WHAT IS ASIA AFRAID OF? THE DIVERSIONARY EFFECT OF NAFTA'S RULES OF ORIGIN ON TRADE BETWEEN THE UNITED STATES AND ASIA

"No nation was ever ruined by trade."[1]

I. INTRODUCTION

On December 17, 1992, the Heads of State of Canada, Mexico, and the United States signed the North American Free Trade Agreement (NAFTA).[2] NAFTA took effect on January 1, 1994 after approval by each member country's legislature.[3] By eliminating tariffs and non-tariff barriers among Canada, Mexico, and the United States over the next fifteen years,[4] NAFTA will create the world's largest free trade area[5] with 360 million people and a total trade output of $6.5 trillion.[6]

1. BENJAMIN FRANKLIN, BARTLETT'S FAMOUS QUOTATIONS 310 (16th ed. 1992).

2. North American Free Trade Agreement, Dec. 17, 1992, Can.-Mex.-U.S. 32 I.L.M. 297 (entered into force Jan. 1, 1994) [hereinafter NAFTA].

3. *Id.* art. 2203, at 702.

4. *Id.* arts. 302, 303, at 300-301, arts. 309, 310, 312, 314, at 303, Annex 302.2, at 309. *See* Kenneth A. Bacon, *Trade Pact Is Likely To Step Up Business Even Before Approval,* WALL ST. J., Aug. 13, 1992, at A1 (stating that the agreement will eliminate all tariffs between the three member nations and will create a free trade zone extending from the "Yukon to the Yucatan").

5. In a free trade area, barriers to trade are eliminated between the member countries, while each member maintains its own individual restrictions on trade from non-member countries. Special Protocol to the General Agreement on Tariffs and Trade, Art. XXIV(8)(b), 62 U.N.T.S. 56, 62 [hereinafter Special Protocol to GATT] (amending General Agreement on Tariffs and Trade, *open for signature* Oct. 30, 1947, 55 U.N.T.S. 187). By contrast, members of a customs union substitute "a single customs territory for two or more customs territories, so that (i) duties . . . are eliminated with respect to substantially all the trade, and (ii) substantially the same duties . . . are applied by each of the members of the union to trade of territories not included in the union." Special Protocol to GATT, Art. XXIV(8)(a), 62 U.N.T.S. at 62. Before the GATT definition of a customs union, the customs union: (1) completely eliminated tariffs among the member territories; (2) established a uniform tariffs on imports from outside the union; and (3) apportioned customs revenue between the members in accordance with an agreed formula. JACOB VINER, THE CUSTOMS UNION ISSUE 5 (1950). The most integrated type of trade agreement is an economic union, like the European Union, which cedes significant national sovereignty over the member country's economic affairs to a regional body. GARY CLYDE HUFBAUER & JEFFREY J. SCHOTT, NORTH AMERICAN FREE TRADE: ISSUES AND RECOMMENDATIONS 6 (1992). In the European Union, trade policy toward the rest of the world is implemented on a regional basis out of Brussels; the European Court of Justice handles internal disputes arising from implementation of the Treaty of Rome; and the members plan to implement a single currency and a European central bank. *Id.* at 6-7.

6. William A. Orme, Jr., *Myth v. Facts: The Whole Truth about the Half-Truths,* 72 FOREIGN AFF. 2, 3 (Nov./Dec. 1993). Dean C. Alexander, *The North American Free Trade Agreement: Potential Framework of An Agreement,* 14 HOUS. J. INT'L L. 85 (1991). In 1989 the European Community and the European Free Trade Area combined had a population of 358 million and a GNP of $5,784 billion. HUFBAUER & SCHOTT, *supra* note 5, at 4.

While NAFTA will have considerable advantages for the United States,[7] the agreement's expected impact on Asia is causing widespread anxiety there. Asian countries fear that NAFTA will hurt their export-driven economies by drawing trade and investment away from Asia.[8] One Asian leader stated he feared NAFTA would draw a line down the middle of the Pacific and that the United States would withdraw from Asia behind this line.[9]

The Japanese have been particularly vocal in expressing their concern that NAFTA is protectionist and will have a negative impact on Japan's trade with North America.[10] For example, former Japanese Prime Minister Kiichi Miyazawa voiced trepidation that NAFTA could turn North America into a "fortress" against goods from abroad.[11] Similarly, Hiroshi Hirabayashi, the Deputy Chief Mission at the Japanese Embassy in Washington, D.C., has argued that several NAFTA provisions "raise barriers to outside countries."[12]

Asian concern over NAFTA is not unfounded. For years, the United States has provided more economic assistance and access to higher education

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7. U.S. goods will be more price competitive in Mexico because they ". . . will compete on a level playing field against Mexican goods" after trade barriers are removed and will command a price advantage over non-North American goods which are subject to external trade barriers. Ann Driscoll, *Key Provisions of the North American Free Trade Agreement*, BUS. AM., Oct. 19, 1992, at 3. NAFTA will make U.S. firms more competitive against European and Asian producers by enabling U.S. manufacturers to integrate their North American operations. *Id.* at 5. "[C]ombining U.S. and Canadian capital, skills, technology, and natural resources with Mexican labor force will offer new competitive strategies in areas where the United States has been losing market share." *Id.* at 3. Integration will also make North American manufacturers more efficient, lowering consumer prices and increasing consumer choice. *Id. See id.* for more examples of NAFTA's benefits.

The NAFTA is often seen as North America's response to the European trading bloc (European Union). HUFBAUER & SCHOTT, *supra* note 5, at 6. However, none of the three NAFTA countries were willing to cede the requisite sovereignty to establish regional governing bodies comparable to the European Union's governing bodies. *Id.* at 7; *see supra* note 5 for an explanation of the European Union's regional institutions.

8. Ramon Isberto, *Asia: Export Tigers Growl Over NAFTA*, INTER PRESS SERVICE, Sept. 15, 1992, *available in* LEXIS, News Library, Wires File. "Asian nations fear that under NAFTA, Mexican competition would substantially erode their share of the giant U.S. market." Leah Makabenta, *Trade: NAFTA Casts Pall Over Asia-Pacific Grouping*, INTER PRESS SERVICE, Sept. 10, 1992, *available in* LEXIS, News Library, Wires File. "The prospect of NAFTA. . . has sent shivers throughout Southeast Asia." K.T. Arasu, *NAFTA Seen Cutting ASEAN Exports by $2 Billion*, REUTERS, Nov. 23, 1992, *available in* LEXIS, News Library, Wires File. "Asian nations . . . fear they will lose access to North American markets under NAFTA." Kenneth Barry, *NAFTA Defeat Could Hurt Clinton at Asian Summit*, REUTERS, Nov. 16, 1993, *available in* LEXIS, News Library, Wires File.

9. *Background Briefing on APEC by Senior Administration Officials*, The White House, Office of the Press Secretary, Nov. 22, 1993, *available in* LEXIS, News Library, Wires File [hereinafter *Background Briefing*].

10. Isberto, *supra* note 8.

11. Jim Mann, *Japanese Express Concern Over Free Trade Pact*, L.A. TIMES, Dec. 28, 1992, at D2.

12. *Id.*

and technology to Asia than any other country.[13] Furthermore, the openness of the United States market to manufactured exports from Asia is one of the most important factors in the speed of Asia's economic growth.[14] However, free trade areas (FTAs) are by nature discriminatory because their success hinges on lower tariff and nontariff barriers benefitting only the partner countries.[15] To ensure that other countries do not evade the barriers still applied to nonmembers, FTAs must adopt "rules of origin" to determine which goods are produced within the member countries and therefore qualify for preferential treatment.[16] Consequently, NAFTA employs rules of origin to ensure that only those goods produced within a NAFTA member-country are afforded the benefits of NAFTA.[17]

This comment discusses NAFTA's rules of origin and their potential impact on U.S. trade with Asia. Part II describes rules of origin, their significance in international trade, and the pre-NAFTA rules of origin in the United States. Part III explains NAFTA's rules of origin. Part IV discusses the growth in the Asian economies and why Asian trade is important to the United States economy. Part V analyzes the extent to which NAFTA's rules of origin will impact on trade and investment between the United States and Asia. Part VI discusses possible responses to NAFTA as Asian countries seek to protect their trade.

II. RULES OF ORIGIN: DETERMINING A PRODUCT'S "HOME COUNTRY"

Rules of origin are systems whereby countries attempt to determine the source of an imported good: its country of origin.[18] Products today are usually produced internationally and a single finished product may be the

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13. For years, the United States has provided most of the economic assistance to Asia, offered much of the higher education and technology, and bought more Asian exports than any other country. David I. Hitchcock, *The United States in a Changing Pacific Rim: Asian Perceptions and the U.S. Response*, THE WASH. Q., Autumn, 1989, at 123.

14. Erland Heginbotham, *Pacific Basin: Restoring U.S. Economic Leadership; The Economy of the Pacific Basin*, 29 BUS. ECON. 7, 12 (1994).

15. HUFBAUER & SCHOTT, *supra* note 5, at 155.

16. *Id.*; David A. Gantz, *Maximizing the Regional Benefits of North American Economic Integration: Rules of Origin under NAFTA*, *in* MAKING FREE TRADE AREAS WORK IN THE AMERICAS, 52, 52-53 (Boris Kozolchyk ed., 1993). Because member states do not maintain a common customs frontier like a customs union, *see supra* note 5, rules of origin are especially important in free trade agreements.

17. NAFTA devotes an entire chapter to determining whether a good originates within the member states for purposes of the agreement. *See* NAFTA, *supra* note 2, at ch. IV. In addition, hundreds of pages of appendices provide further details for the rules. *See* NAFTA, *supra* note 2, annex 401. Only originating goods are eligible for NAFTA's preferential trade treatment. Therefore, the rules of origin are very important not only to member country manufacturers, but also to non-member manufacturers.

18. N. David Palmeter, *Rules of Origin or Rules of Restriction? A Commentary on a New Form of Protectionism*, 11 FORDHAM INT'L L.J. 1, 2 (1987). CHRISTIAN D. DEFOULOW, GLOSSARY OF NAFTA TERMS 74 (1994).

result of parts and processing from several different countries.[19] Rules of origin determine the product's origin for application of import duties, import quotas, tariffs, and fees. A product's origin is important because products from different countries are afforded different treatment.[20] For instance, a country might require a higher tariff for shoes made in India than shoes made in Pakistan. Trade quotas or embargo policies of the importing country might prohibit entry of goods from certain countries and not others.[21] Rules of origin are the mechanism by which the importing country determines a product's country of manufacture and its subsequent treatment when imported.[22]

Rules of origin are important to international manufacturers because manufacturers may try to relocate their production facilities within a preferential trading area to take advantage of free trade and lower tariff rates.[23] Also, if the manufacturer's product is subject to additional tariffs because of its origin, these higher costs will directly impact on profits.[24]

A. Rules of Origin in Free Trade Areas: An Indispensable Link Between the Member Nations

Rules of origin are particularly important in FTAs because the members of the FTA do not want "free-riders," those who did not produce their goods in a member country, taking advantage of the carefully negotiated reductions in trade barriers between the member countries.[25] Consequently, an FTA's rules of origin are designed to ensure that significant economic activity goes into the production of a good in a particular country before an importer can

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19. U.S. GEN. ACC'T OFF., INTERNATIONAL TRADE: RULES OF ORIGIN FOR THE U.S.-CANADA FREE TRADE AREA at 5 (Sept. 1987).

20. For example, goods originating in the Philippines received preferential treatment from the United States until 1974 under the Laurel-Langley Trade Agreement. Trade Agreement Renewing the Agreement of July 4, 1946, Sept. 6, 1955, U.S.-Phil., 6 U.S.T 2981.

21. Products from the People's Republic of China, North Korea, North Vietnam and Cuba were all denied entry into the United States from 1941-1976 under the Trading with the Enemy Act, 50 U.S.C.S. apps § 5(b) (1941-76) and regulations thereunder, 31 C.F.R. pt. 500 (1994) (China, North Korea, North Vietnam); 31 C.F.R. pt. 515 (1994) (Cuba).

22. Over the last twenty years, rules of origin have become exceedingly important. Nations rely on tariff preferences, "buy national" requirements, voluntary restraints agreements, anti-dumping, and countervailing duties to open markets for some products and producers and to close markets to others. *See* Judith H. Bello & Alan F. Holmer, *The Growing Importance of Rules of Origin, in* Trade Law and Policy Institute, 211, 213-15 (PLI Com. L. & Practice Course Handbook Series No. 510, 1989). All these policies require the use of rules of origin. *See* Sabrena A. Silver, *NAFTA's Rules of Origin for Automobiles: A Need for Reform,* 62 FORDHAM LAW REV. 2245, 2251-55 (1994) for an analysis of how the above policies employ rules of origin.

23. Joseph A. LaNasa, *Rules of Origin Under the North American Free Trade Agreement: A Substantial Transformation into Objectively Transparent Protectionism*, 34 HARV. INT'L L.J. 381, 382 (1993).

24. *See Id.* at 381.

25. *See* Frederic P. Contin & Andreas F. Lowenfeld, *Rules of Origin, The Canada-U.S. FTA and the* Honda *Case*, 87 AM. J. INT'L LAW 375, 376 (1993).

claim that country as the source of the good and thereby take advantage of preferential trade rules.[26]

In addition, the rules guard against trade deflection or the trans-shipment of goods. Trade deflection occurs when products are only slightly altered or repackaged in a member country in order to mask the real country of origin.[27] Trans-shipment occurs when goods are imported into the member country with the lowest external trade barriers (country *A*).[28] These goods are then exported to other member countries (countries *B* and *C*) with higher external tariff barriers than country *A*. Since the goods are now considered products of member country *A*, they are not subject to countries *B*'s and *C*'s higher trade barriers. Thus, the manufacturer in a non-member country avoids the higher trade barriers of some member countries by trans-shipping its goods through the member country with the lowest external trade barriers.[29]

B. The Substantial Transformation Test: Rules of Origin in the United States Before NAFTA

Rules of origin are hardly newcomers to the international trade arena. In 1887, the United States Supreme Court first wrestled with the problem of a product's origin in *Hartranft v. Wiegman*.[30] The Court ruled that a good is a product of the last country where it has been "manufactured into a new and different article, having a distinctive name, character or use from that" of the original article or good.[31] The *Hartranft* rule came to be known as the substantial transformation test.[32] From 1887, until the implementation of NAFTA in 1994, the United States employed the judicially developed

26. Harry B. Endsley & Steven Baker, *A Practical Guide to Customs, Tariffs, and Rules of Origin under NAFTA, in* NORTH AMERICAN FREE TRADE AGREEMENTS: COMMENTARY 1, 121 (James R. Holbein & Donald J. Musch eds., Sept. 1994); HUFBAUER & SCHOTT, *supra* note 5, at 155.

27. *NAFTA Origin Rules Will Test Gray Areas of Customs Interpretations, Report Says*, 9 INT'L TRADE REP. (BNA) NO. 43, at 1856 (Oct. 1992).

28. LaNasa, *supra* note 23, at 386.

29. *Id.*

30. 121 U.S. 609 (1887).

31. *Id.* at 615.

32. The term "substantial transformation" is not used in the opinion. However, *Hartranft* has become known as the early case which provided the definition for the term "substantial transformation." For instance, Anheuser-Busch Association v. United States, 207 U.S. 556 (1908) cites to *Hartranft* when stating that "[m]anufacturing implies a change, but every change is not manufacture. . . . [S]omething more is necessary as set forth and illustrated in Hartranft v. Weidman, 121 U.S. 609 (1887)." *Id.* at 562. "For a manufacturing process to *substantially transform* a good, a new and different article must emerge having a distinctive name, character, or use." *Id.* at 562 (emphasis added).

substantial transformation test, supplemented by various legislative acts,[33] to decide a product's country of origin.

This test was fraught with problems. While many statutes and court decisions required a substantial transformation to decide a product's country of origin, none provided a description of "transformation" or a method of measuring what was "substantial."[34] Customs officials and courts used many different criteria in making their substantial transformation determinations.[35]

The subjectivity and discretion afforded both the customs officials and the courts[36] made the rules unpredictable, hard to administer consistently, and vulnerable to political pressure in their administration.[37] One defendant even argued that the "substantial transformation" language was so ambiguous

33. For example, the Trade Agreements Act of 1979 used the substantial transformation test to describe when a product will be considered a product of a country. 19 U.S.C. § 2518(4)(B). For country of origin marking, the United States Customs Service, Treasury, uses the substantial transformation test to decide when a product is a product of a country. 19 C.F.R. § 134.1(b).

34. Anheuser-Busch Association v. United States, 207 U.S. 556, 562 (1908) ("for a manufacturing process to substantially transform a good, a new and different article must emerge having a distinctive name, character, or use."). *See* Belcrest Linens v. United States, 741 F.2d 1368 (Fed. Cir. 1984) (bolts of woven fabric imported from the People's Republic of China into Hong Kong and manufactured into pillowcases in Hong Kong were products of Hong Kong when subsequently imported into the United States because changing the cloth into pillowcases changed the character, appearance, identity and use of the cloth); Uniroyal, Inc. v. United States, 542 F. Supp. 1026 (Ct Int'l Trade 1982, *aff'd,* 702 F.2d 1022 (1983) (merely minor manufacturing and combining processes which leave the identity of the article intact do not cause a substantial transformation); and Torrington Co. v. United States, 764 F.2d 1563, 1568 (Fed. Cir. 1985) (wire which was straightened, cut to a particular length, pressed to form an eye, grooved along the entire length, sharpened and stamped with a logo, hardened, tempered, buffed, polished, and plated to form a sewing machine needles was substantially transformed into a new article).

35. The criteria used to denote a substantial transformation included: (1) lost identity; (2) the distinction between producer and consumer goods; (3) a value-added standard (value-added to the product by the manufacturing process); (4) a comparison of processing operations (how much capital investment, how much labor, degree of complexity); and (5) a change in tariff classification. *See* C. Edward Galfand, *Heeding The Call For Predictable Rules of Origin*, 11 U. PA. J. INT'L BUS. L. 469, 480-84 (1989).

Even the same criteria have been applied inconsistently. For example, when using the "distinction between producer and consumer good" test, two courts defined the test differently. In Midwood Industries, Inc. v. United States, 313 F. Supp. 951 (Cust. Ct. 1970), the transformation of an article from a producer's good to a consumer's good substantially transformed the good. However, in Uniroyal, Inc. v. United States, 542 F. Supp. 1026 (Ct. Int'l Trade 1982), a similar transformation did not substantially transform the good. Three years later in Torrington Co. v. United States, 764 F.2d 1563 (Fed. Cir. 1985), the transformation from a producer good to a consumer good once again substantially transformed the product like in *Midwood Industries*. However, one year later, the court rejected the producer to consumer good test as determinative of origin. National Juice Products Ass'n v. United States, 628 F. Supp. 978 (Ct. Int'l Trade 1986).

36. The terms "new and different article" and "distinctive name, character or use" are applied on a case-by-case basis by the Customs Service and by the courts, and are highly subjective by nature. An article which appears "new and different" to one person may not appear so to another. There is no bright line between situations where assembly or processing in the county of export has resulted in a "substantial transformation" and where it has not done so. *See* Palmeter, *supra* note 18, (describing judicial confusion in interpreting the substantial transformation rule). *See* Endsley & Baker, *supra* note 26, at 125.

37. LaNasa, *supra* note 23, at 384. *See supra* notes 34-36.

that it was unconstitutionally vague[38] even though it was backed with almost one hundred years of case law.[39]

Thus, the substantial transformation test failed to give the United States a useful, predictable standard. Instead of a bright line rule, the United States had only a vague concept, inconsistently developed over the past century through common law, customs regulations and rulings, and even occasional congressional tinkering.[40]

III. THE NAFTA'S RULES OF ORIGIN

The NAFTA rules of origin raised some of the more controversial and difficult issues in the NAFTA negotiations.[41] The governments involved, as well as those representing economic and political interests in the three countries, wanted the reduced duties available under NAFTA to benefit only products that involve significant manufacturing and other economic activity in the three countries.[42] Most particularly, the NAFTA members did not want Mexico, with its lower wage rates and other costs, to be used as an "export platform"[43] for entry into the United States of goods that consisted largely of third-country[44] materials.[45]

Consequently, the NAFTA rules of origin are detailed, complex, and comprehensive.[46] NAFTA includes a twenty-six page Rules of Origin section, including express definitions of thirty terms, a seventeen page Customs Procedure section, two pages of a Notes section, and a 169 page annex with specific rules of origin for individual Harmonized System

38. United States v. Murray, 621 F.2d 1163, 1168-69 (1st Cir. 1980).

39. *Id. See* Hartranft v. Weigman, 121 U.S. 609 (1887) and *supra* notes 34-35.

40. LaNasa, *supra* note 23, at 384. For examples of congressional treatment of the "substantial transformation test" see 19 C.F.R. § 134.1(b) and 19 U.S.C.S. § 2518(4)(B).

41. Donald Harrison & Kenneth G. Wiegel, *Customs Provisions and Rules of Origin Under the NAFTA*, 27 INT'L LAW 647, 653-54. *See also,* Donald Harrison, *Rules of Origin Under the North American Free Trade Agreement, in* THE NORTH AMERICAN FREE TRADE AGREEMENT: A NEW FRONTIER IN INTERNATIONAL TRADE AND INVESTMENT IN THE AMERICAS, 39, 40 (Judith H. Bello, et al. eds., 1994).

42. *See* Harrison & Wiegel, *supra* note 41, at 654. Harrison, *supra* note 41, at 40. *See also* HUFBAUER & SCHOTT, *supra* note 5, at 155; U. S. INT'L TRADE COMM'N, POTENTIAL IMPACT ON THE U.S. ECONOMY AND SELECTED INDUSTRIES OF THE NORTH AMERICAN FREE-TRADE AGREEMENT 3-2 (Jan. 1993) [hereinafter POTENTIAL IMPACT].

43. Harrison & Wiegel, *supra* note 41, at 645. Mexico could serve as an "export platform" by allowing the transshipment or trade deflection of goods. For a discussion of transshipment and trade deflection, see *supra* notes 27-29 and accompanying text.

44. "Third-country" refers to non-NAFTA-member countries.

45. For example, the United States feared that Japanese firms, already attracted by the low-wage Mexican labor force, would increase their investments in Mexico and use those investments to launch exports into the U.S. Endsley & Baker, *supra* note 26, at 121. *See also,* Harrison, *supra* note 41, at 40.

46. Harrison & Wiegel, *supra* note 41, at 654.

chapters.[47]

Under Article 401 of NAFTA, a good is an originating good when:

(1) It is wholly obtained or produced in the NAFTA region;[48]
(2) It is produced within the NAFTA region wholly from originating materials;[49]
(3) It is produced entirely in the NAFTA territory and each non-originating good imported and used in the production of the good undergoes an applicable change in tariff classification as a result of the production;[50]
(4) It is produced in the NAFTA territory, using one or more non-originating materials which do not undergo a tariff classification change, but the regional value content of the good is not less than 50% or 60% depending on the method of calculation employed pursuant to Article 402 of the NAFTA.[51]

The first two categories pertain only to those goods which are made of wholly NAFTA territory originating materials. The last two categories concern goods which contain non-originating materials. NAFTA utilizes two rules of origin mechanisms to determine a product's origin if it contains materials from non-member countries: tariff-shift rules and value-content rules.[52]

A. Tariff-Shift Rules

A good may qualify as an originating good only when each non-originating material[53] used to produce the good undergoes an applicable "change in tariff classification" as a result of production in one or more of the NAFTA countries.[54] The particular change required depends on the tariff classification of the good involved.[55] A change in origin based on a

47. NAFTA, *supra* note 2, ch. 4, at 349-56; annex 401, at 397-456. By contrast, the Canada-United States Free Trade Agreement which entered into force on January 1, 1989, consisted of only seven pages of rules of origin, including a five page "Rules" section, with definitions of only five terms, a two page "Interpretations" section, and a 27 page listing of the "rules for individual provisions of the Harmonized Tariff System." Canada-United States Free Trade Agreement, Dec. 22-23, 1987 and Jan. 2, 1988, U.S.-Can., 27 I.L.M. 281 [hereinafter U.S.-Canada FTA].

48. NAFTA, *supra* note 2, art. 401(a), at 349. Goods wholly obtained or produced in the territory of one of the NAFTA members include mineral goods, agricultural goods, fish products, goods from the seabed, goods from outer space, and waste. *Id.* art. 415, 354-56.

49. *Id.* art. 401(c), at 349.

50. *Id.* art. 401(b), at 349.

51. *Id.* art. 401(d), at 349.

52. *Id.* art. 401, at 349.

53. Material that does not qualify as originating under the NAFTA origin rules.

54. NAFTA, *supra* note 2, art. 401(b), at 349.

55. *See* NAFTA, *supra* note 2, Annex 401, § A, at 397.

shift in tariff classification is a relatively recent development resulting from the adoption by most countries of the International Convention on the Harmonized Commodity Description and Coding System ("Harmonized System").[56]

The Harmonized System classifies products according to a hierarchical framework that reflects increasing degrees of technical sophistication and economic effort.[57] The Harmonized System has over 5,000 article descriptions which appear as "headings" or "subheadings." These descriptions are arranged into ninety-seven chapters. Goods are identified by name and are categorized on the basis of their end use or materials.[58]

The Harmonized System classification number consists of six digits. Any remaining digits, if utilized, are country specific and meet each nation's individual tariff and statistical requirements. The first two digits are the "Chapter" in which the product is contained.[59] The next two digits are called the "Heading" and provide a more specific description of the product. The third two digits represent the "subheading" and provide a still more specific level of description.[60]

The United States implemented this system on January 1, 1989, as the Harmonized Tariff Schedule of the United States (HTSUS).[61] The United States added a final four digits to the tariff classification number, making the tariff classification number ten digits. The seventh and eighth digits represent U.S. tariff subdivisions of the International Harmonized System.[62] The last two digits are for statistical use only and do not affect the duty rate.

NAFTA uses the Harmonized System to describe the specific changes which imported goods must undergo in the United States, Canada, or Mexico to qualify for preferential treatment under NAFTA.[63] Under NAFTA, a good qualifies as an originating good[64] when each of the non-originating materials used to produce the good is sufficiently transformed in one or more

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56. *Done at* Brussels on June 14, 1983, and the Protocol thereto, done at Brussels on June 24, 1986, *reprinted in* UKTS 15 (1989). The Harmonized Systems was implemented by its original parties on January 1, 1988. Since the Harmonized System was opened for signature in 1987, some 71 countries and customs or economic unions have become contracting parties. Endsley & Baker, *supra* note 26, at 42. The United States acceded to the Harmonized System on October 31, 1988, effective January 1, 1989. 19 U.S.C. § 3011. Canada acceded to the Harmonized System on December 14, 1987, effective January 1, 1988. Mexico acceded to the Harmonized System on September 6, 1991, effective March 6, 1992. Endsley & Baker, *supra* note 26, at 37.

57. Galfand, *supra* note 35, at 489-90.

58. Endsley & Baker, *supra* note 26, at 38.

59. *Id.* at 39.

60. *Id.*

61. 19 U.S.C. §§ 3001-3012 (1988).

62. Endsley & Baker, *supra* note 26, at 38.

63. NAFTA, *supra* note 2, art. 413(a), at 354 formally designates the Harmonized System as the "basis for tariff classification" in Chapter Four of the Agreement pertaining to rules of origin.

64. A good that originates within the NAFTA.

of NAFTA countries that it is classified differently under the Harmonized System.[65] Depending on the good involved, the non-NAFTA components or materials included in the finished good must be in a different Harmonized System chapter, heading, subheading, or tariff item than the finished good itself.[66] The details of the required tariff shifts are set out in Annex 401 of NAFTA.

The following illustration is an example of the tariff-shift rules of origin under NAFTA: Canada produces bread, pastries, cakes, and biscuits, which come under Harmonized System Number 1905.90, with flour imported from Europe. The flour is categorized as Harmonized System Chapter 11. These items are then shipped to the United States. The applicable rule of origin states: "A change to heading 19.02 through 19.05 from any other chapter."[67] Thus, for all products classified in Harmonized System Headings 1902 through 1905, all non-North American inputs must be classified in an Harmonized System chapter other than Harmonized System Chapter 19 in order to be considered "originating goods." These baked goods would qualify for NAFTA benefits because the non-originating material, the flour, is classified outside of Chapter 19.

B. Value-Content Rules

Where the non-originating part or parts do not qualify as originating goods under the change in tariff classification test,[68] the product can still be treated as originating in NAFTA if it meets the required regional value-content test.[69]

Regional value-content rules require a percentage of the value of the good to be North American.[70] A good will qualify as an originating good if the assembly of such parts and components within NAFTA accounts for sixty percent of the value of the finished product[71] or fifty percent of the net cost of the product.[72] Under Article 402 of NAFTA, the regional value content can be calculated by either the transaction value or the net-cost method.

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65. NAFTA, *supra* note 2, art. 401(b), at 349.

66. *Id.*

67. *Id.* Annex 401, § IV, ch. 19, at 399.

68. For example, it would be impossible in North America for a bicycle assembled from foreign parts to comply with the change in tariff classification because the Harmonized System classifies the parts of the bicycle (e.g. handlebar, chain, and seat) under the same classification number as an assembled bicycle. Paul Asker, *Changes in the Rules of Origin in the United States-Canada Free Trade Agreement: A Preliminary Evaluation*, 36 WAYNE L. REV. 1545, 1554-55 (1990). Thus, even though the bicycle is fully assembled in a member country, it would not qualify as an originating goods because its tariff heading has not changed. *Id.*

69. NAFTA, *supra* note 2, art. 401(d), at 349.

70. *Id.* arts. 401(d), 402(1)-(12), at 349-51.

71. *Id.* art. 401(d), at 349.

72. *Id.*

1. The Transaction Value Method

The transaction value method generally means the price actually paid or payable for the good.[73] The transaction value method is generally easier to calculate than the net-cost method.[74] A manufacturer may choose whichever method is most advantageous to his goods with certain exceptions.[75]

The transaction-value method calculates regional content by: (1) subtracting the price paid for non-NAFTA-origin materials used in the production of the good from the price charged the consumer for the finished good and (2) dividing that figure by the price charged the consumer.[76] If the product contains more than sixty percent regional value content, it qualifies as an originating good.[77] Put simply, the assembly of parts and components within the NAFTA zone must account for at least sixty percent of the value of the finished product. For example, a Mexican manufacturer produces electric hair curling irons from Japanese hair curler parts. Each curling iron is sold for U.S.$4.40. The value of the non-originating hair curler parts is U.S.$1.80. The regional value content under the transaction value method is:

$$\frac{(4.40 - 1.80)}{4.40} \times 100 = 59.1\%$$

The hair curling iron is not an originating good because its regional value content is below 60% using the transaction value method.

2. The Net-Cost Method

The net-cost method is based on the total cost of the good minus sales promotion, marketing, after-sales service, royalties, shipping, packing, and non-allowable interest costs.[78] The net-cost method calculates regional content by subtracting the price paid for non-NAFTA-origin materials from the net cost to the producer of the good and dividing that figure by the net

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73. Endsley & Baker, *supra* note 26, at 136.

74. *Id.* at 137.

75. The transaction value method may not be used when: (1) there is no transaction value for the good; (2) the transaction value of the good is unacceptable under Article 1 of the GATT Customs and Valuation Code; (3) in certain related party transactions; (4) for certain automotive goods, footwear, and word processing machines; (5) when the exporter or producer elects to "accumulate" regional value content; and (6) when the good is designated as an "intermediate" material and is subject to a regional value contents requirement. NAFTA, *supra* note 2, art. 402(5), at 350.

76. *Id.* art. 402(2), at 349. Regional Value Content = *(TV-VNM/TV)100* where TV = transaction value and VNM = value of non-originating materials. *Id.*

77. *Id.*

78. *Id.* art. 402(8), at 350.

cost to the producer.[79] If the product contains more than fifty percent regional content, it will qualify as an originating product.[80]

For example, assume the Mexican manufacturer above uses the net cost method for the hair curling irons imported into the United States. The total cost for the hair curler is U.S.$3.90. This figure includes U.S.$0.25 for shipping and packing costs. There are no other costs. The net cost therefore is U.S.$3.65. The regional value content under the net cost method is:

$$\frac{(3.65 - 1.80)}{3.65} \times 100 = 50.7\%$$

The hair curling iron would be considered an originating good using the net cost method because the regional value content is a little over 50%.

C. The De Minimis Exception

Under NAFTA's tariff shift rules, each non-originating material must undergo the required change in tariff classification. However, some products may have very low or insignificant percentages of non-originating materials and thus may not undergo the required tariff shift to be a NAFTA originating good.

Article 405 of NAFTA avoids this problem by creating the *de minimus* exception. Under the *de minimus* exception, a product may still be classified as North American if the non-originating material is less than seven percent of the transaction value or the total cost of the good.[81] For example, a chair made of North American materials and non-NAFTA materials will be an originating good if the total value of the non-NAFTA materials is less than seven percent of the transaction value or the total cost of the chair.

D. Specific Rules of Origin for Various Trade Sectors

NAFTA provides specific rules of origin for two trade sectors, automotive goods and textiles and apparel. These specific rules for these two sectors proved to be the most difficult to negotiate[82] and include the most

79. *Id.* art. 402(3), at 349. Regional Value Content = *(NC-VNM/NC)100* where NC = net cost and VNM = value of non-originating materials. *Id.*

80. *Id.*

81. *Id.* art. 405(1)-(2), at 352-53.

82. Gantz, *supra* note 16, at 39; Endsley & Baker, *supra* note 26, at 158. Automotive manufacturing is of enormous importance for all three NAFTA countries. Harrison, *supra* note 41, at 53. Automotive products are the largest component of the trade in manufactured goods between the United States and Canada and the United States and Mexico. NAFTA: ISSUES RELATED TO TEXTILE/APPAREL AND AUTO AND AUTO PARTS INDUSTRIES, U.S. GEN. ACCT. OFF. 2 (May 4, 1993) [hereinafter ISSUES]. Consistent with the enormous importance of manufacturing and trade in and among the three countries involved, NAFTA includes separate rules of origin for automotive goods. Harrison & Wiegel, *supra* note 41, at 659.

Choosing a rule of origin for textiles and apparel was a contentious debate. Endsley &

stringent rules of origin.

In the automotive sector, the rules of origin are a combination of a change in tariff classification and regional value content or a change in tariff heading alone.[83] Where the regional value content applies, the net cost method must be used.[84]

After lengthy and difficult negotiations,[85] the negotiators agreed that the regional value content requirement would remain at 50% for the first four years of the agreement.[86] It will be raised in two stages until it reaches 62.5%, its permanent level.[87]

In the textile and apparel sector, all products wholly-made from yarn and fabric produced in North America and assembled in North America will receive duty-free treatment.[88] Goods produced from some fabrics which are not normally produced in the NAFTA territory, such as silks and tweeds, will receive duty-free treatment up to fixed levels.[89]

IV. ASIA-UNITED STATES TRADE: ESSENTIAL FOR THE ECONOMIC GROWTH OF BOTH ASIA AND THE UNITED STATES

The NAFTA rules of origin are explicitly designed to assure "that the benefits of tariff reductions . . . accrue principally to the NAFTA parties and to provide incentives for North American production and sourcing."[90] The impact these rules of origin will have on Asian trade with the United States is generating widespread anxiety there. The economic ministers of the Association of Southeast Asian Nations (ASEAN)[91] and Japan have

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Baker, *supra* note 26, at 158. Canada and the United States have different perspectives on this issue based on their manufacturing processes. Canada relies primarily on fabrics imported from Europe while the United States uses North American fabrics. *Id.* at 158 n.503. Canada wanted a rule or origin which gave NAFTA preferential treatment to garments assembled in North America regardless of where the yarn or fabric originated. *Id.* at 158. U.S. and Mexican manufacturers wanted strict rules of origin requiring textile goods to use North American yarn or fabric. *Id.* In exchange for the strict "yarn forward" rule promulgated by the United States and Mexico, Canada was granted an increase in its tariff preference levels to allow a certain number of Canadian textile and apparel exports to the United States to be exempt from domestic content rules. *Id.* See Galfand, *supra* note 35, at 491 for further explanation of why the regional value content rules do not apply to textiles and apparel goods.

83. Endsley & Baker, *supra* note 26, at 160.

84. NAFTA, *supra* note 2, arts. 402(5)(d)(i), (ii), art. 403, at 350-52.

85. Endsley & Baker, *supra* note 26, at 160.

86. NAFTA, *supra* note 2, art. 403(5)(a), at 351.

87. *Id.*

88. *Id.* Annex 300-B, §§ 1 and 2, at 327, Annex 401, § XI, at 407.

89. *Id.*

90. POTENTIAL IMPACT, *supra* note 42, at xi.

91. ASEAN includes Thailand, Singapore, Brunei, Malaysia, Indonesia, and the Philippines. Association of Southeast Asian Nations Declaration, Aug. 8, 1967, 6 I.L.M. 1233 (1967). ASEAN was formed in 1967 to accelerate economic growth, social progress and cultural development in the region. *Id.* at 1234. The ASEAN nations pledged to promote active collaboration and mutual assistance on matters of common interest in the economic, social, cultural, technical, and administrative spheres. *Id.*

expressed concern that NAFTA might become an exclusionary regional economic block.[92] Malaysian and South Korean officials have expressed similar concerns about NAFTA's potentially disadvantageous effect on their economies.[93]

The question becomes just how important is Asian trade with the United States to Asia and how will the NAFTA's rules of origin affect that trade. The remainder of this comment discusses (1) the economic "miracle" of Asia and the United States' crucial role in fostering this "miracle;" (2) the importance of United States-Asian trade for the United States' economic prosperity; and (3) the effect NAFTA's rules of origin will have on this trade.

A. The "Economic Miracle" of Asia

Just fifty years ago, Japan faced the task of totally rebuilding its economy.[94] Thirty years ago, East Asia[95] seemed destined for endless suffering.[96] However, by 1993, East Asia and Japan had become an engine of the global economy and a defining part of the post-Cold War international system.[97]

Japan was devastated after World War II.[98] Since the outbreak of

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92. *See ASEAN, Japan, to Express Concern Over NAFTA*, Japan Economic Newswire, Oct. 22, 1992, *available in* LEXIS, News Library, Wires File [hereinafter *ASEAN, Japan Concern*]; *Japan Voices Concern on Exclusionary Nature of NAFTA*, Japan Economic Newswire, Oct. 17, 1992, *available in* LEXIS, News Library, Wires File [hereinafter *Exclusionary Nature*].

93. *Japan to Oppose NAFTA at APEC Meeting*, Agence France Presse, Sept. 7, 1992, *available in* LEXIS, News Library, AFP File; *ROK and Japan to Promote Asia-Pacific Economic Cooperation as Response to NAFTA*, British Broadcasting Corp., Summary of World Broadcasts, Nov. 12, 1992, *available in* LEXIS, News Library, BBCSWB File.

94. *See* Joseph A. McKinney, *Implications of NAFTA for Japan's Trade Relations*, *in* THE CHALLENGE OF NAFTA: NORTH AMERICA, AUSTRALIA, NEW ZEALAND, AND THE WORLD TRADE REGIME 123, 124-25 (Robert G. Cushing et al. eds., 1993) (describing how Japan rebuilt its economy after World War II to its present level).

95. East Asia is defined by the U.S. International Trade Commission as the countries of Brunei, China, Hong Kong, South Korea, Indonesia, Malaysia, the Philippines, Singapore, Taiwan, and Thailand. U.S. INT'L TRADE COMM'N, PUB. NO. 262, EAST ASIA: REGIONAL ECONOMIC INTEGRATION AND IMPLICATIONS FOR THE UNITED STATES (PART 1 OF 9) 3 (May 1993) [hereinafter EAST ASIA PART I]. For the purposes of this article, "East Asia" is used to separate Japan from other Asian nations. While most of Asia is still growing and developing, Japan possesses an aging and established economy. Heginbotham, *supra* note 14, at 12. Thus, in this article "Asia" will refer to the East Asian countries and Japan while "East Asia" does not include Japan.

96. Jim Rohwer, *Asia Survey*, THE ECONOMIST, Oct. 30, 1993 at 4.

97. Robert A. Manning & Paula Stern, *The Myths of the Pacific Community*, 73 FOREIGN AFF., 79, 80 (Nov./Dec. 1994).

98. In the period immediately following World War II, Japan's economy was in a state of near devastation. YASUO AOTO, ET. AL., NIPPON: THE LAND AND ITS PEOPLE 73 (Richard Foster & John Bowen trans., 1982). At the end of World War II, Japanese industry was at a virtual standstill. All of Japan's great cities, with the exception of Kyoto, and most of its lesser cities had been in large part destroyed and their populations scattered throughout the country. The economy, critically maimed, cut off from its normal flows of trade, and disrupted by the uncertainties of foreign rule, recovered only very slowly - much more slowly than in war-

Japan's war with China in 1931, 3.1 million Japanese had perished—of whom 800,000 were civilians.[99] Forty percent of Japan's urban buildings had been destroyed.[100] Japanese industry had been reduced to 25% of its pre-War potential.[101] So great was the destruction, the *New York Times Magazine* predicted in late 1945, that the economy of Japan was not "likely to expand sharply. . . . The prospect [is for] a return to Japan's status as a small, self-contained nation."[102] However, by 1968, Japan was third among the world's industrial powers.[103] Today, Japan is the second largest industrial power in the world.[104]

The growth of the East Asian economies is equally astounding. In 1960, the East Asian economies comprised four percent of the world's gross national product (GNP).[105] The region was engulfed in war and great power confrontations,[106] burdened with poverty,[107] and challenged by insurgent communist movements.[108] In 1992, these East Asian economies accounted for 25% of the global GNP.[109] By the year 2000, they are projected to account for a third of the world's GNP.[110] From 1980 to 1991, the East Asian share of world trade (exports plus imports) almost doubled, growing from 7.5% to nearly 14%.[111]

In Singapore, Taiwan, Hong Kong, and South Korea the growth in annual real gross domestic product (GDP) averaged 8.6% from 1985-1990.[112] The aggressive growth of these four countries earned them the

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devastated Europe. It took a full decade before per capita production had crept back to the levels of the mid-1930s. EDWIN O. REISCHAUER, THE JAPANESE 103 (1980).

99. JOHN WHITNEY HALL, JAPAN: FROM PREHISTORY TO MODERN TIMES 349 (1990).

100. ROBERT C, CHRISTOPHER, THE JAPANESE MIND 18 (1984).

101. HALL, *supra* note 99, at 349.

102. CHRISTOPHER, *supra* note 100, at 19.

103. HALL, *supra* note 99, at 355.

104. Paul Krugman, *The Myth of Asia's Miracle,* 73 FOREIGN POL'Y 62, 73 (Nov./Dec. 1994).

105. Hobart Rowen, *The Promise of Trade with Asia*, THE WASH. POST, May 27, 1993, at A25.

106. Korea was flattened by civil war in the early 1950s. Indochina, and especially Vietnam, fought war after war with the French and the Americans. Rohwer, *supra* note 96, at 4.

107. For example, South Korea's gross domestic product (G.D.P.) per head in 1962 was U.S.$110. Taiwan's was U.S.$160 and China's was U.S.$60. Japan, the richest country in Asia in the 1960s, had a GDP per head of U.S.$380, one-eighth of America's GDP. *Id.*

108. *See* James A. Baker, III, *America in Asia: Emerging Architecture for a Pacific Community*, 70 FOREIGN AFF. 2 (Winter 1991). "In China, Mao Zedong loosed the Red Guards in the mid-1960s to carry out one of the most murderous abolitions of law and order ever seen–until the Khmers Rouges took away that distinction by killing 15-20% of Cambodia's population, especially the educated part, in the mid-1970s." Rohwer, *supra* note 96, at 4.

109. Rowen, *supra* note 105.

110. Manning & Stern, *supra* note 97, at 81.

111. Mary Pierson, *East Asia: Regional Economic Integration and Implications for the United States*, 5 LAW & POL'Y IN INT'L BUS. 161, 162 (March 22, 1994).

112. EAST ASIA PART I, *supra* note 95, at 34.

nickname the "four tigers." In the same period, the growth in GDP averaged 6.8% in Indonesia, Malaysia, Thailand, and the Philippines.[113] China presently sustains a 13% growth rate and is the current leader of growth in the Pacific Basin.[114]

The average 8% growth rate of the Pacific Basin's developing economies continues unabated into 1994, notwithstanding the continued recession in Japan and Western industrial nations.[115] This strong economic performance will continue into the next century for four reasons: (1) savings rates are high; (2) market-oriented policies prevail; (3) national economies are increasingly open; and (4) trade within the region is growing strongly.[116] Economists predict that growth in Asia will average at least double that of the industrialized world over the last quarter of this century.[117]

B. Asia's Dependence Upon the United States

In the early stages of their economic development, Japan and later the "four tigers," emphasized low-wage, labor-intensive industries.[118] Economic growth depended primarily on exporting products to the United States[119] and the capital generated from the sale of these exports.[120] Consequently, the United States became the principle stalwart supporting Asia's rapid growth.[121] The U.S. bought most of its exports[122] and offered it more higher education and technology than any other country.[123]

As Japan, followed by the "four tigers," grew economically, their labor

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113. *Id.*

114. Heginbotham, *supra* note 14, at 8, 9.

115. *Id.* at 7, 8.

116. Stephen W. Bosworth, *The United States and Asia*, 71 FOREIGN POLICY 113, 114 (1991/1992).

117. Thomas J. Duesterberg, *Trade, Investment, and Engagement in the U.S.-East Asian Relationship*, THE WASH. Q. 73, 73 (Winter, 1994).

118. Heginbotham, *supra* note 14, at 10.

119. The United States was the key export market for these goods. For instance, almost one-quarter of Korean total exports go to United States markets. *See* Kim Dayong-Luan, *South Korea's Export Machine Faces Problems*, REUTERS, Sept. 4, 1992, *available in* LEXIS, News Library, Wires File (reporting that in the first half of 1992, Korea exported $8.72 billion worth of goods to the United States, representing 23.8% of Korea's total exports).

120. "[E]xport-led growth . . . produced in East Asia the fastest rise in incomes." Rohwer, *supra* note 96, at 4.

121. Heginbotham, *supra* note 14, at 8.

122. In 1970, the United States purchased 31.2% of Japan's exports and 29.4% of East Asia's. David Robertson, *NAFTA, the EC Single Market, and the World Trade Regime, in* THE CHALLENGE OF NAFTA: NORTH AMERICA, AUSTRALIA, NEW ZEALAND, AND THE WORLD TRADE REGIME 53, 55 (Jeffrey J. Schott et al., eds. 1993). In contrast, Western Europe bought 14.8% of Japan's exports and 15.8% of East Asia's exports. *Id.*

123. Hitchcock, *supra* note 13, at 123.

and land costs consequently rose.[124] These increases in costs threatened the price competitiveness of their products. Both Japan, and later the "four tigers," turned to domestic development of more advanced industries.[125] They then invested in other Asian countries, mainly Thailand, Malaysia, and Indonesia, with lower labor and land costs to produce the lower priced goods formerly produced in their own country.[126] Thus, as each Asian economy moved up the ladder of development, it accelerated the growth of those on a lower tier of development.[127]

The growing economies in Asia generated a greater demand for products and were able to absorb some of the increased production output of the region.[128] However, the principal buyer of Asian goods remains the United States.[129] The openness of the United States market to manufactured exports from Asia is one of the most important factors in the speed of Asia's economic growth.[130] Without the United States as a market for its goods, much of the economic growth of Asia would halt.[131]

C. *The United States' Dependence on Asia*

The United States has long pursued an open trading relationship with Asia. In 1784, the merchant ship *Empress of China* sailed from New York to Canton to trade with China.[132] To end Japan's isolationist policy begun

124. *Id. See also,* Hal Hill, *ASEAN Economic Development: An Analytical Survey*, 53 J. ASIAN STUD. 852, 848-51 (describing how first Japan and then the ASEAN nations shifted their labor-intensive export industries from their own country to Asian countries with newly industrializing economies).

125. For example, the "four tigers" have been relocating labor-intensive industries such as textiles, athletic footwear, toys, and electronic assembly to China, other ASEAN members, and to Vietnam. Manning & Stern, *supra* note 97, at 83.

126. Heginbotham, *supra* note 14, at 10; Manning & Stern, *supra* note 97, at 82-83.

127. Manning & Stern, *supra* note 97, at 82. Thus, the economies of East Asia share the "fruits" of their growth by spurring the growth of other less developed nations. *See Riddle of East Asia's Success: Economic Miracle or Myth?* THE ECONOMIST, Oct. 2, 1993, (U.K. Edition) *available in* LEXIS, News Library, Mags File.

128. The burst of late-1980s development accelerated growth of an affluent middle class throughout Southeast Asia leading to an outburst of upscale consumer spending. Heginbotham, *supra* note 14, at 11-12.

129. *Id.* at 12. The U.S. has absorbed some two-thirds of the expansion of manufactured exports of developing East Asia for more than a decade, and especially from China in recent years. *Id.* at 8.

130. *Id.* at 8. For example, a manual about Japan compiled for foreign employees of Nippon Steel Corporation cited the existence of a major export market for Japanese goods in the United States as a primary factor in Japan's high rate of economic growth after World War II. AOTO, *supra* note 98, at 81.

131. *See* Heginbotham, *supra* note 14, at 8. "Exports will remain an indispensable ingredient for the success of up-and-coming Asians." Rohwer, *supra* note 96, at 13.

132. Baker, *supra* note 108, at 3.

in 1632,[133] President Fillmore commissioned Commodore Matthew C. Perry to open Japan's borders to United States trade in 1852.[134]

1. The Growth of United States-Asian Trade

Today, trade between the United States and Asia is more important than ever. From 1978 to 1991, U.S. trade with Asia grew 400%,[135] rising from $80 billion in 1978 to $361 billion in 1993.[136] East and Southeast Asia absorbed one-third of the total $422 billion in U.S. exports in 1991.[137] Three million jobs in the U.S. are supported by trade with Asia.[138] Over the last fifteen years, Asia has surpassed Europe as America's most important overseas trading region.[139] For example, in 1991, the United States exported more to Thailand than to the former Soviet Union, more to Indonesia than to central and eastern Europe, and more to Singapore than to Spain and Italy.[140]

In 1991, United States exports to East Asia exceeded its exports to any individual country except Canada.[141] United States firms have invested more than $61 billion in the region and Asian investments in the United States total over $95 billion.[142]

While Japan is not part of the current "economic miracle" in East

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133. In 1632, Japan adopted a rigid national policy of seclusion. HALL, *supra* note 99, at 141. Japan's rulers adopted this isolationist policy in the belief that foreign relations and foreign trade held dangers. Both might serve as adjuncts to foreign attack and might be valuable weapons in the hands of a powerful noble who sought to supplant his ruler. W.G. BEASLEY, THE MEIJI RESTORATION 74 (1972). In 1636, overseas Japanese were prohibited from returning to Japan for fear that they might "contaminate" the populace with foreign ideas. "Japanese ships were limited to coastal vessels unsuitable for ocean voyage. Relations with the outside world were limited to a few contacts with Korea and through Okinawa, China." REISCHAUER, *supra* note 98, at 68.

134. "Repeated efforts had been made by various Western nations to persuade the Japanese to open their doors before the United States dispatched about a quarter of its navy, under the command of Commodore Perry, to force the Japanese to give American ships access to their ports." REISCHAUER, *supra* note 98, at 78. Faced with the Commodore's battleships, against which she had no defense, Japan was faced with little alternative but to open to foreigners. *See* HALL, *supra* note 99, at 251-52.

135. Robert Shapiro & Paula Stern, *Progressive Policy Institute Luncheon Briefing*, *available in* LEXIS, News Library, Curnws File.

136. Manning & Stern, *supra* note 97, at 82.

137. Robert B. Oxnam, *Asia/Pacific Challenges*, 72 FOREIGN POL'Y 58 (1993).

138. Shapiro & Stern, *supra* note 135.

139. Oxnam, *supra* note 137, at 58. In 1991, U.S. trans-Pacific trade exceeded trade with Europe by nearly one third. Bosworth, *supra* note 116, at 113. In 1993, United States trade with Asia exceeded its trade with Europe by 50%. Manning & Stern, *supra* note 97, at 82.

140. Baker, *supra* note 108, at 4.

141. *Id.*

142. *Id.*

Asia,[143] the United States trading relationship with Japan is no less important. Accounting for 44% of the total U.S. trade with Asia, U.S.-Japanese bilateral trade is the largest overseas commercial linkage in the world.[144] Furthermore, the Tokyo-Washington political alliance is the bedrock of Asian stability.[145] Both nations are deeply committed to democratic government and basic rights.[146] Few things are as unsettling to other Asians as evidence of dysfunction in U.S.-Japanese relations.[147] Thus, despite the fact that Japan has already been surpassed as a destination for U.S. goods by the other Asian nations, the U.S.-Japan trading relationship is still vitally important.[148]

2. Asia Could Be the Key to United States' Economic Prosperity

From the United States' perspective, Asia's economic dynamism could fuel American growth. While economic performance remains sluggish in the West, expanding Asian markets[149] continue to absorb American products.[150] Thus, economic prosperity in the United States will depend a great deal on the continued growth of United States exports.[151] Over an estimated 40% of U.S. gross domestic product from 1985-1992 is attributable to

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143. Japan has an aging and slowly growing economy while those in East Asia are more economically vital. Asset deflation in Japan is clearly slowing growth and investment and will dampen growth prospects in the short term. Duesterberg, *supra* note 117, at 72. The development of Japan's postwar economy can be broadly divided into three periods: (1) the recovery period during which Japan built its economy back up to the prewar level; (2) the period of rapid growth; and (3) the present period of a stable rate of growth. AOTO, *supra* note 98, at 73.

144. Jeffrey J. Schott, & Gary Clyde Hufbauer, *Implications of NAFTA for U.S. Trade Policy in the Pacific Basin, in* NORTH AMERICA, AUSTRALIA, NEW ZEALAND AND THE WORLD TRADE REGIME 145, 146 (Robert G. Cushing et al. eds., 1993) [hereinafter *Implications of NAFTA*].

145. *See* Manning & Stern, *supra* note 97, at 88 (stating that present strains and suspicions among Asian nations are exacerbated by the waning security structure which was anchored in America's military presence). "For more than four decades, the U.S. network of bilateral alliances and relationships has essentially been the core security system in the region, rooted in Washington's alliances with Japan . . . ." *Id.* "Japan . . . remains the key U.S. partner in the region. . . ." Oxnam, *supra* note 137, at 62.

146. *See* HALL, *supra* note 99, at 349-57 for a description of how the United States rebuilt the Japanese government and economy after World War II and forged close political ties with Japan. *See also* McKinney, *supra* note 94, at 124-25 for an explanation of the United States' role in Japan's economy after World War II.

147. Bosworth, *supra* note 116, at 123.

148. *Id.* at 124-25.

149. The Asian economies as a whole are approaching the size of the United States. Duesterberg, *supra* note 117, at 75. Current World Bank estimates of GDP based on purchasing power parity place China as the third-ranking economy in the world. *Id.*

150. *See id.* at 76-77.

151. William E. James, *Changing Patterns of Trade in Goods and Services in the Pacific Region: Market-Driven Economic Integration*, BUS. ECON., April, 1994, at 20.

export growth.[152] In 1990 alone, export expansion accounted for 84% of the growth of U.S. gross national product.[153] Thus, a sustainable growth and job creation agenda requires an active trade enhancing component.[154] Much of the capital needed in the next few decades to restore the sluggish American economy will be available only in capital-rich Asian countries.[155]

Despite NAFTA's vaunted benefits in expanding North American markets to United States trade,[156] this expansion will not compensate for any subsequent decreases in Asian trade. Trade with Canada and Mexico currently accounts for 26.2% of total United States trade.[157] United States trade with Asia accounts for 34.8% of United States trade.[158] The Mexican economy is much smaller than the Asian economies and the Canadian economy is already well-developed and unlikely to grow quickly.[159] While trade between the United States and Mexico has been growing steadily,[160] it will not compensate for U.S. trade with Asia.[161] It would take a substantial increase in the volume of U.S. trade with its hemispheric neighbors to match its trade with Pacific Basin countries.[162] At a time when the United States is reducing domestic demand through tax increases and reductions in defense spending, failure to take advantage of the growth potential of export markets in East Asia would be disastrous.[163]

D. *United States Turning Away From Asia*

Despite the importance of Asia as a trading partner, the United States'

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152. *Id.* (*citing* Richardson, J.D. *Sizing Up U.S. Export Disincentives*, Washington, D.C., Institute for International Economics, September 1993, at 13).

153. Selected White House Documents on Negotiation of the North American Free Trade Agreement, Tab 1, at 1, on file in the California Western School of Law Library [hereinafter Negotiations].

154. James, *supra* note 151, at 20. The $580 billion of goods and services the U.S. exported in 1991 represented a bigger part of the $5.7 trillion American economy than carmaking and homebuilding combined. Brian O'Reilly, *Fixing the Economy: How to Keep Exports on a Roll*, FORTUNE, Oct. 19, 1992, at 68. Exports account for 20% of the profits of American corporations and one in every six American manufacturing jobs. *Id.*

155. *See* Rowen, *supra* note 105; Already seven leading East Asian economies have 41% of global bank reserves, up from 17% in 1980. Manning & Stern, *supra* note 97, at 81.

156. Negotiations, *supra* note 153, at 2.

157. *Implications of NAFTA*, *supra* note 144, at 147.

158. *Id.* These figures include trade with Japan, China, Hong Kong, South Korea, Taiwan, Indonesia, Malaysia, the Philippines, Singapore, and Thailand. *Id.* at 148.

159. *Id.* at 149. In addition, the United States and Canada have been operating under a free trade agreement since 1989.

160. From 1986-90, U.S. exports to Mexico rose 130%, amounting to $28.4 billion, as a result of Mexico reducing its import restrictions to comply with GATT provisions. Negotiations, *supra* note 153, at 2.

161. The $28.5 billion the U.S. exported to Mexico in 1990 is dwarfed by the $140.9 billion the United States exported to East and Southeast Asia in 1992 alone. Oxnam, *supra* note 137, at 58-59.

162. *Id.* at 146.

163. Duesterberg, *supra* note 117, at 74.

relationship with Asia has deteriorated dramatically.[164] This deterioration threatens to deprive the United States economy of access to the world's premier growth market.[165]

The current emphasis in the United States' trade and economic policy towards Asia revolves around efforts to reduce the merchandise trade deficit, primarily with Japan, but increasingly with China.[166] The American drift toward managed trade, sometimes to promote the export of particular commodities or to protect the interests of particular American corporations, caused severe strain in U.S. relations with Japan.[167] A Japan-centered policy not only diverts attention from policies that could pay larger and more immediate benefits, but it could also drive other Asian nations away from close economic cooperation with the United States.[168]

The United States' policy towards Japan is not the only vulnerable area in U.S.-Asian relations. The Clinton administration's preoccupation with human rights issues, worker's rights in Malaysia and Indonesia, the problem in East Timor, and the caning of an American youth in Singapore; have strained relations with much of Southeast Asia.[169]

United States-Chinese relations are in even deeper trouble than American ties with either Japan or Southeast Asia. The United States-China relationship lurched from crisis to crisis through the summer of 1994.[170] The United States and China have clashed over issues as diverse as China's stance

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164. EDWIN J. FEULNER, THE HERITAGE FOUND. REP., THE NEW "MALAISE": CLINTON ADRIFT IN ASIA 500 (1994).

165. Duesterberg, *supra* note 117, at 73.

166. *Id.*

167. Harry Harding, *Asia Policy to the Brink*, 96 FOREIGN POL'Y 57, 63 (Fall 1994). "The breakdown of the trade talks at the Clinton-Hosokawa summit in February 1994 marked the first time in recent history that a Japanese government said 'no,' publicly and explicitly, to the United States." *Id.*

168. *Id.*

169. *Id.* In 1975, Indonesia invaded East Timor. *Indonesia: East Timor's Past Won't Stay Buried*, THE ECONOMIST, April 23, 1994, at 36. It is estimated that between 100,000 and 200,000 people died as a result of that war. *Id.* In November, 1991, Indonesian troops shot at unarmed demonstrators in the Timorese capital, Dilli, killing at least 50 people. *Id.* The problems and discontent continue in East Timor today. *See id.*

In March of 1994, Michael Fay, an American teenager living in Singapore plead guilty to spray-painting cars and possessing stolen street signs. David Grogan, *Whipping Boy*, PEOPLE, April 18, 1994, at 41. He was sentenced in accordance to the laws of Singapore to a $2,200 fine, four months imprisonment, and six strokes on his bare buttocks with a rattan cane. *Id.* The "caning" is administered by a martial arts expert and each stroke will "split the flesh." *Id.* The United States repeated rebukes of Singapore ". . . for applying its own laws - hitherto unnoticed as an abuse of human rights when only Asians were caned - was a direct confrontation with a government which had unabashedly advanced U.S. economic and security goals. . . ." Manning & Stern, *supra* note 97, at 87. Now, Singapore has joined Malaysia as a vocal critic of America, particularly its social and economic problems. Harding, *supra* note 167, at 63-64.

170. These crises included the imposition of sanctions against China for selling missile technology to Pakistan and the futile search of a Chinese cargo ship supposedly carrying materials for chemical weapons to the Middle East. Harding, *supra* note 167, at 64.

on human rights and its nuclear and weapon sales to Iran.[171] More recently, the U.S. refusal to support Beijing's bid for the Olympics in 2000 caused tensions.[172]

V. THE EFFECT OF NAFTA'S RULES OF ORIGIN ON UNITED STATES-ASIAN TRADE

Against this backdrop,[173] the United States implemented the NAFTA on January 1, 1994, spawning Asian fears that the Agreement would foster United States protection of its markets at the expense of Asia's exports to the United States.[174] This protection of domestic markets is true to some extent as NAFTA's rules of origin reflect the United States' and Canada's fears that the Agreement might inadvertently create an "export platform"[175] in Mexico for Asian manufacturing firms, enabling them to bypass United States and Canadian trade barriers.[176]

The Agreement will affect Asian trade with the United States by making some Mexican exports to the United States cheaper than competing Asian exports. Thus, NAFTA will have the effect of diverting trade and investment from Asia to Mexico.

A. Trade Diversion: Cheaper Mexican Goods

Trade diversion occurs when the formation of a preferential trading arrangement diverts trade from nonmembers to members of the trading bloc.[177] Since the rules of origin determine which goods are eligible for

171. Barbara B. Constable & David M. Compton, *China: The Coming Power,* 72 FOREIGN AFF. 131, 131 (1992).

172. Harding, *supra* note 167, at 64.

173. Just when the Clinton administration's cumulative missteps in Asia were on the verge of producing a serious crisis in relations with the region in the spring of 1994, Winston Lord, Assistant Secretary of State for Asia, submitted a memorandum to Secretary of State Warren Christopher. *Id.* at 71. The document warned that the simultaneous erosion of so many of America's bilateral relationships had "fostered malaise" in the region. *Id.* In response to the Lord memorandum, the Clinton administration revised its policy towards Japan and China in May and June of 1994. *Id.*

174. Jonathan Marshall, *NAFTA Could Divert Trade from Asia,* S.F. CHRON., Nov. 17, 1993, at C4; *See supra* notes 8-11 and accompanying text.

175. The announcement of NAFTA boosted Asian interests in cultivating closer trade and investment ties with Mexico, hoping that Mexico, with its less stringent tariff barriers, could serve as a "back door" to the U.S. market. Vithoon Amorn, *APEC Weighs Impact of North American Trade Pact,* REUTERS, Sept. 8, 1992, *available in* LEXIS, News Library, Wires File. However, NAFTA's rules of origin requirements will prevent Asian companies from locating in Mexico to avoid U.S. trade barriers. "Asian firms that invest in Mexico to access NAFTA will have to use components and labor from the U.S., Mexico, or Canada to qualify for NAFTA treatment." Stephen Lande, *Asia & Europe Watch NAFTA Drama: Think Globally, Trade Locally,* BUS. MEX. 48 (Nov. 1993) *available in* LEXIS, News Library, Mags File.

176. Amorn, *supra* note 175.

177. George D. Holliday, *NAFTA: Effects on Trade with Non-member Countries,* 3 MEX. TRADE & L. REP. 13, 14 (March, 1993).

NAFTA benefits, NAFTA's rules of origin may lead to significant trade diversion.[178]

Cost reductions from tariff elimination for goods that satisfy NAFTA's rules of origin will enable North American domestic production to compete more effectively with exports from Asia and even displace some Asian exports.[179] In addition, manufacturers may replace the goods and supplies they previously bought from third countries with lower-cost goods and supplies from member countries.[180] However, these "new" goods and supplies are cheaper, not because they are produced more efficiently, but because they avoid the tariffs and duties the third party product must pay.[181] Thus, companies trading out of Asia could find themselves replaced by others already established within NAFTA.[182]

In NAFTA, Mexico will become a more attractive place from which to export into the United States because of the reduction in tariffs and other trade barriers.[183] Therefore, trade that would have come from Asia may now come from Mexico.[184]

This trade diversion effect is what concerns Asia the most. When former U.S. President George Bush unveiled the NAFTA initiative, Asian governments and exporters immediately expressed concern that NAFTA would make Mexican exports to the United States cheaper than similar Asian exports, effectively squeezing Asia out of its biggest market, the United States.[185] ASEAN leaders viewed NAFTA as directed at the Asian countries' export-oriented manufacturing sectors, including textiles, automobiles, and electronics.[186] Others concluded that the NAFTA rules of origin would hurt Asia's export-driven economies by drawing trade and investment away from Asia[187] to the Western Hemisphere.[188]

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178. *Id.*

179. Chwee Huay Ow-Taylor, *Facing the Challenge from NAFTA*, BUS. TIMES, July 28, 1993, *available in* LEXIS, News Library, NEWS file.

180. Holliday, *supra* note 177, at 15. "The effect of . . . rules of origin will be to induce producers in the free trade area to divert trade from nonmember countries and to source from less efficient suppliers in the three member countries." *Id.*

181. *See* VINER, *supra* note 5, at 43.

182. *See* Marshall, *supra* note 174, at C4. Rules of origin provisions in the NAFTA "will spur some companies to expand assembly lines within Canada, the United States, or Mexico instead of shipping finished goods from Asia." *Id.*

183. Michael Young, *NAFTA and the Future of U.S. Trade Policy in the Asia-Pacific Region*, *in* NORTH AMERICA, AUSTRALIA, NEW ZEALAND AND THE WORLD REGIME 139, 140 (Robert G. Cushing et al. eds., 1993).

184. *Id.* "Mexican goods will increasingly take the place of those now coming into the United States from Asian countries. Susan Dentzer, *The Pain and Gain of Trade*, U.S. NEWS & WORLD REP., Sept. 28, 1992, at 62.

185. Michael Di Cicco, UPI, Aug. 21, 1993, *available in* LEXIS, News Library, UPI File.

186. Susumu Awanohara et al., *New Kid on the Bloc*, FAR E. ECON. REV., Aug. 27, 1995, *available in* LEXIS, Nexis Library, News File.

187. Isberto, *supra* note 8. NAFTA could drive $500 million in trade away from Asia each year. Marshall, *supra* note 174, at C4.

188. *Implications of NAFTA*, *supra* note 144, at 146.

The Asian fears of cheaper Mexican goods and supplies are not unfounded. Thirty-eight percent of Mexican exports to the United States, totaling $31 billion in 1991, consisted of motor vehicles and parts and electronic goods.[189] These same categories constituted 56% of Malaysia's exports to the United States.[190] Philippine businesses noted that for nearly every trade product exported to the United States, Mexico directly competes with the Philippines.[191] Overall, 76% of Asian exports to the United States compete directly with Mexico's top fifteen exports to the United States.[192] If these goods are replaced with Mexican goods, Asia stands to lose a significant market for its products.

World Bank economist Alexander Yeats forecasted that Asian manufacturers of labor-intensive products such as footwear, toys, and textiles would suffer export losses up to $400 million annually.[193] Other experts are more pessimistic. Dr. Kim Kyu Tae, director of the American division of the Korean Institute of Economics and Trade, concluded that NAFTA's rules of origin will affect 27% of Korea's total exports.[194] As a result, South Korea's potential trade loss with the United States for 1994 is estimated at $ 360 million.[195] Asian investment analyst Patrick Lim estimates that Malaysia alone would suffer $396 million in direct export losses, particularly in the clothing and semi-conductor sectors.[196] The ASEAN estimated that NAFTA would cause a $2 billion drop in ASEAN exports to the United States.[197]

B. Investment Diversion: "Made in Mexico" instead of "Made in Asia"

The potential that NAFTA's rules of origin could divert manufacturing and investment in manufacturing from Asia to Mexico is also of concern to Asia.[198] The Mexican economy is similar in industrial development to the

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189. *Id.* at 51.

190. *See* Ramon Isberto, *Trade: Asia Fears Emergence of Giant American Trade Bloc,* Inter Press Service, Dec. 14, 1993, *available in* LEXIS, News Library, Currnt File.

191. *Id.*

192. Di Cicco, *supra* note 185. Japanese and South Korean studies suggest that Mexico will compete with their exports to the United States of computers, textiles, motor vehicles and parts, and household electrical equipment including color televisions. Jack Taylor, *Asian Exports Could Be Hit by NAFTA, Australian Report Warns,* AGENCE FRANCE PRESSE, May 5, 1994, *available in* LEXIS, News Library, News File.

193. Awanohara, *supra* note 186.

194. Cayman Kim, *NAFTA to Affect South Korean Exports to U.S.,* JAPAN ECON. NEWSWIRE, Nov. 19, 1993, *available in* LEXIS, News Library, Wires File.

195. *Id.*

196. *Southeast Asia Expects Exports to Suffer After NAFTA,* J. COMM., Nov, 24, 1992 at 2A.

197. Arasu, *supra* note 8.

198. *See* Young, *supra* note 183, at 140.

Asian economies,[199] making Mexico a viable alternative to Asia.[200] The NAFTA rules of origin requirements for goods, combined with Mexico's proximity to the United States and competitive labor force, will make Mexico more attractive than Asia for U.S. investment.[201]

Japan's Ministry of International Trade and Industry estimates that NAFTA could divert $10 billion of investment in plants and manufacturing facilities from East Asian countries to Mexico each year over the next eight years.[202] This diversion would decrease East Asia's gross domestic product by $16.5 billion per year.[203]

Gary Hufbauer, a senior economist at the Institute for International Economics in Washington, estimates that NAFTA could divert about $3 billion in U.S. and foreign investment from developing countries in Asia to Mexico over the next six years.[204] This loss in investment could cost Asia about $1.5 billion in exports.[205]

The diversion of investment from Asia to Mexico will be especially evident in labor-intensive industries as Mexican labor costs are roughly equivalent to Asian labor costs.[206] "U.S. manufacturers will move their plants to Mexico to lower labor costs," said Dr. Lee Han Ku, Director of the Daewoo Economic Institute, "and European and Japanese [manufacturers] will follow."[207]

C. Fears Over Nothing? NAFTA's Rules of Origin Will Have No Diversionary Effect

Despite Asia's fears, some claim it is likely that the trade and investment

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199. The East Asian countries "have economies that are similar in industrial structure and factor endowments to the Mexican economy." McKinney, *supra* note 94, at 128.

200. *See* Shaun Seow & Phua Kok Kim, *What NAFTA Means for S'pore and Rest of the World*, THE STRAIT TIMES, Aug. 13, 1992, *available in* LEXIS, News Library, NEWS file (noting that U.S. investment will be drawn away from Asian countries which are at a comparable level of development as Mexico).

201. "NAFTA could easily provide Mexico, with its abundant and cheap labor, easier access to the consumers in North American markets and investments from U.S. industries." Deborah A. Haas, *Out of Others' Shadows: ASEAN Moves Toward Greater Regional Cooperation in the Face of the EC and NAFTA*, 9 AM. U. J. INT'L L. & POL'Y 809, 827 (1994).

202. McKinney, *supra* note 94, at 128.

203. *Id.*

204. Marshall, *supra* note 174, at C4.

205. *Id.*

206. NAFTA will result in competition for Asian developing countries from Mexico in labor-intensive products. Seow & Kim, *supra* note 200. While Mexican labor is somewhat more expensive than labor in Malaysia, Thailand, and Indonesia, it is still cheaper than labor in the more developed countries of Singapore, Hong Kong, South Korea, the Philippines, and Taiwan. *NAFTA Partly Against GATT Rules, Gov't Panel Notes*, JAPAN ECON. NEWSWIRE, Aug. 4, 1993, *available in* LEXIS, News Library, Wires File.

207. Kim, *supra* note 194.

diverting effect of NAFTA will be relatively minor.[208] The free trade area NAFTA created was already highly integrated without it. In addition, trade between the Asian nations may cushion NAFTA's trade diverting effect. The United States and Canada Free Trade Agreement entered into force on January 1, 1989.[209] Mexico is a small addition to this free trade region. The Canada-United States Free Trade Area created a market of $6 trillion when the agreement was signed.[210] Adding Mexico increased this market to $6.2 trillion, Mexico being the "point two."[211] Mexico accounts for about 4% of the total U.S. output and 6.6% of the total exports for the North American free trade region.[212] Thus, its incorporation into the free trade area is unlikely to have any major effect on trade flows.[213]

Not only did the United States and Canada establish a free trade area before NAFTA, but Mexico already enjoyed relatively unfettered access to the United States market. Recent quota expansion in textiles and steel, and generous tariff preferences under the Generalized System of Preferences and duty drawback programs opened the United States market to Mexican goods before NAFTA.[214] Approximately 60% of Mexican goods already enter the United States duty-free without NAFTA.[215] Furthermore, a study by the Asian Development Bank found tariffs on most Mexican exports to the United States were already low, generally between 3 and 4%. Eliminating these tariffs does little to give Mexican products a price advantage over Asian products.

Concerns about investment diversion are also overstated. Manufacturers in Asia are unlikely to shoulder the expense of relocating. Many executives already operating in Asia may be reluctant to abandon long-standing business relationships in Asia to suddenly uproot and move to Mexico.[216] "I've done business in China for 13 years and I've established relationships with reliable and trustworthy suppliers," said Stephen Willen, director of the New York-based Worldwide Apparel Sourcing Group.[217] His company, which sourced $18 million worth of apparel from China alone in 1992, represents companies such as Sears Roebuck & Co., T.J. Maxx Corp., and other major U.S. department stores.[218]

Also, Asia is still an attractive investment option. Several manufactur-

208. *See* Young, *supra* note 183, at 140. Holliday, *supra* note 177, at 15. *Implications of NAFTA*, *supra* note 144, at 149-50.

209. Canada-U.S. FTA, *supra* note 47.

210. Orme, *supra* note 6, at 3.

211. *Id.*

212. Holliday, *supra* note 177, at 18.

213. *Id.*

214. *Implications of NAFTA*, *supra* note 144, at 149; Negotiations, *supra* note 153, at 13.

215. *Id.*

216. Di Cicco, *supra* note 185.

217. *Id.*

218. *Id.*

ers, especially those producing goods on the high-value end, say they will continue to base their production in the Asian region to serve the fast-growing Asia-Pacific market.[219] In addition, factors reaching beyond economic motives may cause investors to favor Asia over Mexico. Dr. Linda Low, a National University of Singapore senior lecturer states: "Other non-economic considerations have to be factored in, like political stability, cultural values, work ethic, language, and efficiency of the government."[220] The cost of moving to Mexico with its lack of infrastructure, especially transportation facilities, could erode incentive to relocate there.[221] This would be especially true for producers which require high-technology equipment.[222] Mr. Najeeb Jarhom, research manager of Fraser Securities, added that the Mexican workforce may not possess the education and skills of Asian workers[223] and thus would not be as attractive as an Asian workforce.

Another reason the effect of NAFTA's rules of origin may be relatively minor is the increased trade among the Asian nations. Intra-Asian trade now accounts for about 45% of East Asia's total trade.[224] Investment analyst Patrick Lim stated that the economic pressure of NAFTA on Asia could be cushioned by increased trade and investment between ASEAN and China, Japan, South Korea, and Taiwan.[225] In addition, "China is likely to stimulate the growth of the Pacific Rim by the year 2010."[226]

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219. *Id.* By the year 2000, Asians will account for 3.5 billion of the world's 6.2 billion people. Rohwer, *supra* note 95, at 3. One billion of these Asians will be spending money on houses, cars, electronics, toys, and clothing. Four million of these consumers will have disposable incomes equal to the wealthy of today. *Id.*

220. Seow & Kim, *supra* note 200. Access to low labor rates alone should not trigger an immediate shift in production to Mexico. Jonathan Cooper, *NAFTA's Rule of Origin and its Effect on the North American Automotive Industry*, 14 NW. J. INT'L L. & BUS. 442, 466 (describing the impact of the NAFTA's rules of origin on the United States automobile industry). "If low labor rates were the most important reason for selecting a production site, Haiti would likely be the most industrious nation in the world." *Id.*

221. Di Cicco, *supra* note 185. "Mexico's weak infrastructure [and] low worker-productivity . . . serve as significant obstacles to shifting automobile operations to Mexico." Cooper, *supra* note 220, at 466.

222. *Id.*

223. Seow & Kim, *supra* note 200. An economist at the Nikko Research Centre stated: "It is questionable whether the quality and costs of Mexican workers are as competitive as those of Asian workers." Aya Takada, *NAFTA Not Seen As Hurting Japan-Asia Economic Ties*, REUTER NEWSWIRE, *available in* WESTLAW, Int-News database.

224. Manning & Stern, *supra* note 97, at 83.

225. Arasu, *supra* note 8.

226. *Id.*

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D. Japan: The Most Vociferous Complainant and the Least Damaged by NAFTA

Japan has been the most vocal complainant about NAFTA.[227] A high-ranking minister in Japan's Ministry of International Trade and Industry even went so far as to accuse NAFTA as being against the GATT rules.[228]

However, despite its concerns, Japan is in a far better position to cope with NAFTA than other Asian countries.[229] First, Japanese products are widely preferred over products from other nations, both for their price and their quality, and thus Japanese exports may not significantly decline when faced with cheaper North American goods.[230] Second, Japanese businesses have already made significant investments in the United States, Mexico, and Canada,[231] securing access to the North American market. Japanese investments in assembly and manufacturing facilities within the NAFTA territory will enable the Japanese to comply with the stricter local content rules of NAFTA.

In addition, the Japanese have successfully introduced their coordinated system of *keiretsu*[232] into the United States.[233] The *keiretsu* system involves corporate groups that tend to do business with each other.[234] Each corporate group has interlocking boards of directors between different companies in the same group.[235] Under the *keiretsu* system, a Honda plant will buy automobile parts from its *keiretsu*-affiliated parts manufacturer, not

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227. *See supra* notes 10-12 and accompanying text. "As the proposed North American Free Trade Agreement moves closer to creating a potentially powerful hemispheric trade zone, the government of Japan is voicing increasing anxiety that NAFTA could prove harmful to its vaunted export machine." Mann, *supra* note 11, at D2.

228. Yoshikuni Sugiyama, *Japan Examines Complex N. American Trade Pact,* THE DAILY YOMIURI, Sept. 19, 1992, *available in* LEXIS, News Library, Papers File. GATT article 24 allows the formation of regional free trade areas as long as the free trade area does not create barriers against other nations. Special Protocol, *supra* note 5, art. XXIV(8)(b), 62 U.N.T.S. at 62.

229. *See* McKinney, *supra* note 94, at 126-30.

230. *See* Michael Williams, *Japan's Surplus for Its Trade Increases 25%*, WALL ST. J., Oct. 15, 1992, at A11.

231. For example, three Japanese automobile producers, Toyota, Honda, and Suzuki, currently have assembly operations in Canada. Suzuki's Canadian operations are a joint venture with General Motors. Nissan has automobile production facilities in Mexico. McKinney, *supra* note 94, at 127.

232. *See* M.Y. Yoshina, JAPAN'S MANAGERIAL SYSTEM 148-49 (defining *keiretsu gaisho* as firms affiliated with a joint company engaged in ordinary business dealings). The Japanese system involves large firms forging a network of affiliated firms, primarily related through subcontracting relationships, into a single organization. *Id.* at 155.

233. There is little direct evidence of the *keiretsu* system in the United States because the United States would protest vehemently against its establishment as *keiretsu* violates most United States anti-trust laws. *See* Percy R. Luney, Jr., *The Japanese View Toward NAFTA and Regional Trade Zones*, 22 DUKE J. COMP. & INT'L L. 297, 301 n.33 (1992).

234. TERUTOMO OZAWA, MULTINATIONALISM JAPANESE STYLE 66 (1979). "*Keiretsu* are close relationships linking Japanese companies with their longtime suppliers." Mann, *supra* note 11, at D2.

235. *Id.*

allowing other non-affiliated companies to bid for the parts contract on the basis of price and quality.[236] The *keiretsu* system permits functionally integrated corporate groups to capture economies of scale and exploit industrial linkages as a group.[237] This system allows the Japanese to buy products within their own corporate group instead of from suppliers. Thus, the profits from these purchases stay within a singe corporation instead of being distributed to other corporations. Also, the corporate group will give its members a more competitive price, lowering the cost of the finished product.

E. Textiles and Motor Vehicles: The Two Asian Industries Hardest Hit by NAFTA

While NAFTA may not cause the kinds of problems Asia envisions, the rigorous rules of origin requirements for textiles and autos will cause some difficulties.

Textiles and motor vehicles are the two areas under NAFTA that have the most restrictive rules of origin requirements. Coincidentally, these two trade sectors are the two Asian industries that will be most affected by NAFTA's rules of origin.[238]

1. Textiles

Asia accounts for a huge share of the U.S. textile and apparel market.[239] In 1989, textiles accounted for over 30% of all exports from Hong Kong, South Korea, and the People's Republic of China.[240] The developing economies of Southeast Asia exported $47.9 billion in clothes alone in 1989; $19.5 billion worth was exported to Canada and the U.S.[241] In 1991, China's $13 billion trade surplus with the United States was mostly from textiles.[242]

Textile imports into the United States are subject to both quotas and

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236. Robert Pear, *U.S. Says Honda Skirted Customs Fees*, N.Y. TIMES, June 17, 1991, at D6. "Honda is willing and able to 'exercise control' over prices charged by Japanese or Japanese-controlled suppliers to which it is linked in a 'web of cross-ownership.' Some affiliated auto-parts suppliers 'sell to Honda at a price below their cost of manufacture and continually operate at a loss.'" *Id.* (quotes are from U.S. Customs Service Audit on the Honda case).

237. OZAWA, *supra* note 234, at 66. A Bush administration official stated that the problem for American products exported to Japan is non-tariff barriers:". . . closed markets, *keiretsu* driven practices." Mann, *supra* note 11, at D2.

238. Marshall, *supra* note 174; *See also* PAUL, HASTINGS, JANOFSKY & WALKER, NORTH AMERICAN FREE TRADE AGREEMENT: SUMMARY AND ANALYSIS 14 (1993).

239. Asia accounts for half the U.S. apparel import market. Lande, *supra* note 175.

240. UNITED NATIONS YEARBOOK, 1990 INT'L TRADE STAT. vol. 1, tbl. 2, at 403, 500, and 170 [hereinafter INT'L TRADE STAT.].

241. *Id.*

242. O'Reilly, *supra* note 154, at 68.

tariffs under the Multifiber Arrangement (MFA).[243] The MFA quotas restrict the quantity of imported textiles that can compete with textiles produced in the United States, providing strong protection for United States textile and apparel manufacturers.[244] NAFTA will eliminate both tariffs and quotas for "qualifying" goods—goods manufactured in North America that meet the strict NAFTA textile rule of origin.[245]

Textiles are considered "originating goods" under the NAFTA rules of origin according to the "yarn-forward" or "fiber forward" rule.[246] The yarn-forward rule means that textiles and apparel goods must be constructed from yarn produced in a NAFTA country to be an originating good and receive the full benefits of NAFTA.[247] Cotton products are subject to a "fiber forward" rule which is similar to the "yarn forward" requirement.

NAFTA will immediately remove import quotas on textiles from Mexico that qualify as an originating good under the yarn forward or fiber forward rule.[248] The net effect of these eliminations will be the increased importation into the United States of textiles and apparel manufactured in Mexico using North American yarn and fabric.[249] These increased imports from Mexico will occur at the expense of existing imports from Asia.[250] In addition, they will result in an increase in U.S. exports of yarn and fabric to Mexico, while reducing North American imports of yarn and fabric from Asian countries.[251]

NAFTA will put Asia at a severe disadvantage in the textile market.[252] The origin rules for textiles are among the most restrictive in NAFTA. Many textile and apparel goods produced in Asia compete directly with those of Mexico in North American markets.[253] As the U.S. tariffs for non-originating textiles are currently 17%,[254] the removal of these tariffs for

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243. Arrangement Regarding International Trade in Textiles, Dec. 20, 1973, 25 U.S.T. 1001, 930 U.N.T.S. 166.

244. Richard H. Steinberg, *Antidotes to Regionalism: Responses to Trade Diversion Effects of the North American Free Trade Agreement,* 29 STAN. J. INT'L L. 315, 330 (1993).

245. NAFTA, *supra* note 2, at Annex 401, § XI, at 407; *Id.* Annex 300-B, §§ 2, 3, at 327.

246. *Id.* Annex 401, § XI, at 407.

247. *Id.* Critics have exaggerated this restrictive requirement by claiming that the wool used to make the yarn must be gathered from sheep that have lived in North America for four generations. Deputy U.S. Trade Representative Julius Katz, Remarks on the North American Free Trade Agreement in a USIA WorldNet Broadcast, Sept. 23, 1992, *transcript available in* LEXIS, News Library, Wires File.

248. NAFTA, *supra* note 2, Annex 300-B, app. 3.1 (B)(10)-(11), at 340.

249. Steinberg, *supra* note 244, at 331.

250. *Id.* NAFTA is expected to benefit U.S. apparel firms that use Mexico as a low-cost manufacturing base to compete with East Asian products in the U.S. and Mexico. POTENTIAL IMPACT, *supra* note 42, at 8-6.

251. *See* POTENTIAL IMPACT, *supra* note 42, at 8-6.

252. Lande, *supra* note 175, at 50. NAFTA will make Mexico an attractive alternative to the large apparel producers in Hong Kong, Taiwan, South Korea, and Taiwan which face restrictions in access to the U.S. market. POTENTIAL IMPACT, *supra* note 42, at 8-4.

253. McKinney, *supra* note 94, at 128.

254. Lande, *supra* note 175, at 50.

Mexican textiles which qualify as originating goods will place Asian producers at a distinct price disadvantage.[255]

2. Motor Vehicles

In 1990, Japan and South Korea exported nearly $24 billion worth of passenger motor vehicles, wholly produced in Asia, into Canada and the United States.[256] These Asian automobile imports do not contain any North American components. Consequently, they did not satisfy the rules of origin requirements for duty-free entry into the United States under the pre-NAFTA rules,[257] nor will they satisfy the NAFTA rules of origin. Therefore, NAFTA will have relatively little practical impact on these exports to North America.[258]

In addition, the United States tariff on automobiles from Asia is only 2.5%.[259] Since this tariff is so low, the United States elimination of its barriers to passenger automobiles manufactured in Mexico will have little effect on the relative competitiveness of Asian automobiles.[260] The low tariff on Asian automobiles does not increase the cost of an Asian automobile by a significant amount compared to a Mexico-produced automobile.[261]

Although NAFTA will not decrease North American sales of Asian automobiles by much, it will affect the Asian automobile parts industry significantly.[262] The general NAFTA rule of origin for automobiles will require 62.5% regional content to qualify for NAFTA benefits.[263] The former regional content requirement was 50%.[264] Thus, the 62.5% NAFTA rule of origin will provide a strong incentive for North American automobile manufacturers to use North American auto parts.[265]

The 62.5% local content requirement will also impact Japanese automobile manufacturing facilities located in North America.[266] While

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255. McKinney, *supra* note 94, at 128.

256. This number excludes buses. INT'L TRADE STAT., *supra* note 240, vol. II, at 1192-93.

257. Before, NAFTA, automobiles which contained 50% North American product benefitted from the Canada-United States Free Trade Area rules of origin requirements. U.S.-Canada FTA, *supra* note 47, at annex 301.2, at 297-98, § XVII, paras. 3-5, at 305-06.

258. Steinberg, *supra* note 244, at 332.

259. *See* NAFTA, *supra* note 2, Annex 302.2, HTS no. 8703, at 311.

260. Steinberg, *supra* note 244, at 333.

261. *Id.*

262. In 1990, Japan and Korea exported approximately $6.5 billion of motor vehicle parts to Canada and the United States. 1990 INT'L TRADE STAT. Y.B. at 1198-99.

263. *See* NAFTA, *supra* note 2, art. 403(5)(a), at 351.

264. U.S.- Canada FTA, *supra* note 47, at Annex 301.2, at 297-98, § XVII, para. 2, at 305-306.

265. Steinberg, *supra* note 244, at 332.

266. *See NAFTA Impacting Investment Strategy; 62.1% of Subsidiaries in U.S. Are Attracted to Mexico, Survey Shows*, THE NIKKEI WKLY. Oct. 26, 1992, at 12; Ow-Taylor, *supra*, note 179.

these automobiles are assembled in North America with a North American workforce, most of the components for the automobiles are currently imported from Japan.[267] These plants were designed to take advantage of the 50% local content rule[268] in place before NAFTA's 62.5% requirement.[269] The higher local content rule will force Japanese automakers to upgrade their North American manufacturing process to include more North American parts, costing them billions of dollars,[270] to take advantage of NAFTA's preferential treatment.

In addition, NAFTA will have serious adverse effects on Asian imports of light trucks to the United States.[271] The current U.S. truck tariffs of twenty-five percent for most light trucks[272] will be eliminated for Mexican-produced light trucks.[273] Thus, light trucks, and possibly minivans which satisfy NAFTA rules of origin will gain a strong advantage over comparable Asian-produced products, as they will not be subject to the 25% tariff.[274] NAFTA will divert some production from Asia to Mexico, as producers seek to avoid the 25% U.S. tariff on the Asian-produced vehicles.[275]

VI. ASIAN REACTION TO NAFTA: FORMATION OF AN ASIAN FREE TRADE AREA

Despite the high trade stakes involved in the implementation of

267. John Eckhouse, *How U.S. Depends on Big 3: Automakers Help Fuel the Economy*, S.F. CHRON., Jan. 31, 1992, at B1 (discussing ECONOMIC STRATEGY INSTITUTE, THE CASE FOR SAVING DETROIT (1992)). Japanese automobile factories in the United States generally import a high percentage of their most expensive parts and buy many other components from Japanese-owned U.S. suppliers. *Id.* at B2. The Economic Strategy Institute estimates that only about 39% of the factory price of a car built at a transplant factory represents pure U.S. content, compared to 88% for a domestic car built by Ford, GM, or Chrysler. *Id.*

Figuring that 30% of the 1.9 million Japanese cars built in the U.S. displaced imports that otherwise would have been sold here, the Economic Strategy Institute (ESI) credits the Japanese plants with creating 41,154 jobs and contributing $2.9 billion to the economy. *Id.* However, 70% of these Japanese sales displaced sales of Ford, GM and Chrysler. *Id.* The lower domestic content of the Japanese cars caused the loss of 124,355 U.S. jobs and a loss of $9.2 billion to GNP. *Id.* In sum, the Japanese-owned factories in the U.S. caused a net loss of 83,201 jobs and a reduction of $6.3 billion GNP.

268. U.S.-Canada FTA, *supra* note 47, at 297-98, at Annex 301.2, § XVII, para. 2, at 305-306.

269. *See* Luney, *supra* note 233, at 300-301.

270. NAFTA's rules of origin could result in expensive re-tooling costs for Japanese-owned automotive corporations in the United States. *See* Cooper, *supra* note 219, at 461.

271. In 1990, Japan and South Korea exported approximately $2.3 billion worth of light trucks to Canada and the United States. INT'L TRADE STAT., *supra* note 240, vol. II, at 1194-95.

272. NAFTA, *supra* note 2, at 311, Annex 302.2, HTS nos. 8704.21.00, 8704.31.00, 8704.22.00 and 87.04.90.00.

273. *Id.* at HTS nos. 8704.31, 8704.32, and 8702.90, and note 1 to Chapter 87 of the schedule.

274. Lande, *supra* note 175, at 50.

275. Steinberg, *supra* note 244, at 332.

NAFTA's rules of origin, Asia has not come up with a concerted response.[276] However, there has been movement within Asia to establish a free trade area similar to NAFTA.

The strongest response seems to be the Malaysian call for an Asian free trade area.[277] This free trade area, the East Asian Economic Caucus (EAEC) would specifically exclude Australia, Canada, New Zealand, and the United States.[278] After the announcement of NAFTA in 1992, the EAEC gained momentum.[279]

However, ASEAN is currently the only regional trading group in Asia and it has met with limited success. Intraregional trade as a proportion of total trade among ASEAN members grew from three percent in 1980 to just four percent in 1990.[280] Not even five percent of this small amount of intraregional trade was covered by preferential trading agreements.[281] However, the ASEAN leaders recognize ASEAN's lackluster performance in the past and realize that economic cooperation must now play a central role in the Association.[282] Although ASEAN has met with limited success in the past, NAFTA seems to have provided the impetus to strengthen the organization.[283]

In January, 1992, ASEAN pledged to strengthen economic, political, and security ties among its members.[284] To achieve these goals, the ministers proposed the creation of an ASEAN Free Trade Area (AFTA).[285]

Notwithstanding Asian fears of NAFTA, there is little incentive for Asian countries to develop broad regional trade arrangements in the Pacific Basin without United States participation.[286] Even though the volume of

276. Ow-Taylor, *supra* note 179.

277. Kym Anderson, *NAFTA, Excluded Pacific Rim Countries, and the Multilateral Trading System, in* THE CHALLENGE OF NAFTA: NORTH AMERICA, AUSTRALIA, NEW ZEALAND, AND THE WORLD TRADE REGIME 33, 46-50 (Robert G. Cushing et al. eds., 1993). *See also* Luney, *supra* note 230, at 304-306; Ow-Taylor, *supra* note 179, at 42.

278. *See U.S. Official Says EAEC is Good for Free Trade,* JAPAN ECON. NEWSWIRE, Oct. 19, 1993, *available in* LEXIS, News Library, Allnws File. The logic for excluding the North Americans is that if they insist on forming exclusive economic blocs, East Asia could similarly put up barriers. *Id.*

279. NAFTA appears to have given the EAEC new impetus after Asia's lukewarm reaction to its proposal in 1988. Japan, which was previously against an Asian regional trading area, warmed to the idea after the announcement of the NAFTA even though the country fears antagonizing the United States. *Id.*

280. Panagariya, *supra* note 170.

281. *Id.*

282. Haas, *supra* note 201, at 809.

283. See *id.* at 809-11 for a detailed background of the events that led up to the AFTA and other regional trading groups currently being discussed in Asia.

284. Singapore Declaration of 1992, Jan. 28, 1992, Brunei-Indon.-Malay.-Phil.-Sing.-Thai., 31 I.L.M. 498 (1992).

285. Framework Agreement on Enhancing ASEAN Economic Cooperation, Jan. 28, 1992, Brunei-Indon.-Malay.-Phil.-Sing.-Thai., 31 I.L.M. 506, 508 (1992). See Haas, *supra* note 201 for a detailed explanation of the AFTA's provisions.

286. *Implications for NAFTA, supra* note 144, at 156.

Asian intraregional trade has grown in recent years, too much Asian trade still depends on trade across the Pacific to the United States for the region to contemplate creating an Asian trade cocoon.[287]

CONCLUSION

NAFTA is a little over one year old now and its first year has not been without troubles, especially for Mexico. The day that the NAFTA went into effect, some of the poorest people in Mexico began a 12-day uprising in the remote southern highlands of Chiapas.[288] In March, 1994, presidential candidate Luis Donaldo Colosio was assassinated.[289] The worst came in the last week of December, when jittery investors pushed the peso down 30%.[290]

In spite of these problems, U.S. trade with Mexico increased 22% through September, 1994.[291] In addition, the peso devaluation is largely seen as positive for Mexico. It will reduce Mexico's trade deficit by raising the cost of imports while making Mexican products more competitively priced in world markets.[292]

It is still too soon to tell if NAFTA will substantially affect U.S. trade with Asia. The rules of origin provisions relating to automobiles will not even come into effect for another three years.[293] However, U.S. companies are investing in Mexican production facilities at a record rate.[294] After the implementation of NAFTA, hundreds of U.S. companies increased their exports to Mexico.[295] Overall, NAFTA will have some diversionary effect on Asian trade with the United States, but this effect will not be as potent as Asia fears. Undoubtedly, the textile and automobile industry will feel the brunt of NAFTA's impact the most.

In other areas, United States' tariffs are quite low so a reduction in U.S. tariffs to Mexico will not make Mexican goods that much cheaper. Moreover, the North American region was already quite integrated before the

287. *Id.*

288. Richard Lacayo, *The Plunger, The Peso Heads South,* TIME, Jan. 29, 1995, at 45.

289. *Id.*

290. Richard Alm, *Trade Expands in NAFTA's First Year,* THE DALLAS MORNING NEWS, Dec. 25, 1994, at 1A.

291. *Id.*

292. Lacayo, *supra* note 288, at 47.

293. NAFTA, *supra* note 2, art. 403.

294. Through October, 1994, foreign investors were planning to pump a little over $8 billion into Mexico's economy in 1995, nearly matching 1994's record pace. Alm, *supra* note 290.

295. "Ford Motor Co. expects to ship 25,000 U.S.-made cars to Mexico this year [1994], up from just 1,500 in 1993. General Motors anticipates a jump from 1,700 to 10,000. Caterpillar Inc. credits NAFTA for a 77 percent increase in exports to Mexico in the first six months of this year [1994]." *Id.* Honeywell projects a 60% increase in sales in 1994 because the 20% tariff on personal computers was eliminated by NAFTA. *Id.* AT&T Corp. joined Grupo Alfa Industrial in a $1 billion joint venture for long-distance. *Id.*

formation of the NAFTA. In addition, the trade and investment diverting effects will probably be dwarfed by the increase in growth of Mexico.[296]

The sheer numbers alone dictate that the United States continue to foster trade relations with Asia. By the year 2000, Asians[297] will account for 3.5 billion of the world's 6.2 billion people.[298] One billion of these Asians will be living in households with some consumer-spending power.[299] They will be spending money on houses, cars, electronics, toys, and clothing. The Asian nations are not mere producers of consumer goods for the U.S. They are now an important market for U.S. goods and services. The rocket-like growth and size of Asia's emerging middle class will create some of the biggest business and financial opportunities in history.

Benjamin Franklin once asserted: "No nation was ever ruined by trade."[300] Trade as a whole is immensely beneficial to a nation as it stimulates economic growth. Economic growth opens new markets, stimulates new technology, and increases the standard of living of the nation's people. In its efforts to increase its trade with its neighbors, the United States must not lose sight of its vital trans-Pacific trading partners.

Kathryn L. McCall[*]

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296. Young, *supra* note 183, at 140-41.

297. "Asian" here means people living on the Asian continent (including Japan) east of Iran, but outside the former Soviet Union. Rohwer, *supra* note 96, at 3.

298. *Id.*

299. *Id.*

300. FRANKLIN, *supra* note 1.

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