
INTERNATIONAL TRADE DEVELOPMENTS

Mexican Trucks Gain Access to U.S. Highways

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A 6-year-old dispute between the United States and Mexico has apparently ended. The United States agreed that, as soon as possible after January 1, 2002, it would grant access to U.S. highways for Mexican trucks, provided that U.S. safety standards are met. This decision was accompanied by measures for significant improvements in the U.S. inspection process.

On February 6, 2001, the United States lost its first major case under a North American Free Trade Agreement (NAFTA) arbitration panel, which ruled that the United States must open its borders to Mexican trucks. In the words of the panel: “the U.S. blanket refusal to review and consider for approval any Mexican-owned carrier applications for authority to provide cross-border trucking services was and remains a breach of the U.S. obligations.”² The panel recognized the right of the U.S. Government to require Mexican trucks to comply with U.S. safety standards, but recommended that it review applications from Mexican truckers for access on a case-by-case basis.³ President Bush signed into law a transportation spending bill on December 18, 2001, which allows Mexican trucks to operate in the United States, and

spells out the requirements Mexican trucks need to meet before they are granted access.⁴

Background

The dispute over access of Mexican trucks to U.S. highways began at the end of 1995, when the United States delayed permission for Mexican-domiciled cargo and passenger services to operate in California, Texas, Arizona, and New Mexico, as agreed earlier in the context of NAFTA. While under NAFTA, Mexican trucks would have access to the entire United States on the first day of 2000, the accord also provided for an interim phase of cross-border trucking that would open up these four states to Mexican trucks in December 1995.⁵ NAFTA further specified that, in order to operate in the United States, Mexican trucks and truck drivers must meet U.S. safety standards. To adapt Mexico to meet this requirement, transportation officials of both countries had engaged in extensive preparations to harmonize motor vehicle safety processes between the two countries.⁶

¹ The views expressed in this article are those of the author. They are not the views of the U.S. International Trade Commission (USITC) as a whole or of any individual Commissioner.

² North American Free Trade Agreement, *Arbitral Panel Established Pursuant to Chapter Twenty in the Matter of Cross-border Trucking Services — Final Report of the Panel*, Secretariat File No. UNITED STATES-MEX-98-2008-01, Feb. 6, 2001, par. 295, found at Internet address <http://www.nafta-sec-alena.org/english/index.htm>, retrieved on Apr. 2, 2002. The panel refers to obligations under Annex I (reservations for existing measures and liberalization commitments) Article 1202 (national treatment for cross-border services), and Article 1203 (most-favored-nation treatment for cross-border services).

³ NAFTA Arbitral Panel, *Final Report of the Panel*, op. cit., par. 300.

⁴ Public Law 107-87, *Department of Transportation and Related Agencies Appropriations Act 2002*, Dec. 18, 2001; 115 Stat. 833.

⁵ NAFTA, Chapter 12, Annex 1212.

⁶ Regulatory harmonization pertaining to U.S. and Canadian truck transport services began in the 1980s and the U.S.-Canadian border was opened to cross-border trucking in 1982, years before NAFTA became effective in 1994. A Land Transportation Standards Subcommittee (LTSS) was established to address standards for drivers and vehicles of safety compliance.

However, shortly before the December 1995 due date of the interim (transitional) phase, President Clinton postponed the opening of the border states to Mexican trucks, citing unmet safety conditions. This action followed intense lobbying by the International Brotherhood of Teamsters (Teamsters) against opening the border to Mexican trucks. The Teamsters and others claimed that Mexican trucks have been involved in countless accidents, that they heavily pollute the air, and that the flow of illicit drugs into the United States increases when Mexican trucks are allowed across the border. The most frequently cited causes of accidents were that Mexican trucks are old, unsafe, and operate without weight limits, and that drivers lack adequate training, work long shifts, and engage in inappropriate behavior on the road.⁷

A 1997 study of the General Accounting Office (GAO) entitled "Safety Concerns About Mexican Trucks Remain Even as Inspection Activity Increases," underscored the Teamster's position on safety. The "status quo," i.e. restriction of Mexican trucks to a narrow commercial zone, 20 miles wide or less north of the border, remained unchanged.⁸ As before, goods had to be transferred from Mexican trucks to U.S. trucks for being hauled past the border zone into the United States.

Bilateral consultations on adapting Mexican trucks and drivers to U.S. safety requirements continued after 1995, but no agreement was reached. Mexican officials insisted that their country's safety inspection system was already consistent with that of the United States. In 1998, the Government of Mexico formally protested under NAFTA dispute-settlement procedures the U.S. postponement of the interim trucking provisions' implementation.

Interest in the issue intensified in 1999, as the January 1, 2000 deadline for Mexican trucking access to the entire United States came into view. U.S. authorities found that, restrictions notwithstanding, a number of Mexican trucks that were not in compliance with U.S. standards had already found ways to haul cargo beyond the commercial zone into U.S. territory.⁹ Hence, in December 1999, President Clinton signed the

⁷ Brendan M. Case, "Mexican Truck Debate Veers Between Fears and Facts," *The Dallas Morning News*, Aug. 20, 2001.

⁸ See also USITC, *The Year in Trade 1995: Operation of the Trade Agreements Program*, USITC Publication 2971, August, 1996. P. 56.

⁹ An 1999 report of the Federal Motor Vehicle Safety Administration (FMCSA), based on an analysis of roadside inspection in FY 1998, identified 254 Mexican domiciled motor carriers that operated improperly beyond the commercial zones and the border States. Report is cited by the Inspector General of the Department of Transportation (DOT), *Interim Report on Status of Implementing the North American Free Trade Agreement's Cross-Border Trucking Provisions*, report No. MH-2001-059, May 8, 2001, p. 16.

"Motor Carrier Safety Improvement Act of 1999,"¹⁰ part of which provided for "Foreign Motor Vehicle Penalties and Disqualifications."¹¹

In addition, since inadequate U.S. border inspection was blamed in part for unsafe Mexican trucks circulating on U.S. roads, the Department of Transportation (DOT) embarked on a program of improving the inspection process.¹² Most important, the opening of the border to Mexican trucks did not take place on January 1, 2000, as mandated by NAFTA. Mexican trucks continued to be restricted to the border zone.¹³

The Dispute During 2001

In 2001, cross-border trucking continued to be a major unresolved issue in U.S.-Mexican trade relations. Since NAFTA became effective in January 1994, trade between the United States and Mexico has grown significantly, increasing the importance of cross-border trucking services. Over four fifths of bilateral trade is transported over highways. The NAFTA ruling in February that the United States is in violation of its treaty obligations, coupled with the advent of new administrations in both countries, gave added urgency to this issue.

Once again, the safety problem had to be addressed. Testifying before the House Subcommittee on Transportation, the Inspector General of the DOT said on March 2, 2001, that since 39 percent of Mexican trucks inspected at the border failed to meet U.S. safety standards, a greater border inspection presence was needed to accommodate a large flow of trucks.¹⁴ Ready to comply with the verdict of the NAFTA arbitration panel, DOT proposed in May 2001 that, beginning January 1, 2002 it would allow Mexican trucking companies to apply for permission to operate in the United States. When in the United States, Mexican trucks would have to adhere to the same rules as do U.S. trucks. DOT also proposed rules for Mexican service providers on how to submit trucks

¹⁰ Public Law 106-159, *Motor Carrier Safety Improvement Act of 1999*, Dec. 9, 1999; 113 Stat. 1748.

¹¹ Title II, Sec. 219.

¹² See also USITC, *The Year in Trade 1999: Operation of the Trade Agreements Program*, USITC Publication 3336, August 2000, p. 61.

¹³ Magdolna Kornis, "Implementation of NAFTA Provision to Open U.S. Roads to Mexican Trucks on January 1, 2000, has been Delayed," *International Economic Review*, Jan.-Feb. 2000.

¹⁴ Bureau of National Affairs (BNA), "Transportation: DOT Official Calls for More Inspectors to Examine Trucks at the U.S.-Mexican Border," *International Trade Daily*, Mar. 6, 2000.

for inspection, and on other aspects of safety compliance.¹⁵

However, the DOT proposal and the pertaining budget request on expanded inspection met with opposition in the congressional debate of the 2002 transportation spending bill. A House bill of June 26, 2001 (HR 2299) would prohibit any funding for processing Mexican truckers' applications for access, in effect postponing again the opening of the border on January 1, 2002.¹⁶ The Senate version of August 1, 2001 (S 1178) proposed to subject Mexican trucks to an array of safety regulations, and required that the trucks should be certified in Mexico even before they apply to U.S. authorities for permission to operate in the United States.¹⁷ The Bush Administration and other advocates of opening the border found these requirements restrictive and discriminatory against Mexico.¹⁸

Principal Arguments for and Against

The proponents for free access into the United States for Mexican trucks include President Bush, President Fox, U.S. trucking associations, and the Mexican Association of Private Transport. Voices opposed to implementing the NAFTA trucking provisions, which would keep Mexican trucks off U.S. roads, include the U.S. Teamsters Union and the Mexican National Cargo Chamber (CANACAR), the latter representing some four fifths of Mexican commercial trucks.

U.S. Arguments

U.S. advocates for free access argued that the U.S. Government should avoid renegeing on NAFTA obligations. President Bush, the most notable U.S. advocate of opening the border, stated on July 25,

¹⁵ Federal Motor Carrier Safety Administration, "Instructions for Completing Applications for Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers," form op-2. Found at <http://www.dot.gov/factsfigs/licensing/op.2.htm> on Sept. 21, 2001.

¹⁶ Amendment to the DOT appropriation bill, offered by Rep. Martin Sabo (D-Minn.)

¹⁷ A bipartisan proposal of Sen. Richard C. Shelby (R-Ala.) and Sen. Patty Murray (D-Wash.), the so-called Murray-Shelby proposal, imposed tough safety restrictions on Mexican trucks.

¹⁸ USTR Zoellick commented on the proposal being debated in the Senate that it violates the spirit of NAFTA by holding Mexico to a different standard than the United States or Canada (BNA, *International Trade Daily*. Aug. 2, 2001). See also Sara J. Fitzgerald, "Why Stricter Standards on Mexican Trucks Will Hurt Our Neighbor and Ourselves," the Heritage Foundation, *Executive Memorandum No. 766*, Aug. 10, 2001, found at Internet address <http://www.heritage.org/library/execmemo/em766.html>, retrieved on Apr. 2, 2002.

2001, that "Mexico is our close friend and ally and we must treat it with respect and uphold NAFTA and the spirit of NAFTA."¹⁹ The President has vowed to veto any legislation that prevents the United States from meeting its NAFTA obligations.²⁰

The American Trucking Associations (ATA) were also firmly opposed to further delay of implementation, emphasizing the efficiency aspect of cross-border trucking. In his testimony in July 2001 at a hearing in the U.S. Senate, the Chairman of ATA described the present system as cumbersome and costly, claiming that it "requires no less than three drivers and three tractors to perform a single international freight movement."²¹ He was referring to the frequent current practice of using separate long-haul truckers on either side of the border, plus a so-called drayage truck in between. The drayage truck is a short-haul truck, whose only function is to ferry the load across the border through the maze of customs officials and brokers. ATA's Chairman argued that with the implementation of NAFTA this system could be replaced by a less costly and more efficient one.

U.S. trucking companies favored NAFTA in part because they were interested in opportunities provided by the Mexican market, which were expected to be jeopardized by U.S. restrictions of Mexican trucks in the United States. Yet, reportedly, U.S. fleet-owners' interest in providing actual trucking services in Mexico was limited, due to the perception that their employees would be handicapped by the poor condition of Mexican roads, fear of crime, and language differences.²² For U.S. interests, more important than being able to provide trucking services might be the investment opportunities in Mexican trucking that would open up following the implementation of NAFTA.²³

On the other side of the U.S. dispute, Jim Hoffa, the Teamsters' President, continued to argue against the implementation of NAFTA. He testified in the Senate that U.S. inspection facilities are "...still inadequate to evaluate and monitor the safety of

¹⁹ White House, "Fact Sheet on Trucking," *Office of the Press Secretary*, found at <http://www.whitehouse.gov> on Sept. 6, 2001.

²⁰ Ibid.

²¹ Duane W. Acklie, statement prepared for hearing on the NAFTA Arbitration Panel Decision and Safety Issues Related to Implementing the North American Free Trade Agreement's Motor Carrier Provisions, testimony before the Commerce, Science and Transportation Committee, U.S. Senate, July 18, 2001, p. 2.

²² To date very few U.S. trucks are to be found on Mexican roads, even though the Mexican Government has not taken any reciprocal action thus far of restricting access for U.S. trucks.

²³ Chris Kraul, "NAFTA May Deliver Blow to Truckers," *Los Angeles Times*, Aug. 15, 2001.

Mexican trucks as they cross the border,”²⁴ and that “...there is real evidence that trucks from Mexico cannot meet all the U.S. safety standards.”²⁵ In addition, Mr. Hoffa disputed that the United States is obligated under the terms of NAFTA to act on the panel’s recommendation to begin accepting applications on a case-by-case basis; he advocated instead, to keep the border closed for as long as needed and let Mexico take reciprocal action.²⁶

Meanwhile, not everyone in the United States agreed with the Teamsters’ concern about safety. A New York Times editorial wrote in August that “The Teamsters Union and some of its Congressional allies have grossly overblown the threat on American highway safety from an open border. Mexico’s long-haul trucking fleet is a lot more modern and its drivers are a lot more professional than the union’s scare tactics would suggest.”²⁷ Advocates of free access generally claimed that safety concerns were based solely on the poor records of the drayage trucks. The owners of these trucks had no incentive to maintain them, since they provided short-haul service.²⁸ With free access—these sources allege—the well-maintained long haul trucks would drive out the drayage trucks, thus the safety problem would diminish.

Analysts also considered other important possible consequences of free access; they speculated for example on how large the volume of Mexican trucks on U.S. roads would become, and how U.S. truck drivers’ wages would be affected by the presence of Mexican drivers on U.S. roads. Antagonists of free access were concerned that opening the border would attract an invasion of Mexican trucks to the United States. Others doubted this outcome, arguing that Mexican truckers would need years to build a network of U.S. customers to keep their trucks loaded in both directions, i.e. minimize “dead-heading” (empty trucks) on the way back.²⁹ As to the effect of free access on wage levels, from the beginning of the dispute, advocates of free access have charged that the Teamsters’ position on safety actually masked another concern, i.e. that competition by the low wages of Mexican truck drivers would depress U.S. wages in the trucking industry.³⁰

²⁴ Jim Hoffa, President, International Brotherhood of Teamsters, statement at hearing on Cross-Border Truck and Bus Operations, testimony before the Commerce, Science, and Transportation Committee, U.S. Senate, July 18, 2001, transcript of hearing, p. 46.

²⁵ Ibid.

²⁶ Ibid.

²⁷ “Free Trade and Mexican Trucking,” editorial, *The New York Times*, Aug. 6, 2001.

²⁸ Brendan M. Case, *The Dallas Morning News*, op. cit.

²⁹ Brendan M. Case, *The Dallas Morning News*, op. cit.

³⁰ Boston Globe, “Truck Safety Ploy,” editorial, Aug. 12, 2001. See also Magdolna Kornis, op. cit.

Mexican Arguments

As in the United States, Mexican views differ sharply on the issue of free trucking access to the United States. Not all Mexicans agree that free cross-border trucking would be in their interest.

The administration of Mexican President Vicente Fox, convinced that competition with the United States would be the best avenue to make Mexican trucking more efficient, is determined to see NAFTA’s trucking provisions implemented.³¹ On August 2, 2001, President Fox announced that, in case the restrictive U.S. bills of August 2001 become law, he might consider barring U.S. trucks from his country in retaliation against the United States.³² Mexican officials have been deliberating other forms of retaliation as well, such as curtailing agricultural imports from the United States³³ or imports of U.S.-made fructose from the United States.³⁴

The Fox Administration’s position that implementation of NAFTA would improve the efficiency of Mexican trucking services is shared by a minority of Mexican truckers, those whose operations are already state of the art. The associations representing advanced truckers, including the Mexican Association of Private Transport, also favor unrestricted cross-border trucking.³⁵ These advanced fleets, generally owned or contracted out by big companies, including Coca-Cola and Cemex (Mexico’s large cement manufacturer), are believed to be fully competitive with U.S. truckers.

However, some four fifths of the commercial truckers in Mexico, represented by the Confederation of Mexican Transporters (CANACAR), are not competitive with their U.S. counterparts either in the U.S. or the Mexican market. Even though labor costs are lower in Mexico, the cost of parts, fuel, financing, and insurance is significantly higher. Concerned about the challenges of free competition with U.S. trucks, these Mexican fleet-owners prefer to maintain the “status quo” of being restricted to the border zone. CANACAR, presumably relieved by the reluctance of the U.S. Congress to admit trucks from Mexico into the United States, requested the Mexican Government not to insist on implementing NAFTA, but to aim instead

³¹ Chris Kraul, *Los Angeles Times*, op. cit.

³² Even though Mexico thus far has not restricted their entry, no U.S. trucks are operating on Mexican roads.

³³ Bureau of National Affairs, “Truck Battle Intensifies,” *International Trade Daily*, July 31, 2001.

³⁴ Bureau of National Affairs, “Mexican Truckers Say \$2 Billion Lost Due to U.S. Noncompliance with NAFTA,” *International Trade Daily*, July 3, 2001. Mexican antidumping duties on High-Fructose Corn Syrup (HFCS) from the United States and taxes on soft drinks sweetened with HFCS from the United States are another major trade issue between the two countries.

³⁵ Chris Kraul, *Los Angeles Times*, op. cit.

at the suspension of the NAFTA provision on trucking.³⁶

After the long-sought access of trucks to the United States had been finally granted at the end of 2001,³⁷ a Mexican Congressman and president of the Confederation of Mexican Transporters (CANACAR) said that "... any U.S. company can now destabilize the Mexican trucking industry, because it is not a competition between equals."³⁸

Agreement

General concern about foreign access to the United States increased sharply in the wake of terrorist attacks of September 11, 2001, threatening further delays in the resolution of the trucking issue. Yet, before the end of the year, the House and the Senate reached a bipartisan compromise for the purposes of the 2002

³⁶ Chris Kraul, *Los Angeles Times*, op. cit., and Bureau of National Affairs, "Wary of Discrimination, Mexico to Inspect Coming Rules on Cross-Border Truck Safety," *International Trade Daily*, Dec. 13, 2001.

³⁷ See following section.

³⁸ John Nagel, Bureau of National Affairs, "Mexico's Trucking Rules Will Mirror U.S. Cross-Border Regulations," *International Trade Daily*, Dec. 6, 2001.

transportation appropriations bill,³⁹ allowing Mexican trucks to enter the United States, provided they met specified old and newly added safety requirements. This is the bill President Bush signed into law on December 18.⁴⁰

U.S. and Mexican transportation and trade officials began to negotiate operating regulations to be imposed on access by U.S. and Mexican trucks to one another's country. A report issued by the General Accounting Office at the end 2001 praised Mexican efforts to improve truck safety and air emission regimes.⁴¹ The same report urged DOT to reach agreements with the border states and the other federal agencies involved, regarding the development of extended truck inspections. DOT reportedly expects to open the border to Mexican trucks sometime in the second quarter of 2002.⁴²

³⁹ A conference report on DOT funding was cleared by the House on Nov. 30, 2001, and by the Senate on Dec. 4, 2001.

⁴⁰ P.L. 107-87.

⁴¹ General Accounting Office, "North American Free Trade Agreement: Coordinated Operational Plan Needed to Ensure Mexican Trucks' Compliance with U.S. Standards," Dec. 21, 2001, GAO 02-28.

⁴² Rossella Brevetti, Bureau of National Affairs, "GAO Faults U.S. Readiness to Ensure Safety of Mexican Trucks," *International Trade Daily*, Jan. 9, 2002.