

Migration A Consequence of Inequality

Effective [U.S.] immigration policy must contain a comprehensive mix of measures, including stronger border controls and internal enforcement processes.

—RAY MARSHALL, 2007

The [U.S. President Barack Obama] should return to the approach followed by all of his predecessors until 2006: stop illegal entrants at the border when possible, but refrain from hunting them down once they cross the border.

—JORGE G. CASTAÑEDA, 2008

The estimate of the U.S. Census Bureau is that there are about twelve million people in the United States who were born in Mexico. This represents a fifteen-fold increase since 1970.¹ The Mexican-born population in the United States now amounts to more than 10 percent of the Mexican population in Mexico. Among developed countries of the Organization for Economic Cooperation and Development, the United States is truly an immigration country—with immigrants not only from Mexico. In 2005 more than thirty-eight million foreign-born, about 13 percent of the total population, lived in the United States. In absolute numbers Germany was second after the United States, with 10.6 million foreign-born people living there.²

A statistic that has deep implications for both the United States and Mexico is that between 2002 and the first part of 2008, more Mexicans found jobs in the United States than they did in formal employment in Mexico—2.37 million compared with 2.21 million.³ This reflects a situation that was not supposed to happen after Mexico and the United States entered into free

trade with NAFTA—namely, that the U.S. GDP would grow at a higher rate than Mexico's. Francisco Alba, a respected Mexican economic-demographic scholar, has pointed out that from 1982 (when Mexico experienced a debt crisis and economic downturn) to 2006 per capita GDP in Mexico grew by only 0.5 percent a year. There was no movement toward economic convergence between Mexico and the United States; indeed, there was further divergence.⁴ The model that economic integration proponents had in mind for NAFTA was what happened in Spain and Ireland after the two countries became part of what is now the European Union—their economies grew faster for many years than those of the more advanced countries.⁵ Mexico's per capita income does not have to be equal to that of the United States to dampen the push to emigrate; however, it is necessary for parents to have confidence that good jobs exist at home for themselves and their children. That confidence does not now exist. The reasons for the failure of more robust economic growth in Mexico after NAFTA are discussed in chapters 1 and 2.

Since 1997, Mexico has had divided government, with the president facing a congressional majority from other political parties. President Felipe Calderón is a member of the PAN and the other two large parties, the PRI and the PRD, together hold more seats than the PAN in the legislature. The congress and the president have not been able to fully come together on basic structural reforms on fiscal issues, taxes, labor laws, energy, education, monopolies, infrastructure, and regulatory modernization.⁶ Each political party protects its sacred cows and, consequently, economic growth is lagging. Calderón has been trying to make progress on many of these issues, with modest success, but hardly enough to overcome the underlying problems. Taking action against the home-grown impediments to Mexican economic growth is the only durable way to slow the pressures to emigrate. Calderón has made this point repeatedly.

The one imperative for adequate job-creation, in Mexico and elsewhere, is a reasonably high rate of economic growth and, as Alba pointed out, Mexico has not achieved this since the early 1980s. To create enough jobs for those entering the labor force, Mexico needs overall real growth in GDP of about 6 to 7 percent a year, or about 5 percent per capita—and it has been getting about 2.5 percent growth in overall GDP and about half of 1 percent a year on a per capita basis. This swells the ranks of the informal economy and pushes energetic Mexicans to cross the border, where they can earn seven to eight times more than at home.⁷ A high rate of economic growth is necessary to re-

duce poverty in Mexico; the evidence for this is universal as long as the desire to reduce poverty is part of government policy. None of this argues that U.S. immigration policy is optimal, however—it is not. Nor does it imply that U.S. financial assistance to Mexico should be withheld.

Mexican Migration Policy

For many years Mexico had a policy to have no policy on migration to the United States. As stated in the 1998 *Binational Study* of the two countries, “Mexico . . . stayed aloof from the debate on changes in U.S. immigration policy, and this political stance undoubtedly was optimal for meeting Mexico’s interests over many years.”⁸ The development that convinced Mexico to change its policy was the immigration debate in the United States involving the Heshburgh Commission in the late 1970s and culminating in the passage of the Immigration Reform and Control Act of 1986 (IRCA). An early example of the change from “no policy” to active engagement with the United States on migration policy was the Mexican initiative to have the *Binational Study* and to support the ground rules that the researchers from the two countries should agree on their conclusions in five main issue areas examined.⁹ Perhaps the outstanding example of a direct Mexican effort to influence U.S. immigration legislation was Jorge Castañeda’s call for the “whole enchilada” when he was the Mexican foreign minister.

If energetic young Mexicans of both sexes are unable to find satisfactory jobs at home, the ability to emigrate clearly serves as an escape valve that reduces internal tensions. For many years Mexicans who stayed home looked down on their compatriots in the United States; the reason for this probably had much to do with nationalism that Mexicans in Mexico are allegedly more patriotic than Mexicans who have left to live in the United States. It is in the same category as the expression used in Mexico to castigate those who support giving economic concessions to Americans and other foreigners: the word *vendepatrias*, meaning “selling the country,” is heard often in Mexican political speeches. After 1982, when economic development from within collapsed and export promotion and seeking to maximize foreign direct investment (FDI) became hallmarks of development policy, the Mexican authorities realized that their expatriate communities could be assets. They were given concessions, such as dual nationality and the right to vote, and they were organized with government help.

The ability to find work opportunities abroad not only reduced internal tensions, but the large remittances from expatriate Mexicans, both legal residents and those without papers, are substantial—they were estimated to be twenty-four billion dollars in 2007 but declined by more than 3 percent in 2008 and are declining further in 2009.¹⁰ The decline is the result of lower U.S. economic growth, higher food prices, and the decline in U.S. construction. Mexico’s remittance receipts generally exceed FDI inflows.

Mexican authorities never say explicitly that emigration is an escape valve, but their behavior makes this evident. The argument instead is that the two economies are complementary, that Mexican labor helps U.S. agriculture, construction, and such low-skill service activities as working in hotels and restaurants. Mexican leaders and scholars also make the point that migration is a natural phenomenon. The solution to the emigration policy that President Calderón espouses whenever he can is greater economic growth in Mexico. Each of these arguments has validity, but the impression one gets is that Mexico hopes to delay drastic anti-immigrant action in the United States until a friendlier (that is, Democratic) Congress is elected, as happened in November 2008. There is fear that the strong measures being taken to find, arrest, often imprison, and then deport unauthorized immigrants in the United States would augment instability in Mexico. There is also concern in Mexico about separating families when undocumented immigrants are arrested during raids on industrial plants because family members are often U.S.-born spouses and children. Family separation can be ended if the Obama administration and Congress are able to enact a path toward legalization for the roughly six million to seven million Mexicans now living without documents in the United States. Getting such legislation does not have a high priority for 2009, but apparently it is on the Obama agenda for 2010.

Seeking delay in U.S. action against undocumented immigrants was an understandable posture on Mexico’s part. The escape-valve aspect is a sign of dependency; at least until the pressure to leave Mexico is ended by economic growth, and that may be a long time in coming. Mexico also hopes—probably *expects* when the U.S. economy recovers—that the United States will institute a large temporary worker program that would authorize legal entry for hundreds of thousand of Mexicans into the United States. Mexico has its own problems on its southern border, as numerous Central Americans enter without documents. Some remain in Mexico and many others use Mexico as a route to the United States. Entering Mexico without docu-

ments has been a criminal offense, but this was changed in April 2008 to a civil offense that could be covered with a fine. The argument used to bring about the change was to regularize these unauthorized immigrants and to respect their human rights.¹¹

U.S. Immigration Policy

According to the Pew Hispanic Center, Mexicans constitute between 50 percent and 60 percent of the estimated twelve million undocumented foreigners in the United States. Most of them crossed clandestinely into the United States on foot, hidden in cars and trucks, and sometimes on boats. Most of the remaining unauthorized immigrants are other Latin Americans, many of whom who entered the United States through Mexico. Still other immigrants entered the United States with valid visas but then overstayed their allowed time; they are referred to as “overstayers.” There surely are Mexicans, other Latin Americans, and Caribbeans among the overstayers, but this group is made up largely of Asians, Canadians, Europeans, and others; they are generally more educated and have higher incomes than the clandestine border crossers. Most attention and resources have been devoted to preventing the undocumented entry of border crossers coming into the United States from Mexico.¹²

There are deep divisions in the United States about how to deal with Mexicans and other foreigners in the country without authorization. Many proposals from 2001 to 2007 never made it to a congressional vote (see the timeline at the end of the chapter), often because of the inability to invoke cloture against filibusters in the Senate. These include the DREAM Act, the AgJOBS Act, the REAL ID Act, the Kennedy-McCain Act, the Corryn-Kyl bill that never made it out of committee, the Sensenbrenner bill that would have made unauthorized entry into the United States a criminal offense, and the proposal of Senate Majority Leader Harry Reid (D-Nevada) to provide a path toward legalization of undocumented immigrants. The differences on immigration legislation cut across party lines, encompassing the conservative wing of the Republican Party (these legislators oppose “amnesty”) and the pro-labor union Democrats (who were prepared to legalize undocumented workers already in the country so that they could more easily be unionized, but did not want new entrants). It became clear in the final years of President George W. Bush’s tenure that immigration legislation would have to wait at least until the next administration.

One aspect of the U.S. immigration debate—especially in its treatment of undocumented border crossers—is how mean-spirited this debate has become.¹³ Some examples supporting this judgment are the following:

- The Congress in enacting IRCA refused to recommend a foolproof way of identifying whether job applicants were legally in the United States and chose as acceptable the kinds of documents that the experts warned could be easily forged. This gave employers an escape from being penalized for “knowingly” hiring undocumented workers. This was an implicit invitation for workers to enter the United States and use forged papers to get their jobs. Their crime, in essence, was to accept an invitation to come and work in the United States, papers or no papers.
- Employers hired labor contractors to find workers for them. This gave the employers deniability about knowing whether workers they employed were legitimately in the United States.
- After failing for more than fifteen years to even try to punish employers who knowingly hired unauthorized immigrants, the Department of Homeland Security took to raiding establishments where there is strong evidence that many unauthorized aliens work. When they find such workers, they are arrested, incarcerated, and then deported.
- In one infamous case a raid of this type on May 12, 2008, on a meat-processing plant in Pottsville, Iowa, led to the detention of hundreds of unauthorized immigrants, mostly from Guatemala, who were detained, shackled, and convinced to plead guilty to criminal charges for which 270 were sentenced to five months in prison instead of a possible felony penalty of two years for identity theft. After their imprisonment they were deported. Arrest, convince foreigners with little education and no English to reach a plea agreement, convict, imprison, deport—the purpose obviously was to send a message to others who accepted job offers implicitly made by U.S. employers.¹⁴
- On May 4, 2009, the U.S. Supreme Court rejected the use of aggravated identity theft unless the prosecution could show that the workers knew in advance that the fake Social Security numbers they used belonged to real persons.
- During a press conference, when asked about separating hundreds of thousands of U.S.-citizen children from their undocumented immigrant parents who are arrested and deported, Michael Chertoff, then secretary of Homeland Security, answered that “we can’t allow the fact that someone who has a child who is an American citizen to create a de facto

immunity from the law."¹⁵ This, despite the fact that employers had been given *de facto* immunity from the law for many years.

In light of these problems, it is useful to ask some "what if?" questions. What would the U.S. picture regarding the employment of unauthorized immigrants have been if employer penalties were imposed right after they were authorized when IRCA was passed in 1986? These penalties would have been meaningful if there was an effective way for employers to check on the bona fides of job applicants, and if the penalties were high enough to nullify the financial benefits of hiring low-paid illegal immigrants. The use of foolproof identity cards is controversial in the United States and other techniques for spotting illegality have been examined; these usually work through discrepancies in social security records. The reality as this is written is that there is no foolproof way to check whether prospective foreign workers are legally in the United States.

Foreigners who considered coming to work in the United States without authorization were informed through their networks that they would be welcomed by U.S. employers if they made it across the border during the years of little to no employer penalties. Similarly, they would have learned quickly through the grapevine, probably within days, which employers would be reluctant to hire them if employer penalties were significant. What would the size of unauthorized migration to the United States have been if the U.S. Congress and administration had been sincere about meaningful employer penalties? Based on U.S. Census data, some 10.3 million immigrants came to the United States between 2000 and 2007, the highest seven-year period in U.S. history. During peak years about five hundred thousand unauthorized Mexicans came to the United States each year.¹⁶

If work opportunities had been drastically reduced by effective employer penalties, it is doubtful that five hundred thousand unauthorized Mexicans would have paid the high *coyote* costs (*coyotes* are people who guide unauthorized Mexicans across the border for a fee) and risked an arduous journey that could cost an illegal border crosser his or her life. With the increase in U.S. Border Patrol agents along the Mexican border, coupled with increasingly sophisticated detection technology, the use of relatively easy routes across the border, especially into California and to a lesser extent into Texas, Mexican migrants were forced to use more treacherous routes to enter the United States. As a consequence, there have been more than four hundred deaths a

year of Mexicans seeking to make their way to job destinations. Total deaths of illegal Mexican border crossers from 2000 to February 11, 2008, have been 3,346. The greatest number of deaths takes place in Arizona because of the need to survive several days walking across the desert.¹⁷

What other actions would not have been necessary if illegal border crossings had been diminished? The raids on workplaces presumably would not be necessary if illegal border crossers could not easily find work in the United States. The fence along the border would be superfluous to diminish unwanted border crossings because that would have been accomplished by the lack of reward to crossing the border illegally. Separation of families would be reduced if potential illegal border crossers into the United States do not cross. The purpose of this counterfactual discussion is to give an indication of how detrimental congressional and executive ambiguity has been in not enforcing IRCAs employer-penalty provisions. The door for entry into the United States was deliberately left half open: people could cross without papers and have jobs waiting for them; and then the blame for what was taking place could be shifted to the poor Mexican whose intent was to find a better life. It has not been a story that casts glory on the United States.

Mexico-U.S. Interaction on Immigration

In February 2001, shortly after Vicente Fox assumed the presidency of Mexico, he met with President George W. Bush and the two agreed to work on immigration issues. Many senior Mexicans took this to be an opening for serious bilateral negotiations toward an immigration agreement. Jorge Castañeda, then Mexico's foreign minister, came to this conclusion; his "whole enchilada" comments came only a few months after the presidential meeting. Years later, in 2007, in an interview with the newspaper *El norte* of Monterrey, Castañeda said that negotiation on an immigration agreement was a victim of the tragic events of September 11, 2001.¹⁸ In his 2007 book *ExMex: From Migrants to Immigrants*, Castañeda referred to the first meeting of a bilateral high-level working group on April 4, 2001, where he said there was a commitment to start migration negotiations.¹⁹ Vicente Fox reached the same conclusion.²⁰ Discussion of migration is pervasive in Fox's autobiography, as it was during his six years as president of Mexico.

This belief that a migration agreement would have taken place absent President Bush's near complete dedication to the Middle East after 9/11 probably

pushes too far what the pre-9/11 U.S. commitment was. There was discussion in the White House after the two presidents met and before 9/11 about how far the executive branch should stick its neck out to get a comprehensive migration agreement. Subsequent events demonstrated that high-level Mexicans and their key U.S. advisers had misread how far the U.S. Congress was prepared to go in approving a comprehensive migration agreement. In any event by pushing for everything in the migration field in the wake of the meeting between the two presidents, the Mexican government got nothing—at least at that time.

Migration relations between the two countries since then have not been felicitous. Deep divisions have prevented the U.S. Congress from enacting any new legislation. President Obama is searching to see what kinds of administrative actions he can take to improve the migration situation without legislation, at least not in his first year in office. President Calderon took the unusual step in late 2007 of criticizing U.S. presidential politics as using Mexican migrants as “thematic hostages” and deploring “the growing harassment” of Mexicans in the United States.²¹ Most of the many state and local laws enacted with respect to unauthorized immigrants have been punitive.

The outstanding symbol of migration relations between the two countries is the fence under construction on the U.S. side of the border. Building the fence is detested in Mexico, and warm relations between the two countries may be impossible as long as it is there. “Walls don’t work,” Vicente Fox wrote in his book.²² The fence is generally disliked by U.S. residents along the border because it is seen as interfering in the beneficial commerce that encompasses both sides and because it separates families by an artificial barrier. Mexicans also believe that it damages the environment by preventing usual movement of the region’s wildlife. The fence is seen by many in the border region as a Washington imposition in an area about which Washington is uninformed and largely uncaring about the fate of the people living there.

Advocates of comprehensive immigration legislation have in mind a large, new agreement with Mexico for temporary workers. This would inevitably be pushed if the supply of unauthorized workers were drastically reduced by a combination of enhanced border security and a significant employer-penalty program. The demand of users of Mexican and Central American workers, especially in agriculture and in construction (when the U.S. housing market recovers), would be that if the unauthorized workers are not available, then they would need legal workers. In the 1970s and earlier many Mexicans came

to work in U.S. agriculture during planting and harvest seasons, went home after this work was done, and then returned to the United States in the succeeding agricultural seasons. Not all those who came as ostensible temporary workers returned to Mexico, as was evident from the buildup of unauthorized workers who were legalized in the IRCA legislation. However, the coming-and-returning pattern, to the extent that it existed, became precarious after border security was enhanced in the 1990s and especially after 9/11. Getting back into the United States became too difficult, and most unauthorized workers stayed put in the United States after they came. That reality is evident by the much larger number of unauthorized workers who live in the United States today than in 1986.

There is a long history of temporary worker programs that mutate into permanent programs. Although this problem will not disappear, there undoubtedly will be much clamor for future, better organized, temporary worker programs. Some features of these programs that the U.S. government could insist on, if they are created, are reasonable wages (such as the prevailing wage rate in a region) and better working conditions than in the past. Contributions for social security coverage should be made mandatory for both employers and workers, and the buildup of contributions should be made portable. An agreement with Mexico to this effect may be required if the worker returns home in Mexico. One of the documents frequently used to demonstrate to employers that a worker is legally in the United States is a forged (or somebody else’s) social security card. It is thus common that social security contributions are made for unauthorized workers who are unable to claim anything because of their status in the United States. The inability to make claims on past payments would disappear under a legalized system of temporary work.

The largest concentrations of poor people in Mexico are in rural areas. The poor include subsistence farmers but also landless peasants who seek out work as best they can. Schooling is inferior in the rural areas compared with that in large cities, and public schooling is not great even there. Consequently, there is every incentive for energetic young rural residents to leave these hopeless situations and go to Mexico’s large cities or over the border into the United States. Casual observers tend to lament the visible poverty they see when they visit a place like Mexico City; they are unable to make a comparison with the more invisible poverty and lack of opportunity in isolated rural areas.

When Mexico agreed to NAFTA, the assumption was that this would enhance economic growth in urban areas. The fifteen-year phaseout of protection for significant agricultural products, such as corn, was believed to provide enough time for sufficient urban job creation to make room for immigration from rural areas. Economic growth and job creation turned out to be inadequate, however. The Mexican negotiators had it wrong, and the supporters of NAFTA in the U.S. government overestimated what Mexican job creation would be. Consequently, there were no provisions in NAFTA for resource transfers to Mexico. It is questionable that NAFTA would have been approved by the U.S. Congress had the agreement included provision for U.S. aid to Mexico—just as it is doubtful that NAFTA would have been approved if it contained provisions for substantial labor migration from Mexico to the United States. Labor usage and migration are part of the same process, but the issues are not dealt with that way by congressional committees.

There is little disposition in the U.S. Congress to provide significant aid to Mexico, although assistance is now being provided for antinarcotics cooperation. Despite this reluctance, it would be useful to analyze what techniques might work to reduce the pressure to emigrate from the Mexican countryside, via large cities, to the United States. One possibility—and surely others exist—is to provide meaningful financial assistance to set up clusters of manufacturing and service activities in regional centers in the areas from which there is considerable original emigration. This could create local jobs. This aid should be conditional on Mexico taking action on its own to support regional job-creating centers. A possible Mexican counterpart action could be to increase tax collections devoted to establishing the regional centers.²³

Mexican dependence on the United States is more clearly demonstrated by emigration flows than by any other phenomenon. President Calderón has said accurately (and repeatedly) that the solution to staunch large-scale emigration is higher economic growth in Mexico than has been achieved during the past thirty years. Without the escape valve of emigration, internal tensions would have been much greater in Mexico. If U.S. policy drastically curtails the flow of immigrants over the next few years, this could raise internal dissatisfaction because of inadequate internal job creation. Would cutting off the flow of unauthorized entries into the United States, without an offsetting temporary worker program, stimulate the Mexican government and legislature to make

the structural changes necessary to raise economic growth rates? The question is raised here, but the answer is by no means clear.

Fertility rates have declined in Mexico since the 1960s, at least outside the areas of deep poverty, and this demographic change is reducing the pressure to emigrate. Nevertheless, the early years of the twenty-first century have been the period of greatest annual Mexican immigration ever into the United States. The demographic transition surely will have greater effect over time as the number of job seekers decreases, but it is uncertain how long it will take—twenty or so more years until Mexico's demographic dividend runs its course?—to see the evidence of a demographically driven emigration decrease.

The response of repeated Mexican governments to their inability to create enough well-paying jobs to keep its young people at home is that the jobs the unauthorized immigrants do benefit the U.S. economy. That may be correct, although the evidence is by no means conclusive whether these unauthorized workers help or burden the U.S. economy. This, in any event, is for the U.S. population to decide through its political processes. Does the presence of unauthorized immigrants lower the wages of similarly skilled U.S. workers? Again, the evidence is not conclusive. Does their presence slow down the technological process of creating machines to do the work of planting and harvesting? The answer is probably "yes."²⁴ Do they disrupt many U.S. communities? We know from legislative proposals throughout the United States that many communities believe the answer is "yes."

The United States does not always know how to respond to the large inflow of Mexicans, especially the illegal border crossers. At times the response to Mexican workers is welcoming, as under the bracero program; and at other times it is restrictive, as the idea of the border fence shows. The U.S. response can also be extremely harsh, such as treating unauthorized immigrants as criminals; their criminal offenses are either entry into the United States without permission or using false documents to obtain jobs. This is done even when it is known that they are not criminals in the sense of harming others—they are jobseekers.

The appropriate manner in which the United States and Mexico should interact in setting migration policy that deeply affects both countries is an issue in process. In a sense it is almost always in process because it is ever-changing. The Mexican government is the applicant in this process, and

the U.S. government is the dominant player. This may change one day, when Mexico loses its worker surplus and the United States has insufficient people in its labor force to fill all the necessary jobs—but for now, the relationship in the area of migration is clearly a dependent country dealing with a dominant nation.

Migration: A Consequence of Inequality

- 1942**
 - August 4: To compensate for the shortage of agricultural workers in the United States because of World War II, the bracero program is started, which brings temporary Mexican workers to the United States.
- 1951**
 - July 12: During the Korean War the U.S. Congress passes Public Law 78 to give the bracero program permanent statutory status.
- 1952**
 - March 20: The U.S. Congress passes the McCarran-Walter immigration act, designed to deal with illegal immigration and establishing conditions on visa issuance. The act includes the so-called Texas proviso, which explicitly prohibits prosecution of employers for hiring undocumented workers.
- 1954**
 - June 17: The Immigration and Naturalization Service (INS) launches Operation Wetback, instituting stricter border controls and rounding up undocumented immigrants, while also increasing the number of braceros to between 400,000 and 450,000 annually.
- 1964**
 - December 31: The bracero program is allowed to expire in the face of criticism by U.S. labor and human rights groups about the low wages and poor working conditions of braceros.
- 1965**
 - October 3: Important amendments are passed to the Immigration and Nationality Act. Among the new provisions are capping the number of immigrants from the Western Hemisphere at 120,000 annually and making family reunification a priority for legal immigration.
- 1977**
 - Following a lawsuit by Mexican plaintiffs, the Silva program temporarily

ily (until 1981) set aside 144,946 visas for Mexicans in addition to the 120,000 hemispheric quota.

- 1978**
 - October: President Jimmy Carter establishes the Select Commission on Immigration and Refugee Policy (known as the Hesburgh Commission, after its chair, Father Hesburgh, the president of Notre Dame University) to make recommendations on immigration legislation.
- 1978–1980**
 - The Western Hemisphere cap is put at 290,000 visas, incorporating the Silva program, which is allowed to expire, and this cap is reduced to 270,000 visas in 1980. Caps are also imposed on worldwide visa issuance.
- 1980**
 - April–October: The Mariel boatlift from Cuba brings 125,000 Cubans to the United States.
- 1982**
 - June 15: The U.S. Supreme Court in *Plyler v. Doe* strikes down a Texas law allowing the state to withhold funds from local school districts that are educating undocumented migrant children. One aspect of the Court's extralegal reasoning is that these children are likely to spend their lives in the United States and should be educated to promote the national interest. The legal reason given was that these children are people and should be afforded Fourteenth Amendment protections.
- 1986**
 - November 6: The Immigration Reform and Control Act (IRCA) is passed. The grand deal in IRCA is to provide legal status to some 2.3 million undocumented immigrants who had been in the United States for at least four years and to temporary agricultural workers. IRCA provides a way to prevent a further buildup of undocumented immigrants by instituting penalties for employers who “knowingly” hire undocumented workers. The identification documents that could be used for employers to knowingly refrain from hiring undocumented immigrants are of a kind that could be readily forged (such as Social Security cards and birth certificates), however, and an industry making these forgeries quickly develops. The U.S. Congress specifically rejects instituting a foolproof identity card.
- 1990**
 - November 29: The Immigration Act of 1990 (IMMACT) is passed. The

law, among other provisions, increases border security, authorizes a thousand new border patrol agents, and establishes a flexible cap of 480,000 a year for legal immigrants.

- **1993**
September: President Bill Clinton's administration institutes Operation Hold-the-Line, upgrading border control technology in the El Paso-Ciudad Juárez area.

- **1994**
January 1: NAFTA goes into effect. One of the arguments used to secure its passage in the U.S. Congress is that NAFTA would enable Mexico to "export goods and not people."

- November 8: Proposition 187 passes in California, allowing denial of social services, health care, and education to unauthorized immigrants. A federal judge issues a restraining order against the law, and it is effectively killed when Governor Pete Wilson leaves office in 1998.

- **1996**
April: Two incidents in Riverside County, California, receive extensive publicity and evoke considerable outrage in Mexico.

- April 1: The first is a high-speed chase, photographed by helicopter by a Los Angeles television station, after which two sheriff's deputies are seen using clubs to beat two Mexicans, a man and a woman.

- April 6: In the second incident seven Mexicans are killed when a speeding truck trying to get away from the U.S. Border Patrol crashes and turns over.

- September 30: The Illegal Immigration Reform and Immigrant Responsibility Act authorizes new funding for sophisticated technology at the border and streamlines deportation procedures for unauthorized immigrants.

- December 10: The Mexican congress approves a constitutional amendment that permits millions of Mexicans abroad to have dual nationality. Absentee voting, which is inherent in this legislation, is delayed until 2006 because of political and technical problems.

- **1997**
September 3: A binational study entitled *Migration between Mexico and the United States* is released by the Mexican Ministry of Foreign Affairs and the U.S. Commission on Immigration Reform. The study was suggested by Mexico and involved twenty researchers, ten from each country.

- **2001**
February 16: Presidents Vicente Fox and George W. Bush meet in San Cristóbal, Mexico, and release the Guanajuato Proposal under which they pledged to work on immigration and labor issues affecting both countries.

- May 21: The Development, Relief, and Education for Alien Minors Act (known as the DREAM Act) is proposed. The act would allow high-achieving high-school students who are unauthorized immigrants long-established in the United States to attend college to gain legal status. Those wishing to serve in the armed forces would also be given legal status. A successful filibuster prevented a vote on the act on October 24, 2007.

- June 21: The Mexican foreign minister Jorge Castañeda tells a group of journalists in Phoenix, Arizona, that Mexico wants "the whole enchilada or nothing" in immigration agreements between the two countries. This would consist of comprehensive U.S. immigration reform, a path to legalization for undocumented immigrants in the United States, and a temporary worker program.

- **2002**
May 14: Bush signs into law the Enhanced Border Security and Visa Entry Reform Act. The act authorizes increased funding for personnel at the border, requires the use of biometric identifiers on travel documents of aliens entering the United States, and seeks to coordinate information obtained by U.S. border security agencies.

- November 25: The Homeland Security Bill is signed into law. The INS functions are assigned to two bureaus of the new department: one on border security and the second on Immigration and Citizenship Enforcement (ICE).

- **2005**
February 10: The Agricultural Job Opportunities, Benefits, and Security Act (S. 1038, H.R. 2414, the AgJOBS Act of 2009) is proposed. The bill, as later reintroduced, would provide a two-step path to legalization, the first an "earned adjustment" of status for undocumented farm workers to be followed over the next three to five years if there is continued employment in agriculture by granting resident immigrant status (a green card). As of mid-2009, the legislation has not been passed (it has been referred to the Senate Judiciary Committee).

- April: A few hundred private individuals establish the Minutemen Project for volunteers to work alongside the U.S. Border Patrol to detect illegal border crossers.
 - May 11: The REAL ID Act is attached as a rider to another bill by Congressman James Sensenbrenner (R-Wisconsin), calling for stricter documentation before a state can issue a driver's permit.
 - May 12: Senators John McCain (R-Arizona) and Ted Kennedy (D-Massachusetts) propose legislation to provide a path to legalization for undocumented workers living in the United States, a guest worker program, and increased funding for border enforcement. Opponents labeled the legalization proposals as "amnesty" and prevented an actual vote in the Senate.
 - July 20: Senators John Cornyn (R-Texas) and Jon Kyl (R-Arizona) propose a bill that, among other provisions, would require illegal aliens residing in the United States to leave the country and then seek legal readmission if they wish to attain legal status. This proposal never made it out of committee.
 - December 6: A bill proposed by Congressman Sensenbrenner would change undocumented immigration from a civil to a criminal offense. The bill passed in the House but found insufficient support in the Senate.
- 2005–2008**
- State and local laws and ordinances targeting unauthorized immigrants proliferate. Among other provisions, the laws seek to prohibit public benefits to these immigrants, such as issuance of a driver's license, disallowing residential renting to them, and preventing gatherings of immigrants seeking work for the day. Other efforts include enacting English-only requirements for local and state documents.
- 2006**
- May: Bush announces Operation Jump Start, under which about six thousand National Guard troops are assigned to help the border patrol on nonenforcement tasks until more border patrol agents could be hired and trained. The National Guard troops are withdrawn from the border on July 15, 2008.
 - October 26: Bush signs the Secure Fence Act for the construction of hundreds of miles of additional fencing along the U.S.-Mexico border.
- 2007**
- March 14: President Felipe Calderón criticizes the United States for its

- plans to build the seven-hundred-mile fence along the border when he meets with Bush in Mérida, Yucatán. Calderón argues that a better strategy would be to encourage more investment in Mexico to boost its economy, which would slow emigration.
- May 9: Senator Majority Leader Harry Reid (D-Nevada) proposes legislation that would facilitate the legalization of unauthorized immigrants living in the United States if they pay a two-thousand-dollar fine, pay all taxes they owe, and travel back to their home country to apply for permanent residence (the "touchback" provision). The bill failed to attract enough votes to invoke cloture.
- 2008**
- July 27: The director of the Bureau of Immigration and Citizenship Enforcement announces a program under which undocumented immigrants in the United States could come to ICE offices, be processed, and leave the country in a few weeks without being detained. The uptake is negligible.
- 2009**
- April 29: During a press briefing on his hundredth day in office, President Barack Obama says that without waiting for new immigration legislation, he could start a more thoughtful administrative approach of giving up raids on workplaces to detect a handful of workers. Instead, the administration would take seriously the violations of companies that sometimes actively recruit undocumented workers.
 - May 4: The U.S. Supreme Court votes unanimously to reject a tool used against undocumented workers of charging them with "aggravated identity theft" if they used fake Social Security numbers, unless the prosecution could show that the workers knew that the numbers used belonged to real persons. Prosecutors had threatened the charge of aggravated identity theft, which is subject to a two-year sentence, to convince undocumented workers caught in a highly publicized raid on a meat-packing plant in Iowa in May 2008 to plead guilty to a lesser charge and thus a shorter stay in prison before they were deported.

The Border

A Phenomenon of Its Own

The border should be viewed as a chain that links ever more closely two peoples who are destined by geography and history to live next to each other.

—MANUEL SUÁREZ-MIER, 2007

Efforts to bolster regulatory, enforcement, and security operations at busy borders may result in a cure worse than the disease. Such endeavors place governments on a collision course with easy trade.

—STEPHEN E. FLYNN, 2000

There are close to one million legal border crossings daily between Mexico and the United States, which is more than between any other two countries.¹ About five million cargo trucks cross from Mexico each year into the zone where their cargo must be reloaded onto U.S. trucks.² Many people with green cards (legal residents of the United States) live in Mexico and cross the border repeatedly to work in the United States; others come to shop, for health care, and for family visits. In addition to the legal crossings from Mexico into the United States, there has been a steady flow of undocumented immigrants. One assessment is that more than half of the estimated 7.3 million Mexican immigrant entries into the United States between 2000 and 2007 were unauthorized.³ The paraphernalia used at the border to facilitate this clandestine inflow (tunnels, safe houses, and transfer points to move the immigrants deeper into the United States) and to slow down this human inflow (border patrol, detection equipment, and detention facilities) is vast.

The Busy Border

The Mexico-U.S. border is a bottleneck.⁴ One reason for this has been the large expansion of trade between Mexico and the United States under NAFTA, which increased both the population and income of Mexico's border states more than any other region of the country. The border region's gross domestic product grew by 57 percent from 1993 (the year before NAFTA went into effect) to 2004, compared with GDP growth of 30 percent for the rest of the country. From 2000 to 2005, Mexico's population grew by 1.1 percent, while that of Baja California Norte grew by 2.7 percent, Tamaulipas by almost 2 percent, and Nuevo León by 1.7 percent.⁵

A more important reason for border bottlenecks was the security measures instituted after the terror attacks of September 11, 2001. The southern and northern borders of the United States were closed for a short time after 9/11; this wreaked havoc on the just-in-time (JIT) inventory arrangements between Canada and the United States in some critical industries. For example, U.S. automotive assembly plants in Detroit had tolerances of less than an hour for receiving inputs from just across the Peace Bridge in Windsor, Ontario. If the inputs did not arrive within the specified time, assembly plants had to shut down. Similar but less-developed JIT systems for coproduction and accompanying trade in intermediate products exist between Mexico and the United States. What became evident both in Canada and the United States was that if disruptions continued, the plants producing inputs would probably have to move across the border to have the entire operation in the United States. It is not surprising, therefore, that Canada and the United States worked out a "smart border" agreement a few months later in December 2001. A comparable agreement was concluded between the United States and Mexico in early 2002.

The U.S. Department of Homeland Security (DHS) stated in one of its early reports on the Mexico-U.S. Border Partnership that it was seeking "a balance between efficiency and security" and outlined the measures taken by each country for the secure flows of people and goods.⁶ The results vary among border-crossing points and the time of day that border crossing takes place. The following is a summary from one study of the time it takes for northbound passengers at major border-crossing points: Tijuana, 60 percent of pedestrians get across within one hour, but only 3 percent of passenger vehicles make it across in one hour; at Nogales, 57 percent of pedestrians and 9 percent of passenger vehicles get across within an hour; at Ciudad Juárez,

the one-hour figures are 75 percent of pedestrians and 4 percent of passenger vehicles; at Nuevo Laredo, 70 percent pedestrians and 17 percent of passenger vehicles. In most cases passenger vehicles make it across within two hours.⁷ The average wait times for the 3,334,026 trucks heading north in 2007 at the following four border-crossing points were: Tijuana, 745,974 trucks, 3 hours; Ciudad Juárez, 773,265 trucks, 2.2 hours; Nuevo Laredo, 1,526,623 trucks, 2.9 hours; and Nogales, 288,164 trucks, 1.1 hours.⁸

Mexican authorities believed before 9/11 that they were close to an immigration agreement with the United States and that these hopes were delayed (perhaps dashed) after that day's terrorism altered U.S. priorities. Ever since, Mexico has sought to separate the migration agenda from that on security.⁹ Edward Alden, a onetime economic journalist and current senior fellow at the Council on Foreign Relations, has described how thoroughly this hope of separation failed; U.S. immigration laws were used because they permitted the authorities to legally detain and hold suspected terrorists indefinitely.¹⁰ Alden believes that the United States has paid a high price for this procedure in that mostly innocent persons are caught. Beyond that, many highly qualified persons have elected to migrate to other locations because of the hassle they encountered at the U.S. border. The ineffectiveness of this policy may lead to what the Mexicans have long wanted—to treat antiterrorism and immigration separately.

The cliché that gained currency in the immediate aftermath of 9/11 was that "security trumps trade." This phrase was used to argue that Canada and Mexico had better "get with it" and recognize U.S. security priorities if they wished their burgeoning trade, especially after NAFTA, to continue. However, this initial macho stance gave way to the more reasonable policy of balancing trade and security. Stephen Flynn, a retired Coast Guard officer and now a leading security expert, has made major contributions to the thinking about "rebordering" North America after 9/11. Flynn made the point early on that however compelling homeland security may be, it should not be allowed to derail the continental engine of free trade. Flynn's position was that the United States should look beyond borders as a line of defense against terrorism.¹¹ This line of thinking has become accepted policy.

U.S. Policy Initiatives and Mexico's Response

The United States has taken many measures related to border policy, some antedating 9/11 and others stemming from the terrorist events of that day. A

timeline of actions appears at the end of this chapter. Some of these actions have been useful (such as preclearance of cargo away from borders for regular shippers known to customs agents), but others are troublesome (such as the time required to move trucks and passenger cars across the U.S. border). The most important actions deal primarily with trade, narcotics, and migration, and they are discussed in the respective chapters dealing with these subjects. However, the border is still the most important locus for these actions because the United States and Mexico have not been able to move many necessary actions away from the border.¹²

Flynn, in an article published before 9/11, suggested that trade enforcement and security operations be moved away from busy borders well before merchandise arrived in order to speed the process.¹³ American Gary Hubbauer and Mexican Gustavo Vega Cánovas wrote a widely cited article in 2003 recommending a common frontier for border management, common defense, and immigration.¹⁴ They also recommended inspection by U.S. customs agents in foreign ports of containers that would then be sealed and made tamper-proof. A container security initiative was actually started in 2002 by U.S. Customs and Border Protection (CPB), a unit of the Department of Homeland Security, for preclearance and sealing of cargo containers in foreign ports. CPB reports that fifty-eight such arrangements are operational.¹⁵

An independent task force of the Council on Foreign Relations made an even more ambitious recommendation for unclogging bottlenecks at the two internal borders in North America (those of the United States with Canada and Mexico)—namely, to establish a common security perimeter by 2010.¹⁶ The report was published in 2005, and there has been no progress thus far in the direction proposed. If there is to be free flow of people within a common security perimeter, as the report recommends, this implies common immigration policies because entry into any of the countries would give access to all three. If goods are to be cleared at the perimeter and are then free to flow into any of the three countries, as was recommended in the report, this requires a common external tariff—as would be the case if NAFTA were transformed from a free-trade area into a customs union. A common security perimeter is unlikely in the immediate future.

The Security and Prosperity Partnership (SPP) agreement that preceded the report from the Council on Foreign Relations—indeed, the latter report stated that it was building on the SPP—is much less ambitious. The SPP was not intended to lead to three-country legislation or executive agreements, but rather to function within existing legal and administrative authorities. Indeed,

Congress was excluded from the SPP process in the United States. Instead, the SPP was set up to work through twenty working groups and annual summit meetings of the leaders of Canada, Mexico, and the United States. However, its accomplishments before its abolition in 2009 were modest.¹⁷

The idea of virtual clearance of cargo away from the border has now become part of the balance to accomplish both security and trade objectives. The most far-reaching proposals, such as those for setting up perimeter security encompassing the three countries, have not prospered—or perhaps, not yet. The two smart-border agreements concluded in the immediate aftermath of 9/11 were bilateral. The Canada-U.S. agreement came first, and this has been the traditional path—Canada first—for policy innovations in North America.¹⁸ The preclearance measures now in place undoubtedly have reduced the time that would otherwise have been taken post-9/11 for containers and trucks to clear U.S. customs, agricultural, and security inspections. However, these measures are by no means optimal. The security aspect of border control adds expense to the movement of cargo. U.S. unwillingness to allow Mexican cargo trucks to travel to the ultimate destination in the United States, despite the commitment made in NAFTA to do precisely this, adds to the expense of transporting goods. The Mexicans retaliated by imposing similar restrictions on U.S. trucks bringing cargo into Mexico.

The infrastructure at the border, especially on the Mexican side, is deficient, adding to the time and cost to move goods.¹⁹ The U.S. Department of Transportation (DOT) has estimated that practices of Mexican customs brokers, particularly for cargo moving into the interior of Mexico, results in holding the cargo in a Mexican warehouse from three to five days before it is released to continue the southward journey.²⁰ Canada, Mexico, and the United States have different weight and size regulations for trucks, and each country has a different methodology to calculate maximum limits. The existence of boundaries therefore represents a large obstacle for truck movement. The transport and logistics expert Juan Carlos Villa has commented that perhaps the simplest way to harmonize truck regulations is for the other two countries to adopt U.S. standards, because the United States has the largest industry, but both Mexico and Canada have higher gross vehicle weight allowances than the United States.²¹ The North American Steel Trade Committee (NASTC), which worked under the aegis of the SPP, has argued that intra-NAFTA steel shippers must conform to the lightest weight allowance of the three countries and therefore must send a larger number of single truck loads than would be

the case if they could use trucks with higher weight allowances. This leads to higher shipment costs for steel and other commodities.²²

The primary purposes of NAFTA in terms of Mexico-U.S. interaction were to augment trade between the two countries and to encourage foreign direct investment (FDI) flows into Mexico.²³ Both these objectives were accomplished. The initial stimulus for increasing intra-North American trade was the combination of the gradual elimination of tariffs and other border barriers and the fact that most other countries had to pay normal tariffs on the goods they exported to North American countries (that is, the most-favored-nation tariff). The preferential aspect of this arrangement diminished over the years because both Mexico and the United States concluded free trade agreements (FTAs) with many other countries. North American free trade continued, but it lost its exclusivity. This affected many industries. In the early years after NAFTA went into effect, Mexico became an important exporter of clothing to the United States. As the preferential advantage diminished, Mexico's clothing exports declined.²⁴

Beyond losing its preferential exclusivity, the security measures put in place at the U.S. border reduced the competitive benefit of proximity that Mexico enjoys. So close to the United States, but so far away procedurally, as trucks took longer to cross the border, this disrupted the competitive benefits of just-in-time inventory systems. Longer waiting times increased costs. So did the inability of Mexican trucks to deliver goods to the destination in the United States, an impediment that Canadian trucks do not face. Instead of one driver, shipment of Mexican goods by truck requires three drivers. When these extra costs are added, the use of the words "free trade" is fiction. It is not surprising that the proportion of goods shipped to the United States from Mexico by truck diminished from 73 percent of the total in 1999 to an estimated 66 percent in 2006.²⁵

The Trucking Dispute

The trucking dispute between Mexico and the United States is primarily a story of the power of U.S. lobbyists in overturning a formal commitment entered into by the two governments in NAFTA. This was accompanied by lobbying by Mexican companies that benefited from the U.S. violation of its commitments and apparently reduced the vigor of the Mexican government in its protests against the U.S. action. There were two NAFTA provisions regarding the right of Mexican trucks to carry cargo into the United States. The

first specified that within three years after NAFTA was signed on December 17, 1992, Mexican trucks would be allowed access to the four U.S. border states—Arizona, California, New Mexico, and Texas. It had always been understood that Mexican trucks and drivers would have to comply with state and U.S. safety standards.

On December 18, 1995, however, the U.S. Department of Transportation announced a delay in the implementation of this provision. The delay followed heavy lobbying by the Teamsters Union. The Teamsters had filed suit three days earlier alleging inadequate safety standards of Mexican trucks and drivers. The delay in giving Mexican trucks full access to the four U.S. border states meant that trucks could carry cargo only into a “commercial zone” extending about twenty miles on either side of the border, where the cargo had to be transferred to a U.S. truck. In July 1998, almost three years later, Mexico requested a meeting of the Free Trade Commission of NAFTA, made up of the ministers responsible for trade of the three countries. The commission was unable to resolve the dispute.

The second provision in NAFTA was that six years after the agreement went into effect (which was on January 1, 1994), Mexican trucks would be allowed to carry cargo to destinations throughout the United States. When the time for this came, on January 1, 2000, the United States again refused to honor the agreement. In February 2001 a NAFTA dispute-settlement panel found that the U.S. refusal to review and consider for approval Mexican truck license applications was in breach of U.S. obligations under Annex 1 of the agreement. This ruling gave Mexico the right to retaliate against U.S. imports, but this right was not exercised—at least not until March 19, 2009. President George W. Bush pledged to open discussions with Mexico to implement the panel decision. The U.S. Congress responded by mandating twenty-two additional safety measures, and in November 2002 the Department of Transportation certified that many Mexican truckers had complied with all of these. Bush lifted the moratorium and instructed the Federal Motor Carrier Safety Administration (FMCSA) to start processing applications from Mexican trucking firms that had received licenses.

In January 2003 another roadblock emerged when the Teamsters, the interest group Public Citizen (which had opposed NAFTA from the outset), and other labor and environmental organizations challenged the decision to permit Mexican trucks to travel throughout the United States. This challenge called for a delay in implementation of the decision because the U.S. govern-

ment had not complied with environmental impact statement requirements under the National Environmental Protection Act (NEPA). The Ninth Circuit Court of Appeals, in *Public Citizen v. Department of Transportation* on February 16, 2003, delayed the implementation of U.S. trucking obligations pending completion of environmental impact reviews. In June 2004 the U.S. Supreme Court unanimously overturned this decision and found that the FMCSA did not violate NEPA.

In February 2007 the DOT announced a one-year pilot program to give one hundred Mexican companies unrestricted access to U.S. roadways, with reciprocal access to be given to Mexican roadways by one hundred U.S. companies. In May 2007 a provision was added to an unrelated appropriations bill to block funds until the DOT published details on the program and allowed time for public comment. It took until September 6, 2007, before the DOT was able to put the pilot program in place. In July 2008 the DOT announced that it would extend the pilot program for another two years. Twenty-seven Mexican trucking companies (101 trucks) and ten U.S. companies (52 trucks) had been granted access under the program as of mid-September 2008, and forty additional Mexican carriers had passed a preauthorization safety audit. Efforts continued to be made in the U.S. Congress to cut off funds for the pilot program, but without success until March 2009, when the funds were eliminated from the U.S. government's budget.

No credible evidence has been presented that Mexican drivers pose a greater safety risk than U.S. drivers. Indeed, the evidence is just the opposite. This evidence comes from FMCSA's safety database.²⁶ The U.S. government had two years to deal with the driver safety issue about access to U.S. border states, but the decision not to honor the agreement in NAFTA came only on the eve of implementation. The later decision on access by Mexican trucks to the entire country still has not been dealt with eight-and-a-half years after the agreed date other than by the now canceled temporary program. Many Mexicans see little hope that the U.S. Congress will ever agree to implement the U.S. NAFTA commitment; they expected a partial solution to be a gradual extension of the temporary program to more Mexican trucks and drivers over many more years. This outcome was dashed, however, when the U.S. government terminated the funding for the temporary program.

The way the system now works is that a Mexican truck brings the goods to the border, where it is inspected by Mexican authorities and then brought into the border commercial zone. At that point the trailer is picked up by a

drayage truck, a short-haul vehicle, and brought to the U.S. side of the border to a drop lot, where the trailer is picked up by a U.S. long-haul driver to be brought to its destination. Each shipment thus involves three trucks and three drivers. Long-haul trucks are generally not used by Mexican trucking companies to bring the cargo to the border because the hauls are not generally long. The Mexican trucks used in the temporary program, by contrast, had to meet U.S. standards. The argument used by Public Citizen in its lawsuit that was decided by the Supreme Court in 2004 implicitly says that the use of Mexican trucks and drivers to bring goods to the destination in the United States could result in environmental damage. The logic seems to be just the reverse—using three trucks, including drayage trucks that are unlikely to be environmentally friendly given the nature of the task assigned to them, and involving long waits at the border—namely, that bringing the cargo in modern, preinspected Mexican trucks to the destination of the cargo would be more environmentally sound.

A 2005 report by Juan Carlos Villa provides a detailed listing of the issues involved in truck movement of cargo. Some favorable points exist, such as a single inspection by the three agencies involved (for security, customs, and agriculture), advance transmission electronically of cargo information, clarifying inspection regulations, and the informal coordination of inspectors on both sides of the border. Villa also lists defects in the process beyond those discussed earlier, such as disparate U.S. and Mexican laws on trucks, disparities between shipping schedules and operating hours at ports of entry, lack of communication to drivers about port-of-entry operations, and concentration of traffic at few ports of entry.²⁷

The fee for the decoupling of trailers in the designated commercial zone and the movement of the trailers by drayage trucks apparently varies between \$100 and \$150. The number of trucks crossing from Mexico to the United States in 2006 was 4.76 million; however, about 10 percent to 20 percent were “bobtails”—that is, tractors without trailers.²⁸ Being conservative and using the \$100 fee, and reducing the number of trailers that have to be decoupled and moved by drayage trucks by 20 percent, still comes to \$381 million. This amount was the *minimum* earnings that accrued to the Mexican drayage companies in 2006. The profit explains why the drayage companies opposed the demonstration program. The beneficiaries of the current system in both countries have been able to prevent maximum efficiency in truck transportation of cargo between Mexico and the United States.²⁹

For years there was much internal discussion in Mexico as to whether its government should avail itself of the authority it was given by the NAFTA trade-dispute panel to retaliate by restricting some two-billion-plus dollars of imports from the United States. Mexico chose not to do this, hoping that U.S. policy would one day be brought into line with the commitments the United States entered into in NAFTA. Mexico feared that trade retaliation would set off a major confrontation between a dependent and a more powerful country, and Mexican authorities were quite sure that they did not want this fight. Imposing import restrictions would harm the U.S. companies that export the products chosen but could also damage the importers of these products.

The United States, however, made it abundantly clear when funding for the pilot program was terminated that it had no intention of *ever* allowing Mexican trucks to bring cargo to destinations in the United States. The Mexican authorities evidently had considered what they would do if the pilot program were terminated because the list of items for trade retaliation was announced just a few days after the United States acted. The retaliation list did not include staple products the United States ships to Mexico, such as corn, but instead a variety of foodstuffs, juices, and other products that could readily be imported from other countries with which Mexico had free trade agreements so as to minimize damage to its importers. The list of products included exports from some forty U.S. states. And, as Mexico hoped, the careful choices it made led some 140 U.S. associations and businesses to sign a letter to President Obama asking that the United States live up to its obligations.

When the United States did not allow Mexican trucks to deliver cargo to destinations throughout the four U.S. border states, Mexico took similar action against U.S. trucks. Mexico refrained for more than eight years from the time that it obtained the right to retaliate against the imports of U.S. goods before it acted. If the shoe had been on the other foot, if Mexico had taken the original restrictive action against U.S. trucks or some other important service rendered by U.S. companies, the U.S. government almost certainly would have retaliated as quickly as it could. It is hard to fault the Mexican action. Mexico clearly was the aggrieved party. The U.S. government, by contrast, gave greater weight to the anticompetitive lobbying of the Teamsters Union than to obligations it had freely entered into.³⁰ President Obama has since said that the United States will work with Mexico to resolve the trucking/trade retaliation problem. It is not clear as this is written whether the United States hopes to restore the pilot program, live up to its commitment

in NAFTA, or find another way to resolve the problem. For its part Mexican authorities have said they hope the United States will honor its NAFTA commitments so that they can remove their retaliatory trade measures.

The Border Fence

Another problem introduced by the United States is the plan to build a fence along some 700 miles of the 1,950 miles of the U.S.-Mexico border as an anti-immigration, antidrug device. The fence building has also become an anti-terrorist measure.³¹ If the U.S. argument is based on the fence having so many objectives, it is probably because there is nothing solid to any single purported motive. There have been problems. Property owners along the proposed route have contested the expropriation of their property without adequate compensation. Some properties would have to be split in two. There is concern at some points that the fence would impede wildlife movements from one side of the border to the other. Many mayors and governors along the border oppose the fence as detrimental to the prospering commerce on both sides. Many residents along the border who have families they visit regularly on the other side are against building the fence.³² "Fence" or "wall"? The words are used interchangeably. Within twenty-four hours after being named the president-elect of Mexico, Felipe Calderón attacked the construction of the wall.³³

There are other ways to deter undocumented immigration, such as actually imposing stiff penalties on employers who knowingly hire them (as discussed in chapter 6). A fence is hardly the optimal way to cut off narcotics shipments from Mexico to the United States, and it does nothing to prevent the large profits drug dealers are able to send to Mexico spawning the violence there (as discussed in chapter 4). There is no solid evidence that terrorists are entering the United States from Mexico posing as unauthorized immigrants. A 2008 article in the *Economist* has argued that as long as there is a large wage gap, Mexicans will continue to "find themselves" in the U.S. labor force.³⁴ The existence of a wall (or fence) between the two countries is an indication that the United States does not anticipate close relations with Mexico over time. Rather, the fence signals that the United States wants separation even as it talks about integration. Stephen Flynn has noted that great powers have been building walls throughout history—China's Great Wall, the Maginot Line, the Berlin Wall—and all have met the same dismal fate. He anticipates the same for the U.S. wall against Mexico.³⁵

The behavior of the two countries at their common border is consistent with the key hypothesis of the research—namely, that Mexico for many years acted as the dependent country and the United States as the dominant one. NAFTA was groundbreaking in that it was the first comprehensive trade agreement that brought together an advanced, high-wage country and an economically weaker, low-wage nation. The European Union at that time included countries with large income and wage disparities, but not as great as between the United States and Mexico. That originality was also NAFTA's weakness in that it brought out fears of many U.S. workers, producers, and communities about the low-wage competition they would face.

The case in favor of free trade was made by the economically weaker and dependent country. Under the dependency-dominance hypothesis, one would have expected the stronger country to propose free trade. President Carlos Salinas's original proposal was not for free trade across-the-board, but rather for free trade in specific sectors. This broke down quickly because each country wanted to negotiate in those sectors in which it believed it had or would develop a competitive advantage. Canada, before it entered into its free trade agreement with the United States, also proposed sector agreements. Both countries, Mexico and Canada before it, realized that comprehensive negotiations permitted de facto but unspecified trade-offs among many or all sectors. The trucking provisions of NAFTA made it into the agreement on that basis: a trucking agreement opening the two countries completely to the trucks of the other almost certainly could not have been successfully completed except in the wider context of economic integration.

The trucking agreement broke down when the time came for implementation. The breakdown took place on the U.S. side. The idea of a trial trucking program was also anathema by the U.S. opponents of NAFTA, and they were supported by their congressional allies. It is remarkable that the trial program was able to proceed as long as it did in the face of congressional efforts to cut the funding for it. The protectionist behavior of the dominant power took place in the U.S. Congress, not at first in the U.S. government; but in the end the U.S. president, without comment, signed the bill containing the protectionist congressional action. The Mexicans behaved as one would have expected in the face of the U.S. unwillingness to live up to its commitments—the Mexicans delayed responding at each step. But in this area, as in many others, the Mexicans became more assertive when it was evident that further patience was not a winning strategy.

The United States, the government and the legislature, acted as the dominant players when decisions were made to erect a fence along the Mexican border and to lengthen its coverage. However, Mexico had changed. The new president-elect, Felipe Calderón, spoke out against the fence in one of his first official statements after he took office in 2006. Mexico is becoming more assertive in criticizing U.S. border actions in much the same way it has regarding U.S. antinarcotics policy. U.S.-Mexico actions at the border differ from the other five policy chapters (trade, foreign direct investment and finance, narcotics, energy, and migration) in that they deal with a region where the two countries come together rather than with specific sectors or programs. The border was included in the analysis in this book precisely because its nature is different from the other five areas, but also because the patterns of policymaking by the two countries with respect to the border are much the same as in their interactions in specific sectors.

The Border: A Phenomenon of Its Own

- 1983**
- August 14: Presidents Ronald Reagan of the United States and Miguel de la Madrid of Mexico sign the La Paz Agreement, addressing pollution and environmental problems along the Mexico-U.S. border. The border is defined as 100 kilometers on either side.
- 1991**
- January: U.S. Navy Seabees build a ten-foot-high wall extending seven miles along the Chula Vista-Tijuana border.
- 1992**
- February: The Integrated Border Development Plan is released by the U.S. Environmental Protection Agency and the Mexican secretariat of urban development and ecology.
- 1993**
- October: The steel wall built by the Seabees in 1991 is extended to fourteen miles in length, to the Pacific Ocean.
 - September: Operation Hold-the-Line (originally named Operation Blockade) is enforced by the Immigration and Naturalization Service to curb the flow of undocumented immigrants in the El Paso, Texas, area.
 - November: The Mexican and U.S. governments create the Border Environmental Cooperation Commission (BECC) and the North American

Development Bank (NADBank) as additions to NAFTA. BECC's role is to certify environmental aspects of projects and that of the NADBank to finance them.

- Operation Gatekeeper, increasing technology and the police presence, is instituted in California. The program is designed to divert undocumented migrants from crossing the border into the San Diego area.
- Operation Safeguard is instituted to increase security along three hundred miles of the Arizona-Mexico border.

1995

- December 18: The U.S. Secretary of Transportation announced a delay in allowing Mexican trucks to cross into the four U.S. border states despite the agreement that this would be permitted three years after NAFTA was signed on December 17, 1992. The ostensible reason for the executive order was the lack of safety of Mexican trucks and drivers. Much pressure for the U.S. action came from the Teamsters Union. Mexico responded by delaying access to U.S. trucks coming into its territory.

2000

- January 1: Under NAFTA, Mexican trucks were supposed to have full access to the United States six years after the agreement went into effect on January 1, 1994. The United States did not honor this agreement on the same grounds that the earlier provision had been delayed in 1995. Access by Mexican trucks carrying cargo to destinations in the United States is still disallowed as this is written in mid-2009.

2002

- March: The U.S.-Mexico Smart Border Accord is signed.

2003

- January 24: The U.S. Department of Homeland Security (DHS) begins to operate.
- April: DHS launches US VISIT to verify identification of individuals coming to the United States for work, study, or travel.
- September 2: DHS announces a new initiative known as "One Face at the Border" to unify the inspection process at the border rather than continue the separate screenings by immigration, customs, and agricultural inspectors.
- September 27: The Free and Secure Trade (FAST) initiative between Mexico and the United States comes into effect beginning with the Ciudad Juárez, Chihuahua-El Paso, Texas, port. The initiative is intended to

speed processing of cargo by allowing importers and carriers enrolled in the Customs Trade Partnership Against Terrorism (C-TPAT) to use fast lanes with less extensive physical examination of contents.

2004

- October 8: Mexico's secretariat of foreign relations publishes a note condemning violations of human rights occurring at the U.S. border, noting in particular the more than three thousand migrant deaths that have resulted from the United States's Operation Guardian.

2005

- January 31: The Law of National Security (the *Ley de Seguridad Nacional*) is published in the *Diario oficial*, which establishes a Mexican National Security Council.

- March 23: Mexico, Canada, and the United States announce the formation of the Security and Prosperity Partnership of North America (SPP).

2006

- President Bush announces Operation Jump Start to deploy six thousand National Guard troops to work with the U.S. Border Patrol.
- October 26: Bush signs the Secure Fence Act, calling for seven hundred miles of fencing along the border.

2007

- September 6: The U.S. Department of Transportation puts into effect a pilot program for Mexican companies that are cleared to carry cargo directly to purchasers in the United States. This was done despite the opposition of many members of the U.S. Congress. The companies operating from Mexico must pass a preauthorization safety audit before they are granted access to the United States.

2009

- March 11: President Barack Obama signs the Omnibus Appropriations Bill, which includes a provision to terminate funding for the pilot program for trucks put into effect by the United States in September 2007.
- March 19: Mexico puts into effect import tariff increases of 10 percent to 45 percent for eighty-nine products exported by the United States.
- April 7: More than 140 business associations, producers, and exporters send a letter to Obama urging him to work with the U.S. Congress and with Mexico to resolve the trucking dispute that led Mexico to increase its import restrictions on U.S. products.

Findings Changing Traditional Practices

As one examines the elements that went into the bilateral policymaking regarding the issues discussed throughout this book, it is clear that Mexico has historically behaved in a dependent fashion with the United States as the dominant nation. Dependence has produced defensive behavior on the part of Mexico. On trade policy Mexico adopted import-substituting industrialization (ISI) in large part to minimize the influence of the "hegemon to the north" (Carlos Salinas's words), and long shunned direct negotiation with the United States. On foreign direct investment (FDI) the pattern was to limit and regulate the extent of foreign (mostly U.S.) equity participation in favor of debt financing to obtain the necessary capital inflows to develop Mexico's manufacturing and service activities. On banking the pattern was to limit the role of foreign-owned banks and insurance companies. On narcotics Mexico's policy on interdiction, spraying crops, and living with the annual certification procedure was largely determined by U.S. policy.¹ On energy Mexico to this day allows no private equity investment for oil