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An International Minimum Wage: Can a Historical Solution Solve a Modern Day Problem?

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I. INTRODUCTION

Eighteen year-old basketball phenomenon, Lebron James, recently signed the largest rookie endorsement contract in history, for any professional sport. 1 James is due to receive $90 million paid over seven years, as well as his own line of "LBJ23" sneakers and apparel from Nike. 2 This contract was executed when James was just weeks-removed from high school and before playing in his first professional game. 3

Simultaneously, in the 900 Nike contract factories in 51 different countries, 4 where merchandise such as "LBJ23" apparel and sneakers are manufactured, workers are allegedly paid pennies per hour and are subject to 'sweatshop' 5 working conditions. In one Vietnamese Nike factory, reports have arisen that, "...teenage girls (are) paid twenty cents an hour to make $180 Nike sneakers, are worked to exhaustion and fondled by their supervisors..." 6 Such allegations against Nike Inc. first emerged in the late 1990's, 7 and have had an adverse impact on the company's profits. 8 In response, Nike Inc. has, according to its website, "strengthened... corporate responsibility measures by implementing several initiatives," which are directed at, "...ensuring that

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2 Id.
3 Id.
5 See BLACK'S LAW DICTIONARY (7th ed. 1999). (Defining "Sweatshop" as, "A business where the employees are overworked and underpaid in extreme conditions.")
7 See generally Campbell, supra note 4.
8 Amy Tsao, The Two Faces of Wal-Mart; Loved for its low prices, the retail behemoth could become the object of scorn, thanks to a growing list of labor-relations woes. BUSINESS WEEK ONLINE, January 28, 2004, at 1, available at 2004 WL 63104357.
workers are paid appropriately, treated fairly and that their rights and dignity are protected at all times."

In what Nike termed a “Community Enhancement Program,” the company passed several initiatives to promote better working conditions in its Indonesian factories. Among other things, Nike raised the monthly minimum wages of its factory workers by approximately eleven percent. This increase, as stressed by Nike in its press release, raised company minimum wages to a level that exceeded the national minimum wage mandated by the Indonesian government. Nike also vowed to pay its workers all of the government’s minimum wages in cash. Despite these self-congratulatory remarks, however, Nike’s wage increase only amounted to a mere $3.56 per month, when converted to American dollars.

The National Basketball Association was found exploiting foreign labor as well. In May of 2001, the N.B.A. discovered that players’ game uniforms were produced in sweatshops in El Salvador. These workers were subject to unsanitary working conditions, and were often paid as little as 29 cents per each jersey they assembled. The N.B.A. promised to conduct a full investigation of the situation, and agreed to adhere to strict standard which ensured humane working conditions. However, less than three years later, the N.B.A. acted immorally if not illegally, when it contracted with Burmese sweatshops for the manufacture of clothing to be sold in the Association’s flagship retail store, in New York City.

Nike is not the only multinational corporation that has been accused of exploiting foreign labor in order to increase corporate profitability. The

10 See id.
11 See id.
12 Id.
13 Id.
14 Id. In its press release, Nike indicates that Indonesian law requires that 75 percent of the government established minimum wage be paid to workers in cash. Although Nike raised the minimum wage that the company would pay its workers, the company indicated that 100 percent of the government minimum wage would be paid to employees in cash.
17 Id.
18 Id.
19 Id.
20 Id. (“NBA sweatshirts made in Burma were raced to the United States just days before the “Burmese Freedom and Democracy Act” was to go into effect on September 1, 2003, barring future imports from Burma. NBA officials knew exactly what they were doing. Three shipments of NBA sweatshirts made in Burma arrived in Los Angeles and Long Beach on August 2, 14 and 24. In this last case, the shipment came in just six days before the ban was to go into effect.”)
Keyhinge Toy Co., a Vietnamese factory that employs over 1000 workers, manufactures Disney toys that are included in McDonald's Happy Meals.\textsuperscript{21} Keyhinge workers, 90\% of whom are women between 17 and 20 years of age, are required to work seven day work weeks, with mandatory overtime, at an average rate of six to eight cents per hour.\textsuperscript{22} The workers are also exposed to chemicals which have caused illness, and are not provided any type of health insurance coverage.\textsuperscript{23}

Global trade and investment are necessary for the development and economic growth in both rich and poor nations.\textsuperscript{24} As a result, large multinational corporations are in a position to exert enormous political and economic pressures on the governments of these nations.\textsuperscript{25} The ability of these corporations to exploit foreign labor effectively prohibits any substantial growth and industrialization in these developing nations.\textsuperscript{26} Without the presence of global regulations, there are vast incentives for companies to pay workers as little as possible, while simultaneously compromising workers' safety conditions. Not only does this policy affect the individual worker and the economies of the host nation, but it also adversely affects the international economy as a whole.\textsuperscript{27}

An international minimum wage will severely reduce this exploitation of foreign workers. Any company that wishes to participate in the global marketplace will be forced to adhere to certain minimum standards. This will not only provide workers with a fair and livable wage, but it will also provide a measure of dignity and compassion that all workers deserve.

Part II of this note offers a synopsis of the fiscal history of three industrialized countries,\textsuperscript{28} including a discussion regarding the impact of minimum wage regulation on their respective national economies. A discussion regarding labor and wages, as well as the problems currently facing developing nations is contained in Part III of this note. In Part IV, a proposal for an international minimum wage will be offered, along with a discussion regarding the past implementation of such a program on a limited scale. Part V discusses new international responsibilities and an incitement to action for all members of our global community.

\textsuperscript{21} Disney & McDonalds Linked to $0.06 Per Hour Sweatshop in Vietnam at http://flag.blackened.net/revolt/ws/ws51_vietnam.html (last visited Jan. 21, 2004).
\textsuperscript{22} Id. (Many of the young women at the Keyhinge factory making McDonald's/Disney toys earn just 60 cents after a 10 hour shift. The most basic meal in Vietnam – rice, vegetables and tofu – costs 70 cents. Three meals would cost $2.10. Wages do not even cover 20 per cent of the daily food and travel costs for a single worker, let alone her family.)
\textsuperscript{23} Id. (Describing a circumstance in which, "Overcome by fatigue and poor ventilation... 200 women fell ill, 25 collapsed and three were hospitalized as a result of exposure to acetone.")
\textsuperscript{25} Id. citing Developing Codes of Conduct with Independent Monitoring Systems to Improve Labor Rights Enforcement, at http://www.labourrights.org/ilr3.html (last visited Jan. 21, 2004).
\textsuperscript{26} See id.
\textsuperscript{27} See id.
\textsuperscript{28} These countries include The United States of America, Canada, and England, respectively.
II. HISTORY OF MINIMUM WAGE POLICY IN CURRENTLY INDUSTRIALIZED NATIONS

a. History of the American Minimum Wage

In the early part of the Twentieth Century, the problem of "sweating," particularly as it pertained to women and children, was becoming increasingly prevalent throughout the United States. In response, in 1912, Massachusetts became the first state to enact a minimum wage law in order to combat this problem. During the 1920's and 1930's, as the national economy matured and the nature of the labor force changed, many of these state statutes proved ineffective in resolving large-scale labor issues. As the plight of the labor force became magnified, the federal government was forced to intercede and regulate the national labor market.

Although this era is generally regarded as one of technological and economic growth and prosperity in the United States, this fiscal prosperity came at the expense of the domestic labor force. As the United States became increasingly industrialized, technological advances in the agricultural industry decreased the need for farm workers. Concurrently, similar technology promoted the establishment of large scale factories and manufacturing plants where labor was required. As a result of these technological changes, there was a rapid migration of unemployed workers to the industrial American cities. In addition, with the growing number of women and children in the work force, a labor surplus resulted. The increasing automation of previously "craft" oriented trades such as automotive, chemical and tobacco production further led to the decline of the value of the labor force. The large corporate conglomerates that employed many workers disregarded the individual needs of the labor force, as well as their representative unions, and simply regarded workers as expendable and easily replaceable. During the period between the

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29 WILLIS J. NORDLUND, THE QUEST FOR A LIVING WAGE: THE HISTORY OF THE FEDERAL MINIMUM WAGE PROGRAM 1 (1997). ("[sweating is] the payment by an employer to his work people of a wage which is insufficient to purchase for them the necessaries of life." (citing M.B. Hammond).)
30 See id.
31 See id. at 21.
32 See id. at 6.
33 See id. at 3.
34 See NORDLUND, supra note 29, at 3.
35 See id.
36 See id.
37 See id.
38 See id.
39 See NORDLUND, supra note 29, at 4.
40 Id. ("[T]he great merger movement of this period resulted in conglomerates that vigorously opposed unionization... The final event that relegated unions to mediocrity in the 1920s was the death of Samuel Gompers on December 13, 1924, and the selection of William Green as president of the American Federation of Labor on December 19, 1924. Green was viewed as ineffective, shallow and predictable. He was honest and decent but impotent. The rise of company unions... the belligerent attitude of firms, the antiunion attitude of the courts, and the inflexibility of craft

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mid 1920’s and the early 1930’s, the unemployment rate reached levels as high as 13% of the available labor force. 41

The stock market crash in October of 1929 followed by the Great Depression caused the state of affairs for the domestic labor force to continue on an accelerated downward spiral. 42 Of the minority of workers who retained employment, men were paid 30 to 50 percent more than equally skilled women; union workers sometimes earned as much as 100 percent more than their non-unionized counterparts. 43

In addition to the drastic wage differentials between comparable workers, average weekly wages for laborers in most industries were rapidly declining. 44 Average weekly earnings in the manufacturing industry decreased by more than 33 percent between 1929 and 1933; while agricultural wages decreased by over 60 percent during the same time. 45

The Federal Government recognized the need to respond to this problem. In 1931, Congress passed the Davis-Bacon Act, 46 which mandated that laborers working for federal contractors were entitled to earn the “prevailing wage” of similar workers in the same geographic region. 47 Although this Act does not establish a specific minimum wage, it does allow a degree of government regulation over wages paid by private companies. 48 Similarly, the Walsh-Healey Act, 49 enacted in 1936, proffered additional governmental regulation over wages, by expanding the scope of Congressional power over laborers working on government manufacturing and supply contracts. 50 The purpose of this Act, “[was] to use the leverage of the Government’s immense purchasing power to raise labor standards.” 51

In March 1933, at the lowest point of the Great Depression, newly elected President Franklin Delano Roosevelt assumed the ominous task of rebuilding the national economy. 52 The national unemployment rate had

unionism all contributed to union stagnation and impotence.”) See generally Joel Wm. Friedman, Essay, The Emergence of John Minor Wisdom as Intellectual Leader of the Fifth Circuit: Reflecting Back on the Forty-Fifth Anniversary of His Joining the Court, 77 TUL. L. REV. 915, 933 (2003) for a discussion on company unions. (“[T]he employee members of these joint committees met monthly on company time and premises, and the management defrayed the costs of operating the committees. In an effort to outlaw employer-dominated (company) unions and thereby promote genuine, arms-length collective bargaining, section 8(a)(2) of the National Labor Relations Act (NLRA) precludes an employer from dominating, assisting, or interfering with the formation or administration of, or contributing financial or other support to a “labor organization.”)

42 Id. at 146.
43 See NORDLUND, supra note 29, at 5.
44 Id.
45 See id.
47 THE FAIR LABOR STANDARDS ACT 15 6 (Ellen C. Kearns et al. eds., 1999).
48 Id.
50 See Kearns, supra note 47, at 7.
52 See NORDLUND, supra note 29, at 6.
reached almost 25 percent, and federal banks were failing at an alarming rate. Former President Hoover’s belief that the depression would end through free enterprise and individual charity simply would not come to fruition. The Roosevelt administration decided to depart from the government’s historical, laissez-faire approach to American economic policy and initiated the National Industrial Recovery Act (NIRA) as part of the New Deal. The NIRA included provisions which protected fair competition, established wage and hour standards, and ensured the collective bargaining rights of workers. Although ultimately a failure, the NIRA, enforced by the National Recovery Agency (NRA), was indicative of the importance of the involvement of the Federal Government in employment and labor issues, and acted as a precursor to further legislation.

In July 1935, less than two months after the Supreme Court struck down the NIRA, Congress enacted the National Labor Relations Act (Wagner Act). Congress’ goal in establishing the NLRA was to encourage workers to unionize and collectively bargain, while also proscribing sanctionable unfair labor practices by employers. Although the Wagner Act did not directly regulate minimum wage standards, it formally declared Congressional power to regulate the labor force, “as a means of facilitating the free flow of interstate commerce.” The United States Supreme Court sustained the Wagner Act as a constitutional exercise of Congressional power under the Commerce Clause of the United States Constitution.

The Roosevelt administration continued towards its goal of establishing nationwide labor standards as a way to salvage and rebuild the national economy from the ground up. President Roosevelt harbored a strong belief that the extent and longevity of the economic problems of the Great Depression were, to

53 See id.
55 Id. at 51.
56 See BLACK'S LAW DICTIONARY (7th ed. 1999). (Defining laissez-faire as “Governmental abstention from interfering in economic or commercial affairs.”)
58 See Kearns, supra note 47, at 9.
59 See A.L.A. Schechter Poultry Corporation v. U.S., 295 U.S. 495 (1935). (After finding a want of Congressional power under the Commerce Clause, the United States Supreme Court effectively put an end to the NIRA.)
61 See BADGER, supra note 57, at 120.
62 Id.
63 Id.
64 Id.
66 National Labor Relations Board v. Jones & Laughlin Steel Corporation, 301 U.S. 1 (1937). (“[W]hen industries organize themselves on a national scale, making their relation to interstate commerce the dominant factor in their activities, how can it be maintained that their industrial labor relations constitute a forbidden field into which Congress may not enter when it is necessary to protect interstate commerce...”).
67 See Kearns, supra note 47, at xxv.
a large extent, the result of employers' treatment of their employees. After his reelection in 1937, President Roosevelt delivered a message to Congress, urging them to enact laws establishing such labor standards.

Our nation so richly endowed with natural resources and with a capable and industrious population should be able to devise ways and means of insuring to all able-bodied working men and women a fair day's pay for a fair day's work. A self-supporting and self-respecting democracy can plead no justification for the existence of child labor, no economic reason for chiseling workers' wages or stretching workers' hours.

Realizing that the situation, "required immediate action to correct, and as rapidly as possible to eliminate condition in such industries," Congress exercised its power under the Commerce Clause to regulate labor and protect the instruments and channels of interstate commerce. Throughout the next year, a number of hearings were held and Congress drafted legislation, which was enacted into law on June 25, 1938, as the Fair Labor Standards Act (FLSA). At its core, the FLSA established laws regarding minimum wage, overtime, and child labor standards.

Immediately after its codification into law, the FLSA faced legal challenges represented primarily by two cases which were eventually heard by the United States Supreme Court. In the matter of United States v. Darby, the lower courts severely limited the intended reach of the FLSA. It was suggested that Congress, in enacting the FLSA acted "...under the guise of a regulation of interstate commerce, undertakes to regulate wages and hours..."

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68 See NORDLUND, supra note 29, at 32.
69 See Kearns, supra note 47 at xxv. See also NORDLUND, supra note 29, at 47.
71 Id. at 13.
72 U.S. CONST., Art. I §8. See also BLACK'S LAW DICTIONARY 244 (7th ed. 1999), (defining "Commerce Clause" as: The provision of U.S.Const. (Art. I, § 8, cl. 3) which gives Congress exclusive powers over interstate commerce.)
73 See Kearns, supra note 47, at 13.
74 See id. at xxv.
75 Id.
76 See NORDLUND, supra note 29, at 32.
77 United States v. F.W. Darby Lumber Co. et. al., 32 F. Supp. 734, 737 (1940) (Wherein the Defendant Lumber Company, and it's owner were indicted for allegedly violating the minimum wage standards proscribed in the Fair Labor Standards Act of 1938, 29 U.S.C.A. §201 et. seq.) ("...[if] the Act means, as this indictment charges, that the mere intent at the time of production that after production it (here, lumber) may or will be sold in interstate commerce in part or in whole makes it a part of interstate commerce, the Act is unconstitutional.").

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The United States Supreme Court reversed the lower courts in *Darby*, holding that, "[w]hatever their motive or purpose, regulations of commerce which do not infringe some constitutional prohibition are within the plenary power conferred on Congress by the Commerce Clause." Justice Stone, delivering the majority opinion of the court, continued, "...the prohibition of goods produced under the forbidden substandard labor conditions is within the constitutional authority of Congress."

The later case of *Opp Cotton Mills*, argued less than three months after *Darby*, raised many of the same constitutional issues as *Darby* and was disposed of by a majority opinion citing to the rationale of the prior decision. In addition to sustaining its holding, the Court also held that Congress may delegate power under its enumerated authority, to administrative agencies.

The decisions of the United States Supreme Court continued to protect workers and thus boost the national economy. In the 1937 matter of the *N.L.R.B. v. Jones & Laughlin Steel Corp.*, wherein the Court upheld the national minimum wage, as well as the rest of the provisions of the NLRA. That same year, the Court also held that the legislature could enact minimum wage standards in an attempt to assist workers of unequal bargaining power. Rather than having workers’ contracting for their wages, as was the traditional practice, minimum standards would now be imposed by statute.

After the Fair Labor Standards Act had been deemed constitutional and its statutory minimum wage requirements were affirmed by the Court, the Act has been a perpetual source of proposed amendments during every session of

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78 United States v. Darby, 312 U.S. 100, 114 (1941).
79 Id. at 115.
80 Id.
81 Opp Cotton Mills, Inc. v. Administrator of the Wage and Hour Division of the United States Department of Labor, 312 U.S. 126 (1941). (Petition by Opp Cotton Mills, Inc. et. al., against the Administrator of the Wage and Hour Division of the Department of Labor to review and set aside an order, which was made in accordance with the Fair Labor Standards Act, fixing a uniform 32 1/2 cents per hour minimum wage for workers in the textile industry.)
82 Id. at 142.
83 Id. at 145-46. (Justice Stone, writing for the majority stated, "[t]he fact that Congress accepts the administrative judgment as to the relative weights to be given to these factors in each case when that judgment in other respects is arrived at in the manner prescribed by the statute, instead of attempting the impossible by prescribing their relative weight in advance for all cases, is no more an abandonment of the legislative function than when Congress accepts and acts legislatively upon the advice of experts as to social or economic conditions without re-examining for itself the data upon which that advice is based.")
84 Jones, 301 U.S. at I.
85 West Coast Hotel Co. v. Parrish, 300 U.S. 379 (1937). (Overturning the decision of Adkins v. Children’s Hospital, 261 U.S. 525 (1923) wherein the Supreme Court held a law establishing a statutory minimum wage for women and children, unconstitutional on the grounds that the regulation of wages had neither a direct beneficial relationship with the welfare of workers, nor served to aid the general welfare, and was therefore a impermissible restriction on one’s freedom to contract for their work efforts.)

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Congress. An example of such an amendment enacted by Congress was the Portal-to-Portal Act of 1947, which served to limit protection by defining "work" hours, "workweeks," and "compensable activities," in terms of their temporal implications. The Portal-to-Portal Act also provided guidelines regarding employee claims against an employer.

In 1966, Congress decided to extend the breadth of the FLSA by amending its provisions in order to allow minimum wage and overtime protection for additional classes of workers. By redefining the term "enterprise," Congress was able to extend the scope of coverage to approximately 7.2 million workers, a large portion of which were public employees.

Subsequent changes to the FLSA have extended coverage to include government employees at the federal, state and local levels. The Act also provides for specific wage rates for certain types of employment. As amendments to the FLSA have served to cover a larger portion of the national work force, Federal Minimum Wage standards have become subject to their closest scrutiny ever. Since 1988, in addition to covering more workers, amendments to the FLSA have produced a minimum wage standard with twice the purchasing power of the original, 1938 standard, while also garnering billions of dollars in unpaid wages, through the enforcement of Act by the Wage and Hour Division.

Additional changes to the FLSA have recently been proposed. In March of 2003, the United States Department of Labor proposed certain changes designed to further "modernize" minimum wage laws. The ultimate goal of these proposed amendments is to further strengthen the labor market, while concurrently attempting to deal with a spectrum of other labor problems.
b. Canadian Minimum Wage Laws

Other industrialized nations have also discovered the beneficial results of national minimum wage laws. For example, the decentralized Canadian system, which leaves the authority to establish minimum wage standards to the individual provinces, has developed from a similar historical background as the American system. During the era preceding the Great Depression, the Canadian economy was faced with high inflation and high unemployment rates. Canadian corporations were taking advantage of the low-cost labor surplus, and were not responsive to the plight of the labor force. In addition, problems such as gender and age discrimination further augmented problems for laborers. The Canadian labor movement gained momentum under the leadership of the Communist movement. As the movement progressed the Canadian labor force suffered many of the same pitfalls and perils as their American counterparts. For example, both national economies gained a post-World War II boost, which served to increase the purchasing power of individual laborers, who were also consumers themselves. The combination of these factors cause the power of the labor force as a whole to increase, and eventually Canadian employers were required to recognize labor unions.

In order to resolve its labor disputes, the Canadian government decided that instituting a national minimum wage program was best left to the individual provinces. Although it is not strictly a national program, the regulations in Canada have developed in a way which has been described as, “a political game of follow the leader.” The wage rate is similar across the country, and the regulations of each province are fundamentally identical, with each having either a board or commission which oversees and enforces their respective systems.

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103 Id.
104 Id.
105 Id.
106 Id.
107 Id.
108 Id.
109 Id.
111 Id.
112 Id.
c. England’s Minimum Wage Laws

The development of a national minimum wage in Great Britain followed a path that was dissimilar from the path followed in the United States and Canada. The English government’s initial decision was not to establish a national wage, but rather to select which types of employment were to be regulated. The first British system, established in 1909 as the Trade Boards Act, allowed Parliament to regulate specified employments of their own choosing. The extent of Parliamentary action established mere guidelines for setting a minimum wage, rather than creating and enforcing stringent laws. The primary purpose of this administrative practice was to prevent the “sweating” of laborers.

In 1980, Parliamentary legislation set aside this laissez-faire practice of wage setting and opted for a system that was similar to American collective bargaining practices. The responsibility of setting wages was left to the employers to, “develop pay systems wholly in accordance with the best interests of their businesses, even if this led to lower pay.” In 1984, four years after its inception, 60 percent of the employers in the United Kingdom established their minimum wages through the collective bargaining system. Within six years, less than half of the employers in the nation opted to establish wages via this method, and by 1998 only 29 percent of the employers in England collectively bargained with employees to establish minimum wages.

In 1998, the New Labour Government introduced and implemented the National Minimum Wage Act 1998, which statutorily established national minimum wage standards. On April 1, 1999, the Act came into effect and included a schedule for minimum wage increases, exempted employments, sanctions, and a system of ‘development wages’ for minors, apprentices, and trainees.

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113 BOB HEPPLE ET AL., INTERNATIONAL ENCYCLOPAEDIA FOR LABOUR AND INDUSTRIAL RELATIONS, VOL. 6, GREAT BRITAIN §205 (Dr. R. Blanpain, ed., 2001).
115 See CARTER, supra note 110, at §93.
116 Id. at § 205.
117 Id. at § 206.
118 Id. (citing Department of Employment Wages and Councils: 1988 Consultation Document, p.5).
119 Id. at §196.
120 Id.
121 Id.
122 Id. at § 5bis. (Elected to office one year prior, in 1997).
123 Id. at § 206.
124 Id.
III. LABOR AND WAGES IN DEVELOPING NATIONS

Internationally, the economies of many countries are currently in a developmental state similar to the economy of the United States in the early Twentieth century. These countries have a comparatively low Gross Domestic Product, when compared globally. In addition, many developing countries suffer from high rates of unemployment, the exploitation of child labor and gender discrimination in the labor market.

Many developing countries have attempted to augment their economies by internalizing production and relying less on import goods. However, due to the increased growth of the world economy, many of these countries have been forced to switch to an export oriented industrialization model. Rather than imposing increasingly strict regulations upon large corporations, as was the practice of the early governments of many industrialized nations, these developing countries are deregulating industry in order to attract corporations to utilize their untapped labor forces. Such deregulation includes providing tax exemptions, easing regulation over imports and exports, and the promise of low-cost labor.

Since the 1950's there has been a shifting of certain industrial production and services from Western industrialized nations to lesser developed countries. Multinational corporations are moving the production of good such as textiles, apparel, and technology support services to developing nations. This labor shift originally occurred to countries in the Far East, such as Hong Kong, Singapore, South Korea and Taiwan. As low cost labor was needed,

125 Andre' Gorz, A New Task for the Unions: The Liberation of Time From Work, in LABOUR WORLDWIDE IN THE ERA OF GLOBALIZATION 48 (Rolando Munck & Peter Waterman eds., 1999)
126 See generally CIA, supra note 15, at http://www.odci.gov/cia/publications/factbook/docs/notessand defs.html (last visited January 24, 2004). (Gross Domestic Product (GDP) is defined by the Central Intelligence Agency, as "[t]he value of all final goods and services produced within a nation in a given year.)
127 Id.
131 Id.
133 Id.
134 Id.
135 Id; see also Lena Ayoub, Note, Nike Just Does It—And Why the United States Shouldn't: The United States' International Obligation to Hold MNCS Accountable for Their Labor Rights Violations Abroad, 11 DEPAUL BUS. L.J. 395, 406-409 (1999).
137 See Ho, supra note 132, at 390.
the shift gradually progressed internationally to areas such as Latin America and the Caribbean.\textsuperscript{138} The leaders of these countries are attempting to alleviate their economic hardships by making use of their labor force attractive to multinational corporations.\textsuperscript{139} However, their deregulation schemes actually hurt the labor force,\textsuperscript{140} thus creating a situation that is strikingly similar to that of the United States, prior to the implementation of the Fair Labor Standards Act. Foreign workers in developing nations are paid at substandard wage rates and are subject to discrimination and poor working conditions.\textsuperscript{141} These "sweatshop" practices include work days greater than 10 hours with forced overtime and no overtime pay, exposure to poisonous and caustic chemicals, severe punishment for errors, earnings below the living wage level, sexual and physical abuse, inability to organize, and locked and guarded workplaces.\textsuperscript{142}

As the global economy continues to grow, multinational companies are becoming increasingly aware of their influence on the economies of these countries.\textsuperscript{143} In order to preserve and increase their favorable and profitable standing, these corporations become even more involved in their host countries government and politics.\textsuperscript{144} Such governmental involvement has also included incidents of violence and bribery.\textsuperscript{145}

Although some developing countries have certain wage regulations and minimum wage laws, most of these laws are inadequate.\textsuperscript{146} The minimum wage laws of many such countries are set either well below the living standard, contain loopholes, or the laws are rarely, if ever, enforced.\textsuperscript{147} Furthermore, regardless of the presence or absence of minimum wage standards, laborers of

\textsuperscript{138} See Ayoub, supra note 135, at 397.
\textsuperscript{140} Id.
\textsuperscript{141} Id.
\textsuperscript{142} See Varley, supra note 128, at 59 (wherein reports of "hundreds" of stories of substandard working conditions have been reported and published, including a report made by an Episcopal clergyman, who, when visiting Guatemala City, learned of a factory supervisor who allegedly "belted young female workers in the stomach every 15 days to 'weed out those who may be pregnant' and sometimes forced sexual favors from them in return for a pass permitting them to use the bathroom.").
\textsuperscript{143} See id. at 401.
\textsuperscript{144} Id.
\textsuperscript{145} See ILO, supra note 24. Recounting two situations where a corporation became criminally involved in governmental functions. In 1973, U.S. corporations, including ITT, led a violent coup which overthrew the Chilean President as a result in increased regulations on industry. In 1975, the Lockheed Corporation was found to have been paying bribes to members of the Japanese government in order to secure military contracts). See also CIA, supra note 15, at http://www.odci.gov/cia/publications/factbook/Indonesia (last visited Jan. 24, 2004) (Indicating that the Indonesian government is currently addressing problems of cronyism and corruption.)
\textsuperscript{146} See Gorz, supra note 125, at 60.
\textsuperscript{147} Id.
many developing nations report that they fail to reliably receive their pay on any appointed day.\textsuperscript{148} The inadequacy of minimum wage regulations in developing countries can be readily observed in Indonesia. In 1999, the Indonesian national minimum wage, set at Rp. 230,000,\textsuperscript{149} was 25.72 percent below the national cost of living.\textsuperscript{150} The following year, Indonesia raised its minimum wage by Rp. 40,000.\textsuperscript{151} However, the minimum wage remained approximately twenty percent\textsuperscript{152} below the living standard.\textsuperscript{153} In Burma, laborers are paid as little as seven cents per hour, and \textdollar{167.96} per year.\textsuperscript{154} The workers have absolutely no rights and may sometimes be jailed for complaining about working conditions.\textsuperscript{155} The situation is so egregious that the United States prohibits the importation of products from Burmese factories and suppliers.\textsuperscript{156} This prohibition is effective until slave labor, and gross human right violations are eliminated.

\section*{IV. FOR AN INTERNATIONAL MINIMUM WAGE}

The economic hardships currently facing workers in developing countries are remarkably similar to the hardships faced by workers in the industrial nations during their respective eras of economic growth.\textsuperscript{157} The United States, Canada, and other prosperous nations all faced periods of economic hardship, as well as the exploitation of its labor forces by large corporate entities.\textsuperscript{158} In addition, these economic problems led to consequential societal problems such as gender bias and the exploitation of child labor.\textsuperscript{159}

Although the nature of the hardships facing developing countries is similar to the hardships once faced by industrialized nations, the causes of these problems are somewhat different. The problems once faced by industrialized countries were primarily internal in nature.\textsuperscript{160} Problems caused by foreign influences were not nearly as prevalent as the problems caused by factors within

\begin{footnotesize}
\begin{enumerate}
\item Id. at 62.
\item See generally Nike, supra note 9.
\item See generally CIA, supra note 15.
\item See generally Nike, supra note 9.
\item Exactly 18.67%.
\item See generally CIA, supra note 15.
\item See National Labor Committee, supra note 16.
\item Id.
\item Id. ("The "Burmese Freedom and Democracy Act" prohibiting imports from Burma was passed by both houses of Congress and signed into law by the President on August 1, 2003. The law, which was to go into effect 30 days later, states: "No article may be imported into the United States that is produced, mined, manufactured, grown or assembled in Burma." The ban is to remain in place until a new, democratically-elected government requests removal based on an end to slave labor and gross human rights violations.")
\item See generally NORDLUND, supra note 29 and related text; cf. Varley, supra note 128 and related text.
\item See generally NORDLUND, supra note 40, and related text.
\item Id.
\item See generally NORDLUND, supra note 29.
\end{enumerate}
\end{footnotesize}
these countries’ borders. As a result, by manipulating internal controls and regulations, industrial nations were better able to mitigate these difficulties.

Developing nations, in contrast, are facing problems that are caused by both internal and external forces. In addition to solving the wide range of internal economic, social and political problems, developing nations must also evaluate the ever-increasing influence of foreign corporations.

In order to take advantage of cheap labor, large, multinational corporations are seeking to relocate and operate overseas. The host country is thus faced with a dilemma; it can either regulate its labor force and risk alienating foreign business, or it can continue to allow its workers to remain oppressed, thus ensuring continued foreign investment.

The application of an international minimum wage standard would be a significant first step towards ending the exploitation of workers while simultaneously boosting the global economy. The establishment of a minimum wage is intended to eliminate the exploitation and “sweating” of the labor force. In addition, fixing a minimum wage also serves to provide compensation that is adequate to meet the needs of workers who are supporting families, while also eliminating unfair market competition, and promoting “the sound development of the national economy.”

The implementation of minimum wage standards has been shown to be an effective tool for maintaining the standard of living for workers even in developing nations. For example, in Thailand, purchasing power for laborers has been stabilized because of the country’s twenty-year history of employing some form of minimum wage. However, for all its benefits, Thailand’s minimum wage failed to provide an equal share of the country’s economic prosperity to its workers. Labor was still being exploited. In response, a 1998 labor protection law was enacted. This law attempted to decentralize the administration of minimum wage standards, and allowed each province to reflect the applied costs in that area. This benefited Thailand’s developing
social and economic fundamentals, while simultaneously guaranteeing equality to its workers. 175

In addition to the beneficial effects the establishment of an international minimum wage will have on developing nations, such legislation will also concurrently promote the economies of larger; more developed nations, as well as the international economy as a whole. 176 In furtherance of the current trend of "globalization," 177 barriers preventing the migration of labor must be abolished. 178 In addition, the permissive exploitation of otherwise desperate workers must also be prevented. 179 Currently, globalization only benefits those countries that are able to globalize, and, in furtherance of their own prosperity, prevent lesser developed nations from achieving the same goals. 180 Industrialized nations are able to branch out into the international community, exploit the abundant supply of low-cost labor, while the host nations have no choice but to take what little is offered for their labor. 181 Therefore, in order to further promote globalization, and allow global access to the entire international community, the fiscal gap between industrialized and developing nations must be lessened. 182 In order to achieve these goals, the establishment of an international minimum wage is an effective solution. 183

The minimum wage legislation could be enacted and enforced by any one of the internationally recognized legislative authorities, including the World Trade Organization ("WTO"), the ILO, the United Nations ("UN"), or even unofficially, through the influential power of the United States government.

It should be noted that the specific economic ramifications arising from the imposition of an international minimum wage are far too broad to be adequately analyzed within this note. The effect of minimum wage on overall employment figures remains unsettled. Issues regarding how corporations would offset the additional costs which an international minimum wage would impose, and upon whom the ultimate cost would be dispersed, are imperative to this proposed standard, and must require carefully evaluated before any economic policy is implemented. Virtually all discussion regarding the economic impact of a broadly imposed, international minimum wage would be

175 Id.
177 Id. "[T]he term 'globalization' is generally understood to mean the trend to enable a free flow of goods and capital by removing national and regional barriers. Such a definition is misleading, because it leaves out one of the most important elements of a truly competitive global economy- the free flow of work forces. Globalization, as practiced today, is based on fundamentally contradictory elements: a free flow of goods and capital, coupled with a ban on the free flow of work forces from country to country. Globalization based on maintaining restrictions on immigration is self-contradicting."
178 Id.
179 Id.
180 Id.
181 Id.
182 Id.
183 Id.
based purely on hypothesis and speculation, as there is sparse empirical evidence regarding the topic.

a. Small-Scale Attempts At Establishing An International Minimum Wage

In certain specific industries, the implementation of an international minimum wage has been attempted on a limited scale. The International Labour Organization ("ILO") is an agency sanctioned by the United Nations that has established an international minimum wage standard for certain maritime workers. The ILO operates through the Joint Maritime Commission ("JMC"), a committee consisting of an appointed chairperson, and representatives of employers and employees from major countries in the industry. This Commission establishes a recommendation for an international minimum wage standard for the class of maritime workers defined as Able Seamen. The wage recommendation is for a basic monthly salary, not including overtime, sick leave, or vacation time, and is not intended to apply to any other rank of maritime workers. In 1996, the last time the ILO changed its recommendation, the ILO raised the minimum wage to $435.00 in United States dollars, per month. This figure is intended to be applied uniformly to all covered employees, regardless of nationality. The standard set by the ILO is only a recommendation, having no penalty if a country fails to comply. The wage established by the JMC through the findings of the ILO, is intended to represent a presumably reasonable, minimum figure which some developing...
nations should be able to meet, without drastically affecting the national economy. 192 Currently, the ILO minimum wage is used in certain countries, as the predominate minimum wage standard for maritime workers, as well as in countries where shipping companies have no other means to ascertain a 'fair' rate of compensation. 193 However, many countries, including India and China, have objected to the standard imposed by the ILO, as it is far in excess of their national wage rates. 194

The ITF is an International Trade Union Secretariat, which represents employees in many national unions, employed in all areas related to transportation. 195 In an attempt to prevent ship owners from taking advantage of maritime workers by using "Flags-of-Convenience" 196 practices in their shipping, the International Transport Workers' Federation ("ITF") 197 has made some alterations to the ILO recommendation, in their own application of the wage standard. 198 As a part of its strategy in representing maritime employees, the ITF has adopted the ideals of the ILO minimum wage. 199 Although the ITF participated in the ILO commission which established the JMC standard, the ITF advocates a minimum wage that is twice the minimum wage standard set by the JMC. 200 In addition to drastically raising the minimum wage standard, the ITF also advocates for other benefits including sick leave and overtime pay. 201 The primary goal of the ITF standard is to redirect jobs back to developed countries, and to curtail the "free play of market forces which sought to supply crews at the lowest economic rates that the market would bear." 202 However, similar to the ILO minimum wage, the ITF standard is static, and fails to consider the specific economic characteristics of each individual nation. 203

By failing to consider the intricacies of each individual nation, both the ILO and the ITF establish a minimum wage, which, in certain geographic areas, is unsuitable as a "living wage," that is sufficient to keep working families out of poverty. 204 This concept of a "living wage," 205 is intended to provide a sufficient wage to an average worker, working average hours in order to sustain their families at a socially acceptable level of welfare. 206 The living wage is more than just mere compensation for labor provided. 207

192 See Northrup, supra note 184, at 384.
193 See ILO, supra note 185.
194 Id.
195 Id.
196 See Northrup, supra note 184, at 371. ("[Flags of Convenience shipping, that is, ships which bear the flags of countries other than those of the beneficial owners.")
197 See id at 370-71.
198 Id.
199 See ILO, supra note 185.
200 See Northrup, supra note 184, at 384.
201 See ILO, supra note 185.
202 See Northrup, supra note 184.
203 See ILO, supra note 185.
204 See ILO, supra note 24, at xv.
205 Id.
206 Id.
207 Id. at xvi.
protecting the worker’s “distributive rights,” the living wage standard also seeks to ensure the “personal dignity” of the worker, by providing them with sufficient resources to “fulfill his/her social role as household head.” Generally, most domestic laws regarding a living wage are aimed at contract workers who provide labor for Federal, State and Local governments. In addition, many of these statutes are also designed to support the unionization of the work force, while concurrently protecting workers who are already unionized.

b. Proposal for a Broadly Applied International Minimum Wage

In order to establish an international minimum wage standard that may be universally applied, the regulation must contain a degree of flexibility which will allow the minimum wage to reflect an accurate living wage for each specific country. The International Labour Organization has entertained various proposals for the establishment of a global minimum wage. At the 53rd session of the International Labour Conference, the Organization evaluated various methods for fixing an international standard. In order to accommodate as many nations as possible, proposals at the conference included establishing a “recommendation” of an international wage base, rather than a more rigid, “convention,” as a means to keep the standard flexible. The purpose of employing such a high degree of flexibility would be to ensure that

209 Id.
210 Id.
211 Id.
212 Id.
213 Minimum Wage Fixing Machinery and Related Problems, with Special Reference to Developing Countries. International Labour Conference, 54th Session, Report V/1 6 (Geneva) (1970) “[A] system of minimum wage fixing should take into account the economic and social conditions of a country. This was particularly necessary in the case of developing countries where these conditions varied widely among countries.”
215 Id.
216 Id. at 6-7. (During a discussion led by the Government member from Japan, it was determined that, “... [a] Convention, by its nature, would not be sufficiently flexible to take these varying conditions into account. Since the new instrument was to make special reference to developing countries, a Recommendation would be more suitable... particularly in the case of developing countries – about the effects of minimum wage fixing on the level of prices, employment and development. In light of this, the new instrument should have the utmost flexibility.” The delegation continued,... [a] Convention on minimum wage fixing machinery would probably be meaningless for one of two reasons: (a) if it imposed rigid obligations on ratifying countries, few countries would ratify it; or (b) if it were very general and contained many exclusions, ratification would not indicate progress.”)
the standard could conform to various social and economic factors, specific to certain nations.\(^{217}\)

A multi-tiered international wage system is one such flexible proposal, designed to limit the adverse impact of the law, while concurrently maximizing its potential benefits.\(^{218}\) Under this system, a macroeconomic international minimum wage would be set at 25% of the global yearly salary for a full-time worker,\(^ {219}\) while simultaneously establishing a local wage standard according to a PPP index,\(^ {220}\) which considers the cost of purchasing basic commodities specific to that country.\(^ {221}\) In addition, a tertiary level of wage protection could be created by setting a national minimum wage for each individual country, set at 25% of the average national income.\(^ {222}\) This multi-tiered system may realistically lead to the creation of several potential minimum wage figures.\(^ {223}\) However, the standard which provides for the highest wages in any locality is to be employed.\(^ {224}\)

Several recommendations have stressed the importance of a gradual implementation of any comprehensive global minimum wages.\(^ {225}\) As one proposal suggests, wages should be increased slightly at first, in order to keep from disrupting the economies of developing countries, and then raised annually until they reached approximately 45 percent of the average minimum wages in industrialized countries.\(^ {226}\)

Alternatively, the local minimum wage could be started at the average wage of the poorest 20% of the population of each country and raised incrementally until it reaches the global minimum wage.\(^ {227}\)

Representative, Richard Gephardt, a Democrat from Missouri, proposed the establishment of a flexible international minimum wage during his 2004 campaign for the presidency.\(^ {228}\) Rep. Gephardt argued for an augmentation and stabilization of international wage standards in order to prevent what he terms, "[a] 'race to the bottom,' where wages plummet and living standards fall through the floor."\(^ {229}\) The ultimate goal of Gephardt’s plan is to create a global

\(^{217}\) Id. at 13.


\(^{219}\) Id.

\(^{220}\) See Wikipedia, The Free Encyclopedia, at http://www.en.wikipedia.org/wiki/Purchasing_power_parity (last visited Mar. 25, 2004), (Defining “PPP” as, “Purchasing power parity. In economics, the theory of purchasing power parity (PPP) asserts that, in equilibrium, the exchange rate that will prevail between two countries will be that which equalizes the prices of traded goods in each country. Typically, the prices of many goods will be looked at, weighted according to their importance in the economy.”).

\(^{221}\) See simul, supra note 218.

\(^{222}\) Id.

\(^{223}\) Id.

\(^{224}\) Id.

\(^{225}\) See generally Ardon, supra note 176.

\(^{226}\) See Lambrecht, supra note 214.

\(^{227}\) See simul supra note 218.

\(^{228}\) Id.

\(^{229}\) See Lambrecht, supra note 214.
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'middle class' of workers,\(^\text{230}\) "that will help ensure expanding growth and long-term prosperity."\(^\text{231}\) Although no specific figure or formula has been proposed by the Gephardt campaign,\(^\text{232}\) the global minimum wage will be set on a country-by-country basis, in order to ensure the welfare and general health of the workers, and their families, in each country.\(^\text{233}\) In addition to the establishment of the international wage standard, Rep. Gephardt also proposed a development-based system of compensation, wherein each country would be evaluated on its compliance and an individually tailored aid package would be provided by the international community.\(^\text{234}\)

As a precursor to the establishment of the international wage standard, Gephardt initially wants to establish a domestic Living Standard, which will remain current with levels of inflation, and solidify the American position in the global community.\(^\text{235}\)

In order to establish the international minimum wage, and enforce its provisions, Gephardt further proposes to employ the services of the World Trade Organization ("WTO").\(^\text{236}\) The WTO is an international organization dealing with the global rules of trade between nations.\(^\text{237}\) WTO agreements are the legal ground rules for international commerce.\(^\text{238}\) Each participating country receives guarantees that its exports will be treated fairly and consistently in other countries' markets.\(^\text{239}\)

Trade friction is reduced because of the WTO dispute settlement process where the focus is on interpreting agreements and ensuring each country's trade policies conform to the standard.\(^\text{240}\) Rulings made by the WTO can be enforced by applying trade sanctions against the offending nation.\(^\text{241}\)

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\(^{230}\) See id. "[I]n his presidential campaign, Gephardt has rallied against what he calls 'a race to the bottom,' where American companies uproot factories to move to developing countries with the cheapest labor and the fewest worker protections."

\(^{231}\) See Lambrecht, \textit{supra} note 214.

\(^{232}\) See \textit{supra} note 229.

\(^{233}\) \textit{Id}. \textit{Id}. \textit{Id}. \textit{Id}.

\(^{234}\) See \textit{supra} note 229.

\(^{235}\) \textit{Id}. \textit{Id}. \textit{Id}. \textit{Id}.


\(^{237}\) \textit{Id} at 9-10.

\(^{238}\) \textit{Id} at 11-14.

\(^{239}\) \textit{Id} at 55.

\(^{240}\) \textit{Id} at 58. The WTO indicates that prior to imposing sanctions upon a participating country that has violated the standards of the Organization other remedy options must be exhausted. ("If a country has done something wrong, it should swiftly correct its fault. And if it continues to break an agreement, it should offer some compensation or suffer a suitable penalty that has some bite. Even once the case has been decided, there is more to do before trade sanctions (the conventional form of penalty) are imposed. The priority at this stage is for the losing 'defendant' to bring its policy into

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Many developing nations believe labor issues, including an international minimum wage, have no place in the WTO framework. These countries believe bringing international labor standards into any trade agreement is simply a method by which the industrialized nations can take advantage of their lower wage trading partners.

As a result of the protests of these developing countries, the WTO has refused to address the issue of an international minimum wage. The WTO has decided that all labor rights issues should be best left to the International Labour Organization ("ILO"). However, as part of the Gephardt proposal, members of the WTO would be required to adhere to the standards set under the international minimum wage law.

Other methods of enforcing the international wage standard would be through the United Nations, International Labour Organization, or via smaller regional trade agreements such as the North American Free-Trade Agreement ("NAFTA") and the Organization of Petroleum Exporting Countries ("OPEC"). In the alternative, the United States could establish an international minimum wage as a guideline, and, as a means to encourage compliance with the recommendation, require that other nations observe the standard as a condition of receiving American funding, loan guarantees, or other financial aid. The United States may also place a ban on any imported products from any nation that fails to comply with the wage standard.

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242 Id at 75.
243 Id.
244 Id at 74.
245 Id.
246 See Lambrecht, supra note 214.
247 See United States Department of Agriculture Foreign Agricultural Service, Fact Sheet: North American Free Trade Agreement, at http://www.fas.usda.gov/info/factsheets/nafta.html (last visited Mar. 18, 2004). ("Implementation of the North American Free Trade Agreement (NAFTA) began on Jan. 1, 1994. This agreement will remove most barriers to trade and investment among the United States, Canada, and Mexico. Under NAFTA, all non-tariff barriers to agricultural trade between the United States and Mexico were eliminated. In addition, many tariffs were eliminated immediately, with others being phased out over periods of 5 to 15 years."). See also Office of the United States Trade Representative, NAFTA, at http://www.ustr.gov/regions/whemisphere/nafta.shtml. (last visited March 18, 2004).
248 See Organization of the Petroleum Exporting Countries, About OPEC, at http://www.opec.org/ (last visited Mar. 18, 2004). ("OPEC is an international Organization of eleven developing countries which are heavily reliant on oil revenues as their main source of income. Membership is open to any country which is a substantial net exporter of oil and which shares the ideals of the Organization.").
249 See Ardon, supra note 176.
Prior to the implementation of any international wage system, various other factors must also be considered, including consultation with employer and worker organizations in crafting the standard.250

IV. CONCLUSION

International investment is a vitally important means to ensure economic development in both industrialized and developing nations.251 Large, multinational corporations are currently facing an impossible decision; they can move overseas and take advantage of the availability of cheap labor, or face high domestic labor costs, and dwindling profits.252 Developing nations, in turn, are forced to either accept the denigration of the labor force, or risk losing foreign investment.253 As a result, there is a “race to the bottom,”254 where worldwide wages plunge, and worker safety conditions disappear.

Historically, the adaptation of a minimum wage has been proven to be a successful tool in reducing the exploitation of workers in the industrialized nations.255 The United States, Canada and Great Britain have all adopted some minimum wage program in order to provide a decent standard of living for its workers and their families. Minimum wage policies have also been a prime instrument for maintaining living standards in some developing nations.256 Thailand, for example, has used its twenty-year history of employing a minimum wage to stabilize its workers purchasing power.257

An international minimum wage would stabilize global trade pressure and promote the industrialization of developing nations.258 The goal of such a standard would be to ensure each worker receives a ‘living wage,’ sufficient to provide a decent standard of living for themselves, and their families.259 Workers wages would, of course, be increased gradually so as not to unnecessarily disrupt the financial system of each country.260 The international minimum wage would be readily enforceable through one of several possible international organizations such as the United Nations or the World Trade Organization.261 The United States and other participating countries could also enforce the standard through the use of trade sanctions against non-complying countries.262 An international minimum wage would forestall the migration of

250 See Lambrecht, supra note 214, at 11.
251 See Ardon, supra note 176.
252 See supra note 229.
253 Id.
254 Id.
255 See generally Nordlund, supra note 29, and accompanying text. See also Carter, supra note 110, and accompanying text.
256 See Imudom, supra note 169.
257 Id.
258 See supra note 229.
259 See ILO, supra note 24, at xv.
260 See Lambrecht, supra note 214.
261 See supra note 229.
262 See Ardon, supra note 176.
jobs and deny multinational corporations the incentive to move factories from one country to another and play impoverished workers against one another.\textsuperscript{263} All companies seeking to do business in the new ‘international minimum wage’ economy must pay its workers an adequate living wage and follow the minimum standards of decency and personal dignity.\textsuperscript{264}

“If one part suffers, all the parts suffer with it; if one part is honored, all the parts share its joy.’ Is it not the same in the labor movement? Are not the locals the fingers of the hand, attached to the arms of the International Unions, joined together in the body of [one]? Though we have many parts, we are of one body. An injury to one is an injury to all! In contrast, we all share in the joy of another’s victory when one is had."\textsuperscript{265}