

# THE USMCA: AN IDEAL “NEW NAFTA?”

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## INTRODUCTION

On December 8th, 1993, President Bill Clinton signed the North American Free Trade Agreement (“NAFTA”), a treaty that eliminated trade barriers between the United States, Canada, and Mexico.<sup>2</sup> At the time, Mexico’s tariffs were five times higher than the United States’ tariffs.<sup>3</sup> Supporters of the agreement touted job creation and lower costs for consumers, but detractors warned it would cause a “giant sucking sound” of jobs flowing to Mexico.<sup>4</sup> After signing, President Clinton remarked, “I believe that NAFTA will create a million jobs in the first five years of its impact. And I believe that that is many more jobs than will be lost, as inevitably some will be as always happens when you open up the mix to a new range of competition.”<sup>5</sup>

As President Clinton candidly observed, free trade agreements can reshape industries and leave many people unemployed for a period of time. About one-third of U.S. residents do not support free trade.<sup>6</sup> Unlike free trade’s immediate burden of worker displacement, free trade benefits typically indirectly filter through the larger populations over time.<sup>7</sup> Free trade agreements can make products less costly for consumers, spur economic growth, and encourage technological advances through

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<sup>2</sup> Anne Straders, *What Is NAFTA? History, Purpose and What It Means in 2019*, THESTREET (Aug. 22, 2019, 12:34 PM), <https://www.thestreet.com/politics/nafta-north-american-free-trade-agreement-14651970> [<https://perma.cc/J7GJ-P3FJ>].

<sup>3</sup> M. ANGELES VILLARREAL & IAN F. FERGUSSON, CONG. RESEARCH SERV., R42965, THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA) 6 (May 24, 2017), <https://fas.org/sgp/crs/row/R42965.pdf> [<https://perma.cc/X3E9-D7X7>].

<sup>4</sup> Andrew Chatzky et al., *NAFTA and the USMCA: Weighing the Impact of North American Trade*, COUNCIL ON FOREIGN REL. (Jul. 1, 2020, 8:00 AM), <https://www.cfr.org/backgrounder/nafta-and-usmca-weighing-impact-north-american-trade> [<https://perma.cc/F3Y6-EXLK>].

<sup>5</sup> Press Release, Office of the Press Secretary, Remarks by President Clinton, President Bush, President Carter, President Ford, And Vice President Gore in Signing of NAFTA Side Agreements (Sep.14, 1993) (archived by The White House), <https://clintonwhitehouse6.archives.gov/1993/09/1993-09-14-remarks-by-clinton-and-former-presidents-on-nafta.html> [<https://perma.cc/EKS8-HF88>].

<sup>6</sup> Mark Murray, *Support for Free Trade Reaches New High in NBC/WSJ Poll*, NBC NEWS (Aug. 18, 2019, 9:00 AM), <https://www.nbcnews.com/politics/meet-the-press/support-free-trade-reaches-new-high-nbc-wsj-poll-n1043601> [<https://perma.cc/74HN-WF8C>].

<sup>7</sup> See DANIEL FRIED, CONG. BUDGET OFF., HOW PREFERENTIAL TRADE AGREEMENTS AFFECT THE U.S. ECONOMY, 1–4 (Sept. 29, 2016), <https://www.cbo.gov/publication/51924> [<https://perma.cc/P3GH-GDWS>].

increased competition.<sup>8</sup> Economists generally agree that the “diffuse and long-term benefits” of free trade outweigh the “concentrated short-term costs.”<sup>9</sup>

NAFTA and its successor agreement, the United States-Mexico-Canada Agreement (“USMCA”), embody the free trade debate.<sup>10</sup> NAFTA brought lower prices to consumers and allowed U.S. agriculture to flourish with tariff-free exports to Mexico, but it contributed to the U.S. manufacturing decline by incentivizing companies to outsource to low-wage regions in Mexico.<sup>11</sup> Noting the manufacturing job loss, President Trump negotiated the USMCA, often referred to as the “new NAFTA,” which replaced NAFTA on July 1, 2020.<sup>12</sup> As this Note will discuss, the USMCA strays away from free trade principles in an effort to stimulate U.S. manufacturing.<sup>13</sup>

This Note addresses the USMCA’s key impacts in comparison to NAFTA. Because Mexico is one of the U.S.’s largest trade partners and because U.S. trade with Mexico is a common subject of political debate, this Note focuses primarily on NAFTA and the USMCA as they relate to the U.S.-Mexico trade relationship.<sup>14</sup> Part I of this Note provides an overview of NAFTA and the USMCA. Part II discusses NAFTA’s effects on the U.S. agricultural sector, a key beneficiary of NAFTA, and argues that the USMCA is a slight improvement over NAFTA for that sector. Part III analyzes NAFTA’s effects on the U.S. manufacturing sector and argues that the USMCA poses significant risks to that sector. Finally, part IV concludes by advocating that the USMCA is unlikely to lead to substantial U.S. economic improvements over NAFTA.

## I. OVERVIEW OF NAFTA AND THE USMCA

### A. NAFTA Ushered in an Era of Increased Trade and Large Deficits

Technological developments and increasing trade with other countries complicate the determination of NAFTA’s precise effects on the North American

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<sup>8</sup> See Brandon Scudder, *Do Free Trade Agreements Encourage Economic Development in the U.S.?*, NCBFAA, [https://www.ncbfaa.org/Scripts/4Disapi.dll/4DCGI/cms/review.html?Action=CMS\\_Document&DocID=17730&MenuKey=pubs](https://www.ncbfaa.org/Scripts/4Disapi.dll/4DCGI/cms/review.html?Action=CMS_Document&DocID=17730&MenuKey=pubs) [<https://perma.cc/7U6X-2JBR>].

<sup>9</sup> FRIED, *supra* note 7, at 1.

<sup>10</sup> *U.S.–Mexico–Canada Agreement (USMCA)*, U.S. CUSTOMS AND BORDER PROT., <https://www.cbp.gov/trade/priority-issues/trade-agreements/free-trade-agreements/USMCA#:~:text=Entry%2Dinto%20Force,rules%20will%20continue%20to%20apply> [<https://perma.cc/C53D-4XLW>].

<sup>11</sup> Chatzky et al., *supra* note 4.

<sup>12</sup> *U.S.–Mexico–Canada Agreement (USMCA)*, *supra* note 10; Jessica Murphy & Natalie Sherman, *USMCA Trade Deal: Who Gets What From 'New Nafta'?*, BBC NEWS (Oct. 1, 2018), <https://www.bbc.com/news/world-us-canada-45674261> [<https://perma.cc/KV62-V8HL>].

<sup>13</sup> See *United States–Mexico–Canada Trade Fact Sheet Rebalancing Trade to Support Manufacturing*, OFF. U.S. TRADE REPRESENTATIVE, <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/fact-sheets/rebalancing> [<https://perma.cc/3UTH-XMM4>] [hereinafter *Rebalancing Trade to Support Manufacturing*].

<sup>14</sup> Ken Roberts, *Mexico is Now Top U.S. Trade Partner, Ahead of China, Canada*, FORBES (Apr. 26, 2019, 5:07 AM), <https://www.forbes.com/sites/kenroberts/2019/04/26/mexico-is-now-top-u-s-trade-partner-ahead-of-china-canada/?sh=6a1522a349fb> [<https://perma.cc/38SY-N9PK>].

economy.<sup>15</sup> Still, the agreement clearly proliferated trade between the North American countries.<sup>16</sup> From 1993 to 2015, trade between the United States and Mexico more than quintupled, increasing from \$85.2 billion to \$481.5 billion.<sup>17</sup>

NAFTA simultaneously ushered in unprecedented trade deficits with Mexico. A trade deficit occurs when a country imports more than it exports.<sup>18</sup> The world's most prosperous countries often run trade deficits in certain areas, but elected officials and voters generally prefer trade surpluses.<sup>19</sup> In the nine years immediately preceding NAFTA, the U.S. averaged a \$1.5 billion goods trade deficit with Mexico, and enjoyed a surplus three out of the nine years.<sup>20</sup> In NAFTA's first ten years, the U.S. goods trade with Mexico averaged a \$21.8 billion deficit which continues to grow.<sup>21</sup> NAFTA went into force on January 1, 1994.<sup>22</sup> Goods trade with Mexico between 1994 and 2019 averaged a \$47.6 billion deficit, including a staggering \$101.4 billion in 2019.<sup>23</sup> Since 1995, the U.S. has not experienced a single goods trade surplus with Mexico.<sup>24</sup>

These trade deficits are more than just numbers—they represent U.S. workers forced to change careers in an uncertain time. By 2010, trade deficits with Mexico

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<sup>15</sup> See David Floyd, *NAFTA's Winners and Losers*, INVESTOPEDIA (Nov. 11, 2020), <https://www.investopedia.com/articles/economics/08/north-american-free-trade-agreement.asp> [<https://perma.cc/B2HT-AQQ8>].

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Will Kenton, *Trade Surplus*, INVESTOPEDIA (Nov. 22, 2020), <https://www.investopedia.com/terms/t/trade-surplus.asp> [<https://perma.cc/6B9H-WZXC>]; see also Jared Bernstein & Dean Baker, *Why Trade Deficits Matter*, ATLANTIC (Dec. 8, 2016), <https://www.theatlantic.com/business/archive/2016/12/trump-trade-deficit/509912/> [<https://perma.cc/9KRR-DJK8>].

<sup>19</sup> See generally, James McBride & Andrew Chatzky, *The U.S. Trade Deficit: How Much Does It Matter?*, COUNCIL ON FOREIGN REL. (Mar. 8, 2019, 7:00 AM), <https://www.cfr.org/backgrounder/us-trade-deficit-how-much-does-it-matter> [<https://perma.cc/BE47-LP7D>] (discussing the arguments for and against trade deficits); see also *Balance of Trade*, TRADING ECON., <https://tradingeconomics.com/country-list/balance-of-trade> [<https://perma.cc/79U8-UCGV>] (showing different countries with trade deficits).

<sup>20</sup> *Trade in Goods with Mexico*, U.S. CENSUS BUREAU, <https://www.census.gov/foreign-trade/balance/c2010.html> [<https://perma.cc/FQG7-EA3R>]. Trade with foreign countries is measured in two forms: “goods” (also known as “merchandise”) trade and “services” trade which includes business and financial services. See M. ANGELES VILLARREAL, CONG. RESEARCH SERV., IF11175, US-MEXICO TRADE RELATIONS (April 9, 2019), <https://fas.org/sgp/crs/row/IF11175.pdf> [<https://perma.cc/SX96-QDPA>] [hereinafter VILLARREAL IF11175]. The U.S. Census Bureau defines “goods” as “[m]erchandise, supplies, raw materials, and products or any other item identified by a Harmonized System (HS) code,” and describes six types of import and export services: “Travel; Passenger Fares; Other Transportation; Royalties and License Fees; Other Private Services; and U.S. Government Miscellaneous Services” as well as an additional service category titled “Transfers Under U.S. Military Sales Contracts” for exports and “Direct Defense Expenditures” for imports. *Foreign Trade: Trade Definitions*, U.S. CENSUS BUREAU (Oct. 6, 2020), <https://www.census.gov/foreign-trade/reference/definitions/index.html> [<https://perma.cc/8B2P-25BK>].

<sup>21</sup> See *Trade in Goods with Mexico*, *supra* note 20.

<sup>22</sup> VILLARREAL IF11175, *supra* note 20.

<sup>23</sup> *Trade in Goods with Mexico*, *supra* note 20. The U.S. typically experiences a modest surplus in services trade with Mexico, but the goods trade deficit overshadows it tenfold. VILLARREAL IF11175, *supra* note 20.

<sup>24</sup> *Trade in Goods with Mexico*, *supra* note 20.

eliminated an estimated 682,900 jobs, 60% of which were in manufacturing.<sup>25</sup> Manufacturing employment in the U.S. declined by 30% between 1993 and 2016.<sup>26</sup> Mexico often experienced manufacturing trade deficits with the U.S. before NAFTA, but the country now enjoys a manufacturing trade surplus of over \$58 billion.<sup>27</sup> Abandoned factories and displaced workers in Ohio and Michigan illustrate the effects of the post-NAFTA trade imbalance with Mexico.<sup>28</sup> Meanwhile, U.S. farmers excelled under NAFTA.<sup>29</sup> The U.S. experienced an agricultural trade surplus with Mexico for twenty of the agreement's first twenty-three years.<sup>30</sup>

Since the beginning of his campaign, President Trump repeatedly called for the repeal or renegotiation of NAFTA, referring to it as the “worst trade deal in history.”<sup>31</sup> In May of 2018, Trump imposed tariffs on steel and aluminum imports from Mexico and Canada, effectively violating NAFTA.<sup>32</sup> Less than a week later, Mexico enacted retaliatory tariffs on various U.S. exports to Mexico, including agricultural products.<sup>33</sup> Canada followed suit and enacted similar tariffs in July 2018.<sup>34</sup>

### B. The USMCA Emerges as the “New NAFTA”

On September 30, 2018, the dust settled from the trade disputes and the United States, Mexico, and Canada negotiated a NAFTA replacement: the USMCA.<sup>35</sup> The USMCA retains tariff-free treatment for all products that were tariff-free under

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<sup>25</sup> *NAFTA, 20 Years Later: Do the Benefits Outweigh the Costs?*, WHARTON UNIV. OF PA. (Feb. 19, 2019), <https://knowledge.wharton.upenn.edu/article/nafta-20-years-later-benefits-outweigh-costs/> [https://perma.cc/2HPA-MAC3].

<sup>26</sup> Floyd, *supra* note 15.

<sup>27</sup> *Id.*

<sup>28</sup> See Kate Linthicum, *A Tale of Two Cities: What Happened When Factory Jobs Moved from Warren, Ohio, to Juarez, Mexico*, L.A. TIMES (Feb. 17, 2017, 11:51 AM), <https://www.latimes.com/world/mexico-americas/la-fg-mexico-us-factories-20170217-htmlstory.html> [https://perma.cc/X8ML-HNEQ].

<sup>29</sup> JENNY HOPKINSON, CONG. RESEARCH SERV., IN10962, AGRICULTURAL TRADE WITH MEXICO AND THE PRELIMINARY U.S.-MEXICO AGREEMENT IN NAFTA NEGOTIATIONS I (Aug. 29, 2018), <https://crsreports.congress.gov/product/pdf/IN/IN10962> [https://perma.cc/FKV7-PBHQ] [HOPKINSON IN10962].

<sup>30</sup> *Farmers Fear Impact of U.S. Exit from NAFTA*, CBS NEWS (May 19, 2017, 11:03 AM), <https://www.cbsnews.com/news/farmers-fear-impact-of-u-s-exit-from-nafta/> [https://perma.cc/JEB9-PVN3].

<sup>31</sup> Clark Packard, *The New U.S.-Mexico-Canada Trade Deal Can Work for Everyone*, FOREIGN POL'Y (July 15, 2019, 3:01 PM), <https://foreignpolicy.com/2019/07/15/the-new-u-s-mexico-canada-trade-deal-can-work-for-everyone/> [https://perma.cc/VXS6-U6TY].

<sup>32</sup> Heather Long, *Trump has Officially Put More Tariffs on U.S. Allies Than on China*, WASH. POST (May 31, 2018, 5:34 PM), <https://www.washingtonpost.com/news/wonk/wp/2018/05/31/trump-has-officially-put-more-tariffs-on-u-s-allies-than-on-china/> [https://perma.cc/Z43J-RC8D].

<sup>33</sup> Ana Swanson & Jim Tankersley, *Mexico, Hitting Back, Imposes Tariffs on \$3 Billion Worth of U.S. Goods*, N.Y. TIMES (June 5, 2018), <https://www.nytimes.com/2018/06/05/us/politics/trump-trade-canada-mexico-nafta.html> [https://perma.cc/8RU9-E5PP].

<sup>34</sup> *Canada Retaliatory Tariffs on US Goods Come Into Force*, BBC NEWS (July 1, 2018), <https://www.bbc.com/news/world-us-canada-44635490> [https://perma.cc/GV8U-ELF5].

<sup>35</sup> Katie Dangerfield, *NAFTA Deal Reached: Canada, U.S., Mexico Reach Trade Agreement Under New Name*, GLOBAL NEWS (Sept. 30, 2018, 9:13 PM), <https://globalnews.ca/news/4500068/nafta-2018-agreement-finalized/> [https://perma.cc/VW6H-XPV8].

NAFTA, but also provides farmers with new access to Canadian markets.<sup>36</sup> The USMCA aims to revitalize U.S. manufacturing by raising labor standards for Mexican workers and employing “rules of origin” provisions, which condition tariff-free treatment on a certain percentage of a finished good’s components being manufactured in the NAFTA region.<sup>37</sup>

## II. U.S. AGRICULTURE: NAFTA VS. THE USMCA

### A. U.S. Agriculture Under NAFTA

#### i. The U.S. Agricultural Sector Flourished Under NAFTA

U.S. farmers fared well under NAFTA. Over eighty agricultural groups and corporations, representing every sector of the agricultural industry, petitioned jointly to the U.S. Secretary of Commerce explaining NAFTA’s positive impacts on the industry.<sup>38</sup> Removal of trade barriers within the NAFTA region gave U.S. farmers access to new customers, which massively increased agricultural exports.<sup>39</sup> Under NAFTA, U.S. agricultural exports to Mexico more than quintupled.<sup>40</sup>

NAFTA helped Mexico and Canada to become critical sources of supply and demand for U.S. farmers.<sup>41</sup> According to the United States Department of Agriculture (“USDA”) NAFTA supported 25,000 jobs related to corn farming and facilitated one-third of U.S. pork exports and over half of U.S. vegetable exports.<sup>42</sup> NAFTA set the stage for Mexico to become the U.S.’s top export customer for several U.S. grown products, including beef, rice, soybean meal, corn sweeteners, and apples.<sup>43</sup>

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<sup>36</sup> See FAS Directive 0202.19, Secretary Perdue Statement on USMCA Agreement (U.S.D.A. 2019), <https://www.fas.usda.gov/newsroom/secretary-perdue-statement-usmca-agreement> [<https://perma.cc/EV96-TUVN>]; Rob Portman, *USMCA is a Needed Upgrade From NAFTA. Let's Get it Passed.*, WASH. POST (Sept. 9, 2019, 2:17 PM), [https://www.washingtonpost.com/opinions/usmca-is-a-needed-upgrade-from-nafta-lets-get-it-passed/2019/09/09/c31e1862-d015-11e9-b29b-a528dc82154a\\_story.html](https://www.washingtonpost.com/opinions/usmca-is-a-needed-upgrade-from-nafta-lets-get-it-passed/2019/09/09/c31e1862-d015-11e9-b29b-a528dc82154a_story.html) [<https://perma.cc/9LKP-RFSD>].

<sup>37</sup> See *Rebalancing Trade to Support Manufacturing*, *supra* note 13.

<sup>38</sup> *NAFTA's Impact on U.S. Agriculture*, CME GROUP (May 1, 2018), <https://www.cmegroup.com/education/articles-and-reports/naftas-impact-on-us-agriculture.html> [<https://perma.cc/2NZH-B4S2>].

<sup>39</sup> Jacob Bunge, *U.S. Farmers Welcome New North American Trade Pact*, WALL ST. J. (Oct. 1, 2018, 2:01 PM), <https://www.wsj.com/articles/u-s-farmers-welcome-new-trade-pact-with-mexico-canada-1538401359> [<https://perma.cc/B625-6X46>].

<sup>40</sup> From 1991 to 1993, U.S. agricultural exports to Mexico averaged \$3.5 billion which jumped to over \$18 billion from 2014 to 2017. HOPKINSON IN10962, *supra* note 29.

<sup>41</sup> Bunge, *supra* note 39.

<sup>42</sup> *Id.*

<sup>43</sup> Kevin Skunes, *NAFTA has Helped Grow American Agriculture for Two Decades*, HILL (Jan. 23, 2018, 5:45 PM), <https://thehill.com/opinion/energy-environment/370363-nafta-has-helped-grow-american-agriculture-for-two-decades> [<https://perma.cc/TMV2-BX5S>].

U.S. government subsidies, particularly with respect to corn production, helped American farmers excel under NAFTA.<sup>44</sup> Mexico is the U.S. corn industry's biggest customer.<sup>45</sup> Before NAFTA, the Mexican government limited corn imports to times when its own production failed to meet the country's needs.<sup>46</sup> NAFTA prohibited Mexico from limiting its corn imports but still allowed the U.S. to subsidize its farmers.<sup>47</sup> After NAFTA, U.S. corn quickly flooded the Mexican market.<sup>48</sup> More corn drove down the price of corn in Mexico, which meant that many Mexican farmers could no longer sell corn at a price sufficient to support themselves.<sup>49</sup> In NAFTA's first decade, over 900,000 Mexican farmers lost their jobs.<sup>50</sup>

NAFTA is not without criticism from U.S. farmers. The last few decades have marked a decline of local family farms and the rise of large, industrial farms.<sup>51</sup> NAFTA increased the "size of the pie," but industrial farms now "control most of the slices."<sup>52</sup> Despite the massive increase in agricultural exports, America shed over 100,000 farms between 2011 and 2018.<sup>53</sup> NAFTA and globalization in general likely contributed to the industry consolidation.<sup>54</sup> Generally, free trade agreements allow farmers from all over the world to sell their crops in U.S. markets, which makes prices lower and more volatile.<sup>55</sup> Large industrial farms typically operate with lower costs, which allows them to sell at lower prices and withstand price fluctuations.<sup>56</sup>

According to the USDA, the change in industry composition "reflects a farm economy experiencing rapid technological change."<sup>57</sup> Farms that implement new technology can produce more crops at cheaper prices, which naturally drives out

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<sup>44</sup> Renée Alexander, *Want to Understand the Border Crisis? Look to American Corn Policy*, COUNTER (July 24, 2018, 12:51 PM), <https://thecounter.org/border-crisis-immigration-mexican-corn-nafta/> [<https://perma.cc/2Z6D-VMNQ>].

<sup>45</sup> *NAFTA's Impact on U.S. Agriculture*, *supra* note 38. In 2017 alone, the U.S. exported \$2.7 billion worth of corn to Mexico. *Id.*

<sup>46</sup> Alexander, *supra* note 44.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> Shasta Darlington & Patrick Gillespie, *Mexican Farmer's Daughter: NAFTA Destroyed Us*, CNN BUS. (Feb. 9, 2017, 12:19 PM), <https://money.cnn.com/2017/02/09/news/economy/nafta-farming-mexico-us-corn-jobs/index.html> [<https://perma.cc/8EGA-T3GK>]. Many of these displaced farmers decided to work in factories, which contributed to the abundance of cheap labor in Mexico. *See* Linthicum, *supra* note 28. Now, most of Mexico's agricultural output comes from large industrial farming operations. *See* Alexander, *supra* note 44.

<sup>51</sup> Kristina Johnson & Samuel Fromartz, *NAFTA's 'Broken Promises': These Farmers Say They Got The Raw End Of Trade Deal*, NPR (Aug. 7, 2017, 7:00 AM), <https://www.npr.org/sections/thesalt/2017/08/07/541671747/nafta-s-broken-promises-these-farmers-say-they-got-the-raw-end-of-trade-deal> [<https://perma.cc/8HV9-2Q38>].

<sup>52</sup> *Id.*

<sup>53</sup> Alana Semuels, *'They're Trying to Wipe Us Off the Map.'* *Small American Farmers Are Nearing Extinction*, TIME (Nov. 27, 2019, 1:16 PM), <https://time.com/5736789/small-american-farmers-debt-crisis-extinction/> [<https://perma.cc/8YFX-MY7A>].

<sup>54</sup> Johnson & Fromartz, *supra* note 51.

<sup>55</sup> Semuels, *supra* note 53.

<sup>56</sup> *See id.*

<sup>57</sup> Christopher Burns, *The Number of Midsize Farms Declined From 1992 to 2012, But Their Household Finances Remain Strong*, U.S. DEP'T OF AGRIC. (Dec. 5, 2016), <https://www.ers.usda.gov/amber-waves/2016/december/the-number-of-midsize-farms-declined-from-1992-to-2012-but-their-household-finances-remain-strong/> [<https://perma.cc/D3E7-674Z>].

smaller, less efficient competing farmers. Ultimately, NAFTA simply facilitated unobstructed access to new markets, which expanded the industry and naturally propelled larger businesses to the top.<sup>58</sup> Placing trade barriers against Mexico, inevitably prompting retaliatory tariffs and reducing demand for U.S. crops from all farmers, is simply not a preferred method for curbing consolidation in the agricultural sector.

Farmers also criticize NAFTA because it allowed Canada to retain a pricing system that discriminated against U.S. farmers.<sup>59</sup> Canada applies a strict import quota system on dairy products and levies tariffs as high as 300% for imports that exceed the quota.<sup>60</sup> In 2017, Canada imposed even more protections for its dairy industry by implementing a milk pricing system.<sup>61</sup> Fortunately, the USMCA limits Canada's ability to impose these trade barriers.<sup>62</sup>

### *ii. Post-2015 Agricultural Trade Deficits Illustrate the Danger of Trade Barriers*

NAFTA's success for the agricultural sector may be reflected by the U.S.-Mexico agricultural trade balance. The U.S. experienced an agricultural trade surplus with Mexico every year between 1991 and 2015.<sup>63</sup> Between 2016 and 2018, however, the U.S. averaged a \$6 billion trade deficit with Mexico.<sup>64</sup> Three factors primarily caused these deficits.

First, the U.S. dollar has been relatively strong compared to the Mexican Peso since 2015.<sup>65</sup> A stronger currency results in cheaper imports and more expensive exports.<sup>66</sup> With most countries, the value of its currency fluctuates with the strength of the economy.<sup>67</sup> Generally, the stronger the economy, the higher-priced the

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<sup>58</sup> Johnson & Fromartz, *supra* note 51.

<sup>59</sup> Katie Lobosco, *Why Canada's Dairy Market is a Target in NAFTA Talks*, CNN POL. (Sep. 5, 2018, 8:33 PM), <https://www.cnn.com/2018/09/05/politics/nafta-canada-dairy-tariffs/index.html> [<https://perma.cc/XFG2-KZM6>].

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> See Heather Long, *The USMCA is Finally Done. Here's What is in It.*, WASH. POST (Dec. 10, 2019, 5:13 PM), <https://www.washingtonpost.com/business/2019/12/10/usmca-is-finally-done-deal-after-democrats-sign-off-heres-what-is-it/> [<https://perma.cc/737S-SZS4>] [hereinafter *The USMCA is Finally Done*].

<sup>63</sup> See RENÉE JOHNSON, CONG. RESEARCH SERV., IF10800, AGRIC. TRADE BALANCES UNDER NAFTA (Dec. 29, 2017), <https://nationalaglawcenter.org/wp-content/uploads/assets/crs/IF10800.pdf> [<https://perma.cc/VHV6-FHK9>].

<sup>64</sup> Philip Martin, *Mexico-US Agricultural Trade*, WILSON CENTER (June 24, 2020), <https://www.wilsoncenter.org/article/mexico-us-agricultural-trade#:~:text=The%20US%20also%20has%20a,of%20%246%20billion%20a%20year> [<https://perma.cc/F5BC-55U6>].

<sup>65</sup> Steve Burak et al., *Gambling on Exports: A Review of the Facts on U.S. Agricultural Trade*, FARMDOC DAILY (June 8, 2018), <https://farmdocdaily.illinois.edu/2018/06/gambling-on-exports-review-facts-us-agri-trade.html> [<https://perma.cc/R2M8-Z3JZ>].

<sup>66</sup> *Id.*

<sup>67</sup> See Tejvan Pettinger, *Is a Strong Economy Generally Accompanied by a Strong Currency?*, ECON. HELP (Nov. 7, 2018), <https://www.economicshelp.org/blog/143224/economics/is-a-strong-economy-generally-accompanied-by-a-strong-currency/> [<https://perma.cc/P5PN-3F6D>].

currency.<sup>68</sup> Lower priced currency makes a country's exports more competitive.<sup>69</sup> For example, suppose that the dollar is priced highly so that two pesos are worth one dollar. Mexican citizens would have to spend two pesos to buy a U.S. product worth one dollar, but U.S. residents would only need to spend one dollar to buy a Mexican product worth two pesos. In fact, "Mexico's exchange rates exhibit almost perfect negative correlation with [the U.S.] agricultural trade surplus and deficit."<sup>70</sup> As the dollar strengthens, exports to Mexico decrease, adversely affecting the U.S. trade balance.<sup>71</sup>

Second, the prices of primary U.S. agricultural exports fell.<sup>72</sup> If the crops sold in 2017 were sold at 2012 prices, when crops were selling at a record high, the deficit would have been drastically reduced.<sup>73</sup> Third, President Trump's trade disputes increased the deficits. In response to President Trump's threats to withdraw from NAFTA, Mexican farming operations lost confidence in the U.S. as a reliable supplier and began to search for alternate sources.<sup>74</sup> In 2017, Mexican buyers imported ten times more corn from Brazil than in 2016.<sup>75</sup>

In May 2018, President Trump enacted tariffs against Mexican imports, to which Mexico responded with retaliatory tariffs.<sup>76</sup> The Congressional Research Service ("CRS") predicted that retaliatory tariffs could adversely impact U.S. farmers by eroding their competitiveness in foreign markets.<sup>77</sup> The CRS also noted that if the tariffs remain in effect long-term, U.S. farmers could lose their market share as suppliers seek out cheaper alternatives.<sup>78</sup> A Purdue University study predicted U.S. agricultural exports could be reduced by as much as \$8 billion after markets adjust to the retaliatory tariffs.<sup>79</sup>

The effects of Mexico's past retaliatory tariffs lend credence to these predictions. In response to the U.S.'s violation of NAFTA trucking provisions, Mexico levied retaliatory tariffs against U.S. agricultural products from 2009 until 2011.<sup>80</sup> During this period of tariffs, U.S. agricultural exports to Mexico fell by \$1.1 billion—a

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<sup>68</sup> *Id.*

<sup>69</sup> Burak et al., *supra* note 65; *see also* Pettinger, *supra* note 67.

<sup>70</sup> Burak et al., *supra* note 65.

<sup>71</sup> *See id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> P.J. Huffstutter & Adriana Barrera, *Exclusive: As Trump Trashes NAFTA, Mexico Turns to Brazilian Corn*, REUTERS (Feb. 22, 2018, 7:35 AM), <https://www.reuters.com/article/us-trump-effect-corn-exclusive/exclusive-as-trump-trashes-nafta-mexico-turns-to-brazilian-corn-idUSKCN1G61J4> [<https://perma.cc/6XDP-PAA7>].

<sup>75</sup> *Id.*

<sup>76</sup> JENNY HOPKINSON, CONG. RES. SERV., R45448, PROFILES AND EFFECTS OF RETALIATORY TARIFFS ON U.S. AGRIC. EXPORTS I (Dec. 31, 2018), <https://crsreports.congress.gov/product/pdf/R/R45448> [<https://perma.cc/Q262-VY3W>].

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> Maksym Chepeliev et al., *How U.S. Agriculture Will Fare Under the USMCA and Retaliatory Tariffs* 18 (Glob. Trade Analysis Project, Working Paper No. 84, 2018).

<sup>80</sup> ERS Directive WRS-15-01, NAFTA at 20: North America's Free-Trade Area and Its Impact on Agriculture (U.S.D.A. 2015), [https://www.ers.usda.gov/webdocs/outlooks/40485/51265\\_wrs-15-01.pdf?v=7367.6](https://www.ers.usda.gov/webdocs/outlooks/40485/51265_wrs-15-01.pdf?v=7367.6) [<https://perma.cc/HL7X-HPUT>].



reduction of nearly 22%.<sup>81</sup> Mexico's history of retaliatory tariffs illustrates the need for the USMCA to retain tariff-free treatment of U.S. agricultural exports.

### *B. The USMCA Improves the U.S. Agricultural Trade Position*

The USMCA leaves the NAFTA agricultural provisions largely unchanged.<sup>82</sup> Under the USMCA, “[a]ll food and agriculture products that [had] zero tariffs under the North American Free Trade Agreement (NAFTA) will remain at zero tariffs.”<sup>83</sup> As its key agricultural change, the USMCA expanded access to the Canadian market.<sup>84</sup> The USMCA keeps Canada's import quota and dairy pricing systems largely in place but allows the U.S. to export more “class 7” dairy products to Canada.<sup>85</sup> This increased dairy access amounts to an additional 2.6% of Canada's dairy market.<sup>86</sup> The USMCA also allows the U.S. to export to Canada more chicken, turkey, and eggs.<sup>87</sup>

The U.S. Farm Bureau predicts that the USMCA will increase U.S. agricultural exports by \$2 billion and increase gross domestic product by \$65 billion.<sup>88</sup> An October 2018 study by the Farm Foundation more conservatively estimates that the USMCA would increase agricultural exports to Canada by \$450 million, which is about 1% of current exports under NAFTA.<sup>89</sup> The USMCA will likely help U.S. farmers, because it preserves the prohibition of trade barriers between the North American countries, reduces uncertainty caused by retaliatory tariffs, and removes Canadian trade barriers. The USMCA's potential effect on U.S. manufacturing, however, is far less clear.

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<sup>81</sup> *Id.*

<sup>82</sup> See FAS Directive 0202.19, *supra* note 36.

<sup>83</sup> *Id.*

<sup>84</sup> See *The USMCA is Finally Done*, *supra* note 62.

<sup>85</sup> *Id.*

<sup>86</sup> Bob Bryan & Joseph Zeballos-Roig, *Trump's New Major Trade Deal Looks a Lot Like NAFTA. Here are Key Differences Between Them.*, MKT. INSIDER (Dec. 10, 2019, 3:43 PM), <https://markets.businessinsider.com/news/stocks/us-canada-mexico-trade-deal-usmca-nafta-details-dairy-auto-dispute-resolution-2018-10-1027579947> [<https://perma.cc/JA5C-B4AR>].

<sup>87</sup> *United States–Mexico–Canada Trade Fact Sheet Agriculture: Market Access and Dairy Outcomes of the USMC Agreement*, OFF. U.S. TRADE REPRESENTATIVE, <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/fact-sheets/market-access-and-dairy-outcomes> [<https://perma.cc/Z9DJ-4ACJ>].

<sup>88</sup> *USMCA*, AM. FARM BUREAU FED'N, <https://www.fb.org/issues/trade/usmca/> [<https://perma.cc/A3XQ-X56Y>].

<sup>89</sup> ANITA REGMI, CONG. RES. SERV., R45661, AGRICULTURAL PROVISIONS OF THE U.S.-MEXICO-CANADA AGREEMENT 14 (Apr. 8, 2019), <https://fas.org/sgp/crs/row/R45661.pdf> [<https://perma.cc/8F9A-28VY>].

### III. U.S. MANUFACTURING: NAFTA VS. THE USMCA

#### A. U.S. Manufacturing Suffered Under NAFTA, But Not Because of NAFTA

##### i. The U.S. Manufacturing Decline

Foreign goods, in 1960, made up only 8% of U.S. purchases.<sup>90</sup> By 2011, that number rose to nearly 60%.<sup>91</sup> As U.S. residents purchased less U.S.-made goods, U.S. factories laid off workers.<sup>92</sup> Since January 2000, U.S. manufacturing employment has fallen approximately 30%, from 17.2 million jobs to 12.2 million jobs.<sup>93</sup> The U.S. automobile industry alone lost 350,000 jobs—approximately 1/3 of all workers—during NAFTA’s first two decades.<sup>94</sup>

Some economists attribute the manufacturing decline to increased technology rather than free trade.<sup>95</sup> Automation allows factories to produce more products using fewer employees, which causes job loss.<sup>96</sup> Still, NAFTA’s enactment clearly coincides with a decrease in U.S. manufacturing and an increase in Mexican manufacturing. U.S. foreign direct investment (“FDI”) in Mexico statistics support this conclusion.<sup>97</sup> Generally, FDI occurs when a company invests in operations in a different country.<sup>98</sup> Businesses commonly produce FDI by building a new factory in another country or by purchasing an existing business in another country.<sup>99</sup> From 1993 to 2017, U.S. FDI in Mexico increased over 600% from \$15.2 billion to \$109.7 billion.<sup>100</sup> Under NAFTA, more U.S. companies invested resources in their operations in Mexico.<sup>101</sup>

The disparity in manufacturing wages between the U.S. and Mexico incentivizes companies to relocate south of the border.<sup>102</sup> For example, in the late 2000s, Delphi

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<sup>90</sup> Bradley Blackburn & Eric Noll, *Made in America: A Brief History of U.S. Manufacturing*, ABC NEWS (Feb. 4, 2011, 6:04 PM), <https://abcnews.go.com/Business/made-america-middle-class-built-manufacturing-jobs/story?id=12916118> [<https://perma.cc/3ENV-YZVS>].

<sup>91</sup> *Id.*

<sup>92</sup> See *id.*; U.S. Bureau of Labor Statistics, *All Employees, Manufacturing*, FRED ECON. DATA, <https://fred.stlouisfed.org/series/MANEMP> [<https://perma.cc/H2J3-8ALN>].

<sup>93</sup> See U.S. Bureau of Labor Statistics, *supra* note 92.

<sup>94</sup> Eduardo Porter, *Nafta May Have Saved Many Autoworkers’ Jobs*, N.Y. TIMES (Mar. 29, 2016), <https://www.nytimes.com/2016/03/30/business/economy/nafta-may-have-saved-many-autoworkers-jobs.html?auth=login-email&login=email> [<https://perma.cc/BD3M-EK72>].

<sup>95</sup> Jeffrey Bartash, *China Really is to Blame for Millions of Lost U.S. Manufacturing Jobs, New Study Finds*, MARKETWATCH (May 14, 2018, 1:30 PM), <https://www.marketwatch.com/story/china-really-is-to-blame-for-millions-of-lost-us-manufacturing-jobs-new-study-finds-2018-05-14> [<https://perma.cc/K2JH-PMAH>].

<sup>96</sup> *Id.*

<sup>97</sup> VILLARREAL IF11175, *supra* note 20; M. ANGELES VILLARREAL, CONG. RES. SERV., RL32934, U.S.-MEXICO ECONOMIC RELATIONS: TRENDS, ISSUES, AND IMPLICATIONS (Jun. 25, 2020), <https://fas.org/sgp/crs/row/RL32934.pdf> [<https://perma.cc/AE79-X4ZR>] [hereinafter VILLARREAL RL32934].

<sup>98</sup> James Chen, *Foreign Direct Investment (FDI)*, INVESTOPEDIA (Feb. 24, 2020), <https://www.investopedia.com/terms/f/fdi.asp> [<https://perma.cc/TL38-G59J>].

<sup>99</sup> *Id.*

<sup>100</sup> VILLARREAL IF11175, *supra* note 20.

<sup>101</sup> VILLARREAL RL32934, *supra* note 97.

<sup>102</sup> See Linthicum, *supra* note 28.

Automotive, once one of the largest employers in northern Ohio, relocated their factory from northern Ohio to Mexico.<sup>103</sup> Delphi employees in Ohio made \$30 per hour, but Delphi employees in Mexico earn only \$1 per hour.<sup>104</sup> Another company, Brake Parts Inc., manufactured brake calipers in California for nearly thirty years.<sup>105</sup> In 2015, Brake Parts laid off 280 workers and relocated their factory to Mexico.<sup>106</sup> A Brake Parts executive explained that the company's competitors were located in Mexico where they could pay workers only \$3.50 to \$4 per hour.<sup>107</sup> Yet another company, Rexnord Corp., laid off 300 workers and moved their factory from Indianapolis to Mexico.<sup>108</sup> Relocation to Mexico reduced Rexnord's labor costs from \$25 per hour with benefits to only \$3 per hour without benefits—a cost savings of \$15.5 million per year.<sup>109</sup> Mondelez International, another company that relocated to Mexico, claimed its move saved \$46 million per year.<sup>110</sup>

Low wages in Mexico present a tempting opportunity to lower costs and maximize profits. Some may say greed drives these moves, but relocating can become a borderline necessity for a company after its competitors relocate. It is very difficult for a company paying workers \$25 per hour to compete with a company in the same industry paying workers \$3 per hour for the same work. Before NAFTA, the U.S. could mitigate the incentive to relocate by enacting trade barriers, but NAFTA prevented any such remedy.<sup>111</sup>

#### *ii. China May Be Primarily Responsible for the U.S. Manufacturing Decline*

Many economists argue that China, not NAFTA, caused the decline in U.S. manufacturing.<sup>112</sup> From 2012 to 2019, the U.S. averaged a \$354 billion trade deficit with China and only a \$67.9 million trade deficit with Mexico.<sup>113</sup> The trade deficit with China has quintupled since 2001, the year China joined the World Trade Organization (“WTO”).<sup>114</sup> This five-fold increase caused 3.4 million lost U.S. jobs, nearly 75% of which were in manufacturing.<sup>115</sup> FDI figures also suggest that U.S. companies are diverting an increasing amount of resources to China operations.

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<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> Jim Puzanghera, *These Three U.S. Companies Moved Jobs to Mexico. Here's Why*, L.A. TIMES (Dec. 19, 2016, 6:00 AM), <https://www.latimes.com/business/la-fi-mexico-jobs-20161212-story.html> [<https://perma.cc/J9W2-83HC>].

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> See VILLARREAL & FERGUSON, *supra* note 3, at 5.

<sup>112</sup> See, e.g., Porter, *supra* note 94; *NAFTA, 20 Years Later: Do the Benefits Outweigh the Costs?*, *supra* note 25.

<sup>113</sup> *Trade in Goods with China*, U.S. CENSUS BUREAU, <https://www.census.gov/foreign-trade/balance/c5700.html> [<https://perma.cc/F6C6-WD6K>]; *Trade in Goods with Mexico*, *supra* note 20.

<sup>114</sup> Margot Roosevelt, *California Lost More Manufacturing Jobs to China Than Any Other State, Report Says*, L.A. TIMES (Jan. 30, 2020, 7:30 AM), <https://www.latimes.com/business/story/2020-01-30/la-fi-california-china-trade-job-loss> [<https://perma.cc/J8B2-TJS2>].

<sup>115</sup> ROBERT E. SCOTT & ZANE MOKHIBER, ECON. POL'Y INST., 156645, *THE CHINA TOLL DEEPENS*, 2 (Oct. 23, 2018), <https://files.epi.org/pdf/156645.pdf> [<https://perma.cc/BYR3-HBLS>].

From 2001 to 2019, U.S. FDI in China increased ten-fold from approximately \$12 billion to approximately \$116 billion.<sup>116</sup> According to a professor at the Wharton School of the University of Pennsylvania, an Ivy League business school, the U.S.-China trade imbalance means that “for every job we have lost in the U.S. to Mexico, five [jobs] were lost to China.”<sup>117</sup>

Cheap Chinese currency and low Chinese wages power the U.S. job loss.<sup>118</sup> China controls its currency prices so that its currency is almost always cheaper than the dollar, which makes their goods cheaper than U.S. goods.<sup>119</sup> Additionally, China’s manufacturing sector is competitive because the country’s low cost of living and subpar workers’ rights allow companies to pay their workers very low wages.<sup>120</sup> In 2018, Chinese manufacturing workers were paid an average \$5.51 per hour,<sup>121</sup> while U.S. manufacturing workers were paid an average of \$26.97 per hour—a disparity of over \$20 per hour.<sup>122</sup> Other Asian countries pay as little as \$2.73 per hour.<sup>123</sup> While Chinese wages are consistently rising in comparison to other Asian countries, U.S. manufacturing wages remain far less competitive than Chinese manufacturing wages.<sup>124</sup>

### iii. U.S. Manufacturing May Have Fared Worse Without NAFTA

Many economists credit NAFTA for making the U.S. manufacturing more globally competitive by developing supply chains across North America.<sup>125</sup> Much of the trade between the U.S. and Mexico occurs in the context of production sharing, with each country involved in different manufacturing steps with respect to the same

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<sup>116</sup> Statista Research Department, *Direct Investment Position of the United States in China From 2000-2019*, STATISTA (Dec. 9, 2020), <https://www.statista.com/statistics/188629/united-states-direct-investments-in-china-since-2000/> [<https://perma.cc/V2PG-DGRW>].

<sup>117</sup> *NAFTA, 20 Years Later: Do the Benefits Outweigh the Costs?*, *supra* note 25.

<sup>118</sup> Bartash, *supra* note 95; Kimberly Amadeo, *US Trade Deficit With China and Why It’s So High*, BALANCE (Jan. 21, 2021), <https://www.thebalance.com/u-s-china-trade-deficit-causes-effects-and-solutions-3306277#annual-trade-deficit> [<https://perma.cc/Z8V7-JD3M>] [hereinafter *US Trade Deficit With China*]; see also SCOTT & MOKHIBER, *supra* note 115, at 3, 5.

<sup>119</sup> *E.g.*, *US Trade Deficit With China*, *supra* note 118; ROBERT E. SCOTT & WILL KIMBALL, ECON. POL’Y INST., BRIEFING PAPER 385, CHINA TRADE, OUTSOURCING AND JOBS, 21 (Dec. 11, 2014), <https://files.epi.org/2014/bp385-china-trade-deficit.pdf> [<https://perma.cc/MW72-FKRL>].

<sup>120</sup> *US Trade Deficit With China*, *supra* note 118; see also SCOTT & KIMBALL, *supra* note 119, at 23.

<sup>121</sup> M. Szmigiera, *Manufacturing Labor Costs Per Hour: China, Vietnam, Mexico 2016-2020*, STATISTA (Mar. 12, 2021), <https://www.statista.com/statistics/744071/manufacturing-labor-costs-per-hour-china-vietnam-mexico/> [<https://perma.cc/7QEH-RTU5>].

<sup>122</sup> Statista Research Department, *Hourly Earnings in U.S. Manufacturing 2006-2019*, STATISTA (May 11, 2020), <https://www.statista.com/statistics/187380/hourly-earnings-in-us-manufacturing-since-1965/> [<https://perma.cc/RT9A-G8V6>].

<sup>123</sup> Szmigiera, *supra* note 121 (average manufacturing wage in Vietnam in 2018).

<sup>124</sup> See Sophia Yan, *‘Made in China’ Isn’t So Cheap Anymore, and That Could Spell Headache for Beijing*, CNBC (Feb. 27, 2017, 12:37 AM), <https://www.cnbc.com/2017/02/27/chinese-wages-rise-made-in-china-isnt-so-cheap-anymore.html> [<https://perma.cc/LQ39-ANA5>]; see also Dmitriy Plekhanov, *Is China’s Era of Cheap Labor Really Over?*, DIPLOMAT (Dec. 13, 2017), <https://thediplomat.com/2017/12/is-chinas-era-of-cheap-labor-really-over/> [<https://perma.cc/PB88-K9GU>].

<sup>125</sup> See Floyd, *supra* note 15; VILLARREAL & FERGUSON, *supra* note 3, at 16; VILLARREAL IF11175, *supra* note 20.

final product.<sup>126</sup> Taking advantage of cheap labor, many companies produce basic parts in Mexico and ship them to the U.S. to assemble the more complicated finished products.<sup>127</sup> Despite the U.S. automobile industry shedding a third of its workforce, the total value added by car and car part makers in the U.S. is only slightly lower than it was in NAFTA's first year.<sup>128</sup> Underscoring the integration of manufacturing between the U.S. and Mexico, Delphi Automotive's CFO warned that if the border were closed to trade, "in less than a week, all of the people who voted for [Trump] in Michigan and Ohio would be out of work."<sup>129</sup>

The automobile industry is especially integrated between the U.S. and Mexico. For example, the Honda CR-V is assembled in Mexico, but roughly 70% of its content is either U.S. or Canadian.<sup>130</sup> This supply chain integration contributes to the 4.9 million U.S. jobs created by trade with Mexico.<sup>131</sup> This means that one out of twenty-nine U.S. jobs depends on the country's economic relationship with Mexico.<sup>132</sup> Gordon Hanson, a professor at the University of California, San Diego, explained to the New York Times that "[w]ithout the ability to move lower-wage jobs to Mexico we would have lost the whole [automobile] industry."<sup>133</sup>

From a cost perspective, low wages in Mexico provide an integral way for the U.S. to compete with Asia's wages.<sup>134</sup> Without NAFTA, it could be cheaper for companies to simply abandon the U.S.'s expensive labor entirely rather than incorporate the U.S. into their supply chains. A trade agreement that levies high tariffs on U.S. imports from Mexico could eliminate the cost feasibility of the NAFTA region. Instead of forcing manufacturing jobs back into the United States, high tariffs against Mexico have the potential to do just the opposite.

## *B. The USMCA and Manufacturing*

### *i. "Rules of Origin" Provisions*

The USMCA implements "rules of origin" provisions to encourage manufacturers to employ more U.S. workers.<sup>135</sup> Rules of origin provisions condition tariff-free treatment on exported finished goods using a certain percentage of components that were manufactured in the NAFTA region.<sup>136</sup> Goods that do not meet the rules of origin requirements are subject to the "most-favored-nation" tariff rate.<sup>137</sup>

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<sup>126</sup> VILLARREAL & FERGUSSON, *supra* note 3, at 16–17.

<sup>127</sup> *Id.* at 32.

<sup>128</sup> Porter, *supra* note 94.

<sup>129</sup> Linthicum, *supra* note 28.

<sup>130</sup> Porter, *supra* note 94.

<sup>131</sup> Alexia Fernández Campbell, *Nearly 5 Million U.S. Jobs Depend on Trade With Mexico*, ATLANTIC (Dec. 9, 2016), <https://www.theatlantic.com/business/archive/2016/12/mexico-nafta-trade/510008/> [<https://perma.cc/KR9H-GX6Q>].

<sup>132</sup> *Id.*

<sup>133</sup> Porter, *supra* note 94.

<sup>134</sup> *See id.*

<sup>135</sup> *Rebalancing Trade to Support Manufacturing*, *supra* note 13.

<sup>136</sup> Sue Senger, *Understanding the NAFTA Rules of Origin*, SHIPPING SOLUTIONS (May 23, 2018), <https://www.shippingsolutions.com/blog/nafta-rules-of-origin-part-1> [<https://perma.cc/PEW3-AU8N>].

<sup>137</sup> *Id.*

The USMCA increases the required percentage of components manufactured in a NAFTA region for several manufacturing industries, including automobiles, textiles, and cosmetics.<sup>138</sup> The automobile rules of origin provisions may have the largest impact on the North American economy. At 3.5% of the U.S. gross domestic product, the automobile industry is one of the most important segments of the U.S. economy.<sup>139</sup>

The USMCA contains several rules of origin provisions intended to stimulate growth in the U.S. automobile industry. The USMCA increases NAFTA's rule of origin requirement by requiring at least 75% of an automobile's components to be manufactured in the NAFTA region.<sup>140</sup> That number was 62.5% under NAFTA.<sup>141</sup> In addition, 70% of a vehicle's steel and aluminum must originate in North America.<sup>142</sup>

The USMCA's automobile rules of origin requirements could incentivize automobile producers to incorporate more of their supply chains in the NAFTA region. Under NAFTA, automobile producers have arranged their supply chains in the most efficient ways possible including sourcing some parts from outside of the NAFTA region.<sup>143</sup> Faced with the new 75% requirement, businesses will likely compare the costs of changing their supply chains to the cost of a tariff and take whichever route is cheaper. Because automobile companies generally prefer to keep component sources near assembly plants to minimize delays, the 75% requirement may prompt companies to integrate more of their supply chains into the NAFTA-region.<sup>144</sup>

If businesses incorporate more of their supply chains into the NAFTA region, employment numbers will rise, but so will prices for consumers.<sup>145</sup> If automobile manufacturers modify their pre-USMCA cost-minimizing supply chains to source more parts from the NAFTA region, they will likely pay more for those parts than before.<sup>146</sup> Manufacturers may be able to absorb a portion of the costs as lost profit or

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<sup>138</sup> See *Rebalancing Trade to Support Manufacturing*, *supra* note 13.

<sup>139</sup> KIM HILL ET AL., CTR. AUTOMOTIVE RES., CONTRIBUTION OF THE AUTOMOTIVE INDUSTRY TO THE ECONOMIES OF ALL FIFTY STATES AND THE UNITED STATES (Apr. 2010), <https://www.cargroup.org/publication/contribution-of-the-automotive-industry-to-the-economies-of-all-fifty-state-and-the-united-states/> [<https://perma.cc/4JKX-9PDX>].

<sup>140</sup> Kimberly Amadeo, *Trump's NAFTA Changes*, BALANCE (Feb. 4, 2021), <https://www.thebalance.com/donald-trump-nafta-4111368#6-changes-to-nafta-under-the-usmca> [<https://perma.cc/LRT9-E9BA>] [hereinafter *Trump's NAFTA Changes*].

<sup>141</sup> *Id.*

<sup>142</sup> M. ANGELES VILLARREAL ET AL., CONG. RES. SERV., IF11387, USMCA: MOTOR VEHICLE PROVISIONS AND ISSUES (Dec. 19, 2019), <https://crsreports.congress.gov/product/pdf/IF/IF11387> [<https://perma.cc/8TYP-ATLX>].

<sup>143</sup> See Finbarr Bermingham, *U.S. and Chinese Companies Fear Trump's Coming Trade War On Car Industry*, POLITICO (Apr. 17, 2019, 5:19 AM), <https://www.politico.com/story/2019/04/17/us-china-trade-car-industry-1358959> [<https://perma.cc/GR7C-X9SC>].

<sup>144</sup> Owen Stuart, *How Will the Shift from NAFTA to USMCA Affect the Auto Industry?*, INDUS. WK. (Oct. 12, 2018), <https://www.industryweek.com/the-economy/article/22026500/how-will-the-shift-from-nafta-to-usmca-affect-the-auto-industry> [<https://perma.cc/8VHY-HRSK>].

<sup>145</sup> *E.g.*, VILLARREAL ET AL., *supra* note 142.

<sup>146</sup> Stuart, *supra* note 144. Automobile manufacturers have four main options for addressing this cost increase: (1) absorb the higher costs as lost profit, (2) renegotiate component supply contracts to pass the cost increase to suppliers, (3) change the product mix to make offerings less expensive, or (4) raise the

renegotiate supply contracts to push costs up the supply chain, but some of the cost increase will inevitably flow to consumer prices.<sup>147</sup>

Automobile executives anticipate cost increases caused by the USMCA.<sup>148</sup> In a 2018 survey of 100 U.S.-based automotive executives, 63% expected USMCA-related production cost increases and 58% believed the costs will be passed onto consumers.<sup>149</sup> Many of the executives already took concrete steps to comply with the new USMCA requirements.<sup>150</sup> Thirty-six percent are negotiating with suppliers to seek production-related cost savings and “[s]eventy-eight percent cite[d] finding North American suppliers or identifying alternate suppliers as a near-term priority for their supply chains.”<sup>151</sup>

While the 75% requirement could increase North American employment, it could lead to the opposite result, with supply chains becoming even more outsourced. To receive tariff-free treatment under NAFTA, companies had to incorporate at least 62.5% of their supply chains in the NAFTA region.<sup>152</sup> If increasing to 75% proves too burdensome, simply paying the tariff will become the preferred option. After paying the tariff, there will be no trade barrier incentives to encourage companies to incorporate even 62.5% of their supply chains in the NAFTA region. Absent trade agreements levying tariffs against other countries, businesses will be free to source parts from anywhere in the world.

## ii. Automobile Wage Provisions

Even if the rules of origin requirements bring jobs back to the NAFTA region, many of those jobs will go to lower-cost regions in Mexico. To address this issue, the USMCA contains several wage and workers’ rights provisions that increase the cost of doing business in Mexico.<sup>153</sup> First, “[a]t least 40% of the value of a passenger

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price of finished goods and pass the increase on to consumers. *Id.* Automobile producers will likely implement a combination of all four options, resulting in some form of increase in the price of cars. *Id.*

<sup>147</sup> Gabrielle Jasinski, *LevaData Survey: 63 Percent of Automotive Executives Believe Production Costs Will Increase Due to USMCA*, BUS. WIRE (Jan. 10, 2019, 9:00 AM), <https://www.businesswire.com/news/home/20190110005101/en/> [<https://perma.cc/CD7Q-9W4J>]; Bridget McCrea, *How Will USMCA Impact the Automotive Supply Chain?*, SOURCE TODAY (Feb. 13, 2019), <https://www.sourcetoday.com/supply-chain/article/21867315/how-will-usmca-impact-the-automotive-supply-chain> [<https://perma.cc/3DJF-LXMB>].

<sup>148</sup> Jasinski, *supra* note 147; McCrea, *supra* note 147.

<sup>149</sup> Jasinski, *supra* note 147; McCrea, *supra* note 147.

<sup>150</sup> McCrea, *supra* note 147.

<sup>151</sup> *Id.*

<sup>152</sup> See *Trump’s NAFTA Changes*, *supra* note 140.

<sup>153</sup> See *Rebalancing Trade to Support Manufacturing*, *supra* note 13. Because cheap labor was the driving force behind the mass exodus of U.S. companies crossing the border, it may seem counterintuitive for Mexico to accept the USMCA wage and labor provisions. But under its first labor-friendly president in modern Mexican history, Mexico has passed several laws improving workers’ rights with the USMCA serving as part of an overarching goal to raise working standards. Lauren Kaori Gurley, *Is Mexico on the Brink of a Labor Revolution?*, NEW REPUBLIC (Apr. 5, 2019), <https://newrepublic.com/article/153467/mexico-brink-labor-revolution> [<https://perma.cc/UTZ9-AFC9>]. Further, Mexico presented little opposition to the USMCA because approximately 80% of its exports are sent to the U.S., and Mexico hopes to preserve positive relations with the U.S. and Canada after the uncertainty caused by President Trump’s threats to disrupt trade. Mary Beth Sheridan, *Mexico Becomes*

car and 45% of a light truck must be made by workers earning at an average of \$16 per hour.”<sup>154</sup> Second, Mexico must pass pro-unionization laws.<sup>155</sup> Automotive companies that do not meet the above requirements will be subject to the most-favored-nation tariff of 2.5%.<sup>156</sup> A committee will be formed to monitor Mexico’s progress on labor issues against clear benchmarks set by the agreement.<sup>157</sup> NAFTA did not contain any provisions related to wages or workers’ rights.<sup>158</sup>

Automobile manufacturers faced with the new USMCA wage provisions will therefore have three primary courses of action: (1) pay 40% to 45% of workers at least \$16 per hour; (2) pay the 2.5% tariff and keep wages the same; or (3) if wages overseas are cheaper than wages in the NAFTA region, and that cost savings outweighs the costs and uncertainties associated with relocation, leave the NAFTA region for countries with cheaper wages.

The average hourly wage for automobile assembly workers in Mexico was \$7.34 in 2017.<sup>159</sup> In the U.S., workers involved in motor vehicles and parts manufacturing were paid \$23.50 per hour on average in 2019.<sup>160</sup> In China, the average automobile industry wage was between \$5.00 and \$6.00 per hour in 2017.<sup>161</sup> Automobile industry wages are even cheaper in other Asian countries. In India, for example, the average automobile industry wage was only \$1.09 per hour in 2017.<sup>162</sup>

The USMCA wage provisions could incentivize manufacturers to hire more U.S. workers by making Mexican workers more expensive. However, the \$16 per hour required wage is still almost \$8 per hour less than the U.S. average automobile industry wage.<sup>163</sup> Therefore, it could also incentivize manufacturers to simply raise wages for their workers in Mexico. In response to the wage requirements, several automobile manufacturers in Mexico have already chosen to triple their Mexican wages rather than relocate to the U.S.<sup>164</sup> More importantly, it could cause automobile

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*First Country to Ratify New North American Trade Deal*, WASH. POST (June 19, 2019, 8:42 PM), [https://www.washingtonpost.com/world/the\\_americas/mexico-becomes-first-country-to-ratify-usmca-north-american-trade-deal/2019/06/19/500dd8c0-92b3-11e9-956a-88c291ab5c38\\_story.html](https://www.washingtonpost.com/world/the_americas/mexico-becomes-first-country-to-ratify-usmca-north-american-trade-deal/2019/06/19/500dd8c0-92b3-11e9-956a-88c291ab5c38_story.html) [<https://perma.cc/Y7EE-TB3Q>].

<sup>154</sup> *Trump’s NAFTA Changes*, *supra* note 140.

<sup>155</sup> *The USMCA is Finally Done*, *supra* note 62.

<sup>156</sup> DAVID A. GANTZ, RICE UNIV.’S BAKER INST. PUB. POL’Y, THE UNITED STATES-MEXICO-CANADA AGREEMENT: TARIFFS, CUSTOMS, AND RULES OF ORIGIN 3–4 (Feb. 21, 2019), <https://www.bakerinstitute.org/media/files/files/6ee1ade5/bi-report-022119-mex-usmca.pdf> [<https://perma.cc/SB29-M7S7>].

<sup>157</sup> *The USMCA is Finally Done*, *supra* note 62.

<sup>158</sup> See VILLARREAL ET AL., *supra* note 142.

<sup>159</sup> *Id.*

<sup>160</sup> *Automotive Industry: Employment, Earnings, and Hours*, U.S. BUREAU LAB. STATS., <https://www.bls.gov/iag/tgs/iagauto.htm> [<https://perma.cc/TPM5-GG36>].

<sup>161</sup> See Mike Rutherford, *The Global Car Manufacturing Wage Gap: What Do Car Factory Workers Earn?*, AUTO EXPRESS (Mar. 22, 2017), <https://www.autoexpress.co.uk/car-news/98986/the-global-car-manufacturing-wage-gap-what-do-car-factory-workers-earn> [<https://perma.cc/BQT5-3ZVH>].

<sup>162</sup> *Id.*

<sup>163</sup> The U.S. average wage of \$23.5 per hour minus the new \$16 required wage is almost an \$8 difference. *Trump’s NAFTA Changes*, *supra* note 140; *Automotive Industry: Employment, Earnings, and Hours*, *supra* note 160.

<sup>164</sup> Shuji Nakayama & Ryo Asayama, *Japan Auto Companies Triple Mexican Pay Rather Than Move to US*, NIKKEI ASIA (June 28, 2020, 4:35 AM), <https://asia.nikkei.com/Business/Automobiles/Japan-auto-companies-triple-Mexican-pay-rather-than-move-to-US> [<https://perma.cc/G224-G6GE>].



manufacturers to pay a tariff and leave Mexico for lower-cost regions, such as India or China.<sup>165</sup> If manufacturers in Mexico leave for Asia, connected manufacturers in the U.S. would likely lay off workers.

USMCA proponents cite several points in arguing why manufacturers in Mexico will be unlikely to relocate to Asia. First, due to integrated supply chains, many North American car makers in the U.S. already conform with the requirement that 40% of the car be produced where the workers make at least \$16 an hour.<sup>166</sup> Second, the USMCA contains a sunset clause, which allows the countries to renegotiate or end the agreement in as early as six years and provides for the agreement to expire automatically after sixteen years if not specifically renewed.<sup>167</sup> By injecting a layer of uncertainty into the USMCA provisions, the sunset clause discourages companies from relocating. If companies decide to move to another country, important USMCA provisions could completely change shortly after they establish their operations. Third, based on an assumption that free trade will continue, automobile companies have invested billions of dollars in new North American factories.<sup>168</sup> Moving to Asia would require millions, if not billions of dollars in new investments, all of which could prove too risky given the sunset clause and today's tumultuous trade climate.

Whether the USMCA will create more employment in the U.S. manufacturing sector depends on thousands of decisions by individual companies, including decisions that turn on factors aside from the USMCA. Still, the USMCA presents two points of certainty. First, its sourcing and wage provisions, by increasing costs, necessarily make Asia a more attractive business location from a cost standpoint. Second, if the USMCA works as intended and companies employ more U.S. workers, costs to automobile companies will rise, which will increase the price of U.S. cars and render them less competitive in the global marketplace.<sup>169</sup>

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<sup>165</sup> See Daniel J. Ikenson, *Protectionist Love Child of the Labor Left and the Nationalist Right*, CATO INST. (Dec. 13, 2019, 8:02 AM), <https://www.cato.org/blog/protectionist-love-child-labor-left-nationalist-right> [<https://perma.cc/BPJ9-SVQ2>].

<sup>166</sup> Carrie Kahn, *Will NAFTA 2.0 Really Boost Mexican Wages?*, NPR (Oct. 17, 2018, 9:05 AM), <https://www.npr.org/2018/10/17/657806248/will-nafta-2-0-really-boost-mexican-wages> [<https://perma.cc/CV8T-CUC5>].

<sup>167</sup> Inu Manak & Simon Lester, *Evaluating the New USMCA*, CATO INST. (Dec. 11, 2019, 4:47 PM), <https://www.cato.org/blog/evaluating-new-usmca-0> [<https://perma.cc/B9CS-GKK9>].

<sup>168</sup> Niraj Chokshi, *Unions Skeptical Trump's Trade Deal Will Bring Back Auto Jobs*, N.Y. TIMES (Jan. 29, 2020), <https://www.nytimes.com/2019/12/11/business/nafta-usmca-auto-jobs.html> [<https://perma.cc/YC89-CYKF>].

<sup>169</sup> Brian Reinbold & Yi Wen, *Changing Trade Relations May Affect U.S. Auto Exports in Long Run*, FED. RES. BANK ST. LOUIS (Mar. 7, 2019), <https://www.stlouisfed.org/publications/regional-economist/first-quarter-2019/changing-trade-relations-auto-exports> [<https://perma.cc/2ULJ-YS5V>] (USMCA auto provisions “could lead to decreased global demand for cars manufactured in North America as they become less competitive in a global market” due to higher prices; “the USMCA is a solution searching for a problem in regard to auto trade”); U.S.-Mexico-Canada Trade Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors, Inv. No. TPA 105-003, USITC Pub. 4889 (Apr. 2019) (Final) (USMCA likely to increase production costs in the United States, resulting in higher prices for automobiles and 140,000 fewer vehicles sold); *Meet the New NAFTA*, CTR. FOR AUTOMOTIVE RES. (Oct. 16, 2018), <https://www.cargroup.org/meet-the-new-nafta/> [<https://perma.cc/NAE7-9CQH>] (“Conforming to the USMCA rules and strategic responses to avoid the risk of additional tariffs will raise production costs for light vehicles and automotive parts, driving up consumer prices.”).

#### IV. CONCLUSION

The substantial difference between wages in the U.S. and competing countries undermines U.S. manufacturing's ability to secure a competitive advantage. NAFTA allowed manufacturing companies to take advantage of low wages in Mexico while still employing U.S. workers by assembling basic parts in Mexico and undertaking more complex work in the U.S.<sup>170</sup> Though the U.S. lost millions of manufacturing jobs under NAFTA, even more could have lost their jobs to Asia without NAFTA.<sup>171</sup> The U.S. should preserve, rather than diminish, manufacturing companies' ability to take advantage of low wages in Mexico while still employing U.S. workers.

Through its protectionist labor, source, and trade requirements, the USMCA represents a bold, risky step in the wrong direction. The USMCA could create some U.S. jobs by encouraging companies to source more parts in North America and increasing labor costs in Mexico, but it will raise costs for automobile manufacturers and consumers. Because businesses will direct capital to its most profitable use, the USMCA's added costs could encourage automobile companies to consider outsourcing to Asia even more. The USMCA will help U.S. farmers by slightly expanding market access into Canada, but these relatively modest agricultural gains could be substantially outweighed by the risks it poses to the much larger U.S. manufacturing industry.

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<sup>170</sup> See VILLARREAL & FERGUSON, *supra* note 3, at 32.

<sup>171</sup> See U.S. Bureau of Labor Statistics *supra* note 92; see *supra* notes 137–38 and the accompanying text.