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Their View: Mexican glassmaker's, court's moves threaten letter, spirit of law

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On the eve of the Trans-Pacific Partnership (TPP) negotiations in Dallas, May 8-18, more than 15 Texas congressional leaders, including Rep. Kay Granger (R-Fort Worth) and Rep. Pete Sessions (R-Dallas) wrote to U.S. Trade Representative Ron Kirk urging Mexico's inclusion in this promising trade agreement.

Including Mexico in the TPP has tremendous potential for both Mexico and Texas, whose communities, histories and economies are intertwined. In fact, in 2011, nearly 35 percent of Texas' exports – or $86.6 billion – flowed into Mexico and nearly $93 billion in imports from Mexico made their way across our 2,000-mile border to manufacturing facilities and stores across Texas.

However, the U.S.-Mexican economic and financial partnership is currently threatened by the fraudulent workout of a major Mexican company that got itself into trouble in 2009. The case creates a significant precedent that's worth noting as the United States and Texas consider expanded trade relations with Mexico.

Mexico has made enormous strides as a business-friendly country since the 1990s, including reforms to its legal system that improved the climate for additional foreign investment. Mexico's Business Reorganization Act of 2000 modernized the country's bankruptcy code in many ways similar to U.S. Chapter 11 reorganization procedures.

Such reforms ushered in a level of transparency, predictability and security that fostered deeper, more productive economic ties among Texas, the U.S. and Mexico.
Yet, one company – Vitro, a giant Mexican glass company that serves many U.S. auto

manufacturers – is at the heart of a raging controversy with troubling implications. After Vitro defaulted on its debt in 2009, it went on to create more than $1.9 billion in intra-company debts for the sole purpose of out-voting its genuine creditors in a Mexican reorganization proceeding.

In a take-it-or-leave-it workout plan, Vitro put the company's internal shareholders at the head of the line for bankruptcy settlement while third-party bondholders – including many U.S. investors – would be paid a fraction of what they were owed. A court in Monterrey, Mexico, ruled that Vitro could count its home-made debt owed to itself as equivalent to the debt owed to others.

If Vitro's actions withstand continued legal challenges here in U.S. Bankruptcy Court in Dallas and in courts in Mexico, it will make a mockery of the rule of law in Mexico despite its great strides forward in transparency and accountability.

The "Vitro effect" would also discourage lending and investment in Mexico and serve to chill the positive cross-border trade and job growth we've seen flourish in recent years.

In 2009, the City of Dallas and ProMexico, an economic development arm of Mexico's federal government, entered into a Memorandum of Understanding aimed at encouraging the creation of a solid platform for further trade and direct investment between Dallas and our neighbor to the south.

Bilateral trade between Mexico and the United States is also significant, surpassing $460 billion in 2011, a 17 percent increase from 2010. U.S. foreign direct investment in Mexico was nearly $98 billion in 2009, up 9.2 percent from 2008, while Mexico foreign direct investment in the U.S. was $11.4 billion in 2009, up more than 20 percent from the previous year.

While there's considerable pressure to grant comity to the Mexican court in this case, the ruling in Monterrey represents a great miscarriage of justice by Mexican standards and is unacceptable under U.S. bankruptcy law. If a Texan company were to do what Vitro did, it would be found guilty of fraud.

To be sure, Vitro's actions have made it an outlier. Vitro is in no way indicative of Mexico's business community on the whole, and it is rightly being shunned as a rogue debtor. To reestablish its creditworthiness, Vitro must do what is right – not just by its creditors but by all of Mexico – and negotiate with its creditors in good faith. A fruitful bilateral partnership and global trade pact hang in the balance as one unjust corporate workout sets a precedent that makes all of Mexico a risky bet for investors and trade partners.

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