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The Coming NAFTA Crash:

The Deadly Impact of a Secret NAFTA Tribunal's Decision to Open U.S. Highways to Unsafe Mexican Trucks

New Evidence Suggests that a NAFTA Ruling Allowing Mexican Trucks Access to U.S. Will Expose the Public to Significant Threats

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Introduction

A legal ruling by a North American Free Trade Agreement (NAFTA) tribunal will be released in February 2001. The NAFTA ruling — requiring the U.S. to permit access to U.S. highways by Mexican trucks — may not only put American motorists and communities at great risk, but could destroy NAFTA itself. Ironically, this NAFTA ruling — which could bring NAFTA's threat to public health and safety directly into communities nationwide — comes as President George W. Bush calls for the expansion of NAFTA. Already his plan for the expansion of NAFTA to all the Americas faces a decidedly negative U.S. public opinion as a result of NAFTA.

> "Just one unfortunate accident between an overweight, unsafe Mexican truck and a Texas school bus...could escalate into an international incident." — Former Texas Attorney General Dan Morales, *Los Angeles Times*, 3/18/96.

The NAFTA dispute America faces about open-border trucking is indicative of the split in the U.S. over corporate managed trade: on one side are corporate pressures to use "trade" deals to further a broad agenda of deregulation regardless of the environmental, health or safety consequences; and on the other, the public pressures to demand that international commercial agreements do not undermine important social and environmental goals.

Imminently in early February, 2001, a final ruling will be issued in a simmering trade dispute between the U.S. and Mexico that pits commercial trucking interests against the public interest of safe highways. A preliminary ruling in the case rejected U.S. arguments regarding the lack of safety of Mexican trucks and ordered the U.S. to permit access by Mexican trucks to U.S. highways.

The North American Free Trade Agreement went into effect in 1994 with provisions

allowing Mexican trucks increasing access to U.S. highways. These NAFTA provisions required the U.S. to open access to all U.S.-Mexico border states in 1995 and to permit Mexican trucks to travel throughout the entire U.S. as of January 1, 2000. Until these provisions are implemented, because of a pre-existing U.S.-Mexico agreement, Mexican trucks may operate in a border commercial zone ranging from 3 to 20 miles into the U.S. to drop off loads destined for U.S. interior states. There are no interior checkpoints to enforce the border zone, however, and Mexican trucks have been pulled over many times in the border states and beyond.

Other provisions of NAFTA require the U.S., Mexico and Canada to negotiate unified standards for truck safety and commercial driver licensing. Proponents of open border trucking argued that this would allow Mexico to develop domestic standards at least as protective as those in the U.S. Yet the standardization process was not linked in NAFTA to the opening of the border and has not thus far led to the establishment of cross-border, uniform safety standards. In defending the administration's decision to keep the border closed, the U.S. Department of Transportation (DOT) has repeatedly documented the significant safety risks Mexican trucks would pose to U.S. highways.

> "We are seeing some frightening violations: air brakes that aren't responding; brake and tail lights that are not working or missing entirely. It's scary stuff." — Lawrence Weintrob, Department of Transportation Assistant Inspector General on condition of Mexican trucks, *USA Today* 1/11/99.

Moreover, the standards that do exist for commercial trucks in the U.S. are hardly a model for safety. Some critical standards, such as restrictions on the number of hours that truckers may drive, date from the 1930s. A consensus has been growing on Capitol Hill that this and other safety measures need to be updated soon in order to protect the public highway. If U.S. standards are upgraded the U.S. and Mexico would have to go back to the drawing table on many issues, so that Mexican trucks and driving rules would not lag behind the new U.S. standards.

Because of all these concerns, while in office President Clinton maintained the limited access to the border commercial zones and did not allow any greater access to the four U.S. states bordering Mexico or the rest of the U.S.

In 1998, Mexico challenged Clinton's refusal to open the border before a NAFTA enforcement tribunal, demanding that the U.S. abide by its NAFTA commitments and open its highways.* On November 29, 2000, the NAFTA tribunal released its preliminary ruling on the case supporting Mexico's claim: the U.S. must open its highways to Mexican trucks or pay an as-yet-unnamed penalty to Mexico for refusing to comply with the NAFTA

* Mexico's initial complaint was that the U.S. did not open the U.S. border states in December 1995 as agreed under NAFTA. However, the NAFTA tribunal did not issue a preliminary ruling until after the NAFTA transportation schedule also required the U.S. to open up the entire country to Mexican truck traffic. Public Citizen has been unable to determine whether during the course of the dispute Mexico amended its complaint to include the U.S. refusal to open its highways countrywide or not, despite repeated inquiries to the United States Trade Representative, the Mexican Embassy, the American Trucking Association, as well as consumer, highway safety and labor organizations concerned with the case.

ruling. A final ruling is due to be made by February 5, 2001 and must be released to the public 15 days later.**

The preliminary ruling in the NAFTA truck case contained the legal sophistry which is becoming increasingly common in trade tribunal rulings as public oversight of this realm has increased. The panel ultimately ordered the U.S. to open its border, but did so using crafty language: the panel ruled that the U.S. can maintain its own truck safety standards as long as it *also* complies with NAFTA's provisions.

In fact, there was never any question whether the U.S. could keep its domestic truck safety rules on the books. The issue was whether those safety standards could be enforced in the context of Mexican trucks.

Owners of commercial fleets who wish to operate in the U.S. must apply for operating permits from the U.S. Department of Transportation. According to the NAFTA panel, the U.S. may require that Mexican trucking companies which apply to be able to cross the border will meet all U.S. safety and labor standards. While this sounds good in theory, in practice given the state of Mexican inspection and enforcement, the only way to monitor whether a company is upholding its obligations is to check every truck which crosses the border and maintain good records on the companies and trucks that fail inspection there or elsewhere in the U.S. Although our government has been working with Mexico to develop a common database to do just that since NAFTA was implemented, no system is currently in place, and we are years away from a workable monitoring process.

Additionally, although the imminent NAFTA border opening deadline creates pressure on Mexico to develop a meaningful motor vehicle safety standard and oversight system little progress has occurred. Although some new Mexican laws are on the books, compliance is voluntary for the first year, and there is little evidence on the level of the Mexican government's commitment to enforce the new rules.

What the preliminary panel ruling actually required was that the U.S. must comply with NAFTA and open its borders— regardless of our state of readiness to enforce critical American health and safety standards. If the U.S. also seeks to try to enforce U.S. safety requirements, it must do so on a truck-by-truck basis. The U.S. inspects approximately 40 percent of domestic trucks with inspections being merely one element of its multifaceted truck safety regulatory system.[1] And the safety standards in Mexico will not do much to assure American safety once the trucks cross the border. As described in this report, Mexico has only a fledgling truck safety system. Our experience thus far has demonstrated the risks. While fewer than 1 percent of Mexican trucks now entering the U.S. are inspected, fully 35 percent of those trucks are forced out of service due to serious safety failures.

To attempt to fully enforce U.S. truck safety standards in the context of Mexican trucks would require that every single Mexican truck be inspected on the border. When President Bush was governor of Texas, he signed a letter

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** The final ruling was supposed to be released December 29, 2000 and released to the public by January 14, 2001, according to NAFTA's pre-set tribunal time lines (final decision is supposed to be provided 30 days after the preliminary ruling and released to the public 15 days later). The delay of the ruling at least until February 5, 2001 may suggest that the NAFTA tribunal sought to allow a transition in the U.S. government to be completed so that President Bush, whose election had only been certified days before the preliminary ruling, would be the decision maker.

to the Clinton Administration criticizing the refusal to open the border.[2] The new administration may argue that the U.S. can ensure safety by inspecting each Mexican truck. But the government and the U.S. trucking industry (which seeks to hire cheap Mexican drivers) know this is impossible.

Currently, 2 million trucks are inspected in the U.S. annually. This includes the 1 percent of 4 million (or approximately 35,000) Mexican trucks now crossing that are checked. DOT estimates that an additional 3 million Mexican trucks would cross yearly if the border were open. Thus, to inspect all entering Mexican trucks, U.S. inspections per year must rise from 2 million to 9 million trucks. Currently, there are about 101 state commercial truck inspectors and 60 federal inspectors at the border who are able to cover 1 percent of the current 4 million Mexican trucks.[***] Thus, to cover every Mexican truck if the border were opened with even a cursory inspection would require 32,000 inspectors. It is unlikely that the administration will guarantee this enormous resource allocation or the necessary funding for the construction of the huge new inspection facilities that would be needed to avoid week-long border backups.

Yet, even if the U.S. had the additional resources to try to enforce U.S. safety standards on a truck-by-truck basis, the preliminary NAFTA truck ruling also included a cryptic reference to a NAFTA provision that could require the U.S. to treat U.S. and Mexican trucks identically for inspection purposes. In typical trade doublespeak, the preliminary ruling contains language suggesting that the U.S. could treat Mexican trucks differently for inspection purposes. However, at the same time, the ruling requires that the U.S. comply with NAFTA's Technical Barriers to Trade Chapter, which explicitly forbids domestic and foreign players from being treated differently.

> "We now have evidence that two-thirds of the trucks that come across the border are not safe; they don't meet our standards. And I intend to see the rules are followed before I follow the rules on this." — President Clinton on delaying the NAFTA truck provisions, 10/99.

Amid the presidential election chaos, the crucial story of the NAFTA truck ruling received little media coverage outside the "trade press." Yet, the upcoming decision has enormous policy and political implications. President Bush has two basic options:

- to reject the NAFTA tribunal's orders to open the border and compensate Mexico for keeping the border closed until Mexican trucks can meet U.S. safety requirements; or
- to allow Mexican trucks to enter the U.S. and risk that inevitable future crashes will lead to additional loss of life and to a massive public backlash against NAFTA.

The high price to be paid under either response scenario — either financially, to maintain safety, or personally and

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[***]Through interviews with state regulators, Public Citizen discerned that the state of Texas provides 45 commercial truck inspectors at the border, Arizona has 31 and California provides 25. Public Citizen was not able to find out the current number of state inspectors in New Mexico, but there were none in 1998, according to a Department of Transportation Office of Inspector General Audit Report.

politically, with increasing fatalities and injuries if the border is opened to unsafe trucks — demonstrates that NAFTA is a severely flawed agreement.

President Clinton noted three major problems that were unsolved when he kept the border closed in 1995:

- major differences between U.S. and Mexican safety regulations;
- major differences in the application and enforcement of the safeguards; and
- the inability of states and federal regulators to effectively enforce U.S. standards on Mexican trucks.[3]

Those concerns are still valid— permitting greater access for Mexican trucks will endanger U.S. motorists, which is why U.S. consumer and highway safety groups urge President Bush to keep the border closed until the safety issues are addressed and to compensate Mexico as NAFTA's rules require.

President Bush's response to this crisis will significantly impact American public opinion regarding trade and President Bush's public image. Many people in the corporate business lobby that financed Bush's campaign and inauguration are eager for him to open the border and allow underpaid Mexican drivers to transport the corporations' cheap-labor Mexican-made goods to the U.S. for sale (long haul drivers in Mexico earn about 6¢ a mile compared to about 28¢ a mile for U.S. drivers).[4] Most other Americans — especially in the border states of Texas, California, Arizona and New Mexico — are legitimately concerned that a flood of unsafe, basically unregulated freight trucks from Mexico would pose a significant threat to the quality of life and to highway safety. The safety threat is so significant that a California trucking *industry* association opposes opening the border, foreseeing a backlash against all trucking when the inevitable accident occurs.

The current NAFTA truck crisis is one of the most dramatic examples of how "trade agreements" such as NAFTA reach far beyond appropriate commercial issues and can threaten vital domestic health and safety standards, even when these standards are applied equally to domestic and foreign commerce. If U.S. federal highway safety officials conclude that Mexican trucks do not meet U.S. safety standards, why should that well-substantiated safety policy be challengeable before a NAFTA dispute resolution tribunal as a trade barrier?

Indeed, raising Mexican truck safety standards would have an enormous benefit for the safety of Mexican motorists and communities. Currently, Mexico has a highway fatality rate more than three times that of the U.S. or Canada. With the opening of the border according to an arbitrary timeline that is set and enforced under the NAFTA agreement without any connection to compelling safety considerations, safety advances in Mexico and the U.S. will lose critical leverage for improving standards.

In short, the panel's decision will force the opening of the border to occur far too soon. The border should remain closed until there is a consensus that meaningful safety standards and oversight are in place.

The continuing trend is that "trade" agreements will undermine safety, health and other domestic social policies. This ongoing diminishment of our hard-won health and safety safeguards fuels the backlash against NAFTA and the World Trade Organization (WTO).

Background

Among its 900 pages of rules and regulations, NAFTA includes provisions requiring standardization of NAFTA countries' truck length, weight, safety and drivers'-licensing standards.[5] NAFTA also required that by 1995, Mexican trucks be permitted to drive throughout U.S.-Mexico border states and that by January 1, 2000, trucks from any NAFTA country could drive anywhere in all NAFTA countries.[6] Absent these NAFTA border openings, Mexican trucks are permitted to travel in a border commercial zone up to 20 miles into the U.S. to unload and pick up freight to take back to Mexico.[7]

However, the two sets of truck-related NAFTA commitments were not linked. Thus, even though U.S. and Mexican standards were not harmonized, the U.S. still faces NAFTA rules which required it to allow access to U.S. highways by Mexican trucks. Yet, before the initial 1995 NAFTA-required opening of U.S. highways in the border states, the General Accounting Office found the same serious truck safety problems that were initially reported by border safety inspectors: of the few Mexican trucks that overwhelmed U.S. highway inspectors were able to examine, more than half had to be taken off the highway for serious safety violations.[8] Indeed, fewer than 1% of Mexican trucks that cross the border are inspected by U.S. safety inspectors.[9]

Given the data on serious safety problems, the U.S. announced that the initial 1995 border-state opening had to be delayed until Mexican truck safety was improved. Mid-1998, Mexico filed a formal challenge of that U.S. policy before a NAFTA dispute resolution tribunal.[10] At the end of 1998, the U.S. DOT again reviewed the Mexican truck border inspection data to determine whether to recommend a border opening and concluded that the same serious failings existed.[11] DOT thus maintained the status quo of only permitting the Mexican trucks in the limited commercial zone. It will be far from adequate to merely bulk up federal and state inspection resources at a few border checkpoints, because the most dangerous parts of the trucking fleet will inevitably be drawn to cross the border at the weakest inspection areas, where oversight is the most tenuous.

The safety problems of the Mexican trucking industry are legion. The Mexican government provides little to no regulatory oversight to its trucking industry. Moreover, as documented in a 1996 *Los Angeles Times* exposé, Mexican drivers work under notoriously poor conditions where extremely long hours and driver fatigue are often the requirements for keeping a job. Long-haul truck drivers in Mexico who bring freight to the shipping terminals at the U.S. border call their runs "working on the blade of the knife" because of the dangers of Mexican highways. This, in turn, contributes to excess preventable highway deaths in Mexico.[12]

Although Mexico does not keep track of highway fatalities by type of vehicle, Mexico has an overall highway fatality rate more than three times that of the U.S. or Canada.

NAFTA has concentrated these underpaid, overworked drivers in the border areas. There, the lucrative temptations of transporting narcotics, undocumented migrants, and contraband, like weapons and stolen cars, contribute to a border area that is more like the Wild West than the modern West. Indeed, Mexican trucks are posing an increasing threat to motorists in Texas border counties. The percentage of Texas border county truck

fatalities and incapacitating injuries from trucks registered in Mexico nearly doubled between 1997 and 1998.

When NAFTA passed seven years ago, Mexico promised to improve its national truck safety standards to meet U.S. safety requirements covering inspection and enforcement. However, Mexican law does not require many fundamentals of highway safety policy that are elements of the U.S. motor carrier oversight program. For example:[13]

- There are no hours-of-service restrictions for drivers;
- Although a new policy require use of logbooks will soon be required in Mexico, U.S. inspectors have yet to see even one in use at the border;
- Roadside inspections are now voluntary and will be "phased-in" over the next two years, as will be vehicle out-of service standards, however, it is unclear if these programs are funded;
- Driver's licensing requirements are brand-new and permit commercial drivers under the age of 21;
- There is no safety rating system;
- Truck weight limitations are significantly higher; and
- Hazardous materials rules are significantly more lax.

It is this comprehensive safety regulatory system in the U.S. which provides the measure of safety for American motorists. Trucking firms are required by law to implement and enforce safety programs established under federal guidelines for their drivers and vehicles to help ensure safety. Roadside and spot inspections provide an added level of safety both by deterring trucking companies from shirking the rules and by actually pulling the most dangerous trucks off the highway.

Without such a system in place, evidence to date that Mexican trucks are significantly less safe than U.S. trucks and thus pose greater risks to motorists is not surprising. The latest analysis of safety data from September 2000 shows that substantially more Mexican trucking firms pose significant threats to drivers than U.S. firms. Additionally, more than five years of border and highway inspections have shown that Mexican trucks have had to be pulled off the highway for serious safety violations at alarmingly high rates and much higher than U.S. truck rates.

"There must be no trading of human lives for dollars in the zeal to facilitate truck commerce." — Robert Dibble, Senior VP for government relations National Association for Independent Insurers, *National Underwriter,* 1/18/99.

Lastly, even without the additional traffic, a border-opening would cause a critical shortage of U.S. safety inspectors to perform the rapidly growing task of monitoring Mexican trucks for safety concerns at the U.S. border. Currently, more than 99% of Mexican trucks cross the border without inspections because of short staffing, despite the acknowledged problems with safety on Mexican trucks.[14] The majority of these inspections are of the most cursory type allowed, the so-called "walk arounds." In addition to missing important safety problems, such inspections are also missing shipments of narcotics and stolen goods, such as automobiles and weapons, crossing the border. Meanwhile, the deluge of trucks across the Mexican border has been growing rapidly — now over 4 million a year — even without the opening of U.S. highway border beyond commercial zones, and it is predicted

to skyrocket — perhaps by 3 million annually — if more access is permitted.

Already, the increase in Mexican trucks within the limited border zone has had an adverse affect on safety in the U.S. The Texas border counties, within the commercial border zone, have seen a dramatic increase in highway fatalities and serious injuries from trucks with Mexican registrations. In one dramatic case in California, a Mexican truck was involved in a 10-car pileup that killed four California motorists north of San Diego — well north of the commercial zone. These fatal accidents are bound to increase if the border is opened and the number of trucks increases rapidly without Mexican safety systems in effect, given that U.S. inspectors are already overwhelmed.

Highway safety groups felt it was imperative for the NAFTA tribunal hearing Mexico's truck challenge to consider these dangerous realities. Thus, while the NAFTA tribunal was hearing the case, American safety experts asked to present evidence to the tribunal on the negative health and safety impacts of allowing unlimited access for Mexican trucks onto U.S. highways. In an ominous premonition of the NAFTA tribunal's decision, the tribunal refused to take any oral or written testimony from highway safety experts regarding Mexican truck standards or truck safety compliance.

On November 29, 2000, the preliminary report of the NAFTA truck panel was released. The panel ruled that the U.S. had violated NAFTA by prohibiting unsafe Mexican trucks from roaming freely (either within the U.S. border states or throughout the country, depending on whether Mexico amended its complaint). Under NAFTA dispute settlement rules, if the U.S. does not agree to open the border to Mexican trucks, it can offer to compensate Mexico with new trade benefits or cash payments. However, if Mexico refuses to negotiate terms of compensation, NAFTA permits Mexico to *take* compensation in the form of levying trade sanctions against the U.S.

As noted above, the clever drafting of the panel opinion may force the U.S. into the position of choosing from only one of the above three options. However, assuming for the sake of argument that another option exists, it would be to open the border and then attempt to try to enforce U.S. safety standards truck-by-truck. Yet, even with granting additional truck access, the already swelling flood of trucks from Mexico since NAFTA's inception is putting a strain on federal and state truck safety inspectors.

Currently, there are about 2 million roadside inspections of large trucks throughout the U.S. This number includes Mexican truck border crossings. The U.S. Department of Transportation's total budget for the Federal Motor Carrier Safety Administration, which is the federal agency responsible for such inspections, for fiscal year 2001 is $269 million.[15] In 1999, the most recent year for which data is available, 4.1 million trucks crossed the Mexican border into the U.S., according to the U.S. Customs Service.[16] Given the increase in Mexican truck traffic since NAFTA (about 2.5 million crossed in 1993), border inspectors are only able to inspect fewer than 1% of the Mexican trucks.[17] With the borders wide open to Mexican truck traffic, Department of Transportation officials estimated at an October 1999 field hearing in Los Angeles that as many 7 million trucks could cross the U.S.

> "You learn quickly, or you die young." — 34-year veteran truck driver Vicente Sanchez on the highway safety dangers facing Mexican truck drivers, *Los Angeles Times*, 3/18/96.

border annually.[18] For U.S. truck safety inspectors to ensure that each of these Mexican trucks was inspected at the border, U.S. truck inspections would have to jump from 2 million annually to 9 million. More than 5,000 Americans die each year in large truck crashes, almost entirely involving U.S. trucks which are lighter and relatively safer than Mexican trucks. Allowing a deluge of heavier, relatively less safe large trucks onto U.S. highways is likely to increase highway deaths attributable to large trucks.

I. Absence of Mexican Truck Safety Rules or Enforcement

Large truck crashes already pose a considerable danger to U.S. motorists. In 1999, there were 5,362 fatalities in the U.S. caused by large truck crashes — up 20 percent from a low of 4,462 in 1992.[19] This included 433 deaths in Texas, 363 in California, 108 in Arizona, and 66 in New Mexico in 1999. In comparison, in the same year there were 691 fatalities in all aviation accidents— a sum which totals just 13 percent of the number of people killed in large truck accidents.[20]

These fatalities occur even though the U.S. regulatory system provides some safeguards against the most dangerous trucks — limiting hours of service, implementing and enforcing vehicle safety standards, limiting total vehicle weights, requiring licensing and training for drivers, and operating a regulatory system to remove the most dangerous vehicles and ensure safety systems are in effect in U.S. trucking firms. But even the U.S. truck safety regulatory program has been harshly criticized and is under pressure to be upgraded. For just one example, the current pressure from non-union U.S. carriers to have drivers work outside of the hours of service rules is recognized as a significant threat to U.S. motorists.

Although Mexico does not keep track of highway fatalities by type of vehicle, Mexico has an overall highway fatality rate more than three times that of the U.S. or Canada. Mexico has a death rate of 7.5 fatalities for every 10,000 vehicles on the road compared with 2 per 10,000 vehicles for the U.S. and Canada in 1996, the most recent year comparable data are available.[21]

Allowing Mexican trucks onto U.S. highways will exacerbate the current problem significantly. The Mexican truck safety standards that exist are significantly less stringent than U.S. standards. Little training has historically been required of drivers and Mexican's licensing requirements are more lax. Below is a chart comparing U.S. and Mexican safety requirements:

Safety Consideration	In U.S.	In Mexico
Hours-of Service Limits for drivers	Yes. 10 hrs consecutive driving, up to 15 consecutive hours on duty, 8 hours consecutive rest, maximum of 70 hours driving in an 8-day period	No

Safety Consideration	In U.S.	In Mexico
Driver's Licensure[22]		
Time period:	2 to 6 years	10 years
Age of driver:	21 years old min. for interstate	18 years old
Skills test:[23]	Yes— for all drivers	New skills test for new drivers
Medical card:	Yes— federal requirement	No— medical qualification on license
Automatic disqualification for certain medical conditions:		
National monitoring system:	Yes	No
Drug testing req'd for domestic and international drivers:	Yes to detect violations Testing and documentation required	Information system still in infancy DOT personnel indicate that some drivers are found w/o documentation.
Logbooks	Yes, standardized logbooks with date graphs are required and part of inspection criteria	While a new law is on the books, to date no Mexican-style logbooks have been seen by U.S. inspectors at the border; new rules do not standardize logbooks in U.S. format
Weight Limits (in pounds)	80,000 is the federal Gross Vehicle Weight limit****	As high as 135,560
Single Axle	20,000	14,300
Tandem Axle	34,000	42,990
Tridem Axle	34,000	49,604
Five Axle	80,000	97,000
Six Axle	80,000	106,900
Turnpike Double	80,000	135, 560
Roadside Inspections	Yes	Not currently. New rule is to be phased in over two years, but the program is currently voluntary.
Out-of-Service Rules for Safety Deficiencies	Yes	Vehicle out of service rules will be phased in over two years, and are currently voluntary.
Hazardous Materials Regulations	A strict standards, training, licensure and inspection regime	Much laxer program with far fewer identified chemicals and substances, and fewer licensure requirements

**** About half the states have grandfathered-in higher limits on the interstates and limits on state highways vary considerably.

Safety Consideration	In U.S.	In Mexico
Vehicle Safety Standards	Comprehensive standards for components such as antilock brakes, underride guards, night visibility of vehicle	Newly-enacted standards for vehicle inspections are voluntary for the first year and far from comprehensive
Safety Rating System	Yes	No

Anecdotal evidence from news stories suggests that the long hours Mexican drivers are required to spend behind the wheel in order to keep their jobs significantly contribute to Mexico's highway fatalities. Long-haul truck drivers in Mexico who bring freight to the shipping terminals at the U.S. border call their runs "working on the blade of the knife" because of the dangers of long hours in unsafe trucks.[24] On an average 14 hour run from central Mexico to the border a driver might pass hundreds or thousands of white crosses at the side of the road signifying fatal crashes.[25]

Although the Mexican government committed to increase its truck safety standards and oversight in time for the NAFTA border openings, in practice few gains have been made. After NAFTA went into effect in 1994, the three NAFTA countries established a Land Transportation Standards Subcommittee (LTSS) to address the differences in the countries' regulatory standards. However, to date this committee has accomplished little and certainly has not accomplished a leveling-up of Mexican highway safety standards.

The latest LTSS draft report trumpets the committee's success at establishing new technical subgroups and creating side-by-side charts of rules and standards between the NAFTA countries. The committee report notes that it "continues to work beyond the timeframes established" by NAFTA to address "reaching compatibility in some areas," which has been a "difficult task."[26] Until the standards and enforcement in Mexico are as protective as those in the U.S., it will remain a challenge for border authorities to be sure that Mexican trucks are in compliance with U.S. safety standards.

Mexico currently does not have a mandatory inspection system for large trucks, nor does Mexican law provide authority to pull dangerous trucks off the highway. Mexico published new rules in July 2000 on truck inspection procedures and criteria to place trucks out-of-service.[27] However, these rules are only voluntary for the first year. Then they are to be "phased in" over two years according, to U.S. DOT officials.[28] However, Mexico does not have a safety audit system in place or compliance review programs.[29] In addition, there is no evidence of the level of funding or enforcement resources for even the newly-required measures.[30]

Mexico has failed to establish a border truck safety inspection program. In 1995, Mexico stated to the U.S. its intention to start inspecting its trucks at the border and issuing inspection decals as part of Mexican preparation for NAFTA open-border trucking. However, it has not done so to date.[31] With the pledge to initiate a truck inspection system, 285 Mexican personnel trained to be border truck inspectors since 1993. However,

many of the officials and trained workers have left the program and there has been little enforcement activity to date.[32]

While U.S. roadside inspections are an effective tool that increases motor vehicle safety, Mexico's lack of roadside inspections is a serious deficiency in its regulatory apparatus. A 1998 study by the U.S. Department of Transportation's Motor Carrier Safety Analysis, Facts & Evaluation department (in the Office of Motor Carriers) found that highway inspections successfully avoided 347 truck crashes. The report found that by both removing dangerous trucks from the highway and by providing deterrence to safety violations, truck inspection saved $47 million dollars in crash-related costs, about $135,000 per crash. The study also found that a carrier's out-of-service rate declined as the number of inspections increased.[33] These findings indicate that the risks to people and communities in Mexico and the U.S. posed by Mexican trucks could be mitigated by an effective, comprehensive inspection program by Mexican authorities. Absent these programs in Mexico, drivers and communities are left without any protection. In the U.S., given the structural and budgetary impossibility of inspecting every Mexican truck if the border were to be opened, the number of people newly exposed to additional harm could be huge.

> "Let's keep those Mexican trucks down south until we're sure they won't pose a major safety threat. I don't want to become roadkill in the name of free trade." — *Fort Worth Star Telegram* editorial writer Jack Smith in 11/2/99 column, who was hit by a Mexican truck.

Mexican trucks are heavier than is permitted under American standards and thus pose greater safety dangers. According to the most recent National Truck Crash Profile, 83 percent of the *fatal* truck crashes in the U.S. involved trucks with gross vehicle weight over 26,000 pounds in 1998.[34] The gross weight limit for U.S. trucks is 80,000 pounds on federal highways, although many states have grandfathered-in exceptions. Mexican truck limits are substantially higher. The most common Mexican truck, the six-axle semi-trailer, which comprises 37 percent of the Mexican carrier fleet, is permitted a gross weight of 106,900 pounds. The second most common Mexican truck, the five axle semi-trailer which makes up 35 percent of the Mexican carrier fleet, has a gross weight limit of 97,000 pounds — 33 percent and 21 percent higher than the American standard respectively.[35]

Mexican trucks also damage U.S. highways and bridges even more severely than U.S. trucks because of their heavier weights on both single and tandem axles. In addition, most Mexican trucks are designed with "walking beam suspensions" — heavier duty suspensions for driving on the dirt roads that are still in widespread use in Mexico. This type of vehicle suspension transmits weight to the road in a much more damaging way. Damage to U.S. highways is both a financial and safety concern. There is already a huge backlog in the U.S. of highways and bridges in need of repair that is disproportionately subsidized by the gas taxes paid by passenger car drivers, because commercial carriers underpay their share. The damage would also create safety hazards and dangers when repairs are made.

The Mexican hazardous materials control system is much more lax than the U.S. and

presents a continuing danger to the public. Although Mexico has regulations on the transportation of hazardous materials, many substances which must be identified in the U.S. need not be marked with an official placard in Mexico. Unmarked materials would endanger highway safety personnel such as fire fighters and police officers, who would be unaware of the nature of the hazardous substance and its proper treatment. Because some hazardous materials are excluded from Mexico's regulations, Mexican drivers are not given the special licensing training and certification which is required to transport those substances in the U.S.[36] According to a recent study by the Teamsters, "[a]s many as 25 percent of trucks coming to the U.S. from Mexico contain toxic or hazardous materials . . . and only 1 out of 14 of those trucks is properly marked to show the dangerous chemicals that are inside."[37]

Mexico has no limitation on hours-of-service for drivers, meaning exhausted drivers put themselves and others at risk. Currently, Mexico does not set any limits to the length of time drivers can spend behind the wheel. U.S. sets limits, known as "hours-of-service," which are monitored by a driver's log books. Mexico has recently published regulations requiring drivers to maintain logbooks, but U.S. border inspectors have yet to see a single logbook.[38] Fatigue-related factors are one of the most significant causes of fatalities for U.S. large truck crashes. The National Transportation Safety Board found driver fatigue to be a factor in 30 percent of truck crashes.[39] Truck companies in Mexico require unusually long hours for their drivers to maintain their jobs, leading to an increase in truck crashes due to fatigue. Even the best firms require as much as 16 hours a day behind the wheel and serious crashes on Mexican highways are common.[40] Allowing truck drivers without hours-of-service limitations onto U.S. highways is likely to increase the number and percentage of fatal crashes.

> "The evidence is that Mexican trucks aren't as safe as they should be." — Former Chairman of House Transportation Committee, Rep. Bud Schuster, *USA Today,* 10/20/99.

Working conditions for Mexican truck drivers are poor. Mexican drivers are notoriously overworked by U.S. standards. It is not unusual for drivers to work seven days a week, making runs of about 1,400 miles from Mexico City to the U.S. border with only a few hours of sleep before the next haul. Some drivers report being required to drive 36 hours straight with only a six hour break before returning to the road. Drivers are paid poorly for this hard work, as little as $400 a month.[41] The risks are high, Mexican truck drivers have almost all been involved in fatality-causing accidents, according to anecdotal reports (Mexico does not keep highway fatality data by type of vehicle).[42]

U.S. owners of Mexican carriers use NAFTA to skirt U.S. safety and labor standards. In 1998, 150 Mexico-based motor carriers with DOT identification numbers listed U.S. citizens as the majority owners. Two-thousand, two-hundred Mexican motor carriers were registered as having Mexican addresses in DOT's operating database, but U.S. addresses in the identification number database.[43] Increasingly, American firms are buying up Mexican trucking companies, gaining access to lower wage drivers, lower regulatory safety regulations and lower worker safety requirements. These owners can use these cheaper trucks and drivers to compete against the safer trucks and higher wage drivers in the U.S. Opening the border without either ensuring a working Mexican regulatory process for truck safety or having the resources to inspect every truck creates a perverse incentive to

gain financially by racing to the bottom in safety.

II. Recent Evidence Shows Mexican Motor Carriers are Substantially Less Safe than Carriers in the U.S.

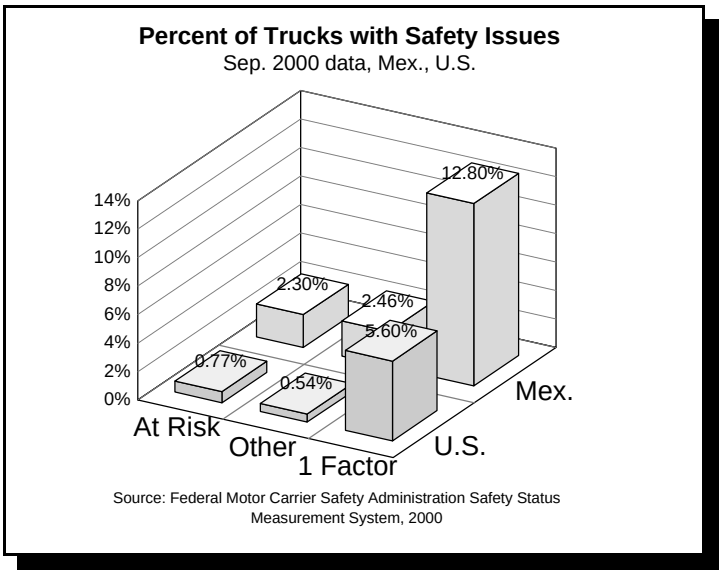
In 1999, development of the Federal Motor Carrier Safety Administration as an independent truck and bus safety enforcement and monitoring executive agency within the U.S. Department of Transportation signified an increasing amount of U.S. public awareness to truck safety issues.

Data collected and analyzed by the new agency under its "Safety Status" program on the relative safety of motor carriers (trucking and bus companies) provides increasingly detailed information about the safety and regulatory compliance of each trucking company and the trucks and buses that are operated by these carriers. The program is a new statistical safety database that provides a more comprehensive evaluation of the actual performance and safety of trucking firms from the U.S., Canada and Mexico than ever before available.[*****] The program included data on safety programs, crashes, drivers' safety records and vehicles. Using the Safety Status tracking data, Public Citizen examined the relative safety of the carrier fleet in Mexico and the carrier fleet in the U.S. and found that Mexican carriers are substantially less safe than U.S. motor carriers.[44]

Advocates of fully opening the border argue that the trucks now licensed to cross the U.S. border are Mexico's oldest, worst-maintained trucks and that this is why the inspection data is so negative. The thrust of this argument is that companies are using older trucks, called 'drayage" trucks, to make the short runs from Maquiladora plants located in Mexico near the border. However, many of the Mexican trucks crossing the border actually come from Mexico's interior.[45] In addition, opening the border would mean that the worst trucks would be permitted new access in addition to the hypothetically safe trucks presumed to exist in the interior — meaning a large number of extremely unsafe trucks would still have access to the U.S.

[*****] The Safety Status data examines all trucking companies licensed by the Department of Transportation. For U.S. firms, this includes all freight trucking firms. For Mexico, this includes all of the companies that are licensed to bring a truck into the commercial zones of the border-states. These Mexican trucks are required to have DOT registration numbers.

Mexican motor carriers have much higher rates of deficient vehicle inspection indicators than U.S. carriers, regardless of years of operation experience. A Vehicle Inspection Indicator is determined by evaluating a trucking company's performance over the previous 30 months at roadside inspections, taking particular consideration of a company's out-of-service rates and the comprehensiveness of the inspection (whether it is a full inspection or the less stringent "walk-around" variety).[46] Comparisons of the "Safety Status" vehicle safety indicators in 2000 found that nearly 60 percent of Mexican carriers had deficient Vehicle Inspection Indicators, regardless of how long the carrier had been operating. By comparison, 32.8 percent new U.S. carriers had deficient Vehicle Inspection Indicators and 27.0 percent of experienced U.S. carriers had deficient Vehicle Inspection Indicators. While American carriers have improved performance after operating two years, the majority of Mexican carriers continued to have vehicle inspection problems even after 2 years of operations.[47] Because there are no roadside inspections in Mexico, the program analyzed the U.S. roadside and border inspection data of the Mexican trucks now licensed by the Department of Transportation to cross the U.S. border.



The Mexican carrier fleet now licensed to operate in the permitted 20-mile U.S. border zone has three times more "at-risk" carriers than the U.S. carriers, according to an analysis of 2000 data provided by the Federal Motor Carrier Safety Administration. The latest comprehensive examination of safety records found that 2.3 percent of Mexican carrier companies licensed to operate in the U.S. were considered "at risk" compared to 0.77 percent of U.S. carriers— a more than three-fold difference. "At risk" carriers are companies that rank in the worst 25 percent in at least two of the four safety measurements and have accident rates that are more than 200 percent of that of companies that are not rated "at-risk."[48]

Mexican truck carriers and Mexican trucks were more than three times as likely to have safety deficiencies than U.S. carriers in 2000. Mexican carriers are 3.5 times more likely to be identified with safety deficiencies than American carriers: 4.7 percent of Mexican carrier companies were identified to have some safety deficiencies, compared to 1.3 percent of U.S. carriers. The percentage of Mexican trucks with safety deficiencies was more than three times higher than U.S. trucks — 13.7 percent of Mexican trucks had safety deficiencies compared to 4.2 percent of U.S. trucks.[49]

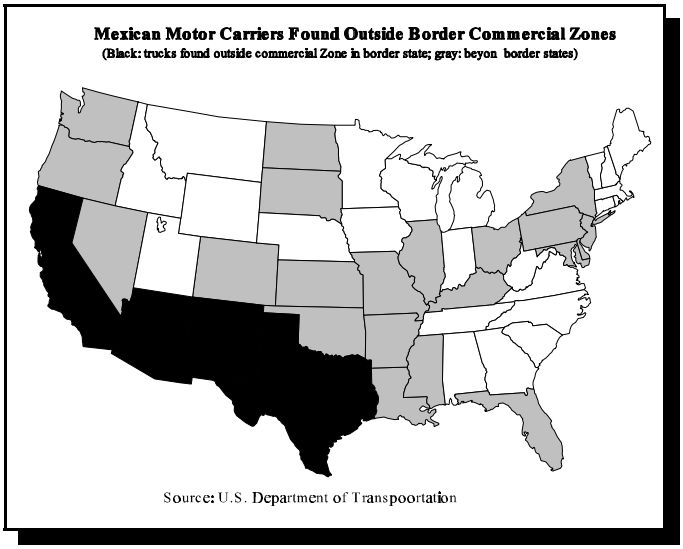
Mexican trucks are twice as likely to be deficient in one safety category as U.S. trucks. 12.8 percent of Mexican carriers were found to be deficient in at least one safety category, compared to 5.6 percent of U.S. motor carriers.

Mexican trucks are three times as likely as U.S. trucks to be deficient in the vehicle safety evaluation category as U.S. carriers. 10.5 percent of Mexican carriers were deficient in the "accident safety" category compared to 3.1 percent of U.S. carriers. The "accident safety" category evaluates a carrier on vehicle safety elements such as safety standards compliance review and roadside inspection data.

III. Mexican Standards and Enforcement Must Improve Because Every Mexican Truck Cannot Realistically be Inspected by U.S.

Proponents of opening the border argue that the U.S. should take care of its safety concerns by simply increasing border truck inspection resources — for instance, by inspecting every Mexican truck. Trucking industry representatives have made similar arguments while trying to spin the initial NAFTA ruling as somehow being a ruling in favor of U.S. safety policies. Yet the reality is that the skyrocketing number of Mexican trucks already crossing the border has greatly outpaced the number of inspectors to monitor these trucks and pull dangerous vehicles off the road.

Even without allowing access by Mexican trucks beyond the narrow border commercial zones, the number of Mexican trucks crossing the border have risen dramatically since NAFTA went into effect — by more than 300 percent in Texas and by nearly 50 percent in California, the two states where the majority of the crossings are made.[50] The number of Mexican trucking firms with Department of Transportation licenses to operate in the commercial zones is rising faster than the number of both U.S. and Canadian firms with DOT registrations to operate in the U.S.[51] If the U.S. commercial zone limitations were lifted, the number of Mexican trucks crossing into the U.S. is estimated to increase substantially. In 1999, 4.1 million trucks crossed the border from Mexico and some federal officials have indicated that an additional 3 million Mexican trucks will cross the border if the commercial zone limitations were ended — nearly a 75 percent increase.[52]

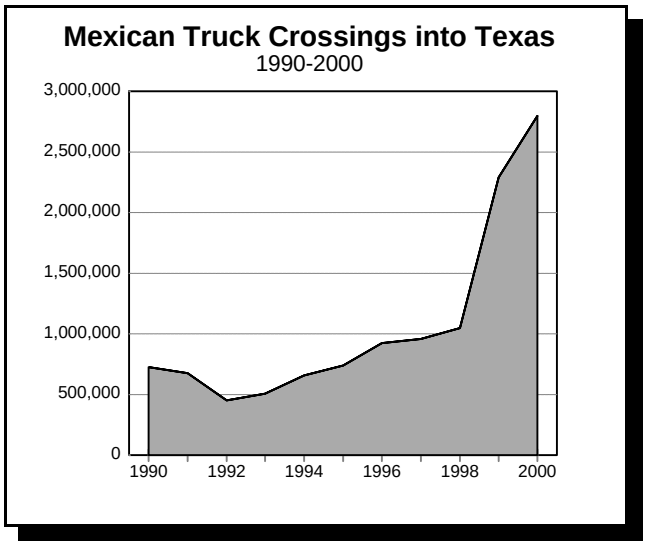


At the same time, the numbers of federal and state inspectors are grossly inadequate to monitor the number of trucks that are *already* crossing the border. For just one example**,** in 1998, the DOT's Office of the Inspector General recommended that at least 120 federal safety inspectors be posted at the border to meet the critical need to remove dangerous trucks from the road, but by 2001 only 60 inspectors were funded.

At many crossings, only one safety inspector is detailed to examine the literally thousands of trucks that cross the border each day. If the border were fully opened, the inspectors who now are unable to handle the current traffic load could face millions more trucks. Yet all of these trucks would be authorized to travel throughout the border-states or even the entire country.

If estimates of the impact of opening of the border are realistic, seven million Mexican truck crossings per year would require inspection. Thus, to inspect all entering Mexican trucks, U.S. inspections per year must rise from 2 million to 9 million trucks. Currently, there are about 101 state commercial truck inspectors and 60 federal inspectors at the border who are able to cover 1 percent of the current 4 million Mexican trucks.[53] Thus, to cover every Mexican truck if the border were opened with even a cursory inspection would require 32,000 inspectors. Given the fledgling nature of the domestic Mexican truck safety inspection system, every one of these trucks would need to be checked by U.S. inspectors and massive, new border inspections facilities would need to be constructed to avoid huge backups. Since this enormous new allocation of inspection funding and personnel training is entirely unrealistic, only Mexico's establishment of a comprehensive, enforceable and well funded safety system can ensure improvements. But such a system is years away from being ready.

Border truck inspections are currently unable to meet the rising demand by increasing truck crossings. The General Accounting Office reported in March 2000 that despite efforts to increase collaboration of the federal and state inspectors at the border and some infrastructure investments, collective efforts have failed to keep up with the skyrocketing flood of trucks coming over the Mexican border even without further border opening.[54] The 161 federal and state truck inspectors would each currently have to inspect more than 24,800 Mexican trucks to inspect all the Mexican trucks *now* crossing the border.



There is an appalling lack of border truck inspectors. The total number of U.S. federal truck inspectors in 2000 was 40, less than a third of the number requested by the 1998 Department of Transportation audit, and an additional 20 were scheduled to start in January 2001.[55] This figure of 60 is still less than half the recommended 126 inspectors to have two inspectors for every border crossing and additional inspectors for high-volume border crossings. In 1997, 13 federal and 97 state safety inspectors monitored the nearly 2000 mile U.S.-Mexico border when 3.5 million Mexican trucks entered the U.S.[56] At Pharr, Texas, two federal inspectors monitored five border crossings that received nearly 8 percent of the total Mexico truck traffic. New Mexico provided no state inspectors and the 37 Texas state inspectors only spent one-quarter of their time inspecting cross border trucks.[57] Requests to double the number of federal inspectors to 27 by Federal Highway Administration Regional Directors responsible for the Mexican border regions was rejected by federal budget negotiators in January 1998.[58] Similarly, the Texas Department of Public Safety's request for 127 inspectors was rejected. Instead only five new state inspectors were authorized: three in 1998 and two in 1999.[59]

Truck Crossings from Mexico into Texas increased 324 percent since NAFTA. Three quarters of the Mexican truck freight traffic enters the U.S. through Texas. Between 1990 and 1993, the year before NAFTA was implemented, truck traffic from Mexico into Texas decreased 29.8 percent to 509,477 crossings.[60]

By 1999, 2.29 million trucks entered Texas from Mexico.[61] Based on the first eight months of year 2000 traffic, Public Citizen projects that truck crossings from Mexico to Texas will have surged to 2,798,839 by the end of 2000 — a 324 percent increase over the pre-NAFTA traffic. In comparison, rail car crossing to Texas increased 173 percent between 1990 and 1994, but grew at a more modest 158 percent rate between 1994 and 2000.[62]

Fewer than 1 percent of Mexican trucks are inspected at the border. Despite slight improvements in the number and percentage of Mexican trucks that are inspected at the border, very few Mexican trucks undergo safety inspections. Especially given the unusually high out-of-service rates for the trucks that are inspected, the failure to inspect more than 99 percent of Mexican trucks crossing the border represents an almost-total failure to protect U.S. motorists and border communities. In 1999, 0.8 percent of the 4.1 million Mexican trucks that crossed the border were inspected.[63] In 1998, 0.6 percent of the 3.9 million trucks that crossed the border were inspected.[64] In comparison, approximately 40 percent of the U.S. truck fleet was inspected in 1998.[65]

Some border crossings have no inspectors for hours every day. A Department of Transportation audit found that at some border crossings there are no U.S. or state inspectors present on most weekdays.[66] At other sites there were inspectors present during regular business hours, but no inspectors regularly assigned to evening or weekend hours.[67] Thus, the drivers of trucks that may have inspection problems can plan to cross at un-staffed hours. The 3 full-time and 3 quarter-time truck safety inspectors at the busy Laredo, Texas border crossing could average about 34 inspections a day.[68] However, on weekdays, an average of 4,800 Mexican trucks cross the border at Laredo making for an 0.7 percent inspection rate.[69]

The number of Mexican motor carrier firms registered with the U.S. has grown faster than either Canadian or U.S. registrations. Mexican companies with DOT licenses to operate within the commercial zone — and with the expectation that the border-states and the entire country will be open to Mexican haulers if the border is opened — have been growing more rapidly than the number of American or Canadian firms seeking DOT registrations. The number of active Mexican motor carrier companies registered with DOT grew by more than half between 1997 and 1999 — 54.9 percent. Over the same period, the number of American carriers grew by 21.1 percent and Canadian carriers grew by 27.2 percent.[70]

Mexican truck traffic to California increased by nearly half between 1994 and 1999. Since NAFTA's passage, northbound truck crossings from Mexico to California increased 48 percent to 949,651 trucks.[71] Top Mexican truck imports to California have grown three times as fast as top California truck exports to Mexico between 1997 and 2000. In the first quarter of 1997, California trucked $860 million worth of its top six goods to Mexico, and by the first quarter of 2000, the figure was $1.1 billion a 22 percent increase. In comparison, top Mexican truck exports to California grew 62 percent between the first quarter of 1997 and first quarter 2000, from $1.6 billion to $2.6 billion.[72]

Removing the limitations to operate only in the border state commercial zones will rapidly increase the number of Mexican trucks crossing the border. At a National Transportation Safety Board field hearing in Los Angeles in October of 1999, Department of Transportation officials predicted that an additional 3 million Mexican trucks will cross the border every year with the Mexican border commercial zone

limitations eliminated.[73]

IV. Much Stricter Penalties and Enforcement Are Needed

The DOT Inspector General's office and safety advocacy groups have complained about lacking enforcement, low fines and failure to pull operating authority for repeated violations in the U.S. for domestic trucking corporations. These same practices of inadequate penalties currently the practice for operator violations. These inadequacies must be addressed for both domestic and Mexican trucks.

Both for Mexican trucks now allowed in the border zone and in the future, there must be greater U.S. penalties for Mexican operators violating their DOT permits. DOT must have a policy of *rescinding* permits to operate in the U.S. for Mexican trucking companies that routinely violate safety standards. Now, DOT uses minimal monetary penalties for the trucks it finds to be out of compliance. Given that 99 percent of trucks are not inspected and the fines for those which are caught violating safety standards are minimal, there is, in effect, no deterrence of potential violations.

> "We simply cannot jeopardize highway safety by opening the border to increased truck traffic." — U.S. Trade Representative Charlene Barshefsky in letter to Rep. Jim Kolbe in 1996 on why the border wasn't opened in 1995.

Along the same lines, major fines must be levied for Mexican motor carriers found operating outside permitted areas without U.S. authorization. Of the 202 Mexican motor carriers found operating outside the existing commercial zones in 1998, only 3 enforcement actions were initiated.[******] In 1999, only 2 actions were initiated against carriers operating illegally outside the commercial zones, and none were taken against Mexican motor carriers operating outside the border states, despite being potentially thousands of miles from their permitted operating range.[74] Federal law provides the authority to penalize Mexican drivers operating outside the border commercial zone, but it also allows discretion to hit violators with heftier fines than state law provides.[75] Yet, these even this policy provides no minimum fines, only caps on how large a fine may be. Absent any punishment for violating the rules limiting Mexican drivers to the narrow commercial border zones, increasing numbers of trucks are likely to flaunt the law. This lack of sanctions creates incentives for dangerous conduct by companies who can profit by violating the law than improving the safety of their trucks.

V. Case Studies of Mexican Trucks Causing Fatalities on U.S. Highways

[******] According to the Department of Transportation Inspectors General Office, fines for Mexican motor carriers in violation of operating regulations are too low to spur compliance with U.S. law. Texas and New Mexico send a warning letter for the first violation of operating outside commercial zones, and a $1,000 fine for the second violation with an additional $1,000 increase for each subsequent violation. In Arizona and California, the fines are $500 for operating outside the commercial zones. The Department of Transportation Inspector General criticized these small fines because companies consider them to be "a cost of doing business." Higher fines and loss of operating authority are needed to effectively deter infractions.

Already, the increase in Mexican trucks within the limited border zone has had an adverse affect on safety in the U.S. The Texas border counties, within the commercial border zone, have seen a dramatic increase in highway fatalities and serious injuries from trucks with Mexican registrations. In one dramatic case in California, a Mexican truck was involved in a 10-car pileup that killed four California motorists north of San Diego — well north of the commercial zone. These fatal crashes are bound to increase if the border is opened, and the number of trucks increases rapidly without meaningful Mexican safety systems in effect.

Mexican trucks are a significant and growing portion of Texas border counties truck accidents and fatalities. Mexican trucks are posing an increasing threat to motorists in Texas border counties. According to data from the Texas Department of Safety, trucks registered in Mexico accounted for 9.7 percent of the fatal commercial vehicle accidents in 1998 — nearly doubling from 5 percent in 1997. Trucks registered in Mexico accounted for 13.5 percent of the incapacitating injuries in commercial vehicle crashes in 1999, up from 7 percent in 1997, according to preliminary data from the Texas Department of Safety.[76] If Texas' experience of increasing fatalities from Mexican trucks along the border were extrapolated to the entire state using the latest fatalities data, an additional 39 people would have died in crashes with Mexican trucks in Texas. If it were expanded to the entire country, an additional 530 people would have died in crashes with Mexican trucks.

Mexican truck caused deadly 10 car pile-up north of California's commercial zone. A Mexican truck driver crashed into a construction slowdown at 60 miles an hour in March 1997, killing four adults and injuring 4 others, one critically.[77] The driver fled the scene. The truck may have been overweight, but the towing company that removed it from the scene offloaded and sold some of its cargo of tomatoes, so investigators will never know.[78] The crash occurred under dry road conditions and clear visibility, and a civil suit against the trucking company alleged that the driver ignored brake lights from the traffic congestion.[79]

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Mexican truck caused a chemical spill in Brownsville, Texas. In January 2000, a short-haul Mexican truck headed south in the commercial zone was responsible for a chemical spill that killed millions of fish. The driver fled to Mexico before authorities discovered he was uninsured and the brakes on his truck were inoperable.[80]

VI. Border Community Conditions Declining at Truck Border Crossings

Population growth near the U.S.-Mexico border has created a cauldron of declining social conditions. Long waits by trucks at the crossings fill Mexican border communities with unhealthy diesel exhaust. A surge in population has occurred on the Mexican side of the border without any of the requisite increases in infrastructure needs. Many Mexican border communities — called Colonias which are located near the export processing factories called Maquiladoras — lack even the most basic sanitation services or access to utilities like water or electricity.

The border crossing areas attract smugglers and narcotics traffickers. The stranglehold the Mexican drug cartels h**ave** on border communities means the presence of additional crime, from money laundering to gun running. Competitive, violent gangs of drug traffickers make border communities especially vulnerable to high homicide rates and unsolved missing persons, cases known as "disappeareds." Added to this are the environmental and social problems caused by thousands trucks lining up daily for multiple-hour waits for crossing.

The majority of narcotics entering the U.S. come through Mexico. Mexican drug cartels operating at the border are one of the main conduits for narcotics entering the U.S. U.S. officials estimate that 60 percent of the cocaine entering the U.S. in 1998 passed through Mexico. Mexico is also a major source of marijuana and heroin — nearly all the 6 metric tons of heroin produced in Mexico in 1998 was destined for the U.S.[81] Total narcotics seizures at the Mexican border increased 78 percent between 1996 and 1999 to more than 1 million pounds— accounting for 77 percent of all seizures nationally.[82]

Border federal court districts are experiencing surging crime rates. Criminal cases in Texas' western district increased 182 percent since 1995 and grew in the southern district by 145 percent. The five federal court districts serving the U.S.-Mexico border region represent one-fourth of all federal court filings.[83]

Drug money is laundered through legitimate transportation companies. The large volume of drug money generated by Mexican drug cartels is laundered through ordinary businesses to conceal the source of the profits. The cartels favor transportation companies, like the trucking industry, because they can both launder money and facilitate the smuggling of drugs, weapons and cash.[84]

Low wages for Mexican drivers encourage the transport of contraband. Mexican truck drivers, who make as little as $400 a month, are often approached to transport drugs, money, weapons or undocumented migrants across the border. Low wages and the rising cost of living make these opportunities tempting for drivers trying to support their families. Indeed, Drug Enforcement Administration officials found that Mexican drug cartel leaders looked forward to the prospect of increasing the traffic of narcotics to the U.S. under NAFTA.[85]

Access to border crossings increases concentration of crime. Illegal smugglers of people, products and narcotics gather at border crossing communities for easy access to the traffic of people and trucks to transship their illegal goods. The drug cartels in Juarez across the border from El Paso have been linked to 500 murders in the 1990's and another 200 people have simply disappeared. Ciudad Juarez has become a haven for smugglers of cars, guns and drugs and has one of the highest homicide rates in Mexico, including the brutal rapes and murders of 238 women over several years in the late 1990's.[86]

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Increasing truck traffic exposes border community to dangerous levels of air pollution. Border crossings from Mexico to the U.S. are in use 24 hours a day, seven days a week. During peak periods, the lines of idling trucks waiting to enter the U.S. can run several miles long, contributing to pollution and safety

concerns.[87] Diesel exhaust from Mexican truck traffic waiting to cross the border contributes to the high levels of air pollution on both sides of the border. Thirteen border cities exceeded or were expected to exceed ambient air quality standards in 1996 — and traffic is the leading cause.[88] The border communities show high levels of respiratory disease and high levels of lead in children.[89]

VII. Recommendations

When should more access to U.S. roads be granted to Mexican trucks? The Mexican government must fulfill its promise to implement high safety standards and a regulatory framework necessary to enforce them. What is required is well known. A working regulatory system would need, at a minimum:

- considerable funding by the Mexican government to implement a Mexican truck safety program, including completion of the monitoring database for domestic and international trucking companies,
- safety standards for every truck and significant truck component — including tires, brakes, lighting, length, weight, etc.,
- enforcement of safety standards for motor carrier operators that establish fleet-wide responsibility,
- creation and enforcement of hours-of-service limits on drivers,
- enforcement of logbook requirements for drivers,
- better training and effective levels of staffing of Mexican safety inspectors,
- regular spot and roadside inspections,
- establishment of the legal authority of Mexican inspectors to take dangerous trucks out-of-service; and
- imposition of strong penalties to deter violations.

Once a comprehensive Mexican truck safety system is in place, the U.S. would need to ensure that safety standards are being enforced by doing a statistically significant number of border safety checks. This would require an additional commitment of resources by Congress to increase inspection staffing and building border inspection facilities.

Yet, even without any further border opening, U.S. resources devoted to border truck inspection are woefully inadequate. Significant improvements in border inspections need to be funded by the U.S. Congress simply to do a reasonable job inspecting the 4 million trucks that *already* enter the U.S. on an annual basis.

In November 1999 the report of the DOT Inspector General stated that "[a]dequate mechanisms are not in place to control access of Mexico-domiciled motor carriers into the U.S."[90] The report described the monitoring systems that would be necessary on the American side of the border to assure safety.

According to the Department of Transportation's Inspector General's report, U.S. controls and safeguards should, at a minimum, include:

- the use of automated data and state safety inspectors to monitor truck safety compliance;
- systems for verification of registration information;
- implementation of consistent enforcement policies for non-compliance;

- increased fines;
- and additional resources for the border program.

This is by no means an exhaustive list: any future opening of the border would require a major effort over several years to develop, implement and test these systems for their adequacy in protecting the American public. While both U.S. and Mexican governments have been taking some steps toward achieving these goals, their efforts to date fall far short of what would be required to protect the public health and safety.

VIII. Conclusion

The Mexican government has had seven years to fulfill its commitments to enact and enforce a truck safety program that would ensure that the Mexican trucks seeking access to U.S. highways meet U.S. safety standards. Instead of full**y** complying with that requirement, the Mexican government has used NAFTA to attack U.S. truck safety enforcement.

Depending on how the conflict is resolved, this case could create a concrete NAFTA threat — deadly trucks — in every U.S. community with dire implications for already negative U.S. public opinion about NAFTA and additional dire implications for public safety.

Perhaps the most disappointing aspect of this NAFTA-based attack on highway safety is the fact that the data regarding public safety is so compelling. **Instead of permitting *additional* access to Mexican trucks, the Bush Administration should focus on the scandal of the millions of dangerous Mexican trucks *now* rolling into the U.S. uninspected.**

Since NAFTA, the number of Mexican trucks crossing the border has skyrocketed to 4 million per year. Because there is now no meaningful domestic Mexican truck safety program, overwhelmed U.S. border inspectors are all that stands between people living and driving in the 20-mile border zone in which Mexican trucks are permitted

Although U.S. officials are only able to inspect less than 1 percent of the Mexican trucks *currently* crossing the border, safety inspectors have routinely found — *and continue to find* — that the severe safety problems that result in a truck being put "out-of-service" for Mexican trucks exceeds the out-of-service rates for U.S. trucks.

Meanwhile, the U.S. Department of Transportation estimates that opening the border would add another 3 million trucks crossing into the U.S. bringing the annual total to 7 million. It is not feasible from a financial or infrastructure perspective for the U.S. to inspect every single Mexican truck that crosses the border. And, if the NAFTA tribunal ruling were implemented, it would no longer be a 20-mile strip of the border-states, but the entire country which would be exposed to the new threat.

The U.S. must ensure domestic highway safety for motorists and communities. Given the current absence of any meaningful Mexican truck safety program, the high safety failure rates of Mexican trucks, and the impossibility of even inspecting all the Mexican trucks that would cross an open border, the only option to ensure safety is to

continue to limit access to the narrow commercial zones and to significantly increase inspection to intercept more of the dangerous trucks already traveling in the border zone.

In terms of NAFTA, this means that the Bush Administration must resolve the current case by agreeing to pay the NAFTA sanctions and continue to limit access until there is a meaningful Mexican truck safety system. Otherwise, the public will learn, painfully and first-hand, the dangers that an anti-democratic and anti-safety decision by a secret international trade tribunal can bring to its front door.[*******]

[*******] Public Citizen does not believe a price can be put on a human life, thus the cost of having to pay NAFTA sanctions to keep a basic safety measure should be viewed as yet more damage resulting from the flawed NAFTA. However, for those of the Chicago School ilk who would do a cost-benefit analysis of maintaining this safety measure: even a mere 1,000 additional crashes from the 7 million cross-border trucks would cost more than $100 million, according to Department of Transportation calculations on truck crash costs, a figure which is more costly than even a high trade sanction would be.

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