LEVELING THE TRADE PLAYING FIELD:

THE AILING U.S. MANUFACTURING SECTOR AND THE NEED FOR TRADE PARITY

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INTRODUCTION

Does U.S. manufacturing need saving? It would seem so, given recent rhetoric from Washington. The discussion dominated the debates leading up to the 2008 presidential election,[1] and many government officials have made "'saving U.S. manufacturing' and 'leveling the playing field' on trade for American business" their top priority.[2] The proponents of reform cite current trade policies as a significant contributor to the decline of the U.S. manufacturing sector and the loss of employment accompanying that decline.[3] The fear is that the U.S. manufacturing sector is slowly eroding, and that this could have serious, long-term consequences for the rest of the economy. With President Obama settling into office, the question remains what actions, if any, will ultimately be taken to deal with this so-called "problem?"

Currently, most discussions concerning the viability of U.S. trade policy focus on the North American Free Trade Agreement (NAFTA) and its dramatic effect on the U.S. economy. The sheer scope of the agreement, and its subsequent influence on other trade agreements, has made it something of a lighting rod. On the one hand, NAFTA's opponents directly attribute the downfall of U.S. manufacturing to the rapid movement of labor jobs to Canada and Mexico that occurred after the agreement was signed.[4]

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1. Elisabeth Malkin, *Revisiting NAFTA in Hopes to Cure Manufacturing,* N.Y. TIMES, Apr. 22, 2008, at C7.

2. Willard M. Berry, *A Trade Agreement for U.S. Manufacturers*, J. COM., Aug. 18, 2008, at 76.

3. Many economists cite the trade policies that developed during the last decade of the 20th century as a significant contributor to American jobs being moved to prominent U.S. trading partners. This movement has particularly affected the U.S. manufacturing sector. *See generally infra* notes 66-93.

4. *See* JOSH BIVENS, TRADE DEFICIT AND MANUFACTURING JOB LOSS: CORRELATION AND CAUSATION (Econ. Policy Inst., Briefing Paper No. 171, 2006), *available at* http://www.epi.org/publications/entry/bp171/; *see* ROBERT E. SCOTT, HIGH PRICE OF FREE TRADE: NAFTA'S FAILURE HAS COST THE UNITED STATES JOBS ACROSS THE NATIONS (Econ. Policy Inst., Briefing Paper No. 147, 2003), *available at* http://www.epi.org/

These commentators commonly cite the nation's ballooning trade deficit, which exploded after the passage of NAFTA,[5] as having a direct correlation to significant manufacturing job losses.[6] On the other hand, NAFTA's proponents tend to focus on the benefits of the agreement and free trade in general.[7] These individuals either claim that the decline in manufacturing jobs is the natural evolution of the U.S. economy or that the claimed losses are wildly overstated.[8] In many ways, the NAFTA debate is representative of the controversy currently surrounding trade reform, and while it has produced convincing statistics on each side, the effect of free trade on U.S. manufacturing is becoming increasingly more difficult to deny.[9]

Although President Obama has yet to commit to a trade reform strategy, he has indicated that job creation is one of his foremost objectives.[10] Specifically, after the U.S. employment sector lost a significant number of jobs in the last four months of 2008,[11] President Obama detailed his plan to stimulate job growth.[12] It is unclear, however, if this plan directs any aid towards U.S. manufacturers. The aim of this Note is to emphasize that the debate raging over current trade policy in Washington and President Obama's quest for job creation go hand in hand. Additionally, it seeks to shed light on Trade Agreement Parity (TAP),[13] legislation that could simultaneously stimulate the job growth sought by President Obama and aid in the revitalization of the U.S. manufacturing sector.[14] With this legislation, Washington can once again make U.S. manufacturing a viable option for business while adding much-needed jobs

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publications/entry/briefingpapers_bp147/; *see* ROBERT E. SCOTT ET AL., REVISITING NAFTA, STILL NOT WORKING FOR AMERICAN WORKERS (Econ. Policy Inst., Briefing Paper No. 173, 2006), *available at* http://www.epi.org/publications/entry/bp173/; *see* JOHN J. AUDLEY et al., NAFTA'S PROMISES AND REALITY: LESSONS FROM MEXICO FOR THE HEMISPHERE, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, 2003 (detailing the link between free trade policies and the alleged correlation in the loss of jobs), *available at* http://www.rrojasdatabank.info/naftaintro.pdf.

5. *See generally* BIVENS, *supra* note 4.

6. *See id.*

7. *See* Robert A. Blecker, *The North American Economies After NAFTA: A Critical Appraisal* INT'L J. POL. ECON. (Special Issue) (Carnegie Endowment for International Peace, 2005), *available at* http://www.carnegieendowment.org/pdf/Blecker_NAFTA_paper_final.pdf.

8. *Id.*

9. *See* JOSH BIVENS, SHIFTING BLAME FOR MANUFACTURING JOB LOSS: EFFECT OF RISING TRADE DEFICIT SHOULDN'T BE IGNORED 5 (Econ. Pol'y Inst., Briefing Paper No. 149, 2004), *available at* http://www.epi.org/publications/entry/briefingpapers_bp149/ (claiming that the number of U.S. manufacturing jobs is at its lowest level since 1958).

10. *Id.*

11. David Goldman, *Worst Year for Jobs Since '45*, CNN MONEY, Jan. 9, 2009, *available at* http://money.cnn.com/2009/01/09/news/economy/jobs_december/?postversion=2009010908.

12. *Id.*

13. *See* Letter from Bill Pascrell, Jr., U.S. House of Representatives, Put U.S. Manufacturers First (June 26, 2008), http://naftz.org/docs/news/TAP%20Colleague%20Letter.pdf [hereinafter Letter].

14. *See infra* notes 154-76 and accompanying text.

to the U.S. economy.

This Note has two goals. First, it seeks to highlight the current state of U.S. trade by focusing on the proliferation of U.S. free trade agreements (FTAs). Specifically, it looks to NAFTA and suggests that, regardless of the other benefits offered by the agreement, it has devastated U.S. manufacturing.[15] It suggests that under the current system, U.S. manufacturers are unable to effectively compete in the global economy, and that the resulting shift in employment away from the manufacturing sector has had a significant impact on displaced individuals as well as the rest of the economy.[16] Finally, it concludes that free trade is a direct threat to the U.S. manufacturing sector and any discussion about "saving" U.S. manufacturing must specifically address this threat.[17]

Secondly, this Note highlights TAP, a trade proposal aimed directly at the U.S. manufacturing sector. It addresses the proposal's ability to look past the free trade debate and target a key incentive causing U.S. manufacturers to leave the U.S. economy. Furthermore, it suggests that TAP will immediately reinvigorate the United States Foreign Trade Zone (FTZ) program by providing aid to U.S. manufacturers competing in the global economy.[18] Finally, it emphasizes that TAP is one example of how U.S. trade policies can be retooled to benefit the American worker without artificially constraining the benefits of free trade.[19]

Part I discusses the United States' trade policies and the current push toward pursuing free trade agreements with additional countries. Part II looks at the controversy surrounding NAFTA and discusses NAFTA's effect on the U.S. manufacturing sector. Part III discusses the effects of the shift of employment from the U.S. manufacturing sector to other sectors of the economy. Part IV discusses the debate between the promotion of free trade and the protection against the harmful effects of practicing free trade. Part V describes the TAP proposal and the potential benefits offered by the legislation. Finally, Part VI proposes that Congress immediately consider the passage of TAP.

PART I: THE CURRENT STATE OF U.S. TRADE

Before asking the question, "Does U.S. manufacturing need saving," we must first clearly define that which threatens it. A popular answer focuses on the attractive incentives currently offered to U.S. manufacturers

15. *See infra* notes 60-88 and accompanying text.

16. *Id.*

17. *See* ROBERT E. SCOTT ET AL., *supra* note 4, at 2.

18. Foreign-Trade Zone Resource Center, A Brief History of the U.S.-Foreign Trade Zones Program, http://www.foreign-trade-zone.com/link01p.htm [hereinafter History] (last visited Apr. 22, 2010).

19. *See* Berry, *supra* note 2.

who move their production facilities out of U.S. territory.[20] Many economists blame current free trade agreements for introducing these incentives into the U.S. economy.[21] While it is unclear how much of the manufacturing sector has been lost to the practice of free trade, several estimates attribute over one million jobs to NAFTA alone.[22] Because these estimates stand in direct opposition to both the net increase in U.S. employment that has occurred over the last two decades,[23] and the undeniable benefits of free trade in general,[24] perhaps it is easy to dismiss these losses as a necessary casualty of globalization. However, clearly defining the United States' role in the international free trade arena should aid in appreciating the nature of this growing threat to U.S. manufacturing.

With the passage of the U.S.-Israel Free Trade Agreement in 1985,[25] the United States formally became a player in the free trade movement.[26] It was not long after the passage of this agreement that the United States sought expansion of its trade relationships with its geographic neighbors, Canada and Mexico.[27] Ultimately, these discussions culminated in the passage of the largest trade agreement the United States is party to, NAFTA, in 1993.[28] The United State's pursuit of free trade rapidly accelerated after the passage of NAFTA. In particular, the U.S. government actively expanded free trade relationships during the George W. Bush administration.[29] After the passage of Trade Promotion Authority (TPA) in 2002,[30] the Bush administration was able to "fast track" a total of six free trade agreements.[31]

Today, the United States maintains free trade relationships with

20. *See generally supra* note 4 and accompanying text.

21. *Id.*

22. BIVENS, *supra* note 9, at 5; SCOTT, *supra* note 4, at 4.

23. Gary Clyde Hufbauer & Jeffrey J. Schott, *NAFTA Revisited*, POLICY OPTIONS, Oct. 2007, at 83, *available at* http://www.irpp.org/po/archive/oct07/schott.pdf.

24. *See* JEFFREY J. SCHOTT, THE NORTH AMERICAN FREE TRADE AGREEMENT: TIME FOR A CHANGE? (Peterson Inst. for Int'l Economics, 2008), *available at* http://www.iie.com/publications/papers/20081218schott.pdf.

25. *See* Office of the United States Trade Representative, Israel Free Trade Agreement, http://www.ustr.gov/Trade_Agreements/Bilateral/Israel/Section_Index.html (last visited Jan. 21, 2010).

26. *See generally* Office of the United States Trade Representative, Trade Agreements, http://www.ustr.gov/Trade_Agreements/Section_Index.html (last visited Jan. 21, 2010).

27. Canada-U.S. Free Trade Agreement, U.S.-Can., Jan. 2, 1988, 27 I.L.M. 281 (entered into force Jan. 1, 1989).

28. *See* North American Free Trade Agreement, 19 U.S.C. §§ 3311-3473 (2008).

29. *See* Office of the United States Trade Representative, Free Trade Agreements, http://www.ustr.gov/Trade_Agreements/Bilateral/Section_Index.html (last visited Apr. 2, 2010).

30. *See* J.F. HORNBECK & WILLIAM H. COOPER, TRADE PROMOTION AUTHORITY (TPA): ISSUES, OPTIONS, AND PROSPECTS FOR RENEWAL (CRS Report for Congress 2007); *See generally* Bipartisan Trade Promotion Authority Act of 2002, 19 U.S.C. § 3804 (2002).

31. *Id.*

fourteen nations.[32] These nations include: Israel, Canada, Mexico, Jordan, Chile, Singapore, Australia, Morocco, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, and Bahrain.[33] Additionally, agreements with Peru and Oman are pending implementation, and agreements with Columbia, Panama, and the Republic of Korea are awaiting Congressional approval.[34]

The United States' pursuit of free trade has been so rapid that it has become somewhat of a standardized process. Specifically, the National Security Council has developed set criteria that govern the selection of trading partners.[35] Additionally, the agreements with the countries listed above share common elements and the general framework pioneered by NAFTA.[36] With each agreement, the United States successfully implements a specific model that expands free trade while mandating certain absolute requirements.[37]

Given the debate surrounding the viability of NAFTA, and its influence on subsequently adopted trade agreements, hopefully it is clear why studying NAFTA in particular has merit. Even so, there are several additional reasons why the following discussion focuses on NAFTA. First, it is the largest free trade agreement to which the United States is currently a party and it represents a significant portion of the country's total trade.[38] Additionally, the agreement created the largest free trading block in the world, and closely linked the U.S. economy with the economies of Mexico and Canada. Furthermore, the United States' NAFTA partners directly benefited from the erosion of the U.S. manufacturing base that occurred after the agreement was passed. Finally, President Obama has recently added to the NAFTA controversy by suggesting that one million jobs have been lost as a direct consequence of the agreement.[39] Engaging each side of the NAFTA debate as it pertains to U.S. manufacturing highlights the path

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32. *See* J.F. HORNBECK & WILLIAM H. COOPER, TRADE PROMOTION AUTHORITY (TPA): ISSUES, OPTIONS, AND PROSPECTS FOR RENEWAL (CRS Report for Congress 2007); *See generally* Bipartisan Trade Promotion Authority Act of 2002, 19 U.S.C. § 3804 (2002).

33. *See id.*

34. *See id.*

35. *Id.* The requirements include: country readiness; economic/commercial benefit; benefits to the broader trade liberalization strategy; compatibility with United States' interest; congressional/private sector support; and U.S. government resource constraints. *Id.* "According to officials . . . these criteria are broad and, as a result, the administration has considerable discretion in choosing potential FTA partners." *Id.*

36. *See* United States Government Accountability Office, *International Trade: An Analysis of Free Trade and Congressional and Private Sector Consultations under Trade Promotion Authority*, at 12 (2007) (reporting to the Chairman, Committee on Finance, and the United States Senate), *available* at http://www.gao.gov/new.items/d0859.pdf.

37. *Id.* at 18.

38. *See* U.S. Census Bureau, Foreign Trade Statistics, http://www.census.gov/foreign-trade/www (last visited Feb. 21, 2010).

39. SCHOTT, *supra* note 24, at 6.

to compromise that must be pursued to effectuate trade reform.[40]

PART II: THE NAFTA CONTROVERSY--A LOOK AT NAFTA AND ITS EFFECT ON U.S. MANUFACTURING

NAFTA was a pioneering agreement that famously linked the U.S. economy with those of Mexico and Canada.[41] The countries signed the agreement in December of 1993 and it marked the creation of one of the largest trading blocs in the world.[42] The impact NAFTA has had on all three of its members is significant. Through October of 2008, the United States was importing 26.5% of its goods and exporting 31.8% of its production to its NAFTA partner countries.[43] Although the United States enjoys healthy trading relationships with several other countries, NAFTA goods make up the single largest portion of its trade.[44]

When NAFTA became effective on January 1, 1994, the architects of the agreement had many stated goals.[45] These goals are reflected in Article 102 and include: "[p]romote trade and investment; [i]ncrease employment and improve working conditions and living standards; [m]anage trade relations and disputes; [s]trengthen and enforce labor and environmental laws and regulations; [c]ooperate in regional and multilateral trade forums."[46] The United States Trade Representative (USTR) has all but declared these goals met. Specifically, it describes the agreement as "an example of the benefits that all countries could derive from moving forward with multilateral trade liberalization."[47] Additionally, it has indicated that NAFTA benefits all sectors of the economy stating that "[F]armers, workers and manufacturers benefit from the reduction of arbitrary and discriminatory trade rules, while consumers enjoy lower prices and more choices."[48]

The USTR also points to substantive benefits of NAFTA. In 2007, it issued a policy brief stating that NAFTA has translated into a $350 to $930

40. *See generally id.*

41. *See generally* Office of the United States Trade Representative, North American Free Trade Agreement (NAFTA), http://www.ustr.gov/trade-agreements/free-trade-agreements/north-american-free-trade-agreement-nafta (last visited Apr. 22, 2010).

42. *Id.*

43. *See supra* note 32.

44. *See* U.S. Census Bureau, Foreign Trade Statistics, http://www.census.gov/foreign-trade/www (last visited Feb. 9, 2009).

45. *See* SCHOTT, *supra* note 24, at 3.

46. *Id.*

47. The United States Trade Representative (USTR) is a government body with specialized experience in many aspects of trade policy. Perhaps its most crucial duty is to negotiate with foreign governments regarding trade agreements. *See* Office of the United States Trade Representative, About Us, http://www.ustr.gov/about-us (last visited Apr. 22, 2010).

48. *Id.*

annual benefit to the average family of four.[49] It further estimates that the implementation of the trade agreement has meant that an average family of four has paid $210 less in taxes annually.[50] Finally, the USTR directly refutes claims that NAFTA has hurt the American manufacturing base.[51] It emphasizes that under NAFTA, U.S. manufacturing output has risen some 58%, with exports reaching an all-time high in 2007, valuing $982 billion.[52]

Considering these claims, it would seem that NAFTA has met the lofty goals initially set, and its threat to U.S. manufacturing is overstated. However, many economists have vehemently opposed the USTR's position. In fact, many predicted that the agreement would be harmful to U.S. employment from the very beginning. Famously, former presidential candidate Ross Perot claimed that NAFTA would produce "a great sucking sound" characterized by the number of jobs leaving the United States.[53] Furthermore, since the agreement's inception it has been a consistent target of attack by commentators citing the negative reverberations felt in various sectors of the economy.

In short, the two sides of the NAFTA debate can be characterized as those seeking to promote free trade versus those concerned with protecting against its harmful effects. Looking at each side of the argument in the NAFTA context sheds light on the actual, if uncertain, impact U.S.-FTAs are having on the U.S. manufacturing sector.

A. Opposition to NAFTA

Several economists believe that NAFTA can be directly linked with job loss and growing inequality between socio-economic classes.[54] These economists generally disagree with the USTR's claim that NAFTA has been an undeniable success. Jeff Faux, former president of the Economic Policy Institute, specifically takes issue with how the agreement was sold to the citizens of all three nations.[55] He claims that each nation promised their citizens that the agreement "would bring large net benefits in better jobs and faster growth,"[56] and that these promises were not necessarily delivered.

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49. United States Trade Representative, NAFTA Facts, http://ustraderep.gov/assets/Trade_Agreements/Regional/NAFTA/Fact_Sheets/asset_upload_file202_14592.pdf (last visited Feb. 11, 2010).

50. *Id.*

51. *United States Trade Representative, FTA Facts, http://www.ustr.gov/assets/Trade_Agreemetns/Regional/NAFTA/Fact_Sheets/asset_upload_file202_14592.pdf (last visited Feb. 11, 2009). Id.*

52. *Id.*

53. Robert B. Zoellick, *Stop the Complaints: With NAFTA, Everyone Wins*, L.A. TIMES, July 31, 2001, *available at* http://articles.latimes.com/2001/jul/31/local/me-28624.

54. *See generally supra* note 4 and accompanying text (detailing the net results of the NAFTA agreement).

55. SCOTT ET AL., *supra* note 4, at 1.

56. *Id.*

Faux argues that the net result of the agreement was not the introduction of better jobs, but the net loss of jobs and a shift in the proportion of income toward the wealthiest social classes.[57] Faux believes this movement has displaced significant numbers of manufacturing workers, many of whom have less than a college education.[58] Because of this limited education, Faux argues that these displaced laborers are unable to gain access to the specialized jobs that are actually being created by free trade. Consequently, Faux concludes that a major portion of the population is not able to benefit and is, in fact, injured by NAFTA and free trade in general.[59]

Faux is not alone in linking NAFTA with the decline of the U.S. manufacturing sector. Several commentators have reached a similar conclusion pointing to the nation's growing trade deficit as the link between NAFTA and manufacturing job loss.[60] These commentators point to the very basic principle that "[I]ncreases in U.S. exports tend to create jobs in this country, but increases in imports tend to reduce jobs because the imports displace goods that otherwise would have been" produced domestically by U.S. workers.[61] Because the U.S. trade deficit ballooned after the passage of NAFTA, these critics blame the agreement for manufacturing job losses.[62]

Economist Robert Scott, who believes job losses from NAFTA have totaled more than one million,[63] seems to believe that initial estimates as to NAFTA's impact on the trade deficit were flawed. He highlights the fact that the predicted benefits of NAFTA were conditioned upon the belief that "U.S. exports to Mexico would grow faster than imports."[64] In other words, the thought was that NAFTA would have a positive effect on the U.S. trade deficit. Specifically, Scott cites an estimate that claimed the trade deficit would be improved by nine billion dollars once NAFTA took effect.[65] In reality, the deficit was not improved at all. One study reflects that the deficit rose $107.3 billion between 1993, when the agreement was passed, and 2004.[66] Scott argues that this trade deficit has limited the positive

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57. *Id.*
58. *Id.* at 1-2.
59. *Id.*
60. SCOTT, *supra* note 4, at 2.
61. *Id.*
62. *Id.*
63. *Id.*
64. *Id.* at 5 (Scott estimates that one million jobs have been lost as a result of NAFTA. Additionally, he believes that roughly one million more job opportunities have been lost, with losses affecting all fifty states); ROBERT E. SCOTT & DAVID RATNER, NAFTA'S CAUTIONARY TALE: RECENT HISTORY SUGGESTS CAFTA COULD LEAD TO FURTHER U.S. JOB DISPLACEMENT (Econ. Pol'y Inst., Issue Brief No. 214, 2005), *available at* http://www.epi.org/publications/entry/ib214/.
65. SCOTT ET AL., *supra* note 4, at 5.
66. *Id.*

effects of NAFTA and in turn caused massive job loss.[67]

While Scott believes the U.S. trade deficit has impacted all areas of the economy, he thinks the manufacturing sector, in particular, has been affected.[68] He claims that "[R]apid expansion of the U.S. trade deficit with Mexico, Canada, and the world as a whole since NAFTA took effect in 1994 has contributed to the contraction of U.S. manufacturing industries, which lost 3.3 million jobs between 1998 and 2004."[69] He believes that the effects of the trade deficit on U.S. manufacturing are finally receiving attention now that job growth has dried up in other areas of the economy.[70] Furthermore, Scott emphasizes that one effect of the agreement was the widespread shift of assembly positions in the U.S. manufacturing sector to our NAFTA partners.[71] He argues that the United States has been relegated to an exporter of parts and components to other countries where they are assembled into final products before returning to the United States for consumption.[72] In other words, Scott believes that the workers once employed to assemble parts on U.S. soil have lost their jobs to assembly facilities abroad.[73]

Although arriving at a slightly different conclusion, Josh Bivens, an economist with the Economic Policy Institute, has made similar findings concerning the nation's trade deficit.[74] He concludes that the trade deficit that exploded after the passage of NAFTA is one of the major causes of the rapid decline of U.S. manufacturing.[75] Bivens cites evidence showing that trade imbalances in manufacturing have accounted for 58% of the total decline in manufacturing employment since 1998.[76] While he does not believe the losses have been exclusively caused by the growing trade deficit, Bivens believes that NAFTA's trade imbalance is directly responsible for manufacturing job loss.

Bivens supports his findings by identifying three factors that influence the number of manufacturing positions available at a given time.[77] These factors are demand, productivity, and international trade.[78] He does not believe that the domestic demand for manufactured goods has declined and therefore cannot explain job loss.[79] Similarly, Bivens does not believe

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67. *Id.* at 9.
68. *Id.*
69. *Id.* at 12.
70. SCOTT, *supra* note 4, at 3.
71. *Id.* at 2.
72. *Id.*
73. *Id.*
74. *See generally* BIVENS, *supra* note 9 (detailing the effects of the growing U.S. trade deficit).
75. *Id.*
76. *Id.*
77. *Id.* at 5.
78. *Id.*
79. *Id.* at 6-7.

productivity could have increased enough to account for the sheer quantity of manufacturing losses.[80] This leads him to blame international trade for causing U.S. manufacturing output to decline to 76.5% of domestic demand, a 14% decline compared to the average production statistics between the years of 1987 and 1997.[81] Bivens concludes that international trade, specifically the growing number of net imports, is responsible for the decline of domestic output and therefore, at least one of the causes of U.S. manufacturing job loss.[82]

B. Advocates of NAFTA

Other economists oppose the findings of NAFTA's critics, choosing to focus on the benefits of the agreement. Some have adopted the findings of the USTR, while others claim that if nothing else, the agreement accelerated and codified a process of economic integration that was already taking place in North America.[83] Jeffrey Schott, an economist at the Peterson Institute for International Economics, has devoted much of his time to defending the benefits that the agreement has secured for the country.[84] In a 2008 publication, Schott argues that NAFTA has largely met the lofty claims set by the architects of the agreement.[85] He asserts that the three member nations have become sufficiently integrated, and the goals set forth in NAFTA's Article 102 have been met.[86] Schott cites statistics showing that the trilateral merchandise trade has tripled since the inception of the agreement in 1993.[87] These numbers reflect that in 1993, trade between the three countries, including both imports and exports, totaled $300 billion.[88] That number was projected to approach one trillion dollars in 2008.[89]

Typically, NAFTA proponents believe that the agreement has benefitted the U.S. employment picture.[90] Schott believes that overall employment has risen in all three countries since the agreement's inception.[91] He cites statistics that show U.S. employment rising from 120

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80. *Id.*
81. *Id.* at 1.
82. *Id.* Bivens estimates that between the years of 1998 and 2003, 3.04 million jobs were lost in manufacturing and rising net imports accounted for roughly 1.78 million of those losses. *Id.* at 5. Between the years of 2000 and 2003, Bivens claims 2.7 million jobs were lost in manufacturing and rising net manufactured imports explain roughly 935,000 of that decline. *Id.*
83. BLECKER, *supra* note 7, at 1.
84. SCHOTT, *supra* note 24; *See* Hufbauer & Schott, *supra* note 23.
85. SCHOTT, *supra* note 24, at 1.
86. *Id.* at 3.
87. *Id.* at 5.
88. *Id.*
89. *Id.*
90. *See id.*
91. *Id.* at 6.

million in 1993 to 145 million in 2008.[92] Additionally, Schott emphasizes the low unemployment rate that the United States has enjoyed throughout much of NAFTA's existence and refuses to blame the agreement for recent unemployment increases.[93] Instead, he solely attributes the current increase in unemployment to the economic crisis on Wall Street.[94] As far as the specific effects on U.S. manufacturing employment, Schott attributes some losses to NAFTA, but emphasizes that even in the worst year of NAFTA-related job losses, these losses represent less than one percent of U.S. annual job loss.[95]

Several economists refute the charge that the nation's trading deficit is a sign of NAFTA's failure.[96] Robert Blecker, a professor of economics at American University, believes that the trade deficits the United States has accumulated with both Mexico and Canada must be viewed in the context of a growing U.S. trade deficit with all trading partners.[97] In other words, Blecker is not ready to blame NAFTA exclusively for the escalating trade deficit. He suggests that this phenomenon is not directly attributable to the effects of the agreement alone because the United States has growing deficits with all of its trading partners.[98]

Blecker contends that when comparing the trade deficits with Mexico or Canada, neither is greater than any other major U.S. trading partner from 1993 to 2003.[99] From this, Blecker concludes that "trade within North America (and indeed, with the entire western hemisphere) is relatively more of a two-way street for the United States than trade with most other countries and regions, and this has been true since before NAFTA went into effect."[100] Blecker does not deny that a significant number of U.S. manufacturing jobs have been lost since NAFTA's passage, but he believes that the U.S. labor sector has been affected by other factors independent of NAFTA, and therefore, refuses to blame the agreement.[101] In his view, the extent of labor dislocation is more affected by the performance of the economies of each member nation rather than the impact of the liberalization of trade between them.[102] Like Schott, Blecker emphasizes that NAFTA related job losses are only a small percentage of overall U.S. job loss. He claims that less than 0.7% of U.S. workers have actually lost

92. *Id.*

93. *Id.* The U.S. unemployment rate is projected to be 8.5 percent for 2009, the highest of any year since NAFTA has been effective. *Id.*

94. *Id.*

95. *Id.*

96. *See supra* notes 54-82 and accompanying text (discussing how NAFTA's opponent commonly identify the trade deficit as a sign of NAFTA's failures).

97. BLECKER, *supra* note 7, at 4.

98. *Id.*

99. *Id.*

100. *Id.* at 4-5.

101. *Id.* at 3.

102. *Id.*

their jobs from U.S. participation in NAFTA.[103]

In sum, NAFTA proponents tend to believe that international trade has been a minimal factor in U.S. job loss.[104] Because of this, many oppose changing or restricting the benefits of free trade agreements in any way. Instead of focusing on the effects of trade, NAFTA proponents believe the focus should be on several other factors that have contributed to the steady loss of manufacturing jobs over the last half-century. For example, and in direct contrast to Bivens' findings,[105] some commentators have found that the steady loss of manufacturing jobs is largely attributable to massive productivity growth that occurred over the same period of time.[106] Brink Lindsey[107] summed the argument up by saying, "[T]rade is only one element in a much bigger picture of incessant turnover in the U.S. job market."[108]

PART III: EFFECTS OF THE U.S. MANUFACTURING JOB SHIFT

In the context of U.S. manufacturing, the two sides of the NAFTA debate, and the larger free trade debate in general, are not entirely incompatible. Each seems to agree that NAFTA, at least to some degree, has affected the U.S. manufacturing sector.[109] The main difference between the two views is how significant the decline in U.S. manufacturing employment is, and furthermore, whether NAFTA's benefits outweigh the negative effects of these losses.[110] While there may be no consensus, simply ignoring the displacement of manufacturing workers in favor of a focus on NAFTA's "net" results on U.S. employment marginalizes a major concern.[111]

Taking a brief look at statistics illustrates the potential problem with focusing on "net" employment results. In 2003, roughly 14.3 million U.S.

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103. *Id.* at 8-9.

104. *See* Martin Baily, Address at the Joint Conference of the Cato Institute and The Economist on Trade and the Future of American Workers (Oct. 7, 2004), *available at* http://cato.org/events/tradeconference/index.html.

105. *See supra* notes 74-82 and accompanying text (discussing how Bivens does not link U.S. manufacturing job losses with the increase in productivity since NAFTA's passage).

106. Greg Mankiw, Address at the Joint Conference of the Cato Institute and The Economist on Trade and the Future of American Workers (Oct. 7, 2004), *available at* http://cato.org/events/tradeconference/index.html.

107. Brink Lindsey is a senior fellow at the Cato Institute and director of its Center for Trade Policy Studies; BRINK LINDSEY, JOB LOSSES AND TRADE: A REALITY CHECK 1, (Cato Inst., Trade Briefing Paper No. 19, 2004), *available at* http://www.freetrade.org/pubs/briefs/tbp-019.pdf.

108. *Id* at 2.

109. *See supra* notes 54-109.

110. *See id.*

111. *See generally* William Cunningham & Segundo Mercado-Llorens, *The North American Free Trade Agreement: The Sale of U.S. Industry to the Lowest Bidder*, 10 HOFSTRA LAB. & EMP. L.J. 413, 414 (1993).

citizens held manufacturing jobs.[112] That number represents the lowest level of workers employed in the U.S. manufacturing sector since 1950 and is a sharp decline from the number of manufacturing jobs available at NAFTA's inception.[113] This number remains relevant today given that growth in the U.S. manufacturing sector has largely been stagnant since 2003.[114] Given the high employment levels relative to the NAFTA timeline, it is difficult to make a coherent argument that these workers have not been shifted to other sectors of the U.S. economy. Furthermore, while such a shift maintains desirable employment statistics, it says nothing about the salaries available to those workers being shifted away from the manufacturing sector. Specifically, questions remain as to what types of jobs these displaced workers were able to procure after leaving the manufacturing sector, and what effect, if any, does this shift have on the rest of the economy?

Statistics suggest that the impact has been substantial.[115] The American Manufacturing Trade Action Coalition (AMTAC) claims that the average manufacturing job produces an income some 33% higher than a service sector job, and that industrial job losses have had a drastic impact on wage growth for U.S. employees.[116] The impact on wage growth is caused when a work-capable individual loses their high paying manufacturing job and is funneled into low paying positions in the service sector.[117] A recent U.S. government forecast reveals that job creation in the next decade will be dominated by low-end service sector positions in the restaurant and retail sectors of the economy.[118] This prediction supports the claim that a substantial portion of the U.S. manufacturing workforce is shifting into lower paying employment positions.

A decrease in earning power by a significant portion of the population has obvious effects on other economic sectors. For example, less earning and, therefore, less spending could be detrimental to the retail industry. However, apart from these obvious correlations, there are other costs that are not so obvious. Specifically, while most manufacturing jobs offer good benefits like health insurance and pensions, many service sector jobs do not.[119] Such developments increase the burden on federal agencies as outsourced workers and their families become dependent on government entitlements such as welfare, Medicaid, unemployment benefits, and worker

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112. *Id.*
113. *Id.*
114. BIVENS, *supra* note 4.
115. *See* American Manufacturing Trade Action Coalition, The Hidden Cost of Free Trade, http://www.amtacdc.org/Policy%20Issues/Pages/toefreetradehiddencost.aspx [hereinafter The Hidden Cost] (last visited Apr. 22, 2010).
116. *Id.*
117. *See id.*
118. *Id.*
119. *Id.*

retraining programs.[120] Furthermore, it is not uncommon for employers in the service industry to encourage their employees to utilize these government assistance programs.[121]

The shifting of manufacturing jobs has also negatively impacted wages in what remains of the manufacturing sector. Bivens emphasizes that earning power is on the decline even for those manufacturing workers lucky enough to have kept their jobs.[122] He suggests that global integration between 1973 and 2006 has "lowered the wages of U.S. workers without a four-year college degree (the majority of the U.S. workforce) by 4%."[123] Four percent does not appear significant until you consider that the wages of this group only increased two percent over the same time period.[124] In other words, without the widespread economic integration delivered by U.S.-FTAs, workers without a college degree could have seen their wages rise 100% more than they actually did during the same time period.[125]

While it is hard to draw concrete conclusions about the connection between free trade and U.S. manufacturing job loss, it is perhaps even more difficult to quantify the negative effects of such a shift in manufacturing employment. Most research concerning these effects can be criticized for methodological limitations and complexities.[126] It should be noted, however, that NAFTA related job loss was deemed significant enough to create a government assistance program to aid displaced workers. As of 2003, the NAFTA Trade Adjustment Assistance Program had certified 525,094 workers as having lost their jobs to NAFTA.[127] While certainly concrete, this statistic is still not representative because it assumes that everyone displaced actually sought, or knew of the program's existence. Even so, the potential impact of shifting such a large quantity of people to other employment sectors of the economy is likely significant. This may be best illustrated by the U.S. government's recent and frantic action to save General Motors, a company of 325,000[128] employees.[129] NAFTA has likely

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120. *Id.*

121. *See* Christina Laun, Note, *The Central American Free Trade Agreement and the Decline of U.S. Manufacturing*, 17 IND. INT'L & COMP. L. REV. 431, 444 (2007).

122. JOSH BIVENS, TRADE, JOBS, AND WAGES (Econ. Policy Inst., Pol'y Brief No. 244, 2008), *available at* http://www.epi.org/publications/entry/ib244/.

123. *Id.*

124. *Id.*

125. *Id.*

126. *See* Michael Abbott, *The Impacts of Integration and Trade on Labor Markets: Methodological Challenges and Consensus Findings in the NAFTA Context* 3 (Comm'n Labor Cooperation, Working Paper No. 1, 2004), *available at* http://naalc.org/english/pdf/WP_Eng.pdf.

127. John J. Audley et al., *supra* note 4, at 28.

128. *See generally What If GM Did Go Bankrupt...: How Investors, Customers, and Suppliers Might Fare Under Chapter 11*, Bus. WK., Dec. 12, 2005, *available at* http://www.businessweek.com/magazine/content/05_50/b3963114.htm (claiming General Motors consists of 325,000 employees).

129. *See* Posting of Andrew M. Grossman to The Foundry,

resulted in losses equivalent to *at least* two General Motors Corporations. It is not hard to imagine that moving such a large class of workers to lower paying jobs has some negative impact on the economy.

PART IV: THE FREE TRADE DEBATE—TRADE PROMOTION VS. TRADE PROTECTIONISM

It seems that free trade has negatively impacted U.S. manufacturing, at least to some degree. However, should the Obama administration take steps to protect U.S. manufacturing jobs moving forward? The history of U.S. trade policy indicates the answer is no. So-called "protectionist" actions commonly risk significant damage to other sectors of the economy while providing little, if any, benefits. In recent history, the United States has implemented various policies that could be classified as "protectionist."[130] Like the current concern over the U.S. manufacturing sector, these policies were similarly aimed at protecting specific sectors of the U.S. economy from the negative impacts of foreign competition. In many instances, the policies backfired, inflicting far more harm than good.

It is widely believed that the imposition of protectionist policies in the form of the artificial inhibition of free trade leads to an array of negative consequences. The Vice Chairman of the Federal Reserve has specified a few consequences of protectionist policies that include: the reduction of variety and increased costs for consumers, the distortion of the "allocation of resources in the economy by encouraging excessive resources to flow into protected sectors," and the fostering of inefficiency through the reduction of competition.[131] Vice Chairman Ferguson suggests that other related and "highly egregious" consequences of protectionist actions are of even more consequence to the general public.[132] He first identifies the risk that protectionist policies in the form of "import barriers" may destroy jobs in "downstream" sectors, in many cases offsetting the number of jobs protected.[133] Secondly, Ferguson claims that protectionist policies provide large benefits to a very small number of producers in a given sector, while providing almost no benefits to the majority of producers in the same and other sectors.[134] A third concern highlighted by Ferguson is that through

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http://blog.heritage.org/2009/02/17/gms-17-billion-wishlist/ (Feb. 17, 2009, 19:01 EST) (discussing the current federal loans already extended to General Motors and the need for more in the future).

130. *See generally* Jagdish Bhagwati, *Protectionism*, *in* THE CONCISE ENCYCLOPEDIA OF ECONOMICS (Libr. of Econ. and Liberty, 2d ed.) (discussing the history of protectionist policy), *available at* http://www.econlib.org/library/Enc/Protectionsim.htm.

131. Roger W. Ferguson, Jr., Vice Chairman, The Fed. Res. Board., Remarks at the Conference on Trade and the Future of American Workers (Oct. 7, 2004), http://www.federalreserve.gov/boarddocs/speeches/2004/20041007/default.htm. (last visited Apr.. 22, 2010).

132. *Id.*

133. *Id.*

134. *Id.*

the restriction in "the supply of certain types of imports to the United States, quotas may benefit those foreign producers who retain the right to sell to U.S. markets by raising the prices of their goods."[135] Finally, Ferguson claims that trade actions "often invite the threat of foreign retaliation that would hurt American workers in export industries."[136]

One of the first instances of protectionist policies implemented by the U.S. government was the Smoot-Hawley Tariff Act of 1930.[137] Economists have blamed the legislation for significantly contributing to the Great Depression.[138] The Act itself set prohibitively high tariff rates on foreign goods at a time when U.S. producers feared losing U.S. market share to foreign competitors.[139] In response to these tariffs, U.S. trading partners retaliated with their own tariff restrictions, severely burdening international trade.[140] The results culminated in a deep and prolonged depression, paralyzing the economic powers of the world.[141]

Unfortunately, the history of U.S. protectionist policy did not end with the Great Depression. More recent examples have manifested the negative consequences highlighted by Chairman Ferguson. These include the Steel Tariffs of 2002, the protection of the U.S. sugar industry, and the recent protection of consumer goods such as shoes and apparel.[142] The traditional concerns associated with protectionist policies were manifested in each situation, and the study of these policies should educate lawmakers considering future policy choices.

Looking at the Steel Tariffs of 2002 in particular illustrates the danger of protectionist policies and the consequences of introducing artificial barriers to the free flow of commerce. In 2002, the Bush administration authorized a system of steel tariffs to stem the effect of strong foreign competition to the U.S. steel industry.[143] The policy implemented tariffs on select foreign steel bound for the United States that averaged 30%.[144] Shortly after the imposition of these tariffs, steel prices rose across the board by as much as ten percent which raised the costs to U.S. consumers of various steel goods.[145] Critics of these tariffs, such as U.S. Senator John

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135. *Id.*

136. *Id.*

137. The Smoot-Hawley Tariff Act, Pub. L. No. 71-361, 46 Stat. 590 (1930).

138. HORNBECK & COOPER, *supra* note 32; *see also* STEPHEN D. COHEN ET AL., FUNDAMENTALS OF U.S. FOREIGN TRADE POLICY 32 (1996).

139. HORNBECK & COOPER, *supra* note 32, at 2.

140. *Id.*

141. *Id.*

142. Hillary E. Maki, Note, *Trade Protection vs. Trade Promotion: Are Free Trade Agreements Good for American Workers?*, 20 NOTRE DAME J.L. ETHICS & PUB. POL'Y 883, 889-95 (2006).

143. *See* Kevin K. Ho, Comment, *Trading Rights and Wrongs: The Bush 2002 Steel Tariffs*, 21 BERKELEY J. INT'L L. 825, 825 (2003).

144. *Id.*

145. *Id.* at 833.

McCain, estimated that "for every steel-producing job the tariffs attempted to save, thirteen others in steel-consuming industries were endangered by the tariffs."[146] While the steel tariffs were quickly rolled back, the Consuming Industries Trade Action Coalition (CITAC) estimates that "[s]teel consumers have lost more jobs to higher steel costs than the total number employed by steel producers in December 2002."[147]

The Steel Tariffs of 2002 should serve as a warning to President Obama and other policy makers currently under pressure to protect the U.S. manufacturing sector. Just as the steel tariffs had the unintended consequence of eliminating jobs in other sectors of the economy, taking steps to protect U.S. manufacturing jobs could likely have negative costs for the rest of the economy. While the question of whether any actions can be taken to save U.S. manufacturing is still up for debate, new ideas are starting to trickle out of Washington that would provide aid without burdening the benefits of free trade.

PART V: SOLUTIONS--TRADE AGREEMENT PARITY AND THE U.S. FOREIGN TRADE ZONE PROGRAM

A. Trade Promotion Authority Proposal

To his credit, President Obama has recently warned of the potential consequences of showing any signs of protectionism.[148] In a time of economic uncertainty, Obama believes that there will be a strong impulse for economies of the world to adopt such policies, which, as seen with the Smoot-Hawley legislation,[149] can only exacerbate the problems of a depressed economy.[150] The question remains then, are there any steps that President Obama can take to ease the harm to the U.S. manufacturing sector that he directly attributes to the effects of free trade?[151] Furthermore, how can aid be provided without showing any "signals of protectionism" which he has recently warned against?

One example of the new thinking coming from Washington is Trade Agreement Parity (TAP). TAP is a trade bill proposed by Representative Bill Pascrell from New Jersey.[152] Put simply, Rep. Pascrell has not aimed at limiting the negative impact of foreign trade but rather at reforming one

146. Maki, *supra* note 142, at 890.

147. *See generally* JOSEPH FRANCOIS & LAURA M. BAUGHMAN, THE UNINTENDED CONSEQUENCES OF U.S. STEEL IMPORT TARIFFS: A QUANTIFICATION OF THE IMPACT DURING 2002, at 12 (Trade Partnership Worldwide, LLC, 2003), *available at* http://citac.info/remedy/2002_Job_Study.pdf.

148. Jonathan Weisman, *Obama, in Canada, Wars Against Protectionism*, WALL ST. J., Feb 20, 2009, *available at* http://online.wsj.com/article/SB123504260038621641.html.

149. *See infra* note 187-189 and accompanying text.

150. Weisman, *supra* note 148.

151. *See id.*

152. Letter, *supra* note 13.

aspect of U.S. Customs trade policy that currently disadvantages U.S. manufacturers. Rep. Pascrell touts the bill as a trade agreement for U.S. manufacturers,[153] and believes that the policy will aid U.S. manufacturers in competing in an increasingly globalized economy.[154] The key aspect of the proposal lies in the fact that it provides immediate aid to U.S. manufacturing without implementing artificial limits on free trade.

To stay competitive in today's globalized economy, manufacturers need to use parts from around the world while balancing both quality and price.[155] This conforms to traditional notions of free trade given that it is most efficient to take advantage of those trade relationships in which components can be the most cheaply obtained.[156] The effective practice of this concept passes savings on to the public and increases the revenue for the producer. This would seem to be the theory behind NAFTA and other U.S.-FTAs. However, U.S. manufacturers have been disadvantaged under the current framework requiring them to pay higher tariffs on imports than their FTA competitors.[157] In essence, many U.S. trading partners currently "allow components to enter their countries duty-free, so their manufacturers can produce high quality goods at competitive prices."[158] In contrast, U.S. manufacturers are not extended similar advantages on imported components.[159] In many cases, the tariff incentives are enough that a U.S. producer has no other choice but to move its production to take advantage of the incentives.

Tariff incentives created by U.S.-FTAs are the equivalent of an unlevel playing field.[160] The resulting inequity of this playing field is the artificial incentive for U.S. manufacturers to leave the United States, taking many jobs with them. The genius of TAP is its ability to look beyond the greatest threat to U.S. manufacturing, free trade, and target a specific disadvantage to U.S.-based companies. TAP levels the playing field by addressing the gap in U.S. Customs policy that is left by U.S.-FTAs.[161] While U.S.-FTAs provide natural benefits in the form of lower labor, input, and distribution costs to U.S manufacturers willing to move production to an FTA partner, they are not designed to encourage the decline of U.S. manufacturing by offering tax breaks to all those willing to exit the U.S.

153. *Id.; see also* Berry, *supra* note 2.

154. Letter, *supra* note 13.

155. Editorial, *A Democrat's Good Idea*, WALL ST. J., July 12-13, 2008 [hereinafter *Good Idea*], *available at* http://www.naftz.org/docs/news/2009%20Lobbying%20Packets.pdf.

156. *See generally Adam Smith (1723-1790), in* THE CONCISE ENCYCLOPEDIA OF ECON. (Libr. of Econ. and Liberty, 2d ed.) [hereinafter *Adam Smith*], *available at* http://www.econlib.org/library/Enc/bios/Smith.html.

157. *Good Idea*, *supra* note 155.

158. *Id.*

159. *Id.*

160. *See* Berry, *supra* note 2.

161. *Id.*

economy.[162] The latter is an artificial benefit, and U.S. trade policy should not encourage domestic manufacturers to move production abroad.

The following example illustrates the problem.[163] Under NAFTA, an automobile assembled in Mexico, consisting of components from Asia that were not taxed prior to their admission to Mexico, may potentially be shipped to the U.S. market without the manufacturer having paid any taxes.[164] Conversely, the same automobile consisting of the same components, but assembled in the United States, may be subjected to tariffs for the Asian-sourced components not taxed when the assembly occurred in Mexico. The current regime has effectively stacked the deck against U.S. manufacturers. TAP is aimed at remedying this inequity.[165]

TAP removes the artificial incentive created by U.S.-FTAs by applying "fresh thinking to a well-established if underutilized government program—the U.S. foreign-trade zone program."[166] The U.S. foreign trade zone program has existed in this country for over 70 years "encouraging U.S.-based companies to keep their manufacturing operations in the states by allowing them to defer, reduce or eliminate Customs duties . . . on products admitted to a zone."[167] By expanding the current scope of U.S.-FTZ benefits to offer U.S. manufacturers access to the same tariff rates available to U.S.-FTA competitors, those manufacturers are more likely to retain operations on U.S. soil.[168]

TAP aids in the stabilization of the U.S. manufacturing sector. The byproduct of this stabilization will be the creation of high paying jobs on U.S. soil.[169] Rep. Pascrell suggests that leveling the playing field allows U.S. manufacturers to effectively compete with foreign-based companies, producing many benefits for the rest of the economy.[170] Taking a look at the development of the U.S.-FTZ program and the pivotal role it plays in

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162. *Id.*

163. *See generally Good Idea*, *supra* note 155, for the discussion underlying this example.

164. The possibility exists if the product shipped to the United States complies with the rules of origin requirements codified in NAFTA. *See generally* Lawrence M. Friedman, *NAFTA Rules of Origin*, BARNES/RICHARDSON GLOBAL TRADE L., Jan. 1, 2003 (discussing the requirements for certifying goods as "originating" under NAFTA), *available at* http://www.barnesrichardson.com/nafta/articles/aspx?ArticleID=000320883605.

165. Mark Drajem, *Democrat Pushes Bill to Expand Duty-Free Status for Trade Zones*, BLOOMBERG, June 27, 2008, *available at* http://www.naftz.org/docs/news/Democrat%20Pushes%20Bill%20to%20Expand%20FTZs%20(Bloomberg%206-27-08).pdf.

166. Berry, *supra* note 2.

167. *Id.*

168. *Id.*

169. *See generally* DEAN A. DEROSA & GARY C. HUFBAUER, THE ECONOMIC IMPACT OF TRADE AGREEMENT PARITY FOR MANUFACTURING FIRMS OPERATING IN US FOREIGN-TRADE ZONES (Peterson Inst. of Int'l Economics, 2008), *available at* http://naftz.org/docs/news/2009%20Lobbying%20Packets.pdf (discussing the potential for TAP to create 95,000 new jobs in U.S.-FTZs).

170. Berry, *supra* note 2.

the U.S. economy aids in understanding Rep. Pascrell's proposed changes.

B. The United States Foreign Trade Zone Program

"The Foreign Trade Zone is an area inside United States territory which, for customs purposes, is considered outside of United States Customs territory."[171] The U.S.-FTZ program has always been a way to mitigate some of the adverse effects resulting from increased participation in free trade relationships.[172] "For more than five decades, the U.S. government's Foreign-Trade Zone (FTZ) program has promoted American competitiveness by encouraging companies to keep and expand their operations in the United States."[173] "[Foreign] trade zones were not available in the early stages of economic development in the United States,"[174] but a U.S.-FTZ program was put in place with the passage of the Foreign Trade Zone Act of 1934 and has remained in place since its passage.[175] The FTZ program has grown significantly over the past several years, and today there are over 500 zones in operation, including one in every state.[176]

Unique economic conditions resulted in the creation of the U.S.-FTZ program. In the early stages of the 20th century, the United States was struggling to effectively and efficiently participate in the growing global economy.[177] By the time the Great Depression took hold, the government began evaluating the prevailing economic policies that were in place.[178] Trade policies in particular were targeted, largely due to the fact that "re-

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171. William G. Kanellis, *Reining in the Foreign Trade Zones Board: Making Foreign Trade Zone Decisions Reflect the Legislative Intent of the Foreign Trade Zone Act of 1934*, 15 NW. J. INT'L L. & BUS. 606, 607 (1995). *See also* Anne Bond Emrich, *Foreign Trade Zones Boost Economic Activity*, GRAND RAPIDS BUS. J., June 23, 2008, *available at* http://www.naftz.org/docs/news/Foreign%20Trade%20Zones%20Boost%20Economic%20Activity%20(Grand%20Rapids%20Business%20Journal%206-23-08).pdf (discussing the benefits offered by U.S.-FTZs). "If you do import or export and are looking to cut some money out of your expense side, you might want to think about foreign trade zones." *Id.*

172. History, *supra* note 18.

173. National Association of Foreign-Trade Zones, Trade Agreement Parity (TAP) Initiative Endorsement Statement, http://naftz.org/docs/news/Endorsement%20Statement%20on%20Letterhead.pdf [hereinafter Initiative Statement] (last visited Apr. 22, 2010).

174. John J. Da Ponte Jr., Variations on the Freeport Theme-A U.S. Perspective (Foreign Trade Zone Board 1995), *available at* http://ia.ita.doc.gov/Ftzpage/articl95.html.

175. *See* 19 U.S.C. § 81 (a)-(u) (2009).

176. Pierre Duy & Elizabeth Whiteman, U.S. Foreign-Trade Zones Offer Flexibility in a Changing Environment 5 (Foreign Trade Zone Staff) (citing U.S.-Foreign-Trade Zone Board, Data for fiscal year 2006), *available at* http://ia.ita.doc.gov/ftzpage/info/March2008_article.pdf.

177. *See generally* Kannellis, *supra* note 171, at 610 (explaining that U.S. ports could have helped the United States benefit from the global economy but were burdened by customs procedures).

178. *Id.*

exports"[179] had fallen from "147 million dollars worth of activity in 1920 to less than 63 million dollars in 1930."[180] The decline in re-exports was traced directly to the Smoot-Hawley Tariff Act of 1930, which imposed a prohibitively high set of tariff rates.[181] Passed in 1934 by a near three to one margin,[182] the FTZ program was intended to limit the harmful effects of Smoot-Hawley, by that time considered an economic disaster.[183]

The prevalent theme of FTZs in America was borrowed from the historic free port paradigm.[184] Although the framework "was inspired by the historic free port archetype, the U.S. version of the free [trade] zone was viewed not as a restatement of the classic form, but rather as a variation of it – a sort of new world opus."[185] The program was designed to aid businesses in dealing with various customs requirements and eventually to jumpstart American trade.[186] This resulting structure has proven very resilient to changes in the global economy throughout the 20th century and has also proven to be a useful tool in controlling several aspects of the U.S. economy.[187]

Congress originally intended FTZ legislation to make the United States a major player in international trade. Specifically, Congress believed that the creation of FTZs, along with the United States' ideal location, would encourage the rest of the world to utilize the United States as a critical trans-shipment point for international trade.[188] Ultimately, the intent was for the increased capital investment in U.S.-based operations, due to international eagerness to take advantage of the favorable tariff and tax benefits, to promote significant job growth in the country.[189]

The Foreign Trade Zone Board is responsible for administering the benefits of U.S.-FTZ operation.[190] The Board is comprised of the Secretary of Commerce and the Secretary of Treasury.[191] The Commissioner of U.S.

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179. "'[R]e-export' means to temporarily move a foreign product into a country for combination with other products and subsequent export." *Id.*

180. Kanellis, *supra* note 171, at 610 ("To 're-export' means to temporarily move a foreign product into a country for combination with other products and subsequent export."). *Id.*

181. *See* Hornbeck & Cooper, *supra* note 32, at 3 (explaining the details of the Smoot-Hawley Act).

182. Kannellis, *supra* note 171, at 610.

183. *Id*; *see also* Hornbeck & Cooper, *supra* note 32, at 2-3.

184. *See* John J. Da Ponte, Jr., *The Foreign-Trade Zones Act: Keeping up with the Changing Times,* BUS. AM., Dec. 1997, *available at* http://findarticles.com/p/articles/mi_m1052/is_/ai_20097704.

185. *Id.*

186. *Id.*

187. *See generally* Kanellis, *supra* note 171.

188. *Id.* at 611.

189. *Id.*; *see also* History, *supra* note 18.

190. United States Foreign Trade Zones Board Glossary of FTZ Terms, http://ia.ita.doc.gov/ftzpage/info/board.html (last visited Jan. 21, 2010).

191. *Id.*

Customs and Border Protection also plays a key role on the Board.[192] The Board's primary job is to authorize the creation of Foreign Trade Zones and permit corporate applicants to operate within them.[193] The Board has the ability to exclude "any goods or process of treatment that, in its judgment, is detrimental to the public interest, health, or safety."[194] These broad powers reflect Congressional intent for the Board to play a significant role in U.S. trade policy.

1. Evolution of the U.S.-FTZ Program

Only recently has the U.S. -Foreign Trade Zone program been widely utilized.[195] When passed in 1934, it was hoped that the program would produce an immediate impact; however, actual effects did not manifest until many years later.[196] In fact, U.S.-FTZs were underutilized until well after the Second World War.[197] Many attributed the dearth of popularity to the prohibitions against manufacturing and exhibition reflected in the original legislation.[198] The program was not producing the results originally intended, and as worldwide trade developed and changed, the need to modify the U.S-FTZ program became clear.[199]

The General Agreement on Tariffs and Trade (GATT)[200] was passed in 1947, and with it came many changes that would affect the use of U.S.-FTZs. As producers looked for ways to take advantage of the newly developed conditions for international trade, the interest of GATT member nations in the potential of the U.S.-FTZ program was revitalized.[201] Business leaders began complaining that U.S.-FTZs were not comparable to those found in other countries, believing they lacked protections that would allow successful participation in the global economy.[202] Responding to this growing pressure, Congress passed the Boggs Amendment in 1950.[203] The

192. *Id.*
193. *See* 19 U.S.C. § 81b(a) (2009).
194. *Id.*
195. *Id.*
196. *Id.*
197. History, *supra* note 18.
198. Kannellis, *supra* note 177, at 613 (citing a report to the Chairmen of the House Ways and Means Committee).
199. *See* History, *supra* note 18.
200. *See* Meredith A. Crowley, *An Introduction to the WTO and GATT*, ECON. PERSPECTIVES, 4Q/2003, at 42, *available at* http://www.chicagofed.org/digital_assets/publications/economic_perspectives/2003/4qeppart4.pdf. GATT was the predecessor to the World Trade Organization (WTO) and was aimed at reducing tariff and other trade barriers among member nations. *Id.* The original agreement was signed by twenty-three member countries whereby those nations agreed to a set of rules to govern trade with one another, specifically maintaining reduced import tariffs for the other members of the organization. *Id.*
201. History, *supra* note 18.
202. Kannellis, *supra* note 171, at 613.
203. *Id.*

Boggs Amendment marked the first time manufacturing was allowed in U.S.-FTZs, and it marked the last Congressional modification of the U.S.-FTZ program.[204]

2. Advantages Offered by the FTZ Program and Its Current Popularity

Because U.S. Customs only collects duties on products that enter U.S. Customs territory and U.S.-FTZs are considered outside of U.S. Customs territory, products manufactured within a U.S.-FTZ are not subject to duties if shipped directly to the international market.[205] The ability to avoid U.S. Customs tariffs is the chief benefit of manufacturing within a U.S.-FTZ.[206] Additionally, a company manufacturing within a U.S.-FTZ benefits from the ability to defer applicable duty payments on those items bound for the U.S. market.[207] These benefits allow U.S. manufacturers to circumvent U.S. Customs requirements up until the time when that product reaches Customs territory, if it ever does.[208]

The U.S.-FTZ program rapidly expanded in the later stages of the 20th century.[209] This expansion was a result of U.S. manufacturers needing the benefits offered by the program to effectively compete in the developing global economy. While only eighteen U.S.-FTZs were in operation in 1973,[210] there are more than 500 U.S.-FTZs being utilized by U.S. manufacturers today.[211] The 2,650 companies operating within U.S.-FTZs are responsible for employing more than 340,000 Americans.[212] It is estimated that the use of these zones produces roughly $500 billion in annual economic activity, and the benefits of that money are experienced in all fifty states.[213]

C. TAP Applies Fresh Thinking to the U.S. FTZ Program

Rep. Pascrell's legislation proposes to alter the U.S.-FTZ program making TAP benefits available to those operating within a U.S.-FTZ.[214] TAP enables these manufacturers to acquire the same tariff treatment as producers operating within a U.S. free trade partner without requiring them

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204. *Id.* at 615-16.
205. *See generally id.* at 618-22.
206. *Id.*
207. *Id.*
208. 15 C.F.R. § 400.1(c) (1991).
209. History, *supra* note 18; *see id.*
210. Kanellis, *supra* note 171, at 607.
211. Berry, *supra* note 2.
212. *Id*; *see also* DUY & WHITEMAN, *supra* note 176, at 5.
213. Initiative Statement, *supra* note 173.
214. *See generally* Berry, *supra* note 2.

to move to those nations to access them.[215] Instead of moving manufacturing abroad to circumvent U.S. duties, TAP offers the opportunity to effectively participate in the U.S. economy without sacrificing valuable U.S. manufacturing jobs, the original intent of the U.S.-FTZ program.[216]

The U.S.-FTZ Board, an administrative body within the Commerce Department, will act as the gatekeeper to TAP benefits.[217] Just as a U.S. manufacturer has to apply to the Board for the traditional benefits of operating within a U.S.-FTZ, manufacturers will also have to apply to receive the benefits of TAP.[218] The burden will fall on the company to demonstrate the merits of their proposal, and furthermore, that the application of TAP benefits are in the "public interest."[219] TAP and the Board will limit the availability of benefits and "if there is no meaningful competition from a particular FTA country, there would be no tariff policy correction needed to level the playing field—and no reason for the FTZ Board to permit the rules of origin of that particular FTA."[220] However, if a U.S. manufacturer does face competition from a U.S. free trade partner, an application for TAP benefits will be granted as long as doing so serves the public interest.[221] Like other U.S.-FTZ benefits, the Board will have a considerable degree of control over the availability of TAP benefits.[222]

TAP does have limitations. The legislation is not designed to give U.S. based manufacturers any more of a benefit than already available to them by operating within a U.S. free trade partner.[223] Such action would not qualify as "leveling the playing field," but rather slanting it in the opposite direction. U.S. manufacturers can apply for the benefits of a specific U.S.-FTA that has disadvantaged them, and if granted, will be limited to the benefits of that particular U.S.-FTA.[224] In effect, this means that the rules of origin codified in the U.S.-FTA will apply to the U.S. based manufacturer.[225] An example better illustrates this point. If a product assembled in Mexico consists of components from all over the world and

215. *See* National Association of Foreign Trade Zones (NAFTZ), The Truth About Trade Agreement Parity (H.R. 6415): Checking the Facts about TAP, http://www.naftz.org/docs/news/2009%20Lobbying%20Packets.pdf [hereinafter The Truth About TAP] (last visited Apr. 22, 2010).

216. *See supra* notes 171-76 and accompanying text.

217. *See supra* notes 190-93.

218. *See* The Truth About TAP, *supra* note 215.

219. *Id.*; *See* 15 C.F.R. § 400.31(b) (1991).

220. The Truth About TAP, *supra* note 215.

221. *See generally id* (discussing the limits to a grant of TAP benefits).

222. *See supra* notes 190-194 and accompanying text.

223. *See generally supra* notes 148-70.

224. *See id.* The TAP legislation will not allow applicant to "cherry pick" which U.S.-FTA offers the best tariff rates on a given product. *Id.*

225. *See generally* The Truth About TAP, *supra* note 215.

does not comply with NAFTA's rules of origin,[226] U.S. Customs will tax that product if shipped to the United States. Furthermore, if a U.S. manufacturer uses the same components, it will not be permitted to use TAP as a shield from the same tariffs. TAP is only capable of providing the benefits actually accessible to a manufacturer under an existing U.S.-FTA.

PART VI: PROPOSALS

A. Congress Should Immediately Consider and Pass TAP

"TAP is the single-best job creation plan for American manufacturing workers that Washington can offer today."[227] It avoids implementing harmful protectionist policies, but limits the competitive advantage offered to companies that relocate manufacturing jobs outside of the United States. As more U.S.-FTAs are passed and pursued, the U.S. manufacturer is put at a growing disadvantage. Under TAP, serving the domestic and global economies from a manufacturing base within the United States will once again be a viable option. Without TAP, or similar legislation, the competitive advantage offered to those manufacturers producing goods abroad will continue to escalate.

TAP will provide immediate and significant benefits to the American economy.[228] A recent study commissioned by the National Association of Foreign Trade Zones (NAFTZ) reflects these benefits.[229] The study, conducted through the Peterson Institute for International Economics[230] by economists Dean DeRosa[231] and Gary Hufbauer,[232] estimates that TAP's implementation will result in a $530 million annual gain to the U.S. economy.[233] Perhaps more important given the current concerns of the Obama administration, the study estimates that 95,000 new jobs will be created within existing U.S.-FTZs.[234] Other benefits from TAP's

226. *See* Friedman, *supra* note 164 (discussing NAFTA's rules of origin requirements).

227. National Association of Foreign Trade Zones (NAFTZ), Trade Agreement Parity (TAP) Legislation, http://www.naftz.org/docs/news/2009%20Lobbying%20Packets.pdf (last visited Apr. 22, 2010).

228. *See* The Truth About TAP, *supra* 215.

229. DEROSA & HUFBAUER, *supra* note 169.

230. "The Peter G. Peterson Institute for International Economics is a private, nonprofit, nonpartisan research institution devoted to the study of international economic policy." Peterson Institute for International Economics, About the Institute, http://www.petersoninstitute.org/institute/aboutiie.cfm (last visited Apr. 22, 2010).

231. "Dean DeRosa is a visiting fellow at the Peterson Institute for international Economics and Principal Economist, ADR International LTD." DEROSA & HUFBAUER, *supra* note 169.

232. "Gary Clyde Hufbauer is Reginal Jones Senior Fellow, Peterson Institute for International Economics. He has written extensively on international trade, investment, and tax issues" *Id.*

233. Berry, *supra* note 2.

234. *Id.*

implementation include "a [twenty] percent increase in U.S. shipments for companies in FTZs and $25 billion in additional fixed-asset investment inside the zones."[235]

The real benefits from TAP may not be quantified in the study. Specifically, TAP may have some success in reversing the domino effect that occurs when a U.S. manufacturer leaves the United States. Currently, once a manufacturer is given enough incentive to move production abroad, a natural domino effect impacts part and component manufacturers down the economic line. By making it less likely for the first company to leave, TAP may stem the domino effect and, in fact, influence some dominos to fall in the opposite direction.[236] As manufacturing prospers within U.S.-FTZs, part and component manufacturers operating both in and out of U.S.-FTZs will also benefit.[237] This probability suggests that the estimated 95,000 jobs created in U.S.-FTZs by TAP are not fully representative of the ultimate impact TAP will have on U.S. employment.

1. The Need for "Real" Free Trade

Currently, trade is not "free" for U.S. manufacturers because of tax penalties associated with operating in the United States.[238] Some may argue that it is the natural progression of an economy to move from a manufacturing and industrial power to more of a service power, exporting the production of goods for the efficiency of the overall economy. These arguments are consistent with the rationalization for integrated world economies and free trade agreements in general.[239] Adam Smith,[240] perhaps the world's first economist, expressed the logic of these views:

> 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.[241]

While this reasoning may be sound, the current tariff structure

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235. *Id.*

236. *See* The Truth About TAP, *supra* note 215.

237. *See id.*

238. *See supra* notes 148-70.

239. *See generally* Alan S. Blinder, *Free Trade, in* THE CONCISE ENCYCLOPEDIA OF ECON. (Libr. of Econ.s and Liberty, 2d ed.), *available at* http://www.econlib.org/library/Enc/FreeTrade.html.

240. *See Adam Smith, supra* note 156.

241. *Id.*

introduces artificial factors into the calculation. The choice to serve the U.S. economy from outside of the United States is no longer a natural progression but an economic necessity in order to remain competitive. Perhaps absent the disincentive of the current tariff structure, some manufacturers would never have chosen to leave the United States. The natural effects of free trade agreements combined with the current tariff structure have provided the American worker with a jarring introduction to the global economy.

TAP is not a silver bullet for the ailing manufacturing sector, but it is a substantial step towards making U.S. manufacturers competitive again. TAP cannot remove the benefits of favorable employment and operation costs available in U.S. free trade partners, and it should not. Even if there were no free trade agreements, U.S. manufacturers would still look to invest in developing economies like China and Mexico.[242] In many cases it will still be more efficient for them to do so.[243] However, removing current tariff incentives will once again make the United States market a viable option for U.S.-based manufacturing.[244] By removing one incentive to serve the U.S. market from abroad, the cost-benefit analysis of leaving the United States shifts and the chances of the United States retaining domestic manufacturing companies and attracting new ones becomes much greater.

2. The "Old" Concept of "Trade Parity"

Trade parity is not a new concept in the arena of international trade. In the past, it has been strived for by many economies in North America.[245] It most recently has been at the forefront of the push for free trade expansion under the Bush administration.[246] After broad trade and economic benefits were granted to Mexico through NAFTA, the majority of similarly situated North American economies expressed aspirations of trade parity or "NAFTA parity."[247] These nations sought benefits equivalent to those which Mexico enjoyed. Specifically, they hoped for equitable access to two of the largest economies in the Western Hemisphere, the United States and Canada.[248]

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242. Elizabeth Becker, *FIVE QUESTIONS for Peter Hakim; How Free Trade Will Alter a Hemisphere*, N.Y. TIMES, Jan. 12, 2003, *available at* 2003 WLNR 5670815.

243. *Id.*

244. *See* DEROSA & HUFBAUER, *supra* note 169.

245. *See generally* J.T. O'Neal, *A Handshake Not a Hand-Out: Extending NAFTA Parity to Textile Imports from the Caribbean Basin Countries*, 9 FLA. J. INT'L L. 497 (1994); Thomas W. Slover, *The Quebec Summit: A Summary of Recent Progress Toward Western Hemispheric Integration*, 7 L. & BUS. REV. OF THE AM. 135 (2001).

246. *See generally* Slover, *supra* note 245, at 139-40 (explaining that Latin American and Caribbean countries have looked to Mexico as an example of how they should become integrated in the North American economy).

247. *See* O'Neal, *supra* note 245, at 498.

248. Larry Rohter, *Blows From NAFTA Batter the Caribbean Economy*, N.Y. TIMES, Jan.

Recent initiatives for trade parity can, at least in part, be attributed to the passage of the most recent regional trade agreement to which the United States has become party,[249] the Central American Free Trade Agreement (CAFTA).[250] Furthermore, another trade agreement is currently under negotiation, the Free Trade Areas of the Americas (FTAA),[251] that seeks to expand "NAFTA-parity" to even more nations. The battle cry of nations seeking trade-parity is that they are "not seeking handouts, but only the opportunity not to be prevented from taking full advantage of the North American market."[252] The countries fighting for such parity fear that "unless the United States grants NAFTA tariff parity . . . their political stability will suffer greatly."[253]

The benefits for countries seeking "NAFTA parity" can be summed up as a "leveling of the playing field." They only ask for the opportunity to effectively compete with countries like Mexico to serve the larger economies of North America. With the passage of TPA and the flood of FTAs that followed,[254] many of these nations have been granted this opportunity.[255] In fact, over much of the last decade delivering trade parity to U.S. trading partners has dominated U.S. trade policy.[256]

While it has been a top priority to ensure that other nations in North America have the ability to compete in the U.S. economy, little attention has been paid to the domestic manufacturers burdened by the similar disadvantages. Like those nations seeking "NAFTA-parity," the U.S. manufacturing sector does not need a handout to remain competitive in the global economy. They simply need to operate on a level playing field with their competition. Like "NAFTA-parity," TAP delivers the ability to compete in the North American market to U.S. manufacturers.

30, 1997, at A1, *available at* 1997 WLNR 4884838.

249. *See also* Laun, *supra* note 121; *see generally* Slover, *supra* note 245; O'Neal, *supra* note 245.

250. *See also* Laun, *supra* note 121, at 435 *See generally* United States Trade Representative (USTR), Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR), http://www.ustr.gov/trade-agreements/free-trade-agreements/cafta-dr-dominican-republic-central-america-fta/final-text (last visited Apr. 22, 2009) (summarizing the CAFTA agreement).

251. *See generally* United States Trade Representative (USTR), Free Trade Areas of the Americas, http://www.ustr.gov/countries-regions/americas (last visited Apr. 22, 2009) (for an overview of the FTAA negotiations).

252. Rhoter, *supra* note 258.

253. O'Neal, *supra* note 245, at 498.

254. *See supra* notes 29-37 and accompanying text.

255. *Id.*

256. I say this in response to the rapid expansion of U.S.-FTAs after NAFTA and the recent push from other nations to achieve "NAFTA-parity". *See* Slover, *supra* note 245, at 139-40.

B. *TAP's Critics and the Need for Strict Regulation*

1. Points of Contention

"American companies that have put operations in Canada and Mexico won't want to lose their protectionist advantage."[257] Many of these companies have expressed concern over several of TAP's key aspects.[258] Perhaps the most significant of these is the charge that TAP could violate the United States' obligations to the WTO by granting FTA benefits to companies in non-FTA countries.[259] It is true that the structure of the WTO requires "that FTAs not unduly discriminate against non-FTA members."[260] However, this criticism represents a fundamental misunderstanding concerning TAP's implementation. Currently, U.S. tariff benefits are already available to non-FTA countries.[261] Whenever a rule of origin permits the use of a non-FTA nation's part or component in a product that later qualifies for U.S. tariff benefits, the non-FTA nation is indirectly benefitted.[262] TAP only extends benefits to non-FTA content that would already be benefitted by an existing U.S.-FTA.[263]

Additionally, critics claim that TAP's reduction of U.S. Customs' revenue will offset many of the benefits of the agreement.[264] U.S. Customs' revenue will in fact be reduced under TAP due to some goods no longer qualifying for applicable taxation. However, the projected benefits of TAP far outweigh this estimated $186 million loss in U.S. Customs revenue.[265] Because of TAP's broad benefits, this loss in Customs revenue is an acceptable trade off. Furthermore, the NAFTZ staunchly defends the estimated $530 million annual gain as being soundly based on accurate theory of U.S.-FTZ usage.[266] The unquantifiable benefit to the economy that an influx of new and higher paying jobs will provide further outweighs the concern over these losses.

2. Regulations

If unregulated, TAP will not realize the benefits it is capable of. It is critical that the FTZ Board effectively condition the reception of TAP benefits on the manufacturer's ability to benefit the public interest.[267] There

257. *Good Idea*, *supra* note 155.
258. *See* The Truth About TAP, *supra* note 215.
259. *Id.*
260. *Id.*
261. *Id.*
262. *Id.*
263. *See id.*
264. *Id.*
265. *Good Idea*, *supra* note 155.
266. *See* The Truth About TAP, *supra* note 215.
267. *See* 15 CFR § 400.31(b) (1991).

is potential concern that without this regulation, TAP's implementation could actually *contribute* to the decline in U.S. manufacturing jobs.[268] If TAP benefits were universally available, a producer operating inside a U.S.-FTZ could simply import duty free parts and components to the detriment of U.S. based producers. However, the FTZ Board's charge to restrict or prohibit any product or activity that it finds "detrimental to the public interest,"[269] gives it the necessary tools to limit these potential abuses.

The Board's strong regulation of TAP will ensure the maximum benefit for U.S. manufacturers, but there are additional safeguards. Any U.S. company fearing harm from an individual grant of TAP benefits is permitted to directly object to the Board's grant of those benefits.[270] This mechanism, along with the Boards strict regulation, will ensure that no application for TAP benefits will be granted if it risks sacrificing jobs in another sector of the economy. Strict application of the Board's "public interest" requirement in both of these situations will ensure that only companies manufacturing in the United States and creating jobs for U.S. workers will receive the beneficial aspects of TAP legislation.

C. Conclusion

Current U.S.-FTAs have created a tariff structure that provides benefits to those manufacturers that leave U.S. territory.[271] Government encouragement of our own manufacturers to leave, and take thousands of U.S. jobs with them, is an unacceptable consequence of free trade. The current administration should push for the passage of TAP as a way to remedy the situation. "TAP is a win-win for U.S.-based companies and U.S. workers, and deserves strong bipartisan support in Congress."[272] Ultimately, even if TAP is not passed, a bill that levels the playing field for U.S. manufacturing is needed. Not only would this initiative aid the quest of many politicians seeking to "save manufacturing,"[273] it would create a substantial number of jobs, the current emphasis of President Obama.[274] To "save" U.S. manufacturing, Congress must take steps to once again make U.S. manufacturing a viable choice. Trade Agreement Parity has the ability to deliver just that.

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268. *See* The Truth About TAP, *supra* note 215.

269. *See* 15 CFR § 400.31(b)(1991).

270. *See* The Truth About TAP, *supra* note 215.

271. *See supra* notes 148-58 and accompanying text.

272. *Rep. Pascrell Introduces Trade Agreement Parity Bill to Boost U.S. Manufacturing; Legislation . . .* BUS. WIRE, June 27, 2008 (quoting National Association of Foreign Trade Zones President Williard M. Berry), *available at* http://www.allbusiness.com/government/government-bodies-offices-us-federal-government/11389127-1.html.

273. *See supra* notes 2-3 and accompanying text.

274. *Id.*