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TRANSPORTATION OF PEOPLE ACROSS THE BORDER

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I. INTRODUCTION

Mexico and the United States of America share one of the most important borders in terms of the volume of movement in total people. According to the United States Customs Service, there were about 218,000 commercial passenger vehicle crossings from Mexico to the United States during the period of June 1996 through May 1997, which constitutes a daily average of 598 crossings.[1]

II. THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA)

The above statistic shows the importance of movement of people between the United States and Mexico within the context of the North American Free Trade Agreement (NAFTA).[2] Moreover, Chapters 9 and 12 of NAFTA specifically address the transportation of cargo and passengers in the North American marketplace. However, in light of individual legislation from both the United States and Mexico, general transportation was substantially hindered at the U.S. – Mexico border.

Notwithstanding the decreased efficiencies claimed by many as a result of additional legislation on both sides of the border, NAFTA provides for a complete set of rules aimed to eliminate restrictions to the transportation of people and cargo between Mexico and the United States. NAFTA sought to create a more efficient means of border crossing by standardizing vehicle sizes, weight and licensing requirements. The most relevant provisions in connection with the transportation of passengers are included in Annex I to NAFTA, which outlines the timetable for the liberalization of the remaining transportation barriers in place in North America. Prior to the NAFTA framework, Mexico and the U.S. executed a memorandum of understanding that allowed Canadian and U.S. persons to obtain "operating authority" to provide charter or tour bus services in Mexico.[3] However, the memorandum did not adequately impact scheduled bus services, which constitutes one of the sectors that stands to benefit from the efficiency measures promulgated by NAFTA.

Thus, the liberalization plan embedded in NAFTA regarding the transportation of passengers focuses on two main areas: cross-border services and investments

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1. *Commercial Passenger Vehicles: Safety Inspection of Commercial Buses and Vans Entering the U.S. from Mexico.* (Letter Report 08/08/97 U.S. Customs Service).

2. The North American Free Trade Agreement (NAFTA) – 1992 (ratified by United States in 1993 and implemented January 1, 1994). Members: United States, Mexico, and Canada.

3. NAFTA *Memorandum of Understanding Between the United States and the United Mexican States on Facilitation of Charter/Tour Bus Service*, December 3, 1990.

concerning cross-border services. With respect to cross-border services between Mexico and the U.S., NAFTA mandates that three years after the signature of the treaty, cross-border bus scheduled services to and from the territories of Mexico and the U.S., shall be permitted.[4]

With respect to the area of investment, NAFTA allows for the participation by U.S. and Canadian companies in the ownership of established or soon-to-be established Mexican companies providing bus services and tourist transportation. In contrast to the flat three-year gestation period for the actual cross-border services themselves, the liberalization of investment in such transportation services will take place in accordance with the following timetable:

(I) Three years after the date of signature of NAFTA, up to 49% foreign (non-Mexican) ownership permitted;
(II) Seven years after NAFTA's inception, up to 51% foreign ownership permitted; and
(III) Ten years after the date that NAFTA was entered into force, up to 100% ownership interest in Mexican bus companies will be permitted.[5]

Conversely, seven years subsequent to the ratification of NAFTA, Mexican persons and institutional investors will be allowed to establish an American enterprise in order to provide bus services between destinations located in both the United States and Mexico.[6] Currently, Mexican bus companies may operate in the so-called "Border Commercial Zones" without the need to obtain permits. Beyond such zones, however, passenger transportation services are restricted to U.S. companies only.

By the same token, U.S. bus companies may cross the Mexican border in order to interconnect with Mexican carriers, provided there is a "Coordination Agreement" among said companies subject to authorization by the Mexican Secretariat of Communications and Transportation.

III. CONCLUSION

Despite the fact that Mexico has denied cross-border permits to U.S. bus companies as a reaction to the U.S. position, there have been important strategic alliances between major Mexican bus companies and their U.S. counterparts in order to facilitate international passenger services. It is important to bear in mind the fact that the delay in the implementation of the NAFTA transportation provisions originated in a restriction of access by Mexican truck carriers to the U.S. That situation impacted cross-border bus services even though the bus sector is substantially distinguishable from trucking. Both sectors have different levels of development, as well as different circumstances.

Nonetheless, it likely that both U.S. and Mexican bus operators have found a successful formula for cooperation through the establishment of the aforementioned

4. NAFTA Annex I – Mexico 86 and 87.
5. *Id.*
6. NAFTA Annex I – United States – 23.

strategic alliances. Hopefully, through the continuous innovations of businesses on opposite sides of the border, the original NAFTA objectives for efficient transportation of people between the U.S.A. and Mexico may still be achieved.