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Comments

The North American Free Trade Agreement (NAFTA) was signed in 1992 and went into effect in 1994. Three years after it was signed Mexican trucks were to be given access to California, Arizona, New Mexico, and Texas in December of 1995. In 1997 Mexican carriers were to be given access to the entire territory of the United States. At the onset of the first staging period in December of 1995, that of access to the U.S. border states, President Clinton's administration changed its mind and did not let Mexican carriers to enter. The U.S. defended its action until 2001, when the final NAFTA dispute panel ruled that it was in breach of its obligations under NAFTA. Further attempts to restrict access followed. At every level of challenge, political challenge, Teamsters' challenge, environmentalist challenge, and legal challenge including the dispute mechanism process and federal litigation, Mexico prevailed and was backed by a U.S. Supreme Court decision that reversed the lower courts and ruled that the President could open the border to Mexican trucks. Finally, it appears in 2007, twelve years after they were supposed to enter, the United States has decided to live up to its obligations and allow Mexican trucks access to all of the 48 contiguous states. Although there were many objections to their entry, four stand out: safety, legal and administrative, security, and unfair competition. All can be shown to be without substance and support.

SAFETY

Up until 1982, Mexican carriers always had operating authority to work in the territory of the United States. There were no objections based on safety. In fact, comparing the safety records of Mexican, U.S. and Canadian long haul operations, one will find that the old U.S. Department of Transportation (USDOT) data showed that Mexicans had the best safety record of the three nations. Since 1982, all the safety data on Mexican trucks were data obtained not from Mexican long-haulers, but from inspecting drayage or transfer tractors which simply hauled trailers from one side of the border to the other,. Those trucks would not be used and could not be used in long haul operations in the United States. As a matter of fact, U.S. drayage tractors were equally poor. What is amazing, however, is that in a February 23, 2007 press release, USDOT stated that out-of-service rates for Mexican trucks (drayage only, since there are no Mexican long-haulers in the U.S.) dropped 64% to a 21% out-of-service rate, equal to the 21% out-of-service rates for U.S. trucks. What USDOT does not say is that the U.S. 21% is the out-of-service rate for U.S. long-haulers, making Mexican drayage as safe as U.S. long-haulers. One would assume, then, that Mexican long-haulers would have an even better (safer) out-of-service rate compared to U.S. long-haulers. In fact, this was confirmed by the USDOT Office of Inspector General Audit Report dated November 4, 1999. The audit revealed that 66 roadside safety inspections were made, 52 of which on Mexican motor carriers operating illegally beyond the U.S. border-states. These 52 were actual Mexican long-haulers, not drayage that is sometimes caught beyond the commercial zone but never far from the border. As a result of the 66 inspections, only 10 vehicles were put out-of-service. If all 10 were Mexican, and that isn't likely, it would be a 19% out of service rate, less than the out-of-service rate for U.S. long-haulers. It also is reasonable to conclude of the 10 out-of-service citations, some were U.S., making the Mexican long-hauler out-of-rate much less than its U.S. counterparts.

Furthermore, Mexican carriers have been meeting U.S. standards for years. The Commercial Vehicle Safety Alliance (CVSA) has been in Mexico cooperating with Mexican carriers to meet U.S. standards, and each Mexican motor carrier participating displays a sticker on the tractor showing safety compliance.

LEGAL AND LEGISLATIVE PROCEDURES

The chronology of the legal and legislative process that took place in the United States regarding Mexican trucking is quite clear and is best shown in USDOT's own words.

- …The trucking provisions of NAFTA were put on hold in 1995. In 2001, a NAFTA dispute resolution panel ruled that the United States was violating its NAFTA obligations by adopting a blanket ban on trucks from Mexico.
- In 2001, Congress approved and President George W. bush signed legislation detailing 22 safety requirements that must be met before allowing trucks from Mexico to drive beyond the U.S. commercial zones.
- In 2002, U.S. Transportation Secretary Norman Y. Mineta certified that DOT had met each of the 22 requirements set by Congress. The last three audits by the U.S. DOT Inspector General confirm it as well.
- Litigation stymied the DOT program; a 2002 U.S. Ninth Circuit Court of Appeals ruling that barred implementation of the treaty's trucking provisions. The U.S. Supreme Court unanimously reversed the decision in 2004.
- U.S. DOT began working immediately with its Mexican counterparts to develop a NAFTA trucking pilot program. (Release dated February 27, 2007)

In light of NAFTA, its dispute resolution mechanism, and a Supreme Court ruling, there is no legal basis for preventing Mexican motor carriers from access to the United States. But without a safety or legal problem to use to deny access, there now is talk of a security and unfair competition problem. A closer look at each will also show that these are also unsustainable.

SECURITY

It has been well documented that there are clear security problems with Mexico. First, Mexico has refused to enter into the Container Security Initiative (CSI) and has even refused to sign its "Declaration of Principles." Secondly, participation in C-TPAT is marginal in the Mexican motor carrier industry. Having said that, no matter how much of a potential security risk Mexico's non participation creates, the Mexican long haul motor carrier is a 100 times less likely to be a security risk than the current drayage carrier that enters the United States daily. Mexican long-haulers coming into the United States are likely to be subsidiaries or partners of U.S. companies, for instance, Jaguar (Mexican) and Celedon Trucking Services, Inc. (U.S.). Therefore, the U.S. partner or parent will ensure that its Mexican long-haulers comply with C-TPAT mandates. The U.S. will now know for the first time something about the Mexican long-hauler that picks up cargo in Mexico which is destined for the interior of the United States. Hopefully it will be the carrier that actually transports the cargo directly into the United States bypassing the drop lots where trailers sit for days waiting to be released by Mexican Customs brokers for entry into the Untied States. These drop lots are, in fact, a present security risk for the United States since the waiting trailer can be breached and prepared to serve as a host for explosive devices or terrorists, themselves. Even with the continued use of drop lots, we will know more about the Mexican long-hauler than we know about the transfer or drayage carrier which is currently one of the weakest links in the security chain linking the United States and Mexico. In short, the Mexican long-haulers should be a security benefit compared to the transfer or drayage carriers, about which we know nothing, now entering the our country.

UNFAIR COMPETITON TO U.S. MOTOR CARRIERS AND SHIPPERS

Having spoken to many U.S. motor carriers, especially small ones who have to haul goods to the southern border, there is a general sense of relief. They are happy with the prospect of not having to carry goods to the border where there is a likelihood of not finding a backhaul. In essence, not having to

drive to the border frees them to concentrate their efforts, equipment, and drivers in more lucrative lanes, maximizing their marketing operations and economies of scale.

I believe that the real benefit to U.S. motor carriers will come from Mexican carriers that will provide relief to U.S. carriers in short lanes between the United States and Mexico. Mexican carriers will probably service regional areas generally close to the border. Short lanes like Mexico-Dallas; Mexico-Houston; Mexico-San Antonio; México-Phoenix; and Mexico-Los Angeles are ideal for Mexican carriers because these short-lane runs are in regions relatively close to the border where there is consistent return cargo (backhauls) to Mexican destinations which are generally not cost effective for U.S. carriers. For U.S. carriers, these short miles still mean the loss of a trailer and driver that could otherwise produce more revenue out of longer U.S. lanes. Because U.S. carriers have to calculate the trailer costs of the average turn around time in Mexico as part of their per-mile costs, it is more efficient not to have to enter Mexico. However, since Mexican carriers have few trailers, they will have to relocate equipment (trailers and tractors) to sites in the U.S. to support their activity. Until that is done, Mexican carriers are likely limited to what is equivalent "regional drayage." Another benefit of Mexican carriage in the United States will likely be to increase pressure for the use of a North American Bill of Lading which, if used, ought to equalize some of the negative differences in liability issues among the NAFTA nations.

With respect to U.S. shippers, there will be an absolute benefit to the larger shippers who require routine transport between Mexico and the United States, especially in those close regional areas near the border. One can envision contractual relationships between firms like Emerson Electric, Toyota, and Daimler Chrysler and Mexican long-haulers to provide two-way carriage between origin and destination sites in both countries. In effect, these large shippers could make Mexican carriage their virtual private motor carrier company. This euphoria could be short lived since as Mexican truck drivers learn and understand the impact of a likely wage disparity, one could expect some negative reaction to driving in the United States, competing equally with, but being paid less than a U.S. driver.

There is one more economic benefit of Mexican carriers operating in the United States. There is no doubt that if Mexican carriers drive into the interior of the U.S., they will need terminals, additional equipment, and employees to manage their facilities in the United States. In effect, Mexican carriers will likely produce new jobs in the United States without taking existing U.S. jobs.

CONCLUSION

While there will be problems with Mexican motor carriers coming into the United States, they will not be the problems typically discussed in the media. The problems will stem from as often happens, a lack of communication between and among U.S. agencies that work on the border and have divergent goals and operations. One example should suffice. Customs and Border Protection (CBP) is instituting a truck e-manifest as part of the new Automated Commercial Environment (ACE) system. The truck e-manifest must be completed by one of the following: the entering motor carrier, a Mexican Customs broker association, or U.S. Customs Broker. However, today Mexican long-haulers do not enter the United States: Mexican drayage drivers do! Therefore, Mexican drayage drivers now have the proper driver identification and know-how to have a manifest entered. Long-haulers do not. Second, the truck e-manifest contains 70 data points. Mexican long-haulers that participate in the open-border pilot, will not only have to meet those e-manifest requirements, but also have to pass successfully a 37-point inspection of this tractor, trailer, and driver for every entry into the United States. It seems, therefore, that opening the border to Mexican trucks could actually slow down border crossings, make long

lines longer, and negatively impacting the whole crossing process. While we have finally done what is right, it may be wrong, at least in the short run and in the way it is implem