March 1996


Timothy P. McElduff Jr.

Jon Veiga

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THE CHILD LABOR DETERRENCE ACT OF 1995: A CHOICE BETWEEN HEGEMONY AND HYPOCRISY

If there is any matter upon which civilized countries have agreed—far more unanimously than they have with regard to intoxicants and some other matters over which this country is now emotionally aroused—it is the evil of premature and excessive child labor.1

Exploitative child labor represents a large problem in many parts of the world.2 Current international human rights enforcement regimes and trade agreements have thus far been ineffective in addressing this troublesome situation.3 In response to the declining conditions and increasing episodes of child labor in recent years,4 legislative action has begun. In the absence of a comprehensive internationally accepted plan to deal with this problem,5

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3 See Ehrenberg, supra note 2, at 374-77 (discussing ineffectiveness of current international human rights enforcement regimes); see also Giampetro-Meyer et al., supra note 2, at 674 (suggesting ways international community might more effectively administer to child labor exploitation). See generally infra notes 88-97 and accompanying text (discussing International Labor Organization’s inability to enforce effectively international labor standards).
5 See Kelleher, supra note 2, at 162 (discussing recent unilateral attempts by United States to regulate economic activities overseas through threat of trade restrictions). See generally Assefa Bequele, Protecting Working Children 69 (William E. Meyers ed.,
the United States Congress has introduced the Child Labor Deterrence Act ("CLDA").

If enacted, CLDA would ban the importation of products which are made, in whole or in part, by children under the age of fifteen, and employed in either the manufacturing industry or mining. Proponents of CLDA argue that the Act would allow the United States to officially express and enforce its principled opposition to the abhorrent practice of exploiting children for commercial gain. Supporters further assert that as the primary market for products made from child exploitation, the United States has the power to halt child labor. In contrast, opponents of the Act contend that such unilateral action by the United States not only violates the General Agreement on Tariffs and Trade ("GATT"), but may also

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8 See 139 Cong. Rec. E2,181-01 (1993) (statement of Rep. Brown) (calling for observance of Children in Servitude Day by all Americans); Tonya, supra note 2, at 631 (arguing elimination of U.S. market for goods produced by child labor can reduce child exploitation); see also Naughton, supra note 7, at 23 (agreeing with Sen. Harkin that prohibition of child labor products should be national policy).
9 See Child Labor and the New Global Marketplace, supra note 7, at 8-10 (calling on United States to use its vast "economic leverage and market to demand respect for human life"); see also Onapito-Ekomolot, supra note 7 (suggesting United States has power to stop child labor because it is primary market for its products).
10 BLACK'S LAW DICTIONARY 1531 (6th ed. 1990). "Unilateral" is defined as one-sided; ex parte; having relation to only one of two or more persons or things. Id.
11 See Kelleher, supra note 2, at 172 (charging CLDA would place "zero quota" on products produced by child labor in violation of GATT if enacted); see also Child Labor Targeted, San Antonio Express-News, June 18, 1995 (stating GATT would prevent enforcement of CLDA). But see Ehrenberg, supra note 2, at 393-95 (analogizing child labor to dumping or subsidies, both of which are unfair trade practices regulated by GATT/WTO); Kelleher,
be harmful to the children it is intended to protect. As a result, opponents recommend that the United States address the problem of child labor through existing Multilateral Trade Agreements.

Part One of this Note explores the problem of child labor, citing alarming statistics and egregious examples of children being exploited in the workplace. It will discuss the American response to the child labor problem, providing a brief historical overview of American legislative efforts to combat the problem on both the federal and state levels and set forth the international standards of child labor. Part One concludes that the problem of child labor is not being ameliorated through socio-economic development fueled by global trade. Part Two analyzes the international enforcement of labor standards through both the International Labor Organization ("ILO") and the newest General Agreement on Trade and Tariffs establishing the World Trade Organization ("GATT/WTO"). This section concludes that existing international agreements are ineffective as a means of enforcing child labor standards. Part Three provides a comprehensive assessment of the Child Labor Deterrence Act. Part Four discusses the potential ramifications of the CLDA under GATT, as well as possible United States justifications for the GATT-legality of the CLDA. This section concludes that CLDA would most likely be found to be a unilateral trade measure in violation of, and inconsistent with, GATT and the WTO. Part Five proposes possible solutions to the child labor problem. This Note concludes that Congress should enact the CLDA and immediately enforce it against non-subsidy agreement countries while simultaneously encouraging the President to procure child labor restrictions within the WTO through amendment or side agreement.

\textsuperscript{12} See Kelleher, supra note 2, at 180 (claiming that removing children from labor force pursuant to CLDA will not increase their well being); see also Basu, supra note 7, at 2 (suggesting CLDA ultimately could cause hardship to children because halting imports would result in serious economic consequences such as driving child labor further underground exposing children to greater exploitation).

\textsuperscript{13} \textsc{Black's Law Dictionary} 1015 (6th ed. 1990). A "multilateral agreement" is defined as an agreement among more than two persons, firms or governments. \textit{Id.}
I. EXPLOITATION OF CHILD LABOR

A. Alarming Statistics and Egregious Examples

The Uruguay Round of GATT, the largest trade agreement in history, ended last year after seven years of intense negotiations. Recently, the Uruguay Round negotiations were approved by Congress. Unfortunately, the sweeping changes made in the trade agreements failed to address the needs and rights of children.

14 See Julie Long, Racheting Up Federalism: A Supremacy Clause Analysis of NAFTA and the Uruguay Round Agreements, 80 MINN. L. REV. 231, 265 n.3 (1995) (quoting President Clinton's characterization of agreements as "broadest, most comprehensive trade agreements in history"); see also Note, Developing Countries and Multilateral Trade Agreements: Law and the Promise of Development, 108 HARV. L. REV. 1715, 1715 (1995) (stating that Uruguay Round "promises to constitute 'the largest, most comprehensive trade agreements in history'" (quoting Results of the Uruguay Round Trade Negotiations: Hearing Before the Senate Comm. on Finance, 103 Cong., 2d Sess. 211 (1994) (statement of United States Trade Representative Mickey Kantor)).

15 See General Agreements on Tariffs and Trade: Multilateral Trade Negotiations Embodying the Results of the Uruguay Round of Trade Negotiation, 33 I.L.M. 1125, 1143-272 (1994) [hereinafter Uruguay Round]. The establishment of the World Trade Organization resulted from seven years of trade negotiations. Id. at 1144.


17 See Gerald R. Ford, Why We Need GATT Now, WALL. ST. J., Nov. 25, 1994, at A8 (noting sweeping changes prevent lawless international jungle); see also Jay Branegan, Put Up or Shut Up (General Agreement on Tariffs and Trade), TIME, Dec. 20, 1994, at 46 (describing Uruguay Round as "sweeping in scope and numbing in detail"); Clare Nullis, GATT Chief Criticizes GOP, LAS VEGAS REV. J., Nov. 19, 1994, at C4 (addressing Uruguay Round's sweeping cuts in customs and subsidies); Tense Times for Trade Pact, FIN. POST, Nov. 15, 1994, at 18 (discussing broadening of Uruguay Round to include sweeping tariff reductions); Anne Veige, 7 Richest Countries Put Growth at Top of Meeting Agenda, WASH. TIMES, July 7, 1992, at A9 (noting Uruguay Rounds' vast changes in trade rules set rules for most of world); Mitchell Zuckoff, Taking a Profit, and Inflicting a Cost, U.S. Firms Seeking Riches Among the Foreign Poor, BOSTON GLOBE, July 10, 1994, at 1 (indicating Uruguay Round is history's most far-reaching trade treaty).

18 See Lynn Kamm, Trade Prosperity Arrives on the Backs of Little Children, SEATTLE TIMES, Nov. 27, 1994, at B9 (indicating that GATT does nothing for child workers in developing nations); see also Group of Seven Ministers Hold Labor Summit—Global Unemployment Discussed, WORLD NEWS DIGEST FACTS ON FILE, Mar. 24, 1994 (noting unlikelihood of strong support among GATT members for GATT social clause codifying restrictions on child labor); Debra Percival, Trade-Labor: EU Pushes For Link Between Trade and Labor Rights, INTER PRESS SERVICE GLOBAL INFO. NETWORK, MAR. 27, 1995, AVAILABLE IN WESTLAW, 1995 WL 2259965, at *1 (noting that although Uruguay Round of GATT "broke new ground" in protecting intellectual property and investment rights, no link between trade and workers' rights was forged); Richard Rothstein, Fair Wages and Standards Spur
According to the ILO, an estimated 200 million children under the age of fifteen are working as industrial laborers in developing nations. Children under age fifteen constitute approximately twenty percent of the work force in Africa, a reported twelve to twenty-six percent in many Latin American countries, and eleven percent in some Asian countries. Child labor endangers a

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*Child Labor Deterrence Act* 585

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child’s welfare and impedes a child’s development.\textsuperscript{23} In some instances, an estimated one-half of these children work under hazardous or life-threatening conditions and eventually contract debilitating diseases that lead to death.\textsuperscript{24} Hazardous industries particularly conducive to child labor include glass or metal works, textiles, mining and fireworks manufacturing.\textsuperscript{25} In the overwhelming majority of these cases, children are not working voluntarily, but are bonded or slave-laborers.\textsuperscript{26} For instance, debt bondage, a particularly exploitative form of child labor, occurs when children are sold by their parents in consideration for a previous

Jan. 30, 1994, at 4 (reporting rampant child labor in South Asia, including India, Pakistan, Bangladesh, Nepal and Sri Lanka); Wright, \textit{supra} note 19, at C3 (noting that one in four Indian workers is under age 14).

\textsuperscript{23} Giampetro-Meyer et al., \textit{supra} note 2, at 657. The article provides that child labor can be defined as work placing a heavy burden on the child or endangering the child’s safety, health or welfare. \textit{Id.} The term was also categorized as that work that: takes advantage of the defenseless child; exploits the child as a cheap substitute for adult labor; uses the child’s effort but does not contribute to development; or impedes education and training, prejudicing his or her future. \textit{Id.} (quoting Report of Director General, \textit{Child Labor}, 69 INT’L LAB. CONF. 3, 37 (1983)); see Smith, \textit{supra} note 2, at 57 (defining exploited children as those forced prematurely into adulthood by long work hours and low pay with threats to health and well-being).

\textsuperscript{24} 138 CONG. REC. S11,603-04, S11,608 (1992) (statement of Sen. Harkin) (indicating many child-laborers work in dangerous industries); see Ehrenberg, \textit{supra} note 2, at 374 (estimating that 76% of children working in glass factories have tuberculosis caused by glasswork hazards); see also Kelleher, \textit{supra} note 2, at 161 (citing ILO estimate that half of 50,000 bonded child laborers in Pakistan’s carpet-weaving industry will die of disease and malnutrition before age twelve); \textit{ILO Finds, supra} note 20, at *3 (revealing that child laborers are often exposed to high risks, develop life-long injuries and deformities and are infected with AIDS resulting from sexual abuse by employers); Amelia A. Newcomb, \textit{Protection of World’s Young: Clocking Out On Child Labor}, \textit{CHRISTIAN SCI. MON.}, Nov. 16, 1994, at 1 (stating that children in Bombay, Manila and Bogota handle toxic substances, often for 14 hours each day); Rothstein, \textit{supra} note 18, at F3 (noting that half of children in Pakistan’s export carpet industry die from malnutrition and disease before age 12); Wright, \textit{supra} note 19, at C3 (reporting that in 1992 fire at Chinese fireworks factory 20 workers killed were between nine and 14 years old).


\textsuperscript{26} See 139 CONG. REC. E2181-01, E2182 (1993) (statement of Rep. Brown). The Congress- man reported that 10 million children in India alone are bonded laborers. \textit{Id.}; see also Kelleher, \textit{supra} note 2, at 187. The article maintains that there is no social, economic, or cultural justification for children to be put to work as bonded laborers in near slave-like conditions. \textit{Id.} China, the Dominican Republic and India all have been examined as having situations of child labor involving slavery, bonded labor, prison labor and forced labor.

\textit{See also} Ehrenberg, \textit{supra} note 2, at 366-74. Children forced to work in sweat shops are subject to locked doors and windows in order to prevent escape. \textit{Id.}; Spielmann, \textit{supra} note 22, at A2 (citing Paul Bravender-Coyle, spokesman for Australia’s Anti-Slavery Society). The Anti-Slavery Society estimates the number of child slave laborers to be between 73 and 115 million in India, 8 million in Pakistan, 5.7 million in Nepal, 5.5 million in the Philippines, 5 million in China, 2.8 million in Bangladesh, 2.4 million in Indonesia, 1.1 million in Thailand, and 500,000 in Sri Lanka. API, Sept. 18, 1995, \textit{available in WESTLAW, 1995 WL 4406633}, at *1-2.
The statistics provided in this section evidence the fact that the child labor problem is one of universal proportions.27

Despite the significant increase in many countries of the number of child laborers29 and the deteriorating working conditions for these children,30 few countries have developed comprehensive plans to address this growing problem.31 The failure to address the child labor dilemma is particularly alarming given the recent economic growth in developing countries attributable to international trade.32

While the amount of child labor pervading the international community is troubling,33 specific incidents of abuse are truly shocking. A congressional hearing on child labor in September of

27 Epstein, supra note 20, at A10 (quoting Department of Labor Report); ILO Finds, supra note 20, at *3 (referring to common situation where parents agree to let children work off debt that parents cannot repay); Wright, supra note 19, at C3 (reporting debt bondage, also known as "enganche" or "the hook," is problem in Peruvian mines).

28 See Giampetro-Meyer et al., supra note 2, at 659 (noting that over 100 million child laborers from all around world are exposed to hazardous and life-threatening conditions); Wright, supra note 19, at C3 ("Child labor is single most important source of child abuse and exploitation in world." (quoting Michael Hansenne, General Director of ILO)); see also Daniel Skoler, *Throughout the World, Children Cry... We Want Rights, Too*, 17 J. Hum. Rts. 30, 32 (1990) (discussing U.N. Convention on Rights of Children).

29 See 141 CONG. REC., supra note 22, at E1, 507-01 (indicating number of child laborers in India approaches 50 million); see also ILO Finds, supra note 20, at *3 (noting in some african countries, 20% of all children are forced to work); Wright, supra note 19, at C3 (reporting children constitute about 18% of Brazil's work force).

30 See, e.g., *Child Labor and the New Global Marketplace*, supra note 7, at 50-52 (describing plight of leather and textile child workers); see also Grossfeld, supra note 19, at A8 (describing plight of eight-year-old carpet worker in India).

31 E.g., Newcomb, supra, note 24, at 1 (noting recent U.S. Dep't of Lab. Bureau of Int'l Lab. Affairs report targeting 19 countries employing extensive child labor in production of goods for United States market); Rothstein, supra note 18, at F3 (reporting that Philippines abolished factory age requirements to attract investors); Stackhouse, supra note 22, at A20 (despite abolishing child labor in 1986, Indian enforcement of child labor prohibitions is weak in almost every state); Wright, supra note 19, at C3 (expressing that although child labor was declining for many years, it is currently on rise in developing countries); see Kelleher, supra note 2, at 162 (indicating that although conditions are worsening and number of child workers are increasing, few countries are dealing with problem of child labor); see also Tonya, supra note 2, at 631 (noting child labor thrives because bans are rarely enforced).


33 See 138 CONG. REC., supra note 19, at S11, 603-04 (noting UNICEF estimates approximately 200 million child laborers are under age 15 worldwide); see also Giampetro-Meyer et al., supra note 2, at 659 (noting that over 100 million child laborers from all around world are exposed to hazardous and life-threatening conditions).
1994 revealed that underage child workers frequently receive beatings for their tardiness and mistakes.\textsuperscript{34} For example, at one Senate hearing the story was told of a young Pakistani rug weaver hung upside down from a ceiling fan because he missed work.\textsuperscript{35} A 1995 study conducted by the United States Department of Labor reports of Asian children in the Persian Gulf being glued or tied to camels during races.\textsuperscript{36} Even more egregious are incidents of children burned to death by their employers\textsuperscript{37} or forced to watch their relatives beaten to death.\textsuperscript{38} Perhaps the most poignant account of child labor abuse is that of the violent and senseless death of a twelve-year-old Pakistani youth who outspokenly crusaded against child slavery.\textsuperscript{39}

\textsuperscript{34} Child Labor and the New Global Marketplace, supra note 7, at 17-23. 19 year-old Nazma Akther of Bangladesh traveled halfway around the world to tell her plight to Congress. \textit{Id.} At 11 years old, Nazma began working at the Shams garment factory in Dhaka, where she was paid eight dollars a month for 70 hour work weeks. \textit{Id.} She was beaten for tardiness or mistakes. \textit{Id.} See Kamm, supra note 18, at B9 (noting Nazma Akther's testimony at Senate child labor hearing).

\textsuperscript{35} Child Labor and the New Global Marketplace, supra note 7, at 50-52 (statement of Neil Earney of International Textile, Garment and Leather Workers Federation) (describing incident where boy was dragged from his bed and hung upside down from ceiling fan for two days as punishment for missing work due to illness); Kamm, supra note 18, at B9 (noting Neil Earney's testimony at Senate child labor hearing); Working Children Tell Poor Conditions, CH. SUNDAYS, Sept. 22, 1994, at 57 (describing tales of abuse told to Senate by child workers from Brazil, Honduras and Bangladesh).


\textsuperscript{37} Paul Murphy, Sad Plight of India's Child Workers, S.F. CHRON., July 15, 1994, at A14. Jaffer Imam was sold by his poverty stricken parents into bonded labor at an Indian embroidery factory. \textit{Id.} The factory conditions under which he worked were so severe that within six months, Jaffer told his boss he could no longer work. \textit{Id.} In a fit of rage, his boss threw kerosene over the boy and set him on fire. \textit{Id.} Jaffer died a painful death, with burns covering 98\% of his body. \textit{Id.} The Indian government has neither publicly condemned the slaying, nor compensated the boy's family. \textit{Id.}

\textsuperscript{38} Grossfeld, supra note 19, at A8. Eight-year-old Laxmi Sada was kidnapped while playing with friends outside his Indian village. \textit{Id.} He was then taken in a bus to a carpet factory. \textit{Id.} When he cried, he was beaten with a punja, a comb-like tool. \textit{Id.} When blood flowed from his wounds, his employers would light matchstick powder on the wound to stop the bleeding. \textit{Id.} In an attempt to rescue him from this abuse, Laxmi's father arrived at the factory only to be intercepted by factory personnel. \textit{Id.} Instead of reuniting with his son, Laxmi's father received a fatal beating. \textit{Id.}

\textsuperscript{39} Joe P. Bean, Another Child Killed in Ruthless World, SAN ANTONIO EXPRESS-NEWS, Apr. 27, 1995. Iqbal Masih was shot and killed in April 1995 as he and two friends rode their bicycles through their Pakistani village. \textit{Id.} Iqbal's parents had sold him into slavery when he was four years old to satisfy a $16 debt. \textit{Id.} For six years, Iqbal worked 12 hour days chained to a loom in unsafe, unhealthy conditions. \textit{Id.} The dust within the carpet factory in which Iqbal worked, severely damaged his respiratory system and made it difficult for him to breathe. \textit{Id.} Two years ago, Iqbal escaped from the carpet factory. \textit{Id.} He began attending school and, eventually, became an outspoken crusader against child slavery both in his country and abroad. \textit{Id.} Iqbal recruited villagers to fight against the forced labor and exploitation of children. \textit{Id.} Iqbal planned to become a lawyer, and Brandeis University offered him a full scholarship. \textit{Id.} Unfortunately, Iqbal would never attend Bran-
B. United States Efforts to Combat Child Labor

CLDA represents a continued effort by the United States to combat child labor on both national and global levels. While protective of American workers, the bill also advocates a strong policy toward the resolution of this human rights issue on a global
deis. Id. His eloquence and pursuit of exposing child exploitation brought death threats from Pakistani carpet manufacturers whose profits had been threatened. Id. Within a short time, Iqbal was murdered. Id. When he died, he was 12 years old, weighed only 50 pounds and was not taller than the average six-year-old American child. Id.; see also, Kathy Gan
non, Young Activist’s Death Hits Pakistani Carpet Sales Trade: Exports to West Have Di

See Child Labor and the New Global Marketplace, supra note 7, at 8-10 (discussing Senator Harkin’s call for United States to comand respect for basic human rights); Tonya, supra note 2, at 655 (noting congressional view America should positively encourage dignified treatment of children). But see, e.g., Kelleher, supra note 2, at 180-81 (implying American concern may not truly lie in improving situation of children in developing countries); Tonya, supra note 2, at 661 (suggesting CLDA, insofar as it is based on theory that children from other countries are taking American jobs, appeals to same protectionist sentiment that flowered in 1980’s); see also Aiming at Child Labor, CHRISTIAN SCI. MON., Apr. 18, 1994, at 18 (warning careful language should be used to keep CLDA from being protectionist); Newcomb, supra note 24, at 1 (noting criticism of CLDA as protectionist); Satyanarayan Sivaraman, Asia-Children: Child Abuse Still Rampant Throughout Region, IN

See 135 CONG. REC. H2,161-02, H2,161 (1989) (statement of Rep. Pease). Representative Pease expressed disapproval of compelling competition between “American workers and importers promoting the manufacture of goods made by brutalized children slaving away under medieval working conditions.” Id.; see also Kelleher, supra note 2, at 192. CLDA has been criticized as protectionist because one of its goals seems to be the improvement of the United States economic situation. Id. The bill would have the direct effect of denying employment to foreign children while simultaneously boosting American employment in the same industries. Juli Stensland, Internationalizing The North American Agreement on Labor Cooperation, 4 MINN. J. GLOBAL TRADE 141, 149 (1995). Developing countries are staunchly opposed to global labor standards set by developed countries. Id. The fear is that the imposition of international labor standards deprive developing countries of low cost labor, which is their competitive advantage in international trade. Child Labor; Boy’s Death Should Stir U.S. Conscience, STAR TRIB. (Minneapolis-St. Paul), Apr. 25, 1995, at A12. The first two versions of the bill were dismissed as too protectionist. Id. The true legislative intent of CLDA has been purported to be to protect United States textile interests and not foreign children. Register’s Readers Say, DES MOINES REG., Aug. 5, 1992, at 6. But see World Must Quit Enslaving Kids, supra note 40, at A10. Concerns that CLDA violates GATT’s anti-protectionist provisions are overblown because many of the violating industries have no American counterparts. Id.
scale. An assessment of the bill in the context of past American efforts in this area supports this interpretation.

Following the Civil War, northern states experienced difficulty prohibiting child labor out of fear that southern states would lure industry to relocate with promises of deregulation. This situation inspired federal action which manifested itself in the passage of federal laws to end the child labor crisis. The Child Labor Law of 1916 was an attempt to do this by prohibiting the employment of children under the age of sixteen in factories and manufacturing establishments. The United States Supreme Court, however, declared the Act an unconstitutional exercise of congressional authority under the Commerce Clause. Thereafter, Congress enacted the Tax on Employment of Child Labor, which attempted to impose a ten percent tax on the total profit of any employer


43 See Rothstein, supra note 18, at F3 (discussing international problems of child labor and American legislative efforts to combat child labor).

44 See Rothstein, supra note 18, at F3 (indicating that developing nations cannot control abuses of child labor because employers retaliate with relocation); Tonya, supra note 2, at 635 ("Businessmen in these [Southern] states competed with the North much as the less developed compete with industrial giants in the twentieth century; by exploiting cheap labor."). See generally ELIZABETH LEWIS OTEY, CHILDREN AND YOUTH SOCIAL PROBLEMS AND SOCIAL POLICY: THE BEGINNING OF CHILD LABOR LEGISLATION IN CERTAIN STATES 73-204 (1974) (providing state by state analysis of child labor legislation in nineteenth century).


47 Act of 1916, supra note 46, at 675.

48 Hammer, 247 U.S. at 271-72 (prohibiting use of Commerce Clause power to regulate goods manufactured at factories through use of child labor because Child Labor Act regulated "manufacturing" not "commerce"), overruled by Darby, 312 U.S. at 116-17 ("The conclusion is inescapable that Hammer v. Dagenhart, was a departure from the principles which have prevailed in the interpretation of the Commerce Clause both before and since the decision and that such vitality, as a precedent, as it then had has long been exhausted.").

utilizing child labor.\textsuperscript{50} This attempt to use the taxing power as a conduit to regulate child labor, however, was also ruled unconstitutional.\textsuperscript{51}

In 1924, Congress proposed a Child Labor Amendment to the United States Constitution.\textsuperscript{52} The proposed amendment sought to empower Congress with the authority to set a minimum age for employment.\textsuperscript{53} After fourteen years of consideration, the amendment proposal failed.\textsuperscript{54} Although twenty-eight states voted to ratify the amendment,\textsuperscript{55} the ratification process mandated approval by thirty-six of the forty-eight existing states.\textsuperscript{56} Finally, in 1938, during the Great Depression, the federal government succeeded in enacting the Fair Labor Standards Act ("FLSA"),\textsuperscript{57} which sets a minimum age for the employment of children in industries whose products enter interstate commerce.\textsuperscript{58} Upon review, the Supreme

\textsuperscript{50} Revenue Act of 1919, \textit{supra} note 49, § 1200. The Act provided that employers of child labor be subject to "an excise tax equivalent to 10 per centum" of their entire net profits. \textit{Id.} The Act empowered the Commissioner and the Secretary of Labor to inspect industries. \textit{Id.} § 1206, 40 Stat. 1138, 1140. Obstruction of an inspection was made punishable by fine and imprisonment. \textit{Id.}

\textsuperscript{51} \textit{Bailey}, 259 U.S. at 39 (holding unconstitutional pretextual use of taxing power because it imposed prohibitive tax rate on employers of child laborers).

\textsuperscript{52} H.R.J. Res. 184, 68th Cong., 1st Sess. (1924).

\textsuperscript{53} \textit{Id.} The proposed amendment gave Congress the power to prohibit persons under the age of eighteen from working. \textit{Id.} § 1.

\textsuperscript{54} \textit{Id.} Section One of the proposed amendment would have given Congress the power to "limit, regulate, and prohibit the labor of persons under 18 years of age." \textit{Id.} § 1. Section Two would have left state power unimpaired except to the extent necessary to implement the Congressional legislation. \textit{Id.} § 2. \textit{See generally} Coleman v. Miller, 307 U.S. 433, 456 (1939) (affirming judgment of Kansas Supreme Court denying writ of mandamus to legislators who brought action attacking state senate vote in favor of ratification of Child Labor Amendment).

\textsuperscript{55} Coleman, 307 U.S. at 473 (providing state by state chronology of Child Labor Amendment); \textit{see} Robert E. Hoyt, \textit{Dealing With Child Labor, Now That GATT Has Passed}, Ariz. Rep., Dec. 11, 1974, at F3 (indicating that it took 14 years for 28 states to ratify amendment).

\textsuperscript{56} U.S. Const. art. V. Amendments to the United States Constitution must be ratified by the "legislatures of three fourths of the several states." \textit{Id.; see} Hoyt, \textit{supra} note 55, at F3 (indicating approval by 36 states necessary to pass Child Labor Amendment).


\textsuperscript{58} 29 U.S.C §§ 212(a)-(c) (1988). The child labor provisions of the 1938 Fair Labor Standards Act prohibit producers, manufacturers or dealers from placing in interstate commerce goods produced by "any oppressive child labor." \textit{Id.} § 212(a). The Act instructs the Secretary of Labor to conduct investigations into the employment of children and to bring actions for violations of the Act. \textit{Id.} § 212(b). The Act applies to "any enterprise engaged in commerce or in the production of goods for commerce." \textit{Id.} § 212(c); \textit{see} Hoyt, \textit{supra} note 55, at F3 (demonstrating how Fair Labor Standards Act prohibits children under 16 years of age from working in industries whose goods enter interstate commerce); \textit{see also} Rothstein, \textit{supra} note 18, at F3 (noting that Fair Labor Standards Act outlaws factory labor by children).
Court upheld the constitutionality of FLSA.59 In addition to FLSA, many states have passed their own child labor legislation.60 These state laws include regulations such as the minimum age of employment,61 the maximum hours of work,62 the minimum wage,63 the scope of employment,64 and a comprehensive method of record keeping.65 Stringent civil and criminal penalties are prescribed for violations of these laws.66 Although child labor legislation has been fairly effective in protecting children from hazard-

59 United States v. Darby, 312 U.S. 100, 116-17 (1941) (overruling Hammer v. Dagenhart, 247 U.S. 251 (1918) (holding Fair Labor Standards Act constitutional as within Commerce Clause and consistent with Fifth and Tenth Amendments)).


65 See, e.g., DEL. CODE ANN. tit. 14, § 3506 (1974) (child labor law records); HAW. REV. STAT. § 390-3 (1988) (certificates of employment); IDAHO CODE § 44-1303 (1977) (employers to keep record of minor employees); ILL. ANN. STAT. ch. 820, paras. 205/6, 205/17.6 (Smith-Hurd 1993) (time records and reports of work-related death, injury or illness).

ous employment in the United States, efforts to combat child labor in the United States have continued on both the federal and state levels.

C. International Standards of Child Labor

CLDA imposes a minimum age requirement of fourteen years for child labor. It has been suggested that such a rigid, fixed standard is both arbitrary and ethnocentric. This standard is, however, in accord with the internationally recognized standard set by the ILO.

Following World War I, the ILO emerged as the entity responsible for defining international labor standards and facilitating their universal application. The Preamble to the ILO Constitu-


68 See Giammetro-Meyer et al., supra note 2, at 661-67 (examining United States federal legislation regulating child labor); Patricia McLaughlin, Do Americans Care About Child Labor? We'll Find Out, VARIETY, May 12, 1993, at 8E (highlighting Sen. Metzenbaum's recently introduced federal child labor bill designed to increase enforcement and stiffen penalties of child labor laws); see also 107 CONG. REC. S2,927-02, 2,956 (1991) (statement of Sen. Metzenbaum) (proposing child labor amendments to Fair Labor Standards Act of 1938 to better enforce its child labor provisions).

69 See Giammetro-Meyer et al., supra note 2, at 661-67 (examining recent state laws regulating child labor); see also Pamela J. Podger, Panel OK's Major Reforms in State Child Labor Laws, FRESNO BEE, July 15, 1993, at B1 (discussing increasing protection for California children afforded by "sweeping reforms" in its child labor legislation); Ritz, supra note 67, at B9 (noting New York State Labor Department creation of team of inspectors responsible for investigating child labor violations); Nancy Stancill, Legislators Draft Bills to Beef Up Child Labor Laws, Hous. CHRON., Feb. 26, 1993, at 25 (discussing proposed Texas child labor legislation that would allow increased civil and criminal penalties for violations).


71 See Kelleher, supra note 2, at 181-82 (arguing that adoption of rigid age-based definition of child assumes universal appropriate age of employment and ignores cross-cultural differences regarding children's societal roles).

72 See Constitution of the International Labor Organization arts. 227-53, reprinted in INTERNATIONAL LABOUR OFFICE, THE INTERNATIONAL LABOUR CODE 1939 140-76 (1939). "Children under the age of 15 years shall not be employed or work in any public or private industrial undertaking. ..." Id. at 140; see also Tonya, supra note 2, at 633. "International fair labor standards, as distinguished from domestic standards of individual countries, provide for the minimum rights of workers and serve as a 'benchmark' applicable to all countries." Id. at 633-34.

73 See GOTE HANSSON, SOCIAL CLAUSES AND INTERNATIONAL TRADE: AN ECONOMIC ANALYSIS OF LABOR STANDARDS IN TRADE POLICY 11-29 (1983) (providing historical review of labor standards and international trade); Tonya, supra note 2, at 638-39 (discussing early en-
tion mandates the regulation of working conditions, including maximum hours, adequate wages and the protection of children.\textsuperscript{74} Nations adopt ILO standards or regulations in the form of conventions.\textsuperscript{75} Each member nation has the option of ratifying these conventions.\textsuperscript{76}

While conventions and standards are binding on those nations that ratify them, nations that do not ratify such measures cannot be compelled to implement them.\textsuperscript{77} The United States, itself, has ratified eleven conventions.\textsuperscript{78} In addition, Congress has recognized and incorporated five of those conventions into federal legis-


\textsuperscript{74} Constitution of the International Labour Organization, supra note 72, § 1. As indicated in the preamble, the ILO Constitution seeks to remedy labor conditions "involving such injustice [and] hardship" which would threaten world peace and harmony. \textit{Id}. It further states that the failure of any nation to adopt humane working conditions creates an obstacle to the other nations who desire to improve working conditions. \textit{Id}. The United States entered into the proclamation on Sept. 10, 1934. See 49 Stat. 2712, T.S. No. 874.

\textsuperscript{75} Constitution of the International Labour Organization, supra note 72, at art. 19, § 1-11. As of December 1993, 173 conventions had been ratified, each of which had been adopted by as many as 1 to 135 different nations. \textit{Id}.; see Lists of Ratification by Convention and by Country, Int'l Labor Conf., 81st Sess., Report III (part 5), ILO, Geneva 268 (1994).


\textsuperscript{77} Stensland, supra note 41, at 148. Nations in the ILO that do not ratify a convention are nevertheless bound or obligated to report to the ILO the position that their national law takes with regard to the unratified convention or recommendation. \textit{Id}.; see Ehrenberg, supra note 2, at 389-90 (noting ILO provides technical assistance to member states in ratifying and applying conventions); see also Compa, supra note 73, at 179 (stating that although not required to ratify convention, nations are required to submit conventions to national leaders and report progress to ILO). See generally Abdul-Karim Tikhriti, Tripartism and the International Labour Organization 276-79 (1982)(discussing obligation of states to ratify international labor conventions).

\textsuperscript{78} Stensland, supra note 41, at 143 n.14. Seven of the conventions that the United States has ratified deal with the labor rights of seafarers while the other four deal with Tripartite Consultation, Merchant Shipping, Forced Labour, and Labour Statistics. \textit{Id}. Specifically, the conventions are: Minimum Age (Industry) Convention, Oct. 29, 1919 (No. 5); Minimum Age (Sea) Convention, June 15, 1920 (No. 7); Minimum Age (Agriculture) Convention, Oct. 25, 1921 (No. 10); Minimum Age (Trimmers and Stokers) Convention, October 25, 1921 (No. 15); Minimum Age (Non-Industrial Employment) Convention, June 3, 1937 (No. 60); Minimum Age (Sea) Convention (Revised), Oct. 22, 1936 (No. 58); Minimum Age (Industry) Convention (Revised), June 3, 1937 (No. 59); Minimum Age (Fisherman) Convention, June 3, 1959 (No. 112); Minimum Age (Underground Work) Convention, June 2, 1965 (No. 120);
Although the impact of these international standards has been, at times, less than global, efforts to establish such standards have resulted in the creation of a comprehensive international labor code.

Child labor was one of the first issues addressed by the ILO. In 1937, ILO Convention No. 59 declared fifteen to be the minimum age for employment in industry. ILO Convention No. 138 also sets the minimum age at fifteen years and further, allows signatory parties to lower the minimum age for employment to fourteen. In 1973, the ILO also recommended raising the minimum age for hazardous employment to eighteen. A comparison of CLDA and the ILO's Minimum Age Recommendation of 1973 indicates that the age proposed by CLDA for industrial and hazardous employment is actually three to four years younger than the ILO international standard. It is submitted that the argument es-


Harlen Mandel, In Pursuit of the Missing Link: International Worker Rights and International Trade?, 27 COLUM. J. OF TRANSNAT'L L. 443, 460 n.83 (1989) (stating internationally recognized workers' rights incorporated into United States legislation are based on five conventions of ILO). These conventions are as follows: Convention No. 1, standardizing hours of work; Convention No. 5, fixing the minimum age for employment at fourteen for industrial employment; Convention No. 11, the right to organize and the right of association; Convention No. 98, the right to collective bargaining; Convention No. 105, the call for the abolition of forced labor; and Convention No. 131, which calls for the establishment of a minimum wage standard. Id.

See generally TIK=rI, supra note 77, at 276-79 (discussing obligation of states to implement or ratify international labour conventions).

See INTERNATIONAL LABOUR OFFICE, INTERNATIONAL LABOUR CONVENTIONS AND RECOMMENDATIONS, 1919-1991 i-x (1992); Ehrenberg, supra, note 2, at 400 (comprehensively explaining role of ILO).

Tonya, supra note 2, at 638-39 (discussing initial development of ILO, dealing with child labor as one of first issues); see HANSSON, supra note 73, at 94 (noting child labor is one of oldest subjects covered by international labor legislation).

Constitution of the International Labour Organization, supra note 72, arts. 227-34, at 140-44 (1939). Specifically, article 229 provides that children under the age of fifteen shall not be employed in industry. Id. This convention was preceded by the 1921 ILO Convention No. 5 which fixed the minimum age for industrial employment at fourteen. Timothy A. Glut, Changing the Approach to Ending Child Labor: An International Solution to an International Problem, 28 VAND. J. TRANSNAT'L L. 1203, 1226-27 (1995).


Id. art. 2(3). Convention No. 138 allows signatory nations to set the minimum age at fourteen if needed due to economic or educational conditions. Id. art. 2(4). Also, the age for employment that jeopardizes the health, safety or morals of the worker is set at eighteen. Id. art. 5(1).

56 ILO Official Bull., No. 1, at 34-37 (1973); see Giampetro-Meyer et al., supra note 2, at 688-69 (citing recommendation's main focus as social development of children); Mandel, supra note 79, at 460 (stating that setting minimum age for employment is one of "most fundamental ILO covenants").
posed by CLDA's opponents, that the bill imposes ethnocentric standards upon foreign countries, is inapposite.

II. INTERNATIONAL ENFORCEMENT OF LABOR STANDARDS

A. International Labor Organization

Nations have struggled continuously to incorporate labor standards and workers' rights into international trade agreements.\(^{87}\) While the ILO clearly has established global standards,\(^{88}\) enforcement of those standards has proven to be problematic.\(^{89}\) Pursuant to the ILO, a signatory nation may lodge a complaint against another signatory nation upon that nation's failure to observe a convention ratified by both of them.\(^{90}\) Once a complaint has been submitted, the Governing Body of the ILO\(^{91}\) may either appoint a

\(^{87}\) See Hansson, supra note 73, at 11-29. The author indicates nations have emphasized international labor standards and international trade since the early nineteenth century. Id. at 11-12. Hours of work and child labor were adopted at the congress held by the International Workingmen's Association in Geneva in 1866. Id. at 14-15. America established high tariffs to rebuke exploitation of women and children in Europe. Id. at 15. In 1876 and 1877, the International Congress of Hygiene set uniform rules of hygiene and labor conditions. Id. at 15-16. European conventions to equalize costs of production and standardize legislation were conducted throughout the late nineteenth and into the twentieth century. Id. at 17-18. Numerous bilateral agreements were negotiated in the beginning of the twentieth century. Id. at 18. The Treaty of Versailles following World War I established the ILO. Id. at 18-22. Following the Second World War, GATT "became the organization that would govern the liberalization of international trade." Id. at 22-29. See generally Joyce, supra note 76, at 19-46 (analyzing rights of workers internationally).

\(^{88}\) See generally Joyce, supra note 76 (exploring fundamental working rights shared by all of mankind).

\(^{89}\) See Tonya, supra note 2, at 639-40 (noting ILO's insufficient enforcement mechanisms); see also Ehrenberg, supra note 2, at 381-417 (concluding that ILO's ability to attain compliance only through moral persuasion, publicity, shame, diplomacy, dialogue and technical assistance, renders it incapable of effectively disciplining violating countries). See generally Walter GALENSON, THE INTERNATIONAL LABOR ORGANIZATION: AN AMERICAN VIEW (1981) (providing extensive evaluation of structural and operational problems of ILO which prompted United States to withdraw from program and expressing possible future role of United States in ILO); Gregoiy T. Kruglak, THE POLITICS OF UNITED STATES DECISION-MAKING IN UNITED NATIONS SPECIALIZED AGENCIES: THE CASE OF THE INTERNATIONAL LABOR ORGANIZATION 1-4 (1980) (discussing "unusually complex" framework of ILO and American withdrawal and subsequent reentry to organization).

\(^{90}\) See Tikriti, supra note 77, at 274-77. The nations that ratify a specific convention must submit annual reports detailing the measures taken to implement the international standard at the national level. Id.

\(^{91}\) See Galenson, supra note 89, at 13. Within the ILO framework the Governing Body is the executive committee. Id. Its responsibilities include making policy, preparing agenda for conferences, electing the director general and hearing complaints. Id. The ILO is structured around three principal bodies: (1) the Governing Body, which meets three times a year to set the agenda for the Conference, select the Director-General of the ILO and serve as the ILO executive body; (2) the International Labour Conference, which is the ILO's supreme policy-making and legislative organ; and (3) the International Labour Office, which is headed by the Director-General, who oversees the daily activities of the ILO. Tikriti, supra note 77, at 3.
Commission of Inquiry\(^92\) to examine the complaint or communicate the complaint to the government alleged to have violated the convention, allowing that government to address the problem.\(^93\)

The Governing Body has broad discretion to secure compliance with ILO conventions.\(^94\) The ILO operates under the assumption that ratifying countries will comply with the conventions.\(^95\) In the event of noncompliance, where the alleged violating government refuses the ILO recommendation, the International Court of Justice has jurisdiction to make a final determination on the matter.\(^96\)

Enforcement problems arise when a member state does not execute the recommendations of the Commission of Inquiry or the International Court of Justice.\(^97\) Where these instances occur, the ILO fails to provide a mechanism for imposing economic sanctions in the event of non-compliance.\(^98\) In the absence of effective compliance incentives, the ILO relies on moral persuasion and political pressure to promote the enforcement of workers' rights and

\(^92\) See Tikriti, supra note 77, at 303. The three member Commission of Inquiry is responsible for investigating complaints and preparing reports for the Governing Body. Id.; see also Ehrenberg, supra note 2, at 387-88 (describing in detail complaint procedure followed by ILO).

\(^93\) Tikriti, supra note 77, at 297. Allegations may also be brought via the representation procedure that is specified in articles 24 and 25 of the constitution. Id. at 297. Any industrial organization of employers or workers may convey to the International Labour Office that a member nation has not observed a convention to which it is a party. Id. at 299. The Governing Body of the ILO also possesses the authority to initiate a complaint sua sponte, or upon receiving notice of a complaint from a delegate of the International Labour Conference. Id. at 302-03; see also Ehrenberg, supra note 2, at 387 (setting forth complaint procedure under ILO).

\(^94\) Constitution of the International Labour Organization, supra note 72, art. 26, cl. 4. The Governing Body may bring complaints on its own motion or at the initiation of any member of the International Labour Conference. Stensland, supra note 41, at 146.

\(^95\) Stensland, supra note 41, at 147 (noting ILO basis in understanding that members will comply).

\(^96\) Tikriti, supra note 77, at 303-04. The International Court of Justice may affirm, change or renounce the findings of the ILO and such determination is final. Id. Although this authority appears to bolster the ILO's enforcement power over labor standards, as of 1992, the International Court of Justice has not resolved an international trade conflict. Guntner Jaenicke, International Trade Conflicts Before the Permanent Court of International Justice and the International Court of Justice, in Adjudication of International Trade Disputes in International Law and National Economic Law 43-44 (Dr. Ernst-Ulrich Petersmann & Dr. Gunther Jaenicke eds., 1992) [hereinafter Adjudication of International Trade].

\(^97\) See Stensland, supra note 41, at 147-48 (analyzing lack of force in ILO enforcement mechanism); see also Ehrenberg, supra note 2, at 389.

\(^98\) Ehrenberg, supra note 2, at 390; see Glut, supra note 83, at 1226 (discussing lack of enforcement provisions in ILO conventions).
labor standards. Although the standards promoted by and through the ILO represent an important attempt to achieve uniform labor practices, their limitations represent a current inability to address child labor violations adequately on a multilateral level.

B. GATT and the World Trade Organization

GATT\(^{101}\) is a multi-lateral forum for international commerce that is intended to facilitate the elimination of global trade barriers.\(^ {102}\) After World War II, the United States and twenty-one other nations signed the GATT accords in an attempt to stabilize international trade.\(^ {103}\) The initial purpose of GATT was to reduce tariffs worldwide.\(^ {104}\) Due to the absence of any broad international trade guidelines, however, GATT effectively became the central authority linking national policies and international trade.\(^ {105}\) Its informal structure has evolved into the world’s primary multilat-

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99 See generally Ehrenberg, supra note 2, at 381-417 (discussing ILO’s reliance on moral persuasion and political pressure, resulting in less than adequate enforcement incentives).

100 See id. (indicating ineffectiveness of ILO enforcement mechanisms).

101 The General Agreement on Tariffs and Trade, opened for signature Oct. 30, 1947, 61 Stat. A3, 55 U.N.T.S. 187 [hereinafter GATT 1947] (superseded by GATT 1994, 33 I.L.M. 1125 (1994)). At its inception, the GATT was intended to be the intergovernmental agreement that regulated the flow of goods across national borders. See Michael Hart, Coercion or Cooperation: Social Policy and Future Trade Negotiations, 20 CAN.-U.S. L.J. 351, 382 (1994). In 1947, the members concern was with border disputes and not with product origin and the original GATT sought to bring about non-discrimination between domestic and foreign goods once they passed GATT requirements. Id.

102 General Agreement on Tariffs and Trade: Multilateral Negotiations Final Act Embodying the Results of the Uruguay Round of Trade Negotiations, opened for signature Apr. 15, 1994, 33 I.L.M. 1125, 1126 (1994) [hereinafter GATT 1994]; see Hart, supra note 101, at 382 (noting GATT was negotiated and conceived as intergovernmental agreement designed to regulate and influence flow of goods).


105 See JACKSON & DAVEY, supra note 73, at 294. The International Trade Organization was the entity intended to implement GATT, but after extensive hearing and debates, the United States Congress moved away from liberal, international trade policy. Id. at 294-96. Moreover, Congress’ refusal to support the ITO effectively eradicated the ITO since most nations were waiting to follow the United States’ lead. Id. at 294-95; see also, Guy T. Petrillo, Note, Free Trade Area Agreements and U.S. Trade Policy, 18 N.Y.U. J. INT’L L. & Pol’y. 1281, 1284 (1986) (discussing GATT’s early role in international trade relations); Schien, supra note 103, at 106 (describing main goal of GATT accords).
eral agreement dealing with the trade of goods. On January 1, 1995, GATT entered a new era with the emergence of the WTO, which now serves as the arbiter of all issues regarding the Multilateral Trade Agreements. The agreement that established the WTO was the result of the Uruguay Round talks. That agreement reiterates the goals previously sought under GATT. These goals include the promotion of global living standards, optimal use of the world's resources, preservation of the environment, securing participation in international trade by least-developed-nations and developing an integrated and durable world trade system. Unfortunately, neither the WTO, nor its predecessor in GATT, has sought to eliminate child labor while furthering international standards of living.

106 See Jackson & Davey, supra note 73, at 294 (discussing historical development of GATT).
108 World Trade Organization Agreement, Dec. 15, 1993, para. 2, art. II, 33 I.L.M. 13, 15 (1994) (hereinafter WTO Agreement). The GATT, the General Agreement on Tariffs and Services, and the Agreement on Trade-Related Aspects of Intellectual Property are considered to be Multilateral Trade Agreements that bind all members of the GATT and now the World Trade Organization. Id. See generally Pierre Pescatore et al., Handbook of WTO/GATT Dispute Settlement 11-17 (1995) (hereinafter GATT Handbook). The plurilateral agreements are the Civil Aircraft Agreement, the Bovine Meat Agreement and the Dairy Products Agreement, and are included within GATT but are binding only on the signatories of each agreement. Id. at 18.
109 WTO Agreement, at 13. Since the creation of GATT, several rounds of multilateral trade negotiations have convened. Symposium, The Uruguay Round and the Future of World Trade, 18 Brook. J. Int'l L. 1, 1 (1992). The most ambitious of the negotiations took place in 1986 in Punta del Este, Uruguay ("Uruguay Round"). Id. The scope of the Uruguay Round encompassed many international trade issues, including, but not limited to, tariff reductions, market access for products of lesser developed countries, trade in services, the institutional structure of GATT, the functioning of the GATT system, and a dispute resolution mechanism. Id. at 2-3.
110 Uruguay Round, supra note 15, 33 I.L.M. 1125. After seven years, the signatory parties agreed to the establishment of the WTO to incorporate all changes to GATT and the new agreements regarding such issues as the environment and intellectual property. Id.; see also Law & Practice, supra note 107, at v-vi.
111 Id.
112 Uruguay Round, supra note 15, at 1144; GATT 1947, supra note 101, at 188. The Preamble of the original GATT stated objectives such as improving economic well being throughout the world and increasing international trade by (i) substantially reducing tariffs and other trade barriers and (ii) eliminating discriminatory treatment in international commerce. Id.; Pescatore et al., supra note 108, at 10; see also Office of the United States Trade Representative, Uruguay Round of Multilateral Trade Negotiations: Ministerial Decisions and Declarations Communication from the Chairman, available in WESTLAW, GATT database, 1994 WL 761491, at *1. The Declaration from the Chairman of the Uruguay Round welcomed the new agreement as an achievement that "will strengthen the world economy and lead to more trade, investment, employment and income growth throughout the world." Id.
113 Office of the United States Trade Representative, The Uruguay Round Agreements Act: Statement as to How the Uruguay Round Agreements Achieve Congres-
The WTO will administer almost every aspect of world trade in goods and services\textsuperscript{114} and will serve as the primary forum for disputes arising from such trade.\textsuperscript{115} Under the WTO, trading partners are referred to as "members."\textsuperscript{116} The members of GATT and the new WTO are obliged to negotiate multilaterally to reduce tariffs, eliminate non-tariff barriers and, most importantly, refrain from discriminatory treatment.\textsuperscript{117} Each member will have a representative at the Ministerial Conference,\textsuperscript{118} which has the authority to facilitate the operation and further the objectives of the Multilateral Trade Agreements.\textsuperscript{119} A General Council composed of members' representatives executes the functions of the WTO when the Conference is not in session.\textsuperscript{120} Under the former GATT system, the decision-making process was guided by consensus.\textsuperscript{121} As such, GATT did not achieve any result unless a consensus was reached.\textsuperscript{122} According to the WTO, if no consensus is reached, a decision is made by a majority vote in which each member casts one equally weighted vote.\textsuperscript{123} This innovation should play an im-


\textsuperscript{115} Ehrenberg, \textit{supra} note 2, at 395 (describing GATT/WTO dispute settlement procedures).

\textsuperscript{116} WTO Agreement, art. IV, 33 I.L.M. at 16.

\textsuperscript{117} Ehrenberg, \textit{supra} note 2, at 391; see Piscatore \textit{et al.}, \textit{supra} note 108, at 10 (providing overview of original and modern objectives of GATT); see also Jackson \& Davey, \textit{supra} note 73, at 296-98 (outlining GATT requirements).

\textsuperscript{118} WTO Agreement, at 16.

\textsuperscript{119} Id.

\textsuperscript{120} Id. The General Council also has responsibility for establishing the rules for the WTO to follow, establishing the responsibilities of the Dispute Settlement Body and the Trade Policy Review Body, and creating councils within the WTO on each multilateral agreement. \textit{Id.} at 16-17.

\textsuperscript{121} See Piscatore \textit{et al.}, \textit{supra} note 108, at 13 (examining GATT dispute settlement process).

\textsuperscript{122} Id. at 13-14.

\textsuperscript{123} WTO Agreement, at 19. If a General Council interpretation of one of the trade agreements is not adopted by consensus, a three-fourths majority will reign. \textit{Id.}
portant role in the implementation of new trade policy under current and future trade agreements by preventing a one-country veto and allowing expedited resolutions under GATT.

III. THE CHILD LABOR DETERRENCE ACT

For the sixth consecutive year, Congress has responded to the global problem of child labor with the introduction of the Child Labor Deterrence Act. This Note focuses on the Senate version of CLDA, also referred to as the "Harkin Bill," sponsored by Senator Tom Harkin. The Harkin Bill has accumulated bipartisan support in both Houses of Congress. On the international level, the United Nations and the ILO also have indicated their approval of CLDA. Furthermore, 112 Nobel laureates have expressed a willingness to collaborate with Congress to enact and enforce the Act.

CLDA links international child labor and United States trade policy by conditioning trade upon the securing of workers' important decision making powers regarding the power to waive obligations under the WTO Agreement and the Multilateral Trade Agreements by three-fourths majority and amend the Multilateral Trade Agreements by two-thirds vote. WTO Agreement, supra note 108, at 19-20.

124 S. 706, 104th Cong., 1st Sess. (1995); H.R. 2065, 104th Cong., 1st Sess. (1995); see Kelleher, supra note 2, at 168 n.50. The House bill differs significantly from that sponsored by the Senate because the House Bill is inapplicable to articles produced by foreign manufacturers unless they do not "comply with the applicable national laws prohibiting child labor in the workplace." Id. Strangely, this provision renders the remainder of the bill defining child labor and fixing a minimum age of 15 for employment, "basically irrelevant." Id. at 169 n.53. Application of the House bill would result in punishment of countries with child labor legislation and complete disregard of countries without such legislation. Id.


126 140 CONG. REC. E1420-01 (1994) (statement of Rep. Brown). The Harkin Bill has been co-sponsored by six senators. 1995 Bill Tracking S. 706; 104 Bill Tracking S. 706. The House Bill sponsored by Representative Barney Frank and is co-sponsored by 33 representatives. 1995 Bill Tracking H.R. 2065; 104 Bill Tracking H.R. 2065. But see Epstein, supra note 20, at A10 (suggesting Child Labor Deterrence Act had received less support in Congress than Sen. Howard M. Metzenbaum, D-Ohio, a co-sponsor, had hoped). Cf. Kamm, supra note 18, at B9 (indicating that when President Clinton announced intention to link future trade negotiations with international labor standards, all 44 Republican senators responded "they would not support his request for fast track authority").


128 See 140 CONG. REC. E1420-01 (1994) (statement of Rep. Brown). During an unprecedented public hearing held at the United States Labor Department in 1994 to discuss international child labor, 112 Nobel laureates "announced their plans to link the work of their newly established organization, Childright Worldwide, with legislative and nonlegislative initiatives to stop child exploitation." Id. This group was led by international leaders such as Mother Theresa, Nelson Mandela, Rigoberta Menchu and the Dalai Lama. Id.
rights.\textsuperscript{129} The bill is an attempt to curtail the exploitation of children by preventing products manufactured by underage children from entering the United States’ market.\textsuperscript{130} The underlying policies of CLDA are to prevent the use of child labor as a means of becoming more competitive in international trade,\textsuperscript{131} to ameliorate international trading rules,\textsuperscript{132} and to alleviate poverty in developing countries.\textsuperscript{133}

The Harkin Bill urges the President of the United States to seek an agreement with trading partners regarding child exploitation in the workplace.\textsuperscript{134} The bill prohibits the entry into the United


Brown further proposed that the United States encourage government leaders and prominent private businessmen in developing countries to work towards helping achieve socially responsible trade that benefits workers and consumers in all countries. \textit{Id.;} 135 CONG. REc. H2161-02 (1989) (statement of Rep. Pease). Representative Pease indicated that effective action hinges on the elimination of trading markets for goods made by exploited children. \textit{Id.}

\textsuperscript{130} S. 706, 104th Cong., 1st Sess. \textsection 2(b) (1995); see 139 CONG. REc. S3173-01, S3179 (1993). In reintroducing the bill in 1993, Senator Harkin opined that the bill aims to eliminate child abuse and protect the dreams, childhood and future of children around the globe. \textit{Id.} Senator Harkin also expressed his view that the Bill is designed to raise the standard of living in Third World countries so that we may “compete on the quality of goods” and not on “the misery and suffering of those who make them.” \textit{Id.} Senator Harkin further claimed that the bill assists Third World governments in enforcing their legislation by “ending the role of the United States in providing a market for goods and encouraging other nations to do the same.” \textit{Id.} Finally, Senator Harkin warned the President, “unless the economic exploitation of children is eliminated, the potential and creative capacity of future generations will forever be lost on the factory floor.” \textit{Id.; see also} Kelleher, supra note 2, at 169 n.52 (citing 139 CONG. REc. S3179 (1993)).


\textsuperscript{132} \textit{Id.}

\textsuperscript{133} \textit{Id.}

\textsuperscript{134} \textit{Id.} \textsection 3. To further its underlying purpose the bill implores the President to seek agreement with United States trade partners “securing an international ban on trade in the products of child labor.” \textit{Id.; see} 140 CONG. REc. E1420-01 (1994) (statement of Rep. Brown). Representative Brown also urged the President to seek an agreement securing a ban on international of products made by children. \textit{Id.}
States of any manufactured article produced by a foreign nation or industry that utilizes child labor. According to the terms of the Harkin Bill, once a product is identified as one of child labor, the Secretary of Labor may ban its importation into the United States. This ban, however, would not apply if importers certify that the product was not derived from child labor. A ban placed on a foreign industry can be revoked in appropriate circumstances as where the Secretary of Labor finds that the foreign industry and the host country are no longer using child labor in the manufacture of products.

CLDA prescribes both civil and criminal penalties for violations of the Act. Most significantly, CLDA advocates educational and developmental alternatives to the employment of underage children. This provision is intended to address concerns that enforcement of the act will result in massive unemployment of millions of child laborers and will, therefore, eventually prove

135 S. 706 § 8(1)(A). "Manufactured articles" are those that are, in whole or in part, fabricated, assembled processed, or mined. Id.
136 S. 706, 104th Cong., 1st Sess. § 5(a)(1) (1995). While the foreign industry and its host country are being identified, the Secretary is directed to prohibit entry of any products of that foreign industry. Id.
137 Id. § 4(a)-(b). CLDA directs the Secretary of Labor to identify those foreign industries that utilize child labor in the exportation of products as well as allows third parties to file petitions requesting the identification of violators. Id.
138 Id. § 5(b). The Secretary shall require written documentation that reasonable steps were taken to ensure the product was not made by child labor. Id.
139 Id. § 4(d) (1995). The Secretary is empowered to revoke "the identification of any foreign industry and its host country" upon receiving information making such action appropriate. Id.
140 Id. § 4(d)(2)(A). Before revocation can occur, the Secretary must first submit a written report to Congress stating the opinion that child labor is not being utilized in either production or export, including the facts upon which the opinion is based and the reasons why the Secretary feels revocation is appropriate. Id. § 4(d)(2)(A)(B). Proposed revocation would require publication in the Federal Register and an invitation for public comment before such revocation could become effective. Id. § 4 (d)(3).
141 S. 706, 104th Cong., 1st Sess. § 6(b)-(c) (1995). Violators are liable for civil penalties of up to $25,000, and criminal penalties of fines from $10,000 to $35,000 and/or one year imprisonment. Id.
142 Id. § 6(c). The bill states that "any person" will be liable for attempting to enter a manufactured article from an CLDA identified foreign industry. Id. § 6(a)(1). The criminal liability is imposed by the CLDA only when the entry was intentional. Id. § 6(c). Accordingly, it seems that the violators of an enacted CLDA would most likely be corporate entities in the importing business.
143 S. 706 § 9. This section appropriates $10,000,000 for the fiscal years from 1996 through 2000 to the President to be expended as a United States contribution to both the International Labor Organization, to assist its International Program on the Elimination of Child Labor, and the United Nations Commission on Human Rights, to aid the Subcommittee and Working Group on Contemporary Forms of Slavery in combatting bonded child labor. Id.
detrimenital to children. In fact, the Harkin Bill incorporates measures which address the displacement of children previously relegated to child labor.

CLDA echoes a developing global trend that links trade and child labor. The prospect of CLDA’s enactment has prompted several foreign governments to reveal their opposition to the commercial exploitation of children. Accordingly, similar legislative proposals linking child labor with trade have surfaced throughout Europe. The mere proposition of CLDA, however, has not been

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144 See Kelleher, supra note 2, at 184-85. The author maintains that the assumption that removing children from the work force will benefit the child is false. Id. at 184. Kelleher contends that in high poverty areas, the absence of work could actually lead to a variety of social, moral and health risks since it will decrease income that is needed for nutritional and health support. Id. at 185. Moreover, the author suggests that lack of educational opportunities, coupled with the prohibition of employment, defeats the possibility for the personal development of children. Id.

145 S. 706 § 2(b)(2). The Act supports initiatives extending “primary education, rehabilitation, and alternative skills training” to child laborers. Id. These contributions are in accord with the United States policy of increasing assistance to eradicate the poverty that so often gives rise to the incidence of child labor. Id. § 2(c)(4); see 140 Cong. Rec. E1420-01 (1994) (statement of Rep. Brown). Introducing CLDA, Representative Brown stressed the necessity of having the United States contribute financially to beneficial alternatives for the development of displaced child workers. Id.; see also Onapito-Ekomoloit, supra note 7, at *1. Onapito-Ekomoloit’s article dispels the argument that CLDA exhibits ambivalence towards children by pointing to the United States’ contributions to the International Labor Organization and the United Nations. Id.


147 See Carney, supra note 7, at 4 (suggesting CLDA has already caused some importers and manufacturers to take corrective action); see also Kamm, supra note 18, at B9 (“Despite the fact that the Harkin-Brown bill is still pending, its effect has been felt in South Asia.”); Newcomb, supra note 24, at 1 (stating that United States can influence exploitation of children overseas, as proven by fact that many countries have begun to regulate child labor following introduction of CLDA); N. Vasuki Rao, Curbs on Child Labor Gain Momentum in S. Asia, J. Com. (N.Y. Times), July 10, 1995, at A5 (noting countries such as India, Pakistan and Bangladesh are moving to eliminate child labor due to pressure from Western countries); Rothstein, supra note 18, at F3 (indicating possible enactment of CLDA has received attention internationally).

148 See 140 Cong. Rec. E1,420-01, E1,420-01 (1994) (statement of Rep. Brown). “Very soon Frau Brigitte Adler, a Social Democratic Party member of the German Bundestag, will introduce counterpart legislation to our bill [CLDA].” Id. Furthermore, a coalition of German, French, Belgian and Dutch Parliamentarians expect to pass similar legislation in
enough to prevent the majority of abuses of child labor abroad.\textsuperscript{149} Thus, passage of CLDA is necessary to initiate a global movement toward compliance with international labor standards.\textsuperscript{150}

IV. POTENTIAL RAMIFICATIONS OF CLDA ON INTERNATIONAL TRADE

A comparison of CLDA to past United States' trade legislation indicates a GATT dispute settlement review of the bill would find it to be GATT-illegal. CLDA, if enacted, would be the sixth piece of United States' legislation to link international child labor standards with trade practices.\textsuperscript{151} A majority of the prior legislation provides trade benefits to developing countries that have taken steps to recognize international labor standards.\textsuperscript{152}
Section 301 of the Omnibus Trade and Competitiveness Act ("OCTA"), however, like CLDA, penalizes trade partners for failure to recognize certain labor standards and authorizes the United States Trade Representative to take unilateral retaliatory action against trade partners who violate certain recognized workers' rights. Enforcement of Section 301 is inconsistent with GATT since it defies the presumption that members of GATT will refrain from unilateral retaliation and will reconcile grievances on a multilateral level.

Because CLDA employs a unilateral rather than a multilateral approach to the child labor problem, enforcement of the bill will put the United States in direct conflict with its corresponding obligations under the WTO. Although Section 301 of the OCTA authorizes the President to utilize "all appropriate and feasible ac-
tion" against countries whose acts violate United States rights or benefits under any trade agreement, including a ban on products from foreign nations.\textsuperscript{157} CLDA extends the government's reach. This added control is found in CLDA's explicit prescription for a direct ban of all imports produced by child labor, and its provision for the use of criminal as well as civil penalties.\textsuperscript{168} Since GATT seeks to avoid precisely those unilateral measures which permit member nations to invoke restrictions such as those authorized by CLDA,\textsuperscript{169} any future CLDA ban has the potential to be even more violative of GATT than Section 301.\textsuperscript{160}

As a result of GATT's failure to include restrictions on child labor, the United States would have a difficult time defending CLDA's validity as a permissible trade restriction.\textsuperscript{161} For instance, the United States would likely attempt to counter a charge that CLDA is a GATT-illegal unilateral measure by arguing that CLDA qualifies as a general exception to GATT Article XX's prohibition against such measures, because the bill is designed to protect the "national welfare."\textsuperscript{162} The United States may then at-

\textsuperscript{157} 19 U.S.C. §§ 2411(a)-(b) (1994). The President is authorized to take all appropriate and feasible action within his power to enforce this act, with respect to trade or any area of relations with foreign countries. \textit{Id.}

\textsuperscript{158} S. 706, 104th Cong., 1st Sess. § 6(b)-(c) (1995). According to the bill, violators are liable for civil penalties of up to $25,000 and criminal penalties of fines from $10,000 to $35,000 and/or one year imprisonment. \textit{Id.}

\textsuperscript{159} GATT 1947, art. XI, at 224. Article XI is entitled \textit{General Elimination of Quantitative Restrictions}. \textit{Id.} The first paragraph of Article XI disallows prohibitions and restrictions against contracting parties based on quotas, license requirements and other measures. \textit{Id.} at 224-26.

\textsuperscript{160} \textit{See} GATT 1947, art. XI, at 224. Complaints leveled against the United States for action taken under an enacted and enforced CLDA would most likely be based on Art. XI, which bans measures that nullify or impair the benefits of trade partners. \textit{Id.} Complaints under the WTO/GATT invoke the dispute settlement mechanism that is based on Article XXIII of GATT. \textit{Id.} art. XXIII, at 226. Article XXIII:1 allows one party to GATT to file a complaint against another party in the event the grieving party feels that GATT benefits or objectives are being nullified or impaired. \textit{Id.} at 266; \textit{see also} Zuckoff, \textit{supra} note 17, at 77 (noting that CLDA supporters acknowledge proposed legislation appears to be illegal under GATT). Under GATT, unanimous consent of trade partners is required to impose a sanction upon any member. \textit{Id.} Under WTO, the United States no longer has the ability to block sanctions because the requirement has been reversed: "unanimous consent is not required to impose sanctions." \textit{Id.}

\textsuperscript{161} \textit{See} HANSSON, \textit{supra} note 73, at 30-31. While the United States wants child labor restrictions to be a part of international agreements, the issue was not included in the Uruguay Round agreements due in great part to immense disagreement as to whether such a provision should be included in economic agreements. \textit{Id.} at 30. Dr. Hansson notes that the main arguments against uniform labor standards in trade agreements pivot upon geographical, cultural, and economic differences, which render uniform application virtually impossible. \textit{Id.} at 29.

\textsuperscript{162} GATT 1947, art. XX, at 262. Article XX, entitled General Exceptions, aims to exempt select governmental measures concerned with the protection of national welfare. \textit{See} Kelle-
tempt to establish CLDA as an internal regulation that treats both foreign and domestic products alike, in accordance with the provisions of GATT Article III. A look at a recent GATT dispute settlement panel decision, in which the United States tried unsuccessfully to use this rationale to justify the Marine Mammal Protection Act ("MMPA"), however, indicates CLDA would meet a similar fate.

In the 1991 Tuna Import Dispute, Mexico alleged that a United States boycott pursuant to the MMPA, which sought to restrict Mexico's methods of tuna fishing, violated GATT as a unilateral import restriction. The United States argued that the restriction was necessary to protect the life and health of dolphins outside the United States and as such, fit within GATT article XX's prohibitions established to protect animal, human and plant life. The GATT dispute resolution panel held that the exception

her, supra note 2, at 173 n.77. GATT shall not be construed as preventing the enforcement of measures that are necessary to protect "public morals, human, animal or plant life or health, or that relate to products of prison labour." Id.; see also GATT 1947, supra note 101, art. XX, at 262. These exceptions are prefaced in Article XX with the statement that they are not to be applied in a manner constituting arbitrary or unjustifiable discrimination between countries where the same conditions prevail or as a disguised restriction of international trade. Id.

See GATT 1947, supra note 101, at 204 (amended by Protocol modifying part II and Article XXVI of the General Agreement on Tariffs and Trade, signed at Geneva, Sept. 14, 1948, 62 U.N.T.S. 80). Article III recognizes that internal laws should not be applied to imports in an effort to protect domestic production. 62 U.N.T.S. at 82. It further provides that imported products not be subject to restrictions not imposed on like domestic products. Id. at 82; see also Kelleher, supra note 2, at 173 nn.75, 76 (describing language of Article III). The author discusses the Article III provisions of GATT, concluding that their intention is to provide equal treatment to domestic and imported products; therefore, internal regulations effected by a United States' ban on all products of child labor would not disfavor imports. Id.


Tuna Import Dispute, supra note 165, para. 5.24.

The dispute resolution system under the GATT was one of the many changes made after the Uruguay Round. See General Agreement on Tariffs and Trade: Understanding on Rules and Procedures Governing the Settlement of Disputes, art. IV, 33 I.L.M. 1226, 1228-29 (1994) (describing new procedures for dispute settlement in the WTO) [hereinafter GATT Dispute Understanding]. Under the new system, a report from the WTO dispute panel will bind members in the absence of a consensus for veto of the ruling. LAW & PRAC-
was limited to restrictions promulgated for the protection of life within the borders of the importing country.\textsuperscript{169} The GATT panel also concluded that domestic regulations must relate to the product itself and not to the method of production.\textsuperscript{170} The panel noted that an interpretation of GATT which would allow a country to justify unilateral measures to protect life outside its borders is incompatible with GATT and would provide trade security only to those nations which have similar internal regulations.\textsuperscript{171} Since a CLDA ban premised upon protection of children in the exporting countries would not be protecting United States citizens, it would likely fail under the Tuna Import Dispute rationale.\textsuperscript{172}

Ninety percent of child labor worldwide is either forced, bonded or indentured,\textsuperscript{173} and, therefore, a viable argument for passage of CLDA may be that the vast majority of its bans on imports are consistent with a GATT provision allowing bans on products derived from prison labor.\textsuperscript{174} Since the issue would be one of first impression, it is possible that the United States might successfully persuade the members of GATT and the WTO to legitimize this analogy, and thus amend its framework to include child labor prohibitions. Because GATT dispute resolution panels interpret

\textsuperscript{169} Tuna Import Dispute, \textit{supra} note 165, paras. 5.28-5.29, at 1620.


\textsuperscript{171} Tuna Import Dispute, \textit{supra} note 165, para. 5.27, at 1620.


\textsuperscript{173} \textit{See} Epstein, \textit{supra} note 20, at A10 (quoting Department of Labor Report); \textit{ILO Finds}, \textit{supra} note 20, at *3 (describing parents selling children to pay debts).

\textsuperscript{174} \textit{See} GATT 1947, para. (e), at 262 (allowing measures to deter products of prison labor).
Article XX exceptions narrowly,\textsuperscript{175} and because the panels are hostile to the regulation of foreign countries by contracting parties,\textsuperscript{176} the likelihood of this argument persuading a GATT panel seems quite remote.

V. PROPOSED SOLUTIONS

In offering a solution to the problem of child labor vis-a-vis GATT/WTO prohibitions against unilateral action, it is necessary to note that GATT restrictions against discriminatory treatment apply only to contracting parties.\textsuperscript{177} There are numerous countries that are not members of GATT, such as China, Taiwan, the former Soviet Republics, Iran, Syria, Libya, and Guatemala, which could serve as potential targets of a CLDA ban without GATT ramifications.\textsuperscript{178} These countries are referred to as non-subsidy agreement countries.\textsuperscript{179} GATT does not prohibit unilateral action against these non-subsidy agreement countries.\textsuperscript{180} Additionally, the United States can make support for membership in the WTO and

\textsuperscript{175} See Christopher A. Cherry, Environmental Regulation Within the GATT Regime: A New Definition of "Product", 40 UCLA L. Rev. 1061, 1066 (1993) (offering United States-Mexico Dispute for proposition that GATT dispute resolution panels interpret exceptions narrowly).

\textsuperscript{176} See id. at 1070 (noting GATT panels hostility towards prospects of members regulating matters outside their borders).

\textsuperscript{177} See 19 U.S.C. § 1671 (1994). The United States deals with member countries differently than with non-member countries. Id. This statute provides that an initial determination of material injury to a United States industry must be made if countervailing duties are to be imposed against a "Subsidies Agreement" country. Id. § 1671(a). No material injury needs to be determined if the same is sought to be imposed against non-Subsidies Agreement countries. Id. § 1671(c); see also John P. Karalis, INTERNATIONAL JOINT VENTURES: A PRACTICAL GUIDE 294 n.25 (1992). Karalis notes that the United States Code handles retaliation against non-members of GATT distinctly from members of GATT. Id.; cf. 19 U.S.C. § 3521 (1994) (allowing President to increase tariffs against any country not part of World Trade Organization that does not accord United States adequate trade benefits).


\textsuperscript{179} 19 U.S.C. § 1671 (1994). A Subsidy Agreement Country means a World Trade Organization Member. Id. §1671(b).

\textsuperscript{180} Steve Charnovitz, Green Roots, Bad Pruning: GATT Rules and Their Application to Environmental Trade Measures, 7 Tul. Envtl. L. J. 299 n.97 (1994); see Charnovitz, supra note 150, at 470, 525 (noting that discrimination is inherent in trade involving non-member of GATT).
GATT contingent on that country's addressing the problem of child labor.\textsuperscript{181}

Regarding subsidy-agreement countries, the United States could work with members of WTO to develop side agreements addressing labor standards. A bilateral or plurilateral agreement between the United States and any number of contracting parties may indirectly pressure remaining nations to support the side agreement. The appropriate model for such an amendment is the North American Agreement on Labor Cooperation or the "Labor Side Agreement,"\textsuperscript{182} which was negotiated as a side accord to the North American Free Trade Agreement.\textsuperscript{183}

The Labor Side Agreement recognizes five international standards regarding workers' rights and enforces existing national laws in the United States, Canada, and Mexico.\textsuperscript{184} This Labor Side Agreement builds upon existing domestic labor standards,\textsuperscript{185} allowing them to serve as a starting point for the development of multilateral standards.\textsuperscript{186} An agreement such as this would require only that each signatory enforce its own labor laws,\textsuperscript{187} avoiding any claims regarding cultural differences or hegemony. Since a side agreement could be brought to fruition on a multilateral level, GATT/WTO would have authority to review any disputes and effectively to bind the parties to their own labor standards.\textsuperscript{188} A side agreement supported by two-thirds of the membership in the


\textsuperscript{183} See Katherine Van Wezel Stone, *Labor and the Global Economy: Four Approaches to Transnational Labor Regulation*, 16 Mich. J. Int'l L. 987, 1007 (1995). The agreement was negotiated by President Clinton before NAFTA was submitted to Congress for approval in an effort to address organized labor's perceived threat to United States jobs. Id.

\textsuperscript{184} See Stensland, supra note 41, at 158-63 (evaluating Labor Side Agreement as useful multilateral link between employee rights and trade benefits).

\textsuperscript{185} Labor Side Agreement, supra note 182, Annex 1, at 1515-16 (setting forth broad labor principles that parties to Agreement promoted, including labor protections for children and young persons).

\textsuperscript{186} See Stone, supra note 183, at 1007-08 (discussing the innovative attempt of Labor Side Agreement to harmonize labor conditions between countries).

\textsuperscript{187} See Stensland, supra note 41, at 159 (noting Labor Side Agreement compels members to set forth and enforce their labor standards).

\textsuperscript{188} Labor Side Agreement, supra note 182, art. 27(1), at 1509. The "Labor Side Agreement" provides for a dispute settlement panel to be invoked if there is a failure of one party to enforce its labor standards. Id. The parties can then take action that comports with the panel decision. Id.
WTO is a very attainable multi-lateral solution to the problem of child labor.

As a unilateral ban on imports, CLDA is likely to violate the terms of GATT.\textsuperscript{189} A more effective approach would be for the United States to confront the problem multilaterally. Although the ILO’s conventions lack enforcement mechanisms, they are available to provide the necessary guidelines for international workers’ rights.\textsuperscript{190} In addition, the United Nations has supported other international child labor standards, evincing a widespread concern for this issue and providing the international substantive basis for any new agreements.\textsuperscript{191} The United States should maintain its position of continuously advocating the inclusion of labor standards in trade legislation\textsuperscript{192} and working to amend GATT to include requirements for workers’ rights and regulation of child labor.\textsuperscript{193}

\textsuperscript{189} See Zuckoff, supra note 156, at 16 (suggesting CLDA would conflict with GATT); see also Zuckoff, supra note 17, at 78 (noting CLDA would put United States in conflict with GATT).

\textsuperscript{190} See generally Joyce, supra note 76, at 19-46 (analyzing fundamental working rights of workers internationally).


\textsuperscript{193} See WTO Agreement art. X, at 20 (providing procedures for amendments to WTO agreement). The Multilateral Trade Agreements may be amended by two-thirds vote of the members, with some agreements needing consensus. GATT Handbook, supra note 108, at 13.
CONCLUSION

The exploitation of child labor continues to be an immense problem. Unfortunately, the problem has not been eradicated through the socio-economic development of third-world countries fueled by global trade. The exploitation of children is on the rise. Existing international agreements are ineffective as a means of enforcing child labor standards. The ideal solution to the problem of child labor would be the procurement of child labor provisions in the WTO through dispute-resolution and amendment procedures.

Until such time that this resolution becomes possible, there is a need for a more realistic, pragmatic approach to the problem of child labor. As a result of the inability of international trade agreements to respond multilaterally to the growing problem, CLDA confronts the issue head-on with a unilateral ban on imports of child labor. Although United States enforcement of CLDA against co-signatories to the GATT/WTO would violate the existing WTO framework, CLDA may be enforced against non-subsidy agreement countries with impunity as well as used as a contingency for United States support for entry into the GATT/WTO.

This Note recommends that Congress enact CLDA into law and immediately begin enforcing it against non-subsidy agreement countries. The United States should join with other countries opposed to child labor and use the Labor Side Agreement resulting from the NAFTA trade talks as a paradigm for an agreement supplementing GATT/WTO. An agreement such as this would be a practicable, multilateral approach to the child labor problem.

Timothy P. McElduff, Jr. & Jon Veiga