

THE CENTRAL AMERICAN FREE TRADE AGREEMENT AND THE DECLINE OF U.S. MANUFACTURING

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I. INTRODUCTION

Imagine being a middle-class American working in a factory in a Midwestern community earning an average salary of about \$50,000 per year, including full health benefits and a retirement pension. You have a high school diploma, but no further education. You also have a spouse and four children. Two of your children are attending college universities, but you earn enough in a year to have a comfortable standard of living. One day, your floor manager holds a meeting explaining to every employee in your division that management has decided to lay off all of its factory workers because it is moving its manufacturing operations offshore. Management explains that the layoffs are necessary for your employer to compete with companies offering comparable products at a much lower price. In a matter of minutes, you see all of your hard-work and dreams fall apart due to forces beyond your control. You no longer have a job, health insurance, or a retirement pension. You have no other experience or higher education; your career choices are limited. Ultimately, you resort to taking a lower-paying service sector job.

This fictitious account is similar to stories originating out of Canton, Ohio.¹ For many years, Canton was a booming, industrial city and home to a number of companies, such as Maytag.² In the past few years, however, Canton's economy has been hit hard with factory closings, bankruptcies, and layoffs; it is no longer considered an industrial city.³ Many displaced Canton factory workers are unemployed, while others have resorted to lower-paying service jobs, such as hospital aides.⁴

There is no definitive reason for the factory closings of domestic manufacturers in Canton, Ohio, or other cities across the country. A number of the unemployed factory workers in Canton, however, blame the city's industrial decline on the increase in imports from low-wage countries, as well as the enactment of free trade agreements.⁵

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1. Steven Greenhouse, *As Factory Jobs Disappear, Workers Have Few Options*, N.Y. TIMES, Sept. 13, 2003, available at <http://www.commondreams.org/headlines03/0913-09.htm>.

2. *See id.*

3. *Id.*

4. *Id.*

5. *Id.*

A number of other Americans fear that a newly enacted free trade agreement, the Central American Free Trade Agreement (CAFTA), will cause more cities across the United States to end up like Canton.⁶ Over the past few years, CAFTA has been a controversial topic.⁷ Although there are many proponents of the agreement that claim CAFTA will “benefit the American family,”⁸ there are also many critics prophesizing that CAFTA will negatively impact U.S. manufacturing.⁹ In particular, “CAFTA critics are worried that the agreement would promote offshoring and hurt small U.S. manufacturers.”¹⁰

This Note provides an in-depth discussion focusing on the potential negative effects CAFTA will have on U.S. manufacturing and the U.S. economy. First, the Note will discuss the historical basis for the theory of free trade and the enactment of CAFTA. Second, the Note will analyze the potentially negative consequences that CAFTA could have on U.S. manufacturers and, in turn, on the U.S. economy. Third, the Note will set forth the positive consequences of CAFTA advocated by its proponents. Finally, the Note will discuss potential solutions to protect against CAFTA’s adverse consequences.

II. THE THEORY OF FREE TRADE AND THE ESTABLISHMENT OF THE CENTRAL AMERICAN FREE TRADE AGREEMENT

The theory of free trade stems from the economic doctrine of comparative advantage, in which each country or region concentrates on what it can produce most efficiently at the cheapest cost in exchange for products from another country that it is less able to produce at a low cost.¹¹ The exchange of goods between countries in a free trade agreement is “carried on without such restrictions as import duties, export bounties, domestic production subsidies, trade quotas, or import license.”¹² Although in theory free trade and the theory of comparative advantage result in savings to consumers and an overall increase

6. See generally Yvonne Teems, *Groups Debate Impact of CAFTA Trade Bill*, DAYTON BUS. J., July 8, 2005, available at http://www.policymattersohio.org/media/DBJ_Groups_debate_impact_of_CAFTA_2005_0708.htm.

7. Net Aid, *U.S. Approves Controversial CAFTA*, Aug. 2, 2005, <http://www.netaid.org/press/news/page.jsp?itemID=27173936>. The United States House of Representatives passed CAFTA with the narrowest margin ever for the adoption of a free trade agreement. *Id.*

8. OFFICE OF THE U.S. TRADE REPRESENTATIVE, *CAFTA BENEFITS THE AMERICAN FAMILY BY EXPANDING EXPORTS AND LOWERING THE TRADE DEFICIT, CAFTA CREATES JOBS* (May 2005), http://www.ustr.gov/assets/Trade_Agreements/Bilateral/CAFTA/Briefing_Book/asset_upload_file408_7749.pdf [hereinafter *CAFTA BENEFITS THE AMERICAN FAMILY*].

9. See *infra* Part III.

10. Marylou Doehrman, *National Council Lobbies for Small, Family Owned Manufacturers*, COLO. SPRINGS BUS. J., June 3, 2005, available at http://findarticles.com/p/articles/mi_qn4190/is_20050603/ai_n14653603.

11. Answers.com, *Free Trade*, <http://www.answers.com/free+trade&r=67>.

12. *Id.*

in incomes,¹³ in practical reality, free trade may have the dangerous effect of increasing a company's incentive to move manufacturing operations offshore to low-wage countries.¹⁴ Ultimately, a decline in U.S. manufacturing could have a negative impact on the U.S. economy.¹⁵

The concept of free trade and comparative advantage has existed since the late 1700s, originating with English economists Adam Smith and David Ricardo.¹⁶ Adam Smith created the rationale for free trade and capitalism in *The Wealth of Nations*.¹⁷ Smith theorized:

It is the maxim of every prudent master of a family, never to attempt to make at home what it will cost him more to make than to buy. . . . If a foreign country can supply us with a commodity cheaper than we ourselves can make it, better buy it of them with some part of the produce of our own industry, employed in a way in which we have some advantage.¹⁸

Building upon the concept of free trade and capitalism that Smith created, David Ricardo expanded the idea of free trade in positing the comparative advantage theory: a theory founded upon the notion that international trade was indispensable.¹⁹ In developing this theory, Ricardo pondered “why a country that could most cheaply produce all tradable goods would trade with a higher cost country[.]”²⁰ His answer was that the opportunity cost of producing the good differed between countries.²¹ Ricardo illustrated that each country's output of total goods would increase if “each country specialized in the product

13. See generally THOMAS L. FRIEDMAN, *THE WORLD IS FLAT* 225-26 (2005).

14. See George Shuster, Co-Chairman, Am. Mfg. Trade Action Coal. Cent. Am. Free Trade Agreement—Ways and Means Comm. (Apr. 21, 2005) (testifying that free trade agreements grant “free access to the U.S. markets for producers that use pennies-an-hour wages, low labor standards, and low environmental standards to undercut U.S. domestic manufacturers”). Offshore manufacturing involves “[t]he relocation of business activity to a location in another country with lower costs.” WordWebOnline, *Offshoring*, <http://www.wordwebonline.com/en/OFFSHORING> (last visited Mar. 18, 2007).

15. See American Manufacturing Trade Action Coalition, *The Hidden Cost of Free Trade*, <http://www.amtacdc.org/policy/oped/thehiddencostoffreetrade.asp> (last visited Mar. 18, 2007) [hereinafter *The Hidden Cost of Free Trade*].

16. See The Library of Economics and Liberty, *Biography of Adam Smith*, <http://www.econlib.org/library/Enc/bios/Smith.html> (last visited Mar. 18, 2007) [hereinafter *Biography of Adam Smith*]. See also The Library of Economics and Liberty, *Biography of David Ricardo*, <http://www.econlib.org/library/Enc/bios/Ricardo.html> (last visited Mar. 18, 2007).

17. *Biography of Adam Smith*, *supra* note 16.

18. Alan S. Blinder, *Free Trade*, <http://www.econlib.org/library/Enc/FreeTrade.html> (last visited Mar. 18, 2007).

19. Jonathan Larson, *History of “Free Trade,”* (1993), <http://www.elegant-technology.com/TVAFretr.html>.

20. Paul Craig Roberts, *Statement for U.S.-China Commission Hearing*, (May 19, 2005), http://www.vdare.com/roberts/050520_hearing.htm.

21. *Id.*

in which it had a relative advantage.”²²

The theory of free trade has expanded since the concepts developed by Smith and Ricardo; countries began significantly exploiting the idea of free trade and the theory of comparative advantage in the nineteenth century.²³ Since the nineteenth century, numerous free trade agreements between countries have been executed and enforced.²⁴ In particular, the United States has extended the idea of free trade to encompass three types of agreements: bilateral agreements, regional agreements, and global agreements.²⁵ According to the Office of the U.S. Trade Representative, the United States has numerous bilateral free trade agreements in force including, among others, agreements with Morocco, Australia, Israel, Jordan, Panama, Singapore, Southern Africa, Malaysia, and Bahrain.²⁶ U.S. regional free trade agreements include the North American Free Trade Agreement (NAFTA), the Middle East Free Trade Area Initiative, the Enterprise for ASEAN Initiative, the Asia-Pacific Economic Cooperation, and the proposed Free Trade Area of the Americas Agreement (FTAA).²⁷ Finally, U.S. global agreements include the World Trade Organization (WTO).²⁸

Most recently, the United States passed CAFTA, a regional trade agreement.²⁹ Before becoming an official law, it scarcely passed through the House of Representatives by a vote of 217-215.³⁰ Initially, CAFTA was a free

22. *Id.*

23. See BBC News, *A Century of Free Trade*, Feb. 12, 2003, <http://news.bbc.co.uk/1/hi/business/533716.stm>.

24. See generally Congressional Budget Office, *The Pros and Cons of Pursuing Free-Trade Agreements*, July 31, 2003, <http://www.cbo.gov/showdoc.cfm?index=4458&sequence=0> (stating that since World War II, the idea of trade liberalization between a number of countries was actively pursued).

25. Office of the U.S. Trade Representative, USTR - Trade Agreements Home, http://www.ustr.gov/Trade_Agreements/Section_Index.html (last visited Mar. 18, 2007).

26. *Id.*

27. *Id.*

28. *Id.* The World Trade Organization (WTO) is a global organization comprised of 149 countries (as of Dec. 11, 2005) that have formed together to develop and implement “rules of trade” between countries. World Trade Organization, *What Is the WTO*, http://www.wto.org/english/thewto_e/whatis_e/whatis_e.htm (last visited Mar. 18, 2007). “The goal is to help producers of goods and services, exporters, and importers, conduct their business.” *Id.* The functions of the WTO include: (1) managing WTO trade agreements; (2) providing a forum for countries negotiating trades; (3) supervising trade disputes between countries; (4) monitoring trade policies enacted by participating nations; (5) providing assistance to developing countries; and (6) supplying cooperation with other trade organizations.

Id.

29. Office of the U.S. Trade Representative, *Dominican Republic to Join Central American Nations in Free Trade Agreements with United States*, July 23, 2004, http://www.ustr.gov/Document_Library/Press_Releases/2004/July/Dominican_Republic_to_Join_Central_American_Nations_in_Free_Trade_Agreement_with_United_States.html [hereinafter *Dominican Republic to Join Central American Nations*].

30. Stephen Koff, *LaTourette Attributes Flip-Flop on CAFTA to Tariff No One Pays*, PLAIN DEALER, Aug. 10, 2005, at A1 (noting that Ohio Representative Steve LaTourette’s decision to vote in favor of CAFTA was vital to its ratification). In July, a public opinion poll

trade agreement negotiated between the United States, Costa Rica, Guatemala, El Salvador, Honduras, and Nicaragua.³¹ The Dominican Republic joined these countries on August 5, 2004, and the agreement officially became known as the Dominican Republic-Central American Free Trade Agreement.³²

CAFTA can be summarized as follows. First, the agreement immediately eliminates more than eighty percent of tariffs on “industrial goods” traded between the countries.³³ Second, the agreement eliminates tariffs between farm and agricultural exports.³⁴ Third, CAFTA immediately eliminates quotas and tariffs on textiles and apparel if the countries “meet the agreement’s rule of origin,” and the agreement “will give duty-free benefits to some apparel made in Central America that contains certain fabrics from NAFTA partners Mexico and Canada.”³⁵ Fourth, “[t]he Central American countries will accord substantial market access across their entire services regime, offering new access in sectors such as telecommunications, express delivery, computer and related services, tourism, energy, transport, construction and engineering, financial services, insurance, audio/visual and entertainment, professional, environmental, and other sectors.”³⁶ Fifth, the agreement gives digital products and patents, trademarks, and trade secrets nondiscriminatory protection.³⁷ Sixth, the agreement sets forth a three-pronged worker rights strategy that guarantees “effective enforcement of domestic labor laws, establish[es] a cooperative program to improve labor laws and enforcement, and build[s] the capacity of Central American nations to monitor and enforce labor rights.”³⁸ Seventh, the agreement creates a legal agenda for investors.³⁹ Finally, the agreement institutes anticorruption procedures for government contractors.⁴⁰

Led by the robust support of President George W. Bush, the United States began its campaign to enact CAFTA in January 2002.⁴¹ During that time,

showed that fifty percent of Americans supported CAFTA and only thirty-nine percent opposed the passage of CAFTA. Edward Gresser, *The Progressive Case for CAFTA*, July 2005, http://www.ppionline.org/documents/CAFTA_0715.pdf.

31. See OFFICE OF THE U.S. TRADE REPRESENTATIVE, THE DOMINICAN REPUBLIC—CENTRAL AMERICA—UNITED STATES FREE TRADE AGREEMENT: SUMMARY OF THE AGREEMENT, http://www.ustr.gov/assets/Trade_Agreements/Bilateral/CAFTA/Briefing_Book/asset_upload_file128_7284.pdf (last visited Mar. 18, 2007).

32. *Dominican Republic to Join Central American Nations*, *supra* note 29. For purposes of this Note, the Dominican Republic-Central American Free Trade Agreement and the Central American Free Trade Agreement will both be referred to as CAFTA.

33. Office of the U.S. Trade Representative, *U.S. & Central American Countries Conclude Historic Free Trade Agreement*, Dec. 27, 2003, http://www.ustr.gov/Document_Library/Press_Releases/2003/December/US_Central_American_Countries_Conclude_Historic_Free_Trade_Agreement.html.

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. The White House: President George W. Bush, International Trade, <http://www.whitehouse.gov/infocus/internationaltrade> (last visited Mar. 18, 2007) [hereinafter

President Bush announced that the enactment of CAFTA was a priority in his administration and ordered his administration to “fast track”⁴² the agreement.⁴³ President Bush hoped to use CAFTA as a starting point to eventually negotiate the FTAA, free trade agreement between the United States and all of Latin America, excluding Cuba.⁴⁴

The majority of Republicans in the House of Representatives strongly supported the CAFTA bill,⁴⁵ urging that it would “benefit the American family.”⁴⁶ Furthermore, Republicans maintained that a free trade agreement with the six Central American countries was fully appropriate given that those Central American countries were already substantial purchasers of U.S. exports.⁴⁷

On the other hand, of a total of 220 House Democrats, only fifteen voted

International Trade].

42. Fast tracking occurs when the President and the U.S. Trade Representative negotiate an agreement and force it on Congress “for a straight up-or-down vote with no ability to amend the deal, offer advice, or fix problems.” Rep. Michael H. Michaud, *Laboring to Keep Our Jobs in Maine*, U.S. FED. NEWS, Sept. 1, 2005.

43. ASS'N OF CARIBBEAN STATES, PROCESS OF NEGOTIATIONS TO ESTABLISH THE FREE TRADE AGREEMENT BETWEEN CENTRAL AMERICA AND THE UNITED STATES OF AMERICA (CAFTA), http://www.acs-aec.org/Documents/Trade/Cafta/CAFTA_Seguimiento_En.pdf (last visited Mar. 18, 2007).

44. CTR. OF CONCERN/U.S. GENDER AND TRADE NETWORK, FACT SHEET #2: WHAT YOU NEED TO KNOW ABOUT THE U.S.-CENTRAL AMERICAN FREE TRADE AGREEMENT (CAFTA), http://www.coc.org/pdfs/coc/CAFTA_Facts.pdf (last visited Mar. 18, 2007). Essentially, the Bush administration views CAFTA as a requirement for its ultimate ten-year goal of creating an “industrial infrastructure” throughout the region. *Id.* FTAA negotiations initiated after NAFTA was enacted in 1994. Global Exchange, Free Trade Area of the Americas, <http://www.globalexchange.org/campaigns/ftaa> (last visited Mar. 18, 2007). The FTAA was expected to be enacted as of January 1, 2005; however, “strong social support” among the Latin American countries in support of “a better model of integration” halted its enactment. *Id.*

45. See Arnie Alpert, *Analysis of CAFTA Passage*, <http://www.afsc.org/trade-matters/stop-the-cafta-vote/CAFTA-analysis.htm> (last visited Mar. 18, 2007). Believing that CAFTA would ultimately benefit the United States in all realms of society, only twenty-seven Republicans voted “nay” on July 28, 2005. *Id.* Just prior to the vote, Republicans in favor of CAFTA had to put together “a last minute deal” to ensure a victory. *Id.* This included, among other things, extra spending money for highway repair. *Id.* “The *Washington Post* reported, ‘the last minute negotiations for Republican votes resembled wheeling and dealing on a car lot.’” *Id.* Three Republicans who specifically voiced their opposition to CAFTA, including Representatives Virgil Goode of Virginia and Walter Jones of North Carolina, experienced as much as a seventy percent decrease in federal funding for state highway projects. Darren Goode, *Three Anti-CAFTA Republicans Have Road Projects Slashed*, NAT'L J., Aug. 5, 2005, <http://www.globalexchange.org/campaigns/cafta/3496.html>. Neither representative will comment whether he believes there is a connection to their decreased funding for highway projects and their opposing vote to CAFTA. See *id.*

46. CAFTA BENEFITS THE AMERICAN FAMILY, *supra* note 8. On May 17, 2005, President Bush stated that CAFTA will “increase prosperity for our small businesses and farmers and manufacturers, and create jobs for American workers. By enforcing trade laws and agreements, we will ensure a level playing field for American workers. American workers can compete with anybody, any time, anywhere when the rules are fair.” *Id.*

47. See Gresser, *supra* note 30 (noting that CAFTA countries purchased \$15 million worth of U.S. goods in 2004).

in favor of passing CAFTA.⁴⁸ Democrats opposing CAFTA thought it was “wrong to strike a free-trade pact with poor countries lacking strong protection for workers’ rights.”⁴⁹ Despite this opposition, the Senate passed the free trade agreement by a vote of 54-45.⁵⁰ On August 2, 2005, President Bush officially enacted CAFTA.⁵¹

The Republicans, led by President Bush, supported CAFTA based upon their beliefs that it would provide domestic benefits.⁵² The Democrats and numerous trade experts, on the other hand, opposed the agreement, citing concerns that the newly established law would result in a decline of manufacturing in the United States and, in turn, a loss of American jobs.⁵³

III. THE HIDDEN PROBLEM OF CAFTA: THE FUTURE DECLINE OF U.S. MANUFACTURING

CAFTA’s potential effects include a decline in U.S. manufacturing and, thus, less domestic employment opportunities in the manufacturing sector.⁵⁴ Specifically, a number of trade experts agree that the decrease in U.S. manufacturing may result from an increase in low-wage manufacturing opportunities available in Central America and the Dominican Republic,⁵⁵ unfair competition resulting from China’s exploitation of CAFTA,⁵⁶ inadequate protection for workers’ rights,⁵⁷ and exploitation of environmental laws in the CAFTA region.⁵⁸

48. Paul Blustein & Mike Allen, *Trade Pact Approved by House: GOP Struggles to Eke out 217-215 Victory on CAFTA*, WASH. POST, July 28, 2005, at A01.

49. *Id.*

50. U.S. Department of State, *President, Administration Officials Hail Senate Passage of CAFTA*, U.S. INFO, July 1, 2005, <http://usinfo.state.gov/wh/Archive/2005/Jul/01-103533.html>.

51. The White House: President George W. Bush, *President Signs CAFTA-DR*, Aug. 2, 2005, <http://www.whitehouse.gov/news/releases/2005/08/print/20050802-2.html>.

52. See generally CAFTA BENEFITS THE AMERICAN FAMILY, *supra* note 8.

53. See Joel Wendland, *CAFTA Will Cut Jobs, Wages, and Lives, Says Experts*, POL. AFF., July 26, 2005, <http://www.politicalaffairs.net/article/view/1557/1/110>.

54. See *The Hidden Cost of Free Trade*, *supra* note 15.

55. See Judy Ancel, *The High Cost to Kansas of “Free Trade”: Trade-Related Job Loss in Kansas and the Third Congressional District*, May 9, 2005, at 8, available at <http://www.umkc.edu/labor-ed/documents/OffshoringtheKansasEconomy.pdf> (finding that CAFTA and other new free trade agreements will provide incentives for manufacturers in Kansas to move production offshore).

56. See AM. MFG TRADE ACTION COAL., AMTAC OPPOSES CAFTA—DEAL HARMS DOMESTIC MANUFACTURING (2003), http://www.citizenstrade.org/pdf/amtac_cafta.pdf [hereinafter AMTAC OPPOSES CAFTA] (noting CAFTA provides a loophole for other countries, including China, to take advantage of importing duty free into the United States).

57. Human Rights Watch, *CAFTA’s Weak Labor Rights Protections: Why the Present Accord Should Be Opposed*, Mar. 2004, <http://hrw.org/english/docs/2004/03/09/usint8099.htm> [hereinafter *CAFTA’s Weak Labor Rights Protections*] (observing that CAFTA does not require Central American countries to comply with international labor law standards established by the United Nations).

58. See Sierra Club, *Central American Environmental Groups: CAFTA’s Environmental*

A. Low-Wage Manufacturing

Currently, Americans buy \$1.25 million per minute more manufactured goods than the United States produces.⁵⁹ Accordingly, the United States has recently lost three million manufacturing jobs to offshore production.⁶⁰ In other words, one out of every six U.S. manufacturing jobs has disappeared into a country offering lower wages.⁶¹ The following section sets forth the reasons why opponents of CAFTA fear that the agreement will result in a loss of U.S. manufacturing jobs due to competition from low-wage manufacturers and consequently, adversely affect the U.S. economy.

1. Previous Free Trade Agreements and the Loss of Manufacturing

It comes as no surprise that CAFTA may potentially result in a decline of U.S. manufacturing jobs since previous free trade agreements have resulted in a similar decline.⁶² Specifically, NAFTA, an agreement between the United States, Mexico, and Canada,⁶³ has resulted in a loss of approximately 1.5 million U.S. manufacturing jobs⁶⁴ since its enactment on January 1, 1994.⁶⁵ This decrease in employment is arguably due to NAFTA providing an incentive for U.S. manufactures to move their operations offshore and ship the products tariff-free into the United States.⁶⁶

Provisions *Fall* *Far* *Short,* *May* *11,* *2005,*
http://www.sierraclub.org/trade/cafta/central_american_enviro_groups.doc [hereinafter
CAFTA's Environmental Provisions Fall Far Short] (stating that CAFTA does not require the
Central American countries to comply with international environmental standards).

59. *The Hidden Cost of Free Trade*, *supra* note 15.

60. Patrick J. Buchanan, *Defeat NAFTA*, WASH. TIMES, July 27, 2005, available at <http://www.washtimes.com/op-ed/20050726-085615-4529r.htm>.

61. *Id.*

62. *See id.* (arguing that "today's trade agreements are about reshaping the world to conform to the demands of transnational corporations that have shed their national identities and loyalties and want to shed their U.S. workers").

63. Jeff Faux, *NAFTA at Seven: Its Impact on Workers in All Three Nations*, Apr. 2001, http://www.epinet.org/content.cfm/briefingpapers_nafta01_index.

64. United Steelworkers of America, *Challenging Unfair Trade: NAFTA's Decade of Job Losses*, <http://www.usw.org/usw/program/content/839.php> (last visited Mar. 18, 2007).

65. *Mexico & NAFTA Report*, LATIN AMER. REG. REPORT, Dec. 2, 1993. NAFTA was initially proposed by President George H.W. Bush on June 10, 1990, when he and Carlos Salinas, the President of Mexico, signed a declaration promoting the idea of NAFTA. *Id.* On Feb. 5, 1991, Salinas and Bush met with Brian Mulroney from Canada and ultimately announced they were in the process of planning a free trade agreement between the three nations. *Id.* In May of that same year, Congress gave approval to "fast track" NAFTA so that it would be passed within two years. *Id.* After President Clinton took office, on November 3, 1993, President Clinton signed NAFTA and sent it to Congress for its ratification. *Id.* The House of Representatives voted in favor of NAFTA 234-200. *Id.* Thus, NAFTA became law on January 1, 1994. *Id.*

66. *See* AFL-CIO, *Exporting America: Policy Solutions to Shipping Jobs Overseas*, http://www.aflcio.org/issues/jobseconomy/exportingamerica/outourcing_solutions.cfm (last visited Mar. 18, 2007) (stating "[t]rade deals such as [NAFTA] create new rights, but no

Like proponents of CAFTA, supporters of NAFTA claimed the agreement with Mexico and Canada would increase exports and thereby create new job opportunities and raise Americans' household incomes.⁶⁷ Economists predicted that the elimination of barriers through NAFTA would allow each country to specialize in what it could produce most efficiently and import what it could not produce efficiently.⁶⁸ Furthermore, prior to its enactment, predictions were made that NAFTA would "improve the environment in border towns, and reduce the flow of undocumented immigration across the border."⁶⁹

On the other hand, prior to its enactment labor unions were concerned about the effects NAFTA would have on the U.S. workforce.⁷⁰ In particular, labor unions feared that Americans would lose their jobs or have to take substantial pay cuts, along with reduced health benefits, because Mexican workers were earning about one fifth or less of what Americans were earning at that time.⁷¹

In the end, the labor unions were correct in their uncertainties about NAFTA.⁷² Instead of increasing job opportunities for Americans, NAFTA actually precipitated a decline in the domestic manufacturing employment sector, which resulted in a trade deficit with Mexico.⁷³ With the elimination of trade barriers, NAFTA provided an incentive for U.S. manufacturers to move their operations to Mexico to decrease their labor costs.⁷⁴ As a result, "[t]he

responsibilities, for companies that ship jobs overseas").

67. E. Anthony Wayne, Assistant Secretary, Economic and Business Affairs, Testimony Before the Subcommittee on International Economic Policy, Export, and Trade Promotion (Apr. 20, 2004), *available at* <http://www.state.gov/e/eeb/rls/rm/31645.htm>.

68. Keith Bradsher, *The Free Trade Accord; NAFTA: Something to Offend Everyone*, N.Y. TIMES, Nov. 14, 1993, at A14. Some economists have argued that offshore manufacturing is merely an extension of the comparative advantage theory developed by David Ricardo. Roberts, *supra* note 20. However, other economists have argued that "comparative advantage has two necessary conditions, neither of which is met . . . One condition is that capital is immobile internationally relative to traded goods. The other is that the trading countries have different opportunity costs of producing the traded goods." *Id.* "When US firms substitute foreign labor for domestic labor in their production for domestic markets, capital is flowing to absolute advantage." *Id.*

69. U.S. Representative (AZ) Raúl M. Grijalva, *Free Trade Delivers More Immigrants, Not Jobs*, HOUSTON CHRONICLE, Oct. 20, 2003, http://www.citizen.org/documents/grijalvaoped_cafta.pdf.

70. *See* Bradsher, *supra* note 68.

71. *Id.*

72. *See generally* Faux, *supra* note 63 (noting that for the majority of Americans, NAFTA was clearly not a success).

73. *Id.*

74. *Id.* One of the incentives Mexico had to offer U.S. manufacturers was a decrease in labor cost. *See* Cal Pacifico, *Mexico's Advantages*, <http://www.calpacifico.com/mexicoadvantajes.htm> (last visited Mar. 18, 2007). "The average hourly compensation cost during the year 2004, in US dollars including benefits and taxes, for production workers in Mexico was \$2.48 per hour" compared to \$23.17 in the United States, \$21.90 in Japan, and \$32.33 in Germany. *Id.* Additionally, Mexico claims NAFTA provided other incentives for manufacturers to move U.S. manufacturing to Mexico, including: (1) production of high-quality goods due to the number of "world class companies" already producing in Mexico; (2) a stable economic and political economy; (3) NAFTA duty and tariff

Economic Policy Institute found that NAFTA eliminated 766,030 actual and potential U.S. jobs between 1994 and 2000.⁷⁵ Moreover, by 2004 the U.S. trade deficit with Mexico had reached \$50 billion.⁷⁶

Likewise, the enactment of CAFTA will provide more opportunities for U.S. manufacturers to relocate to lower-cost countries within the CAFTA region.⁷⁷

[T]he CAFTA nations are an economically stagnant population of 46 million people, more than half of whom live below the poverty level. . . . Costa Rica, the wealthiest CAFTA nation, has a per-capita GDP of \$9,000 — roughly one-quarter of ours. . . . Taken together, the six CAFTA nations have a minuscule consumer economy—but represent a huge pool of low-wage labor.⁷⁸

Hence, as seen with the enactment of NAFTA, CAFTA could ultimately have the effect of decreasing, rather than increasing, American job opportunities.⁷⁹

2. *Economic Analysis of Offshore Manufacturing*

Free trade agreements such as NAFTA and CAFTA make it cheaper for U.S. manufacturers to operate in low-wage countries and import products into the United States rather than manufacture products in the United States.⁸⁰ The McKinsey Global Institute (MGI)⁸¹ reported that for every \$1 of offshore

advantages; (4) intellectual property protection; and (5) proximity to the United States. *Id.* Nevertheless, “NAFTA has also contributed to rising income inequality, suppressed real wages for production workers, weakened collective bargaining powers and ability to organize unions, and reduced fringe benefits.” Robert E. Scott, *NAFTA's Hidden Costs: Trade Agreement Results in Job Losses, Growing Inequality, and Wage Suppression for the United States*, ECON. POL'Y INST., Apr. 2001, http://www.epinet.org/content.cfm/briefingpapers_nafta01_us.

75. Grijalva, *supra* note 69.

76. Buchanan, *supra* note 60.

77. See generally Norman Grigg, *CAFTA: Exporting Jobs and Industry*, Apr. 18, 2005, http://www.stoptheftaa.org/artman/publish/article_279.shtml (observing that agricultural and textile producers worried CAFTA would have the same effect as NAFTA—“another flood of imports and another hemorrhage of industrial jobs”).

78. *Id.*

79. See generally *id.* (noting the only export America would bring to the CAFTA region is a flood of manufacturing jobs).

80. Ancel, *supra* note 55, at 8. “Our trade agreements grant corporations the right to sell products in the U.S. at high prices while making them abroad at low cost, and as . . . cheaper countries get access to U.S. markets, the incentive to move jobs only increases.” *Id.*

81. MGI is a consulting firm that produced a report entitled “Exploding Myths of Offshoring.” L. Josh Bivens, *Truth and Consequences of Offshoring*, Aug. 2, 2005, <http://www.epi.org/content.cfm?id=2075>. This report identified the large economic benefits that companies have received from offshore production. *Id.* MGI notes that the report “exaggerate[s] the size of the benefits offered to the American worker by offshoring and gloss over the more troubling distributional consequences.” *Id.*

production the offshore manufacturing company (i) saved \$0.58 in corporate costs, (ii) increased U.S. exports to the offshore country by \$0.05, and (iii) sent back \$0.04 to the United States from the offshore location.⁸²

Furthermore, from 2001 to 2003 MGI reported that offshore manufacturing increased a company's average current recovery of capital income by approximately thirty-five percent, while also decreasing its average labor compensation by approximately thirty-five percent.⁸³ Because a primary goal of nearly every corporate board is to maximize shareholder value, it is not surprising that American corporations have moved production offshore in order to increase profits.⁸⁴

Additionally, consumers are demanding low-priced products. Therefore, U.S. manufacturers have discovered that an economically feasible way to meet this demand is to move their manufacturing operations offshore.⁸⁵ Paper Converting Machine Co. (PCMC), located in Green Bay, Wisconsin, recently faced this dilemma.⁸⁶ PCMC is a manufacturing company that produced equipment to make "fold and print packaging for everything from potato chips to baby wipes."⁸⁷ For years, PCMC thrived as a manufacturing corporation, but eventually it fell on hard times.⁸⁸ Already recovering from a 2001 recession, one of PCMC's primary customers told PCMC, in 2003, that if PCMC did not cut its machinery prices by forty percent the customer would find a manufacturer elsewhere.⁸⁹ In order to carry out this price cut, PCMC's customer strongly urged PCMC to relocate its manufacturing operations to China.⁹⁰

Outsourcing manufacturing results in cheaper products for Americans, but, unfortunately, it also results in job losses and lower household income for some Americans.⁹¹ "While free trade policies might make a T-shirt at the local discount store a few cents cheaper, one must ask whether the costs paid to

82. *Id.*

83. *See id.* (noting that in 2003 capital income was 64.8% and labor compensation was 35.2%).

84. *See generally The Economics of Outsourcing*, INFO. ECON. J., June 2004, <http://www.strassmann.com/pubs/iej/2004-06-a.pdf> (noting that a high outsourcing/revenue ratio is a key indicator of profitability).

85. *See* Pete Engardio, *The Future of Outsourcing; How It's Transforming Whole Industries and Changing the Way We Work*, BUS. WEEK, Jan. 30, 2006 (providing an example of how a U.S. manufacturer's largest customer insisted the business move overseas to China to provide lower-cost goods).

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. William Anderson, *The Economics of Outsourcing*, Apr. 21, 2004, <http://www.mises.org/story/1488>. "[W]hatever savings consumers might gain from the cheaper goods sold here [United States] is more than nullified by the loss of income to workers in this country." *Id.*

achieve those savings represent a real bargain for America.”⁹²

3. *The Negative Consequences of Low-Wage Competition*

The availability of low-wage manufacturing in other countries makes it harder for U.S. manufacturers to compete and prosper while keeping their operations within the confines of the United States.⁹³ Thus, some of the potential adverse consequences of an increase in U.S. manufacturing outsourcing from CAFTA include: a decrease in the number of U.S. manufacturing suppliers,⁹⁴ an increase in the number of individuals using Welfare and Medicaid programs,⁹⁵ a significant increase in the federal budget deficit,⁹⁶ additional adverse consequences to state and local governments,⁹⁷ and a decrease in the value of a U.S. college education.⁹⁸

a. Decrease in the Number of U.S. Manufacturing Suppliers

Many small and mid-size U.S. manufacturers that have not moved their manufacturing operations offshore are now facing a bigger problem—the loss of their U.S. suppliers that provide the essential products and parts necessary for their finished product.⁹⁹ As a result, these businesses are being forced to look elsewhere to find supplies, and many have ended up locating providers offshore that offer lower costs for materials.¹⁰⁰

U.S. manufacturers report on average imports comprised 11.2% of their dollars spent on materials and components in 2005, according to responses from 466 plants surveyed for the

92. Auggie Tantilillo, *Free Trade Actually Incurs High, Hidden Costs*, AUGUSTA CHRONICLE, Apr. 24, 2005, at A05.

93. See Rosalind Mclymont, *Made in America; State of U.S. Manufactured Exports Not as Bleak as It Seems*, SHIPPING DIG., Feb. 6, 2006 (noting that manufacturing exports have increased because the United States has the ability to negotiate trade agreements with other countries).

94. See Jonathan Kratz, *Census of Manufacturers—Drifting Apart*, Apr. 1, 2005, <http://www.industryweek.com/ReadArticle.aspx?ArticleID=11615&SectionID=10>.

95. *The Hidden Cost of Free Trade*, *supra* note 15 (remarking that a number of displaced U.S. manufacture employees “become dependent on government entitlements”).

96. See *id.* (noting that an increase in Americans dependent on government entitlements increases the federal budget).

97. See *id.* (observing that displaced workers pay little or no taxes which hurts state and local economies).

98. See FRIEDMAN, *supra* note 13, at 265-75 (noting that a number of specialized jobs requiring higher education are being shipped offshore).

99. University of Wisconsin: College of Engineering, *Alliance Brings E-Business Technologies to Wisconsin Manufacturers: Supply Chain Collaboration Key to Economic Growth*, Mar. 3, 2003, <http://www.engr.wisc.edu/news/headlines/2003/Mar03.html>.

100. *Id.*

2005 IW/MPI Census of Manufacturers. That's up from an average imported material/component spend of 7.8% (based on 440 plants responding) reported in the 2002 IW/MPI Census.¹⁰¹

U.S. manufacturers are also choosing to import supplies as a result of an increase in the price of supplies.¹⁰² From 2002 to 2005, “[p]er-unit cost of components and raw materials increased more than 10% for 38.9% of 643 survey respondents. Nearly 30% of the manufacturers surveyed report a 6% to 10% rise in material and component costs, while only 3.3% say there was a 1% to 5% decrease.”¹⁰³

Obtaining supplies offshore can create problems for manufacturers that remain in the United States.¹⁰⁴ In particular, the disadvantages of contacting offshore suppliers includes “longer supply chains, lower supplier reliability, greater financial risk, variable quality, slower delivery, the instability of some foreign governments, and locally, public and employee backlash from the loss of American jobs.”¹⁰⁵

b. Increased Numbers of Americans on Welfare and Medicaid

If the effects of CAFTA result in a decrease in U.S. manufacturing jobs, the majority of new employment opportunities will emerge in low-paying service sector positions.¹⁰⁶ Service sector occupations include positions like waitpersons, secretaries, temp positions, and sales clerks.¹⁰⁷ Service sector jobs do not offer benefits comparable to most manufacturing jobs.¹⁰⁸ Thus, many American service sector employees are forced to rely on Medicaid and other government-subsidized programs.¹⁰⁹

Service sector employment opportunities usually offer wages lower than

101. Kratz, *supra* note 94.

102. *Id.*

103. *Id.*

104. Dean Poeth, *Manufacturing Management Strategies for the Small Business Competing in an Offshoring Economy: Beyond Lean and Six Sigma. How to Compete and Win in a Global Environment*, <http://poeth.com/os-1.htm> (last visited Mar. 18, 2007).

105. *Id.*

106. *The Hidden Cost of Free Trade*, *supra* note 15.

107. *Id.* “The broadest definition of the service sector encompasses all industries except those in the goods-producing sector—agriculture, mining, construction, and manufacturing. Under this definition, services include transportation, communication, public utilities, wholesale and retail trade, finance, insurance, real estate, other personal and business services, and government.” Ronald E. Kutscher & Jerome A. Mark, *The Service-Producing Sector: Some Common Perceptions Reviewed*, MONTHLY LAB. REV., Apr. 1983, at 21, <http://www.bls.gov/opub/mlr/1983/04/art3full.pdf>.

108. *The Hidden Cost of Free Trade*, *supra* note 15.

109. *Id.* See also *supra* note 95 and accompanying text.

that of manufacturing jobs.¹¹⁰ According to the U.S. Department of Labor's Displaced Worker Survey, approximately half of U.S. manufacturing workers who lost their jobs between 2001 and 2003 found new employment in 2004, but at a lower wage.¹¹¹ On average, service sector jobs pay thirty-three percent less than manufacturing jobs.¹¹² Another study conducted by Henry Farber, a professor at Princeton University, discovered that displaced manufacturing workers "faced a 17 percent decline in wages" between 2001 and 2003.¹¹³

Additionally, most service sector positions do not offer the benefits such as health insurance and retirement pensions, provided in most manufacturing jobs.¹¹⁴ For instance, a Wal-Mart employee from San Jose claimed that "health benefits are so unaffordable [at Wal-Mart] that workers instead sign up for government health care at the urging of the retailer."¹¹⁵ Accordingly, if more manufacturing employment opportunities are lost due to the enactment of CAFTA, more individuals will join the existing forty-three million uninsured Americans.¹¹⁶

Finally, a number of Americans looking for employment opportunities in the service sector industry have discovered that it is increasingly competitive because "most of the new jobs in domestic services have gone to new legal and illegal immigrants. . . . [E]mployment growth of native-born Americans has ceased in the 21st century."¹¹⁷ The U.S. Chief Economist and Director of Policy, Mark Levinson, acknowledged the reality of the situation:

Twenty-five percent of displaced workers in the U.S. don't find new ones within six months after losing their jobs. Those who are fortunate enough to find new jobs suffer big losses of income. Two-thirds earn less on their new jobs. And these figures on lost wages are from the years before the bottom fell out of the labor market for U.S. manufacturing workers in the last three years, when it's become even more difficult to transition into decent-paying jobs. And beyond lost jobs and wages, workers displaced . . . lose their homes because they can't keep up with mortgage payments, they lose their health insurance, they lose their pensions. They suffer increased

110. See Gene Sperling, *The Early-Warning Economy: The Time to Think About Helping Displaced Workers Is Before They Lose Their Jobs*, WASH. MONTHLY, Dec. 2005, <http://www.washingtonmonthly.com/features/2005/0512.sperling.html>.

111. *Id.*

112. Tantillo, *supra* note 92.

113. Sperling, *supra* note 110.

114. *The Hidden Cost of Free Trade*, *supra* note 15.

115. Janet Adamy, *Wal-Mart's Benefits Come Under Fire*, CONTRA COSTA TIMES, Oct. 19, 2003, <http://sandiego.indymedia.org/en/2003/10/101416.shtml>.

116. *The Hidden Cost of Free Trade*, *supra* note 15.

117. Roberts, *supra* note 20.

rates of heart disease, of divorce, depression, and suicide.¹¹⁸

In sum, because of lower wages, decreased or eliminated employee benefits, and increased competition for service sector jobs, an over-reliance on service sector jobs will potentially negatively impact the U.S. economy.¹¹⁹

c. Increase in the Federal Budget

A potential decrease in manufacturing jobs due to offshore manufacturing not only has the potential to worsen the health care crisis in the United States, but also adversely affect federal and state governments.¹²⁰ In 2005, the average manufacturing wage in Indiana was \$18.14 per hour.¹²¹ As these “high-wage” positions disappear due to offshore manufacturing, “outsourced workers and their families [will] become dependent on government entitlements such as welfare, Medicaid, unemployment benefits, and worker retraining programs[.]”¹²² In 2004, the increase in the number of Americans participating in these government subsidies attributed to a \$412 billion federal budget deficit in the United States.¹²³

d. Adverse Consequences to State and Local Governments

State and local governments also feel the destructive impact of the decline of U.S. manufacturing.¹²⁴ Manufacturing plants forced to close down due to offshore production decrease the amount of taxes that a locality collects; the manufacturing plant often serves as the largest taxpayer.¹²⁵ Additionally, those who are unemployed or underemployed pay little or no taxes.¹²⁶ Therefore, a decrease in the amount of taxes a state or locality collects may result in an increase in private citizens’ taxes or a cut in the state or local budget for services, such as police, fire department, and schools.¹²⁷

118. *U.S.-China Trade: Preparations for the Joint Commission on Commerce and Trade: Before the Subcommittee on Commerce, Trade, & Consumer Protection*, 108th Cong. (2004) (statement of Mark Levinson, Chief Economist and Director of Policy), available at <http://energycommerce.house.gov/108/Hearings/03312004hearing1239/Levinson1920.htm>.

119. See Roberts, *supra* note 20. “In the 21st century, the US labor force has been acquiring the complexion of a third world country, with new jobs available only in domestic services. In contrast, China and India are acquiring high tech manufacturing and professional service jobs, the mark of first world countries.” *Id.*

120. *The Hidden Cost of Free Trade*, *supra* note 15.

121. South Carolina Department of Commerce, Average Manufacturing Wage, http://www.sccommerce.com/average_wage.html (last visited Mar. 18, 2007).

122. *The Hidden Cost of Free Trade*, *supra* note 15.

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

e. Decreasing Value of a U.S. Education

One of the most disturbing consequences of low-wage competition is the potential decrease in the value of an American college education.¹²⁸ U.S. manufacturers are not the only industries outsourcing employment opportunities.¹²⁹ Other high-paying positions requiring advanced education are moving to other countries where employers can pay employees a considerably lower salary.¹³⁰ For example, “[c]ompanies are increasingly moving sophisticated, mission-critical functions such as product design and research and development to China, India and other offshore locations.”¹³¹

Perhaps the dislocation of highly-paid, specialized jobs is a consequence of a trend in which citizens of low-wage countries come to the United States to take advantage of the U.S. educational system and then move back to their home countries to practice in their specialized field.¹³² Furthermore, countries such as China and India are increasing their educational standards at the college and graduate school level, thus increasing competition for American students entering the job market.¹³³

B. Unfair Competition from China via CAFTA Channel

Chinese manufactures are able to produce goods at a cost of “30% to 50% less” than U.S. manufactures.¹³⁴ This phenomenon is particularly prevalent in the bedroom furniture industry.¹³⁵ For instance, a “[m]ission style bed made in China for Universal [manufacturing company] retails for \$829. U.S. models cost up to \$1,800.”¹³⁶ In response to these price disparities, in October 2003, U.S. manufacturers of wooden bedroom furniture and labor unions representing the employees of those manufacturers acted. They filed an “anti-dumping petition with the U.S. International Trade Commission and the U.S. Department of Commerce seeking relief from the injury allegedly caused by unfairly priced import competition from China.”¹³⁷ In their petition, U.S. manufacturers and

128. See Roberts, *supra* note 20. “[T]he vast majority of the new jobs that the economy is expected to create during the next ten years require no university education.” *Id.*

129. See FRIEDMAN, *supra* note 13, at 265-75 (noting that the recent trend is to outsource high-paying research jobs).

130. *Id.*

131. Booz Allen Hamilton, *Study Finds Companies Moving High-End Functions Offshore to Access Talent*, Oct. 31, 2006, http://www.boozallen.com/capabilities/Industries/industries_article/16945601?lpid=659806.

132. See FRIEDMAN, *supra* note 13, at 270-75 (remarking that “60 percent of the nation’s top science students and 65 percent of the top mathematics students are children of recent immigrants”).

133. See *id.* at 265 (noting that Chinese universities are starting to “crack the top ranks”).

134. Pete Engardio & Dexter Roberts, “*The China Price*,” BUS. WEEK, Dec. 6, 2004, at 102 [hereinafter “*The China Price*”].

135. *Id.*

136. *Id.*

137. Dan Ikenson, *Poster Child for Reform: The Antidumping Case on Bedroom Furniture*

labor unions argued that bedroom furniture imports from China increased to “\$1.4 billion from 2000 to 2003,” which in turn forced numerous plant closings and job layoffs.¹³⁸

In 2004, the U.S. International Trade Commission and the U.S. Department of Commerce found that bedroom furniture produced in China was sold “at less than fair value” in the United States¹³⁹ and “damaged America’s furniture industry.”¹⁴⁰

In response to this result and other “anti-dumping” lawsuits¹⁴¹ and U.S. “anti-dumping” regulations,¹⁴² China is attempting to find new ways to get its exports into the United States at the lowest cost possible to the American consumer.¹⁴³ It is contended that one method of achieving that goal is to initially ship the products to a CAFTA nation and subsequently deliver them to the United States tariff and “duty free.”¹⁴⁴ If this strategy is successful, it will potentially create additional competition for American manufacturers and could prompt more U.S. manufacturers to shut down their operations in the United States.¹⁴⁵

In recent years, the United States has had a win-lose trade relationship with China. On one hand, the United States benefits from China’s low-wage manufacturing by importing its low-cost products to American retailers and consumers.¹⁴⁶ Financial experts have theorized that China has the ability to

from China, June 3, 2004, <http://www.freetrade.org/pubs/FTBs/FTB-012.html>.

138. Pete Engardio & Dexter Roberts, *Wielding a Heavy Weapon Against China*, BUS. WEEK, June 21, 2004, at 56 [hereinafter *Wielding a Heavy Weapon Against China*].

139. Notice of Final Determination of Sales at Less Than Fair Value, 69 Fed. Reg. 67313 (Nov. 17, 2004).

140. *Wielding a Heavy Weapon Against China*, *supra* note 138.

141. *See id.* (stating that China has lost a number of other anti-dumping lawsuits in other manufacturing sectors such as televisions, iron pipe fittings, and saccharin).

142. A number of critics have argued the anti-dumping regulations have not been successful because the Federal Court of Appeals has interpreted “dumping” as selling products at “predatory” prices. Michael S. Knoll, *Dump Our Anti-Dumping Law*, CATO FOREIGN POL’Y BRIEFING, July 25, 1991, <http://www.cato.org/pubs/fpbriefts/fpb-011.html>. “Predatory pricing is the practice of charging less than the marginal cost of production in order to drive competitors out of business . . .” *Id.* However, “dumping” in the statutory sense is not the same as selling goods at a predatory level. *Id.* Anti-dumping, in the statutory meaning, is selling goods below “fair market value.” *Id.* Fair market value is the price a willing buyer would buy it in the market, the product’s “home market.” *Id.* Thus, some critics argue “a foreign firm can be dumping even if it is charging a normal, competitive price for its product in the U.S. market.” *Id.*

143. *See* AMTAC OPPOSES CAFTA, *supra* note 56 (noting that, for example, “China could supply 100 percent of the components for a product, have the product assembled in Central America, and then export the product in unlimited quantities to the United States duty free”). *Id.*

144. *Id.*

145. *See* Thomas Heffner, *CAFTA: Free Trade Funds US Global Competitors Like China to Acquire US Assets While Destroying US Industry Like Textiles, Autos*, <http://www.economyincrisis.org/articles/show/57> (last visited Mar. 18, 2007) (noting that CAFTA will likely result in the same trend as NAFTA—China will utilize the CAFTA channel to “dump” cheap imports into the United States duty and tariff-free).

146. Michael Hennigan, *Americans Put Low-Cost Chinese Imports Ahead of Jobs*, Jan. 14,

supply products to American retailers at exceptionally low prices because the Chinese currency, the Yuan, is undervalued by forty percent.¹⁴⁷ Therefore, China has the advantage of exporting its products into the United States at an exceedingly low price.¹⁴⁸ Consequently, American retailers are taking advantage of these cheap imports because it costs less to produce the product in China than it would in the United States.¹⁴⁹ As a result, it is making it more difficult for U.S. manufacturers to compete.¹⁵⁰

In light of the fact that the Yuan is considerably undervalued, the U.S. government formed the China Currency Coalition, which "is an alliance of industry, agriculture, and worker organizations whose mission is to support U.S. manufacturing by seeking an end to Chinese currency manipulation."¹⁵¹ On April 20, 2005, the China Currency Coalition, which consists of thirty-five senators and representatives, filed a petition under Section 301 of the Trade Act of 1974¹⁵² against China.¹⁵³ Moreover, a bill is currently being proposed to Congress that would ultimately make "currency manipulation" a trade violation.¹⁵⁴

China is also able to provide cheap products to American consumers

2005, <http://www.finfacts.com/cgi-bin/irelandbusinessnews/exec/view.cgi?archive=2&num=1378printer=1> (noting that China more than doubles the number of goods Canada, the second largest American importer, imports into the United States). "China in 2003 replaced Mexico as the number two exporter to the United States. . . . China is coming on strong and has already displaced Mexico in areas such as computer parts, electrical components, toys, textiles, sporting goods, and tennis shoes." FRIEDMAN, *supra* note 13, at 310.

147. Hennigan, *supra* note 146. China has a fixed rate of 8.28 Yuan for every U.S. dollar for the next decade. *Id.* See also Terence Poon, *Politics & Economics: Beijing Reports Narrower Trade Surplus*, WALL ST. J., Feb. 13, 2007, at A4 (noting that "China's trading partners said its Yuan is undervalued, giving the country's exporters an unfair competitive advantage").

148. *Id.*

149. See FRIEDMAN, *supra* note 13, at 137-38 (quoting Xu Jun, the spokesman for Wal-Mart China, who noted that China's eighth largest trading partner is Wal-Mart, ranking ahead of Russia, Australia, and Canada).

150. See Hennigan, *supra* note 146 (noting the undervalued Yuan is "making China's exports cheaper and giving its manufacturers an unfair advantage").

151. China Currency Coalition, Mission, <http://www.chinacurrencycoalition.org/index.html> (last visited Mar. 18, 2007).

152. China Currency Coalition, Section 301 Petition, <http://www.chinacurrencycoalition.org/petition.html> (last visited Mar. 18, 2007). Section 301 provides that the United States "may impose trade sanctions against countries that violate or deny U.S. rights under trade agreements, or that place an unreasonable burden on U.S. commerce. The section grants the United States Trade Representative (USTR) broad authority to take a variety of countermeasures against foreign practices that unduly burden U.S. trade." *Id.*

153. *Id.* This was not the first petition the China Currency Coalition filed. *Id.* A previous petition filed on Sept. 9, 2004, was denied by the U.S. Trade Representative Board. *Id.*

154. Louis Uchitelle, *What to Do About China and the Yuan, Small Companies Want Action; Big Ones Tend to Say Go Slow*, N.Y. TIMES, Oct. 12, 2005, at Sec. C; Col. 1; Business/Financial Desk; Pg. 5, available at <http://select.nytimes.com/gst/abstract.html?res=F40811F63D5B0C718DDDA90994DD404482&n=Top%2fReference%2ftimes%20Topics%2fPeople%2fs%2fsnow%2c%20John%20W%2e>.

because the average hourly factory wage is drastically lower in China than in the United States.¹⁵⁵ “[T]he average hourly Chinese factory worker cost is estimated to be US \$0.64: the US hourly cost is 34 times the Chinese level”¹⁵⁶ During December 2006, the average manufacturing rate in the United States was reported at \$16.97 per hour.¹⁵⁷

On the other hand, while China has been providing low-cost products to the American consumer,¹⁵⁸ it has also become a fierce manufacturing competitor and arguably an industrial giant.¹⁵⁹ Specifically, in 2006 the United States had a \$202 billion trade deficit with China.¹⁶⁰ As a result, the United States is now dependent upon China for a vast majority of the electronic components necessary for the construction of American military hardware.¹⁶¹ China, however, has been using this trade surplus from the United States to strengthen its military.¹⁶² As a result, one must ask, “[i]f China decided not to sell to the United States during a period of crisis, would the United States have the ability to replenish its stocks without an adequate industrial base?”¹⁶³

With CAFTA as a viable alternative for Chinese manufacturers to export its goods into the United States, competition between manufacturers will

155. Hennigan, *supra* note 146.

156. *Id.* However, Jonathan Anderson, the chief economist in Asia for UBS, argues that “[w]ages and costs are going up in China. The economy is already past its peak. . . . There are fears that if China’s currency appreciates markedly, some manufacturers will be forced to raise prices or shift production to other low-cost regions like India or Southeast Asia.” David Barboza, *For Foreign Companies in China, a Rising Yuan Is Hard to Swallow*, N.Y. TIMES, Oct. 15, 2005, at Sec. C; Col. 1; Business/Financial Desk; Pg. 5, available at <http://select.nytimes.com/gst/abstract.html?res=F50C17FA3F5B0C768DDDA90994DD404482&n=Top%2fNews%2fInternational%2fCountries%20and%20Territories%2fChina>.

157. U.S. Dept. of Commerce: International Trade Administration, *Manufacturing Biweekly Update*, http://trade.gov/competitiveness/mbu/mbu_current.asp (Jan. 26, 2007).

158. See “*The China Price*,” *supra* note 134 (stating that outsourcing manufacturing to China has allowed “U.S. multinationals from General Motors to Proctor & Gamble and Motorola” to earn big profits).

159. See *The Hidden Cost of Free Trade*, *supra* note 15.

160. *Economic Policy Institute, Trade Picture: Rapid Growth in Oil Prices, Chinese Imports Pump Up Trade Deficit to New Record*, Feb. 10, 2006, available at http://www.epi.org/content.cfm/webfeatures_econindicators_tradepict20060210 [hereinafter *China Imports Pump Up Trade Deficit*]. The trade deficit with China is the largest trade deficit the United States has with any other country. William R. Hawkins, *Trade Deficit Provides China With More Than Economic Advantages*, July 18, 2003, http://www.americaneconomicalert.org/view_art.asp?Prod_ID=864. “[I]f current trends continue for just another five years, the U.S. trade deficit with China would triple to over \$330 billion. The total U.S. trade deficit with the entire world [in 2002] was \$470 billion.” *Id.* Already, the 2006 U.S. trade deficit with China is above \$200 billion. *China Imports Pump Up Trade Deficit*, *supra*.

161. *The Hidden Cost of Free Trade*, *supra* note 15.

162. *Id.* China “is using its trade surplus to buy U.S. bonds” and using the interest on these bonds “to build and buy the ships, planes and missiles needed to fight a naval war off her coast.” Buchanan, *supra* note 60.

163. *The Hidden Cost of Free Trade*, *supra* note 15.

increase.¹⁶⁴ This will provide an additional incentive for U.S. manufacturers to offshore production to low-wage countries and more Americans will lose their jobs.¹⁶⁵

C. *Inadequate Workers' Rights in CAFTA Nations*

Prior to the passage of CAFTA, the United Nations had repeatedly criticized a number of CAFTA nations for not complying with international labor standards.¹⁶⁶ Arguably, CAFTA will not provide an adequate remedy to fix the labor problems in these CAFTA nations.¹⁶⁷ Instead, CAFTA may actually weaken them even more, which in turn would create another incentive to lure American manufacturers to move their manufacturing operations from the United States to the CAFTA region.¹⁶⁸

The argument that CAFTA will not improve existing CAFTA labor standards is supported by the text of CAFTA itself.¹⁶⁹ Specifically, CAFTA's text does not require CAFTA nations to satisfy the basic international labor norms created by the United Nations and the International Labor Organization.¹⁷⁰ Rather, CAFTA merely institutes provisions "recommending that CAFTA parties 'strive to ensure' such compliance and that they are not 'encourag[ing] trade or investment by weakening or reducing the protections afforded in domestic labor laws.'"¹⁷¹ Violations of these recommendations pose no serious consequences to the breaching CAFTA nation.¹⁷² CAFTA merely imposes a monetary fine for noncompliance.¹⁷³

164. See Heffner, *supra* note 145 (noting that CAFTA will open up another door for China, Japan, Germany, and the United Kingdom, to dump cheap imports into the United States, which will ultimately devastate the U.S. manufacturing industry).

165. *Id.*

166. AFL-CIO, *Fair Trade or Free Trade? Understanding CAFTA: Labor Rights Provisions in CAFTA Are Inadequate*, http://www.wola.org/economic/brief_cafta_labor_april04.pdf (last visited Feb. 24, 2007) [hereinafter *Labor Rights Provisions in CAFTA Are Inadequate*]. For example, "[e]mployers in Central America intimidate, fire and blacklist workers for attempting to exercise their right to join an independent union, and they do so with impunity under Central American laws." *Id.*

167. *Id.*

168. See Lindsay McLaughlin & Brian Davidson, *An Injury to One Is an Injury to All* (June 24, 2004), <http://www.ilwu.org/political/warrior/04/vol4no5.cfm?renderforprint=1> (observing that CAFTA acts as a catalyst to U.S. manufacturing job loss because weak labor laws in the CAFTA nations are driving U.S. producers out of business).

169. *Labor Rights Provisions in CAFTA Are Inadequate*, *supra* note 166.

170. *CAFTA's Weak Labor Rights Protections*, *supra* note 57.

171. *Id.* In addition, failure to require CAFTA nations to comply with international labor laws does not "[p]rotect [w]omen [w]orkers against [d]iscrimination in [l]aw or [p]ractice," does not "[e]nsure [a]dequate [d]omestic [r]emedies," and does not provide "[i]ncentives to [e]nforce [e]xisting [l]abor [l]aws." *Id.* See also OFFICE OF THE U.S. TRADE REPRESENTATIVE, *CAFTA-DR FINAL TEXT*, http://www.ustr.gov/assets/Trade_Agreements/Bilateral/CAFTA/CAFTA-DR_Final_Texts/asset_upload_file320_3936.pdf (last visited Mar. 18, 2007).

172. *CAFTA's Weak Labor Rights Protections*, *supra* note 57.

173. *Id.* See also Michelle Chen, *Labor Fears Free Trade Deal Will Prompt 'Downward*

The U.S. government recognizes that low labor standards in CAFTA nations could pose a problem to the success of CAFTA.¹⁷⁴ Accordingly, President George W. Bush and his administration have promised to spend approximately \$180 million over the course of the next five years “to improve workers’ rights and environmental protection in the CAFTA countries.”¹⁷⁵ Nonetheless, CAFTA’s current weak labor law protections may still force U.S. manufacturers to move offshore; U.S. manufacturers simply cannot “compete against workers [in the CAFTA region] who are forced to work long hours in dangerous conditions for an average of \$50 a month, and who have no real right to negotiate a contract to ensure better working conditions and better wages.”¹⁷⁶

D. Exploitation of Environmental Law

It is arguable that stringent “environmental regulations,” such as those adopted in the United States, “impose significant costs [and] slow productivity growth,” making it difficult for U.S. manufacturers to compete against manufacturers in other countries that have less rigorous standards.¹⁷⁷ The CAFTA agreement does not force CAFTA nations to comply with environmental standards imposed in the United States: putting U.S.

Spiral,’ May 25, 2005, http://newstandardnews.net/content/?action=show_item&itemid=1848.

174. U.S. Dept. of State, *U.S. Supports Better Labor, Environment Efforts in CAFTA Nations*, July 19, 2005, <http://usinfo.state.gov/wh/Archive/2005/Jul/20-669544.html>.

175. *Id.* Of the \$180 million projected assistance:

\$[7] million . . . will be spent to modernize the labor justice systems in CAFTA countries, including the training of judges . . . \$7 million will be spent to strengthen the ability of regional labor ministries to enforce labor laws . . . \$3 million will be spent to support ILO officials who will monitor and verify progress in improving labor law enforcement and working conditions . . . \$2 million [will be] allocated to fight gender discrimination, focusing on eliminating sexual harassment in the workplace . . . \$1 million [will be] set aside to support an Environmental Cooperation Agreement.

Id.

176. Teamsters Take Action, *CAFTA: Bad for Working Families*, June 2, 2005, http://www.teamsterstakeaction.org/teamsters/alert-description.tcl?alert_id=1446897. For instance, in Nicaragua CAFTA provides an enticement for U.S. manufacturers to produce goods in its country by offering corporations a “desperate work force, no taxes or tariffs, subsidized electricity and water, and poorly enforced labor and environmental standards.” Witness for Peace, *Inhuman Economies: What Does Free Trade REALLY Mean for Nicaragua, and the Rest of Central America’s Poor*, Jan. 16, 2002, http://www.witnessforpeace.org/docs/CAFTA_facts.doc.

177. Adam B. Jaffe et al., *Environmental Regulation and the Competitiveness of U.S. Manufacturing: What Does the Evidence Tell Us?*, J. OF ECON. LITERATURE (1995), available at <http://economia.unife.it/materia/29/jaffe.pdf>. For example, because of China’s lack of environmental laws concerning pollution, among other incentives, more manufacturers are choosing to move their operations. See generally, Cable News Network, *China Adds Pollution to Exports* (Jan. 8, 2006), <http://www.komvux.uddevalla.se/download/18.6e1b2a31108bd6d4c54800013843/CNN+China+adds+pollution+9+Jan+2006.doc>. However, allegedly China now exports more than just products. *Id.* It is also exporting its pollution into other nations, particularly Russia. *Id.*

manufacturers at a disadvantage.¹⁷⁸ The declining competitiveness of U.S. manufacturers is reflected by a decrease in U.S. exports, an increase in foreign imports, and an increase in offshore manufacturing.¹⁷⁹

CAFTA's text does not require CAFTA nations to comply with existing international environmental standards.¹⁸⁰ Thus, sanctions are not imposed on CAFTA nations that fail to comply with international regulations.¹⁸¹ The agreement only "allow[s] action to be taken for repeated failures while providing loopholes . . . [making it] extremely difficult to take action when a country fails to enforce its laws in an attempt to attract investment."¹⁸² Some critics of CAFTA argue that its environmental provisions do not prohibit the CAFTA region from lowering, or even waiving, "existing environmental laws in an effort to attract investment."¹⁸³ Instead, critics believe that CAFTA "would actually prohibit member countries from enacting many new environmental regulations, allowing those regulations to be challenged as 'barriers to trade.'"¹⁸⁴

The lack of environmental regulation in CAFTA, provides another incentive for U.S. manufacturers to move manufacturing facilities to the CAFTA region where there are few environmental laws.¹⁸⁵

IV. CAFTA'S POSITIVE EFFECT ON THE U.S. ECONOMY

While a number of critics oppose CAFTA because of its potential to adversely affect the U.S. manufacturing industry,¹⁸⁶ CAFTA has also had a number of proponents. President George W. Bush serves as CAFTA's most notable supporter, and he claims that it will ultimately have many positive

178. Jaffe et al., *supra* note 177.

179. *Id.*

180. *CAFTA's Environmental Provisions Fall Far Short*, *supra* note 58.

181. *Id.*

182. CITIZENS TRADE CAMPAIGN, CAFTA AND THE ENVIRONMENT, http://www.citizenstrade.org/pdf/ctc_caftafacts_enviropupdate_01062005.pdf (last visited Mar. 18, 2007).

183. Deborah James, *Environmental Impacts of CAFTA*, <http://www.globalexchange.org/campaigns/cafta/Environment.html> (last visited Mar. 18, 2007).

184. *Id.*

185. *See generally*, Global Trade Watch, Offshoring, <http://www.citizen.org/trade/offshoring> (last visited Mar. 18, 2007) (stating that NAFTA's environmental provisions provided an incentive for U.S. manufacturers to move operations offshore to Mexico, where there were few environmental regulations to comply with compared to environmental regulations in the United States). However, a number of free-trade supporters have argued that environmental laws are not a critical consideration when choosing a place to manufacturer; rather, considerations such as protection of property rights, education of the work-force, and a country's legal system are more important. Center for Trade Policy Studies, Free Trade Frequently Asked Questions, <http://www.freetrade.org/faqs/faqs.html#three> (last visited Mar. 18, 2007).

186. *See supra* Part III.

effects on the U.S. economy.¹⁸⁷ The Office of the U.S. Trade Representative has asserted four probable advantages of CAFTA: (1) the creation of new jobs for Americans; (2) a “level playing field” for U.S. exporters; (3) increased consumer savings; (4) and a boost to U.S. small businesses.¹⁸⁸

A. *Creation of New Jobs for Americans*

The enactment of CAFTA is a part of President Bush’s “six-point plan”¹⁸⁹ for creating new jobs in the United States by expanding exports and lowering the trade deficit.¹⁹⁰ President Bush contends that CAFTA will increase U.S. exports by opening new markets, thereby leveling the playing field for U.S. products to compete in the CAFTA region.¹⁹¹ Additionally, President Bush claims that CAFTA may encourage foreign companies to set up operations in the United States, which would create additional employment opportunities for Americans.¹⁹²

Even if CAFTA leads to a loss of American jobs in the short term, proponents are optimistic that the United States’s economy should ultimately find means to create new jobs with or without the help of CAFTA.¹⁹³ There are many more ideas for future inventions; therefore, everything that is going to be invented has not yet been invented.¹⁹⁴ Even though jobs could be lost due to free trade, and in particular, CAFTA, “new jobs are also being created [in the United States] in fives, tens, and twenties by small companies that [Americans] can’t see.”¹⁹⁵

B. *Level Playing Field*

CAFTA advocates maintain that the agreement will level the playing field by eliminating foreign taxes, opening up CAFTA members’ markets, and allowing the United States to export more goods, services, and farm products to

187. See *supra* notes 34-41 and accompanying text.

188. CAFTA BENEFITS THE AMERICAN FAMILY, *supra* note 8.

189. See International Trade, *supra* note 41. President Bush’s six point plan includes: (1) affordable health care; (2) elimination of frivolous lawsuits to prevent good businesses and people from losing jobs; (3) reduction of unnecessary government regulation; (4) enactment of a national energy policy to provide affordable energy to all Americans; (5) an increase in U.S. exports by pursuing free trade agreements; and (6) making previous tax relief plans permanent. U.S. Gov. Info, *Bush Sees Job Market, Economy Improving*, Dec. 6, 2003, <http://usgovinfo.about.com/b/a/048162.htm>.

190. CAFTA BENEFITS THE AMERICAN FAMILY, *supra* note 8.

191. International Trade, *supra* note 41.

192. *Id.* “Foreign-owned firms directly employ more than 6.4 million workers in the U.S.—jobs that might otherwise go to foreign workers—and that does not include the millions of people who work at companies that supply parts and material to foreign-owned firms.” *Id.*

193. See generally FRIEDMAN, *supra* note 13, at 227.

194. *Id.*

195. *Id.* at 227-28.

the region.¹⁹⁶ In particular, the Office of the U.S. Trade Representative projected increased revenue for important industries such as agriculture.¹⁹⁷

The American Farm Bureau Federation estimates CAFTA would expand U.S. farm exports by \$1.5 billion a year. The National Association of Manufacturers (NAM) estimates that CAFTA will result in an additional \$1 billion a year in goods exports. . . . [A] study by the U.S. International Trade Commission finds that CAFTA will reduce our trade deficit by \$756 million.¹⁹⁸

Furthermore, advocates argue that not enough attention is being paid to substantial investments coming into the United States from offshore production and free trade.¹⁹⁹ “[E]very dollar a company invests overseas in an offshore factory yields additional exports for its home country, because roughly one-third of global trade today is within multinational companies.”²⁰⁰

C. Increase in Consumer Savings

The Office of the U.S. Trade Representative maintains that free trade agreements like CAFTA will increase disposable income for U.S. citizens; particularly, they will benefit low-income families by offering imported products at a lower cost.²⁰¹ In fact, an increase in consumer savings was

196. See CAFTA BENEFITS THE AMERICAN FAMILY, *supra* note 8. In particular, Michigan and Colorado have already observed the benefits of an open market into CAFTA nations. See Michigan District Export Council, *Michigan Benefits from CAFTA-DR*, Mar. 2005, http://www.exportmichigan.com/wg_agreements_cafta_mfg.htm (noting that the amount of exports into the CAFTA region in 2004 was more than double the amount in 2000). See also U.S. Dept. of Commerce, *Benefits of CAFTA-DR Colorado*, Mar. 2005, <http://www.export.gov/fta/CAFTA/States/Colorado.pdf> (noting that exports into the CAFTA region in 2004 were \$8.1 million, which was somewhat higher than the amount of exports in 2000).

197. CAFTA BENEFITS THE AMERICAN FAMILY, *supra* note 8.

198. *Id.* The Agriculture Coalition for CAFTA-DR conducted a study focusing on “40 Congressional districts with significant agricultural production.” American Farm Bureau, *Agriculture Coalition Releases Study Highlighting Benefits of CAFTA-DR for 40 Congressional Districts* (Apr. 11, 2005), <http://www.fb.org/index.php?fuseaction=newsroom.newsfocus&year=2005&file=nr0411a.html>. The study projected the potential benefits CAFTA would have upon the agricultural industry, concluding that agricultural communities will significantly benefit from the enactment of CAFTA. *Id.*

199. See FRIEDMAN, *supra* note 13, at 123.

200. *Id.*

201. CAFTA BENEFITS THE AMERICAN FAMILY, *supra* note 8. “[Free] [t]rade delivers a greater choice of goods—everything from food and furniture to computer and cars—at lower prices.” *Id.* “CAFTA would tie Central America and the Dominican Republic to the United States both economically and politically and would help keep costs down for U.S. retailers and Latin American garmentmakers. . . .” David Armstrong, *CAFTA Friends, Foes State Their Case*

observed after the enactment of NAFTA.²⁰² A decade after the ratification of NAFTA, the Office of the U.S. Trade Representative claimed the average American's standard of living increased approximately \$2,000 per year.²⁰³ Additionally, a study conducted by the University of Michigan concluded that "lowering global trade barriers on all products and services by even one-third could boost the U.S. economy by \$177 billion, thereby raising living standards for the average family by \$2,500 annually."²⁰⁴

D. Boost to Small Businesses

The Office of the U.S. Trade Representative noted that the CAFTA region is currently the United States' second largest export market.²⁰⁵ The elimination of tariffs will only allow U.S. businesses that export into the CAFTA region to grow even larger.²⁰⁶ According to Jim Morrison, the president of the Small Business Exporters Association, "[m]ore than 13,000 American small and medium-size businesses already export to Central America and the Dominican Republic, accounting for 37% of total U.S. merchandise exports to the region."²⁰⁷ Small businesses will benefit the most from the ratification of CAFTA because its elimination of trade barriers will cause the transaction costs of trading within the region to decrease.²⁰⁸ The transaction costs of shipping the completed product from the United States to the CAFTA region will become as easy as it is to ship goods within the United States.²⁰⁹ Therefore, "[c]ompetition between the shipping companies will surely bring down the costs of getting [U.S.] goods to the area."²¹⁰

on Free Trade Deal Central American Pact Goes to House After OK by Senate, SAN FRANCISCO CHRON., July 3, 2005, available at <http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2005/07/03/BUGS8DI7PR1.DTL>. See also CAFTA BENEFITS THE AMERICAN FAMILY, *supra* note 8. "CAFTA will benefit the most underrepresented constituency in America: consumers, particularly the lower-income consumers who find that a 50-cent difference in the price of a T-shirt actually means something." Steven Sherman, *The CAFTA Fifteen: The New Heroes of the Poor?*, July 29, 2005, <http://www.commondreams.org/views05/0729-29.htm> (internal citations omitted).

202. International Trade, *supra* note 41.

203. *Id.*

204. *Id.* The Institute for International Economics organization estimated prior to the ratification of CAFTA that the enactment of CAFTA would increase the average American household by as much as \$5,000 per year. American International Automobile Dealers, *CAFTA Benefits and WTO*, WASH. TIMES, June 9, 2004, available at <http://www.washtimes.com/functions/print.php?StoryID=20050608-092109-2167>.

205. CAFTA BENEFITS THE AMERICAN FAMILY, *supra* note 8.

206. *Id.*

207. Ken Hoover, *DR-CAFTA Deal Could Boost Small Exporters*, DALLAS BUS. J., July 8, 2005, available at <http://www.bizjournals.com/dallas/stories/2005/07/11/story8.html?GP=OTC-MJ1752087487>.

208. *Id.*

209. AEGIS, *CAFTA for Small & Medium Enterprises* (on file with author).

210. *Id.*

V. RECOMMENDATIONS/SOLUTIONS

Thousands of U.S. manufacturing jobs have been lost since NAFTA became law because free trade agreements have given manufacturers an incentive to move offshore.²¹¹ The ratification of CAFTA provides yet another incentive for more American jobs to move offshore.²¹² Therefore, the U.S. government needs to take certain initiatives to protect Americans employed within the manufacturing industry.²¹³ In addition, American citizens need to protect themselves from losing their jobs due to offshore opportunities.²¹⁴

A. Government Initiatives

To protect against the loss of jobs due to offshore manufacturing, the U.S. government needs to accomplish three main objectives: (1) make certain that its free trade agreements are also fair trade agreements;²¹⁵ (2) ensure that the United States continues to innovate in order to facilitate job creation for Americans;²¹⁶ and (3) address the healthcare crisis and take initiatives to protect U.S. manufacturers from its effect.²¹⁷

1. Adoption of Fair Trade Agreements

The U.S. government needs to ensure that free trade is *fair* trade in order to diminish incentives for U.S. manufacturers to move offshore to the CAFTA region.²¹⁸ While free trade involves the exchange of goods and information between countries without tariffs or taxes, fair trade “refers to exchanges, the term of which meet the demands of justice.”²¹⁹ The principles of fair trade include fair wages, a better workplace, and environmental sustainability.²²⁰ The Oxfam American campaign has developed policies that members of free trade

211. See Buchanan, *supra* note 60.

212. See *supra* Part III.

213. See *infra* Part VA.

214. See *infra* Part VB.

215. See generally Jeffrey Eisenberg, *Free Trade Versus Fair Trade*, Sept. 21, 2006, http://www.aworldconnected.org/debates/id.2911/debates_detail.asp (noting the differences between a free trade agreement and a fair trade agreement).

216. See FRIEDMAN, *supra* note 13, at 227 (noting that not everything that will be invented has already been invented).

217. See generally Suzanne Travers, *An Appeal to Buy American; Leaders Warn of Middle Class 'Evaporation'*, HERALD NEWS, Nov. 18, 2005, at B10 (observing that the cost of health care for small businesses has sky rocketed).

218. See Eisenberg, *supra* note 215.

219. *Id.*

220. Grinning Planet, *Lose Two Jobs, Outsource One Free*, Mar. 8, 2005, <http://www.grinningplanet.com/2005/03-08/WTO-global-trade-democracy-outsourcing-jobs-article.htm>. Supporters of fair trade, such as the Fair Trade Federation, “argue that exchanges between developed nations and lesser developed countries (LDCs) occur along uneven terms, and should be made more equitable.” Eisenberg, *supra* note 215.

regions should institute to ensure that free trade is indeed fair trade.²²¹

First, governments need to implement fair trade for agriculture.²²² This includes ensuring a steady food supply and executing rules that protect local farmers.²²³ Furthermore, the governments of developing countries need to prohibit the practice of saturating their markets with cheap agricultural products, and should implement rules that allow farmers to compete on a level-playing field.²²⁴

Second, governments participating in free trade agreements need to promote foreign investment rules that encourage development in their country.²²⁵ Governments can achieve this by “develop[ing] links between foreign-owned businesses and the local economy, so profits from exports are spread through communities.”²²⁶ Additionally, governments need to both control “speculative and short-term investments” that could potentially undermine their economy, and also enforce rules that prohibit corporations from waiving existing laws in exchange for investment.²²⁷

Similarly, the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) has urged the United States to initiate policies encouraging fair trade in the CAFTA region.²²⁸ Specifically, the AFL-CIO is urging Congress to “require governments to respect the rule of law, root out corruption, and fully and effectively enforce workers’ rights in order to receive trade benefits.”²²⁹ Finally, the AFL-CIO is encouraging Congress to reject any trade agreement that fails to meet these proposed standards.²³⁰

Congressman Michael H. Michaud has taken steps to promote fair trade through the formation of the Fair Trade Act of 2005.²³¹ Rep. Michaud has also introduced a Congressional resolution demanding that the U.S. Treasury Department give American citizens “parity in the Personal Exemption Laws.”²³² Personal Exemption Laws currently allow American citizens to buy

221. Oxfam Campaigner, *Make Trade Fair in the Americas*, Fall 2003 (on file with author) [hereinafter *Make Trade Fair in the Americas*]. Oxfam America is a non-profit organization affiliated with Oxfam International that “works to end global poverty through saving lives, strengthening communities, and campaigning for change.” Oxfam America, *Who We Are*, <http://www.oxfamamerica.org/whoweare> (last visited Mar. 18, 2007).

222. *Make Trade Fair in the Americas*, *supra* note 221.

223. *Id.*

224. *Id.*

225. *Id.*

226. *Id.*

227. *Id.*

228. *Labor Rights Provisions in CAFTA Are Inadequate*, *supra* note 166. The AFL-CIO is a trade organization comprised of 52 national and international trade unions that primarily lobbies on behalf of organized laborers for labor rights and laws. Answers.com, AFL-CIO, <http://www.answers.com/afl-cio&r=67> (last visited Mar. 18, 2007).

229. *See Labor Rights Provisions in CAFTA Are Inadequate*, *supra* note 166.

230. *Id.*

231. Michaud, *supra* note 42. The Fair Trade Act would withdraw the United States from involvement in CAFTA. *Id.* *See also* H.R.J. Res. 3480, 109th Cong. (2005).

232. Michaud, *supra* note 42.

large bulks of Canadian goods and bring them back to the United States duty free, while preventing Canadians from doing the same.²³³ Rep. Michaud has also introduced a bill that would remove the President's power to fast track a free trade agreement.²³⁴ This proposal would allow Congress more time to analyze the proposed agreement to ensure that it promotes fair trade policies.²³⁵

2. *Encourage Innovation*

Since the United States has experienced a loss of manufacturing jobs in the past and will likely lose more manufacturing jobs following the enactment of CAFTA, the U.S. government should encourage scientific and mathematical innovation in the United States to facilitate the creation of new jobs.²³⁶ To accomplish this goal, the U.S. government needs to ensure the price of failure does not hinder structured risk taking.²³⁷ In order to encourage increased innovation, policymakers need to develop flexible and enlightened bankruptcy and patent laws²³⁸ and become proactive at encouraging investment through education.²³⁹

a. *Flexible and Enlightened Bankruptcy and Patent Laws*

Currently the United States is ahead of China and India in terms of innovation because of its capitalist market.²⁴⁰ The United States is unique in the sense that it has "innovation-generating-machines," such as top-notch universities around the country, public and private research labs, retailers, and "the best-regulated and most efficient capital markets in the world for taking new ideas and turning them into products and services."²⁴¹ The stock exchanges in the United States, namely the New York Stock Exchange and NASDAQ, are where "risk capital" is accumulated and dispersed to innovators and developing companies.²⁴² There is no other country in the world that has a better and more efficient capital market than the United States.²⁴³ What makes the U.S. capital market more advanced than any other country are the laws that were enacted to regulate and secure it.²⁴⁴ Specifically, the United States has a

233. *Id.*

234. *Id.*

235. *See id.*

236. *See* FRIEDMAN, *supra* note 13, at 230.

237. *See id.* at 245 (noting that the United States is unique in that it has "innovation-generating-machines").

238. *See id.* at 245-49 (observing that we currently have the best protection for new ideas).

239. *See id.*

240. *Id.* at 245-46.

241. *Id.* at 245

242. *Id.*

243. *Id.*

244. *Id.*

“rule of law which protects minority interests under conditions of risk.”²⁴⁵

Because the United States has such a unique and efficient capital market and other devices to foster new innovation, the U.S. government needs to ensure that it does not adopt legislation that would obstruct America’s “innovation-generating-machines.”²⁴⁶ Currently the United States is on the right track with intellectual property laws that encourage people to come up with new ideas and mechanisms for ensuring that those ideas are protected.²⁴⁷ The government should reexamine newly enacted bankruptcy laws, however, which could discourage innovators from developing new ideas.²⁴⁸ Recently reformed U.S. bankruptcy laws make it easier for small businesses to collect debts, but also make it more difficult for individuals to work out debt repayment plans and resurface from bankruptcy protection.²⁴⁹

The goal of the reformed bankruptcy regime is to encourage Americans to be more responsible for their debt.²⁵⁰ However, entrepreneurship experts fear that these new laws may have the unintended consequence of restraining new innovation because “entrepreneurs finance their startups by maxing out their personal credit cards as well as taking out mortgages or equity lines of credit on their homes.”²⁵¹ Congress needs to make certain that the new bankruptcy laws do not have the unintended consequence of stifling new ideas and innovations that could ultimately spur job creation in America.

b. Sustaining United States’ Educational Advantage

The United States needs to sustain its educational advantage over other countries in order to supply more jobs for working Americans.²⁵² Specifically, in order to continue to produce innovative new products and services that increase employment opportunities for Americans, the government needs to encourage and create opportunities for U.S. citizens to become more educated in science and engineering fields.²⁵³

In April 2005, Missouri Senator Christopher S. Bond encouraged the federal government to allocate more federal funds towards educating children in the fields of science and engineering.²⁵⁴ He stated:

245. *Id.* at 245-46.

246. *See id.*

247. *Id.* at 246.

248. Louise Witt, *Will Bankruptcy Law Stifle Entrepreneurship?*, STANDARD TIMES, May 17, 2005, available at <http://www.southcoasttoday.com/daily/05-05/05-17-05/102ca647.htm>.

249. *Id.*

250. *Id.*

251. *Id.*

252. *See* FRIEDMAN, *supra* note 13, at 244-49.

253. *See id.*

254. *Fiscal 2006 Appropriations: Hearing Before the Subcommittee on Transportation, Treasury, the Judiciary, and Housing and Urban Dev.*, 109th Cong. (2005) (statement of Sen. Christopher S. Bond).

[T]he lack of support for NSF [National Science Foundation] and the physical sciences and the growing funding disparity between the life sciences and the physical sciences is jeopardizing our Nation's ability to lead the world in scientific innovation. Further, we are jeopardizing the work of the National Institutes of Health because we are undermining the physical sciences, which provide the underpinning for medical technological advances. Inadequate funding for NSF also hurts our economy and the creation of good jobs, which would help address the outcry of outsourcing jobs to other countries. The bottom-line is that by underfunding NSF, we are shooting ourselves and our future generations in the foot. I hope we can get NSF back on the path of doubling the budget as I have strongly advocated.²⁵⁵

Some public schools have taken their own initiative to address this problem.²⁵⁶ For instance, High Tech High School, located in San Diego, California, is a public school designed to look more like a high tech company rather than a high school.²⁵⁷ Less than one-third of the building is designated for traditional classrooms, with specialized laboratories “for the study of everything from biotechnology to computer animation,” embracing the remainder of the building.²⁵⁸ Not only is the structural aspect of this high school unique compared to other public high schools, its curriculum is even more unconventional.²⁵⁹ Student-advisors create customized lesson plans for each student.²⁶⁰ Instead of multiple fifty-minute classes, students only have one morning and one afternoon block so that they can concentrate on one aspect at a time.²⁶¹ Most importantly, students are given opportunities to intern at a number of large corporations in the area.²⁶²

The goal of creating public schools like High Tech High is to introduce students at an early age to the experiences and challenges of working at a high tech corporation.²⁶³ Larry Rosenstock, the Principal of High Tech High, states that High Tech High “with its emphasis on technology, individualized course work, and depth rather than breadth . . . may well prove to be a blueprint for the

255. *Id.*

256. See William C. Symonds, *High School Will Never Be the Same*, BUS. WEEK, Aug. 28, 2000, available at http://www.businessweek.com/2000/00_35/b3696053.htm.

257. *Id.*

258. *Id.*

259. *Id.*

260. *Id.*

261. *Id.*

262. *Id.*

263. *Id.* San Diego restructured its public schools to resemble public schools in Europe, where students complete their core curriculum by the time they reach sixteen and then dedicate two years to a more specialized program to prepare students for their future. *Id.*

21st century school.”²⁶⁴ Companies such as IBM have also joined in the effort to encourage more young Americans to enter science and math fields.²⁶⁵ Fearing that the educational achievements of America’s children are falling behind their peers in China, IBM has created a program allowing up to 100 IBM employees to leave the corporation in order to teach science and math.²⁶⁶ “The goal is to help fill shortfalls in the nation’s teaching ranks, a problem expected to grow with the retirement of today’s educators.”²⁶⁷

The U.S. government needs to consider the propositions recommended by Senator Christopher S. Bond and encourage more states to adopt public educational programs, such as High Tech High and the IBM program, in order to facilitate U.S. innovation.

3. Address and Reform the Healthcare Crisis

U.S. manufacturers have resorted to moving their production offshore, or have even been forced out of business, because of excessive labor costs in the United States.²⁶⁸ One of the reasons why the United States has such a disproportionate labor cost compared to the CAFTA region is due to the high costs of health care.²⁶⁹ The cost of health care is particularly pernicious to small U.S. manufacturers because the cost of providing health care to employees is not spread out among a large band of employees.²⁷⁰

In order to compete with corporations manufacturing in the CAFTA region, the “country must develop a national health-care system so that American businesses’ competitive edge is not dulled by their obligations to pay skyrocketing health-care costs.”²⁷¹ Representative Max Sandlin has addressed the health care crisis in America and has suggested that the federal government take the following initiatives to resolve this problem:

[G]iving help to small manufacturers both through tax relief and the Manufacturing Extension Partnership; fully funding the Small Business Administration; improving access

264. *Id.*

265. Brian Bergstein, *IBM to Encourage Employees to be Teachers*, USA TODAY, Sept. 16, 2005, available at http://www.usatoday.com/tech/news/2005-09-18-ibm-teachers_x.htm.

266. *Id.*

267. *Id.* It is estimated that over 250,000 math and science teachers are needed across the country. *Id.*

268. *See supra* Part III(C).

269. *See generally* Travers, *supra* note 217.

270. Paul Wilson, *Small Manufacturers Converge at Summit*, CHARLESTON GAZETTE, June 22, 2004. “[S]mall businesses are big business in this country . . . they are the engine of America’s economy, representing more than 95 percent of all employers, creating half of our gross domestic product, and creating three out of four new jobs nationwide.” Press Release, Rep. Sandlin Talks Healthcare with Small Business Leaders (June 17, 2004) (on file with U.S. Fed. News) [hereinafter *Rep. Sandlin Talks Healthcare*].

271. Travers, *supra* note 217.

to 7(a) loans; opening the \$285 billion federal marketplace to small businesses; and putting the government on a 'pay-as-you-go' basis to restrain deficit spending that raises interest rates and restricts small firms' access to capital.²⁷²

President George W. Bush has recently taken steps to address the problem of rising health care costs for small businesses.²⁷³ President Bush has urged Congress to pass legislation that would permit small businesses to acquire federally regulated health care plans through trade associations and businesses.²⁷⁴ These plans would be exempt from state benefit requirements and availability rules.²⁷⁵ Alternatively, the U.S. Department of Labor would regulate the plans.²⁷⁶ President Bush illustrated the current problem and his proposed solution:

If you're a restaurant owner here in Loudoun County and a restaurant owner in Crawford . . . they should be allowed to pool their risk across jurisdictional boundaries. . . . In other words, the larger the risk pool, the more employees you're able to get in a risk pool, the easier it is to manage your costs when it comes to health insurance. You can't do that now. And Congress should encourage you to be able to pool risk.²⁷⁷

If the government can find a way to provide health care to all Americans at a lower cost to manufacturers, it would help curb the problem of competing against manufacturers producing in the CAFTA region and hopefully save jobs in America.

B. Individual Solutions

With increased competition due to the elimination of trade barriers, outsourcing domestic manufacturing jobs may be inevitable. However, Americans can protect themselves from job loss.²⁷⁸ As Pulitzer Prize winner and New York Times writer, Thomas Friedman states:

Every law of economics tells us that if we connect all the

272. *Rep. Sandlin Talks Healthcare*, *supra* note 270.

273. R.J. Lehmann, *President Points to Tort Reform, Health Care as Key to Small-Business Agenda*, BEST WIRE, Jan. 20, 2006.

274. *Id.*

275. *Id.*

276. *Id.*

277. *Id.*

278. See generally Ed Frauenheim & Mike Yamaoto, *Reforms, Not Rhetoric, Needed to Keep Jobs on U.S. Soil*, May 4, 2004, http://news.com.com/Offshoring+U.S.+needs+reforms,+not+rhetoric/2009-1070_3-5198156.html. See also FRIEDMAN, *supra* note 13, at 237-49.

knowledge pools in the world, and promote greater and greater trade and integration, the global pie will grow wider and more complex. And if America, or any other country, nurtures a labor force that is increasingly made up of men and women who are special, specialized, or constantly adapting to higher-value-added jobs, it will grab its slice of that growing pie.²⁷⁹

Thus, U.S. citizens need to become more marketable and “untouchable” in order to succeed in a free trade world.²⁸⁰

1. Becoming More Marketable

As the U.S. government passes more free trade agreements, the potential for American jobs to become outsourced increases.²⁸¹ Therefore, U.S. citizens need to become more marketable by attaining and possessing skills that cannot be outsourced to low-wage countries within the CAFTA region.²⁸²

To increase their marketability, Americans should take a number of steps.²⁸³ First, individuals should take a personal assessment of themselves to determine where they stand in relation to others in a similar field.²⁸⁴ Second, individuals “need to develop the technical competence that enables [them] to meet the performance requirements of [their] specific position. . . .”²⁸⁵ Third, individuals should update their current skills by enrolling in continuing education classes.²⁸⁶

Additionally, parents serve an integral part of achieving this goal of increased marketability.²⁸⁷ Parents need to encourage their children to enter into educational fields that will lead to marketable jobs in the future.²⁸⁸

279. FRIEDMAN, *supra* note 13, at 248.

280. *Id.* at 237-49.

281. See Frauenheim & Yamaoto, *supra* note 278 (noting that the opportunities we are educating young Americans to perform, are the very jobs that are being exported offshore).

282. See *id.* In terms of planning a career, marketability refers to the likelihood that potential employers will hire you rather than hire someone with similar skills and experience. Kathleen Spencer Lee, *How Marketable Are You*, June 2003, http://www.certmag.com/articles/templates/cmag_webonly.asp?articleid=258&zzoneid=41.

283. See Lee, *supra* note 282.

284. *Id.*

285. *Id.*

286. *Id.*

287. See FRIEDMAN, *supra* note 13, at 270 (contributing students’ success to their parents’ insistence that their children manage their time and encouragement to enter math and science fields).

288. See *id.* If the United States does not enhance its innovation within the science and engineering fields, there is a substantial risk of job loss for those young people who decide to become employed within the manufacturing industry. Rick Barrett, *Blue Collar Alert: Silencing Factor Whistles Will Muffle Economy, Report Warns*, Feb. 1, 2006, <http://www.jsonline.com/bym/news/feb06/389277.asp>.

2. *Becoming "Untouchable"*

In order to minimize the possibility of having a job outsourced to a low-wage country, Americans need to become "untouchable."²⁸⁹ Becoming "untouchable" includes acquiring specialized skills, an anchored job, and adaptable skills.²⁹⁰

Specialized skills include skills that are in high demand and are not fungible.²⁹¹ Any kind of "knowledge work[]" involves specialized skills.²⁹² For instance, people possessing specialized skills include specialized accountants, attorneys, physicians and surgeons, and computer and software engineers.²⁹³

Realistically, not everyone can acquire specialized skills.²⁹⁴ Those who cannot acquire specialized skills need to obtain a job that is anchored.²⁹⁵ Individuals who possess anchored jobs include hairdressers, waitresses, chefs, and entertainers.²⁹⁶ These jobs will always be in demand and unlikely will become outsourced because they involve "face-to-face contact with a customer, client, patient, or audience."²⁹⁷

Nevertheless, not all anchored jobs are safe from being moved offshore; as more free trade agreements are passed and technology improves, corporations will have more opportunity to move jobs offshore.²⁹⁸ Therefore, Americans also need to become adaptable.²⁹⁹ Being adaptable means gaining "new skills, knowledge, and expertise that enable [a person] constantly to be able to create value."³⁰⁰

VI. CONCLUSION

The theory of free trade and comparative advantage has existed since the 1700s.³⁰¹ Since that time, the United States has made a number of agreements

289. FRIEDMAN, *supra* note 13, at 237-49.

290. *Id.* at 238.

291. *Id.* "Work that can be easily digitized and transferred to lower-wage locations is fungible. Work that cannot be digitized or easily substituted is nonfungible." *Id.*

292. *Id.*

293. *Id.*

294. *Id.*

295. *Id.*

296. *Id.*

297. *Id.* However, with new technology emerging, "digitization of information and expanded bandwidth abroad are enabling companies to outsource to low-wage countries services ranging from routine call center work to higher-value software programming, medical diagnosis, and research and analytical activities." Lael Brainard & Robert E. Litan, "Offshoring" *Service Jobs: Bane or Boon and What to Do About It*, Apr. 2004, <http://www.brookings.edu/comm/policybriefs/pb132.htm>.

298. FRIEDMAN, *supra* note 13, at 238-39.

299. *Id.* at 239.

300. *Id.*

301. *See supra* notes 16-22 and accompanying text.

with other countries.³⁰² Although free trade often results in cheaper products for Americans, it also has the propensity to leave thousands of manufacturing employees unemployed because domestic manufacturers are no longer competitive.³⁰³

Most recently, CAFTA was passed to promote free trade between the United States and Central America.³⁰⁴ Proponents of CAFTA have proclaimed that there will be benefits to its enactment, such as lower priced commodities.³⁰⁵

However, many opponents of CAFTA contend that U.S. manufacturing employees may lose their jobs as a result of its ratification.³⁰⁶ In other words, opponents characterize CAFTA as merely an extension of NAFTA and an agreement that will only exasperate existing problems.³⁰⁷

Certain measures must be taken to ameliorate the potentially adverse implications of CAFTA, such as the loss of U.S. manufacturing.³⁰⁸ In particular, the U.S. government must strive to ensure CAFTA is a *fair* trade agreement, increase innovation, and address the health care crisis in the United States.³⁰⁹ Moreover, Americans need to become aware of the possible negative outcome of CAFTA and the ways to insulate themselves from shifts in the job market as more trade agreements are passed.³¹⁰ If steps are not taken to protect U.S. manufacturing, many more cities across the country may end up like Canton, Ohio. In a speech to the Senate, former Federal Reserve Chairman Alan Greenspan stated:

The basic problem that we confront is given that the advantages [of globalization] are so much greater than the deficits, how do we take care of those who are on the wrong side of this process? . . . [W]hat our international trade policy should be focusing on is finding how we put resources, basically much of the resources that we gain from globalization, to assist those who are on the wrong side of the adjustment to retrain, come back and if necessary to at least get a means of redress which recognizes that there are very significant problems in any competitive -- any advance in economic activity.³¹¹

302. See *supra* notes 25-28 and accompanying text.

303. See *supra* Part III(A)(1).

304. See *supra* Part II.

305. See *supra* Part IV.

306. See *supra* Part III.

307. See generally Buchanan, *supra* note 60 (noting that the United States will experience the same adverse consequences observed after the enactment of NAFTA).

308. See *supra* Part V.

309. See *supra* Part V(A)(1).

310. See *supra* Part V(B).

311. Jeffrey Sparshott, *The Hidden Cost of Free Trade*, WASH. POST, Sept. 18, 2005, available at <http://www.washingtontimes.com/specialreport/20050917-104940-2061r.htm>.

