
**SALVAGING TRADE, ECONOMIC AND
POLITICAL RELATIONS WITH MEXICO IN THE
AFTERMATH OF THE TERRORIST ATTACKS:
A CALL FOR A REEVALUATION OF U.S.
LAW AND POLICY**

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I. INTRODUCTION

While commonly underestimated, the United States' relationship with Mexico is, without a doubt, one of its most important. In the words of the U.S. Ambassador to Mexico, "no country in the world has a greater impact on the daily life of Americans than does Mexico [because] what we buy, sell and make, the wages we pay and receive, the languages we speak, the illicit drugs and criminality that afflict us, and, in some locales, the very air we breathe and water we use is influenced in significant measure by Mexico."¹ As evidence of this closeness, approximately 500,000 Americans reside in Mexico, 2,600 U.S. companies operate there and 60 percent of foreign direct investment in Mexico originates in the United States. Mexico is also an important trading partner, obtaining nearly 75 percent of its imports from the United States, and directing approximately 85 percent of its exports to its northern neighbor. Furthermore, the economic and political stability of Mexico is paramount to U.S. national security because "economic difficulties always threaten to worsen democratic and security problems."² In addition to its historical importance to the United States, Mexico's role in U.S. policy has increased exponentially in the last few years as a direct result of, among other things, the signing of the North American Free Trade Agreement ("NAFTA") in 1993.³ Based on the links between the two nations, the U.S. government has repeatedly recognized that "U.S. relations with Mexico are as important as those we have with any other country in the world [and] how the United States engages this neighbor and interna-

¹ Jeffrey Davidow, *United States-Mexico: New Opportunities*, AMBASSADORS REV., Spring 2001 available at <http://www.usembassy-mexico.gov/et0109/opportunities.html> (last visited Apr. 22, 2002).

² James Cason, *Regional Impact of the September 11 Events: U.S. Security Concerns*, Address Before the Center for Strategic and International Studies (Nov. 1, 2001) (explaining the relationship between economic problems in Latin America and security issues, the author quotes former president Roosevelt: "[n]ecessitous men are not free men. People who are out of a job are the stuff of which dictatorships are made."), at http://www.emergingfromconflict.org/cuba/dialogue/dc_agenda.html (last visited Apr. 16, 2002).

³ *Changing Hats Across the Rio Grande*, ECONOMIST, July 8-14, 2000, at 30.

tional partner now will have a direct effect on the lives and livelihoods of millions of Americans in the years to come.”⁴

The Bush Administration shares this traditional sentiment and has consistently emphasized the importance of U.S.-Mexico relations. For example, President Bush himself recently acknowledged “the dynamism achieved through NAFTA, which has ushered in dramatic increases in trade that have transformed our economic relationship.”⁵ Moreover, a recent report by the U.S. Trade Representative, who was personally appointed by Bush, states that “[t]he success of NAFTA underscores the importance of expanding free trade throughout the hemisphere. . . . As Latin America grows, the United States benefits.”⁶ Bush’s stance on U.S. policy toward Mexico was also apparent during his presidential campaign. In an effort to reveal his understanding of the intricacies and importance of U.S.-Mexico relations, Bush repeatedly employed a political refrain that left little room for misinterpretation: “What is good for Mexico is good for the United States.”⁷ After his election, Bush delivered a consistent message regarding his esteem for Mexico, while his Mexican counterpart, Vicente Fox, made similar announcements in his nation. During a visit by Fox in September, 2001, for instance, the two leaders issued a joint statement in which they praised the relationship between the two nations and claimed that each share the “common purpose” of addressing various challenges, including migration, the environment, drugs, crime, corruption, education and commerce. Both nations committed themselves to being good neighbors and good friends. According to these two leaders, “[f]riends deal in good faith, and disagree with respect. Friends

⁴ *Fact Sheet: Working with Mexico: Building America’s Future* (1998), U.S. Dep’t of State, at <http://www.wiley.com/college/geocases/cases/case5/readings.html> (last visited Apr. 16, 2002). See also Clifford Kraus, *Economic Pain Spreads from US Across Latin America*, N.Y. TIMES, Oct. 14, 2001, at A3 (noting the strength of the relationship between Mexico and the United States is clear upon examining the economic trends of these two nations). Since the terrorist attacks on the United States on September 11, 2001, Mexico’s economy has “stumbled badly” due to a reduction in foreign investment, a lowering of prices on natural resources, a plunge in the stock and bond markets, an upsurge in interest rates, and a drastic decline in consumer spending. Economists claim that “the severity of the slowdown will depend on the comeback of the United States economy. [B]ecause of the geography and the North American Free Trade Agreement, Mexico is intricately linked to the United States.” *Id.*

⁵ George W. Bush and Vicente Fox, *Towards a Partnership for Prosperity: The Guanajuato Proposal*, Joint Press Statement (Feb. 16, 2001), at http://www.sre.gob.mx/e-bulletins/2001/feb/I_version/C-00.html (last visited Apr. 16, 2002).

⁶ Robert Zoellick, *Free Trade and Hemispheric Hope*, Remarks at the U.S. Trade Representative Council of the Americas (May 7, 2001), at http://www.ustr.gov/speech-test/zoellick/zoellick_2.pdf (last visited Apr. 16, 2002).

⁷ Ron Fournier, *Bush Keeps Training Wheels on Foreign Policy with Mexico Trip*, SAN DIEGO UNION-TRIB., Feb. 15, 2001.

stick together, *in good times and in bad*.”⁸ Based on statements like these and other recent interactions between the two countries, policy analysts contend that the U.S.-Mexico relationship is becoming increasingly strong due, in large part, to the natural rapport between the current political leaders. It is suggested, specifically, that “[t]he United States and Mexico have quietly become integrated to a degree that would surprise those who live outside of the American Southwest. The Bush-Fox intimacy transcends personal chemistry and reflects the structural convergence of their two countries, a marriage stemming from economies, demographics and politics.”⁹

Concurring with the Bush Administration on the importance of U.S. relations with Latin America, and especially those with Mexico, many policy analysts have publicly urged the president to engage thoroughly this region that was somewhat neglected under the Clinton Administration. Citing numerous examples of political and economic instability in Peru, Colombia, Ecuador and Venezuela, certain advocates explain that, while U.S. relations with Latin America are essentially sound, a deeper probe reveals a number of serious problems. In light of the increasing precariousness of the situation, experts beseeched the Bush Administration to “heed the warnings” and aggressively interact with its hemispheric partners. With regard to Mexico, the election of Vicente Fox, who has consistently professed his desire to strengthen relations with the United States, presented “a historic opportunity” to deepen bilateral relations. By actively working with President Fox, Bush “can make up for the lost momentum in U.S.-Latin American relations, begin to alleviate some of Latin America’s concerns, and blunt the region’s growing criticism of the United States.”¹⁰ While acknowledging that only Latin Americans themselves can truly author their own success, other analysts pressed President Bush to reinvigorate relations with the region soon since the proverbial window of opportunity may prove to be quite ephemeral. With respect to Mexico, it is argued that maintaining a positive relationship with this nation’s leader is pivotal due to the fact that “Mexico under President Vicente Fox is more likely to be engaged as an eager partner in solving common problems and achieving shared goals than as a prickly adversary.”¹¹

⁸ George W. Bush and Vicente Fox, Remarks at the Arrival Ceremony (Sept. 5, 2001) (emphasis added), at <http://www.whitehouse.gov/news/releases/2001/09/20010905-2.html> (last visited Apr. 16, 2002).

⁹ Robert S. Leiken, *With A Friend Like Fox*, FOREIGN AFF., Sept./Oct. 2001, at 91.

¹⁰ Peter Hakim, *The Uneasy Americas*, FOREIGN AFF., Mar./Apr. 2001, at 46.

¹¹ Stephen Johnson, *A New US Policy For Latin America: Reopening the Window of Opportunity*, HERITAGE FOUND. BACKGROUNDER, Feb. 15, 2001, available at <http://www.heritage.org/library/backgrounder/bg1409.html> (explaining that “[a] more prosperous, democratic Mexico is clearly in the interest of the United States”).

Despite the irrefutable empirical evidence of the importance of U.S.-Mexico relations, the Bush Administration's repeated acknowledgement thereof, and the exhortations by foreign policy experts to strengthen the arrangement while the conditions are propitious, recent U.S. legal and policy decisions have proven detrimental to Mexico. Worse still, this deteriorating situation has been exacerbated by the terrorist attacks on the Pentagon and the World Trade Center on September 11, 2001. Based on this premise, section two of this article concentrates on the recent U.S. legal actions (and inactions) that have negatively impacted Mexico. It analyzes the resistance to cross-border trucking under NAFTA, the deferment of immigration reform for Mexicans, the issuance of an executive order that could potentially subvert Mexico's entire economy, and the enactment of trade legislation that, among other things, has triggered a battle between the United States and Mexico before the World Trade Organization ("WTO"). Section three examines the numerous ways in which Mexico has been damaged, albeit indirectly, as a result of the terrorist attacks and U.S. policy decisions in the region. Section four explains that, due to the innumerable links between the United States and Mexico, U.S. decisions designed to safeguard the stability of its southern neighbor amid the current environment of increasing chaos are based on self-interest, not altruism. Accordingly, this article urges a swift and serious reevaluation of U.S. legal and policy decisions affecting Mexico.

II. U.S. LEGAL DECISIONS AFFECTING MEXICO

While not all recent U.S. legal actions (or inactions) have addressed Mexico in particular, many have substantially impacted the country. For instance, the United States has delayed cross-border trucking negotiated under NAFTA, halted the possibility of immigration reform regarding Mexicans, issued an executive order that threatens to destabilize the Mexican economy, and potentially violated the WTO and NAFTA by enacting the Continued Dumping and Subsidy Offset Act. Each of these events is examined below.

A. *Delay of Cross-Border Trucking Under NAFTA*

In 1982, Congress enacted the Bus Regulatory Reform Act, which included a two-year moratorium on the issuance of new authorizations to Mexican trucks to operate in the United States.¹² Relying on the discretionary authority granted by the Act, U.S. presidents have continually extended the moratorium since its inception in 1982. Despite this long-standing restriction, certain exceptions were made in order to facilitate cross-border trade, including the ability of Mexican trucks to operate

¹² 49 C.F.R. § 368 (2000).

within designated commercial zones in the four border states of California, Arizona, New Mexico and Texas.¹³

Discussions between the United States, Mexico and Canada concerning NAFTA began in 1990. Shortly thereafter, in August 1992, the three countries announced that they had reached a comprehensive agreement, which included provisions designed to gradually liberalize cross-border trucking throughout the North American continent. Specifically, pursuant to Annex I of NAFTA, Mexican trucks would be permitted to operate in the four U.S. border states three years after the signing of the NAFTA agreement, i.e., on December 18, 1995.¹⁴ Annex I provided, furthermore, that Mexican trucks would be allowed to operate throughout the entire United States five years later, on January 1, 2000.¹⁵

Prior to these pivotal dates, the United States gave unequivocal indications that it intended to uphold its treaty obligations in a timely fashion. For instance, while announcing certain measures to facilitate the implementation of the NAFTA trucking provisions, the Secretary of the Department of Transportation (“DOT”) stated that “[i]t is clear that this December [1995] will mark a visible, fundamental change in the way trade and commerce is conducted in our hemisphere . . . *the United States is determined that NAFTA is enacted properly* and works right for each of our countries.”¹⁶ Notwithstanding this and similar declarations, citing alleged deficiencies in terms of safety and security, the United States determined just one day before the deadline not to fulfill its treaty obligation of allowing Mexican trucks to operate in the four border states as of December 18, 1995.¹⁷

In reaction to this denial of access to Mexican trucks, the Mexican government requested in September, 1998, the formation of an arbitral panel

¹³ OFFICE OF INSPECTOR GENERAL, U.S. DEP’T OF TRANSP., AUDIT REPORT TR-2000-013 – MEXICO-DOMICILED MOTOR CARRIERS 1-3 (1999), *available at* http://www.oig.dot.gov/show_txt.php?id=220 (noting that while 98 percent of Mexican trucks were restricted to operating in the commercial zones, the remaining 2 percent retained the right to travel throughout the entire United States under one of the following exceptions: (i) Mexico-domiciled trucks that have U.S. citizens as majority owners, (ii) Mexico-domiciled, Mexican-owned trucks “grandfathered” because they received operating authority prior to the enactment of the Bus Regulatory Reform Act, and (iii) Mexico-domiciled, Mexican-owned trucks that use the United States as a “land bridge” to Canada, without stopping to load or unload cargo).

¹⁴ North American Free Trade Agreement, Dec. 18, 1992, Annex 1, 19 U.S.C. §§ 3301-3473 (1994 & Supp. V 1999), 32 I.L.M. 289 [hereinafter NAFTA].

¹⁵ *Id.*

¹⁶ Press Release, U.S. Dep’t of Transp., Peña Announces Key Measures for Smooth, Safe and Efficient NAFTA Transition (Sept. 5, 1995) (emphasis added), *at* <http://www.dot.gov/affairs.1995/border.html> (last visited Apr. 16, 2002).

¹⁷ *See id.*

(the “NAFTA Panel”) as provided for in NAFTA Article 2008.¹⁸ While this dispute continued unresolved, the United States failed to adhere to the second NAFTA deadline. Namely, it refused to allow Mexican trucks to operate throughout the entire United States as of January 1, 2000. Similar to the justifications offered for noncompliance in 1995, the United States claimed that inadequate safety regulations and enforcement in Mexico warranted the extension of the moratorium. Although the DOT acknowledged improvements in the Mexican system and efforts by the United States and Mexico to harmonize relevant regulations, the disparity in safety standards between the two nations was still too formidable in the DOT’s opinion. Upon announcing its intention to disregard the second NAFTA deadline, representatives of the DOT summarily stated that “[w]e’ve made good progress [but] we’re simply not there yet.”¹⁹

After a period of additional submissions and requests, the arbitration was conducted by the NAFTA Panel in May 2000, and a final report was issued in February 2001. In a unanimous and scathing decision against the United States, the NAFTA Panel held that the blanket refusal by the United States to review and consider applications from Mexican trucks to provide cross-border services constituted a breach of Annex I of NAFTA. The NAFTA Panel rejected the U.S. arguments as “unpersuasive” and refused to entertain any *ex post facto*, self-serving justifications. The report issued by the NAFTA Panel stated, in particular, that “[t]he fact that the United States may not have available, for budgetary or other reasons, ‘safety investigators’ to travel to Mexico, is not an excuse to fail to comply with U.S. obligations under the [NAFTA] Agreement, particularly given the fact that Mexican regulatory conditions were well-known to the United States at least since September 1992, when NAFTA negotiations were completed.”²⁰ Based on its findings, the NAFTA Panel mandated that the United States take “appropriate steps” to bring its practices regarding cross-border trucking services into compliance with its obligations under NAFTA within a period of 30 days.²¹ Otherwise, the United States would be penalized monetarily and susceptible to trade retaliation by Mexico.

Contrary to the directive from the NAFTA Panel, the United States failed to take “appropriate steps” to rectify the situation within the allot-

¹⁸ See NAFTA, *supra* note 14, art. 2008, 32 I.L.M. at 695 (establishing that if the Free Trade Commission was convened and has not resolved the matter within 30 days, then any consulting Party may request in writing the establishment of an arbitral panel).

¹⁹ Rossella Brevetti, *DOT to Continue Current Policy Limiting Mexican Truck Access*, 17 Int’l Trade Rep. (BNA) No. 1, at 16 (Jan. 6, 2000).

²⁰ NAFTA Panel Established Pursuant to Chapter Twenty in the Matter of Cross-Border Trucking Services Final Report (Feb. 6, 2001), 40 I.L.M. 772, available at <http://www.ustr.gov/enforcement/trucking.pdf>.

²¹ *Id.*

ted 30-day period. Nonetheless, President Bush, who fancies himself a zealous advocate of free trade, made several unambiguous statements that his Administration would take all feasible measures to make the country NAFTA-compliant by, at the latest, January 1, 2002. As a manifestation of this intention, shortly after the NAFTA Panel decision, the Bush Administration announced that “[w]e have assured the Mexican government that we intend to live up to our NAFTA obligations to open the U.S.-Mexico border to trucking [and] discussions are underway on how to implement the recent NAFTA Panel decision in a safe and orderly fashion.”²²

Despite this pledge to open the border to Mexican trucks by January 2002, the United States recanted once again, announcing that bilateral trucking would not commence by this deadline. Many attempt to attribute this prolonged closure of the border to heightened security measures implemented in reaction to the terrorist attacks on the Pentagon and the World Trade Center. It is suggested, for example, that the “terrorist attacks in New York and Washington mean that budget bills, including the Transportation Department’s funding for the coming fiscal year, will be delayed.”²³ However, the U.S. Transportation Secretary announced *before* the terrorist attacks that the United States would not open its borders to Mexican trucks until an effective safety program has been implemented, a process which was impeded by intense congressional debate.²⁴

Finally, in December 2001, nearly seven years after cross-border trucking was due to commence pursuant to NAFTA, the U.S. congress managed to reach a compromise.²⁵ According to the pertinent “conference agreement,” cross-border trucking will be permitted, provided that certain conditions are met. For example, the DOT must conduct an onsite safety review of all Mexican trucks that aspire to operate beyond the commercial zones in the United States; state and federal inspectors are required to verify electronically the validity of each license involving the transport of hazardous waste; truckers must submit themselves to periodic inspections to maintain their eligibility; Mexican carriers must obtain

²² Alan Larson, *Outlining the Potential for Expanded US-Mexico Trade*, Remarks to 54th Plenary of the Mexico-U.S. Business Committee (Mar. 5, 2001), at <http://www.state.gov/e/rls/rm/2001/1133pf.html> (last visited Apr. 16, 2002).

²³ David Hendricks, *Feds Put Off Trucking Plan*, SAN ANTONIO EXPRESS-NEWS, Sept. 19, 2001, at 1E. See also Richard A. Oppel et al., *New Security Clogs US Borders*, N.Y. TIMES, Sept. 20, 2001, at C1; Bill Mongelluzzo, *West Coast Tightens Security*, J. OF COM., Sept. 11, 2001; R.G. Edmenson, *Delays at Border Crossings*, J. OF COM., Sept. 12, 2001.

²⁴ Derrick Cain, *Lack of US Safety Enforcement Program Could Push Back Mexico Border Opening*, 18 Int’l Trade Rep. (BNA) No. 35, at 1398 (Sept. 6, 2001).

²⁵ *Bush Signs Transportation Bill*, WASHINGTON POST, Dec. 18, 2001. President Bush officially signed into law on December 17, 2001, the transportation-spending bill that, among other things, imposes new safety requirements on Mexican trucks desirous of operating in the United States. *Id.*

sufficient insurance from a company licensed in the United States; and the U.S. government must install ten weigh-in-motion scales at the stations with highest volume.²⁶

The problems generated by this NAFTA trucking dispute are lingering and undoubtedly detrimental to U.S.-Mexico relations for several reasons. First, irrespective of the approval of the recent conference agreement, actual commencement of cross-border trucking may not be readily forthcoming due to stringent prerequisites. Indeed, experts predict that bilateral transportation will not occur for at least a few months because the DOT requires time to hire and train border agents, issue interim final safety-related regulations, establish the requisite computer systems to verify Mexican drivers' licenses and insurance, and install truck scales at nearly a dozen border crossings.²⁷ In addition, the U.S. Inspector General must conduct a comprehensive review of the DOT's capacity to ensure safety on U.S. highways once Mexican trucks are allowed to operate, and the Secretary of Transportation must certify that the opening of the border does not present "an unacceptable safety risk to the American public."²⁸

Second, U.S. officials have attempted to downplay Mexico's irritation at this additional delay that clearly defies the NAFTA Panel ruling, claiming that the Mexicans "have no problem" and that "no one is complaining" because it is understood that U.S. national security takes priority over transportation issues.²⁹ This position, however, is dubious considering the repeated refusal by the United States to open the border, thereby obligating Mexico to engage in a battle lasting over half a decade to exercise its rights under NAFTA. The claim that Mexicans are not embittered by the prolonged trucking dispute is also directly contradicted by recent legal actions. Eleven Mexican trucking companies recently filed a \$4 billion dollar class-action lawsuit in Texas, claiming that the DOT violated (i) NAFTA by unjustly denying operating permits to Mexi-

²⁶ Suzanne Gamboa, *Plan To Allow Mexican Trucks Access*, WASHINGTON POST, Nov. 28, 2001; Press Release, Patty Murray, Senator Murray Announces Deal on Mexican Trucks – Retains Every Safety Point of Original Murray-Shelby Compromise (Nov. 28, 2001), at <http://murray.senate.gov/~murray/releases/01/11/2001b29702.html> (last visited Apr. 16, 2002); Christopher Lee, *Deal Struck on Mexican Trucks*, DALLAS MORNING NEWS, Nov. 29, 2001, at D1; Heather M. Rothman, *Senators Overhaul Limits on Mexican Trucks; Conferees Hoping to Inspect Deal by Nov. 16*, 18 Int'l Trade Rep. (BNA) No. 45, at 1839 (Nov. 15, 2001); H.R. CONF. REP. NO. 107-308, § 350 (2001).

²⁷ See Christopher Lee, *House Votes to Allow Mexican Trucks*, DALLAS MORNING NEWS, Dec. 1, 2001, at 2F; see also David Rogers, *House, Senate Negotiators Reach Accord On \$59.6 Billion Transportation Budget*, WALL ST. J., Nov. 30, 2001, at A2.

²⁸ H.R. CONF. REP. NO. 107-308, § 350 (2001).

²⁹ David Hendricks, *Feds Put Off Trucking Plan*, SAN ANTONIO EXPRESS NEWS, Sept. 19, 2001, at 1E.

can truckers and (ii) the U.S. Constitution by allowing Canadian firms greater access.³⁰

Third, even if the DOT manages to fulfill the prerequisites mentioned above, hastily-installed equipment may malfunction, further frustrating the goal of virtually seamless borders. This prediction is logical based on a recent incident where over 1,200 Mexican trucks were denied entry into the United States due to the DOT's "faulty computer systems" that were unable to properly verify licenses and permits.³¹ Finally, although U.S. congressional leaders are lauding the conference agreement as a major success in terms of NAFTA relations, Mexico itself has not yet pronounced its approval of the legislation. High-ranking representatives of the Mexican government did espouse their initial belief that the United States has "kept its word" regarding trucking. Positive public rhetoric aside, Mexico has reserved the right to further examine the conference agreement to identify any "complications" indicating U.S. noncompliance with NAFTA.³²

B. *Mexican Immigration Plan Thwarted*

Although they recognized that it was a 'formidable challenge,' in early 2001 the United States and Mexico announced efforts to introduce massive immigration reform to benefit both nations. On one hand, U.S. employers would obtain access to a multitude of persons willing (unlike many of their North American counterparts) to work in low-skill, low-pay positions. On the other hand, some 3.5 million Mexicans working and living in the United States illegally would earn "permanent resident" status, which could ultimately lead to full citizenship.³³ The negotiations progressed to such a point that, upon his visit to the White House, President Vicente Fox of Mexico announced that an agreement on immigration reform could be reached by the end of the year.³⁴ For his part, President Bush's desire to advance immigration reform seemed categorical, and his regard for his Mexican homologue was equally resolute. At a recent political rally, Fox was tremendously successful in advancing his political agenda and persuading others to adopt his perspective regarding immigration: "He sold 'trust' again. He sold the dignity of Mexican

³⁰ Lynn Brezozky, *Trucking Cos. Allege Discrimination*, WASHINGTON POST, Dec. 18, 2001.

³¹ *Mexican Truckers Angry Over Being Turned Back by US Inspectors Continue Blocking Traffic at US Border*, SAN DIEGO UNION-TRIB., Dec. 7, 2001.

³² John Nagel, *Mexico Studying NAFTA Truck Rules, Sees Definitive Entry of Trucks to US*, 18 Int'l Trade Rep. (BNA) No. 48, at 1958 (Dec. 6, 2001).

³³ See Ronald Brownstein, *Political Realities Intrude on Promise of Change*, L.A. TIMES, Sept. 7, 2001, at A1; Dana Milbank, *Fox Presses for Immigration Agreement*, WASHINGTON POST, Sept. 6, 2001, at A1.

³⁴ Edwin Chen & James F. Smith, *Fox Pushes for Migrants Pact by End of Year*, L.A. TIMES, Sept. 6, 2001, at A1.

immigrants. He sold the North American Free Trade Agreement. He sold Mexico's achievements in drug, crime and economic policy. And he sold Bush."³⁵

These initial indicators of success notwithstanding, the United States soon determined that overhauling immigration policy was a "thornier job" than it had anticipated. Consequently, it was announced that immigration reform with Mexico would not be accomplished in the near future.³⁶ If any hope remained for resolution of the immigration reform issue, it was surely lost after the terrorist attacks on the Pentagon and the World Trade Center. As a result of these events, the U.S. attitude toward relaxing the rules applicable to immigrants changed dramatically. While only a few months ago Mexico and the United States were aggressively contemplating the legalization of millions of undocumented Mexicans residing in the United States, now the U.S. Congress is moving in the opposite direction, enacting even more stringent immigration policies.³⁷ Although this tightening of the border is comprehensible, it is inconsistent with one of the primary missions of the United States prior to the terrorist attacks, namely "to fulfill the promise of the North American Free Trade Agreement [and] to make the border as unobtrusive as possible and to build on the world's largest bilateral trade flow, now \$420 billion year."³⁸

Approximately two months after the terrorist attacks, the U.S. government attempted to demonstrate that it had not forsaken immigration reform. As a manifestation of this continued interest, Senators Tom Daschle and Dick Gephardt traveled to Mexico to renew talks on immigration, characterizing the issue as a matter of national security.³⁹ According to these politicians, the primary objective of their journey was to clarify

³⁵ Dana Milbank, *Fox Strikes Up the Brand For Immigration*, WASHINGTON POST, Sept. 7, 2001, at A17.

³⁶ Eric Schmitt & Ginger Thompson, *Mexico Takes Small Steps to Improving Its US Ties*, N.Y. TIMES, Sept. 5, 2001, at A6. Explaining this postponement, Mexican officials acknowledge that the goals regarding immigration reform, especially in terms of timing, were unrealistic. They stated, specifically, that "it was very ambitious to anticipate that the two countries settle in four to six years issues that had defied resolution for more than a century." *Id.*

³⁷ Joe Cantlupe, *Bush-Fox Immigration Overhaul Falls Victim to Terrorism*, SAN DIEGO UNION-TRIB., Sept. 24, 2001, at A7. This article explains that the Bush-Fox immigration agenda has "been shelved," and, according to legal and immigration experts, will not be seriously reconsidered for another year. *See id.*

³⁸ Sam Howe Verhovek, *Vast US-Canada Border Suddenly Poses a Problem to Patrol Agents*, N.Y. TIMES, Oct. 4, 2001, at B1. *See also* Susan Sachs, *Changes Called Likely in Policy on Immigration*, N.Y. TIMES, Sept. 24, 2001, at A16.

³⁹ Mary Jordan & Kevin Sullivan, *US and Mexico to Resume Talks on Immigration Policy*, WASHINGTON POST, Nov. 15, 2001, at A40. Despite this focus on security, these legislators claimed that "their basic commitment to immigration reform had not changed since the attacks." *Id.*

that the issue of immigration reform “had not been abandoned in the wake of the attacks and the subsequent war on terrorism.”⁴⁰ Irrespective of this official visit, detractors question the feasibility of immigration reform in the near future. Some skeptics argue, for instance, that the issue of immigration overhaul has been simply and undeniably “relegated to the back burner” after the terrorist attacks.⁴¹ Relying on announcements by the U.S. government, others claim that Mexico was informed that, regardless of these political visits, a new migration agreement was untenable at this time due to concerns that easing restrictions may facilitate another terrorist attack.⁴² Those possessing even greater pessimism argue that the visit by Daschle and Gephardt did not concern immigration at all. Rather, it was merely a disguised political campaign to help the Democrats build support among the rapidly increasing population of Latino voters in the United States.⁴³ Other experts on U.S.-Mexican relations, likewise, claim that the actions and statements by Daschle and Gephardt are classic examples of strategic obfuscation; an attempt to muddle the issue and “fool” the general public. In their opinion, in spite of official announcements and political maneuvers, the conclusion is clear: “Migration reform is out. Interdependent security is in. Buzzwords like ‘guest workers,’ ‘amnesty,’ and ‘circularity’ have lost their currency. Terms like ‘security bubbles,’ ‘intelligence sharing,’ and ‘North American perimeter’ have replaced them.”⁴⁴

To make matters worse, predicated on historical experience, immigration restrictions may become even more severe. Citing the extreme measures introduced after the bombings at Pearl Harbor and the passage of the Illegal Immigration Reform and Immigration Responsibility Act after the bombings of the World Trade Center in 1993, some predict that the

⁴⁰ Richard Jacobsen, *Mexico, US Renew Talks on Immigration, Border*, SAN DIEGO UNION-TRIB., Nov. 17, 2001.

⁴¹ George Gedda, *Talks With Mexico Border Security Set*, WASHINGTON POST, Nov. 19, 2001.

⁴² George Gedda, *Mexico Told Plans for a Migration Agreement Must Be Deferred*, SAN DIEGO UNION-TRIB., Nov. 20, 2001. See also Press Release, U.S. Dep’t. of State, US-Mexico Migration Talks (Nov. 21, 2001), at <http://www.state.gov/r/pa/prs/ps/2001/6295.htm> (last visited Apr. 16, 2002). According to recent information released by the U.S. Department of State, formal discussions on immigration reform have resumed. However, there will be absolutely no progress on this issue until early 2002, when U.S. and Mexican officials will convene for the next technical-level meeting on bilateral migration. See *id.*

⁴³ Ginger Thompson, *Top Democrats Politick Through Rural Mexico*, N.Y. TIMES, Nov. 19, 2001, at A12. See also Christopher Edwards, Editorial, *Keep Immigration Tight*, WASHINGTON POST, Nov. 25, 2001, at B06 (labeling the recent visit by the legislators as “blatant appeals for Hispanic votes that run contrary to American public opinion”).

⁴⁴ George Kourous, *Out With the Old, In With the New*, BORDERLINES, Nov. 23, 2001.

initial “restrictionist and xenophobic impulses” manifested in the United States may be codified into law in the coming months.⁴⁵ Any further tightening of the immigration laws concerning Mexicans will prove extremely detrimental to President Vicente Fox, who has been continuously criticized for dedicating an excessive amount of time to foreign relations, including immigration reform, with the United States. As one expert explains, “Fox is pinning Mexico’s future on the creation of a strengthened, united and coordinated North American community. He can’t afford to go home empty-handed; and speeches, paeans to the Bush-Fox amity, or photo-ops just aren’t enough.”⁴⁶ Accordingly, the recent turnabout in U.S. immigration policy (i.e., from potential liberalization to increased restriction) is damaging to U.S.-Mexican relations.

C. *Executive Order on Terrorism May Provoke a Recession in Mexico*

In response to the recent terrorist attacks, President Bush issued an executive order designed primarily to deprive Osama bin Laden and his associates of financial resources. This presidential mandate serves to freeze the assets of certain identified businesses, individuals and charitable organizations suspected of terrorist activities. Moreover, the order punishes any foreign or domestic financial institution that provides resources or services to terrorists. Since large-scale international terrorism requires significant amounts of money to operate, by issuing the executive order the Bush Administration hopes to curtail further attacks on the United States and elsewhere. Upon signing Executive Order 13224 Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten or Support Terrorism (the “Executive Order”), Bush was unambiguous as to the effects of this mandate on persons and entities that fail to collaborate with the United States, including those in Latin America.⁴⁷ Bush stated, “[i]f you do business with the terrorists, if you support them, you will not do business with the United States of America.”⁴⁸

Section 1 of the Executive Order provides, among other things, that all property and interests in property of certain persons that are in the United States now or in the future will be seized and held by the U.S. government. Such persons include (i) any foreign person (i.e., terrorists

⁴⁵ Rodolfo García Zamora, *Perspectives From Mexico, Post-September 11th*, MEX.-U.S. ADVOCATES NETWORK NEWSL. (Heartland Alliance for Human Needs and Human Rights, Chicago, Ill.), Nov. 2001, at 4.

⁴⁶ George Kourous, *US-Mexico Relations: Making the Most of the Bush-Fox Meeting*, FOREIGN POL’Y IN FOCUS, Sept. 2001, at 2.

⁴⁷ See Exec. Order No. 13,224, 66 Fed. Reg. 186 (Sept. 25, 2001).

⁴⁸ Press Release, White House, President Freezes Terrorists’ Assets, Remarks by the President, Secretary of the Treasury O’Neill and Secretary of State Powell, (Sept. 24, 2001), at <http://www.whitehouse.gov/news/releases/2001/09/20010924-4.html> (last visited Apr. 16, 2002).

or terrorist organizations) identified in the Annex attached to the Executive Order, (ii) any foreign person that has committed or poses a significant risk of committing an act of terrorism, (iii) all persons that assist, sponsor or provide financial, material or technological support for terrorism or terrorists, and (iv) those persons that are “otherwise associated” with terrorist organizations or terrorists.⁴⁹

Since no Mexican persons or entities are listed in the Annex to the Executive Order, one may presume that this region would not be significantly affected. Such a presumption, however, would be erroneous. There is a high incidence of drug trafficking and money laundering in this region, which is inextricably linked to terrorism. As experts explain, “the money [to fund terrorists] comes mostly from drugs - heroin in Afghanistan and Southeast Asia; cocaine in Latin America.”⁵⁰ The indisputability of the link between drugs in Latin America and terrorism is further fortified by actions of the U.S. government. For example, the Bureau for International Narcotics and Law Enforcement Affairs spent approximately \$11 million in the year 2000 to address the problem of drugs, terrorism and illicit money transfers in Central America, South America and the Bahamas.⁵¹ With respect to Mexico, recent reports indicate that Mexican cartels account for over 65 percent of all the illegal drugs smuggled into the United States.⁵² In terms of the pervasiveness of the Mexican drug dealers’ power, studies indicate that their corrupting influence in Mexico “has extended into every aspect of national and local political and economic life.”⁵³ Based on this information, although no Mexican persons or entities are explicitly listed in the Annex of the Executive Order, it is clear that they may be directly affected.

In response to the Executive Order, several nations have pledged support for the U.S. initiative. The North Atlantic Treaty Organization, for instance, affirmed its solidarity in assisting the United States since, from its perspective, the armed attacks on September 11th are considered an

⁴⁹ Exec. Order No. 13,224, 66 Fed. Reg. 186 (Sept. 25, 2001).

⁵⁰ Kai Ryssdal & Aaron Schacter, *Tracking Terrorist Money* (Minnesota Public Broadcasting radio broadcast, Oct. 3, 2001). See also *UN Speakers Call for Comprehensive International Convention on Terrorism in General Assembly Debate*, M2 PRESSWIRE, Oct. 3, 2001, available at LEXIS, News Library, M2 Presswire File. In a statement before the United Nations, Alfonso Valdivieso, representative of Colombia, explained that “[o]ne manifestation of terrorism was supported by another criminal activity with global repercussions – the illicit drug problem.” *Id.*

⁵¹ Bureau for International Narcotics and Law Enforcement Affairs, U.S. Dep’t of State, *Fiscal Year 2000 International Narcotics and Law Enforcement Affairs Budget Congressional Presentation* (April 1999), available at http://www.state.gov/www/global/narcotics_law/fy2000_budget/latin_america.html.

⁵² Stephen C. Johnson & John Sweeney, *Regional Strategies - Latin America*, in 18 ISSUES 2000, THE CANDIDATE’S BRIEFING BOOK 42.

⁵³ *Id.*

assault on all 19 member countries.⁵⁴ Similarly, the Group of Seven most industrialized nations (United States, Japan, Germany, France, Britain, Italy and Canada) have professed their intention of complying with the recent U.S. mandate. A manifestation of such unity was the joint statement by this group announcing that “[w]e stand united in our commitment to vigorously track down and intercept the assets of terrorists and to pursue the individuals and countries suspected of financing terrorists.”⁵⁵

Unlike these groups, certain Latin American countries such as Mexico will be reluctant to implement measures to freeze assets pertaining to alleged terrorist organizations. This unwillingness to cooperate with the Executive Order is attributable to the tremendous importance of money laundering to Mexico’s overall economic stability. After the peso crisis in 1994, the banks in Mexico are finally recovering, due in large part to money generated by the processing of funds derived from drug trafficking and other illicit activities.⁵⁶ According to a recent study by the U.S. Department of State, Mexico is considered “one of the most important money laundering centers in the Western Hemisphere.” It is estimated, for example, that some \$30 billion are laundered through Mexico per year. In relative terms, this amount constitutes four times the yearly national oil revenues, five times Mexico’s international reserves, and 7.1 percent of the gross national product.⁵⁷ As a result, experts conjecture that “if this illegal activity were to disappear, it would trigger an economic crisis worse than the one suffered six years ago.”⁵⁸ Other commentators concur with this theory, explaining that for a developing country like Mexico, laundering money constitutes the difference between growth and stagnation. In other words, this nation’s dependence on the processing of illegal or possibly terrorist funds places it in a veritable no-win situation: “This is the Catch 22 of Mexico’s fight against the drug trade: if it were to successfully staunch the flow of laundered money through the Mexican financial system, it could seriously destabilize the economy.”⁵⁹ Therefore, compliance with the Executive Order mandating the freezing of all assets somehow related to terrorism (e.g., from money

⁵⁴ See Press Release, U.S. Dep’t of State, Statement by NATO Secretary General Robertson (Oct. 2, 2001), at <http://www.state.gov/s/ct/rls/other/5197.htm> (last visited Apr. 16, 2002). See also Ray Moseley, *NATO Pledges ‘Solidarity’ In Assisting US*, CHI. TRIB., Sept. 13, 2001, at 12.

⁵⁵ Joseph Kahn, *G-7 Leaders Pledge to Work in Concert and Thwart Terrorism*, N.Y. TIMES, Oct. 7, 2001, at B8. See also *G7 Countries To Seek Stiffer Controls on Financial Centers*, FIN. TIMES, Sept. 26, 2001, at 2.

⁵⁶ See Carlos Loret De Mola, *Curbing Money Laundering Is Not Easy: Lesson For Those Who Want to Deny Funding to Terrorists*, LATIN AM. WKLY. REP., Sept. 25, 2001, at 448.

⁵⁷ Tim Coone, *Money Laundering in Mexico*, LATIN TRADE, Sept. 1997, at 2.

⁵⁸ See Carlos Loret De Mola, *supra* note 56, at 448.

⁵⁹ Coone, *supra* note 57, at 56.

laundering or illicit drugs) will may seriously prejudice Mexico's economy and threaten political stability.⁶⁰

D. *The Byrd Amendment*

Certain U.S. industries face significant foreign competition. To shelter themselves from commercial rivals that they believe are acting unscrupulously, these domestic industries often rely on U.S. unfair-trading laws, including those designed to deal with "dumping" of goods by overseas producers and unacceptable subsidization of particular foreign industries. In most cases, seeking protection by utilizing these laws is time-consuming, expensive and offers remedies that some consider insufficient. In order to address these alleged shortcomings, the U.S. Congress recently enacted the Continued Dumping and Subsidy Offset Act (the "Byrd Amendment").⁶¹ The major change introduced by this law is that the duties traditionally paid by foreign importers to the U.S. Treasury are redirected to those domestic parties that file or support a legitimate antidumping or countervailing duty petition.

The Byrd Amendment will prove injurious to U.S.-Mexico relations in at least three major ways, each of which is briefly examined below.

1. Mexico and the United States Battle Before the WTO

On December 22, 2000, approximately two months after the enactment of the Byrd Amendment, nine parties (the European Union, Japan, Australia, Brazil, Chile, India, Indonesia, Korea and Thailand) filed a joint complaint with the WTO, seeking "consultations" with the United States regarding this legislation.⁶² Pursuant to the dispute resolution procedures of the WTO, a member-nation may request consultations with another party, which must occur within 30 days of such request. If such negotiations fail to resolve the discord within 60 days, then the complaining party

⁶⁰ Mark Falcoff, *Mexico: Finding the Middle Ground*, *LATIN AM. OUTLOOK* (American Enterprise Institute for Public Policy Research, Washington, D.C.), Sept. 1999 (explaining that illicit drug sales in Mexico have "perversely" generated economic development because much of the money is reinvested in real estate, laundromats, shopping centers, restaurants, etc.). The virtually instantaneous elimination of the drug business, therefore, would dramatically impact Mexico's economic, social and political well-being. As the author clarifies, "[b]y no means is this an argument for the country's participation in the production and export of illicit substances—merely a cautionary note to American politicians who blithely talk about the drug problem as if it were something Mexico could turn off at will, with no negative side effects." *Id.*

⁶¹ 19 U.S.C.S. § 1675(a) (2001) [hereinafter Byrd Amendment] (enacted on Oct. 28, 2000, as part of the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act).

⁶² Yasushi Fujii, *Nine WTO Members Led by Japan, EU File Complaint Against the US Law*, *JAPAN ECON. NEWSWIRE*, Dec. 21, 2000, available at LEXIS, News Library, Japan Economic Newswire File.

may request the establishment of a “panel.”⁶³ Although they did not initially join the complaint, NAFTA partners Mexico and Canada later attempted to participate in the consultations since, as the two largest recipients of U.S. exports, the Byrd Amendment would substantially affect their trade interests.⁶⁴ In a maneuver that undoubtedly served to inflame the situation, the United States, in accordance with WTO rules, excluded these two nations from consultations. To justify this prohibition, the United States argued that neither NAFTA partner had the requisite “substantial interest” in the dispute.⁶⁵ In the absence of these two nations, consultations began in February, 2001. Lamentably, the dispute was not resolved at this stage, which, for the nine complaining parties, was basically a foregone conclusion.⁶⁶

In May, 2001, Mexico and Canada filed a separate request for consultations with the United States. In doing so, these two countries expressed disbelief about the applicability of the Byrd Amendment in the face of NAFTA, under which they believed themselves to be exempt.⁶⁷ As with the earlier consultations, these yielded no resolution. Accordingly, in July, 2001, all eleven nations requested the formation of a dispute settlement panel.⁶⁸ The formal complaint argues that the Byrd Amendment

⁶³ General Agreement on Tariffs and Trade: Multilateral Trade Negotiations Final Act Embodying the Results of the Uruguay Round of Negotiations, Apr. 15, 1994, Annex 2, Understanding on Rules and Procedures Governing the Settlement of Disputes, 33 I.L.M. 1226 [hereinafter DSU Agreement].

⁶⁴ Daniel Pruzin, *Mexico and Canada Join WTO Talks on Byrd Amendment*, 18 Int'l Trade Rep. (BNA) No. 4, at 147 (Jan. 25, 2001).

⁶⁵ DSU Agreement, *supra* note 63, art. 4 (11) (establishing that a member-nation shall be included in consultations when it so requests “. . . provided that the member to which the request for consultations was addressed agrees that the claim of substantial interest is well-founded.” *Id.*).

⁶⁶ Daniel Pruzin, *WTO Consultations on Byrd Provision Held; Canada, Mexico, Argentina Denied Seats*, 18 Int'l Trade Rep. (BNA) No. 7, at 278 (Feb. 15, 2001). The lack of progress at these consultations did not surprise the complainants, who claim that the obligatory discussions pursuant to the WTO have become merely “a pro-forma exercise where the two sides outline their arguments and where little negotiation actually takes place.” *Id.*

⁶⁷ Daniel Pruzin, *Canada, Mexico Initiate WTO Consultations Against Byrd Amendment to U.S. Tariff Act*, 18 Int'l Trade Rep. (BNA) No. 22, at 840 (May 31, 2001). This article explains that these two countries “were surprised when senior U.S. officials told their representatives during recent talks in Washington that the United States had no intention of excluding Canada and Mexico from Byrd amendment actions, prompting the two to file their joint request for WTO consultations.” *Id.*

⁶⁸ Daniel Pruzin, *Countries File Joint Request for Panel Against Byrd Amendment on Dumping Duties*, 18 Int'l Trade Rep. (BNA) No. 29, at 1137 (July 19, 2001). Mexico and Canada did not file a request for a panel until early August, 2001. *See id.* Their claims, however, are identical to those of the nine other parties. *See United States Continued Dumping and Subsidy Offset Act of 2000 - Request for the Establishment of a Panel by Australia, Brazil, Chile, the European Communities,*

violates the WTO for numerous reasons, including (i) the disbursements represent a “specific action” against dumping and subsidization,⁶⁹ (ii) the legislation will cause an “adverse effect” on other members,⁷⁰ (iii) the disbursements are “specific subsidies,”⁷¹ and (iv) it is not in conformity with the laws, regulations and administrative procedures of the WTO.⁷²

The validity of the Byrd Amendment has not yet been resolved by the WTO, and likely will not be for many months as the issue is examined by the panel and subsequent appellate bodies. Regardless of the final determination by the WTO, numerous negative repercussions for U.S.-Mexico relations are already evident. First, by initially excluding Mexico and Canada from consultations, and then asserting the applicability of the Byrd Amendment to these nations without providing the requisite notice under NAFTA, the United States has unquestionably alienated these two important trading partners. Second, even if the Byrd Amendment is

India, Indonesia, Japan, Korea and Thailand, July 13, 2001, WT/DS217/5, WTO Doc. No. 01-3528; United States Continued Dumping and Subsidy Offset Act of 2000 - Request for the Establishment of a Panel by Mexico, Aug. 10, 2001, WT/DS234/13, WTO Doc. No. 01-4035; United States Continued Dumping and Subsidy Offset Act of 2000 - Request for the Establishment of a Panel by Canada, Aug. 10, 2001, WT/DS234/12, WTO Doc. No. 01-4029.

⁶⁹ Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization [hereinafter WTO Agreement], Annex 1A, art. 18(1), *available at* http://www.wto.org/english/docs_e/legal_e/19-adp.pdf [hereinafter Article VI Agreement] (providing that “[n]o specific action against dumping of exports from another member can be taken except in accordance with the provisions of GATT 1994.” *Id.*); Agreement on Subsidies and Countervailing Measures, Apr. 15, 1994, WTO Agreement, Annex 1A, art. 32(5), *available at* http://www.wto.org/english/docs_e/legal_e/24-scm.pdf [hereinafter Subsidies Agreement].

⁷⁰ Subsidies Agreement, *supra* note 69, art. 5 (providing that “[n]o member should cause, through the use of any subsidy . . . adverse effect to the interest of other members, i.e., (a) injury to the domestic industry of another member, (b) nullification or impairment of benefits accruing directly or indirectly to other members under GATT 1994 [or] (c) serious prejudice to the interests of another member”).

⁷¹ *Id.* art. 2 (providing that a subsidy is “specific” to a particular industry or enterprise (a) if the granting authority or the legislation explicitly limits access to a subsidy to certain enterprises or (b) if, despite any appearance of non-specificity, there are reasons to believe that the subsidy may in fact be specific, because of (i) use of subsidy program by a limited number of certain enterprises, (ii) predominant use by certain enterprises, or (iii) the granting of disproportionately large amounts of subsidy to certain enterprises).

⁷² Article VI Agreement, *supra* note 69, art. 18(4) (providing that “[e]ach Member shall take all necessary steps, of a general or particular character, to ensure, not later than the date of entry into force of the WTO Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement as they may apply for the Member in question.” *Id.*); Subsidies Agreement, *supra* note 69, art. 32(5).

found not to be a technical breach of the WTO, it surely undermines the “spirit” of the WTO to, *inter alia*, remove trade barriers and facilitate international trade. Circumventing the essence of the WTO on a technicality would not place the United States in good stead with Mexico and its other trading partners.⁷³ Finally, even if the United States wins this battle (i.e., the Byrd Amendment is held not to violate the WTO), it will certainly not win the war. In particular, if the panel determines that the Byrd Amendment is valid, other nations such as Mexico will likely adopt identical provisions, thereby commencing a vicious circle.⁷⁴

2. Mexico Will Likely Retaliate Against the United States

Due to the opportunity to recuperate funds traditionally paid to the U.S. Treasury, the Byrd Amendment will act as an incentive for U.S. industries to file more antidumping and countervailing lawsuits. Since simply defending against these claims involves significant interruptions of business, enormous expenses and time commitments, those U.S. trading partners such as Mexico named in these suits will likely be disgruntled. In response to this irritation at increased unfair trade suits, these nations are likely to retaliate against the United States in three major ways. First, other countries may simply enact provisions to their domestic laws that are identical to the Byrd Amendment, thereby subjecting various U.S. industries to the same difficulties. As one expert explains it, “Mr. Byrd’s action will not go unnoticed. When the United States indulges in protectionism, foreign countries respond *in kind*.”⁷⁵ Other trade experts concur, explaining that the most significant threat is whether “copycat provisions” will be passed by other nations. If so, “U.S. firms may find themselves the victims rather than the beneficiaries of the provision.”⁷⁶

The second manner in which Mexico and other nations will retaliate is by the implementation of more stringent antidumping and countervailing laws in general, which will injure virtually all U.S. exporters. During congressional debate it was asserted that imposing higher duties on foreign

⁷³ Somporn Thapanachai, *Thai-US Trade: ‘Cash Prizes’ In New Law Threaten Exports; Antidumping Tool Slipped Past Clinton*, BANGKOK POST, Nov. 14, 2000, available at 2000 WL 26697353.

⁷⁴ Brenda Jacobs, *Duty Measures on Antidumping, Countervailing Spark Concern*, BOBBIN, Feb. 1, 2001, at 64 (noting the enactment of “copycat provisions” as a latent and threatening implication of the Byrd Amendment). See also Ravi Kanth, *New US Antidumping Law Comes Under Fire in WTO*, BUSINESS TIMES (SINGAPORE), Nov. 4, 2000, at 12 (“[T]he [Byrd Amendment] sets a dangerous precedent as many members would be encouraged to put in place similar provisions.” *Id.*).

⁷⁵ Aaron Schavey, *Tilting the Field on World Trade*, WASHINGTON TIMES, Nov. 22, 2000, at A16 (emphasis added). According to a recent study, more than 130 U.S. companies have been investigated by foreign countries for alleged antidumping practices, some of which “were lodged in retaliation for US antidumping investigations.” *Id.*

⁷⁶ Jacobs, *supra* note 74, at 64.

imports or providing any other special relief to a U.S. industry would occasion “prompt swift retaliatory action by our trading partners against *a wide range of US exports*, including farm commodities and manufactured products . . . construction equipment, airplanes, automotive parts, and computers.”⁷⁷ It is argued, furthermore, that any trade legislation like the Byrd Amendment that tends to rile our trading partners will “put U.S. exports at risk of retaliation [and] set into motion a spiral of market-closing measures in foreign markets”⁷⁸ Mere accusations of dumping can be disastrous for U.S. exporting industries since many opt not to participate in the investigation and, thus, forego the opportunity to sell products in a particular nation. This lack of self-defense, especially in unfair trade actions initiated in developing countries, is attributable to the fact that U.S. exporters (i) conclude that it is not worthwhile to expend the time and money in an investigation where the local government has a phenomenal degree of discretion, and (ii) fear that if they were to participate and provide their confidential price and cost data to foreign government officials, such information would end up in the hands of their competitors.⁷⁹

Finally, the third way that Mexico and other U.S. trading partners will retaliate against the Byrd Amendment is by increasing the frequency of antidumping or countervailing actions against U.S. industries. During the 1980s, more than 80 percent of the unfair trade cases were initiated by the four “traditional users” (i.e., Australia, Canada, European Union and the United States). Recently, however, developing countries like Mexico have become active, strategic users of these mechanisms.⁸⁰ The use of these procedures is so pervasive in these emerging-market nations that,

⁷⁷ *Trade Legislation Relating to Steel Imports: Hearing on S. 395 and S. 528 before the Senate Comm. on Finance*, 106th Cong. 82 (1999) (statement of J.B. (Jack) Porter, Chief Procurement Officer, Caterpillar, Inc. on behalf of the Emergency Committee for American Trade) (emphasis added).

⁷⁸ *Id.*

⁷⁹ Brink Lindsey & Dan Ikenson, *Coming Home to Roost: Proliferating Antidumping Laws and the Growing Threat to US Exports*, 14 TRADE POLICY ANALYSIS (Cato Institute) 2 (July 30, 2001) (explaining that while only the few industrialized nations used antidumping and countervailing mechanisms for many decades, developing nations are becoming avid users, too). Consequently, “the chickens are coming home to roost: U.S. exports are increasingly encountering the same unpredictable, arbitrary, and disruptive obstacles abroad that have long been inflicted on other countries’ exports here.” *Id.*

⁸⁰ See Edwin Vermulst, *Anti-Dumping and Anti-Subsidy Concerns for Developing Countries in the Millennium Round: Key Areas for Reform*, Presentation at the United Nations Conference on Trade and Development Workshop on Developments of Positive Agenda (June 8-10, 1999), available at <http://www.unctad.org/en/docs/adas.pdf>. See also generally THOMAS J. PRUSA, ON THE SPREAD AND IMPACT OF ANTIDUMPING (Nat’l Bureau of Econ. Research, Working Paper No. W7404, 1999); JOSÉ TAVARES DE ARAUJO JR., ANTIDUMPING IN THE AMERICAS (Org. of Am. States

according to experts, "Latin American countries have begun to imitate the pattern of the industrial countries . . . and have become keen, adept and enthusiastic students of antidumping practice."⁸¹ Mexico's steady increase of pending trade investigations since the mid-1980s has earned it the "dubious distinction" of having the largest antidumping caseload in the entire world.⁸² The Byrd Amendment will likely lead to retaliation, especially by Mexico, against U.S. industries because nations tend to bring unfair trade cases against their major trading partners. Accordingly, "it is not surprising that a fair proportion of Mexican . . . cases are against imports from the United States."⁸³

3. The Byrd Amendment May Violate NAFTA

Since the issue is currently under review by the WTO, an action against the Byrd Amendment under NAFTA has not yet been initiated. As demonstrated below, however, if such a complaint were launched, it is likely that this law would be invalidated. Pursuant to Article 1902(2)(a) of NAFTA, each party has the right to change or modify its antidumping and/or countervailing duty law with respect to goods imported from any other member of this trade agreement. Such modifications, though, will be valid only on the condition that (a) the amending statute *specifies* that it applies to goods from the NAFTA parties, (b) the amending nation *notifies in writing* the parties to which the amendment applies as far in advance as possible of the date of enactment of such statute, (c) following notification, the amending party *consults* with the potentially affected NAFTA parties prior to the enactment of the amending statute, and (d) such amendment is not inconsistent with the rules set forth in the GATT or the object and purpose of NAFTA, which is to establish fair and predictable conditions for the progressive liberalization of trade among the parties while maintaining effective and fair control on unfair trade practices.⁸⁴ If the amendment is made without satisfying all of these conditions, then the injured parties have the right to seek resolution by a binational panel.⁸⁵

Trade Unit, No. OEA/Ser.D/XXI, 2001), *available at* <http://www.sice.oas.org/tunit/studies/subsid/Antidumtavr.pdf> (last visited Apr. 16, 2002).

⁸¹ J. LUIS GUASH & SARATH RAJAPATIRANA, ANTIDUMPING AND COMPETITION POLICIES IN LATIN AMERICA AND CARIBBEAN: TOTAL STRANGERS OR SOUL MATES? 6 (World Bank, Working Paper No. 1958, 1998), *available at* <http://www.econ.worldbank.org/docs/243.pdf> (last visited Apr. 8, 2002).

⁸² RAJ KRISHNA, ANTIDUMPING IN LAW AND PRACTICE 5 (World Bank, Working Paper No. 1823, 1997), *available at* <http://www.worldbank.org/html/dec/Publications/Workpapers/WPS1800series/wps1823/wps1823.pdf> (last visited Apr. 8, 2002).

⁸³ Terence P. Stewart et al., *Opportunities in the WTO for Increased Liberalization of Goods: Making Sure the Rules Work for All and That Special Needs are Addressed*, 24 FORDHAM INT'L J. 652, 682 (2000).

⁸⁴ NAFTA, *supra* note 14, art. 1902(2), 32 I.L.M. at 682.

⁸⁵ *Id.* art. 1903, 32 I.L.M. at 682.

In the instant case, the Byrd Amendment does not specify that it is applicable to Mexico and Canada, the United States did not notify these countries in writing that this legislation may potentially affect them, no consultations on the issues were conducted between the NAFTA parties, and the potential effects of the Byrd Amendment (i.e., the filing of additional antidumping actions, the enactment of identical laws with retaliatory motives, etc.) are incongruous with NAFTA's purpose of establishing conditions for the progressive liberalization of trade. Accordingly, notwithstanding a certain degree of discord on the issue, the enactment of the Byrd Amendment may violate NAFTA.⁸⁶ The obviousness of the transgression was such that Mexico and Canada initially opted not to participate in the WTO complaint, believing that they were indisputably exempt under Article 19 of NAFTA. Experts explain, for example, that the two countries were surprised when U.S. officials announced that the United States had no intention of excluding Canada and Mexico from Byrd Amendment actions.⁸⁷

III. U.S. POLICY DECISIONS AFFECTING MEXICO

In addition to the legal actions and inactions of the United States described above, this nation has recently made policy decisions (both express and tacit) that substantially affect Mexico. Most importantly, despite the Bush Administration's repeated pledge to make U.S.-Mexican relations a top priority, Mexico has been virtually ignored since the terrorist attacks on September 11, 2001. Prior to these incidents, continental integration and forging new ground with Mexico constituted high priorities for the United States. After the attacks, though, it appears that U.S. foreign policy simply did not encompass Mexico. In the opinion of many political columnists, the neglect was so absolute that Mexico (i) has been subordinated to the status of "a sideshow," (ii) has witnessed its supposedly tight friendship with the United States "suddenly seem like nostalgia," (iii) has been relegated "to the junior league of American foreign policy," (iv) has become the "most conspicuous loser" in the shift in U.S. policy, and (v) has been transformed from "a darling of [U.S.] politi-

⁸⁶ Rossella Brevetti, *Byrd Amendment May Violate NAFTA If Applied to Mexico, Canada, Lawyer Says*, 18 Int'l Trade Rep. (BNA) No. 4, at 146 (Jan. 25, 2001) (asserting that Canada and Mexico have no right to receive notifications or demand consultations pursuant to NAFTA because the Byrd Amendment does not fundamentally alter the U.S. antidumping and "countervailing duty laws"). Rather the article asserts, "[t]his is about the US government . . . deciding what is going to be done with the government revenues." *Id.*

⁸⁷ Daniel Pruzin, *Canada, Mexico Initiate WTO Consultations Against Byrd Amendments to US Tariff Act*, 18 Int'l Trade Rep. (BNA) No. 22, at 840 (May 31, 2001).

cians left and right” into “a bride left standing at the altar.”⁸⁸ This utter disregard by the United States is extremely detrimental to Mexico, particularly in light of the numerous indirect effects that this nation has suffered as a result of the recent terrorist aggressions.⁸⁹ Examined below are several examples of the repercussions that currently plague Mexico.

A. *Foreign Investment in Mexico Has Diminished Dramatically*

Mexico is heavily dependent on direct foreign investment from the United States. Unfortunately, the economic instability and decreased demand for Mexican products in the United States resulting from the terrorist attacks have made U.S. investors reluctant to invest in Mexico. The reluctance to direct funds toward emerging markets such as Mexico is so prevalent that net private capital flow is predicted to decline by some \$61

⁸⁸ See, e.g., *Let us Be Your Frontier Post*, *ECONOMIST*, Oct. 13-19, 2001, at 39 (asserting that Mexico used to “top the bill on George Bush’s foreign-policy agenda”). But after the terrorist attacks Mexico “became a sideshow.” *Id.*; Kevin Sullivan, *US Relations Change Suddenly for Mexico*, *WASHINGTON POST*, Sept. 21, 2001, at A32 (stating that weeks before the attacks, Bush stated the United States has “no more important relationship in the world than the one we have with Mexico”). Now, “the ringing friendship with Mexico suddenly seem[s] like nostalgia.” *Id.*; John Ross, *Some Mexicans Have Mixed Emotions About Black Tuesday*, *BORDERLINES*, at <http://www.us-mex.org/borderlines/updater/2001/sept19attack.html> (last visited Apr. 16, 2002) (asserting that in the past Bush praised Mexico as the “most important foreign relation” of the United States, but after the terrorist attacks “Bush [will] forget Fox fast”); *Fair Weather Friends?* *ECONOMIST*, Sept. 20, 2001, at 35 (stating that Mexico and the United States used to be “the biggest of buddies. . . [now] Mexico fears relegation to the junior league of American foreign policy”); Mary Jordan, *Fox Walks Fine Line in Support for US – Response to Terrorist Attacks is Rekindling Debate Over Mexican Nationalism*, *WASHINGTON POST*, Sept. 27, 2001, at A15 (stating that despite President Fox’s repeated declarations on the importance of Mexico’s increased role in foreign affairs, after the terrorist attacks, Bush neglected to invite Fox to the rubble of the World Trade Center and there was certainly no “photo-op of the dos amigos at the White House”); Jackson Diehl, *Flights of Foreign Policy*, *WASHINGTON POST*, Nov. 26, 2001, at A25 (referring to the recent visit by Senators Daschle and Gephardt to discuss immigration issues, this author claims that the most conspicuous loser, Mexico, “has been so neglected that he now depends on Democrats in Congress to revive his long-lost immigration agenda”); Tim Weiner & Ginger Thompson, *Mexico Lower on Bush’s List Since Sept. 11*, *N.Y. TIMES*, Dec. 29, 2001, at A4. Robert Pastor, a former National Security Council member, explains that “[t]here is no country in the world that suffered more from the eclipse of Sept. 11 and the laser focus of the Bush Administration on bin Laden than Mexico.” *Id.*

⁸⁹ Alfredo Corchado, *Mexico Workers Among Victims; Nation Offers US Help Identifying Immigrants Who Are Missing, Dead*, *DALLAS MORNING NEWS*, Sept. 14, 2001, at 3A. Along with the indirect effects, Mexico also incurred direct injury from the terrorist attacks in the deaths of at least 500 Mexican citizens who worked in the World Trade Center. *See id.* Still this calculation may be inaccurate due to the difficulty in obtaining data about Mexican citizens because of poor documentation.

billion next year.⁹⁰ This prediction enjoys support from numerous financial experts who explain that the drastic decrease in foreign investment will inevitably trigger or compound other problems for Mexico. They anticipate that the “withering” of foreign capital will lead to a lowering in local stock and bond markets, an increase in interest rates, a cessation of business expansion, and a halt to consumer spending.⁹¹ Building on this theme, other experts claim that the risk aversion caused by the terrorist attacks have generated a substantial contraction in international investment, which will hinder the Mexican economy from much growth in 2002.⁹² Still other commentators explain that the current situation is especially threatening to the maquiladoras, many of which face the following dilemma: “how to service billions of dollars in maturing debt at a time when earnings are being hammered and Wall Street is reluctant to refinance.”⁹³

Aware of the precariousness of the situation, the Mexican government has taken significant and costly steps in an attempt to attract foreign investors. For instance, it recently paid a U.S. company involved in establishing a hazardous waste treatment plant in Mexico approximately \$16 million dollars to avoid an extended legal struggle that may have scared international investors away from the country.⁹⁴ Despite this large settlement, no signs of increased foreign investment have been spotted yet. To further aggravate the situation, investment in Mexico by Mexican investors has also dwindled, if not altogether stopped. President Vicente Fox introduced a program whereby Mexican entrepreneurs would “jump start” the economies of the poorer regions in Mexico by supporting projects designed to create well-paying jobs. After the terrorist attacks, though, the majority of those who initially signed up for the program

⁹⁰ See PriceWaterhouseCoopers, *Sudden Impact*, at <http://www.pwcglobal.com/extweb/newcoweb.nsf/docid/45795DCD62895E8185256AFD00241ADE?OpenDocument> (Nov. 2001). This sharp decrease in foreign capital to Mexico is a foregone conclusion, explains the author. See *id.* “Make no mistake, Latin America will feel the coming US recession” and one of the most affected countries will be Mexico. *Id.*; See also Martin Neil Baily, *Economic Policy Following the Terrorist Attacks*, Institute for International Economics, Policy Brief No. 01-10 (Oct. 2001), at <http://www.iie.com/policybriefs/news01-10.htm> (last visited Apr. 16, 2002).

⁹¹ Clifford Krauss, *Economic Pain Spreads From US Across Latin America*, N.Y. TIMES, Oct. 14, 2001, at A3.

⁹² Ernesto Zedillo, *Latin America – Another Victim of Sept. 11*, FORBES, Nov. 12, 2001, at 41.

⁹³ Joel Millman, *Mexico’s Aggressive Exporters Flail Under Economic Cloud*, WALL ST. J., Oct. 23, 2001, at A32.

⁹⁴ *Eye on Investors, Mexico Pays US Company*, N.Y. TIMES, Oct. 29, 2001, at A4. In paying the settlement, the Mexican government tried to showcase its respect for the rule of law by announcing that the country “honors its international obligations, even when it does not agree with the findings of the international tribunal nor with the way the tribunal works.” *Id.*

have withdrawn, explaining that they must instead focus on the survival of their own businesses in the United States.⁹⁵

B. *U.S. Demand for Mexican Exports Has Fallen*

In describing Mexico's economic dependence on the United States, a common refrain is that "when the U.S. sneezes, Mexico gets pneumonia."⁹⁶ Nowhere is this relationship more apparent than in the import-export paradigm existing between the two nations. Mexico is an export-dependent nation that directs the lion's share - approximately 85 percent - of its products to the United States. As a result of this lack of diversification and substantial reliance on exports, when U.S. demand dropped after the terrorist attacks, Mexico was instantly injured. Recent reports indicate that industrial production in Mexico decreased for eight consecutive months in early 2001 due to the slowing U.S. economy. With the recession triggered in part by the incidents of September 11, 2001, the situation has deteriorated even further.⁹⁷ In the words of one expert, "[w]hile the slowdown in the United States has roiled all national economies, no countries were hit earlier or harder than the two that are closest to and most thoroughly integrated with the American economy - Canada and Mexico."⁹⁸ The trouble for Mexican exports, lamentably, is not likely to end in the short term. In fact, Mexican experts do not anticipate a major turnaround in the U.S. economy until the second half of 2002. Since there is normally a three-month lag between recovery of the U.S. economy and the corresponding economic revitalization in Mexico, Mexican exporters will realistically receive no relief for nearly one full year.⁹⁹

⁹⁵ Enrique Garcia Sanchez, *Mexican Entrepreneurs Reconsider Investing Back Home*, SAN DIEGO UNION-TRIB., Oct. 2, 2001, at C1.

⁹⁶ Jenalia Moreno, *Mexico Has Much to Lose in Aftermath; Intertwined Economies Hit Neighbor In All But Oil Sector*, HOUSTON CHRON., Sept. 15, 2001, at Business 1.

⁹⁷ Monica Gustchi, *Mexico's Sept. Industrial Output -5.4%; Consensus -5.5%*, WALL ST. J., Nov. 12, 2001; see also Martin Neil Bailly, *supra* note 90.

⁹⁸ Anthony DePalma, *With the U.S. Economy Slumping, Canada and Mexico are Reeling*, N.Y. TIMES, Dec. 17, 2001 at C13 (explaining that the terrorist attacks taught Mexico a harsh economic lesson).

⁹⁹ See *id.* Mexico's dependence on the U.S. economy is so absolute that Mexico is "now essentially powerless to do much but wait for the United States' economy to get going again." *Id.*; see also *Mexico Seeks to Rebound in 2002, Eyes on U.S.*, SAN DIEGO UNION-TRIB., Dec. 28, 2001 (explaining that manufacturing and foreign investment, which are directly linked to the health of the U.S. economy, will recuperate quickly when U.S. demand increases). The most important factor in Mexico's resurgence, however, may be whether domestic-oriented sectors of the Mexican economy, dictated by consumer spending, will remain strong. See *id.* In the words of Mexican economists, "[a] recovery in the U.S. economy does not guarantee a recovery in the Mexican economy." *Id.*

C. *Tourism in Mexico Has Decreased*

Tourism constitutes Mexico's third largest industry, generating approximately \$9 billion dollars annually and employing over five million persons.¹⁰⁰ After the terrorist attacks, the principal visitors to Mexico, North Americans, have been hesitant to venture south of the border. According to the Mexican national secretary of tourism, the industry was hit by a "major blow," which clearly demonstrates the "fragility of our interdependence."¹⁰¹ As an example of the extent of the slowdown, the nation's most popular tourist destination, Cancun, experienced a drop of nearly 30 percent in the weeks following the terrorist attacks.¹⁰² Cognizant of the importance of salvaging the tourism industry, the Mexican government recently implemented one of the largest promotional campaigns its history, spending some \$35 million dollars to boost domestic and international tourism alike.¹⁰³ While there are those optimists that argue that tourism in Mexico may actually increase instead of lessen as a result of the terrorist attacks, there has been no proof yet to support such wishful thinking.¹⁰⁴

D. *Border Commerce Damaged By Heightened Restrictions*

As a consequence of enhanced security measures and visa restrictions, commerce on both sides of the U.S.-Mexico border has suffered. For merchants on the U.S. side, Mexicans constitute a "powerful shopping force in every U.S. border city."¹⁰⁵ Statistics supporting this statement

¹⁰⁰ Clifford Krauss, *Economic Pain Spreads From US Across Latin America*, N.Y. TIMES, Oct. 14, 2001, at A3.

¹⁰¹ Sandra Dibble and Anna Clearley, *Fox Promises Mexico's Support of Terror Fight During Border Visit*, SAN DIEGO UNION-TRIB., Oct. 4, 2001, at A1.

¹⁰² *Mexico Committed to Helping US Fight Terrorism, Fox Says*, U.S. Dep't of State Washington File, at <http://usinfo.state.gov/regional/ar/mexico/mexico01.htm> (Oct. 1, 2001). See also L. Ronald Scheman, *Remarks Regarding New Security Issues and the Impact on Development in Latin America and the Caribbean* (Oct. 31, 2001), at http://www.oas.org/oaspage/crisis/sherman_en.htm (last visited Apr. 16, 2002). Mexico's current situation in terms of tourism is not unique: "The economic outlook for the coming months is grim indeed. The events of September 11th will have profound impacts on the global economy in all the nations of the Americas . . . affecting three areas that are crucial to the economics of the Americas: tourism, trade and remittances." *Id.*

¹⁰³ Mercedes Olivera, *Mexico Hopes Tourism Campaign Pays Off*, DALLAS MORNING NEWS, Nov. 10, 2001, at A34.

¹⁰⁴ Graham Gori, *Mexico Hopes to Lure Travelers With Its Close-to-Home Status*, N.Y. TIMES, Sept. 28, 2001, at W1. Contrary to popular opinion, some Mexican officials claim that "tourism here may not decline much and may regain losses because Americans who are nervous about security in air travel will want to visit places that are familiar, safe and close to home, and Mexico fills the bill." *Id.*

¹⁰⁵ Mary Jordon, *Commerce at Crawl On Mexican Border – Security Slows Traffic, Keeps Tourists Away*, WASHINGTON POST, Oct. 5, 2001, at A30.

demonstrate that Mexicans usually spend approximately \$3 billion in San Diego each year and generate 65 percent of Nogales, Arizona's yearly sales-tax revenue.¹⁰⁶ The buying power of the Mexicans is so considerable that, according to representatives of the McAllen, Texas Chamber of Commerce, a large portion of the shops in the border town cater primarily to Mexicans.¹⁰⁷ Since September 11, 2001, the number of Mexican consumers crossing the border has decreased by 60 percent. While U.S. merchants will likely be able to withstand this decrease in revenue for a short period, a prolonged slowdown could prove fatal, and not just to the border shops. Some local business owners warn, for instance, that "[a] permanent slowdown in the flow of humanity and goods over the border . . . could ripple through the rest of the U.S. economy."¹⁰⁸ Other businesses less willing to await the impending economic doom have already taken aggressive action in an attempt to safeguard their livelihoods. A group of merchants in California, for example, have urged local politicians to declare the entire border area in a "state of emergency," thereby providing access to low-interest loans to those businesses in financial distress.¹⁰⁹

Similar to their North American counterparts, Mexican merchants are also suffering from the terrorist attacks. Due to the decrease in U.S. citizens on day-trips to border towns, local stores are struggling. While no definitive statistics have been released, it is estimated that business on the Mexican side has decreased by at least 80 percent, leaving local shop owners to wonder just how long they can endure the drastic drop in patronage.¹¹⁰

¹⁰⁶ *Id.* Like these states, Texas derives approximately 40 percent of its sales-tax revenue from Mexicans, "many of whom fly from as far away as Mexico City to visit . . . fast-growing shopping malls." *Id.*

¹⁰⁷ Judith Graham, *Merchants in Texas Feeling the Pinch; Long Lines, Fears, Keeping Mexican Shoppers at Home*, CHIC. TRIB., Nov. 2, 2001, at 13.

¹⁰⁸ Susan Ferriss, *Mexican Merchants: Border Security Has Price; Restrictions on Legal Crossings to Hurt US Business, They Say*, ATLANTA J. CONST., Oct. 7, 2001, at 9B; see also Paul Duggan, *Tight Security, and Belts – Crackdown Deters Mexican Shoppers, Crippling Texas Stores*, WASHINGTON POST, Oct. 9, 2001, at E1. In Laredo, Texas, about 40 percent of the patrons are Mexican, the increased border security threatens the economic stability of the town. *Id.* As one local explains, stores, hotels and restaurants that depend on Mexican shoppers "are feeling a pinch." *Id.*

¹⁰⁹ Janine Zuniga, *Businesses Blast Border Slowdown as Big Sales Killer; San Diego Council Eyes Urging Davis to Declare State of Emergency*, SAN DIEGO UNION-TRIB., Nov. 7, 2001, at B1.

¹¹⁰ Chris Kraul, *Tight Security Stifles Twin Cities – Lengthy Waits and Strict Customs Inspections Deal a Blow to Business in Nuevo Laredo, Mexico and Laredo, Texas*, L.A. TIMES, Sept. 30, 2001, at A32. See also Anna Cearley & Marisa Taylor, *Border Waits Hurting Baja's Businesses*, SAN DIEGO UNION-TRIB., Sept. 15, 2001, at A23; Mary Jordan, *Commerce at Crawl On Mexican Border – Security Slows Traffic, Keeps Tourists Away*, WASHINGTON POST, Oct. 5, 2001, at A30.

E. *Mexican Import-Dependent Industries Are Failing*

The maquiladora industry is vital to Mexico's economic success. To operate, these businesses frequently import substantial quantities of components and other materials, process them into final products, and export the majority of these items (approximately 85 percent) to the United States. After the terrorist attacks, border security, especially for larger vehicles such as trucks, has intensified dramatically. As a result of this heightened scrutiny, the import of components and materials, as well as the export of the finished products, have become both problematic and costly. It is estimated, for instance, that if the international transportation systems are disrupted for several months, Mexican industry could incur losses of up to \$150 billion.¹¹¹

Ramifications of this production slowdown do not merely involve money. Indeed, those most seriously damaged by the decrease in maquiladora production are arguably the workers that lose their jobs or have their hours severely limited in an attempt by companies to minimize costs and avoid bankruptcy.¹¹² For example, the Mexican plant of Hitachi Consumer Products de Mexico recently suspended over 3,000 workers in order to reconfigure its production process to account for the delayed shipments.¹¹³ Groupe Carbone Lorraine, likewise, was forced to lay off workers at its Mexican facility for the first time in 20 years. According to one expert, "[s]ome plants have closed because of the economic slowdown in the United States, which buys 88 percent of the goods made at these factories."¹¹⁴

Many of the workers that may be fired already live on the cusp of the poverty line. Dismissal from the maquiladora, therefore, will mean that

¹¹¹ Don Bauder, *Slowdowns Won't Let Up On Economy*, SAN DIEGO UNION-TRIB., Oct. 27, 2001, at C1.

¹¹² Ginger Thompson, *Fallout of U.S. Recession Drifts South Into Mexico*, N.Y. TIMES, Dec. 26, 2001, at C1. Described as once a powerful economic engine for Mexico, the border region "has begun to sputter" as a result of the U.S. recession triggered, in part, by the terrorist attacks. *Id.* It is estimated that nearly 800 maquiladoras have closed this year, resulting in a loss of over 200,000 jobs. *Id.* Even after the U.S. economy recovers, the border region may not enjoy similar recuperation due to high labor costs. This maquiladora-filled region "may never be the same." *Id.* See also Traci Carl, *Global Slowdown Hits Mexico Economy*, WASHINGTON POST, Dec. 28, 2001 (describing the global economic slowdown, which was aggravated by the terrorist attacks, causing Mexico's unemployment to reach its highest level in three years).

¹¹³ Eduardo Garcia, *Maquiladoras Confront Delay in Shipments*, SAN DIEGO UNION-TRIB., Sept. 21, 2001, at C2.

¹¹⁴ Jenalia Moreno, *Maquiladoras Feeling the Pain of Slowdown Across the Border*, HOUSTON CHRON., Oct. 21, 2001, at 4; see also *Mexico: Maquiladoras Shed Workers As Employment Falls 14%*, LAN DAILY REP. (London), Nov. 30, 2001, available at <http://www.latinnews.com> (indicating that employment in the maquiladoras dropped by 13.7 percent in 2001, meaning that some 182,000 lost their jobs).

“many people will again fall below the poverty line and others won’t have the chance to rise above it.”¹¹⁵ This need to lay off Mexican workers is also detrimental to the U.S. companies located in Mexico that are obligated to comply with stringent, worker-friendly labor laws. The Mexican labor code dictates that each employee fired is entitled to three-months’ severance pay, plus an additional 20 days’ pay for every year that an individual has worked with a particular company. As an indicator of just how egregious these amounts can be, Goodyear Tire & Rubber Co. was required to pay approximately \$48 million in severance pay upon terminating 1,600 employees from a plant near Mexico City.¹¹⁶ In addition to injuring the maquiladora owners, the employees that are fired, and those companies that are forced to terminate employees, several border cities themselves claim that the production slowdown is an insurmountable disaster. Officials in Ciudad Juarez, for instance, recently claimed that their town was in a “state of emergency,” because the loss of 13 percent of all maquiladora jobs was causing “ripple effects on most city businesses.”¹¹⁷

F. *The Mexican Airline Industry Is Suffering*

While the degree of damage is not comparable to that sustained by its U.S. counterpart, the Mexican airline industry has suffered in two principal manners as a result of the terrorist attacks. First, due to the increasing limitations on visas, generalized fears of flying, and restrictions on the number of flights and destinations, several major Mexican airlines have incurred substantial financial losses upon canceling flights to and from the United States. In an effort to reduce costs, these airlines opted to fire thousands of employees.¹¹⁸ Whereas the majority of air travel to most of Latin America has been essentially unaffected by the terrorist attacks because the passengers are principally business travelers, Mexican airlines suffered since vacation travel (which is more readily postponed or canceled) dominates in this country. In fact, approximately 85 percent of the 20 million foreigners that arrive in Mexico each year are North Amer-

¹¹⁵ Ernesto Zedillo, *Latin America*, FORBES, Nov. 12, 2001, at 41; see also *Slow Growth Hurts Employment*, CEPAL NEWS (U.N. Econ. Comm’n for Latin America and the Caribbean, Washington, D.C.), Sept. 2001, at 1, at <http://www.eclacwash.org/public.html> (last visited Apr. 16, 2002).

¹¹⁶ Eduardo Garcia, *Mexico’s Export-Assembly Hurt as U.S. Recession Cuts Orders*, BLOOMBERG NEWS, Nov. 30, 2001, available at LEXIS, News Library, Bloomberg News File; see also Joel Millman, *Mexico Layoffs Cost U.S. Firms a Bundle*, WALL ST. J., Nov. 30, 2001, at 13 (arguing that the Mexican labor laws are “brutal” according to U.S. companies forced to pay the large severance packages).

¹¹⁷ Mary Jordan, *Mexico’s El Dorado Loses Its Luster; Border Economy Slows with U.S.*, WASHINGTON POST, Sept. 20, 2001, at A30.

¹¹⁸ *Id.*; see also Jenalia Moreno, *Assault on America; Mexico Has Much to Lose in Aftermath; Intertwined Economies Hit Neighbor In All But Oil Sector*, HOUSTON CHRON., Sept. 15, 2001, at 1.

ican vacationers, many of whom decided to cancel pleasure excursions after the terrorist attacks. As one analyst explains, “[t]he tourism sector, the country’s No. 3 source of income, was sucked into a vortex after flights were grounded for three days and border controls tightened.”¹¹⁹

The second manner in which the Mexican airline industry was injured involves the costs associated with implementing new security measures. After the terrorist attacks, security in Mexican airports has increased dramatically, with more stringent screenings of passengers, the installation of additional security equipment, and hiring of new personnel in charge of reviewing passenger identifications and baggage.¹²⁰ On behalf of Mexico, President Vicente Fox has repeatedly announced that his nation will take any reasonable measures to assist the United States in eradicating terrorism. Therefore, Mexico will undoubtedly be called upon to introduce expensive safety measures due to, in large part, the proximity of certain Mexican airports to U.S. targets. The Tijuana facility, for instance, is located less than one mile from the U.S.-Mexico border, thereby allowing a Mexican plane replete with fuel to be over downtown San Diego within minutes. According to one expert, “[a]lthough public attention is focused on what’s being done to prevent terrorists from boarding planes in the United States, perhaps a dozen . . . Mexican airports close to the U.S. border could just as easily serve as launching pads for terrorist acts.”¹²¹

G. Ubiquitous Unemployment Leads to Social Ills

As mentioned above, the problems experienced by the maquiladora industry has forced many Mexicans residing in border towns to lose their jobs. This situation, however, is not limited to one region of the country. Rather, the troubled U.S. economy and the resulting slowdown in Mexico have generated severe unemployment throughout the nation. In the city of Santa Ana del Valle, with its principal industry of carpet production, for instance, the recent lack of tourists and foreign commercial buyers has dealt a “devastating blow to a town where almost every home has a loom.”¹²² Similarly, those Mexicans residing in the United States face the proverbial no-win situation. On one hand, they can remain in the United States and hope to find a job during a recession, amid a period of latent hostility toward foreigners and increasing documentation requirements for hiring. On the other hand, they can return to Mexico where the econ-

¹¹⁹ Mary A. Dempsey, *Without a Scratch*, LATIN TRADE, Dec. 3, 2001.

¹²⁰ See *Update on Post-September 11 Situation: Impact on Migrants in Mexico and Central America*, MEX.-U.S. ADVOCATES NETWORK NEWSL. (Heartland Alliance for Human Needs and Human Rights, Chicago, Ill.), Oct. 10, 2001, at 2-3.

¹²¹ Anna Cearley, *Is Tijuana Airport Safe From Terror? Danger Could Be Seconds From San Diego*, SAN DIEGO UNION-TRIB., Oct. 22, 2001, at A1.

¹²² James F. Smith & Ken Ellingwood, *Sept. 11 Leaves Carpet Loomers Idle in Oaxacan Town*, L.A. TIMES, Nov. 28, 2001, at A5.

omy is also hurting and the job possibilities are notably scarce. As one Mexican explained the predicament, the situation is difficult in the United States, but returning to Mexico is "sure death . . . from hunger."¹²³ These daunting circumstances notwithstanding, many Mexicans have recently returned to Mexico, thereby intensifying social problems such as drug use and crime. In Ciudad Juarez, for instance, an estimated 40,000 newly unemployed workers have arrived in search of jobs that simply do not exist. As a result, "[s]treet crime has jumped."¹²⁴

H. *Eradicating Terrorism May Generate Human Rights Violations*

Mexico has pledged its support to eliminate terrorism and safeguard hemispheric security. As part of this commitment, the Mexican government intends to identify and detain any terrorist or conspirator. While this collaborative effort appears positive in theory, its implementation may lead to abuses in Mexico, a country with a history of disregard for human rights. According to two recent reports by independent international organizations, despite announcements by Fox's government to the contrary, certain abuses continue in Mexico today. The first report, issued by Human Rights Watch, identified several persistent problems in the Mexican system of justice, including (i) prosecutors frequently ignored police abuses, (ii) police made arbitrary arrests, which were later substantiated by evidence fabricated by the prosecutors, and (iii) courts admitted evidence that was attained through violations of human rights such as illegal searches.¹²⁵ The second report, issued by Amnesty International, found that the government or the military intimidated human rights activists into dismissing complaints, obstructed justice, initiated smear campaigns against activists in an attempt to undermine their credibility, tapped telephones without the requisite authorization, and issued numerous death threats.¹²⁶

To rectify this situation and avoid future human rights abuses, President Fox recently appointed a "totally independent prosecutor" to, among other things, identify those responsible for the "disappearance" of over 530 anti-government activists in the 1970s.¹²⁷ Regardless of the

¹²³ Bart Jones, *America's Ordeal; Workers Afraid to Stay, or to Leave*, *NEWSDAY* (N.Y.), Oct. 2, 2001, at A31.

¹²⁴ Mary Jordan, *Mexico's El Dorado Loses Its Luster; Border Economy Slows with U.S.*, *WASHINGTON POST*, Sept. 20, 2001, at A30.

¹²⁵ HUMAN RIGHTS WATCH, *WORLD REPORT 2001, EVENTS OF 2000* 134-139 (2000).

¹²⁶ Will Weissert, *Amnesty Int'l Reports on Mexico*, *WASHINGTON POST*, Dec. 10, 2001; see also Ricardo Sandoval, *Human Rights Abuses Continue to Plague Mexico, Report Finds*, *DALLAS MORNING NEWS*, Dec. 11, 2001, at 5A; James F. Smith, *Amnesty: Mexico's Activists In Danger*, *CHI. TRIB.*, Dec. 11, 2001, at 12.

¹²⁷ Kevin Sullivan, *Fox Vows Prosecution of Rights Abuse Cases*, *WASHINGTON POST*, Nov. 27, 2001, at A9; see also Ricardo Sandoval, *Mexico To Take a Closer Look*

appointment of this new prosecutor, additional human rights abuses may occur in connection with the current hunt for terrorists. Already, the detention of immigrants from countries such as Iraq, Palestine, Yemen and India has generated a "crisis situation" in the migration center in Mexico City, which required the summoning of federal police to maintain order.¹²⁸ Based on incidents like this, policy experts warn that building coalitions with nations that traditionally fail to protect human rights simply undermines established U.S. foreign policy and causes increased volatility in the long run.¹²⁹

I. *Student Visa Restrictions Prejudice Mexico and the United States*

Due to the fact that at least one of the participants in the terrorist attacks entered the United States using a student visa, the Bush Administration has ordered tighter controls on the issuance of all education-related visas.¹³⁰ While all foreign students will be affected by this stringent policy, those from Mexico will receive the brunt of the impact since approximately 36 percent of all international students enrolled in U.S. institutions are Mexican citizens. Significantly reducing the number of visas will prove detrimental to the United States and Mexico alike. With regard to the United States, experts claim that limiting foreign students will have "a profound social, economical and pedagogical impact on U.S. educational institutions, academics, and small and large enterprises that depend upon the spending power of Mexican students and those from elsewhere in the world."¹³¹ Mexico, likewise, would suffer from restrictionist student-visa policies. Numerous U.S. high-tech companies have

at 'Dirty War' Offenses, DALLAS MORNING NEWS, NOV. 28, 2001, at 6A; *Government Admits Its Role in Leftists' Torture, Execution*, CHI. TRIB., NOV. 28, 2001, at 14; Eduardo Garcia, *supra* note 116; *Mexico Faces Its Terror*, CHRISTIAN SCI. MONITOR, NOV. 28, 2001, at 8; Ginger Thompson, *Rights Report Holds Mexico Responsible for Torture*, N.Y. TIMES, NOV. 28, 2001, at A7.

¹²⁸ See *Update on Post-September 11 Situation: Impact on Migrants in Mexico and Central America*, *supra* note 120, at 2-3.

¹²⁹ Adam Isacson & Joy Olson, *A Quick Tour of U.S. Defense and Security Relations with Latin America and the Caribbean*, INT'L POL'Y REP., NOV. 2001, available at <http://ciponline.org/facts/1101jtf.htm> ("[I]n a rush to build coalitions and to guard against this new [terrorist] threat, policymakers may come to view human rights . . . as obstacles . . . yet these protections are more badly needed now than ever." *Id.*). Further, nations that abuse human rights may strengthen U.S. security in the short run; however, tacitly approving the behavior of countries that fail to respect the U.S. core values such as human rights, liberty and democracy will simply make volatile regions less secure in the long run. *Id.*

¹³⁰ Anne E Kornblut, *Security Student Visas; Bush Orders Closer Scrutiny of Foreign Students – New Task Force to Lead Effort to Tighten Border*, BOSTON GLOBE, OCT. 30, 2001, at A12.

¹³¹ Press Release, Council on Hemispheric Affairs, *Fox May Not Like What He Hears Today in Washington, But It Is A Dramatically Changed Ballgame* (Oct. 4,

strong commercial ties to Mexican entities in the same sector. Employees from these Mexican firms are normally sent to the United States for specialized educational courses about the technological product(s) purchased by their employers. In light of the new limitations on education-related visas, however, such an arrangement could be easily spoiled, thereby engendering a significant slowdown in the modernization of Mexico.¹³²

J. *Decreases in Oil Price and Production Harm the Mexican Economy*

Nearly simultaneous with the terrorist attacks, Mexico was pressured into decreasing its oil production and price for 2002. In an effort to manage the current oversupply of oil in the world market, the Organization of Petroleum Exporting Countries ("OPEC") agreed to lessen its production significantly, provided that Mexico and others followed suit. Accordingly, Mexico committed to reducing its production by 100,000 barrels per day, a move that will benefit consumer nations while severely damaging suppliers.¹³³ As one expert put it, the drastic drop in oil prices after the terrorist attacks will "trigger a fresh boom and new heights of prosperity in the West," while causing economic turmoil in Mexico, the third largest supplier of oil to the United States.¹³⁴ This situation was exacerbated by OPEC's later request that Mexico reduce production and slash prices even further.¹³⁵ Mexico agreed to do so and now faces a grave situation because its national budget for 2002 was based on the figures provided *before* the OPEC request. In particular, the budget was set on the presumption that oil production would continue unchanged, with each barrel fetching \$17. Now, though, production will be decreased in excess of 100,000 barrels daily and the price per barrel may not surpass \$13.¹³⁶ Due to the fact that Mexican oil production is state-owned, the lower market prices are "hurting the government," the impact of which will be experienced by the entire country.¹³⁷ Furthermore, this unanticipated economic setback will also be detrimental to Mexican immigrants residing in the United States. The Mexican Communities Abroad Pro-

2001), at http://coha.org/Press_Releases/01-18-fox_in_washington.html (last visited Apr. 16, 2002).

¹³² See *id.* "It could also destabilize highly beneficial financial and intellectual arrangements . . . as well as compromise valuable ties in the field of higher learning along with a host of commercial connections between the two countries, which would be sundered." *Id.*

¹³³ *Mexico: Ready to Cut Oil Production*, WASHINGTON POST, Nov. 14, 2001.

¹³⁴ William Drozdiak, *Cheap Oil Comes at a Price*, WASHINGTON POST, Nov. 21, 2001, at E1.

¹³⁵ *OPEC President Urges Further Cut*, WASHINGTON POST, Nov. 25, 2001.

¹³⁶ *Mexico: Hanging Tough on Oil Cuts*, LAN DAILY REP. (London), Nov. 30, 2001, available at <http://www.latinnews.com> (last visited Apr. 16, 2002).

¹³⁷ Laurence Iliff et al., *A Year Into Job, Fox Still Has Much To Do*, DALLAS MORNING NEWS, Nov. 29, 2001, at 1A.

gram designed to sponsor literacy projects, AIDS education programs, cultural activities and community organizations, for instance, will lose up to 80 percent of its funding on account of falling oil revenue and a overall weakened economy.¹³⁸

K. *Tighter Borders Provoke Drug Problems*

As a result of its strategic location (i.e., between the drug-producing nations in Latin America and drug-consuming North America), Mexico has traditionally served as a transit country for the illicit drug trade. After the terrorist attacks, increased border security has deterred smugglers from delivering their drugs to the U.S. market. As a result, drugs began piling up in Mexico and “addicts are congregating in border towns where drugs are widely available and law enforcement often looks the other way.”¹³⁹ The recent availability of drugs not only affects addicts, but also the law-abiding residents of many border towns. In Tijuana, for example, experts warn that “the longer the U.S. government seals the border, the more dealers will be looking to the domestic market as an alternative.”¹⁴⁰ To make matters worse, police officers in charge of eliminating drug usage and sales in Mexico have been fired from their positions for consuming these illegal substances. According to a recent Ciudad Juarez Police Department report, 77 officers tested positive for the use of illicit drugs such as cocaine, marijuana, and methamphetamines.¹⁴¹ Such conditions could lead to lawlessness, violence and death in Mexico.

L. *Terrorism Could Actually Increase in Mexico*

The secondary effects in Mexico of the terrorist attacks include massive job losses, increased poverty and potential abuses of human rights. These conditions, warn experts, may actually increase the incidence of terrorism in Mexico. It is argued that “[c]ountries in which corruption, high unemployment and underemployment, widespread poverty, malnutrition, and civil and human rights abuses are commonplace offer ready-made populations of disaffected people who are vulnerable for recruitment by guerrilla and terrorist groups.”¹⁴² Concurring with this position, other experts

¹³⁸ Alfredo Corchado & Brendan M. Case, *Fox's Budget Slashes Funds For Migrants By 70 Percent*, DALLAS MORNING NEWS, Dec. 15, 2001, at 12A.

¹³⁹ Mark Stevenson, *Evidence Suggests Drugs Are Piling Up Behind Mexican, Guatemalan Borders*, SAN DIEGO UNION-TRIB., Nov. 22, 2001.

¹⁴⁰ Julie Watson, *Mexico Faces Growing Drug Abuse Problem, Border Cities Hit Hardest*, ASSOCIATED PRESS, Nov. 21, 2001, available at <http://www.amaonline.net/pdfarchive/2001/November/22/11-22-01%20D15.pdf> (last visited Apr. 26, 2002).

¹⁴¹ Sonny Lopez, *77 Mexican Officers Test Positive for Drugs*, DALLAS MORNING NEWS, Nov 27, 2001, at 17A.

¹⁴² Antonio Garrastazue & Jerry Haar, *International Terrorism: The Western Hemisphere Connection*, N.-S. CENTER UPDATE (University of Miami, Miami, Fla.),

explain that a significant economic decline in many Latin American nations will engender a widespread sense of anger and disillusionment among the population. These emotions make fertile ground for the rise of charismatic populist leaders or the creation of even greater political upheaval. Accordingly, if the United States does not assist in maintaining economic stability in this region, "there could be a problem of governability."¹⁴³ The legitimacy of the threat of terrorism propagating in Mexico is evident by examining existing groups. There are at least three terrorist groups in the country, including the Popular Liberation Army, which has attacked towns in Oaxaca and Guerrero since 1996, the Revolutionary Armed Forces, famous for bombing three branch offices of the Banamex bank in Mexico City in 2001, and the Arellano-Felix drug cartel in Tijuana, which allegedly formed an alliance with a notorious Colombian rebel group.¹⁴⁴ Based on this information, although it may seem counterintuitive, focusing nearly all U.S. anti-terrorism efforts in the Middle East and Central Asia may essentially backfire, creating conditions favorable to increased terrorism in Mexico and the rest of Latin America.

M. *Anti-Terrorism Cooperation May Cause Political Unrest*

During his presidential campaign designed to dethrone the *Partido Revolucionario Institucional* that ruled Mexico for over 70 years, Vicente Fox promised to create millions of jobs, grow the economy by seven percent annually, readily establish peace with various indigenous groups, overhaul the existing tax system, begin eliminating corruption and governmental bureaucracy, and institute immigration reform. Due to a number of factors, however, these goals have not been achieved. As a result, Fox's approval rating among the Mexican public, after just one year in office, has dropped dramatically. In the words of one commentator, the 6-foot-5-inch Fox continues to wear his cowboy boots that initially seemed to represent his candid talk and assertive style, but "his political stature has shrunk, at least as far as the public is concerned, and it looks like some swagger has gone out of his step."¹⁴⁵ Other commentators

Oct. 10, 2001, at <http://www.miami.edu/nsc/pages/newsupdates/Update48.html> (last visited Apr. 16, 2002).

¹⁴³ Joseph Contreras, *Adiós Amigos?*, NEWSWEEK, Dec. 17, 2001, at 42.

¹⁴⁴ Stephen Johnson, *US Coalition Against Terrorism Should Include Latin America*, BACKGROUND NO. 1489 (Heritage Foundation, Washington, D.C.), Oct. 9, 2001, at 4 (explaining that Mexico, like Colombia, "has insurgencies that use terrorism to pursue their leftist political goals, but on a much smaller scale").

¹⁴⁵ Gretchen Peters, *Fox Falls Short on Tall Pledges*, CHRISTIAN SCI. MONITOR, Dec. 3, 2001, at 6; see also Gerri Smith, *Mexico: The Fox Revolution is Spinning Its Wheels*, BUSINESS WEEK, Dec. 10, 2001, at 51; Will Weissert, *Fox: Many Expected Too Much From Him*, WASHINGTON POST, Dec. 1, 2001. In his defense, Fox claims that the lack of accomplishments to date was foreseeable since his campaign goals were

agree with this assessment, emphasizing that while Fox is an indisputable wizard of public relations, he has yet to prove his capacity as a political leader. It is argued, for instance, that “the cowboy politician has done a great job of marketing Mexico as a democratic success story. But . . . he is failing to use his political capital for real change.”¹⁴⁶

The terrorist attacks, along with Fox’s decision to cooperate fully with the United States in its counterterrorism campaign, have only exacerbated the political turmoil. Despite his initial “low-key reaction” to the attacks, Fox soon pledged Mexico’s full support in the endeavor. As a manifestation of this unity, the Mexican government placed announcements in numerous U.S. periodicals containing the following unambiguous statement: “We are with you.”¹⁴⁷ Polls administered shortly thereafter clearly indicate the strong public condemnation of Fox’s actions, with 73 percent of the population opining that Mexico should maintain a neutral position in the war on terrorism.¹⁴⁸ Even though Fox has consistently advocated hemispheric integration, the public reaction to his decisions regarding the war on terrorism demonstrates “the extent to which Fox’s vision of North American integration has not trickled down

planned to be reached during his six-year term. Those arguing that all should be resolved within the first year, according to Fox, are simply creating “absurd expectations.” *Id.*

¹⁴⁶ Laurence Iliff et al., *A Year into Job, Fox Still has Much to Do*, DALLAS MORNING NEWS, Nov. 29, 2001, at 1A. Stating the Fox’s “extended honeymoon” is not infinite, this article explains that Fox faces several formidable challenges, including (i) reversing the economic downturn in Mexico, (ii) salvaging his relationship with the media because currently “he has a nasty fight on his hands, one that may make his life miserable for a long time,” (iii) urging greater solidarity in his cabinet, which has been plagued by public disagreement and infighting, and (iv) obtaining more legislative support so that he can pass some of his initiatives. *See id.*

¹⁴⁷ Alfredo Corchado, *Fox Reaffirms Mexico’s Support for United States in Terrorism War; President Had Been Criticized for Not Being Forceful Enough in Response to Attacks*, DALLAS MORNING NEWS, Oct. 5, 2001, at 22A; *See also* James F. Smith, *As the Smoke Clears, New Attitudes on Security Alliance Emerges in Mexico Diplomacy*, L.A. TIMES, Oct. 7, 2001, at A4. This nearly unconditional support was somewhat unexpected, and not altogether popular. According to one commentator, “[o]ne of the surprising consequences of the Sept. 11 terror attacks has been Mexico’s decisive shift toward a security alliance with the United States, overcoming its deep, historic fear of overly cozy US relations.” *Id.*

¹⁴⁸ *See* Corchado, *supra* note 147, at 22A; *see also* Tim Johnson, *Latins Differ from Leaders on Backing the Military*, MIAMI HERALD, Sept. 26, 2001, at 6A. Like the presidents of most Latin American nations, Fox supported invoking the Río Treaty and fortifying efforts by the Organization of American States in the fight against terrorism. *See id.* Approximately 80 percent of the Mexican public, however, apparently disagrees with any potential military involvement. *See id.* Based on similar statistics throughout the region, experts point out the obvious: “a big breach exists between statements by the leadership of Latin America and public sentiment in the streets.” *Id.*

to the Mexican public.”¹⁴⁹ As a result of this incongruity between Mexico’s official position (as dictated by the Fox Administration) and public opinion, the terrorist attacks could lead to a certain degree of political instability, especially while the president’s approval rating has dropped sharply and various “pseudo intellectuals” in Mexico aggressively attempt to foment social unrest.¹⁵⁰

N. *Dwindling Remittances Weaken the Mexican Economy*

Major sources of income for many Mexican families are the remittances sent by family members working in the United States. In precise terms, it is estimated that Mexicans abroad send approximately \$8 billion dollars annually in the form of money transfers.¹⁵¹ Especially in smaller towns, the remittances constitute the primary source of income for many families.¹⁵² As a result of the tightening U.S. job market after the terrorist attacks, this vital source of funds is dwindling significantly, a trend which could gravely injure countries like Mexico that depend on this transferred money to ease poverty.¹⁵³ According to a recent study by the Inter-American Development Bank, nearly seven percent of Latin Americans lost their jobs due to the U.S. economic recession while 26 percent reported earning less since the terrorist attacks.¹⁵⁴ Consequently, almost 60 percent of all Latin Americans polled admitted that they were sending less money home this year. This drastic drop is a “major blow” to areas such as rural Mexico where remittances represent the only source of income for approximately 40 percent of the families.¹⁵⁵

¹⁴⁹ Gregory Rodriguez, *Mexico, Fair-Weather Friend*, L.A. TIMES, Oct. 14, 2001, at M2. This article explains that Mexican nationalism has traditionally manifested itself as anti-Americanism for several reasons, including the military defeat of Mexico in 1848 and the resulting loss of land, and the fact that “Mexican leaders consciously manipulate such sentiments to unite the public and to distract them from pressing domestic issues.” *Id.*

¹⁵⁰ Dr. Roberto Salinas-León, *Latin America’s Intellectual Cockroaches*, DAILY COMMENTARY (Cato Institute), Oct. 6, 2001, at <http://www.cato.org/dailys/10-06-01.html> (explaining that several “intellectual cockroaches” have emerged in Mexico after the terrorist attacks that attempt to fuel anti-USA sentiment and undermine Fox’s position on this issue by arguing that the attacks were justified as aggressions against “the savage capitalism of neo-liberal yanquee financial imperialism”) (last visited Apr. 16, 2002).

¹⁵¹ Corchado & Case, *supra* note 138, at 12A.

¹⁵² Mary Jordan, *Christmas Cheer From Across the Border*, WASHINGTON POST, Dec. 18, 2001, at A22. In the town of Toliman, Mexico, population 21,000, the remittances from Mexican workers in the United States “account for the majority of money people spend.” *Id.*

¹⁵³ See *Latin America’s Stumbling Economies Pinched by a Slowing Flow of Dollars*, WALL ST. J., Dec. 18, 2001.

¹⁵⁴ See *id.*

¹⁵⁵ See *id.*

IV. POTENTIAL SOLUTIONS: REFORMULATION OF LEGAL AND POLICY DECISIONS AFFECTING MEXICO

The U.S.-Mexico relationship is paramount due to a number of mutual interests, including bilateral trade, foreign investment, immigration, environment, and national security. The extent of the links between the two nations is such that it is commonly accepted that “no country in the world has a greater impact on the daily life of Americans than does Mexico.”¹⁵⁶ Unlike some of his political predecessors, President Bush professes to be aware of Mexico’s importance to the well-being of the United States. As evidence thereof, in a recent public appearance President Bush claimed that Mexico and the United States were “good friends” and, as such, they must “stick together, *in good times and bad*.”¹⁵⁷ As amply demonstrated throughout this article, the situation for Mexico, particularly in the aftermath of the terrorist attacks, can persuasively be categorized as a “bad time.”

Despite the unquestionable importance of Mexico and President Bush’s repeated pledges of nearly unconditional support, it seems that all Mexican issues, both legal and policy, have been blatantly disregarded or decided unfavorably during the last year. As a result, experts are beginning to cast doubt on the Bush Administration’s level of commitment to Mexico and its ability to juggle the multitude of global problems affecting the United States. Posing the question of whether President Bush is the internationalist that he claims to be or is really an isolationist, one expert warns that while Bush occupies himself with issues like money laundering and international terrorism “his foreign policy may become a balancing act [and] this is a president who likes to keep things in simple terms - which may not be easy as he faces the long struggle ahead.”¹⁵⁸ Other commentators have cautioned the current Administration not to neglect certain issues that may come back to haunt the nation in the future. They speculate, for example, that with the United States focused primarily on problems in Afghanistan, other international issues may “rise to bite a turned back.”¹⁵⁹

With regard to Mexico, analysts are unrestrained in pointing out the lamentable lack of attention given to this country recently, explaining that “[n]o clearer metaphor exists for Latin America’s tumble on the White House priority list . . . than how Mexican president Vicente Fox went from being greeted as America’s most important friend four days

¹⁵⁶ Davidow, *supra* note 1.

¹⁵⁷ See Bush & Fox, *supra* note 8 (emphasis added).

¹⁵⁸ Helle Bering, Editorial, *Which President Bush?*, WASHINGTON TIMES, Dec. 12, 2001, at A21. All of his recent experience in the international scene notwithstanding, this article claims that President Bush, in terms of his genuine view of global issues, remains “a bit of an enigma to our friends and allies abroad.” *Id.*

¹⁵⁹ Howard LaFranchi, *Can US Juggle Other Global Problems, Too?*, CHRISTIAN SCI. MONITOR, Dec. 11, 2001, at 2.

before the September 11 attacks, to having trouble getting Washington appointments in the aftermath.”¹⁶⁰ Although it was supposed to occupy a central place in U.S. foreign policy, Mexico, along with the rest of Latin America, has suddenly found itself essentially ignored. As a representative from the Mexican Foreign Ministry put it, “[n]obody in Washington today is giving more than five minutes’ attention to Latin America.”¹⁶¹ To aggravate the situation, it appears that many key governmental positions concerning Mexico are conspicuously vacant, which creates “a creeping sense of neglect and irrelevance.”¹⁶²

Safeguarding the political and economic stability of Mexico is not purely an altruistic gesture by the United States. On the contrary, U.S. actions are undertaken primarily out of self-interest since the profound relationship between these two countries necessarily dictates that what is good for one is good for the other, and vice versa.¹⁶³ As one expert explains, the closeness of the U.S.-Mexico relationship “means that our neighbors’ troubles will inevitably have a strong impact upon the vital interests of this country . . . We must therefore ensure that Latin America comes to comprise an important asset, rather than a debilitating liability to the United States, in the competitive, uncertain world of the future.”¹⁶⁴ Other analysts, similarly, explain that as the world becomes increasingly chaotic after the terrorist attacks, Mexico’s importance to the United States should skyrocket, not plummet. Simply stated, “[a]s world affairs edge toward uncertainty, the stability of this neighbor *becomes more, not less, important.*”¹⁶⁵

¹⁶⁰ *Id.*

¹⁶¹ Contreras, *supra* note 143, at 42. This article argues that such neglect could hardly come at a worse time because of the recent economic collapse and debt default in Argentina, the increased drug incidence in Colombia, the political instability of President Hugo Chavez in Venezuela, and the increase in attacks by the terrorist group, the Shining Path, in Peru. *See id.*

¹⁶² *Id.* The Bush Administration’s Latin American team has several vacancies. For example, the White House nominee to oversee hemispheric affairs has been denied confirmation for months by Congress and the head of US-Southern Cone Command, who would run military operations in the Caribbean and most of Latin America, has yet to be named. Based on these vacancies, the author argues that “[b]ack in Washington, the lights are on but almost nobody is home.” *Id.*

¹⁶³ William Perry, *US Policies Toward Latin America*, E-NOTES (Foreign Policy Research Institute, Philadelphia, Pa.), Apr. 19, 2001, at <http://www.fpri.org/enotes/latin.20010419.perry.uspolicy.html> (last visited Apr. 16, 2002). According to this author, identifying the appropriate U.S. strategy concerning Mexico does not require a level of genius. Rather, one simply needs an “enlightened projection of our basic national [i.e., self] interest, a dose of imagination, and a great deal more ongoing commitment to the hemisphere than has been evident before.” *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Remember Mexico*, L.A. TIMES, Sept. 19, 2001, at B10 (emphasis added).

In terms of legal decisions, during the last year the United States has delayed cross-border trucking, refused to address immigration reform for Mexicans, issued an executive order that jeopardizes the economic stability of Mexico, and enacted the Byrd Amendment that may violate the WTO and/or NAFTA. With respect to policy, despite the fact that Mexico is suffering tremendously as a result of the terrorist attacks, the United States has basically disregarded this nation. It appears that this neglect of Mexico, unfortunately, will not be remedied in the near future since the Bush Administration has recently announced its next intention: to redirect its attention to the *domestic* agenda.¹⁶⁶ The advisability of dedicating a large portion of U.S. resources to the war on terrorism is indisputable. Placing all the proverbial eggs in one basket for too long, though, may prove detrimental. Given Mexico's importance, the recent U.S. legal and policy decisions affecting this nation merit a serious reevaluation, and fast.

¹⁶⁶ Jeanne Cummings, *Bush Will Refocus on Home Front in Effort to Revive Economy, Save Domestic Agenda*, WALL ST. J., Dec. 17, 2001, at A200. This article claims that one of the biggest lessons that President Bush learned from his father's time in office is that "you can win a war and still lose the White House." *Id.* Accordingly, in order to protect his political popularity at home, Bush recently announced that his next matter of business would be to salvage his domestic agenda. In doing so, however, he failed to mention any focus on foreign policy issues, particularly those with Mexico and Latin America. *See id.*