March 19, 2011

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Child labor is a global problem that has attracted much discussion. Various solutions proposed include attempts at improving international compliance with human rights standards, levying of trade sanctions or boycotts, and increasing legislation and prosecution of crimes. None of these solutions have achieved more than marginal success, largely because they are rarely enforced and ignore the root causes of child labor and global market forces.

The use of fair trade labeling to combat child labor is an approach that has received virtually no attention in the legal community. Yet, primary qualitative research and case studies presented here illustrate that fair trade should be considered as a proven alternative to current strategies to eliminate child labor. First, it relies on market incentives and private monitoring with effective punishments of noncomplying fair trade companies. Second, it is voluntary and private, avoiding the political problems with international monitoring which rarely end in enforcement or penalties. Third, unlike prosecutions that focus on a small number of the resulting problems of child labor and trafficking, fair trade focuses on improving incomes, working conditions, health, and education of a large number of workers.

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I. INTRODUCTION

When it comes to the plight of children being exploited internationally, the horror stories commonly publicized are of children being trafficked into commercial sex work.1 While this is clearly an issue that deserves attention, a less known and more widespread concern facing children is child labor,2 whether the children have been trafficked or are forced to work in their own community. According to the U.N., over 200 million children work in conditions that violate international


child labor standards.3

This global phenomenon has attracted much discussion including various solutions proposed by legal scholars, some of which various countries have attempted to implement with marginal success. Some of these scholars have focused on the importance of international monitoring and enforcement of human rights standards.4 Others have encouraged countries to join international bodies like the WTO in order to address human rights abuses such as child labor.5 As an alternative solution, a growing number of scholars focus on combating child labor by linking economic penalties such as trade sanctions or boycotts with a country’s illegal use of child labor.6 Many of these scholars rely on


6. Vachhani, supra note 5, at 149 (“If states are forced to look at child labor as an unfair trade practice, for example, a state may be more willing to recognize that its material interests may be affected if it fails to deter child labor practices.”); Elizabeth B. Chilcout, Pinkie Promises or Blood Oaths? Using Social Clauses in the U.S. Free Trade Agreements to Eradicate Child Labor, 7 WASH. U. GLOBAL L. REV. 307, 307-08 (2008) (arguing that U.S. social clauses in trade agreements should be strengthened to prevent trade with countries that do not make progress in avoiding use of child labor); Junlin Ho, The International Labour Organization’s Role in
Daniel Ehrenberg’s proposal to treat child labor as an illegal trade subsidy that constitutes an unfair comparative advantage under the World Trade Organization. Other scholars, as well as U.S. policymakers, have emphasized the importance of developing stricter legislation and increased prosecution of child labor.

This article argues that worldwide child labor problems can be mitigated through the support of fair trade labeling. Fair trade is one of the fastest growing markets in the world. It allows a market-based approach that helps producers in developing countries obtain better trading conditions and increased profits in exchange for meeting various

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human rights and labor standards that benefit workers. Yet the use of fair trade labeling to combat child labor is a solution that has received little attention in the legal community. And primary, qualitative research, as well as multiple other case studies illustrate that fair trade has the ability to increase income for families in developing nations, improve working conditions, and reduce (or eliminate) child labor in targeted industries. Fair trade is an especially effective solution because it does not involve coercion of either countries or private industry. Rather, it allows for effective monitoring of labor practices, reduced market price fluctuation, and significant incentives for producers to maintain fair trade markets.

Part II of this article outlines the international standards defining the rights of children and what constitutes harmful child labor. Part III addresses the underlying causes of child labor, which are critical to design an effective solution. Part IV explains how alternate proposals fail to provide a comprehensive solution that addresses the root causes of child labor, namely poverty and globalized market forces unrestrained by educated consumers, and at worst these proposals might actually aggravate child labor. It also recommends that rather than focus on prosecution or sanctions, the U.S. should follow the lead of the European Union and provide subsidies and tax benefits to companies that participate in fair trade and promote public awareness of fair trade. Studies indicate that more U.S. consumers would be willing to purchase products at a premium if they were aware of the child labor concerns at stake in the supply chain, and governmental support of the fair trade movement would contribute to a comprehensive solution that addresses the core causes of child labor.

II. DEFINING CHILD LABOR

A. Rights of a Child

Before analyzing the substance of these issues, it is important to provide clear definitions of child labor and trafficking. To begin with, the terms child labor and child trafficking can sometimes be conflated, when

in fact they represent different, though sometimes overlapping issues. Consent is irrelevant if the person being exploited is a child, thus a child is trafficked if he or she is transferred from his or her home for purposes of exploitation. Exploitation includes forced labor or services or practices like slavery.

As for the definition of child labor, scholars have recognized that one of the great problems is defining the scope of the problematic behavior. The International Labor Organization (ILO), currently defines child labor as any one of the following three categories: 1) labor performed by an underage child, 2) hazardous labor that "jeopardizes the physical, mental or moral well-being of a child,” or 3) the child slavery, trafficking, debt bondage and other forms of forced labor, including for war or prostitution. Thus while child labor can include the trafficking of a child, the worst forms of child labor may also include slavery or debt bondage within a child’s own community.

Because of the breadth of the ILO’s three-pronged definition of child labor, which may include work that is beneficial for the family, as well as the difficulty of “estimating the number of children working around the world,” this article will focus primarily on the worst forms of child labor.

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15. Eric V. Edmonds & Nina Pavcnik, Child Labor in the Global Economy, 19 J. OF ECON. PERSPECTIVES 199, 202 (2005) (“Contrary to popular perception in high-income countries, most working children are employed by their parents rather than in manufacturing establishments or other forms of wage employment.”); Panjabi, supra note 4, at 424 (“Although a very broad definition would encompass any work performed by children, it is universally recognized that some forms of work involving family chores have a positive role to play in child development.”).

16. Edmonds & Pavcnik, supra note 16, at 200. Thus, this economist suggests that “rather
labor.

B. International Protections Against Child Labor

The world community has decided that exploiting children for labor should not be tolerated. In 1989, the United Nations General Assembly adopted the Convention on the Rights of the Child. This treaty establishes goals for individual nations to achieve for children’s rights, and has been ratified more quickly than any other human rights document. The only members of the United Nations that have not ratified this treaty are the United States and Somalia.

The “basic premise” of this treaty is to declare that all children (below the age of 18), have certain fundamental rights and governments should institute legislation to protect these rights and report on the status of children’s rights in their country. The rights that the treaty calls for that are of primary importance to this article are, 1) states should take measures to “prevent the abduction of, the sale of or traffic in children for any purpose or in any form,” 2) “protect the child against all other forms of exploitation prejudicial to any aspects of the child’s welfare,” and 3) “recognize the right of the child to be protected from economic

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17. For an in-depth discussion of international children’s rights related to child labor, see SARA DILLON, INTERNATIONAL CHILDREN’S RIGHTS 143-271 (2010).
23. Id. at Art. 35.
24. Id. at Art. 36.
exploitation.” In order to prevent economic exploitation of children, the treaty calls upon member states to “take legislative, administrative, social and educational measures” to provide for a minimum age for employment, to regulate “the hours and conditions of employment,” and “appropriate penalties or other sanctions to ensure the effective enforcement” of the treaty’s requirements.

In 1999, the magnitude of child labor in the world precipitated a call to prioritize the worst forms of child labor, and to ensure the total elimination of child labor as the overall objective. As a result, the ILO adopted the Worst Forms of Child Labour Convention No. 182, which requires countries to take urgent steps to eliminate the worst forms of child labor. Additionally, in 2002, two optional protocols to the Convention on the Rights of the Child came into force and further strengthen the treaty. They specifically prohibit the sale of children, child pornography, and prostitution, and prohibit children in armed conflict. While these international agreements denounce the use of child labor, unfortunately, few of them have been effectively enforced against industries or countries benefiting from child labor as discussed in Part IV.

C. Violations of Children’s Rights in the Agricultural Sector

It is a myth that the most dangerous child labor occurs in sweat shops, sooty factories or production plants to create consumer goods.
In fact, the economic sector that is often most guilty of the worst types of child labor is the agricultural sector.\(^{33}\) One third of the worldwide agriculture workforce is made up of child laborers.\(^{34}\) The United States Department of Labor found that “[m]ore of the world’s working children are employed in agriculture than in any other sector.”\(^ {35}\) According to the ILO, “Most child labourers aged 5 to 17 years old are in agriculture (60 percent), compared to some 26 percent in services and 7 percent in industry.”\(^ {36}\) The United Nations Food and Agriculture Organization found that of children between five and fourteen, 132 million, or 70% of the children, were working in agriculture.\(^ {37}\)

While it may be surprising, agriculture is among the most dangerous and underregulated industries.\(^ {38}\) Part of the concern about agricultural


\(^{37}\) Food and Agriculture Organization of the United Nations, supra note 34.

industries stems from the lack of regulation in that sector. Some countries refuse to regulate agriculture or subject it to lower requirements. Indeed, according to the U.S. Department of Labor, child labor in agriculture is “to a large degree, invisible—uncounted, often undocumented, and little understood.”

An industry in the agricultural sector that has been notorious for using child labor is the tobacco industry. Tobacco is an important cash crop in a 100 countries, and far more profitable in many countries. Despite the economic advantages of tobacco, it is highly labor intensive and often involves child labor. One survey found that child labor is more common with tobacco growing families than non-tobacco growing families, by 68% to 40%. In addition, tobacco growing children are often subjected to the worst forms of child labor.

Bonded labor has historically been common among tobacco tenants and their families, including children. Children accompany parents to work in the tobacco industry for several weeks, and they do not get a choice of how long they remain there, live under abhorrent conditions, and are not free to go until they have paid their debts to the company.

The cocoa industry, another labor intensive industry, provides another troubling example of uses of the worst forms of child labor. A
2002 study estimated that over 600,000 children were involved in cocoa farming in Côte d’Ivoire, the world’s largest cocoa producer. A more recent ILO study in Ghana suggests that the number of independent child laborers with no family connection may be as high as one-third of the working children. The hazardous working conditions for children in both industries include carrying heavy loads, handling chemicals and pesticides, using dangerous tools—not to mention physical abuse and inadequate food. Similar to tobacco, cocoa is a very labor-intensive industry with little machine use, and this is cited as one of the causes for an increased use of child labor in this sector.

### III. Causes of Child Labor

There are many reasons that child labor remains such a persistent problem globally, and the U.N. has observed that “no single factor can fully explain the persistence of child labour.” However, only through understanding the predominant causes of child labor can a solution be identified that makes significant progress in addressing the issue.

#### A. Poverty

Chronic poverty can often lead families to place children into child labor in order to reduce the number of dependents in a family or in the

**References**


hope of securing increased income. According to several scholars and organizations, and frankly as an intuitive matter, poverty is the most common contributing factor to child labor.\textsuperscript{55} Indeed, worldwide child labor is driven by low income and poor institutions.\textsuperscript{56}

Studies suggest that child labor increases with elevated economic pressure. For instance, a study done in Vietnam found that child labor decreased in Vietnam by thirty percent between 1993 and 1997 when the country’s GDP grew by an average of nine percent per year.\textsuperscript{57} The study explains that sixty percent of the improvements in child labor resulted from improved economic status.\textsuperscript{58} The ILO found that in Brazil, when families were given a stipend incentive for keeping their children age seven through fourteen in school, the “school drop-out rate was reduced to a minimal level” because this scheme “alleviate[d] poverty in the short term.”\textsuperscript{59} In Tanzania, a study found that when households suffer crop losses the incidences of child labor increased, and in Brazil when the male head of the house lost his employment, children from that household were more likely to engage in child labor and less likely to pursue an education.\textsuperscript{60}

Indeed, additional studies suggest that parents who are complicit in child labor send their children to work if there are no better options.\textsuperscript{61}

\textsuperscript{55} Anup Shah, Child Labor, Global Issues, Jan. 01, 2001, http://www.globalissues.org/article/62/child-labor (citing UK Committee for UNICEF); see also Panjabi, supra note 4, at 435. Economic downturns in countries like the United States may also increase poverty in other areas of the world, which increases child labor. For instance, when families in third world countries depend on the income of a family member living abroad in the U.S., and that family member loses his or her job, the entire family can be plunged into poverty and be forced to resort to options such as child labor. Id. at 445.


\textsuperscript{57} Edmonds, supra note 56, at 79.

\textsuperscript{58} Id.


\textsuperscript{60} Edmonds, supra note 56, at 213.

\textsuperscript{61} Juan Forero Puerto Inca, In Ecuador's Banana Fields, Child Labor Is Key to Profits, NEW YORK TIMES, July 13, 2002, available at
Particularly where families depend on small incomes, children are critical to survival.\(^{62}\) Ironically, when families turn to child labor to increase incomes, they often inadvertently perpetuate the vicious cycle of poverty, depriving their children of educational opportunities that could alleviate poverty in the long run.\(^{63}\) Thus, not only is poverty a direct cause of child labor, it is “also the genesis of many other causes of child labor.”\(^{64}\)

**B. Lack of Consumer Awareness of Market Forces in a Globalized Economy**

Impoverished farmers and workers fall as easy victims to market forces present in a globalized economy. Often in the unorganized informal sectors of the economy where profits are low, child labor is in high demand.\(^{65}\) Employers in developing nations are driven by low profit margins and a necessity to compete in the globalized market place. Thus, when world prices for a commodity is low or fluctuates, farmers in poor countries must lower costs, often causing them to rely on child labor.\(^{66}\)

http://www.organicconsumers.org/starbucks/0828_fair_trade.cfm (A mother in Ecuador who sent her children to work growing bananas explained, “With my husband’s salary, we did not have enough for school, not enough for food”)

62. As UNICEF observed, when the family needs a small amount of money to survive, children may be bonded to employers. UNICEF, The State of the World’s Children, Report 1997, available at http://www.unicef.org/sowc97/news1.htm (last visited Jan. 25, 2011). Thus where finding enough food is the daily challenge, parents are dependent on their children for income and see that as the only way to survive. See also Panjabi, supra note 4, at 434 (quoting JEREMY SEABROOK, CHILDREN OF OTHER WORLDS: EXPLOITATION IN THE GLOBAL MARKET 51 (2001)).

63. “Poverty begets child labor, begets lack of education, begets poverty and lack of fulfillment of personal aspirations as well as aspirations of a significant contribution to society.” Ximena de la Barra, Defeating the Trends: In Search of a Better Future, in 4 ADVANCES IN EDUCATION IN DIVERSE COMMUNITIES: RESEARCH, POLICY AND PRACTICE 484 (CAROL CAMP YEAKEY ET AL. EDTS., 2006). See also Charles T. Mantei, It Takes a Village to Raise a Child: The Role of The Organization of American States in Eliminating the Worst Forms of Child Labor in Brazil, 32 U. MIAMI INTER-AM. L. REV. 469; PHARIS J. HARVEY & L. RIGGINS, TRADING AWAY THE FUTURE: CHILD LABOUR IN INDIA’S EXPORT INDUSTRIES II (1994). Indeed, “studies seem to suggest that while a developing country’s use of child labor may enhance its short-term economic condition, the practice is nonetheless antithetical to long-term sustainable economic development.” D’Avioio, supra note 9, at 112. The U.N. has similarly observed that “[c]hild labour, while a serious human rights violation in itself, often entails the erosion of other children’s rights. It further impedes the achievement of basic education for all, perpetuating poverty, and undermines development.” United Nations General Assembly, supra note 3.


65. Browne, supra note65, at 27.

66. GLOBAL EXCHANGE, THE NEWS ON CHOCOLATE IS BITTERSWEET: NO PROGRESS ON
Indeed, the in-country employers and employees receive very little income because internationally-based wholesalers and retailers make the bulk of profits.\textsuperscript{67} For instance, a box of bananas is bought for $2 in Ecuador by exporters and sold for $25 in the U.S., with the grower making 12 cents on the dollar.\textsuperscript{68} In the past, major companies have sought to cut costs in order to discount bananas and capture more of the market share by paying less to the banana growers. This has resulted in a 1.4 percent decline in the real price of imported bananas from 1973 to 2001.\textsuperscript{69} As a result of depressed prices, often the wages of two working adults is no longer sufficient and thus the added child’s salary is needed for additional family income.\textsuperscript{70}

In addition, market fluctuations in prices force producers to pay workers less or hire fewer workers. The market desire to keep commodity prices low forces farmers to pay workers less and forces those at the bottom to absorb market changes in costs. Another example comes from the cocoa industry, where farmers are often paid based on the fluctuating price of cocoa, and when prices go down farmers are forced to pay less to workers, or hire fewer workers, in order to compensate for their low profit margins.\textsuperscript{71}

These business pressures to be profitable are often passed on to children.\textsuperscript{72} Children make ideal employees for producers because they

\textsuperscript{67} Inca, \textit{supra} note 62.

\textsuperscript{68} Id.

\textsuperscript{69} \textit{FINE, BUSINESS UNUSUAL: SUCCESSES AND CHALLENGES OF FAIR TRADE} 87 (2006), \textit{http://www.fairtrade-advocacy.org/images/stories/publications/Fairtrade-UK_1to84.pdf} [hereinafter Business Unusual].

\textsuperscript{70} Id. at 88 (report by Human Rights Watch).


\textsuperscript{72} Inca, \textit{supra} note 62.
are cheap, more obedient, and they do not often strike.73 And so long as impoverished farmers are not paid a fair price for their product, incentives for child labor will continue. With broader awareness of the business practices of transnational companies that exacerbate child labor problems, many participants may refuse to contribute to such supply chains.74 However, consumer awareness of these issues is quite low in the United States and the U.S. government does little to encourage investment in companies that commit to eliminate child labor.

IV. SURVEY OF PROPOSED SOLUTIONS TO MITIGATE CHILD LABOR

Scholars and the global community alike have proposed and implemented various solutions to combat the prevalence of child labor globally. However, at best, the majority of these solutions fail to deal with the underlying causes of child labor, and at worst some of these solutions can actually increase the exploitation of children.

A. International Monitoring and Enforcement of Human Rights Standards

The UN and ILO Conventions are voluntary guidelines and, as such, have little enforcement authority nor authority to sanction the noncompliant.75 While these international agreements do allow countries to confront other nations about human rights violations, “since hardly any country is free from human rights abuses, international political action by states is usually avoided.”76 States are often reluctant to point

73. Aine Smith, Comment, Child Labor: The Pakistani Effort to End a Scourge Upon Humanity—Is It Enough?, 6 SAN DIEGO INT’L L.J. 461, 477 (2005); Norimitsu Onishi, supra note 72 (“It’s easier to tell younger workers what to do . . . the older ones are harder to control.”); see also Charles T. Mantei, supra note 64, at 469 (“child laborers are cost effective, easily hidden and substitutable, ignorant of their rights, and not prone to organize”).

74. See supra note 9.

75. Panjabi, supra note 4, at 460. See also Ehrenberg, supra note 8, at 381-82 (“The ILO, through its standard-setting activities, has created a comprehensive international labor code, an unprecedented achievement for an international organization. The ILO’s major drawback is its exclusive reliance on moral persuasion and similar nonpunitive techniques to obtain compliance with the standards it promulgates. Thus, the ILO achieves only limited success, especially with recalcitrant states.”); James J. Silk & Meron Makonnen, Ending Child Labor: A Role for International Human Rights Law, 22 ST. LOUIS U. PUB. L. REV. 359, (2003) (“These standards, although well established, have suffered from many of the same practical weaknesses that have limited the effectiveness of international human rights law generally . . . strong legal norms but weak enforcement mechanisms.”). See also Celek, supra note 4, at 104.

76. Joseph Langan, Did Your Jeans Enslave Children? Child Labour in International Trade, 2 ASPER REV. INT’L BUS. & TRADE L. 159, 163-64 (2002). See also Ehrenberg, supra note 8, at 375-76. See also Vachhani, supra note 5, at 141 (“foreign nations have minimal incentives to retaliate against a state that has violated human rights laws”).
fingers at each other with regards to human rights because they do not want to jeopardize or damage their relationships with other countries or encourage retaliation on issues where they are noncompliant.77

The ILO also has the ability to set standards regarding workers’ rights,78 and use public embarrassment or diplomacy with member states that violate standards.79 However, the ILO is usually unwilling or unable to enforce its policies,80 and does not follow through on warnings to suspend or expel members.81 For instance, despite ample evidence of child labor abuses by Malaysia and Burma, both of these countries remain members of the ILO.82

Sometimes the ILO does criticize certain industry players. For instance, 2005 and 2006 ILO reports harshly criticize the chocolate industry for their dismal progress in reducing the use of child labor in their supply chain and its failure to implement the protocol’s action steps,83 Moreover U.S. political leaders have criticized the ILO for being

77. Id. at 145. See also Ehrenberg, supra note 8, at 375-76 (“[S]tates are reluctant to criticize each other on human rights issues because they do not want to jeopardize their relations with the violator, and because they have other interests that they view as more important than human rights. Furthermore, states are extremely sensitive about their own human rights practices and thus feel intensely threatened by the subject. Many states fear that criticism of another’s human rights practices will be viewed as a hostile act, initiated for purely political reasons, and will thus subject them to retaliation. Finally, states do not want unnecessarily to sully their political and economic relationships with each other.”).


79. Id. at 701. For an extensive overview of the legal instruments adopted by the ILO to combat child labor, see CHILD LABOUR IN A GLOBALIZED WORLD: A LEGAL ANALYSIS OF ILO ACTION (EDS. GIUSEPPE NESI, ET. AL. 2008).

80. Junlin Ho, supra note 7, at 337.

81. Baltazar, supra note 79, at 701. See also Ehrenberg, supra note 8, at 376-77.

82. Baltazar, supra note 79, at 691-92 (“[I]n spite of ILO findings that Malaysia has failed to implement ILO Conventions for over twenty years, Malaysia remains a member of the ILO . . . . Burma, a signatory to the ILO’s Right of Association Convention of 1921 (No. 11), remains a member of the ILO despite forced labor abuses cited by the ILO.”).

aggressive in ratifying international instruments but devoting little attention to implementing them.\textsuperscript{84}

As evidenced by UN and ILO standards, since countries are mainly only bound voluntarily by international human rights standards, attempts to enforce these standards have not been widely successful. As a result, the world community has begun to look toward holding accountable the true beneficiaries of child labor, transnational companies. While many scholars agree that companies ought to be held accountable for their role in human rights violations,\textsuperscript{85} international laws are generally poorly suited to hold companies responsible for their violations of human rights, and the UN’s attempts to set standards for transnational corporations have not been effective.\textsuperscript{86} For instance, the UN attempted to create a U.N. Code of Conduct on Transnational Corporations, which would have regulated business practices, including the use of child labor on an international level. This document would have been the first of its type.\textsuperscript{87} However, nations argued over whether the code should be legally binding or voluntary, and under pressure of developing nations such as the United States, the U.N. eventually abandoned its efforts after almost 15 years of negotiations.\textsuperscript{88} Instead, the U.N. later merely set forth recommendations for international corporate practices rather than a binding code.\textsuperscript{89}

The failure of international organizations to enforce international standards on transnational companies prompted some U.S. political leaders to create legislation that would apply these international obligations on corporations through national enforcement. For instance, in 2001 two U.S. Congressmen (Senator Tom Harkin and Representative Eliot Engel) added a rider to an agricultural bill that would have required federal certification that chocolate products were “slave free,” based on

\textsuperscript{84} WALTER GALENSON, THE INTERNATIONAL LABOR ORGANIZATION: AN AMERICAN VIEW 250 (1981).


\textsuperscript{86} Mustapha, supra note 53, at 1169-70.

\textsuperscript{87} Id. at 1170-71. See also Baltazar, supra note 79, at 698.

\textsuperscript{88} Mustapha, supra note 53, at 1170-71.

\textsuperscript{89} Id.
international standards. Since companies such as Mars, Hershey, and Nestle would be unable to qualify for the certification at the time, the chocolate industry mounted an attack on the legislation. The proposal passed the House, but the chocolate industry’s lobbyists were able to kill the measure in the Senate. Accordingly, attempts to impose international human rights obligations on companies, either directly or incorporated through national legislation, have generally failed.

One of the diplomatic tools the United States has been able to use to instigate international dialogue about one of the worst forms of child labor—trafficking—is its annual Trafficking in Persons Report, which highlights trends in trafficking, encourages multilateral and bilateral action, and supports anti-slavery programs. This year’s report included, for the first time, a ranking of the United States based on the same standards under which other countries were reviewed. The report ranks 177 countries into three different tier rankings (Tier 1, 2, and 3) with rankings based on compliance with TVPA’s standards for stopping child trafficking. The penalties for countries that receive Tier 3 status are that they could be subjected to certain sanctions, and the US may withhold non-humanitarian assistance.

The TPVA was reauthorized and expanded in 2003, 2005, and 2008, and one beneficial requirement added in both 2005 and 2008 was

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90. See supra note 139.
92. GLOBAL EXCHANGE, supra note 67. See also Mustapha, supra note 53, at 1172.
93. TIP REPORT, supra note 2.
95. TIP REPORT, supra note 2, at 20. In order for a country to maintain Tier 1, the highest ranked status, the country must be taking the issue of human trafficking seriously, meet TPVA minimum standards, and show appreciable progress each year in combating human trafficking. Tier 2 countries do not fully comply with TPVA minimum standards but are working on bringing themselves into compliance, and Tier 3 countries are countries that do not fully comply and are not making efforts to do so. Id. at 20, 22.
96. TIP REPORT, supra note 2, at 25.
97. U.S. Department of State, U.S. Laws on Trafficking in Persons, http://www.state.gov/g/tip/laws/ (last visited Jan. 28, 2011). See also Michelle Crawford Rickert, Through the Looking Glass: Finding and Freeing Modern-day Slaves at the State Level, 4 LIBERTY U. L. REV. 211, 220-21 (2010) (“The Trafficking Victims Protection Act (TVPA) was enacted in 2000 to ‘combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.’ The TVPA was reauthorized and expanded respectively by the Trafficking Victims Protection Reauthorization Act of 2003; Trafficking Victims Protection Reauthorization Act
that the Department of Labor create a list of goods produced by child labor or forced labor. The purpose of the list is to increase awareness of child labor in production in an effort to stop these practices. Not surprisingly, the list found that the sector that utilized child labor the most was the agricultural sector, with the most common goods being "cotton, sugarcane, tobacco, coffee, rice, and cocoa." The list also provided which countries these goods depending on child labor came from. However, it failed to identify specific companies or supply chains that are guilty of using products or goods produced by child labor, and thus the effectiveness of this list for raising consumer awareness is significantly limited.

B. Economic Sanctions and Penalties

Because, as discussed above, it is neither feasible nor likely that an international organization such as the U.N. or ILO will be able to directly enforce human rights standards on member states (through a penalty like expulsion, for instance), some scholars have argued that a better alternative would be for such international organizations to utilize multilateral trade sanctions against countries not compliant with child labor requirements. Thus, member states could levy trade sanctions into ILO procedures. In what has been dubbed the “Ehrenberg Proposal,” Daniel Ehrenberg argued that a country’s use of child labor should be viewed as “a state subsidy or ‘social dumping’ that give[s] states an unfair competitive advantage,” and as such, transgressor


99. Id.

100. Ehrenberg, supra note 8, at 390; Vachhani, supra note 5, at 148; Redd, supra note 4, at 408 (“A related way to make the convention more effective is by detailing specific penalties for the nation in which the worst forms of child labor occurs. These penalties could include economic sanctions, fines, and embargoes.”); D’Avolio, supra note 9 at 111 (“incorporating a labor reform clause into the WTO rules or multilateral trade agreements will ensure that all member states raise their labor standards accordingly.”) (citing BELLAMY, supra note 7 at 70; Basu, supra note 7 at 1111).


102. Ehrenberg, supra note 8, at 379. See also Claire R. Kelly, Enmeshment as a Theory of Compliance, 37 N.Y.U.J. Int’l L. & Pol. 303, 321 (2005) (explaining that linking trade to child labor can be theoretically justified for the following reasons “(1) normative (because linkage is demanded by justice and fairness); (2) coherence (because a free trade regime simply would not make sense if human rights are ignored); (3) consequentialist (because free trade will adversely
states engaging in this “unfair trading practice” should be “sanction[ed]” multilaterally through a complex procedure melding the ILO and WTO in order to protect the trade interests of other states. The ILO could specifically use sanctions to “withdraw technical cooperation to make sure the state complies with ILO conventions.”

This proposal has been criticized for multiple reasons. First, the assistance that would be withheld by the ILO is actually intended to aid compliance so withholding such aid may actually decrease a country’s ability to comply with international child labor standards. Second, a trade solution would primarily deal with goods made by child labor, which is inadequate because targeting export industries would only reach a small percentage of those using child labor. Third, as a practical matter, use of multilateral sanctions for use of child labor is extremely controversial—particularly with less developed countries. Developing countries strongly oppose trade sanctions to punish labor violations affecting human rights; (4) strategic (because linking these issues in creative package deals leads to more effective negotiations as to both); or (5) effectiveness (because the more effective WTO approach to dispute settlement can be usefully “borrowed” to the benefit of human rights.”)

Baltazar, supra note 79, at 703. See also Kelly, supra note 103, at 324 (discussing different methods through which the WTO could use trade to address child labor issues).

Baltazar, supra note 79, at 703.

Bellamy, supra note 7, at 23, available at http://www.unicef.org/sowc97/download/sow1of2.pdf; Kelly, supra note 103, at 327-28 (“Arguably, a trade solution could address more than goods produced by child labor. Trade sanctions could be aimed at products not produced with child labor because of a country's failure to address the problem more generally. But this type of ban would not seem to fall under the WTO's Article XX exceptions. Moreover, any attempt would be subject to discretionary abuse and manipulation. And there would be serious concerns about disguised protectionism.”); Matthew C. Bazzano, Child Labor: What the United States and Its Corporations Can Do to Eliminate Its Use, 18 HAMLINE J. PUB. L. & POL'Y 200, 201 (1996) (“[B]ecause so few products manufactured by children are sold on the global market, the United States must combat this problem by using other measures.”).
because it undermines their relative advantage with lower wages. This view has prevailed at several WTO Conferences, and so it is unlikely, as a practical matter, that trade sanctions will be imposed anytime soon. Unilateral trade sanctions by the United States are another option advocated by proponents of linking trade to child labor. For instance, for the same reasons that would justify multilateral sanctions, Ehrenberg argues that “a single nation” should be able to “prohibit the importation of goods” created through child labor.

Some scholars question whether such action would withstand WTO muster, since the U.S. has agreed not to prohibit imports of products under the General Agreements on Tariffs and Trade (GATT). GATT Article XI requires that no members prohibit the import of goods from other members. Under this provision, trade limitations imposed by the

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108. Baltazar, supra note 79, at 704-05.
110. Baltazar, supra note 79, at 706 (“[I]n its 1994 and 1995 sessions, the ILO Governing Body concluded that there was inadequate consensus among members to link labor standard monitoring to international trade, but that the ILO should instead reinforce its work by strengthening its supervisory mechanisms.”).
111. Blackett, supra note 7, at 35 (advocating amending Article XX of the GATT to allow nations like the U.S. to utilize unilateral trade sanctions); Brewster, supra note 4 (advocating unilateral sanctions that withhold foreign aid to countries that utilize child labor), at 211-13; Chilcoat, supra note 7 (advocating strengthening contingencies relating to child labor in free trade agreement social clauses), at 307-08; Ho, supra note 7, at 337 (arguing that decentralized and unilateral trade sanctions by nations would be more effective than multilateral trade sanctions); Garg, supra note 7, at 485-92 (advocating import bans on goods produced with child labor); Ellenbogen, supra note 7, at 1315 (advocating the application of the Tariff Act with caution allowing time for government and industries to respond); Mitro, supra note 7 (advocating import restraints), at 1223; Stevenson, supra note 7, at 129 (arguing that the U.S. should use unilateral trade sanctions against countries that utilize child labor).
112. Ehrenberg, supra note 8, at 416.
113. See Bazzano, supra note 107, at 216 (“This appears to be the true obstacle in imposing domestic legislation outlawing the sale or importation of goods made with child labor. By requiring products to be made with ‘adult labor,’ the United States would impose a prohibition on imported goods.”) GATT Article XI states that “No prohibitions or restrictions . . . shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party . . . .” A recent GATT panel seems to confirm this proposition. The United States attempted to restrict the amount of Mexican tuna it allowed to be imported because the method the Mexicans used to manufacture the product apparently harmed several dolphins. The panel ruled that the United States could not use trade restrictions to control Mexican product creation.” Citing Note, James P. Kelleher, The Child Labor Deterrence Act: American Unilateralism and the GATT, 3 MINN. J. GLOBAL TRADE 161 (Spring 1994); see also Jonassen, supra note 102, at 20-21.
United States on products created with child labor could constitute inappropriate “prohibitions or restrictions.”

Though, other scholars, such as Robert Howse, have argued that the GATT authorizes such sanctions under Article XX(a) and XX(b), since XX(a) allows nations to “take actions otherwise inconsistent with the GATT when necessary to protect public morals”, and XX(b) “allows nations to take inconsistent actions when human life or health is at stake.” Matthew Mitro has similarly argued that a “unilateral import prohibition should be among the available policymaking tools” the United States considers when combating child labor, and that such legislation should pass WTO muster under Article XX.

The United States has multiple legal tools at its disposal to enforce trade sanctions or penalties against countries that utilize child labor in the production of their products. First, when the United States enters into free trade agreements with other countries, it should strengthen the requirements of its “social clauses” to provide stronger enforcement of child labor and penalties of reduced free trade if such conditions are not complied with. Another option that has been advocated by the International Labor Rights Fund is stricter use of The Sanders Amendment of 1997 to the Tariff Act of 1930, which prohibits the importation of items produced through use of “forced or indentured child labor.” In addition, under the TPVA, Tier 3 countries can be subjected to sanctions under which the United States may withhold non-humanitarian assistance. Also, under the U.S. Generalized System of Preferences (GSP) Program under the 1974 Trade Act, the United States

114. Ehrenberg, supra note 8, at 416.
116. Mitro, supra note 7, at 1223 (2002). See also Stevenson, supra note 7, at 167 (“[T]here is growing hope that such domestic laws will pass international muster.”).
117. Chilcoat, supra note 7, at 307-08. Under this option, the United States has already utilized social clauses in agreements with Mexico, Jordan, Chile, Australia, Peru, and Columbia, but these provisions do not provide for strict enforcement or data collection of child labor, and as of yet there is no evidence that such provisions have reduced the use of child labor in these countries. Id. at 319-328.
119. TIP REPORT, supra note 2, at 25.
may provide a developing country “duty-free benefits” if it addresses labor issues among workers. Finally, in 1999, Senator Harkin sponsored the Child Labor Deterrence Act, which would have made it illegal to import goods produced with child labor, and companies violating this law would face severe penalties. Although this bill never became law, Senator Harkin has announced plans to reintroduce a similar bill.

Through any of the trade mechanisms, the United States is able to unilaterally penalize countries that utilize child labor in their production of goods. However, the use of such sanctions or penalties has been criticized on many grounds. Many commentators argue that sanctions have been enforced inconsistently, or based on political motives or protectionism. Arbitrariness may be increased when the United States is concerned about offending a nation that represents an “important ally” or a “significant market” of goods valuable to the United States. For example, the United States continues to give trade preferences to Malaysia and Burma despite “ample evidence” of child labor violations. In addition, critics argue that small countries are often targeted, given concerns about the international effects of sanctions on

120. Baltazar, supra note 79, at 707. These rights include a prohibition on the use of forced or compulsory labor, as well as a requirement that the country have a minimum age for employment. 19 U.S.C. § 2462(a)(4) (1976).


123. Camastra, supra note 4.

124. Baltazar, supra note 79, at 690 (“Under its program of Generalized System of Preferences (GSP), the United States has also accepted labor rights responsibilities by withdrawing or threatening to withdraw its trade benefits to developing countries found to violate ‘internationally-recognized worker rights.’ This unilateral linking of human rights standards to trade policies, however, has been widely criticized as protectionist, prone to questionable and arbitrary implementation, and detrimental to the competitive advantage of the United States in key emerging markets.”); PETER FALLON & ZAFIRIS TZANNATOS, CHILD LABOR: ISSUES AND DIRECTIONS FOR THE WORLD BANK 12 (1998) (“The imposition of sanctions may be little more than a cover for those who wish to introduce trade protectionist measures in developed countries and may be implemented in a discretionary way that has little to do with child labor.”).

125. Kelly, supra note 103, at 332.

larger countries.\textsuperscript{127}

As a criticism of trade sanctions in general, whether multilateral or unilateral, Kelly argues that they are not useful, in practical terms.\textsuperscript{128} This is primarily because trade sanctions fail to address the root instigators of child labor, such as poverty, and may in fact aggravate this problem.\textsuperscript{129} It is also foreseeable that sanctions could further reduce the income of countries where a lack of resources is already one of the primary contributing factors to the use of child labor.\textsuperscript{130} Moreover, sanctions might force children to seek work in even more hazardous sectors.\textsuperscript{131}

Although unilateral trade sanctions are theoretically possible under the ILO or GATT provisions, there is little evidence of countries using such provisions to target trading partners violating international child labor provisions.

\begin{center}
\textbf{C. Boycotts}
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While many human rights advocates support consumer boycotts of products made through child labor,\textsuperscript{132} boycotts may increase hardship for
children with a loss of a source of income and a push them to seek more dangerous jobs.

In 1993, for instance, it is estimated that close to 55,000 children in Bangladesh lost their jobs because Bangladesh Garment Manufacturers and Exporters Association feared an international boycott of their goods if its members did not comply with Bangladeshi law prohibiting child labor. A follow-up study done by the ILO and UNICEF found that few of these children returned to school, and in fact many of them turned to more hazardous forms of employment. Some children were unable to find any other employment, and “their families were abruptly deprived of necessary income.” While we argue that there is clearly room for consumer action to decrease the use of child labor, the use of boycotts alone may in fact be more detrimental than helpful.

134. Id. See also Michael B. Rannels, et. al., Corporate Social Responsibility and the New Governance: In Search of Epstein’s Good Company in the Employment Context, 43 AKRON L. REV. 501, 514-16 (2010) (“As a result of this focus on the alleged immorality of child labor, Bangladeshi manufacturers, between 1992 and 1995, dismissed tens of thousands of children who ultimately found employment in the rickshaw pulling, brick carrying, rag-picking, and prostitution professions.”); Intl'. Labour Org., IPEC in Action: Asia, available at http://www.ilo.org/public/english/standards/ipec/publ/field/asia/banglad2pr.htm; FALLON & TZANNATOS, supra note 125, at 11; Anna A. Kornikova, Note, International Child Labor Regulation 101: What Corporations Need to Know About Treaties Pertaining to Working Youth, 34 BROOK. INT'L L. 207 (2008); John F. Sawyer, Comment, Shipbreaking and the North-South Debate: Economic Development or Environmental and Labor Catastrophe?, 20 PENN ST. INT'L L. REV. 535, 555 n.181(2002) (“When US NGOs boycotted the Bangladeshi garment industry because it used child labor over 50,000 children were thrown out of work. These children did not then go to school because schools are not available to them. These children who were working in legitimate jobs were forced to turn to crime and prostitution to survive.”). But see Note, Mihir Chatterjee, Re-Negotiating Trade and Labor Standards in a Post Hong Kong Scenario, 2 ASIAN J. WTO & INT'L HEALTH L. & POL.'Y 473 (2007) (arguing that “A regime of sanctions coupled with an effective domestic mechanism to prevent other illegal activities such as prostitution, human trafficking and the like would slowly but surely improve the overall labour conditions in the world.”).
135. Kelly, supra note 102, at 328-29.
136. Kaushik Basu, Symposium, Compacts, Conventions, and Codes: Initiatives for Higher International Labor Standards, 34 CORNELL INT'L L.J. 487, 494 (2001) (“product boycott share the problem of extra-national action discussed above, which drive bad practices, such as the use of child labor, from the export sector of developing countries to the indigenous sectors where conditions are often worse.”); Frances Williams, United States Urges Action on Child Labour, Fin'cl Times, Jun.
In 2001, major chocolate manufacturers, such as Hershey’s and Mars, began to receive “unwelcomed media attention” about the use of child labor in their supply chain.\textsuperscript{137} Originally, these companies denied any responsibility, claiming that “they neither owned the cocoa farms nor controlled the labor practices of local farmers.”\textsuperscript{138} However, amid discussion among politicians about introducing legislation to require “slave free” chocolate products,\textsuperscript{139} as well as consumer outrage and threats of boycotts,\textsuperscript{140} in 2001 the chocolate industry signed a voluntary, non-binding protocol pledging to take steps to eliminate the worst forms of child labor.\textsuperscript{141}

Thus, while admittedly boycotts are correct in taking affirmative action to mitigate child labor violations, they do not take into account the poverty within which child labor thrives and fail to address, and maybe even aggravate, the underlying causes of this dilemma.\textsuperscript{142}

\textbf{D. Domestic Prosecution of Child Labor and Trafficking}

Some commentators have focused on the importance of stricter

13. 1996, at 4, available in 1996 WL 10595158 (“[T]rade boycotts of goods made with child labour could prove counter-productive by depriving the children's families of income or driving child labor underground.”); Browne, \textit{supra} note 65, at 39 n.202 (“Since child labor is predominantly a feature of the South, the boycotting of goods produced using child labor or using labels signifying the use of child labor, both methods used by the developed nations, can cause significant harm to the trade of the developing nations.”).


138. \textit{Id.} at 1166 (“Initially, industry representatives even denied that child labor existed on the cocoa farms.”).


141. Vachhani, \textit{supra} note 5, at 128-29. Under this protocol, chocolate companies agreed to voluntarily end child labor. “Initially, the deadline set to accomplish the voluntary Protocol was July 2005, but it was extended to July 2008. When the industry failed to accomplish its commitment to end child labor in 2005, cocoa companies did not face sanctions from lawmakers. In addition to its lack of enforcement, the Harkin-Engel Protocol has a myriad of shortcomings within its scheme which contribute to its failure.” Id.

142. Runnels, \textit{supra} note 135, at 514-16. \textit{See also} Browne, \textit{supra} note 65, at 40 (noting that the welfare of children should not be harmed by legal action intending to help them, and the approach to resolve the issue should seek to identify and address the cause and contexts where child labor flourishes rather than resolving the issue with “overreaching laws” and trade restrictions); Kornikova, \textit{supra} note 135, at 207 (“This example demonstrates that children's right to be free from exploitation and their right to be balanced.”).
prosecutions of child labor traffickers.\textsuperscript{143} Panjabi has advocated the important role of governments in dictating “severe penalties” for the use of either slavery or child labor in agricultural products, including jail terms and confiscation of assets.\textsuperscript{144} Similarly, others have argued that forced child labor results largely from “government complicity and inadequate enforcement.”\textsuperscript{145} As a result, international organizations such as UNODC stress the importance of prosecuting traffickers and work to strengthen criminal justice systems to achieve more prosecutions and convictions.\textsuperscript{146}

Many countries have adopted this emphasis on prosecution in their legislation. For instance, the model of legislation used by the United States emphasizes prosecution of child traffickers.\textsuperscript{147} In 2000, the U.S., recognizing that it is a transit and destination for child trafficking passed the Trafficking Victims Protection Act (TPVA).\textsuperscript{148} The TPVA was intended as a comprehensive approach to protecting victims of trafficking and prosecuting child traffickers.\textsuperscript{149}

The TPVA purports to take a three prong approach of prevention of trafficking, protection of victims, and prosecution of traffickers,\textsuperscript{150} but in

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\item D’Avolio, supra note 9, at 141; Redd, supra note 4, at 408.
\item Redd, supra note 4, at 408. See also Jeanne M. Glader, Note, A Harvest of Shame: The Imposition of Independent Contractor Status on Migrant Farmworkers and its Ramifications for Migrant Children, 42 HASTINGS L.J. 1455, 1457 (1991) (arguing for increased “zealous investigation and prosecution” as a solution to child labor).
\item Haynes, supra note 9, at 221.
\item Id. See also Henry Andrés Yoder, Civil Rights for Victims of Human Trafficking, 12 U. PA. J. L. & SOC. CHANGE 133, 133-34 (2009). The act defines “severe forms of trafficking in
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practice, many commentators agree that the act focuses primarily on prosecution of traffickers. With the reauthorizations of the TPVA, Congress reemphasized the priority of increasing prosecution of trafficking and increasing penalties under the Federal Sentencing Guidelines.

However, the effectiveness of the TPVA in dealing with child labor has been quite limited for at least two reasons. First, it places a disproportionately heavy emphasis on sex trafficking and it fails to recognize the more widespread issue of trafficking for labor. For example, of the alleged incidents of human trafficking that were investigated by the Department of Justice between 2007 and 2008, 83% dealt with sex trafficking, and just 12% involved labor trafficking, which amounted to an investigation of less than 150 investigated cases of labor trafficking. In 2009, successful trafficking prosecutions rose to the level of 4,166, but only 8%, or 335 of those cases were related to forced labor. This approach that targets sex cases neglects labor cases and obscures the reality that labor cases are more rampant.

As the Department of State recognized in its annual Trafficking in Persons report, “More people are trafficked for forced labor than for commercial persons” as (a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (b) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. 22 U.S.C.A. § 7102(8).

151. Chuang, supra note 9, at 137 (“Legal responses to the problem typically adopt a three-prong framework focused on prosecuting traffickers, protecting trafficked persons, and preventing trafficking. In practice, however, these responses emphasize the prosecution of traffickers and, to a lesser extent, the protection of their victims.”); Haynes, supra note 9, at 221.


153. Yoder, supra note 151, at 156.

154. See Enrique A. Maciel-Matos, Comment, Beyond the Shackles and Chains of the Middle Passage: Human Trafficking Unveiled, 12 SCHOLAR 327 (2010) (describing the TVPA’s “overemphasis on prosecution of traffickers”).


156. TIP REPORT, supra note 2, at 7.

157. Chuang, supra note 9, at 138 (“While the problem of human trafficking has captured widespread public attention in recent years, it has mostly been in response to narrow portrayals of impoverished women and girls trafficked into the sex industry by shady figures connected to organized crime. Considerably less attention has been devoted to the widespread practice of the trafficking of women, men, and children into exploitative agricultural work, construction work, domestic work, or other nonsexual labor.”).
sex.” In addition, a 2005 study done by the ILO found that “of the estimated 9.5 million victims of forced labor in Asia, less than 10 percent are trafficked for commercial sexual exploitation,” and “[w]orldwide, less than half of all trafficking victims are part of the sex trade.” Thus, while focusing on the sex industry may instigate action through moral outrage, it does so at the expense of prioritizing, or even fully considering, the most widespread abuses of children.

These statistics above also illustrate the second reason why random prosecution and investigation of child labor is not a comprehensive solution to the problem. Prosecuting 335 cases is clearly of miniscule consequence when compared to the Department of State’s estimate that 12.3 million people are subject to “forced labor, bonded labor, forced child labor, and sexual servitude at any given time.” As the Washington Post observed, “[c]onvicting a local recruiter or transporter has no significant impact on the overall scale of trafficking. If the incentives are right, he or she is instantly replaced, and the flow of people is hardly interrupted.” As a result, very little evidence supports the argument that prosecutions have any widespread impact on overall levels of international trafficking.

Other countries have similarly faced difficulties in curbing child labor or child trafficking through increased emphasis on prosecution. Particularly in developing countries, many of the justice systems simply lack the resources to detect and prosecute these types of crimes, even where the country has appropriate legislation in place making the use of the worst forms of child labor illegal.

For instance, in Malawi, one of the world’s poorest countries,

158. TIP REPORT, supra note 2, at 5.
159. Feingold, supra note 2, at 26 (“Trafficking of women and children (and, more rarely, young men) for prostitution is a vile and heinous violation of human rights, but labor trafficking is probably more widespread.”). See also Bullard, supra note 2, at 140 (observing that child labor is the most common type of child exploitation).
160. TIP REPORT, supra note 2, at 7.
161. Feingold, supra note 2.
162. Id.
163. See Vachhani, supra note 5, at 131 (“enforcement of child labor prohibitions is obstructed by a lack of resources, weak institutions, and the lack of a regulatory and judicial framework.”) (quoting Bureau of Int’l Labor Affairs, U.S. Dep’t of Labor, 2006 Findings on the Worst Forms of Child Labor 118 (2007), http://www.dol.gov/ilab/programs/ocft/PDF/2006OCFTreport.pdf); Browne, supra note 65, at 39; Panjabi, supra note 4, at 444 (“It is also true that governments, particularly in developing countries, lack the resources to monitor the agricultural sector . . . ”).
164. NationsOnline, Countries of the Third World, http://www.nationsonline.org/oneworld/third_world.htm#Poverty. This source ranks Malawi as the second poorest country in terms of gross national income. Malawi has also made the UN’s list of
sources indicate that child labor is widespread and increasing. The ILO has estimated that 23.3 percent of children age 5-14 work, and 88.9 percent of these children work in the agricultural sector. The U.S. has classified Malawi as a country that is a source for children trafficked, particularly for forced labor and prostitution. This level of child labor and human trafficking persists even though Malawi’s laws currently prohibit such action and prescribe penalties that are “sufficiently stringent” with up to 10 year prison sentences.

In 2009, Malawi only prosecuted five offenders for trafficking and 34 offenders for exploiting children in forced farm labor. Nevertheless, one of the United States’ primary recommendations for Malawi to improve combating human trafficking was to increase training programs for judges, prosecutors, and police on how to identify, investigate, and prosecute trafficking offenses using existing laws. This recommendation for enhancing prosecution, while certainly important, seems somewhat unrealistic as a comprehensive solution in light of the fact that Malawi only has a police to population ratio of 1:1,672 (as compared to the United States’ ratio of 2.3:1000), and only has a crime detection rate of 7%.

India is another example of a country that has no shortage of laws
punishing child labor, but there have been very few prosecutions and fewer convictions under any child labor law. Some reasons for ineffective prosecution of child labor in India include the existence of unorganized sectors of the economy, the lack of resources to enforce such laws, or where the laws are enforceable, the risk of being detected is low and worth the profit made for breaking the law. Another scholar observed that child labor is difficult to regulate and prosecute because

172. Kathleen Kerr, Returning Home: The Challenge of Repatriating Foreign Born Child Victims of Forced Labor From India, 16 BUFF. HUM. RTS. L. REV. 155, 177 (2010) (noting that prosecutions of child labor can occur under the “Bonded Labour System (Abolition) Act, the Child Labour (Prohibition and Regulation) Act, the Mines Act, the Factories Act, the Beedi and Cigar Workers (Conditions of Employment) Act, the Children (Pledging of Labour) Act, the Indian Penal Code, or under the Constitution of India”).


174. Browne, supra note 65, at 33-34, 39. See also Panjabi, supra note 44, at 444 (“Quantifying and monitoring the work children and adults perform on family farms is next to impossible without vast bureaucratic teams of inspectors, well beyond the fiscal capacity of most nations in both the developing and developed world. Plantations, particularly those engaged in cash crop production, often hire an adult worker - usually a migrant - who comes, accompanied by children, to accomplish the daily quota of work. The registered worker is the adult. The children, even though they work all day, do not even figure on the documentation and they are not directly paid. When farm owners are inclined to hire undocumented immigrants, the problems of verifying the role of children become even more complex.”).
employers work hard to hide child labor and corruption is endemic.\textsuperscript{175} Prosecution of any type of trafficking is also further complicated by the fact that victims are often afraid to testify against traffickers,\textsuperscript{176} as well as the fact that reliable statistics about child trafficking are difficult to find.\textsuperscript{177}

Probably the most important reason that prosecution alone cannot effectively combat child labor and trafficking is that, as with the other solutions addressed above, it addresses the result but not the root causes of the problem, including the poverty driving employee decisions,\textsuperscript{178} and market forces driven by a globalized economy.\textsuperscript{179} Thus, despite strict laws and continued efforts at strict enforcement, child labor will likely continue so long as prosecution is a primary focus of policymakers.\textsuperscript{180}

\textbf{V. FAIR TRADE: A SOLUTION WITH EFFECTIVE VOLUNTARY MONITORING}

One private solution that would address many of the root problems causing child labor (poverty of both families and producers, demand from companies, and lack of information for both consumers and victims of forced labor), is the use of fair trade organizations to certify that products have been created without child labor and with fair pay for

\begin{thebibliography}{99}
\bibitem{175} Smith, supra note 74.
\bibitem{176} HumanTrafficking.org, \texttt{http://www.humantrafficking.org/combat Trafficking/prosecution.}
\bibitem{177} Dina Francesca Haynes, \textit{(Not) Found Chained to a Bed in a Brothel: Conceptual, Legal, and Procedural Failures to Fulfill the Promise of the Trafficking Victims Protection Act}, 21 GEO. IMMIGR. L.J. 337, 341 (2007). Furthermore, even for victims whose cases have been investigated, the act has been criticized as not really providing the protection it claims for victims of trafficking. For example, the Act offers T-Visas to victims of trafficking, but limits this number to 5,000 Visas despite the fact that the Act admits that “[a]pproximately 50,000 women and children are trafficked into the United States each year.” See Yoder, supra note 151, at 150-51 (this act was passed among other pieces of anti-immigrant legislation and while it seems to aid and protect victims of trafficking, in reality victims receive little benefit from it); Wendy Chapkis, \textit{Trafficking, Migration, and the Law: Protecting Innocents, Punishing Immigrants}, 17 GENDER AND SOC’Y 923, 924 (2003). With what one journalist called a “slick rhetorical maneuver,” the “statutory scheme implicitly makes the condemnation of sex work a priority while ignoring sex workers’ legitimate needs.” Henry Andrés Yoder, supra note 151, at 157 (quoting Debbie Nathan, Oversexed, \textit{THE NATION}, August 29, 2005, at 4, \texttt{http://www.thenation.com/doc/20050829/nathan}).
\bibitem{179} Chuang, supra note 9 ("The problem of trafficking begins not with the traffickers themselves, but with the conditions that caused their victims to migrate under circumstances rendering them vulnerable to exploitation.").
\bibitem{180} Ehrenberg, supra note 8, at 371.
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workers.

A. Fair Trade Defined

According to the World Fair Trade Organization and Fairtrade Labelling Organizations International, fair trade evolved as because conventional trading failed to provide development opportunities to people in the least developed countries. Fair trade proponents believe that fair trade can reduce poverty with greater transparency and equity. This equity and transparency is achieved by helping marginalized producers gain access to mainstream markets and by providing information to consumers in the developed world about the product supply chain so that consumers can make informed decisions. Fair trade-certified labels guarantee consumers that strict economic, social, and environmental criteria were met in the production and trade of the labeled product. Of particular importance to this article is the fair trade guarantee that no child labor was used in the production of the good, and that the farmers were paid a fair wage for the product.

Fair Trade Organizations work with both workers and producers to set a price for the product. The price of the product includes a “premium” paid to both workers and producers. The producers benefit because their profit is not subject to market fluctuations and they gain access to (often larger) fair trade markets. In exchange, producers have to allow random monitoring and inspection by fair trade organizations. The workers benefit because they are assured a fair wage, decent working conditions, and a “premium” spent on development projects in their community.

Fair trade is not a charity or an aid organization, but is rather, a product certification scheme that considers all of the costs of production—direct and indirect—rather than just market conditions to determine how much to compensate workers and producers.


182. Id. at 6.

183. LAURA T. RAYNOLDS, DOUGLAS MURRAY & JOHN WILKINSON, EDs., FAIR TRADE: THE CHALLENGES OF TRANSFORMING GLOBALIZATION 4 (2007) (“Northern activists working with producers, laborers, and other impoverished sectors of the Global South, are using market-based strategies to mobilize consumer awareness in order to bolster incomes and empower Southern producers and workers. In doing so, Fair Trade seeks to redirect globalization’s transformative powers toward the creation of greater social equity on a global scale.”).

184. Id. at 7.
trade standards and payment terms “are set with the cooperation of producers, traders and external experts.” These payment terms are meant to not only provide sustainable living, but also an income that can improve future conditions and lead to long term economic development. Thus, in this way, fair trade is able to address the root causes of poverty by connecting actors all along the trading chain, rather than focusing on stricter compliance from isolated actors.

Between 2004 and 2007, international fair trade sales more than tripled. As of 2006, more than one million producers world-wide were involved in the fair trade movement. As a result of this growth, fair trade now constitutes one of the fastest growing segments of the global food market.

B. Fair Trade Accomplishments Related to Child Labor

All fair trade organizations are committed to protecting children from forced child labor. And the fair trade movement has already begun making some progress in reducing child labor. One way this is accomplished is that fair trade increases monitoring and compliance within industries by mandating reporting of child labor violations. Monitoring consists of a three-prong process: self-assessment against fair trade standards, peer reviews from trading partners, and random external inspections.

An example of the benefits of such monitoring is the use of fair trade for sporting goods. In the football industry, industry members representing 80% of industry sale agreed to eliminate child labor from football production by only buying from suppliers that agreed to be

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186. Id. at 7.
187. Id. at 8.
189. BUSINESS UNUSUAL, supra note 70, at 5.
191. For a discussion of different types of fair trade organizations, see Alex Nicholls & Charlotte Opal, Fair Trade: Market-Driven Ethical Consumption (2005); Mary Ann Littrell & Marsha Ann Dickson, Social Responsibility in the Global Market: Fair Trade of Cultural Products (1999).
inspected for child labor.\textsuperscript{193} Production has moved from home labor to centers that are much more easily monitored, with resulting decreases in child labor in this sector.\textsuperscript{194} An additional example of advances in monitoring is the fact that Nike, who was once lambasted in the media for child labor violations, now allows fair trade organizations to perform unannounced inspections of up to 5\% of its supply chain.\textsuperscript{195}

This strict monitoring of child labor violations combined with the consequence of a producer losing their fair trade certification status (with its corresponding access to the fair trade market and price premiums) create clear economic incentives for producers to reduce child labor. For example, Kuapa Kokoo, the fair trade cocoa cooperative in Ghana, suspended seven out of 33 of their producers after Kuapa Kokoo found that they were using the worst forms of child labor in production.\textsuperscript{196} The certification of these producers was suspended in September of 2009 and was not reinstated until January of the following year once the producers had taken steps to resolve the issues.\textsuperscript{197}

Fair trade also assists producers to access larger markets and technology that helps them receive a fair price for their product. Contrary to the traditional supply and demand model, small scale producers in developing countries are often unable to demand fair prices because of power imbalances in the supply chain.\textsuperscript{198} For instance, in the coffee industry, economic analysis has found that non-fair trade small coffee producers generally received below market prices for their product,\textsuperscript{199} often because they lacked economies of scale. Natasha Dhillon-Penner observed that producers who sell coffee beans to fair trade organizations have more opportunities to “improve their production techniques and

\textsuperscript{193} BUSINESS UNUSUAL, supra note 70, at 96.
\textsuperscript{194} Id. See also Fair Trade Sports, Child Labor in Pakistan, http://fairtradesports.com/2009/09/25/child-labor-in-pakistan/ (“Fair Trade Sports is proud to continue our commitment to only sell sports equipment that is manufactured by adult stitchers who receive a wage certified by the Fair Trade Labeling Organization International for their work.”).
\textsuperscript{195} BUSINESS UNUSUAL, supra note 70, at 92.
\textsuperscript{197} Id.
\textsuperscript{199} Dhillon-Penner, supra note 185, at 221 (quoting Brink Lindsey, Grounds for Complaint?: 'Fair trade’ and the Coffee Crisis, at 3 (2004) available at The Adam Smith Institute < www.adamsmith.org/publications/economy/5/).
diversify their crops.” Similarly, in the tea industry, without fair trade, smallholder farmers often rely on local middlemen or factories to sell their products. Lack of knowledge about the market, economies of scale, and the latest technological inputs (such as advanced fertilizers) reduces the farmer’s bargaining power, increases transaction costs, and increases a farmer’s vulnerability to exploitation. For instance in Malawi, farmers who affiliated with fair trade organizations had access to bulk fertilizer rates, new hybrid tea plants that produced more leaves, and access to a plant to process their tea for export to the U.K. The Fairtrade Foundation estimates that over 750,000 tea farmers, workers, and their families have been able to better negotiate working conditions and get better pay through fair trade. Often employees are unaware of their rights, or else not in a position to assert them, and thus are left open to poor working conditions, no job security, and pay too low to provide food for families. As a result, small-scale tea farmers receive only a fraction of the price their tea earns at an auction. In 2007, this varied from just 4% in Malawi to around 17% in Sri Lanka. Fair trade can also improve economic benefits that withstand market fluctuations for producers and create better working conditions for workers. Transfair USA and Fairtrade Labelling Organization estimate that coffee farmers on conventional farms receive 2 cents from the average $3.00 latte, whereas fair trade coffee farmers receive an additional 10 cent premium per kilo price. Stephen Franklin observed that fair trade coffee farmers receive on average $1.00 and $1.10 per

200. Dhillon-Penner, supra note 185, at 223.
201. Martin Odoch, Fair-trade and Tea: A Comparative Analysis of Value Chains in Kabarole District, Uganda at 6, Sept. 2008, available at http://edepot.wur.nl/331 (They are likely to receive less than 3% of the retail value of tea, and often less than 1%).
204. Fairtrade Foundation, supra note 199.
205. Id.; The Malawi Centre for Advice, Research and Education on Rights, Malawi Tea Research Project, available at somo.nl/publications-en/Publication_3098/at_download/fullfile.
206. Id.
pound for their coffee, whereas non fair trade farmers received only $0.30 per pound.\textsuperscript{208} In 2009 the Danish Institute for International Studies conducted a study for Traidcraft analyzing the impact of fair trade on small-scale producers. The study concluded that producers were positively impacted by fair trade certification, and fair trade schemes provided greater welfare benefits and higher gross pay.\textsuperscript{209} Another study conducted on the impacts of fair trade in Nicaragua found that during years of “coffee crisis,” successful fair trade-certified cooperatives paid a much higher than market price for coffee to their members.\textsuperscript{210} Fair trade provides a minimum price for farmers that “act[s] as a safety net against the unpredictable market.”\textsuperscript{211} Fair trade also provides price premiums for investment in “social, economic and environmental improvements,” as well as provides credit to farmers if needed.\textsuperscript{212}

These economic benefits are critical to the elimination of child labor because they attack the root of the problem, which is poverty. As farmers are less pressed to make a profitable margin on crops, they are less desperate to use illegal work forces. Similarly, as parents are able to make a living wage, economic necessity no longer drives them to send children to work.\textsuperscript{213} Indeed, multiple sources have found that cracking down on child labor without increasing the economic benefits to producers and workers can actually harm children more, since their poverty can increase, and they could even resort to taking other lower paying jobs, such as prostitution, in order to financially assist their struggling families.\textsuperscript{214}

Fair trade also has made improvements in reducing incentives for


\textsuperscript{209} Traidcraft, Research into the impact of voluntary standards on producers, http://www.traidcraft.co.uk/international_development/policy_work/fair_trade/voluntary_standards. For the full study, see http://www.traidcraft.co.uk/Resources/Traidcraft/Documents/PDF/tx/policy_report_Voluntary_Standards.pdf.


\textsuperscript{211} Fairtrade Foundation, supra note 199.

\textsuperscript{212} Id.

\textsuperscript{213} Chilcoat, supra note 7, at 314 (noting that where poverty is reduced and educational opportunities for children are improved, “child labor becomes superfluous to the economic vitality of the family unit and subsequently disappears”). See also Judith Perhay, The Natural Step: A Scientific and Pragmatic Framework for a Sustainable Society, 33 S.U. L. REV. 249 (2006).

\textsuperscript{214} See supra note 134.
companies to race to the bottom. Whereas for the typical consumer, cheaper is better, fair trade works to educate consumers about the fact that lowering costs of goods often results in less money and more extreme working conditions for laborers in developing countries. A study conducted on Belgian consumers found that when educated about the products they were purchasing, consumers on average were willing to pay a price premium of up to 10 percent, with a subset of respondents willing to pay a premium as high as 27 percent.215 Another study conducted on American consumers in Washington found an overall “positive willingness” by consumers to pay more for socially responsible goods.216 In fact, the guarantee that the product was produced with “fair and safe working conditions” ranked as one of the highest characteristics in terms of importance to the surveyed consumers.217 Another consumer poll found that “seventy-five percent of people would pay more for Fair Trade products.”218 Thus, a company’s incentive to exploit workers such as children should dramatically diminish once educated consumers are unwilling to pay for such products, while conversely a company’s incentive to ensure fairness along the supply chain should increase once educated consumers are willing to pay a premium for such products.219

C. Criticisms of Fair Trade

Despite the successes of fair trade, some of the literature analyzing the movement has been critical, typically arguing that fair trade is not sustainable, creates an artificial market, fails to pay enough to workers

216. McCluskey, supra note 10, at 100.
217. Id.
219. Janet Dine, Democratization: The Contribution of Fair Trade and Ethical Trading Movements, 15 IND. J. GLOBAL LEGAL STUD. 177, 177-78 (2008) (“Fair trade is also a popular way for consumers to express solidarity with those who work in poor countries and who are particularly badly served by the system of “free trade” which has been constructed by the powerful among the international community.”); But see Steve Stecklow & Erin White, How Fair is Fair Trade? That’s Tough to Figure: Confusing Labels Make It Hard for Shoppers to Know Where Money Goes, WALL ST. J., at A10, June 8, 2004, available at http://www.globalexchange.org/campaigns/fairtrade/coffee/2066.html (last visited Feb. 27, 2011) (observing that consumers may have difficulty differentiating fair trade brands); Todd Mumford, Note, Voluntary International Standards: Incorporating “Fair Trade” Within Multilateral Trade Agreements, 14 SW. J. L. & TRADE AM. 171, 186 (2007) (“To obtain a level of consistency necessary to be a truly international standard, one mark would have to be decided upon, which would then be the worldwide standard and included in trade agreements. One mark means less confusion for everyone and provides for easier integration.”).
and producers, or that it is not effective in creating social change.

For instance, a study done on coffee in Nicaragua found that the wages and benefits given to workers on fair trade coffee farms did not significantly differ from wages and benefits given to workers on non-fair trade farms.220 Moreover, the fair trade labor standards did not prevent children of farmers or harvesters from working in the farms, since they were not classified as “contracted” workers, and thus the study concluded that the “efforts to eliminate child labor seemed to have had limited effects.”221

Others argue that does not alter the status quo for poor countries but only “preserves the undeveloped state of third world economies.”222 Specifically, Mark Littlewood notes that even with fair trade affiliation, too small a percentage of profits are given to the employees.223 Spendel also argues that fair trade promotes market inefficiency and that it gives an unfair amount of the premium to the retailers rather than small producers and workers.224

One response to these criticisms of fair trade is that much of the condemnations of fair trade “lack evidential rigour” and instead rely on “rhetorical aptitude.”225 Based on “a substantial amount of positive

220. Valkila & Nygren, supra note 211.
221. Id.
222. Jacek Spendel, Unfair Fair Trade, GLOBALIZATION INSTITUTE FOUNDATION.
223. When asked whether or not fair trade works, Mark Littlewood, the Director General of the Institute of Economic Affairs, responded, “The best that can be said . . . is that it brings about a fairly modest amount of good. Even on the most optimistic measures, the impacts are microscopic for those we are supposedly helping.” The Great Fair Trade Debate: Consumer Choice and its Effects on the Developing World http://www.suite101.com/content/the-great-fair-trade-debate-a212644#ixzz1ChLQAvh4. Littlewood argued that only .01 goes directly to farmers for every extra 10p that is paid for a fair trade certified product.
224. Id.
225. Alastair Smith, A Response to the Adam Smith Report & A New Way to Think About Measuring the Content of the Fair Trade Cup, The Centre For Business Relationships, Accountability, Sustainability and Society, http://www.brass.cf.ac.uk/uploads/TheFairTradeCupResponseToAdamSmithD9_1.pdf. The Fairtrade Foundation also responded by pointing out that of the 33 case studies on fair trade producers done in different pieces of literature, 31 contained evidence of positive economic impacts such as higher returns (found in 29 case studies), and more stable incomes (found in 27 case studies). In addition, the Fairtrade Foundation 22 of the case studies support the assertion that fair trade is effective in empowering producers, through benefits such as greater self-confidence, improved knowledge of markets, access to training, and improved ability to negotiate. While the Fairtrade Foundation explicitly said that it “does not claim to solve rural poverty in developing countries,” it argued that “the information to date shows the importance of Fairtrade in providing organised small farmers with the greater stability and security needed to make longer-term investments, in building their capacity and throwing them a lifeline in times of real hardship.” http://www.fairtrade.org.uk/includes/documents/cm_docs/2010/n2_nri_full_literature_review_final_version.pdf.
evidence,” Alastair M. Smith of the Centre For Business Relationships, Accountability, Sustainability and Society, concluded that fair trade should certainly not be abandoned.

Another study conducted on the effects of fair trade in Latin America concluded that the “economic effects of fair-trade participation are unassailable,” and it concluded that fair trade positively affects a child’s education and health opportunities.226 Still another study conducted in part on the production of cocoa in Ecuador found that “benefits accruing to small producers of the cocoa scheme included cash payments, more transparent weighing and grading systems, better returns on crops due to the vertical integration of the ethical trading chain, and capacity-building benefits.”227 Other scholars have argued that fair trade provides producers “better prices, stable market links, and resources for social and environmental projects.”228 Still other scholars have observed that fair trade gives producers more bargaining power, even for non-trade sales, and it also provided producers with invaluable access to bank credit and market information.229

Furthermore, the fact that multiple studies on consumer behavior have found a willingness on the part of consumers to pay more for fair trade products indicates that there is in fact a real and sustainable demand for such a market.230

**D. Case Studies in Malawi and Ghana**

One way to observe the effect of fair trade on child labor is by contrasting the use of child labor in fair trade versus conventional industries in countries with significant poverty. When the bulk of a product is sold to buyers through fair trade bodies, the producers have the incentive to maintain fair trade status. In order to do so, they must

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227. V. Nelson, *Assessing the benefits of ethical trade schemes for forest dependent people: comparative experience from Peru and Ecuador*, 4 INTERNATIONAL FORESTRY REVIEW 99 (2002). While the results from the portion of the study on Peru were more mixed, the study still found positive effects of fair trade in Peru, and noted that “Non-monetary benefits, obtained through capacity building, are often underrated but are important to producers.” Id.


230. *See supra*, Part V.B.
eliminate child labor and improve labor conditions to meet a minimal standard. There is regular auditing by fair trade bodies to ensure compliance. Without fair trade involvement, particularly in poor countries, there is little government monitoring or international enforcement to ensure adequate labor conditions, thus labor abuses abound. This is clear in the Malawi case study between fair trade tea and tobacco.

1. Malawi: Tea vs. Tobacco

In 2010, primary research conducted in Malawi compared the existence of child labor in the tea industry, an industry dominated by fair trade, with the tobacco industry, an industry with no fair trade involvement.\textsuperscript{231} Data was collected for this study by interviewing over 50 employees, government and nonprofit representatives working in and around the tea communities of Mulanje and Thyolo.\textsuperscript{232}

Tea is one of the major export crops in Malawi, alternating between "being the second and third largest foreign-exchange earning industry in Malawi after tobacco and (sometimes) sugar."\textsuperscript{233} Malawi is also the second largest producer of tea in Africa after Kenya.\textsuperscript{234}

As a result of the tea industry’s relationship with fair trade, the use of child labor has become virtually non-existent.\textsuperscript{235} Indeed, extensive interviews with temporary and permanent tea pluckers, health workers, international nonprofit organizations, police and government officials revealed that child labor had been virtually eliminated on the tea estates, where it had formerly been a problem.\textsuperscript{236}

The communities affected by fair trade also bragged of benefits such as higher pay, schools, wells and health clinics bought by fair trade “premium” funds, and an increased standard of living. In Southern Malawi, fair trade premium funds are received by smallholder organizations at fifty cents for every kilogram sold.\textsuperscript{237} These funds have built the biggest adult literacy school in Malawi. They have also funded

\textsuperscript{231} Baradaran, supra note 204 at 19. In addition, interviews were conducted with representatives of the tobacco and sugar industries in Malawi.

\textsuperscript{232} Id.

\textsuperscript{233} Michael Shaw, Malawi’s Tea Sector – Opportunities for Growth, WELSPRING DEVELOPMENT (Feb. 2010).

\textsuperscript{234} Id.

\textsuperscript{235} Baradaran, supra note 204 at 12.

\textsuperscript{236} Id.

\textsuperscript{237} This money is provided to the tea estates working with the smallholder organizations and then distributed to the organizations.
community run HIV programs, micro solar power, sports programs for employees, and generally increased morale by improving the workplace environment. Management at the tea estates noted that in the last five years, there have been more regular increases to minimum wages based on cost of living calculations, and that pay is consistently above the government minimum wage. Moreover, employee health and safety has improved because of the certification standard bodies providing increased protection and safety measures for employees. In addition, the standard of employee homes have improved, water supply for employees and villagers have increased, more toilets have been built, and clinics contain adequate medication whereas previously they were understocked. Most importantly for employees, they have greater access to fertilizer and a consistent guaranteed price for their tea due to fair trade affiliation.

In contrast, the Tobacco industry in Malawi provides a troubling example of the use of some of the worst forms of child labor. Tobacco is Malawi’s biggest export, and it accounts for about 53 percent of the export commodities and contributed 60 percent of Malawi’s foreign currency earnings as of March 2010. Malawi is the fifth largest producer of tobacco in the world and according to the U.S. Department of Agriculture, most of Malawi’s tobacco exports go to the United States, Europe, and Asia.

Much attention has been given to the fact that child labor is especially pervasive in Malawi’s tobacco industry. In Malawi, 78,000

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238. Id. According to another report, the Malawi tea industry has built 14 schools, operated 100 Child Day Centres, introduced school and employee feeding programs targeting 4500 children and employees, drilled 23 wells for water, and planted over 10 million trees. NYASA, supra note 11.
239. Id.
240. Id.
children, some as young as five, work 12-hour days to produce cigarettes.\(^{246}\) One report found that “[t]he young Malawian tobacco pickers are paid the equivalent of 17 cents a day for 12 hours,”\(^{247}\) which is less than a living wage.

But for Malawian children in the tobacco industry, the lack of fair pay is the least of their worries, as their working conditions are also difficult. Indeed child laborers are often exposed to dangerous quantities of nicotine.\(^{248}\) “On humid days, the average field worker may be exposed to as much as 54 milligrams of dissolved nicotine — the equivalent of more than 32 average cigarettes.”\(^{249}\) These children reap the health consequences of a pack-and-a-half-a-day habit through their work. Common health results of extensive work with tobacco, without proper protective clothing and gloves, are headaches, severe coughing and vomiting of blood.\(^{250}\)

2. Ghana: Conventional vs. Fair Trade Cocoa

Another interesting case study can be found by analyzing the wages and working conditions of conventional cocoa farmers versus fair trade cocoa farmers in Ghana. Ghana is second to Côte d’Ivoire as the world’s largest cocoa producer,\(^ {251}\) with cocoa accounting for about 33 percent of


\(^{247}\) Blanchfield, supra note 246.

\(^{248}\) Children often suffer from “green tobacco sickness, which results from workers’ exposure to nicotine released during cultivation and harvesting . . . . The symptoms of green tobacco illness include respiratory problems, weakness, and toxicity.” Rangita de Silva de Alwis and Richard Daynard, Reconceptualizing Human Rights to Challenge Tobacco, 17 MICH. ST. J. INT’L L. 291, 345 (2009).

\(^{249}\) Id.

\(^{250}\) Id.


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all export revenues and constituting Ghana’s primary cash crop.\textsuperscript{252} The cocoa industry has long been linked with child slavery, especially in West Africa.\textsuperscript{253} The extent of child labor is difficult to measure,\textsuperscript{254} but an ILO study suggests possibly as many as a third of cocoa farms in Western Africa use non-family child laborers, which is generally an indication of child labor trafficking.\textsuperscript{255} As of June 2007, one estimate put the number of children working in cocoa production in West Africa at 284,000.\textsuperscript{256}

One study found that almost 32 percent of rural children in Ghana have experienced a work-related injury or illness.\textsuperscript{257} Furthermore, the major chocolate manufacturers who purchase the cocoa from conventional farmers often refuse to take responsibility for these abuses, and shift the responsibility to local farmers with infrequent surveys.\textsuperscript{258}

In contrast, on the fair trade side, Ghana cocoa farmers joined together in 1993 to form Kuapa Kokoo, “one of the world’s first fair trade-certified, farmer-owned organizations,” and the largest supplier of fair trade-certified chocolate in the world.\textsuperscript{259} Kuapa Kokoo now includes close to 50,000 small producers of cocoa, and it sells 27 percent of

\begin{itemize}
  \item \textsuperscript{252} U.S. Dept. of State, Background Note: Ghana, Sept. 17, 2010 http://www.state.gov/r/pa/ei/bgn/2860.htm.
  \item \textsuperscript{253} \textit{Business Unusual}, supra note 70, at 50.
  \item \textsuperscript{254} Sackett, \textit{supra} note 49.
  \item \textsuperscript{255} \textit{Id.} A BBC article reported about a 12-year-old boy named Ouare Fatao Kwakou, who had been sold by his uncle to traffickers to work in Ghana, expecting to receive pay for his family. “More than a year later, he had not been paid a penny for his work—the profits of his labour going instead to his new cocoa masters and to the uncle who sold him.” Paul Kenyon, \textit{Tracing the Bitter Truth of Chocolate and Child Labour}, BBC, March 24, 2010, available at http://news.bbc.co.uk/panorama/hi/front_page/newsid_8583000/8583499.stm (last visited Feb. 24, 2011).
  \item \textsuperscript{258} Mustapha, \textit{supra} note 53, at 1186. For further discussion of the abuses of child labor in the cocoa industry, see Int’l Inst. of Tropical Agric., \textit{Child Labor in the Cocoa Sector of West Africa} (2002), http://www.globalexchange.org/campaigns/fairtrade/cocoa/ITACocoaResearch.pdf; Vachhani, \textit{supra} note 5, at 127-28; Ellenbogen, \textit{supra} note 7, at 1315-16; Tiaji Salaam-Blyther et al., \textit{supra} note 140.
\end{itemize}
production to the Fair Trade market, though all of Kuapa Kokoo’s cocoa is produced under fair trade standards. The fact that Kuapa Kokko produces all of its cocoa under fair trade standards, even though a small percentage of its cocoa is fair trade is a significant rebuttal to arguments that with such a small amount of products sold being fair trade that it does not make a substantial difference. However, the effects are significant even when a small percentage of goods are fair trade since usually the entire operation maintains the improved standards, including certifications against child labor.

The fair trade minimum price for cocoa is $1,600 per ton plus a price premium of $150 per ton. When the world price is above $1,600, the fair trade price is the world price plus a price premium of $150 per ton. In contrast, recent world market prices for cocoa are as low as $1000, demonstrating that those with fair trade ties are able to make a larger profit despite market fluctuations. Kuapa Kokoo also provides a living wage to all of its employees, offers insurance, offers paid and unpaid leave, requires that a minimum number of women on leadership councils in the cooperative, and offers other benefits for full time employees.

Kuapa Kokoo has also created a very proactive policy on child labor. Kuapa Kokoo recognizes that while children assisting parents on farms and learning the cocoa trade is a valuable tradition, this labor is prohibited where children are exposed to danger or work rather than attend school. To combat this issue, Kuapa Kokoo created its child labor policy in May of 2009, which focused on creating an internal monitoring system, training communities to address instances of child labor, educating its members about health and safety issues, improving awareness about child labor issues, creating a remediation team to directly respond to any incidence of child labor, and creating kids camps.

260. Fairtrade Foundation, supra note 252.
261. COMMUNITY FOOD ENTERPRISE, supra note 260, at 147. See also Fairtrade Foundation, supra note 252.
262. Fairtrade Foundation, supra note 252.
264. “In 2008 more women than men were voted onto the Kuapa National Executive, and women hold some of the most senior positions.” Id.
265. COMMUNITY FOOD ENTERPRISE, supra note 260, at 150.
where children learn about their rights and role in the cocoa industry.267 Over 70 teenagers from surrounding villages were able to participate in these camps.268 Much of these activities have been funded by fair trade premiums.269 Kuapa Kokoo also used premiums to build schools for children.270 Thus, as one fair trade organization observed, “[r]ather than focusing on just enforcement, Kuapa Kokoo is attempting to change the culture of their community” by educating adults about the benefits of having children attend school and the negative consequences of exploitive child labor.271

One of the major problems with non-fair trade cocoa farms is how difficult it is to track and monitor abuses of children in the supply chain.272 Similarly, the production chain for chocolate is long and complex with many intermediate buyers.273 As explained above, the audits and monitoring that fair trade organizations perform on certified farmers help ensure that child labor abuses are not taking place along the supply chain. The fact that fair trade farming entities that use child labor have been suspended shows that fair trade is effective as a sanction against abusive labor practices. Unlike non-fairtrade products, the fair trade cocoa can be traced to the source and action can be taken where violations occur. Finally the companies have a serious incentive to comply so they do not lose access to the fair trade certification, the fair trade market, and its premium price.274

267. Id.
270. Id.
271. Catholic Relief Services Fair Trade, supra note 197.
272. Paul Kenyon, supra note 256 (“By the time it hits the High Street, cocoa becomes increasingly hard to trace. As it passes from farmer to buyer to wholesalers, exporters, importers and manufacturers, on the journey from cocoa pod to dried bean to chocolate bunny, it becomes more and more likely that the source of the bean will be lost.”).
274. Kenyon, supra note 256 (Harriet Lamb, executive director of the Fairtrade Foundation in the U.K., stated that there have been farming communities suspended from fair trade, and fair trade cocoa can be traced to a source farm and action can be taken, as it was with Kuapa Kokoo.).
VI. RECOMMENDATIONS & CONCLUSION

U.S. policymakers need to recognize that child labor is a more widespread global threat to children than sex trafficking, and thus new policies need to focus specifically on the unique challenges of exploitive child labor. Unlike trade sanctions, boycotts, international monitoring and trade sanctions, fair trade labeling has a proven track record in mitigating child labor. The United States government should consider supporting fair trade labeling by offering subsidies and tax breaks for fair-trade compliant companies and increasing public awareness about the benefits of purchasing fair trade products.

The European Union has offered similar support to fair trade organizations, and the widespread recognition and use of fair trade in Europe illustrates the benefits of such government support. Indeed, the fair trade movement has received a significant amount of support from the European Union. Fair trade has grown significantly in Europe with government support, up to 1.5 billion Euro a year in recent estimates. In January of 2010, the E.U. praised the fair trade movement for its role in improving the numbers of consumers purchasing socially responsible products through awareness. The E.U. also expressed its commitment to “develop consumer awareness” of fair trade, support studies on the impact of fair trade, and encourage funding of sustainability schemes that utilize fair trade. On awareness-raising alone, the E.U. supported fair trade in 2007 and 2008 with 19 million Euro.

Likely as a result of this governmental support, recognition of fair trade organizations has become fairly wide-spread in Europe, with a survey in 2005 showing that fair trade sales in Europe were growing at approximately 20% per year, making fair trade one of the fastest growing

278. Id. at 5.
279. Id.
markets in the world. As of 2007, in Europe there were 254 fair trade importing organizations (organizations that import products from fair trade producers), 3,191 specialty fair trade stores, and 67,619 supermarkets that carried fair trade products.

In contrast, in the United States there are just over 200 fair trade importing organizations, 280 specialty fair trade stores, and 40,000 supermarkets that carried fair trade products. Fair trade as per capita of consumption is “relatively low” in the United States at only 2.43, as opposed to 20.06 in Switzerland, 11.57 in the United Kingdom, 7.27 in Denmark, 6.56 in Finland, and 4.66 in Sweden. In the United States, consumer awareness of fair trade was at 33 percent in 2009, as contrasted with 70 percent in the United Kingdom. Thus, while the United States currently provides a strong market for fair trade products, there is “huge potential waiting to be tapped” through continuing to increase consumer awareness.

The U.S. Government could utilize currently existing legislation under the TPVA, to increase fair trade labeling. The TVPA has a provision requiring the development of public awareness campaigns to prevent human trafficking. Under this provision, Congress should set forth specific criteria that the private labeling organization must comply with in order to be a fair trade label endorsed by the government. Congress could then publicize information to the public about what this label means and how to access these products. In addition, one


282. Id.

283. Id.


287. 22 U.S.C.A. § 7104(b).
particularly important change that could increase public awareness would be to require that the list the Department of Labor is directed to create under the TPVA must go beyond just listing goods in countries that utilize child labor, such as cocoa and sugar, and should additionally list specific companies that use such products in their supply chain. This will dramatically increase the usefulness of the list through increasing public awareness about the products they are purchasing, as well as through holding companies accountable for any forced child labor or trafficking.

As an alternative to using existing provisions under the TPVA, Congress could enact new legislation to promote fair trade specifically focused on the problem of child labor. This legislation would likely look similar to the Child Labor Free Consumer Information Act of 1999 introduced by Senator Harkin, which would “inform and empower consumers in the United States through a voluntary labeling system” for goods “made without abusive and exploitative child labor.” As with the prior bill, this new legislation should establish a Child Labor Commission and endorse a voluntary labeling system of “child labor free” products, with the criteria and labeling companies to be selected by the commission. However, unlike the prior bill, this new legislation should address all child labor products, including agriculture and industrial production, as opposed to just the apparel and sporting goods mentioned in the original bill, and it should also provide subsidies or tax breaks to companies that participate in the labeling system. The benefit of a bill that endorses voluntary fair trade labeling on the part of companies is that it is more likely to be passed by Congress than a bill that bans a company’s imports.


290. This type of legislation is not to be confused with Senator Harkin’s other proposed bill, the Child Labor Deterrence Act of 1999 discussed in Part IV, which would have created an import ban on all goods created with child labor. S. 613, 103d Cong. (1993). For a general discussion of this proposed legislation, see James P. Kelleher, Note, The Child Labor Deterrence Act: American Unilateralism and the GATT, 3 MINN. J. GLOBAL TRADE 161 (1994); Michael A. Tonya, supra note 122.

291. Indeed requiring a company’s products to be “slave free” certified is also not recommended as it employs potentially politically divisive language. Moreover, an import ban could have devastating economic effects on developing countries, whereas a bill that allows voluntary participation and benefits for companies, as well as includes criteria for companies to pay premiums to invest in long-term growth of developing countries, will eliminate child labor while addressing the underlying causes of poverty and globalized market forces.
Because studies indicate that more U.S. consumers would be willing to purchase products at a premium if they were aware of the child labor concerns at stake in the supply chain, governmental support of the fair trade movement in the United States would empower consumers to make decisions that would help reduce poverty in developing nations and give individuals more power in a globalized economy.

Given case studies in Malawi and Ghana of fair trade and non-fair trade industries, the fair trade industries benefited with higher pay, improved working conditions and standards of living, and more importantly significantly decreased (or virtually nonexistent) instances of forced child labor. As such, fair trade labeling should be considered as a proven alternative to current strategies to eliminate child labor. First, it relies on market incentives and private monitoring and enforcement with effective punishments of noncomplying fair trade bodies (including penalties and expulsion from fair trade bodies). Second, it is voluntary and private, avoiding the political problems with international monitoring which rarely end in enforcement or penalties. Third, it targets the root of child labor—poverty—by increasing wages of workers. In addition, unlike prosecutions that focus on a small number of the resulting problems of child labor and trafficking, fair trade focuses on improving incomes, working conditions, health, and education of a large number of workers. By addressing these underlying issues and supporting fair trade labeling, the United States will be able to make a much more significant contribution to the global community’s effort to eliminate harmful child labor.