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## **TRADE AND LABOUR STANDARDS**

*This report will be presented at the meeting of the Employment, Labour and Social Affairs Committee and the Trade Committee of 12-13 February 1996.*

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## EXECUTIVE SUMMARY

i. Since the end of the Uruguay Round, the issue of trade and labour standards has come to the forefront of the policy agenda. Concern has been expressed about the risk of "unfair" trade practices associated with competition from firms that allegedly base their comparative advantage on low labour standards. The protracted rise in unemployment and wage inequalities in many OECD countries has exacerbated sensitivity to any perceived "unfair" trade practices. This concern is challenged by those who claim that differences in labour standards do not have any significant impact on trade flows or foreign direct investment and that trade between high-standards' and low-standards' countries is not a significant cause of unemployment or growing wage inequality in the OECD area.

ii. Besides the issue of "unfair" trade practices, the debate has focused on the human rights' dimension of certain labour standards. There is widespread agreement that certain labour standards embody basic human rights and that all countries in the world should therefore adhere to these standards. However, there are significant differences of opinion on how such labour standards can be promoted. Some take the view that the international community should exert pressure on those countries that do not observe these standards, with the possibility of trade sanctions as a last resort. Others remain unconvinced that new international promotion mechanisms are required, in addition to those available in the International Labour Organisation (ILO), and fear that the defence of human rights would be captured by protectionist interests. More fundamentally, the issue arises as to whether economic development (associated, for example, with trade liberalisation) will gradually improve labour standards, or whether additional actions (for example, through the imposition of conditionality criteria in international trade agreements) are needed, on the condition that they would not reduce general welfare.

iii. In June 1994, Ministers invited the OECD Secretariat to undertake an analysis of "areas where further progress with liberalisation and the strengthening of the multilateral system may be required". These areas included "trade, employment and internationally recognised labour standards, including basic concepts, empirical evidence in trade and investment patterns, and current mechanisms for promoting higher labour standards world-wide". The mandate was reiterated in May 1995. Responding to this mandate, the Trade Committee and the Employment, Labour and Social Affairs Committee began jointly an analytical programme to examine these issues, in close co-operation with other relevant OECD Directorates as well as other international organisations, in particular the ILO. The attached study is the result of this exercise. Its purpose is to shed some light on the analytical aspects of this issue, while also evaluating different mechanisms to promote core labour standards world-wide.

### **Selection of core labour standards and their implementation**

iv. The debate has been blurred by the use of different definitions for the kind of labour standards that are at stake. Part I of the study identifies a small set of labour standards, termed "core" for the purposes of the study, which are widely recognised to be of particular importance: elimination of child labour exploitation, prohibition of forced labour, freedom of association, the right to organise and bargain collectively and non-discrimination in employment.

v. The choice of these labour standards is based primarily on the fact that they embody important human rights, as attested by the fact that they can all be directly derived from the Universal Declaration of Human Rights. The universality of these basic labour rights has been highlighted in the conclusions of the recent World Social Summit. In addition, three United Nations acts (the Covenant on Economic, Social and Cultural Rights, the Covenant on Civil and Political Rights and the Convention on the Rights of the Child), which contain relatively detailed provisions on core labour standards, have been ratified by over 120 countries, suggesting that these standards receive near-universal adherence. It is also important to note that all countries who are members of the ILO subscribe to the principles of freedom of association and collective bargaining by virtue of their membership.

vi. Certain ILO Conventions provide for internationally-negotiated definitions of core standards: Conventions 87 and 98 provide detailed provisions on freedom of association, the right to organise and collective bargaining; Conventions 29 and 105 establish the prohibition of all forms of forced labour; and Convention 111 provides for non-discrimination in employment. Although there is general agreement on core standards, i.e. the underlying principles behind these conventions, the study suggests that certain provisions of some of these conventions or their interpretation may find themselves at variance with national laws or regulations, thereby providing one explanation why so few ILO member countries have ratified all five Conventions in question. Finally, there is no ILO convention that addresses the issue of child labour exploitation as such. Instead, Convention 138 provides for a minimum employment age, while remaining silent on the possibility of non-exploitative forms of child labour.

vii. It is difficult to make a precise assessment of the degree of enforcement of core labour standards across countries, as available information is sparse and incomplete. The lack of reliable indicators of enforcement of standards on child labour, forced labour and non-discrimination is especially acute. Available evidence in this area is mostly anecdotal, making any attempt to analyse the economic implications of these standards problematic. But, on the basis of ILO reports and other sources, the study makes a tentative assessment of the state of freedom-of-association rights in over 70 countries throughout the world. It highlights wide cross-country differences in the degree of enforcement of freedom-of-association rights. There is a weak positive association between the degree of enforcement of these rights and the level of economic development. Finally, there seems to be a trend towards better compliance in low-standards' countries.

### **Links between core labour standards, trade, economic development and employment**

viii. Economic theory, discussed in Part II, suggests that proper implementation of some core labour standards can support economic development, permitting an expansion in trade. Improved enforcement of non-discrimination standards might raise economic efficiency, as the allocation of labour resources moves closer to a free-market situation. Elimination of forced labour and child labour exploitation can also contribute to improve allocative efficiency. Child labour exploitation, moreover, is likely to undermine long-term economic prospects to the extent that it hampers children's education possibilities and degrades their health and welfare. The economic effects of freedom of association and the right to collective bargaining depend on a variety of factors. On the one hand, these rights can help upgrade production processes, while also raising workers' motivation and productivity. On the other hand, they can introduce a new distortion in the market if unionised workers succeed in raising their wages and working conditions above market levels. The net outcome on economic efficiency depends on the relative importance of these two effects.

ix. The empirical analysis presented in Part II refers almost entirely to only two core standards, freedom of association and the right to collective bargaining. This limitation of the analysis is unavoidable

given the lack of data regarding the other core standards and the considerable technical difficulties encountered when trying to link the observance of labour standards with a range of economic outcomes.

x. Notwithstanding these caveats, this analysis suggests that the output effects of greater freedom-of-association and collective bargaining rights are likely to be negligible compared with other factors (shifts in technology, raw-material prices, terms of trade, etc.). More generally, the actual economic effects of core labour standards are likely to be very small.

xi. Part II also analyses the possible relationship between trade flows and core standards. Several points emerge:

- theoretical analysis suggests that, in general, trade improves economic welfare, irrespective of whether or not core standards are observed by all trading partners;
- standard trade models show that patterns of specialisation are likely to be determined by fundamental factors such as relative factor endowments, technology and economies of scale, rather than the degree of enforcement of core standards;
- empirical research suggests that there is no correlation between real-wage growth and the degree of observance of freedom-of-association rights;
- there is no evidence that low-standards' countries enjoy a better export performance than high-standards' countries;
- a detailed analysis of US imports of textile products (for which competition from low-standards' countries is thought to be most intense) suggests that imports from high-standards' countries account for a large share of the US market. Moreover, on average, the price of US imports of textile products does not appear to be associated with the degree of enforcement of child labour standards in exporting countries;
- a few cases have been recorded where governments appear to deny core standards to workers or not enforce them deliberately with the aims of improving sectoral trade competitiveness or attracting investment into export-processing zones (EPZs); the economic gains expected from such a strategy are, however, likely to prove short lived and could be outweighed in the longer term by the economic costs associated with low core standards;
- an analysis of selected trade liberalisation episodes does not prove unambiguously whether trade reforms or freer association rights came first. There is no evidence that freedom-of-association rights worsened in any of the countries that liberalised trade. Nor is it apparent that the promotion of these rights impeded a subsequent trade liberalisation. The strongest finding is that there is a positive and mutually reinforcing two-way relationship between successfully sustained trade reforms and improvements in core standards.

xii. These results imply that developing countries are wrong to fear that core standards would negatively affect their economic performance or their international competitive position; on the contrary, the enforcement of core standards is likely to strengthen the long-term economic performance of all countries.

xiii. The debate on trade and core standards is also motivated by concern that trade between low-standards' countries and high-standards' countries has led to a rise in unemployment, especially for

unskilled workers, and/or growing wage inequality in the latter countries. Part II reviews research that shows that there is little support for this belief. Indeed, there is no compelling evidence that trade with developing countries is a significant cause of higher unemployment and/or lower wages in OECD countries.

### **Mechanisms to promote core labour standards world-wide**

xiv. Part III of the study reviews and evaluates different mechanisms that are currently in use or have been proposed to promote directly or indirectly core labour standards. These mechanisms may take the form of either incentives or disincentives (i.e. sanctions as the most extreme form), which are channelled through government decisions at the multilateral, bilateral or unilateral level, or alternatively, through private actions.

xv. To evaluate the effectiveness of the various mechanisms, one must first identify the problem they are meant to address. Once this is done, the effectiveness of particular promotion mechanisms will depend upon the degree to which they refer to core labour standards, to the broad coverage of these mechanisms in terms of countries and economic agents, to their character (e.g. legally binding vs. voluntary), to their political acceptability and, finally, to their economic and social impacts.

xvi. In cases of systematic violations of basic worker rights by non-democratic regimes, it is up to the international community to decide what should be done. In such situations, the solution lies in political and legislative changes within the countries concerned with a view to ensuring that the effective implementation of these rights becomes an objective of national policy. For example, there are cases in recent history where serious violations of human rights have been sanctioned by the UN system. Trade sanctions and/or consumer boycotts have also been used.

xvii. Relatively few countries systematically deny core labour standards. The more common case is the non-observance of core standards in certain sectors or the inadequate enforcement of national legislation. A variety of promotion mechanisms, both in effect or proposed, have been examined with respect to such cases.

#### *i) Enhancing the role of the ILO*

xviii. The ILO's distinguishing features --its mandate, unique tripartite structure and quasi-universal membership-- make it an appropriate international forum for the promotion of core labour standards. The ILO is the only existing international institution explicitly responsible for defining labour standards. It also provides the only functioning and directly relevant supervisory mechanism. Its monitoring/peer review procedures are specifically aimed at raising the level of standards and ensuring that they are universally recognised and properly implemented.

xix. The special procedure on freedom of association appears to be relatively effective. There is some evidence that governments respond to complaints presented under this procedure. Its effectiveness could be increased if more attention were given to countries where union rights are not fully protected and if important recommendations formulated by the Freedom of Association Committee were given more publicity.

xx. The ILO is currently discussing the idea of establishing procedures to cover discrimination in employment and forced labour, whether of adults or children, similar to the existing special procedure for complaints concerning freedom of association. This proposal seems a useful one to strengthen the ILO procedures but the discussion has not proceeded very far at this stage.

xxi. It would also be desirable to encourage greater ratification of the conventions relating to core standards. Once ratified, ILO Conventions become binding for the Parties and the regular review and complaints procedures are then applicable. One problem is that there exist practical obstacles to ratification, which prevent some countries from ratifying core ILO Conventions, even when their laws and practices are consistent with the principles embodied in these Conventions. The ILO is currently investigating the nature of these obstacles to ratification. The advantage of this solution is that no major overhaul of the existing system would be needed.

xxii. Another problem is that there is presently no mechanism to monitor cases of child labour exploitation. More generally, it would help the debate if the ILO could provide reliable and up-to-date information on the enforcement of core standards, an area where information is presently sparse and incomplete.

xxiii. In sum, the current ILO monitoring system has proven to be reasonably effective, within the limits of its applicability, and could be further strengthened if deemed necessary.

ii) *Actions through other international organisations*

xxiv. Insofar as the non-enforcement of some core labour standards, in particular the prohibition of child labour exploitation, is linked to issues of poverty and economic development, development co-operation programmes can make a positive contribution by addressing the underlying causes. An important advantage of such positive mechanisms over sanctions is that they are less likely to cause economic distortions or generate political frictions. On the contrary, they are more likely to enjoy the support of all concerned countries, including developing ones. However, the direct costs may be higher (i.e. comparing the costs of providing financial aid or technical assistance programmes versus withdrawing trade preferences). In addition, development cooperation programmes cannot address all the causes of non-enforcement of core standards.

xxv. Proposals have also been made to harness WTO disciplines in order to foster core labour standards. Existing WTO provisions have not been designed for promoting core standards. Some of the suggestions under discussion would imply a reinterpretation of WTO procedures while others would require to a greater or lesser extent renegotiation and amendment of WTO articles. Extending the WTO's Trade Policy Review Mechanism procedure to include labour standards would fall in the former category while all other proposals would fall into the latter. As shown in Part II of the report, there are some countries where governments deliberately restrict core standards in certain export sectors or EPZs, with the aim of improving sectoral competitiveness or attracting foreign investment. Trade Policy Reviews might document such practices while also persuading governments that these policies will bring few, if any, economic benefits. In all cases, a consensus among WTO Members on the benefits of using WTO procedures to promote core labour standards and on the institutional changes required would have to be reached; such a consensus does not exist at present.

xxvi. Finally, it has been suggested to make international financial assistance conditional on the respect of core labour rights by borrowing countries. There is no practical experience of such a mechanism. Its effectiveness may, however, be queried. First, it would target only those countries which apply for multilateral loans. Second, it is doubtful that by restricting one important means of improving national welfare, one would stand a better chance of accelerating the improvement of social norms.

iii) *Other mechanisms at national or regional level*

xxvii. Other types of measures include unilateral or plurilateral government actions. Regarding unilateral government actions, the evidence from the U.S. Generalised System of Preferences (GSP) Program suggests that conditioning eligibility for GSP benefits on the respect of core labour standards induced a positive change in the behaviour of some countries. This has prompted the EU to attach a similar set of conditions to its GSP, to become effective as of 1st of January 1998. Both systems refer explicitly to internationally-recognised labour standards, thus enhancing their credibility and ensuring their consistency with other international actions to promote core labour standards.

xxviii. Compared with unilateral measures, making the respect of core labour standards part of regional trade agreements, as in the case of the NAFTA side agreement on labour cooperation, has the advantage that all concerned parties must agree to a preestablished set of norms and a well-defined dispute-settlement mechanism. However, it must be noted that the NAFTA side agreement aims to enhance the enforcement of existing national labour laws, but not to improve such legislation nor ensure that it is consistent with the norms defined in relevant ILO Conventions. It is also far too early to assess the effectiveness of this particular mechanism.

xxix. In sum, the influence of these mechanisms depends not only on the sanctions but also on the review process. In any case their effectiveness is clearly related to the size of the U.S. and EU markets.

iv) *International Standards for the conduct of firms*

xxx. International codes of conduct for firms, such as the ILO Tripartite Declaration and the OECD Guidelines on multinational enterprises (MNEs), can also play an important role. In a globalizing environment, MNEs are a prime vehicle for the transfer of technology, innovation and modern management practices. Nevertheless, the impact of MNEs on the promotion of core labour standards should not be overstated. The most direct effect MNEs can have is on raising the labour standards of their own labour force. MNEs can also exert an indirect influence by requesting that good labour practices be applied by their suppliers and other local partners. Indeed, the variety of existing codes of conduct for firms seems to reflect the increasing importance of business ethics in the regular operation of enterprises. The fact that such codes are voluntary also makes them easier for firms to adopt. However, evidence is still lacking on their effectiveness in promoting core labour standards, and further study is required in order to assess whether such international codes of conduct have had any impact on the enforcement of core labour standards by MNEs in developing countries.

v) *Private-sector mechanisms*

xxxi. In situations where non-enforcement of core labour standards is not necessarily due to poverty, but is an act of individual employers motivated by potential economic benefits, private-party mechanisms can help create counter-incentives, whereby the respect of core labour standards and not their denial, is economically rewarded. These mechanisms take various forms:

- Ethical standards for firms have been used in the past, in particular with the aim of eliminating apartheid in South Africa. Though these private-sector codes of conduct have had certain effects, in particular with respect to the operations of large MNEs, they have not been specifically directed to the set of core labour standards under consideration. In addition they have two weaknesses: i) since they are voluntary, firms are free not to follow them; and ii) they are not subject to satisfactory review procedures.

- Another mechanism consists in persuading consumers to base their purchases not only on price but also on moral principles. This may take the form of boycotts of products which can be connected with non-observance of core labour standards. The effectiveness of these mechanisms is variable and uncertain, since they depend on widespread consumer acceptance. In addition, boycotts can have an impact on trade and run the risk of being manipulated to suit narrow domestic interests.
- “Social labelling” of products allows consumers to buy goods that meet certain criteria deemed to be socially desirable. One current example is the “Rugmark” label aimed at avoiding child exploitation in carpet manufacturing. The advantages of such a mechanism are that it takes the form of an incentive rather than a sanction and that it requires the co-operation of both manufacturers and importers. This enhances its effectiveness. But, as in the case of all labelling programmes, care must be taken that the criteria for attribution are properly defined and monitored. It is unlikely that social labelling could deal with all cases of low core standards.
- “Socially-responsible investment schemes” aim to promote firms which implement high standards of social policies. Investment fund managers either screen and select such firms for their funds or reject those firms which violate the set criteria. These schemes have, so far, been run on a limited scale and therefore their economic (and social) impact is difficult to gauge. In any case, they generally target only one or two core labour standards, such as freedom of association and child exploitation, and, by their very nature, impact only on those countries in which firms listed on the Stock Exchange operate or invest.

xxxii. In sum, such private codes and mechanisms can help in certain specific cases, particularly if they reinforce other more broadly based mechanisms, but they are unlikely to provide a general solution.

*vi) Conclusion*

xxxiii. Combining the range of situations and objectives outlined above with a variety of existing or potential promotion mechanisms clearly highlights the multifaceted nature of the problem. In particular, all the mechanisms reviewed in the study can potentially address at least one of the reasons for non-enforcement of core labour standards. However, none of them can solve all problems at the same time.

## INTRODUCTION

1. The issue of trade and labour standards is not a new one. It first arose in the 19th century when concern was expressed about the risk of "unfair" trade associated with competition from firms producing under socially-unacceptable practices [Follows (1951)]. In fact, this concern was one of the motivations behind the creation of the International Labour Organisation (ILO) in 1919. More recently, the protracted rise in unemployment in many OECD countries has exacerbated sensitivity to any perceived "unfair" trade practices. It is thus sometimes argued that competition with low labour standards' countries distorts trade flows, entailing job losses in countries with high standards. This view is challenged by those who claim that differences in labour standards do not have any significant impact on trade flows and foreign direct investment patterns, and that, consequently, trade between the North (equated to high-standards' countries) and the South (equated to low-standards' countries) is not a significant cause of unemployment in the OECD area.

2. In addition to concerns about "unfair" trade, the issue is also strongly motivated by a concern with human rights. It is argued that some labour standards reflect basic human rights which should be observed in all countries, independently of their levels of economic development and socio-cultural traditions. The universality of these basic labour rights is highlighted in the conclusions of the recent World Social Summit in Copenhagen. Attention then focuses on the choice of the most appropriate mechanisms to ensure world-wide enforcement of these basic rights. Trade sanctions (or the threat of them) are sometimes advocated as a mechanism of last resort to achieve observance of these basic human rights at the workplace. The human rights argument has been reinforced by the claim that i) those labour standards that embody basic human rights can stimulate economic development and are therefore in the interest of all workers (and countries) in the world; and ii) observance of these labour standards could neutralise protectionist pressures, thus securing support for free trade.

3. Acceptance of a human rights' justification for certain labour standards does not lead automatically to agreement that there should be a link established between these standards and trade policies. For example, it is sometimes argued that human rights should be enforced in a manner that is consistent with the specific socio-economic conditions prevailing in each country. On the issue of trade sanctions, it is also argued that they could be counter-productive since free trade is a powerful engine of economic development and social progress. More generally, there is concern that the alleged human rights nature of certain labour standards could be used as an excuse for adopting protectionist solutions.

4. The Ministerial Mandate does not question the importance of promoting, as widely as possible, the observance of human rights and the labour standards that embody these rights. Endorsement by OECD countries and many non-OECD countries of several international conventions and declarations on human rights lends support to this view.

5. The aim of this report is rather i) to assess whether there is any relationship between those labour standards that are held to embody basic human rights on the one hand and trade and foreign direct investment flows and policies on the other; and ii) to discuss mechanisms proposed to enforce those standards. Part I provides basic concepts and definitions and identifies a set of core labour standards that

are likely to be important from the human rights' point of view. The extent to which existing ILO Conventions embody these core standards is also discussed and observance of these standards in a wide range of countries is described. Part II is devoted to an economic analysis of core labour standards, with a view to assessing the impact of core standards on economic development, trade and foreign investment patterns, and employment. Part III reviews a range of existing and proposed mechanisms to promote core labour standards and draws some tentative conclusions as to their effectiveness.

## PART I. LABOUR STANDARDS IN OECD AND SELECTED NON-OECD COUNTRIES

6. Labour standards are norms and rules that govern working conditions and industrial relations. They embrace practically all aspects of labour markets (minimum wages, working time, health and safety, labour inspection, statistics, industrial relations, non-discrimination, child labour, etc.). They are established either at the national level, in the form of laws and government regulations, or at the international level. National labour standards are typically binding. Governments have competence to enforce them and, if necessary, they can impose sanctions in cases of non-observance. Likewise, international labour standards recognised in certain regional trading areas, such as EU Directives on social matters, have some sort of legal force. They are usually compulsory upon member countries; a variety of instruments exist to sanction countries that do not comply with these labour standards. Other international labour standards such as the ILO Conventions and several acts of the United Nations also have a binding character, but no sanctions are imposed in case of non-enforcement. However, the ILO Conventions constitute the most comprehensive set of international labour standards. As such, they are often cited in the trade and labour standards debate.

### A. Selection of core labour standards

7. Despite the lack of formal international consensus in this area, there appears to be some agreement that the debate should focus on a subset of labour standards, often termed "core", as opposed to labour standards writ large. For example, a recent report by the ILO (1994) suggests that a few labour standards such as freedom of association, collective bargaining, prohibition of forced labour and elimination of child labour are particularly important from the humanitarian point of view. Agreement on the same set of labour standards was reached at the World Social Summit in Copenhagen in March 1995.

8. Proposals have been made to add some other labour standards to the "core" list. For example, Fields (1994) adds to this list health and safety, i.e. the provision whereby no person should be exposed to dangerous working conditions without being appropriately informed. Other authors lend support to the ILO list, while also adding non-discrimination in employment and equal wage treatment to the list of core standards.

9. This paper suggests that the following standards, called "core" standards for convenience, should be selected for the purpose of the analysis:

- Freedom of association and collective bargaining, i.e. the right of workers to form organisations of their own choice and to negotiate freely their working conditions with their employers<sup>1</sup>.
- Elimination of exploitative forms of child labour, such as bonded labour and forms of child labour that put the health and safety of children at serious risk.
- Prohibition of forced labour, in the form of slavery and compulsory labour.
- Non-discrimination in employment, that is the right to equal respect and treatment for all workers.

10. The selection of these core labour standards is based on several considerations. First, they embody basic human rights as exemplified in the Declaration of the World Social Summit. Other labour standards, such as working-time arrangements, or minimum wage laws do not embody basic human rights. Second, it can be argued that core standards are framework conditions for other labour standards to be meaningful.

### ***1. Core labour standards as basic human rights***

11. Throughout the 20th century, a body of international law on human rights has developed and certain basic workers' rights have become part of this legislation. The first important international agreements on workers' rights date back from the beginning of the century, when several international treaties on the elimination of slavery were signed<sup>2</sup>. The creation of the ILO in 1919 reflects concern with the improvement of living conditions of human beings and illustrates the growing importance of basic workers' rights. Ever since the creation of the United Nations, the promotion of human rights in general and workers' rights in particular has been one of the major aims of member countries. This is illustrated by the presence of human rights provisions in several acts of the United Nations, starting with its constitutive Charter. Article 55 of the Charter of the United Nations of 1945 states that countries should provide a higher level of living standards, full employment, and should promote respect for human rights and basic liberties for all, without distinction of race, gender, language or religion. It is important to note that the article considers these provisions as necessary conditions for the maintenance of peaceful relations between countries. Obviously, all member countries are bound by these provisions by virtue of membership. Besides the very general provisions of the Charter of the United Nations, the Universal Declaration of Human Rights of 1948 gives a more detailed description of human rights. These include civil and political rights (the right to life, liberty, freedom from torture, freedom of opinion and expression, freedom from slavery and servitude, right to peaceful assembly and association) and economic, social and cultural rights (right to join and form trade unions, right to work, right to equal pay for equal work, right to education). Again, the right to decent living standards is regarded as one important element. In contrast to the Charter, the Declaration has no binding character in international law.

12. This body of international law considers human rights as universal, transcending all political, economic, social and cultural situations. They are characterised as such because they involve the fundamental liberty, dignity and respect of the individual. Moreover, freedom of association, prohibition of forced labour, elimination of child labour exploitation and the principle of non-discrimination are well established elements of the human rights international jurisprudence; in fact these workers' rights are an inseparable part of human rights.

13. The recent World Social Summit of Copenhagen has reinforced international consensus on fundamental human and workers' rights<sup>3</sup>. In Commitment 3 of the Declaration from this summit, nations affirm their adhesion to certain workers' rights, which are identical to the core labour standards selected in this study. The Declaration also encourages countries that have ratified the relevant ILO Conventions to implement them and calls upon other countries to respect the principles embodied in these Conventions. It also invites governments to ratify these Conventions and, more generally, to use international labour standards as a benchmark for their national labour legislation<sup>4</sup>.

### ***2. Core labour standards as framework conditions for other labour standards***

14. In a market economy, working conditions are generally the outcomes of supply and demand forces. But for these forces to manifest themselves, individuals must be allowed to express their choices

and act freely and core labour standards provide basic guarantees for the expression of free choices. This issue, as well as the overall economic and labour market implications of core standards, is explored in some detail in Part II.

15. Moreover, without core labour standards, other standards may not be very meaningful as their implementation requires that individuals can determine (or influence) these standards freely. For example, many countries have working-time standards. But if workers are forced to accept the working conditions laid down by employers because, for example, their basic human rights are not respected, working-time standards will have little impact. More generally, it can be expected that workers are better placed to demand improved working conditions when the economy expands rapidly; but for this to happen, they must be allowed to express these demands freely.

### 3. *Conclusions*

16. The following core standards have been selected for the purposes of analysis: freedom of association and collective bargaining, elimination of exploitative forms of child labour, prohibition of forced labour and non-discrimination in employment. These core standards have the characteristics of human rights. Moreover, observance of these standards might pave the way for the establishment of better working conditions.

## B. **ILO Conventions**

17. ILO Conventions are a major source of international labour standards, which are binding only on countries that have ratified them<sup>5</sup>. However, it is important to note that a special procedure on freedom of association is applicable to all ILO member countries. The ILO is empowered, under Article 33 of its Constitution, to take such action as may be considered wise and expedient to secure compliance by a state against which another member country has filed a complaint with the terms of the Convention which both member countries have ratified. However, in practice the ILO relies on technical assistance, peer pressure and persuasion to encourage greater compliance<sup>6</sup>. It does not impose sanctions -- financial, commercial or other. An overview of ILO procedures is presented in Part III. One key issue, examined here, is whether existing ILO Conventions and instruments embody in all cases the core labour standards identified in this study.

### 1. *Overview of ILO Conventions*

18. ILO Conventions embrace numerous aspects of labour standards, ranging from minimum wages and equal pay to health and safety regulations. Given this wide coverage, the main principles contained in ILO Conventions are worth mentioning. The ILO groups existing Conventions in fourteen categories.

19. First of all, there are so-called Fundamental Human Rights. The right of workers and employers to create and freely join trade unions or other types of representative organisations is established. Two Conventions call for the abolition of any form of slavery and forced labour. They also specify conditions under which some form of compulsory labour "in the public interest" can be maintained. Finally, various other Conventions affirm the principles of equal pay and working conditions. In particular, these Conventions affirm that race and sex, *inter alia*, should not motivate unequal pay, occupation or career prospects.

20. Conventions grouped under the Employment category aim at encouraging countries to pursue policies that will maximise the level of employment, by ensuring that there is work for all available persons who are actively seeking a job. Also, another Convention sets out conditions under which employment contracts can be terminated, with the aim of providing workers with a minimum level of employment security; provisions can be established by collective agreements, not necessarily by government regulations<sup>7</sup>.

21. As regards Social Policy, two Conventions set out basic principles with the objective of improving living standards while also ensuring that every person has access to a minimum level of living conditions. The Conventions also state that education and training are key instruments to achieve better living standards.

22. Another category of Conventions, related to Labour Administration, calls for the establishment of a well-functioning administrative system, with the participation of the social partners. A Convention on labour inspection matters aims at securing the enforcement of labour laws. Another Convention asks governments to establish procedures that promote tripartite consultation.

23. Industrial Relations are addressed in several Conventions which call for the promotion of collective bargaining and its progressive extension to most aspects of working conditions. They also recommend that governments should consult employers' organisations and workers' groups before adopting any measure that aims at encouraging collective bargaining. The establishment of tripartite consultative procedures with the aim of improving the application of international labour standards is also recommended.

24. Numerous Conventions are grouped in another category termed Conditions of Work. First, the principle of minimum wages is established and conditions that protect wages defined. Accordingly, workers should be guaranteed a minimum wage in cases where wages are exceptionally low and collective agreements do not provide for wage floors. Second, this category also includes Conventions on working-time and health and safety matters.

25. Social Security constitutes another important category, comprising several general Conventions as well as specific ones on sickness benefits, pensions, compensation for work-related accidents, unemployment benefits, as well as maternity benefits. The basic purpose of these Conventions is to establish minimum standards for social security benefits.

26. Conditions for Employment of Women are regulated in several Conventions. For instance, a Convention on maternity protection grants twelve weeks of (paid) maternity leave. Another Convention prohibits night work by women, with some exceptions. Underground work by women is also prohibited, with few possible exceptions.

27. The category on Employment of Children and Young Persons comprises several Conventions that aim at the elimination of child labour. For instance, the most recent Convention stipulates that the minimum age for admission to employment or work shall not be less than 15 years or the end of compulsory schooling, whichever is greater, with the possibility that this age can be lower for developing countries<sup>8</sup>. Other Conventions also regulate night work by young persons.

28. The last four categories deal with Old Workers, Migrant Workers, Indigenous Workers and Tribal Populations, and Particular Categories of Workers (notably seamen and fishermen).

29. It is important to note that a hierarchy can be discerned among these Conventions, even though the ILO does not make one. There are first-level Conventions, dealing with freedom of association, the right to organise, collective bargaining and setting conditions governing child labour, non-discrimination in employment and the prohibition of forced labour. These Conventions represent minimum norms which should be respected by all. Their implementation does not rely on other Conventions. Particularly important are the principles of freedom of association and collective bargaining, which are enshrined in the Preamble of the ILO Constitution and the Declaration of Philadelphia. Then there are second-level Conventions that establish rules that help improve working conditions, minimum wages, social benefits and workers' participation in the determination of their labour conditions. Countries are encouraged to subscribe to these norms, which are not as fundamental to the rights of workers as core standards. Their enforcement does not always call for government regulation; some of the provisions of these Conventions can be enforced by collective agreement or other national practices. Therefore, freedom of association, collective bargaining rights and other first-level standards might be seen as framework conditions that permit direct determination by the social partners of second-level standards<sup>9</sup>.

## 2. *Discussion of several key ILO Conventions*

30. Several Conventions are often considered as the most important ones in establishing these framework conditions. These include Conventions 87 and 98 which establish the principles of freedom of association and collective bargaining; Conventions 29 and 105 on prohibition of forced labour; Convention 138 on the minimum age for employment; Convention 100 on equal remuneration and Convention 111 on non-discrimination in employment. The main provisions of these Conventions are as follows (the full text is given in the Annex).

31. Convention 87 sets guarantees for freedom of association:

- It stipulates that workers have the right to establish and join organisations of their own choosing. These organisations have the right to draw up their own constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes. Provisions whereby only one trade union may be established at the enterprise, sectoral or national level run counter to the Convention. Likewise, regulations that state a union may only be established if it has a minimum number of members, that minimum being set at such a high level that it effectively prevents the formation of unions, are not in agreement with the Convention.
- Workers have the right to establish organisations without prior authorisation. In certain countries, the authorities apply arbitrary registration and recognition requirements, thereby violating the spirit of the Convention.
- The ILO Committee on Freedom of Association, as well as other ILO bodies, consider the right to engage in industrial disputes and the right to strike as an inherent dimension of the principle of freedom of association<sup>10</sup>.

32. In certain countries, although unions can be freely formed, they face restrictions when they seek to exert their functions. Respect for Convention 98 on the right to collective bargaining is essential to make meaningful the principle of freedom of association established in Convention 87; for this reason these two conventions are usually grouped together. Convention 98 contains three main provisions:

- It stipulates that workers should be protected against acts of anti-union discrimination, such as subjecting the establishment of an employment contract to the condition of not being unionised, or dismissing workers only because they are union members.
- The law should also provide "adequate protection against acts of interference between workers and employers organisations".
- The authorities are asked to promote collective bargaining.

33. The aim of Conventions 29 and 105 is to eliminate all forms of forced labour, i.e. "work exacted from any person under menace of any penalty, and for which the said person has not offered himself voluntarily". Certain forms of forced labour do not fall within the scope of Convention 29 and are therefore permitted; this is notably the case of work performed in the interest of the community when there is imminent necessity and work by convicted prisoners. However, it is important to note that the Convention prohibits prison labour when such workers are hired by (or placed at the disposal of) private agents, though not when such work is carried out under the supervision or control of a public authority (article 2.c) or when it is voluntary. Convention 105 states that forced labour should be suppressed "as a means of political coercion or education ...; as a method of mobilising and using labour for purposes of economic development; as a means of labour discipline; as a punishment for having participated in strikes".

34. The aim of Convention 138 is to establish a minimum age for child labour. It stipulates that children should not enter the labour market before completion of compulsory education or having reached the age of 15. In case of work that is unhealthy or dangerous, the minimum age set by the Convention is 18. However, these provisions do not apply to work done by children in the context of training institutions. Likewise, light work by children aged 13 to 15 may be allowed, to the extent it is not prejudicial to their educational activities. Finally, developing countries can, in consultation with the social partners, limit the scope of application of the Convention and the minimum age for employment may be lowered to 14 (12 in the case of light work).

35. Convention 100 provides for the principle of equal remuneration for work of equal value, without discrimination based on sex. This principle may be applied by means of national law and regulations, as well as by collective bargaining or other existing machinery for wage determination.

36. According to Convention 111, States should take action with the aim of eliminating any form of job discrimination on the basis of "race, colour, sex, religion, political opinion, national extraction or social origin". It can be asserted that non-discrimination in pay is a special form of non-discrimination in employment: the latter establishes the principle of equal terms and conditions of employment for equal work without any sort of discrimination, while the former is specifically devoted to equal pay (one element of the terms and conditions of employment), without discrimination based on sex. Therefore, the principles behind Convention 100 are embodied in Convention 111.

### **3. *ILO Conventions and core labour standards***

37. Three of the core labour standards identified in this study are embodied in some of these key Conventions:

- Freedom of association and collective bargaining is contained in Conventions 87 and 98.

- Prohibition of forced labour is given by Conventions 29 and 105.
- Non-discrimination in employment is given by ILO Convention 111.
- No ILO Convention is explicitly devoted to elimination of exploitative forms of child labour. However, it can be argued that this core labour standard is one aspect of forced labour, and is therefore dealt with by Conventions 29 and 105.

38. Even if these five Conventions (29, 105, 87, 98 and 111) appear to embody core standards, they have not received universal ratification; a convention becomes a binding obligation only for the States that ratify it. However, these conventions are among the most ratified ones<sup>11</sup>: Convention 29 on forced labour is the most ratified Convention (135 of the 173 member states had ratified it by end-1994); this is followed by Convention 98 on right to organise and collective bargaining (124 ratifications), Convention 100 on equal pay (123 ratifications), Convention 111 on non-discrimination (119 ratifications), Convention 11 on right of association in agriculture (116 ratifications), Conventions 14 and 19 on weekly rest in industry and equality of treatment for accident compensation (114 and 115 ratifications), Convention 105 on prohibition of forced labour (114 ratifications), Convention 81 on labour inspection (114 ratifications) and Convention 87 on freedom of association (112 ratifications). It is noteworthy that only 62 countries (including 15 OECD countries) have ratified all five key Conventions.

39. It is perhaps surprising that so many ILO member states have not ratified all these key five Conventions despite the fact that the underlying principles behind these conventions are likely to meet universal agreement. A recent ILO survey on the reasons for non-ratification of several important Conventions gives interesting results [GB.264/LILS/5 and GB.264/9/2]. First, none of the countries that responded to the survey was in disagreement with the underlying principles behind Conventions 29, 105, 87, 98 and 111 and indeed a number of them indicated that they are examining the possibility of ratifying the Conventions. Second, several countries mentioned specific aspects or details of Conventions 29, 105, 87 and 98 as the main obstacle to ratification:

- The United States indicated that the subcontracting of the operation of prison facilities conflicts with Convention 29. Canada argued that Convention 29 is not relevant to the situation of the country because provisions of Convention 29 are believed to be intended primarily for colonies. Several countries (e.g. Croatia) claimed that there is no substantial difference between Conventions 29 and 105, and thus there was no need to ratify both.
- Brazil and the United States observed that Conventions 87 and 98 cannot be ratified without some changes in national legislation and regulations concerning, for example, the right to strike for certain employees. For New Zealand, non-ratification was explained by the fact that the Committee on Freedom of Association finds some of its practices to be contrary to Conventions 87 and 98; prior to these observations of the Committee, legislation had been brought in line with the Conventions. India argued that the Conventions are “largely influenced by western concepts”. Canada indicated that its legislation provides for exclusions from collective bargaining rights that are wider than those provided for in Convention 98. Finally, Switzerland observed that the provisions of Convention 98 on anti-union discrimination are not consistent with its law.

40. Overall, no country opposes ratification of Conventions 29, 105, 87, 98 and 111 for reasons of principle. Instead, the reasons given for non-ratification refer to specific details of the Conventions or their interpretations by ILO bodies. For example, while the right to strike is not mentioned in Convention 87, the Committee on Freedom of Association regards this right as an intrinsic part of the right to freedom of association. This makes ratification problematic in countries which by and large respect the main

principles of the Conventions, but not certain (relatively unimportant) provisions of either the Conventions or their interpretation. Some countries, though adhering to core labour standards, feel that the provisions of ILO Conventions that are supposed to embody these standards are either too detailed or out-of-date. Also, some countries may find it difficult to apply specific provisions of Convention 29 that treat differently prison labour carried out for a private enterprise and for a government agency.

41. Even so, ILO member countries have decided not to revise these Conventions in the context of the current revision exercise, though this question may arise in the longer run. The ILO Governing Body is examining ways to strengthen the promotion of fundamental ILO Conventions; this includes examination of possible new review procedures (see Part III). It cannot be excluded that this process would be accompanied by a simplification of certain provisions of core Conventions or a reconsideration of their interpretation.

42. Convention 138 on a minimum age for child labour has only been ratified by 46 countries. However, Convention 5, which sets child labour conditions at a lower level than Convention 138, has been ratified by 48 countries<sup>12</sup>. Hence, the principle whereby child labour below age 14 should be avoided has been accepted by a majority of ILO member countries. Convention 138 is not specifically devoted to any core standard as it does not make a distinction between exploitative and non-exploitative forms of child labour. Children working under the minimum age provided for in ILO Conventions do not necessarily pose a major problem from the humanitarian point of view. Child labour typically plays an important role in the economy of rural societies and this does not raise an issue of human rights (see Box). Moreover, the results of the recent ILO survey on the reasons for non-ratification of certain Conventions showed that several countries explicitly oppose ratification of Convention 138 and openly criticise various substantive aspects of the Convention, including the fact that it does not provide for an effective safeguard against child labour exploitation. ILO member countries have decided “for the time being” not to consider the issue of whether Convention 138 should be revised.

### **Child work and exploitation**

"Child labour", a term applied to the most diverse situations, defines an extremely complex set of phenomena. In many countries, including in the OECD, part-time work is a fact of life for many children and is neither exploitative nor detrimental to the child's development. It can help young people acquire skills and build confidence. In combating child labour, it is necessary, therefore, to consider carefully its various forms, making a distinction between work and exploitation, and analysing the developmental and cultural contexts.

It is widely agreed that child labour is strongly associated with poverty, low levels of development, lack of educational opportunities and certain cultural traditions. The countries with the highest illiteracy rates, lowest school enrolment ratios and serious nutritive deficiencies are in general those that have the highest proportions of children working.

According to the criteria developed by UNICEF in 1986, child exploitation is characterised by children who work too young, too long hours, for too little pay, in hazardous conditions or under slave-like arrangements. UNICEF adds that exploitation also occurs when children's work entails too much responsibility; hampers their access to education; is detrimental to their full social and psychological development; or undermines their dignity or self-esteem. Based on these criteria, some of the most obvious and outrageous cases of exploitation stand out, such as those involving children in bonded labour, prostitution, military groups, the drugs trade and other highly dangerous occupations. But children engaged in agriculture, services or manufacturing may also be exposed to exploitative situations. Due to heavy workloads and malnutrition, children in these occupations often face high health risks and occupational hazards with dire consequences for their physical and intellectual development.

The phenomenon of child exploitation is extremely complex. It is not necessarily linked to poverty alone and may be associated with children being used to advance various kinds of family aspirations or roles<sup>13</sup>. Solutions such as the imposition of a minimum wage or compulsory education, which ignore economic, social and cultural factors underlying child labour, run the risk of worsening the situation of children. Unless some alternative is provided for the children and their families, many children dismissed from work will be left to fend for themselves in the streets or will take up more hazardous employment. Child work can be expected to decrease gradually with higher levels of development. However, the eradication of specific forms of child exploitation and a massive reduction in child labour can only be achieved through political commitment, specific policies and development programmes.

No existing ILO Convention deals with the phenomenon of the exploitation of children as such. Several Conventions set a minimum age for employment. Cases of children exploitation are sometimes examined under the aegis of forced labour Conventions. Finally, Article 32 of the UN Convention on the Rights of the Child prohibits the economic exploitation of children.

#### 4. *Conclusions*

43. Certain ILO conventions do provide a basis for the set of core labour standards selected in this study. The Constitution of the ILO mentions freedom of association as a basic principle, one that all members of the ILO have to apply by virtue of their membership. ILO Conventions 87 and 98 provide detailed provisions of freedom-of-association. However, some of these provisions give rise to interpretations by ILO bodies that seem to go beyond the freedom-of-association principle. None of these Conventions has received universal ratification: Convention 98 has been ratified by less than three quarters of member countries and Convention 87 by less than two-thirds of them. ILO Conventions 29 and 105, which are two of the most ratified conventions, explicitly embody the principle of prohibition of forced labour, even though they contain more detailed provisions that do not necessarily relate to human rights. Also, these two Conventions implicitly prohibit the most abhorrent forms of child labour. Convention 138 sets out a minimum age for child labour, and, as such, does not deal with the issue of child labour exploitation: some forms of child labour are consistent with observance of human rights. Finally, Convention 111 (ratified by two-thirds of member countries) seems to reflect adequately the right to non-discrimination in employment. Despite some caveats and a less-than-universal ratification record, it can be asserted that, at present, Conventions 87, 98, 29, 105 and 111 are the most importance references for monitoring observance of core labour standards.

#### C. **UN provisions on workers' rights**

44. Several acts of the United Nations also include provisions on core labour standards. The Declaration of Human Rights is a direct source of two Covenants, with legal binding force on countries that ratify them. First, the Covenant on Economic, Social and Cultural Rights of 1966, ratified by 131 countries at end-1994, seeks to promote and protect the right to work in just and favourable conditions, the right to social protection and to decent standards of living, and the right to education. More specifically, concerning workers' rights, the Covenant mentions the right to "equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence" (article 7). This provision seems to be fully consistent with provisions of ILO Convention 111 on non-discrimination in employment. In addition, according to article 8 of the Covenant, countries should ensure the right to everyone to join and form trade unions of their own choosing, the right of trade unions to establish national federations or confederations and the right of trade unions to function freely. This is very similar to the provisions of Convention 87 of the ILO. However, the Covenant also states that these trade union rights should not be subject to any limitations other than "those prescribed by law and which are necessary in a democratic society in the interest of national security or public order or for the protection of the rights and freedoms of others (our underlining)". This latter provision is not mentioned in Convention 87 of the ILO. Despite this difference, the Covenant states that countries that have ratified the Covenant as well as Convention 87 of the ILO should observe both.

45. Second, the Covenant on Civil and Political Rights of 1966, ratified by 129 countries at end-1994, deals with individual rights such as the right to life, prohibition of torture, freedom of opinion and expression, as well as freedom of association and prohibition of forced labour and equality before the law. Several articles deal with workers' rights. Article 8 prohibits slavery, servitude and other forms of forced and compulsory labour, in terms that are very similar to those of Conventions 29 and 105 of the ILO. However, according to article 8 of the Covenant, the term forced labour does not include prison labour "in consequence of a lawful order of a court". The ILO Conventions also exclude from the prohibition on forced labour any work or service undertaken by a convicted person so long as the work is carried out under the supervision of a public authority and the convict is not placed at the disposal of

private individuals or companies. This is an important nuance. Article 22 of the Covenant provides for freedom of association in terms that are very similar to Article 8 of the other Covenant. It is also mentioned that trade union rights should not interfere with the freedoms and rights of other individuals, including non-unionised workers. Again, the Covenant states that countries that have ratified the Covenant as well as Convention 87 of the ILO should observe both.

46. A recent UN Convention on the Rights of the Child (adopted in 1989) contains general provisions on the right of children to special protection and healthy development. It affirms the right to free primary education for all children. Also, Article 32 of the Convention establishes the principle of non-exploitation of child labour: countries recognise the right of the child to be protected against economic exploitation and not to be forced to carry out dangerous or unhealthy work, or work that would hamper education prospects; countries should determine a minimum age for child labour and regulate child labour conditions, including working time; finally abuses should be sanctioned as appropriate. In contrast to Convention 138 of the ILO, this UN Convention does not specify a minimum age for employment. Instead, it protects against child labour exploitation and abuses. It is worth noting that, by end-1994, the UN Convention had been ratified by 168 countries compared with 46 countries in the case of Convention 138 of the ILO<sup>14</sup>.

47. In sum, the UN acts on human rights contain provisions on core labour standards. These provisions are similar to, but less detailed than, the ones contained in the corresponding ILO Conventions. The UN acts on human rights, though adopted fairly recently, have been generally ratified by more countries than the corresponding ILO Conventions: by the end of 1994, 123 countries had ratified the three UN acts containing workers' rights provisions compared with 62 having ratified the five ILO Conventions in question . This suggests that, independently of whether ratified UN instruments on workers' rights are applied in practice or not, the principles that they contain receive near-universal acceptance.

**Ratification of several Conventions of the ILO and UN**

	Total	OECD Countries
ILO Convention 87 (freedom of association)	113	23
ILO Convention 98 (right to organise and collective bargaining)	125	20
ILO Convention 111 (non-discrimination in employment)	119	20
ILO Convention 29 (forced labour)	137	22
ILO Convention 105 (abolition of forced labour)	115	24
<i>Number of countries that have ratified all above ILO Conventions</i>	<i>65</i>	<i>15</i>
UN Covenant on Economic, Social and Cultural Rights	131	23
UN Covenant on Civil and Political Rights	129	23
UN Convention on the Rights of the Child	168	21
<i>Number of countries that have ratified all above UN acts</i>	<i>123</i>	<i>20</i>

*Note: Situation at October 1995 for ILO Conventions, at end-1994 for UN Acts.*

*Sources: ILO and UN.*

**D. Observance of core labour standards in selected countries**

48. This section describes the extent to which the ILO Conventions on the selected core standards are applied in 75 countries<sup>15</sup>. The latter include the OECD countries, Dynamic Non-Member Economies (Argentina, Brazil, Chile, Hong Kong, Korea, Malaysia, Philippines, Singapore, Chinese Taipei and Thailand), as well as three populous countries with considerable trade potential (China, India, Indonesia) and a range of poor countries throughout the world for which information could be collected. Taken together, these countries account for almost all of world trade. Table 1 presents basic economic indicators for these countries. Per capita GDP levels (in 1990) ranged from \$98 in Tanzania to above \$33000 in Switzerland. As expected, per capita GDP is on average the highest in the OECD area. However, in a large number of non-OECD countries, per capita GDP is higher than in Mexico and Turkey, the two poorest OECD economies. For example, Hong Kong and Singapore come close to the OECD average, while Korea and Chinese Taipei have similar levels of per capita GDP to Portugal and Greece, countries at the bottom end of the OECD league table.

49. Table 2 provides information on ratifications of Conventions that fall within the province of core labour standards. There are wide cross-country differences in the number of these Conventions that have been ratified in this area. Almost half of the selected countries (and 60 per cent of OECD countries) have

ratified them all. At the other extreme, Botswana, China, Korea, South Africa and Zimbabwe have not ratified any of the five Conventions, while the United States has only ratified one.

### **1. *Freedom to form unions and the right to strike***

50. Tables 3 and 4 give an overview of the main restrictions to the principle of freedom of association, as established in Convention 87. In virtually all OECD countries, legislation and practice appear to be consistent with the principle of freedom of association. In most of the selected non-OECD countries, freedom of association is subject to some restrictions.

51. As can be seen from Table 3, there are two main avenues through which the authorities can deny the establishment and functioning of independent unions. First, there can be direct or indirect political interference in union activities. For instance, in Jordan, Kenya, Singapore and Chinese Taipei, the ruling party maintains close links with the main union federation. Political control appears to be very strict in China, Egypt, Iran, Kuwait, Syria, Tanzania and, to a lesser extent, in Indonesia. In these countries, there is *de facto* a single union structure. Second, the right to form unions may be restricted through the imposition of discretionary registration and recognition requirements. Thus, the requirement that only one union may be registered in each enterprise or occupational category is imposed in several of the Latin American and Asian countries under study (see Table 3). Also, in certain countries (notably Malaysia), the authorities can deny union recognition to a workers' organisation whose objectives are judged to run counter to government policies<sup>16</sup>. Finally, special restrictions apply in export-processing zones in Bangladesh, Mauritius, Pakistan and Panama.

52. The right to strike, a crucial dimension of the principle of freedom of association, is not only complex, but it also leads to numerous controversies, as attested by the complaints examined by the ILO. Table 4 describes the main impediments to the right to strike. It shows that in many countries, legislation and government regulations seriously hamper this right. Restrictions pertaining to essential services are not indicated in the Table, except in those cases where the definition of essential services can lead to abuses.

53. The main findings from Table 4 are the following. First, the right to strike is recognised in all countries with the sole exception of China, where there is a general prohibition of strikes. Strikes are also practically prohibited in Egypt, Iran and Syria and rendered very difficult in Pakistan and Tanzania. Second, sectoral restrictions apply in Korea (defence sector), Philippines (so-called "strategic industries"), Thailand (state enterprises), Turkey (export processing zones) and in broadly defined essential services in Bangladesh, Colombia, Jamaica, South Africa and Zimbabwe. Third, in several countries -- Bahamas, Guatemala, Indonesia, Kenya, Korea, Malaysia, Mauritius, Pakistan, Peru, Philippines, South Africa, Chinese Taipei, Turkey, Zambia and Zimbabwe -- strikes are authorised only if prior notification is given and/or a long "cooling-off" period, during which the strike is illegal, is observed. Fourth, arbitration by administrative authorities can be made compulsory in many non-OECD countries and in Mexico. Finally, in the United Kingdom, the ILO has raised the question of whether protection against dismissal of strikers is adequate. In Hong Kong and Jamaica, such protection is weak, according to the ILO.

### **2. *Protection of union members and collective bargaining rights***

54. In the majority of non-OECD countries, legal protection against acts of anti-union discrimination is not adequately enforced (Table 5). Lack of appropriate judicial structures as well as the authorities' unwillingness to sanction employers are factors explaining the weakness of enforcement. In several

countries, legislation itself does not provide adequate protection. For instance, in Hong Kong reinstatement in the enterprise is not required by law. By contrast, protection is more satisfactory on average in the OECD area. ILO experts have raised questions about the adequacy of application procedures in the United Kingdom, but these have now been answered<sup>17</sup>.

55. In several countries, legal provisions limit the right to bargain collectively. Collective bargaining is severely restricted in Egypt, Swaziland, Syria, as well as in Malaysia (so-called "pioneer industries"), Singapore (new firms), China and Thailand (state enterprises). Collective bargaining is inhibited by legal or practical obstacles in export processing zones in Bangladesh, Honduras, Jamaica, Panama and Sri Lanka. Even though collective bargaining may be allowed, its scope is sometimes limited to certain issues. For example, promotions and the termination of contracts are excluded from the scope of collective bargaining in Brazil and Singapore. Third-party intervention in collective bargaining is prohibited in Korea and Turkey.

56. In order to make a more exhaustive assessment of the situation regarding freedom-of-association rights across selected countries, the evolution of these rights over the past decade or so has been examined. It appears that in none of the selected countries did freedom-of-association rights worsen significantly. Instead, in 17 countries these rights improved markedly (Table 6). More generally, there seems to be a trend towards better enforcement of these rights, especially in countries where legislation is very restrictive.

### 3. *Freedom of association: an assessment*

57. Based on the above information, it is now possible to arrange countries in different groups, based on Secretariat judgement concerning the extent to which they comply with freedom of association. In group 1, comprising all OECD countries (except Mexico and Turkey), as well as Bahamas, Barbados, Israel, Malta and Suriname, freedom of association is by and large guaranteed in law and practice. At the other extreme are group 4 countries where freedom of association is practically non-existent (China, Egypt, Indonesia, Iran, Kuwait, Syria and Tanzania). In countries of group 2 (Argentina, Brazil, Chile, Ecuador, Ethiopia, Fiji, Hong Kong, India, Jamaica, Mexico, Niger, Papua New Guinea, Peru, South Africa, Venezuela and Zambia) some restrictions exist, but it is possible to establish independent workers' organisations and union confederations. In the remaining countries (group 3), restrictions on freedom of association are significant; in these countries, the existence of stringent registration requirements, political interference or acts of anti-union discrimination make it very difficult to form independent workers' organisations or union confederations.

58. Given these four country groupings, Chart 1 shows that there is some association between the level of economic development, proxied by GDP per capita, on the one hand, and the degree of observance of freedom of association on the other. Most developed countries generally enjoy better-than-average standards, and conversely the poorest countries do not generally comply with standards. However, there are major departures from this pattern.

### 4. *Child labour*

59. According to Ashagrie (1993), in 1990 nearly 80 million children under age 15 were officially reported to be working around the world. This figure is likely to under-estimate considerably the real situation, as suggested by the results of a recent study by UNESCO which show that, in developing countries, 20 per cent of children of school-age are working<sup>18</sup>. Also, an ILO study on the incidence of

child labour in Ghana, India, Indonesia and Senegal shows that 25 per cent of children aged under 14 are working. Some 95 per cent of working children live in developing countries, with about half of them in Asia. However, child labour is not restricted to developing countries and has not been fully eradicated in OECD countries. The main characteristics of child labour are as follows:

- By far the greater part of the work done by children is classified by the ILO as unpaid assistance to the family (on average, 80 per cent of child labour).
- Most child labour in developing countries is rural and unpaid. In rural areas, an important distinction needs to be drawn between children working on the family plot and those employed as labourers on plantations and estates. Children working on the family farm are usually considered to be better protected by traditional systems, even when the family lives near subsistence, but in some cases, child work in this traditional context can also become highly exploitative. Such exploitation may take the form of excessively heavy loads, physically demanding tasks, long hours and work-related hazards.
- Some large estates employ entire families and in many developing countries, there is no legal protection for agricultural employees. To keep wages low, large estates may employ children as well as their parents and other family members.
- In urban areas, most children work in the informal sector, in family business and small shops, which escape statistics and regulations. Hence, work in this sector can be very similar to the rural subsistence economy. At the same time, child labour can also operate in the context of a more open and formal economy, as in the case of many firms which rely upon networks of small subcontractors and, occasionally, family workshops to serve local, national or even international markets.
- Millions of children, particularly girls, also work as domestic servants, but figures are not available, especially since this is often not counted as work in any official estimate. Many children also work under conditions of bonded labour or are engaged in marginal and illegal activities, which are the most difficult to enumerate and regulate. They include the drug trade, pornography and prostitution, and the many activities performed by street children.
- Children also work in the formal sector, including export-processing zones where implementation of national regulations may be more lax. Children are mainly found in the textile, garment, shoe and carpet industries. According to the ILO, there are relatively few children working in export-related sectors and, among these sectors, the incidence of child labour is probably higher in agricultural activities than in manufacturing industries. However, there is strong evidence of child labour exploitation in a few export-oriented industries of some countries<sup>19</sup>.

60. The causes of child labour are complex. The recent ILO study on this issue mentions poverty as the main factor. Work is a matter of survival for children of poor families. It is estimated that the cost of sending a child to primary school may exceed a third of the money income of poor families and these families often have more than one child of school age. Only 68 per cent of children complete primary education in the world as a whole. It is also argued that one of the reasons for child labour is the fact that children are paid less than adults for the same kind of job. However, according to the ILO, the difference between child wages and adult wages for a similar job is not significant (the gap is only 5 per cent in the carpet industry).

61. In the majority of OECD countries, legal provisions regarding child labour appear to be broadly in agreement with Convention 138. But there are some exceptions. First, in Australia and New Zealand,

there is no specific legislation setting a minimum employment age. In these two countries, however, school attendance is compulsory until a certain age. Second, in Ireland, Mexico as well as certain Canadian Provinces, the legal minimum age for employment is less than that provided for by the Convention. In the United Kingdom, the legal minimum age for light work is 13, but education is compulsory until age 16.

62. Outside the OECD area, only in Chile, China, Philippines and Chinese Taipei do legal provisions comply with Convention 138. However, in most countries legal requirements come close to these provisions. The minimum age for employment in Morocco and Thailand is as low as 12.

63. In sum, it is unlikely that the low legal provisions are the main factor behind child labour. Instead, it is the lack of enforcement of the existing provisions (however low) which poses the major problem. Enforcement is typically weak in the informal sector. In several countries, the under-provision of schools makes enforcement of child labour laws problematic. This is especially the case in rural areas of Brazil, India and Turkey. More generally, in the face of very low living standards, child labour provides an important source of income to their families. However, there are cases where the authorities, either at the national level (Korea, Singapore and Chinese Taipei) or at the local level (Kerala state in India), have given a high priority to school enrolment.

## **5. *Forced labour***

64. Most of the observations of the ILO concerning Conventions 29 and 105 on prohibition of forced labour, and the corresponding requests for legislative reform, relate to OECD countries. For instance, over the past four years, 32 of the 55 ILO recommendations refer to inconsistencies with the Conventions by OECD countries. This is all the more surprising since Conventions 29 and 105 have been ratified by the majority of ILO member countries.

65. In fact, most of the ILO observations on OECD countries relate to certain legal provisions of relatively minor importance. For example, according to the ILO, in Austria, France, Germany and the United Kingdom, work done by certain prisoners is performed in workshops managed by private enterprises and individuals. The ILO has repeatedly stressed that this practice is inconsistent with the provisions of Convention 29, except with the formal consent of prisoners and when guarantees and safeguards with regard to wages and social security are given so that the labour relationship can be regarded as a free one. It has therefore asked the authorities to abolish this practice, or else give the necessary guarantees to bring it into conformity with the Convention.

66. It can be safely asserted that, in general, forced labour is of negligible importance in the OECD area. However, in several countries outside the OECD area, forced labour appears to be a prominent problem. In China, most prisoners are systematically required to work without pay. In India, bonded labour is widespread. Accordingly, many families and children are forced to work almost as slaves for certain individuals in order to pay off their debts. In Brazil, according to ILO experts, thousands of workers in rural sectors and mining are subject to forced labour conditions. It is dangerous for these workers to escape.

## **6. *Non-discrimination***

67. As with the two Conventions on forced labour, most ILO observations concerning Convention 111 refer to OECD countries while few relate to non-OECD countries. There is, however, a substantial difference between the issues raised by the ILO in the two cases. Whenever OECD countries

are concerned, elimination of sex discrimination in employment seems to be the major problem. Sex discrimination often takes the form of practical obstacles experienced by women in advancing to higher positions. Observations by the ILO concerning Turkey relate to the positions of public servants whose employment had been affected during the period of Martial Law.

68. In non-OECD countries, additional issues on discrimination have been detected by ILO. For example, in Brazil it has denounced cases where employers demand certificates attesting to the sterilisation of women who seek employment or wish to keep their jobs. Discrimination on the basis of social origin has been subjected to complaints in India.

## **7. *Conclusions***

69. It is difficult to make an overall assessment of the degree of enforcement of core labour standards across countries. Information on this issue is sparse and incomplete. The lack of reliable indicators on enforcement is especially acute regarding child labour, forced labour and non-discrimination in employment. Based on ILO reports and other sources, however, it is possible to make a tentative assessment of freedom-of-association rights in selected countries. It emerges that there are wide cross-country differences in the degree of enforcement of freedom-of-association rights.

## **PART II. POSSIBLE LINKS BETWEEN CORE LABOUR STANDARDS, TRADE, FDI, ECONOMIC DEVELOPMENT AND EMPLOYMENT**

70. This Part focuses on possible economic outcomes of core labour standards. It does so by investigating the various possible economic impacts of core labour standards from both a theoretical and an empirical point of view. It also analyses the links between trade policy and core labour standards, including the important question whether trade liberalisation precedes or follows changes in core labour standards. The final section summarises recent Secretariat research on the effects of trade between OECD and non-OECD countries on employment and relative wages.

### **A. Economic properties of core labour standards**

71. The debate over possible links between labour standards and trade has been hampered by the lack of solid analytical underpinnings. Economic research in this area is practically non-existent. This section examines the roles core labour standards can perform in the economy (based in particular on an analytical framework developed in the Analytical Appendix) and then provides some empirical evidence.

#### ***1. The impact of core labour standards on economic efficiency***

72. The first question that arises is whether the outcomes of free markets without any core standards are efficient. If the answer is that they are not, there is a *prima facie* case for considering whether government intervention can improve the situation; the issue then becomes one of whether core labour standards are an adequate policy response.

##### *1.1 Are market outcomes efficient?*

73. There are arguments for and against the view that markets lead to an efficient allocation of resources.

- i) Market outcomes are basically efficient

74. According to the neo-classical theory of perfectly competitive markets, relative prices reflect supply and demand conditions of all goods, services and factors traded in the economy. Under these circumstances, and assuming that a variety of other conditions are satisfied, economic efficiency will be achieved. But for this result to hold, it is obvious that supply and demand forces must be allowed to operate freely. This will occur under several important conditions. First, economic agents must be free to choose, i.e. free to express their choices resulting from utility/profit maximisation decisions. Otherwise, supply and demand forces will be constrained, leading to inefficient outcomes. Second, an important characteristic of free markets is perfect competition. If certain agents have market power, they will shift the structure of relative prices in their favour. Third, market efficiency calls for perfect information, so that individual choices are made on the basis of accurate and complete information.

75. According to this theory, any government intervention, be it in the form of labour standards or other regulations, will impair the free functioning of markets, thus reducing efficiency. Market outcomes are endogenous, determined by the working of market forces. Proponents of this theory argue that the operation of the market can lead endogenously to an economically efficient degree of observance of core labour standards. For instance, compliance with the principle of freedom of association can be expected to improve as the level of income per capita rises, irrespective of whether legislation exists or not. Likewise, forced labour and child labour are likely to be more frequent in poor countries than in more developed ones. Even at similar levels of economic development, the particular manifestation of the freedom-of-association principle may vary across countries because the content of regulations, union structure, collective bargaining institutions and labour practices are (almost by definition) country-specific.

76. Overall, if conditions under which markets are efficient are in place, efforts to regulate them will cause inefficiencies. In this framework, for core labour standards to be consistent with free markets, they have to be both endogenous and country-specific.

- ii) Market outcomes are not always efficient

77. Some or all of the conditions mentioned above may not hold in the real world. There may indeed be significant market distortions and failures, i.e. situations that are unlikely to be consistent with those that characterise a perfectly-competitive equilibrium :

- The practice of forced labour represents a clear departure from the freedom-of-choice condition, for two different reasons. First, forced workers have little scope for utility maximisation, entailing a loss of welfare. Second, forced workers cannot move easily to other activities that match their skills and aspirations. As a result, the allocation of labour resources is distorted, thereby leading to a loss of economic efficiency (and output). Child exploitation constitutes another departure from the freedom-of-choice condition, for similar reasons. Finally, employment discrimination may also lead to a sub-optimal allocation of labour resources. For example, strict demarcation lines between male and female work are imposed in certain countries. This entails waste as workers will not be employed in the sectors/occupations where they will be most productive. Also, when particular categories of the population are not allowed to work (for political, religious or other reasons), total output will be lower than otherwise. The (in)efficiency effects of these labour market distortions are analysed in detail in the Analytical Appendix.
- Many product markets are characterised by imperfect competition, and employers, in the absence of measures that protect labour rights, are likely to have a much stronger bargaining power than the individual worker or groups of workers.

78. In addition to arguments about static efficiency, there might be instances where the market in and of itself does not provide sufficient incentives to maximise dynamic efficiency and/or help create positive market externalities:

- Workers may have practical views on how production in their firms can be made more efficient, but they may not be interested in sharing these views with management if they do not have incentives to do so. This is because individual workers may not perceive the benefits to themselves from suggestions they might make.
- There might be circumstances under which the labour market fails to provide individual employers with sufficient incentives to increase productivity<sup>20</sup>.

- The market may fail to provide enough incentives to ensure an adequate level of investment in education and training. This is partly so because education and training are typically long-term investments, whereas the planning horizon of individual agents is often a short-term one. In addition, education and training can give rise to significant externalities for society as a whole, in terms of knowledge accumulation, research and development, etc. Since these benefits are not captured by private agents, the result is underinvestment in education and training.

79. In this context the question arises as to how these market distortions and failures can be addressed. More specifically, is government action needed and, if so, under which form? Can the establishment of core labour standards go some way towards solving these problems? Alternatively, is there a danger that the imposition of core standards will worsen them, and what are the employment repercussions?

*1.2 Can core labour standards improve the efficiency of market outcomes?*

80. As shown in the Analytical Appendix, there are arguments that lend support to the view that core labour standards are a possible response to the various market distortions and failures mentioned above.

81. First, prohibition is the appropriate policy response to the existence of forced labour. This calls for ratification and enforcement of the relevant ILO Conventions, except perhaps in the case of prison labour (even when working for the private sector) as the latter may have social rehabilitation purposes.

82. Second, the elimination of exploitative forms of child labour would serve similar purposes. Besides, it would help preserve (if not improve) human capital, which is likely to depreciate rapidly when children work under unsafe or unhealthy conditions. It may be profitable for unscrupulous employers to exploit children, but certainly not for society as a whole<sup>21</sup>.

83. Third, regulations on non-discrimination in employment, as provided by ILO Convention 111, can help reduce distortions to labour market mobility across both occupations and sectors. At the same time, these regulations may stimulate the active labour market participation of certain categories of workers, which again points to beneficial economic effects.

84. Fourth, freedom of association and collective bargaining may also produce positive efficiency effects:

- Freedom of association and collective bargaining rights are necessary instruments to counter-balance the market power of employers, where such power exists. The bargaining power of an individual worker may be very limited faced with a powerful employer or group of employers. In addition, when differences of interpretation of labour laws arise between a worker and his/her employer, legal protection can be expected to be stronger when the worker is supported by some collective organisation (union, workers' council, association). Such organisations typically offer legal advice and expertise so that individual workers can assert and defend their rights<sup>22</sup>.
- Collective bargaining institutions can encourage workers to share their views with management about the running of the enterprise; the existence of such institutions provides some guarantees that higher productivity will bring benefits to all.
- Collective bargaining might also provide incentives for enterprise-based training.

85. However, the question arises as to whether freedom of association and the right to collective bargaining are the most appropriate forms of intervention to deal with these problems:

- In some instances, even if there is an imbalance of market power between employers and workers, freedom of association and collective bargaining may only be a second-best solution. A better route to reduce the market power of employers may indeed be to enhance product market competition, for example by way of trade liberalisation. This would prevent abuses of market power, as greater product market competition would strengthen competition in the labour market.
- Even though it might well be true that freedom of association and collective bargaining can enhance labour market competition, there is still the important issue of what is the best form of union organisation which can counter-balance the bargaining power of employers. The issue of what level of bargaining (centralised or decentralised) is likely to produce the best outcomes is an important but complex one<sup>23</sup>. For example, it may well be the case that enterprise-based bargaining can counter-balance the market power of the employer, while avoiding the relative wage rigidity which is likely to be one of the outcomes of multi-employer bargaining conducted at the sectoral level. On the other hand, there is also evidence that centralised wage bargaining carried out at the national level can produce the same effects as decentralised bargaining.
- One strand of the economic literature emphasises the economic costs of unions. These costs arise when unions protect the rights of their members to the detriment of non-unionised workers and the unemployed. For example, there is strong empirical evidence that forming a union introduces a distortion between union and non-union workers in terms of a wage (and fringe benefits) premium [Freeman and Medoff (1984)]. Also, unions might impose a high level of employment protection, thus creating a dual labour market. In this context, workers in unionised sectors (the so-called “insiders”) are protected against wage competition from the unemployed (the “outsiders”). As a result, the latter cannot underbid unionised workers, making their re-employment difficult<sup>24</sup>. Wages of non-unionised workers may also be depressed as the supply of labour in that sector is raised. More generally, it is important from the economic point of view that union rights be exerted in such a way that they do not create a new source of distortions, with detrimental consequences for employment and economic efficiency. These arguments, however, relate to particular trade union practices and not to freedom of association as a principle. This is illustrated by the fact that certain authors, who have highlighted the possible distortions associated with unions, are also in favour of a world-wide enforcement of core standards, including freedom of association<sup>25</sup>.

86. In sum, the efficiency effects of freedom of association and collective bargaining will depend on a variety of factors. First, freedom of association and policies that enhance product market competition such as trade liberalisation can be regarded as complements. Second, the appropriate form of union and employer organisations that is conducive to the highest possible level of efficiency is likely to differ from country to country depending on specific historic and cultural factors. Third, there are instances where the activities of unions can introduce distortions in the labour market, thus imposing costs on some parts of the workforce as well as impairing the expected benefits in terms, for example, of more balanced worker-management relations, and improved information. Although freedom of association is a basic human right and it may help reduce certain distortions in the economy, it is no less true that particular forms of union organisation and collective bargaining may introduce new ones.

*1.3 Why are core labour standards not observed in certain parts of the world?*

87. If core labour standards do enhance economic efficiency, the obvious question is: why are they not observed world-wide?

- i) The public good argument

88. One possible answer is that core labour standards are public goods, the optimal provision of which cannot be accomplished by market forces alone. According to Samuelson (1954), public goods can be consumed by all economic agents, while consumption by one agent does not reduce the amount of the public good available to others. Economic agents acting on their own would choose not to pay for a given public good because of the well-known free-rider problem: each individual consumer of the public good believes that this good will be produced, independently of whether he/she pays for it, because the cost will be borne by others. As a result, if all individual agents follow the same reasoning and behave as free riders, the good may not be produced at all. Some form of co-ordination is necessary in order to ensure an optimal level of production of the public good: this can take the form of either government regulations (norms, standards, etc.) or the government can provide the public good directly.

89. Are core labour standards public goods? Freeman (1994) argues that some core labour standards might be appropriately conceptualised as private goods. If individuals are in fact concerned by and are willing to pay for the "social" content of the goods and services they consume (i.e. the extent to which the production of goods and services respects core labour standards), core labour standards are no longer a public good<sup>26</sup>. They then become one of the many characteristics of goods and services which influence consumers' preferences. In these circumstances, consumers will behave as in the case of (normal) private goods. In other words, they will buy the good which has the preferred characteristics, in terms of price, embodied labour standards and quality in general. Some consumers will be prepared to buy a product that is more expensive but is produced under conditions of "good" labour standards, others will prefer low-price, "bad-standards" products. There is no free-riding problem since no consumer will get a product embodying "good" labour standards without paying for them. This assumes, of course, that consumers are well informed about the "social content" of the physical goods and services they want to buy<sup>27</sup>. This is not the case at present.

90. Swinnerton and Schoepfle (1994), on the other hand, suggest that core standards may share some of the characteristics of a public good. According to them, union rights, prohibition of child labour and forced labour can be seen as a public good which they call "social moral consciousness". This good responds to a universal concern in the sense that "consumers" of this good are interested in the respect of core labour standards irrespective of whether the goods and services that are produced in the presence or absence of such standards are exported or not. For example, it might be argued that individuals in industrialised countries are concerned about exploitation of child labour in the rest of the world; this concern is equally strong whether children work in traded or in non-traded sectors. Social moral consciousness is a public good since individuals can "consume" it without reducing the amount available to others. A free-rider problem emerges because any given individual "consumer" (or country) may not be willing to pay for social moral consciousness; if others pay for it, he/she will benefit without paying any of the costs.

91. Finally, it could be asserted that core standards are an instrument that permits the provision of a public good. First, they can strengthen competition in the labour market. Competition, though beneficial for society as a whole, may entail costs for particular economic agents (e.g. those who benefit from forced labour, child exploitation, employment discrimination) who are able, in the absence of core standards, to maintain their rents. Second, the greater degree of participation and transparency between workers and

employers to which freedom of association gives rise, might also be regarded as a public good. Neither managers nor individual workers acting on their own have incentives to provide sufficient information. Finally, market forces alone are likely to lead to under-provision of education and training, hence the need for regulations in the form, for example, of prohibition of child exploitation and compulsory school attendance.

- ii) The blocking minority argument

92. Another possible explanation for the lack of observance of core standards is that, with the establishment of core labour standards in countries that are deprived of them, some individuals will be worse-off, even if the society at large is better-off. If some economic agents benefit by suppressing core labour standards and have the power to do so, it is in their interests to ensure that core standards are suppressed. The problem may well be that in certain countries the minority which benefits from forced labour, child exploitation and employment discrimination has more political power than the majority of the population. This suggests that denial of core labour rights is likely to be more frequent in non-democratic systems<sup>28</sup>.

- iii) The endogeneity argument

93. According to Bhagwati (1994) and Srinivasan (1994), core labour standards cannot be easily shaped by policies. Instead they are market outcomes that will be influenced, *inter alia*, by economic growth. In their view, core standards are not international public goods: each country determines its own rules and regulations, including its labour market regulations, according to its specific institutional and historical set-up, level of economic development, etc. Only the principles are internationally recognised, not the setting of standards, which is necessarily country-specific.

94. Several examples are worth mentioning here. Restrictions on certain aspects of freedom of association may be explained by a government's belief that free unions may produce detrimental economic effects. Thus, the limitations on the right to strike that prevail in many countries are often justified by governments on the grounds that unrestricted strikes will lead to social disorder and lower economic growth. Likewise, the ILO regularly issues complaints against the legal requirement that only one union can represent workers in each enterprise. However, enterprise-based union systems exist in many Latin-American countries, probably for historical and cultural reasons. The system of enterprise-based unions is also rather common in Asia. To the extent that such a system has been democratically chosen, it can be viewed as a particular manifestation of freedom of association and not as a denial of basic workers' rights.

- iv) The economic development argument

95. Finally, there are cases where non-observance of core standards is used as a tool to strengthen exports and foreign direct investment, especially in the case of export-processing zones. Unions are simply prohibited in the export-processing zones of Bangladesh and Pakistan (see Part I), while they are discouraged in Guatemala and Panama. A special legislation applies to the export-oriented electronics' industry in Malaysia. These cases cannot be explained by differences in the approach to human rights (indeed unions are allowed in the rest of the economy). Neither can they be explained by difficulties in implementation problems associated with a particular socio-cultural context. Instead, such regulations and practices seem to be part of a deliberate strategy to improve export performance. Whether they achieve this latter objective or not is, of course, another question.

## 2. *Some empirical results*

96. Empirical analysis can shed some light on the effects of core standards on certain observable economic indicators such as output, wages and productivity. On the other hand, workers' welfare is likely to be positively influenced by the degree of observance by employers of their basic labour rights; but these welfare effects are not directly observable and cannot be estimated empirically. For this reason, the analysis in this section is limited to observable economic indicators. It is, however, important to stress the limitations of empirical work in this area. Information on the degree of enforcement of core standards is rather sparse, except in the case of freedom of association and collective bargaining. Moreover, empirical analysis has to focus on the possible relationship between economic indicators that can be easily quantified (such as output, wages and trade flows) and core standards, which are a qualitative variable in nature.

97. The effects of freedom of association and collective bargaining on wages and productivity can go in different directions. For example, as the analytical framework suggests, freedom of association can increase labour costs, but it can also raise productivity (and thus reduce unit labour costs). In one case, freedom of association might reduce economic efficiency, while in the other case it might foster growth and living standards. An empirical investigation of the economic effects of core standards has been carried out in the case of freedom of association, the only core standard for which information on the extent of implementation is available for all countries selected for the study.

### *Freedom of association and output*

98. There appears to be a weak positive association between the level of per capita GDP and the degree of observance of freedom of association. Likewise, international comparisons of productivity growth show that countries belonging to group 1 have, on average, a better productivity performance than countries of groups 2 and 3. Certain countries where freedom of association is non-existent exhibit very rapid productivity growth, though from very low levels.

99. These weak associations imply nothing about the direction of causality. In order to have a better understanding of the relationship between economic development and the degree of observance of core standards -- and to assess whether one causes the other -- countries for which a significant change in freedom-of-association legislation and practice has been recorded are selected. In these countries (Table 6), there has been a clear-cut improvement in freedom of association over the past 15 years or so. In general, this reflects a more fundamental move towards democracy. GDP growth during the 5 years following the change is compared with GDP growth during the 5 years preceding the change. Interestingly, the (unweighted) average growth rates of GDP and manufacturing output are both higher after the improvement in freedom of association. However, no single pattern holds for all countries. In six countries (Argentina, Panama, Peru, Philippines, Uruguay and Venezuela), GDP growth increased significantly after the improvement in freedom of association. On the other hand, in eight countries (Brazil, Ecuador, Fiji, Korea, Suriname, Chinese Taipei, Thailand and Turkey), GDP growth fell significantly after the improvement, while in the remaining countries (Dominican Republic, Guatemala and Honduras), no change was recorded. Not surprisingly, other factors (factor accumulation, technological change, oil price changes, debt crises, economic policies, etc.) play a much more important role than freedom of association in determining economic growth.

*Freedom of association, wages and productivity*

100. The wage and productivity effects of freedom of association and collective bargaining are difficult to gauge. A priori, the impact of union rights on wages and productivity is ambiguous (see the Analytical Appendix):

- The establishment of guarantees to union rights can lead to an improvement in working conditions through the collective bargaining process. This might happen even in the absence of legislation on these working conditions. For instance, unions may succeed in establishing a floor to wage levels through collective bargaining. Unions may also establish a premium in wages and fringe benefits for their members over the wages and benefits paid to non-union members. Both effects would tend to influence labour costs, hence employment.
- Union rights and free collective bargaining might also influence the structure of labour costs (and the allocation of employment) across industrial sectors and skill groups. For example, in the absence of free bargaining rights, wages of some sectors might be maintained at artificially low levels compared with what market forces would justify<sup>29</sup>. The establishment of freedom of association and bargaining rights will therefore entail a shift in relative wages, inducing changes in the allocation of labour between firms and sectors.
- As discussed above, it is often argued that workers' representatives can shape management practices, thereby creating a favourable environment for improving productive efficiency. To the extent these favourable effects occur, they would give rise to income effects which, in turn, would have repercussions on welfare and the demand for factors of production, including labour. But a favourable productivity effect would have to be traded-off against the impact of a union in terms of generating a wage premium over non-union members, thereby leading to unemployment<sup>30</sup>.

101. At the aggregate level, there appears to be no correlation between real wage growth and freedom of association (Chart 2). During the 1980s, countries belonging to group 1 have recorded similar rates of growth of real wages as countries belonging to groups 3 and 4. Even though freedom of association is not observed in countries such as Kuwait, Indonesia and China, real wages in these countries have grown faster than in most of the OECD area. The same conclusion holds when the growth in real wages is compared with productivity growth: for all four groups, real wages have grown less than productivity gains. In several countries where there is relatively little or no freedom of association (e.g. Kuwait, Malaysia, Singapore, Thailand and Turkey), real wages have actually grown faster than productivity growth.

102. It is also interesting to note that in countries where core standards have improved, there is no evidence that real wages grew faster. This, taken together with the previous result, suggests that there is no empirical evidence that "low" core standards imply "low" real wage growth or that raising core standards would imply higher real wage growth.

## **B. Core labour standards and trade performance**

103. This section looks at the implications for trade performance of different economic properties of core labour standards. It focuses on the issue of whether there is a relationship between core standards, however set, and trade. This issue can be looked at in three different ways. First, does trade between a high-standards' country and a low-standards' country reduce real income and output in the former?

Second, will a country that improves its observance of core standards suffer a loss of competitiveness and trade performance? Third, do core standards shape sectoral trade patterns?

### *1. Trade performance of countries with different degrees of enforcement of core standards*

104. As the analytical framework developed in the Analytical Appendix suggests, trade between countries with different degrees of observance of core standards is beneficial for all countries. The reason is that trade permits countries to exploit their comparative advantages, irrespective of the source of those advantages. There is, however, some concern that competition between countries with different levels of labour standards might trigger a "race to the bottom". This view is based on the belief that "unduly low" labour standards can create a special competitive advantage, thereby stimulating exports and attracting inflows of FDI.

105. The purpose of this sub-section is to present descriptive data on the trade performance of countries with different degrees of enforcement of core standards. The description is based on the CHELEM data base, which comprises trade statistics for the world as a whole, as well as for most individual countries. This data base is of special interest for this study as it is the only one that contains harmonised bi-lateral trade flows between all countries, including non-OECD trade. This sub-section focuses on the countries selected in Part I of the study.

106. Before presenting the data, it is useful to elaborate on some data and methodological issues. First, the empirical work will mainly concentrate on freedom of association and collective bargaining<sup>31</sup>. Moreover, the potential trade implications of non-respect for child labour protection rules will be only addressed in the special case of exports of products for which blatant child labour exploitation seems to be a serious problem.

107. Second, in very general terms trade performance can be defined as the ability of an economy to adapt to ever-changing world market conditions. Trade performance can be positively influenced by a favourable level of cost competitiveness, but also by the intrinsic capacity of firms to adapt products (and production methods) to shifting tastes, trends in technology and other exogenous shocks. In this section, the export market share (the share of a country's exports in world trade) is taken as a proxy indicator of trade performance. A rise in the export market share is interpreted as an improvement in trade performance, and conversely a fall in export market shares suggests a deterioration in trade performance.

108. Third, when comparing trade performance, it is important to distinguish between manufacturing products and raw materials (including oil products, commodities, non-ferrous metals, etc.). During the 1980s, the value (in \$US) of world trade expanded by an average annual rate of 5 1/2 per cent. However, this masks a divergent trend between raw materials' trade and manufacturing trade: the latter grew at an annual rate of 7 1/2 per cent while the former recorded a small decline. These opposite trends have to be borne in mind when comparing trade performance, as several of the countries examined here are major exporters of raw materials. Given the volatility of raw material prices, it seems appropriate to focus on manufacturing trade rather than total trade.

109. Fourth, the analysis attempts to explore the links between core labour standards and trade performance. Therefore, the empirical analysis reviews trade performance from 1980 to the early 1990s, the period for which data are readily available for all countries under study. For most countries, there were very few changes in core labour standards during this period. Notable exceptions are Argentina, Chile, Korea and perhaps Chinese Taipei, where core labour standards improved in the course of the 1980s. For

the latter countries, an attempt will be made to assess trade performance before and after the changes in core labour standards.

110. Fifth, the extent to which core labour standards might explain trade performance depends on competing explanations. Over the medium and long-run, trade performance is influenced by many factors<sup>32</sup>. In a nutshell, these factors can be grouped under two broad headings, namely market forces and government intervention, including the establishment of core labour standards. Market forces are likely to play a very important role; for example, according to the catch-up theory, less-developed countries will tend to exhibit a higher economic growth potential, thus permitting a relatively dynamic expansion of exports. In other words, the lower the level of economic development, the higher is the export potential of countries. However, in order to realise this export potential, market forces must be allowed to operate -- hence, the need to adopt market-oriented policies. Conversely, developed countries have by definition less room to catch-up with the most advanced technologies. Their potential output (and export) growth will thus be more limited than in the case of developing countries.

111. Table 8 shows patterns of trade performance in OECD countries and selected non-OECD countries. Several countries have performed much better than others, especially the Dynamic Non-member Economies (DNMEs) as well as several OECD countries. On the other hand, the majority of OECD countries have maintained their export shares in world markets, while some non-OECD countries have recorded sharp declines.

112. In order to better understand whether core standards might have accounted for these trends, Chart 3 shows trade performance for different groups of countries. Countries are classified according to the degree of compliance with freedom of association and the right to collective bargaining. If one focuses on either total trade or manufacturing trade, little relationship is found between changes in export market shares on the one hand and these core standards on the other. Therefore, it might be argued that low standards are not an important explanatory factor behind changes in trade performance.

113. Chart 4 suggests that market forces are likely to be a more important explanation of trade performance. The Chart shows that there is some association between manufacturing trade performance and the level of per-capita GDP: the lower the latter, the higher is the potential for exports. More specifically, during the 1980s, export market shares of the average high-income country declined; they rose by nearly half for the average medium-income country<sup>33</sup>. Most of the low to medium-income countries reviewed here have exhibited export dynamism, irrespective of the levels of their core labour standards. For example, China, Portugal, Spain, Singapore, Chinese Taipei, Thailand and, especially, Turkey, have all recorded impressive gains in export market shares<sup>34</sup>.

114. Finally, it could be argued, however, that core standards influence export performance mainly via their possible impact on unit labour costs, which is a significant determinant of export performance; but, as shown above, there is empirical evidence that over the last decade, real wages have grown faster in low standards' countries than in high standards' ones. This finding is confirmed by a recent study [U.S.I.T.C. (1995)].

## 2. *Changes in core labour standards and trade performance*

115. Even though international differences in freedom of association and collective bargaining appear to have no detectable impact on cross-country trade performance, it is still possible that significant changes in a particular country's labour laws will have a measurable effect on the trade performance of that

country. It is of interest to apply this type of analysis for a few countries under study, namely Argentina, Chile, Korea, Portugal, Spain and Chinese Taipei<sup>35</sup>.

116. The recent history of these countries is characterised by important changes in their political systems, entailing the creation of democratic institutions in most of them. Reflecting political changes, freedom-of-association principles have been strengthened in these countries. For instance, by the end of the 1970s, legislation and practice in the three Southern European countries was made consistent with ILO Conventions. In Argentina, democracy was restored in 1983, after 7 years of military regime. Following the 1973-89 Pinochet regime, democracy was restored in Chile. Finally, in 1987, labour relations in Korea and Chinese Taipei shifted towards a more liberal stance following a period characterised by martial law.

117. Chart 5 presents the evolution of export market shares during and after the period of repressed labour rights in these countries. Except in the case of Chile, trade performance was altered following the upgrading of core standards. In Argentina, restoration of democratic institutions was followed by a worsening of trade performance. However, this is likely to be the result of other factors, notably the build-up of a sizeable internal and external debt, rather than better freedom-of-association guarantees. Likewise, trade performance in Korea and Chinese Taipei appears to have suffered after the improvement in core standards, but similarly the main causes lie elsewhere.

118. In Korea, a shift towards a democratic regime occurred in 1987 and various restrictions on trade union organisation and activity were consequently relaxed. As far as trade unions were concerned, before democratisation the emphasis was on enterprise-level organisation, in particular as stipulated in changes to labour law introduced in 1980. After the 1987 revisions to labour law, unions were allowed to organise at the level they chose, even if bargaining has tended to remain at the enterprise level. Several restrictions to the freedom of association still remain, as noted in Part I<sup>36</sup>.

119. According to Wilkinson (1994), who studied the inter-relationship between the state, employers and labour in the East Asian economies, a chronic labour shortage has developed since the late 1980s, and this has gone hand-in-hand with an improvement in working conditions. As a result, manufacturing labour costs were pushed up. After the democratisation process, Korean labour gained not only in terms of real wages but also in terms of improved working conditions. Between 1987 and 1990, nominal wages in the manufacturing sector, where trade unions are concentrated, increased faster than average and this coincided with a loss of export competitiveness. In general, however, the deterioration of Korean trade performance is due to several factors, including the real appreciation of the won, which was part of the overall re-orientation of economic policies to stimulate domestic demand, and the relocation of many export firms abroad [OECD (1994c)].

120. Similar considerations apply to Chinese Taipei. Under martial law which was lifted in 1987, strikes and collective bargaining were prohibited. Until 1987, trade union activities were not repressed but severely constrained by the ruling party. During the 1980s, as a consequence of international and domestic pressures, a number of changes intervened in labour laws. A Labour Standards Law was introduced in August 1984, which improved compulsory pension and severance benefits and established a 48-hour working week and minimum monthly wages. But the major changes occurred after 1987, when better guarantees for freedom of association were introduced and a Council for Labour Affairs was established with the aim of up-grading labour conditions and maintaining social stability. As in Korea, union activity has probably contributed to increase labour costs. Manufacturing wages and manufacturing unit labour costs in Chinese Taipei have been rising rapidly since the late 1980s. It can be argued that real wage gains are attributable to a tight labour market (since 1988, unemployment has remained below 2 per cent), and to trade union demands. In addition to the changes in labour law, in the late 1980s and early

1990s a number of factors have combined to constrain trade performance, including again a nominal appreciation of the currency which accompanied a deliberate policy shift to slow down the growth in the balance-of-payments surplus.

121. In sum, the relaxation of labour policies in Korea and Chinese Taipei in 1987, combined with the emergence of labour shortages, may have fuelled wage demands, entailing a temporary slowdown in exports. However, over the longer-run, no clear pattern emerges, perhaps because higher wages resulting from more liberal labour policies have been accompanied by better productivity. These conclusions lend support to the results presented in Table 7, which suggest that improved freedom of association is not associated with a significant change in the growth of total exports.

### 3. *Core labour standards and sectoral trade performance*

122. It has been argued that core labour standards might shape patterns of comparative advantage and thus sectoral trade patterns. This argument, if correct, would explain the perception among employers and workers in particular industries located in high-standards' countries that trade practices in other parts of the world are "unfair".

123. Factor endowments and technology are key factors that shape comparative advantage. Thus, it can be expected that low-income countries will be specialised in low-technology/labour-intensive sectors. But it is also well-known that government policies can also modify comparative advantage. In particular, restrictive labour laws are sometimes part of a more general industrial policy, whereby governments favour particular sectors by way of subsidies, tax concessions and, perhaps, denial of core labour rights. It can thus be assumed that countries that restrict core labour standards in particular sectors will prolong or strengthen an existing comparative advantage, and in some instances, create a new one. It is a fact that provisions on labour standards differ across sectors and industries (see below). Overall, the question that arises is: Can the pattern of comparative advantage that is justified on the basis of resource endowments and technology be altered by different degrees of enforcement of core labour standards?

#### *a) Revealed comparative advantage*

124. Table 9 provides an overview of comparative advantage patterns for several selected countries. It is based on an index of "revealed" comparative advantage, which takes into account the strengths and weaknesses of foreign trade at a very disaggregated level (71 products). In the Table (Column 2), the most competitive sectors in terms of the index of revealed comparative advantage are identified for each country. In the last column of the Table, the main factors that create a comparative advantage in these sectors are identified<sup>37</sup>. For instance, differences in resource endowments explain why several countries at different levels of development display a comparative advantage in sectors with a high content of raw materials. This is the case for Australia (food products, metals), Canada and the Netherlands (gas sector), United Kingdom (oil), New Zealand (agricultural products), Malaysia and Mexico (oil). This is not surprising since raw materials are abundant in these countries. Differences in technology also play a role: the higher the level of development, the higher the technological content of comparative advantages. For instance, comparative advantage in Germany (special machines) and Switzerland (pharmaceutical products), differs quite substantially from that in Morocco and China (textiles and clothing). There is strong evidence of a technological catch-up: Korea has a comparative advantage in consumer electronics and Chinese Taipei in computer components. The main result that emerges is that patterns of specialisation are mainly governed by the relative abundance of factors of production and technology differences.

125. Are there cases where legislation on core labour standards interferes with specialisation? Analysis of compliance with the core standards on freedom of association and collective bargaining in specific export sectors based on reports of the ILO Committee on Freedom of Association suggests that in some cases these complaints have occurred in sectors where the examined countries have a comparative advantage. Most of these cases refer to a complaint against unlawful practices of employers, often with the consent of the authorities. For example, in Morocco severe measures were taken against workers who had engaged in trade union activities in textiles and agriculture enterprises (Case No.1724, June 1994); in Korea, workers in the automobile industry and shipyard workers were pursued or arrested in connection with their union activities (Case No.1629, June 1994); and in the Philippines and India, cases of anti-union discrimination and interference in trade union activities were denounced by workers in the food sector (Case No. 1718 and Case No. 1651, November 1994). These complaints concern anti-union practices by specific employers which are not necessarily followed by other employers in the same sector. Moreover, these practices are not the expression of a deliberate government policy aiming at creating a comparative advantage in the sectors concerned.

126. By contrast, in Malaysia, a complaint concerning the inadequacy of sector-specific legislation with respect to national legislation (and international standards) has been filed with the ILO. Malaysia has a strong comparative advantage in electronic products and special legal restrictions on freedom of association in this sector were noted in Part I. For example, electronics workers have faced intimidation aimed at eliminating the only in-house union in the industry (Case No. 1552, November 1994). This restriction on freedom of association, since it is intended by government and applied to a specific sector, can be interpreted as a deliberate attempt to strengthen comparative advantage in the electronics industry. It is, however, difficult to assess whether such a restriction is a fundamental factor behind the comparative advantage. In any case, there seems to be evidence that wages in that sector in Malaysia are higher than the manufacturing average [Business Times, May 1995, U.S. State Department, Country Report on Economic Policy and Trade Practices, 1995].

127. A recent study by the U.S. International Trade Commission lends support to these findings [U.S.I.T.C. (1995)]. According to this study, successful exporters of ten developing countries do not suppress core labour standards in order to reduce production costs<sup>38</sup>. In fact, exporting sectors in these countries have higher labour standards than non-exporting sectors. The study shows that sectors where core labour standards are typically low do not occupy the only or even the primary share of these countries' total exports. It also appears that, in these countries, core standards are often higher in export-oriented sectors than in the rest of the economy. Within the export-oriented sectors, wages and working conditions are positively associated with the degree of involvement of firms in exports.

#### *b) Export-processing zones*

128. Restrictions on labour rights in export-processing zones may also interfere with purely factor-based specialisation. The first export-processing zone (EPZ) was established in Ireland in 1959. By the 1970s, EPZs had begun to expand in East Asia as a way of attracting foreign investment and technology transfers to take advantage of the low labour costs in these countries and boost their exports of manufactures. Since then, EPZs have spread rapidly. Today it is estimated that there are over 500 zones world-wide located in 73 countries [Lloyd (1995)]. It is still in Asia, however, where this form of export promotion is particularly important. Indeed, Asian EPZs account for much of the growth of this region's exports of manufactures and about 64 per cent of world-wide employment in EPZs, with over 50 per cent of the total in China alone. The types of activities in the zones have also expanded. Whereas industrialisation in EPZs used to be concentrated in textiles, garments and electronic products, diversification into high-tech industries and services is becoming commonplace today.

129. According to the ILO, the vast majority of new jobs created by MNEs in developing countries are likely to occur in EPZs. Moreover, MNEs appear to account for a very large share of investments and jobs in EPZs, with about two-thirds of such jobs held by women. For example, it is estimated that foreign-owned firms account for 30 per cent of all firms in EPZs in Mauritius, 63 per cent in the Philippines, 77 per cent in Korea, and over 80 per cent in the Dominican Republic, Sri Lanka, Jamaica and Mexico (maquiladoras) [ILO (1993)]. In addition, many domestic firms established in EPZs often maintain close relations with MNEs.

130. The distinguishing feature of EPZs, as compared with other types of commercial zones, is the aim of attracting export-oriented enterprises or activities through the establishment of some sub-national customs area which gives customs treatment to goods entering the area that is different from, and more favourable than, goods entering other parts of the same nation. Most EPZs also offer preferences or privileges with regard to other government policies. This definition is complicated, however, by the linking of zones across two or more countries, a pattern that has emerged lately as a new form of industrial co-operation. One consequence is that different geographic areas of one nation can be constituents of different zones.

131. The economic policy environment in which EPZs operate is the main determinant of the work conditions prevailing in the zones. For example, in Mexico, where major policy reforms have been underway since 1986, accelerating the integration of the Mexican economy with, notably, the U.S. economy, labour practices under the maquiladora program have tended to approach the standards implemented in the United States [U.S. GAO (1993)]. Under the North American Agreement on Labour Co-operation between the United States, Canada, and Mexico, a side agreement to the North American Free Trade Agreement, moreover, mutual consultations over labour standards issues are regularly pursued (see Part III).

132. In other countries that have only recently begun to open markets to international trade and investment, restrictions on labour rights and freedoms are more prevalent in EPZs. However, only in five cases has it been demonstrated that the law is different in EPZs than in the rest of the country, indicating a deliberate government attempt to reduce core standards in these zones. In Bangladesh, professional and industry unions are simply prohibited in EPZs and this is presented as an inducement to attract foreign investors. Union officials do not have access to EPZs in Jamaica and Sri Lanka. In Pakistan, unions are banned in EPZs. Finally, in Turkey, workers do not have the right to strike for the first ten years of operation of EPZs.

133. It is a fact that governments in these five countries deliberately reduce core standards in EPZs compared with the rest of the country. However, it is difficult to assess whether such a policy will be successful for two main reasons. First, it is not at all certain that low core standards are a key factor in trade and investment decisions. As already discussed, there is indeed no evidence that low core standards are associated with low labour costs, an important determinant of trade and investment flows. Moreover, investors may prefer a stable social climate in their enterprise (which is likely to be associated with "good" standards), rather than a situation characterised by no or low core standards and social tension. Second, even if such practices do succeed in attracting certain foreign investors or in stimulating exports, the impact on the long-term growth of the country as a whole is very uncertain. Indeed, as discussed in the Analytical Appendix, repression of basic labour rights may cause a misallocation of resources, impairing long-term economic prospects.

134. There is some evidence of a positive effect of EPZs on employment and wages. According to a recent study, between 1986 and 1990, employment in EPZs rose on average by 14 per cent annually [Starnberg Institute (1991)], that is nearly five times more than the manufacturing average in developing

countries. Moreover, ILO (1993) points out that wages in EPZs are higher than average wages in the rest of the economy.

*c) Trade prices*

135. More direct evidence of the sectoral trade effects of core standards can be found by looking at trade prices. Indeed, trade prices are one channel through which core standards may have an impact on export performance. One problem with this kind of analysis is that data on trade prices cannot be easily found. The only available source of information is the OECD Foreign Trade database, which comprises data on trade values and volumes at a very detailed level of disaggregation. From this data base, one can construct measures of import (export) unit values, i.e. the ratio of import (export) values to import (export) volumes, which are used as a proxy for trade prices.

136. Using this data base, an attempt was made to assess the possible impact of freedom-of-association rights on U.S. import prices of textiles . The analysis has focused on one country only (the United States) and not on the OECD area as a whole, in order to focus on the differences of trade prices by country of origin of the exports. Indeed, trade prices may also be influenced by differences in factors unrelated with the supply conditions in the country of origin, such as the structure of demand in the countries of destination. The textiles sector has been selected because it is often claimed that the effects of violations of core standards in this sector are especially acute.

137. However, it is important to bear in mind that international comparisons of import prices so calculated pose methodological problems. Even at a detailed level of disaggregation, products may indeed differ across countries because of different design or other qualitative characteristics. These differences may lead to differences in their price that are not attributable to cost conditions. It might even be claimed that these qualitative characteristics are so important that it is not legitimate to compare the price of a product exported by different countries: the qualitative characteristics enable a differentiation of products. If this is the case, international comparisons of import prices would be irrelevant (just as it is irrelevant to compare the price of different products). But then the issue of “unfair” competition (be it as a result of alleged differences in core standards, dumping, or other reasons) cannot be raised. Moreover, the structure of import prices by country of origin may be affected by differences in the trade regime applied to imports from each of these countries.

138. Bearing these problems in mind, prices of US imports of 39 textile products from 28 countries have been calculated. The 39 products correspond to the SITC international categories of textile products (4-digit level). Selected countries comprise four major OECD exporters of textiles for which freedom-of-association rights are fully enforced (France, Germany, Italy and Japan), as well as 24 developing countries. These countries, though having similar levels of economic development (per capita GDP of less than \$1600), have different records in terms of freedom-of-association rights. With this selection of countries, two questions can be addressed: To what extent are US imports from high-standards’ countries more expensive than other imports and have these countries been crowded out from the US market as a result? Do international differences in freedom-of-association rights among the selected developing countries translate into different import prices?

139. The results of this research are presented in Table 10. First, the prices of textile products imported from high-standards’ OECD countries are generally much higher than prices of products imported from the other selected countries. Even so, the share of these OECD countries in US markets for textiles is very high. This suggests that high-standards’ countries have successfully differentiated their products. Second, the prices of imports from developing countries shown in the Table tend to be rather uniform, even though the degree of enforcement of freedom-of-association rights varies substantially

among these countries. This result suggests that freedom of association *per se* plays little role in the determination of export prices. A similar conclusion can be drawn from Chart 6. There also seems to be some association between per capita GDP and export prices: the price level tends to rise with higher levels of per capita GDP.

*d) Some evidence on export prices of goods produced with child labour*

140. Further empirical analysis of the possible relationship between core standards and sectoral trade patterns can be conducted by looking at the sectors where child labour exploitation is reportedly widespread. It could be argued that, because of child labour exploitation, export prices of the goods which embody this type of labour intensively are especially low. In order to assess the validity of such assertions, it is interesting to look at export prices of the carpet sector, where child labour exploitation is alleged to be widespread in several developing countries.

141. Table 11 presents data on export unit values (a proxy for export prices) for carpets for two groups of countries chosen among the largest world exporters of hand-made carpets. The export price of a hand-made carpet ranges from over 40 \$ in China to almost 70 \$ in Nepal, where child labour is reportedly pervasive [US Department of Labour (1994)]. The use of child labour in the manufacture of hand-made carpets does not seem to have reduced the export prices of these carpets compared with other countries where the practice of child labour is not widespread. A similar estimate has been carried out for the export of carpets manufactured with artificial textiles. For this type of product, Belgium and Netherlands have lower average export prices than Turkey, where there is some evidence of child labour, while the third developed country in the group, Denmark, has the highest average export price. Economies of scale are likely to be an important factor at work: the second column in Table 11 gives a measure of the volume of exports for each country.

142. The practice of exploitative child labour is morally reprehensible. It moreover has an insignificant impact on the patterns of specialisation, even in the short-run. This finding is consistent with evidence, cited in a recent ILO report, that in countries where child labour is used, such labour is only marginally cheaper than adult labour [ILO 1995)].

#### **4. Conclusions**

143. It is difficult to carry out empirical analysis on the possible links between core standards and trade flows. The main problem encountered is that information on enforcement of core standards is sparse and incomplete, except in the case of freedom of association and collective bargaining. Any conclusions drawn relate mainly to these two core standards.

144. Within these limitations, empirical findings confirm the analytical results that core labour standards do not play a significant role in shaping trade performance. The "race to the bottom" view which argues that low-standards countries will enjoy gains in export market shares to the detriment of high-standards countries appears to lack solid empirical support. Countries can only succeed in repressing real wages and working conditions for a limited period of time. Thereafter, market forces will be such that wages will catch-up, thus wiping out previous competitiveness gains. More generally, there is evidence that, as expected, low per-capita income countries have recorded significant improvements in export market shares, suggesting market forces work in the aggregate.

145. Moreover, apart from some notable exceptions, there is little evidence to suggest a relationship between core labour standards and sectoral patterns of export performance; once again, market forces

appear to be the main influence on sectoral trade patterns. There are, however, some cases where the denial of core standards has been deliberately used by governments with the aim of improving the trade performance of certain sectors or of attracting investment to EPZs. Even though some economic gains might be obtained for these sectors, these gains are likely to prove short-lived; in the long-term, the economic costs associated with low core standards are likely to outweigh any possible short-term gains.

146. These findings also imply that any fear on the part of developing countries that better core standards would negatively affect either their economic performance or their competitive position in world markets has no economic rationale. On the contrary, the enforcement of core standards is likely to strengthen the long-term economic performance of all countries.

### **C. Core labour standards and trade liberalisation**

147. Possible links between the level of core labour standards in a given country and the openness of its trade regime are also important to consider. Questions about such links concern not only the direction of causation but also the nature of the relationship, whether it is mutually supportive or conflicting. More specifically:

- i) Does trade liberalisation have an effect on the level of core labour standards in a liberalising country?
- ii) Does better enforcement of core standards in a newly liberalising country make trade reform more successful by increasing the actual and potential gains from trade, or does it constrain trade reform by slowing down the ability of firms to adjust to international competition?

148. Because the links between core standards and comparative advantage patterns have proved to be tenuous, the emphasis in this section is placed on the dynamic adjustment process that takes place in an economy over time when more liberal trade policies are being credibly pursued. The two questions set out above are considered in turn. In subsection 1, the decisions of firms and governments about the level of core standards during periods of continuing structural adjustment are considered. In subsection 2, some empirical evidence regarding freedom of association and collective bargaining rights is presented.

#### ***1. Possible relationships between core standards and trade liberalisation***

##### *1.1 Can trade liberalisation affect core standards?*

###### **i) Firms and adjustment pressures**

149. Trade liberalisation can create sizeable and lasting increases in an economy's real income and welfare. But it can give rise to severe adjustment pressures, especially for particular firms and their employees and in certain geographical locations [Richardson (1989) and Venables (1995)]. Although the burden of adjustment is likely to diminish over time, especially if trade liberalisation is itself phased in gradually, as is often the case, it can be particularly severe at the start of reforms, leading many firms to change outputs and activities and workers to change industries and jobs.

150. The decisions that firms make with regard to core labour standards will be related to the effects they perceive standards to have on their ability to adjust. Based on the analysis in Section II A above, to the extent that low (or non-existent) core standards are a cause of resource misallocation or a constraint on

innovation, and are perceived by managers as such, trade liberalisation can, over time, impel higher standards. However, when markets function less than perfectly, managers may not perceive any link between the new incentives and the need for higher standards. Or, when core standards have significant public goods attributes, managers may perceive the link, but still be unwilling to improve core standards on their own because their personal gains are relatively greater under the status quo. This will be especially true in concentrated industries or in enterprises that have been protected for a long time, particularly by non-tariff barriers [Gaston and Trefler (1995)].

#### ii) International convergence

151. Illustrative evidence on a closely-related set of issues indicates that for countries that are linked together by international trade, not only do their growth rates tend to converge [Larre and Torres (1991) and Williamson (1995)] but so do their institutional systems [Sachs and Warner (1995)], with the poorer countries catching up to the richer ones. Most programmes of economic reform now underway in the developing and transition economies have as their strategic aim the integration of the national economy with the world economy. Integration means not only increased market-based trade and financial flows but also institutional harmonisation with the OECD economies with regard to trade policy, legal codes, tax systems, ownership patterns, and other regulatory arrangements.

#### *1.2 Can core labour standards make trade reforms more successful?*

152. Experiences in liberalising countries over the past two decades have shown that for trade reforms to be successful, they need to be sustained over a considerable length of time, and not reversed. One of the requirements for a durable reform process has proved to be a widespread coalition in support of freer trade. In other words, the more numerous the individuals in a society are with an "encompassing interest" in that society, the more likely that the liberalisation process can be successfully sustained.

153. According to Olson (1982), an encompassing interest gives an individual an incentive to care about the productivity of the society and to attempt to increase it. His/her interests are served not only by obtaining a larger share of the social output, but also by increasing the total output of the society. By contrast, an individual with a "narrow" interest has only an incentive to strive to obtain a larger share of the society's output through distributional struggle, even if this distributional struggle reduces the national income by much more than the narrow interest obtains. The evidence suggests that societies lacking encompassing interests have not been able to carry out a well-planned trade liberalisation programme over an extended period [Thomas and Nash (1991)].

154. Can core labour standards foster the prevalence of encompassing interests in a society? Two opposing arguments are reviewed, assuming different economic properties of core standards.

#### i) Core standards and enforceable contracts

155. When core standards are guaranteed, their effects can be equivalent to those of enforceable contracts. For example, whether considered as the framework conditions for other labour standards or separately, core standards can provide a reliable and impartial mechanism to enforce needed contracts in the work place. In securing the credibility of such negotiated contracts, core standards can free the individuals concerned from many of the constraints that keep their interests narrow. For the first time, they will be able to enter into certain kinds of transactions that take place over a long period of time, or involve many parties; such transactions are not feasible when there is no such mechanism to enforce work-related contracts. In these circumstances, core standards can enable encompassing interests to become more prominent in society as a whole.

156. The interaction between advancing trade reforms and better core standards in this case will be mutually reinforcing. Freer trade will increase the potential returns from complex transactions. And, at the same time, rising core standards will permit a growing number of individuals to undertake such transactions and to benefit from their returns.

ii) Core standards and dual labour markets

157. When the enforcement of core standards results in the protection of an exclusive group of workers, the effects of core standards will tend to reinforce the narrow interests of both the protected and unprotected individuals. As pointed out earlier, this could be the case when unions protect the rights of their members to the detriment of the non-unionised workers and the unemployed. In these circumstances, neither of the groups of workers nor individuals among the unemployed will have an incentive to care about the productivity of society at large.

158. The interaction between the trade liberalisation process and core standards in this case may be ambiguous. On the one hand, to the extent that core standards create distortions in the labour market, this can clearly constrain the dynamic adjustment of the economy towards the international prices and best practices that it is being exposed to by the trade policy measures. On the other hand, the discipline imposed by markets on such distortions should increase over time as international competition is progressively introduced by the trade reforms. In an open and competitive economy, the costs of collective bargaining agreements will fall mainly on the firm and the unionised workers, deterring them from reaching unrealistic agreements [World Bank (1995)].

## 2. *Some empirical results*

159. This subsection attempts to evaluate the relationships discussed above on the basis of some empirical evidence gathered for a sample of countries. It is reasoned that if trade liberalisation is an effective policy instrument for raising core standards, then trade liberalisation episodes should precede improvements in core labour standards. Similarly, if core standards can make trade reforms more successful, then better standards should precede the final phase of a trade liberalisation episode. The possibility of a mutually supportive or incompatible relationship is also tested for.

160. The approach adopted is to track the sequencing patterns observed between trade liberalisation episodes and improvements in freedom-of-association and collective bargaining standards, proxied by progress in compliance with ILO Conventions 87 and 98. Comparable data for the other core standards were not available at the time of this writing so any conclusions drawn from this analysis relate only to freedom of association and collective bargaining rights.

161. The concepts of "trade liberalisation" and "improving compliance with freedom-of-association standards", as they are used here, are closely related to the data sources used to measure changes over time in the openness of trade regimes and in the extent to which association rights are respected. Thus, trade liberalisation is evaluated on the basis of the coverage and intensity of quantitative restrictions and the average level of (all-inclusive) statutory tariffs according to a method developed by the IMF to monitor trade reforms in Fund-supported programmes [IMF(1995)]. Improving compliance with freedom of association and collective bargaining is evaluated on the basis of a method developed by the Secretariat. It consists of computing an index for individual countries of their compliance with ILO Conventions 87 and 98, and of measuring changes in the degree of compliance over time. Observations made by the ILO Committee of Experts and the Conference Committee in their annual country reviews are weighted according to the category of observation and the severity of the Committees' evaluations. It must be

stressed that the resulting index values embody an element of judgement on the part of the Secretariat. Moreover, the empirical results emphasise changes in individual countries' practices over time rather than cross-country comparisons. This is for two reasons. First, countries interpret these two ILO Conventions in different ways. Second, the ILO takes no position in the rating of countries as compared with one another.

162. The time period covered is 1980-94. It was determined by the availability of consistent data series as well as the fact that trade liberalisation episodes in most low-standards' countries have been concentrated in this period. Details of the IMF and Secretariat methodologies are presented in Annex 2.

### *2.1 Does trade liberalisation precede freer association rights?*

163. The first step was to identify those initially low-standards' countries which put in place a major trade reform programme during 1980-94. This resulted in a selection of 44 countries which are grouped in Table 12 according to the estimated restrictiveness of their trade regime in 1994. Then, progress in complying with ILO Conventions 87 and 98 was estimated for each of the countries over the same time period. In this case, progress reflects both improvements in a country's legislation governing freedom of association and collective bargaining rights as well as improvements in implementing the laws as verified by the ILO Committee of Experts and Conference Committee.

164. To gauge the sequencing between trade liberalisation and better compliance with Conventions 87 and 98, an attempt has been made to pin-point the respective time periods when each process began. Though the intensity of the reforms differs across countries, the focus here is on the timing of the starting points.

165. The patterns of sequencing that emerges for the sample countries are presented in Table 13. No single pattern is dominant. First, free association rights tended to improve at least three years after the start of trade reforms in 15 countries (Bangladesh, Bolivia, Chile, Colombia, Costa Rica, Ghana, Korea, Malaysia, Mexico, Morocco, the Philippines, Chinese Taipei, Thailand, Tunisia and Turkey). Second, better association rights preceded the trade reforms by at least three years in nine countries (Argentina, Brazil, Ecuador, Honduras, India, Jamaica, Kenya, Pakistan and Zimbabwe). Third, the two processes began at about the same time in eight countries (Algeria, Ethiopia, Guatemala, Mali, Peru, Sri Lanka, Uruguay and Venezuela). Fourth, trade reforms were pursued in six countries without any observable improvement in association rights (Cameroon, China, Egypt, Indonesia, Nigeria and Tanzania). Finally, there was insufficient information reported to the ILO on association rights to evaluate any possible change in six countries (Benin, Burundi, Cote d'Ivoire, El Salvador, Malawi and Nepal).

166. The question of whether freer trade can lead to better association rights appears to be answered affirmatively for the 15 countries where trade reforms came first. However, in the 17 countries where freer association came first or occurred at about the same time as the trade reforms, there appears to be a positive two-way relationship between these processes. Indeed, comprehensive policy and institutional reforms have been implemented simultaneously in most of the liberalising countries.

### *2.2 Do freer association rights precede successful trade reforms?*

167. The second test is to find out whether improved compliance with Conventions 87 and 98 can lead to more successful trade reforms in newly liberalising countries. This is attempted by categorising the sample countries in two ways (Table 14). First, countries are grouped according to the estimated restrictiveness of their trade regime in 1994, the most recent year for which comparable information is available (from Table 12). It is reasoned that the greater the openness of the trade regime, the more

successful the trade reform, even though in some countries the process has taken a much longer time than in others.

168. Second, within the trade-restrictiveness categories, countries are grouped according to the extent to which they have been found to comply with the ILO's freedom of association and collective bargaining requirements in 1994. It is recalled that four groups were defined in Part I: Group 1, where freedom of association is by and large guaranteed in law and practice; Group 2, where some significant restrictions still persist; Group 3, where restrictions severely hamper freedom of association; and Group 4, where freedom of association is practically non-existent. Since the analysis in this section is concerned with relatively low-standards' countries, all of the sample countries fall within Groups 2, 3 or 4; none is included in Group 1. A final grouping in Table 14 includes countries for which information on association rights is lacking. Such a striking absence of information is interpreted in itself as a disrespect for freedom-of-association norms.

169. The results reveal a relatively clear pattern. The more successful the trade reform in terms of the degree of trade liberalisation achieved, the greater is the respect of association rights in the country. And conversely, the more restricted the trade regime, the worse is the country's compliance with the ILO Conventions in question.

170. For example, the 12 countries with relatively open trade regimes also display the best record in terms of association rights. Seven belong to Group 2 and five others to Group 3. No country is included in Group 4 or lacks sufficient information. Next, for the 21 countries with moderately restrictive trade regimes, four are included in Group 2, 12 in Group 3, one in Group 4, and four others lack adequate information. Finally, the 11 countries which have restrictive trade regimes appear to have the worst performance as a group with regard to compliance with freedom of association norms. That is, only one country is in Group 2, just three in Group 3, five in Group 4, and two lack information.

### *2.3 Conclusions*

171. The empirical results presented for the sample of 44 countries do not provide unambiguous support for one pattern of sequencing over the other as to whether trade liberalisation or freer association rights come first. Rather, the clearest and most reliable finding is in favour of a mutually reinforcing relationship between successfully sustained trade reforms and improvements in association and bargaining rights. This positive two-way relationship appears to be strongest after trade reforms have been in place for several years. Excluding the countries with insufficient information, there was notably no case where the trade reforms were followed by a worsening of association rights. And there was similarly no case where promoting freedom of association and bargaining rights impeded trade liberalisation. This means, at least for these countries, that fears that freer trade could lead to an erosion of these standards, or that improved compliance with them could jeopardise trade reforms, are unfounded.

## **D. Core labour standards and FDI (under discussion in the CIME)**

172. A note by the Secretariat on the possible links between core standards and FDI will be discussed at the upcoming meeting of the CIME. It is intended that a revised version of the note will be incorporated in this report.

## **E. Trade, employment and wage inequality**

### **1. Introduction**

173. Although the world-wide increase in international trade after the second world war is generally regarded as having made a major contribution to economic growth, trade, especially with low wage developing countries, has more recently been identified by some observers as contributing to higher unemployment and/or lower wages in OECD countries, especially for the low-skilled. It is also sometimes argued that certain low-wage developing countries derive their comparative advantage from their failure to observe or enforce core labour standards. In Section B, the possible links between comparative advantages and certain core standards were explored and little evidence of such a relationship was found. However, even assuming that core standards do shape wages and comparative advantage, it is still of interest to assess the recent evidence in support of the basic proposition that trade with developing countries is a significant cause of higher unemployment and/or lower wages in OECD countries.

### **2. Summary of empirical work**

174. In recent years, there have been several empirical analyses of the impact of changing trade patterns on employment, including two conducted by the OECD Secretariat and reported on below. There have also been many studies which examine the links between trade and the growth in wage inequality which has been observed in a number of OECD countries over the past decade. Most studies have tended to concentrate on US experience, since that country has witnessed a substantial increase in its openness and major changes in the geographical distribution of its main trading partners at the same time as a sustained and large widening in earnings inequality. The swing into large trade deficit during the 1980s was one impetus to analysis, as were the potential impacts of NAFTA and rising trade with low-wage Asian countries on production, employment and relative wage patterns in the US. Some of the work is summarised in Baldwin (1995) and Richardson (1995), and there have been a number of recent Working Papers published by the National Bureau for Economic Research (NBER) in the context of their research programme on trade and resource allocation. More recently, some studies have focused on the European experience [Dewatripont et al. (1995); Courakis, Maskus and Webster (1995); Hine and Wright (1995); Cortes et al. (1995)].

175. Typically, analysts find that the impact of trade on employment and wage relativities has been significant in specific sectors. They also find that the measurable negative impact arising through increased import penetration is highest in sectors that employ relatively large numbers of low-skilled workers. Almost all studies find that the impact of trade on employment is small relative to changes in employment overall, even for those sectors where the trade impact is highest. Recent empirical research is based mainly on two methodologies, the factor content analysis of import and export industries and the goods' price analysis.

176. The factor content method estimates the amount of employment used in the production of a particular country's exports, and the amount of employment that would have been used to produce the country's imports. The difference between the employment content of exports and the employment content of imports is interpreted as the net impact of trade on the demand for labour. Most recent studies based on this methodology find that this impact is small (see for instance Sachs and Shatz (1994), and Lawrence (1995)). One notable exception is Wood (1991, 1994), who argues that the conventional factor content method of measuring the employment content of imports from developing countries seriously understates their true impact on demand for low-skilled labour in OECD countries<sup>39</sup>

177. The factor content method in general and Wood's results in particular have been criticised. By ignoring the crucial transmission role of relative goods' prices, it is argued that the factor content analysis misinterprets the possible impact of imports from LDCs on the demand for labour in OECD countries.

178. The proposition that trade with the South has led to a relative (and possibly absolute) fall in real wages for unskilled labour in the U.S. (or lower unskilled employment in Europe), is based on the Stolper-Samuelson theorem. For this result to occur, the theorem requires that the relative prices the goods intensive in unskilled labour should have fallen in the first place. Recent empirical studies show that there is no compelling evidence in support of this. For instance, Lawrence and Slaughter (1993) analyse the behaviour of US prices of manufacturing industries over the 1980s and find no significant relationship between relative price changes and relative factor intensity. They also find that during the 1980s, relative trade prices of unskilled-labour-intensive goods increased slightly (computer prices are included in the sample). It has been argued that this result (i.e. the lack of a statistical relationship between trade prices and relative factor intensities) is explained by the fact that the price of computers are included in the sample; since the price of computers (which are skilled-labour intensive) has recorded a massive fall, their inclusion in the analysis might distort the picture. In another study [Sachs and Shatz (1994)], computer prices are excluded from the sample and a modest relationship between trade prices and relative factor intensity is found: relative prices of goods produced in industries relatively intensive in unskilled labour have declined somewhat. Lawrence's latest work also shows that the picture does not greatly change even when computers are excluded [Lawrence (1996)]. But, it has also been pointed out that even if such a relationship was stronger, the conclusion that the result would be a fall in the real wages of the unskilled (or a rise in unskilled labour unemployment) is based on several strong assumptions that may or may not hold true [Bhagwati (1995)]<sup>40</sup>.

179. More generally, several surveys of this literature [Lawrence (1995); Freeman, (1995); Richardson (1995)], conclude that trade with low-wage countries is not a major explanatory factor behind the observed trend in wages/employment of unskilled workers in OECD countries. Instead they tend to accord a modest role to such trade in accounting for observed trends in unemployment and wage inequality. The use of technologies biased against unskilled labour is often considered a more plausible explanation even though direct evidence in support of this latter hypothesis is difficult to find. Wood's work represents an exception.

### 3. *Evidence from the Jobs Study*

180. In Chapter 3 of the OECD Jobs Study: Evidence and Explanations, the relation between changes in trade patterns and employment patterns was analysed for a large number of OECD countries. Two pieces of analysis were reported, one using an econometric approach, the other input/output analysis<sup>41</sup>. The econometric work concentrated on changes in relative employment and relative wages in the tradeables sector, and specifically the manufacturing sector, as non-availability of data severely restricts any analysis of the service sector. The input/output analysis, on the other hand, covered services as well as manufacturing industries.

181. By and large, as regards total trade, the findings of the OECD's econometric analysis were similar to those of previous studies, even though the number of countries in the OECD sample was considerably larger than in previous studies, and the data were more recent. Changes in trade intensities were found to be associated with changes in employment in particular sectors as resources are reallocated in response to underlying cost and price changes. The changes were usually in the expected direction, i.e. a rise in import penetration was associated with a fall in employment and a rise in export intensity with an increase in employment (the export-employment link is strongly positive only in the long term).

However, insofar as the empirical analysis could determine, the employment changes associated with changes in trade intensities were small relative to changes induced by other factors (above and beyond the long-term trend changes in employment in the sectors and countries concerned). There was no evidence that trade-related employment effects were any stronger or weaker in the more open economies of European countries than in the more closed ones of the United States or Japan.

182. Chapter 3 of the *Jobs Study* also reported on work carried out by the Directorate for Science, Technology and Industry. This analysis was based on a sectorally disaggregated input/output (IO) approach covering 8 OECD countries during the period 1971 to 1986 (few IO matrices are available after this date). The aim was to decompose changes in employment in major economic sectors by major proximate causes: economic growth; labour productivity; changes in industrial structure; net trade. The IO approach differs from the regression analysis described above in that more sectors were analysed, and the change in employment was broken down exhaustively (in an accounting sense) into its various components. The analysis showed that trade-related changes in employment were small relative to employment changes related to other influences, and that the net effect was broadly positive, especially so in the service sectors. As with other studies of this nature, the IO approach found that in an accounting sense, the largest positive trade-related employment gains for particular countries were during periods when external balances in goods and services were moving into substantial surplus, and vice versa. The conclusions of this analysis were thus very similar to earlier studies using similar methods (see references in Baldwin, 1995).

183. The two studies thus confirm the results of previous work (usually on individual countries) that changes in trade intensities as such have negligible influence on employment (although changes in trade imbalances will usually be associated with significant employment shifts in the tradeables sector), but that there are changes in relative employment by sector. Even there, though, the changes are generally small relative to those caused by other factors.

#### **4. *Trade with low-wage countries***

184. Even though it is possible to demonstrate that trade-related employment shifts broadly net out at the aggregate level, absent large changes in trade balances, it cannot be excluded that there could be a significant net impact on the employment of different types of labour, if labour is not homogeneous.

185. Chapter 3 of the *Jobs Study* attempted to quantify to what extent trade between OECD and developing countries has been associated with falls in employment and/or falls in relative wages for the low-skilled. As in the case of total trade, the approaches used included regression and input/output analysis. Although trade between the OECD area and the sample of developing countries involved (China plus the Dynamic Asian Economies, which together account for nearly half of OECD imports from developing countries) has grown in recent decades, it is still quite small, around 2 per cent of OECD GDP, and close to balance<sup>42</sup>. It was therefore not expected that the analysis would detect a major impact of such trade on OECD employment, either in total or by type of labour, nor did it. The input/output analysis implied an employment gain between the early 1970s and the mid-1980s of about 0.75 million jobs in Japan and losses in other countries (except France) which ranged from about one million persons in the United States to a few tens of thousands in the smaller countries and Germany. Of the countries in the sample, only the United States and the United Kingdom registered net job losses associated with their total trade: in the case of the United States, losses associated with trade with developing countries were greater than gains on trade with other OECD countries. In the case of the United Kingdom, employment losses were associated with both kinds of trade, but especially trade with other OECD countries.

186. The regression analysis of the Jobs Study confirmed and extended these results, showing the existence of significant negative trade-related employment effects related to trade between OECD and developing countries. The effects were confined to a small number of industries, especially textiles, clothing, footwear and electronic goods. The actual measured impact was small, because the trade involved is small. Interestingly, and unexpectedly, it was found that on balance, negative employment effects were most marked in industries employing (in OECD countries) a high proportion of skilled workers. Because of data limitations, it was not possible to investigate the impact of OECD/developing country trade on relative wages for skilled and unskilled workers.

## 5. *Conclusions*

187. Theory suggests that any shift in total employment associated with changes in trade patterns should be small, provided that the external trade balance remains broadly unchanged at the macro level. Empirical analysis, including that carried out by the OECD Secretariat in the course of the Jobs Study, bears out this theoretical conclusion. Theory also suggests, and the analysis confirms, that there will nevertheless be shifts in employment between sectors as trade patterns change in response to cost and price pressures. Such shifts seem in practice to be small relative to those resulting from other forces, e.g. technological progress. Another theoretical prediction, that a balanced expansion of trade in manufactured goods with developing countries will result in a decline in demand for low-skilled labour in the tradeables sectors of OECD countries (and an increase in the demand for skilled labour), also seems to be borne out. Here again, the quantitative importance of the trade-related effect is too small to account for more than a small proportion of the lower demand for low-skilled labour in OECD countries.

### PART III MECHANISMS TO PROMOTE CORE LABOUR STANDARDS WORLDWIDE

188. This part of the study sets out to review and evaluate different types of mechanisms to promote, directly or indirectly, core labour standards. Some of these mechanisms are already operational, some have been adopted but are not yet functioning, while others have merely been suggested. Further, while some deal only with one core labour standard (e.g. child labour exploitation), others seek to address a broader set of human rights.

189. When discussing each of these mechanisms, it may be useful to have in mind the following questions as a framework for their evaluation:

*i) is it an effective means of promoting core labour standards worldwide? that is:*

- *is the mechanism directed at the source of the problem, i.e. low standards?*

Three distinct causes of low standards can be identified. First, in a few countries, national legislation does not embody core standards. Denial of core standards is part of the political system. Though the countries in this situation are few in number, one of them, China, accounts for a large share of world population and a significant and increasing proportion of the world economy. Second, there are also a few countries where there is a deliberate policy to reduce core standards in certain parts of the economy such as EPZs, but not across the board. Third, there are cases of non-enforcement of national legislation on core standards by certain employers; in these cases the policy is to enforce core standards, but some individuals or employers do not respect the law. These cases are likely to occur more often in poor countries, where governments lack the means to enforce the law, than in developed countries.

- *does it refer to internationally defined core labour standards (as in the relevant ILO and UN Conventions), or to specific national labour legislation?*
- *does it have a universal or partial coverage in terms of states and/or private agents?*
- *is it politically acceptable for all concerned countries?*
- *is it legally binding or voluntary?*

*ii) what is its likely economic impact, notably on trade and/or investment flows?*

It is obviously extremely difficult to assess with very much precision the economic impact of the various mechanisms, especially in the situation when they have been recently adopted or have only been proposed. The evaluation here will thus be very much qualitative, trying in most cases only to identify the type of economic effect (if any) of the mechanism in question.

190. This review is organized according to whether, for each mechanism, the channelling of incentives (or disincentives) is accomplished through: (i) government decisions at the multilateral, bilateral, or unilateral level; or (ii) private actions. If, as mentioned in part II, core labour standards share some of the characteristics of public goods, then there is scope for welfare-enhancing government intervention. Alternatively, in situations where core labour standards are more adequately viewed as private goods, then consumer demand can lead to an efficient market outcome. This will be the case if consumers derive utility from purchasing goods produced under conditions where core labour standards are respected. Through market forces, economic benefits derived from the suppression of core labour standards will tend to disappear.

191. The ILO supervisory mechanism is reviewed in section A, along with current proposals to improve and strengthen it. Section B looks at the positive role of development cooperation programmes, focusing on the process of economic development. Section C deals with other proposed mechanisms at the multilateral level. In particular, it examines some proposals which have been made to introduce core labour standards in the WTO. Suggestions to link labour standards with multilateral financial assistance are also reviewed. Regional and unilateral government actions are examined in section D, while section E focuses on the role of voluntary codes of conduct for MNEs. Finally, mechanisms based on private actions such as labelling schemes and investment programmes are considered in section F.

## **A. An overview of the ILO monitoring system**

192. Since its creation in 1919, the ILO has established an all-embracing set of Conventions on social, labour and workers' rights (see Part I). Once set, the Conventions are subject to an elaborate review process for those countries that have chosen to ratify them. Another important role of the ILO is to monitor closely the application of certain obligations arising from membership of the Organisation. This section presents an overview of the ILO's supervisory system and a brief assessment of the effectiveness of its functioning.

### ***1. The ILO supervisory system***

193. The ILO has at its disposal a variety of instruments with the aim of ensuring application of the existing Conventions.

#### *i) Regular supervisory system*

194. The aim of the regular supervisory system is to ensure compliance with Conventions for countries that have ratified them. The first stage of the procedure is the provision of a report by governments which have ratified a particular Convention. Countries submit these reports every two or five years, depending on the Convention; they can sometimes be requested to submit reports more frequently. Copies of these reports are sent to the most representative employers' and workers' organizations in the country under examination. These organisations are invited to comment on the report and, if necessary, to contradict it or provide additional information concerning the application of the Convention in question.

195. The report, together with any comments from employer and worker organisations, is then submitted by the Secretariat of the ILO to the independent Committee of Experts on the Application of Conventions and Recommendations, which meets annually. This Committee comprises 20 independent legal experts, appointed by the Director-General of the ILO, with the approval of the Governing Body.

The Committee examines compliance. It can ask for additional information, and, if necessary, call for changes in law and practice in order to assure compliance with the Convention.

196. The Committee of Experts, in turn, submits a report to the tripartite Conference Committee on the Application of Conventions and Recommendations. This report, produced annually, contains a general overview of the main trends and problems, a review of the implementation of obligations by particular countries and a summary of national laws and practices based on reports submitted by member states. In the light of the report, the tripartite Committee of the Conference may invite governments to appear for further discussion. In particular, it may ask governments to explain intended measures to fulfil their obligations. A final report is then discussed at the plenary session of the International Labour Conference.

*ii) Procedure based on complaints*

197. Two complaints' procedures for violations of ILO standards are provided for in the ILO Constitution:

- Representations may be made by any employers' or workers' organizations alleging non-observance by a government of a Convention that the country in question has ratified. Representations are examined by a special tripartite committee designated by the Governing Body. The Committee can request information from the government which is examined. If necessary, the Governing Body can also publish the representations. So far, very few (only 59) Representations have been presented. But it is interesting to note that this procedure appears to be increasingly used, as attested by the fact that in 1994 alone 13 Representations were made.
- Complaints against a government that has ratified a particular Convention may be presented by another government that has ratified the same Convention, by a delegate to the International Labour Conference, or by the Governing Body of the ILO. These Complaints are examined by an independent Commission of Inquiry, set by the Governing Body. The Commission can issue recommendations. The government concerned then informs the ILO whether it accepts the recommendations of the Commission or it proposes to bring the Complaint to the International Court of Justice. A decision of the latter in regard to a Complaint is considered final. Few Complaints have been made so far (only 23 in number) and there is no sign that this procedure is being used more frequently. One reason for this may be the fact that this procedure is both slow and expensive.

*iii) Special procedure on Freedom of Association*

198. Established in 1951 as a tripartite body comprising nine members of the Governing Body, and chaired since 1978 by an independent personality, the Committee on Freedom of Association examines complaints containing allegations of infringements of the principle of freedom of association, regardless of whether or not the countries concerned have ratified the freedom-of-association Conventions. The consent of the governments concerned is not necessary in order for these complaints to be examined: the legal basis for this concept resides in the Constitution of the ILO and the Declaration of Philadelphia. This Declaration, which is part of the ILO Constitution since 1944, mentions freedom of association as one of the building principles of the ILO; it also insists on the role of the ILO in implementing the necessary programmes with a view to ensuring the effective application of the right to collective bargaining. Accordingly, member states, by virtue of their membership of the Organization, are bound to respect the fundamental principles contained in its Constitution, particularly those concerning freedom of association and collective bargaining, even though they may not have ratified the Conventions on this subject.

199. Complaints can emanate from either organisations of workers and employers of the country concerned, from international organisations of workers and employers when one of their members is directly concerned with the complaint, or from international organisations of employers and workers with consultative status at the ILO. The Committee on Freedom of Association systematically examines the substance of the cases submitted to it and presents conclusions to the Governing Body, recommending, where appropriate, that it draw the attention of the governments concerned to any principles called into question, and in particular to any recommendations made with a view to settling the difficulties raised in the complaint. When the case concerns a country that has ratified one of the relevant Conventions (notably 87 and 98), the conclusions and recommendations of the Committee are brought to the attention of the Committee of Experts on the Application of Conventions. Otherwise, when the case concerns a country that has not ratified the relevant Conventions, the Committee on Freedom of Association can request this country to provide information on the measures taken to follow up its recommendations and ask the Director-General of ILO to discuss the issue with the government of the country concerned.

200. The Committee meets three times a year, thus facilitating the establishment of a continuous dialogue. The system also enables the presentation of complaints quickly after the alleged case occurs. Not surprisingly, the Committee on Freedom of Association is very busy: since its creation, it has examined some 1800 cases concerning 135 countries. It has established a series of principles which constitute a unique body of jurisprudence on freedom of association.

*iv) Direct contacts and technical assistance*

201. The ILO also establishes dialogue with member countries. First, missions and direct contacts are carried out with the aim of examining particular issues raised by the Committee of Experts on the Application of Conventions. Obviously, the nature of these contacts depends on the political will of the government concerned. Among recent direct contacts, it is worth mentioning those with Thailand concerning the application of Convention 29 on forced labour, and those with Costa Rica, Indonesia, Pakistan and Malaysia concerning freedom of association.

202. In order to facilitate compliance with ILO Conventions, the ILO also proposes technical assistance programmes to its member countries. These programmes can take the form of legal advice when a review of national legislation is needed. But they can also be more focused on implementation issues, especially in the area of child labour. In 1993, technical assistance was granted to about 50 countries.

**2. *Outcomes of the ILO supervisory system***

203. The ILO has recently undertaken an evaluation of its supervisory procedures and it is beyond the scope of this study to make a definitive assessment of the effectiveness of those procedures. The aim of this section is simply to make some remarks on the functioning of the ILO system, with particular focus on how ILO Conventions on core labour standards, as defined in Part I, are monitored.

*i) Freedom of association and collective bargaining*

204. There appears to be agreement that one of the most efficient procedures of the ILO is the Committee on Freedom of Association. Because of its tripartite composition and the frequency of its meetings, the Committee has examined numerous cases. Also, procedural rules are rather flexible, thereby facilitating inspections and inquiries. The role of the Committee is particularly effective in cases of blatant violations of freedom of association, in particular concerning acts of anti-union discrimination. These

cases can often be readily proven, and international public opinion appears to be rather sensitive to them. On the other hand, cases of restrictions on the freedom to form unions, collective bargaining and the right to strike are much less spectacular. The procedure can also take a long time, as it deals with areas which are very complex from the legal point of view. Finally, certain restrictions are deeply embedded in the industrial relations systems of particular countries, and it is not easy to modify them without undertaking a complete overhaul of the system.

205. According to the ILO, the role of the Committee has been particularly useful in countries which recently acceded to democracy (Eastern Europe, Chile, etc.). For example, in Poland the ILO has maintained close links with unions that were unofficial at the time of the communist regime.

206. More generally, most governments appear to be extremely sensitive to freedom-of-association issues. They are reluctant to see any complaints on this issue appearing in the media. This is one reason why nearly all countries examined under the Committee's procedure respond to the complaints, often indicating that action will be taken to solve the issue.

207. In general terms, a trend towards an improvement in the situation regarding freedom-of-association rights can be discerned. Thus, the 1994 report of the Committee of Experts mentions two interesting figures:

- Since 1964, the Committee of Experts has expressed satisfaction in 2070 cases, where progress towards resolution of the complaints had been made as a result of ILO monitoring.
- In 1995, the Committee of Experts highlights progress in 36 cases, concerning 22 countries. A large number of these cases relate to core labour standards: seven concern Conventions 87 and 98; one concerns forced labour and seven non-discrimination in employment.

208. It is, however, difficult to gauge the extent to which this progress is due to the effectiveness of ILO procedures or instead it reflects a more general tendency towards the establishment of democratic institutions observed, in particular, since the end of the Cold War.

209. Despite these encouraging trends, the activity of the Freedom of Association Committee has been criticised on several grounds. First, it is sometimes argued that its recommendations are not given enough publicity. Giving greater publicity in the international media to the most important cases would perhaps encourage more countries to comply with their obligations. Second, the recommendations of the Committee are often very legalistic. Thus, there is a risk that the Committee devotes as much attention to relatively minor differences with respect to the Conventions as to more fundamental violations of labour rights. Finally, the special procedure functions on the basis of complaints which often originate from national unions. As a result, countries where unions are relatively free are subject to more numerous complaints compared with countries where unions are either repressed or under close political control.

*ii) Forced labour and non-discrimination*

210. Forced labour and non-discrimination in employment are monitored mainly through the Regular procedure. In 1994, the Regular procedure on forced labour led to observations concerning 49 countries. Some of those observations apply to OECD countries. But the most blatant violations of the ILO Conventions in this area concern Thailand, Bangladesh, Brazil, Haiti, India, Pakistan, Sudan and Peru. Most cases relate to prison labour, compulsory labour, bonded labour (including children) and slavery. Complaints procedures have been used recently in the cases of Brazil, Guatemala, Myanmar and Thailand.

211. The ILO made 22 observations concerning cases of discrimination in employment in 1994 (43 observations in 1993), 5 of which concerned OECD countries (11 in 1993).

212. There are various problems with the Regular procedure, making its effectiveness problematic. First, the procedure only applies to countries that have ratified the Conventions. Second, the Regular procedure is only meaningful if and when governments submit a report to the Committee of Experts at the date requested. Only 16.4 per cent of the reports on ratified Conventions had been submitted at the requested date for the 1995 examination by the Committee of Experts, which has expressed great concern about this issue<sup>43</sup>. Many reports are submitted after the requested date: 68 per cent of the reports were submitted by the end of the 1995 session of the Committee of Experts. However, some of these reports are submitted so late that the Committee does not have the time to examine them in detail. According to the Committee, a number of these reports are incomplete and do not enable it to reach conclusions regarding the application of the Conventions. Third, the Regular procedure is more limited in its application than the Committee on Freedom of Association.

### **3. *Measures to strengthen the ILO supervisory system***

213. Given the importance of ILO Conventions on freedom of association and collective bargaining, forced labour and non-discrimination in employment, the Director-General of the ILO recently proposed measures to strengthen the supervisory system of these Conventions<sup>44</sup>.

214. First, the creation of a procedure similar to the one on freedom of association to examine issues of forced labour and non-discrimination is proposed. Such a decision would need to be backed by a solid legal basis as is the case for freedom of association. But, according to the Director General, the legal basis exists as these two core standards have a special place in the Constitution of the ILO.

215. Second, article 19 of the Constitution could be used to encourage ratification of key ILO Conventions. Under this article, the Committee of Experts is empowered to inquire about reasons for non-ratification of ILO Convention 111 on non-discrimination in employment. It is suggested to extend this procedure to other key ILO Conventions on forced labour, freedom of association and collective bargaining, non-discrimination in remuneration and child labour.

216. A first discussion of these proposals took place during the November 1995 session of the ILO Governing Body and the matter will be further discussed at another meeting in March 1996. However, several ILO member countries believe that the priority is to improve the efficiency and effectiveness of existing supervisory procedures.

### **4. *Concluding remarks***

217. The ILO has established a well-developed system for monitoring the application of its Conventions. The special procedure on freedom of association appears to be relatively effective: there is some evidence that most governments respond to complaints presented under this procedure. But it functions on the basis of complaints, so that governments from countries where union rights are best protected are likely to be more often criticised than other governments less concerned with union rights. Its effectiveness could perhaps be increased if important recommendations formulated by the Committee were released to the public domain since most governments are very sensitive to the issue of freedom of association.

218. Monitoring of the application of Conventions related to forced labour and non-discrimination is more problematic. First, according to the Regular procedure, only countries that have ratified these Conventions are examined. The ILO Secretariat has suggested the use of a procedure already existing for Convention 111 to inquire about reasons for non-ratification of key Conventions, with the aim of promoting ratification. Second, such examinations are not frequent enough and generally depend on the examining government sending a report to the ILO. Other existing procedures are either slow or do not appear to be cost-effective. The ILO Secretariat is therefore proposing the creation of a special procedure (similar to that on freedom of association) to deal with other core labour standards. This proposal has, however, met with scepticism on the part of some OECD governments. If this were to be agreed, monitoring and enforcement could be further strengthened if these procedures focused on serious violations of labour rights, leaving aside relatively minor inconsistencies between the Conventions and national practices.

## **B. The Contribution of Development Co-operation Programmes**

219. This subsection reviews the contribution of development co-operation programmes in promoting some core labour standards, particularly the reduction of child labour and the liberalisation of trade union rights and freedoms. Donor support is provided in a wide range of relevant areas such as for equitable and sustainable economic growth; poverty alleviation; good governance and human rights; capacity building for improving legislation and enforcement, assistance in the areas of health, education and nutrition; gender equality; advocacy and awareness raising.

### ***1. The reduction of child labour***

#### *1.1 Basic conventions*

220. The long-term objectives to improve the lives and development of children are set out in international decisions. As discussed in Part I, the ILO Minimum Age Convention No. 138 of 1973, along with its companion Recommendation No. 146, has as objective the abolition of child labour (Preamble and Article 1). The ILO doctrine reflects the conviction that under a certain age children need not engage in an economic activity and that childhood is a period in life that should be devoted not to work but to education and training. The elimination of some of the most dangerous forms of child labour is covered in part by the Forced Labour Convention, No 29 of 1930. There is, however, no similar instrument that outlaws other intolerable forms of exploitation such as the traffic or sale of children for employment or prostitution and other contemporary forms of slavery.

221. The UN Convention on the Rights of the Child, 1989, which has now been ratified by nearly every developing country (with 167 States parties, as of October 1994<sup>45</sup>) is the most comprehensive legal instrument available for the protection of children, and extends far beyond issues of child labour. It incorporates standards laid down in ILO Conventions and Recommendations. The UN Convention states that children have the right to survival, protection, care, development and participation. It sets forth in article 32 that children shall be protected from economic exploitation and from performing any work likely to be hazardous to or interfere with a child's education or be harmful to a child's health. The UN Committee for the Rights of the Child is monitoring its implementation.

222. The Plan of Action adopted at the World Summit for Children in New York in 1990 specifies goals to be achieved by the year 2000 especially with respect to reduction of child mortality (by one third), malnutrition (by one half), access to basic education, drinking water and sanitation.

*1.2 Development co-operation programmes*

223. As much as these international acts reflect a commitment to reduce child labour, they must be underpinned by multifaceted development strategies which put a strong emphasis on human development and offer viable economic alternatives to the vast majority of poor families who depend on the important contribution of child labour for their very survival.

224. The 1995 DAC Policy Statement on Development Partnerships in the New Global Context sets out in its "integrated strategies" approach, some of the most effective means to reduce child labour: an overriding focus on poverty alleviation; strong investment in education; enhanced participation of women in economic development; generation of alternative sources of income through private sector development; and greater involvement of civil society and local government.

225. While poverty is a fundamental reason for children working, it is not necessarily always the deciding one. Social conditioning and political will are among other important factors. Donors have concluded from experience that in some cases of extreme poverty (e.g. single-parent households), child labour can be effectively eliminated only if the family's poverty is also addressed. However, poverty alleviation efforts will always have to be part of an integrated set of measures in order to combat child labour effectively.

226. Investments in primary education which contribute to freeing children from work and, not least, yield major economic, social and political returns need to be increased substantially to fulfil the stated goals of education for all<sup>46</sup>. Given the economics of poverty and the high opportunity cost from the family's perspective, especially for girls, specific policies have been identified to remove impediments to the enrolment of children, for instance, by bringing schools closer to home, improving the relevance of curricula and reducing direct costs.

227. Creating alternative employment opportunities for adults is also key to reducing the pressures on children to work in order to supplement the family income. Micro-enterprise development and private sector development generally may, with targeted donor assistance, contribute to providing such opportunities for poor families<sup>47</sup>. In addition, projects to provide basic services, such as access to clean water, fuelwood and small farming technology, can make an important contribution by relieving children from domestic chores.

228. Central to the success of these development activities are approaches that focus on enabling the full participation of women and concentrate on removing the obstacles impeding their access to resources and services. In most developing countries women are the main food producers, providers of water and firewood and they have a major responsibility for health care, nutrition and hygiene in the family and the community. They exert a critical influence on the family size and the education of children. They also play a predominant role as entrepreneurs in the informal sector and are often primary income-earners, as a large number of households are headed by women. However, women face unique constraints. Social values and legal systems are often biased against them and impede their access to key resources and services such as land, credit, education and technology. Programmes to promote more active participation of women in the process of development, therefore, have far-reaching implications for the economy, improved family welfare and social standards<sup>48</sup>.

229. Complementing these programmes, donors support a wide range of small projects targeted at children and child labour, which would need to be multiplied and further replicated to have a broader impact. These are generally carried out by non-governmental organisations (NGOs), which are particularly well suited to reach children and their families in poor communities through community-based projects<sup>49</sup>. Such approaches are based on local initiatives and carried out in partnership with governments, and civil society,

involving a whole range of actors such as social workers, teachers, the police, the judiciary, churches, employers, unions, and the media. In India, the Philippines, Brazil and Bangladesh, wider efforts are being made to combat child labour at its cultural roots, including sustained campaigns to break the climate of indifference over the issue and to enlist the understanding and participation of society as a whole.

### *1.3 International organisations and their work on child labour*

230. International organisations, particularly the ILO and UNICEF, have also developed programmes specifically aimed at reducing child labour. As noted above, the ILO provides technical assistance to help countries develop policies on child labour, and sponsors development programmes to combat child labour. It is currently running the most important international programme in this field, the International Programme on the Elimination of Child Labour (IPEC). This global offensive against child labour was launched in 1991 with donor assistance and is currently implemented in a dozen countries. IPEC is an innovative and flexible programme which relies on a substantial role for NGOs in project delivery. As broad social support is essential for carrying out measures which aim at preventing child labour, key aspects in implementing ILO-IPEC's strategies are to raise awareness and to seek the involvement and commitment of individual governments to address child labour in co-operation with a wide variety of public and private groups. Some components of the Programme, therefore, include training of government and private organisations, strengthening of national capacities to address child labour problems and participation by unions and employers organisations. In working towards the progressive elimination of child labour, IPEC lays special emphasis on protecting children from the worst exploitation by targeting the most vulnerable groups such as bonded child labourers; children working in hazardous occupations and under abusive conditions; very young children, below 12 years of age; and working girls. The objective is to remove these children from work and send them to school, provide alternatives or improve working conditions as a transitional measure towards the ultimate elimination of child labour.<sup>50</sup>

231. UNICEF addresses the problems of child labour within the framework of its programme on Children in Especially Difficult Circumstances (CEDC). This programme, however, covers only partially the child labour question. It includes children in circumstances of armed conflict and other disasters (UNICEF's oldest mission), children in circumstances of exploitation, and children in circumstances of abuse and neglect. UNICEF has determined a number of strategic priorities to fight child labour: eradicate the most exploitative forms of child labour; improve the working conditions of children; provide universal primary education; make better use of existing legal instruments to combat child labour; encourage co-operation between government, industry, unions and NGOs; and improve assistance to developing countries.

232. The UN Commission on Human Rights adopted in 1993 a "Programme of Action for the Elimination of the Exploitation of Child Labour". Activity under this programme is in an early stage. So far, the main outcome has been the provision of information by a number of governments on the situation of child labour in their countries. Child labour has also received attention by the "expert-level" Sub-Commission on Prevention of Discrimination and Protection of Minorities, a subordinate body to the Commission on Human Rights, as well as by the Sub-Commission Working Group on Contemporary Forms of Slavery. Finally, the UN Commission on Human Rights has established an Office of Special Rapporteur to consider matters relating to the sale of children, child prostitution and pornography. The special Rapporteur reports each year to the Commission.

233. Minimum-age laws, compulsory education, and labour-law enforcement have been milestones in economic and social history of developed countries. While achieving these goals in developing countries will require a long-haul effort at the fundamental level of grassroots economic and social change,

development co-operation can make a positive contribution in these areas. Indeed, one of the main challenges in the years to come will be to support efforts to enact national legislation including labour laws in conformity with human rights standards, and to promote their enforcement. Some workers' organisations have begun to disseminate information to working children on their legal rights. Initiatives also exist to provide children with legal aid, but a great deal more experience is needed on how to involve the judiciary actively, streamline legislation, set up networks of paralegal extension staff to disseminate information to the target groups and further enforce the application of existing legislation. There is a need to look further into the possibilities for increasing the potential for development co-operation to promote these efforts.

234. The evaluation of the impact of targeted programmes aimed at combatting child labour and of the progress made in reducing the incidence of child labour through broader development programmes remains a neglected field of study. There is a need to devise sets of indicators and to carry out objective assessments of development co-operation effectiveness in this area.

#### *1.4 Policy dialogue*

235. It is generally agreed that a positive approach to assisting and encouraging adherence to international labour standards in developing countries is the most effective and efficient approach. The solution rests, ultimately, in the hands of societies and their national authorities. Development co-operation can provide a channel through which OECD countries can help developing countries improve their labour standards through constructive policy dialogue, technical assistance and financial support.

236. As part of their development co-operation efforts, a number of OECD countries pursue the issue of exploitative child labour through human rights fora, policy dialogue and awareness raising. DAC Members have been active, for instance, in raising the profile of child labour as an international human rights issue at the UN Commission on Human Rights. They raise their concerns and encourage the application of international legal obligations in bilateral consultations with recipient countries and in multilateral fora; publish annual human and labour rights reports; and co-finance the advocacy activities of NGOs.

## **2. *Promotion of freedom of association and the right of collective bargaining***

237. The current thrust of OECD Members' programmes on good governance, participatory development and the protection of human rights opens a window of opportunity for enhanced co-operation in the field of labour standards<sup>51</sup>. OECD Members work for the promotion of human rights both at the policy level, where they pursue these issues in their policy dialogue with recipient countries, and at the operational level through special projects and integration into broader development co-operation.

#### *2.1 Policy dialogue in a multilateral setting*

238. In the 1990s, the promotion of human rights has become an emerging issue in the multilateral policy dialogue conducted in the framework of Consultative Group and Round Table meetings. A more open attitude of many developing countries at these meetings has contributed to establishing a constructive dialogue on the broad issues of fundamental political and civil rights, good governance, and respect for the rule of law. It is noteworthy that, in particular, those developing countries which have recently engaged in a process of democratisation have demonstrated a growing understanding of the need for this dialogue to touch upon areas considered until recently as highly sensitive and impinging on national sovereignty.

239. The issue of labour rights, for example, was raised by the donor community at the Consultative Group (CG) Meeting for Indonesia in July 1994. For many years, the Indonesian Government had been urged by some OECD countries to improve its labour legislation and trade union rights practices. When legislative changes introduced in early 1994 to repeal a law authorising military interference in labour disputes and to allow collective bargaining were not followed in practice, donors seized the opportunity of the CG meeting to express their concern over the Government's repressive policy in labour disputes. Since then, international pressure has continued to intensify, including the possibility of exclusion from the U.S. Generalized System of Preferences (see section D below).

240. While human rights issues are gaining prominence in multilateral fora, policy dialogue also continues to have a special place and role in bilateral development assistance programmes. Policy dialogue can help establish an appropriate policy climate for successful programme and project development and implementation, and thus maximise the effects of assistance targeted to support policy change.

*2.2 Development co-operation programmes to promote freedom of association and the right of collective bargaining.*

241. All over the world, labour organisations have frequently played a key role in furthering workers' rights, improving social conditions, and promoting respect for human rights and democratisation. The freedom of trade unions to assemble, speak out and take actions including strikes is generally linked to respect for a broader range of human rights and the growth of a healthy civil society which is strongly correlated with development progress. For these reasons, support for trade unions, professional associations, , farmers' unions, rural workers' organisations and independent co-operatives form a key part of donors' efforts in assisting the development of a genuinely participatory and equitable economic culture, institutions and practices.

242. Many assistance programmes in the area of human and labour rights are initiated and implemented by non-governmental organisations with the financial support of bilateral donors. NGOs have long played a significant and pioneering role in the observance and promotion of human rights, especially where it was considered difficult for outside governments to intervene directly.

243. In particular, NGOs, including labour unions, are active in monitoring government compliance with ILO conventions and national labour legislation with a view to prevent arbitrary actions by Government<sup>52</sup>. They play a critically important role through monitoring, research, analysis of laws, advice, training, publications, dissemination of findings and advice through the media and audio-visual means, especially in local languages. Efforts are also made to provide organisational support, advisory services and leadership training among workers in the formal and informal sectors of rural and urban areas. Over the past decade, trade union confederations in OECD member countries have increased and diversified their activities in favour of developing countries. Their programmes not only assist trade unions in developing countries to develop and organise themselves, but they also pay attention to the economic and social context in which the workers of these countries live.

244. The contribution of labour organisations to the development and the emergence of a strong civil society could be further strengthened and expanded, particularly as regards their monitoring and advocacy roles. In many developing countries, however, the status of professional associations and trade unions is weak and threatened by outright persecution, restrictive legislation, and other obstacles such as slow registration, hindrance in dissemination of their views, and obstructions to receiving external aid. Assistance

programmes to strengthen good governance, accountability and the rule of law should therefore address these problems.

245. Many developing countries lack the institutional and technical capacity to develop comprehensive labour legislation and to enforce it, including labour standards. There is scope in this area for expanding donor co-operation bilaterally and multilaterally, particularly through the activities of ILO, the World Bank and other UN bodies. As part of efforts to reinforce the rule of law and to secure an independent judiciary, attention is increasingly paid to strengthening the legal process which allows citizens and workers to seek enforcement of their rights.

## **C. Proposed Mechanisms in International Organisations**

### **1. Labour standards and WTO disciplines**

#### *1.1 Introduction*

246. The debate about linkages between trade disciplines and labour standards is not new. Indeed, Article 7 of the Havana Charter referred to the importance of satisfactory social conditions for the smooth operation of the trading system and invited Members to work for the establishment of such conditions within their territory.<sup>53</sup> However, this article was among the provisions of the Charter that never entered into force.

247. More recently, several specific suggestions have been made for possible links between trade and labour standards as regards GATT/WTO. For instance, in 1983, the European Parliament called for the negotiation of a GATT provision on labour standards engaging all GATT Members to respect ILO Conventions on freedom of association, collective bargaining, forced labour and non-discrimination.<sup>54</sup> In 1986 and in 1994, the United States suggested, without success, to add worker rights to the Uruguay Round and to the WTO agenda.<sup>55</sup> In 1994, the European Parliament further suggested that GATT Article XX(e) on prison labour be amended to include forced and child labour, as well as violations of the principle of freedom of association and collective bargaining.<sup>56</sup> Some have suggested making use of the WTO Trade Policy Review Mechanism (TPRM). The ILO Secretariat made proposals on using anti-dumping and countervailing duties provisions, general exceptions provisions, or nullification and impairment provisions<sup>57</sup>. Subsequent discussion on these proposals within the ILO underlined their controversial nature, with no agreement emerging.

248. Interpreting WTO provisions remains a matter for the WTO members themselves to determine. Accordingly, the comments below simply draw attention to certain key elements that would need to be addressed satisfactorily in relation to such proposals to establish links between WTO disciplines and core standards.

249. There have been other proposals (e.g. by TUAC and by the ILO Director General) for the introduction of a “social clause” into the WTO, with the aim in particular to strengthen the enforcement of “basic” labour standards<sup>58</sup>, following the model of the Agreement on Trade-Related Aspects of Intellectual Property Rights. The negotiation of any such specific instrument would imply the existence of sufficient political will among WTO Members, and would be a matter for their consideration and decision. As such, these proposals are not discussed here.

#### *1.2 Elements of proposals concerning the use of WTO provisions*

##### *i) “Social Dumping”*

250. Low levels of labour standards applied by exporting firms are considered by some as a form of “social dumping” which affects unfairly firms in countries adopting more advanced standards. It has been proposed that there be application of anti-dumping duties against so-called “social dumping”.

251. As currently formulated in the WTO Agreement on Implementation of Article VI of GATT 1994, a product is considered as being dumped when it is introduced into the commerce of another country at less than its normal value. This occurs if the export price is less than the comparable price in the ordinary sense of trade for the like product when destined for consumption in the exporting country. When there are no sales, or when, because of insufficient sales volume, or a particular market situation, such sales do not permit a proper comparison, the margin of dumping is to be determined on the basis of either a comparable price of the like product exported to a third country or on the basis of constructed value. Investigating authorities must, therefore, base their determination either on actual price discrimination or on an actual cost of production/export price comparison as set forth in the Agreement. It is to be noted also that anti-dumping duties can be levied only in respect of a product determined to have been dumped, if that product is causing or threatening to cause material injury to the domestic producers of the like product in the importing country.

252. All of these, and other requirements, must be met if a WTO Member is to act in a manner consistent with its WTO obligations. Thus, to the extent that application by an investigating authority of antidumping duties rested on any other separate or distinct criterion in its own right, such as “violation of core labour standards” *per se*, it would seem difficult to reconcile this practice with the existing provisions of the Agreement. These provisions do not allow for the determination of a margin of dumping on the basis of non-enforcement of core standards; in addition, seeking to calculate the impact of such non-enforcement on the costs of production would raise considerable practical and technical difficulties.

*ii) “Social Subsidies”*

253. The concern has been expressed that governments may, in effect, assist production and/or exports by either enforcing low labour standards, or labour standards that deviate from those that are generally applicable at the national level, for example by instituting “union-free” export processing zones within a country that otherwise permits the establishment of independent unions. This action is characterized by some as a subsidy, or as an indirect export subsidy. It is further argued that only conditions which are freely established on the labour market between supply and demand can be described as “normal”, since the liberalization of trade is based on the freedom to negotiate and contract. In this context it has been proposed that countervailing duties be applied against exports from such countries. This would depend on a number of factors.

254. First it would depend on whether “abnormally” low labour conditions would represent a form of subsidy within the meaning of GATT Article XVI and the definition of the WTO Agreement on Subsidies and Countervailing Measures. The definition of a subsidy in the WTO Agreement includes a number of situations in which a benefit is conferred by either a financial contribution granted by the government or public bodies<sup>59</sup>; or by “any income or price support in the sense of Article XVI of the GATT 1994”. Violation of core standards does not involve a direct financial contribution by government. There remains a question of whether it could be deemed to meet the latter criterion relating to income and price support. It is unclear how any measure to reduce core labour standards could constitute income “support”. It is also difficult to envisage how the criterion of “price support” could be satisfied, given that non-enforcement of core standards is not a governmental measure that supplies assistance to firms or producers through regulation of prices.

255. Even if a measure is deemed to satisfy the criteria for definition as a “subsidy” within the terms of the Agreement, action against it can only be taken if it is also “specific” within the meaning of the Agreement. There are a number of tests which apply, including, *inter alia* that the “granting authority” limits access to a subsidy to “certain enterprises.” A subsidy which is “limited to certain enterprises located within a designated geographical region” shall be determined to be specific.

256. This would seem to suggest, for instance, that a country-wide, objective implementation of labour standards, albeit at a low level, would be unlikely to meet the specificity test in any case, as it would appear to be generally applicable by definition.

257. The more limited case of lower labour standards limited to export processing zones would need to be evaluated precisely against the criteria related to specificity, as well as the other relevant provisions of the Agreement.

258. Furthermore, the primary means for taking “remedial” action against any subsidy that satisfies the specificity test are countervailing actions (often called “Track one”) or recourse to the procedures for dispute resolution in relation to nullification and impairment or serious prejudice (often called “Track two”).

259. Recourse to either of these tracks gives rise to a further set of requirements. In the case of any measures that satisfied the criteria for countervailability, it would be necessary, *inter alia*, to satisfy all the requirements for a determination of injury to the domestic producers of the subsidized product. It should be noted that in the absence of such injury or threat of injury, it is not permissible to apply countervailing measures. It would also be necessary to be consistent with the guidelines on calculation of the amount of a subsidy. This would be vital if it was in principle possible to quantify any specific benefit arising from non-observation/non-enforcement of core labour standards.

260. As regards the question of whether this case could be deemed to be a kind of export subsidy prohibited by the Agreement, it would be necessary to establish that, in addition to the above considerations relating to definition and specificity, the measures satisfied at least one of the criteria of Annex I to the Agreement, viz the “Illustrative List of Export Subsidies”.

*iii) General exceptions provisions*

261. GATT 1994 provides for certain general exceptions, such as Article XX(a) on public morals, Article XX(b) on human life or health, and Article XX(e) on products of prison labour. As exceptions to other provisions of the Agreement, any party seeking to invoke these provisions would bear the burden of demonstrating that it satisfied the relevant criteria, including those specified in the chapeau to Article XX. Article XXI provides also for certain security exceptions.

262. Other provisions under the General Exceptions Article include Article XX(d) and Article XX(h). The idea of using Article XX(d) (on measures necessary to secure compliance with laws or regulations not inconsistent with the GATT) in relation to labour standards was envisaged and abandoned during the negotiations on the Havana Charter. The Sub-Committee which considered the general exceptions to Chapter IV noted that “in discussing an amendment to [Article XX(d)], designed to exempt measures against so-called ‘social dumping’ from the provisions of Chapter IV, the Sub-Committee expressed the view that this objective was covered for short-term purposes by paragraph 1 of Article 40 [Article XIX] and for long-term purposes by Article 7 [on worker rights] in combination with Articles 93, 94 and 95 [on dispute settlement].” The text of Article 7 was not, of course, included, in the GATT.

263. Article XX(h) allows GATT Members to adopt measures “undertaken in pursuance of obligations under any intergovernmental commodity agreement which conforms to criteria submitted to the CONTRACTING PARTIES and not disapproved by them or which is itself so submitted and not so disapproved”. Within the framework of the Integrated Programme for Commodities of the UNCTAD, a number of international commodity agreements contain provisions on “fair labour standards”<sup>60</sup>. These provisions, however, seem to be more declarations of intent than precise contractual undertakings; they are limited to a general reference to fair working conditions without quoting any concrete provisions referring to existing international agreements. Special sanctions or control mechanisms are not provided for, and their effects in practice depend largely on the leverage which concerned countries can exert in securing compliance with such clauses. None of the commodity agreement, nor criteria with respect to commodity agreements, have ever been formally submitted to the GATT Members.

*iv) Nullification and Impairment provisions*

264. It has been suggested by some that the dispute settlement provision of the WTO might offer a means to address enforcement of core labour standards in certain circumstances. Under Article XXIII,1(b) or (c) a Member may bring an action if it believes that any benefit accruing to it under the Agreement is being nullified or impaired, or that the attainment of any objective of the Agreement is being impeded, as a result of *inter alia* “the application by another of any measure, whether or not it conflicts with the provisions of the Agreement” or the “existence of any other situation”. Paragraph 2 of that article also refers to the scope for CONTRACTING PARTIES to consult with other inter-governmental organizations. It would be up to the complainant to bear the burden of demonstrating the nullification and impairment including that it is the result of foreign measures.

265. The original Article 7 of the Havana Charter would have involved incorporating worker rights provisions in the Agreement as a potential basis for any invocation of nullification and impairment provisions. With respect to all such matters referred to dispute settlement procedures, co-operation was to be instituted between the ITO and the ILO. In 1953, when a US proposal to re-insert the provision in the GATT was rejected, the United States declared that, taking into account the distortions likely to be created by unfair labour conditions, they considered the possibility to invoke nullification or impairment in terms of Article XXIII as existing already under the current provisions<sup>61</sup>. No action was ever taken in this direction, although the United States still reserves its right to do so.

*v) “Opt-out” provisions*

266. It has been argued that GATT Article XXXV presented an opportunity for contracting parties to exercise a *de facto* labour-rights exception to GATT rules. This was the so-called “opt-out” clause, under which a contracting party had the right upon the accession of a new contracting party (or upon its own accession to GATT) to declare that it will not apply GATT in its trade relations with a specific contracting party. There were no limitations placed on a country’s decision to exercise this option, apart from the requirements that it be invoked only at the time of accession, and could not be invoked if tariff negotiations had taken place between the two parties in the course of GATT-accession negotiations. This provision of the GATT first emerged in response to India’s concerns over the Accession of South Africa in 1948. To the extent that one considers the specific opposition to *apartheid* to have been, *inter alia*, a labour rights issue, those countries that invoked Article XXXV against South Africa employed this provision as a labour-related political exception. Of the twelve invocations of the article that were still in effect as of 1990, four of them related to South Africa. The issue has since been rendered moot by the abolition of apartheid and the establishment of the WTO, although it remains an option for any WTO Member to take recourse to the provision of Article XIII regarding future new WTO Members for

whatever reason<sup>62</sup>. It should, however, be noted that such an approach is rather inflexible and would appear disproportionate in regard to most of the labour standards issues presently under consideration.

*vi) Labour standards in the Trade Policy Review Mechanism (TPRM)*

267. It has also been suggested that policies that deliberately attempt to reduce core labour standards in certain export sectors or export processing zones be included and discussed in the country reviews undertaken in the framework for the Trade Policy Review Mechanism on the grounds that the publicity and peer pressure involved in this exercise might eventually improve the situation of core labour standards in some countries. It has been proposed that the ILO might play an active part in such a procedure, first by defining the set of core labour standards and then by participating in the elaboration of that part of the WTO Secretariat report dealing with labour policies.

268. The TPRM focuses on trade and trade policies. Export processing zones *per se* can be the subject of TPRM discussions. Any proposals to deal with core labour standards issues would need to be consistent with, *inter alia*, Articles A(i) and (ii) of the TPRM annex, whereby the subject-matter of review is to be a background for better understanding and assessment of the country's trade policies and practices, and cannot in any case be used as a basis either for dispute settlement procedures or for imposing new policy commitments on Members. It should be noted that all proposals to include labour policies in Trade Policy reviews undertaken in the past have encountered strong opposition from developing countries.

*1.3 Concluding remarks*

269. Applying the proposals reviewed in this section would pose in the first place a number of questions concerning the appropriateness and the effectiveness of various WTO mechanisms which, in their present forms, are directed toward the enforcement of trade policies and practices. A second observation is that the use of various WTO articles or procedures would, in all appearance, require amendments, reinterpretations or common understandings. Such remain, ultimately, a matter for WTO members themselves to determine. It is, however, apparent that there is presently a lack of consensus within WTO to move in such a direction.

**2 *Conditional lending by international financial institutions***

270. Another proposed way of promoting core labor standards would be to make international financial assistance conditional on the respect of basic labour rights by borrowing countries. Such suggestions may have been inspired by a recent U.S. legislative action to encourage the Bretton Woods institutions (i.e. IMF and IBRD) to promote core labour standards. In 1994, the U.S. Congress passed a law requiring the Secretary of the Treasury to instruct the U.S. directors of international financial institutions to "use the voice and vote of the United States to urge the respective institution (...) to adopt policies to encourage borrowing countries to guarantee internationally recognised worker rights and to include the status of such rights as an integral part of the institution's policy dialogue with each borrowing country".<sup>63</sup>

271. Nevertheless, it seems that there are some issues that this type of mechanism would have to address. First, there is a question of consistency and coherence: would it be able to target all systematic denials of basic labour rights, when it can reach only those countries who are applying for multilateral loans? Second, can it be reconciled with the principles for well-designed conditions laid out by the World Bank, in particular that conditionality should concentrate on the program's critical goals, and that it should be within the borrower's implementation capacity? With respect to the latter principle, it must be

remembered that when worker rights' violations occur in the informal sector of the economy, it may be difficult for the government to find rapid and effective remedies.

#### **D. Regional and Unilateral Government Actions**

##### ***1. The North American Agreement on Labour Cooperation***

272. The North American Agreement on Labour Cooperation (NAALC) — more commonly known as the NAFTA “side agreement” on labour — links each of the North American countries' labour laws to the regional trade agreement. Both agreements entered into force on January 1st, 1994. The NAALC covers core labour standards as well as health and safety of workers and the protection of migrant workers [NAALC: A Guide, 1995].<sup>64</sup>

273. The main objective of the NAALC is to improve working conditions and living standards in the U.S., Mexico and Canada mainly through cooperation and exchange of information. The agreement also provides for consultations and even the possibility of sanctions in the event that a North American country does not meet these standards.<sup>65</sup> Complaints or petitions can be submitted by any person with a legally recognized interest under the law of any party to the NAALC. However, the dispute settlement procedure can be quite lengthy: over two years may elapse before trade sanctions can be enforced. In addition, trade sanctions are only possible in the areas of child labour, minimum wages and occupational safety and health, but not in cases relating to freedom of association, right to bargain collectively, and forced labour (see the table below on the NAALC dispute settlement process and time-frame). Furthermore, it must be noted that the NAALC does not refer to internationally-agreed minimum labour standards as the European GSP system (see below), but to standards defined under the national legislation of the parties. In particular, complaints must be either trade-related or covered by mutually recognized labor laws, and there must have been a persisting pattern of non-enforcement of the relevant social provisions [NAALC, 1993: Article 41].

**NAALC Dispute Settlement Process**

<b>Action</b>	<b>Timing</b>
<b>Step 1</b> Petition/Complaint filed with NAO (full coverage of NAALC dispositions)	NAO must accept or reject submission for review within 60 days
<b>Step 2</b> Review process: consultation with other NAOs, public hearing, final report published	60 days, with possible 60 days extension
<i>If unresolved:</i>	
<b>Step 3</b> Ministerial consultations (full coverage)	No set time limit
<i>If unresolved</i> , and object of dispute is (i)trade related; (ii)concerns mutually recognized labour laws; (iii)pattern of non-enforcement, any consulting party may request:	
<b>Step 4</b> Establish an Evaluation Committee of Experts, prepare draft evaluation report that may be reviewed by the parties, and then present final evaluation report	Draft report shall be presented to the parties within 120 days, and final report presented to the Council no later than 60 days later. Written responses by the Parties must be provided within 90 days, and submitted to the Council along with the final report.
<i>If unresolved</i> AND related to health and safety, child labor or technical labor standards:	
<b>Step 5</b> Ministerial Council consultations	60 days
<i>If unresolved</i> , at the request of any consulting Party and by a two-third vote, the Council may:	
<b>Step 6</b> Request an Arbitrary Panel	Initial Report presented to the Parties within 180 days after selection of the panelists. Final report due within 60 days after submission of initial report.
<i>If unresolved</i> (i.e. no action plan adopted by parties or action plan not being implemented):	60 days
<b>Step 7</b> Panel may be reconvened and may impose a monetary enforcement assessment	90 days
<i>If a Party fails to pay</i> a monetary enforcement assessment within 180 days after it is imposed by panel:	
<b>Step 8</b> Complaining Party or Parties may suspend application of NAFTA benefits in an amount no greater than that sufficient to collect the monetary enforcement assessment.	

Sources: NAALC, Final Draft, 1993; NAALC: A Guide, U.S. NAO, U.S. Dept of Labor, Washington, D.C., 1995, Appendix 1, Appendix2.

274. Five cases have been submitted so far under the NAALC dispute settlement procedure. Four submissions were filed with the U.S. National Administrative Office (NAO)<sup>66</sup> since its establishment in January 1994, the fourth of which was withdrawn in early 1995. The last submission was filed in 1995 with the Mexican NAO. The first two submissions concerned subsidiaries of U.S. firms in the Mexican “maquiladora” sector, and related to alleged violations of the right to freedom of association. A joint public hearing was held in September 1994 in Washington, D.C. and a Public Report was issued one month later. In the report, the U.S. NAO recognized that the submissions raised strong concerns regarding the freedom to join independent unions, both at the level of the firm management and the Mexican labor authorities.<sup>67</sup> Nevertheless, the report concluded that it had not been established that the Government of Mexico failed to promote compliance with or to enforce the specific laws involved, and thus did not recommend ministerial consultations on matters presented in the two submissions [U.S. NAO, 1994 and U.S. NAO, Jan.1995].

275. The third submission concerned the maquiladora operations of a subsidiary of Sony corporation in Mexico. Allegations involved freedom of association, right to organize, and minimum employment standards relating to hours of work and holiday work.<sup>68</sup> The review revealed serious problems related to the workers’ ability to obtain recognition of an independent union by local labour authorities. Therefore, the NAO recommended that ministerial consultations would be appropriate in order to “further address the operation of the union registration process” [U.S. NAO, April 1995]. The final agreement called for the Mexican authorities to meet (a) with workers at Sony to inform them of remedies available to them under Mexican labour law regarding union registration and (b) with local labour authorities to discuss union registration issues raised by the U.S. NAO report.

276. The fifth submission, and the only one to date to be brought with the Mexican NAO, relates to the dismissal of about 200 workers and the shutting down of the “La Conexión Familiar” Sprint subsidiary in California, a week before a scheduled election of union representatives. In its review report of May 31, 1995, the Mexican NAO recommended that ministerial consultations be held in order to “further study the effects on the principles of freedom of association and the right to organize of workers of the sudden closure of a place of work”.

277. Concluding remarks: Since the NAALC entered into force on January 1st, 1994, and only five cases have been submitted so far, it is too early to draw conclusions on its effectiveness. All complaints involved alleged violations of the freedom-of-association right. However, as mentioned earlier, advanced steps of the dispute settlement process are available to the Parties only on matters involving health and safety, child labour or technical labour standards. Furthermore, only in two instances (Sony and Sprint cases) did the dispute settlement process reach the level of ministerial consultations (see table 2 above), which are still under way at the time of this writing.<sup>69</sup> Whether the ministerial consultations will lead to effective improvements in the enforcement of the relevant national labour standards in the member countries remains therefore to be seen.

## 2. *Labour standards and trade preferences*

### 2.1 *The U.S. GSP Program*

278. Legislation designed to promote better labour standards in developing countries has been added to several U.S. trade and aid programmes over the past 12 years. These programmes include: the Caribbean Basin Economic Recovery Act (1983); the GSP Program (1984); the Overseas Private Investment Corporation (1985); the Multilateral Investment Guarantee Agency (1987); Section 301 in the Omnibus Trade and Competitiveness Act (1988); the Andean Trade Preference Act (1991); Section 599 of

the Foreign Operations Appropriations Act (1992); and Section 1621 of the Foreign Operations, Export Financing and Related Programs Act (1995). Among these programmes, the GSP is the most important in terms of promoting better labour standards. It contains a systematic review and decision process and suspension of GSP benefits potentially triggers action under the other worker rights provisions in U.S. trade law. Because of its importance to advocacy groups and its 11 years in use, this section concentrates on the U.S. GSP Program. An overview of the Program's legislation, procedures and performance is followed by an assessment of its effectiveness.

279. The U.S. GSP scheme was implemented on 1st January 1976, for a period of 10 years, in conformity with the Trade Act of 1974<sup>70</sup>. It was reauthorized for another eight and one-half years until 4 July 1993, by the Trade and Tariff Act of 1984, which amended the GSP provisions in the 1974 Trade Act by adding stricter eligibility criteria for beneficiary countries. The criteria in the 1984 GSP legislation stipulated that in determining beneficiary status the President must take into account among other things (1) the extent to which the country in question provides adequate and effective protection of intellectual property rights and (2) whether the country is taking steps to offer internationally-recognised worker rights to workers<sup>71</sup>. Since 1993, the GSP Program has been extended twice for around one year each time. The short-term renewals are due to budgetary concerns resulting from Congress' revenue offset requirements for U.S. trade programmes<sup>72</sup>.

280. The worker rights provision in the GSP statute defines internationally-recognised worker rights as including: the right of association; the right to organise and bargain collectively; a prohibition on the use of any form of forced or compulsory labour; a minimum age for the employment of children; and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health. The worker rights criterion is one of "taking steps" to meet international standards, rather than being in full compliance with those standards.

281. The GSP statute does not define any of the worker rights in question, except for designating them as "internationally-recognised", which is generally interpreted to refer to ILO norms. The GSP worker rights standards are thus based on, but do not replicate, ILO Conventions. In interpreting the meaning of the five standards, the GSP Subcommittee takes into account the relevant ILO Conventions, e.g., Convention 87 in the case of freedom of association. The Subcommittee also examines the findings of ILO supervisory bodies for beneficiary countries under review in regard to the rights listed in the statute.

282. The 1984 renewal of the GSP Program required that the existing annual review process for products include "country practices" as well. According to this process, petitions to review worker rights in particular beneficiary countries must be submitted by June 1st of each year to the GSP Subcommittee for subsequent evaluation. The Subcommittee, composed of representatives of the various government agencies responsible for trade policy making, bases its evaluation on information contained in several sources, including the State Department's annual Country Reports on Human Rights Practices, documents from the ILO, reports from the U.S. Embassy in the country, published studies by the U.S. Labor Department, and information provided by the petitioners and the beneficiary country.

283. Once a petition is filed, the Subcommittee can choose either to accept or reject it. If it is accepted, a one-year review is conducted. After the review process, the Subcommittee can make one of three recommendations: i) extend the review process for a period of time that is determined by the Subcommittee; ii) terminate the review because the country is found to be "taking steps"; or iii) suspend the country's eligibility for GSP benefits, because the country is not complying with GSP law. While the ultimate outcome of the review process is the recommendation of the Subcommittee, the bilateral

negotiations or representations that are triggered by the filing of the petition are the real focus of the reviews<sup>73</sup>.

284. The importance of the GSP Program for advocacy groups has grown in recent years<sup>74</sup> along with an interest in improving the system. Two problems with the present process are emphasized. The first is the fixed date (June 1st) as the deadline for submissions of all GSP petitions for consideration during the annual review cycle. Worker rights groups believe that they should be able to file petitions at any time during the year when a crisis occurs and receive expedited review. Frequently, country practice cases are held over to the next review cycle and take a long time to resolve.

285. The second problem concerns a lack of formal standards in GSP law or regulations for accepting country practice petitions for review. This has led to perceptions in advocacy groups that acceptance standards are subjective and highly political. They object particularly to two of the policies used to select petitions for review: i) the classification of a petitioned offense into either a human rights or a worker rights problem, which eliminates the human rights problems from reviews; and ii) the use of the "new information" standards to deny re-petition of a case that has been dismissed previously, unless substantially new information is brought.

286. There is an important difference in views, however, between advocacy groups and GSP officials as to the degree to which the leverage of GSP sanctions should be pursued in investigations and negotiations. Worker rights advocates would like to see more cases accepted for review and more countries sanctioned through suspension of their GSP benefits. U.S. government officials, in contrast, generally feel that the focus of a GSP review should be on improving labour standards, given other foreign policy and trade concerns, and prefer to impose sanctions only as a last resort.

287. From 1984 through 1995, 40 countries have been named in petitions citing labour rights abuses according to GSP law. In almost half of the cases, the GSP Subcommittee recommended that a formal review of the country's situation be postponed until sufficient information could be gathered to evaluate the alleged abuses; many of these countries were later petitioned at least once more, and the monitoring period was prolonged even further. For the other cases, the countries were usually found to be in compliance with GSP law.

288. Ten countries have been denied GSP treatment on either a temporary or permanent basis by reason of the labour criteria. A distinction is drawn in U.S. policy between the termination of GSP benefits, in which case a country would have to go through the difficult and time-consuming process of being redesignated for the programme in order for its benefits to be reinstated, and the suspension of GSP benefits, a sanction that can be more readily lifted through an administrative determination. Only four countries have been terminated from the GSP programme: Nicaragua and Romania in 1987, Liberia in 1990, and Maldives in 1995. Six countries have been subject to suspension of benefits, including the Central African Republic (1989-91), Chile (1988-91), Mauritania (since 1993), Myanmar (since 1989), Sudan (since 1991), and Syria (since 1992). At the time of writing, the USTR has yet to decide whether to initiate investigations based on several labour-related petitions that it received in June, 1995. The agency has stated that it will not decide which (if any) of these petitions to accept for review until Congress acts to renew the GSP, which expired 31 July 1995.

289. By far, the most frequent petitioner has been the AFL-CIO, followed by the International Labor Rights Education and Research Fund (ILRERF), although anyone is permitted to file a petition, including individuals and small interest groups. All petitions have cited freedom of association and collective bargaining violations; minimum age and work conditions violations have been mentioned in only about half, while forced labour abuses have received the least attention.

290. In reviewing worker rights petitions, the GSP Subcommittee undertakes a thorough investigation in order to obtain a balanced view using information from a variety of sources. The Subcommittee looks in particular for evidence of progress in the country's legislation and in its practices, and relies on ILO Conventions and Recommendations as benchmarks for interpreting progress. The determination of "taking steps" is particular to each case. There are no guidelines, but the underlying criterion is that movement in the desired direction be taking place. While the link with ILO Conventions and Recommendations is indirect, complementarity between them and the Subcommittee's evaluation of progress is sought deliberately. In addition, the Subcommittee has regular contact with ILO staff and frequently recommends ILO's technical assistance to countries where labour legislation is found in need of reform. The final recommendations of the Subcommittee note the positive actions taken but also record what additional steps the Subcommittee expects. This provides the "hook" for a new petition as well as a ruler for gauging progress in subsequent reviews.

291. The administration of the country practice reviews encourages improved worker rights practices principally by raising consciousness and applying international peer pressure. A great deal of information about a country's labour regime is exposed during the GSP's review process. Beneficiary governments do not want to be judged negatively for fear of discouraging potential foreign investment.

292. The leverage provided by withdrawing tariff preferences, or threatening to, has been used only as a last resort. One of the main reasons for this is that once sanctions are applied, the leverage is lost.

293. The U.S. GSP worker rights provision is a unilateral trade programme according to GATT law. But its influence depends not only on the sanctions mechanism that involves the withdrawal of one country's tariff preferences. It also depends on the review process which is tied to ILO's international and tripartite agreements and procedures. In both cases, nevertheless, its effectiveness is clearly related to the fact that the U.S. market is the largest for most of the GSP beneficiaries.

294. Concluding remarks: Progress in raising core standards has been made in most of the countries petitioned, particularly when the review period has been extended for several years. Notwithstanding the GSP Program's strengths, a certain bias appears to be introduced into the petition process as well as the Subcommittee's final recommendations. Petitions focus frequently on specific worker rights (freedom of association; collective bargaining) and sectors (export processing zones). Other rights concerning minimum age of employment, work conditions, and forced labour, and informal sector activities receive less scrutiny.

## *2.2 The EU GSP System*

295. A direct link between trade and core labour standards is also established in the 1994 GSP System of the European Communities.<sup>75</sup> The EC's approach consists of a mix of incentives, in the form of additional GSP benefits for countries implementing core labour standards, and of disincentives, i.e. the suspension of GSP benefits for countries denying some of the core labour standards.

296. On the one hand, starting on January 1, 1998, the Council Regulation establishing the GSP provides for "special incentive arrangements in the form of additional preferences", that may be granted at the written request of beneficiary countries, providing that they have adopted and apply the substance of ILO standards concerning freedom of association and collective bargaining (ILO Conventions 87 and 98), as well as the provisions on child labour laid down in ILO Convention No 138. The actual implementation of these incentives, as well as the level of the supplementary preferential margin, will depend on a 1997 Commission report on the results of work on trade and labour standards carried out in the ILO, the WTO, and the present OECD study.

297. On the other hand, trade sanctions in the form of a temporary suspension of the preference scheme can be taken in circumstances such as the practice of forced labour or export of goods made by prison labour.<sup>76</sup> Member States or any natural or legal persons or associations can signal such practices to the Commission, which then initiates consultations with the concerned parties before deciding whether to open an investigation. Sanctions, if any, cannot be implemented before a year of investigation and a decision by the (qualified) majority of the Council. Contrary to the special incentive clauses, this procedure became applicable as of January 1st, 1995.

298. Concluding remarks: Since this mechanism has yet to come into force, it is impossible to discuss its effectiveness. The incentive approach is novel and interesting, but its real value seems limited by the extent to which GSP preferences for developing countries are eroded under the implementation of the Uruguay Round of trade negotiations. The sanctions part has certain resemblances to the provisions set out in the U.S. GSP. However, there are some differences. First, in the case of the European GSP, the labour standards referred to are defined in ILO Conventions, while the link is less explicit in the case of the U.S. GSP. Second, the U.S. GSP refers to a larger set of labour standards than the EU one, which coincides with the set of core labour standards referred to in this study.

### 3 *The relationship between trade and labour rights in the U.S.*

299. The United States is probably the country that has enacted the most pieces of legislation linking trade and labour standards. This is a reflection of the U.S. Constitutional system which gives strong regulatory powers to the Congress and of the high visibility given to labour standards' issues in U.S. legislation. A recent example of which can be found in the Omnibus Trade and Competitiveness Act of 1988.<sup>77</sup> Section 131 of the Uruguay Round Agreements Act (the U.S. implementing legislation for the accords) further called for the establishment of a WTO working party "to examine the relationship of internationally recognized worker rights ... to the articles, objectives, and related instruments of the GATT 1947 and of the WTO, respectively." The provision proposed *inter alia* that the working party consider ways to address the effects that the systematic denial of these rights have on international trade, and "develop methods to coordinate the work program of the working party with the International Labor Organization." Congress directed the President to report within a year (i.e., by the end of 1995) on the progress made towards establishing this working party.

300. In addition, one proposed and one existing provision of U.S. trade law could expand upon the historical experience with labour-related trade sanctions. As discussed below, the former refers to a proposed ban on the importation of goods produced with child labour, and the latter to the use of the principal U.S. retaliatory trade law (i.e., section 301) against countries that deny internationally-recognized workers' rights.

#### *3.1 Child labour*

301. There have been repeated but thus far unsuccessful efforts in the United States to impose a ban on the importation of products made by child labour. In the 102nd (1991-1992) and 103rd (1993-1994) congresses, U.S. legislators introduced a bill known as the "Child Labor Deterrence Act", also known as the Harkin bill. Senator Harkin and other sponsors continue to press for approval of the bill, having reintroduced it in the 104th Congress (1995-1996).<sup>78</sup>

302. Under the terms of this proposed legislation, the Secretary of Labor would be directed to compile a list of foreign industries that use children under the age of fifteen in the manufacture or mining of

exported products.<sup>79</sup> The bill would also prohibit the importation of any product made in whole or in part by children under the age of fifteen in industry or mining. This ban would not apply if U.S. importers take reasonable steps to ensure that the product is not made by child labour, and sign certificates of origin affirming that they have taken such steps. This provision is intended to promote programmes such as the Rugmark labeling initiative described below; importers in the United States could meet the “reasonable steps” test by complying with the Rugmark rules. The bill would also urge the President to seek an international agreement to impose an international ban on trade in products made by child labour.

### *3.2 Prison labour*

303. Privately-conducted investigations of prison labour in China, some of which were funded by the AFL-CIO [Southerland, 1994], revealed that goods produced by political prisoners and other incarcerated persons were being exported to the United States. Such imports are illegal under section 307 of the Tariff Act of 1930, and the threat of unilateral sanctions led to a series of bilateral disputes and negotiations.

304. The United States and the People’s Republic of China reached a memorandum of understanding (MOU) on prison labour exports in August, 1992. This agreement provides for investigation of suspected violations, exchanges of information and meetings between officials and experts, furnishing of evidence that can be used in judicial or administrative proceedings against violators, and facilitation of visits to relevant facilities.<sup>80</sup> Subsequent to the conclusion of this MOU, labour unions, human rights organizations, and the State Department itself expressed dissatisfaction with Chinese compliance [Lord, 1993]. These concerns have also led to new demands in Congress for more stringent legislation.

### *3.3 Retaliation under section 301*

305. Section 301 of the Trade Act of 1974 (as amended) gives the Office of the U.S. Trade Representative (USTR) the authority to investigate foreign laws, policies, and practices that are alleged to be unreasonable, unfair, or discriminatory, and to negotiate with the country in question for redress. If an investigation determines that U.S. trade rights have indeed been violated, and the foreign country does not take action to correct the problem, the USTR has the authority under section 301 to retaliate through the imposition of restrictions on imports from the country in question; penal tariffs of one hundred percent on a list of selected products have been the preferred means in recent cases.

306. Congress amended section 301 in 1988 to allow for the use of this mechanism in cases involving foreign countries’ denial of internationally-recognized labour rights. A provision in the Omnibus Trade and Competitiveness Act of 1988 did so by expanding the definition of “unreasonable” (and therefore actionable) acts, policies, or practices to include “a persistent pattern of conduct that (I) denies workers the right of association, (II) denies workers the right to organize and bargain collectively, (III) permits any form of forced or compulsory labor, (IV) fails to provide a minimum age for the employment of children, or (V) fails to provide standards for minimum wages, hours of work, and occupational safety and health of workers.” The provision further allowed the USTR to find that such a pattern was not unreasonable if either “the foreign country has taken, or is taking, actions to demonstrate a significant and tangible overall advancement in providing throughout the foreign country (including any designated zone within the foreign country the rights and other standards” described in the law, or “such acts, policies, and practices are not inconsistent with the level of economic development of the foreign country.”

307. This law has never been invoked. The USTR has not received any formal petitions asking that it do so, nor have allegations of labour-rights violations been included in the USTR annual *National Trade Estimate Report on Foreign Trade Barriers* (1995).

308. Concluding remarks: It is difficult to evaluate these mechanisms since they have never been used directly. These Congressional initiatives may have contributed to the current debate on trade and labour standards' issues.

## **E. International Standards for the Conduct of Firms**

### **1. *The ILO Tripartite Declaration of MNE's and Social Policy***

309. The ILO Tripartite Declaration of Principles Concerning Multinational Enterprises (MNEs) and Social Policy [ILO, 1977] is a universal instrument adopted in 1977 by the ILO Governing Body in order to provide guidelines for multinational enterprises, governments, employers and workers in areas of employment, training, conditions of work and life, and industrial relations. The Declaration urges the parties to respect the Universal Declaration of Human Rights and the corresponding United Nations Covenants, the constitution of the ILO as well as the principles laid out in the Declaration of Philadelphia on freedom of association and collective bargaining.

310. The Declaration, through references to UN and ILO conventions, as well as explicit references, covers all the core labour standards listed in part I of this report. It also contains an important direct reference to MNEs, i.e. that "where governments of host countries offer special incentives to attract foreign investment, these incentives should not include any limitation of the workers' freedom of association or the right to organise collectively" [ILO, 1977, par.45].

311. A regular review procedure is established by the Declaration, which consists of a triennial survey conducted to monitor the extent of the application of the Declaration by governments, employers, workers and MNEs. The ILO Committee on MNEs analyses the parties' replies to the survey and formulates recommendations for decisions to be taken by the ILO Governing Body. Since 1986, there also exists a procedure for the examination of disputes concerning the application of the Declaration by means of interpretation of its provisions.

312. The 6th review is currently under way and a report is due by November 1996. The 5th review took place in 1992. The analysis of the parties' replies by the Committee on MNEs showed a "generally positive assessment of the valuable contribution that MNEs make to national economic and social development".<sup>81</sup> Nevertheless, some worker organisations signalled problems regarding the implementation of the Declaration, such as FDI legislation limiting the rights of unions, in particular in EPZs, and threats by firms to relocate in an attempt to influence the bargaining process.

313. Concluding remarks: The Tripartite Declaration has been adopted by all ILO members and thus has a near-universal character. Although it is a non-binding instrument, it's implementation is nevertheless the object of regular reviews. There is no mechanism to formally enforce the recommendations of the Governing Body, so that the effectiveness of the Declaration is questioned by some worker organisations. They propose to turn it into a binding Convention, while employer organisations and governments insist on the importance of its voluntary character.

### **2. *The OECD Guidelines for Multinational Enterprises***

314. The OECD Guidelines are recommendations to MNEs designed to ensure that they operate in harmony with the policies of the countries where they are located. These voluntary standards cover the full range of MNEs' operations.

*2.1 An overview of the Guidelines*

i) Features

315. The Guidelines are a part of the Declaration on International Investment and Multinational Enterprises. The Declaration constitutes a political commitment, adopted by the governments of OECD Member countries in 1976, with the objective of facilitating direct investment among OECD Members [see OECD (1994a)]. The other parts of the Declaration deal with three related instruments, aimed at:

- providing national treatment to foreign-owned enterprises;
- promoting co-operation among governments in relation to international investment incentives and disincentives; and
- minimising the imposition of conflicting requirements on MNEs by governments of different countries.

316. The Guidelines are voluntary and, consequently, not legally enforceable. This, however, does not imply less commitment by OECD governments to encourage their observance. The system under which the Guidelines are implemented is described below.

317. The basic approach is that internationally-agreed guidelines can help to prevent misunderstandings and build an atmosphere of confidence and predictability among business, labour and governments.

318. The Guidelines address the MNEs from OECD countries. However, reflecting the worldwide operations of MNEs, Member countries support international co-operation in this area to extend the Guidelines to all States, and in particular developing countries, with a view to improving the welfare and living standards of all peoples by encouraging the positive contributions of MNEs and minimising or resolving any problems which may arise in connection with their activities.

ii) Coverage

319. The Guidelines are divided into separate chapters which cover the range of MNE activities. These chapters deal with: general policies, information disclosure, competition, financing, taxation, employment and industrial relations, environment and science and technology. The introduction makes it clear that no different treatment between MNEs and domestic enterprises is sought. Wherever relevant, the Guidelines reflect good practice for all. The introduction also states that enterprises should take full account of countries' general objectives, co-operate with local community and business interests and refrain from bribery and improper political activities.

320. The provision of information is an important theme of the Guidelines. For the public, this involves having information on the structure, activities and policies of the enterprise as a whole. For governments, this means access to information to ensure compliance with policies and regulations on taxes, competition and environmental standards. For employees, it means having information provided to their representatives for purposes such as meaningful negotiations on conditions of employment or the performance of the enterprise.

321. For the purpose of this study, it should be noted that a separate chapter addresses employment and industrial relations, where enterprises are encouraged to respect employees' rights to representation, refrain from unfair influence in labour negotiations or during organising campaigns, and to negotiate constructively on employment conditions. Enterprises are also encouraged to provide reasonable notice of changes in operations that would have major effects on employees and to co-operate to mitigate any adverse effects from such changes. In particular, enterprises should:

- respect the right of their employees to be represented by trade unions and other bona fide organisations and engage in constructive negotiations with them on employment conditions;
- provide assistance and information to employee representatives;
- provide information for a true and fair view of the performance of the enterprise;
- observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country;
- utilise, train and prepare for upgrading their labour force;
- provide reasonable prior notice of changes in operations, in particular on intended closures and collective layoffs;
- refrain from discriminatory practices in their employment policies;
- not exercise unfair influence over bona fide negotiations with employee's representatives;
- enable authorised representatives of their employees to conduct negotiations on collective bargaining or labour-management relations with management representatives authorised to take decisions on the matters at hand.

## *2.2 Implementation*

### *i) Institutional set-up*

322. The institutional set-up of the Guidelines consists of three elements: i) the National Contact Points; ii) the OECD Committee on International Investment and Multinational Enterprises (CIME); and iii) the advisory Committees of business and labour federations, BIAC and TUAC.

323. The National Contact Points (typically a government office in a Member country) serve to gather information on experience with the Guidelines, to promote them, to handle enquiries, to discuss matters related to the Guidelines and to assist in solving problems which may arise between business and labour in matters covered by the Guidelines. The CIME's responsibilities in the field of the Guidelines include: (i) providing clarifications on the interpretation of the Guidelines; (ii) reviewing and exchanging views on them; and (iii) responding to requests from Members, BIAC or TUAC on aspects of the Guidelines. BIAC and TUAC can request consultations with the National Contact Points on issues related to the Guidelines and can raise such issues at the CIME. They also inform their member federations about the Guidelines' development and seek their members' input in follow-up procedures.

ii) Follow-up procedures

324. The Guidelines are drafted in general terms, so as to apply to the whole OECD area, with its diversity of legal systems and practices towards MNEs. Consequently, clarifications may be necessary in individual cases.

325. If a party is under the impression that, in an individual case, the Guidelines have not been observed, but is unclear about the Guidelines applicability, that party should approach the National Contact Point. Member governments, labour and business organisations (through BIAC and TUAC) may raise such issues. The National Contact Point should contact the enterprise, either directly or through the appropriate business federation, to inform it that a Guidelines issue has been raised. The Contact Point and business and labour representatives should try to resolve the issue at the national level. If entities of the enterprise in another country are involved, the contact point should contact its counterparts in that country to exchange information and try and resolve the matter. The National Contact Point in the country where the enterprise has its headquarters should also be informed.

326. If no solution can be found through the National Contact Points, and a clarification seems necessary, the issue can be submitted to the CIME for consideration. Final responsibility for clarifications lies with the Committee, although matters discussed by the National Contact Points may involve questions of the scope and meaning of the Guidelines in specific circumstances. Whenever a Contact Point gives its opinion as to the relevance of the Guidelines to matters at hand, it should keep in mind the international character of the Guidelines and the overriding necessity of avoiding conflicting national interpretations. Where there is any doubt or where there are divergent views as to the consistency of an interpretation under consideration by a Contact Point with clarifications adopted by the OECD, the matter should be brought to the attention of the Committee before the Contact Point gives the final answer.

327. In order to speed up such proceedings, these matters can be referred directly to the CIME's Working Group on Investment Policies and the Guidelines for preliminary consideration. After considering the question, and consulting with BIAC and TUAC, the CIME may then provide a clarification. It is important to note that the clarification refers to how the Guidelines would apply as concerns the issue raised. It is not a judgement on the behaviour of an individual enterprise and thus does not refer to it by name. This being said, the enterprise concerned may express its views orally or in writing on Guidelines issues involving its interests. Such an enterprise may, alternatively, use the offices of BIAC for this purpose.

328. Labour and business organisations may, though BIAC and TUAC, submit cases that raise issues for clarification, but an attempt should be made first to resolve the issues at the national level.

3. *Experience*

329. In the two decades of their existence, the OECD Guidelines have become a respected point of reference for a great majority of MNEs. Although the Guidelines are a voluntary instrument, they carry the weight of a joint Recommendation of OECD governments. Along with national laws, the Guidelines form part of a legal infrastructure which promotes responsible behaviour of MNEs. In addition, their language has influenced considerably the other codes of conduct for multinational enterprises, such as the ILO Tripartite Declaration (see above) and the Code of Conduct for Transnational Corporations of the United Nations.

330. As with any internationally negotiated instrument, the Guidelines have sometimes been criticised, either for being too general or too detailed. Some have argued, for example, that they do not go

far enough in ensuring that MNEs comply with national law and practice, while others have suggested that the Guidelines go beyond those standards in some areas. Another area of debate involves the follow-up, which some say needs to be made stronger, while others argue that it is too juridical. To date, no formal evaluation of these criticisms has been made. In particular, further study is needed in order to assess whether the Guidelines have had any impact on the enforcement of core labour standards by MNEs in developing countries.

331. When Guidelines issues arise, the onus of attempting a settlement is particularly on the National Contact Point; hence, the effectiveness of the Guidelines depends to a large degree on that of the Contact Points. This effectiveness differs from country to country. The functioning of the National Contact Points will be discussed by the CIME's Working Party in the Autumn of 1995.

### 3. *Private sector codes of conducts*

332. Ethical standards for firms emerged mainly during the lengthy campaign to eliminate apartheid in South Africa. In the European Union, these pressures produced the Code of Conduct [Redleaf, 1992]; in the United States, companies were urged to adhere to the voluntary Sullivan principles. These standards stemmed from broader human rights concerns but core labour standards are clearly included in these measures.

333. The Sullivan principles are named after the Reverend Leon Sullivan, who is a member of the board of directors of General Motors. When in 1977 Sullivan was unsuccessful in his efforts to convince his fellow board members to pull the company's operations out of South Africa, he proposed instead that the firm agree to a series of six pledges regarding its treatment of South African workers.<sup>82</sup> These principles of fair employment and non-segregation soon spread to other companies, with a dozen adhering to them in the first year, and 120 by 1983 [Clark, 1983: 362]. The accounting firm of A.D. Little was given the responsibility for policing companies' adherence to the principles, issuing annual reports on each signatory's compliance. The European Code of Conduct was based on similar principles.

334. These principles inspired several comparable initiatives. Prior to the breakup of the Soviet Union, for example, the Slepak Principles provided a voluntary code of conduct for Western businesses [Hansen, 1989]. These principles offered guidance on issues ranging from labour rights (e.g., pledge not to use the products of forced labour) to strategic industries (e.g., pledge not to aid the Soviet military).

335. The MacBride Principles provide guidance for U.S. companies that invest in Northern Ireland, in order to prevent employment discrimination on the basis of religion.<sup>83</sup> In the United States, sixteen states and over forty cities have laws or resolutions in support of these principles [Gilman, 1995], some of which are linked to investment of pension funds or rules governing government procurement of goods and services. The "MacBride Principles Bill" (H.R.470) pending in Congress would prohibit U.S. companies operating in Northern Ireland from exporting their products to the United States unless they are in compliance with the MacBride Principles; similar legislation has been repeatedly introduced, but not enacted, since the mid-1980s.<sup>84</sup>

336. Another set of principles is variously known as the Minnesota Principles (for the Minnesota Center for Corporate Responsibility), the Caux Principles (for the Caux Roundtable) or the Kyosei Principles (for the Japanese term meaning "living together"). They establish "stakeholder principles" for dealing with customers, employees, owner/investors, suppliers, competitors, and communities. Included among the principles for dealing with employees are the responsibilities to "provide jobs and compensation that improve workers' living conditions" and to "engage in good faith negotiation when

conflict arises.” The principles have been backed by business leaders in the European Union, Japan, and the United States [Skelly, 1995].

337. Concluding remarks: Are privately adopted standards effective? Because they are voluntary, firms remain free not to follow the standards. Another weakness lies in the lack of satisfactory review procedures. However, there are indirect ways in which voluntary codes of conduct can make a real contribution to the promotion of core labor standards. First, if adhering to such standards improves a firm’s image, making consumers more willing to buy its products, other firms may want to join in for fear of losing market shares.<sup>85</sup>

338. Second, voluntary codes do in some cases inspire national legislation, which then becomes legally binding for all firms concerned. One such example is provided by a bill currently pending in the U.S. Congress (H.R.910), which would promote ethical standards for businesses. The legislation would direct the Secretary of State (in cooperation with other officials) to “establish guidelines which United States nationals should use in conducting business operations anywhere in the territory of any foreign country.” These guidelines are to be based on the OECD Guidelines for Multinational Corporations, the standards of the ILO, GATT Article XX(e), and the MacBride, Sullivan, Slepak, and Minnesota/Caux/Kyosei principles. The bill also provides for annual reporting to the Secretary of State by U.S. businesses, hearings conducted by the State Department, an annual report to Congress, and linkage between U.S. export-assistance programmes and the adherence of recipient countries to the aforementioned principles.

339. Third, voluntary adherence to ethical codes of conduct by large firms may lead them to insist that their suppliers, which often consist of small subcontracting firms located in least developed countries, also respect core labour standards. For example, in 1983 the Swiss retail stores chain Migros signed an agreement with Del Monte, its Philippino pineapple supplier, guaranteeing that “production conditions for workers are above average on the social and economic level.”<sup>86</sup>

## **F. Private Party Mechanisms**

340. Many of the policy instruments examined in this study are in the hands of governments and international organisations. They are not the only actors in this field, however. Consumers, investors, and firms can also influence directly the promotion of core labour standards, both at home and abroad.

### ***I. Moral suasion***

341. The basic principle of what is sometimes called “ethical consumption” is to persuade consumers to base their consumption decisions not only on price considerations but also on moral principles, relating to the conditions of production. Some activists encourage consumers to reward socially-responsible firms by directing their purchases towards companies that meet certain social criteria [Council on Economic Priorities,1994]. Others urge boycotts of goods that are produced under conditions of poor labour standards.

342. In the United States, the AFL-CIO officially sanctions national boycotts of non-union products. From a legal perspective, campaigns of this sort are a form of “secondary boycott.” Some types of secondary boycott are illegal under U.S. labour law, but the law explicitly permits advertising campaigns that urge consumers not to purchase non-union products.<sup>87</sup> A secondary boycott is illegal if it encourages consumers to avoid all purchases from a secondary employer (e.g., an otherwise unrelated retailer), and the law has been interpreted to bar U.S. labour unions from asking foreign labour unions to participate in a

boycott. There are also childrens' advocates based in developing countries who have adopted this tactic, such as the South Asian Coalition on Child Servitude [Harvey and Riggin, 1994].

343. Concluding remarks: Is this approach effective? The utility of this tactic may be limited by the substantial informational and organizational problems faced by those who seek to organize collective action by consumers. The difficulty here is even greater than that faced in the classic case of organizing consumers to oppose protectionist policies. In the case of a boycott organized for the promotion of labour rights abroad, it means convincing consumers to act *against* their narrow economic interests (i.e., asking that they voluntarily restrict their choice or be willing to pay higher prices).

344. In addition, boycotts can have an impact on trade, and indeed a danger is that they could be manipulated for protectionist purposes. This issue hinges upon the type of good being boycotted, and the groups that are behind the campaign. If the good in question is produced in the consuming country, there may be an incentive for a local industry to take advantage of the calls for a boycott.

## 2. *Labelling of consumer goods*

345. The main tool of the organizations attempting to induce consumers to stop buying some products and start to buy others according to ethical criteria is of course the gathering and diffusion of information regarding the conditions of production. This is why "social labelling" programmes have grown in number and importance. The principle is to provide consumers information that enables them to choose to reward goods that meet certain standards deemed to be socially desirable. Examples of social labelling programmes include (i) the Rugmark campaign, under which certain hand-made carpets are labelled to indicate that they were not produced with child labour; and (ii) the union label, indicating that the product in question was produced by members of a labour union.

346. The Rugmark campaign is directed specifically at the hand-knotted rug industry [Harvey and Riggin, 1994]. Founded in 1994, the Rugmark Foundation is the joint effort of the Indo-German Export Promotion Council, carpet manufacturers, and child welfare and human rights organisations. Rugmark has a small staff of inspectors, and has thus far certified several dozen Indian companies; many more have applied for membership. The programme also entails a levy of 1 to 2 percent of the export value of these rugs, with the funds being used for the rehabilitation of former child labourers in the industry. Although the initiative is relatively new, it has received considerable publicity and achieved early progress. The Rugmark programme has thus far been most successful in Europe. Germany is the leading importer of Oriental carpets, and several major German retailers have pledged to honour the campaign. Similarly, the Swedish retailer IKEA has also agreed to import only Rugmark-approved carpets. The programme has made limited inroads in the United States.

347. The union label approach has a lengthy history in the United States, where it extends as far back as 1869. The observation that some manufacturers have tried to apply counterfeit union labels may be taken as an indication of their economic value. The union label is in fact a protected trade mark, and one of the principal responsibilities of the union label department of the AFL-CIO is the discovery of such false representations.

348. Concluding remarks: Is social labelling an effective means of promoting core labour standards? This approach is useful only for products that meet the twin criteria of being (1) exported and (2) purchased directly by consumers. It would not work for goods or services that are sold solely in the country of origin, such as household services or locally-consumed construction materials. Similarly, it

would be too unwieldy to use for raw materials or semi-finished goods that are incorporated in the manufacture of other products overseas. However, labelling requirements on the finished product may induce some producers to require from their suppliers that they respect core labour standards in their production of inputs, thus starting a dynamic of self-discipline. In this way, it could make a positive contribution to fostering core labour standards worldwide.

349. Could social labelling programmes constitute a barrier to trade? Some argue that social labelling constitutes a nontariff barrier to the extent that it appeals to the latent economic nationalism of consumers. However, the impact, if any, is likely to be small, since labels would be awarded to a limited number of products representing a relatively small share of the market. The trade impact of social labels will be further diminished if they refer to international standards, agreed to by both developed and developing countries. In any case, labels represent an improvement upon, as well as a potential substitute to, unilateral trade action. An advantage of social labelling programmes is that they cause a minimum of economic distortions, since the incentives are likely to be most directly and appropriately related to the producers concerned.

### 3. *Socially-responsible investing*

350. Known as “socially-responsible investing” (SRI) in the United States and “ethical investing” in the United Kingdom, this is a practice under which those who purchase stocks and other securities make their investment decisions on the basis of social as well as economic criteria. Practitioners of SRI hope that by steering capital towards what are deemed to be socially-responsible firms and away from those deemed to be socially irresponsible, they can wield a positive influence on issues of importance to them. There are active and growing associations of SRI practitioners who share information and ideas through newsletters, investment clubs, computer networks, and organisations such as the Social Investment Forum in the United States and the Ethical Investment Research Service in the United Kingdom. SRI is also expanding to several other countries. The International Association of Investors in the Social Economy (founded in 1989) is a Brussels-based organisation that has thirty-five member organisations in fifteen countries. Other NGOs and firms involved in this field are located in Austria, Australia, Canada, and Germany, and in other countries as well.

351. The most important forms of SRI, for the purposes of this study, are investment in stocks of socially-responsible companies through (i) screened mutual funds, (ii) divestment of stocks in socially-irresponsible companies, and (iii) the promotion of shareholder resolutions that deal with social issues. These operate in the following ways:

352. (i) In screened mutual funds, in addition to employing traditional economic criteria in picking stocks, the managers of SRI mutual funds employ various types of “social screens” to choose specific companies. A “positive screen” actively seeks companies that are believed to produce a socially-desirable good, or are otherwise deemed to be exceptionally good corporate citizens. More common is the “negative screen” approach under which companies are rejected if they violate one or more of the criteria set by the fund managers.

353. Are screened mutual funds an effective means of promoting core labour standards? Among the SRI funds that are currently offered in the United States, relatively few focus specifically — and none of them exclusively — on the *foreign* labour practices of companies. For most SRI practitioners, both charity and investment begin at home. It is much more common for these funds to examine the domestic labour relations of a company, as measured by such criteria as its degree of unionisation or the generosity of its benefits packages, than it is to scrutinise their overseas labour practices, let alone focus on core labour

standards. Finally, screened mutual funds seem to too small and diverse to have wielded much influence on core labour standards.

354. (ii) Divestment by institutional investors might be seen as the reverse image of screened mutual funds. This approach is based not on investing in stocks, but instead on urging or obliging large institutions to sell off any stock that they might hold in companies that are deemed to violate some social standards. The classic example of divestment was the campaign in the 1970s and 1980s to require that universities, labour unions, government pension services, and other institutional investors divest any stocks in companies that had operations in South Africa. More than 150 municipal and state governments in the United States adopted divestment policies, some of which forced the sale of billions of dollars worth of securities. These restrictions were lifted after Nelson Mandela requested an end to sanctions in 1993. Another divestment campaign sprouted in 1989, following the Tiananmen incident in China.

355. (iii) The introduction of shareholder resolutions at annual meetings was popularised in the early 1970s by consumer organisations in the United States. For example, activists used the annual shareholder meetings of automotive producers to promote labour rights and product-safety issues. Shareholder resolutions moved into entirely new territory with the controversy over apartheid; while previous resolutions had dealt specifically with the nature of the products or services offered by a firm, or direct consequences of their production and use (e.g., pollution), resolutions concerning apartheid dealt with the broader political and social environment in which companies operate. There are now literally dozens of social and environmental issues that are frequently raised at annual meetings. However, as in the case of screened mutual funds, it appears that domestic issues, both social and environmental, are much more attractive targets of interest than is the protection of labour rights abroad, let alone core labour standards. There are relatively few shareholder resolutions that deal with this topic, and fewer still that are adopted.

356. Concluding remarks: Consumer-driven mechanisms, such as boycotts of specific products or social labelling schemes, can constitute a potentially useful, albeit limited means of promoting core labour standards. There is the potential utility of incentives or penalties being channelled through more market-oriented forces. In this way any economic benefits stemming from the violation of core labour standards could be diminished by the effect of market-based mechanisms that would create correct incentives. Under certain conditions,<sup>88</sup> programmes such as social labelling schemes could constitute a useful complement to other types of governmental action.

357. That said, specific measures generally focus on only one or two labour standards, such as child labour or freedom of association, and/or they are targeted only at a few firms or countries. The standards may or may not be internationally defined, and broader motives than the promotion of core labour standards may explain specific measures. Furthermore, boycotts or selective investment/divestment may, if they operate on large enough scale, have a disruptive and spillover effect on trade and/or investment flows, which in turn may lead the affected countries to retaliate in some way.

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## NOTES

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1. The right to collective bargaining is closely related with freedom of association of workers. One main purpose of workers' organisations is to bargain collectively with employers; hence, a denial of collective bargaining rights would make the right to freedom of association practically meaningless.
  2. See for example the International Agreement for the Suppression of White Slave Traffic of 1904, the International Convention for the Suppression of White Slave Traffic of 1910, the International Convention for the Suppression of the Traffic in Women and Children of 1921, and the International Convention for the Suppression of the Traffic of Women of Full Age of 1933.
  3. The World Social Summit of Copenhagen was attended by 117 heads of state and of government. Its main purpose was to affirm countries' commitment to combat poverty, unemployment and social exclusion and to promote social development.
  4. It is also interesting to note that, in January 1995, governments from non-aligned countries and other developing countries agreed on the so-called Delhi Declaration, whereby countries commit themselves to the promotion of working/living conditions of all people and to the provision of "better protection". The Delhi Declaration also calls for the elimination "of the practice of exploitative child labour and of gender discrimination in all economic activities".
  5. Another source of international labour standards is embodied in the OECD Guidelines for Multinational Enterprises, which were adopted in 1976. According to the Guidelines, multinational enterprises (MNEs) are recommended to provide their employees with freedom of association and the right to collective bargaining. Also, workers' representatives should be given information on the performance of the enterprise. MNEs are also asked to provide training, while also upgrading the skills of the local labour force. Finally, the Guidelines call for a non-discriminatory implementation of MNEs employment policies, including hiring/firing practices, wages, promotion and training. It is important to note that, according to the Guidelines, labour standards observed by MNEs must not be less favourable than those observed by comparable employers in the host country. (An overview of the functioning of the Guidelines is presented in Part III.).
  6. As will be seen in Part III, peer pressure can be a powerful instrument to improve enforcement in certain cases.
  7. More specifically, to the extent that the provisions of the Convention are not enforced by way of collective agreements, court decisions or any other practice, government action in the form of laws or regulations is called for.

8. Earlier child labour Conventions provided for a minimum age of 13. Even so, they still have legal force.
9. The important question of how labour standards might influence employment performance --- and the potential trade-offs at work -- is analysed in Part II.
10. However, the Employers' group of the ILO and several governments disagree with the interpretation of the Committee on Freedom of Association concerning the right to strike. They call for a stricter application of Conventions 87 and 98 which are silent on this issue.
11. The 176 Conventions have been ratified on average by slightly over 30 countries.
12. According to Convention 5, the minimum age for admission to employment should not be less than 14 years compared with 15 years in the case of Convention 138. Convention 5 applies to employment in industry, whereas Convention 138 refers to employment in all economic sectors. The two Conventions are mutually exclusive in that no country can ratify both; ratification of Convention 138 implies the denunciation of Convention 5 and vice versa; if a country has ratified Convention 5 (without denouncing it), it cannot ratify Convention 138.
13. It could be argued that child exploitation may also be in the interest of unscrupulous employers. But a recent ILO report shows that child labour is only marginally less costly to the employer than adult labour [ILO (1995), GB.264/ESP/1].
14. It should, however, be stressed that states can make reservations to UN Acts and Conventions, but not to ILO Conventions.
15. Information concerning the enforcement of ILO Conventions comes from different sources including ILO (1985); ILO (1994b); Blanpain (1991); International Confederation of Free Trade Unions (1994); and United States Department of State (1994).
16. In general, only recognised unions have the legal capacity to represent workers and engage in collective bargaining.
17. The 1994 Conference Committee noted that protection against anti-union discrimination had strengthened.
18. UNESCO (1993), Education pour tous: situation et tendances.
19. See U.S. Department of Labor (1995).
20. In his study of the so-called sweat-shop, Piore (1984) provides an interesting illustration of the positive effects of core labour standards. According to Piore, the sweatshop capitalism prevailing in the United States in the 19th century was based on "worker exploitation", i.e. poor labour standards. Piore mentions the particular case of the textile industry where, owing to the lack of labour standards, employers paid little attention to human capital and management issues. By the end of the century, the federal government introduced labour standards, including health and safety regulations. This forced employers to look for new strategies to improve competitiveness. It followed a period of organisational and technical innovation, permitting an

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unprecedented increase in productivity levels in the textile industry. Higher productivity levels in the textile industry, in turn, freed up resources which could be used more productively in other sectors. For a more recent discussion of these issues, see also Swinnerton (1995).

21. However, as mentioned earlier, there is no ILO Convention which is specifically devoted to the elimination of child labour exploitation.
22. Work by Freeman and Medoff (1984) lends support to this interpretation. There is an interesting parallel with competition legislation. The latter is designed to prevent practices that distort the free working of product markets. In particular, competition legislation seeks to provide consumers and producers with protection against abuses of dominant positions. Similarly, there might be cases where employers will enjoy a dominant position in the labour market, with detrimental repercussions on the structure of wages across sectors and/or professional categories.
23. For a thorough review of the literature, see Calmfors (1993). It is also interesting to note that ILO experts, as attested by a number of recommendations of the Committee on Freedom of Association, would regard enterprise-based collective bargaining as less satisfactory from the legal point of view than multi-employer collective bargaining. But, from the economic point of view, enterprise-based unions and bargaining are not necessarily conducive to lower efficiency, quite the contrary.
24. Evidence that high dismissal costs and other provisions of employment protection legislation inhibit job creation provides some support to this argument [OECD (1993)].
25. For example, see Freeman (1994).
26. In reality, these individuals may also be concerned by social moral consciousness. But they may think this issue is of special importance when they buy goods. An example of this is when consumers select environmentally-friendly goods, as designated by special eco-labelling.
27. For a discussion on how consumers might be informed about the social content of their purchases, see Freeman (1994).
28. For two recent studies on the links between civil rights and economic growth, see Bhalla (1994) and Sachs and Warner (1995).
29. An example might be restrictions on collective bargaining in the electronics industry in Malaysia, which are designed to maintain wages in this industry at below-market rates.
30. The empirical literature on this issue has been reviewed by Freeman and Medoff (1984). Even if favourable productivity effects are present, as Freeman and Medoff claim, the issue is whether they offset the substitution effects on labour demand arising from union wage premia.
31. The issues of forced labour and non-discrimination will be ignored, owing to the lack of reliable information on these standards in the countries selected here.
32. In the short-run, relative cyclical positions play a key role in export determination.

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33. In low per-capita income countries, GDP per capita (in current \$US) is less than \$5000. In medium per capita income countries it ranges from \$5000 to \$15000. GDP per capita (in current \$US) in the remaining countries exceeds \$15000.
  34. Particularly impressive is the export performance of Turkey, which appears as an outlier in the Chart.
  35. Turkey would also provide a good example. However, labour law changes have occurred relatively recently (in most cases in 1991), making it difficult to assess subsequent trade effects. It should be stressed that CHELEM only contains complete data up to 1992.
  36. Even after 1987, many labour leaders and trade unionists have been prosecuted for activities considered illegal [Wilkinson (1994)].
  37. This is based on a classification of industries according to the primary factors that are believed to affect competitiveness (see OECD (1992), *Industrial Policy in OECD Countries: Annual Review 1992*).
  38. The ten countries examined in the study are China, Hong Kong, Indonesia, India, Korea, Malaysia, Mexico, Philippines, Singapore and Thailand.
  39. The reason put forward by Wood is that developing countries typically export goods no longer produced in OECD countries. According to Wood, the conventional factor content method is based on domestic labour coefficients, which refer to the production of goods that are skilled-labour intensive, whereas imports are unskilled-labour intensive. It follows that the conventional methodology underestimates the number of unskilled workers who would be needed (in the absence of trade) to produce the goods that are now imported from developing countries. Instead, Wood begins with the labour coefficients used in developing countries to produce their exports and then makes a number of adjustments to correct for relative factor price differentials between developing and developed countries. The resulting “counter-factual coefficients” are then used to estimate the factor content of developed countries’ imports from developing countries. For a critique of Wood’s method, see Baldwin (1995); Wood (1995) sets out his response to the critiques of his method.
  40. In fact, in the case of complete specialisation (all the more relevant when examining the impact of trade with countries that produce goods no longer manufactured in OECD countries) and in the presence of scale economies, real wages of both skilled and unskilled workers can well rise as a result of trade with non-OECD countries.
  41. The detailed econometric analysis was published separately in Larre (1995). For further in-depth analysis of trade and wage issues, see Oliveira-Martins (1994).
  42. This is true for the OECD area as a whole. Japan runs a substantial surplus vis-à-vis these countries, the US a large deficit and Europe a somewhat smaller one, relative to their respective GDPs.
  43. See 1995 Report of the Committee of Experts of the ILO, page 27.
  44. These proposals are presented in ILO (1995), GB.264/6.

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45. States parties are the countries that have committed themselves to the convention through ratification (after signature) or accession (without signing). Signatories (presently 9 countries) are those that have signed the convention, and are presumably considering ratification.
  46. The World Declaration on Education for All, Jomtien 1990, adopted by 155 UN Member States, including OECD countries, calls for a renewed commitment and mobilisation of financial and technical assistance to basic education.
  47. See DAC Orientations for Development Co-operation in Support of Private Sector Development, published in the Development Co-operation Guidelines Series, OECD, 1995.
  48. The DAC Guiding Principles for Women in Development (1989) provide a framework for assistance in this area. They are reproduced in the Development Assistance Manual: DAC Principles for Effective Aid, OECD, 1992.
  49. A sample of NGOs doing notable work on child labour is listed: Bureau International Catholique de l'Enfance (BICE); MIDADE, Paris; Save the Children; Chilwatch; Chilhope; Concerned for Working Children; Norwegian Center for Child Research; Education International, a world teacher's union; Terre des Hommes; Enda Tiers-Monde, Dakar; Child Asia, Thailand; Bonded Labour Liberation Front of Pakistan; Child Workers in nepal Concerned Center (CWIN); Childworkers in Asia, Bangkok; Committee for Eradication of Child Labour, india.
  50. See Strategies, Priorities and Lessons for the Future: A summary, IPEC, Geneva 1995.
  51. See DAC Orientations on Participatory Development and Good Governance published in the Development Co-operation Guidelines Series, OECD, 1995.
  52. Directory of the Development Activities of Trade Unions based in OECD countries, OECD, 1993.
  53. According to Article 7, Members "recognise(d) that unfair labour conditions, particularly in production for export, create difficulties in international trade, and accordingly, each Member shall take whatever action may be appropriate and feasible to eliminate such conditions within its territory. In all matters relating to labour standards that may be referred to the Organisation in accordance with the provisions of Article 94 or 95 (corresponding to GATT Article XXIII on dispute settlement) it shall consult and co-operate with the International Labour Organisation".
  54. Resolution of the European Parliament of 28.10.1983, paragraph 12, reiterated in the Resolution of 09.09.1986, paragraphs 64-65.
  55. US House of Representatives Doc.102-51 (1991) pp. 111-112.
  56. Resolution of the European Parliament on the introduction of a Social Clause in the Unilateral and Multilateral Trading System, OJEC no C61 of 28.02.1994, p.89. The Resolution further suggested that the ILO be associated to any surveillance of the respect of core labour rights undertaken by the WTO; and that an advisory committee composed by the ILO and concerned countries be able to lodge complaints against MNEs or countries violating the provisions incorporated in the social clause.

57. See ILO document GB.261/WP/SLD/1 on “The social dimensions of the liberalisation of world trade”.
58. See, in particular, the note by the Trade Union Advisory Committee to the OECD, 2 December 1994, OECD/TUAC(94)2; see also “Defending Values, Promoting Change ...”, report of the ILO Director-General to the 81st Session of the International Labour Conference, 1994.
59. Agreement on Subsidies and Countervailing Measures, Article 1.1, (a)(1).
60. The 1992 Sugar Agreement provides in Article 29 that “Members shall ensure that fair labour standards are maintained in the respective sugar industries and, as far as possible, shall endeavour to improve the standard of living of agricultural and agricultural workers in the various branches of sugar production and of growers of sugar cane and sugar beet”. The 1993 Cocoa Agreement provides in Article 49 that “Members declare that, in order to raise the levels of living of populations and provide full employment, they will endeavour to maintain fair labour standards and working conditions in the various branches of cocoa production in the countries concerned, consistent with their stage of development, as regards both agricultural and industrial workers employed therein”. The 1987 Natural Rubber Agreement provides in Article 53 that “Members declare that they will endeavour to maintain labour standards designed to improve the levels of living of workers in their respective natural rubber sectors” (this text remains unchanged in the draft under renegotiation). Once a “fair labour standards” clause has obtained entry to an agreement, in each case it has been included in the renegotiations as a non-controversial element without any amendments. However, these provisions have not been of major operational importance compared with the mostly very detailed economic provisions of the agreements.
61. US Commission on Foreign Economic Policy Staff Papers, February 1954, pp. 437- 438.
62. WTO Article XIII generally operates on the same principles as did GATT Article XXXV. One difference concerns the restraints placed on a WTO Member’s right to invoke the provision: a contracting party could not invoke GATT Article XXXV if it had engaged in tariff negotiations with the acceding country, but there is no such restriction in the operation of WTO Article XIII.
63. Section 1621 of Public Law 103-306: Foreign Operations, Export Financing and Related Programs Appropriation Act.
64. In particular, labor law includes laws and regulations pertaining to:
  - freedom of association and protection of the right to organize
  - the right to bargain collectively
  - the right to strike
  - prohibition of forced labour
  - labor protections for children and young persons
  - minimum employment standards, such as minimum wages and overtime pay
  - elimination of employment discrimination
  - equal pay for men and women
  - prevention of occupational injuries and illnesses
  - compensation in cases of occupational injuries and illnesses

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- protection of migrant workers

65. In the case of Canada, however, a special procedure defined in an annex to the Agreement shall apply instead of the provisions relating to the suspension of NAFTA's trade benefits [NAALC, Annex 41A].
66. The National Administrative Offices (NAO) administer the agreement and serve as a liaison between the Commission and the national governments.
67. Workers supposedly linked with independent unions were fired and had to waive their right to file claims against their former employer in order to collect severance payments. In addition, the employer is accused of having used coercive measures in order to gain information about other pro-union employees. The second submission also asserts that the Government of Mexico failed to enforce its labor law, especially in the maquiladora sector.
68. In particular, the submission documents violations of workers rights, in the area of freedom of organization, involving intimidation, firing and other repressive actions against independent union activists as well as failure by the Mexican government to allow the registration of an independent union (Submission #940003, before the U.S. NAO).
69. Regarding the Sony submission, the consultations have led to a review by a panel of independent experts of the overall union registration process in Mexico and in the Sony case in particular. Meetings between Federal Mexican labor authorities and the Parties concerned (Sony workers, Sony managers, and local labor authorities) will also be held during the Summer of 1996 [Daily Labor Report, Bureau of National Affairs, Washington, D.C., July 27, 1995].
70. In June 1971, the GATT contracting parties established the legal basis for GSP schemes by approving a waiver to GATT Article I, which requires that trade policy measures be applied without discrimination to all contracting parties [OECD (1983)]. Under the waiver, developed contracting parties were permitted to accord more favourable tariff treatment to products imported from developing countries, for a period of 10 years. Over time, OECD and most East European countries have modified their respective schemes according to different criteria and time schedules.
71. Section 502 (b) of the U.S. Trade and Tariff Act of 1984. The President may waive this condition for a particular country if he/she determines and reports with reasons to Congress that such a waiver is in the U.S. national economic interest.
72. Under the "offset" programme, a long-term renewal of the GSP requires a cut of \$500 million in other programmes. This is because the GSP, according to government accounts, leads to a loss of tariff revenues of \$500 million.
73. Law cases associated with such negotiations or representations are reported to be relatively inexpensive, or about one-tenth the cost of anti-dumping cases, on average.
74. According to labour advocacy groups, successive cuts in the financial benefits available under the Trade Adjustment Assistance programme have led them to rely more heavily on the GSP worker rights review process as a vehicle to defend their interests, in spite of the overall decline

- in the value of GSP preferences resulting from the Uruguay Round agreement on MFN tariff cuts.
75. Official Journal of the European Communities N.L 348, Council Regulation N.3281/94.
76. Other circumstances where preferences may be withdrawn relate to drug trafficking and money laundering, fraud or failure to cooperate regarding verification of certificates of origin, and manifest cases of unfair trading practices [See Official Journal of the European Communities N.L.348, Council Regulation N.3281/94, article 9].
77. Section 2901(b)(14) of the act provides that, “The principal negotiating objectives of the United States regarding worker rights are:
- to promote respect for worker rights;
  - to secure a review of the relationship of worker rights to GATT articles, objectives, and related instruments with a view to ensuring that the benefits of the trading system are available to all workers; and
  - to adopt, as a principle of the GATT, that the denial of worker rights should not be a means for a country or its industries to gain competitive advantage in international trade.”
78. In the Senate it is designated S.706 (introduced 6 April 1995); the version in the House of Representatives is H.R.2058 (introduced 19 July 1995). Similar legislation has been sponsored in the German Bundestag and in the European Parliament (Brown [1994]).
79. The decision to place an industry on the list would be based on consideration of (a) whether it complies with the applicable national laws prohibiting child labour; (b) whether it utilises child labour in the export of products; and (c) whether it has on a continuing basis exported the products of child labour to the United States.
80. The text of the MOU is published in Volume 3 Number 3 of the State Department’s journal *Dispatch* (17 August 1992).
81. ILO, GB.254/MNE/1/4, p.18.
82. The Sullivan Principles called for :
- Nonsegregation of the races in all eating, comfort and work facilities.
  - Equal and fair employment policies for all workers.
  - Initiation of training programmes to bring blacks into supervisory, administrative, clerical, and technical employment.
  - Recruitment and training of minorities for management and supervisory positions.
  - Improving the quality of life for minorities outside the work environment in areas such as housing, health, transportation, schooling and recreation.
83. The MacBride Principles provide for:
- Increasing the representation of individuals from under-represented religious groups in the work force including managerial, supervisory, administrative, clerical and technical jobs.

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- Adequate security for the protection of minority employees both at the work place and while traveling to and from work.
  - The banning of provocative religious or political emblems from the work place.
  - All job openings should be advertised publicly and special recruitment efforts made to attract applicants from under-represented religious groups.
  - Layoff, recall and termination procedures should not in practice favor a particular religious group.
  - The abolition of job reservations, apprenticeship restrictions and differential employment criteria which discriminate on the basis of religion.
  - The development of training programs that will prepare substantial numbers of current minority employees for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of minority employees.
  - The establishment of procedures to assess, identify and actively recruit minority employees with potential for further advancement.
  - The appointment of a senior management staff member to oversee the company's affirmative action efforts and the setting up of timetables to carry out affirmative action principles.
84. A less radical approach, but one more likely to be enacted into law, is offered by a provision of the "American Overseas Interests Act of 1995" (H.R.1561). As approved in the House of Representatives, and now pending in the Senate, the bill provides that any U.S. company accepting funds from the International Ireland Fund must comply with the MacBride Principles. This fund was established in 1986, and provides grants and loans for business enterprises in Northern Ireland.
85. In particular, the companies that signed on to the Sullivan Principles often did so out of concern that they would otherwise be subject to divestment campaigns or even boycotts, while the Irish National Caucus in the United States has organized boycotts against three firms that are alleged to operate in violation of the MacBride Principles (i.e., Coca Cola, Ford Motor, and Timex).
86. Cited in the report of the European Parliament Commission on Social Affairs, Employment and Work Environment on the introduction of a social clause in the multilateral trading system, A3-0007/94, Jan.6, 1994. A follow-up on the agreement took place in 1987, when a Swiss Parliament Representative and a U.S. law professor went to the Philippines to check on local conditions. They verified that the clause was indeed respected.
87. There is an important distinction to be drawn here. Campaigns that urge consumers not to purchase certain products are considered a form of "secondary boycott" under U.S. labour law, when the product in question is sold to the consumer by a firm other than the one that produces it (e.g., a pair of shoes is produced by one manufacturer, but then sold by a shoe store that carries the products of many different shoe manufacturers). It is lawful under the National Labor Relations Board Act (as amended) for a union to engage in such a secondary boycott through advertisements in the public media or through handbilling (i.e., the distribution of literature). The law also permits the use of pickets (i.e., persons carrying signs outside the secondary establishment) urging consumers not to purchase the product in question, but it is illegal to picket when the aim is to urge consumers to cease *all* purchases from the secondary establishment. Moreover, it is lawful for a union to request that a retailer stop handling goods produced by the primary employer, provided that the request does not threaten or coerce.

88. In particular, to ensure a universal definition of the standards and uniform application of social labelling schemes, an international institution such as the ILO or the ISO could be asked to oversee their implementation.