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NAFTA and the Textile and Apparel Industries: Made in North America

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COMMENT

NAFTA and the Textile and Apparel Industries: "Made in North America"

I. Introduction

On December 17, 1992, during the final months of his Presidency, George Bush signed a draft proposal of the North American Free Trade Agreement (NAFTA),[1] an agreement between Mexico, Canada, and the United States. NAFTA was approved by Congress in November of 1993 under the fast track procedures of the Omnibus Trade and Competitiveness Act of 1988,[2] creating a total market larger than the European Community, encompassing 370 million people and $6.5 trillion.[3] The agreement provides for the progressive elimination of all

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[1] Karen Rothmyer, *Bush's Parting Gift*, NEWSDAY (Nassau), Dec. 18, 1992, at 57; *see also Bush Signs NAFTA to Cheers, Protests*, WWD, Dec. 18, 1992, at 11.

[2] *See* Omnibus Trade & Competitiveness Act of 1988, 19 U.S.C. §§ 2901-2906 (1988). *See also* CRS REPORT TO CONGRESS (CRS), A NORTH AMERICAN FREE TRADE AREA? A BRIEF REVIEW OF MAJOR ISSUES 1-2 (May 17, 1991) [hereinafter MAJOR ISSUES]; U.S. INT'L TRADE COMM'N, PUB. NO. 2353, THE LIKELY IMPACT ON THE UNITED STATES OF A FREE TRADE AGREEMENT WITH MEXICO, xix (Feb. 1991) [hereinafter LIKELY IMPACT]. Fast track authority allows the President to negotiate a trade agreement while consulting with Congress on a regular basis. However, Congress can only vote for or against the agreement as negotiated by the President. Congress cannot alter provisions in the agreement but can add new provisions. Under fast track provisions, the administration must submit to Congress the agreement and an implementing bill outlining the changes that must be made to existing laws and regulations in order to comply with the agreement. Congress then has ninety days to consider the agreement, and both houses have to vote either for or against NAFTA by a simple majority. *U.S., Canada, Mexico Reach North American Free Trade Agreement*, FACTS ON FILE WORLD NEWS DIGEST, Aug. 13, 1992, at A1 [hereinafter *U.S., Canada, Mexico Reach Agreement*]. Fast track authority was set to expire in March of 1993. *Id.* However, because the President had already signed the agreement by the date his fast track authority expired, it was not necessary to get an extension of the authority. *Id.* *See* U.S. INT'L TRADE COMM'N, PUB. NO. 2596, POTENTIAL IMPACT ON THE U.S. ECONOMY AND SELECTED INDUSTRIES OF THE NORTH AMERICAN FREE-TRADE AGREEMENT, app. e at 2 (Jan. 1993) [hereinafter POTENTIAL IMPACT]. *See also* LIKELY IMPACT, app. xix. The House of Representatives passed NAFTA and its implementing legislation by a vote of 234 to 200 on November 17, 1993. James Gerstenzang & Michael Ross, *House Passes NAFTA, 234-200*, L.A. TIMES, Nov. 18, 1993, at A1. On November 20, the Senate voted to pass NAFTA by a margin of 61-38. William J. Eaton & James Risen, *Senate OKs Extension of Benefits for Jobless; Congress: Measure Would Help California's Long-Term Unemployed. Upper House Also Passes NAFTA, 61-38*, L.A. TIMES, Nov. 21, 1993, at A1; *How Our Senators Voted*, WASH. TIMES, Nov. 28, 1993, at A13.

[3] *U.S., Canada, Mexico Reach Agreement*, *supra* note 2, *available in* LEXIS, Nexis Library, Currnt File.

tariffs on goods originating in the NAFTA countries.[4] The rules of origin determine which products qualify for this preferential treatment.[5] Additionally, once a product originating in a non-NAFTA country has been imported into a NAFTA country and the appropriate tariff has been paid, such product may be transported into another NAFTA country duty-free.[6]

Although NAFTA is a trilateral treaty among the United States, Canada, and Mexico, this Comment only discusses the effects of a U.S. free trade agreement with Mexico because Canada and the United States are on a similar level of economic development, have similar interests in a free trade agreement, and will be similarly affected by a free trade agreement with Mexico.[7] Additionally, the United States and Canada have operated under a free trade agreement similar to NAFTA since 1989.[8] Therefore, a discussion of U.S.-Mexican trade relations and the effects on the United States of a free trade agreement with Mexico should be a sufficient analysis of the effects of NAFTA on the United States.

The focus of this Comment is NAFTA's possible effects on the U.S. textile and apparel industries. To this end, the Comment begins with a brief survey of the history of trade relations between Mexico and the United States and continues in Part II.B to explain, compare, and contrast the textile and apparel industries. Part III sets out the NAFTA provisions that are most likely to affect these industries. Against this background, Part IV delineates the differing opinions as to the effects of a U.S.-Mexico free trade agreement on the U.S. economy and, more specifically, on the textile and apparel industries. The Comment finally concludes in Part V that NAFTA will affect the balance of trade between the United States and Mexico only minimally, but should prove favorable to the United States.

II. Background

A. *History of U.S.-Mexican Trade Relations*

Historically, Mexico has exhibited strong protectionist tendencies caused in part by its distrust of the United States.[9] In the mid-1800s, Mexico lost a substantial amount of territory, including Texas and what is now the American Southwest, to the United States.[10] Later,

[4] North American Free Trade Agreement Between the Government of the United States of America, the Government of Canada and the Government of the United Mexican States, Nov. 17, 1992, art. 302, annex 302.2, annex 300-B, § 2, *available in* WESTLAW, NAFTA Library [hereinafter NAFTA].

[5] NAFTA, *supra* note 4, arts. 401, 402, annex 300-B, § 7, annex 401, § XI.

[6] NAFTA, *supra* note 4, art. 301.

[7] CRS REPORT FOR CONGRESS (CRS), NORTH AMERICAN FREE TRADE AGREEMENT: ISSUES FOR CONGRESS 2 (Mar. 25, 1991) [hereinafter ISSUES FOR CONGRESS].

[8] *Id.* at 4.

[9] *Id.* at 11.

[10] *Id.* at 15.

during the Mexican Revolution, the United States occupied Mexico's Veracruz, which led to continued Mexican wariness toward the United States.[11]

During the late 1800s and early 1900s, investors from the United States invested heavily in Mexico at a level that eventually exceeded Mexico's domestic investment and all other foreign investment combined.[12] The heavy U.S. investment spurred the Mexican government to adopt policies geared toward the protection of domestic industry.[13] The government nationalized the Mexican oil industry in the 1930s and instituted socialist economic reforms.[14] Relations between the United States and Mexico improved throughout the 1930s with Franklin D. Roosevelt's establishment of the "Good Neighbor Policy."[15] However, Mexico still restricted foreign investment and controlled its exchange rates in an effort to avoid domination of its economy by foreign nations.[16]

The discovery of large oil reserves in the 1970s allowed Mexico to obtain sizeable loans from foreign countries and banks. By 1982, however, Mexico was unable to service this debt.[17] During this debt crisis, the Mexican government began a series of debt restructuring and economic reforms including decreases in foreign trade barriers, diversification of the Mexican economy away from oil production, and institution of incentives for foreign investors.[18] Even after these reforms, however, the Mexican economy was unable to recover, and the government continued to have trouble servicing its debt.[19] Again, in 1986, the Mexican government enacted more economic reforms including privatization of state-owned industries, reformation of the tax system, liberalization of foreign investment, and entry into membership of the General Agreement on Tariffs and Trade (GATT).[20]

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[11] *Id.* at 11, 15. The Mexican Revolution started in 1910 and lasted approximately thirty years. *Id.* at 15.

[12] *Id.* at 11.

[13] *Id.* at 12.

[14] *Id.* at 15.

[15] *Id.* at 11. The Good Neighbor Policy adopted by the United States was a policy of respect for the sovereignty of other nations in North and South America through nonintervention in other nations' internal affairs. *Id.*

[16] LIKELY IMPACT, *supra* note 2, at 1-1.

[17] *Id.*

[18] ISSUES FOR CONGRESS, *supra* note 7, at 12.

[19] *Id.* at 17.

[20] *Id.* GATT is a forty-four-year-old agreement between most major nations to reduce trade barriers. Brian O'Reilly, *Fixing the Economy: How to Keep Exports on a Roll*, FORT., Oct. 19, 1992, at 68. Mexico has agreed to GATT provisions on technical barriers to trade, anti-dumping, licensing, and customs valuation. LIKELY IMPACT, *supra* note 2, at 1-2 n.6. An additional provision requires that any country who grants trade concessions to another GATT country must make those concessions available to all GATT members. This recent is referred to as the most-favored nation principle. However, Article XXIV of GATT permits free trade agreements with some limitations. ISSUES FOR CONGRESS, *supra* note 7, at 2. The recent approval of the Uruguay Round of GATT negotiations may influence substantially the effects of NAFTA. However, the effects of GATT are beyond the scope of this paper.

In 1987, Mexico and the United States entered into the first agreement to govern trade between the two countries.[21] A second agreement in 1989 established negotiating procedures to expand bilateral trade and investment.[22] Finally, in 1990, President George Bush and Mexican President Carlos Salinas de Gortari issued a joint statement in favor of negotiating a free trade agreement.[23]

Through Mexico's trade reforms in 1985, its entry into GATT in 1986, and the trade agreements of 1987 and 1989 with the United States, Mexico and the United States now have relatively low trade barriers between the two countries. Mexico has reduced its highest tariffs from 100% to 20% and has cut its average tariff in half, from 16.9% to 8.2%.[24] The average tariff on U.S. goods entering Mexico was about 10% in 1993.[25] Additionally, Mexico has decreased some non-tariff barriers.[26] For example, the Mexican reforms reduced the number of import products requiring trade licenses from 12,000 to 230 products.[27] The average U.S. tariff on Mexican goods was estimated to be between 2.5%[28] and 4% in 1993.[29] By 1992, 50% of Mexican goods imported to the United States came in duty-free, and the balance was subject to duties of less than 4%.[30]

As a result of decreased trade barriers, U.S. trade with Mexico has increased dramatically since the mid- to late 1980s.[31] In 1987, U.S. exports to Mexico totaled about $14 billion and imports from Mexico totaled about $19.8 billion, leaving the United States with a trade deficit of approximately $5.8 billion.[32] In 1988, exports increased to $19.8 billion, and imports increased to $22.6 billion, reducing the annual

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21 ISSUES FOR CONGRESS, *supra* note 7, at 12. The agreement provided an agenda for the reduction or elimination of barriers to trade and a framework through which the two countries could discuss trade issues. *Id.* Under this agreement, Mexico and the United States liberalized trade in the steel and textile industries as well as in the alcoholic beverages industry. Additionally, the two have been negotiating other opportunities to increase trade. *Id.*

22 *Id.* at 12.

23 *Id.*

24 MAJOR ISSUES, *supra* note 2, at 4.

25 Lloyd Bentsen, *Is NAFTA Good for the U.S.?/Yes: Mexico's Market Is Ripe for U.S. Exports*, USA TODAY, Oct. 12, 1993, at A13.

26 *See* LIKELY IMPACT, *supra* note 2, at 1-2; POTENTIAL IMPACT, *supra* note 2, at 1-7. Mexico still imposes non-tariff barriers including import licenses and official import prices. Other Mexican trade barriers include "discriminatory government procurement policies; standards, testing, and certification requirements; limited intellectual property protection in many sectors . . . ; and exclusive sales rights and distribution contracts." LIKELY IMPACT, *supra* note 2, at 1-2.

27 LIKELY IMPACT, *supra* note 2, at 1-2.

28 James Gerstenzang, *Ticket Fee to Finance Free Trade Pact May Be Dropped*, L.A. TIMES, Oct. 22, 1993, at A26.

29 Bentsen, *supra* note 25, at A13.

30 *The MacNeil/Lehrer NewsHour* (Educational Broadcasting Broadcast, Oct. 7, 1992), Transcript No. 4471, *available in* LEXIS, Nexis Library, Currnt File [hereinafter *MacNeil/Lehrer*]. *See also* LIKELY IMPACT, *supra* note 2, at 2-2; MAJOR ISSUES, *supra* note 2, at 4.

31 LIKELY IMPACT, *supra* note 2, at 1-4.

32 *Id.* app. e.

deficit to $2.8 billion.[33] In 1990, exports increased to $28.4 billion and in 1992, exploded to $41.9 billion.[34] Most industries have benefited from Mexico's reduction in trade barriers, including the textile and apparel industries.[35]

B. *The Textile and Apparel Industries*

Before investigating imports and exports of the textile and apparel industries, it is necessary to examine briefly the nature of these industries, their history, and their structure today. The textile industry encompasses the production of yarn or thread and the production of fabrics from these materials;[36] the apparel industry encompasses the cutting and sewing of the fabric into clothing.[37] The textile industry is high-tech, capital intensive, and generally requires highly skilled workers.[38] Textile manufacturing, finishing, and dyeing require an abundance of clean water and a reliable source of electricity.[39] Unlike the rest of the industry, the cutting sector of the apparel industry is also highly skilled and automated.[40] In many plants, the cutting operations are controlled by computers, and therefore require a reliable electrical source as well.[41]

The rest of the apparel industry, which consists of the fabrication of pieces of cloth into clothing, is labor intensive.[42] Labor comprises more than thirty-one percent of total apparel production costs as compared to twenty-two percent to twenty-five percent for the textile industry.[43] As a result, the apparel industry does not require as much infrastructure as the textile industry. All that is necessary is electricity, and as Eric Hoyle, Chief Financial Officer of Bali Co., pointed out, "You can put a generator outside [the plant] if the power is unreliable."[44]

The labor intensive nature of both the textile and apparel industries is the source of much competition in these sectors from develop-

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[33] *Id.*

[34] *North American Free Trade Agreement: An Assessment*, FED. NEWS SERVICE, Dec. 15, 1992 (Statement of Jeffrey J. Schott, Senior Fellow, Institute for International Economics before the Committee on Small Business, U.S. House of Rep.), *available in* LEXIS, Nexis Library, Currnt File [hereinafter *An Assessment*].

[35] *See infra* notes 45-68 and accompanying text for discussion of U.S. textile and apparel trade with Mexico. *See also infra* tbls. 1, 2.

[36] LIKELY IMPACT, *supra* note 2, at 4-38 to 4-39.

[37] *Id.* at 4-39.

[38] Laura Zelenko, *Down Mexico Way: Is That Where Tarheel Jobs Will Be Headed if the North American Free Trade Agreement Is Approved?*, BUS.-N.C., Nov. 1992, at 24, 34-35.

[39] *Id.* at 29.

[40] *Id.*

[41] *Id.*

[42] *Id.* at 25. *See also* LIKELY IMPACT, *supra* note 2, at 4-38.

[43] Zelenko, *supra* note 38, at 25.

[44] *Id.* at 29. Bali Co. is a large apparel firm based in Winston-Salem, North Carolina. The company employs 500 workers at each of 2 bra-sewing plants located in Mexico. *Id.* at 27.

ing countries with low average wages.[45] For example, the average hourly pay for a textile or apparel worker in Mexico is between $1.50 and $2.00,[46] compared to U.S. average hourly wages of $8.59.[47] As a result, the United States regularly runs a trade deficit in these industries.[48]

Another reason for the trade deficit with Mexico is the *maquiladora* industry.[49] The Mexican *maquiladora* program was established in 1965 to help decrease the unemployment rate in Mexico.[50] The program allowed foreign firms to own assembly plants in Mexico and to import intermediate materials for assembly, but only if all final products were exported.[51]

Mexico changed the law in 1989 to allow *maquiladoras* to sell their products domestically.[52] Sales in Mexico, however, are still restricted.[53] For each $100 exported, the *maquiladoras* may sell only $50 worth of their goods in Mexico.[54] Mexico also offers a system of full-duty drawbacks through which *maquiladora* exporters can receive rebates for any import duties paid.[55] United States customs laws have

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[45] The U.S. textiles and apparel industries face stiff competition from many low wage countries such as those in the Far East. Corporations in these countries pay lower wages than American workers are paid. Thus, the products are less expensive than U.S. products. By allowing free trade between Mexico and the United States, U.S. companies will be able to take advantage of the lower wage level in Mexico to become more competitive with Pacific Rim textiles and apparel. *See* Jennifer Reingold, *Heap Big Smoke . . . Why the Controversial NAFTA May Be Less Than Meets the Eye*, FIN. WORLD, Feb. 16, 1993, at 40; *see also* LIKELY IMPACT, *supra* note 2, at 4-40; POTENTIAL IMPACT, *supra* note 2, at 8-4 to 8-6. Louis S. Richman, *How NAFTA Will Help America*, FORT., Apr. 19, 1993, at 95. *See also infra* notes 64-68 and accompanying text.

[46] Zelenko, *supra* note 38, at 27.

[47] *1992 U.S. Textile Industry Business Review*, PR Newswire, Dec. 29, 1992, *available in* LEXIS, Nexis Library, Currnt File [hereinafter *1992 Review*].

[48] *See American Textile Manufacturers Institute Releases Review*, PR Newswire, Dec. 15, 1987, *available in* LEXIS, Nexis Library, Currnt File [hereinafter *1987 Review*]; *1988 U.S. Textile Industry Business Review*, PR Newswire, Dec. 27, 1988, *available in* LEXIS, Nexis Library, Currnt File [hereinafter *1988 Review*]; *1990 U.S. Textile Industry Business Review*, PR Newswire, Dec. 27, 1990, *available in* LEXIS, Nexis Library, Currnt File [hereinafter *1990 Review*]; *1991 U.S. Textile Industry Business Review*, PR Newswire, Dec. 26, 1991, *available in* LEXIS, Nexis Library, Currnt File [hereinafter *1991 Review*], *1992 Review*, *supra* note 47; *Textile Production Up, Employment Down*, UPI, Dec. 28, 1989, *available in* LEXIS, Nexis Library, Currnt File [hereinafter *1989 Review*].

[49] Jeff Silverstein, *Survival of a Dinosaur*, BUS. MEXICO, Nov. 1992, *available in* LEXIS, Nexis Library, Currnt File.

[50] ISSUES FOR CONGRESS, *supra* note 7, at 19; *see also* LIKELY IMPACT, *supra* note 2, at 1-5.

[51] Silverstein, *supra* note 49. Mexican law provided that companies in Mexico must have majority Mexican ownership. ISSUES FOR CONGRESS, *supra* note 7, at 19. The *maquiladora* program exempted *maquiladoras* from this law and from the Mexican law prohibiting foreign ownership of land near its borders. *Id.* At first *maquiladoras* were permitted only in the border regions near the United States, but now they are permitted in the interior of Mexico. LIKELY IMPACT, *supra* note 2, at 1-5; ISSUES FOR CONGRESS, *supra* note 7, at 19.

[52] Silverstein, *supra* note 49.

[53] *Id.*

[54] *Id.*

[55] *Id.* "For example, if a firm paid a US $100 import tax followed by a US $50 export tax, the company is entitled to a $100 rebate." *Id.* This program benefits not only *maqui-*

aided the development of the *maquiladora* program by charging duties only on the total value of the product less the cost of the product's U.S. components.[56]

Even though the United States has charged low duties on textiles and apparel produced by the *maquiladoras*, the textile and apparel industries as a whole still have been the most protected industries in the United States over the last thirty years.[57] The average U.S. tariff on textiles is approximately twenty percent, and the average tariff on all imported goods is approximately four percent.[58] Over the last few years, the United States has liberalized its import quotas with Mexico, eliminating quotas on articles produced from U.S. made and cut fabrics, while increasing quotas on other types of textile and apparel goods from countries other than Mexico, such as those from the Far East.[59]

Even though the trade barriers between the United States and Mexico are relatively low, textile and apparel trade with Mexico constitutes only a small portion of total U.S. textile and apparel trade.[60] Table 1 below shows U.S. imports from and exports to Mexico in the textile and apparel industries in millions of U.S. dollars. Table 2 demonstrates the performance of the U.S. textile and apparel industries in terms of exports, imports, and U.S. trade deficit in these industries in billions of U.S. dollars.

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ladoras using U.S. products but also those using materials from other developing countries, including those in the Caribbean and the Far East. *Id.*

[56] LIKELY IMPACT, *supra* note 2, at 4-39. The Harmonized Tariff Schedule of the United States (HTS), in provisions 9802.00.60 and 9802.00.80, provides for these favorable duties. Countries other than Mexico, such as Canada and Japan, take advantage of these provisions as well. LIKELY IMPACT, *supra* note 2, at 4-39.

[57] Brenda Lloyd, *Apparel Contractors Still Apprehensive About NAFTA*, WWD, Oct. 27, 1992, at 14.

[58] *Central America's Textile Problem; Excluded From CBI*, LATIN AMERICAN REGIONAL REP.: MEXICO & NAFTA REP. (Latin American Newsletters, Ltd.), Jan. 14, 1993, at 4. U.S. trade weighted duties average 17% ad valorem for apparel and 8% for textiles. Because a large number of Mexican-produced garments are made out of U.S. components (thereby falling under HTS) the effective rate is only 6%. Mexican barriers to trade in the textile and apparel industries are much higher than in the United States. Mexican duties on textiles range from 12% to 18% and on apparel average approximately 20%. LIKELY IMPACT, *supra* note 2, at 4-38.

[59] LIKELY IMPACT, *supra* note 2, at 4-39. See *supra* note 45 for discussion on Far East competition.

[60] MAJOR ISSUES, *supra* note 2, at 6.

Table 1[61]
U.S. Textile and Apparel Trade with Mexico
(in millions)

	1988	1989	1990	1991
Exports	$598	$702	$854	$1017
Imports	$565	$646	$678	$879
Trade Surplus	$33	$56	$176	$138

Table 2[62]
Total U.S. Textile and Apparel Trade
(in billions)

	1986	1987	1988[63]	1989	1990	1991	1992e
Textile & apparel imports	24.7	28.9	29.7	33.6	33.7	35.0	42.0
Textile & apparel exports	3.5	4.1	5.1	7.2	7.4	8.7	9.9
Trade Deficit	21.3	24.8	24.7	26.4	26.3	26.4	32.0

e = estimated

The two tables show that Mexican imports accounted for only 2%, 2.1%, 2.5%, and 2.9% of all U.S. imports of textiles and apparel in 1988, 1989, 1990, and 1991 respectively. The ratio of U.S. exports of textiles and apparel to Mexico to U.S. exports of textiles and apparel to the rest of the world was higher at 11.8%, 9.8%, 11.5%, and 11.7% for the same years respectively.

The U.S. textile and apparel industries face stiff competition from China, Pakistan, and India.[64] M.L. Cates, Jr., president of the American Textile Manufacturers Institute (ATMI), asserted that these countries "have been allowed to increase their shipments to the U.S. while at the same time virtually closing their markets to our exports."[65] China's textile and apparel imports to the United States exceeded all textile and apparel imports from Mexico, the Caribbean, and Central America combined.[66] China's $13 billion trade surplus with the United States is mostly from textiles.[67] According to Cates, the increas-

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61 Juanita Darling, *Fears of Free Trade*, L.A. TIMES, Nov. 9, 1992, at D1.

62 *1987 Review*, *supra* note 48; *1988 Review*, *supra* note 48; *1989 Review*, *supra* note 48; *1990 Review*, *supra* note 48; *1991 Review*, *supra* note 48; *1992 Review*, *supra* note 47.

63 There was no Textile Industry Review available for 1989. Therefore, the 1988 figures are estimates from the 1988 report.

64 *Textile and Apparel Import Surge Threatens Proposed NAFTA, ATMI Says*, 9 Int'l Trade Rep. (BNA) No. 42, at 1813 (Oct. 21, 1992). See also *supra* note 45 for brief discussion of Far East competition.

65 *Id.* ATMI is the national trade association of the U.S. textile industry.

66 *Id.*

67 O'Reilly, *supra* note 20, at 68.

ing imports from the Far East have contributed to tremendous job losses in the textile and apparel industries in the United States.[68]

Although U.S.-Mexican textile and apparel trade and, indeed, U.S. textile and apparel trade with the whole world, has increased substantially over the past several years, employment in the textile and apparel industries decreased substantially throughout the 1980s.[69] Over one million textile and apparel jobs disappeared during this time period due, in part, to imports from the Far East,[70] but also due to increased automation of textile plants.[71]

Table 3[72]
U.S. Employment
(in thousands),
Wages and Weekly Earnings in the Textile Industry

	1986	1987	1988	1989	1990	1991	1992e
Employment-textiles	705	725	729	723	691	672	678
Average hourly wages	$6.95	$7.17	$7.35e	$7.67	$8.02	$8.30	$8.59
Average weekly earnings	$286	$300	$302e	$314	$320	$337	$353

e = estimated

Possible loss of U.S. jobs is one of the most controversial issues in the NAFTA debate and will be discussed later in this Comment.

III. Provisions of the North American Free Trade Agreement

In 1990, President George Bush and President Carlos Salinas of Mexico endorsed a plan to formulate a bilateral free trade agreement between the United States and Mexico.[73] Shortly thereafter, Canada proposed participation in a North American free trade agreement.[74] NAFTA was negotiated in the United States under fast track authority granted to the President by Congress in 1991.[75] Bush, Salinas, and Prime Minister Mulroney of Canada initialed the preliminary draft of NAFTA on August 12, 1992,[76] and then signed the final text on De-

68 *U.S. Textile Industry Improved In 1992,* Int'l Trade Daily (BNA), at 3 (Jan. 13, 1993).

69 *See infra* tbl. 3.

70 Darling, *supra* note 61. *See also supra* notes 45, 64-68 for discussion on competition from the Far East in the textile industry.

71 LIKELY IMPACT, *supra* note 2, at 4-38.

72 *1987 Review, supra* note 48; *1988 Review, supra* note 48; *1989 Review, supra* note 48; *1990 Review, supra* note 48; *1991 Review, supra* note 48, *1992 Review, supra* note 47.

73 LIKELY IMPACT, *supra* note 2, at xix.

74 *Id.*

75 *U.S., Canada, Mexico Reach Agreement, supra* note 2; *see also* POTENTIAL IMPACT, *supra* note 2, at 2, app. e. See *supra* note 2, for explanation of fast track authority.

76 *Bush Signs NAFTA to Cheers, Protests, supra* note 1.

cember 17, 1992.[77]

However, under the new Clinton administration, there was initial uncertainty as to what direction NAFTA would take. President Clinton promised during his campaign that, although he would not renegotiate the text of NAFTA, he would negotiate several side agreements to accompany the treaty.[78] In a meeting with Salinas before taking office, Clinton said that NAFTA would require additional guarantees regarding workers' rights and the environment.[79] Additionally, he had proposed a side agreement addressing the problems of import surges.[80] Clinton signed labor, environmental, and import surges side agreements in August of 1993.[81]

The provisions of NAFTA are based on the United States-Canada Free Trade Agreement which went into effect on January 1, 1989.[82] The most significant provisions of NAFTA provide for (1) reduction or elimination of tariffs and quotas;[83] (2) rules of origin which require that goods be comprised of a certain amount of North American materials in order to receive preferential treatment;[84] and (3) safeguard provisions.[85] NAFTA will eliminate immediately, or phase out over ten years, all tariffs on textiles and apparel products imported from Mexico.[86] Additionally, the United States will immediately eliminate quotas on Mexican textiles and apparel that meet the rules of origin and gradually eliminate quotas on Mexican imports that do not.[87]

The rules of origin determine which goods receive free trade

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77 *U.S., Canada, Mexico Reach Agreement*, *supra* note 2.

78 Keith Bradsher, *Study Says Trade Pact Will Aid U.S. Economy*, N.Y. TIMES, Feb. 3, 1993, at D1 [hereinafter *Study Says Pact Will Aid U.S.*]. *See North American Free Trade Agreement Labor and Environmental Supplemental Accords Along with a Summary of Those Agreements, Issued by U.S. Trade Representative Mickey Kantor Aug. 13, 1993*, Daily Report for Executives (BNA) 156 (Aug. 16, 1993), [hereinafter *Labor and Environmental Accords*]. *See infra* notes 149-57 and accompanying text for brief discussion of side agreements.

79 Colin Narbrough, *GATT Teams Sit on Their Hands and Wait for Clinton to Roll in*, THE TIMES, Jan. 15, 1993. *See Labor and Environmental Accords*, *supra* note 78.

80 Bradsher, *Study Says Pact Will Aid U.S.*, *supra* note 78. *See Labor and Environmental Accords*, *supra* note 78.

81 *Labor Leaders Denounce Side Agreements to NAFTA*, Int'l Trade Daily (BNA) (Aug. 17, 1993) *available in* LEXIS, Nexis Library, Currnt File. *See infra* notes 149-57 and accompanying text for brief discussion of side agreements.

82 ISSUES FOR CONGRESS, *supra* note 7, at 21.

83 NAFTA, *supra* note 4, art. 302, annex 302.2, app. 2.1, annex 300-B, §§ 2, 3. *See also Summary of North American Free Trade Agreement*, LATIN AMERICAN REGIONAL REP.: MEXICO & CENTRAL AMERICA (Latin American Newsletters, Ltd.), Sept. 24, 1992, at 8. *See also* Cynthia Mitchell, *Pact's Textile & Apparel Provisions Block Most Duty-Free Importing*, ATLANTA J. & CONST., Oct. 1, 1992, at D2.

84 NAFTA, *supra* note 4, arts. 401, 402, annex 300-B, § 7, annex 401, § XI.

85 *See* NAFTA, *supra* note 4, arts. 801, 802, annex 300-B, §§ 4, 5.

86 *See* NAFTA, *supra* note 4, annex 300-B, § 2; *see also* DESCRIPTION OF THE PROPOSED NORTH AMERICAN FREE TRADE AGREEMENT, Aug. 12, 1992, (prepared by the governments of Canada, Mexico and the United States), *available in* WESTLAW, NAFTA Library [hereinafter DESCRIPTION].

87 NAFTA, *supra* note 4, annex 300-B, § 3; DESCRIPTION, *supra* note 86.

treatment, and thus are a vital part of NAFTA.[88] For most textiles and apparel the "yarn-forward" rule of origin applies.[89] All products wholly-made from yarn and fabric produced in North America and assembled in North America will receive duty-free treatment as soon as NAFTA is implemented.[90] Goods produced from some fabrics not normally produced in the United States, such as silks and tweeds, can receive duty-free treatment up to fixed levels.[91] Additionally, some yarns, fabrics, and apparel produced in North America out of materials not manufactured in North America can still receive duty-free treatment up to certain import levels, called tariff rate quotas.[92] No NAFTA country may institute new quotas except as provided by the safeguard provisions of NAFTA.[93]

If increased imports from one NAFTA country cause substantial damage to the textile or apparel industries of another, the importing country may invoke temporary safeguard provisions until such time as the industry has stabilized.[94] Safeguard provisions include increased tariffs or the imposition of quotas on the damaging products.[95] However, damage resulting from products that meet the rules of origin can only be combatted by increases in tariffs and not by the imposition of quotas.[96]

IV. NAFTA's Effects: Differing Views

Opinions differ as to the possible effects of NAFTA on the U.S. economy. In general, industry leaders promote the agreement as an opportunity for their companies to become more efficient, to reduce costs by taking advantage of cheap labor, and to sell to an expanded

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88 *See* NAFTA, *supra* note 4, arts. 401, 402, annex 300-B, § 7, annex 401, § XI.

89 Mitchell, *supra* note 83. There is also a fiber-forward provision for synthetic materials. NAFTA, *supra* note 4, annex 401, § XI; *see also* DESCRIPTION, *supra* note 86.

90 NAFTA, *supra* note 4, annex 401, § XI. *See* Mitchell, *supra* note 83; Jim Ostroff, *Industry Panel Gives Qualified Nod to NAFTA*, WWD, Sept. 21, 1992, at 1 [hereinafter *Industry Panel Gives Nod to NAFTA*]. Additionally, some products that are not comprised of North American materials can still receive the preferential treatment of NAFTA if they have undergone substantial transformation in North America or if a certain percentage of the materials of which the products are constituted are from North America. NAFTA, *supra* note 4, annex 401, § XI; DESCRIPTION, *supra* note 86.

91 NAFTA, *supra* note 4, annex 401, § XI; Mitchell, *supra* note 83; Ostroff, *Industry Panel Gives Nod to NAFTA*, *supra* note 90.

92 NAFTA, *supra* note 4, annex 401, § XI; DESCRIPTION, *supra* note 86.

93 NAFTA, *supra* note 4, annex 300-B, § 5; DESCRIPTION, *supra* note 86.

94 NAFTA, *supra* note 4, annex 300-B, §§ 4, 5; DESCRIPTION, *supra* note 86. NAFTA lists factors relevant to the determination of whether increased imports actually caused sufficient damage to an industry to warrant the implementation of the safeguard provisions. Factors include "such relevant economic variables as output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits and investment." NAFTA, *supra* note 4, annex 300-B, § 4. NAFTA expressly states that "changes in technology or consumer preferences" shall not support a determination of substantial harm to an industry. NAFTA, *supra* note 4, annex 300-B, § 4.

95 NAFTA, *supra* note 4, annex 300-B, §§ 4, 5; DESCRIPTION, *supra* note 86.

96 NAFTA, *supra* note 4, annex 300-B, §§ 4, 5; DESCRIPTION, *supra* note 86.

market.[97] Union leaders and workers oppose NAFTA because they fear that corporations will move production to Mexico[98] to take advantage of its lower wages.[99] Finally, most studies of the potential effects of NAFTA conclude that it will have little or no effect on the U.S. economy or U.S. employment over the long or short term.[100] Most of the studies indicate that the apparel industry will be among the losers and the textile industry will be among the gainers.[101] These studies predict that the effects on the textile and apparel industry will be much the same as suggested by the proponents of NAFTA. However, the overall effects on the economy will be small and positive.[102]

A. *Proponents*

Industry leaders judge the benefits of NAFTA by its effects on efficiency and not upon the likelihood that the agreement will create jobs.[103] They believe the agreement will benefit the United States by

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97 Zelenko, *supra* note 38.

98 *U.S., Canada, Mexico Reach Agreement*, *supra* note 2.

99 Edmund G. Brown, Jr., *Is NAFTA Good for the U.S.?/No: It'll Exploit Workers and the Environment*, USA TODAY, Oct. 12, 1993, at 13A.

100 *See, e.g.*, LIKELY IMPACT, *supra* note 2, at 2-2; POTENTIAL IMPACT, *supra* note 2, at 2-2. There have been several studies done on the potential effects of NAFTA. *See* UNITED STATES INT'L TRADE COMM'N, PUB. NO. 2516, ECONOMY-WIDE MODELING OF THE ECONOMIC IMPLICATIONS OF A FTA WITH MEXICO AND A NAFTA WITH CANADA (May 1992) [hereinafter ECONOMY-WIDE 1]; UNITED STATES INT'L TRADE COMM'N, PUB. NO. 2508, ECONOMY-WIDE MODELING OF THE ECONOMIC IMPLICATIONS OF A FTA WITH MEXICO AND A NAFTA WITH CANADA (May 1992) (addendum to Pub. No. 2516) [hereinafter ECONOMY-WIDE 2]; ISSUES FOR CONGRESS, *supra* note 7; LIKELY IMPACT, *supra* note 2; MAJOR ISSUES, *supra* note 2; POTENTIAL IMPACT, *supra* note 2. *See also* Carlos Bachrach & Lorris Mizrahi, *The Economic Impact of a Free Trade Agreement Between the United States and Mexico: A CGE Analysis*, *in* ECONOMY-WIDE 1, at 16 & ECONOMY-WIDE 2, at 37 [hereinafter *Peat Marwick Study*]; Clinton R. Sheills & Robert C. Shelburne, *A Summary of "Industrial Effects of a Free Trade Agreement Between Mexico and the U.S.A.," by the Interindustry Economic Research Fund, Inc.*, *in* ECONOMY-WIDE 1, at 15 & ECONOMY-WIDE 2, at 5 [hereinafter *Almon Study*].

101 *See, e.g.*, LIKELY IMPACT, *supra* note 2, at 4-38 to 4-41; MAJOR ISSUES, *supra* note 2, at 6-7; POTENTIAL IMPACT, *supra* note 2, at 8-1 to 8-6.

102 *See* studies listed in *supra* note 100. The studies vary in their methods. The ISSUES FOR CONGRESS, *supra* note 7, and MAJOR ISSUES, *supra* note 2, studies are more general and do not involve much technical economic theory. The International Trade Commission studies, ECONOMY-WIDE 1 & 2, *supra* note 100, LIKELY IMPACT, *supra* note 2, and POTENTIAL IMPACT, *supra* note 2, involve complex economic theory, an explanation of which is beyond the scope of this Comment. The International Trade Commission's ECONOMY-WIDE studies are a collection of twelve technical papers, and economists' discussions of each, which were presented at a symposium in February of 1992.

103 No one, however, expects the benefits of NAFTA to be particularly large. The studies conducted on the potential effects of NAFTA on the U.S. economy conclude that the agreement's effects, if any, will be small, but positive. *See* studies listed in *supra* note 100. Even though Mexico is the United States's third largest trading partner, Mexico's share of U.S. trade is very small. ISSUES FOR CONGRESS, *supra* note 7, at 13; LIKELY IMPACT, *supra* note 2, at 1-3. Mexico's output is one-twenty-fifth of that of the United States, and the entire Mexican market is only 4% of U.S. Gross Domestic Product (GDP). Likely Impact, *supra* note 2, at 2-2; *MacNeil/Lehrer*, *supra* note 30; MAJOR ISSUES, *supra* note 2, summary. U.S. Gross National Product (GNP) in 1990 was approximately $5,500 billion while Mexico's GNP was about $200 billion. MAJOR ISSUES, *supra* note 2, at 4. Because the Mexican economy is so small in comparison to the U.S. economy, trade with Mexico is unlikely to have much effect on the U.S.

increasing demand for U.S. products, such as textiles, while enabling each of the member countries to become more efficient and more competitive with the rest of the world.[104]

Although the Mexican economy is small relative to the U.S. economy, and the Mexican people are relatively poor,[105] the agreement will help the Mexican economy expand by further reducing barriers to trade with the United States.[106] As the Mexican economy expands, so will the market for U.S. goods. Mexican imports will increase and the Mexican people will benefit by obtaining more buying power.[107] As a result, the Mexican people will demand and purchase more U.S.-made products, increasing U.S. exports to Mexico.[108]

The Congressional Research Service study predicts that U.S. exports to Mexico will grow faster than imports from Mexico because of the dynamics in the rate of exchange of dollars for pesos.[109] United States investment in Mexico would be in pesos and therefore, United States firms or individuals wishing to invest in Mexico would have to exchange dollars for pesos. The demand for pesos would exert an upward pressure on the currency's value. As the peso increased in value, U.S. goods would become cheaper in Mexico, and Mexican goods would become more expensive in the United States. Therefore, demand for U.S. goods will increase faster than demand for Mexican goods.[110] Jeffrey J. Schott, Senior Fellow of the Institute for International Economics, stated before the U.S. House of Representatives that he expected the United States to run a $7 billion trade surplus with Mexico throughout the mid-1990s.[111]

All three NAFTA countries are expected to experience increases in their Gross Domestic Products (GDP). Mexico will gain the most with an estimated increase in GDP of between 0.01% and 11.39%.[112]

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economy. LIKELY IMPACT, *supra* note 2, at 2-2. Additionally, barriers to trade between Mexico and the United States are already fairly low. MAJOR ISSUES, *supra* note 2, at 4. Fifty percent of Mexican goods already enter the United States duty-free. *MacNeil/Lehrer*, *supra* note 30. Therefore, the two countries already receive most of the benefits from trade with one another and the continued reduction of these barriers will have little effect. LIKELY IMPACT, *supra* note 2, at 2-2.

104 Katherine Snow, *New Buyer Confidence to Buoy Textilers*, BUS. J.-CHARLOTTE, Dec. 28, 1992, at 12.

105 *Policy Briefing No. 46-Special Section*, ROLL CALL (Levitt Communications, Inc.) Oct. 5, 1992, at 28. Senator Howard Metzenbaum, who opposes NAFTA, said that Mexico has a 20% unemployment rate, a 40% poverty rate, and an average per capita annual income of $2,490. *Id.*

106 LIKELY IMPACT, *supra* note 2, at vii-viii.

107 Susan Dentzer, *The Pain and Gain of Trade*, U.S. NEWS & WORLD REP., Sept. 28, 1992, at 62, 68; MAJOR ISSUES, *supra* note 2, at 4.

108 MAJOR ISSUES, *supra* note 2, at 4.

109 *Id.*

110 *Id.*

111 *An Assessment*, *supra* note 34. Mr. Schott spoke before the Committee on Small Business of the House of Representatives. *Id.*

112 ECONOMY-WIDE 1, *supra* note 100, at 6, 15.

Canada will gain between 0.12% and 10.57% of real GDP.[113] Finally, the United States is likely to gain the least with an estimated GDP increase of 0.02% to 2.07%.[114]

Industry leaders also believe that NAFTA will "impel industrial reorganization along regional lines, with firms taking best advantage of each country's ability to produce components and assembled products, thus enhancing competitiveness in the global marketplace."[115] Because of Mexico's lower wages, some labor intensive industries may move to Mexico.[116] However, such job loss should be offset by an increase in the number of higher paying jobs in the United States.[117]

To help relocate U.S. workers from these lower paying, lower-skilled jobs to the higher paying, high-skilled jobs, the Clinton administration has just added a job training plan to the NAFTA implementing legislation.[118] The $90 million Clinton plan will aid workers who lose their jobs between January 1, 1994, and June 30, 1995, because of NAFTA.[119] The plan allows financial assistance to displaced workers as well as "career counseling, testing, job-placement assistance, training, income support and child and transportation allowances."[120]

Mexico's push to modernize will enlarge demand for U.S. high-tech equipment and machinery as well as other high-tech U.S. products.[121] To keep output in line with demand, U.S. firms will hire more workers for the higher paying, high-tech jobs.[122] Studies in this area seem to agree that there will be more jobs created than lost, and those jobs that are created will be higher paying than those that are lost.[123]

Textile and apparel industry executives base their support of NAFTA on these comparative advantage theories.[124] Comparative advantage theories predict that industries in which a country is not competitive should move to a country in which that industry can better

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[113] *Id.*

[114] *Id.*

[115] *An Assessment, supra* note 34.

[116] *Low-Wage Strategy Will Hurt Country*, PR Newswire, Aug. 11, 1992, *available in* LEXIS, Nexis Library, Currnt File.

[117] *MacNeil/Lehrer, supra* note 30. However, one study predicts that the loss of apparel jobs will more than offset the job gains in the textile industry. POTENTIAL IMPACT, *supra* note 2, at 8-2.

[118] Keith Bradsher, *Clinton Offers Job Training for Trade Pact Casualties*, N.Y. TIMES, Oct. 14, 1993, at B8 [hereinafter *Clinton Offers Job Training*].

[119] Norm Brewer, *Retraining Program Needs to Be Retooled, Administration Says*, Gannet News Service, Oct. 19, 1993, *available in* LEXIS, Nexis Library, Currnt File.

[120] David Lightman, *Clinton Unveils Job-Training Plan*, HARTFORD COURANT, Oct. 21, 1993, at A1.

[121] Dentzer, *supra* note 107.

[122] Zelenko, *supra* note 38.

[123] POTENTIAL IMPACT, *supra* note 2, at 2-3. The Institute for International Economics predicts that although there will be as many as 150,000 unskilled factory jobs lost in industries such as apparel, as many as 325,000 new jobs would be created by 1995. Zelenko, *supra* note 38.

[124] *See Textile Industry Leader Advocates NAFTA Approach over Uruguay Round Trade Proposal*, PR Newswire, Oct. 1, 1992, *available in* LEXIS, Nexis Library, Currnt File.

compete. The theory predicts that certain products should not be produced in the United States but instead should be produced in Mexico. Many companies in the labor intensive apparel industry are expected to move to Mexico.[125] Thus, the lower costs of unskilled labor in Mexico will allow the apparel companies to become more profitable and more competitive with the rest of the world, especially with Far East companies.[126] Therefore, companies that are able to move their production plants to Mexico should profit from NAFTA.

NAFTA should increase demand for apparel products, thus increasing demand for textiles, an industry that is expected to gain from NAFTA.[127] The President of AMTI, M.L. Cates, Jr., sees the treaty as a "much-needed shot in the arm, enabling [the textile industry] to work with Mexico and Canada for mutual new growth opportunities .... NAFTA can curb the steady increases in imports from the Far East and the job losses they have caused in the United States during the last decade."[128] Because the United States has a comparative advantage over Mexico in the textile industry, textile companies in the United States will benefit from NAFTA.[129] The textile industry is a relatively high-tech industry. It is highly automated and requires highly-skilled workers. The Mexican textile industry has not been modernized and does not produce as high quality fabrics as its U.S. counterpart.[130] Therefore, NAFTA will create a higher demand for the better quality U.S. textile products,[131] and firms will hire more high-skilled labor to

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125 MAJOR ISSUES, *supra* note 2, at 6-7; *Almon Study, supra* note 100; *Peat Marwick Study, supra* note 100; POTENTIAL IMPACT, *supra* note 2, at 8-5 to 8-6. But most studies do not suggest that any industry will lose too many jobs. The *Peat Marwick Study* suggests that as a result of NAFTA, employment will fall by less that one half of one percent in the apparel industry and one tenth of one percent in the textile industry. The studies show that apparel will lose only between 500 and 720 jobs per year for ten years. MAJOR ISSUES, *supra* note 2, at 7 n.11 (citing *Peat Marwick Study*; *see supra* note 100 for full citation). *See also* Zelenko, *supra* note 38; *see generally, Peat Marwick Study, supra* note 100.

126 Zelenko, *supra* note 38.

127 *See, e.g.*, LIKELY IMPACT, *supra* note 2, at 4-38 to 4-41; MAJOR ISSUES, *supra* note 2, at 6-7; POTENTIAL IMPACT, *supra* note 2, at 8-1 to 8-6. Increased demand for textiles also will come from the rules of origin, some of which require North American content to be almost 100% of a product in order for that product to qualify for NAFTA's preferential treatment. Zelenko, *supra* note 38. Additionally, Mexico has high production costs and poor quality textiles. LIKELY IMPACT, *supra* note 2, at 4-39.

128 *U.S. Textile Industry Improved in 1992, supra* note 68.

129 POTENTIAL IMPACT, *supra* note 2, at 8-4.

130 LIKELY IMPACT, *supra* note 2, at 4-39.

131 Yet, most textile and apparel executives believe that the recent approval of the Uruguay Round of GATT could eliminate many of the benefits of NAFTA. *See General Developments: Legislative Calendar*, 10 Int'l Trade Rep. (BNA) No. 4, at 143 (Jan. 27, 1993); *see also supra* note 20 for discussion of GATT. The Uruguay Round proposal provides for a phase-out of the Multi-Fiber Arrangement (MFA). Randall Palmer, *Proposed GATT Accord at a Glance*, Reuters (BC Cycle) Dec. 22, 1991, *available in* LEXIS, Nexis Library, Reuters File. *See Draft Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations*, GATT Doc. MTN.TNC/W/FA (Dec. 20, 1991); Miguel Montañá-Mora, *International Law and International Relations Cheek to Cheek: An International Law/International Relations Perspective on the U.S./EC Agricultural Export Subsidies Dispute*, 19 N.C. J. INT'L L. & COM. REG. 1 (1993). The MFA was first developed during the Nixon years, Joyce Barrett, *Execs, Workers Recall Bush's Backing*

expand output.

For example, Guilford Mills' CEO, Chuck Hayes, stated that under NAFTA the U.S. textile and apparel industries will be able to compete with Far East imports by taking advantage of cheap production costs in Mexico.[132] By making less expensive goods, U.S. industries can sell more.[133] Demand will increase and production expand to meet demand, creating more jobs.

B. Opponents

Union officials, and many workers, measure the desirability of a free trade agreement by the number of jobs lost or created. The unions oppose NAFTA because they believe that the agreement will encourage corporations to move to Mexico to take advantage of cheap unskilled Mexican labor,[134] thus decreasing employment in the United States.[135] They believe that Mexico's low wages, lower labor and environmental standards, and proximity to the United States, as well as the reduction of trade barriers, will make Mexico a less expensive and, therefore, a more desirable location for production.[136] Labor intensive industries in particular will be forced to move to Mexico.[137] As a result of the move, many low-skilled jobs will be lost in the United States. Many of these jobs are union jobs and will likely be replaced by higher-skilled nonunion jobs. It is for this reason in part that the unions object to NAFTA.

Bruce Raynor, International Vice President of Amalgamated Clothing and Textile Workers Union, predicts that as many as 250,000 jobs will be lost nationwide in the first twelve to eighteen months after NAFTA goes into effect.[138] Even the Bush Administration's Secretary of Labor, Lynn Martin, said that as many as 150,000 jobs could be lost over ten years.[139] Thomas Donahue of the AFL-CIO stated that as production moves from the United States to Mexico, between 500,000 and

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for NAFTA, China MFN, WWD, Oct. 27, 1992, at 16, and permits countries to restrict textile and apparel imports from Third World nations through the use of quotas. Palmer, *supra.* The GATT proposal would phase out all quotas on textiles and apparel while allowing tariffs to remain. *Id.*

132 Zelenko, *supra* note 38.

133 *Id.*

134 Mike Magner, *Shaky Union Force Tries to Fight NAFTA,* THE TIMES-PICAYUNE, Sept. 5, 1993, at A1.

135 *Economists Say Uruguay Round Necessary as "Umbrella" for Trade Blocs,* Daily Report for Executives (BNA) 207 (Oct. 26, 1992). It is not just unions that feel this way. In his new book, Ross Perot outlines his views on the detrimental effects of NAFTA. ROSS PEROT & PAT CHOATE, SAVE YOUR JOB, SAVE OUR COUNTRY: WHY NAFTA MUST BE STOPPED—NOW! (1993). *But see,* Michael G. Wilson, *Setting the Record Straight: Evaluating Ross Perot's Allegations Against NAFTA,* HERITAGE FOUNDATION REP. No. 959 (Sept. 30, 1993).

136 MAJOR ISSUES, *supra* note 2, at 7.

137 Zelenko, *supra* note 38.

138 *Id.*

139 *Id.*

600,000 jobs would be lost during the rest of the 1990s,[140] and Senator Metzenbaum predicted that the number would be closer to 900,000.[141]

Senator Metzenbaum pointed out that Canada has had higher average wages than those in the United States, and when Canada signed the free trade agreement with the United States, it suffered substantial trade losses.[142] Thus, he argued that because the U.S. wage differential with Mexico is much greater than with Canada, the United States should suffer greater job loss than Canada did.[143] Additionally, the Senator argued that the loss of jobs caused by NAFTA will not be offset by an increase in U.S. jobs resulting from an increase in Mexican consumers' buying power and demand for U.S. goods.[144] He said, "[c]urrently, Mexico has a 20 percent unemployment rate, a 40 percent poverty rate, and a gross domestic product one-twentieth of [that of the United States]. Mexican workers, with an average annual income of $2,490, can barely afford food and shelter and are in no position to buy our products."[145]

Many workers also oppose NAFTA because they fear that the corporate flight will take their jobs away. The fact that a better job may be created does not mean much to a person who loses his or her job. That theoretical newly created job may not be in the same town or state as the displaced worker, and even if it is, the worker may not have the skills necessary to perform the job.

In response to this argument, Clinton has proposed a new job training plan.[146] The opponents of NAFTA are not impressed with Clinton's assurances that this plan will help place people in new jobs. According to Mark A. Anderson, Director of the AFL-CIO Task Force on Trade, "[i]t strikes me as a NAFTA Band-Aid."[147] Many opponents believe that the job training program is just too small.[148]

Unions and workers also oppose NAFTA because they believe that large U.S. companies are exploiting workers in Mexico as well as taking advantage of the "lax enforcement of Mexican environmental and safety laws."[149] These groups argue that the side agreements signed by Clinton in August of 1993 are insufficient to protect workers' rights

[140] *MacNeil/Lehrer*, *supra* note 30.

[141] *Policy Briefing No. 46-Special Section*, *supra* note 105, at 28. Senator Metzenbaum based his estimate on the number of Canadian jobs relocated to the United States after the U.S.-Canada free trade agreement was signed in 1989 and believes as many as 40% of U.S. workers will lose their jobs to Mexico. *Id.*

[142] *Id.*

[143] *Id.*

[144] *Id.*

[145] *Id.*

[146] See *supra* notes 118-120 and accompanying text for a brief outline of Clinton's job training program.

[147] Bradsher, *Clinton Offers Job Training*, *supra* note 118, at B8.

[148] *Id.*

[149] Joe Ward, *The Continental Divide: Jobs Lost or Created? Environmental Disaster? What NAFTA Will Mean Depends on Who's Talking*, COURIER-J., Sept. 26, 1993, at E1.

and the environment in Mexico.[150] The labor side agreement sets up commissions to report on each country's labor laws and the enforcement of such laws.[151] Additionally, the agreement sets up dispute settlement panels that can impose fines or trade sanctions on any party that fails to enforce properly its labor laws.[152] The environmental agreement also sets up commissions which report on each country's enforcement of environmental laws.[153] This agreement also provides for sanctions if a country fails to enforce its laws.[154]

Union leaders believe that these agreements are insufficient to protect workers' rights and the environment. The side agreements "have no teeth" and have "no real enforcement mechanisms."[155] Additionally, the dispute settlement process is "cumbersome to the point of being unworkable."[156] Therefore, the agreements offer no disincentive for large companies who will move their production plants to Mexico to exploit the low-paid Mexican workers and the low level of enforcement of Mexican environmental laws.[157]

Finally, some businesses oppose NAFTA because they think that small companies will be hurt by competition with companies that can take advantage of cheap Mexican labor.[158] These small companies may not be able to move to Mexico. Thus, they will be competing with larger companies that can charge less for their products because they paid less for the labor.

C. *Counter-Arguments to Opponents' Views*

Proponents of NAFTA argue that U.S. companies will not flock to Mexico. They argue that U.S. employment and wages will not decline because the barriers to trade with Mexico are so low now that any large

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150 *See, e.g.*, Jim Ostroff, *Unions: NAFTA Side Deal on Labor Too Lax*, WWD, Sept. 21, 1993, at 11; *Labor Leaders Denounce Side Agreements to NAFTA*, *supra* note 81. The labor agreement states as its objectives the promotion of:

> the freedom of association, the right to bargain collectively, the right to strike, prohibition of forced labor, restrictions on labor by children and young people, minimum employment standards, elimination of employment discrimination, equal pay for men and women, prevention of occupational accidents and diseases, compensation in cases of work accidents or occupational diseases, and protection of migrant workers.

Labor and Environmental Accords, *supra* note 78. The environmental agreement sets out as its objectives "the promotion of sustainable development, cooperation on the conservation, protection and enhancement of the environment and the effective enforcement of and compliance with domestic environmental laws." *Id.*

151 *Labor and Environmental Accords*, *supra* note 78.

152 *Id.*

153 *Id.*

154 *Id.*

155 *Labor Leaders Denounce Side Agreements to NAFTA*, *supra* note 81; *see also supra* note 99.

156 *Labor Leaders Denounce Side Agreements to NAFTA*, *supra* note 81.

157 *Id.*

158 Brenda Lloyd, *Apparel Contractors Still Apprehensive About NAFTA*, WWD, Oct. 27, 1992, at 14.

dislocations and wage adjustments have already been made.[159] Other proponents argue that although the base wage in Mexico is significantly lower than that in the United States, employers in Mexico are required to pay social security, health and unemployment benefits, and a required bonus of one month's pay per year.[160] Although many of these expenses exist in the United States, these payments equal only twenty-five percent to thirty percent of employees' pay in the United States and fifty percent of pay in Mexico.[161] Additionally, according to Eric Hoyle, CEO of Bali, "[i]n many cases you have to subsidize a plant cafeteria and subsidize public transportation—you basically have to pay the local bus company to do special routes where your workers live. . . . In most locations [Bali] has a relationship with a local physician."[162] These added expenses for Mexican labor reduce the wage differentials somewhat between the United States and Mexico.[163]

Industry leaders argue that the better paying, high-skilled jobs will not go to Mexico. The lack of high-skilled workers and the lack of a reliable infrastructure will keep most of the better paying jobs in the United States.[164] Eric Hoyle argued that the textile industry requires a reliable infrastructure such as water and electricity for manufacturing, finishing, and dyeing.[165] Because Mexico's infrastructure is unreliable, he believes that most textile plants will remain in the United States.[166] Additionally, highly automated industries such as cutting operations will also remain in the United States because they require high technology and high-skilled workers that are unavailable in Mexico.[167] Even many of those who agree that NAFTA will cause the loss of jobs to Mexico believe that NAFTA will only accelerate the job migration that is inevitable.[168]

V. Conclusion

The proponents of NAFTA believe that the Agreement will help make the United States more competitive in the world market. It will increase demand for U.S. products in Mexico and create more jobs in the United States. On the other hand, the opponents feel that NAFTA will lead to a loss of American jobs as U.S. companies move to Mexico

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159 MAJOR ISSUES, *supra* note 2, at 7. *See also* Zelenko, *supra* note 38. Bali Co. and Burlington Industries are just two of the many U.S. textile and apparel companies that have already opened plants in Mexico. *Id. See also* Kelly Greene, *NAFTA or Not, N.C. Textiles Head South*, BUS. J.-CHARLOTTE, Sept. 13, 1993, § 1, at 1.

160 Zelenko, *supra* note 38.

161 *Id.*

162 *Id.*

163 *See generally* Louis S. Richman, *How NAFTA Will Help America*, FORT., Apr. 19, 1993, at 95.

164 Zelenko, *supra* note 38.

165 *Id.*

166 *Id.*

167 *Id.*

168 *Id.*

to take advantage of the lower costs of production. The proponents point out, however, that although some existing jobs may be lost, such loss will be outweighed by the number of new jobs that are created.

The studies seem to support the proponents' views that NAFTA will be beneficial to the United States, although the benefit may be small. NAFTA will open up the U.S. economy to Mexican imports as well as opening the Mexican economy to U.S. products. As Mexico increases its exports to the United States, its economy will expand and its people will gain buying power, increasing the market for U.S. goods.

Although it is inevitable that some U.S. jobs will go to Mexico, union officials opposing NAFTA have not taken into account the creation of jobs that the Agreement will promote. Some jobs in industries such as apparel will be lost, but more will be created in other industries. Through the use of job retraining programs already in place in the United States and President Clinton's proposed new job training programs, the low-skilled workers who lose their jobs to Mexico can be retrained to work in other higher-skilled, higher paying positions created by the increased trade under NAFTA.

Finally by transferring U.S. resources, such as labor, to the industries and sectors in which they are most competitive, the United States can better compete in the international market. The United States does not enjoy a competitive advantage in the apparel industry (with the exception of cutting operations) and, thus, would profit from abandoning that industry, and transferring its resources to an industry such as textiles in which it does have a comparative advantage. NAFTA will result in this relocation of resources and thus will benefit the United States.

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