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LAW REVIEW

ARTICLES

Whither Social Clause? Human Rights,  
Trade Theory and Treaty Interpretation  
*Adelle Blackett*

From Nation State to Failed State:  
International Protection from Human  
Rights Abuses by Non-State Agents  
*Jennifer Moore*

PANEL

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# WHITHER SOCIAL CLAUSE? HUMAN RIGHTS, TRADE THEORY AND TREATY INTERPRETATION

by Adelle Blackett\*

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## I. INTRODUCTION

Fairness claims, including claims that workers' fundamental human rights should be enforced through the World Trade Organization (WTO) in the form of a social clause,<sup>1</sup> have been considered among the most serious challenges to the world trading system.<sup>2</sup> The

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1. A social clause may be defined narrowly as one or more provisions within the text of the WTO agreement that would explicitly enable the parties to the agreement to enforce violations of certain workers' fundamental human rights through the WTO's dispute resolution mechanisms. The term can also encompass attempts to read a clause into the existing trade agreements, and is used in this broad sense in this Article.

2. Eminent economics professor and former economic policy advisor to the GATT, Jagdish Bhagwati, has described the rise of fair trade discourse as "the truly greatest threat since the 1930s to the world trading system." Jagdish Bhagwati, *Fair Trade, Reciprocity and Harmonization: The New Challenge to the Theory and Policy of Free Trade*, in *Analytical and Negotiating Issues in the Global Trading System* 548 (Alan Deardorff & Robert M. Stern eds., Univ. of Michigan Press 1994). See also Jagdish Bhagwati, *The Demands to Reduce Domestic Diversity Among Trading Nations*, in 1