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A stylized world map in a vibrant yellow color, centered on the Atlantic Ocean, set against a dark background. The map is slightly tilted and has a soft glow.

**Global capital strategies
and trade union responses:
Collective bargaining
and transnational
trade union cooperation**

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Global capital
strategies and trade
union responses:
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Preface

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The world of work has been profoundly affected by the global economic crisis that unfolded rapidly in the final months of 2008, tipping the economies of most countries into the most serious global recession since the Great Depression. Yet, many of the major challenges faced by workers and trade unions had already been obvious. The past decade has brought drastic changes in the world of work with an increase in atypical forms of work and unprotected and precarious jobs, with far-reaching implications for collective bargaining. Throughout the world, labour has become more diversified and the average size of enterprises has been reduced by restructuring. This has placed greater pressure on traditional collective bargaining by eroding the power and the base of trade union organizations. In some countries, the effect of such pressure may be that, where it used to take place, collective bargaining as such becomes more difficult and or more decentralized and sometimes transforms into concession bargaining. The erosion of the link between productivity, profits and wages is part of this development. In other countries, collective bargaining has not yet been implemented effectively.

The liberalization of trade, deregulation, and privatization, which are often associated with economic globalization, have significantly curtailed governments' room for manoeuvre while allowing enterprises much greater autonomy. Similarly, the growing mobility of capital has triggered competition among countries to raise their employment levels and encourage investments, with certain negative spin-offs for traditional collective bargaining. All these changes have contributed in shifting the balance of power between employers and workers, with the result that trade unions are losing power while company managements are strengthening and buttressing their position. Financialization, mergers and acquisitions, relocation and supply chain management, have put pressure on collective bargaining.

Therefore, in recent years, the right to organize and to bargain collectively has faced the challenges stemming from falling trade union membership,

increasing individualization of labour relations and the difficult quest for greater competitiveness and flexibility in the context of globalization. In these circumstances, the capacities of trade unions need to be strengthened in order to face these challenges and enhance the right to organize and to bargain collectively and other fundamental rights and principles, such as the global platform rules governing the increasing globalization of the economy and the promotion of decent work for all.

Freedom of association and the right to collective bargaining

The 60th anniversary of the adoption of the International Labour Convention No. 87 concerning freedom of association and protection of the right to organize was marked in 2008. Freedom of association is of course the precondition for any form of collective bargaining.

The 60th anniversary of the adoption of international labour Convention No. 98 concerning collective bargaining is being marked in 2009. Since its adoption by the International Labour Conference in, respectively, 1948 and 1949, Convention No. 87 and Convention No. 98 have become the main international instruments on freedom of association and collective bargaining.

As a result of recent ratifications, the total ratifications to Conventions No. 87 and 98 stand at, respectively, 148 and 158 member States out of 181 ILO member States as of 17 January 2008.

These figures tell us that the ratification numbers for the two Conventions are high and have been increasing. However, in spite of significant progress having been made in their ratification, the two Conventions have not yet been as widely ratified as the fundamental Conventions on the elimination of forced and compulsory labour (Convention No. 29 and Convention No. 105), the Conventions on the elimination of discrimination in respect of employment and occupation (Convention No. 100 and Convention No. 111) or, indeed, the Conventions on the abolition of child labour (Convention No. 138 and Convention No. 182).

In 2008, the Bureau for Workers' Activities, the Global Union Research and the European Trade Union Institute (ETUI) organized a workshop on "The challenges and responses of collective bargaining and corporate strategies" which was hosted by the ETUI in Brussels.

This issue of the *International Journal of Labour Research* brings together the most important contributions of the above mentioned workshop.

All authors contributing to this journal stress the continued importance of collective bargaining as it is a democratic and inclusive system for bringing about decent work. Collective bargaining improves the wealth distribution between capital and labour by helping to reduce income inequalities

(including the gender gap) and fighting poverty. The impact of collective bargaining is biggest where extensive trade union coverage exists. Collective bargaining protects workers from abuse of economic power and limits at the same time the power of the employers. In some countries collective bargaining is important for modelling social security in addition to improving working conditions. Collective bargaining plays a positive role in fostering investment in human resources, productivity improvements and innovation.

Challenges

The ongoing internationalization of markets created transnational economic areas where capital, services and products gained international mobility. In 2008, lack of regulation of financial markets which allowed unfettered greed and shifted finance from a vital resource for the economy to a parasite in the economy led to the worst financial and economic crisis since the 1930s. Parts of capital will try to use the crisis to water down social standards.

Leading forces of the internationalization of the economy are multinational enterprises. Multinational enterprises decide on places of production, investments and workplaces. In the name of profit maximization they often produce where wages and taxes are low and where labour laws tend to be weak. Due to the fact that capital is a much more mobile factor of production than labour, a sort of “caravan capitalism” becomes possible. This includes an increasing imbalance of power within the supply chains. Governments are partially competing in a downward spiral to deliver ostensibly “investment friendly” environments which includes (partially) dismantling labour law.

Collective bargaining is challenged by the dramatic increase of precarious work, including disguised, ambiguous and triangular employment relationships where sometimes legal loopholes are used to avoid recognized employment relationships (see ILO Recommendation No. 198 on the scope of the employment relationship, at www.ilo.org/ilolex/cgi-lex/convde.pl?R198).

In the global South the challenge of collective bargaining mainly consists in formalizing the economy so that the increasing number of informal economy workers is covered by collective bargaining agreements. In Europe the main challenge of collective bargaining consists in a declining bargaining coverage and a weakening of the binding character of collective agreements through the use of opening clauses and individual agreements. Furthermore, collective bargaining has little influence on the driving power of finance capitalism. Threatened by relocations and dismissals, it becomes difficult to balance the interests of competing production sites.

Responses

One of the most important responses by trade unions is to foster transnational coordination among trade unions to coordinate collective bargaining on a regional level, in particular within intergovernmental regional organizations such as the European Union. European Works Councils can use information they gain through disclosure rights. Trade unions can use their leverage within the supply chain through transnational organizing and campaigning. With a view to increasing representation and union leverages, it is important to organize workers who are currently underrepresented in unions, such as informal economy workers, migrant workers and women workers. Increasing the cooperation and campaigning with other social movements can also be seen as one possible direction for enhancing union effectiveness.

Further, unions should seek to influence governments in order to regulate financial markets including higher taxation of private equity funds. Collective bargaining agreements can include provisions which require potential purchasers of a company to conclude a new collective bargaining agreement with the union recognized by the company before the completion of a buyout. Companies bought by private equity funds might be obligated to establish a European Works Council.

Finally, in June 2009, the International Labour Conference of the ILO reacted to the worldwide economic crisis that began in 2008 by approving a far-reaching Global Jobs Pact. This agreement set out a multidimensional policy framework for the maintenance and creation of employment, the proper regulation of financial markets, the protection of wage levels (including a minimum wage), the extension of social protection to all, and the application of international labour standards. The Global Jobs Pact establishes a kind of policy protocol with which trade unionists can evaluate the responses of their own national governments – as well as articulate demands for better. To the extent that this proves successful, trade unions will be better positioned to use collective bargaining (and other tools) in support of a wage-led recovery that produces environmentally sustainable prosperity, social justice and gender equality.

Global capital strategies and trade union responses

*Towards transnational
collective bargaining?*

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Introduction

More than ever, the present global financial and economic crisis draws attention to the kind of globalization the world has experienced since the 1980s and its social implications. The effects of globalization on growth and employment creation are disputed, with pessimists pointing to the increasing poverty in many parts of the world or to the loss of manufacturing jobs in industrialized countries; and optimists emphasizing the expansion of world production, wealth, income and employment that can be shared, reducing the challenge of globalization to a distributive problem (see Løken et al., 2008 for a summary of arguments and evidence). It is less disputed, however, that today's globalization, and in particular the promotion of the freedom of capital and the institutionalization of a global "free" market, has a number of negative social consequences. These include growing inequalities and insecurities, the loss of democratic control over the economy, and the growing power of capital at the expense of labour.

It is often labour that first suffers the consequences of globalization and of the strategies capital deploys within the global economy. Labour is affected by rising job insecurity and labour market instability, pressure on wages and working conditions and rising precariousness, informalization of employment relations or limits on collective representation. All these developments are aggravated in the present economic and financial crisis. Trade unions have experienced difficulties in dealing with these issues at a transnational level and are often pushed onto the defence. At the same time, unions have experimented with a variety of strategies to strengthen their position towards capital and to soften the impact of globalization. In particular, efforts have been made to develop innovative forms of transnational cooperation and collective bargaining to counter global capital strategies and to regain the initiative.

This issue of the *International Journal of Labour Research* presents a collection of papers that analyse in detail the character of global capital strategies and their impact, as well as trade union responses to these strategies, in particular responses related to the development of transnational forms of collective bargaining. In this introductory article we provide an overview of these issues. The structure of the article is as follows. In section 2 we discuss global capital strategies related to the production of goods and services and to the financialization of the economy. In section 3 we focus on the impact of such strategies on democracy and on labour capital relations. Section 4 presents a number of trade union responses to global capital strategies and discusses in particular union attempts to develop transnational collective bargaining and the obstacles they encounter in doing so. Section 5 presents conclusions.

Globalization and global capital strategies

Globalization is understood here as the “... integration of intellectual concepts, trade finance, property and labour across state borders and continents” (Løken et al., 2008). It manifests itself, among others, in the global hegemony of neoliberal and monetarist ideas; the institutionalization of free trade and the free movement of capital through global and regional agreements (WTO, MERCOSUR, ASEAN, NAFTA, EU Single Market, etc.); the increase of global trade and foreign direct investment (FDI) and the ever-growing importance of multinational enterprises; the growing weight of stock exchanges and globally operating investment funds; and increasing migration flows. The advancement of globalization in recent years can be illustrated with a few numbers: trade as a percentage of global GDP increased from some 36 per cent in the mid-1980s to 45 per cent in 2005, while net inward flows of FDI as a percentage of global GDP grew from some 0.5 per cent in 1985 to 2.8 per cent in 2006 (ILO, 2008a, pp. 4–5, figures 3 and 4).

Globalization as a political project has a decisively economic character. It largely consists of national and international political and economic actors conspiring to reduce the barriers to trade, capital movement and financial markets through the reform of legislation and the conclusion of international agreements. The social dimension is largely excluded: according to its major proponents, globalization through free trade and capital movement is the best way of achieving social progress.¹ Attempts to make labour and social issues part and parcel of international trade agreements and regional processes of economic integration have largely failed.

Within this globalizing economy, capital has followed a number of strategies to make optimal use of the opportunities it provides, which we can roughly divide into strategies related to the production of goods and services and those related to the financialization² of the economy.

Production of goods and services

Where production of goods and services is concerned, production chains are constantly subject to restructuring and are increasingly organized across borders. Rhode (in this issue) argues that three basic types of such cross-border organization have emerged, namely outsourcing, offshoring and parallel production.

1. This includes the European Union, often supposed to represent a more social version of integration, where regional economic integration is very advanced while social integration is minimal in comparison (Scharpf, 2002).

2. Financialization refers to the deregulation of financial markets and the growing size of the financial market and will be further discussed in a later section of this chapter.

Outsourcing concerns the reduction of processing depth by outsourcing to supplier and subcontractors. Individual process steps are increasingly handled by subcontractors both at home and abroad and production is becoming based on networks of enterprises. For example, Cremers (in this issue) analyses this trend in detail for the construction industry, showing that the sector is increasingly dominated by fragmented production chains headed by large multinational construction firms that engage large numbers of smaller firms as well as individuals to perform particular tasks within the chains. Miller (in this issue) also shows that in the apparel industry production is largely organized along buyer-driven and fragmented supply chains involving a myriad of complex multi-tiered contracting and subcontracting relationships. In both industries the enterprises involved in such production chains range from multinationals to small enterprises and individuals operating in the informal sector.

Offshoring refers to companies building up production capacity abroad. Offshoring may be aimed at a wide variety of goals, ranging from accessing new markets or (human) resources, to reducing (wage) costs and increasing flexibility through the exploitation of differences in local cost structures, regulations and industrial relations practices.

Furthermore, there is a tendency towards a parallel production model, referring to the situation in which the same product of a multinational is produced in different countries but for the same market. This can increasingly be observed in, for example, the automobile industry.

Outsourcing, offshoring and parallel production have a number of common effects. One is that production chains are becoming more complex, fragmented and geographically dispersed, and involve an ever-wider range of actors operating in different countries, continents or regulatory regimes. Secondly, company strategies have become internationalized and the faith of production sites and workers has become increasingly dependent on decisions in faraway headquarters. Thirdly, countries, workers and production sites of multinationals are increasingly involved in benchmarking exercises comparing costs and productivity and competing with each other for investment.

Financialization

The present global crisis has in particular put a spotlight on capital strategies related to the financialization of the global economy. Financialization is an umbrella term covering a number of different trends (e.g. Watt, 2008; Blum and Rossman in this issue; Hoffmann, 2006). They include the deregulation of financial markets, the growing size of the financial sector and the explosive growth of financial flows (growing considerable faster than trade or FDI), the increase in inter-bank loans, the growing role of institutional investors, private equity and hedge funds, the increased tradability of mortgages and other loans, the widespread use of stock options and other incentive payments to

senior managers, etc. The current crisis was triggered by the deflation of the US housing bubble and later the equity bubble that had built up as part of the financialization trend (Watt, 2008). This was followed by the collapse of major banks, the fall of share prices and increasingly also by enterprise bankruptcies and unemployment. The fundamental causes of this crisis are, however, not limited to the financialization of the economy and also include factors such as the building up of large current account deficits in many countries, most notably the US, economic mismanagement by governments and central banks, and the lack of public control over economic processes (Walt, 2008).

The process of financialization has led to an increasing dependence of companies on shareholder capital and to the reversal of the traditional relationship between financial and productive capital (Hoffmann, 2006; Rhode in this issue). Shareholder value and short-term returns on investment, instead of longer-term profitability and growth of companies, have moved to the centre of investment strategies. Also, instead of defining returns as a function of profits, today shareholders make *ex ante* claims on the minimum rate of return from companies. As a result companies are more and more forced to concentrate on short-term goals and pursue cost reductions and continuous restructuring to serve the profit expectations of shareholders or the expected rise in corporate resale value in the case of private equity funds (Hoffmann, 2006; also Blum and Rossman in this issue).

Financialization obviously puts strong pressures on wages and working conditions. Also, they lead to reducing stability in workplaces, companies and indeed the global economy as such. Again today's crisis is a major manifestation of this instability.

Consequences for democracy and labour–capital relations

The global capital strategies outlined above have had serious consequences for societies, workers and trade unions. Here we want to discuss briefly two of these consequences: the problems this phenomenon causes from the perspective of democratic control; and the changes it causes in labour-capital relations.

Democracy

At the level of society, where workers are citizens and unions collective societal actors, the globalizing of capital strategies presents a problem of democratic control. Today's societies have increasingly become dependent on private capital to provide them with jobs and income, and this dependency is greater in the poorer countries. At the same time, while societies are organized on a national basis, capital has a global outlook and moves with increased

ease across borders to the location most favourable to its global strategies.³ To a certain extent, governments hide behind the mantra of the invisible hands of global capital and pretend to be powerless vis-à-vis capital. This has repercussions related to democracy, some of which we will briefly expose here (for a more detailed discussion, see Crouch in this issue).

One repercussion is that the “faith” of nation states is, to an important extent, in the hands of capital, and its investment strategies operate so as to condition, directly or indirectly, the sovereignty of the State and the design of public policy. Indeed, it has become commonplace for governments to design and justify public policy based on the “inescapable” need to appeal to potential inward investors, and it has become equally commonplace for foreign investors to condition investments upon public incentives. One of the results of this has been regime competition, i.e. a competition in which countries and regions compete to best fulfil the needs and requirements of investors in general and for specific investment projects in particular.

What is more, Crouch (in this issue) argues that large corporations, instead of being subjected to the authority of national polities, are part of the modern polity as locations of political power and authority themselves; however, they constitute a non-democratic part of the modern polity in that they are not formally answerable to a public.

Also, processes of democratization in many Southern countries in recent decades have, at the instigation of international organizations such as the IMF or World Bank, gone hand in hand with a liberalization of the economy and extensive acquisition of property and extraction of resources by international capital. But, as suggested by Makoa (2001) in a paper on globalization in eastern and southern Africa, one can wonder what the value of this kind of democracy is if it does not give poor people control over their country’s resources and over the processes that sustain or threaten their livelihoods.

Labour–capital relations

Globalization has affected the relations between labour and capital, and in particular the character and sustainability of collective bargaining in a number of ways. Firstly, while capital, and especially the multinational company, is a global actor following a global strategy, labour, if at all, is largely organized on a national basis. This discrepancy is also mirrored in that between the organization of production, increasingly fragmented and organized across

3. Mobility is of course not absolute. Moving existing operations abroad is not necessarily easy, as firms have sunk costs in their existing locations, i.e. investments in installations, distribution, supplier networks, social relations, etc. (Crouch in this issue). Also, the most advantageous location is not necessarily the one with the lowest costs or the weakest regulations and industrial relations systems, as the attractiveness of the high-wage, high-tax, high union-density Nordic countries for capital shows (*ibid.*)

borders, and collective bargaining processes, taking place, if at all, within national borders at the level of company or sector. Although there are a number of international trade union organizations, in which national confederations or sectoral unions join forces (see below), they have few resources compared to capital and only in a very limited number of cases are they collective bargaining actors. As a result, trade unions or other workers' representatives have little or no control over or influence on issues addressed at the international level and international decision-making is largely monopolized by company management (van der Meer et al., 2004).

Fragmentation of production also means that company bargaining may become less relevant. The wages and working conditions of workers in a sub-contracted firm may well depend more on the decisions and demands of the firm dominating a particular supply chain than on management itself. Moreover, diffuse ownership can sometimes obscure the proper bargaining counterpart for trade unions.

Secondly, the ever more short-term outlook of capital, its focus on shareholder value and its demand for high minimum returns, undermine stability, long-term growth of companies, and secure employment, all of which remain key interests for workers and trade unions. The latter are however seriously affected by the tendency of finance capital to flow towards short-term profit opportunities. Hence, the contradiction of interests between labour and capital are further sharpened, but labour can exercise very little influence on the international flow of finance capital.

Thirdly, capital has always had more scope than labour to pursue its interests by choosing exit options, and this "mobility differential" has strongly increased in the last two decades (Hoffmann, 2006). These increased exit options of capital mean that it can constantly put pressure on labour by using the threat of relocation (Keune, 2008).

These three factors strengthen the power position of capital towards labour and make it more difficult for trade unions successfully to represent the interests of their members through traditional collective bargaining processes and structures. What is more, by using the threat of relocation, restructuring or disinvestment, capital increasingly pushes labour onto the defence and into concession bargaining, i.e. into accepting lower wages and worse working conditions in exchange for promises of job security (Hoffmann, 2006). In the final analysis, then, globalization leads to increasing wage competition between workers in different countries and locations, a competition that capital can exploit to reduce its wage costs.

One of the clearest expressions of this mounting negotiation power of capital is the structural gap between wage growth and economic growth in many countries around the world, leading to a continuous decline of the wage share, i.e. the share of GDP that goes to wages. This decline represents a shift of income from labour to capital or from wages to profits. Lack of data makes it difficult to analyse the wage share around the world. In the EU, the wage

share fell from 59.5 per cent to 56.9 per cent between 1995 and 2007 (Keune, 2008; see also Janssen in this issue). ILO estimates suggest, however, that in some three-quarters of the developing countries the wage share is also on the decline (ILO, 2008a).

Trade union responses and transnational collective bargaining

A transnationalizing union movement

Capital has developed a range of global strategies which has strengthened its position towards workers, unions and nation states. However, in principle, globalization also provides new opportunities for workers and unions to organize and act transnationally and create a fairer world order (Hardt and Negri, 2001). What is more, from its inception, the labour movement has had a strong discourse of international solidarity and international cooperation. Indeed, many attempts are made to do so and unions have established a variety of transnational modes of cooperation.

This concerns first of all the international trade unions acting at the global level or regional level. Globally, there is first of all the International Trade Union Confederation (ITUC), as well as a series of international sectoral unions or Global Union Federations (GUFs) like the UNI Global Union, the International Metalworkers Federation (IMF) or the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF). Also the Workers' group of the ILO can be seen as a global union forum. At the regional level, national confederations cooperate in organizations like the Organization of African Trade Union Unity (OATUU), the Coordinadora de Centrales Sindicales del Cono Sur (CCSCC) at the level of the MERCOSUR, or the European Trade Union Confederation (ETUC). And also at the regional level sectorally organized European Industry Federations (EIFs) abound.

Beyond these structures uniting national (confederal or sectoral) unions, two largely national unions agreed in July 2008 to create the first transatlantic union. UNITE, the largest union in the United Kingdom and United Steelworkers, the largest private sector union in the United States and Canada signed an agreement with a view to creating the first transnational union which is to be called Workers Uniting. The union was specifically created to deal with the challenges of globalization and to deal with casualization of employment and reductions in pay and conditions of workers. The intention of the signatory parties is to develop Workers Uniting into a fully functional and registered trade union in the United Kingdom, United States, Ireland and Canada.⁴

4. Information from the web site, at www.workersuniting.org (accessed 30 Jan. 2009).

Also, more and more transnational cooperation between unions takes place at the level of multinationals and supply chains, as workers from different establishments increasingly consider that their fates are intertwined and that they are often played out against each other by their employers (Miller, Marginson in this issue). Such cooperation takes place through various types of company networks, some more formally institutionalized and others more informal, consisting of unions, shop stewards and/or works councils in different production sites of a multinational company, i.e. headquarters and its subsidiaries, and possibly also including some of its suppliers (Croucher and Cotton, 2008). One important element of this cooperation is to create solidarity, to avoid downward pressure on wages and working conditions and to preclude location competition against another. Company networks take quite different forms, with differing levels of involvement of works councils, headquarters and non-headquarters unions, and international (global or regional) unions (*ibid.*). Examples of such networks include the Caspian Energy Project, which was set up by the Global Union Federation in the Energy Sector International Federation of Chemical, Energy, Mine and General Workers Union (ICEM); the Nestlé company network set up by the IUF; and the Daimler Network set up by IG Metall and German Works Councils.

In the EU, such company networks are institutionalized through European Works Councils (EWCs), which according to European Works Council Directive (1994) have to be set up in all companies with at least 1,000 employees within the European Union and at least 150 employees in at least two Member States, and which are largely financed by the employer. The EWCs have important information and consultation rights and in recent years have become increasingly involved in the negotiation of joint texts and framework agreements (see below).

World Works Councils (WWCs) have been set up in a few global multinational companies including Volkswagen, Daimler and Caterpillar. They work on issues such as minimum working conditions, particularly in the field of health and safety, and global investment programmes of companies which are relevant for job security in various production sites. Contrary to the EWCs, WWCs require substantial financial contributions from trade unions and are therefore difficult to maintain and often only meet infrequently.

Finally, unions increasingly establish new transnational alliances with non-union actors, in particular with the global justice movement, with which they often share objectives and political positions concerning globalization and its effects (della Porta, 2007). For trade unions, alliances with this movement represent opportunities to reach out to a new public, to act in innovative ways and to strengthen its mobilization capacity, in particular transnationally.

Transnational trade union cooperation concerns a wide variety of activities. Here is not the place to provide a comprehensive overview of these

activities but it is useful to mention some notable examples. One major focus has been the union struggle for the inclusion of core labour standards in international trade agreements.⁵ As a result, although in only vague terms, the WTO has committed itself to “the observance of internationally recognized core labour standards” (WTO, 1996). In bilateral and regional agreements, reference to core labour standards is stronger and most North American and EU free trade agreements refer to or require core labour standards. For example, the 1999 United States–Cambodia trade agreement rewarded improvements in the enforcement of core labour standards with increased United States market access for Cambodian garment exports. Pressure from the Global Unions led also to the inclusion of core labour standards in the International Finance Corporation (IFC) Policy and Performance Standards on Social and Environmental Sustainability and in the World Bank’s Standard Bidding Document for Procurement in 2006. In the European Union, the ETUC has been arguing for more EU-level social and labour regulation to soften the social impact of the creation of the Single Market.

Transnational cooperation between unions and the global justice movement has also resulted in a number of campaigns on non-traditional issue related to, for example, the environment, fair trade or social standards. Another example of transnational trade union cooperation can be found in the field of industrial action and protest, including solidarity strikes, joint demonstrations of unions from different plants of single multinationals, the 2009 Euro-manifestations organized by the ETUC, etc. (e.g. Erne, 2008).

However, in contrast to the advancing transnationalization of trade union organization and cooperation, transnational collective bargaining is still in its infancy. Indeed, in spite of the growing interest of trade unions in developing transnational collective bargaining structures and processes, they are confronted with a number of obstacles which make such developments difficult. We will first outline these obstacles and then turn to discuss some examples of union strategies aimed at fostering transnational bargaining.

5. Core labour standards have a special importance for labour in that they form part of *ius cogens* of international law, i.e. they are part of non-negotiable absolute standards to be enforced as binding obligations undertaken by all States (Paech, 2003). They are defined in the ILO’s 1998 Declaration on Fundamental Principles and Rights at Work to cover four principles: freedom of association and the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. These four principles are covered in eight ILO Conventions (Conventions Nos 29, 87, 98, 100, 111, 105, 138 and 182) which apply to all 182 ILO member States regardless of whether they have ratified them. Notwithstanding their legal obligation to do so, a number of ILO member States have not implemented the core labour standards effectively and therefore unions seek ways to enforce implementation above and beyond the ILO’s supervisory bodies. One such means is through their inclusion in bilateral, regional or international trade agreements.

Obstacles to transnational collective bargaining

Unions encounter many obstacles that hinder their capacity to engage in transnational collective bargaining. First and foremost, as the contributions of Upadhyaya and Ndungu in this issue illustrate, in many countries unions continue to encounter serious political, economic or legal barriers which limit trade union freedoms, the right to organize, and their capacity to engage in collective bargaining. For example, as Upadhyaya shows, despite the recent democratization of Nepal, unions still have to fight against feudal-type ownership systems in the country. Ndungu analyses how unions in South Africa struggle against laws, some of them dating back to the apartheid era, which put them in a disadvantaged position as compared to employers and limit their ability to organize strikes and pickets. Also, as shown by other articles herein, the increase of informal, casual and precarious work as well as the decline of union membership in many countries reduce unions' bargaining strength. Obviously, such obstacles do not only obstruct collective bargaining in the domestic context but also seriously limit these unions' potential engagement in transnational activities. The same argument counts for individual firms where workers can face serious constraints that impede them from engaging in bargaining (see Miller in this issue), as well as for countries with very low unionization rates or collective bargaining coverage.

Secondly, in spite of the abundance of international trade union organizations, workers and unions do not easily define their core interests and bargaining strategies in transnational terms. Nationally and locally defined interests and bargaining strategies clearly dominate and transnational bargaining is for most (national) unions a secondary (though not unimportant) option. As a result, the potential merits of transnational collective bargaining are often largely evaluated in terms of the extent to which it may contribute to achieving national or local objectives. Workers and unions are also not immune to such regime competition. Often they feel forced to engage in regime competition to save jobs or attract new investment for their company, sector or country. For example, in many countries and in many multinationals, trade unions have been engaged in competitive wage bargaining or have made concessions in terms of working conditions to avoid relocation to other countries or to attract investment from abroad (see Janssen in this issue).

A by-product of this predominantly national focus is that unions dedicate only limited resources to transnational activities, and transfer only limited resources and responsibilities to international trade union organizations. This seriously constrains the potential role the latter could play in promoting and strengthening transnational collective bargaining. Also, the national focus is further fostered by the wide variety of national industrial relations systems and bargaining structures and traditions, which are not easily made compatible with each other.

Thirdly, transnational collective bargaining is limited by the fact that there are no international legal frameworks to regulate such bargaining and make agreements enforceable by the signing parties.

Finally, employers are a major obstacle. They are generally reluctant to engage in transnational collective bargaining and do not encourage union initiatives in this direction. Also, they are even less interested than trade unions in delegating resources or responsibilities to international employers' organizations and, especially at the global sectoral level, only few counterparts to the global sectoral trade unions exist. In addition, where multinationals are concerned, unless they are required to do so by legislation, they are rarely ready to disclose information on their global investment strategies or to provide detailed information on wages and working conditions in their various plants and in supplier companies (Miller in this issue). This again undermines the capacity of trade unions to organize bargaining across borders.

Towards transnational collective bargaining?

In spite of the above obstacles, however, transnational collective bargaining has been moving higher and higher on the trade union agenda. It is believed that such bargaining can reduce wage competition across borders and contribute to wage improvements and higher wage equality (cf. Hayter in this issue). Unions are engaged in a series of activities of a largely experimental nature that can be read as a move towards transnational bargaining structures and processes. Such activities rarely concern collective bargaining in the traditional sense and rarely result in formal, binding and enforceable transnational collective agreements that regulate core bargaining issues, especially wages. Rather, they concern new types of agreements and new forms of coordination, and may involve non-union actors as well. Several articles in this issue describe examples of such developments, some of which are presented below.

A major development in this respect is the rapidly increasing number of transnational agreements that are signed between unions at various levels, other types of employee representatives (mainly works councils), and multinational companies. At the global level, this concerns first of all the conclusion of International Framework Agreements (IFAs), that are negotiated between Global Union Federations (in exceptional cases together with EWCs), and multinational enterprises (Marginson in this issue; Schoemann et al., 2008). By February 2008, 83 IFAs had been signed, mainly after 2000.⁶ Most of the IFAs are concluded with companies headquartered in Europe but they have

6. For a comprehensive list of IFAs, see www.global-unions.org/spip.php?rubrique70 (accessed 31 Jan. 2009).

a global reach. They address core labour standards within these MNCs and frequently also in their supply chains. Many IFAs refer to further ILO instruments and address subjects such as health and safety, wages, training, the environment and corporate restructuring. IFAs are found mainly amongst MNCs that form part of producer-driven supply chains (in particular in construction, energy, food manufacturing and metalworking) and much less among MNCs controlling buyer-driven supply chains (Marginson in this issue).

The growing number of IFAs clearly points towards the interest of unions to conclude agreements to regulate workers' rights, working conditions and other issues at the level of multinationals and supply chains. However, controversies arise about the usefulness of IFAs in production sites of multinational enterprise in countries where there is no freedom of association or where there are only weak trade union structures. Questions also arise as to the effectiveness, monitoring and enforceability of IFAs. Moreover, companies have on some occasions used IFAs for PR campaigns and there is a danger that IFAs remain on the symbolic level. As a result, unions have become more cautious towards concluding IFAs. For example, the IUF, after signing its last agreement with Club Med in 2004, decided to first assess the impact of IFAs on the actual implementation of core labour standards and on organizing new members before committing to new agreements.

In the EU, more and more agreements are signed at the level of the more than 800 EWCs presently in existence. The EWCs were originally established for the purpose of information and consultation. More and more, however, they are being mobilized by either management or employee and trade union representatives, or both, to undertake transnational negotiations resulting in the conclusion of joint texts and framework agreements (Marginson in this issue). In this way, they stretch the use of the EWCs beyond their original intentions. Over 70 agreements were concluded with 40 MNCs by the end of 2007 and their number is on the rise. They are in a number of cases co-signed by national unions or European Industry Federations.

In terms of content, the EWC agreements often go beyond the IFAs and in this sense they come closer to collective agreements. Four themes are prominent: (i) basic labour rights and core labour standards (comparable to the IFAs); (ii) key principles for company employment and personnel policies; (iii) business restructuring and its effects; or (iv) specific aspects of company policy, of which the most common are health and safety and data protection, privacy and electronic communication (Marginson in this issue).

Another way to move closer to the core issues of traditional collective bargaining but at a transnational level is through transnational campaigns. Considering that presently there is hardly any scope to conclude IFAs or other types of transnational agreements, especially on wages, unions have been using transnational campaigns to promote wage bargaining and wage improvements in particular (groups of) countries, sectors or MNCs. Miller (in this issue) provides a series of examples of such campaigns conducted

by the International Textile Garment and Leather Workers Federation (ITGLWF), national unions and NGOs, concerning in particular the apparel industry. Such campaigns can have a variety of goals (*ibid.*). One is to facilitate bargaining through better access to key bargaining information such as labour costs, the share of labour costs in total costs, and company profitability. Another is to encourage unions to engage in national tripartite exercise to determine a living wage which can then be used in bargaining processes to demonstrate the extent to which wages paid actually allow for a decent living, an approach adopted by a number of national unions in Asia.

Related to this, pressure is put on multinational companies, supply chains, brands and retailers, to commit to the concept of a living wage and to include it in their company policies. However, given the difficulties of monitoring company policies and compliance along the supply chain, there seems to be a shift among brands and retailers to focus rather on the acknowledgement of the importance of freedom of association and collective bargaining as a way to establish a more robust system of local governance in the supply chain and to provide the means to facilitate improvements of pay and conditions in the industry. Nevertheless, while this is in line with the demands of the ITGLWF, its affiliated unions and NGOs, the question remains: Does organized labour in the apparel industry around the globe have the capacity to act upon such renewed opportunities (*ibid.*)?

In Europe, the ETUC and several of the European Industrial Federations have been working on providing a transnational dimension to collective bargaining in different ways. First, they have been setting guidelines for wage bargaining across Europe. In 2000, the ETUC approved a resolution on collective bargaining coordination that adopted a European wage guideline which targets nominal wages increases that, at a minimum, keep pace with inflation. In addition, wage increases should also reflect the greater part of productivity growth, with the remaining margin being used for qualitative improvements in working conditions (Keune, 2006). This guideline is above all a political statement aiming to defend the purchasing power of wages and to achieve a fair distribution of the benefits of productivity improvements. However, it also aims to synchronize the positions of unions involved in wage bargaining in the different European countries and to avoid downward wage competition. Similar guidelines have been adopted by a number of EIFs, the oldest one being the European coordination rule adopted by the European Metalworkers Federation (EMF) in 1998.

In particular in the European metal sector, in the past decade or so a complex system of coordination of collective bargaining has emerged, consisting of top-down and bottom-up elements (Glassner in this issue). The top-down, centralized elements make up the EMFs bargaining coordination strategy. They include, apart from the coordination rule, internal committees and working groups dealing with collective bargaining; a system of information exchange on bargaining processes and outcomes in the sector around

Europe; common demands on qualitative collective bargaining topics;⁷ and cooperation with other sectors on coordination of collective bargaining.

The bottom-up, decentralized elements concern cross-border collective bargaining networks involving smaller groups of countries (ibid.). Most of these networks involve the German IG Metall union of a particular border region and the metal unions of the nearby countries (e.g. IG Metall Bavaria with metal unions from Austria, Hungary, Czech Republic, Slovakia and Slovenia). But there are also examples not involving Germany, such as the network at the level of the Nordic countries. These networks all have their own priorities and ways of functioning, but they are mostly involved in organizing common seminars and conferences, the exchange of information on bargaining processes and outcomes and the exchange of trade union officials, who, for example, can participate as observers in collective bargaining rounds in partner countries.

These coordination of collective bargaining activities are still quite experimental and should be seen as learning processes (ibid.). Nonetheless, the unions consider them to be highly important. It is telling in this respect that the metal sector experiences are taken as a reference point by many other sectors that have started to develop their own coordination activities tailored to the requirements of their specific conditions. The mode of coordination that is core to most of these experiments seems to be the exchange of information. This is a “light” form of coordination but its importance should not be underestimated. First of all, through information on bargaining processes and results in other countries unions can learn from each other and identify successful practices and strategies. Secondly, they get a better view of the actual situation of the sector across the continent, which can serve as a powerful tool in negotiations with employers and help to avoid having workers in different countries played off against each other.

The activities presented above are only a sample of the many innovative initiatives that can be observed around the world. They are often experimental and some are still in their infancy. Also, the immediate effects of some of these experiments are more visible or tangible than those of others. What counts for all of them, however, is that they provide unions with important learning experiences, enhance their knowledge on the functioning of the global economy in general and capital strategies in particular, and help to establish more intimate relationships and trust between unions in different countries. Both seem vital conditions to advance towards stronger forms of cooperation and coordination that can eventually constitute functional equivalents for transnational collective bargaining in the traditional sense.

7. Most importantly this concerns the EMFs Common Demand on the Individual Right to Training, adopted at the 5th EMF Collective Bargaining Policy Conference in Rome in October 2004. This first common demand was put on the bargaining table in the metal sector around Europe.

Conclusions

Today's globalization has had a number of negative social consequences, including growing inequalities and insecurities, the loss of democratic control over the economy, and the growing power of capital at the expense of labour. These consequences have become more visible and are aggravating in the present economic and financial crisis. As part of this process, workers are confronted with production chains that are constantly subject to restructuring and that are more and more organized across borders, and with the increasing financialization of the economy. Unions consider that a further transnationalization of their own structures and activities is needed to deal with globalization and global capital strategies and to strengthen cross-border solidarity. Manifold examples of such transnationalization can be observed, including the development of formal and informal transnational union structures; the union struggle for the inclusion of core labour standards in international trade agreements; transnational industrial action and protest; and international campaigns.

While transnational collective bargaining is high on the agenda for unions, they nonetheless face a series of obstacles in realizing its potential. These include, in many countries, domestic political, economic or legal barriers that put limits on trade union freedoms, their rights to organize, and their capacity to engage in collective bargaining. It also remains difficult for unions to define their core interests and bargaining strategies in transnational instead of national and local terms. Finally, the absence of international legal frameworks to regulate such bargaining and make agreements enforceable is compounded by a generalized opposition to the concept from employers, who are reluctant to provide the necessary company information to real or potential bargaining partners.

As a result of these obstacles, transnational collective bargaining in the traditional sense hardly occurs. At the same time, unions are engaged in a series of transnational activities of a largely experimental nature that are closely related to collective bargaining, some of which are summarized in this article. They range from the conclusion of IFAs on core labour standards and EWC agreements addressing a wider range of subjects; to transnational union campaigns to promote wage bargaining and wage improvements in particular (groups of) countries, sectors or MNCs; to various types of coordination of collective bargaining at the aggregate or sectoral level. Although they do not represent collective bargaining in the traditional sense of the word, the more they are expanded and strengthened, the closer they may come to constituting functional equivalents for transnational collective bargaining.

This does not mean that transnational collective bargaining in the traditional sense should be abandoned as an objective. Indeed, it might be a powerful option to address some of the negative effects of globalization and to counter global capital strategies. However, this requires overcoming the

obstacles outlined above, including the true internationalization of union strategies and the development of a series of new international legal instruments. Both constitute major challenges to the trade union movement.

References

- Bakvis, P.; McCoy, M. 2008. "Core labour standards and international organizations: What inroads has Labour made?", FES Briefing Paper No. 6/2008 (Bonn, Friedrich Ebert Stiftung).
- Croucher, C.; Cotton, E. 2008. *Global Unions, Global Business. Global Union Federations and International Business* (London, Middlesex University Press).
- della Porta, D. (ed.). 2007. *The global justice movement. Cross-national and transnational perspectives* (Boulder/London, Paradigm Publishers).
- Erne, R. 2008. "European Unions. Labour's quest for a transnational democracy" (Ithaca, New York: ILR Press).
- EIRO. 2006. Workers' assembly at GM–Opel plant, at www.eurofound.europa.eu/eiro/2006/07/articles/hu0607069i.htm (accessed on 15 January 2009).
- FNV Mondiaal. 2006. "International trade union work within multinationals. The sense and nonsense of international framework agreements" (Amsterdam) (unpublished manuscript).
- Hardt, M.; Negri, A. 2001. *Empire* (Cambridge, Harvard University Press).
- Hoffmann, J. 2006. "The relevance of the exit option: The challenges for European trade unions of post-fordism, internationalization of the economy and financial market capitalism", in *Transfer European Review of Labour and Research*, No. 4, pp. 609–20.
- ILO. 2008a. *Global wage report 2008–09, minimum wages and collective bargaining, towards policy coherence* (Geneva).
- . 2008b. ILO Declaration on Social Justice for a Fair Globalization, adopted by the International Labour Conference at its 97th Session, Geneva, 10 June (Geneva).
- Keune, M. 2008. "Introduction: wage moderation, decentralization of collective bargaining and low pay", in M. Keune and B. Galgóczi (eds): *Wages and wage bargaining in Europe: Developments since the mid-1990s* (Brussels, ETUI)
- . 2006. *The Coordination of Collective Bargaining in Europe. Annual Report 2006* (Brussels, ETUC).
- Løken, E., Seip, A.; Dølvik, J. 2008. *Pathways to decent work in a global economy, FAFO report 2008: 33* (Oslo, FAFO).
- Makoa, F. 2001. "Globalization and democracy with reference to eastern and southern Africa", in *Journal of Social Development in Africa*, Vol. 16, No. 1, pp. 125–141.
- Meer, M. van der; de Boer, R.; Houwing, H.; Kahancová, M.; Raess, D.; Visser, J. 2004. *Globalization. The impact of globalization on industrial relations in multinationals in the Netherlands* (Amsterdam, FNV).
- Müller, T.; Platzer, H-W.; Rüb, S. 2008. "International framework agreements – Opportunities and limitations of a new tool of global trade union policy", FES Briefing Paper No. 8/2008 (Bonn, Friedrich Ebert Stiftung).

- Paech, N. 2003. "Social, economic and cultural human rights within the legal system of the international economic and trade regime", Occasional Paper, FES.
- Scharpf, F. 2002. "The European social model: Coping with the challenges of diversity", in *Journal of Common Market Studies*, 40 (4), pp. 645–70.
- Schmidt, V. 2006. "Temporary migrant workers: Organizing and protection strategies by trade unions", in Kuptsch C. (ed.): *Merchants of labour*, International Institute for Labour Studies, ILO, Geneva, pp. 191–206.
- . (ed.). 2007. "Trade union responses to globalization" (Geneva, ILO).
- Schoemann I.; Sobczak, A.; Voss, E.; Wilke, P. 2008. *Codes of conduct and international framework agreements* (Luxembourg, Office for the Official Publications of the European Communities/European Foundation for the Improvement of Living and Working Conditions).
- Watt, A. 2008. "The economic and financial crisis in Europe: Addressing the causes and repercussions", European Economic and Employment Policy Brief No. 3 (Brussels, ETUI).
- World Trade Organization. 1996. Ministerial Conference, Singapore, 9–13 December 1996, Singapore Ministerial Declaration, adopted on 13 Dec.

A fair globalization

*The role of collective bargaining
in stemming the rising tide of
inequality in earnings and income*

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Introduction

There has been growing concern over the relationship between globalization and inequality, particularly the rise in earnings inequality and the growing gap in the distribution of income between different groups in society.¹ While the share of national income that goes to labour in the form of wages has been falling, the level of compensation for executives (including basic salary, bonuses, share options and other company benefits) has risen dramatically.

To date, examination of the reasons for these distributional fault lines has paid very little attention to the effects of globalization on the bargaining power of labour and the impact of deregulation and the decentralization of collective wage-setting on wage distribution in some countries.

This article begins by reviewing the different reasons that have been given in the academic literature for rising inequality. In this regard particular attention will be given to the impact that globalization has had on the institutions which structure industrial relation. It then reviews the evidence on the role that collective bargaining institutions play in promoting more equitable patterns of distribution, particularly among wage earners. Since most of this literature focuses on more developed countries, the final section of this article will consider the policy implications of these changes for developing countries. It argues that for those concerned with a fair globalization, support for the development of effective collective bargaining institutions needs to be at the core of the labour market agenda.

Globalization and inequality

The last two to three decades of global economic integration have been accompanied by three related distributional concerns. First, the share of national income that goes to labour (in the form of salaries and wages) has declined in most regions of the world (Guscina, 2006).² Second, despite a rise in the average real incomes of the poorest segments of the population, inequality in consumption or earnings (as measured by the Gini coefficient) has risen in most countries and regions (World Bank, 2006; IMF, 2007). Third, total wage inequality – defined as the difference in the earnings of those at the 90th and 10th percentile of the overall wage distribution – has increased in many OECD countries (Machin and van Reenen, 2007; OECD, 2004).³

1. For example, see World Bank, 2006, and IMF, 2007.

2. For a brief overview, see Technical Brief No. 1: Labour Shares by M. Lübker, 2005, available at www.ilo.org/integration/resources/briefs/lang--en/docName--WCMS_086237/index.htm.

3. Earnings are typically measured on a gross basis, i.e. before deductions of taxes and social security contributions and include basic wages and salaries, overtime payments, bonuses and other extra allowances but exclude executive benefits such as stock options. In this article, the term “wage inequality” is synonymous with “earnings inequality”.

There has been significant debate in the academic literature about what is causing these distributional fault lines to widen. One explanation has to do with the process of technological change which accompanies globalization. Technological advances, it is argued, resulted in the ongoing replacement of labour with machines and other types of capital equipment and a revolution in information technology. The productivity benefits arising from this process boosted capital's returns along with its share of the economic pie. In the pre-globalization era, productivity gains tended to result in an increase in the share of national income going to labour. Since the mid-80s, the latter has been steadily declining despite increases in productivity (Guscina, 2006). Since returns from capital tend to be more concentrated than labour income (i.e. wages), the shift of income away from labour (and wage earners) toward capital (and those who benefit from this income in the form of equity, capital gains etc.) contributed to an increase in overall income inequality.⁴

Another explanation is that the process of technological change favoured the most skilled workers at the expense of those with fewer skills. This bias, it is claimed, led to both a fall in the demand for less skilled workers and increase in the value normally associated with a higher level of skill (a skill premium). The result was a growing pay gap between skilled and less skilled workers. The process of skills-biased technological change was also closely associated with increased openness to trade and financial flows, in particular foreign direct investment. As a result, researchers had difficulty untangling the effects of trade versus technology. This led to significant debate about whether trade between developed and developing countries or processes of skills-biased technological change were behind the rise in inequality.⁵ Some authors concluded that trade only played a small role while others attributed a larger role to trade (Lawrence and Slaughter 1993; Wood, 1994).

To date, much of the focus has been on the “skills versus trade” debate with skills-biased technological change being the most frequently cited reason for the collapse in wages and rise in inequality. However as other authors point out, if technological change biased the demand for workers away from those with lower skills, there should have been a simultaneous decline in the share of workers with low-wage/low-skill jobs. Instead, country-specific evidence shows large increases in low-wage jobs during the period in which technological change is said to have been driving increases in wage inequality. The fact that this was also accompanied by a growth of within-group inequality (defined by industry, gender, education and experience) suggests that

4. Stock options and other forms of profit sharing are an increasingly significant proportion of executive compensation. For example, in 2007, Porsche CEO, Wendlin Weideking, earned €68 million (\$100.2 million) in executive compensation. If included in the definition of earnings, the rise in inequality in earnings would be much higher.

5. See Goldberg and Pavcnik, 2004; and Lee and Jansen, 2007, for a review of literature.

other factors were at play: among these the weakening of collective wage-setting institutions (Howell, 1993).

Very little attention has been given to the effect that globalization had on the bargaining power of labour and collective wage-setting institutions – and the implications of this for the distribution of wages and income. Greater openness to financial flows made it easier for firms to relocate (or make a credible threat to do so) thus increasing the bargaining power of the owners of these firms over labour. As a result, trade unions were more likely to moderate wage demands which in turn contributed to a decline in the share of national income accruing to labour. By contrast, countries where capital controls made it difficult for firms to relocate have recorded higher shares of labour income over time (Harrison, 2002; Bentolia and Saint-Paul, 2003).

Increased openness to trade exposed firms to stiffer price competition, placing limits on firm mark-ups and the possibility for these profits to be passed on to workers as wage increases. It also placed constraints on the increases that trade unions could negotiate in collective wage agreements – in the absence of significant improvements in labour productivity. Country-specific evidence shows that sectors with higher import penetration are also those with lower mark-ups and in which the exercise of trade union bargaining power has been more limited (Abraham, Konings and Vanormelingen, 2007). Faced with increasingly competitive product markets, firms in some countries adopted low labour-cost strategies demanding wage concessions from workers and their organizations.

More competitive product markets and the emergence of global production systems also provided firms with both the incentive and possibility to outsource production to other countries. This contributed to worker insecurity and has no doubt also undermined the bargaining power of trade unions. There is evidence which shows that for industries characterized by a significant degree of outsourcing, the internationalization of production placed downward pressure on union wages. This effect was particularly significant for lower skilled workers and contributed to an increase in wage inequality (Braun and Scheffel, 2007).

Easier mobility of capital, increased product market competition and the possibility of outsourcing production to other countries presented a new set of challenges to collective wage-setting mechanisms. These needed to be more responsive to the performance of labour markets and the imperative for firms to remain competitive.

In some countries an explicit policy decision was taken to weaken the bargaining power of unions and reform collective wage-setting policies (Krugman, 2007; Traxler, Kittel and Lengauer, 1997). Fuelled by neoliberal perspectives, many economic scholars and policy-makers came to regard market efficiency as the primary concern of economic policy. Collective wage-setting institutions were considered to disrupt the free flow of supply and demand and contribute to labour market rigidities. Since these labour

market institutions could increase labour costs there was also a fear that they would ultimately damage competitiveness and employment. In countries faced with declining manufacturing jobs, governments had a strong incentive to keep wages “competitive”.

This concern with anything that might impede the functioning of labour markets and damage competitiveness led to the deregulation and weakening of collective wage-setting institutions, and rollback of support for trade unions (sometimes extending to direct action to disempower, subvert and destroy unions) in a number of OECD countries including Australia, New Zealand, United Kingdom and the United States. The result was the decentralization of collective bargaining to the enterprise level, the replacement in many instances of collective contracts with individual contracts, and a fall in both collective bargaining coverage and trade union membership in these countries.

A number of studies of the United States and the United Kingdom show that the decline in unionization accounted for a significant proportion of the growth of wage inequality since the late 1970s (Blau and Kahn, 1999; Card, Lemieux and Craig, 2003; Gosling and Lemieux, 2001).

In a similar vein, OECD policy guidance in 1994 called for “changes in taxation, social policy, competition policy and collective bargaining”. The latter included the deregulation of collective wage institutions (specifically the phasing out of extension mechanisms) and the decentralization of wage-setting to the company level (OECD, 1994, pages 45–46).

Collective bargaining and equality in wages and income

Concern that collective wage-setting institutions would lead to (excessive) wage pressure appears to be unfounded in light of an overall trend toward wage moderation in OECD countries. In addition, a recent review of empirical research found no conclusive evidence to support the idea that collective bargaining institutions impede labour market performance and damage employment.⁶ On the contrary, the social partners in many European countries have been responsive to the performance of their collective bargaining

6. A large body of research analysed the effects of wage bargaining institutions on the overall level of wages and macroeconomic performance as measured by employment and unemployment rates. OECD, 2006, reports multivariate evidence from 17 recent studies, most of which find no evidence of union density and bargaining coverage having a negative effect on overall labour market performance (for example, see Bassanini and Duval, 2006). OECD, 2006, also reports results from other studies including Baker et. al., 2004, which show that any potential negative effect on equilibrium unemployment is offset by the centralization and coordination of collective bargaining.

system, adapting their practices in light of changing economic imperatives and labour market performance (Ebbinhaus and Kittel, 2005).

Instead, what the evidence does show is that labour markets in which wages are predominantly determined by collective wage-setting mechanisms are also those with more egalitarian wage structures and more equitable patterns of income distribution (Blau and Kahn, 1999; OECD, 2004). Central to this relationship are the different institutional arrangements that determine the extent to which these collective wage-setting mechanisms cover the entire labour market. While it is important to stress the diverse ways in which different countries achieve this, some of these arrangements include strong trade union interest representation, multi-employer bargaining, centralized collective bargaining structures, the extension of collective agreements and various forms of bargaining coordination.

Conclusive evidence of the positive relationship between encompassing collective bargaining institutions and wage equality led the OECD to review the policy guidance that had underpinned its 1994 Jobs Strategy. In 2004, the OECD *Employment Outlook* noted:

... that equity effects need to be considered carefully when assessing policy guidelines related to wage-setting institutions (OECD, 2004, page 166).

In 2006, the OECD again revised some of its prior recommendations:

It would be useful to take fuller account of the fact that national industrial relations practices are part of the social and political fabric, implying that bargaining structures are not easily changed by government action ... Recent experience also suggests that greater allowance be made for the potential contribution of centrally coordinated bargaining ... (OECD, 2006, page 88).

Given growing concern with rising wage and income inequality, it is worth restating what we know about the role that collective wage-setting plays in facilitating more equitable distribution.

Trade union involvement in wage-setting results in more egalitarian wage structures

Studies across countries and time periods show that trade unions negotiate collective contracts that allow for less variation in wages than is the case in non-union firms and/or sectors.⁷ Unions typically act to increase wages at the bottom of the wage distribution, thus compressing the wage structure

7. See Blau and Kahn, 1999; Card, Lemieux, and Craig, 2003, for a review of the literature.

(Freeman, 1980 and 1982). Since women tend to be more concentrated at the bottom of the wage distribution, the increase in their relative wages also reduces the gender pay gap (Blau and Kahn, 2003). In addition, union bargaining reduces the overall difference in wages between less skilled and more skilled workers in union firms and/or sectors (Lemieux, 1998).

The effect of unions on the wage structure has important implications for workers that change between union and non-union jobs. We see a decline in inequality among workers that shift from non-union to union jobs and increased inequality among workers that move in the opposite direction (Freeman, 1984).

More encompassing collective wage-setting mechanisms contribute to overall wage equality

The extent to which labour markets are governed by collective wage-setting has a major influence on overall wage equality. Where union density and/or the coverage of collective agreements are high, the effects of union bargaining on the wage structure within firms and/or sectors are increased, contributing to overall wage equality. Studies confirm a strong relationship between high trade union density, high collective bargaining coverage and lower earnings inequality (OECD, 2004; Blau and Kahn, 1999).

Governments in many countries promote this form of labour market governance by extending collective agreements by parties that are deemed to be sufficiently representative of all workers in that industry or territory. In the absence of statutory provisions firms may voluntarily extend the provisions in collective agreements to non-union workers. These contract extensions reduce wage differentials between unionized and non-unionized individuals and between union and non-union firms. By having the terms of collective agreements apply to more firms and workers, the extension of collective agreements also reduces overall wage inequality.

Among OECD countries, this practice of extending collective agreements to non-union workers was prevalent among the same group of countries that did not experience a rise in income inequality between 1970 and 1990 such as Germany, Italy, Netherlands and Sweden (Western, 1998).

Even where there is no explicit government policy to extend the reach of collective contracts, non-union firms may imitate wage levels and settlements reached in unionized firms, thus extending the equalizing effects of union wage structures.

More centralized and/or coordinated collective wage-setting contains wage inequality

Certain features of a country's collective bargaining system can also make a difference to the overall dispersion of wages, such as the level at which collective bargaining takes place and the degree to which wage settlements are coordinated across an economy.

The coordination of collective bargaining can occur in a number of different ways.⁸ The State may play a role either in imposing or supporting the coordination of wage bargaining through national social dialogue and income accords. For example, in the Netherlands the government and peak associations of labour and employers meet to exchange views on socio-economic development (including wage bargaining) in the tripartite Social-Economic Council before bargaining rounds begin.

Centralized bargaining by peak associations representing workers and employers, such as takes place in Norway, is another way to coordinate wage settlements. Associations can also play a role in coordinating negotiations among their members without engaging in centralized bargaining, such as is the case with employers' organizations in Switzerland.

While bargaining coordination among firms might involve horizontal coordination by an association, this is not a necessary condition. Coordination may also occur when firms emulate settlements in other strategic industries or firms. The annual *Shunto* bargaining or "Spring [wage] offensive" in Japan is a good example of this type of pattern bargaining in a country characterized by an enterprise-level collective bargaining system. Another example is Austria with a system of industry-level bargaining, where collective agreements reached in the metal industry are typically emulated by other industries.

Most studies of OECD countries find a strong and robust relationship between more centralized and/or coordinated systems of collective bargaining and lower wage dispersion (OECD, 2004; Blau and Kahn, 1999).⁹ In addition to these cross-country studies, there is also evidence of a narrowing of wage dispersion in countries which shifted to a more centralized collective bargaining structure over time, as in Norway in the mid-1980s (Kahn, 1998).

Multi-employer bargaining reduces inter-firm and inter-industry wage inequality

Another factor that contributes to overall wage equality is the way in which employers' organizations are governed. As we have seen, collective wage agreements between unions and firms increase wages at the bottom of the

8. For discussion, see Soskice, 1990, and Traxler, 2003.

9. See Flanagan, 1999; and Aidt and Tzannatos, 2002, for a review of the literature.

wage structure and flatten the wage distribution. Multi-employer agreements extend this effect across firms and industries and by so doing contribute to overall wage equality. As mentioned, this form of bargaining also provides a mechanism whereby wage settlements can be coordinated across an industry or economy, thus reducing inter-firm and inter-industry differentials (Traxler, 1995).

In countries characterized by single employer bargaining, wage-based competition between firms can result in an increase in wage inequality. In countries where multi-employer bargaining is the predominant mode of bargaining, wages are taken out of competition and the potential negative effect of such competition on wage dispersion is contained (Traxler, Kittel and Lengauer, 1997).

When bargaining takes place at multiple levels, such as in countries where multi-employer bargaining sets a binding framework for conditions at an industry or national level and plant-level (single employer) negotiations are used to explore different means by which firms might implement this agreement, the positive effect of multi-employer bargaining on overall wage inequality may be undermined.¹⁰

Countries which rely on collective wage-setting institutions to determine wages are also those with better overall wage and income equality

There appears to be a favourable conjuncture between countries in which labour markets are governed by collective bargaining institutions and total wage equality (or a smaller 90–10 wage differential). Since wages are a major part of people’s income, we can expect the equalizing effects of collective bargaining institutions to feed through to equality in income and consumption. Indeed countries with strong collective bargaining institutions, including strong trade unions and employers’ organizations, high levels of collective bargaining coverage and a high degree of coordination, are also those with better measures of income distribution as measured by the Gini coefficient (Freeman, 2007; Hayter, 2002).

For example, among OECD countries, the United States, which ranks as one of the most market-driven labour markets, is one of the countries that has the highest dispersion of wages and the highest Gini, while Norway, with a strong tradition of collective wage-setting is one of the countries that has the lowest dispersion of wages and the lowest Gini (table 1).

10. See studies by Plasman, Rusinek and Rycx, 2006; and Dell’Aringa and Pagani, 2007, which imply that the final outcome will depend on the goals and bargaining power of unions at the firm level and the extent of pattern bargaining across firms.

**Table 1. Wage differential 90–10 ratio
and Gini coefficient for OECD countries**

Country	Wage differential 90–10 percentile ratio	Gini coefficient
Australia	3.07	35.2
Austria	3.56	29.1
Belgium	2.28	33.0
Canada	3.71	32.6
Czech Republic	2.86	25.4
Denmark	2.41	24.7
Finland	3.07	26.9
France	2.87	32.7
Germany	2.87	28.3
Hungary	4.92	26.9
Ireland	3.97	34.3
Italy	2.40	36.0
Japan	2.99	24.9
Korea	3.77	31.6
Netherlands	2.85	30.9
New Zealand	3.28	36.2
Norway	2.03	25.8
Poland	3.50	34.5
Portugal	3.76	38.5
Sweden	2.30	25.0
Switzerland	2.69	33.7
United Kingdom	3.40	36.0
United States	4.64	40.8

Source: Based on exhibit 3 in Freeman, 2007.
Earnings dispersion from OECD, 2004, table 3.2 latest year.
Gini coefficient from UN Human Development Report, 2007–08.

Deregulation and decentralization of collective wage-setting over time is associated with growing wage inequality

While there is no evidence to support the contention that the deregulation and decentralization of collective wage-setting improves labour market performance, there is evidence to show that it can undermine a country's institutional capacity for equitable wage distribution.

Country studies of changes in wage inequality over time periods in which labour market institutions were also changing show that the deregulation (for example, non-extension of collective agreements) and decentralization of collective bargaining institutions was immediately followed by an increase in the dispersion of wages. In Sweden for example, wage equality improved from the 1960s onwards, a period which was characterized by centralized bargaining and in which the Swedish Trade Union Confederation (LO) adopted a "solidarity wage" policy. In 1983, employers withdrew from

centralized bargaining. Their withdrawal was followed by increased wage inequality both within and across industries and a rise in the wages of workers with more education.¹¹

Italy underwent a similar experience. The wage distribution narrowed between 1975 and 1992, a period during which a government-supported wage indexing system, the *Scala Mobile*, was in place. When this centralized system of wage determination ended, wage inequality increased dramatically (Manacorda, 2004). In Israel, the process of decentralization from the mid-1970s onwards – involving both the proliferation of local agreements and decline in the use of extension orders – was associated with an increase in earnings inequality between 1970 and 2003 (Kristal and Cohen, 2007).

The institutional foundations of wage and income equality

Diverse forms of evidence show that collective bargaining compresses wage structures and where it is more encompassing also reduces the overall dispersion of earnings and contributes to income equality. The weakening of these institutions has contributed to growing inequality in a number of countries. In others, particularly developing countries, their underdevelopment enables inequality to persist. For those concerned with a fair globalization, support for the development of effective collective bargaining needs to be at the core of the labour market agenda.

Globalization has increased competition and subjected firms to the discipline of world prices thus reducing their ability to pass increases in wages on to consumers. Depending on the institutional context and the quality of industrial relations, firms in different countries may respond in different ways with implications for wage and income inequality. Countries with high-quality industrial relations institutions have been able to adapt their practices and renegotiate collective bargaining arrangements so that these permit firms to be more adaptable while at the same time ensuring continued employment security for workers.

The quality of industrial relations institutions can also shape the response of employers and workers to competition. Where competition is seen as a matter of mobilizing resources rather than minimizing costs, firms may seek the cooperation of labour and by so doing improve efficiency and productivity.¹² Depending on the context, different industrial relations institutions

11. See Blau and Kahn, 1999, for a review of studies and discussion.

12. The benefits of participation are well established and include the ability to secure the trust and commitment of workers, identify new ways to improve productivity and efficiency, and reduce monitoring costs. There is a great deal of evidence to show that participation at the workplace enhances firm performance. See Blinder, 1990; and Levine, 1995.

(e.g. works councils) can provide firms with the means to encourage greater participation in production, the results of which can contribute to greater efficiency. Collective wage-setting mechanisms enable the gains to be distributed more equally.

In countries where collective wage-setting institutions are viewed as an impediment to competitiveness and efforts have been made to deregulate labour markets and decentralize collective bargaining, firms may be more inclined to adopt cost-minimizing low-wage strategies that keep wages “competitive”. This type of wage-based competition between firms can contribute to an increase in wage inequality.¹³

Most of the literature on industrial relations institutions and labour market performance has focused on more developed countries. In developing countries, collective wage-setting institutions often remain underdeveloped out of fear that they will reduce formal employment and exacerbate inequality by improving the conditions of “insiders” (trade union members in formal employment) to the detriment of “outsiders” often in informal employment.¹⁴ However, from a macroeconomic perspective, higher wages may also boost aggregate demand and contribute to the expansion of formal employment. Indeed, there is evidence which shows that in Latin America, countries with stronger “civic rights”, including collective bargaining rights have higher shares of formal employment and lower shares of informal employment (Galli and Kucera, 2004). It is thus also possible that effective collective bargaining institutions may improve overall wage distribution in these countries.

Trade unions in many countries are extending their efforts beyond workers in formal employment to include those in informal employment. For example, in the export agricultural sector in northeast Brazil, trade unions have expanded their traditional membership base of small farmers to include a larger group of landless labourers. Their involvement in improved work practices has resulted in better quality crops (critical for export) and higher productivity. They have also been able to negotiate better working conditions for landless workers (Damiani, 2003). As this example demonstrates, collective action on behalf of workers in both formal and informal employment is more likely to contribute to overall equality rather than exacerbate inequality.

Policy-makers may also consider other institutional means to align the goals of employers’ and workers’ organizations with a country’s development

13. In considering the reasons for the decline in wages and increasing inequality in the United States in the 1970s and 1980s, Howell (1993) shows that, faced with increasingly competitive product markets, abundant supplies of low-skilled workers and a comfortable ideological climate, firms chose a “low road” human resource strategy aimed at substantially reducing labour costs by demanding wage concessions and replacing full-time workers, whose wages were determined by union contracts, with part-time workers.

14. For a theoretical discussion, see Lindbeck and Snower, 1989.

priorities. Support for national social dialogue can be an important way to facilitate consensus around development priorities, coordinate collective bargaining, promote social stability and facilitate adjustment (Stiglitz, 2000; Rodrik, 1999). On the other hand, attempts to deregulate labour markets and weaken industrial relations institutions may result in social instability, delay adjustment processes and erode the institutional foundations of broader income equality. As an author from the International Labour Organization noted:

The implied policy response is therefore to promote pro-equity developments in the institutional environment in which trade unions and employers operate rather than to take the fatalistic view that trade unionism is automatically harmful for equity (Lee, 1998).

Where there are fears that collective wage-setting in the public sector are driving up labour costs without improvements in productivity and efficiency, policy-makers may wish to focus their efforts on well-targeted measures to improve the efficiency of the public sector rather than deregulate labour markets. A study of the impact of labour market policies on economic performance in Latin America and the Caribbean concluded the following:

Labour market reforms should be approached with great humility. ... restructuring the public sector and changing incentives faced by unions may yield higher payoffs than changing the Labour Code (Rama, 1995).

Concluding remarks

Different types of evidence show that collective bargaining compresses wage structures and where collective wage-setting institutions are more encompassing also reduces the overall dispersion of earnings and contributes to income equality. Despite growing concerns over rising inequality in income and earnings, little attention has been given to the impact that globalization has had on collective wage-setting institutions in different countries and the role this played in reducing the prospects for a more equitable distribution of its benefits. Globalization weakened the bargaining power of labour and demanded more adaptability from collective wage-setting mechanisms.

Concerned with the performance of their labour markets and competitiveness of their enterprises, some more developed countries adopted policies to deregulate labour markets and encourage the decentralization of collective bargaining. The effect was to erode the very institutions that provided the means to achieve both equity and efficiency goals. In developing countries, fears that collective wage-setting institutions will exacerbate informal employment ironically impede the evolution of regulated/organized labour markets and more equitable patterns of development.

Those concerned with a fair globalization should focus on laying the institutional foundations of broader income equality promoting high-quality industrial relations and both pro-equity and pro-efficiency incentives. As we have seen, this includes encompassing collective wage-setting structures, the coordination of collective bargaining and national social dialogue.

References

- Abraham, F.; Konings, J.; Vanormelingen, S. 2007. *The effect of globalization on union bargaining and price-cost margins of firms*, LICOS Discussion Paper 181/2007.
- Aidt, T.; Tzannatos, S. 2002, *Union and collective bargaining: Economic effects in a global environment* (Washington, DC, World Bank).
- Baker, D. et al. 2004. "Labour market institutions and unemployment: Assessment of the cross-country evidence", in D.R. Howell (ed.): *Fighting unemployment: The limits of free market orthodoxy* (Oxford University Press).
- Bassanini, A.; Duval, R. 2006. *Employment patterns in OECD countries: Reassessing the role of policies and institution*", Social, Employment and Migration Working Papers, No. 35.
- Bentolia, S.; Saint-Paul, G. 2003. "Explaining movements in the labour share", in *Contribution to Macroeconomics*, Vol. 3, Issue 1, Article 9 (Berkley Electronic Press).
- Blau, F.; Kahn, L. 1999. "Institutions and laws in the labour market", in O. Ashenfelter and D. Card: *Handbook of Labour Economics*, Vol. 3 (Elsevier Science BV).
- . 2003. "Understanding international differences in the gender pay gap", in *Journal of Labour Economics*, 2003, Vol. 21, No. 1.
- Blinder, A. (ed.). 1990. *Paying for productivity* (Washington, DC, The Brookings Institution).
- Braun, S.; Scheffel, J. 2007. *Does international outsourcing depress union wages?*, SFB 649 Discussion Paper 2007-033.
- Card, D.; Lemieux, T.; Craig, R. 2003. "Unions and the wage structure", in *International Handbook of Trade Unions*.
- Damiani, O. 2003. "Effects on employment, wages and labour standards of non-traditional export crops in northeast Brazil", in *Latin American Research Review*, 38 (1).
- Dell'Aringa; Pagani, L. 2007. "Collective bargaining and wage dispersion", in *British Journal of Industrial Relations*, Vol. 45: pp. 29–54.
- Ebbinghaus, B.; Kittel, B. 2005. "European rigidity versus American flexibility? The institutional adaptability of collective bargaining", in *Work and Occupations*, Vol. 32, No. 2, pp. 163–195.
- Flanagan, R. 1999. "Macroeconomic performance and collective bargaining: An international perspective", in *Journal of Economic Literature*, Vol. XXXVII (Sep. 1999), pp. 1150–1175.
- Freeman, R. 2007. *Labour market institutions around the world*, NBER Working Paper, 13242

- . 1984. “Longitudinal analysis of the effects of trade unions”, in *Journal of Labour Economics*, 2 (1), pp. 1–26.
- . 1982. “Union wage practices and wage dispersion within establishments”, in *Industrial Relations Review*, Vol. 36, No. 1 (Cornell University).
- . 1980. “Unionism and the dispersion of wages”, in *Industrial and Labour Relations Review*, 34(1), pp. 3–23.
- Galli, R.; Kucera, D. 2004. *Labour Standards and Informal Employment in Latin America*, *World Development*, 32(5), 809–828.
- Goldberg, P.K.; Pavcnik, N. 2004. *Trade, inequality and poverty: What do we know? Evidence from recent trade liberalization episodes in developing countries*, NBER Working Paper, 10593.
- Gosling and Lemieux, 2001. *Labour market reforms and changes in wage inequality in the United Kingdom and the United States*, NBER Working Paper 8413.
- Guscina, A. 2006. “Effects of globalization on labour’s share in national income”, in *IMF Working Paper*, 06/294 (Washington, DC).
- Harrison, A.E. 2002. *Has globalization eroded labour’s share? Some cross-country evidence*, mimeo, University of California, Berkeley.
- Hayter, S. 2002. “Collective bargaining and income inequality in an integrating world”, in *Labour education: Paying attention to wages*, 2002/3, No. 128 (Geneva, ILO).
- Howell, D. 1993. *Technological change and the demand for skills in the 1980s: Does skill mismatch explain the growth of low earnings?*, Working Paper 101, The New School (New York).
- IMF, 2007. *World Economic Outlook: Globalization and inequality* (Washington, DC)
- Kahn, L.M. 1998. “Against the wind: Bargaining recentralization and wage inequality in Norway 1987–91”, in *The Economic Journal*, Vol. 108, pp. 603–45.
- Kristal, T.; Cohen, Y. 2007. “Decentralization of collective agreements and rising wage inequality in Israel”, in *Industrial Relations*, Vol. 46, No. 3.
- Krugman, P. 2007. *The conscience of a liberal* (W.W. Norton and Company, New York, London).
- Lawrence, R.; Slaughter, M. 1993. “Trade and US wages: Giant sucking sounds or small hiccup”, in *Brookings Papers on Economic Activity*, 2, pp. 161–210.
- Lee, E. 1998. “Trade union rights: An economic perspective”, in *International Labour Review*, Vol. 137, No. 3.
- .; Jansen, M. 2007. *Trade and employment: Challenges for policy research* (ILO and WTO, Geneva).
- Lemieux, T. 1998. “Estimating the effects of unions on wage inequality”, in *Journal of Labour Economics*, 16(2), 261–291.
- Levine, D. 1995. *Reinventing the workplace* (The Brookings Institution, Washington, DC).
- Lindbeck, A.; Snower, D. 1989. *The insider-outsider theory of employment and unemployment* (Cambridge, MA, MIT Press).
- Machin, S.; van Reenen, J. 2007. *Changes in wage inequality*, Special Paper No. 18, Centre for Economic Performance, London School of Economics.

- Manacorda, M. 2004. "Can the *Scala Mobile* explain the fall and rise of earnings inequality in Italy? A semiparametric analysis, 1977–1993", in *Journal of Labour Economics*, 22(3), pp. 585–613.
- OECD. 2004. *Employment Outlook* (Paris, OECD).
- . 2006. *Employment Outlook: Boosting jobs and incomes* (Paris, OECD).
- Plasman R.; Rusinek M.; Rycx F. 2006. "Wages and the bargaining regime under multi-level bargaining: Belgium, Denmark and Spain", in *European Journal of Industrial Relations*, Vol.13, No.2, pp. 161–180.
- Rodrik, D. 1999. *The new global economy and developing countries: Making openness work* (Baltimore, John Hopkins University Press).
- Rama, M. 1995. "Do labour market policies and institutions matter? The adjustment experience in Latin America and the Caribbean", in *Labour*, Special Issue, pp. 243–268.
- Soskice, D. 1990. "Wage determination: The changing role of institutions in advanced industrialized countries", in *Oxford Review of Economic Policy*, 6(4), pp. 36–61.
- Stiglitz, J. 2000. *Democratic development as the fruits of labour* (mimeo), keynote address to the Industrial Relations Research Association, Boston, Jan.
- Traxler, F. 1995. "Farewell to labour market associations? Organized versus disorganized decentralization as a map for industrial relations" in C. Crouch and F. Traxler (eds): *Organized Industrial Relations in Europe: What Future?* (Aldershot, Avebury).
- .; Kittel, B.; Lengauer, S. 1997. "Globalisation, collective bargaining and performance", in *Transfer*, Vol. 3, No.4, pp. 787–806.
- .2003. "Coordinated bargaining: A stocktaking of its preconditions, practices and performance", in *Industrial Relations Journal*, Vol. 34, pp. 194–209.
- Western, B. 1998. "Institutions and the labour market", in M.C. Brinton and V. Nee (eds): *The new institutionalism in sociology* (New York, Russell Sage Foundation).
- Wood, A. 1994. *North-South trade, employment and inequality: Changing fortunes in a skill-driven world* (Oxford, Clarendon Press).
- World Bank, 2006. *World Development Report: Equity and development* (Washington, DC, World Bank and Oxford University Press).

Collective bargaining and transnational corporations in the global economy

Some theoretical considerations

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Introduction

While the global economy does not constitute an institutional vacuum, the institutions that populate it are weighted heavily towards the interests of the private firm. Workers have often looked to states to protect their interests in their highly unbalanced relations as small human beings with large employing organizations. At national level in democracies this has often been a partly successful strategy, as democratic governments have to pay attention to mass demands, even though corporations will also have major influence with governments because of the dependence of the latter on them for economic success. But global society is far from being democratic. With the exception of the International Labour Organization (ILO), few international agencies even have the condition of labour within their responsibilities. In this context workers need to look to that other force that has safeguarded their interests in various political contexts: representation by trade unions within relations of collective bargaining with employers. This too is, however, extremely weak at the transnational level. Even where labour can organize (which is by no means the case in all parts of the world), it can only with great difficulty achieve links and solidarities going beyond national level.

To understand both the challenges and possibilities facing transnational collective bargaining, it is necessary to spend some time considering the place of the transnational corporation (TNC). This will be seen to be a structure that transcends both the polity and the market, presenting major problems as to how it is to be incorporated within wider society. Collective bargaining will be seen to be one of the possible answers to that problem, but only if it can be combined with other components of an infant global civil society. Within individual countries where bargaining institutions are strong, TNCs may be brought to the bargaining table like any other corporation; they might threaten to move investments elsewhere if unions make strong demands, but, as will be discussed below in relation to sunk costs, the viability of these threats varies. The main problems occur where bargaining, to be effective, needs to operate along a TNC's entire supply chain, or where some coordination is needed across the different labour markets of a firm with similar plants in a number of countries. In both these cases unions need to extend their reach, not only across national boundaries, but across labour markets with very varied conditions, often including countries where the combined efforts of TNCs and governments have prevented labour interests from organizing and expressing themselves.

While, as several other articles in this volume show, many of the problems experienced by labour in these situations relate to the practicalities of organization and bargaining rights as such, behind and prior to these difficulties stands another issue: the ambiguity of the political role of the firm in a capitalist economy and democratic polity. On the one hand, the rules of the free market require a mutual separation of economy and polity; on the

other, the individuals who constitute the leadership of firms enjoy the democratic rights of citizens to work for their political interests, which implies some engagement between the two spheres. Two potential resolutions exist. Under pluralist theory, the existence of high levels of competition in both economy and polity prevent concentrations of either economic or political power, and thereby limit or even cancel out any undue influence exercised by particular firms. Under neo-corporatist theory, firms exercise their political influence through formally constituted associations. This both maintains a level playing field among firms, at least within the sectors represented by an association, and makes transparent the way in which influence is exercised. The rise of large TNCs threatens the already imperfect solutions presented by both these approaches. No solution exists for the analysis of these firms within the terms of nation-State based democracy, as they constitute a non-democratic component of politics in advanced capitalism. Given that the dominant ideology of our period presents capitalist liberal democracy as a more or less complete political form, it is not normally considered appropriate to posit the existence of an established, accepted non-democratic component of that politics.

The political role of the firm

While economic theory does not have much to say about politics, some implications for political behaviour can be read off from the neoclassical model.

The firm in economic theory

First, in a pure market economy there is a strong separation between politics and economics. The State is needed to safeguard the rules necessary for the market to operate: enforcement of contracts, maintenance of currency, maintenance of rules of corporate accountability and transparency. But this role itself requires that the worlds of economy and polity do not interfere with each other. Governments should not interfere with markets, or the mathematical rationality of price-setting will be disturbed; individuals active in the market should not use their economic resources to interfere in politics to get privileged outcomes for themselves, or this too will distort the market. The vulnerable spot in this account is the puzzle specified above: there are no means to prevent individuals from using their wealth in a way that produces mutual interference by economic and political forces.

Neoclassical economics has its own answer to this, which is then paralleled by analogy in pluralist political theory: in the pure market economy, economic inequalities are limited, and therefore the influence exercised by any one individual will be quickly cancelled out by others. If larger profits or

incomes than are available elsewhere arise in a particular sector, individuals in other sectors will quickly switch their resources to the more profitable one until, as a result of competition, profit and income levels reach the mean of other sectors, at which point there is no longer an incentive to shift to it. In the long run, therefore, a pure market economy should be one without sharp inequalities. As a consequence, no-one will be able to use extreme wealth to accumulate political privileges.

In practice, actually existing capitalist economies do not conform to the pure neoclassical model. Barriers to entry can be high and irremediable, as where vast investment is required for research and development or where extensive distribution networks have to be developed before a firm can establish itself. Also, information, a resource fundamental to the operation of market rationality, is itself unequally distributed. To operate efficiently in capital markets in particular it is necessary to have kinds of information that can be provided only by highly skilled teams of experts; and it takes a high level of existing resources to be able to construct such teams in the first place. Therefore, those firms and individuals with the resources to acquire professional advice are able to make better use of information concerning capital markets than those who lack them, leading to a spiralling exacerbation of inequalities rather than a tendency for them to diminish.

To understand what is happening in these situations it is necessary to abandon the artificial view that firms are individuals, referred to above. The fact that the firm is an organization, and therefore capable of strategy, and not just a nexus of markets was first recognized in economic theory in the 1930s, in the theory of the firm. The main use that orthodox economics makes of this theory is in considering the trade-off between market and organization that confronts companies. It has been left to unconventional (“institutional”) economists and organization theorists to consider some of the wider implications of the idea of the firm as an organization, in particular the political implications. The larger a firm becomes, the stronger and better informed will be the organizational hierarchy that it can establish, and the existence of organization thereby becomes a source of entry barriers. True, in the long run this growing size can present problems, as the enterprise becomes top-heavy. But a firm that is sufficiently well constructed that it has reflexive capacity can even anticipate these problems. We should therefore anticipate a growing role for giant firms with extensive organizational resources within the economy.

Competition law, especially in the United States, has accommodated itself to the inevitability of the domination of large firms and limited competition. Classical US anti-trust law, developed in the first part of the twentieth century, aimed at breaking up major accumulations of corporate power, so that there was a limit to how far any one firm or group of firms could go in dominating a particular set of markets. One of the strongest examples of this was US banking law, that for many decades prevented US banks from

having branches outside an individual State. It is no coincidence that US pluralist political theory (see below) developed from exactly this intellectual environment. It was as essential for democracy as it was for economic efficiency that there should not be concentrations of power so strong that they faced no effective competition. To the extent that economic power could be a major source of political power too, anti-trust policy served the purpose of protecting democratic pluralism as much as it did market competition.

It proved impossible to maintain all markets with low entry barriers and full competition, and by the late twentieth century American law and political practice had changed. Economic theorists, principally at the University of Chicago, and corporate lawyers defending anti-trust suits for large corporations developed a new set of principles that abandoned earlier perspectives that had insisted on the need for actual competition and numbers of competitors if the liberal capitalist model was to work (Bork, 1978; Posner, 2001). The doctrine of consumer welfare was developed, which argued that, if it could be shown that economies of scale resulting from the existence of a small number of firms meant lower prices than if there was a large number of competing firms, then consumers' welfare could be considered to be better protected by the domination of markets by a small number of giant enterprises. Such arguments were used successfully to roll back the anti-trust bias of US corporate law (Schmidt and Rittaler, 1989). European Union competition policy, paradoxically trying harder to hold on to the earlier US model than the US itself, has developed a kind of second-best policy under which market-dominant firms are required to maintain the possibility of survival for competitors in some aspects of their operations. This can be seen in such measures as the European Union's insistence that Microsoft maintain access to its platforms so that competitors can produce software that is compatible with them.

It is not our task here to examine the economic efficacy of these different approaches to grappling with monopoly and imperfect competition, but to assess the political implications. Economic and political power can be translated into each other; this is why it is so difficult in practice to maintain the separateness alongside interdependence required by liberal capitalism. Giant firms generate very high concentrations of wealth. Not only can they convert this wealth into political influence, but they can use the capacity for strategy given to them by their organizational hierarchies to pursue political purposes and to become political actors. Seeing the firm as an organization and not just as a nexus of markets enables us to perceive the implications of this for political theory. Doctrines of consumer welfare and regulatory agencies may check the economic implications of corporate gigantism, but they cannot address these political implications. This becomes particularly important when firms operate transnationally – which virtually all large firms do today, and can exercise some choice of the political regimes within which they develop their strategies.

The firm in pluralist theory

The theory of political pluralism comes from the same intellectual stable as neoclassical economics. It holds that, to prevent major inequalities of political power arising, it is important that power resources are scattered around a society in autonomous centres, and not aggregated into large blocks. In such a situation, all decision-making requires the assembly of numbers of these centres. As with economic theory, protection against the abuses that might flow from powerful concentrations of resources is found in large numbers of separate participants in the system. Also as with economic theory, a more or less egalitarian economy is one of the conditions for political pluralism, as a polity in which economic resources were very unequally shared would be likely to be one in which political power was also concentrated, economic resources being so easily capable of conversion into political ones.

The rise of TNCs clearly challenges the balance implied here, in ways that current purely economic regulatory approaches, which leave the “giants” in place, do not address. Political scientists have not ignored this problem. As long ago as the late 1970s two of the most prominent exponents of both the analytical and normative concepts of American political pluralism – Robert Dahl (1982) and Charles Lindblom (1977) – both warned that the large corporation was becoming a threat to the balance of democratic pluralism. Lindblom based his analysis, not so much on the implications of the size of individual firms, as on the absolute dependence of governments for their popularity and legitimacy on economic success, and their perception that they depended for that success on the business community. Governments were therefore likely to listen intently and uncritically to whatever that community said it wanted from public policy.

Dahl and Lindblom were writing when the current trend towards economic globalization following the international deregulation of financial markets was just beginning. This has further enhanced the capacity of giant firms to translate their economic strength into political power in two ways. First, they have some capacity to “regime shop”, that is to direct their investments to countries where they find the most favourable rules. Second, the global economy itself constitutes a space where governmental actors are (compared with the national level within stable nation states) relatively weak and corporations therefore have more autonomy.

The first of these arguments seems straightforward: if firms have a choice between two countries for maintaining their investments, they should be predicted to choose that which presents better opportunities for profit maximization, which will mean lower costs, and therefore lower levels of corporate taxation, lower labour protection and social standards, lower levels of environmental and other regulation. In the short run we should therefore expect a shift of investments from the more costly to the cheaper country. In the longer run the former should be expected to adjust its own standards

downwards in order to be able to compete for investments with the cheaper country. The result would be a general lowering of standards to meet the preferences of multi-national enterprises – a process often known as “the race to the bottom”. Given that, as argued here, large firms are political as well as economic actors, this race is not purely a market phenomenon: firms often lobby governments to ensure that labour standards are kept low or even lowered.

In practice, matters are not as clear-cut as this. Existing investments in plant, distribution and supplier networks, as well as social links are not so easily moved. Firms have what are called “sunk costs” in their existing locations, and in order to move existing investments from one jurisdiction to another they need confidence that profits in the new location will be sufficient to outweigh these costs. The more likely threat is not so much a transfer of existing investments as a preference in favour of the cheaper country for future new investments being planned by the firm. Even here, there is not necessarily a consistent preference among firms for the cheapest locations. Firms capable of strategy choose in which market niches to locate themselves, and this does not always mean a preference for the cheapest. High quality of the good or service being produced is often a criterion, and this may require highly paid staff with good working conditions, or a strong social infrastructure, requiring high taxation. It is therefore not the case that high-wage, high-tax economies have lost out in competition for direct inward investment, as the strong performance of the Nordic countries shows.

Nevertheless, this argument still places the initiative with the firms: it is their market strategy that determines (or at least strongly affects) whether particular government policies will be “rewarded” with investment or not. Globalization does not necessarily mean a race to the bottom, but it does increase the power of firms in designing the rules for the races that public policy must run.

The second argument maintains that, there being no government at global level, TNCs are left fairly free to make what rules they like, including deals they make between each other for setting standards or rules of trade. There appears to be no higher level than deals among firms for making regulations at the global level; and since this is the level at which there is currently most economic dynamism, this global level of firm-determined regulation feeds back into national levels, undermining government authority.

This argument too is exaggerated. Alongside the growth of the global economy has come a growth of regulatory activity by international regulatory agencies whose members comprise national governments and which therefore constitute a kind of delegated governmental authority. Since the post-war period some (but not much) of the work of the United Nations, and the activities of the World Bank and International Monetary Fund (IMF) have had some authority of this kind. The Organisation for Economic Co-operation and Development (OECD), for long mainly a source of data and statistics on national economies, has gradually acquired more of an

international policy-coordinating role – for example, in the field of corruption in governments' business deals with TNCs. Within the field of labour the ILO provides a forum within which member states, employers' organizations and trade unions agree on conventions for labour rights. Most recently, the World Trade Organization has begun to regulate terms of international trade, though its authority extends more over governments than over corporations, and it is very reluctant to include social issues within its general free trade mandate. Finally, at a level between the nation State and the global level itself there has been a growth of inter-governmental organizations regulating economic affairs in a more detailed way across world regions: the European Union (EU), the Association of South-East Asian Nations (ASEAN), the North American Free Trade Area (NAFTA), and the Organization of South American States (MERCOSUR). However, of these only the EU has developed extensive policies across a wide range of fields.

Global economic space is therefore not entirely without regulation, but individual giant firms occupy a more directly regulatory role at this level than at national level in a number of areas. An important example is standardization (Mattli, 2001; Schepel, 2005). The standardization of products and components is essential for the conduct of a market economy, as it is a major means for lowering entry barriers. In many instances standardization is a matter for governments and inter-governmental agreements through (in Europe) the EU or, more globally, the International Standards Organization (ISO), which comprises representatives of governments and trade associations. However, there are important areas of the economy where individual giant firms set their own standards with little reference to international or national authorities, and doing so in a manner deliberately intended to raise entry barriers against competitors. This is particularly likely to happen in high-technology areas where product innovation is so rapid that there is no time to secure agreement on a standard among a wide range of different governments. For this reason this form of standard-setting has become accepted, though from a strict neoclassical point of view it threatens market competition. It is clear that classical pluralist theory cannot cope with these developments.

The firm in neo-corporatist theory

More relevant to collective bargaining than pluralist theory is neo-corporatism. When Dahl considered the inability of pluralist theory to deal adequately with the political role of firms in the modern US economy, he looked for potential solutions in the organized capitalism of the Nordic economies. Here, firms exercised political influence mainly through business associations, partly at the sectoral level, but partly through peak associations representing the whole private sector. Because this representation was formal and open, it could be used to have associations impose some kind of social

responsibility on member firms in exchange for any success of their lobbying activities. In addition, lobbying through associations maintained a level playing field among firms, at least within a sector, and could not be used to secure anti-competitive privileges for individual companies.

Dahl was here moving from US pluralist theory to the more European approach of neo-corporatist analysis, most often used for the analysis of industrial relations (e.g. Crouch, 1993; Traxler, Blaschke and Kittel, 2004), though its concept of interest representation through organizations that simultaneously lobbied and imposed codes of behaviour on members can also be used more generally. While neo-corporatism might avoid some of the political problems presented by single-firm political action, it presents a new one that whole sectors might become privileged at the expense of others, or functional economic interests privileged over other kinds of interest (for example, the environment). As Mancur Olson (1982) argued, in a market economy organizations of particular interests operate by means of rent-seeking behaviour: extracting gains for their members from the general public. They would abstain from this only if their membership was so extensive within the society concerned (“encompassing” in Olson’s term) that they must internalize any negative consequences of their action: there is not enough of the society outside the group’s membership on to which negative consequences can be dumped. This tended to be the case where neo-corporatist structures operated most successfully (Crouch, 2006a).

Olson’s concept of “encompassingness” assumes a manageable and definable universe across which organizations can be said to be encompassing. His theory, and all others that concern the logic of neo-corporatist stability, hold only to the extent that there is a relatively bounded universe linking fiscal and monetary policy, and the scope of firms. Throughout most of the history of industrial societies the nation State has provided such a universe; but in the global economy it no longer does so. Neo-corporatism is therefore severely challenged by the rise of the global economy and in particular the global firm.

Neo-corporatist organizations can respond positively to this kind of situation in two ways (Crouch, 2006a). First, they might shift their point of activity to a higher level, such as the EU, to recapture encompassingness. Second, the shift to levels above the nation State of many elements of economic regulation paradoxically increases the incentive of nationally rooted institutions to find new powers for themselves. Governments, trade unions and smaller firms remain organized primarily at national levels, and governments and unions have to respond to national constituencies. For various reasons both these types of initiative have been weak, and are insufficient to meet the challenge of TNCs, who have little incentive to participate, as they already operate at the global level. It is difficult for any system of organized interests that is not itself global to achieve encompassingness.

A further problem with neo-corporatism – and collective bargaining institutions whether in neo-corporatist settings or not – is that, being based

on associations representing existing industries and sectors, it loses effectiveness at times of rapid economic and technical change. During such times the old, organized sectors of the economy become less important – or, worse, their organizations try to slow down a decline that will be inevitable. Meanwhile, new sectors are not yet organized, and may not even see themselves as sectors. For example, what we now see as a biotechnical industry existed for several years before its distinctiveness was noted. Now, it and other new industries, such as information technology, have acquired self-awareness and have developed organizations. But it remains the case that, at any moment during a period of high change and innovation, old, declining sectors will be better represented than new, dynamic ones. In such a situation, individual firms, rather than associations, become the main representatives of business interests – as demonstrated above with the case of standardization. This reduces the level playing field among firms and gives individual TNCs a strong incentive to act politically.¹

There can therefore be no formal guarantees that extremely skewed influence will be excluded from a democratic political system through either pluralism or neo-corporatism. The problem of entry barriers blocking access to resources and capacity to be heard apply to both. These problems become particularly severe when we move to the transnational level, where there is not even much of a “political system”.

The giant firm as a part of the polity

From the perspective of pluralist political theory, firms constitute “lobbies”, and the kind of role that giant firms are able to play in the global economy makes them disturbingly powerful lobbies, threatening the balance of both democracy and pluralism. This was the burden of the critique of Dahl and Lindblom, and of a large number of subsequent critics. The main alternative view is that: (i) provided the economy remains a market one, these firms are still constrained to accept consumer sovereignty in their economic activities; (ii) provided the political system is transparent, firms’ lobbying activities will be subject to criticism and public debate; and (iii) the activities of firms bring jobs and new consumer products, and so public welfare is enhanced by even their political lobbying activities.

The relative merits of these arguments are subject to considerable political debate. However, both sides share the perspective that the concept of the lobby is adequate to analyse the phenomenon of giant firms’ political

1. Paradoxically, while neoclassical economists normally see neo-corporatism as more hostile to the free market than a pluralist arrangement, in practice neo-corporatist associational representation is better able to restrain market distortions stemming from unequal size among firms than is a pluralist system.

role. Disagreement is empirical – over how dominant that role is in relation to other lobbies (such as labour or environmental interests); and normative – over whether the level of lobbying power is acceptable. However, the concept of lobbying is inadequate, and we need instead to reconceptualize the large firm as a political entity, which in turn requires rethinking the scope of the political and its characteristic institutions.

The standard model of a polity in political science, constitutional law, and the assumptions of everyday political discussion take the following form. At the peak is the sovereign entity, the State. These States recognize no authority above them; that is what defines them as the units of the global system and as the peaks of their own subsystems. It is taken for granted today that these States are “nation States”, i.e. they constitute a large area of usually coterminous territory, both open country and urban centres, with a population that recognizes that it is joined by certain ties to form a “nation”, even if these are sometimes little more than being part of the same territorial State. These States do make treaties with each other, and sometimes these treaties can be very demanding in the terms they impose and strict in enforcing sanctions in the case of disobedience of the terms. They may even construct organizations charged with the task of enforcing their terms and charting the common tasks that should be confronted by the treaty’s members. These treaties therefore constitute important *de facto* compromises with the concept of “sovereignty”, but because they are treaties (contracts among equals) rather than constitutions (implying subordination within an organizational hierarchy) they are held not to make *de jure* compromises. Within each nation State there will be regional and local levels of political authority; these are subordinate within the organizational hierarchy of the State and are bound together through its structures, not through treaties.

The nation States, the structures produced by treaties among them, and the States’ internal sub-structure of delegated authority constitute the only “political” entities within society. This does not mean that they can do what they like. Where the State is defined as being one within the rule of law, the things it may do and the powers it may take in relation to its citizens or others are carefully prescribed and limited. Within a liberal polity citizens have opportunities to lobby for, request, demand, beseech various actions (or abstention from action) by the State; and as we have seen, some organizations (in particular, large firms) can attain such power that governments have little practical choice than to give in to their demands. But they remain “lobbies”, as the political power to implement the demands remains in the hands of government.

This framework has become inadequate for analysing the early twenty-first century giant firm for the following reasons:

- (1) The framework assumes that those engaged in lobbying are members of the polity of the nation State concerned, or physically within it and therefore subject to its authority for the time being. This is not

the case with TNCs bargaining over the terms of their investments. International law requires firms to have a place somewhere on the planet where they have their formal location, but from that base they can deal with governments all over the world, never putting themselves into a position of subordination to its authority, unless and until they set up facilities. During the crucial period of negotiations, where they are deciding among a number of potential locations for an investment, they remain external and therefore do not “lobby” for terms, an action implying at least formal subordination. Their relations are more like those of ambassadors of other States, but they cannot be assimilated to this concept as it belongs only to the world of political entities.

- (2) It difficult to apply the concept of a lobby to the relationship of large global firms to a global polity seen as constituted by nation States and organizations formed by treaties among them. This can perhaps be seen most clearly in that autonomous role in standards setting of individual corporations, which is a kind of legislative activity. They exist out there *alongside* the international and transnational agencies, not generally subordinate to them.
- (3) When large corporations from the advanced countries invest in very poor countries, there is usually a major imbalance between the institutions of the corporations and those of the local State. The former will be well equipped and staffed, with a high level of resources, and with clear hierarchies and internal procedures. The local State is likely to have very low levels of resources and poor means of internal communications and enforcement. In such circumstances it is very difficult for the local State to live up to the legal fiction that it constitutes an “authority” and the investing firm a private entity subject to its authority. The firm is likely to be able to pick and choose which local laws it obeys and which ignores, as enforcement and inspection are likely to be poor. The firm becomes its own law enforcement agency. This imbalance can also work the other way. Within the society governed by the local State there may well be only meagre political debate, while the home base of the investing firm may have lively debate, even over affairs in the country where the firm is investing. For example, a European firm employing child labour in an African country is likely to experience more difficulties about the issue at home than it is in the country where the abuse is occurring. In response to domestic pressure the firm might become a more vigorous guardian of children’s rights than the African government. Again, the firm becomes its own law enforcement agency.
- (4) The last example raises the general issue of corporate social responsibility (CSR). This concept refers to the acceptance by firms that their responsibilities as organizations extend beyond that of immediate profit maximization and that they should recognize responsibilities for the

externalities produced by their actions (i.e., those effects of their activities that are not represented in the market forces operating on them, such as pollution caused by production processes) (Crouch, 2006b). There is much debate in the literature whether firms do or should accept social responsibilities for moral reasons, in order to pre-empt tougher government action if they do not act, or because for various reasons social responsibility will be associated with higher long-run profitability. It is not our present task to try to resolve this debate. We need only note that firms are here taking on themselves responsibility for defining public priorities, and deciding and then implementing the actions that seem to be required by those priorities. For example, some Western firms operating in African countries have decided that, because their activities lead to the concentration together of large numbers of young people as employees, they have some responsibility for education and medical treatment relating to HIV/AIDS among their workforces, and beyond in their workers' local communities. This is public-policy action going beyond the immediate remit of the firm as a profit-maximizing concern. The decisions whether or not to do anything about the issue, and if so what to do, are public-policy actions. The firm may or may not liaise with local government about the matter; that also is its decision. The example given is from a developing country, but CSR issues are also presented within the advanced economies, at the present time particularly in relation to environmental concerns and climate change.

CSR is undertaken by firms within the ambit of normal company law, the firms' directors and senior management using the capacity for strategy of their corporate hierarchies to pursue their public policy preferences. In seeking concepts by which this process might be understood, some authors have developed the idea of "corporate citizenship". This can have a banal meaning, signifying little more than that firms ought to behave like good citizens. But in the hands of Crane, Matten and Moon (2006) it has been brought to a higher pitch of analysis. Strictly speaking, firms cannot "be" citizens as in democracies this quality belongs solely to the individual human beings who possess the right to vote. But these authors see firms as administering the general rights of citizens, in so far as firms enter the field of making corporate-level public policy, which is what CSR amounts to. The idea remains deeply problematic, as citizens have no formal capacity to access the corporation (which remains governed by corporate law, recognizing only the rights of shareholders) in the way that they can in theory put political pressure on governments. On the other hand, firms can be responsive to citizens *qua* customers.

The concept of "powerful lobby" is inadequate to analyse this multifaceted role of today's TNCs: they are part of the polity, not a part of an external civil society that powerfully lobbies the polity. This is particularly

the case at the level of the global economy, where there are no truly public institutions, only intergovernmental ones. The ideal that the economic and the political can be mutually separated is always compromised in practice: their mutual dependence and their capacity to be translated into each other are too great. As a result political formulæ that depend on their separation will be false and misleading. The consequence of this is that democracy operates in relation to only part of the actual polity. If an issue arises in relation to a private firm acting in a public capacity (whether as a subcontractor, in CSR policy, or its global governance activities), it can become a political question only if it can be tracked back to government. This is guaranteed by the character of electoral politics in mass democracies, whereby a question can acquire political salience only if it can be shown to offer opportunities for mutual blaming between government and opposition. Even if firms are somehow implicated in the affair, they are secondary to the democratic politics of the issue.

We need to conceptualize firms, at least large ones operating multi-nationally, as locations of political power and authority, to be analysed alongside governments, parties and other obviously political actors. They constitute a non-democratic part of the modern polity, in that they are not formally answerable to a public. On the other hand, they are vulnerable to campaigning by social movement organizations, particularly when these can negatively affect a firm's reputation among its customers. At the international economic level and in poor countries with undeveloped institutional infrastructure, they may constitute the most important objects for political study.

Global civil society and collective bargaining

Within the so-called advanced societies, not much importance is usually placed on a distinction between democratic and pluralistic political activity around the State on the one hand and civil society on the other. An almost seamless web of groups and activities runs from the polity out to a vast range of voluntary and campaigning bodies. It is interesting to note that the concept of civil society – which has been around since Aristotle – experienced one of its periodic returns to prominence in the late twentieth century, by thinkers (initially in central Europe and Latin America) trying to identify a realm of dialogue and human exchange *excluded by polity and market alike*.² From there the concept has crept into political discourse within many kinds of society, usually being used to denote those organizations and informal groupings that concern themselves with public affairs, but which operate without the power of either State or corporation. To some extent therefore civil society refers to “the power of the powerless”. (This phrase itself was

2. For an excellent guide to the historical vicissitudes of the concept, see Wagner, 2006.

coined by Vaclav Havel (1985) in the 1980s to refer to the civil society outside the party-State that was being rediscovered in the then Czechoslovakia and elsewhere in central Europe.)

The concept can be applied with particular force in the transnational arena, where the main actors are firms and inter-governmental bodies largely cut off from relations with any *demos* or society. Any activity from a public outside corporate and political leaders is therefore likely to constitute the power of the powerless. And, as with the internal politics of countries in central and eastern Europe, Latin America and many other parts of the world, where this kind of gulf exists between elites and public, it becomes vital that organizations and less formal groups start to fill the empty spaces.

The main groups that one can identify are the campaigns variously labelled “international civil society organizations” (ICSOs), or rather oddly “international non-governmental organizations” (INGOs). (The fact that they are mainly identified negatively as being “not government” indicates the weak state of global society.) These organizations are very weak, depending on support from a few activists and people willing to give them some money – often the same people appearing under different group names. But the fact that they exist and are growing is a fascinating indicator of how empty spaces of the global polity are being populated. Particularly interesting from the perspective of the above discussion, these groups do not just target governments or intergovernmental organizations in the classic manner of political lobbying. They also target individual global corporations, appealing to them to remedy abuses in their treatment of the environment, their workforces, and the populations around their installations within developing societies. If CSR is the expression of firms’ own recognition that they are part of the transnational polity and not just the economy, the activities of the international civil society groups are the expression of critique and opposition directed at this new political level.

Transnational trade union activities can be seen as fitting into this same framework, just as at local and national levels collective bargaining is a part of civil society. As the article in this volume by Miller shows, links are gradually being forged between international unions and ICSOs. It is not necessarily an easy relationship. Unions are concerned to advance the interests and rights of members (and the wider categories to which their members belong); ICSOs are more concerned with altruistic general causes. International unions have to find means of uniting the interests of their first- and third-world memberships; ICSOs are likely to be oriented only towards developing countries. Some would argue that there is also a culture gap: that unions (and their associated institutions of collective bargaining) are examples of the bureaucratic structures of Fordist industrialism, while ICSOs are typical flexible structures of post-industrial society.

Against these objections stand some positive points. First, as argued above, the emerging global polity is so heavily dominated by corporate

interests that any groups that are critical of corporate behaviour have important incentives to work together.

Second, links with ICSOs can in fact be one of the means by which international unions relate their first- and third-world memberships (and potential memberships) as campaigns aimed at customers and governments in the richer countries to react to bad working conditions in developing economies are starting to build relationships between these two different kinds of society.

Third, while collective bargaining is the form of action preferred by unions, it can be very difficult to construct at the transnational level. Other forms of action, such as those pioneered by ICSOs, can therefore be used as important steps towards its construction. In turn, if bargaining relationships can be constructed, they can also be used to advance the causes of other campaigns.

Clearly, these kinds of activity, whether they involve campaigns alongside ICSOs or just trying to shame TNCs in relation to their own proclaimed CSR strategies, are not the same as collective bargaining. They are, as the idea of the “power of the powerless” shows, expressions of weakness in terms of power relations. We see this very clearly in the continuing debate over international framework agreements (IFAs) and corporate codes of conduct (see Papadakis, 2008, especially Gallin, 2008). IFAs have been the main expression of moves towards true transnational collective bargaining, usually across countries with similar levels of labour market and institutional development. Codes of conduct are an aspect of CSR, controlled entirely by managements and with no union involvement. Increasingly firms are showing a preference for the latter, which marks a step away from the establishment of international labour rights or labour citizenship, towards a new kind of paternalism. The trend is encouraged by the free-trade bias of the World Trade Organization and, in recent years, the European Court: while these are suspicious of formal trans-corporate agreements, they can say nothing about firms’ unilateral declaration of policy preferences (Bercusson, 2008).

Within the advanced countries where industrial relations institutions today are strong, campaigning for labour rights through moral appeals to employers and general public and through links with social cause organizations was characteristic of early years of trade union weakness. Real success was achieved by organized labour when it was able to move beyond such action to mustering a balance of forces at the bargaining table – though we should never lose sight of the fact that capital nearly always maintains a superior power position in such confrontations. But the reality of the situation within the global economy is that labour is weak; an analogy with the early days of national unionism may not hold at every point, but many features are similar. Early unions faced a hostile alliance of political and managerial forces, as is the case in today’s global economy; workers had no citizenship rights, as is the case at the global level; workers experienced organizational and cultural

difficulties in getting beyond local and district levels, as today similar obstacles inhibit transnational action.

In examining the scope for joint action with ICSSOs, or exploitation of CSR, one is therefore not pointing the way to a bright and optimistic future for organized labour, or seeing early prospects for transnational bargaining. The comparison is with a situation in which labour can achieve almost nothing without these strategies. They are likely to be most effective where workers' labour market weakness and social distress are apparent and striking, which mainly refers to the case of supply chains. ICSSOs are not likely to become involved if, say, French and German unions are unable to deal with their organizational rivalries in order to bring a TNC to the bargaining table. There are also deep ambiguities in the response of public opinion if, say, a firm is playing off well paid workers in its Dutch plant against lower paid workers in its Polish one. In the supply chain one typically finds workers with different levels of living engaged on different parts of the production chain. There is little competition among groups of workers in countries with different standards of living, and even if there might be problems of inter-union cooperation along the chain, these are considerably less important than differences in labour supply, political regime and corporate strategy. In these situations the strategy of moral appeal has potentiality, not because it is so powerful, but because it is all that there is.

References

- Bercusson, B. 2008. "Implementation and monitoring of cross-border agreements: The potential role of cross-border collective industrial action", in Papadakis (ed.), q.v., pp. 131–158.
- Bork, R.H. 1978. *The antitrust paradox: A policy at war with itself* (New York, Free Press).
- Crane, A.; Matten, D.; Moon, J. 2006. *Corporations and citizenship* (Cambridge: Cambridge University Press).
- Crouch, C. 2006a. "Neo-corporatism and democracy", in C. Crouch and W. Streeck (eds): *The diversity of democracy* (Cheltenham, Elgar, pp. 46–70).
- . 2006b. "Modelling the firm in its market and organizational environment: Methodologies for studying corporate social responsibility", in *Organization Studies*, 27, 10: pp. 1533–51.
- . 1993. *Industrial relations and European state traditions* (Oxford, Oxford University Press).
- Dahl, R.A. 1982. *Dilemmas of pluralist democracy: Autonomy versus control* (New Haven, Yale University Press).
- Gallin, D. 2008. "International framework agreements: A reassessment", in Papadakis (ed.), q.v., pp. 15–42.
- Havel, V. 1985. *The power of the powerless* (London, Hutchinson).
- Lindblom, C. 1977. *Politics and markets: The world's politico-economic systems* (New York, Basic Books).

- Mattli, W. 2001. "The politics and economics of international institutional standards setting", in *Journal of European Public Policy*, 8, 3, pp. 328–344.
- Olson, M. 1982. *The rise and decline of nations: Economic growth, stagflation and social rigidities* (New Haven, Yale University Press).
- Papadakis, K. (ed.). 2008. *Cross-border social dialogue and agreements: An emerging global industrial relations framework?* (Geneva: International Institute for Labour Studies and International Labour Office).
- Posner, R.A. 2001. *Anti-trust law*, second ed. (Chicago, Ill, University of Chicago Press).
- Schepel, H. 2005. *The constitution of private governance: Standards in the regulation of integrating markets* (Oxford, Hart).
- Schmidt, I.L.O.; Rittaler, J.B. 1989. *A critical evaluation of the Chicago school of antitrust analysis* (London, Kluwer).
- Traxler, F.; Blaschke, S.; Kittel, B. 2004. *National labour relations in internationalized markets* (Oxford, Oxford University Press).
- Wagner, P. (ed.). 2006. *The languages of civil society* (Oxford, Berghahn).

The transnational dimension to collective bargaining in a European context

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Introduction

The internationalization of economic activity is embracing ever more national economies as rapid industrialization proceeds amongst the emergent economies of east and south Asia, eastern Europe and Latin America. The process is being driven forward by the emergence of global supply chains in a growing number of sectors, reaching into services as well as manufacturing, in which the division of labour between operations in different parts of the international economy is continually under review according to the imperatives of cost, flexibility and productivity. Organized by multinational companies (MNCs), the resultant regime competition between labour market and industrial relations regimes within these global supply chains has a local as well as a national dimension. In addition to considerations of costs, flexibilities, skills provision, productivity and labour standards as shaped by national institutions and regulations, the performance of individual sites and the localities in which they are situated is under continuous scrutiny. The social and industrial relations consequences of these internationalized economic dynamics increasingly calls for cross-border, coordinated responses and initiatives by trade unions, and other institutions of employee representation, at transnational sector and company levels. These include the emergence of forms of transnational collective bargaining.

Within Europe, further impetus has been added to these economic dynamics by ever closer integration of markets for products and services, capital (including the “market” for production locations) and – especially since the European Union’s 2004 and 2007 eastern enlargements – labour. The process has been driven forward by EU initiatives, first, to create a single European market in the early 1990s; largely affecting manufactured products, the process was extended to the service sector under a controversial measure finally adopted in 2004. The second was the Economic and Monetary Union, creating a single currency and a unified monetary policy amongst a significant and growing group of EU Member States, which took effect from 1999. Economic and market integration has been accompanied by a social dimension, aimed, *inter alia*, at providing workers with new rights of representation and voice at transnational level and new protections against the consequences of the widespread rationalization and restructuring of sectors and companies which the integration process unleashed. The emergence of a transnational dimension to collective bargaining within the EU has been accelerated as a result of both formal institution-building under the social dimension and autonomous actions by employers and trade unions, respectively.

This emerging transnational dimension to collective bargaining at sector and company levels is two-fold (Marginson and Sisson, 1998). On the one hand, it takes the form of cross-border information exchange of bargaining-relevant data, by either employers or trade unions, with the aim of setting the context for the national and local negotiations which take place in sectors

and companies. At its most developed, such activity can result in coordination of bargaining agendas and outcomes in different local and national negotiations. On the other, it takes the form of transnational negotiations resulting in the adoption of joint texts and framework agreements of varying degrees of regulatory “hardness” or “softness”.

Concerning cross-border “context setting” and coordination, there is a striking asymmetry in the predominant level of level of activity for employers and trade unions. Although employers’ organizations do engage in cross-border information exchange and learning at sector level, the primary focus of employer activity is at the level of MNCs, through mechanisms which systematically monitor workforce costs and performance in local operations, compare these across borders and deploy the results in local and national negotiations. For trade unions, the primary focus has been at the sector level, through initiatives aimed at sharing bargaining information across borders and, ultimately, at coordinating bargaining agenda and outcomes. In some instances, unions are responding to the articulation of local negotiations by MNCs, but such response is far from widespread. At company level, European Works Councils (EWCs), constituted as a formal structure for employee information and consultation (i.e. social dialogue) within MNCs, have also been mobilized in ways not anticipated by the 1994 EWCs directive. These include context-setting activity around local negotiations by management and by trade unions, and the emergence of transnational negotiating activity in a small but growing number of EWCs.

The next two sections review trade union cross-border bargaining cooperation and coordination initiatives, which are considered in greater depth by Glassner in another article in this volume, and the activities of MNCs in coordinating the agenda and outcomes of local negotiations in different countries, respectively. The following section considers the significance of EWCs for both context setting for local negotiations and as a forum for transnational negotiations, and the final section concludes.

Trade union cross-border bargaining cooperation

European trade unions have launched initiatives aimed at coordinating the agenda and outcomes of national negotiations at sector level, prompted by fears that intensification of regime competition under EU economic and market integration will trigger a downward spiral in wages and conditions. The aim is to “link them [national bargaining systems] so as to limit national competition on pay and labour cost developments” (Schulten, 2003, page 113). The initiatives essentially entail context setting for national and local negotiations, through the establishment of cross-border collective bargaining databases as a means of information exchange and, more ambitiously, coordination of bargaining objectives. The bargaining databases also enable outcomes to be

monitored, a process which is backed up by peer review. These initiatives are unilateral: employers' organizations are generally opposed to any European-level coordination of negotiations, reflecting their clear preference for further decentralization of collective bargaining towards company level.

Two kinds of trade union initiative are apparent: European level, under the aegis of the European industry federations of unions (EIFs), and "inter-regional" which involve unions from two or more neighbouring countries. There are marked variations between sectors in the existence, extent and nature of activity. At interregional level, the Doorn initiative bringing together trade union confederations and major sectoral unions from the Benelux countries and Germany (and more recently France) exercised considerable influence on subsequent developments. A 1998 declaration committed the unions involved to a bargaining coordination rule under which negotiators should aim for settlements consistent with the increase in the cost of living plus the increase in labour productivity. Ongoing information exchange forms the input to a database which enables settlements to be monitored against the bargaining coordination rule and assess progress on non-wage qualitative issues (Schulten, 2003). These features are also evident in some sector-based inter-regional coordination initiatives, such as that involving each of the German IG-Metall's bargaining districts and counterpart metalworking unions in the relevant neighbouring countries. Such interregional developments are concentrated in metalworking and construction, and have largely focused on two regions within the EU – Germany and its neighbours, particularly the Benelux countries, and the Nordic Area (Marginson, 2005).

Of the European-level initiatives, the EMF's is the longest established and most developed, acting as a pacesetter. Its core features involve a wage bargaining coordination rule (under which wage settlements should be consistent with increases in the cost of living and a share in productivity gains), a working-time charter, an electronic database for recording and monitoring settlements, and peer review of outcomes. Several other EIFs in manufacturing have elaborated settlement coordination rules which resemble EMF's formula. Other EIFs, including EFBWW, UNI-Europa finance and EFJ have not adopted a specific formula, whilst EPSU has formulated a common objective to improve the position of low-paid workers. EFBWW pursues a "bottom-up" approach, aimed at protecting national collective agreements from the effects of the cross-border movements of labour which characterize construction (e.g. through bilateral, cross-border trade union agreements to organize and assist posted workers). There are noticeable gaps in activity in the private service sectors, where product markets tend to be less internationally exposed and trade union organization is generally weaker. Linking the European-level sector initiatives, the European Trade Union Confederation (ETUC) has adopted its own European guideline which also calls for wage settlements equivalent to cost-of-living increases plus a proportion of productivity gains sufficient to redress the declining share of wages in GDP. Subsequently, the ETUC has

added substantive aims to narrow the gender wage gap and reduce numbers of low-paid workers. Annual benchmarking exercises reviewing progress suggest a mixed picture: "... most European countries conform to the ETUC guideline to the extent that, on average, over the four-year period, wage growth compensates for inflation. ... However, real wage growth remains clearly below productivity growth in most countries" (Keune, 2006).

A range of problems has arisen in the elaboration and implementation of these various bargaining coordination initiatives (Schulten, 2003; Marginson, 2005). These are both contextual and structural. The context of these initiatives is one where the absence of adequate social provisions accompanying the creation of Europe's single market results in ongoing conflicts of interest between unions from different countries over securing internationally mobile investments and therefore jobs. Structural problems include difficulties stemming from differential engagement with initiatives by unions from different countries. Reflecting the concentration of interregional networks, unions from the Nordic and Germanic (Austria, Germany, and Benelux) areas have tended to drive forward European level sector initiatives, influencing the forms of coordination adopted. Unions from Mediterranean Europe (including France), which are less engaged, advocate a different idea of coordination based on realizing common qualitative goals. Those from Ireland and Britain, and from central east Europe, remain relatively detached. Further problems arise from the different bargaining systems found across Europe. The question of vertical coordination under two-tier bargaining systems, and whether supplementary pay negotiations at company level result in outcomes consistent with sector-wide bargaining coordination rules, is becoming more pressing as scope for company-level negotiation progressively opens up. Even more fundamental is the question of how best to mesh systems where bargaining is single-employer-based, such as the United Kingdom and several of the central east European Member States, with sector-level coordination premised on multi-employer agreements.

The most pressing problem confronting bargaining coordination initiatives, however, is their (non)enforceability. They are essentially voluntaristic: the settlement coordination rules and common standards adopted carry moral force only. Whilst benchmarking and peer review processes can reveal the extent to which implementation has been achieved across countries, they cannot require compliance. Even under the EMF's initiative, which is widely regarded as the most advanced, the evidence indicates that national parameters remain prominent in the bargaining strategies and decisions of its national affiliates albeit that the evidence points to national negotiations taking place within a European context (Erne, 2008). In the light of these and other problems, recent evidence suggests that the more ambitious expectations of union bargaining coordination initiatives are being scaled down, with increased emphasis placed on cross-border exchange of bargaining context and bargaining outcomes (Léonard et al., 2007).

Cross-border bargaining coordination and context setting in MNCs

At company level, it is the management of MNCs which has been prominent in driving forward cross-border context setting activity for, and coordination of, local negotiations. Within Europe, the internationalization and associated intensification of competition arising from economic and market integration has been compounded by the growing scale and internationalization of firms themselves. Although the global reach of firms has increased as a result of their recent internationalization, there is a marked regional (respectively, European, North American, Asian) dynamic to developments. Many MNCs are either regionally focused or organized, and are increasingly organizing their production and service on a pan-European basis, under integrated European management structures (Edwards, 2004). At the same time, under the multi-employer sector-wide agreements which still prevail across much of western Europe, employers have secured increased scope to negotiate working conditions and practices at company level, including the local operations of MNCs. In this evolving context, MNCs have sought to bring international comparisons of costs and productivity to bear within local, company-based negotiations, aiming to secure equivalent bargaining outcomes and/or lever workforce concessions at sites in different countries. Whilst the downwards pressure on terms and conditions that can arise have exercised trade union concern, union capacity to respond to such management comparisons has to date been limited. The process of comparison involved can and does extend to the global operations of MNCs, more so in some sectors than others. Nonetheless, reflecting the regional focus or organization of these companies, a distinctive European dynamic is evident (Arrowsmith and Marginson, 2006).

Management activity in compiling international comparisons derives from its broader interest in cross-border benchmarking of practices, performance and costs, so as continually to enhance the competitiveness of operations. Management benchmarking has two aspects: the diffusion across sites of those work practices which are deemed to be examples of “best practice”; and the deployment of coercive comparisons of performance across sites in local negotiations over work practices and conditions. Increasingly, MNCs have put in place management systems to diffuse best examples of employment practice across sites in different European countries (Edwards, 2004). Diffusion of best practice is reinforced by the second aspect, which emanates from the systems of performance control now utilized. These give international management the capacity to compare the performance of workforces from sites across Europe, and beyond, across a range of productivity, cost and other labour-related indicators.

The results of these “coercive comparisons” are deployed by international management to set the context for local negotiations. Pressure is placed on local management to secure cost and flexibility concessions from the workforce

over work practices and conditions. Where sites are deemed to be performing poorly, the context which such comparisons set for local negotiations can lead to threats of loss of production mandates, disinvestment and ultimately run-down and closure. Conversely, better performing sites may be “rewarded” with new investment and fresh production mandates. The effects vary: in some situations deployment of coercive comparisons can result in a series of matching concessions across borders in which the substantive bargaining outcome at different locations is similar. Hancké (2000), for example, details a cross-border round of concession bargaining at General Motors Europe, over working-time arrangements, involving sites in four countries. In other situations, local negotiators are well aware of the context provided by cross-border comparisons, but a range of substantive outcomes is possible – as long as these are consistent with maintaining, or improving, the competitive position of the site within the MNC’s production network (Arrowsmith and Marginson, 2006).

Differences are evident between and within sectors, according to contingencies such as whether MNC local investments are primarily market- or efficiency-seeking, which affects their potential mobility (Meardi et al., 2008). In a study of collective negotiations in ten MNCs, in four different European countries, in the automotive and banking sectors, Arrowsmith and Marginson (2006) found management’s cross-border coordination of local negotiations to be much more developed in automotive than in banking, but also identified variation among the companies within the two sectors. Differences between sectors were attributed to relative exposure to international competition and the extent to which production (or service provision) is integrated across borders. Within-sector differences related to several influences, including: the degree and nature of internationalization of operations (in some banks, for example, back-office operations were centralized across borders); the degree of diversity of the products and production systems across operations; and ownership, where the scale and symbolism of home-based operations served to blunt cross-border comparisons.

EU enlargement has extended the ambit for the exercise of coercive comparisons by management, as MNCs opened new and acquired existing operations in the new member States both in anticipation of and after their accession. Sector and company contingencies are again relevant. In sectors characterized by international integration of production, such as automotive, efficiency-seeking foreign direct investment into the central east European new member States has prompted the restructuring of pan-European production networks (Meardi et al., 2008). The gap in labour costs between sites in the new member States and those in western Europe, in a context where productivity levels are often now similar, has – under the exercise of coercive comparisons – become a source of pressure for changes to work practices on an enhanced scale at established sites in western Europe, under threat of relocation. The enhanced scale of the impact is indicated by recent evidence from WSI’s authoritative survey of German works councils (Ahlers et al., 2007).

Trade union efforts at cross-border networking and benchmarking within MNCs are generally less developed than those of management, and EU enlargement has correspondingly enhanced the challenges unions face. Arrowsmith and Marginson (2006) found that this was a product of resource constraints, lack of a central “authority”, divisions wrought by multi-unionism and the effects of inter-plant competition. Even so sector and company differences were apparent: local union negotiators were compiling and deploying cross-border comparisons in several of the automotive MNCs, but in none of the banks. And amongst the automotive MNCs such activity was attenuated where home-country operations had a dominant position in the European business.

Mobilizing EWCs towards transnational collective bargaining

Although formally constituted under the 1994 European Works Councils Directive as structures for employee information and consultation at transnational level, a minority of EWCs amongst the more than 800 MNCs which have established them has been mobilized – by either management or employee and trade union representatives, or both – for either context-setting purposes in local negotiations at sites across different European countries or to undertake transnational negotiations resulting in the conclusion of joint texts and framework agreements.

Information on the extent to which EWCs offer a focal point for context setting around local negotiations is limited; neither do existing findings portray a consistent picture. Drawing on an investigation of major car manufacturers, Hancké (2000) contends that EWCs have been largely ineffective as a mechanism facilitating the coordination of union bargaining positions across countries. Even where unions are well organized, and have cross-border links – as in car manufacturing, the inter-plant competition that production and investment decisions are structured around would seem to promote local site egoism amongst (union) representatives on the EWC.

In contrast, Arrowsmith and Marginson’s (2006) study identified three instances where EWCs, all in the automotive sector, were being mobilized by one or both parties towards setting the context for local negotiations. In one case it was management that was utilizing the EWC to strengthen its message about comparative costs and performance at sites across Europe, with the aim of reinforcing the context for local negotiations at larger and higher cost sites located in two countries. In a second case, context-setting activity was primarily engaged in by the employee side (assisted by national trade unions), which was undertaking regular surveys of aspects of working conditions in order to make comparative data available for local union and works council negotiators. In the third case, context-setting activity was being pursued by

both sides. Employee representatives were well aware of the ongoing comparisons of costs, performance and flexibility practices that management compiled across its European operations – and that “Europe” was an ever-present factor in local negotiations. At the same time, the employee representatives – supported by the main national trade unions – regularly undertook their own surveys of working conditions, an activity of which management was apprised. Two circumstances would seem crucial in accounting for these instances: the existence of internationally integrated production operations under a single European management structure; and strongly organized sites linked through a functioning international trade union network.

The conclusion of transnational joint texts and framework agreements (hereafter agreements) between MNCs and representatives of their workforce covers a small but growing number of companies. There is both a European and global dimension to the phenomenon, with EWCs being relatively prominent in agreements which are Europe wide in their application, while Global Union Federations (GUFs) are to the fore in the conclusion of “international framework agreements” (IFAs) whose application tends to be worldwide. The focus will be on the European-wide texts, once the wider state of play has been reviewed.

By late 2007, estimates suggested that EWCs were party to over 70 agreements concluded with 40 MNCs, figures which had increased from 17 agreements in just nine MNCs in 2001 (EIRR, 2007). Transnational negotiations appear to have particularly taken root amongst a core group: ten companies accounted for over 30 of the known agreements. Some, but not all, agreements are co-signed by EIFs and/or national trade unions: recent prominent examples include those at Schneider Electric (EMF) and Suez (EPSU and relevant French trade unions). European-level agreements concluded solely by EIFs with MNCs, such as those between EMF and Areva and Schneider Electric, remain the exception. EWC and other European-level agreements are spread across a range of sectors, although with some concentration in metalworking.

The IFAs, addressing core labour standards within the MNCs concerned and usually also their supply chains, had been concluded by GUFs in some 65 companies by mid-2007 (EIRR, 2007), most of which have been signed since 2000. Although global in their reach, the great majority (58 out of 65) have been concluded with European-based companies. They are largely found amongst MNCs which are inserted into producer-driven supply chains; rather few have been concluded by multinationals controlling buyer-driven supply chains. Accordingly, IFAs are concentrated in particular sectors, including construction, energy, food manufacturing and metalworking (Hammer, 2005; Schoemann et al., 2008). In addition, the world works councils which have been established in a few MNCs have concluded some agreements. Examples include those at Daimler, SKF and VW.

Crucially from a trade union perspective, the employee-side negotiating agent differs between these two main types of transnational agreement. In the

case of EWC agreements, and the handful concluded by world works councils, the agent is an elected body of all employees, and not a trade union organization. IFAs, on the other hand, have almost all been negotiated by an international trade union organization, most usually a GUF (exceptions are four which have been concluded with EWCs as the sole signatory). Yet these European and global agreements, and therefore their employee-side signatories, do intersect. Fifteen IFAs have been co-signed by EWCs, and in several others EWCs are specified a role by the agreement in the implementation and monitoring of the provisions of agreements. And, as noted above, EIFs and national trade unions have played a role in the negotiation of, and are signatory to, some EWC agreements, a trend which is increasing. Agreements solely concluded with EWCs are more common amongst US-owned MNCs (Béthoux, 2008).

EWC agreements address a range of topics, amongst which four themes are prominent. First, underlining the intersection with IFAs, is corporate social responsibility, covering basic labour rights and core labour standards. Second is elaboration of key principles which underpin company employment and personnel policies. Third is business restructuring and its effects, where two sub-types are identifiable: statements of general principle as to how restructurings should be handled (e.g. Axa's 2005 agreement); and framework agreements which address the handling of specific restructuring decisions by providing a frame for subsequent local negotiations. The latter type of agreement has been concluded at GM Europe (on four occasions), Ford Europe (two occasions) and Danone's biscuits division. Specific aspects of company policy are the fourth theme, of which the most common are health and safety and data protection, privacy and electronic communication. Some agreements cover more than one of these headings. In particular, several agreements addressing core labour standards also elaborate key principles underpinning company employment and personnel policies (e.g. Air France, Lyonnaise des Eaux, Vivendi).

Findings from interviews conducted with management and trade union actors involved in some of the negotiations (*European Works Councils Bulletin*, various issues; Arrowsmith and Marginson, 2006) throw light on the motives of the parties to engage in the conclusion of EWC agreements. Three main kinds of motive can be identified. The first stems from management concerns to secure legitimacy for pan-European, company human resource policies. In those MNCs which are elaborating and implementing common, cross-border policies, or policy guidelines, across their European operations, management may see advantages flowing from the additional legitimacy that can arise through securing employee representatives' consent or approval via a formal agreement. The second, which also primarily relates to management, stems from minimizing the transactions costs potentially entailed in a series of parallel local negotiations. The conclusion of a common European frame in negotiation with employee representatives at the EWC can significantly reduce the management time and resources involved

in a series of local negotiations each searching for a solution to a common problem, and the attendant danger of any one local negotiation setting an unfortunate precedent. Considerations of transactions costs are to the fore in cross-border restructurings, where securing agreement on a set of principles for handling a restructuring at European level can expedite, as well as coordinate, the series of local negotiations that will nonetheless have to take place. They are also particularly salient for “new” issues on the bargaining agenda, which are not currently the subject of local agreements, such as privacy and e-communication. Third are instances where management is pressured into a European-level negotiation by a demonstrable employee-side capacity to coordinate local negotiations and, if necessary, cross-border forms of action. Such capacity rests on a strong cross-border network of employee representatives, effectively resourced by national trade unions working in cooperation with the relevant EIF. This third consideration has been most prominent in prompting European-level negotiations in the automotive industry over restructuring, including the agreements at Ford Europe and GM Europe. In practice, two or even all three of these motives may come into play in the decision to negotiate any given agreement.

The extent to which, although legally non-binding in nature, EWC agreements are intended to be mandatory in their implementation for the signatory parties, and for management and employee representatives within the different operations of the company across Europe, varies considerably. The nomenclature of an agreement, however, is not a good guide as to its regulatory nature: some so-called “agreements” are little different in character to other texts titled “joint declarations” or “charters” (Béthoux, 2008). Examination of the provisions of agreements suggests that they can be differentiated according to four main categories in terms of the “softness” or “hardness” of the regulation they introduce (Carley, 2001). At the softest end of the possible regulatory spectrum are agreements which elaborate general principles of a company’s personnel policy, but which do not envisage or require any specific actions. Examples include the charters adopted at Suez and Vivendi, upholding core labour standards. Harder in their regulatory nature are agreements which commit the signatory parties to specific actions, such as the establishment of a health and safety observatory at ENI, but do not invoke action by local management and employee representatives. Harder in nature also are framework agreements which establish a set of general principles on a specific issue, and incite – but do not require – follow-up action by management and employee representatives at lower levels of the MNC. Examples include Danone’s agreement on training. Harder still in their regulatory nature, and coming closest to the status of the provisions laid down in national and local company agreements, are obligatory frameworks which require actions by the parties at lower levels within the company, but where national and local-level practice in implementation can vary. The principal examples are the agreements on specific restructuring decisions cited above.

Amongst agreements dealing with any one of the four themes identified above, there are variations in their regulatory nature. For example, the provisions of some agreements on core labour standards are advisory, whilst others are mandatory. Lying behind this difference is the existence, nature and extent of any monitoring of implementation provided for (Hammer, 2005). Agreements mapping out general principles for the handling of restructuring also vary as to whether they are advisory (Deutsche Bank) or mandatory (Axa), whereas those agreements addressing specific restructuring processes tend to be mandatory.

Conclusions

The continuing progress of European market and economic integration, accompanied by reconfiguration of production and market-servicing on a European-wide basis, has transformed the context for collective bargaining from one that was traditionally nationally-bounded to one that now exhibits significant cross-border interdependencies. The re-casting of the reference points of national and local negotiations has prompted cross-border activities and initiatives by employers' organizations and individual employers, notably MNCs, and trade unions and other workforce representative structures aimed at developing a transnational dimension to collective bargaining. The activities and initiatives involved are both unilateral and bilateral, and at present have an experimental character, as the actors search for appropriate responses to the growing cross-border interdependencies. In large part, they also represent unintended consequences of the ongoing process of European market and economic integration. Put differently, the developments reviewed above do not have their origins "by design" in the formal institution-building through which the EU has sought to complement market and economic integration with a social dimension. Even EWCs, whose origin lies firmly in the social dimension's programme of institution-building, were established as structures for employee information and consultation only. Their subsequent mobilization as focal points for cross-border context setting in local negotiations and for transnational negotiations was not foreseen by the European legislator. An implication for other global regions, is that other projects promoting regional market integration could themselves have unanticipated consequences in the form of the emergence of a transnational dimension to collective bargaining.

The unilateral initiatives by both employers and trade unions which are opening up a transnational dimension to collective bargaining take the form of cross-border "context-setting" activity for, and attempts to coordinate the agenda and outcomes of, local and national collective negotiations. Amongst employers, it is local negotiations within MNCs which are to the fore, whilst amongst trade unions the focus is on the sector-level negotiations which continue to be a cornerstone of arrangements in much of western

Europe. The intention of these unilateral initiatives seems primarily to be to strengthen one side's position in comparison to the other. For example, faced by MNCs' major business decisions, which are increasingly cross-border in scope and impact and which often draw on cross-border comparisons of costs and performance, the growing number of instances of cross-border mobilization and action by trade unions and EWCs signal a determination to demonstrate cross-border strength by one side in relation to the other.

Bilateral activity is most clearly evidenced by the conclusion of EWC joint texts and framework agreements, and also by the growing number of IFAs being concluded (largely by European-based MNCs). The momentum which appears to be building prompted the European Commission, in 2005, to signal that it was considering bringing forward a proposal for a measure to give legal underpinning to transnational agreements, where the parties so wish. Such a measure would regularize developments, including questions of legal application (and therefore implementation and enforcement) and which representative structures could act as employees' negotiating agent. Currently, however, there are few signs that the Commission is intent on progressing further. Nonetheless, the considerations which have generated the recent momentum towards transnational agreement-making are likely to persist. Key questions concerning the future trajectory of developments include, at global level, the adequacy of the provisions of IFAs for ensuring effective implementation across the operations of MNCs and their suppliers. At European level, they are likely to focus on the capacity of trade unions, in a context of continuing cross-border restructuring of companies' operations, to secure an increasing number of European or EWC agreements regulating the decisions involved, and their consequences, in terms which are quasi-binding. There are also reasons for anticipating the conclusion of further EWC agreements which address concrete aspects of terms and conditions. Transnational collective bargaining in Europe may be on the threshold of becoming more like its national and local counterparts, in terms of both substantive content and the conventions governing implementation.

References

- Ahlers, E.; Oez, F.; Ziegler, A. 2007. "Company relocation: The consequences for employees", WSI Discussion Paper, No. 151 (Dusseldorf, WSI in der HBS).
- Arrowsmith, J.; Marginson, P. 2006. "The European cross-border dimension to collective bargaining in multinational companies", in *European Journal of Industrial Relations*, 12:3, pp. 245–266.
- Béthoux, E. 2008. "Transnational collective bargaining in Europe", Working document prepared for Europe et Société Symposium: "Transnational collective bargaining in Europe", Paris, 5–6 February.
- Carley, M. 2001. *Bargaining at European Level? Joint Texts Negotiated by European Works Councils* (Luxembourg, Office for Official Publications of the European

- Communities/European Foundation for the Improvement of Living and Working Conditions).
- Edwards, T. 2004. "The transfer of employment practices across borders in multinational companies", in A-W. Harzing and J. Van Ruysseveldt (eds): *International Human Resource Management* (second ed.) (London, Sage).
- EIRR. 2007. "International: Suez signs three transnational agreements", in *European Employment Relations Review*, No. 404, 12 Sep.
- Erne, R. 2008. *European Unions* (Ithaca, New York, ILR Press).
- Hammer, N. 2005. "International Framework Agreements", in *Transfer*, 11:4, pp. 511–530.
- Hancké, B. 2000. "European Works Councils and Industrial Restructuring in the European Motor Industry", in *European Journal of Industrial Relations*, 6:1, pp. 35–59.
- Keene, M. 2006. *The Coordination of Collective Bargaining in Europe: Annual Report, 2005* (Brussels, ETUI).
- Léonard, E.; Erne R.; Marginson, P.; Smijsmans, S. 2007. *New Structures, Forms and Processes of Governance in European Industrial Relations* (Luxembourg, Office for the Official Publications of the European Communities/European Foundation for the Improvement of Living and Working Conditions).
- Marginson, P. 2005. "Industrial relations at European sector-level: The weak link?", in *Economic and Industrial Democracy*, 26:4, pp. 511–540.
- Marginson, P.; Sisson, K. 1998. "European collective bargaining: a virtual prospect?", in *Journal of Common Market Studies*, 36:4, pp. 505–528.
- Meardi, G.; Marginson, P.; Fichter, M.; Frybes, M.; Stanojevič, M.; Toth, A. 2008. "The complexity of relocation and the diversity of union responses", in *European Journal of Industrial Relations*, 14.
- Schoemann, I.; Sobczak, A.; Voss, E.; Wilke, P. 2008. *Codes of Conduct and International Framework Agreements* (Luxembourg, Office for the Official Publications of the European Communities/European Foundation for the Improvement of Living and Working Conditions).
- Schulten, T. 2003. "Europeanization of collective bargaining", in B. Keller and H-W. Platzer (eds): *Industrial Relations and European Integration* (Aldershot, Ashgate, pp. 112–136).

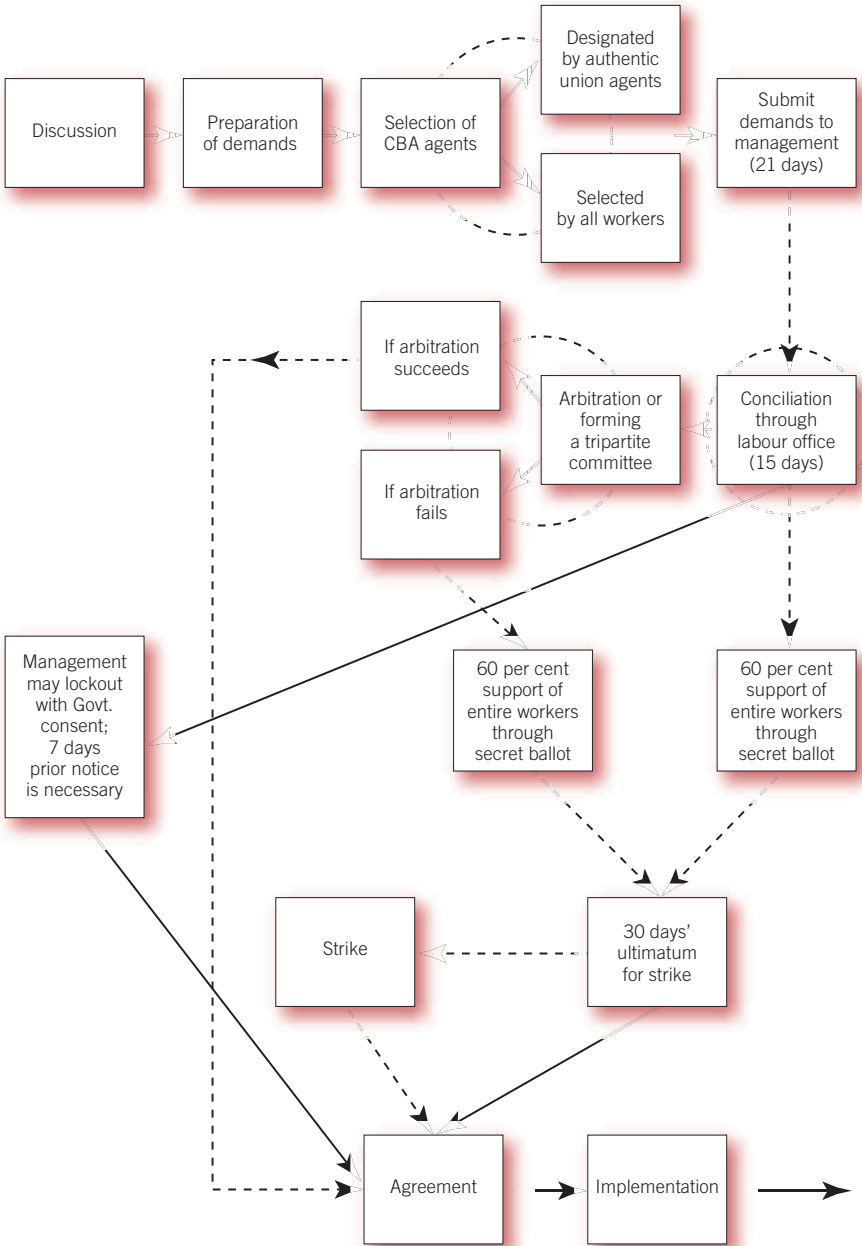
Collective bargaining: The context of Nepal

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Fig. 1. Legal process of collective bargaining agreements according to the Labour Act 1992



Existing union structures under trade union law

There are three types of union structures provided by the Trade Union Act 1992 in Nepal – plant/enterprise-level union, national federations and national confederations. In order to register a plant/enterprise-level union, at least 25 per cent of the total number of workers in the enterprise concerned should be members. Thus the law provides space for a maximum of four unions at the plant level. This suggests that the law has promoted multiplicity and competition among unions at the grass roots of the collective bargaining process in the formal sector.

Similarly, a national federation or trade union association can be registered if 50 enterprise unions or 5,000 individual members come into association for this purpose. However, for the informal sector, 500 individual workers within the same type of work, if they organize themselves, can register a national federation. Organizing workers in informal segments of employment, and developing such federations, is a very difficult but also very necessary task. Because the overwhelming majority of the working class is involved in the informal economy, a legal process for organizing that was easier to use was considered essential.

For a national federation to be recognized by law, at least ten national federations as affiliates are compulsory under its umbrella, where at least six should be large federations with 50 enterprise unions or a minimum of 5,000 individual members.

Unions in collective bargaining

Collective bargaining in Nepal is basically limited to the enterprise level. Collective bargaining representatives will be elected for two years from among the registered enterprise-level unions by secret polls under the auspices of the labour office of the relevant location/district/zone of the enterprise in question.

However, there is no legal provision for industrial bargaining. As a result, the role of national federations in collective bargaining is somewhat unclear, and hence the role of national federations is based on their relative strength. If they are strong enough, the management at the enterprise level can request their involvement in collective bargaining with the enterprise-level union if the two negotiating partners are unable to reach a settlement. Similarly, if the enterprise-level union is unable to solve a particular problem and needs the involvement of a national federation, it can call for an intervention by the federation to which it is associated.

Confederations have a policy negotiation role in collective bargaining at the national level, and also the potential for policy interventions within a tripartite framework. In practice, therefore, tripartism is non-existent at the industrial/sectoral level.

Implementation is extremely difficult

In principle, collective bargaining agreements have full legal status but their implementation and enforcement proved to be an extremely difficult task in Nepal. Even the provisions of the Labour Act 1992 and other related laws are still not respected and enforced throughout the country. Only in those enterprises where unions are strong enough are the provisions of law and collective agreements properly respected and enforced.

Current overall scenario

The current national scenario is very fluid and highly transitional. Various social groups are in significant confusion and some are creating socio-economic and political disturbances. Political unionism in the form of a Maoist union called the All Nepal Federation of Trade Unions (ANFTU) is fighting forcefully for space. Industrial unrest has become common and laws and regulations are frequently violated. Violent actions have adversely affected economic activities. Closures are frequent and disinvestment and outflow of capital are also being observed.

Nepal's economy is significantly dependent on remittances from abroad as more than 4 million workers of productive age out of a total 14 million in the workforce are working abroad, most of them under conditions of serious vulnerability.

Challenges to develop an effective collective bargaining system

While stubborn feudal attitudes among many employers still need to be changed, this process has accelerated after the successful mass movement of April 2006, which resulted in the King and the monarchy being pushed aside. The country has entered the stage of a federal democratic republic.

However, the Nepalese State is still essentially pro-capital and anti-labour. Previously, under the dominant role of the monarchy and the King's palace, feudal class elites (with land as their major form of property) retained full control over the State and Government. However, after the success of the popular mass movement of 1990 and the establishment of a multi-party parliamentary system, the influence of both the business class and the working class has grown, albeit that the influence of the former has seen a rapid increase and that of the latter a much slower and less dramatic increase.

These trends of shifting class influence are reflected in the current scenario of collective bargaining in the country. The business class is trying to use its access to and influence on the government bureaucracy and political

leaders in its favour, and asserting its economic power both in the political sphere and within the labour market.

Certain obstacles have also been created by the Maoist union, which sometimes operates very aggressively with populist slogans and even violent attacks in the workplace. The general tendency of employers to pacify them through donations (and thereby avoid real collective bargaining) is a bitter reality. The challenge is to normalize this extremist union and lower its degree of aggressiveness.

Another challenge to the unions has been the significant pressures exerted on the national government by the international financial institutions, particularly the World Bank, in favour of multinational capital and big business. In response to these pressures, employers and government often come together, creating a united front against the unions.

For a highly effective collective bargaining system to emerge, another basic challenge is to the need to develop a common position as trade unions and harmonize inter-union relations.

Union efforts

In the year 2000, two major national trade union confederations, GEFONT and NTUC, began a major joint initiative through the establishment of the GEFONT–NTUC Taskforce, a body created in order to harmonize their relationship and better unify the movement. This joint work has created a situation where rivalry has been minimized even at the local level and a culture of working together began to take a shape. Based on the Taskforce's practice, a further step was taken in the form of NTUC/GEFONT Joint Board, which opened a joint secretariat office. Joint initiatives have been taken on every major issue to develop a common position.

This effort is also aiming to ensure full recognition of unions in every segment of employment, so that the basic rights of workers can be guaranteed everywhere. In addition, social security has been given a top priority by the unions and efforts have been focused on inserting provisions reflecting the principles of fundamental workers' rights in the country's new Constitution (as it was possible to include social security as a fundamental right in the interim Constitution).

Operating under a consensus with the key employers' organization, a new institution, the National Labour Commission, was introduced as a new mechanism for the resolution of disputes and enforcement of legal rules as well as the implementation of collective bargaining agreements. The establishment of this new institution is currently under way.

References

- GEFONT. 2007. *Enhancing Decent Work Agenda in Workplace*, Empirical Research Report of collective bargaining practices in Nepal (Kathmandu, GEFONT-ILO).
- Government of Nepal: Ministry of Labour, Labour Act 1992.
- . Ministry of Labour, Trade Union Act 1992.
- NTUC/GEFONT Board, Samyukta Trade Union Aandolan Nirmantarpha. 2007. *Towards a united trade union movement – A collection of four Joint Declarations of Nepali trade union centres* (Kathmandu).
- Rimal, B.; Manandhar, N. 1998. *Samuhik Saudaebaji: Prashichhyan samagri* (Collective Bargaining: Education Manual) (Kathmandu, GEFONT-ILO Cooperation).
- Upadhyaya, U. 2007. “Production Relations and Class in Nepal: A Historical Perspective”, Paper presented at the National Seminar on Restructuring for Social Transformation: Agenda for trade unions, organized by GEFONT and FES–Nepal, 19–20 April, Kathmandu.
- . 2007. “Class Struggle and Social Movement Unionism: Experiences in the Nepali Context”, Paper presented at the Asian Regional Conference on Participatory Democracy and Popular Power, Organized by Left International Forum-Sweden and Transform Asia-Philippines, 30-31 January, Manila.

Perspectives on collective bargaining in the global south

The case of South Africa

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Introduction

Collective bargaining in South Africa has experienced fundamental changes since 1995 when a complete overhaul of the labour market was undertaken. However, a careful examination of the post-apartheid industrial relations framework shows that the balance of power has shifted increasingly in favour of employers.

Employers not only have a right to resort to lock-outs when workers embark on industrial action, they can also hire replacement labour during strikes. At the same time, workers in essential and maintenance services are prohibited from taking strike action and whenever there is a stalemate between them and their employers, all workers can do is seek conciliation and arbitration. In addition, there are a range of apartheid-era laws which limit the way that workers engage in marches and pickets.

A brief background of collective bargaining in South Africa

Collective bargaining in South Africa has a long and difficult history. Under apartheid and especially prior to the Wiehahn Commission's recommendations in 1979, collective bargaining was the preserve of Whites, Indians and Coloureds. Until then Black¹ workers were not defined as "employees" and while they could form and join trade unions, such unions were not recognized under the Industrial Conciliation Act of 1924.² This meant that black trade unions could not join industrial councils – forerunners of today's bargaining councils – and black workers remained effectively excluded from the racialized bargaining system.

Changes introduced in the late 1970s, however, had their immediate genesis in the 1973 Durban strikes by dock workers. After the strikes, new forms of militant, black-led trade unions emerged and began to push workers' demands aggressively at the shop-floor level. Additionally, the formation of the Wiehahn Commission in 1977 to investigate and make recommendations on South Africa's industrial relations regime resulted in amendments to the industrial relations law in the early 1980s, in which black workers were recognized for the first time as "employees" in terms of legislation. This meant that black workers could form and join trade unions as well as participate in industrial councils for purposes of collective bargaining.

1. "Black" here means Black African. Under the Population Registration Act (30 of 1950), the apartheid regime divided the South African population into four distinct racial groups: White, Coloured, Indian and (Bantu) African.

2. No. 11 of 1924.

These reforms did not, however, fundamentally alter the dualist nature of the apartheid labour market system. Adler³ argues that the reforms were necessary because they “opened up a process through which the unions were able to transform the system from within”. Black-led unions then began to organize and recruit workers in a climate of legitimacy and despite concerted efforts by government and employers to restrain their growth, they were able to demand and win significant concessions.

All in all, collective bargaining for black workers remained at plant level with unions largely reluctant to join the sector and area-based industrial councils, partly because they perceived them to be conservative and limiting (Godfrey, Theron and Visser, 2007, page 5)⁴ and partly as a strategy to build their strength at plant level. This enabled unions to win an increasing range of collective bargaining rights including those relating to wages, work restructuring and disciplinary action (Adler, *ibid.*).

The post-Wiehahn Commission period of the 1980s saw a huge increase in the number of unions established and also in the number of workers joining unions. Importantly, this period also coincided with increasing repression by the apartheid state against liberation movements, activists and unions. Towards the end of the 1980s, and with white capital – the bedrock of apartheid – recognizing that political change was inevitable if it was to remain profitable, a series of reforms began to be initiated at both the political and socio-economic levels.

Most significant of these was the formal dismantling of apartheid in the early 1990s, and the election of the African National Congress (ANC) in 1994 as the first democratic and black-led government in the country.

From compulsion to voluntarism: South Africa’s collective bargaining framework after 1994

The Constitution

The new ANC government embarked on a substantive overhaul of the labour market in 1995, and a Labour Market Commission was appointed to examine and make recommendations on, among others, reforms to the entire labour relations framework. The outcome of this exercise was the Labour Relations Act (66 of 1995) (LRA) which removed many of the limitations and weaknesses of the apartheid era, and introduced a host of innovative features in industrial relations, including an elaborate dispute resolution mechanism and new methods of collective bargaining.

3. No year of publication is provided. The article is available at www.columbia.edu/itc/seminars/671/adler/part2.html (accessed on 12 May 2008).

4. Citing Du Toit et al., 2006, pp. 10–11.

In the interim Constitution (200 of 1993), the right to collective bargaining was recognized as one of the essential features of the post-apartheid labour market. Section 27(3) provided that workers and employers had “the right to organize and bargain collectively”, while subsection (4) stated that workers had “the right to strike for the purpose of collective bargaining”. The wording of subsection (4) is especially significant as it expressly tied collective bargaining to the right to strike. The final 1996 Constitution (hereafter, the Constitution) does not however contain similar phraseology and collective bargaining and the right to strike are presented as separate stand-alone rights.

Section 23(1) of the Constitution provides that “everyone has the right to fair labour practices”. Section 23(2)(c) stipulates that every worker has the right to strike while section 23(5) states that:

Every trade union, employers’ organization and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).⁵

What is significant about section 23 (“the labour relations clause”) is that it severs the two rights and, in contrast to the earlier constitutional framework in which workers could justifiably argue they needed to strike in order to enforce their right to collective bargaining, in the post-1996 constitutional era, this connection has effectively been removed. It has taken judicial intervention to re-emphasize that, devoid of the right to strike, the right to collective bargaining lacks meaning. In the 2002 Constitutional Court case of *NUMSA and others v. Bader BOP (Pty) Ltd*,⁶ the Court, while considering the question whether a minority union and its members could strike in order to persuade their employer to recognize certain of its organizational demands, pointed out that “it is through industrial action that workers are able to assert bargaining power in industrial relations. The right to strike is an important component of a successful collective bargaining system”.⁷

We must also emphasize the textual difference between the right to collective bargaining as found in the interim Constitution and its formulation in the final Constitution. In the former, the right to collective bargaining was applicable to workers and employers generally. In the latter, this right

5. Section 36 is what is known as the general limitation clause. It states that if any right in the Bill of Rights is to be limited, then such limitation must only be in terms of a law of general application, and the limitation must also be reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom. In addition, the section lays down a number of factors that the limitation must comply with, including the importance and extent of such limitation, and also whether there are other less restrictive means of achieving the same purpose.

6. CCT 14/02.

7. Para. 13.

has been restricted to “every trade union, employers’ organizations and employers”. While the objective of the legislature may have been to prevent a proliferation of collective bargaining processes at the workplace and hence encourage unionization, it means unfortunately that unless workers are formally constituted in unions, they may not be able to enforce their right to collective bargaining.

A key feature of the post-apartheid labour market is that collective bargaining is entirely voluntary. This is a fundamental change from the earlier years when both unions and employers had a statutory duty to bargain. Cheadle (2006, page 35) points out that section 23 of the Constitution creates a “freedom” not a “right” to bargain. In the event, the Constitution does not impose a corollary duty on employers to bargain. Under the previous apartheid Labour Relations Act, the refusal by an employer to bargain constituted an unfair labour practice and this could be challenged in the Industrial Court. The reality now is that as the Supreme Court of Appeal has observed in the case of *SANDU v. Minister of Defence and Others*⁸ the Constitution:

[W]hile recognizing and protecting the central role of collective bargaining in our labour dispensation does not impose on employers or employees a judicially enforceable duty to bargain. It does not contemplate that where the right to strike is removed or restricted, but is replaced by another adequate mechanism, a duty to bargain arises.⁹

The alternative “adequate mechanism” is the elaborate structure of organizational rights granted to workers and unions under Chapter III of the Labour Relations Act.

The new Labour Relations Act

Removal of the duty to bargain in the new Labour Relations Act (66 of 1995, hereafter “the LRA”) was supplemented by an extensive provision of organizational rights for unions for purposes of collective bargaining. Thus, Chapter II of the LRA protects the rights of workers and employers to associate for purposes of advancing their interests, but it is in Chapter III that the right to collective bargaining is given impetus. Part A of this chapter provides unions with a raft of organizational rights, Part B makes provision for collective agreements, Part C establishes bargaining councils, Part D sets up bargaining councils specifically for the public sector and Part E establishes statutory councils.

What emerged therefore after the extensive re-examination of the collective bargaining system by the Labour Market Commission in 1995, were

8. [2006] SCA, 90 (RSA).

9. Para. 25.

two main bargaining structures; bargaining councils and statutory councils. However, an additional mechanism was created to run parallel to the collective bargaining system, and these are workplace forums established under Chapter V of the LRA. Although workplace forums are meant to deal with issues traditionally handled by bargaining councils, such as work organization and job grading, their focus is less on collective bargaining and more on workplace change. We will now examine the three collective bargaining structures in some depth.

Bargaining councils

Bargaining councils are the pre-eminent bargaining structures in South Africa's new labour relations framework. According to section 27 of the LRA, one or more registered trade union and one or more registered employers' organization may establish a bargaining council for a sector or area in either the public or the private sector.

Section 28 of the Act describes the powers and functions of bargaining councils which include the power to conclude collective agreements, enforce agreements, prevent and resolve labour disputes, conduct education and training, and establish medical aid schemes and provident and pension funds. Bargaining councils are also empowered to "extend services and functions ... to workers in the informal sector and home workers".¹⁰

Before a bargaining council can be registered, the trade union and employers' organizations must meet a number of conditions including in the main, being at least "sufficiently representative"¹¹ of the area and sector in which they operate. Furthermore, section 30(1)(b) of the LRA requires the constitution of every bargaining council to make provision for "the representation of small and medium enterprises". Where the parties in the bargaining council are representative of the majority of workers and employers in that sector, the council can request the Minister of Labour to extend its collective agreements to non-parties. The Minister then has no discretion and he or she must extend the agreement within 60 days of receiving the request.¹² Moreover, the Minister can also extend agreements to non-parties who fall within the registered scope of the council in cases where the parties (in the council), are only "sufficiently representative", and if failure to do so would "undermine collective bargaining at sectoral level or in the public service".¹³

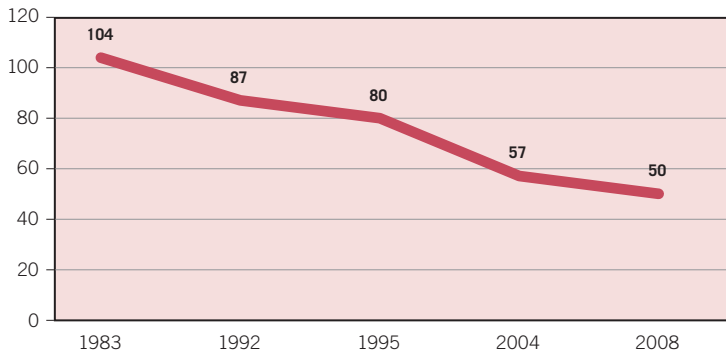
10. This followed amendments to the LRA in 2002 and seems to be in response to the rapid growth of non-standard forms of work in the South African labour market.

11. This term is not defined in the Act but it is assumed to connote a much lower threshold of representation for workers or employers within the given sector.

12. Section 32(2).

13. Section 32(5)(b).

Figure 1. Bargaining councils, 1983–2008



Source: DOL, at www.labour.gov.za (accessed 13 May 2008).

Thirteen years after its inception, the bargaining council system has, in the words of Godfrey, Theron and Visser, (2007) “proved to be very resilient”, but “it faces some serious challenges”. As figure 1 shows, since 1995 bargaining councils have declined from 80 to 50, a reduction of 37.5 per cent. By May 2008, there were 44 registered councils in the private sector and six in the public sector. Both firm- and plant-level bargaining are also on a downward trend. Not all registered bargaining councils are functional. At the time of writing, four councils in the private sector were already in the process of being wound up, so that the number of fully functioning councils is only 40.

The decrease in the number of bargaining councils is attributable to a variety of factors, including mergers, non-functionality, employer resistance to joining and participating in the activities of councils, and poor financial and administrative support by the Department of Labour. But perhaps the biggest challenge facing bargaining councils is the rise in non-standard forms of employment, which has led to declining numbers of union membership as the traditional core of standard workers gives way to fixed-term, casual and informal workers.

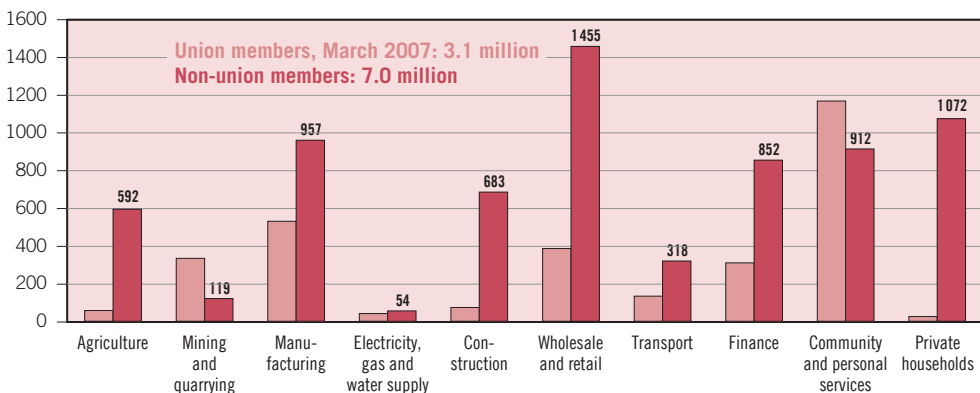
According to the September 2007 Labour Force Survey (LFS), by March 2007, trade union membership stood at approximately 3.1 million out of a total number of slightly over 10 million employees in South Africa. This means that only 31 per cent of workers belong to trade unions while approximately 70 per cent do not. Figure 2 shows union membership by sector and it is notable that the services sectors – retail, finance and community and personnel services, which are the fastest growing sectors of the South African economy – have the highest number of non-unionized workers. At the same time, the construction, agriculture, utilities (electricity and gas supplies) and domestic (private households) sectors have extremely low levels of unionization.

Godfrey (2007)¹⁴ argues that while the number of bargaining councils has declined, the number of workers covered by bargaining council agreements has not changed, meaning that in certain sectors, centralized bargaining has become strengthened. In total however, bargaining councils cover only a quarter of the 9.5 million employees who fall under the Labour Relations Act and the Basic Conditions of Employment Act (Godfrey, Maree and Theron, 2005).

Besides the challenges thrown up by decreasing union membership, extending collective agreements to non-parties has sparked controversy and resistance by many employers. As discussed above, the LRA has created two mechanisms for the extension of collective agreements. In the first instance, where the trade unions and employers' organizations represent the majority of workers and employers respectively in a particular sector, the Minister of Labour has a statutory duty to extend such agreement to non-parties if requested to do so by the parties. In the second instance, the Minister has a discretion to extend an agreement to non-parties where the unions and employers are only "sufficiently representative" of workers and employers, in order to promote sectoral bargaining. Given declining union membership in various sectors, the problem of "sufficient representation" has become even more pronounced and many unions are no longer able to hold majority representation in their workplaces.

In addition, the Minister has employed a very restrictive approach to the discretion conferred by section 32(5)(b) to extend agreements. Godfrey, Theron and Visser, (2007) argue that this "policy shift" is ostensibly aimed at forcing unions "to get their act together and up their representivity" but it is instead doing more harm than good, since it continuously limits the extent

Figure 2. Trade union membership by sector, March 2007 (thousands)



Source: Labour Force Survey, Sep. 2007; DOL, 2007.

14. Citing Du Toit et al., 2006, p. 44: *Labour relations law, A comprehensive guide* (Durban, Lexis-Nexis Butterworths).

and reach of many agreements. In the event, workers in many vulnerable sectors such as security, contract cleaning and domestic work are left unprotected or earning lower wages with poorer conditions of work, in comparison with workers covered by collective agreements. Cheadle (2007) proposes that the Minister should have a wider discretion in regard to extensions but this should be underpinned by an established labour market policy, guidelines and codes of practice.

Once touted as the bedrock to underpin peaceful labour relations in the post-apartheid labour market, it is clear that they have not been as successful as initially envisaged. This however does not imply that they have outlived their usefulness; on the contrary, they remain the most viable means of defending the rights and interests of workers in the ever-changing nature of the post-apartheid labour market.

Statutory councils

Statutory councils are a midway mechanism between the voluntarism of bargaining councils and the discarded compulsion of collective bargaining under the apartheid industrial relations regime. The rationale for them is that they are meant to boost collective bargaining in sectors with low union and employer organization density. Establishment of a statutory council is less onerous than that of a bargaining council as it requires only a union or employer organization representing at least 30 per cent of workers or employers in a particular sector to apply for registration.¹⁵

Be that as it may, it is rather surprising that 13 years since they were first mooted, only a mere three statutory councils have been established. These are the Statutory Council of the Printing, Newspaper and Packaging Industry of South Africa in Gauteng Province, the Amanzi Statutory Council in the Western Cape and the Statutory Council for the Squid and Related Fisheries of South Africa in the Eastern Cape. The novelty built around statutory councils by lowering the threshold required for representation has not proved to be an incentive for unions to push for their establishment. Their absence is probably more a reflection of union weakness and failure to realize their strategic importance in collective bargaining, than employer resistance to their presence.

A statutory council that is not sufficiently representative of workers and employers within its registered scope is empowered to submit its collective agreement to the Minister of Labour and the Minister may then promulgate it as a sectoral determination¹⁶ for that sector. However, the type and number

15. LRA, section 39(1) and (2).

16. Sectoral determinations are established in Chapter 8 of the Basic Conditions of Employment Act (No. 75 of 1997). They are promulgated by the Minister of Labour on the advice of the Employment Conditions Commission and cover poorly organized sectors.

of issues which such an agreement may cover are limited and include dispute resolution functions, training and education and the establishment of provident, pension, medical aid, sick pay, holiday and unemployment funds.

Workplace forums

A borrowing from the German and Dutch model of works councils, workplace forums were conceived as a supplementary structure to the bargaining council system to facilitate joint worker and employer decision-making. They are provided for under section 80 of the LRA and can be established by a trade union or trade unions which represent the majority of workers in a workplace with more than 100 employees. Section 84 of the LRA designates a wide range of matters which presumably workplace forums could deal with, including work restructuring, product development, education and training, job grading, plant closure and retrenchments.

Unfortunately, workplace forums are still a paper invention and none have been established so far. Despite legislative protection which ensures that they are to be controlled by unions, they remain moribund because of what Du Toit (2008) calls fear by unions that they “would serve as cats’ paws for employers and sow divisions among workers”. Godfrey, Theron and Visser, (2007) argue that the forums in their current format are “dead ducks” but suggest that they can be radically revised (e.g. by having training for representatives who sit on the forum) and made compulsory in workplaces with at least 50 employees. They view the forums as playing a critical role in tackling the challenge of non-standard employment, an area where unions and bargaining councils have been spectacularly ineffective.

Tilting the balance of power in favour of employers: Collective bargaining and the right to strike

Removal of the duty to bargain on the part of employers, and its replacement with a bundle of organizational rights as well as the right to strike on the part of workers was deemed a sufficient mechanism for compelling employers to come to the bargaining table. This however is not borne out by existing practice. In fact, it is becoming increasingly obvious that employers are using legislative and non-legislative mechanisms to frustrate and deny workers their right to collective bargaining. Over a decade since the reforms initiated in South Africa’s collective bargaining system, the balance of power has gradually shifted in favour of employers.

It is notable that while the interim Constitution of 1993 expressly permitted workers “to strike for the purpose of collective bargaining”, the final Constitution effectively truncated the two rights. One may therefore argue that in the post-apartheid labour market, workers have to make a convincing

case of why strike action is required in order to compel their employer to engage in collective bargaining. To complicate matters, the organizational rights¹⁷ conferred by Chapter III Part A of the LRA are only applicable to trade unions that are either “representative”¹⁸ or “sufficiently representative” of workers. The LRA is silent on the kind of organizational rights applicable to unions that fail to meet the representivity criteria. Fortunately, the Constitutional Court has ruled in the NUMSA case¹⁹ that nothing expressly prevents non-representative unions from resorting to “collective bargaining and industrial action to persuade employers to grant them”²⁰ the organizational rights provided for in Part A of the LRA.

Another notable tilt in the balance of power is the right granted by section 64(1) of the LRA to employers to resort to lockout when workers embark on a strike. During industrial action, employers are increasingly resorting to lock-outs and the number has risen from six in 2002 to 27 in 2006 (DOL, 2006). If strike action is meant to squeeze the economic power of employers in order to compel them to come to the negotiating table, lockouts and the principle of “no work, no pay” no doubt have a disciplining effect on strikers as they are quickly worn down by any prolonged period of strike without wages. In the event, the majority of strikes since 1996 have been of short duration.

A third important weapon in the armoury of employers is the use of scab or “replacement labour” as it is referred to in section 76 of the LRA. In 2003, 36 per cent of employers reported using scab labour during strikes and the figure rose to 45 per cent in 2004 and 50 per cent in 2005 before dropping to 27.2 per cent in 2006 (DOL, 2006). The Department argues that this could be the reason why employers are able to hold out for very long periods of time as was evidenced during the security workers’ strike in 2006.

The fourth crucial tilt in favour of employers is the prohibition of strikes by the LRA, of workers engaged in essential²¹ and maintenance services.²² Essential services are not defined in the Act but an Essential Services Committee has been designated under section 70 of the Act to determine which services are essential and which are not. So far, the parliamentary, police, nursing and correctional services have been deemed to be essential services. On the other hand, a maintenance service is defined as a service where

17. Such rights include access to employees at the workplace, deduction of trade union subscriptions, election of shop stewards and leave for trade union activities.

18. This is defined in section 14(1) and section 16(1) of the LRA as a trade union or trade unions “that have as members the majority of the employees employed by an employer at the workplace”.

19. CCT 14/02.

20. Para. 40.

21. Section 65(1)(d)(i).

22. Section 65(1)(d)(ii).

“the interruption of that service has the effect of material physical destruction to any working area, plant or machinery”.²³

Essential services remain a bone of contention between unions and the State and since the advent of the LRA, public-sector unions have been fighting to press the Government to sign a minimum services agreement so that workers would be able to strike over activities which fall outside the scope of essential services. The State, however, has stalled and Government cleverly exploits the prohibition imposed by the LRA to blunt the right and ability of workers to strike for better terms and conditions of service. This reality came out sharply during the massive public service strike in June 2007; when the Government quickly warned workers in the police, prisons and nursing sectors that they faced disciplinary action including summary dismissal if they participated in the strike. A few days after the strike, the Department of Health issued hundreds of letters of dismissal to striking nurses; the dismissals were only reversed once the strike came to an end in late June.

It is unlikely that the Government will soon give up the instrument of essential and maintenance services which it seems to consider as one of its most powerful weapons for disciplining workers in the public service. This is especially the case when workers resort to strike action to try and push demands which they have failed to win during bargaining rounds.

Lastly, there are a plethora of apartheid-era laws which ensure that during industrial action, power is unquestionably cast in favour of employers. Such laws include the National Key Points Act (No. 102 of 1980), which designates certain important facilities (e.g. airports and major telecommunications centres) as national key points and severely restricts all manner of industrial action within or close to them, and the Regulation of Gatherings Act (No. 205 of 1993), which lays down restrictive procedures for pickets, marches and demonstrations.

Strikes often follow a breakdown in negotiations between workers and employers and looking at industrial action alone, it is clear that the workplace remains a site of serious contestation. As shown in table 1, the number of strikes and workdays lost dropped significantly between 1998 and 2000 before rising modestly in 2001 then dropping again at least until 2004. Thereafter, strikes increased by an extraordinary 108 per cent between 2004 and 2005.

The slight decrease in the number of strikes between 2005 and 2006 was nonetheless accompanied by a huge increase in the number of workdays lost, which jumped from around 2.6 million in 2005 to over 4 million in 2006. This was the highest number of workdays lost since 1998.

Official data for industrial action in 2007 is still outstanding although workers in many sectors downed tools in demand for better wages or an improvement in working conditions. A quarterly economic review published by the South African Reserve Bank states that in the first six months of 2007,

23. Section 74(1).

Table 1. Strikes and workdays lost to strikes, 1998–2006

Year	Number of strikes	Per cent increase/decrease on strikes yr/yr	Workdays lost	Per cent increase/decrease on days lost yr/yr
1998	527	n.a.	3 833 000	
1999	107	-79.7	2 627 000	-31.5
2000	80	-25.2	1 670 000	-36.4
2001	83	3.8	954 000	-42.9
2002	47	-43.4	616 000	-35.4
2003	62	31.9	920 000	49.4
2004	49	-21.0	1 286 000	39.8
2005	102	108.2	2 628 000	104.4
2006	99	-2.9	4 152 563	58.0

Sources: LRS, 2007 *Bargaining Indicators*, p. 41; Department of Labour, *Industrial Action 2006*, p. 17; own calculations.

the number of “man” (work) days lost to strike action was already 11.5 million, a figure far surpassing the previous record figure of 9 million workdays lost in the whole of 1987 (SARB, 2007).

Importantly for workers, solidarity and militancy appear to have increased in recent years, but there is also a strong indication of employer arrogance, intimidation and brutality against workers. State intimidation and harassment of workers also appear to have become a common response to militant strikes. During a strike lasting 96 days by private security workers in 2006, scores of people were killed on allegations of being strike breakers. In Durban and Cape Town, police used brutal force and indiscriminate arrests against the striking security workers.

The South African Transport and Allied Workers Union (SATAWU) – which represents the majority of private security workers – denied claims that its members were involved in the killings and pointed out instead that employers were using agent provocateurs to disrupt marches and pickets and cause public violence leading to police intervention.

Similarly, during a strike lasting 90 days by members of the South African Commercial, Catering and Allied Workers Union (SACCAWU) at a meat-processing plant in Gauteng Province, two union members were killed, one of them allegedly by police. The union also made allegations of racism and intimidation by company management acting in conjunction with local police officers (SACCAWU, 2006). It is interesting to note that in the 2006 Industrial Action Report, the Department of Labour mentions the strikes by security workers, contract cleaners and retail workers as “the most disposed to resort to brute force to settle disputes” (DOL, 2006). The increasing nature of violence during strikes forced COSATU at its ninth national congress in September 2006 to adopt a resolution calling for an enquiry into police brutality and an end to the use of private security agencies to terrorize striking workers (COSATU, 2006, resolution 3.10).

Globalization and its impact on collective bargaining in South Africa

South Africa's transition to democracy in the early 1990s also resulted in the full reintegration of its economy into the global economy. In 1995, South Africa became a member of the World Trade Organization (WTO) and, a year later, the ANC Government adopted the conservative macro-economic structural adjustment policy GEAR (Growth, Employment and Redistribution). Between 1997 and 2001, South Africa entered into what some have called "the GEAR period" which saw major cuts in public spending, the privatization of state assets and basic services, and massive job losses in traditionally dominant sectors such as mining and agriculture.

There are divergent views on the impact of globalization on the South African economy. On the one hand, writers like Godfrey, Theron and Visser (2007, page 20), argue that an analysis of the impact of globalization on the economy "is complex, even within a given sector, because of a range of other factors that also affect the sector". In other words, globalization alone cannot be taken as the major contributory factor to the changes experienced in the various sectors of the South African economy.

On the other hand, sociologists like Webster (2003) and Clarke (2003) observe that globalization in fact underpins most of the negative changes experienced in the economy such as casualization, externalization and informalization. Unfortunately, there is limited literature dealing with the impact of globalization on collective bargaining in South Africa. Clarke (2003) however argues that amongst other vulnerabilities, informal workers "fall outside the coverage [of] labour laws, social security legislation and collective bargaining agreements".

Similarly, Bezuidenhout and Fakier (2006) have observed in a study of contract cleaning workers that the implementation of neoliberal policies in South Africa's higher education sector has resulted in the outsourcing of support services (such as cleaning) to private-sector providers. Consequently, workers employed previously by the tertiary institutions are now employed by private contract-cleaning companies. The resulting triangular employment relationship has enabled the tertiary institutions to use the uncertain legal milieu existing between them and the employees to deny them many of their basic labour rights, including the right to organize and freedom of association. These two rights, it must be emphasized, underpin the right to collective bargaining.

Trade unions have been left with few options but to respond to the challenges brought about by globalization. Powerful unions like NUMSA (National Union of Metalworkers of South Africa) and NUM (National Union of Mineworkers) have located their collective bargaining strategies in the context of globalization.²⁴ In an address to NUMSA's national conference

24. For example, NUMSA's collective bargaining theme is "confronting the logic of capital through collective bargaining".

on collective bargaining in 2001, COSATU General Secretary Zwelinzima Vavi challenged unions to come up with smarter collective bargaining strategies in order to respond effectively to the “relentless attack” of globalization (COSATU, 2001).

Conclusion

In South Africa, labour relations are becoming more and more protracted, contrary to the vision of the LRA of a post-apartheid labour market that would be characterized by “social justice and labour peace”.²⁵ The role of collective bargaining in ensuring labour peace cannot be emphasized enough but, given the shifts built in both the Constitution and the LRA— which inevitably favour employers – it is not surprising that workers have been regularly forced to resort to industrial action in a bid to win what employers routinely oppose at the bargaining table.

Thirteen years since a new framework of industrial relations was crafted, South Africa’s collective bargaining system has demonstrated a high degree of versatility but at the same time a measure of flexibility. Employers and employees are at liberty to bargain; however, given the unequal relations of power at the workplace, it is obviously in the interests of workers that collective bargaining be strengthened.

An analysis of wages and other conditions of work shows that workers covered by bargaining agreements earn on average higher wages, more benefits and work in safer environments (NALEDI, 2007; 2008). This is a far cry from workers in poorly organized sectors who have to rely on sectoral determinations, or the minimum floor of rights provided by existing labour legislation such as the Basic Conditions of Employment Act and the Occupational Health and Safety Act.

Globalization has brought a raft of new challenges to unions in their exercise of bargaining power. Despite the absence of sufficient literature on the subject of globalization and its impact on collective bargaining in South Africa, we may conclude that the negative tendencies associated with this phenomenon in many sectors of the economy have also had a similar effect on the labour market. The fact that globalization has led to the casualization, externalization and informalization of workers in many sectors means that unions have increasingly lost the core group of workers that it has traditionally relied upon for organizing and collective bargaining.

25. Section 1 of the LRA.

References

- Adler, G. (no date of publication). "Institutional innovations for class compromise: The South African case", available at www.columbia.edu/itc/seminars/671/adler/part2.html.
- Bezuidenhout, A.; Fakier, K. 2006. "Maria's Burden: Contract cleaning and the crisis of social reproduction in post-apartheid South Africa", in *Antipode* (Blackwell Publishing).
- Cheadle, H. 2006. "Regulated flexibility and small business: Revisiting the LRA and the BCEA". Working Paper 06/109, Development Policy Research Unit, University of Cape Town.
- Clarke, M. 2003. "Class and identity in the context of labour market restructuring in Africa", available at www.arts.yorku.ca/african_liberation/conference_papers/clarke_print.html.
- Congress of South African Trade Unions (COSATU). 2006. Resolutions of the Ninth National Congress of the Congress of South African Trade Unions, available at www.cosatu.org.za.
- . 2001. "Collective bargaining in the context of globalization", speech by Zwelinzima Vavi, available at www.cosatu.org.za.
- Department of Labour. 2006. *Industrial Action Annual Report, 2006* (Pretoria).
- . 2007. "Trade unions in South Africa", available at www.labour.gov.za (accessed on 13 May 2007).
- Du Toit, D. 2008. "Collective bargaining trends and the law", paper presented at the National Labour Law Symposium of the Development Institute for Training, Support and Education for Labour (Ditsela), 7 May.
- Godfrey, S.; Theron, J.; Visser, M. 2007. "The state of collective bargaining in South Africa: An empirical and conceptual study of collective bargaining", Working Paper 07/130, Development Policy Research Unit, University of Cape Town.
- Godfrey, S.; Maree, J.; Theron, J. 2005. "Conditions of employment and small business: Coverage, compliance and exemptions", Labour and Enterprise Project, University of Cape Town.
- Labour Research Service. 2007. *Bargaining indicators 2007: A collective bargaining omnibus*, Vol. 11 (Cape Town, LRS).
- NALEDI. 2008. *Annual Report on Collective Bargaining*.
- . 2007. *Annual Report on Collective Bargaining*.
- South African Commercial Catering and Allied Workers Union (SACCAWU). 2006. Media statement on the Karan Beef strike, 2 Nov.
- South African Reserve Bank (SARB). 2007. *Quarterly Bulletin*, September, No. 245 (Pretoria).
- Statistics South Africa. 2008. *Labour Force Survey, March 2008* (Pretoria).
- . 2007. *Labour Force Survey, September 2007* (Pretoria).
- Theron, J.; Godfrey, S.; Visser, M. 2007. *Globalization, the impact of trade liberalization, and labour law: The case of South Africa* (Geneva, The International Institute for Labour Studies).
- Webster, E. 2003. "Fair globalization in southern Africa: a response to the ILO's World Commission on the Social Dimension of Globalization", *Labour, capital and society*, Vol. 36, No. 2.

Legislation

Industrial Conciliation Act (No. 11 of 1924) (Pretoria, Government Printer)
National Key Points Act (No. 102 of 1980) (Pretoria, Government Printer)
Regulation of Gatherings Act (No. 205 of 1993) (Jutastat, CD-Rom)
Labour Relations Act (No. 66 of 1995) (Jutastat, CD-Rom)
Constitution of the Republic of South Africa (No. 108 of 1996) (Jutastat, CD-Rom)
Basic Conditions of Employment Act No. (75 of 1997) (Jutastat, CD-Rom)

Cases

NUMSA and Others v. Bader BOP (Pty) Ltd, [2002] CCT, 14/02.
SANDU v. Minister of Defence and Others, [2006] SCA, 90 (RSA).

Global production chains, relocation and financialization

*The changed context of trade
union distribution policy*

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Introduction

“Highest rise in wage earnings for twelve years”. This was the headline for an evaluation of labour incomes in Germany, published in 2008 by the country’s Federal Statistical Office. There also seems to be a shift in public perceptions of trade unions. For many years, the assumption was that the unions were experiencing a slow death (declining membership, outdated programmes), but now there is more and more talk of a new surge in strength. Similarly, a majority of Germans want the unions to regain more influence within society.

The latest collective bargaining successes in many sectors and trades and also the public services are undoubtedly a positive signal for two reasons. First, workers’ incomes are rising strongly. Second, this means that the unions can once again take a more optimistic and self-confident view of the future. Neither of these factors should be played down or underestimated.

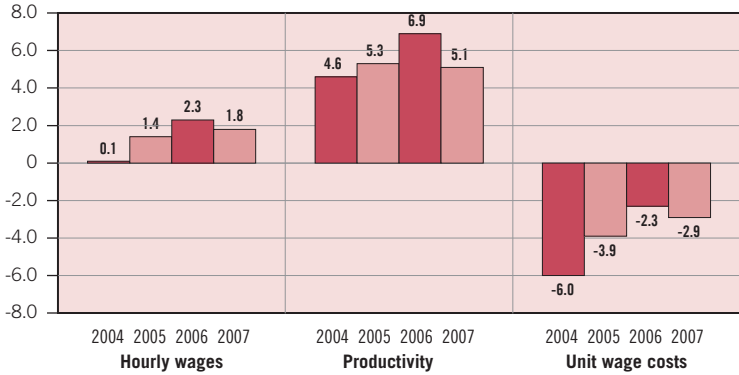
On the contrary, the new upswing in the fight for income distribution needs to be continued. Only thus can the longer-term trend of soaring profits coupled with stagnating or even declining mass incomes be corrected. Justice demands no less, but this is also the only way of overcoming the weaknesses of the German domestic market due to a lack of demand. To put it bluntly, the widening gap between the poor and the rich must also be closed by means of trade union distribution policy. This is, of course, no easy task.

The internationalization of production chains, the partial relocation of jobs (or the threat of it), and, above all, the new power of the financial investors have all led to a series of significant changes that need to be taken into account. These changes will be briefly assessed in this article, which will then look at some strategic responses that are being discussed and tried out within the trade unions.

Aspects of change

In the past, the catchword “globalization” was mainly used to describe the *new economic and political age*. However, the term has often hidden more than it analysed. The concept of “globalization” has served not only to describe but also justify the implementation of neoliberal policies against the social state. In many workplaces, employees found that references to globalized competition (“Workers in other parts of the world earn less ... Capital has to be wooed ...”) were being used to secure give-backs on pay and hours. The neoliberals in academia, politics and company boards painted a picture of industrial haemorrhage. According to them, pay in Germany was too high and working hours were too short to retain industrial production, which would gradually shift to East Asia and Eastern European Union. In future, they said, the manufacture of everything from microchips to jumbo jets would take place in low-cost countries only. Nor were these claims restricted

Figure 1. Metalworking: Productivity and unit wage costs in Germany (percentage change over previous years)



Source: German Federal Office of Statistics (firms with 20 or more employees, 2007 values).

to Germany. In many other Western European Union countries, the same scenario was used and is being used to put workers under pressure.

But this scaremongering has very little to do with reality, as witness the enormous balance of trade surpluses chalked up by Germany year after year. Also, a glance at the present-day cost structure soon makes it clear that the significance of wages is systematically exaggerated. For instance, in the German metalworking firms, after years of clear decline, wages account for less than 16 per cent of turnover. That in itself is a sign of high productivity. This trend towards productivity gains becomes even clearer when unit wage costs are examined (figure 1). They, too, have significantly decreased. Moreover, German firms are often world market leaders in high quality production.

To prevent the use of “globalization” as a smokescreen, a closer look is needed at the real changes in production, trade and companies’ financing conditions.

Relocations and relocation threats

In connection with more strongly networked production, the issue of job relocation is often raised. Examples of cost- or yield-oriented relocation include AEG in Nuremberg and Nokia in Bochum. In both cases, profitable production was shifted to cheaper locations in order to get closer to the firms’ aim of even higher yields.

Overall, however, the relocation of whole factories is still the exception. As a rule, it is individual components that are transferred. And it is worth noting at the outset that this process is not a one-way street. In the past, sites and thus workers in other countries have been affected by relocations to Germany.

Moreover, some relocating firms' fond hopes of better production conditions in faraway places are soon dashed. Relocations do not automatically lead to economic success. One recent study showed that every third firm is dissatisfied with the outcome of a relocation. This is further underlined by examples of firms moving back to their original location. The additional costs and increased operational problems tend to be underestimated. Contrary to initial hopes, in everyday practice more complicated logistics, more complex management structures, a lack of local infrastructure, bureaucracy, a shortage of sufficiently qualified labour and quality problems have often meant that production conditions are far from ideal.

Even stronger than the trend towards actual relocation has been the increase in relocation threats. Against a background of continuing high unemployment, increased pressure on the unemployed and rapidly growing fears of decline, talk of relocation certainly has the desired effect. Management hints of a possible relocation of parts of the production are systematically used as an instrument for disciplining the workers and the unions.

As an intention or threat to relocate always implies the sacrifice of workers' jobs and thus of their social security, trade unions cannot simply treat this as a matter for detached debate. Pointing out that exports make a significant contribution to employment security is not much comfort to workers directly hit by relocation – which is precisely why this whole issue is such a contradictory one for trade unions. However, there have been more and more cases recently in which unions and works councils have been able to portray an intended relocation as a “bluff” or a false management threat. Similarly, it has been possible to ward off some planned relocations. Experience so far suggests that both these types of success are achieved when attention is paid very early on to the economic circumstances of the firm and its surroundings.

Internationalization of the production chain

The relocation debate is really hiding another process. Qualitatively, the past 20 years have been marked by the increased construction of cross-border production chains in many industrial sectors. By and large, three different basic types have emerged (table 1).

The first is the reduction of processing depth through outsourcing to other enterprises. So the production chain becomes more fragmented and individual process steps are increasingly handled by subcontractors both at home and abroad.

The second is offshoring, under which further production capacity is built up abroad with the aim of reducing costs. In particular, it can often be seen that many new European Union countries are being linked into international production chains as component suppliers.

Table 1. Outsourcing, offshoring and relocation

Control	Non-affiliated firm	Domestic outsourcing (External domestic supply)	International outsourcing (External cross-border supply)
	Affiliated firm	Internal domestic supply	Internal offshoring (Internal cross-border supply)
		National	International
Location			

Source: ETUI-REHS.

Alongside these two vertical divisions, a third phenomenon has been the increasing development of parallel production. For example, in parts of the automobile industry, the same model may be built at different sites. This means that the plants are in direct competition with each other.

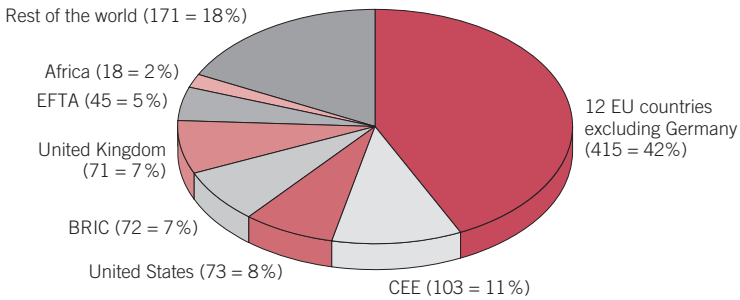
Apart from market access, the motives for international production networks have mainly to do with lowering production costs. The outcome has been that multinational enterprises have gained the upper hand over workforces and unions. The example of company-internal beauty contests to see who will be awarded the manufacture of a car model shows just how workforces are now at increased risk of being pitted against each other. These contests can be, and are, held over and over again, both between Munich and Hamburg and at the international level.

Rather than just accepting a broad-brush picture of dying production sites, it may be helpful to take a look at individual sectors and also at the economy as a whole. Briefly, the situation is as follows. In the garment and domestic appliance industries, employment in Germany has clearly declined in recent years. This production increasingly takes place in Eastern Europe and to some extent in East Asia. However, this finding cannot be generalized. For instance, automobile production, which dominates the German industrial scene, has seen an increase both in added value at home and in German firms' engagement abroad. The position in the metalworking industry as a whole is similar. It accounts for more than 55 per cent of Germany's exports. Due to internationalization, preparatory work is indeed increasingly being performed abroad, but Germany has lost none of its importance as a production site. In future, its economic structure will continue to develop via major leading sectors such as automobile production and mechanical engineering.

Table 2. German direct investments abroad, 1991–2006 (in billion euro at year end)

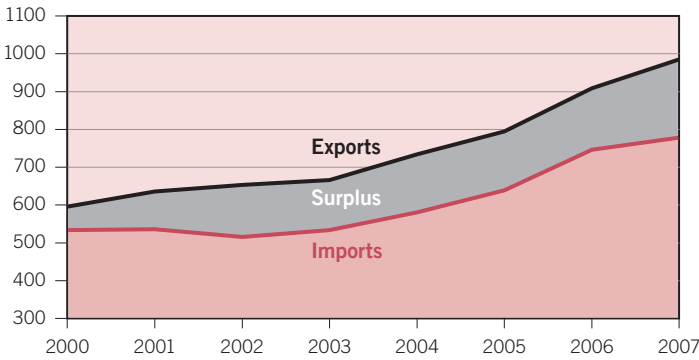
	1991	1995	1996	1997	1998	1999	2000	2003	2004	2005	2006
Total	134.3	178.8	231.2	283.0	318.6	411.5	582.3	657.8	679.2	786.2	811.4
<i>Industrialized countries</i>											
European Union	75.0	86.6	121.7	138.6	151.2	182.1	241.7	333.7	360.8	410.8	443.2
Belgium	9.9	14.3	15.6	16.7	17.2	19.0	23.9	28.5	27.2	29.0	33.5
France	12.2	14.6	18.1	18.9	23.4	23.5	33.0	35.0	38.8	39.4	40.6
UK	9.9	14.0	23.9	29.8	31.5	40.8	54.2	70.6	73.0	96.5	102.8
Italy	7.1	7.2	10.1	11.7	13.4	15.6	18.8	29.8	22.6	32.4	26.7
Netherlands	8.4	10.5	13.0	14.8	13.6	20.5	36.5	41.9	48.0	38.7	43.5
Luxembourg								27.2	34.2	41.3	42.5
Austria								20.2	21.2	25.5	28.8
Spain	7.7	6.6	7.6	8.5	10.2	11.8	13.5	18.4	18.0	18.6	19.0
Czech Rep.	0.3	1.4	2.8	3.4	4.5	5.5	7.3	11.3	12.6	15.3	18.8
Hungary	0.3	1.4	3.2	3.9	4.8	6.0	7.2	9.9	12.3	14.1	16.5
Poland								7.9	10.0	12.6	15.2
Malta								0.2	0.2	2.5	14.5
Switzerland								14.9	16.1	19.3	20.6
Russian Federation								2.8	3.9	7.1	11.2
USA	30.6	40.9	54.3	76.0	89.9	133.1	213.4	216.2	205.9	234.0	211.6
Japan	-	4.7	11.0	15.3	19.6	25.6	34.3	9.0	8.9	8.8	9.7
Threshold and developing countries	13.3	19.8	23.1	28.4	31.0	38.5	50.2	59.2	64.2	87.6	99.8
Brazil	3.9	0.0	7.1	8.0	7.7	7.2	8.6	4.8	5.8	8.5	9.1
China								10.5	11.9	14.3	15.1
India								1.7	2.1	2.2	2.8
Cayman Islands								5.5	4.4	7	9.1

Figure 2. German exports to selected countries and regions, 2007 (billion euro)



Note: BRIC = Brazil, Russian Federation, India and China.
 Source: German Federal Office of Statistics.

Figure 3. External trade, overall economy, 2000–07 (billion euro)



Source: German Federal Office of Statistics.

If industrial production in Germany were really not internationally competitive, this would be demonstrable in its trade flows. But in fact, few countries in the world are as strongly export-oriented as Germany (figure 2). Exports are clearly outstripping imports and in 2007 the trade surplus was almost €200 billion. Also in 2007, German firms exported goods and services valued at some €970 billion, an increase of 8.5 per cent over the previous year, despite the soaring value of the euro. The export surplus is the clearest proof that, overall, German industry should be seen as an internationalization winner (figure 3). In view of its trade balance, it is not viable to consider it a “weak” location.

Along with an increasingly internationalized production has gone a rise in direct investments (table 2). But by no means does every direct investment translate into the construction of new so-called “green-field” production capacity. Often, such direct investment represents merely acquisitions aimed at gaining market share abroad. It should also be noted that the greatest proportion of German direct investments – more than a quarter – is in the United

States (26 per cent) rather than in China (1.9 per cent) or India (0.3 per cent). Among its European Union investment destinations, too, countries such as France, the Netherlands, and the United Kingdom clearly predominate over new Member States such as the Czech Republic, Hungary, and Poland. These figures show that the image of dying “old Europe” locations and a “gleaming new East” is misleading. On the other hand, it is noticeable that the inter-relations between the states of Western Europe and the United States remains very pronounced.

Financialization

The end of “Rhineland capitalism” cannot be understood without reference to the increased influence of the financial markets and their actors. The concentration on shareholder value has revolutionized industrial relations and the division of labour in German enterprises. Profit used to be a residual value within the economic process, but now the yield has become a preset value. In many firms, the institutional investors in particular prescribe the profit that the management and workforce are expected to provide. If it is not forthcoming, the funds have the corresponding sanctions instruments at their disposal.

In sum, the financial investors are the new masters in the workplace. While institutional investors vary, one thing that they all have in common is an extremely short investment horizon, together with sky-high expectations of returns. Moreover, the purchase price is to a large degree financed by credit and this burden is swung on to the portfolio firm.

Of course, maximizing profits has always been the aim in a market economy. Nonetheless, today’s special outflows and the complete restructuring of enterprises for quick gain have taken on a whole new quality. New levels of intensity of the quest to maximize profits reflect the new dominance of financial investors. It is often argued that the new power of the financial markets increases efficiency and optimizes risk spread. But this ignores the systemic risks created. In this respect, reality speaks much more clearly than financial market theory. It is not only the long series of crises – from the Asian crisis at the end of the 1990s to the present United States subprime crisis – that point to the potential of anarchic financial markets to destroy overall economic stability.

At the workplace too, the changes are becoming clear. In Germany, 6,000 firms have already experienced the arrival and impact of private equity funds as major investors. Management, too, is under new pressure from these investors, but it is mainly the workers who face the highest costs. There are more and more cases of metalworking, electrical, wood, plastic, textile and garment firms in which the Works Councils are confronted, more or less overnight, with new owners from the financial sector. Restructuring,

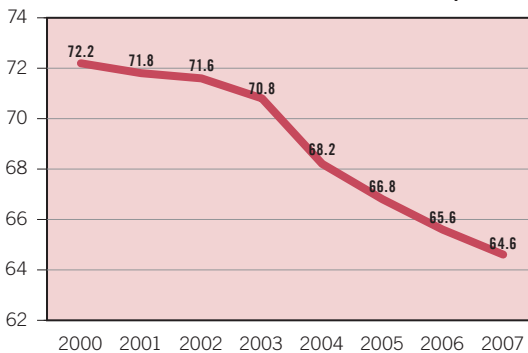
dismissals, (partial) plant closures, and cutbacks in working conditions and pay may then follow, according to broadly similar first-hand reports from the Works Councils concerned.

Trade union responses

The conclusions to be drawn from the location discussion are found at two levels. First, for the German economy as a whole and large parts of the metalworking industry, the allegations of locational weakness are simply false, as may be seen from the strong foreign orders booked by German firms. Second, the potential exit option is nonetheless a sword of Damocles hanging over the heads of many workforces and their representatives.

The increasingly international networking of production and the stepping up of competition should be seen in the context of the dogma that increased enterprise value (in other words, exorbitant rises in yield) is the be-all and end-all of any economic activity. Above all, the overriding quest for a fast buck is calling into question the unions' aim of translating economic progress into social progress through higher pay and shorter hours for the workers. The falling proportion of the national income that goes to wages – and, consequently, the rising share taken by profits – makes this clear.

Figure 4. Wage levels in Germany. Share of employee remuneration in national income (per cent)



Source: German Federal Office of Statistics.

This multiplicity of challenges demands that the unions achieve the virtually impossible, namely to develop a multi-level strategy that meets the shifting and complex needs of the era. The following five groups of tasks outline the beginnings of a strategy with which IG Metall intends to meet this challenge.

Prevent dumping, strengthen coordination

The German national economy is not lacking in price competitiveness. That fact cannot be stated too often, as a wrong diagnosis would lead to the wrong remedy. So there are no prospects of success in pursuing a strategy of wage dumping at the cost of our European neighbours. In fact, the exact opposite of dumping is needed. Precisely within the euro zone, more correspondence and coordination is needed between trade unions in order to prevent a downward spiral in wage bargaining.

Unions already have some experience of coordination. As regards bargaining policy, metalworkers' unions across Europe have agreed to base their pay demands on the macroeconomic room for distribution created by the level of growth in productivity and prices. In the German metalworking industry, this has largely been achieved over the past several years. But in the economy as a whole, wage growth in Germany was insufficient and was clearly below the European average. This has often led to the German unions being accused of dumping within European labour networks.

It is not difficult to draw our own proper conclusions from these developments. We in the metalworking industry intend to continue vigorously down the path of coordination and urge other sectors to follow this example.

Implementation of this objective is, of course, not easy. What is lacking in many sectors is not so much the will to secure higher wages as the strength to apply the necessary bargaining policy over and above the basic regional wage agreements. There are also other pressures on the distribution policy balance. Amongst other things, supplementary gains outside the basic agreements are being cut back in some cases, and a number of sectors are moving away from collective agreements altogether, so the number of "blank spots" on the map is growing.

Regulated divergences from the basic regional agreements

Much has been written about the pending demise of basic regional agreements. Certainly, many individual cases in the past have shown that collective agreements and bargaining power have been undermined. IG Metall's priority aim is therefore to re-stabilize and strengthen our regional collective bargaining arrangements.

In recent years, IG Metall has developed a controlled process under which divergences from the collective agreement are possible in connection with company emergencies such as a looming insolvency, but also to ensure sustainable improvements in employment rates.

The aim of this strategy is to re-stabilize the regional basic agreement system by permitting controlled, regulated divergences. A principle has been established that divergences are possible only for a limited time period, and

that the divergence must be on a give-and-take basis. For instance, in return for an increase in working hours, a firm might have to agree to refrain from dismissals and make certain investments in the site.

This discussion was not, and is not, an easy one for German unions, either in principle or in a given case, and there have been lively debates on this approach. Open questions that have been raised include possible distortions of competition within a sector, setting and monitoring the right balance between the give and the take, and the return to the basic regional agreement. What should be noted is that IG Metall is learning how to use this new instrument in practice.

Make profit-driven relocations more difficult

Relocations and the international division of labour are a field of tension in which IG Metall wants to strike the right balance. So it would not be a sustainable strategy to try and produce all goods in Germany. Our European neighbours, for good reasons, also want their countries to retain existing production and build up new capacities. Nonetheless, in individual cases at the workplace, it is our duty to intercede and fight for our members' jobs.

One way forward here may be to fight profit-related relocations and defend the jobs affected, as well as obligating the firms to pay part of the social costs resulting from any relocation.

The aim of this is primarily to politicize the struggle over relocations and to set up a socially responsible position against the mere calculation of yield. To the politicians, the point should be made that the transfer of production from one site to another should not be subsidized by the taxpayer. Currently, the cost of a relocation can be written off as operational expenses, thus reducing declared profits. In practice, this provides a tax incentive to relocate. This loophole must be closed.

And firms must be made to realize that “privatizing profits and socializing the social costs and unemployment” is not an option. A relocation tax, payable by firms, would help to ensure that the affected regions and the workers concerned are not left alone to deal with the results of decisions taken in the boardrooms of the big corporations. The tax could help to build up the industrial structures required in the affected regions and to qualify workers for new fields of activity.

A further option would be to strengthen worker co-determination rights in the case of site closures or relocations. The latter should require the consent of two-thirds of the members of German supervisory boards. This would be an effective instrument precisely in the case of large firms that operate internationally.

All in all, the point is to prevent a caravan capitalism culture, as it would lead to workers in all countries losing out.

Rein in the financial investors

Without a doubt, financial markets and investors have become important and the clock cannot be turned back. All the more reason to place limits on the private equity funds through legislation at the national and European Union levels.

Many possible approaches are conceivable, if the political will is there. It would, for instance, make sense to consider a legal minimum own-capital quota and to ban credit-financed special outflows. It is also the case that the funds do not pay taxes, without there being any particular reason for this privilege. So it should be scrapped.

It is also important for Works Councils and trade unions to be given stronger information rights concerning the entry of a financial investor. It will only be with such strengthened rights that, in individual cases, the investor's intentions will be brought out into the light of day and affected trade unions will be able to develop strategies to achieve long-term employment security at the site.

Go on the offensive at the workplace and in society

The fields of action listed so far are mainly reactive. But it is also important for unions to contribute their own impulses and push their own ideas. Two positive models are available for this.

One approach is "Better, not cheaper". This is all about avoiding a narrow discussion of wages as a cost factor and getting the issues of innovation and competence at work onto the agenda instead. This is based on an awareness that innovative enterprises are more successful. They are better at creating and safeguarding jobs. Innovation at work is about more than just having a research and development department. Underlying it is the assumption that the workers themselves know how to make processes more efficient and turn out better products. And good working conditions very often lead to better work processes and products. Many examples from workplace practice show that, although management frequently talks about innovation, it often takes very little action. Changing this can contribute to the preventive protection of jobs. The "Better, not cheaper" campaign changes firms' way of seeing and doing things, moving away from disputes purely about cost reduction (and therefore a lowering of social standards) to solving important workplace issues such as the organization of work, company-internal qualifications, investment, marketing and product quality.

Another approach is “Good Work”,¹ through which unions react to the rollback of work times and labour standards. “Good Work” makes it clear that, from the unions’ point of view, the aim cannot be work at any price. Rather, the conditions must be designed in such a way as to reduce health risks and ensure that wages provide a decent living. And “Good Work” goes even further, linking this approach to the tradition of humanizing the world of work. These are the themes: good working conditions for ageing workforces, limits on increasing work times, reduction of permanent stress, well-designed shift-work patterns etc.

All in all, the combination of the “Good Work” and “Better, not cheaper” approaches is a counter-concept to the narrow, profit-driven thinking of management.

Prospects

Without a doubt, trade unions have been on the defensive. However, even from this defensive position, there are some starting points for a stronger offensive approach. There is no point simply complaining about this new age of higher expected profit yields.

Rather, these new times we are in need to be analysed and conclusions need to be drawn for engaging in the trade union struggles that are ahead. This is all about getting a fair share of the economic cake for workers.

Broad public support for the trade unions’ positions on labour and social policy, together with renewed growth in the number of unionized employees in German metalworking firms, suggests that the tide is once again turning in our favour.

1. The “Good Work” concept which was developed by the German trade unions needs to be distinguished from the “Decent Work” concept developed by the ILO.

Transnational collective bargaining coordination at the European sector level

*The outlines and limits
of a “European” system*

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Introduction

The advanced internationalization of markets and the completion of the European Monetary Union (EMU) gave new impetus to the analysis of transnational coordination of collective bargaining. Since the countries of the Euro zone have been deprived of their instruments for the adaption to asymmetric shocks, the question of cross-border coordination of wage policy is of particular relevance. The harmonization of monetary policy in the framework of the EMU and the limits it placed on financial and budgetary policies of the members of the European Union (EU) shifts the burden of adjustment to disruptive economic developments within the Euro zone on to wages. Additionally, the enlargement of the EU increased differences in wage levels to a considerable degree and thus the danger of wage dumping.

National social agents responded with different strategies and approaches to cope with pressures stemming from market internationalization (Marginson and Sisson, 1996). In almost all systems of industrial relations in Europe, collective bargaining at the company- and plant-level has grown in importance since the early 1990s – a trend further intensified by the completion of the EMU and the accession of 12 new member countries to the EU in 2004–07. This has however not been a process of “disorganized decentralization” (Traxler, 1996). Rather, a multi-layered system of industrial relations emerged. Different levels of political action (i.e. inter-industry, industry- and company-level) reinforce and complement each other, with the local levels providing a kind of “leverage credibility” for the centralized one (Dolvik, 2000).

This paper starts from the following premises. First, it refers to the coordination of transnational collective bargaining in the narrow sense, i.e. as the negotiation of binding collective agreements by recognized bargaining agents and the coordination of the process of collective bargaining and its outcomes across borders. Therefore, transnational bargaining on the level of multinationals is beyond the scope of this article.

Second, transnational coordination requires a diversified multi-level approach of coordination whereby the sector-level bargaining agents play a particularly prominent role. This is due to the fact that the necessity for inter-sectoral wage moderation is reduced against the background of the macro-economic regime within the EMU. The non-accommodating monetary policy of the European Central Bank (ECB), with its overriding goal of containing price increases, exerts a containment-effect on wage developments (Schulten, 2002).¹ The ability of wage-setting institutions to internalize

1. Real unit labour costs (RULC) as an indicator for labour cost per unit of output of an economy have been declining in the majority of EU27 countries from 2001 to 2007. For the period under investigation, the change of RULC in the Euro zone was around -3.79 per cent; for the EU27 -4.24 percent; whereby declines have been particularly steep in some of the new member countries such as Poland, -16.57 per cent; Romania, -10.59 per cent; and Bulgaria, -7.32 per cent (EC, 2008).

negative wage externalities and to keep labour cost increases in line with the ECB's inflation target has therefore become a key feature of national collective bargaining systems (Traxler et al., 2001).

Third, with regard to the bargaining actors, collective bargaining coordination on the transnational level is carried out exclusively by trade union actors. Collective bargaining (CB) coordination activities – even in the minimal form of information exchange – are low on the agenda of European employers' associations due to their limited mandates for collective bargaining at the European level.

Fourth, narrowing the scope of analysis to trade-union-led initiatives for the transnational coordination of CB on the European sector level, two main patterns are discernable: on the one hand transnational cross-border coordination initiated by national unions (bottom-up); and on the other CB coordination arrangements established by European Industry Federations (EIFs) (top-down). Thus, the vertical dimension of coordination activities carried out by European sectoral peak-level organizations and their national member organizations is of particular relevance.

What can be inferred from the increased process of Europeanization of national and cross-border collective bargaining activities carried out by bargaining agents of both the European and the national level? The following questions are addressed in this article:

- Do the organizational and institutional differences between and within national systems of collective bargaining (Traxler and Schmitter, 1995; Marginson and Sisson, 1996; Traxler et al., 2001) require differing paths to Europeanization? How are top-down and bottom-up processes inter-linked in a multi-level system of transnational collective bargaining?
- How can sector-specific conditions such as economic developments and institutional settings be accounted for in a European-wide approach to CB coordination? Do sectoral particularities require different models of transnational collective bargaining coordination?

The structure of the article is as follows. In order to clarify the question of a possible model of transnational collective bargaining coordination, developments in the metal sector – the sector that has developed its respective activities the most – will be discussed first (section 2). The variation of structures and practices within sectoral cross-border coordination arrangements will then be evaluated, comparing the chemical, finance and construction sectors (which differ with regard to economic variables such as export dependency, capital and labour mobility) to the metal sector's approach to transnational collective bargaining coordination (section 3). Section 4 concludes. The article is based on a review of the literature, analysis of documents of the various EIFs and interviews with EIF officials.

The evolution of transnational collective bargaining coordination in the European metal sector

The metal sector has been at the forefront of the transnational coordination of collective bargaining. Against the background of the forthcoming EMU, the European Metalworkers' Federation (EMF) embarked on a cross-border approach on CB coordination with the formulation of its "statement of principle on collective bargaining policy" adopted at the EMF Collective Bargaining Conference in 1993. The EMF and its member organizations agreed on a "regular annual compensation for price increases in order to protect real wages, and to guarantee workers a share in productivity gains" (EMF, 1993). It was only some years later that a second cornerstone in the realization of bargaining goals was set by some of the EMF's member organizations. In a so far unparalleled initiative, the IG Metall, the Belgian metalworkers' organizations CCMB and CMB, and the two sector-related Dutch unions in FNV Bondgenoten and CNV Bedrijvenbond established a cross-border network for the exchange of collective bargaining information and trade union officials in 1997 (Schulten, 1998; Gollbach and Schulten, 2000). Finally, the adoption of the "European Coordination Rule" (1998) which specifies quantitative and normative criteria for wage bargaining was a further step towards an organized approach on CB coordination.

In this section the two central elements of the metal sector's arrangement for the transnational coordination of CB policies are investigated in more detail. First, the cross-border collective bargaining networks are analysed with respect to their functioning and the issues which are of relevance on a transnational level to the actors involved. Second, the implementation of the European Coordination Rule is discussed to shed light on the preconditions and problems of the Europe-wide coordination of wage bargaining.

Finally, a typology of the metal sector's model on transnational CB is derived from the empirical findings in the sector. This model then serves as a reference point for the analyses of CB strategies adopted in the chemical, banking and construction sectors.

Cross-border collective bargaining networks

Interregional bargaining networks developed rapidly since the 1990s through bottom-up initiatives. However, not all of the initially set up cooperations have functioned on a regular and continuous basis. Some transregional partnerships slowly tapered off or have been continued on an informal and ad hoc basis. Also, rather than representing a uniform pattern of cross-border interaction, CB actors within these networks established their own procedures and practices in terms of regularity of meetings, information exchange and the topics of coordination. The IG Metall plays a key role in most of the

Table 1. The most active transnational collective bargaining networks in the European metal sector

Regions/countries	Participating partner trade unions
Scandinavia (Sweden, Norway, Finland, Denmark)	IF Metal Sveriges Ingenjörer, UNIONEN (Sweden); Fellesforbundet, TEKNA, NITO (Norway); Metalityövåen Liitto, TU ry, UIL ry, Sähköliitto, Sähköliitto (Finland); CO-industri, IDA (Denmark)
Sweden, Denmark and Coastal District (Hamburg) of IG Metall	IF Metal Sveriges Ingenjörer, UNIONEN (Sweden); CO-industri, IDA (Denmark); IG Metall Coastal District
Austria, IG Metall district of Bavaria, Czech Republic, Slovakia, Slovenia and Hungary	GMTN (Austria), Odborovy SVAZ KOVO (Czech Republic), OZ KOVO (Slovakia), SKEI (Slovenia), VASAV (Hungary); IG Metall district of Bavaria
Belgium, Netherlands and IG Metall district of North-Rhine Westphalia	FNV Bondgenoten, CNV Bedrijven Bond, (Netherlands); CCMB, CMB (Belgium); IG Metall District of North-Rhine Westphalia

longstanding cross-border structures for the coordination of collective bargaining (table 1). However, other initiatives have developed outside the direct sphere of the German IG Metall as well. In particular the Nordic countries (Norway, Sweden, Denmark and Finland) have traditionally been a core arena of transnational collective bargaining coordination. A broader coordination approach with a real “European” dimension also emerged through the overlap and the linkage of interregional coordination initiatives such as those between Sweden, Denmark and the IG Metall’s coastal district of Hamburg, on the one hand, and the one between the Scandinavian trade unions of the metal sector, on the other hand.

Each network has its own history and specificities. For example, the coordination partnership between Austria, Bavaria, Czech Republic, Slovakia, Slovenia and Hungary, a good example of an active transnational network approach, was established in 1999 by the trade unions from these countries that make up the so-called “Vienna Memorandum Group”. Within this framework special seminars and conferences are organized, and trade union officials and members from the collective bargaining working groups meet annually to discuss their bargaining policy in the context of the EMF coordination rule for wage bargaining.

Collective bargaining coordination in the Scandinavian metal sector dates back to 1970 when Nordiska Metal was established as a forum for the exchange of information. With the accession of Sweden and Finland to the EU in the 1990s, Nordiska Metal became a regional body for the coordination of European policies within the EMF. By formulating an annual action programme for collective bargaining and establishing a select working party on the topic which meets approximately four times a year, the Nordic cooperation exhibits a high degree of institutionalization (Andersen, 2006). The Scandinavian network has to be considered as one of the most

active ones and the Scandinavian unions also coordinate with the German unions. Initiatives between the IG Metall Coastal district and the unions in Denmark even include the involvement of employers' associations in cross-border projects aiming at strengthening employment in the region. Moreover, the usually disputed topic of cross-border support in strike actions has been taken up by Danish and German trade unions. Recently, the ties with non-Scandinavian metalworkers' unions become stronger and more elaborated: "[O]ver the winter of 2003/04 there were more or less parallel sequences of bargaining in Denmark, Sweden, Norway and Germany. This triggered a number of meetings" (Andersen, 2006, page 37). This finding is confirmed by interviews with trade union bargaining experts active in both the metal and the chemical sector.

The bargaining cooperation within the German–Belgian–Dutch network is quite active and strongly institutionalized. Trade union representatives from the three countries meet two times per year in order to exchange data on collective bargaining. Additionally, they meet on an ad hoc basis for annual theme-specific seminars on other important issues such as vocational training. Occasionally, even the EMF as European Industry Federation takes part in collective bargaining negotiations in these three countries.

Coordination across the different regional networks takes place through the EMF steering group two or three times a year to deal with more practical aspects of collective bargaining coordination such as the transnational mobility of workers and cross-border relocations. The so-called "big groups", i.e. collective bargaining working groups that comprise around 50 to 60 people usually come together once a year. Big groups deal with broader issues such as so-called "flexicurity". An important function of these meetings within the formal structures of big groups is to enhance the visibility of collective bargaining activities among the EMF member organizations.

A case of transnational pattern-bargaining? The implementation of the European Coordination Rule

Against the background of the completion of the Single Market and the forthcoming European Monetary Union, the EMF embarked on a formalized approach on the transnational coordination of wage policies within Europe. The EMF's "productivity-orientated" wage policy is based on the following goals: first, "a regular annual compensation for price increases in order to protect real wages"; second, guaranteeing workers a "share in productivity gains to ensure the balanced developments of incomes" and, finally, "the redistribution of unjustifiably high income from capital investment to the workers" (EMF, 1993).

Evidently, the "European Coordination Rule" leaves the wage autonomy entirely to the national social partners. As a starting point for the analysis

here we assume that the metal sector's voluntaristic and non-centralized approach on CB coordination constitutes a case of pattern-bargaining at the transnational level. Two overriding questions need to be addressed with regard to the effectiveness of pattern bargaining as a mechanism for transnational coordination. First, despite the formalization of bargaining principles by the EMF, full autonomy is retained by national bargainers. Thus, one of the national member organizations or a group of "key" countries has to act as pattern-setter. The second question touches upon the issue of compliance of pattern-takers. As a general principle, for pattern-bargaining to be effective, a "critical mass" of pattern-taking units is sufficient to ensure coordination on the macro-level (Traxler, 1998; 2000). Referring to the question of the pattern-setter, observers assign Germany the status of the "anchor" country (Sisson and Marginson, 2002; Traxler, 2002). The crucial question however is whether German trade union bargainers assume their "leadership" role and whether and to what extent member organizations in other countries follow the bargaining outcomes achieved by the pattern-setter (this latter question is discussed in section 3).

A first element in answering these questions is an evaluation of the implementation of the EMF's European Coordination Rule for the period 1999–2005 based on bargaining results in different countries (EMF, 2001a; 2001b; 2005). Bargaining results are defined as "value of the whole agreement" (VowA) aimed at giving one measure that includes not only the wage increase but also wage-related and qualitative elements of the collective agreement.² This assessment leads to a two-fold conclusion: First, the minimum target, i.e. the compensation of the inflation rate, has been reached in almost all countries³ – for the entire period under consideration (1999–2005). Second, the combined wage goal of setting off inflation plus a "balanced participation" in the productivity increase constitutes the more ambitious "productivity-orientated" goal. On a longer term perspective, trade union wage bargainers tended to fail in reaching the combined goal in the majority of countries.

Second, we turn to the question of the possible wage leadership role of Germany. Here empirical evidence does not give a clear picture. On the one hand, the German unions reached the goal of a "balanced participation" in the productivity growth on a regular basis between 1999 and 2004 according to EMF data and it was widely seen as the European leader in this respect. On the other hand, the picture changed from 2005 onwards and today, despite the fact that compliance to EMF goals by German trade union bargainers

2. The value of the whole agreement includes wage-related elements such as wages, early retirement and pension payments, working time, vocational training, equal opportunities, gender equality, and other qualitative issues which are quantified by the national network correspondents according to a standardized procedure.

3. Only in Italy and parts of the Slovakian metal sector has the inflation goal not been reached.

has been ensured to a certain extent, the country's pattern-setting role in the European metal sector is under pressure. Observers report a growing pressure on wages resulting from the wide use of opening and hardship clauses that allow for the undercutting of the wage rates stipulated in sectoral collective agreements in Germany (Traxler et al., 2008b; Bispinck and Schulten, 1999; Dribbusch, 2004). This has led to a low dynamic of labour costs⁴ and a discrepancy between reported wage agreements on the sector level and the effective wage developments at the regional or company level. This discrepancy has become one of the most virulent problems of information-based CB coordination systems. It is however not only Germany that is affected by this problem. Collective bargaining arrangements in other countries are also endangered by re-opening and hardship clauses, and the increasingly dominant company-level bargaining can be observed in, for example, France and the Central and Eastern European countries. This creates further obstacles to an effective transnational CB coordination.

The "archetypical" collective bargaining model of the European metal sector

The metal sector is here taken as a starting point to develop a general model for transnational CB coordination for two reasons. First, it had a pioneering role in the Europe-wide coordination of collective bargaining policies. Second, as an export-oriented industry the metal sector plays a pivotal role in inter-sectoral wage coordination on the national level in setting the pattern for wage-setting that serves as a framework of orientation for bargaining agents in other sectors. Empirical evidence supports the argument for the metal sector as the industry that is best suited to perform wage leadership (Sisson and Marginson 2002; Traxler et al., 2008a).

In addition, a multi-level model in which top-down and bottom-up effects of harmonization and coordination are complementing each other has developed in the European metal sector. In this respect, the metal sector provides for an "archetypical" model that sets a framework of reference for coordination arrangements in other sectors. This model, summarized in table 2, derives its referential status from: (i) the leadership role of the metal industry in the process of wage-formation; and (ii) the assumption that a "complete" and fully functioning model of transnational CB coordination needs to incorporate both top-down and bottom-up elements. These centralized and decentralized governing mechanisms cannot be conceived as functionally equivalent but are rather complementary to one another.

4. In Germany, annual unit labour cost developments have been negative from 2004 to 2007 (EC, 2008).

Table 2. The “archetypical” collective bargaining coordination model of the metal sector

Centralized, top-down elements
<p>EIF bargaining coordination strategies:</p> <ul style="list-style-type: none"> – Formalized structure of decision-making, e.g. internal committees, working or steering groups on CB. – Common Rules and Guidelines, e.g. EMF’s European Coordination Rule. – Coordination instrument for wage bargaining, e.g. bargaining formula, qualitative aspects. – Database on developments in collective bargaining, in particular wage developments. – Electronic exchange systems on day-to-day CB and European social policy information. – Monitoring and reporting system. – Cooperation in CB with other sectors, integrated cross-sectoral systems of CB coordination. – Common demands on qualitative CB topics, i.e. Common Demand on Training (EMF, 2004).
Decentralized, bottom-up elements
<p>Inter-union coordination and cooperation:</p> <ul style="list-style-type: none"> – Form of the most important CB initiatives: networks, projects, cooperations (e.g. Wiener Memorandum Group). – Most important issues. – Functioning and proceedings of the CB initiative/s: regularity of meetings, information exchange, exchange of international union representatives etc.
Process of political learning – Top-down and bottom-up processes
<p>Inter-union decision-making and cooperation:</p> <ul style="list-style-type: none"> – Best practice, exchange of information and experts from other national union organizations of the same or other sectors. <p>EIF bargaining coordination strategies:</p> <ul style="list-style-type: none"> – Best practice, exchange of information and experts from other EIFs, formal or informal inter-sectoral cooperation on the coordination of CB.

As summarized in table 2, typical centralized elements of transnational CB include: formalized, intra-EIF structures for the coordination of CB; instruments for the cross-border coordination of collective bargaining – including wage bargaining; a central database for the exchange of CB information, including a reporting and monitoring system; as well as the formulation of common demands with regard to qualitative bargaining issues. In contrast, the non-centralized elements include more ad hoc trade union initiatives on certain sector-specific issues of transnational relevance. This cooperation, which involve trade unions from different countries, typically exhibit a much lesser degree of institutionalization.

The extensive development of both top-down and bottom-up elements of cross-border collective bargaining coordination makes the metal sector a front-runner in Europe. At the same time, cross-border coordination of collective bargaining is not yet a well-entrenched practice among trade union organizations nor is it perceived as a self-evident task for trade unions.

Coordination is still perceived as a “learning experience” or a learning process by trade union actors. Their perceptions with regard to the importance and effectiveness of the various elements of coordination have not yet developed into general social norms but are subject to change and strongly depend on the personal attitudes of individual actors. Learning effects – emerging from both the centralized and the de-central pattern of transnational CB – are conceived as an important factor in strengthening the efficiency of activities and to guarantee the continuity of such arrangements.

The inter-sectoral level of CB coordination – The European chemical, finance and construction sectors: Taking the pattern?

Departing from the metal sector’s “archetypical” model of transnational CB coordination, arrangements and practices for the cross-border coordination of CB in the European chemical, finance and construction sectors are discussed from a comparative perspective in this section. The four sectors differ considerably with regard to fundamental economic variables, i.e. labour and capital mobility as well as export-dependency.⁵ Likewise, structural variables of the industrial relations systems such as union density, the predominant level of collective bargaining, CB coverage and the degree of fragmentation/centralization differ along sectoral lines. These variables are expected to lead to differences in the type and intensity of coordination practices. Moreover, given the “experimental” status of transnational CB coordination that is largely shaped by learning processes among the actors involved, the perceptions of trade union bargainers in the different sectors are also important in the analysis.

The chemical sector: Striving for a coordinated approach within an institutionalized inter-sectoral collective bargaining framework

In contrast to the metal industry, in the chemical sector a formal network structure embedded in the organizational structure of the industry federation has never been established. There are cooperational structures, for example between Scandinavian countries and Germany and the Benelux Region but

5. The variables are operationalized as follows. Labour mobility is measured as the sum of EU-15 “foreigners” and “other foreigners” in relation to total employment by NACE sectors (Classification of Economic Activities in the European community) (Eurostat Population Census, 2001); the indicator for capital mobility are foreign direct investments by sector (OECD, 2004b) and export dependency is measured by the indicator “export flows” of the variables “external trade by products” and “external trade in services” (UNCTAD, 2007).

these are much more informal networks. In pursuing a bottom-up approach on coordination, trade unionists from these countries meet on a regular basis – but less frequently than in the metal sector – and organize joint seminars and bi- or multilateral meetings. There exist no formalized instruments like the EMF's Coordination Rule for wage bargaining coordination that specifies quantitative orientation criteria for the European Mine, Chemical and Energy Workers' Federation (EMCEF) sectors. Other top-down instruments, such as the formulation of Common Demands on specific non-wage issues, are also absent in the chemical sector.

This emphasis on bottom-up and decentralized wage coordination initiatives is mainly due to the intra-sectoral heterogeneity of the branches belonging to the EMCEF that includes industries such as mining, energy, paper and pharmaceuticals. In institutional terms, this high degree of intra-sectoral heterogeneity in the EMCEF sector is mirrored in the fact that the trade union systems are highly fragmented compared to the other sectors considered in this paper (UCL, 2006). The coexistence of several sector-based trade unions within this broader sector is perceived as a hindering factor for cross-border bargaining coordination. This is even more the case where unions are competing for members or with regard to their collective bargaining competencies.

Other institutional characteristics of the industrial relations system are more favourable for transnational bargaining coordination policies. Union density in the chemical sector more or less corresponds to the density level in manufacturing (EC, 2006) though it tends to be lower than in the metal sector. Collective bargaining coverage rates in the chemical industry are above 80 per cent in the EU-15 (UCL, 2006) whereby multi-employer bargaining on the sector level is predominant. Also, the economic conditions in the chemical sector, such as a high export-dependency in particular for chemical products and pharmaceuticals and a relatively high level of FDI flows – although lower than in the metal and the finance sector – require trade union bargainers to embark on transnational strategies on CB to prevent regime-shopping and downward pressures on wages and working conditions.

Still, the chemical sector's information and reporting system has never attained the same degree of institutionalization and formality of its counterpart in the metal industry. It was not before 2003 that bargaining information has been collected on a regular basis and annual reports have been compiled. However, the effectiveness of the reporting system is questionable since the quality of data varies among member countries. Besides, the number of member organizations that report on a regular basis to the EMCEF is rather small. Nevertheless, the EMCEF invested some resources to improve the quality of the reported information and to extend their net of national correspondents.

Coordination of CB policies became more systematic and elaborated with the integration of the chemical sector's system in the inter-industry framework

of the Eucob@n system in 2006. The “Eucob@n – Europeanization of CB” system aims at the cross-border coordination of CB policies within and between sectors, i.e. the metal, chemical and textile sector. It constitutes a basic institutional framework that accommodates the inter-sectoral dimension of transnational CB. Despite efforts to increase the timeliness of information, the potential of the Eucob@n system lies not so much in the exchange of ex-post CB information but more in spotting the collective bargaining trends and tendencies and helping to identify important bargaining issues and best practices. Topics that are perceived as being of particular cross-border relevance are the basic development of labour costs, training as well as health and safety.

The “self-sustaining” network-structure of European collective bargaining coordination in the European finance sector

Although the Europe-wide coordination of collective bargaining was already an important topic in the finance sector, structures for the exchange of CB information on the European peak-level were only established in 2002, when the first data-based project on benchmarking pay and working time was initiated and the Collective Bargaining Network of UNI-Europa Finance (the sector’s EIF) was established (Dufresne, 2002). Wage policy coordination is not a goal within this network since wages are exclusively dealt with by national unions. However, the network’s database does include information on wage increases. In contrast to earlier findings (Dufresne, 2002), at present there exists no instrument for the transnational coordination of wage bargaining that is based on quantitative orientation criteria such as inflation and productivity growth. Such a quantitative “coordination rule” for wage bargaining is not considered as useful in the banking sector, since wages depend on a variety of factors and are therefore not easily comparable between countries. Besides, despite the existence of sectoral collective agreements in the banking and insurance sector wages are frequently settled at company-level. A high wage-drift resulting from differences between collectively negotiated and effective pay increases renders an efficient implementation of a wage rule doubtful.

According to European-level trade union representatives, there is no distinct leading trade union organization that actively pushes for coordination. This contrasts with other sectors, particularly the metal industry where the German IG Metall acted as a pioneer with regard to the establishment of collective bargaining coordination networks. The Collective Bargaining Network of UNI-Europa Finance exhibits a considerable degree of de-centralization and bottom-up coordination. National member organizations enjoy significant autonomy in shaping policy goals and organizing and administering the bargaining coordination network. The network is described

as a “self-sustaining structure” created by the national member organizations in cooperation with the UNI–Europa secretariat.

However, capital mobility in the finance sector is very high – foreign direct investment is higher than in the metal and the chemical industry – which would argue for transnational collective bargaining coordination. Also, industrial relation structures in the EU–15’s finance sector are highly favourable to cross-border coordination. Unions are highly centralized – with the exception of Italy where seven sector-related union organizations are reported (UCL, 2000) – and union density in banking is higher (with the exception of Germany and the United Kingdom) than in the services sector as such (EC, 2006). Likewise, collective bargaining coverage in the EU–15 is around 85 per cent due to the existence of sectoral or branch collective agreements that cover a large number of employees in the banking and insurance sectors. On the other hand, as mentioned above, company bargaining becomes more and more important, in particular in the banking sectors of France and the Netherlands with large multinationals setting the pattern for the rest of the industry.

Within this context, UNI–Europa Finance did not embark on a centralized approach on cross-border CB coordination and decentralized initiatives dominate. This is not so much the result of economic or institutional factors but of actors’ orientations. However, a decentralized path to the Europeanization of CB clearly has its limits. Trade union experts contend that ad hoc inter-union initiatives are lagging behind managerial decisions in multinationals and that therefore their effectiveness is limited.

Construction

In the construction sector coordination initiatives have been established almost exclusively on a bi- or multilateral basis between member unions of the European Federation of Building and Woodworkers (EFBWW). Most frequently they are organized within the framework of the European social funds that have been created to deal with some of the socio-political implications of the posted workers’ directive (Directive 96/71/EC). Thus, they typically address topics related to the high cross-border mobility of construction workers, such as the mutual recognition of industrial relations and social security systems. The impetus for transnational coordination of collective bargaining policies derives from the European regulation of the building industry, in particular by the adoption of the posted workers’ directive in 1996.

Arrangements for the transnational coordination of collective bargaining policies are less formalized in the construction sector than in the metal sector. There is no common formula for wage bargaining and an EFBWW respondent claims that “it’s not even possible to streamline negotiation procedures” on the European level. Although the construction sector is relatively

homogenous across countries, the production process is organized through multiple chains of production in which numerous supplier companies – often highly specialized – are linked together in relationships of outsourcing and subcontracting. However, the EFBWW is working on a database on collective agreements on minimum wages, working time and work organization in all 27 member countries. The building-up of the collective bargaining database also involves the employers' federation FIEC (European Construction Industry Federation). The EFBWW's approach on collective bargaining coordination differs from that in other sectors and therefore it is not interested to participate in the Eucob@n system at the present time.

Industrial relation structures in the construction sector are typically less favourable to cross-border coordination: the union system is the most fragmented and collective bargaining coverage is the lowest of the sectors considered, and union densities are comparably low, in particular in Spain, Portugal, Germany and Austria (UCL, 1999). The same holds true for the crucial economic characteristics of the building industry. Labour mobility is outstandingly high whereas capital mobility in terms of foreign direct investment (FDI) is low. As a typically labour-intensive sector, the high labour mobility directly exerts pressure on wages and working conditions. Therefore, the EFBWW embarked on an approach on transnational CB coordination that is aimed at covering foreign workers by domestic regulations. The focus on statutory rules and regulations rather than on collective bargaining as such distinguishes the building sector from the other industries considered in this article. Thus, lobbying the European legislator is a more important goal for the EFBWW than building up highly institutionalized networks for the cross-border coordination of CB policies.

Conclusions

Whereas the EMU and the internationalization of product and financial markets increased the need for CB coordination in order to contain downward pressure on wages and labour standards, the conditions for coordination activities have worsened. Trade union bargainers are confronted with a trend towards CB decentralization and the erosion of collective bargaining systems through the undermining of sectoral collective agreements. The most virulent problem that hinders inter-union cooperation and decision-making is the growing importance of company-level negotiations that undermine a coordinated cross-border approach on collective bargaining. Decreasing unionization rates, the weakness of peak-organizations and slack labour markets are additional factors that undermine the bargaining power of unions. Also differences in collective bargaining systems, practices and outcomes such as scope, level and duration of collective agreements and desynchronized negotiation rounds in member countries are perceived as factors that hinder the cross-border coordination of CB policies.

From the cases discussed here, it emerges that centralized, top-down cross-border coordination of collective bargaining appears difficult to achieve. Even in the metal sector, in many ways the sector that has advanced the most in cross-border coordination, the central coordination rule plays a limited role and the low dynamic of the development of unit labour costs on the macroeconomic level renders Germany's role as pattern-setter open to doubt.

However, when the focus on wage coordination in the strict sense is abandoned and a broader – and rather political – perspective is taken, initiatives for the cross-border coordination of CB policies seem more feasible, in particular when they take the form of flexible, non-hierarchical, network-structured arrangements. With regard to the geographical scope of such union-led coordination initiatives, they arise most easily in the form of transnational “clusters of coordination” between economically highly integrated countries and/or regions (e.g. Germany, the Netherlands, the Benelux countries). Moreover, these countries share a high degree of communality in terms of industrial relation structures and traditions.

Considering the large extent of variation with regard to economic structures and industrial relation systems between sectors, the inter-sectoral scope of CB coordination arrangements on the European level, such as the Eucob@n system, is clearly limited to industries which exhibit similarities with regard to variables such as export dependency, FDI and labour mobility.

Nonetheless, as these developments reflect an early stage of cross-border coordination initiatives, they are still “learning experiences” for the actors involved. The intensification of cross-border exchange and the improvement of the quality of CB information in terms of timeliness and comparability are important goals for establishing efficient CB coordination systems that provide a valuable tool for spotting tendencies and trends with respect to wage developments and examples of best practices in member countries. If these preconditions are met, European coordination structures have the potential to develop from systems of information exchange into forums for cross-border solidarity and trade union action.

References

- Andersen, S.K.. 2006. “Nordic metal trade unions on the move: Responses to globalization and Europeanization”, in *European Journal of Industrial Relations*, Vol. 12, No. 1, pp. 29–47.
- Bispinck, R.; Schulten, T. 1999. “Flächentarifvertrag und betriebliche Interessenvertretung”, in W. Müller-Jentsch (ed.): *Konfliktpartnerschaft* (Hampp, München-Mering).
- Beguín, J.M.; Carley, M. 2005. “Industrial relations in the steel industry”, European Foundation for the Improvement of Living and Working Conditions.
- Carley, M. 2002. “Industrial Relations in the EU Member States and candidate countries”, available at EIROOnline, <http://www.eurofund.europa.eu/eiro/2002/07/feature/tn0207104f.htm>.

- Dolvik, J.E. 2000. "Economic and Monetary Union: Implications for industrial relations and collective bargaining in Europe", ETUI Working Paper, Apr.
- Dribbusch, H. 2004. "New collective agreements signed in metalworking", available at: www.eurofound.europa.eu/eiro/2004/03/feature/de0403203f.html.
- Dufresne, A. 2002. "Wage co-ordination in Europe: Roots and routes", in Pochet, P. (ed.): *Wage Policy in the Eurozone*. (Brussels, Vienna, PIE Lang).
- European Commission (EC). 2008. AMECO – Annual Macroeconomic Database. European Commission, Directorate General for Economic and Financial Affairs.
- . 2006. "Industrial Relations in Europe 2006," manuscript completed in June 2006.
- . 2004. "Industrial Relations in Europe 2004", manuscript completed in 2004.
- European Metalworkers' Federation (EMF). 2007. "Eucoba@n Report 2007", typescript.
- . 2006. "Eucoba@n Report 2006", typescript.
- . 2005. "Eucob@n Report 2005", typescript.
- . 2004. First EMF Common Demand for Collective Bargaining: The individual right to training guaranteed by collective agreements, adopted at the Fifth EMF Collective Bargaining Policy Conference, Rome, 11–12 October.
- . 2002. "Eucob@n Report. Annual Report: 2001/2002", typescript.
- . 2001b. Collective Bargaining with the Euro, resolution adopted at the Third EMF Collective Bargaining Conference, 9–10 December 2001.
- . 2001a. "Report on the European Coordination Rule", EMF Collective Bargaining Conference, Oslo, 20–21 June.
- . 1996. Guidelines and basic issues of the collective bargaining policy of the European Metalworkers' Federation (EMF), adopted at the Second Collective Bargaining Conference, Brussels, 24–25 October 1996.
- . 1995. EMF Action Programme 1995–99, adopted at the Eighth EMF General Assembly, Vienna, 20–30 June.
- . 1993. Collective Bargaining Policy in a Changing Europe, statement of principle on collective bargaining, adopted at the First EMF Collective Bargaining Conference, Luxembourg, 11–12 March.
- Gollbach, J.; Schulten, T. 2000. "Cross-Border Collective Bargaining Networks in Europe", in *European Journal of Industrial Relations*, Vol. 6, No. 2, pp.161–179.
- Grainger, H.; Crowther, M. 2007. Trade union membership 2006. (London, Department of Trade and Industry).
- Lash, S.; Urry J. 1988. *The End of Organized Capitalism* (Cambridge: Polity Press).
- Le Queux, S.; Fajertag, G. 2001. "Towards Europeanization of collective bargaining?: Insights from the European Chemical Industry", in *European Journal of Industrial Relations*, Vol. 7, No. 2, pp. 117–136.
- Marginson, P.; Sisson, K. 1996. "European collective bargaining: A virtual perspective?" Working Paper presented at the IREC Conference: Industrial Relations in Europe: Convergence or Diversification? Copenhagen, 19–21 September.
- Marginson, P.; Sisson, K.; Arrowsmith, J. 2003. "Between decentralization and Europeanization: Sectoral bargaining in four countries and two sectors", in *European Journal of Industrial Relations*, Vol. 9, No. 2, pp. 163–197.

- OECD. 2004a. *Employment Outlook 2004*.
- . 2004b. *International Direct Investment Statistics Yearbook 1992–2003*.
- Sisson, K.; Marginson, P. 2002. “Co-ordinated bargaining: A process for our times?”, in *British Journal of Industrial Relations*, Vol. 40, No. 2, pp. 197–220.
- Schulten, T. 1998. “Collective bargaining in the metal industry under the condition of the European Monetary Union”, in T. Kauppinen (ed.): *The Impact of EMU on Industrial Relations in European Union* (Helsinki, Finnish Labour Association).
- . 2002. “A European Solidaristic Wage Policy?”, in *European Journal of Industrial Relations*, Vol. 8, pp. 173–96.
- Traxler, F. 1995. “Entwicklungstendenzen in den Arbeitsbeziehungen Westeuropas. Auf dem Weg zur Konvergenz?”, in M. Mesch (ed.): *Sozialpartnerschaft und Arbeitsbeziehungen in Europa* (Vienna, Manz).
- . 1996. “Collective bargaining and industrial change: A case of disorganization? A comparative analysis of eighteen OECD countries”, in *European Sociological Review*, Vol. 12, No. 3, pp. 271–287.
- . 1998. “Collective Bargaining in the OECD: Developments, Preconditions and Effects”, in *European Journal of Industrial Relations*. Vol. 4, No. 2, pp. 207–226.
- . 2002. “Wage regulation between industrial democracy and market pressures: Toward a European model?” *European Sociological Review*, Vol. 18, No. 1, pp. 1–16.
- . 2000. “Das Tarifverhandlungssystem in der Wirtschafts- und Währungsunion: Von nationalen zu supranationalen Institutionen”, in *Kölner Zeitschrift für Soziologie und Sozialpsychologie*, Transnationale Integrationsprozesse in Europa, Sonderheft.
- Traxler, F.; Kittel, B.; Blaschke, S. 2001. *National Labour Relations in Internationalized Market*, (Oxford, Oxford University Press).
- Traxler, F.; Brandl, B.; Glassner, V. 2008a. “Pattern bargaining: An investigation into its agency, context and evidence”, in *British Journal of Industrial Relations*, Vol. 43, No. 1, March, pp. 33–58.
- Traxler, F. et al. 2008b. “Can cross-border bargaining coordination work? Analytical reflections on its feasibility and evidence from Germany’s and Austria’s metal industry”, in *European Journal of Industrial Relations*, Vol. 14, pp. 217–237.
- Université Catholique de Louvain (UCL). 2006. *Study on the representativeness of the social partner organizations in the chemical industry (EU25)*, Institut des Sciences du Travail.
- . 2000. *Rapport annuel sur la concertation et la négociation. Les organisations d’employeurs et de salariés dans le secteur bancaire au sein de l’UE*, Institut des Sciences du Travail.
- . 1999. *Rapport annuel sur la concertation et la négociation. Les organisations d’employeurs et de salariés dans le secteur de la construction au sein de l’UE*, Institut des Sciences du Travail.
- UNCTAD. 2007. *UNCTAD Handbook of Statistics 2007*. available online at: www.unctad.org/statistics/handbook.

Transnational employer strategies and collective bargaining

The case of Europe

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Introduction

Over the past decades, the share of wages in the total income of the economy has seen an almost continuous decline in most of the industrialized economies. The trend for wages to lose (relative) significance is particularly manifest in Europe as a whole and in the euro area in particular. The first section of this article describes the different reasons why wages in Europe have come under so much pressure. It finds that wage formation faces a multitude of economic processes which are all working to weaken the bargaining position of workers and trade unions. The second section describes some of the avenues trade unions have tried to develop in order to correct for this. The final section presents several conclusions.

European workers are facing an uphill battle

The internal market as a natural habitat for locust employers

The process of European economic integration brings with it a logic similar to the process of trade globalization. With internal frontiers to trade being abolished since 1993, multinational business can decide much more freely in which European Member State to invest and to localize its production and services centres. Moreover, after the breakdown of state socialism and in particular with the 2004 European enlargement, the menu of choice has widened considerably and employers can now choose between countries with wage costs ranging from 2 to 30 euros an hour.

However, the process of relocalization of business investment should not be demonized, and it should also be recognized that the internal market may unleash other processes bringing major benefits. For example, the European internal market allows businesses to exploit advantages of scale to the fullest extent and to build big and highly efficient production units in one locality. The productivity increase resulting from this is the basis for improved competitiveness and/or improved wages. Another positive effect may be that the higher intensity of competition coming from a multitude of competitors in the internal market could lead to increased innovation performance.

The trick is of course to guide the forces of competition and to ensure that the market power of so-called creative destruction is channelled into efficiency gains and innovation performance and stays away from simple cut-throat competition at the expense of wages and working conditions.

When planning and introducing the European single market, the European Commission was indeed aware of the need to guide the forces of competition. Its answer to the problem of 'cut-throat' competition was to accompany the introduction of more competition in the internal market with a "Social Europe" programme. The idea was to define a package of minimum

rules and workers' rights aimed at setting a floor in the European internal market. In this way, key aspects of working conditions would be set aside and protected from the forces of internal market competition. At the same time, this programme was also defined in terms of "non-regression". Minimum standards defined at European level were supposed to be floor-level standards and not to function as effective ceilings to more generous worker rights standards at national level. For these reasons, trade unions in Europe – including the European Trade Union Confederation (ETUC) – supported the elimination of trade barriers in the internal market.

However, and with the benefit of hindsight, it appears that the power of market forces to trigger cut-throat competition has been grossly underestimated. Indeed, multinational business has not reacted in a passive or static way to the opportunities of relocalization of investment offered by the European internal market. Business is not only relocating activity where the existing competitive advantage is best suited. On top of that, business has in practice developed a strategy to reshape competitive advantages of countries according to its own needs and its own profit targets. Countries, governments and workers are continuously played out against each other and concessions obtained in one country are used to extort concessions in other countries, and so on. In the end, the decision to invest is indeed granted to one particular country (most probably the country where the enterprise intended to invest anyway) but this decision is then taken after wages, working conditions and social systems have been pressured and weakened in a range of other countries.

Nokia Germany provides a recent and clear example of how this mechanism operates in practice. In early 2008, public opinion in Germany was shocked by Nokia's sudden announcement that it would close down its mobile phone factory in Bochum and relocate it to Romania. In doing so, Nokia management ignored European directives and German laws on information and consultation of workers in case of major restructuring. Yet, this is just the tip of the iceberg. Nokia's decision to close down the German factory followed years of pressing workers and trade unions in Germany into "concession bargaining". Company level agreements had "flexibilized" working time, wages and working conditions in a (vain) attempt to keep the jobs in Germany. Nokia management, however, not only decided to profit from the fact that in the end, wage costs were much lower in Romania, but also tried to abuse the situation by contacting the Romanian Minister of Labour in order to seek a loosening of national labour legislation, which had just been brought into line with the European social acquis. In this case, fortunately, the Romanian trade unions were informed of this move and in turn warned the Labour Minister not to bow to such blackmail.

However, the basic message is clear. The process of relocating investment around Europe is used by business management to pursue a strategy of divide and rule, of playing workers in different countries against each other. In that way, the benefits of the internal market and European integration are captured by one small group in society: shareholders and CEOs.

Laval, Rüffert: The internal market as a Trojan horse

Business has not limited itself to single company strategies using a transnational approach to investment decisions with the aim of trapping social models in Europe in a downward competition spiral. Indeed, business federations are also keen on using the economic freedoms written down in the European Treaty to weaken wages, workers' rights and bargaining position. The recent judgements of the European Court of Justice (ECJ) in the Laval and Rüffert cases are a perfect example of this strategy.¹ In these cases, industrial action by the Swedish trade union and social procurement law generalizing a collective agreement by the Niedersachsen regional government in Germany were used to clarify a number of principles in relation to the European Treaty and the freedom to invest and to provide services. Summarized, the ECJ judgements boil down to the following:

- The freedom to take industrial action is to be subordinate to the freedom to invest and engage in cross-border services. This implies that industrial action should not inhibit these economic freedoms and, amongst other things, that action needs to be proportionate to the objective of ensuring fair labour market practices.
- European minimum standards such as minimum wages written down in the posted worker directive are taken by the ECJ as providing a precise definition of social dumping. This has the effect that these minimum standards become maximum standards. According to the ECJ, action against exploitative practices of companies engaging in cross-border trade and investment can be undertaken by trade unions and/or governments but only up to the point where these exploitative practices breach the minimum standards of the European social acquis. As long as companies respect the European social acquis, the ECJ is of the opinion that social dumping is ruled out, even if these companies do not respect the higher standards in the "destination" country that are established within, for example, collective agreements. In this way, European minimum standards are turned into national maximum standards, thereby opening up the possibility of unequal pay for equal work achieved through the mechanism of cross-border reallocations of production.

Enlightening in this respect is the fact that the legal proceedings giving rise to these court judgements are formally presented by those companies "suffering" the restriction on exerting their economic freedoms whereas, informally, employer associations from the host country appear to be financially involved.

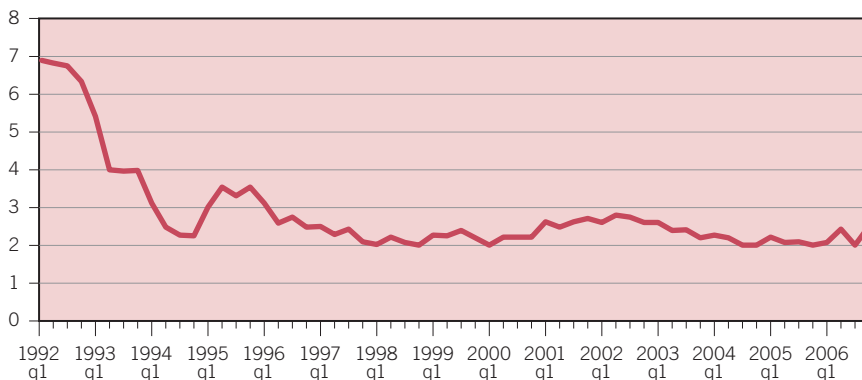
1. For information on these cases, see www.etuc.org.

Monetary union and social pacts: Competitive wage moderation replacing competitive currency devaluations

Monetary integration through the European Monetary Union, including a common currency for the 15 countries of the Euro zone, a common central bank and a common macroeconomic policy framework, has had a profound impact on the processes and dynamics of wage bargaining. As illustrated in figure 1, collectively bargained wages at the level of the euro area have become extremely disciplined already since the beginning of the 1990s. During this entire period, growth of collectively bargained wages has stayed extremely close to the 2 per cent price stability target of the European Central Bank (ECB), thereby leaving most of productivity growth to capital and thus increasing the share of profit. Even at the peak of the recent upturn, with unemployment falling and with rising energy and food prices eating away at the purchasing power of wages, the growth of collectively bargained wages is still limited to only 2 per cent in the last quarter of 2007.

This structural change in the dynamics of collectively bargained wages has primarily to do with reforms initiated at the national level in response to the process of preparing for the single European currency. Social partners in several Member States clearly understood that currency devaluations were no longer possible in a monetary union. In response, they reformed their wage bargaining systems, aiming to prevent wages from getting out of control. There are numerous examples of such reforms. Already in 1993, Italy concluded a social pact dismissing the automatic wage indexation system and replacing it with wage bargaining at national sector level limited to inflation compensation only. The consequence was that, during much of the 1990s, average real wages in Italy hardly moved. In Belgium, a law on competitiveness was even introduced, forcing trade unions to take the expected wage

Figure 1. Collectively bargained wages in the euro area (%)



Source: IMF.

increases in France, Germany, and the Netherlands into account when negotiating wage agreements.

However, not only bargaining structures were modified in the run-up to the single currency. From the moment the single currency was introduced, incentives to deliver more wage moderation got introduced with it. In particular, Member States with an already existing tradition of competitive disinflation identified monetary union as an important reason to intensify wage moderation policies. Indeed, whereas in previous periods gains in competitiveness in relation to other European countries tended to be erased by an appreciation of the currency, in a monetary union this is no longer the case. As a result of this incentive, in 2000 Germany² embarked on an unprecedented wage moderation effort. Trade unions were put under political pressure to deliver extremely moderate sector agreements as well as accepting opening clauses in these sector agreements so as to shift the bargaining process to the enterprise level where employers could freely use the argument of cutting wages to safeguard jobs. As a result, collectively bargained wage increases in Germany were as low as 1.3 per cent (2006) leaving the real average hourly wage increases at a level of 0 per cent.

Most probably, further downward pressure on wages will come from these processes in the near future. The staggering competitive position that some euro area Member States have now built up by pursuing this model of competitive disinflation and excessive wage moderation (e.g. Austria, Germany, Netherlands) is now catching the attention of employers and policy-makers throughout the euro area. Member States that have lost (wage cost) competitiveness – not because they have had excessive wage increases but because the other group of countries has excessively cut wage growth – are coming under increased scrutiny and pressure to follow the correct example and restore competitiveness. This theme is currently very popular within euro area policy discussions and is repackaged as “internal imbalances”. In this way, the wage moderation effort of workers in one country is used to justify wage moderation in other countries. And if those countries now enjoying a competitive surplus are unwilling to lose this position and react to the intensifying wage moderation from their competitors by cutting their wages even further, the circle is complete. In this way, wage moderation goes from bad to worse, from slow nominal wage growth and zero real wage growth to zero nominal wage growth and real wage cuts for the entire euro area.

2. Austria and the Netherlands followed a similar strategy, although to a much more limited extent.

The most independent central bank of the world caught in hegemonic policy analysis

The single currency and the disappearance of (internal) exchange rate movements do not only trigger a possible domino effect, with Member States undercutting each other wages in order to maintain or regain competitiveness.

In addition, the Board of Directors of the ECB can be seen as having a certain bias against wages in its policy analysis and its monetary policy decisions. The bias operates through the ECB's quest for price stability. The objective of price stability is of course a good thing and no one wants to return to the hyper-inflation of the 1970s. However, the question is not whether price stability should be pursued or not, the real question is how to pursue low and stable inflation rates. Here, one cannot escape the impression that, very often, the ECB confuses anti-inflation policies with a neoliberal policy agenda. In this agenda, liberalized, privatized and competitive product and labour markets are equated with guarantees for low inflation and any regulation or protection of these markets is seen as a threat to price stability. In this way, workers' rights and strong trade unions are turned into inflationary forces threatening the credibility of the ECB.

It should be underlined that the ECB also has the power to match its words with deeds. The ECB is able to cause havoc in the economy if trade unions and politicians do not comply with the model of the economy central bankers happen to have in mind. By conducting a tight monetary policy stance and in that way inflicting serious damage on the real economy, the ECB can sanction governments and trade unions for not following the lines of the economic reform agenda set by the ECB itself. The ECB can do so because its independence is almost absolute. Whereas the statutes of the Federal Reserve in the United States can in principle be changed by Congress, it would take a new European Treaty, with all Member States and their respective parliaments, to approve the slightest change in the regime governing the ECB.

For workers and trade unions, all of this is quite problematic since the ECB is indeed a keen supporter of wage moderation and sees wage restraint as a key contributor to price stability. The ECB does concede that euro area average wage growth since 2001 has been moderate and structurally below productivity increases. However, it also observes that, despite subdued wage growth, inflation has stubbornly remained over the 2 per cent price stability target. This then leads the ECB to argue that price stability requires that wage growth should remain even further below productivity growth. This however is a flawed conclusion. The ECB overlooks the obvious fact that wage moderation has not resulted in lower prices but in higher profits. And in claiming that wages should not rise and evolve in line with productivity growth, the ECB is actually defending the business case for higher profits. In this way, any acceleration of wage growth, even if it takes place from extremely moderate rates of wage growth and even if productivity growth is not

exceeded, is redefined by the ECB as “inflationary”. The ECB and business have formed a de facto common front calling for wage moderation to continue and for structural reforms weakening the bargaining power of workers and their trade unions. Meanwhile, the possibility that more robust wage growth would not trigger inflation but would lead to stable instead of rising profit rates is not being considered.

Recent events testify to the fact that all of this is not abstract theory. In late 2007 and early 2008, trade unions staged a revival of collective bargaining throughout Europe and the euro area in particular. Wage outcomes from these bargaining agreements have been much improved and the expectation is that the collectively bargained wages in the euro area will increase from a too modest 2 per cent rate of growth to a still relatively modest rate of growth slightly above 2.5 per cent. The ECB has watched this evolution with dismay, eyeing such wage growth for triggering inflationary second round effects. In return, the ECB has refused to cut interest rates and is now even contemplating a rise in interest rates and this in the midst of an economic slowdown and a financial crisis. The remainder of the story is not hard to guess: the ECB will trigger another serious slowdown of the euro area economy, set to take place during end 2008 and 2009. This will push up unemployment and weaken again the bargaining position of workers. If the ECB does not get wage sacrifices directly derived from flexible markets, it will obtain it “through the back door” by unnecessarily creating a slump in growth and higher unemployment.

Globalization and liberalization of financial markets

On top of the internal market, the single currency and legal proceedings to weaken the bargaining power of trade unions, the process of globalization is providing business with even more leeway to undermine the bargaining position of workers. The threat of delocalizing business to China where tens of millions of workers are available to work for a few cents an hour is a very convincing threat for individual workers. And the argument that the European economy will also benefit from the emerging economies by importing machines and luxury products made in China, thereby creating jobs in other segments of the economy, is not very convincing for workers faced with the blackmail from their employer of longer unpaid working hours or plant closure.

Another dimension of globalization however is to be found in the financial sphere. Indeed, globalization is not limited to goods and services and investments are moving about more freely. Financial markets and financial capital flows have also become unchained. Regulatory oversight on banks and related institutions has been loosened and financial markets have used “innovation” as a way to create structures such as hedge funds, private equity funds

and structured investment vehicles which are hardly supervised or monitored by financial authorities. In many of these structures, the technique of “leverage”, of funding investment activity by borrowing massively, is used excessively. If things go well, this leverage will boost returns on equity capital, leading to returns on investment of 20–30 per cent per year.

Wages and workers do not go unscathed from these processes. Logically, these developments in unfettered financial markets have generated higher profit expectations on economic investment as well. Whereas Social Europe was promoted as a provider of a level playing field for working conditions, in practice financial market liberalization has produced a level playing field for company profits by establishing this standard of at least 20 per cent returns on equity. In addition, new players like private equity funds have entered the game and have replaced long-term stable stakeholders with short term financial market related shareholders. Managers and employers have therefore shifted their focus from a strategy to build up competitive advantage (through research, innovation and diversification) to a simple short-term strategy of cost cutting – with the principal “cost” being workers’ wages.

Countervailing strategies

The extent to which wages and working conditions in Europe have been challenged by several powerful economic processes and forces is impressive. Given this, one could wonder why the fall in the share of wages in gross domestic product (GDP) in Europe has not been even more marked. What strategies are trade unions in Europe following in order to respond to these challenges?

Continuing the “Social Pact” approach: If you can’t beat them, join them

One strategy is to continue with the “Social Pact” approach, followed in many European countries over the past 15 years. The basic idea is that politicians and enlightened employers in the end do not want chaos in wage formation processes. Employers, governments and central bankers have an objective interest in the existence of trade unions and coordination of wage bargaining, provided of course trade unions are prepared to deliver concessions instead of taking up a combative role. There is a clear link with the “Europeanization” of industrial relations here. A strongly coordinated wage policy in the euro area with, for example, strong commitments from the different trade unions not to trigger second-round effects but to moderate wages, would certainly make life much easier for the ECB and its single monetary policy. At the same time it would demonstrate that trade unions and collective bargaining are part of the solution, not part of the problem.

However, experience shows that the nature and logic of exchanging things in a social pact is, in practice, unbalanced. Trade unions often accept structural concessions which are afterwards difficult or impossible to modify, the “internal market deal” being a good example. European workers were promised Social Europe in return for support for market liberalization. However, market liberalization is a structural process whereas conceptions of a Social Europe depend on day-to-day political support which can change over time and, as discussed above, even change into the opposite.

Moreover, the nature of the effort demanded from workers may well cause important legitimacy problems for trade unions. Indeed, wages are nowadays seen by policy-makers as the one and only adjustment mechanism. In the mainstream analysis, wage moderation and wage flexibility are seen as the answer to all problems, whether the problem concerns competition from China, resilience to economic shocks, adaptability to technological developments, budget consolidation, unemployment, inflation, internal competitive imbalances in monetary union, financialization of the economy, etc. This implies that the shopping list of employers looking for concessions from wage earners is so vast that it is becoming quite difficult for trade unions to deliver. Trade unions can deliver, and indeed have delivered, moderate nominal wage increases and some forms of flexibility. However, what is demanded right now is going much further and involves measures such as nominal and real wage cuts, longer unpaid working hours, increasing inequality – all while bonuses for the already super-rich continue to grow. Ultimately, this may result in trade unions being perceived by their own members and other workers as collaborators with vested interests, and face dwindling membership rates as a consequence.

Social Europe: Minimum Europe?

The risk that multinational business would take advantage of the European single market and its single currency by playing off one country’s workers and governments against another’s is not new; it has been recognized from the very start of the big European projects such as monetary union and the completion of the single market. At that time (the early 1990s), trade unions nevertheless accepted the economic logic of the single market and its single currency because they had been promised a Social Europe in return. Here, the “social” logic balancing the “economic” logic consisted of a set of European social directives formulating minimum standards and workers’ rights being taken out of the competition process, thus ensuring fair competition or a level playing field for the internal market. These directives aimed, for example, at making sure that all Member States respect a maximum limit to the working week, that health and safety regulations are in place, that all workers have a right to paid holiday and that there are maternity

leave provisions. On top of these social directives, the social correction of the market was reinforced by creating a structural process of social dialogue at the European level. European level social partners obtained the opportunity to discuss social agreements amongst themselves, which can even be transformed into a directive and hence made binding for the whole of the European Union. Such European level social agreements were signed, amongst other things, on the subject of atypical forms and contracts of work, thereby forcing all Member States to respect certain principles such as the principle of pro rata treatment for part timers, the principle that there should be limits to chains of fixed-term contracts and that an open-ended contract should remain the general rule. In demanding these social directives, trade unions made it clear that these European rules were to be regarded as minimum rules and that Member States would always be free to maintain or adopt higher and better standards. The key idea was to make sure that “social laggards” were pulled upwards by minimum European-wide standards, not that countries with high standards would start revising them downwards because of unbridled cut-throat competition from the “social laggards”.

There is no doubt that Social Europe has delivered. Indeed, millions of workers in many countries have benefited from these European social directives and agreements, forcing Member States to implement workers’ rights where these were previously non-existent. For example, thanks to the European provisions on paid holiday, some 2 million UK workers for the first time became legally entitled to paid leave.

At the same time, the momentum on Social Europe has stalled, to say the least. The political majority in Europe has changed since the 1990s and is no longer favourable to social corrections, let alone workers’ rights. Instead, the ruling philosophy is one of ensuring that companies are competitive by removing rigidities and “simplifying” workers’ rights. Employers are well aware of this and have been using the shift in the political momentum to ask for a “social moratorium”. Most of the time, employer organizations have also been unwilling to engage in further European social dialogue. In this context, advancing on corporate social obligations is a difficult task.

Moreover, sometimes one can also observe a certain ambiguity in the European social acquis and the European social dialogue. Things are not always as they appear. Since social agreements are the outcome of a dialogue in which the points of view of employer and trade union organizations widely differ, the logic of some of these agreements is not always that straightforward. Take, for example, the 1999 framework agreement on fixed-term contracts. The agreement consecrates the principle that fixed-term work should remain the exception and not become the rule and that Member States should put limits to chains of fixed-term contracts. However, the agreement also states that its objective is “to accompany the further

development of atypical and fixed-term jobs on a basis acceptable to both employers as well as workers. This is somewhat ambiguous and may imply that the 1999 agreement indeed accepts a further flexibilization of the labour market through fixed-term work contracts as long as this remains within (not clearly defined) limits.

In any case, the 1999 framework agreement certainly did not stop the share of fixed-term work from continuing to increase. Whereas the share of fixed-term workers was limited to about 12 per cent in 1995, it has now risen to 15 per cent, with major country differences hiding behind this European average. Similar questions can be raised concerning the draft directive for agency workers now back on the political discussion table at the European Commission with the help of the Portuguese and Slovenian presidencies. Whereas the draft directive is based on the principle that agency workers should be paid an equal wage to other workers in the same firm, the directive also provides the possibility for countries to install a grace period of several weeks during which the equal pay principle would not apply. In this way, what may seem as social progress at first sight, may turn out to be social regress, certainly for those countries where agency workers now enjoy equal pay from the very first day.

The latter links up again with the issues discussed above. European minimum standards are supposed to be just that: minimum standards, with countries and national social partners having the option of improving on them. However, if Europe – with the ECJ leading the way, is now adopting a political strategy in order to turn European minimum standards into maximum standards for each country, then the logic of Social Europe changes radically and upward social convergence would turn into downward social convergence.

Coordination of collective bargaining strategies

Another strategy also involves a “Europeanization of wage policy” but in a more offensive way. The basic principle is to start replicating at European level what the labour movement has been doing at national level since the end of the nineteenth century: competition between workers was taken out of the (national) market by adopting social norms and standards applicable to all workers, by labour law and/or by developing strong and representative collective bargaining practice.

European economic integration and the possibilities it offers for having workers from different countries undercut each other now forces trade unions to look for a Europe-wide approach. Of course, given the diversity of national industrial relations systems in Europe, it is inconceivable to think of European-level collective agreements or bargaining as such (with transnational enterprise bargaining as one possible exception, as discussed below).

Nevertheless, what is possible is to have a European *coordination* of collective bargaining going on in different countries.³

This idea was at the basis of the 1999 Helsinki congress of the ETUC. It was decided to establish a committee with a mandate to develop a coordination of collective bargaining in Europe. This committee would bring together those trade union officers responsible for (the coordination of) collective bargaining in the different countries as well as the European industry federations. The basic aim was to prevent monetary integration and European enlargement from resulting in a process where trade unions undercut each other in their collective bargaining strategies. In other words, the ETUC was (and is) seeking to avoid excessive wage moderation by trying to improve the coordination of collective bargaining strategies in Europe. To do so, the ETUC has established a guideline, annually discussed and agreed upon by its Executive Committee, which calls upon affiliates to orient wage negotiations on the sum of inflation plus the productivity increase, while at the same time also paying attention to more qualitative aspects such as the gender pay gap, training, poverty wages, etc. Whereas the guideline is formulated in a flexible way (wages to orient themselves on inflation and productivity), different ETUC resolutions also make it quite clear that real wage cuts – with nominal wage growth staying behind inflation – are to be strictly avoided. The ETUC also ensures a regular and annual follow-up of its guideline, by requesting and collecting reports from affiliates on collectively bargained wage growth.

What have been the experiences so far? The ETUC collective bargaining committee has certainly allowed improved the flow of information. Besides an annual questionnaire and report on overall bargaining trends, real-time information on collective bargaining deals is being exchanged through collective bargaining bulletins and newsletters. The real-time exchange of information has also served to raise further our members' awareness that they are not "bargaining on an island" and that situations in which employers abuse collective agreements in one country to weaken the bargaining position of trade unions in other countries need to be avoided. On the other hand, coordination has thus far not really gone beyond the point of collecting and exchanging information. If coordination exists, it is more of an *ex post* (and not *ex ante*) nature, with affiliates that opted for wage moderation having to explain (and to a certain extent, justify) themselves to their peer trade unions.

3. Much of this coordination takes place at the level of the European Industry Federations (see the article by V. Glassner in this volume). Here we will limit ourselves to the ETUC.

A small step forward: The ETUC's campaign for a better deal for European workers

Awareness of the fact that workers in Europe are all too often played off against each other has recently inspired the ETUC and its affiliates to try to use the strength of working together to improve the national bargaining position of trade unions. In early 2008, the ETUC launched a European campaign, drawing wide attention to the fact that excessive wage moderation, together with the rising incidence of poverty wages, is undermining domestic demand throughout Europe and that competitive wage dumping strategies must be stopped. To deliver this message to the European public, press in Europe was contacted and provided with material showing the seriousness of the situation. One striking result from that was that European press (or some parts of it) seemed to be thinking that wage growth was already in line with productivity growth so that any acceleration of wage growth would indeed be inflationary. The ETUC's press campaign aimed at correcting this misperception. The campaign was backed up by a trade union mass demonstration in Ljubljana, coinciding with the informal summit of finance ministers organized by the Slovenian EU presidency. This meant that those policy actors, who are usually lecturing workers on the benefits of wage moderation and wage inequalities, could witness first-hand the demands and realities of European workers marching in the streets.

More fundamentally, this campaign indeed managed to reinforce the negotiating position of trade unions in Europe. Several trade unions indicated that things have changed after the demonstration and the campaign. Prior to these events, most national actors tended to argue that the national trade unions' wage demands were an "aberration", that the national trade union was standing alone, and that the widely accepted wisdom throughout Europe was supportive of wage moderation. After the ETUC campaign, national governments or employers could no longer maintain this position. It was clear for all to see that the problems experienced by workers in one country were the same as those experienced by workers in the rest of Europe. It thus also became clear that the trade union demand for a better deal for workers and their wages was not an isolated demand but a common demand from all trade unions throughout Europe. Trade unions throughout Europe were seen to be sticking together, which made it much more difficult for national governments and employers to consign trade union demands to the waste basket, for example by claiming that higher wage increases would erode competitiveness because the other European trade partners would meanwhile continue moderating their wages.

Transnational (enterprise) bargaining

Another type of answer to the pressure of cross-border competition in Europe on wages and working conditions has been the conclusion of transnational agreements covering workers from several European countries.⁴

In practice, the institution of European Works Councils (EWCs) has functioned as a platform for the development of such cross-border agreements, even though the EWCs' mandate is limited to information and consultation and does not involve collective bargaining. Indeed, according to a database developed by the Commission, there now exist almost one hundred transnational agreements between management and workers of a European company. About half of these agreements concern policy intentions of the company related to fundamental norms and workers' rights and which the company pledges to uphold in its operations, not only in Europe but around the world. The other half of these agreements opens up rights to lifelong learning or retraining for company workers throughout Europe and/or treating the rights of workers in all subsidiaries of the company in case of restructuring.

One well-known example illustrating the potential of this approach comes from the General Motors EWC where the worker delegation at the end of the 1990s refused the closure of the British plant and forced management to redistribute the cut in car production among the company's different plants across Europe.

Although wage bargaining has thus far not been an issue in these transnational agreements, its potential should not be underestimated. Transnational company bargaining can be seen as a way to get around the problem of multinational companies evading national rules and regulations by way of the mobility of their investments. By following up on the production chain of the multinational and enforcing workers' rights throughout this production chain, management can no longer behave as if in a *de facto* free trade zone.

However, there are also problems and risks with this approach. One major problem is that the legal nature of a transnational bargaining agreement is highly uncertain. How can workers' rights be enforced if the European company itself does not respect the agreement it signed? Or, what happens if the transnational agreement is respected and turned into national agreements in all but one or two national subsidiaries of the company? For these reasons, in its 2005 Social Agenda the European Commission put forward a proposal on a voluntary legal framework for transnational collective bargaining. Four years later, however, the Commission, under pressure from business, has abandoned the proposal.

4. See also the article by P. Marginson in this volume.

Moreover, the transnational agreement approach could also turn out to be a double-edged sword. Since the worker delegation in EWCs is not entirely composed of trade union representatives, it may for example be used as a way to sidestep trade unions and their European industry federations. Alternatively, deals might be brokered in which wages and working conditions are set lower than defined in labour law and/or collective agreements applicable in some countries. Or, the dynamics could turn the other way around as the case of a big chemical company shows: when the EWC was informed of a “pact for jobs”, giving up pay in exchange for keeping existing jobs by localizing investment in the headquarters’ country, the reaction of worker delegations from other countries was to ask whether they could also strike such a deal. In this way, European enterprise bargaining could become a structure which at the same time organizes and legalizes concession bargaining of European workers amongst each other.

Nevertheless, despite these possible drawbacks, the ETUC and its industry federation consider this as a possible tool to provide some order in the jungle of international competition on working conditions. Internal procedures to define the nature of the relationship of the European trade union federation with the EWC on the one hand and with the national sector affiliates on the other hand have been decided by the European metal workers and by the European textile workers. These procedures describe the way in which the negotiating mandate is set and lay down the exact majorities and blocking minorities necessary to come to an official agreement.

Conclusion

Wage competition undermining European real comparative advantages

This article has described three ways in which trade unions in Europe are at present responding to the pressure from “footloose” investment and cross-border management strategies on the bargaining position and wages of workers. Trade unions are trying to provide a response by renewing social pacts, by advocating more of a Social Europe approach, and by organizing the coordination of collective bargaining across borders, together with European campaigns and transnational agreements trying to control the production chain of individual European companies throughout the internal market. Each strategy has its own advantages and risks. And, in practice, a combination of these different strategies is likely to be pursued by trade unions in Europe.

However, regardless of which strategy will be chosen, trade unions are well advised to distinguish in any case the marketing efforts of business from the actual factors driving their investment decisions. As described above,

business will claim time and time again that investment will only be made in the cheapest and most flexible location. And since there is always another country willing to undercut the country that is the cheapest at the time, the only actor gaining from this downward spiral is business. Confronted with this race to the bottom, trade unions should take a look at the actual behaviour of foreign direct investment. Indeed, it appears that over the 2000–05 period no less than half of the world's foreign direct investment has gone to the EU–15, a group of countries where hourly wage costs, social charges and worker protections are high. Despite its image as “old Europe”, the EU–15 is a magnet for foreign investment. Moreover, when international managers were asked the reasons for investing so heavily in the EU–15, the standard reply was that old Europe offered comparative advantages in the form of well-developed markets with strong purchasing power and an educated and skilled workforce. This has an important implication for trade union strategies. Even if companies do not make additional gains by playing European members and workers off against each other, they are nonetheless likely to invest in Europe given its fundamental competitive advantages. This means that if trade unions (and governments) stick together and refuse to play the business game of competing at the expense of wages and to the benefit of profits, international companies will still be drawn to invest in Europe. Only this time around, workers in Europe will have to be provided with a better deal and a fair share of economic progress.

Hidden privatization in public education*

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Around the world, there is a growing tendency amongst governments to introduce different forms of privatization into public education systems and to privatize sections of public education. Many of the changes are the result of deliberate policy, often under the banner of “educational reform” to challenge perceived problems or inadequacies of public service education. Numerous national and international governmental, non-governmental, and private bodies strongly advocate reforms that introduce privatizing effects as “solutions” deemed as necessary for the development and expansion of public education systems. The impact of these changes can be far-reaching, for the education of students, for equity, for the conditions of teachers and other educational actors.

Other changes may be introduced unannounced: changes in the way schools are run, which may be presented as “keeping up with the times” and “modernization” but in reality reflect an increasingly market-based, competitive and consumerist orientation in our societies – turning education into an object for profit. In both cases the trend towards privatization remains hidden, whether as a consequence of educational reform or as a means of pursuing such reform.

Privatization tendencies are at the centre of the shift from education being seen as a public good that serves the whole community to its being seen as a *private good* that serves the interest of the educated individual, the employer and the economy. In particular privatization renders education into the form of a “commodity”, a competitive private good. The social values of education are displaced and its worth as a collective public good from which each person should benefit, is overlooked.

This article aims to shed light on the hidden processes and forms of privatization in public education, and to stimulate a public debate on what kind of reforms are really necessary for education to be successful. It argues that education should not be viewed as a commodity from which private profits can be made, but as a public good equally accessible to all.

Forms of privatization *in* and *of* public education

Traditionally, the distinction between private and public sectors in education is based upon the ownership and funding of schools. Education institutions which are established and funded by state or local government make up the public education system, while those established, managed and at least partially funded by private persons or bodies, belong to the private education sector. This distinction has become less clear with the trends in many countries to fund private schools fully or partially from public sources, or, conversely, public schools seeking additional funds from private sources. This article interprets privatization in public education in a broad and non-traditional way.

Privatization in and of public education is based on neoliberal principles that aim to open up education to the disciplines of the market, to choice and competition between schools for student recruitment, and to allow new (for-profit) providers to operate alongside or within the state school system. What makes privatization hidden is that it is often subsumed within, or attached to, other kinds of educational reform like school choice or school-based management or public-private partnerships (PPPs).

Privatization that takes place in education can be separated into two main forms:

Privatization in public education

These so-called “endogenous” forms of privatization involve the importing of ideas, techniques and practices from the private sector in order to make the public sector more like businesses and more businesslike. Schools are in effect perceived and managed as a business, and may include such features as competition (quasi-markets), new public management (NPM), performance management, accountability, and performance-related pay for teachers and staff.

Privatization of public education

Also referred to as “exogenous” privatization, these forms involve the opening up of public education services to private sector participation on a for-profit basis and using the private sector to design, manage or deliver aspects of public education.

The first type of privatization, privatization in public education, where the public sector assumes the characteristics of the private sector, is generally widespread and well established. Privatization of public education, where the private sector enters public education, is newer but rapidly expanding. These two types are not mutually exclusive and, frequently, tendencies of privatization in public education pave the way for explicit forms of privatization of education.

Key features of endogenous privatization

Quasi-markets

The market form is the key device of hidden privatization in education. Through the introduction into the state education system of forms of school choice (the right of parents to choose between schools), competition is established that is expected to lead to the raising of standards across the school system. Choice is facilitated by the introduction of: per-capita funding; devolution of management responsibilities and budgets to schools; provision of school “vouchers” for use in public and private schools; publication of performance “outcomes” as a form of market information for parents.

In Chile, choice linked to vouchers and the participation of private providers was used as a mechanism for the overhaul of the education system. Voucher introduction doubled enrolments in private schools, but almost all of this increase was in urban areas. Additionally the voucher system led to student selection with better performance, despite attempts to overcome these practices.

New public management

The rise of NPM and the role of the school manager are further key features of hidden privatization. The manager is the central figure in the reform of the public sector and the introduction of quasi-markets; he/she is no longer a lead professional of teachers but a manager of institutional performances. Often school managers are not necessarily persons with teaching experience. NPM has been the primary means through which the structure and culture of public services like education are recast in order to introduce forms of privatization, and often leads to the disempowerment of education practitioners who become subject to new forms of control through performance-management techniques.

Features of NPM include: attention to outputs and performance rather than inputs; using competition to enable “choice” (e.g. parental choice of schools, of teachers); devolution of organizational budgets to managers.

Performance management, accountability and performance-related pay

These techniques are intended to ensure that educational processes are made more transparent and accountable, but at the same time have the effect of re-focusing the work of schools and teachers and changing the values and priorities of school and classroom activities. Such techniques include, at the school level: governments setting benchmark targets for schools and school systems to achieve and linking school funding to performance requirements. For example, in the No Child Left Behind legislation in the United States, schools are required to demonstrate increased test scores in Reading and Mathematics, or face the loss of federal education funding. At the teacher level this has meant: linking teachers pay to student performance; breaking the link between qualifications and employment in education and the introduction of “skill mix” into schools, whereby the number of qualified teaching personnel is limited and augmented by a range of unqualified staff on lower pay and more precarious contracts, leading to an increase in unqualified staff; introduction of systems of appraisal and performance review of teachers. Performance-related pay schemes for teachers are currently being used in the United States, Hong Kong (China), New Zealand, Israel, Japan and Australia.

Key features of “exogenous” privatization

The involvement of the private sector and NGOs in the delivery of education in developing countries where state-funded education has been absent, has long existed, as has the provision of elite, religious and other alternative forms of education by private providers in Western industrialized countries. However, the public education sector as a place of private profit-making activity has emerged only recently. These forms of profit include.

Contracting out of services to private providers

In this case, contracting extends beyond “non-core” educational services (school transport, food services, cleaning) to include contracting of the private sector for the delivery of so-called core education services (including curriculum materials and pedagogy, national programme designing and delivery, IT hardware, professional development services, payroll and HR services, consultancy).

Contracting out schools to private operators

Individual schools or groups of schools are handed over to private companies to run under contract on a for-profit basis. Here private providers are regarded as being able to provide a better quality education service than municipal schools and better value for money, although this is not always the case in practice. In some cases the privatization of public schools remains hidden, and changes in management are obscured as change in the interest of choice, efficiency and effectiveness.

In Colombia so-called “concession schools” have been introduced, whereby the management of some public schools is in the hands of private institutions which deliver education services. Management contracts are for 15 years, and failure to meet educational outcome targets such as drop-out rates and standardized test scores can lead to cancellation of the contract.

Public–private partnerships

These are often a “re-labelling” of contractual or outsourcing arrangements. Partnerships are one of the ways in which privatization works as a policy device, of and in the public sector, addressing social problems in new ways, establishing new relationships and redistributing decision-making. A popular type of PPP among governments that aim to reduce their public sector expenditure involves the use of private providers to design, build, operate and manage state education facilities on a lease-back basis, thereby transferring capital costs and some risk to the private sector.

There exist varying levels of public awareness and understanding of PPP and their implications. Education services are now a “big business” and an increasing number of national and international firms are looking to make profits from selling services to schools and governments. Some countries now earn a considerable proportion of their export revenue from educational services sales. Business is also increasingly involved with local and national governments and educational institutions as partners (PPPs).

The costs and risks involved with PPPs may be high and not necessarily a win-win situation for both parties. The New Schools Project in New South Wales in Australia led to the financing, designing and construction of schools where enrolment rates proved low.

International capital in public education

Public services are increasingly a focus for private investment and profit, particularly on a trans-national level. For example, UK education services company Nord-Anglia, which operates across a whole spectrum of for-profit education services, runs schools in Moscow, Pundong (Republic of Korea), Warsaw, Shanghai, Bratislava and Berlin, and trades its educational provision with other companies. Education services are an “emerging market” for foreign direct investment (FDI) whose significance grew dramatically in the 1990s and now forms part of the “portfolio investment” of commercial, financial and private equity companies. Securing inward private investment in education is a key target identified for the developing world by the United Nations and the African Union; private solutions to public problems are often privileged.

Commercial enterprises may have an interest in a number of markets simultaneously, for example the Alokozay group, based in Dubai, which plans to create a network of fee-paying schools in Afghanistan, yet describes itself as a leader in the cigarette industry.

Commercialization or “Cola-ization”

This involves commercial companies targeting their products and brands at child/youth consumers through schools (selling to school children via vending machines, producing curriculum material, maintaining educational web sites). The development of brand identity and loyalty through the display of logos, sponsorship and equipment promotions have become normalized and obscure the role of such practices in the privatization of education.

High-profile companies such as McDonald’s and Cadburys use educational web sites to promote their products in schools in the United Kingdom, and in Ethiopia schoolchildren receive lessons via plasma TV screens provided from South Africa together with curriculum and content, thereby

effectively removing the role of the teacher. In the United States, in Seattle's secondary schools, students are required to watch commercial TV in exchange for the use of television equipment.

Global patterns of privatization

Privatization in education does not take place in a linear process, but rather a process of selection of different possibilities available. These policy patterns of privatization have been coined “cafeteria style” in the United States. The diversity of forms of privatization in and of public education services, and likewise privatization tendencies are increasing on a global level. Highly influential Western governments and multilateral agencies such as the World Bank, OECD, IMF and WTO, actively promote privatization as desirable and necessary for the economic development of developing countries and as part of their own economic strategies. They promote reforms that introduce privatizing effects as solutions to public sector problems or deficiencies, which are represented as necessary for the development or expansion of such systems. This provides a platform for neoliberal political ideas and for policy ideas like school choice, vouchers and contracting out.

Contexts of privatization

Privatization tendencies are most developed in highly industrialized nations; often they are the place of testing and development of new privatizations, from where they are exported to developing countries. Privatization tendencies are often normalized in these countries. Countries looking for policy solutions to educational problems engage in “policy-borrowing” and policy transfer from the United Kingdom and the United States. Most promoters of privatization are also located in Western industrialized nations, where most companies profiting from global patterns of privatization are located.

In countries outside of the highly industrialized world, privatization tendencies such as devolution and public–private partnerships are being built into the process of newly establishing education services in areas where education services have not previously existed. In developing nations, formal education is often provided by a range of actors, including the State, international NGOs, civil society organizations and for-profit companies. In many cases school provision is stratified across social classes, with high-quality and formal, Western-style education available for fee-paying urban elites, and poorly resourced, lesser-quality education for poorer sections of society, which is often not free to the user. A number of direct and indirect costs as well as formal and informal mechanisms keep children out of schools, particularly user fees.

Embedding exogenous privatization in education in the developing world

Exogenous privatization can be seen as a fundamental feature of international education policy for the developing world. Private finance is frequently presented as an inevitable necessity to realize targets such as *Education for All* in the developing world. Private sector involvement has been extremely problematic in developing countries, with a lack of transparency, uneven regulatory frameworks, and vast disparities between different social groups that become exacerbated by hidden privatization mechanisms.

Governments additionally commission Western private sector for-profit organizations to work in the developing world, usually in the form of technical assistance (training, scholarships, studies), where a large proportion of the funds are usually lost to international consultancy.

Endogenous privatization tendencies in the developing world

The transfer of endogenous privatization tendencies from the highly industrialized nations to the newly industrialized and developing world includes the insertion and naturalization of Western models of organization, education, leadership and employment, and the extension of the commodification and commercialization of education.

The language of the Dakar Framework,¹ which identifies strategies for achieving *Education for All*, is that of “improvement”, “accountability” and “management”, language that has long dominated the education policies of the West and is closely tied to endogenous privatization tendencies. These tendencies are particularly evident among teachers in the developing world, where the use of non-qualified personnel in schools is promoted, and is often used as cost-saving strategy that prioritizes financial imperatives over investment into trained teachers, and often ignores the need to employ more teachers in order to accommodate growing numbers of primary-school children.

Impacts of privatization

Evidence of the achievement effects of privatization remains very unclear and contradictory. Competition between schools commonly leads to the development of local economies of student worth in which students are deemed to

1. Declaration adopted by representatives of governments at the World Education Forum, organized by UNESCO in Dakar, Senegal, 2000. It sets targets for achievement of the *Education for All* programme.

be desirable or not on the basis of whether they are perceived to be an asset or liability in relation to indicators of school performance. In some cases this may exacerbate stratification of schools by student attainment. These market forms can also have a significant impact on equity in education. Overt and covert practices of student selection may be introduced in schools to ensure that they have a population that is most likely to perform well in relation to external measures. This may lead to social segregation in schools and homogenization of student populations.

Privatization tendencies, both endogenous and exogenous, have profound implications for the future of teachers' careers, pay and status, the nature of their work, and their degree of control over the educational process. An increasing number of countries are introducing schemes of performance-related pay for their teachers, and monitoring performance targets. Additionally, privatization tendencies have brought with them the move to make teachers' contracts more flexible and to introduce teaching personnel without qualifications, whose lower pay and softer contracts allow significant efficiency savings to be made. This in turn affects working conditions and the positions available to those teachers who are qualified.

The privatization of education involves a shift in the role of the State from that of delivering education services directly to that of contractor, monitor and evaluator of services delivered by a range of private providers.

Conclusions

Privatization of education not only leads to changes in the way education is delivered, but also fosters the development of a new language for education policy, and new roles, positions and identities for teachers, students, and parents. Privatization in education changes the way in which education is organized, managed and provided; how the curriculum is decided and taught; how students' performance is assessed; and how students, teachers, schools and communities are judged. Privatization tendencies also change the way in which teachers are prepared; the nature of and access to ongoing professional development; the terms and conditions of teachers' contracts and pay; the nature of teachers' day-to-day activities and the way they experience their working lives.

Privatization also challenges the capacities of Education Unions to bargain collectively on behalf of their members and more generally participate in education policy. Most importantly, it changes education as a whole – from a public service which serves the community through the democratic process to the private good which serves the consumer through the market.

Leveraged buyouts, restructuring and collective bargaining

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Collective bargaining and debt-financed restructuring: The context

Workers and trade unions have now experienced two significant cyclical periods of leveraged buyouts (LBOs). The first, primarily confined to North America, peaked and crashed in the second half of the 1980s. The second LBO boom was global, peaking in late 2007 when the first signs of the global financial crisis froze the easy access to credit which underpinned the financial engineering behind the expansion. From first to second cycle, leverage buyout firms tried to recast their public image, in the process adopting the more benign name “private equity”. In form, function and behaviour, however, the nature of the business model remained the same: the use of high leverage, often severe restructuring strategies and short investment periods to achieve high threshold returns on equity.

The total volume of buyout deals for 2006 has been estimated as high as US\$738 billion, accounting for over one-fifth of global M&A activity.¹ The following year was set to surpass that, until the “credit crunch” put an end to the mega-deals which accounted for an ever-growing share of overall buyout activity.² Investment banks are, at least temporarily, significantly less able to engage in higher-risk leveraged finance strategies due to balance sheets weakened by the unwinding of past leveraged derivative instruments. Though the current global financial crisis has imposed a drastic reduction in the size and number of LBOs, they continue to take place, affecting workers in all sectors and all regions of the world.

Millions of workers are currently employed in companies that have gone through one or more LBOs. As pointed out in a previous article, “[i]f private-equity funds were recognized as TNCs (given their extensive control over manufacturing and service companies globally) and included in UNCTAD’s top 100 non-financial TNCs, they would easily displace the top ten corporations. General Electric, ranked first in UNCTAD’s list, controls less foreign assets and employs fewer workers overseas than either Blackstone, Carlyle Group or Texas Pacific Group.”³ In 2006, Blackstone, for example, owned companies employing over 400,000 workers. Following the 2007 purchase of Hilton Hotels and other large buyouts, Blackstone now owns companies employing an estimated 650,000 workers. KKR’s portfolio companies employ over 800,000, making it second only to Wal-Mart in terms of employees. As a consequence of the second global LBO wave, buyout funds have emerged as major transnational employers.

1. Thomson Financial, cited in *The Wall Street Journal Online*, at http://online.wsj.com/public/resources/documents/info-YE_PEQUITY06.html.

2. “Behind the Buyout Bust”, in *Business Week*, 27 Sep. 2007.

3. P. Rossman and G. Greenfield: “Financialization: New routes to profit, new challenges for trade unions,” in *Labour Education*, 2006/1, p. 60.

Many of the workers in private equity-owned portfolio companies continue to face ongoing restructuring challenges that can be compounded by high debt burdens associated with leveraged acquisitions. In addition, the impact of the financial crisis on companies “taken private” through LBOs has been to exacerbate these pressures. Secondary buyouts – the sale of a company from one private equity to another – have become problematic as private equity firms find themselves starved of cheap credit, and the current volatility in public equity markets inhibits rapid “exit” of the investment through relisting on the stock market through an initial public offering (IPO).⁴ “The result is likely to be even more pressure to cut costs through layoffs, closures, outsourcing and further reductions in productive investment. Collective bargaining power, already eroded under the buyout onslaught of recent years, will come under heightened pressure. And more company pension funds will face deficits, capping and closure.”⁵

It is therefore urgent that trade unions systematically and effectively address the specific challenges to traditional collective bargaining strategies posed by the growth – and current crisis – of restructuring derived from leveraged buyouts. There already exists a growing literature which locates private equity within the “financialization”.⁶ One element of this transformation has been the emergence of “invisible employers” – financial owners of companies with significant numbers of employees who stand outside the international and national legal frameworks defining employer responsibility – including responsibility for industrial relations – on power relations at the workplace.⁷

These approaches highlight the political nature of the leveraged buyout business, its dependence on institutional changes in national and global financial markets, and the need for a political response by the labour movement. The purpose of this article, however, is to draw attention to the critical changes in enterprise restructuring introduced under the private equity regime and what, in the first instance, unions need to know about the specifics of restructuring under this regime in order to respond through the collective bargaining process.

4. “Buyout firms’ exit options narrow as new year begins”, in *Wall Street Journal Online*, 8 Jan. 2008, at <http://blogs.wsj.com/deals/2008/01/08/buyout-firms-exit-options-narrow-as-new-year-begins/>.

5. “The harsh world of leveraged buyouts has suddenly gotten harsher”, 2 Aug. 2007, IUF Private Equity Buyout Watch, at www.iufdocuments.org/buyoutwatch/2007/08/.

6. “Financialization transforms the functioning of the economic system at both the macro and micro levels. Its principal impacts are to: (1) elevate the significance of the financial sector relative to the real sector; (2) transfer income from the real sector to the financial sector; and (3) contribute to increased income inequality and wage stagnation.”, definition taken from Thomas I. Palley: *Financialization: What it is and why it matters*, The Levy Economics Institute and Economics for Democratic and Open Societies, Washington, DC, Dec. 2007, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1077923.

7. *A workers’ guide to private equity buyouts*, IUF, Geneva, 2007, available at www.iufdocuments.org/www/documents/A%20Worker’s%20Guide%20to%20Private%20Equity-e.pdf.

Restructuring challenges of leveraged buyouts

The leveraged buyout as a specific business model has appeared across sectors and countries. It is applied in cases of mergers, acquisitions and divestitures related to enterprise restructuring; in distressed assets, bankruptcy claims and consolidation of operations associated with corporate-driven industrial rationalization; and in situations where privately held, family-controlled enterprises face succession issues.

So-called closely held enterprises of course exist in size and scope that range from some of the largest transnational corporations controlled by trusts, to subsidiaries and divisions and to small locally operated shops. Closely held ownership of an enterprise, as opposed to a publicly held joint stock company or some other form of incorporation, has critical legal and regulatory ramifications for workers, for the economy and society at large. What the LBO model used by “private equity” introduces into the restructuring mix is a high-risk combination of leveraged debt financing with a short-term intent to resell the business in order to pocket extraordinary returns. Threshold rates of return on investment of 25 per cent and more are not uncommon with withdrawals of equity and planned time to exit measured in periods of months to a couple of years.

Without adequate protections negotiated by trade unions through the collective bargaining process, the excessive returns under this kind of LBO model can be extracted at the expense of good jobs, secure pension plans, upskilling and training of workers, improved working conditions and needed investments in operations and product development. Collective negotiations with employers to ensure socially acceptable outcomes of restructuring of any form are essential, whether enterprises are public or private, large or small, in the manufacturing or service sectors.

Types of management strategies

Understanding the impact of the high debt/rapid exit strategy within the overall context of restructuring is crucial to understanding how a leveraged buyout can intensify the general rigors of restructuring. When this is understood, unions can more clearly delineate what approaches towards collective bargaining can best serve and protect workers’ interests when facing an LBO.

Management strategies impacting workers in an LBO situation can generally be categorized into three groups, typically implemented in varying degrees and in different combinations but involving all three. The first set of strategies centres on general cost-cutting measures that aim to boost profits, impacting directly workers at the given company and across its supply chain. Such pressures tend to intensify as the targeted rate of return increases and the time span of ownership shortens. A second area focuses on

the management of assets and cash flow, including inventory systems associated with lean production methods. These methods, designed to maximize cash flow relative to asset utilization, become more pressing for workers as debt burdens increase and planned exit time condenses. The last set of strategies relates to leveraged financing itself, as well as the means to extract accumulated equity in the business. The impacts of this third group are of more consequence as the greater the debt burden and degree of leverage, the faster will be the withdrawal of equity.

In the broader context of restructuring, the first two sets of strategies are of course widespread across the full range of economic activity and are by no means limited to LBOs. The third group, on the other hand, is more specific to LBOs, though the growing financial crisis has clearly demonstrated that the use of debt and leverage to amplify returns to capital with concomitant risks has also reached well beyond the confines of LBOs. The potential effects on workers when management tries to apply strategies simultaneously in the case of LBOs are more severe the higher the target return on the investment, the greater the debt burden and degree of leverage, and the shorter the intended period before exiting the investment.

LBO strategies and objectives: A closer look

The nature and impacts of management strategies can be more readily understood when related directly to objectives. This is done here for each of the groups described above. Figures 1 and 2 below, respectively, corresponding to the first two strategy groups, list entities that have objectives focused on achieving a targeted rate of return. A common and simplified measure of return on capital is after-tax profits divided by shareholders' equity. (Shareholders' equity is in turn equal to total assets minus total liabilities.)

The objective as presented here is simplified from more complex financial formulas calculating return on investment, particularly concerning the central roles of time and the cost of capital. These would be reflected in discounted cash flow and internal rate of return analyses of investments and threshold returns. In general, however, low real interest rates that have prevailed since the bursting of the asset bubble associated with technology stocks have lowered the cost of capital used to finance LBOs. With respect to time and the short-termism embedded in the LBO model, the faster an amount of capital that has been invested can be recouped and the resulting profits posted, the higher is the annualized rate of return pocketed in the process.

For the third group of strategies, which focuses on the role and impact of leveraged financing and cash flow in LBOs, we use another financial measure: the leverage ratio (see figure 3). This ratio compares the borrower's total debt from all sources to cash flow, which is typically calculated as earnings before interest, taxes, depreciation and amortization (EBITDA). Among the "Lords

Table 1.

Private equity firm	Leverage ratio
Madison Dearborn Partners	11.8
Providence Equity Partners	11.0
Blackstone Group	10.6
Thomas H. Lee Partners	10.3
Carlyle Group	9.6
Goldman Sachs Group	9.5
Apollo Management	9.1
TPG	8.2
Bain Capital	7.8
Kohlberg Kravis Roberts	7.5

Source: J. Kelly: "Madison Dearborn Beats Blackstone, Goldman Sachs as Deals Stall", Bloomberg, 1 Oct. 2007.

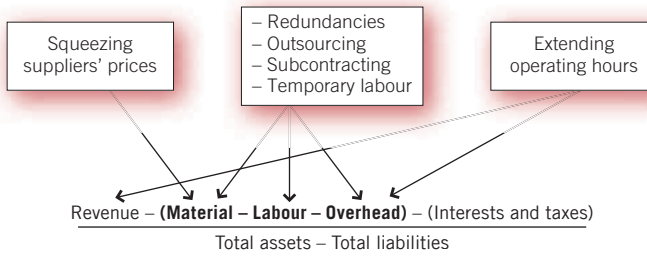
of Leverage" in the private equity industry, leverage ratios prior to the unfolding credit crisis indicate the degree of debt involved in typical private equity acquisitions.⁸ These are set out in table 1.

Cost-cutting strategies

Through the collective bargaining process, productivity gains derived from improved technology and better ways of working can be shared equitably with workers. The result is improved living standards for both particular groups of workers and for working people as a whole. This is a very different route to profit than aggressive cost-cutting methods in pursuit of extraordinary rates of returns through lay-offs, the outsourcing and subcontracting of jobs and the substitution of temporary for permanent employment. This is not to say that this latter route is limited to LBOs. "Financialization" has meant a general trend for employers to focus on increased dividends and short-term movements in share prices at the expense of productive long-term investment. "Downsize and distribute" is increasingly the rule at companies around the world, private or publicly held, large or small and across sectors. The point here is rather to emphasize that the higher are targeted returns and the more pronounced the short-termism of an LBO investment, the more likely it is that management will attempt to implement aggressive cost-cutting measures and avoid investing in and sharing gains from new technology and productivity-enhancing approaches that do not come at the expense of workers.

8. Average amount of debt committed to an acquisition relative to the target's EBITDA. Includes announced US acquisitions of more than US\$100 million from 1 Jan. 2005 to 12 Sep. 2007, for which merger agreements were available.

Figure 1. Restructuring and management strategies – #1

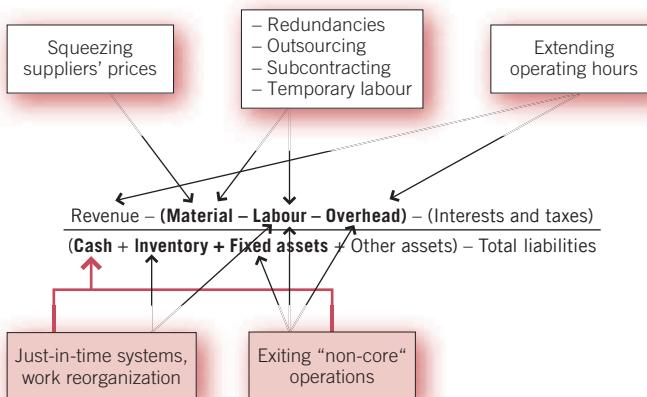


In Figure 1, which shows after-tax profits divided by shareholders' equity, we see how aggressive cost cutting measures boost returns on investment. For example, squeezing existing suppliers reduces material costs while redundancies, outsourcing, subcontracting and the substitution of temporary labour are possible ways to drive down the cost of goods sold or services provided and thus boost profits.

Asset management and cash flow strategies

On top of these methods are ones that attempt to increase and accelerate the flow of cash for a given amount of assets. Methods that attempt to reduce the amount of working capital used and turn it over more frequently, such as just-in-time inventory systems, have over the years been adopted by enterprises of all sizes and sectors. Like the cost-cutting measures described above, they are hardly specific to LBOs. Owing to the financial imperatives which underpin their operations, however, LBOs again can intensify the application of such

Figure 2. Restructuring and management strategies – #2



methods the higher the targeted return, the more highly leveraged the deal and the shorter the planned exit time.

In addition to the more rapid and frequent turnover of inventory and working capital that will generate more cash flow from a given amount of assets, fixed assets in the form of building, factories, equipment, warehouses, offices, stores and the like are vulnerable if management aims to consolidate existing operations and in the process shutter or scale back some workplaces. These may take place under the guise of exiting “non-core” operations or in the consolidation of existing productive capacity with closures as part of the restructuring process.

Leverage, debt and cash flow

The third set of management strategies are at the heart of the LBO model. At the centre of the diagram illustrating these (see figure 3) is the leverage ratio, which is an example of the types of financial covenants contained in senior loans used to finance LBOs and other debt-financed transactions. Financial covenants are specific financial benchmarks that the borrower must satisfy during the term of the loan. The leverage ratio compares the borrower’s total liabilities from all sources to its cash flow as approximated by EBITDA (earnings before interest, taxes, depreciation and amortization). In the diagram, another way to state total liabilities from all sources is shown as the value of assets plus needed funding of pensions and other obligations and then subtracting shareholders’ equity.

Figure 3. Restructuring and management strategies – #3

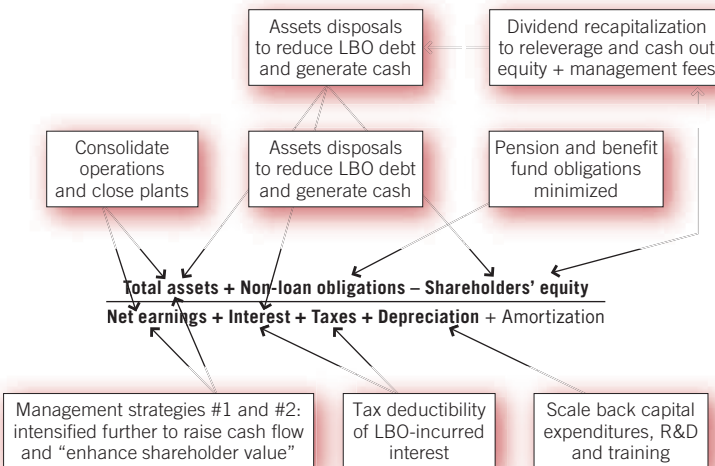
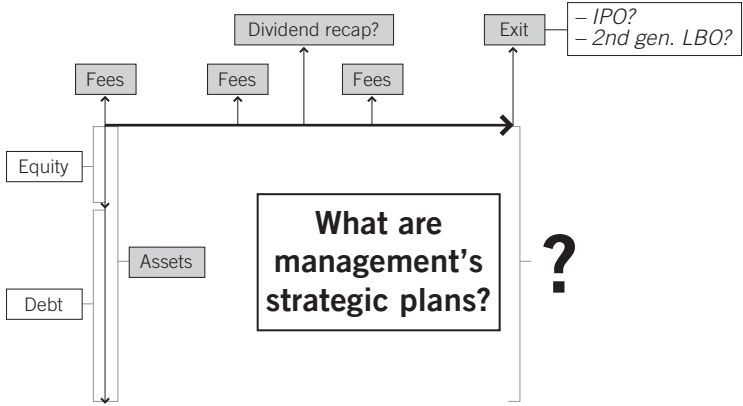


Figure 4.



The strategic plan behind an LBO aimed at achieving typically inflated rates of return would start with very high debt relative to equity to acquire the assets and then incorporate a mixed range of methods to extract the original invested capital plus profits. These can range from quick asset disposals to immediately reduce debt incurred in the acquisition to the targeting of pension and benefit funds. Such a plan could also intensify cost-cutting and pressures to consolidate operations, scale back investments needed to maintain and grow the business while maximizing the tax-deductibility of interest payments on the debt.

The more-or-less rapid extraction of the initially invested capital, accumulated equity and profits is typically accomplished by a combination of fees, dividends and the exiting sale. This is illustrated in figure 4. High management fees paid by the portfolio company to the “private equity” owners is one important method.⁹ Another method is through large cash dividend payments financed by additional debt which can keep the leverage ratio high up to the time of exiting the business, generally referred to as a dividend recapitalization or “recap”. Finally, a full or partial public offering of stock, or second or even third LBO can be the vehicle to sell the business and assets as the last stage of this kind of model.

It is again important to bear in mind that these kinds of techniques, in varying forms and to varying degrees, are also used in situations other than LBOs. The LBO process, however, concentrates and condenses these methods, with an impact on workers which is immediate and visceral. When private equity buyouts are simply folded into global figures on merger and

9. A. Metrick and A. Yasuda: *The Economics of Private Equity Funds*, University of Pennsylvania, The Wharton School, Department of Finance, 9 Sep. 2007, available at <http://intl.fp.sandpiper.net/reuters/editorial/images/20070913/whartoncarriedinterest.pdf>.

acquisition activity, their unique features are obscured. A leveraged buyout differs fundamentally from a traditional merger/acquisition precisely in that the acquired company pays the cost of its own acquisition through debt and fees. Further, the fact that the private equity firm has to beat the “hurdle rate” agreed with investors before it can collect the “carried interest” which (apart from fees) is the profit from the acquisition/disposal cycle, means that a private equity investor is necessarily highly aggressive in the pursuit of profits. These two elements, which are at the heart of the LBO process, pose distinctive challenges to unions engaged in collective bargaining with a private equity portfolio company.

As these visual representations of restructuring strategies make clear, it is critical for trade unions facing a potential LBO to obtain a maximum of concrete information about the proposed strategic plans of prospective buyers. While this is of course true in any sale/acquisition/takeover, the very nature of an LBO makes it imperative to obtain clear and comprehensive information on the degree of leverage, the structure of financing, and the length of time and investments that owners commit to the business in order to defend employment security, working conditions and pensions through the collective bargaining process.

Collective bargaining and access to information

The weight of the debt on a portfolio company’s balance sheet fundamentally transforms management cash flow and asset management strategies in ways which fundamentally transform the environment in which collective bargaining takes place, as highlighted in figure 3 above. It therefore follows that, in addition to all the other information which unions normally require for bargaining with employers, collective bargaining with a company taken private through an LBO requires full disclosure of the mechanisms behind the debt financing. Union representatives’ access to such financial information is therefore crucial.

Information available to union representatives for collective bargaining purposes varies widely from country to country and from company to company, depending on the legal and regulatory environment and the strength of the union. Where the activities of publicly listed companies are subject to disclosure requirements, the minimum is established by the regulatory reporting requirements. Unions will also have varying degrees of access to information where laws require employee representation on management boards, or, in the European Union, through a European Works Council. These minimum legal requirements, however, are rarely sufficient for unions to obtain all the information they need in the form they need it. The objective should be full access to the company’s accounts in order to obtain accurate, verifiable information concerning:

- the total amount of the debt incurred in purchasing the company;
- the types and maturities of the debt – junior or senior? (i.e. who has first claims on company assets)/secured or unsecured?;
- the rates (floating or fixed) and schedules;
- the nature of the covenants (e.g. restrictions on assuming more debt), if any;
- the identities of the lenders/holders of the debt securities if they are not publicly traded;
- the fees paid for the takeover operation, as the acquired company normally assumes these costs.

Since, as we have emphasized, every buyout has a financial target to achieve and a timeframe to make it in, unions need detailed information on the specifics of the business plan, including:

- exit strategy (IPO or sale to another financial investor);
- plans for selloffs/closures: how will the cash freed up from these be used?;
- projected changes in employment methods and their impact on collective bargaining units/structures (e.g. co-packing, subcontracting);
- utilization of company cash reserves/financial assets;
- utilization of intangible assets (“intellectual property”, patents, trademarks, copyrights);
- resources and commitment to maintaining pension funds/ retirement and other benefits.

The collective bargaining goal in mapping the private equity owner’s financial/business strategy is to gain sufficient information to locate:

- availability and sources of funds for investment in plant and equipment, research and training;
- space for negotiating employment and investment commitments.

Conclusion

Broadening the bargaining response

Because of the financial mechanisms which are at the core of the business model, LBOs add significant pressures on workers and trade unions over and above the pressures of permanent restructuring which have become an established feature of today’s global, financialized economy. Union experience

with LBOs varies widely between and within countries and regions. Even where LBOs have been long established as a business model, there are enormous disparities in trade unions' capacity to meet the specific challenges of collective bargaining under private equity ownership. Where unions have been well organized, usually on a national and sectoral as well as company basis, they have achieved some successes in defending employment and working conditions, maintaining pensions, securing investment, blocking particular LBO attempts and even in substantially influencing the conditions of a potential LBO.

These successes – few in comparison with the frequently massive concessions and defeats imposed by the buyout firms – must be built upon and amplified. While the headline-grabbing multi-billion LBOs are currently off the agenda, leveraged buyouts of small and medium companies continue and are expanding in geographical scope. Despite the global credit crisis, the largest private equity firms raised record amounts of cash in 2008, and are currently sitting on over US\$1 trillion in uninvested funds.¹⁰ Growing numbers of workers around the world now work for a buyout fund, whether they know it or not. As stated at the outset, the buyout business is cyclical. In the absence of substantial reregulation of capital markets, leveraged financing to acquire and manage companies for quick returns will remain a firmly established business model, the big deals will return, and unions will increasingly have to grapple with the distinctive collective bargaining challenges.

We have attempted to highlight some of these issues, drawing attention to the unique features of LBO-imposed restructuring and the information unions require in order to effectively respond to these specific restructuring challenges through collective bargaining. Access to information, of course, is not in itself sufficient. Unions need to acquire the necessary tools for analysing the information once they have it, and transform that analysis into action in the workplace and at the bargaining table. Developing a shared and accessible body of information, analysis and experience is therefore critical for enhancing trade unions' capacity to respond to LBOs, now and in the future.

10. Private Equity International "PEI 50 2008", executive summary, at www.iufdocuments.org/buyoutwatch/2007/09/new_wharton_study_shows_the_me_1.html#more).

Collective bargaining and global capital strategies in Brazil

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Collective bargaining in Brazil

For the entire world, rapid changes in the world of employment and the growing differentiation in forms of labour recruitment have been among the greatest worries of national labour movements. The ongoing deregulation of labour relations has had the direct effect of transforming productive structures everywhere.

In Brazil, serious problems related to employment, both quantitative and qualitative, are fundamental characteristics of the country's labour market. However, these problems do not occupy a prominent place on governmental agendas of recent years. The Brazilian labour movement has made only slight progress on issues related to productive organization. There is not a regulatory standard that guarantees the negotiation of these issues in collective agreements.

Brazil adopted an economic policy in the 1990s and in the beginning of the 2000s that further fostered a precarious and heterogeneous labour market, and which fails to properly guarantee conditions of a decent life for workers. Moreover, there is the aggravating circumstance of excluding a wide part of the population from the labour market.

The combination of these policies with previously existing problems, including severe unemployment and insecure, "flexible" labour relations, has had a transformative effect on the living conditions of Brazilian workers, and on the capacity of workers' organizations.

In the 1980s, with the re-democratization of the country, there was a parallel rise in a form of trade unionism that was strategically oriented to strengthening its internal organization and to the consolidation of decision-making processes and the regulation of issues that are important for workers.

One of the distinguishing characteristics of collective bargaining in Brazil during the post-dictatorship period is the stagnation of workers' wages, and their purchasing power. This is a result of the persistence of very high inflation rates until the middle of the 1990s and due to insufficient public policies to protect purchasing power. In this context, collective bargaining was pursued strongly by trade unions aiming to secure the real level of paid wages. Nonetheless, it is important to emphasize that negotiations are not restricted to this theme alone. Unions have also sought to increase the level of democracy in industrial relations, a goal that remains far from realized in Brazil.

An example of the authoritarian character of labour relations in the country is seen in the fact that neither existing laws nor collective agreements provide for the protection of two basic workers' rights: organization in the workplace and access to employer information. Freedom of association and collective bargaining are considered fundamental rights for labour and essential for the exercise of democracy by the International Labour Organization (ILO). ILO Convention No. 87 (which deals with freedom of association) remains unratified by Brazil. Brazil's labour legislation is also insufficient, even

though the free negotiation between capital and labour is recognized by the country's Constitution.

Ratification of this key Convention would require Brazil to adapt its legislation to its underlying principles. Presently, in spite of the advances of the Constitution of 1988, the legislation still contradicts some of the basic principles of this Convention. For example, there continues to be very significant intervention by the Government into trade union organizing, and this interference is used to restrict how and when workers can become members of a trade union. Moreover, the Government continues to interfere with the right to strike.

The Workers' Central Union (Central Unica dos Trabalhadores) (CUT) has been organized around the edges of these legal restrictions, consolidating itself in action as the main entity of workers' representation. But, if there were a proper institutionalization of these organizations, it would result in improved participation with various councils and public forums. Without such needed changes, the CUT will continue to be based on official unions and on the confederation system, and unable to take advantage of the full legal jurisdiction and competence of a trade union under Brazilian law – including the right to establish and sign collective agreements.¹

Despite the impressive growth in membership of Brazil's unions, and the related high level of dynamism of organizing activity in the latest decade, this growth has had the effect of slowing advances in the expansion of services provided. It has also generated a certain fragmentation of the various workers' organizations, which in turn has weakened the previous strength of workers' representation.

The success of collective bargaining in Brazil remains strongly rooted in the mobilization and power of the entities that actually negotiate. The lack of a regulatory standard creates a serious dependence on the forces that correlate between companies and unions, which usually is disadvantageous for the unions. Groups and unions with more "mobilization power" tend to achieve better results in their negotiations, and these successes are then used as reference points by other groups with less power.

It has not yet been possible, in general terms, for Brazil's trade unions to pass from a basically defensive position regarding wages' (and purchasing power) to an offensive position that would actually increase workers' share of the social product. These problems, among others, have caused intense public discussion. Recently, they motivated some attempts at tripartite collective bargaining within the ambit of the National Labour Forum (NLF).²

1. The Brazilian Workers' Central Union (CUT) were recognized, in fact, in March 2009.

2. The National Labour Forum was created on 29 July 2003. The NLF had the participation of 600 workers, government and employers' representatives. The lack of agreement on the legal procedures in the National Congress does not contribute to a union reform.

The context of innovations in corporate strategies in Brazil

During the 1990s, the Brazilian government adopted a series of measures that aimed to stimulate competitiveness among companies and the deregulation of the market, including: privatization, the reformulation of antitrust legislation and consumer protection, commercial liberalization, and new rules on foreign direct investment (FDI).

From the beginning of the 1990s, there was an acceleration in the production rationalization process, which produced a new dynamic for labour relations. These changes transpired as part of an intensification of capital internationalization, which established an accumulation regime operating on a new basis, created new economic structures, integrated financial markets and fostered the homogenization of production and consumption.

This process unfolded in Brazil in the midst of a serious economic crisis that caused very high inflation rates and production stagnation. Brazilian companies went through a “competitiveness crash”, a period of adaption to the new production standards. This changed the economic picture with respect to costs, quality and product development, following new parameters imposed by significant new levels of importation that resulted from the opening up of Brazil’s internal market. Consequently, the overall levels of employment, employment quality, labour conditions, and trade union organization were all directly affected by these changes.

As these neoliberal policies advanced, the flexibilization of labour contracts, the growing use of outsourcing, unemployment, and the advance of the merger and acquisition movement significantly weakened workers’ organizations over the course of that decade. This complex process of transformation, alongside various changes in the conditions of the domestic labour market, were clearly disadvantageous for Brazilian workers. Perhaps not surprisingly, a significant number of the unions were debilitated by the loss of members, resulting in difficulties mobilizing their bases.

This process further reduced the possibility of an intervention by workers in restructuring the processes of production that affect labour conditions. Such involvement had already been limited by the absence of guarantees of workers’ representation and the negotiation of companies’ internal issues.

So, while in developed countries collective bargaining can extend to issues such as production organization and the use of the labour force, in Brazil its role has been restricted to employment preservation – without encouraging results. Usually, companies put into practice their strategies without consulting the workers’ representatives and, even when they do, it is generally limited to sharing information.

Trade union strategy and collective negotiation in the context of corporate mergers and acquisitions in Brazil

In the present decade in Brazil there is an intense process of centralization of corporate capital into huge company groups, as a result of acquisitions and mergers. This process involves multinational companies as much as it involves national companies. In many cases, the multinational companies are cutting deals among themselves, but the acquisition of control of significant national (Brazilian) companies has also frequently occurred.

Some exemplary acquisition cases have drawn widespread public attention in Brazil because of the companies' respective size, the exercise of leadership in their sectors of activity, and the extent to which they illustrate the intense process of internationalization and centralization of capital in recent years. The following sections consider the cases of the purchase of the bank ABN Amro by Santander, the acquisition of the supermarket group Bompreço by Wal-Mart, and the purchase of the airline company Varig by Gol Transportes Inteligentes.

The purchase of Bompreço by Wal-Mart

Brazil's retail sales sector, organized in supermarkets and in hypermarkets, has undergone an intense process of concentration and centralization of capital since the end of the 1990s. Until the middle of the last decade, this sector was dominated by one national company with a long-established management, as well as company networks of medium size that operate regionally. Only two or three corporate networks were operating throughout (or nearly throughout) Brazil and only one of them represented multinational capital – the French group Carrefour.

Starting in 1995, there was a significant shift in the sector's landscape with the internationalization of the market, its concentration into fewer companies, and the extension of management to many regions of the country. The participation of the three major market groups in Brazil passed from 28 per cent of the market in 1996 to 59 per cent in 2005.³ Along with this structural concentration came other changes, including the incorporation of technological innovations, changes in the stores' relationship to their suppliers, and the imposition of new higher requirements of formal education to manage the contracting of labour.

The Dutch group Ahold acquired an ownership stake in the supermarket chain Bompreço in 1996 and assumed complete control of the company in 2000. At that time, it was the fourth major supermarket company in Brazil, with 100 stores. This number was increased with the later acquisition

3. *Ranking Abras*, Brazilian Association of Supermarkets, 2006.

of G. Barbosa, helping it to reach a total of 156 stores in April 2003. This chain had stores in the cities of nine different states in north-eastern Brazil.

In February 2003, the worldwide direction of the group Ahold announced to the public that the accountancy of one of its subsidiaries in the United States had been manipulated and the company's accounts had an enormous financial deficit of US\$0.5 billion. In order to cover this gap, the group expressed its intention of selling assets in other parts of the world, including Brazil.

Bompreço and G. Barbosa together employed at that time about 25,000 workers, represented by unions organized on a municipal, inter-municipal, or state basis. One group of these unions, related to the National Confederation of Trade Workers and CUT, was struggling to form a union committee that would represent all Bompreço employees. This effort had the support of the Social Observatory Institute and of the Dutch Central Labour Union FNV and, through this cooperation, succeeded in coordinating the efforts of a group of Brazilian trade unionists (CONTRACS and a group of commercial employees' unions from the north-east) and trade unionists from the Netherlands (FNV Bondgenotten). The goal of the Brazilian trade unionists was to establish a unified process of social dialogue with the company to guarantee a future of unified and centralized collective bargaining that would cover the entire Bompreço structure.

Until then, the company's position was to deny any possibility of collective bargaining with unions, and this position was partly supported by the argument that the proper legal structure for collective bargaining, based on the unions functioning in each workplace, needed to be respected. In other words, the company agreed to have contact with the unions as a group, but formal negotiation could only be done with the unions separately and within the collective bargaining standards as provided for under the established legal framework.

With the announcement of the decision by the Bompreço and G. Barbosa chains to sell their stores to Wal-Mart (1 March 2004), the unions proposed a meeting with the company's management to obtain information and to deal with possible impacts on employees. The company's management in Brazil refused to negotiate agreements related to these changes, and focused on communication with each union separately. After several attempts to gain guarantees against dismissal and to establish a negotiating dialogue to do so, two Brazilian union representatives participated in an interchange trip to the Netherlands that included one meeting with the international management of the Ahold Group. In the course of these meetings, the company offered a partial compromise with respect to employment preservation, at least until the transfer of control to the new (yet to be found) owner. Of course, this commitment did not hold any kind of binding legal force: rather, it was a broad declaration of intention.

Currently, the union committee continues its activities within the ambit of the Wal-Mart ownership group. It has chosen a theme of "Participation

in the Profits or Results” (PPR) for its negotiations. It is important to note that PPR has generally been seen as a reflection of the decentralization of negotiations to the company level. But in this case, it is helping to unify many unions in different regions of the country, which is an uncommon practice in this sector.

Mergers in the financial sector: Acquisition of ABN Amro by Santander

In the 1990s, foreign capital infusions and acquisitions in Brazil increased more than 44 per cent. The peak of this process occurred in 1997 with the registration of 372 businesses across a number of different sectors.⁴ Among them, the financial sector is exceptional. It registered 176 businesses in this period, of which 56 per cent included the participation of foreign capital.

The association formed by the British bank, Royal Bank of Scotland (RBS), the Spanish bank, Santander, and the Belgian-Dutch group, Fortis, was the successful bidder in the purchase of the Netherlands-based ABN Amro at the end of 2007. This association gained 86 per cent of outstanding shares, and allowed it to acquire the Dutch bank ABN Amro for 71 billion euro (approximately R\$181 billion), the largest entity of the banking sector in the world.

This acquisition will have significant impacts on employment. In the Netherlands, the new owners estimate a reduction of 13,000 jobs. The bank’s labour unions in Brazil are developing strategies related to the fusion of ABN with Santander, aimed primarily at employment preservation. Santander had announced that 19,000 jobs would be lost following the purchase of ABN. The political actions that the unions pursued included demonstrations, presentations to public hearings at the federal legislature, and engagement with federal regulatory agencies. These actions have constituted a primarily reactive strategy, partly because the banks refused to consider prior discussions with the workers’ unions.

Recently, with the possible incorporation of Banco de Brasília into Banco do Brasil, the unions have begun speaking directly with district parliamentarians and high-level officials from both companies. The establishment of these negotiation spaces was a result of the relatively positive relationship between the Lula da Silva government and the labour movement. Nevertheless, up to now, there have been no compromises with respect to job losses at Banco de Brasília, partly because the future of the bank itself is now doubtful. It is worth noting that the private banks, mainly Bradesco, have also not given up on this market.

4. “Fusions and acquisitions in Brazil – 90’s Analysis”, research developed by KPMG Corporate Finance.

The Brazilian unions participated in a coordinated mass demonstration known as the International Day of Contest, an action coordinated across many countries of the hemisphere with the aim of protecting employment and demanding better labour conditions.

This International Day of Contest, launched during the Third Collective Assembly of international banking sector trade unions, took place on 22–23 November 2007 in the “Contraf-CUT” electoral district in São Paulo. Demonstrations were held at HSBC Bank (which had already dismissed more than 200 workers in that year), Banco do Brasil, and BBVA.

In the House of Deputies, a subcommission was created on 17 October 2007, specifically to deal with the purchase of ABN by Santander. Among this subcommission’s initial actions were the extension of an assurance that negotiations would take place regarding an agreement on employment guarantees.

The case of Gol/Varig

In June 2005, the airline company Varig asked for the establishment of a legally-sanctioned restructuring process and presented a plan to the company’s creditors. Previously, there had been plans that proposed 13 per cent cuts in payroll. Most of the company’s debts had been held by state companies. The main private creditor was the Aerus pension fund of the company’s workers. There are outstanding payroll debts in addition to liabilities linked to customs duties and state payroll taxes, none of which are included in the restructuring plan.

In addition to selling off its engineering transport and maintenance subsidiaries, there was a complete Varig “split”. The so-called New Varig was established as an entity constituting the company’s active operations, and then auctioned off.

In March 2007, the Brazilian company Gol purchased control of New Varig for US\$275 million. In the domestic market Gol ranked second with US\$40 million or 26 per cent of the market. The company originated in the urban transport sector and was a pioneer in Brazil as a “low cost, low fare” operator in 2001.

In an attempt to avoid the liabilities associated with previous unpaid wages and payroll taxes from the “old” Varig, as well as the problem of inactive (redundant) workers, Gol acquired the company through another group subsidiary. Responsibility for the inactive workers is a point of discussion between the workers and the company, and has been taken to labour tribunals for a legal decision.

From the workers’ perspective, the Varig acquisition re-established a certain level of economic security and financial viability, once control was passed to a huge national airline. Since then, there has been considerable distrust towards the groups that assumed control of the company after the corporate

reorganization, and management has repeatedly demonstrated serious weaknesses in its own capacity and expertise.

In consequence, despite creating a certain level of economic security and extending the company's horizon for viability, the Gol presence in control of Varig has had a significant negative impact on labour relations. It is the first time in the company's history that the more hostile labour relations typical of the collective transport sector (which also originated in the Gol controller group) have become the norm, a development that was accelerated by the adoption of tighter managerial controls on workers and new restrictions on the systems and rules used for the payment of wages.

Now, standards for work shifts have become much more intense than at the old Varig. In labour relations, harassment has become a problem, as one part of the growing pressure on workers, along with problems relating to the payment of wages and benefits. From the trade unions' perspective, the professional respect for employees under Gol management has declined significantly from the standards previously displayed by Varig.

This deterioration in labour relations is also seen in a reduction in access to basic union representation. According to the union, Gol management frequently employs anti-union practices that have the effect of minimizing the number of workers that choose to join trade unions, and undermining the unions' strength.

In collective bargaining with the employers' organization – the National Union of Aerial Companies (NUAC) – the absence of Varig resulted in a campaign targeting the duopoly of Tam and Gol. Lately, even though negotiations were taking place at a time of exceptional financial performance of these companies, the weakened power of the trade unions and their difficulties in mobilizing had serious negative consequences. The result of the bargaining was very few gains on wage issues and other cost items, even in comparison with other categories.

The labour unions were centrally involved in the process that restructured Varig. In this case of a corporate buy-out, once the transaction was completed the company developed new strategies for transforming its labour relations, aiming to guarantee that Gol take over responsibility for the existing collective agreement and most of the measures called for under the corporate restructuring of the company.

The unions argued in favour of giving preference to the ex-workers of the old Varig in the new contracts. They continue to defend the principle of work succession (seniority) and demand that it be respected by the restructured company and legal authorities. Gol argues that following its purchase of the company, there is no obligation to respect the previous company's commitments. This debate has been discussed before the courts.

In other words, the negotiation between the unions and the company occurred after the purchase decision, and without anticipation of possible impacts. The unions followed decisions and actions by public authorities (other

unions, parliament, and regulatory agencies of the sector), but their actions were all taken in relation to the legally sanctioned restructuring process that Varig was undergoing.

Conclusion

We see in the review above that, since the beginning of 1990, the combination of economic crisis, internationalization, company restructuring and economic liberalizations resulted in a degeneration of the labour market and the weakening of trade union power in Brazil. Even though this degeneration process has started to reverse in recent years, its effects are still evident in the difficulty of increasing the role of collective bargaining, which remains too limited in its coverage of the labour force and employment protection. Nonetheless, while they played a primarily defensive role, the unions' actions were decisive in avoiding even greater losses during the period from 1990 to 2000. Their effective strategies against the employers' attacks did achieve the establishment of key new agreements and, while limited, certain new guarantees.

It is also important to recognize the achievement of guarantees of the right to organize in the workplace and access to corporate information, as well as the inclusion of productivity issues, profits and wages in the collective bargaining agenda. The strong presence of multinational companies also brought about the unions' need to internationalize their struggles, and to create links with international organizations. This led to improved coordination and the utilization of information and models as established by the ILO and the Organisation for Economic Co-operation and Development (OECD).

Therefore, we have seen how the theme of collective bargaining extends beyond the national ambit and, particularly in the case of multinationals, the labour movement needs to rise to the challenge of building and refining mechanisms that will lead to strengthened rules and binding, enforceable contracts at the international level.

Trade union networks are being established in many of Brazil's companies and they are utilizing existing mechanisms – both mandatory and voluntary – that aim to guarantee workers' rights. Such mechanisms include corporate codes of conduct as established under the auspices of the OECD and the basic norms and standards of the ILO. The utilization of these mechanisms are important steps toward the constitution of a strong and viable trade union internationalism for the twenty-first century.

References

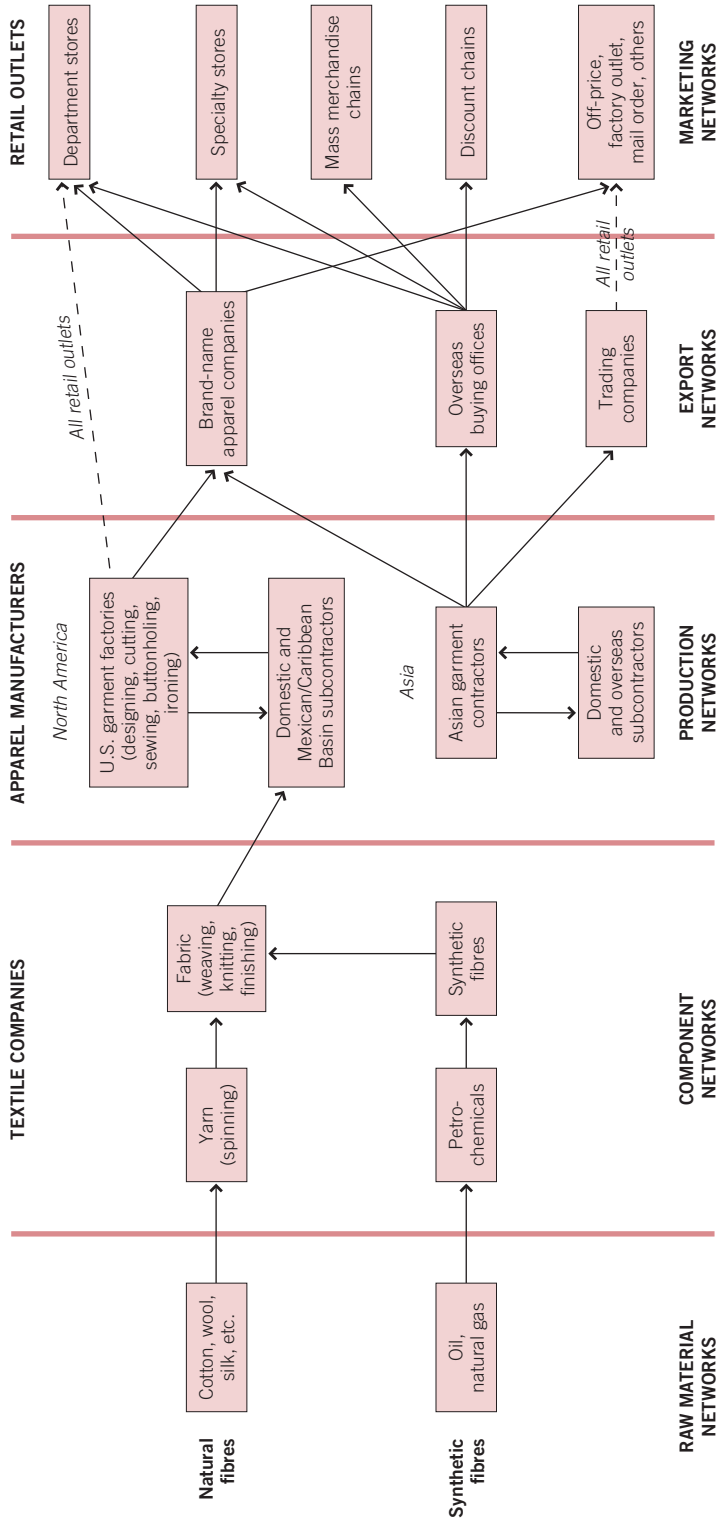
- DIEESE. 2007. Mudanças no contexto das negociações coletivas, São Paulo, Dec.
- Instituto Observatório Social. 2005. Negociação coletiva no Brasil, Observatório Social em Revista, São Paulo, Sep.
- Martins, R. 2003. Estratégia sindical em face das empresas multinacionais: a experiência da Icem, Rio de Janeiro. Sep.
- MTE (Ministério do Trabalho e Emprego). Fórum Nacional do Trabalho: Diagnóstico das relações de trabalho no Brasil, available at www.mte.gov.br (accessed 14 May 2008).

Wage determination in outsourced multi-buyer apparel supply chains

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Figure 1. The apparel commodity chain



Source: Gereffi, 2001.

A political economy of the global apparel industry

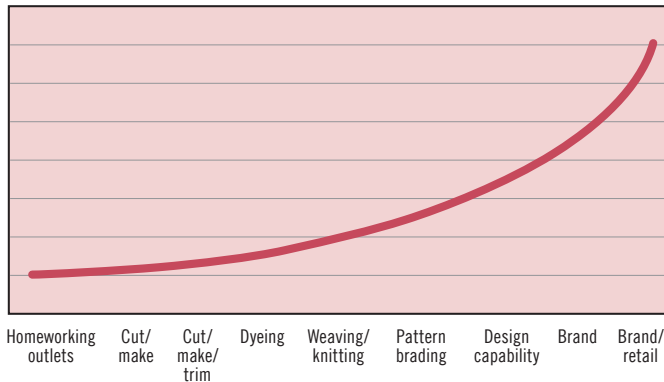
Wage
determination
in outsourced
multi-buyer
apparel
supply
chains

The apparel sector has historically always been characterized by low pay and an absence of trade unions and collective bargaining that has contributed to this state of affairs. With the migration of apparel production to low cost countries, through much of the last quarter of the twentieth century, wage-setting in the industry has largely remained the prerogative of the State – in the form of minimum-wage fixing, and the employer – in the form of unilaterally determined wage elements offered over and above any nationally or provincially determined minimum rate. Against a “buyer driven” (Gereffi, 2001) backdrop of outsourced and fragmented supply chains which are governed by retailers and brand-owners, the prospects for collective bargaining in apparel and footwear must be viewed in the context of a quite specific political economy which is to be found in the sector, (Collins 2003). It is hoped that this brief analysis of the contours of power and value in the sector can shed some light on the prospects for wage determination in other industries with similar workforce and business model.

Under buyer-driven models, market power in the apparel and footwear industry has shifted from the manufacturers to the retailers and branded marketers, both of whom play a leading role either directly or indirectly in the configuration of production networks – not only in terms of geographical location of the manufacturing facility, but in terms of patterns of ownership, technology, and employment. It is estimated that there are some 300,000 contract manufacturers worldwide, many of which are clustered in special economic zones or export processing zones or industrial parks in key developing countries: China (Hong Kong), Turkey, India, Bangladesh, Mexico, Indonesia, Sri Lanka, Viet Nam, Thailand and Cambodia and in the outward-processing countries of the Pan-Euro Mediterranean area.

Gereffi has represented the process relationships in the apparel commodity supply chain in simplified form (see figure 1). For the apparel segment, where the vast majority of workers in the industry are located, manufacturing capital is characterized by two contradictory tendencies, both of which are dictated by buying conditions imposed by the multinational brands and retailers. On the one hand there is the emergence of larger first tier “full package” manufacturers, capable of offering a one-stop service for buyers. On the other, there remain the “CMT” or cut make and trim manufacturers, responsible for a degree of volatility in the sector as they switch from country to country in search of more profitable sourcing conditions. Beyond and between type of contract manufacturer there exists a myriad of complex multi-tiered contracting and subcontracting relationships as companies struggle to meet the production targets imposed on them by retailers. In some countries this has resulted in a vast informal underbelly in the sector, which in many cases is simply not on the radar of even the best supply chain governance efforts.

Figure 2. Added value in the clothing industry



Source: Based on M. Newberry, 2006, Purchasing trends in the fashion industry, management briefing (just-style.com), p. 9.

Whilst efforts to map particular apparel supply chains are complex undertakings, conceptualizing the value chain in the apparel production is a much more straightforward exercise.

Moving downstream from Gereffi's production networks segment one can map the relative value which accrues to each labour input along the supply chain. This is represented in figure 2.

As already noted, apparel manufacturers – depending on their level of investment in full package – can be located at different points along this global value chain (Kaplinsky, 2000; Gereffi and Memedovic, 2003). Much has been written about the need for manufacturers to embrace “full package” to move up the chain to enhance their overall value-added in terms of industrial upgrading (see Tewari, 2006a). However, in the discussion on upgrading, the focus does not appear to shift to the question of revaluing the labour of the majority of female apparel workers who toil in assembly either in “outwork” as homeworkers, or in “make and trim” or CMT – cut make and trim facilities at the bottom of this curve. Under a buyer-driven power relationship, in which retailers can dictate the value of labour in their negotiation of orders with their employers through what is known as the “freight” or “free on board” (FOB) price, they remain locked into the foot of this curve. The FOB price as it is known is the ex factory price which is negotiated by the buying departments of multinational brand owners and retailers for a specific consignment of goods. It includes fabric and trim costs, factory overheads and profit and labour costs and delivery to the port. Table 1 gives an example of the FOB price of a pair of jeans.

The wage component of the FOB is included and masked in the profit and overhead elements in the CM (cut, make) item in table 1. Increasingly, suppliers are asked for “open book costing” in which all of their costs are disclosed to the buyer. This is one way in which downward pressure has been

Table 1. FOB price of a pair of jeans

Full value cost			
Men's jeans			FVC
Fabric	\$3.00	\$4.50	12%
CM (Labour, overhead, profit)		\$2.25	6%
Trim		\$0.75	2%
FOB		\$7.50	20%
Agent's commission	10%	\$0.75	2%
Duty (6203.42.40.10)	16.6%	\$1.25	3%
Freight		\$0.35	1%
Clearance and inland freight		\$0.15	0.4%
Delivery duty paid (DDP)		\$10.00	27%
Private label markup	30%	\$4.28	12%
Total cost		\$14.28	39%
Less markdown chargeback		-\$1.43	n/a
Retail markup		\$29.85	n/a
Full retail price	65%	\$36.71	n/a
Markdown	30%	\$11.01	30%
Net retail markup	44.4%	\$11.42	44%
Net retail after markup		\$25.70	

Source: D. Birnbaum, 2006, How factories can ease the cost squeeze, just-style.com, Oct.3.

Table 2. Export of W/G jeans from India to European Union, 2000–06

Year	Units exported	Value in euros	Price-jeans (euros)
2000	563592	4478589	7.9
2001	1351961	9467001	7.0
2002	1915561	14016407	7.3
2003	1215116	9451086	7.7
2004	802137	5211775	6.4
2005	3037462	15975346	5.2
2006	2894183	17257882	5.9

Source: <http://denimiscool.wordpress.com/category/denim-data-figures/>.

applied by buyers on FOB prices in recent years. The example in table 2 shows how prices have fallen in the case of denim jeans in recent years against an enormous increase in volume.

Sourcing the ever cheaper garment has fuelled industry consolidation on the one hand and, on the other, the migration of apparel production to ever cheaper locations aided and abetted by the expiry of the Agreement on Textiles and Clothing in December 2004 which had previously carved the global market for specific apparel items up into national quota. Moreover, buyers have been able to force through price reductions based on (at times, for the supplier, unrealistic) increases in volume of orders.¹ A significant

1. United Kingdom: "M&S cuts supplier payments by 5.5 per cent", 3 Mar. 2006, at www.just-style.com.

contributory factor has been high street-price competition between the fashion retailers and the entry into the market of the mass discount super-market retailers which has heralded the age of the €5 pair of jeans. Rock-bottom garment prices do, of course, finally push some consumers at least into questioning the labour value behind such prices. Unfortunately these cannot be readily derived from an FOB price. For this one has to generate data from the workplace.

In a focus group recently conducted with a group of female Indian garment workers from Bangalore,² who earned on average between 109 and 128 rupees per day, their overwhelming issue was the very high daily production target. For some workers, this had been increased by 60 per cent and, if not reached, management would mark workers down as absent for the day. Other workers making shorts for a major US brand on a production line of 18 workers had a target of 400 pairs per shift.

It is only when we *fully* calculate unit labour cost – including stone-washing, embroidery, ironing, inspection and packaging – that the extent of labour exploitation can be unmasked. Usually the unit labour costs are hidden in what is referred to as the CMT element of the FOB price. More research is needed to disaggregate these costs, particularly as they relate to some of the garments which retail on the high streets of the buying countries.

In one example which seeks to break down the unit labour cost of a t-shirt manufactured in Bangladesh, the labour value was calculated at €0.039 or US\$0.06 (Miller, 2009). What is staggeringly and shamefully clear, as can be seen in the example in table 3, is just how *fractionally* labour is valued as an input for any given garment in a multinational retailer or brand's supply chain. These sorts of calculations have become significant in taking the argument to buyers, namely that marginal increases in the retail price of a garment could lay the basis for substantial wage increases for workers. Table 3, produced by the Worker Rights Consortium, provides us with an example of the magnitude of the labour costs expressed as a percentage of the retail cost in a standard garment.

There is a general consensus on all sides of the industry that an increase of unit wage cost by a proportional Living Wage amount would only marginally impact on the retail price of the garments, (Birnbaum, 2000; Flanagan, 2002; SOMO, 2003; Pollin and Heintz, 2004; Worker Rights Consortium, 2005), although the figure is higher than initially estimated due to percentage follow-through markups at each stage of the critical path (Miller and Williams, 2008). This does appear to expose an Achilles heel for many brands and retailers although there is still little in the public domain about labour costing. Whilst brands and retailers acknowledge that the living wage is an issue, there is no widespread public declaration that they are as yet willing to

2. Meeting held with 22 workers from the Garment Workers Union on 3 October 2007 in Bangalore at the Office of the Indian Textile Garment and Leather Workers' Federation.

Table 3. Production cost breakdown: Logo t-shirt (silk-screened)

Description	Cost (\$US)	% of cost to licensee	% of retail cost
Fabric: knit cotton@\$1.50 per yard	1.50	43.40	8.60
Sikscreen	0.20	5.70	1.10
Label/packaging	0.10	2.90	0.60
Labor: 15 minutes@\$1.00 per hour	0.25	7.20	1.40
Factory overhead	0.42	12.10	2.40
Factory profit	0.17	4.90	1.00
Agent commission	0.20	5.70	1.10
FOB cost to brand	2.75	79.70	15.70
Shipping, duty, etc.	0.70	20.30	4.00
Total cost to licensee	3.45		
Retail cost	17.50		

Source: Worker Rights Consortium, 2008.

address this through a retail price markup – particularly within a highly competitive market environment.

This is not to argue that savings cannot be found within the critical path which could be passed on. Indeed, Gap Inc. (2005) identified efficiencies in its work on purchasing practices with *Women Working Worldwide*,³ although it is not clear that these formed the basis of any wage hike in their vendor factories. Delivering a wage increase via an increase in FOB price in both union and non-union workplaces is fraught with difficulties (Miller and Williams, 2009). In order to understand this we need to look at the processes of wage determination and collective bargaining in outsourced environments in general and in the apparel sector in particular.

Wage determination in the apparel sector

Wages in the key apparel exporting countries are largely determined by minimum wage-fixing machinery which invariably means national government involvement. Since governments in developing countries in particular are keen to attract foreign direct investment (FDI), and are mindful of the so-called “jobs effect” of a national minimum wage, the pressure, particularly from the employers’ lobby, to keep the minimum wage level “competitive” is great. Where there is an absence of industrial upgrading and supplementary wage bargaining at factory level, minimum wages can have a tendency to become maximum wages (Lee, 2007; ILO, 2007). In the absence of a strong trade union presence at the factory level (Miller, 2008), workers can often struggle to receive even the minimum wage due to a lack of minimum

3. See www.gapinc.com/public/documents/www_study.pdf (last accessed 12 July 2008).

fall-back guarantees (Impactt, 2002) misclassification of work, delayed payments, and false apprenticeship schemes (Fair Wear Foundation, 2006, page 44). Cases are also reported of employers offsetting increases against food and accommodation charges for migrant workers,⁴ or by blatant increases in production quotas with no productivity enhancement.

Given this background and the current context of rampant food price inflation (Ivanic and Martin, 2008), it is not surprising that industrial relations in the sector have become more volatile. Early in 2007 and in 2008, workers in a number of foreign-owned export companies in Viet Nam engaged in a series of wildcat strikes to achieve an increase in the minimum wage, which had not been revised since 1999.⁵ The communist Government said it had raised the minimum wage for labourers from 1 January 2008 to 540,000 dong and to at least 800,000 dong for workers in foreign-invested enterprises. However, given a 12 per cent decline in real wages, workers in the same sector had rejected the latest increase to 1,070 million dong (about \$67 or €45) as being too low.⁶ In Cambodia, which is often held up as a model for social compliance through the International Labour Organization-sponsored “Better Factories Programme” (Miller et al., 2007; Wells, 2006), 80 strikes were reported in 2007, resulting in 294,142 lost working days. Most disputes during 2007 centred on employment contract and wage issues.⁷ The minimum wage in Cambodia was set at US\$50 per month in 2006 but rising unrest forced a US\$6 additional allowance to cope with the rising cost of living.⁸ In Bangladesh, where it is now claimed that 70 per cent of workers’ wages go towards covering the cost of rice,⁹ the Bangladesh Knitwear Manufacturers and Exporters Association, fearing growing unrest, recently started selling rice to workers at subsidized prices.¹⁰

Part of the problem is the absence of collective bargaining structures at the factory level to permit supplementary wage bargaining. Even where unions have become established at the enterprise or workplace level,

4. “Hundreds of foreign workers end strike”, in *Jordan Times*, 7 Jan. 2008, at www.jordan-times.com/index.php?news=4822&searchFor=foreign%20workers (accessed 10 Jan. 2008).

5. See: <http://vietnamnews.vnanet.vn/showarticle.php?num=01LAB060106> > <http://vietnamnews.vnanet.vn/showarticle.php?num=01LAB060106>.

6. AFX News Limited: “2,000 Vietnamese workers strike at Taiwan-owned plant”, 1 Apr., 2008, at www.forbes.com/afxnewslimited/feeds/afx/2008/01/04/afx4494050.html.

7. See [www.betterfactories.org/content/documents/Fact%20sheet%20April%202008\(En\).pdf](http://www.betterfactories.org/content/documents/Fact%20sheet%20April%202008(En).pdf) (accessed 14 July 2008).

8. *ibid.*

9. International Textile, Garment and Leather Workers’ Federation press release: “ILO raps Bangladesh Government”, 8 June 2006, at www.itglwf.org/DisplayDocument.aspx?idarticle=15538&langue=2 (accessed 15 July 2008).

10. Emily Wax: “Food Costs Push Bangladesh to Brink of Unrest”, in *Washington Post Foreign Service*, Saturday, 24 May, 2008, at www.washingtonpost.com/wp-dyn/content/article/2008/05/23/AR2008052303160_pf.html.

Table 4. Minimum wages in the garment sector in Asia

Country	Minimum wage per month (\$US)	Minimum wage per day (\$US)	National/provincial/sectoral
Cambodia	50	1.92	National /sectoral
Indonesia	80.7	3.10	Provincial
Pakistan	80	2.35	Depends on sector
India	75	2.40	Provincial
Hong Kong (China)	n/a	n/a	n/a
Philippines	161–228	6.20–8.80	Regional
Malaysia	281	n/a	Sectoral/provincial
Thailand	210	5–7	Provincial
Japan	n/a	7 per hour or 56 per day	Provincial/prefectural
Sri Lanka	47	1.8	National/sectoral
Viet Nam	60/40 54/35 50/30	n/a	Provincial/sectoral

Source: Based on data tabled at an ITGLW/TWARO Regional Workshop on the Living Wage in Asia Hong Kong, 28 June 2008.

collective bargaining cannot be conducted under the conditions of transparency to which some trade unions are accustomed in the buyer countries. There are major problems in relation to access to bargaining information, with brands and retailers reluctant to disclose their unit FOB prices, and apparel contract facilities belonging to private limited companies which do not face the obligation to declare their bottom line publicly and/or are headquartered elsewhere, where company accounts are not obliged to provide factory profitability data. This ownership pattern and/or reluctance to disclose profit and loss figures is not without reason – since many suppliers could face even tighter contractual terms from buyers who are aware of their bottom line.¹¹ To this we must add the problem of rising costs on other elements which suppliers have to cover – the most significant being energy (Clothesource, 2008). The absence of bona fide collective bargaining has provoked militant rank-and-file activity in Viet Nam, Bangladesh, Sri Lanka and Cambodia, where workers have begun to unite around a notional living wage figure (table 4). However, trade union leaders in some of these countries have become the targets of intimidation, threats of abduction,¹² and even murder.¹³

11. In discussions to draw up reporting guidelines for multinationals in the apparel and footwear sector hosted by the Global Reporting Initiative, supplier representatives were resistant to standards on economic volatility.

12. See www.ituc-csi.org/IMG/pdf/Intimidation_abduction_of_TUists_28-02-07.pdf (accessed 14 Jan. 2008).

13. See www.itglwf.org/DisplayDocument.aspx?idarticle=1299&langue=2 (accessed 14 Jan. 2008).

The living wage debate

Given these constraints at the level of the firm what, if anything, can be done at the global corporate level? From a number of quarters, pressure has been building in recent years on brand owners and retailers to address the issue of a living wage, defined in the base code of the UK Ethical Trading Initiative as “enough to meet basic needs and to provide some discretionary income”.¹⁴ Progress has been painfully slow. A recent study in the United Kingdom by Labour Behind the Label (2006) showed that of 37 UK companies surveyed, only 16 accepted the principle of a living wage, and of these only four showed any evidence of putting the principle into practice. A comparison of code provisions in multi-stakeholder initiatives reveals a similar reluctance, particularly on the part of US-based initiatives such as the World Responsible Apparel Production (WRAP) Programme and the Fair Labor Association (FLA) to aspire to such a principle (Setrini, 2005) and more recent retailer efforts such as the Business Social Compliance Initiative (BSCI) would appear to be muddying the waters even further (Maquila Solidarity Network, 2007, page 19). Yet numerous other retail and brand-name companies have either adopted “living wage” statements in their corporate codes of conduct or have signed up to provisions in the base codes of so-called multi-stakeholder initiatives. The living wage issue came to a head in 2007, with the suspension and ultimate resignation of Levi Strauss & Co from the UK-based Ethical Trading Initiative, on the grounds that the company was not willing or able to implement the multistakeholder initiative’s Base Code provision on a living wage. In their own defence, Levi Strauss & Co argued that they aimed to pay

... prevailing industry wages and benefits and encourage (their suppliers) to work with Levi Strauss Foundation grantees to support worker literacy, worker rights education, access to capital, advocacy.¹⁵

Moreover, corporate members of the same multi-stakeholder initiatives – Primark, Tesco, Asda, Gap, Marks & Spencer, Matalan and Mothercare – were all singled out by newspapers and campaign groups for poverty-level pay and sweatshop conditions at some of their supplier factories in Bangladesh and India (War on Want, 2006; Labour behind the Label, 2006). Stories featured workers in Bangladesh being paid as little as GBP0.05 an hour, and workers in India receiving only GBP1.13 for a nine-hour day (Clothesource, op. cit.).

Unfortunately, due to the weak union presence in the headquarters of brand-owner and retailer multinationals (Miller, 2008), major living wage initiatives on the back of an international framework agreement are not

14. ETI Base Code 5.1.

15. M. Kobori, Head of CSR, quoted in Maquila Solidarity Network, Codes Memo No. 21, p. 13.

remotely on the table. In the two companies where the ITGLWF either has an IFA (Inditex SA) or where there is a negotiated Code of Conduct (Triumph International), the concern is more to establish mature systems of industrial relations in the supplier factories of the former¹⁶ (to ensure that the minimum wage is being paid in the first instance), and address the impact of SAP on piecework earnings in the latter.¹⁷

However, in late 2007 the ITGLWF did mount an initiative with its affiliates to determine their respective stance on the living wage issue and to encourage them to engage in national tripartite exercises to determine a living wage based on local economic and social data and not based on some externally imposed formula.¹⁸ Such data could then be used as bargaining information for industry-wide bargaining or for campaigning during minimum wage setting or for company/workplace based negotiations. As already stated, there are signs that this approach is informing the unions' bargaining strategy in Sri Lanka, Bangladesh and Cambodia, although the unions have relied on union-friendly/NGO living wage definitions. In Turkey, one of the tasks of the recently wound up Joint Multi-Stakeholder Initiative on Corporate Accountability and Workers' Rights (Jo-In Project) was to focus on the implementation of key workplace standards including wages.¹⁹ Perhaps the most significant outcome of the wages work carried out under the terms of this project was the application of the concept of a "wage ladder"²⁰ which offers a benchmarking system for charting factory progress in improving wages and for plotting wages against specific standards/interpretations of the living wage.

The Play Fair 2008 (PF08) alliance consisting of the ITGLWF, the ITUC and partner organizations of the Clean Clothes Campaign made the living wage one of the four key demands as it campaigned in the run-up to the Beijing Olympics (Maquila Solidarity Network, 2008). One of the outcomes of a meeting in Hong Kong (China) between the brands and the Playfair constituents in advance of the Games was an undertaking to roll out a series of national meetings to determine a living wage estimate using the wage ladder tool.²¹ It remains to be seen how some brands will respond given

16. N. Kearney, 2007: "Global organising: Organising achievements through supply chain activity", ITGLWF. Internal Note.

17. Notes of a meeting with the Triumph union committee at Bangplee, Thailand, 30 Nov. 2007.

18. ITGLWF: "National Living Wage Estimates", Circular 24, 20 July 2007.

19. Jo-In Explanatory Note on the Treatment of the Living Wage Common Code Element during the Jo-In Pilot Project in Turkey's Garment Industry, 2006–07, at www.jo-in.org/pub/docs/Jo-In-%20Explanatory%20Note%20for%20Living%20Wages.pdf (assessed 16 Jan. 2008).

20. Known as the Rut Tufts wage ladder in honour of the recently deceased FLA officer who conceived the idea.

21. ITGLWF: "Leading sports brands and unions working together globally for better working conditions", at www.itglwf.org/DisplayDocument.aspx?idarticle=15569&langue=2, press release, 2 July 2008.

that many do not aspire to a living wage in their respective codes of conduct. Some of these national meetings will be given added impetus by a global campaign launched in October 2008.²²

On a more ambitious level, some NGOs and trade unions belonging to the New Trade Union Initiative in India²³ are seeking, with NGO support from elsewhere, to apply this concept across key apparel export countries in Asia. Using arguments similar to those in the United Students Against Sweatshops/Worker Rights Consortium Designated Suppliers' Programme (DSP) (Worker Rights Consortium, 2006) in relation to the ability of brands and retailers to absorb wage increases via marginal retail price increases, the Asia Floor Wage Alliance advocates a common pan-Asian daily wage norm, of US\$4 across the sector within the region (India Committee for an Asian Floor Wage Alliance, 2006, cf. also Brenner, 2002). Although still some way short of a living wage, such an increase would require a degree of transnational trade union coordination that has so far eluded the social partners in the EU where, arguably, economic and political structures are more advanced (than in the ASEAN economic community) to deliver such an initiative.

Beyond national and even regional collective bargaining, ITGLWF living wage strategies must also focus on the buyers in their headquarters countries. In the wake of the adverse publicity suffered by many of the corporate members of the Ethical Trading Initiative (War on Want, 2006), and the sheer weight of the academic and moral argument, the ITGLWF applied pressure throughout 2007 on the secretariat of the ETI to urge its retail and supermarket member companies to finally address the living wage issue through their FOB. Finally, a number of member of firms, undoubtedly swayed by indications from consumer organizations that shoppers are prepared to pay more for a brand with a good reputation,²⁴ signalled their intention to address the issue by way of a pilot project in Bangladesh.²⁵

Confidentiality issues apart, it is much too early to provide any details about this initiative. However it is useful to rehearse some of the implementation questions which immediately arise. What system of assurance would

22. ITGLWF: "ITGLWF to Kick off Living Wage Campaign on World Day for Decent Work", press release, 4 July 2008, at www.itglwf.org/DisplayDocument.aspx?idarticle=15573&langue=2.

23. It comes as no surprise that this initiative has originated in this country, where the sector has repositioned itself in the global apparel market in the wake of the phase-out of the Multi-fibre agreement. So-called tier 1 suppliers of major global brands, located in Bangalore, Delhi, Chennai and Tiripur, boast large-scale manufacturing investment and commensurate workforces, not only targets for union-organizing drives but also facilities with the potential for absorbing substantial wage increases (Tewari, 2006)

24. The Retail Bulletin: "CBI survey: Consumers will pay premium for a great reputation," Web posting, 23 Nov. 2007, subscription-based web site, at www.theretailbulletin.com/news/cbi_survey_consumers_will_pay_premium_for_a_great_reputation_23-11-07/.

25. ETI Update, No. 36, Winter 2007, p. 3, at www.eti2.org.uk/Z/lib/2007/news1/eti-update-2007-12.get.pdf (accessed 15 July 2008).

prevail to satisfy retailers and their customers that an increase in the FOB will be passed on to the workers? How would the workers be apprised of the increase in the employer's revenues? If the living wage is only paid to those factory departments/floors assembling the retailer's product which has attracted a "living wage FOB price", would this not lead to divisiveness with workers in other departments or on other lines? What incentive would there be for a buyer to increase the FOB price for apparel items in the same market category as other buyers sourcing from that factory unless they too were to engage in the exercise?²⁶ Moreover in a number of cases purchasing behaviour may be such that buyers switch suppliers from one year to the next, either on commercial or fashion grounds. In cases where a small number of brands source from a particular supplier, a multi-brand initiative might prove possible. However – such initiatives could be construed as acts to restrain and monopolize commerce in violation of European competition law²⁷ and Articles 1 and 2 of the US Anti-Trust laws.²⁸

It is clear that certain – in some cases quite unique – conditions would need to prevail in order for such an initiative to be effective. First, there would need to be a commitment from the brand/retailer to enter into or continue a stable commercial relationship with a given supplier coupled with – in the case of multiple brand presence in a particular supplier – a joint commitment to collaborate in this area. This is a clear demand of Play Fair (2008). Second, in addition to living/minimum wage data from the supplying country, buying/corporate social responsibility departments would need to have at their disposal the notional unit labour costs of the garments they were commissioning in order to assist in calculating the living wage addition to the FOB. Thirdly, and critically, provision would need to be made to enable local negotiations of wage scales.

Little has been said about monitoring and remediation. Buyers would need to establish a sophisticated auditing effort to verify whether in fact a living wage was being paid in practice, and in fact was not contributing to further subcontracting. However social auditing would appear to be currently in a state of crisis²⁹ (O'Rourke, 2003; Ascoly and Zeldenrust, 2003; Esbenshade, 2004; Clean Clothes Campaign, 2005; Locke et.al., 2006; Ethical Trading Initiative, 2006; Harney, 2008). Auditors appear to have their hands full monitoring wage documentation and seeing to it that a minimum wage is paid, let alone establishing whether the wage is sufficient to

26. At the time of the Spectrum factory collapse in Savar, Bangladesh in 2005, for example, 27 companies were sourcing from the facility.

27. Article 81 of the Treaty of the European Community.

28. J.M. Skonberg, K.E. Notestine, Nitin Sud: "Sharing Compensation or Benefit Information Between Competitors May Violate Antitrust Laws", 2006.

29. cf. "Sweatshop snoops' take on China factories," Thomas Fuller, *International Herald Tribune*, 15 Sep. 2006.

meet the basic needs of a worker. In recognizing the shortcomings of the code of conduct/audit model of social compliance, numerous brands and retailers, and the multi-stakeholder initiatives to which they belong, have acknowledged the importance of freedom of association and collective bargaining as a way of both establishing a more robust system of local governance in the supply chain and, crucially, providing the means to facilitate improvements in pay and conditions in the industry (Nike, 2005; Adidas, 2006; GAP, 2005; Fair Labour Association, 2005; and Jo-In/MIT, 2005).

Nike's approach is particularly instructive here:

We believe that a responsibly competitive industry that invests in its workforce will result in sustainable, locally relevant wage increases for workers over the long term. We do not endorse artificial wage targets or increases based on arbitrary living wage definitions. Minimum wages should be determined by negotiations with workers and management and through public policy. As part of our lean manufacturing strategies, we are committed to educating managers and workers in our contract factories about freedom of association and collective bargaining, as well as helping factories implement strong human resources management systems and practices.³⁰

Although Nike has ignored the difference between national wage minimums and the living wage needs of apparel workers, they have signalled, by financial year 2011, the not unambitious target of educating all of their supplier factories on freedom of association and collective bargaining (Nike, 2007). This is certainly in line with demands from the ITGLWF and its affiliate unions (and certain NGOs) but it begs the question as to the capacity of and scope for organized labour, particularly in the apparel sector, to increase wages substantially through the processes of collective bargaining at this time. In the absence of such machinery and the continuing rise in basic food prices, industrial relations in the apparel sector looks set to endure significant turbulence in the coming period.

References

- Adidas. 2005. *Connected by Football – Social and Environmental Report 2005* (Herzogenaurach, Adidas).
- Ascoly, N.; Zeldenrust, I. 2001. "Discussing key elements of monitoring and verification", (Amsterdam, SOMO).
- Birnbaum, D. 2000. *Birnbaum's global guide to winning the great garment war* (Hong Kong, Third Horizon Press, p. 168).

30. Nike, 2007, p. 47.

- Brenner, M. 2002. "Defining and Measuring a Global Living Wage: Theoretical and Conceptual Issues", paper prepared for the conference, Global Labor Standards and Living Wages, at the University of Massachusetts–Amherst, 19–20 April 2002.
- Coalition of Cambodian Apparel Workers Democratic Union (CCAWDU). 2006. Khmer Future: "Labor Ministry plays intimidating tactics on workers," undated, at www.khmerfuture.com/index.php?name=News&file=article&sid=1117&theme=Printer.
- Clean Clothes Campaign. 2005. *Looking for a quick fix. How weak social auditing is keeping workers in sweatshops* (Amsterdam, Clean Clothes Campaign).
- Clothesource. 2008. "Apparel industry issues to watch in 2008", management briefing, at www.just-style.com.
- Collins, J. 2003. *Threads: Gender Labor and Power in the Global Apparel Industry* (Chicago, University of Chicago Press).
- Esbenshade J. 2004. *Monitoring sweatshops: Workers, consumers, and the global apparel industry* (Philadelphia, Temple University Press).
- Ethical Trading Initiative. 2007. "Getting Smarter at Auditing, Tackling the growing crisis in ethical trade auditing", report from ETI members' meeting, 16 Nov. 2006, at www.ethicaltrade.org/Z/lib/2006/11/smart-audit/index.shtml (accessed 17 July 2007).
- Fair Labor Association. 2005. Annual Report, available at www.fairlabor.org/2004report/freedom/index.html.
- Fair Wear Foundation. 2006. *Background Study Bangladesh* (Amsterdam, Fair Wear Foundation).
- Flanagan, M. 2002. "Clothesource: Sourcing Intelligence", in *Pricetrak*.
- Gap Inc. 2005. *Facing challenges, Finding opportunities 2004 Social Responsibility Report* (San Francisco, Gap Inc.).
- . 2006. Findings from Women Working Worldwide's Study of Gap Inc.'s Purchasing Practices, available at www.gapinc.com/public/documents/www_study.pdf. (accessed 17 July 2007).
- Gereffi, G. 2001. "Outsourcing and Changing patterns of international competition in the apparel commodity chain", background paper for the *World Industrial Development Report 2001*, United Nations Industrial Development Organization.
- Gereffi, G.; Memedovic, O. 2003. *The Global Apparel Value Chain: What Prospects for Upgrading by Developing Countries*, United Nations Industrial Development Organization, Sectoral Studies Series, Geneva.
- Harney A. 2008. *The China Price* (New York, Penguin Press).
- Impactt. 2002. *Changing overtime: Tackling supply chain labour issues through business practice*, London, available at www.impacttlimited.com/resources/changing-overtime-tackling-supply-chain-labour-issues-through-business-practice/ (accessed 11 Jan. 2008).
- India Committee for Asia Floor Wage Alliance. 2006. "Asia Floor Wage: Towards an Asian Floor Level Wage Campaign in the Garment Export Sector – An analysis of labour and the supply chain in the garment export sector" (New Trade Union Initiative, Civedep, Fedina, Jobs with Justice-India, SAVE, Centre for Education and Communication, Shree Jagruti).

- International Confederation of Free Trade Unions (ICFTU). 2005. "The Impact of the ending of quotas on the textile industry, Cambodia: increasing pressure on trade union rights", *Trade Union World* report (Brussels, ICFTU).
- . 2006. *Internationally-Recognised Core Labour Standards in Bangladesh: Report for the WTO General Council Review of the Trade Policies of Bangladesh* (Brussels, ICFTU), pp. 3–9.
- International Labour Organization. 2007. "Wages around the world: Developments and challenges", Committee on Employment and Social Policy, GB.298/ESP/2 (Geneva, ILO).
- International Textile Garment and Leather Workers' Federation. 2006. *Human And Trade Union Rights: USAS Sweat-Free Campus Campaign*, Presidium Paper 8c (Brussels, ITGLWF).
- Ivanic, M.; Martin, W. 2008. "Implications of Higher Global Food Prices for Poverty in Low-Income Countries", Policy Research Working Paper 4594, World Bank Development Research Group Trade Team.
- Jo-In/MIT. 2005. *Report on Exploring common approaches to Corporate Accountability and Workers' Rights*, a forum jointly organized by the Institute for Work and Employment Relations, MIT and the Joint Initiative on Corporate Accountability and Workers' Rights (Jo-In), 11–12 July 2005, MIT, Boston, available at www.jo-in.org/pub/docs/MtgRpt-JoIn-MIT20050711-12.pdf.
- Kaplinsky, R. 2000. "Globalisation and unequalisation: What can be learned from value chain analysis?", in *Journal of Development Studies*, Vol. 37, No. 2, pp. 117–146.
- Labour Behind the Label. 2006. "Let's Clean Up Fashion: The State of Pay Behind the UK High Street", available at www.labourbehindthelabel.org/content/view/126/53.
- Lee Chang Hee. 2007. "The Minimum Wage, Asian Labour Update, Asia Monitoring Resource Centre", available at www.amrc.org.hk/4207.htm.
- Locke, R.M.; Fei Qin; Brause, A. 2006. "Does Monitoring Improve Labor Standards? Lessons from Nike", Working Paper, 4612-06 (MIT, Sloan School of Management).
- Locke, R.M.; Romis, M. 2006. "Beyond Corporate Codes of Conduct: Work Organisation and Labor Standards in Two Mexican Garment Factories" (MIT, Sloan School of Management), Aug.
- Maquila Solidarity Network. 2008. *Clearing the Hurdles: Steps to Improving Wages and Working Conditions in the Global Sportswear Industry* (Toronto, MSN/Playfair).
- Miller, D. 2009. "What price a living wage?", in Parker and M. Dickson: Sustainable fashion: A handbook for educators. (Bristol, Labour behind the Label), pp. 86–90. Available at <http://fashioninganethicalindustry.org/resources/teachingmaterials/handbook>.
- . 2008. "The ITGLWF policy on Cross Border Dialogue in the textiles, clothing and footwear: Emerging strategies in a sector rules by codes of conduct and resistant companies," in K. Papadakis (ed.), 2008: *Cross-border social dialogue and agreements: an emerging global industrial relations framework?*, International Institute for Labour Studies Research Series (Geneva, IILS/ILO).

- .; Aprill, C.; Certeza, R.; Nuon, V. 2007. “Business as Usual – Governing the supply chain in clothing post MFA phase out: The case of Cambodia”, Global Union Research Network Discussion Paper No. 6 (Geneva, ILO).
- Miller, D.; Williams P. 2009. *What price a living wage? Implementation issues in the quest for decent wages in the global apparel sector*, Global Social Policy, Vol. 9, No. 1, pp. 99–125.
- Nike. 2005. “FY2004 Corporate Social Responsibility Report”(Beaverton, Nike).
- . 2007. “FY2005–2006 Innovate for a Better World”, Corporate Social Responsibility Report (Beaverton, Nike).
- O’Rourke, D. 2000. *Monitoring the Monitors: A Critique of Pricewaterhouse Coopers Labor Monitoring*, White paper, released 28 Sep. 2000.
- . 2003. “Outsourcing Regulation: Analyzing Nongovernmental Systems of Labor Standards and Monitoring”, in *Policy Studies Journal*, Vol. 31, No. 1, pp. 1–29.
- Pangsapa Piya. 2005. “The Piecework System and ‘New Slaves’ of the Apparel Industry”, Paper presented at the 100th annual meeting of the American Sociological Association in Philadelphia.
- . 2007. *Textures of Struggle: The Emergence of Resistance Among Garment Workers in Thailand* (Ithaca New York, ILR Press).
- Pollin, R., Burns, J.; Heintz, J. 2004. “Global apparel production and sweatshop labour: Can raising retail prices finance living wages?”, in *Cambridge Journal of Economics*, Vol. 28, No. 2, pp.153–171.
- Prasanna, R.P.I.R.; Gowthaman, B. 2006. *Sector Specific Living Wage For Sri Lankan Apparel Industry Workers, Survey Findings and Preliminary Report for Wider Discussion* (Sri Lanka, ALaRM).
- Setrini, G. 2005. *Wages In The Apparel Industry: What Constitutes A Decent Standard?*, Conference paper presented to the conference, “Exploring common approaches to Corporate Accountability and Workers’ Rights”, Massachusetts Institute of Technology, 10–11 July 2005.
- Centre for research on multinational corporations (SOMO). 2003. *Bulletin on Issues in Garments & Textiles*, No. 1, May (Amsterdam, SOMO).
- Tewari, M. 2006a. “Is price and competitiveness enough for apparel firms to gain market share in the world after quotas? A review,” in *Global Economy Journal*, Vol. 6, No. 4, pp. 1–46.
- . 2006b. “Targeting Global Supply Chains: Innovations in labor organising in the Indian garment industries”(unpublished paper).
- War on Want. 2006. *Fashion Victims: The true cost of cheap clothes at Primark, Asda and Tesco* (London, War on Want).
- Wells, D. 2006. “‘Best Practice’ in the Regulation of International Labor Standards: Lessons of the US Cambodia Textile Agreement”, in *Comparative Labor Law and Policy Journal*, Vol. 27, No. 3, pp. 357–376.
- Worker Rights Consortium. 2005. *The Impact of Substantial Labor Cost Increases on Apparel Retail Prices*.
- . 2006. *The Designated Suppliers Program – Revised*, available at www.workersrights.org/DSP/Designated%20Suppliers%20Program%20-%20Revised.pdf.

Changing employment patterns and collective bargaining

The case of construction

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Introduction

Labour-intensive industries in Europe are going through a stage that can be characterized by a process of outsourcing and downsizing. This general trend is driving companies to replace direct employees with all kinds of “new” employment relations. Work is executed by “employers” pretending to belong to other branches (circumventing compliance with contracts, collective agreements, sector regulations, etc.), by specialized subcontractors, temporary work agencies, and/or self-employed. Workers in non-standard employment relationships are in general non-unionized. In this, the main trends and developments in the European construction industry are analysed. Construction has traditionally been a sector with a high share of subcontracting and there is evidence that this share is further increasing. The possible impact on collective bargaining of the process of “externalization” (of the recruitment of labour), resulting in non-standard employment patterns, is examined. The article ends with recommendations to revitalize the sectoral industry-wide bargaining tradition. Corporate social responsibility and liability throughout the production chain have to be part of a joint strategy to promote continuity and fair competition; and the industry has to (re)install provisions that are meant to keep the sector stable, clean and professional.

Characteristics of the construction industry

Market strategies

The production process and the conduct of business in construction have undergone structural adaptations since the 1980s. The market strategy of most top contractors has changed. Before the internal market concept was introduced in Europe and globalization accelerated, the ambition of larger firms was to be among the top companies that controlled the sector, with the result that in certain branches a de facto cartel existed in those days. This had several effects on the construction labour market. To give just one example, the procurement of public works became subject to bribery and corrupt pricing practices.

The introduction of free market principles (both in the European Union and within the World Trade Organization) brought a remarkable change, although formal national implementation of the European Union (EU) procurement rules was and still is poor and incomplete. Since the early 1990s, company management of the main contractors started to define territorial ambitions in European terms. The aim was and is to become a European leader and to compete at European scale. This created a new wave of mergers and takeover. At the same time the traditional subcontracting, through a stable and cooperative division of labour in the production process, changed

to a type of outsourcing that was much more cost-driven. Due to this competitive subcontracting the average size of firms became smaller.

The process of diversification, combined with a Europeanization of the territory in the late 1980s, led to the emergence of giant conglomerates in a broad field of economic sectors (energy, water, public works, waste management, etc.) and with a range of activities (production, concessions, operations and facility management, maintenance etc.). At the same time a clear divergence developed on the operational side, with, at the top of the production chain, a concentration on core business and externalization of the execution to dependent subcontractors.

The industry

Construction has certain characteristics that distinguish the sector from others. For example:

- The construction production takes place on temporary and mobile work-sites with normally unique projects and a relatively non-standardized immobile final product. Execution and completion on site. The industry is exposed to weather vicissitudes and to seasonal cycles and disruption.
- The negotiation power of construction firms, especially those of small and medium-size, is weak compared to their main clients and large materials suppliers. Construction is very materials-intensive and location-dependent. The end price is demand-driven, and the costs are supply driven.
- The sector is characterized by a widespread variety of small and medium-sized companies and a limited, but dominant group of large general contractors. Competencies are not equally distributed over the production chain and the organization of skills is divided and fragmented. Market orientation can be local, rural, regional, national and global.
- The production system is very heterogeneous. It demands cooperation under varying circumstances in one-off complex projects. Large numbers of subcontractors with various specializations and competencies are involved throughout the project cycle from conception to execution and completion.

The production process takes the form of a fragmented multiple chain of production that has lengthened and broadened. This chain constitutes a logistical chain (both horizontal and vertical), as well as a value chain of an economic and productive nature: “from conception to completion”. Single specialities or tasks are often “externalized” to small firms or self-employed workers. Because of this process of subcontracting and outsourcing and because of the role of supplying industries and of the resulting thinning out of

the workforce, new enterprises emerge and existing enterprises size down. At the same time, subcontracting and outsourcing to de jure independent firms does not lead to independence. Companies at a lower level in the value chain, with the exception of specialized subcontractors with high-tech or other sophisticated activity, are not in a position to act on equal footing with a main contractor.

The labour force

The industry as a whole can be seen as a sector with activities of a labour-intensive nature (up to one-quarter of operating costs) with physically demanding jobs. The skill level of construction professions differs; it ranges from repetitive low-skilled work to highly operational and technological specialization. In recent years labour shortages in the lower echelons of the construction labour market have increased in almost every EU Member State.

Since the beginning of the 1990s the overall trend has been for less direct employment on the part of the main contractor or leading company. Relatively few and increasingly specialized staff are now responsible for development, procurement, supervision and management. Labour has been effectively “externalized” by the use of subcontractors and agencies (Jounin, 2006). A chain of specialized contractors/undertakings/suppliers is engaged in the execution phase. The very low-margin subcontractors do not take on more labour than they are certain of utilizing, and investment in human capital or incentives to train are absent.

The general features of externalization become manifest in a recruitment strategy characterized by a replacement of direct employees with many different types of “new” employment relations. The supply of cheap, unskilled labour has become an integral part of lower level subcontracting with no legal relationship between the user-undertaking and the workers concerned. By doing so, companies aim to cut labour costs and to attain a greater independence from the traditional labour market. The effect in the companies’ accounts is a substitution of direct labour costs by subcontracting, services or supplier costs based on invoices and “commercial contracts for services”. Also, although the growing use of subcontracting for the labour-intensive segments of execution does not necessarily have to lead to a deterioration of working conditions, it certainly has created a decrease of the direct social responsibility of the main contractor. This is also because of the rapid increase in self-employment in the sector (Cremers and Janssen, 2006).

The chain of dependence

The decision to subcontract can be motivated by different arguments: the search for expertise and know-how not belonging to the core activity; labour shortages; efficiency seeking; a traditionally grown division of labour; with partners based on mutual trust, routine, or other historical factors. In the positive sense a chain is based on, or results in, stable relationships between a main contractor who “delegates” part of the work to specialized and preferred subcontractors. Nevertheless, the results on site are activities, carried out simultaneously or in several subsequent phases, consisting of different parts of an overall project, executed by various contractors and subcontractors with all the problems related to coordination and efficiency (Fellini, Ferro and Fullin, 2007).

The chain can be seen as a hierarchical socio-economic dependence network or triangle, based on a linked series of contracts and connections. On top of this triangle, there are regular and completely legal undertakings. Large construction firms can even integrate backwards into building materials and a certain “mechanization” to manufactured supply is possible and advantageous. The structure of the production chain is complicated and contract compliance difficult to organize. Imbalanced power in the chain leads to questionable contracts that define the market transactions between the different levels. A chain can end up in a grey zone, with the result that compliance is no longer guaranteed. This is especially the case when large companies transfer recruitment to small subcontractors that multiply this transmission of recruitment and drive it even further down by the use of agencies, gang masters and other intermediaries. A strategy based on the use of labour-only subcontracting with the aim of fixing reduced prices carries the risk that sooner or later undeclared labour and illegal foreign work enter the market. Groups of undeclared workers are recruited via post-box companies, advertising and informal networking. The lower stratum is then an irregular supply of cheap labour via agents or gang masters and distortion of the labour market is substantial.

Collective bargaining in construction

Collective agreements have long served in the construction industry as the answer to a constantly changing workplace and to contracts that permanently shifted from one employer to another. Industrial relations in construction in most of the “old” EU Member States could be characterized by mutual concerns that served as fields for cooperation as well as potential issues of conflict. This is one of the reasons why the industry has a long tradition of bargaining and why almost “similar”, national industry-wide collective answers (for interruption of careers, holiday pay, weather vicissitudes and

vocational training) were formulated in European countries at a time when cross-border exchanges of good practices were still underdeveloped. Both sides of the industry endorsed the necessity of conventional and regulatory arrangements, the underlying basis for collective bargaining.

In countries where construction was highly regulated (with industry-wide collective agreements, often made generally binding by the legislator) the resulting coverage rate was substantial, and union density often beyond national averages (the Nordic countries, Belgium, Germany, Austria and the Netherlands to mention a few). In these countries joint provisions and social funds existed that were managed and even administrated by the unions. In some, seemingly less regulated countries (such as Italy), both sides of the industry had established strong partnership and a similar system of sectoral industrial relations with industry-wide social funds. There again, the rate of unionization was relatively high. In less regulated countries that lacked this tradition of joint industry-wide provisions (the United Kingdom, Portugal), implementation of agreements and contract compliance were never self-evident and union density was normally low.

Collective bargaining stabilizes the industry and contributes to the necessary continuity. Social dialogue can be seen as an important instrument for the improvement of decision-making and as a platform for all stakeholders. Training, safe working conditions, insurance and social benefits are, for instance, all items subject to collective bargaining at the sector level. Industry-wide regulation then is not in place for the sake of regulation, but as the choice of partners aiming to promote continuity, quality and fair competition.

The development described earlier, however, renders representation and bargaining procedures more and more ineffective. The traditional employer-employee relationship is becoming more rare. Part of the work is executed by a workforce supplied by employers or specialized subcontractors that pretend to belong to other branches (circumventing compliance with contracts, collective agreements, sector regulations etc.), or by labour agencies or self-employed that do not have to comply with (part of) the agreements. Compliance with generally binding agreements is evaded by segments in the chain that call themselves “service suppliers” or another (less regulated) profession or branch (cleaning, facility management), that claim to belong to a different sector. In most countries self-employment is another important means to avoid binding agreements.

The effect on industrial relations is that the representativeness of both sides of the industry during collective bargaining comes under pressure as the workforce of subcontractors is in general non-unionized or characterized by low union density. The bargaining power of workers contracted on an individual basis or recruited via agencies is weaker than that of a mandated collective negotiator. On the employers’ side, the representative basis becomes questionable when parts of the production chain are executed by non-affiliated external subcontractors.

Outsourcing in the form of an intensified appeal to subcontractors, temporary agencies or self-employed for the execution of operations leads to bargaining situations that can only partly handle the range of “employers” and workforces involved. The trade unions are confronted with the challenge of representing the unorganized and vulnerable worker (Pollert, 2007). Employers associations, confronted by outflow and bypasses in their own ranks, lose their grip on processes that are meant to keep the industry stable and professional. And finally, the financial foundation for joint provisions, social funds and facilities deteriorates.

Trends at national level

France

The massive use of subcontracting has led to a small, but powerful group of general contractors that win tenders, manage the sites and have their logos visibly attached to each project. Professions and activities with high added value are incorporated (conception, finance, concessions) on top of the chain. On site, these contractors are no longer visible to their workforce. They have externalized the discontinuity and uncertainty of temporary labour intensive activities and all the simple and repetitive work is handed over to subcontractors and agency workers. Subcontracting of labour by intermediaries in the form of temporary agencies was long forbidden in French construction. After this ban was abolished and the use of temporary agencies was legally introduced, outsourcing in construction took the form of subcontracting of labour only (the return of the *marchandage*, a stable supply of precarious labour). Construction is strongly over-represented in the agency work sector with a (still growing) share of 20.6 per cent of the overall temporary workforce in 2006. It is calculated that temporary agency workers occupy 120,000 full-time jobs in construction (IRNS, 2007). An analysis of employment according to trades sectors shows that, since the beginning of the 1970s, the proportion of employees in the main construction industry (*gros œuvre*) has fallen from about 55 per cent to just 39 per cent (Kahmann, 2006).

Externalization of recruitment leads to precarious work sites and the basic solidarity stemming from the direct link between the (ownership of the) workplace and the employment relation is vanishing (Jounin, 2006). The lowest echelon of temporary agency workers, mainly immigrants, does not figure in official construction workers’ statistics: they are seen as “service providers”, or simply ignored because of the irregular character of their work. These workers are not represented at all. Labour inspection has more and more tasks to fulfil and the interests of workers in vulnerable situations have no priority, as the exploitation of illegal immigrants becomes the central

focus. Labour law is only applied for a hard core of regular workers. Workers' representation in the centre ignores the interests of those in the periphery and representation in small subcontracting firms and agencies is under-developed. The basis for public and collective action is therefore vanishing. The defence of direct labour and campaigns against outsourcing so far have dominated trade union action. Little has been done in favour of those that stand outside. The result is individual flight from poor conditions: absenteeism, sabotage, loss of know-how, departure and high labour turnover.

Germany

Until the early 1990s, German contractors worked with a large group of directly employed workers. This tradition began to erode and, when this erosion combined with a process of mergers and enterprise takeovers, the number of workers on the payrolls decreased. Main contractors started to shift from production to management contracting and development. With central tendering and planning on the one hand and outsourcing of the execution on the other, part of the chain of production and supply was externalized. The search for cheap labour has contributed to the so-called *Tarifflicht*, an evasion of the general applicable collective agreement for the construction sector. Subcontractors, and sometimes even construction companies, left their employers' organizations and moved to other sectors with more flexible and cheaper arrangements and agreements. As a result many workers are now included in the statistics of the services industry. Employment of construction workers in building and finishing trades decreased enormously in the period 1998–2004 (–32 per cent). Employment in construction related services increased (+6 per cent), and especially the category of managerial staff at central level exploded (+70 per cent). Taking into account the workforce throughout the production chain (supplying industries, building and finishing trades and construction-related services) the transformation in the period 1998–2004 is remarkable: the share of building and finishing trades decreased from 55 per cent in 1998 to 46 per cent in 2004, the share of services increased in the same period from 29 per cent to 38 per cent (calculations based on Bosch, 2007).

In these figures the (increased) share of self-employed is not included. In the early 1990s the share of self-employment in construction stayed well below 10 per cent. In 1995 this rate had gone up to 12.3 per cent. Although reliable figures are not available there is some evidence that a further rise in self-employment in Germany in recent years has taken place due to the long period of mass unemployment and lack of opportunities in direct labour relations. The increase was also due to policy measures to simplify the entrance of small businesses, to lower educational impediments for trades and the simplification of trade licensing and start-ups. These changes have resulted in a

higher degree of fluctuation in and out of self-employment (Cremers, 2007). The sector has become fragmented and dispersed, with unequal and unbalanced dependence relations based on tough, cost-driven competition.

Hungary

As a consequence of the rapid fragmentation and decentralization of companies after the demise of the centrally planned economy, the construction industry in Hungary is characterized by a company size well below the European average: an average of four employees against six in the EU-15 in 2000 (Neumann and Toth, 2006). The industry is dominated on the one hand by a few major contractors, often owned by foreign investors and mainly active in civil engineering and road building, and on the other by small domestic companies working mainly in house-building. Partly this was the result of government policy to create an environment favouring foreign investments, in particular in infrastructure (e.g. construction of motorways).

Here also, the trend has been for larger companies to reduce the share of blue-collar workers by outsourcing and subcontracting. As a result, fragmentation is ongoing. Large firms are becoming “general contractors” and tend to maintain only white-collar staff and highly skilled manual labour on the company payroll. The result is a downward spiral of corporate restructuring and primary labour force shrinkage.

Companies have increasingly used outsourcing to spin off certain units (i.e. those with a low-tech manual work profile) and replace them with a network of small and medium-sized enterprises (SMEs) through subcontracts. This trend includes the increasing use of “bogus” work contracts. Instead of an employment contract in line with the regulation of the Labour Code, commercial work contracts are concluded or contracts for the provision of certain services are arranged, allowing for a flexible and less regulated work relationship, tax evasion and bypasses of obligatory social contributions.

This reorganization drive hit union representation hard and further reduced the impact of collective bargaining on terms and conditions of employment in the industry. Although the major trade unions have been arguing for a renewal of collective bargaining processes since the early 1990s, the last voluntary framework agreement in the sector was terminated by the employers’ organizations in 1994. In the following years, unions and employers’ associations prepared statements and common petitions for an effective regulation of the industry. A study on the impact of vocational training (Forde and Mackenzie, 2005) highlighted that the construction industry, whilst experiencing a high growth rate, was frequently facing a shortage of skilled workers, causing increasing difficulties for the industry in the forthcoming decade. The study called for an improvement of the attractiveness of working in the industry and it brought collective bargaining back on the agenda.

Employers and unions shared the concern about bad working conditions, contingent work contracts, widespread use of undocumented labour and low wages. They jointly concluded that the trend of a downward spiral in working conditions should be turned around and the attractiveness of the industry (to potential workers) restored. A sectoral collective agreement was seen as an option for a re-regulation of the increasingly chaotic situation and the social partners finally agreed to conclude a voluntary multi-employer agreement. The result was submitted to the Ministry of Labour for extension and as of 1 July 2006 the collective agreement was extended for the whole construction sector.

Spain

Construction activity in Spain boomed from the middle of the 1990s to 2005, with only occasional annual contractions in output. Spain's construction sector ranked high with regard to number of persons employed, value added and share of national non-financial business. The proportion of enterprise birth in construction in Spain, at 20 per cent, was several percentage points higher than in almost all other EU Member States in the period 1995–2005 (Eurostat, 2006).

The structure of the industry is segmented with many regional specificities, a large section of small and medium-sized companies and a market divided between infrastructure, residential and non-residential building. Fragmentation is also a result of increasing diversification. Employees at small and medium-sized enterprises form part of long subcontracting chains. Indeed, subcontracting is the most typical form of work organization. However, several large construction enterprises are developing stronger regulatory mechanisms to keep control of the fragmented subcontracting chain. These mechanisms include a series of conditions that each employee and company have to fulfil (e.g. presenting certain documents such as work contracts, invoices, etc.). Workers who have fulfilled these conditions have to wear a card or sticker on their helmet so that the contractor can carry out visual inspections and remove workers not duly identified from the building site. This prevents workers from exchanging jobs without control.

Also, the laws on subcontracting address the problem of fragmentation by stating that the principal enterprise that enters into contracts and subcontracts for works or services that form part of its own activities, shall be jointly liable for any non-payment of wages and social security contributions, and shall have subsidiary liability in social security obligations and responsibilities in the event of insolvency. The collective agreement is made generally binding for all construction companies, so that around 2.2 million workers are covered.

Moreover, in 2007 a new law on subcontracting in the construction industry was introduced, aiming to reduce temporary contracts and accidents,

and promote compliance with all types of regulation. The new law limits the number of subcontractors in a chain to three and as a result the number of long subcontracting chains is expected to diminish (Vargas et al., 2006). Four points deserve particular mention:

- a third subcontractor will not be able to pass the task that has been entrusted to him to a fourth one;
- moreover, subcontractors will not be able to further subcontract those activities, which basically involve manual labour work with no specialization;
- the obligation to set up a “subcontracting book” has been established in order to register subcontracting chains, deadlines and health and safety plans;
- workers’ representatives of the different companies operating at a given construction site must be informed about the contracts and subcontracts in force at that location.

United Kingdom

The British construction industry is characterized by extensive subcontracting, large numbers of self-employed workers and a strong pressure to drive prices ever lower. The fragmented, casual and insecure character of the employment structure in the construction industry is a critical problem (Clarke, 2006). The industry often continues to operate on a “hire and fire” basis whereby workers are only retained if required. Labour provisions regulated by labour law were scarce in the United Kingdom until the middle of the 1990s. However, since then the implementation of some of the EU Directives (especially those on health and safety) introduced important notions of labour legislation.

Collective bargaining is voluntary (“gentlemen’s agreements”) as opposed to legally binding and although there are collective agreements between employers and unions, these are not fully encompassing and their impact is limited. Coverage in construction (in the form of pay affected by collective agreements) is estimated at around 19 per cent of the workforce (DTI, 2007). A basic problem is found in instances where, even if the main contractor complies, subcontractors can easily circumvent the collective agreements. Other industry-wide benefit schemes for construction often cover only a minority of workers.

Since the 1980s, employing organizations in the United Kingdom have shifted employment practices in ways that have increased the numbers of people in the “contingent” workforce. Currently main contractors manage the projects and the finances, but usually do not employ labour; subcontractors, gang masters and agencies employ or supply labour. Large

Table 1. Employment in the United Kingdom construction industry, 1970–2005

	Total		Directly employed operatives		Self-employment		APTC		Trainees*	
	No. (000s)	Per cent of total	No. (000s)	Per cent of total	No. (000s)	Per cent of total	No. (000s)	Per cent of total	No. (000s)	Per cent of total
1970	1 802	65	11 70	22	405	18	333	18	84	4.5
1980	1 696	57	9 75	29	495	20	346	20	69	3.9
1985	1 492	49	7 25	32	470	20	297	20	49	3.2
1990	1 703	39	6 68	42	718	19	317	19	33	1.9
1995	1 375	37	5 15	45	621	17	238	17	26	1.9
2000	1 451	49	7 06	34	498	17	248	17	37	2.5
2005	1 800	43	7 77	39	707	18	316	18	42	2.3
Per cent change 1970–2002	-0.1%		-34%		+75%		-5%		-50%	

* Figures for trainees were discontinued by the Department of the Environment in 1989 and those for 1990 are therefore from 1989. The figures exclude those in public authority Direct Labour Organizations.

Source: Department of the Environment, Housing and Construction Statistics and Department of Trade and Industry (DTI), *Construction Statistics Annual*, London: HMSO, 2007.

numbers of subcontract arrangements enable companies or individuals to set up businesses and use agency labour almost at will, with as a consequence serious ambiguities in the employment relationship. Subcontracting has become so all-pervasive that it extends to subcontracting only for labour (labour-only subcontracting), with even those working for subcontractors having contracts for services as self-employed workers rather than contracts of employment. Labour-only subcontractors trade essentially on the difference between the price they pay labour and the price they sell labour, thus contributing to the labour-cost pressure in the industry (Clarke and Gribling, 2006). Although subcontracting allows for labour flexibility and swift response to fluctuating market demands, it passes social risks down through the subcontracting chains.

A wider use of self-employment was introduced in the 1970s in an attempt to regularize the use of casual and often undeclared labour employed specifically in the construction sector by labour-only subcontractors (Lean, 2005). The recognition of a “self-employed” status peculiar to construction represented a special tax status, giving construction employers in effect a subsidy to employ “bogus” self-employed at far less cost than employing labour directly. Since the 1970s this system has undergone an uncontrolled expansion combined with a rapid decline in direct employment and training (table 1). For many contractors and subcontractors it represents a strategy to evade labour regulations and other statutory obligations, including holiday pay and a guaranteed weekly wage. In the British deregulated economy, it has been possible to acquire this self-employed status – generously issued by the tax office – from one day to the next, including for newly arriving migrants. As a result, up to 60 per cent of workers employed on any one site might be, in effect, “bogus” self-employed under labour-only subcontractors.

A major challenge in the United Kingdom is thus associated with the predominance of self-employment in the construction sector. With the rise of self-employment as a mechanism for evading the terms and conditions of collective arrangements, as well as a flourishing agency industry, the prospect of stable industry-wide provisions seems distant. In recent years, however, there are calls from the social partners in the British construction industry for better control of the way labour is employed, as well as for a properly regulated workforce in order to prevent exploitation. The position of the trade unions and the employers’ associations has been that such workers are first and foremost “employees”, engaged as “self-employed” for tax and social security reasons. It is for this reason that they have supported various campaigns to improve the situation, including the most recent – introduced in April 2007 (Clarke, Cremers and Janssen, 2007).

Summary

The primacy of the principle of free movement in the business environment and the consequences of the use of the management contracting principle have transformed the organization of the construction industry, have intensified the pressure on wage costs, and have modified the recruitment practices used. The traditional model of undertakings with skilled and unskilled workers contributing their labour under the supervision and disciplinary control of an employer is no longer the standard one. Cost reduction strategies have led to extensive outsourcing, downsizing, subcontracting, the use of agencies for the supply of labour, and the widespread practice of bogus self-employment. It created a new, Europe-wide playground for new types of contracts that do not fit the traditional model.

These developments have had a destabilizing effect on the industry. The increase of flexible contracts, agency work and self-employment affects stability since it undermines longer-term relationships. It also affects the future adjustment and upgrading of the sector through the associated negative effects on the provision of training (Forde and MacKenzie, 2005). These non-standard employment arrangements then offer no structural solution to the prevailing skills shortages.

They also have a very significant impact on the collective bargaining process, undermining the conclusion of and respect for industry-wide collective agreements. Outsourcing with the explicit aim to reduce the labour force blurs the regulatory capacity of trade unions and employers' associations. Like the irregular worker, the overwhelming majority of workers with non-standard employment relationships is unrepresented. The externalization of labour leads to a pricing and allocation of labour that is no longer governed by the industry's traditional regulatory framework, within which collective bargaining played a paramount role, providing rules and procedures for adequate earnings, legal protection and social security. In non-standard employment relationships, the rules and procedures defined by the partners in collective bargaining no longer apply. Instead, pricing and allocation become dependent on market forces.

This scenario is, for obvious reasons, not attractive to workers but, in the long term, also not appealing leading employers, which do not benefit from increased instability and skills shortages. As a result, as can be seen from the country cases discussed above, attempts are being made to re-regulate the sector through new initiatives in law and collective bargaining.

Recommendations

There are no easy or uniform answers available to address the industry's problems. Nevertheless, we would like to formulate a series of recommendations.

- In the long run there is no alternative for industry-wide customized regulation. This is a necessary condition for the fair redistribution of costs and benefits in a partitioned industry. This regulation should start with the settlement of minimum wage provisions that are generally applicable. In labour market segments with low trade union density this type of regulation is one of the few instruments against exploitation. At the same time it is a weapon against the race to the bottom that otherwise leads to a complete erosion of collectively agreed upon rules and standards.
- Partners in collective bargaining have to identify ways to reinforce the outcome of their negotiations. Debates in the EU linked to the free movement of workers have demonstrated the necessity to make agreements “internal market proof”. Implementation of agreements and supplementary site-related negotiations should go hand-in-hand, with contract compliance permanently on the agenda.
- Trade unions and employers' organizations share the crucial objective that they look after the interests of the industry's population. They cannot pretend that the unorganized and unrepresented are not there. In the long run that will ruin the industry, reintroduce archaic industrial relations and lead to a permanent distortion of competition. The organization of agency workers and self-employed and a broadening of labour market organizations are of the utmost importance. Unions must redefine their territory, scope and target groups.
- The difference between fraudulent practices and true civil and commercial business relationships has to be addressed, with the aim of effectively establishing a clear distinction between employed and genuinely self-employed workers.
- The industry should take the lead in the promotion of cooperative subcontracting for specific one-off tasks on the one hand, and for the restriction of the multiplication of subcontracting on the other. Framework agreements that define social responsibility and liability in the chain need to complement the necessary regulation.

References

- Baumann, H.; Cremers, J.; Janssen, J. 2003. "Hervorming of ondergang van de vakbeweging", in *Tijdschrift voor Arbeid en Participatie*, Vol. 25, No. 3/4, pp. 261–271.
- Bosch, G. 2007. *Konzeptstudie zur Entwicklung eines Leitbildes Bauwirtschaft der Bundesrepublik Deutschland* (Gelsenkirchen, Institut Arbeit und Qualifikation).
- Buitelaar, W.; van der Meer, M. 2007. "Balancing roles – Bridging the divide between HRM, employee participation and learning in the Dutch knowledge economy" (Amsterdam, AIAS).
- CGT. 2004. *Travail illégal – Droits à faire respecter: Les propositions de la CGT* (Paris, Confédération Générale du Travail).
- Clarke, L. 2006. "Valuing Labour", in *Building Research & Information*, Vol. 34, No. 3, May–June.
- Clarke, L.; Gribbling, M. 2006. *Undeclared labour in the construction industry, Country report-Great Britain* (Brussels, European Institute for Construction Labour Research), available at www.clr-news.org (accessed 20 Dec. 2007).
- Clarke, L.; Cremers, J.; Janssen, J. 2007. "The transformation of employment relations or 'undeclared labour', the case of the construction industry", paper presented at the IIRA Manchester, Sep.
- Cremers, J.; Janssen, J. 2006. *Shifting employment, Undeclared labour in construction*, CLR-Studies 5 (Utrecht, i-books).
- Cremers, J. 2007. "Self-employed and the free provision of services", in CLR-News 2-2007: *Poland's Construction Industry* (Brussels, European Institute for Construction Labour Research).
- DTI. 2007. *Trade Union Membership 2006, Employment Market Analysis and Research* (London, Department of Trade and Industry and National Statistics).
- European Building Confederation (EBC). 2007. *Draft declaration on undeclared work*, presented at the EBC General Assembly, Murcia, Oct.
- Eurostat. 2007. *European business – Facts and figures*, 2006 ed. (Brussels).
- . 2006. *Key figures on European business – With a special feature section on SMEs – Data 1995–2005* (Brussels).
- Fellini, I.; Ferro, A.; Fullin G. 2007. "Recruitment processes and labour mobility: The construction sector in Europe", in *Work, Employment and Society*, Vol. 21, No. 2 (Sage Publications, British Sociological Association).
- Forde, C.; MacKenzie, R. 2005. "Skills shortages and casualisation in construction: Evidence from two UK Surveys" in *Construction Industry Quarterly*, Vol. 7, No. 3 (Ascot, CIOB).
- IRNS. 2007. *Dossier Travail Temporaire*, at www.irns.fr (accessed 6 Jan. 2008).
- Jounin, N. 2007. "L'illégalité sous-traitée?", in *Droit social*, No. 1 (Paris, URMIS).
- . 2006. *Loyautés Incertaines – Les Travailleurs du Bâtiment entre Discrimination et Précarité*, Master thesis (University of Paris, Laboratoire URMIS).

- Kahmann, M. 2006. *Undeclared labour in the construction industry, Country report – France* (Brussels, European Institute for Construction Labour Research), available at: www.clr-news.org (accessed 20 Dec. 2007).
- Lean, G. 2005. “When does a contract for services become a contract of employment?” in *CLR-News 2-2005: Free Movement Revisited* (Brussels, European Institute for Construction Labour Research).
- Neumann, L.; Toth, A. 2006. “Undeclared labour in the construction industry, Draft report Hungary” (unpublished) (Brussels, European Institute for Construction Labour Research).
- Pollert, A. 2007. *The unorganized vulnerable worker: The case for union organising* (London, The Institute for Employment Rights).
- Vargas, O.; González, J.; Rodríguez, F.J. 2006. *Undeclared labour in the construction industry, Country report – Spain* (Brussels, European Institute for Construction Labour Research), available at: <http://www.clr-news.org/CLR-Studies/Spain%2003-OK.pdf> (accessed 18 December 2007).

Global capital strategies and trade union responses: Collective bargaining and transnational trade union cooperation

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