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## Position on Cross Border Trucking Provisions of NAFTA

- 1. INTRODUCTION:** Since the early days of NAFTA negotiations, San Antonio leaders envisioned the city becoming a service center for trade with Mexico, particularly in the value-added areas of trade processing, distribution and other logistics-related activities. This vision and concept, known as Port San Antonio, encompasses all of the trade processing-related facilities and services throughout the community.

Once implemented, the cross border trucking provisions in NAFTA will allow shipments bound for Mexico to be consolidated in San Antonio and trucked without interruption directly to destinations in the Mexican interior. Similarly, shipments from Mexico can be trucked directly to San Antonio for redistribution or other value added activities.

Because of the current system of transferring trailers from a U.S. carrier to a Mexican carrier at the border it has been uneconomical for many shippers to use San Antonio as hub for trade processing activities vis-à-vis Mexico. However, with the implementation of the NAFTA trucking provisions San Antonio will be able to offer shippers an economical alternative for Mexico-related logistics and distribution related activities.

Cross border trucking is critical to the competitiveness of the North American region and in particular the Texas-Northern Mexico region. Regional projects like the Toyota plant in San Antonio, that will source components in a just-in-time fashion from suppliers in Northern Mexico, need cross border trucking to achieve ideal efficiencies. These efficiencies are critical to making the Toyota project, and others like it, competitive vis-à-vis manufacturers in other regions around the world.

- 2. BACKGROUND:** The NAFTA gave U.S. and Mexican carriers the right to pick up and deliver international freight into the neighboring country's Border States beginning in December 1995. This market access was scheduled to expand to the entire territory of the United States and Mexico by January 2000. However, the cross border trucking provisions of NAFTA have never been implemented due to pressures on both sides of the border. The political hurdles are numerous and continue to be thrown in front of the issue.

In a long anticipated ruling, a NAFTA dispute settlement panel in February 2001 determined that the United States had violated its obligations on cross-border trucking. On June 5, 2001, President George W. Bush issued a memorandum instructing the U.S. Department of Transportation to begin accepting and processing applications by Mexican nationals for the purpose of establishing U.S. trucking companies. On November 27, 2002, President Bush issued an executive order to lift the moratorium on cross border trucking.

However, in January of 2003, the US Ninth Circuit Court of appeals in San Francisco ruled that the US Department of Transportation could not open the border until a full environmental impact study (EIS) was completed. Opponents of cross border trucking argued to the court that Mexican carriers would be potentially harmful to the US environment and, therefore, an EIS was needed. The court agreed and placed a temporary ban on cross border trucking until a full EIS was completed. In June of 2004, the U.S. Supreme Court overturned the Ninth Circuit Court's decision, effectively ending political and legal opposition to the provision in the United States.





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Until February 23, 2007, the U.S. Department of Transportation had been unable to implement the provisions due to a lack of response from the Mexican government to agree to the necessary protocols to allow U.S. inspectors into Mexico to conduct the necessary safety audits and inspections. However, on February 23, 2007 U.S. Secretary of Transportation Mary E. Peters announced truck safety inspectors working for the U.S. Federal Motor Carrier Safety Administration will be able to travel to Mexico to conduct extensive safety audits on companies interested in participating in the pilot program.

The Free Trade Alliance (Alliance) and the Mexican Foreign Trade Council (COMCE) have long been a proponent of a general framework for a pilot project that should be conducted with the following goals: a) demonstrate how the various security initiatives such as Customs Trade Partnership Against Terrorism (C-TPAT), Free and Secure Trade (FAST), Automated Customs Environment (ACE) and the International Trade Data System (ITDS) function in a cross border trucking climate; b) identify and address any issues (whether regulatory, statutory, or procedural) that impact cross border trucking; and c) demonstrates the logistical efficiencies that can be achieved for shippers by having one truck and driver deliver cargo to and from points in the interior of the U.S. and Mexico.

### ***Current Status & Challenges***

On September 5, 2007 the cross border demonstration project commenced. Stage Coach Cartage & Distribution of El Paso, Texas and Transportes Olympic of Nuevo Leon, Mexico were the first companies to participate in the program. As of August 4, 2008, 27 Mexican carriers operating 100 vehicles and 10 U.S. carriers operating 55 vehicles are participating in the demonstration project. The Mexican carriers have made 1,287 trips into the U.S. interior and the U.S. carriers have made 2,311 trips into the Mexican interior. During the first year of the program, each country is limited to 100 carriers authorized to participate in the program. Mexico's trucks and their drivers must meet all U.S. safety and security requirements before they will be allowed to drive beyond the border region. Every truck that crosses the border as part of the pilot will be checked - every truck, every time. Any truck with a safety violation that poses a risk to the traveling public - no matter how small or large - will be stopped until the problem is fixed. So far, there have been **0 reported accidents and/or crashes.**

The House Transportation and Infrastructure Committee made progress on putting an end to the Department of Transportation's Cross Border Trucking Pilot Program. The bill, HR 6630, was passed on a unanimous vote and it orders the DOT to terminate the program for Mexican motor carriers. Bill HR 6630 was sponsored by Representatives Peter DaFazio, James Oberstar, John J. Duncan Jr., and John Mica. The Teamsters and Sierra Club have also filed a suit in the US Ninth Circuit Court of Appeals challenging the legality of continuing the current pilot program. As we approach the 2009 budget process, it is likely that the demonstration project will again come under fire. If passed into law, the bill will restrict the US Department of Transportation from granting authority to allow any more Mexico-based motor carriers to operate beyond the commercial zone after September 6, 2008.

On September 30, 2008 the United States Senate passed a continuing resolution for the Department of Transportation's Cross Border Trucking Pilot Program. The continuing resolution puts a hold on the House of Representatives HR 6630 bill and allows all operations as well as funding to continue without





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congressional opposition until March 6, 2009. The Pilot Program is expected to come up for a vote in front of the full House in late Spring 2009.

March 11, 2009, a \$410 billion Omnibus Bill has passed through Congress that includes a provision to pull ALL funding from the Department of Transportation Cross Border Trucking Demonstration Project. This move will effectively end a Project that currently allows trucks to operate beyond the commercial zone of the U.S.-Mexico Border. Under NAFTA, merchandise trade with Mexico has quadrupled from \$81 billion in 1993 to \$367 billion in 2008. Not only is the program a commitment the U.S. made to Mexico under NAFTA, but the trucking industry is vital to trade with Mexico with over 70% of goods being moved between the two countries on trucks.

**It is therefore imperative that we continue to demonstrate support and communicate the business opportunities that a Cross Border Trucking program offers, in addition to fulfilling our commitment under NAFTA.**

- 3. OBJECTIVES:** (1) Support the cross border trucking provisions of NAFTA. (2) Determine next actions to ensure the creation of a new bilateral cross-border trucking program.

