NATIONAL FOREIGN TRADE COUNCIL, INC.

1625 K STREET, NW, WASHINGTON, DC 20006-1604

TEL: (202) 887-0278 FAX: (202) 452-8160

May 3, 2011

U.S. Department of Transportation
1200 New Jersey Ave, SE
Washington, DC 20590

To Whom it May Concern:

The National Foreign Trade Council (NFTC) an association of some 250 U.S. corporations engaged in international trade and investment is pleased to submit the following statement in response to the request for comments (Docket Number FMCSA-2011-0097) by the Department of Transportation's Federal Motor Carrier Safety Administration. The National Foreign Trade Council strongly supports the proposal by the Department of Transportation to initiate a *"Pilot Program on NAFTA Long-Haul Trucking Provisions."*

The pilot program represents a critical step toward meeting the long-standing U.S. commitment to allow cross-border delivery of international cargo by Mexican-domiciled carriers from Mexico into the United States, access that is already provided to Canadian carriers.

As a signatory of NAFTA, the United States is bound by the agreement's articles which explicitly forbid the United States from favoring Canadian or domestic carriers over Mexican carriers. Under Article 1102 of the NAFTA agreement, the United States is bound to accord to Mexican and Canadian investors treatment that is no less favorable than that it accords, in like circumstances, to its own investors. Likewise, under Article 1103 of the NAFTA agreement, the United States is bound to grant treatment to Mexican investors that is no less favorable than it grants to Canadian investors and vice-versa.

On February 6, 2001, a NAFTA arbitration panel concluded that contrary to its NAFTA obligations under Article 1102, the United States had implemented a regulatory framework that permitted the Department of Transportation to refuse to process applications from Mexican motor carriers. Additionally, the Panel concluded that the United States had refused to allow Mexican nationals to establish enterprises to engage in point-to-point truck transportation of international cargo within the United States, which NAFTA requires. The panel also determined that awarding Canadian carriers access to U.S. markets while denying Mexico's constituted a violation of the Most Favored Nation principle, Article 1103 of the NAFTA agreement.

Following the arbitration panel's ruling the Bush administration created the Demonstration Project, which allowed a select number of Mexican carriers who passed safety regulations to operate in the U.S. After 1 year had passed, the Federal Motor Carrier Safety Administration reviewed the program and issued a report to congress that concluded that although the level of participation from Mexican carriers was not adequate to provide statistically valid findings, none of the Mexican carriers who participated were involved in any crashes. The report also concluded that Mexican carriers had out-of-service rates that were lower than U.S. carriers. Unfortunately, the program while successful was short lived and in 2009, the U.S. Congress cut off its funding. After the termination of the pilot program the Mexican government withdrew NAFTA-mandated tariff preferences on US$2.4 billion worth of imports from U.S., This authorized retaliation resulted in duties from 5% to 25% being charged to targeted U.S. products sold in Mexico beginning in March 2009. A renewed retaliation list was issued in August 2010 with additional products added.

Many of these products are produced by NFTC's members, whose sales to Mexico contribute substantially to employment in the U.S. Mexico is the second largest U.S. export market, purchasing $163 billion in U.S. goods in 2010. For many specific U.S. products it is the number one export market. U.S. agriculture has been particularly impacted by Mexico's retaliation. According to a report by Texas A&M University, agricultural goods account for about 70 of the 99 U.S. products on the targeted tariff list. Overall, about 12 percent of all U.S. agricultural exports to Mexico are affected by these duties.

The NFTC endorses the proposed pilot program and views it as a critical step that will help end a dispute that according to a study titled "*Trade Action – or Inaction: The Cost for American Workers and Companies*" conducted by economists Laura M. Baughman and Joseph F. Francois for the U.S. Chamber of Commerce, resulted in the loss of over 25,000 U.S. jobs.

The lack of U.S. compliance with the NAFTA agreement establishes a poor precedent and lowers America's credibility with its largest trading partners. Overall, it reduces global confidence in U.S. adherence to trade agreement commitments and may negatively impact our future and ongoing negotiations.

U.S. compliance with the agreement will help to restore trust in America's international commitments. It will also help American farmers compete in the Mexican market. Mexico and the United States have agreed that upon the signing of an agreement on the Department of Transportation's proposal, 50% of the retaliatory tariffs currently in place will be suspended. The remaining 50% of the added tariffs are to be suspended when the first Mexican carrier is authorized to operate under the pilot program.

We commend the effort of the Department to end this long-standing dispute with Mexico and empower U.S. workers and farmers to become more globally competitive, including in the critical Mexico market. However, it is critical that this pilot lead quickly to a permanent solution to fully comply with U.S. NAFTA services commitments related to cross border long haul trucking. Doing so will restore the jobs lost by America's farmers, workers and businesses as a result of this dispute, increase U.S. exports and enhance America's position in a rules based global trading system.

Thank you for your consideration of these views.

Sincerely,

William A. Reinsch
President