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Meredith Vesledahl

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# ECONOMIC IMPLICATIONS OF THE BUSH PILOT PROGRAM ON CROSS-BORDER TRADE BETWEEN THE UNITED STATES AND MEXICO

*Meredith Vesledahl\**

SINCE 1982, Mexican trucks entering the United States have been confined to operate only within the border of commercial zones extending approximately twenty-five miles into the United States, where they must transfer their cargo to American vehicles.<sup>1</sup> One of the requirements of the North American Free Trade Agreement (NAFTA) was that the United States must gradually lift this moratorium on Mexican motor carriers and allow these carriers to operate beyond the commercial zones.<sup>2</sup> This requirement, however, had yet to be fulfilled, with no substantial steps taken towards the lift of the moratorium, until February 24, 2007, when the U.S. Secretary of Transportation, Mary E. Peters, and the Mexico Secretary of Communications and Transportation, Luis Tellez Kuenzler, announced a demonstration project that would finally execute the NAFTA trucking provisions.<sup>3</sup>

The purpose of the proposed demonstration project, according to the Federal Motor Carrier Safety Administration, is “to demonstrate the effectiveness of the safety programs adopted by Mexico-domiciled motor carriers and the monitoring and the enforcement systems developed by DOT [Department of Transportation].”<sup>4</sup> The demonstration project is limited to one year and will allow up to one hundred Mexico-domiciled motor carriers to operate beyond the border commercial zones and transport international cargo throughout the United States.<sup>5</sup> In accordance with the NAFTA trucking provisions, this project only involves the transport of international cargo, with the transport of domestic cargo reserved for U.S. carriers.<sup>6</sup> Consequently, Mexican carriers will not be permitted

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\* J.D. Candidate, Southern Methodist University Dedman School of Law, 2009; B.A., Georgetown University, 2006.

1. *Free Trade and Fireballs: Coming to America in an 18-wheeler*, THE ECONOMIST, Sept. 25, 2007, at 40, available at [http://www.economist.com/world/na/displaystory.cfm?story\\_id=9804164](http://www.economist.com/world/na/displaystory.cfm?story_id=9804164). See also Notice, 72 Fed. Reg. 23883 (May 1, 2007).
2. Notice, 72 Fed. Reg. at 23883.
3. *Id.* at 23884.
4. Notice, 72 Fed. Reg. 46263, 46264 (Aug. 17, 2007).
5. *Id.*
6. *Id.* at 46286. See also *Hearing on NAFTA: Arbitration Panel Decision and Safety Issues With Regard to Opening the U.S./Mexican Border to Motor Carriers Before*

to transport domestically point-to-point within the United States and will only be able to load in Mexico and unload in the United States, or alternatively, to load in the United States and unload in Mexico.<sup>7</sup> Additionally, “[u]p to 100 U.S.-domiciled motor carriers will be granted reciprocal rights to operate in Mexico for the same [one-year] period.”<sup>8</sup> And, all Mexican participants operating within the United States under the project will be obliged to comply with all of the current U.S. safety standards.<sup>9</sup>

As several U.S. and Mexican trucking companies have been given the authority to make long-haul deliveries under the demonstration project,<sup>10</sup> there have been outcries from various U.S. groups to halt the implementation of this project.<sup>11</sup> For example, on August 29, 2007, the International Brotherhood of Teamsters, together with other environmental and highway safety groups, filed an emergency injunction in the Ninth Circuit Court of Appeals to block the Bush administration from opening the U.S. border to Mexican trucking companies.<sup>12</sup> The Ninth Circuit ruled against the Teamsters union,<sup>13</sup> but this group’s continued opposition to the program raises serious questions about the implications of the program. Although the group focuses their arguments on the safety and environmental implications of the demonstration program, fears over outsourcing and increased competition from Mexican truckers are obviously of utmost importance to the group.<sup>14</sup> As more and more companies are granted access under the demonstration program, the question of whether the economic benefits of this program will outweigh the economic disadvantages remains open for debate.

Currently, the greatest economic obstacles of the pilot program concern the potential loss of income by American truckers.<sup>15</sup> These truckers fear that because the labor costs and fuel costs are cheaper in Mexico than in the United States, companies in the United States will hire Mexican trucks instead of U.S. trucks in order to reduce their costs.<sup>16</sup> Mexican

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*the Subcomm. on Highways and Transit, H. Transportation Comm.*, 108th Cong. (2001) [hereinafter *Hearing on NAFTA*] (testimony of Peter F. Allgeier, Deputy United States Trade Representative).

7. *Hearing on NAFTA*, *supra* note 6.
8. Notice, 72 Fed. Reg. at 46264.
9. *Id.* at 23884.
10. News Release, *Second U.S. Trucking Company, Second Mexican Trucking Company Cleared to Participate in Cross-Border Trucking Demonstration Project*, Fed. Motor Carrier Safety Administration No. 07-07 (Sept. 19, 2007), available at <http://www.fmcsa.dot.gov/about/news/news-releases/2007/091907.htm>.
11. See, e.g., *Free Trade and Fireballs: Coming to America in an 18-wheeler*, *supra* note 1.
12. *Teamsters Sue to Stop Illegal, Unsafe Mexican Trucks From Crossing Into U.S.*, Int’l Brotherhood of Teamsters (Aug. 29, 2007), [http://www.teamster.org/07news/nr\\_070828](http://www.teamster.org/07news/nr_070828).
13. *Free Trade and Fireballs: Coming to America in an 18-wheeler*, *supra* note 1.
14. John Gallagher, *Racing for NAFTA Freight*, TRAFFIC WORLD, Mar. 12, 2007, at 1.
15. Billie Thomas, DOT Law Suit to Stop Mexican Trucks on American Highways, Helium (2007), <http://www.helium.com/tm/317283/ooida-owner-operator-independent>.
16. *Id.*

trucks can fill up with enough gas in Mexico to run 1800 miles before they need to refuel in Mexico, thus keeping fuel costs significantly lower than with U.S. trucks, which must fill up with the higher U.S. gas prices.<sup>17</sup> By filling up in Mexico, Mexican carriers also avoid state or federal fuel taxes, further decreasing their transportation costs.<sup>18</sup> Additionally, the Teamsters claim that on average a qualified Mexican driver earns seven dollars per hour, whereas a U.S. driver earns at least eighteen dollars per hour.<sup>19</sup> Consequently, opposition groups argue that these lower labor and transportation costs for Mexican carriers will result in lower rates than U.S. carriers can offer and ultimately lure shippers to employ the Mexican carriers to haul freight rather than the U.S. carriers.<sup>20</sup>

While the Federal Motor Carrier Safety Administration (FMCSA) argues that the pilot program will have a minimal economic impact on U.S. carriers because “Mexico-domiciled motor carriers cannot compete against U.S.-domiciled carriers for point-to-point deliveries of domestic freight cabotage within the United States,”<sup>21</sup> interest groups have argued that the lack of supervision currently in place for the pilot program would leave the U.S. border completely open and allow Mexican trucks to operate throughout the United States in blatant disregard of cabotage laws.<sup>22</sup> Under cabotage laws, Mexican truckers are restricted to “driving to their delivery location and picking up a load in that same area which is [destined for] Mexico.”<sup>23</sup> However, there is currently no mechanism in place to ensure compliance with these laws, leaving Mexican truckers within the demonstration project free to drive anywhere in the United States unsupervised and without impediment.<sup>24</sup> Additionally, opposition points to the fact that only a small percentage of operating authority violations are detected, and the FMCSA has no information as to how many of these detected violations entailed a violation of cabotage law.<sup>25</sup> This uncertainty as to the potential enforcement of cabotage law further aggravates the fear that the Mexican trucks will take business away from the U.S. trucks and trigger a decline in jobs and income for U.S. truckers.<sup>26</sup>

Those groups most likely to be negatively impacted by the program are the smaller carriers and those companies that have specialized in the border transfer process.<sup>27</sup> The demonstration project would most likely create an increased competition for smaller carriers in the United States, “causing a potential strain on the trucking industry.”<sup>28</sup> Further, because

17. *Id.*

18. Notice, 72 Fed. Reg. 46285 (Aug. 17, 2007).

19. Ricardo Castillo Mireles, *Mexican Trucks to Cross U.S. Border*, LOGISTICS TODAY, Apr. 2007 at 1, 17.

20. Notice, 72 Fed. Reg. at 46285.

21. *Id.* at 46286.

22. Thomas, *supra* note 15.

23. *Id.*

24. *Id.*

25. Notice, 72 Fed. Reg. at 46283.

26. *See generally id.*

27. *See, e.g.*, 72 Fed. Reg. at 46285.

28. *Id.*

most of the commercially available U.S. insurance policies do not cover travel within Mexico, most likely only large self-insured carriers will have access to the Mexican market.<sup>29</sup> Thus, small business carriers will probably be excluded from the Mexican market while simultaneously experiencing increased competition within the U.S. market.<sup>30</sup> Trucking companies that specialize in the border crossing process will also be significantly impacted by the demonstration program, as the project would streamline the currently inefficient process.<sup>31</sup> Those trucking companies “whose business has disproportionately been border-to-destination moves will be hurt if they are not able to leverage their in-country delivery competency into securing moves from origin.”<sup>32</sup> The breadth of the impact on these trucking companies will likely depend on the strength of the partnerships that these companies form with U.S. companies.<sup>33</sup>

These potential disadvantages, however, cannot overshadow the fact that NAFTA has proved to be a success in expanding U.S. trade and creating increased competitiveness for manufacturers.<sup>34</sup> In fact, between 1993 and 2000, exports of U.S. merchandise to Mexico rose 170 percent, and these exports supported around 1.2 million American jobs.<sup>35</sup> Further, U.S. exports to Canada and Mexico are more than double what they were prior to 1993, and by eliminating tariffs NAFTA has lowered prices for consumers in the United States, Mexico, and Canada.<sup>36</sup> And, while Mexico has increased the number of factories manufacturing goods for export, the United States continues to be the leading supplier of these factories, providing an estimated 82 percent of components to the Mexican factories.<sup>37</sup> Consequently, the amount of U.S. goods exported within North America has increased almost two times as fast as the amount of U.S. goods exported to the rest of the world.<sup>38</sup>

The trucking industry in particular has served an important part in enhancing U.S. economic growth.<sup>39</sup> For example, in 2006, trucks transported 219.4 billion dollars worth of goods, over 80 percent of the value of the surface trade between the United States and Mexico.<sup>40</sup> The industry’s growth under NAFTA helped, in turn, to “catalyze border industri-

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29. *Id.*

30. *Id.*

31. Erik Markeset, *The Positive Impact of the Change Allowing Mexican Truckers to Operate in the U.S.*, SUPPLY CHAIN DIGEST, Mar. 19, 2007, [http://scdigest.com/Assets/Experts/Transportunities\\_07-03-13.php?cid=1116](http://scdigest.com/Assets/Experts/Transportunities_07-03-13.php?cid=1116).

32. *Id.*

33. *Id.*

34. *Hearing on NAFTA*, *supra* note 6.

35. *Id.*

36. *Id.*

37. *Id.*

38. Gallagher, *supra* note 14 at 1.

39. James P. Worthington, *Safe, Reciprocal Crossborder Trucking*, TRAFFIC WORLD, Apr. 9, 2007, at 1.

40. *Id.*

alization” in both the United States and Mexico.<sup>41</sup> The population of the Mexican states bordering Texas had increased 22 percent from 1990 to 2000, while the population of U.S. border towns had increased 29 percent.<sup>42</sup> This population increase can be attributed to the increase in available jobs resulting from more and more facilities and services opening within these border towns.<sup>43</sup>

One of the greatest booms of the NAFTA trucking industry is the incredible growth of Mexico’s maquiladora industry.<sup>44</sup> The maquiladora plants typically import U.S. parts, assemble them, and immediately ship the finished products back to the United States.<sup>45</sup> On the return to the United States, “the shipper pays only such return import duties as are applicable to the value added by the manufacturing process in Mexico.”<sup>46</sup> Since 1994, when NAFTA was implemented, through March 2000, the maquiladora industry has been the most vibrant area of the Mexican economy, adding 1,400 new plants and generating around 640,000 new jobs.<sup>47</sup> In addition to benefiting the Mexican economy and securing new jobs for Mexican workers, the growth of the maquiladora industry has supported the U.S. economy more than U.S. production sharing arrangements with every other country.<sup>48</sup> Because the maquiladoras rely heavily on U.S. suppliers for their parts, their growth in turn stimulates the growth of the American economy.<sup>49</sup> Consequently, because of the maquiladora industry’s effect on employment, trade, and commercial traffic between the United States and Mexico, the border areas of the two countries continue to achieve economic significance for both countries.<sup>50</sup>

But, even with the great role that the trucking industry has played in the growth of the maquiladora industry and the U.S. economy, motor carriers have not yet had the opportunity to utilize fully the benefits of free trade under NAFTA.<sup>51</sup> Since NAFTA went into effect, “cross-border truck traffic has soared by 170%. . . with over 4.2 million truck cross-

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41. Susan Combs, Special Report, *State Functions at the Texas-Mexico Border and Cross-Border Transportation*, Window on State Government (Jan. 2001), <http://www.window.state.tx.us/specialrpt/border/sfatb1.html>.

42. *Id.*

43. *See, e.g., id.*; Dave Hannon, *Logistics Providers Increase Focus on Mexico*, PURCHASING MAGAZINE ONLINE, Aug. 22, 2007, <http://www.purchasing.com/article/CA6470860.html>.

44. Combs, *supra* note 41.

45. William C. Gruben and Sherry L. Kiser, *NAFTA and Maquiladoras: Is the Growth Connected?*, Federal Reserve Bank of Dallas, June 2001, [http://www.dallasfed.org/research/border/tbe\\_gruben.html](http://www.dallasfed.org/research/border/tbe_gruben.html).

46. *Id.*

47. Combs, *supra* note 41.

48. J.F. Hombeck, *Maquiladoras and NAFTA: The Economics of U.S.-Mexico Production Sharing and Trade*, C.R.S. Report 98-66 E, Jan. 27, 1998, <http://digital.library.unt.edu/govtdocs/crs/permalink/meta-crs-812:1/>

49. *Id.*

50. Combs, *supra* note 41.

51. *See, e.g.,* Worthington, *supra* note 39.

ings in 1999.”<sup>52</sup> Only twenty-five ports of entry along the border process all of this commercial vehicle traffic, with seven of the ports carrying 91 percent of the cross-border truck traffic.<sup>53</sup> This booming cross-border trade in only a few ports “aggravates traditional border transportation bottlenecks, resulting in unprecedented congestion at border crossings.”<sup>54</sup> Part of this congestion is due to the industry procedure of the maquiladoras.<sup>55</sup> The maquiladoras’ operations use the “just-in-time” manufacturing method so that they produce goods only as orders are received and then ship the orders the same day.<sup>56</sup> As a result, most of the Mexican trucks “carrying finished goods are released in the afternoon in large batches and attempt to cross the border at the same time. . . .”<sup>57</sup> This congestion leads to inefficiency and increased costs.<sup>58</sup>

The inefficiency and congestion at cross-border ports can also largely be attributed to the disorganized requirements of governmental agencies.<sup>59</sup> A truck entering the United States may have to handle as many as six U.S. governmental agencies: Customs, the Department of Agriculture, the Food and Drug Administration, the Immigration and Naturalization Service (INS), the Department of Transportation, and the Fish and Wildlife Service.<sup>60</sup> Each of these agencies has its own paperwork and inspection procedures, thus leading to a further backlog of trucks and longer delays.<sup>61</sup>

Additionally, the procedure for the transportation and delivery of goods is very complex, and requires the use of three different trucks to deliver a single load of freight from Mexico to the United States.<sup>62</sup> During the transportation process, “a long-haul truck first transports the trailer of goods to a staging yard near the border. A short-haul drayage company then shuttles the trailer to the border, where the company pays all necessary duties and Mexican customs brokers prepare documents.”<sup>63</sup> Once the trailer passes through Mexican customs inspection, it crosses the border, where U.S. customs brokers prepare further documents, and the truck continues to a primary inspection station.<sup>64</sup> At the primary inspection station, the customs inspectors review the truck’s documentation, and, depending on such factors as the contents of the trailer or the

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52. Julie Schneider, *NAFTA & Transportation: Impacts on the U.S.-Mexico Border, BORDERLINES*, June 2000, available at <http://americas.IRC-online.org/borderlines/PDF/BL67.pdf>.

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. Robert Guy Matthews, *U.S. to Allow Mexican Trucks; Pilot Program Resolves NAFTA Issue but Upsets Teamsters, Lawmakers*, WALL ST. J., Feb. 24, 2007, at A.3.

59. Schneider, *supra* note 52.

60. *Id.*

61. *Id.*

62. *Hearing on NAFTA, supra* note 6.

63. Schneider, *supra* note 52.

64. *Id.*

queue order, the truck may then be obliged to progress to a secondary inspection station.<sup>65</sup> After the inspection procedures are complete, the truck progresses to a drayage yard where its goods are shifted to a U.S. long-haul carrier charged with delivering the goods within the United States.<sup>66</sup> Backlogs in any one of these steps will lead to increased traffic and additional delays at the border.<sup>67</sup> Further, the same inefficient process must be used to carry goods from the United States to Mexico.<sup>68</sup>

This cumbersome procedure becomes very costly for suppliers, causing an increase in transactions costs, whose burden is born by producers and consumers, as well as a decrease in potential cross-border trade.<sup>69</sup> For example, the current border crossing process, on average, adds \$85 to \$120 per crossing to the border crossing costs as well as five hours to the delivery time.<sup>70</sup> Border crossing services already cost \$287 to \$639 per truck, so the added transaction costs significantly increase an already expensive process.<sup>71</sup> Additionally, as result of the procedure, "trucks delivering finished goods to a long-haul truck on the U.S. side return to Mexico empty, while trucks delivering raw materials to maquiladoras in Mexico cross back to the [United States] empty."<sup>72</sup> This leaves an estimated 47 percent of containers entering the United States empty, which produces additional traffic and further minimizes the prospective value of the cross-border trade.<sup>73</sup> Further, the Department of Transportation estimated that the drayage system alone results in 400 million dollars in additional costs.<sup>74</sup> These additional costs do not include other costs related to warehousing, delays, and other costs that are more difficult to quantify, so that increased costs most likely greatly exceed the 400 million dollar figure.<sup>75</sup> The added expenses hike the cost of merchandise up as much as 35 percent, the cost of which is paid by the owner and translated into costs for consumers, wrecking havoc on competitive pricing.<sup>76</sup>

In response to the current inefficiencies in the cross-border trade, many logistics providers have made attempts to increase their offerings around the U.S.-Mexico border and to streamline the process of shipping across the border.<sup>77</sup> For example, "[i]n July, DHL introduced a new cross-bor-

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65. *Id.*

66. *Id.*

67. *Id.*

68. Schneider, *supra* note 52.

69. Alan K. Fox, Joseph F. Francois & Pilar Londono-Kent, *Measuring Border Crossing Costs and Their Impact on Trade Flows: The United States-Mexican Trucking Case* (Apr. 30, 2003) (unpublished paper, presented at the 6th Annual Conference on Global Economic Analysis, the Hague, the Netherlands), at 6 *available at* [https://www.gtap.agecon.purdue.edu/resources/res\\_display.asp?RecordID=1282](https://www.gtap.agecon.purdue.edu/resources/res_display.asp?RecordID=1282).

70. Markeset, *supra* note 31 at 7.

71. Fox, *supra* note 69.

72. Schneider, *supra* note 52.

73. *Id.*

74. Worthington, *supra* note 39.

75. *Id.*

76. Ricardo Castillo Mireles, *Mexican Trucks Ahoy!*, LOGISTICS TODAY, June 2007, at p. 14.

77. Hannon, *supra* note 43.



der service based out of Harlingen, Texas, capable of handling triple the volume of its previous offering as well as heavier palletized freight and non-conveyable material to meet the growing logistics needs” of the border towns.<sup>78</sup> Additionally, FedEx has opened two border facilities, one in Ciudad Juarez, Mexico, and the other in El Paso, Texas, to facilitate the transportation of goods across the border.<sup>79</sup> According to Ed Clark, president of FedEx Trade Networks, through the opening of these two border facilities, FedEx “looks to simplify the supply chain process by managing the transportation, brokerage and distribution of shipments that cross the Mexico-U.S. border on a regular basis. . . .”<sup>80</sup> Accordingly, this “expanded solution” will help FedEx “work hand-in-hand with maquilas . . . as part of their supply chain, so they can benefit from a simplified shipping and customs clearance process managed entirely by FedEx.”<sup>81</sup>

As the need for a more efficient cross-border transportation system is evident, the opening of the U.S.-Mexico border to a limited number of trucks under the demonstration program appears to be a step in the right direction. With the opening of the border, the inefficient process of offloading and reloading goods at the border will be simplified.<sup>82</sup> The previously wasted time and manpower used in the offloading and reloading of goods will be better spent elsewhere, increasing delivery times and lowering costs for production delays.<sup>83</sup> Additionally, American trucking companies will have the ability to compete for deliveries within Mexico, increasing profits and increasing demand for U.S. truck drivers.<sup>84</sup> The demonstration project could thus, according to investment firm Morgan Keegan, “serve to benefit the U.S. truckload industry as a whole by easing the tight driver market that has served as an inflationary cost for many carriers. . . .”<sup>85</sup> Truck brokers could also benefit from the program by looking to connect Mexican truckers with backhauls, for unless these truckers find a backhaul they will return to Mexico empty.<sup>86</sup> Consequently, truck brokers could become the ideal participant to manage this new market, which would, in turn, benefit the U.S. economy.<sup>87</sup>

Moreover, not only will the trucking industry as a whole benefit within the United States, but also those U.S. carriers owning a stake in Mexican companies could stand to gain a tremendous amount of revenue.<sup>88</sup> Many U.S.-based trucking companies “have invested in the Mexican infrastruc-

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78. *Id.*

79. Press Release, FedEx Expands Cross-Border Solutions to Facilitate Trade Along Mexico-U.S. Border, Aug. 22, 2007, <http://news.van.fedex.com/node/4358>.

80. *Id.*

81. *Id.*

82. David T. Griswold, *Ban on Mexican Trucks a Setback for U.S.-Mexican Trade, NAFTA*, C. N.Y. BUS. J., July 6, 2001, at 18.

83. *Id.*

84. *See generally id.*

85. Gallagher, *supra* note 14.

86. *Id.*

87. *Id.*

88. *Id.*

ture and have a commercial presence in the country.”<sup>89</sup> For example, the U.S. truckload carrier Celadon Group owns Jaguar, a Mexican trucking operation that operates 250 trucks in Mexico and produces about 35 percent of Celadon’s business.<sup>90</sup> Under the demonstration program, freight can move “directly from origin to destination” and, accordingly, “eliminate inefficiencies at the border and allow Celadon to use Mexican drivers for its cross-border moves.”<sup>91</sup> Thus, unsurprisingly, the National Association of Courier Enterprises, which boasts such members as DHL, UPS, and FedEx, supports the pilot project and claims that the “project will make trade easier for both countries.”<sup>92</sup>

Ultimately, although there is a valid fear for U.S. truckers of outsourcing and increased competition with Mexican drivers, the potential economic benefits of the demonstration program seem to support the implementation of the program. The streamlining of the currently inefficient cross-border practices, as well as the opening of the market to additional goods and to further trade with Mexico, suggest that allowing border access to both Mexican and U.S. trucks would provide a much needed change to the infrastructure controlling the cross-border trade as well as stimulate the U.S. economy and trade.

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89. Mireles, *Mexican Trucks to Cross U.S. Border*, *supra* note 19.

90. Gallagher, *supra* note 14.

91. *Id.*

92. Mireles, *Mexican Trucks to Cross U.S. Border*, *supra* note 19.



# Updates

