United States Department of State

Washington, D.C. 20520

November 13, 2015

Mr. E. Alejandro Zendejas Vázquez
Deputy Director General for
Air Transport and Aeronautical Control
Directorate General of Civil Aviation
Blvd. Adolfo López Mateos #1990
Col. Los Alpes Tlacopac, Delegación Álvaro Obregón
México D.F., C.P. 01010

Dear Mr. Zendejas:

Thank you for your letter of November 9, detailing the concerns raised by the *Cámara Nacional de Autotransporte de Carga* (CANACAR) regarding Article 8, paragraph 8 of the Air Transport Agreement between the United States and Mexico, initialed on November 21, 2014 (the "Agreement"). After close consultation with the U.S. Department of Transportation, I am pleased to share the following response.

As the delegations from our countries discussed during the negotiation of the Agreement, the United States views the rights contained in Article 8, paragraph 8 as a crucial element of any modern air transport agreement. These rights provide companies with an opportunity to reduce costs, improve speed, and increase overall performance and customer satisfaction.

Our delegations carefully negotiated the language in Article 8, paragraph 8 with our industry stakeholders present. The resulting language, which represents a significant shift away from the text initially suggested by the U.S. delegation, incorporates language requested by the Mexican delegation to address concerns raised by its stakeholders that surface transportation companies, including trucking companies, could provide intermodal services in Mexico without having been established under Mexican law. Specifically, the Agreement provides that:

> Airlines and indirect providers of cargo transportation of both Parties, *established in accordance with the applicable laws and regulations of each Party*, shall be permitted, without restriction, to employ in connection with international air

> transportation any surface transportation for cargo to or from any points in the territories of the Parties or in third countries…" (emphasis added)

Consistent with this language, a surface transportation company (e.g., a trucking company) used by an airline of Mexico or the United States would be able to perform intermodal services in the other country pursuant to the Agreement only if the surface transportation company in question is established in accordance with the applicable laws and regulations of the other country.

Our delegations also addressed intermodal services in the Memorandum of Consultations that accompanies the Agreement, recognizing that:

> [A]ny surface transportation company operating under Article 8, paragraph 8 (Commercial Opportunities), is subject to the laws, rules, and regulations that are applied on a non-discriminatory basis and do not constitute an effective denial of the intermodal rights in the new Agreement.

As reflected by this statement, the Agreement is not intended to alter the existing legal framework for motor carriers operating in either country. It is also worth noting that U.S. and Mexican carriers already perform intermodal cargo operations pursuant to the air transport agreement currently in force between Mexico and the United States. *See* Annex I, §§ B(5), D(9) of the U.S.-Mexico Air Transport Agreement of 1960, as amended.

As to the specific questions referenced in your letter:

(i) "International cargo" is a term that is generally understood to refer to cargo that originates in one country and is destined for another. For example, cargo with an origin or destination outside of the United States indicated on the air waybill and that is flown to a U.S. airport and then transferred to a surface transportation company for delivery would be considered international cargo.[1]

---

[1] We note that the Memorandum of Understanding on International Freight Cross-Border Trucking Services, which governed a pilot program between the United States and Mexico that ended in October 2014, defined "international freight cross-border trucking services" as "*international cargo* transportation provided by motor carriers that are authorized by either the United States of America or the United Mexican States to operate in their respective territories, and in the case of the United States of America, to operate beyond the commercial zones immediately adjacent to the U.S.-Mexico border." (emphasis added)

(ii) As discussed above, under the Agreement, a surface transportation company (e.g., a trucking company) used by an airline of Mexico or the United States would be able to perform intermodal services in the other country pursuant to the Agreement only if the surface transportation company in question is established in accordance with the applicable laws and regulations of the other country. Based on our understanding of current Mexican law,[2] the Agreement would not permit U.S. surface transportation companies that are not registered in Mexico to perform intermodal services.

(iii) During the negotiation of the Agreement, our delegations discussed the issue of cabotage. Article 2, paragraph 2 of the Agreement does not provide cabotage rights to either the United States or to Mexico. Our delegations' discussion regarding cabotage is reflected in the Memorandum of Consultations that accompanies the Agreement:

> In discussing Article 2, paragraph 2 (Grant of Rights), the delegations noted their mutual understanding that nothing in the new Agreement grants cabotage rights.

Under the Agreement, as under the 1960 U.S.-Mexico Air Transport Agreement, as amended, intermodal operations would occur only in connection with *international* air transportation. In the case of an intermodal air/truck operation, such cargo would travel under an air waybill that indicates that the cargo's origin and destination are not within the same country.[3]

I hope that this information is informative in your ongoing discussions with CANACAR.

Sincerely,

Stephen A. Cristina
Director, Aviation Negotiations

---

[2] Current Mexican law includes Article 6 of the *Ley de Inversion Extranjera* as implemented by the *Secretaría de Economía*. In addition, the *Secretaría de Communicaciones y Transporte's Direccíon General de Autotransporte Federal* is responsible for registration and safety oversight. We understand that under current Mexican law, foreign-owned package or express delivery companies may only invest a minority interest in a Mexican-domiciled trucking company.

[3] Under current U.S. law, cabotage is only permitted under limited, emergency circumstances, and requires specific licensing. Based on our understanding of current Mexican law, foreign-owned motor carriers are prohibited from carrying domestic cargo.