The Effects of Transportation Regulation on the Transborder Metropolitan Areas of the U.S.-Mexico Border Region: NAFTA and the Mexican Truck Plan – Where Do We Go From Here?

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I. Introduction

The North American Free Trade Agreement (NAFTA),[1] entered into between the United States, Canada, and Mexico in December 1992, has transformed relations between these countries, and nowhere are the changes more evident than in cities and towns straddling the border. The U.S.-Mexico border region, as defined by the La Paz Agreement of 1983 to include areas within 100 kilometers on either side of the border, is home to over 12 million people, 90% of whom live in 15 interdependent sister cities along the border.[2] The cities along the U.S.-Mexico border are tightly interconnected through their history, people, and especially their economies, which had become co-dependent long before the advent of NAFTA.[3] The border has come to define a region that for decades has been the fastest growing in both the United States and Mexico.[4]

One of the most contentious portions of NAFTA has always been the provision to allow direct trucking between the United States and Mexico by carriers of both nations.[5] The cross-border trucking plan has been repeatedly delayed and to date all of its planned milestones have been missed.[6] Despite expectations that the deadlock might finally be broken in 2007, recent Congressional actions and new lawsuits appear once again to have stalled the inauguration of the cross-border trucking program.[7]

1. North American Free Trade Agreement, U.S.-Can.-Mex., art. 20001, Dec. 17, 1992, 32 I.L.M. 289 (1993) [hereinafter NAFTA].

2. Mexico-United States: Agreement to Cooperate in the Solution of Environmental Problems in the Border Area, U.S.-Mex. art. 4, Aug. 14, 1983, 22 I.L.M. 1025, 1027 (1983); Cynthia J. Burbank, Guest Editorial, *Vital Borders and Transportation Impacts*, Public Roads, Jan. 1, 2005, at 1; Environmental Protection Agency & Secretaria de Medio Ambiente y Recursos Naturales, State of the Border Region: Indicators Report 2005 4 (2006) [hereinafter Indicators Report].

3. James R. Curtis, *Central Business Districts of the Two Laredos*, 83 Geog. Rev. 54, 54 (1993).

4. Indicators Report, *supra* note 2, at 4.

5. Casey Burgess, *The Cross–Border NAFTA Truck Debate*, 8 L. & Bus. Rev. Am. 279, 281-282 (2002).

6. *see* 153 Cong. Rec. S11389 (daily ed. Sept. 11, 2007) (statement of Sen. Cornyn) (listing a chronological recitation of the delays).

7. *See* 153 Cong. Rec. S11350, SA 2797 (daily ed. Sept. 10, 2007). On September 10, 2007, the United States Senate voted to prohibit funding a pilot program announced days prior by President Bush that would grant 100 Mexican motor carriers access to U.S. roadways. The measure followed a similar one passed by the House of Representatives.

With the United States again dragging its feet on the implementation of the Mexican truck program, now is a prudent time to review the history of NAFTA, its evolution, and its impacts on transborder metropolitan economies, which are most directly impacted by the NAFTA-related decisions made far away in Washington D.C. and Mexico's Distrito Federal (Mexico City). Importantly, the time is right to review whether the cross-border trucking program will ever be implemented, and especially whether its delay could actually benefit the purported beneficiaries of increased free trade: the border regions.

This note will review the status of trade between the Unites States and Mexico leading up to the implementation of NAFTA, with particular focus on the development of the border economy. It will then review the NAFTA agreement, its promises, and its performance looking back at its first ten years. The note then will analyze the criticisms of NAFTA and the reasons given on each side for the failure to implement the trucking plan. Finally, the note will review the nature of transborder cities on the U.S.-Mexico border, their economies, their future prospects, and the primary question concerning these cities – for whom cross-border trucking is as much a local issue as an international one – namely, what are the potential impacts of the cross-border trucking provisions of NAFTA and do they stand to benefit border cities; or, alternatively, would advocates of a prosperous border region be well advised to join the ranks of the firmly entrenched opposition to the cross-border trucking program?

II. Transborder Urban Integration: An Overview

The border region's common history predates the industrial development of the border in the 20th Century.[8] El Paso-Juárez was founded in 1598 by Don Juan de Oñate Salazar, who claimed the area for Spain and renamed the area El Paso del Norte.[9] Today, though an international border splits El Paso del Norte, the combined agglomeration is home to nearly 3 million people in what is, by all conventional measures, a single city.[10] Estimates in the 1990's indicated that up to 40% of El Paso's sales tax revenue came from Mexicans crossing the border, and with thousands of El Pasoans commuting to jobs in Mexico, undoubtedly revenues travel the opposite direction as well.[11] Further, though undoubtedly a "U.S." city, El Paso's population is 78% Hispanic and trending upward, with

8. *See* Timothy C. Brown, *The Fourth Member of NAFTA: The U.S.–Mexico Border*, 550 Annals Am. Acad. Pol. & Soc. Sci., Mar. 1997, at 105, 109 (providing a brief history of the U.S-Mexico border).

9. *Deep in the Heart of* NAFTA, The Economist, Feb. 28, 1998, at 31.

10. *See Id.*

11. *Id.*

two-thirds of the city's population being of Mexican origin.[12] The border cities show clear demographic convergence – El Paso's literacy rate is well below U.S. averages, while Juárez' is well above Mexico's mean.[13]

Some authors contend that the cities of the U.S.-Mexico border regions are not true "binational" cities, but rather more simply akin to border-crossing cities because of disparities in current local conditions, historical backgrounds, and a general lack of institutional integration and cooperation – cross-border relations exist primarily for economic opportunity rather than friendship, trust, or any "sense of belonging together."[14] Other authors, however, have noted that the U.S.-Mexico border is "unique for what it unites, not what it divides."[15] Regardless of how these urban "borderplexes" are viewed, the cities of the U.S.-Mexico border are united both demographically and economically, and likely will share destinies as much as they share histories.

Perhaps not surprisingly, the U.S. Department of Transportation estimates that 80% of cross-border passenger vehicle trips are for same-day travel, including commuting, shopping, and visiting family and friends.[16] NAFTA, combined with the December 1994 peso crash that overnight left a starker economic divide in everything from wages to electricity costs, created an entire class of fronterizos (border dwellers) for whom crossing the border is a part of daily life.[17] Mexican citizens living in border towns are given three-day passes to enter the United States. These individuals have not only picked up American goods during their time in the U.S., but many of the United States' political values as well, transforming Mexican politics in the process.[18] These changes and their significance will be considered later.

As the border region is a dynamic, growing region with strong cultural ties and a historic dominance of the U.S.-Mexico trade relationship, it is worth considering the extent to which the urban systems that dominate this vast, otherwise sparsely populated region function as integrated cities. A better understanding of these metropolitan economies may provide insight into how these areas can remain competitive in this era of cheap imports from Asia, tight border security, immigration fears, static cross-border trucking arrangements, and the continuing exodus of people

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12. Roberto Coronado & Lucinda Vargas, *Economic Update on El Paso del Norte*, Busniess Frontier, Issue 2, 2001, at 2, *available at* http://www.dallasfed.org/research/busfront/bus0102.html

13. *Id.*

14. Glen Sparrow, *San Diego – Tijuana: Not Quite a Binational City or Region*, 54 GEOJOURNAL 73, 83 (2001).

15. Brown, *supra* note 8, at 110.

16. Jill L. Hochman, *Border Planning for the 21st Century*, PUBLIC ROADS, Jan. 1, 2005, at 2.

17. Geri Smith and Elisabeth Malkin, *The Border*, BUSINESS WEEK, May 12, 1997, at 64.

18. *Id.*

from Mexico's south and interior to its northern states in search of better paying jobs.

Interestingly, the United Nations already forecasts that the border region will fail in its effort to remain competitive. Despite decades of unrelenting growth, the UN Population Division forecasts 1.8% annual growth in Tijuana between 2010 and 2015, down from 4.8% between 2000 and 2005.[19] The U.N. reports a similar drop from 4.3% to 1.7% in Ciudad Juárez.[20] With the growth of these cities having been historically driven by an economic boom and the correspondent influx of job seekers, such dire population predictions equate to dire economic forecasts. Proper planning and strategizing for a successful "transfrontier metropolis" may be the best opportunity to head off potential disaster.[21]

III. The Early Border Economy & Manufacturing

The cornerstone of the border economy and the primary driver of its growth both before and after the implementation of NAFTA has been the maquiladora (maquila) industry.[22] Maquiladoras developed as a result of the United States' decision in 1964 to eliminate the Bracero Program, which had drawn thousands of Mexicans to the border region between 1942 and 1964 to provide temporary labor, primarily in the agricultural sector.[23] When the U.S. unilaterally terminated the program, some 180,000 Mexicans were left unemployed.[24] As a result, in 1965 the Mexican government initiated the Programa de Industrialización de la Frontera Norte de Mexico, or Border Industrialization Program (BIP), which through various financial incentives was meant to draw labor-intensive U.S. industries to the border region to build plants, called maquilas, and provide employment for those left unemployed by the termination of the Bracero Program.[25]

A maquila is an in-bond manufacturing facility, primarily for American, Asian, or European companies that provide consumer goods for sale in the U.S. market.[26] Typically, raw materials, parts, and components are imported from these countries, assembled using less-expensive Mexican

19. U.N. Dep't of Econ. & Soc. Affairs Population Div., World Urbanization Prospects: The 2005 Revision at 154, U.N. Doc. ESA/P/WP/200 (2006).

20. *Id.*

21. *See* Lawrence A. Herzog, *International Boundary Cities: The Debate on Transfrontier Planning in Two Border Regions*, 31 Nat. Resources J. 587, 589 (1991).

22. David W. Eaton, *Transformation of the Maquiladora Industry: The Driving Force Behind the Creation of a NAFTA Regional Economy*, 14 Ariz. J. Int'l & Comp. L. 747, 747 (1997).

23. Robert B. South, *Transnational "Maquiladora" Location*, 80 Annals Ass'n. Am. Geographers. 549, 551 (1990).

24. *Id.*

25. *Id.*

26. *Id.*

labor, and re-exported to their destination market. Prior to NAFTA, maquiladoras generally afforded significant benefits to manufacturers because they were permitted to temporarily import these intermediate inputs into Mexico without paying duties.[27] As intended, these duty drawbacks granted by Mexico created a great incentive for the development of maquiladoras, and by 1988, 1,400 had been constructed.[28]

Initially, geographic limits were imposed by the Mexican government on plant locations to draw industrial development away from the established centers of Mexico City, Guadalajara, and Monterrey, limiting plants to within 20 kilometers of the U.S. border.[29] As such, maquiladoras were initially located in Tijuana and Ciudad Juárez, fueling population and economic booms in these cities.[30] Today, the policy on geographic restriction has been reversed, and the Mexican government sets minimum wages lower in inland areas to encourage maquiladoras to locate in poorer, interior locations.[31]

Studies have indicated that the three primary factors in locating maquiladoras are wage rates, proximity to parent companies in the U.S. (for management personnel), and proximity to U.S. markets (to minimize transportation costs).[32] Many top executives, including those of several large Japanese electronics firms, choose to locate satellite headquarters and live in the United States, while commuting to plants in Mexico.[33] With increasing competition from overseas manufacturers, it is unclear whether reduced wages in inland areas of Mexico will be sufficient to overcome the significant structural advantages that the border cities enjoy today, namely, an established manufacturing and labor base, as well as the obvious advantage of proximity to the U.S. – the one advantage that overseas manufacturers cannot compete with.

IV. Cross-Border Planning and Collaboration

Past efforts at coordinated planning between local governments in border areas have had mixed success.[34] As critics of the historically unequal relationship between border cities have pointed out, "there has been no shortage of rhetoric calling for trans-frontier cooperation in the areas of transportation management, land use planning, and environmental

27. *See* Eaton, *supra* note 22, at 750.
28. South, *supra* note 23, at 549.
29. *Id.* at 551.
30. *See* Eaton, *supra* note 22, at 757-8.
31. South, *supra* note 23, at 558.
32. *See* South, *supra* note 23, at 556-58.
33. Eaton, *supra* note 22, at 760.
34. *See* Herzog, *supra* note 21, at 606 (illustrating various efforts at transborder cooperation efforts).

regulation."[35] Chief among these efforts are the work that has been done in the San Diego-Tijuana area in the fields of transportation and environmental controls. In the early 1980's, San Diego connected its downtown to the San Ysidro border crossing with a light rail line, but Tijuana was never able to muster the funding to construct the planned connector system.[36] Similarly, an effort in 1991 by the San Diego Association of Governments to construct a joint international airport was rejected.[37] The "TwinPorts" concept would have replaced San Diego's aging airport with a modern facility on the U.S.-Mexico border that would have shared runways with Tijuana's existing Gen. Abelardo Rodriguez International Airport. The project never got off the ground, and in 1991 fell victim to political tensions and San Diego's unease with its neighbor.[38]

Most joint planning efforts have been plagued by strategies imposed at the national level, though local efforts, especially recently, have been more successful at meeting local needs.[39] Mexican municipalities are constitutionally restricted from borrowing internationally, and long-term financing for municipal projects is difficult to obtain.[40] As such, Mexican cities have historically had to rely on unreliable federal funding or commercial lending to meet local needs.[41] Recently, newer innovations at the local level (wholly apart from NAFTA) have brought marked success in those areas where planning and implementation on a regional basis are most critical.[42] Construction of the International Wastewater Treatment Plant in California to treat wastewater from Tijuana is one such example.[43] Along similar lines, police in the San Diego-Tijuana and El Paso-Juárez metropolitan areas have both experimented with joint policing efforts with considerable success, and the Tijuana and San Diego police departments keep in close touch by radio (in Spanish).[44] In a 1998 article discussing shared policing in El Paso, local officials said what people in the transborder cities had long thought: "You're better off keeping Washington and Mexico City out of things, because [then] all bets are off . . .

35. *Id.* at 604.

36. *Id.*

37. BOARD OF DIRECTORS, SAN DIEGO ASS'N OF GOV'T, ADDENDUM TO THE FINAL AIR CARRIER SITE SELECTION STUDY (1991).

38. Al Ducheny, *TwinPorts' Plight*, L.A. TIMES, May 3, 1992.

39. Susan L. Bradburty, *Planning Transportation Corridors in Post-NAFTA North America*, Journal of the American Planning Association, Mar. 22, 2002, at 12, *available at* 2002 WLNR 10780831.

40. *Id.* at 13.

41. *Id.*

42. *Id.* at 12.

43. *See* Geri Smith and Elisabeth Malkin, *The Border*, BUSINESS WEEK, May 12, 1997, at 64 (describing the "$400 million sewage treatment plant that will serve both cities".

44. *Id.*

Keep it local, keep it simple."[45]

Even shopping does not respect international borders in the trans-border economies. The greater availability and variety of consumer goods in U.S. cities has led U.S. retailers to actively promote cross-border shopping by Mexicans, while more affordable medical goods and services have been used to lure American shoppers into Mexico.[46] This contrast is evident in Laredo and Nuevo Laredo, where a 1993 survey counted 35 electronics stores on the U.S. side and virtually none on the Mexican side, but found that medical offices in Nuevo Laredo outnumbered those on the Laredo side 28-to-3.[47] Cross-border complementarity is evident in other areas as well. As a matter of course, downtown Laredo merchants flatten truckloads of cardboard boxes on to specially designed tricycles, which are then taken across the border to a recycling facility in Nuevo Laredo.[48] The dynamic cross-border consumer market provided Laredo, a relatively poor city by U.S. standards, with over $11,000 in per capita retail sales in 1991.[49]

V. Enter NAFTA: The North American Free Trade Agreement

Negotiated in 1992, NAFTA is a trilateral agreement between the United States, Mexico, and Canada that is comprised of twenty-two chapters primarily addressing trade in goods, services, and investment.[50] NAFTA's stated goals include the facilitation of cross-border movement in goods and services, promotion of increased investment opportunities, and perhaps most critically, the elimination of barriers to trade.[51]

NAFTA Chapter 12 addresses cross-border trade in services, and in Article 1202 provides that each party to the agreement shall accord the service providers of the other party treatment no less favorable than it would provide its own service providers.[52] This Article applies to the free movement of trucking companies across borders, except insofar as Article 2101(2) applies to protect inconsistencies with local laws intended to

45. Howard LaFranchi, *U.S., Mexico Unite to Take a Bite Out of Crime*, Christian Science Monitor, February 4, 1998, at 6.

46. *See* Curtis, *supra* note 3, at 59-61.

47. *Id.* at 61.

48. *Id.* at 62.

49. Curtis, *supra* note 3, at 55.

50. *See* NAFTA, *supra* note 1, at chs. 1–9, 32 I.L.M. 605 (chs. 10–22); *see also* NAFTA Implementation Act of 1993, 19 U.S.C. § 3301 (2000).

51. Carrie Anne Arnett, Comment, *The Mexican Trucking Dispute: A Bottleneck to Free Trade. A Tough (Road) Test on the NAFTA Dispute Settlement Mechanism*, 25 Hous. J. Int'l L. 561, 567 (2003).

52. *Id.* at 571.

ensure the health and safety of consumers.[53] NAFTA Annex I established the timetable for enacting the liberalization of cross-border transportation services described in Article 1202. Annex I set December 18, 1995, as the implementation date for access of Mexican carriers to the border states of California, Arizona, New Mexico, and Texas, with access throughout the United States to take effect on January 1, 2000.[54]

Interestingly, prior to 1982, Canadian and Mexican truck and passenger bus carriers already had operated freely within the United States after deregulation of its trucking industry in 1980 by the Motor Carrier Act.[55] In 1982, however, Congress passed the Bus Regulatory Reform Act of 1982 (the "Bus Act") , which placed a moratorium on the entry of Mexican trucks into the United States.[56] The 1982 legislation grandfathered in the five Mexican carriers that were already operating within the United States, but otherwise instructed the Interstate Commerce Commission (ICC) to deny permits to all Mexican carriers until it had determined that American carriers wishing to operate in Mexico were treated "at least as favorably" by Mexico as its native carriers.[57] Facing a presidential veto, the proposed legislation was modified to give the President authority to extend the moratorium as needed and – after first notifying Congress of the proposed change – to lift the moratorium if he found it to be in the national interest.[58]

NAFTA Annex I permitted the Bus Act status quo to remain in effect until the scheduled implementation dates for greater access as provided for in NAFTA, at which time the President would presumably lift the moratorium. Except for those Mexican carriers grandfathered in by virtue of their pre-1982 U.S. operations, and another 160 or so Mexican carriers that were specifically exempted, Mexican carriers were restricted to operating in "commercial zones" associated with municipalities along the U.S.-Mexico border until the moratorium was lifted.[59]

The commercial zones were originally defined by the ICC for economic regulation purposes, and are often described as a 20-mile-wide swath along the border from the Pacific to the Gulf of Mexico.[60] However, the actual area encompassed by the commercial zones varies from a

53. *Id.* at 572.

54. *Id.* at 568.

55. Elizabeth Townsend, *NAFTA, Mexican Trucks, and the Border: Making Sense of Years of International Arbitration, Domestic Debates, and the Recent U.S. Supreme Court Decision*, 31 Transp. L.J. 131, 146 (2004).

56. *Id.* at 147.

57. Bus Regulatory Reform Act of 1982, Pub. L. No. 97–261, 96 Stat. 1102, *superseded by* Interstate Commerce Commission Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803.

58. H.R. Rep. No. 97–780, at 38 (1982), *as reprinted in* 1982 U.S.C.C.A.N. 2342, 2349.

59. Burgess, *supra* note 5, at 296.

60. *See* Townsend, *supra* note 55, at 149; *see* Burgess, *supra* note 5, at 283 (citing the C.F.R.

2-mile-wide strip in some areas to as much as a 75-mile-deep expanse in others. The commercial zones encompass nearly all of the urbanized areas in the border region, including a four-county area of the Rio Grande Valley in Texas and the entire San Diego metropolitan area, extending over fifty miles north of the U.S.-Mexico Border, and nearly to the southern suburbs of Los Angeles.[61] By 1996, over 11,000 Mexican carriers operated within the commercial zones.[62]

Meanwhile, long after the passage of NAFTA, the Interstate Commerce Commission Termination Act of 1995 (ICCTA) modified the moratorium language of the Bus Act so that the President could lift the moratorium on movements beyond the commercial zones if removal "[was] consistent with the obligations of the United States under a trade agreement or with United States transportation policy."[63] The changes in ICCTA appeared to give the President explicit authority to implement the provisions of NAFTA Annex I. But to date, the barriers to cross-border trucking have not been lifted, despite attempts by President George W. Bush to do so.[64]

VI. Legal Status of NAFTA: The Law of the Land?

The United States Constitution affords treaties the full force and effect of law.[65] Strictly speaking, NAFTA is not a treaty in constitutional terms because it did not pass the Senate by a two-thirds vote.[66] NAFTA was negotiated using the "fast-track authority" given to the President in the Omnibus Trade and Competitiveness Act of 1988, which permitted the President to negotiate a trade agreement with Congressional participation and guaranteed that subsequent enabling legislation would be acted upon by Congress, without amendment, within 60 days of being

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formula used in determining the width of commercial zones proportionate to the size of municipalities).

61. NAFTA Stafety Stats, *Commercial Zones United States/Mexico Ports of Entry*, http://ai.fmcsa.dot.gov/International/border.asp?redirect=commzone.asp (last visited Nov. 1 2007) (Per the C.F.R. formula, the commercial zone of the San Diego metropolitan region extends to the farthest municipal boundary of any municipality any portion of which lies within a 20-mile radius of any point within the City of San Diego municipal boundary. Similar radii, proportionate to the population of the base municipality per the C.F.R. formula, exist for all U.S. Ports of Entry on the U.S.-Mexico border).

62. U.S. Gen. Accounting Office, Commercial Trucking: Safety and Infrastructure Issues Under the North American Free Trade Agreement 3 (1996).

63. 49 U.S.C. § 13902(c)(3) (2000).

64. *See Roadblock*, Wall Street J., Sept. 13, 2007, at A16, *available at* http://online.wsj.com/article/SB118964410280325865.html.

65. U.S. Const., art. VI, cl. 2.

66. Katharine G. Shirey, *International Implications: The Elephant in the Living Room in Public Citizen V. Department of Transportation*, 34 Envtl. L. 961, 979 (2004).

submitted for Congressional approval.[67] The NAFTA enabling legislation – the NAFTA Implementation Act – was passed by Congress in 1993, and though only approved by a simple majority in both houses of Congress, it nonetheless affords NAFTA status as "the supreme Law of the Land," and in terms of U.S. law is treated the same as an international agreement reached by other means.[68]

The U.S. recognizes the customary international law principle of *pacta sunt servanda*, or "agreements must be kept," so the failure of the United States to abide by the terms of NAFTA is a clear abrogation of its legal duty to the agreement's other signatories.[69] On the other hand, according to other established principles of U.S. domestic law, congressional legislation later in time takes precedence over earlier legislation, including international obligations.[70] Under this theory, any later conditions imposed by Congress take precedence over NAFTA obligations and are legally binding on the DOT under U.S. law. This obvious tension between domestic and international law has not been resolved, despite the determination of the NAFTA Chapter 20 panel, which will be discussed later. Ultimately political channels seem likely to dictate the outcome of the trucking dispute – more so than any legal mechanism currently available.

VII. Cross-Border Trucking Under NAFTA

The debate about whether to allow Mexican trucks into the United States has raged for over two decades and predated NAFTA.[71] However, when the December 18, 1995, NAFTA Annex I deadline passed and Mexican carriers were still not permitted to operate outside the commercial zones within the Unites States, Mexico initiated a Chapter 20 procedure against the United States. NAFTA Chapter 20 provides a dispute resolution mechanism for disputes between party nations.[72] Despite U.S. arguments that the language contained in Annex I was suggestive rather than mandatory, the arbitration panel agreed with Mexico that the U.S. was obligated to afford Mexico's carriers equal access to U.S. roads.[73] Language in NAFTA Article 1202 limits the requirement of equal treatment to "like circumstances," but the arbitral panel made clear that mere differences in regulatory systems were not sufficient to support the general

67. *Id.* at 987
68. *Id.* at 979-80.
69. *Id.* at 983.
70. Restatement (Third) of the Foreign Relations Law of the United States § 115(1)(a) (1987).
71. Townsend, *supra* note 55, at 132.
72. *Id.* at 139.
73. *See Id.* at 140.

moratorium on Mexican trucking in the U.S.[74] The panel did recognize, however, that equal treatment in all senses was not necessary required, and that NAFTA Article 904 allowed the U.S. to impose legitimate safety requirements.[75] Mexico's decision to bring a NAFTA case against the United States was the result of a politically motivated delay within the Clinton Administration.[76]

On December 4, 1995, only weeks before the border states were to be opened, Secretary of Transportation Federico Peña issued a press release announcing that regulations were in place for a smooth transition to cross-border trucking.[77] On December 12, 1995, President Clinton received a letter from the Teamsters and other labor groups about safety concerns with the cross-border trucking program.[78] Only three days later, Secretary Peña issued a second press release announcing that the border would remain closed.[79] The next day, Mexico filed its NAFTA case against the U.S.[80]

Despite the clear mandate of NAFTA Annex I and the arbitral panel decision, the border remains closed to trucks from Mexico outside of the commercial zones. Still, the failure of the parties to implement the findings of the arbitral report is not conclusive evidence that the dispute resolution procedures contained within NAFTA[81] are faulty or inadequate. If Mexico had chosen to do so, NAFTA permitted it to retaliate against the United States if no suitable resolution could be reached within 30 days of the NAFTA Chapter 20 panel report being issued.[82] Following the arbitral panel's decision against the United States, action permitted under NAFTA articles 2018 and 2019 would have entitled Mexico to approximately $5 billion in sanctions in the form of protective tariffs against the United States.[83] However, repeated assurances from President George W. Bush that the U.S. would comply with its NAFTA obligations have so far stalled any further action from the Mexican government.[84]

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74. *See Id.* at 141-42

75. *Id.* at 144-45.

76. *See Id.* at 153 (illustrating the Teamsters involvement with the Clinton administration).

77. *Id.*

78. *Id.* at 154.

79. *Id.*

80. *Id.*

81. *See* David A. Gantz, *Dispute Resolution Under the NAFTA and the WTO: Choice of Forum Opportunities and Risks for the NAFTA Parties*, 14 Am. U. Int'l. L. Rev. 1025, 1030 (1999) (listing the various NAFTA dispute resolution procedures).

82. *Id.* at 1039.

83. Dana T. Blackmore, *Continuing to Put the Brakes on Mexican Truckers: Will the U.S. Ever Implement NAFTA Annex I?*, 9 L. & Bus. Rev. Am. 699, 721 (2003).

84. *Id.*

VIII. NAFTA AND TRADE: THE FOURTH NAFTA PARTY

Meanwhile, as the cross-border trucking debate rages on, so does the cross-border economy. In the end, international boundaries are merely lines drawn by men on a map and they have seldom been able to constrain the more organic development of urban areas and economies.[85] The border economy flourished in the second half of the 20th Century and many cities that would probably not even exist without the border became dynamic urban areas of their own.[86] Tijuana, San Diego's border twin, grew from a hamlet of 16,500 people in 1940[87] to a bustling city of over 1.3 million in 2005.[88] Similarly, Ciudad Juárez grew from 20,000 to 1.3 million (and by some estimates, as high as 1.8 million) over the same time period.[89] And though, like most border towns, Juárez' population greatly exceeds its northern counterpart, El Paso, the interconnectedness of the U.S.-Mexico border region has led to the development of some of the world's premier binational metropolitan economies.[90] NAFTA has transformed this transnational economy and still has the potential to do so further.

In 2001, NAFTA Article 303 eliminated the duty drawbacks for taxes paid on inputs from non-American sources.[91] The elimination of the duty drawback was intended to encourage greater use of North American manufacturing inputs in the maquiladoras.[92] When Article 303 came into force, it had the effect of increasing costs for some Asian and European-owned maquiladoras by 20% overnight, which resulted in some shutting down altogether. Mexico's subsidy of the maquilas is now subject to NAFTA's "rule of origin," which only allows preferential treatment for goods of North American origin.[93] Nevertheless, the maquilas retain some benefits for manufacturers. First, import duties on intermediaries are deferred until the final product is exported to the United States.[94] Also, maquilas have traditionally been exempted from paying Mexico's value added tax.[95] Most importantly, companies utilizing maquilas can still benefit from the duty drawbacks for products exported to non-

85. Brown, *supra* note 8, at 108.

86. *See id.* at 110-11.

87. *Id.*

88. *Tijuana*, WIKIPEDIA, http://en.wikipedia.org/wiki/Tijuana#External_links (last visited Oct. 24, 2007).

89. Brown, *supra* note 8, at 110-112 (discussing population growth in Juárez').

90. *Id.* at 112. (attributing the economic growth in Juárez' to corss-border trade and the maquila industry).

91. NAFTA *supra* note 1, art. 303.

92. *See* Eaton, *supra* note 22, at 750.

93. *Id.* at 749-50

94. *Id.*

95. *Id.* at 747-48

NAFTA countries, and can similarly benefit from free-trade agreements between Mexico and other Latin American nations.[96] As such, it is unlikely that the maquiladoras will be phased out in the immediate future.

However, while total maquiladora employment (primarily in the border region) grew from 540,000 in 1993[97] to 1.35 million in 2000, that figure had dropped to 1.14 million by 2004.[98] While most economists attribute the loss to the post-September 11 recession in the United States and note that employment has since stabilized, stiff competition from overseas producers, particularly China, should prompt the border regions to evaluate current developments related to NAFTA and the cross-border trucking program in light of how best to continue the economic growth they have enjoyed in the last half century. Particularly, the border region should consider whether there may be regional advantages that can be capitalized upon by further delaying implementation of some portions of NAFTA because, as some authors have suggested in reference to the disparate benefits of free trade agreements across regions, a "more level and compact landscape is not an advantage to everyone."[99]

Few question that NAFTA has greatly stimulated trade between the U.S. and Mexico since its inception in 1993, but the growth in trade has been surprisingly localized, leading some to comment that the border region itself is the "Fourth Party" to the NAFTA agreement.[100] Overall, U.S. merchandise trade with Mexico, approximately 80% of which is truck trade, increased from $38.6 billion in 1993 to $161.5 billion in 2002.[101] However, the majority of this trade is confined to the border region. In 2002, nearly 60% of cargo shipments between the U.S. and Mexico did not leave the border state region of the two countries.[102] This is not surprising because many trade sectors are acutely distance-sensitive and wage differentials between border and non-border locations have been too small to offset other border advantages.[103] This fact led some experts to predict, even before NAFTA was enacted, that it would have

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96. *See Id.*at 750

97. Gary Hufbauer and Jeffrey Schott, NAFTA REVISTED: ACHIEVEMENTS AND CHALLENGES 50, 104 (Institute for International Economics, 2005).

98. *Id.* at 104.

99. Kenneth D. Boyer, *American Trucking, NAFTA, and the Cost of Distance*, 553 ANNALS AM. ACAD. POL. & SOC. SCI. 55, 65 (1997).

100. Brown, *supra* note 8 at 105.

101. Bureau of Transportation Statistics, *U.S. Merchandise Trade with Mexico by Truck*, http:/www/bts.gov/programs/international/transborder/reports/us_mex_2002_Truck.html.

102. Bureau of Transportation Statistics (BTS), *North American Merchandise Trade by U.S. State by Truck*, http://www.bts.gov/programs/international/transborder/reports/annual02/state/us_trade-2002_trk.html.

103. Jane R. Rubin-Kurtzman, Roberto Ham-Chande & Maurice D. Van Arsdol, Jr., *Population in Trans-Border Regions: The Southern California-Baja California Urban System*, 30 INT'L MIG. REV. 1020, 1037 (1996).

spillover effects on the Southern California-Baja California urban system and would increase trade and transborder labor mobility.[104] In effect, as one author correctly predicted, NAFTA so far has been "primarily a free trade agreement between Northern Mexico, California, and Texas."[105] The macroeconomic benefits of NAFTA have effectively filtered down to the border region, while at the same time, the commercial zones may have absorbed much of the immediate benefit and slowed its spread to the wider U.S. and Mexican economies.

IX. Mexican Trucking Today

Because the majority of Mexican trucks currently are not permitted outside of the commercial zones, a complicated "drayage" system has evolved at the border for goods destined in the United Stated beyond the confines of the commercial zones.[106] Goods are shipped first from their Mexican point of origin using Mexican long-haul carriers.[107] At a drayage yard near the border, trailers are then transferred to a short-haul Mexican drayage truck.[108] These trucks are typically older and are used solely for the time-consuming border crossing, where Mexican carriers are loath to use their best equipment.[109] Drayage trucks are often forced to stop as many as eight times during the border crossing: first, by Mexican customs brokers; second, at the toll station of the international bridges; third, at the U.S. Customs/Immigration and Naturalization Service (INS) station; fourth, for the primary inspection; fifth, for a secondary inspection; sixth, supplemental vehicle or drug inspections by U.S. federal, state, or local authorities; seventh, exit review of final papers; and eighth, for random safety inspections within the commercial zones.[110] Ultimately, when the drayage trucks finally reach the U.S. side the trailers are again transferred, this time to a U.S. long-haul carrier that will transport the goods to their final destination in the U.S.[111] Drayage trucks return to Mexico empty, and contribute greatly to the congestion at the border, especially in Laredo, where the majority of cargo destined for points beyond the commercial zone crosses the border.

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104. *Id.*
105. *Id.*
106. Hale E. Sheppard, *NAFTA Trucking Dispute: Pretexts for Noncompliance and Policy Justifications for U.S. Facilitation of Cross-Border Services*, 11 Minn. J. Global Trade 235, 258 (2002).
107. *Id.*
108. *Id.*
109. *Id.*
110. Christopher Stoltz, *NAFTA, The United States, Texas, and Mexico: Problems Facing Commercial Vehicles at the Border and What is Being Done to Ensure Safety on the Roadways*, 6 Tex. Tech. J. Tex. Admin. L. 165, 178–79 (2005).
111. Sheppard, *supra* note 104, at 158.

The Mexican drayage trucks are also notorious for their failure rates at U.S. inspection stations, which ranged anywhere from 36-to-50% between 1996 and 1999.[112] However, contrary to the contentions of many who would argue against cross-border trucking, the drayage trucks are not representative of the overall Mexican trucking fleet, and many safety violations are in fact only minor shortcomings. Indeed, Mexican trucks that were "grandfathered" in because they received operating permission prior to the Bus Regulatory Reform Act of 1982 are already operating within the U.S., as are trucks using U.S. roads as a "land bridge" to Canada and those with U.S. citizens as majority owners (despite the fact that the carriers themselves are domiciled in Mexico).[113] There is no evidence to indicate that these carriers and their vehicles, which are more representative of the Mexican long-haul trucking fleet than the much maligned drayage trucks, have worse safety records than those of U.S. long-haul carriers.[114]

X. WHY IS THE BORDER NOT OPEN? THE CONTINUING SAGA

Many justifications are given by the U.S. Congress for refusing to allow the border to open. After the NAFTA panel's decision against the U.S., the Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA) went back to the drawing board to develop rules to govern the safety of Mexican trucks crossing the border.[115] Following the decision of the arbitral panel, Congress had conditioned DOT funding for carrying out the panel's mandate on the promulgation of rules for Mexican trucks to operate safely within the United States.[116] The panel decision only forbade a blanket exclusion of all Mexican trucks pursuant to NAFTA, but allowed the U.S. to determine on a case-by-case basis whether the trucks were suitable to meet applicable U.S. safety standards.[117]

In May 2001, FMCSA published three proposed rules, including two to directly regulate Mexican motor carriers - the "Application Rule" and the "Safety Rule" - for public comment.[118] The Application Rule required proof of ability to meet safety regulations, insurance, audits, regis-

112. *Id.*

113. *Id.* at 263.

114. *Id.* at 261.

115. Application by Certain Mexican Motor Carriers to Operate Beyond U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border, 66 Fed. Reg. 22,371 (proposed May 3, 2001) [hereinafter *FMCSA Proposed Rules*] (to be codified at 49 C.F.R. pt. 365).

116. Shirey, *supra* note 66, at 981.

117. *Id.*

118. *See* FMCSA Proposed Rules, *supra* note 113, at 22,371 (discussing rules involving application forms and safety standards for trucks operating in interstate commerce in the United States).

tration as a certified Mexican carrier, and regular inspections.[119] The Safety Rule provided further intensive inspections for the first 18 months of provisional authority to operate within the U.S. and guaranteed that Mexican trucks would meet the same safety requirements as U.S. carriers.[120] The third proposed rule – the "Certification Rule" – outlined procedures for the certification of auditors, investigators, and inspectors conducting inspections of vehicles, carriers, and drivers. With the necessary controls set for implementation, President Bush announced his intention to open the border by early 2002 and requested funding from Congress to implement the FMSCA's proposed inspection program.[121] Acknowledging its action was in direct violation of NAFTA, on June 26, 2001, the U.S. House of Representatives nonetheless voted to prevent the Bush Administration from using any funds in 2002 to process applications from Mexican trucking firms.[122]

An agreement was later reached on November 30, 2001, which led to a compromise funding solution for border safety.[123] By March 22, 2002, President Bush announced a twenty-two point "Smart Border" plan, leading to the President finally lifting the moratorium on November 27, 2002, ordering the DOT to process Mexican carrier applications.[124] The Teamsters and environmental groups immediately requested and received an emergency stay from the Ninth Circuit Court of appeals, citing the DOT's alleged failure to conduct an Environmental Impact Assessment (EIS) pursuant to the National Environmental Policy Act (NEPA).[125] On June 7, 2004, a unanimous Supreme Court reversed the Ninth Circuit, paving the way for the eventual revival of the cross-border trucking program, two years after it appeared the border might finally open.[126]

XI. Mexican Opposition

Despite the perpetual delays on the U.S. side to allowing Mexican trucking on U.S. roads, perhaps in part because of the misperception that goods traffic is largely a one-way Mexico-to-U.S. flow, discussion is muted about the likelihood of U.S. carriers being given reciprocal access within Mexico. Indeed, cross-border trucking is "extremely unattractive" for many established interests on the Mexican side of the border as

119. *Id.* at 22,373.
120. *Id.*at 22,374.
121. Townsend, *supra* note 55, at 166.
122. *Id.* at 165.
123. *Id.* at 174.
124. *See id.* at 173-78.
125. *Public Citizen v. Dep't. of Transp.*, 316 F.3d 1002, 1009 (9th Cir. 2003).
126. *Public Citizen v. Dep't. of Transp.*, 541 U.S. 752, 752 (2004).

well.[127] Mexican truckers argue that it will never be economical for them to operate long-distance routes to the United States.[128] Mexican carriers are significantly smaller and are handicapped by disadvantageous financing availability. Further, Mexican truckers spend up to 30% of earnings on maintenance, far in excess of their U.S. counterparts.[129] Fearing direct competition with U.S. carriers, the Mexican trucking organization Cámara Nacional De Autotransporte De Carga (CANACAR), which represents 78% of commercial rigs in Mexico, has successfully lobbied to prevent opening the border to U.S. carriers operating in Mexico and has threatened to strike if the border is opened.[130] CANACAR has gone so far as to suggest abandoning the cross-border trucking provisions of NAFTA altogether - an idea this note will consider further.[131]

CANACAR's official comment on the FMSCA's proposed safety rules in 2001, however, complained that "consciously or unconsciously, all three of FMCSA's [proposed rules] unfortunately are permeated with anti-Mexican sentiments . . . disguised in the form of concern for highway safety [and] based on false assumptions."[132] CANACAR's concern about unfair treatment and discrimination against Mexican nationals has parallels - and finds some justification - on the U.S. side of the debate. Some authors have written of the "nativistic racism" that pervades over the NAFTA debate.[133] Indeed, there is an inherent tension between U.S. border policy related to immigration, which seeks to restrict cross-border movement, and NAFTA's goal of easing cross-border movement.[134] Further, there is some evidence that NAFTA-related trucking may in fact be an increasingly preferred vehicle for human trafficking across the U.S.-Mexico border.[135] While it is outside the scope of this note, there can be no denying that nationalistic feelings will play a major role in the political destiny of the cross-border trucking program.

In considering the mixed feelings within Mexico about the cross-border trucking provisions of NAFTA, it is important to also consider that the vibrant north of Mexico has transformed Mexican politics. Probably led in part by border communities that had tired of the "viceroys" of

127. Sheppard, *supra* note 104, at 271.

128. *Id.* at 272.

129. *Id.*

130. *See id.* (discussing requests by Mexican organizations to keep the border closed for a period of five years).

131. Townsend, *supra* note 55, at 186.

132. Safety Monitoring System and Compliance Initiative for Mexico–Domiciled Motor Carriers Operating in the United States, 49 C.F.R. § 385 (2001).

133. Gallegos, *Border Matters: Redefining the National Interest in U.S.–Mexico Immigration and Trade Policy*, 92 CAL. LAW REV. 1729, 1740-41 (2004).

134. *Id.* at 1751.

135. *Id.*

Mexico City and the political dynasty of the Institutional Revolutionary Party (PRI), the right wing National Action Party (PAN) won the Mexican presidency in 2000 after 71 years of PRI rule.[136] In the 2006 presidential election, Felipe Calderón and the PAN won a second consecutive presidential victory by the slimmest of margins over Andrés Manuel López Obrador, the former mayor of Mexico City, and his Party of the Democratic Revolution (PRD). The border states and their ever-changing demographics, influenced by strong connections to the United States, were the driving force behind the right-wing PAN's victory; the PAN won every border state by significant margins, while losing the Distrito Federal and most of the poorer southern states by similarly large margins. The shift to conservative rule in Mexico may harden the positions of organized labor interests – as it has done in the U.S. – and make cross-border trucking more difficult to implement, despite the subtle ideological shift that continued migration toward the U.S. border region seems to foster within the Mexican electorate.

XII. Ongoing U.S. Opposition

Many commentators have speculated that if the border was ever likely to open, it would happen under the George W. Bush administration.[137] President Bush, a former Governor of Texas, has been a consistent advocate of free trade generally and cross-border trucking in particular and has tried on multiple occasions to lift the moratorium on cross-border trucking and honor the United States' obligations under NAFTA Annex I.[138]

The USDOT announced on February 22, 2007, that it had come to an agreement with Mexico that would allow on-site inspections of Mexican carriers to verify compliance with a 37-point compliance program DOT developed in response to Congressional concerns about safety.[139] On February 23, 2007, DOT announced that procedures had been implemented to meet all 22 safety requirements set forth by Congress in 2001 and that it would initiate a pilot program for 100 Mexican trucking companies to enter the United States, with reciprocal rights planned for 100

136. *See Mexico's New Frontier*, The Economist, Feb. 8, 1997, at 41 (speculating prior to the election on demographic shifts in Mexico's northern states and the PAN's electoral prospects as a result); *see* Instituto Federal Electoral, *2000 Election Results,* http://www.ife.org.mx/documentos/RESELEC/esta2000/comp_test/reportes/centrales/Presidente.html

137. *See* Blackmore, *supra* note 83, at 710.

138. *See Id.* at 709.

139. Press Release, U.S. DOT, U.S. Officials Will Travel to Mexico to Conduct On-Site Safety Audits of Trucking Companies As Part of New Program Announced Today, (Feb. 22, 2007). (on file with author). *See also* Cross Border Truck Safety Inspection Program, U.S. Department of Transportation, http://www.dot.gov/affairs/cbtsip/inspchecklist.htm (last visited Oct. 24, 2007) (listing 37-point inspection program).

American carriers.[140] An article in the Washington Post the following day contained criticism of the move, with the Teamsters claiming that the DOT was "playing a game of Russian roulette on America's highways."[141] Even so, in an editorial on March 8, 2007 entitled "Let the Trucks Roll," the Washington Post stated its support for the pilot program.[142] The following week, Teamsters President James Hoffa penned a response, again railing against the government's "dangerous experiment" with Mexican trucking.[143]

Not surprisingly, by March 22, 2007, a Senate committee had halted the program to open the border to Mexican trucks, and on March 29, 2007, U.S. Representative James Oberstar (D-MN) gave testimony in the House to support his proposed Safe American Roads Act of 2007, which would further delay the cross-border trucking program by restating the DOT safety requirements, adding a public comment period, and permanently delaying the program until Mexico is prepared to grant immediate reciprocal access to U.S. companies.[144] Oberstar noted that Mexico is currently unable to grant licenses to U.S. carriers and needs at least 6 more months before it will be prepared to do so.[145]

After President Bush vetoed the supplemental funding bill for the Iraq war containing Oberstar's additional criteria for initiating the pilot program - importantly, including the requirement that Mexico concurrently grant equal access to U.S. carriers –the House Transportation and Infrastructure Committee on May 2, 2007, proceeded to vote 66-0 in favor of opening the border to a maximum of 1,000 trucks for the pilot program. In the meantime, however, on April 23, 2007, the Teamsters and a coalition of environmental and labor groups filed suit against the DOT and FMCSA seeking an injunction for DOT's alleged failure to provide the requisite public notice of the proposed pilot program.[146] At this point, it is unclear whether cross-border trucking may be in sight for 2007. Still, with the next presidential election looming and opposition to the

140. Press Release, U.S. DOT ,New Program to Allow U.S. Trucks Into Mexico For the First Time Ever Change the Way Some Mexican Trucks Operate Within the United States, (Feb. 23, 2007).

141. Leslie Miller, *Cross-Border Trucking Plan Draws Criticism*, THE WASHINGTON POST, Feb. 24, 2007, at D03. .

142. *See* Editorial, *Let the Trucks Roll*, THE WASHINGTON POST, Mar. 8, 2007, at A22.

143. James P. Hoffa, Letter to the Editor, *Trucks Not Ready for Our Roads*, THE WASHINGTON POST, Mar. 15, 2007, at A18.

144. Press Release , House Transportation and Infrastructure Committee, *Floor* Statement of Chairman Oberstar Regarding the Safe American Roads Act of 2007, (March 29, 2007).

145. *Id.*

146. *Sierra Club v. U.S. Dep't of Transp.*, No. C 07–2210 (N.D. Cal. filed April 23, 2007. A decision in this case has been reached as of the date of this publication. *See Sierra Club v. U.S. Dep't of Transp.* No. 07-73415 (9th Cir. Aug. 30, 2007) (order denying Sierra Club's request for a preliminary injunction).

program as fierce as ever, it seems unlikely that either party will "rock the boat" and initiate this controversial program in the foreseeable future.

XIII. Meanwhile, Back on the Border: Measured Progress in Border Logistics

Unsurprisingly, the largest barrier to the full integration of trans-border cities is not the lack of a cross-border trucking program, but rather the logistical nightmare of crossing the border. Following September 11, 2001, total trade with Mexico by land modes decreased by over $11 billion, due in large part to excessive delays at the border.[147] Wait times in excess of two hours were commonplace in late 2001, bringing trade almost to a halt.[148] Fortunately, with the advent of technological innovations there is hope that a more efficient border crossing procedure can take the place of constructing ever greater border crossing facilities and infrastructure, for which funding has thus far been scarce. Furthermore, if elimination of the costly drayage system is the primarily rationale for implementing the contentious provisions of NAFTA Annex I, perhaps technological innovations for border crossing can reduce the incentive to use an intermediary vehicle and reduce border transactions to a single exchange between Mexican and U.S. long-haul carriers - no more onerous than the intermodal exchanges used in the transport of nearly every other good imported into the United States.

The main strategies being employed by Customs and Border Protection (CBP) to increase the speed and efficiency of processing incoming trucks at the U.S.-Mexico border are a forced transition to electronic automation and advance inspections. First, trucks are now required to submit manifests electronically before reaching the border. Further, as part of the Free and Secure Trade (FAST) program, trucks are being outfitted with electronic transponders that allow instant identification of the vehicle and link it to a manifest the carrier must submit ahead of time. The Customs Trade Partnership Against Terrorism (CTPAT) program purports to secure the supply chain, and includes CBP inspectors at manufacturing facilities in foreign countries ensuring that proper security measures are in place before trucks reach the border. Manufacturers who are part of the CTPAT and FAST programs receive expedited services at the border, fewer inspections, and according to CBP, will normally face waits at the border of less than 5 minutes. These improvements provide cause for hope that border delays will soon no

147. Daniel C. Stiles, *Border Crisis: Time for a New Collective Review of Tri-Nation Border Security*, 29 Transp. L. J. 299, 302 (2002).
148. *Id.*

longer be major burdens to cross-border freight movement and infrastructure constraints can be disregarded as major considerations in selecting appropriate border policies.

XIV. Transborder Cities – Port Cities: So What About the Cross-Border Trucks?

So what does the future of the cross-border trucking program mean for the cities of the border region? So far, NAFTA seems to have benefited the border regions greatly, and the continued use of commercial zones seems to do the same. The City of Laredo has expressed direct concern that the cross-border trucking program could diminish the city's importance as a trade hub and major port.[149] Is Laredo's fear of being bypassed rational? The Free Trade Alliance San Antonio has already successfully lobbied to be the first non-border city to receive a prototype of the North American Trade Automation Protocol (NATAP), which facilitates the electronic transmission of standardized import-export information via the Internet.[150] However, others have argued that existing infrastructure and established business relationships with customs brokers protect the status quo in Laredo and other border towns, despite the additional costs the drayage system imposes on carriers.[151] American drivers also frequently get paid by the mile, and so have a strong motivation to carry loads to Laredo[152], for example, rather than unloading to a Mexican carrier in Dallas, even if Dallas is a more strategic transfer point and logical site for a regional distribution center.

Port cities have always been the some of the most dynamic on earth, and while a traditional port could not be disconnected from its city, the cross-border trucking program presents that very possibility for many of the cities on the U.S.-Mexico border – cities whose very existence has been defined by the border for decades. Even within the border region, however, there are differences of priority. For example, Laredo, the top gateway into the U.S. for Mexican trucks, is more port than city. This is distinguishable from Tijuana, which primarily serves the Southern California market with its industries, and otherwise is an integral player in the San Diego metropolitan area. Juárez' interests probably lie somewhere in between Laredo's and Tijuana's. While it is part of a vital interconnected metropolitan area, its industries also depend on distribution of goods to a much broader area than Tijuana's. So, while the border region

149. Jim Yardley, *Truck-Choked Border City Fears Being Bypassed*, New York Times, Mar. 15, 2001, at A1.

150. Michael R. Skahan, Comment, *The NAFTA Trucking Dispute with Mexico: Problem? What Problem?*, 5 NAFTA: L. & Bus. Rev. Am. 603, 609 (1999).

151. *Id.* at 610.

152. *Id.*

as an identifiable, unique area certainly has interests that differ from those of the national governments, each metropolitan area, in looking out for itself, should have somewhat different goals in mind.

Even so, better cross-border integration, vital to all trans-border metropolitan areas, should be a goal of both parties to the NAFTA agreement because, with the vast majority of U.S.-Mexico trade beginning and ending in the border region, it goes without saying that stronger cities will make for a stronger international economy. Hopes of more integrated transportation networks have long been one of the great promises of the NAFTA cross-border trucking program.[153] However, given the entrenched political opposition on both sides to the cross-border trucking program and the promise of better technology alleviating delays at the border – delays that provided much of the incentive for the program in the first place – it is worth questioning whether NAFTA Annex I is even necessary.

If lesser measures – for example, eliminating border delays enough that utilizing drayage trucks no longer becomes necessary – can reduce transportation costs and provide reliable "just in time" deliveries to the U.S. side, perhaps the existing border zone commercial areas are adequate. Eliminating the commercial zones in favor of free trucking could weaken the cities that are the foundation of the border economy. And while there is certainly a need to reduce costs so that the maquiladora sector can remain competitive, the cross-border trucking program may not be the answer. In the grand scheme of things, one expert noted, it may not "matter a great deal to the U.S. economy whether [Mexicans] in Juarez or Nogales come across the border [to their sister cities] on a regular basis . . . but for [the border] economies these things are very important."[154] And, as one Laredo official commented on the current system, "It's not just what is most efficient, it's what makes everybody politically happy."[155] With opposition against the program firmly entrenched, technological solutions in sight, and the weakening of border communities a real possibility if cross-border direct trucking is fully implemented – a prospect already prophesied by credible U.N. population forecasts – the trucking program of NAFTA Annex I may be a solution where no real

153. *See* Eaton, *supra* note 22, at 808.

154. David A. Gantz, *Comparing the Southern Border to the Northern Border and the Issues to be Dealt with at Each*, 29 CAN.- U.S. L. J. 363, 369 (2003).

155. Skahan, *supra* note 148 at 610.

problem exists. In the end, cross-border trucking may not be in the best interests of the flourishing cities of the U.S.-Mexico border region.[156]

156. 156. As of the time of printing, December of 2007, a Cross Border Demonstration Project for Mexican trucking has been implemented, with five Mexican-domiciled carriers and three U.S.-domiciled carriers currently operating throughout both countries. FMCSA, http://www.fmcsa.dot.gov/cross-border/cross-border-carriers.htm. Time will tell whether this demonstration project leads to wholesale acceptance of Mexican trucking on U.S. roadways.