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The Child Labor Deterrence Act of 1995: A Choice Between Hegemony and Hypocrisy

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

[I]f 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

¹ Hammer v. Dagenhart, 247 U.S. 251, 280 (1917) (Holmes, J., dissenting).

² See Joan M. Smith, *North American Free Trade and the Exploitation of Working Children*, 4 TEMP. POL. & CIV. RTS. L. REV. 57, 57 (1994) (stating that “over 200 million child workers are exploited around the world”); see also Daniel S. Ehrenberg, *The Labor Link: Applying the International Trading System To Enforce Violations of Forced and Child Labor*, 20 YALE J. INT’L L. 361, 364-65 (1995) (examining international labor standards and demonstrating how combination of International Labor Organization (“ILO”) and General Agreement on Tariffs and Trade (“GATT”)/World Trade Organization (“WTO”) enforcement and dispute procedures could better deter and sanction violations of forced and child labor); Andrea Giampetro-Meyer et al., *The Exploitation of Child Labor: An Intractable International Problem?*, 16 LOY. L.A. INT’L & COMP. L.J. 657, 657-61 (1994) (defining problem of child labor exploitation); James P. Kelleher, *The Child Labor Deterrence Act: American Unilateralism and the GATT*, 3 MINN. J. GLOBAL TRADE 161, 193 (1994) (analyzing Child Labor Deterrence Act (“CLDA”) in light of United States’ obligations under General Agreement on Tariffs and Trade); Michael A. Tonya, *Baby Steps Toward International Fair Labor Standards: Evaluating The Child Labor Deterrence Act*, 24 CASE W. RES. J. INT’L L. 631, 632 (1992) (evaluating effects of Child Labor Deterrence Act on existing international agreements, American workers, American importers, and foreign children).

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).

⁴ See Giampetro-Meyer et al., *supra* note 2, at 657-61 (defining problem of child labor exploitation); see also 138 CONG. REC. S11,603-04 (1992) (statement of Sen. Harkin) (noting UNICEF estimates between 80 and 200 million children work in manufacturing industries).

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").⁶

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.⁷ 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.⁸ Supporters further assert that as the primary market for products made from child exploitation, the United States has the power to halt child labor.⁹ In contrast, opponents of the Act contend that such unilateral¹⁰ action by the United States not only violates the General Agreement on Tariffs and Trade ("GATT"),¹¹ but may also

1991) (providing global overview of child labor with focus on developing countries and suggesting remedial actions available to protect working children from exploitation).

⁶ S. 706, 104th Cong., 1st Sess. (1995).

⁷ 140 CONG. REC. E1,420-01 (1994) (statement of Rep. Brown) (introducing House version of CLDA); see also *Child Labor and the New Global Marketplace: Reaping Profits at the Expense of Children: Hearing on Child Labor Before the Subcomm. on Labor of the Senate Comm. on Labor*, 103d Cong., 2d Sess. 8-10 (1994) [hereinafter *Child Labor and the New Global Marketplace*] (statement of Sen. Harkin) (citing United States Department of Labor's International Affairs Bureau study identifying industries and countries where child labor is used to manufacture products from industry or mining); Rekha Basu, *Stopping Exploitation of Child Labor*, DES MOINES REG., May 1, 1994, at 2 (noting every American purchase of products made by child labor contributes to exploitation of children); Tom Carney, *Harkin: Imports Made Exploited Children, the Senator's "Child Labor Deterrence Act" Would Stop Imports of Goods Made by Children Under the Age of 15*, DES MOINES REG., Sept. 20, 1994, at 4 (noting Congress required Labor Department to identify countries and industries utilizing child labor in industry or mining); Carl Hartman, *Child Labor Reported Rising; Bill Would Ban Imports*, ASSOC. PRESS (D.C.), Apr. 12, 1994 (discussing CLDA); Julie Naughton, *Harkin Child-Labor Bill Adds Senate Resolution*, HFD-WKLY HOME FURNISHINGS NEWSPAPER, Oct. 25, 1993, at 23 (noting Senator Harkin's assertion that United States should prohibit products of child labor); Onapito-Ekomolait, *U.S.-Children: New Bill Would Ban Child-Labor Imports*, INTER PRESS GLOBAL INFO. NETWORK, July 17, 1995 (citing Senator Harkin's declaration that "United States must not import products made by child labor. . . . [p]eriod").

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-Ekomolait, *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.¹² As a result, opponents recommend that the United States address the problem of child labor through existing Multilateral Trade Agreements.¹³

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.

supra note 2, at 173 (suggesting classification of prohibition of goods produced by child labor as "internal" market regulation authorized by GATT or permissible under enumerated "general exceptions").

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).

¹³ BLACK'S LAW DICTIONARY 1015 (6th ed. 1990). A "multilateral agreement" is defined as an agreement among more than two persons, firms or governments. *Id.*

I. EXPLOITATION OF CHILD LABOR

A. Alarming Statistics and Egregious Examples

The Uruguay Round of GATT, the largest trade agreement in history,¹⁴ ended last year after seven years of intense negotiations.¹⁵ Recently, the Uruguay Round negotiations were approved by Congress.¹⁶ Unfortunately, the sweeping changes made in the trade agreements¹⁷ failed to address the needs and rights of children.¹⁸

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.

¹⁶ Uruguay Round Agreements Act of 1994, 19 U.S.C. § 3511 (1994); see *House Floor Debate Regarding H.R. 5110, The General Agreement on Tariffs and Trade*, FEDERAL NEWS SERV. WASH. PACKAGE, Nov. 29, 1994 (providing statements by Reps. Dan Rostenkowski and Nancy Johnson expressing strong support for Uruguay Round Act's and common set of rules for all trading partners); see also *Memorandum for the United States Trade Representative on WTO Agreement*, U.S. NEWSWIRE, Dec. 23, 1994 (containing memorandum released by White House directing trade representative to accept Uruguay Round Agreement); *Presidential Proclamation on Implementation of Uruguay Roundtable Provisions: To Implement Certain Provisions of Trade Agreements from the Uruguay Round of Multilateral Trade Negotiations*, U.S. NEWSWIRE, Mar. 23, 1995 (containing presidential proclamation of congressional approval of Uruguay Round Agreements Act).

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 Veigle, *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.¹⁹ Children under age fifteen constitute approximately twenty percent of the work force in Africa,²⁰ a reported twelve to twenty-six percent in many Latin American countries,²¹ and eleven percent in some Asian countries.²² Child labor endangers a

Growth: Workers' Rights Shouldn't Be Abandoned in GATT, L.A. TIMES, Apr. 14, 1994, at 7 (pointing out Uruguay Round almost failed as result of Clinton Administration demands for "international worker rights"); Mitchell Zuckoff, *Free Trade, Human Rights Clash Over GATT*, BOSTON GLOBE, Oct. 30, 1994, at 77 (stating that although ban on child labor was repeatedly discussed throughout GATT negotiations, developing countries blocked its inclusion by portraying it as protectionism).

¹⁹ 138 CONG. REC. S11,603-04 (1992) (statement of Sen. Harkin). "In many developing countries children represent a substantial portion of the work force and can be found in such industries as glass, metal works, textiles, mining and fireworks manufacturing." *Id.* "UNICEF estimates that between 80 and 200 million children fall into [these] categor[ies] (industry or mining)." *Id.*; see Stan Grossfeld, *Trapped in a Hellhole*, BOSTON GLOBE, Dec. 29, 1994, at A8 (citing ILO estimates of 200 million child laborers under age 15 worldwide); see also Kamm, *supra* note 18, at B9 (discussing evolution of GATT); *Slave-Like Child Labor Growing in Asia, Africa*, PLAIN DEALER (Cleveland), Sept. 28, 1993, at A8 (according to U.N. estimates up to 30% of children ages 10 to 14 work full-time in some countries, many in hazardous or slave-like conditions); Robin Wright, *Labor of Children Fuelling Boom in Third World*, EDMONTON J., May 15, 1994, at C3 (citing ILO estimate of one in four children between ages 10 and 14 working in Third World countries).

²⁰ *Labor: ILO Finds Child Labor Biggest Source of Child Abuse*, INTER PRESS SERVICE GLOBAL INFO. NETWORK, July 21, 1992, available in WESTLAW, 1992 WL 2490541, at *3 [hereinafter *ILO Finds*] (noting in some African Countries, 20% of all children are forced to work); see Keith C. Epstein, *U.S. Report Gives Details of Worldwide Child Labor: Sweatshops Documented*, SUNDAY PATRIOT NEWS, Oct. 2, 1994, at A10 (stating Africa has world's highest child labor rate, with one in three children working like adults); see also Lewis Machipisa, *Zimbabwe-Children: Child Labor Takes on Tragic Proportions*, INTER PRESS SERVICE GLOBAL INFO. NETWORK, June 16, 1995, available in WESTLAW, 1995 WL 2261808, *1 [hereinafter *Zimbabwe Children*] (warning that child labor likely to become national tragedy in Zimbabwe by end of century).

²¹ *ILO Finds*, *supra* note 20, at *3 (noting up to 26% of children work in some countries); see 139 CONG. REC. E1,784-01 (1993) (statement of Rep. Brown) (pointing to reports that up to 18% of Mexican children between ages 12 and 14 are working (reading from Lynn Kamm, *How Our Greed Keeps Kids Trapped in Foreign Sweatshops*, WASH. POST, Mar. 28, 1993, at C5)); see also Ehrenberg, *supra* note 2, at 369-70 (exposing forced child labor in Dominican Republic's state-run sugarcane plantations with children 14 and under); Tonya, *supra* note 2, at 631 (recounting story of 12 year-old Mexican boy who was told that he no longer had to go to school but would instead begin working full-time spreading toxic glue on sneakers); Wright, *supra* note 19, at C3 (reporting children constitute about 18% of Brazil's work force).

²² *ILO Finds*, *supra* note 20, at *3; see 141 CONG. REC. E1,507-01 (1995) (statement of Rep. Burton) (indicating estimates by non-governmental organizations of child labor in India approach 50 million); see also Ehrenberg, *supra* note 2, at 371-74 (examining slavery, forced labor, bonded labor, and child labor in India and noting that children as young as 10 are either sold, kidnapped or tricked into bondage); Tonya, *supra* note 2, at 631 (stating that sickly Thailand children laborers rarely see daylight and cling to legs of policemen raiding sweatshops where they work); Epstein, *supra* note 20, at A8 (stating that one-quarter of world's work force between ages five and 15, approximately 17.5 million boys and girls, is in India); Peter J. Spielmann, *Child Slavery: Millions of Asian Kids Caught in Long, Cruel Labor*, DENVER POST, Sept. 19, 1995, at A2 (reporting Anti-Slavery Society estimate that between 73 million and 115 million children are working in India); John Stackhouse, *Little Match Girls Parents Blamed for Child-Labor Abuses in India*, CHI. TRIB.,

child's welfare and impedes a child's development.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.²⁴ Hazardous industries particularly conducive to child labor include glass or metal works, textiles, mining and fireworks manufacturing.²⁵ In the overwhelming majority of these cases, children are not working voluntarily, but are bonded or slave-laborers.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, *supra* note 19, at C3 (noting that one in four Indian workers is under age 14).

²³ Giampetro-Meyer et al., *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. *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. *Id.* (quoting Report of Director General, *Child Labor*, 69 INT'L LAB. CONF. 3, 37 (1983)); see Smith, *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).

²⁴ 138 CONG. REC. S11,603-04, S11,608 (1992) (statement of Sen. Harkin) (indicating many child-laborers work in dangerous industries); see Ehrenberg, *supra* note 2, at 374 (estimating that 76% of children working in glass factories have tuberculosis caused by glasswork hazards); see also Kelleher, *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); *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, *Protection of World's Young: Clocking Out On Child Labor*, 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, *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, *supra* note 19, at C3 (reporting that in 1992 fire at Chinese fireworks factory 20 workers killed were between nine and 14 years old).

²⁵ See, e.g., 138 CONG. REC. S11,603-04, S11,607 (1992) (noting major industries responsible for exploiting child labor).

²⁶ See 139 CONG. REC. E2181-01, E2182 (1993) (statement of Rep. Brown). The Congressman reported that 10 million children in India alone are bonded laborers. *Id.*; see also Kelleher, *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. *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.

See also Ehrenberg, *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. *Id.*; Spielmann, *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, available in WESTLAW, 1995 WL 4406633, at *1-2.

debt.²⁷ The statistics provided in this section evidence the fact that the child labor problem is one of universal proportions.²⁸

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).

³² See generally Walter J. Camper, *Prosperity Linked to Lowering of International Trade Barriers*, ROANOKE TIMES & WORLD NEWS, Feb. 27, 1993, at A11 (reporting that World Bank study delineated close relation between economic growth and environmental improvement in developing countries); *Dreaming of Golden Ages*, FIN. TIMES, May 20, 1995, at D6 (noting that Asian countries' growth took place amidst industrial nations' recession); *World Economy Slowing*, U.N. SAYS, STAR-TRIB. (Minn.), Sept. 12, 1995, at D3 (citing United Nations Conference on Trade and Development report that "developing countries' growth will continue to outstrip that of industrialized economies").

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.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.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.³⁶ Even more egregious are incidents of children burned to death by their employers³⁷ or forced to watch their as relatives are beaten to death.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.³⁹

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. *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. *Id.* She was beaten for tardiness or mistakes. *Id.* See Kamm, *supra* note 18, at B9 (noting Nazma Akther's testimony at Senate child labor hearing).

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*, CHI. SUN TIMES, Sept. 22, 1994, at 57 (describing tales of abuse told to Senate by child workers from Brazil, Honduras and Bangladesh).

³⁶ Brian Tumulty, *Labor Department Examines Child Labor*, GANNETT NEWS SERV., Oct. 11, 1995, available in WESTLAW, 1995 WL 2908382, at *1 (discussing Department of Labor report on child labor).

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. *Id.* The factory conditions under which he worked were so severe that within six months, Jaffer told his boss he could no longer work. *Id.* In a fit of rage, his boss threw kerosene over the boy and set him on fire. *Id.* Jaffer died a painful death, with burns covering 98% of his body. *Id.* The Indian government has neither publicly condemned the slaying, nor compensated the boy's family. *Id.*

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

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. *Id.* Iqbal's parents had sold him into slavery when he was four years old to satisfy a \$16 debt. *Id.* For six years, Iqbal worked 12 hour days chained to a loom in unsafe, unhealthy conditions. *Id.* The dust within the carpet factory in which Iqbal worked, severely damaged his respiratory system and made it difficult for him to breathe. *Id.* Two years ago, Iqbal escaped from the carpet factory. *Id.* He began attending school and, eventually, became an outspoken crusader against child slavery both in his country and abroad. *Id.* Iqbal recruited villagers to fight against the forced labor and exploitation of children. *Id.* Iqbal planned to become a lawyer, and Brandeis University offered him a full scholarship. *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.⁴⁰ While protective of American workers,⁴¹ 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 Gannon, *Young Activist's Death Hits Pakistani Carpet Sales Trade: Exports to West Have Diminished Even Though Producers Haven't Been Linked to Death of 12 Year-Old Who Fought Child Labor*, L.A. TIMES, May 31, 1995, at 7 (suggesting Iqbal's death has caused loss in sales of Pakistani carpets to West); *News in Brief*, CHRISTIAN SCI. MON., Apr. 19, 1995, at 2 (describing tragic story of Iqbal).

⁴⁰ See *Child Labor and the New Global Marketplace*, *supra* note 7, at 8-10 (discussing Senator Harkin's call for United States to command 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*, INTER PRESS SERVICE GLOBAL INFO. NETWORK, June 22, 1994, available in WESTLAW, 1994 WL 2580573, at *2 (citing Asian attack on CLDA as "protectionist ploy" designed to save jobs in developed countries); *World Must Quit Enslaving Kids*, MILWAUKEE J., Nov. 28, 1994, A10 (expressing concern CLDA would violate GATT's anti-protectionist thrust).

⁴¹ 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.⁴² An assessment of the bill in the context of past American efforts in this area supports this interpretation.⁴³

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.⁴⁴ This situation inspired federal action which manifested itself in the passage of federal laws to end the child labor crisis.⁴⁵ The Child Labor Law of 1916⁴⁶ was an attempt to do this by prohibiting the employment of children under the age of sixteen in factories and manufacturing establishments.⁴⁷ The United States Supreme Court, however, declared the Act an unconstitutional exercise of congressional authority under the Commerce Clause.⁴⁸ Thereafter, Congress enacted the Tax on Employment of Child Labor,⁴⁹ which attempted to impose a ten percent tax on the total profit of any employer

⁴² See U.S. DEP'T OF STATE DISPATCH, AMERICA'S COMMITMENT TO HUMAN RIGHTS (1994) (statements by Secretary of State Warren Christopher, Counselor Tim Wirth, Asst. Secretary John Shattuck) (pointing out serious child labor problems in export industries and impact of international trade on worker rights standards). See generally CHILDREN AND YOUTH SOCIAL PROBLEMS AND SOCIAL POLICY: PROCEEDINGS OF THE ANNUAL MEETING OF THE NATIONAL CHILD LABOR COMMITTEE 1905-06 (Robert H. Bremner et al. eds., 1974) (detailing proceedings of first, second and third annual meetings of National Child Labor Committee and containing essays on child labor).

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).

⁴⁵ See Rothstein, *supra* note 18, at F3 (discussing approval of Fair Labor Standards Act in 1938). See generally WALTER I. TRATTNER, CRUSADE FOR THE CHILDREN: A HISTORY OF THE NATIONAL CHILD LABOR COMMITTEE AND CHILD LABOR REFORM IN AMERICA 45-163 (1970) (providing detailed discussion of United States' history in dealing with child labor including federal child labor legislation, proposed federal child labor amendment and Fair Labor Standards Act).

⁴⁶ Act of Sept. 1, 1916, ch. 432, Pub. L. No. 249, 39 Stat. 675, 675-76 [hereinafter Act of 1916] (declared unconstitutional by *Hammer v. Dagenhart*, 247 U.S. 251, 271-72 (1918), *overruled by United States v. Darby*, 312 U.S. 100, 116-17 (1941)).

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.")

⁴⁹ Title XII of the Revenue Act of Feb. 24, 1919, ch. 18, § 1200, 40 Stat. 1138, 1139 [hereinafter Revenue Act of 1919] (declared unconstitutional by *Bailey v. Drexel Furniture Co.* 259 U.S. 20, 39 (1922)).

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

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

⁵⁰ Revenue Act of 1919, *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. *Id.* The Act empowered the Commissioner and the Secretary of Labor to inspect industries. *Id.* § 1206, 40 Stat. 1138, 1140. Obstruction of an inspection was made punishable by fine and imprisonment. *Id.*

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

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

⁵³ *Id.* The proposed amendment gave Congress the power to prohibit persons under the age of eighteen from working. *Id.* § 1.

⁵⁴ *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." *Id.* § 1. Section Two would have left state power unimpaired except to the extent necessary to implement the Congressional legislation. *Id.* § 2. *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).

⁵⁵ *Coleman*, 307 U.S. at 473 (providing state by state chronology of Child Labor Amendment); *see* Robert E. Hoyt, *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).

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." *Id.*; *see* Hoyt, *supra* note 55, at F3 (indicating approval by 36 states necessary to pass Child Labor Amendment).

⁵⁷ Fair Labor Standards Act of 1938, 29 U.S.C. § 212 (1938) amended in 29 U.S.C. § 212 (1974).

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." *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. *Id.* § 212(b). The Act applies to "any enterprise engaged in commerce or in the production of goods for commerce." *Id.* § 212(c); *see* Hoyt, *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); *see also* Rothstein, *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)).

⁶⁰ See, e.g., ALA. CODE § 25-8-32 (Supp. 1995); ALASKA STAT. § 23.15.490 (1990); CAL. EDUC. CODE § 51769.5 (West 1989); D.C. CODE ANN. § 36-1006 (1981); FLA. STAT. ANN. § 450.001 (West Supp. 1996); FLA. STAT. ANN. § 450.121 (West 1981); HAW. REV. STAT. § 390-1 (1988); ILL. ANN. STAT. ch. 820, para. 205/17 (Smith-Hurd 1993); IND. CODE § 22-3-7-9.2 (1995); MISS. CODE ANN. § 71-1-29 (1995); OHIO REV. CODE ANN. § 3331.12 (Baldwin 1995); OR. REV. STAT. § 653.545 (1993); PA. CONS. STAT. ANN. tit. 43, § 66.1 (1992); S.C. CODE ANN. § 23-13-70 (Law. Co-op. 1976), S.D. CODIFIED LAWS ANN. § 26-4-9 (1984); VA. CODE ANN. § 40.1-114 (Michie 1950); WASH. REV. CODE § 49.12.380 (1996); W. VA. CODE § 21-6-8a (1966); WIS. STAT. § 103.69 (West 1988).

⁶¹ See, e.g., FLA. STAT. ANN. § 450.045 (West Supp. 1996) (proof of age); HAW. REV. STAT. § 390-3 (1988) (employment of minors under 18 years of age); IDAHO CODE § 44-1301 (1977) (restrictions on employment of children under 14); ILL. ANN. STAT. ch. 820, paras. 205/1, 205/8 (Smith-Hurd 1993) (minimum age); N.J. ANN. STAT. § 34:2-21.3 (West 1993).

⁶² See, e.g., CAL. EDUC. CODE § 49116 (West 1989) (maximum work outside school hours); HAW. REV. STAT. § 387-15 (1988) (wage and hour law); IDAHO CODE § 44-1304 (1977) (working hours for children under 16); ILL. ANN. STAT. ch. 820, paras. 205/3, 205/5 (Smith-Hurd 1993) (hours of work and posting of hours); N.J. ANN. STAT. § 34:2-21.3 (West 1995) (hours of work); PA. CONS. STAT. ANN. tit. 43, § 1301.203 (1992) (wages and hours).

⁶³ See, e.g., CAL. EDUC. CODE § 78249 (West 1989) (worker's compensation); FLA. STAT. ANN. § 440.54 (West 1981) (workers' compensation); GA. CODE ANN. § 34-9-1 (1994) (workers' compensation); ILL. ANN. STAT. ch. 820, paras. 305/7, 305/8 (Smith-Hurd 1993) (amount of compensation in fatal and non-fatal cases); IND. CODE § 22-3-7-9 (1995) (double compensation for certain minors); MO. REV. STAT. § 287.250 (1993) (compensation computation); PA. CONS. STAT. ANN. tit. 77, § 672 (1992) (liability and compensation to minors illegally employed); WASH. REV. CODE § 49.12.420 (1996) (exclusive remedies); WIS. STAT. ANN. § 103.32 (West 1988).

⁶⁴ See, e.g., FLA. STAT. ANN. § 450.132 (West 1981) (employment of children by entertainment industry); IDAHO CODE §§ 44-1306, 1307 (1977) (prohibition against theatrical employment or employment in immoral surroundings); ILL. ANN. STAT. ch. 820, paras. 205/7, 205/8.1 (Smith-Hurd 1993) (minors employed in hazardous occupations and entertainment related performances); N.J. ANN. STAT. § 34:2-21.58 (West 1993) (employment of minors in theatrical productions).

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).

⁶⁶ See, e.g., DEL. CODE ANN. tit. 14, § 3513 (1974) (child labor law penalties applicable to employer); HAW. REV. STAT. § 390-7 (1988) (penalties); IDAHO CODE § 44-1305 (1977) (penalty for violations of chapter); ILL. ANN. STAT. ch. 820, para. 205/17.3 (Smith-Hurd 1995) (fines and penalties); WASH. REV. CODE §§ 49.12.390, 49.12.410 (1995) (violations—civil and criminal penalties).

ous employment in the United States,⁶⁷ efforts to combat child labor in the United States have continued on both the federal⁶⁸ and state levels.⁶⁹

C. *International Standards of Child Labor*

CLDA imposes a minimum age requirement of fourteen years for child labor.⁷⁰ It has been suggested that such a rigid, fixed standard is both arbitrary and ethnocentric.⁷¹ This standard is, however, in accord with the internationally recognized standard set by the ILO.⁷²

Following World War I, the ILO emerged as the entity responsible for defining international labor standards and facilitating their universal application.⁷³ The Preamble to the ILO Constitu-

⁶⁷ See Giampetro-Meyer et al., *supra* note 2, at 670-71 (noting initial success of United States' enforcement of child labor regulations to decrease incidence of child labor). *But see* Hartman, *supra* note 7. Hartman cites a government report that child labor problems worsened in the United States, nearly tripling between 1985-89. *Id.*; Joseph P. Ritz, *Crackdown Set on Child Labor Violations*, BUFFALO NEWS, May 30, 1993, at B9. According to the Executive Director of National Child Labor Committee, even though New York State has what is considered stringent child labor legislation an estimated seven thousand children work in New York City sweatshops. *Id.* In Texas the state senate is concerned that far too many children are engaged in risky employment. *Child Labor Bill: State Senate Passed It, House Should Follow Suit*, HOUS. CHRON., May 11, 1993, at 12.

⁶⁸ See Giampetro-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* 137 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 Giampetro-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).

⁷⁰ S. 706, 104th Cong., 1st Sess. § 1(a)(2) (1995).

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.⁷⁴ Nations adopt ILO standards or regulations in the form of conventions.⁷⁵ Each member nation has the option of ratifying these conventions.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.⁷⁷ The United States, itself, has ratified eleven conventions.⁷⁸ In addition, Congress has recognized and incorporated five of those conventions into federal legis-

forcement of labor standards); see also JOHN H. JACKSON & WILLIAM J. DAVEY, *LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS, CASES, MATERIALS, AND TEXT* 280 (2d ed. 1986) (noting ILO's purpose is amelioration of working and living standards); Lance Compa, *Labor Rights and Labor Standards in International Trade*, 25 *LAW & POL'Y INT'L BUS.* 165, 175-79 (1993) (discussing development of ILO and its present day effect on international trade community). See generally Ehrenberg, *supra* note 2, at 381-83 (providing in-depth discussion of structure and working conditions of ILO).

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. *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. *Id.* The United States entered into the proclamation on Sept. 10, 1934. See 49 Stat. 2712, T.S. No. 874.

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. *Id.*; see Lists of Ratification by Convention and by Country, Int'l Labor Conf., 81st Sess., Report III (part 5), ILO, Geneva 268 (1994).

⁷⁶ Constitution of the International Labour Organization, *supra* note 72, at art. 19, § 1-11; see VIRGINIA A. LEARY, *INTERNATIONAL LABOUR CONVENTIONS AND NATIONAL LAW: THE EFFECTIVENESS OF THE AUTOMATIC INCORPORATION OF TREATIES IN NATIONAL LEGAL SYSTEMS* 9-11 (1982) (explaining effect of ILO conventions on national law); Stensland, *supra* note 41, at 144 (describing ILO's system of conventions binding nations to certain labor standards). See generally JAMES AVERY JOYCE, *WORLD LABOUR RIGHTS AND THEIR PROTECTION* 26 (1980) (analyzing objectives and activities of ILO system).

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. *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 TIKRITI, *TRIPARTISM AND THE INTERNATIONAL LABOUR ORGANISATION* 276-79 (1982) (discussing obligation of states to ratify international labor conventions).

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. *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. 123);

lation.⁷⁹ Although the impact of these international standards has been, at times, less than global,⁸⁰ efforts to establish such standards have resulted in the creation of a comprehensive international labor code.⁸¹

Child labor was one of the first issues addressed by the ILO.⁸² In 1937, ILO Convention No. 59 declared fifteen to be the minimum age for employment in industry.⁸³ ILO Convention No. 138⁸⁴ also sets the minimum age at fifteen years and further, allows signatory parties to lower the minimum age for employment to fourteen.⁸⁵ In 1973, the ILO also recommended raising the minimum age for hazardous employment to eighteen.⁸⁶ 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-

Minimum Age Convention, June 6, 1973 (No. 138). INTERNATIONAL LABOUR ORGANIZATION, INTERNATIONAL LABOUR CONVENTIONS AND RECOMMENDATIONS: 1919-1981 *passim* (1982).

⁷⁹ 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.*

⁸⁰ See generally TIKRITI, *supra* note 77, at 276-79 (discussing obligation of states to implement or ratify international labour conventions).

⁸¹ 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).

⁸² 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).

⁸³ 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).

⁸⁴ ILO Convention No. 138 concerning Minimum Age for Admission to Employment, June 26, 1973, in INTERNATIONAL LABOUR ORGANIZATION, INTERNATIONAL LABOUR CONVENTIONS AND RECOMMENDATIONS: 1919-1981, at 730 (1982).

⁸⁵ *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. 3(1).

⁸⁶ 56 ILO Official Bull., No. 1, at 34-37 (1973); see Giampetro-Meyer et al., *supra* note 2, at 668-69 (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").

poused 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 ILO⁹¹ 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); GREGORY 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 Inquiry⁹² 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. GUNTHER 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.⁹⁹ 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.¹⁰⁰

B. GATT and the World Trade Organization

GATT¹⁰¹ 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-

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).

¹⁰³ JACKSON & DAVEY, *supra* note 73, at 398; see also Josh Schein, *Section 301 and U.S. Trade Law: The Limited Impact of the 1988 Omnibus Trade and Competitiveness Act on American Obligations Under GATT*, 1992 PAC. RIM L. & PUB. POL'Y J. 105, 106-07 (discussing GATT origin and history).

¹⁰⁴ See Hart, *supra* note 101, at 382 (discussing original conceptions of GATT). See generally Robert E. Baldwin & David A. Kay, *International Trade and International Relations, in WORLD POLITICS AND INTERNATIONAL ECONOMICS* 99, 100 (C. Fred Bergsten & Lawrence B. Krause eds., 1975) (describing initial GATT objectives).

¹⁰⁵ See JACKSON & DAVEY, *supra* 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. Pettrillo, Note, *Free Trade Area Agreements and U.S. Trade Policy*, 18 N.Y.U. J. INT'L L. & POL. 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.¹⁰⁶ On January 1, 1995, GATT entered a new era with the emergence of the WTO,¹⁰⁷ which now serves as the arbiter of all issues regarding the Multilateral Trade Agreements.¹⁰⁸ The agreement that established the WTO¹⁰⁹ was the result of the Uruguay Round talks.¹¹⁰ That agreement reiterates the goals previously sought under GATT.¹¹¹ 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.¹¹² Unfortunately, neither the WTO, nor its predecessor in GATT, has sought to eliminate child labor while furthering international standards of living.¹¹³

¹⁰⁶ See JACKSON & DAVEY, *supra* note 73, at 294 (discussing historical development of GATT).

¹⁰⁷ See JOSEPH DENNIN, *LAW & PRACTICE OF THE WORLD TRADE ORGANIZATION* 1-14 (1995) [hereinafter *LAW & PRACTICE*] (introducing GATT/WTO agreements and full text).

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 services¹¹⁴ and will serve as the primary forum for disputes arising from such trade.¹¹⁵ Under the WTO, trading partners are referred to as "members."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.¹¹⁷ Each member will have a representative at the Ministerial Conference,¹¹⁸ which has the authority to facilitate the operation and further the objectives of the Multilateral Trade Agreements.¹¹⁹ A General Council composed of members' representatives executes the functions of the WTO when the Conference is not in session.¹²⁰ Under the former GATT system, the decision-making process was guided by consensus.¹²¹ As such, GATT did not achieve any result unless a consensus was reached.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.¹²³ This innovation should play an im-

SIONAL NEGOTIATING OBJECTIVES, available in WESTLAW, GATT database, 1994 WL 761805, at *1 [hereinafter Uruguay Round Achieves Negotiating Objectives]. The United States was the key player in forcing the issue of workers' rights into the Uruguay Round discussions and indicated that it did not intend to let the issue die with the ratification of the WTO Agreement. *Id.* at *12. The statement explained the national objectives achieved by the Uruguay Round. *Id.* at *1-13. It stated that although the attempt to have workers' rights issues included on the Uruguay Round agenda failed, the United States will continue to address international labor standards as a "new issue" for the member countries of the WTO to consider. *Id.* at *12. It also reported that the United States was collaborating with the WTO Preparatory Committee to ensure that workers' rights remain on the WTO agenda. *Id.*

¹¹⁴ See Thomas J. Dillon, Jr., *The World Trade Organization: A New Legal Order For World Trade?*, 16 MICH. J. INT'L L. 349, 355 (1995) (providing detailed discussion of scope, functions and structure of WTO).

¹¹⁵ Ehrenberg, *supra* note 2, at 395 (describing GATT/WTO dispute settlement procedures).

¹¹⁶ WTO Agreement, art. IV, 33 I.L.M. at 16.

¹¹⁷ Ehrenberg, *supra* note 2, at 391; see PESCATORE ET AL., *supra* note 108, at 10 (providing overview of original and modern objectives of GATT); see also JACKSON & DAVEY, *supra* note 73, at 296-98 (outlining GATT requirements).

¹¹⁸ WTO Agreement, at 16.

¹¹⁹ *Id.*

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. *Id.* at 16-17.

¹²¹ See PESCATORE ET AL., *supra* note 108, at 13 (examining GATT dispute settlement process).

¹²² *Id.* at 13-14.

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. *Id.* The previous consensus-only system prevented the effective enforcement of GATT. See PESCATORE ET AL., *supra* note 108, at 13-14. The Ministerial Conference and the General Council also have

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.¹²⁴ This Note focuses on the Senate version of CLDA, also referred to as the "Harkin Bill," sponsored by Senator Tom Harkin.¹²⁵ The Harkin Bill has accumulated bipartisan support in both Houses of Congress.¹²⁶ On the international level, the United Nations and the ILO also have indicated their approval of CLDA.¹²⁷ Furthermore, 112 Nobel laureates have expressed a willingness to collaborate with Congress to enact and enforce the Act.¹²⁸

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.*

¹²⁵ S. 706, 104th Cong., 1st Sess. (1995).

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").

¹²⁷ See 104 CONG. REC. E1420-01 (1994) (statement of Rep. Brown) (stating ILO and UNICEF, the United Nations child-welfare agency, have taken lead in supporting United States' efforts to combat exploitative working conditions); Basu, *supra* note 7, at 2 (noting CLDA has support of UNICEF and International Labor Organization).

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.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.¹³⁰ The underlying policies of CLDA are to prevent the use of child labor as a means of becoming more competitive in international trade,¹³¹ to ameliorate international trading rules,¹³² and to alleviate poverty in developing countries.¹³³

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

¹²⁹ See *Child Labor and the New Global Marketplace*, *supra* note 7, at 8-10. Senator Harkin urged the United States to use its far-reaching economic leverage and markets to compel respect for basic human rights. *Id.*; see also 138 CONG. REC. S11,603-04, S11,607 (1992) (statement of Sen. Harkin). Senator Harkin argued that our country should refuse to import any item from countries that depend on child labor to compete in the global marketplace. *Id.*; 140 CONG. REC. E1420-01 (1994) (statement of Rep. Brown). Representative Brown recommended implementing a reward system for socially responsible businessmen in marketplace at the expense of unscrupulous or uncaring exporters and importers. *Id.* 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. *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. *Id.*

See Kelleher, *supra* note 2, at 168-69. The article asserted that enactment of the Harkin Bill would strengthen the link between international child labor and United States trade policy. *Id.*; see also Tonya, *supra* note 2, at 655. The author cited to Congressman Pease's view that "access to the American marketplace is powerful leverage and should be used positively to encourage foreign producers and importers to treat defenseless children with dignity." *Id.*; Newcomb, *supra* note 24, at 1. The author emphasized that the onus of protecting human rights belonged to the United States because of its status as the world's largest importer of manufactured products from developing countries. *Id.*

¹³⁰ S. 706, 104th Cong., 1st Sess. § 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. *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." *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." *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." *Id.*; see also Kelleher, *supra* note 2, at 169 n.52 (citing 139 CONG. REC. S3179 (1993)).

¹³¹ S. 706, 104th Cong., 1st Sess. § 2(c) (1995); see 140 CONG. REC. E1420-01 (1994) (statement of Rep. Brown) (indicating CLDA rewards socially responsible businessmen to detriment of uncaring or unscrupulous importers and exporters).

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.* § 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." *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. *Id.*

States of any manufactured article¹³⁵ produced by a foreign nation or industry that utilizes child labor.¹³⁶ 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.¹³⁷ This ban, however, would not apply if importers certify that the product was not derived from child labor.¹³⁸ A ban placed on a foreign industry can be revoked in appropriate circumstances,¹³⁹ 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.¹⁴⁰

CLDA prescribes both civil and criminal penalties¹⁴¹ for violations of the Act.¹⁴² Most significantly, CLDA advocates educational and developmental alternatives to the employment of underage children.¹⁴³ 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.*

detrimental to children.¹⁴⁴ In fact, the Harkin Bill incorporates measures which address the displacement of children previously relegated to child labor.¹⁴⁵

CLDA echoes a developing global trend that links trade and child labor.¹⁴⁶ The prospect of CLDA's enactment has prompted several foreign governments to reveal their opposition to the commercial exploitation of children.¹⁴⁷ Accordingly, similar legislative proposals linking child labor with trade have surfaced throughout Europe.¹⁴⁸ The mere proposition of CLDA, however, has not been

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-Ekomolot, *supra* note 7, at *1. Onapito-Ekomolot'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.*

¹⁴⁶ See 140 CONG. REC. S15,077-01, 15,088 (1994) (statement of Sen. Metzenbaum) (criticizing GATT for failing to "link trade privileges to child labor protections"); see also *Child Labor and the New Global Marketplace*, *supra* note 7, at 4-6 (statement of Sen. Howard M. Metzenbaum) (urging link between trade privileges and child labor protections as requisite for continued open markets around world); *Malaysia Wants Third World Unity Against Wage-Trade Link*, *ASIAN ECON. NEWS KYODO NEWS INT'L*, Apr. 11, 1994 (indicating United States and France hope that wage-trade link in WTO will monitor use of child labor); *Reich Won't Use Job Plan to Aid NAFTA: 'Dislocation' Aid Will be Insurance Policy, He Says*, *STATE J. REG.* (Springfield), Oct. 16, 1993, at 10 (noting North American Free Trade Agreement between United States, Canada and Mexico links free trade benefits to enforcement of child labor laws). *But see* Terry Collingsworth et al., *Multinational Businesses are Killing the Goose that Lays the Golden Egg*, *BUFFALO NEWS*, Feb. 6, 1994, at G7 (stating view of free-traders that although child labor is abhorrent, linking trade with social legislation violates trade law).

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.¹⁴⁹ Thus, passage of CLDA is necessary to initiate a global movement toward compliance with international labor standards.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.¹⁵¹ A majority of the prior legislation provides trade benefits to developing countries that have taken steps to recognize international labor standards.¹⁵²

the European Union. *Id.*; see also Percival, *supra* note 18, at *1. Fifteen European Union states have taken steps towards applying trade sanctions against countries that do not recognize labor rights. *Id.* Germany's legislature, the Bundestag, recently raised a proposal to link child labor with trade. Epstein, *supra* note 22, at A10. European politicians are urging the European trading union to add 'social clauses' on child labor to trade agreements. *Id.*

¹⁴⁹ See 138 CONG. REC. S11,603-04, S11,607 (1992) (statement of Sen. Harkin) (noting UNICEF estimates that nearly 200 million children are working in industry and manufacturing in developing countries); see also Wright, *supra* note 19, at C3 (citing ILO estimate of one in four children between ages 10 and 14 working in Third World countries).

¹⁵⁰ See Steve Charnovitz, *Free Trade, Fair Trade, Green Trade: Defogging the Debate*, 27 CORNELL INT'L L.J. 459, 525 n.78 (1994). The author discusses the fact that non-member countries do not enjoy the receipt of favors equivalent to member countries, creating incentive to join GATT and avoid discrimination, which means lowering trade barriers or "paying" a fee to join. *Id.* Accordingly, an enacted and enforced CLDA may achieve the same result.

¹⁵¹ Kelleher, *supra* note 2, at 163. Five acts currently exist. See Generalized System of Preferences of the Trade Act of 1974, Pub. L. No. 93-618, tit. V, §§ 501-05, 88 Stat. 2066 (1975) (codified as amended at 19 U.S.C. §§ 2461-65 (1994)) (authorizing President, after receiving advice from trade agencies, to designate articles eligible for duty-free status); Caribbean Basin Economic Recovery Act, Pub. L. No. 98-67, tit. II, subtit A §§ 201-18, 97 Stat. 384 (1983) (codified as amended at 19 U.S.C. §§ 2701-06 (1994)) (authorizing President to designate articles from Caribbean countries eligible for duty free status based on stable political and economic climate); Foreign Assistance Act of 1961, Pub. L. No. 87-195, pt. I, ch. 2, tit. IV, § 231 as added Dec. 30, 1969 Pub. L. No. 91-175, pt. I, § 105, 83 Stat. 809 (1961) (codified as amended at 22 U.S.C. § 2191 (1994)) (creating corporation to mobilize and facilitate United States private investment activity in less-developed nations); Multilateral Investment Guarantee Agency Enabling Statute, Pub. L. No. 100-202, § 101(c), 101 Stat. 1329-131, 1329-134 (1987) (codified as amended at 22 U.S.C. § 290k (1994)) (authorizing President to accept membership in Multilateral Investment Guarantee Agency); Trade Act of 1974, Pub. L. No. 93-618, tit. III, ch. 1, § 301, 88 Stat. 1978, 2041 (1975) (codified as amended at 19 U.S.C. § 2411 (1994)) (calling for President to retaliate against action taken by foreign entities inconsistent with any United States trade agreements). Section 301 was amended by the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, tit. 1, subtit. C, pt. 1, § 1301(a), 102 Stat. 1164 (1989) (codified as amended at 19 U.S.C. § 2411 (1994)), which provides for new investment and incentives for trading with developing countries, through domestic policy reforms. *Id.*

¹⁵² See Kelleher, *supra* note 2, at 164 (discussing existing American legislation with respect to international child labor and United States trade policy). Several statutes provide

Section 301 of the Omnibus Trade and Competitiveness Act ("OCTA"),¹⁵³ 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.¹⁵⁴ 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.¹⁵⁵

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.¹⁵⁶ Although Section 301 of the OCTA authorizes the President to utilize "all appropriate and feasible ac-

for the recognition of "internationally recognized workers' rights" and define such rights to include the right of association, the right to organize and bargain collectively, a prohibition of forced or compulsory labor, the right to acceptable working conditions and an unspecified minimum age for the employment of children. 19 U.S.C. § 2462(b)(7)(1994); 19 U.S.C. § 2702 (b)(7) (Supp. II 1990); 22 U.S.C. § 2191(a) (1994).

¹⁵³ Pub. L. No. 93-618, tit. III, ch. 1, § 301, 88 Stat. 1978, 2041 (1975) (codified as amended at 19 U.S.C. § 2411 (1994)). Section 301 was later amended by the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, tit. I, subtit. C, pt. 1, § 1301(a), 102 Stat. 1164 (1988) (codified as amended at 19 U.S.C. § 2411 (1994)). Section 301 authorizes the President to use all feasible action to enforce United States trade rights, including the discriminatory treatment of the products of one foreign country or instrumentality. 19 U.S.C. §§ 2411(a)-(b). The President may withhold trade benefits or impose import restrictions for an appropriate length of time. 19 U.S.C. § 2411(c). The power that the President is granted by this Act seems to infer that, even without an enacted CLDA, the President could deny entry into the United States any product made by child labor. *Id.*

¹⁵⁴ 19 U.S.C. § 2411(c) (1988). The Omnibus Trade and Competitiveness Act represents the first time United States legislation mandated the implementation of workers' rights as a pre-requisite for the receipt of trade benefits. *Id.* The theory underlying this protective policy over workers' rights is that producers who violate rights of workers are able to lower production costs, giving the trade partner an unfair market advantage via artificially low prices. *Id.* The legislation sought to prevent this disparity in the market by conditioning trade benefits on implementation of recognized worker rights. *Id.*

¹⁵⁵ See Schein, *supra* note 103, at 114. The author describes "multilateralism" as embodying the presumption that GATT members will settle grievances through GATT or appropriate international bodies and will refrain from employing unilateral retaliation. *Id.* The author also suggests that although the Section 301 provisions are broad enough to allow the President to suspend trade concessions and impose duties unilaterally, the section is not intended to be invoked in such a drastic manner. *Id.* at 115. Instead, it advocates that the United States seek multilateral consultations under the relevant international trade agreements. *Id.* at 111; see also Hashimoto Terms 'Super 301' as Inconsistent with WTO, JAPAN ECON. NEWSWIRE, Sept. 28, 1995, available in WESTLAW, JWIRE database. Recent implementation of a "Super 301" trade negotiation procedure has drawn a negative reaction from Japan's International Trade and Industry Minister Ryutaro Hashimoto. *Id.* The inconsistency between Section 301 and the WTO could lead to the United States initiating procedures against Japan. *Id.*

¹⁵⁶ See Mitchell Zuckoff, 'Rugmark' Certifies No Child Labor Was Used, CHI. TRIB., Feb. 4, 1995, at 16 (suggesting CLDA would conflict with GATT); see also Zuckoff, *supra* note 17, at 77 (noting CLDA would put United States in conflict with GATT).

tion" against countries whose acts violate United States rights or benefits under any trade agreement, including a ban on products from foreign nations,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.¹⁵⁸ Since GATT seeks to avoid precisely those unilateral measures which permit member nations to invoke restrictions such as those authorized by CLDA,¹⁵⁹ any future CLDA ban has the potential to be even more violative of GATT than Section 301.¹⁶⁰

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.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."¹⁶² The United States may then at-

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. *Id.*

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. *Id.*

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

¹⁶⁰ 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. *Id.* Complaints under the WTO/GATT invoke the dispute settlement mechanism that is based on Article XXIII of GATT. *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. *Id.* at 266; see also Zuckoff, *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. *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." *Id.*

¹⁶¹ See HANSSON, *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. *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. *Id.* at 29.

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. 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.¹⁶³ 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"),¹⁶⁴ however, indicates CLDA would meet a similar fate.

In the 1991 Tuna Import Dispute,¹⁶⁵ 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.¹⁶⁶ The United States argued that the restriction was necessary to protect the life and health of dolphins outside the United States¹⁶⁷ and as such, fit within GATT article XX's prohibitions established to protect animal, human and plant life. The GATT dispute resolution panel¹⁶⁸ 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.*

¹⁶³ 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.*

¹⁶⁴ Pub. L. No. 95-522, 86 Stat. 1027, 1030 (1972) (codified as amended at 16 U.S.C. § 1371(a)(2)(e) (1994)). The Act prohibits the importation of tuna into the United States when the importer uses fish harvesting techniques which cause incidental death of marine mammals in excess of United States standards set for the production of tuna. *Id.* The Act further permits the Secretary of Commerce to impose the ban. *Id.*

¹⁶⁵ General Agreements on Tariffs and Trade: Dispute Settlement Panel, *Report on United States Restriction on Imports of Tuna* (submitted to the parties Aug. 16, 1991), 30 I.L.M. 1594, 1598-623 (1991) [hereinafter Tuna Import Dispute].

¹⁶⁶ Tuna Import Dispute, *supra* note 165, paras. 3.34-3.35, at 1606. See Kelleher, *supra* note 2, at 173-74 n.78 (describing Tuna Imports Dispute). GATT generally prohibits trade restrictions other than duties, taxes, or other charges. GATT 1947, *supra* note 101, Art. XI, para. 1, at 224.

¹⁶⁷ Tuna Import Dispute, *supra* note 165, para. 5.24.

¹⁶⁸ 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.¹⁶⁹ The GATT panel also concluded that domestic regulations must relate to the product itself and not to the method of production.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.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.¹⁷²

Ninety percent of child labor worldwide is either forced, bonded or indentured,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.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

TICE, *supra* note 107, at vi. The commentator suggests that although the United States was at the forefront of the effort to obtain a binding, transparent, and legalistic dispute resolution mechanism, such mechanisms may undercut existing United States child labor, health, safety, and environmental laws. *Id.* According to the Office of the United States Trade Representative, the new agreement ensures that the GATT obligations will be fully implemented and consistently applied and that there will now be a system of procedures that allows for the swift and fair settlement of disputes. *Id.* URUGUAY ROUND ACHIEVES NEGOTIATING OBJECTIVES, *supra* note 113, at *1. The USTR statement also states that "[c]ountries whose laws are found to be inconsistent with a Uruguay Round agreement will have to implement obligations promptly." *Id.* at *7.

¹⁶⁹ Tuna Import Dispute, *supra* note 165, paras. 5.28-5.29, at 1620.

¹⁷⁰ Tuna Import Dispute, *supra* note 165, paras. 5.14-5.15, at 1618. *See generally* Alexandra Haner, Comment, Will the European Union Packaging Directive Reconcile Trade and the Environment, 18 *FORDHAM INT'L L.J.* 2187, 2196-201 (1995) (describing GATT Panel report in Tuna Import Dispute).

¹⁷¹ Tuna Import Dispute, *supra* note 165, para. 5.27, at 1620.

¹⁷² *See* Ernest E. Smith, *Environmental Issues for the '90s: Golden-Cheeked Warblers and Yellowfin Tuna*, 47 *ME. L. REV.* 345, 361 (1995) (observing that United States bans on textiles produced by child labor and harmful to environment would meet same fate as MMPA). *See generally* Hon. R. Kenton Musgrave & Garland Stephens, *The GATT-Tuna Dispute: An Update*, 33 *NAT. RESOURCES J.* 957, 957 (1993) (discussing tuna dispute at length).

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

¹⁷⁴ *See* GATT 1947, para. I(e), at 262 (allowing measures to deter products of prison labor).

Article XX exceptions narrowly,¹⁷⁵ and because the panels are hostile to the regulation of foreign countries by contracting parties,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.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.¹⁷⁸ These countries are referred to as non-subsidy agreement countries.¹⁷⁹ GATT does not prohibit unilateral action against these non-subsidy agreement countries.¹⁸⁰ Additionally, the United States can make support for membership in the WTO and

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).

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

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).

¹⁷⁸ See Donna D. Skeen, *Can Capitalism Survive Under Communist Rule? The Effect of Hong Kong's Reversion to the People's Republic of China in 1997*, 29 INT'L LAW. 175, 195-97 (1995) (discussing China's attempts to regain GATT membership); see also David A. Codevilla, *Inland Steel and the Implementation of the Uruguay Round of GATT 1994*, 3 GEO. MASON INDEPENDENT L. REV. 435, 469 (1995) (criticizing as height of hypocrisy, United States imposition of countervailing duties against non-members of GATT such as China, Taiwan and former Soviet Republics); Michael Gaugh, *GATT Article XXI and U.S. Export Controls: The Invalidity of Nonessential Non-Proliferation Controls*, 8 N.Y. INT'L L. REV. 51, 87-88 (1995) (discussing non-membership of Syria, China and Libya); Andreas Lowenfeld, *Economic Sanctions: A Look Back and a Look Ahead*, 88 MICH. L. REV. 1930, 1942 (1990) (characterizing GATT non-members as potential targets for sanctions).

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

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.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,"¹⁸² which was negotiated as a side accord to the North American Free Trade Agreement.¹⁸³

The Labor Side Agreement recognizes five international standards regarding workers' rights and enforces existing national laws in the United States, Canada, and Mexico.¹⁸⁴ This Labor Side Agreement builds upon existing domestic labor standards,¹⁸⁵ allowing them to serve as a starting point for the development of multilateral standards.¹⁸⁶ An agreement such as this would require only that each signatory enforce its own labor laws,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.¹⁸⁸ A side agreement supported by two-thirds of the membership in the

¹⁸¹ Cf. Lori F. Damrosch, *GATT Membership in a Changing World Order: Taiwan, China, and the Former Soviet Republics*, 1992 COLUM. BUS. L. REV. 19, 34-36 (noting United States' support for China's membership in GATT and WTO induced China into ending toleration of piracy of United States intellectual property).

¹⁸² North American Agreement on Labor Cooperation, Sept. 14, 1993, U.S.-Mex.-Can., Pub. L. No. 103-182, 107 Stat. 2057, 32 I.L.M. 1499, 1502-18 (1993) [hereinafter Labor Side Agreement].

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.*

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

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).

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

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

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.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.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.¹⁹¹ The United States should maintain its position of continuously advocating the inclusion of labor standards in trade legislation¹⁹² and working to amend GATT to include requirements for workers' rights and regulation of child labor.¹⁹³

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).

¹⁹⁰ See generally JOYCE, *supra* note 76, at 19-46 (analyzing fundamental working rights of workers internationally).

¹⁹¹ See U.N. CENTRE FOR HUMAN RIGHTS, U.N. CONVENTION ON THE RIGHTS OF THE CHILD 174 (1989) (noting fruition of 65 year attempt to achieve formal international legal recognition of human rights of children); U.N. CENTRE FOR HUMAN RIGHTS, U.N. DECLARATION OF THE RIGHTS OF THE CHILD 171 (1989) (giving official recognition to human rights of children); *Programme of Action for the Elimination of the Exploitation of Child Labour*, 1 IHRR 227 (1994) (imploring entire international community to attack exploitation of child labor and urge immediate action to meet needs of children exposed to grave danger). International labor standards have been supported by the United Nations via the Convention on the Rights of the Child, the Commission on Human Rights, with the Programme of Action for the Elimination of the Exploitation of Child Labour and the European Community and its Council Directive on the protection of young people at work. See generally INTERNATIONAL CONVENTIONS ON PROTECTION OF HUMANITY AND ENVIRONMENT 86-100 (Gunter Hoog & Angela Steinmetz eds., 1993) (containing full text of Convention on the Rights of the Child); Skoler, *supra* note 28, at 86-100 (providing in depth discussion of Convention on Rights of Child).

¹⁹² See Giampetro-Meyer et al., *supra* note 2, at 670-71 (noting success of United States' enforcement of child labor regulations in decreasing incidence of child labor); see also *International Labor: Otero Says for Now U.S. Favors ILO as Forum for World Labor Standards*, 1995 DAILY LAB. RPT. 66, 66 (reporting statement of United States Deputy Undersecretary of Labor, Joaquin Otero, that United States is committed to implementation of labor standards into world trade framework); *New Labor-Standards Push*, ARIZ. REPUBLIC, Apr. 5, 1995 (indicating United States will push for talks on labor standards as long as human exploitation continues).

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.

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