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The Social Clause and Sustainable Development

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FOREWORD

It is hoped that this paper will continue to contribute in a meaningful way to the debate on trade and the social clause by providing a complementary analytical framework to look at the relationship between labour standards, trade, and sustainable development. The sustainable development perspective, which stems from concerns on equity, fairness and effective and rational use of resources, provides innovative and interesting avenues for action in this field. This study seeks to review and synthesize the relevant literature, help build bridges between the various issue areas and actors involved in the debate, and facilitate constructive dialogue. Hence, it simultaneously targets the audiences, immediate stakeholders –academia, policymakers, and NGOs– whose concerted efforts are continuously called upon to meet the challenge of shifting the global and domestic policy environments towards sustainable outcomes.

Since the time we set to cover this highly controversial subject, in the aftermath of the Singapore Ministerial Meeting of the WTO, a great deal of developments have taken place particularly in terms of bringing the divides closer on the fundamentals. Notwithstanding apparent emerging progress on the “how”, and an explicit general shift away from a sanctions-based approach, defining appropriate homes seems still elusive. This study indicates that there is scope, and need, for action at all levels. At the theoretical level, more comprehensive models could be developed and much evidence awaits to be gathered on the impact of trade on labour; in particular, ways must be found for measuring all costs and benefits, including social ones, associated with higher labour standards. Currently, these measurement problems, due to the nature of labour standards, make it very difficult to assess material injury or to calculate margins of dumping under the WTO trade regime, except in the case of forced labour. Second, at the level of civil society, there is much scope for raising awareness and undertaking implementation at the grass-root level. The informal sector in particular remains difficult to reach for state agencies. However, unless labour standards achieve universal coverage, trade sanctions might backfire and push bad labour practices further away from scrutiny. At the policy level, the necessary political will is still wanting to find mutually agreeable solutions, devise innovative instruments, improve participatory decision-making processes and benefit sharing. Labour peace ensures social and political stability, the single most important factor for foreign and local investors and employment creation. And, no single forum is best suited for the task, hence, the multi-pronged approach.

A special effort has been made in this paper to clarify conceptual issues and to explain many of the theoretical underpinnings of the debate. Indeed, much of the disagreement is more apparent than real because, upon closer scrutiny, proponents seem not to be talking about the same things. The enclosed glossary facilitates reading for those unfamiliar with economic terms, although the paper remains purposely non-technical and policy-oriented.

The debate on the social aspects of trade will most likely take time to resolve. This is a most disturbing and disheartening reality in face of the starkly grave evidence of growing inequity in the World and the persevering unfairness embedded in the current trade agreements and their implementation. Immobility on this one, as on other critical issues, is often the result of policy formulation processes that fail to involve stakeholders. It is also a reflection of a lack of a shared higher vision for trade policy, and the subsequent necessary political will to shift its purpose towards the public interest. As the debate evolves, we look forward to the opportunity to contribute to it by bringing to the table the sustainable development perspectives and the weaker and/or excluded actors.

Ricardo Meléndez-Ortiz
Executive Director

EXECUTIVE SUMMARY

Social clauses strictly speaking endeavour to set the social rules of trade, and refer only to core labour standards as enshrined in ILO Conventions. Core labour standards are considered enabling human rights; they set standards concerning processes (e.g. freedom of association). They seek to realise the conditions reflected in the very strong assumptions underlying neo-classical economic models, namely freedom of choice, equal bargaining power, and full information. When these conditions are not fulfilled, labour standards cannot be viewed as representing a social choice. Substantive labour standards, on the other hand, set standards concerning *outcomes* (e.g. actual wage levels or the specific content of health and safety standards). Hence, unlike substantive labour standards, core standards do not bear much on production costs (with the exception of forced labour and slavery). They do not impair a country's relative comparative advantages.

Nearly all states have endorsed core labour standards, at least on paper, either by ratifying relevant ILO Conventions or the International Covenant on Economic, Social and Cultural Rights of the United Nations (1966). Yet, an important implementation gap remains.

Labour standards make economic sense, although this case can be difficult to defend because costs immediately appear on firms' balance sheet whereas benefits are often delayed, non-local, hidden, intangible and extend beyond the firm. Labour standards in general can become the source of competitiveness and economic dynamism as they transform the production process. Labour standards aim at correcting market failures, internalising social externalities associated with firms' activities, and thus improve factor allocation consistent with the general good. It follows that bad standards would not drive out good ones. Nor do labour standards as such create distortions or impede economic growth, except when their design and implementation is inadequate. Moreover, they may provide valuable mechanisms for "greening" production and ensuring more equity, consistent with sustainable development. Core labour standards in particular, as human rights, which set the "right tone", would be a prerequisite to embark on a *sustainable* growth process from the start, while some substantive labour standards would follow in the wake of economic development.

Non-enforcement of labour standards, on the other hand, may entail staggering costs to society at large as well as to neighbouring countries (but not necessarily trading partners), because of the links between: labour standards, working poverty, social problems and public health, social unrest, and displacement of people; or poverty, environmental degradation, and displacement of people; or lax enforcement of labour standards, major industrial accidents, and their harmful social and environmental effects. Sustainable development demands that we account for such interdependencies and adopt a holistic approach.

Lax enforcement of labour standards is therefore not merely a moral concern, but first and foremost an economic one, including for the international community at large. This provides a justification to press for more aid in the form of technical assistance, training, and financial assistance to raise labour standards in general. Such assistance would be a first step in the implementation of social clauses, sanctions remaining measures of last resort. Granting trade preferences might also be considered in this context, although there is no guarantee labour will benefit from such measures.

Social clauses restricted to trade will have a limited impact on labour standards in general. Moreover, trade sanctions might backfire. Fear of sanctions might encourage firms to extend informalisation of employment, outsourcing, and subcontracting in order to circumvent labour regulations. Bad labour practices might be driven further underground safe from scrutiny and sanctions. Therefore, the real issue would be to ensure universal coverage for core labour standards in particular, reaching informal sector workers, homeworkers, and technically "self-employed" outworkers and subcontractors. But, at the

same time, good employers, not bad ones, have provided the impetus to move forward by setting an example. Thus, even a limited coverage would nevertheless be valuable.

Universal coverage and effective implementation of labour standards, however, challenge unions to adopt new strategies and programs, or to create new institutions extending beyond their current focus on defence of pay, working conditions, and jobs. The scope of unions' activities is too narrow for several reasons: because of blurring boundaries between labour and management; to meet the challenge of industrial restructuring and labour redeployment; to embrace the wide variety of work arrangements, including self-employment, family labour, and interlocking transactions; and to reach the informal sector. Capacity building of, and coordination with, other informal and traditional institutions to build a broad coalition might offer an effective avenue for extending coverage to the informal sector, or rather, to harmonise "formal" and "informal" labour standards. Non-governmental organisations (NGOs) might act as relays in two-tier arrangements to help bridge this gap. In any case, labour standards must be complemented with other measures to ensure a certain degree of fairness and equity in all forms of employment, but also just for an effective implementation of labour standards themselves. For example, good governance programs could be utilised to enhance union-management cooperation.

Where violations of core labour standards coincide with non-respect of other human rights (as can be expected), more targeted pressures than trade sanctions might be more suitable. The UN would therefore seem to provide a more appropriate forum for an assessment of the situation, in coordination with other agencies. In principle, and notwithstanding some reforms, the UN could adopt a broader range of sanctions than the WTO. The issue would no longer be trade liberalisation, nor labour standards strictly speaking, but violation of human rights at large and good governance.

Emphasising the human rights nature of core labour standards, in accordance with the terms of the International Covenant on Economic, Social and Cultural Rights, would imply that these fundamental rights should take precedence over WTO trade rules. Prior amendment of trade rules should not be necessary to apply this principle, consistent with the need for coherence among international instruments.

However, under current WTO trade rules, it would be difficult to adopt remedial measures even if breaches in (core) labour standards could be taken into consideration. It is a system of compensation for the actual material damaged incurred by an importing country. Therefore, margins of dumping must be calculated. This in turn implies that "normal" wages must be available to estimate what "normal" production costs would have been in the absence of "social dumping." But such "normal" wages will in most instances not be available, except for forced labour. Hence, importing countries would not be able to assess material injury, even less to calculate commensurate anti-dumping duties, in order to apply remedial measures. In the case of forced labour, one might wonder whether the appropriate response would consist of levying anti-dumping duties, which, under WTO trade rules, should only seek to remove injury to *importing* countries, but not to change domestic policies of offenders. Current proposals for an actual system of trade sanctions would therefore represent a major departure from WTO practices.

More generally, trade liberalisation causes problems to poorer countries, and at times negatively affect wages and working conditions, partly because WTO trade rules and practices do not account sufficiently for their specific circumstances. Social clauses and trade sanctions will not redress these structural imbalances. More comprehensive measures are called for in collaboration with other international agencies.

The strongest case for social clauses probably arises with respect to multinational enterprises (MNEs), which determine most trade. Their production strategies have become global. Their revenues exceed

the GNP of some countries. They begin to escape state control and, as a result, their private interests are no longer subsidiary to the general good. States scramble to attract MNEs, probably engaging at times in excessive competitive bidding and unnecessarily suppressing core labour standards. MNEs, like large employers in general, usually provide better work conditions for their core of permanent staff. But this does not account for poor working conditions and wages among subcontractors and suppliers. Union avoidance appears to be a major problem of MNE conduct, but seems to reflect the cultural ethos of American parent companies. Union avoidance as such finds little economic justification since employers gain from cooperative labour relations.

Confronting globalised entities and business strategies, governments, labour, and MNEs themselves would gain from cooperation and a more uniform set of labour standards. States and labour would gain because regulations should match the size of the market to be effective, and MNEs could also benefit because it would reduce the cost of learning about, and complying with, labour codes. In addition, it might help reduce harmful tensions, which hamper full realisation of the potential of MNEs. But, in this case, social clauses need not be restricted to core labour standards. In fact, their coverage should embrace a broader range of standards and issues, setting comprehensive framework conditions, in order to ensure MNEs' activities concur with the global good; avoid strangling the egg-laying goose; and meet the challenges of globalisation and of sustainable development. In other words, this would mean extending the coverage of, and giving binding force to, MNEs' voluntary codes of conduct, on the basis of relevant ILO conventions.

Sustainable development demands that we reinvent growth, emphasising qualitative improvements rather than unrelenting quantitative increases, which no longer seem feasible. This process calls for comprehensive changes. It should not frighten us, but challenge us to enhance cooperation and adopt a more holistic, systemic, and evolutionary approach. The narrow focus of self-interests, and of the additive utilitarian paradigm, has little to offer in this respect. They cannot generate synergies, which call for another mindset altogether, synergies that portend the potential for leaping forward. Higher labour standards could provide an avenue for improving cooperation and labour-management relations in order to set synergies in motion.

INTRODUCTION

The social clause is one of the most hotly debated issues in multilateral trade negotiations and dates back to their inception. Article 7 of the Havana Charter (1948), which never came into force, already explicitly linked trade with the maintenance of labour standards.¹ The objective is to establish a uniform set of minimum social protection to ensure fair and equitable trade, curbing potential negative social effects of trade liberalisation and granting labour its fair share of the benefits. It seeks to ensure that social progress and trade liberalisation go hand in hand. However, it does not aim at, nor can it achieve, equalisation of production costs across nations such as by instituting some sort of common minimum wage. The social clause merely aims at setting the "social rules of the game" in the international trading order, in particular by ensuring consultation among all parties; what agreement they ultimately reach and its specific content is up to them.²

The US reintroduced the issue in multilateral trade negotiations of the Uruguay Round. At the Ministerial Conference in Marrakesh (1994), which formally concluded the Uruguay Round and established the World Trade Organization (WTO) as successor to the General Agreement on Tariffs and Trade (GATT), the US together with France, most notably, succeeded in placing this "new" issue on the agenda for discussion of the new organisation.

Most Southern governments (the G77) oppose any linkage between trade and labour standards, for fear of losing their comparative advantage of low labour costs and Northern countries using the social clause as disguised protectionism. They argue that raising labour standards is a problem of development. In any case, the social clause in the WTO is the wrong way of protecting workers' rights; it would simply give more power to a "select club" which is controlled by those who wish to exploit them. Northern countries and trade unions, on the other hand, fear "social dumping" and "unfair" competition from less industrialised nations, which most heavily affect unskilled workers (in the North). They are also concerned that globalisation will drive labour standards down, North and South. Taking the labour dimension of trade liberalisation into consideration might therefore help buttress public support for the WTO, provided it does prove fair and equitable. Notably, a survey of 67 Southern and Eastern European organisations (NGOs, trade unions, and research centres) found 91% of those polled in favour of a social clause. Two other studies, which used a somewhat different methodology, obtained less favourable responses.³ Nevertheless, the North-South rift is probably less sharp than government positions indicate. Official positions of Southern governments can equally be questioned, not merely those of Northern ones.

At the Ministerial Conference of the WTO in Singapore (1996), labour standards were one of the main topics, if not the main one, even though it was not listed on the agenda. In the official declaration, which represented a breakthrough but also a difficult compromise, Trade Ministers affirmed:

4. *We renew our commitment to the observance of internationally recognized core labor 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 liberalization contribute to the promotion of these standards. We reject the use of labor standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage*

1. For a historical overview of attempts for linking trade and labour standards, dating back over 100 years, see: Hansson (1983); and Charnovitz (1987).

2. ILO (1994b), p. 10.

3. Egger and Schümperli (1996). For a review of the position of various organisations, see: Shaw (1996).

developing countries, must in no way be put in question. In this regard, we note that the WTO and the ILO Secretariats will continue their existing collaboration.

6. *In pursuit of the goal of sustainable growth and development for the common good, we envisage a world where trade flows freely. To this end we renew our commitment to: a fair, equitable and more open rule-based system; . . .*⁴

The existing collaboration between the ILO and WTO, however, really meant none.

Emboldened by the outcome of the World Summit for Social Development held in Copenhagen (1995) and the Singapore Ministerial Declaration, the ILO has taken several initiatives for strengthening its standard-setting function. In 1995, it launched a ratification campaign of the seven core Conventions. At the annual conference of 1997, the Director-General proposed a social labelling scheme, which was subsequently abandoned.⁵ And in 1998, it adopted the Declaration on Fundamental Principles and Rights at Work. It made the novel case that *all* ILO Members, by their very acceptance of the ILO Constitution, had an obligation to respect, realise and promote core labour standards, even if they had not ratified the relevant conventions. Thus, it instituted an annual review mechanism to encourage non-ratifying states in their efforts. The review is promotional in nature and highlights technical cooperation as the central means for achieving that objective. An annual Global Report will be commissioned on one of the four categories of fundamental rights to review the effective implementation of these rights by both ratifying and non-ratifying countries.

Finally, at the WTO Ministerial Conference in Seattle, LDCs were more united than on no other issue in their opposition to any linkage between core labour standards and the multilateral trading system. The US proposed a WTO working group on the subject and the EU a joint ILO/WTO forum. It appeared that four-fifth of WTO Members were opposed to both.⁶

The content of the Singapore Ministerial Declaration raises important questions which will be briefly discussed in this paper, namely the links between labour standards, trade liberalisation, environmental concerns, and development. The goal of sustainable development already featured in the Preamble of the Marrakesh Agreement Establishing the World Trade Organization (1994), which rightly should be our main preoccupation at this critical point of human history and represents a major change in orientation for the multilateral trade regime. Thus, this paper approaches the debate from the perspective of sustainability, which sheds a somewhat different light on these issues. Indeed, when the prospects of quantitative growth are questioned, and growth can no longer be offered as a cure for poverty, then *qualitative* and *distributional* aspects come to the fore, together with the need for participation and consultations at all levels to maintain social cohesion and dynamism. Otherwise the system breaks down.⁷ The social clause is about improving dialogue. Adopting a sustainable development perspective thus recenters the debate on human resource development and the long-term view. It also helps resolve seeming contradictions and false trade-offs, which will be clarified in this study, while developing the point that core labour standards are a prerequisite for sustainable

4. WTO (1996).

5. ILO (1997b).

6. "Confidence-Building" (2000).

7. Mr. Buiatti made an interesting (3 pages) comment which develops this point from a biotechnological perspective:
Living beings in the biosphere are a network of dynamically interactive elements such that any action on one of them has positive and negative feedbacks on part of the net. Changes in the elements of the net are not additive, but . . . their effects are better represented by power functions. All biological systems are therefore built on correlated elements and the correlation rules are very important for the survival of the system itself. . . . Introducing noise in the system, and breaking connections, is allowed only if it is within the homeostatic capacity. After a certain threshold of noise, the recovery is impossible and the system collapses.

development. This approach might provide an avenue for mustering the necessary political will and overcoming the current deadlock.

Section 1 defines the concept of sustainable development and the content of social clauses. Currently, proposals for a social clause in the multilateral trading system only cover so-called core labour standards. But since social clauses ultimately aim at raising labour standards in general, the analysis throughout the paper will not be restricted to core labour standards. Section 2 briefly outlines the case for raising labour standards to promote sustainable development. This is the position adopted by neo-institutionalist economists who usually favour more enlightened human resources management. Section 3 appraises some of the criticism and potential shortcomings of three kinds: institutional constraints with existing instruments and fora, which might lead to missing the target; the concerns of neo-classical economists with factor misallocation; and environmental preoccupations with limits to growth. Legal aspects pertaining to current proposals for reform have been left out of the discussion of institutional constraints. The analysis focuses on economic (and statistical) aspects that would arise in this context, in particular in the application of trade sanctions. Finally, Section 4 reviews some additional measures that would complement a social clause in the multilateral trade regime, such as the need for universal coverage and ways for reaching informal sector workers to avoid backlash.

1. SOME DEFINITIONS

The most widely used definitions of sustainable development and of the social clause are presented here. International consensus seems to be emerging over the labour standards that would be covered by a social clause in the multilateral trading system.

1.1 Sustainable Development

Originally, the concept of sustainable development referred to the impact of human activities on the life-support system (the environment). It essentially identified and mapped out the biophysical limits of the human ecosystem, which are near and real.⁸

The Brundtland Report, the original blueprint for sustainable development and the result of an independent three-year investigation, adopted a comprehensive and dynamic definition of sustainability, phrased as follows:

Sustainable development meets the needs of the present without compromising our ability to meet those of the future. . . .

. . . [It] includes two key components: The concept of needs, in particular the essential needs of the world's poor; and the idea of limitations that are imposed by technology and society on the environment to meet those needs. . . .

. . . Sustainable development is best understood as a process of change.⁹

The report identified a broad range of measures, grouped under seven strategic imperatives for sustainable development:

- Reviving growth;
- Making economic growth less energy-intensive and more equitable in its social impact;
- Meeting the essential needs of an expanding population in the developing world for employment, food, energy, water, sanitation and health care;
- Ensuring a sustainable and stabilised population level;
- Conserving and enhancing the resource base;
- Reorienting technology and managing risk;
- Merging environmental and economic concerns in decision-making.

The report also adopted an optimistic approach to growth, unlike the Club of Rome, believing that human creativity would find ways to surmount the limitations imposed by non-renewable resources in particular, for instance by finding substitutes.¹⁰ However, available substitutes are limited and renewable resources follow specific replacement cycles. Perhaps sustainability should be qualified as entailing *reharmonisation* of human activities with the cycles of the ecosystem and of human cycles with each other (i.e. reproduction, education, production-recycling, technological and institutional change, etc.). In other words, we would have to reinvent development and economic growth in particular. Evolution in a qualitative sense is infinite, but growth in a quantitative sense seems limited.

8. Daly (1991), pp. 224-229.

9. World Commission on Environment and Development (1987).

10. Dommen (1994), pp. 18-19.

The agenda outlined in the Brundtland Report was further enlarged with the string of five main World Summits sponsored by the United Nations: the UN Conference on Environment and Development in Rio de Janeiro (1992) which adopted Agenda 21, the International Conference on Population and Development in Cairo (1994), the World Summit for Social Development (1996), the Fourth World Conference on Women in Beijing (1995), and the UN Conference on Human Settlements – Habitat II – in Istanbul (1996).¹¹ These meetings took place about twenty years after the first such round which had yielded the basic needs approach. This second string emphasised sustainability and interdependence, and was characterised by a substantial participation of civil society. For the first time at such world summits NGOs were massively present and actively interacted with officials.

Agenda 21, the current blueprint for sustainable development, is thus closely linked with the programs of action adopted at the other conferences cited above.¹² These instruments should be considered jointly. For instance, the Copenhagen Declaration and Programme of Action, which address social and employment issues, make specific reference to Agenda 21 and the world trading system (the Uruguay Round).¹³

It should be stressed, however, that sustainability as a process of change must be constantly redefined at the operational level. Hence, the action plans set by these world summits should be regularly reappraised. The real objective would be to find and maintain a balance in all domains while proceeding with human progress.

1.2 The Social Clause

The concept of "social clause" refers to core labour standards, or minimum standards of social protection, which would be introduced in the multilateral trade system as a prerequisite for participation, to guarantee the possibility (not the specific content) of social progress. Core labour standards differ from other (substantive) labour standards in two essential ways:

1. Core labour standards embody basic human rights, enshrined in the Universal Declaration of Human Rights (1948), Articles 23 to 25, which also considers the right to decent living standards as an important element. Therefore, it is generally held that they should apply irrespective of a country's level of development.¹⁴ Poverty should not become a pretext for non-respect of human rights. This criterion of human rights has important implications as regards potential sanctions. Section 3 will explore this issue further.
2. Core labour standards represent a set of *enabling*, or framework, conditions giving workers the means to take active charge in defence of their interests. Labour standards can hardly be claimed to represent a social choice, or to reflect "normal" conditions given the level of development and other circumstances, if workers are denied the means to express their choices and to act freely.¹⁵ The market system, and trade liberalisation in particular, are fundamentally flawed under such

11. IISD (1994) developed seven principles more specifically related to trade and sustainable development, the so-called "Winnipeg Principles." They were based on three key assumptions: The need for poverty alleviation, the importance of environmental policies, and the role of trade liberalisation in sustainable development. These principles are: Efficiency and cost internalisation; equity; environmental integrity; subsidiarity; international cooperation; science and precaution; and openness.

12. United Nations (1994b).

13. United Nations (1995), pp. 44-50.

14. De Wet (1995); and OECD (1996), pp. 25-27.

15. ILO (1994b), pp. 8-10.

conditions and therefore fail to maximise welfare as postulated in textbooks. Neo-classical models, which provide the theoretical justification for economic liberalism, are based on strong assumptions, *inter alia* of freedom of choice, full information, equal bargaining power, and perfect mobility. The ability to choose is one of the necessary, but not sufficient, preconditions for a well-functioning market. Core labour standards seek to ensure that this precondition is fulfilled.

Core labour standards are defined with reference to ILO conventions. These conventions embody current international consensus and constitute the most comprehensive set of international labour standards. The Copenhagen Declaration on Social Development, Commitment 3 (i), which is reproduced in the Appendix, made reference to these four categories of fundamental rights, which are currently defined as follows:¹⁶

- Freedom of association and the right to bargain collectively – Convention No. 87 (122 ratifi., June 1999), and Convention No. 98 (146 ratifi., May 2000);
- Prohibition of forced labor – Conventions No. 29 (153 ratifi., May 2000), and Convention No. 105 (146 ratifi., May 2000);
- Prohibition of child labor – Conventions No. 138 (89 ratifi., May 2000), and Convention No. 182 (15 ratifi., May 2000);
- Non-discrimination in employment – Convention No. 100 (146 ratifi., May 2000), and Convention No. 111 (142 ratifi., May 2000),

Already in December 1994, prior to the ILO ratification campaign, were these conventions amongst the most adhered to, with a ratification rate of 70% against an average 18% for all 176 ILO conventions.

Convention No. 138, however, establishing a minimum age for child labour, is very much contested by LDCs in particular because they feel that it is inadequate and premature. The OECD also acknowledges that this criterion is ill-suited for less industrialised countries, and therefore has been calling for prohibition of *exploitative* forms of child labour instead, concurring with UNICEF on the subject.¹⁷ UNICEF defined them as work conditions and jobs that are harmful to the development of children (physical, mental, emotional, and spiritual). Indeed, in less industrialised countries many children do work, and will in the short and medium term until a comprehensive welfare system has been instituted. Working children are usually orphans and children from poor households, in particular female-headed families, migrants, and refugees. The minimum age criterion drives working children into illegality and puts them at even greater risk of exploitation and abuse. The objective should therefore be to afford them legal protection and to strictly regulate the conditions under which they may be permitted to work.¹⁸ This could provide a starting point, first to ensure compatibility between child work and schooling, and eventually to eliminate child work altogether.

Eventually, the ILO partly endorsed this view with the adoption, in 1999, of Convention No. 182 on the worst forms of child labour. It has been unanimously adopted, with no abstention, a perfect record no other convention had achieved so far, and is currently achieving the fastest ratification pace in ILO history.

Other advocates have added to this list Convention No. 155 on occupational health and safety, and Convention No. 131 on *the principle* (not the level) of minimum wage fixing.¹⁹

16. United Nations (1995), p. 17.

17. OECD (1996), pp. 36-37.

18. Dessing (1995).

19. De Wet (1995), p. 453.

It should be stressed that implementation of core labour standards cannot result in equalisation of production costs across nations. These conventions set standards concerning *processes*, not outcomes. It is disingenuous to suggest that tolerating unions would result in cost equalisation. Even with respect to substantive labour standards such a claim cannot be made. The specific content of many substantive labour standards, such as the level of minimum wages, will necessarily vary from one country to another. Hence, an OECD study concluded that differences in labour standards would not have much of an effect on comparative advantages in global markets.²⁰ The diagram on the following page clarifies the complex relationship between labour standards and market access. It indicates how various issues raised in this paper fit along this string of interfaces, although it does not account for *all* factors involved.

The cut-off point between core labour standards and substantive labour standards is liable to shift as human rights encompass an ever-increasing set of items. One may also ask why other human rights are not included in social clauses to address the social impact of trade at large.²¹ The case of indigenous and tribal people illustrates this point: trade can jeopardise their habitat because of over-exploitation and spillover effects, affecting their culture and life-style, if not their survival.²² The environment, indigenous cultures, and human rights of these people are inextricably linked.²³ The ILO has adopted Convention No. 169 on indigenous and tribal people, notably to support their role in the sound management of natural resources.²⁴ Other communities, organised around specific trades (e.g. wine-growing communities, mountain farmers, fishing communities, etc.) experience similar problems of cultural survival, should their trades be displaced by international competition; sometimes, characteristic landscapes and provision of environmental services are also at stake. Agricultural subsidies in Europe probably partly reflect this concern. We touch here upon a key issue of development: how much change, what kind, and at which pace are communities willing and able to sustain.

Human rights labour standards have been widely accepted. Notably, the International Covenant on Economic, Social and Cultural Rights of the UN (1966) contains a broader set of labour rights than those covered by ILO core conventions; relevant articles are reproduced in the Appendix. In December 1999, it had been ratified by 142 out of 188 member states, including countries such as Japan, North and South Korea, Mexico, and India, as well as most Eastern European and developing nations. The Covenant is legally binding, unlike the Universal Declaration of Human Rights (1948), which primarily has moral force. But its enforcement mechanisms remain limited to moral pressure; it does not aim to impose sanctions of any kind.²⁵ Further, the European Union has created a Social Charter that applies minimum labour standards on a range of issues in the form of directives which member states must implement.²⁶ The Council of Europe in Strasbourg has sponsored yet another charter, the European Social Charter (1961), which was last revised in 1996.

As regards trade, a social clause has been inserted in the EU Generalized System of Preferences (GSP) and in the North American Free Trade Agreement (NAFTA) in the form of the North American Agreement on Labor Cooperation (NAACL). Several international commodity agreements of UNCTAD make reference to "fair labor standards": the Sugar Agreement (1992), the Cocoa Agreement (1993), the Natural Rubber Agreement (1987), and the Tin Agreement (1975). In each case, these clauses have been maintained in the renegotiations.

20. Cited in Shaw (1996), pp. 19 and 23.

21. Ward (1996), p. 627.

22. For a case in point, related to global climatic change rather than specifically to trade as for Amazonian Indians, see: Morgan (1995).

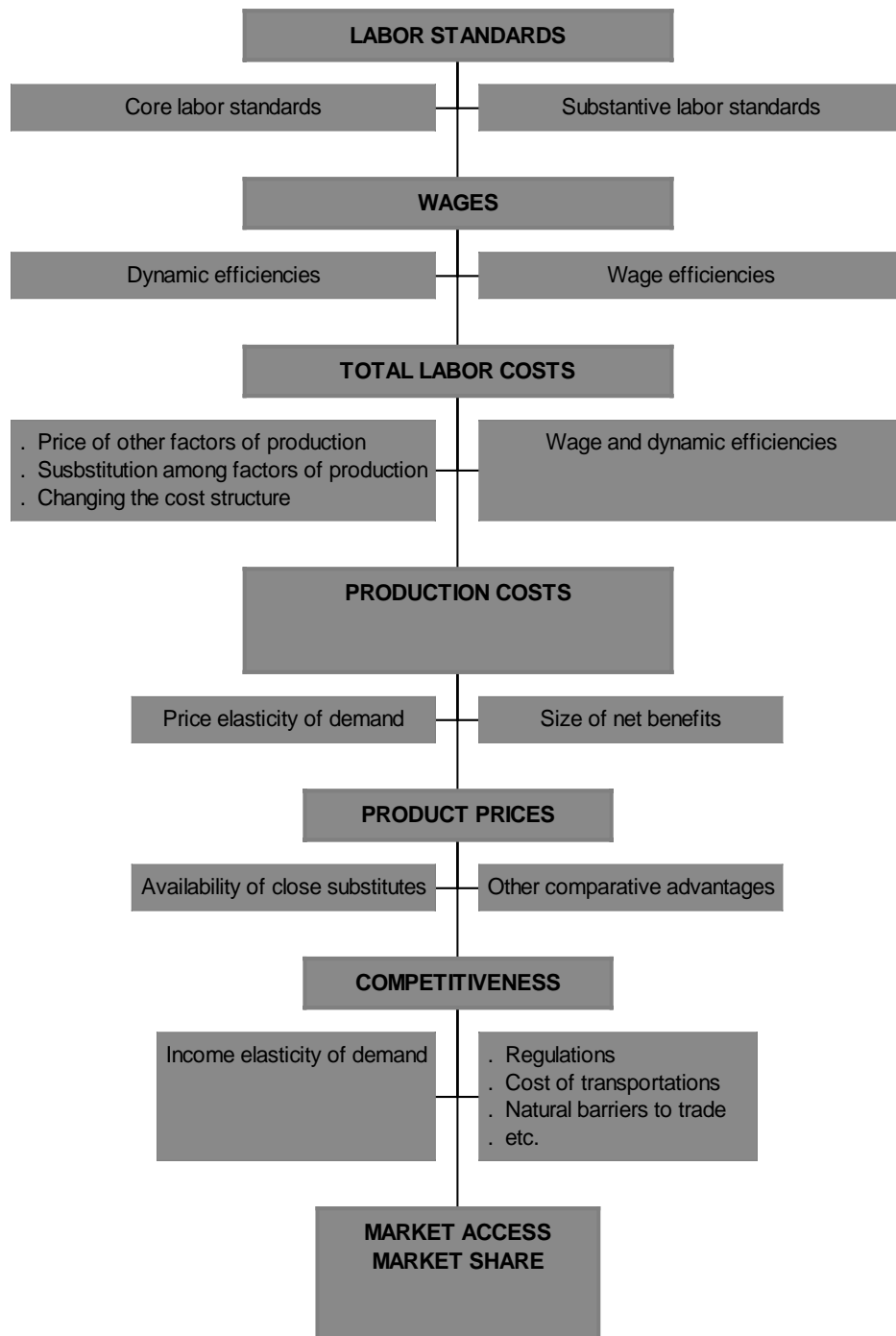
23. Beaucher (1996), p. 2.

24. ILO (1994a).

25. De Wet (1995), pp. 454-455.

26. Shaw (1996), pp. 16-17.

DIAGRAM 1: The Relationship between Labour Standards and Market Access



In recent years, no country has taken as far-reaching action as the US to link international trade with minimum labour standards. Several US laws contain such provisions, for instance: the Caribbean Basin Economic Recovery Act (1983); the Overseas Private Investment Corporation (1985); the Multilateral Investment Guarantee Agency (1987); Section 301 in the Omnibus Trade and Competitiveness Act (1988); the Andean Trade Preference Act (1991); Section 599 of the Foreign Operations Appropriations Act (1992); and Section 1621 of the Foreign Operations, Export Financing and Related Programs Act (1995); and the GSP program (1984) which is the most important in terms of promoting better labour standards. Public procurement mechanisms have also increasingly been used for this purpose.²⁷

Finally, several voluntary Codes of Conduct also make reference to labour standards: various private-sector codes, the OECD Guidelines for Multinational Enterprises (MNEs), and the ILO Tripartite Declaration of Principles concerning MNEs and Social Policy.²⁸

Hence, in spite of controversies over the specific content of social clauses and implementation mechanisms, a trend can be discerned towards their insertion in private, national, and multinational instruments. Current proposals for a social clause in the multilateral trading system can thus draw on these experiences, plus relevant ILO Conventions, to harmonise, extend and unify the existing network. These schemes, however, cover only core labour standards which, as enabling devices, would have little negative impact on relative comparative advantages, but they may have significant positive spillover effects, as we shall see in the next section.

27. McCrudden (1999).

28. For a brief review, see: Van Liemt (1989); and OECD (1996), pp. 173-174, 178-199.

2. PROMOTING LABOUR STANDARDS TO ACHIEVE SUSTAINABLE DEVELOPMENT

The role of labour standards in fostering sustainable development is subject to many debates. Two main questions have been raised: Are labour standards a prerequisite or a product of development, and what should their content be. This section focuses on the case made by neo-institutional economists for better labour standards and more enlightened human resources management.²⁹ In particular, it will be argued that core labour standards, as human rights, would be a prerequisite for sustainable development, rather than a product of economic development as is the case for some substantive labour standards. The specific content of substantive labour standards, which is necessarily localised, is not discussed. This is an empirical issue which does not lend itself to generalisations because of the bewildering variety of labour standards and institutions (or other formal and informal institutions fulfilling similar functions). The role of trade in this context is also examined. Section 3 will appraise criticisms.

2.1 The Nature of Labour Standards

Labour standards make economic sense. They seek to compensate for missing markets and market failures – such as externalities, monopoly power, imperfect information, free rider problems associated with public goods, and moral hazard – they introduce ethics in the employment relation and *set limits* to the "playing field" of competition in the general interest. However, the main difficulty in defending this case is that costs associated with the implementation of better labour standards immediately appear on the balance sheet of firms, while benefits extend beyond the firm and cannot be measured as readily, if at all. Many benefits are indirect, hidden, intangible, delayed, and non-local. They may become apparent only when standards are violated or dismantled.³⁰

For instance, in the absence of labour standards, market forces may trigger a downward spiral of wage reductions and increases in labour supply, as households struggle to maintain the same level of income: spouses and children seek paid employment, heads of household extend their work days or moonlight. The Brundtland Report points out that for many poor people the problem is one of underpayment; they work 10 to 15 hours a day, six to seven days a week.³¹ In these conditions (represented by the segment AB in Figure 1, p. 19), the income effect dominates instead of the usual substitution effect. The labour supply curve of the family traces a reverse S and slopes downward at low wage levels instead of upward. Part of the labour market may therefore contend with an unstable equilibrium (Point Eu in Figure 2, p. 20), market forces constantly pushing wages down to barest levels at W_s . The labour market is caught in a poverty trap. In such a situation, introducing a minimum wage may yank the market out of this low-wage trap, back to a stable equilibrium (Point E2), where market forces do have the usual desirable effect of clearing the market at acceptable wage levels and more normal work hours.³²

In fact, labour is paid less than its marginal product (see Glossary). For a work load of D' hours, labour should be paid wages corresponding to Point D ($w_{D'} > w_D$). "Social dumping" prevails along Segment AB. Firms can thus exploit labour's subsistence needs to curtail wages, while increasing profit margins ($\pi = w_{D'} - w_D$), working hours, and production – although labour productivity may decline. Higher profit margins create room for selling products at lower prices to increase competitiveness and still leave employers better off. "Social dumping" may therefore entail a sizeable transfer of income from labour to

29. Kochan and Nordlund (1989) coined this label.

30. Sengenberger and Campbell (1994), p. 427. This collection of essays provides an excellent overview of the debate over labour standards.

31. World Commission on Environment and Development (1987), pp. 248-249.

32. Dessing (1989 and 1990b).

employers: in effect, the total wage mass dwindles away. The second group presumably has a higher propensity of importing. Hence, income terms of trade may deteriorate, adversely affecting the trade balance and possibly leading to immiserising or *negative* growth (see Glossary).³³

In industrialised countries, mass production and attendant labour standards succeeded in intercepting this depressive spiral of the "iron law of wages." They set a virtuous cycle in motion. Heavy capital investments in highly dedicated machinery forced employers to apply more professional management methods (and to fear work interruptions). Employers could no longer shift the very low cost of "footloose" capital onto workers, paying piece-rate wages, and therefore remaining oblivious to differences and variations in workers' productivity. Firms were forced to compete, not with low wages, but through product and process enhancement, product differentiation, and productivity increments.³⁴

Well-designed labour standards may elicit other positive effects. They help internalise social costs (externalities) associated with low wages and poor working conditions, in particular with respect to health and safety. According to the efficiency wage argument, better working conditions and higher wages may reduce production costs and increase productivity, more than compensating for initial wage increments: higher wages reduce labour turnover, hence hiring and training costs; more enlightened management practices can elicit goodwill, trust, and cooperation, all of which decrease supervisory costs, shirking, and absenteeism. In less industrialised countries, abysmally low wages often force employees to resort to "self help" (*le système D*), stealing, seeking rent, and otherwise detracting their attention from work, all of which impose immense costs and dysfunctionalities on society.³⁵

Labour standards may also create dynamic efficiencies in the following ways. Better labour standards reduce labour turnover, thus encouraging firms to invest in training which otherwise would be insufficient, excessively job-specific and short-term oriented. They may also elicit more cooperative labour-management relations. Tutu makes the very interesting distinction between slave labour, productivity-augmenting, and cooperative labour.³⁶ Cooperative labour can provide management with valuable feedback on ways to improve current operations, and thus facilitate the introduction of new technologies. Most importantly, the creativity which plays a key role in remaining competitive can only be engendered with cooperative labour.

In short, labour standards may be seen as an investment in productive resources, as enabling devices which create the "collective efficiencies" or synergies discussed above at the level of firms, but with positive spillover effects for the rest of society. They can become the source of social cohesion, political stability, and economic dynamism.³⁷ Therefore, *labour standards should be evaluated in terms of their impact on the transformation of the production process itself (i.e. in dynamic terms)*, not just on how they may affect resource allocation within any given process (i.e. in comparative static terms as in the neo-classical model).³⁸ Dynamic, rather than static, comparative advantages would govern national economic success.³⁹ It follows that bad standards would not drive out good ones, because each set is associated with a different production process.

33. Dessing (2000a and b), although immiserising growth may also ensue under other circumstances than "social dumping."

34. Piore (1990).

35. Tutu (1992), p. 152.

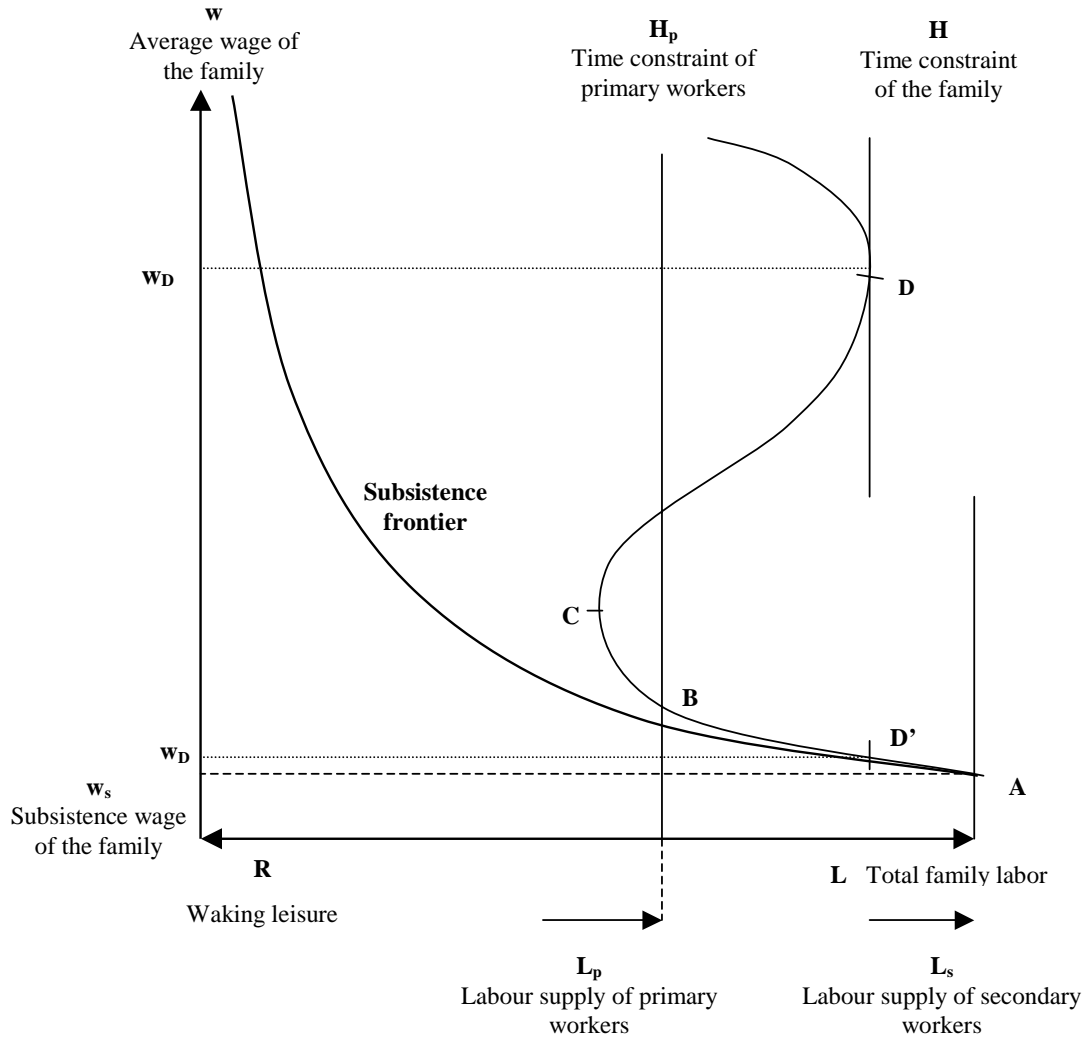
36. *Ibid.*, pp. 151-152.

37. De Castro (1995), p. 16; and Sengenberger and Campbell (1994), p. 423.

38. Michael J. Piore, cited in Swinnerton and Schoepfle (1994), p. 55.

39. Scott and Lodge (1985).

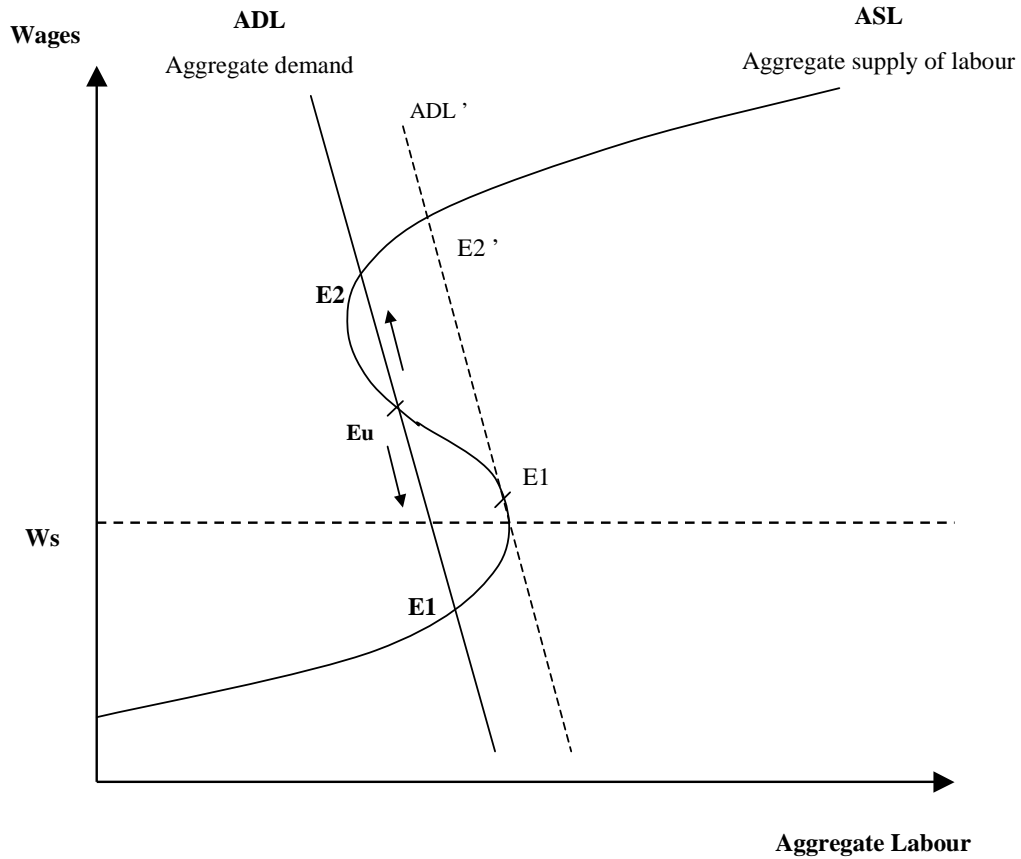
FIGURE 1: Labour Supply Schedule of the Family, Primary, and Secondary Workers



The subsistence frontier traces a rectangular hyperbola. Thus, along this constraint, subsistence income of the family ($Y_s = w \cdot L$) remains constant.

Along Segment ABC, the income effect dominates the substitution effect: as wages fall, the family increases its supply of labour to maintain the level of income constant. This increase in labour supply would be primarily due to secondary workers (spouses and children) seeking paid employment. It is more substantial than at higher wage levels.

FIGURE 2: Labour Market Disequilibrium and the Poverty Trap



In E1 and E2 the equilibrium is stable, whereas in Eu it is unstable. Therefore, as long as the wage level remains below Point Eu, market forces will keep pushing wages down to barest levels in Ws. The labour market is caught in a poverty trap.

The possibility of creating synergies, through enlightened management of human resources, opens highly promising avenues in terms of productivity, creativity, and adaptation to changing conditions. When synergies can be set in motion, total welfare exceeds the sum of individual gains; utility is no longer additive. Moreover, synergies generate new and additional factors; they introduce a *qualitative* difference. Trust could be cited as an example. Therefore, it becomes possible to shift to a positive-sum game (your gain is also my gain) rather than remain trapped in a zero-sum process (your gain is my loss). Therein resides the potential for benefits far exceeding costs and extending well beyond the firm.

Labour standards may also share some of the attributes of "public goods."⁴⁰ Some form of cooperation, such as welfare-enhancing government intervention, would then be necessary to ensure an optimal level of standards. The labour market, left to its own devices, will produce too few standards. Everyone relies on the initiatives of others to improve the situation and refuses to take the lead. If labour standards are "public goods" it also raises problems of free riders and moral hazard, that is, of individual firms breaking standards to gain competitive advantages, at least in the short term. But Bophal and other major industrial accidents serve as reminders of the staggering costs such short-sighted policies may entail.

In so far that labour standards can be conceptualised as "private goods", that is, people discriminate between products and are even willing to pay higher prices to consume "socially correct" goods and services, then labelling and consumer information might suffice to ensure an optimal level of standards.⁴¹ Therefore, it becomes a moot argument when critics object to US trade policies and linkage with minimum labour standards on grounds that they would not be motivated by humanitarian reasons, but simply seek to prevent their products from being undercut by those produced by prison, child, and other cheap labour. To the extent that US consumers do wish to consume "socially correct" products, the final effect is similar, provided such a linkage also raises prices sufficiently to cover the higher production costs of these products (assuming profit margins were not originally excessively high). The past ILO proposal for such a scheme was interesting in that respect. But, the creation of a label will nonetheless require government intervention to monitor implementation and prevent abuses. Moreover, the free rider problem remains as well because of the positive social externalities generated by higher labour standards.

These general comments do not distinguish between different types of labour standards.⁴² The distinction between core and substantive standards is also relevant here. The former, as enabling standards, may trigger a culture of participation that can be instrumental to reaping the benefits of substantive labour standards and economic growth. Moreover, the effectiveness of labour standards depends on their specific content, the manner in which they are implemented, the contribution of complementary social and economic policies, and general conditions conducive to social solidarity and cooperative solutions. Implementing agencies should act in the social interest, rather than pander to special interest groups, and should refrain from rent seeking. Coherence, multi-level standards, and universality appear to bear special importance.⁴³ Finally, the organisational structure of unions conditions collective bargaining outcomes.⁴⁴

40. Swinnerton and Schoepfle (1994).

41. Freeman (1994).

42. Sengenberger identified protection, participation, and promotion standards, in Sengenberger and Campbell (1994), pp. 45-60.

43. *Ibid.*, pp. 6, 7, 33-35, in particular.

44. Banuri and Amadeo identified four types in unions' organisation:

a) Decentralised, diffuse and with little national influence, as in East and Southeast Asia;

b) Pluralistic, dependent on other identifiable political groups such as political parties or ethnic communities, as in South Asia and the US;

c) Polarised, strong and mobilised, but internally divided and unable to negotiate cooperative solutions at the national level, as in Latin America, the Philippines, and the United Kingdom; and

d) Social corporatist, as in Scandinavian countries, powerful and functional groups organised at the national level with the help of the state to facilitate cooperation. Banuri (1990), pp. 54-55.

For instance, broad union representation and centralised coordination of the social corporatist style of Northern European countries appears to facilitate redeployment of redundant workers and industrial restructuring. These nations have been more effective than others, with more decentralised systems, in resolving the crisis of the 1970s and 1980s. Excessive decentralisation may favour parochial policies that introduce undesirable rigidities in the labour market. Unions organised along narrow occupational lines or sectors will perceive restructuring as a threat to their existence and will therefore resist such changes, or may engage in competitive upward bidding of wages beyond what is globally desirable.⁴⁵

This brief overview of some of the features of labour standards suggests that markets on their own would be unlikely to produce a socially desirable and optimal level of standards, even though labour standards are probably in part endogenously determined. By the same token, better labour standards or participation in and of themselves will not ensure cooperative labour relations – they may become adversarial – nor will they necessarily elicit the positive effects outlined above. Not all labour standards are good ones. In fact, strictly speaking, there is no such thing as a vacuum of standards, but a set of implicit and explicit rules that favour one party or the other. The challenge, therefore, consists in setting a virtuous circle in motion, striking a more satisfactory balance between the parties, designing adequate labour standards and implementation mechanisms, and adopting other complementary measures of good governance to foster cooperation.

2.2 Labour Standards and Development

Labour standards, in the form of higher wages, contribute to the deepening of domestic markets so that economic development becomes less dependant on export markets and more firmly anchored at home. This was the macroeconomic logic for Ford's five-dollar day.⁴⁶ The consequent improvement in living standards contributes in turn to the easing of political and social tensions; higher wages buy labour peace.

Labour standards form part of a larger set of complex interactions between social development, economic growth, and democratic institution, which remain difficult to capture. Moreover, development cannot be reduced to measures of GDP. Not surprisingly, the OECD found that all countries with a GDP per capita above 15'000 US dollars were complying with the principle of freedom of association, as defined in Convention No. 87 of the ILO. But this association completely broke down for countries with a GDP per capita below this threshold level. Nevertheless, the OECD believes that growth of a healthy civil society, with a genuine participatory and equitable economic culture, is strongly correlated with the development process. All over the world, labour organisations often played a key role in improving social conditions, and promoting human rights and democratisation. Hence, in the 1990s, promotion of human rights and good governance have become accepted issues in multilateral policy dialogues and development assistance programs. The donor community can facilitate this process, raising these concerns, publishing human and labour rights reports, offering technical assistance, and financing advocacy activities of NGOs.⁴⁷

Here again the distinction between core (human rights) labour standards and substantive standards is important. While some substantive labour standards remain impractical in the context of less industrialised countries, respect for human rights labour standards arguably constitutes a prerequisite for *sustainable* economic growth.

45. Wilkinson (1994), pp. 67-68.

46. Piore (1990), p. 40.

47. OECD (1996), pp. 41-44, 166-169.

Neglect of core labour standards usually coincides with non-respect for other human rights. Some believe that autocratic regimes are more conducive to fast economic growth, because they would facilitate the task of adjustment and, in concentrating capital, they would be able to create growth poles. This scenario presumes that funds are productively invested in the domestic economy instead of being spent on a lavish life-style. But, several recent studies show that autocratic regimes (who usually repress labour unions) have lower or no higher per capita growth or success in adjusting than democracies (who invariably permit labour unions and favour participation).⁴⁸

Growth pole strategies assume that concentrating resources to embark on large-scale projects will spur growth and productivity. Benefits would eventually "trickle down". However, management of assets and their ownership remain distinct issues. Public appeals to small shareholders offer an alternative to sponsorship of large projects by industrial magnates. Moreover, firms can choose to reinvest benefits rather than pay extravagant compensations to their CEOs. Therefore, pooling resources to embark on such projects need not coincide with widening income disparities. But, more fundamentally, "trickle down" implies shifting to another growth process altogether, which in fact is compatible with sustainable development. Once an uneven growth process has been instituted, it can prove very difficult to switch to another, more equitable, process. Changing track can prove very costly and seriously impair any progress made so far. Often, vested interests that have been created must be fought, institutions overhauled, values and ways-of-doing changed, in order to redirect resources to those who, so far, have been somewhat neglected. No wonder "trickle down" (and "trickle across") has not worked!

The key problem for achieving sustainability thus consists in reinventing economic growth. This difference in kind entails proceeding with *qualitative* improvements in the light of limited *quantitative* growth. Most crucially, meeting the current challenge of switching to such a sustainable process necessitates harnessing human creativity and ingenuity, eliciting the synergies that were discussed in the previous section, which in turn calls for more equity. A necessary precondition, of course, is respect for human rights and more ethical human resources management. *In setting the "right tone", human rights play a key role in ensuring that economic growth proceeds on a sustainable path from the start.*

More generally, labour standards enhance development to the extent that they contribute to the internalisation of negative social externalities associated with hazardous working conditions, poverty, and excessive income disparities, while being conducive to the creation of dynamic and collective efficiencies. Higher labour standards can become the source for enhanced competitiveness and sustainable economic growth; these objectives do not conflict. It has often been stated that human resources are the most precious resource, the hope for progress and the guarantee for overcoming challenges, provided they are properly harnessed. The principle of the Philadelphia Declaration "labor is not a commodity" takes its full meaning here.

2.3 The Role of Trade and Related Foreign Direct Investments

Trade may play a critical role in the process of development as a source of products and raw materials, technology, capital and, above all, know-how. It encourages a more efficient use of resources based on comparative advantages. But sufficient foreign exchange must be earned with exports to finance imports of machinery (capital) and other inputs for the expansion of domestic production. Conditions prevailing in world markets thus become critical. Moreover, the impact of trade on a country's development also depends on other factors, such as the quality of its human resources, incentives for innovations, linkages with the rest of the economy, the state of its infrastructure, communications and transportation, and

48. Cited in Freeman (1992), p. 138.

generally an enabling environment including political stability. The role of trade relative to domestic factors should therefore not be exaggerated. Technological change is a systemic process, not a linear one.⁴⁹

The final outcome is thus uncertain and depends on a range of structural and institutional factors. Local infant industries may be eliminated by international competition before they have a chance of learning-by-doing and reaching optimal size; expanding export production may entail switching to more capital-intensive technologies, thus displacing labour. A recent study of eighteen LDCs found that, on average, increasing export and import penetration had no discernible impact on manufacturing employment in either direction: in only about half the cases did either one result in an overall expansion of employment, although, across countries, some industries appeared generally more prone of creating jobs when trading was stepped up.⁵⁰ The impact on wages is even less conclusive. For example, an ILO study found that in the machinery and electrical industry labour's share in value added was not only generally much lower in LDCs, but globally had declined during 1970-95, in particular in the South, in spite of a sizeable relocation of employment to those countries: labour in LDCs is not really sharing in the benefits.⁵¹ Finally, a late WTO report states that the debate rages concerning the impact of trade on growth.⁵² Trade may drain the most skilled manpower and other resources without contributing much to overall development; a country may not be able to reap the benefit of trade unless it has already reached a certain level of industrialisation; trade may even translate in deteriorating terms of trade and immiserising or negative growth (see Glossary), as was noted in Section 2.1.

As relative comparative advantages of countries shift over time, so do business strategies of firms seeking to maintain their global competitive position. An increasing share of world trade is taking place under the control of MNEs. They account for most trade (about 70% of international trade in goods in 1989), but only about 3% of total world employment: 10% of total employment in industrialised countries (with substantial variations across countries) and less than 1% in less industrialised nations. Foreign direct investment (FDI) is closely associated with trade. Since the 1970s, MNEs have reduced their reliance on trade as an instrument of control in favour of a combination of activities which include: import of semi-finished inputs; recourse to subcontractors; intra-firm trade; foreign direct investment; protection of intellectual property rights; and strategic alliances. Also, governments have increasingly welcomed inward FDI and adopted a more relaxed stance on outward FDI.⁵³

As a result, growth of FDI has significantly outpaced growth in world trade; in the 1980s, FDI grew at a rate 1.5 times faster than international trade. Overseas investment by MNEs has become a more significant force in the world economy than trade; in 1993, for example, world sales of foreign affiliates had reached US\$ 6 trillions, or 128% of world exports of goods and services.⁵⁴ But MNEs tend to concentrate in sectors that are most susceptible to change. They can better anticipate and respond to structural changes than indigenous firms, and are more dynamic than uninalational firms. The most volatile (footloose) of all FDIs tend to be those located in export processing zones (EPZs).⁵⁵

Therefore, trade and associated FDIs induce constant adjustment in the structure, composition and location of employment. In OECD countries, trade does appear to have a negative impact on unskilled

49. For an interesting study of the systemic nature of technological change, see: Paul David (1992).

50. Dessing (2000c).

51. ILO (1998), p. 31.

52. WTO (2000).

53. ICDA (1995), pp. 88, 91-92; and Dunning (1994), p. 353, who provides a comprehensive overview of MNEs, both theoretical and empirical.

54. World Bank (1997), pp. 27-28; and Sengenberger, in Sengenberger and Campbell (1994), pp. 396-397.

55. Dunning (1994), pp. 370-371.

manufacturing employment in particular. But that impact appears marginal compared to changes triggered by technological innovation, economies of scale and rationalisation.⁵⁶ These factors are closely interconnected and should therefore be tackled with comprehensive policies and programs for economic restructuring, rather than by singling out trade.

However, the globalisation of firms and of their strategies introduces a totally new dimension. Their objectives and those of individual countries sometimes conflict. Bargaining capacity vis-à-vis the state and unions has become asymmetrical because they command such important resources (MNEs' income exceeds the GNP of some countries). Often, they possess an advantage as regards information and a global perspective of evolving comparative advantages. Moreover, some governments lack the resources to create the institutional framework and implement economic policies that will ensure MNEs contribute to their economic development. Hence, some MNEs are in a position to dictate their terms to host governments and do not hesitate to play nations against each other in search of new locations.

Host countries, pressed for foreign exchange, scramble to offer advantageous conditions in EPZs, such as tax breaks, fiscal incentives, lax enforcement of labour regulations, and suppression of unions.⁵⁷ MNEs have become particularly adept at fleeing the most highly regulated national jurisdictions, thus lowering global standards by which governments regulate firms. Union avoidance appears to be a main problem with MNE conduct in host countries.⁵⁸ However, this might simply reflect the cultural ethos of parent companies: the Japanese have a relatively open and consultative style of industrial relations; the British are more hierarchical and most labour-management relations are dogged by crafts unions; the Germans are used to worker participation on their management boards; and the US prefers not to deal with unions at all.⁵⁹

Host governments may frequently engage in unnecessary, expensive, and inefficient competitive bidding among themselves. Political stability almost invariably is a necessary, though not sufficient, condition for market-seeking FDI in the selection of a location. On the other hand, tax holidays and fiscal incentives would rarely be of critical importance in determining whether a particular foreign project will be undertaken or not, although they have more import for footloose industries in EPZs. Similar observations have been made regarding the importance of labour costs. The importance of labour costs varies according to industries, the function of a particular location in a firm's global production strategy (type of FDI), and the stage of development of both the investing and recipient countries. Table 1 (p. 27) summarises main determining factors for six types of international production. Table 2 (p. 29) indicates that labour costs would play a more critical role in determining the location of projects in less industrialised countries than in more advanced ones. Hence, over recent years, labour-intensive activities have been relocated from newly industrialising economies (NIEs) to second and even third tier countries.⁶⁰

MNEs usually (but not always) offer more attractive wages, working conditions, and training opportunities than local firms to their core of regular employees. Large firms in general appear to be better employers than smaller ones. These observations imply that, even though fiscal incentives and labour costs play a role, host countries may have some room for negotiating a more favourable set of framework conditions, in line with their legitimate aspirations for development and reflecting more accurately their contribution to the market value of products. Coordinating their action and agreeing on

56. For studies that investigate the impact of trade on employment, see: Lawrence (1994); Wood (1995); Richardson (1995); Freeman (1995); and De Aguilar (1999) for a review.

57. Portes (1994), p. 168.

58. Vernon (1993), p. 13; Sengenberger, in Sengenberger and Campbell (1994), p. 408; and Campbell (1994).

59. Dunning (1994), p. 378.

60. *Ibid.*, chap. 4 passim, and pp. 351, 368, 372-381.

a minimum set of standards should facilitate this task, while thwarting "predatory" shopping around. MNEs select a package in their choice of a location. Moreover, keeping labour costs low does not call for lax enforcement (or suppression) of labour standards, in particular core standards. These remain two distinct issues: improving labour standards need not entail raising wages; but, more importantly, higher wages might be offset by productivity increments and reduction of labour and other costs. As stated above, an OECD study concluded that enforcement of core labour standards would have little negative impact on comparative advantages, because these standards do not seem to have much incidence on comparative advantages to begin with.⁶¹ In fact, MNEs might actually favour harmonisation of labour standards for economic reasons. More uniform international labour standards would reduce the cost to global businesses of learning about, and complying with, different labour codes.⁶²

These remarks, however, do not account for abysmal work conditions and wages among subcontractors and outworkers, especially in clothing and leatherwork. This is where the problem really lies. Most workers in these sectors are women, as well as in the informal sector at the very end of the subcontracting chain. Many foreign affiliates in labour-intensive industries employ an exceptionally high share of women, mainly young ones. They suffer particular problems of exhaustion and exposition to health-damaging products;⁶³ women are typically non-unionised, docile, have been trained since childhood to perform tedious and repetitive tasks, and earn less than men for comparable work. Thus, MNEs reduce labour costs and circumvent existing labour regulations by hiring women and increasingly resorting to subcontracting and outsourcing.

MNEs can play an important role in helping both home and host countries restructure and enhance their technological and human resource capabilities. But their potential will only be fully realised provided labour and governments also coordinate their action internationally, in order to: avoid strangling the egg-laying goose; pre-empt adverse effects of excessive competitive bidding among countries; and generally to minimise tensions as MNEs pursue global strategies. Firms should be subject to state control whose role is to institute safeguards, provide direction, and ensure firms contribute to the general good in conformity with legitimate aspirations for development. However, to be effective, regulations must match the size of the market.⁶⁴

61. OECD, cited in Shaw (1996), pp. 19 and 23.

62. Frank Doyle, GE's Executive Vice-President, cited in Swinnerton and Schoepfle (1994), p. 55.

63. ICDA (1995), p. 93; and Brown, Hamilton, and Medoff (1990).

64. Several authors call for such a coordination between the geographic span of regulations and MNEs' activities, see: the collection of essays in *International Economic Insights* (1993); and Sengenberger, in Sengenberger and Campbell (1994), p. 415.

TABLE 1: Types of International Productions - Some Determining Factors

Type of international production	Ownership advantages (the 'why' of MNE activity)	Location advantages (the 'where' of production)	Internalisation advantages (the 'how' of involvement)	Strategic(s) goals of MNEs	Illustration of types of activity that favor MNEs
Natural resource seeking	Capital, technology, access to markets; complementary assets; size and negotiating strengths.	Possession of natural resources and related transport and communications infrastructure; tax and other incentives.	To ensure stability of supplies at right price; control markets.	To gain privileged access to resources <i>vis-à-vis</i> competitors.	a) Oil, copper, bauxite, bananas, pineapples, cocoa, hotels. b) Export processing, labor intensive products or processes.
Market seeking	Capital, technology, information, management and organisational skills; surplus R&D and other capacity; ability to generate brand loyalty.	Material and labor costs; market size and characteristics; government policy (e.g. with respect to regulations and to import controls, investment incentives, etc).	Wish to reduce transaction costs, buyer ignorance, or uncertainty, etc; to protect property rights.	To protect existing markets, counteract behavior of competitors; to preclude rivals or potential rivals from gaining new markets.	Computers, pharmaceuticals, motor vehicles, cigarettes, processed foods, airline services.
Efficiency seeking a) of products b) of processes	As above, but also access to markets; economies of scope, geographical diversification, and international sourcing of inputs.	a) Economies of product specialisation and concentration. b) Low labor costs; incentives to local production by host governments.	a) As for second category plus gains from economies of common governance. b) The economies of vertical integration and horizontal diversification.	As part of regional or global product rationalisation and/or to gain advantages of process specialisation.	a) Motor vehicles, electrical appliances, business services, some R&D. b) Consumer electronics, textiles and clothing, cameras, pharmaceuticals.

TABLE 1: Types of International Productions - Some Determining Factors (continued)

Type of international production	Ownership advantages (the 'why' of MNE activity)	Location advantages (the 'where' of production)	Internalisation advantages (the 'how' of involvement)	Strategic(s) goals of MNEs	Illustration of types of activity that favor MNEs
Strategic asset seeking	Any of the first three that offer opportunities for synergy with existing assets.	Any of the first three that offer technology, markets and other assets in which firm is deficient.	Economies of common governance; improved competitive or strategic advantage; to reduce or spread risks.	To strengthen global innovatory or production competitiveness; to gain new product lines or markets.	Industries that record a high ratio of fixed to overhead costs and which offer substantial economies of scale or synergy.
Trade and distribution (import and export merchandising)	Market access; products to distribute.	Source of inputs and local markets; need to be near customers; after-sales servicing, etc.	Need to protect quality of inputs; need to ensure sales outlets and to avoid under-performance or misrepresentation by foreign agents.	Either as entry to new markets or as part of regional or global marketing strategy.	A variety of goods, particularly those requiring contact with subcontractors and final consumers.
Support services	Experience of clients in home countries.	Availability of markets, particularly those of 'lead' clients.	Various (see above categories).	As part of regional or global product or geographical diversification.	a) Accounting, advertising, banking, producer goods. b) Where spatial linkages are essential (e.g. airlines and shipping).

Source: John H. Dunning. *Multinational Enterprises and the Global Economy*. Wokingham: Addison-Wesley Publishing Company, 1994, pp. 82-83. Reproduced with the kind permission of Addison-Wesley.

TABLE 2: Some Main Influences on FDI Decisions by 52 Leading Firms

	REASONS FOR FDI IN			
	Developed countries		Developing countries	
	Percent of respondents mentioning that factor among their 'top three' most important factors influencing new FDI			
	1970	1983	1970	1983
A Market seeking				
A1 Access to host country's domestic market	89	67	82	87
A2 Access to markets in host country's region	41	37	29	34
A3 Avoidance of existing or anticipated tariff barriers	24	16	51	43
A4 Avoidance of existing or anticipated non-tariff trade barriers	13	18	29	28
A5 Inducements offered by host country	11	12	16	13
A6 Need for local market presence	6	5	3	0
A7 Development of local market	3	3	3	0
B Resource seeking				
B1 Access to raw materials	13	10	13	11
B2 Comparative labor cost advantages	4	6	11	13
B3 Comparative material cost advantages	4	6	2	4
C Rationalised (efficiency) seeking				
C1 Integration with company's existing investment	26	37	4	17
C2 Changes in industry's structure	20	22	11	9
D Strategic asset seeking				
D1 Acquisition opportunities	3	3	0	0
E General				
E1 Slower growth of home market	17	18	11	11
E2 Integration with other companies' investment	4	8	4	4
E3 Shifts of political and social stability of host country	2	8	9	8
E4 Tax advantages	6	4	7	0
E5 Distribution of risk	0	5	0	3
E6 Exchange rate movements on siting (not financing) investment	0	2	0	0

Source: John H. Dunning. *Multinational Enterprises and the global Economy*. Wokingham: Addison-Wesley Publishing Company, 1994, p. 147. Reproduced with the kind permission of Addison-Wesley.

3. POTENTIAL ADVERSE EFFECTS ON SUSTAINABLE DEVELOPMENT

Labour standards in general, and social clauses in particular, have been essentially criticised from three perspectives that have relevance to the sustainable development debate. The first set of criticisms comes from an institutional perspective. "Institutional critics" – not to be confused with neo-institutionalist economists advocating higher labour standards – do not fundamentally disagree over the desirability of higher labour standards, in particular the enforcement of core labour standards. However, they appraise practical aspects of implementation which might cause social clauses to miss their target. The second set is voiced by neo-classical economists who provide the theoretical justification for economic liberalism. They express concern for the potential distortionary impact of labour standards, which could lead to factor misallocation and inefficiencies. The third set of criticisms emanates most prominently from ecologists. They advocate against unsustainable consumption and production patterns. This raises very difficult questions for growth prospects to alleviate poverty by means of higher labour standards, and therefore also for some labour unions' policies.

3.1 The Institutional Critique: Missing the Target

Social clauses might miss their presumed objective, although it is not clear whether advocates aim at regulating trade or wish to use trade sanctions for the enforcement of core labour standards in general. These two objectives are related, but call for different implementation mechanisms. The present discussion of institutional constraints in the implementation of social clauses focuses on economic issues that arise in this respect. Technical legal aspects are not analysed on how existing international instruments might be amended for this purpose.

Both the ILO and the UN Committee on Economic, Social and Cultural rights, which monitor implementation of core labour standards, are committed to moral persuasion.⁶⁵ The WTO is probably one of a few international agencies with some "real teeth", in the sense that a complainant country may raise tariffs or suspend other obligations against a government that fails to comply with WTO rules. That form of reprisal, however, has never been used in the fifty years of the GATT/WTO history. The WTO itself regards this as a readjustment of bilateral trade relations (or a compensation), not as sanctions strictly speaking.⁶⁶

Several proposals have been presented for strengthening the ILO and for involving the WTO to assist with this task. These proposals do call for the use of sanctions in the real sense for the enforcement of core labour standards, as we shall see shortly. That raises several difficulties, from an economic point of view, due to the nature of labour standards and to the "institutional geography" of non-enforcement of these standards.

First, it might prove extremely difficult, if not impossible, to apply trade sanctions on the basis of the WTO existing instruments. Assuming labour standards could be brought under its *chapeau*, presumably by way of Article XX(a) or XX(b) of GATT 1994, the following issues would arise in the context of anti-dumping rules.⁶⁷ "Social dumping" means a lowering of labour standards which would reduce production costs. Therefore, some claim that low labour standards would cause material injury to importing countries. But, the WTO definition of dumping refers to product prices falling below

61. This Committee falls under the supervision of the Economic and Social Council (ECOSOC) of the UN. De Wet (1995), pp. 455 and 460.

66. Comment by Steve Charnovitz.

67. Charnovitz (1998) discusses the possibility of using Art. XX(a) for that purpose, which provides an exception for trade measures necessary to protect public moral. Article XX(b) provides an exception to protect human, animal or plant life or health.

production costs, not to an artificial lowering of production costs themselves.⁶⁸ Moreover, according to the terms of the Agreement on Implementation of Article VI of GATT 1994, margins of dumping must be calculated in order to assess material injury for domestic industries of importing countries. A determination of material injury (or the threat thereof) must be based on positive evidence, on facts, and not merely on allegation, conjecture or remote possibility (Art. 3 para. 1 and 7).

In assessing material injury, three cases can be distinguished:

- If "social dumping" is due to non-enforcement of *core* labour standards, production costs might not be affected to begin with and no material injury could be assessed. There is one exception, however: forced labour which will be discussed below.
- If, on the other hand, "social dumping" is due to non-enforcement of substantive labour standards, margins of dumping could only be calculated if these breaches are localised (i.e. restricted to few firms). Otherwise "normal" wages – for the same industry in the same country – will not be available as reference to estimate what "normal" production costs would have been in the absence of "social dumping". However, if the breach is localised, the damage might remain too small to pass the *de minimis* test (Art. 5 para. 8) and undertake an investigation of dumping. In any case, the most obvious response would be to strengthen the enforcement capacity of state agencies in order to bring these firms up to national standards, however low these are. But, in most instances, "social dumping" will be a generalised occurrence and, therefore, "normal" wages will not be available to calculate margins of dumping.
- In the case of forced labour it would probably be possible to assess material injury, notwithstanding the *de minimis* test. However, one might wonder whether application of anti-dumping duties would be an appropriate response. It is interesting to note that, when a developing country is found dumping, Article 15 states that constructive remedies should be explored "before applying anti-dumping duties where they would affect the essential interests of developing country Members". Further, anti-dumping duties should only aim at removing the injury to domestic industries of importing countries (Art. 9 para. 1), not at changing domestic practices of dumping countries. Article XX (e) of GATT 1994 reflects the same logic as regards prison labour; it only prohibits trade of products of prison labour, but does not seek to curtail prison labour itself.⁶⁹

In other words, the main difficulty in assessing material injury in the case of "social dumping" is due to measurement problems because of the nature of labour standards. Anyhow, the rationale of core labour standards is not so much to affect production costs, *but to change the production process altogether* (to create dynamic and collective efficiencies). Hence, it would be hopeless endeavouring to establish

62. Art. VI para. 1 of GATT 1994 defines dumping as follows:

For the purpose of this Article, a product is to be considered as being introduced into the commerce of an importing country at less than its normal value, if the price of the product exported from one country to another

(a) is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country, or,

(b) in the absence of such domestic price, is less than either

(i) the highest comparable price for the like product for export to any third country in the ordinary course of trade, or

(ii) the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit.

Due allowance shall be made in each case for differences in conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability.

WTO (1995), pp. 493-94.

69. WTO (1995), pp. 168-196, 519-520.

counterfactuals for the assessment of economic costs associated with non-respect for these core standards. Other criteria might appear more suitable to apply trade sanctions in this context. Involving the ILO to assess breaches in the enforcement of core labour standards would therefore be desirable, but this will not suffice to eliminate these measurement problems. They will re-emerge at the next stage in the application of WTO trade sanctions, namely in the determination of their scope. In a rule-based system such as the WTO, and to ensure fairness, one would expect a clear link between the severity of breaches and the scope of sanctions. But, if material injury eludes measurement, other criteria must first be devised. In any case, it would represent a major departure from current WTO practices, moving from a system of compensation for the actual material injury incurred to a system of sanctions strictly speaking: based on a qualitative appraisal of a country's behaviour; aimed at changing its domestic practices; and decoupled from the actual damage inflicted to other parties, as is the case with fines.

These observations do not imply that "social dumping" does not involve important (collective) economic costs, as discussed in Section 2. But these costs are mostly born by the dumping country itself. Many consist of (social) externalities which do not affect (private) production costs. Of course, these costs may spill over to other countries because of their interdependence. Such "physical" spillovers may affect neighbouring nations directly, as in the case of major industrial accidents, or follow some less direct channels.⁷⁰ The links between low labour standards, poverty, social unrest, and displacement of people; or between low labour standards, poverty, environmental damage, and displacement of people; may provide avenues for adversely affecting neighbouring countries.

Hence, low labour standards abroad do not merely represent a moral concern, as some claim. They may inflict economic costs to other nations – though not necessarily trading partners – thus providing a justification for adopting a preventive approach to complement sanctions: to press for more aid in the form of technical assistance, training and the like for raising labour standards in less industrialised countries.⁷¹ This would mean involving other institutions, including creditors like the World Bank. Granting trade preferences, along the lines of the EU GSP, might also be considered, although there is no guarantee labour will share in the benefits and the margins of preference that can be granted diminish as tariffs are being dismantled.

A second set of difficulties with current proposals for a social clause stem from their limited compliance with core labour standards to traded products; two issues arise. As stated above, most trade is undertaken by MNEs who generally offer better work conditions (for the core of permanent staff) than similar local firms. Moreover, their share in employment is rather small. Hence, enforcement of core labour standards in MNEs would primarily have a demonstration effect. But that demonstration effect should nevertheless not be neglected. Good employers, not bad ones, have always showed the way.

Further, the trading sector is embedded in a complex web of subcontracting and supply arrangements, which embrace non-unionised labour in the informal sector. Monitoring labour standards in these sectors is not impossible, but would require some innovative thinking, in particular with respect to self-employed subcontractors! The effective implementation of social clauses regulating production processes of traded goods and services would call for enforcement of core labour standards *across the board*, that is, for universal coverage (this issue is discussed in Section 4.1). Otherwise, enforcement of social clauses will always entail some degree of arbitrariness as some suppliers and subcontractors, and perhaps the worst offenders, elude scrutiny. It may even result in a backlash, pushing bad labour practices further underground. Firms might be tempted to resort more extensively to subcontracting and outsourcing in order to circumvent existing labour regulations.

70. Halina Ward (1996) distinguishes between physical, economic, and psychological spillover effects.

71. Juan de Castro (1995) presents a proposal for aid to help raise labour standards entitled "Global Convention on Core Labor Standards of Universal Value."

A third set of difficulties with proposals for a social clause relate to the fact that they aim at enforcing *human rights* labour standards, not substantive labour standards. Therefore, one might wonder whether the WTO would be the appropriate forum for applying sanctions as a measure of last resort, presumably after failure of an ILO process of exposure, technical assistance and negotiations. Violation of economic human rights is likely to coincide with other, politically motivated, non-respect for human rights. In such a situation, and not withstanding some reforms, the UN would probably provide a more suitable forum for assessing the situation and the appropriateness of sanctions. Its membership is nearly universal, unlike that of the WTO. Moreover, since trade sanctions might impact most heavily on the poor (whom the international community is presumably trying to help) other, more targeted, forms of pressure might be more suitable. The issue here is no longer trade liberalisation, or labour standards as such, but violation of human rights and good governance. The proposal of UNDP to create an Economic Security Council might also have some relevance in this context.⁷² However, the problem remains, with the UN as for the WTO, of fairness, politics, and control of the organisation by few powerful nations. Finally, the Office of the High Commissioner of Human Rights might play a role, but only in coordination with the ILO, in order to address the broader issue of human rights violations, although it is also committed to moral pressure.

Bearing these provisions in mind, careful administration of social clauses might reduce these shortcomings to a reasonable level. Their scope would be limited to clearly identifiable trade-related offenders, such as deliberate suppression of core labour standards in EPZs, and would mainly have a demonstration effect for the broader issue of respect for these standards at large. In any case, application of trade sanctions would remain a measure of last resort. But that possibility must effectively exist for the threat of using them to suffice, as it is hoped, in prompting the desired changes.

With respect to the second objective of social clauses, namely regulating trade to guarantee fair practices, the issues that are involved include the following.

Some non-respect for core labour standards seems to be aimed at gaining "trade advantages", that is, attracting inward FDI in export processing zones. The most compelling case for social clauses probably arises in this context. As stated above, governments may engage in excessive competitive bidding to attract MNEs, erroneously believing that the suppression of core labour standards would be critical. MNEs might actually favour a more uniform set of standards in EPZs, to reduce the cost of learning about, and complying with, labour codes; governments and labour would also gain from international coordination to match the global scope of MNEs, avoid excessive competitive bidding, reduce tensions which impede the full realisation of MNEs' potential, and set framework conditions to ensure MNEs activities concur with the global good. However, in this case, the issue is no longer social clauses and core labour standards, but establishing a comprehensive regulatory framework to meet the challenges of globalisation and of sustainable development. In effect, this would mean extending the scope and giving binding force to instruments such as the voluntary codes of conduct of MNEs and the OECD Guidelines for Multinational Enterprises, and based on relevant ILO conventions which represent the outcome of long years of negotiations at the international level. Proposals were drafted by the UN but were abandoned in 1992, after 12 years of negotiations, as no agreement could be reached.⁷³

Some advocates therefore contemplate the possibility of extending the mandate of the WTO to regulate trade. At present, it is a negotiating forum ill suited for this task. Some major reforms would be called for. But that might not represent such a remote possibility as may seem at first. The proliferation of private labelling schemes might force labour issues on the agenda of the WTO. Its

72. UNDP (1994), p. 84.

73. Shaw (1996), p. 33.

rules constantly evolve precisely because it is a forum for negotiations. Moreover, once most tariffs will have been negotiated away, the WTO might be looking for a "new role" and begin to orient its activities in that direction.

Also, in the context of panel decisions, the WTO might increasingly find itself under pressure for extending the scope of its definition of "fair trade". One would think that core labour standards, as fundamental human rights, should take precedence over WTO trade rules, in accordance with the terms of the Charter of the United Nations and the International Covenant on Economic, Social and Cultural Right (Art. 4 and 5). The Covenant is legally binding for states that have ratified or acceded to it, unlike the Universal Declaration of Human Rights which primarily has a moral force. Thus, it should not be necessary to amend trade rules to apply this principle, consistent with the standard of coherence among international instruments, which jointly form the body of international law. This is one aspect of multilateral coherence, the need for which has often been stated.

3.2 The Neo-Classical Critique: Factor Misallocation

The neo-classical critique of labour standards does not reject them altogether; it is not a call for *laissez faire* even though these models provide the theoretical justification for economic liberalism. Neo-classical economists accept a minimalist list, which corresponds more or less to core labour standards, although they express ambivalence about basic organisational rights. However, it is probably fair to say that the strong assumptions upon which neo-classical models are built embody the conditions core labour standards seek to achieve, namely: free choice, equal bargaining power, and full information.

Neo-classical economists also agree to interventions that correct market failures and missing markets, or promote dynamic efficiencies. For instance, they accept protection of infant industries. They welcome state intervention and active labour market policies to provide incentives for technology and skills development, in particular for general training which otherwise falls short.⁷⁴ They further admit that active labour market policies can help restructuring by easing the adjustment process.⁷⁵

Neo-classical and neo-institutional economists principally disagree over the specific content of labour standards and over the impact of unions. However, implementation of a minimalist or maximalist list of standards nonetheless requires full-fledged labour institutions, norms and standards. "Without the appropriate institutions no market economy of any significance is possible".⁷⁶ Whatever the specific content of norms is, contractual parties must know what their respective rights and responsibilities are. Appropriate implementation mechanisms must exist to pre-empt and resolve costly conflicts.

The minimalist list basically grants more discretionary power to firms, reflecting a different view of the behaviour of firms, labour, and the state. Simplifying somewhat for the sake of the argument, neo-classical economists conceive of firms as basically benign if not benevolent, while holding a rather negative view of labour and unions; thus, they favour the stick approach to labour. Neo-institutionalists, on the other hand, behold a mirror image. Neo-classical economists also express scepticism about state agencies and their ability to act in the social interest and refrain from rent seeking.

However, these views of firms, labour, and the state mask a fundamental conceptual disagreement over welfare maximising processes. For neo-classicists, pursuing individual self-interest necessarily increases

74. Herzenberg, Perez-Lopez, and Tucker (1990), pp. 6-7.

75. Fields (1990), p. 32; and Freeman (1992), p. 141.

76. Coase (1992), p. 714.

general welfare. This follows from the additive utilitarian approach to welfare maximisation and the maintained assumption of perfect competition which, in effect, rules out predatory practices. According to the former, total welfare of a population is the sum of individual gains (utilities). Moreover, competition would force firms to abide by the rules and be "reasonably good employers". Hence, firms should not be fettered; they would know best. Neo-institutionalists, on the other hand, account for asymmetrical power relations and conceive of a collective good beyond the individual, which is not merely the sum of individual utility, and which therefore calls for a global perspective (and policies) that neither individual firms nor workers have. "Another perspective would incorporate society, which is not the sum of individuals."⁷⁷ Thus, maximising general welfare would demand collective institutions, processes, consultations, and above all cooperation. These are some normative underpinnings of the debate.

The main contention of neo-classical criticism arises from the fear that labour standards and trade unions in particular will interfere with an otherwise well-functioning market, thus resulting in deadweight-losses to society due to factor misallocation. This criticism should not be taken lightly; efficient use of resources is a key element for sustainable development. Accounts of poorly designed and implemented labour standards are not lacking. This does not mean, however, that labour institutions never work well nor that labour standards necessarily introduce detrimental rigidities.

Neo-classical models usually assume that unions will raise wages. Hence, these economists claim that, in a dualistic economy as would typically be the case in less industrialised countries, raising wages in the "formal" sector above market clearing rates will reduce employment there. Thus, workers will crowd in the "informal sector" and put downward pressure on wages. This scenario presumes that labour is perfectly fungible and that firms compete for the same labour in both sectors. However, alternative schemes can be conceived. For instance, if labour supply curves slope downwards over the relevant range because of binding income needs – as wages fall families increase their supply of labour – then raising minimum wages in the formal sector might *increase* wages in the informal sector, rather than lowering them. Higher wages could help resorb excess labour supply (unemployment), overextended work days, and child labour, thus reducing downward pressures on wages in the informal sector.⁷⁸

In practice, labour standards and minimum wages in the informal sector suffer from an implementation gap.⁷⁹ Moreover, the relationship between the "formal" and "informal" sectors is much more complex than these models assume, due to subcontracting arrangements and other linkages; nor do these sectors necessarily compete for the same labour. Finally, low incomes in the "informal" sector are not primarily due to Western-style labour codes in the "formal" sector, but to other factors such as systematic neglect and under-investment.⁸⁰

Not surprisingly, neo-classical economists place greater emphasis on capital investment for economic growth, while neo-institutionalists stress development of the domestic market, the multiplier effect, and income distribution. The former favour growth poles and export-led industrialisation (ELI) based on comparative advantages, and the latter prefer a more diffused, inward-looking, grass-root type development. Of course, these views form two sides of the same coin. Not surprisingly, structural adjustment programs, for example, include elements of both strategies.

The size and resource endowment of a country greatly conditions which of these two approaches is most suitable, or rather, what the appropriate mix would be. A small country would find it difficult to pursue

77. Tokman (1992), p. 149.

78. Dessing (1990b).

79. Portes (1994), pp. 167-170; and Herzenberg, Perez-Lopez, and Tucker (1990), p. 10.

80. Dessing (1990a).

an inward-looking strategy. Moreover, it would be quite impossible for *all* countries to engage simultaneously in an export-led strategy and maintain a trade surplus. Globally, if some countries run a trade surplus, others will necessarily face a trade deficit. In addition, if everybody starts looking for markets abroad in the pursuit of ELI, this strategy still calls for the development of domestic markets; trading partners looking for export markets will press for it, instead of domestic producers as with an inward-looking development strategy. Higher labour standards, to the extent that they help reduce income inequalities, contribute to the development of domestic markets, especially since low-income households have a higher propensity to consume out of income than wealthier families. Hence we fall back on our feet and rejoin the arguments of neo-institutionalists.

Also, the debate over sustainable development illustrates that it would be dangerous to generalise the "successful" experiences of a few, whether Western industrialised countries or Asian NIEs. Some seem to suggest that countries pursuing ELI should begin with textiles, as a *passage obligé*, in order to learn-by-doing, before switching to other labour-intensive industries. However, it would not be feasible for a large number of countries to produce textiles or electronics in surplus of domestic consumption, or to indulge in "grey" (environmentally damaging) industrialisation. Western countries and Asian NIEs succeeded perhaps precisely because only few countries pursue these strategies. In industrialised countries, demand for the products of traditional labour-intensive industries increases very little as incomes rise (i.e. income elasticity of demand is low), which means that market shares can only be enlarged at the expense of other producers. This limits the size and expansion of existing export markets, while strategies of keeping real incomes down in poor countries restrict the growth of potential markets, where the highest demand for these goods can be expected.⁸¹

Reviewing a number of World Bank and ILO studies, Freeman finds no pattern buttressing distortionist fears that labour market interventions introduce undue wage rigidities, in spite of some cases indicating the contrary. In many industrialising countries real wages fell during the 1980s, sometimes quite drastically. "Research on labor markets in industrial countries shows that labor markets work tolerably well and that real wages are flexible downward under diverse institutions, ranging from decentralised US labor markets to centralised Swedish or Australian wage-setting. . . . No labor market works exactly according to simple neo-classical models, but most respond reasonably well to shifts in market conditions."⁸² The evidence that minimum wages and other labour market interventions rarely seriously distort the labour market is consistent with the following explanations which have been offered: labour market standards would be selectively enforced; minimum wages might also be endogenously determined, that is, they would be set on the basis of the existing wage distribution in order to eliminate only the least tolerable salaries.⁸³

Freeman does not find much support for neo-institutionalists either, but he restricts his inquiry to tripartite decision making bodies. Elsewhere, he points out that interventions reduce wage differentials in the industrial sector. Moreover, he does not find, neither in less nor in more industrialised countries, that unionism impedes rapid economic growth. Germany and Japan had outstanding growth records with extensive labour market interventions. Similarly, neo-corporatist centralised wage-setting arrangements worked well in certain periods of time in Northern European countries.⁸⁴

Freeman's findings echo those of others, namely that the US and the UK, where experimentation with unregulated markets went furthest, also experienced the most pronounced industrial decline amongst advanced economies. Wilkinson dubs them newly deindustrialising countries (NDCs). The US and the

81. Wilkinson (1994), pp. 78-79.

82. Freeman (1992), pp. 128, 139-141.

83. Fallon (1987), pp. 7-8; Figueroa (1994); and Freeman (1992), pp. 127-129.

84. Freeman (1992), pp. 123-124, 134, 138.

UK were quite successful in creating employment, but largely low-wage, unskilled, and of a precarious kind. Thus, income inequalities widened and poverty increased, undercutting human resource development. The short time horizon of business strategies led to an under-investment in product and process innovation and in skills development, thus undermining their international competitiveness.⁸⁵

One must admit, though, that neo-classicists and neo-institutionalists do not really talk about the same thing. Schematically, the former focus on *static* comparative advantages and the "monopoly" function of labour unions; their impact on wages and employment, and how that affects capital investment and economic growth. The latter stress *dynamic* comparative advantages and the "voice" function of unions; their general impact on working conditions and industrial relations, and how that affects technological innovation and society at large.⁸⁶ These two approaches complement each other, neo-institutionalists enriching the rather narrow perspective of neo-classicists.

3.3 The Ecological Critique: Unsustainable Growth Patterns

Ecological concerns question prevailing growth patterns, and therefore also some union policies and the content of some labour standards. From an ecological and sustainability perspective, solutions must be found to the twin problem of mass poverty in the South, and unsustainable consumption and production patterns in the North. Presumably, this would entail shifting growth to the South while tapering it in the North, and simultaneously "greening" production and consumption worldwide through considerable technological transformation and adjustments in day-to-day habits.

In this respect, less industrialised countries might hold some advantage to the extent that they will be less encumbered by obsolete industries which must be converted. They have the opportunity of learning from the mistakes of the North, while benefiting from green technologies (provided their price is not prohibitive), and of taking a few "shortcuts" to embark from the start on more sustainable growth patterns. Moreover, with the oblivion of the Northern economic model as "universal" reference, indigenous models, technologies, and know-how will (should) gain importance. Less industrialised countries might assume strategic importance as repositories of genetic materials, unknown medicinal plants, and the knowledge of their indigenous and tribal people for sustainable resource management.⁸⁷ Therefore, what might seem bad news at first could in fact favour less industrialised countries.

However, the *kind* of labour standards and union policies that are implemented plays a critical role in fostering sustainable economic growth. The wrong kind will simply exacerbate unsustainable production and consumption patterns, thus aggravating the current situation.

For instance, union policies that create a labour aristocracy defeat the purpose of sustainability, because they magnify inequalities and lead to the exclusion of the majority of the work force – women, migrants, and workers in the informal sector – from effective participation in shaping industrial relations and strategies.

Furthermore, in the previous sub-section, it was argued that product differentiation and productivity increments were central elements in a successful business strategy to remain competitive, and that such a strategy demanded better labour standards. But product differentiation calls for the creation of new

85. Wilkinson (1994), pp. 73-74, 79-80; Dertouzos (1987); and Galbraith (1992).

86. The "voice" and "monopoly" functions of unions were highlighted by Freeman and Medoff (1984). For a discussion of static and dynamic comparative advantages, see: Scott and Lodge (1985).

87. Coté and Courval (1996), p. 5; and Dei (1993), pp. 104-105.

consumption needs. The question can therefore be raised: how much and what kind of product differentiation would be compatible with sustainable development? Presumably product cycles should be lengthened and goods become more readily repairable, convertible, adjustable, or polyvalent in their use to curtail unsustainable consumption patterns. Some firms have applied these principles in their production strategy with much success.⁸⁸

Similar reservations, on sustainability grounds, could be raised concerning productivity growth which labour standards seek to stimulate. How much more productive does labour need to become to earn decent wages? Productivity cannot rise exponentially for ever.⁸⁹ Nor is the link between wages and productivity entirely straightforward. Production has become systemic; a share of the output can no longer be readily assigned to a given person (or group). Moreover, for services, the very notion of productivity loses relevance. How does one measure the productivity of a teacher or a priest? The determination of wages, and of prices, hinges on many factors including social conventions. The systematic difference between men and women's wages for the same, or equally demanding, work illustrates this point. Consumers' preferences condition the demand for goods and services, which in turn affect product prices and therefore the total labour bill a firm can support. But this still leaves much room for restructuring wages within firms. Sustainability calls for labour standards that contribute to such an adjustment of wages (and prices) towards more equity.

Bearing these provisions in mind about the content of labour standards, ecological concerns do call for better ones. For instance, poverty is a main cause for environmental degradation, pushing people on marginal lands and high-risk areas (e.g. risk of flooding), thus jeopardising development by destroying the life-support system. It is a vicious circle. Labour standards aimed at combating poverty, while training people in environmentally friendly production processes, might help achieve the twin objectives of development and environmental protection (provided demand for polluting products or processes does not increase).

More generally, labour standards may contribute to the protection of the environment in several ways. First, agents that cause professional accidents and illness are often major components of environmental nuisances. The case of agriculture illustrates how the work environment and the quality of the environment in general are inextricably linked.⁹⁰ Thus, well-managed safety and health programs at the work place reduce polluting emissions, improve waste collection as well as adequate handling and disposal of pollutants. Second, training of workers in health and safety measures also helps prevent industrial accidents that may cause ecological disasters (see the ILO Convention No. 174 on the prevention of major industrial accidents). In the last analysis, the terribly costly industrial accidents of recent years were almost all failures of human resources management procedures and standards, that is, of training, safety, and health standards.⁹¹ Third, labour standards may contribute to the "greening" of products and processes by retraining people to work with cleaner technologies or to be redeployed in "green" industries. Fourth, existing labour and factory inspection mechanisms might also be used to assist with environmental monitoring and inspection at the plant level. "Green clauses" could therefore be inserted in collective agreements to address environmental issues at the work place.⁹²

Finally, as stated previously, labour standards may enhance coordination and cooperation between labour, business, and the government. Ecologists (and others) warn that we must change growth

88. Falkman (1996) provides some examples.

89. Dommen (1994), pp. 10-14.

90. For a discussion of the relation between work, employment, and environmental issues, see: the collection of essays in Bhalla (1992).

91. Sengenberger and Campbell (1994), p. 427.

92. ILO (1990), pp. 60-64.

patterns.⁹³ In other words, we must turn the boat around, so to speak. If anything, "turning the boat around" would call for pervasive changes and, therefore, for a high level of coordination among all parties, rather than a policy of *laissez faire*; but the kind of coordination which provides direction and elicits individual creativity. Such a coordinated, joint effort is only feasible with a social consensus, that is, with good industrial relations among other things. There would be agreement that labour interventions during transitions are functional to the success of reforms. Labour institutions can provide valuable social feedback, legitimacy, and support.⁹⁴

Ecologists lend support to neo-institutional economists favouring labour standards in yet another, indirect, way. The ecological (holistic) perspective challenges the very foundations of neo-classical theory, in particular the linear approach to change (growth) and the additive utilitarian paradigm. The analysis of ecosystems draws on the theory of complex systems and the evolutionary perspective. These approaches to change feature cascading systemic impacts, feedback loops, thresholds, and critical points. Abrupt, non-linear, and unpredictable changes are more likely to occur than gradual, linear, and predictable alterations. The mean state of a system is therefore a poor predictor of long-term responses to change. Long-term responses often involve magnification of seemingly unimportant actors and components. Surprises are the norm when systems are perturbed.⁹⁵

Synergies feature prominently in the evolutionary perspective. As stated in Section 2, *more ethical human resources management would be a prerequisite to set synergies in motion and make a quantum leap forward*. But synergies elude the neo-classical additive utilitarian approach and zero-sum game thinking (your gain is my loss). They are characterised by a positive-sum process (your gain is also my gain). Therefore, they call for another mindset altogether, for other ways of doing things, not acting merely in one's own self-interest but seeing the bigger picture.

The theory of systems and the evolutionary approach might be fruitfully applied in the field of economics to enhance current models, which are still too fragmented, partial, static, and relevant for relatively small changes over a short time frame. The holistic perspective appears to challenge axioms that are invoked in support of economic liberalism, for instance on the distribution and magnitude of welfare gains, or the direction, nature, and pace of technological innovation and economic growth.

93. The highly significant warning call of Cogi Indians in Colombia offers a case in point. Apparently, they made an exception to their habitual policy of isolation and contacted a "Westerner" to disseminate their message, from the Elder Brothers (them) to the Little Brothers (us). They feel we behave rather irresponsibly: we must shape up; time is running out; and we must generate less "imbalances" because they can no longer keep up with the task of reharmonisation... Ereira (1992).

94. Freeman (1992), pp. 136-141; and Tokman (1992), pp. 146-147.

95. Malcolm (1996), pp. 44-45.

4. STRIVING FOR SUSTAINABLE DEVELOPMENT: COMPLEMENTARY MEASURES

Few additional issues bear stressing in relation to the nexus between trade, labour standards, and sustainable development. The first issue is universal coverage of labour standards for effective interception of the "iron law of wages" and to fully realise the potential of these standards as a source of economic dynamism. The second question concerns closer tripartite cooperation to meet the challenges of globalisation and of sustainable development. And finally some comments are offered on how sustainable development might affect trading patterns and the structure of production costs.

4.1 Universally Applicable Labour Standards

Currently, unionised labour represents a "labour aristocracy". Most workers are not covered by collective agreements and have only limited access to other means of redress – workers in the informal sector, women, home workers, casual workers, working children, migrants, and refugees, not to mention self-employed subcontractors. Yet, for an effective interception of the downward spiral of working poverty, labour standards must extend to all workers. A minimum floor should be instituted to begin internalising social externalities associated with firms' activities and to embark on a more equitable (and sustainable) growth path.

In Western countries, combating widespread unemployment despite "jobless growth" also calls for universally applicable labour standards, which should cover managerial positions as well. Several factors combine. Economic growth can no longer be offered as the cure for unemployment. Sustainable development admits some growth, in particular in "green" industries, but exponential increases may no longer be feasible. Moreover, much of this unemployment is due to structural factors, including a secular decline in working time which remains unevenly spread. Therefore, proposals have been made of further reducing working time to keep in step with technological progress. A rationale for industrialisation was to free humans of the drudgery of work. But technological innovations cause disruptions that must be managed accordingly.

For instance, in the face of excess labour supply, employers do not hesitate to abuse the situation, shedding much labour and lowering wages on a piecemeal basis, while increasing work time to maintain output constant. Unemployment and lower wages combine to exacerbate excess labour supply as people attempt to maintain their former levels of income. As a result, those who still hold a job are overburdened with work, while ad hoc wages and other employment practices further undermine social cohesion and long-term prospects.

All these factors demand universally applicable work standards, centralised and coordinated restructuring of wages and work hours, to spur employment, maintain social consensus, and meet the challenges of the twenty-first century.

However, universal coverage of labour standards represents a major challenge for unions (or similar institutions). They should move away from a narrow focus on defence of pay, working conditions, and jobs, and embrace broader issues such as employment promotion, retraining and redeployment of the work force to match industrial restructuring, and devise innovative approaches to reach non-organised labour.⁹⁶ They need to adopt a global perspective and recognise social objectives that go beyond the particular interests of labour. Above all, they must remain flexible, be able to adapt their strategies and

96. Shaw (1996), p. 37.

institutional framework to fluctuating conditions and the emergence of new issues.⁹⁷ For example, other forms of organisation have been created which blur the boundaries between labour and management: employee participation schemes, quality circles, in-house mediation services, etc.

Informalisation of employment must be combated to achieve universal coverage. Employers increasingly call upon "independent" subcontractors to circumvent existing labour regulations. A first issue in this respect concerns the terms of work contracts themselves, when such contracts exist. In this case, the table could be turned onto employers, using the same legal devices as they do, but the other way around. Giving precedence to the content of a work relation over the formal terms of an employment contract might provide an avenue for extending the coverage of existing labour standards to these "de facto employees".

The second issue is how unions might reach non-organised labour in the informal sector. The scope for organising the informal sector appears limited. Informal sector workers are, for the most, primarily concerned about their next meal. Their resources for making their voices heard and engage in a constructive dialogue with management remain virtually non-existent, in terms of time, energy, information, and means for financing their own "unions" or other kinds of associations. Rebellion and other destructive actions may require fewer resources than setting up "unions", which have sufficient knowledge about the business to bargain effectively without putting firms in jeopardy. In other words, informal sector workers cannot be expected to do it all alone. Granting them the freedom of association and the right to bargain collectively will not suffice. Much preparatory work, aiming at "creating a window of opportunity", will be required on the part of other organisations. Employers might also find it beneficial to help create conditions that are conducive to a constructive dialogue in order to pre-empt a backlash.

It should be stressed, however, that non-unionisation does not imply a vacancy of labour standards or of implementation mechanisms. In many parts of the world, customs and "informal" mechanisms, such as peer pressure and intercession of community leaders, regulate labour relations. Intermediation may occur under the auspices of church groups, women's groups, and other institutions. Moreover, in some traditional societies, unionisation as such may neither be feasible nor desirable. Homeworkers, for instance, are difficult to organise because of their geographic dispersion. Hence, the most promising avenue might consist in learning about these traditional and "informal" institutions, strengthening their capacity, upgrading them, and devising ways of linking them with "formal" institutions to ensure harmonisation and centralised coordination on main issues. NGOs may act as relays between formal and informal institutions, especially since the informal sector remains difficult to reach for state agencies.

No miracle recipe can be offered for setting up such tier arrangements, except to recommend a grass-root approach, flexibility, and tailoring to specific local conditions. What matters is identifying and coordinating enforcement of labour standards with grass-root institutions who can, or already do, perform such functions. In some cases, the transition between traditional and "modern" institutions might prove most problematic, not traditional institutions themselves, and leave gaps in the coverage of labour standards. Such tier arrangements should probably also respect the principles of subsidiarity and of multi-level standards to enhance flexibility.

Finally, ways must be found for assisting self-employed workers in general and addressing the question of family labour. Their situation is typically worse than those of regular employees. Moreover, they may be the first to feel the bite of trade sanctions. For instance, one may envisage creating cooperatives to help them negotiate better terms with subcontractors, wholesale buyers, creditors, and the like.

97. Tokman (1992), pp. 149-150.

Because of interlocking transactions, the scope of labour standards remains too narrow and must be extended to include other aspects.⁹⁸ That provides a strong case for utilising a multi-pronged approach and complementing a social clause with various forms of assistance to provide a certain degree of fairness and equity. The role of creditors, such as the World Bank, and of NGOs becomes critical here.

4.2 Closer Tripartite Cooperation

In the preceding section the case was made that the scope of labour standards must be extended to cover *all* forms of employment and pre-empt a backlash of trade sanctions. Similarly, a successful implementation of adequate labour standards calls for complementary measures, especially if ultimately the objective is to curtail working poverty and switch to a sustainable development path.

The presence of unions, or other similar institutions, does not guarantee cooperative solutions. They may facilitate consultations between labour and management on a more equal footing, provided labour relations are not adversarial. Thus, additional measures of good governance might be required.

Further, as stated above, switching to sustainable development implies rather comprehensive changes of both production and consumption patterns that call for a global perspective and coordinated action at all levels and among all parties. The narrow perspective of competitive agents acting in their own self-interest will not suffice. Relying on the Invisible Hand of Adam Smith might result in chaos. Framework conditions, reflecting a social consensus, should give direction and set the limits to the playing field of competition to ensure it accords with the common good and does not impair labour standards broadly speaking.

For instance, in the context of such fast, unrelenting, and overwhelming changes, labour must be constantly redeployed and retrained, not just in job-specific skills, but also in general training and for the acquisition of "new" skills in anticipation of industrial restructuring. Firms will not provide sufficient training, in particular general training, unless subsidies or other measures help share the costs. Nor can this burden simply be shifted onto labour. For low-income families the cost of education and training remains prohibitive without some financial assistance in one form or another. Labour is ill equipped to anticipate industrial restructuring. Moreover, education and training follow their own cycles. These constraints invite counselling services and support for adult education to smooth the process. Generally speaking, coordinated action between firms, unions, and the state plays a key role in easing the process of industrial restructuring, ensuring appropriate technological and human resource development to engage in product and process innovation, and thus pre-empt head-on competition.

In any case, it probably bears stressing the need for, and virtues of, cooperation when it has become fashionable to praise competition. But cooperative solutions do not necessarily entail a burgeoning state administration either, as some fear. Other fora may assume these functions. Moreover, enhancing cooperation might simply call for *other kinds of regulations*, another role for the state, rather than more regulations per se.

98. Gilian Hart (1986) coined the term of "interlocking transactions," see the Glossary.

4.3 Changing Trading Patterns

Sustainable development would imply rather different trading patterns, as growth shifts to the South, value-added activities increasingly take place in the South, and income inequalities are reduced. Currently, three quarters of world trade occurs among OECD countries, that is, countries with a similar level of industrialisation and exchanging similar goods. South and Southeast Asian countries strengthened trade among themselves as domestic demand increased for the kind of Western export goods and services they produce. Economic growth seems to be the main incentive for intensified regional South-South trade.⁹⁹ Therefore, North-South trade will lose import for LDCs.

At present, many nations primarily compete on the basis of product differentiation. But it remains to be seen how much, and what kind of, product differentiation and of bidding for market shares agree with sustainable development. The sort of advertising wars we have witnessed between certain brand names probably cannot be justified in a sustainable development perspective. When demand is highly responsive to changes in product prices (i.e. price elasticity of demand is high), marketing wars simply shift market shares back and forth without expanding the overall market; fashions go yo-yo with little value-added for society at large. The alternative would consist of cooperative arrangements, freeing resources for more productive uses, which impact more positively on people's living standards while reducing ecological nuisances in the form of waste. For instance, it has been estimated that less than 0.2% of the price of Nike shoes goes to factory workers in Indonesia or China, while 9.5% is spent on advertising and sponsoring, 39.6% on distribution, 10.8% to cover sales and administrative costs, and 29.3% for raw materials, depreciation, transportation and stocking.¹⁰⁰ Hence, some marketing could probably be curtailed, spending a larger share on wages instead, and passing remaining savings on to consumers in the form of lower prices. *Paying fairer wages need not raise product prices.*

Finally, as we proceed with the internalisation of externalities, pay fairer wages to people in the South, and shift to more sustainable production patterns, the relative price of some production inputs will probably nonetheless increase and perhaps also some transportation costs (at least in the medium term). How trade will be affected remains unclear. It might eventually taper off. With higher transportation costs and relative prices for some production inputs, and with smaller wage differentials across nations, firms will also have fewer incentives to haul inputs and semi-finished products around the globe, from one stage of production to the next. At present, about 40% of world trade would take place within MNEs (intra-firm trade).¹⁰¹ But, in the interim, we can expect intensified relocation of labour-intensive industries to the South, while the North might find trade in "green" technologies increasingly attractive.

99. Shaw (1996), p. 19; and ICDA (1995), pp. 51-53.

100. ICDA (1995), p. 89.

101. Dicken (1992), Chap. 3, cited in Shaw (1996), p. 7.

CONCLUSION: THE SOCIAL CLAUSE REVISITED

This report points to the following six key aspects of social clauses and labour standards:

- Current proposals for a social clause in the multilateral trade system cover four categories of fundamental principles or core labour standards that are deemed human rights and enabling standards, unlike substantive labour standards which set the specific (technical) content of labour standards. The latter necessarily vary in accordance with specific local circumstances.
- Core labour rights as such, with the exception of forced labour, would have little bearing on production costs. Therefore, core labour standards cannot be claimed to result in equalisation of production costs across nations nor in loss of competitive advantage. It follows that, in the case of "social dumping", it would prove very difficult to calculate margins of dumping and assess material injury, especially if non-enforcement of core labour standards is a generalised phenomenon. "Normal" wages must be available as reference to assess what "normal" production costs would have been in the absence of "social dumping".
- Labour rights in general (i.e. core plus substantive labour standards) make economic sense. However, the main difficulty in making this case is that costs immediately appear on the balance sheet of firms, whereas benefits are more difficult to measure. Many benefits are indirect, hidden, intangible, delayed, and non-local; they extend beyond the firm to society at large. *Labour standards can be the source of economic dynamism, greening of production, and greater equity, in accordance with the objectives of sustainable development.* Conversely, non-enforcement may entail staggering costs that spill over to neighbouring countries. Major industrial accidents serve as reminders of how important these costs can be. Moreover, "social dumping" may result in negative or immiserising growth. Hence, non-enforcement of labour standards is foremost an economic problem, not merely a moral concern, including for the international community.
- Demands for a social clause reflect a twin concern: one for structural problems arising with globalisation, in particular the fact that MNEs' private interests escape state control and therefore are no longer subsidiary to the general good; and the other to ensure universal implementation of core labour standards as human rights. However, these two objectives are probably best kept separate as they call for different measures.
- MNEs determine most trade but employ only about 3% of world total paid labour. Larger firms in general are better employers than small firms for their core of permanent employees. Also, labour costs do not appear to have as much importance in the selection of new locations for FDI as governments seem to believe while scrambling to attract MNEs. But employers often resort to outsourcing and subcontracting to circumvent labour regulations. Thus, because of the "institutional geography" of non-implementation, *trade sanctions might backfire, encouraging increased informalisation of employment and pushing bad labour practices further underground, safe from scrutiny.* The real issue with enforcement of labour rights is how to ensure universal coverage, reaching informal sector workers, in particular homeworkers and technically "self-employed" outworkers. By the same token, good employers, not bad ones, have always shown the way. Therefore, even a limited coverage to trade would already have a valuable demonstration effect.
- Core labour standards, as human rights, set the "right tone" and thus can play a key role in ensuring that economic growth proceeds on a sustainable path, consistent with the need for equity and

participation. In providing an avenue for more collaborative industrial relations, fundamental labour rights may also help set synergies in motion to meet the challenge of switching to another growth process, of "turning the boat around" and making a quantum leap forward. Thus, core labour standards probably represent a prerequisite for sustainable development, although some substantive labour standards still seem impractical in the context of less industrialised countries.

- The findings of this report also suggest that the following actions concur with a sustainable development perspective:

With respect to enforcement of human rights (core) labour standards

- The United Nations should probably play the main role in adopting sanctions as a measure of last resort, although that would require some reforms. Non-respect of economic human rights is likely to coincide with non-respect of political human rights, in a general climate of poor governance. *Non-respect of human rights is not a problem of trade liberalisation as such, but a political problem, which only the United Nations can address in those terms.* Moreover, sanctions should not be restricted to trade sanctions. Trade sanctions might be counter-productive and impact most heavily on the poor, whom the international community is trying to help. Other forms of pressure might therefore be more suitable.

The international community could also:

- Create appropriate instruments, should trade sanctions nonetheless be contemplated. Existing instruments of the WTO do not seem suited for the task. It is a system of compensation, not of sanctions strictly speaking. Material injury plays a central role in the administration of WTO remedial actions, both to permit their application and to determine their scope. But, measurement problems would arise, due to the nature of core labour standards, when assessing material injury to importing countries of "social dumping".
- The original version of this report recommended the drafting of a new ILO convention to eliminate exploitative child labour, which would be more relevant in the context of less industrialised countries and afford working children the protection of the law with respect to their working conditions and terms of employment.¹⁰²
- Ensure coherence between international instruments, which jointly form the body of international law, as regards their content and implementation. For instance, highlighting the human rights nature of core labour standards, in accordance with the terms of the International Covenant on Economic, Social and Cultural Rights of the UN, implies that these fundamental rights should take precedence over WTO trade rules.
- Increase coordination between the programs of the UN, the ILO, and the World Bank in particular, to help countries improve enforcement of core labour rights, through technical assistance, training programs, capacity building, awareness raising activities, etc. Many employers are simply not aware of the potential gains to be derived from more enlightened management methods.
- Above all, ensure universal coverage of core labour standards in particular. Proposals for involving the WTO do not eliminate the need for reinforcing the role of both the UN and the ILO in the

102. This report, which was circulated widely prior to the adoption of the 1999 ILO Convention No. 182 on the worst forms of child labour, was instrumental in achieving this result.

implementation of core labour standards enshrined in their respective instruments. Universal coverage would entail the following:

- All forms of employment should be firmly anchored in a "fair labour system" broadly speaking, which would extend to informal sector workers, technically "self-employed" outworkers, and homeworkers.
 - Creating a broad coalition and working with all relevant organisations and institutions, including traditional and informal ones, could provide an avenue for reaching workers in the informal sector. Unionisation as such is neither always feasible nor desirable, especially in traditional societies.
 - Complementary measures will be necessary to introduce a certain degree of equity in all forms of employment. For instance, in the case of technically self-employed outworkers, the tables could be turned giving precedence to the content of an employment relationship over the formal terms of a work contract. These workers could be considered "de facto employees" and, on this basis, request that employers grant them the same salaries and work conditions as for regular employees.
- Promote cooperative industrial relations with complementary measures of good governance, expand the agenda of unions to address all aspects of employment, including industrial restructuring, retraining, and redeployment of labour, and, more generally, enhance implementation of labour standards through coordinated policies (multi-pronged approach).

With respect to globalisation, trade, and sustainable development

- Create comprehensive, universally applicable, and *binding* codes of conduct for MNEs, with the following objectives:
 - Restore the proper hierarchy of interests, namely, that the private interests of MNEs be again subsidiary to the general good and therefore subject to (international) state control: to be effective regulations must match the size of the market;
 - Regulate MNEs activities in a comprehensive and coherent framework to reduce harmful tensions and thus avoid strangling the egg-laying goose (in line with MNEs' own interests); and
 - Provide a more uniform set of labour standards, to reduce the costs for MNEs of complying with labour codes, and to pre-empt excessive and destructive bidding among states scrambling to attract foreign direct investments in export processing zones.
- Anchor the WTO more firmly within the UN system, through coordination of programs and policies, to help redress structural imbalances that disadvantage poorer countries in the international trading system.

In summary, the social clause in its current form probably remains too modest, that is, to subject trade to the respect of four categories of core labour rights and, in the last resort, apply trade sanctions. It seems inappropriate to address either problem: the impact of globalisation on labour standards, or the enforcement of human rights (core) labour standards. Both call for a more extensive set of measures, albeit not the same ones. In any case, the current mandate of the WTO focuses on trade liberalisation on a non-discriminatory basis – it is a forum for negotiations. A system of sanctions would thus represent a

major change of orientation for that institution. But, more fundamentally, sustainable development calls for a comprehensive set of rules and policies for international trade, which duly take into consideration the legitimate needs and concerns of all parties, in a spirit of cooperation. At present a spirit of competition prevails, as elsewhere. Competition helps improve efficiency, but too much competition can also be damaging and foreclose moving forward consistent with long-term global interests (such as switching to sustainable production and consumption patterns). Once most tariffs will have been negotiated away, the WTO might be looking for a "new role" and orient its activities in that direction to become a full-fledged regulatory agency.

APPENDIX : Main Multilateral Instruments And Core Labour Standards (Excerpts)

Havana Charter For An International Trade Organization, 24 March 1948

(Never came into force because the US objected to Article 7.)

Article 7: Fair Labour Standards

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 a 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 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.
2. Members which are also members of the International Labour Organization shall co-operate with that organization in giving effect to this undertaking.
3. In all matters relating to labour standards that may be referred to the Organization in accordance with the provisions of Articles 94 or 95, it shall consult and co-operate with the International Labour Organisation.

(Source: United Nations. *United Nations Conference on Trade and Employment, Held at Havana, Cuba, from November 21, 1947, to March 24, 1948: Final Act and Related Documents.* Lake Success, New York: Interim Commission for the International Trade Organization, April 1948, p. 7)

International Covenant On Economic, Social And Cultural Rights, 16 Dec. 1966

(As of 30 June 1996, it had been ratified by 134 states out of 185 Member)

Article 2

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

.....

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum with:
 - (i) *Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;*
 - (ii) *A decent living for themselves and their families in accordance with the provisions of the present Covenant;*
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Article 8

1. The States Parties to the present Covenant undertake to ensure:
 - (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
 - (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
 - (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
 - (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.
2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.
3. Nothing in this article shall authorize States parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is

responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

(Source: United Nations. *Human Rights: A Compilation of International Instruments*. Vol. 1. *Universal Instruments*. New York: United Nations, 1994, pp. 9-12.)

Copenhagen Declaration On Social Development, 12 March 1995
(Adopted by delegates of 186 countries.)

Commitment 3¹⁰³

We commit ourselves to promoting the goal of full employment as a basic priority of our economic and social policies, and to enabling all men and women to attain secure and sustainable livelihoods through freely chosen productive employment and work.

To this end, at the national level, we will:

.....
i. Pursue the goal of ensuring quality jobs, and safeguard the basic rights and interests of workers and to this end, freely promote respect for relevant International Labour Organization conventions, including those on the prohibition of forced and child labour, the freedom of association, the right to organize and bargain collectively, and the principle of non-discrimination.

(Source: United Nations. *The Copenhagen Declaration and Programme of Action: World Summit for Social Development, 6-12 March 1995*. New York: United Nations, 1995, pp. 16-17.)

United Nations Millennium Declaration, 18 September 2000
(Adopted by delegates of 186 countries.)

III. Development and poverty eradication

We also resolve:

-
● To develop and implement strategies that give young people everywhere a real chance to find decent and productive work.

(Source: United Nations. Resolution adopted by the General Assembly: *United Nations Millennium Declaration*. A/RES/55/2. New York: United Nations, 2000, p. 5.)

¹⁰³ Reaffirmed by the *UN General Assembly Special Session (Copenhagen+5): World Summit for Social Development and Beyond: Achieving Social Development for All in a Globalized World* (United Nations. *Further initiatives for social development*. A/RES/S-24/2. New York: United Nations, 2000, pp. 21-23).

ABBREVIATIONS

CDP	Committee for Development Planning, UN
CEO	Chief Executive Officer
CIIR	Catholic Institute for International Relations, London (Great Britain)
CSD	Commission on Sustainable Development, UN
ECOSOC	Economic and Social Council, UN
ELI	Export-Led Industrialisation
EPZ	Export Processing Zone
ETUC	European Trade Union Confederation
EU	European Union
FDI	Foreign Direct Investment
GATT	General Agreement on Tariffs and Trade
GNP/GDP	Gross National Product/ Gross Domestic Product
GSP	Generalized System of Preferences
ICDA	International Coalition for Development Action
ICTSD	International Centre for Trade and Sustainable Development
IDS	Institute of Development Studies, Brighton (Great Britain)
ICFTU	International Confederation of Free Trade Unions
IILS	International Institute for Labour Studies, ILO
IISD	International Institute for Sustainable Development, Winnipeg (Canada)
ILO	International Labour Office (Organization)
MNE	Multinational Enterprise
NAACL	North American Agreement on Labor Cooperation
NAFTA	North American Free Trade Agreement
NGO	Non-Governmental Organization
NIE	Newly Industrialising Economies
OECD	Organisation for Economic Co-operation and Development
ODS	Office of Development Studies, UNDP
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Program
UNICEF	United Nations Children's Fund
WCED	World Commission on Environment and Development, UN
WCL	World Confederation of Labor
WTO	World Trade Organization

GLOSSARY

Additive utilitarian paradigm: For mathematical reasons, economic models usually assume that people's utility (satisfaction) is additive. Thus, the total welfare of a population is given by the simple sum of individual utilities.

Capital (or labour) intensity: The share of capital (machines) among inputs in the production of goods and services.

Cost internalisation: When a production process generates externalities (see below) one solution consists of ensuring firms internalise these costs, that is, they cover them instead of transferring them to third parties (e.g. the "polluters pay" principle).

Counterfactual: Hypothetical scenario mapping out an alternative course of action to the one being observed.

Deadweight-loss: A loss to consumers which producers cannot capture (or *vice versa*), unlike losses which represent a transfer from one group to another.

Dedicated machinery: Machinery that can be used to produce only one item, unlike polyvalent tools.

Dynamic efficiency: The possibility of reducing total production costs (in the long run) by increasing the dynamism of the firm, in particular its capacity for technological innovation and adaptation.

Elasticities: The price elasticity of demand is the change in demand for a given change in product prices. The income elasticity of demand is the same, but in response to a given change in consumers' income.

Externalities: By-products of a production process, such as social costs and benefits, which do not appear on the balance sheet of firms.

Factor allocation: The way in which factors of production (inputs) are allocated among different uses in the economy.

Factor prices: The price of factors of production (inputs) of a firm.

Free rider: A person who consumes a good or service without having paid for it, as is the case with public goods.

Fungible: One unit of a fungible item cannot be distinguished from other units (e.g. water).

Immiserising growth: Describes a growth process biased towards the export commodity for which the foreign demand is price inelastic. Hence, to increase the volume of exports, their price must sharply drop. If, simultaneously, expansion in the production of exports significantly raises the demand for imports, due to a high propensity to import, the final result might be a *net loss* from trade.

Income terms of trade: The total value of exports divided by the total value of imports.

Infant industry: A new industry which still has scope for reducing its average production costs by increasing its size and learning-by-doing.

Interlocking transactions: A complex work arrangement usually found in agriculture where labour, debt, and other transactions are interdependent; they take place between the same persons.

Job-cell: Comprises all identical jobs in the same plant.

Labour productivity: Total output of labour per unit of time (e.g. one hour). Therefore, when working time decreases sufficiently, total output of labour may actually fall even though labour productivity is increasing.

Marginal product (of labour): The increase in total production when using one more unit of an input (labour).

Mean state of a system: Central tendency of a system calculated on the basis of the values of the middle units.

Product cycle: Comprises all the stages in the production, use, and disposal of a good.

Public good: A good which, once it has been produced, can be consumed by everybody (e.g. a public park).

Synergy: Dynamic process characterised by a multiplicative effect and the creation of a new variable (a qualitative difference) in the process.

Trickle down, trickle across: Trickle down refers to the sharing of benefits of economic growth with lower income groups, whereas with trickle across benefits are shared with other family members (i.e. women).

Wage efficiency: The possibility of reducing total production costs by raising wages.

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The social clause is one of the most hotly debated issues in multilateral trade negotiations, dating back to their inception when Article 7 of the Havana Charter (1948), which was never adopted, already explicitly linked trade with the maintenance of labour standards. The US successfully reintroduced the issue in multilateral trade negotiations of the Uruguay Round, placing this "new" issue on the agenda for discussion of the newly established World Trade Organization at the Ministerial Conference in Marrakesh (1994). This paper aims to make a substantive contribution to the debate on the social clause by highlighting the links between labour standards, trade, the environment, and development. The sustainable development perspective, which covers both equity and environmental concerns, provides new and interesting avenues for action in this field. By reviewing and synthesising the relevant literature, the study seeks to help build bridges between the various issue areas and actors involved in the debate, and facilitate constructive dialogue by targeting the three main audiences simultaneously – academia, policymakers, and NGOs – whose concerted efforts will be called upon to meet the challenge of switching to a sustainable process.