

Organising workers


globally:

the need for **public** policy to

regulate **investment**

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Organisation for the Economic Co-operation and Development

Unions21



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Debate

Unions 21 exists to provide an 'open space' for discussion on the future of the trade union movement and help build tomorrow's unions in the UK.

We are mainly resourced by contributions from trade unions and others who work with trade unions that recognise we need to keep the movement evolving in an ever changing world. We encourage discussion on tomorrow's unions through publications, conferences, seminars and similar activities.

The *Debate* series of publications present opinions upon the challenges trade unions are facing, solutions they may consider and best practice they may adopt. These opinions are not endorsed by Unions 21, but are published by us to encourage the much needed, sensible and realistic debate that is required if the trade union movement is going to prosper.

Please read and consider this publication, forward it to others connected to the trade union movement and debate the content within your own organisation.

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Introduction

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Organising workers and collective bargaining are central activities of trade unions. They do not, however, take place in a political or economic vacuum. With globalisation workers are increasingly part of global supply chains where companies can relocate investment to counter union pressure or undertake regulatory arbitrage. The thinking behind policy advocacy covering the global economy by unions is precisely to increase the leverage that unions have at all levels to organise workers, to negotiate with and have influence over multinational enterprises.

Since the fall of the Berlin Wall and the emergence of China and India as major producers on world markets, the number of potential participants in the global trade and investment system has doubled from three to six billion people. The potential world labour force has, at a conservative estimate, also doubled, although the IMF suggests that when weighted by exports it has risen fourfold over the past two decades¹. This initially impacted on the low cost sectors of production and the workers employed in them, but technology is allowing the international comparative advantage also to have an effect in the service sector and on white collar jobs previously thought immune to international relocation. Moreover, foreign investment now drives or operates in conjunction with trade. The growth of China's bilateral trade surpluses with the United States (US) and most recently with the European Union (EU) have become a major policy issue. However, 57% of China's exports are from non-Chinese firms, many domiciled in the US or Europe. Workers and their trade unions are therefore increasingly confronted by the same firms globally, either as their direct employers or indirectly through the expansion of global supply chains.

For trade unions the central priority for government policy with regard to the international investment system as a central component of the global market economy is that it sets a range of enforceable rules for global markets to ensure that workers' rights and core labour standards are taken out of competition and that the fruits of economic development are shared more fairly. A central part of this must be enforceable rules to cover the activities of multinational enterprises and supply chains.

¹ International Monetary Fund, *World Economic Outlook*, 2007, chapter 5.

The growing inequality of income

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² International Labour Organisation, *Growth and Decent Work: Strengthening the Linkage*, 2006.

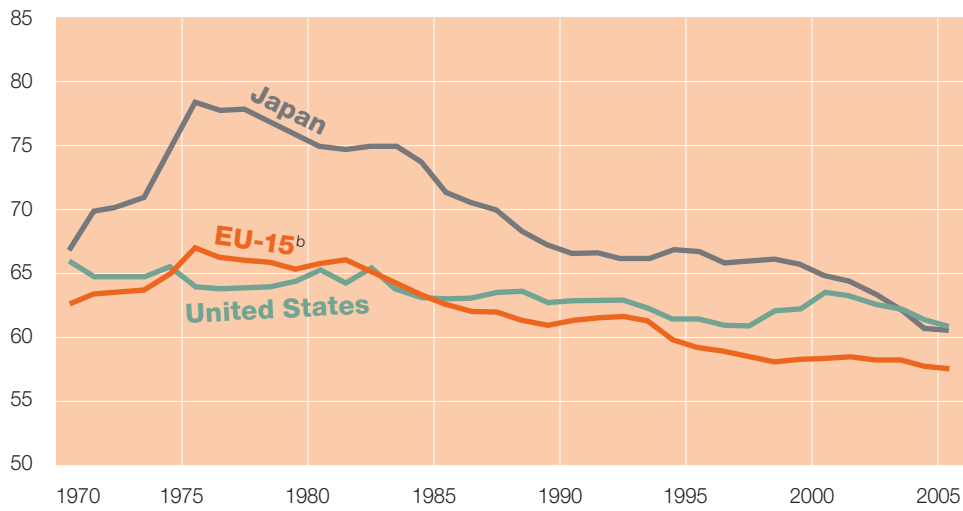
The impacts of the globalisation of investment on workers are mixed. On the one hand, expanding investment flows give the opportunity to provide decent work for many of the billion people who are unemployed or underemployed and to relieve the poverty of the 1.4 billion people working for less than two USD a day². Few unions would dispute the potential benefits of inward investment in terms of jobs and technology transfer. On the other hand, unless governments manage this enormous expansion of the global labour force, it threatens to undermine the wages and working conditions of workers. The fact that workers are parts of global supply chains that, according to some business leaders such as the head of IBM, have replaced multinational enterprises as the dominant form of business model, has put pressures on employment standards across different categories of jobs. This issue, therefore, permeates significantly the daily relations between trade unions and employers. The attitude of employers towards unions generally, including attitudes to union recognition, their policy on labour costs and their attitude to technological change and work organisation are increasingly dictated by international competitiveness. The threat of 'exit' by an employer from a given labour market and relocation to an offshore site is now the growing feature of industrial relations when workers are seeking to organise trade unions and to negotiate.

Moreover, whilst workers may face the same employers, they do not have the same rights to organise and bargain across jurisdictions. The rapid emergence of China as the dominant force and global location for manufacturing, where low wages in export sectors are based in part on the suppression of union freedoms and workers rights is having a chilling effect on the improvement of labour standards in East Asia and elsewhere. The most brutal examples of competition to attract investment by lowering labour standards are often found in export-processing zones (EPZs) where semi manufactured products or raw materials are processed into goods for export by foreign companies operating outside normal laws and regulations of the host country. They may operate very differently in different parts of the world, but EPZs tend to have one over-riding common characteristic: trades unions are tolerated in few of them.

The growing imbalance in the relative power of workers and their unions compared to employers in the global labour market is reflected in the changing functional distribution of income. This is evident in the falling share of wages as a proportion of national income throughout the Organisation for the Economic Co-operation and Development (OECD), as shown in the figure opposite.

The International Labour Organization (ILO) reports similar trends in the major emerging and transition economies. In addition, within incomes from employment the benefits of globalisation in the industrialised countries have accrued disproportionately to the wealthiest families, while the majority of working families are excluded from sharing in increasing productivity and economic growth. As a result, the OECD notes that in 17 of 20 countries surveyed, earnings inequality as defined by the earnings of workers in the 90th percentile compared to workers in the 10th percentile has risen.

Wage share of national income: EU-15, Japan and the United States, 1970-2005^a



a) Total labour compensation, including employers' social security and pension contributions and imputed labour income for self-employed persons.

b) GDP-weighted average of the following countries: Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Italy, The Netherlands, Spain, Sweden and the UK.

Source: Based on OECD Employment Outlook, 2007 Figure 3.7

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Enforceable rules for the global labour market

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The existing institutions and mechanisms of governance of global markets are imperfect. Although a caricature, it would be true to say that the institutions of 'social governance, such as the ILO, that brings together labour and social affairs ministers and those responsible for human rights, have weaker powers of enforcement compared to those that deal with property rights, such as the World Trade Organisation (WTO) or the international financial institutions. Moreover, there is a lack of coherence between different parts of international governance. The same governments can profess support for labour rights at the ILO whilst undermining them in their activities at the WTO.

A range of governance mechanisms is potentially available with, at one end of the spectrum, a set of 'hard' international regulations covering specific fields, in the middle, looser policy co-ordination, regional integration, continuing national regulation and more loosely regional or district level policies. Trade unions have pragmatically recognised that binding, 'hard' mechanisms of regulation at a global level will only be able to cover a limited number of areas such as fundamental rights. They are therefore not an alternative for the looser forms of co-ordination and co-operation in other areas.

³ Fabian Globalisation Group, *Just World*, 2005, chapter 10.

Unions' objectives have been summarised as fivefold³, namely to:

- guarantee fundamental human rights at the workplace through binding international regulation and effective enforcement as well as integrating 'decent work' as an objective in sustainable development strategies;
- establish enforceable intergovernmental regulation covering the accountability of multinational enterprises and their employment practices;
- create a negotiating space in international industrial regulations through the conclusion of global framework agreements between global union federations and multinational enterprises;
- use market power such as the influence of workers savings or consumer pressure to ensure that there is a viable business case for socially responsible investment;
- use the regional space for regulation created by the European process of regional integration;
- undertake broader social impact assessments of trade agreements.

Guaranteeing fundamental human rights at work

Globalisation has drawn dramatic attention to the need to guarantee core workers' rights on a global basis. The agreement in the ILO in 1998 of the *Declaration on Fundamental Principles and Rights at Work* focusing on core rights (cf.: - freedom of association, rights to collective bargaining, freedom from forced labour or prison labour, freedom from child labour exploitation and non-discrimination) has provided a floor for employment regulation in the global economy and a standard that should be applied throughout the international governance system. Such rights are vital for human dignity and self respect to be applied at the workplace. These are fundamental requirements that have to apply before more extensive employment regulation can be put in place. Without respect for freedom of association it is hard to apply even basic labour, or health and safety laws, or operate effective factory inspection. The core labour rights have also been agreed by the vast majority of countries operating in the global economy, the 177 members of the ILO, and it cannot be argued that they infringe upon national sovereignty. The issue is whether or not they are enforced in practice.

The international labour movement has long advocated 'workers' rights clauses' in trade and investment agreements and in the constitution of the WTO. The idea of a workers' rights clause is to ensure that fundamental workers' rights embodied in the ILO *Declaration on Fundamental Principles and Rights at Work* become an integral part of trade agreements. This would require close co-operation on implementation between the WTO and the ILO. A workers' rights clause could make it easier for workers to form unions, and would ensure that all governments took serious measures to tackle the abuses of basic workers' rights. It would provide a partial counterweight to the negative pressures on good labour relations in the global economy and could influence the behaviour of corporations.

The issue has remained off the agenda in the WTO in the Doha round although it is a live issue in many bilateral trade negotiations. If further trade liberalisation is to regain public support, WTO members must recognise that trade is only one of the elements in the three pillars of sustainable development and give full attention to the social dimension of development including the respect of fundamental workers' rights.

Other governmental institutions also have to treat core labour rights as criteria that they apply in their own activities. The World Commission on the Social Dimension of Globalisation⁴ established by the ILO made strong pleas for far more attention to be paid to the social dimension of globalisation. It called for coherence to be established in the multilateral system to ensure respect for workers' rights by all international institutions including the lending and conditionality policies of the IMF and World Bank as well as the WTO. The Commission is following up with Policy Coherence Initiatives by the different institutions.

But action must go beyond strengthening dialogue and coherence to:

- increase the ratification of the ILO's human rights conventions and strengthen the ILO machinery for the supervision of core labour standards;
- expand labour rights machinery in preferential trade arrangements;
- integrate obligations for core labour standards into all of the World Bank's lending policies;
- extend labour standards clauses in hemispheric and regional trade agreements;
- establish a forum to work on coherence between the ILO and the WTO;
- modernise the Article XX of the GATT to exclude from WTO disciplines goods made not just from prison labour but any labour in abuse of core labour standards;
- integrate the attainment of decent work and respect for core labour standards into development assistance programmes.

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⁴ International Labour Organisation, *A Fair Globalisation, Creating Opportunities for All*, 2004.

The 'social dimension' of investment agreements

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The issue of social rules also arose in the ill-fated negotiations from 1995-98 of the Multilateral Agreement on Investment (MAI) at the OECD. Trade unions were less single-minded in their approach to the MAI than the NGO campaign that was a significant factor in the derailment of the negotiations. As with the majority of the NGOs, unions had defensive objectives in seeking to ensure that governments' rights to regulate in the area of environment and social standards would not be compromised by the Agreement. As the details of the MAI texts emerged the interaction of very wide definitions of 'investment' and 'expropriation' together with the investor to state dispute settlement arrangement gave very real cause for concern as to whether national and regional governments would be challenged and sued for legitimate attempts to regulate in the labour and environment area.

However, unions also had offensive objectives and throughout the negotiations on the MAI, the trade unions represented in TUAC argued that the development of a simple investment liberalisation agreement, which guaranteed investors' rights but did nothing to protect workers' rights and set out the corresponding obligations on multinational companies, would be unfair and unbalanced and would be opposed by trade unions. Four mutually supportive elements were proposed for treating labour issues:


- (i) the incorporation of the OECD Guidelines for Multinational Enterprises into the MAI through an extended reference in the Agreement's Preamble and the annexing of the full text of the Guidelines to the MAI;
- (ii) the incorporation into the MAI of the legal obligations on all the parties (OECD members and non-members alike) to set up National Contact Points to implement the Guidelines;
- (iii) a commitment in the Preamble of the MAI by governments to protect, enhance and enforce basic workers' rights;
- (iv) a specific provision in the MAI by which governments would undertake in a binding commitment subject to dispute settlement procedures not to seek to attract foreign investment by suppressing domestic labour standards or violating internationally recognised core workers' rights.

In April 1998, the MAI negotiations ended in much publicised failure and attempts to bring investment into the WTO as a 'Singapore issue' have also been stopped dead. However, the spread of bilateral investment agreements and regional trade agreements with investment chapters has continued apace and several of the same 'social issues' have arisen. Bilateral investment agreements currently number more than 2,500, or 5,500 if a broader definition of International Investment Agreements is used. Commentators close to trade unions have raised the concern that both the content of treaties and the rise in litigation under investor to state procedures may compromise legitimate and desirable government policies. A Friedrich Ebert Foundation report survey concludes: "Recent investor-state disputes have seen multinational firms seek to challenge the imposition of health and environmental measures, various forms of taxation, and even the introduction of affirmative action policies designed to promote certain disadvantaged racial or ethnic groups. There is a need for governments to scrutinise their existing treaties so as to ensure that they provide adequate safeguards for the exercise of legitimate government activity⁵".

⁵ Luke Eric Peterson, *The Global Governance of Foreign Direct Investment: Madly Off in All Directions*, Friedrich Ebert Foundation, May 2005.

Parallel to this has been the piece-meal development of what the OECD has called the 'social dimension' of international investment agreements. Of the 40 countries that are signatories to the OECD Declaration on International Investment and MNEs an OECD survey⁶ finds that 15 countries have included labour, environmental or to a lesser extent anti-corruption language in one or more agreements. Much of the language reflects the issues that were current in the MAI negotiation: "not lowering standards", "the right to regulate", and the scope of "indirect expropriation" and promotion of "internationally recognised standards" such as labour rights.

What is not clear, however, is the extent to which such language has moderated or conditioned the rise in investor-to-state litigation on environmental and social grounds? For unions, therefore, the current trend of international investment agreements would appear to be still increasing investor power versus states rather than balancing it with effective social responsibilities. More ambitious attempts to propose an alternative approach to bilateral agreements that blend rights and obligations of investors have been proposed by the International Institute for Sustainable Development (IISD) in the form of the 2005 IISD Model International Agreement for Sustainable Development. This has been looked at with interest by trade unions, in particular the extent to which the approach can 'balance investor rights with a novel mix of voluntary and binding investor responsibilities, and with both host and home state rights and obligations'⁷.



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⁶ Kathryn Gordon, *International Investment Agreements: survey of environmental, labour and anti-corruption issues*, 2007.

⁷ The model agreement is available at: www.iisd.org.

More effective rules for multinational enterprises

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The development of social elements in investment agreements has been far outpaced by the multifaceted initiatives of corporate social responsibility (CSR) and accountability. Governmental approaches have differed: while some governments see the complexity of globalisation and a need for effective regulation, they realise that at the level of the Nation State, or even that of the EU, it is difficult to implement regulation of global markets. They therefore see CSR as a way of trying to achieve those public objectives in a more global environment when more formal forms of regulation are not possible. But some governments have used voluntarism to argue that if companies are prepared to take the responsibility for sustainable development and social and environmental standards, then there are fewer responsibilities for the State. The result is likely to lead to initiatives that are PR driven and poorly enforced rather than effective regulation.

Intergovernmental rules for MNE's in the labour and social area have existed since the 1970s in the form of the OECD Guidelines on Multinational Enterprises⁸ that form part of the wider OECD Declaration on Investment and Multinational Enterprises and the ILO Tripartite Declaration on principles concerning multinational enterprises and social policy⁹. In the wake of the failure of the MAI negotiations in 1998 the OECD undertook a significant review of the guidelines leading to revised guidelines being adopted by the OECD Council in 2000. There was willingness by some to use the period as a window of opportunity to transform the guidelines into a more operational, more usable instrument that could be an important tool regulating corporate conduct by multinationals.

The guidelines are not legally binding on companies in a formal sense; they nevertheless set out governmental expectations on how their companies (companies which are operating in or from the 40 signatory countries) should behave wherever they operate. They should not therefore be optional; they are political commitments by governments as to their expectations of the behaviour of their country's firms. Since the guidelines expressed the shared view of what OECD governments believe to be the good corporate behaviour, corporations are expected to abide by their contents in their business operations worldwide.

The guidelines specify the need for respect for human rights and the observance of the core standards of the ILO but they go beyond this in terms of how companies and their suppliers and subcontractors are expected to operate and set out prescriptions on attitudes to union recognition, relative employment conditions, procedures for plant closures, and health and safety issues, to mention only a few elements covered by the Chapter on Employment and Industrial Relations.

The guidelines have an enforcement mechanism which was significantly developed in the 2000 Review. Signatory governments are legally bound to establish a National Contact Point (NCP). The Contact Point is expected, in addition to promotional activities, to receive cases and then try to conciliate between parties. If they cannot resolve cases successfully then they have to publish the recommendations and to put them in the public domain. The outcome should be that the company observes the guidelines. In the 1980s and 90s many supposed NCPs were non-existent. In the 2000 Review governments re-committed themselves to establish these NCPs. The OECD is expected to exert 'peer pressure' to make NCPs work.

Unions have also argued that granting of public subsidies, investment and export credit guaranties should be conditional on the observance of the OECD guidelines.

⁸ For more information visit:

www.oecd.org/document/28/0,3343,en_2649_34889_2397532_1_1_1_1,00.html.

⁹ For more information visit:

www.ilo.org/public/english/employment/multi/tripartite/declaration.htm.

This has met with furious opposition by some business groups. Nevertheless, seven OECD countries now require a company, when it receives export credits or investment guarantees, to notify the government that it is aware of the guidelines. Further progress on the issue of conditionality is necessary. In a related development the private lending arm of the World Bank, the International Financial Corporation that lends to predominantly non-OECD companies, has introduced performance requirements to be observed by its clients that include the observance of core labour standards.

In the period following the 2000 Review up to mid-2007 some 140 cases have been raised with NCPs, more than half of these have been raised by unions. TUAC affiliates and partners publish a regularly updated review of cases¹⁰. A majority of the cases raised by unions concern violations of trade union rights and roughly one quarter concern restructuring (most often company closures). A few refer to health and safety, environment, corruption or disclosure of information. Many mix different issues. Currently, a little more than one third of cases have arisen in non-adhering countries. On average, NCPs take 13 months to deal with a case. Some cases have lasted for three years or more before they were closed by the NCPs.

Most closed cases have been resolved and/or led to public statements and recommendations by NCPs. In some cases the outcome can be attributed to the efforts of the NCPs. In others the efforts of the NCPs have been marginal. Nevertheless, the mere fact that a case is submitted can sometimes have an impact on the outcome. In several cases an external trade union official making a site visit where there are ongoing cases, reporting on what is seen and then meeting with home country management who may be concerned at issues of reputation risk, can make a difference. Even when not the main factor in a case, sometimes the guidelines have contributed to the solution as part of a wider union campaign. In about half of the trade union cases it is judged that the guidelines have made a positive difference for the workers concerned.

However, the excessive length of procedures indicates that far more work remains to be done to achieve effective implementation of the guidelines and to fulfil the full potential of the Instrument. In successive submissions to the OECD, TUAC has set out key elements of a reinvigorated agenda for implementing the guidelines, including: clarification as to the criteria by which the NCPs agree to deal with cases; government engagement in the promotion and awareness of the guidelines; mainstreaming the Instrument in the OECD's other programmes and beyond.

The first step in increasing government commitment to the guidelines must be establishing soundly functioning NCPs. There have been some recent improvements. Some NCPs have upgraded their capacities and dialogue procedures to assist in resolving cases. Some of the non-member signatories to the guidelines have made considerable efforts to function well. Where NCPs include employers and trade unions they have a higher profile and are more active. Yet many NCPs appear unwilling to meet their responsibilities to resolve cases. Some NCPs do not systematically acknowledge receipt of cases. Not all NCPs issue a statement after the case has been finalised despite this requirement when the parties fail to reach agreement. The result should also be made public. This is something that NCPs often fail to do. Inconsistent interpretations of the criteria for acceptance of cases are, however, the chief obstacle including NCPs not accepting cases because of parallel legal proceedings.

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¹⁰ For more information visit: www.tuac.org

¹¹ For more information visit: www.oecdwatch.org.

¹² For more information visit: www.g-8.de/Webs/G8/EN/Homepage.

¹³ For more information visit: www.business-humanrights.org/Documents/SRSG-report-Human-Rights-Council-19-Feb-2007.pdf.

The TUAC has argued that there is no alternative to treating seriously all substantive cases and that NCPs should always deal with a case (which would meet the guidelines' own procedure guidance), even if it is partly or wholly addressed in parallel proceedings. The guidelines are not part of national or international judicial systems, and there is no *prima facie* conflict or inconsistency between the guidelines and legal proceedings. As mechanisms that can help resolve conflicts between companies and stakeholders, all state-to-state issues or concern about 'adversity' between parties (arising, for instance, from legal proceedings) should not influence an NCP decision to accept cases.

Since 2004, NGOs and their representative network at the OECD (the OECD Watch) have made a welcome step forward in the monitoring and awareness of the guidelines¹¹. However, the burden of developing the Instrument cannot rest upon trade unions and NGOs. The guidelines are a far from perfect instrument, yet their governmental nature, the implementation mechanism and their content mean that strengthening them is an important priority for unions in the investment area. With more political will on the part of governments they could become a more effective tool. It was potentially significant that the Heiligendamm Summit conclusions in 2007¹² committed the G8 to the strengthening of the observance of the guidelines through NCPs and called on emerging economies to adhere to the guidelines. A key test will be the extent to which they become an active CSR tool in China.

Unions would not see the OECD guidelines as an alternative to legal regulation of companies, workers capital strategies or collective bargaining but they can be an important complement. Whilst several NGOs are campaigning for a binding code on human rights to be adopted by the United Nations, unions would agree with the report¹³ of the United Nations special representative, John Ruggie that decent work and enforcement of workers' rights have to progress by several routes at the same time.

Building international industrial relations

An international framework for balancing investor rights needs to include a framework for industrial relations. But just as the earliest trade unions and collective agreements preceded a national legal framework, international industrial relations are evolving as multinationals become engaged in different forms of negotiations with international trade union organisations.

Even though individual companies or industries are not legally obliged to recognise trade union organizations, or engage in negotiations at the international level, limited international social dialogue has already started notably with individual enterprises. On the trade union side, structures already exist; the Global Union Federations (GUFs), which can form part of the basis for international industrial relations at both industry and company levels. Many GUFs have already established structures that deal with particular multinational enterprises, usually company councils. Many MNEs have recognised, formally or de facto, GUFs as their international counterparts. Some of this growing, global social dialogue has resulted in the negotiation of global agreements between global firms and GUFs.

By mid 2007 more than 50, global framework agreements have been concluded covering 4.2 million workers. Unlike unilateral company initiatives, agreements are a way to resolve conflicts or problems before they become serious or damaging, based on the agreement, dialogue and the establishment of a certain amount of confidence inside the relationship. Unlike campaigns and other public action, the intention is to implement common, agreed principles in a way that leads to conflicts to be resolved or even anticipated. Whereas most CSR exercises are voluntary efforts, promises or claims, the adoption of framework agreements can be seen as the start of international collective bargaining.

In the maritime industry, an industry that has always been international, a full-fledged collective bargaining agreement covering wages, hours, and working conditions has been negotiated and signed between the International Transport Workers Federation and an association of ship-owners and ship-managers. It is an important part of a larger effort to end the abuses of workers found in 'flags of convenience'.

In Europe, the law also requires a more formal structure for consultation. The process of European political and economic integration has also allowed cross-frontier regulation of labour standards to move well beyond the guarantee of core workers' rights. The European Trade Union Confederation has sought:

- (i) to establish a framework of standards to stop 'social dumping';
- (ii) to achieve progress in the harmonisation of social standards through both European legislation and social partner agreements;
- (iii) to establish consultation, information and negotiation rights with multinational companies at a European level;
- (iv) to expand the structural funds of the European Commission. One significant development in this process has been the passing of the European 'Works Council' Directive and the subsequent creation of more than seven hundred European Works Councils in the multinational companies operating across the EU.

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Using market and investor power

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Some of the momentum behind the debate over CSR and socially responsible investment has resulted from the market pressures created by consumers seeking to avoid buying products or services from firms seen to have negative social or environment practices. An industry in itself has been created in the area of social rating, certification verification and labelling. Some of these initiatives are supported by unions and NGOs and may be valuable but many also have risks.

In sectors such as clothing and textiles, trade unions co-operate actively in some certification initiatives. The Ethical Trading Initiative represents a different but important approach. Certification bodies influence whether purchasers are prepared or not to buy products from certain factories. Trade unions have sought to be involved in what they are doing. On the other hand, some certification schemes can be misleading when information cannot be validated and verified properly. Inspectors may be present one day in a year but, even if they find every problem, they can't verify what happens on the other 364 days in the factory. Unions have adopted a pragmatic approach to each instrument to make sure that they are not mere public relations tools. There is no way to guarantee the effective respect of workers' rights unless workers can shift the balance of power at the workplace by having their own trade unions and being free to bargain collectively.


Market pressure for decent employment standards has also come from investors' concern over the potential risk of unsustainable social or environmental performance by companies in which they invest. With the growth of corporate governance scandals the quality of corporate governance has become a key issue for investors and unions.

A major campaign has developed in the trade union movement to mobilise the market pressure that potentially exists in workers' pension funds. Although retirement systems differ greatly between countries, an increasing number of them are using funds as one of the ways to provide for retirement. The money is being invested in many different ways. Equity prices in industrial countries have risen faster than growth and inflation; more and more countries have stock markets, so the importance of investment in stocks has grown accordingly. As a result of this, institutional investors, such as pension funds, own more and more shares in companies world-wide. And as workers, in turn, own these pension funds they have indirectly become important investors in companies. The end result is that, as stockowners with voting power in a company, workers now may have an alternative possibility to change a company's behaviour.

The total assets of the world's pension funds reached almost 13,500 billion US\$ at a first peak in 1999. After falling back to 10,800 billion US\$ in 2002, assets grew again in subsequent years to an estimated 17,000 billion. According to one survey, the assets of the top 20 funds worldwide amount to 3,800 billion US\$ in 2007 and have grown faster than the remaining 280 funds. Their assets increased 12% compared to nine percent for the rest.

The ITUC, TUAC and the GUFs have created an international network to facilitate co-operation on workers' capital strategies. Socially responsible investment, and in particular the behaviour of companies on workers' rights, is one of the main concerns of this Committee. Companies are increasingly vulnerable to direct shareholder actions, and are therefore more and more concerned about their reputation. Trade unions have been very active over the last few years in initiating these shareholder actions. The Committee raises support at the international level for these campaigns. Executive remuneration has been, next to workers' rights, one of the re-emerging issues.

The many socially responsible investment funds, funds that base their investment decisions on a specific set of social criteria, have also become important bodies for engagement by unions. Furthermore, the issue has entered the mainstream investment world. For example, the UK, France and Germany now require their pension funds to disclose their policy on socially responsible investment. There are also initiatives to improve information tools in which unions are participating, such as the Global Reporting Initiative's work to establish and have applied common international standards for corporate reporting on social and environmental sustainability.



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The growth of financialisation

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¹⁴ Ronald Dore, *New Political Economy, Stock market capitalism and its diffusion*, 2002 Vol. 7 no 1.

Financial globalisation has posed major issues for unions beyond the stewardship of pension funds and socially responsible investment. One commentator has defined financialisation as “the increasing dominance of the finance industry in the sum total of economic activity, of financial controllers in the management of corporations, of financial assets among total assets, of marketised securities and particularly equities among financial assets, of the stock market as a market for corporate control in determining corporate strategies and of fluctuations in the stock market as a determinant of business cycles”¹⁴. However, since 2004 the emergence of large and largely unregulated masses of financial capital at global level in the shape of ‘new investors’, notably private equity funds and hedge funds, has confronted traditional models of corporate governance.

One of the concerns unions have is the risk to financial stability, and hence ultimately to jobs and incomes, posed by the highly leveraged nature of the private equity investments and the lack of transparency of hedge funds. The financial crisis of the summer of 2007 to some extent bore this out. The financial shock created by sub-prime mortgage collapse in the US has been a tragedy for many of the lower income families involved who lost their housing; however, the contagion of the world financial system, the collapse of a series of hedge funds and the run on a UK bank turned this into world financial crisis. The US sub-prime markets were simply too small to account for the scale of disruption experienced. The accelerant has clearly been the rapidly growing and complex role of leverage in these markets. Given the scale of leverage and the complexity of financial products, bankers simply no longer know what assets used as collateral on loans are worth any more. The result was a temporary paralysis in the financial system and the resulting impact on the real economy.

These events reflect just one part of the concerns that have led unions to enter the world of discussion of hedge funds and private equity. In North America and in parts of Europe unions have had experience over a number of years of dealing with private equity investors at the venture capital end of the business, as well as with some of the ‘distress funds’ specialising in turning round companies in difficulty. Venture capital has traditionally been seen as a non-controversial part of the financial architecture, where high returns to some investors have reflected the high risk of supporting start-up companies and a necessary contributor to overall growth. With regard to ‘distress funds’ unions particularly in the US have on occasion adopted a pro-active role in identifying investors and worked with them so as to restructure companies faced by severe problems and so safeguard jobs. Pension funds are also significant investors in this asset class, attracted by the high rates of return that are being advertised funds a way of filling gaps in pension funding.

However, the spectacular growth of the leverage buy-out end of the private equity business and the move by private equity to control very significant parts of the private sector economy has meant that important numbers of workers in several OECD countries are now employed by private equity controlled firms. Private equity transactions accounted for over a quarter of all mergers and acquisitions in the US and the EU in 2005. Private equity buy-outs have expanded their reach to large-size companies, industries, household brands and even companies linked to public services. These alternative funds are largely debt financed hence little-taxed and are exempt from many of the regulations that apply to traditional collective investment schemes, to banks and to insurance companies, notably in the areas of investment prudential rules and reporting requirements.

The impact of alternative investors on the real economy and sustainable development has yet to be impartially and comprehensively researched. However, trade unions' experiences with employment and working conditions linked to private equity are alarming. The high rates of return required to finance private equity debt-driven buy-outs can jeopardise target companies' long-term interests and provision of decent employment conditions and security for employees. Studies, of which the most recent have been conducted in the UK¹⁵, suggest that wages in private-equity-backed companies grow more slowly than in the private sector as a whole, and that the private equity management culture is not consistent with quality employment. Rather than corporate restructuring for the purpose of shared productivity gains and increased competitiveness, private equity firms now appear to be looking at extracting maximum value over a short period before reselling the company at a substantial premium. As private funds have moved from niche market to a general form of corporate ownership and governance, the issue arises of how are the very high rates of return achieved and are they sustainable when the 'real economy' at global level is growing at three-four percent per annum. Unions have concern at the business model based on high leverage, the pressures this puts on employment and working conditions as well as tax revenues. The predominant experience has been that the pressure for resale and capital gains over a relatively short time period are not consistent with the need for long-term investment in areas such as skill development, research and development, product innovation and patent registration.

The trade union statements to the G8 meetings and summits in 2007 and 2008¹⁶ made a series of recommendations in this regard, including the need to have an international forum where the wider social and economic implications of private equity can be assessed. The recommendations cover: tax, workers' rights, transparency and corporate governance but also reinforce the broader needs for more effective international rules on global markets.

If the fruits of growth are to be more equitably shared in what is now a global economy it has to be shown that it is possible to manage change in firms, industries, regions and labour markets in socially equitable ways. An industrial organisation 'model' has to be developed, which is both competitive and socially acceptable. OECD countries have to restructure on the basis of a high set of labour standards, not on the basis of a low wage model of development whilst developing countries have to ensure that productivity growth is used to raise living standards, reduce poverty and contribute to sustainable development. The evolving investment regime will influence greatly whether this is indeed possible and whether some of the short-term excesses of financial capital can be reined in. The trade union movement is also having to become global in its reach where policy advocacy, assistance in capacity building and action on trade union rights and around multinational corporations is not seen just as a form of 'solidarity' but rather the necessary daily activity of unions.

Organising workers globally: the need for public policy to regulate investment

John Evans

Trade Union Advisory Committee to the OECD

¹⁵ Phil Thornton, The Work Foundation, *Inside the black box: shedding light on private equity*, March 2007.

¹⁶ For information visit: www.tuac.org.

Conclusion

DON'T KNOW WHERE TO TURN FOR HELP?



LAWYERS FOR UNIONS

For more information please contact Jamie Hanley, Head of Client Relations
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