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RECENT DEVELOPMENTS IN NAFTA LAW

Albany R. Shaw*

I. FULL IMPLEMENTATION OF NAFTA

ON January 1, 2008, the North American Free Trade Agreement (NAFTA) went into full effect.¹ After fourteen years of gradually phasing out protectionist measures, “the last remaining barriers to agricultural trade in North America were dismantled.”² Specifically, Mexican duties on U.S. sugar were lifted as well as restrictions on U.S. exports of “corn, dry edible beans, nonfat dry milk, and high fructose corn syrup.”³ U.S. duties were also lifted on Mexican sugar in addition to limits on “Mexican exports. . . of certain horticultural products.”⁴ But many farmers in both countries have expressed displeasure now that these barriers have been removed.⁵

Some maintain that U.S. sugar producers are only concerned because this opens the door for Mexican sugar to enter the U.S. market at a much cheaper cost, thereby “undercutting the government system of sugar supports, which guarantees farmers high prices.”⁶ But sugar producers in Mexico and the United States seem to share concerns about the effects of removing trade barriers under NAFTA, joining forces to offset an action that they believe will lead to “market chaos” and NAFTA’s failure.⁷ Together the groups “developed a joint set of recommendations to their governments.”⁸ Most notably, the group called for U.S. market allotments based on Mexico’s needs and Mexican allotments, “taking into account the amount of Mexican sugar displaced by high fructose corn syrup sales to Mexico.”⁹ The group also recommended creating a Joint Mexico-United States Sugar Commission as a means of supervising the implementation of the recommended agreement and resolving potential

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1. *U.S. and Mexican Officials Discuss NAFTA*, 25 INT’L TRADE REP. (BNA) 85 (2008).

2. Eduardo Porter, *NAFTA is a Sweet Deal, So Why Are They So Sour?*, N.Y. TIMES, Feb. 11, 2008, at A20.

3. Rossella Brevetti, *NAFTA Reaches Milestone in 2008 as Agricultural Tariffs End*, 25 INT’L TRADE REP. (BNA) 99 (2008).

4. *Id.*

5. Porter, *supra* note 2.

6. *Id.*

7. Rossella Brevetti, *U.S., Mexico Sugar Industries Develop NAFTA Recommendations*, 25 INT’L TRADE REP. (BNA) 129 (2008).

8. *Id.*

9. *Id.*

disputes.¹⁰

Mexican corn farmers, on the other hand, believe that increased U.S. agricultural imports will not only cut into their "meager livelihoods," but also "end a centuries-old way of life revolving around small-scale farming."¹¹ Although the Mexican government has implemented plans to help, smaller farmers have rebuffed these efforts.¹² Many argue that the Mexican government has done too little. They insist that the policies have mostly focused on the large producers instead of the overwhelming majority of small producers.¹³ In that same vein, many Mexican farmers note that they are handicapped in comparison to "[their] neighbors up north" because they lack the same kinds of government subsidies enjoyed by U.S. and Canadian farmers.¹⁴ In fact, hundreds of thousands of Mexican farmers and activists were so incensed by this latest NAFTA development and their government's response, that they protested in Mexico City.¹⁵ At the demonstration they called for the Mexican government to either renegotiate NAFTA or "to reinstate protection for basic crops."¹⁶

While the Mexican government has said that it will not renegotiate NAFTA, it is open to the possibility of increasing farmers' subsidies. Understanding the economic realities facing the vast majority of its country's farmers, the Mexican Congress recently "ordered the creation of a special commission to look at emergency measures for Mexican farmers when tariffs are removed on U.S. exports."¹⁷ Rep. Ismael Ordaz, who initiated the commission's creation, explained that these steps are necessary because the "Mexican government failed to prepare the producers for U.S. competition during the last 14 years."¹⁸

II. MEXICAN TRUCK PILOT PROGRAM

In addition to the debate taking place on the agricultural front, NAFTA is also facing increased scrutiny in the transportation arena. Truckers in the United States and Mexico have raised concerns about a pilot program implemented in February 2007 that allows "a limited number of Mexican trucks to deliver goods within the continental United States."¹⁹ Although Mexican trucks should already have total access to the United States under NAFTA, trucking provisions in the agreement

10. *Id.*

11. Porter, *supra* note 2.

12. Mark Stevenson, Mexican Farmers Protest US Trade Pact (Feb. 1, 2008), [http://www.thefreelibrary.com/Mexican farmers protest US trade pact-a01610895435](http://www.thefreelibrary.com/Mexican+farmers+protest+US+trade+pact-a01610895435) [hereinafter *Mexican Farmers*].

13. *Id.*

14. Harris Whitbeck, Mexican Farmers Protest NAFTA (Feb. 1, 2008), <http://www.cnn.com/2008/WORLD/americas/02/01/mexico.farmers/index.html>.

15. *Id.*

16. *Mexican Farmers*, *supra* note 12.

17. Ioan Grillo, *Mexican Congress Created Commission to Support Farmers Faced with NAFTA*, 24 INT'L TRADE REP. (BNA) 1552 (2007).

18. *Id.*

19. Rosella Brevetti, *Teamsters Union Files New Letter Against Mexican Truck Pilot Program*, 25 INT'L TRADE REP. (BNA) 52 (2008).

were not put into operation because of safety concerns.²⁰ As such, the U.S. Department of Transportation (DOT) developed the pilot program to ensure compliance with the provisions.²¹

The Mexican National Truck Drivers Federation has expressed concern that its government was, in essence, “hand[ing] Mexican trucking over to the Americans” by participating in the program.²² Elias Dip Rame, president of the group, further stated that the program really serves the “interest of the state or rather of the leaders of large privately-owned manufacturing companies, but [the program] is not in the interest of the transport sector.”²³ Members of the group are so displeased about the Mexican government’s allowance of U.S. trucks into their country that the organization threatened to block the U.S./Mexico border if the pilot program continued.²⁴

Likewise, the International Brotherhood of Teamsters also disapproves of continuing the pilot program. According to the Teamsters, the program sets “a dangerous precedent” and should be discontinued because it does not hold “Mexican trucks and truck drivers. . .to the same safety standards as their U.S. counterparts.”²⁵ As such, the Teamsters and other groups have filed a lawsuit in the Ninth Circuit of the U.S. Court of Appeals to stop the program.²⁶

20. *Id.*

21. *Id.*

22. Jami Jones, *Special Report: Mexican Truckers Planning to Block Border*, LAND LINE MAG., Dec. 19, 2007, http://www.landlinemag.com/Special_Reports/2007/Dec_07/121907_mexican_truckers.htm.

23. Jonathan Tapia, *Mexican Truckers Threaten to Close Northern Border in January*, EL FINANCIERO, Dec. 7, 2007, http://www.teamster.org/07news/hn_071227_2.asp.

24. Jones, *supra* note 22.

25. Press Release, International Brotherhood of Teamsters, Teamsters Back in Court to Stop Unsafe Mexican Trucks: Bush Administration Defies New Law by Continuing Pilot Program (Jan. 7, 2008), http://www.teamster.org/08news/nr_080107_3.asp.

26. *Id.*

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