



The International Brotherhood of Teamsters

Testimony on Cross Border Truck and Bus Operations

Before the

Committee on Commerce, Science, and Transportation
United States Senate

On July 18, 2001

International Brotherhood of Teamsters

Chairman Hollings, Senator McCain and Members of the Committee:

My name is Jim Hoffa, and I am General President of the International Brotherhood of Teamsters. I am pleased to appear today before this Committee on behalf the 1.4 million members of the Teamsters Union and the hundreds of thousands of our members who literally make their living on our nation's highways.

The Teamsters Union has taken a serious interest in the work that Congress and, in particular, this Committee has undertaken to ensure safety on our nation's highways. It was just two years ago that most of the people on this panel and on the following panel were testifying before you on the need to strengthen motor carrier safety here in the United States.

And now, as this Committee moves forward with hearings concerning the issue of whether Mexican-domiciled motor carriers should be allowed to operate throughout the United States, we are pleased to have the opportunity to share our views on this important safety issue.

In general, the Teamsters Union believes that the United States is not prepared to begin approving Mexican carrier applications to operate throughout the

United States because the safety of Mexican carriers cannot be assured. But before I delve into this issue, I think it's important that we first review how the United States got to this point.

When the North American Free Trade Agreement (NAFTA) was enacted in 1993, the existing moratorium on the registration of Mexican motor carriers was initially left in place; however, operating authority for Mexican carriers was planned to be phased-in over an eight-year period. The first phase was to have occurred in 1995, when Mexican trucks were to be allowed to operate beyond the commercial border zones into the four border states (California, Arizona, New Mexico, and Texas). In 2000, Mexican carriers were scheduled to operate throughout the United States. To alleviate safety concerns, the agreement also provided for the establishment of a Land Transportation Standards Subcommittee whose function was to implement a work program to harmonize the truck and bus safety standards of the United States and Mexico.

In 1995, however, when the first phase was scheduled to occur, and again in 2000, it was apparent that Mexico had not yet made the kinds of safety improvements that were required when the schedule was agreed upon. Although the Clinton Administration initially planned to implement the first phase of the schedule, when Congress and numerous groups including the Teamsters Union made it aware

of the serious safety concerns it acted responsibly and kept the moratorium in place. These concerns were outlined in four separate Congressional letters to the President: One in 1997, which was signed by 236 House Members on both sides of the aisle; another in June of 1999, which was signed by 258 House Members; another in November 1999, which was signed by 48 Senators, many of which serve on the Senate Commerce Committee; and another sent just two months ago to President Bush by Senator John Kerry (D-MA) and 9 other Senators who supported NAFTA but are concerned about the safety implications of cross-border trucking. The Teamsters Union wishes to submit all of these letters for the record.

In response to the moratorium, Mexico sought consultations under NAFTA's Article 20 dispute resolution mechanism. And from 1995 through January 2000 various consultations and meetings took place, but the parties could not resolve the serious safety issues at hand. An arbitration panel was then formed on February 2, 2000. During the year-long panel proceedings, the United States vigorously opposed the entry of Mexican carriers into the United States because of serious safety concerns and the United States' inability to adequately ensure the safety of the traveling public if Mexican carriers were to enter the United States prior to Mexico's establishment of a comprehensive safety regime. The United States explained the problem as follows:

“Mexico’s existing truck and operator safety rules are not yet compatible

with those in the United States and large and important gaps remain. Mexico does not impose key record-keeping requirements. It has no roadside inspection program and thus does not generate reliable nationwide statistics on vehicle out-of-service rates. Mexico has only recently begun a limited program of on-site inspections and audits, and Mexican enforcement resources remain quite limited. Mexico and the United States do not yet have a functioning data exchange arrangement.

“All this means that when Mexican trucks cross into the United States, there is no assurance that, based on the regulatory regime in place in Mexico, those trucks already meet U.S. highway safety standards.”

In the Matter of Cross-Border Trucking Services, Secretariat File No. USA-MEX-98-2008-01, Counter-Submission of the United States at 48 (Feb. 23, 2000), the United States further explained that these safety problems could not be adequately addressed through border inspections:

“[T]he effectiveness of any [border inspection] program is limited given the huge number of trucks that cross the southern border each day, the time and resources required to conduct even a small number of rigorous inspections, and the commercial disruptions that would accompany any system other than occasional spot-checks. As a practical matter, the deterrent effect of any reasonably practicable system of border safety inspections is limited since the likelihood of inspection on any given cross-border transit is small.”

“Since a border inspection system alone cannot sufficiently assure safety compliance, the United States is in a position in which it must rely on Mexico, much as it relies on Canada, to ensure that the great preponderance of its trucks already meet U.S. standards by the time they arrive at the border.”

On February 6, 2001, the NAFTA panel issued a report which determined that “the inadequacies of the Mexican regulatory system provide an insufficient legal basis for the United States to maintain a moratorium on the consideration of applications for U.S. operating authority from Mexican-owned and/or domiciled trucking service providers.” It also held that the United States was and remains in breach of its obligations under Annex I (reservations for existing measures and liberalization commitments), Article 1102 (national treatment), and Article 1103 (most-favored-nation treatment) to permit Mexican nationals to invest in enterprises in the United States that provide transportation of international cargo within the United States.

It is important, however, to note what the Panel did not determine. According to its *Findings, Determinations And Recommendations, Secretariat File No. USA-MEX-98-2008-01*, the panel “is not making a determination that the Parties of NAFTA may not set the level of protection that they consider appropriate in pursuit of legitimate regulatory objectives. It is not disagreeing that the safety of trucking services is a legitimate regulatory objective. Nor is the Panel imposing a limitation of the application of safety standards properly established and applied pursuant to the applicable obligations of the Parties under NAFTA.”

In fact, in its report, the Panel even provided U.S. authorities

permission to establish inspection and licensing requirements that are not “like” those in place for U.S. carriers, so long as their expectations are the result of legitimate safety concerns.

“With regard to the inspection and licensing requirements of Mexican trucks and drivers operating in the United States, the circumstances may well not be “like,” even though those trucks and drivers are fully subject to the U.S. regulatory regime. For example, given the different enforcement mechanisms currently in place in Mexico and in the United States as of the date of this Report, it may not be reasonable for the Department of Transportation to address legitimate U.S. safety concerns by declining to rely largely on self-certification by Mexican trucking firms seeking authority to operate in the United States.”

“If the United States implements differing specific requirements for Mexican carriers from those imposed on U.S. and Canadian carriers, in order to meet legitimate U.S. safety concerns, it must do so in good faith and those requirements must conform with the requirements of Chapter Nine and other relevant NAFTA provisions.” [Secretariat File No. USA-MEX-98-2008-01 Findings, Determinations, and Recommendations]

Such legitimate objectives are addressed in Article 904.2 of NAFTA: “Notwithstanding any other provision of this Chapter, each party may in pursuing its legitimate objectives of safety or the protection of human, animal or plant life or health, the environment or consumers, establish the level of protection that it considers appropriate.”

Therefore, the United States has two choices: (1) it can establish a program,

which requires Mexican trucks to meet more stringent standards than is the case under current U.S. law. The Teamsters Union believes the United States would be acting responsibly in fulfilling its safety obligations to the American public by establishing such a program and that such action would not be in conflict with NAFTA. Or (2) it can refuse to implement the findings of the NAFTA Panel because it is under no legal obligation to do so. **Let me repeat that: The United States is under no legal obligation to implement the findings of the NAFTA panel.**

Under U.S. law, the health, safety and welfare of U.S. citizens is paramount, and to the extent NAFTA conflicts with any U.S. law dealing with health, environment, and motor carrier/worker safety, U.S. law prevails. 19 U.S.C. § 3312(a). Even under the terms of NAFTA, the U.S. is entitled to disregard the panel's recommendation, and simply allow Mexico to take equivalent reciprocal measures or negotiate compensation or a new grant of some trade benefits to Mexico. Indeed, the United States has not traditionally allowed foreign countries or international bureaucracies to dictate its domestic policy, particularly where the health and safety of U.S. citizens is concerned.

Despite these options, the Bush Administration has indicated that it plans to begin processing Mexican carrier applications at the behest of the NAFTA panel,

and has set a target date of January 2002 for doing so. It is in accordance with this decision that the Department of Transportation (DOT) has proposed three rules, which, unfortunately, achieve the opposite of what is permitted under the NAFTA Panel ruling. In order to save time, I'd like to dispense with the details of our specific concerns with the proposed rules and instead submit our comments to the docket for the record.

What I would like to emphasize, however, is that the DOT's proposals actually allow greater latitude in several key areas for Mexican-domiciled carriers and drivers than currently apply to U.S. and Canadian companies and drivers under U.S. law. In fact, the Department's proposed 18- month safety review process for Mexican carriers is more lenient and far less comprehensive than inspections of U.S. carriers since, among other things, those done for Mexican carriers would be off-site. Affectively, the DOT proposal creates a safe harbor for Mexican-domiciled entrants to the market and a competitive disadvantage for U.S. interests.

Moreover, the rules appear - although surely the DOT is not - to be almost entirely uninformed about the real risks that these dangerous provisions pose to the U.S. public.

We believe that the U.S. is acting far too quickly, with far too little attention to the actual and potential costs, and at the risk of causing hazardous material spills,

horrific truck crashes and other unnecessary suffering and death on U.S. highways. After all, the serious safety concerns expressed by the United States before the NAFTA panel have not yet been resolved.

Now I want to take a moment and highlight some of the United States' own submissions to the NAFTA Panel because I think it is crucial that when this Committee considers whether to act on this issue that all of the Members take a close look at and compare what the United States Government, under the direction of the DOT and the United States Trade Representative (USTR), submitted to the NAFTA Panel and what the two agencies are asserting now – two entirely different things.

“Trucking firms operate in Mexico under a far less comprehensive and less stringent safety regime than that in place in either Canada or the United States. The Mexico safety regime lacks core components, such as comprehensive truck equipment standards and fully functioning roadside inspection or on-site review systems. In light of these important differences in circumstances, and given the experience to-date with the safety compliance record of Mexican trucks operating in the U.S. border zone, the United States decision to delay processing Mexican carriers’ applications for operating authority until further progress is made on cooperative safety efforts is both prudent and consistent with U.S. obligations under NAFTA.” (Secretariat File No. USA-MEX-98-2008-01, June 8, 2000)

“The safety of Mexican carriers cannot be ensured on a case-by-case basis. Rather, as the United States has explained, highway safety can only be assured through a comprehensive, integrated safety regime.” (Secretariat File No. USA-MEX-98-2008-01, June 8, 2000)

“U.S. safety inspectors may easily audit, inspect, and enforce compliance vis-à-vis firms based in the United States, and can rely on Canadian inspectors to enforce Canadian rules and regulations in a similar manner, but this is not the case for companies based in Mexico. In light of these important differences, and given the experience to-date with the safety compliance record of Mexican trucks operating in the U.S. border zone, the United States is within its rights to insist that the necessary regulatory and enforcement framework be in place – and working – prior to authorizing Mexican trucking firms to operate across the U.S. roadway system. And, given the high volume of cross-border truck traffic, and the fact that truck safety regulation requires a comprehensive, integrated regulatory regime, border inspections alone are not sufficient.” (Secretariat File No. USA-MEX-98-2008-01, April 24, 2000)

“Roadside inspections alone, without on-site inspections, accident and carrier information, and other elements of a safety regime, are not sufficient to identify problem carriers. Thus, a Mexican carrier’s safety performance cannot be assured simply because, for example, it uses only new trucks in its U.S. operations that are more likely to pass roadside inspections.” (Secretariat File No. USA-MEX-98-2008-01, June 9, 2000)

“The Government of Mexico cannot identify its carriers and drivers so that unsafe conduct can be properly assigned and reviewed. While we understand that the Government of Mexico is engaged in an effort to register all of its motor carriers and place them in a database that would facilitate the assignment of safety data, that database does not contain any safety data. Therefore, Mexico cannot track the safety fitness of its carriers and drivers.” (Secretariat File No. USA-MEX-98-2008-01, June 9, 2000)

“It is the position of the United States that Mexico must develop and implement a safety oversight program that ensures that Mexican carriers planning to engage in cross-border transportation meet minimum safety standards, and which allow the Mexican and U.S. Governments to share relevant and complete motor carrier noncompliance data. Without such

carrier safety performance history, the United States cannot conduct a meaningful safety fitness review of Mexican carriers at the application stage. In light of this... the Mexican case-by-case approval scenario would be unworkable.” (Secretariat File No. USA-MEX-98-2008-01, June 9, 2000)

“No review of a Mexican carrier based solely on an unverifiable application for operating authority can give the United States a sufficient level of confidence regarding the safety of that carrier’s vehicles, no matter how detailed an application is required.” (Secretariat File No. USA-MEX-98-2008-01, June 9, 2000)

“Mexico has not yet completed the process of establishing safety enforcement mechanisms with respect to a number of important areas of truck safety. (Secretariat File No. USA-MEX-98-2008-01, June 9, 2000)

“Mexico has neither promulgated final safety standards for motor carrier inspections nor implemented a safety oversight and enforcement program for carriers seeking U.S. operating authority.” (Secretariat File No. USA-MEX-98-2008-01, June 9, 2000)

“When Mexican trucks cross into the United States, there is no assurance that, based on the regulatory regime in place in Mexico, those trucks already meet U.S. highway safety standards.” (Secretariat File No. USA-MEX-98-2008-01, June 9, 2000)

These admissions become even more disturbing when you read the DOT Inspector General’s (IG) interim report, which was issued shortly after the DOT published its proposed rules. The report, entitled *Status of Implementing the North American Free Trade Agreement’s Cross-Border Trucking Provisions* (Report No. MH-2001-059, May 8, 2001) found that while some improvements have been made since the IG last investigated the safety of Mexican trucks in 1998,

Mexican trucks are still not as safe as U.S. and Canadian trucks, and U.S. border inspection facilities are still inadequate to evaluate and monitor the safety of Mexican trucks as they cross the border.

According to the IG, there are only two permanent inspection facilities, both of which are state facilities in California. Of the 25 remaining border crossings, a vast majority lack dedicated phone lines to access safety databases and therefore cannot perform as simple a safety check as validating a commercial driver's license. Further, almost all of these inspection facilities lack adequate space to inspect vehicles and/or place dangerous vehicles out of service. In addition, there are not currently enough inspectors to adequately staff border operations. The IG indicates that DOT has requested increased funding to hire additional personnel, and if all such funding is approved, DOT will be able to hire and train an additional 80 inspectors. However, this is not enough to implement all three proposed rules. Although the number of inspectors would meet the minimum recommended by the IG in its 1998 report if all 80 are designated to border operations, only 40 have been designated by the DOT as inspectors. The remainder are designated as investigators who will conduct compliance reviews. As such, the number of inspectors still falls far short of the 1998 goal. Indeed, the IG indicates that its 1998 recommendation was conservative and that even more inspectors are actually

needed. Thus, there is no basis to believe the situation will be improved by the time the DOT begins processing Mexican carrier applications to operate throughout the United States, and in each of your congressional districts, by January 2002.

The IG also reported that over 4.5 million trucks entered the U.S. at the southern border in FY2000. Of those, 46,114 inspections were performed – less than one percent. Now, some will claim that this number is skewed: That the 4.5 million trucks that entered the U.S. was the result of 80,000 trucks crossing the border more than once in FY2000. The Committee Members should not be fooled by this assertion because assuming for a moment that this figure is correct – and it may very well be correct – then the situation is even worse than we thought. In fact, this means that on average each of those 80,000 trucks traveled across the border about 56 times in FY2000. Taking past inspection rates into consideration (less than 1 percent inspected), this would mean that about 800 of those trucks were inspected. The Committee should then question how so many trucks that crossed the border 56 times in one year went un-inspected. If the rather low 80,000 figure is accurate, then it is the Teamsters' position that every truck should have been inspected, and Mexico's out-of-service rate should be equal to if not better than the United States.

But the fact is that, of those trucks that were inspected in FY2000, 36 percent

of them were placed out-of-service as a result of being in an unsafe condition. While that rate has improved from the 1997 out-of-service rate of 44 percent, it is still 50 percent high than the U.S. out-of-service rate and even higher than the Canadian out-of-service rate of 17 percent. The Teamsters Union needs not to remind this Committee that it was not too long ago that we were all concerned about the United States' own high out-of-service rate of 24 percent. A higher out-of-service rate for foreign motor carriers that are not going to be directly monitored by the DOT should be an even greater concern.

The average out-of-service rate for Mexican carriers, however, may not accurately reflect the entire picture. But not because of what our opponents have been claiming: That the high out-of-service rates for Mexican carriers are due to the fact that most of the trucks taken out of service are drayage trucks that provide a different service than that provided by long haul trucks. Even the DOT disagrees with that in each of the U.S.' submissions to the NAFTA Panel:

“In terms of safety, the service provided by drayage trucks is no different from that provided by long-haul trucks – they haul goods on the same roads, through the same cities and towns through which long-haul trucks operate. Furthermore, the Government of Mexico has presented no evidence that Mexican long-haul carriers are safer than Mexican drayage carriers. Indeed, many of the Mexican trucks that are inspected at the border have traveled considerable distances from the interior of Mexico to the border and thus are, in fact, long-haul trucks. Plus, there is no guarantee that drayage truck operators would not seek to operate their trucks beyond the commercial zone once the moratorium is lifted.”

[Secretariat File No. USA-MEX-98-2008-01]

In order to truly evaluate the accuracy of the average out-of-service rate for Mexican carriers, the Committee must look at the rates for each of the four border states, individually. At the state funded, permanent inspection facility in Otay Mesa, California, the out-of-service rate for FY 2000 was 23 percent, comparable to U.S. rates. The total out-of-service rate for California was 26 percent. This is because California has a comprehensive state funded inspection program. California, however, only receives 23 percent of the commercial cross-border traffic. By comparison the out-of-service rate for Texas, which receives 69 percent of all commercial cross-border traffic, was 40 percent. At the El Paso, Texas, border crossing alone, the out-of-service rate for FY 2000 was an alarming 50 percent. Meanwhile, the out-of-service rates for New Mexico and Arizona are 32 and 40 percent, respectively. Combined, these out-of-service rates make up the 36 percent average out-of-service rate. Taken separately, these rates are a recipe for disaster, particularly in Texas.

Equally troubling is the fact that Mexico still has not harmonized its safety standards with the United States and Canada, as NAFTA requires. The IG confirmed that Mexico still hasn't established an effective drug and alcohol-testing program. Mexico still has no hours of service regulations and has only recently proposed in its *Diario Oficial* logbook requirements to record hours of service. And to this day, no database exists for our two nations to exchange information on past violations of Mexican drivers and carriers.

Despite these serious concerns, the IG found that the DOT does not yet

have an implementation plan to ensure safe opening of the U.S.-Mexico border to commercial vehicles, according to the Inspector General. In this regard, the IG recommended that the DOT take the following actions:

“Finalize and execute a comprehensive plan that identifies specific actions and completion dates for the implementation of NAFTA’s cross-border provisions (including staffing and facilities), and that reasonably ensures safety at the southern border and as the commercial vehicles traverse the United States.

“Increase the number of Federal safety inspectors at the U.S.-Mexico border to at least 139 (our 1998 estimate of 126 plus the 13 authorized in 1998) to enforce Federal registration and safety requirements during all port operating hours, and provide the requisite inspection facilities.”

Unfortunately, none of these actions have been taken. It is therefore incomprehensible to understand how the DOT will be prepared to begin processing applications from Mexican carriers by the end of this year. We are clearly nowhere near ready to implement NAFTA’s cross-border trucking provisions. And it is impossible for the Bush Administration to do in one year what the Clinton Administration could not do in eight.

For these reasons, the Teamsters Union supports House Resolution 152. We also support the provisions that were included in both the House and Senate Transportation Appropriations bills. In fact, many of the provisions in the Senate bill came out of the House Resolution.

It is important to stress that we still believe that the ban on cross-border trucking should be continued – the U.S. has that option under NAFTA, as explained earlier in this testimony. But if Congress chooses against going in that direction, then it must at least ensure that the many safety issues highlighted in the IG report are resolved *before* the DOT begins processing Mexican carrier applications – not after. Safety should *never* be an afterthought.

Now I understand that our opponents will claim that such actions discriminate against Mexico and Mexican-citizens. Nothing could be farther from the truth. The Teamsters Union has the largest Latino membership amongst all the unions in the AFL-CIO, and our members know that this issue has nothing to do with discrimination. In fact, we'd like to submit for the record a letter to both the House and Senate from the President of the Teamsters' Hispanic Caucus, Bob Morales. In it, President Morales, writes what this issue is really about: corporate greed.

“The Administration does not want the border to be opened for the benefit of the poor Mexican driver desperate to reach for a better life. Rather, it will be opened for monetary gain to a trucking industry reaching for better and higher profits through unrestricted motor carrier access to the United States, and, of course, for political gain with Mexican President Vicente Fox.

“The impoverished Mexican may drive the truck, but he will never see the profit. That will belong to the industry, which will pay him a meager wage, and use him to hide behind the official NAFTA policy

that exploits the poor in Mexico, while endangering both Mexican and Mexican-American U.S. Citizens with unsafe and largely unregulated trucks.”

“Thus, Mexican drivers are offered at best four things: first, the spur of poverty; second, the incentive of a wage slightly higher than the meager wages that consign most of their countrymen to a kind of economic involuntary servitude; third, unsafe vehicles, and no rest; fourth, a requirement that they drive across the border, into and across the United States, and deliver their cargo on time and in good condition. And this is what Latinos, on both sides of the border, are supposed to think is a good deal.” [Letter to Congress from Teamsters Hispanic Caucus President, July 11, 2001]

The fact is that for Latinos on both sides of the border -- the drivers coming across from Mexico and the Mexican-American families that are living here in the United States – this is a potentially dangerous deal. And without a much-needed re-evaluation of the NAFTA cross-border trucking provisions, there will inevitably be a tragic crash, a loss of life, and a devastated family, on one or both sides of the border.

Mr. Chairman, the Teamsters Union urges you and the members of this Committee to turn this policy around and to get the DOT off the fast track and on the right track before it's too late.

Thank you again for providing me the opportunity to testify. I'm happy to answer any questions that you might have.