

## Talking Trash about Mexican Trucks

by George Kourous

During the recent presidential campaign, Green Party candidate Ralph Nader declared there were no substantial differences between Democrat Al Gore and the eventual winner, Republican 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 that on February 6 ruled that the United States 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 United States, 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 a 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, a NAFTA arbitration panel took up the matter.

As expected, in its February 6 decision the panel ruled that Washington's ban on Mexican trucks was indeed 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, who 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 on Mexican truckers that it does on U.S. and Canadian carriers.

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 by conducting reviews of 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 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.

But 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 so could not have been the basis for that decision. 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—U.S. national requirements that do not exist in 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%. 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 point out, if allowed access to the United States, Mexican companies will be apt to send the best trucks in their fleets north, and those doing 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%, and the number of highway fatalities involving large truck accidents increased also 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. Some 30% were rated "conditional" and 8% were rated "unsatisfactory."

Strong concern expressed by congress, the DOT's own inspector general, the GAO and others regarding problems with U.S. 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 two out of every five of those trucks which have been rated fail to win a "satisfactory" grade, the pundits who 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 that time talking trash about Mexico's trucks without ever talking about spending more money on public safety and transportation planning, despite the clear necessity for doing so. We should have been looking for ways to safely and responsibly live up to the NAFTA trucking provisions years ago.

What we need now is not 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.