

ly to be increased public pressure to restrict the flow of what are perceived to be “unfairly” produced goods. Whether these allegations have an economic basis or not, they pose a serious threat to the world trading system.

Recent years have seen an increase in national or regional laws linking trade to labour rights and in codes of conduct in particular companies or sectors. While being an important response to the lack of a multilateral alternative, it is high time for the WTO, together with the ILO, to create a multilateral framework for core labour standards in the international trading system.

All women are entitled to equal treatment; all children should be protected from child labour; all workers must be allowed to join trade unions, and must be free from the threat of forced labour (often described as a contemporary form of slavery). To argue that the rights of workers in developing countries are inferior to the rights of workers in the industrialized countries is to promote global economic apartheid. It will divide the world as surely as a workers' rights clause will unite it.

To argue that the principles themselves are “Western values” is offensive and dangerous. It splits the world's workers into first- and second-class citizens. It legitimizes the notion that workers in the “West” are more “advanced” than workers in the developing world, while the people in the developing world neither need nor deserve any protection of their basic rights.

A workers' rights clause could rein in unilateral measures and provide a more open and fair means for settling disputes. It could resolve rather than increase protectionist tendencies and help keep markets open by sharing out the benefits of trade more fairly. By guaranteeing fair trade, a workers' rights clause would promote open trade.

PART IV

THE CAMPAIGN FOR WORKERS' RIGHTS IN INTERNATIONAL TRADE AGREEMENTS

INTRODUCTION

Ever since world trade began, merchants have dreamt of a borderless economy around which goods and capital could flow without let or hindrance; a free-market Shangri-La, uncluttered by rules or restrictions. Political and technological changes are at last making that dream a reality. We are living in the global village with its own global market-place. According to the free market acolytes, the role of governments and international institutions now is to refine and accelerate the process of globalization by removing all the remaining barriers to trade. Anything else is irrelevant; it has no place on the world's economic agenda.

That might be how some people like to tell it; but it's not how it is. In fact, the kind of concerns being raised by the trade unions have been connected with the whole globalization project from the very beginning. They were raised during the attempt to set up the International Trade Organization at the end of the Second World War; and while it is true that the international business community managed to sideline them during the years of the GATT, they have remained central to wider attempts to create an international community – as opposed to an international shopping mall. More and more people are beginning to see that globalization will fail if it has no social dimension.

THE HAVANA CHARTER

Between 1946 and 1948, the United Nations held a conference on Trade and Employment. The agenda was ambitious. The aim was to create a third institution along with the World Bank and the International Monetary Fund that would handle international economic co-operation. More than 50 countries were involved. The new institution was to be a specialist United Nations agency known as the International Trade Organization (ITO). Its charter would cover employment rules, commodity agreements, restrictive business practices, international investments and services. Known as the Havana Charter, this draft document included a workers' rights clause that specifically linked economic progress and trade liberalization to fair labour standards. The text read as follows:

1. The Members recognize...that all countries have a common interest in the achievement and maintenance of fair labour standards related to productivity, and thus in the improvement of

wages and working conditions as productivity may permit. The Members recognize that unfair labour conditions, particularly in the production for export, create difficulties in international trade and, accordingly, each Member shall take whatever action may be appropriate and feasible to eliminate such conditions within its territory.

2. Members which are also members of the International Labour Organization shall co-operate with that organization in giving effect to this undertaking.
3. In all matters relating to labour standards that may be referred to the Organization....[under dispute settlement provisions of the Charter] it shall consult and co-operate with the International Labour Organization .

The unions which shortly afterwards became the ICFTU's founder-members backed the ITO, and its Workers' rights clause. Unfortunately, although the draft was approved at the UN Conference on Trade and Employment in Havana in 1948, some national legislatures refused to ratify it. Opposition by the US Congress proved to be the fatal blow; the US government, which had been one of the driving forces behind the ITO, announced in 1950 that it would not seek Congressional ratification of the Charter. The ITO was dead, and with it died a workers' rights clause. For the time being.

GATT – THE PROVISIONAL ITO

Even while the ITO talks were going on, 23 out of the 50 participants began negotiations on reducing customs tariffs. With the war having just ended, they wanted to give an early boost to liberalizing the world economy, and to start hacking down all the protectionist barriers that were still in place from the 1930s. The first round of these negotiations, which took place in Geneva, brought about 45,000 tariff concessions affecting \$10 billion worth of trade. The participants also agreed that they should “provisionally” accept some of the trade rules in the ITO Charter to protect some of the tariff concessions they had negotiated. The “Geneva 23” became founding members (known officially as “contracting parties”) to the General Agreement on Tariffs and Trade (GATT).

Even though it was provisional, GATT remained the only multilateral instrument governing international trade until the WTO was set up in 1995. Its agenda was limited to traditional commercial aspects of trade in goods and since it was assumed that the ITO

would eventually supersede GATT, the ITO chapter on employment and labour (among many others) was not included in GATT. Apart from Article XX(e) which permits governments to ban trade in goods produced by prison labour, GATT makes no further reference to labour standards – though the trade union movement has pressed repeatedly for their inclusion.

The GATT did a great deal to promote the liberalization of trade, as during the 1950s and the 1960s, tariff reductions alone boosted world trade by an average of eight per cent per year. But a series of recessions in the 1970s and the 1980s led to factories shutting down, and unemployment soared, so governments sought new protectionist devices to safeguard their industries, made bilateral deals with other governments and extended subsidies to keep their hold on trade. These tactics undermined the GATT's credibility and effectiveness.

While a workers' rights clause would not have eliminated these difficulties and the tensions they caused, such a clause would have provided a potential mechanism for dealing with the problem. At the very least, it would have removed any suspicion of unfair competition based on violation of fundamental workers' rights. The most recent stage in the evolution of GATT was the mammoth Uruguay Round of trade talks, launched in Punta del Este in September 1986. It took seven and a half years; involved 125 countries; and covered almost every product and service that could be made and traded. It was the biggest trade negotiation in history – probably the biggest negotiation of any kind.

The Uruguay Round ended in Marrakech in April 1994. The Marrakech meeting was a significant success for the trade union movement, as while there was no formal declaration referring to the link between trade and labour standards; a workers' rights clause was firmly on the agenda, being the single issue that dominated discussions all week long. The issue received extensive press coverage, and there were at least 20 governments (not all from the industrialized countries) who spoke in favour of discussing the need for the clause. Another ten governments were receptive to and interested in the idea, but concerned about whether the WTO was the proper forum for this debate, and were anxious about protectionism. Twenty-two countries spoke out in opposition to a workers' rights clause.

In January, 1995, the agreements signed in Marrakech began to take effect in Geneva with the creation of the World Trade Organization (WTO).

THE WTO – A WINDOW OF OPPORTUNITY?

The WTO is the legal and institutional foundation for a multilateral trading system. It provides a contractual framework which determines how governments shape and implement domestic trade laws and rules. It is a platform on which trade relations among countries can evolve through debate, negotiation and consensus.

It is a rules-based organization, dedicated to maintaining a system of rules for open, fair and undistorted competition. Those rules will be worked out in “trade rounds” where trade concessions are negotiated in a package. This means that concessions which are necessary but would otherwise be difficult to defend domestically can be made and sold within a package which contains other politically and economically attractive benefits.

It is a genuinely global organization. 76 governments became members of the WTO on its first day, and by the end of 1998 the WTO had 132 members. With talks underway with China and Russia, the WTO is well on the way to becoming universal. It is no longer a club of mainly developed countries.

Both the “package deals” and the way the WTO operates as an organization mean that the ICFTU and our affiliates can target our lobbying campaigns much more clearly. The recent pressure on the WTO has led it to try to improve its cooperation with Non Governmental Organisations. The WTO has had a number of meetings with the trade union movement and its Director General has addressed a number of ICFTU seminars.

The WTO also has a disputes mechanism.

The WTO monitors national trade policies through its Trade Policy Review Mechanism (TPRM). The purpose of the TPRM reviews are to increase transparency and understanding of trade policies, to stimulate public and intergovernmental debate on the issues, and to assess the effects of policies on the world trading system.

The reviews are conducted regularly. The four biggest traders - the EU, the US, Japan and Canada - are examined approximately once every two years. The next 16 countries in terms of their share of world trade are examined every four years, and the remaining countries every six years; with a longer interim period for most least-developed countries.

The TPRM shows that the WTO is an organization that means to monitor its members' activities to make sure they are sticking to the rules. One method by which the WTO, in cooperation with the ILO,

could reinforce internationally recognized core labour standards is through the examination of the effects of non-observance in the context of the regular country trade policy reviews. Labour standards should be considered among the trade-related issues which are discussed by the WTO General Council when it undertakes a debate of the trade policies of WTO members. In 1997 and 1998 the ICFTU produced 43 reports on core labour standards in the countries subject to TPRs as a basis for encouraging an informed debate on the issue.

THE WTO STRUCTURE

The highest authority in the WTO is the Ministerial Conference, composed of representatives of all WTO members. This meets at least every two years and can take decisions on all matters under any of the multilateral trade agreements. The day-to-day work of the WTO is done by the General Council, the Dispute Settlement Body and the Trade Policy Review Body.

Decision-making in the WTO is by consensus and not by voting, although votes are allowed under some circumstances when consensus is not possible. In such circumstances, decisions are taken by a majority of votes cast and on the basis of “one country, one vote”. Four specific voting situations can take place: a majority of three-quarters of the WTO members can vote to adopt an interpretation of any of the multilateral trade agreements; by the same majority, the Ministerial Conference can waive an obligation imposed on a particular member by a multilateral agreement; decisions to amend positions of the multilateral agreements can be adopted through approval either by all members or by a two-thirds majority depending on the nature of the provision concerned. (These amendments only apply to those WTO members who accept them.) Finally, a two-thirds majority in the Ministerial Conference can admit new members.

Eventually the ICFTU would like to see these reports replaced by similar ones from the ILO itself and this could be one method of developing cooperation between the two organisations. In the meantime, the ICFTU will continue its complementary reports which are a reminder to the WTO of the need to address the relationship between core labour standards and trade.

The Marrakech meeting followed by the creation of the World Trade Organisation in January 1995 provided progress towards incorporating rules on workers rights into the world trading system. In March 1995, the United Nations Social Summit provided yet another sign of the way the pendulum is swinging in our direction.

THE UN SOCIAL SUMMIT

In March 1995, leaders from 115 countries gathered in Copenhagen for the United Nations World Summit for Social Development. Known as

the “Social Summit”, this meeting was the first time that world leaders had sat together and held a thorough discussion on how to put social concerns at the centre of economic and political development. It was a massive international endorsement of a social dimension for the world economy.

At the end of the Summit, governments signed up to a series of commitments that entailed both international obligations, and action at home.

The extracts below are taken from the commitments which relate to the ICFTU campaign for a workers’ rights clause:

“We commit ourselves to create an economic, political, social, cultural and legal environment that will enable people to achieve social development.” (Commitment 1)

Internationally, governments promised to:

- Promote social development through international co-operation in economic policies and agreements on trade, investment, technology, debt and development aid; Reaffirm and promote all human rights, which are universal, indivisible, interdependent and interrelated.
- The national action promised under this commitment includes a promise that governments will provide: full respect for human rights, freedoms and the rule of law; equality and equity between women and men; transparent and accountable government; and that they will work in partnership with free and representative organizations.

“We commit ourselves to promoting the goal of full employment as a basic priority of our economic and social policies, and to enabling all men and women to attain secure and sustainable livelihoods through freely chosen productive employment and work.” (Commitment 3)

Internationally, governments promised to:

Ensure that migrant workers are protected against exploitation, in line with international instruments on migrant workers;

Promote sustained economic growth through international co-operation on economic policy, trade and investment, and through exchange of experiences on successful approaches. The national action promised under this commitment includes a promise that governments will:

- put job creation at the centre of government policy, with full respect for workers’ rights and with the participation of employers, workers and their organizations, and with special attention to long term unemployed people, the disadvantaged and those subject to discrimination; expand work opportunities, productivity and access to resources in the rural and urban sectors, including in the informal

sector and small and medium enterprises; ensure that workers and employers have the education, information and training needed to adapt to changing conditions; ensure that women have access to employment, protection in the labour market and equal treatment, especially equal pay; promote quality jobs, and safeguard workers’ rights in line with relevant ILO Conventions and to this end, freely promote respect for relevant ILO Conventions, including on forced and child labour, freedom of association, the right to organize and bargain collectively and the principle of non-discrimination.

“We commit ourselves to promoting full respect for human dignity and to achieving equality and equity between women and men, and to recognizing and enhancing the participation and leadership roles of women in political, civil, economic, social and cultural life and in development.” (Commitment 5)

Internationally, governments promised to

- Promote and protect women’s rights and encourage the ratification of the Convention on the elimination of all forms of discrimination against women and other relevant instruments; Recognize the full extent of women’s work and all their contributions to the national economy, including unpaid and domestic work; Assist developing countries to achieve equality and equity and the empowerment of women.

The national action promised under this commitment includes a promise that governments will:

- promote gender balance and equity in decision-making and integrate a gender perspective in economic and social policies; promote equal partnership between women and men and full and equal access of women to education;
- Work to eliminate all obstacles to human dignity, equality and equity; Enhance the equality of girls; combat and eliminate discrimination, exploitation, abuse and violence against women and girls; support gender equality in the labour market through positive action, legal protection, child care and other support services.

The trade union movement is campaigning and lobbying to make sure that governments keep their word on these commitments. It has presented a set of proposals for implementing the Commitments to the Preparatory Meetings of the ‘Copenhagen + 5’ Special Session of the UN, to be held in June 2000. This Special Session will be looking at how far the 10 Commitments have been put into practice.

In the proposals the ICFTU stresses that the commitments governments entered into at the Social Summit will never be fully realized unless inter-

national agencies including the IMF, World Bank, the regional development banks and the WTO observe core labour standards based on the ILO Declaration on Fundamental Principles and Rights at Work, which are the standards in the workers' rights clause. No country, however much it acknowledges the importance of the social dimension, will take an initiative which it thinks may threaten its economic well-being. A workers' rights clause will enable the international community to move forward collectively on the commitments made at Copenhagen as a community.

WORKERS' RIGHTS IN THE INFORMAL SECTOR

In many developing countries, a majority of workers are in the informal sector, engaged in production for the domestic economy. Any workers' rights clause should include measures to benefit those workers as well. It should simply state that all WTO members would fully respect the basic workers' rights included in the workers' rights clause - not just in export production but throughout the economy.

A workers' rights clause would therefore lead governments to confront a problem which many have so far largely ignored. Governments would have to start an effort to apply the basic labour standards covered in the workers' rights clause to all workers in their countries, including those in the informal sector. This should be complemented with a range of supporting policies to upgrade the living and working conditions of people in the informal sector.

FROM COPENHAGEN TO SINGAPORE

The Social Summit gave a powerful boost to a workers' rights clause campaign. The UN Fourth World Women's Conference in Beijing in September 1995 reaffirmed the principles adopted in Copenhagen, especially respect for basic workers' rights including the core ILO labour standards. The next key date was the WTO Ministerial Summit in December, 1996.

Singapore was a difficult meeting. But the final Declaration that came out of the meeting included a paragraph as follows:

"We renew our commitment to the observance of internationally recognized core labour standards. The International Labour Organization is the competent body to set and deal with these standards and we affirm our support for its work in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labour standards for protectionist purposes, and agree that the comparative advantage of countries,

particularly low wage developing countries, must in no way be put into question. In this regard, we note that the WTO and ILO secretariats will continue their existing collaboration."

Both sides were giving their own views of this text after the meeting. But what is unquestionable is that for the first time in the fifty-year history of GATT, a commitment to core labour standards had been made.

THE SECOND MINISTERIAL CONFERENCE OF THE WTO AND THE ILO DECLARATION

In early summer 1998 two significant meetings took place in Geneva. The first was the Second Ministerial Conference of the WTO (May 18 - 20), and the second was the Annual International Labour Conference (June 2 - 16).

Prior to the WTO Conference, a special three-day ICFTU Conference was held in Geneva on the eve of the Ministerial itself. The ICFTU Conference was addressed by the Director-Generals of the WTO, and the ILO, the Secretary-General of UNCTAD, the trade ministers of South Africa and Italy and the US Ambassador to the WTO.

The Ministerial Meeting focused mainly on a Commemorative Session marking GATT's 50th Anniversary, with speeches by Heads of Governments. However, several heads of Governments and Ministers made speeches supporting including references to workers' rights in trade.

President Clinton:

I propose the WTO, for the first time, provide a forum where business, labour, environmental and consumer groups can speak out and help guide the further evolution of the WTO. The WTO and the International Labour Organisation should commit to work together to make certain that open trade lifts living conditions and respects the core labour standards that are essential not only to workers' rights but to human rights everywhere

President Mandela:

It is imperative that we build confidence in the system. It would be unwise to ignore the increased frustration of ordinary people... There can be no refusal to discuss matters such as labour standards, social issues and the environment.

This viewpoint was also supported by Jacques Santer, then President of the European Commission, as well as Romano Prodi, Italian Prime Minister who is now the President of the European Commission. Norwegian Prime Minister Kjell Magne Bondevik offered to organise a forum outside the WTO to review the effects of globalisation.

Against the backdrop of the Asian crisis which put globalisation on trial, this Ministerial was an opportunity for world leaders to show that they were ready to meet the challenge of building a new stronger, fairer system for the governance of trade and investment. It is clear that a significant number wanted to find a way forward to boost the authority of the ILO and discourage countries from trying to extract a competitive advantage from the gross and persistent abuse of basic human rights at work.

In June 1998, the International Labour Conference, the annual Conference of the ILO with its tripartite structure, after many hours of debate and dissention, adopted a Declaration on Fundamental Principles and Rights at Work and its Follow-up, which the ICFTU saw as a historic step in that it established workers' fundamental rights as the ground rules of globalisation (see Chapter Three).

The Declaration was important because it makes it clear that all ILO member states have an obligation to respect fundamental workers' rights. The Declaration also gives the ILO important new powers to supervise the performance of all member states in respecting fundamental rights, such as giving them the right to examine the fundamental rights situation in all countries - even if they have not ratified the relevant ILO Conventions.

Additional support for promoting core labour standards came with the June 1998 Conference discussion on the new Convention on the worst of child labour which was adopted at the ILO Conference in 1999.

THE GENERALISED SYSTEMS OF PREFERENCES (GSP)

The trade union movement's final goal is to get a workers' rights clause enacted within the WTO. But the WTO is not the only show in town, just the biggest. The battle to defend workers' rights is being fought on several other fronts.

There are the Generalized System of Preferences (GSP) arrangements operated by the USA, the European Union and other industrialised countries. These are deals by which certain developing countries get preferential access to US and European markets. The US and EU GSPs include references to observance of basic labour standards.

OTHER WTO INITIATIVES

As well as the policy reviews and the general preparatory work for the Seattle meeting, the WTO has a work programme in other areas where labour standards and other labour issues arise, such as investment, competition and environmental protection. They are clearly relevant areas to workers and in which trade unions have both interests and expertise, especially in the developing countries.

The idea of preferential trading systems between countries is not new. It developed in the 1960s, an era when many former colonies became independent countries. In order to help new countries get in on international trade and promote their economic growth, the UN Conference on Trade and Development (UNCTAD) suggested that industrialised countries reduce or remove customs duties on goods from developing countries. This system was accepted by GATT in 1971 and the first GSP was created by the European Community in 1971.

THE GSP OF THE UNITED STATES

The GSP was adopted by the US Congress in 1974. It provides duty-free treatment to certain products from developing countries. A country cannot get GSP status if it "has not taken or is not taking steps to afford internationally recognized worker rights to workers in the country".

Organizations and individuals can petition the government at public hearings to review the behaviour of countries benefiting from GSP status. The Committee examining these petitions looks at information on workers' rights in the State Department annual Country Reports on Human Right Practices, findings of the ILO, reports from US Embassies and Consulates, and US International Trade Commission reports on the economic effects of GSP decisions. In a number of countries of Central America and the Caribbean, and most notably in the Dominican Republic, the threat of US GSP sanctions brought about changes to the labour code and improved rights to collective bargaining and freedom of association for workers. There is no doubt that potentially, the GSP is a powerful instrument for enforcing international labour standards.

At present six countries are suspended from the US GSP for violating workers' rights: Burma, Liberia, Maldives, Mauritania, Sudan and Syria. In the case of Pakistan, violations of core labour standards in three sectors led to those products - surgical instruments, carpets and footballs - being made ineligible for GSP benefits.

Further petitions filed by the AFL-CIO on Belarus, Swaziland, Indonesia and Thailand are under investigation, and the AFL-CIO has two other petitions in the process which the US government is considering whether to investigate, on Cambodia and Guatemala.

THE GSP OF THE EUROPEAN UNION

In 1994, the European Union integrated some workers' rights into its own GSP. Countries which respect core labour standards can get

additional GSP benefits, while countries denying certain core labour standards face suspension.

As from 1 January 1995, countries which tolerate forced labour, or which export goods made by prison labour could face trade sanctions in the form of temporary suspension from the GSP scheme. Investigation by the European Commission can be initiated by member states or any natural or legal persons or associations able to demonstrate a bona fide interest in the case. Sanctions, if any, cannot be implemented before a year of investigation and a decision by the (qualified) majority of the Council.

In March 1997, the European Union formally suspended Burma's trade privileges on the grounds that Rangoon's military regime sanctions the use of forced labour. This action set a precedent in the Commission's bilateral trade relations by linking trade and core labour standards for the first time.

Since 1995 international trade union organisations have been trying to get the European Union to investigate Pakistan under the GSP mechanism for the use of forced labour. In February 1998 they submitted filmed and written evidence of the use of bonded labour in the brick kilns. However, so far the European Union has accepted Pakistan's promises of making improvements, and has refused to open an investigation.

From May 1998, countries have been able to apply for "special incentive arrangements in the form of additional preferences", provided that they have adopted and apply the substance of ILO standards concerning freedom of association and collective bargaining and the minimum age for employment.

THE NAFTA SIDE AGREEMENT ON LABOUR

The North American Free Trade Agreement (NAFTA) is a further stage in the process of economic integration in North America. There is much evidence that NAFTA is bringing downward pressure to bear on wages and working conditions. However, NAFTA does contain a "side" or "parallel" agreement on labour standards. The North American Agreement on Labor Co-operation (NAALC), also commonly known as the NAFTA Side Agreement on Labor, came into force at the same time as NAFTA on 1 January 1994.

The NAALC provides for a commitment to uphold existing labour laws in basic areas of workers' rights including freedom of association, the right to collective bargaining and the right to strike; prohibition of forced labour; discrimination; protection of migrant workers; health and safety; child protection; and minimum employment

standards. In the areas of minimum wages, safety standards and child labour, fines of up to \$20 million can, in theory, be levied on countries that allow their companies to gain a competitive advantage by violating labour laws in these areas. There is no effective enforcement mechanism to protect freedom of association and the right to collective bargaining.

As of June 1999, twenty submissions had been filed for review under the NAALC, but so far without any positive results. The findings of the first four cases at Honeywell, General Electric, Sony and Sprint, largely concerning dismissal of workers as a result of their efforts to organise in unions, did not help to get the sacked workers reinstated. To date, the NAALC has failed to protect freedom of association or to promote its objective of "compliance with, and effective enforcement by each party of, its labour law."

INTERNATIONAL COMMODITY AGREEMENTS

Some international commodity agreements also refer to core labour standards: the International Sugar Agreements, the Tin Agreement of 1981, the Cocoa Agreement of 1986 and the International Rubber Agreement of 1987.

These clauses are essentially statements of intent. They contain no special sanctions or control mechanisms. They are therefore of limited use, but they do nevertheless add strength to the trade union argument that there is nothing unprecedented about linking trade to labour standards.

CODES OF CONDUCT

Codes of conduct for international business activity are not new. In the 1970's concern over the growing power of multinational companies led to calls for an international code of conduct governing the behaviour of multinational companies. The United Nations established a Commission on Transnational Corporations which conducted negotiations for a "UN Code of Conduct for Transnational Companies". Although these negotiations failed and a UN Code was not adopted, two international organisations did adopt codes of conduct for international business during this period: the OECD Guidelines for Multinational Enterprises in 1976 and the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy in 1977.

These international instruments sought in part to protect the sovereignty of countries by defining the social responsibilities of international business. Unfortunately, international business has

interpreted the "voluntary" nature of these instruments to mean that they were "optional." Both instruments have follow-up procedures that fell into disuse due to the opposition of business and for other reasons. However, in terms of the behaviour expected of TNCs, these instruments were meant to be definitive. - they are voluntary only in the sense that they are not legally enforceable. The ILO Declaration is important for several reasons: it is the only comprehensive and universally applicable code defining the social responsibilities of TNCs. Because the Declaration is based on ILO standards and their accompanying jurisprudence, its meaning is especially clear. It also shows that although ILO Conventions are meant to apply to governments, the principles embodied in these standards can be applied by multinational companies.

INTERNATIONAL LABOUR STANDARDS IN CODES OF CONDUCT

In the early period, the new codes of conduct covering labour practices rarely went beyond pledging not to use child labour and to respect national law. Pledging to observe national law, or to require suppliers to observe the law, is unnecessary because this is already and always the minimum obligation of any legitimate enterprise. Only codes having provisions that are internationally rooted and applicable constitute recognition of international responsibility.

Following revelations about the use of child labour in the stitching of soccer balls, the international soccer federation FIFA agreed to negotiate a code of labour practice for the production of FIFA-licensed products with the ICFTU the ITGLWF and FIET. The three international trade union organisations developed a draft code based on all of the fundamental ILO standards and, in September 1996, the text was agreed with FIFA.

The FIFA agreement was a major development in the codes of conduct debate. Its most immediate effect was on the sporting goods sector where the World Federation of the Sporting Goods Industry (WFSGI) intensified its efforts to address the issue on behalf of its member companies, the largest of which were well-known athletic shoe companies that were subject to pressure concerning the labour practices of their sub-contractors. In November 1996 the WFSGI organised a conference on child labour and announced its intention to develop its own "model code" for the industry. In February 1997 an agreement involving some 56 soccer ball manufacturers, the ILO, the Sialkot Chamber of Commerce and Industry and UNICEF announced a programme to assist manufacturers in identifying and removing child labourers from the soccer ball industry in Sialkot where 80% of the world's soccer balls are made.

The ICFTU/ITS Basic Code of Labour Practice and the FIFA code were the first of the new codes of labour practice meant for companies to explicitly reference all of the fundamental ILO standards. The ICFTU/ITS Basic Code influenced the subsequent development of other "base codes" such as CEP AA's SA 8000 and the code adopted by the Ethical Trading Initiative. A version of this code was adopted as an objective of the Clean Clothes Campaign, an alliance of over 160 NGOs and trade unions in 9 European countries. Similar codes have been used by a number of sporting organisations to apply to their licensees. Following discussions with the ACTU and the New South Wales Labour Council, the Sydney Organising Committee for the 2000 Olympics Games (SOCOG) and Sydney Paralympics Organising Committee adopted a code based on the ICFTU/ITS code.

Beginning in the early 1990s, companies involved in the marketing or manufacturing of brand-name goods produced internationally through outsourcing began to formulate and adopt codes of conduct covering labour practices that were meant to apply to their subcontractors and suppliers. The companies adopting these codes were responding to negative publicity generated by reports of dangerous working conditions, inhumane working hours, starvation wages, brutality and the widespread use of child labour involved in the production of clothing, footwear, toys and other labour-intensive manufacturing as well as in the production of many agricultural products.

Companies operating in other sectors are now adopting similar codes. Indeed, throughout the 1990's the number and variety of company codes of conduct covering labour practices proliferated and they became an important issue in larger debates over corporate responsibility and over globalisation. Many NGOs campaigned for companies to adopt codes and codes attracted both support and opposition from business and trade unions. Codes also attracted the attention of governments and international organisations some of which began to promote them. Codes became the object of study by academics and they spawned an entire new industry of consultants and enterprises offering "social accountability" services to companies.

Labour practices are central to these codes which constitute a significant departure from earlier codes of conduct for multinational companies. Although the ILO and OECD codes were voluntary, they are part of an international framework of principles agreed to by governments, employers and trade unions and recommended to companies. The new codes are being formulated and adopted by individual companies. Indeed, when formulating the earliest new codes, most companies ignored established standards in favour of creating their own. Also different is that the purpose of the new codes does not include protection of the sovereignty of governments but is to address situations created by the failure of national governments and of the international community to adopt or enforce acceptable labour standards.

The new codes address situations created by the changing organization of business in the global economy. Traditionally company policy with respect to labour practices was based on national law and practice but the new codes are meant to be applied internationally regardless of where the work is being performed. In this the most significant feature of many of the new codes is that they are supposedly meant to protect workers whether or not they are employees of the company adopting the code and, in particular, they are meant to apply to the labour practices of the company's suppliers and subcontractors. The international treatment of labour practices and

their application to enterprises other than the company that has adopted the code are the two most significant characteristics of the new codes of conduct and distinguish them from company personnel policy or more traditional statements of a company's "mission" or philosophy.

The new codes are central to an expanding concept of corporate responsibility in part driven by increasing public access to information about working conditions in developing countries and evidence that significant numbers of consumers do not want to buy products made by exploited and abused labour. Also behind the unilaterally-adopted codes is the widely held belief by business that a company's reputation and image of its brand-name products are significant assets to be protected.

The new codes have been surrounded by controversy concerning what provisions should be included in them, what the company should do to give them effect and whether or how they should be monitored and their observance verified. For trade unions another question is the relationship of the new codes to collective bargaining.

With respect to content there is a growing recognition that multinational companies should not make up their own standards but should base their codes on internationally-recognised standards including all of the fundamental ILO standards. The ICFTU/ITS Basic Code of Labour Practice has been developed by the international trade union movement for use as a benchmark in evaluating company codes of conduct.

A frequent criticism of the new codes is that most are public relations exercises and that the companies adopting them appear to have little intention of doing anything to make good on what essentially are their promises to the public. This failure led to calls for independent monitoring of codes. It is generally recognised that a company must be responsible for monitoring workplaces as part of implementing its code but that code compliance and the company's implementation programme must be subject to some form of verification if the code is to be credible. It is also generally accepted that verification should be rule-based but what these rules should be and who should establish them remain controversial.

Codes of labour practice should not become a substitute for collective bargaining but should promote collective bargaining by among other means creating space for workers in repressive conditions to form their own trade unions. The low level of trade union organisation in many of the industries and countries where codes are meant to apply suggest that insisting that codes must always be negotiated with trade unions is not realistic. The international scope of the new codes makes it questionable whether it is either practicable or appropriate for national trade unions to seek to negotiate these new codes.

THE ICFTU/ITS BASIC CODE OF LABOUR PRACTICE

The 111th meeting of the ICFTU Executive Board (Brussels, December 1997) adopted a text for a "Basic Code of Conduct covering Labour Practices". The text of this code was developed by the ICFTU/ITS Working Party on Multinational Companies in a process that involved extensive consultations with various trade union organisations and other interested individuals and organisations. It aims to establish a minimum list of standards that ought to be included in all codes of conduct covering labour practices. It is not meant, and should not be interpreted to mean, that codes of conduct that are the result of a collective bargained agreement with an appropriate trade union organisation should be limited to the provisions of this code.

Copies of the full code are available from the ICFTU and are on the ICFTU Web-site at the following URL:

<http://www.icftu.org/english/tncs/tncscode98.html>

Trade unions cannot ignore codes of conduct covering labour practices even if they are not negotiated agreements. For this reason the ICFTU believes it is useful to distinguish between unilaterally-adopted company codes of conduct and framework agreements. A framework agreement is an agreement negotiated between a multinational company and an International Trade Secretariat (ITS) concerning the international activities of that company. Although an international code of conduct can be part of a framework agreement, the main purpose of a framework agreement is to establish an ongoing relationship between the multinational company and the ITS which can solve problems and work in the interest of both parties.

GUIDELINES FOR THE MULTINATIONAL CORPORATIONS

International negotiations took place at the OECD over 1995 to 1998 on a global investment instrument (Multilateral Agreement on Investment — MAI) to set rules governing the treatment of foreign direct investment.. The Trade Union Advisory Committee (TUAC) to the OECD was working to ensure that any new agreement should contain a clause to stop governments promising cheap labour and a union-free environment to attract investors. Trade unions in OECD countries kept pressure on their governments to ensure that trade union demands on the MAI were taken into account. However, because of the lack of balance in the agreement and very strong opposition from a number of non-government organisations, and a shift in interest by some of the large corporations which had initially supported the MAI, some countries within the OECD, such as France, withdrew their support for the MAI, and negotiations ended.

The failure of negotiations at the OECD has increased the pressure for the third WTO Ministerial Conference to put investment onto the agenda of the WTO. UNCTAD is also involved in the consideration of how a global instrument might be negotiated.

FRAMEWORK AGREEMENTS

An early example of a framework agreement is the 1988 agreement between the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) and the France-based MNE Danone. This agreement set forth union company co-operation in four areas and pledged the company and the IUF to implement trade union rights as defined by ILO Conventions Nos. 87, 98 and 135. Five subsequent implementation agreements based on the 1988 agreement have been signed. Of particular note is the 1994 agreement consisting of a joint charter guaranteeing full exercise of trade union rights throughout the entire operations of this global company. In June 1995, the IUF signed a similar agreement with the ACCOR hotel and catering chain on trade union rights that also applies throughout the global operations of this company.

The International Federation of Building and Wood Workers (IFBWW) reached an agreement with IKEA which covers suppliers. The agreement incorporates ILO core standards and provides for an annual review by a joint committee. The sanction for violations is cancellation of the supply agreement. An agreement negotiated between the International Chemical Energy and Mine Workers' Federation (ICEM) and the Norwegian oil company Statoil commits the company to respect the principles contained in ILO core conventions. The agreement explicitly provides that the company shall not oppose the organisation of its employees.

The ICFTU considers that international investment policies should also include strong workers' rights and environmental clauses to ensure that incentives for TNC investment do not include violation of core labour standards or lax enforcement of environmental protection. The ILO Tripartite Declaration of Principles on Multinational Enterprises and Social Policy and the OECD Guidelines on Multinational Companies should inform the drafting of any WTO agreement on investment. Furthermore, any international framework agreement on investment should include a development clause allowing developing (and transition) countries which respect fundamental workers' rights to create time and space for national companies to develop before full exposure to the force of global competition from large and well-established multinational companies.

³ op cit., ICFTU (1996), p.25 and 26.

⁴ Havana Charter for an International Trade Organisation.

⁵ The ICFTU has published a "Users' Guide to the Social Summit. Available from the ICFTU, or on our World Wide Web site at <http://www.icftu.org>

PART V

THE WAY FORWARD

THE NEXT STEP

The campaign for a workers' rights clause is now at a critical phase. The trade union movement made significant gains from the Marrakech, and Singapore meetings. These gains were the result of careful planning, a lot of media work and intensive lobbying during the negotiations. Trade ministers left the 2nd WTO Ministerial in Geneva knowing that core labour standards and their relationship to the WTO would figure prominently in talks about the next round of multilateral trade negotiations.

The third WTO Ministerial Conference will be held in the United States from November 30 - December 3 1999. The purpose of this meeting will be to review progress in the implementation of the Uruguay Round of trade talks and to consider launching a new round of WTO negotiations, which will last into the next decade. Campaigning around the issues to be raised at this meeting has already started, and will intensify over the intervening months.

The ICFTU's aims are to keep up the pressure for core labour standards and trade nationally and at world level, and to create and use opportunities to keep the issue in the headlines, such that the Seattle meeting takes decisive measures to move forward on labour standards. The ICFTU is further calling for development, environment, gender and other social issues to be fully included when the decisions are taken at Seattle on the content of the new round (see Chapter Two).

THE RIGHT TIME FOR WORKERS' RIGHTS

Support for a workers' rights clause is growing. Public awareness of international social issues is high. The growth in media and communications technology has shrunk the distance between countries.

The Asian crisis has illustrated the flaws in trying to build up an economy without taking into account the views and needs of civil society, including trade unions. Governments have learnt that they cannot simply pursue growth, without taking human and trade union rights into account. And that the free market cannot simply be left to operate unchecked and ungoverned. As we have argued earlier, the international business community itself campaigns vigorously for global regulation when it comes to matters like copyright control, or the manufacture of counterfeit goods that affect corporate profits. This sits rather uneasily alongside their opposition to a workers' rights clause.