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Truckers proposal must "not discriminate", warn Mexican lawyers

The proposal announced by the United States to allow Mexican truckers to operate on US highways has been greeted as a "step in the right direction" by lawyers in Mexico, although doubts remain as to whether the new regulations can be imposed without unfairly discriminating against Mexican truck drivers or if they are in line with NAFTA.

The proposal announced by the United States to allow Mexican truckers to operate on US highways has been greeted as a "step in the right direction" by lawyers in Mexico, although doubts remain as to whether the new regulations can be imposed without unfairly discriminating against Mexican truck drivers or if they are in line with NAFTA.

Reactions in Mexico to the US proposal released on 6 January are mixed.

Eduardo Siqueiros, a partner at Barrera, Siqueiros y Torres Landa SC, says that while he respects the need to control whoever drives on the US highways, he believes such measures are only justified if they can be applied fairly.

He says: "If they apply these proposals properly in a non-discriminatory fashion, [then under NAFTA] they are fully justified to do so. However, if they start to apply them in a discriminatory fashion, such as by imposing more stringent measures on Mexican carriers...than for their own carriers, then this would mean that the US is not complying with NAFTA regulations and that wouldn't be right."

The new measures, which require trucks to be equipped with on-board electronic monitoring devices to ensure drivers abide by US laws, will make it easier for US authorities to conduct safety checks on Mexican drivers, as well as clarifying a number of ambiguities that arose in the first pilot scheme implemented in 2008.

"To be honest there were probably carriers in both the US and Mexico that didn't meet the original safety specifications", says Siqueiros.

"But the problem was the original pilot did not define clearly who did and who did not comply."

"What these steps being implemented now will achieve is that if the vehicle, if the driver, if all the safety requirements are fulfilled, then the carrier is authorised...It makes them equals in the same manner."

Adrián Vázquez, partner at **Vázquez Tercero y Asociados SC**, takes a different view: "This is not a final programme by the US and it does not comply or meet with the obligations established by NAFTA. It is just a pilot programme and it is very restrictive."

"I agree that they have tried to solve some of the weaknesses of the previous pilot programme, but this does not mean it is less restrictive for Mexican truckers. For example, this new pilot programme does not allow the transportation of dangerous materials on the US highways, but NAFTA did not exclude the possibility of Mexican truckers transporting dangerous materials in the US."

He adds that new restrictions, such as the requirement that Mexican truckers speak English and drive trucks of the same, high level of environmental standards as US trucks, unfairly impose additional costs on Mexican truckers that their US counterparts do not have to bear.

"In the end, the new pilot scheme includes provisions that are trying to make everyone happy, but at the end of the day it is NAFTA that is being breached," he says. "I think this will succeed and bring to an end the retaliatory measures by Mexico...but it will not solve the controversy until both countries comply fully with NAFTA."

In retaliation to the US renegeing on the original pilot scheme in 2009, the long-running trade dispute between the two countries came to a head when Mexico imposed tariffs on a number of US imports that gradually grew to include pork, apples, and California oranges.

For **Vázquez**, it was not the US but Mexican consumers that were hurt by the dispute as they were met by higher prices of products they could not easily get from elsewhere.

For both the US and Mexico, the greatest challenge will come if the pilot scheme is expanded and applied in both countries.

"If the programme is applied in an expeditious manner, especially with regards to the US Department of Transport's inspections, it should represent a strength in comparison with the Pilot pilot programme", says Edmundo Elias, a partner at the Mexican office of Baker & McKenzie (Mexico).

"However if meeting the requirements for securing permits to operate and passing inspections becomes a burdensome and time consuming process that causes Mexican trucking companies to be rejected for the sole reason of being Mexican, then it will be a weakness," he adds.

"The concept document indicates that vehicles and drivers will be inspected each time they cross the northbound border. If these inspections are very time consuming and burdensome, and in the event the reviews are more exhaustive than those faced by US carriers, several objectives of NAFTA would be breached."

He points out that many of these regulations fall under Article 102 of NAFTA which outlines the objectives to eliminate barriers to trade, facilitate cross-border movement of goods and promote conditions of fair competition in the free trade area.

Adriana Ibarra-Fernandez, partner at Baker & McKenzie (Mexico), agrees: "The main reason for this dispute is that the domestic industries do not want to face competition from the service providers of the other country. In the case of Mexico, they are afraid of competing with brand new, state of the art trucks which in most cases are not available to Mexican trucking companies. From the US side of the border, they do not wish to compete with skilled drivers whose wages are much lower than those earned by US drivers and trucks."

"One of the main opposing groups is the Teamsters...I would not be surprised if they block implementation of this proposal again, but at least now Mexico has retaliatory measures in place...Let us hope that these affected sectors continue putting pressure on the US government so that it abides by its NAFTA commitments."