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# The NAFTA Trucking Provisions and the Teamsters: Why They Need Each Other

*Erica Richman\**

## INTRODUCTION

The International Brotherhood of Teamsters (Teamsters) has opposed the North American Free Trade Agreement (NAFTA) since the treaty's inception. The labor union's current campaign of opposition focuses on a Department of Transportation (DOT) and Federal Motor Carrier Safety Administration (FMCSA) pilot program that grants a limited number of Mexico-domiciled trucks access to U.S. roadways for one year.<sup>1</sup> The pilot program is an effort to finally comply with NAFTA Annex I, intended to liberalize cross-border trucking between the United States, Mexico, and Canada.<sup>2</sup>

While the Teamsters' opposition campaign focuses on alleged differences in U.S. and Mexican trucking safety standards, the underlying motive is protectionism.<sup>3</sup> Both the purported and veiled motives are misguided however, because the program stands to benefit the entire North American trucking industry, create jobs in both countries, and present the Teamsters with the chance to expand influence into Mexico.

Part I of this comment lays out the basic structure of the Bush pilot program and outlines the general arguments anchoring the Teamsters' opposition. Part II discusses the history of NAFTA and the specific NAFTA trucking program, and charts the controversy surrounding the

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\* J.D. Candidate, 2009, Northwestern University. I would like to thank my friends and family for their support, especially my father for his help with the idea for this comment, and my fiancé Matt for his love and patience.

<sup>1</sup> Paul M. Krawzak, *Teamsters Continue Battle Against Truck Initiative*, SIGN ON SAN DIEGO, Sept. 6, 2007, <http://www.signonsandiego.com/news/mexico/20070906-1228-bn06trucks2.html>.

<sup>2</sup> Editorial, *Fears About Mexican Trucks Are Unfounded*, ARIZ. DAILY STAR, Sept. 14, 2007, at A8.

<sup>3</sup> See Michelle Chen, *Racism Seen in Liberals' Opposition to Mexican Truckers*, NEW STANDARD NEWS, Mar. 28, 2007, <http://newstandardnews.net/content/index.cfm/items/4569>; *Fears About Mexican Trucks Are Unfounded*, *supra* note 2; Posting of Porter Corn to Life on the Road blog, <http://lifeontheroad.com/2007/10/06/the-numbers-dont-add-up/319.html> (Oct. 6, 2007, 10:37am) [hereinafter Corn].

implementation of these provisions. Part III examines the current status of the NAFTA trucking debate and the Bush pilot program, and looks at the various legislative attacks on completing NAFTA implementation. Part IV offers an overview of the trucking industry's organized labor landscape in both the United States and in Mexico. Part V explores why the Teamsters oppose opening the border to Mexican truckers, and finally, Part VI argues that the Teamsters should support implementation of the NAFTA trucking provisions.

### I. THE CROSS BORDER DEMONSTRATION PROGRAM

Although the United States allowed Canadian trucks to cross the border unrestricted shortly after NAFTA became effective in 1994, Mexican access is still highly restricted. Trucks originating from Mexico can only travel in "commercial zones"—roadways within twenty-five miles of the United States-Mexico border.<sup>4</sup> At the edge of commercial zones, Mexican carriers transfer their goods to U.S. trucks, and the U.S. trucks then deliver the goods to destinations inside the United States.<sup>5</sup> The expensive and risky transfer of goods between the Mexican and the U.S. trucks creates a strong disincentive for U.S. companies to purchase Mexican goods, and to use Mexican carriers to transport those goods.<sup>6</sup>

The Cross Border Demonstration pilot program was a one-year program implemented by the Bush administration, "under which Mexican carriers can transport goods from Mexican to the United States and back."<sup>7</sup> The Cross Border Demonstration pilot program stops inefficient transfers by allowing Mexican trucks to transport goods originating in Mexico to their final destinations within the United States.<sup>8</sup> As part of the program, the DOT plans to issue permits to operate in the United States to about 100 Mexican trucking firms that operate approximately 500 trucks.<sup>9</sup> As of August 2008, 26 Mexican carriers operating 107 trucks participate in the program.<sup>10</sup>

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<sup>4</sup> Oscar Avila, *Mexican Trucks Ready to Roll*, CHI. TRIB., Sept. 8, 2007, at 13; Dave Montgomery, *Senate Red-Lights Mexican Truck Plan*, FORT WORTH STAR-TELEGRAM, Sept. 12, 2007, at C3.

<sup>5</sup> Avila, *supra* note 4, at 13; Montgomery, *supra* note 4, at C3.

<sup>6</sup> See *Fears About Mexican Trucks Are Unfounded*, *supra* note 2 (quoting State Senator John Kyl of Arizona as saying "[t]hey [Mexican products] are fresher, less expensive, and they can be even more fresh and less expensive if they don't have to offload the cargo and reload it onto American carriers to be transported to (their) final destination.").

<sup>7</sup> *Fears About Mexican Trucks Are Unfounded*, *supra* note 2.

<sup>8</sup> *Id.*; Montgomery, *supra* note 4, at C3.

<sup>9</sup> Montgomery, *supra* note 4, at C3.

<sup>10</sup> Andy Leonatti, *Transportation Panel Votes to Halt Mexican Truck Program*, CONGRESS DAILY, July 31, 2008, available at [http://www.nationaljournal.com/congressdaily/mr\\_20080731\\_1523.php?related=true&story1=null&story2=null&story3=null](http://www.nationaljournal.com/congressdaily/mr_20080731_1523.php?related=true&story1=null&story2=null&story3=null).

The pilot program has come under fierce attack with the most vocal opposition coming from organized labor.<sup>11</sup> The opposition to liberalizing the border, however, is unfounded. The opposition is a mask for job protectionism, potentially harmful to member truckers, and detrimental to the growth of the trucking industry in general.<sup>12</sup> In reality, the Teamsters should support the measure because it will have a positive impact on U.S. truckers: cross-border transport will create new trucking and employment opportunities for U.S. citizens in the United States and in Mexico, will not threaten U.S. jobs, and is a perfect opportunity for the Teamsters to spread progressive labor rights and protections throughout North America.

The Teamsters wage a two prong attack on the trucking measure focused on safety. First, they contend that allowing Mexican trucks into the United States seriously threatens the safety and security of U.S. roadways and the U.S. citizens who drive on them.<sup>13</sup> The union argues that Mexican trucks are old, unreliable, and that they fail to meet FMCSA's safety requirements.<sup>14</sup> They also contend that Mexican drivers are highly under-regulated, are not held to the same high safety standards as U.S. drivers, and regularly engage in activities that endanger U.S. drivers.<sup>15</sup> As Teamsters' President James Hoffa remarked at a Teamsters International Convention:

The Teamsters will not let these time-bomb [Mexican] trucks on our highways to threaten the lives of American drivers and their families. Trucking companies in Mexico need to adhere to the same regulations and standards that our companies and drivers are subject to.<sup>16</sup>

Statistics indicate, however, that Mexican trucks and truckers are no more dangerous than their U.S. counterparts. U.S. trucks are cited for

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<sup>11</sup> See, e.g., Posting of 'Keep on Truckin' to Trucker Talk—Truck Blog, <http://www.truckertotrucker.com/trucker/1/2007/09/Mexican-Truck-Program-Hits-Roadblock.cfm> (Sept. 14, 2007, 5:47pm) [hereinafter 'Keep on Truckin'].

<sup>12</sup> Chen, *supra* note 3; Corn, *supra* note 3.

<sup>13</sup> Lee Sustar, *Should the U.S. Ban "NAFTA Trucks,"* SOCIALIST WORKER, Aug. 3, 2001, at 15; Press Release, International Brotherhood of Teamsters, Teamster Delegates Stand Strong Against Cross-Border Trucking (June 28, 2006), available at <http://www.teamster.org/press-release.aspx?id=10558>; 'Keep on Truckin', *supra* note 11.

<sup>14</sup> See Charles Walker, *Mexican Truckers & the Teamsters*, SOCIALIST ACTION, <http://www.geocities.com/arcticreds/truckers.html> (last visited Feb. 2, 2009).

<sup>15</sup> Sara J. Fitzgerald, *Why Stricter Standards on Mexican Trucks Will Hurt Our Neighbor and Ourselves*, THE HERITAGE FOUND., Aug. 10, 2001, <http://www.heritage.org/Research/LatinAmerica/EM766.cfm>; Luige del Puerto, *Federal Program Allowing Mexican Trucks Deeper into the Country Causes Uproar in Arizona*, ARIZ. CAPITOL TIMES, Sept. 28, 2007; Corn, *supra* note 3. See Walker, *supra* note 14.

<sup>16</sup> Teamster Delegates Stand Strong Against Cross-Border Trucking, *supra* note 13.

safety violations at a higher rate than Mexican trucks,<sup>17</sup> and a recent study found that U.S. drivers violate hours-of-work requirements eight times more often than Mexican drivers.<sup>18</sup> Moreover, in 2008, 6.9% of U.S. drivers inspected at the border were taken out of service, compared to only 3.1% of Mexican drivers.<sup>19</sup>

The second prong of the Teamsters' argument focuses on homeland security and well-being concerns. The Teamsters vehemently assert that Mexican trucks and their contents threaten homeland security, and that Mexican truck drivers will steal jobs and depress wages for scores of hardworking U.S. citizens.<sup>20</sup> The labor union questions the DOT's ability to monitor and inspect the goods that are transported across the border, which may permit the transport of illegal or dangerous materials, including illicit drugs, into the United States.<sup>21</sup> Moreover, the union contends that Mexico's lenient trucker regulation and sub-par wages will encourage U.S. carriers to set up shop south of the border.<sup>22</sup>

These fears are also groundless. The U.S. government has increased funding for border inspection facilities and hired more inspectors to ensure proper oversight.<sup>23</sup> Additionally, program supporters continually vow to ensure appropriate inspection, and to hold Mexican carriers to U.S. trucking standards.<sup>24</sup> Furthermore, the U.S. trucking industry is almost twenty times larger than the Mexican trucking industry, making it extremely unlikely that

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<sup>17</sup> Federal Motor Carrier Safety Administration, NAFTA Safety Stats: Annual Summary, <http://ai.fmcsa.dot.gov/international/border.asp?redirect=GenStats.asp> (last visited Feb. 2, 2009) [hereinafter NAFTA Safety Stats].

<sup>18</sup> Chen, *supra* note 3.

<sup>19</sup> NAFTA Safety Stats, *supra* note 17.

<sup>20</sup> Avila, *supra* note 4; *Fears About Mexican Trucks Are Unfounded*, *supra* note 2.

<sup>21</sup> See Krawzak, *supra* note 1; Michael R. Skahan, *The NAFTA Trucking Dispute with Mexico: Problem? What Problem?*, 5 NAFTA: L. & BUS. REV. AM. 603, 612 (1999).

<sup>22</sup> See Avila, *supra* note 4, at 13 (reporting that the Teamsters have always fought NAFTA because cheap Mexican labor threatens U.S. jobs, and drives down wages for American workers); del Puerto, *supra* note 15 (reporting that senators are opposing the pilot program because American truckers will lose jobs to lower paid Mexican truckers).

<sup>23</sup> *Oversight Hearing on the U.S. Department of Transportation's Cross-Border Truck Pilot Program Before the Comm. on Commerce, Science and Transportation*, 110<sup>th</sup> Cong. 4 (2008) (statement of Calvin L. Scovel III, Inspector General U.S. Department of Transportation) (stating that "FMCSA has implemented plans to ensure every truck is checked every time it crosses the border . . .") [hereinafter Scovel Statement]; DEPARTMENT OF TRANSPORTATION, NEW PROGRAM TO ALLOW U.S. TRUCKS INTO MEXICO FOR THE FIRST TIME EVER, CHANGE WAY SOME MEXICAN TRUCKS OPERATE WITHIN THE UNITED STATES, Feb. 23, 2007, <http://www.dot.gov/affairs/cbtsip/dot2107.htm>.

<sup>24</sup> See Hale Sheppard, *The NAFTA Trucking Dispute: Pretexts for Non-Compliance and Policy Justifications for U.S. Facilitation of Cross-Border Services*, 11 MINN. J. GLOBAL TRADE 235, 236-37 (2002).

Mexican carriers will take U.S. jobs.<sup>25</sup>

Although the environmental impact of allowing Mexican trucks onto U.S. roads plays a large part in the opposition to the pilot program, labor unions have not integrated these issues into their cause, and environmental issues will only be briefly discussed in this comment.<sup>26</sup>

## II. HISTORY OF THE DEBATE

### A. Origins of the Cross-Border Trucking Debate

Prior to 1982, Mexican trucks operated freely in the United States as long as they complied with U.S. safety regulations.<sup>27</sup> In 1982, however, Congress passed the Bus Regulatory Reform Act (BRRA),<sup>28</sup> restricting access to the United States for new motor carriers from contiguous foreign countries.<sup>29</sup> The president could modify these restrictions for a variety of different reasons including “obligations of the United States under a trade agreement,” provided that the action was in the best interest of the country.<sup>30</sup>

The president quickly lifted the BRRA restrictions for Canadian trucks, alleging that Canadian truck safety standards were equal or superior to those in the United States.<sup>31</sup>

However, the BRRA restrictions continued to apply to Mexican trucks.<sup>32</sup> Mexican truckers could only operate within specified commercial zones extending twenty-five miles from the United States-Mexico border in California, Arizona, New Mexico, and Texas.<sup>33</sup> As early as 1994, the Interstate Commerce Commission had already issued 4666 licenses permitting Mexican carriers to operate in commercial zones.<sup>34</sup> Upon reaching the commercial zone border, the Mexican truckers transferred their

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<sup>25</sup> Casey Burgess, *The Cross-Border NAFTA Truck Debate*, 8 L. & BUS. REV. AM. 279, 291 (2002).

<sup>26</sup> See Erica Burgess, Note, *Trucks on Our Turf: Seeking to Resolve the International Inconsistency in Public Citizen v. Department of Transportation*, 66 U. PITT. L. REV. 601 (2005); Skahan, *supra* note 21, at 610; Section II.F *infra*.

<sup>27</sup> Lowell Powell, *NAFTA Keep on Truckin': Paving the Way for Long-Haul Trucking Operations between Mexico and the United States*, 16 TRANSNAT'L L. 467, 470 (2003).

<sup>28</sup> *Id.* at 470–71.

<sup>29</sup> *Contemporary Practice of the United States Relating to International Law: U.S.-Mexico Dispute on Cross-Border Trucking*, 97 AM. J. INT'L L. 194, 194 (Sean D. Murphy ed., 2003) [hereinafter Murphy]; Sheppard, *supra* note 24, at 237.

<sup>30</sup> Murphy, *supra* note 29, at 194; Sheppard, *supra* note 24, at 237.

<sup>31</sup> Sheppard, *supra* note 24, at 236–37.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*; Avila, *supra* note 4, at 13.

<sup>34</sup> Paul Stephen Dempsey, *Free Trade but Not Free Transport? The Mexican Stand-Off*, 30 DENV. J. INT'L L. & POL'Y 91, 92 (2001).

goods to U.S. trucks, and the U.S. trucks proceeded to the products' destinations. These restrictive regulations, however, did not stop Mexican products from coming to U.S. markets, and the expense of transferring goods from Mexican carriers to U.S. carriers at the commercial zone border was passed on to U.S. consumers.<sup>35</sup>

### B. Creation of NAFTA and Annex I

In 1990, Canada, Mexico, and the United States began discussions that eventually led to the signing of NAFTA in 1992.<sup>36</sup> Proponents hailed NAFTA as an innovative agreement that would eliminate trade barriers, promote fair competition, and increase investment and business opportunities for citizens in all three countries.<sup>37</sup> Many saw NAFTA as a victory for free trade, and a symbol of hope and promise for the future prosperity of North America.<sup>38</sup> The overall impact of NAFTA so far has been positive: between 1993 and 1998, trade between Mexico and the United States rose 113%.<sup>39</sup> In 2007, the United States' surface trade with Mexico totaled \$286 billion, and U.S. exports to Mexico were valued at \$93 billion.<sup>40</sup> In April 2008, surface trade between the United States, Canada, and Mexico reached a new NAFTA-era single month record at \$74.2 billion.<sup>41</sup> Furthermore, NAFTA spurred job creation and industrial growth in Mexico and the United States; the \$10 trillion in products and services that passed between the two countries were produced and performed by 400 million workers.<sup>42</sup>

While there are several sections of NAFTA that impact analysis of the Mexican trucking dispute, the most important is Annex I because it lays out the gradual schedule designed to liberalize cross-border trucking between the United States, Mexico, and Canada.<sup>43</sup> The agreed-to timeline opened the Mexico-United States border in two steps. First, Mexican trucks would have complete access to roadways in the four states bordering Mexico—California, Arizona, New Mexico, and Texas. The second step permitted

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<sup>35</sup> See del Puerto, *supra* note 15.

<sup>36</sup> Sheppard, *supra* note 24, at 237.

<sup>37</sup> *Id.*; Skahan, *supra* note 21, at 603.

<sup>38</sup> See Skahan, *supra* note 21, at 603.

<sup>39</sup> Burgess, *supra* note 25, at 281.

<sup>40</sup> Press Release, Bureau of Transp. Statistics, 2007 Surface Trade with Canada and Mexico Rose 4.9 Percent from 2006 (Mar. 11, 2008), available at [http://www.bts.gov/press\\_releases/2008/bts011\\_08/html/bts011\\_08.html](http://www.bts.gov/press_releases/2008/bts011_08/html/bts011_08.html).

<sup>41</sup> *April Surface Trade Sets NAFTA Record*, PAC. SHIPPER, Sept. 7, 2008, [http://www.pacificshipper.com/news/article.asp?ltype=first\\_watch&sid=32455](http://www.pacificshipper.com/news/article.asp?ltype=first_watch&sid=32455).

<sup>42</sup> *Id.*

<sup>43</sup> North American Free Trade Agreement, U.S.-Mex.-Can., Annex I, Dec. 17, 1992, 32 I.L.M. 605, 704 (1993); Burgess, *supra* note 26, at 610; Sheppard, *supra* note 24, at 237.

Mexican trucks to travel freely on U.S. roadways by January 1, 2000.<sup>44</sup>

After NAFTA's enactment, all signals indicated that the United States was willing to uphold its obligations under the agreement. As the Secretary of the DOT at the time said:

It is clear December [1995] will mark a visible, fundamental change in the way trade and commerce is conducted in our hemisphere . . . the United States is determined that NAFTA is enacted properly and works right for each of our countries.<sup>45</sup>

More than just words, the U.S. government took concrete action to prepare for an influx of Mexican trucks. First, the DOT infused two million dollars into the four border-states to help them cope with the expected increase in cross-border truck traffic.<sup>46</sup> Additionally, on April 24, 1994, the North American Transportation Summit issued a Memorandum of Understanding detailing a plan of cooperation between Mexican and U.S. transportation officials to implement the NAFTA Annex I mandates.<sup>47</sup> Moreover, the United States, Canada, and Mexico worked to create uniform vehicle inspection and safety requirements through the Commercial Vehicle Safety Alliance, ensuring that trucks from all of the countries were safe and reliable.<sup>48</sup>

While implementation of Annex I's Canadian timeline progressed on schedule, the Mexican plan quickly stalled.<sup>49</sup> Bending to strong political pressure, President Clinton halted the progress of the timeline on December 17, 1996, one day before Mexican trucks were scheduled to travel freely in the border states.<sup>50</sup> The President and the DOT cited safety and regulatory concerns as justification for the sudden setback, including Mexico's lenient freight weight restrictions, absence of hours-of-service regulations, and fears that Mexican trucks could not comply with U.S. safety standards.<sup>51</sup> While the United States assured Mexico and the public that they were working to address these concerns, NAFTA's January 1, 2000 deadline also

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<sup>44</sup> North American Free Trade Agreement, *supra* note 43, at 704; Sheppard, *supra* note 24, at 237.

<sup>45</sup> Sheppard, *supra* note 24, at 238 (quoting Press Release, U.S. Dep't of Transp., Pena Announces Key Measure for Smooth, Safe, and Efficient NAFTA Transition (Sept. 5, 1995)(on file with author)).

<sup>46</sup> Jason C. Messenger, *Opening the U.S.-Mexico Border: Problems and Concerns for the Bush Administration, the Countries, and the Legal System to Consider*, 9 TULSA J. COMP. & INT'L L. 607, 609 (2002).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> Burgess, *supra* note 25, at 282; Dempsey, *supra* note 34, at 93; Powell, *supra* note 27, at 472; Sheppard, *supra* note 24, at 238.

<sup>50</sup> See Powell, *supra* note 27, at 471-72; Sheppard, *supra* note 24, at 238.

<sup>51</sup> Messenger, *supra* note 46, at 609-10; Powell, *supra* note 27, at 472.



came and passed unfulfilled.<sup>52</sup> Thus, Mexican trucks remained relegated to commercial zones, transferring their cargo to U.S.-based long haul trucks at commercial zone borders—slowing the movement of goods and increasing the price of transport.<sup>53</sup>

### C. The Arbitration Mandate

In response to the United States' failure to fulfill its obligations under NAFTA, Mexico closed its border to U.S. trucks.<sup>54</sup> Mexico also initiated arbitration proceedings under Chapter 20 of NAFTA, claiming that the United States breached its obligations under the agreement by failing to phase out restrictions on cross-border trucks as prescribed in Annex I.<sup>55</sup> The United States claimed that safety concerns delayed compliance with the agreement, and defended its acquiescence to the Canadian timeline by arguing that it was easier to implement because the United States and Canada have similar safety and transport regulations.<sup>56</sup>

On February 6, 2001, a specially convened arbitral panel determined that the United States' arguments were unpersuasive, and that noncompliance with Annex I violated NAFTA.<sup>57</sup> The panel ordered that the United States take all "appropriate steps" to bring its practices regarding cross-border trucking into compliance with NAFTA.<sup>58</sup>

In accordance with the panel's unanimous decision, the United States vowed to take "appropriate steps" to rectify the situation.<sup>59</sup> President Bush even went so far as to publicly announce that the United States would soon be fully compliant with the agreement:

We have assured the Mexican government that we intend to live up to our NAFTA obligations to open the U.S.-Mexico border to trucking [and] [d]iscussions are underway on how to implement the recent NAFTA panel decision in a safe and orderly fashion.<sup>60</sup>

The U.S. Secretary of the DOT shared Bush's optimism, stating "President Bush has made a firm commitment to implement NAFTA

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<sup>52</sup> Powell, *supra* note 27, 474.

<sup>53</sup> Dempsey, *supra* note 34, at 91–92.

<sup>54</sup> *Id.* at 93–94.

<sup>55</sup> Burgess, *supra* note 26, at 610–11.

<sup>56</sup> Sheppard, *supra* note 24, at 237.

<sup>57</sup> *Id.* at 239.

<sup>58</sup> *Id.* at 240.

<sup>59</sup> *Id.*; Powell, *supra* note 27, at 475–76.

<sup>60</sup> Sheppard, *supra* note 24, at 240 (quoting Alan Larson, Under Secretary, U.S. Dep't of State, U.S. Outlines Potential for Expanded U.S.-Mexico Trade, Remarks before the 54th Plenary of the Mexico-U.S. Business Committee (Mar. 5, 2001), <http://www.usinfo.state.gov/regional/ar/mexico/larson5.htm>).

trucking provisions, and his Administration has begun doing that.”<sup>61</sup>

#### D. The DOT Trucking Regulations

In May 2001, as an outgrowth of this commitment, the DOT released the DOT Trucking Regulations (DOT Regulations).<sup>62</sup> These regulations opened U.S. highways to Mexican trucks, but required that the trucks and truck drivers fully comply with U.S. safety standards.<sup>63</sup> In particular, the DOT Regulations required that each Mexican carrier certify that its drivers have the requisite qualifications and insurance levels, and that they comply with U.S. hours-of-service limits, truck condition standards, and alcohol and drug testing requirements.<sup>64</sup>

The DOT Regulations soon came under fire from Congress and a multitude of different interest groups.<sup>65</sup> Opponents expressed skepticism about the regulations, and doubted the United States’ ability to sufficiently address safety concerns regarding Mexican trucks and truckers.<sup>66</sup>

To strengthen the DOT assurances of Mexican truck safety, the 2002 Department of Transportation Appropriations Bill (DOT Bill) required that FMCSA establish an extensive program to ensure adequate inspection, certification, and verification of Mexican trucks and their drivers.<sup>67</sup> Moreover, the DOT Bill addressed some of the specific concerns Congress and the interest groups expressed. For example, the DOT Bill required that Mexican trucks carrying hazardous materials comply with the same standards as U.S. trucks carrying the same substances.<sup>68</sup> FMCSA also adopted regulations for accepting applications from Mexican carriers wanting to operate in the United States, and developed a comprehensive safety-monitoring program to regulate Mexican trucks operating between Mexico and the United States.<sup>69</sup> All of the regulations were built around the Bush administration’s “four core principles”: first, the safety of U.S. highways will not be compromised for compliance with NAFTA; second, Mexican carriers will be held to the same standards as U.S. carriers; third, the United States must uphold its obligations under NAFTA; and fourth, Mexican and U.S. carriers will have equal opportunity and fairness in both

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<sup>61</sup> *Id.* at 241 (citing Rossella Brevetti, *DOT Proposes Rules to Open U.S. to Mexican Trucking Entities*, 18 INT’L TRADE REP. (BNA) 714 (2001)).

<sup>62</sup> *Id.* at 240; Powell, *supra* note 27, at 475.

<sup>63</sup> Powell, *supra* note 27, at 475–76; Sheppard, *supra* note 24, at 241.

<sup>64</sup> Sheppard, *supra* note 24, at 241.

<sup>65</sup> Powell, *supra* note 27, at 475.

<sup>66</sup> *Id.* at 476; Dempsey, *supra* note 34, at 94–95.

<sup>67</sup> Powell, *supra* note 27, at 476.

<sup>68</sup> Murphy, *supra* note 29, at 194–95.

<sup>69</sup> *Id.*

the United States and Mexico.<sup>70</sup>

#### E. The Legislative Response

With the executive branch's agenda firmly in place, the legislature took an equally strong stance on the opposite side of the table. The Murray Amendment was Congress' response to the DOT Regulations and brought final NAFTA implementation to a screeching halt. The Murray Amendment grew out of the proposed Sabo Amendment, a radical proposition to completely preclude use of federal funds to process applications submitted by Mexican carriers seeking to operate in the United States.<sup>71</sup> The Murray Amendment was a compromise that adopted the goal of the Sabo Amendment, but was also consistent with the demands of the arbitration panel.<sup>72</sup>

The Murray Amendment placed strict safety restraints on Mexican carriers, including complete safety audits of the Mexican carriers and safety compliance reviews at the carriers' headquarters.<sup>73</sup> It also called for implementation of all DOT Regulations and construction of additional border inspection facilities before any Mexican trucks entered the United States.<sup>74</sup> The Murray Amendment passed in 2001, and although it did not completely proscribe Mexican carriers' operating in the United States, it prevented full implementation of the DOT and FMCSA plan until further safety measures were operational.<sup>75</sup>

#### F. Fighting it out in the Courts

Another minor set-back came when the citizens' rights group, Public Citizen, sued the government for alleged failure to conduct an environmental analysis before promulgating the DOT Regulations and FMCSA regulations.<sup>76</sup> In *Public Citizen v. Department of Transportation*, 541 U.S. 752 (2004), southern citizens expressed concern that allowing Mexican truckers into the country would disrupt their lifestyles and harm the environment that they live in and enjoy.<sup>77</sup> Although the Ninth Circuit agreed with the disgruntled citizens, the United States Supreme Court overruled the Ninth Circuit's decision, determining that FMCSA was not

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<sup>70</sup> Messenger, *supra* note 46, at 611.

<sup>71</sup> K. LARRY STORRES, CRS ISSUE BRIEF TO CONGRESS: MEXICO-U.S. RELATIONS, ISSUES FOR THE 107TH CONGRESS 14 (May 15, 2003), available at <http://www.au.af.mil/au/awc/awcgate/crs/ib10070.pdf>; Sheppard, *supra* note 24, at 242.

<sup>72</sup> STORRES, *supra* note 71, at 14; Sheppard, *supra* note 24, at 242–43.

<sup>73</sup> Sheppard, *supra* note 24, at 243–44.

<sup>74</sup> *Id.*; STORRES, *supra* note 71, at 14.

<sup>75</sup> STORRES, *supra* note 71, at 14; Sheppard, *supra* note 24, at 243–44.

<sup>76</sup> Burgess, *supra* note 26, at 614.

<sup>77</sup> *Id.*

required to provide an environmental assessment for the proposed rules regarding Mexican motor carriers' safety regulations.<sup>78</sup> Thus, *Public Citizen* effectively delayed DOT and FMCSA progress, but it did not have a substantial effect on implementation of the NAFTA trucking provisions.<sup>79</sup>

### III. CURRENT STATUS OF THE DEBATE

President Bush's proposal to open the U.S.-Mexico border to Mexican truckers arose within this tumultuous environment. Unfortunately, the Bush plan, like all other efforts to lift restrictions on cross-border trucking with Mexico before it, faces fierce opposition. To begin with, Congress passed the Dorgan Amendment as part of the 2008 DOT Bill.<sup>80</sup> The Dorgan Amendment prohibits the DOT from spending any federal funds to establish "a cross-border motor carrier demonstration program to allow Mexico-domiciled motor carriers to operate beyond the commercial zones . . . ."<sup>81</sup> Congress still worries about the safety of Mexican trucks, and fears that an influx of Mexican products may harm U.S. manufacturing and produce industries.<sup>82</sup>

Another amendment proposed in the Senate, the Cornyn Amendment, permits using federal funds to implement the Bush pilot program, but places additional stringent safety requirements on the participating Mexican carriers.<sup>83</sup> Although the central opposition to a Mexican trucking program has consistently been safety concerns, the Cornyn Amendment did not pass the Senate.<sup>84</sup> The failure of this measure reflects a hidden agenda—if safety were the primary concern, Mexican trucks should be permitted to operate in the United States as long as they comply with U.S. safety standards.<sup>85</sup>

On July 31, 2008 Congress dealt the pilot program another blow when the House's Transportation and Infrastructure Committee unanimously

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<sup>78</sup> *Id.* at 601.

<sup>79</sup> See Powell, *supra* note 27, at 496–97.

<sup>80</sup> H.R. 3074, 110th Cong. (2007).

<sup>81</sup> *Id.*

<sup>82</sup> del Puerto, *supra* note 15 (reporting that Arizona state Sen. Karen Johnson supported a letter sent to the United States Congress urging them to suspend the cross border trucking program because, "broader road access could mean a flooding of goods, destroying 'any manufacturing base we have left in this country.'").

<sup>83</sup> S.A. 2842, 110th Cong. (2007).

<sup>84</sup> *Id.*

<sup>85</sup> See Richard Simon, *Collision over Truck Bill Looms*, L.A. TIMES, Sept. 12, 2007, at A15, available at [http://www.latimes.com/news/print/edition/asection/la-na-trucks12sep12,1,6158442.story?coll=la-news-a\\_section](http://www.latimes.com/news/print/edition/asection/la-na-trucks12sep12,1,6158442.story?coll=la-news-a_section) (quoting head of FMCSA John Hill as saying that the votes to prohibit funding of the Bush pilot program are "a sad victory for the politics of fear and protectionism and a disappointing defeat for U.S. consumers and U.S. truck drivers.").

approved a bill that set September 6, 2008 as the pilot program's mandatory end date.<sup>86</sup> Neither this bill nor the cut in funding, however, deterred the DOT, as evidenced by the head of the Department's August 4, 2008 announcement that the pilot program will be extended for an additional two years.<sup>87</sup>

The pilot program was also recently attacked in the courts. In January 2008, The Teamsters, Public Citizen, and the Owner-Operator Independent Drivers Association brought suit against the DOT in the Ninth Circuit, claiming that the DOT acted unlawfully by continuing the pilot program after Congress passed the Dorgan Amendment.<sup>88</sup> The DOT argues that the wording of the amendment exempts programs that were already "established" when the measure was enacted, including the pilot program.<sup>89</sup> The Court has not yet issued a decision in this case.

#### IV. The Organized Labor Landscape

The Teamsters was founded in 1903,<sup>90</sup> and today is one of the largest labor unions in the United States.<sup>91</sup> The union boasts approximately 1.4 million members from a diverse array of industrial, trade, and service professions, including a waste division, a warehouse division, and a freight division.<sup>92</sup> The freight division represents more than 80,000 freight workers, including long-haul truck drivers from approximately 238 unions across the country.<sup>93</sup>

The Teamsters have taken an aggressive stance against Bush's proposed Mexico-domiciled carrier pilot program.<sup>94</sup> Led by their president, James Hoffa, the Union has exhibited enthusiasm and energy in its opposition, as Hoffa has vowed "Democrats, Republicans, and

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<sup>86</sup> Press Release, Committee on Transportation and Infrastructure, Republicans, Bill Halts NAFTA-Relic Mexican Trucking Program (July 31, 2008), available at <http://republicans.transportation.house.gov/news/PRArticle.aspx?NewsID=452>.

<sup>87</sup> Press Release, Walter B. Jones, Jones Denounces Two-Year Extension of Mexican Trucking Program in U.S. (Aug. 4, 2008), available at <http://www.walterjonesforcongress.com/jones-denounces-two-year-extension-of-mexican-trucking-program-in-us>.

<sup>88</sup> Rebecca Richards, *Peters Seeks Mexico Options as Court Mulls Border Program*, TRANSPORT TOPICS, July 7, 2008.

<sup>89</sup> *Id.*

<sup>90</sup> The Early Years—International Brotherhood of Teamsters, <http://www.teamster.org/history/teamster-history/early-years> (last visited Feb. 9, 2009).

<sup>91</sup> Teamsters Structure—International Brotherhood of Teamsters, <http://www.teamster.org/content/teamsters-structure> (last visited Feb. 9, 2009).

<sup>92</sup> *Id.*

<sup>93</sup> Freight Division, International Brotherhood of Teamsters, <http://www.teamster.org/content/freight-division> (last visited Feb. 2, 2009).

<sup>94</sup> See Teamster Delegates Stand Strong Against Cross-Border Trucking, *supra* note 13; Keep on Truckin', *supra* note 11.

Independents—everyone wants to keep our highways safe. The Teamsters are going to stop this madness. We’re going to stop George Bush.”<sup>95</sup>

The Teamsters argue that the safety of U.S. highways and U.S. truckers is their primary concern. “The Teamsters will not let these time-bomb trucks on our highways to threaten the lives of U.S. drivers and their families.”<sup>96</sup> They contend that Mexican trucks do not abide by U.S. safety regulations, including mandatory driver drug-testing, and are often cited by vehicle inspectors at the border for poor vehicle maintenance and safety precautions.<sup>97</sup> As the Teamsters’ National Vice-President, Jim Santangelo, said:

We have a beef with the American Government lying to the American people [that] these people are under the Department of Transportation rules and regulations . . . . [T]his is not about union organizing these guys, it’s all about homeland security and the safety of America’s highways.<sup>98</sup>

Moreover, the Teamsters voice homeland security concerns, including the potential transport of dangerous or illegal materials into the United States. “We don’t know who these drivers are and we don’t know what they’re bringing in . . . . [T]he weapons of mass destruction George Bush is looking for could be in the backs of these trucks.”<sup>99</sup>

The Teamsters’ propositions have gained credence and support from some extremely powerful figures. Senator Arlen Specter commented that the Bush pilot program raised “very serious safety issues,”<sup>100</sup> and Senator Byron Dorgan insisted, “this is about safety . . . . We don’t have equivalent standards between this country and Mexico. Not yet.”<sup>101</sup> Teamsters have also rallied residents of the United States-Mexico border who fear that

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<sup>95</sup> Press Release, Int’l Brotherhood of Teamsters, Hoffa Denounces Bush’s Illegal, Unsafe Mexican Trucking Program (Sept. 8, 2007), *available at* <http://www.prnewswire.com/cgi-bin/stories.pl?ACCT=104&STORY=/www/story/09-08-2007/0004658904&EDATE=> [hereinafter Hoffa Denounces Program]. See Sustar, *supra* note 13.

<sup>96</sup> Hoffa Denounces Program, *supra* note 95; Press Release, Union Resolves to Delay Implementation Until Safety, Wages, and Working Conditions for Mexican Truckers are at Highest Levels, Int’l Brotherhood of Teamsters, June 28, 2006, (quoting Teamsters General President James Hoffa) (on file with author); see also Chen, *supra* note 3; *Fears About Mexican Trucks Are Unfounded*, *supra* note 2.

<sup>97</sup> Chen, *supra* note 3; Krawzak, *supra* note 1; del Puerto, *supra* note 15; Keep on Truckin’, *supra* note 11.

<sup>98</sup> Krawzak, *supra* note 1 (quoting Teamsters National Vice-President Jim Santangelo).

<sup>99</sup> Hoffa Denounces Program, *supra* note 95; Teamster Delegates Stand Strong Against Cross-Border Trucking, *supra* note 13 (quoting James Hoffa’s speech at the Teamsters Women’s Conference at the Hilton-Americas Houston Hotel).

<sup>100</sup> Keep on Truckin’, *supra* note 11.

<sup>101</sup> Simon, *supra* note 85, at A15.

opening the border will generate a large influx of traffic, creating severe traffic congestion and transforming small towns into noisy truck-stops.<sup>102</sup>

U.S. unions are not alone in their opposition. One of the largest Mexican labor unions, Camara Nacional del Autotransporte de Carga (CANACAR), has also voiced concerns about opening the border between the United States and Mexico.<sup>103</sup> The Union went so far as to say that “the border must be completely closed to American trucks,”<sup>104</sup> and it requested that the Mexican government nullify the NAFTA trucking provisions altogether.<sup>105</sup> CANACAR fears that as a result of open transport, manufacturers in both the United States and Mexico will discriminate against the smaller Mexican transportation business, and Mexican carriers will lose business to U.S. carriers in Mexico and in the United States.<sup>106</sup>

Furthermore, Mexican truckers are at a significant disadvantage to U.S. truckers because parts, fuel, trucks, and financing are all more expensive in Mexico; Mexican truckers thus have to charge customers more to cover operation costs.<sup>107</sup> For example, a new tractor-trailer truck costs about \$97,000 in Mexico versus \$60,000 in the United States, and on average, replacement truck tires cost \$340 each in Mexico, but only \$260 in the United States.<sup>108</sup>

## V. VEILED PROTECTIONISM

The following sections of this comment will demonstrate that the Teamsters’ fears regarding the safety and security of U.S. roadways are unfounded, and are only a means to hide the real reason for their discontent: U.S. protectionism.<sup>109</sup> In actuality, the Teamsters should support the implementation of the Bush pilot program because it will have a positive impact on employment opportunities for U.S. truckers and U.S. carriers.<sup>110</sup> Furthermore, as AFL-CIO President John Sweeney said, “American labor is as concerned about the rights of workers all over the world as it is about the rights of workers here in America. The two cannot be separated.”<sup>111</sup> Thus,

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<sup>102</sup> Burgess, *supra* note 25, at 289.

<sup>103</sup> *See id.* at 291.

<sup>104</sup> *See id.* (quoting *No Truck with Free Trade*, ECONOMIST, Aug. 4, 2001, at 35).

<sup>105</sup> *Id.* at 292.

<sup>106</sup> *Id.*; Carrier Anne Arnett, *The Mexican Trucking Dispute: a Bottleneck to Free Trade. A Tough Test on the NAFTA Dispute Settlement Mechanism*, 25 Hous. J. INT’L L. 561, 606 (2003).

<sup>107</sup> Burgess, *supra* note 25, at 291.

<sup>108</sup> *Id.* (tractor-trailer price represents the cost of a new Volvo or Freightliner tractor-trailer truck in 2002).

<sup>109</sup> *See, e.g.* Chen, *supra* note 3; Corn, *supra* note 3.

<sup>110</sup> *See* Burgess, *supra* note 25, at 292.

<sup>111</sup> John Wojcik, *Solidarity and Mexican Trucking*, PEOPLES WEEKLY WORLD NEWSPAPER, Sept. 20, 2007, available at <http://www.pww.org/article/articleview/11759/>.

the Mexican trucking debate presents a ripe opportunity to support global labor rights and strengthen organized labor in North America.<sup>112</sup>

#### A. Unfounded and Unsupported Concerns

To begin with, FMCSA has repeatedly assured the public that Mexican carriers operating in the United States will be held to the same safety standards as U.S. truckers.<sup>113</sup> The FMCSA guidelines require that Mexican truckers hold a commercial drivers license, comply with all hours-of-service rules, submit to mandatory drug and alcohol testing, speak and understand English, and drive trucks that comply with the minimum standards for U.S. vehicles.<sup>114</sup> As Secretary of Commerce Carlos Gutierrez said when Bush presented his pilot program to the public: "Safety is the number one priority and strict U.S. safety standards won't change . . . . We will continue to work closely with President Calderon . . . [to] further enhance the commerce of our countries . . . without sacrificing safety or security."<sup>115</sup>

In fact, a report issued by the Inspector General for the DOT in 2007 indicated that the DOT fulfilled the majority of safety requirements created by FMCSA and by Congress through the Murray Amendment.<sup>116</sup> While the Inspector General's 2008 report indicates that the available data is too limited to draw any meaningful conclusions about the safety performance of the pilot program participants, the report does credit the DOT with implementing plans to ensure that every truck is checked each time it crosses the border.<sup>117</sup>

Furthermore, the DOT increased the number of vehicle inspection facilities and the number of inspection personnel.<sup>118</sup> Since 1995, the federal government has spent more than \$500 million to improve border inspection facilities, and has hired over 600 new federal and state vehicle inspectors.<sup>119</sup> In fiscal year 2002, \$56.3 million was appropriated to improve state border safety inspection facilities at the United States-Mexico border, including money to Arizona, California, New Mexico, and Texas.<sup>120</sup> In fiscal year 2003 another \$46.7 million was appropriated to the DOT for inspection

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<sup>112</sup> See Chen, *supra* note 3; Corn, *supra* note 3.

<sup>113</sup> See, e.g. Sheppard, *supra* note 24, at 272.

<sup>114</sup> Department of Transportation, Cross Border Truck Safety Inspection Program (Feb. 23, 2007), <http://www.dot.gov/affairs/cbtsip/dot2107.htm>.

<sup>115</sup> *Id.*

<sup>116</sup> Chen, *supra* note 3.

<sup>117</sup> Scovel Statement, *supra* note 23.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> Department of Transportation, Border Infrastructure Program: Construction of State Border Safety Inspection Facilities at the U.S./Mexico Border, Dec. 1, 2003, <http://www.fhwa.dot.gov/planning/borbrf03.htm>.



facility improvement.<sup>121</sup>

Moreover, safety inspection statistics gathered by both federal and state governments have *not* uncovered large discrepancies between the safety of U.S. and Mexican trucks and drivers.<sup>122</sup> Each year, the DOT collects information on motor carriers operating in the United States and domiciled in the United States, Mexico, or Canada, and publishes the data as the NAFTA Safety Stats.<sup>123</sup> As of June 2008, 22.7% of the vehicles inspected by the DOT and domiciled in the United States were taken out of service due to noncompliance with safety mandates, as compared to only 20.9% of Mexico-domiciled trucks during the same period.<sup>124</sup> The 2008 DOT data also indicate that Mexico-domiciled trucks are involved in significantly fewer accidents in the United States than both U.S. and Canadian trucks.<sup>125</sup>

This trend in safety statistics is not new. In 2000, the California Highway Patrol released statistics on the vehicles passing through their state-of-the-art border inspection facility at the Otay Mesa port of entry.<sup>126</sup> Between 1995, when the facility was opened, and 2000, the facility processed 2.83 million trucks; 63% were from Mexico and 37% were from California.<sup>127</sup> During that time, 23.2% of the Mexican trucks were placed out of service, compared to 22.3% of the Californian trucks—only a 1% difference.<sup>128</sup>

Furthermore, safety statistics crush any fears regarding the fitness of Mexican drivers. According to prior DOT inspection data, U.S. drivers violated U.S. hours-of-work rules eight times more often than their Mexican counterparts.<sup>129</sup> Moreover, in 2008, 6.9% of U.S. drivers inspected were taken out of service, as compared to only 1.3% of Mexican drivers.<sup>130</sup>

Not only do safety statistics indicate that Mexican trucks are no more

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<sup>121</sup> *Id.*

<sup>122</sup> See Burgess, *supra* note 25, at 294–95; Chen, *supra* note 3.

<sup>123</sup> Federal Motor Carrier Safety Administration, About NAFTA Safety Stats, <http://ai.fmcsa.dot.gov/international/border.asp?redirect=about.asp> (last visited Feb. 2, 2009).

<sup>124</sup> NAFTA Safety Stats, *supra* note 17.

<sup>125</sup> The data show that only 70 Mexican trucks were involved in crashes on U.S. roadways, as compared to 93,394 U.S. trucks. *Id.*

<sup>126</sup> Patrick Osio, *Mexican Trucks Fears Are Overblown: Safety Issues Are Being Used to Protect the Economic Interests of U.S. Transportation Companies*, SAN DIEGO METROPOLITAN, Mar. 2001, available at <http://sandiegometro.com/2001/mar/connection.html>.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> Chen, *supra* note 3.

<sup>130</sup> NAFTA Safety Stats, *supra* note 17.

dangerous than U.S. trucks, it is also in the Mexican carriers' best interest to use the highest quality trucks for long-haul trips into the United States.<sup>131</sup> The individuals running Mexican carriers are sophisticated businesspersons intent on modernizing their industry and their country.<sup>132</sup> These businesspersons are also interested in profiting off of NAFTA, and are willing to take the necessary steps to reap the largest reward.<sup>133</sup> By sending their best equipment into the United States, Mexican carriers avoid potential financial losses that decrease their profits, including towing and repair costs for broken trucks, increased insurance rates from frequent accidents, and the high cost of personal injury lawsuits in the United States.<sup>134</sup> Additionally, Mexican carriers using the highest quality equipment are the most reliable, and thus have the lowest rates of product spoilage and damage due to accidents or time lapses. The carriers that are reliable will get the most business and will be the most successful.

### B. The Real Opposition

In light of the above safety statistics, the Teamsters use the safety argument to belie their real opposition to the Bush pilot program: U.S. protectionism.<sup>135</sup> The Teamsters are intent on protecting U.S. truck drivers, and think that U.S. truckers will lose their jobs and their competitive edge once the border is opened to Mexican carriers.<sup>136</sup> A judge writing a decision in a dispute involving the Teamsters regarding cross-border transport noted that the Teamsters believed that they would suffer "both from the extra competition and from a possible increase in the number of truck accidents; in their view, the [proposed agreement] threatens both their pocketbooks and their safety."<sup>137</sup>

This suspicion is justified by, as one journalist put it, "characterizations of Mexican trucks wildly taking over U.S. highways . . . . It's a tactic on the part of the Teamsters and unions in general to scare the public . . . . They're creating an enemy to build up their ranks."<sup>138</sup> Teamsters fear that U.S. truckers will lose their jobs once the border is opened, because "American trucking companies will simply close their U.S.

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<sup>131</sup> Sheppard, *supra* note 24, at 260.

<sup>132</sup> *Id.* at 260.

<sup>133</sup> *Id.* at 261.

<sup>134</sup> *Id.*

<sup>135</sup> See Chen, *supra* note 3; Powell, *supra* note 27, at 496-97; Sheppard, *supra* note 24, at 255.

<sup>136</sup> See Chen, *supra* note 3; Powell, *supra* note 27, at 496-97; Sheppard, *supra* note 24, at 255.

<sup>137</sup> Sheppard, *supra* note 24, at 255 (citing Int'l Brotherhood of Teamsters v. Pena, 17 F.3d 1478, 1480 (1994)).

<sup>138</sup> *Id.* (quoting *Teamsters Ask DOT About Change in Highway Access for Mexican Trucks*, 16 INT'L TRADE REP. (BNA) 1537 (Sept. 22, 1999)).

factories and move their headquarters across the border.”<sup>139</sup> The Teamsters forecast that the majority of U.S. carriers will move to Mexico to take advantage of lower wages and longer work days.<sup>140</sup> The Teamsters are also worried that Mexican truckers will drive down U.S. truckers’ wages.<sup>141</sup>

Some argue that the Teamsters’ opposition to a Mexican trucking plan represents a latent racism towards Mexican truckers, especially because they did not oppose the opening of the United States-Canada border.<sup>142</sup> Supporting the opening of the Canadian border, however, fits with the Teamsters’ purported concern with safety because Canada and the United States have similar truck safety regulations, whereas in the past Mexican regulation was not as stringent.<sup>143</sup>

## VI. DISPELLING OLD NOTIONS

### A. Mexican Truckers are Not a Threat to U.S. Truckers

The Teamster’s protectionist reasons for opposing the Bush Pilot program are misguided and inconsistent with organized labor’s interests. Mexican truckers do not pose a threat to U.S. jobs or the U.S. trucking industry. The U.S. trucking industry is vastly larger than the Mexican trucking industry.<sup>144</sup> Nearly seven million U.S. trucks operated in 2002, compared to a mere 375,000 Mexican trucks.<sup>145</sup> Thus, even if every truck in Mexico began carrying cargo loads into the United States, there would still be a minimal effect on the enormous U.S. trucking industry.<sup>146</sup> Additionally, few Mexican carriers can shoulder the inflated operational costs of transporting goods beyond the commercial zones, as discussed previously.<sup>147</sup> At its height, the Bush pilot program will only permit 100 Mexican carriers to operate in the United States, and the carriers will be awarded permits under the program in small batches.<sup>148</sup> Therefore, the program is easily halted if it proves detrimental to the U.S. trucking

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<sup>139</sup> *Id.* (warning from the Teamsters quoting *Teamsters Ask DOT About Change in Highway Access for Mexican Trucks*, 16 INT’L TRADE REP. (BNA) 1537 (Sept. 22, 1999)).

<sup>140</sup> *Id.*

<sup>141</sup> Chen, *supra* note 3; Corn, *supra* note 3.

<sup>142</sup> See Burgess, *supra* note 25, at 298; Chen, *supra* note 3.

<sup>143</sup> Burgess, *supra* note 26, at 610.

<sup>144</sup> See, e.g. Burgess, *supra* note 25, at 291 (stating that in 2001, the Mexican trucking industry had 5.36% of the hauling capacity of the U.S. trucking industry); Corn, *supra* note 3 (stating that in 2005, there were “168,225 two and three axle tractors in . . . Mexico” and “more than 3,000,000 [ ] registered in the United States.”).

<sup>145</sup> Burgess, *supra* note 25, at 291.

<sup>146</sup> *Id.*

<sup>147</sup> *Supra* Section IV. See Burgess, *supra* note 25, at 291–92, 297.

<sup>148</sup> Simon, *supra* note 85, at A15.

industry or Teamsters members.

Moreover, under the pilot program Mexican carriers will only be permitted to move goods from a point in Mexico to a point in the United States.<sup>149</sup> Therefore, all goods originating in the United States and staying in the United States will continue to be transported by U.S. carriers.<sup>150</sup> It is also interesting to note that lifting restrictions at the Canada-United States border strengthened and expanded the Canadian trucking industry, but has not disrupted U.S. carriers.<sup>151</sup>

Furthermore, the United States is experiencing a severe long-haul trucker shortage.<sup>152</sup> In a report published in 2005, the American Trucking Association estimated that the current trucking shortage is approximately 20,000 truckers.<sup>153</sup> The Association also forecasted that this shortage would continue to grow over the next ten years; between 2005 and 2015, economic growth will spur the need for an annual increase of about 2.2% in the number of long-haul truck drivers, while the supply of long-haul truck drivers in the United States will only increase at an average rate of 1.6% annually.<sup>154</sup>

Thus, the gap between supply and demand of long-haul truckers will increase each year, necessitating an alternate source of truckers.<sup>155</sup> A shortfall will have negative implications for the trucking industry: transport will be delayed, businesses will be less likely to use ground-transport for deliveries, trucking companies will go out of business because customers leave, and truckers will lose their jobs. These costs are too burdensome, especially when Mexican carriers may be able to help fill in gaps left open by U.S. carriers.

#### B. Advantages of Opening the Border

Instead of continually thwarting Bush's pilot program, the Teamsters should support the initiative because it presents opportunities for the Teamsters' members and organized labor in general. First, opening the border with Mexico will create more trade between the United States and Mexico, and thus more work and more profits for everyone.<sup>156</sup> Trade

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<sup>149</sup> Krawzak, *supra* note 1; del Puerto, *supra* note 15.

<sup>150</sup> *Id.*

<sup>151</sup> JOAN MACLEAN, ET AL., NAFTA AND THE TRUCKING INDUSTRY (1999), <http://wehner.tamu.edu/mgmt.www/NAFTA/spring99/Groups99/ITAM/transpo2.htm>.

<sup>152</sup> See GLOBAL INSIGHT, THE U.S. TRUCK DRIVER SHORTAGE: ANALYSIS AND SHORTAGE 4 (2005), available at [http://www.gsa.gov/gsa/cm\\_attachments/GSA\\_DOCUMENT/ATA\\_DriverShortageStudy05\\_R25-c-d\\_0Z5RDZ-i34K-pR.pdf](http://www.gsa.gov/gsa/cm_attachments/GSA_DOCUMENT/ATA_DriverShortageStudy05_R25-c-d_0Z5RDZ-i34K-pR.pdf).

<sup>153</sup> *Id.* at 4.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> See Murphy, *supra* note 29, at 194; Powell, *supra* note 27, at 472; Skahan, *supra* note

between the United States and Mexico is extremely profitable and important. Between the signing of NAFTA in 1994 and 2004, trade between the two countries grew by 191%, and more than \$250 billion worth of goods moves between the countries annually.<sup>157</sup> By 2000, trucks became the main transportation vehicle, moving about 75% of these goods over the border.<sup>158</sup> In April 2008 alone, surface trade between the United States and Mexico totaled \$25.5 billion, up 12.2% from April of 2007.<sup>159</sup> U.S. carriers, however, do not reap the total benefits of this trade since Mexican fleets currently control 80% of the cross-border business.<sup>160</sup> Liberalizing the border will spur U.S. investment in cross-border transport, bringing more money and more business to U.S. carriers.

Furthermore, Mexico retaliated against the United States by restricting U.S. access to its highways once it was clear that the NAFTA timeline would not be implemented.<sup>161</sup> All of the subsequent implementation efforts and stoppages created tension between the United States and Mexico, and current President Felipe Calderon's administration is "deeply troubled" by efforts to block the Bush pilot program.<sup>162</sup> Opening the border mends these wounds and serves as a catalyst for Mexico to open their highways to U.S. trucks.<sup>163</sup> Therefore, liberalizing truck transport presents a lucrative opportunity for U.S. carriers to expand their operations into Mexico, and to fulfill the needs of both the U.S. and the Mexican markets.

Opening the Mexico-United States border can also have broader positive implications for organized labor. The Teamsters have the opportunity to build a strong labor alliance with their neighbors, thus improving labor conditions and strengthening organized labor throughout North America.<sup>164</sup> Stronger alliances lead to better working conditions for both U.S. and Mexican truckers. Instead of focusing on whether Mexican truckers will drive down U.S. wages, the Teamsters should focus on ensuring that every trucker in North America receives an appropriate wage. Furthermore, a larger Teamster-CANACAR alliance holds more weight at the bargaining table, and can compete more effectively with corporate interests pushing for further free trade initiatives that may create more competition in domestic markets.<sup>165</sup>

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21, at 605.

<sup>157</sup> Dempsey, *supra* note 34, at 91.

<sup>158</sup> *Id.*

<sup>159</sup> *April Surface Trade Sets NAFTA Record*, *supra* note 41.

<sup>160</sup> *Id.*

<sup>161</sup> Dempsey, *supra* note 34, at 93.

<sup>162</sup> Simon, *supra* note 85, at A15.

<sup>163</sup> See, Dempsey, *supra* note 34, at 91-92.

<sup>164</sup> See Chen, *supra* note 3; Sustar, *supra* note 13; Wojcik, *supra* note 111.

<sup>165</sup> Chen, *supra* note 3; Sustar, *supra* note 13.

Finally, on a more general note, it is important for the United States to uphold its obligations under international agreements.<sup>166</sup> Showing U.S. citizens and other countries that the United States is dependable and follows through on international treaties will create more trade and economic expansion opportunities in the future.<sup>167</sup>

## CONCLUSION

NAFTA was heralded as a victory for free trade, and an agreement that would revolutionize the relationships between the North American countries. While NAFTA certainly changed the way Canada, Mexico, and the United States interact, there is one piece of the treaty that is still not in effect more than ten years after its signing: Annex I. The trucking provisions relating to Mexico in Annex I have been attacked at every stage by aggressive efforts from the United States' largest truckers' union, the International Brotherhood of Teamsters. The Teamsters assert that Mexican trucks are unsafe, and fear the potential loss of U.S. jobs. In reality, the opening of the border and the implementation of the Bush pilot program would benefit the Teamsters by increasing opportunities for carriers and strengthening organized labor's standing in the debate.

Although the pilot program is slated to continue for an additional two years, there are a variety of situations that could greatly impact the progression of this conflict. While it is unlikely that the Teamsters will alter their strong opposition to permitting Mexican trucks onto U.S. roadways, the 2008 elections might have brought a stronger ally into the White House, whose administration may be willing to tighten control over the pilot program, or stop the program all together. Moreover, the Teamsters recently supported a case filed in the Ninth Circuit, alleging that the proposed extension directly violates the Dorgan Amendment. The court has not yet issued an opinion on this matter, but the decision could potentially impact the progression of this debate. Although these unknowns may change the future of the Mexican trucking debate, it is likely that the pilot program will continue, but after the extension expires, intense pressure from the Teamsters and other labor groups may mean the end of full NAFTA compliance.

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<sup>166</sup> See Sheppard, *supra* note 24, at 267 (quoting a U.S. legislator as stating that "the United States made a solemn commitment under NAFTA to open its borders to Mexican trucks—just as Mexico promised to do for American trucks. It's time we both kept our word.").

<sup>167</sup> See *id.* at 267–68 (explaining that the United States has opened Pandora's box by setting precedent for it and other countries to disregard transnational agreements and by generally decreasing the level of trust between nations).

