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LADB Staff

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U.S. Congress Again Blocks Program For Mexican Truckers to Haul Cargo in U.S.

by LADB Staff
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For the third time in about a year, US federal legislators have blocked funding for a pilot program proposed by US President George W. Bush to allow Mexican truck drivers who meet certain qualifications to haul cargo on US highways.

The program, which Bush announced in early 2007, is intended to help the US comply with commitments under the North American Free Trade Agreement (NAFTA). The US House of Representatives blocked funding in July 2007, and the Senate took the same action in September of that year. The House later passed legislation to scrap the pilot program altogether. But the Bush administration found a legal loophole that allowed the program to continue, even though it was not funded.

In 2008, Bush again requested money for the program, but the request was again denied when the Senate Appropriations Committee blocked funding in a vote in July 2008. The controversy regarding the NAFTA provision that allows Mexican truckers access to US highways has brought legal action or the threat of legal action on both sides of the border. A coalition of organizations led by the International Brotherhood of Teamsters (IBT) has filed a lawsuit against the Bush administration for proceeding with the program.

In Mexico, the Camara Nacional de Autotransporte de Carga (CANACAR) is threatening to file a lawsuit against the US government for failing to implement the NAFTA trucking provisions.

Bush government found loophole to keep program going

The pilot program, which the Bush administration proposed in February 2007, was an effort by the US government to find a compromise that would allow the US to comply with transportation provisions of NAFTA. Under the trade agreement, the US was obligated to open its highways to Mexican truckers in January 1995. But former US President Bill Clinton's administration decided not to comply with this provision, arguing that a wide difference between Mexican and US truck guidelines could compromise the safety of US highways (see SourceMex, 1994-02-23, 1996-01-17, and 1997-02-05).

Mexico has continually pressed for the US to comply with the provision, even bringing the issue to a NAFTA dispute-resolutions panel (see SourceMex, 2000-12-16, 2001-05-09). The US Congress, partly because of pressure from the Teamsters and environmental advocates like the Sierra Club, has opted not to approve legislation that would enable the US to comply with the NAFTA provision. Critics of the provision have cited concerns that improperly trained drivers and obsolete trucks would jeopardize US highway safety.
The Bush government developed the pilot program to appease the Mexican government and US critics. Under the program, a limited number of Mexican truck drivers would be allowed to haul cargo into the US, provided that they meet a strict set of US Department of Transportation (DOT) guidelines (see SourceMex, 2007-02-28).

The Mexican government found the pilot program acceptable and had begun to train its drivers to participate in the program. But the US Congress held a different opinion. Congressional critics suggested that the Mexican trucking industry had not made sufficient advances in safety to be allowed access to US roads. In 2007, both the US House and the Senate voted to block funding for the pilot program despite administration assurances that sufficient safeguards were in place to "ensure a safe and secure" program (see SourceMex, 2007-09-12).

In December, Congress passed legislation prohibiting the use of government funds to "establish" a program that allows US-certified Mexican trucks to carry loads across the border and into the country. But the DOT interpreted the word "establish" as meaning to start a new program rather than to stop the current one, which was launched in September. Using this logic, the Bush government continued efforts to implement the program. This prompted the IBT and other organizations to bring a lawsuit before the 9th US Circuit Court of Appeals early this year.

The Sierra Club and Public Citizen urged the three-judge panel hearing the case to issue an immediate injunction to halt the program. "And, at the least, there should be an injunction before the year is up and they [federal officials] go ahead and decide to open the border based on the flawed pilot program," Jonathan Weissglass, an attorney representing the two organizations, said at that time.

As of mid-July, the court had not handed down a decision, but one justice hearing the case suggested that she supported the plaintiffs' position. "Isn't the congressional intent behind [the law] unambiguous?" Judge Dorothy Nelson argued at a hearing in February of this year. "If you look at the legislative history, including remarks by both proponents and opponents of the program, clearly it indicates in the record that the intention was to halt the pilot program."

Several lawmakers who oppose the program considered filing a congressional lawsuit against the executive branch but were advised by attorneys it was unlikely to succeed, said Copley news service. With the suit still pending, the Bush administration attempted to seek funding for the pilot program through a transportation-funding bill. US Transportation Secretary Mary Peters, along with a coalition of 69 businesses, appealed to Congress to approve the pilot program or face the threat of trade retaliations from Mexico.

"If the pilot program is blocked, we expect Mexico to exercise its right to retaliate," Peters and the business groups said in a letter to Congress. "This could affect a wide variety of exports to Mexico." The letter failed to convince the Senate Appropriations Committee, which in early July voted 20-9 to strip the funding request from the bill. "The Department of Transportation has already defied the intent of Congress once, and they are not going to get away with it again," said Sen. Byron Dorgan (D-ND). "With this amendment, this program will finally come to an end." The committee's decision effectively ends any chance that the issue will be resolved before Bush leaves office in January 2009.
But, even if funding had been approved, the transportation-funding bill is not likely to be enacted before 2009. This means the next US administration, which will take office in January 2009, will inherit this issue. Mexican truckers consider lawsuit against US government The pilot program has attracted very little interest in Mexico. As of mid-February, only 18 Mexican companies, operating about 62 trucks, had received authorization to participate after passing US inspections.

US officials said the negative campaign by the Teamsters against the program and the strong opposition in Congress might have deterred would-be participants. Some trucking companies are reluctant to pay several thousand dollars a year for insurance required to cross the border "in light of the uncertainty of whether or not it [the program] is going to continue," said John Hill, administrator of the Federal Motor Carrier Safety Administration (FMCSA).

The impasse regarding this issue has led Mexico's trucking industry to consider filing a lawsuit seeking US$2.5 billion in damages from the US government to compensate for lost income for blocking access to Mexican trucks since 1995. CANACAR, which represents more than 4,500 trucking companies in Mexico, pointed to Chapter 11 of NAFTA, which gives injured parties the right to demand economic compensation for unfair trade practices resulting in the loss of income.

The US company Metalclad used this investor-protection clause in seeking compensation from the Mexican government after the municipal government of Guadalcazar in San Luis Potosi and several environmental groups succeeded in shutting down a hazardous-materials storage site constructed by the company's Mexican subsidiary (see SourceMex, 2000-09-13 and 2001-05-09).

"We will take any legal actions necessary to claim financial compensation for the damages caused during all these years, as the government in Washington has failed to live up to its obligations under the trade agreement negotiated by Mexico, the US, and Canada," CANACAR said in a prepared statement. The trucking association said the Mexican government should consider blocking the entry of US trucks into Mexico. "While the Mexican government allows US trucking companies to travel and invest in Mexico, Mexican truckers are not allowed entry into the US," said CANACAR. "This is not only an unfair trade practice but also a clear example of discrimination."

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