U.S. NAO Review

Submission No. 2000-01 was accepted for review on September 1, 2000. The review was deemed appropriate as it raised issues related to labor law matters in Mexico and because a review would further the objectives of the NAALC. The decision to review was not intended to indicate any determination as to the validity or accuracy of the allegations contained in the submission.

In conducting its review, the U.S. NAO considered information from the submitters, workers, Breed Technologies' management, the Government of Mexico, and representatives from three unions in the Matamoros area that represent Breed Technologies' workers, as well as testimony received at a public hearing. The U.S. NAO also visited Breed Technologies' facilities to observe general working conditions, meet with management and workers, and view documents related to inspections, training, and other safety and health issues at the facilities. Finally, technical experts provided the U.S. NAO with assistance in the review of the submission.

The focus of the review was to gather information to assist the U.S. NAO to better understand and publicly report on the issues raised in the submission concerning occupational safety and health conditions and workers' compensation.

3.1 Information from Submitters

The U.S. NAO engaged in meetings, telephone conversations, and written correspondence with the submitters in order to obtain additional information. The submission included four appendices containing petitions sent to STPS, IMSS, and SSA; worker affidavits, interviews and IMSS documents; reports on Mexican maquiladora safety and health conditions; and Material Safety Data Sheets (MSDSs) for chemicals in use at the facilities.^{1[8]} The submitters also supplied the U.S. NAO with copies of press reports and a video concerning the collapse of a section of the roof at Auto Trim in December 1992.^{1[9]} In addition, the submitters provided written comments on the documents filed with the U.S. NAO by Breed Technologies in a letter

dated February 23, 2001.^{1[10]}

3.2 Information from Mexican NAO

The U.S. NAO sent two two sets of questions relating to the issues raised in the submission to the Mexican NAO, dated October 10, 2000 and February 5, 2001.^{1[11]} The Government of Mexico responded to the first set of questions by letter dated February 14, 2001 and received on February 27, 2001.^{1[12]} The response discussed the institutional roles and obligations of relevant agencies in the application of labor laws, regulations and procedures in the area of safety and health and workers' compensation. Specifically, the response described the respective roles of management and public officials in monitoring workplace hazards; policies and programs to promote worker training and the reduction of workplace injuries and accidents; and administrative procedures to be followed by management, joint safety and health committees, and medical staff in response to work-related injuries and the reporting of accidents. The response also discussed a series of inspections carried out at Auto Trim and Custom Trim/Breed Mexicana over a period of years, as well as the findings and actions taken in each case. As of the date of this report, the U.S. NAO has not received a response to the second set of questions.

3.3 Information from Breed Technologies

The U.S. NAO engaged in telephone conversations and written correspondence with Breed Technologies in order to obtain information related to the issues raised in the submission. On November 8, 2000, the U.S. NAO sent the company a series of questions, to which Breed responded on December 11, 2000. The U.S. NAO received a written response to its inquiries, supplemented by a wide variety of documents including copies of STPS inspection reports, records of worker training, monitoring studies, and photographs.^{1[13]} Breed legal staff also issued the U.S. NAO an invitation to visit the plants, meet with management and workers, and review additional documents.^{1[14]} A delegation composed of representatives from the U.S. NAO, the U.S. Embassy in Mexico City, the U.S. Occupational Safety and Health Administration (OSHA), and the National Institute for Occupational Safety and Health (NIOSH)^{1[15]} visited Breed Technologies' facilities in Matamoros and Valle Hermoso January 22-24, 2001.

3.4 Information from Unions

The U.S. NAO sent a series of questions to the Mexican NAO with a request that they be forwarded to three unions representing Breed Technologies' workers in the Matamoros area: SJOIIM, the CTM affiliate that holds the bargaining contract at Auto Trim; SIMVH, the CTM affiliate that holds the collective bargaining contract at Custom Trim/Breed Mexicana; and the Industrial Union of Maquiladora Plant Workers and Assemblers of Matamoros and its Municipality (*Sindicato Industrial de Trabajadores de Plantas Maquiladoras y Ensambladoras de Matamoros y su Municipio*) (hereinafter SITPME), a CTM affiliate that holds the bargaining contract at a third Breed Technologies plant (Custom Trim de Ramírez).^{1[16]} The unions did not provide written responses to the U.S. NAO's inquiries. However, during the site visit, the U.S. delegation had the opportunity to meet with representatives from these unions. Representatives of SIMVH provided the U.S. delegation with information concerning

inspections at Custom Trim/Breed Mexicana by STPS and IMSS. Members of SITPME described working conditions at Custom Trim de Ramírez and provided the delegation with copies of the union's collective bargaining agreement and information on additional union activities.¹[17] SJOIIM representatives gave the delegation information about working conditions at Auto Trim and about the role of the union in service of its members at the facility, and showed the delegation copies of correspondence from 1995 between union leaders and STPS in regard to worker concerns about health and safety conditions at the plant.

3.5 Information from Public Hearing

As part of the review process, the U.S. NAO conducted a public hearing in San Antonio, Texas, on December 12, 2000. Notice of the hearing was published in the Federal Register on November 8, 2000.¹[18] Notice of the hearing also was provided to Breed Technologies, whose representatives attended the hearing but did not provide testimony, the Mexican NAO, and unions that represent Breed Technologies' workers in the Matamoros area.

Five experts testified at the hearing. Linda Delp of the Labor Occupational Safety and Health Program, University of California at Los Angeles, provided an overview of the plants' production process and its impacts on workers' health and safety. Garrett Brown, a certified industrial hygienist with California state OSHA and the coordinator of the Maquiladora Health and Safety Support Network (MHSSN), and Dr. Francisco Mercado, a professor at the Mexican National Autonomous University (UNAM), coordinator for the Center for Union Research and Assessment (CILAS), and Deputy Director of Health and Safety in the Workplace for the Mexico City government, testified regarding the use of chemicals in the workplace. In addition, Mr. Brown and Dr. Mercado provided the U.S. NAO with relevant journal articles on occupational safety and health, material safety data sheets, and copies of applicable Mexican laws. Lida Orta, an ergonomist at the Health and Safety Department of the International United Auto Workers (UAW), testified on ergonomics issues and provided the U.S. NAO with an ergonomics video.¹[19] Alfonso Otero, a Mexican attorney, testified on Mexican law with a focus on workers' compensation.

Twelve former workers of Auto Trim and Custom Trim/Breed Mexicana testified at the hearing. Matias Pecero, Veronica Lopez, Pedro Lopez Morales, and Isabel Morales testified on the production process and its impacts; Joaquin Gonzalez, Bruno Mantagna Lopez, and Ezequiel Tinajero testified in regard to chemical hazards; Consuelo Silva and Beatriz Reyna Vasquez testified on ergonomics issues; and Toribio Resendez, Elsa Alamillo, and Isabel Morales testified on workers' compensation issues. A representative of a local worker rights organization known as *Pastoral Juvenil Obrera* (hereinafter PJO), Manuel Mondragon, also provided testimony and gave the U.S. NAO a videotape of television news stories pertaining to Auto Trim.¹[20]

3.6 Information from Site Visit

A team from the U.S. NAO, the U.S. Embassy in Mexico City, OSHA, and NIOSH visited Matamoros and Valle Hermoso January 22-24, 2001. At the invitation of Breed Technologies, the delegation visited the Auto Trim and Custom Trim de Ramírez facilities.¹[21] During these visits, the delegation spoke with management, plant safety and health committee representatives,

and company doctors; reviewed company documents; conducted walk-throughs; and spoke with workers on the plant floor. The delegation also attended a meeting with Breed management at the Breed Mexicana 1 facility in Valle Hermoso. After visiting the plants, the delegation attended meetings with SJOIIM (which holds the bargaining contract at Auto Trim); SIMVH, (which holds the collective bargaining contract at Custom Trim/Breed Mexicana); and SITPME (which holds the bargaining contract at Custom Trim de Ramírez). The delegation was provided written documentation^{1[22]} during these meetings related to union programs and services for members at the respective facilities. The delegation also was informed about the unions' general monitoring role related to occupational safety and health in local plants. During the visit, the delegation also engaged in a meeting with submitters on January 23, 2001.

3.7 Information from Experts

The U.S. NAO also sought information and views from technical experts on the occupational safety and health issues raised in the submission. Experts from OSHA and NIOSH participated in the site visit and provided the U.S. NAO with their observations.^{1[23]}

4. North American Agreement on Labor Cooperation (NAALC) Obligations

Articles 1, 3, 4, 5, and 7 of the NAALC are relevant to this submission. Article 1 of the NAALC contains objectives of the signatory Parties and Articles 3, 4, 5, and 7 contain obligations to which the Parties are committed.

Article 1(a) calls for the improvement of working conditions and living standards in the three countries. Article 1(b) calls for the promotion, to the maximum extent possible, of the labor principles set out in Annex 1. Principle 9 of Annex 1 commits the parties to “prescribing and implementing standards to minimize the causes of occupational injuries and illnesses” and Principle 10 requires the establishment of a system of compensation in cases of occupational injuries and illnesses. Article 1(f) seeks to “promote compliance with, and effective enforcement by each Party of, its labor law.” Article 1(g) requires the Parties to “foster transparency in the administration of labor law.”

Article 3(1) calls for each Party to “promote compliance with and effectively enforce its labor law through appropriate government action,” such as:

(b) monitoring compliance and investigating suspected violations, including through on-site inspections; (c) seeking assurance of voluntary compliance; (d) requiring record keeping and reporting; (e) encouraging the establishment of worker-management committees to address labor regulation of the workplace; . . . and (g) initiating, in a timely manner, proceedings to seek appropriate sanctions or remedies for violation of its labor law.

Article 3(2) commits each Party to require that due consideration be given to any request by an employer, employee, their representatives, or other interested parties, for an investigation of an alleged violation of the Party's labor law.

Article 4(1) calls on each Party to ensure that persons have appropriate access to administrative

and labor tribunals. Article 4(2) ensures that such persons may have recourse to, as appropriate, procedures by which rights arising under: “(a) [a Party’s] labor law, including in respect of occupational safety and health . . . and (b) collective agreements, can be enforced.”

Article 5 spells out the procedural guarantees to which the signatories of the NAALC are committed. Article 5(1)(d) commits the Parties to provide that legal proceedings “are not unnecessarily complicated and do not entail unreasonable charges or time limits or unwarranted delays.” Article 5(2)(a) calls on Parties to provide that decisions on cases are written and preferably state the reasons on which they are based.

Article 7 states that “[e]ach Party shall promote public awareness of its labor law, including by: (a) ensuring that public information is available related to its . . . law and enforcement and compliance procedures; and (b) promoting public education regarding its labor law.”

5. Mexican Law

5.1 Mexican Constitution

Various articles of the Mexican Constitution provide authority for the labor and health laws applicable to the instant submission.^{1[24]} Article 4 provides for the basic right to the protection of an individual’s health. Article 123 sets out the basic principles that underlie Mexican labor law. Section XV of Article 123 requires employers to observe safety and health regulations at their companies and to make efforts to prevent workplace accidents and illnesses. Section XXXI.A of Article 123 states that the Federal government shall have exclusive jurisdiction in applying Mexican labor law to the automotive industry, including auto parts. Article 123, Section XV also calls for the inclusion of sanctions in the laws for occupational safety and health violations.

With regard to workers’ compensation, Article 123.A, Section XIV of the Mexican constitution obligates employers to indemnify employees who suffer work-related accidents. Article 123.B, Section XI specifically states that work-related accidents and illnesses are covered by Social Security.

5.2 Federal Labor Law

Mexican labor law in the private sector is codified as the Federal Labor Law (LFT). The law primarily is enforced by the Secretariat of Labor and Social Welfare (STPS). The following LFT articles are relevant to the issues discussed in the instant submission.

5.2.1 Occupational Safety and Health

5.2.1.1 General Occupational Safety and Health Standards

Article 132, Section XVI obligates employers “to equip the factories, workshops, offices and other places in which the work is to be performed in accordance with the principles of safety and health to prevent work accidents and losses to the workers, as well as to adopt the necessary

measures to assure that contaminants do not exceed the maximums permitted in the regulations and instructions issued by the competent authorities.”^{1[25]} The Article goes on to give the authorities power to demand changes in workplaces failing these standards, stating that “for these purposes, installations must be modified as set forth by the proper authorities, if they do not meet the norms.”

5.2.1.2 Employee Training

Article 132, Section XV states that employers have an obligation to provide training to workers.

Article 153.A reiterates the fact that each worker has a right to training, and Article 153.F states that one of the purposes of training is to prevent work accidents. Moreover, Article 153.M requires that collective bargaining contracts at workplaces spell out this training requirement.

5.2.1.3 Joint Safety and Health Committees

Article 509 provides that “[s]afety and health committees consisting of an equal number of representatives of the workers and the employer shall be established as found necessary in every enterprise or establishment, to investigate the causes of accidents and diseases, proposing preventive measures and enabling compliance therewith.” Article 510 states that the committees have to operate during work hours and cannot be paid.

5.2.1.4 Workplace Inspections: Obligations and Procedures

Pursuant to Article 527 workplace inspections in the automobile industry are carried out by the Federal Inspectorate of Labor (*Dirección General de Inspección Federal del Trabajo*) of the STPS and supported by the respective state governments.

Article 511 lays out the general duties of labor inspectors, which are:

- I. To ensure compliance with the laws and regulations respecting the prevention of employment hazards and the protection of the workers’ life and limb;
- II. To report in writing any failure to comply with the above which may come to their knowledge; and
- III. To collaborate with the workers and the employer in publicizing and making generally known the rules respecting accident prevention and health.

Article 540 lays out the functions of the inspection authorities. They are:

- I. To ensure fulfillment of the labor norms;
- II. To provide technical information and advise workers and

employers as to the most effective manner of fulfilling the labor norms;

- III. To report to authority any failure to observe, and violations of, the labor norms it discovers in enterprises and establishments;
- IV. To make such studies and collect such data as may be required by the authorities and those which it seems necessary to achieve harmony in the relations between workers and employers;
- V. Such other duties as may be assigned to it by law.

Article 541 lays out the specific responsibilities of labor inspectors. It states that inspectors shall have the following powers:

- I. To ensure that the labor norms are observed, in particular those prescribing the rights and obligations of workers and employers, those concerning the prevention of employment injuries, safety and health;
- II. To inspect enterprises and establishments during the hours of work (day or night) on producing identification;
- III. To put questions to workers and employers, in the presence or absence of witnesses, on any matter connected with the application of the labor norms;
- IV. To require the production of any books, registers or other documents required to be kept by the labor norms;
- V. To suggest that any nonobservance of the employment conditions be corrected;
- VI. To suggest that any duly ascertained defects in plans and methods of work be put right if they constitute a violation of the labor norms or a danger to the workers' safety or health, and the adoption of immediate measures in the case of any imminent danger;
- VII. To examine the substances and materials used in enterprises and establishments in the case of dangerous work;
- VIII. Any other power and duties assigned to them by law.

Article 542 lays out the obligations of labor inspectors. The obligations include:

- I. To display their credentials to workers and employers;
- II. To inspect enterprises periodically;
- III. To carry out special tours of inspection whenever required to do so by their superiors or whenever they receive reports of nonobservance of the labor norms;
- IV. To draw up a report of each inspection they make, consulting the workers and the employer, reporting any nonfulfillment or violation of the labor norms, to give a copy of such report to the parties consulted and to forward the report to the appropriate authority.

Article 547 states that inspectors will be held liable for failing to carry out legally mandated inspections, giving false information in their reports, for violating a provision of Article 544 (which deals with conflicts of interest), or if they receive any bribe or gift from workers or employers.

5.2.1.5 Regulatory Powers and Sanctions

Article 512 establishes that measures to prevent workplace injuries and to insure that work is performed under safe conditions shall be based on LFT regulations. Article 512.D states:

Employers must make the modifications that the labor authorities order for the purpose of adjusting their establishment, installations or equipment to the provisions of this Law, of its regulations or of the instructions based on them issued by the competent authorities. If they do not make the modifications within the period of time granted to do so, the Ministry of Labor and Social Welfare shall fine the employer who fails to do so, providing a higher fine if he does not comply within the new period granted.

If the irregularity persists after the abovementioned fines have been imposed, the Ministry, taking into account the nature of the modifications ordered and the extent of the risk, may partially or totally close the work center until the respective obligation has been fulfilled, after hearing the opinion of the corresponding Mixed Committee of Safety and Health, without prejudice to the Ministry's own adoption of pertinent measures to bring about the employer's compliance with that obligation.

If the Ministry of Labor decides to partially or totally close the work center, it must notify the employer and the representatives from the trade union, three working days in advance, in writing. If the workers are not unionized, the notice shall be sent to their

representative on the Mixed Committee of Safety and Health.

5.2.1.6 Penalties

Article 992 establishes that monetary penalties for violations of labor rules committed by employers or workers shall be based on the daily amount of the general minimum wage in force in the place and at the time in which the violation was committed.

Article 994, Section V states that the penalties will be 15 to 315 times the general minimum wage in the case of the employer who fails to observe the safety and health rules in equipping his establishments or measures set forth in the laws to prevent work accidents. The fine shall be doubled if the irregularity is not corrected within the time period specified.

5.2.1.7 Reporting of Violations of Labor Laws

Article 1003 of the LFT establishes which parties may make complaints of violations of labor law. The article states: “Any worker, employer, trade union, federation or confederation of employers or workers may report violations of the labor norms to the authorities.” When STPS receives a petition, the agency makes a determination on a case by case basis as to whether to conduct an inspection. The following issues are considered in the decision: whether safety and health form the substance of the complaint; the background and compliance history of the company; and the state of labor management relations at the facility.¹[26]

5.2.2 Workers’ Compensation

Article 132, Section XVII places responsibility on an employer to institute policies that will prevent workplace illnesses and injuries. It also requires an employer to “notify the competent authorities at once of every accident occurring.” Specifically, Article 504, Section V requires employers to provide notification of injuries within 72 hours. Article 504, Section V also specifies that “(a) name and address of the enterprise; (b) name and address of worker, as well as his post or category and the amount of his salary; (c) place and hour of accident, with a concise expression of facts; (d) name and address of the persons who witnessed the accident; and (e) place in which medical attention was rendered or will be rendered” must be provided to the appropriate authority.¹[27]

The responsibility of employers to maintain a stock of first aid medications and medical supplies is codified in Article 132, Section XVII. It states that employers must “keep at all times a stock of such medicaments and therapeutic materials as are necessary in the opinion of the competent authorities, so that efficient first aid may be given in due time.” Article 504 requires: “If there are more than 100 workers in a given enterprise, an infirmary with appropriate staff must be established. Enterprises employing more than 300 workers must have a sick bay staffed with adequate medical and auxiliary personnel.”

Articles 472-515 address occupational injuries. Of particular relevance to this submission is the scope of occupational injuries defined in Articles 472-476, and the classifications of disabilities and their appropriate compensation set out in Articles 477-480 and Articles 491-496,

respectively. Temporary disability is defined in Article 478 as “loss of faculties or skill rendering a person either partially or totally unable to perform his work for a certain time.” Permanent partial disability is defined in Article 479 as “the loss of a person’s work faculties or skills.” Permanent total disability is defined in Article 480 as “the loss of a person’s work faculties or skills rendering him incapable of working for the rest of his life.”

The rights of employees who suffer work-related injuries or illnesses are set out in Article 487. Included in these rights are medical and surgical attendance, rehabilitation, and compensation. Article 490 provides that if it is proven that “inexcusable negligence” occurred on the part of an employer, an employee’s compensation may be increased by up to 25%. The article considers inexcusable negligence demonstrated:

- I. if he [the employer] fails to observe the laws and regulations for the prevention of employment injuries;
- II. if, in spite of the fact that previous accidents have occurred, he has failed to adopt adequate measures to avoid a repetition thereof;
- III. if he fails to adopt the preventive measures recommended by the joint committees established by workers and employers or by the labor authorities;
- IV. if there are similar circumstances of the same degree of seriousness as those referred to in the above items.

Article 512.E delineates the relationship between IMSS and STPS. The Article states that STPS is responsible for coordinating with IMSS to develop campaigns and programs that aim to prevent workplace injuries and illnesses.

5.3 Federal Regulation on Safety, Health and the Workplace (RFSH)

Enacted in 1997, the RFSH establishes the rules and procedures for the enforcement of safety and health standards. [28] The RFSH replaced the General Regulation on Safety and Health (RGSH) in the Workplace, which entered into force in 1978. [29] Because the submitters claim that Mexican occupational safety and health laws were not enforced at Auto Trim and Custom Trim/Breed Mexicana both before and after 1997, both federal regulations will be discussed in this report.

As was the case with the RGSH, the RFSH is intended for application throughout Mexico and has as its purpose the establishment of measures necessary for the prevention of workplace accidents and illnesses. The objective of both regulations is to ensure that work takes place under conditions of safety and health that are appropriate for workers and in accordance with the LFT and international treaties ratified by Mexico (See Article 1 of both regulations). Many of the provisions of the regulations are similar, but the language used in the RGSH tends to emphasize STPS responsibilities, while the RFSH places greater emphasis on the responsibilities of

employers and employees.

5.3.1 Occupational Safety and Health

5.3.1.1. Employee Training

Article 189 of the RGSH stated that the labor authorities must carry out training programs to inform employers and employees of the importance of adopting sound safety and health practices. In addition, workers were to be provided training based on studies of workplace hazards carried out under the supervision of STPS (See Articles 218-219). Articles 15 and 135 of the RFSH place the burden of training on employers, by requiring them to inform workers of the risks associated with their work activities, as well as train them on prevention and control measures. Articles 136 and 137 of the RFSH require that the Joint Safety and Health Committees and employers monitor such trainings.

Article 213 of the RGSH and Article 17, Section VII of the RFSH specifically call for worker training in the prevention of risks and attendance to emergencies. The RFSH, however, mandates additional training efforts. Article 17, Section VI and Articles 130 - 134 of the RFSH provide that companies must draw up safety and health programs and manuals, which must be continually reevaluated. Article 134 requires employers to publish and execute these programs and train and qualify workers in their application. Article 138 of the RFSH states that “[t]he personnel responsible for . . . as well as involved in the handling, transport or storage of hazardous substances and chemicals should have specialized training.” Article 141 reiterates that employers must inform workers of the workplace safety and sanitation program, as well as train and qualify them in its execution.

5.3.1.2 Health and Safety Studies

Article 190 of the RGSH stated that the labor authorities will promote studies and technical investigations to determine workplace hazards, and that the employers and workers must cooperate with authorities in the development of such studies. Articles 217-218 likewise referred to the development of health and safety risk prevention programs in workplaces based on risk assessments and other types of studies.

Article 17, Section III of the RFSH requires companies to undertake studies and risk assessments in matters relating to occupational safety and health and to apply appropriate control measures. Section IV states that employers must identify and maintain within allowable levels the environmental conditions at the workplace. Employers must present such evidence to the authorities when requested. Section IX requires employers to present opinions issued by private inspection units with regard to the safety and health standards of the employer’s facilities. Article 28 requires that risk assessments with regard to fire and explosion hazards be conducted and used to design fire safety programs. Article 128 mandates employers to prepare occupational risk statistics each year and notify workers and the safety and health commission at the workplace. These statistics must be presented to STPS upon request.

Articles 11 and 163 of the RFSH gives private labs and engineering firms the power to conduct

studies and risk assessments in workplaces. These parties, known as “verification units,” must be accredited by STPS through a process established in the Federal Law on Measurements and Standards (LFMN). 1 [30]

5.3.1.3 Inspections

Articles 236 through 252 of the RGSH laid out STPS’s right to inspect workplaces and specified how such inspections were to be conducted. Article 5 of the RFSH gives STPS the responsibility to promote compliance with the regulations to “safety and sanitation commissions, safety officers and supervisors and company physicians.” Article 11 states that verification units, such as testing laboratories and certification agencies, may verify compliance with workplace standards. Article 17, Section VIII, requires employers to permit the inspection and monitoring activities that STPS or other labor authorities undertake. Articles 161 and 163 make clear that STPS retains the authority and responsibility to conduct inspections.

5.3.1.4 Hazardous Materials

The RGSH laid out specific requirements with regard to the prevention of and emergency preparedness for fires in the workplace.¹[31]

Articles 122 through 134 of the RGSH and Articles 54 through 75 of the RFSH discuss requirements for the handling, transport and storage of hazardous chemical materials, including: proper work facilities for the handling and storage of such materials; communication of risk and training in proper handling and corrective measures (including the dissemination of material safety data sheets [Article 63]) to those workers who carry out these activities; risk assessments; and the use and labeling of appropriate storage containers. Article 84 specifically states that safety and health programs must include measures for the reduction of exposure to pollutants, including hazardous chemicals.

5.3.1.5 Ventilation

Article 154 of the RGSH and Article 99 of the RFSH require proper ventilation at work sites. At locations where operations are capable of affecting worker health, employers are responsible for monitoring and providing adequate ventilation, air quality and volume.

Article 100 of the 1997 law asserts that employers must set up maintenance schedules and inspection programs for their artificial ventilation systems.

5.3.1.6 Personal Protective Equipment (PPE)

Articles 159 and 160 of the RGSH and Article 101 of the RFSH mandate employers to provide workers with appropriate PPE when necessary. Articles 162-174 of the former law described the specific types of PPE that workers must be given depending on the tasks they must perform; these specifics are now incorporated into the relevant NOMs.

Article 180 of the former regulation and Article 103 of the new regulation state that, depending

on the type of work, employers are required to establish showers for worker use and provide dressing rooms and lockers.

Article 161 of the RGSH gave the Joint Safety and Health Committee the responsibility for ensuring the proper use of PPE. Article 140 of the RFSH requires that employers train workers in the use, maintenance and replacement of PPE.

5.3.1.7 Ergonomics

Reference to ergonomics in the RGSH was made in Articles 183 and 184, which required employers to supply workers with ergonomic chairs.

Article 2, Section V of the RFSH defines ergonomics as

the suitability of the workplace, equipment, machinery and tools to the worker, in accordance with their physical and psychological features, in order to prevent occupational accidents and illnesses and to optimize the latter's activity with the least amount of effort, as well as to prevent fatigue and human error.

Article 102 of the RFSH states: "The Secretariat shall encourage employers to take ergonomic aspects into consideration in the facilities, machinery, equipment, or tools of the workplace, with a view to preventing occupational accidents and illnesses."

5.3.1.8 Joint Safety and Health Committees

Article 193 of the RGSH stated that STPS should promote the establishment of Joint Safety and Health Committees at the workplace. Article 17, Section XIII of the RFSH states that employers must facilitate the establishment of the mixed commissions at the workplace.

Articles 193 through 212 of the RGSH and Articles 123 through 126 of the RFSH lay out the regulations that apply to the safety and health committees. Both the former and current laws require that committees be established within 30 days after the startup of operations of the facility and that they be composed of an equal number of worker and employer representatives. Articles 203 and 204 of the RGSH state that the joint committees were responsible for promoting the training of workers regarding workplace safety and hygiene and that committees had to ensure that workers were familiar with workplace regulations. Both the RGSH and RFSH state that these committees are responsible for investigating causes of occupational accidents and illnesses, monitoring compliance, describing violations in the necessary paperwork, and proposing preventive measures.

5.3.2 Workers' Compensation

5.3.2.1 Medical Services

The focus of the medical services provisions of the RGSH was on preventive services (Articles 213 through 216). Similarly, several sections of the RFSH address preventative and curative

medical services provided to employees. Article 17 Section X denotes an employer's obligation to provide preventative medical services while Article 143 states that medical services may be offered either internally or externally of the place of production. Article 83 of the RFSH states that employers must perform medical exams on workers exposed to hazardous materials. Article 148 states that an employer is responsible for providing first aid medication and materials. The requirement that physicians be fully autonomous to issue opinions regarding the degree and cause of an employee's disability is addressed in Article 145. Further, Article 146 requires physicians to inform the employer of an employee's ability or inability to work. Article 150 of the RFSH requires STPS, employers and workers to promote the implementation of occupational safety and health preventive services, in accordance with the characteristics of the work performed. Article 151 of the RFSH states that this preventive service shall involve activities such as the investigation of workplace conditions and the causes of workplace accidents and illnesses, and the development of occupational safety and health programs. Article 152 of the RFSH states the such services may be provided by an external agent or by the company itself.

5.3.2.2 Notification of occupational accidents

Article 17 and 127 codify an employer's responsibility to notify STPS of occupational accidents in writing, while article 129 requires STPS to maintain statistics on such accidents. Article 149 mandates that an employer must submit the medical records to STPS when requested. Finally, the Sixth Transitory Provisions established in RFSH state that STPS shall coordinate with IMSS in assisting employers with their compliance in submitting accident notices.

5.4 Official Mexican Standards (NOMs-STPS)

Articles 3 and 5 of the RGSH and Articles 3-13 of the RFSH address the development and enforcement of standards known as NOMs on the full range of occupational safety and health issues. The NOMs cover matters ranging from specific hazards to technical specifications for protective and monitoring equipment and analytical methods. Under the authority granted by Article 40 of the 1976 Federal Public Administration Act (*Ley Orgánica de la Administración Pública Federal*) (hereinafter LOAPF), STPS is in charge of enforcing the LFT and developing and enforcing the appropriate NOMs in the area of occupational health and safety.^{1[32]}

Since 1997, a number of NOMs have been revised and consolidated. Because the submitters allege a failure to enforce certain NOMs both before and after these revisions, current as well as former NOMs will be discussed in this report.

5.4.1 Workplace Ventilation

NOM-001-STPS-1999: Health and Safety Conditions in Buildings, Premises, Installations and Areas in Work Centers, sets forth the minimum requirements for workplace ventilation systems.^{1[33]} The NOM requires that ventilation systems be started at least 15 minutes before employees work in a particular area and that employers establish a systems maintenance program with a log of repairs. In addition, the Reference Guide contained in the NOM requires employers to abide by the standards of "comfort ventilation" in interior work spaces, which set limits for humidity, temperature, and air velocity. NOM-010-STPS-1999, Section 9.2 requires the

implementation of feasible engineering controls, including the use of local exhaust ventilation, when air-monitoring results demonstrate overexposures to hazardous chemicals.

5.4.2 Fire Security

NOM-002-STPS-2000: Safety Conditions- Prevention, Protection and Fire Fighting in the Workplace, establishes minimum fire safety requirements. Requirements include the installation of fire extinguishers and labeling of flammable substances. In addition, the NOM requires employers to train workers in fire prevention and combating fires.

5.4.3 Use of Chemicals

NOM 005-STPS-1998: Health and Safety Conditions in Workplaces for the Handling, Transport, and Storage of Dangerous Chemicals, condenses the requirements of four separate NOMs previously in effect in Mexico: NOM 009-STPS-1994: Relative to the Safety and Health Conditions for the Storage, Transport, and Handling of Corrosives, Irritants, and Toxics in Workplaces;1[34] NOM 008-STPS 1993: Relative to the Safety and Health Conditions for the Production, Storage and Handling of Explosives in the Workplace; NOM 018-STPS 1993: Relative to the Requirements and Characteristics of Showers, Lockers and Changing Room Services in Workplaces; and NOM-020-STPS-1993: Relative to Medicaments, Curative Materials and First Aid Personnel in Workplaces. 1 [35]

Both the former NOMs and the current NOM 005 mandate employers to gather information by conducting risk assessments and to inform workers of the health and safety risks to which they may be exposed. NOM 005 also states that employers are obligated to develop a specific program on the use and storage of dangerous chemicals. Under this program, employers must draw up plans for clean up and emergencies and maintain up to date Material Safety Data Sheets (MSDSs), manuals and information on PPE and exposure limits. Employers must also ensure that chemicals are stored properly and have a maintenance program for equipment that is used to handle such chemicals.

Both the former NOMs and NOM 005 state that employers are required, based on the results of the risk assessment, to provide sufficient PPE, changing rooms, showers, and/or laundry services. Employers are also required to create a first aid manual, provide sufficient first aid in case of emergencies, and train personnel in the provision of first aid. NOM 005 requires employers to conduct entrance, periodic and special medical exams on workers exposed to dangerous chemicals.

NOM-010-STPS-1999: Health and Safety Measures in Workplaces that handle, transport, process or store chemical substances capable of contaminating the workplace environment, establishes permissible exposure limits (PELs) to chemicals in the workplace. The NOM directs employers to study contaminant concentration levels based on methods laid out in the standard and to keep such information current. It requires employers to inform workers of the risks to which they are exposed and to train them in the safe use of possible contaminants. 1[36]

NOM-018-STPS-2000: System for the Identification and Communication of Hazards and Risks

from Dangerous Chemical Substances in the Workplace, establishes requirements for the labeling of hazardous chemicals and communication of risks to workers that use such chemicals. Employers must identify hazardous substances used in the workplace, obtain MSDS on such chemicals; and communicate hazard information to employees through the use of labels, MSDSs, and annual training. NOM 018 supersedes NOM-114-STPS-1994.

5.4.4 Personal Protective Equipment (PPE)

NOM-017-STPS-1994: Relative to Personal Protective Equipment for Workers in the Workplace, requires employers to study workplace processes to determine the need for PPE, and, in cases where it is necessary, to provide proper PPE and training in its use. NOM-116-STPS-1994 and NOM-030-STPS-1993 set specific requirements for respirators, while NOM-113-STPS-1994 and NOM-115-STPS-1994 lay out regulations in regard to safety shoes and hard hats, respectively.

5.4.5 Joint Safety and Health Committees

Per NOM -019-STPS-1993: Constitution and Function of the Safety and Health Committees in Workplaces, employers are required to support the committees by providing necessary training to committee members, giving proper attention to the committee's recommendations, and providing the committee with the training it requests regarding work processes. Employers must give training to the workforce that is proposed by the committee and make information about committee participants available to employees. Committees are responsible for establishing and carrying out an annual program of inspections, producing reports on these inspections which the employer must keep for 12 months, and investigating the causes of accidents and illnesses and proposing corrections.

5.4.6 Notice of Accidents and Illnesses

NOM-021-STPS-1994: Relative to the Requirements and Characteristics of the Reports on Worksite Hazards in order to form Statistics, requires employers to give notice of workplace accidents to STPS, the Federal Labor Delegate, the Inspector of Labor, the Permanent Conciliation Board or the Conciliation and Arbitration Board, and the joint safety and health committee within 72 hours of the accident or of detection in the case of illness. This standard also mandates companies to keep a register of workplace accidents and illnesses.

5.4.7 Ergonomics

NOM-004-STPS-1999: Protection Systems and Safety Devices for Machinery and Equipment used in Workplaces, requires employers to conduct an assessment to determine the risks involved in operating machinery in the workplace. Based on this assessment, the employer is mandated to develop safety and health programs and provide training to workers. Related standards include NOM-006-STPS-1993: Relative to Safety and Health Conditions for Loading and Unloading Materials in Workplaces; NOM-009-STPS-1999: Suspended Access Equipment—Installation, Operation and Maintenance, Safety Conditions; NOM-011-STPS-1993: Relative to Safety and Health Conditions in Workplaces in which Noise is Generated; NOM-015-STPS-1993: Relative

to Occupational Exposure to High or Low Temperature Conditions in Workplaces; NOM-023-STPS-1993: Relative to Safety Components and Devices For Hoisting Equipment in Workplaces; NOM-024-STPS-1993: Relative to Safety and Health Conditions in Workplaces in which Vibrations Are Generated; and NOM-025-STPS-1999: Lighting Conditions in Workplaces.

5.5 General Health Law (LGS)

5.5.1 Occupational Safety and Health

Mexican health law in the private sector is codified as the General Health Law (LGS). 1 [37] The LGS regulates the right to health of the individual as provided for in Article 4 of the Mexican Constitution.

5.5.1.1 Applicability

Article 3, Section XIV of the LGS establishes that the law covers occupational health. Article 128 mandates that all work activities must be carried out respecting rules laid out by SSA. Article 132 of the LGS indicates that any type of workplace, including subsidiaries, is covered under the LGS.

5.5.1.2 Authority of SSA

Article 39 Section XVII of the LOAPF mandates that SSA implement measures to enforce the protection of health in the workplace. Articles 116, 118, 119, 120, and 129 of the LGS give federal government authorities the power to protect environmental health and to work with the states to protect health and provide health services in certain areas including instances where toxic substances and hazardous materials are used. Article 130 declares that SSA should coordinate with labor authorities at state and federal level to undertake studies and develop programs to prevent occupational accidents and injuries. Article 194 gives SSA the authority to engage in sanitary control, such as training, monitoring, and taking samples. Further, SSA has the authority to apply sanctions when necessary. Articles 393 and 394 establish that SSA and the states have authority to apply the LGS and its regulations, but that if other entities discover problems they should inform SSA.

5.5.1.3 Use of Chemicals

Article 278 defines dangerous and toxic substances and mandates SSA to publish a list in the Official Daily of the Federation (*Diario Oficial de la Federación*) of such substances. Article 281 requires labels for toxic and dangerous materials, which must identify the materials and give handling and emergency instructions in Spanish. Articles 298, 299 and 375 state that companies that import toxic substances must get sanitary authorizations (permits per Articles 368 and 369) from SSA.

5.5.1.4 Enforcement

The LGS is enforced through a variety of methods including regular and special verification visits (Articles 396 and 398). These visits have as their objective to verify that potentially toxic substances used in the workplace do not adversely affect worker health, and of investigations of workplace accidents.¹[38] Article 401 mandates that during such a visit, the employer must appoint two witnesses who must accompany the inspector during the inspection, the inspector records problems found in writing, and the employer must be given an opportunity to make written comments about the inspector's report. Articles 401 BIS 1 and 401 BIS 2 describe procedures for taking samples if necessary.

Article 400 obligates employers to provide free access to the workplace during an inspection. Articles 416-425 lay out the types of sanctions that can be assessed against an employer who violates the LGS. These sanctions include fines and arrests, suspension of work, or partial or complete closure of a facility. Some of the violations for which an establishment may be closed include operating without authorization, committing wanton violations of LGS, failure to remedy problems, and the existence of grave health and safety problems.

5.5.2 Workers' Compensation

The relevance of the LGS to workers' compensation is established in Articles 2 and 3 of this law. Article 2 affirms the right to the full use and enjoyment of one's health while Article 3 makes clear that Mexican workers are covered by the LGS.

Article 130 references several agencies with which SSA should coordinate, including IMSS, in an effort to prevent and control occupational illnesses and injuries.

5.6 Official Mexican Standards-SSA (NOMs-SSA)

NOM-047-SSA1-1993: Establishing the Maximum Permissible Exposure Limits for Organic Solvents for Workers Exposed to those Chemicals,¹[39] describes the kinds of testing that must be carried out in workplaces where benzene, toluene and xylene are used.¹[40] Part 6 of the NOM requires that workers be tested if biological monitoring (urine/blood) shows levels of dangerous substances above the PELs. It also states that if environmental monitoring shows levels above PELs, such a situation must be corrected. Part 7 of the standard requires employers to conduct entrance medical exams and to exclude possible employees with medical histories that show a particular sensitivity to the effects of toluene and xylene; to conduct annual medical exams; and to perform biological monitoring on employees working in areas where toluene and xylene are used.

NOM-048-SSA1-1993: Establishing the Standardized Method for Risk Evaluation at the Workplace due to environmental agents, suggests methods to avoid personal exposure to dangerous substances such as the use of less dangerous substances in place of more toxic ones, and the use of PPE.

NOM-056-SSA1-1993: Sanitary Requirements for PPE, lays out the requirements for use of PPE in the workplace. The NOM states that PPE must be in good condition and must fit the needs of the worker employing it. It also requires workers to receive adequate instruction in the use of

PPE.

5.7 Social Security Law (LSS)

IMSS is a decentralized agency that, along with local government agencies, is responsible for administering Mexico's Social Security Law (*Ley de Seguro Social*) (hereinafter LSS).^{1[41]} The objectives of the social security programs include "affording health security, medical assistance, support for economic subsistence, and social services for the well being of individuals and families, and a pension."^{1[42]} Social insurance in Mexico is divided into two categories: compulsory and voluntary. For the purpose of this report, the compulsory plan, which deals with workers' compensation for work-related illnesses and injuries and covers all "individuals who enter into an employer-employee relationship of any kind, whether permanent or casual," is most relevant.^{1[43]}

Article 42 of the LSS states that a "[w]ork-related injury means a bodily injury or impairment of physical function, whether sustained immediately or manifesting itself subsequently"¹ Article 43 defines an occupational illness as "a pathological condition arising out of or in the course of employment or attributable to the environment in which the employee is required to work. All diseases classified in the Federal Labor Act as occupational diseases are work-related diseases."

Article 44 guarantees an employee's right to appeal any IMSS determination as to the nature of an accident or injury. The Article also provides for certain employee benefits while an employee pursues such an appeal. Article 294 requires that the appeal must follow the regulations of the respective District Advisory Board, which is responsible for making a determination on the appeal.

Article 55 of the LSS affirms four categories of work-related disabilities and defers to the LFT for the appropriate definitions. The four categories are temporary disability, permanent partial disability, permanent total disability, and death.^{1[44]} Article 56 of the LSS names four types of in-kind assistance available to employees who incur a work-related illness or injury. These include "I. Medical and surgical care and medicines; II. Hospital care; III. Prosthetic and orthopedic appliances; and IV. Rehabilitation services."

Article 58 outlines the monetary benefits an employee may claim through the compulsory social insurance plan. The Article provides:

The pension shall be calculated using the disability valuation table in the Federal Labor Act, using as a basis the pension entitlement for permanent total disability. The percentage of incapacity will be set between the maximum and minimum indicated in the said table, taking into account the worker's age, severity of disability, and whether the disability precludes absolutely the performance of his occupation but not the performance of another occupation, or whether his performance skills have simply diminished for purposes of his occupation or for the performance of gainful

activity comparable to his previous occupation.1[45]

Article 62 provides that an employee who sustains a work-related injury or illness and later suffers a relapse on account of the same illness or injury is entitled to “100% of his contributory earnings as of the date of injury or onset of the illness.”

Inspections are referenced in several sections of the LSS. Article 15.V requires employers to allow IMSS to visit and inspect the premises. Article 51 requires employers to notify IMSS of all work-related accidents and illnesses. Article 52 further states that “[a]n employer that fails to report an accident befalling one of its employees on the job, or falsely reports such an accident as having occurred en route to work, shall be liable to the penalties under this Act and regulations thereunder.”

Articles 80-83 address the responsibilities of IMSS as they relate to occupational safety programs. Article 81 states that IMSS shall work with STPS and federal and state agencies to carry out occupational safety and health programs. Article 82 gives IMSS authority to conduct occupational safety-related research at its discretion and shall recommend to employers effective means of preventing job-related injury and illness in their workplace. Article 83 outlines several ways employers should work with IMSS to promote occupational safety programs including “providing input for the compilation of occupational risk statistics” and “adopting and making their employees aware of occupational safety rules and standards.”

Article 96 of the LSS explains that an insured person who suffers a non work-related illness is entitled to monetary benefits so long as the person remains unfit for work. “This benefit is payable commencing from day four of his incapacity . . . for a maximum of 52 weeks.” Article 98 codifies that this entitlement will be 60% of the insured’s “most recent daily contributory wage.”

Title 6 of the LSS codifies the accountability of government officials and employers for not acting with integrity and lays out the correlating penalties. Article 303 states:

persons holding any position of performing any task in the Institute, whether or not on a term assignment, shall be liable to civil and criminal penalties assessable on public servants, it being incumbent upon such persons to display a high level of professional commitment and ethics and to seek to afford superior service and assistance to persons entitled to the same. Every person who, being required to perform an administrative obligation to this end, fails to do so, shall be liable to penalties under the Federal Service Accountability Act, except persons covered under article 5 of the Act.

5.8 Medical Services Regulations (RSM)

The Medical Services Regulations (*Reglamento de Servicios Médicos*) (hereinafter RSM), establish the procedures for the provision of medical services by IMSS. 1 [46] The system of medical services provided by IMSS is a three-tier system. Patients are referred from one level to the next based on the level of care required by the patient, with each level offering a higher

degree of technologically advanced treatment.¹[47]

Article 6 explains that within the institutional health system, doctors are held accountable for the welfare of patients, as are any medical personnel that are involved in the care of patients at each level of treatment provided. In all cases, the Article stipulates that the Institute assumes responsibility with the previously mentioned personnel.

Chapter II of the RSM covers medical attention for work-related risks. Article 17 elaborates the services that IMSS will offer “[i]n cases that the Institute determines the existence of a work-related danger.” These services include “I. Medical, surgical and pharmaceutical assistance, II. Hospitalization service, III. Prosthetics and Orthopedic apparatuses, and IV. Rehabilitation.”

Article 18 codifies the methods IMSS will use to promote the health of workers. These include “epidemiological vigilance in businesses, medical services attention and the protection of the means of subsistence by assessing claims of work-related risks, the assessment of recurring injuries and illnesses, the valuation and reevaluation of permanent incapacities and work-related deaths.”

Article 21 establishes that an employer must notify IMSS of a work-related injury “no more than 24 hours after the event occurred.” Article 21 continues that an employer “is obligated to provide the information that IMSS requests and to permit the investigations that are necessary in the headquarters or area of labor, with the goal of assessing the risk.” Article 22 explains that “if the employer refuses to fill out and sign the notice of probable work-related risk, the worker is able to inform IMSS of the said situation, at which point IMSS shall act in accordance to the LSS.”

Investigations of the working environment are discussed in Article 24. This article states that when a worker seeks the assistance of the institutional medical services, the service providers should investigate the labor environment that predisposed the worker to the sickness. The article continues that, to this end, the employers should cooperate with IMSS.

Permanent incapacities suffered by workers are reviewed in Article 25, which states that the degree of permanent incapacity will be made by IMSS doctors. Their decision will be made on the determination of the “physico-functional” state of the worker and the medical, social and technical information that representatives of the union and the company provide.

In regard to the role of IMSS in the prevention of workplace injuries and illnesses, Article 26 states that IMSS will provide “information, advising, training and technical support,” individually or generally, in an effort to avoid work-related injuries and illnesses. The Article continues that IMSS should encourage coordination with STPS on programs aimed at minimizing work-related hazards “preferably in small and medium companies, as well as companies with high accident rates.” Article 27 continues that IMSS can order verifications of risk-prevention programs at its own initiative or at the request of owners. It states:

The Institute, through the institutional medical services that they correspond, will provide to the owners, by means of the workers or of their families or when it is possible directly, the information corresponding to the judgments of permanent partial or total incapacity and of death

because of work hazards, for the purpose that they rely on the data that permits them to determine their culpability and to calculate the premium that they will pay in the insurance sector.

5.9 Administrative Procedures

The General Regulation for Inspections and the Application of Sanctions for Violations of Labor Legislation (*Reglamento General para la Inspección y Aplicación de Sanciones por Violaciones a la Legislación Laboral*) (hereinafter RGIASVLL) governs inspections and sanctions in regard to occupational safety and health in Mexico. 1[48] It was enacted in 1998.1[49] Article 13 establishes the requirement for STPS to conduct initial, periodic, and verification inspections, while Article 14 empowers authorities to conduct special inspections. Initial inspections are first-time visits conducted at new workplaces. Periodic inspections are generally conducted on an annual basis, and verification inspections are conducted to determine whether companies have implemented remedial actions ordered during periodic inspections. Special inspections take place if authorities learn of possible labor law violations, dangerous working conditions, or the occurrence of accidents in the workplace, or if inspectors are provided with false information or are threatened by employers during periodic inspections. Article 17 imposes a minimum of a one-day advance notice requirement for inspections.

The Federal Law of Measurements and Standards (*Ley Federal de Metrología y Normalización*) (hereinafter LFMN), published in the federal daily (*Diario Oficial*) on July 1, 1992, establishes the NOMs that will be used to implement the LFT and the then-existing RGS. To this end, it established the National Standardization Commission (*Comisión Nacional de Normalización*) and the National Accreditation System of Standardization Institutions (*Sistema Nacional de Acreditamiento de Organismos de Normalización*). Since this law was passed, there has been a revision of a number of NOMs.

The LFMN also establishes the requirements for the private verification units that conduct plant monitoring under RFSH Articles 11 and 163.1[50] Articles 68-73 lay out the accreditation requirements for verification units. According to these articles, special evaluation committees which are overseen by the Trade Ministry (Secretaría de Economía) and the National Standardization Commission determine whether the units meet accreditation standards. Articles 118, 119, 120-A and 122 of the LFMN state that verification units and accreditation agencies must meet professional standards.1[51]

As discussed previously, Article 39 Section XVII of the LOAPF mandates that SSA implement measures to enforce the protection of health in the workplace. 1 [52] Similarly, Article 40 of the LOAPF gives STPS authority to enforce the LFT, and mandates that STPS develop and enforce appropriate NOMs in the area of occupational health and safety. 1 [53]

5.10 International Labor Organization (ILO) Conventions

5.10.1 Occupational Safety and Health

The ILO has developed several international conventions addressing occupational safety and

health. Conventions Nos. 155, 161, 167, and 1701[54] (see below) have been ratified by Mexico. Article 133 of the Mexican Constitution states: “This Constitution, Congressional laws of the Union, and all of the treaties that are in agreement, honored and respected by the President of the Republic with Senate approval, will be the Supreme Law of the Union.” Further, Article 6 of the LFT states that laws and treaties concluded and approved in terms of Article 133 of the Constitution, shall apply to labor relations insofar as they are to the workers’ advantage.

Convention 155: Occupational Safety and Health, 1981, promotes the adoption of a national policy on occupational safety and health and the working environment, as well as communication and cooperation at all levels in this area. The Convention requires the parties to formulate, implement and periodically review a coherent national policy on occupational safety and health and the working environment. The Convention applies to all branches of economic activity (with a few specific exclusions) and lays down a series of detailed provisions concerning action at the national level and the level of the undertaking. The Convention calls for the adoption of laws or regulations intended to safeguard occupational safety and health, including standards for risk assessments, training, reporting, and construction and calls for the operation of a system of inspections and the proper assessment of penalties. Further, the Convention provides that workers and their representatives shall cooperate in the fulfillment of the obligations placed on the employer. Finally, the Convention provides that workers who remove themselves from a work situation where they have reasonable justification to believe they are in imminent and serious danger, shall be protected from undue consequences.

Convention 161: Occupational Health Services Convention, 1985, aims to maintain safe, healthy and well-adapted working environments to promote the physical and mental health of all workers by means of a preventive health service. The Convention calls for governments to implement a national policy on occupational health services and see that these services are provided to workers. The Convention points out that this policy should be developed through consultations with the most representative organizations of employers and workers. Convention 161 indicates that safety and health services may be organized by public authorities, social security institutions, private sector groups, or by any other competent body. Further, the Convention states that employers, workers, and their representatives should cooperate and participate in the implementation of these services, which include the identification of risks from health hazards in the workplace, technical advice, training and education, first aid, analysis of occupational accidents and diseases, and vocational rehabilitation.

Convention 170: Chemicals Convention, 1990, aims to reduce the incidence of chemical induced illnesses and injuries at work. The Convention calls for a coherent policy on safe use of chemicals at work. Such a policy should include detailed regulations concerning classification systems of chemicals, their labeling and marking, and the responsibilities of suppliers and those of employers, particularly with regard to the identification of chemicals, their transfer and disposal, the exposure of workers, as well as information and training. The Convention states that employers shall ensure that chemical safety data sheets are provided to workers and provides that workers will cooperate with employer efforts in this regard, but also that they shall have the right to remove themselves from danger.

5.10.2 Workers' Compensation

The Mexican government has signed and ratified two ILO Conventions regarding compensation for work-related accidents and illnesses.

Convention 17: Workmen's Compensation (Accidents) Convention, 1925, codifies the responsibilities of signatory countries to ensure that workers or their families are compensated for workplace accidents. The Convention provides that compensation must be paid within five days of the accident. Further, an injured worker is entitled, as deemed appropriate, to indemnification of his/her surgical, medical and pharmaceutical expenses. Convention 17 also provides for compensation of a full-time medical assistant if the nature of the accident necessitates it.

Convention 42: Workmen's Compensation (Occupational Diseases), 1934, provides for the compensation of workers, or their families, in cases of illness or death arising from occupational disease. The Convention also stipulates that indemnification of occupational disease shall "not be less" than the national indemnification rates for occupational injuries.¹[55]

5.11 Additional International Agreements Ratified by Mexico

The International Covenant on Economic, Social and Cultural Rights was adopted by the UN General Assembly on December 16, 1966, and signed by Mexico on March 23, 1981. ¹[56] Article 7 commits signatories to the recognition that all people have the right to safe and healthy working conditions. Article 2 states that signatory countries must take steps to see that rights spelled out in the covenant are protected.

The Universal Declaration of Human Rights was adopted by all the members of the UN General Assembly, including Mexico, on December 10, 1948. ¹ [57] Article 23 of the Declaration states that everyone has the right to "just and favorable conditions of work" Article 25 states that everyone has the right to "security in the event of . . . disability"

The American Declaration of the Rights and Duties of Man was adopted by Mexico at the Ninth International Conference of American States at Bogotá in 1948. ¹ [58] Article XI states, "[e]very person has the right to preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources."

The Protocol of San Salvador, also known as the "Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights" was signed by Mexico on November 17, 1988, in San Salvador, El Salvador.¹[59] Article 1 commits signatories to promote principles in the protocol to the extent possible given their level of development. Article 7 affirms that while everyone has the right to work, they have the right to work under just and satisfactory conditions, and specifically the right to safety and hygiene at work. Article 9 states that people have the right to social security in case of accident or injury at work. Article 10 states that everyone has the right to health "including the prevention and treatment of . . . occupational disease." Signatories are required to submit periodic reports to the

OAS regarding progress on these principles.

The Constitution of the World Health Organization (WHO), to which Mexico is a signatory, has as an objective (Article 1) to promote the attainment of the highest possible level of health for all peoples. 1 [60]

The Constitution of the Pan American Health Organization, to which Mexico is also a signatory, has as an objective (Article 1) to “promote . . . the physical and mental health of people.” 1 [61]

6. Analysis

6.1 Occupational Safety and Health

6.1.1 Use of Chemicals

Submission 2000-01 raises issues concerning government enforcement of occupational safety and health laws as they pertain to the use of chemicals in the workplace. Workers at Auto Trim and Custom Trim/Breed Mexicana use glues and solvents during the leather wrapping and finishing operations. The submitters claim that products such as Sicomet 5019, Loctite, Hallmark 7158, and Varsol are used. According to information from manufacturers’ Material Safety Data Sheets (MSDSs) gathered by the submitters, the chemicals and compounds in use include ethyl cyanoacrylate, polymethyl methacrylate, acetone, n-hexane and hexane, toluene, magnesium oxide, nitromethane, trimethyl benzene and stoddard solvent.

The submitters allege that workers at the plants have developed illnesses and diseases such as dermal irritations, respiratory irritations, eye damage, and central nervous system depression and other effects due to the unsafe use of these chemicals.1 [62]

One current worker who testified to being employed at Auto Trim for 8½ years explained:

For about three and a half years now, I have suffered from respiratory and throat problems, which I believe have been caused by working for years with toxic glues and solvents. I now suffer from a constant cough that never goes away. I also frequently get throat infections and sometimes cough up blood. I sometimes feel as though I can’t breathe properly – that I can’t get enough air and that I’m gasping. My nose burns a lot, especially at work. The skin on my hand is irritated and peels easily. Sometimes if I get a lot of glue or solvent on my hands, it causes skin burns. My eyes get very irritated, and I get terrible headaches. I am now often dizzy and have almost constant nausea and stomach pain. I have trouble sleeping at night sometimes because of pain.1 [63]

Other workers provided similar testimony. A nurse employed at Custom Trim from 1995 to 1997 stated:

I began to see cases of workers getting sick within the first few months I started working at Custom Trim. . . . I saw several cases of workers suffering from respiratory problems, four of them chronically, as a consequence of being exposed to the hazardous vapors that filled the plant. . . . The workers suffered from symptoms that included heavy rashes in [sic] the hands . . . , wrinkling and acute dryness of the skin and cracking of the nails. . . . In addition, workers suffered from frequent nasal bleeding, nausea, headaches and even loss of consciousness . . . that would take place on the production floor itself.¹ [64]

A worker who testified to having been employed at Auto Trim from 1992 to 1998 stated:

I used white and yellow glues and Varsol and Loctite in my work. . . . I would feel a lot of discomfort from using these chemicals; my nose was very itchy and I was always sneezing and having frequent nosebleeds, almost everyday; I had a dry throat as if I had a cold or an infection, and it would go away when I got away from the factory. . . . My eyes would sting, I would get dizzy all the time, I felt like vomiting, I felt dull, forgetful, I don't hear when people talk to me and I get very sleepy.¹[65]

To further support their allegations, the submitters provided documentation and presented testimony from various experts at the public hearing. Garrett Brown, an industrial hygienist employed by California State OSHA and Director of the Maquiladora Health and Safety Support Network, supplied the U.S. NAO with written testimony that contained toxicological information on a variety of the chemicals cited by the submitters. According to this documentation, while the specific effects of the chemicals vary widely, many have been found to cause dermal, eye, and respiratory irritation as well as central nervous system depression.¹[66] Mr. Brown also indicated that toluene, one of the chemicals in use at Auto Trim and Custom Trim/Breed Mexicana, can be a reproductive health hazard.¹[67] In the public hearing, Ezequiel Tinajero, who testified to having worked at Auto Trim from 1988 to 1996 stated:

After seven years of being exposed to these toxic substances, in 1995, my wife and I had a daughter that died two hours later; she had anencephaly. After this, we started asking about the cause of death of my daughter, and I started getting information from other co-workers that had had miscarriages that had happened at the plant and from other co-workers that had children with physical defects. Eighteen days after my daughter died, another worker had a daughter that died due to hydrocephaly and the wife of another co-worker had another daughter like my daughter. My friend Bruno, had a son with Spina bifida.¹ [68]

The submitters allege that STPS, IMSS and SSA permitted an unsafe work environment to exist by failing to enforce safety and health laws, regulations, and standards. First and foremost, the

submitters argue that these agencies neglected to conduct inspections -- or conducted completely inadequate inspections. The nurse formerly employed at Custom Trim/Breed Mexicana stated:

In the 2½ years that I worked at Custom Trim, I never saw any inspectors from the STPS conducting any periodic or extraordinary inspections. However, I am aware of the existence of an internal environmental report done at Custom Trim, perhaps to determine the level of toxins, vapors and contamination in the air, but I do not know who did the report or what the contents are. Neither do I know how to get a copy of it or from whom.¹[69]

The submitters also claim that they received basically no response to four petitions they presented to STPS, IMSS, and SSA, and that, to their knowledge, no inspection was conducted as a result of their petitions. In written testimony, a worker who testified to having been employed at Custom Trim/Breed Mexicana from 1995 to 1997 stated:

Back on May 19, 1998, we submitted a petition for inspection asking the STPS to inspect Custom Trim and Auto Trim . . . because of the dangerous working conditions in both plants. . . . After we filed this petition for inspection, we telephoned Ing. (*Ingeniero/Engineer*) Oscar M. Martinez at the state offices of the STPS in Ciudad Victoria, Tamaulipas, to find out what had happened to those inspections of Custom Trim and Auto Trim we had requested. . . . We called over and over trying to find out what had happened, but to no avail. . . . Some time later, on August 12, 1998, when Custom Trim workers . . . accompanied a worker from another maquiladora . . . to file a petition . . . we found out from Ing. Oscar M. Martinez that Mexico City inspectors had supposedly visited the plants. He told them that the inspectors had conducted ‘verifications’ in both plants. . . . Nevertheless, to this day we do not really know if the inspections or ‘verifications’ really took place or what the results might have been. When I was working at Custom Trim, I saw some outside people visiting the plant a couple times. I assumed they were inspectors, but I do not really know. They were not wearing uniforms, but we think they were inspectors because our supervisors kept telling us to keep working and told us to clean the floors. Both times these people went to see only one or two production lines very quickly and then left or went to the manager’s office and talked for a long time. Then, they left, but did not really do any inspection at all.¹ [70]

Manuel Mondragon, a representative of the local worker rights organization PJO in Matamoros, testified that: “IMSS and SSA have done nothing [in response to our petitions].”¹ [71]

The submission alleges that STPS, IMSS and SSA also failed to ensure that other safety and health practices were followed. These include properly functioning safety and health

committees; monitoring and reporting of contaminant levels; provision of appropriate PPE; adequate ventilation, exhaust and temperature control systems; labeling of chemicals; and relevant safety and health training.

Specifically, the submitters allege that the Government of Mexico failed to ensure environmental and biological monitoring of contaminants at Auto Trim and Custom Trim/Breed Mexicana. In written testimony provided to the U.S. NAO, an individual who testified to working at Auto Trim for the past four years stated:

I have never seen anybody from the government nor from the plant conducting testing or sampling on the chemicals we use in the four years I have worked for Auto Trim. . . . I took a blood test when I was first screened for employment. Thereafter, I have never been screened again. No blood or urine samples have been taken whatsoever after my hiring screening. I know that co-workers are not tested either. 1[72]

The submitters likewise assert that the joint workplace safety and health committees did little to affect safety and health conditions in the plants. In written testimony, an individual who testified to working at Auto Trim from 1989 to 1999 and being active on such a committee stated:

The commission did not work. It did not monitor the plant's health conditions. The most the commission did was make sure that there was no garbage, that fire extinguishers were there, and that the emergency doors weren't locked. . . . I told Auto Trim's environmental engineer that I thought that the NOMs contained many rules that should be followed by the plant. I said that the commission should get involved in seeing that the plant complied with the health and safety NOMs. The engineer told me that the health and safety commission was not supposed to have anything to do with the NOMs. The commission did not educate workers about . . . the legal rights or workers . . . [or] about the risks they faced at Auto Trim, and did not train workers how to reduce risk.1[73]

In regard to PPE, the submitters assert that workers have been provided with cloth, plastic or rubber gloves, and dust masks that were easily damaged, and plastic safety goggles that were easily scratched. The submitters contend that workers should be provided with chemical-resistant gloves and aprons, carbon-based masks or personal respirators, and safety goggles. In written testimony, an individual who testified to working at Auto Trim for the past three years stated: "I use the Varsol with a rag and I drench it [; I do so] without gloves because we don't get any. . . . Because I use the solvents and the glues without gloves, my hands are really sensitive and I get these blisters that are very painful. My fingernails are all cracked."1[74] Workers also provided testimony regarding the use of PPE during the public hearing. Bruno Mantagna Lopez, who testified to having been employed at Auto Trim for seven years, stated that gloves with which he was provided did not completely cover his hands and fit poorly,

causing calluses and swelling.¹ [75]

In written testimony submitted to the U.S. NAO, a worker who testified to being employed at Custom Trim/Breed Mexicana from 1996 to 1997 stated:

Custom Trim would not give us any safety equipment, with the exception of a pair of plastic glasses that were very heavy and would get easily scratched, making it difficult to see. Sometimes management would give us food-serving gloves to handle the glues and solvents but they got damaged by or literally disintegrated because of the solvents. Our hands would become dry, the skin would peel and our nails would crack. Also the only protection against cuts from the thread we used to sew the leather onto the gear-shift knobs, would be some adhesive tape that we would wrap around our fingers. However, with time, this would cause our fingers to become deformed.¹[76]

Workers also testified to allegedly inadequate ventilation and extraction equipment. In written testimony presented to the U.S. NAO, an individual who testified to working at Custom Trim from 1994 to 1997 described the ventilation system at the plant:

the toxic vapors from chemicals, solvents, and glues we used in the plant, contaminated the air and we breathed these toxic vapors all day long. . . . the air conditioning system was usually turned off and it was very hot in the plant, especially in the summer. . . . the ventilation system inside the plant consists of air extractors (*extractores de aire*) to eliminate or extract the chemical vapors. These air extractors consisted of pipes running along the production table with small openings at each work station. However, the air extractors were too weak, broke down frequently or did not work at all. Furthermore, we could not work right next to the air extractors because the supervisors told us that glue could spill inside the duct and stain it. This defeated the purpose of the air extractor which, to begin with, did not have enough suction force to effectively aspirate the toxic chemical vapors.¹ [77]

In the public hearing, Matias Pecero, who testified to having worked at Auto Trim from 1989 to 1999, stated:

we performed a study [at Auto Trim]. And we were able to determine that there [were] only 120 air extractors for all the personnel, for 540 workers. And percentage wise, we're saying that only 28 percent of [workers had the] . . . air extraction system . . . present in our work area, and 72 percent of workers were totally without the benefits of the system. . . . thinking that the distribution of the vapors was [spread] throughout the company,

that was totally inadequate.¹ [78]

The submitters also allege that workers were not provided with adequate information about the chemicals with which they work. Workers claim that all the information they obtained about chemicals was provided by outside sources, including the Coalition for Justice in the Maquiladoras. Pedro Lopez Morales, who testified to having been employed at Custom Trim/Breed Mexicana from 1995 to 1997, stated:

[For] the chemical substances – the yellow glue – there is no labeling. Some of the solvents did have labels, but the information was labeled in English. So none of the workers knew what it said. Nor was any information disclosed by supervisors, managers or human resources [personnel] about the content of the solvents or the consequences of using those solvents¹ [79]

Similarly, Veronica Lopez, who testified to having worked at Auto Trim from February to August 1999, stated:

In my case, Loctite – we all knew that it said, “Loctite,” but in truth, we didn’t know what it meant. There were instructions – use instruction, but we didn’t know because they [were] . . . in English. And the white glue that we were using came in small containers that they emptied out themselves. So they didn’t have any labeling, nor did the green glue have any kind of labeling . . . that we could understand.¹[80]

The submitters also claim that workers have not been provided with relevant safety and health training. In a written statement submitted to the U.S. NAO, a worker who testified to having been employed at Custom Trim from 1996 to 1997 stated:

Custom Trim did not give us any instruction manuals or safety information sheets describing how to properly handle the glues and solvents and the safety equipment. Management threatens to fire anyone who asks for . . . better working conditions and instruction manuals. That is why Custom Trim fired me along with several dozen workers in June of 1997. Also, the company did not give us any training even though our trial period was for 60 days. Some workers got a little training but most of them had to learn on the job from co-workers who would show them how to use the tools and handle the chemicals.¹ [81]

In written testimony to the U.S. NAO, a worker who testified to working at Custom Trim from 1994 to 1997 stated:

I did not receive any training or instruction on how to use the chemicals or any information about the dangers of working with

them or what to do in case of an accident or fire. None of the workers did. We were just told to just work . . . and without any training.1[82]

In private interviews conducted by U.S. NAO personnel, current workers from Auto Trim stated that plant management gave them blank forms to sign, which were later completed to document proof of training.

During its review, the U.S. NAO considered the submitters' allegations in light of written documentation and other information supplied by the Government of Mexico, Breed Technologies, current workers, unions, and experts. Breed provided the U.S. NAO with a list of products currently in use at Auto Trim along with their Material Safety Data Sheets (MSDSs). No information was provided in regard to chemical use at Custom Trim/Breed Mexicana.1[83] According to this information, several chemicals described by submitters are currently in use at the plant.1[84]

During the visit to Auto Trim and Custom Trim de Ramírez,1[85] technical experts from OSHA and NIOSH confirmed the use of Loctite 76820 X-NMS solvent, Loctite glue, water-based glue, Hallmark 7158, and Varsol.1 [86] The U.S. NAO was unable to obtain information on chemicals and solvents used at Auto Trim and Custom Trim/Breed Mexicana before 1997. According to Breed management, however, certain chemicals were replaced by less toxic varieties starting in 1998, including water-based glues.1 [87] Occupational safety and health experts from NIOSH noted: "One important improvement . . . has been the partial substitution of water-based glue in the process (green glue), which is less irritating and toxic than the organic solvent-based glues. . . . However, the solvent-based products are still used in the process."1[88]

With regard to the health effects on workers of the glues and solvents in use at the facilities, the NIOSH experts indicated:

Workers had potential for direct skin contact with glues and solvents at gluing work stations. We were not able to collect enough information to determine if dermatitis is a significant problem in the plants. Workers we observed during the walkthroughs appeared to have only minimal skin contact with the glues and solvents because of their skill in using brushes to apply yellow and green glues, and small bottles with applicator or brush tips to apply Loctite glue (superglue). However, there was still potential for skin contact with the glues due to accidental spills or drips, and hand contact with solvents used on cleaning rags to clean up spills or excess glue on parts.

* * *

Workers have exposures to potentially hazardous solvents and glues by skin contact and inhalation. . . . Many of the worker health complaints mentioned in Submission 2000-01 . . . , such as

respiratory and dermal irritation and central nervous system effects, are consistent with overexposure to these substances.¹ [89]

With regard to workers' reports of reproductive health problems and neural tube defects, while there may be medical studies documenting a relationship between some of the chemicals under consideration and those reproductive hazards, the U.S. NAO does not have sufficient information to document a relationship in this case. According to NIOSH experts:

We were unable to make any determination regarding [reproductive health problems]. . . . In order to determine whether the rates . . . are elevated, it is necessary to have data available on the total number of births and the number of cases of neural tube defects, miscarriages, or other adverse reproductive outcomes. Since this information was not available to us during the site visit it is impossible to determine whether the rates at the Breed facility are elevated.¹ [90]

6.1.1.1 Inspections

According to LFT Articles 527 and 541 and RGIASVLL Articles 13 and 14, STPS has the responsibility to conduct initial, periodic, verification, and/or special inspections at workplaces under its jurisdiction. Breed management provided the U.S. NAO with copies of eight STPS reports from inspections carried out at Auto Trim between 1997 and 2000. Of these, two were periodic safety and health inspections dated September 18, 1997 and August 12, 1999, two were verification inspections dated December 16, 1997 and June 22, 2000, and one was a special safety and health inspection dated August 11, 2000.¹[91] Subsequently, Breed provided the U.S. NAO with information on inspections carried out at the plant between 1991 and 1996. Of these, three were periodic safety and health inspections on June 6, 1991, August 7, 1992 and October 4, 1995; three were safety and health verification inspections on November 11, 1991, December 16, 1992 and September 20, 1996; and one was a special safety and health inspection on September 14, 1995.¹[92]

The Government of Mexico also supplied the U.S. NAO with information in regard to inspections at the Breed facilities. In its response to the U.S. NAO, the Mexican government corroborated that special safety and health inspections were conducted on September 14, 1995 and August 11, 2000, periodic safety and health inspections were conducted on September 18, 1997 and August 12, 1999, and verification inspections were carried out on December 16, 1997 and June 22, 2000. The Government of Mexico provided additional information explaining that STPS inspectors recommended sanctions be imposed on the company based on the September 1995, August 1999, and August 2000 inspections.¹ [93] As a result of these recommendations, STPS issued an unspecified fine against Auto Trim on April 11, 1997, and began sanctioning procedures against the company on June 29, 2000 and August 15, 2000, both of which are pending currently. The Mexican government also informed the U.S. NAO that additional inspections had been carried out at Auto Trim, including a September 20, 1996 verification visit and a December 5, 1996 periodic safety and health inspection.¹[94] Based on the information provided by Breed Technologies and the Government of Mexico, it is apparent that STPS has

conducted annual periodic inspections and verification visits at Auto Trim as required under the RGIASVLL.

In regard to inspections at Custom Trim/Breed Mexicana, Breed Technologies provided the U.S. NAO with the record of a periodic safety and health inspection dated December 18, 1997. During a meeting with SIMVH on January 23, 2001, the U.S. delegation was briefly shown copies of two reports from STPS inspections at Custom Trim/Breed Mexicana dated February 9, 1997 and May 13, 1999. The Government of Mexico corroborated that the December 1997 and May 1999 inspections were conducted,¹ [95] and indicated that they were followed by verification inspections on May 20, 1998 and July 10, 2000. The Mexican government further indicated that, although sanctions had been recommended in the December 1997 inspection, the verification inspection found the company to have complied with all previously ordered actions.¹ [96] The Mexican government also indicated that a special inspection was conducted at Custom Trim on September 24, 1998, but that the company was found to have ceased operations.¹[97] Based on this information, it appears that STPS has conducted regular inspections at Custom Trim/Breed Mexicana as mandated by the RGIASVLL.

According to LGS Articles 396 and 398, SSA has the responsibility to conduct periodic verifications of companies that use any of the potentially toxic chemicals regulated by the agency, or if a chemical-related accident occurs in the workplace. According to submitters, there was no investigation of an alleged chemical fire at the Custom Trim/Breed Mexicana facility in the summer of 1996.¹[98] During the course of its review, the U.S. NAO discovered no information that SSA conducted any kind of verification visits at the facilities.¹[99] The Government of Mexico response provided no information on SSA responsibilities or SSA inspections at either plant.

In addition to STPS and SSA, Mexico's Federal Attorney General of Environmental Protection (PROFEPA) has the responsibility to carry out inspections of environmental conditions in the workplace.¹[100] Based on documents presented to the U.S. NAO during the site visit, PROFEPA has been engaged in correspondence with Breed management on issues of occupational safety and health.

Further, information provided during the site visit to Custom Trim de Ramírez indicates that all of the Breed facilities are involved in a self-management or voluntary compliance inspection program, in which STPS trains company management to conduct plant inspections.¹ [101] The results of these inspections are examined by STPS officials. In its response to the U.S. NAO, the Government of Mexico indicated that Auto Trim had applied to participate in October 1997 in the government's Safety and Health Self-Management Program, and that STPS technical experts visited the plant on August 5, 1998, to gather information on improvements the plant had made under the program.¹[102]

In 1996, the ILO Committee of Experts on the Application of Conventions and Recommendations (hereinafter CEACR) issued an observation in response to a communication concerning occupational safety and health conditions in the Matamoros area, noting that it hoped "that the measures taken through an appropriate and adequate inspection system [would] make it possible to prevent accidents and reduce to a minimum . . . the causes of hazards . . . in

accordance with Article 4(2) of . . . Convention [155].”¹ [103] In 1998, the CEACR reported that it had received a response from the Government of Mexico, which stated that it had instituted a new regulation, the RFSH, in order to formalize its policies so that the Government, workers, and employers could fulfill their obligations and the conditions for protecting workers’ health could be strengthened. The Committee stated its hope that the Government would continue to make efforts to reduce workplace risks, and would keep the Committee informed of progress made to ensure the application of Convention 155.1 [104]

While the available information makes clear that STPS inspections were conducted on a regular basis at Auto Trim and Custom Trim/Breed Mexicana, the format of the inspection reports raises questions in regard to the thoroughness of inspections. The reports are standardized checklists on a variety of safety and health conditions, with little detail on particular issues and no additional comments from inspectors. As NIOSH experts noted, the inspection reports focus:

primarily on reviewing documents provided by the employer to demonstrate the existence of certain components of a safety and health program. For example, the STPS inspector reviewed documents regarding maintenance of the ventilation system, but the reports provided no indication that the STPS inspector made a direct evaluation of the ventilation system in either plant. STPS inspectors did not conduct environmental monitoring for chemical exposures to verify results reported by the company. . . . Although the thoroughness of the inspection recommendations appears to have improved between 1997 and 1999, the major focus of the STPS inspection recommendations at Auto Trim and Custom Trim was on issues of illumination, warning signs, or safety rather than chemical or ergonomic exposures.¹ [105]

While the law provides for periodic plant inspections, it also requires that inspectors communicate with workers during the course of these inspections. The safety and health inspection reports available to the U.S. NAO indicate that generally at least two workers were asked to make comments on each report. Worker interviews described in the reports usually contain names and other personal details. Although this practice is not expressly contrary to existing Mexican law, it raises questions about whether workers are given an equal opportunity to make comments to inspectors and would feel comfortable to freely express critical views.

The reports of safety and health inspections also indicate that a union representative on the joint safety and health committee was interviewed during the inspections. In some cases, his signature appears on the report. Moreover, during the U.S. delegation meeting at Auto Trim, management stated that copies of inspection reports are given to joint committee and union representatives by STPS. Statements made by union representatives during the U.S. delegation meeting with SJOIIM support this assertion. To this point, the U.S. delegation was shown copies of inspection reports during the meeting with SIMVH. It is clear, therefore, that representatives of the plant unions do have knowledge of inspections and access to inspection reports. This is in contrast to the submitters’ assertion that workers had no knowledge of inspections at the plants. This discrepancy raises questions about the level of communication between worker representatives

and rank and file workers. While STPS inspectors may be following the “letter of the law” as laid out in LFT Articles 511, 541 and 542 in regard to communication with worker representatives, there are questions about whether such communication extends to all workers. This appears to conflict with the obligation of Article 7 of the NAALC to promote public awareness of labor law, as well as the objective of NAALC Article 1(g) to “[f]oster transparency in the administration of labor law.”

The U.S. NAO has gathered information that suggests that STPS has the capability to carry out thorough plant inspections. During its meeting with members of SJOIIM, the U.S. NAO was shown a letter dated September 5, 1995, in which then SJOIIM leader Agapito González requested that Fidel Velázquez, then Secretary General of the CTM, intercede on behalf of workers at Auto Trim who were suffering various health problems. In its response to the U.S. NAO, the Mexican government indicated that Mr. González made such requests on both March 15 and September 5, 1995:

Through letters dated March 15 and September 5, 1995, . . . Agapito González Cavazos . . . stated that an alarming number of workers at the firm Auto Trim de México, S.A. de C.V. were presenting pains in their fingers, in the wrists of their hands, and in their arms, for which reason they were applying for intervention by the STPS.¹ [106]

Representatives from SJOIIM also showed the U.S. delegation a letter dated September 22, 1995, from Dr. Juan Antonio Legaspi, then Director of Inspections at STPS, to Breed management, in which Dr. Legaspi suggested changes the company could make to address the possibility of chemical exposures and improve the ergonomics of its plant design. ¹[107] Most of Dr. Legaspi’s recommendations concerned reducing risk factors for ergonomics, but he also recommended further air monitoring and biologic monitoring to assess workers’ chemical exposures, and suggested that local exhaust be installed at gluing work stations. The letter stated that these suggestions were made based on the special inspection that STPS conducted at Auto Trim on September 14, 1995.¹[108] This correspondence between STPS and the company indicates that the Mexican government has the capability to address worker concerns and conduct detailed plant visits, which contrasts with the standardized format of periodic inspections evidenced in reports the U.S. NAO examined.

In addition to the September 1995 special inspection and correspondence from Dr. Legaspi, the Government of Mexico informed the U.S. NAO that STPS technical safety and health experts visited Auto Trim on August 5, 1998, in part based on the receipt of the May 19, 1998 request for inspection from current and former workers of Auto Trim and Custom Trim/Breed Mexicana, as well as a supplemental request on July 13, 1998.¹[109] The Mexican government indicated that it has no record of having received a request for inspection from current and former workers of Auto Trim and Custom Trim/Breed Mexicana dated April 14, 1999: “With reference to the alleged application for inspection filed on April 15, 1999, neither the Bureau of Federal Workplace Inspection nor the Local Labor Branch Offices have any acknowledgement of receipt.”¹[110] This contrasts with credible information provided to the U.S. NAO by the submitters, which shows that the 1998 and 1999 petitions sent to STPS and SSA are stamped by

those agencies as received. Furthermore, although there is no stamp on the petition submitted to IMSS, the U.S. NAO received information from the Custom Trim union SIMVH indicating that IMSS representatives visited the plant on May 13, 1999 in reference to a letter presented by Jaime Salinas de Leon,¹ [111] who apparently signed the petition on behalf of the current and former Auto Trim and Custom Trim/Breed Mexicana workers.¹[112]

Despite the evidence that STPS and IMSS responded to some worker complaints, the submitters state that the only information from government agencies that workers received was a belated letter from SSA. During the site visit to Matamoros, Breed management representatives likewise informed the U.S. NAO that they was not aware of any response to the petitions filed by the submitters. The workers' claim that they did not receive a proper response from the authorities is supported. The fact that the Mexican authorities apparently have not communicated with the submitters is a cause of concern to the U.S. NAO. This lack of responsiveness raises questions about the Mexican government's compliance with its commitments to ensure appropriate access under NAALC Article 4, to guarantee that administrative procedures are transparent under NAALC Article 5, and to promote public awareness of labor law under NAALC Article 7. The U.S. NAO will continue to seek additional information from the Mexican government concerning the 1995 and 1998 plant visits and its handling of the 1999 workers' petitions.

6.1.1.2 Monitoring

Certain documents gathered by the U.S. NAO contain information regarding the submitters' allegation of failure to conduct chemical monitoring at Auto Trim and Custom Trim/Breed Mexicana. Breed management sent the U.S. NAO information concerning Auto Trim, which included copies of a September 17, 1997 letter from STPS acknowledging receipt of a recent chemical monitoring study and two chemical monitoring studies conducted by two contractors, Hardt and Ecotech, one undated and the other dated October 2000.¹ [113] In addition, during the site visit, the U.S. delegation was permitted to review copies of additional monitoring reports dating back to 1994.¹[114] The U.S. NAO was informed by Breed management that the contractors who conducted the chemical monitoring at Auto Trim were accredited by the Government of Mexico as private verification units under the LFMN, both at the inspector and the lab level.¹ [115]

NOM-010-STPS-1999 establishes the PELs for a variety of chemical compounds and outlines requirements for the sampling and analysis of these compounds. With some minor exceptions, according to the chemical monitoring studies reviewed by the U.S. NAO, Auto Trim did not exceed PELs for chemicals included in the studies.¹ [116] In addition, although the three periodic and special STPS health and safety inspection reports from Auto Trim¹ [117] available to the U.S. NAO indicate that chemical risk assessments and health diagnosis reports are sometimes out of date, all three note that the plant met requirements for current chemical monitoring.

The STPS December 1997 periodic inspection report at Custom Trim/Breed Mexicana states that the company maintains current chemical monitoring studies. Furthermore, in its response to the U.S. NAO, the Mexican government stated that chemical monitoring studies conducted at both Custom Trim/Breed Mexicana and Auto Trim have revealed chemical concentrations far below

PELs.1 [118]

In reviewing the Auto Trim monitoring reports, it was noted that concentrations of all substances included in the evaluations, n-hexane, acetone, mineral spirits, trimethyl benzene, and methyl methacrylate, were reported to be below their individual STPS permissible exposure limits. However, the sampling results raise some concerns.¹ [119] The consultants did not appear to sample the minimum number of workers required under NOM 10, nor did they include information in their reports on how workers who were sampled were selected. In addition, the consultants did not monitor for ethyl cyanoacrylate or nitromethane, a component of the Loctite X-NMS Solvent. While Mexico does not have a PEL for ethyl cyanoacrylate, it is an internationally recognized contaminant and NOM 10 states that studies should be conducted to evaluate exposures to all contaminants in the work environment. The view of the Government of Mexico on the effect of NOM 10 on monitoring for ethyl cyanoacrylate, and other chemicals for which no PELs exist, is unknown. The Government of Mexico has a PEL for nitromethane; thus, it is unclear why this chemical was not included in the monitoring studies. Additionally, although NOM 10 requires full shift sampling to be conducted with either one continuous sample or a combination of segmented samples, the reports reviewed contained only a few sampling times that covered a full shift. Finally, the reports show that the consultants compared only individual chemical concentrations with their individual PELs, and did not follow the NOM 10 requirement to evaluate exposures based on additive effects when workers are exposed to a mixture of two or more chemical substances for which there are PELs.

Based on the information gathered by the U.S. NAO, it appears that STPS did not require the consultants to make any corrections to the sampling or the results they reported. The U.S. NAO is not aware of any STPS responses to the monitoring studies submitted by Auto Trim other than the September 1997 letter, but Breed management indicated that STPS generally responds only if government officials find problems with the reports.

Furthermore, although the inspection reports at both Auto Trim and Custom Trim/Breed Mexicana note that the companies have up-to-date monitoring studies, the reports do not indicate that inspectors do any testing or monitoring of chemicals during inspections to validate the accuracy of the private consultants.

There was no evidence that STPS inspectors conducted any monitoring of chemical exposures in the plants. STPS appeared to rely entirely on the consultants' evaluations of chemical exposures and the consultants' conclusions regarding acceptability of workplace conditions. The records provide evidence that over a period of several years the consultants' reports to STPS failed to meet the Mexican standards regarding methods for chemical exposure evaluations, and there were no STPS citations for these deficiencies.¹[120]

Under recent legislation,¹ [121] the Mexican government has established a system of workplace monitoring that relies in large part on studies conducted by third party verification units. The apparent failure of STPS to critically review consultant reports in this case raises questions about

how the Mexican government assures the quality of the private verification units and their studies.

In addition to environmental monitoring, Mexican regulations and standards also require biological monitoring and medical testing for potential overexposure to hazardous chemicals in the workplace. Article 83 of the RFSH and NOM-005-STPS-1998 require employers to conduct medical examinations on workers exposed to dangerous chemical substances, while NOM-010-STPS-1999 states that employers must conduct medical monitoring when environmental monitoring shows that PELs have been exceeded. According to the report from the August 1999 inspection at Auto Trim, the company conducted medical exams on workers. The report from the August 2000 inspection at Auto Trim, on the other hand, states that the company is not required to conduct medical exams since the PELs for the chemicals in use at the plant have not been exceeded. However, NOM-047-SSA1-1993 states that employers must conduct annual medical exams and perform biological monitoring on employees working in areas where toluene and xylene are used. The U.S. NAO has confirmed these substances are in use at Auto Trim and Custom Trim/Breed Mexicana.¹ [122] According to the submitters, SSA has failed to ensure that workers at Auto Trim and Custom Trim/Breed Mexicana receive regular medical testing. Whether Mexican law would require biological monitoring in this case remains unclear, and the Government of Mexico provided no information to the U.S. NAO in regard to biological monitoring by STPS or SSA. Information gathered from conversations with workers and company doctors during the site visit to Auto Trim and Custom Trim de Ramírez indicates that workers receive pre-employment medical exams and periodic blood pressure and cholesterol screenings, but do not receive regular biological monitoring for exposure to hazardous chemicals.

During its review, the U.S. NAO also gathered information regarding government oversight of joint safety and health committees at the plants. NOM -019-STPS-1993 lays out the requirements for workplace joint safety and health committees. According to this standard, committees must carry out monthly inspections or “*recorridos*,” produce reports on such inspections, investigate the cause of accidents and illnesses, and propose corrections. The U.S. NAO reviewed copies of monthly reports of *recorridos* conducted by members of the committees during the years 1998 through 2000.¹[123] These reports mention worn out anti-fatigue mats, broken chairs, and other conditions that coincide with some of the allegations made by the submitters, but do not address issues such as adequacy of ventilation or musculoskeletal effects of the work process. According to submitters there is very little discussion between members of the safety and health committees and other workers about workplace problems, and little sharing of the *recorrido* reports with the workers in general. Therefore, although the joint committees do exist and carry out their basic functions, it is unclear whether committee members receive adequate technical training to fulfill their monitoring activities and whether the committees actually investigate the causes of worker accidents and illnesses or propose measures to address them as mandated in NOM 019.

Over the course of its review, the U.S. NAO accumulated information regarding STPS enforcement of the five standards governing PPE.¹[124] NOM-017-STPS-1994, the most relevant standard for purposes of this report, establishes basic requirements for protective equipment in workplaces in Mexico. It mandates employers to determine the need for PPE, and,

in cases where it is necessary, to provide proper PPE and training in its use. According to STPS inspection reports, it appears that Auto Trim and Custom Trim generally met the requirements for PPE in their plants. Only the August 2000 inspection at Auto Trim stated that the company did not have a current study on the need for PPE. Breed Technologies responded to STPS in a letter dated August 18, 2000 with a copy of the needed risk assessment.¹[125] Nonetheless, questions are raised about the effectiveness of the inspection process in regard to the use of PPE. The reports show that STPS inspectors do not verify training in the use of PPE with any consistency, and none of the reports indicate whether PPE is in fact utilized effectively by workers on the plant floor. The Government of Mexico's response to the U.S. NAO did not provide any additional information on how the use of PPE is verified during an inspection.

In documentation provided by Breed Technologies to the U.S. NAO, the company stated that all workers are presented with PPE, which includes gloves for handling solvents (such as Nitrile Gloves), air masks with activated carbon (such as 3M 7000 Series, Dual Cartridge Respirators), and safety glasses (such as DEFIANT brand).¹[126] During the visit to Auto Trim and Custom Trim de Ramírez, the delegation was able to observe the use of PPE. It appeared that there was inconsistent use of gloves among workers in the leather wrapping and finishing sections. Almost all workers appeared to wear safety glasses, while almost no workers appeared to wear masks. According to NIOSH technical experts, given the information available, the use of air-purifying respirators in the steering wheel/shift knob gluing and finishing areas may neither be necessary nor the best solution to potential over exposures.¹[127] Gloves should be considered a hazard control of last resort, as their use can cause skin and dexterity problems.¹ [128]

During its review, the U.S. NAO also gathered information relevant to government enforcement of ventilation and temperature regulations at the Breed facilities. Two official standards govern workplace ventilation in Mexico. NOM-001-STPS-1999 requires employers to maintain ventilation in workplaces and to keep records of repairs to ventilation systems. NOM-010-STPS-1999, Section 9.2 requires the use of engineering controls, including local exhaust ventilation, when air-monitoring results demonstrate overexposures to hazardous chemicals. Based on the information available to the U.S. NAO, it appears that STPS verified that the ventilation system at Auto Trim was in overall compliance with legal standards. In the inspection reports from September 1997 and August 2000, the inspector noted that Auto Trim had a maintenance program for its ventilation system.¹ [129] In the August 2000 report, the inspector ordered the company to maintain a vent in the accessories area free of blockages and to augment the extraction capacity in the area. This finding was echoed in the August 2000 monthly *recorrido* report compiled by the Auto Trim safety and health committee.¹[130] In a letter sent to STPS in Ciudad Victoria on October 3, 2000, plant management stated that they supplied two annexes (Annex 6 and Annex 7) in response to these two corrective orders.

Additionally, STPS noted that a ventilation maintenance program was lacking in the December 18, 1997 Custom Trim/Breed Mexicana inspection report. The Government of Mexico indicated that sanctions were recommended as a result of the inspection and that the company was ordered on February 3, 1998 to take remedial measures. The Mexican government's response, however, did not state what these remedial measures were nor give any indication if they were related to the ventilation system. The inspector did not include a corrective order in the inspection report for the company's failure to document a ventilation maintenance program, and the Government

of Mexico response did not explain how STPS determines when to order corrective actions. 1 [131] The Mexican government indicated that the sanctioning process was terminated when STPS inspectors discovered that the plant had ceased operations during a verification visit on February 24, 2000.1 [132]

During its visits to Auto Trim and Custom Trim de Ramírez, the U.S. delegation noted the presence of local exhaust at most workstations in the leather wrapping areas, but concluded that its effectiveness was limited. Additionally, workstations in the finishing area where glues containing ethyl-cyanoacrylate were used did not have local extraction.1 [133] Three of the four STPS inspection reports that Breed provided to the U.S. NAO include no indication that the inspector directly examined the ventilation system. Since overexposure to chemical compounds at the facilities has not been documented, it is unlikely that STPS would require abatements regarding plant ventilation. However, the apparent failure of STPS to inspect ventilation systems first-hand raises questions about how STPS ensures compliance with ventilation standards as laid out in NOM-001-STPS-1999.

NOM-005-STPS-1998 and NOM-018-STPS-2000 cover issues of communication of risks and dissemination of information on chemicals to workers. During its review, the U.S. NAO accumulated information in regard to the submitters' allegation that these standards were not being enforced at Auto Trim and Custom Trim/Breed Mexicana. In addition to presenting the U.S. NAO with copies of Spanish-language MSDSs, Breed Technologies provided written information stating that the glue and other chemical containers used at their plants are labeled in Spanish with information on how the substance is to be used, safety measures to be observed, and first aid measure to be taken in the event of an emergency.1 [134] Breed also provided photos of chemicals with Spanish language labels and color coded labels.

Three of the four safety and health inspection reports provided to the U.S. NAO list Auto Trim and Custom Trim as having MSDSs in stock.1[135] The three inspections conducted at Auto Trim for which the U.S. NAO received documentation state that the plant had manuals on the use and storage of chemicals. Based on this information, it appears that STPS assured that Auto Trim generally met requirements for the dissemination of information on chemicals. The inspection report December 18, 1997 at Custom Trim/Breed Mexicana, in contrast, states that the plant does not have a manual on the use and storage of chemicals. As discussed previously, although the inspector recommended sanctions based on this visit and STPS ordered remedial actions, a corrective order for the company's failure to present the chemicals manual was not included in the inspection report, nor did the Mexican government describe what remedial actions were required.

Although Auto Trim in particular appears to meet STPS requirements for communication of risks as laid out in the inspection reports, the reports themselves do not appear to verify workers' familiarity with the chemicals they are using. There is no information in the inspection reports in regard to labeling or worker access to MSDSs. Just as in the case of the use of PPE, it would seem preferable for the inspector to verify that information is actually reaching workers.

During the site visit, the U.S. delegation was told by Breed management that workers are informed about risks of exposures to chemicals used and are provided with copies of MSDSs

during periodic training at the plants. The delegation also witnessed that chemicals at Auto Trim and Custom Trim de Ramírez were labeled in Spanish with warnings and actions to take in case of emergencies, and were color coded. However, employees interviewed during the site visit indicated that they did not understand the significance of the colors and other markings on the labels. Further, some current workers alleged that these labels were added in the last few months. Therefore, while it appears that STPS has ensured that Auto Trim and Custom Trim/Breed Mexicana had information on file regarding chemicals, it is not clear that STPS has ensured that information about chemicals and the risks associated with them is effectively communicated to workers as contemplated in the RFSH and the NOMs.

NOM-005-STPS-1998 and NOM-018-STPS-2000 require that relevant training in the handling and storage of chemicals be provided to employees. Breed management and the worker representative of the Joint Safety and Health Committee at Auto Trim informed the U.S. NAO that workers receive regular training on a variety of topics including safety and health and that they receive copies of MSDSs during these trainings. According to the reports from the three inspections conducted at Auto Trim in 1997, 1999 and 2000, STPS inspectors noted overall compliance with training regulations. However, the only reference made to safety and health training was made in the August 11, 2000 Auto Trim report, which noted that records of safety and health training were not in fact in existence at the plant. The reports state that plant management provided records of training in the prevention and combat of fires, in the use of tools and machines, in the use of PPE, in first aid, and in the handling of chemicals, as well as records of an STPS-approved training plan. None of the reports indicate whether workers were asked to verify the amount and kinds of training they received. The report from the STPS inspection at Custom Trim/Breed Mexicana on December 18, 1997 describes a plant that lacked several kinds of training records. The plant had an STPS approved training plan and a fire brigade, but lacked records of fire prevention training, tool use training, PPE use training, health and safety training, and first aid training. Again, although sanctions were recommended by the inspector and remedial measures were ordered by STPS, the Government of Mexico did not clarify what remedial measures the company was required to undertake, and the inspection report itself did not list failure to present training program records as a condition to be addressed by the company.

According to the written documentation supplied by Breed Technologies, Custom Trim/Breed Mexicana management sent a letter with a set of documents to STPS on Feb 16, 1998¹ [136] that appears to be a response to the December inspection. The packet included copies of written instructions on how to use tools and perform job tasks at the plant. Also included was a letter dated January 29, 1998 from Custom Trim/Breed Mexicana management to STPS with copies of official STPS forms with the names of more than 150 workers who had received training in 1998. According to another document titled “Presentation of Training Plan and Programs” these figures represent training corresponding to five levels: level (1) preparation to occupy vacant posts or new positions; level (2) share information on new technologies; level (3) increase productivity; level (4) prevent work risks; and level (5) update of training. Breed also provided the U.S. NAO a packet of training forms for hundreds of workers at Auto Trim dated 1998 and 1999.¹[137] While this information contradicts the submitters’ claim that there is no safety and health training at Auto Trim and Custom Trim/Breed Mexicana, the U.S. NAO is not able to determine its full extent from the available documents, nor does the U.S. NAO have sufficient

information to determine how training requirements are verified during inspections.

6.1.2 Ergonomics

The workers at Auto Trim and Custom Trim/Breed Mexicana primarily glue and sew leather to steering wheels and gear shift knobs. The process involves attaching leather to the wheel or knob manually, manipulating it with fingers and hand tools, sewing with hand-held needles, trimming, and cleaning. This is manually intensive work that requires repetitive motion of the hands and upper extremities. The work generally is done in “cells” of 8 - 12 workers, with each worker having a specific function. There is little rotation among job duties.

The submitters allege that workers suffer muscular-skeletal disorders as a result of this work. Most of the written testimony provided to the U.S. NAO from current and former workers includes complaints of hand, wrist, arm, shoulder, neck, or back pain. As one current worker at Auto Trim explained:

I rest on weekends and I come back rested when I start on Mondays and I can sew until about 1 or 2 pm without too many problems but after that hour I begin to feel a lot of pain in my right hand and my wrist and in my forearm. I have a lot of problems with my left hand too, and when I move my hands I can feel my bones cracking in my hand and I'm in a lot of pain as I work. I also have back pain. . . . My back hurts when I breathe and my hands get inflamed. I take a lot of pain pills and the doctors tell me that it's because I stand so much, and the same company doctor tells me to take a higher dose of pain pills. When I get home from work, I have a lot of trouble cooking and during the winter I can't do anything because the pain is unbearable; I get cramps in my arm and I have to sleep with my hands all covered and I ask my daughters to massage my arm and my hands because they hurt so much.1[138]

Beatriz Reyna Vasquez testified that “[a]fter working for a year at the company, I began to experience problems in my arm and my wrist, my neck and my back. My two arms were affected. The greatest impact is on the right side.”1[139] Other workers indicated similar problems, noting difficulty in picking up household items and doing household chores, pain in the arm, wrist, and shoulder, back and neck areas.1 [140]

Ms. Lida Orta Anés, an expert in ergonomics,1[141] testified at the public hearing that the work process in which the employees are engaged has been linked to muscular-skeletal disorders:

In terms of the analysis of these tasks, we have seen that this type of sewing and this type of hand movement is done regardless of the type or model of steering wheel: between 100 and 174 manipulations to do the stitches. . . . The English, More and Guard, Stetson and Silverstein [articles] are examples of studies that

helped us determine that there is a very close relationship between the types of risk factors that we have identified in these tasks and the development of syndromes like the carpal tunnel syndrome. Another of the areas that we are concerned about in those awkward positions and that these workers are showing is herniated disks. . . . These are some of the studies that show this direct relationship between these risk factors, the tasks performed and the development of these types of disorders.¹ [142]

These injuries, it is alleged, are amplified by the fact that workers must meet high production quotas, and that such quotas were increased after changes in workstation design were made in 1998. It is asserted that production supervisors put pressure on workers to meet quotas, that workers are allowed only infrequent and short breaks, and that workers are not given adequate time to engage in exercises to relax hands and arms. One worker explained that “[m]y standard output was around 64 wheels per day . . . the production lines are now smaller workstations called *celdas* (cells) with 8 workers each . . . the production process is similar [to years past] but at a faster pace.”¹[143]

The submitters allege that poor design of the workstations further exacerbates ergonomic hazards. Specifically, the submitters assert that workstations are unsteady, workspace is insufficient, and that workers lack adjustable chairs. They assert that close working quarters result in punctures and cuts from needles and trimming knives. At the hearing, Consuelo Silva, who testified to working at Auto Trim from 1991 until 1994, stated:

To sew the steering wheel, we had to place the steering wheel on a very small base . . . to be able to hold it down. But when you would pull from here, this support would loosen up; so we had to hold it on our shoulder like this to be able to pull. This movement was like this, very, very quickly. And that’s why we would suffer from pain in the neck, shoulders and arms, because of so much movement. Our movements were also towards the back – we didn’t really have space. We were very close together, very close to each other, and we didn’t have space laterally. . . . so you had to use your arms backwards so as not to hurt or hit the person next to you. And sometimes with the people from the back . . . we would sometimes hit each other hand to hand in the back. ¹[144]

Ms. Silva went on to say: “One time, I remember, a male worker – he was right next to me, and he poked an eye with a needle. And it was only like a cloud that was left in his eyes. . . . And that was caused by that needle that they gave us for the stitching of the leather.”¹[145]

The submitters also state that workers did not receive information and training about the risks involved in the sewing process and about how to reduce such risks:

[Workers] were not informed by their employers that the sewing processes currently in place at the plants could cause muscular-

skeletal damage and serious cuts and gashes. Nor were they told of alternative ergonomic processes . . . that could be instituted to reduce risk. Similarly, workers were not trained to undertake conditioning, strengthening and stretching exercises which could reduce muscular-skeletal disorders. Workers were not informed about or provided personal protective equipment that could diminish the risk of muscular-skeletal problems, cuts, and gashes.¹ [146]

In written testimony submitted to the U.S. NAO, the nurse who testified to working at Custom Trim from 1995 to 1997 stated that a stretching program did exist at the plant but was discontinued:

In the beginning, when I started working at Custom Trim, workers would do some warm-up and stretching exercises before they started to work. These exercises amounted to 10 repetitions of the following: Stretching the thumbs only – to facilitate threading the needles; stretching the back; stretching the arms – raising one arm above the head and holding it with the opposite hand while pulling up at the same time; wrist and hand rotation – rotation of the wrist while holding the hand in a fist. . . . These exercises were decided by management and I found them completely ineffective and, in any event, these warm-ups were stopped and no longer practiced.¹ [147]

During the site visit to Auto Trim and Custom Trim de Ramírez, the U.S. delegation was able to observe the work processes in which workers are involved. The type of injuries reported by the workers in the submission is consistent with the type of work observed. As expressed by NIOSH experts:

Conditions described in the Submission are generally consistent with our observations. Based upon our experience conducting studies of manually intensive jobs involving repetitive and forceful upper extremity exposures in a variety of manufacturing facilities in the United States, the types of musculoskeletal injuries recorded on company logs and those expressed by former workers at the public hearing are consistent with the biomechanical risk factors which exist in both plants.¹[148]

The U.S. delegation was also able to observe the condition of the workstations, the use of chairs, and the proximity of workers to one another. It appeared that workstations were stable, that there was approximately one chair for every two workers, and that workers worked fairly close together. In addition, the delegation noted the use of both anti-fatigue mats for standing as well as foot rests for seated workers. Nonetheless, the NIOSH experts concluded:

The work was manually intensive involving repetitive, forceful and

awkward movements of both upper extremities. All aspects of the work cycle involved frequent pinch grip postures. Several of the workers used small hand tools Some of these hand tools . . . required an awkward hand posture and contact pressure on the palm.

* * *

The highly repetitive work involving awkward hand/arm positions, which we observed in both plants, has been linked to a variety of musculoskeletal disorders, including tendonitis and carpal tunnel syndrome.¹[149]

Mexican law mandates an ergonomically sound work environment. According to the Government of Mexico, LFT Article 132, Sections XVI and XVII establish requirements in regard to ergonomics that employers are compelled to follow. Article 132, Section XVI obligates employers “to equip the factories, workshops, offices and other places in which the work is to be performed in accordance with the principles of safety and health to prevent work accidents and losses to the workers,” and Section XVII obligates employers “to comply with the safety and health provisions established by the laws and regulations in order to prevent accidents and illnesses in places of business” In addition the Government of Mexico states “. . . the employer has the obligation to train his workers so as to improve the use of the machinery and equipment, which necessarily implies adoption of ergonomic measures and consequent reduction in workplace hazards.”¹ [150] Such training is based on regulations set forth in LFT Article 153-F and RFSH Articles 135 through 141. Failure to comply with these articles is punishable by fines.¹[151] In addition, RFSH Article 102 provides that STPS shall “encourage employers to consider ergonomic aspects of the work conducted under their supervision,” while ILO Convention 155, which Mexico has ratified, calls for consideration of ergonomics in occupational safety and health policy.¹[152]

Although Mexican law apparently requires employers to ensure ergonomically sound workplaces, the STPS inspection reports reviewed by the U.S. NAO do not include specific details or references to ergonomic conditions. Three inspection reports indicate that inspectors were satisfied with the “diagnostic” assessments of overall plant safety and health conditions at the plants, while the report from the August 12, 1999 inspection of Auto Trim states that the diagnostic is out of date. In addition, STPS inspectors noted overall compliance with training regulations in the inspection reports from Auto Trim in 1997, 1999 and 2000, although the report from the STPS inspection at Custom Trim on December 18, 1997 notes the lack of required training records.¹ [153] The reports contain no information as to whether such diagnostic assessments include reviews of ergonomic conditions or whether worker training includes a discussion of safe ergonomic practices.

During the meeting with representatives of SJOIIM, the union representatives discussed ergonomic problems that workers face and admitted that they have received several complaints from workers. The union representatives also discussed efforts to address these concerns, including the September 1995 correspondence from union officials and STPS officials

concerning ergonomic issues.¹[154] The subsequent correspondence from Dr. Legaspi went into significant detail in regard to ergonomic conditions that were reviewed by STPS inspectors during their visit to Auto Trim. The letter indicated that an STPS representative found problems with working conditions and offered numerous recommendations for improvement, most of which focused on ergonomics and reducing musculoskeletal injuries. As was previously stated, this level of detail is in contrast to the STPS periodic safety and health inspection reports examined by the U.S. NAO.

In response to an inquiry from the U.S. NAO, Breed Technologies outlined company efforts to institute ergonomically correct production processes, including changes to the production process. Breed documented that an ergonomic assessment by an outside consultant was performed on May 23, 1996 and the company instituted several improvements, including a rotation program whereby workers alternate between sitting and standing positions, which may have relieved some musculoskeletal stress. The company indicated that it gave ergonomic courses to its employees, mandated ergonomic exercises, and worked closely with IMSS officials on issues such as physical therapy and rehabilitation for injured workers.¹ [155] Breed also provided the U.S. NAO with copies of a “Health, Safety and Ergonomic Audit,” conducted at Auto Trim on November 24, 1997.¹[156] The audit was conducted by a contractor as a follow-up to the ergonomic assessment performed in 1996.

It is acknowledged that ergonomic hazards inherent in a manufacturing process can be lessened through the introduction of more ergonomically sound practices, such as rotation of workers between jobs and adoption of tools that place less stress on workers’ hands, arms, and shoulders. The 1997 audit report indicated that although Auto Trim had not instituted a majority of the recommendations from the 1996 assessment, certain changes had been made, such as the provision of workstations that allow the employee to alternate sitting and standing, the provision of chairs that promote lumbar support and height adjustability, and changes in the height ranges of hand sewing jigs. The U.S. NAO received no similar information about Custom Trim/Breed Mexicana.

Although the U.S. delegation confirmed that Breed had made improvements designed to lessen ergonomic hazards, the inherent repetitiveness and forcefulness of the manufacturing process, which leads to adverse ergonomic conditions, remain. Additionally, workers interviewed by the U.S. NAO expressed varying views on when and to what extent these improvements were implemented and their benefit. Although the Government of Mexico indicated that sanctions resulted from the 1995 special inspection, it is not clear whether ergonomic improvements were implemented as a result of that review, as a result of the recommendations by the independent consultant employed by Breed, or as a result of some other company decision process. Indeed, in their response to the U.S. NAO, Breed management stated: “STPS has not cited [Auto Trim] for failure to comply with any legislation dealing with ergonomic matters prior to or after 1997.”¹[157] In any event, in contrast to the 1995 letter from Dr. Legaspi, there is nothing in any of the inspection reports indicating that the STPS inspectors gave consideration to ergonomic issues in their annual inspections, nor obviously that they recommended or required any specific improvements.

6.2 Workers' Compensation

Allegations raised by the submitters regarding workers' compensation primarily involve IMSS. Complaints concerning the enforcement practices of STPS and SSA also were asserted. The allegations focus predominantly on the process for receiving workers' compensation. Specifically, it is asserted that IMSS failed to enforce laws requiring employers to accurately and appropriately report work-related illnesses and injuries, failed to accurately diagnose and treat work-related illnesses and injuries, and failed to properly value and compensate work-related illnesses and injuries. Additionally, the submitters allege that IMSS failed to conduct investigations and implement training programs.

6.2.1 Compensation Process

The Government of Mexico provided the U.S. NAO with information describing the compensation process. The Government of Mexico explained that when a worker becomes injured or ill, he must go to IMSS to receive medical attention and to obtain the ST-1 form. The employee then takes this form back to his place of employment for his employer to complete with the required information. This form is completed and returned to IMSS so that the amount of compensation can be determined and the accident incorporated into the company's statistical accident reports.¹ [158]

The submitters describe the process for receiving medical attention and compensation at Auto Trim and Custom Trim somewhat differently. The submitters explain that for a worker to receive compensation for a work-related illness or injury:

[the] worker who is ill or injured reports his or her illness to the floor supervisor. The supervisor then decides whether the worker should see the company nurse. If the worker is permitted to see the nurse, and the nurse believes further medical attention is warranted, she must ask permission from the company doctor or floor supervisor to make an appointment with an IMSS doctor. If an appointment is allowed, the nurse calls the IMSS to schedule an appointment.¹ [159]

Reportedly, such appointments are available for only one hour during the afternoon of each workday. Employees must present the MT-11[160] form to IMSS, which allows them to receive medical attention and subsequently qualify for disability benefits.

The management of Breed similarly described the process for receiving compensation.

The company doctor makes a determination as to whether or not it is necessary for the worker to be sent to IMSS for further evaluation depending upon the severity of the injury, along with the ST-1 Format provided by IMSS. If it is necessary to send the worker to IMSS, the company doctor completes IMSS format ST-1, which is signed by both the doctor and a supervisor, and the

worker then proceeds to IMSS for treatment.¹ [161]

During the site visit, union representatives explained that in cases of emergency, workers are permitted to proceed directly to IMSS without the completed ST-1 form.

The submitters allege that the “IMSS has persistently failed to enforce laws requiring employers to report promptly and accurately work-related injuries and illnesses.”¹[162] The submitters state that “IMSS has known or reasonably should have known that Auto Trim and Custom Trim/Breed Mexicana were failing to make required reports for several reasons. First, workers themselves often reported work-related accidents and illnesses to IMSS that the plants had failed to report.”¹ [163] Second, employees notified IMSS of their concerns regarding reporting deficiencies through a written petition for inspection dated April 15, 1999.¹[164]

Alfonso Otero, a practicing attorney with experience in worker compensation law, provided testimony explaining how the financing of IMSS system impacts the reporting of work-related illnesses and injuries to IMSS. He explained that the amount of money companies must pay to IMSS is determined by the company’s level of risk. This process was affirmed in the response provided by the Government of Mexico, which elaborated that a company’s level of risk is determined with the information provided by IMSS Workplace Health Services, which is the branch of IMSS that determines the degree of incapacity and the corresponding compensation. This data is then used by IMSS Business Classification and Risk Determination Area¹ [165] to determine the company’s degree of risk and the premium the company should pay to the institute. Once this is determined, the information is remitted to the company.¹ [166] Therefore companies with higher risk rates would be assessed higher levels of payment. In an effort to keep expenses down, Mr. Otero suggested that companies generally tend to underreport work-related accidents and illnesses. Another practice invoked by companies, he explained, is the utilization of private doctors and clinics. By sending employees to medical personnel outside of the IMSS system, he alleged that a company is able to avoid notifying IMSS of accidents and injuries, thereby keeping the premiums it pays into the system low.¹[167]

This reporting practice was also alleged by Ms. Morales, a nurse who testified to working at Custom Trim from 1995 to 1997, who stated that while some workers did go to the IMSS, others “would be sent to a private doctor so they wouldn’t go to IMSS. This way, the company could get this title of ‘No accidents’ or ‘Accident-free’.”¹ [168] Ms. Alamillo, who testified to working at Auto Trim from 1993 to 1996, also testified to the use of private clinics, outside of the IMSS system, to administer medical services. She explained that after speaking with a union representative about her injuries, she was sent to the company’s clinic in St. Lucas for examination.¹[169]

The submitters assert that doctors purposely misdiagnose workers and do not refer work-related illnesses and injuries to IMSS.¹ [170] A former worker stated in his affidavit that “the Custom Trim doctor would frequently refuse to fill out the MT-1 forms that I needed in order to go to the Seguro Social.”¹ [171] A nurse formerly employed at Custom Trim stated that the “human resources manager had set a limit on the number of medical appointments I could set up for the workers at the *Seguro Social*. He also ordered that I should not make any appointments for any

worker who had already suffered a prior accident or injury in the plant.” 1[172]

According to former and current workers, IMSS doctors would deliberately play-down the severity of their illness and therefore the degree of disability, as well as inaccurately diagnose and treat work-related illnesses and injuries. A recurrent theme throughout the testimony of workers presented during the public hearing was that the causes of their illnesses and injuries were incorrectly deemed “general” or “psychological” by IMSS doctors. A general illness is distinguished from a work-related illness as defined by Article 43 of the LSS and is therefore assigned a lesser valuation. A former worker stated that the doctors at IMSS “would tell us that we did not have anything or that we had a ‘general illness’ (*enfermedad general*) and that was all, but they never told us what this general illness was.”1[173] Another worker related her problems with a swollen arm. She explained that in 1995 she began going to IMSS where doctors diagnosed her problem as a “general illness.” Shortly thereafter, she began a work schedule consisting of 2-3 days and then going back on disability for several days. “The doctor would say that he wouldn’t send me to the trauma specialist because my condition didn’t require it although he wouldn’t tell me why.”1[174]

Similarly, there are allegations that the extent of injuries has been misdiagnosed. For example, a former Auto Trim worker present at the hearing testified that she suffered from what was diagnosed by IMSS as a “minor poke,” but ended up being a serious infection that spread through the arm and resulted in inhibited movement of her arm. She also testified that while the treatment she received desensitized the area, it was inadequate in that the infection continued to spread.1 [175]

The submitters assert that misdiagnosis and mistreatment of work-related illnesses and injuries cause the valuation and compensation of these injuries and illnesses to be erroneous. They claim that IMSS routinely failed to properly compensate workers for work-related illnesses and injuries by classifying their injuries as “general” and thereby incorrectly under-assessing the injuries as defined in Articles 96-98 of the LSS. 1 [176] These articles provide that a worker whose illness or injury is diagnosed as non work-related will receive disability of 60% of his most recent contributory wage throughout his temporary disability beginning from day four of the onset of the illness or injury.1 [177] Should this same illness or injury be attributed to work conditions or as work-related, the compensation due to the employee would increase to 100% of his contributory wages.

During the public hearing, several workers testified on the subject of the amount of compensation they received from the IMSS. One worker1 [178]stated:

[T]hen I was sent to the IMSS for medical care. And there they told me that I didn’t have anything. Then I went back to work, I worked for about a week, and I could work no longer. I went back to the IMSS. At the IMSS, they gave me disability for two months, and they said that it was a work-related injury. And I was out for two months, and then I returned to my workplace again for another week. And then I returned to the IMSS and they gave me disability, but this time for general illness. I had the same

symptoms as before.1 [179]

Other workers spoke to the difficulties they had in receiving compensation from IMSS. Beatriz Reyna Vasquez, a former worker at Auto Trim,1[180] stated:

I went back to the IMSS because I really felt bad, but the doctor now did not want to accept me as a work-related cause. He didn't want to give me that. And he gave me disability just based on a general illness, but I kept insisting, going back to the doctors every day. And finally, they were able to give me my disability as a work-related occurrence.1 [181]

The statements of some workers indicated an alleged reluctance on the part of IMSS doctors to diagnose injuries and illnesses as work-related, thereby improperly valuating these injuries at lesser amounts. On the other hand, other workers testified that, ultimately, they received disability for work-related injuries and illnesses. Additionally, a former Auto Trim worker, consistent with her right under Article 22 of the RSM, stated that she went to IMSS to file a complaint against the company for refusing to sign the MT-1 form and that "IMSS compelled Auto Trim to fill out the accident forms and I received my disability benefits."1 [182]

When asked at the public hearing whether Mexican law provides for the right to appeal IMSS determinations and whether workers were aware of such a right, the workers replied negatively.1 [183] In fact, Article 44 of the LSS provides that an employee "may appeal any Institute determination as to the nature of an accident or illness." The U.S. NAO is not aware of a delineated process for such appeals in the regulations or NOMs and the U.S. NAO has insufficient information to know whether IMSS staff is obligated to provide notice of the appeal right to workers. Nonetheless, several workers indicated that they were successful in having disability awards adjusted when they repeatedly disagreed with the determinations. However, it is alleged many workers do not contest IMSS determinations because of fears of retribution or blacklisting.1[184]

With regard to the allegation that IMSS failed to ensure proper reporting of injuries and illnesses, including that appropriate documentation was not submitted for workers to seek medical attention, the U.S. NAO considered several documents. Sample ST-1 forms completed by the on-site doctor at Auto Trim authorizing workers to see an IMSS physician were reviewed.1 [185] The forms indicated the name and address of the worker, the worker's salary and specific job function, the name and address of the company, the time and place of the accident, the name of a witness, a description of the facts surrounding the accident, and the place where medical attention was or will be rendered in conformance with Article 504(V) of the LFT. The U.S. NAO also reviewed several reports that IMSS uses to determine the premium the company would pay for workplace risks. Additionally, included in documentation provided to the U.S. NAO was a report composed by STPS in accordance with the Sixth Transitory Provision of the RFSH, which concluded that the company was reporting accidents to IMSS. The report stated:

In the period comprising the months from January to July of the current year, [1999] there have been 30 work-related injuries, for

which there has been a submission of the CM-2A and CM-2B forms to this office. There are statistics on the risks of injuries that have occurred in the workplace.¹ [186]

Also, among documents examined by the U.S. NAO was a copy of a letter, dated May 12, 1999, from IMSS commending the company as one of ten facilities in Matamoros to have improved the health of their workers.¹[187]

Based on the information reviewed by the U.S. NAO, it appears that there has been reporting of work-related injuries and illnesses as required by IMSS and STPS. Furthermore, there is documentation indicating that coordination occurred between STPS and IMSS with respect to specific cases and that STPS has undertaken efforts to verify injury and illness reporting to IMSS. Collaboration between the two departments is also confirmed in the response provided by the Government of Mexico. Further, the Mexican government explained that according to IMSS, the accidents and illnesses of the workers involved with the submission were properly reported, compensated and classified.

Although STPS and IMSS workplace accident and illness reporting requirements may have been met, there are potential concerns about transparency, independence, and fairness within portions of Mexico's social security system. During the site visit, the U.S. NAO confirmed that some physicians work for the company, as well as IMSS. The practice of dual employment raises potential conflicts of interest and concerns as to whether physicians can provide autonomous opinions regarding a worker's health, in accordance with Article 145 of the RFSH.

There is credible testimony regarding misdiagnosis and improper treatment of workers. This raises concern about the transparency of the process by which workers are informed by IMSS about their work-related injuries and illnesses. It leads to mistrust by workers of doctors and managers of the plants and IMSS doctors and highlights the need for greater transparency. Without the testimony or the evaluation of independent medical personnel on behalf of ill or injured workers, it is difficult to determine whether the workers were inaccurately diagnosed and treated.¹[188] Nevertheless, Article 6 of the RSM states that the health system and medical personnel are to be held accountable.

Additionally, the reliance of the compensation system on the self-reporting of workplace illnesses and injuries, without apparent sufficient checks and balances to assure accurate reporting, might encourage underreporting by the employers. Underreporting would interfere with the right of workers to receive proper medical attention and appropriate compensation in cases of work-related illnesses and injuries. To the extent that such a practice were to occur, it would be a violation of Article 487 of the LFT, which lists the rights of employees who suffer work-related injuries and illnesses, including the right to medical and surgical attendance and compensation. It also would be in violation of Article 123.A, Section XIV of the Mexican Constitution, which obligates an employer to indemnify work-related accidents, and Article 4 of the Mexican Constitution, which declares the general right to the protection of health. The U.S. NAO has insufficient information upon which to make a complete determination on this issue.

6.2.2 Investigations

The submitters assert that IMSS failed to respond to the workers' petition requesting a plant inspection filed on April 15, 1999, in violation of Article 3(1) of the NAALC, which requires parties to investigate suspected violations. The Government of Mexico stated that IMSS does not have enforcement powers nor does it have the authority to conduct labor inspections of companies. Instead, the Mexican government explained that IMSS has the authority to provide information, training, assessment, and technical assistance to those companies that report a high accident rate and where the introduction of such assistance could lower the occurrence of workplace accidents.¹[189] Information obtained by the U.S. NAO indicates IMSS representatives visited the Custom Trim facility on May 13, 1999 in response to a letter alleging deficient conditions in the areas of health, safety and hygiene.¹[190] The extent of the visit is unclear, but documentation of the visit, in accordance with Article 82 of the LSS, indicates that the Director and Chief Engineer of the IMSS office in Matamoros had plans to implement a special study of Health and Safety in the Workplace and that they had the full cooperation of Breed management in undertaking this project. The U.S. NAO has no information as to whether this study ever took place.

One reason for the confusion regarding IMSS inspections is the lack of communication and transparency in Mexico regarding verifications and the assessment process. Mr. Otero, a practicing attorney with experience in worker injuries and illnesses, indicated that, when he attempted to procure information regarding whether inspections had taken place, he was denied access to information.¹[191]

The submitters also assert that "IMSS persistently failed to conduct investigations and inspections at the plants" concerning illnesses and injuries as required by Article 24 of the RSM.¹ [192] Mr. Otero stated in his testimony regarding the occurrence of workplace inspections that "from all of the information throughout so many years and from many witnesses or people that we interviewed . . . we do not recognize that such inspections were ever carried out at any day or at any time."¹ [193]

However, testimony presented by workers offered information inconsistent with the allegations presented in the submission. For example, Toribio Resendez, in response to a question at the public hearing concerning whether anyone ever came to the plant to investigate injuries, stated: "Sometimes - - well, on one occasion, they sent a medical doctor. But he didn't evaluate [everyone], just a few." Another worker also confirmed that IMSS investigated her workstation in 1999.¹[194] Additionally, management at Breed Technologies noted:

any difference which might arise as a result of classifying an accident into either a general illness or a[n] on the job injury will most certainly merit an investigation on the part of IMSS. This is particularly true when IMSS doctors see a pattern of repetitive injuries at the clinics suffered by people from the same company. Under such circumstances, IMSS will intervene to determine the root of the problem and assist companies to remedy these problems.¹[195]

6.2.3 Training Programs

The submitters assert that IMSS failed to implement workplace training programs in accordance with Article 26 of the RSM. They also assert that IMSS was in violation of LSS Article 83, which states IMSS should provide input for the compilation of occupational risks statistics. According to the Government of Mexico, it is the responsibility of IMSS to provide assistance to employers in the formulation of training activities in conjunction with special efforts aimed at reducing the incidence of workplace injuries and accidents.¹[196]

During the visit to the facilities, the U.S. NAO learned of Breed's training plan for 2000-2001, which was implemented July 3, 2000 in fulfillment of the ISO 14,000 certification. The handling of hazardous materials, environmental conditions, responses to emergencies and the use of chemicals were topics incorporated into the training program. The U.S. NAO also examined workers' annual training records, which include training for workers in the areas of safety equipment, emergency procedures, handling of chemicals and hazardous substances. Further, STPS inspection records examined by the U.S. NAO indicate that STPS inspectors verified that training programs were undertaken in accordance with Article 81 of the LSS.¹ [197] From the information available, the U.S. NAO is unable to determine the extent to which training programs have been conducted pursuant to IMSS requirements.

7. Findings

In this review, the information presented by former and current workers, expert witnesses, employers, and trade union leaders contains radically different views with respect to the enforcement by the Government of Mexico of its occupational safety and health and workers' compensation laws and regulations at Auto Trim and Custom Trim/Breed Mexicana. Although the information provided by the Government of Mexico offers some insight into the enforcement efforts undertaken, it does not resolve many of the concerns raised in the submission.

While the deficient conditions alleged by the submitters may have existed at the facilities at one time, there is credible evidence that a number of remedial measures have been taken and plant modifications have been made. STPS conducted safety and health reviews of one facility in 1995 and 1998 and private consultants conducted ergonomic reviews in 1996 and 1997. Although the U.S. NAO cannot determine which, if any, of these visits or reviews was the impetus for change, it is apparent that Breed management has taken initiatives in the areas of training and hazard prevention plans to reduce work-related injuries and illnesses, improved ergonomic practices, installation and operation of improved exhaust systems, ventilation and temperature controls, use of personal protective equipment, and provision of medical treatment in cooperation with IMSS.

The U.S. NAO review determined that STPS and IMSS have carried out periodic inspections and assessments at the facilities during the period of 1991-2000. The U.S. NAO has no information concerning SSA inspections of the facilities. There have been STPS inspections indicating review of equipment and safeguards, ventilation and temperature control systems, handling of chemicals and other hazardous materials, and training requirements. IMSS has reviewed the

reporting and treatment of workplace accidents and illnesses. At least some of these inspections have occurred as a result of requests by workers or their unions and, in some cases, the inspections led to orders to take remedial measures and follow-up verification visits to assess compliance. It also is evident that in the course of conducting inspections, inspectors met with safety and health committee members and interviewed workers at the facilities and that inspection reports were provided to union representatives.

Although the U.S. NAO finds that the Government of Mexico conducted inspections and verification visits, the efficacy of these processes remains problematic for several reasons. Inspection reports contain names and other personal details about worker interviews, indicating that such interviews are not confidential. This raises a concern as to whether a worker may feel free to provide any information critical of the employer. Perhaps more importantly, inspectors appear to use a checklist approach in their inspections. They appear to note the existence of workplace systems and documents, without actually testing and monitoring to assure compliance. Additionally, the procedures for certifying third party monitors, which are relied on by employers and the governmental authorities, are not clear. This calls into question whether the Government of Mexico is meeting its obligations under NAALC Article 3 to enforce its labor law. Unfortunately, with the information currently made available from the Government of Mexico and other sources, the U.S. NAO is unable to fully determine the nature and methodology of the inspection and assessment processes.

The U.S. NAO review confirmed the existence of functioning workplace safety and health committees at the facilities. Consistent with Mexican law and regulations, the committees are composed of equal numbers of members representing management and workers. There is documentation in STPS inspection reports supporting that the committees meet on a regular basis, carry out general inspections of the plant, and report their findings and recommendations to plant management. This is consistent with Mexican law requiring that committee coordinators file reports with plant management identifying workplace risks and safety and health violations observed, as well as remedial measures needed to correct deficiencies. However, workers expressed credible concerns about whether these committees investigate the causes of accidents and illnesses brought to their attention by workers and whether committees propose corrective measures beyond simple cleaning and basic repairs to equipment. These concerns are supported by U.S. NAO examination of committee reports, which, for the most part, appear to be concerned only with necessary repair of equipment, plant cleanliness, and minor hazards, as opposed to matters such as chemical use, ventilation, ergonomics, and recommendations for improvement to the overall safety and health of workers.

STPS and IMSS appear generally to have enforced applicable laws and regulations with respect to monitoring and reporting of workplace accidents and illnesses. Inspection reports examined by the U.S. NAO also reveal that STPS and IMSS coordinated their activities in specific cases and that reports of work-related injuries and illnesses to IMSS were examined and verified in follow-up inspections. However, workers offered credible testimony about the unwillingness of medical staff at the facilities to send workers to IMSS and of IMSS doctors to diagnose injuries as work-related, particularly those that may have resulted from ergonomic strain, and a peculiar tendency to treat physical ailments as psychological problems. This contrasts with the U.S. NAO's determination that the types of illnesses of which workers complained, including

respiratory, eye and dermal irritation and musculoskeletal disorders, are consistent with exposure to the chemicals used and the work performed in the facilities. Certain physicians apparently work both for employers and IMSS, which gives rise to a concern about potential conflicts of interest and a physician's credibility in reporting, diagnosis, and valuation of workplace injuries and illnesses. The appearance of impropriety created by these potential conflicts of interest affects workers' perception of the fairness and transparency of the process. The legitimate concerns of workers raise questions as to whether Mexico is meeting its obligations under Articles 3 and 5 of the NAALC to enforce its workers' compensation laws and to assure their transparency and fairness.

Mexican law, as reflected in LFT Article 132 and RFSH Article 102, encourages an ergonomically sound work environment and requires employers to take ergonomic practices into account in the workplace. The U.S. NAO found that the repetitive and forceful nature of the manufacturing process encountered by workers in this submission inevitably constitutes an ergonomic hazard and that the types of injuries reported by workers are consistent with that manufacturing process. This conclusion is supported by U.S. NAO observations of the work process, as well as the testimony of experts, and is in agreement with the views expressed by submitters. Inspection reports examined by the U.S. NAO do not include specific information or references to ergonomic conditions, which leaves it unclear as to how the Government of Mexico enforces the principles enunciated in LFT article 132 and RFSH Article 102.

The STPS consultation visit and letter in 1995 to Breed management suggested a series of modifications the company could make to reduce the possibility of chemical exposure and to improve the ergonomics of the plant design. This response was prompted by a complaint filed by SJOIIM in 1995 and results of the consultation visit, including required remedial measures, were shared with the company and union representatives. In 1998, STPS responded to workers' petitions by conducting a special visit to the facility, at which time it recognized prior improvements undertaken by the company on its own initiative. STPS did not order any remedial measures as a result of this special inspection. Further, there is no indication that STPS officials ever communicated their efforts to the workers who submitted the petition despite numerous inquiries by the workers and their representatives. With regard to the 1999 petitions to STPS, IMSS, and SSA, the Government of Mexico indicated that it has no record of their receipt. However, included with the submission to the U.S. NAO are copies of the petitions filed with STPS and SSA clearly stamped as having been received by those agencies. Additionally, available information indicates that IMSS inquired at a Breed facility about a worker who had signed the 1999 petition, which is indicative that IMSS received the petition. Workers assert that their inquiries to government authorities about these petitions were ignored.

The failure of the Government of Mexico to communicate to the workers about its efforts undertaken in response to the 1998 petition, the lack of records on the 1999 petitions, and the failure to respond to workers' inquiries about the petitions are inconsistent with the Government of Mexico's obligations under Articles 3, 4, 5 and 7 of the NAALC. Among other things, these articles obligate the government to require record keeping; to give due consideration to any request for an investigation of suspected violations of labor law; to ensure that persons have appropriate access to administrative proceedings for the enforcement of labor law; to ensure that proceedings are transparent; to provide for procedural guarantees in those proceedings; and to

promote public awareness of labor law.

As in previous submissions, the U.S. NAO consulted with the Government of Mexico and requested information on Mexican laws, regulations, procedures, policies, and practices from the Mexican NAO pursuant to Articles 16(2) and 21 of the NAALC. These articles obligate Parties to the Agreement to promptly provide information requested by an NAO of another Party. The Government of Mexico ultimately responded to most of the U.S. NAO inquiries in this case. The U.S. NAO is committed to working with the Government of Mexico to ensure the prompt exchange of information in the future.

8. Recommendation

Accordingly, the U.S. NAO recommends ministerial consultations pursuant to Article 22 of the NAALC on the occupational safety and health and workers' compensation issues raised in this submission.

Ministerial consultations should include the efficacy and methodologies of the STPS, IMSS, and SSA inspection, verification, and assessment processes; the response by the Government of Mexico to complaints brought by workers; and the interest in timely response by the Government of Mexico to information requests from the U.S. NAO.

Lewis Karesh
Acting Secretary
U.S. National Administrative Office

April 6, 2001

Endnotes

1[1] 59 Fed. Reg. 16660-16662 (1994).

1[2] 65 Fed. Reg. 54301-54302 (2000).

1[3] Throughout this report, this plant will be referred to as Custom Trim/Breed Mexicana.

1[4] U.S. NAO Submission 2000-01, Appendix I.

1[5] Ibid.

1[6] Transcript of Public Hearing on U.S. NAO Submission 2000-01, p. 20. Transcript on file

with the U.S. NAO.

1[7] U.S. NAO Submission 2000-01, pp. 105-108.

1[8] U.S. NAO Submission 2000-01, Appendices I, II, III and IV.

1[9] These items are on file at the U.S. NAO.

1[10] Letter on file at the U.S. NAO.

1[11] Letters on file at the U.S. NAO.

1[12] Letter from Rafael Aranda Vollmer, Secretary of the Mexican NAO, to Lewis Karesh, Acting Secretary of the U.S. NAO, dated February 14, 2001, on file with the U.S. NAO (hereinafter Government of Mexico Response). Official English translation provided by the United States Department of State. This translation will be used throughout this report.

1[13] Submission to U.S. National Administrative Office (NAO) Responded to by AUTO TRIM DE MEXICO, S.A. DE C.V., MATAMOROS, TAMAULIPAS, MEXICO, AND CUSTOM TRIM/BREED MEXICANA, S.A. DE C.V. VALLE HERMOSO, TAMAULIPAS, MEXICO. (Hereinafter Breed Response to the U.S. NAO.) Response and exhibits on file at the U.S. NAO.

1[14] Letter dated December 1, 2000, from Stuart D. Boyd, Vice President, Legal Affairs, Breed Technologies, to Lewis Karesh, Acting Secretary, U.S. NAO. Letter on file at the U.S. NAO.

1 [15] NIOSH is a branch of the Center for Disease Control of the U.S. Department of Health and Human Services, and is independent from the Department of Labor.

1[16] Letters on file at the U.S. NAO.

1[17] Documents on file at the U.S. NAO.

1[18] 65 Fed. Reg. 67019 (2000).

1[19] The materials submitted by Mr. Brown, Dr. Mercado, and Ms. Orta are on file at the U.S. NAO.

1[20] Videotape on file at the U.S. NAO.

1[21] During the site visit, the U.S. NAO visited Custom Trim de Ramírez near Matamoros and not Custom Trim/Breed Mexicana, which is located in Valle Hermoso. The U.S. NAO was informed by Breed management that the leather wrapping operations that had been conducted at Custom Trim/Breed Mexicana were moved last year to Custom Trim de Ramírez and other facilities in the Matamoros area. See *supra* discussion p. 4.

1[22] Documents on file at the U.S. NAO.

1[23] NIOSH experts provided the U.S. NAO with a letter dated March 7, 2001 detailing their observations. The letter is on file with the U.S. NAO (hereinafter NIOSH letter).

1 [24] *Constitución Política de los Estados Unidos Mexicanos*. Cámara de Diputados del Honorable Congreso de la Unión de los Estados Unidos Mexicanos. Available: <http://www.cddhcu.gob.mx/leyinfo/1/> [March 1, 2001]

1[25] *Federal Labor Law*. (Ormond Beach, FL: Foreign Tax Law Publishers, Inc., trans., 1995). This English translation of the LFT will be used throughout this report with exceptions to be noted.

1[26] See U.S. Department of Labor Occupational Safety and Health Administration, Mexican Secretariat of Labor and Social Welfare, and Human Resources Development Canada. *Occupational Safety and Health Laws in the United States, Mexico and Canada: An Overview*. (1999), pp. 74-75.

1[27] Appropriate authority includes the permanent conciliation board, the Conciliation and Arbitration Board, or the Inspectorate of Labor.

1[28] A copy of the RFSH is on file at the U.S. NAO.

1[29] Secretaría del Trabajo y Previsión Social, *Reglamento General de Seguridad e Higiene en el Trabajo* (October 1994). English translation provided by the U.S. NAO. This version of the RGSH will be used throughout this report with exceptions to be noted.

1[30] *Ley Federal de Metrología y Normalización*. Cámara de Diputados del Honorable Congreso de la Unión. Available: <http://www.cddhcu.gob.mx/leyinfo/138/1.htm>. [February 2, 2001]. English translation provided by the U.S. NAO.

1[31] See Articles 12 through 34. In more recent years, much of these articles have been incorporated into the NOMs, specifically NOM 002-STPS 2000.

1[32] *Ley Orgánica de la Administración Pública Federal*. Cámara de Diputados del Honorable Congreso de la Unión. Available: <http://www.cddhcu.gob.mx/leyinfo/161/>. English translation provided by the U.S. NAO.

1 [33] *Normas Oficiales Mexicanas sobre Seguridad e Higiene*. Secretaría del Trabajo y Previsión Social. Available: <http://www.stps.gob.mx>. English translation provided by the U.S. NAO. This version of the NOMs-STPS will be used throughout this report with exceptions to be noted.

1[34] *Norma Oficial Mexicana: NOM-009-STPS-1994. Relativa a las condiciones de seguridad e higiene para el almacenamiento, transporte y manejo de sustancias corrosivas, irritantes y tóxicas en los centros de trabajo*. Secretaría del Trabajo y Previsión Social. Copy on file with

the U.S. NAO. English translation provided by the U.S. NAO.

1[35] Unidad de Información y Enlace de Tecnología Ambiental del Centro de Calidad Ambiental del Instituto Tecnológico y de Estudios Superiores de Monterrey. *Compendio de Normas en Materia de Seguridad e Higiene* (Monterrey, Mexico: 1998). NOM-008-STPS-1993, NOM-018-STPS-1993 and NOM-020-STPS-1994 appear in this publication. NOM-005 incorporates much of the language from these former NOMs, although it is not as specific in regard to showers and changing room facilities as the former NOM-018 or in regard to first aid as the former NOM-020.

1[36] The 1999 version is an update to an earlier version of NOM 010, which entered into force in 1994.

1[37] *Ley General de Salud*. Secretaría de Salud. Available: <http://www.ssa.gob.mx/leysalud/leysalud.html>. English translation provided by the U.S. NAO. This version of the LGS will be used throughout this report with exceptions to be noted.

1[38] See McGuinness, Michael Joseph. "The Landscape of Labor Law Enforcement in North America: An Examination of Mexico's Labor Regulatory Policy and Practice." *Law and Policy in International Business*, Vol. 29, (1998). pp. 375-376, note 46.

1[39] *Normas Oficiales Mexicanas en Materia de Salud*. Secretaría del Salud. Available: http://www.ssa.gob.mx/marco_juridico/normas/index.htm. English translation provided by the U.S. NAO. This version of the NOMs-SSA will be used throughout this report with exceptions to be noted.

1[40] Information collected by the U.S. NAO indicates that toluene and xylene are components of some of the chemicals used at Auto Trim and Custom Trim/Breed Mexicana.

1[41] *Ley de Seguro Social, Article 3*. Instituto Mexicano del Seguro Social. Available: <http://www.imss.gob.mx/>. This English translation will be used throughout the report with exceptions to be noted.

1[42] LSS, Article 2.

1[43] LSS, Articles 11 and 12.

1[44] LFT, Article 477.

1[45] The valuation table for permanent disability can be found under Article 514 of the LFT.

1[46] Instituto Mexicano del Seguro Social, *Reglamento de Servicios Médicos*, Article 1, on file with the U.S. NAO. English translation provided by the U.S. NAO. This version of the RSM will be used throughout this report with exceptions to be noted.

1[47] RSM, Article 4.

1[48] *Reglamento General para la Inspección y Aplicación de Sanciones por Violaciones a la Legislación Laboral*. Secretaría del Trabajo y Previsión Social. Available: <http://www.stps.gob.mx/210/Indice.htm>. English translation provided by the U.S. NAO.

1[49] For a discussion of the regulation, see U.S. Department of Labor Occupational Safety and Health Administration, et al. *Occupational Safety and Health Laws in the United States, Mexico and Canada: An Overview*. (1999), p. 68.

1[50] See *supra* discussion p. 29.

1[51] See U.S. Department of Labor Occupational Safety and Health Administration, et al. *Occupational Safety and Health Laws in the United States, Mexico and Canada: An Overview*. (1999), p. 77.

1[52] See *supra* discussion p. 40.

1[53] See *supra* discussion p. 34.

1[54] International Labour Organization, ILOLEX. Available: <http://ilolex.ilo.ch:1567/public/english/50normes/inflleg/iloeng/index.htm>.

1[55] The table for occupational disease can be found under Article 513 of the LFT.

1[56] *International Covenant on Economic, Social and Cultural Rights*. United Nations Office of the High Commissioner for Human Rights. Available: http://www.unhchr.ch/html/menu3/b/a_cescr.htm

1[57] *Universal Declaration of Human Rights*. General Assembly of the United Nations. Available: <http://www.un.org/Overview/rights.html>

1[58] *Declaration of the Rights and Duties of Man*. Organization of American States. Available: http://www.hrcr.org/docs/OAS_Declaration/oasrights.html

1[59] *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights*, OAS Treaty Series 69. Organization of American States. Available: <http://www.worldpolicy.org/americas/treaties/achr-esc.html>

1[60] *Constitution of the World Health Organization*. World Health Organization. Available: http://policy.who.int/cgi-bin/om_isapi.dll?infobase=Basicdoc&softpage=Browse_Frame_Pg42

1[61] *Constitution of the Pan American Health Organization*. Pan American Health Organization. Available: <http://www.paho.org/english/constitution.htm>

1[62] The submitters assert: “Documented health effects of using these glues and solvents are

as follows: Adhesives that include the chemicals in Sicomet 5019 and Hallmark 7158 can cause skin to be bonded rapidly and burned. They can also cause erythema (diffused redness on the skin), skin sensitization, systemic dermatoses, blurred vision, nasal and bronchial passage irritation, conjunctival inflammation, occupational asthma, and allergic rhinitis; [d]efatting of skin . . . sedation, dizziness and coma. Even death can occur with significant exposure and inadequate ventilation when exposed to acetone . . . and Toluene; . . . [e]ye irritation and damage to cornea by glues or vapors that include toluene, a component of Hallmark 7158, Loctite 76820, and Lokweld 110; . . . [r]isk of spontaneous abortion or damage to the fetus in pregnant women.” U.S. NAO Submission 2000-01, pp. 29-30.

1[63] U.S. NAO Submission 2000-01, Appendix II, Affidavit W.

1[64] U.S. NAO Submission 2000-01, Appendix II, Affidavit L.

1[65] U.S. NAO Submission 2000-01, Appendix II, Affidavit R. Additional testimony on alleged effects of chemicals is provided in U.S. NAO Submission 2000-01, Affidavits B, F, K, N, O, P, W, and Y, and Interviews D and E.

1[66] Excerpts from Hathaway, Gloria J., PhD., Proctor, Nick H., PhD., and Hughes, James P., MD, *Proctor and Hughes' Chemical Hazards of the Workplace*, Fourth Edition, Van Nostrand Reinhold, New York (1996). Documents on file at the U.S. NAO.

1[67] Transcript of Public Hearing on Submission 2000-01, p. 118. Mexican witnesses presented their testimony in Spanish. Interpreters contracted by the Department of Labor provided simultaneous English interpretation, which is used throughout this report.

1[68] Transcript of Public Hearing on U.S. NAO Submission 2000-01, p. 107. Many of the birth defects described by the submitters fall under the general category of neural tube defects.

1[69] U.S. NAO Submission 2000-01, Appendix II, Affidavit L.

1[70] U.S. NAO Submission 2000-01, Appendix II, Affidavit M.

1[71] U.S. NAO Submission 2000-01, Appendix II, Testimony V. English translation provided by the U.S. NAO.

1[72] U.S. NAO Submission 2000-01, Appendix II, Affidavit Y.

1[73] U.S. NAO Submission 2000-01, Appendix II, Interview E.

1[74] U.S. NAO Submission 2000-01, Appendix II, Affidavit C.

1[75] Transcript of Public Hearing on U.S. NAO Submission 2000-01, p. 99.

1[76] U.S. NAO Submission 2000-01, Appendix II, Affidavit K.

1[77] U.S. NAO Submission 2000-01, Appendix II, Affidavit B.

1[78] Transcript of Public Hearing on U.S. NAO Submission 2000-01, pp. 53-54.

1[79] Transcript of Public Hearing on U.S. NAO Submission 2000-01, p. 67.

1[80] Ibid. p. 67.

1[81] U.S. NAO Submission 2000-01, Appendix II, Affidavit K.

1[82] U.S. NAO Submission, Appendix II, Affidavit B.

1[83] Breed Response to the U.S. NAO, Exhibit 12.

1[84] Ibid. The products described in Breed's letter of response are: water based glue, adhesive Loctite, solvent based glue, cleaner for adhesive Loctite, Mineral spirits "solvent" or Varsol, glue reducer "solvent," and Bioact 113 precision cleaner degreaser. Breed also supplied the U.S. NAO with copies of Spanish language MSDSs for Lokweld Solvent 110, Lokweld Glue 260, Varsol, Hallmark Glue 7158, Instant Adhesive Loctite 4471, Instant Adhesive Loctite 190627, Water Based Glue 3M 30 Blue-green color, Noryl Resin PX0888-66588, Geon 90203 Black Pellets 2695, and Cylolac Resin AR-4051.

1 [85] As discussed previously, the U.S. delegation visited Custom Trim de Ramírez and not Custom Trim/Breed Mexicana in Valle Hermoso. See *supra* discussion p. 16.

1[86] See NIOSH letter, p. 5.

1[87] Breed Technologies acquired the Auto Trim and Custom Trim facilities in 1997.

1[88] NIOSH letter, p. 4.

1[89] NIOSH letter, pp. 4, 6.

1 [90] NIOSH letter, p. 12. The communication goes on to state that the results of a Texas Department of Health study on neural tube defects in the U.S.-Mexico border region should be released later this year. In addition, the U.S. and Mexican governments have been collaborating under the auspices of the binational Border XXI program to improve joint programs of surveillance for neural tube defects in the border region and to develop prevention programs focusing on dietary deficiency of folic acid (or folate) among women of childbearing age.

1[91] The other reports consisted of two periodic inspections of "General Conditions of Work" dated September 17, 1997 and August 13, 1999; and one inspection on pressurized containers dated July 18, 2000. See Breed response to the U.S. NAO, Exhibits 1, 6, and 10 respectively.

1[92] The remaining reports consisted of periodic inspections on general work conditions dated December 16, 1993, October 4, 1994, and October 16, 1995. Copies of the June 6, 1991,

November 11, 1991, December 16, 1993, October 4, 1994, and October 16, 1995 reports are on file at the U.S. NAO. The remaining reports were examined during the site visit.

1[93] According to the Government of Mexico, these inspectors recommended that Auto Trim be sanctioned, and the Federal STPS Office in Tamaulipas considered the recommendations and determined whether sanctions would be levied. (Government of Mexico Response, pp. 4-5.)

1[94] See Government of Mexico Response, pp. 4-5. The response also indicated that an inspection on general work conditions was carried out at Auto Trim on December 4, 1996.

1[95] The Mexican government indicated that the May 1999 inspection was carried out as part of a monitoring program aimed at the maquiladora industry. See Government of Mexico Response, p. 7.

1[96] See Government of Mexico Response, pp. 6-7. The response also describes an initial inspection carried out October 17, 1997 and an inspection of general work conditions on December 17, 1997.

1[97] Government of Mexico Response, p. 6. See *supra* discussion p. 4 on transfer of Breed operations from Custom Trim to Breed Mexicana.

1[98] U.S. NAO Submission 2000-01, Appendix II, Affidavit B.

1[99] According to the 1997 through 2000 STPS periodic safety and health inspection reports from Auto Trim and Custom Trim/Breed Mexicana, inspectors verified overall compliance with requirements for fire risk assessments, training in prevention and combat of fires, and emergency preparedness. See Breed Response, Exhibits 2, 7, and 13, and supplemental exhibit provided during site visit.

1[100] PROFEPA (Procuraduría Federal de Protección al Ambiente), is an enforcement agency under the Secretariat of the Environment and Natural Resources (SEMARNAT)(Secretaría de Medio Ambiente y Recursos Naturales). Enforcement authority is provided to the Secretariat in Articles 160-169 of the General Law on Ecological Equilibrium and Environmental Protection (Ley General del Equilibrio Ecológico y la Protección al Ambiente). Cámara de Diputados del Honorable Congreso de la Unión de los Estados Unidos Mexicanos. Available: <http://www.cddhcu.gob.mx/leyinfo/156/>

1[101] In 1978, IMSS and STPS instituted a system of voluntary compliance inspections, whereby companies are trained to conduct self-audits of safety and health conditions. See U.S. Department of Labor Occupational Safety and Health Administration, et al. *Occupational Safety and Health Laws in the United States, Mexico and Canada: An Overview*. (1999),p. 81.

1[102] Government of Mexico Response, p. 4.

1[103] *Individual Observation concerning Convention No. 155, Occupational Safety and Health*, 1981 Mexico (ratification: 1984) Published: 1996. CEACR. Available:

<http://ilolex.ilo.ch:1567/public/english/50normes/infleg/iloeng/index.htm>. (February 20, 2001). The CEACR issued its observation regarding a communication from the Latin American Central of Workers.

1[104] *Individual Observation concerning Convention No. 155, Occupational Safety and Health*, 1981 Mexico (ratification: 1984) Published: 1998. CEACR. Available: <http://ilolex.ilo.ch:1567/public/english/50normes/infleg/iloeng/index.htm>. (February 20, 2001).

1[105] NIOSH letter, pp. 7-8.

1[106] The U.S. delegation was permitted to view the letters, but was not provided copies.

1[107] Government of Mexico Response, p. 3-4.

1[108] In its response to the U.S. NAO, the Mexican government indicated that STPS ordered Auto Trim to undertake remedial actions based on this inspection, and, that after conducting a verification inspection in 1996, STPS fined the company in April 1997 (Government of Mexico Response, p.4). See *supra* discussion p. 67-68.

1[109] Government of Mexico Response, pp. 4-5. The letter also stated that the visit was conducted in order to assess improvements made by the company under the Safety and Health Self-Management Program. See *supra* discussion p. 70.

1[110] Government of Mexico Response, p. 8.

1[111] Memorandum of IMSS May 13, 1999 visit to Custom Trim/Breed Mexicana, on file with the U.S. NAO. Although SIMVH delegates provided copies of this memo, in U.S. NAO meetings with SJOIIM, SIMVH, and SITPME, the union representatives maintained that they were not aware of the petitions submitted by the workers to STPS, IMSS, and SSA. They further indicated that had they been made aware of the complaints, they would have interceded on the workers' behalf. The workers, on the other hand, indicated to the U.S. NAO that raising the issues with the unions would have been pointless, which is why they chose to pursue the issues with the responsible authorities themselves.

1[112] Although the signatures on the petitions were redacted before the documents were submitted to the NAO, Affidavit M stated that Salinas' contact information was given to the authorities. See U.S. NAO Submission 2000-01, Appendix I and Appendix II, Affidavit M.

1[113] Breed Response to the U.S. NAO, Exhibits 12 and 29.

1[114] The delegation was permitted to review the reports, but was not provided copies.

1[115] Breed management also indicated that the contractors were two of only a handful of companies accredited in the Matamoros area, which suggests that the reports may be the highest quality that could be obtained. See discussion *supra* page 29 for further explanation of

verification units.

1[116] According to the September 17, 1997 STPS letter, the May 6th study shows that PELs were not exceeded at Auto Trim for acetone and toluene; the letter did not comment on whether hexane levels were exceeded. The undated report sent to STPS in August 2000 stated that only oxygen levels were above Mexican PELs.

1[117] Breed Response to the U.S. NAO, Exhibits 2 and 7, and the supplemental exhibit obtained during site visit.

1[118] Government of Mexico Response, p. 22.

1[119] See NIOSH letter, pp. 9-12.

1[120] NIOSH letter, p. 12.

1[121] See RFSH Articles 11 and 163 and LFMN Articles 68-73 and 118, 119, 120-A, and 122. See discussion *supra* page 29 for a discussion of Mexican law regarding verification units.

1[122] See *supra* discussion p. 43.

1[123] Breed Response to the U.S. NAO, Exhibit 20.

1[124] In their letter to the U.S. NAO, the Mexican government indicates that there are six NOMs that cover PPE, but list only five (Government of Mexico Response, p. 10 and pp. 20-21).

1[125] Exhibit 12, assessment conducted August 15, 2000 by Breed management under the ISO 14000 program.

1[126] Breed Response to the U.S. NAO, p. 8.

1 [127] In their letter, NIOSH experts note several reasons for this conclusion: “1) The use of respirators is the least preferred method of controlling hazardous chemical exposures because of inherent problems in their use (substitution and engineering controls are preferred), 2) it is not possible to make a determination whether any employees are overexposed to chemicals used until further monitoring is conducted due to the lack of monitoring and exposure data for several chemicals used in the process, and 3) if chemical overexposures are measured in the plants, it appears that the existing ventilation systems can be feasibly modified to prevent hazardous or irritating chemical exposures.” NIOSH letter, p. 4.

1[128] NIOSH letter, p. 4.

1[129] In the Auto Trim inspection report dated August 12, 1999, the STPS inspector made no remarks about the ventilation system.

1[130]Breed Response to the U.S. NAO, Exhibit 20.

1[131] The U.S. NAO requested information on this topic in both the October 11, 2000 letter and a letter dated February 5, 2001, on file at U.S. NAO.

1[132] Government of Mexico Response, p. 6. See *supra* discussion p. 4 regarding the closing of the Custom Trim facility, the opening of Breed Mexicana Plant 2, and the transfer of Custom Trim operations to plants in the Matamoros area.

1[133] NIOSH experts noted that, although both plants have ventilation systems providing local exhaust ventilation (LEV) to many of the glue storage locations, none of the Loctite glue containers or work areas had LEV. NIOSH letter, p. 5 and 6.

1[134] Breed Response to the U.S. NAO, p. 7.

1[135] The report of the August 11, 2000 inspection conducted at Auto Trim makes no mention of MSDSs.

1[136] Breed Response to U.S. NAO, Exhibit 15.

1[137] Breed Response to U.S. NAO, Exhibit 16.

1[138] U.S. NAO Submission 2000-01, Appendix II, Affidavit C.

1[139] Transcript of Public Hearing on U.S. NAO Submission 2000-01, p. 167. Ms. Reyna testified to working at Auto Trim from 1993 – 1997.

1[140] See, e.g., U.S. NAO Submission 2000-01, Appendix II, Affidavits A, B, C, and W.

1[141] Ms. Orta is an ergonomist for the Health and Safety Department of the United Auto Workers.

1[142] Transcript of Public Hearing on U.S. NAO Submission 2000-01, pp. 187-189.

1[143] U.S. NAO Submission 2000-01, p. 25.

1[144] Transcript of Public Hearing on U.S. NAO Submission 2000-01, p. 162.

1[145] Transcript of Public Hearing on U.S. NAO Submission 2000-01, p. 165.

1[146] U.S. NAO Submission 2000-01, p. 78.

1[147] U.S. NAO Submission 2000-01, Appendix II, Affidavit L.

1[148] NIOSH letter, p. 3.

1[149] NIOSH letter, pp. 2-3.

1[150] Government of Mexico Response, p. 12.

1[151] Government of Mexico Response, p. 13.

1[152] Article 102 of the RFSH states: “The Secretariat shall encourage employers to take ergonomic aspects into consideration in the facilities, machinery, equipment, or tools of the workplace, with a view to preventing occupational accidents and illnesses.” Article 5 of ILO Convention 155 states: “The policy referred to in Article 4 of this Convention [a coherent national policy on occupational safety, occupational health and the working environment] shall take account of the following main spheres of action in so far as they affect occupational safety and health and the working environment: . . . (b) relationships between the material elements of work and the persons who carry out or supervise the work, and adaptation of machinery, equipment, working time, organization of work and work processes to the physical and mental capacities of the workers.”

1[153] Breed Response to U.S. NAO, Exhibits 2, 7, and 13 and supplemental exhibit provided during site visit.

1[154] See discussion *supra* pp. 73-74.

1[155] Breed Response to the U.S. NAO, pp. 5-6.

1[156] Breed Response to the U.S. NAO, Exhibit 21.

1[157] Breed Response to the U.S. NAO, p. 6.

1[158] Government of Mexico response, p. 20.

1[159] U.S. NAO Submission 2000-01, p. 82.

1[160] The MT-1 form is the same as the previously mentioned ST-1 form.

1[161] Breed Response to U.S. NAO, p. 9.

1[162] U.S. NAO Submission 2000-01, p. 79.

1[163] U.S. NAO Submission 2000-01, p. 81.

1[164] U.S. NAO Submission 2000-01, Appendix I.

1[165] *Area de Clasificación de Empresas y Determinación de Riesgo*, Government of Mexico Response, p. 20.

1[166] Government of Mexico Response, p. 18.

1[167] Transcript of Public Hearing on U.S. NAO Submission 2000-01, p. 203.

1[168] Transcript of Public Hearing on U.S. NAO Submission 2000-01, p. 64.

1[169] Transcript of Public Hearing on U.S. NAO Submission 2000-01, p. 220.

1[170] U.S. NAO Submission 2000-01, p. 84. See also U.S. NAO Submission 2000-01, Appendix II, Affidavit L.

1[171] U.S. NAO Submission 2000-01, Appendix II, Affidavit B.

1[172] U.S. NAO Submission 2000-01, Appendix II, Affidavit L.

1[173] U.S. NAO Submission 2000-01, Appendix II, Affidavit B.

1[174] U.S. NAO Submission 2000-01, Appendix II, Affidavit R.

1[175] Transcript of Public Hearing on U.S. NAO Submission 2000-01, p. 164.

1[176] See LFT, Article 514, which provides a table of disabilities and their corresponding valuations. Classifications as to the degrees of disability are provided for in Articles 477-480 of the LFT and Article 55 of the LSS.

1[177] LSS, Articles 96-98.

1[178] Worker testified to working at Auto Trim from 1988 – 1998.

1[179] Transcript of Public Hearing on U.S. NAO Submission 2000-01, pp. 216-217.

1[180] Ms. Reyna testified to working at Auto Trim from 1993 – 1997.

1[181] Transcript of Public Hearing on U.S. NAO Submission 2000-01, p. 171.

1[182] U.S. NAO Submission 2000-01, Appendix II, Interview O.

1[183] See U.S. NAO Submission 2000-01, p. 89.

1[184] U.S. NAO Submission 2000-01, p. 89.

1[185] Breed Response to U.S. NAO, Exhibit 33.

1[186] Breed Response to U.S. NAO, Exhibit 7 and 34.

1[187] Breed Response to U.S. NAO, Exhibit 35.

1[188] A similar view was noted by Manuel Mondragon of PJO. Transcript of Public Hearing on U.S. NAO Submission 2000-01, p. 231.

1[189] Government of Mexico Response, p. 17.

1[190] Memorandum of IMSS May 13, 1999 visit to Custom Trim/Breed Mexicana, on file with the U.S. NAO.

1[191] See Transcript of Public Hearing on U.S. NAO Submission 2000-01, pp. 32-34.

1[192] U.S. NAO Submission 2000-01, p. 80.

1[193] Transcript of Public Hearing on U.S. NAO Submission 2000-01, p. 30.

1[194] This statement was made during the U.S. delegation's January 23, 2001 meeting with current Auto Trim workers.

1[195] Breed Response to U.S. NAO, p. 9.

1[196] Government of Mexico response, p. 8 and p. 17.

1[197] Supplemental Breed exhibit provided to U.S. NAO during site visit.