

**Submission to the U.S. National Administrative Office (NAO)
Under the North American Agreement on Labor Cooperation (NAALC)**

**Regarding the persistent failure
by the Mexican Secretariat of Labor and Social Welfare (Secretaría de Trabajo
y Previsión Social - STPS), the Mexican Institute of Social Security
(Instituto Mexicano del Seguro Social - IMSS), and
the Mexican Secretariat of Health (Secretaría de Salud - SSA)
to enforce health and safety laws and regulations applicable to the workplace, and
to provide appropriate medical referral, and disability benefits
for work-related accidents and illnesses.**

**THE CASE OF 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**

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Interfaith Center on Corporate Responsibility Global Corporate Accountability Program (ICCR)
Casa de la Mujer - Grupo Factor X, A.C.
The New York State Labor-Religion Coalition
The Maquila Solidarity Network (MSN) (Canada)
Northwest Coalition for Responsible Investment
The Maryknoll Fathers and Brothers
Portfolio Advisory Board (PAB) - Adrian Dominican Sisters

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APPENDICES

- I. Petitions filed with STPS, IMSS, and SSA regarding health and safety conditions at Auto Trim and Custom Trim/Breed Mexicana

- II. Former and current employees: affidavits and interviews
- III. Reports on Health and Safety Problems at Other Maquiladoras at the Northern Mexico Border
 - A. Pastoral Juvenil Obrera, Investigacion Sobre Problemas de Salud en La Industria Maquiladora en Matamoros, December 1998
 - B. Obrero Regional (CAFOR) Survey of Maquiladora Workers on Occupational Health and Safety in Tijuana and Tecate, Mexico, June-July 1996
- IV. Material Safety Data Sheets

I. SUMMARY OF THE PETITION

This petition will show that the Mexican government, specifically the Secretaría de Trabajo y Prevision Social (STPS), Instituto Mexicano del Seguro Social (IMSS), and the Secretaría de Salud (SSA), has persistently failed to enforce occupational health and safety laws and regulations with regard to the Auto Trim and Custom Trim/Breed Mexicana *maquiladoras* located respectively in Matamoros and Valle Hermoso in the state of Tamaulipas. Workers at these plants sew and glue leather covers onto steering wheels and gearshifts. Many workers suffer from illnesses and injuries related to exposure to toxic substances and muscular-skeletal disorders caused by poor ergonomics.

Petitioners believe that work-related injuries and illnesses at Auto Trim and Custom Trim/Breed Mexicana could be reduced if the Mexican government properly enforced its own health and safety laws, regulations, and norms. These include the Federal Labor Law (*Ley Federal del Trabajo* or "LFT"), the Social Security Law (*Ley de Seguro Social* or "LSS"), the Health Law (*Ley General de Salud* or "LGS"), and the regulations and norms issued pursuant to these laws.

The STPS has failed to enforce LFT provisions which require the agency to:

- ▶ conduct effective and transparent periodic inspections of Auto Trim and Custom Trim/Breed Mexicana to ensure that workers operate under safe conditions and that employers comply with Mexico's occupational health and safety rules;
- ▶ investigate reported violations of health and safety laws;

- ▶ mandate that the plants inform and educate workers about workplace hazards, including exposure to toxic substances, musculo-skeletal disorders, cuts and gashes;
- ▶ ensure that the plants develop and implement effective training and hazard prevention plans to reduce the incidence of work-related illness and injury;
- ▶ insist that the plants institute safe ergonomic practices;
- ▶ insist on appropriate exhaust systems, ventilation, and temperature control at the plants;
- ▶ direct the plants to provide appropriate personal protective gear;
- ▶ ensure that the plants establish fully-functioning health and safety committees;
- ▶ issue corrective orders;
- ▶ assess monetary fines for violations; and
- ▶ ensure that employees who suffer work-related injuries and illnesses receive proper medical treatment and compensation.

The IMSS has similarly failed to enforce Mexican health and safety rules established in the LSS by neglecting to ensure that workers are properly trained, and that the plants implement preventive and protective measures in accordance with the law. IMSS, along with STPS, has also failed to enforce laws which require that plant employees receive proper medical treatment and compensation for work-related illnesses and injuries.

The SSA has ignored its responsibility under the LGS to determine whether the plants are in compliance with Mexico's occupational health laws, to impose sanctions for violations, and to suspend plant operation when serious violations of such laws occur. Like the STPS and IMSS,

the SSA has failed to ensure that plant workers are properly trained in occupational health and safety issues, in particular the prevention of workplace illness and injury. The SSA, moreover, has neglected its legal obligations to publicize to plant workers the maximum permissible limit of exposure to different toxic materials, and to coordinate implementation of testing and investigation of worker exposure to toxins.

Because of the persistent pattern of failure by the STPS, IMSS, and SSA to enforce applicable laws, workers at Auto Trim and Custom Trim/Breed Mexicana suffer work-related illnesses and accidents, sometimes resulting in permanent disabilities. These illnesses and injuries typically fall into two broad categories: (1) those related to exposure to toxic substances, including chronic skin and eye irritations, dermatitis, rashes, headaches, nausea, respiratory difficulties, chronic sore throats and coughs, dizziness, fainting, memory loss, and an unusually high rate of birth defects in their children; and, (2) those related to poor ergonomics, including chronic hand, wrist, arm, and back pain, permanently diminished mobility and use of hands, wrists, and arms, carpal tunnel syndrome, and cuts and gashes. Furthermore, the failure to enforce laws governing work-related medical referrals and disability payments results in workers being denied the medical care and disability benefits to which they are legally entitled; such denials can exacerbate the effects of the injuries and illnesses.

Despite written requests to STPS, IMSS, and SSA, the agencies have persistently failed to take actions to enforce Mexico's health and safety laws at Auto Trim and Custom Trim/Breed Mexicana. Mexico's persistent failure to enforce its Constitution, laws, and regulations governing worker health and safety violates the letter and the spirit of the North American Agreement on Labor Cooperation (NAALC). Petitioners request the National Administrative

Office (NAO) to investigate, hold hearings, and direct the Mexican government to abide by the NAALC, and enforce Mexican occupational health and safety standards at Auto Trim and Custom Trim/Breed Mexicana, as well as other maquiladoras operating within Mexico's borders.

II JURISDICTION

A. The NAO's Authority in This Case

Jurisdiction over this matter is based on Article 16(3) of the North American Agreement on Labor Cooperation (NAALC), which provides that the NAO shall review submissions of public communications on labor law matters arising in the territory of another Party. This submission by interested parties in the United States and Mexico is brought to challenge labor law matters, defined in Article 49 of the NAALC, arising in Mexico. In particular, the parties filing this submission challenge the failure of the Mexican government to enforce laws requiring the "prevention of occupational injuries and illnesses." *See* NAALC Articles 3(1) and 49 (1) (i) and (j).

The Submitters have exhausted all the domestic procedures available to them in compliance with NAO guidelines. Mexican law provides no specific procedures or remedies to workers to challenge the failure to enforce occupational health and safety laws by the STPS, IMSS, and SSA. Several Submitters, however, pursuant to their right of petition, complained to the Mexican government of unsafe and unhealthy working conditions, and petitioned the government to carry out inspections and enforce health and safety laws at Auto Trim and Custom Trim/Breed Mexicana. These petitions include:

- 1) Petition to the Secretaria del Trabajo for an inspection, dated May 19, 1998;
- 2) Petition to the Secretaria de Salud for a sanitary inspection, dated April 14, 1999;

- 3) Petition to the Secretaria del Trabajo for an extraordinary inspection, dated April 14, 1999;
- 4) Petition to the Instituto Mexicano del Seguro Social (IMSS), dated April 15, 1999.¹

Workers and former workers at Auto Trim and Custom Trim/Breed Mexicana have also requested proper medical attention and disability payments from the IMSS. *See* Affidavits, Interviews, and Reports, attached at Appendix II. Although there is an appellate process available for redetermination of payment disabilities, most workers have not pursued these remedies for a variety of reasons. Some workers failed to appeal during the statutory time period because of lack of information about their right to appeal and the mechanics of the appeal process. Others did not appeal because they feared that any disability payments they had been granted could be reduced on appeal. Others decided not to appeal because they feared retaliation from their employers if they sought proper adjudication of disability payments.

For the above reasons, the Submitters have actually or constructively exhausted domestic remedies as required by NAO guidelines.

B. Mexico's Violations of the NAALC

Petitioners allege that the Mexican government's persistent pattern of failure to enforce its occupational health and safety laws in the cases of Auto Trim and Custom Trim/Breed Mexicana violates Articles 1, 3, 4, 5, and 7 of the NAALC. Article 1(a) requires the parties to "improve working conditions and living standards in each Party's territory." Article 1(b) requires parties to "promote, to the maximum extent possible, the labor principles set out in

¹These petitions are attached at Appendix I.

Annex 1" to the NAALC. Annex 1 establishes guiding principles to which each Party commits, subject to its domestic laws, to protect the rights and interests of its workforce. Principles relevant to the instant complaint include "prevention of occupational injuries and illnesses" and "compensation in cases of occupational injuries and illnesses." *See* Annex I (9) and (10). In addition, Articles 1(f) and (g) of the NAALC require each party to "promote compliance with, and effective enforcement by each Party of its labor law; and foster transparency in the administration of labor law."

Article 3 of the NAALC obligates each party to promote compliance with and effectively enforce its labor law through appropriate government action, including:

- ▶ "monitoring compliance and investigating suspected violations including through on-site inspections" (Article 3(1)(b));
- ▶ requiring record-keeping and reporting (Article 3(1)(d)); and
- ▶ "initiating, in a timely manner, proceedings to seek appropriate sanctions or remedies for violations of its labor law" (Article 3(1)(g)).

Article 4 ensures a private right of action by requiring that each government's domestic laws guarantee an individual's access to relevant "administrative, quasi-judicial, judicial or labor tribunals for the enforcement of the [its] labor laws." (Article 4(1)).

Article 5 requires that all proceedings for the enforcement of labor laws be fair, equitable and transparent. It also requires that these proceedings comply with due process of law, are open to the public, and are not unnecessarily complicated or involve unwarranted delays.

Article 7 requires each party to promote public information and awareness of its labor laws, including by: "(a) ensuring that public information is available related to its labor law and

enforcement and compliance procedures; and (b) promoting public education regarding its labor law." (Article 7 (a)(b)).

In addition to violating Articles 1, 3, 4, 5, and 7, Petitioners allege that Mexico's pattern and practice of failing to enforce occupational health and safety shows flagrant disregard for the principles set out in the preamble to the NAALC. Paragraph 1 of the preamble, for example, refers to the parties' resolve in enacting NAFTA "to protect, enhance, and enforce basic workers' rights." In Paragraph 7, the parties resolve 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."

C. Applicable Mexican Laws

Article 123 of the Mexican Constitution is the original source of authority for labor laws in Mexico, including occupational health and safety rules, and provides federal jurisdiction over such matters. The principles embodied in the Constitution are codified in Mexico's Federal Labor Law (*Ley Federal del Trabajo* or "LFT"). The STPS is charged with enforcing the LFT, including its occupational health and safety provisions, which are intended to promote safe working conditions and to reduce the risk of injury and illness. The Federal Regulation on Safety, Health, and the Working Environment (*Reglamento Federal de Seguridad, Higiene y Medio Ambiente de Trabajo* or "RFSH") establishes the rules and procedures for the enforcement of safety and health standards in Mexico. The purpose of the RFSH, which took effect on April 21, 1997, is to ensure that work takes place under appropriate health and safety conditions, and in accordance with the LFT. The STPS is also obligated to develop and enforce standards known

as the Official Mexican Standards (*Normas Oficiales Mexicanas* or "NOMs-STPS" or "NOMs"). Petitioners allege that the STPS failed to enforce the LFT, the RFSH,² and the NOMS-STPS at Auto Trim and Custom Trim/Breed Mexicana.

The Social Security Law (*Ley de Seguro Social* or "LSS") establishes the Mexican Institute of Social Security ("IMSS"). Under the LSS, IMSS is responsible for ensuring the existence of preventive programs aimed at reducing injuries in the workplace, as well as the provision of appropriate medical attention and disability benefits to workers who are injured or become ill on the job. Petitioners allege that the IMSS failed to enforce the LSS at Auto Trim and Custom Trim/Breed Mexicana.

Article 4 of the Mexican Constitution provides for the basic right to the protection of health of the individual. Mexico's General Health Law (*Ley General de Salud* or "LGS") provides specific rules to enforce this constitutional right, and encompasses the right to protection of health at the workplace. Norms which implement the LGS, known as the NOMS-SSA, further delineate obligations under the LGS. The Secretaría de Salud ("SSA") is charged with overseeing compliance with the LGS and its NOMs. Petitioners allege that the SSA failed to enforce the LGS and the NOMS-SSA at Auto Trim and Custom Trim/Breed Mexicana.

D. Application of International Agreements

Article 133 of the Mexican Constitution provides that international treaties to which

²The General Health and Safety Regulation in the Workplace (*Reglamento General de Seguridad y Higiene en el Trabajo* (RGSH)) helped implement the LFT prior to the enactment of the RFSH. Like the RFSH, the RGSH, which consisted of 271 articles, delineated specific workplace requirements designed to protect worker health and safety. Petitioners maintain that the STPS persistently failed to enforce the RGSH as well as the RFSH at Auto Trim and Custom Trim/Breed Mexicana.

Mexico is a party constitute binding law throughout the country.³ Mexico is a party to numerous international treaties and declarations covering matters related to occupational health and safety. Petitioners allege that the Mexican government's failure to enforce its occupational health and safety laws violates its obligations under these accords.

ILO Convention 155,⁴ entitled "Convention Concerning Occupational Safety and Health and the Working Environment," requires member countries to take the necessary steps to implement the Convention, including the establishment of adequate and appropriate systems for workplace inspections and penalties. The Convention mandates that member countries implement measures to ensure that employers observe practices to make workplaces as safe and without risk to health as possible, that adequate protective clothing and equipment are provided, and that workers are provided with training. ILO Convention 155 also provides that workers must be informed about the hazards of equipment and dangerous properties of chemical substances used in the workplace. See Articles 9(1),(2),12(a),12(b).

ILO Convention 161,⁵ entitled "Occupational Health Services Convention," provides that Member countries must establish occupational health services. Among other requirements, this convention specifies that workers shall be informed of health hazards involved in their work (Article 13); that Occupational Health Services be informed of "any known factors and any

³Indeed, article 6 of the LFT explicitly incorporates international treaty provisions regarding labor issues. Article 6 states:

The respective laws and treaties concluded and approved in the terms of Article 133 of the Constitution shall apply to labor relations insofar as they are to the worker's advantage, as from the date of commencement of their validity.

⁴Ratified by Mexico January 2, 1984.

⁵Ratified by Mexico on February 17, 1987.

suspected factors in the working environment which may affect the workers' health" (Article 14); and "of occurrences of ill health amongst workers and absence from work for health reasons, in order to be able to identify whether there is any relation between the reasons for ill health or absence and any health hazards which may be present at the workplace" (Article 15).

ILO Convention 170,⁶ entitled "Chemicals Convention," governs production, handling, storage and transport of chemicals as well as the disposal and treatment of waste chemicals. *See* Article 2(c) (i-vii). It provides for classification systems, labeling and marking, and the dissemination of chemical safety data sheets to inform employees about the types of hazardous chemicals they are using. *See* Articles 6,7,8. Article 11 provides that "employers shall ensure that when chemicals are transferred into other containers or equipment, the contents are indicated in a manner which will make known to workers their identity, any hazards associated with their use and any safety precautions to be observed." Article 12(a) provides that employers shall "ensure that workers are not exposed to chemicals to an extent which exceeds exposure limits" by *inter alia*, providing adequate hygiene measures, proper health and safety training, and proper protective gear and clothing at no cost to the employee. Article 13 provides that employers make an assessment of the risks from the use of chemicals at work and protect workers against such risks by using safer chemicals, choosing technology that eliminates or minimizes the risk, adopting adequate engineering control measures, implementing adequate occupational hygiene measures, and providing proper personal protective equipment.

*The International Covenant on Economic, Social, and Cultural Rights (ICESCR)*⁷

⁶Ratified by Mexico on September 17, 1992.

⁷Ratified by Mexico on March 23, 1981.

requires parties to take progressive measures to safeguard and improve the health and well-being of its residents without discrimination on the basis of any status. Article 7 provides that the state parties to the ICESR "recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, in particular: . . . safe and healthy working conditions."

The *Universal Declaration of Human Rights (UDHR)*⁸ and the *American Declaration on the Rights and Duties of Man (ADHR)*⁹ provide that signatory governments agree to promote and respect the right to just and favorable conditions of work. *UDHR* article 23; *ADHR* article 14. *UDHR* article 25 also mandates signatories to promote and respect a "standard of living adequate for . . . health and well-being."

The *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador")*¹⁰ mandates parties to ensure that all persons have the right to work under satisfactory conditions particularly with respect to safety and hygiene. See Articles 6 and 7(e). Although this treaty has not yet entered into force, Article 18 of the *Vienna Convention on the Law of Treaties* imposes upon signatories to the treaty a good faith obligation to adhere to the treaty's objectives and purposes.

Mexico is also a party to the *American Convention of Human Rights (ACHR)*¹¹ which requires parties to promote and respect the right of all individuals to physical, mental, and moral integrity. ACHR art. 5 sec. 1. Petitioners believe that this obligation includes the right to physical, mental, and moral integrity of workers in the workplace.

⁸Signed by Mexico on December 10, 1948.

⁹Signed by Mexico on May 2, 1948.

¹⁰Signed by Mexico on November 17, 1988.

¹¹Ratified by Mexico on March 24, 1981.

Mexico is a signatory to the Constitutions of the World Health Organization (WHO)¹² and the Pan American Health Organization (PAHO)¹³ which obligate member countries to promote the physical and mental well being of their citizens. These constitutions establish measures that countries must take to combat disease, lengthen life, and promote physical and mental health. Signatory countries are also required to promote the improvement of working conditions and other aspects of environmental hygiene. *See, e.g.*, art. 1 of the PAHO Constitution and art. 2 of the WHO Constitution.

III. THE SUBMITTERS

This complaint is submitted by current and former employees of Auto Trim and Custom Trim/Breed Mexicana, Pastoral Juvenil Obrera (PJO); Caminos (Capacitación y Apoyo a Movimientos de Obreros en Solidaridad, AC.); FUTURO (Frente Unico de Trabajadores Unidos pro Reivindicación Obrera); the Coalition for Justice in the Maquiladoras (CJM); St. Mary's University School of Law International Human Rights Clinic; El Centro de Investigación Laboral y Asesoría Sindical, Asociación Civil (CILAS); Cetrac; Campo Obrero; International Union of United Automobile, Aerospace and Agricultural Implement Workers of America (UAW); United Electrical, Radio and Machine Workers of America (UE); AFL-CIO; Columbia University School of Law Human Rights Clinic; The Cross Border Network for Justice and Solidarity; Movimiento Ciudadano por la Democracia; the Maquiladora Health & Safety Support Network; Global Exchange; Our Lady of Victory Missionary Sisters; Interfaith Center on Corporate Responsibility Global Corporate Accountability Program (ICCR); Casa de la Mujer -

¹²Constitution of the World Health Organization, July 22, 1946.

¹³Constitution of Pan American Health Organization, Buenos Aires, October 2, 1947.

Grupo Factor X, A.C.; New York State Labor-Religion Coalition; Maquila Solidarity Network (MSN)(Canada); Northwest Coalition for Responsible Investment; Maryknoll Fathers and Brother; and Portfolio Advisory Board (PAB) - Adrian Dominican Sisters.

Current and Former Employees of Auto Trim and Custom Trim/Breed Mexicana.

Appendix II contains the affidavits and testimony of current and former workers at Auto Trim and Custom Trim/Breed Mexicana. Affiants and interviewees are identified by letters of the alphabet and identifying information has been deleted to preserve their anonymity, because they fear retaliation, harassment, loss of jobs and intimidation to them or members of their families should their identities be publicized.

Pastoral Juvenil Obrera is a religious social and community organization in Mexico. Manuel Mondragón Gallegos is Pastoral Juvenil Obrera's coordinator in Matamoros, Tamaulipas. This organization facilitates support, education, and counseling for *maquila* workers so they can better advocate for fair and healthy working conditions and improve their lives and that of their communities.

Caminos, established in 1998, is a network of grassroots workers' organizations on the Mexican border whose function is to educate maquila workers by promoting and defending their labor rights.

FUTURO (Frente Unico de Trabajadores Unidos pro Reivindicación Obrera) is a grassroots organization of Custom Trim workers who have been struggling for the defense of their labor rights since May 1997.

The Coalition for Justice in the Maquiladoras (CJM), is a tri-national coalition of religious, environmental, labor, Latino, and women's organizations in Mexico, the United States,

and Canada. CJM works to ensure that U.S. transnational corporations adopt socially responsible practices within the *maquiladora* industry, including safe work conditions inside the *maquiladora* plants, and a fair standard of living for *maquila* workers. CJM, headquartered in San Antonio, Texas, was established in 1989. Martha A. Ojeda is CJM's Executive Director.

The St. Mary's University School of Law International Human Rights Clinic, established in 1994, is a branch of the Law School's Center for Legal and Social Justice. The clinic, comprised of law students and a supervising attorney, provides legal advocacy on a range of human rights issues, including workplace health and safety in South Texas and Northern Mexico. The clinic offers legal assistance to members of underserved populations, and trains law students to become effective advocates through supervised work on actual cases and projects. Monica Schurtman is the Human Rights Clinic's professor and supervising attorney. Current and former Clinic students who researched and wrote this submission include Carlos López, Marisol Pérez, Alfonso Otero, Carolyn Perkins, Sergio Aleman, Griselda Villareal, and Phillip Doyle.

El Centro de Investigación Laboral y Asesoría Sindical, Asociación (CILAS), based in Mexico City, is an independent non-profit organization dedicated to strengthening workers and their unions through research, analysis, training, public education, and other types of support. CILAS collaborates with workers and their organizations, as well as teachers, sociologists, doctors, economists, and attorneys, to address worker concerns regarding economics, workplace conditions, and the right to organize. Héctor de la Cueva is the General Coordinator of CILAS.

Centro de Trabajadores y Comunidades (CETRAC) is an organization representing workers who came together for education, support and justice in the *maquiladora* industries of

Nuevo Laredo, Tamaulipas after the harassment and dismissal of workers who sought improvement of health and safety workplace conditions of specific companies, such as Industrias Metálicas. Guadalupe Carrillo G. is an organizer with CETRAC.

Campo Obrero, located in Juarez, Mexico, provides legal assistance to workers who have been fired, suffered work-related discrimination, injuries, and violations of their human dignity. Norma Guillermina Solís Torres is a coordinator for Campo Obrero.

The International Union of United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) represents 1.3 million workers in the automobile, aerospace, agricultural, University, hospital, library, clerical, and state sectors. Lida Orta Anes, Ph.D., Ergonomist, is the contact person for this Submission.

The United Electrical, Radio and Machine Workers of America (UE) is a labor organization representing approximately 35,000 workers in diverse industries and occupations across 26 states. Its membership ranges from factory workers in the metalworking, plastics and various other manufacturing industries, to employees in the public sector, in educational institutions and healthcare facilities. UE has been on the forefront of the effort to establish meaningful relationships between U.S. and Mexican workers through its "Strategic Organizing Alliance" with Mexico's Frente Auténtico del Trabajo (FAT), and has vigorously supported the demands of Mexican workers for full effectuation of the rights of freedom of association and protection of health and safety which are contained in Mexican law as well as in ILO conventions to which Mexico is a signatory. Robin Alexander is the contact person for purposes of this NAO Submission.

AFL-CIO is a union that seeks to bring social and economic justice to the nation's

workers by enabling working people to have a voice on the job, in government, in a changing global economy and in their communities. Tim Beaty is the authorized agent for the AFL-CIO for purposes of this NAO Submission.

The Columbia University School of Law Human Rights Clinic in New York began in January 1999 as part of Columbia University's Human Rights Institute. The Columbia Law School Human Rights Institute establishes and coordinates education, training, and scholarship in human rights. Exploring ways to enforce human rights in the post Cold War context, students in the Human Rights Clinic work on advocacy projects in two areas: business and human rights, and war crimes. Professor Catherine Powell directs the Human Rights Clinic. Arturo Carrillo is a Clinic fellow. Clinic students Angie Armer, Julia Zajkowski, Larisa Garriga, and Samrat Ganguly provided research support for this Submission.

The Cross Border Network for Justice and Solidarity is a non-profit organization of labor, religious, human rights, and environmental groups and activists who seek to educate and build alliances between workers and communities in the Kansas City, Missouri area and the Mexican border on issues of health, safety and environmental violations and hazardous conditions. Judy Ancel is the contact for this Submission.

Movimiento Ciudadano por la Democracia, based in Mexico City, promotes civil society through workshops, dialogue, conferences, and educational materials. Saúl Olmos is an organizer for Movimiento Ciudadano por la Democracia.

The Maquiladora Health & Safety Support Network is a volunteer network of 400 occupational health and safety professionals in Canada, Mexico, and the United States who provide information, technical assistance, and training to community-based organizations of

maquiladora workers on the U.S.-Mexico border. Garrett Brown is the contact person for this Submission.

Global Exchange is a human rights group based in San Francisco that examines the conduct of U.S. multi-nationals abroad, particularly in the area of occupational health and safety. The group has focused on the shoe, clothing, toy, and light manufacturing sectors. Dan La Botz is a coordinator for Global Exchange and Medea Benjamin is the founding director.

Our Lady of Victory Missionary Sisters is a religious congregation of Catholic women who support workers in the *maquiladora* industry who seek enforcement of Mexico's occupational health and safety laws. Sister Mary Ellen Descourouez, is a member of this congregation and contact for this NAO Submission.

Interfaith Center on Corporate Responsibility Global Corporate Accountability Program (ICCR) has 275 religious institutional investors as members. ICCR members have pressed U.S. corporations operating in the maquiladora sector of Mexico to implement high standards on worker health and safety, basic worker rights, and the right to a living, dignified wage. Reverend David M. Shilling is the contact for this Submission.

Casa de la Mujer - Grupo Factor X, A.C. based in Tijuana, Baja California, is an organization of women that promotes and defends the human rights of maquiladora workers. Of particular concern to Casa de la Mujer is the ongoing violations of the rights of workers to safe and healthy work conditions. Carmen Valadez Pérez is Casa's contact person for this Submission.

The New York State Labor-Religion Coalition has been active in promoting justice for working people since 1980. In 1997, the Coalition inaugurated its international project to

build solidarity across borders. The coalition has partnered with the workers of Custom Trim/Breed Mexicana and Auto Trim since that time, and supports their struggle for safety, justice, and a living wage. Maureen Casey is the Labor-Religion Coalition's International Project Coordinator.

The Maquila Solidarity Network (MSN) (Canada) researches working conditions, including health and safety and wages of maquiladora workers in Mexico, for dissemination to civil society and government in Canada. Lynda Yanz is MSN's Policy Analyst. Bob Jeffcott, MSN's Policy Analyst is the contact person for this Submission.

The Northwest Coalition for Responsible Investment is a regional collaborative venture of faith-based institutions committed to using their power as investors to shape a more just world. Judy Byron, OP, is the contact person for this Submission.

The Maryknoll Fathers and Brothers work in 37 countries on issues of health and safety in the process of preaching the gospel. Maryknoll is deeply concerned about the effects of poor working conditions on people's daily lives. In the basic Christian communities in which Maryknoll works, Maryknoll assists people to develop methods for seeking justice in their workplaces, neighborhoods, and lives. Reverend Joseph P. LaMar, Office of Corporate Social Responsibility, is the contact person for this Submission.

The Portfolio Advisory Board (PAB) - Adrian Dominican Sisters endeavors to monitor its investment portfolio according to its established socially responsible investing criteria. These criteria include the promotion and protection of human dignity and human rights in the workplace through fair labor practices in domestic and international operations. PAB also works to provide investments and loans to community-based enterprises that demonstrate a

commitment to social justice through alternative economic endeavors. PAB has visited plants on the Mexican-Texas border and observed deplorable working conditions there, and has advocated with corporations and corporate shareholders to improve those conditions. Sister Annette M. Sinagra, OP, is the contact person for this Submission.

IV. THE ENTITIES ABOUT WHICH THE PARTIES COMPLAIN

In Mexico, the STPS has primary responsibility for labor affairs, including workplace health and safety.¹⁴ The STPS works closely with the IMSS which administers Mexico's social security system, and is responsible for providing medical services and disability payments,¹⁵ as well as providing and promoting preventive programs aimed at reducing workplace injuries and illnesses. The Secretaría de Salud is responsible for ensuring compliance with Mexico's LGS, including laws which govern occupational health and safety.¹⁶ The STPS, IMSS, and SSA are the three Mexican governmental agencies against which the submitters of this petition complain. Specifically, petitioners allege that the STPS, IMSS, and SSA have engaged in a pattern and practice of failing to enforce Mexican laws governing workplace health and safety, specifically with regard to Auto Trim and Custom Trim/Breed Mexicana. Petitioners also believe that the failure by STPS, IMSS, and SSA to enforce the law at Auto Trim and Custom Trim/Breed Mexicana is illustrative of their failure to enforce the law at other *maquilas* along the Mexico/U.S. border.¹⁷

¹⁴*Mexican Laws and Regulations Governing Occupational Safety and Health, A Selection of Principle Documents*, Occupational Safety and Health Administration, U.S. Department of Labor (January 1993), pg. viii.

¹⁵*Id.* at ix.

¹⁶LGS art. 3, §XIV.

¹⁷*See, e.g.,* Michele González Arroyo, Garrett Brown, Simon Bromis, Elizabeth Knight, and Tim Tatearo, *The CAFOR Survey of Maquiladora Workers on Occupational Health and*

V. STATEMENT OF FACTS

A. Auto Trim and Custom Trim/Breed Mexicana

Auto Trim and Custom Trim/Breed Mexicana¹⁸ are subsidiaries of one of the largest conglomerates of auto-part-makers in the world, Breed Technologies Inc., headquartered in Lakeland, Florida, and incorporated in Delaware.¹⁹ Breed Technologies is one of the world's leading suppliers of automotive occupant safety systems and steering wheels, providing its global automotive customers with research and development, engineering, and manufacturing support through its global network of facilities in 13 countries. The company employs more than 11,100 people at its 57 facilities worldwide.²⁰

Auto Trim, located in Matamoros, Tamaulipas, manufactures and attaches leather covers to automobile steering wheels. Custom Trim/Breed Mexicana, located in Valle Hermoso, Tamaulipas, assembles and sews leather covers onto automobile gear shift knobs. These two

Safety in Tijuana and Tecate Mexico, Maquiladora Health and Safety Support Network (June-July 1996); *Investigación Sobre Problemas de Salud en La Industria Maquiladora en Matamoros*, Pastoral Juvenil Obrera (December 1998) (reports attached at Appendix III); and NAO decisions in Submission Nos. 9701 (Gender), 9702 (Han Young), 9703 (ITAPSA). See also generally, Elvia R. Arriola, *Voices from the Barbed Wires of Despair: Women in the Maquildoras*, *Latina Critical Legal Theory and Gender at the U.S.-Mexico Border*, 49 De Paul Law Review 729 (2000).

¹⁸The Custom Trim Ltd. group of companies, including Auto Trim and Custom Trim, was acquired by Breed Technologies for \$70 million in February 1997. *United States Securities and Exchange Commission. Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 (June 30, 1997)* [hereinafter *Securities and Exchange Commission Annual Report*] at 14 <<http://www.sec.gov/Archives/edgar/data/891531/0000891554-97-000910.txt>> (visited June 3, 1998). In November 1998 Breed closed the original Custom Trim plant in Valle Hermoso, and according to workers, re-opened it as Breed Mexicana Plant #2 at a different location in Valle Hermoso, with the same machinery and much of the same workforce. This plant continues to produce leather gear shift covers. Auto Trim's operations were not affected.

¹⁹*Id.* at 1-2.

²⁰*Id.*

maquiladoras supply steering wheels and gear-shift knobs to some of the largest car companies in the world, such as General Motors, Ford and Daimler-Chrysler.²¹

For the past fourteen years the combined workforce at Auto Trim and Custom Trim/Breed Mexicana has ranged from approximately 1200 to 1700 workers.²² The average salary for workers at both plants ranges from the equivalent of three to five U.S. dollars per day.²³ At Custom Trim most employees work nine hours per day, six days per week. At Auto Trim, workers typically work eight hours a day, five days a week. Workers at both plants are given two 10 to 20 minute breaks each day; depending on their particular shift and the length of their breaks, some workers are allotted a half hour for lunch.²⁴

B. The Assembly Processes at Auto Trim and Custom Trim/Breed Mexicana.

Workers at Auto Trim glue and sew pre-cut leather covers onto steering wheels. In the past, there were three areas on the production floor. Each area consisted of seventeen production lines where the assembly, sewing and finishing processes took place. Each production line had approximately four workers that assembled the steering wheels; twelve

²¹These three car makers have recognized Auto Trim and Custom Trim for their high quality products by certifying both maquiladoras as complying with the quality control specifications under the car makers' QS-9000 guidelines. This logo, QS-9000, can also be seen outside Breed's offices located in the industrial park in Valle Hermoso, Tamaulipas.

²²THE COMPLETE TWIN PLANT GUIDE, published by Solonet, The Solutions Network, 4416 North Nefa, El Paso, Texas 79901 (1999).

²³EMPRESA, No. 36, January 1999 at 49.

²⁴Until 1997, Custom Trim Ltd. operated plants in Canada. Like their Mexican counterparts, workers in Canadian plants produced and assembled leather steering wheel and gear-shift knob covers. The Canadian workers earned an average of \$ 12.00 Canadian Dollars an hour (\$8.64 US). They typically worked eight hours per day, five days per week. Workers in Mexico worked 48 hours per week and earned \$0.71 (Canadian Dollar) or (\$ 0.51 US) per hour. See, April Lingren, *Mexican Workers Talk Shop*, THE OTTAWA CITIZEN, August 21, 1997. Currently, workers in Mexico average US\$.50 an hour. EMPRESA, No. 36, January 19, 1999 at 49.

workers that sewed the leather; and four workers that completed the production process. There were also two workers that packaged the steering wheels. Two additional workers were available for substitution. The distance between production lines was about 2 meters (6 feet apart), and the distance between workers was around 80 centimeters (3 feet apart).

During the assembly process a worker would first secure leather onto a steering wheel with glue. Then, another worker further secured the leather on the steering wheel by means of sewing with a long needle and coarse thread. The steering wheel was then sent to the finishing phase where any excess glue was removed with solvents and the leather was trimmed with sharp scalpels.

By the beginning of 1999, the assembly process at Auto Trim had changed.²⁵ The production floor is now divided into several areas and each area has a number of cells (these are smaller working stations) composed of eight people each. Each cell is in a "U" shape. This means that workers now stand outward with their backs facing each other.

The new assembly process is as follows: One worker will stretch the leather to fit it tightly over the steering wheel and secure it with glue; another will further secure with glue and begin to stitch; the next four workers will continue to stitch and make the final knots. Then, there are two workers that continue to glue additional leather and straighten the stitches with a sharp fine tool into grooves that are found on each side of the steering wheel. In the finishing process, workers heat the leather on the wheel with some sort of blow dryer and use a flat based tool to eliminate the wrinkles. Lastly, a solvent will be used to finish the product. This new production process, now with fewer people on a production line, has effectively doubled production

²⁵See Affidavit F for a detailed description of the new production processes at Auto Trim.

quotas.²⁶

At Custom Trim/Breed Mexicana workers glue and sew leather covers onto gear-shifts . The production process is similar to that of Auto Trim. The plant has multiple production lines each of which is engaged in a particular process: At Custom Trim/Breed Mexicana, the process includes: 1) "ensamble" - gluing the leather to the gear-shift; 2) "costura" - sewing the leather around the gear-shift knob; 3) "corte y botón" - trimming excess leather with a scalpel and adding more glue; 4) "plancha y hueso" - clean, soften, and dry; and 5) review and pack. Workers at Custom Trim/Breed Mexicana are spaced at arm's length or less.²⁷

At both plants workers perform their jobs either sitting down or standing up.²⁸ Workers at both Auto Trim and Custom Trim/Breed Mexicana are exposed to several kinds of glues and solvents that contain hazardous chemical substances.

C. Occupational Health and Safety Risks at Auto Trim and Custom Trim/Breed Mexicana

1. The employers fail to provide information about occupational hazards and training to reduce risk of injury

Workers at both plants complain that they receive little or no information or training about the production process, the identity and hazards of handling chemicals, the dangers posed by poor ergonomic practices, or how to reduce workplace risks. Despite legal obligations and worker requests, the maquiladoras do not regularly provide workers instructions about how to properly handle tools, glues, and solvents, or material safety data sheets that identify and

²⁶*See id.*

²⁷*See, e.g.,* Affidavit K.

²⁸*See, e.g.,* Affidavits K and R.

describe the chemicals used in the workplace.²⁹ When a worker is hired, he or she is simply put to work.³⁰ Workers are also moved around to different areas of production, without receiving any training to perform the new tasks. The lack of information and training makes workers more susceptible to workplace injuries, illnesses and to fetal endangerment.³¹

Workers have also stated that they are not trained in safety procedures in case of chemical emergencies. A former Custom Trim worker described a chemical fire which broke out at a work station in the summer of 1996. The water-based fire extinguishers provided by the plant did not put out the fire. In fact, the extinguishers caused the fire to grow stronger, and in the end, the workers had to extinguish the fire themselves by smothering it. The fire produced toxic vapors, but workers were not evacuated; the plant did not even initiate a partial evacuation from the particular work area where the fire occurred.³²

2. Custom Trim and Auto Trim/Breed Mexicana's plant managers and supervisors pressure workers to meet excessively high production quotas without regard for their health and safety

²⁹Affiant K, formerly a Custom Trim worker, stated that he often asked for instruction manuals on how to use chemicals and equipment. He said that management threatened to fire him if he continued to ask for manuals. *See e.g.*, Affidavits B, K, L, V, W, X, Y; Interviews D, E.

³⁰One worker described that workers were never given any training or instruction on how to use the chemicals or any information about the dangers of working with them. He stated that workers are only to work ("Solamente, trabaja!"). *See* Affidavit B.

³¹*See e.g.*, worker affidavits and interviews(attached as Appendix II) including: Affidavit A (musculo skeletal stress and two miscarriages); Affidavit B (musculo-skeletal injuries and nausea); Affidavit C (musculo-skeletal injuries, respiratory difficulties; menstrual irregularities); Affidavit D (headaches and dizziness; shoulder ache and wrist pain); Affidavit F (musculo-skeletal injuries; chronic lower back pain); Affidavit I (headaches and dizziness, respiratory difficulties, skin rashes, low blood pressure); Affidavit J (muscular stress; cysts in wrist and arm; itching and burning sensations; chronic body pain and loss of muscular strength for simple tasks as cooking, sweeping, etc.); Affidavit H (musculo-skeletal injuries and inflammation of hand, arm, neck and shoulder).

³²*See* Affidavit B.

Workers at Auto Trim and Custom Trim/Breed Mexicana are forced to meet extremely high production quotas. In 1996 and 1997, for example, the average production quota for workers at Custom Trim was 72 gear shift covers a day.³³ The average production quota for workers at Auto Trim in 1996 and 1997 was between 40 and 60 steering wheels covers a day.³⁴ After the new production process was put in place, production requirements increased.³⁵ As an Auto Trim worker recently explained, "My 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."³⁶ At both plants production supervisors put constant pressure on workers to meet their excessive quotas. This causes workers to overexert themselves, resulting in increased risk of injury.³⁷ Some workers attest that when they meet established quotas, managers then increase them. The excessive emphasis placed on production, without regard to worker and health safety, is also reflected in the long workday and work weeks at both plants. Workers are allowed only infrequent and short breaks. They also are not given adequate or any time to engage in exercises which might relax their hands and arms.

3. Poorly designed work stations continually expose workers to health and safety risks

Workers at Auto Trim generally do not have their own chairs; they must switch off with co-workers, and therefore, must often work standing up. Workers at Custom Trim/Breed Mexicana reported having chairs. However, according to Custom Trim's former nurse the chairs

³³See Affidavit K.

³⁴See Interview A and Affidavit Q.

³⁵See, e.g., Affidavits E, F, and W.

³⁶Interview E.

³⁷See, e.g., Affidavits B, C, Q, R, and W.

were metal, about ½ cm thick and caused workers to suffer lower back pain during their 8-9 hour shift.

Some employees complain that work stations have no anchoring device that would allow them to hold on securely to the steering wheel and gear shifts as they work on them. This results in the workers further exerting their hands, arms, and backs and in workers frequently dropping parts.³⁸

Workers at both plants also complain that they are squeezed into tight spaces between work stations. The closeness to each as they work with dangerous instruments, like the long sewing needles, results in cuts and gashes. In recent years Auto Trim's work station design worsened. The new "U" shape of the assembly line not only causes workers to stab themselves and each other in the arms and face, but also to stab the backs of their co-workers.³⁹

4. Injuries and illnesses associated with chemicals, glues, and solvents in use at Auto Trim and Custom Trim/Breed Mexican

a. Worker contact with glues and solvents

During the assembly process at Auto Trim and Custom Trim/Breed Mexicana, workers have direct contact and/or are exposed to several kinds of glues, adhesives and solvents that contain hazardous chemicals.⁴⁰ Workers have direct skin contact with adhesives such as Sicomet 5019 and Hallmark 7158 while cementing leather covers onto the steering wheels and the gear-shift knobs. When workers have to remove excess glue from a leather piece they come into

³⁸See e.g., Affidavit F.

³⁹*Id.*

⁴⁰The Submitters learned the identity of the glues and solvents used at Auto Trim and Custom Trim/Breed Mexicana from a variety of sources; however, as noted above, both plants failed to provide information directly to workers about the identity and risks of the chemicals being used.

direct contact with highly toxic solvents such as Loctite 76820 xms, 1,1,1-Trichloroethane, Varsol and Lokweld 110. These glues and solvents are not only dangerous when there is direct skin contact, they also emanate heavy toxic vapors⁴¹ that workers are breathing in all day and every day, further endangering their general health.. At both plants open containers of glues and solvents are frequently kept uncovered on the work floor. In some cases, smaller open containers of these substances are kept at work stations.⁴²

The chemical composition of each of these substances plays a crucial role in determining the short and long term effects that workers will suffer, especially in the absence of appropriate health and safety measures. The composition of the substances used at Auto Trim and Custom Trim/Breed Mexicana is as follows:

- ▶ Sicomet 5019⁴³ contains Ethyl-2-Cyanoacrylate (90%) and Polymethyl Methacrylate (10%);
- ▶ Hallmark 7158 ⁴⁴ contains Acetone (15-40%), N-Hexane (15-40%), Toluene (7-13%) and Magnesium Oxide (1-5%);
- ▶ Loctite 76820 xms⁴⁵ consists of a blend of Nitromethane (approx. 90-100%) and Toluene (approx. 3-10%);

⁴¹A vapor is the gaseous form of a substance that is primarily a liquid or a solid at normal pressure and temperature. Most organic solvents evaporate and produce vapors. During the cure cycle "blooming" or "frosting" may take place with glues such as Sicomet 5019 and Loctite. This phenomenon prevents the vapors, which are heavier than air, from fully dissipating and actually concentrate around the bonding area creating a serious health hazard for workers. Frosting usually occurs in the summertime when there is high humidity. (Visited July 9, 1998)<http://www.rbssystem.com/_private/hazardous.htm> and <<http://www.loctite.com/info/help/fatq.html>> (Loctite-Most Frequently Asked Technical Questions).

⁴²See, e.g., Affidavit W.

⁴³See Material Safety Data Sheet issued by Henkel Corporation on April 30, 1993. All material safety data sheets (MSDS) cited in this submission are attached at Appendix IV.

⁴⁴See Material Safety Data Sheet issued by Halltech Inc. issued in October, 1999.

⁴⁵See Material Safety Data Sheet issued by Loctite Corporation on December 12, 1999.

- ▶ Lokweld 110 ⁴⁶ contains Acetone (15-40%), N-Hexane (1-5%), Hexane isomers (40-60%) and Toluene (15-40%);
- ▶ 1,1,1-Trichloroethane,⁴⁷ also known as Methyl chloroform, is composed of 1,1,1-Trichloroethane (96%) and Cyclic Ether (3%); and
- ▶ Varsol⁴⁸ consists of Petroleum Hydrocarbons, Trimethyl Benzene, and Stoddard Solvent. The manufacturer does not provide a specific percentage of each component.

b. Documented health hazards from using glues and solvents without proper safety equipment⁴⁹

⁴⁶See Material Safety Data Sheet issued by Wilsonart International on September 27, 1999.

⁴⁷See Material Safety Data Sheet issued by Hill Brothers in 1993.

⁴⁸See Material Safety Data Sheet issued by Exxon Chemical Company on February 25, 1999.

⁴⁹This information is drawn from the following sources: Francisco Mercado Calderón, "Avances Recientes en el Monitoreo Biológico Ocupacional a Substancias Químicas Potencialmente Tóxicas," (Recent Advances in the Occupational Biological Monitoring of Potentially Toxic Chemical Substances), Boletín de Investigación, Educación y sus Nexos, 2:2, 58-62, Facultad de Estudios Superiores Zaragoza, UNAM, México, 1995; Francisco Mercado Calderón, La Toxicología Industrial y La Salud en el Trabajo, (Industrial Toxicology and Health in the Workplace), La Jornada Laboral, September 26, 1996; Francisco Mercado Calderón, Contaminantes Orgánicos Volátiles, (Volatile Organic Compounds) Introducción a La Toxicología Ambiental, (Introduction to Environmental Toxicology), Capítulo 18, 299-313, México, 1997, Editora, Dra. Lilia A. Albert, Centro Panamericano de Ecología Humana y Salud, División de Salud y Ambiente, Organización Panamericana de la Salud, Organización Mundial de la Salud. National Library of Medicine Specialized Information Services at <http://sis.nlm.nih.gov>; Handbook of Toxic and Hazardous Chemicals and Carcinogens by Marshal Sittig, 3rd Edition, 1991; Hazardous Chemicals Desk Reference by Richard Lewis, Fourth Edition 1997; National Institute of Health and Human Services, National Institute for Occupational Health and Safety Pocket Guide to Chemical Hazards 1997; Agency of Toxic Substances Disease Registry's Public Health Statement December 1990; Center For Occupational Health and Safety at <<http://ccinfoweb.ccohs.ca/mSSA>> ; Material Safety Data Sheet issued by Henkel Corporation on April 30, 1993; Material Safety Data Sheet issued by Loctite Corporation on December 12, 1999; Material Safety Data Sheet issued by Exxon Chemical Company on February 25, 1999; Material Safety Data Sheet issued by Halltech Inc. issued in October, 1999; Material Safety Data Sheet issued by Hill Brothers in 1993; Material Safety Data Sheet issued by Wilsonart International on September 27, 1999; Interview with Dr. Francisco Mercado Calderón, January 29, 1999.

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;
- ▶ Defatting of skin, erythema, respiratory tract irritation, sedation, dizziness and coma. Even death can occur with significant exposure and inadequate ventilation when exposed to acetone which is a component of N-Hexane, Hexane, Hexane isomers and Toluene which is contained in Hallmark 7158 and Lokweld 110;
- ▶ Eye irritation and damage to cornea by glues or vapors that include toluene, a component of Hallmark 7158, Loctite 76820, and Lokweld 110;
- ▶ Damage to liver, renal and central nervous system, also ataxia, unconsciousness, and if exposed at a high enough level, death can occur when exposed to Toluene;
- ▶ Depression of the central nervous system with possible headaches, dizziness, incoordination, narcosis, stupor, muscular weakness, and even a coma as a result of inhalation of N-Hexane, a component of Hallmark 7158 and Lokweld 110;
- ▶ Fractured skin, slower response time, liver and kidney damage, nervous system effects such as unconsciousness and decreased blood pressure as a result of exposure to 1,1,1- Trichloroethane;
- ▶ Skin disorders, irritation of eye and trachea, impaired liver and kidneys, or pulmonary dysfunction as a result of exposure to Nitromethane, contained in

Loctite 76820 xmns;

- ▶ Drowsiness, anesthesia , unconsciousness and other central nervous system effects, including death when exposed to high vapor concentrations of Varsol;
- ▶ Risk of spontaneous abortion or damage to the fetus in pregnant women.⁵⁰

c. Worker symptoms at Auto Trim and Custom Trim/Breed Mexicana

Workers at AutoTrim and Custom Trim/Breed Mexicana commonly suffer from symptoms consistent with the unsafe use of chemicals, glues, and solvents.⁵¹ Many workers at Auto Trim and Custom Trim/Breed Mexicana's plants suffer chronic skin and eye irritations, dermatitis, rashes, peeling of the hands and nails, sores on and inflammation of the hands, headaches, nausea, dizziness, memory loss and other central nervous system symptoms.⁵² They

⁵⁰Organic solvents can pass through the placenta. Some experts believe that if an embryo is exposed to solvents, especially during the third to seventh week of pregnancy, miscarriage or fetal damage can result. Toluene has also been associated with damage to male reproductive systems, and anencephaly in babies whose fathers, as well as mothers, have been exposed to toluene. Interview with Dr. Francisco Mercado Calderón, January 29, 1999. See also Lindbohm ML, Taskinen H, Sallmen M, Hemminki K, *Spontaneous Abortions Among Women Exposed to Organic Solvents*, AM. J. IND. MED. 17: 449-463 (1990); Mc Donald JC, Lavoie J, Cote R, Mc Donald AD, *Chemical Exposures at Work in Early Pregnancy and Congenital Defects: A Case-Referent Study*, BR. J. IND. MED. 44:527-533; Brender JD, Suarez L. (1990), *Paternal Occupation and Anencephaly*, AM. J. EPIDEMIOLOGY 131:517-521; Daniel WE, Vaughn TL., *Paternal Employment in Solvent-related Occupations and Adverse Pregnancy Outcomes*, BR. J. IND. MED. 45:193-197 (1988).

⁵¹Some workers suffer health problems related both to the sewing process and to unprotected use of glues and solvents. A former Auto Trim worker, now deceased, recounted the following situation: "I sewed steering wheel covers onto steering wheels. I had continuous pain in my arm, shoulder and neck, and was put in physical therapy. I also worked with white glue, yellow glue, and Varsol. I never had a mask or gloves. I would get headaches too." See Affidavit U. The kinds of problems described by this former worker were echoed by dozens of current and former employees interviewed in the course of preparing this submission.

⁵²See, e.g., Affidavit B; Affidavit F; Affidavit K; Affidavit L; Affidavit N; Affidavit O; Affidavit P; Affidavit R; Affidavit W, Affidavit Y; Interview D and Interview E; and excerpt of Worker Testimony from La Chamba Newsletter, Number 1, October 1996, attached at Appendix

also exhibit respiratory problems, sore throats, nasal congestion, itching and bloody noses, sores in the mouth and on the tongue, dryness of the throat, and chronic coughing.⁵³ Some workers report that, at times, they feel tightness in the chest or literally are forced to gasp for air.⁵⁴ Some workers have fainted on the production floor.⁵⁵ Workers have also suffered an uncommonly high number of miscarriages, stillbirths and babies born with birth defects such as anencephaly and spina bifida.⁵⁶

Between 1996 and 1997, at least fourteen (14) children of workers at Auto Trim and Custom Trim were born with serious birth defects or had serious health problems; 13 of them died in infancy or right after birth.⁵⁷ At least 15 women employed at Auto Trim and Custom Trim suffered miscarriages in 1995 and 1996.⁵⁸ Former Custom Trim nurse, Affiant L, recalls that there were five miscarriages among Custom Trim workers during an approximately one month period during the summer of 1996. Affiant L stated that she knew of cases where several pregnant women had threats of miscarriage. Many of these women would suffer from heavy

II.

⁵³See Affidavit C; Interview D; Interview E; Interview H; Affidavit I; Interview J; Affidavit L; Affidavit R; Affidavit T; and Affidavit Q; Affidavit R; Affidavit V; Affidavit W; Affidavit X.

⁵⁴See Affidavit C. Affiant C describes, for example, "I use a variety of chemicals at Auto Trim. I use the yellow glue and Varsol to remove excess glue from the leather during the entire 8 hours that I work my shift. They only give me glasses for protection and there are no suction tubes near my work station. I try to stay as far from the finishing area as I can because I can't breathe and I feel like I am drowning, like I need more air and my throat gets very dry. I use the Varsol with a rag because they don't give us gloves and as I said the vapors are very strong and I am inhaling these fumes all day long."

⁵⁵See Affidavit L and Interviews H, O.

⁵⁶See Affidavit D; Affidavit K, Affidavit L.

⁵⁷See, e.g., Affidavits A, D, J, L; Complaint and Petition by Auto Trim Workers, December 1996, attached at Appendix II.

⁵⁸See *id.*

bleeding, nausea and would even faint on the floor.⁵⁹

d. Inadequate health and safety infrastructure at Auto Trim and Custom Trim/Breed Mexicana increases risks to workers from glues and solvents

As discussed in §V(C)(1), *supra*, former and current employees at both plants assert that they were given little or no training about workplace hazards, including the safe use of glues and solvents, and often were not informed of the identity or potential dangers posed by the chemicals to which they were exposed or instruction in how to handle chemical emergencies. Additionally, both plants have failed to provide adequate ventilation and temperature controls, and proper personal protective equipment.

One worker, Affiant Q, stated, for example,

I worked at Auto Trim for 9½ years. I was not provided with any type of safety equipment with the exception of a dust mask. I have serious respiratory problems. I have been coughing up blood since 1995.

Another worker noted:

...there are no air extractors close to me and I need to be as far as possible from the finishing area because I feel awful, I feel like I can't breathe and that I am suffocating and that I need more air to breathe... The vapors from the chemicals also cause me to become dizzy. I feel like dying. *See* Affidavit C.

Another described:

I have worked at Auto Trim since 1993. I was exposed to glue and solvents continuously. The smell of chemicals was overwhelming. I never wore a mask or gloves. I have had constant sinus pain in my nose and head. I have also had pain in my left arm and hand. In 1997, my son died of Spina Bifida. A doctor told me that I may have infected the baby during my wife's pregnancy and that I should wait three or four years before we have another. I am very sad about my son's death right now. *See*

⁵⁹*See, e.g.,* Affidavit L, Interviews H and O.

Interview D.

i. Inadequate or non-existent ventilation, exhaust systems, and temperature controls at Auto Trim and Custom Trim/Breed Mexicana

Ventilation and exhaust systems at AutoTrim and Custom Trim/Breed Mexicana are seriously deficient, causing contamination to reach levels harmful to worker health. Neither plant is set up with a safe way to dissipate or eliminate the toxic vapors. Workers stated that the only existing forms of ventilation or exhaust systems for suctioning off the vapors from glues and solvents are small air extractors or aspirator tubes ("extractores de aire") the company places next to their work stations. These devices are described as tubes or pipes running under their work stations and up through them exiting through openings in the work stations.⁶⁰ In theory, the tubes are meant to suck away the vapors. In reality, workers report that the air extractors are too weak to effectively aspirate the toxic vapors, that they frequently break down, or simply do not work at all.⁶¹ Some of the workers try to get close to the air extractors, placing the glue containers right next to them hoping that the extractors will better suction in the vapors. But the production floor supervisors admonish workers who do this telling them the glue might spill inside. Workers report that there are no windows in either plant to allow air to circulate⁶² and the air conditioning system is either kept low or off, causing the temperatures inside to rise,⁶³ and vapors to become even more concentrated.

⁶⁰See, e.g., Affidavits M and Q.

⁶¹See, e.g., Affidavits B, K, L, M, Q, and W, Interview E.

⁶²From the outside, the Custom Trim/Breed Mexicana and Auto Trim buildings look like giant rectangular blocks. There are reportedly no windows, except, perhaps, in the administrative offices.

⁶³See, e.g., Affidavits B and W.

ii. Inadequate personal protective equipment

Workers use rags they soak in solvents with their bare hands. The concentration of vapors from the solvents become stronger in the soaked rags increasing the health hazards to the workers.⁶⁴ Plant managers provide no adequate personal protective gear. Such protective equipment should include chemical-resistant gloves, safety glasses with side shields, protective clothing such as coveralls, boots, aprons, and respirators. *See* discussion *infra* V(C)(4)(e).

According to workers, managers at Auto Trim and Custom Trim/Breed Mexicana occasionally provide cloth or thin plastic or rubber gloves to workers; the gloves, however, are easily damaged by solvents, thus offering little or no protection at all. The solvents make workers hands excessively dry, cause rashes, peeling, and cracked nails.⁶⁵ Similarly, workers were sometimes given dust masks. These, of course, cannot protect against chemical vapors. Instead, protection from chemical vapors requires dual cartridge and half mask respirators with chemical cartridges for organic vapors.⁶⁶ According to the workers, Auto Trim and Custom Trim/Breed Mexicana have sporadically provided plastic safety goggles or glasses that were essentially useless because they were not scratch-resistant and hampered the workers' vision. Also, for those with impaired vision, work is made even more difficult because the safety glasses do not fit over prescription eyewear.⁶⁷

e. Failure to institute safer protocols for handling glues and solvents

Safer alternatives to the current methods of handling chemicals used by Auto Trim and

⁶⁴*See, e.g.*, Affidavit K.

⁶⁵*See, e.g.*, Affidavits K, L, V, W; Interviews D, E, and F.

⁶⁶Interview with Dr. Francisco Mercado in Mexico City, January 29, 1999.

⁶⁷Affidavit F and Affidavit K.

Custom Trim/Breed Mexicana exist. Occupational health specialists typically recommend several approaches to reducing workplace hazards created by toxic chemicals. The preferred method involves the substitution of toxic chemicals for those that are non-toxic.⁶⁸ In the event that toxic substances cannot be entirely eliminated, workplaces should monitor levels of contaminants and worker exposure, and adopt industrial ventilation and vapor extraction measures located at the sources of emission.⁶⁹ Localized exhaust systems, defined as ventilation systems designed to capture an emitted contaminant at or near its source before the contaminant has a chance to disperse in the workplace air,⁷⁰ are appropriate when : emission sources contain materials of relatively high hazards; emitted materials are primarily larger diameter particulate; emissions vary over time; emission sources consist of point sources; employees work in the immediate vicinity of the emission source; the plant is located in a severe climate; or minimizing air turnover is necessary.⁷¹ Ventilation and extraction devices located in a factory's walls or ceilings are not nearly as effective. Experts recommend, moreover, that extraction devices be adjustable to adequately accommodate at the sources of the emission of vapors.

Personal protective equipment (PPE) and clothing constitutes the last line of defense for workers. There is a consensus among health specialists that PPE such as respirators should not be the first choice for controlling worker exposure to hazardous chemicals. Personal respirators

⁶⁸Interview with Dr. Francisco Mercado in Mexico City, January 29, 1999. *See also* HEALTH AND SAFETY MANUAL ON TOXICOLOGY (produced by CILAS and PIDCAST), for a training sponsored by the Coalition for Justice in the Maquiladoras.

⁶⁹Industrial ventilation generally involves the use of supply and exhaust ventilation to control emissions, exposures and chemical hazards in the workplace. *See* <http://www.osha-slc.gov/dts/osta/otm/otm>.

⁷⁰*Id.*

⁷¹*See* <http://www.osha-slc.gov/dts/osta/otm/otm>.

should be of internationally-recognized quality. Generally there are two different types of respirators: air-purifying respirators; and supplied-air respirators.⁷² Air purifying respirators can purify air by absorbing gases or vapors on a sorbent (absorbing material) in a cartridge or cannister.⁷³ Supplied air respirators can supply clean air from a compressed air tank or through an air line.⁷⁴ This air should meet standards for purity and moisture content.⁷⁵ There should also be a complete respiratory program⁷⁶ that will describe the proper procedures for selecting and operating respiratory protective equipment. Dust masks should be used only to reduce exposure to dust and other particulate matter; they do not protect from toxic vapors.⁷⁷ According to material safety data sheets, recommended respirators for the chemicals used at Auto Trim and Custom Trim Breed/Mexicana included the following : Chemical Cartridge Respirators with organic vapor cartridge; or a Full-Face Piece Self Contained Breathing apparatus.⁷⁸

Health and Safety specialists also recommend protective clothing and gloves to shield workers from skin contact with toxins.⁷⁹ This includes chemical-resistant gloves, coveralls, aprons and safety footwear. Material safety data sheets often specify the material that is resistant

⁷²See <<http://www.ccohs.ca/oshanswers/prevention/ppe/respslct.html>>.

⁷³*Id.*

⁷⁴*Id.*

⁷⁵*Id.*

⁷⁶Some of the recommended components of the program include: hazard identification and control; exposure assessment; respirator selection; respirator fit testing; training program; inspection and record keeping; cleaning and sanitizing respirators; repairing and maintaining respirators; proper storage of respirators; health surveillance; standard operating procedures; and program evaluation. See <<http://www.ccohs.ca/oshanswers/prevention/ppe/respslct.html>>.

⁷⁷Interview with Dr. Francisco Mercado in Mexico City on January 29, 1999. See also HEALTH AND SAFETY MANUAL ON TOXICOLOGY (produced by CILAS and PIDCAST).

⁷⁸Refer to MSDS sheets attached at Appendix IV.

⁷⁹In addition to causing damage to skin from direct contact to toxins, organic vapors can also enter the body through the skin, not just through inhalation.

to particular chemicals. Resistance is typically determined by the permeation rate, breakthrough time, and degradation of the chemical.⁸⁰ A "permeation rate" is the rate at which the chemical will move through the material.⁸¹ The higher the permeation rate, the quicker it will move through the material.⁸² "Breakthrough time" is the time it takes the chemical to permeate completely through the material.⁸³ The measurement of the physical deterioration of a material due to contact with a chemical is called "degradation."⁸⁴ Each chemical used by workers must be evaluated to determine which materials provide the best resistance to protect workers from harm.⁸⁵ For instance, the chemical Toluene, a component of Hallmark 7158, Loctite 76820, and Lokweld 110 — substances used at Auto Trim and Custom Trim/Breed Mexicana — has a

⁸⁰See Canadian Center for Occupational Health and Safety Guidelines, <<http://www.ccohs.ca/oshanswers/prevention/ppe/gloves.html>>.

⁸¹*Id.*

⁸²*Id.*

⁸³*Id.*

⁸⁴*Id.*

⁸⁵The Canadian Center for Occupational Health and Safety recommends gathering and analyzing information based on the following factors when considering what type of gloves and protective clothing should be used: 1) Complete, accurate description of the task; 2) Identification of all hazards that may require hand protection. This should include a list of the chemicals involved as well as physical hazards such as abrasion, tearing, puncture and temperature. The kind of hazards will also affect the decision to use other chemical protective clothing in addition to gloves; 3) Flexibility and touch sensitivity needed for the task. This need may significantly limit the thickness of glove material that can be used. The requirement for textured or non-slip surfaces to improve grip must also be considered; 4) Type of potential contact. This will also help in choosing the appropriate length of the glove; 5) Contact period. How long the worker could be in contact with the chemical (and which chemicals) may also influence the selection of type and thickness of the glove material and the choice of lined or unlined gloves; 6) Potential effects of skin exposure. The immediate irritation or corrosion of the skin must be considered in addition to the potential health effects to the entire body from absorbing the chemical through the skin; 7) Decontamination procedures. Consider whether the gloves should be disposed of or cleaned after use. If they are cleaned, consider the cleaning method, how often they can be cleaned, and any special procedures required for disposing; 8) Training required for effective use. <<http://www.ccohs.ca/oshanswers>>.

breakthrough time of less than one hour with materials such as Butyl rubber, natural rubber, neoprene, nitrile rubber, polyethylene, polyvinyl chloride, and Saranex.⁸⁶

Workers at both Auto Trim and Custom Trim/Breed Mexicana also need appropriate safety glasses. Examples include: Eye-cup goggles; mono-frame goggles; or even face shields. This equipment should be hermetic to assure the best protection for eyes from toxic vapors.⁸⁷ The goggles must be scratch-resistant so as not to interfere with workers' ability to sew and cut properly. They should also accommodate the worker who must wear prescription eyeglasses.

Sufficient air-conditioning should also be provided to make sure the goggles do not slip and the protective clothing does not overheat.⁸⁸ Workplaces that use chemicals, such as Auto Trim and Custom Trim/Breed Mexicana, should provide employees with showers to use at the end of the workday and lockers to keep street clothing. Work clothing should not be taken home. This precaution will reduce the risk of exposing other members of the family to toxins. Plant management should provide for regular cleaning of clothing worn at work.

Another simple method for reducing worker exposure to toxins would be to replace the vats currently used to hold chemicals with safety containers that could be hermetically-sealed. Similarly, hermetic containers should be provided for the disposal of the rags used by workers to clean-up toxic spills.

5. Injuries associated with the sewing, stretching, trimming and fitting of leather at Auto Trim and Custom Trim/Breed Mexicana

⁸⁶See <http://www.ccohs.ca/oshanswers/chemicals/chem_profiles/toluene/>.

⁸⁷Interview with Dr. Francisco Mercado in Mexico City on January 29, 1999.

⁸⁸Workers have complained that it is too hot to wear protective gear at Auto Trim and Custom Trim/Breed Mexicana because of inadequate air conditioning on the work floor. See, e.g., Affidavit B, Affidavit D, Interview E, Affidavit F, Affidavit L, and Affidavit W.

a. Musculo-skeletal damage and cuts and gashes on workers' bodies

Workers at Auto Trim and Custom Trim/Breed Mexicana receive little or no training, have poorly designed work stations, are subjected to ergonomically unsound practices which require unreasonable exertion of their hands, arms, shoulders, and backs when sewing, and lack appropriate intervention methods that will either prevent or reduce work-place injuries related to the sewing and trimming processes. The deficiencies have resulted in long term and permanent disabilities for workers at these plants. Workers also commonly suffer injuries caused by deep cuts and gashes, which result from unsafe production practices and the absence of proper personal protective equipment.

Cumulative evidence from studies indicate a causal relationship between identifiable workplace risk factors and disabilities, including musculo-skeletal disorders.⁸⁹ At Auto Trim and Custom Trim/Breed Mexicana, numerous workers and former workers suffer symptoms consistent with musculo-skeletal disorders. These include severe and often chronic hand, wrist, arm, shoulder, neck, and back pain.⁹⁰ These disabilities are recognized as musculo-skeletal disorders.⁹¹ There are seven recognized risk factors that have been shown to cause or contribute to musculo-skeletal disorders. The risk factors are: force;⁹² awkward postures;⁹³ static posture;⁹⁴

⁸⁹See Occupational Safety and Health Administration, *Ergonomics Program Proposal* (1999) available at <http://www.osha-slc.gov/Fed.Regosha_data/FED1999/123>, Section V. A. 1 [hereinafter, "OSHA Ergonomics Report"].

⁹⁰See, e.g., Affidavits B, C, L, P, Q, R, W; Interviews A, D, E, F, G, O, S.

⁹¹There is widespread agreement that workplace risk factors play a major role in the development of work related musculo-skeletal disorders. *OSHA Ergonomics Report, supra* n. 89.

⁹²Force is the mechanical effort required to carry out a movement or to prevent a movement. It can be exerted against a work piece or tool, or against gravity, to stabilize body

repetition;⁹⁵ motion;⁹⁶ compression;⁹⁷ and vibration.⁹⁸ There are also modifying factors that enhance the effects of the basic risk factors. These include: intensity or magnitude;⁹⁹ duration;¹⁰⁰ and temporal profile.¹⁰¹ These risk factors and modifying factors are present at Auto Trim and Custom Trim/Breed Mexicana, and worker injuries at both plants are consistent with injuries that

segments. *Id.*

⁹³Awkward postures are postures that deviate from neutral position and can be classified as extreme postures (joint positions close to the ends of the range of motion), non-extreme postures exposing the joint to loading from gravitational forces, postures that change musculo-skeletal geometry. There is strong evidence of a causal relationship between awkward postures and musculo-skeletal disorders related to the hand, wrist, and neck. *Id.*

⁹⁴Static postures are postures held over a period of time to resist the force of gravity or to stabilize a work piece, and are stressful to the musculo-skeletal system. These include standing or sitting over a period of time which requires isometric muscle force and exertion without accompanying movement. Increased intramuscular pressure exerted on neural tissue can result in a chronic decrement in nerve function. *Id.*

⁹⁵High repetition is itself a basic risk factor, and can also exacerbate other basic risk factors of force and awkward posture. *Id.*

⁹⁶Motion of body segments consists of both linear motion and rotational motion around a joint. Dynamic factors may result in increased tendon travel and irritation. Dynamic factors such as velocity and measured acceleration may also exacerbate other risk factors, such as force and postural risk. This combination of risk factors is associated with back injury. *Id.*

⁹⁷Compression of tissues can result from external exposure or internal exposure. External compression can be caused by sharp edges, excessive pressure from tools, workbench edges, machine corners, and seating which concentrate forces on a small area of the anatomy and result in high and localized pressure. This type of compression results in tissue specific damage to nerves, vessels and other soft tissues and commonly effects the hands and wrists. Internal compression results from conditions of height-force exertions, awkward postures, static postures and dynamic risk. *Id.*

⁹⁸Vibration is generally divided into two categories: segmental vibration transmitted through the hands and whole-body vibration transmitted through the lower extremities and/or the back. *Id.*

⁹⁹This is a measure of the strength of each risk factor such as how much force, how deviated the posture, how great the velocity and how great the compression. *Id.*

¹⁰⁰Duration is the measure of how long the risk factor was experienced. This can be a function of the frequency that a task is performed. *Id.*

¹⁰¹Workers who are exposed to multiple risk factors which are modified by intensity and duration have diminished recovery capacities. Recovery capacity is strongly related to the time available for tissue repair. *Id.*

result from these factors.

In an effort to meet the excessively high productivity standards of both plants, workers engage in constant repetitive movements of hands, wrists and arms for long periods at a time.¹⁰² During the sewing process, workers must pull long needles, stretching their arms out to tighten the stitches. The toughness of the leather makes sewing more difficult because workers have to put great effort into pushing and pulling the needles through the leather. Workers state that they suffer from chronic pain in their arms, wrists, necks, shoulders and backs. Workers commonly exhibit inflammation in the areas where they suffer from such chronic pain. *See, e.g.*, Affidavits A, B, K, L, R and S. A nurse formerly employed by Custom Trim, stated that s/he knew of numerous workers who had Carpal Tunnel Syndrome¹⁰³ at that plant. Workers often cannot grasp objects or even carry on with daily routines at work or at home.

¹⁰²Ergonomic studies indicate that high "repetition" is a basic risk factor contributing to the existence of musculo-skeletal disorders. "Motion", also a recognized risk factor, Symptoms of these types of injuries are: pain and stiffness in the hands, wrists, forearms, elbows and shoulders; tingling and numbness; loss of strength; coordination in the hands; pain while trying to sleep; feeling a need to massage the hands, wrists and forearms. *See* <<http://www.ergoteacher.com/RiskFactors.htm>>.

¹⁰³According to *The Merck Manual*, Carpal Tunnel Syndrome "is particularly associated with occupations that require wrist flexion" which "results from compression of the median nerve in the volar aspect of the wrist between the longitudinal tendons of forearm muscles that flex the hand and transverse superficial carpal ligament." THE MERCK MANUAL, Merck Research Laboratories, USA (16th ed 1992), Chapter 131, pp. 1519-1520. CTS occurs when "strains within the connective tissue create a low tolerance for continuous repetitive movement. When the hand is used repetitively in a stressful position, the tendons inside the carpal tunnel swell causing tendons to compress the median nerve and cause acute pain. The ability of the muscles to be able to glide smoothly and effortlessly becomes inhibited and impedes nerve impulses." Over time the compression of the median nerve leads to nerve damage. This causes the muscles in the base of the thumb to deteriorate, resulting in the inability to grip objects. *See Carpal Tunnel Syndrome & Repetitive Strain Disorder*, (visited November 18, 1998) <<http://www.rsirelief.com>>. *See also CUPE-Carpal tunnel Syndrome*, (visited November 18, 1998) <<http://www.cupe.ca/topics/health/19970601/3p5.html>>.

One worker, in his mid-twenties, stated:

At times, I do not have the strength to do simple things like household chores or pick up a glass or a book because I have no strength in my arms and hands. *See Affidavit B.*

Another worker stated:

My arm hurts so much that I cannot stand the pain when I wash clothes. Also, my wrist hurts a lot and I cannot sweep or mop the floors as I used to and sometimes I cannot hold on to the handrail when I ride the bus. *See Interview A.*

Another worker declared:

When I get off from work and go home it is very hard for me to cook. In the winter time I cannot do anything because the pain is so unbearable. My arm cramps and I have to sleep with my hands well covered and warm . . . It pains me that my daughters have to do all the household chores . . . *See Affidavit C.*

Auto Trim workers not involved in the sewing process have also complained of symptoms consistent with musculo-skeletal disorders. These symptoms appear to result from the repeated action, musculo-skeletal stress, and awkward posture involved in stretching leather to fit onto steering wheels.

Affiant W, for example, explains:

My job is to stretch and glue leather covers onto steering wheels, and clean excess glue with solvents. I have to stretch the leather very tautly to get it to fit over the wheel. Doing this over and over again puts a lot of stress on my hands, wrists, shoulders, neck, and back The constant physical stresses and repetition in my work causes a lot of pain in my back, shoulders, neck, my arms, wrists, and hands. I am also losing my grip, it has become much weaker.

For those engaged in the sewing and trimming processes, the actions of threading and pulling the long needles away from the leather to tighten the stitches, and the practice of using sharp scalpels to trim leather along with the toughness of the leather and lack of protective gloves

and clothing also makes it easy for the workers to pierce their own fingers, hands, arms, and faces, or accidentally stab fellow workers.¹⁰⁴

Affiant L, formerly a nurse at Custom Trim, stated:

During the sewing process the workers used scalpels ("bisturies") to cut the leather and thread, and since the workers have no protection for their hands they often pierce their hands and fingers. Sometimes the long needles they used for sewing went all the way through their hands. Very often workers would stab themselves because of the close proximity of the work station and I would see approximately 15 workers a day suffering from cuts, some of them severe, and the only treatment provided to them would be a band-aid or some adhesive tape, and then they would be sent back to work. *See* Affidavit L.

Another worker said:

I was injured with one of the large needles I used to sew the leather. The needle went all the way through my hand, causing a large gash with heavy bleeding. Injuries like this one and other cuts and accidents happened very often at Custom Trim. When we would get stabbed or cut the only treatment we received was a little disinfectant and the band-aid to cover the wound.

. . .my wife, who also worked at Custom Trim got injured with one of the scalpels as she was cutting the thread and sewing the leather covers. The scalpel went all the way through her left thumb causing heavy bleeding...she was only given a piece of gauze to cover the wound. *See* Affidavit B.

At Auto Trim specifically, the risk of cuts and gashes has increased.¹⁰⁵ In the production process in place prior to 1999, Auto Trim workers would mainly stab themselves and others in the arms and face because they were standing next to each other. Now they are stabbing each other in the back as well.¹⁰⁶

¹⁰⁴*See, e.g.*, Affidavits B, E, F, L, P.

¹⁰⁵*See, e.g.*, Affidavit F.

¹⁰⁶*Id.*

b. Failure to institute safer production methods and interventions that could prevent or remedy workers' injuries resulting from the sewing, cutting, and stretching of leather

Reduction of exposure to risk factors can reduce the incidence and severity of musculo-skeletal disorders.¹⁰⁷ Ergonomic interventions can reduce these risks. Multifactorial interventions will reduce incidences more effectively than interventions targeting only a single risk factor present in the workplace.¹⁰⁸ Ergonomic experts have stated: "research clearly demonstrates that specific interventions can reduce the reported rate of musculo-skeletal disorders for workers who perform high risk tasks. No known single intervention is universally successful. Successful interventions require attention to individual, organizational, and job characteristics, tailoring and the corrective action to those characteristics."¹⁰⁹

Ergonomic interventions should be designed specifically with respect to risks at the Auto Trim and Custom Trim/Breed Mexicana maquiladoras. To determine effective ergonomic interventions, problem areas, as well as problem-specific solutions must be identified. Workers should be fully involved in identifying problems and solutions, and participate in appropriate ongoing education and training.

One important intervention to reduce dynamic risk factors would be to slow the work pace and reduce production quotas to a realistic level that would not so drastically compromise

¹⁰⁷See, e.g., *Musculo skeletal Disorders and Workplace Factors*, Bernard B. Fine, eds., U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, National Institute for Occupational Safety and Health, DHHS (NIOSH) Publication #97-141 (1997).

¹⁰⁸*OSHA Ergonomics Report*, Section V (A)(1).

¹⁰⁹NRC (1998, Ex 26-37). Source: *National Academy Press. Work-Related Musculoskeletal Disorders: A Review of the Evidence* (pg. 23). <http://www.nap.edu/books/0309063272/html/index.html>.

worker health.¹¹⁰ Interventions to reduce force could include: the redesign of tools to reduce extreme wrist flexion, easier insertion and pressing; introduce jig fixtures to hold work pieces; provide trolleys so workers will not have to lift the wheels and materials; and reduce weight and use more flexible leather. Measures to reduce awkward posture would include: altering work stations to eliminate twisting and bending, making them adjustable; provide workstations tilted toward worker; have a 'sit/stand' work station; introduce jig fixtures to hold work pieces at proper angles that are adjustable; provide adjustable chairs with height adjustment and lumbar supports (cushions) as well as foot rests; install glue stations to reduce awkward upper-extremity postures and excessive reaches; allow for more space between work stations.¹¹¹

To reduce static posture Auto Trim and Custom Trim/Breed Mexicana should : vary tasks; rotate jobs; provide appropriate adjustable chairs; provide anti-fatigue mats for prolonged standing; provide adjustable work stations; and redesign assembly operations so that workers are in upright, not hunched over positions. In order to reduce repetition they should: rotate jobs; and give frequent and regular breaks.

Clearly, the adoption of several common-sense, low-cost measures would significantly reduce harm to workers at Auto Trim and Custom Trim/Breed Mexicana. Also, long-term and permanent musculo-skeletal disorders could be reduced or mitigated significantly by allowing and encouraging workers to obtain adequate treatment as soon as symptoms occur.¹¹² Workers at

¹¹⁰See, e.g., *OSHA Ergonomics Report*, Appendix VI(B).

¹¹¹*Id.*

¹¹²See, e.g., *Work Related Musculo Skeletal Disorders: A Review of the Evidence issued by the Steering Committee for the Workshop on Work Related Musculo Skeletal Injuries; The Research Base; The National Research Council; Commission on Behavioral and Social Sciences; and Education and the National Research Council*, National Academy Press, Washington D.C. 1998.

AutoTrim and Custom Trim/Breed Mexicana, however, are not typically afforded these remedial measures — either at all, or in a timely fashion. In many cases, the failure to provide appropriate remedial measures has resulted in permanent disabilities for workers at both plants.

6. No meaningful health and safety committees or health and safety plans

Neither Auto Trim nor Custom Trim/Breed Mexicana have established functioning workplace health and safety committees or promulgated written health and safety plans, although both measures are required by law. *See* discussion at Part VI(A)(4) of this Submission. Mexican law intends for workplace health and safety committees, composed of workers and management, to meet regularly, investigate workplace injuries and illnesses, and make recommendations to improve worker health and safety. Mexican law also requires that employers, in conjunction with health and safety committees, develop and disseminate written health and safety programs. These are supposed to include a description of workplace hazards, and measures to reduce risk, as well as a detailed training plan designed to educate workers in methods to minimize dangers to their health and safety. *Id.* Information received by the submitters indicates that health and safety committees at Auto Trim and Custom Trim/Breed Mexicana have been either non-existent or non-functional, and that written health and safety plans have not been distributed. *See, e.g.,* Affidavits B, K, L, V, W, Interview E. The following example illustrates the problem:

Affiant L explained:

Mr. Ernesto Argueta, Custom Trim Human Resource Manager and head of the health and safety committee was supposed to direct and conduct a thorough inspection of the plant. He was supposed to write the report that needed to be sent to Ciudad Victoria detailing problems in the plant. However, in his report he would only include minor problems and his solution for everything was to clean, sweep and paint. *See* Affidavit L.

Interviewee E described his attempts to convince Auto Trim management to allow the plant's health and safety commission to educate workers about Mexico's occupational health and safety laws, and that the committee should encourage plant compliance with these laws. He was told that "the health and safety commission was not supposed to have anything to do with [these laws]. The commission did not educate workers about the NOMs, or the legal right . . . to good health and safety conditions. The commission did not educate workers about the risks they faced at Auto Trim, and did not train workers how to reduce risk."

7. Failure to stock proper first-aid medical supplies in on-site plant infirmaries

Information received by the submitters also indicates that neither Auto Trim nor Custom Trim/Breed Mexicana stock basic first aid materials necessary to provide immediate treatment of the kinds of illnesses and injuries suffered by workers on the job. At Custom Trim/Breed Mexicana, for example, the infirmary only stocked simple band-aids, gauze, or adhesive tape, often inadequate to treat the cuts and gashes sustained by workers, and common allergy medication and aspirin, ostensibly to relieve respiratory and skin problems, headaches, and muscle pain.¹¹³

D. Inadequate Reporting, Diagnosis, Treatment and Compensation for Work Place Illnesses and Injuries¹¹⁴

¹¹³See, e.g., Affidavit L.

¹¹⁴Testimony attached at Appendix II shows that a number of Auto Trim and Custom Trim/Breed Mexicana workers whose health and dexterity deteriorated because of poor workplace conditions not only failed to receive proper referrals, diagnosis, treatment, and compensation, they were also subjected to humiliation by plant supervisors. Often supervisors would segregate them from other workers and taunt them for being inferior and inadequate because the physical pain interfered with meeting the high production quotas. See, e.g., Affidavit H; Affidavit K ("workers in the *yonkeados* [from the English word "junk"] were frequently subjected to insults and humiliation by supervisors who would tell the workers to quit because

Illnesses and injuries are often unreported or under-reported because Auto Trim and Custom Trim/Breed Mexicana do not always inform the STPS or the IMSS when workers become sick or are injured because of workplace conditions.¹¹⁵ For example, one worker, fired from Auto Trim in May 1998, had worked there for over nine years. In August 1995, he began to suffer from severe pain in his hands, arms, and shoulders. He also developed serious respiratory problems that not only made breathing difficult but also forced him to cough up blood. On many occasions the coughing was so bad that he had to put a tin can next to his work station to spit up the blood. With all these signs of illness present Auto Trim's plant managers often refused to issue and sign the MT-1 forms that would entitle him to diagnosis and treatment by the Social Security doctors and to lawfully mandated disability benefits for work-related illness. Auto Trim never reported his illness to the STPS or the IMSS. Eventually he was fired because he was considered useless. He received neither proper medical attention nor any benefits. To this day this worker cannot properly breathe and he still spits blood.¹¹⁶

According to Affiant L, former nurse at Custom Trim, and workers at both plants, members of management would frequently fail to report workplace accidents and injuries to avoid paying higher social security premiums. See discussion at §VI(A)(3), *infra*. In addition, doctors at IMSS have failed to properly diagnose and valorize worker injuries and disabilities,

they could not do the work anymore because of their disabilities”) workers in this area were treated as if they were trash; Affidavit A (“management puts the disabled workers in the *yonkes* production line, where they have no privileges, they are pressured more and watched over more closely”).

¹¹⁵See, e.g., Affidavits B, L, N, Q, R, V; Interviews D, O.

¹¹⁶See Affidavit Q. Affiant Q, like other workers, also had skin problems and central nervous disorders like headaches and nausea. In May of 1999 Affiant Q was diagnosed with a herniated spinal disk which had been previously missed by the Social Security doctors.

resulting in lower disability benefits or none at all. *See* §VI(B)(3), *infra*.

Physical therapy is sometimes provided to workers, but is offered sporadically or after permanent damage has already set in. A purportedly remedial measure often used by doctors at the *maquiladoras* and IMSS is an injection, referred to as "bloqueo" or "to block the pain." The bloqueo is used to numb different parts of an injured employee's body to allow the employee to continue work without further pain. "Bloqueos," however, do not provide real treatment. In fact, the bloqueos can aggravate injuries because they simply mask pain, which often causes workers to believe mistakenly they are ready to go back to work.¹¹⁷ Testimony provided by current and former workers suggests that treatment of symptoms caused by exposure to chemicals is usually not provided, by IMSS doctors or at the plants. Similarly, compensation for illnesses related to exposure to chemicals is not typically provided.¹¹⁸

As detailed further in §§VI (B)(2) and (3), legally-mandated compensation for disabilities suffered as a result of working at Auto Trim and Custom Trim/Breed Mexicana is often difficult to collect. Affiant T, for example, suffers serious pain and impeded motion in several parts of the right side of her body. She explained:

At Auto Trim, I sewed. I sewed steering wheel covers onto the steering wheels. I worked on different models. In early 1994, I began to have problems with my right arm. My arm started to hurt. . . . In July of 1994, I

¹¹⁷One worker reported receiving a total of twelve injections. The injections would first affect the nerves in her arm and she had side effects, such as eye irritation and impairment of vision. *See* Affidavit P. Another worker received a similar injection, but after six months the pain became stronger. *See* Interview I. Workers demand better rehabilitation treatment and do not want to be subjected any longer to these injections or "bloqueos" which they know only worsened the conditions of other co-workers. *See* Interview A.

¹¹⁸Affidavits C, L, Q, T; Interviews A-I. IMSS reports provided to these workers make no mention of symptoms, treatment, or compensation for exposure to chemicals, even where worker testimony indicates serious symptoms related to chemical exposure.

was working with very tough leather. This caused more pain in my arm. I went to the Social Security doctor. He stated nothing was wrong. . . .On September 13, 1996, I met with my supervisor. The company said I was not meeting the production demands. I was fired. On September 19, 1996, I accepted a permanent pension of 10% of my salary for my injuries. The only reason I accepted 10% . . . was because it was the only way I would receive medical attention. Affidavit T.

Affiant T also noted that she worked with yellow and white glues and solvents on the steering wheel covers. She said she did not receive compensation for on-going respiratory problems associated with her unprotected exposure to chemicals.

E. Informal Health and Safety Complaints, Recommendations, and Requests Made By Auto Trim and Custom Trim/Breed Mexicana Employees to Plant Management

Until April 1997, workers at Auto Trim and Custom Trim/Breed Mexicana who were concerned about the plants' health and safety conditions either kept their concerns among themselves or raised them in an ad hoc fashion with plant managers. Individual workers, for example, periodically asked for personal protective gear, better ventilation, relief from repetitive tasks which caused hand, arm, and back pain, and effective treatment and adequate compensation for illnesses and injuries related to their work. Typically, workers were either unaware that they could seek recourse from Mexican government agencies to remedy dangerous health and safety conditions, unsure of how to do so, or convinced that such requests would be to no avail, and could lead to retaliation.¹¹⁹

Affiant L, a nurse at Custom Trim, from 1995 until her termination in 1997, tried to

¹¹⁹Lacking confidence that they could obtain relief in Mexico, and hoping that international attention might facilitate improvements, in December 1996, workers at Auto Trim drafted a document describing substandard health and safety conditions at the plant. They submitted this document to the Canadian Steelworker's Union #1090 who were visiting the maquiladora workers. See Affidavit V, and Document #29, attached at Appendix II.

obtain improvements in health and safety conditions at the plant. She made specific recommendations to plant management, sought to order medicine and materials to adequately stock the plant infirmary, and insisted on trying to refer injured or ill workers for medical treatment. Her efforts apparently led to her termination.¹²⁰

F. The 1997 Contract Negotiations at Custom Trim¹²¹

During April and May 1997, Custom Trim/Breed Mexicana workers and plant management began to negotiate a new collective bargaining agreement. In addition to asking for better wages, workers asked for improved health and safety conditions. In mid-May 1997, Custom Trim management halted negotiations. On May 10, 1997, after employees carried out a work-stoppage, management agreed to resume negotiations, and workers resumed their duties at the plant. Although negotiations were supposed to start-up again later in the afternoon of May 19, 1997, plant management evidently again declined to negotiate. The time period mid-May through mid-June was characterized by repression of the workers who demanded increased wages and improved health and safety conditions by plant managers with the support of Mexican police, Mexico's "official" labor union, the CTM, and the Public Ministry. Custom Trim/Breed Mexicana workers engaged in work-stoppages and sit-ins. On May 23, workers discovered that Custom Trim/Breed Mexicana management and Saturnino Méndez Alfaro, the CTM union leader in Valle Hermoso, had already signed a secret collective bargaining agreement which included neither an adequate wage increase nor real improvements in health and safety conditions. Recognizing that they had been outmaneuvered, employees agreed to return to work

¹²⁰See Affidavit L.

¹²¹See, e.g., Affidavits K and M.

in exchange for the company's agreement not to retaliate.

Despite this agreement, on June 2, 1997, Custom Trim/Breed Mexicana fired 28 workers, all active in efforts to secure better working conditions. In August 1997, at the invitation of the Canadian Steelworkers Union, Local #1090, several of the fired workers traveled to Canada seeking advice and support. Upon their return, they were harassed by local government officials, and one former worker was the subject of death threats. Former Custom Trim/Breed Mexicana workers filed a complaint with the Mexican Conciliation and Arbitration Board challenging their terminations.¹²²

G. Petitions Submitted by Current and Former Auto Trim and Custom Trim/Breed Mexicana Workers to STPS, IMSS, and SSA Alleging Numerous Violations of Mexico's Occupational Health and Safety Laws

1. Petitions filed with STPS in Ciudad Victoria

On May 19, 1998, current and former employees of AutoTrim and Custom Trim/Breed Mexicana filed petitions with STPS regional headquarters in Ciudad Victoria requesting that STPS immediately conduct inspections of both plants pursuant to the LFT. The petition also alleged numerous violations of Mexico's occupational health and safety laws and regulations. A copy of this petition is attached at Appendix I.

On April 15, 1999, a second petition was filed with STPS in Ciudad Victoria. This petition, a copy of which is attached at Appendix I, again asked STPS to conduct plant inspections and alleged additional violations of Mexico's health and safety laws. Petitioners

¹²²On December 16, 1998, the Conciliation and Arbitration Board issued a decision in favor of the Custom Trim/Breed Mexicana workers, and orders that they be reinstated. Custom Trim/Breed Mexicana appealed the decision, and the workers have not been reinstated during the appellate process. See *Expediente 178/8/97 Ante La Junta Especial #8 de la de Conciliacion y Arbitraje en el Estado de Tamaulipas*.

have never been notified whether inspections occurred, and if so, of the results. Upon information and belief, STPS has not conducted proper inspections of AutoTrim or Custom Trim/Breed Mexicana based on either of these petitions.

2. Petition filed with SSA in Ciudad Victoria

On April 15, 1999, current and former employees of AutoTrim and Custom Trim/Breed Mexicana filed a petition with IMSS regional headquarters in Ciudad, Victoria. The petitioners requested inspections at both plants in coordination with the STPS, pursuant to the LFT, LSS, the Mexican Constitution and other health and safety regulations and norms. The petition also requested investigations of local IMSS offices have refused to give proper medical attention and benefits to workers at both plants. In addition, they petitioned for measures to be taken against doctors in these entities who have neglected their duties. A copy of this petition is attached at Appendix I-3. IMSS has not responded to the Petitioners' requests. Shortly after the petition was filed, however, several workers currently employed at AutoTrim reported that a union representative at IMSS visited the plant demanding to know the identities of the petitioners.¹²³

3. Petition filed with SSA in Ciudad Victoria

On April 15, 1999, current and former employees of AutoTrim and Custom Trim/Breed Mexicana filed a petition with SSA regional headquarters in Ciudad Victoria. The petitioners requested that the SSA carry out verification visits and inspections of both plants pursuant to the laws prescribed by the LGS, the Mexican Constitution and the other applicable health and safety regulations. The petition alleged substandard working conditions, and outlined the health and safety risks associated with these conditions. A copy of this petition is attached at Appendix I. It

¹²³ See, e.g., Affidavit V.

appears that SSA has not taken appropriate action in response to their petition.

VI. THE PERSISTENT FAILURE OF THE MEXICAN GOVERNMENT TO ENFORCE AND COMPLY WITH OCCUPATIONAL HEALTH AND SAFETY LAWS WITH RESPECT TO AUTO TRIM AND CUSTOM TRIM/BREED MEXICANA: A LEGAL ANALYSIS

Mexico's STPS, IMSS, and SSA have persistently failed to enforce provisions of the Mexican Constitution, the Federal Labor Law (Ley Federal de Trabajo or "LFT"), the Federal Social Security Law (Ley de Seguro Social or "LSS"), the Federal Health Law (Ley General de Salud or "LGS"), the Official Mexican Health and Safety Norms ("NOM"), and the Federal Regulations on Health, Safety and Environment in the Workplace ("RFSH") with respect to Auto Trim and Custom Trim/Breed Mexicana. Mexico's failure to enforce its occupational health and safety laws violates its obligations under the NAALC. *See* §II(B), *supra*. The failure by the Mexican government to enforce occupational health and safety laws also violates its obligations under international treaties and declarations, including ILO Conventions 155, 161, and 170, the International Covenant on Economic, Social and Cultural Rights ("ICESCR"), the Universal Declaration of Human Rights, the American Declaration on the Rights and Duties of Man, and the Treaty of San Salvador.

As a result of the failure by the STPS, IMSS, and SSA to enforce health and safety laws, many workers and former workers at Auto Trim and Custom Trim/Breed Mexicana suffer work-related illnesses and accidents, and both plants continue to operate with serious deficiencies, which pose ongoing risks to worker health and safety.

A. STPS Has Persistently Failed to Enforce Occupational Health and Safety Laws and Regulations

The STPS is responsible for enforcing the LFT, which includes significant occupational

health and safety requirements intended to promote safe working conditions and minimize the risk of injury and illnesses. In addition, the STPS is responsible for enforcing the RFSH¹²⁴ and NOMS-STPS, legal regulations and standards designed to help implement the LFT.

The LFT, RFSH, and NOMS-STPS establish procedures by which government authorities must ensure compliance with occupational health and safety mandates. These procedures include conducting on-site inspections to determine whether workplaces adhere to Mexico's occupational health and safety laws, and requiring non-compliant workplaces to undertake corrective measures or face legal sanctions. With regard to Auto Trim and Custom Trim/Breed Mexicana, the STPS has persistently failed to enforce or itself comply with the provisions set out in the LFT, RFSH, (and prior to enactment of the RFSH, persistently failed to enforce the RGSH), and NOMS.¹²⁵

1. STPS has persistently failed to conduct legally mandated inspections

The LFT contemplates workplace inspections as a principal means by which the STPS can carry out its responsibility of ensuring compliance with Mexico's labor laws. Through inspections, STPS can exercise its power to investigate compliance with health and safety standards, collect evidence regarding compliance or non-compliance, make recommendations or

¹²⁴The RFSH went into effect on April 1, 1997. It was enacted to streamline Mexico's already existing comprehensive health and safety regulations, the *Reglamento General de Seguridad y Higiene regulations*, or the RGSH, in place since 1978. Like the RFSH, the RGSH provided regulations governing vast areas of occupational health and safety, including proper handling and storage of hazardous materials, the adoption of ergonomically-sound production processes, provide information about workplace hazards and training to prevent those hazards, the use of adequate personal protective equipment, the installation of adequate ventilation and exhaust systems, and the formation of workplace health and safety committees.

¹²⁵Other information strongly suggests that STPS has similarly persistently failed to enforce occupational health and safety laws at other maquiladoras. See, e.g., reports attached at Appendix III; Echlin complaint and NAO findings.

compel corrective measures, and make official findings leading to possible sanctions against an employer. *See, e.g.*, LFT Articles 516, 540-542.¹²⁶ The NAALC similarly emphasizes the importance of on-site government inspections in monitoring and verifying compliance with health and safety laws, and in initiating remedies or sanctions. *See* NAALC article 3.

LFT articles 512 and 512-D explain that an employer must take corrective measures ordered by labor authorities to comply with Mexico's health and safety laws and regulations. If such modifications are not made, the STPS shall impose monetary sanctions.¹²⁷ *Id.*

Indicative of the central role given inspections in the enforcement of Mexico's labor laws, the LFT makes it a specific obligation of inspectors to carry out these inspections, both in the course of their normal duties, and in response to complaints originating from a given workplace.

¹²⁶LFT article 511 requires STPS inspectors to: (i) monitor compliance with Mexico's legal standards governing workplace hazards and worker health and safety; (ii) make evident through special reports violations they discover; (iii) work with employees and the employer to explain standards regarding workplace risk prevention, health, and safety. Article 540 emphasizes that in addition to assessing whether health and safety standards are being met, the purpose of a work inspection is to provide technical assistance and advice to workers and employers about the most effective manner to comply with these standards; report to the proper authorities the existence of deficiencies and violations of such standards; to conduct studies and provide data; and to undertake whatever else the law authorizes. Article 541 requires STPS inspectors to: (i) to monitor compliance with labor standards, especially those which affect women, children, and those which relate to measures to prevent work-related health and safety risks; (ii) visit workplaces during working hours, day or night; (iii) interview workers and employers about compliance with work standards; (iv) review workplace records mandated by law; (v) make recommendations to correct violations; (vi) make recommendations to eliminate deficiencies in the workplace and in methods of work when they constitute a violation of work norms or a danger to the health or safety of workers; (vii) in the case of dangerous work, examine substances and materials used in the workplace; (viii) whatever else the law authorizes. Article 542 explains that STPS inspectors must conduct periodic workplace inspections, and, when a denunciation is received regarding violations, must conduct an extraordinary inspection. Inspections are also mandated by the RFSH. *See, e.g.*, RFSH articles 161 and 162.

¹²⁷Monetary sanctions are also authorized by LFT articles 992, 994-V, and 1002. *See also* RFSH articles 164-168.

LFT Article 542, paragraphs II and III. Failure by an inspector to fulfill the obligations of paragraphs II (periodic inspections of businesses and workplaces) and III (extraordinary inspections in response to complaints) of Article 542 are among the causes made explicit by the LFT for sanctioning an inspector with warnings, suspensions, or ultimate dismissal. *See* Article 547.¹²⁸ The STPS fails its specific mission under the LFT if inspections are not conducted on a regular basis and in response to specific complaints.

The LFT provides legal norms for the execution of workplace inspections. *See* Articles 542-544, in conjunction with Articles 509 and 511. Both the spirit and letter of the law require transparency of the inspecting authority, as well as the input and participation of both employers and workers in any inspection. The LFT requires the formation of joint worker-employer health and safety commissions at industrial work sites, and an inspector should logically deal with or recommend the formation of such joint commissions during an inspection. *See* Article 509. The inspector is obligated to collaborate with the workers and the employer in the diffusion of information about occupational health and safety standards concerning the prevention of workplace illnesses and injuries. Article 511. The law requires inspectors to identify themselves and present their credentials to both workers and employers when making an on-site inspection. Article 542. The law prohibits inspectors from representing or patronizing either workers or employers in a conflict. Article 544. Moreover, the LFT requires an official report or findings to be made following an inspection. The report should be drawn up with the intervention of workers and the employer, and a copy of the report is to be given to the parties involved (workers

¹²⁸Other causes for sanctioning an inspector include falsifying information on reports or findings, accepting bribes, or failing to follow a superior's order.

and employer). Article 542, paragraph IV, Article 511, paragraph II.

In the present case, the STPS has failed to carry out its legal responsibilities for workplace inspections at the AutoTrim and Custom Trim/Breed Mexicana maquiladoras. This failure amounts to a failure to adequately enforce Mexico's labor laws. The evidence suggests that the STPS has never carried out "periodic" inspections as required by the LFT articles 540-542.¹²⁹

If periodic inspections were ever conducted, they were ineffective and legally deficient, since they were not conducted according to the applicable legal norms. Workers do not recall speaking with or being contacted by STPS inspectors. Former workers at Auto Trim do recall one occasion when plant managers told them that STPS would conduct an inspection the following day. Before the inspection, supervisors told workers to hide glues and solvents. The plant ceased operations for one day. One day later, the plant reopened. Workers do not really know whether an inspection was conducted or why the plant was temporarily closed. However, workers do report that, if STPS did indeed conduct an inspection that day, it did not result in any change or improvement in the workplace. If inspections were conducted, none of the information gathered nor any subsequent reports were made available to the workers,¹³⁰ in violation of LFT articles 511 and 542.

Upon information and belief, STPS has also failed to undertake extraordinary plant inspections as required by LFT article 542, paragraph III. This provision obligates STPS inspectors to carry out extraordinary inspections when a complaint has been filed alleging

¹²⁹See, e.g., Affidavits B, L, M, V, W, Y; Interviews H and O.

¹³⁰See, e.g., Interview E and Affidavit F, Affidavit H and Affidavit O.

occupational health and safety violations. Complaints to the STPS were made on May 19, 1998 and April 15, 1999 by workers at AutoTrim and Custom Trim/Breed Mexicana. These complaints alleged numerous violations of law, and described work-related injuries and illnesses suffered by plant employees. *See* Appendix I.

Upon information and belief, STPS made no inspection in response to those complaints, nor was any other response given to the workers. *See* §V(G), *supra*. *See, also* Affidavits K, M, and V. Again, even if inspections were made in response to the complaints — and it remains doubtful whether any actually took place — the norms for conducting those inspections were violated by not involving workers and complainants in the inspection and by failing to provide them a copy of any report of findings.¹³¹ This failure to respond adequately to specific workers' complaints represents a willful disregard on the part of the Mexican authorities to enforce the country's labor laws regarding occupational health and safety standards.

2. STPS has persistently failed to issue orders for corrective measures or sanctions

LFT Article 512 and 512D authorize the STPS to issue orders requiring employers to take measures to correct health and safety violations in the workplace. These articles also require the STPS to sanction employers who refuse to comply with such orders. Articles 992, 994-V and 1002, requires the imposition of monetary sanctions. Similarly, LFT article 541, §§V and VI direct the STPS to issue recommendations and orders to correct defects in work installations and work methods which constitute violations of the law, the RFSH, or the NOMS, or pose danger to the health and safety of workers. Article 541 §VI further requires the STPS to order immediate

¹³¹*See, e.g.*, Affidavits K, M, V, W.

preventive measures in case of imminent danger. RFSH articles provide additional legal basis for the STPS to issue corrective orders. RFSH articles 164-168 specify the monetary sanctions the STPS should impose on employers for violations. LFT article 512D authorizes the STPS to order partial or total closure of non-compliant workplaces.

Numerous violations of Mexico's health and safety laws and regulations have persisted at Auto Trim and Custom Trim/Breed Mexicana for years. These include the plants' failure to:

- a. Report workplace injuries and illnesses;
- b. Provide appropriate referral, treatment and compensation for work-related injuries and illnesses;
- c. Institute workplace health and safety commissions and programs;
- d. Offer information and training about dangers posed by chemicals and the sewing process, and ways to minimize such risks;
- e. Implement chemical monitoring;
- f. Issue appropriate personal protective equipment;
- g. Install and maintain adequate ventilation and exhaust systems;
- h. Develop emergency preparedness measures; and
- i. Redesign the work process to minimize risks.

The ongoing existence of these violations indicates that the STPS has persistently failed to enforce appropriate corrective measures or impose sanctions, as required by Mexican law. Such persistent failure also violates the NAALC, in particular article 3, which emphasizes the need to initiate timely proceedings to seek appropriate sanctions or remedies for violations of labor law.

3. STPS has persistently failed to enforce laws regarding the reporting of and referral, treatment, and compensation for work-related injuries

and illnesses

The STPS shares responsibility with the IMSS for enforcing laws and regulations governing reporting of, referral for, treatment, and payment of appropriate compensation for work-related injuries and illnesses. The STPS has persistently failed to enforce such laws with respect to Auto Trim and Custom Trim/Breed Mexicana. This persistent failure also constitutes a violation of the NAALC, in particular articles 1 and 3, and Annex I (10).

LFT article 132 §XVII obligates employers to advise the appropriate authorities of each workplace accident. Article 504 §V requires employers to provide written notification of a workplace accident to the STPS within 72 hours. Notification must include: Name and address of the company; name and address of the worker as well as his or her position and salary; time and place of the accident; name and address of any witnesses to the accident; and place where medical attention was provided. *See also* RFSH articles 127-128; NOM-021-STPS.

LFT articles 132 §§XVII and XIX, 504 §I, and RFSH article 148 require employers to maintain, at the workplace, medicines and other necessary curative materials (*material de curación*) to provide first-aid. Under article 487, workers who suffer work-related injuries and illnesses have the right to appropriate medical and surgical intervention, rehabilitation, hospitalization, medicines and treatment, orthopedic devices, and financial indemnization. Article 506 establishes that doctors at workplaces must certify that a worker who suffered a workplace injury or illness is ready to return to work and issue an opinion regarding the degree of disability. LFT articles 476-499 and 513 set out formulations for determining degrees of incapacity and the legally-required compensation for such incapacities.

The STPS's persistent failure to enforce these provisions at AutoTrim and Custom Trim/

Breed Mexicana has resulted in numerous legal violations, and significant harm to plant workers.

These include:

- ▶ Failure by Auto Trim and Custom Trim/Breed Mexicana to report work-related accidents and illnesses to STPS and to IMSS (*see, e.g.*, Affidavits B, L, and Q, Interview O);
- ▶ Failure by Auto Trim and Custom Trim/Breed Mexicana to stock appropriate medicines and supplies to provide first aid treatment (*see e.g.*, Affidavits B, K, L, and Q);
- ▶ Failure by Auto Trim and Custom Trim/Breed Mexicana doctors to make referrals to IMSS doctors for examination and treatment (*see, e.g.*, Affidavits B, C, L, Q, and R);
- ▶ Failure to properly qualify and value disabilities leading to workers receiving less disability compensation than that which they are legally due or none at all.¹³²

4. STPS has persistently failed to ensure the existence of properly-functioning workplace health and safety committees and health and safety plans

LFT Article 509 requires workplaces to establish joint health and safety committees composed of an equal number of worker representatives and employer representatives. *See also* RFSH Articles 123-126; NOM-019-STPS-1993; *Acuerdo por el cual se modifica la norma Oficial Mexicana NOM-019-STPS-1993*.¹³³ These committees must be created within thirty days

¹³²*See* §VI, B.3, *infra*, for further discussion. The Submitters argue that the STPS, under LFT articles 476-499 and 513-514, must provide oversight of determinations made by IMSS with respect to diagnosis and valorization of work-related disabilities.

¹³³This *Acuerdo* seems to give increased authority to plant managers to oversee the work of health and safety committees and delegate more responsibility for inspections and

after an establishment opens for business or after the RFSH came into effect, and must be registered with the STPS. RFSH art. 125. Health and safety committees are to carry out their duties during work hours. LFT article 510. Duties include investigating and reporting workplace accidents and illnesses, proposing measures by which to prevent risks, ensuring that such measures are enforced, and monitoring compliance with the RFSH and the NOMs. NOM-019-STPS-1993. The health and safety commissions are required to file periodic reports with STPS.

Several former employees reported that safety and health committees were nominally established at Custom Trim/Breed Mexicana and Auto Trim, but failed to comply with their legally-prescribed duties. According to these employees, the committees rarely met, did not adequately (if at all) investigate or report workplace injuries and illnesses, did not monitor the companies' compliance with the NOMS and the RFSH, and had no meaningful opportunity to propose effective preventive measures to management. *See, e.g.*, Affidavits C, L, R, W, and V,

verifications to the commissions. The Submitters assert that the *Acuerdo* cannot legally allow STPS to delegate fully this responsibility to the plant's health and safety commission or rely solely on the commission's reports to determine plant compliance with Mexico's occupational health and safety rules for several reasons. Workers have a right to the protection of health by the State. MEX. CONST. art. 4. *See also* LFT arts. 3 and 5, § XII (health and safety laws are part of "the public order and social interest," and must, therefore, be enforced by the state). Such constitutional and legal authority cannot be legally delegated to a private entity in such a manner that the private entity becomes the sole arbiter of determining its own compliance with a constitutional provision; the duty to enforce the law rests upon the State, not on an employer whose duty is to follow, rather than determine, compliance with the law. When the State relies mainly on a private entity to determine its own compliance with health and safety laws, the State ignores its responsibility, under Mexican law, to enforce the NAALC, the law, and international treaties.

The fact that the health and safety commissions may include workers does not change this analysis. Workers have no legal duty to enforce occupational health and safety laws. Perhaps more importantly, workers do not have the political power to do so, because they are in a completely subordinate relationship to their employers. *See, e.g.*, Interview E.

Interview E. Other former employees of both plants reported to the submitters that the health and safety committees appeared to be completely non-existent. In addition, workers state that when such committees were established, they were under upper management orders, and reluctant to conduct meaningful inspections or offer substantive recommendations to improve health and safety conditions. *See* Affidavit L and Interview E. Some workers state that when health and safety reports were prepared to submit to STPS, management had an extra sheet in the back of the document for workers' signatures; and that once workers signed the signature sheet, management modified the report in order to show no risks to workers' health and safety. An Auto Trim worker who participated in the plant's health and safety commission explained that:

Auto Trim's health and safety commission ("comisión mixta") 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 offered ideas about how to improve health and safety conditions at the plant that I had learned from workshops organized by independent occupational health and safety experts (not affiliated with Auto Trim). I attended these workshops; for example, I learned about Mexican health and safety NOMs. 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 NOMs or the legal rights of workers to good health and safety conditions. The commission did not educate workers about the risks they faced at Auto Trim, and did not train workers how to reduce risk. *See* Interview E.

The worker continued:

I believe that the major goal of Auto Trim's environmental engineer was that each commission member sign the monthly health and safety report that had to be submitted to STPS. The people who wrote the health and safety reports would take care not to mention workers' illnesses, injuries, or symptoms. They

would also make promises about improvements that would be made, but they did not follow through with those promises. Sometimes we would tell plant management to take specific corrective measures, but they didn't do anything.

Sometimes we did not agree with what the reports said and did not want to sign. People from the plant's management would visit us individually to have us sign the health and safety reports to file with STPS. If we didn't want to sign, they would pressure us by saying that everybody else had signed, even if that was not true.

Some of us workers tried to convince the Auto Trim managers that we needed good exhaust systems ("*extractores*") because of the concentration of vapors from glues and solvents. In the beginning we had no *extractores* at all. After a lot of pressure, we did get some *extractores*. But, they often did not work at all; in any case, they were never strong enough to dissipate the vapors. The managers said it was impossible to get exhaust systems to get rid of the vapors. *Id.*

Another worker stated: "A health and safety commission does exist, but it is worthless. I don't want to participate in it – for what? – it doesn't do anything that makes our conditions better." Affidavit W.

The RFSH also requires employers, with the assistance of workplace health and safety commissions, to develop written plant safety and health programs. RFSH articles 130-141. Such programs must include a written description of existing health and safety risks, and the development and implementation of a written training plan, on at least an annual basis, to educate workers about these risks and ways to prevent them. In addition, plants which use chemicals must establish health and safety plans specifically geared to reduce harm from chemicals. RFSH art. 1355. *See also* LFT 153F, §111, NOM-STPS-05-1993. Worker reports from both Auto Trim and Custom Trim/Breed Mexicana indicate that written health and safety plans were either never developed or at least never disseminated widely among the workforce. *See* Affidavits B and K, Interview E.

The absence of effective health and safety commissions and plans at Auto Trim and Custom Trim/Breed Mexicana is yet another example of the lack of legally-required oversight, verification, and preventive mechanisms at both plants, and the failure of STPS to enforce Mexican laws designed to maximize compliance with workplace health and safety regulations.

5. STPS's failure to enforce Mexico's occupational health and safety laws has resulted in violations by Auto Trim and Custom Trim/Breed Mexicana with respect to the use of chemicals, glues, and solvents, and has caused harm to workers' health and safety

Workers at Custom Trim/Breed Mexicana and Auto Trim suffer symptoms consistent with exposure to toxic substances. *See* §V(C)(4)(c), *supra*. These include: chronic skin and eye irritations, dermatitis, rashes, peeling of the hands and nails, sores on and inflammation of the hands, headaches, nausea, dizziness, short-term memory loss and other central nervous system symptoms, fainting, respiratory problems, sore throats, nasal congestion, itching and bloody noses; sores in the mouth and on the tongue, dryness of the throat, and coughing. Miscarriages, stillbirths, and birth defects are uncommonly high. *Id.*

Mexican law obligates employers to undertake measures to safeguard workers from hazardous effects posed by chemical substances. RFSH articles 2, 13, 64-75, 83-84, 93-94, 99-103, 123-152. NOM-009-STPS-1993, in effect until April 3, 1999, provided that employers must protect workers from the risk of intoxication and irritation by establishing safe and healthy conditions for the handling and storage of toxic and irritating substances. NOM-009-STPS §3.1.F, for example, mandated that employers should substitute less hazardous substances for harmful chemicals to minimize risk. *See also* ILO Convention 170. NOM-009-STPS §3.1.H similarly required employers to introduce modifications in the work process to reduce risk from

contaminants.¹³⁴

NOM-010-STPS directs employers to establish measures to prevent harm to employees from chemicals, and improve conditions in workplaces where chemicals are handled and stored.

Information provided by current and former employees at Auto Trim and Custom Trim/Breed Mexicana demonstrates that both plants failed to take measures required by Mexican law to reduce harm to workers from toxic and corrosive chemicals. Upon information and belief, neither plant has made serious efforts to substitute safer substances for those used in the production process, and as described below, neither plant has undertaken alternative preventive

¹³⁴NOM-009-STPS was in place during the majority of the time period covered by this submission. The RFSH articles cited in the text, *supra*, are still current, as are Mexico's obligations under international treaties to take adequate measures to protect workers from health and safety risks caused by hazardous materials.

NOM-005-STPS-1998 replaced NOM-009-1993, effective April 3, 1999. NOM-005-STPS not only abrogates NOM-009-STPS-1993 but also abrogates NOM-008-STPS-1993; NOM-018-STPS-1993; and NOM-020-STPS-1993. NOM-005-STPS-1998 mandates that employers must: 1) elaborate and maintain current studies to determine potential work risks regarding toxic substances; 2) elaborate and maintain current a manual delineating procedures for the safe handling, storage, and transportation of toxic substances, including identification of such substances; 3) provide showers in places where toxic substances can be carried in skin or cloths; 4) provide a first aid manual based on studies of potential workplace risks and the medical treatments necessary in case such risks are realized; 5) provide workers necessary first aid treatment; 6) train workers to provide first aid treatment; 7) provide employees with protective personal gear; 8) provide equipment, places, or materials to contain toxic substances in case of spills or leaks of liquids or gases, to avoid them from expanding; 9) designate in writing, particular locations in which dangerous activities involving exposure to toxic substances must be carried out; 10) elaborate a specific program of health and safety for the use of toxic substances according to this NOM; 11) train employees in the use of the safe use, transportation, and storage of toxic substances; 12) inform workers of the risks to which they are exposed; 13) conduct entry, periodical, and special medical examinations on workers exposed to toxic substances.

This NOM has been criticized as reducing health and safety protections for workers, and as resulting from administrative deregulation to encourage foreign investment in Mexico at the expense of worker health. Interview with Dr. Francisco Mercado in Mexico City, February 25, 2000. Additionally, NOM-005-STPS may be inconsistent with stronger health and safety protections required by the RFSH, and Mexico's constitutional obligation to comply with treaties it has ratified, such as ILO Conventions 161 and 170.

measures prescribed by law. The Submitters argue that the persistent failure by the STPS to enforce these laws has allowed serious violations to continue at Auto Trim and Custom Trim/Breed Mexicana which have caused harm to the health and safety of the plants' employees. The persistent failure to enforce these laws also constitutes an abrogation of Mexico's obligations under the NAALC and other international agreements.

a. Failure to inform and train workers about the health risks caused by exposure to those chemicals, the chemicals they use, and violations of workers' "right-to-know"

Mexican law includes provisions which require employers to inform workers generally of work-related risks (*see, e.g.*, RFSH 15 and 135), and train them how to minimize work-related injuries and illnesses. *See, e.g.*, LFT article 132 XV and XVI; LFT articles 153A, 153F, and 153M; NOM-009-STPS-1993 and its successor NOM-005-STPS-1998 § 5.

Mexican law additionally imposes special obligations on employers to inform and train workers in plants where chemicals are used and stored. RFSH article 15 emphasizes the particular importance of informing employees of hazards associated with the use or exposure to chemicals in the workplace, and of training them in procedures to prevent and control these risks. *See also* NOM-005-STPS-1998 and its predecessor NOM-009-STPS-1993.¹³⁵ RFSH article 55 requires employers to disseminate written information about hazardous materials used in the workplace as part of the health and safety program that employers must develop. *See id.* RFSH article 62 provides that employers must ensure that hazardous materials are identified by type

¹³⁵NOM-009-STPS and its annexes contained detailed "right-to-know" instructions that employers were required, including labeling chemicals, and posting warning signs prominently on the work floor. Although its successor, NOM-005-STPS-1998, is not as specific with regard to an employer's obligation to ensure its workers' "right-to-know," NOM-005-STPS does require employers to inform workers about the identities of the chemicals they use, and the risks they pose. *See, e.g.*, discussion *supra* note 134.

and by degree of risk, and must communicate to each worker the preventive and corrective measures that must be observed in their handling and storing. NOM-114-STPS mandates that employers inform workers of the identity of particular toxic chemicals used in the workplace and their dangers; this provision includes the chemicals used at Auto Trim and Custom Trim/Breed Mexicana. Proper labeling of chemicals and dissemination of material data safety sheets to workers are required by RFSH art. 63, NOM-114-STPS, and ILO Convention 170.¹³⁶

Workers at Auto Trim and Custom Trim/Breed Mexicana typically are not even provided basic information such as the identity of the chemicals used at the plants and their health risks.¹³⁷ In fact, requests by former Custom Trim/Breed Mexicana workers to know the names and components of hazardous materials being used led to reprimands, and in some cases, firing.¹³⁸ Material data safety sheets are not readily made available to workers. Similarly, workers are not generally provided with training in the proper handling of chemicals.¹³⁹

The failure of Auto Trim and Custom Trim/Breed Mexicana to provide information about chemicals used and the health risks they pose, and training to permit workers to carry out their duties under optimal health and safety conditions constitute serious breaches of Mexican law. The STPS's persistent failure to enforce the laws has allowed these violations to continue unchecked.

b. Failure to comply with regulations governing temperature and ventilation

¹³⁶The purpose of a material data safety sheet is to identify each chemical substance used, its elements, possible harmful effects, and instructions for proper handling and clean-up.

¹³⁷See *e.g.*, Affidavits K and V.

¹³⁸See, *e.g.*, Affidavits K and M.

¹³⁹See, *e.g.*, Affidavit K, Interview O.

The STPS's persistent lack of enforcement has allowed Auto Trim and Custom Trim/Breed Mexicana to continue to ignore obligations to provide temperature control, ventilation, and exhaust systems adequate to protect worker health. RFSH articles 93 and 94 require employers to elaborate a health and safety program in workplaces where temperature conditions can adversely affect worker health. RFSH 99 and 100 obligate employers to provide and maintain well-functioning ventilation systems, given specific workplace needs.¹⁴⁰ NOM-016-STPS, in effect through February 12, 2000, similarly required employers to maintain ventilation systems sufficient to reduce risks to worker health and safety posed by exposure to chemicals.¹⁴¹ *See also* ILO Convention 170, article 13.

Auto Trim and Custom Trim/Breed Mexicana have consistently violated these provisions. Employees report that there are no windows in the production areas, that the air conditioning system is either low or off, and that the plants lack proper systems to dissipate or eliminate vapors. The air extractors or aspirator tubes placed near work stations are too weak to aspirate

¹⁴⁰Ventilation systems typically include general ventilation and exhaust or extractive ventilation methods. *See, e.g., CILAS Training Manual for the Coalition for Justice in the Maquiladoras Training*, Cd. Juarez, Chihuahua, June 16-18, 1999, p. 8.

¹⁴¹NOM-016-STPS was in place during the majority of the time period covered by this submission, and as evidenced by workplace conditions at Auto Trim and Custom Trim/Breed Mexicana, was not enforced. NOM-001-STPS-1999, abrogated NOM-016-STPS, effective February 13, 2000. NOM-001-STPS establishes a new, more general concept of ventilation called "*ventilacion de confort*" (comfort ventilation). Although some commentators suggest that comfort ventilation appears to reduce the requirements established by NOM-016-STPS for adequate workplace ventilation, RFSH articles 99 and 100 still require employers to gear ventilation systems to specific workplace needs. Therefore, NOM-001-STPS should not be interpreted as relaxing ventilation requirements. Moreover, NOM-001-STPS may not even apply to workplaces such as Auto Trim and Custom Trim/Breed Mexicana. Its plain language suggests that it applies only to offices, laboratories, computer rooms, and control rooms.

vapors effectively, frequently break down, or do not function at all.¹⁴²

c. Lack of adequate personal protective equipment to safeguard workers from risks caused by chemicals

STPS's persistent lack of enforcement has allowed Auto Trim and Custom Trim/Breed Mexicana to continue to breach the duty to provide adequate personal protective equipment in violation of RFSH 101, as well as NOM-009-STPS (effective until April 3, 1999), §§ 3.1.1(E), 3.1.2(D), NOM-010-STPS §10, and NOM-017-STPS-1993 §§ 3.1.A, B, C, and D, and NOM-005-STPS-1998 §5.9, effective until April 3, 1999. These provisions require employers to provide appropriate personal protective equipment (PPE) to reduce health and safety risks. *See also* ILO conventions 155, 161, and 170.

At Auto Trim and Custom Trim/Breed Mexicana, PPE to reduce harm from exposure to chemicals should include well-made chemical-resistant gloves and aprons, carbon-based masks or personal respirators, and safety goggles. Workers have testified that they either are not provided any personal protective equipment at all, or that the equipment is inadequate.

Workers frequently handle glues and solvents with their bare hands.¹⁴³ Although plant managers sometimes distribute gloves made of cloth or thin rubber or plastic, such gloves do not adequately protect workers from the effects of solvents; the gloves disintegrate when in contact with solvents such as Loctite and Varsol.¹⁴⁴ To provide sufficient protection, gloves must be chemical-resistant. Similarly, the plant should issue chemical-resistant aprons to cover workers' clothing. As added protection, the plants should provide clothing for employees to wear only at

¹⁴²*See e.g.*, Affidavit K, Affidavit C, Interview A-1, Affidavit B, Affidavit M, Interview H, and Affidavit R.

¹⁴³*See, e.g.*, Affidavit B, Affidavit C, and Affidavit P.

¹⁴⁴*Id.*

work.¹⁴⁵

Carbon-based masks or respirators for each worker should also be provided, because of the contamination caused by the substantial accumulation of toxic vapors and the lack of adequate ventilation and exhaust systems to eliminate them. Although the *maquiladoras* sometimes provide the workers with dust masks, dust masks offer no protection against toxic vapors. Personal respirators of high-caliber, or two-layered good quality carbon filter masks covering the mouth and nose can reduce inhalation of dangerous vapors. For such devices to be effective, the plants must institute a regular program of training and maintenance. The plants' failure to provide appropriate respirators violates NOM-116-STPS which establishes detailed instructions for employers on the proper use and maintenance of respirators, filters, and masks.

RFSH article 101 and ILO Convention 170, article 13.1.f clearly state that where the employer is unable to maintain appropriate ventilation and exhaust systems for "technical reasons," the employer must provide workers the personal protective equipment necessary to maintain a safe and healthy work environment. Reports from workers at both plants make it clear that proper ventilation and exhaust systems do not exist.¹⁴⁶ Despite the lack of adequate exhaust and ventilation systems, workers are not provided necessary well-functioning personal protective equipment, such as carbon-based masks or respirators.¹⁴⁷

Similarly, workers at Auto Trim and Custom Trim/Breed Mexicana are not provided adequate protection from eye irritation and injury caused by exposure to chemicals. Hermetic

¹⁴⁵NOM-018-STPS mandates that workplaces which use chemicals must provide employees with lockers to keep street clothing, showers to use at the end of the work day, and facilities to launder and disinfect work clothing.

¹⁴⁶See Affidavit A-1, Affidavit B, Affidavit C, Affidavit H, Affidavit M and Affidavit R.

¹⁴⁷See Affidavit B, Affidavit K and Affidavit L.

goggles are best suited to protect eyes from toxic vapors. To avoid impeding vision, goggles must be scratch-resistant.

d. Improper storage of chemicals

Workers at both plants report that chemicals, glues, and solvents are often stored on the production floor in open and unmarked or improperly labeled containers, and that rags and mops used by workers to clean up chemical spills are sometimes left in the open.¹⁴⁸ Such practices violated NOM-009-STPS and NOM-010-STPS, and now violate NOM-005-STPS, which require the employer to provide for proper storage, handling and disposal of chemicals, and to minimize exposure of workers to toxic substances. *See also* RFSH articles 2, 54-75. Hermetically-sealed safety containers to store chemicals and disposing materials used to clean spills should be adopted to comply with regulations mandating safe storage and disposal of chemicals.

e. The plants' failure to implement chemical monitoring and reporting, and medical testing of workers exposed to chemicals

STPS has persistently failed to enforce LFT article 132, §XVI and ILO Convention No. 170, articles 12, 13.2.a, ILO Convention 155, articles 5a,11, 12, 16 and ILO Convention No. 161, article 5, and NOM-005-STPS-1998 §5.17 at Auto Trim and Custom Trim/Breed Mexicana. These provisions require the prevention of dangerous levels of contamination, and exposure of workers to harmful chemical concentrations in the workplace. One principal means of prevention is to institute environmental monitoring. Mexican law requires employers to monitor contaminants in the workplace and report their findings to the STPS. RFSH article 17, §IV. NOMS-010-STPS and -037 through 099-STPS establish detailed requirements for determining

¹⁴⁸*See, e.g.*, Complaint and Petition by Auto Trim workers signed in 1996, attached at Appendix II, Document #29.

whether permissible levels have been exceeded. As an additional means of preventing worker exposure to dangerous levels of contamination, Mexican law also requires employers to establish medical testing for workers in plants where potentially harmful chemicals are used. *See* RFSH article 83.

Based on interviews with current and former workers, the Submitters believe that Auto Trim and Custom Trim/Breed Mexicana have persistently violated laws which require employers to assess, monitor, and report levels of contaminants in the workplace, and undertake periodic medical testing of workers.

f. Lack of emergency preparedness measures in case of chemical spills or fire

Mexican law requires employers to develop comprehensive health and safety plans, including procedures to follow in the event of workplace emergencies. *See, e.g.*, LFT article 509; RFSH articles 130-141; NOMS-009 and -010-STPS before April 3, 1999, and -005-STPS, effective April 3, 1999. The RFSH and NOMs also contain specific provisions which obligate employers to develop procedures to prevent, provide protection from, and combat fires. RFSH articles 26-28; NOM-002-STPS.

Workers at both Auto Trim and Custom Trim/Breed Mexicana have asserted that they have not been informed of any safety or evacuation plan in case of a serious chemical spill. Similarly, workers have not been trained in proper clean-up techniques. In addition, workers have not been informed of any plan to respond to fire. A former worker at Custom Trim described a chemical fire that occurred at a work station. The water-based fire extinguishers provided by Custom Trim/Breed Mexicana did not put out the fire, and actually made it worse. Workers finally put out the fire by smothering it. Although the fire produced additional vapors,

there was no evacuation at all, not even a partial evacuation from the particular work area where the fire took place.¹⁴⁹

The failure by Auto Trim and Custom Trim/Breed Mexicana to implement plans for emergency situations such as large chemical spills or fire, and educate workers with respect to those plans constitute significant violations of Mexican occupational health and safety laws.

6. STPS's persistent failure to enforce Mexico's occupational health and safety laws has resulted in violations by Auto Trim and Custom Trim/Breed Mexicana related to the sewing and trimming processes and has caused harm to workers' general health and safety

The sewing and trimming process at Auto Trim and Custom Trim/Breed Mexicana was designed with insufficient consideration to the health and safety of workers. Poor job design and failure to adopt measures to minimize harm have caused many workers to suffer painful and often permanently disabling conditions, including musculo-skeletal disorders, Carpal Tunnel Syndrome, and persistent face, neck, wrist, arm, shoulder, and back pain, serious cuts and gashes. The failure of Custom Trim/Breed Mexicana and Auto Trim to provide safer conditions for workers engaged in the sewing and trimming processes violates the following provisions of Mexican law, which STPS has failed to enforce: Article 123 Part A, Sections III, XIV, XV and XVI of the Mexican Constitution; LFT Article 512-D, Fr. XVII and LFT Article 132 Fr. XVII; RFSH, Articles 1, 2, 8, and 15, 17, 101, 102, 135-137, 140, 141, 151; NOM-021-STPS, Section 3.1.1.E and NOM-017-STPS, Section 3.1.A, B, C, and D. *See also* ILO Conventions 155 and 161.

a. Failure to design jobs to minimize disabilities caused by the sewing, stretching, and trimming processes

¹⁴⁹See Affidavit B.

Mexican law requires employers to adopt measures to make work processes safer for employees. *See generally* Mexican Constitution, article 123(a) §XV; LFT article 132 §XVI. The RFSH spells out specific steps employers must take with regard to ergonomic conditions.¹⁵⁰ RFSH article 2, §V provides that the workplace ergonomics be designed to prevent accidents and illnesses. RFSH article 102, entitled "Ergonomics," requires that STPS to help ensure that employers "take into account ergonomic aspects [in the workplace] with the goal of preventing work-related accidents and illnesses." *See also* NOM-004-STPS (providing that employers establish work systems and use equipment designed to protect employees from workplace risks).

Auto Trim and Custom Trim/Breed Mexicana have failed to design a workplace that takes into consideration basic ergonomic principles. The STPS has persistently failed to require the plants to adopt appropriate ergonomic measures to reduce workplace injuries and illnesses. The sewing process at Auto Trim and Custom Trim/Breed Mexicana includes multiple risk factors which cause or contribute to musculo-skeletal disorders (MSSA) and related injuries.¹⁵¹ These risk factors include force, awkward posture, static posture, repetition, type of motion, and compression. Additional modifying factors exacerbate the effects of the basic risk factors.¹⁵² At both plants, harmful modifying factors include: intensity, duration, and inadequate recovery time. *See* detailed discussion in §V(C)(5), *supra*. The sewing and trimming processes used at both plants also increase the risk that workers will suffer serious cuts and gashes. *Id.*

¹⁵⁰The RFSH, in effect from 1978 until April 1997, also contained specific measures regarding workplace ergonomics. *See, e.g.*, article 183.

¹⁵¹Risk factors which cause or contribute to musculo-skeletal and associated disorders are outlined in *OSHA Ergonomics Report*, AI at §V, *supra* n. 89.

¹⁵²Modifying factors are not themselves risk factors. Instead, they modify and can worsen the effects of basic risk factors. *Id.*

In sum, by failing to take reasonable measures to improve ergonomics and, thereby, reduce the risk of injury related to the sewing process, Auto Trim and Custom Trim/Breed Mexicana have violated numerous Mexican laws and regulations. The persistent failure of the Mexican government to enforce these laws and regulations constitutes a serious violation of the NAALC.

b. Failure to inform and train workers about dangers related to the sewing process and how to reduce risk

RFSH articles 15 and 135 require employers to inform workers of work-related risks, develop appropriate preventive programs, and train workers to undertake measures to control and prevent occupational hazards. *See also* RFSH articles 150 and 151 regarding "preventive services for safety and health in the workplace." LFT article 132, §XV obligates employers to provide training to workers. LFT article 153F, §III specifically mandates that employers train workers about preventive and safety measures to avoid work-related injuries.

Auto Trim and Custom Trim/Breed Mexicana have violated the LFT and RFSH by failing to inform workers about the ergonomic risks inherent in the sewing process, and failing to train workers about steps that could be taken to minimize such risks. For its part, the STPS has persistently failed to enforce the applicable legal provisions, thereby allowing the plants to continue to violate the law.

As one worker put it:

The only training we got came from our co-workers who showed us how to use the sewing tools... and the solvents... and how to sew the leather onto the gear shift knobs.¹⁵³

¹⁵³See Affidavit B.

The information received by the Submitters indicates that workers at Auto Trim and Custom Trim/Breed Mexicana were not informed by their employers that the sewing processes currently in place at the plants could cause musculo-skeletal damage and serious cuts and gashes. Nor were they told of alternative ergonomic processes, such as those described in §VI (A)(6)(a), *supra*, that could be instituted to reduce risk. Similarly, workers were not trained to undertake conditioning, strengthening and stretching exercises which could reduce musculo-skeletal disorders. Workers were also not informed about or provided personal protective equipment that could diminish the risk of musculo-skeletal problems, cuts, and gashes.

B. Persistent Failure by IMSS to Enforce Laws and Regulations Regarding Work Related Injuries and Illnesses

The IMSS is responsible for overseeing employer compliance with Mexico's Ley de Seguro Social or Social Security Law ("LSS"). See LSS arts. 3, 4, 5, 6, and 7. The LSS also establishes that IMSS is obligated to provide medical attention, hospitalization, prostheses and orthopedic equipment, rehabilitation and appropriate disability benefits to injured or ill workers.¹⁵⁴ In addition, IMSS is authorized by the LSS to conduct investigations and studies of work-related health and safety risks in conjunction with the STPS aimed at establishing health and safety programs for the prevention of work-related accidents and illnesses. See LSS 81. These joint investigations by IMSS and STPS include plant inspections, verification that employers properly report workplace injuries and accidents and permit workers to obtain prompt medical attention, and ensure the existence of training and preventive programs for the

¹⁵⁴LSS Arts. 56-67, 84IIa. See also Art. 17 of the *Reglamento de Servicios Médicos* or Medical Service Regulations, RSM.

reduction of work place injuries.¹⁵⁵ The IMSS has persistently failed to enforce the LSS and its relevant regulations at Auto Trim and Custom Trim/Breed Mexicana.

1. IMSS has persistently failed to conduct plant inspections and investigations

Article 15 §V of the LSS authorizes the IMSS to conduct workplace inspections, and obligates employers to allow on-site inspections. *See also* LSS arts. 81, 82, and 83. When a worker requests treatment for a work-related illness or injury, or to be placed on work-related disability, IMSS is required to investigate the workplace conditions which gave rise to the request. *See, e.g.*, RSM art. 24. The IMSS has failed to conduct investigations at Auto Trim and Custom Trim/Breed Mexicana even though IMSS personnel know that working conditions at the plants pose health and safety risks. A considerable number of workers have sought treatment and disability payments for workplace illnesses or accidents. *See* affidavits and interviews attached at Appendix II. However, IMSS has failed to follow up with investigations pursuant to RSM art. 24. Workers and former workers of both plants also filed a petition with IMSS requesting workplace inspections.¹⁵⁶

For all these reasons, IMSS was on notice that serious health and safety risks existed at both plants, and, by law, should have conducted plant investigations and inspections. Had IMSS done so, the Mexican government could have then insisted that the plants comply with Mexican occupational health and safety laws, and undertaken appropriate enforcement

¹⁵⁵LSS Arts. 15, 81. *See also* STPS arts. 512-A and 512-B.

¹⁵⁶*See* petition for inspection submitted to IMSS on April 15, 1999, attached at Appendix I. Auto Trim workers reported that after this petition was filed, workers were questioned about the identities of those who supported the petition. *See* Affidavit V.

measures. Despite the knowledge that workplace accidents and illnesses repeatedly occurred at Auto Trim and Custom Trim/Breed Mexicana and the legal duty to investigate and inspect, IMSS persistently failed to conduct investigations and inspection at the plants.

2. **IMSS has persistently failed to enforce laws requiring employers to report promptly and accurately work-related injuries and illnesses, and to authorize workers to receive necessary medical attention**
 - a. **IMSS failed to enforce laws requiring employees to report work-related injuries and illnesses to IMSS**

Article 51 of the LSS obligates employers to notify IMSS of every work-related accident or injury. Although IMSS is required to assure compliance with the LSS, IMSS has persistently failed to require Auto Trim and Custom Trim/Breed Mexicana to report work-related injuries and illnesses to IMSS.

Auto Trim and Custom Trim/Breed Mexicana have repeatedly failed to notify IMSS of work related injuries and, in some cases, appear to have concealed them purposely in violation of LSS article 52.¹⁵⁷ Employers are required to inform IMSS within 24 hours that a worker has suffered or been exposed to an occupational health and safety risk, as defined by RSM Art. 13.I.¹⁵⁸ In addition, LSS article 52 establishes that employers who conceal workers' work accidents shall be subjected to sanctions. *See also* LSS art. 304; *Reglamento para la*

¹⁵⁷According to some workers, plant managers do not always file the required report because they do not want to acknowledge the high number of accidents and illnesses in the plants, thereby avoid paying higher social security quotas. *See, e.g.,* Affidavit L. Affiant L states that she was given specific orders by her Custom Trim supervisor either not to send injured or ill workers to IMSS doctors, or refuse to fill out the MT-1 forms workers needed to receive disability benefits. Affiant L states that she saw serious work-related injuries and illnesses that needed, but never got, necessary medical attention, or were not reported to IMSS by plant managers. *See also* Affidavits B, N, Q, R, V, and Interviews D, O.

¹⁵⁸RSM art. 13.I defines occupational health and safety risks as accidents and illnesses to which workers are exposed as a result of performing other work or related to it.

imposicion de Multas por Infracción a las Disposiciones de la Ley del Seguro Social y sus Reglamentos (Regulations for the Imposition of Fines for Violation of the Social Security Rules and its Regulations)[hereinafter "Regulations for the Imposition of Fines"], art. 6 §XII. IMSS has known or reasonably should have known that AutoTrim 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. Second, on at least one occasion, the IMSS was formally notified in writing about the underreporting, as well as the refusal of Auto Trim and Custom Trim/Breed Mexicana to fill out MT-1 accident reports for submission to IMSS.¹⁵⁹

Despite IMSS's knowledge of under-reporting by Auto Trim and Custom Trim/Breed Mexicana, IMSS has persistently failed to enforce Mexican laws requiring employers to report occupational injuries and illnesses to IMSS. IMSS also failed to investigate workers' complaints about Auto Trim and Custom Trim underreporting, as required by art. 10 of the Regulations for the Imposition of Fines.

b. IMSS failed to enforce laws requiring employers to respect workers' rights to receive medical attention and appropriate disability payments

The plants' frequent failure to report workplace injuries and illnesses in turn interferes with the right of workers to receive medical attention and disability compensation from IMSS as established by LSS Arts. 56-67. In order for workers to receive IMSS benefits, such as treatment and compensation for work-related injuries and illnesses, an employer must report the accident or illness to IMSS and fill out the appropriate forms (MT-1 accident report forms).

¹⁵⁹See petition for inspection filed with IMSS on April 15, 1999, attached at Appendix I.

The workers must then present these forms to IMSS to get medical attention and qualify for disability benefits.¹⁶⁰ Supervisors at both Auto Trim and Custom Trim/Breed Mexicana often declined to sign MT-1 forms in instances of work-related injuries and illnesses, making it difficult for workers to seek treatment and disability payments. *See, e.g.*, Affidavits B, L, V, and Interview D. On other occasions when workers had to take temporary sick leave because they were too ill or injured to work, company personnel would designate the reason for the leave as general or non-work-related, even when the evidence strongly indicated that the disability was work-related.¹⁶¹ This meant workers would receive lower temporary disability payments than mandated by LSS article 58 §I and LSS article 98.¹⁶²

It is typical practice at both plants that a worker who is ill or injured reports his or her illness or injury 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

¹⁶⁰Pursuant to a decision by the Third Court of Appeals of the First Circuit (*Tercer Tribunal Colegiado en Materia de Trabajo del Primer Circuito*) on direct appeal, Amparo Directo # 6973/88-Instituto Mexicano del Seguro Social.- 28 de Septiembre de 1988, failure to present the MT-1 form to the IMSS based on the refusal of the employer to fill it out, does not preclude a worker from receiving social security and disability benefits without an MT-1 form filled out by the employer. *Seguro Social: Manual Práctico*, Norahenid Amezcua Ornelas, ed., Mexico City, Mexico (October 1998), pp. 422-424. Despite this ruling, it is common practice by the IMSS not to pay benefits without an MI-1 form signed by the employer.

¹⁶¹Affiant Q states when job-related respiratory problems first interfered with his ability to work, Auto Trim managers told him to sit down in the cafeteria. After two weeks, Affiant Q was told to fill out papers for general illness, rather than for a work-related illness. *See also* Affidavit B, Interviews H and O.

¹⁶²LSS article 58 §I provides that an employee who is temporarily unable to work because of a work-related injury shall receive 100% of his or her salary from the moment the injury occurs until he or she is able to return to work. By contrast, LSS article 98 provides that a worker who suffers a non-related work disability (often referred to as a "general disability" or "general illness") shall only receive 60% of his or her salary during the period of temporary disability.

believes that further medical attention is warranted, she must ask permission from the floor supervisor or the company doctor to make an appointment with an IMSS doctor. If an appointment is allowed, the nurse then calls IMSS to schedule an appointment. However, IMSS will typically see workers only at specific times, usually during the workday. Appointments can be hard to get, and would often require workers to take time off from work. Workers often are unable to go to these appointments, because they fear being fired if they miss work. Thus, they are frequently unable to obtain necessary medical treatment.¹⁶³ Sometimes supervisors refused to authorize referrals for treatment altogether, and instead instructed workers to sit in the infirmary or the cafeteria, or return to work without being referred for medical attention.

3. **IMSS personnel themselves persistently failed to properly diagnose and treat work-related illnesses and injuries, and to properly valorize compensation due to workers for their on-going work-related disabilities**
 - a. **Failure by IMSS personnel to provide proper diagnosis and treatment**

LSS Article 2 states that the main objective of the IMSS is to "guarantee the right to health." One way to guarantee this right is by providing necessary medical intervention. Yet, IMSS and its medical personnel persistently fail to provide necessary diagnosis and treatment to workers employed by Auto Trim and Custom Trim/Breed Mexicana.

IMSS doctors are required to diagnose accurately and treat work-related illnesses and injuries. LSS art. 24. IMSS is responsible for its doctors' actions or omissions. RSM article 6 states that IMSS will share responsibility in all cases with doctors and other IMSS personnel

¹⁶³ See Affidavit L .

with respect to the diagnoses and treatment given to a patient. A review of worker testimony and IMSS records demonstrates that when workers employed by Auto Trim and Custom Trim/Breed Mexicana were permitted to see IMSS doctors, the IMSS diagnoses were often misleading, incomplete, or plain wrong, and treatment, if provided at all, was frequently inadequate. Furthermore, there is also evidence that IMSS doctors, together with plant managers from both maquiladoras, purposely denied proper medical treatment and disability benefits to workers.¹⁶⁴

IMSS doctors have often failed to accurately diagnose disabilities as being work-related despite significant evidence. One former Auto Trim worker reported suffering from terrible pain in her wrists and arms from the prolonged and continuous repetitive movements while sewing leather covers onto steering wheels. She stated in her affidavit:

Even when I finally got to go see the doctors at the social security, they would sometimes treat me badly and tell me to quit my job. They would also say I was faking my pain as an excuse not to work. I was frequently told the same thing, "you have nothing," or "you have a general illness" (*enfermedad general*) or "it's all in your head, it's psychological." See Interview O.

A former Custom Trim worker explained:

Even if the Custom Trim doctor would fill out the MT-1 forms to go to the *Seguro*, the doctors at the *Seguro* would mistreat us. They would tell us that we did not have anything or that we had a "general illness" and that was all, but they never told us what this general illness was. See Affidavit B.

As noted earlier, if a worker is diagnosed with a "general illness" and must take time off from work to recuperate, compensation is only 60% of the worker's salary during the recuperation

¹⁶⁴See, e.g., Affidavits L, Q, and R; Interview O.

period.¹⁶⁵ By contrast, a worker who is diagnosed with work-related illness or injury and must take time off from work to recuperate is entitled to 100% of his or her salary during the recuperation period.¹⁶⁶

Another frequent kind of failure by IMSS doctors to properly diagnose workers at Auto Trim and Custom Trim/Breed Mexicana is to minimize the severity of symptoms. A worker, for example, may be diagnosed with "tendonitis of the left forearm," a temporary condition, even when the evidence suggests a more chronic problem. Minimizing a worker's condition means not only that any disability benefits paid to the worker will be lower, but that any treatment prescribed will be insufficient. Workers who required treatment for chronic or recurring disabilities instead were often prescribed treatments appropriate only for short-term illnesses and injuries. A former worker at Auto Trim described, for example, that she went to IMSS several times for medical treatment for severe pain and a swollen arm. The only treatment she received was Naproxen, and she was told that she had nothing wrong with her. Her family physician finally referred her to another doctor, who determined that she was on the verge of losing function and mobility in her arm. He sent her back to IMSS with a request that she be placed on disability and provided urgent medical treatment to prevent permanent dysfunction. Only then did a specialist at IMSS see her and place her on disability for 28 days. See Affidavit R.

Other times the failure by IMSS doctors to prescribe proper treatment for plant workers aggravates disabilities. The following account illustrates this problem:

¹⁶⁵LSS art. 98.

¹⁶⁶LSS art. 58.

They gave me massages in my shoulder and neck. The therapy also consisted in placing my arm in hot water and then in cold water. They would put a hot compress on my neck and shoulder. I would place my arm in hot wax and then in a plastic bag, wrapping my arm in a towel. They also prescribed me medicine but it was very strong and I would get very sleepy and dizzy and I would lose my appetite. But the pain would continue, the pain got even worse than before. *See* Interview H.

b. IMSS's failure to valorize properly and to compensate appropriately workers disabled because of work-related illnesses and injuries

LSS article 55 characterizes work-related injuries and disabilities as producing either (1) temporary disability; (2) partial permanent disability; (3) total permanent disability; or (4) death. Articles 2 and 58 of the LSS establish the authority of the IMSS to assess the amount of disability compensation to be paid a disabled worker and to guarantee that adequate payment is made. LFT Article 480 provides that:

Total permanent incapacity is the loss of the means or abilities of a person which makes it impossible for the person to perform any work for the rest of his or her life.¹⁶⁷

A total permanent incapacity will be determined by IMSS doctors based on the "physico-functional state" of the worker, plus medical, technical and social information from union and company representatives. *See* RSM art. 25 and LFT art. 514.

Article 482 of the LFT requires that, in determining the degree of incapacity of a worker, future consequences of work-related illnesses and injuries must be taken into consideration. Article 492 of the LFT explains that if a work-related illness or injury produces a partial permanent incapacity, the disabled worker shall receive indemnization equal to the

¹⁶⁷Submitters' translation from the Spanish: "Incapacidad permanente total es la pérdida de facultades o aptitudes de una persona que la imposibilita para desempeñar cualquier trabajo por el resto de su vida."

percentage established by the "Assessment Table of Incapacities" set out in LFT article 514. This percentage is based on the total amount that would have to be paid if the permanent incapacity were total. In calculating the payment, the following factors must be considered: the worker's age; the importance of the disability; the aptitude of the worker "to perform remunerative activities, *similar to his or her profession or position*;" and, whether the employer has made efforts for the worker to obtain professional re-education. LFT article 492 (emphasis added).¹⁶⁸ Jurisprudence establishes that the question of whether a work-related illness or injury has caused the absolute loss of a worker's ability to perform his profession is a technical and scientific question that requires an expert assessment.¹⁶⁹

IMSS doctors routinely accord the lowest valorizations possible to permanently disabled workers from Auto Trim and Custom Trim/Breed Mexicana. IMSS routinely fail to consider the full range of factors required by LFT art. 492: the age of the worker; the nature of the disability; the worker's ability to perform similar remunerative activities; and, whether the employer made any efforts to re-train the worker for other suitable jobs. Indeed, none of the IMSS assessments reviewed by the Submitters reflect that any of these factors had been taken into account. *See* Appendix I.

Pursuant to the Total Permanent Disability Valorization Table established in LFT

¹⁶⁸Similarly, Mexican law provides that if a partial permanent incapacity consists of the absolute loss of the worker's ability to perform his or her profession, the Conciliation and Arbitration Board (CAB) may increase the payment to the amount of a total permanent incapacity, taking into consideration the importance to him or her of the profession, and the possibility of performing similar work for which the worker would receive a similar level of pay. LFT art. 493.

¹⁶⁹This decision, 21/95, issued March 3, 1995, is reported in *Tomo I*, página 148, Segunda Sala, 9a Epoca, edición de junio 1995 del Semanario Judicial de la Federación.

article 514, each part of the human body is assigned a specific percentage or percentage range of the worker's salary in determining the worker's disability pension. When a percentage range is provided, factors to be considered in determining the appropriate percentage include the degree of the disability and age of the individual. IMSS doctors regularly opt to assign lower valorizations even when the facts suggest that a higher percentage would be appropriate. According to Affiant T, for example, she was given a 10% total permanent disability. An August 11, 1995 report from Dr. Luevano, her rehabilitation doctor, stated that she experienced pain in several different parts of her body: her right shoulder, wrist and fingers. *See also* Affidavit T's accident report, dated February 28, 1995. Her final disability pension of 10%, issued on November 23, 1995, acknowledges a total permanent disability on the right side of her body. Yet, Affiant T continued to suffer serious pain and motion difficulty in several parts of the right side of her body. She therefore should have been awarded a higher disability payment according to the Permanent Disability Valorization Table which assigns a percentage value *to each part of the body*. It follows that each disabled body part should be valorized separately, and the disability payment should reflect the cumulative percentage of the different disabilities. Based on Dr. Luevano's diagnosis, Affiant T should have received payments at least based on disabilities of her wrist, shoulder and fingers. In her case, that would have meant paying her between 10-30% of her salary for her shoulder, 10-15% for her wrist, and depending on which fingers were deemed disabled, an average of 3-4% per finger. Even assuming the low end of each percentage range, Affiant T should have received at least 35% rather than the 10% she was given. Indeed, Affiant T apparently wrote to the IMSS Technical Council (Consejo Técnico del IMSS) in Tamaulipas requesting that her 10% total

permanent disability pension, which amounts to 47.82 pesos a month (or US\$5.04), be increased to 30%. Her request was denied.¹⁷⁰

IMSS doctors also regularly neglected to recognize both ergonomic and chemical-related disabilities in arriving at a determination of how much compensation a worker should receive. None of the IMSS records reviewed by the Submitters show that workplace illnesses related to exposure to toxic substances were ever considered by IMSS in calculating the amount of disability paid to even workers whose symptoms were clearly related to toxics.¹⁷¹

In other cases, worker disabilities were labeled as total and permanent by IMSS doctors, and pursuant to LSS art. 58 §II, should have therefore been valorized at 70% for a total permanent disability, yet the disabilities were valorized at 40% or even 10 or 15%. Although Mexican law permits workers to appeal IMSS valorizations to the CAB (LFT art. 493), and to solicit a revision if disabilities become worse, in practice, appeals and requests for revisions by Auto Trim and Custom Trim/Breed Mexicana workers are rare. Interviews with current and former employees of both plants suggest several reasons for this, including:

- 1) IMSS's failure to inform workers of their right to appeal or seek revision, and to explain and facilitate the process;
- 2) workers' concerns – sometimes actively fostered by IMSS personnel – that an appeal or revision would result in a lowered valorization;
- 3) workers' fears of retaliation or blacklisting for filing an appeal or request for revision; and
- 4) affirmative discouragement by IMSS personnel.

4. IMSS has persistently failed to promote or implement training and

¹⁷⁰See Affiant T's IMSS report, attached to Affidavit T.

¹⁷¹See, e.g., Affidavit A, Affidavit B, Affidavit I, Affidavit J, Affidavit P, and Affidavit T.

prevention programs

LSS articles 81 and 82 and RSM article 18 authorizes IMSS to provide and promote programs aimed at preventing work-related hazards. LSS article 81 and RSM article 26 explain that IMSS, in collaboration with STPS, along with other federal entities shall create programs for the prevention of work accidents and injuries. LSS article 82 authorizes IMSS to conduct investigations to determine the workplace health and safety risks for the establishment of prevention programs by using a company's accident rate index.

LSS article 83 further outlines the duties of an employer to cooperate with IMSS in the prevention of work hazards by (1) facilitating studies and investigations; (2) providing data and reports for the compilations of statistics concerning work hazards; and (3) collaborating within the company to adopt and circulate standards for prevention of work hazards. In addition, RSM article 26 require IMSS through its Health in the Workplace Department (*Area de Salud en el Trabajo*) to provide information, services, training, and technical support for prevention measures either individually or collectively to the general public to prevent occupational health risks in the workplace.

IMSS has failed to meet its obligations under the LSS and its regulations to verify the existence of or itself establish training and prevention programs, even though IMSS clearly knew that workers at Auto Trim and Custom Trim/Breed Mexicana suffered a high number of occupational injuries and illnesses. IMSS failed to enforce these laws even in the face of a petition for inspection and complaint filed at its regional offices in Ciudad Victoria, Tamaulipas on April 15, 1999. *See* Appendix I. This petition alleged that Auto Trim and Custom Trim/Breed Mexicana failed to provide adequate training, and take preventive

measures necessary to reduce the risk of workplace injuries and illnesses. The petition also alleged that as a result of Auto Trim and Custom Trim/Breed Mexicana's persistent failure in establishing preventive health and safety programs, workers suffered from musculo-skeletal disorders, and a range of symptoms consistent with exposure to toxic chemicals. The IMSS has further neglected to conduct studies, as required by LSS article 82, to reduce health and safety risks in Auto Trim and Custom Trim/Breed Mexicana, and determine if the maquiladoras have implemented appropriate health and safety programs.

5. IMSS has persistently failed to impose sanctions on Auto Trim and Custom Trim/Breed Mexicana and on IMSS staff for violations

LSS Article 304 gives IMSS the authority to impose sanctions against companies who have not complied with laws governing payment of quotas to IMSS. The amount a company must pay depends on its rate of reported work-related injuries and illnesses. Under LSS article 305, a company is subject to sanctions if it does not make the required payments or gives false information to reduce the amount of its payments to IMSS. Article 52 explains that sanctions will be imposed upon any owner who conceals a work accident or falsely reports the injury as not work-related. Failure to report illnesses and injuries by CustomTrim/Breed Mexicana and AutoTrim violates LFT article 504 §VI, which states that notification should be given to STPS within 72 hours of the accident. RSM article 21 stipulates that the employer must inform IMSS of a work-related accident or illness within 24 hours of its occurrence. Article 37 of the LSS, which states that companies that do not report work injuries to IMSS are financially responsible for compensating injured workers, is also violated by Custom Trim/Breed Mexican and Auto Trim.

Upon information and belief, IMSS has failed to impose sanctions on Auto Trim and

Custom Trim/Breed Mexicana for lost revenues caused by the companies' payment of lower quotas due to on-going under-reporting. Custom Trim/Breed Mexicana and AutoTrim often failed to report work-related illnesses and injuries, or caused the submission of misleading and inaccurate data. As explained in §VI(B)(2), *supra*, IMSS knew or reasonably should have known that the plants failed to report all occupational illnesses and injuries. Yet, IMSS failed to impose sanctions against Auto Trim and Custom Trim/Breed Mexicana for underreporting, and based on such underreporting, the companies' likely underpayment of quotas to IMSS..

In addition, LSS article 303 establishes that sanctions shall be imposed on employees of the IMSS and its representatives for failure to carry out their duties professionally, ethically, and with excellence and quality, when providing services to individuals. Under art. 303, failure by IMSS personnel to adequately fulfill these duties will be sanctioned according to rules established by the Ley Federal de Responsabilidad de los Servidores Publicos (Federal Law on the Responsibility of Public Servants). Upon information and belief, sanctions have not been assessed against IMSS personnel who failed to properly report, diagnose, treat, or valorize work-related injuries and illnesses suffered by employees of Auto Trim and Custom Trim/Breed Mexicana.

C. Persistent Failure by the SSA to Enforce Health and Safety Laws and Regulations at Auto Trim and Custom Trim/Breed Mexicana

Mexico's Secretaria de Salud (Secretary of Health or "SSA") has persistently failed to enforce occupational health and safety laws at Auto Trim and Custom Trim/Breed Mexicana, specifically, SSA has failed to: 1) carry out verifications and inspections to determine whether the plants comply with the law; 2) monitor the use of toxic substances at the plants; and, 3) implement appropriate sanctions for non-compliance. Such failure violates both the letter and

the spirit of the NAALC and numerous international treaties and agreements.

1. Applicable law

a. Federal Constitution of the United Mexican States

Article 4 of the Mexican Constitution states that every person has a right to the protection of health. This includes the right to protection from health risks in the workplace. In addition, article 123 of the Constitution, the original source of authority for Mexico's labor laws, refers specifically to occupational health and safety laws.

b. Ley Orgánica de la Administración Pública Federal (LOAPF)

Article 39 §XVII of the Ley Organica de la Administracion Publica Federal (the Organic Law of Federal Public Administration) mandates the SSA to implement measures to promote the conservation and protection of health and life of workers.

c. Ley General de Salud (LGS) and its norms

The LGS regulates the right to health contemplated in article 4 of the Mexican Constitution, and affirms its federal character. *See* LGS art. 1. Article 3 §XIV establishes that the LGS applies to occupational health. The provisions of the LGS are "of social interest and public order," and therefore cannot be waived under any circumstances. LGS art. 1. The LGS also sets out the goals of the right to health. Goals relevant to the instant case include: 1) physical and mental well-being to allow the full exercise of each person's potential; 2) prolongation and improvement of the quality of human life; 3) protection and expansion of values that contribute to the creation, enjoyment, and the conservation of health conditions which facilitate social development. *See* LGS art. 2 §§I, II, III, IV, and VII.

Articles 132 and 133 mandate the SSA to issue and enforce NOMs regarding the

prevention of work illness, accidents, and injuries. Of particular importance to this submission, is NOM-047-SSA1-1993, which establishes the worker's maximum permissible limits of exposure to organic solvents including toluene and benzene. Toluene and benzene comprise components of substances used at Auto Trim and Custom Trim/Breed Mexicana including Hallmark 7158 (Toluene 7%-13%; Loctite 76820 xmns; Toluene 3%-10%; Lokweld 110; Toluene 15%-40%) and Varsol (Benzene; the manufacturer does not provide a specific percentage of each component).¹⁷² Additionally, NOM-047-SSAI-1993 mandates that all the establishments in which toluene and benzene are used must monitor the degree of exposure of the workers to such organic solvents. It also requires employers to remove workers from the workplace in order to conduct a medical evaluation in case the biological monitoring exceeds maximum permissible limits. See NOM-047-SSA-1993 §6.2. NOM-047-SSA-1. It further establishes maximum levels of concentration of chemicals in workers' urine as well as the procedures to monitor workers' exposure to organic solvents such as conducting medical evaluations every 12 months and monitoring of chemical exposure on workers' urine after work shifts. See *id* at 7.2.1 and 7.2.2.

In addition, NOM-056-SSA1-1993 establishes sanitary requirements for protective gear for workers. It also requires the employer to train workers in the use of protective gear. See *id* at 8. The Submitters believe that if protective gear is provided at all to workers at Auto Trim and Custom Trim/Breed Mexicana, they are not trained in the proper use of the gear. Moreover, NOM-048-SSA1-1993 establishes the method of evaluation of health risk caused by toxic substances. It mandates employers who use toxic substances to periodically document

¹⁷²See discussion at §V(C)(4), *supra*, and MSDS sheets attached at Appendix IV.

monitoring of health effects. This monitoring may be weekly, biweekly, semestral, or annual depending on the investigated toxic substance and its health effect according to the applicable NOM. *See* NOM-047-SAA1-1993 (which establishes periodical monitoring in cases where Toluene and benzene are involved). It also states that the result of the monitoring obtained by at least seven urine samples under normal conditions of production throughout a year for 8 hour shifts above the maximum permissible limits constitutes a superior risk. *See id* §7. Auto Trim and Custom Trim/Breed Mexicana have failed to monitor the maximum limits of exposure to benzene and Toluene. Consequently, the SSA has also failed to enforce the compliance of the above NOMs.

i. The jurisdiction and power of the SSA to enforce the LGS and its norms

The SSA is authorized to monitor and enforce the LGS norms issued pursuant to the LGS and related regulations. *See also* Reglamento Interior de la Secretaría de Salud (RISS) art. 1 and LOAPF art. 39. LGS art. 13 §A establishes that the SSA has jurisdiction over occupational health. Articles 128 and 129 provide that all activities related to work shall conform to the LGS, regulations, and norms issued by the SSA. Article 128 clarifies that the LGS regulates any establishment¹⁷³ covered by art. 123(A) of the Mexican Constitution. Article 123(A) of the Mexican Constitution applies to every workplace in the private sector of the economy. Auto Trim and Custom Trim/Breed Mexicana are establishments regulated by art. 123(A) of the Mexican Constitution.

¹⁷³Article 132 defines "establishment" as a facility, its annexes and branches closed or open, movable, of production, transformation, storage, distribution, of goods or places that render services at which an occupational activity is performed.

In addition, Article 120 of the LGS empowers the SSA to: establish criteria for the use of substances, machinery, and the like, aimed at reducing work-related injury; determine the maximum limits of exposure to pollutants, and coordinate and perform studies of toxicology; and, exercise with other entities and states, sanitary control at the establishments where occupational activities are performed, and to ensure compliance with applicable health regulations. Article 130 directs the SSA, along with other authorities, to promote, develop, and publish multidisciplinary research geared toward the prevention of illnesses and injuries at work. It also mandates that the SSA carry out studies on ergonomics for the same purpose. Similarly, arts. 131 and 132 obligate the SSA to carry out programs aimed at preventing accidents and work illnesses at work places. Article 133 mandates the SSA to enforce NOMs regarding the prevention of work illness, accidents, and injuries. *See* RISS art. 1. The SSA is authorized to enforce NOMs issued pursuant to LGS.

ii. SSA responsibility for sanitary control

Article 194 of the LGS defines Sanitary Control (Control Sanitario) as the actions of training, monitoring, education, verification, and when necessary, the imposition of corrective measures and sanctions. It further states that the exercise of sanitary control shall be applicable to the use of toxic substances. LGS art. 278 §IV defines the term "Toxic Substances" as elements or compound elements, or the chemical mixture of both that when inhaled, ingested, or in contact with the skin or tissue causes adverse immediate or long-term effects to the human organism, permanent or temporary, including functional injuries, genetic alterations, or death. It also states that the SSA shall determine through the issuance of a list the substances that are subject to sanitary control. This list is published in the *Diario Oficial*

de la Federación. These substances include: Acetone, Benzene, Toluene, and Alcohol Metanol,¹⁷⁴ all of which are used at Auto Trim and Custom Trim/Breed Mexicana. Auto Trim and Custom Trim/Breed Mexicana therefore use toxic substances subject to sanitary control. Article 279 empowers the SSA to establish the classification and characteristics of different products, including toxic substances. It further mandates the SSA to issue NOMs to establish conditions for transport and storage of toxic substances.

iii. SSA responsibility for sanitary authorizations

LGS arts. 368 and 369 explain that "Sanitary Authorization" is the administrative act through which the SSA permits a public or private person to conduct activity related to human health. Article 371 clarifies that sanitary authorizations are to be issued if the requirements of the LGS and related regulations are met. Authorizations may take the form of licenses, permits, registration, or sanitary control cards, depending on the particular kind of establishment involved. *Id.* Article 298 establishes that the importation of toxic substances require sanitary authorization. Upon information and belief, the SSA has granted sanitary authorizations to Auto Trim and Custom Trim/Breed Mexicana. However, given the current and past working and safety conditions at the plants, such authorizations should have not been granted at all or should be suspended until the plants are in compliance with the law.

iv. SSA responsibility for sanitary oversight

LGS Title XVII mandates the SAS to oversee compliance with the LGS and regulations promulgated pursuant to the LGS. The SSA shall carry out this obligation for sanitary oversight through several methods of monitoring: verification visits (inspections),

¹⁷⁴See *Diario Oficial de la Federacion*, Miercoles 26 de Agosto de 1998.

sampling, and biological testing. *See* LGS arts. 396, 397, 398, 399, 400, 401, 401 Bis-I, and 401 Bis-2, §I. Articles regulate the procedures for verification visits, sampling, and testing. In addition, LGS art. 299 requires the SSA to control and monitor the activities in places where imported toxic substances are used.¹⁷⁵ *La Ley de Precursores y Productos Químicos Esenciales (LPPQE)* similarly establishes reporting requirements for establishments that import substances. *See, e.g.*, LPPQE arts. 2 § I; 3 § VI; 7 § II, II, 11, 12, 14 §I. The SSA must review reports in order to further compliance with the LGS in establishments where these toxic substances are used. *See* LGS article 299; RISS article 22 § I.

(a) Verification visits. The SSA has the power to carry out administrative visits at the establishments where the LGS applies without prior notice. LGS art. 399. Verification visits are to be conducted at regular intervals. The SSA is also supposed to undertake verification visits upon petition by employees or any interested party. *See, e.g.*, Mexican Const., art. 8.¹⁷⁶

Verification visits are a primary means by which the SSA can monitor employer compliance with sanitary requirements prescribed by the LGS and related regulations and NOMs. Compliance with sanitary requirements relevant to Auto Trim and Custom Trim/Breed Mexicana which can best be assessed through verification visits include the employer's obligation to properly label toxic substances (LGS Article 281); provide adequate

¹⁷⁵Upon information and belief, the toxic substances at Auto Trim and Custom Trim/Breed Mexicana are imported.

¹⁷⁶Article 8 of the Mexican Constitution provides that the public authorities will attend and address petitions directed to them when such petition is written and respectfully submitted. In addition, "[a] person has the right to file a written petition which adopts specifically the character of administrative petitions, actions, or recourse." *See* Ignacio Burgoa, *Garantias Individuales*, Editorial Porrúa, S.A. (25th ed.) (1993).

health and safety information, training, education, and hazard prevention programs (NOM-053-SSAI-1993); and perform blood tests to determine exposure to toxic substances (NOM-047-SSAI-1993; NOM-048-SSAI-1993); and, provide employees with protective gear (NOM-056-SSAI-1993). Without on-site verification visits, it is impossible for SSA to have any idea of whether Auto Trim and Custom Trim/Breed Mexicana are adhering to these obligations.

(b) Sampling. With regard to sampling, the SSA is required to take samples of chemicals to ensure employers comply with health and safety regulations. LGS articles 299, 396 §I, and 401-Bis. Employers who use toxic substances such as Toluene and Benzene are required to monitor the worker's degree of exposure to chemical substances. NOM-047-SSAI-1993 and NOM-048-SSAI-1993. In order to determine whether or not the employers are complying with health and safety regulations the SSA must ensure that the substances used at the establishments are in fact the regulated substances; therefore, sampling is the only way the SSA can ensure compliance with the law. LGS article 401-Bis sets out the procedure for the collection of samples. This article also gives the SSA the power to collect samples. *See id.*

Under NOM-047-SSAI-1993, the employers must also conduct monitoring of certain toxic substances in the workplace, including Benzene, Toluene, and Xylene — all substances used by workers at Auto Trim and Custom Trim/Breed Mexicana to ensure and adhere to the maximum limits of toxic substances that are safely permissible in the workplace.

(c) Biological Testing. NOM-048-SSAI-1993 requires employers to monitor whether the maximum permissible limits of worker exposure to toxic substances have been reached. It also establishes the procedure through which this monitoring must be carried out. *See* NOM-0048-SSAI-1993.

v. Sanitary safety measures

Article 404 VII contemplates the suspension of workplace activities as a sanitary safety measure. Articles 411 and 412 establish that the temporary suspension of work activities is proper when continuing the activity endangers human health. Work activities may be resumed when the unsafe or unhealthy conditions are corrected. *See* LGS article 412.

vi. Administrative sanctions

Article 416 of the LGS establishes that violations of the LGS shall be sanctioned by the SSA. Administrative sanctions may include warnings, fines, temporary or definite closing, and arrests for up to 36 hours. LGS art. 417. Articles 419, 420; and 421 classify types of violations, and establish the amounts of fines. Article 421 further mandates a fine up to ten thousand times the minimum wage if an establishment violates art. 281; art. 281 mandates establishments to label containers of toxic substances. In addition, LGS art. 425 § II, IV, VII mandates the closure of a workplace when danger to health at the workplace is posed by persistent violations of the LGS and related regulations.

d. Reglamento Interior de la Secretaria de Salud (RISS)

The RISS delegates the powers and duties of the SSA "Direcciones" to the different administrative units of the SSA. The RISS mandates the Direccion de Salud Ambiental (Division of Environmental Health) of the SSA to determine the maximum permissible exposure of the workers to toxic substances; issue norms and criteria for occupational health; exercise sanitary control and oversee the establishments where toxic substances are used; exercise the sanitary control and oversight and issue or revoke sanitary authorizations regarding the process, exportation, importation of toxic substances; impose and apply safety

measures and sanctions; promote communication of occupational risk; identify and evaluate the risk for human health in places where toxic substances are used; and carry out verification visits to ensure that the conditions under which such authorizations were issued still exist.

RISS art. 22.

2. Persistent failure by the SSA to carry out verification visits

Upon information and belief, the SSA has persistently failed to carry out regular verification visits at Auto Trim and Custom Trim/Breed Mexicana, although it is required to do so as part of its sanitary control duties. Under LGS Title XVII, the SSA's Direccion de Salud Ambiental is specifically required to carry out these visits. *See also* RISS 22.

Upon information and belief, the SSA failed to conduct regular verification visits at the plants. The LGS mandates that verification visits shall be carried out periodically to ensure compliance with the LGS and related regulations. However, workers at both plants state that they have never been aware of any type of inspection conducted at Auto Trim or Custom Trim/Breed Mexicana, with the possible exception of one unconfirmed at Auto Trim and Custom Trim/Breed Mexicana in August of 1998. The working conditions at Auto Trim and Custom Trim/Breed Mexicana also evidence the persistent failure by the SSA to carry out regular verification visits.

In addition, upon information and belief, after a written petition alleging violations of the LGS at Auto Trim and Custom Trim/Breed Mexicana requesting a verification visit was submitted to the SSA on April 4, 1999, an extraordinary verification was not undertaken. The SSA failed to respond to the petition properly. It stated that Auto Trim currently participated in a self-execution program, and that the SSA had no power to carry out verification visits at

the plant. *See* SSA response dated April 16, 1999, attached at Appendix I. A self-execution program, however, cannot vitiate the right of workers to request an exceptional inspection when they believe that ongoing health and safety violations are occurring. Such a result would violate the very character of the LGS, legislation recognized as pertaining to "the public order and social interest." LGS art. 1. It would also violate the Mexican Constitution's right to protection of health. Mexican Constitution art. 4.

The SSA response also indicated that a verification visit would be carried out at Custom Trim/Breed Mexicana on May 13, 1999. However, upon receipt of the petition, the Direccion de Salud in the state of Tamaulipas requested instructions from the SSA in Mexico City to proceed with the verification visit. The communication requesting directions to proceed with the verification visit was apparently received by the SSA Direccion de Salud Ambiental in Mexico City on May 31, 1999. *See* Appendix I. It would appear, therefore, that the verification did not occur on the date the Direccion de Salud mandated it because the Direccion de Salud in the state of Tamaulipas had on May 31 requested instructions as to how to proceed with the verification clearly after the date the actual verification was scheduled. Thus, Secretaria de Salud Tamaulipas was waiting for instructions from SSA in Mexico City. Since Mexico City received that request as May 31, the verification did not take place on May 13. It is not clear whether the verification took place at all.

Verification visits by the SSA would have demonstrated that Auto Trim and Custom Trim/Breed Mexicana have not complied with their obligations under the LGS. Information received by the Submitters overwhelmingly demonstrates that workers at Auto Trim and Custom Trim/Breed Mexicana work in unhealthy conditions and are not provided with

information, training, or adequate preventive measures and equipment to reduce workplace health and safety risks. The SSA has persistently failed to enforce the LGS and related regulations and norms at Auto Trim and Custom Trim/Breed Mexicana.

3. The SSA persistently fails to sample the levels of toxic substances or require its inspectors to sample at Auto Trim and Custom Trim/Breed Mexicana

As part of its sanitary control duties, the SSA is obligated to monitor the level and concentration of toxic substances used in the workplace. *See* LGS art. 299, NOM-047- SSA1-1993, NOM-048-SSA1-1993. Auto Trim and Custom Trim/Breed Mexicana use toxic substances as part of the manufacturing process. These include: Sicomet 5019, Hallmark 7158, Loctite 76820 xnms, 1, 1, 1-Trichloroethane, Varsol, and Lokweld 110 which contain Acetone, Toluene, and Benzene, alcohol methanol, and xylene. The SSA, thus is or should have been, aware of the use of such substances at the plants, without proper ventilation and personal protective equipment, and that worker health was being compromised. *See* NOM-056-SSA1-1993. Workers at both plants state that they are not aware of any sampling procedure carried out at the plants.

Illnesses and accidents linked to the use of toxic substances at these maquiladoras could have been prevented had the SSA carried out its obligation to sample levels of toxic substances. Employees and former employees of both plants submitted written petition to SSA complaining of illnesses resulting from workplace exposure to toxic substances.

4. The SSA has persistently failed to enforce NOMs that direct Auto Trim and Custom Trim/Breed Mexicana to conduct biological monitoring of workers to determine the employers' compliance with

maximum permissible exposure to toxic substances

The SSA has persistently failed to enforce NOM-047-SAA1-1993 and NOM-048-SSA1-1993 which mandate that at any establishment where toxic substances are used, employers must conduct biological monitoring to determine chemical concentration in workers' urine. This monitoring is aimed at preventing work illness related to the use and exposure of toxic substances such as Benzene, Toluene, acetone, alcohol methanol, and xylene. *See id.* This monitoring must be conducted periodically to assure the workers are protected from work illnesses related to the use of these substances. In particular, the SSA has recognized that the use of Toluene and Benzene must be carefully monitored because its use under improper circumstances can cause brain damage and other severe illnesses and injuries. *See* NOM-0047-SSA1-1993 and NOM-048-SSA1-1993.

The lack of enforcement of these NOMs by the SSA has resulted in serious violations of the law. Auto Trim and Custom Trim/Breed Mexicana have persistently failed to carry out their obligation to monitor worker exposure to toxic substances. Petitioners contend that there is no periodic testing of workers to determine maximum levels of exposure to toxic substances as mandated by NOM-047-SSA1-1993 and NOM-048-SSA1-1993.¹⁷⁷ The lack of enforcement of these regulations has resulted in serious harm to worker health.

5. SSA's persistent failure to implement safety measures and

¹⁷⁷The majority of workers and former workers at both Auto Trim and Custom Trim/Breed Mexicana could not recall any biological testing or monitoring after an initial urine test at the time of hiring. One worker did describe being "hooked up a few times to something they say is supposed to monitor levels of chemicals at the workstation." He further explained: "I asked for the results of those tests, but nobody would give them to me." *See* Affidavit Y.

administrative sanctions at Custom Trim and Auto Trim/Breed Mexicana

Upon information and belief, the SSA has persistently failed to impose and implement safety measures and administrative sanctions against Auto Trim and Custom Trim/Breed Mexicana authorized by the LGS, despite the plants' flagrant disregard for the LGS and its related regulations and norms. Plant violations include: careless and uncontrolled use of toxic substances, failure to inform workers about the hazards of the substances they use and how to reduce health risks, failure to conduct air and biological monitoring, and allowing levels of exposure to toxic substances to be sufficiently high that workers regularly sustain illnesses. Violations also include serious safety and ergonomic flaws inherent in the sewing and trimming processes used at both plants. The SSA's failure to impose legally-authorized sanctions, such as temporary or permanent closure, sanitary measures, and fines, against Auto Trim and Custom Trim/Breed Mexicana has resulted in grave damage to the health of former and current employees of both plants and their families.

VII. RELIEF REQUESTED OF THE U.S. NAO

Petitioners request that the U.S. NAO undertake the following actions:

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

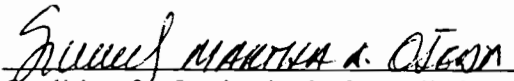
which Mexico is a party.

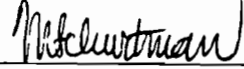
7. To compel the Mexican government to abide by Mexican occupational health and safety laws, regulations; and norms, and the principles of the NAALC ; relevant ILO Conventions, and international human rights law.
8. To determine the required fines and penalties for each health and safety violation at 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. 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.

Respectfully submitted,


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