

2014

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“Ubuntu”: Market Forces and Sustainable Development in South Africa

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Ubuntu: from the isiXhosa language of South Africa; roughly translated means “I am because you are,” an idea of the interconnectedness of humanity

I. INTRODUCTION

Ubuntu is a South African word that demonstrates the interconnectedness of the environment. Used by Archbishop Desmond Tutu in the Truth and Reconciliation Committee after the end of apartheid to exemplify an emotion of forgiveness and acceptance, Ubuntu does not perfectly translate into the English language, roughly meaning “I am because you are.” This idea of the interconnectedness of humanity, can also be used to look at policies and frameworks to promote environmental protection. Environmental law is a field that is uniquely global in nature. The laws and policies of one nation are deeply connected with the promotion of the growth and welfare of the environment throughout the planet. As is seen in climate change, simply having one nation change policies to emit less carbon does not necessarily impact and effect the protection of the o-zone layer when other nations continue to emit carbon at high levels. Due to the innate interconnectedness of the environment, nations have tremendous leeway to influence the environmental law and policies of each other.

This paper seeks to explore the connections between the United States and South Africa. The United States as a global power in trade and governance has a tremendous influence over the formation of policies in many nations. South Africa, as a developing nation with significant authority among the emerging nations in Africa has the ability to sway and shape the environmental policies of other developing countries. As a result, the link between these two nations has the potential to create strong environmental protection in vast geographic areas. This paper looks at the promotion of environmental policies through sustainable development, primarily because of the nature of South Africa's government and infrastructure. By incorporating environmental practices, policies and procedures into its growth, South Africa can move forward using sustainable development to compete in markets and politics on the international level. For South Africa, nearly every type of environmental practice has to be a form of sustainable development because the nation itself is still in its relative infancy post-apartheid and to incorporate environmental concerns into its economic development is a form of sustainable development in itself.

Both South Africa and the United States have strong command and control environmental regulations. Both nations are highly aspirational in their statutory control of environmental practices and procedures. However, command and control regimes are not always successful and often fail to incorporate or effectively implement sustainability.¹ Where command and control fails, there is another

¹ As is discussed in more detail below, South Africa promotes sustainable development in its Constitution, but this command and control element alone does not mean the nation is successful at effectuating sustainable development.

solution: the market. This paper is primarily inspired by the Michael P. Vandenberg paper on the “New Wal-Mart Effect” which demonstrates the impact of supply-chain contracting on environmental regulation and control.² The market as gap-filler approach is not a new one, but the potential for US companies to impact, shape, and enforce sustainable development practices in South Africa has not yet truly been explored and studied at length. This paper explores the market connection between the US and South Africa and its ability to enforce environmentally sustainable policies in South Africa where command and control has failed. This paper suggests that while there is some evidence of links between the US and South Africa that could be promoting sustainable development environmental policies, it is an area that needs to be explored and studied at further length. Finally, this paper suggests that this market-link is a strong tool to act as a gap filler and should not only be studied further, but in fact promoted as a method for enforcing environmental protection.

II. SUSTAINABLE DEVELOPMENT

Sustainable development is a term that has gained in popularity since the 1970s as environmentalism and environmental concerns began to be considered in developing nations.³ For the purposes of this paper, sustainable development is

² Vandenberg, Michael P., “The New Wal-Mart Effect: The Role of Private Contracting in Global Governance,” (2007) 54 *UCLA Law Review* 913, at pp. 919. Also accessible at http://ssrn.com/abstract_id=743167.

³ For purposes of this paper, “developing” or “emerging” nations refers to countries with a lower living standard, underdeveloped industrial base, and a low Human Development Index (HDI) relative to other countries. Sullivan, Arthur & Steven M. Sheffrin (2003) *Economics: Principles in Action*, Upper Saddle River: Pearson Prentice Hall.

defined in the terms used by the Bruntland Commission as “development that meets the needs of the present without compromising the ability of the future generations to meet their own needs.”⁴ In today’s globalized world, with developing nations attempting to bridge the industrial gap and meet generally accepted environmental standards, sustainable development is emerging as a necessary component of government for developing countries.

The publication of Rachel Carson’s *Silent Spring* in 1962 triggered public awareness of the harms of industrialization and trade to human health and well-being.⁵ Developed nations, with the advantage of having undergone the industrialization process centuries before the concept of environmentalism truly existed are better able to promote sustainable development and environmental policies with a complex infrastructure capable of fluctuating and adjusting to new environmental standards. Meanwhile, emerging nations seeking to compete in the world economy struggle to balance the needs to incorporate new standards for environmental protection, promote trade and economic growth and at the same time build their infrastructure.

Sustainable development is a potential path of industrialization that would allow emerging nations to account for new environmental protection standards. As environmental standards are increasingly popular in an

⁴ United Nations (1987) “Report of the World Commission on Environmental Development.” General Assembly Resolution 42/187, 11 December 1987, Retrieved 2013-10-29.

⁵ International Institute for Sustainable Development (2009) “Sustainable Development Timeline.” www.iisd.org/pdf/2009/sd_timeline_2009.pdf, Retrieved 2013-10-29.

interconnected world, developing nations have difficulty competing to achieve economic success while incorporating environmental goals. Sustainable development allows emerging nations to incorporate worldwide environmental standards into the trade and industrialization process. The United States can promote sustainable development initiatives through policy and market forces that will have positive environmental effects in emerging nations.

III. SOUTH AFRICA

South Africa is a nation with a diverse history and a significant influence through both its economy and government on the nations throughout the African continent.⁶ With a tumultuous history shadowed by apartheid and race relations, South Africa still struggles today to overcome the injustices society has built up over decades of time.

This part will provide a brief summary of South Africa's complex history as background for a discussion of sustainable development in present-day South Africa.

South Africa as a geographical region was originally dominated by the Khoikhoi indigenous population before the Bantu peoples migrated from Northern Africa to the region.⁷ In the 15th Century European expeditions began to arrive in the South African region to explore natural resources and trade opportunities,

⁶ "Africa's Big Economies can Influence, Protect their Neighbors." IMF Survey Magazine, Published 25 October 2012. Accessed 28 October 2013.

⁷ *The Cape Herders: A History of the Khoikhoi of Southern Africa* by Emile Boonzaier et al., Ohio Iniversity Press, 1996.

however colonization did not truly begin until the 17th Century with the Dutch Cape Colony in 1652.⁸ The British arrived in the 18th Century and seized the colony from Dutch control.⁹ In 1909 the numerous South African colonies under British control came together as the Union of South Africa, which remained a British territory but was governed by the white Afrikaners, South Africans who could trace their heritage back to Dutch colonization¹⁰. While numerous statutes and regulations legalized black oppression prior to 1948, Apartheid became formally institutionalized in 1948 with the election of the National Party and the architects of apartheid.¹¹ Apartheid essentially means “separateness” and stands for the proposition that Black, White, and Coloured societies should flourish and develop apart from each other. Apartheid was mainly based on “friction theory” which was the basic idea that any contact between races inevitably produced conflict.¹² While first seen by the National Party as a viable option for a society marked by racial differences, the obvious flaws in the apartheid ideology soon became evident as thirteen percent of the land was given to eighty percent of the people (Black and Coloured) and eighty-seven percent of the land was given to the twenty percent of the people who were White. Racial geography was one of the defining characteristics of apartheid. As

⁸ Theal, George McCall. *History of the Boers in South Africa; Or, the Wanderings and Wars of the Emigrant Farmers from Their Leaving the Cape Colony to the Acknowledgment of Their Independence by Great Britain*. Greenwood Press. 28 February 1970

⁹ Alexander Wilmot; John Centlivres Chase (1869). *History of the Colony of the Cape of Good Hope: From Its Discovery to the Year 1819*. Google E-Book, retrieved 6 November, 2013.

¹⁰ Brand, Hon. RH – *The Union of South Africa*, (1910), Clarendon Press

¹¹ Beinart, William. *Twentieth-Century South Africa*. Oxford University Press 2001.

¹² Social Engineering through Spatial Manipulation: the Ideal Apartheid City in Theory and Practice.

the National Party advocated, “mixing is undesirable and racially/ethnically homogeneous neighborhoods are for everyone’s good.”¹³

With the passage of the Group Areas Act in 1950, segregated neighborhoods moved past ideology into reality.¹⁴ Whites were given prime housing locations around city centers and business districts while Coloureds and Blacks were pushed to the outskirts of the city and in “townships” separate from each other. Races were not allowed to intermingle, and were forced to keep to their own areas. As racial categories became more defined over time, the different subgroups of Coloured were forced into separate city zones as well. This racial geography restricted both the places people could live, but also the jobs they could get. Racial geography combined with the emphasis the National Party placed on physical labor-preparing education for Blacks and Coloureds, meant that economic opportunity for the majority of people in South Africa was extremely limited from the late 1940s onward.

South Africa as a nation achieved full independence from Great Britain in 1961 and became the Republic of South Africa.¹⁵ After violent uprisings in the 1970s and 1980s, and foreign government boycotts and pressure, South Africa emerged from apartheid in the 1990s with a brutal history of oppression but strong

¹³ Social Engineering through Spatial Manipulation: the Ideal Apartheid City in Theory and Practice.

¹⁴ “1950 Group Areas Act No. 41,” The O’Malley Archives, Retrieved 3 December 2013. <http://www.nelsonmandela.org/omalley/index.php/site/q/03lv01538/04lv01828/05lv01829/06lv01839.htm>

¹⁵ “The Union of South Africa: Movement Towards Republic,” South African History Online, Retrieved 6 November, 2013. <http://www.sahistory.org.za/topic/union-south-africa-movement-towards-republic>

goals for equality in an attempt to overcome the oppression of the nation's history.¹⁶ Known as the "Rainbow Nation" due to the representation of Bantu peoples, Khoisan indigenous groups, British, Afrikaans, Indian and Muslim populations to name a few, the new Republic of South Africa sought to achieve unity through the idea of Ubuntu and preserve the rights of all citizens under the new government.¹⁷ After overcoming apartheid in 1994 the government led by the African National Congress (ANC) and President Nelson Mandela, created a new constitution, which was incredibly aspirational in nature guaranteeing over thirty-two (32) different constitutional rights to every citizen.¹⁸

Today, as one of the most industrialized nations in Africa, South Africa has a significant impact on the sub-Saharan nations around it. South Africa is a significant contributor to the GDP of Africa as a whole, and affects the market growth and development of other sub-Saharan nations located nearby.¹⁹ South Africa has been an economic powerhouse in Africa even prior to the decline of apartheid and its growth through trade only grew with the end of apartheid.²⁰ Further, South Africa has played a significant role in the rise and formation of the African National

¹⁶ Beinart, William. *Twentieth-Century South Africa*. Oxford University Press 2001.

¹⁷ Archbishop Desmond Tutu coined the term "rainbow nation" in his creation and formation of the Truth and Reconciliation Commission post-apartheid which was later popularized by Nelson Mandela. *Truth and Reconciliation Commission of South Africa Report*, Vol. 6, Section 4 Appendix: The 'Third Force', 2003.

¹⁸ Constitution of the Republic of South Africa, Chapter 2: Bill of Rights, Sec. 7 to 39.

¹⁹ "Africa's Big Economies can Influence, Protect their Neighbors." IMF Survey Magazine, Published 25 October 2012. Accessed 28 October 2013.

²⁰ Alden, C. & Mills Soko. "South Africa's Economic Relations with Africa: Hegemony and its Discontents," *J. of Modern African Studies*, 43, 3 (2005) pp. 367-392. Cambridge University Press.

Congress and the African Union.²¹ South Africa continues to exert this influence today through leadership positions in numerous non-governmental organizations influencing trade, politics and development throughout Africa.²²

A. SOUTH AFRICA'S COMMAND AND CONTROL REGIME

South Africa's constitution contains a range of environmental rights.²³ It guarantees every citizen the rights to "an environment that is not harmful to their health or wellbeing," "to have the environment protected for the benefit of present and future generations through reasonable legislative and other measures that prevent pollution and ecological degradation, promote conservation and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development."²⁴

South Africa has additionally proposed relatively strong "command and control" environmental regulations.²⁵ Among the significant command and control laws in South Africa are the Environment Conservation Act, the National Environmental Management Act, the National Water Act and the National Forests Act, to name a few.²⁶ Just as South Africa's economy influences the nations of Sub-

²¹ *Id.*

²² Alden, C. & Mills Soko. "South Africa's Economic Relations with Africa: Hegemony and its Discontents," *J. of Modern African Studies*, 43, 3 (2005) pp. 367-392. Cambridge University Press.

²³ Goolam, N. (2000) "Recent Environmental Legislation in South Africa," *Journal of African Law*: vol. 44 no. 1, pgs. 124-128.

²⁴ Constitution of the Republic of South Africa, Chapter 2, Section 24, "Environment."

²⁵ "Command and control" regulation is defined herein as the direct regulation of an industry or activity by legislation that states what is permitted and what is illegal. McManus, P. (2009) *Environmental Regulation*. Australia: Elsevier Ltd.

²⁶ Goolam, N. (2000) "Recent Environmental Legislation in South Africa," *Journal of African Law*: vol. 44 no. 1, pgs. 124-128.

Saharan Africa, so to could South Africa's command and control environmental regime.

With its aspirational environmental structure and powerhouse status in Africa, South Africa is a nation that has the potential to impact the environmental growth and development of sustainable policies throughout Africa. The reasons it has not yet done so are set forth below, along with a potential area to explore to resolve this dichotomy.

III. US ENVIRONMENTAL LAW STRUCTURE

The United States has an extensive history of environmental laws and policy.²⁷ The 1960s in the US started environmental law with the passage of landmark laws such as the Wilderness Act of 1964, the Land and Water Conservation Act of 1965, the National Historic Preservation Act of 1966, and the National Wild and Scenic Rivers System in 1968.²⁸ In the 1970s a more rigorous command and control structure began to be developed with the passage of the Clean Air Act in 1970, the Resource Conservation and Recovery Act (RCRA) in 1976, and the amended Clean Water Act in 1977.²⁹ Finally with the passage of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, the United States had established a fairly robust environmental regulatory

²⁷ "Environmental law and policy" is defined here as the "use of governmental authority to protect the natural environment and human health from the impacts of pollution and development" see Salzman, J. and Barton H. Thompson Jr. *Environmental Law and Policy*, 3d Ed. Foundation Press (2010).

²⁸ Salzman, J. and Barton H. Thompson Jr. *Environmental Law and Policy*, 3d Ed. Foundation Press (2010), pp. 8.

²⁹ *Id.* at pp. 175, 198.

structure under which environmental goals were aspirational and environmental protection the expectation.

On the international level, the US influence and emphasis on environmental laws and regulation has evidenced itself in the US participation in numerous international treaties and agreements. The US position as an economic powerhouse and global force in trade also gives it a position of influence in global environmental agreements. However, the United States has not always conscientiously and forcibly attempted to exert that influence as was evidenced by its failure to ratify the Kyoto Protocol in the late 1990s and early 2000s.³⁰ Further, the United States withdrew from the Kyoto Protocol completely in 2001, despite being one of the largest emitters and thus contributors to climate change in the world.³¹

The most common method of environmental regulation the United States employs is command and control regulation, also known as prescriptive regulation. Prescriptive regulations mandate what organizations, from private firms to state governments, can and cannot do. Command and control regulation can be very effective in some senses as a way to encourage production process and design innovations that have less of an impact on the environment.³² Further, command and control regulation can also be “technology –forcing.” It allows the government to set environmental standards and force industry to adapt and change in order to

³⁰ Natoli, N. “United States Problems with the Kyoto Treaty,” 2 May 2003. Retrieved 6 November, 2013. <http://www-pub.naz.edu/~nanatoli/us.htm>

³¹ “US Withdraws from Kyoto Protocol,” Greenpeace.org, 5 April 2001. Retrieved 6 November 2013. <http://www.greenpeace.org/usa/en/news-and-blogs/news/u-s-withdraws-from-kyoto-prot/>

³² Porter, M.E. & C. van der Linde, *Towards a New Conception of the Environment-Competitiveness Relationship*, 9 *Journal of Economic Perspectives* 97 (1994, Issue 4).

meet those standards no matter how unattainable or unrealistic they may be.³³ Command and control is perhaps the most straightforward approach to environmental regulation but it is not the only method and is often criticized for its significant shortcomings in terms of flexibility, market outcomes, and ineffectiveness.³⁴

IV. WHERE COMMAND AND CONTROL FAILS

Both in the United States and South Africa command and control regulation has not always created the solutions necessary to effectuate environmental change. The interconnected nature of the environment itself demonstrates the limits of command and control legislation. US environmental regulation is not fully capable of preventing the externalization of environmental costs and enforcement.³⁵ Regardless of a private firm, industry or local or state government's ability to abide by command and control regulation, meeting those standards alone does not necessarily stop pollution or environmental harm as a whole.

For command and control systems to be effective, they must provide a clear map for navigating the legal requirements of each regulation. They must be accessible to the public and easy to understand.³⁶ Unfortunately, in both South Africa and the United States this is rarely the case.

³³ Salzman, J. and Barton H. Thompson Jr. *Environmental Law and Policy*, 3d Ed. Foundation Press (2010), pp. 100.

³⁴ *Id.* at 47.

³⁵ Vandenberg, Michael P., "The New Wal-Mart Effect: The Role of Private Contracting in Global Governance," (2007) 54 *UCLA Law Review* 913, at pp. 919. Also accessible at http://ssrn.com/abstract_id=743167.

³⁶ Fulton, Scott and Benjamin, and Justice Antonio Herman, "Foundations of Sustainability," (2011) *Environmental Forum* Vol. 28 No. 6, at pp. 457. Also accessible at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1950777.

Despite the far-reaching statutory framework Congress enacted and the regulatory structure put in place by the Environmental Protection Agency (EPA), the United States struggles to overcome environmental protection issues. The United States still contributes approximately 30% to the planet's total carbon emissions.³⁷ Further, the US is losing about 100,000 acres of wetlands every year, an important geographical feature that acts as a carbon sink and offset for carbon emissions.³⁸ Additionally, about a third of animals and plants in the US are threatened with extinction, and over half of lakes and rivers in the United States still do not meet the standards set by the Clean Water Act.³⁹ Even champions of environmental regulatory policy are willing to admit that environmental regulation in the US has fallen far short of its goals due to the inflexible nature of regulation and lack of long-term goals.⁴⁰

Like the United States, South Africa has, at the legal level, implemented a vast array of impressive and aspirational environmental regulations. More impressive than the United States, South Africa has even included sustainable development

³⁷ Speth, James G. "Environmental Failure: A Case for New Green Politics," 20 October 2008, Environment360. Retrieved 6 November 2013. http://e360.yale.edu/feature/environmental_failure_a_case_for_a_new_green_politics/2075/

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ See The President's Council on Sustainable Development ("PCSD"), Sustainable America: A New Consensus for Prosperity, Opportunity, and a Healthy Environment for the Future 25(55 (1996) (arguing the need for a more performance-based regulatory system); Jonathan Lash & David T. Buzzelli, Beyond Old-Style Regulation, J. Com., Feb. 28, 1995, at 8a (arguing for greater flexibility and incentives for continuous improvement by regulated firms).

targets and initiatives into the Constitution.⁴¹ However, like many of the regulations of South Africa, and the South African Constitution itself, these environmental statutes fall far short of their goals. South Africa's most rigorous command and control environmental regulation, the National Environmental Management Act (NEMA), has fallen short of its aspirations due partially to the bureaucratic undertaking NEMA imposes on South Africa's Department of Environmental Affairs, but additionally due to the young nation still grappling with infrastructure issues.⁴² South Africa has had a significant decline in the enforcement mechanisms of environmental regulations in recent years, which could be attributed to the downsizing and restructuring of environmental agencies.⁴³ However, South Africa also struggles with corruption in enforcing compliance with environmental regulations.⁴⁴ Unprincipled and corrupt environmental decision-making obstructs the goals of command and control regulations.⁴⁵ In addition,

⁴¹ Sec. 24(b) of the Constitution of the Republic of South Africa imposes a positive duty on the state to take legislative and other measures to achieve sustainable development.

⁴² See Murombo, T. *Beyond Public Participation: The Disjuncture Between South Africa's Environmental Impact Assessment (EIA) Law and Sustainable Development*, (2008), PER/PELJ, Vol. 11, No. 3. Retrieved 6 November 2013.

http://www.nwu.ac.za/webfm_send/11794; criticizing NEMA and EIA's for the structure requiring feedback from citizens and stating that this structure creates hurdles to successful environmental regulation.

⁴³ 2010-2011 National Environmental Compliance and Enforcement Report, Department of Environmental Affairs, Republic of South Africa.

http://www.sawma.co.za/images/Dec2011_NECER.pdf

⁴⁴ Sundstrom, A. "Corruption in the Commons: Why Bribery Hampers Enforcement of Environmental Regulations in South African Fisheries," (2013) Int. J. of the Commons, vol. 7 no. 2. Also Accessible at:

<http://www.thecommonsjournal.org/index.php/ijc/article/view/370/360>.

⁴⁵ Fulton, Scott and Benjamin, and Justice Antonio Herman, "Foundations of Sustainability," (2011) Environmental Forum Vol. 28 No. 6, at pp. 463. Also accessible at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1950777.

unlike the United States South Africa faces significant hurdles to environmental regulation in light of its need to continue to develop.⁴⁶ While industrially-advanced compared to other African Nations, South Africa is still creating an infrastructure and economy capable of competing on the global scale.⁴⁷ For South Africa, a potential path to environmental regulation is a sustainable development approach that includes environmental concerns in promotion of industrialization.

V. THE MARKET AS A GAP FILLER

Because of the shortcomings of command and control regulation in environmental regulation, other methods of environmental enforcement have emerged. The market approach to environmental regulation is not a new one, but provides a gap filler element to environmental protection. At its most basic level, market-based approaches to environmental goals generally employ markets, prices, and other economic variables to promote environmental initiatives.⁴⁸ This paper works off the proposal by Michael P. Vandenbergh that supply-chain contracting by industries in the United States is effective at promoting environmental goals.⁴⁹ Vandenbergh completed an extensive empirical study focusing on the impact of US companies in promoting environmental policies through their contract

⁴⁶ For more information and a case study see “Monitoring and Enforcement Compliance with Environmental Legislation in South Africa” published by the Association for Water and Rural Development (2003), Retrieved 6 November 2013, http://www.award.org.za/file_uploads/File/Compliance%20Report%20NRM%20Gov%20AWARD%20SHORT%20VERSION.pdf

⁴⁷ *Id.*

⁴⁸ Gayer, T. and J. K. Horowitz, *Market-based Approaches to Environmental Regulation*, (2006) Hanover: Foundations and Trends in Microeconomics.

⁴⁹ Vandenbergh, Michael P., “The New Wal-Mart Effect: The Role of Private Contracting in Global Governance,” (2007) 54 *UCLA Law Review* 913, at pp. 919. Also accessible at http://ssrn.com/abstract_id=743167.

requirements with resource-supplying subsidiaries. Further, Vandenberg revealed to some extent that consumer demand in the green-friendly United States could have a potential impact on the promotion of environmental goals in resource-rich nations. Vandenberg cautions that in some cases the agreements enforcing or promoting environmental policies may simply be the product of public standards, but clarifies that this supply-chain enforcement is nonetheless a form of global governance.⁵⁰ Vandenberg also argued that a contributing factor of the inclusion of these environmental standards in private contracting was consumer demand and third-party (NGO) pressures in the developed nations to include environmental policies in the production of a good or service.⁵¹ While Vandenberg's article grappled with statistical shortcomings regarding access to company-supplied information, his market-approach reveals that markets could be used as a gap-filler to promote sustainable development aspirations in South Africa.

As Vandenberg's article demonstrates with empirical data, more than half of the largest private companies in the United States across eight different sectors impose environmental requirements of some type on their foreign suppliers.⁵² Vandenberg proposes that large corporations set environmental standards that are then imposed on their suppliers through supply-chain contracting. General Electric began including environmental, health and safety terms in its supplier contracts in

⁵⁰ *Id.* at 916.

⁵¹ Vandenberg, Michael P., "The New Wal-Mart Effect: The Role of Private Contracting in Global Governance," (2007) 54 *UCLA Law Review* 913, at pp. 916. Also accessible at http://ssrn.com/abstract_id=743167.

⁵² *Id.* at 919.

1997.⁵³ Vandenberg’s primary example, Wal-Mart, which is the largest discount and variety retail firm worldwide, has over \$315 billion in sales, 1.2 million employees in the United States, 600,000 employees in other countries and 60,000 suppliers.⁵⁴ Wal-Mart imports a wide-variety of products from developing and emerging nations annually, and has been subject to numerous protests in the United States regarding a variety of health, safety, and environmental issues.⁵⁵ Wal-Mart announced publicly in 2006 that it would be “educating” suppliers about sustainability measures and its position as the largest seller of variety and discount products in the United States has had significant ripple effects on its competitors⁵⁶. The Wal-Mart example is a fitting one, not only does this one power-house company have the ability to influence and change the practices of its 60,000 suppliers, but it has the ability to influence the policies of its competitors across industries. This simple example demonstrates the vast and ever-changing and adapting network the market offers to environmental policy promoters. Vandenberg goes on to discuss companies across many other sectors in the United States. He reveals through empirical data and research that all of the major automobile manufacturers headquartered in the United States impose a variety of environmental requirements on their foreign suppliers, that seven of the largest companies in the computer technology sector impose environmental performance requirements on their suppliers, seven of the ten largest firms in the industrial machinery and equipment

⁵³ *Id.* at 924 citing Hedges, J. “Changing Face of Corporate Responsibility Detailed by IBM, General Electric Attorneys,” *Int’l. Env. Daily*, Apr. 26, 2006, at A2.

⁵⁴ *Id.* at 927.

⁵⁵ *Id.*

⁵⁶ *Id.*

manufacturing industry impose environmental requirements on their suppliers, and the timber and forestry industry has six of its largest firm imposing some type of environmental requirements on suppliers.⁵⁷

While Vandenberg's study is limited in scope, its findings reveal the strength and adaptability of the market as a potential tool to encourage environmental sustainability. By breaking his research into sectors, Vandenberg is able to demonstrate the ability for the largest firms at the top of each sector to have their environmental contracting procedures and policies trickle down to other companies in the same sector. This approach encourages not just the biggest importers in the United States to promote environmental sustainability, but may eventually lead to the standard practice of incorporating environmental policies into supply-chain contracts and agreements between all trade partners.

The United States goods and services trade with South Africa totaled \$22 billion in 2011.⁵⁸ South Africa is currently the 36th largest goods trading partner with the United States with \$16.8 billion in total goods traded during 2011, \$7.3 billion of which were exports and \$9.5 billion of which were imports.⁵⁹ South Africa has a comparative advantage in mining and manufacturing due to the low cost of labor and rich natural resources available in the nation.⁶⁰ Statistics on

⁵⁷ *Id.* at 930-934.

⁵⁸ Office of the United States Trade Representative: South Africa, Retrieved 4 November 2013, <http://www.ustr.gov/countries-regions/africa/southern-africa/south-africa>

⁵⁹ *Id.*

⁶⁰ "Competitiveness of Selected South African Agricultural Products in the European Union Market," Department of Agriculture, Forestry and Fisheries. pp.3 Retrieved 8 November 2013, <http://www.webcitation.org/65xzW4i6K>

which specific US companies in these sectors are the largest importers from South Africa are difficult and time-consuming to ascertain. However, a detailed study of these companies and their environmental policies could reveal the potential for promotion of environmental sustainability in South Africa through private US actors. Upon discovering which companies are the largest importers from South Africa in the US, one should then make a study of the company's policies on environmental promotion and conservation. Then one could look to whether those policies are enforced upon the firm's supply-chain contractors. This analysis would potentially reveal an area of environmental enforcement and compliance that is likely and potentially occurring extra-governmentally in South Africa to promote sustainable development objectives.

This private contracting to include environmental standards and procedures may serve as a temporary gap filler as government regulation, enforcement and infrastructure builds in developing nations like South Africa but it can also serve as a permanent solution to the short-comings of command and control regulation of the environment. As Vandenberg suggests, a principal driver for the inclusion of environmental policies and practices in supply-chain contracting could partially be attributed to the preference of individual consumers in the United States for sustainable practices in product development. Vandenberg does not rule out the potential for government regulation in the United States as a contributing factor to the enforcement of these environmental standards in contracts. However the fact remains that ultimately this market-mechanism fills the gaps of environmental enforcement that command and control struggles with in the United States, and

could be doing just that in South Africa as well. As such this mechanism is an important contributor to the enforcement of environmental regulation on the global level. While many anti-market activists struggle to see the benefits of powerful firms and capitalism, there is evidently a need for market forces to help regulate areas where governments often fall short or are simply incapable. While this paper by no means suggests that environmental regulation should become entirely extra-governmental in nature, there is a demonstrated benefit to market enforcement that should be espoused and explored further. This methodology for environmental enforcement may be able to at least temporarily overcome South Africa's governmental short-comings to achieve some of the aspirational and lofty goals set by the environmental regulations and Constitution. In the long run, this mechanism could simply act as a gap-filler for the areas of command and control regulation in South Africa which fall short consistently as regulation is difficult to pass and perhaps even more difficult to change and adapt to new markets and technology. Ultimately, the use of supply-chain contracting to promote and enforce environmental policies and standards is an area that needs to be researched in great depth. If those conclusions proven by Vandenberg in his "New Wal-Mart Effect" article prove true in South Africa, then this methodology should be promoted as an efficient and effective method of creating and conserving a sustainable environment.

VI. CONCLUSION

More research needs to be done on the links between the US and South African market and which companies are the primary importers from South Africa in the US. However, it is evident that there are shortcomings to command and

control regulation of the environment in South Africa and the United States. To overcome these shortcomings, particularly in South Africa which has a less developed infrastructure but aspirational environmental goals, supply-chain contracting between US importers and their South African business partners could be a mechanism that not only acts as a temporary solution but a long-term gap filler for enforcement of environmental sustainability.