

## *Still Talking Trash About Mexican Trucks*

By George Kourous

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During the recent presidential campaign, Green Party candidate Ralph Nader declared there were no substantial differences between Democrat Al Gore and the Republican winner, George W. Bush—especially as regards trade policy. Since Bush was sworn in, however, we've had several examples that suggest Nader may have waxed a bit hyperbolic. One wonders, for instance, if Gore would have been as willing to heed the NAFTA arbitration panel, which on February 6 ruled that the U.S. must allow Mexican commercial trucks access to its highways.

Under the terms of NAFTA, Mexican trucks were to have been allowed gradual access to the U.S., and vice versa, starting in December 1995; by January last year, U.S. trucks would have been able to seek permission to operate nationwide in Mexico, and Mexican truckers would have been able to do the same north of the line. The Clinton administration, however, unilaterally suspended implementation of the first of these provisions the day it was to have gone into effect. Mexico, predictably, responded in kind. Following prolonged but unsuccessful negotiations, in late 1998 Mexico filed a claim against the U.S. under the NAFTA dispute resolution process. A year later Washington filed a counterclaim, charging that Mexico's denial of access to U.S. drivers was purely retaliatory, and therefore not permitted under NAFTA. Last June, the matter was taken up by a NAFTA arbitration panel.

As expected, in its February 6 decision the arbitration panel ruled that Washington's ban on Mexican trucks has indeed been in violation of

NAFTA. The ruling has triggered a flood of complaints and warnings from the Teamsters Union as well as Nader's Public Citizen organization, which have long argued that Mexican trucks represent an unmitigatable safety hazard. Supporters of crossborder trucking counter that the United States is free to enforce the same safety standards it does on U.S. or Canadian carriers on Mexican truckers.

The United States can comply with the panel's ruling in several ways: it could begin granting access to Mexican trucking firms on a case by case basis according to their safety records, as originally contemplated under NAFTA; it could try to come to some sort of gradual phase-in or pilot program compromise with Mexico; or, it could maintain the ban and either seek to negotiate a compensation agreement with Mexico or simply allow Mexico to impose the retaliatory tariffs on U.S. products that NAFTA allows in such cases. Public Citizen et al. favor the latter option.

Safety is a serious concern, certainly. Mexico's fleet of 375,000 trucks has been estimated to have been in service an average of 15-20 years, compared to five years for most U.S. rigs.

Be that as it may, the notion being forwarded that Mexico's commercial trucking fleet represents a wholesale safety hazard is being overplayed. Many of the warnings regarding unsafe Mexican carriers refer to a 1997 DOT study showing that between December 19, 1995 and May 3, 1996, 48.7% of Mexican truckers failed safety inspections in Laredo, Texas, while 77.4% failed in El Paso.

The study, the first of its kind, was initiated two days after the U.S. announced it would not honor the NAFTA trucking agreement, and could not have been the basis for that decision. And in the end, the politically induced investigation relied on highly suspect science. For



instance, the DOT researchers obtained their data from Mexican drayage equipment, not long-haul rigs. As an article in the *Texas International Law Journal* points out:

“The difference between the two is significant. Owned by customs brokers or independent owner-operators, drayage haulers haul freight between import lots on both sides of the border. Most drayage haulers are years or even decades old. Many lack basic vehicle features like lights, reflectors, good tires or brakes, or even safety windows. Their trips only cover the length of an international bridge, so they are not prepared for DOT inspection. It is unlikely that Mexican motor carriers would use drayage carriers for long-distance travel since the risk of breakdown or being turned away at the border is a costly expense. The United States, however, possess no data on the failure rates for [Mexican] trucks that are actually used for long-distance freight hauling. The DOT report compared apples to oranges when it denounced the safety of Mexican trucks on the basis of Mexican drayage haulers. The report was an inaccurate and misleading assessment of what safety conditions would be like if the border were opened.”

Additionally, “safety violations” identified in the report also included failure to display a DOT number, obtain state permits, or maintain a driver logbook and other documentation not currently required within Mexico.

At any rate, there is considerable evidence that Mexican trucks applying for entry into the United States would comply with standards comparable to those of U.S. operators. Other DOT studies show that in

California, which has more commercial vehicle inspection stations and a more rigorous inspection process than Texas, the number of Mexican trucks “idled” for safety reasons dropped to a figure on a par with U.S. trucks—26%. And officials at the Texas Department of Public Safety have noted that the safety performance of Mexican buses—which have already been allowed access to the U.S. under NAFTA—match U.S. safety rates. Finally, as supporters of Mexico’s trucking industry accurately point out, Mexican companies will be apt to send the best trucks in their fleets north, and the companies that do so will be the largest and best-equipped—smaller carriers without resources for vehicle upgrades or driver training are not likely to operate north of the line.

Another detail lost amid the Mexico-bashing is that the U.S. trucking industry is not itself a shining example of safety.

In the U.S., major safety problems plagued the industry until the mid-1980s; subsequent crackdowns reduced the fatal accident rate for large trucks by 42%, but problems persisted nonetheless. A GAO study showed that in 1997, the year for which most recent data is available, the annual number of miles traveled by large trucks in the U.S. increased by 25%, while the number of highway fatalities involving large truck accidents increased 25%. In 1999 testimony before a House Transportation Appropriations subcommittee, Department of Transportation Inspector General Ken Mead stated that “thirty years ago, congressional concerns centered around the fact that too few trucks were being inspected, too many inspected trucks were found unsafe for operation, and driver fatigue was a major factor in

many accidents. These are the same concerns we have today.” According to Wolf, “one in every five trucks is so unsafe they should be towed away to some repair facility.” Figures offered today by DOT’s Motor Carrier Safety Administration indicate only 26% of U.S. commercial trucks have been rated for safety and of these, only 62% earned a “satisfactory” rating. 30% were rated “conditional” and 8% were rated “unsatisfactory.”

Strong concern expressed by congress, the DOT’s own inspector general, the GAO, and others in regard to continued problems with trucking safety culminated in the Motor Carrier Safety Improvement Act of 1999. However DOT compliance with the Act has continued to prompt concern and criticism.

Clearly, Mexico does not have a monopoly on unsafe trucks. Yet despite the fact that nearly three-quarters of U.S. trucks have not ever been rated for safety and that of the 26% that have been, two out of every five fail to rate as “satisfactory,” the parties that are so vehemently concerned with the safety hazards Mexican trucks present have never suggested that overall resources for highway safety inspections be increased.

Nor have the opponents of granting Mexico’s truckers access to the U.S. ever talked about compromises—such as gradual phase-ins, pilot projects, or trial periods. The implication, unfortunately, is that Mexicans are simply incapable of getting their trucking operations up to U.S. standards, period. If one scratches the surface of that assumption, some pretty ugly colors show through.

The end result: six years after NAFTA’s first trucking provision was to have been implemented, we still

haven't done anything substantive to address crossborder trucking safety issues. Instead, we've spent six years talking trash about Mexico's trucks without ever talking about spending more money on public safety and transportation planning, despite the necessity of doing so, resulting from surges in crossborder commerce. What we need now is not antiquated nationalism or Mexico-bashing. What we need now is for consumer safety groups, safety advocates, and concerned citizens to insist that Washington put its money where its mouth is and take the steps necessary to mitigate the many impacts of free trade: construction of an adequate transportation infrastructure that reduces risks and minimizes impacts on communities and the environment; allotment of money and facilities for highway safety inspections of trucks of all nationalities, both on and off the border; and adequate enforcement of existing regulations.

Finally, people also seem to have forgotten that NAFTA's trucking provisions are reciprocal. By allowing Mexican truckers to operate on its roadways, Washington wins access to the Mexican trucking market for U.S. carrier outfits. The few articles in the national press that have pointed this out have gone on to state that U.S. truckers and U.S. trucking companies will not be likely to move into Mexico, however, due to the poor condition of roads and "lack of good truck stops" south of the border.

This claim holds no water. Companies expand into niches where they have an opportunity make money, and the operating environment in Mexico is not so harsh that U.S. companies cannot adapt. Indeed, U.S. companies could potentially outcompete Mexican firms. Unlike their Mexican counterparts, U.S. trucking firms have access to credit to buy new rigs; this is why the U.S. commercial fleet is 5 years old on average as opposed to 15 in Mexico, where firms must purchase new trucks outright. Although the most lucrative stretches of NAFTA's transportation business runs from U.S. input suppliers to Mexico's northern border maquila zone then back north again to retailers, look to see U.S. carriers establishing themselves south of the line as well. With credit and capital behind them, U.S. companies will be well equipped to do so.

This fact has Mexico's commercial trucking associations very, very nervous, yet they haven't taken the obstructionist route. Despite serious concerns, Mexico has opted to play fair. By the rules. The rules both countries agreed on.

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## Sources for More Information

### **Cámara Nacional del Autotransporte de Carga**

<http://www.canacar.com.mx/>

**Peter Cazamizas**, "The U.S.-Mexico Trucking Dispute: A Product of a Politicized Trade Agreement," *Texas International Law Journal*, April 1, 1998." Available for a fee online at <http://www.northernlight.com/>

### **Federal Motor Carrier Safety Administration**

<http://mchs.fhwa.dot.gov/>

**Public Citizen**, "The Coming NAFTA Crash: The Deadly Impact of a Secret NAFTA Tribunal's Decision to Open U.S. Highways to Unsafe Mexican Trucks"

<http://www.citizen.org/pctrade/nafta/reports/truckstudy.htm>

### **Teamsters**

<http://www.teamster.com/governmt/nafta/background.htm>

### **U.S. General Accounting Office,**

"Commercial Motor Vehicles: Effectiveness of Actions Being Taken to Improve Motor Carrier Safety is Unknown" (GAO/RCED-00-189);

"Commercial Motor Vehicles: Significant Actions Remain to Improve Truck Safety" (GAO/T-RCED-00-102);

"Commercial Trucking: Safety Concerns About Mexican Trucks Remain Even as Inspection Activity Increases (RCED-97-68); "Truck Safety: Effectiveness of Motor Carriers Office Hampered by Data Problems and Slow Progress on Implementing Safety Initiatives," GAO/T-RCED-99-122);

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