

Mexican Long-Haul Program Moves Forward despite staunch opposition

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After more than a decade of protest and concern over the North American Free Trade Agreement (NAFTA) long-haul trucking provisions, which grant unrestricted use of U.S. highways to Mexican and Canadian domiciled trucking firms, the first Mexican trucks crossed the U.S./Mexican border on Sept. 7, 2007 under the Bush administration backed long-haul demonstration program (Demo-Program).

According to the Mexican Transportation Secretary Luis Tellez, the two trucks are operated by Transportes Olympic, a Mexican corporation located near the city of Monterrey, Mexico. They hauled construction materials from their home base directly to New York and South Carolina. On their return trip, they picked up loads from Arkansas and Alabama.

In exchange for unrestricted travel, Mexico granted Stagecoach Cartage & Distribution Inc., an El Paso, Texas based firm, authority to travel throughout Mexico.

Since that time, and in the face of strong opposition, the U.S. Department of Transportation (DOT) has granted more Mexican trucking firms unrestricted use of U.S. highways. Mexico has reciprocated by permitting an equal number of U.S. domiciled trucking firms to have unrestricted use of Mexican roads.

Response to NAFTA

Immediately after the 1993 adoption of NAFTA, opposition from labor, environmental and public watchdog organizations moved quickly to delay the full implementation of NAFTA long-haul trucking provisions with Mexico. Among other reasons, these organizations cited potential safety and negative environmental consequences as their primary concerns.

In contrast to Canadian domiciled trucking firms, Mexican domiciled trucking firms were limited to operation within the (pre-NAFTA) 25-mile border zone near the U.S./Mexico border, where they have been operating since 1982. Since that time, Mexican payloads bound for the U.S. (to locations outside of the 25 mile border zone) had to be transferred to trucks owned by U.S. domiciled trucking firms. The U.S. trucks would then haul the loads to their ultimate destination. In response to the U.S. decision to not fully implement the NAFTA long-haul trucking provisions with Mexico, the Mexican government refused to allow any U.S. trucks into Mexico.

In 2001, a NAFTA arbitration panel ruled against the U.S. position to limit its full implementation of the NAFTA provisions, which would allow Mexican domiciled trucking firms unrestricted access to U.S. Highways. Despite the ruling, lawsuits and failed negotiations with Mexican authorities further delayed

the full implementation of NAFTA.

NAFTA Critics

Among others, the U.S. Senate, U.S. House, International Brotherhood of Teamsters, Sierra Club, Public Citizen, Environmental Law Foundation and Owner-Operator Independent Drivers Association have all voiced strong concerns about opening the U.S./Mexican border. Although they may have varying interests, they have several common safety and environmental concerns.

According to some critics, Mexican truck drivers on U.S. highways pose a significant risk to U.S. motorists because they are not as stringently regulated as U.S. truck drivers. Specifically, there is no reliable method for determining how long Mexican truck drivers have been on the road before they cross the U.S./Mexican border.

Instead of specifically regulating hours of service like the United States, the Mexican government relies upon a general labor regulation that limits the Mexican workday to eight hours. According to critics, this is not practically reliable. They want the Mexican government to adopt similar hours of service regulations, and they want Mexican truck drivers to maintain detailed driver logs in keeping with U.S. inspection practices, so their hours of service can be readily verified at the border and within the country.

Furthermore, some critics have pointed to various environmental reports, which indicate that almost 66 percent of the Mexican truck fleet consists of model years 1993 or older and 25 percent of the fleet consists of trucks built before 1980. Coupled with what some critics characterize as a pro-Mexican court system, this could mean disaster for a U.S. citizen unfortunate enough to be involved in a collision with a Mexican insured, and potentially mechanically unsound Mexican truck on a U.S. road.

According to environmentalists, the NAFTA long-haul truck program will also eventually lead to the environmental fragmentation and degradation of various habitats along the proposed NAFTA delivery corridors. At least one report indicates that engines built prior to 1980 emit very high levels of Nitrogen Oxide (NOx) and particulate matter. Some estimate that this could lead to an additional 50 tons of NOx and 2.5 tons of particulate matter in the South Coast Basin on a daily basis.

NAFTA Supporters

Defenders of the NAFTA long-haul trucking provisions insist that full implementation of the long delayed agreement will benefit the economies of both countries and indicate that appropriate measures will be and have already been taken to ensure that safety and environmental concerns are eliminated.

According to U.S. Ambassador to Mexico Tony Garza, direct hauling between the two countries will save an estimated \$400 million annually in transportation costs. In response to safety concerns, John

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Hill, Administrator of the U.S. Federal Motor Carrier Safety Administration (FMCSA) indicated that Mexican owned trucks would have to qualify for authority to travel into the United States. Pursuant to the qualifying criteria established by the federal government, the Mexican owned trucks would be subjected to more stringent safety and environmental regulations than their U.S. counterparts. Furthermore, Hill indicated that Mexican owned trucks would not be permitted to haul hazardous materials across the border.

In addition, Hill stressed that U.S. inspectors have already been given permission from Mexican authorities to travel into Mexico to conduct their inspections. Hill also outlined numerous other safety features of the Demo-Program to Congress on March 13, 2007, including a regulation requiring Mexican trucks to be outfitted with a readily observable Commercial Vehicle Safety Agency (CVSA) decal, which would only be issued to trucks (after inspection) on a 90-day interval.

Finally, the Mexican Secretary of Transportation has vowed to aid Mexican trucking firms in bringing their truck fleets up to U.S. standards.

DOT Demonstration Program

On Feb. 23, 2007, the U.S. Secretary of Transportation Mary E. Peters, announced that all congressional safety and security mandates relative to the NAFTA (Mexico) long haul provisions had been met.

Peters also announced that DOT was ready to launch a one-year demonstration program aimed at evaluating the effects of full implementation of the NAFTA (Mexico) long-haul trucking provisions. Under the Demo-Program, DOT would gradually grant authority to 100 Mexican domiciled trucking firms to operate in the U.S. In exchange, the Mexican government agreed to grant 100 U.S. domiciled trucking firms the same authority to operate within Mexico.

Due to various delays, including a House vote (411-3 against the Demo-Program) and a lawsuit filed by the Sierra Club, Teamsters, Public Citizen, Environmental Law Foundation and Owner-Operator Independent Drivers Association, DOT was forced to delay the initial launch date. The lawsuit alleges that the Bush administration failed to publish proper notice and allow for public comment on the program.

After DOT and FMCSA announced their revised demo launch date of Sept. 1, 2007, NAFTA critics were quick to respond by filing for emergency injunctive relief in the Ninth Circuit Federal Court of Appeals to halt the program's implementation. On Aug. 31, 2007, the court issued an order denying the plaintiffs' requested stay and gave DOT the green light to launch its Demo-Program.

Due to the timing of the court ruling, DOT planned its new launch date for Sept. 7, 2007. In response to the announcement, the Teamsters flocked to San Diego , California and Laredo , Texas on Sept. 6,

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2007 to protest the Demo-Program, carrying signs that read, “NAFTA KILLS,” “UNSAFE MEXICAN TRUCKS” and “SAVE AMERICAN HIGHWAYS.” Despite the protest, two Mexican owned trucks crossed the U.S./Mexican border as scheduled on Sept. 7 and successfully delivered their payloads in New York and South Carolina.

On Sept. 10 DOT announced that it allocated \$66.2 million to improve what some have dubbed the “NAFTA Super-Highway System.” The money was earmarked for improvements aimed at reducing congestion and improving freight flow by adding bypasses and truck-only lanes.

At the same time, Senators Byron Dorgan (D-ND) and Arlen Specter (R-PA) introduced Senate Amendment 2797 to H.R. 3074 for a vote scheduled for Sept. 11, 2007. The Dorgan Amendment passed with an overwhelming 75-23 vote in favor of prohibiting the “establishment of a program that allows Mexican truck drivers to operate beyond the commercial zones near the Mexican border.”

Future of the DOT Demo-Program

Although the House and the Senate have voted to block funding for the Demo-Program and lawsuits are still pending, some find it hard to believe that the Bush administration will abandon its efforts to open the U.S./Mexican border as set forth by NAFTA.

In fact, just one week after the Senate voted to block the program's funding, FMCSA announced that, “IBC Inc., a San Diego-based trucking company, and Transportes Rafa, a Mexicali, Baja-based trucking company, had both received authority to make long-haul deliveries in Mexico and the United States, respectively, as part of the cross-border trucking demonstration project.”

On Sept. 24, 2007, Transportes Padilla, a Tijuana-based trucking company, became the third Mexican domiciled trucking company to receive authority to make long-haul deliveries in the United States.

Currently, there has been no indication that either DOT or FMCSA is allowing the funding block to halt the Demo-Program. In a news release dated, Nov. 5, 2007, FMCSA announced that it has adopted a Global Positioning System (GPS) based tracking program, which will allow it to track all trucks participating in the Demo-Program. Pursuant to program requirements, each truck will be outfitted with a GPS device that allows FMCSA to monitor whether truck drivers are adhering to the U.S. hours of service regulations by tracking origination locations and travel progress.

Despite strong opposition from Congress, the Demo-Program has just entered its sixth month in existence. Earlier this year, Senator Dorgan characterized the DOT's refusal to end the Demo-Program as a direct violation of Senate Amendment 2797 (SA 2797), which according to Congress, calls for the immediate “halt” of the Demo-Program.

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The DOT countered by asserting that the SA 2797 bars the “establishment” of a Demo-Program and does not prevent it from “maintaining” the already existing Demo-Program. Senator Dorgan pledged to hold a hearing where the DOT would have to account for its actions.

With respect to the pending lawsuit filed by various labor and environmental organizations, the plaintiffs' brief was due on Nov. 19, 2007, the government's brief was due on Dec. 15, 2007 and oral arguments were scheduled for Feb. 12, 2008. We will be monitoring this topic and will report the latest developments in the next edition of “The Dispatch.”