1998:25

Social Clauses and Other Means to Promote Fair Labour Standards in International Fora

– A Survey

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ARBETSLIVSRAPPORT
ISSN 1401-2928

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Preface

This report was originally presented at a workshop arranged by the National Institute for Working Life in June 1998 concerning social clauses in public contracts and trade agreements. The aim of the workshop was to build on the experience at Member State, EU and international level to develop proposals for the EU to adopt a policy on social clauses. The workshop forms part of the preparations for the Work Life 2000 conference, a large conference on Work Life in Europe to be held in January 2001.

We would like to thank Aina Godenius-Berntsson and Per Malmberg for linguistic editing.

Jonas Malmberg has written section 1, 2 and 6 and David Johnsson section 3–5.

Stockholm August 1998

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1 Introduction

1.1 Background

The minister of finance of Louise XVI, Jaugues Necker, is often mentioned as one of the first to observe the linkage between domestic labour standards and international competitiveness.[1] As early as 1778, he wrote that if a country abolished the weekly day of rest, this would gain an advantage, provided that it was the only country to do so. If others acted likewise the situation would remain unchanged. This linkage was used as an argument against enacting domestic labour standards in the newly industrialised states of Europe. The latter argument gave in the middle of the 19th century rise to calls for international labour standards. Such standards were seen as a necessary precondition for a country to provide better conditions for the working class without losing the ability to compete on the international market. One of the pioneers was the Alsatian manufacturer Daniel Legrand (1783–1859). For more than twenty years he wrote letters to European statesmen, arguing for social reforms. In one of his appeals he wrote:

> "In modern industrial Europe there are certain matters that individual nations cannot regulate except in the form of an agreement between the interested powers. (...) An international labour law is the only possible solution to the great social problem of granting moral and material well-being to the working class without working a hardship upon manufacturers or upsetting the competitive balance between the industries of these countries."[2]

The idea of a connection between domestic labour standards and international competitiveness is also recognised in the Preamble of the ILO Constitution from 1919:

[1] For the following see Follows (1951) and Hansson (1983).
[2] Follows (1951) 38.

> "Whereas (...) the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries ..."

Although the issue of international labour standards and their relation to international competitiveness was first put on the agenda in the 19th century, it has during the last few years been gained renewed interest. In fact, calls for international labour standards seem to be put forward each time the conditions of competition between countries are changed.[3] One reason for this renewed interest in international labour standards can be ascribed to a globalisation of the world economy. Through technological changes, removal of trade barriers, new forms of business organization, it has become easier to move business operations from one country to another. This is said to have reduced the possibilities for national governments and national social partners to regulate the labour market.[4] Another reason is the recession in the economy in the industrialised part of the world. A third reason could be that television and other media have made people in the industrialised countries more aware of the appalling conditions under which, for instance, children work in some developing countries.[5]

Although the question is more or less the same as in the 19th century and the first decades of the ILO, the context in which it is put differs in one important aspect from the earlier situation. In those days the countries pushing this issue on the agenda were those that wanted to raise their own labour standards, and which feared competition from countries at a similar stage of development. Nowadays the countries pursuing the matter are not in the first place interested in raising their own standards. The idea is instead to raise the standard for countries at a lower stage of development. This has added a north-south–aspect which earlier was not connected with the question.

[3] Servias (1989) 424.
[4] Hepple (1997).
[5] Lee (1997).

1.2 The scope of the report

International labour standards can be promoted in different fora and in various ways. The aim of this report is to survey in which international fora the need of international labour standards has been discussed and which results the debate has yielded in the form of proposed or adopted conventions and other legal acts.

First of all we find international labour standards in the form of conventions and recommendations from the ILO (section 2). Labour standards can also be promoted through social clauses in trade agreements. By a social clause the parties promise to comply with certain labour standards or they run the risk of being confronted with trade barriers. Social clauses have been discussed in connection with different multilateral trade agreements, such as ITO, GATT, WTO and NAFTA (section 3). Social clauses have also been imposed on different bilateral trade agreements and unilateral trade arrangements (section 4). A different approach to promote labour standards is through consumer or trade union boycotts, voluntary codes of conducts or through systems of labelling (section 4.2.1).

In the review of proposed or adopted legal acts we will mainly raise the following questions:

- How are the international labour standards adopted (for instance uni- , bi- or multilateral)?
- Which labour standards do the legal acts cover?
- How is the observance of the acts organised (review, supervision etc.)?
- Which sanctions do the acts provide?
- Who is competent to interpret the acts?

It should be stressed that there are other – probably more effective – means of combating inferior working conditions than adopting legal labour standards. Inferior working conditions are often a result of poverty, imbalances in world trade structure, low level of education etc., and these *causes* can be obstructed through information exchanges, technical assistance, educational programmes etc. However, these ways of raising the working conditions will not be discussed in this report.

The report will not deal with social dumping inside the barriers of the European Union or social clauses in connection with public procurement.[6]

1.3 Is there a need for social clauses and other international labour standards?

Social clauses and other means to promote international labour standards can have different aims. With a crude simplification we can distinguish between three main arguments.[7]

> The list of arguments for and against social clauses and other international labour standards could be made longer. One argument that earlier was given attention was that huge differences in living conditions inside or between countries could cause risks for social unrest. The fear of such consequences of inequality seems to have vanished after the fall of the communism in the late 1980s.

As we have already seen the classic argument is that domestic labour standards have an impact on the international competitiveness. Earlier the main threat was that domestic manufacturers would lose market shares as a consequence of high labour costs. Now the focus is on the behaviour of multinational companies and their willingness to invest in countries with low labour standards.[8] According to this opinion there is a risk that free trade and globalisation without international labour standards could cause unemployment in countries with high labour standards. Further, there is a risk that it will lead to a downward pressure on domestic labour standards; *a race to the bottom*. Thus international labour standards are needed to make it possible to maintain or raise the labour standards in the proponent's own homeland.

From a theoretical point of view these assumption seem quite plausible. Answers to a questionnaire from the ILO also indicate that many states have carried out legislative reforms with the aim to cope with international competition.[9] Notwithstanding this, the empirical evidence

[6] For the latter question see Krüger, Nielsen & Bruun (1998).
[7] For the following see Hansson (1983), Lee (1996) and (1997).
[8] See for example Arhturs (1996).
[9] ILO (1997) 3.

for the assumptions are rather weak. Lee concludes that there is no clear evidence that globalisation has caused a lowering of labour standards in the industrialised countries, and that trade with countries with low labour standards has in fact been a minor factor behind the rise of unemployment in the developed countries.[10] Other factors relating to the differences in development, such as a low level of education etc., seem to be just as important for the competitiveness between countries.

> Thus, it is not unlikely that low labour costs have a greater impact on the competitiveness between countries at the same stage of development. If this is correct there is a greater need to prevent social dumping, for instance, *inside* the European Union or *between* developing countries, than in a north-south-perspective.

Another argument is that the introduction of international labour standards would protect the system of free trade from protectionist demands. The idea is that for instance a social clause in GATT would create a "fair" world trade, and thus take away one strong argument from protectionists in the industrialised countries.

A third argument for establishing international labour standards concerns the solidarity with employees who work under poor working conditions. In this view the aim of international labour standards is to improve the conditions for foreign workers.

The crucial question for this argument is what impact internationally imposed labour standards have on labour standards in the developing countries. Do social clauses improve the conditions for workers in developing countries?

This question is obviously attractive to economists. Unfortunately the result of their studies is hard to comprehend for simple lawyers, and it is even harder to check the relevance of their argumentation.

The answers to the question differ. In a report from 1994 an expert group from the Organisation for Economic Co-operation and Development (OECD) discussed the economic effects for developing countries of an improvement of core labour standards (freedom of association and collective bargaining, elimination of exploiting forms of child labour, prohibition of forced labour and non-discrimination in employment). The conclusion of the report is that an improvement of those labour

[10] Lee (1996) and ILO (1997) 5.

standards might raise the economic efficiency in developing countries and that the concern about negative effects on their economic or international competitiveness is unfounded.[11]

On the other hand a recent report from the World Bank has pointed out that weak provisions of core labour standards cannot be treated effectively by imposing trade sanctions, but should instead be approached through programmes aimed directly at poverty reduction, education reforms and disclosure of information. According to the report, trade restrictions are blunt, indirect instruments and may be counterproductive, harming the people they are designed to help and ineffective in achieving stated goals.[12]

It looks as if there is no definite answer to the question whether internationally imposed labour standards will contribute to higher labour standards in the developing countries. On the other hand the argument for solidarity with foreign workers is seen as ethical or moral, rather than economic:

> "(E)ven if the evidence on the link between labour standards and competitiveness is disputed there still remains the very strong moral case in favour of observing the core standards which are basic human rights. This cannot be overridden by purely economic considerations, even if there were evidence of some negative impact of these standards on the competitiveness."[13]

The opponents of social clauses are mainly to be found in the developing countries. According to their view low labour standards in the developing countries are an unintended effect of the economic situation in these countries. Such labour standards were accepted in the US and the European countries at the time of the industrial revolution. The way to improve labour standards in the developing countries is, in this view, through economic growth. And this is best achieved by access to the markets of the industrialised countries, financial and technical assistance etc., and not by imposing international labour standards. Social clauses are regarded as disguised protectionism, which aims at raising the labour costs in the developing countries.

[11] OECD (1994).
[12] Maskus (1997).
[13] Lee (1997) 187.

Another argument is that the notion of what constitutes fair labour standards is culture specific and thus it is difficult to reach universal moral consensus on a set of international labour standards.[14]

As we have seen, no consensus is reached on the need of a linkage between international labour standards and international trade. The relevance of an argument for international labour standards is questioned. Even the motives of those advocating international labour standards are doubted. Notwithstanding this, commentators often end up in the conclusion that international labour standards can play a constructive role in liberalising world trade.[15]

2 International Labour Organization

2.1 Introduction

The International Labour Organization (ILO) and the League of Nations were founded in 1919, at the Peace Conference following World War I. While the League of Nations ceased to exist as a result of the outbreak of World War II, the ILO lived on and in 1945 became the first specialised agency of the United Nation system.[16]

The ILO Constitution formed part of the Peace Treaty of Versailles. Due to the experiences of the war, the participant governments felt a need to create an international body to promote good working conditions. As is stated in the preamble of the Constitution of the ILO, one of the ideas was that a "universal and lasting peace can be established only if it is based upon social justice".

One of the main tasks of the ILO is to adopt international labour conventions and recommendations. These are adopted by the annual International Labour Conference in Geneva. The Conference has a tripartite structure with representatives of governments, employers' and workers' organizations from all member states. To adopt a convention or a recommendation a majority of two-thirds of the votes cast by the dele-

[14] Lee (1997) 183, with references.
[15] For example Charnovitz (1986) 74 and Edgren (1979).
[16] For general information about the ILO, see for example Betten (1993) and ILO (1990).

gates present is required.[17] The conventions must be ratified by the member states to be binding upon them. In this way the ILO is a highly voluntaristic institution.

There is no doubt that the ILO with its tripartite organization and voluntaristic approach in an overall perspective has been successful. The organization has today 174 members and has adopted more than 175 conventions, which cover a wide range of subjects. The way in which these instruments are produced and the organization of supervision of the instruments, makes the ILO a unique source of competence in matters of international labour and social standards.

2.2 Supervision

2.2.1 Governmental reports

The Constitution of the ILO provides a rather elaborate system for supervision of the obedience to the conventions and recommendations. First of all, member states are obliged to report periodically to the ILO on the progress in implementing the *ratified conventions*.[18] Originally this was to be done every year, but due to the rising number of conventions and member states, the amount of reports had to be reduced. Today conventions dealing with *basic human rights* are to be reported every second year, while other conventions are to reported on a four-year interval.[19]

Governments are also from time to time requested to report on the position in national law and practise regarding *unratified* conventions and recommendations.

The reports are examined by the Committee of Experts, which submits an annual report to the International Labour Conference, where it is closely examined by a tripartite committee composed of government, employer and worker members.

If a member State does not deliver the reports it is obliged to, the Conference may – after a complicated procedure – take action as it may "deem wise and expedient to secure compliance therewith".

[17] The ILO Constitution article 19.

[18] The ILO Constitution article 22.

[19] ILO (1990) 83.

2.2.2 *Representations and complaints*

Should a member state fail to comply with a ratified convention, any *employers' or workers' organization*, national or international, may make a *representation* to the International Labour Office.[20] After communication with the concerned government, the Governing Body of the ILO may publish the representation in the *Official Bulletin*. In its conclusion the Governing Body indicates in what respects it considers the issues raised by the representations to have been satisfactorily or *un*satisfactorily disposed of, and whether further actions or clarifications are required.[21]

A *member state* that is not satisfied with another member state's observance of a Convention, which both have ratified, may file a *complaint* with the International Labour Office.[22] This can also be done by the Governing Body. A complaint can also be filed to follow up a representation.[23] After a certain procedure a Commission of Inquiry shall prepare a report of the issue. If the government does not accept the recommendations of the report, it is entitled to refer the complaint to the International Court of Justice (ICJ). The ICJ can then affirm, vary or reserve the Commissions findings or recommendations. The ICJ's decision in the matter is final.

2.2.3 *Complaints concerning freedom of association*

Freedom of association holds a central position in the ILO Constitution. Thus the member states, by virtue of their acceptance of the Constitution, are bound to respect this right, even if they have not ratified the relevant conventions (especially nos. 87 and 98).

Further, a special procedure is established for supervision of the freedom of association, which supplements the regular supervisory procedures and the procedure for representations and complaints (described above).[24] Under this procedure governments, national workers' and employers' organizations are allowed to submit complaints concerning violations of trade union rights to the *Committee on Freedom of Association.* Complaints can be made even against governments that have not ratified the relevant conventions. The Committee is a tripartite body with an

[20] The ILO Constitution article 24-25.

[21] ILO (1990) 97.

[22] The ILO Constitution article 26

[23] Swepston (1997)

[24] ILO (1990) 103–114

independent chairman. After a preliminary study the committee may, if an infringement has been established, recommend the Governing Body to make the concerned government aware of the problems and invite the government to solve it.

The Committee was set up in 1951 and has dealt with more than 1900 cases. Through these cases the Committee has developed a rich fund of principles for the interpretation of the concepts of freedom of association and collective bargaining in the Constitution and the relevant conventions, recommendations and resolutions.[25]

2.3 Discussions on linking ILO and WTO

Although the ILO system relies on the principle that conventions undertaken by ratification are legally binding and that international supervision is necessary to ensure they are respected, the work of the organization is not aimed at accomplishing effects as a result of threats or sanctions, but rather as a result of voluntary undertakings by the member states. The Director-General concluded in his report to the International Labour Conference 1988:

> "Reliance has been placed rather on various forms of persuasion and moral pressure with emphasis also on the importance of assistance by the ILO in overcoming difficulties in the implementation of its standards. It has been observed that, in general, rather than resorting to sanctions, specialised international organizations have given preference to measures involving conciliation and a pragmatic approach to upholding the organizations' rules."[26]

This approach sets the limitation for the organization, since no effective sanctions are connected to the standards. Critique of this kind has often been put forward. As an example we quote a statement by the International Textile, Garment and Leatherworkers' Federation at the International Labour Conference in 1991:

[25] ILO (1996).
[26] ILO (1988) 59.

> "(T)he federation is convinced that the only effective means of enforcing minimum standards is to link trade to worker rights, whereby it would be a condition for a country participating in international trade to respect and enforce the minimum standard set down by the ILO"[27]

It is in the light of this limitation that the discussion on social clauses in trade agreement should be seen.

In his report to the International Labour Conference in 1984 – written before the Marrakech-meeting[28] – the Director-General discussed the need of strengthening the international effectiveness to cope with the globalisation of the economy and the increasing international competition. According to the Director-General the crucial question was whether the ILO, given the voluntary acceptance of obligations arising from its standards, can remain a spirit of emulation towards social progress in spite of the countervailing influence exerted by the globalisation of the economy and the growth of international trade. The Director-General answered the question in the affirmative, on two premises. First the ILO should recognise that freer trade is to be sought for its potential to promote economic development and thereby to improve the conditions of life and work. Thus the ILO should not advocate either restrictions to trade or compulsory equalisation of social costs. The second premise was that ILO should rely on co-operation rather than coercion in its efforts to promote social progress.

As one way of strengthening the effectiveness of the standard setting the Director-General mentioned the possibility

> "to transfer the responsibility for sanctions to a kind of 'secular arm' outside the Organization. This is essentially what happens when states or groups of states link trade concessions (such as access to their markets) to compliance with certain labour standards with a view to combating what they refer to as 'social dumping'. This practice already exists, and it is reasonable to expect that it will spread. *While there is nothing in the Constitution which forbids it, its utility to our Organization is by no means clear and our supervisory machinery could suffer if the conclusions that result from it are used in a context of coercion."* [29]

[27] International Labour Conference, Provisional Record, (78th Sess. 24th sitting, June 21, 1991), cited from Leary (1997) 190.
[28] See section 3.3.3.
[29] ILO (1994) 58–59 (italics added).

The debate following the Director-General's report at the Labour Conference in June 1994 resulted in the formation of a Working Party on the Social Dimension of International World Trade. Later the same year the Working Party presented an interesting working paper, in which it points out that all members of the ILO are or will be members of the WTO:

> "Unless it proceeds from a certain schizophrenia, this membership of both organizations means that the states concerned endeavour in good faith to take account in each of these organizations of the objectives and obligations they have undertaken in the other. Once this observation has been made, the logical next step is to attempt to define the content of the social dimension that the community of these states may legitimately introduce in the trade system to guarantee the possibility (and not the content) of social progress from the two different standpoints." [30]

In the paper the Working Party in a very concrete fashion discusses what amendments to the WTO agreement that would be feasible to make the enforcement of ILO standards more effective.

> The report is thoroughly discussed by Laery (1997). A quite similar – although not so elaborated – proposal was made by some international trade union confederations during the Uruguay Round in 1994.[31]

In 1995 it was decided that the Working Party on the Social Dimension of the Liberalization of International World Trade should leave aside the question of establishing a link between ILO standards and international trade through a sanction based social clause mechanism.

2.4 The Declaration on fundamental principles at work

After the question on adding a social clause to the WTO agreement was left aside, the efforts at the ILO for strengthening the effectiveness of its

[30] Working Party on the Social Dimension of International World Trade (1994.) 25.
[31] The Social Dimension of International Trade: Joint Statement by World and European Trade Union Confederations, ICFTU, WCL and ETUC, 43/94, World Confederation of Labour, 33 Rue de Treves, B-1040, Brussels, Belgium. For an earlier discussion of the same question, see Hansson (1984) 175–182.

labour standards have been focused on the promotion of fundamental or core labour rights and reinforcement of a supervisory system.

The need to especially promote fundamental labour rights has been recognised in several international fora during the last few years, for instance by OECD,[32] at the Copenhagen World Summit for Social Development in 1995, at several G7-meetings[33] and by the WTO Ministerial Conference in Singapore 1996. The discussion in these fora, and elsewhere, shows an almost total consensus on what labour standards are to be regarded as fundamental (meaning that their implementation is considered a priority[34]) and that these standards should be defined through reference to certain ILO Conventions. The rights considered as fundamental are:

1. *Freedom of association*: Freedom of Association and Protection of the Right to Organise (ILO Convention No. 87, 1948) and Right to Organise and Collective Bargaining Convention (ILO Convention No. 98, 1949).
2. *Prohibition of forced labour*: Forced Labour Convention (ILO Convention No. 29, 1930) and Abolition of Forced Labour Convention (ILO Convention No. 105, 1957).
3. *Non-discrimination in employment*: Equal Remuneration Convention (ILO Convention No. 100, 1951) and Discrimination (Employment and Occupation) Convention (ILO Convention No. 111, 1958)
4. *Prohibition of child labour*: Minimum Age Convention (ILO Convention No. 138, 1973).

Although this is not the place to discuss why these labour standards have been picked out to be the fundamental labour standards, or why other conventions have been left out, two explanations should be mentioned. One is that these labour standards are to a large extent recognised in the major basic human rights documents, such as the United Nations' Universal Declaration of Human Rights and the European Convention of Human Rights.[35] The other explanation is that these standards are not in the same way as other labour standards (such as standards regarding

[32] OECD (1994).
[33] COM (96) 402.
[34] ILO (1997) 20
[35] See for example Compa (1993/1994)

minimum wage or health and safety) connected with the productivity in different countries. Thus the promotion of these standards are not necessarily to be seen as compulsory equalisation of social costs.

The last contribution to the promotion of fundamental labour rights is the adoption by the International Labour Conference in 1998 of a *Declaration concerning fundamental rights at work* and the Follow-up mechanism to this declaration. Through the Declaration all Members, even those who have not ratified the Conventions in question, recognise that they have an obligation arising from the very fact of membership in the ILO "to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights" mentioned above. According to the Director-General the aim of the declaration is not to establish or extrapolate a new or more detailed character of these rights, but to underscore the importance of these rights, which are already enshrined in the ILO Constitution and the Declaration of Philadelphia.[36] The declaration also stresses that labour standards should not be used for protectionist trade purposes.

The Declaration is completed by a partly new *follow-up mechanism* that will provide an opportunity to review annually the efforts made by members which have *not* yet ratified the relevant conventions. The review will be based on reports by the Members (article 19/5/e of the Constitution). Further the Director-General shall provide a global report regarding the most significant developments relating to each fundamental right.[37]

The Declaration will hardly satisfy those who earlier have criticised the ILO for being ineffective in the enforcement of minimum labour standards.

[36] International Labour Conference 86th Sess. 1998 Report VII "Considerations of a possible Declaration of principles of the International Labour Organization concerning fundamental rights and its appropriate follow-up mechanism".

[37] An earlier proposal of establishing a mechanism by analogy with the freedom of association procedure, has been withdrawn because it became clear that it would not gain the necessary support.

3 International trade agreements

3.1 ITO

The General Agreement on Tariffs and Trade, GATT, was concluded in Havana in 1947. The object of GATT was to establish a set of rules eliminating obstacles to international trade and thus constituting a code of conduct for world trade. The GATT was supposed to be provisionally applied in anticipation of the conclusion in 1948 of the Havana Charter of the International Trade Organization (ITO), which had a broader content.

The Havana Charter contains a social clause which reads:

> 1. The Members recognize that measures relating to employment must take fully into account the rights of workers under inter-governmental declarations, conventions and agreements. They recognize that all countries have common interest in the achievement and maintenance of fair labour standards related to productivity, and thus in the improvement of wages and working conditions as productivity may permit. The Members recognize that unfair labour conditions, particularly in production for export, create difficulties in international trade, and, accordingly, each Member shall take whatever action may be appropriate and feasible to eliminate such conditions within its territory.

The relative character of the clause is worth noting. What conditions the member states are to eliminate depend on the productivity in the country.

The Charter provides for a dispute settlement procedure, by which the Board of the Organization is to investigate matters relating to labour standards in co-operation with the ILO. If no other measure is sufficient, the Conference of the Organization could allow the offended member state to take trade action against the offending state (Chapter VIII, article 94 and 95).

However, the Havana Charter on the ITO was never put in effect, since the United States (for other reasons than the social clause) refused to ratify it. Instead the provisional GATT was to be the main regulation of international trade during several decades.

3.2 GATT

The General Agreement on Tariffs and Trade (GATT) is today an integral part of the WTO. GATT does not contain any social clauses similar to the one in the Havana Charter. The only direct rule in the GATT relating to social or labour standards is article XX (e) General Exceptions, where it is stated that

> "nothing in this agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures (...) relating to the products of prison labour".

According to Virginia Leary, Article XX could arguably also permit trade barriers against imports of goods produced by *forced* labour.[38] If necessary, discrimination can also be allowed to protect public morals or to protect human, animal or plant life or health.

Charnovitz has argued that the GATT rules concerning fair trade are inconsistent in their treatment of capital versus wage distortion:

> "Consider two government policies to aid an industry producing for export. One policy relieves the industry from having to pay direct taxes on export profits. This violates the GATT article on Subsidies (Article XVI). The other policy relieves the industry from having to recognize and negotiate with labor unions, despite such recognition in other sectors of the economy. Yet this does not violate the GATT."[39]

Since the beginning of the 1950s, the question of whether or not working conditions that do not comply with the acceptable standards should be considered unfair and therefore actionable under the GATT, has frequently been on the agenda. Proposals in that direction have often come from the US.[40]

As an example the US, supported by the EEC, in 1987 proposed the formation of a working group which was to examine the possible relationship of internationally recognised labour standards with international trade. In the light of this examination, the working group should consider any proposals and suggestions that may be put forward with respect to issues relating to trade and observance of internationally recognised labour standards. The findings and conclusions were to be reported to

[38] Leary (1997) 204.
[39] Charnovitz (1986) 73.
[40] Grossman & Koopman (1996), Kullman and Charnovtz (1986) 64.

the Council. The international labour standards to be addressed in this examination were freedom of association, freedom to organise and bargain collectively, prohibition of forced labour and compulsory labour, minimum age for employment of children, and measures setting minimum standards in respect of conditions of work.[41]

Even such limited proposals – calls for setting up a working group – have consequently been turned down. Moreover if a working group were set up and it were to be deliver a concrete proposal for amendments, normally a two-thirds-majority of the member states would be required for accepting the proposal. In practice amendments to the general provisions of GATT have – even in minor questions – very seldom been possible.[42]

3.3 WTO

3.3.1 Background

In 1994, after more than seven years of negotiation, the Uruguay round was completed and signed by around 120 countries in Marrakech. Thereby the World Trade Organization (WTO) was established. The WTO agreement covers both areas that were, and areas that were not, included in the previous GATT agreement. The WTO is the legal and institutional foundation of the multilateral trading system. It provides the principal obligations, determining how governments frame and implement domestic trade legislation and regulations. It is the body from which trade relations among countries evolve through collective debate, negotiation and adjudication. It is also an institute for resolving trade disputes.

The main object behind the WTO is the idea of world trade without discrimination. This is to be achieved through the *most favoured nation system* (MFN). The MFN means that member states are bound to grant the products of other member states a treatment no less favourable than that accorded to products of any other country. Thus, no country is to give special trading advantages to another or discriminate against it: all

[41] Waer (1996) 27.
[42] Long (1987) 15–19.

are on an equal footing and all share the benefits of any moves towards lower trade barriers.[43]

There are exceptions to the MFN status, but it is the main rule and guiding principle. For instance, exceptions are allowed in matters concerning protection of national security or for national defence purposes. Furthermore, exceptions are allowed

> "to protect public morals, order or safety, human, animal or plant life or health or intellectual property; or relating to the products or services of handicapped persons, of philanthropic institutions or of prison labour."

3.3.2 Supervision and Enforcement

According to the Trade Policy Review Mechanism (TPRM) all WTO members' trade policy and their trade policy proceedings shall be supervised on a regular basis. The supervision consists of a country report issued by the member itself and a report from the secretariat. This control mechanism is fairly mild and will not conclude on whether the supervised countries' trade policies are acceptable or not. Rather than a formal control mechanism the process has the character of voluntary openness towards the other members.

If a trading dispute should occur it is to be solved at the Dispute Settlement Body (DSB). The DSB has the sole authority to establish panels, adopt panel and appellate reports, maintain surveillance of the implementation of rulings and recommendations, and authorise retaliatory measures in cases of nonimplementation of recommendations. If a conflict should be solved at the DSB and the country that "loses" refuses to obey the ruling, the other conflicting party may request authorisation from the DSB to suspend concessions or obligations against the other party. Since the member states have much to lose financially by not obeying the rules it is likely that they will accept a DSB ruling.

3.3.3 Discussion of a social clause

As early as the Marrakech meeting the question of social clauses was on the agenda. The debate between those in favour of social clauses and those opposing them was transferred into allegations of unfair competition or "social dumping" on the one hand and disguised protectionism on the other. Those who favoured a social clause were accused of seek-

[43] WTO (1995) 5.

ing to impose minimum levels of wages and working conditions regardless of levels of economic development, thus undermining the comparative advantage of developing and emerging countries. Those opposing the idea were accused of wanting to improve their competitive position by maintaining inferior working conditions and suppressing workers' rights. Even though there was a discussion, no decision was taken.[44]

At the first Ministerial conference of the WTO, held in Singapore in December 1996, the question of social clauses in the WTO was discussed again. At this meeting The Director General of the ILO, Michel Hansenne, was invited to speak. Due to objections from developing countries the invitation was withdrawn. The developing countries did not want the social clauses to be an issue at the Singapore meeting. They opposed the linking of labour standards and international trade within the WTO. This linkage was supported by France, USA and some other industrialised countries but opposed by a large number of third world countries and by the UK. As a compromise between the different opinions the following paragraph was included in the final Ministerial declaration:

> "We renew our commitment to the observance of internationally recognised core labour standards. The International Labour Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalisation contribute to the promotion of these standards. We reject the use of labour standards for protectionist purposes, and agree that the competitive advantage of countries, particularly low-wage developing countries, must in no way be put into question. In this regard, we note that the WTO and the ILO Secretariats will continue their existing collaboration."[45]

This paragraph give rise to some questions: On the one hand labour standard issues are mentioned in a WTO document, on the other hand it excludes the addition of a social clause to the WTO agreement. The text appears to conclude that this is a matter for the ILO and not for the WTO. Some have interpreted this not as a complete exclusion of the matter from the WTO agenda, but rather as a starting point for a collaboration between ILO *and* WTO on this issue. The sheer fact that the question is mentioned indicates, to some, the importance that leading

[44] Leary (1997b).
[45] WT/MIN (96)/DEC/W 13 December 1996,

trading nations attribute to this question. "The failure of the Ministerial Declaration to close the door explicitly on any further consideration of the topic leaves open the likelihood that the issue will surface in other work of the WTO concerning, for example, labelling and investment." [46]

This opinion seems well in line with the following statement by the Director-General of WTO, Renato Ruggiero:

> "The increasing interdependence of the world economy underlines the necessity of having appropriate architecture to manage issues and policies which are becoming more interlinked. Finance, trade, development, environment, social issues are only some of those growing interrelations."[47]

It is worth noting that no issue of social clauses or labour standards were on the agenda for the Ministerial conference in May 1998.

The decision making process within the WTO is a heritage from GATT. The main rule is that decisions are to be reached in consensus, meaning that none of the members participating in the meeting where the decision is made, has any formal objections to the proposed decision. There is also a possibility of reaching majority decisions. This proceeding is open only if consensus cannot be reached. In most cases the decision can be made by a majority of the votes given. If there is a question on the interpretation of the WTO-treaty three quarters of the members must vote. To change some of the articles in the treaty members must agree.[48]

The provisions for adding a social clause to the WTO agreement and the widely differing opinions among the members render the prospect of such a clause rather bleak.

[46] Leary (1997b) 120.
[47] Address by WTO Director-General Renato Ruggiero given on 4 March 1998 in Washington DC to the Brookings Institution Forum "The Global Trading System: a GATT 50th Anniversary Forum".
[48] Articles IX:1–2

3.4 Other multinational trade agreements

Despite the efforts of especially the US Government no social clause has been incorporated in the GATT/WTO. On the other hand we find social clauses in multinational trade agreements with a more limited scope.

The United Nations Conference on Trade and Development (UNCTAD) has within its Framework of Integrated Program for Commodities negotiated a number of international agreements for different commodities, such as tin, sugar, natural rubber and cocoa. Several of these agreements contain a social clause. An example is article 45 of the International Tin Agreement (of 1982):

> "Members declare that, in order to avoid the depression of living standards and the introduction of unfair competitive conditions in world trade, they will seek to ensure fair labour standards in the tin industry."

The content of the clause is vague. It is formulated as a declaration of intent of the contracting parties and it only refers to fair labour standards, without an explicit reference to any ILO Convention. The agreement contains no special mechanism for control or sanction. Thus a violation of the social clause has to be handled in the same way as other breaches of the agreement, which includes a procedure before an especially established council. This council can, for example, suspend the contracting party from voting rights or even exclude it.[49] Due to the vague character of the clauses it is not likely that any actions grounded on these will ever be taken.

3.5 NAFTA

3.5.1 Introduction

The North American Free Trade Agreement (NAFTA) was concluded between Mexico, Canada and the United States in 1992. Through the agreement the parties have in a radical way reduced taxes and other barriers of trade, but no social clauses or labour standards are included. The agreement was heavily criticised for not taking environmental and labour

[49] Kullman (1980).

issues into account. Due to this criticism and the threat that the US Congress would not ratify the agreement, the NAFTA was supplemented with a side agreement on labour issues; The North American Agreement on Labour Cooperation (NAALC). NAALC was signed in 1993.[50]

3.5.2 A duty to enforce the member state's own labour law

The intentions of the NAALC are to improve the working conditions and living standard in each party's territory. Further the objective of the agreement is to ensure the enforcement of each country's own labour law, and not the application or enforcement of internationally recognised labour standards. This may seem peculiar, but is explained by the fact that Mexico, although having a legislation that copes with acceptable labour standard, is known to fail the enforcement of the law of the book.[51]

The NAALC allows, in theory, the member states to lower their local social standards. However, that could probably in some cases be in conflict with the NAFTA agreement as it forbids the members to attract investments from fellow member states.[52] Further, the agreement states that the parties – as "guiding principles" – are committed to promote "the most important internationally recognised labour standards" (freedom of association, the right to collective bargaining and the right to strike). Thus a radical limitation of this would probably be a violation of the agreement.

3.5.3 Dispute settlement procedure

One of the most important parts of the agreement is the formation of a dispute settlement procedure concerning the enforcement of the parties' respective labour law in the field of occupational health and safety, minimum wage, child labour and technical labour standards. The dispute settlement procedure is not applicable to enforcement of law concerning freedom of association, the right to collective bargaining or the right to strike.[53]

[50] Leary (1997) 205.

[51] Leary (1997) 206.

[52] Grossman et al. (1996)

[53] Leary (1997) 207.

The procedure is quite complex. In short, the agreement establishes a trilateral Commission on Labour Cooperation. This trilateral Commission consists of, inter alia, a National Administrative Office (NAO) in each country. The NAOs shall compile and transmit information to the secretariat of the Commission on Labour Cooperation and register complaints of non-enforcement of labour law. If a member state thinks that another member state has demonstrated "a persistent pattern of failure" to enforce any of the regulations mentioned above, proceedings may begin at the Labour Commission. If the Commission finds that a violation has occurred it may assess a monetary fine. If the fine is not paid, the complaining party may suspend the violator's tariff benefits by a duty increase for as long as it takes to collect the amount of the fine, or until an action plan is implemented. No punitive damage for the violated unions or workers is allowed.

The possible actions are consequently limited to enforcement of a country's own labour law and not the neglect of maintaining internationally recognised labour standards. Complaints concerning the latter issues can not be raised through the dispute settlement procedure.

The NAALC has been criticised as a weak instrument for protecting workers. The critics have focused on the fact that "internationally recognised labour standards" are not protected under the agreement. Another point of criticism is that the dispute settlement procedure is too complex and time consuming, so that a country wanting to obstruct has ample means to detain a possible sanction.[54]

[54] Leary (1997) 210.

4 The Generalised System of Preferences and bilateral trade agreements

4.1 The United States

As we have already seen, the United States have a long tradition of promoting social clauses in international trade. One of the means that the US uses to promote social clauses is by unilaterally attaching labour provisions to the Generalised System of Preferences (GSP).[55]

In accordance with the GSP programme the President of the US can grant trade privileges to certain products from developing countries. The Generalized System of Preferences Renewal Act of 1984 states that those preferences should be withheld or withdrawn

> "if such country has not taken or is not taking steps to afford internationally recognized workers' right to workers in the country."

Apart from the fundamental labour rights mentioned in section 2.4, the regulation also includes "acceptable" conditions of work with respect to minimum wages, hours and safety and health.

Similar provisions can be found in other trade related legislation, such as the Caribbean Basin Initiative, the Overseas Private Investment Corporation and the Omnibus Trade and Competitiveness Act of 1988.

With Charnovitz's terminology the Social Clause in the United States GSP refers to *incremental standards*.[56] The Clause does not point out any fixed standard that the country has to live up to. Instead the Clause refers to the progress that should be made. The country shall *take steps* to advance certain labour standards. Further, the clause refers to "internationally recognised" rights of workers, without specifically pointing out how these rights are to be interpreted. These two circumstances provide the one applying the clause a wide margin of appreciation in determining if a country has taken steps to afford internationally recognised workers' rights to its workers. This is especially worth noting

[55] Charnovitz (1987) and Leary (1997).
[56] Charnovitz (1986) 75.

since it is the President's discretionary judgement to decide on granting duty free treatment and other special preferences.

Due to this clause and to the fact that the application of the labour provisions has not been fully consistent, the provisions have been sharply criticised as aggressive unilatarism.[57]

4.2 The European Union

4.2.1 The Lomé Convention

The Commission of the European Union has often expressed the opinion that economic development is a necessary precondition for social progress:

> "It is axiomatic that improved social protection becomes a political objective in the developing countries as soon as national income reaches a level capable of sustaining such protection. The long term aim must therefore be to help these countries create the requisite conditions for promoting the growth of domestic demand and improving living conditions. (...) However, the need for development must not be taken as a pretext for abusive practices at the workplace or, particularly, to justify non-adherence to a universally agreed core of labour rights."[58]

Thus the European Union is anxious to promote fundamental labour rights as a means to endeavour working and living standards corresponding to the level of economic development and to the social structures of the countries concerned.

However, this is not done through separate "social clauses". Instead, the European Union has often chosen to use clauses by which the parties promise to respect human rights and democratic principles. Such a reference is considered to include the fundamental labour rights mentioned in section 2.4.

Human Rights Clauses have gradually been incorporated in the Union's contractual relations with third countries.[59] The Lomé Convention is a good example of this development.

[57] Leary (1997) 212.
[58] COM (96) 402 final 6.
[59] See for example Cremona (1996) and COM (95) 216 final.

The Lomé Conventions is an agreement between the European Union and some African, Caribbean and Pacific States on co-operation in the development of all economic sectors, and in matters of cultural, social and regional co-operation and the protection of the environment.

In 1978 the EEC tried to incorporate a social clause in the Convention. Due to strong protests, saying that it was an instrument of protectionism, the proposal was withdrawn. When the fourth Lomé Convention was signed in December 1989 a human rights clause where included. This clause did not provide any clear legal basis to suspend or denounce the agreement in case of serious human rights violations. Such a legal base was introduced through the amendment signed on Mauritius in November 1995.

In article 5 of the Convention, the contracting parties state that respect for human rights, democratic principles and the rule of law constitute an essential element of this Convention. If one party considers that another party has failed to fulfil one of these obligations it shall invite the latter to hold consultation. If no solutions are found during the consultation, the party which invoked the failure to fulfil an obligation may take appropriate steps, including partial or full suspension of the application of the Convention. It is understood that suspensions would be a measure of last resort (article 366a).

4.2.2 Bilateral trade agreements

The EU is also a party to trade agreements with separate countries. Since 1992 all bilateral trade agreements concluded by the European Union include a clause defining human rights as a basic element of agreement. The clauses concluded since 1995 are fairly standardised. They normally read:

> Respect for democratic principles and human rights established by the Universal Declaration of Human Rights [the Helsinki Final Act and the Charter of Paris for a new Europe], as well as the principles of market economy, inspire the domestic and external policies of the Parties and constitute essential elements of the present association. [60]

[60] OJ (1994) L 359/1, OJ (1998) L 68. See also OJ (1998) L 72.

Clauses like this make it possible for the EU to discuss human rights with the country concerned, without being accused of intrusion in the country's internal affairs. If a country should not comply with its duties according to the agreement the EU can take "appropriate measures"[61], such as withdrawal of trade advantages or the financial aid. According to international law it also enables the EU to suspend the treaty as a measure in case of severe human rights violations.[62]

4.2.3 The Generalised System of Preferences

Since 1995 the Union's Generalised System of Preferences (GSP) contains social clauses.[63] These permit two different kinds of measures:

First, provided preferences may be withdrawn if a country practices any form of forced labour (as defined, inter alia, in ILO Conventions Nos. 29 and 105) or where export goods are made by prison labour. A decision on withdrawal is taken by the Council on proposal from the Commission following an inquiry into the matter. In March 1997 the Council temporarily withdrew the access to tariff preferences from the Union of Myanmar (Burma) because of its use of forced labour.[64]

The second measure has a more promoting character. As from 1998 special incentive arrangements in the form of additional preferences may be granted to beneficiary countries, which have adopted and actually apply standards consistent with ILO Conventions Nos. 87 and 98 (freedom of association) and No. 138 (minimum age).

The implementation procedures and the degree of preferences granted (supplementary margin) will be defined on the basis of a Commission report which will take into account the results of studies carried out by other international bodies such as the ILO, WTO and OECD.

[61] OJ (1996) L 68 article 122:2 and OJ (1998) L 72. article 18.
[62] Waer (1996) 25–42.
[63] Council Regulation (EC) 3281/94. See also Council Regulation (EC) 1256/96.
[64] Council Regulation (EC) 552/97.

5 Voluntary codes of conduct and social labelling

5.1 International codes for multinational enterprises

One way of promoting international labour standards is through voluntary codes of conduct for multinational enterprises. Such codes have been developed by international organizations, for instance the United Nations[65] and the OECD.[66]

In 1977 the ILO adopted a *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy.* The Declaration is not addressed only to the governments, but also directly to, inter alia, multinational enterprises. It covers all of the fundamental labour rights mentioned in section 2.4. The Declaration is not binding. Nevertheless a procedure for review of the application of the Declaration is established. Every third year the ILO Committee of Multinational Enterprises analyses replies from the parties on the obedience of the Declaration. There is also a procedure of examination of disputes concerning the interpretation of the provisions in the Declaration.[67]

In September 1997 a Code of Conduct was signed by the *social partners of the European textile and clothing sector*; the European Trade Union Confederation for Textiles, Clothing and Leather (ETUC:TCL) and The European Apparel and Textile Organisation (EURATEX). The parties call on their members to encourage actively the companies and workers of the European textile and clothing industry to comply with the fundamental labour rights mentioned in section 2.4. These standards are identified by a reference to the relevant ILO Conventions.[68] The parties call on their respective member organizations, i.e. national employers' organizations and trade unions, to adopt the charter and implement it at the company level. This has already been done in several countries, for instance Belgium, Finland and Italy. The ETUC:TCL and the EU-

[65] United Nations Conference on Restrictive Business Practice, Multilaterally Agreed Equitable Principles for the Control of Restrictive Business Practices (U.N. Doc. TD/RBP/Conf/19; May 2, 1980).

[66] OECD (1994) 192–199.

[67] OECD (1994) 190–192.

[68] No reference is made to the ILO Convention no. 100 concerning Equal Remuneration.

RATEX will conduct a yearly evaluation to follow up the implementation of the Charter.

5.2 The Sullivan Code and other US business codes

During the last decades several voluntary business codes have been established in the United States to promote international respect for workers' rights.[69] The initiative to those codes has mainly been taken by individual persons or private organizations. A famous example is the principles for employment policies of US companies acting in South Africa, which were introduced by a pastor in the Zion Baptist Church In Philadelphia, Rev. Sullivan.

These voluntary codes are designed as principles for the conduct of US multinational enterprises when operating in certain parts of the world, such as South Africa and the former Soviet Union. Some codes deal exclusively with labour standards, others have a broader content but include labour standards. Most of these codes are concerned with the behaviour of the US corporations, but in some cases they also require foreign subcontractors or suppliers to act in line with the codes. For example, Levi Strauss in 1982 issued a set of guidelines regarding, among other things safety standards and employment practices. These guidelines also apply to contractors and suppliers who provide labour and/or material used by Levi Strauss. Further it is worth noting that at least one of these codes – the Sullivan principle – has been codified by an act of the US Congress, and thereby made applicable to all US companies active in the South Africa.

5.3 Social labelling

The idea behind social labelling is to engage the market forces to promote fair labour standards. By a label on a product the consumers are informed that it is produced in accordance with a certain standard, for

[69] For the following see Perez-Lopez (1993).

instance that it is not produced by children.[70] Since consumers are assumed to prefer goods produced under fair and acceptable working conditions, merchants observing these standards will gain economic advantages.

The labelling system has a long history. In 1899 the National Consumer League of the United States introduced "the White Label" which assured consumers that products, mainly stitched cotton underwear, was produced under decent working conditions and without child labour. In recent years social labelling has gained renewed interest, especially labels attesting that illegal child labour is not used in the manufacturing. The most well-known example is probably the label *Rugmark*, which is used on handmade rugs. The labelling method is also very common as a warrant of environmentally healthy products, and has in that area been very successful.

What results could be gained by social labelling? There are no studies which provide firm answers to the question. We know that there has been a significant decline of child labour in India after the introduction of Rugmark in 1994, but it is not possible to tell what part the labelling has played in this development. Professor Janet Hillowitz, who has studied the labelling of child labour products on behalf of the ILO, has concluded that labelling may reduce the number of employed children and improve the conditions for some still at work, although it is too early to tell what impact it will have on combating child work in the future.

The system of social labelling is usually introduced and administrated by private agencies or non-governmental organizations. It is based on voluntary participation of merchants and consumers, who freely choose to acquire, or not acquire, the labelled commodity. Due to this voluntary approach, labelling systems are more likely to be carried out than for instance social clauses in multinational trade agreements.

Notwithstanding this, there are several obstacles to making a labelling system work. As Hillowitz has pointed out, there is a very large set of actors who have to work together: child workers, producers and employers, exporters, importers, consumers, etc. Since all these actors have different interests and concerns, it is not an easy task to make them cooperate.

[70] About social labelling, see OECD (1984) 200–202, Hillowitz (1997) and (1998).

Another crucial problem is how monitoring and inspection is to be organised. In some cases an independent inspection operation is set up, while in other cases the inspection is left to the exporters in the producer country. A commonly thought that the latter is not a satisfactory means to guarantee the credibility of the labels, which are needed to make the system work in the long run.

One way of increasing the credibility would be to engage for instance the ILO in the supervision of the labels. The Director-General of the ILO has in several speeches implied ideas in that direction, but, as far as we know, no concrete proposals have been put forward.[71]

6 Concluding remarks

In this report we have tried to describe different means to promote fair labour standards in a global setting. The report has shown an impressive number of initiatives, taken in many different fora, and the list could easily have been made longer. These earlier efforts constitute a rich fund of experiences to take into account when discussing the possibility of promoting international labour standards through social clauses. We will end this report by briefly pointing to some of the questions that have to be raised in this discussion.

The first question is *which aims* social clauses should have. The answer to this question has an impact on, for instance, how a social clause is to be designed.[72] In section 1.3 we distinguish between three main arguments: to protect/promote labour standards in the proponent's own country, to protect the free trade system from protectionist demands and to improve the conditions for foreign workers. In a global perspective the last argument is, in our view, the strongest, and the following discussion will be based on that assumption.

The next question is *what forum or fora* should deal with labour standards. There are several reasons to prefer a *multilateral approach*, rather then bi- or unilateral approaches. First, social clauses negotiated in a multilateral procedure are more likely to be generally accepted. There is an obvious risk that unilaterally implemented social clauses will reflect

[71] For example in a speech in Amsterdam, 23 January 1997. Speeches of the Director-General is available on the ILO:s homepage (www.ilo.org). See also ILO (1984) 65.
[72] Hansson (1983) 174.

protectionist interests rather than a concern for the workers in other countries. Further, the social clauses introduced in a world-wide manner are likely to be more effective. For instance, such an approach could probably contribute to prevent social dumping between developing countries (see page 5). From this point of view a multilateral approach is to be preferred. But is such an approach possible?

In an overall perspective the ILO has been quite successful in working out internationally accepted labour standards. This is often explained by the voluntary approach of the organization. A threat of sanctions is said to discourage states from ratifying conventions or joining the ILO.[73] Yet the lack of effective means of enforcement has set limits for the organization. The aspirations to place social clauses in multilateral trade agreements with better means of enforcement, such as the GATT and the WTO, have not led to any significant result. The recent discussion in the ILO and the WTO (section 2.3 and 3.3.3) makes the establishing of a sanction-based linkage between ILO standards and global trade look unrealisable, at least in the short run.

The existing social clauses have a more narrow scope of application. There are several examples of social clauses in *bilateral trade agreements and unilateral arrangements*. In these fora the positions of the United States and the EU are so strong that the other parties have accepted the social clauses. The way in which these clauses are introduced opens up for criticism of disguised protectionism (which in some cases seems well grounded). The same kind of critique could be put forward against initiatives taken by multinational enterprises, trade unions and non-governmental organizations, based in the developed countries.

Here we encounter a problem. The multilateral approach (ILO/WTO) seems to be blocked and the other approaches suffer from lack of legitimacy. One way of tackling this could be to give the social clauses introduced by the EU, single countries or NGOs a form which diminishes the risk of being accused of protectionism.

[73] ILO (1994) 55.

A third question is *what labour standards* the social clause ought to cover. In order to limit the risk of protectionism, the social clause should refer to labour standards that are internationally recognised. Such labour standards are found in the basic human rights documents, such as the United Nations' Universal Declaration of Human Rights and the European Convention of Human Rights, and in some ILO Conventions. Further preference should be given to labour standards which will not (to any large extent) increase the labour costs for the developing countries, but rather aim at giving the workers a means to, individually or collectively, claim "a just share of the fruits of progress".[74] The fundamental labour rights mentioned in section 2.4 seems to be well in line with these criteria. As we have already seen, there is a remarkable consensus on giving priority to the observance of these standards.

A final question is *how to enforce* the social clauses. It is of great importance to organise the enforcement in a way which does not invite accusations of disguised protectionism. If sanctions for breach of a social clause lie mainly in the hands of one of the contracting parties (like in the GSP-arrangements, section 4.1 and 4.2.3) there is a great risk of opportunistic behaviour. Thus the supervision of the clauses should be left to an independent body. The ILO has a long tradition of handling supervision of the obedience to international labour standards. Perhaps it would be possible to make it optional for parties to bilateral trade agreements, voluntary codes of conducts or social labelling to refer disputes to the supervisory machinery of the ILO.

One conclusion which could be drawn from this survey is that there are no single solution to the problem of how promote international labour standards. Instead we have to use a multi-track approach, and the most important question is not which track is most effective, but which tracks are possible.

[74] The Declaration of Philadelphia.

Writings concerning social clauses and international labour standards

Arthurs, H., Labour Law Without the State, vol. 46. University of Toronto Law Review, pp. 1–45 (1996).

Betten, L., International Labour Law – Selected Issues, Kluwer, Deventer (1993).

Cair, G., Labour Standards and International Trade. In Sengenberger & Campbell (eds) International Labour Standards and Economic Interdependence. International Institute for Labour Studies pp 297–318 (1994).

Charnovitz, S, The world Trade Organization and Social Issues. Journal of World Trade vol. 28 pp 17–33 (1994).

Charnovitz, S., Fair Labor Standards and International Trade. Journal of World Trade vol. 20 pp 61–78, (1986).

Charnovitz, S., The influence of International Labour Standards on the World Trading Regime: A Historical overview, International Labour Review pp 565–584, (1987)

Communication from the Commission to the Council. On the Inclusion of Respect for Democratic Principles and Human Rights in Agreements Between the Community and Third Countries. COM (95) 216 final.

Communication from the Commission to the Council. The trading system and internationally recognized labour standards. COM (96) 402 final.

Compa, L., Labor Rights and Labor Standards in International Trade. The International Journal of Georgetown University Law Centre, No 25 pp 165–191(1993/1994).

Cremona, M., Human Rights and Democracy Clauses in the EC's Trade Agreements. In Emiliou & O'Keeffe, The European Union and the World Trade, John Wiley & Sons, Chichester (1996).

Edgren, G., Fair Labour Standards and Trade Liberalisation. International Labour Review, Vol. 118, 523–535 (1979).

Follows, J.W., Antecedents of the International Labour Organization. Clarendon Press, Oxford (1951).

Grossman, H. & Koopman, G., Social Standards in International Trade, a new protectionist wave? In Sander, H et al (eds) World trade after the Uruguay Round pp 115–133, Routledge (1996).

Hansson, G., Social Clauses and International Trade, Croom Helm (1983).

Hepple, B., New approaches to International Labour Regulations, Industrial Law Journal, Vol. 26 pp 353–365 (1997).

Hilowitz, J., Labelling Child Labour Products – A preliminary study, (http://www.ilo.org), ILO (1998)

Hilowitz, J., Social labelling to combat child labour: Some considerations, International Labour Review, Vol. 136 No 2 (1997).

ILO, International Labour Standards – A Worker's Educational Manual. International Labour Office (1990).
ILO, Standard Setting and Globalisation. Report of the General-Director, International Labour Conference (1997).
ILO, Defending Values, Promoting Changes. Report of the General-Director, International Labour Conference (1994)
ILO, Freedom of Association, Digest of decisions and principles of the Freedom of Association Committee of the Governing Body, 4th edition (1996).
ILO, Human Rights – A Common Responsibility. Report of the General-Director, International Labour Conference (1988)
Krüger, K., Nielsen, R. & Bruun, N., European Public Contracts in a Labour Law Perspective. DJØF Publishing (1998).
Kullman, Ü., "Fair Labour Standards" in International Commodity Agreements. Journal of World Trade vol. 14, pp 527–535. (1980)
Leary, V., The WTO and the Social Clause: Post Singapore, European journal of International Law, No 8, pp 118–122 1997 (1997b).
Leary, V., Workers Rights and International Trade: The Social Clause (GATT, ILO, NAFTA, U.S. Laws), In Bhagwati & Hudec (eds), Fair Trade and Harmonization, vol 2: Legal Analysis, The MIT Press 1997.
Lee, E., Globalization and Employment: Is Anxiety Justified? International Labour Review vol. 135, pp 485–497 (1996).
Lee, E., Globalization and labour standards: A review of the question, International Labour Review vol. 136, pp 173–190, (1997)
Long, O., Law and its Limitations in the GATT Multilateral Trade System. Graham & Trottman/Martinus Nijhoff Publishers (1987).
Maskus, K. E., Should Core Labor Standards Be Imposed Through International Trade Policy?, The World Bank Development Research Group, Policy Research Working Paper 1817 (1997).
McGovern, E., International Trade Regulation, Globefield Press (1995).
Myrdal, H.G. The ILO in Crossfire: Would it Survive a Social Clause. In Sengenberger & Campbell (eds), International Labour Standards and Economic Interdependence. International Institute for labour Studies pp 339–356 (1994).
OECD, Trade and Labour Standards. A Review of the Issues (1995).
OECD, Trade, Employment and Labour Standards. A Study of Core Workers' Right and International Trade (1996).
Perez-Lopez, J.F., Promoting International respect for Workers Right Through Business Codes of Conduct. Fordham International Law Journal Vol. 17 1–47, (1993)
Qureshi, A.H., The World Trade Organization: Implementing Trade Norms (1996).
Servias, J.-M., The social clause in trade agreements: Wishful thinking or an instrument of social progress?, International Labour Review vol. 128, pp 423–432 (1989).

Stone, K., Labour in the Global Economy: Four Approaches to Transnational Labour Regulation. In Bratton et al. (eds.) International Regulatory Competition and Coordination. Oxford University Press (1996).

Swepston, L, Supervision of ILO Standards. The International Journal of Comparative Labour Law and Industrial Relations, pp 327–344 (1997).

Valticus, N. & von Potobsky, G. "International Labour law". In Blanpain (ed.) International Encyclopaedia For Labour Law and Industrial Relations (1994).

Van Liemt, G., Minimum Labour Standards and International Trade: Would a social clause work ? International Labour Review, vol. 128 pp 433–448, (1989).

Waer, P., Social Clauses in International Trade – The Debate in the European Union. Journal of World Trade, pp 25–42 (1996).

Wedderburn, Lord, Consultation and Collective Bargaining In Europe: Success or Ideology?, 26 Industrial Law Journal pp 32–33, (1997)

Wilcox, C., A charter for World Trade (1972).

Working Party on the Social Dimension of International World Trade, "The Social Dimension of Liberalisation Of World Trade", International Labour Office, Governing Body, 261st Sess., ILO Doc GB 261/WP/SLD/1 (1994).

WTO, Singapore Ministerial Declaration, 1996-12-13.

WTO, Trading Into the Future, World Trade Organization (1995)

Summary

International labour standards can be promoted in different fora and in various ways. The aim of this report is to survey in which international fora the need of international labour standards has been discussed and which results the debate has yielded in the form of proposed or adopted conventions and other legal acts.

First of all we find international labour standards in the form of conventions and recommendations from the ILO. The ILO has been quite successful in working out internationally accepted labour standards, but there are no effective sanctions connected to the standards. This is one of the reasons that the possibility of including social clauses in trade agreements are discussed. By a social clause the parties promise to comply with certain labour standards or run the risk of being confronted with trade barriers. Social clauses have been discussed in connection with the ITO, GATT, WTO, but so far no social clause has been included in the agreements. On the other hand we find social clauses in NAFTA and in different bilateral trade agreements and unilateral trade arrangements. A different approach to promote labour standards is through consumer or trade union boycotts, voluntary codes of conducts or through systems of labelling.

In the review of proposed or adopted legal acts we mainly raise questions on how the international labour standards are adopted (for instance uni- , bi- or multilateral), on which labour standards do the legal acts cover, how is the observance of the acts organised (review, supervision etc.) and which sanctions do the acts provide.

National Institute for Working Life

The National Institute for Working Life is Sweden's center for research and development on labour market, working life and work environment. Diffusion of information, training and teaching, local development and international collaboration are other important issues for the Institute.

The R&D competence will be found in the following areas: Labour market and labour legislation, work organization and production technology, psychosocial working conditions, occupational medicine, allergy, effects on the nervous system, ergonomics, work environment technology and musculoskeletal disorders, chemical hazards and toxicology.

A total of about 470 people work at the Institute, around 370 with research and development. The Institute's staff includes 32 professors and in total 122 persons with a postdoctoral degree.

The National Institute for Working Life has a large international collaboration in R&D, including a number of projects within the EC Framework Programme for Research and Technology Development.

Arbetslivsrapporter is published by Arbetslivsinstitutet.
Additional copies can be ordered from:

Förlagstjänst
Arbetslivsinstitutet
S-171 84 Solna, Sweden

Tel: +46-8-730 98 00
Fax: +46-8-730 98 88
E-mail: Forlag@niwl.se

Arbetarskyddsstyrelsens tryckeri 1998
ISSN 1401-2928