

Adamy, Wilhelm

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Wilhelm Adamy\*

## International Trade and Social Standards

*The agreements setting up the new World Trade Organisation (WTO) which were signed in Marrakesh have met with widespread approval. The accompanying controversy over the question of social clauses has made the latter an issue of national and international importance which has since been under discussion in many international bodies, such as the International Labour Organisation (ILO), the OECD and the EU. The following two articles present differing views on this issue.*

The demand for the anchoring of social clauses in international trade agreements, raised particularly by the trade unions, is by no means new. The discussion became topical in recent months through an initiative by the United States government. The US Vice-president, Al Gore, said at the GATT Conference of Ministers in Marrakesh, that a world trade system which did not aim to put an end to exploitation would fail in the end because people throughout the world would not be able to support it.<sup>1</sup> The USA was supported in this opinion by France and Canada. Austria, Sweden and Norway also spoke in favour of it. There were differences of opinion, however, among the member states of the EU. In the run-up to the Marrakesh conference the German Economics Minister had attempted to persuade the EU Trade Commissioner, Sir Leon Brittan, to make "very moderate statements on behalf of the Commission on this subject" and at the conference itself he criticised the draft of Brittan's speech as "unbalanced with regard to the non-trade issues". The German delegation was supported in this by the United Kingdom and the Netherlands, while in particular Italy, Ireland, Spain and Portugal declared themselves in favour of the inclusion of social standards in the WTO. The majority of developing country governments, on the other hand, regarded the social clauses as a protectionist element and emphasised that social and labour rights should not be allowed to be used to undermine comparative advantages.<sup>2</sup> At the signing of the WTO agreement and in the Declaration of Marrakesh it was emphasised that the subject of social clauses can be dealt

with in the committee for the preparation of the future WTO. Further demands were not raised, as otherwise a number of developing countries would possibly have refused to sign the final document.

### Need for Elementary Social Clauses

Economic growth and free trade are without doubt major preconditions for an open economy. These are, however, by no means adequate to ensure that international trade is fair or that the advantages of world trade are justly distributed.

Certainly, until now the liberalisation of world trade has not been able to reduce the inequalities in the world economy. More than 80% of 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's population live fell in the same period from 2.3% to 1.4%.<sup>3</sup> In particular the African countries south of the Sahara are in danger of being pushed further and further towards the brink of the world economy. In Tanzania, for example, real wages have fallen by almost 80% since 1975.

In many parts of the world exploitation and the

\* Executive Board, German Trade Union Federation, Düsseldorf, Germany.

<sup>1</sup> Quoted from Amerika-Dienst of 20th April 1994, p. 1.

<sup>2</sup> At the ILO general assembly in June 1994 the trade union representatives of several countries, such as Malaysia and Pakistan, spoke on the contrary in favour of social clauses. They advocate social clauses so that the advantages accompanying economic growth can in fact be used nationally.

<sup>3</sup> Cf. UNDP: Human development report 1992, p. 34.

repression of basic human rights at work continue to be on the order of the day:

- Approximately 200 million children throughout the world are employed as cheap labour, often in dangerous industries (e.g. firework factories) in which many of them are mutilated by accidents or contract deadly diseases or incur serious lasting damage to their health.
- Millions of people are exploited as forced labour. Millions of prisoners have to work in labour camps and prisons producing exports. Their working conditions are often on a level with pure slavery.
- Trade union rights are often trampled upon, in violation of the basic human right of freedom of association. Men and women are beaten, tortured, thrown into prison without reason and murdered, just because they belong to a trade union, or wish to do so, and because they are struggling for humane working conditions.
- Roughly one fifth of the world's population lives in extreme poverty. At least 700-800 million are unemployed worldwide.
- The human rights of women, ethnic minorities and political dissidents are often flagrantly disregarded.

In addition, a number of developing countries have set up so-called export processing zones which seek to rescind the national labour and social legislation. Pakistan, for example, passed a fiscal law in 1992 which foresaw that for certain regions the entire labour legislation could be annulled simply by a 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.

With the advancing globalisation of markets national policy instruments lose their effectiveness and the decision centres of multinational enterprises gain in importance. Their influence on the world economy is continually increasing. Altogether, multinational enterprises worldwide already control one third of the productive assets of the private sector.

Social dumping not only endangers social development in the developing countries but at the same time promotes economic and political instability. This could lead, among other things, to an increase in the pressure to migrate and thus to growing labour market and social problems in the industrial countries too. Unfair or unsocial conditions and subsidies at the same time endanger jobs in the industrial countries and thus impair the capacity of these countries to support social development and to impart new impetus

to the world economy. At the same time there is the danger that the necessary solidarity with the developing countries will be further undermined.

A fair and broad-based system of world trade must attempt to counter the danger of protectionism and trade warfare. Social clauses must therefore not be allowed to lead to a new version of trade protectionism, but rather the humanitarian objectives must take central place so that more attention is paid to the realisation of elementary human rights at work. The poor living and working conditions of a large part of the population in the developing countries issue clear and unmistakable signals to political decision-makers at the national and international level. The international community has considerable possibilities open to it, and it is its task to help these countries to climb further up the ladder of economic and social development and to eradicate blatant violations of human rights.

Unfortunately some regions are still not prepared to change their policies or to allow the advantages accruing from economic growth to be distributed more evenly. An open world trade system, a dynamic increase in demand on major markets and export oriented growth strategies are presently regarded as the most important elements for promoting rapid growth in developing countries. A central problem also lies in the fact, however, that economic growth does not necessarily lead to more jobs or to social progress. In a number of countries power is concentrated in the hands of a few, who profit disproportionately from economic growth. Workers and trade unions in these countries are not always able to voice their opinions freely and are certainly unable to negotiate freely in order to gain for the workers the share of economic progress which is due to them.

### **What are Social Clauses About?**

The demand for social clauses is not at all intended to mean that *all* social costs should be largely equalized. This would inevitably overtax the developing countries; but if basic social clauses are renounced altogether it will become much more difficult to withstand the pressure to implement stronger measures for the protection of trade. It is of decisive importance that competition take place within a framework which includes basic human rights at the workplace, a framework which can be expected to be respected by all countries. This is especially important for those developing countries which are seriously trying to improve basic working and living conditions, as they are most in danger of being pushed from the world market by countries which do not adhere to the basic labour standards. International trade must be accompanied at least by the removal of blatant malpractices and the most

crass forms of exploitation. Therefore basic social rights, which – independent of the level of productivity of a country – are among the central human rights, must also be taken into account in international trade. No country should be able to withdraw from the recognition of the few basic standards.

The point of reference should certainly not be all the international labour standards but simply a few of the central human rights standards of the ILO. The following ILO Conventions in particular must be taken into consideration here:<sup>4</sup>

- Convention 87 on freedom of association, Convention 98 on the right to collective bargaining and Convention 135 on the protection of workers' representatives at their place of work;
- Conventions 29 and 105 on the abolition of forced labour or compulsory labour;
- Convention 138 on the prohibition of child labour;
- Convention 111 on the prohibition of discrimination in employment and choice of occupation and Convention 100 on equal remuneration of male and female workers for work of equal value.

These basic international standards are either central preconditions for trade relations' being at all able to lead to an improvement in the working and living conditions of workers (such as trade union rights) or they are basic human rights, the violation of which may not be supported by trade preferences.

### Broad Consensus

These basic standards have been ratified by the majority of states and justly enjoy worldwide validity. With the exception of the Conventions on the prohibition of child labour and on the protection of workers' representatives these basic standards have been ratified by more than 100 members of the ILO and Convention 29 on the abolition of forced labour by more than 130 states. These are therefore standards which do not relate specifically to the industrial countries but which must be observed by all states, independent of their individual level of development.

These standards were adopted in a final document, which took two years of careful negotiations to produce, by a representative international conference in which the member states of the ILO as well as both employers and trade unions participated. In addition, a tried and tested

worldwide procedure for the supervision and implementation of these Conventions has existed for decades. This supervisory procedure extends from the duty to report to special inquiry procedures. Both national and international employer and employee associations can lodge complaints. The governments of member states as well as the employees' and employers' delegates at the annual assembly can also institute proceedings if they are of the opinion that central Conventions are not being adhered to.<sup>5</sup>

The observation of these few international standards in the world trade system can open up new perspectives without encroaching upon free trade to any great degree.

### Inadequate Supervisory Mechanisms

Even although the ILO is equipped with an extensive set of labour and social regulations with corresponding supervisory mechanisms, it often proves impossible to go beyond moral pressure and to force judicially the observation of the international obligations which have been entered into. According to the ILO constitution, the International Court of Justice plays the role of final legal authority, but only the member states can appeal to it if they do not agree with the decisions of the supervisory bodies.

Moreover, the ratification of the ILO Conventions by the member states represents the voluntary assumption of the obligations arising from the Conventions. Limits to the effectiveness of the ILO standards also arise from the fact that the obligations in the Conventions are directed exclusively towards central states and direct pressure cannot be put on regional governments, nor on individual branches or enterprises, nor on multinational concerns.

The rules of the General Agreement on Tariffs and Trade (GATT) are also inadequate. Within the GATT framework the application of quotas as an instrument of trade policy is prohibited on principle. Precisely defined exceptions and special regulations make it possible, however, to apply protective measures if a branch of the economy suffers or threatens to suffer considerable injury from imports. The criteria for the imposition of quotas are the growth of import volume, the degree of dumping and the consequences resulting for the producer. The level of injury required to evoke protective measures is generally higher than in the case of anti-dumping measures. It is a requirement that there is a causal connection between the level of imports and the import conditions on the one hand and the

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<sup>4</sup> On these Conventions cf. W. Adamy, M. Bobke, K. Lörcher: Internationale Arbeitsorganisation, in: W. Däubler et al. (eds.): Internationale Arbeits- und Sozialordnung, Cologne 1990, p. 147ff.

<sup>5</sup> Cf. D. Willers: Sozialklauseln in internationalen Handelsverträgen, in: Weltfriede durch Gerechtigkeit, published by the German Ministry of Labour, the Federal Association of German Employers' Associations and the German Trade Union Federation, Baden-Baden 1994, p. 165ff.

considerable injury on the other. The protective measures must in both their timing and their extent be limited to that which is necessary to prevent or repair the injury. According to the rules of the GATT codex, temporary or permanent tariffs may only be introduced when a first examination or a final assessment have shown that dumping exists and that it causes injury.

The question whether, or to what extent, basic social standards are adhered to in the production of goods is not examined within the GATT framework and is irrelevant for the admissibility of trade barriers. Only if goods are produced in prisons can the importing countries introduce trade policy measures against imports of those goods. This regulation is much less differentiated than the ILO Convention on this question, which focuses on whether the prisoners have been paid in a way which conforms to international law and whether they are included in the system of social security.<sup>6</sup>

The GATT agreement therefore basically does not offer any possible way of including the gross disregarding of elementary workers' rights in trade policy considerations. It is extremely problematical that trade policy sanctions are allowed if the exporting countries artificially make their goods cheaper by means of subsidies but not if this competitive advantage is achieved by means of blatant violations of basic workers' rights.

#### Workers' Rights and the GATT

In the ILO constitution of 1919 it is stated that, "the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries". In the original first British draft of the ILO constitution it was even

stated that one of the main aims of the international agreement consisted in *abolishing* unfair competition based on oppressive working conditions and that the appropriate punishment for states which allowed such conditions should be that, whenever a two-thirds majority of the conference came to the conclusion that the provisions of the agreement had been disregarded, the signatory states should discriminate against those goods proven to be produced under conditions of unfair competition unless these conditions were corrected within a year or within a longer period which may be determined by the conference. An adequate supervisory mechanism has, however, still not been established.<sup>7</sup>

Following the Second World War the discussion on the introduction of social clauses was revived. The Havana Charter of 1948, which laid the foundation for the GATT, foresaw clauses on workers' rights. It declared, "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."<sup>8</sup>

The changing general political situation after the end of the Second World War, however, meant that the Havana

<sup>6</sup> While the USA more than once prohibited the import of such goods after 1930, the international community never applied this Convention.

<sup>7</sup> International Labour Organisation, Report by the Director General: Preserving values, supporting changes, 81st Conference, 1994, p. 37.

<sup>8</sup> *Ibid.*, p. 45.

Peter Behrens (Ed.)

### EEC Competition Rules in National Courts (II)

### Les règles de concurrence de la CEE devant les tribunaux nationaux (II)

Part Two: Benelux and Ireland • Deuxième Partie: Bénélux et l'Irlande

The competition rules of the EC-Treaty are directly applicable in the Member States. Therefore, the national courts play an important role in the implementation of European competition law. The editor of this volume has initiated a research project which will analyse the national case law. A first volume published in 1992 contained the national reports from the United Kingdom and Italy. This volume contains the national reports from Belgium, the Netherlands, Luxemburg and Ireland. Further national reports will follow.

The project is designed to make the national case law accessible to lawyers practicing in the field of European competition law. The Community organs get an overview over the implementation of Community law in Member States. Those, interested in research find the materials for further comparative studies.

The authors are competition law experts from the different Member States.

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Charter was never ratified. Nevertheless, in the GATT agreements which followed the participating countries acknowledged, "that their relationships with regard to trade and economic efforts will be so formed that living standards shall be raised, full employment and a large and continually growing volume of real income and effective demand are guaranteed, the world's resources fully utilised and production and trade expanded."

### Agreements with Social Clauses

Since the mid-seventies regulations have been included in several international commodity agreements which oblige the contracting parties to pay attention to the creation and observation of fair labour standards in the production of the commodities involved. Most of these regulations are largely impracticable, however, as they do not foresee any follow-up or control procedure.

The Lomé Convention of 1984 between the European Community and Asian and African developing countries on trade preferences also contains only very general principles with regard to the observance of social standards. There is simply a reference to the necessity of guaranteeing fair labour standards, without describing more precisely what this means and without any follow-up or control mechanism.

Several laws have been passed in the USA since 1983 which attempt to tie international trade and investment policies to international labour rights. The law which goes furthest in this connection empowers Americans to submit a petition to the Office of the US Trade Representative if competitive disadvantages are to be feared from trade with a country which seriously represses basic human rights.

The North American Free Trade Association (NAFTA) also includes a side-agreement which is intended to improve working conditions in the country involved and achieve the uncompromising enforcement of the corresponding *national laws*. The relevant sociopolitical areas include in particular health and safety at work, child labour, minimum wages, relationships between employers and employees, legislation on the formation and functions of trade unions, and legislation on the solving of labour disputes.<sup>9</sup> The Council of Ministers, which consists of the labour ministers of the three member countries, the USA, Mexico and Canada, is regularly informed as to the national laws and their enforcement. In the case of controversial issues independent experts can be consulted and asked to make recommendations, or mediation committees can be formed which can impose

finer or – as a last resort – trade sanctions. The Canadian law courts regard the decisions of the mediation committee as legally binding, so that they are automatically enforced.

The European Parliament also 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.<sup>10</sup>

After the collapse of the Berlin Wall and the end of the Cold War, and with the progressive globalisation of the world economy, the need for social clauses has become more urgent than ever. For the first time since the end of the First World War the market economy has become a general model. It is now of decisive importance that social aspects are not pushed back on a worldwide scale and that the worldwide competitive struggle does not lead to a new bout of economic warfare, paving the way for a return to the "laissez-faire" of the Manchester school.

### Creation of an Institutional Framework

It is of decisive importance that – on an international level too – the instruments of social policy, trade policy and fiscal policy cease to be regarded in isolation from one another and the corresponding special international agencies begin to improve their cooperation. The International Confederation of Free Trade Unions has suggested that the signatories to GATT and its successor, the World Trade Organisation, commit themselves to take measures to guarantee the observance of the individual minimum standards laid down by a supervisory body to be set up jointly by the GATT and the ILO. These minimum standards are to include freedom of association and the right to wage negotiations, a minimum working age, and the abolition of discrimination and forced labour. Particular emphasis is placed on a joint WTO and ILO supervisory body. This body should have the task of investigating the trade policy consequences of a contravention of basic social clauses. This institutional framework could possibly also be ensured by a skeleton agreement between the WTO and the ILO.

The concept of social clauses includes in particular the following:

- The WTO should undertake to prepare at regular intervals, in conjunction with the ILO, detailed,

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<sup>9</sup> E. Göll: Das nordamerikanische Freihandelsabkommen NAFTA, in: WSI-Mitteilungen, No. 1, 1994, p. 37ff.

<sup>10</sup> European Parliament: Decisions on the introduction of social clauses in the unilateral and multilateral trade system (A3-0007 94), Brussels 9. 2. 1994.

independent analyses of the relationships between trade and workers' rights and to list unfair competitive practices based on the violation of internationally recognised social standards. At the same time the exchange of information on this subject between the central special agencies of the United Nations (with the inclusion of the World Bank) must be ensured and a mutual obligation to provide information guaranteed. These analyses should, in the case of complaints, also include the trade regulations of the industrial countries if these lead, or threaten to lead, to sociopolitically unjustifiable predatory competition at the cost of the weaker countries.

□ The members of the new WTO should acknowledge that in order to encourage the growth of trade not only generally accepted anti-dumping regulations are necessary to ensure fair competition, but also a small number of centrally important social clauses. The GATT anti-dumping regulations represent a mechanism which should be expanded.

□ If complaints are lodged with the ILO which claim to see a connection between the violation of basic labour standards and international trade, the ILO should use its own procedures to examine whether there has been a violation of an international standard. The task of the WTO, on the other hand, should be to examine whether and to what extent this leads to effects on international trade in individual products.

□ If a relationship between the violation of a labour standard and a particular product is established, the member states involved should be obliged to set up a

national programme of action showing how a situation conforming to international law can be brought about. At the national level it must be ensured that the employers' associations and the trade unions participate in the creation of the programme.

□ At the international level it must be examined whether and to what extent this programme of action makes social progress possible and whether there is a serious will to establish a practice in conformity with international law. In the initial phase measures should be proposed by the ILO which must be introduced within a certain time-limit, depending on the severity of the violation, in order to remedy the situation. Depending on which standard has been violated, this must be understood as a dynamic process and international aid in the form of increased labour inspections or other forms of technical assistance must be provided for the implementation of national laws and international standards. This practical international support should be more effective and cover a broader field than has been usual until now; for example, an international social fund could be established to support these activities. Failing this, the special agencies of the United Nations should oblige each other to effectively expand their technical aid.

□ If the sociopolitical recommendations are acted upon and the measures proclaimed in the national programmes of action are in fact introduced, the WTO and the ILO should examine whether and to what extent the countries doing so can be given positive incentives via the opening of the market in order to support their economic and social bases.

Bernhard Fischer/Albrecht von Gleich/Wolf Grabendorff (eds.)

## Latin America's Competitive Position in the Enlarged European Market

Fostering the integration of the Latin American economies into the world markets is one of the main principles of the reform policies that have been undertaken by practically all countries of the region. Much emphasis is given to a sustainable improvement of the export capacity and of the competitiveness of Latin American products in traditional and new markets. Europe, in spite of declining trade relations, still ranks first or second among the Latin American trading partners. Against this background the results of integration within the European economic area and their implications for trade with Latin America are discussed. The competitive position of Latin American countries is compared with that of South-East Asian as well as East European countries and reasons are provided for their different performance. The recent economic policy reforms in Latin American countries are assessed with regard to sustained improvement of their export capacity and whether they are sufficient to guarantee a continued inflow of foreign private capital. Finally, strategies are developed which aim at a deepening of trade and investment flows between Europe and Latin America.

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In principle, positive incentives are probably more suitable for increasing the chances of success of laws in the field of social policy. In these cases, however, priority must be given to the examination of the question of whether the development of social progress is keeping up with the opening of the international markets and the economic development of individual countries. This does not at all mean that it should be laid down for all fields how the social progress made possible by the liberalisation of trade should be carried out. But the basic labour standards, which are an integral part of the efforts to achieve social progress and to utilise the economic advantages of the international division of labour independently of individual national priorities, must not be questioned. With regard to the basic standards the most important question is whether the states take effective measures commensurate to their situation and their possibilities as well as to their economic development which is supported by the liberalisation of trade. If, however, the rights of trade unions and the prohibition of forced labour are blatantly infringed, positive incentives should not be granted but, rather, it should be possible to impose sanctions and increased tariffs.

### Multilevel System

As a whole, this multilevel system aims to avoid trade barriers as far as possible and to concentrate on supporting the efforts of member states to comply with international social standards. The further development of trade and social progress should be inseparably bound together, however. In this connection there must be an objective and regular control, in cooperation with both employer and employee associations, of the opportunities for social progress offered by economic growth and the development of trade.

ILO procedures can largely be applied here. Such a multilevel system offers a multitude of opportunities to support social progress via international cooperation rather than via coercive elements. This supervisory system involves mutual obligations and rights for the member states. The mutual rights of control can relate to basic labour standards as well as to the examination of the trade regulations of the industrial countries in as far as they endanger the compliance with basic social standards in the developing countries.

The system of elementary social clauses proposed here should be examined with regard to its effectiveness after a period of five years and reformed if necessary.

### Limits of Social Clauses

Since social clauses in international trade contracts are limited to existential workers' rights, the comparative advantages of the developing countries should not and cannot be neutralized so long as a minimum of social protection relevant to human rights is observed. Social clauses are therefore neither a factor to ensure high wage standards via protectionist measures on a broad front nor one to combat unemployment effectively in the industrial countries.

It must also be taken into account that the creation of a situation conforming with international law must, depending on the stage of development of the country involved, be understood as a *dynamic* process. The abolition of child labour, for example, will not normally be achievable in the short term by means of laws alone. Public pressure in the industrial and developing countries is just as important an impetus for reforms as improvements in education and training or the establishment of old-age security systems and social security as a whole.<sup>11</sup> Thus, in the case of a developing country the economy and administration of which are inadequate, the age limit for the employment of children and youth should, according to the social clauses concept, be twelve or fourteen years. If the work represents a risk to the life, health or morality of young people, the minimum age can under certain conditions be raised to sixteen. For this regulation, too, the area of application in developing countries can be limited to begin with, if at least a number of major areas are covered, such as industries concerned with the production of raw materials, manufacturing, building and public works. Family businesses and other small enterprises can be exempted.

Since the social clauses are to be limited to a few areas, they are only one factor, even if a major one, for the suppression of practices which violate human rights. They are, however, not something for harmonising social standards worldwide or for solving the problem of unemployment in the industrial countries. Since the criteria can be examined objectively within the framework of multilateral agreements, it is not at all intended to rob the developing countries of their comparative advantages.

A uniform supervisory procedure must, however, also ensure that cultural and religious differences do not play a role. Countries such as Malaysia and Indonesia are nevertheless pursuing the objective of making the application of international social standards generally dependent on the cultural and religious peculiarities of a country. This would, however, mean the creation of a great degree of latitude for political discretion and subjective supervisory and control functions. This would jeopardize

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<sup>11</sup> The ILO Convention on this foresees differentiated and flexible rules for the developing countries.



the system of supervisory instruments which has been developed so far by the International Labour Organisation.

### **Need for International Coordination**

The supervisory procedures for international social standards must, however, also be improved in those areas which are not themselves the subject of trade-related social clauses. The industrial countries and the international community should therefore give the ILO the right to appeal to the International Court of Justice if member states do not comply with the voluntarily ratified standards and ignore the decisions of the supervisory bodies. At the same time the industrial countries should grant the ILO the right to analyse the social consequences of the structural adjustment programmes of the World Bank and the International Monetary Fund and in the case of a threatened violation of basic social standards to use its influence to bring about a modification of the adjustment programmes. The special international agency of the United Nations responsible for social policy should be placed in a position to examine whether major international standards are being observed and adhered to. Until now it is only foreseen that the new World Trade Organisation should develop closer cooperation with the institutions responsible for monetary and financial questions (International Monetary Fund and World Bank) and make possible an improved coordination of trade policy, economic policy, financial policy and monetary policy.

The question also poses itself, whether and to what extent multinational concerns will commit themselves to observe the international social standards, or whether they will make use of the advantages of export processing zones, in which even the national social legislation of developing countries is invalidated. The three-part declaration of principles for multinational concerns within the framework of the ILO does offer an institutionalised procedure for linking trade to social clauses. It urges the multinational concerns to observe certain minimum ILO standards even if they are operating in countries in which some or all of these international minimum standards have not been ratified. The fact that the three-part declaration of principles does not have a binding character means, however, that there are very narrow limits to its authority. It is therefore a matter of great urgency to make this declaration more effective and to adopt a new international

agreement on specific aspects of the activities of multinational enterprises. It should be possible for multinational concerns to endorse this international agreement voluntarily and thus to subject themselves to the supervisory procedures of the ILO.<sup>12</sup>

### **Mutual Obligations**

Following the conclusion of the Uruguay Round and the founding of the WTO the worldwide discussion and debate on social clauses has gained in importance. In order to avoid the risk of a protectionist interpretation, the system proposed here is differentiated and graduated so that as far as possible positive trade policy incentives and possibly also development policy incentives can be applied. The mechanisms to be applied should take account of the individual level of development and the labour standard under discussion specifically for the case in hand. The developing countries should in no way be discriminated against or robbed of their natural advantages in world trade; it is not the intention to create a new guise for industrial country protectionism. Neither of these would be of much help and would in the final analysis be counterproductive in a world which is moving ever closer together. Social clauses should certainly not lead to one-sided obligations on the part of developing countries but should equally involve mutual obligations and rights for both the industrial and the developing countries. It must be equally possible to investigate the trade regulations of the industrial countries.

The concept of social clauses must be equally committed to objectivity and to multilaterality. The example of China shows that human rights policy must be further developed if at all possible in a multilateral framework and that trade aspects cannot be excluded here. The effectiveness of the existing institutions should be improved but on no account should a new mammoth authority be created.

The European Union intends to be guided by these ideas and reward developing countries for good behaviour in the fields of environmental and social policy by means of low tariffs for their exports. Based on a report by the Commission, the general system of preferences is to be subjected to a thorough revision and progressive rates and solidarity mechanisms introduced.<sup>13</sup> This can lead to tariff advantages of up to 30% if producers present certificates from their governments showing that the central social standards of the ILO have been observed by them.

### **Double Standard**

The opponents of social clauses in the government camp seem in comparison to apply a double standard here. The German Economics Ministry thus comes to the

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<sup>12</sup> Cf. also International Labour Organisation, Report by the Director General, *op. cit.*

<sup>13</sup> Report by the Commission to the Council and to the European Parliament: Ways and means towards the improved integration of the developing countries into world trade, Document COM (94) 212 final.

following conclusion with regard to the new agreement on trade-related aspects: "Without appropriate protection – and one which can effectively be enforced – of intellectual property rights, investments will be misdirected, trade flows falsified and individual and entrepreneurial achievements misused."<sup>14</sup> The protection of patterns and fashions, as well as that of markets, is apparently given more weight than the protection of trade union rights or safety provisions for children.

The regulations and procedures for the settlement of disputes agreed upon in the agreement on trade-related aspects include among other things the creation of a new appeal body to examine decisions and rules regarding sanctions, which in the extreme case make possible the intersectoral withdrawal of trade concessions vis-à-vis a member state which obstinately does not comply with the treaty. In order to suppress international trade with copied or counterfeit goods there are much more effective international rules than for example in the case of blatant violation of trade union rights. But that which applies to intellectual property should apply equally to basic workers' rights.

The aim of social clauses is to combat the violation of human rights worldwide. Since they are limited to the eradication of the crassest forms of exploitation they can

only be one factor among many. It is of great importance to persuade multinational enterprises to observe basic social standards and to oblige the other international bodies to observe the ILO's basic social standards. Finally, the industrial countries themselves must set an example in the ratification of international agreements.

Basic social clauses are an important contribution to this. They are a key factor with regard to the strengthening of the framework for an open world trading system. The concept of social clauses is feasible and enforceable. It represents a continuation of tested procedures and mechanisms. 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. It is urgently necessary that these trade policy regulations are extended to include rules to prevent cut-throat competition at the cost of human rights at work. This concept is equally in the interest of both those industrial and those developing countries which are attempting to combat the violation of human rights worldwide and to improve conditions for workers.

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<sup>14</sup> Cf. Aktuelle Beiträge zur Wirtschafts- und Finanzpolitik, No. 11, 1994, p. 35. (Our translation.)

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Harald Großmann and Georg Koopmann\*

## Minimum Social Standards for International Trade?

Ever since Jacques Delors suggested the introduction of social "progress clauses" to govern trade relations with third countries while addressing the issue of strengthening European competitiveness at the EC's Copenhagen Summit in June 1993, the idea has been intensively debated in Europe. A mixture of humanitarian and commercial motives lies behind this. The intention of introducing minimum international social standards and establishing mechanisms to enforce these effectively is to help banish scandalous living and working conditions as well as political repression in Europe's trading partner countries while at the same time preventing the emergence

of economic and social disadvantages for the European Union itself as a result of trading with them. Apart from the fact that sub-standard social policies are a violation of fundamental human rights, other specific arguments put forward are

- that they encourage a high concentration of income, thus preventing the development of purchasing power across a broad front (which also would mean more export markets) in the countries concerned;
- that they create an artificial comparative advantage which distorts international competition;
- that they also provoke ruinous competition among developing countries, particularly damaging the countries

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\* Hamburg Institute for Economic Research (HWWA), Hamburg, Germany.