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Casey Burgess*

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XI. **Summary**
In 1992, the governments of the United States, Canada, and Mexico signed the North American Free Trade Agreement (NAFTA). NAFTA became effective on January 1, 1994. The overall affect of NAFTA has been positive. Cross-border trade between the United States and Mexico rose 113 percent between 1993 and 1998. United States' exports to Mexico had grown to $111.35 billion by 2000. NAFTA created 350,000 American jobs. The agreement also helped spark much needed economic reform in Mexico. NAFTA has become the world's most productive trade alliance, employing almost 400 million people who produce $10 trillion in products and services. The agreement has not reached its full potential, however, due to controversy over cross-border trucking.

I. Introduction

This comment will address the history behind the NAFTA truck debate, the decision of the NAFTA arbitration panel, and the differences in trucking regulation between the United States and Mexico. The paper will then focus on concerns held by the American public regarding compliance with the arbitration panel's decision, and opening the border to Mexican trucks. The comment will then address the political dimensions of the NAFTA truck debate, and recently passed Congressional legislation. The author will also suggest how new technology can streamline border inspections, thereby allowing for more efficient movement of goods.

II. History Behind the Dispute

Under the terms of NAFTA, Mexican trucks were to be permitted to drive throughout the United States-Mexico border region by December 18, 1995. NAFTA also provided that trucks from any NAFTA nation could drive anywhere in any NAFTA country

2. NAFTA art. 2203.
4. NAFTA at Five Years, supra note 3.
5. Id.
6. Id.
by January 1, 2000. However, instead of complying with NAFTA, the Clinton administration suspended the cross-border trucking clause on December 17, 1995, one day before it was to take effect.

A. CLOSING THE BORDER

On December 18, 1995, the Department of Transportation (DOT) began accepting applications from Mexican motor carriers to operate in the United States. However, prior to the border's opening, DOT Secretary Federico Peña announced a freeze on processing application from Mexican carriers. Secretary Peña explained that the freeze on applications from Mexican carriers was due to the lack of harmonization between Mexican and American safety standards. Administration officials claimed that Mexican motor carriers were not safe, and that the action was taken to protect American motorists. The Clinton administration cited drastic differences in the enforcement and application of Mexican and American safety standards. They also claimed that state and federal officials were unable to effectively enforce American standards on Mexican carriers.

B. TEXAS DEPARTMENT OF TRANSPORTATION STUDY

The Clinton administration needed proof to back up its allegations, so it requested the Texas Department of Transportation (TXDOT) to conduct a study on Mexican truck safety. TXDOT conducted this study between December 19, 1995 and May 3, 1996. The study found that Mexican trucks failed safety inspections 48.7 percent of the time in Laredo, and 77.4 percent failed in El Paso. This study gave the administration the ammunition it needed to keep the border closed.

13. Id.
15. Cazamias, supra note 12, at 353.
17. Osio, supra note 10.
18. Id.
C. **Drayage System**

The closing of the United States-Mexico border in 1995 left intact a situation where many Mexican trucks were only allowed to operate in narrow commercial zones, extending twelve to twenty-five miles into the United States. Instead of the free flow of traffic and goods that the drafters of NAFTA envisioned, a drayage system persisted.

Under a drayage system, goods are loaded onto Mexican trucks and driven to a border crossing, such as Nuevo Laredo. The goods are then off-loaded onto a short-haul truck, which is driven across the Rio Grande to Laredo where the goods are then off-loaded again onto an American rig. This is an inefficient, uneconomical solution that can increase merchandise-shipping time—sometimes by weeks—and allows inspectors to pilfer goods from trailers.

D. **Seeds of Discontent**

The Clinton administration's decision to keep the border closed has led many Mexicans to feel like they are being taken advantage of by their wealthier neighbor to the north. This led the Mexican government to challenge Clinton's decision before a NAFTA arbitration tribunal in 1998.

III. **The Arbitration Dispute**

A. **Mexican Argument**

In its Chapter 20 arbitration, Mexico claimed that the United States violated Annex I by not phasing out restrictions on cross-border motor-carrier services. Mexico further claimed that the United States violated articles 1202 and 1203 of NAFTA by refusing to open the border.

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24. See NAFTA ch. 20. Chapter 20 sets out the rules for arbitration under the agreement.


26. NAFTA arts. 1202, 1203.

1. **Article 1202**

Dealing with national treatment, article 1202 states: "Each Party shall accord to service providers of another Party, treatment no less favorable than that it accords, in like circumstances, to its own service providers." It further explains that this treatment means "treatment no less favorable than the most favorable treatment accorded, in like circumstances," by a state or province to service providers in the same nation.

This seems to indicate that Mexican trucks entering Texas, for instance, would have to be given equal treatment as trucks entering the state from Oklahoma or Arkansas. Closing the Rio Grande to Mexican trucks, apparently would violate article 1202 if the Red and Sabine Rivers are not closed to trucks domiciled in other states. It also appears to say that Texas, or for that matter the United States, would have to treat Mexican trucks in an equal fashion with domestic carriers.

2. **Article 1203**

Article 1203 addresses most-favored-nation (MFN) treatment. It reads, "[e]ach Party shall afford service providers of another Party treatment no less favorable than it accords, in like circumstances, to service providers of any other Party or of a non-Party. Therefore, if the United States allows trucks from Canada, or any other nation, access to American highways, it must extend the same courtesy to trucks from Mexico.

3. **Mexico's Point of View**

When read in this light, a quick examination of the facts reveals that the United States has not fulfilled its obligations under articles 1202 and 1203. The Clinton administration's closing of the southern border obviously creates a situation where Mexican trucks are not treated equally with their American counterparts. This appears to be a clear violation of article 1202. The United States also regularly allows Canadian trucks access to American highways. Since—with few exceptions—Mexican carriers are not allowed equal access to our nation's roads, this looks like a violation of article 1203.

**B. American Argument**

1. **Articles 1202 and 1203**

In its defense, the United States claimed that the "in like circumstances" language of articles 1202 and 1203 means that the United States can treat Mexican carriers differently. The United States claimed that since "adequate procedures are not yet in place [in Mexico] to ensure U.S. highway safety, NAFTA permits Parties to accord differential, and even less favorable, treatment where appropriate to meet legitimate regulatory objectives." The United States felt that its treatment of Mexican motor carriers was proper,
since it was enacted "in order to address a legitimate regulatory objective." The United States also claimed that allowing Canadian carriers onto American highways was not a violation of most-favored-nation treatment "since the Canadian regulatory system is 'equivalent' to that of the United States," and Canadian trucks are "in like circumstances' vis-à-vis" American trucks.

2. Article 2101

The United States employed article 2101 to bolster its case. Article 2101 states that chapter 12 "shall not be construed to prevent the adoption or enforcement by any Party, of measures necessary to secure compliance with laws or regulations that are not inconsistent with the provisions of this Agreement, including those relating to health and safety and consumer protection."[35]

3. American Point of View

This NAFTA provision seems to indicate that the Clinton White House was correct in the action it took concerning the border. Mexican trucks do not receive equal treatment for a simple reason: the Mexican regulatory system puts them in a situation where they do not operate in like circumstances. This reading also indicates that the United States has the right to maintain its sovereignty and maintain its own laws.

IV. Lack of Harmonization of Trucking Standards

The United States has a legitimate concern. Annex 915.5a-1(2)(a) required the standardization of truck weight and length, as well as safety and driver's license standards between NAFTA nations. Mexico agreed to improve its motor-carrier safety standards to meet those of the United States; however, Mexican law was not upgraded to meet basic American safety standards, such as hours-of-service restrictions, the use of logbooks, and roadside inspections. Mexican trucks can also be much heavier than their American counterparts. American trucks are limited to a gross vehicle weight limit of 80,000 pounds, whereas Mexican trucks can weigh up to 135,560 pounds. Many Mexican trucks are also designed with walking-beam suspensions. These are heavier duty suspension systems used for driving over dirt roads. Walking-beam suspensions transfer vehicle weight to the road surface in a much more severe fashion than traditional suspension systems. Thus, heavier weight combined with walking-beam suspensions,

33. Id. at 2.
34. Id.
35. NAFTA art. 2101.
36. Id. annex 915.5a-1(2)(a).
37. Public Citizen, supra note 16.
38. Id.
39. Id.
40. Id.
41. Id.
42. Id.
means that Mexican trucks have the potential to create much greater damage to American roads than their American counterparts. 43

A. UPDATED MEXICAN TRUCKING REGULATIONS

Mexico recently passed legislation to deal with American concerns in this area. 44 Nonetheless, the new rules still lag far behind those of the United States. Some major problems with the new standards from the American point of view are:

- The trucking standards only apply to federal highways. 45 More than 90 percent of the roads traveled by Mexican motor carriers are under state or local jurisdiction. 46 This means that trucks traveling these roads are exempt from the rules. 47
- The maximum time allowed for the inspection of a general cargo carrier is thirty minutes, while the maximum time allotted for the inspection of a hazardous-cargo carrier is twenty minutes. 48 The United States imposes no time limit for conducting an inspection. 49
- Driver and company safety records will be difficult to track until a joint U.S.-Mexico database is completed. 50

The new rules still do not rise to American standards, even with the limitations imposed on Mexican trucks by Mexico's Ministry of Transport and Communications. The new rules contain no hours-of-service limitations; instead, "[t]he driver's hours of service [are] designed by [the] company, according to its needs," and new vehicles are exempt from inspections and safety standards for two years after their manufacture date (emphasis in original). 51

A larger problem is that safety issues are treated in isolation. A truck can be found to have a number of borderline problems, that cumulatively would take the truck off the road in the United States, but it would still be allowed to roll the highways in Mexico. 52 Finally, while fines are authorized by the new safety rules, no specific amounts or deterrent effects are mentioned. 53

43. *Id.*
46. *Recent Mexican Trucking Rules, supra* note 45; Mexican Standard §5.2.1.
47. *Recent Mexican Trucking Rules, supra* note 45; Mexican Standard §5.2.1.
48. *Recent Mexican Trucking Rules, supra* note 45; Mexican Standard §5.2.1.2.
49. *Recent Mexican Trucking Rules, supra* note 45; Mexican Standard §5.2.1.2.
50. *Recent Mexican Trucking Rules, supra* note 45.
51. *Id.*
52. *Id.*
53. *Id.*
B. Differences in Regulations Between the United States and Mexico

To illustrate the difference in the two nations' safety standards, the following list of infractions would earn an automatic out-of-service order in the United States, but would merely incur a ticket in Mexico, with a promise to fix the problem in twenty days:

- Non-existent log book.
- Incompatible hazardous materials in the same shipment.
- Bulk loads improperly secured or blocked.
- Identifications or warnings do not match hazardous material being hauled.
- Missing more than 25 percent of anchoring components.
- Using tanks that were not designed or authorized to transport the products being shipped.
- Material that is leaking from a transport tank.
- Failing to carry appropriate emergency information.

There are also a number of areas where an out-of-service order would be very likely in the United States, but where Mexico would still only issue a ticket with a promise to fix the problem in twenty days. Examples include:

- Missing or inoperable break lights.
- Worn or exposed wiring.
- No windshield wipers or spray jets.
- A shattered or missing windshield.
- Damaged tires.
- Wheel rims that are bent, broken, or cracked.
- Detached joints or loose steering wheel.
- Cracked brake drums.
- No seats in cab.
- No spring on mechanical suspension, among others.

V. Decision of the NAFTA Arbitration Panel

A. United States Breached Its Duties Under NAFTA

The differences in safety regulations and vehicle size standards between the United States and Mexico appear to show that Mexico was in violation of NAFTA, by not harmonizing safety standards with Canada and the United States, and that the United

54. 49 C.F.R. §395.13 (2001); Mexican Standard §4.2.
55. 49 C.F.R. §173.24 (2001); Mexican Standard §4.2.
57. 49 C.F.R. §171.2 (2001); Mexican Standard §4.2.
59. 49 C.F.R. §130.21 (2001); Mexican Standard §4.2.
61. 49 C.F.R. §397.19 (2001); Mexican Standard §4.2.
States was justified in closing its border to Mexican trucks. The Chapter 20 arbitration panel did not take this view, however. Instead, the panel sided with Mexico, stating: "the U.S. blanket refusal to review and consider for approval any Mexican-owned carrier applications for authority to provide cross-border trucking services, was and remains, a breach of the U.S. obligations."63

The panel made clear that in its opinion the "in like circumstances language" of articles 1202 and 1203 did not create "[a]n exception to these obligations."64 The panel explained this position by stating: "the proper interpretation of Article 1202 requires that differential treatment should be no greater than necessary for legitimate regulatory reasons, such as safety, and that such different treatment be equivalent to the treatment accorded to domestic service providers."65

With the knowledge that motor carriers would have to fully comply with the standards of the nation in which they were providing the service, NAFTA was passed with the intent of eliminating barriers to trade and facilitating cross-border movement of goods and services. Therefore, the panelists believed that the "in like circumstances" language could not be used to justify a ban on cross-border trucking services.66

B. THE UNITED STATES DOES NOT HAVE TO PROVIDE FOREIGN CARRIERS EQUAL TREATMENT

The panel concluded that the United States was in violation of NAFTA, because of its "so-called 'blanket' ban" on allowing Mexican trucks onto American highways.67 The United States does not have to extend favorable treatment to all Mexican trucking firms, however. The United States can deny a Mexican carrier the right to enter the United States, if it may be unable to comply with American law.68 The panel also decided that a NAFTA nation can implement different procedures for international motor carriers, to ensure that they comply with the nation's safety standards.69

VI. CURRENT DEBATE

While the NAFTA arbitration panel's decision seems to be fair given the objectives of the agreement, until recently there has been much debate in the United States over how, when, and if to open the nation's southern border to Mexican trucks. A preliminary opinion of the NAFTA arbitration panel released on November 29, 2000 stated that the United States must open its roads to Mexican domiciled trucks, or face possible trade sanctions.70

64. Id.
65. Id. at 69.
66. Id. at 63, 69.
67. Id. at 81.
68. Id.
69. Id. at 82.
70. Public Citizen, supra note 16.
A. Political Issues and American Misperceptions of Mexican Trucks

Many Americans might be willing to accept trade sanctions due to fears of opening the border. A number of misconceptions abound. Concern has been expressed over traffic congestion, \(^{71}\) loss of American jobs, \(^{72}\) and, most importantly, the safety of American motorists. \(^{73}\) It is understandable that the American public feels this way, given the amount of attention the opponents of free trade have given the subject. \(^{74}\) Many of these fears should evaporate, however, upon a closer examination of the economic and social reality surrounding the situation.

1. Congestion

a. Congestion in the Border Region

Some United States residents along the nation’s border with Mexico fear that opening the border will create a large inflow of traffic and convert their quiet, small towns into large, environmentally polluted truck stops. \(^{75}\) This is a legitimate concern. The state of Chihuahua estimates that it will have approximately 100,000 trucks spilling across the border into small South Texas communities in two years. \(^{76}\) This would be a major problem for small, affluent, artistic communities such as Alpine, Texas, but would be a blessing for neighboring cities like Presidio burdened by one of the highest unemployment rates in the state. \(^{77}\) Presidio officials claim that every truck stop built in the city would create around 100 jobs. \(^{78}\)

Texas and California are already devising ways to deal with possible congestion problems. Texas Proposition 2 authorizes TXDOT to issue general obligation bonds up to a

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76. Id.

77. Presidio County’s unemployment rate as of Nov. 2001 stood at 20.4 percent, see Texas Workforce Commission, County Current Unemployment Rates, at http://www.twc.state.tx.us/lmi/lfs/ type/unemployment/unemploymentcountycurrent.html (last visited Jan. 9, 2002).

78. Reaves, supra note 75.
sum of $175 million to help finance the construction of highways for low income communities in the border region that badly need an updated infrastructure. The recently passed Proposition 2 can help solve the problem faced by communities like Alpine by providing money to build a bypass around the city. Similarly, California's senate is debating legislation that would create a border-infrastructure financing authority, that would issue bonds to construct similar projects on both sides of the border.

b. Congestion in the Interior

While opening the United States-Mexico border will have a definite impact on traffic congestion in the border-states, a common misconception among Americans is that opening the southern border to Mexican trucks would increase motor-carrier traffic nationwide. The numbers do not support this proposition. Trade between Canada and Mexico amounts to a paltry $8 billion per year compared to U.S.-Mexico trade of $190 billion. $7 billion of the Canada-Mexico trade is Canadian exports to Mexico.

The above numbers show that most NAFTA traffic generated in Mexico will be bound for the United States, not Canada. Studies of the volume and flow of NAFTA truck traffic show that the southern flow of goods from Canada and the northern flow of goods from Mexico “overlap and dwindle” somewhere around Tennessee. The studies show that most northbound truck traffic from Mexico does not venture north of the Dallas-Ft. Worth Metroplex, and is nonexistent north of Kansas City. This indicates that the vast majority of Mexican truck traffic will be limited to the states of Texas and California, which are already gearing up to handle the inflow.

2. Job Loss/Economic Decline

The prophets of doom and gloom have been predicting that millions of Americans would lose their jobs due to NAFTA, and that our economy would take a corresponding downward spiral. The opposite has in fact occurred. The Dow Jones Industrial Average rose from 3798.40 in January 1994 when NAFTA took effect to a close of 10221.57 December 31, 2001. Likewise, the NASDAQ composite average rose from 800.47 in January 1994 to a close of 1950.40 on December 31, 2001. United States unemployment rates also dropped from 6.60 percent in January 1994 to 5.40 percent in December 2001.
During the first five years of NAFTA’s existence, the United States government estimates that 11.1 million new jobs were created, and 350,000 of those were due to NAFTA.90

a. American Truck Drivers Have Not Lost Jobs

Fears that American truck drivers will lose jobs to their Mexican counterparts when the border is opened are also widely exaggerated. Mexican trucking companies currently operate around 375,000 trucks.91 This pales in comparison to the seven million trucks currently operated in the United States.92 Given these numbers, Mexican trucking companies only have 5.36 percent of the hauling capacity of the American trucking industry. Thus, even if all of the trucks in Mexico were carrying loads in the United States, they would hardly make a dent in the United States trucking industry.

It also seems unlikely that U.S. trucking companies will replace their American workforce with Mexican truckers once the border is opened. While there is still plenty of uncertainty over how the newly passed truck rules would apply in a situation of this sort, it seems logical to think that U.S. employment law and standards would apply to truckers employed by American companies; and operating in the United States. It also stands to reason that if a situation of this sort did occur, the Teamsters or Canacar would unionize the workers and demand wages comparable to other truck drivers operating in the United States.

b. Mexican Truck Drivers Fear Opening the Border to American Competition

Mexican truckers also fear the opening of the border.93 Most Mexican truckers fear they cannot compete against the more modern and efficient American motor fleets.94 Mexican truckers are at a severe cost disadvantage because parts, fuel, trucks, and financing are significantly more expensive south of the border.95 For instance, a new Volvo or Freightliner tractor-trailer truck costs $97,000 in Mexico versus $60,000 in the United States.96 Financing on that truck would run 12 to 24 percent in Mexico, but would only average 6 to 8 percent in the United States.97 The price per gallon of diesel fuel runs $2.10 a gallon in Mexico and averages $1.40 a gallon in Texas.98 Truck tires cost $340 a piece in Mexico and only $260 in the United States.99 Canacar, Mexico’s trucking union, says “[t]he border must be completely closed to American trucks.”100 Canacar has gone

90. NAFTA at Five Years, supra note 3.
92. Murphy, supra note 22, at 6; No Truck with Free Trade, supra note 91, at 35, available at 2001 WL 2510645.
94. Id.
95. Id.
96. Id.
97. Id.
98. Id.
99. Id.
100. No Truck With Free Trade, supra note 91.
as far as asking the Mexican government to declare the NAFTA trucking provision null and void.\textsuperscript{101}

c. The American Trucking Industry Has Much to Gain From Opening the U.S.-Mexico Border

American truckers would gain much from opening up the United States-Mexico border. Mexican fleets currently control about 80 percent of the cross-border trucking business.\textsuperscript{102} With lower costs and greater economies of scale, American trucking companies could easily capture this lucrative market. American firms would also gain much by investing in Mexican trucking companies. Approximately 80 percent of Mexico's trade is transported by truck.\textsuperscript{103} With wise investments, American companies would be able to bring most of the revenue generated through Mexico's domestic trucking to the United States.

d. Mercantilism vs. Economic Exchange

This doom-and-gloom mentality has been created by a sixteenth-century economic concept known as mercantilism. Put simply, mercantilists believe that one man's profit is another man's pain. Mercantilists advocate national regulation of foreign trade in a manner that will increase exports and decrease imports, thereby creating a net inflow of revenue.\textsuperscript{104} However, this theory is contrary to modern economic thought.\textsuperscript{105} Modern economics has shown that profits are generated by "anticipating future events and... adjusting... activities to the future state of the market."\textsuperscript{106} Those who reap economic rewards, do so because they are in the best position to meet the public's demand for goods and services. Those who lose, do so because they missed in their estimation of market demand, not because victory went to other players.\textsuperscript{107}

(i) Theory of Exchange

Generally speaking, rational individuals do not engage in an exchange they think will make them worse off. Instead, rational individuals seek to maximize their utility.\textsuperscript{108}

\begin{itemize}
\item \textsuperscript{101} Kraul, \textit{supra} note 93.
\item \textsuperscript{102} \textit{Id}.
\item \textsuperscript{103} \textit{Id}.
\item \textsuperscript{104} See \textsc{Ludwig von Mises}, \textsc{Human Action: A Treatise On Economics} 664 (Henry Regnery Co. 3d rev. 1966) (1949); see also \textsc{Percy L. Greaves, Jr.}, \textsc{Mises Made Easier: A Glossary For Ludwig Von Mises' Human Action} 89 (1974); Laura LaHaye, \textit{Mercantilism, in The Fortune Encyclopedia of Economics} 534 (David R. Henderson, ed., 1993).
\item \textsuperscript{105} \textsc{Mises}, \textit{supra} note 104, at 53.
\item \textsuperscript{106} \textit{Id}. at 664–65.
\item \textsuperscript{107} \textit{Id}. at 665.
\item \textsuperscript{108} Utilitarianism is a theory made popular in the nineteenth century by Jeremy Bentham and John Stewart Mill. It holds that that which is right is, as Francis Hutchison put it, what produces "the greatest happiness for the greatest number." \textsc{Roland N. Stromberg}, \textsc{European Intellectual History Since 1789} 56 (6th ed. 1994). Therefore, maximizing personal utility would be doing that which gives one the most pleasure. When applied to the economic realm, utilitarianism reveals that a rational individual will not willfully engage in activity that he believes will make him economically worse off.
\end{itemize}
Rational individuals only engage in exchanges that are Pareto optimal, meaning that at least one party is made better off, and no one is made worse off.\textsuperscript{109}

For example, suppose A is a hat maker, and B is a farmer. A makes more hats than he or his family can possibly wear, and B grows more food than his family can eat or store. A would like to have food to put on his table, and B would like to have a hat to keep the sun from scorching his head. Therefore, if A and B know of each others’ existence, they will likely engage in trade to satisfy both their needs. The extra hats are of little value to A, but of great value to B, since he has none. Likewise, the extra food is of little value to B, but of immense value to A to cure his hunger. Both give up something they value less, for something they value more. Both parties are made better by the exchange, and Pareto optimality has been achieved. This is the basic logic behind the theory of exchange.\textsuperscript{110}

The same logic applies to nations. The United States will not engage in trade that will make it worse off. This would be irrational, and would not satisfy the theory of Pareto optimality. Instead, the United States will engage in mutually beneficial trade with its NAFTA partners.

(ii) Wal-Mart Illustration

The impact Wal-Mart stores are having in Mexico illustrates this point well. Many mom-and-pop markets are purchasing food items for resale at Sam’s Clubs, because the warehouse outlets are able to provide those items cheaper than domestic suppliers.\textsuperscript{111}

Mom-and-pop markets are better off by purchasing these items at Sam’s, and these savings are passed on to Mexican consumers. This increases the purchasing power of Mexican consumers, because such savings free up income for other goods and services. Thus, Mexicans are made better off.

Americans are better off with this transaction as well. Since Wal-Mart has the ability to get goods to market cheaper than their Mexican competitors, Wal-Mart generates huge profit. Wal-Mart is an American based company, which means those profits eventually find their way back to stockholders in the United States, increasing their purchasing power, and making them better off.

This scenario repeats itself in a number of different situations, such as Mexican maquiladoras producing textile items more cheaply than American factories, and shipping clothing to American retailers, and electronic items being manufactured more cost-effectively in the United States and shipped to Mexico. Both nations are made better off by these transactions.


(iii) Persistence of Mercantilistic Thought

Ideas such as mercantilism still persist, and are preached by politicians, because the general population lacks a basic understanding of the theory of exchange. Many people attribute economic improvement to scientific and industrial progress. Other attribute economic fortunes to labor unions, humanitarian legislation, or public education.

While these institutions have had a positive impact on the American economy, the simple fact is that they could not exist without freedom of exchange. Without market incentives, there would be little in the way of scientific or industrial breakthroughs. Labor unions would have no reason to exist, if capitalists did not hire workers to carry on industry. Humanitarian legislation and public education would not be possible, without the tax revenues generated by a capitalist market.

NAFTA affords the United States the opportunity to expand its wealth and well-being by carrying on cross-border trade with Canada and Mexico. This opportunity is hampered, however, by not opening our borders to Mexican trucks and allowing the free flow of goods.

3. Safety

Safety appears to be American’s primary concern. This is understandable considering all of the publicity surrounding safety problems with Mexican trucks. Recent reports have indicated a dramatic increase in fatalities in Texas border counties caused by trucks with Mexican registrations. There has also been news of a Mexican truck causing a ten-car pileup that killed four motorists north of San Diego. These instances illustrate legitimate concerns, but again, much of the rhetoric of Mexican trucks’ lack of safety is blown out of proportion.

a. TXDOT Study

The TXDOT study mentioned earlier is a case in point. It found that Mexican trucks had a failure rate of 48.7 percent in Laredo and 77.4 percent in El Paso. These numbers sound disturbing until you give the study a closer look. Mexican trucks were deemed to be unsafe, for instance, if they failed to carry a DOT identification number on the side of the truck. This study has also been called inaccurate and misleading, because the trucks that were inspected were drayage equipment. These trucks only transfer goods from warehouses on one side of the border to the other. They typically make three to five trips a day, and many times the entire length of the trip is the bridge over the
Rio Grande. These trucks are intended for short hauls in urban areas. They are not the type of vehicles used for extended hauls into the United States, and were never intended to meet those safety standards.

b. Inspector General's Audit

Like the TXDOT study, a safety audit conducted by the United States Inspector General revealed frightening numbers. The Inspector General's study found that 44 percent of all Mexican trucks making deliveries in the United States failed safety inspections, compared to only 20 percent of American trucks. These numbers are skewed as well, though. Only trucks with visible safety problems were pulled over. That means the audit may not be representative of all Mexican trucks crossing the border.

c. California Data

Numbers provided by the California Highway Patrol (CHP) paint an entirely different picture. CHP has processed 2.83 million commercial trucks through its Otay Mesa commercial point of entry inspection station since December 4, 1995. CHP's numbers reveal that 23.2 percent of Mexican trucks were placed out of service for safety reasons, compared to 22.3 percent of Californian trucks. The difference is only 0.9 percent. This is not a bad result, especially when one considers that Mexican trucks are required to meet California emission standards, carry U.S. liability insurance, and drivers must have an international driver's license.

d. Canada's Roadcheck 96

Given these numbers, the failure rate for Mexican trucks is no worse than those of Canadian trucks. A June 1996 study conducted by Canadian provincial and territorial governments revealed a comparable failure rate that was somewhat higher than that of Mexican trucks under the CHP numbers, and somewhat lower than those released by the Inspector General. The study revealed a national failure rate of 32.6 percent for Canadian big rigs. Two jurisdictions had failure rates in excess of the national average. New Brunswick pulled 36.6 percent of trucks inspected off the road, followed by Alberta, where 33.1 percent of trucks flunked inspection. The safety inspections

120. Osio, supra note 10.
121. Id. However, this does not mean truck safety is not a legitimate concern in urban areas.
122. Ignore Fears Let Mexican Trucks Roll, supra note 19.
124. Id.
125. Id.
126. Id.
127. Ignore Fears Let Mexican Trucks Roll, supra note 19.
129. Id.
revealed common problems with braking systems, load securing, suspension, tires, and steering, among others.130

The numbers released by CHP are logical. It is in Mexican firms’ best interest to comply with American law when their trucks are traveling highways in the United States. Having a truck found in violation of United States law is a costly venture: the average fine imposed on a Mexican truck violating American safety standards is $2000.131 Mexican motor carriers have been turning to American law firms for advice on complying with current restrictions.132

e. Exemptions Currently Allow Many Mexican Trucks Access to American Highways

Shockingly, Mexican trucks are already here. As noted earlier, most Mexican trucks are limited to narrow commercial zones in urban areas along the United States-Mexico border.133 However, five Mexican trucking companies that were already operating in the United States before 1982, when the ban on Mexican trucks went into effect, were grandfathered into NAFTA.134 The United States also exempted another 160 or so Mexican trucking companies from the commercial-zone limit, giving them the right to operate throughout the United States.135 American companies with Mexican subsidiaries are also allowed to maintain private, not-for-hire trucking fleets based in Mexico, which are allowed to operate in the United States.136 While specific numbers are not available, DOT indicates that these Mexican fleets have a failure rate below the United States average.137

B. Politics Rears Its Ugly Head

As this comment has shown, most American concerns over the Mexican truck issue are borne about by misconceptions. Many of these misconceptions have been fueled by anti-NAFTA propaganda sponsored by organizations such as those involved in the “Battle of Seattle,” who are opposed to any sort of economic globalization, and organized labor unions, who want to keep a stranglehold on the U.S. job market.138

130. Id.
131. Higgs, Fletcher and Mack, LLP, supra note 123.
132. Id.
133. Revision of Regulations, supra note 20, at 22,328.
135. Id.
136. Id.
137. Id.
1. Trucking Unions Have Led the Battle to Keep the Border Closed

Trucking unions in both nations have an interest in making sure that the border stays closed. In the United States, the International Brotherhood of Teamsters (Teamsters) has led the charge against opening the border to our southern neighbors. Teamsters General President James P. Hoffa claims that the issue "is very much about highway safety..."139 Hoffa explains that "the American inspection regime is so inadequate that less than 1 percent of the 4.5 million annual border crossings are inspected."140 He goes on to say that "[u]ntil these shortcomings are adequately addressed on both sides of the border, granting Mexican trucks full access to all of the U.S. and Canada is an invitation to disaster."141

This is a weak argument, especially in light of the aftermath of the September 11, 2001 terrorist attacks, after which all vehicles crossing the United States border were inspected.142 If the United States can put an inspection system in place overnight in response to the threat of terrorism, it stands to reason that a much better inspection system can be put in place with some advance planning to help spur free trade.

Canacar is opposed to opening the border as well.143 They seem to be more honest with themselves about its reasoning, however. Mexican truckers claim that opening the border will kill their businesses due to lack of capital and higher costs of operation in Mexico.144 On this issue, the union is at odds with President Fox, who they claim is not speaking for Mexican truckers, but rather for American business.145

2. Plans for Border Inspection System Halted

An inspection system was already in the works before the ban on Mexican trucks was put into place. One hundred nine officers were added in Texas to handle border inspections.146 California spent $30 million building inspection centers.147 The DOT granted border states $4 million for inspections.148 Mexico set aside a portion of its World Bank loan to improve border infrastructure.149 Secretary Peña and the Mexican Minister of Transportation and Communication, Emilio Gamboa, signed a Memorandum of Understanding that laid a blueprint for cooperation between American and Mexican

140. Id.
141. Id.
144. Id.
145. Id.
146. Cazamias, supra note 12, at 352.
147. Id.
148. Id.
149. Id.
officials. Both nations also made an attempt to harmonize safety inspections and precautions. Inspection stations were never built or staffed to their full potential, however, since Mexican trucks were denied the right to travel American freeways.

3. Democrats Apparently Bend to Political Pressure in Hope of Retaining White House

On the day that the border was scheduled to be opened, the DOT director for motor carriers told reporters that “the DOT had put tough safety enforcement programs in place and promised that Mexican trucks would be held to U.S. standards.” Secretary Peña called a press conference later in the day announcing a freeze on applications for trucking permits from Mexican firms due to a lack of harmonization of safety standards.

The Teamsters had battled the border opening since the enactment of NAFTA. Interestingly, the Teamsters issued a press release commenting on the decision to place a moratorium on processing applications of Mexican motor carriers hours before Secretary Peña’s official announcement. This fact, combined with the director of motor carriers’ previous announcement, and President Clinton’s then-loomign reelection campaign, suggest that the decision was more politically based than on safety concerns.

The fact that similar sanctions were not placed on Canadian motor carriers also suggests that the decision was political. As noted above, the Roadcheck 96 results in Canada showed the number of Canadian trucks taken out of service, was similar to the number of Mexican trucks found to have safety problems. The fact that 1.4 million Teamsters live in Canada, and none live in Mexico, makes the inference of political motivation seem very likely.

VII. Response From Washington, D.C.

Much debate has surrounded the issue of how to handle the NAFTA arbitration panel’s decision. The position of the White House has been that Mexican trucks should be allowed to begin crossing the border in January 2002. The Bush administration issued new rules in May 2001 permitting Mexican carriers to make deliveries of cargo in the United States. However, both houses of Congress voted to block the border

151. Cazamias, supra note 12, at 352.
152. Id. at 353.
153. Id.
154. Id.
155. Id.
156. Canadians for Responsible and Safe Highways, supra note 128.
opening. In June 2001, the House voted to leave the current restrictions on Mexican trucks in place.\textsuperscript{160} The Senate followed suit when it passed the Murray/Shelby bill the following August.\textsuperscript{161}

A. Murray/Shelby Bill

The Murray/Shelby bill passed the Senate by a 70-30 vote.\textsuperscript{162} Provisions of the bill include:

- Barring funds from the DOT to process applications from Mexican trucking companies until border crossings have 24/7 coverage.\textsuperscript{163}
- Performing safety audits before any conditional operating authority is granted to Mexican truckers.\textsuperscript{164}
- Scales are to be placed on the border to weigh all commercial vehicles entering the United States.\textsuperscript{165}
- Truck drivers from Mexico are to comply with hours-of-service requirements.\textsuperscript{166}
- Provision of increased funding above the Bush administration's request to provide for inspectors and facilities.\textsuperscript{167}
- Requirement of an accessible database for monitoring safety performance of all Mexican carriers applying for United States operating certificates.\textsuperscript{168}

The White House vowed to veto any version of a bill placing these kind of restrictions on Mexican trucks entering the country.\textsuperscript{169} Secretary of Transportation Norman Mineta summed up the Bush administration's stance by saying: "[w]e will not accept enforcement requirements that create a de facto system that unfairly discriminates against Mexican drivers and carriers."\textsuperscript{170}

B. HR 2299

It appeared that the Mexican-truck issue had dropped off of the political map after the terrorist attacks of September 11, 2001, but Congress resumed discussion on the issue in November. The product of the renewed discussion was the passage of a compromise bill, H.R. 2299, that was signed into law December 18, 2001.

161. \textit{Id.}
162. \textit{Id.}
165. \textit{Id.} §343(1)(A).
166. \textit{Id.} §343(1)(G).
167. \textit{Id.} §343(2)(D).
168. \textit{Id.} §343(2)(D).
H.R. 2299 allows for opening the border by January 1, 2002 as the Bush administration wished, but still contains safety provisions that members of Congress saw as important. Like the Murray/Shelby bill, H.R. 2299 requires motor carriers to undergo safety examinations before being granted authority to operate in the United States, and Mexican carriers must observe U.S. hours-of-service requirements. It differs dramatically, however, in other areas.

The most noticeable difference is that H.R. 2299 does not keep the border closed until the entire inspection system is in place for round-the-clock service. Instead, it calls for opening the border in phases. Under the new law, Mexican carriers are only allowed to enter the United States at commercial border crossings when inspectors are on duty, and the inspection station has the capacity to do the inspections. H.R. 2299 provides that the five border crossings with the most border volume be equipped with weight-in-motion (WIM), systems to enforce vehicle-weight requirements and the remaining five are to have equipment installed within a year. These measures will allow traffic to move across the southern border much more quickly than under other proposals, and hopefully avert trade sanctions from Mexico.

Other provisions of H.R. 2299 include:

- Safety examinations must verify safety-management programs and available performance data, drug and alcohol testing, compliance with hours-of-service rules, proof of insurance, and driver qualifications;
- Inspectors are required to review carriers’ safety history data; evaluate carriers’ inspection, maintenance, and repair facilities; inspect commercial vehicles to be operated in the United States; and interview carriers’ management personnel;
- Mexican carriers must receive a satisfactory safety rating before being given permanent authority to operate beyond border commercial zones;
- Distinctive DOT numbers are to be given to trucks operating outside commercial zones to assist in enforcing U.S. regulations; and
- Inspection of all vehicles, except those that have been granted operating authority for three consecutive years, not bearing a Commercial Vehicle Safety Alliance (CVSA) decal.

172. Id. §350(1)(A).
173. Id. §350(1)(B)(iii).
174. Id. §350.
175. Id.
176. Id. §350(9).
177. Id. §350(7)(A).
178. Id. §350(1)(B).
179. Id.
180. Id. §350(1)(C)(2).
181. Id. §350(1)(C)(4).
182. Id. §350(5)(A).
C. Potential Problems Under the New Rules

As with all political compromises, H.R. 2299 has some provisions that will likely cause problems. Two requirements in particular are likely to slow the flow of traffic across the border. First, while H.R. 2299 allows Mexican motor carriers to cross at commercial border crossings while inspectors are on duty, it prohibits transferring inspectors from other parts of the country to the U.S.-Mexico border. The law says inspectors are not to be moved to ensure an adequate level of vehicle inspection nationwide. This is a sensible provision, but it will take time to hire and train new border inspectors, thus delaying a free flow of traffic across the border.

Second, ambiguity over the insurance provision poses another problem with H.R. 2299. The law requires Mexican trucks to provide "proof of valid insurance with an insurance company licensed in the United States." There is speculation in the insurance industry as to what, exactly, this means. The law is unclear on whether surplus lines, joint ventures with Mexican insurance companies, or self-insurance would qualify. There is also a question of whether U.S. insurance will even be available to Mexican motor carriers. Insurance companies require information to write policies and hedge their risk. Mexican carriers represent a new market and there is little information available on the industry. Without adequate information, insurance companies are traditionally leery of writing policies due to the unknown risk.

VIII. Civil Litigation

Even with new legislation paving the way for opening the border to Mexican trucks, the issue is still far from resolved. The hotly contested trucking issue has led supporters of NAFTA to accuse the treaty's detractors as having an "anti-Mexico" or "anti-Hispanic" attitude. The day following the passage of H.R. 2299, this rhetoric turned into action when eleven Mexican trucking companies, filed a $4 billion lawsuit against the U.S. government in federal district court in Brownsville. The class-action suit was filed on behalf of at least 185 Mexican trucking companies, and alleges that the United States discriminated against them by denying permits to operate in the United States, and not allowing them to invest in, or own, U.S. trucking companies.

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183. Id. §350(10)(E)(C)(1)(c).
184. Id.
185. Id. §350(8).
189. Id.
190. Dewar, supra note 159, at A01.
192. Id.
IX. Conclusion

The NAFTA arbitration panel made a fair decision. The drafters of the treaty did a sub-par job regarding trucking issues, and the panel did the best it could given the text of NAFTA. While the United States does have the right to enforce its laws, and Mexico entered the agreement knowing full well that the United States intended to do so, the United States’ blanket rejection of all applications to operate in the nation from Mexican trucking companies is at odds with the stated intent of NAFTA.

The drafters of NAFTA intended the treaty to encourage the free flow of goods and services across the borders of North American nations. The ban on allowing Mexican trucks into the American interior hampers this intended result. The arbitration panel’s decision adheres to this intention by ruling that an outright ban on Mexican carriers entering the United States, does not demonstrate good-faith actions under NAFTA. At the same time, the decision allows the United States to use its discretion in choosing which firms are likely to be able to meet its tough standards, and hence should be allowed in the nation.

The United States’ passage of H.R. 2299 was a fair response to the arbitration panel’s decision. The above analysis shows that it would be in the nation’s best interest to open the borders to Mexican trucks. This is true for two reasons. First, the United States should honor its NAFTA commitments, and faces possible trade sanctions if it fails to do so. The NAFTA arbitration panel gave Mexico the power to retaliate against the United States, up to the same dollar amount of losses caused by the United States’ border closing. Mexico estimates these losses to be as high as $1 to $2 billion annually.

Second, American motor carriers have more to gain than lose, by opening up to competition the North American motor-cargo market. American trucking companies are larger than their Mexican counterparts, thereby deriving lower costs and higher efficiency through economies of scale. Loosening restrictions on the border would allow American motor carriers to expand into Mexico, and develop dominance over a new market, similar to what Wal-Mart has done in retail south of the border.

The above data also reveals that it would be impossible for Mexican truck drivers to muscle their American counterparts out of the business, because of higher costs of business in Mexico, and the comparative sizes of the Mexican and American motor-carrier industries. The likely result would instead be that American truckers would dominate the North American continent if they desired to do so.

The American public does not have to fear an onslaught of unsafe Mexican trucks running over our children and taking our jobs. It is in a Mexican trucking firm’s best

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194. Id.

interest to comply with American law, because it makes good business sense to do so. Having trucks taken out of service north of the border would cost Mexican carriers in a number of ways, including fines, increased repair costs, and revenue lost from downtime. A number of violations would also cost a Mexican company its good reputation, and possibly the right to operate in the United States.

X. Recommendations

While the tragedy of September 11, 2001 means that we now live in a different world from the one in which the NAFTA truck debate arose, the United States has properly taken the steps necessary to open the U.S.-Mexico border as soon as possible. It is gratifying to see the United States re-embarking on its efforts to create a border-inspection system. This effort is now more important than ever. American standards should be strictly enforced on both the Mexican and Canadian borders; vehicles that do not meet those standards should not be allowed in the country. However, vehicles that meet American standards, and do not pose a security risk, should be allowed access to the nation's highways to help spur the domestic economy, and further economic liberalization in Mexico. The United States and Mexico need to establish common trucking standards to create an efficient cross-border transportation system. Intelligent transportation system technology was part of the original NAFTA plan, and can be used to help create an effective border inspection system today.

A. Border Inspections Through Intelligent Transportation Systems

1. Lack of Inspections Facilities at Border Crossings

Probably the most legitimate of all of the arguments for keeping the border with Mexico closed to Mexican motor carriers, is the lack of permanent inspection stations to handle the inflow of trucks from south of the border. The United States has twenty-seven border crossing sites with Mexico, but only two of those border crossings are equipped with permanent full-time safety inspection stations. These border crossings are located at Otay Mesa and Calexico, California, with two more under construction at Nogales, Arizona and Santa Teresa, New Mexico.

Texas, which accounts for 69 percent of the NAFTA cross-border traffic, does not operate any permanent weigh stations. Texas relies instead on a combination of permanent, semi-portable, and portable scales to weigh approximately 269,000 trucks a year. Public sentiment will likely require border states to beef up border inspection facilities, when the doors are opened to Mexican trucks. Luckily, new technology will likely make the border inspection process relatively quick and simple.

196. Cazamias, supra note 12, at 352.
198. Id.
199. Id.
2. Commercial Vehicle Information Systems: A Possible Solution

Border inspections can be accomplished with minimal hassle with the use of Commercial Vehicle Information Systems (CVISN). CVISN, pronounced “see vision,” is an attempt by the DOT to link Intelligent Transportation Systems (ITS) already in use, into a unified information-sharing system. The ITS program was launched in the early 1990s, and some form of ITS has been deployed in fifty-five of the seventy-five largest metropolitan areas in the United States. ITS technology has been used by various government agencies for electronic toll-collection, traffic-signal priority, automatic vehicle-counting, and other uses. The private sector has also used ITS devices such as ONSTAR for keyless entry into vehicles, automated identification of automobiles involved in accidents, and remote diagnostics, as well as other applications.

a. What is CVISN?

CVISN is a collection of communication networks and information systems like those just mentioned. The network includes information systems owned and operated both by private industry, and state and federal governments. It will allow motor carriers and government agencies to exchange information and transact business electronically. CVISN gives truckers pass-through ability at weigh stations and at safety and credential checks.

b. How Does CVISN Work?

In the CVISN system, transponders in the trucks transmit information to computers at inspection stations immediately, allowing inspectors to check weight and safety records. These transponders can be programmed to transmit information on safety, taxes, weight, permitting, driver, and freight information. This technology likely could be implemented at the United States-Mexico border.


203. Id.

204. Id.


206. Id.

207. Id.


c. Advantages of CVISN

CVISN would offer numerous advantages over manual inspection at the border with Mexico. For instance, allowing trucks to do pass through inspections would greatly reduce congestion at inspection stations, and law-enforcement personnel could concentrate more effort on high-risk vehicles. This would help alleviate concerns about congestion and environmental pollution at the border, and should help assure the American public that only safe vehicles are allowed to enter the country.

Another advantage of CVISN over manual inspection, is that once the technology is in place, the inspection process becomes much simpler. Standardized exchanges of data allow for seamless movement of trucks between states or even nations. CVISN gives inspectors access to national and state databases, containing a motor carrier's safety and performance record, and gives truckers a one-stop shop for motor-carrier credentials.

CVISN is also economically efficient. Data indicates that the use of CVISN has resulted in a 75 percent reduction in credentialing costs for both industry and government. Kentucky, for instance, estimates a savings of $20 per credential inspection. CVISN has created a cost/benefit savings for motor carriers ranging from 4 to 1 up to 20 to 1 depending on carrier size. Studies have also shown that CVISN technology has paid for itself in reduced administrative costs in states where it has been implemented.

d. Current CVISN Implementation

Maryland and Virginia are the prototype states for the CVISN program. Eight other states, California, Colorado, Connecticut, Kentucky, Michigan, Minnesota, Oregon, and Washington, began a model deployment in 1996. Thirty-four other states have completed CVISN architectures. The technology is gaining widespread acceptance. Congress should meet its goal of having CVISN adopted in a majority of the states by 2003.

212. Id.
214. Id.
215. Id.
216. Id.
220. Id.
3. Recommendations for Implementing CVISN at the U.S.-Mexico Border

By now the potential benefits of CVISN should be evident. While the technology is being implemented throughout the United States, some additional steps need to be taken to apply the technology to U.S.-Mexico cross-border transportation.

a. Build Permanent Inspection Stations

First, permanent inspection stations need to be built along the border. Out of twenty-seven border-crossing sites, there are only two permanent truck-inspection stations.\(^2^2^1\) The problem is even worse in Texas. Texas accounts for fifteen of the twenty-seven border crossings and absorbs 69 percent of the traffic,\(^2^2^2\) yet it has no permanent truck-inspection stations anywhere in the state.\(^2^2^3\) A lack of permanent inspection stations makes it difficult to implement CVISN technology.

Since CVISN could solve many of the problems associated with opening the southern border, Congress should appropriate sufficient funds to construct and maintain CVISN-enabled inspection stations along the United States-Mexico border. While the up-front cost would likely be greater than hiring additional personnel to do manual inspections of trucks at the border (which seems to be the U.S. government's best proposal for handling the situation), there would be long-term economic benefits from implementing CVISN. The government would save money by requiring fewer inspectors to staff inspection stations, and the trucking industry would save money due to less downtime spent at inspection stations. These savings would ripple through the economy, and make any product transported into the United States by truck from Mexico cheaper for the American consumer. Border communities would also benefit from the implementation of CVISN through reductions in traffic congestion, and environmental pollution, both of which can be viewed as negative externalities created by the long lines, likely at border crossings if manual inspections of all trucks is required.\(^2^2^4\)

b. Require Mexican Motor-Carriers to Equip Trucks with CVISN-Compliant Transponders

A second step to applying CVISN would be Congress passing a law requiring Mexican motor carriers to equip their trucks with transponders in order to enter the United States. This would be permissible under the NAFTA arbitration panel's decision, which stated that different standards could be applied to international trucks, to ensure that they comply with American law. Along with this step, the United States will need to create a database to track the records of Mexican trucks. Adopting these suggestions would allow for speedy border inspections, and keep dangerous vehicles off the road. Trucks would be able to pass through border crossings unimpeded if all of their credential, weight, and

\(^{221}\) Highways and Transit Hearing, supra note 197.

\(^{222}\) Id.

\(^{223}\) Texas Comptroller of Public Accounts, supra note 200.

\(^{224}\) Negative externalities are spillover costs associated with economic activities where outsiders unwillingly share in costs created by the actions of others. This is likely to lead to an inefficient use of resources. See Robert Higgs, Crisis & Leviathan 9 (Oxford University Press 1987).
safety information were verified. Otherwise, trucks would be flagged down for manual inspection, or denied entry into the nation.

c. Protection of Privacy

Third, a system would need to be put into place to protect the privacy of truck drivers. CVISN would conceivably allow government agents to track a truck’s every move.225 This is understandably a major concern in the trucking industry, because nobody likes to be snooped on every second. Several recent law review articles have addressed this subject.226 However, the technology’s ability to pinpoint a truck anywhere on the map, could be considered an advantage in the world after September 11th, given fears of foreign terrorists’ use of trucks for carrying our their plots.

4. CVISN Best Option

Given the advantages of CVISN, Congress should appropriate sufficient capital to put an ITS inspection system in place at both borders of the nation. Such a system would help ensure that only safe commercial vehicles are allowed to enter the United States. A system of this sort could help alleviate threats from abroad, because trucks lacking the proper credentials would not be allowed into the nation. An ITS system of this sort would also be within the spirit of the recently passed H.R. 2299, which calls for implementation of similar technology with the use of WIM systems.227

B. Clarification of Rules

Another obvious step that needs to be taken before the border can truly be opened is a clarification of the H.R. 2299 rules passed by Congress. At the time this article was written, certain provisions of the rules are unclear, such as the insurance provision mentioned above. Confusion over the meaning of certain rules could postpone the opening of the border, and give further credence to private lawsuits seeking damages for the delay in opening the border. Fortunately, there is still ample time for the DOT to clarify the meaning of the rules before the anticipated March 2002 border opening.

XI. Summary

The United States has not acted in good faith under NAFTA by denying Mexican motor carriers access to U.S. highways. A NAFTA arbitration panel found in favor of Mexico on this issue, ordering the United States to open its border or face economic

225. Zuckerman, supra note 208.
sanctions. This paper has shown that it would be in the best economic interest of the United States to open the border to Mexican trucks. Mexican trucks are, on average, as safe as American and Canadian trucks. Opening the border would streamline the distribution system saving the American consumer money at the checkout. While there are still a few snags that need to be ironed out before the opening of the border, technology currently in use by many states can help speed the process, and get goods rolling across the border.