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Christoph Scherrer*

The Economic and Political Arguments For and Against Social Clauses

The globalisation of markets is calling national employment and social legislation increasingly into question, so that not only the international trade union organisations but also the Clinton Administration are calling for workers' rights to be embodied in trade agreements. This article deals both with the fundamental question whether international labour standards serve a useful purpose and the more specific question whether trade agreements are a suitable way of enforcing minimum standards.

For several years manufacturers in countries belonging to the Organisation for Economic Co-operation and Development (OECD) have encountered increasing competition from companies in countries with far lower wages, social security benefits and environmental requirements. As productivity levels are becoming broadly comparable, it is feared that social standards in the OECD countries will come under considerable pressure. The question therefore arises whether minimum international standards could not be agreed to prevent competition in terms of social conditions. Since 1919 the International Labour Organisation (ILO) has had responsibility in this field and can point to more than a hundred international agreements on workers' rights and social conditions. However, its method of setting international standards by means of voluntary conventions is increasingly considered to be inadequate, as the ILO is finding it ever more difficult to enforce conventions. Furthermore, the process of adopting and implementing ILO conventions has slowed down significantly in the last decade. The International Confederation of Free Trade Unions has therefore demanded that workers' fundamental rights be written into trade agreements as social clauses. It argues that at least the following rights, which are already covered by ILO conventions, should be guaranteed: freedom of association, right to collective bargaining, non-discrimination in the workplace, prohibition of child labour and forced labour.¹

Predictably, both employers' associations² and the overwhelming majority of economists³ contend that trade agreements are not an appropriate means of enforcing minimum standards. Especially in the United States, where the Clinton Administration has made the adoption of social clauses part of its official negotiating position in the new World Trade Organisation (WTO), critics do not stop at the question of how to enforce international social standards but also cast doubt on the usefulness of international standards in principle. Before discussing the more specific question whether trade agreements are a suitable means of implementing minimum standards, it is therefore necessary to examine the fundamental question whether international labour standards serve a useful purpose.

To that end I have reviewed the international debate about international social standards as part of a preliminary study entitled "International Trade Agreements and Social Standards" financed by the Hans Böckler Foundation. The aim of the exercise was to establish the extent to which the advocates of

* Free University, Berlin, Germany. The article is based on a preliminary study entitled "International trade agreements and social standards. The North American experience", financed by the Hans Böckler Foundation.

¹ International Confederation of Free Trade Unions/World Confederation of Labour/European Trade Union Confederation: The Social Dimension of International Trade - Joint Declaration, Brussels 1994.

² F. P. Doyle: The Perspective of Business, in: U.S. Department of Labor, Bureau of International Labor Affairs (ed.): International Labor Standards and Global Economic Integration: Proceedings of a Symposium, Washington, D.C., 1994, pp. 43-45.

³ For the negative attitude of German economic research institutes, see D. Brand and R. Hoffman: "Sozial-Dumping" oder Protektionismus? Zur Kontroverse über eine Sozialklausel im internationalen Handelssystem, in: IFO-Schnelldienst (25-26) 1994, pp. 23-33; and for the HWWA H. Großmann and G. Koopmann: Minimum Social Standards for International Trade?, in: INTERECONOMICS, No. 6, 1994, pp. 277-283.

social standards succeed in refuting the arguments of their critics.

In the first part of this article I shall present the debate about international social standards in terms of answers which have been given to the following three questions:

1. Is social interference in the workings of the market justified in principle?
2. Do international standards help countries catch up in the process of industrialisation or hinder them?
3. In the absence of international agreements, are social standards in the OECD countries being undermined by competitors operating under lower standards?

The second part, which addresses the linkage between social standards and trade agreements, will be structured around the following three questions:

1. Do social clauses violate national sovereignty?
2. Do social clauses run counter to the tradition of multilateral trade agreements?
3. Are social clauses an additional obstacle to the conclusion of multilateral agreements and do they provide an opening for protectionism?

Clash of Paradigms: the Market versus the State

The question whether minimum standards are justified touches upon the fundamental economic understanding of the nature of the market as a social regulatory mechanism. In highly simplified terms, the various concepts of the market can be reduced to two paradigmatic approaches: the neo-classical and the neo-institutional "schools".⁴

From the neo-classical standpoint, welfare-increasing efficiency gains can be achieved in foreign trade only if unhindered trade permits product specialisation on the basis of comparative cost advantages. The classical school allows an exception to the rule of non-interference by the state in foreign trade only in the case of infant industries.⁵ The neo-institutional approach, by contrast, points to the destructive potential that market mechanisms can have in trade between nations because of the

absence of a central regulatory authority at an international level. According to that view, foreign trade should therefore be flanked by domestic social legislation and regulated externally by multilateral agreements.⁶

These differing perceptions of the market mechanism also underlie the contributions to the debate about international standards for workers' rights. There is a systematic lack of communication between the two paradigmatically closed views of the world. A critique of the inherent features of the opposing position is rarely carried out; more often, empirical findings tending to endorse one or other view of the world are simply juxtaposed.

The contribution by the Canadian expert on employment law, Brian Langille, in the ILO's jubilee publication is an exception.⁷ Langille explicitly attacks the theoretical basis of the arguments put forward against international standards. He shows that two recent developments create theoretical problems for the classical liberal trade theory: increasing capital mobility and increased regulatory competition. Capital mobility contradicts the assumption made in the simple models upon which liberal trade theory is based. State regulation played "no part" in these theories geared to deal with import duties. Since the level of customs duties is now tending towards zero, the question arises as to the extent to which they will be replaced by differences in governmental regulatory competition as a cause of trade distortions. In Langille's view, liberal trade theory cannot conceptionally distinguish between the effect of a tariff on an imported good, a direct subsidy for domestic producers, an easing of a requirement of employment law and a decision not to regulate. The advocates of this theory thus face the question as to what constitutes a "natural", "neutral" or non-subsidising level of state regulation. The neo-classical approach suggests that this question must be solved by the international market in state regulation. In such a market mobile capital would be the purchaser and the individual authorities the suppliers. According to

⁴ Cf. T. Kochan and W. Nordlund: *Reconciling Labor Standards and Economic Goals: A Historical Analysis*, U.S. Department of Labor, Bureau of International Labor Affairs, Washington, D.C., September 1989. For the neo-classical view of the market, see E. Sohmen: *Allokationstheorie und Wirtschaftspolitik*, Tübingen 1976. For the neo-institutional approach, see E. Altvater: *Die Zukunft des Marktes*, Münster 1991.

⁵ H. Siebert: *Strategische Handelspolitik. Theoretische Ansätze und wirtschaftspolitische Empfehlungen*, in: *Aussenwirtschaft*, Vol. 43, No. 4 (1988), pp. 549-584.

⁶ M. Piore: *International Labor Standards and Business Strategies*, in: U.S. Department of Labor, Bureau of International Labor Affairs (ed.), op. cit., 1994, pp. 21-25.

⁷ B. Langille: *Labor Standards in the Globalized Economy and the Free Trade/Fair Trade Debate*, in: W. Sengenberger and D. Campbell (eds.): *International Labor Standards and Economic Interdependence*, International Institute for Labour Studies, Geneva 1994, pp. 329-338.

Langille, however, this would mean that the market was designated as the mechanism for determining the regulatory scope of the market itself. Not only can this circular reasoning be exposed by examining its theoretical basis, it is also contradicted in practice by the world trading system. When it came to reducing customs tariffs, it was decided to do so by means of political multilateral negotiations in order to avoid the prisoner's dilemma that existed for the individual state. Hence, if non-market mechanisms were needed to remove tariffs, it cannot be argued that only the market can determine the optimum level of regulation. Langille therefore concludes that the demand for multilateral agreements on standards of employment should be seen as a natural and inevitable component of the policy of free trade.

Development Policy Dimensions of Social Standards

The debate about international social standards revolves primarily around the introduction and raising of standards in developing countries. The justification of social standards therefore derives largely from the contribution they make towards enhancing these countries' prospects of industrialisation. Opponents of social standards see them as an obstacle to closing the industrial gap. They argue that better living and working conditions cannot be legislated but would be the natural outcome of industrialisation. Economic development would be best promoted by ensuring that the trading system was as free as possible.⁸

In order to rebut this criticism, the advocates of social clauses must demonstrate first that social standards do not prevent countries from closing the industrial gap and may even accelerate the process, and secondly that development and expansion of the export sector do not necessarily lead to an improvement in living and working conditions. The latter point shall be dealt with only briefly. The example of the Caribbean strikingly shows that

despite a massive increase in export production and in employment working conditions did not improve.⁹ Even in the countries that have experienced the economic miracles of the eighties, such as South Korea, a visible improvement in living standards was achieved only as a result of very hard trade union campaigning.¹⁰

Standards: Obstacles or Catalysts of Development?

The criticism of social standards on development grounds comes in two forms. The "hard" variant takes the line that industrial development requires a repressive employment regime. It is put forward by Gary Fields,¹¹ but enjoys little support in the economic profession. The "soft" variant only demands that the employment regime contain no minimum standards that slow down development. It enjoys support among the majority of economists.

The soft variant of the criticism takes issue with international standards mainly in the fields of pay, health and safety at work (standards that are not part of the current list of demands for inclusion in social clauses), but also in the field of workers' rights. As a rule, it is argued that every officially imposed increase in production costs harms the prospects of sales in the world market, and hence the development prospects of the countries concerned. Every increase in labour costs supposedly jeopardises the developing countries' main comparative advantage.¹² This argument is also bolstered by a conclusion deduced from an opposite standpoint: if social standards really fostered development, it would be in the interests of the countries concerned to implement them and there would be no need for pressure from the USA or other OECD countries.¹³

The advocates of social standards counter this criticism by pointing first to the positive effect of trade unions on economic growth and secondly to the need to make social standards binding on as many countries as possible by means of international agreements. Both demand-side and supply-side arguments are put forward to demonstrate the stimulatory growth effects of workers' rights.

⁸ J. Bhagwati: A View from Academia, in: U.S. Department of Labor, Bureau of International Labor Affairs (ed.), op. cit., 1994, pp. 57-62; P. Krugman: Does Third World Growth Hurt First World Prosperity?, in: Harvard Business Review, Vol. 72, No. 4 (1994); D. Brand and R. Hoffman, op. cit., p. 33.

⁹ D. Jessup: Workers' Rights and Trade: Democracy's Next Frontier, Paper presented at the Conference on U.S.-Latin American Trade and Women: Breaking Trade and Gender Barriers, October 24, 1994, p. 2; A. Portes: By-Passing the Rules: The Dialectics of Labour Standards and Informalization in Less Developed Countries, in: W. Sengenberger and D. Campbell (eds.), op. cit., pp. 168 f.

¹⁰ S. Charnovitz: Environmental and Labor Standards in Trade, in: The World Economy, Vol. 15, No. 3 (1992), pp. 335-356, here p. 347.

¹¹ G. Fields: Labor Standards, Economic Development and International Trade, in: U.S. Department of Labor, Bureau of International Labor Affairs (ed.): Labor Standards and Development in the Global Economy, Washington, D.C., 1990, pp. 19-34.

¹² J. Bhagwati, op. cit., p. 60.

¹³ T. Srinivasan: Comments on Fields and Piore, in: U.S. Department of Labor, Bureau of International Labor Affairs (ed.), op. cit., 1990, p. 67.

From a demand-oriented perspective, highly unequal income distribution is regarded as an obstacle to development. First, it is argued that such inequality impedes the emergence of a mass market in durable consumer goods, so that developing countries cannot emulate the "Fordist" growth model of Western Europe. Secondly, the concentration of national income in the hands of a few people produces an excessively high savings ratio, so that growth-stimulating investment is too low.¹⁴ Even advocates of social standards find the demand gap argument not convincing. In small open economies (which most of the developing countries are), an expansion of domestic demand as a result of wage increases would be cancelled out by the resulting fall in demand in export markets.¹⁵

The supply-side neo-institutionalists cite two reasons why social standards and higher wages have

a positive effect on a country's economic development prospects. First, higher wages promote the development of "human capital", without which no economic development is possible. Wages close to or below the minimum subsistence level make it impossible for workers to invest in their own education or that of their children and are often insufficient to pay for necessary health care. Higher wages, on the other hand, would not only enable workers to maintain and enhance their qualifications but would also increase the incentive to attend school and to adopt performance-oriented behaviour.¹⁶

Secondly, they argue, social standards are necessary to make the transition from the extensive to the intensive use of labour. Under the prevailing system of sweatshops, employers have no particular interest in using labour intensively, first because workers are paid on a piece basis and hence no fixed labour costs arise, and secondly because their capital stock is usually small and consists of outdated machinery that cannot be used more efficiently. The resulting low labour productivity in turn precludes

¹⁴ R. Rothstein: Setting the Standard. International Labor Rights and U.S. Trade Policy, Briefing Paper, Economic Policy Institute, Washington, D.C., 1993, pp. 1 f.; K. Hickey: Connecting Trade and International Labor Standards: Denial of Worker Rights as an Unfair Trade Practice, in: Law and Inequality, Vol. 6, Nos. 2/3 (1988), p. 151.

¹⁵ A. Amsden: Macro-Sweating Policies and Labour Standards, in: W. Sengenberger and D. Campbell (eds.), op. cit., p. 187; A. Singh: Southern Competition, Labor Standards and Industrial Development in the North and South, in: U.S. Department of Labor, Bureau of International Labor Affairs (ed.), op. cit., 1990, pp. 254 f.

¹⁶ R. Marshall: The Importance of International Labour Standards in a More Competitive Global Economy, in: W. Sengenberger and D. Campbell (eds.), op. cit., pp. 72 f.

Hans-Georg Ehrhart/Anna Kreikemeyer/Andrei V. Zagorski (Eds.)

Crisis Management in the CIS: Whither Russia?

Political and social instability on the territory of the former Soviet Union is aggravated by violent conflicts. In these Russia is playing a central role. Due to its potentials it is in a structurally hegemonial position while being itself deeply involved in a long-term process of internal change. At the same time Russia is striving for a reintegration within the framework of the Commonwealth of Independent States (CIS) and is also engaged in armed conflicts in the "near abroad". On the one hand, the West is interested in the integration of Russia and in the containment or the resolution of these conflicts within collective security systems. On the other hand, it is restraining itself from becoming more engaged in the CIS.

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raising wages. In such a situation, social standards could increase interest in measures to raise productivity by changing the structure of incentives for firms and workers. For firms, they would make the extensive use of labour less attractive; for workers, they would make it more rewarding to strive for the success of the firm. If, for example, a strategy of "flexible specialisation" is to succeed, certain preconditions must be met which ensure that workers can earn better wages, show themselves to be co-operative and acquire professional qualifications. Social standards could help create those preconditions.¹⁷

The neo-classicists doubt whether a minimum wage could eradicate the sweatshop system; they consider it more likely that a minimum wage above the market-clearing price would lead to unemployment. If the efficiency wage argument applied, firms would voluntarily make it the basis of their system of remuneration. The strategy of "flexible specialisation" therefore requires no special regulation. The resolution of the classical tension between a system of incentives and productivity on the one hand and the impermissible withdrawal of labour and free-loading on the other therefore depends, in their view, mainly on the production technique, preferences as between work and leisure, risk and the employment regime, including the prevailing ideology (i.e. worker morale).¹⁸ It has to be asked, however, whether these latter factors are not precisely those conditions which the neo-institutionalists consider necessary for the strategy of "flexible specialisation" and which have to be set politically.

Overcoming "Cut-throat Competition"?

The "soft" objections to social standards rest ultimately on the argument that social standards that push wages above the market-clearing price threaten the competitiveness of firms. This threat to competitiveness, however, is the very reason why social standards have to be negotiated internationally. As long as it is possible for an economic region to gain a competitive advantage by undercutting the social standards in other regions, these other regions

are in danger of losing market share and hence employment opportunities. The greater the similarity between the competing regions as regards factor endowment and market position, the more acute is the danger. It will be particularly high if market success depends on a single factor, namely low-skilled labour. In such a case, the danger from lower standards cannot be offset by other factors. This situation is particularly true of developing countries, which face the constant risk that new regions with an even larger reservoir of cheap labour will break into the world market. For these reasons, developing countries cannot raise their social standards in isolation but only in conjunction with other countries by multilateral agreement.¹⁹

Social Standards to Protect Domestic Industry?

Although the international debate focuses on social standards in developing countries, the real motivation of most advocates of social standards stems from concern to maintain the working and living conditions achieved in the industrial countries. They point out that for some years now producers in OECD countries have encountered increasing competition from firms producing in countries with far lower wages, social benefits, rights of co-determination and environmental requirements. If productivity were more or less equal, this competition would drive industry to the wall in the existing industrial countries. If this occurred more rapidly than the structural shift towards higher-value products and services, as they fear, the existing level of social standards in the OECD countries would come under great pressure. The former US Labour Secretary Ray Marshall summarised this argument particularly succinctly when he stated that "bad standards tend to drive out good standards".²⁰

The critics of social standards contest the view that wage levels and workers' conditions are threatened by imports from regions with lower standards and that the standards achieved are worth protecting, as they stand in the way of increases in efficiency. They accuse the advocates of social standards of diverting attention from the real structural causes of competitive problems in the industrial countries and blinding the public to the advantages and welfare effects of international trade.

¹⁷ M. Piore, op. cit., 1994; M. Piore: Labor Standards and Business Strategies, in: U.S. Department of Labor, Bureau of International Labor Affairs (ed.), op. cit., 1990, pp. 35-49. See also the article by S. Herzenberg and J. F. Perez-Lopez, in: U.S. Department of Labor, Bureau of International Labor Affairs, (ed.), op. cit., 1990.

¹⁸ T. Srinivasan, op. cit., pp. 68-69.

¹⁹ L. Emmerij: Contemporary Challenges for Labor Standards Resulting from Globalization, in: W. Sengenberger and D. Campbell (eds.), op. cit., pp. 319-328, here p. 323. See also G. Edgren: Fair Labour Standards and Trade Liberalization, in: International Labour Review, Vol. 188, No. 5 (1979), pp. 523-535.

²⁰ R. Marshall, op. cit., p. 72.

Does Foreign Trade Undermine Working Conditions?

The critics of international labour standards generally cite the classical theory of comparative cost advantages. From this viewpoint, a welfare gain generally stems from trade between unequal economic areas, each specialising according to its particular comparative advantage. Specialisation increases the efficiency of production, which benefits all market participants.²¹

Objections to this classical theory have been raised on theoretical grounds for some time (see above), but it was not until incontrovertible empirical evidence emerged from the USA that the advocates of free trade had difficulty justifying their stance. It was found that real wages in the USA fell (by 7.8% between 1980 and 1990) at the same time as the US economy was becoming more open.²² The decline in the real wages of low skilled workers was particularly

pronounced (16.9%). Only in the upper third of the wage scale did real wages rise marginally during the eighties (by 1.1%).²³ These parallel developments force one to surmise that the increase in efficiency due to foreign trade and direct investment abroad did not lead to a rise in domestic wages.²⁴

This divergence in wage income distribution corresponds to the Stolper-Samuelson theorem, which states that the dismantling of trade barriers leads to an equalisation of factor prices in the countries involved. The income of the relatively scarce production factor will fall, as it becomes less scarce as a result of trade. Applied to trade between industrial and developing countries, this theorem leads one to expect that the pay of low-skilled workers in industrial countries will approach the level obtaining in developing countries. Studies carried out by George Borjas of the National Bureau of Economic Research in conjunction with various other labour market economists show that foreign competition contributed both to the decline in average real wages and to a further widening of wage income differentials

²¹ G. Hufbauer: The Free Trade Debate. Reports of the Twentieth Century Fund Task Force on the Future of American Trade Policy, New York 1989.

²² C. Juhn and K. Murphy: Inequality in Labor Market Outcomes: Contrasting the 1980s and Earlier Decades, in: Economic Policy Review, Vol. 1, No. 1 (1995), p. 27.

²³ Ibid.

²⁴ R. Marshall, op. cit., p. 67.

Wassilios Skouris (Ed.)

Advertising and Constitutional Rights in Europe

A study in comparative constitutional law

In view of the major economic and political importance of advertising, a comparative study on the constitutional parameters of this activity is long overdue. It has been undertaken for the first time by a group of Professors of Public Law from the Member States of the European Union who have each carried out a detailed and systematic account of the protection of advertising in the light of fundamental rights as guaranteed in their own legal systems. The various and disparate restrictions imposed on advertising in each Member State constitute the central point of the study. The national reports along with a report on the European Convention on Human Rights provide the basis for a comparative analysis, which reveals both common and divergent features among the various countries as far as the constitutional protection of commercial speech is concerned. This comparative analysis is arguably the first of its type.

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between low-skilled and high-skilled workers. Borjas and his colleagues ascribe this effect to imports from both developing and industrial countries.²⁵

Professor Jagdish Bhagwati of Columbia University firmly rejects both Borjas' diagnosis of the trade effects and the empirical validity of the Stolper-Samuelson theorem. This stance is surprising, as Stolper-Samuelson is regarded as being derived from the law of the equalisation of international factor prices as a result of foreign trade and, alongside the Heckscher-Ohlin principle, as one of the four central tenets of the "pure theory of international trade".²⁶ Bhagwati even contributed to the development of the neo-factor proportions theorem.²⁷ Today he believes that foreign trade cannot have contributed to widening wage differentials, as "we know that during the 1980s, the unionized sectors in the United States, especially autos and steel, were politically powerful enough to shield themselves greatly through anti-dumping actions, VERs, and OMAs (orderly marketing agreements) from the effects of foreign competition".²⁸

While it is true that the trade unions were able to win protectionist measures for these industries, they were not by any means given complete protection. The study by Borjas and Ramey shows that these very industries, which had a high proportion of semi-skilled workers and paid them above-average wages, suffered a large reduction in real wages and heavy job losses.²⁹ The decline of the US trade unions is seen by some authors as the main reason for the downward trend in the real wages of unskilled and semi-skilled workers.³⁰ This decline can, in turn, be interpreted as

a consequence of the internationalisation of the US economy.³¹ Bhagwati himself admits that increasing capital mobility is strengthening firms' negotiating position vis-à-vis their employees.³²

The Harvard economist Robert Lawrence develops an equally unconvincing argument against the empirical validity of the Stolper-Samuelson theorem. If the widening of wage differentials is due to competition from developing countries, according to Lawrence the prices of manufactured goods with a high content of low-skilled labour would have to fall relative to those of "high-skill" manufactured goods, but this did not happen.³³ David Brauer and Susan Hickock of the Federal Reserve Bank of New York confirm this lack of evidence, but add that the prices of both types of manufactured goods fell in relation to the rest of the US economy.³⁴ This accords with Borjas' thesis that competition from developing and industrial countries had an adverse effect on prices and wages in manufacturing industry. Prices are also affected by factors other than wages, such as productivity. According to Brauer and Hickock, productivity gains were greater in high-skill industries than in low-skill industries, so that for that reason alone the prices of goods produced by low-skill industries could not be expected to fall against those of goods produced by high-skill industries.³⁵

Lawrence puts forward yet another argument against Stolper-Samuelson: employment in manufacturing industry accounts for too small a share of total employment to explain the decline in wages in the economy as a whole.³⁶ According to calculations by the Harvard economists Jeffrey Sachs and Howard Shatz, trade with developing countries caused employment in US manufacturing industry to contract by 5.7% between 1978 and 1990, as a result of which the total number of employed workers declined by only just over 1%.³⁷ However, the increasing

²⁵ G. Borjas and V. Ramey: Foreign Competition, Market Power, and Wage Inequality: Theory and Evidence, National Bureau of Economic Research Working Paper No. 4556, 1993; G. Borjas, R. Freeman and L. Katz: On the Labor Market Impacts of Immigration and Trade, in: G. Borjas and R. Freeman (eds.): Immigration and the Work Force: Economic Consequences for the United States and Source Areas, Chicago 1992, pp. 213-244; D. Brauer and S. Hickock: Explaining the Growing Inequality in Wages across Skill Levels, in: Economic Policy Review, Vol. 1, No. 1 (1995).

²⁶ W. Ethier: Some of the Theorems of International Trade with many Goods and Factors, in: Journal of International Economics, 1974, pp. 199-206.

²⁷ R. Bharawaj and J. Bhagwati: Human Capital and the Pattern of Foreign Trade: The Indian Case, in: The Indian Economic Journal, NS2, 1967, pp. 117-142.

²⁸ J. Bhagwati, op. cit., p. 45.

²⁹ See G. Borjas and V. Ramey, op. cit.

³⁰ R. Freeman: How Much has De-Unionization Contributed to the Rise in Male Earnings Inequality?, in: S. Danziger and P. Gottschalk (eds.): Uneven Tides: Rising Inequality in America, New York 1992; M. Blackburn, D. Bloom and R. Freeman: The Declining Economic Position of Less-Skilled American Men, in: G. Burtless (ed.): A Future of Lousy Jobs? The Changing Structure of U.S. Wages, Washington, D.C., 1990.

³¹ C. Scherrer: US-Gewerkschaften: Gefangene des Nachkriegs-kompromisses, in: T. Evers (ed.): U.S.A., Innenansicht einer Großmacht, Hofgeismar, pp. 25-35.

³² J. Bhagwati, op. cit., p. 46.

³³ R. Lawrence and M. Slaughter: Trade and U.S. Wages: Great Sucking Sound or Small Hiccup?, in: Brookings Papers on Economic Activity: Microeconomics, No. 2, 1993, pp. 115-180.

³⁴ D. Brauer and S. Hickock, op. cit., p. 65.

³⁵ Ibid.

³⁶ R. Lawrence: U.S. Wage Trends in the 1980s: The Role of International Factors, in: Economic Policy Review, Vol. 1, No. 1 (1995), pp. 18 f.

³⁷ J. Sachs and H. Shatz: Trade and Jobs in U.S. Manufacturing, in: Brookings Papers on Economic Activity, No. 1, 1994.

competitive problems in the unionised branches of manufacturing industry were a significant factor in the weakening of the bargaining power of wage-earners in other branches.³⁸

Overall, the opponents of social standards cannot convincingly refute the claim that the internationalisation of the US economy had adverse effects on real wages in the USA, especially those of semi-skilled and unskilled workers. Bhagwati himself unintentionally emphasises the extent to which concern about trade-induced real wage losses is justified when he points out that workers in some branches were able to maintain their wage level by means of protectionist measures.

Trade Agreements as a Means of Enforcing Minimum Standards

Even if international social standards are considered necessary, the question arises whether they should be included in trade agreements or continue to be agreed on a consensual basis under the auspices of the ILO. There are essentially two arguments for incorporating ILO agreements in trade treaties. The first is that the ILO monitoring arrangements are not adequate to ensure enforcement of the conventions; over the long term, the moral weight of the ILO's efforts at persuasion is essential, but as long as there is no central body to regulate the world market, social clauses will be the only way to ensure compliance with the standard.³⁹

Secondly, it is argued that the adoption and implementation of ILO conventions has slowed down markedly in the last decade. The proportion of conventions ratified by export-oriented developing

countries is particularly low, so that the ILO conventions apply to a shrinking circle of participants in the world market. These countries could be brought within the ILO system by adopting social clauses in agreements reached through the new World Trade Organisation.⁴⁰

Violation of National Sovereignty?

The central objection to social clauses in trade agreements is generally that they violate the sovereignty of nation states by prescribing their social policy.⁴¹ Advocates maintain, however, that the economic sovereignty of even the major industrial countries is being increasingly undermined, as international competitive pressure and especially capital mobility are setting the parameters of national policy.⁴²

The erosion of national sovereignty in this manner is positively welcomed by authors of the free trade persuasion in the name of welfare-increasing efficiency.⁴³ They differentiate between this form of the phenomenon, which affects all trading nations equally and leaves national governments free to decide how they should react, and the political curtailment of sovereignty by social clauses. It is argued that if social clauses were introduced, the OECD countries would use their political and economic strength to impose their social policy on other countries by means of trade agreements, and not through the market process.⁴⁴

Against this charge of neo-imperialism, it is inadequate to argue, as does Ray Marshall, that it is precisely the countries that permit the greatest exploitation (in other words, primarily the industrialising countries) that set the standards for the rest of the world.⁴⁵ First, the argument is too sweeping, because market success does not depend solely on the degree of exploitation.⁴⁶ Secondly, around 80% of world trade is transacted among the OECD countries. The steady deregulation of social conditions in OECD countries in recent years is more a consequence of fiercer competition among themselves than the result of competition from production locations in the industrialising countries. The social standards directly threatened by the exploitative practices of a few countries are to be found mainly in those industrialising countries competing with one another in the same market segment.⁴⁷

Thirdly, Marshall's argument begs the question whether it is permissible for a country to use its economic and political weight to safeguard its own standards. The controversial nature of this question

³⁸ B. L  thje: Telekommunikation, in: C.-L. Holtfrerich (ed.): *Wirtschaft USA*, Munich, pp. 353-360; C. Scherrer: *Verkehrswirtschaft*, in: C.-L. Holtfrerich (ed.), op. cit., pp. 327-352.

³⁹ T. R. Donohue: *Workers' Rights in the Global Village: Observations of an American Trade Unionist*, in: W. Sengenberger and D. Campbell (eds.), op. cit., pp. 195-204; R. Marshall: *Trade-Linked Labor Standards*, in: *Proceedings of the Academy of Political Science*, Vol. 37, No. 4 (1990), pp. 67-78.

⁴⁰ R. Marshall, op. cit. 1990, pp. 67-78; W. Sengenberger: *Internationalisierung der Wirtschaft und weltweite Arbeits- und Sozialstandards - ein   berblick*, in: *Die Mitbestimmung*, May 1994, pp. 11-14.

⁴¹ F. P. Doyle, op. cit., and L. Emmerij, op. cit.

⁴² D. Jessup, op. cit., pp. 5-9.

⁴³ See K. Ohmae: *The Borderless World*, New York 1990.

⁴⁴ J. Bhagwati, op. cit., p. 60.

⁴⁵ R. Marshall, op. cit., 1994, p. 72.

⁴⁶ See M. E. Porter: *The Competitive Advantage of Nations*, New York 1990.

⁴⁷ A. Singh, op. cit., p. 251.

cannot be defused by minimising the power-play dimension of social clauses. The long-standing advocate of social clauses, Steve Charnovitz, concedes that there is a paternalistic element to social and environmental clauses but believes that they do not force trading partners to change their practices but only to create the conditions in which voluntary exchanges can take place.⁴⁸ Access to the markets of the OECD is essential to a country's industrial development, however. These countries therefore have no alternative but to bow to the dictates of the stronger industrial countries.⁴⁹

Advocates of social clauses must therefore ask themselves in what circumstances it is justified to wrest changes in national employment and social policy from the reluctant governments of the non-OECD world at the negotiating table. Usually, such action can be regarded as legitimate only if it does not serve individual purposes, such as the protection of the domestic economy, but is taken in the name of supposedly universal rights. As the debate on the Western understanding of human rights shows, every claim to universal validity is problematic, however well it is justified by reference to a religious commandment, reason, natural justice or tradition. In fact, only that which is almost universally recognised can have universal validity ("almost" is an adequate requirement, for where there is total unanimity there is no longer need for discussion).⁵⁰

Some authors now claim that the ILO standards they would like to see incorporated in social clauses satisfy this requirement of universal recognition. First, all GATT member countries are also members of the ILO, even those that have not ratified a single ILO convention.⁵¹ Secondly, a great many countries have undertaken to comply with at least one of the ILO conventions.⁵² Thirdly, even in countries whose governments reject social clauses, worker representatives independent of government (insofar as they are permitted by the state) also demand social clauses.⁵³

The most prominent academic proponent of free trade, Jagdish Bhagwati, denies that the ILO standards have the status of universal human rights, as violations of employment standards occur even in the USA.⁵⁴ According to that logic, there could be no universal human rights at all, as Amnesty International has reported offences against traditional human rights in the USA and other OECD countries.

If the use of political and economic power in enforcing social clauses in the name of universal rights is justified, there are nevertheless restrictions on the scope of the social clauses and the manner of their enforcement. Only those standards and rights that already enjoy a high level of acceptance can be included in the catalogue of demands for social clauses. The demand for a worldwide minimum wage does not meet that requirement⁵⁵ and the unilateral enforcement of social standards cannot be justified on those grounds. Only if demands for minimum standards are tabled in the course of multilateral negotiations can the claim of universal validity be made on their behalf.⁵⁶

In confronting the disparity in power between the OECD countries and the rest of the world, it should not be overlooked that there is a further power axis as far as social clauses are concerned. Charnovitz rightly points out that in negotiations on minimum standards the governments of the industrialising countries can count on strong allies in the industrial countries, namely employers' associations.⁵⁷ Even if negotiations between national representatives on social clauses open up a North-South divide, the true political tension stems from the clash of interests between capital and labour.⁵⁸

Contrary to the Tradition of the World Trading System?

Social clauses continue to be rejected on the grounds that linkage between social standards and trade agreements runs counter to the tradition of multilateral negotiating rounds. It is argued that trade barriers were successfully dismantled because trade issues had been decoupled from other political

⁴⁸ S. Charnovitz, *op. cit.*

⁴⁹ C. Yeutter: A View from a Former Trade Representative, in: U.S. Department of Labor, Bureau of International Labor Affairs (ed.), *op. cit.*, 1994, pp. 51-53.

⁵⁰ See E. Laclau: Universalism, Particularism, and the Question of Identity, in: *October*, No. 61 (Summer 1992), pp. 83-90.

⁵¹ S. Charnovitz: Promoting Higher Labor Standards, in: *The Washington Quarterly*, Vol. 18, No. 3 (1995), p. 171.

⁵² K. Hickey, *op. cit.*, p. 149.

⁵³ T. R. Donahue, *op. cit.*; D. Jessup, *op. cit.*, pp. 5-9.

⁵⁴ T. R. Donahue, *op. cit.*, pp. 195-204; T. N. Srinivasan: International Labor Standards Once Again!, in: U.S. Department of Labor, Bureau of International Labor Affairs (ed.), *op. cit.*, 1994, pp. 34-39.

⁵⁵ T. R. Donahue, *op. cit.*, p. 200.

⁵⁶ G. Edgren, *op. cit.*

⁵⁷ S. Charnovitz, *op. cit.*, 1995, p. 184.

⁵⁸ D. Jessup, *op. cit.*, p. 10.

objectives.⁵⁹ Three precedents are cited against this argument:

1. Article XX(e) of the General Agreement on Tariffs and Trade (GATT), which permits trade protection measures against products produced by forced labour;
2. the social clauses already contained in regional trade agreements (NAFTA, CBI, EU) and national legislation (the Generalised Systems of Preferences in the USA and the EU, Section 301 of the US Trade Act);
3. the protection for Trade-Related Intellectual Property Rights (TRIPS) agreed in the Uruguay Round. The industrialising countries initially rejected the handling of intellectual property under the GATT, as they maintained that it had no clear product characteristics and should therefore be dealt with in the World Intellectual Property Organisation (WIPO), a UN agency (the same argument as is applied to workers' rights and the ILO). However, they finally bowed to pressure from the OECD countries. The agreed clauses on TRIPS require them to make far-reaching amendments to legislation and to establish costly monitoring mechanisms.⁶⁰

Bhagwati does not accept any of these precedents.

On the first point he objects that political compromises from the immediate post-war period cannot serve as a precedent. Indeed, he suggests that these agreements should be examined to establish whether they are still valid. With specific reference to Article XX(e), he argues that it is not forced labour as such but the circumstances in which the prisoners work that should be the subject of trade measures.⁶¹ On this point he could find support from the ILO, as the ILO convention on forced labour makes precisely that distinction.⁶²

Bhagwati attempts to devalue the second group of precedents by pointing out that they are unilateral or bilateral trade measures and as such are of no consequence for multilateral negotiations. In his view, the US Trade Act of 1988 and the system of tariff preferences for developing countries are unilateral measures which give no greater legitimacy to international agreements than laws passed by other countries for their territory. NAFTA is another example

⁵⁹ J. Bhagwati, *op. cit.*, p. 60.

⁶⁰ C. Yeutter, *op. cit.*, T. R. Donahue, *op. cit.*, and D. Jessup, *op. cit.*

⁶¹ J. Bhagwati, *op. cit.*, p. 57.

⁶² W. Adamy: *International Trade and Social Standards*, in: *INTERECONOMICS*, No. 6, 1994, pp. 269-277.

Hans-Eckart Scharrer (ed.)

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of an agreement between highly unequal partners. Canada and Mexico had no choice but to accede to the wishes of the USA to conclude side agreements on workers' rights and environmental protection.⁶³

Bhagwati's refutation of the third type of precedent – the protection of intellectual property – deserves to be quoted verbatim, as his treatment of this case takes on especial importance:

"Rules about intellectual property protection ... do have some essential trade aspects: the transfer and diffusion of technology, and payments for the same, across countries can be legitimately viewed as international trade in technology, whereas no such case can be made for 'labor standards'".⁶⁴

David Jessup, Director of the American Institute for Free Labor Development, rejects this distinction between workers' rights and intellectual property rights. He explains why the right of workers to form trade unions and engage in collective bargaining is as closely related to trade as patent rights:

"Workers also contribute to part of a product's value: When unscrupulous employers rob workers of their right to organize and bargain collectively ... they are able to sell the product at a lower price, thereby gaining an unfair competitive advantage over employers who respect workers' rights. Workers in both companies are harmed by this unfair trading practice, as is the employer who obeys the law."⁶⁵

The parallels that Jessup draws convincingly establish workers' rights as trade-related. Nevertheless one difference remains: it is possible to trade in patents and copyrights, but (thankfully?) not in workers' rights. TRIPS therefore do not represent a precedent which is identical with workers' rights.

The argument of the critics of social clauses that they run counter to the tradition of multilateral rounds of negotiations can therefore not be refuted. Up to now, the international trading system has concentrated on protecting the owners of tradable goods, but not the producers of those goods. A place for workers' rights still has to be won. Nevertheless, it can be pointed out that the scope of GATT negotiations has been widened from one round to the next according to economic and political imperatives. If today the changed conditions in world markets and a new political awareness placed the issues of the

environment and workers' rights on the agenda, the treatment of these subjects would accord precisely with the tradition of multilateral trade agreements to tackle new challenges as they arise.⁶⁶ The precedent would therefore lie in the pragmatic widening of the subject matter and not in the subjects that have been handled in the past.

Overburdening the Negotiating Process?

A frequent argument against social clauses is that they represent an additional hurdle in the conclusion of multilateral agreements on the dismantling of trade barriers. It is claimed that taking account of this controversial demand would jeopardise the success of already highly complex and delicate negotiations. Moreover, for the WTO to take over responsibility for ILO tasks would run counter to the existing principle of specialisation in the political handling of international problems. Specialised organisations were established for particular problem areas in the international community of nations and have acquired the necessary powers and instruments in their respective spheres. If they were given functions outside their existing fields of competence, they would not be able to perform them efficiently.⁶⁷

Charnovitz rejects both the specialisation argument and the claim that social clauses are an unnecessary extra hurdle for multilateral trade agreements. He argues that the WTO would have great difficulty performing its true function of regulating trade relations and promoting the dismantling of remaining trade barriers if it ignored subjects such as workers' rights and environmental protection, which have a high profile in public opinion. Moreover, where trade in foodstuffs was concerned, the UN Codex Alimentarius Commission would lay down the standards that the WTO would have to police. This arrangement would be exactly the same as has been proposed for the WTO and the ILO with regard to social clauses.⁶⁸

The fear that the demand for social clauses could open the door for protectionism⁶⁹ has more substance than the claim that it overburdens the negotiating process. Advocates of social clauses stress that they

⁶³ J. Bhagwati, *op. cit.*, pp. 57 and 58.

⁶⁴ *Ibid.*

⁶⁵ D. Jessup, *op. cit.*, p. 9.

⁶⁶ M. Kantor: *The Perspectives of the U.S. Trade Representative*, in: U.S. Department of Labor, Bureau of International Labor Affairs (ed.), *op. cit.*, 1994, p. 15.

⁶⁷ T.N. Srinivasan, *op. cit.*, 1994, p. 35.

⁶⁸ S. Charnovitz, *op. cit.*, 1995, p. 180; and C. Yeutter, *op. cit.*, p. 55.

⁶⁹ P. Krugman, *op. cit.*, p. 121.

reject protectionism, that they do not want social clauses to have protectionist overtones and that in fact social clauses serve to cut the ground from under protectionist demands. In the USA, however, the advocates are recruited mainly from the trade unions, the majority of which have pleaded the case for restricting access to the US market since the end of the sixties.⁷⁰ They therefore lack credibility. Even if they seemed credible, however, there would be a danger that the debate about social clauses would mobilise protectionists. For that reason international trade union organisations point to the need for social clauses to be negotiated multilaterally. In contrast to unilateral measures, action that took account of the interests of all trading partners would prevent protectionist excesses.⁷¹

Conclusion

The international debate about the justification for social standards and social clauses can therefore be summarised under five headings:

1. In the academic debate, the arguments of advocates of internationally binding social standards are based on a neo-institutional view of the market mechanism, while those of their critics stem from a neo-classical approach. If criticism on purely ideological grounds is to be avoided, it is necessary to challenge these approaches on their own grounds. It can be demonstrated first that central assumptions of the neo-classical critics' trade theory are no longer valid, particularly the assumption of factor immobility. Secondly, on the question of the optimum international level of regulation their reasoning is circular, declaring the market to be the mechanism for determining the regulatory scope of the market. Moreover, the trading nations have long ago decided to lower barriers to international trade by negotiation, i.e. through GATT. For that reason it cannot be argued that the optimum level of regulation can be decided solely by the market.

2. In the development policy debate, minimum standards are rejected from the neo-classical standpoint because every increase in labour costs endangers the comparative advantage of the industrialising countries. This objection is, however, simultaneously the decisive argument for having international social standards, for only if workers'

fundamental rights are taken out of the competitive arena by international agreement is it possible to ensure that producers who respect those rights are not put at a competitive disadvantage. There is no need to fear a decline in the overall demand for goods from the developing countries, as their long-term growth depends primarily on the level of training of their workers and on transfers of technology. It is often only higher wages that permit the development of "human capital". International standards can therefore plausibly be justified in terms of development theory.

3. The Stolper-Samuelson theorem of the classic trade theory suggests that trade between industrial and developing countries will cause the pay of low-skilled workers in industrial countries to approach the level of developing countries. In contradiction to their theoretical arguments, neo-classically inclined critics of minimum standards dispute the empirical validity of this theorem, but studies carried out in the USA show that foreign competition contributes both to the decline in average real wages and to the widening of the income differential between low and high skilled workers. The largest contribution to real wage losses comes from competition from OECD countries. For that reason, the proposed social clauses are an inadequate way of protecting low-skilled workers in the OECD.

4. The use of political and economic power to enforce social clauses can be justified only in the name of universal rights. It follows that demands for social clauses should relate only to those standards and rights which already enjoy a high level of acceptance, in other words can claim almost universal application through the "normative power of the *fait accompli*". Hence, claims for universal validity can be made on behalf of social clauses only if they are agreed in multilateral negotiations and not enforced unilaterally. The procedure for negotiating social clauses foreseen by the international trade union movement and the proposed content of such social clauses meet these criteria.

5. One of the arguments against social clauses is that they overburden the multinational negotiating machinery of the GATT. However, a trading system will lose legitimacy if it ignores issues that interest public opinion. More serious is the fear that the demand for social clauses could open the door to protectionism. These reservations can be overcome if social clauses are negotiated multilaterally. Protectionist excesses can be prevented by taking account of the interests of all trading partners.

⁷⁰ S. J. Silvia: Protektionismus und amerikanische Gewerkschaften, in: Gewerkschaftliche Monatshefte, No. 11, 1992, pp. 707-716.

⁷¹ G. Edgren, op. cit.