The Social Clause

Reality or Utopia ?

Dissertation submitted in partial fulfilment of the requirements of the degree of Master of Laws

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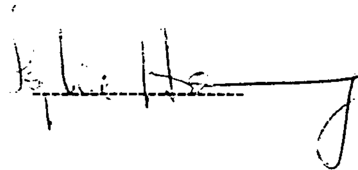
DECLARATION

I the undersigned, Sophie Hornung, certify that I have carried out this work myself and that it has not been submitted for a degree in another University.

Sophie Hornung



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Independent of those people involved in my work, I feel a deep sense of gratitude to my mother for having surrounded me with her love during my studies, and to my sisters for their encouragement. My last thought is for my father, who passed on to me his everlasting concern about the need to help and understand others.

ABSTRACT

For my final work at the University of Cape Town, I wanted to find a topic which encompassed the issues I studied during my one year in South Africa.

The Social Clause turned out to be the perfect issue for my dissertation because it embraced three of the four courses I followed :

- Human rights, with the human side that underlies the issue;
- Labour Law, because productivity is increasingly dictating labour conditions for thousands and thousands of workers;
- Trade Law, in the sense that international trade tends towards the elimination of borders and seeks to maximise profits, to the detriment of an ethical approach to working conditions.

The concept of the Social Clause, which was abstract to me when I began my work, became familiar to me within weeks. The controversies surrounding the Social Clause, as well as the topicality of this issue at recents summits and other political meetings, showed me that people are not always very aware of what is understood by the term « Social Clause ».

Therefore, I decided to examine in my dissertation some of the questions and opinions relative to the Social Clause, that arise at the institutional, political and academic levels. I tried to give lectors an overview by summarising the current debates on whether or not to introduce a social aspect in trade, and how to compel states and other economic actors to « play the game » of the Social Clause.

In other words, the aim of this dissertation is to tackle the questions and to raise all the other issues ensuing from the Social Clause.

My work is far from being complete, exhaustive or innovative on this issue which divides even the economists, lawyers and experts of labour rights. But if I have shed some light on certain realities of the economic world, or simply on the problems of society and its new rules resulting from globalisation, my task will have been fulfilled.

INTRODUCTION

Technology and increased international competition over the last thirty years have changed the framework of trade, to the detriment of the mass production system. The quest for economic viability has led governments to adopt policies that have weakened labour standards by reducing labour costs in order to compete in international markets. This has led to a situation in which workers are considered as « consumption » items in economic terms, a tough reality which was the main topic of the International Labour Conference launched as long ago as 1919, just after the First World War.

« Labour should not be regarded merely as a commodity or article of commerce. »[1]

Labour standards are generally described as « the norms and rules governing working conditions and industrial relations »[2]. As a result of the freeing up of trade in recent years, labour standards now have to deal with two developments: the first is ideological, while the second is a direct response to a range of global labour market trends.[3]

The idea of introducing rules with a social dimension into the positive law governing international trade has been considered by policymakers for a long time.[4]
If we are of the opinion that the world-wide economy must essentially have a human purpose, then the inclusion of social standards becomes relevant. The most obvious risk inherent in the absence of a social dimension from the multilateral trade system is that, under pressure from the groups concerned, it will bring about a proliferation of unilateral measures. These would be aimed at compensating for the different levels of protection of working conditions, or at setting up economic blocs that are homogeneous in their social protectionism and are sheltered by a common external tariff.[5] It could also lead to a downscaling of labour conditions or to increasing unemployment in industrialised countries.
In a well-functioning democratic system, the governments have a strong incentive to set labour standards so as to overcome market failures, achieve desired redistribution of wealth, and enhance efficiency. Therefore, a judicious choice of labour standards is made, taking into account the country's social, political, cultural and economic levels of development.
But a problem can arise if the leaders of a country do not care about their citizens and seek only economic growth, at any price. Such a policy will have repercussions not only on the economies of neighbouring countries, but also world-wide.

Social development and respect (and non-respect) for workers' rights are complex and multi-dimensional issues which are defined by various interdependent parameters: social, but also economic, political and cultural. A social clause may help redress certain extreme situations but it is also a relatively blunt instrument that can, but need not, have the desired

[1] Treaty of Versailles, Part. XIII, Sec. II.

[2] Nevertheless, other definitions have been given. According to Sengenberger W., (1990), The Role of Labour Standards in Industrial Restructuring : Participation, Protection and Promotion, International Institute for Labour Studies, Geneva, 1990, « labour standards » have two distinct meanings: the first refers to the level or the quality of well-being of workers relative to social security, level of wage...The second definition is a normative or prescriptive one, on what « ought to be ». It refers to the rules which grant workers regulations and norms on the maximum and minimum level of protection of their status. The author, in this category, regroups under the term of « labour institutions » the regulation and labour organisations. and raises the question as to « whether these institutions are necessary to ensure forms of economic organisation and patterns of restructuring favourable for the welfare of workers and society at large ». (p. 1)

[3] According to Alston, P. (1994), Post modernism and International Labour Standards : The Quest for a New Complexity, pp. 96-97, in Sengenberger, W. and Campbell, D.(eds.)(1994), International labour standards and economic interdependence, International Institute for Labour Studies, Geneva.

[4] See Part 1 on the Historic overview.

[5] ILO, The Social Dimension of the Liberalisation of Trade, GB.261/WP/SLD/1, 261st session, November, 1994, Geneva, p. 5

effects. One has to take into account that the creation of a situation conforming with international law must, depending on the stage of development of the country involved, be seen as a *dynamic* process.
Therefore, some concepts are more likely than others to be applicable to this issue. For example, comparative advantage is a static, short-run concept, while the principle of competitive advantage is a more dynamic, long-run concept, and, therefore, more appropriate.
In a global economy, the keys to success are, more than ever, human resources and effective production systems. Thus, human capital must become the centrepiece for economic success.
The expression « race to the bottom » is used by some authors to describe the results of policies which aim first at economic growth, by maintaining wages below productivity gains, but which do not redistribute wealth in the society and which promote economic mobility without promoting the same in labour protection. To avoid these consequences, the challenge for trade policymakers sensitive to worker rights would be, therefore, to strike the proper balance with an *upward* trend for labour standards. The term « upward harmonisation » has been used in this sense in discussions of the European Community Social Charter and proposals for an accord on labour standards in the North American Free Trade Agreement (NAFTA).[6]

All this demonstrates that the globalisation of the economy has left the law far behind. The current questions, therefore, are: what are the chances of the law catching up, and what are the measures to be undertaken to build a fair « world government » able to deal with these problems?.

The purpose of this dissertation is to examine the issue of the social clause from different viewpoints to permit a better understanding of the questions and problems that arise in both defining and implementing it.
First, through a historical overview, the debate over the link between labour standards and trade is addressed. The matter is not new, and has been the subject of international debate for several decades without any consensus having been reached.
Secondly, the economic, moral and cultural arguments about the inclusion of a social clause in trade legislation are examined. This gives some indication of the dimension of the issue, as well as the difficulties faced by the partisans of a social clause relative to its implementation and enforcement.
The third part describes the principal regional and international instruments and agreements on implementing labour standards in trade, both in the US and Europe.
In the fourth part, the two organisations generally mentioned as being the relevant bodies to implement the social clause, the World Trade Organisation/General Agreement on Tariffs and Trade (WTO/GATT) and the International Labour Organisation (ILO), are examined. The principal question that arises is whether their structures and powers provide a sufficient framework for respecting a social clause.
The last part of the dissertation analyses some of the other actions that have been launched to promote labour standards. Finally, the dissertation concludes with the lessons that can be drawn from the preceding discussion.

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[6] Compa L. (1993), Labour Rights and Labour Standards in International Trade, Washington, 1993, p. 168.

1. AN HISTORICAL PERSPECTIVE

An historical overview shows that the debate over the desirability of a link between labour standards and trade is not new, having already existed in the nineteenth century.[7] But the actors have changed, and the background, given the expansion and enlargement of the market, has become even more complex.

1.1 The late nineteenth century

According to Hansson[8], the founder of the idea of international labour legislation was Charles Frederick Hindley. In 1833, the latter suggested a foreign treaty on labour legislation, in which the working conditions were defined as hours of work.
But in the opinion of the authors, the primary concern of the debate was that unharmonised national labour legislation could result in the loss of international competitiveness.[9] The change in both the economic and labour structures in the Western countries provided fertile ground for rethinking the existing systems. Another factor favouring change was the appearance of an urban industrial working class which wanted to have a greater share of the wealth and better conditions in the workplace.
Beginning in 1881, the Federation of Organised Trade and Labour Unions (the ancestor of the AFL-CIO) put pressure on the American Congress to obtain protective measures against unfair competition from countries with low wages. The principle evoked at this time was *cost equalisation*, in other words to nullify, through tariff barriers, the economic advantages brought by low labour costs. This principle was written into the laws and tariff agreements.[10]

1.2 The Bern Conferences

At the beginning of the century[11], conferences took place in Bern which led to the adoption of what can be considered as the first conventions on labour standards issues[12]. Twelve European countries ratified The Convention of Phosphorus, which prohibited the manufacture and trade of matches containing the toxic substance white phosphorus, a major cause of industrial disease. It thus became the first international agreement to use import control as a means of safeguarding foreign and domestic workplace safety. Although the United States did not ratify the treaty, it adopted legislation to ban the import and export of such matches. Moreover, a special tax was introduced, aimed at eliminating this production.[13]
Therefore, the linkage between trade and labour dates back to the beginning of the century.

[7] Jean Necker, the banker and finance minister under Louis XVI, wrote in 1788 that if a country were to abolish the weekly day of rest, it would undoubtedly gain an advantage, provided it was the only one to do so; if other acted likewise the situation would be as before. (Servais, 1989, The social clause in trade agreement : Wishful thinking or an instrument of social progress?, in International Labour Review, Vol. 121, No. 5, Sept.-Oct., p. 424)

[8] Hansson, G (1983), Social Clauses in International Trade, Croom and Helm, London and Canberra, p. 12.

[9] Hansson, G quotes Louis Wolowsky, Daniel Legrand, Edouard Ducpetiaux and Christophe Ulrich Hahn.

[10] For example, the President of the US was still able in 1962 to equalise low labour costs with the tariffs. The most recent recommendation on the matter was in that year and concerned the importation of brooms, but President Kennedy did not use it.

[11] Respectively in 1905, 1906 and 1913.

[12] Conventions on phosphorus in industry, prohibition of night work by women and maximum work hours. Additional Conventions on a ban on night work for young people and on a ten-hour working day for adolescents and women were prevented by the outbreak of war in 1914.

[13] Act providing For a Tax on White Phosphorus and for Prohibiting their Import or Export, esp. Secs 10 and 11. 1912 (26 U.S.C 4085). The tax was repealed in 1976.

1.3 The First World War

The Treaty of Versailles establishing peace after the First World War enshrines clauses on labour protection.[14] It has to be considered as the first multilateral treaty to elevate labour standards to an international issue. The idea that international competition should not be impeded by low labour costs was already in the minds of the national leaders.[15]
The Peace Conference of 1919 set up a Commission on International Labour Legislation. On 11th April 1919, the Commission agreed on a document drafted by the British, which became Part XIII of the Treaty of Versailles, and which provided for the creation of the ILO, with the task of promoting workers' rights world-wide.
There were two main motivating factors behind the creation of the ILO: the first was to improve the condition of the workers (in a human approach), and the second was to equalise the conditions of competition among the countries by harmonising working conditions world-wide.[16]

The issue of unfair competition resulting from low labour costs was expressly addressed in 1927, and the expression « social dumping » was used for the first time in the Conference of the League of Nations on the world economy.[17]

1.4 The Second World War

After the Second World War, the question of the linkage between labour standards and trade was addressed again. « *Economic policy can no longer be an end in itself; it is only a means of achieving the social objective* », US President Franklin D. Roosevelt said at the 1941 Conference of the ILO in New York.

1.4.1 The ILO Constitution and the Philadelphia Declaration of 1944

Between the two World Wars, the ILO functioned as an autonomous organ of the League of Nations. Its concerns at this time were the limitation of working hours to eight a day, the protection of pregnant women, the struggle against unemployment and the regulation of female and child labour.
The ILO Constitution and its Annex (the Philadelphia Declaration of 1944) makes important distinctions among different countries in setting labour standards.[18]
In 1946, the ILO became the first of the specialised institutions of the United Nations (UN), and the two structures have collaborated since then.

1.4.2 The ITO

The Havana Charter of 1948, which laid the foundation for the GATT, foresaw clauses on workers' rights.[19] Article 7(1) of the Charter stated that « *unfair labour conditions,*

[14] Article 23(a) of the Treaty of Peace states that Members « will endeavour to secure and maintain fair and humane conditions of labour for men, women and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organisation. »

[15] In the original first British draft of the ILO Constitution it was even stated that one of the main aims of the international agreement was to abolish unfair competition based on oppressive working conditions. If the goods were to be produced under condition of unfair competition, states should discriminate against them, unless these conditions were corrected within a period to be determined by the conference.(272/20) These measures were possible only if two-thirds of the delegates to the International Conference found that a Government had failed to implement a Convention. This proposal found its way into the first ILO Constitution; however, it did not survive and was deleted in 1946.

[16] Hansenne M., (1996), Libéralisation du commerce mondial dans la perspective de la réunion ministérielle de Singapour, Geneva, March 1996, p. 1.

[17] Caire G., (1994) Labour Standards and International Trade, in Sengenberger, W. and Campbell, D. (eds.), 1994, International Labour Standards and economic interdependence, International Institute for Labour Studies, Geneva, p. 305.

[18] As stipulated in Part V, the international principles on which the ILO is based are applicable world-wide, but the manner of their application must be determined with due regard to the stage of social economic development reached by each people.

particularly in the production for exports, create difficulties in international trade » and an ITO member is required to « *take whatever action may be appropriate and feasible to eliminate such conditions within its territory.* » Under paragraph 2, co-operation with the ILO was provided for the ITO member States. The absence of a definition of « unfair labour standards » as well as the silence on sanctions against offending states meant that this provision was too vague to be implemented. The Havana Charter was not ratified by the US, but the other countries decided to go ahead without it. The absence of the ITO chapter on employment and labour in the GATT resulted from the assumption that the ITO would supersede the GATT.

The question was raised again in the 1950s, with the first steps towards European integration. The ILO put a group of experts to the task of providing a report (the so-called « Ohlin report ») on the link between different working conditions and unfair competition. This report concludes that there was no need to eliminate the wage differential, but that a harmonisation of social policies would be appropriate.[20]
Then, in 1953, the US State Department made informal proposals for adding an unfair labour clause to the GATT, but no consensus was reached on the definition of « unfair ».[21]
During this period, developing countries (particularly Africa and Asia) made unprecedented economic and industrial progress. A group of Asian and Latin American nations -- the so-called New Industrialised Countries, NICs -- were especially successful and started to compete with the rich industrial countries. This economic growth came in parallel with improvement in social conditions, health and education.[22]

As for the US, the Brandt Commission recommended in 1980 that fair labour standards should be internationally agreed « in order to prevent unfair competition and to facilitate trade liberalisation. »[23]
In 1985, in the report of the « Leutwiller Group », the Director-General of the GATT pointed out that « no one deny that countries are not obliged to accept goods produced resulting from forced labour or prison labour ».

1.5 The Uruguay Round

At the Marrakesh Ministerial Meeting in April 1994, of the important points that received support from developed countries[24], the link between trade and labour standards was the object of passionate debates. While a Sub-Committee on Trade and Environment was established to deal with the link between environment and trade, the proposal for the WTO to examine the link between trade and international labour standards (TRILS) encountered great opposition. So, this issue was not included in the work of the WTO.

[19] The Havana Charter stated: The members recognise that...all countries have a common interest in the fulfilment and maintenance of fair working standards in relation to productivity and thus in the improvement of wages and working conditions, as far as productivity allows. The members recognise that unfair labour conditions, particularly in production for export, create difficulties in international trade and that every member should therefore take appropriate and realistic measures to abolish such conditions within its territory. The main proposal on labour came from a group of Latin American countries. According to this provision, the nations were relieved of obligations they had under the trade rules towards any nations whose labour standards were lower than their own.

[20] BIT : Les aspects sociaux de la cooperation économique européenne, ILO, Geneva, 1956, p. 110.

[21] The U.S. gave the following definition of « unfair »: the « maintenance of labour conditions below those which the productivity of the industry and the economy at large would justify ». Chernovitz, (1986) Fair Labour Standards and International Trade, in Journal of World Trade Law, Vol. 20(1), January, p. 64.

[22] For more details on the eventual interaction between the economic development witnessed during this period in developing countries and the net rise in unemployment in developed countries, see Michie J. and Grieve Smith J., (1995) Managing the Global Economy, Oxford University Press, pp. 102-106.

[23] Chernovitz S., (1986), op. cit., p. 66.

[24] Respectly: a) links between trade rights and environmental measures; b) multilateral rules on competition policy and c) links between trade and labour standards.

Some of the issues on work had been raised at Punta del Este at the start of the Uruguay Round, but a consensus to negotiate could not be reached at that time.[25]
The internationalisation of trade over the last twenty-five years brought calls for a more specific social clause within the GATT. Among them, already in 1973, was the request by the Trade Unions federation Metalworkers Federation for the introduction of such a clause.
Both the United States[26] and the European Union (EU) argued that the emerging WTO should begin work on a program examining the link between international trade and labour standards. Developing countries, particularly in South East Asia, remained hostile to any such suggestion, as did Peter Sutherland, GATT's Director. Thus, the Uruguay Round of GATT was signed without a social clause, and progress in that direction has been put on hold.

1.6 The Singapore Summit of December 1996

Before the Singapore Summit of December 1996, the question of the social clause loomed ever larger as the principal problem created by economic internationalisation. First at the Bangkok summit in March 1996, then at the G7 employment summit in Lille in April 1996, the social clause was one of the central issues. No consensus on the question existed either among the developed and developing countries, or among western states: the French (and American) position -- pro-social clause -- and Britain's -- anti-social clause -- appeared clearer.
In December 1996, the question of the link between trade and labour standards was raised at the summit, and, recognising that the ILO is the competent body to deal with these standards, and that economic growth will promote these standards, we read the following:

We reject the use of labour standards for protectionism purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question. In this regard, we note that the WTO and ILO Secretariats will continue their existing collaboration.[27]

[25] UNCTAD(1994a) The Built-in Work Programme of the Uruguay Round results and the Emerging of New Issues for Future Multilateral Trade Negociation, UNCTAD/MTN/RAS/CB:15. In 1987, for example, the US called for the establishment of a Working Party to examine the possibility of linking internationally recognised labour standards with trade and with the attainment of the objectives of GATT.

[26] The Clinton Administration has made the adoption of social clauses part of its official negotiating position in the new World Trade Organisation.

[27] WTO, Draft Singapore Ministerial Declaration (WT/MIN(96)/DEC/W), Singapore, 13 Dec. 1996, p. 2.

2. The Role of a « Social Clause » in Trade Agreements : The Issues

2.1 Definition, Aims and Challenges of a « Social Clause »

Definition

There is no consensus on the exact wording of a social clause.
A « social clause » aims at improving labour conditions in exporting countries by allowing sanctions to be taken against exporters who fail to observe minimum standards.[28]
According to M. Hansenne, Director-General of the ILO, there is no such thing as a ready-made product called a « social clause » which can be incorporated, or not, into social policies and legislation. His opinion is that the benefits derived from international trade sub-divide fairly among all the countries that helped create them.[29]
The social clause depends on two principal concerns: humanitarian and commercial. Therefore, a distinction has to be made between the approach resulting from a moral consideration of the problem and the approach based on economic or pseudo-economic concepts. The first approach concerns labour standards applying to areas such as child labour, etc.[30] The second deals with economic and political factors which make the issue even more complex and touchy.
However, the scope of social clauses has been more or less established by trade unions, governments, economists and authors. If some argue that a social clause should set a universal obligation for the respect of human rights, the current debate is less ambitious and tends to aim simply at the fundamental norms governing working conditions.[31]

Aims

It is important to establish the reason why a social clause is required. Though the question of the causal link between comparative advantage and negative social externalities is still open, in reality there is evidence that low labour costs in developing countries provide them with an important competitive edge in international trade. The danger is that this competitiveness may also result from exploitation of workers, such as forced labour.
According to M. Hansenne, « *the aim of the proponents of « social clauses » relating to workers' rights was of course to make these rights both obligatory and enforceable by trade sanctions, by integrating recognition of these rights in the international trade system.* » Guy Caire envisages minimal rules governing behaviour in three inter-related areas: permitted categories of labour, conditions of employment and the functioning of the labour market.[32]

Challenges

Labour standards have to tackle both human rights and economic factors.

[28] Definition given by Van Liemt, G., The Multilateral Social Clause in 1994, Brussels, 1994, p.1. Van Liemt, G. has been responsible for the ILO's research programme on the international division of labour.

[29] Quoted in Aparicio-Valdez, L., Hemispheric Integration and Labour Law, in Comparative Labour Law and Industrial Relations, Summer 1995, p.110.

[30] See Castro J.A., (1995), Trade and Labour Standards, UNCTAD Discussion Paper, No. 99, Geneva, 1995, p. 3.

[31] Trade Unions like the German Trade Union share this point of view and propose the implementation of progressive incentive measures which would advocate economic sanctions only in case of gross violation by a State concerned. See Brand D., Hoffmann R., 1994. Le débat sur l'introduction d'une clause sociale dans le système économique : quels enjeux? in Problèmes economiques, Nov. 1994, p. 6.

[32] See Caire G.,(1994) op. cit., p. 299.

Harmonising labour standards will at least remedy gross violations of workers' rights all over the world. But why are these standards still not implemented in countries which are, most of the time, party to the ILO and signatories of ILO Conventions relative to the very subjects targeted by social clauses?

Three causes can be identified. The first is that national legislation does not embody these standards, and denial of workers' rights is part of the political system. Secondly, some countries reduce core standards in certain parts of the economy, but not across the board. Thirdly, employers do not enforce national legislation on core standards.

With respect to this issue, the developing countries are not the only ones concerned about the introduction of a social clause and the mechanism to enforce it. But the reasons they oppose the social clause show that they are convinced that their trade system would suffer from it and that any intrusion by the international community is likely to affect their economies.

2.1.1 Globalisation of the Economy

The current pace of change of the global economy is more rapid than at any time in history. Various phenomena are usually listed as components of the process of globalisation. Among them are increased global trade, the growth of multinational corporations, the internationalisation of finance, the application of new technologies, the shift of mass production to developing countries, and the decentralisation of production. Globalisation also involves « *a wide variety of political, sociological, environmental and economic trends based on the processes that bring people together in more frequent contact, more sustained contact and more varied contact.* »[33]

One factor which is particularly relevant to the issue of a link between trade and labour standards is the growth of transitional companies (TNCs). These companies are the result of a shift away from the centralising trend in trade to vertical disintegration, subcontracting, with the result that labour is divided between firms.[34] These companies can shift their capital and human resources to almost anywhere in the world. The economic advantages that TNCs bring to a country's economy encourages countries to seek TNC investments. The weight of labour costs in the decision to locate a TNC in a country is controversial. Empirical research shows that labour and other social policies have a smaller effect on investment decisions than critics of trade liberalisation imagine to be the case.[35] According to an OECD study, « labour standards could influence the decision on the location of investment », but « while in a static view lower labour standards may in fact translate into lower labour costs, the relationship could be reversed in a dynamic perspective » since « higher labour standards may work as an incentive to raise productivity through investment in both human and physical capital, thus contributing in the longer run to greater cost competitiveness of companies. »[36]

But the fear of relocation of activities that is associated with the lowering of barriers to international capital flows is a relatively new phenomenon. To attract TNCs, countries decrease labour costs, with the result that relocation tends to weaken the situation of workers whose bargaining power has already suffered from high unemployment and a decline of union unity. The International Trade Union Movement, and the ICFTU in particular, has argued that in its view, a social clause in trade arrangements would guarantee all workers an adequate standard of working conditions.[37]

[33] Hart M., Coercion or Co-operation : a Social Policy and Future Trade Negotiations, Canada -United States Law Journal, 20, 1994, p.355.

[34] Sengenberger, (1990), The Role of Labour Standards in Industrial Restructuring : Participation, Protection and Promotion, Geneva, 1990 (ILO-DP/19/1990), p. 16.

[35] Hart M., op. cit., p. 371.

[36] OECD, (1996) Trade, Employment and Labour Standards, p. 113. This report underlines the fact that core labour standards are not the primary factors in the majority of investment decisions of OECD companies.

[37] Van Liemt, G., (1994), op. cit., p. 5.

A second important factor of globalisation is the liberalisation of markets. The Uruguay Round agreement brought about an unprecedented degree of tariff liberalisation by subjecting domestic policy measures to stringent multilateral discipline.[38] An unharmonised social system appears, therefore, as a threat to fair competition, but the countries can hide behind the excuse of « domestic jurisdiction » in matters of social policy in order to refute accusations about their low labour costs.
The new labour market is, however, only one component of the new global economy. Arguments about the real influence of the costs of social protection on the competitiveness of a country are still contradictory. Some speak about « social dumping » to the detriment of more advanced countries, while others see the integration of a social clause in trade as a disguised attempt at protectionism.

So far, the liberalisation of world trade has not been able to reduce the inequalities in the world economy. More than 80% of the world GNP today is concentrated in those countries in which the richest 20% of the world's population live. Thirty years ago their share of world GNP was 70%. The share of world GNP of those countries in which the poorest 20% of the world live fell in the same period from 2.3% to 1.4%.[39]

So the question is whether the inclusion of a social clause will prevent developing countries from catching up with international economic markets. Some argue that the effect of social standards will be to increase the gap between developing and developed countries. According to them, working conditions will automatically improve if industrialisation is as free as possible, because of the natural income from such industrialisation. To oppose this theory, the advocates of a social clause should demonstrate first that social standards do not act as a brake upon the economic expansion of developing countries (and may even accelerate the process), and secondly that economic growth in itself is not a guarantee of better working and living conditions.
But how should a social clause be implemented? What is the best structure for ensuring the respect of labour standards in international trade? Do existing organisations have the power to deal with this issue?
The role of labour organisations is one of the most controversial aspects of high-performance production systems. Some are of the opinion that the reason for the controversy is the very nature of the employment relationship itself, and that the right of workers to organise readily and bargain collectively is an important requirement for a high-performance system.[40] To grant these rights universally, the intervention of an international structure would be necessary, given the numerous parts of the world where workers' rights are denied.
This would also be a positive incentive for calming the fear that the shift of trade towards an international dimension would threaten developed countries which have solid social and economic policies. Thus, « *One purpose to getting a social clause into the GATT is to give a sign that firms moving production facilities to Eastern Europe, or to South Asia, with the prospect of exporting back to the European market, may face a new barrier.* »[41].

If, from a macroeconomic point of view, industrialised countries have no interest in applying foreign trade sanctions to promote respect of labour standards among developing states, the advantage that Third World growth could bring industrialised countries with respect to

[38] UNCTAD (1995b), New and Emerging Issues on the International Trade Agenda, (unpublished), (TD/B/EX(10)/CRP.1), Geneva.
[39] Cf. UNDP : Human development report 1992, p. 34, quoted in Adamy W., (1994), International Trade and Social Standards, in Intereconomics, November/December, 1994, p. 269.
[40] Marshal R., (1994) The Importance of International Labour Standards In a More Competitive Global Economy, in Sengenberger, W. and Campbell, D. (eds.), 1994, International Labour Standards and Economic Interdependence, International Institute for Labour Studies, Geneva, p. 68.
[41] De Gray, 1994, p.14, quoted by De Castro J.A., (1994), op. cit., p. 11.

increasing demand for imported capital and consumer goods is also undeniable. To illustrate this, the authors[42] take the example of child labour, which has a positive effect for industrialised countries (except for the fact that this means of production is totally unacceptable and violates basic human rights), but whose existence will undermine one of the most valuable elements of a country's economy: its human capital.
What has to be borne in mind is that the economic framework has changed, and that in the new global context, the centrepiece for economic success is human capital.[43] Human capital has to be managed both on the qualitative side -- the labour force has to be employed relative to skills and competence -- and the quantitative side -- employment should be the principal goal of a country.
The importance of human capital will, in the future, dictate the measures taken either on the national or on the international level. It should be the first preoccupation in each economic and social decision.

Therefore, as Denis Macshane points out , « *the slogan « think global; act local » needs to be reversed.* »[44]

2.1.1.1 The declining relevance of national structures on trade and international concerns : imperialism?

Up to the present, each national labour policy of each country managed its own economies. This leads to the argument that a sovereign nation is in the best position to make the appropriate trade-off between social policy and economic necessity. Moreover, governments operated in a sovereign capacity when enacting labour laws, whether they had ratified international instruments or not.[45] But this is true only in democracies, where workers' rights are respected and enforced. The problem is that the need for implementing labour standards exists primarily in countries where rights do not exist or are impaired.
The phenomenon of globalisation is frequently defined as the declining relevance of national structures and equated with a weakening of the power of national governments and other essentially national institutions.[46] Thus, national governments have less control over their economies and, most of the time, they have only two ways to remain competitive in international trade: by reducing wages and income; or by increasing productivity and quality.
This fierce competition leads to pressure for deregulation and liberalisation, which in turn leads to a reduction in autonomy for national governments. The governments as well as the central banks are weakened in their ability to control the economy and, through it, labour conditions. Thus, new instruments are needed to create social protection for workers who are often the first victims of this economic race.
To avoid the danger that the loss of autonomy will simply toss national « models », and national systems of labour institutions and protection into the arena of international competition, there is a serious need for global economic management.[47] Its principal task would be to enhance workers' rights and labour standards within the framework of international trade.

[42] Grossman H. and Koopman G., Minimum Social Standards for International Trade?, in Intereconomics, Vol. 29(6), Nov.-Dec. 1994, p. 283.
[43] See Marshal R., op. cit., p. 66.
[44] Macshane D., Global Business: Global Rights, Fabian Society, London, 1996, p. 3.
[45] The ILO Conventions are binding on the member states which have ratified them, but enforcement remains the matter of the state. As pointed out by Caire, G., (1994), op. cit., p. 6.« There is no international labour law in the strict sense ».
[46] Van Liemt G., (1994), op. cit., p. 15.
[47] As P. Alston , (1994),post-post Modernism and International Labour Standards : The Quest for a New Complexity, in Sengenberger W., Campbell D (eds.), op. cit, p. 101 points out: « labour policy, per se, is diminishing in importance in relation to overall social policy at the national level ». According to him, « inter-governmental settings have the potential to move the principal locus of social protection away from the labour market ».

A successful social clause would have to be flexible and adaptable to each national situation.[48]
The universal recognition of ILO standards, as well as the fact that all GATT member countries are also members of the ILO, makes the enforcement of social clauses possible. But a high level of acceptance is necessary to make a standard enforceable world-wide. Another problem is that enforcement measures enter into the national policy of governments, and may have economic repercussions. This leads to virulent opposition by states which claim sovereignty over what they consider to be a « domestic » matter, and which want to protect their right to self determination.
For instance, the so-called Bangkok Group (led by Malaysia's Prime Minister Mahathir Mohammed) denounced proposals to link labour standards to trade as « imperialism ». This term was also used by Carlos Andres Perez, the former Venezuelan president, at the 1992 ICFTU, to condemn what most developing countries consider to be protectionism. The other leaders oppose a social clause from a right-wing economic position, arguing that market forces would be distorted if labour standards had to be introduced.[49]

One can nevertheless raise the following questions: do social clauses violate national integrity? Do they constitute interference by the international community with the sovereignty of the state concerned?

It is generally considered[50] that workers' rights are an inseparable part of human rights. As they are universal, they transcend all political, economical, social and cultural situations. Therefore, the denial of basic workers' rights is a sufficient reason for intervening in national policies.

Be that as it may, developing countries see the linkage of labour standards to trade as a policy tool enabling the developed countries to interfere directly in their internal social and political affairs: « *We don't need an inquisition to spread Christianity* », said an Indian government delegate during the 261st session of the ILO Governing Body, in November 1994.

2.1.1.2 The threat from East Asian and second-tier NICs : social dumping?

Competition is a key process in which we see the interplay between social relations and economic process.[51]
The term social dumping[52] has been used to denote outcomes disadvantageous to labour that many argue could result from the operation of the single market with wide differences in labour standards and costs. These costs may be direct or indirect, and social protection may constitute a comparative advantage. But seen in parallel with the definition of « dumping » as described in Article 6(1) of the GATT, where the economic advantage

[48] See Chicke Okogwu (1994), Labour Standards Across Countries with Different Levels of Development, in Sengenberger W., Campbell D., (eds.), op. cit., pp. 148-151.
[49] Macshane D., (1996), op. cit., pp. 16-17.
[50] See Chapter on Human Rights. 2.1.3.6.
[51] Sengenberger W.,(1990), op. cit., opposes two models of organisation of economic processes: the « individualistic », based on the utilitarian rationality of the 19th century, and which recognises workers' freedom to behave as they like; and the view according to which the economic organisation is « social », and which advocates that the failure of others has to be obviated to prevent harm to the collectivity. Under the first theory, competition should be unfettered; under the second, controls are needed (p. 8).
[52] See Mosley H., (1990), The Social Dimension of European Integration, in International Labour Review, Vol. 129, no. 2, p 110. According to him, there are three different situations of « social dumping » : a) through the displacement of high-cost producers by low-cost producers from countries in which wages, social benefits, and direct and indirect costs entailed by productive legislation are markedly lower; b) firms with high-labour-cost countries would be increasingly free to relocate their operations, thereby strengthening their bargaining power vis-à-vis their current work force to exert downward pressure on wages and working conditions; and c) individual states might be tempted to pursue a low-wage and perhaps anti-union labour market strategy as part of their efforts to catch up economically.

results from a spatial element [53], there is not *stricto sensu* a spatial element of competition in « social dumping ».

But the notion of « social dumping » is used widely by those who condemn the unfair competition of the developing countries that is based essentially on both the low labour costs and low social protection offered to the investors. It is interesting to note that while developing countries remained commodity exporters, no concern for the adoption of « internationally recognised labour standards » was expressed by industrial countries. This demand came only with the emergence of NICs and their possible threat to Western economies.[54]

From the 1950s onwards a small group of newly industrialised countries emerged in the international markets, competing in terms of both labour costs and productivity.[55] Since the late 1980s, a second tier of NICs (among them Malaysia and Thailand) has also become an important economic force. The economic growth of these countries has had an influence on labour standards, particularly rising real wages, and these standards appear to have benefited workers and improved education.[56]
Some economists argue that the threat posed by the less developed countries is, in fact, the result of the current institutional framework, and « *it is...a profound error to accuse the less developed countries...of « social dumping » and « unfair competition » and to seek to impose on them social protection systems comparable to those of developed countries...* »[57]
The consequences of defensive behaviour by the industrialised countries would be disastrous for countries of the Third World, impeding them from catching up in economic markets. The secondary effects of such measures could also put a brake on the chances for developing countries to reimburse their debts thanks to the foreign currency resulting from export trade.
If defensive measures have to be taken by developed countries, it is likely that bilateral trading agreements among the developing countries would be sought by the developing countries, and the situation of workers would be even worse, given the competition among developing countries themselves. Thus, the countries which are striving to achieve more balanced social development would have to change their policies.
Opposition to the inclusion of a social clause in trade agreements are to be found all over the world, but especially among NICs and developing countries. Among them, Labour Ministers of non-aligned and other Developed Countries strongly opposed the idea of a social clause in a meeting held in Delhi in 1995.[58]
When competitors derive their competitive advantage in a « trade playing field », this is considered as « unfair ». The idea of « levelling the playing field » has emerged from this way of competing. This concept implies both neutralising comparative advantages built on the basis of external diseconomies, as well as rendering compatible « external » and « internal » policies whose increasing interaction can make incompatibility a source of serious trade friction. But what criteria can be used to judge if a competitive advantage derived from different standards is « unfair » or not? International understanding is therefore essential in order to prevent protectionism and other dangers inherent to the intervention in trade from dictating measures or sanctions to be taken.

[53] See chapter X on dumping as provided in Article VI of GATT.
[54] De Castro, (1995), op. cit., p. 4.
[55] The share of four East Asian economies (Hong Kong, Republic of Korea, Singapore and Taiwan) in total developing countries was 9.3% in the 1950s; forty years after, it had risen to 42%.
[56] See Michie J., Grieve Smith J., (1995), op. cit., p. 102. They give a complete overview of the Golden Age of the developing countries which witnessed, between 1950 and 1980, the economic development of the South surpassing the eighty-year record of the North's nineteenth century (1820-1900).
[57] Maurice Alais, Uruguay Round, quoted by Caire G., (1994), op. cit., p. 304.
[58] ARLAC Newsletter, Africa Labour Administration. News, 10 June 1996 (Harare).

Therefore, labour standards can, on the one hand, ensure that competition is not mainly based on squeezing labour and, on the other hand, can help promote constructive competition through better co-operation with the international community.

2.1.1.3 Increasing unemployment in developed countries

The shift of production in developing countries is likely to be the cause of increasing unemployment in developed countries.[59] The less-skilled workers would probably have to chose between either lower pay, or unemployment. The new challenge the economies face is that the less-skilled worker in industrialised countries will find himself in the same labour market as his counterpart in a developed country. But the price of his work, for the same productivity, is higher. Therefore, the advantage for enterprises to hire the worker of the developed country is clear.

2.1.2 Labour standards to be included in a « social clause »

Labour standards are established at the national and international levels.
At the national level, they have principally the form of laws and government regulations. Their binding nature enables governments to enforce labour standards, and to impose sanctions when they are not respected.
The sources of international labour rights are to be found in international, multilateral and regional human rights charters, in Conventions and recommendations of the ILO and in common labour law practices in democratic countries.
The regional agreements (for example, the European Union (EU) Directive on Social Matters, NAFTA) may also have binding force on member states, which can be sanctioned in case of non-compliance. At the international level, ILO instruments and several acts of the United Nations compose the most comprehensive set of labour standards. The force of ILO instruments is however weakened by the fact that they are binding only on states that ratified them. Moreover, given the lack of sanctions of the Organisation, their implementation and enforcement depend only on the willingness of the state. Nevertheless, their universal scale means that they are considered as the most important labour standards at the international level.
There is, however, a controversy on what should be included in a Social Clause.[60]
According to the clause proposed by the International Confederation of Free Trade Unions (ICFTU), the world's largest international union organisation, a social clause should be based on specific ILO Conventions.[61]
The ILO Constitution does not set any hierarchy on the application of the labour standards. But one can nevertheless note that there is a « first-level » Conventions, representing the minimum norms which should be respected by all member States. This first level of fundamental rights has to be respected for the implementation of the rights embodied in the other Conventions.
The principle of universality which underlines all the ILO instruments asks for general provisions. Thus, Conventions drafted in general terms and providing for the fundamental rights should constitute the core of labour standards which have to form the « social

[59] In the 1970s and early 1980s, Western Europe and the United States experienced sharply falling growth rates and rising unemployment. Between 1974-1985, there was on average no increase in employment in the 12 countries constituting the present EU.

[60] The very definition of « fair » labour standards has also been discussed. Chernovitz S., (1986), op. cit., p. 69, points out that the definition of fairness is based on two grounds : First, the labour market should operate under voluntary choice, not coercion. Second, there should be a floor for workplace conditions below which no nation can go.

[61] The clause proposed by the ICFTU reads : « The contracting parties agree to take steps to ensure the observance of the minimum labour standards specified by an advisory committee to be established by the GATT and the ILO, and including those on freedom of association and the rights to collective bargaining, on the minimum age of employment, discrimination, equal remuneration and forced labour. »

clause », so that Member States can apply them to their political and social situations, whether they belong to the developing or the developed countries.

Authors[62] and Trade Unions (the ICFTU, the World Confederation of Labour (WCL) and European Trade Union Confederation (ETUC)) generally agree on the following standards :

1) Freedom of Association, covered by Convention 87
2) The right to organise and bargain collectively, covered by Convention 98
3) The introduction of a minimum age for Employment (Convention 138)
4) Prohibition of discrimination in employment and occupation (Conventions 100 and 111)
5) The prevention of forced labour (covered by Conventions 29 and 105)[63]

These standards are also regarded as being the « basic human rights » and, as such, fundamental to the ILO's core mandate.[64] A more limited category of what are called « basic rights » has also gained unanimous recognition at the Copenhagen Social Summit and in the discussions in the ILO.[65]
But there are these same labour standards, which means that many companies, fed up with what they consider as a « burden », shift operations to countries with what they feel is a more favourable investment climate - lower wages, weaker unions and less regulation of industry. These movements are most noticeable from developed to developing countries, but they occur also from one developed country to another, and between developing countries. Analysis of such transfers by both economists (who see them as beneficial) and workers/Trade Unions (who say that it is in the long run favourable to have strong labour standards) show that the only solution to this dilemma is a set of strong, enforceable labour rights and international fair labour standards. Thus, a normative action has to be made.

Another problem is that even though most of the countries are Members of the ILO, not all of them have ratified either the relevant Conventions[66], or its Constitution. Therefore, the question of who will be in charge of dictating these standards, which involves a moral consideration, is raised. Because trade-related coercion inevitably becomes « inquisition » when moral concerns are introduced into the functioning of an international trading system characterised by large differences in the negotiating powers of its members, this question is of great importance. To address this issue, a distinction has to be made between, on the one hand, those trade restrictive approaches whose justification is built upon economic concepts and which seek to correct certain economic imbalances attributed by trade and, on the other hand, those whose justifications are built upon moral consideration of a global nature.
To convince governments that claim protectionism one should take into account the economic repercussions of the implementation of the relevant labour standards on the competitive position of both the industrialised and the developing countries. This would lead to an economic criterion for the real costs such standards could represent for a country. For

[62] The criteria used by these authors were most of the time the social, juridical and economical aspects and implications of the ILO Conventions. The number of ratifications was relevant to establish what would be the support of the international community in this issue. The economic criteria had to show what economical results the implementation would have on competitiveness, to prevent damage to the economy of a country, especially developing countries. Among them : Van Liemt G., Minimum Standards in International Trade : Would a Social Clause Work? in International Labour Review, 128(4), 1989.
[63] Other Conventions on safety and hygiene in the workplaces are also included in these standards.
[64] Michie J., Grieve Smith J.,(1995), op. cit., p. 116. See also the OECD report on trade, employment and labour standards, Nov. 1996, p. 10.
[65] In Commitment 3 of the Declaration from this summit -which was attended by 117 heads of state and of governments and whose main purpose was to promote social policy - nations affirmed their adhesion to certain workers' rights. These rights are the following : Prohibition of forced labour (which can also encompass certain forms of child labour), freedom of association and the right to engage in collective bargaining, and equality of treatment, at least in so far as it refers to the principle of equal remuneration for work of equal value. Hansenne M., The Social Dimension of the Liberalisation of International Trade, Lille, ILO, April 1996., p. 2.
[66] The United States, for example, has only ratified one of them.

this, the use of data gathered in this field by organisations such as the OECD would provide good examples of the success labour standards can have in developing economies.[67]

As to the nature of a social clause, it is largely accepted that it should be formulated with positive conditionality[68], i.e. award one party certain benefits if it meets prescribed labour standards.[69]

So if there is a general knowledge of what should be the bases of a social clause, the choice of the relevant ILO Conventions is not without problems and has to be made very carefully. A more detailed analysis of these Conventions can be found in chapter 4.2.3.

2.1.3 Political and Economic Implications of the Inclusion of a « Social Clause » in Trade Agreements

2.1.3.1 Economic efficiency

The challenge faced by the economic actors is to maximise common interests and prevent conflicts from becoming « functionless » by making all parties worse off. In this sense, labour standards are viewed as improving economic efficiency by removing worker (or public) subsidies from firms that do not provide acceptable working conditions. If they want to keep their good place in the economic markets, the companies are obliged to compete by increasing efficiency rather than by reducing labour standards. This, in turn, would shift resources to more efficient uses and allow countries to protect and develop what is the most important asset of an economy : human resources. Therefore, the main target would ideally consist of keeping aggregate *global* demand and improving both flexibility and productivity growth in order to maintain high and rising incomes and relatively low unemployment rates.[70]

G. Van Liemt points out that « *in purely economic terms, ...workers in countries at a low level of economic development tend to receive low wages.* » He continues : « *When combined with a good level of productivity, low labour costs can be a critical competitive advantage for developing countries.* »[71] According to him, low wages mean that workers need to work longer to survive, therefore threatening their health and their security in work.

To be efficient, a social clause would have to safeguard the comparative advantage of a state, in other words it would only have to prevent situations of exploitation.[72] Or given the increasing predominance of countries with low labour costs in the world economy, the western industrial countries face two possibilities : the first is a structural adaptation, with the result of increasing unemployment. The second is to « level the playing field », to put pressure on NICs and developing countries so that the costs of production would be similar to those in developed countries.

What is the position of the economists on the issue?

[67] For the costs of the implementation of ILO Conventions, see section 4.2.2.

[68] As opposed to negative conditionality, which imposes sanctions by reducing a favourable trade concession if one party fail to meet certain labour standards. Van Liemt G., (1994), op. cit., p. 3, states : « conditionality is an essential aspect of a social clause. » According to him, the psychological approach of both positive and negative conditionality plays a role in the future acceptance of a social clause.

[69] For M. Hansenne there are some basic workers' rights that should be unconditionally recognised He gives three reasons : the first is because workers have to have the opportunity to freely choose what is the best for them; governments are not always willing to grant certain rights in the name of economic efficiency. Second, there are ethical and political reasons for ensuring the respect of fundamental freedoms which are also universal human rights. Finally, the freedom and transparency of the markets call for the prohibition of forced labour and child labour, and are thus based on the same principles as the ILO. (The Social Dimension of the Liberalisation of International Trade, G7/E.C./1996/2, April 1996, p. 2-3). Chernovitz (1986), op. cit., p. 75, is of the opinion that labour standards should be : either absolute(unconditional) in case of protection of child labour and forced labour, or relative (conditional), which would differ with the conditions prevailing in each country.

[70] Marshall R., (1994), op. cit., p. 71.

[71] Van Liemt G., (1994), op. cit., p. 4.

[72] Brand D., Hoffmann R., (1994), op. cit, p. 7.

There are mainly two concepts of the economic markets.[73] Sengenberger describes them as follows: The first consists of a « *laissez-faire notion of the market governed by the unfettered forces of supply and demand, and motivated by fear of hunger and hope of monetary gains, and the second is regulated, socially constrained or controlled notion of the market which requires institutions to make it work and function properly, and maintain social cohesion.* »[74] The first notion is the notion of the neo-classical theory, which is opposed to the link of labour standards and trade.[75] The second corresponds to neo-institutionalism, advocating the inclusion of labour standards within the trade system as an instrument to ensure social development. According to this view, foreign trade should be flanked by domestic social legislation and regulated externally by multilateral agreements.[76]
Moreover, orthodox economists argue that low pay reflects low levels of productivity. Thus, sweatshop conditions and the hard driving associated with the absence of any effective employment rights or worker representation are directly detrimental to the health and general well-being of workers and hence to worker productivity in the long term. However, the traditional foreign trade theory is opposed by numerous authors.[77]

In its 1995 development report, the World Bank began to realise that economic growth without ethical and social standards is insufficient. The export sectors are a part of the economy, but in order to increase domestic demand, the rights provided in a social clause, especially the right to bargain collectively, could lead to an increase in wages, increasing also domestic consumption.[78]

2.1.3.2 Protectionism

The main criticism raised by the opponents of the introduction of a « social clause » in international trade is that it will deprive them of one of their key comparative advantages : low labour costs. They argue that if they had to raise labour standards in order to secure trade agreement the advantage they can offer to MNEs would be undermined.[79]
As Van Liemt points out[80], the question of whether the application and respect of labour standards constitute a protectionist attempt by the developed countries or not will depend on the costs generated. Although these costs are difficult to forecast, it is already possible to say that a ban on child labour and forced labour would raise labour costs.
But, even if there is no evidence either refuting or providing that introduction of labour standards in trade agreements will have an impact on the competitiveness of a country, what should be borne in mind is that the nature of competition has substantially changed. The « old » sources of comparative advantage (factor costs, product prices) have been superseded by product quality, innovative capacity, flexibility and industrial organisation.[81]

[73] More details on these different theories are provided in Langille B., (1994), Labour Standards in the Globalised Economy and the Free Trade/Fair Trade Debate, in Sengenberger W., Campbell D., (eds.), (1994), op. cit.
[74] Sengenberger W., Campbell D., (1994), International Labour Standards and Economic Interdependence, International Institute for Labour Studies, Geneva.
[75] According to the conventional economic theory, economic efficiency results only from a free trade and an open economy. For this result, supply and demand forces must be allowed to operate freely. The conditions to fulfil are : first, economic agents must be free to choose, in other words to express their choices resulting from utility/profit maximisation decisions. Second, perfect competition is needed. Finally, the choices have to be made according to information which has to be as perfect as possible. Market outcomes are endogenous, they are determined by the working of market forces. Since national differences are a necessary requirement for international trade, the introduction of labour standards in trade would work against the rationale for trade itself. For them, the fact that developing countries have lower labour standards is merely the result of the low level of economic development in these countries. Therefore, the only measure to adopt is to let these countries increase their economic growth, and the labour standards would automatically be enhanced.
[76] Scherrer C., (1996), The Economic and Political Arguments For and Against Social Clause, in Intereconomics, Jan.-Feb. 1996, p. 10.
[77] Grossmann H., Koopmann G., (1994), op. cit., p. 282.
[78] Macshane D., (1996), op. cit., p. 16.
[79] The International Metalworkers' Federation has responded to this criticism by showing that its affiliate trade union organisations in developing countries, such as in South and East Asia, show that it is rather a positive factor for trade. (Michie J., Grieve Smith J., Managing the Global Economy, 117).
[80] Van Liemt G., The Multilateral Social Clause in 1994, Brussels, 1994, p.2.
[81] De Castro J.A., (1995), p. 12.

The ambiguity in the concept of « fair » labour standards leads also to a danger in the drawing up of a social clause. The sought-after purpose will dictate the nature of the labour standards, which will be more or less flexible. « *If....the main purpose was to safeguard fair competition in the world market against abuses in the form of « sweated labour », then the main focus of interest would be on the market distortions caused by the practice rather than on conformity or non-conformity with labour standards.* »[82]
Some argue that the basic standards proposed by the ICFTU and others advocates are just a first step, with the result of diminishing the international competitiveness of the products of the developing countries, thereby limiting their development. For them, the ILO standards are set in line with those of developed countries, and do not respond to the situation in developing countries. If a social clause has to refer to these standards, discrimination against the developed nations would automatically be the result.[83] Sengenberger's answer is that to continue international trade at the expense of workers' rights could lead to national and regional protectionism as well. [84]
According to the long-standing advocate of social clauses, Chernovitz[85], « *the best way to disprove the charge of protectionism would be to couple international fair labour standards with reduced trade barriers for complying countries.* »

What is certain is that a supranational body is the only structure able to grant neutrality and objectivity in the decisions. While the introduction of trade sanctions as a means to implement labour standards may lead to the levying of trade barriers to protect developed countries, this may also lead to discriminatory practices. For example, it would be difficult to imagine trade sanctions against a country which presents huge markets and trade opportunities or against a country with important natural resources. Moreover, the small developing countries which rely on the export-sector to catch up economically would particularly suffer from trade sanctions.

There is a danger that the introduction of labour standards in trade leads to protectionism by developed countries; therefore, the best solution is co-operation between all the countries concerned and the setting up at a multilateral agreement on the issue, because such an agreement is needed, sooner or later.

2.1.3.3 Influence on the formal and informal sectors

The introduction of a « social clause » in international trade agreements will increase the gap already existing in the developing countries between the formal and informal sectors.
In developing countries, most workers continue to work as self-employed or irregular employees. This situation creates a gap between the formal sector, target of international labour standards, and the informal sector, on which no standards are applied.[86] Therefore, labour standards have to be set up which are flexible enough to suit both the formal and informal sectors.
In addition, many TNCs are extending their subcontracting networks into these informal sectors, such as home-based production, where no labour laws apply.
The experience of developing countries shows that the conventional assumption that the informal sector is a transient phenomenon is false. The relevance of international

[82] Edgren G., Fair Labour Standards and Trade Liberalisation, in International Labour Review, 5 (1979).
[83] Social Clause : Will it Work for Workers?, in Asian Labour Update, Nov. 1995-March 1996, p. 13, which cites Zhang Zhi Yan, The Essence of « Social Clause » debate and its Implications on the International Movements, in Workers University Journal, no 4, Hubei Workers Movement School, Hubei, PRC, 1995.
[84] Sengenberger (1990), op. cit., p. 22.
[85] Chernovitz, (1987), The influence of international labour standards on the world trading regime : A historical overview, in International Labour Review, Vol. 126, No. 5, Sept.-Oct., p. 581.
[86] For example, in India 92% and in Thailand 70% of the workforce are in the unorganised or informal sectors. Social Clause : Will it Work for Workers?, Asian Labour Update, Nov.-1995-March 1996, p. 3.

instruments in the informal sector is regarded with scepticism, and yet it is in this sector that the need for standards is the most urgent.[87]

2.1.3.4 Danger for the non-exporting sectors

There is another danger in linking social clause to trade, given the fact that only one sector, the exporting sector, will be concerned with the measures set up.
Edgren[88] notes that « *the most blatant cases of exploitation and deprivation are not generally found in manufacturing industries which produce for export. The worst offences are usually found in plantations and mines, construction industry and small services firms working entirely for the domestic market.* »
The enforcement of labour standards would therefore highlight the « visible » sector, with a worsening of the non-exporting sector, where the conditions of work are already unbearable.
Because of the pressure on exports, « *labour costs would be artificially raised, leading towards an increasing emphasis on capital intensive investments. This will aggravate the dualism of developing economies, reduce the rate of growth of employment ...* ».[89]
Export Processing Zone : a number of developing countries have set up so-called export processing zones which seek to rescind the national labour and social legislation.[90] They are very numerous in Asia, and account for much of the growth in their manufacturing exports. This type of activity, which used to be concentrated in textiles, garments and electronic products, has been expanded into high-tech industries and services. Two-thirds of jobs are held by women, and the MNEs are numerous in these EPZs. The characteristic of these zones is the treatment accorded to goods entering the zone which is more favourable than other parts of the same nation. It has the effect of attracting export-oriented enterprises or activities through the establishment of some sub-national customs area in which goods enter. But do the countries use different labour costs in these EPZs to appeal to the eventual investors? The countries concerned answer negatively in the 1992 survey conducted on the basis of the ILO Tripartite Declaration.[91] But the cases of six countries prove that core labour standards were reduced in the EPZs compared with the other parts of the countries.[92] Nevertheless, if on the one hand these zones have a negative effect on labour standards, on the other hand they offer the advantage of increasing employment (of 14% annually between 1986 and 1990) as well as wages, which is higher in EPZs than in the rest of the economy (ILO 1993).

2.1.3.5 Promotion of economic and political stability

One other reason in favour of the introduction of a « social clause » is that it will promote economic and political stability. Unfair conditions of work could lead to an increase in pressure to migrate into the industrialised countries, where the workers of developing countries would try to find better wages and social protection.[93]

[87] Trilok Singh Papola (1994), International labour standards and developing countries, in Sengenberger W., Campbell D, (eds.), (1994), op. cit., p. 181.
[88] Edgren G., Fair Labour Standards and Trade Liberalisation, in International Labour Review, 5 (1979), p.525.
[89] Emmerij L., (1994), Contemporary challenges for labour standards resulting from globalisation, in Sengenberger, W. and Campbell, D. (eds.), 1994, International Labour Standards and economic interdependence, International Institute for Labour Studies, Geneva, pp. 95-10.
[90] The first export-processing zone (EPZ) was established in Ireland in 1959. These zones have begun to expand, particularly in East Asia, as a way of attracting foreign investment. Their principal assets were the low labour costs. Since then, EPZs have spread rapidly. Pakistan, for example, passed a fiscal law in 1992 which foresaw that for certain regions the entire labour legislation could be annulled simply by corresponding proclamation by the government in its official gazette. Other laws on export processing zones contain no mention of social rights - as in Columbia- or foresee only the application of specific clauses of the labour legislation, such as in Peru or Venezuela. Today it is estimated that there are over 500 zones world-wide, in 73 countries.
[91] The OECD (1996) Report on trade, employment and labour standards, GB.267/WP/SDL/2, 267st Session, p.13, states that some governments do not apply labour standards into export-processing zones to attract FDI.
[92] These six countries were Bangladesh, Jamaica, Sri Lanka, Pakistan, Panama and Turkey.
[93] Adamy W., (1994), op. cit., p. 270.

As pointed out by the National Bipartism Commission on Central America (the Kissinger Commission), « *they (the unions) have been not only an economic force but a political one as well, opposing arbitrary rule and promoting democratic values* ».[94]

2.1.3.6 A Human Rights issue

To let the economic powers dictate alone the rules of the labour market could lead in the long term to competitiveness in the availability of underestimated labour and therefore to encouragement of predatory capitalism, disrespectful of workers' rights.
Some authors consider that, given the danger of protectionism encountered by the introduction of a « social clause » in the trade system, such a clause would lead instead to a humanitarian protection of workers.[95]
It is true that the repression, discrimination and abuses suffered by the workers transcend the workplace to become a human rights issue. Moreover, to think of wage cutting as a mere economic or structural change in the costs of production has the effect of dishonouring skilled workers, and through them their very personality and integrity.
Labour standards set up by the ILO are part of human rights that could be found in several human rights instruments, such as the Universal Declaration of Human Rights of 1948, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights of 1966. The so-called « minimum package » of labour standards is recognised in the Covenant on Economic, Social and Cultural Rights.[96]
Even if Article 2 of the Covenant states that social progress has to be achieved progressively, accordingly to the development of each country, one can note the fact that many developing countries and NICs, parties to the Covenant, do not comply with the provisions related to workers' rights. In other words, a social clause would have been useless, given the fact that the Covenant protects workers on a much wider scale than a social clause would do.
Respect for fundamental labour standards as well as workers' rights as Human Rights is often viewed as less ambitious, but also as more « realistic ». Among the descendents of this approach, the German Trade Union Confederation, the DGB, proposes the setting up of a system in several steps, which would work as much as possible on incentive measures with economic sanctions only in case of serious violation and bad faith of the states concerned.[97]

2.1.3.7 Controversy over a global minimum wage

The experience of the organisations of economic integration, and of the European Economic Community in particular, shows that while trade liberalisation presupposes a minimum of social harmonisation, an eventual equalisation of wages is neither desirable nor possible. It enters also in contradiction with Article 19(3) of the ILO Constitution which *subordinates* the implementation of the ILO instruments to the development of the country targeted.
International labour standards do not cover wages (except in the shipping industry). The very definition of « fair wage » is difficult to establish, as is the minimum level of wage. Therefore, the specific issue of the minimum wage is not discussed in the debate of the social clause.

[94] Chernovitz, (1986), op. cit., p. 72.
[95] Grossmann H., Koopmann G., Minimum Social Standards for International Trade?, in Intereconomics, 29(6), Nov.-Dec. 1994, p. 270.
[96] These rights are the following : rights to freedom and collective bargaining (Art. 8 and 9), the abolition of child labour (Art. 10), the rights to free choice of employment (Art. 6) and just and favourable working conditions (Art. 7).
[97] Document of the DGB, « Menschenrechte in der Arbeitswelt und internationaler Handel-Vorschläge für elementare Sozialklausen », Informationen zur Sozial-und Arbeitsmarktpolitik.

But if a social clause does not seek to impose a global minimum wage, some argue that this latter will be indirectly influenced by a social clause. This problem has to be tackled by those who know what are the needs for a decent life, in other words trade unions and employers' organisations who are aware of this problem and would be able, each in their own country, to address this issue. Therefore, a social clause will in the long run ensure fair wages by guaranteeing this right to bargain collectively and the right to organise.
Another concern about the influence or effect of labour standards on wage is the fact that *« without labour standards, immigrants with limited skills, low wage expectations and limited legal protection will not only displace workers and suppress wages in developed countries, but will also perpetuate marginal industries that can only compete with low wages. »*[98]
According to the classical theory of comparative cost advantages, a welfare gain results from trade between unequal economic areas, each offering its own comparative advantages.
This theory was verified by the American situation, which shows that while the economy was becoming more open, the real wage fell by 7.8% between 1980 and 1990.[99] This leads to the conclusion that the increase in efficiency due to foreign trade and direct investment abroad does not provoke a rise in domestic wages.[100]
Even though low wage constitutes one of the main competitive arguments of developing countries, to tackle the question would complicate the debate, given all the other factors composing the attractiveness of a country. This is the reason why minimum wage is not part of the discussions in the debates on a social clause.

2.1.3.8 Cultural implications of a social clause

The problems of implementing stricter labour standards are not merely economic, but also have important cultural and social implications. The case of child labour provides a good example of the complexity of the problem.
If cultural traditions give sometimes an explanation for the treatment of workers, cultural values are more often abusively invoked as an excuse to deny workers' rights.[101]
Thus as long as politicians consider that labour standards, such as the right to strike, are not part of the country's culture, and therefore do not need any special protection, the issue will be sterile.[102] Because of globalisation, communications and the universal recognition of human rights, it is unlikely that these arguments will hold water in the long run. And it is also these false excuses used to violate workers' rights which call for an international mobilisation.
Interestingly enough, some authors argue that labour standards are culturally specific and that they cannot be considered as « universal ».[103] Therefore they are internal affairs of a state, and prevent any intervention by the international community.
This argument forgets that the core labour standards belong to the human rights declared universal, enabling the international community to consider their violation as a « legitimate concern ».

[98] Marshall R., (1994), op. cit., p. 70.
[99] Juhn C., Murphy K., Inequality in Labour Market Outcomes : Contrasting the 1980s and Earlier Decades, in Economic Policy Review, vol. 1, No. 1 (1995), p. 27, quoted in Scherrer C., (1996), op. cit., p. 14
[100] For more details on the theories of wages, see Marshall R., (1994), op. cit., p. 67.
[101] Political leaders and capitalists in Asia deny the universal character of labour standards and claim that their countries do not need these kind of protection.
[102] For example, according to Asian leaders, the « Confucian » heritage is the reason why workers do not need any special protection. But in reality, this heritage suits only the economic leaders, not the main actors.
[103] See Bhagwati J., 1994, A view from Academia, in Schoepfle G., Swinnerton K., (1994), International Labour Standards and Global Economic Integration : Proceedings of a Symposium, US Department of Labour, p. 59.

The different problems that arise with the inclusion of labour standards in international trade described in this chapter can be overcome or at least partly solved. In the next part, examples of the link between trade and labour standards will be addressed, giving some ideas on possible solutions to this problem.

3. Forms of « Social Clause » Integration

3.1 American initiatives

Until now the more significant measures taken in the field of labour standards have been taken by the United States.[104]
Even if the American schemes are autonomous -not multilateral- schemes, they have operated long enough to give some indication of how, whether and under which conditions a multilateral social clause might work. The NAFTA side agreement is even more relevant because it is a trilateral agreement with a North-South dimension to it and includes the possibility of taking sanctions.

3.1.1 North American Free Trade Agreement (NAFTA)

3.1.1.1 North American Agreement on Labour Co-operation (NAALC)[105]

NAFTA is the fruit of economic integration in North America that started to accelerate in the mid 1980s. In June 1991, the US, Canada and Mexico started trilateral negotiations on NAFTA, ratified by the Presidents of the three countries concerned.
In NAFTA, the countries which are party to the agreement do not impose any new standards upon themselves. To ensure that nations adhere to the provisions that existing national regulations will be monitored, the North American Agreement on Labour Co-operation (NAALC), the labour supplemental agreement to the NAFTA, which entered into force on 1 January 1994, was established.[106] The NAALC promotes mutually recognised labour principles including core labour standards and other standards such as occupational health and safety of workers and the protection of migrant workers.[107] It specifies in great detail how a trade-labour clause would operate between the contracting parties.

According to the Agreement, each country can only raise its labour standards, not lower them.
A Trinational Labour Commission has been established for the enforcement of the Agreement. It consists of a Ministerial Council, an International Co-ordinating Secretariat and three National Administrative Offices (NAOs)
The agreement provides for consultations between the NAOs or at the Ministerial level.
The Evaluation Committee of Experts (ECE) provides reports on the measures undertaken by the three countries. In case of failure of this stage and if the Party still does not comply with labour laws with respect to health and safety, child labour and minimum wage in a situation involving mutually recognised labour laws, a dispute-resolution process can be invoked by any Party. An arbitration panel will examine the case and, if it finds that the Party failed in the enforcement of laws the Parties have the possibility, within 60 days, to agree on a mutually satisfactory action plan to remedy the non-enforcement. If this fails, the panel makes a final report. Thereafter, between 60 and 120 days after this report, the panel may be reconvened to evaluate an action plan proposed by the Party complained against or

[104] The programmes launched by the US include : the Caribbean Basin Economic Recovery Act (1983), the GSP Programme (1984) which is discussed below, the Overseas Private Investment Corporation (1985), the Multilateral Investment Guarantee Agency (1987), and sections of other Acts.
[105] For more details on the subject, see Aparicio-Valdez, L., (1995), op. cit., pp. 104-107.
[106] To gain the support of the opponents of the NAFTA, particularly the American Workers who feared that the Agreement would lead to job losses in the US, President Clinton said that he would only sign NAFTA if it included certain assurances and protection of labour and environmental standards. This led to the NAFTA « side » agreement, including the Agreement on Labour Co-operation.
[107] NAALC, Art. 1, Art. 3, Art. 49; NAALC : A Guide, 1995. Labour Laws include among others the « core » of labour laws recognised by the ILO.

to set out an action plan in its stead. This process may ultimately result in fines (monetary enforcement assessments) backed by trade sanctions[108]. Anybody with a recognised interest under the law of any party to the NAALC can open the procedure.

This Agreement provides a good example of how a social clause might be implemented, for two main reasons : the first is that the agreement is established between partners with different economic and social levels, comparable to the North-South situation. The second reason is that sanctions can be taken.[109]

Five cases have been submitted so far under the NAALC dispute settlement procedure.

Concluding remarks :

One of the problems faced by the US is immigration. While the American authorities argued that the NAFTA would prevent immigration, the opposite seems to be the case. Two phenomena can explain this increase : The industrial plan of the border launched in the 1960s has led to a proliferation of Mexican assembly firms (the so-called *maquiladoras*) producing goods for exportation towards the US. They are built close to the border, and have quadrupled since 1980. Therefore, Mexicans come to work there, with the hope to be able one day to cross the border. The other explanation is that, according to immigration specialists, the enforcement of the NAFTA may lead to the forced migration of around 1,400,000 farmers, because the farm importation coming from the US increased by 38%, especially in cereals which represented 30-50% of the working hours of the Mexican farmers. The economists point out that a better enforcement of labour law in the two countries has to be a priority, as well as the establishment of a minimum wage in Mexico. In other words, a policy of trade unions repression.[110]

3.1.2 The US GSP Program

Among the programmes devoted to promoting better labour standards launched by the US, the GSP (Generalised System of Preferences) is the most important means of action. [111]
The US scheme was implemented for the first time on 1 January 1974.[112] It was renewed for another eight-and-a-half years until 4 July 1993. Since 1993, the GSP Program has been extended twice for around one year each time.
The GSP Program is an unilateral government action.
The criteria entering into consideration in determining beneficiary status in 1984 were both the protection of intellectual property and the protection of workers.
Among workers' rights, the GSP recognises : the right of association, the right to organise and bargain collectively, prohibition of forced labour, minimum age, minimum wage and hours of work, and occupational safety and health. While no definitions of these rights are provided in the GSP statute, they have been interpreted as corresponding to ILO norms.
The annual review process of the GSP enables the petitioner -in most case the AFL-CIO and the International Labour Rights Education and Research Fund- to cite violation of

[108] However, trade sanctions are only possible in the areas of child labour, minimum wages and occupational safety and health, not in case of freedom of association, the right to bargain collectively and forced labour. Moreover, standards referred to are defined under the national legislation of the parties. These sanctions are not available against Canada (NAALC, Part. 4 and Part 5).
[109] Van Liemt G., (1994), op. cit., p. 6.
[110] See Etats Unis/Mexique : la face cachée de l'intégration économique in Problèmes économiques, no 2,500, p. 23-29 which reproduces large extracts of Andrea P., US-Mexico : Open Markets, Closed Border, in Foreign Policy Review, Summer 1996.
[111] The same year, Section 301 of the Trade Act 1974 was promulgated. Under this Section, the US Trade Representative was able to take action against nations that did not accord internationally recognised workers' rights. But this provision was not put into effect. For more details, see Chernovitz S., Promoting Higher Labour Standards, in The Washington Quarterly, Vol. 18, No. 3, 1995, pp. 167-190.
[112] The legal basis for GSP schemes was established, in June 1971. The Contracting Parties of the GATT approved a waiver to Article 1 of GATT. Under the waiver, developed contracting parties were allowed to accord favourable tariff treatment to products imported from developing countries, for a period of ten years.

workers' rights in beneficiary countries. The GSP Subcommittee, composed of representatives of the various government agencies, receives these petitions on 1 June of each year. If it accepts the petition, a one-year review is carried out, and after that, the changes made in the country will determine if the review is finished, if it is renewed or if the country's eligibility for GSP benefits is suspended.[113] The Subcommittee takes its decision after having undertaken investigation so as to have a complete and neutral view of the situation of the country concerned; it is also in contact with the ILO.
The leverage provided by withdrawing preferences, or threatening to, has been used as last resort.
The effect of the GSP has been positive, and labour standards have been raised in most of the beneficiary countries. The most frequent reviews have been done on specific rights, especially freedom of association. But it is also argued[114] that these kind of unilateral trade measures are weak when confronted with economic powers (China, in this case, which resisted pressure on human and workers' rights as interference in its domestic policies, and was granted Most Favoured Nation status), and that friction in international relations can result from the decision whether to grant special duty-free benefits or not. Moreover, the vagueness of the GSP clauses can also leave it open to abuse for political aims.

3.2 European initiatives

The EU has been a very active advocate in favour of the inclusion of a social clause in the GATT.[115] Article 68 of the treaty establishing the European Coal and Steel Community contains a social clause.[116]
Recently, the European Parliament adopted a resolution with a large majority, in February 1994, (190 for, 29 against and 20 abstentions) which requires that the European Commission include a social clause both in the trade preferences of the European Union and in the GATT agreements.[117] The main reason was the collapse of the Berlin Wall and the end of the cold war, and the fear that the world-wide competitive struggle would lead to a new bout of economic warfare, paving the way for a return to « laissez-faire » economic policies.
The EU is characterised by substantial differences in labour costs among the member States.[118]
Between 1980 and 1990, in the European Community alone, 400 anti-dumping and anti-subsidy procedures were initiated and 900 resolutions published. On average there were fourteen final tariff and price obligations per annum. These numerous measures taken to struggle against unfair competition indicate that such actions would be probably also essential in matters relating to social issues, especially labour standards. It is therefore necessary that these trade policy regulations are extended to include rules to prevent cut-throat competition at the cost of human rights at work.[119]

[113] OECD, (1996), op. cit., p. 183-185.
[114] Castro, J., (1995), p. 7.
[115] For instance, the European Parliament called for the relevant change to the GATT in February 1994 : it stated that Article 20(e) of the GATT should be extended to cover also the refusal of trade union and collective bargaining. But some countries were reluctant, and some political leaders too. See Adamy W.,(1994), op. cit., p. 278.
[116] Under this social clause, cases where enterprises charge abnormally low prices because the low wages they pay compare with the level of wage of the same area, are condemned.
[117] European Parliament : Decisions on the introduction of social clauses in the unilateral and multilateral trade system (A3-0007 94), Brussels 9.2.1994 The report on the question : Sainjoin report called also on the European Commission to introduce a Social Incentive Clause in the new ten year arrangement for the Community's GSP.
[118] For instance, the low costs of British labour (which are around 80% of French costs) have been the reason for an accusation of « social dumping » in the Hoover case. See Hoover Affair and Social Dumping, in European Industrial Relations Review, 230, March 1993, 14-20.
[119] Grossman H., Koopmann G., (1994), op. cit., p. 277.

3.2.1 EU Social Charter

The EU Social Charter, adopted by 11 countries in December 1989, is the result of the fear of capital flight from higher-cost countries to countries offering low labour costs. One of its aims is to focus on the differences in labour standards among member countries irrespective of differences in productivity. Social dumping would be counteracted via long-term « upward harmonisation » of labour standards and social policies.[120] While attention is given to the importance attached to labour standards and social protection, the relative lack of concern to labour cost is surprising.[121]

Although the unions are united behind the Social Charter, this unity is based on a potentially unstable balancing of competing interests. Employer and governments are less united than unions. Britain and Ireland, the two countries without any significant form of worker participation, see the introduction of these measures as likely to render the Union less competitive (relative to the rest of the world). But given the principles of subsidiary and of « opting-out », it is likely that there will be persistent differences in labour standards across the EU countries that could affect their competitive positions.

Economic integration moves much faster - as rules and institutions inhibiting capital mobility and free flow of trade are dismantled - than trade unions - still very national -, whose progress towards the European Social Charter of Community-wide social standards is slow.

3.2.2 The EU GSP

A direct link between trade and labour standards has existed since 1994 in the European Communities.[122] Incentives (additional GSP benefits for countries implementing core labour standards) and disincentives (suspension of GSP benefits for countries violating core of labour standards) composed the GSP scheme.

The European GSP makes explicit reference to the labour standards as defined in ILO Conventions, which form a larger set than the EU one.

In January 1996, the first investigation was initiated. The issue in question was forced labour practices carried out in Myanmar.

In the European Union's revised GSP[123] scheme, a « social and environmental incentive clause » has been introduced. Under this clause, countries can qualify for additional duty reductions if they adopt certain provisions. These « incentive clauses » are to take effect from 1998 onwards. Under the social incentive clause, additional preference is to be offered upon request to countries which respect ILO conventions on the freedom of association, the right to collective bargaining and child labour. The intensity and modalities of these incentive clauses are to be defined in the course of 1997 by the Council on the basis of a proposal from the Commission, in the light of a review of the matters and on the basis of internationally accepted criteria. In addition, temporary withdrawal of GSP benefits from an individual beneficiary country is possible if it has been established that « unacceptable trading practices or behaviour » have been undertaken by that country. These unacceptable practices include slavery and forced labour as defined in ILO conventions 29 and 105.[124] Sanctions can be implemented before a year of investigation and a decision by the majority of the Council.

[120] Erickson Ch.L., Kuruvilla S., (1994), Labour Costs and the Social Dumping Debate in the European Union, in Industrial and Labour Relation Review, Vol. 48, No. 1, October, 1994, p. 29.

[121] Moreover, the Maastricht social policy agreement, while it provides for possible qualified majority voting on Directives relating to « working conditions », specifically (in Article 2(6)) excludes pay from the field of Community competence.

[122] Official Journal of the European Communities, N.L 348, Council Regulation N.3281/94.

[123] Based on a report by the commission, the general system of preferences is to be subjected to a thorough revision, with progressive rates and a solidarity mechanism introduced. This can lead to tariff advantages of up to 30% if producers present certificates from their government showing that the central social standards of the ILO have been observed by them. See Adamy W., (1994), op. cit., p. 276.

[124] Report submitted by the European Communities to the WTO, Trade Policy Review of the European Union, WT/TPR/G/*, 30th June 1995, p.17.

The beneficiary countries who request the special duty reductions, added to the benefits gained under the normal GSP scheme, will be entirely responsible for the control and certification that products meet recognised standards. But withdrawal of the benefits will be possible at any time. To ensure the most complete knowledge of a situation, hearing procedures have been set up. All interested parties can express their views in each case.[125]

The European guideline on the role of the GSP during the 1995-2004 period proposes that certain practices of social exploitation should be punished with the removal of preferential status. It also proposes that the effective conformity to certain international labour organisation conventions should be rewarded by granting additional preferences for goods which have been demonstrably produced in conformity with the respective ILO Conventions.[126] During the application period of the new GSP scheme from 1995 to 1997, the Commission proposes an additional preference of 20 percentage points above the base preference for those countries which have granted the freedom to organise and the right to collective bargaining, and which do not tolerate child labour below a given minimum age. After the initial two-year period, this positive incentive[127] is to be granted for the first time in 1997.[128]
Reference to labour standards is also made in a number of commodity agreements but these have been cast in normative terms, rather than in terms of the rights of importing countries to impose sanctions.[129]

3.2.3 The Lomé Convention

There have been many attempts to include a type of « social clause » in the preferential trade arrangement with the African, Caribbean and Pacific (ACP) group of developing countries.[130] It is interesting to note that the Lomé beneficiary countries strongly opposed the EC Commission's proposal, which they accused of being paternalistic, protectionist and hypocritical in not being applied to EEC-South Africa trade.[131]
If the 1984 Lomé Convention contains a broad notion of human rights, it was not followed up or no control mechanism was established. However, in the mid-term review of Lomé IV, issues of human rights, democratic values, the rule of law and good governance were raised as items for negotiation. In 1994, three points were issued : the promotion of human rights, democracy and the rule of law; establishment of a political dialogue with the ACP States; and improved programming and more effective co-operation and procedures.
The Lomé Convention should provide a good example for the inclusion of the minimum Labour standards provision, especially for the appeals procedure and the conditions it creates for fostering the observance of minimum standards.[132]

3.3 The OECD Guidelines for Multinational Enterprises

The Declaration is a political commitment, adopted by the governments in 1976. Not legally enforceable, it aims at facilitating direct investment among OECD Members. Three other matters dealt with are the following : to provide national treatment to foreign-owned

[125] European Community Press Release : IP/94/482, June 2, 1994.
[126] COM (94) 212 final, Brussels, June 1, 1994, pp.10ff.
[127] In contrast to the EU's (planned) system of positive incentives (« carrots »), the American policy emphasised the « stick » approach of refusing preferences.
[128] Grossmann H., Koopmann G., (1994), op. cit., p. 278.
[129] The commodity agreements referred to are the International Sugar Agreement (successive), the Tin Agreement of 1981, the Cocoa Agreement of 1986 and the International Rubber Agreement of 1987.
[130] The first attempt was in 1978, where the Commission of the European Communities made a proposal to the EC Council of Ministers to link the Lomé II Convention to the observation of basic international labour standards. Chapter 1 (article 5) of the fourth ACP-EEC Convention on 15 Dec. 1989 requires, for the first time, that human rights be taken into account in development co-operation policy.
[131] Chernovitz (1986), op. cit., p.65.
[132] Emmerji L., (1994), op. cit., p. 328.

companies, to promote co-operation among governments in relation to international investment incentives and disincentives, and to minimise the imposition of conflicting requirements on MNEs by the governments of different countries.
A separate chapter addresses employment and industrial relations, where enterprises are encouraged to respect workers' rights to representation, to refrain from unfair influence in labour negotiations or during organising campaigns, and to negotiate on employment conditions. Among others, the enterprise should respect the right of their employees to be represented by trade unions, provide information for a true and fair view of the performance of the enterprise, comply with the standards of employment of the host country, etc.
The constitutional set-up of the Guidelines consists of three elements : the National Contact Point, the OECD Committee on International Investment and Multinational Enterprises (CIME) and the advisory Committee of business and labour federations (BIAC and TUAC).
The National Contact Point serves to gather information on experience with the Guidelines, to promote them, etc.
The CIME is responsible for providing clarifications on the interpretation of the Guidelines, for exchanging views on them, and for answering the questions from Members, BIAC or TUAC. The latter can request consultations with the National Contact Points on the issues at the CIME.
Member governments, labour and business organisations may raise problems on the non observance of the Guidelines. The National Contact Point should contact the enterprises and resolve the problem at the national level. If no solution is found, the issue can be submitted for consideration to the CIME, which has the final responsibility.
Since the inception of the Guidelines, around 30 cases of alleged violations have been introduced to the CIME, mostly by TUAC, but also by the Belgian, Danish, Dutch and French governments. The majority of these cases referred to the provisions on industrial relations chapter.[133]
The expansion of the Guidelines to countries in Central and Eastern Europe, Asia and Latin America will reinforce the role of the OECD instrument.
Even if there is criticism of either its too general or too-detailed provisions, the Guideline remains a voluntary instrument which can be endorsed even by non-OECD countries.

These different systems which provide possible examples of insertion of labour standards into trade are encouraging.
But one has to bear in mind that at the macro-level, the world is moving towards even freer trade, so the WTO , GSP and other arrangements are in fact working for their own abolition. At some point there will be no trade barriers or incentives left to be used as a restraints, so the options will be free trade or sanctions. In this case, the likelihood of actually imposing sanctions is very small. At the micro-level, the labelling of products to create separate markets (see below, in Chapter 5) is fine, but banning non-labelled products would be rejected by the WTO. Given this, it would be better to use the ILO conventions to GATT as a means of introducing guidelines into international trade, and compare the ILO/GATT relationship with that of the World Bank and IMF. The IMF, like the ILO, is seen as a burden, while the World Bank, like GATT, is seen as a benefit.[134]
Some argue that the two organisations are not suited for operating a multilateral clause, especially given the dangers engendered by the introduction of a social clause in trade. There are four main concerns calling for special attention : first, how to grant a fair part of the benefits, second, how to avoid disastrous competition, third, how to prevent it from

[133] The issues have related, in particular, to infringements of the rights of employees to be represented by trade unions (section 1), to the provision of reasonable notice in case of major changes in company operations (section 6), and to the provision of information to employee representatives to enable them to obtain a true and fair view of the enterprise performance (section 3).
[134] Williamson H., Pannartz P., (1994), Conditions or Co-operation? Trade Aid and Minimum Labour Standards : Visions and Campaigns from the South and the North, in Report of the International Seminar on Trade, Aid and Minimum Labour standards, Tilburg, p. 32.

being used as a protectionist device, and finally to what extent a country can judge the situation in another country.[135]

We will now examine to what extent already existing structures in both economic and labour rights fields provide a framework complete enough to be used for the inclusion of a social clause in international trade.

[135] Van Liemt G., (1994), op. cit., p. 7.

4. Social Standards in the WTO and in the ILO

4.1 Social Standards in the WTO

4.1.1 Why the WTO ?[136]

Views differed particularly sharply on whether the WTO had a role to play or not in the social field.[137]
The absence of reference to workers' rights in both the GATT[138] and the Agreement establishing the WTO is the sign of the incapacity of the member states to find a consensus on this sensitive matter.
One interpretation of the silence on labour standards within the agreement may be the certainty of some politicians and economists that workers will automatically have a share in the profits resulting from liberalisation, and through it their working conditions would be improved.
While the ICFTU advocates that a social clause should be written into trade agreements, employers' associations and the overwhelming majority of economists contend that trade agreements are not an appropriate means of enforcing minimum standards.
As seen above, the debate as to whether or not to introduce labour standards in trade is between two opposing economic theories :
The defendants of « free trade » argue that the WTO does not provide an appropriate framework for the establishing of international labour standards.[139] They argue that market principles would suffer if standards between countries had to be fixed and that it will work against the comparative advantage provided by regulatory diversity.
For the « fair traders » labour standards have a place within the WTO framework.
This dichotomy leads to strong opposition over the necessity of linking labour standards with trade. As Freeman[140] points out : « *These reactions make the argument about labour standards one of a set of running battles between those who believe the unfettered market can do no wrong and those who believe governmental regulations can make things better. If you like standards, trot out the (usual) arguments about market imperfections, externalities, unequal bargaining power, prisoners' dilemma or co-ordination games, etc. If you don't like standards trot out the (usual) argument about wonders of the Invisible Hand, the ineffectiveness of governments to act in the public interest, rent seeking, etc. The debate is long on ideology and rhetoric and short on analysis and evidence.* »

Nearly all of the Contracting Parties of the WTO are member States of the ILO and it is probably to be expected that the membership of the two organisations will become increasingly identical. This participation in both organisations means that the States concerned endeavour in good faith to take into consideration the objectives and obligations they have undertaken in each of these organisations.
But virulent opposition remains among the member States over the content, scale, implementation and, above all, necessity of a social clause in trade agreements.

[136] For the historical background, see Chapter 2.
[137] The GATT is a binding contract between governments. The main aim of the GATT is to provide a secure and predictable international trading environment and to enhance the process of trade liberalisation. The WTO is the successor to the GATT. It was established on 1 January 1995. A major change brought by the WTO is the dispute settlement mechanism which is more transparent, predictable and consistent than its predecessor.
[138] With the exception of Article XX of the GATT on general exceptions that enable the contracting parties to adopt or maintain restrictive measures relating to the products of prison labour.
[139] See Langille B.A., Labour standards in the globalised economy and the free trade/fair trade debate, in Sengenberger, W.; Campbell D., (eds.) , op. cit. and Wedderburn, L., Labour standards in international trade : Would a social clause work?, in Sengenberger, W.; Campbell D., (eds.) , op. cit., 245-271.
[140] Freeman R., A hard headed look at labour standards, p. 80, in Sengenberger W., and Campbell D., (eds.) (1994), op. cit.

The US[141] and the EU[142] argued that the emerging WTO should begin a work programme on the issue of the link between the expansion of international trade and international labour standards. Developing countries, particularly in South East Asia, remain hostile to any suggestion. They express their opposition relative to the rights and obligation they have in the WTO. For them, the right to accede to the market can only be modified if they are in breach of the obligations they have undertaken. Therefore, if there is no obligation, as there is not in the case of labour standards, the withdrawal of their rights has no legal basis.[143]
Another strong voice against a social clause was GATT Director-General Peter Sutherland who warned that : « *simplistic demands for drastic trade remedies against the so-called eco-dumping or social dumping sometimes bear a striking similarity to the more conventional forms of protectionist rhetoric, but in many respects ill-thought out measures can be more dangerous because of the popular emotional appeal that they appear able to carry with them.* »[144]
After the failure of the Uruguay Round to find a consensus on social issues, calls for the introduction of labour standards were made by trade unions and some developed countries. Two years later, during the informal meeting of Ministers of Trade of the European Union which was held on 18 and 19 September 1996 in Dublin, labour standards were one of the themes mentioned. The Director-General could see an emergence of four areas of common ground. First, the respect of basic labour standards. Second, the recognition of the primary role of the ILO in the question of labour and employment. Third, the assurance to call into question the competitive advantage of low-wage countries. Finally, the assurance that the possibility of trade sanctions would not be envisaged.[145]

The very nature of the Agreement and its role is often evoked. The following argument comes round to deny the place of workers' rights within the WTO : this latter being a commercial contract, the inclusion of labour standards would change its very nature and would also interfere in a matter which belongs to the member states' domestic policies : labour rights. Within the GATT framework the application of quotas as an instrument of trade policy is prohibited on principle. Moreover, the WTO has neither the experience nor the adequate structure to deal with labour standards.

All this means that if the WTO represents the first organisation competent to deal with the implementation of social clauses, it remains the target of criticism from developing countries and some developed countries. Given the necessity to reach a broad consensus and to force international co-operation, a decision on the matter is not likely to be found.

The principle charge levelled against the WTO remains the fact that it assures freer trade, not fairer trade. In other words, it is regrettably the case that the grip of TNCs and governments of the industrial countries has been strengthened on the millions of poor in the world. Therefore, there are doubts that an organisation which is viewed as impairing workers' rights could be the protector of the same.
Another reproach addressed to the implementation of a social clause by the WTO is that, given the structure of the WTO and its procedures in the measures taken to struggle against the bad behaviour of one state party, the interest of the nation will predominate, which is very different from workers' rights in most cases.

[141] In 1986 and 1994, the US suggested, without success, adding workers' rights to the Uruguay Round and to the WTO agenda (US House of Representatives Doc. 102-51(1991), pp. 111-112.
[142] For instance, in 1983, the European Parliament called for negociation of a GATT provision on LS engaging all the GATT Members to respect ILO Conventions on core LS (Resolution of the European Parliament of 28 October 1983, par.12, reiterated in the Resolution of 9 Sept. 1986, pars. 64-65.
[143] Brewster G., (1995), Report on the trade and international labour standards debate in the WTO and the ILO, p. 2.
[144] Peter D. Sutherland, « Consolidating Economic Globalisation », 21 March 1994 quoted in De Wet G., (1994), op. cit., p. 23.
[145] ILO, Continuation of Discussions Concerning the Programme of Work and Mandate of the Working Party, c) Overview of the Activities of other International Organisations and Bodies relevant to the Work of the Working Party, GB.267/WP/SDL/1/3, 267st Session, p.12.

The complexity of the situation means that the insertion of social clauses needs to be given all possible attention and that the wide range of factors must be taken into consideration.

4.1.2 Labour standards and the conclusion of the Uruguay Round

If no consensus was reached as to the substance of the inclusion of a social dimension in international trade, the Contracting Parties did agree on a compromise solution on the establishment of the Preparatory Committee for the World Trade Organisation.[146] Its task was to discuss « suggestions for the inclusion of additional items on the agenda of the Trade Negotiations Committee to the importance attached by certain delegations to the relationship between the trade order and internationally recognised labour standards. »[147]

4.1.3 Implication of trade sanctions

As noted above, economic sanctions are dangerous instruments for ensuring the implementation and enforcement of labour standards. As Castro points out[148], : « *It is not simply because the issue of labour standards as well as other issues have emerged in a trade negotiating context that trade instruments should be used to address them.* »
It is obvious that a social clause cannot be realised through a single vehicle such as trade sanctions. There are many other ways around trade sanctions and other means of counteracting infringement of workers' rights.
Trade sanctions are only used as last remedies in multilateral instruments (US and European GSP, NAALC).

4.1.4 Possible links with GATT/WTO procedures

The GATT system of enforcement or sanctions was primarily designed to enable a party injured by practices contrary to the GATT to mete out justice itself and to redress the imbalance by applying restrictions which are normally prohibited. This leads to the situation where such measures are neither uniform nor proportionate, being dictated by the party concerned. Therefore, the current system does not provide a desirable solution for the inclusion of labour standards in trade.
Moreover, the defendants of the introduction of labour standards in the WTO/GATT point out that the lack of these standards would increase the unilateral actions undertaken by the countries within the framework of the GATT, and that could lead to a dangerous weakness of the multilateral system.
The WTO and GATT agreements set up several initiatives to guarantee fair trade among the member states. Are they relevant in the context of the social clause? Do they provide for measures that could be applied and used for the respect of labour standards in trade?

We should now turn and try to address these questions directly.

4.1.4.1 Dumping (Article VI GATT 1994)

Among the propositions made to use WTO or GATT provisions for the introduction of a social clause, unfair competition as a form of « social dumping » has been proposed.[149] Under WTO Agreement on Implementation of Article VI of GATT 1994, there is dumping

[146] The divergence and oppositions in the Uruguay Round negotiations on social clauses have meant that it is sometimes called the Blue Round, blue referring to labour.
[147] ILO(1994), Social Dimension of the Liberalisation of Trade, GB. 261/WP/SLD/1, 261st session, Nov. 1994, p. 12.
[148] Castro, J.-A., (1995), op. cit., p. 4.
[149] Several countries have provided for anti-dumping duties to combat social dumping. In 1924, in Australia, these penalty duties (up to one third of the statutory rates) sanctioned the goods produced by labour working excessive hours. Charnovitz S., (1987), op. cit., pp. 576-577.

when a product is introduced into the commerce of another country at less than its normal value.
Are these requirements met if we consider that in our case dumping[150] would result from a low level of labour standards (compared with the labour standards applied in the importer state) applied by exporting firms?
The GATT provision does not allow for the determination of a margin of dumping on the basis of non-enforcement of core standards. Moreover, the costs of production according to which cases of dumping are established needs to be actual, not hypothetical. For it is the differentiation of the price between two countries which constitutes « dumping » . Thus, « social dumping » does not enter in the scale of Article VI.
Nevertheless, the defendants of « fair trade » argue that dumping in the form of export prices below the cost of production in the exporting country has to be considered as the starting point of social dumping.

4.1.4.2 Article XIX GATT 1994

The debate on introducing a « social clause » into Article XIX of the GATT has dragged on for many years. American Trade Unions as well as the International Metalworkers' Federation were very active in this campaign, pointing out that the lack of labour standards led and will lead to unfair competition.[151] Therefore, they argue that the general escape clause of Article XIX would be added with a social clause, giving a legal basis for governmental measures taken against countries manufacturing goods under unfair conditions.

4.1.4.3 Article XX GATT 1994

Article XX(b) of GATT states that : « *...nothing in this Agreement shall be construed to prevent the adoption and enforcement by any contracting party (member state) of measures necessary to protect human, animal or plant life or health.* »
These general exceptions (Article XX(a) provides on public morals) have become an important issue not only in trade but also in environmental debates.
The party seeking to invoke this exception would bear the burden of demonstrating that it satisfied the relevant criteria, including that « *measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail: or a disguised restriction on international trade.* »[152]
Under Article XX(e), importation of goods made with prison labour is prohibited. Article XX(h) allows GATT members to adopt measures « *undertaken in pursuance of obligations under any inter-governmental commodity agreement conforming to criteria submitted to the contracting parties and not disapproved by them or which is itself so submitted and not disapproved* ». [153]
In 1994, André Sainjon, rapporteur for the European Parliament, further suggested that GATT Article XX(e) on prison labour be amended to include child labour, as well as violation of the principle of freedom of association and collective bargaining.[154]

[150] According to this provision, measures can only be applied by the country that can claim to be injured. Or for those who defend the theory of « social dumping », it would hardly be compatible with the nature and the credibility of the social rules game, which they seek to enforce : how can the credibility of the principle of freedom of association as a fundamental right not risk being affected by the necessarily arbitrary character of the measures which can only be applied by means of production and depending on whether the Contracting Party concerned has a stake in global terms?
[151] Emerij L., (1994), op. cit., p. 325.
[152] This is specified in the « chapeau » to Article XX.
[153] A certain number of international commodity agreements contain provisions on « fair labour standards »: the 1992 Sugar Agreement, at Article 29; Article 49 of the 1993 Cocoa Agreement, and Article 53 of the 1987 Natural Rubber Agreement. But these are more declarations of intent than contractual undertakings : no sanctions are provided.
[154] Resolution of the European Parliament on the introduction of a Social Clause in the Unilateral and Multilateral Trading System, Official Journal of the European Communities, No C61, 28 February 1994, p. 89. In this Resolution, it was also proposed to give

4.1.4.4 Article XXIII GATT

According to the accepted interpretation of this provision, violation of an obligation specifically laid down in the Agreement creates a presumption that a benefit has been nullified or impaired.[155] Therefore, if a new provision on, for instance, the subordination of Membership of the GATT to the ratification of a core of labour standards, were to be introduced in the Agreement, measures relative to the violation of ILO Conventions should be undertaken by the states. Instead of levying countervailing duties or any other economic sanctions, Contracting Parties should also be able *inter alia* to consult « appropriate intergovernmental organisations ». The ILO could be one of these, and then members could co-operate in this matter.
If the American proposal, made in 1953, to include a provision stating that unfair labour standards « create difficulties in international trade which nullify or impair benefits under GATT » was not accepted, the United States made clear its position that Article XXIII provided a basis on which problems arising from unfair labour standards could be actionable. This view was also shared by the British Trades Union Congress.[156]

4.1.4.5 The Trade Policy Review Mechanism (TPRM)

The peer pressure and the publicity given to this procedure have been considered as a positive means to improve labour standards. The situation of a country could be then the subject of one of the reviews undertaken in the framework of the TPRM.[157] In this case, a reinterpretation of WTO practices and procedures would have to be made.
Proposals were made to give an active role to the ILO, first in the definition of the set of labour standards, and then in co-operating in the elaboration of that part of the WTO Secretariat report dealing with labour policies.

4.1.4.6 Article XXX of the GATT

Under Article XXX of the GATT, provisions other than those requiring unanimous agreement of the contracting parties can become effective only upon acceptance by a two-thirds majority, and only in respect of those parties which accept them. Further on, the provision states that, in case of a particular amendment, the contracting parties : « *may decide that any amendment made effective under this article is of such a nature that any contracting party which has not accepted it within a period specified by the contracting parties shall be free to withdraw from this Agreement or to remain a contracting party with the consent of the contracting parties.* » The example provided by intellectual property shows that a controversial issue can find its way through in spite of strong opposition. But a global compromise has nevertheless to be reached.

4.2 The ILO

The ILO system of Conventions and Recommendations continues to be the most extensive and detailed body of international labour legislation and supervisory procedures, despite the increasing multilateral instruments described above.
As pointed out by the Director-General of the ILO, « *the globalisation of the economy affects both the will and the capacity of the member States of the ILO to follow the*

the surveillance of the respect of core LS to the WTO; also that an advisory committee composed by the ILO and concerned countries be able to lodge complaints against MNEs or countries violating the provisions incorporated in the social clause.
[155] See GATT : Notes on the drafting, interpretation and application of the articles of the General Agreement, Oct. 1985, pp. 19-21.
[156] Chernovitz S., (1989), op. cit., p. 575.
[157] The proposals should be consistent with Articles A(i) and (ii) of the TRPM Annex, which provide that the procedure is made to ensure a better understanding of the situation of a country, and can not be used as a dispute-settlement procedure.

guidelines it provides in order for them to promote its objectives, in particular in the form of Conventions and Recommendations. »[158]

The ILO has therefore a dominant role to play and pressing reasons to take up the debate.[159]

If the ratification of the Conventions of the ILO is a voluntary assumption, the member States of the Organisation have a general obligation to « play the game » of social progress, that is to say to improve social objectives in parallel with the economic growth. But the issue of labour standards is broad and complex, and its link with trade will be difficult to realise, given the political tensions and divergence it engenders.

Both the implementation of a social clause and its implications within the very structure of the ILO will be the subject of the following chapter.

4.2.1 At the political level

The ILO was set up in Part XIII of the Treaty of Peace of 1919 with the aim of promoting social progress in line with an approach that was in fact that of a certain liberalisation of trade.

The main concerns that were at the source of the creation of the ILO were the following: The first was that the Governments involved believed that the failure of any one nation to adopt humane conditions of labour would be an obstacle in the way of other nations which desire to improve the conditions in their own countries.[160] Therefore, their goals were to improve the conditions of the workers and to grant them rights to improve their situation. The second was that fair labour standards constituted an important element of the equity in international commercial policy, especially in matters concerned with competition.

The principle of universality is the cornerstone of the Organisation. The ILO Constitution and its Annex (Philadelphia Declaration of 1944) are drafted in this sense and take into consideration the different level of development of member States. The voluntary character of the ratification of the Conventions is the corollary to this principle. The Declaration in Part V stipulates that, while fundamental principles on which the ILO is based are fully applicable to all people everywhere,

The manner of their application must be determined with due regard to the stage of social and economic development reached by each people.

The Constitution of the ILO repeats the flexible nature of ILO instruments, as provided in Article 19(2) :

« in framing any Convention or Recommendation of general application the Conference shall have due regard to those countries in which climatic conditions, the imperfect development of industrial organisation, or other special circumstances make the industrial conditions substantially different and shall suggest modifications, if any, which it considers may be required to meet the case of such countries ».

Therefore, a notion of good faith had underlined since the very beginning the obligations that Member States had under ILO instruments.

[158] In his « contribution » to the G7, M. Hansenne makes three propositions corresponding to three principles that could lead to a consensus. These three propositions are the following : 1. each country has to determine the level and content of social protection according to its economic possibilities and preferences; 2. there are some basic rights that should be unconditionally recognised, by all states; 3. the economic progress must go hand in hand with a promotion of social progress.

[159] According to certain authors, however, the ILO risks becoming less relevant. Alston P., (1994), op. cit. , p. 103, points out that the promotion of specific social justice objectives will be the role of overall social policies, not labour market policies.

[160] See the Preamble of the ILO Constitution : « ..the failure of any nation to adopt conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own nations. »

The very structure of the Organisation is also a guarantee that workers and employers, not only nations with the will to increase economic development, are represented.[161] Complaints can also be made by non-governmental organisations (NGOs), that offer more objective involvement and a neutrality generally absent among the parties concerned.
The globalisation of the economy and the liberalisation of trade can have contradictory repercussions on social progress : either negative if countries would like to compete on the international level and therefore bring down labour costs to attract foreign investments, or positive by means of a better share of the profits granted to workers.
Given this new background, the ILO feels, more than ever, concerned over the role it has to play. Moreover, one fears that its credibility would be lost if the ILO had to give up now.[162]
According to the ILO, « *it is simply a matter, of using and judiciously developing the structures and means of action available to the ILO to help its Members to avail themselves of the instruments at their disposal in order to cope with inevitable restructuring and enable their workers to enjoy their fair share of the fruits of liberalisation.* »
While the insertion of workers' rights as a condition for economic growth resulting from trade liberalisation is vigorously opposed by the large majority of ILO Members[163], at the same time the non respect of social protection is seen as an infringement of the obligations that States have to assume as Members of the ILO.
The crucial point is that the ILO does not have the competence to impose sanctions in cases of non-compliance with the provisions of the different instruments.
An early British Government paper for the Labour Commission, drafted by E.J. Phelan for the first ILO Constitution, proposed that when two-thirds of the delegates to the International Labour Conference found that a government had failed to implement a Convention, the signatory states, « should discriminate against articles produced under the conditions of unfair competition ». Although this proposal found its way into the first ILO constitution, it did not survive and was subsequently deleted in 1946.
The current debate on the social clause offers other perspectives. With the possibility of trade sanctions, the weakness the ILO has for the enforcement of its instruments should be superseded by the link of labour standards with trade. It should also provide a good weapon for new ratification of Conventions. But this is not the only possibility, and the Director-General of the ILO proposed another way of making these principles obligatory.[164] His proposal is to make the acceptance of the relevant Conventions an inherent condition for the recognition of Membership of the ILO.

But the ILO Governing Body itself still does not have a common view on the inclusion of a social clause in trade. Serious differences were revealed when the issue was raised at the 81st Session of the International Conference in June 1994.

4.2.2 At the legal and institutional level

The 1980s for the ILO have been described as a decade of « limited advancement, stagnation, and even retrogression in labour policy ».[165] Among the factors evoked, economic growth, as well as the fall of the Berlin wall are most commonly pointed out to explain the decrease in ILO initiatives.[166]

[161] Three main bodies form the ILO. Firstly, the International Labour Conference, which is the Supreme deliberate organ of the ILO. It meets annually in the head office of the ILO, in Geneva. National delegations of the Conference are composed of two governments delegates, as well as one employers' and one workers' delegate. Secondly, the Governing Body. It is the executive part of the structure and is elected by the Conference. Its composition is the following : 28 government members, 14 workers' members and 14 employers' members. The last body is the International Labour Office.
[162] ILO (1994), The social Dimension of the Liberalisation of Trade, November 1994, p. 8.
[163] See Record of Proceedings (GB.261/WP/SDL/RP, 261st Session, November 1994).
[164] Hansenne M., (1996), The Social Dimension of the Liberalisation of International Trade, Lille, April 1996, p. 3.
[165] Michie J., Grieve Smith, (1995), op. cit., p. 117.
[166] For some authors, this « slowing down » of ILO adoption and implementation of the Conventions is one of the reasons why the Organisation is unsuitable for the implementation of a social clause. The other is the fact that the ILO has no means to enforce its instruments. See Scherrer C., (1994), op. cit., p. 16.

Even if the opposition relative to the social clause could be overcome, the challenge of how to graft a guarantee of labour standards onto a trade system remains.
In this enterprise, it has to be borne in mind that the role of the ILO is not to correct the international competition, which is the role of the WTO. Although the ILO is concerned when competition leads to an encroachment upon workers rights, its duty is rather to find effective remedies so that economic growth goes hand in hand with social progress.[167]
The idea of linking labour standards to trade raises the question as to whether or not the definition of these standards has to be made separately or in reference to ILO Conventions.
To opt for a separate definition excluding reference to ILO standards would be rather superfluous in the sense that the relevant Conventions set up by the ILO are valid in the framework of international trade. Moreover, the tripartite structure of the ILO provides a guarantee that the provisions are the fruits of collaboration of employers, workers and governments and therefore constitute a guarantee that the national economic growth is not the only determinant factor.
But if reference to ILO Conventions is made, does it automatically lead to the implementation of ILO procedures?

The answers to these questions will be given in this chapter, firstly on the « core » labour standards themselves, their nature, their scopes and goals. Secondly, the question of the implementation and the enforcement of these labour standards will be answered.

4.2.2.1 Controversy on the binding force of the ILO Instruments

4.2.2.1.1 The voluntary principle

At the very beginning of the Organisation, the founders of the ILO had a difficult choice to make as to whether or not to give international labour Conventions generally and automatically binding force. The universality they wanted to achieve was made the primary concern, and it dictated the abandoning of the idea of making ILO instruments compulsory for the Members.
Therefore, the Conventions set up by the ILO are binding only on countries that have ratified them.
For a long time, international trade union movements have made the demand that ILO Conventions should be made binding.
Moreover, the criticisms against the ILO have become more and more frequent, and its role in the new economic framework is questioned. Myrdal, in his very sharp comment on the ILO[168] brings into question the so-called « universality » of ILO instruments and points out that if the two-thirds majority of the International Labour Conference required to adopt Conventions is reached, it is often the fruit of consensus, or even of the opposition of one entire group. Moreover, he deplores the fact that only 11 Conventions have been ratified by more than half of the member States.[169]
But, as pointed out in the ILO report, « *it is of course practically self-evident that ratification of international labour Conventions, in particular those referred to as the basic Conventions, constitutes the most tangible proof of determination to advance in the direction of a social progress...* »[170]

[167] Hansenne M., (1996), Commerce et Normes du Travail : peut-on convenir de règles communes?, ILO, Genève, pp., 4-5. The Director-General sees two aspects in the obligation member States have in « playing the game » of social progress : 1. To respect fundamental principles which exist for each country, no matter what its level of developments. 2. Each country with a high level of development has to enhance in good faith workers' rights relative to its development. Therefore, labour standards have to be developed in parallel with economic growth.
[168] Myrdal H.G., 1994. The ILO in the cross fire : Would it Survive the Social Clause?, in Sengenberger, W. and Campbell, D. (eds.), 1994, International Labour Standards and economic interdependence, International Institute for Labour Studies, Geneva, pp. 339-356, 1994.
[169] Myrdal H.G., (1994), op. cit., p. 342.
[170] ILO(1994), The Social Dimension of the Liberalisation of Trade. GB.261/WP/SLD/1, 261st session, Nov. 1994, p. 19.

4.2.2.1.2 The supervisory system

Different methods exist to ensure the implementation of the ILO Conventions. The first is regular and does not imply complaints, the second is implemented in case of violation, the third is specially devoted to the freedom of association and the last is more technical.
The regular supervisory system is the system foreseen in each Convention, and provides for the submission of reports every two or five years. The workers' and Employers' organisations of the countries concerned are given copies, and are invited to comment on the report. Thereafter, these documents are submitted by the Secretariat of the ILO and the independent Committee of Experts on the Application of Conventions and Recommendations,[171] in their annual meeting. Then, the Committee submits the report to the tripartite Conference Committee on the Application of Conventions and Recommendations. In this annual report, a review of the implementations and obligations by particular countries, as well as a summary of national laws can be read. The tripartite Conference Committee can also ask governments for further discussion and explanation.
Finally, the report is discussed at the plenary session of the International Labour Conference.[172]
The second method for ensuring application of the Conventions is the procedure based on complaints. The non-observance of a Convention can be the object of a complaint made by any employers' or workers' organisation. A tripartite committee designed by the Governing Body examines the representations, and can demand further explanation from the government concerned. A revival of this procedure, which was not frequently used (59 procedures have been launched till now), has occurred these last few years (13 in 1994). A complaint can also be made by another government that has ratified the Convention, as well as by a delegate to the International Labour Conference, or by the Governing Body of the ILO. The Governing Body sets up an independent Commission of Inquiry, which can issue recommendations. The government concerned has then two possibilities : either to accept the recommendation, or to bring complaint to the International Court of Justice. Should these recommendations fail to be carried out, any other member may take measures of an economic character against that member, indicated in the report of the Commission or in the decision of the Court as appropriate to that cause. The decision of the Court is final. This expensive and slow procedure has not been used more than 23 times.
The third procedure is the procedure set up in Convention 87, and concerns only this Convention.[173]
The last method is the technical assistance between the ILO and member States. The Committee of Experts can raise issues to be examined by missions and direct contacts with the member States. The co-operation of the government concerned is essential for this procedure. The ILO also proposes technical assistance programmes, both to assist and give advice when a new national law is adopted, but also to foresee the implementation of a Convention in a country.

4.2.3 « Core » Labour standards

In chapter X, the criteria used to set up the list of what are considered as being the « core » labour standards has been addressed. We do not need to go over this point again.
As seen above, some of the ILO' Conventions loom large in discussions of core labour standards. The question whether they provide a definition complete enough to be embodied in labour standards remains at the centre of the debate. But the majority of authors, and

[171] This Committee comprises 20 independent legal experts, appointed by the Governing Body of the ILO, acing on the proposals of the Director-General.
[172] These reports are often given too late. In its 1995 Report , p. 27, the Committee of Experts of the ILO expressed its concern on the delay with which the reports are submitted. In 1995, for example, only 16.4 per cent of the reports were submitted in time. Moreover, in some cases these reports are submitted so late that the Committee is not able to examine them in detail.
[173] For more details, see chapter 6.2.2.2.

governments, and several trade unions agree upon them, and it is therefore useful to have a look at these Conventions and their scope.
Conventions on freedom of association, child labour and non-discrimination represent a wide array of recognised labour standards, and the majority of ILO member states have ratified them.[174]

Ratification of several Conventions of the ILO

Number of countries which have ratified the Conventions

ILO Convention 87 on freedom of association	113
ILO Convention 98 on the right to organise and collective bargaining	125
ILO Convention 111 on non-discrimination in employment	119
ILO Convention 29 on forced labour	137
ILO Convention 105 on abolition of forced labour	115
Total of countries that have ratified all of the above ILO Conventions	65

Situation in October 1995.

4.2.3.1 Convention No. 87 on freedom of association

This Convention provides for the principle of freedom of association. This freedom is the object of numerous international instruments,[175] and is among the bedrock Conventions of the ILO. Under this Convention, established in 1948, workers have the right to establish and join organisations. The constitution and administration of these organisations are free, as well as the number of members and the elections. Any limitation of these rights runs counter to the Convention. It is also contrary to the Convention to submit the creation of an organisation to the obtaining of an authorisation.
The scope of the Convention also covers the right to strike and the right to engage in industrial disputes.[176]
Among the ILO Conventions, No. 87 has a special status given the fact that member States ratifying the Constitution of the ILO automatically recognise the possible intervention of the Organisation in matters concerning Freedom of Association. As such, the Convention is enforceable and represents therefore an interesting example.
On the practical level, Freedom of Association provides a good instrument to counter-balance the market power of employers. It is also a support to workers in cases of interpretation of legal texts or laws and can give them some advice. Moreover, unions have the ability to collect and analyse information that ordinary workers do not have or simply cannot read. But Freedom of association may also create a gap between unionists and non-unionists in terms of wage and employment protection and therefore may impair the possibility for unionists to be re-employed.

[174] If a large majority of member States of the ILO have ratified these Conventions, it remains a fact that it is far from being a « universal » recognition. For example, if we take the five Conventions considered as forming the « core » labour standards, Conventions 29, 87, 98, 105, and 111, we can see that only 62 countries have ratified all of them. Convention 29 is the most ratified Convention (135 ratifications), followed by Convention 98 (124 ratifications), then Convention 105 (114 ratifications). The last is Convention 87, with 112 ratifications. One of the reasons why these Conventions embodying the basic rights of workers do not meet universality is because their interpretation creates some problems or because the states fear that it would engender too many changes in their legislation...or that they have already some legislation on the matter which provide better protection. For more details, see ILO survey : GB./ 264/LILS/5 and GB:/264/9/2.
[175] Universal Declaration of Human Rights (1948), International Covenant on Economic, Social and Cultural Rights, International Convenant on Civil and Political Rights (1966), American Convention on Human Rights (1969), Banjul Charter on Human and Peoples' Rights (OAU)(1981), Convention for the Protection of Human Rights and Fundamental Freedoms (1950).
[176] This large scope does not meet with the unanimity among the member States of the ILO. Some of them do not agree with the views of the ILO Committee on Freedom of Association and the ILO bodies and argue for a restrictive application of the Convention.

The next chapter gives more details on the Convention as a source of ideas for our debate.

4.2.3.2 Convention No. 87 : a model to strengthen the ILO's intervention in international economic matters ?

The effectiveness of the procedure set up in Convention No 87 on freedom of association provides a good basis for a possible consensus on the introduction of labour standards in trade.

The large scope of this freedom, which enables the ILO to intervene even without the ratification of the Convention by the Member State, as well as the positive co-operation of the governments show that a solution can be found in important matters of labour standards.

The procedure of the Committee on Freedom of Association is one of the most important procedures of the ILO. Thanks to its flexibility, and the frequency of its meetings, the Committee can examine numerous cases, most of them relative to gross violations of freedom of association. In recently democratic countries, this procedure is very successful. The publicity given to issues of freedom of association is one of the reasons why governments co-operate actively with the Committee.

This special procedure was established in 1950 by an agreement between the United Nations Economic and Social Council and the ILO. The main body of this procedure is the Committee on Freedom of Association, a tripartite body chaired by an independent personality. Its task is to examine complaints of member States of the ILO, regardless of whether they have ratified Convention no. 87 or not. To be a party of the ILO is therefore in itself a recognition that workers will have the right to associate. The Committee examines the cases submitted and presents conclusions to the ILO Governing Body. Since its establishment, the Committee has examined almost 2,000 cases. Moreover the principles that have been enhanced constitute a veritable international law on freedom of association.

Another good example provided by freedom of association is that its implementation is the result of action by NGOs, active in monitoring governments' observance of relevant international labour standards and of national legislation.

But the difficulty is that freedom of association is defined « negatively » with reference to certain limitation or prohibitions.[177]

There are also criticisms of the Committee itself, on three grounds.[178] First, more publicity should be given to the recommendations of the Committee. Second, the legalistic character of recommendations takes up time that the Committee should devote to other cases. Third, complaints come most of the time from national unions. Therefore, countries that exert great power over the unions have less chance to be the subject of such procedures.

But the proposal to extend the special procedure for freedom of association to the forced labour and non-discrimination standards met with considerable opposition in the Discussions in March 1996.

4.2.3.3 Convention on Collective Bargaining

This Convention is usually grouped with Convention 87 because of the interdependence of both Conventions. The first principle established in this Convention, no. 98 of 1949, is the protection of workers against acts of anti-union discrimination, such as unfair dismissal, etc. More broadly, workers are protected against acts of interference by employers' organisations. Finally, the authorities of the member state have a duty to promote collective bargaining. The positive improvement of this Convention is that it recognises rights on the part of the workers to participate in the company, with the result of increasing productivity.

[177] The Convention on freedom of association is defined relative to limitations or prohibition. This definition is not in accord with the promotion of rights such as those referred to in labour standards to be linked to trade.

[178] See OECD, (1996), Trade, Employment and Labour Standards, p. 158.

4.2.3.4 Conventions on the Elimination of Forced Labour

Two Conventions address the problem of forced labour : Conventions 29 and 105.[179] The definition of forced labour is the following : « *work exacted from any person under menace of any penalty, and for which the said person has not offered himself as voluntarily* ». Not all forms of forced labour fall within the scope of the Conventions. Among them, the work performed in the interest of the community when there is an emergency as well as the work of convicted prisoners do not enter into the scope of the Convention. If workers are in prison, their work is prohibited only when they are hired by private agents; when it is made under the control of a public authority, it is allowed.[180] It has to be noted that while Convention 138 on the minimum age does not provide for a protection against exploitative forms of child labour, the ILO Committee of Experts agree that it is protected under Convention 29 and therefore enters into the definition of forced labour provided in the Convention. These Conventions find their places in the « core » labour standards given the fact that prohibition is the only appropriate measure capable of preventing this form of workers' exploitation.

4.2.3.5 Convention on the Minimum Age for Child Labour

Perhaps foremost amongst the concerns of the social clause is child labour.
This Convention of 1973 gives a good example of the principle of *flexibility* characterising the implementation of the ILO Conventions. The minimum age provided in the Convention depends on the nature of the work. If the work concerned is unhealthy and dangerous, the minimum age is 18 years old. It is 15 years of age for other kinds of work, and can be 14 (12 in the case of light work) in the developing countries that have consulted social partners.
The efficiency of this Convention is primarily to preserve the human capital of a country and to enhance the importance of education.
But some regret that the Convention remains silent on the possibility of non-exploitative forms of child labour.[181]

4.2.3.6 Convention on the Principle of Equal Remuneration

Under the provisions of Convention 100, discrimination in remuneration based on gender for work of equal value is prohibited. This principle has to be implemented through bargaining as well as wage determination at the national level of the member State.

4.2.3.7 Convention on Freedom from Discrimination

Convention 111 of 1958 states that : Race, colour, sex, religion, political opinion, national extraction or social origins do not constitute a sufficient basis to apply a different treatment. As a special form of non-discrimination, non-discrimination in pay enters also into the scope of this Convention. Therefore, the principles behind Convention 100 are embodied in Convention 111.

[179] Forced labour was very common in the colonial era. Conventions 29 of 1930, and 105 of 1957, were established to struggle against it.
[180] See Article 2.c. of Convention 29.
[181] See ILO (1996), Report of the Organisation for Economic Co-operation and Development on Trade, employment and labour standards, GB.267/WP/SLD/2, 267st Session, November, 1996. It is one of the reasons why some OECD countries take the view that ILO Conventions do not provide a unique and comprehensive set of definitions for the so-called « core » standards.

4.2.4 Other ILO instruments relevant in the debate

If the Conventions cited above are viewed as embodied in a possible « social clause », the ILO has set up another Convention governing the relations between labour and trade. The question arises also as to the meaning of the drafting of other instruments concerned with this issue.

4.2.4.1 The ILO Tripartite Declaration of Principles Concerning MNEs and Social Policy

The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy was adopted in 1977. It is aimed at providing guidelines for MNEs, governments, employers and workers in matters such as employment, training, conditions of work and industrial relations. Among the provisions, we can read :

Where governments of host countries offer special incentives to attract foreign investments, these incentives should not include any limitations to workers' freedom of association or the right to organise collectively. *(Par. 45)*

Every three years, surveys are conducted to monitor the extent to which the Declaration has been applied by the parties. Since 1986, interpretations of the provisions of the Declaration can be demanded.
If in general the results of the implementation of the Declaration are successful, during the fifth review which took place in 1992, some workers' organisations signalled problems, such as FDI legislation limiting the rights of unions, in particular in EPZs, and attempts by firms to influence the bargaining process.
Although this Declaration tries to cover a wide range of actors in labour areas, it remains a non-binding instrument. But the regular reviews as well as the possibility of obtaining some interpretations of its provisions strengthen the scale of the Declaration.

4.2.4.2 Convention on Tripartite Consultation

Convention 144 is aimed at advising governments in the implementation of the ILO instruments they have ratified. For this, the Convention enhances the role of the co-operation between the government and both workers' and employers' organisations.

4.2.5 Relevance of a new global Convention on core labour standards ?

According to some authors,[182] trade liberalisation should go hand in hand with a promotion of workers' rights and this could be set up in a convention encompassing key labour standards of universal value. The implementation of these standards would be strengthened. In this Convention a co-operative approach rather than a coercive one should be launched to help countries willing to promote workers' rights but with economic difficulties. Trade restrictive actions should be seen as a last resort. All this should correspond to the rules of the trading system and WTO.
The principal reproach against such a Convention is that it will constitute just one more instrument of the ILO, with its inherent weakness concerning the implementation left to the discretion of the states. It seems to be obvious that this will only be « another » convention, with good intentions but unable to address the issue effectively.

[182] Castro J., (1995), op. cit., p. 15.

4.2.6 Changes to be made

The forecast of these next years in the framework of labour and social policies is that the models which have composed for a long time the international and national system will change.

The most important modification for the ILO is that its labour policy will be superseded by social policies at the national level. The traditional link between labour market and social protection will have to be revised, and a new national social policy will emerge : a « *social-safety-net-type* ». [183]

A social clause implemented by means of economic incentives and eventual sanctions will tackle only one side of the problem. Since the sectors where the denial of workers' rights are the most frequent are the sectors not linked with exportations, the ILO remains the most adapted structure to implement labour standards.

The current challenge of the ILO is to make some changes in its structure to be able to continue to play a key role in the promotion of labour standards. Its positioning could be strengthened by a partnership with the United Nations' specialised agencies which are also active in the social and labour fields. Moreover, some argue[184] that international labour standards should take into account the increasing integration of legal and economic policy perspectives. For Chernovitz, « *The most essential reform is to reinvigorate the ILO. A better functioning ILO would take some of the pressure off the trading system. The ILO needs to recodify its Conventions and to separate the core rights from the good practices.(...) One might also consider a revision in the ILO's federal-state clause to allow subnational units of the governments to accede to Conventions.* »[185]

4.2.7 Enforcement

It has to be borne in mind that the development of ILO procedures is a means to an end, not an end in itself.

As said above, the only « sanction » of the ILO is of a political and moral nature, and is based on persuasion. The recourse to the International Court of Justice under Article 29 of ILO Constitution is only used as a last resort, and the length of the procedure does not provide a useful framework for the implementation and enforcement of labour standards. It is therefore unsuitable as a means of guaranteeing respect of labour standards.

But the Organisation would still have to play a determining role which should consist of convincing the member States that the belief that international labour standards automatically equals cost-equalisation is a false conception. Its technical assistance should also be reinforced. [186]

In addition to these problems relative to the powers of the ILO, the implementation and enforcement of labour standards will also generate costs. The ILO faces a financial crisis,[187] with the continual threat of the US, the major contributor to its budget, to withdraw its contribution. Therefore, the ILO is unlikely to provide an adequate structure to deal with the implementation of a link between labour standards and trade without modifications of its very structure and organisation.

[183] Alston P., (1994), op. cit., 101. He continues (p. 102) by saying that the ILO should focus on specific labour groups, and therefore should abandon the defence of women and children. But at the same time, the raison d'être of the ILO should remains its position in favour of basic human rights.

[184] Alston P., (1994), op. cit., p. 102.

[185] Charnovitz S., (1994), op. cit., p. 20.

[186] De Wet E., (1994), op. cit., p. 13.

[187] Within the ILO institution, given the small budget (US$233 million) and the fact that the issue of the social clause has reached an impasse due to serious differences within the ILO governing body. A non-controversial means to breach this impasse is to strengthen the involvement of the ILO in direct measures of development and technical co-operation.

4.3 At the economic level : social costs.

One of the principal excuses evoked for the non-implementation of the ILO Conventions is the costs they engender. But the lack of data prevent adequate studies of what the costs raised by the implementation and enforcement of labour standards are, exactly.[188]

As pointed out above, there are reasons to doubt that trade liberalisation alone will automatically lead to an improvement in core labour standards.[189]

In developing countries, the slogan « any job under any condition is better than no job » is the sign that in the current labour environment, employers can find workers anyway. In these countries particularly, the respect of certain workers' rights are viewed as counter-productive or as impairing economic growth. But surveys show evidence that it is erroneous in the long run to consider remuneration as a production cost that the employers or the country can modify in order to increase competitiveness.

Given the globalisation and the mobility of production, the Multinational Enterprises can move into countries offering interesting economic advantages.[190] Because « economic advantage » means among other things low labour costs, these MNEs have been criticised, being accused of supporting developing countries applying low labour standards to attract foreign investments.

If low wages seem to attract foreign companies and reduce costs of production, to lower them affects the skills of the workers, the domestic demand and increases the reliance on export-led growth. The difficulty is that this phenomenon is not perceptible in the short term. For example, the influence of labour standards in South East Asian developing economies made three important contributions : the first was to stop the recourse to counter-productive sweat -shop competition; the second effect of labour standards pressure was emphasize high quality production rather than quantity; and the third was that exports no longer are the primary concern.[191]

But the influence of the MNEs is not always to worsen the working conditions in the countries they choose. According to a recent analysis,[192] « *FDI and MNEs can have both positive and negative economic effects in the host countries. Overall, the evidence seems to support those who maintain that FDI tends to have net positive effects on host country.* »

MNEs may have for example an indirect effect on the improvement of labour standards simply by implementing with success labour standards, themselves or their subcontractors of the country concerned.

However, the important question remains : is the decision to relocate an MNE in a country influenced by labour standards? If no empirical evidence exists on this question, the principal investment criteria noted in surveys and other studies do not include labour standards and their eventual costs but rather : the size of the market, opportunities and growth potential that it offers, skills of the workers, education levels, productivity levels, communications, social and political stability. It is therefore interesting to note that the influence of the costs on the decision to locate a company in a country is taken into account only if it is linked with productivity; in other words, it is only when there is no correspondence between productivity and labour costs, that the question of costs are considered.

[188] According to Castro J.A., (1995), op. cit., p. 12, the globalisation of the economy modifies the nature of competition. For him, « The main reason is the need to acknowledge that economic dynamism and the rise in labour standards are no longer in conflict with each other and, as a result, that it is not through low labour standards but through higher ones that economic dynamism and export competitiveness may be reached. »

[189] As acknowledged by the ILO Working Party on the Social Dimension of International Trade (ILO, GB.264/WP/SDL/1, Nov.,1995).

[190] See OECD (1996), op. cit., p. 117-118, to have an idea of the importance of these relocations: Some 16 per cent of total MNE employment (including home countries and foreign affiliates) is estimated to be located in developing countries. And 41 per cent of MNE employment in foreign affiliates is located in developing countries. Between 1985 and 1992 five million out of eight million jobs created by MNEs were located in developing countries.

[191] See Kirmani, N., (1994), International Trade Policies : The Uruguay Round and Beyond, p. 18., who points out that « low labour standards per se need not confer comparative advantage, especially if they reflect low productivity ».

[192] Graham, 1995, cited in OECD, (1996), op. cit.

Ray Marshall[193] points out that labour standards contributed to the equitably shared prosperity of the post-second World War till 1973, with the result that human resources, the « most valuable assets » of the countries, were spared and developed. According to him, « *the main challenge today is to maintain aggregate global demand and to improve flexibility and productivity growth to maintain high and rising incomes and relatively low unemployment.* » This should be done through a social programme, co-ordinated with economic and labour markets, which would enhance education, training and job creation. In developing countries, where the working population is very high, these programmes are needed more than anywhere else. The danger is that the developing countries will have some difficulties in providing jobs for everyone, with the result that the developed countries will face increasing migration, and that industries will lower the wages as their only means of survival. Without labour standards, these consequences could lead to a catastrophic situation. This is why co-operation between developed and developing countries, as well as between industrialised and new industrialised countries, could find in the elaboration of labour standards a possible means of action and collaboration.

The labour standards must therefore not only advocate decent working conditions and measures to take in matters of safety, health, rights to bargain collectively and to associate , child labour and access to work. They also have a wider role so as to pave the way for governments and employers to direct economic activities in ways whose success does not rely on the exploitation of the workers.

The OECD report makes an interesting evaluation on the economic efficiency of freedom of association and the right to collective bargaining.[194] According to this report, the effects can be, on the one hand, that these rights have a positive incentive on production, as well as motivating workers and therefore their productivity. On the other hand, the unionists' action could lead to an increase in wage that does not correspond to the market level.[195]

One other positive influence of the implementation of labour standards would be that employers and national markets would not be allowed to count on child labour and forced labour to be competitive. This inhumane way to obtain low labour costs is the subject of numerous regional and international instruments.[196]

4.4 The 1994 Working Party on the Social Dimensions of the Liberalisation of International Trade

The mandate of the Working Party[197] is extremely broad, but two principal elements can narrow its scope :

First, there is a social dimension to the liberalisation of international trade which is referred to. The implications of trade in the social fields lead to the question as to whether or not social provisions can be included in trade instruments.

Second, there is a deliberate omission of the term « social clause », used very often in the final stage of the Uruguay Round. The reason is that, even if no definition of a « social clause » was agreed upon, all associate it with the idea of imposing a certain uniform basis

[193] Marshall R., (1994), op. cit., p. 69.

[194] ILO (1996), Report of the OECD on trade, employment and labour standards, p. 11-12. Moreover, this report makes on pp. 12 and 13 some observations on the relationship between trade flows and core standards. Among them, it is interesting to learn that there is no correlation at the aggregate level between real wage growth and the degree of observance of freedom-of-association rights; that there is no evidence that low-standards countries enjoy a better global export performance than high-standards countries. Another fact is that where governments deny core standards to attract investment, the expected economic gains could be outweighed in the long term by the economic costs associated with low core standards.

[195] OECD (1996), Trade, employment and labour standards, pp. 90-97. The OECD has carried out some surveys on the modification in trade noted after the introduction or the strengthening of Freedom of Association in six countries. The shift towards democracy was also taken into consideration. This data shows that the economic repercussions are very different from one country to another.

[196] On Child Labour, a United Nations Convention has been adopted in 1989. Under Article 32, the exploitation of child labour is prohibited. The age is not mentioned, unlike Convention 138 of the ILO. It is also important to note that the UN Convention has been adopted by 123 countries (but they can make reservations) compared with the 62 states which have ratified Convention 138.

[197] At its 260th Session, the Governing Body of the ILO decided, on the basis of the document submitted to it by the Director-General on this subject, to set up a party in order to « discuss all relevant aspects of the social dimension of the liberalisation of international trade ». (Doc. GB.260/205, June 1994).

of social protection as a condition of participating in the multilateral system. But the basis at the Conference and that of the Director-General's Report are different : the question they raise is not whether it is appropriate and possible to impose a certain minimum social protection to everyone, but what conditions are likely to enable the persons concerned to enjoy an equitable share of the benefits this implies by working out specific social protection that would be most appropriate to the conditions of each country.
The contribution of the ILO in this issue will not consist of an economic analysis. It will rather follow a procedure according to two symmetrical focuses : First, on the possibility of incorporating minimum guarantees into the international trade system enabling the workers to have a share in the economic benefits. Second, to make sure that social progress has to go hand in hand with trade liberalisation.
Most generally, the Working Party agreed that there was a fundamental need to promote the ILO labour standards through more ratification and applications of the core conventions.
The Working Party was not established without problems. When it first met in November 1994, the labour group in the Governing Body, made an early concession to suspend all discussion of trade sanctions in the Working Party. Without this concession, the Working Party would have floundered and resistance by developing country governments and employer members would have been too overwhelming.[198]

The Working Party is meeting in March 1997, and the main item for debate will be a general review of the ILO's means of action in assisting member States to address the social dimension of the liberalisation of international trade.[199]

4.5 Co-operation with WTO : how ?

One possibility of co-operation between the WTO and ILO would be to apply the WTO procedure of dispute settlements.[200] However, given that Conventions referred to are the work of the ILO, it may be envisaged that the ILO's constitutional machinery would handle it.[201] So, a procedure should be set up under Article 26 of the ILO Constitution, with all of the safeguards it comprises against frivolous claims.[202]
Another procedure, resulting from the introduction of certain ILO Conventions within the WTO, is the following : in becoming a member State of the WTO, the government would also be bound by the relevant ILO Conventions. Article 26 of ILO Constitution would apply, and the WTO would have to draw its conclusions relative to its own procedures. According to the procedure of Article 26 of the ILO Constitution, the Governing Body decides whether or not to appoint a Commission of Inquiry. If it does, the Contracting Parties could decide to take action they consider appropriate. The complaint can come from a non-governmental delegate of the Conference, enlarging the possibilities given in the WTO procedure.
But co-operation between WTO and ILO is most frequently viewed as a co-ordinating of ILO and WTO procedures. The International Confederation of Free Trade Unions : *« the contracting parties agree to take steps to ensure the observance of the minimum labour standards specified by a committee to be established by the GATT and the ILO. »*[203]
Therefore, the member States of the WTO commit themselves to take measures to guarantee the observance of the minimum labour standards constituting the social clause. They propose also to set up a Joint Advisory Committee that would have both WTO and

[198] Brewster G., (1995), op. cit., p. 2, Report on the trade and international labour standards debate in the WTO and the ILO, p. 2.
[199] Mrs Hartwell, (1996), Oral report of the Chairperson of the Working Party on the Social Dimension of the Liberalisation of International Trade, GB.267/235- 11.E96.
[200] See chapter X on the enforcement and procedure set up in GATT/WTO.
[201] ILO (1994), The social dimension of the liberalisation of world trade, p.14-15. According to the report, the results of both procedures would not necessarily be the same. It emphasises the tripartite structure of the ILO which has to be applied also to the procedure.
[202] In this procedure, the Governing Body intervenes on a tripartite basis, inter alia, to decide whether or not to appoint a Commission of Inquiry.
[203] Williamson H., Pennartz P., (1994)Conditions or Co-operation?, p. 24.

ILO representatives, with the mandate to establish the exact content of a social clause, as well as the investigation of the trade policy consequences of a contravention of basic social clauses. On the basis of specific complaints from the tripartite constituents of the ILO, this Committee would systematically examine the extent to which the contracting parties were meeting their obligations under the social clause and make recommendations accordingly. In case of failure, measures should be taken, but no longer than two year. In parallel, technical assistance would be provided by the ILO. If at the end of the period the country is still in breach of its obligations, trade sanctions would be applied in the form of a levy by all WTO members on the offending country's exports.
The proponents of a joint enforcement scheme suggest that an offending country first be persuaded on moral grounds to comply with the relevant ILO Conventions. Then, economic pressure and finally trade sanctions will be applied. The only danger of such a procedure is the time it will take before sanctions are applied, with the risk that the offenders can move to another country meanwhile. That is the reason some advocate a transitional phase to be enforced before the implementation of a social clause.

Another possible form of co-operation between WTO and ILO concerns a « code of ethics » developed in collaboration with a business working group, on the model already existing in some companies.[204]

It is interesting to have a look at the different suggestions made in November 1996 on the possibilities the ILO has to assert itself. Firstly, the emphasis is on the application and the enforcement of ILO instruments. Secondly, surveys and studies in different parts of the world should be undertaken. Thirdly, simplification and co-operation is needed for a better implementation of the instruments. Finally, a co-ordination between the different international institutions should place the ILO in a good position to promote labour standards in other matters, especially in trade.[205]

Van Liemt points out that the implementation of a social clause enters neither into the mandate of the WTO or that of the ILO.[206] On the one hand, the WTO was set up mainly to alleviate trade barriers. But, as mentioned above, a social clause will constitute a kind of barrier to international trade. The ILO role is to promote labour rights. Yet, a social clause will enable the Organisation to sanction the countries in cases of non-compliance with labour standards. For him, the answer is given by multilateral implementation, such as NAFTA and other American schemes, more appropriate than the existing structure of the WTO or the ILO.

4.5.1 Conclusion

If we look at the very nature of the ILO, its longevity (almost 78 years), its success in the promotion of many social and labour rights, its world-wide actions and assistance, we cannot help thinking that the keys to this success lie in many characteristics. The first is its tripartite structure which enables it to balance the different interests of the groups as well as the interests of nations. The second principle is voluntariness which enables each member state of the ILO to ratify or not a Convention, according to its national situation. But the strength of ILO instruments relies also on the fact that even without ratification, the states can be inspired by the Conventions and Recommendations for their own legal instruments. The third characteristic is the will of the ILO to assist and help instead of sanctioning. The

[204] Macshane D. (1996), op. cit., p. 20. He agrees with the idea to set up a body composed by GATT and ILO. Moreover, he proposes the setting up of a working party, composed of the GATT, ILO and relevant NGOs to develop mechanisms for building complaints and investigation procedures into trade relationships.
[205] These four suggestions follow the proposals made by different countries within the Discussion concerning the programme of work of the Working Party, ILO, Geneva, November 1996 (GB.267/WP/SDL/1/1), p. 21-22.
[206] Van Liemt G., (1994), op. cit., p. 15.

ILO can therefore achieve a so-called « universality », and also gain the faith of the developing countries.
But what will be the fate of these principles if a social clause is introduced within the framework of the ILO?[207]
The principle of tripartism would suffer because the distribution of the States' voting power and influence has been till now democratically distributed among member States. But if instead of having the power to make recommendations, the ILO was given the possibility to sanction a state for non-compliance, the big nations would certainly ask for another distribution of the voting powers, according to their population or economic importance in international markets.
Voluntarism would also have to be reviewed. For some countries, especially the developing countries, a social clause is a threat. Moreover, if sanctions are linked with this social clause, they would try to obtain the support of other countries in the same situation, and then make some political alliances. The guarantee of neutrality and objectivity reached by the principle of tripartism would, consequently disappear.
So, does it mean that the structure and principles of the ILO prevent the Organisation from taking part in the implementation of a social clause? Not necessarily. The Organisation faces a difficult situation; its existence is questioned. But its role in many parts of the world as well as its actions in sensitive matters (the IPEC programme [208] launched to struggle against child labour, its concerns for women's rights) show that its relevance still exists. Moreover, the Conventions the ILO set up are also considered as the best bases for a social clause.
Therefore, we think that the Organisation has a place in the debate, but that the ILO should preserve the role it has always had, in other words to advise, help and promote the rights of workers, and leave to organisations devoted to economic questions the burden of implementing a social clause. The ILO is too valuable a body to risk compromising its existence and credibility in the debate of a social clause, given the fact that this debate will surely be very hard and long, and will oppose not only economic forces, but also political, moral and social interests.

[207] See the article of Myrdal H:G., 1994. The ILO in the cross fire : Would it Survive the Social Clause?, in Sengenberger, W. and Campbell, D. (eds.), 1994, International Labour Standards and economic interdependence, International Institute for Labour Studies, Geneva, pp. 339-356, 1994., in which he tackles the problem very completely. This chapter is mainly based on his analysis.
[208] International Programme on the Elimination of Child Labour. This is an innovative and flexible programme which relies on a substantial role for the NGOs in project delivery. The key aspects in implementing ILO-IPEC's strategies are to raise awareness and to seek the involvement and commitment of individual governments to address child labour in co-operation with a wide variety of public and private groups.

5. Conclusion

5.1 Other means of promoting social clause

Private, multilateral and informal sectors have not waited for the decision of the ILO and WTO/GATT to promote and implement a social clause. These actions concern small areas of the trade market; they are the target of criticisms, but they exist and some of them with success.

5.1.1 Multilateral agreed codes of conduct

Several multinational corporations with subsidiary manufacturing operations in developing countries have initiated codes of conduct on workers' rights.[209] The implementation of such codes is not always easy, and to import regulations from one country to another may lead to difficulties with the workers of the host country.[210]

Recently, a « charter for global business ethic » was launched by the Consumers International, which is represented in 86 countries. Its targets were the 100-largest European companies.

This method based on codes of conduct is not free from criticism, some arguing that it is only a tool to improve the reputation of the company without incurring any outside monitoring of fair production facilities.[211]

5.1.2 By means of the Bretton Woods Institutions : IMF and the World Bank

The World Bank[212] and the International Monetary Fund (IMF) should impose conditions on lending, linking at least their labour market programmes to the participation of local trade unions, if they are democratic and independently controlled by their members.

The work of these two institutions has significant impact on the political, civil and social structures of developing countries. Over recent years there has been much criticism of the failure of the institutions to consider the human impact of their work. As a part of the drive for better labour standards, it should be a pre-condition that any programmes entered into should be evaluated from a human rights perspective. Governments that can demonstrate a commitment to and a programme of concrete measures for improving human rights should be given preferential treatment. This conditionionality should be supported by a programme of technical assistance.

[209] For example, Levi Strauss came under fire in 1991 and again in 1994 for poor labour standards in their contractor shops in developing countries, because Levi's « Global Sourcing Guidelines » against child labour and forced labour failed to be enforced. An example of success is the Body Shop. Its implementation of the Eco-Management and Audit Scheme (EMAS) is independently verified by outside authorities. They have developed stockholder-based approaches to social auditing, involving the participation of other « stockholders » in the business and in the wider community.

[210] For example, the Euro Disney theme park outside Paris, got off to a difficult start by enforcing its personal appearance code of conduct on French employees who claimed the code violated their rights. See A Disney Dress Code Chafes in the Land of Haute Couture, N.Y. Times, Dec. 25, 1992, at A1.

[211] Social Clause : Will it Work For Workers?, in Asian Labour Updates, November 1995-March 1996, p. 4

[212] In its document entitled « The employment crisis in industrialised countries, Is integration to blame? », the World Bank shows the growing interdependence between labour markets of the developed countries with those of the developing countries. According to the World Bank, for the developed countries, the gains resulting from greater international economic integration should be higher than the costs. Therefore, the World Bank emphasises adjustment for the most vulnerable sectors as an essential means to redistribute the impact of globalisation and a way of containing protectionist pressure.

5.1.3 Private sector

5.1.3.1 Moral Suasion

According to this « ethical consumption », the attention of the consumers is drawn to the moral principles relating to the production of a good.
In the US, for example, the AFL-CIO boycotts non-union products. This so-called « secondary boycott » is illegal under US labour law, even if the law allows campaigns to urge consumers not to purchase non-union products.
If the reasons for boycotts can be praiseworthy when they target protection of workers' rights, they remain nevertheless unilateral acts which are legally questionable in the principle of reciprocity relative to international trade.

5.1.3.2 Labelling of consumer goods

The principle of this method is to provide consumers with information that enables them to choose to reward goods that meet certain standards deemed to be socially desirable.
One example is provided by the Rugmark campaign, which struggles against child labour in labelling carpets made without the work of children. Founded in 1994, the Rugmark Foundation is the joint effort of the Indo -German Export Promotion Council, carpet manufacturers, and child welfare and human rights organisations. Inspectors visit Indian manufacturers and give certificates to the ones which guarantee that child labour is banned. The programme entails a levy of 1 to 2 percents of the export value of these rugs, and the money gathered is used for the rehabilitation of children.
This campaign was very successful, above all in Germany, the number one importer of oriental carpets. But the success of labelling programmes depends widely on the behaviour of consumers.
According to a 1994 poll conducted by Marymount University, 84% of US shoppers said that they would be willing to pay $1 extra for a $20 garment if it were made without sweatshop labour.[213]
Two conditions are necessary for the success of social labelling : it must have as its aim an exported product that is purchased directly by consumers. Thus, services and semi-finished goods cannot be targeted by this approach.
Another question raised by such a program is whether it constitutes a barrier to trade. Some argue that it does not, because it appeals to latent economic nationalism of consumers. However, this delicate issue is currently being debated in the WTO.
The ILO supports this means of action, as shown by the Director-General's decision to initiate a preliminary research study, targeted for completion by June 1997, on the issue of voluntary labelling programmes and child labour.[214] This programme would describe current labelling programmes and review assessments that may be available of their effect on child labour and on industry and consumer behaviour in the industrialised and developing countries.[215]

5.1.3.3 Socially responsible investing (SRI)

This practice (« ethical investing » in the UK) attempts to persuade investors to take into consideration not only the economic aspect of a country or firms where they want to invest, but also the social structure. These associations are to be found in the US, in UK and also in a Brussels-based organisation that has 35 member organisations in 15 countries.

[213] Kruegger A.B., (1996), Observation on International Labour Standards and Trade, June 1996, p. 9.
[214] GB.167/ESP/Inf.2.
[215] See Continuation of Discussions Concerning the Programme of the Working Party, GB.267/WP/SDL/1/2, p. 3.

The initiatives of SRI are implemented through three forms : screened mutual funds, divestment of stocks in socially irresponsible companies and promotion of shareholder resolutions that deal with social issues.[216]

5.2 GSP Co-ordination

This initiative for a GSP co-ordination was made by Abraham Katz, who is President of the United States Council for International Business and a member of the ILO's Governing Body. The small chance that a social clause would be introduced in the GATT meant that Mr. Katz suggests that other « donor countries », the economic powers (Canada, Japan and European countries) join the US in making workers' rights a condition for granting GSP. A kind of « social charter » should be established, to indicate to the beneficiary countries a set of labour standards. The compliance with their workers' rights would enable the countries to benefit from multilateral GSP while any failure to respect workers' rights would have as a consequence the withdrawal of these benefits. The structure of freedom of association would be taken as a model for the supervisory machinery. In case of fault, a country would be asked to comply with the « social charter ». If it fails the government concerned would be fined as in NAFTA. The issue would then be turned over to a Committee of GSP donors which would invoke the withdrawal of GSP benefits in whole or in part.

5.3 Concluding remarks

Two sources of tension underline the debate and correspond to the two goals sought in this issue : the promotion of human rights on the one hand, and the fairness in trade on the other hand. Therefore, one will have to decide which goal will prevail in the inclusion of a social clause in trade agreements, or if a goal has to prevail. But what seems to be clear is that international trade cannot evolve at the expense of workers' rights.
It is argued that in the long term, the problem will be alleviated only with the eradication of poverty.[217] Struggle against poverty has to become an important part of economic reforms, not only a subsidiary measure. The welfare of the population as well as the respect of human rights have to be the first priority of a policy. The assault on the residence of the Japanese Embassy in Lima illustrates the serious anxiety experienced throughout Latin America, engaged in economic reforms. The population claims a fair share of the economic benefits made with the privatisation and the liberalisation of trade. In the 1996 summit of Santiago, some leaders expressed their concern over the dangers that the economic changes represented to democracy. But what is true for Latin America is also true for a large part of the world.
Therefore, laws and agreements have to balance both economic and social interests. Competition among countries has to be regulated and ensured by a supranational framework.
Since the ILO does not provide a structure capable of dealing with the inclusion of labour standards in international trade, the solution would have to be found in the establishment of a body which would benefit from the knowledge of the organisation. The WTO should provide for such a body, with the mandate to ensure fair competition among states, and through it, the promotion of labour standards. Promotion and assistance should be emphasised, and economic sanctions should give way to aid and economic incentives through schemes such as those provided in the American and European GSP. Furthermore, education and training have to be enhanced in order to develop qualified human resources.
It is likely that the Western developed countries will have to pay the price of this levelling of economic markets, but to levy trade barriers in the name of a so-called « social dumping »

[216] More details in OECD (1996), op. cit., pp. 202-203.
[217] Macshane D., (1996), op cit., p. 14.

to protect their markets runs against the globalisation and liberalisation of international trade. Each country has to participate in the promotion of labour standards, either by strengthening and implementing core labour standards, or by helping countries to enforce them through economic incentives and aid.
Protection and concern for « human capital » is not an empty fashionable term; it embraces the wealth and the future of humanity, which calls out more than ever for equality, equality in work but also equality in the share of the benefits resulting from economic growth. Therefore, promotion of « business ethics » has to mobilise not only policymakers, but also the leaders of national and multinational firms and consumers. Workers must no longer be considered simply as « items of production costs » in international and national economies.
In this context, the link between labour standards and trade becomes an instrument of regulating the competitive regime so as to be constructive and not destructive.

As the Deputy Chairman (Worker) of the ILO's Governing Body, Mr Brett, pointed out : [218]

« *It is not about protecting trade, it is not about protecting people. It is not about establishing minimum wages throughout the world. It is not about transferring wages and conditions from the first world to the third world. It is about ensuring that fundamental human rights are respected in all countries engaged in trade.* »

[218] Aparicio-Valdez L., 1995. Hemispheric Integration and Labour Law, International Journal of Comparative Labour Law and Industrial Relations, 11(2), Summer 1995, p. 110.

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Appendix A.

Employment by multinational enterprises, 1990 or latest year available.

	Employment (millions)	Share of total MNE employment
Total MNE employment		
Home-country employment in parent company	44	60.3%
Employment in foreign affiliate	29	39.7%
Total MNE employment, all countries	73	100%
Foreign affiliate employment		
Developed countries	17	23.3%
China	6	8.2%
Other developing countries	6	8.2%
Employment in foreign affiliates	29	39.7%
Employment in export-processing zones		
China	2	2.7%
Other developing countries	2	2.7%
Total MNE employment in EPZs	4	5.4%

Source : UNCTAD, *World Investment Report, 1994.*

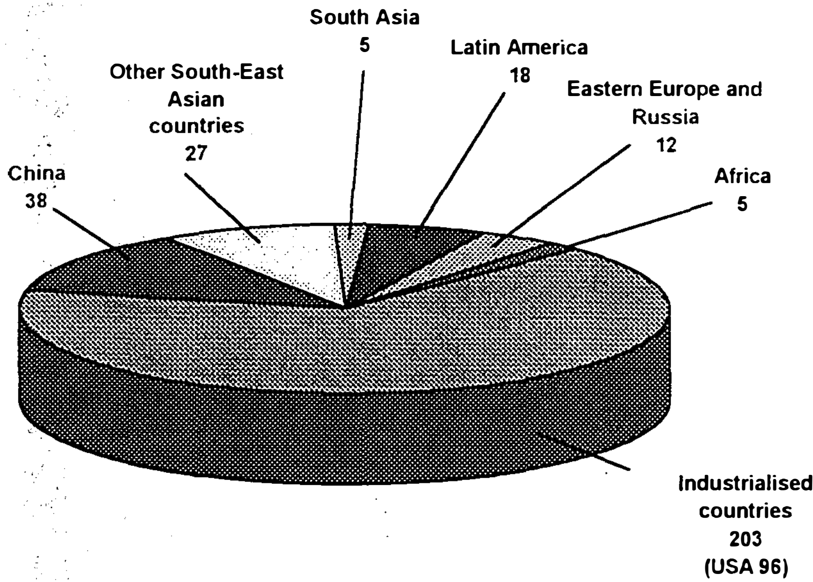
Appendix B

Unemployment rates in the developed countries.

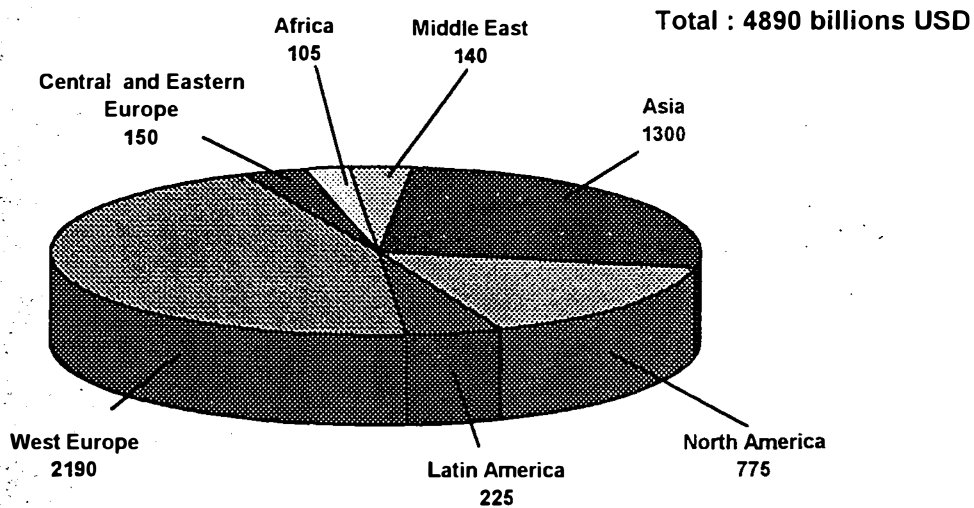
	1996	1995
Australia	8.5 in November	8.5
Austria	7.0 in December	6.8
Belgium	13.6 in December	8.5
Canada	10.0 in November	9.4
Denmark	8.2 in November	9.6
France	12.7 in November	11.9
Germany	10.9 in December	9.9
Italy	12.2 in July	12.0
Japan	3.3 in November	3.4
Netherlands	6.5 in November	6.8
Spain	21.9 in the third quarter	22.7
Sweden	7.9 in November	7.2
Switzerland	5.3 in December	4.3
United Kingdom	6.9 in November	8.0
United States	5.4 in November	5.6

Source : The economist,
January 1997

Appendix C and D



DIRECT INVESTMENTS in 1995 (in USD billions)



EXPORTATIONS in 1995 (goods only - without petrol sector) in USD billions

Appendix E

NAALC Dispute settlement process

Action	Timing
Step. 1 Submission filed with NAO (full coverage of NAALC dispositions)	NAO must accept or reject submission for review within 60 days
Step. 2 Review process: information gathering through consultation with other NAOs, and/or public hearing (in the US), final report published (in Mexico and the US)	Final report must be published within 120 days from acceptance of submission, with possible 60-day extension.
If unresolved	
Step. 3 Ministerial consultation (full coverage)	No set time limit
If unresolved, and object of dispute is (i) trade-related; (ii) concerns mutually recognised labour laws in the areas of health and safety, child labour and technical labour standards; any consulting party may request :	
Step. 4 Establish an Evaluation Committee of Experts, prepare draft evaluation report that may be reviewed by the Parties, and then present final evaluation report	Draft report shall be presented to the Parties within 120 days after establishment, and final report presented to the Council no later than 60 days later. Written responses by the Parties must be provided within 90 days, and submitted to the Council along with the final report at the next regular Council Session
If unresolved AND related to health and safety, child labour or minimum wages :	
Step. 5 Ministerial Council consultation	60 days
If unresolved, within 60 days Party may request a Special Session of the Council to convene within 20 days and have 60 days to reach a resolution, and if unresolved, then at the request of any consulting Party and by the two third vote, the Council shall :	
Step. 6 Convene an Arbitrary Panel	Initial report presented to the Parties within 180 days after selection of the panellists. Final report due within 60 days after submission of initial report.
If unresolved (1. no action plan adopted by Parties or 2. Parties cannot agree on whether implemented) :	Under (a), request to reconvene between 60-120 days, under (b) no earlier than 180 days.
Step. 7 Panel may be reconvened and may impose a monetary enforcement assessment	Under (a) Panel has 90 days to take action, under (b) 60 days.
If a Party fails to pay a monetary enforcement assessment within 180 days after it is imposed by panel :	
Step 8. Complaining Party or Parties may suspend application of NAFTA benefits in an amount no greater than that sufficient to collect the monetary enforcement assessment (only for Mexico and the US)	

Sources : Final Draft, 1993; *NAALC : A Guide*, US NAO, US Dept. of Labour, Washington D.C., 1995, Appendix 1, Appendix 2.

Appendix F

Enforcement of the Social Clause

Step 1. A complaint about the violation of one or more of the core standards which underpin the social clause is made to the WTO/ILO Advisory Body.

Step 2. The ILO undertakes a review of the situation and determines whether these standards are being adhered to in law and practice. If these standards are being violated then the ILO makes recommendations to the country in question. Technical assistance and resources are provided to assist in the improvement of laws and labour practices.

Step. 3 After « an adequate period of time » another review is undertaken by the ILO to determine whether progress is being made in enforcing these standards. If this is the case then another report is prepared a year later.

Step. 4 If the government in question has refused to co-operate or has failed to undertake the recommendations for improving labour standards, a warning is issued by the ILO.

Step. 5 If after one year there is still no improvement in the government's response, then the issue is referred to the WTO.

Step. 6 Following its own review of the situation the WTO Council determines whether the sub-standard labour conditions in the export industry concerned constitutes « unfair trade ».

Step. 7 If does constitute unfair trade the WTO Council imposes trade penalties. This ranges from the country's exclusion from particular trade negotiations undertaken by WTO members, to the imposition of tariffs and other barriers on the exported goods associated with the violation of the core labour standards.

Enforcement as proposed by the ICFTUD and the International Textile, Garment & Leather Workers' Federation.