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NORTH AMERICAN FREE TRADE AGREEMENT: INTENT; ACHIEVEMENT; AND THE FUTURE OF THE INTERNATIONAL POLICY

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ABSTRACT

This article will address the overview of policy, implementation, and achievements and shortcomings of the North American Free Trade Agreement[2] that was entered into by the United States of America (US), Canada and Mexico on January 1, 1994.[3] Policy justifications for the implementation of NAFTA focused on, among other motives, positive effects on intra-continental economy, human rights and environmental concerns.[4] Part One of this article will identify the historical background of NAFTA, preceding governing policy, other free trade agreements[5] and goals of NAFTA upon ratification. This part will further illustrate policy-centric opinions of North American political leaders and numerous political views about the current state[6] of NAFTA.

Part Two will discuss the numerous benefits that have been accomplished because of implementation of NAFTA, as they relate to all of the countries involved with the agreement. The top economic earners within each country have benefited the most since the implementation of NAFTA, and Part Two will further discuss why this is an important economic benefit to member nation states individually, and to all nation states on a collective basis.

Part Three will address the shortcomings of NAFTA. More specifically, NAFTA has failed to improve, or even maintain manufacturing levels in the United States and in Canada. Manufacturing rates on American import-to-export rates are grossly imbalanced. Canadian wages have slightly fallen, on average, since the implementation of the agreement despite the increase in value of the Canadian dollar on an international currency exchange rate and in spite of an average annual national economic growth of 3.4%. Improving the state of Human Rights is expressly listed in the Preamble of the agreement as a core goal. Yet, Mexican standards of living have not improved since the implementation of the

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[2] *See* North American Free Trade Agreement [*hereinafter* NAFTA] Preamble, *available at*, http://www.worldtradelaw.net/nafta/preamble.pdf.

[3] ALAN S. ALEXANDROFF, ET. ALL, *Still Amigos: A Fresh Canada-US Approach to Reviving NAFTA*, 274, C.D. HOWE INSTITUTE COMMENTARY, 1 (Sept. 2008).

[4] *See* NAFTA Preamble, *supra* note 2.

[5] Free trade agreement(s), *hereinafter* FTAs.

[6] By "current state," this author means reflective views and opinions of the benefits, burdens, achievements, and shortcomings of NAFTA as of the date of publication of this article.

agreement. In some respects, the standards of living in Mexico have worsened after, and as a result of the agreement. Major environmental concerns have continued to plague Mexico, and illegal immigration, as a consequence of poor quality of life, has continued to be problematic in the U.S.

Part Four will discuss what, if any, changes to NAFTA, and the mechanisms of international trade are necessary to fully achieve the goals laid out in the portions below. Although it may be impossible to address or solve all of the issues presented in this article, modifications to NAFTA and political philosophy in regards to its existence are necessary to achieve its goals.

INTRODUCTION

[Corporations] cannot commit treason, nor [can they be] outlawed, nor excommunicate[d], for they have no souls.[7]

NAFTA has long been a topic of discussion in regards to political elections, national, and intra-continental law making, and diplomatic furtherance between the member nation states of Mexico, the U.S. and Canada. This topic is a heated debate because some political leaders[8] feel that policies that were in place prior to the implementation of NAFTA were more conducive to meeting economic stability and other objectives laid out in NAFTA.[9] While American opinions range greatly from positive to negative, as will be discussed later, Canadian leaders have a mostly favorable view of NAFTA.[10] Mexican leaders have primarily also looked favorably on NAFTA, while similarly to some in the U.S., Mexican citizens have been divided in terms of attitudes to NAFTA and its current state.[11]

Although much of the focus of language in the Preamble to NAFTA[12] appears to be on advancing economic growth and stability,[13] amongst other concerns, on an individual humanistic level – much of the benefits resulting from the achievements of NAFTA have been on the corporate level. Many concerns of this

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[7] Case of Sutton's Hospital, (1612) 77 Eng, Rep. 960 (K.B.) 973; *See also* Benjamin Levin, *Made in the U.S.A.; Corporate Responsibility and Collective Identity in the American Automotive Industry*, 53 B. C. L. REV 821, 822. (Levin uses this quote in a similar way to give the reader an almost metaphysical way of foreshadowing where his point is going.)

[8] *See* Sheryl Gay Stolberg, "Nafta Looming over Obama's Canada Trip" NY Times, 2/19/2009. *Available at*, http://www.nytimes.com/2009/02/19/us/19trade.html.

[9] *See* NAFTA Preamble, *supra* note 2.

[10] *See generally* "Renegotiate NAFTA? Not anytime soon" *CBC News*. Available at http://www.cbc.ca/money/story/2009/02/09/f-nafta-update.html. (Last Updated: Monday, February 9, 2009. 4:49pm).

[11] *See infra* note 6 and accompanying text.

[12] *See* NAFTA Preamble, *supra* note 2.

[13] *See id*.

effect center either on the political philosophy that rejects providing economic advantages to the top income earners or companies with the hope that economic growth centered on top income earners or companies will improve those lower on the economic earning scale. Others are concerned with the pragmatic realism that many people are adversely impacted as an ultimate result of NAFTA. When viewed in the framework of American political thought, much of the aforementioned concerns in regards to the ultimate effects of NAFTA and its policy come from the Democratic Party. Conversely, speaking generally, leadership within the Republican Party has viewed the effects of NAFTA as beneficial when applying a "Risk-Utility" balancing analysis to the benefits compared to the burdens of NAFTA.[14] Because the benefits that have benefited North American parties to NAFTA have largely been to corporations, the end result is that the question is begged: does NAFTA benefit the people? Although this article is not aimed at justifying or condemning any particular economic philosophy within the American or North American political spheres, this article will briefly touch upon some basic principles of them. This analysis of economic theory, coupled with analysis of statistical effects on member nation states will identify whether the goals of implementation of NAFTA have been achieved.

PART I: HISTORICAL BACKGROUND AND POLITICAL VIEWS OF NAFTA

A. *Protectionism and Isolationism: Philosophical Principles*

The general purpose of a FTA is to increase trade on an international level. The idea of trading amongst nation states is becoming more and more "inevitable and productive"[15] in the modern world.[16] Within the ever expanding "global economy where labor, profits, and environmental effects reach across national boarders,"[17] citizenship of corporations or companies must become part of all countries that they do business in.[18] Doing business in multiple countries presents challenges. Some of which are simple to anticipate, e.g. language barriers. Conversely, however, when businesses expand into other countries they are faced with problems that are not so obvious – namely tariffs and taxes on their goods, which are foreign to the country to which they expanded into.[19] Another "legal

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[14] United States v. Carroll Towing Co., 159 F.2d 1022, 1026 (2d Cir. 1947); *See also*, Barbara Ann White, *Risk-Utility Analysis and the Learned Hand Formula: A Hand that Helps or a Hand that Hides?* 32 ARIZ. L. R. 77 (1990). (Although the so-called "Risk-Utility" analysis focuses on a negligence standard, the formula has been incorporated to balance whether NAFTA has benefited North American member nation states on a totality of the circumstances basis.)

[15] Stolberg, *supra* note 8, at 1.

[16] Levin, *supra* note 7, at 824-25.

[17] *Id*.

[18] *Id*.

[19] *Id*. at 825; *See also generally* ROBERT CHARLES CLARK, CORPORATE LAW 692 (1986)

mechanism~~[,]~~”[20] that corporations may have difficulty anticipating and/or preparing for while doing business in foreign nations, are differences in “consumer … tort law and consumer protection laws” that may very well be vastly different than the law in the country from which they originate.[21] For example, if a Mexican toy maker desires to expand her small business into Texas, Arizona, New Mexico and California, then she must prepare to be able to comply with all sales taxes and import tariffs associated with manufacturing and supplying her product to children in South Western U.S. In addition to the costs associated with the taxes and tariffs, she must prepare for different state and federal laws in regards to products liability and production standards. These may very well be difficult for her to prepare for, or be able to comply with.

This leads into the concept of protectionism – or on the negative end of the spectrum of trade philosophy – isolationism. Tariffs and taxes that are placed on imports/exports are meant to either raise tax revenue for the government of the country asserting the tax, or the tax is meant to encourage citizens to purchase goods from producers within their home country. Benefits often result from this sort of economic governmental intervention. For example, by increasing tax revenue, governments can help provide infrastructural necessities, such as highway development and streamlining irrigation systems for agriculture in countries that are poor or developing. Additionally, these governmental practices can encourage its nationals to buy goods from domestic companies – thus stimulating the domestic economy. These benefits, at least on a theoretical basis, can boost the economy of a nation and help it grow. Self-reliance encourages a greater variety of goods to be produced within a country and encourage the domestic producers to become technologically innovative.

There are, however, many negative effects that this form of governmental interference with trade has on domestic and global economy once put into practice. The concept of encouraging local producers to be more technologically innovative by isolationism is likely not going to succeed because most poor or developing countries do not have the basic tools or education to allow for this blossoming of industry. Isolationism on a global scale is simply accepting “vulnerability” to not be able to sustain a government or society.[22] Most countries are reliant on goods (or services such as medical treatment from doctors[23]) that are

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[20] CLARK, *supra* note 19, at 692.

[21] *Id*; *see also generally* Asahi Metal Co. v. Superior Court, 480 U.S. 102, 108-13 (1987); Levin, *supra* note 7, at 825.

[22] Aginam Obijiofor, *Symposium: Sars, Public Health, and Global Governance: Article: Between Isolationism and Mutual Vulnerability: A South-North Perspective on Global Governance of Epidemics In an Age of Globalization*, 77 TEMP. L. REV. 297, 298 (2004).

[23] *See generally id*. (Obijiofor addresses the “stark realities of […] regrettably popularized isolationism” as a serious hindrance on poor nations ability to get even basic necessities such as access to medical treatment.)

imported from other countries.[24] Almost all "management of world affairs have been premised on the integration of a [globalized economic] system of commerce and politics."[25] Isolationism, or putting unnecessary restraints on international trade is "at the very least, damaging to a state's long-term interests."[26]

Isolationism of a country can be harmful due to factors such as: not being able to domestically produce the materials that are needed for production or that there is not a manufacturer that is able to produce the product as well as or as cheaply as a foreign market participant. This results in many countries leaning towards reducing or eliminating taxes and tariffs on imported and exported goods to allow their people to have the very best goods in the most cost affordable way.[27] One such way of agreeing to avoid excess taxes or tariffs on foreign goods is by FTAs.

B. Free Trade Agreements: The Theoretical Effects of Implementation on International Trade

The overarching concept in support of FTAs is that "trade and economic endeavor[s] should be conducted with a view to raising standards of living, ensuring full employment and a large and steady growing volume of real income and effective demand" for the goods of other member nations.[28] The general purposes for implementation of a FTA by nation states is centered around four main principles: (1) expanding economic opportunities for its people; (2) encouraging technological advancement; (3) allowing for "strategic manufacturing;" and, (4) expanding capitalism and investment opportunities for its nationals.[29] Each of these principles will be expanded upon in more detail.

1. *Expansion of Economic Opportunities*

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[24] *Id*. (Obijiofor seeks to identify the need for globalization, or freeing the ability of international cooperation to provide medical treatment to developing countries. This same principal can be applied to allowing for streamlining commerce via an FTA because it can allow for poor and developing countries to have the opportunity to engage in the capitalistic global market place. This is where opportunity for economic growth is introduced.)

[25] Helga Turku, ISOLATIONIST STATES IN AN INDEPENDENT WORLD, 1 (2009).

[26] *Id*. at 107.

[27] *See generally* NAFTA Preamble, *supra* note 2, at 1. (Elimination of taxes and tariffs was generally perceived as eliminating unnecessary restraints on trade – at least on an intra-continental level.)

[28] The Preamble to the General Agreement on Tariffs and Trade, 1 (1986).

[29] *See* NAFTA Preamble, *supra* note 2, at 1.

By incorporating a FTA into international trade by member nation states, one major goal is to "[p]romote trade and investment[.]"[30] This is also a primary goal of NAFTA.[31] What this means is that by increasing the opportunity for investment capitalists to bring money into a foreign market and invest money into a new economy and new production system, the ability for the new nation to grow it's economy is substantially greater.[32] Furthermore, the individual investor has an excellent opportunity to advance his own business in a new market.[33] FTAs also aim to expand economic opportunities by alleviating "restrict[ions on] trade that would strain relations with other nations"[34] if tariffs and taxes were imposed upon imports and exports from foreign countries.[35]

By alleviating economic burdens of taxes and tariffs on foreign investors, foreign investors are able to bring the return on the investment back to their home country and vicariously contribute to the economic growth of their own country, should they chose to do so. Furthermore, having a pre-negotiated and mutually agreed upon FTA in place allows for uniformity of "strictly enforced international regulations on labor practices or environmental [effects]."[36] Theoretically, this would allow for more uniformity in all areas of trade practices and thus, level the playing field between member nation states. What this further allows, ties into economic advancement and improvement in quality of life on a "macro" scale[37] within countries.

2. *Technological Advancement: The Ability of Open Trade to Encourage Development*

If you really want to protect your workers and you really want to protect an industry, you open up the doors of opportunity.[38] – Stockwell Day, Canadian International Trade Minister

Another goal of most FTAs that is also reflected by NAFTA, specifically in the preamble, is to "[foster] creativity and innovation, and promote trade in goods

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[30] Jeffery J. Scott, *The North American Free Trade Agreement: Time for a Change?* PETERSON INST. FOR INT'L ECON., 7th Annual North American Regional Meeting, The Trilateral Commission, 3 (2008).
[31] *Id*.
[32] *Id*.
[33] *See generally* NAFTA Preamble, *supra* note 2, at 1.
[34] Stolberg, *supra* note 8, at 1.
[35] *See generally id*.
[36] Levin, *supra* note 7, at 826.
[37] *Id*. at 825. (Levin is referring to the large-scale effects to the populous within nations. In his note, Levin focuses more on the shortcomings of this theory of "macro script," but it raises a question of effect beyond the specific investor and the parties who receive the investment.)
[38] CBC News, *supra* note 10, at 1.

and services that are the subject of all intellectual property rights[.]"[39] This goal is two-fold. First, the aim is to foster creativity and innovation. This is important in terms of international trade because certain countries are better at making certain goods or refining certain natural resources than other countries are. For example, if "Country X" is a landlocked desert country, rich with oil and natural gas, and "Country Z" is an island with an abundance of fish and tropical fruit, it does not make sense on an economic perspective to tax or tariff the importation of the other nation's goods. This is because it is unlikely, if not impossible to obtain the same goods domestically. Further, even if they are able to obtain the goods domestically, it is even more unlikely that they can obtain them in a cost effective way to the people. This illustration of tax and tariff free dealing between "Country X" and "Country Z" is a classic example of "open[ing] up the doors of opportunity"[40] in an international trade sense.

Clearly, this hypothetical scenario is an exaggerated scenario in which procurement of fish and oil is made nearly impossible without free trade between two separate nation states. A more practical and real-life example can be made with technological advancement such as in the automotive industry. In the U.S., the automotive industry is an area of manufacturing and production in which its global dominance has been unrivaled for many years.[41] Much of the U.S. automotive manufacturing dominance is attributable to "the rise of suburbia"[42] which occurred after World War II,[43] and also to the increasing "commuter culture"[44] which has led to the perception of the "national way of life"[45] that called for every household to own a car.[46] American automotive manufacturing dominance can further be evidenced by the unique position that the U.S. automotive industry experienced post World War II.[47] "While most major capitalist societies were forced to rebuild after the war, U.S. manufacturing firms dominated their huge home market and much of the world market in the 1950s and 1960s."[48] This brings the focus of analysis to the topic of international trade.

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[39] NAFTA Preamble, *supra* note 2, at 1.

[40] CBC News, *supra* note 10, at 1.

[41] *See generally* Levin, *supra* note 7, at 825. (Levin illustrates the automotive industry led by Ford and general motors as global market participant that was nearly unrivaled for decades).

[42] *Id*. at 827.

[43] *Id*.

[44] *Id*.

[45] *Id*.

[46] For further reading on the rise of suburbia and the trend relating to the flight from the cities that occurred post World War II, up until the 2000's, *see e.g.* Anthony Flint, *THIS LAND: The Battle Over Sprawl and the Future of America*, (2012).

[47] Robert J Antonio & Alessandro Bonanno, *A New Global Capitalism?: From "Americanism and Fordism" to "Americanization-Globalization,"* 41 AM. STUD., Summer/Fall 2000 at 33, 36.

[48] *Id*.

One reason why the U.S. automotive dominance occurred in the 1950's and 1960's is that companies such as Ford and General Motors made constant evolution and progress in regards to developing new features and more efficient models during that period.[49] Ford, since its inception in 1903,[50] held dominance over the U.S. domestic and international markets because of an abundance of "supply, demand,"[51] low cost of production,[52] and high quality of the cars that they were manufacturing.[53] At this point during the 1950's and 1960's, foreign markets were unable to compete in the automotive marketplace with Henry Ford and his affordable product which was, from 1903 until the 1960's,[54] being produced with the corporate mindset of being "concerned with the well-being of the public[.]"[55] Ford was, however, still able to make a substantial profit,[56] presumably since the automobile blossomed technologically and in terms of cost during his reign as owner of the company.[57]

During the first two-thirds of the twentieth century, American automotive manufacturing experienced dominance of the market share as a direct result technological innovation of the car. Between 1903 and the 1960's, with the exception of the great depression when the U.S. experienced "severe economic stress[,]"[58] the U.S. economy boomed in correlation with the expansion of the automotive economy.[59] This is evidenced by a "massive industrialization and production boom that defined the [U.S.] during the Second World War[.]"[60] The U.S. automotive boom was likely "central to the American experience and the success of the American automotive corporation [was] essential to maintaining the national way of life."[61] The economic success that the U.S. automotive industry experienced became somewhat diluted by the emergence during the 1970's of

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[49] *See infra* note 41 and accompanying text.

[50] *See* HENRY FORD WITH SAMUEL CROWTHER, MY LIFE AND WORK 90 (1992).

[51] Levin, *supra* note 7, at 827.

[52] *Id*.

[53] *Id*. (Although Levin is discussing how any company can control the market share within an industry, he is making reference to Ford and their dominance in the automotive market share.

[54] *See* Dodge v. Ford Motor Co., 270 N.W. 668 (Mich. 1919). (Henry Ford produced cars at an affordable price for because of a personal moral obligation to bring his new technology of the automobile to the public on a mass scale.)

[55] *Id*. at 843.

[56] *See generally id*.

[57] *Id*.

[58] Eli Wald, *The Economic Downturn and the Legal Profession, Foreword: The Great Recession and the Legal Profession*, 78 FORDHAM L. R., 2051, 2053 (2010).

[59] Levin, *supra* note 7, at 837.

[60] *Id*.

[61] *Id*. (Note that Levin is suggesting that the automotive boom enjoyed by Ford and General Motors post-World War II was merely perceived as being "central to the American experience." This author suggests, in contrast to Levin's argument, that the success of the automotive industry and the "American experience" were causally connected, rather than merely correlated.)

Japanese automotive car companies such as Honda and Isuzu.[62] These, and other foreign automotive companies evolved the technological make-up of the car that defined the "American experience"[63] by producing "smaller, more fuel-efficient or larger, more family-friendly alternatives."[64] Although the Isuzu Company "no longer sells cars to American consumers[,]"[65] other Japanese and other foreign automotive companies have benefited from "domestic success of non-American automobiles"[66] in the U.S. from the 1970's and into today.

With increased fuel-efficiency and family-friendly options placed on the market, it is no wonder that the buyer in the U.S. embraced the new technology by purchasing foreign cars on the domestic market. Since the 1970's, the U.S. automotive industry experienced a decline in sales and in value.[67] They responded by making "obvious American cultural references"[68] into their advertisements to appeal to the emotion of the buyer by instilling "Americanness"[69] into the ads. This "Buy America"[70] form of marketing was materialized "in the form of President's Day sales,[71] patriotic vehicle names,[72] or even nationally directed apologies or product recalls."[73] The advertisement push by the U.S. automotive industry is merely an alternate way to increase a push in sales by appealing to the emotions of the domestic buyer.[74] This alternative approach is likely a desperate way to respond to the superior technological advancements by the Japanese and other foreign automotive manufacturers. Additionally, the concept of instilling national pride[75] or patriotic emotions into a national audience is not "unique to automobile advertising[.]"[76] These techniques are mechanisms of advertising used

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[62] *Id*. at 823.
[63] *Id*. at 837.
[64] *Id*. at 823. *See also*, *e.g.*, David Kiley, *Chrysler's New Owner Has Serious Marketing Work to Do*, BLOOMBERG BUS. WK., May 23, 2007, *available at* http://www.buisinessweek.com/the_thread/brabdnewday/archives/2007/05/chryslers_new_o.html.
[65] Levin, *supra* note 7, at 823. *See also*, *e.g.*, Ken Bensinger, *Isuzu Quitting U.S. Car Market*, L.A. TIMES, Jan. 31, 2008.
[66] Levin, *supra* note 7, at 823.
[67] *See generally id*.
[68] *Id*.
[69] *Id*. at 824.
[70] *See generally* Stolberg, *supra* note 8, at 2.
[71] *See* Peter DeMarco, *Behind Presidents' day car Sales Push*, BOS. GLOBE, (Jan. 3, 2002), *available at* http://www.boston.com/cars/newsandreviews/overdrive/2010/2/behind_the_presidents_day_car_sales_push.html.
[72] *See e.g.*, James M Flemmang, *Time to Say Goodbye in Many Languages*, CHI. TRIB., Sept. 30, 2001; James R. Healey, *2007 Patriot No Wimp in the Wild*, USA TODAY, May 25, 2007.
[73] Levin, *supra* note 7, at 824.
[74] *See id*. at 824-25.
[75] *See generally id*. at 825-31. (By "national pride" this author is referencing an emotional connection perceived by a consumer in relation to a product that is believed {in theory, by the general public} to have some sort of patriotic value on a domestic level.)
[76] *Id*. at 826

by other industries, such as tobacco companies who advertise in such a manner to appeal to the rugged, blue color-type American.[77]

These alternative mechanisms are working in a modern North American market because of FTAs, and more specifically, NAFTA. If taxes and tariffs were imposed on U.S. automotive manufacturers such as Ford or General Motors during the height of their market dominance in foreign markets, then they would have likely had a lesser market share. This is because when consumers who are taxed or who must pay a tariff become less likely to buy the foreign good as the cost goes up. This is a simple supply and demand principle. Conversely, if taxes or tariffs were placed on companies such as Honda, Toyota or Volkswagen in the U.S. market, then the U.S. buyer would become more inclined to buy the domestic automobile. Similarly, this is based on the simple economic principle of cost and demand. Furthermore, if taxes and tariffs were placed on foreign automotive manufactures entering the U.S. market, then they would be less likely to create and innovate new automobiles and features. The consumer who does not have the new technology then suffers the ultimate harm.

This problem is a key factor that the creators of NAFTA intended to avoid.[78] The "creativity and innovation"[79] showed by Japanese and other foreign manufacturers have been of a great benefit to the American buyer. This benefit is evident by the introduction of hybrid gas/electric vehicles and also by reductions in cost due to technological advancements that increase productivity in the production and assembly of the vehicles.[80]

3. *Strategic Manufacturing: Stick to Your Strengths & Abandon Your Weaknesses*

The principals of the effects of tariffs and taxes can be broadened to encompass all forms of manufacturing and production of goods.[81] What logically flows from the elimination of, or refraining from implementing taxes or tariffs on

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[77] *See* Jon D. Hanson & Douglas A Kysar, *Taking behaviorism Seriously: Some Evidence of Market Manipulation*, 112 HARV. L. REV. 1422, 1466-1502 (1999): *See also* Levin, *supra* note 7, at 827. (Levin references targeted advertising of the tobacco industry and its attempts to appeal to the U.S. consumer in an analogous way to emotional appeals by the automotive industry.)

[78] *See* NAFTA Preamble, *supra* note 2, at 1.

[79] *Id*.

[80] *See* J.D. Holden, *Making Taxis Green: Hybrid Cab Programs and the Debate Over Preemption in Environmental Regulation*, 37 B. C. ENVTL. AFF. L. REV. 1. 157, 157-163

[81] *See generally* Levin, *supra* note 7, at 831.

foreign goods is that countries can manufacture and produce only things that they are good at. Take the previous example of "Country X" and "Country Z." If the citizens of "Country X" are able to buy oil cheaply from "Country Z" because it is easy to drill for, for example, then they can be economically efficient by avoiding to search for and excavate oil from their domestic land. What if "Country X" does have oil off of the coast, but the deep water drilling would be too costly? Should a domestic company pay an exorbitant amount of money to drill for it to give the domestic market oil that can compete with the increased price of the imported oil? This would surely not happen in most reasonable countries. This is because having affordable fuel is vital to the survival of any country.

Our second example between "Country X" and "Country Z" illustrates the point that the imposition of taxes and tariffs on foreign products would result in forcing (or encouraging) a domestic party to become a market participant, even if the economic viability of the product is not sound. E.g., even if they can sell their goods domestically because it would be cheaper than the foreign goods, their cost is only cheaper on a subjective measurement within a domestic realm. If the company were to expand into other foreign markets, then his price may be substantially higher than other market participants, and the foreign company may not be able to compete. This example leads into the last of the four main principles of FTAs.

4. *Investment Opportunities: The Expansion of Capitalism on International Trade*

By allowing for free trade access across boarders, companies are able to bring their products into a new market, and expand their company onto a global scale. Also, private capital can also be injected into foreign markets – private investors are able to invest in foreign companies, and those foreign companies thus have the capital that they need to expand their business domestically within their borders. Examples of this have been the expansion of Japanese automotive companies into U.S. markets,[82] the expansion of Canadian Tire into U.S. markets to compete with companies like Wal-Mart and Target, and U.S. investors forwarding capital into Asian and European stock exchange. Inclusion of foreign investors is important to an economy because it allows for additional stimuli to the economy and can help avoid stagnation.[83]

Understanding these four main principles, an evaluation of NAFTA requires specific historical background.

C. *General Agreement on Tariffs and Trade (GATT)*

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[82] *See generally* Levin, *supra* note 7, at 823-25.

Chapter 1 of NAFTA begins with an "Establishment of the Free Trade area."[84] This area is later defined to include the U.S., Canada and Mexico.[85] In Chapter. 1, the first declaration is that all parties to the agreement who participate in the free trade area must follow rules and conditions "consistent with Article XXVI of the *General Agreement on Tariffs and Trade*."[86] Thus, GATT is a guiding building block from which NAFTA was drafted. Similarly to most FTAs, GATT calls for "increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements."[87] This statement echoes sentiments found throughout NAFTA,[88] and focuses on voluntary cooperation by its members. Article XXVI uses language in part 3.(*a*) that calls for "[a]dvantages" to "adjacent countries in order to facilitate frontier traffic."[89] This wording demonstrates subtle similarities to the four main principles of FTAs previously discussed.

Perhaps the most important part of Article XXVI of GATT, as it pertains to NAFTA, is the definition of a "free-trade area."[90] According to part 8.(*b*), a free-trade area "shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce […] are eliminated on substantially all the trade between the constituent territories in products originating in such territories."[91] This definition, amongst other things, sets up the perambulatory framework of NAFTA.[92]

D. *The North American Free Trade Agreement: Implementation in 1994*

The objectives of NAFTA, beyond that laid out in abstract in the Preamble,[93] are discussed in Chapter 1. Article 102. Focus is placed more closely on "national treatment,"[94] and "most-favored nation"[95] principles. The national treatment doctrine proclaims that any trade partners within NAFTA must be placed on a

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[83] *See* NAFTA Preamble, *supra* note 2, at 1.
[84] North American Free Trade Agreement [*hereinafter* NAFTA], Chapter 1, article. 101.
[85] *See id.*
[86] *Id*.
[87] General Agreement on Tariffs and Trade, art. XXVI 4.
[88] *See generally* NAFTA Preamble, *supra* note 2, at 1.
[89] General Agreement on Tariffs and Trade, art. XXVI 3.(*a*)
[90] General Agreement on Tariffs and Trade, art. XXVI 7.(*b*)
[91] General Agreement on Tariffs and Trade, art. XXVI 8.(*b*)
[92] *Cf*. NAFTA Preamble, *supra* note 2.
[93] *See id*.
[94] NAFTA Chapter. 1 article. 102.
[95] *Id*.

level playing field, and that they must give other nations equal preference to even their domestic goods.[96] The most-favored nation doctrine centers around the concept that if any member nation state has a trade preference or special dealing practices with another country – even a non-member – then they must offer the same treatment to all of the member nation states.[97]

PART II: ACHIEVEMENTS OF THE NORTH AMERICAN FREE TRADE AGREEMENT

Trade between the U.S. and Canada has been tremendous since the implementation of NAFTA. Canada has remained the U.S.'s greatest trade partner with trade amount in 2008 that was over $560 billion.[98] While in the same year, China's trade with the U.S. with a trade amount just higher than $379 billion.[99] These numbers reflect that the goal of encouraging trade between members, at least between the U.S. and Canada in this example, has been achieved. Positive economic goals are evidenced by a continuous Canadian economic growth. Since the implementation of NAFTA, the Canadian economy has grown at an average rate of 3.4% per year.[100] Furthermore, during that same time since the implementation of NAFTA, approximately 2.5 million Canadian jobs have been created, further stimulating the Canadian economy.[101] These statistics reflect a consistent growth in Canada and increases in work opportunities within the domestic marketplace. The U.S. and Canadian economies have sustained a continued demand "for each other's products, services, capital and ideas, creating jobs and wealth across many sectors and accelerating the forces of mutually beneficial integration."[102]

The Centre for Trade Policy and Law in Canada has "developed an extensive database detailing the extent of co-operation" between U.S. and Canadian governments in regards to trade.[103] The sectors of this co-operative database include "customs administration, energy, agriculture and agri-food, surface transportation, immigration, drug approval, medical devises, chemicals and petro-chemicals, environment, and financial services."[104] These are beneficial because increased co-operation in developing safe and technologically improved products,

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[96] *See id*.
[97] *See generally id*.
[98] CBC News, *supra* note 10, at 1.
[99] *Id*.
[100] *Id*.
[101] *Id*.
[102] Michael Hart, *A New Accommodation with the United States: The Trade and Economic Dimension*, 4.
[103] *Id*. at 46.
[104] *Id*.

or services, as the case may be, benefit all citizens involved. For example, sharing "information, experience, data and expertise" makes for safer products, safer development of pesticides used for food, safer and more efficient modes of transit, etc.[105]

As a result of co-operation between the U.S. and Canada, which has occurred because of NAFTA, human kind is reaping the benefits. These benefits reflect a Catholic prerogative to provide to mankind "deliver[ance] … from the snare of the fowler and from the deadly pestilence."[106] This psalm reflects that God will protect us. It also serves as a guide for mankind to do its best to be their "brother's keeper"[107] and do their best to protect each other whenever possible. Benefits that NAFTA has brought in these fields of trade have made better medicines,[108] safer food[109] and safer consumer products.[110]

Because "NAFTA affects bilateral trade flows among the United States, Canada, and Mexico"[111] the U.S. has seen many benefits to the national economic climate since the implementation of NAFTA. According to the Office of the United States Trade Representative, (USTR), investment in American businesses has seen a substantial boom.[112] The USTR explains, "[b]usiness investment in the United States has risen by 117 percent since 1993, compared to a 45% increase between 1979 and 1993."[113] What this data confirms is that since the inclusion of NAFTA to the U.S. foreign policy, trade between member nations has correlated with an accelerated economic growth on a domestic scale. Although it can be argued that much of this increase is due to a sustained rate of inflation of the U.S. dollar during that same time,[114] as a whole, both intra-continental and domestic investment have experienced an increase that eclipsed the inflation rate.[115]

Further evidence that NAFTA has benefited the U.S. domestic economy is illustrated by the positive impact on the total number of people that make up the U.S. workforce. The U.S. domestic employment work force has risen from 110.8 million people in 1993[116] to 137.6 million people in 2007.[117] This is an increase on

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[105] *See id.*

[106] Psalm 91:1-3

[107] Genesis 4:9

[108] *See generally* Hart, *supra* note 104, at 78

[109] *See generally id*.

[110] *See generally id*.

[111] Mary E. Burfisher, Sherman Robinson and Karen Thierfelder, The Impact of NAFTA on the United States, 15 *Journal of Economic Perspectives*, 1 (2001).

[112] Office of the United States Trade Representative, *NAFTA Facts*, at 1. Available at, http://www.ustr.gov/sites/default/files/uploads/factsheets/2008/asset_upload_file71_14540.pdf .

[113] *Id*.

[114] *See* http://www.tradingeconomics.com/united-states/inflation-cpi. for inflation rates between January 1979 and April 2013. (Last visited April 15, 2013).

[115] *See* Office of the United States Trade Representative, *supra* note 114, at 1.

[116] *Id*.

[117] *Id*.

the U.S. workforce of 24 percent.[118] Between 1993 and 2007 the average national unemployment rate in the U.S. was 5.1 percent.[119] This can be compared with a 7.1 percent average rate between 1980 and 1993, prior to NAFTA.[120] The increase in the total number of persons who are employed in the U.S. coupled with the 28.16 percent decrease in the average national unemployment rate[121] illustrates a consistent level of economic security to the workforce in the U.S. This economic growth has provided more people in the U.S. with an opportunity to make a living for themselves and their families. Also during the period of 1993-2007, "business sector real hourly compensation rose by 1.5 percent each year between 1993 and 2007, for a total of 23.6 percent" average increase in the hourly wage to the American worker.[122] These economic benefits have not been limited to the U.S. and Canada. The people in Mexico have experienced wage increases since the implementation of NAFTA.[123]

Prior to the implementation of NAFTA, the value of the Mexican peso was adversely affected by an economy, which experienced an account deficit "which ballooned from $6 billion in 1989 to $15 billion in 1991 and to more than $20 billion in 1992 and 1993."[124] The Mexican workforce has experienced wages that "grew steadily after the 1994 peso crisis, reached pre-crisis levels in 1997; and have increased each year since."[125] What this data confirms is that NAFTA, and the benefits of free trade that resulted from it, helped to the Mexican economy recover from the "financial meltdown"[126] that afflicted the economic structure and the Mexican workforce. The effect of increased wages in Mexico has on the people is an improvement to the quality of life that is reflected by the goals in the framework of NAFTA.[127]

The intent of the framers of NAFTA envisioned the preservation of and improvement to the environmental conditions and pollution output by member nations.[128] Since 1994, the Canadian and U.S. governments have partnered to

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[118] *Id*.
[119] *Id*.
[120] *Id*.
[121] *Id*.
[122] *Id*.
[123] *Cf*. Eduardo Zepeda, Timothy A Wise, and Kevin P. Gallagher, *Rethinking Trade Policy for Development: Lessons From Mexico Under NAFTA*, CARNEGIE ENDOWMENT FOR INT'L PEACE 5 (2009); *See also* World Bank, *World Development Indicators*, (2008). (These statistics show that since the implementation of NAFTA, although there has been some level of economic growth in Mexico, the growth rate is substantially less than the growth rate between 1960 and 1979.)
[124] Joseph A. Whitt, Jr. *The Mexican Peso Crisis*, Federal Reserve Bank of Atlanta, *Economic Review*, 1. Available at, http://www.frbatlanta.org/filelegacydocs/j_whi811.pdf.
[125] *See* Office of the United States Trade Representative, *supra* note 113, at 2; *but see*, *e.g.* ZEPEDA, ET. ALL, *supra* note 124, at 5.
[126] Whitt, *supra* note 126, at 4.
[127] *See generally* NAFTA Preamble, *supra* note 2.
[128] *Id*.

create "environmental infrastructure projects to provide a clean and healthy environment for residents along the U.S.-Mexico border."[129] As of 2008, these environmental infrastructure projects have financed nearly $1 billion to improve environmental concerns along the U.S.-Mexican border.[130]

Financing of the environmental infrastructure projects have attempted to improve environmental conditions among member nations. It also appears to be setting an example for non-member nations, insofar as the U.S.-Canadian efforts have provided a model for non-member nations to follow while engaging in international trade. The Mexican government has also taken measures to improve their environmental impact by making "substantial new investments in environmental protection, increasing the federal budget by the environmental sector 81% between 2003 and 2008."[131]

PART III: SHORTCOMINGS OF THE NORTH AMERICAN FREE TRADE AGREEMENT

Despite the many achievements of NAFTA, many goals have failed to be achieved. Much of the focus of implementation of NAFTA was focused on improving job prospects in North America[132] and improving the economic structure of member nations.[133] Although many economic and humanitarian benefits have been achieved because of NAFTA, as mentioned in Part II of this note, there are many shortcomings of its goals.

A. Trends in the U.S. and Canadian Workforce Have Failed to Mimic the Economic Success of the Top Earners

One shortcoming of NAFTA is evidenced by trends in Canadian unemployment rates. During the first 15 years after NAFTA's implementation, Canadian unemployment rates have been about the same as the 15-year period before the agreement commenced.[134] This rate stagnation occurred in spite of an average annual economic growth rate in Canada of 3.4% during that same 15-year period.[135] On its face, this statistical data does not make sense. It does not seem possible that a steady and consistent national economic growth can occur while unemployment rates have stayed the same. The reasoning that makes sense of this

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[129] Office of the United States Trade Representative, *supra* note 114, at 2.
[130] *Id*.
[131] Office of the United States Trade Representative, *supra* note 114, at 2.
[132] *See generally* NAFTA Preamble, *supra* note 2.
[133] *Id*.
[134] Robert E. Scott, Jeff Faux & Carlos Santos, The Economic Policy Institute, *NAFTA: Still Not Working for North America's Workers*.
[135] CBC News, *supra* note 10, at 4.

data is that only the top 1% of the Canadian income scale has seen any significant growth since implementation of NAFTA.[136] Although modern conservative economic theories suggest that trickle down economics is beneficial for the entire economy of a nation,[137] it has not seemed to have the same success in Canada since the implementation of NAFTA as it had in the U.S. during the 1980s.[138] Furthermore, although approximately 2.5 million Canadian jobs have been created since NAFTA's implementation,[139] the stagnation of unemployment over a 30-year period[140] suggests that an equal – or at least a substantially similar – number of jobs have been lost in Canada.[141]

The U.S. has also faced economic problems as a result of NAFTA. The U.S. trade deficit with Mexico and Canada has almost quadrupled since the implementation of NAFTA.[142] This has caused the loss of 750,000 jobs.[143] This loss of jobs has caused significant harm to the U.S. economic structure by displacing the 750,000 workers from their jobs.[144] Furthermore, data that reflects an increase in the U.S. workforce is misleading. Although the U.S. domestic workforce has increased by 24 percent between 1993 and 2007,[145] inflation adjusted wages reflect a lower quality of living in the U.S. during that same time.[146] With an average annual inflation rate of just over 2.0% each year since 1993,[147] U.S. workers who are paid at the Federal minimum wage have failed to keep up with the reduction in value of the U.S. dollar as there has only been one pay rate increase since 1993.[148] This reflects greater suffering by the poorest population of the U.S. workforce.

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[136] *See generally* SCOTT, ET ALL, *supra* note 136.

[137] Murdoch R. Martyn, *NAFTA – Limited in Nature?*, NORTH AMERICAN FREE TRADE AGREEMENT: (NAFTA OVERVIEW), Cooley School of Law, (Summer 2012 Program for Toronto, Canada), (2012). Note: Martyn's is a professor of law for The Thomas M. Cooley School of Law for the school's foreign study program. This source makes reference to U.S. Conservative Lou Dobbs who focuses on the fiscal benefits of free trade and profits from outsourcing.

[138] *See generally* SCOTT, ET ALL, *supra* note 136.

[139] CBC News, *supra* note 10, at 1.

[140] The "30-year period" referenced is from 1979-2009. This period is specifically referenced to have a substantial period of time both prior to, and after the agreement commenced.

[141] CBS News, *supra* note 10, at 1.

[142] *Id*.

[143] *Id*.

[144] *Id*.

[145] *See* Office of the United States Trade Representative, *supra* note 114, at 1.

[146] *See* Inflation Rates, *supra* note 116.

[147] *See id*.

[148] U.S. Department of Labor Wage and Hours Division, *Changes in Basic Minimum Wages In Non-Farm Employment Under State Law: Selected Years 1968 To 2013*. Available at, http://www.dol.gov/whd/state/stateMinWageHis.htm.

Many jobs that have been lost are in "Rust Belt" American manufacturing.[149] American liberal, and President of the Teamsters union, James P. Hoffa, suggests that as a result of outsourcing of American jobs to Mexico and non-member nations, "particularly China, has accelerated job losses in the United States[.]"[150]

U.S. jobs, other than in manufacturing have been outsourced to Mexico as a result of NAFTA. This is rooted in a corporate profit seeking nature, in which companies are seeking cheaper labor. The Hershey Chocolate Company has "pack[ed] up and move[d] to Mexico."[151] As NAFTA has sought to encourage investment in developing countries,[152] much of its intentions have been met by a negative job-killing backlash in the U.S.[153] NAFTA framers would argue that bringing the jobs to a developing country gives job opportunities to poorer people, and give an opportunity for consumer benefits in the form of cheaper products.[154] In theory, this is true. NAFTA truly does seek to bring human rights development, [155] and cheaper products to consumers in member-nations. [156] However, some corporations seem to have exploited the poor in the developing countries for greater profits. The goals of NAFTA aim to improve labor conditions and eventually raise the cost of doing business in Mexico and in other developing countries.[157] Once the cost of doing business rises, market equilibrium in terms of cost, would be reached. Thus, costs of business would be equal in all member countries. Theoretically, this would "make companies think twice about moving" business operations out of the U.S.[158]

B. Mexican Wages Have Failed to Substantially Improve

The goal of reaching market equilibrium has not occurred in many circumstances because costs of doing business in Mexico have not substantially improved. Because the average hourly pay rate for manufacturing labor in Mexico is 13% of what the United States' average hourly wage is,[159] companies have been

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[149] Elisabeth Malkin, *Re-examining Nafta in Hopes of Curing U.S. Manufacturing*, The New York Times. *Available at*, http://www.nytimes.com/2008/04/22/business/worldbusiness/22nafta.html?_r=1&pag…

[150] *Id*. (Note, Hoffa suggests that outsourcing to China that has occurred in recent years has been a greater problem to the American manufacturing job market than NAFTA. However, this author does not aim to include China in the analysis of the effects of the agreement. This is because the focus of this note is on the intra-continental paradigm within North America without the inclusion of non-member nations in the analysis.)

[151] *Id*.

[152] *See* NAFTA Preamble.

[153] *See* Malkin, *supra* note 151, at 1.

[154] *See* NAFTA Preamble, *supra* note 2.

[155] *Id*.

[156] *Id*.

[157] Malkin, *supra* note 151, at 1.

[158] *Id*.

[159] *Id*.

getting labor at a substantially discounted rate by outsourcing jobs to Mexico, or even to non-member nations like China.[160] Although, if the goals of NAFTA where achieved, the costs of those companies products would go down to the ultimate consumer. This is not the case. Companies like Hershey Chocolate have moved operations to Mexico,[161] and have you ever seen the price of a chocolate bar go down? The stabilized, or still often increasing, costs to consumers is providing evidence that the success of Regan's trickle down economics has not provided the same success on an intra-continental scale as NAFTA has aimed.

C. Mexico Has Not Reached Its Goals To Improve Environmental Concerns

As discussed in Part II, Mexico has been plagued by environmental concerns have failed to be remedied since the implementation of NAFTA. "With a total estimated cost of $2.89 billion and [an allocation of] $33.5 million in assistance and $21.6 million in grants"[162] being funneled into the environmental infrastructure projects to benefit Mexico, little has been accomplished to improve the persistent presence of environmental issues.[163]

Two glaring environmental issues face Mexico as a developing country in a FTA with two developed countries. The first environmental concern facing Mexico is that "the rise in the over application of nitrogen, phosphorus, and other agrochemical inputs"[164] has adversely impacted the safety of food being used domestically in Mexico, and being exported to the U.S. and Canada.[165] This is a major concern because "Nitrogen runoff is the largest pollution source in Mexico, the United States, and Canada."[166] This results in algae blooms and other natural phenomena that affect the ecosystems in Mexican waterways.[167] This has caused destruction to natural balances in the waterway ecosystems in "rivers, lakes, the Sea of Cortez, and the Gulf of Mexico."[168]

The second major environmental concern that is persistently facing Mexico is "depletion of groundwater due to increased crop irrigation[.]"[169] The water depletion occurring in Mexico can in part be attributable to NAFTA's success in promoting food exportation on a global scale.[170] "Since enactment of NAFTA,

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[160] *See generally, e.g. id.*
[161] *Id*.
[162] Office of the United States Trade Representative, *supra* note 114, at 2.
[163] JOHN J. AUDLEY, ET. ALL, *NAFTA's Promise and Reality: Lessons from Mexico for the Hemisphere*, Carnegie Endowment for International Peace, 62 (2004). Available at, http://carnegieendowment.org/files/nafta1.pdf.
[164] *Id*.
[165] *Id*.
[166] *Id*.
[167] *Id*.
[168] *Id*.
[169] *Id*.
[170] *Id*.

Mexican exports of all fresh vegetables have increased by 80 percent, and exports of fresh fruit have increased by 90 percent."[171] The increased amounts of exportation have required significant increases in irrigation and water in Mexico is becoming one of the most water stressed countries in the world.[172] This is therefore an unsustainable way to produce fruits and vegetables for exportation because "water stress"[173] will render farming fruits and vegetables nearly impossible.

It appears that the concerns of pollution by chemicals on food products and the increased demand for water for many of the same food products is attributable to the desire by the businesses that are engaging in these practices to put profits as their main priority. This is a similar manifestation of the holding in *Dodge*.[174]

This attitude by the companies who are not taking proper precautions to ensure long-term sustainability of their agricultural practices[175] suggest that greed is the sole motivator behind their action. When the companies that grow and process the exported fruits and vegetables put profits and production before the health and safety of the local area, the price of a devastated ecosystem, or an agricultural system that will collapse on itself is not a relevant concern to the company because they can simply relocate their business to another member nation.[176] This leads into the next failure of NAFTA.

D. The Lack of Corporate Ties to Any Nation: The Conflict Between Short Term Profit and Long Term Stability.

> In a global economy where labor, profits, and environmental effects reach across national borders, what does it mean for a corporation to present the impression of national citizenship?[177]

Corporations exist for the good of their investors.[178] Furthermore, corporations are "strictly a private entity whose exclusive responsibility [is] to make a profit for the benefit of its shareholders.[179] The Michigan Supreme Court

[171] *Id*. at 63.
[172] *Id*.
[173] *Id*.
[174] *See* Dodge, 170 N.W., *supra* note 54.
[175] AUDLEY, ET. ALL, *supra* note 165, at 63.
[176] Recall generally the aims of the framers of NAFTA.
[177] Levin, *supra* note 7, at 825.
[178] *See, e.g.* ADOLF A. BERLE & GARDINER C MEANS, THE MODERN CORPORATION AND PRIVATE; PROPERTY 293 (Transaction Publishers 1991) (1932); *see also* Levin, *supra* note 7, at 832. (Levin makes a general reference to the preceding citation.)
[179] Levin, *supra* note 7, at 832.

ruled in Dodge v. Ford[180] held that maximization of profits and making the largest divided payment to its shareholders is the corporation's most important duty.[181]

At the same time, corporations are vital to the people of their country, because the manufacture goods, and also create jobs.[182] This typically means that benefits the corporation, e.g. reduced costs, increased productivity, etc., also benefits the workers.[183] Therefore in many circumstances, the corporation who is manufacturing goods and employing a workforce "becomes a quasi-governmental entity or at least a crucial, unifying social force."[184] This may very well be too big of a responsibility for corporations because their actions are targeted to benefit only a small group of people – the shareholders.[185]

Once implemented, NAFTA opened the doors to bring in foreign investment into U.S. and Canadian corporations.[186] At the same time, NAFTA opened the doors for companies to move their production to a country that will maximize profits for their shareholders.[187] What results is that American and Canadian corporations have an overwhelming incentive to move to a country like Mexico, where the average hourly wage is 13% of what it would be in the U.S.[188] The result of having a duty to maximize profits and dividend payments to shareholders,[189] coupled with an opportunity to reduce labor costs by 87% is that international outsourcing becomes an inevitable way to do business.[190]

These short-term profits are often offset by the long-term fallout of having a depressed economy with no wages coming in. This is because "the operation of a factory becomes an ostensibly immutable background condition,"[191] to perpetually stimulate the economy and create future purchasers of the corporation's own products. Not only is maintaining production and payment of high wages paramount to "stability to an entire community's way of life[,]"[192] it is also important to the long-term sustainability of ensuring that the corporation will have purchasers for their own products.

Outsourcing and its effects on an economy are illustrated by the following example: Companies "X," "Y," and "Z" are producers in "Country A," and they all decide to move their production to "Country B" to take advantage of wages

[180] 170 N.W., *supra* note 54, at 685.
[181] *See generally id*.
[182] Levin, *supra* note 7, at 833.
[183] *See generally id*.
[184] *Id*. at 835.
[185] Dodge, 170 N.W., *supra* note 54, at 685.
[186] *See* NAFTA Preamble, *supra* note 2.
[187] *See generally* Malkin, *supra* note 151.
[188] *Id*. at 1.
[189] *See generally* Dodge, 170 N.W, *supra* note 54.
[190] *See* Malkin, *supra* note 151, at 1.
[191] Levin, *supra* note 7, at 874.
[192] *Id*. at 875.

that are substantially lower than "Country A." If the displaced workers from Companies "X," "Y," and "Z" are all displaced from their work, then the former employees of all of the companies will stop purchasing products from all three companies because they will not have employment and thus not have money to buy the products. Furthermore, the newly hired employees in "Country B" will not be able to buy the products from any of the three companies because they are not paid enough as the employees who were working in "Country A" prior to outsourcing. The end result is that in order to maximize profits for the company and dividend payments to the shareholders, Companies "X," "Y," and "Z" all sacrificed future profits by eliminating consumers.

This simple illustration only shows three corporations in a vacuum. The real world implications of just three companies outsourcing jobs will not typically have its effect felt much beyond the town or community in which the jobs where outsourced from. However, if the previous example is multiplied by hundreds of companies over many years, then it is entirely possible to have the illustrated effect become a reality.

PART IV

NECESSARY MEASURES OF INTERCONTINENTAL ACTION

By showcasing the problems that have manifested since implementation of NAFTA, this article argues that most of the problems originate from corporate and investor greed. There is a problem when a national economy, like Canada, is capable of having an average annual growth of 3.4% and only the top earners earn almost all of that economic growth.[193] The answer is not to tax. That is clearly counter-intuitive to capitalistic growth. The answer is not to impose tariffs on goods made by corporations who outsource jobs to Mexico.

The concept of "Soft Law"[194] states that intergovernmental entities that may be having political conflicts over concepts such as environmental standards, or human rights issues should have a "flexible process … to develop and test new legal norms[.]"[195] The point of soft-law is to avoid conflict by coddling reluctant members and refraining from making the laws "binding" on them.[196] NAFTA has taken on a similar type of operation. Corporations who are given the wonderful benefits of free trade and the ability to increase profits have totally abused their power due to their lack of national identity. Corporations are able to avoid unfavorable laws and simply move wherever they can make the easiest money.

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[193] CBS News, *supra* note 10, at 4.
[194] DAVID HUNTER, JAMES SALZMAN, AND DURWOOD ZAELKE, INTERNATIONAL ENVIRONMENTAL LAW AND POLICY, 344 (4th ed. 2011).
[195] *Id*. at 344-45.
[196] *Id*. at 344.

The answer is to fight to ensure that "market equilibrium"[197] becomes eventually reached by wages in developing countries – e.g. Mexico – rise to reflect the influx of jobs. The use of the soft-law-type approach of coddling corporations to stay and/or offering huge tax incentives to keep jobs domestically is not the answer. The answer is to remove the duty to simply maximize profits and pay out massive dividends.[198]

Corporations and Inter-continental governments do not to be at odds, as they seem to always be in North American countries. Ensuring that a vision by corporations and governments is centered on long-term economic growth for all members of the workforce should be paramount. However, the ruling in *Dodge*, (94 years ago,) suggests that this conflict is not going away because it is still the *status quo* today.[199]

Once corporate citizenship and national identity is accepted, and corporations view their duty to their country and the sustainability of the domestic market, then many of the shortcomings that NAFTA has will disappear. Further, corporations outsource jobs to developing countries and compensate the workers there with a fair wage, and then the "market equilibrium"[200] that Malkin discusses may be obtainable. Additionally, if the wages in Mexico are paid in such a manner, then the consumer market domestically in Mexico will increase and further stimulate corporate investment. It is this author's contention that many of the environmental concerns will be cured by the corporation's commitment to sustainable economic practices. Eliminating the desire to maximize short-term profits now will allow corporations to realize with clarity that further stressing water is bad for business in the long run. This is because further stressing water supplies will lead to an inability to produce any agricultural goods when the supply is completely depleted.

There are clearly many benefits that NAFTA has made since implementation in 1994. What must be addressed are the shortcomings addressed above. If government and corporations truly worked together, then the entire population of North America – and beyond – would benefit from it.

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[197] Malkin, *supra* note 151, at 1.
[198] *See generally* BERLE, *supra* note 180.
[199] *See generally* Dodge, 170 S.W. *supra* note 54.
[200] Malkin, *supra* note 151, at 1.