



INTERNATIONAL ORGANISATION OF EMPLOYERS
ORGANISATION INTERNATIONALE DES EMPLOYEURS
ORGANIZACIÓN INTERNACIONAL DE EMPLEADORES

International Labour and Social Policy Review

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PREFACE

Welcome to the International Organisation of Employers' first edition of the *International Labour and Social Policy Review* which we expect to publish on an annual basis.

The articles contained in this *Review* reflect a wide range of issues from across the global employer community and are presented from a national perspective; they are designed to present a snapshot of key current labour market issues and trends. Contributions drawn from the ongoing work of the IOE Secretariat have also been included.

The common denominator running throughout the *Review* can be expressed in one word: *globalization*. All the articles, in one way or another, reflect the changes and reactions of our societies to increased global economic integration – whether in the growing mobility of individuals across borders; the increased focus on productivity in order to compete globally; the role of enterprises in society; the need to adapt our structures and frameworks to face the future; or the importance of dialogue in our policy debates. Above all, the issues presented in this *Review* underline the importance of adapting to an ever increasing globalization.

We hope that this *Review* will add to the global debate on these issues and will become in time an important reference for policy makers in the labour and social fields.

We would like to thank all those who have made contributions to this the inaugural *Review* and, finally, to warmly thank the United States Council for International Business (USCIB) for its generous financial contribution.

Yours sincerely,



Abraham Katz
President

Daniel Funes de Rioja
Executive Vice-President

Antonio Peñalosa
Secretary-General

International Organisation of Employers

About the IOE

The IOE is a membership organization that promotes the interests of employers and their organizations from all over the world at the international level through representation, information and advice.

The IOE provides leadership for the business community in all areas of social and labour policy and proactively participates in international policy development that seeks to create a framework that underpins enterprise creation and development.

It provides an international forum that brings together national employers' organizations and their members from around the world and facilitates the exchange and transfer of information, experience and good practice amongst the business community globally.

The IOE was founded in 1920 and today represents 145 national members in 140 countries.

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Labour Relations Reform in Australia: The Employer Perspective

By Peter Anderson, Director Workplace Policy, Australian Chamber of Commerce and Industry (ACCI)¹

Significant changes were made to Australian labour law by the Australian parliament in December 2005. They came into operation in March 2006. These changes, in a package of legislative measures known as 'WorkChoices', have sparked considerable debate within and outside Australia, including a favourable constitutional judgment by the High Court of Australia, a bevy of polarized media commentary, and a well-funded campaign of opposition by the Australian trade union movement and some sections of the Australian community.

What is less well-known about these changes is that they are the third phase in an ongoing process of 13 years of labour market reform in Australia.

It was in 1993 that a Labor government led by former Prime Minister Paul Keating first declared that the days of the old Australian system of centrally regulating industrial relations by compulsory conciliation and arbitration was "over"², to be replaced by a system of enterprise-level bargaining underpinned by minimum standards³.

Following the electoral defeat of the Keating government in 1996, the incoming government led by Prime Minister John Howard enacted a second wave of labour market reform⁴, which extended the bargaining system established

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² Speech to the Institute of Company Directors, April 1993. The system Keating described as "over" was the system of collectively setting wages and employment conditions on an economy-wide or industry-wide basis through orders of industrial tribunals made after a process of compulsory conciliation and arbitration. Those orders were known as 'industrial awards'. That system had operated in Australia since 1904.

³ Industrial Relations Reform Act 1993. The Keating package also introduced a national employment protection (unfair dismissal) law and legislated a right to strike during the negotiation of collective bargaining agreements.

⁴ Workplace Relations Act 1996.

by the Keating government into the non-union sector⁵, and further limited the role of centralized conciliation and arbitration⁶.

It is in this context that ten years later, in 2006, the third wave of labour market reform (WorkChoices) came into operation. WorkChoices was developed by the Howard government following the 2004 general election when it gained a majority in both houses of the Australian parliament. It was enacted by the Australian parliament⁷ and came into operation on 27 March 2006⁸.

Constitutional Validity of WorkChoices Upheld

Following the enactment of WorkChoices, a major constitutional challenge was launched in the High Court of Australia by State and Territory governments. The States and Territories – all (Labor) governments of a different political persuasion to the (Liberal–National) Australian government – sought to have Australia’s highest constitutional court strike the laws down on the grounds that they exceeded the constitutional power of the Australian parliament. This challenge arose from the fact that WorkChoices uses a different constitutional power (the power to make laws with respect to corporations⁹) than the previously used constitutional power to make laws with respect to the conciliation and arbitration of interstate industrial disputes¹⁰.

In practice, this change in the constitutional basis of Australian workplace relations law was a product of the Australian government’s policy to create a single, more consistent, national set of labour relations laws. For the preceding century, labour relations law was a product of duplicate and overlapping

⁵ Technically, the 1993 Keating government reforms allowed for collective bargaining in non-union workplaces. However this was not a well used option at the time, due to direct rights of union intervention. In contrast, the 1996 reforms limited collective bargaining with unions to workplaces where union members were employed. In addition, the 1996 changes also established a parallel stream to collective bargaining – direct employer/employee bargaining on an individual level (with scope for unions to be appointed as bargaining agents). The instruments used for individual bargaining were known as ‘Australian Workplace Agreements’. Both collective bargaining and individual bargaining were subject to compliance with legislative minimum standards and a global ‘no disadvantage’ test based on a prevailing industry-wide award.

⁶ The content of arbitrated industrial awards was limited to specified subject matters.

⁷ WorkChoices passed the parliament in December 2005, by a significant majority in the lower house (the House of Representatives) and by a slender majority in the upper house (the Senate).

⁸ A number of minor provisions came into operation on its passage in December 2005.

⁹ Australian Constitution, section 51(20); a number of other heads of power were also used.

¹⁰ Australian Constitution, section 51(35); WorkChoices is the first general use of the corporations power for the purposes of making Australian labour law, but not its first use. It was first used by the Keating government in 1993 to underpin a system of national collective bargaining. Its use in 1993 was in addition to the conciliation and arbitration power, not (as in the case of WorkChoices) in substitution for it.

rights and obligations created by both the Australian parliament and the six State parliaments. That system had led to inconsistent rights and obligations within and across industry, with little or no policy basis for such differences. Whether businesses competing and employing in the same market were covered by laws of one parliament or another was a random decision of unions and tribunals based on the artifice of constructing interstate disputes to invoke Commonwealth jurisdiction. By the turn of the 21st century, it was widely acknowledged that this system was not sustainable, particularly as bargaining took hold, as disputes declined and as regulation adopted a greater safety net rather than market setting character¹¹.

Creating a national industrial relations system was opposed by most State and Territory governments¹² and some trade union interests¹³. The peak trade union body, the Australian Council of Trade Unions (ACTU), did not participate in the proceedings as either plaintiff or intervener. ACTU policy, whilst strongly opposing the content of WorkChoices, generally supports the creation of a national system of labour laws¹⁴.

On this issue, there was and remains a conjunction of views that cross both the political and industrial divide at the national level. The major political parties (Liberal–National and Labor), and the peak industrial councils (the ACTU and the ACCI) each support a national system of labour regulation. The case for such an approach, on both economic and equity grounds, is very strong, and outlined in an Issues Paper published by ACCI in October 2005¹⁵.

On 14 November 2006, the High Court of Australia, by a majority of 5:2, upheld the constitutional validity of WorkChoices, and dismissed the legal challenge¹⁶.

As a consequence, all workplaces in Australia where the employer is a corporation are governed by a single set of national labour laws: the WorkChoices

¹¹ In 2000 the Australian government re-opened the debate about the creation of a national labour law system based on the corporations power in a series of Issues Papers, 'Breaking the Gridlock: Towards a Simpler National Workplace Relations System' released by then Minister for Employment, Workplace Relations and Small Business Hon. Peter Reith MP.

¹² All States and Territories participated in the 2006 High Court challenge; however the Government of Victoria had referred most of that State's constitutional powers over labour law to the Commonwealth in 1996. Thus a single system of law applied in Australia's second largest jurisdiction during the decade preceding the High Court judgment in 2006.

¹³ Principally Unions New South Wales and the Australian Workers Union.

¹⁴ A policy confirmed by the ACTU national congress in October 2006.

¹⁵ Anderson P., 'Functioning Federalism and the Case for a National Workplace Relations System' (ACCI) October 2005 available at www.acci.asn.au

¹⁶ *New South Wales and Others versus Commonwealth* [2006] HCA 52 per Gleeson CJ, Gummow, Hayne, Heydon and Crennan JJ; Kirby and Callinan JJ dissenting.

legislation. Only unincorporated employers remain governed by State labour laws, and even then if they were (prior to WorkChoices) under national laws, they remain in WorkChoices for a five-year transitional period.

It is estimated that some 85% of employees in the private sector in Australia are thus governed by WorkChoices. Bringing the remainder into the national industrial relations system is a further nation-building challenge for Australia. This can only be achieved, over time, by the use of available constitutional powers and/or intergovernmental agreements between the Australian and State governments¹⁷.

The Australian Context

Although the establishment of a near national system of labour law is a policy pillar of WorkChoices that has wide acceptance across the national political and industrial divide, most other policy changes introduced by WorkChoices are strongly contested matters between the tripartite stakeholders – government, employers and trade unions.

Matters of particular controversy concern exemptions from employment protection legislation; reliance on legislated minimum standards (rather than arbitrated industrial awards) as a basis for bargaining; restrictions on compulsory arbitration; conditions pertaining to the right to strike; allowing for individual employer/employee bargaining as an alternative or in addition to collective bargaining; limits on pattern bargaining; restricting collective agreements to matters that concern the employer/employee relationship; and conditions for trade union right of entry into workplaces.

It is not possible to assess the merits of these policy differences without placing them in the context of the system that regulated labour relations in Australia prior to WorkChoices.

The previous Australian legal and institutional framework of laws, regulations and legal decisions on employment matters had a long history of being highly interventionist, to the point of regulating how, when and where employers and employees in workplaces could deal with each other on issues that concerned their wages and employment conditions.

WorkChoices operates in a context where legislative minimum standards – derived from multiple Commonwealth and State laws – already existed across all sectors of the economy on many labour matters. It varies some of those standards and adds a range of new or different economy-wide standards.

¹⁷ An agreement to this effect has existed in the State of Victoria since 1997. ACCI supports the development of further intergovernmental agreements.

WorkChoices also simultaneously preserves the existence and enforceable legal status of the industry-wide industrial awards that had been established by the former system, but largely closes down the potential for new awards to be made. Those awards, of which there are over 4'000, constitute a very significant body of labour regulation on top of the WorkChoices legislative standards¹⁸. They mean that Australia has over 4'000 separate labour laws for a workforce of just ten million people.

In addition, Australia has a highly regulated system of minimum wages. Some 105'000 separate minimum wage classifications exist, and remain under WorkChoices¹⁹. Mandatory minimum wages start at a federal minimum wage (the highest amongst developed countries) and then extend through these classifications into lower levels of professional and management staff.

This unique dual body of regulation (the compulsory arbitration system and its mandatory awards, plus legislative minimum standards) is not found elsewhere in the labour market systems of industrialized countries²⁰.

In other words, unlike the situation in many countries, minimum standards in Australia are not set purely by bargaining. Bargaining is in addition to already established minimum standards in arbitrated awards and legislation. In contrast to the situation in Australia, bargaining in other countries tends to set wages and employment conditions much closer to both minimum and market rates of pay.

The essential principle underpinning WorkChoices is one of mutual consent to change. Pre-existing wages and employment conditions (and the consequent obligations of employers) overwhelmingly remain²¹ unless and until agreements are made through the bargaining system to regulate on different terms, subject only to compliance with legislative standards.

This is not to suggest that the changes introduced by WorkChoices are not significant – they are, as outlined below. They move labour regulation in Australia in the same general direction of the 1993 and 1996 changes (towards decentralization and flexibility underpinned by legislated minimum standards), but accelerate that policy direction in key areas. This has led ACCI and others to characterize them as evolutionary rather than revolutionary or discontinuous changes.

¹⁸ WorkChoices contemplates a rationalization of these awards over time.

¹⁹ Under WorkChoices, the minimum wage setting body (the Australian Fair Pay Commission) can rationalize these pay scales, but cannot reduce minimum pay levels. This is discussed below.

²⁰ The closest parallel was the New Zealand arbitration system which existed until the early 1990s. It was abolished by a National government and not reintroduced by a subsequent Labor government.

²¹ With some exceptions, such as wider exclusions from employment protection legislation.

Employer Bodies and the Case for Reform

It is no coincidence that in Australia the commencement of labour market reform in 1993 and the further reforms of 1996 heralded a 13-year period of uninterrupted economic growth²² and strong labour market performance that is widely acclaimed at home and internationally. This has included record levels of employment (in all categories – full-time, part-time and casual²³); the halving of unemployment²⁴; extremely high rates of labour market participation (including by women); growth in new forms of labour market participation (such as independent contracting and self employment); declines in industrial disputes to the lowest levels since records were kept²⁵ (both in aggregate numbers and in the numbers of days lost per thousand employees); real income growth; and the maintenance of high living standards. Labour market reform has also allowed Australia to recover from recessions of the early 1990s and avoid economic slow-downs in Asia in 2000 whilst successfully integrating new generations of persons into work.

Given these good outcomes, following the 2004 general election the government considered a further (third) round of labour market reform to be in the national interest. In the preceding years, micro economic reform to the labour market had been advocated by employers²⁶, a range of economic commentators, the OECD, the International Monetary Fund and the Reserve Bank of Australia.

ACCI, as the peak council of employer organizations in Australia, has been a lead advocate in this task. Industry relied on three propositions:

- that good economic and labour outcomes had only been possible as a result of past reform;
- that a decade had passed since the 1996 changes (and during that decade the global economy had moved on); and

²² Other factors contributing to this extended period of economic growth exist (such as economic management, trade liberalization, external demand for natural resources). The strong labour market performance has also been attributed to education and training reform (commenced by the former Hawke and Keating governments), the privatization of the employment services market (by the Howard government) and reforms in the welfare to work system.

²³ Over 276 000 new jobs were created during the first twelve months of WorkChoices, 265 400 of them full time. This is a rate of growth that significantly exceeded previous comparable periods. Whilst a range of factors can be attributable to that growth, micro economic reform to the labour market has been advocated by the OECD, the International Monetary Fund and the Reserve Bank of Australia as a basis for increasing productivity and lowering unemployment.

²⁴ To 4.6% (seasonally adjusted) in November 2006, from a high of 10.3% in the early 1990s.

²⁵ National statistical records of industrial disputes were first kept in 1914.

²⁶ Particularly by ACCI since November 2002 following the release of a ten year industry blueprint for reform, *Modern Workplace: Modern Future 2002–2010*.

- the 1993 and 1996 changes were limited steps which contemplated further change over time; they changed the former system from within, rather than replacing it with a new system (in contrast to what had occurred in other industrialized countries²⁷).

The framework for reform was set out by unanimous resolution of Australia's employer bodies in November 2002 when ACCI released a reform Blueprint, *Modern Workplace Modern Future – A Blueprint for the Australian Workplace Relations System 2002–2010*²⁸.

ACCI and employer organizations believed that there were two broad dimensions to labour market reform, workplace relations reform and education and training reform.

By workplace relations reform, employers contemplated changes to the legal and institutional framework of laws, regulations and decisions that govern the rights and responsibilities of employers and employees, trade unions and employer bodies in workplaces, and also the nature and quality of the workplace culture and the dealings at work between employers and employees.

The ACCI Blueprint argued that Australia was only one decade into its transition from the nine decade centralised system of highly regulated and interventionist employment laws, to more flexible bargaining approaches²⁹. WorkChoices is one of the next further important steps in this transition.

Reform Values Advocated by Employers

Whilst the 1993 and 1996 reforms were criticized in some quarters³⁰, there was widespread community acceptance of the principles on which they were founded (choice, flexibility, freedom and fairness) and the imperatives which justified them (productivity, competitiveness, economic and social change).

²⁷For example, New Zealand reforms in the late 1980s and early 1990s (not overturned by the Clarke government in the late 1990s), and the United Kingdom reforms of the 1980s (not overturned by the Blair government in the mid 1990s) were far more substantial than the Australian reforms.

²⁸ Available at www.acci.asn.au

²⁹“The concept of transition is important. Having left for a new destination, we have not yet reached it. We still sit uncomfortably in the middle of two systems... This is because the 1993 and 1996 changes did not displace the former system. They were introduced over the former system, not as a substitute. They were enabling, not compelling reforms that allowed for workplace change. The nature and pace of workplace reform and the transition to the new system was left to be a product of the needs, choices, attitudes and decisions made at the workplace, by third parties and by parliaments over the ensuing years. ACCI ‘Modern Workplace: Modern Future’ Blueprint (2002), page 5.

³⁰ The ACTU supported the 1993 changes but opposed the 1996 changes; some unions opposed both the 1993 and 1996 changes.

These principles found their way in the concepts of freedom of association; choice in agreement-making; primacy of employer and employee bargaining over tribunal arbitration; and a legislated safety net rather than a central regulation with 'one size fits all' rules.

More fundamentally, ACCI argued in support of the basic principle that workers and employers in each business should choose how their workplace relationship should be conducted and regulated, subject to minimum standards and compliance with principles of freedom of association, the promotion of collective bargaining and protection against coercion or duress when exercising free choice.

ACCI also called on the workplace relations system to take a broader view of those whose interests it serves. The regulation of employment affects not just those who are in jobs, but those who want to work. The regulation of employment also affects not just those operating businesses but those who want to start up a business.

In other words, ACCI argued that reforms must be designed to promote new jobs and new entrepreneurship and not just cater for those who are already on the inside of the labour market.

Employers highlighted that economic reform, including labour market reform, is not for abstract purposes. The object of reform is higher living standards – stronger businesses, employees and families. It was about and for people: business people and working people, and the community they live in.

International and domestic experience suggested that sensible and balanced workplace relations reform produces an economic benefit with the most fundamental of social dividends: more employment, higher living standards and greater workplace freedom, mobility and participation. Well-structured labour relations systems can contribute in a meaningful way to the goal, in the contemporary language of the International Labour Organization, of 'decent work'.

In the Australian context it was also relevant that the globalization challenge needed to be met, and its opportunities grasped. Being a country of a relatively small population (20 million) and geographically separated from natural markets, Australian businesses were acutely aware that the world owes no employer success in business or any employee the guaranteed security of his or her job. ACCI argued that business success and job security, like the level of employment, would be a product of the hard decisions made as a nation. Structural reform to our workplace system was a real pathway to achieving the gains that had been made and to sustain them into the future. The Australian labour market has also changed: the turn of the century saw the number of workers engaged as self-employed independent contractors exceed the number of trade union members.

The ACCI Blueprint advocated a vision of a workplace relations system that progressively empowered employers and employees across the nation to work co-operatively and make decisions in their shared interests.

Under the changes proposed in the Blueprint the regulatory system would progressively take on a different character. There would be less employment regulation. Remaining regulation would be simplified, and become more flexible, less prescriptive, be regularly reviewed and applied only to the extent necessary to provide a genuine safety net.

The shared interests of employers, employees and the unemployed would be the overriding factor regulating workplace relations cultures, structures and outcomes. There would be an increasing focus in workplace agreements sharing the benefits of improved business performance. There would be greater freedom for productive and entrepreneurial changes in the labour market, including direct employment and independent contracting.

The ACCI Blueprint envisaged compulsory arbitration being restricted to actual disputes seriously affecting the economy and public interest. There would be widespread recognition of freedom of association and voluntary unionism and collective bargaining within a framework of trade union and employer organizations. Unions and employer organizations that established a service oriented culture for members would prosper.

Following the Australian government's announcement in May 2005 that it proposed to proceed with a further significant round of labour market reform, ACCI and Australia's employer bodies released a series of further papers in support of the principles and vision underpinning the ACCI Blueprint. These were:

- The Economic Case for Workplace Reform³¹;
- Functioning Federalism and the Case for a National Workplace Relations System³²; and
- Workplace Reform: Working for Australian Women³³.

These supplementary materials, together with a detailed analysis of the proposed new laws, formed the basis for ACCI and employer organizations' dialogue with governments, unions and a parliamentary inquiry to the new laws in November 2005.

³¹ [http://www.acci.asn.au/text_files/Discussion Papers/Economic Case for WR Reform Electronic Copy.pdf](http://www.acci.asn.au/text_files/Discussion%20Papers/Economic%20Case%20for%20WR%20Reform%20Electronic%20Copy.pdf)

³² [http://www.acci.asn.au/text_files/Discussion Papers/Functioning Federalism Paper Electronic Version.pdf](http://www.acci.asn.au/text_files/Discussion%20Papers/Functioning%20Federalism%20Paper%20Electronic%20Version.pdf)

³³ [http://www.acci.asn.au/text_files/Discussion Papers/Aust Women & WR Reform Electronic Copy.pdf](http://www.acci.asn.au/text_files/Discussion%20Papers/Aust%20Women%20&%20WR%20Reform%20Electronic%20Copy.pdf)

OECD Support for Australian Reform

The OECD's 2006 Employment Outlook and 2004 Country Report for Australia provided support for continuing reform to Australia's labour market of the character pursued by WorkChoices (and the 1993 and 1996 reforms). The OECD argued³⁴:

- regulatory requirements for collective and individual agreements should be eased to promote enterprise bargaining;
- federal and state industrial relations systems should be harmonized;
- industrial dispute regulations should be streamlined to minimize the incidence of unlawful industrial action;
- safety-net award wage-increases should be guided by the productivity and thus employability of low-skilled workers;
- the minimum wage should be at moderate levels, with lower minima for youth and other vulnerable groups being essential³⁵;
- there is still much scope for further easing of the regulatory requirements for collective and for individual agreements³⁶;
- although the extent of the disemployment effects of employment protection laws (EPL) is unclear, EPL rules reduce dynamic efficiency, reduce employment prospects for the most disadvantaged job seekers (young workers, women and the long-term unemployed), prolong the adverse effects of economic shocks, hinder job creation and trap some workers in precarious jobs with little training or income security³⁷; and
- workers and employers should be able to negotiate working arrangements in a decentralized manner³⁸.

In many respects these policy directions have been pursued in WorkChoices.

³⁴ OECD 2004 Country Report, Australia, p 181.

³⁵ "The low-skilled face additional barriers to enter employment, or remain in it, because of relatively high minimum-wage scales and remnants of the formerly pervasive and excessively legalistic industrial wage award system still discouraging flexibility. Further reforms are needed in these areas." OECD 2004 Country Report, Australia.

³⁶ OECD 2004 Country Report, Australia, p 160.

³⁷ Employment Outlook, pp 96, 100, 186. In its Country Report for Australia, the OECD argues that EPL reforms should "lower the costs of managing the workforce and thus encourage hiring", p 159.

³⁸ OECD Employment Outlook, p 104.

The WorkChoices Reforms

The WorkChoices reforms adopt many (albeit, not all) of the foundations for reform advocated by Australian industry through the ACCI Blueprint. This was a very positive development and one that reflects on the leadership in public policy that can be provided through the collective work of employer organizations.

One of the principal objectives of WorkChoices is to establish a 'fair and flexible labour market' characterized by 'high employment, improved living standards, low inflation and international competitiveness though higher productivity'³⁹. More specific objectives include protecting the competitive position of young people in the labour market⁴⁰; providing a safety net of minimum wages and conditions of employment⁴¹; promoting workplace or enterprise level bargaining⁴²; assisting employees to balance work and family responsibilities⁴³; and respecting and valuing diversity and non discriminatory employment practices⁴⁴.

At the same time, WorkChoices departed from the ACCI Blueprint in some key areas, resulting in a level of regulation of bargaining and the wider application of minimum standards (together with some unnecessary and prescriptive extra compliance requirements) than had been contemplated by industry.

Government also chose to largely internalize the drafting of legislation to its public administration and legal contractors, resulting in only a limited scope for employer organizations and trade unions to comment upon the details of specific measures. This is an aspect that has been the subject of criticism by both ACCI and the ACTU.

The WorkChoices amendments to the Workplace Relations Act 1996 were substantial. It is a matter of record that the amending legislation runs to hundreds of pages with many specific amendments. Reforms of principal importance for employers include:

- a national workplace relations system;
- national legislated minimum employment standards;
- collective and employer/employee bargaining;

³⁹ Section 3(a), Workplace Relations Act 1996.

⁴⁰ Section 3(k), Workplace Relations Act 1996.

⁴¹ Section 3(c), Workplace Relations Act 1996.

⁴² Section 3(d), Workplace Relations Act 1996.

⁴³ Section 3(l), Workplace Relations Act 1996.

⁴⁴ Section 3(m), Workplace Relations Act 1996.

- national minimum wages;
- targeted employment protection laws;
- freedom of association; and
- enforcement and compliance.

The key to ensuring the WorkChoices reforms translate into social, societal and economic gains is the human resource capacities and approaches of those who will implement the new policy options. In the immediate term, Australian industry faces the challenge not only of understanding and responding to WorkChoices, but also of delivering the improved management and human resource capacities necessary to fully and equitably implement WorkChoices and to create the necessary environment for workplace reform. Excellence in attraction, recruitment, selection and day-to-day management must support (for example) refinements to termination of employment claims and improved options for bargaining.

It is very important that employers and employees, particularly smaller businesses, be fully informed of what WorkChoices offers. WorkChoices delivers substantial new rights and capacities which must develop within the marketplace if employers in particular are going to be properly informed on – and avail themselves of – opportunities for new and improved ways of working.

There is a clear link between promoting reform and providing information necessary to support reform. The WorkChoices package implements arguably the most significant changes to the Australian workplace relations system since the original Conciliation and Arbitration Act of 1904. New rights, avenues and capacities are accompanied by new obligations, prohibitions and newly regulated ways of operating. WorkChoices should not only be promoted, but also supported by a substantial information campaign⁴⁵.

Following the commencement of WorkChoices, ACCI and employer organizations rapidly moved to understand and advise upon the new rights and obligations. Employer organizations encouraged and supported Australian employers to implement WorkChoices, and utilize the range of options under the new system as rapidly and comprehensively as possible. Key priorities have been promoting new capacities for agreement-making, and ensuring wage-setting and award-reform meet the interests of Australia's employers, their employees, and communities. Thus, ACCI and employer organizations are playing a significant part in providing information, representation, and strategic advice on developing productive, harmonious and mutually beneficial relations within workplaces.

⁴⁵ For example, the government-initiated WorkChoices Employer Advisers Programme (WEAP), which actively involves employer organizations; and web sites such as www.WorkChoices.gov.au

Employment Standards

It is a principal objective of WorkChoices that it provide ‘an economically sustainable safety net of minimum wages and conditions for those whose employment is regulated by the Act’⁴⁶.

Consequently, WorkChoices introduces national legislative standards for minimum wages and minimum conditions of employment. These are contained in a new legislative instrument, the Australian Fair Pay and Conditions Standard (AFPCS), and in related legislation.

The AFPCS provides for:

- minimum wages for multiple employment classifications and a federal minimum wage where classifications do not have a higher regulated minimum wage (including minimum loadings for casual work and rights to equal pay for men and women for work of equal value)⁴⁷;
- maximum full-time working hours of 38 per week⁴⁸, with protection against unreasonable requirements to work in excess of 38 hours⁴⁹;
- minimum four weeks paid annual leave each year (accruing per month, and paid out on termination)⁵⁰;
- minimum ten days⁵¹ paid personal leave each year (accruing each month, unlimited accrual able to be used for personal sickness and accrual of up

⁴⁶ Section 3(c), Workplace Relations Act 1996.

⁴⁷ WorkChoices fully preserves the level of minimum wage classifications or of the minimum wage as they existed at the time of its introduction; minimum wage reviews under WorkChoices can only increase or retain minimum wage levels. They cannot be decreased. The number of minimum wage classifications can, however be rationalized.

⁴⁸ Thirty-eight hours has been a widely applied standard in most industries in Australia since the 1980s, although when WorkChoices was introduced a 40-hour week applied in parts of some industries. Where 40-hour weeks applied, WorkChoices reduced standard working hours to 38 when transitional provisions expire.

⁴⁹ WorkChoices extended the concept of reasonable overtime into a new standard of reasonable working hours and applied that standard not simply to persons working overtime, but to all employment categories (including professionals and managers). In 2002 the ACTU had sought a reasonable hours standard from the Australian Industrial Relations Commission, but this had been rejected in a national arbitration. WorkChoices delivered a standard on reasonable hours in excess of what the ACTU had secured through the previous arbitration system.

⁵⁰ Four weeks annual leave has been a widely applied standard in most industries in Australia since the 1940s; under WorkChoices, some shift workers are entitled to a minimum of five weeks annual leave per year.

⁵¹ Ten days paid sick leave has been a standard in some industries in Australia since the 1970s, however at the time WorkChoices was introduced eight days per year applied in some industries. Where eight days applied, WorkChoices increased paid sick leave to ten days per year.

to ten days per year able to be taken for sickness of a family member⁵²); plus (if paid leave exhausted) two days unpaid leave on each occasion a family member is sick (number of occasions unlimited); plus two days paid compassionate leave on the death or life-threatening illness of a family member⁵³; and

- parental leave of a minimum of 12 months unpaid leave for mothers or fathers on the birth (or adoption) of a child, plus a week unpaid concurrent leave for spouses including rights to return to previous employment on the conclusion of parental leave and rights to transfer to a safe job prior to the birth of a child, or (in the absence of a safe job being available) payment of additional paid leave until birth.

Other legislative minimum conditions under WorkChoices include:

- right to redundancy payments, penalty rates, shift and overtime loadings, monetary allowances and annual leave loadings where they exist in arbitrated awards governing the employee (so long as they are not set aside by bargaining);
- minimum entitlement to meal breaks during work;
- right to days off work on public holidays;
- minimum rights to notice of termination, or payment in lieu of notice, on a scale of up to five weeks;
- right to not be unlawfully dismissed (such as dismissals based on union activities, exercising bargaining rights or other forms of discrimination);
- right to not be unfairly dismissed (dismissal based on performance grounds), except where employed by a small or medium business, or a short term casual employee;
- right to maintain conditions of employment for at least 12 months on the sale or transmission of an employing business;
- right to consultation (including trade union consultation) by employers when making more than 15 employees redundant;
- right to a dispute resolution process;

⁵² The use of five days of personal leave for family caring purposes has been a standard since the 1990s; immediately prior to the introduction of WorkChoices the ACTU and ACCI, supported by the Australian Industrial Relations Commission, had agreed to increase this to ten days per year from personal leave accruals. WorkChoices reflected that agreement and provided the legal basis for most employees to access this higher entitlement.

⁵³ WorkChoices extended the concept of bereavement leave from paid leave on death of a family member to the wider entitlement of paid leave to include cases of a life threatening illness of a family member.

- right to freely join trade unions, and establish new unions (provided rights of existing unions are not unreasonably interfered with⁵⁴);
- right to choose bargaining agents (including trade unions) when negotiating agreements; and
- right to not be coerced into bargaining or bargaining agreements.

In addition, WorkChoices retains legislative employment rights under certain laws of the Commonwealth, States and Territories. These include:

- right to at least an additional 9% of earnings paid on a quarterly basis by employers into a superannuation fund⁵⁵ of the employees choice (with no corresponding mandatory contribution obligations by employees⁵⁶);
- right to paid long service leave, generally in the order of 13 weeks after each ten years of service (and pro-rata payment on termination after seven years)⁵⁷;
- right to paid workers compensation for work-related injuries (physical or psychological) irrespective of employee fault (funded by mandatory levies on employers), including income replacement and payment of medical and rehabilitation expenses⁵⁸ ;
- right to safe workplaces and safe systems of work, including certain rights to trade union representation on health and safety matters;
- right to seek employment and undertake employment free from discrimination or harassment⁵⁹;
- right to work as an independent contractor, with equivalent rights for employees against sham contracting⁶⁰;

⁵⁴New trade unions can only be registered if the relevant employees cannot 'conveniently belong' to an existing trade union. This is an element of Australian law which existed prior to WorkChoices.

⁵⁵The expression 'superannuation' in the Australian context is the equivalent of a retirement pension in other countries; a government funded means-tested age pension also applies in Australia.

⁵⁶Employees who contribute to their superannuation entitlements are entitled to a co-contribution payment by the Commonwealth government into their superannuation fund.

⁵⁷This is the most common long service leave standard applying to Australian employees under legislation; some laws provide greater or lesser rights.

⁵⁸Some Australian workers' compensation laws provide income or partial income replacement for around two years, with access to lump sums thereafter; others provide employer-financed pensions until retirement. In addition, workers compensation schemes give employees a right to be provided with suitable alternative duties consistent with their medical condition, and rights against dismissal as a consequence of making compensation claims.

⁵⁹Discrimination grounds under Australian laws generally include race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

⁶⁰The Independent Contractors Act 2006 and related legislation was enacted in December 2006 and is the first contracting legislation of its kind amongst industrialized countries and in part follows a Recommendation adopted (by majority but without consensus) by the International Labour Conference in June 2006.

- rights to privacy in respect to employment matters⁶¹; and
- right to leave in respect of jury service.

The safety net for employees in Australia is also supplemented by a series of measures provided by the Commonwealth government, and funded from general revenue (a significant proportion of which is derived from business taxation). Australia's very substantial social safety net includes:

- payments (subject to certain caps) of unpaid wages, unpaid annual leave, unpaid long-service leave and unpaid redundancy payments on the insolvency of an employer⁶²;
- payment of AUD\$4'000 to a female employee on the birth of a child⁶³;
- monetary payments to employees with families through the taxation system;
- means-tested assistance to employees for the financing of child care; and
- fortnightly unemployment benefits and job seeking assistance.

The AFPCS set out in WorkChoices applies to all employment categories. This is a significant broadening of the legislative safety net in Australia. Prior to WorkChoices national employment standards did not apply to all occupational groupings. They applied only to employment relationships that were regulated by legislation, by arbitrated awards of industrial tribunals or bargaining agreements. This left gaps in minimum standard coverage in some unskilled areas and in many areas of professional or managerial employment. In contrast, the AFPCS in WorkChoices applies wherever an employment relationship exists⁶⁴.

In addition, each minimum wage and condition of employment in the AFPCS is a mandatory obligation of employers in respect of every Australian employee under WorkChoices. None of those minimum conditions can be varied or removed through bargaining. They are mandated, and compliance with them is strictly enforced. This is in direct contrast to the pre-WorkChoices position, where fewer legislative standards were mandated, and those that were included

⁶¹ Certain exemptions relating to small business and employee records apply under Australian law.

⁶² These payments are made under an administrative scheme established by the Australian government, the General Employee Entitlements and Redundancy Scheme. Until 1999, no such scheme operated in Australia.

⁶³ This payment is known in Australia as the 'baby bonus', and was the response of the Australian government to calls for the introduction of paid maternity leave.

⁶⁴ Subject only to the constitutional requirement that the employer is a corporation.

in arbitrated awards could be varied or removed through bargaining, provided employees were not, in an overall sense, disadvantaged.

The other legislative standards set out in WorkChoices, or retained by the WorkChoices scheme in other Commonwealth, State or Territory laws, generally apply to all employment categories unless a stated legislative exception exists.

WorkChoices also provides for freedom of association in membership of trade unions or employer organizations, and in collective and individual bargaining. It provides equal protections against persons being coerced into joining or remaining members of industrial organization, and being coerced into either collective or individual agreements. Conditions are placed on the circumstances in which trade union officials can exercise rights of entry into workplaces, and on the conduct of union and employer organization officials in agreement-making.

Based on the above, it can be seen that Australia has an extensive body of employment rights and that body has been broadened by WorkChoices.

Australia has only a very small informal economy. This means that the employment standards created by WorkChoices are widely applied by employers operating in Australia, whatever their region or industry.

In addition, WorkChoices establishes an active enforcement and compliance agency to give effect to another principal object, that is, 'to ensure compliance with minimum standards, industrial instruments and bargaining processes by providing effective means for the investigation and enforcement of employee entitlements, and the rights and obligations of employers and employees and their organizations'⁶⁵.

To achieve this objective, the Australian government has considerably increased the size and financial resourcing of the compliance and enforcement agency (the Office of Workplace Services). The enforcement agency is actively embarking on compliance campaigns, education campaigns, investigations, prosecutions and recovery of monies owed.

Whilst it is always important that employee rights be protected (particularly while any system is undergoing change), enforcement, inspection and compliance can never be the source of new jobs, productivity and innovation. ACCI believes that governments should ensure inspection is undertaken constructively and sensibly, particularly where both employers and employees have to adjust to new systems and processes.

⁶⁵ Section 3(f), Workplace Relations Act 1996.

Bargaining

Aligned to the principal objective of providing a safety net of minimum wages and conditions, WorkChoices establishes a legal framework for bargaining in enterprises so that employers and employees can access wages and employment conditions above regulated minimum standards and generate improved business competitiveness and productivity. These objectives stated in law are:

- to ensure, as far as possible, the primary responsibility for determining matters affecting the employment relationship rests with the employer and employees at the workplace or enterprise levels⁶⁶;
- to enable employers and employees to choose the most appropriate form of agreement for their particular circumstances⁶⁷;
- to support harmonious and productive workplaces by providing flexible mechanisms for the voluntary settlement of disputes⁶⁸; and
- to assist employees to balance their work and family responsibilities effectively through the development of mutually beneficial work practices with employers⁶⁹.

Bargaining under WorkChoices does not occur in a deregulated context. There are multiple levels of regulation which provide checks and balances that are designed to establish both fairness and flexibility in bargaining. These are:

- all bargaining agreements must include, without variation, each of the minimum conditions of employment and applicable minimum wages set out in the legislated minimum standards (the AFPCS);
- bargaining agreements cannot vary or set aside other legislative rights or protections under Commonwealth law, or that are retained in State or Territory law;
- bargaining agreements must include additional monetary provisions formerly provided for in some applicable arbitrated awards unless express agreement exists to vary or exclude them;
- bargaining agreements have a maximum duration and must have a dispute resolution procedure;
- employees have the right to be represented by a trade union or agent in bargaining negotiations;
- employees have the right to take collective industrial action in support of bargaining claims, after secret ballot approval of such action;

⁶⁶ Section 3(d), Workplace Relations Act 1996.

⁶⁷ Section 3(e), Workplace Relations Act 1996.

⁶⁸ Section 3(h), Workplace Relations Act 1996.

⁶⁹ Section 3(l), Workplace Relations Act 1996.

- it is unlawful for any employee to be coerced into making or terminating bargaining agreements;
- all bargaining agreements have legal effect only after they have been lodged with an independent regulator (the Office of Employment Advocate); and
- a party to a bargaining agreement can seek injunctions and damages for breaches, or secure assistance of a trade union or the enforcement agency.

Bargaining under WorkChoices can be collective bargaining (with a trade union, or alternatively by a group of employees who may collectively or individually be represented by a trade union), or individually between an employer and an employee (who may be represented by a trade union or other agent of their choice). Where agreements are made, they are either collective agreements or individual agreements (Australian Workplace Agreements, or AWAs).

As discussed above, the bargaining system under WorkChoices system operates within a context where both legislative minimum standards and certain conditions in previously arbitrated awards continue to apply. Hence bargaining in the Australian context is bargaining for wages and conditions in excess of regulated minimum standards.

This unique aspect of Australian labour law has given rise to the concept of both collective and individual bargaining. Collective bargaining is a notion well-known and accepted in Australia and the international community. Individual statutory bargaining is less well-known as a parallel bargaining concept, and has existed in Australia since 1996; however, when understood as the setting out of terms and conditions of employment between an employer and an employee akin to an employment contract, it is widely recognized and used internationally. In essence, AWAs are regulated forms of employment contracts.

Collective agreements and AWAs are subject to the same regulatory checks and balances on process and content. Both must include the minimum legislated wages and conditions of employment. However both can vary or set aside some of the pre-existing industry-specific conditions that had been arbitrated in awards.

This limited scope for bargaining flexibility is the *quid pro quo* for the APCS and its broader application of minimum standards, and the rights of employees to those minimum standards without them being varied or removed through bargaining.

The obligation to include legislative standards in all bargaining agreements but not necessarily any or all of the formerly operating award conditions (except where they form part of the legislative standards) is subject to policy debate in

Australia. Industry argues that this flexibility is necessary to provide a basis on which collective or individual agreements in workplaces can apply wage structures or conditions that reflect local circumstances of employers and employees and eliminate inefficient work practices. Unions argue that employees who agree to these agreements can be, in an overall sense, disadvantaged compared to what they would have previously been entitled to, ignoring or regarding as inadequate the protections mentioned above.

Whatever the merits of these positions, it is clear that the bargaining system (and its levels of regulation) established by WorkChoices is far from the deregulated employment contract models that unions seek to portray. Extensive protections regulating process and agreement outcomes have been imposed.

Another oft debated aspect of the WorkChoices bargaining system is that bargaining must be at the workplace or enterprise level, not at the sectoral level⁷⁰. Again this reflects the unique aspect of Australian law where pre-existing industrial awards already apply at the sectoral level, and these are in essence the equivalent of industry-wide collective agreements or arbitrated collective instruments. Applying the bargaining system on an enterprise rather than industry-wide basis has been the law in Australia since the 1990s and was a policy objective of the Keating government when enterprise bargaining was first introduced in 1993. WorkChoices maintained this approach.

WorkChoices also introduces some restrictions on the content of collective and individual agreements, primarily relating to matters that would not ordinarily fall within the employment relationship. This too has provoked debate, but largely reflects a series of court and tribunal decisions that were made under Australian laws before WorkChoices was introduced.

Unions in Australia also argue that WorkChoices is deficient because there is no obligation to collectively bargain with unions. In making this criticism unions generally fail to acknowledge that there is a right to make collective bargaining demands, a right to take industrial action in support of those demands and a right to have trade union representation in that process. It was also accepted well before WorkChoices that collective bargaining is not the exclusive form of employer/employee engagement, that agreements must be voluntarily entered into and that bargaining could not be the exclusive domain of trade unions. Two additional matters are also relevant:

- an extra obligation to collectively bargain takes on a different character to that applying in other countries where there is (as there is in Australia, but not elsewhere) already a framework of industry-wide wages and conditions of employment collectively imposed on industry sectors through negotiated or arbitrated industrial awards; and

⁷⁰ There is however limited scope for multi-employer agreements on certain projects.

- the level of trade union membership in the private sector in Australia is 15.2% (with an almost exclusive formal economy), meaning that large portions of the workforce would be unable to access collective bargaining if it was the exclusive domain of trade unions.

Minimum Wages

The WorkChoices system retains, and extends, a heavily regulated system of minimum wages in Australia. The Australian minimum wages system is the most extensive in the world, both in the level of the minimum wage and its pervasiveness across the economy.

Under WorkChoices each of the regulated minimum-wage classifications that existed before WorkChoices, continues. In Australia there is no single minimum wage, there are multiple regulated minimum wages; indeed there are over 105'000 of them for a workforce of just ten million people. They apply to both unskilled and skilled employment classifications, even into lower classifications of managerial employees and professionals. They exist in every industry. They extend beyond median earnings. They apply in all areas and regions, urban and rural. They are included in what is known as Pay and Classification Scales. They are set by an independent review body, the Australian Fair Pay Commission.⁷¹

The minimum wages are mandatory minima in any workplace bargaining or in any employment relationship. Bargaining can only increase them, not reduce them or vary them.

The review of minimum wages commenced within months of the new laws operating. Despite Australia having a very high minimum wage in global terms, the new review body conducted a review of minimum wages between May 2006 and October 2006. On 27 October 2006 it decided to increase minimum wages in each of these 105'000 wage classifications by AUS\$27.36 for wages of less than AUS\$700 per week, and by AUS\$22.04 for wages of more than AUS\$700. The federal minimum wage increased by 5.6% to AUS\$13.47 per hour or AUS\$511.86 per week. Immediately following the commencement of these increases on 1 December 2006, the Commission commenced a second review announcing that a further decision on the minimum wage would be made in mid 2007.

The minimum wage increases awarded in October 2006 under the WorkChoices system were the largest dollar increase to minimum wages in the history of Australian labour law.

⁷¹ Prior to WorkChoices they were set by a different body, the Australian Industrial Relations Commission. The former body set minimum wages by arbitration; the new body sets minimum wages by inquiry and review.

These regulated wage increases mean that the Australian minimum wage under WorkChoices has become the highest percentage of average median weekly earnings of any nation. In nominal terms it is also the highest – and that is simply the minimum wage applicable to unskilled employees. Minimum wages extend to classifications throughout the industry to certain work classifications remunerated in excess of AUS\$100'000 per annum.

This point is illustrated in the table below, which compares the Australian minimum wage to the mean wage ratio of a sample of other industrialized countries.

Median Wage Ratio	1997	2000	2004
Australia	0.59	0.57	0.58
Turkey	0.42	0.39	0.57
Luxembourg	0.55	0.52	0.54
France	0.55	0.55	0.54
Netherlands	0.48	0.50	0.51
Greece	0.52	0.50	0.49
New Zealand	0.45	0.44	0.47
Belgium	0.50	0.48	0.45
Hungary	0.25	0.27	0.45
United Kingdom	-	0.42	0.44
Portugal	0.43	0.46	0.44
Canada	0.44	0.44	0.41
Poland	0.45	0.41	0.40
Ireland	-	0.40	0.39
Slovak Republic	-	0.43	0.39
Czech Republic	0.22	0.30	0.37
Japan	0.31	0.31	0.32
United States	0.38	0.36	0.31
Spain	0.33	0.31	0.29
Korea	0.22	0.23	0.27
Mexico	0.23	0.21	0.19
Average			0.42

Arbitration

There are three tiers of workplace regulation under the WorkChoices system, these are:

- legislated minimum standards on wages and employment conditions;

- wages and employment conditions above minimum standards established by bargaining; and
- wages and employment conditions above legislated minimum standards established by collectively negotiated or arbitrated sectoral awards.

The existence of award regulation on a sectoral basis is retained by WorkChoices, but the scope for new awards or new regulation in existing awards is limited. This is because the policy underpinning WorkChoices is to move to a combination of legislative standards and workplace bargaining in preference to the former system of sectoral award-regulation established by compulsory conciliation and arbitration.

Award regulation on a sectoral basis was considered by government to be inadequate on both equity grounds (it excluded employment categories from protection if they were not award governed), and on economic grounds (it restricted bargaining flexibility at the workplace level). In addition it could be said that compulsory arbitration is also inconsistent with an effective system of collective bargaining; compulsory arbitration of bargaining disputes is an intrusion into the bargaining rights of employers and employees⁷².

Despite this, as discussed above, WorkChoices retained industrial-award regulation of employees where this existed at the time of its introduction, transferred some award conditions into legislative minimum standards, and requires certain award conditions to be incorporated in bargaining agreements unless they are expressly excluded by the parties.

Employment Protection

Australia has a well-developed set of employment protection laws. These include:

- laws against unlawful dismissal (including dismissal for trade union membership or representation);
- laws against dismissal that breach contractual rights;
- laws against discrimination-based dismissals;
- laws against dismissal whilst on workers compensation or personal sickness;
- laws against dismissal for family responsibilities;
- laws against dismissal for exercising industrial rights or claiming employment entitlements;

⁷² A number of decisions of the ILO Committee on the Freedom of Association have been critical of governments allowing compulsory arbitration of trade union bargaining demands (see for example, ILO Freedom of Association Digest of Decisions 5th revised edition, paragraphs 992–997).

- laws against unfair (performance-based) dismissal;
- laws providing minimum periods of notice of termination of employment;
- arbitrated awards providing mandatory minimum redundancy payments (additional to notice of termination or payment in lieu of notice) in the event of retrenchment;
- a government scheme of safety net payments in the event entitlements are unpaid where dismissal arises from employer insolvency; and
- a government scheme of unemployment benefits paid to workers who have been dismissed and are seeking alternative employment.

WorkChoices retained each of these employment protections but established a new exemption for small and medium businesses from unfair dismissal claims where the employer employs fewer than 100 employees.

WorkChoices established this exclusion because of the inappropriate use of these (well-intended) laws by employees who had been fairly dismissed but were simply seeking additional monies, the inappropriate touting of business by some consultants and lawyers, the limited capacity of small and medium businesses to effectively respond to unjustified litigation, and the disincentives to employment that had been created by the use and abuse of these laws flowing from their negative perception amongst small and medium employers.

Although Australian unfair dismissal law prior to WorkChoices had long provided for categories of exclusion, the new small and medium business exclusion was opposed by unions and labour lawyers. However, it must be recognized that:

- other employment protection laws remain, including for employees of small and medium businesses;
- all employees of larger businesses retain unfair dismissal rights;
- it was accepted by all sides of politics in Australia that the former unfair dismissal laws were routinely abused and rorted, with an adverse effect on small and medium businesses;
- the Australian government had made changes in previous years in an endeavour to overcome the problems of vexatious litigation but those changes failed to significantly stop the abuse and rorting;
- the Australian government sought to provide for a more modest exemption for small business (less than 15 employees) in previous years, but this was blocked by the upper house of the Australian parliament; and
- ILO Convention 158 contemplates exemptions for businesses of a particular size.

The small and medium business exemption has not led to any general misuse of dismissal laws by employers. In contrast, full-time jobs growth has surged in the period since this exemption has operated. The reasons for this are likely to be numerous, but the beneficial impact of small and medium businesses employing persons without risk of unfair dismissal litigation is considered by industry to be a significant contributing factor. Further, even with the easing of unfair dismissal laws, job security in Australia is high. The Morgan Job Security Index⁷³ released on 22 December 2006 reveals that 81% of Australian employees believe their current job is safe. This is one of the highest recorded expressions of job security since these surveys began in 1975.

Job security in Australia in this post-WorkChoices environment also exceeds the average of the 1970s (78.4%), the average of the 1980s (78.6%) and the average of the 1990s (72.4%). A further 64% of Australian workers believe that if they became unemployed a new job could be found quickly.

Australia's job security, together with New Zealand and Malaysia was the highest of the 14 surveyed countries in the Asia-Pacific region. Across the globe, Australia ranks seventh of 58 industrialized countries – higher than the UK, Germany, Sweden, Japan and the USA.

International Labour Standards

The International Labour Conference has not directly considered the WorkChoices reforms. However in 2006 a Report of the ILO Committee of Experts on the Workplace Relations Act 1996 and the secondary boycott provisions of the Trade Practices Act 1974 was debated by the Committee on the Application of Standards. A 2007 report on the new laws is expected.

The 2006 debate was a continuation of a discussion that started in 1998 following criticisms by the ACTU of the Howard government's 1996 workplace reforms. In 2006 the Committee of Experts repeated previously made criticisms of Australian law. They concerned:

- restrictions on protected industrial action, especially in relation to multi-employer agreements;
- suspension or cancellation of protected industrial action;
- prohibition on strike pay;
- prohibition on secondary boycotts (sympathy strikes) in sections 45D and 45E of the Trade Practices Act;
- Australian Workplace Agreements; and
- trade union collective bargaining rights.

⁷³ <http://www.roymorgan.com/news/polls/2006/4120>

The Committee of Experts consider these provisions a breach of ILO Conventions 87 (Freedom of Association) and 98 (Collective Bargaining).

Neither ACCI, nor global employers, agree with these views. Nor does the Australian government. The views of the ILO Committee of Experts are, in ACCI's view, based on incorrect interpretations of the conventions and a misunderstanding of the operation of Australian workplace law and practice.

In the debate ACCI argued:

- that ILO Conventions 87 and 98 did not expressly provide for a right to strike and, accordingly, the criticisms of the 'Committee of Experts' on the restrictions on the right to strike were not supported by the terms of the convention and were subjective conjecture;
- that no right to strike can or should be unrestricted;
- that secondary boycott laws in the Trade Practices Act are well-accepted by the community;
- that the ILO charter of reducing social disadvantage through decent and productive employment is being fulfilled in Australia with record levels of employment, high living standards, investment in skills, low unemployment and few industrial disputes;
- that AWAs are not inconsistent with Convention 98 on collective bargaining because all workplaces where AWAs are made are workplaces where collective bargaining is equally available to unions or employees. The convention does not make collective bargaining mandatory, nor does the convention say that it must be the exclusive form of bargaining.

ACCI also identified support for the Australian reforms from other international bodies such as the International Monetary Fund and in certain OECD reports.

The ACTU used the debate to criticize WorkChoices even though the Committee of Experts report was about Australian law as amended pre-WorkChoices – that is, amendments from 1996 until 2005. The ACTU was supported by officials from the global trade union movement.

Aside from criticizing the Australian government's workplace relations law and policy to a global audience (calling them an 'act of bastardry') and alleging that the government was 'in the grip of the greediest of business leaders', the ACTU used the ILO forum to launch an attack on the International Monetary Fund for its support of the Australian workplace reforms, describing the IMF as "morally bankrupt and economically shortsighted".

The presentation by the ACTU of Australia, Australian employers and Australian working conditions in such a negative light before a global audience is a matter of considerable regret. No doubt these are genuinely held views and it may suit

the ACTU's domestic political campaign against WorkChoices to do so, but in the process it is unfairly denigrating Australian employers and Australian workplaces in view of world governments. The Australian government also entered the debate, rejecting many of the conclusions of the Committee of Experts and undertook to provide details to the ILO about the WorkChoices amendments.

The debate in the Committee on the Application of Standards resulted in the ILO requiring further information from the Australian government about both the Workplace Relations Act and WorkChoices, and asked it to engage in consultations with the ACTU and ACCI on the Committee of Experts' report and the union concerns.

Conclusion

Recent changes to Australian labour law represent the third stage of reform to Australia's industrial relations system over the past 13 years. It is not a deregulation of labour law in Australia, but a further step towards bargaining and workplace flexibility within the framework of a national safety net.

The structural reform of moving towards a single national system of labour regulation in an economy with a workforce of only ten million is widely accepted as desirable and beneficial.

Many of the changes made are supported by industry, notwithstanding legislative detail that employers consider excessive. They have been welcomed by the OECD and the IMF.

They have attracted attention largely as a result of a campaign against them by the trade union movement. That campaign portrays the laws as unfair and extreme. In a charged political environment there is a failure to debate the laws in a balanced and objective manner⁷⁴. It can only be hoped that once the political temperature of the industrial relations debate in Australia recedes, that a more constructive dialogue on workplace reform can occur.

The implementation of WorkChoices is at an early stage. There is bound to be the need for amendment in such a large reform package. Much of the work of employer bodies and employers in the first year has been to bring employment practices into compliance with the new mandatory legislative standards and to be properly informed of rights and responsibilities under the new system, particularly in regard to bargaining.

The workplace application of these new laws by specific employers and employees will occur progressively, not at one time. There has been only limited variation to

⁷⁴The independent workplace regulator in Australia, the Office of Workplace Services, concluded in July 2006 that certain aspects of the trade union campaign were misleading.

employment conditions, most visibly the sizeable economy-wide minimum wage increase of October 2006. The laws largely follow the principle of retaining the *status quo* in employment conditions unless and until employers and employees or their representatives use new bargaining options. A strong safety net of social protection for employees continues to exist in Australia.

The early signs are that the new laws are contributing to a wider incidence of collective and individual bargaining, especially in workplaces which have not been previously part of a formal bargaining system. Employer bodies are reporting strong interest in the small and medium sector about new bargaining options and opportunities.

The commencement of WorkChoices has also coincided with strong employment growth (276'000 new jobs since March 2006, 96% of which are full-time), low unemployment (4.6%), high job security and a further reduction in industrial disputes to historically low levels. Australia has well and truly thrown off the shackles of a generation ago when it was, from time to time, not regarded as a sufficiently reliable supplier of goods to the international community due to industrial disputes. Longer term impacts on productivity and competitiveness are far too early to judge. The first minimum wage review under the new laws surprised industry, unions and government for its size.

It is also important that employers continue work with governments to ensure that Australia moves to a fully national workplace relations system through the conclusion of intergovernmental agreements with respect to workplaces where the employer is not incorporated.

In a globalized economy, industrialized nations must progressively reform labour market institutions with a view to better and more efficient economic and social outcomes. This is particularly so for a nation the size of Australia, with its remote geography, and where Australia's living standards and wealth are deeply embedded in the notion of being a competitive trading nation with a skilled and productive (but relatively small) labour force.

The WorkChoices reforms have sparked political and industrial debate. Change can be confronting to the institutional interests of trade unions and even employer organizations, but if they are in the national interest they should be pursued with appropriate respect for the representative role of these bodies. In Australian workplaces employers and employees are largely getting on with the job of creating a stronger economy and a better way of life under the governance of these new laws and the system of workplace relations they herald.

The Industrial Relations Climate in Colombia

By Alberto Echavarría Saldarriaga, Vice-President Social and Legal Affairs, Asociación Nacional de Empresarios de Colombia (ANDI)

Colombia's economic production model underwent a radical change with the opening up of the national market economy – an opening which altered the whole concept of the employers' organization. This change, which began at the beginning of the 1990s, accelerated the coming into effect of new entrepreneurial concepts already in place in other countries around the world.

Effects of the New Economic Model on Labour Relations

This in turn imposed major transformations to the productive sector and greatly changed the dynamics of employers' organizations. The latter were forced to continuously improve their ability to compete – by increasing productivity; incorporating new technologies; adopting appropriate management techniques; improving the knowledge base in all their activities; increasing their relations with the rest of the world; and, finally, taking into consideration a series of elements which, in the recent past, were not among the country's priorities.

The continuous search for strategies and means of stimulating and promoting productivity and competitiveness was not an option that the employer community could choose to ignore. On the contrary, it was the only path to cementing and maintaining its presence on national and international markets.

As a consequence of the challenges imposed by globalization and by tough competition, enterprises were forced to reframe their relationship with personnel. Faced with this perspective, despite it having little recognition under law before the above-mentioned reshaping of the economy, the sub-contracting of services recently became generalized in entrepreneurial practice and was described as an alternative in order for enterprises to reduce their operation costs, improve their productivity and efficiency, while enabling them to concentrate their resources on the main economic activity for which they exist.

In other words, while at first there was a 'classic' labour scheme where the enterprise, with very few exceptions, was the employer of all those who carried out any type of function within its production centres – with the inevitable economic phenomenon mentioned earlier – the sub-contracting of services opened the door to enterprise development.

However, these changes in labour relations in Colombia were seen not only from the perspective of reducing costs but also from the need for specialization. This led to the development of other types of enterprise centred on the provision of services – changing the country's overall business picture which previously had been concentrated mainly on industrial manufacturing and commerce.

Based on the above, it became clear that one of the main benefits to be brought about by this new model was the increase in competitive advantage, notably because it encourages leadership. By subcontracting out those processes which are not its core business, the organization tends to become a leader in its area of activity and more efficient; moreover, by delegating certain tasks, it can focus time and attention on satisfying customers' expectations.

These new forms of contracting labour were not introduced without criticism as they involved a departure from the traditional labour relations scheme. This was because some tasks which were traditionally carried out within the enterprise were being subcontracted, generating resistance from workers who had now become subcontractors – as they continued carrying out tasks similar to those they did directly for the employer but now in their capacity as contractors with either labour or private rights implications vis-à-vis the specialized enterprise or their former employer.

This also had clear repercussions on relations with the workers' organizations. The Colombian collective bargaining system is designed to directly solve a labour disagreements between an enterprise and the company union. The federations and confederations to which the company union is affiliated play an advisory and supportive role – that is, although guiding the union as to the decision it should adopt, it is the union itself which directly negotiates with the employer. It is not customary to carry out national negotiations but specific issues such as fixing the minimum wage is an exception.

Traditionally, relations between workers and the enterprise were limited to negotiating, once or twice a year, a series of requests in an atmosphere of tension and hostility vis-à-vis the other party, without any major consideration being given to either the economy of the nation or of the enterprise. Our cultural upbringing is based on the assumption that differences are extreme and almost irreconcilable and that, in any negotiation, the opposite side is not being transparent. Against this background, it is natural that any conflict becomes aggravated since the solutions are subject more to a game of pressure than to what those involved really believe in.

Many unions based their strategies on permanent confrontation; on securing increasing acquired rights that cannot be tampered with; on promoting these rights and on minimizing their obligations; defending job security and maintaining benefits. When State monopoly or industrial protectionism permitted, public

and private employers bought 'peace at any price' – pushing their labour costs up without any corresponding increase in productivity and transferring the bulk of the increase in prices onto the consumer. This model becomes obsolete in a State which strives to be efficient in a globalized market but which does not allow employers to transfer the costs of inflexibility, lack of training and inefficiency onto the consumer.

Today's world economy calls for distinct labour relations schemes. It is increasingly difficult to maintain a system of permanent confrontation when the real threat is not the employers, the workers, the corporations or the unions, but international competition of goods and services from other countries, where everyone works as a team.

Team work must replace conflict. The priorities of the social actors must change: education or complying with environmental standards, to name only two examples, can no longer be left to the specialists – they must be part of a shared employer/worker agenda, since what is at stake is the survival and growth of the production sector, of employment and the possibility to increase the quality of life.

The foundation of employer/worker relations should be an ongoing dialogue on issues essential for the preservation of the enterprise such as: skills development; the introduction of new technologies; industrial safety; and the various possibilities open to increase competitiveness. Joint analysis and agreement on the manner in which each one of these topics is to be treated will contribute to building an atmosphere of respect, of joint achievement and shared objectives – resulting not only in improving the workers' well-being but also strengthening the enterprise.

It is for this reason that these changes in labour relations have accelerated and their scope moderated, to become a valid instrument for the efficiency of the productive activity of the enterprise and not only a means of reducing personnel costs, since otherwise, the model could harm the enterprise development.

In conclusion, the impact of these changes – although they have given rise to cries of resistance, based on the argument that the nature of labour relations has been modified, has served as a model of the specialized role of business and labour that has strengthened the development of certain posts and has presented a new challenge for the entrepreneurial structure.

Although there is still a long way to go, it is not sticking one's neck out to say that it is practice that, in the long run, will limit its effects in a way so that it will be possible to conciliate the need for economic and organizational optimization of the enterprise with respect for workers' rights.

Forms of Contracting Labour

From a practical perspective, the various forms of contracting labour in Colombia are the following:

Contracts of undetermined duration: This is the classic type of labour contract under which the employer and the worker agree to enter a working relationship without it being subject to any condition or time frame.

Except if the parties specifically agree in writing that the contract will be for a defined time (subject to a time limit), or for a specific task or job (subject to condition), the law provides that the contract will be of an undetermined duration.

Clearly, the key characteristic of a contract of undetermined duration is the permanency of employment and the stability of the labour relationship. This form of contract is therefore the most common in the formal and organized economy.

A contract of undetermined duration can be terminated by mutual consent of the two parties – employer and worker – or by a unilateral decision of one of the parties. The unilateral decision may be for a valid or qualified reason or, on the contrary, without any reason.

Colombian law lays down the precise circumstances which are considered valid for either of the parties to terminate the labour contract (which apply to contracts of undetermined duration, to those subject to a time limit and to those for a specific task or job). Although the procedures vary according to the cause, in all cases the party who terminates the contract must advise the other of the reason for the decision. Valid reasons for terminating a labour contract are defined as follows

VALID REASONS FOR THE EMPLOYER	VALID REASONS FOR THE WORKER
Has been cheated by the worker presenting false certificates.	Has been cheated by the employer concerning working conditions.
Acts of violence or ill treatment during working time against the employer, his relatives, supervisors or fellow workers.	Acts of violence or ill-treatment towards the worker or his family during or outside working time. Also if these acts are committed by the employer's relatives or representatives of the employer with his permission.
Acts of violence or ill treatment outside working time against the employer or his relatives, representatives, partners, factory heads or supervisors.	Acts by the employer or his representative which induce the worker to commit acts which are illicit or which go against his political or religious convictions.

Intentional material damage to the company's premises or goods.	Any situation that could not be foreseen by the worker at the time of signing the contract that puts his health or integrity in danger, and which the employer does not correct.
Immoral or criminal acts by the worker during work.	Any malicious damage caused by the employer towards the worker while in his service.
Any serious violation by the worker of his legal obligations, or any serious offence as defined in collective agreements or conventions.	The systematic and unjustified breach by the employer of his legal or contractual obligations.
Preventative detention of the worker for more than 30 days unless he is acquitted, or arrest for more than eight days.	Unjustified demand by the employer for the worker to work elsewhere than in those places for which he was hired.
If the worker reveals technical or trade secrets or damages the enterprise by giving away confidential information.	Any serious violation by the employer of his legal obligations, or any serious offence as defined in collective agreements or conventions.
Poor work-yield compared with the workers' ability when this has not be corrected within a reasonable time after warning.	
If the worker systematically or unjustifiably does not carry out his legal or contractual obligations.	
Any vice on the part of the worker which disturbs the discipline of the enterprise's premises.	
The systematic refusal by the worker to take preventive measures against accidents and diseases.	
Inability of the worker to carry out the work entrusted to him.	
If the worker is entitled to old age or invalid pension.	
If the worker suffers from a chronic or contagious illness which is not occupational in origin and which renders him unable to work for longer than 180 days.	

When an employer terminates a contract of undetermined duration without a valid reason, he must pay the worker concerned a fixed indemnity calculated according to the table below. Since, in 2002, the indemnity payments for dismissal without valid or sufficient reason were reduced, the law stipulates that those workers who at the time the new scale of indemnities came into force had been employed for ten years or more by the same employer, they will have the right, in the case of unjustified dismissal, to the indemnity which they would have received under the earlier law. The same occurred when a similar reform was introduced in 1990. Therefore, the indemnity rate varies, depending on the date of entry into service of the enterprise.

WAGE EARNED BY WORKER	AMOUNT OF IDEMNITY
Workers bound by a contract of undetermined duration since 28 December 1992 and who earn less than ten times the minimum wage.	<ul style="list-style-type: none"> • Less than one year of service: 30 days' wages. • More than one year of service: 30 days' wages for the first year and 20 days' wages for each additional year, or a corresponding proportion thereof for part of a year.
Workers bound by a contract of undetermined duration since 28 December 1992 and who earn an amount equal to or above ten times the minimum wage.	<ul style="list-style-type: none"> • Less than one year of service: 20 days' wages. • More than one year of service: 20 days' wages for the first year and 15 days' wages for each additional year, or a corresponding proportion thereof for part of a year.
Workers bound by a contract of undetermined duration prior to 1 January 1981 have two alternatives:	<ul style="list-style-type: none"> • Reintegration measures, with payment of the unperceived salaries. • 45 days' wages for the first year and 30 days' for each subsequent year, or a corresponding proportion thereof for part of a year.
Workers bound by a contract of undetermined duration between 1 January 1981 and 27 December 1992:	<ul style="list-style-type: none"> • 45 days' wages for the first year. • 40 days' wages for each subsequent year, or a corresponding proportion thereof for part of a year.

On the other hand, when it is the worker who terminates the contract without there being a valid or sufficient reason, he is obliged to give the employer at least 30 days' notice. However, if he does not give such notice, it does not mean that the worker has to pay indemnization to the employer.

Service contracts with individuals and legal entities: Service contracts are different from the strictly labour contracts and are drawn up mainly for the purpose of regulating relations between the enterprise and third parties providing services which do not involve a working relationship.

Service contracts are private law contracts (civil or commercial) drawn up between an enterprise and a third party – an individual or a legal entity – where there is no subordination relationship as exists in the labour relationship sense, but rather a contractual relationship between individuals under which one autonomously and independently provides the other with a service against payment, respecting the bilateral relationship established.

As indicated, a service contract is one under which the services provided are carried out without any subordination (there would be a labour relationship otherwise). It is therefore common practice that it is written between legal entities (enterprises) where the provider of the service relies on his own human and technical resources to do the job.

Service contracts with individuals are common in the case of specific liberal professions and independent professionals, or in other occupations where, in providing a service, independence of the contractor vis-à-vis the service provider prevails, the relation is focused on obtaining one or more specific results and where the risk is assumed by the service provider.

In all cases, civil or commercial relations regulated by service contracts must be genuine and in no circumstance will the law allow for the use of this type of contract to cover up for a true labour relationship. Should a commercial or civil contract be used for this purpose, the contracting party receiving the service is considered, for all intents and purposes, as the real employer.

The casual or transitory contract: This protects work of short duration (no longer than one month) and which is different from the employers' normal activities:

- it is a real labour contract and entails fulfilment of all the legal obligations on the part of the employer;
- there is no need to give notice of termination; and
- it covers only those activities which normally do not fall within the employers' traditional field of business.

Fixed-term contract: This contract has the same characteristics as a labour contract but is subject to a fixed time-frame which can be no longer than three years. It must always be drawn up in writing and renewed automatically for the same period of time as initially, unless one of the parties gives at least 30 days' notice of his wish not to renew the contract.

Contract for a specific job or work: The duration of this contract can be mutually agreed upon, taking into consideration not only the weather but also the work to be done. For this, it is necessary to clearly determine in advance the job or work that is contracted since it is its accomplishment that determines the duration of the contract.

Apprenticeship contract: (Employment-training). The system of training for employment is based on the German dual training model. Recently, this system was modified under Colombian law and it is now defined as a special labour relationship. The enterprise must sponsor both the theoretical phase of the training and the practical phase within the enterprise. The total duration of the two phases must not exceed two years. During the theoretical phase the apprentice receives financial support equivalent to 50% of the minimum legal wage in force. During the practical phase the financial support is 75% of the minimum legal wage for the ordinary worker and the trainee must insure himself against occupational accidents and diseases. Since the apprenticeship contract is not a labour contract, the last labour legislation reform in 2002 prohibited the financial support of the trainee being subject to collective bargaining – which was formerly the practice in many national enterprises;

- enterprises with more than 15 employees must hire one trainee worker or apprentice for every 20 employees;
- in the past, vocational training could only be provided by a State body, whereas today this can be done by other recognized educational institutions, including by the enterprise directly; and
- the training body decides the duration of each apprenticeship course.

The apprenticeship contract has encouraged skills development among young people and increased opportunities for them to access the world of work.

Other Forms of Work

Associated labour enterprises: (Spanish acronym: EAT), these are governed under Colombian law as productive economic organizations whose associates bring their work and technological skills, expertise or other assets necessary for the enterprise to fulfil its objectives:

- the production of basic goods for family consumption or the provision of individual or joint services by its members;

- the relationship between the associates and the enterprise falls under commercial and not labour law;
- there are two categories of associates: those who contribute solely with their labour and those who contribute with more than just their labour. Additional contributions can include industrial or intellectual property or other assets, including money;
- those associated to the EAT will be affiliated to social security as independent workers;
- they enjoy special State treatment when obtaining assistance;
- they cannot exercise any intermediary labour function nor act as employer; and
- they enjoy certain tax benefits, which are gradually being broken down.

Temporary work enterprises: (Spanish acronym: EST) These act as private employment agencies and, according to the law, they are true employers. Their object is to contract the provision of services to third parties (users) by collaborating temporarily in the development of their activities with individuals hired by the temporary work enterprise as employers:

- the enterprise benefiting from the worker's services is the user, under contract with the temporary work enterprise;
- in the EST there are two categories of workers : *in-house workers*, who carry out their activities on the EST's premises; and *out-workers*, who are sent by the EST to the user's premises;
- out-workers come under Colombian labour law, since their employer is the EST, except that they work for and come under the subordination of the user by virtue of the contract of delegation;
- out-workers are not allowed to provide services to the same user enterprise for a period exceeding one year; and
- the user can only contract EST labour in three specific circumstances:
 - a) for occasional or transitory work;
 - b) to replace staff who are on vacation, sick or who have been dismissed; and
 - c) increases in production or provision of services for a period of six months only, extendable for one further period of six months.

An EST worker who is contracted out by a user enterprise, although he is employed by the former, must enjoy wages and other benefits similar to those of the workers in the enterprise where he is sent to work.

Associated labour cooperatives and pre-cooperatives: (Spanish acronym: CTA), this is a form of work regulated by national law. They are legal persons

of a special category collectively and unitedly responsible, where members are both owners and employees of the undertaking and, as a grouping, provide services to enterprises:

- members work together to produce goods, carry out certain tasks and provide services;
- they are non-profit making enterprises, are fully autonomous and assume the risks of the work contracted to them;
- the members do not receive a salary but make an income from profits;
- relations between partners and the cooperative are covered by Statutes and by the law governing cooperatives and not by the labour law regime. It is a special form of work;
- workers belonging to cooperatives are covered by the social security system contributing under a special regime; and
- a labour relationship does not exist between the enterprise that contracts with the cooperative, as it is a private law relationship with the cooperative and not with its associates.

The responsible and strict legal application of the various forms of labour contract is essential in order to maintain a balanced and peaceful labour relations climate. The success of flexible labour relations schemes not only depends on legalities but also on their fair application; this must respond to the needs of enterprises according to the dynamics of demand, production cycles, international market conditions, etc., as well as respect the rights of the workers and the legitimate social expectations of a nation which is striving to achieve a modern, sustainable and stable productive system.

In conclusion, various forms of contracting labour exist, some of which come directly under a labour contract while others under civil or commercial contracts between enterprises.

Corporate Social Responsibility (CSR)

ANDI has always upheld a holistic view of the enterprise, where the economic and social role come together. Its aim is to obtain the best for all Colombians by defending private enterprise. As a system of production, the enterprise must in fact generate wealth and growth and, as a consequence, has the responsibility to be profitable and sustainable. Moreover, it is a combination of internal and external social interactions, inasmuch as its activities are carried out by and for human beings.

Social responsibility means therefore any initiatives undertaken voluntarily by the enterprise to promote the development of its workers, to integrate social and environmental aspects into its operations and to contribute to the community which has enabled it to exist and to grow.

It is the fruit of the conviction that enterprises and the way they operate affect others – people, sectors and communities – and that, moreover, enterprises develop thanks to the labour of men and women and the support of the community.

This conviction gives rise to social policies adopted by enterprises with much commitment and applied voluntarily. If this were not the case, all that the private sector should do would be to comply with the law.

Therefore, besides carrying out their legal obligations and respecting international labour principles, enterprises are strongly engaged in developing activities which benefit the workers and their families – activities which bring about social well-being.

There is a more or less generalized consensus as to the great productive opportunities that have arisen from the global market economy and the wealth and knowledge it has generated. Likewise, Corporate Social Responsibility is being seen more and more generally as a strategy on the part of the enterprise for its social, economic and environmental sustainability vis-à-vis its stakeholders, both internal and external.

Where there seems to be a lack of concrete views is how to ‘universalize’ the benefits of globalization among countries, regions and their inhabitants.

The strengthening of democracy and the market economy is essential for countries and people to be able to play an active role in and reap the benefits of globalization. On the one hand, the market economy and competition produce wealth and knowledge. On the other, a democratic vision enables an equilibrium to be achieved and ensures the necessary controls are in place thus leading to fairer results.

Enterprises have the responsibility to act in a manner consistent with the values of the country in which it operates. In this way, not only will they secure its growth but will create social capital giving legitimacy to the private sector and contributing to competitiveness within the framework of the principles that ‘democratize’ globalization and which are accepted by the international community.

As the most representative employers’ organization in Colombia, ANDI has since its foundation in 1944 been at the forefront of a social responsibility strategy. In more recent years, the National CSR Administration was established and a survey was carried out to identify where progress had been made in this field.

Moreover, it has been proposed that the national Government set up a National Sustainability Board composed of all members of civil society whose activities focus along these common lines, to formulate a long-term sustainability policy which would enable the Millennium Development Goals to be achieved and which

would have a structured impact on social indicators. It is worth mentioning that the production of a first report on the country's sustainability situation has been proposed to be a model to influence the action of the international system and maximize its benefits.

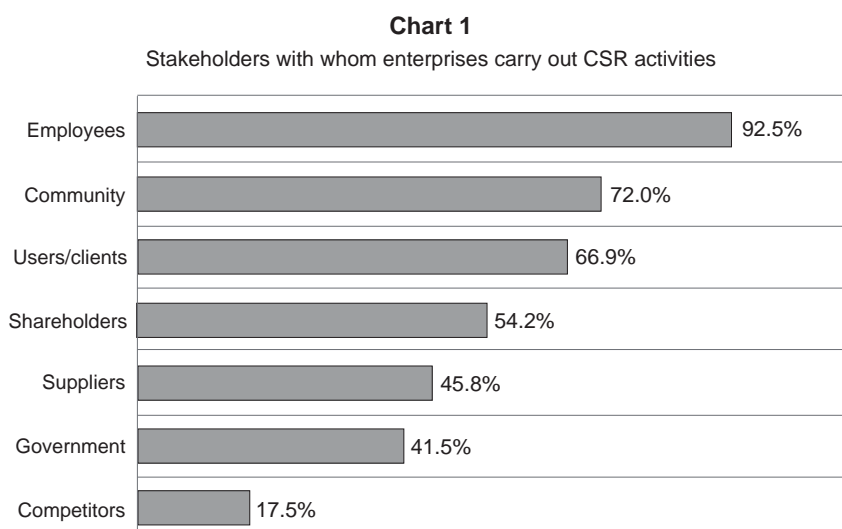
CSR Survey

A first CSR Survey was carried out in 2004 to ascertain what steps were being taken by enterprises in this field. To date there have been three such annual surveys. Last year 157 survey responses were received from affiliated companies reporting on 2005 data. The operational income of these 157 enterprises amounted to 36.1 billion pesos (US\$ 16'044.4 million, at an exchange rate of 2.25 pesos to the dollar).

Stakeholders

An analysis of the results of the CSR survey indicates that almost all the employers who responded – 98.7% in fact – believe that the private sector should assume social responsibilities vis-à-vis its workers and the community over and above that which is strictly required by the law.

CSR activities, according to those towards whom the social activity is directed, may be classified into two major categories: internal and external. The former includes the workers and the shareholders; the latter includes the community, users/clients, suppliers, the government and competitors. In undertaking CSR activities, enterprises take into account the interests of both categories, as shown in the chart below. Internally, of greatest priority are the workers who are closest to the enterprise just as externally it is the community that comes first given the impact it has on the daily activities of the enterprises.



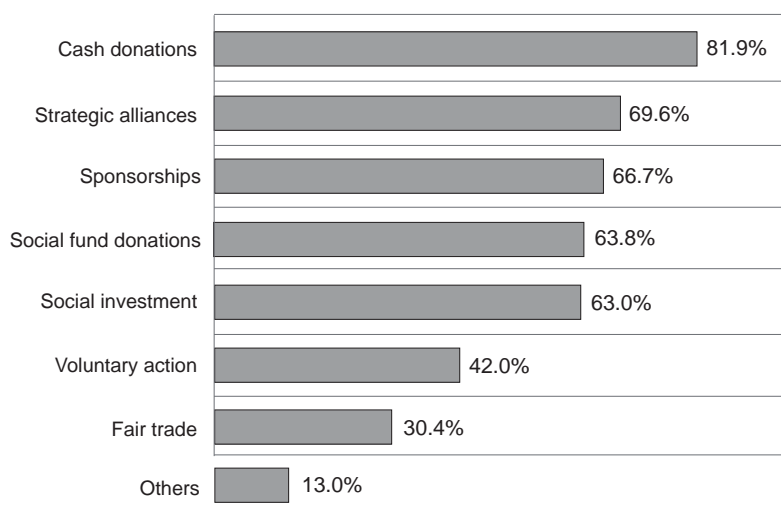
Source: ANDI, CSR Survey – October 2006

Means of developing CSR

The main means used by enterprises to develop CSR activities are cash donations, pursuing strategic alliances, sponsorships, donations to social foundations or social investments (*Chart 2*). When asking the views of the main parties to whom the CSR activities are directed we find that, in the case of the workers, the means most commonly used are cash donations, donations to employer foundations and social investment.

Chart 2

Means used by enterprises to develop CSR activities



Source: ANDI, CSR Survey – October 2006

Fields of CSR investment

With regard to the fields of investment to which CSR is directed, employers stress the importance of investing in human capital and this, coupled with housing, is of first priority followed by investment in health, education and training and human resources development. The following table (*Table 1*) shows the order of importance reported by employers in the three surveys, which has remained relatively stable.

Over and above that which they are legally obliged to contribute, enterprises mainly extend support to covering that which should be provided by the State in order to meet the basic needs of the Colombian people.

	2003	2004	2005
Housing	78.9	81.8	91.2
Health	77.6	74.1	80.9
Education	73.9	71.8	79.9
Training & HR development	65.1	65.1	75.2
Culture	65.7	57.7	65.3
Recreation	69.4	62.1	64.5
Public services	47.2	52.0	55.9
Environmental protection	42.9	47.0	54.2
Education in values	44.8	38.2	45.3
Tolerance	44.6	37.1	41.1
Reconstruction of the social fabric	40.7	34.3	38.6
Social investigations	29.9	25.0	36.6
Support to the destitute	28.0	23.6	30.0
Public transparency (corruption)	23.9	18.5	27.1
Strengthening justice	0.0	0.0	27.1
Strengthening political parties	24.7	19.7	25.6
Defending private initiative and free enterprise	27.0	20.2	23.8
Contributing intellectual solutions for peace	22.4	16.8	22.0
Support to victims of kidnapping	14.0	8.8	16.9
Productive networking	10.3	7.4	13.6
Other	4.2	7.0	7.3

Source: ANDI, CSR Survey

Enterprise investment in CSR

Concerning investment in CSR, *Tables 2, 3 and 4* show that, while there has been a clear increase over the years in the number of enterprises taking on CSR initiatives having responded to the survey, the annual results are not strictly comparable.

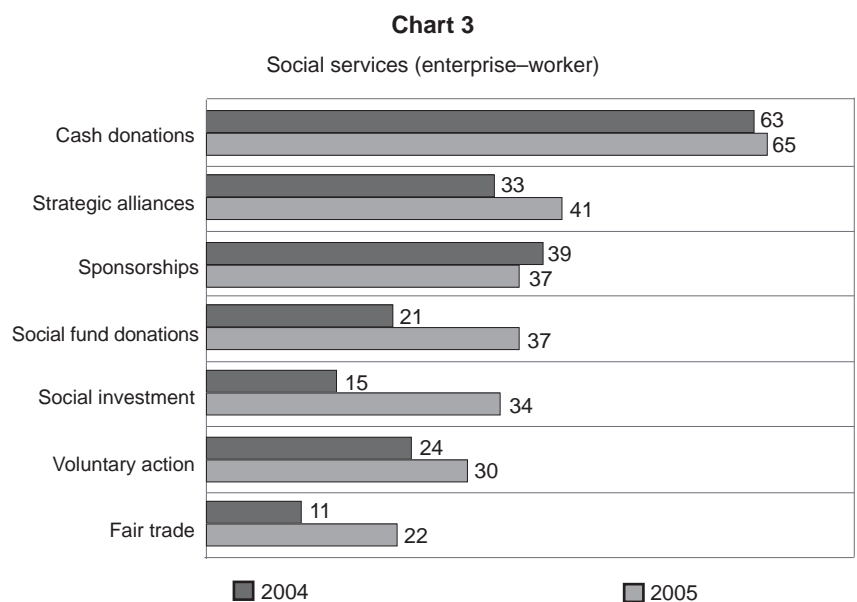
a) With the workers

When it comes to investment in social services for the workers, areas to which most resources are directed are: food, housing, health, transport and skills development (*Table 2*).

Table 2
Sums invested by enterprises (in \$ millions) in social services with the workers

	2003	2004	2005
Food	38'792	47'700	90'156
Housing	52'753	52'923	77'103
Health	54'516	63'588	73'558
Transport	31'038	38'596	57'866
Skills development	17'785	24'582	38'601
Formal education	18'328	18'265	31'157
Other	26'715	44'067	26'079
Recreation and culture	5'513	10'942	19'493
Children and youth	4'345	4'622	6'516
The aged	634	1'091	951
TOTAL	250'418	306'377	421,478

In addition to these investments, employers contribute to the well being of the enterprises' workers by employee funds, providing advice concerning insurances, promoting the creation of cooperatives and providing legal advice (*Chart 3*).



Source: ANDI, CSR Survey

b) With the community

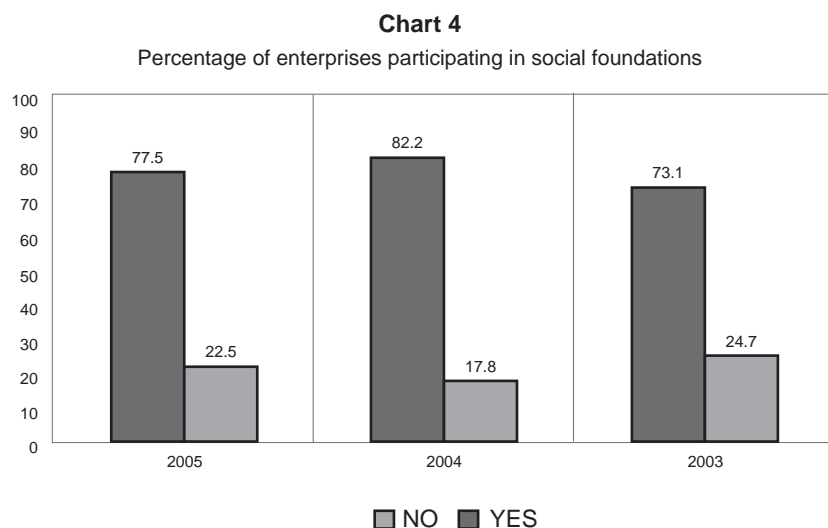
Employers also invest in CSR activities directed at the community. In this respect, the main areas of focus are health, leisure and cultural activities, supporting social undertakings, housing, the environment and education (*Table 3*).

	2003	2004	2005
Health	16'016	54'169	133'718
Other	11'834	17'145	103'669
Recreation and culture	5'162	60'266	91'990
Support to social enterprises	6'398	8'102	43'316
Housing	76'992	40'453	41'310
Environment	24'187	18'916	31'078
Formal education	5'227	25'314	23'045
Skills development	1'941	16'835	14'444
Infrastructure	28'045	10'450	12'760
Community development	4'203	13'206	12'157
The aged	1'043	1'364	8'839
Children and youth	7'280	14'699	6'868
Peace and co-existence	1'767	1'942	4'036
Technological investigation	5'216	1'213	1'039
TOTAL	195'312	284'074	528'268

Source: ANDI, CSR Survey

c) Investment in foundations

In addition to the above are resources directed at non profit-making social foundations; 78% of enterprises responding to the survey this year made such investments (*Chart 4*). In this respect, the main areas where enterprises supported this type of foundation were, in order: education, support to vulnerable groups (children, youths, single mothers, the aged), health, development of culture and values and nourishment.



Source: ANDI, CSR Survey

Total resources devoted to CSR

Thus, according to the CSR survey carried out by ANDI, member enterprises participating in the survey devoted on average 3% of their profits to CSR social activities as is illustrated in the following table resuming the different social services to which the private sector has focused resources.

Table 4
Enterprise CSR contributions (million pesos)

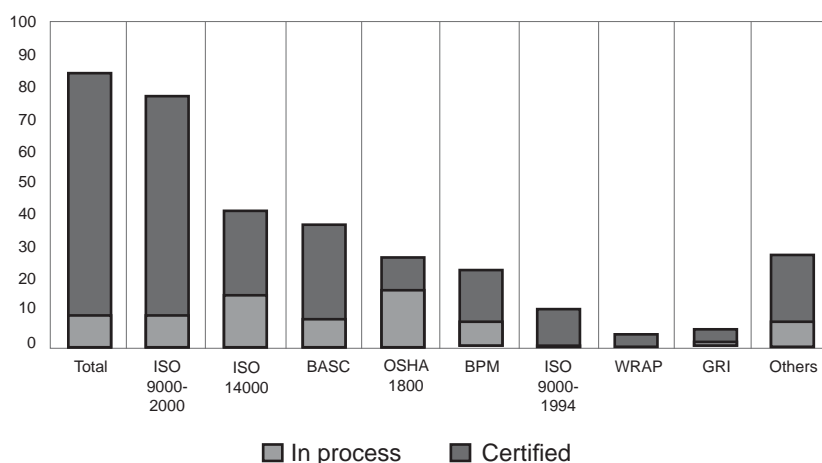
	2003	2004	2005
<u>Investment in CSR</u>			
Social services with the workers	250'418	393'890	421'478
Social services with the community	195'312	319'954	528'268
Social foundations	121'552	25'890	138'818
TOTAL	567'282	739'734	1'088'564
Profits of enterprises surveyed	20'296'263	24'722'930	36'077'099
<u>Percentage of profits invested in CSR</u>			
Social services with the workers	1.23	1.59	1.17
Social services with the community	0.96	1.29	1.46
Social foundations	0.60	0.10	0.38
TOTAL	2.80	2.99	3.02

Source: ANDI, CSR Survey

Indicators of conduct: international standards

Within the CSR framework, it is important to consider the efforts made by the productive sector to meet international standards by seeking certification of quality such as that done by ISO – environmental certification, good manufacturing practices, etc. In this respect, it is to be noted that 82.9% of enterprises already have a certification of quality (Chart 5).

Chart 5
Percentage of enterprises certified or in process



Source: ANDI, CSR Survey

Lastly, of particular note is the positive response from employers to put in place mechanisms which guarantee the development of CSR within enterprises. The following table shows that the great majority of those surveyed consider it advisable to include steps aimed at strengthening CSR in their normal business activities.

	2003	2004	2005
Percentage of enterprises that believe that enterprises should voluntarily establish codes of conduct as part of CSR	96.8%	98.3%	96.0%
Percentage of enterprises that believe that CSR should be governed by corporate codes, even if they are not listed on the national stock exchange	84.9%	92.2%	96.0%

Source: ANDI, CSR Survey

Epilogue

Tripartite Agreement on the Right of Association and Democracy

Given the prevailing violence in Colombia and the repeated denunciations by the Colombian trade unions for the death of, and threats against, trade union leaders and activists, Colombia has repeatedly been the subject of individual cases examined by the Committee on the Application of Conventions and Recommendations – the ILO’s supervisory body – for non-respect of Convention No.87 concerning freedom of association. In the past 20 years, several avenues have been embarked upon to dissipate these denunciations.

With this background, the social actors saw the need to alter the way labour relations were developing. Together they built up the favourable environment that led to the signing, during the 95th (2006) Session of the International Labour Conference, of a tripartite agreement defining in general terms how to overcome, in a concerted manner, the circumstances which historically had affected the development of labour relations.

The agreement reflects the change in attitude on the part of the workers’ organizations in the search of social dialogue not for confrontation but for consensus.

Moreover, there is a clear will on the part of the Government to directly contribute financially for the implementation of technical cooperation programmes submitted to the developed countries in November 2005. It is also interested in promoting all possibilities of consensus and ways of offering security to trade unionists. Approximately \$5 million will be included in the Nation’s general budget to finance activities aimed at improving labour relations and promoting the decent work programme in Colombia.

One of the key aspects of the agreement is the proposal that the ILO re-establish its presence in Colombia through technical cooperation and permanent representation in promoting and ensuring the full respect of freedom of association and collective bargaining, workers’ rights and the freedom to undertake for employers. This presence will be agreed between the Government and the ILO with the participation of the Colombian employers and workers. It will thus be a forum for following and facilitating the process of social dialogue and the development of activities undertaken by the three Colombian partners (government, employers and workers) at their own direct initiative.

In this respect, tripartite meetings have already been held to define the logistic details of establishing an ILO office in Colombia.

Of equal importance, the agreement proposes that a follow-up committee be set up composed of the parties to the agreement to monitor progress and be

informed of results of the investigations into the crimes committed against the trade union movement. To this end, tripartite meetings have already been held with the General Prosecutor of the Nation who has set up a special investigation unit to resolve the criminal investigations of the 120 most flagrant cases of attacks against the integrity of trade union leaders.

It has also been agreed to reactivate the Tripartite Negotiating Committee as a social dialogue platform with a permanent agenda to discuss not only wages but also the nation's labour policy.

Although these agreements are only recent, the will of the Government and of the employers and workers to create a completely new framework is the first step towards establishing modern labour relations fit for a developing country which is endeavouring to become a competitive player in the global economy.

Migration and its Impact on the Irish Labour Market: Experiences of a Receiving Country

By Heidi Lougheed – Senior Policy Executive, Irish Business and Employers Confederation (IBEC)

Like many developed countries Ireland is now a ‘destination of choice’ for individuals in search of employment and new opportunities. This is a relatively new situation for Ireland, one to which the country is still getting accustomed. As the number of people immigrating has risen, the impact on the Irish labour market has also increased.

The experience to date has been broadly beneficial but there have been, and continue to be, considerable challenges for the individuals coming to the country, the companies they are working for, the State’s capacity to cope with the sheer increase in scale and for society at large.

Ireland’s historical experience with migration was one of emigration, of thousands of people leaving year after year. Net outward migration peaked in the 1950s, leaving the 1961 Census recording a low overall population of 2.8 million. That trend continued into the 1960s and although this was reversed in the 1970s the 1980s saw, once again, substantial numbers leave. The 1990s was a decade of growth and ever increasing numbers of net migration¹. As a result, the preliminary results of the 2006 Census show a population size of 4’234’925. The general trends can be illustrated from the table below looking at the population numbers and estimated net migration in the first half of each decade.

Period	Estimated net migration	Total numbers in population
1951–1956	-39’000	2’960’593 (1951)
1961–1966	-16’000	2’818’341 (1961)
1971–1976	14’000	2’978’248 (1971)
1981–1986	-14’000	3,443,405 (1981)
1991–1996	2’000	3’525’719 (1991)
2002–2006	46’000	3’917’203 (2002)
* Preliminary results		4’234’925 (2006)*

Population numbers and estimated net migration, taken from the Census Reports

¹ Commentary based on net migration figures as estimated from the Census.

Different Permission Types

One of the most interesting and relevant features of migration into Ireland has been the change in profile of the migrants and the right or permission type that they have used to come to the country. All of these existing schemes were replaced on 1st February 2007 with a package of new schemes which changes the future profiles as well. The different groups will be broken down into a number of main categories:

- Irish and European Union²/European Economic Area nationals (who can both work unrestricted in Ireland) and their non-EU/EEA spouses;
- individuals on one-year work permits;
- individuals on two-year work authorisations/visas (a particular scheme for highly skilled individuals in three named sectors); and
- individuals on intra-company transfers (very small numbers).

Some of the non-employment related permission types have also had an impact upon the labour market: the working holiday visa scheme, student visas for international students and individuals coming to Ireland to join family members and refugees.

Immigration Trends and Experience

The Irish immigration system, as it exists at the moment, is based on fulfilling EU membership obligations and on temporary migration programmes. There is currently no longer-term or permanent migration programme. In terms of trying to manage migration, this approach raises a number of challenges.

The right under the European Treaties for EU citizens to move to another EU country to work does not allow any restrictions, even if labour markets are facing substantial difficulties. This has not been a problem to date but could cause dilemmas in the future.

The rest of the system is designed with only temporary migration programmes but individuals can and are renewing their permissions and as a result are staying for the medium, if not the long-term. This is not unusual. In the past, many temporary migration programmes in other countries have been criticized for generating a number of unanticipated consequences including the non-return and eventual settlement of large numbers of workers.

It is too early to say in Ireland, but early indications are that there is a cohort of individuals who entered the country on work permits, renewed them at least five times and then applied for Irish citizenship. As a result, despite the

²This right can be curtailed directly after accession into the EU

clear intention of Government, Ireland is seeing numbers of people making a commitment to remain in Ireland.

It is positive that there is a legitimate way in which individuals can stay permanently by relying on a system of temporary migration that then facilitates citizenship, but there is little systematic thought being given to the selection of these potential citizens. This can cause dilemmas for individuals from countries where dual citizenship is not recognized.

Numbers of Migrants

From the 1990s, Ireland saw increasing levels of growth in net migration. Accurate figures are difficult to come by as Ireland has no system of compulsory registration for its own citizens or for other EU nationals. Figures from only some of the schemes mentioned above are available, so assembling a clear, accurate picture is difficult.

What does emerge is a changing landscape. From the mid-1990s when figures started to indicate substantial movement, the first wave was dominated by returning Irish emigrants (or their children/grandchildren). The numbers of returning Irish continued to grow into the second wave, although numbers from the 'rest of the world' soon surpassed them. One of the most substantive features of Ireland's recent experience of large-scale immigration is the numbers of returning Irish who brought new skills and experience to further stimulate the rapidly expanding economy.

Nationality	1996	1998	2000	2002	2003
Irish	17.7	24.3	24.8	27.0	17.5
UK	8.3	8.6	8.4	7.4	6.9
Rest of EU	5.0	6.1	8.2	8.1	6.9
USA	4.0	2.3	2.5	2.7	1.6
Rest of World	4.2	4.7	8.6	21.7	17.7
Total	39.2	46.0	52.6	66.9	50.5

**Estimated immigration classified by nationality*

**Figures in 000's*

**Figures taken from the CSO, Population and Migration Estimate Series*

Individuals coming from the UK and the rest of the EU, despite constituting a substantial group, were not thought of in the general consciousness as constituting 'immigration'. In comparison, the figures from the 'rest of the world' grabbed most people's attention, especially as the numbers grew and started having a visible impact on workplaces and communities.

It was around 2002 that debates around ‘managing’ immigration and migrants coming into Ireland really began to emerge and a ‘tipping point’ was reached. For non-European Union citizens, most entered Ireland on work permits. In the beginning there were relatively small numbers doing this; it built up gradually to 4’328 new work permits in 1999 and then increased dramatically for three to four years so that by 2001, 29’592 new permits had been issued. The Government put in place restrictions in an attempt to manage the situation and to curtail the profile of those who could apply. In particular, there was a deliberate policy to restrict work permits to only highly skilled and highly paid individuals. Following this shift, fewer work permits were granted and as a result, from 2003 onwards, there were more renewals being granted than new permits. In fact the number of permits granted have fallen significantly. Last year saw only 6’289 work permits issued³.

With most people coming to Ireland to work or study, this new national experience was viewed positively. Whilst few people probably understood the finer details of how immigration employment permission schemes worked, there was an instinctive understanding that migrants coming here were working and contributing to society. Surveys of people’s experiences were positive and revealed individuals’ and communities’ curiosity and the novelty of the situation. Unusually for most short, intense migration flows, individuals coming to Ireland are not overly concentrated in larger urban areas. Whilst of course, the large towns and cities now have large numbers of migrants, rural communities and peripheral areas have also experienced people arriving, resulting in greater diversity.

2004 and the European Union Enlargement

The real watershed in terms of the scale of migration to Ireland came in May 2004 with the enlargement of the European Union and the Irish Government’s decision not to take advantage of the transitional measures possible under the Accession Treaties. Two other Member States, the UK and Sweden, made the same decision whilst all other Member States continued imposing some or severe restrictions on entry into their labour markets.

Nearly three years on, it is hard to reconcile the experience since 2004 with the expectations at the time. There were no official Irish estimates made at the time of expected migration flow, but most people working in the area genuinely believed that the number of new European citizens who would wish to come to Ireland would be small. European Commission reports looking at how enlargement and the free movement of workers would operate, recognized that forecasts vary considerably and were uncertain, but expectations were

³ Figures from Department of Enterprise, Trade and Employment. 2006 figures only until 31 October 2006

that labour migration would be concentrated only in a few Member States (Germany and Austria). Previous experiences of enlargements created certain expectations and European forecasts were that early yearly flows into the EU15 (i.e. pre-enlargement EU Member States) would be somewhere in the region of 70'000–150'000. Flows into Ireland were expected to be negligible.

In May 2004, the Irish Government, employers and trade union representative groups all stated that they believed that the experience for Ireland would be positive for the economy and that the numbers who might come would be limited.

Ireland's experience has been very different from any of the predictions. Within the first 12 months, 26'400 individuals from the ten new Member States were estimated to have immigrated to Ireland and that movement has not slowed.⁴ Some 37'800 nationals from the ten new Member States are estimated to have immigrated in 2006. Within that total the largest group was from Poland (22'900) and Lithuania (6'100). Some of these individuals are coming for short periods of time and others may be family members, but the majority have stayed and are working. Tentative estimates⁵ of the labour force are that it includes 87'700 nationals of the new Member States, a number built up practically from nothing over two and a half years.

This has been a critical change for Ireland, especially coming on top of three to four years of growth in the number of work permits. Over the 1990s Ireland saw inward migration for the first time as a feature. From 2000 to 2004 there were significant increases in the numbers of work permits issued and then from 2004 onwards the numbers continued to increase but the profile changed from 'all corners of the world' to a central and eastern European one.

Bulgaria and Romania

After a decade of growth in the numbers of people coming and, in particular, two and a half years of extremely high levels, the Irish Government's decision over whether or not to impose transitional measures for the next European Union enlargement was always going to be interesting. In the event, the Minister for Enterprise, Trade and Employment, Micheál Martin, announced that restrictions would remain in place for Romanian and Bulgarian nationals. He said that the decision was informed by the "very significant inflow of labour migrants Ireland had experienced since May 2004" and that for the moment, the Government had decided it was "appropriate to take stock, be cautious and concentrate on addressing the integration needs of those who had already come

⁴ CSO Population and Migration Module, September 2006

⁵ Quarterly National

to live and work in Ireland⁶.” Before making its decision, the Government had consulted with both the employers and trade union bodies, and both groups (with slight differences in emphasis and rationale) had advocated leaving restrictions in place. This was a dramatic break from the approach taken in 2004 and before but none of the parties were able to ignore the experience of the last two years.

Why They Came?

One of the fascinations for Irish people in the middle of this accelerated change process has been exactly why people have chosen to come to Ireland. A number of factors appear to have prompted this decision:

- knowledge that the economy was doing well and that there were jobs available;
- already having a job offer (Irish employers actively recruiting in the home country);
- a wish to experience another country and learn a language at the same time (in particular English);
- a location that was easily accessible (at least for the EU10 nationals who did not need any further permission in Ireland, but still did in most other European countries);
- having contacts in Ireland; and
- not having as many opportunities in other possible destinations.

Labour Force

In a small country like Ireland, the movement of peoples on such a scale cannot help but have a significant impact on the labour force. Over the 1990s, Ireland saw unprecedented economic growth – the national GDP almost doubled and employment increased by 50%. During this time, much of the employment increase was due to demographic factors. By the end of the 1990s, labour market activation measures aimed at the unemployed had proven to be very successful, the levels of female participation were growing substantially, Irish people (in particular graduates) were not leaving in substantial numbers as opportunities now presented themselves at home, and some measures aimed at the economically inactive who were not unemployed were even showing results. Taken as a whole the educational attainment levels of the workforce were increasing and productivity was increasing.

By the late 1990s, immigration had already started to be a feature in the labour market, particularly in the health, construction and tourism sectors, but

⁶ Press Release, Department of Enterprise, Trade and Employment, 24 October 2006

as the economy continued to grow and the 'traditional' labour sources were diminishing, Ireland experienced a very tight labour market with significant demands for both labour and skills. When the numbers of work permits reached significant numbers, migrant workers were filling vacancies at all levels and in nearly all sectors. Labour supply growth had become a necessary condition for fulfilling Ireland's future output potential and immigration became one of the essential elements.

After a decade of high immigration into the state, the Irish labour force appears to be stronger than ever. In 2006, the numbers in employment went to over two million for the first time and unemployment remains relatively low at 4.5%. The Irish labour market now has 2'073'300 people in employment. Participation levels continue to increase overall reaching 69.6% in 2006, with both male and female employment rates increasing, the female level exceeded 60% for the very first time (meeting the European set 'Lisbon Targets' four years ahead of schedule).

At the same time, Ireland is seeing slight increases in the unemployment rate, from 4.4% to 4.5%, but this is still relatively low and long-term unemployment remains stable at 1.3%. It is certainly very low compared with Irish historical unemployment levels. This has remained broadly stable for the last two years and remains one of the lowest European rates.

Immigrants are now estimated to constitute around 10% of the labour market with 199'600 in employment and 15'900 unemployed. Non-Irish workers are working throughout the economy but particularly in the construction sector, hotels and restaurants, financial and other business services, wholesale and retail and the health sector.

Sector	Non-Irish ('000)	% of workforce
Agriculture, forestry and fishing	5.2	4.3%
Other production industries	32.1	10.8%
Construction	35.4	12.7%
Wholesale and retail	24.7	8.3%
Hotels and restaurants	29.6	24.5%
Transport, storage and communication	9.9	7.7%
Financial and other business services	24.9	9.3%
Public administration and defence	1.3	1.2%
Education	5.8	4.7%
Health	19.3	9.2%
Other services	11.5	9.4%
Total	199.6	9.6%

Citizens of the new Member States constitute the fastest growing group in the labour market and in two and a half years have also become the largest non-Irish

group. A profile of non-Irish nationals currently in the labour force shows UK citizens making up 19.5%, EU15 citizens (excluding UK and Ireland) making up 11.9%, the 'rest of the world' making up 27.9% and the ten new Member States citizens making up 40.7%.

Not surprisingly, in terms of age, the largest group of immigrants every year are aged between 25–44, followed by the 15–24 year olds⁷. To take 2006 as an example, 53.7% of immigrants were aged between 25–44, 28.4% were aged between 15–24, 10.6% were under 14 years of age, 5.8% were between 45–64 and 1.5% were over 65. This age profile is not particularly unusual for immigration, and obviously is positive for the labour market. In terms of gender, there are more male immigrants than female, but not in significant numbers. In 2006, for example, 56.3% of immigrants were men, 43.7% were women.

Studies looking at immigrants' educational profile have shown them to be, generally, a highly educated group. Many, however, are not working in positions that reflect their educational background. This is not particular to Ireland. Often when moving country, individuals find it difficult to access informal networks or lack the knowledge of patterns of job searches in that country. Language shortcomings can also make it more difficult to find suitable employment. It is not clear yet whether this is a temporary problem for new arrivals.

Labour Substitution

Always a concern for countries with sudden population movements, the issue of labour substitution or replacement has become the subject of debate in Ireland. Until around 2005, most parties acknowledged that it was theoretically possible, but it did not seem to be something that was happening in Ireland. In 2005/2006, however, this emerged into a significant debate, one which probably still has not finished. Following a small number of cases, fears and concerns were raised and debated with no general consensus emerging from policy makers. For those researching the area, "the case regarding displacement remains unproven"⁸. Others suggest that whilst information "strongly suggests that the increase in the employment of non-Irish people has not meant a contraction of employment levels for Irish people... In some sectors some form of replacement would certainly seem to be occurring"⁹. The same authors conclude that even if that is happening figures imply "that there is not any widespread process of Irish people being displaced into unemployment".

The most recent commentary goes further to suggest that with the labour force growing and unemployment levels remaining stable, "the Irish labour market

⁷ Figures from CSO Population and Migration Module, September 2006

⁸ Non-national workers in the Irish Economy, AIB Global Treasury Economic Research, February 2006

⁹ Understanding Migration: Causes and Effects, NESCC, September 2006

has shown a capacity to absorb immigrants with limited impact on natives, on average in terms of employment/unemployment¹⁰.” The same report goes on to conclude that “the Irish situation appears to represent an interesting case study of success in absorbing immigrants”.

Skills

Since enlargement in 2004, Ireland’s labour needs have been met by immigration from within the EU. Despite the numbers concerned, not all of its skills needs have been met and Ireland has had to recognize that the primary source of skills supply should be met by the development of Irish and EU nationals as well as resident migrants. However, that it was also in the national interest to continue to seek out highly skilled individuals. The Expert Group on Future Skills Needs assessed the situation¹¹ and determined that a number of required skills would not be met from within the EU. These included skills from the following disciplines: information communications technology (ICT), biotechnology, financial, internationally traded services and research and development.

Benefits

That immigration has helped Ireland’s economy is beyond doubt. It has been one of the factors that has allowed the recent growth levels to continue and has contributed to the strength of the labour force. But it has not only been about supplying numbers of people to fill existing labour shortages. Essential skills gaps have also been filled, in particular in the health, financial services, pharmaceutical and ICT sectors. Although it is difficult to quantify, the knowledge and experience that migrants have brought to workplaces in Ireland, the diversification of the workforce has been beneficial.

Challenges

While statistics can paint a generally positive picture for all concerned from this decade of migration, there are anecdotal small strains which should be considered by policy makers.

For many individuals coming to Ireland, the biggest challenge has been language. Many may come with some knowledge of English but their technical language may not be sufficient for the area in which they are qualified, so they end up working in positions beneath their qualifications. This is not a problem in the short-term if individuals improve their language skills and move forward,

¹⁰ Quarterly Economic Commentary, Winter 2006, ESRI

¹¹ ‘Skills Needs in the Irish Economy: The Role of Migration’, Expert Group on Future Skills Needs

but if they remain at the same level, it is a loss for them and for the economy as a whole. In parallel (mostly over the last two years) there are a number of people coming to Ireland who have no English at all. This represents a significant challenge for the individuals in terms of working and operating in society.

Individuals and companies have also been faced with knowledge gaps around qualifications. It is hard for many people to determine how a particular 'foreign' qualification compares to an Irish one and whether it proves that an individual is capable of carrying out a specific job. The actual qualifications can be translated, but this does not always give enough information and companies have to decide whether to take a small 'leap of faith'.

For individuals, migrating to a new country alone can be an isolating experience. Over the last couple of years, stronger local national/ethnic groups have emerged and are now providing support and networking opportunities, and are beginning to advocate more coherently on behalf of their constituents. This is particularly the case for citizens of the new Member States who, almost as soon as they started arriving, constitute a significant minority.

Most employment permission types are only granted for 12 months and it can be stressful for the individuals and companies to be almost constantly applying for renewals of permission to live, work or enter the country. Added problems confront individuals who need permission for their family members to join them. Often this is at the discretion of the relevant government department and can be stressful for the individual concerned.

Government systems have caused problems. Without a long-term history of inward migration, the actual State 'system' or processes to deal with individuals and companies started out as rather rudimentary; different pressures have emerged, the economy has moved on, the scale of migration has increased, government policy has changed, the profile of people has changed and as is wont to happen – people have tried to abuse the system. The relevant government departments responded by changing the terms of the schemes. Often, however, these changes were not announced and information on how they would work was not available or they were announced with no warning leaving a trail of confusion. Departments could also be very slow to assess applications and this compounded the situation.

It has not helped that three different departments are involved in different, but related, immigration processes and individuals or potential employers are left confused over what they are actually supposed to do and in what order. Systems have not always been able to keep up with changes and strains, companies and individuals have not been able to keep up with the changing rules.

Strains on infrastructure are beginning to show not so much because of immigration, as the fact that the population is now much bigger than ever

before: not only are more people arriving but fewer people are leaving. The sheer numbers are putting additional pressure on various parts of the physical and service infrastructure from schools and hospitals to roads and housing. Although, ironically, it is immigrants who are making a significant contribution to sustaining services and building the required physical infrastructure.

Claims of exploitation from foreign workers have led to strains on the Irish social partnership system. This was addressed by including significant commitments under the new social partnership agreement, 'Towards 2016'. There were a small number of cases of employers failing to fulfil their legal obligations with regard to employment rights, but there has been no evidence of widespread abuse.

Ireland has a history of working through social partnership to face challenges in a constructive manner. Recent social partnership agreements have included sections with commitments to address particular parts of the challenge. The social partners put in place a 'National Anti-Racist Workplace Week' which in 2007 will be held for the eighth time. The social partners will spread a message against racism in workplaces; the main Social Partners took part in European and ILO projects to help create supports for companies and individuals.

The Next Chapter?

Ireland's story of immigration is probably only really starting now. Its ten-year first chapter had been a fast-changing, intense experience for those working in the area and, in that time, the experience has changed Ireland beyond recognition.

The second chapter probably starts this year with the abolition of all the existing immigration programmes and the introduction of new schemes under the Employment Permits Act 2006, as well as the eventual introduction of the Immigration, Residence and Protection Bill. The challenge of the second chapter will be to look at issues of integration and assist all those living in Ireland to create together an identity and vision for the future. Predictions are always risky but, in the short to medium term it looks likely that the immigration levels felt over the last couple of years will continue and will help to contribute to the economy's continued growth. In the long-term, strains slowly emerging and still to emerge need to be met head-on for the story to have a happy ending for all.

Investing in Social Capital in South Africa

By Professor Raymond Parsons – member of the Management Committee and Executive Council of Business Unity South Africa (BUSA) and Overall Business Convenor of the National Economic Development and Labour Council (Nedlac)¹

This article seeks to describe the political and economic setting in which the origins of South African social dialogue and the National Economic Development and Labour Council (Nedlac) are to be found. Ideas tend to take root when the soil has been fertilized by social and economic trends – and in South Africa’s case, by political developments as well. This helps to explain both the emergence of ‘institutionalized social dialogue’ in South Africa – and also the extent to which that had its roots in workplace issues.

First of all, though, what do we mean by ‘social dialogue’? The concept is an elusive but pervasive one. Internationally it sails under a number of flags. These include ‘social capital’, ‘civil society’, ‘civil engagement’, ‘tripartism’, and even ‘corporatism’. A growing body of literature has accumulated around these separate but related concepts, especially since the end of the Cold War. For economic science the term ‘social capital’, like its conceptual relations, remains an imprecise concept whose role in economic development is no less hard to pin down. Social dialogue is apt to mean different things to different people.

Yet it *exists*. Globally about 50 countries now have similar structures to Nedlac and the list is steadily expanding. On all sides there are strong reasons why the language of ‘social dialogue’ appeals and suggest an interesting interplay between politics, economics and ideas. With the recent surge in scholarship on social capital it is worthwhile giving more thought to what social capital is, what we have learnt from existing studies, and what issues need to be further explored.

A working definition of institutional social dialogue was given by the International Labour Organisation (ILO) in 1996 as follows:

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‘All types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy. It can exist as a tripartite process, with the Government as an official party to the dialogue or it may consist of bipartite relations only between labour and management (or trade unions and employer associations), with or without indirect government involvement. Concertation can be informal or institutionalized, and often it is a combination of the two. It can take place at national, regional or at enterprise level. It can be inter-professional, sectoral, or a combination of all of these.’

The ILO has gone on to say that ‘the main goal of social dialogue itself is to promote consensus building and democratic involvement among the main stakeholders in the world of work’. This implies that social dialogue is now more generally viewed – characteristically and historically – as tripartite in more inclusive terms. Yet we must accept that there are still conceptual and other difficulties around the issue of social dialogue which are as yet unresolved, thus leaving scope for different interpretations of its potential role in democracy.

Ever since it was launched on 18 February 1995, Nedlac has often been the subject of controversy, some critics having expressed the view that it would fail to achieve the goals set for it at its inception. There was understandably considerable scepticism in some quarters. In spite of this, by 2005 over 120 agreements had been reached by Nedlac on a wide range of economic and social policy issues and numerous reports and other activities had been completed.

More important, however, is whether the existence of Nedlac – and the many hours spent in discussion and negotiation by the participants – have served to raise the level of trust and understanding, especially between business, labour and government, to a point that such essentially social gains will have made for greater unity of purpose, more effective policy-making and speedier policy implementation. If so, then Nedlac could well be regarded as an important investment in ‘social capital’ contributing over time to the emergence of a ‘high trust’ society fully comparable with ‘healthy’, prosperous, competitive societies in other parts of the world. What is the balance sheet here?

To assess and understand Nedlac’s establishment and its role in what remained of the 20th century – and subsequently – it is first of all necessary to refer to some prior developments leading up to its creation. We must locate our historical bearings. It will be recalled that 1990 was the crucial year in which the future President Nelson Mandela was released from prison, unleashing the various political and social forces which ultimately culminated in a negotiated full democracy in 1994 and with that the end of the apartheid system in South Africa. To that extent, at least, the advent of representative democracy and development of institutionalized social dialogue must be said to have converged in South Africa.

Stepping-Stones to Nedlac

Although Nedlac eventually arose from a merger of the National Economic Forum (NEF) and the National Manpower Commission (NMC), the genesis of tripartism in South Africa can be traced back to the labour relations arena which developed in the wake of the watershed Wiehahn Commission report on the subject in 1979. The acceptance of most of the recommendations of the Wiehahn Commission by the National Party Government of the day was significant because it paved the way for the legitimizing of black and multi-racial trade unions in South Africa, and their subsequent recognition by commerce and industry. It was a major step forward at the time to normalize labour relations in this country.

We should not, at this remove, underestimate the impact which the Wiehahn Report made on the political and socio-economic circumstances then prevailing. Dr Joubert Botha summed it up as follows:

‘The recommendations of the Wiehahn Commission – appointed in 1977 – produced a veritable watershed in labour relations in South Africa. It was unique in its consequences. It constituted the first crack in the wall of apartheid. After Wiehahn nothing would ever be the same again... No other official enquiry had as incisive an effect on the South African economy as the Wiehahn report has had. An independent study found that more than eighty percent of the recommendations had been positively reacted upon by the Government’.

In this process, the power relations within the South African economy started to shift from a highly autocratic framework towards a more inclusive and consensual framework of decision-making at the workplace. This shift predated, but would in many respects be seen to have been synchronized with South Africa’s gradual movement towards a democracy that would place value on, and give full recognition to, human rights. The majority of business leaders were supportive of this process.

The experience gained by both organized business and organized labour in the post-Wiehahn industrial relations system – such as through the National Manpower Commission (NMC) – equipped individuals within each of these constituencies with the necessary tools to act as facilitators, mediators and negotiators, and in so doing made a more collaborative decision-making process possible. However, that is not to deny nor make light of severe tensions between the parties in the post-1980 period – especially since the apartheid system had created a political vacuum which the new trade union movements understandably attempted to fill. This resulted in some, if not all, major unions assuming political roles which extended far beyond the general framework covered by the evolving modernized and inclusive collective bargaining system.

It might therefore be argued that, in spite of the mounting exogenous pressure on the industrial relations system during the latter half of the 1980s, significant pathways of trust were slowly emerging between the different constituencies to seek common ground. Unfortunately, much of this trust developed between individual personalities involved in the industrial relations process – rather than at an institutional level – so that then, as now, the consensus-building exercise was subject to the vagaries of leadership moving into different spheres of activity.

Although in 1988 the then government tried to ‘roll back’ some of the advances of the Wiehahn dispensation, pressure from labour and business resulted in an historic agreement being reached in 1990 which was subsequently endorsed by the Cabinet and signed by the then Minister of Manpower. Apart from providing the foundations for a new Labour Relations Act, the important ‘Laboria Minute’ – as the Agreement came to be known – also made provision for the formation of an appropriate forum to discuss the impact of labour relations on the economy. However, the trade unions interpreted this provision more widely, arguing that the forum should discuss, and even negotiate, all micro and macro economic policy issues. There was clearly a growing need to move away from a dominant culture of ‘adversarialism’ in the socio-economic arena towards one of consultation and dialogue – and perhaps even one of forging agreements.

Emergence of the National Economic Forum (NEF) and Nedlac

Against this backdrop, both organized business and organized labour began to see advantages in a negotiating forum for constructive engagement. As a result, a series of meetings between labour and business occurred and agreement was reached about a forum to discuss economic issues. The next step was to get a hesitant government on board in the early 1990s.

Ongoing trade union hostility at the time to the introduction of value added tax on a wide range of ‘basic’ foodstuffs, which were previously exempt from general sales tax, and the firm opposing stance adopted by the then Finance Minister, Barend du Plessis, contributed to the reluctance on the part of government to join the forum process. However, when du Plessis resigned in April 1992 and was replaced as Minister of Finance by Derek Keys (who came from the business community), this obstacle to government’s participation was removed. The founding documents were soon drafted and the NEF was established administratively. Keys referred at the time to the ‘golden triangle’ of government, labour and business.

Several participants believed that the NEF’s strength at the time lay in its *informality*. The creation of the NEF in 1992 had been seen as the result of a needs-driven voluntary process mainly initiated in its early stages by labour

and business, reflecting a political will to make it work and deliver. It was not a statutory body, yet it bound its key players to important agreements. The role of informal discussions, the combination of constituency mobilization (sometimes in the form of strikes) and tough bargaining at the NEF, created the platform on which the future social dialogue framework would be built.

Most obvious of all, but no less significant for that, the mere process of establishing or improving cross-cultural human relationships must have done something – and perhaps did quite a bit – to facilitate the formation of social capital at a crucial stage. If so, a large part of its genesis lay in workplace changes. It was necessary to build trust. There was also significant personal ‘chemistry’ among the key participants which, in a sense, carried itself through to the eventual establishment of Nedlac. The transitional NEF was a good apprenticeship for the more formalized Nedlac that still lay ahead.

Another source of renewed cooperation and trust-building lay in addressing the endemic political violence which characterised the early 1990s and which threatened to derail the political negotiation process. Apart from the start of trilateral engagement around workplace challenges, critical developments were also unfolding on a broader political level which began to involve other formations such as organized labour and business in the National Peace Accord. The negotiated National Peace Accord was an important mechanism for keeping contemporary political violence to manageable proportions, and involving more or less the same constituencies as were participating in the NEF. They were all linked to a greater or lesser extent to the tough and tumultuous political process then underway.

On all sides there was a real commitment to make social dialogue work – in ways that would help address South Africa’s serious socio-economic challenges. These included the challenge of transforming the economy from one that had become inward-looking, uncompetitive, excessively protected and isolated from the world economy into one which would be open, competitive and growing – no less, in other words, than to reintegrate South Africa into the international economy and the globalization process in the post-sanctions era.

Given that both the NEF and the NMC had effectively developed along tripartite lines representing the same constituencies, it was logical for any new structure to incorporate the two bodies. Discussions in the latter half of 1994 centred on how this could best be done, including drawing on international experience in social dialogue. The gains to be had from compromise continued to look attractive. Nedlac was then established as a statutory body – the Nedlac Act No.35 of 1994 being one of the first pieces of legislation passed by the new Parliament.

In summary, therefore, it could be said that the four main stepping stones to the creation of Nedlac were the Wiehahn Report, the NMC, the Laboria Minute and

finally the NEF. When the economic history of this period comes to be written, special recognition must be given to the significant and decisive role played by the NEF at the time. It proved to be a distinctly important institutional bridge between the 'old' and the 'new' regimes and in building social capital in South Africa.

Launch of Nedlac

Nedlac then came into being on 18 February 1995. High expectations and enthusiasm in many quarters surrounded the launch of this institution. Nedlac was to be a major instrument of post-conflict rehabilitation. It was intended to inaugurate a new era of inclusive consensus-seeking and ultimately decision-making in the economic and social arenas. The enabling legislation formally spelt out Nedlac's task to pursue the goals of growth, equity and participation. As the legislation indicated, Nedlac had a broad scope of activity covering all aspects of social and economic policy and decision-making.

Nedlac was, and remains, institutionally distinctive in several ways. It is the most representative policy body South Africa has ever had, since it includes government, labour, business and the 'community'. Nedlac requires *mandated* representatives – no one is there in their personal capacity. It is an *agreement-making* body and not merely an advisory body. Of the 50 or so countries, mainly developing ones – which have Nedlac-type institutions – Nedlac is among the very few that is a *negotiating* body and not only an advisory one. Constituencies are held accountable for the consequences within their sphere of influence. Often social dialogue outcomes could result in policies being those that would secure agreement, rather than those that would achieve a given set of objectives efficiently. This is partly why some critics dislike Nedlac 'compromises'.

And what was social dialogue intended to do? Institutionalized social dialogue was needed to help undo the damaging legacies of apartheid and address the challenges of economic performance, more especially with reference to growth, job creation and poverty. Pitched at its highest, Nedlac was intended to provide the socio-economic dimension of the reconciliation and nation-building to which President Mandela was strongly committed. The main participants in Nedlac – predominantly the ANC-driven government, business and labour – all had their reasons for engaging in the Nedlac process. From their various perspectives they all hoped that, in one way or another, Nedlac would help to keep the country 'governable', and maximize their own influence in the process.

Although Nedlac was regarded at the time as an agreement-making body rather than an advisory one, it was recognized by all participants that the Nedlac process was *not* supposed to be a substitute for Parliament. Whilst agreements

could be reached between the social partners, such agreements were not intended to be binding on the country's elected representatives and certainly could not, in the absence of Parliamentary debate and adoption, result in changes in the laws of the land. That said, problems *did* soon develop in the relationship between Nedlac and Parliament – the perception that there appeared to be ‘two parliaments’ – and these difficulties persisted for some years.

The ‘engine rooms’ of Nedlac today are its four chambers, in which the social partners discuss issues related to the specific portfolio of each chamber. These are the Labour Market Chamber, the Trade and Industry Chamber, the Public Finance and Monetary Chamber, and the Development Chamber. At this level the community constituency is officially represented *only* in the Development Chamber. There have been special reasons for this particular configuration.

All in all, the Nedlac arrangement (‘tripartism plus’) is more inclusive than those of most other similar institutions elsewhere – in other words, *social* dialogue and *civil* dialogue are not as compartmentalized as they are, for example, in the European Union (EU). This inclusivity has both advantages and disadvantages for the functioning of Nedlac. It has undoubtedly had an important influence on the policy areas to be covered and in the setting of the Nedlac agenda.

Overview of Nedlac's Formal Outcomes

During its first few years Nedlac's main focus was on negotiating the introduction of government's new labour market policy and legislation. Whilst Nedlac's labour market processes enjoyed a correspondingly high profile, the Trade and Industry Chamber also began to do important work in the spheres of trade liberalization, preliminary discussions on the formulation of an industrial strategy, and competition law reform. Nedlac's agenda slowly broadened over time to include a range of socio-economic matters.

But labour issues predominated. Soon after the 1994 elections the government decided to launch a complete overhaul of the South African labour market. Intentions were spelled out in the Department of Labour's five-year plan and commenced with comprehensive review of the Labour Relations Act (LRA) and the appointment of a Presidential Commission into the Labour Market. However, the proposed far-reaching changes to both the LRA and the Basic Conditions of Employment Act (BCEA) were prematurely rushed into the Nedlac process – the LRA redraft even before the Presidential Commission had been appointed, and the BCEA before the Commission had reported.

The basic problem in 1995 therefore was that the phased nature of the negotiations precluded presentation and negotiation of a single and coherent package of labour reforms within a thorough labour market evaluation. In part, these errors and omissions can be attributed to high expectation that a broad social accord

was in fact emerging at the same time. In part, it was doubtless considered that early introduction of meaningful reforms would demonstrate the Government's commitment to protecting workers in any social accord. The overall accord never materialized. Accordingly the labour law reform process, albeit always tripartite in composition, was segmented – its different facets being *separately* introduced and negotiated. The effect therefore was that the labour law reform process – although necessary – degenerated into piecemeal negotiations, from whence several serious unintended socio-economic consequences emerged in subsequent years.

Another important strategic 'gap' in the early days of Nedlac's operations was the fact that attempts were being made to reach agreement on the issues in the absence of an overall framework for economic policy-making. Similar tensions accompanied other elements of the Ministry of Labour's five-year labour programme – such as the BCEA – even after the release of the Growth, Employment and Redistribution (GEAR) strategy in 1996 which referred to 'a more flexible labour market'.

Initially, government indicated that the basic policy lines of the GEAR strategy were *not* negotiable, even within Nedlac. This was partly because implementation of the strategy was deemed to be urgent, partly because some elements like interest rates, taxes and fiscal deficits were not practically negotiable in *any* modern economy, and partly, it seems safe to say, because the Government surmised (correctly) that organized labour would strongly oppose GEAR because it was seen to be 'too market-friendly'. Whatever the reasons, it did put considerable strain on Nedlac processes.

While this has not prevented the development of a problem-solving approach by Nedlac participants to specific policy issues (as outlined in clause V of the 1995 Founding Declaration), the lack of an overall shared economic vision has from time to time generated considerable tension in Nedlac. Yet a dialogue which becomes problem-solving and practical can produce consensus, even where there are deep underlying conflicts of interest and even where there may be no shared understanding at the outset. Experience also suggests that adopting that approach to achieve consensus in one sphere often facilitates a similar attitude towards other areas of policy. Nedlac has been both a steep learning curve and a strong intellectual challenge in policy-making.

Hence over the past eleven years Nedlac – as the portal of entry into social dialogue in South Africa – has found itself driven into an ever-widening socio-economic agenda as its processes matured. It has probably become the most complex agenda of any public institution in South Africa. It has had both successes *and* failures and has undoubtedly also been a source of deep frustration for Nedlac participants from time to time. In practice, it was to become not only an institution in which to reach formal agreements, but was

also to evolve into an instrument of consultation and coordination regarding several policy issues. Important events like the Jobs Summit (1998) and the Growth and Development Summit (2003) were also organized under Nedlac's auspices and generated heavy policy as well as project commitments by its stakeholders.

Evaluation of the Role of Nedlac

Any assessment of the Nedlac role since its formation in 1995 would – in part at least – be bound to reflect one's overall perspective on the South African economy, politics and society in these years. Nedlac and social dialogue over this period undoubtedly attracted critics; and to give the most strident of those their day in court, the most sweeping of all possible questions must be posed: would South Africa have been better off without Nedlac?

While much more research is clearly needed to evaluate Nedlac's interventions in specific policy matters – and how they may have influenced policy outcomes – the interim and overall qualitative answer must be 'no'. Without the conflict-management potential of a structure like Nedlac, the transition to a successful democracy would have been, to say the least, trickier than it needed to be, especially within an emerging market like South Africa.

Indeed, it could be argued that the recurring spectacle of labour and capital sitting down together to discuss policy under the auspices of Nedlac was reassuring to investor confidence. It has rightly been emphasized that South Africa has been able, through sound monetary and fiscal policies, to inject more certainty and predictability into the policy environment. Less credit, however, is given to the perception of stability to which institutionalized social dialogue also contributed. While Nedlac has not governed the country, it has arguably helped to keep it governable.

Has social dialogue and investment in social capital made a quantifiable difference to South Africa's economic performance since 1994? It is extremely difficult to link a specific institution or feature on the national landscape to a particular set of economic results. It is really not possible to establish a *direct* correlation between extensive peak-level social dialogue and higher economic growth rates, or a rising human development index. All that can safely be said of South Africa is that the average economic growth rate rose from nearly zero in the early 1990s to about 2.5 per cent in the six-year period post-1994 – and that the acceleration of growth in the most recent years is arguably an extremely significant reflection of the groundwork that took place in the earlier period.

To the extent that certain processes, such as Nedlac, promoted social stability and reduced perceived *country risk*, they must have made a positive contribution. South Africa's international credit ratings did slowly begin to improve in the

early years and subsequently they have returned increasingly favourable verdicts on the South African economy. These are developments in a period which has been historically designated as a one of 'consensual stability' and to which Nedlac contributed. 'Consensual stability' has helped to reduce uncertainty and raise expected returns on investment.

Nonetheless, no institution, no matter how rich its history, may shirk the challenge of taking stock of its role in a changing environment. Both government and other participants in Nedlac believed that, after eleven years, the functioning of Nedlac needed to be reviewed to assess its performance. Some serious institutional and operational challenges had developed and needed to be addressed. For if function declines, so also do status and influence. A wide-ranging independent ILO-led audit and evaluation of Nedlac's role and performance has therefore been commissioned and is expected to be available in due course.

With an extensive assessment of the role and impact of institutionalized social dialogue in South Africa in the offing, there are four final key thoughts:

First, promotion of the valid reasons that prompted the creation of Nedlac also made for *excessive expectations* as to what social dialogue could achieve in South Africa in the short term. Given the bitter legacy of apartheid it was too optimistic to expect significant levels of trust to be established more or less overnight. The intense enthusiasm which had greeted the advent of democracy could not last as the real problems of governance crowded in. Social dialogue, as important as it is as a mechanism to manage change, can in a mere eleven years only do so much to repair decades and even centuries of mistrust and suspicion. To that extent, criticisms that Nedlac is failing to achieve its goals are based on unrealistic hopes, or wishful thinking, about how South Africa can best respond to the challenges of transformation and globalization.

Second, some organization theory has it that institutions are designed according to their constituents' basic needs at the time of their formation. These requirements will change over time and generate increasing pressure for adaptation to any changes in the overall environment and to effect improvements. In doing this institutional assessment there is probably a need to think of the Nedlac process in terms of trade-offs between various performance criteria, rather than as a unique institutional solution that maximizes social welfare. Seen in this context, social dialogue is a renewal resource. A renewed vision of institutionalized social dialogue in South Africa *is* possible.

The third key thought revolves around the changing relationship between policy-making, implementation and monitoring in South Africa. Most of the 'big' policy issues in South Africa should – for good or ill – have now been settled, which is markedly different from the situation pertaining in the early years of Nedlac. Agreements at Nedlac level, especially on specific programmes and

projects such as those in the 2003 Growth and Development Summit (GDS), mean little if they are not implemented properly. South Africa has reached a stage where, in several areas of policy, implementation and monitoring are now critical requirements for effective delivery. Both the GDS – and more recently the Accelerated and Shared Growth Initiative for South Africa (ASGI-SA) – have identified serious weaknesses in this regard, especially at the local government level. Nedlac needs to be refocused to accommodate this new dimension within an appropriate institutional design.

Finally, we are still in a situation in South Africa where a number of policy decisions are often made in great ignorance of the consequences. Hence the policy choices are not always as well-informed as they should be, especially if we want South Africa to be globally competitive. Our minds, and policies are still too often dominated by *clichés*; we tend to judge by categories instead of by substantiated implications. If, therefore, an effective consultation process – by emphasising the results of action, rather than action considered intrinsically – can do something to focus our assessments on real issues and perceptions, we could hope that at least some of our differences may dissolve. Properly structured and underpinned by good research, institutionalized social dialogue remains a valuable mechanism to this end. In any case, is there a plausible alternative in certain national circumstances?

Conclusion

The fundamental challenge remains how to reconcile a dynamic economy and the liberating effects of individual freedom with the goals of an *inclusive* society, even at the cost of some disturbance to a few cherished ideological shibboleths. The search for the right balance is not yet over. This is not a new debate and South Africa is not the first country to discuss it. Nor will it be the last to design institutions that can help it to sensibly manage these dilemmas and trade-offs in the years ahead, given the socio-economic challenges that remain for South Africa. There is a strong perception that investment in social capital in South Africa is still lagging. Although social dialogue may have *widened*, the extent to which it has *deepened* is still an open question. While there are issues on which economic ideology and race will continue to divide South Africans, they *can* address common challenges in ways which do not force them to pay an even higher price for their divisions than they already have. Effective social dialogue remains one significant way to bridge these divides and to make progress on crucial issues that still matter to the future of South Africa.

Productivity: Case Study on the Factory Improvement Programme in Sri Lanka

By Ravi Peiris – Director-General of the Employers’ Federation of Ceylon (EFC)

In the context of a highly competitive global market environment in the apparel manufacturing industry and the demands – particularly on factories in developing countries – for the delivery of quality garments at cost-effective prices while upholding labour standards propelled by external pressures for compliance, the International Labour Organization (ILO) under its Management and Corporate Citizenship Programme developed the Factory Improvement Programme (FIP). In essence, the FIP is a tool to assist factories in the garment manufacturing industry to successfully face the challenges of competitiveness in a sustainable manner. The FIP is funded by the United States Department of Labour.

The FIP takes a holistic approach to improving factory performance based on a multi-module training programme spread over a period of 12 months. A single phase of the programme can accommodate 10–12 factories as it has been in the three FIPs hitherto conducted in Sri Lanka.

With the emphasis placed by the ILO on labour standards and its current goal of ‘Decent Work for all’, the vital thread that runs through the entire fabric of the programme is the involvement of workers in improving overall factory performance. The FIP is divided into six modules as identified below with Continuous Improvement through Workplace Cooperation being the cornerstone. The modules are:

- Continuous Improvement (now identified as Continuous Improvement and Workplace Cooperation);
- Quality Improvement;
- Workplace Cooperation and Social Dialogue (now identified as Workplace Relations);
- Productivity Enhancement;
- Human Resource Management/Development; and
- Occupational Safety and Health.

By way of ‘add-ins’, the following areas were also included in the FIPs conducted in Sri Lanka:

- National Labour Laws;
- Gender and Discrimination; and
- Health Aspects in Occupation.

The first two complemented the Human Resource Management module while the third related to the Occupational Safety and Health module.

Since 2002 three rounds of FIP, in which twenty seven factories participated, have now been implemented in Sri Lanka in the apparel sector and preparations are underway for the fourth. A programme for twelve factories was run in Vietnam. This programme was not limited to the apparel sector (there was multi-sectoral participation). The FIP has also been implemented in Cambodia and is to be introduced in India as well. In Vietnam, the FIP has been implemented in collaboration with the Vietnam Chamber of Commerce and Industry.

The Garment Manufacturing Industry in Sri Lanka and the FIP

The garment manufacturing industry occupies a vital position in the Sri Lankan economy. Since 1978, with the ‘opening’ of the Sri Lankan economy, the garment manufacturing industry has risen to overtake many of the traditional industries in terms of its scale of operations and export revenue. Notwithstanding its relatively small six per cent contribution to the GDP – mainly due to the import of much of the raw material for the production of garments – garment exports account for approximately 50% of the country’s export revenue and provides direct employment to about 350’000 people providing indirect support for the livelihoods of many more. When viewed in the context of a labour force of approximately seven million, these figures assume much significance.

Since the 1980s, the industry had overcome numerous challenges and continued to grow. The ending of the “quota regime” in 2005 with the termination of the Multi Fibre Agreement gave reason for concern regarding the stability and future of the industry. While the industry adopted its own measures to meet the new challenges, the ILO Factory Improvement Programme was identified by the Colombo Office of the ILO as a unique and effective one to assist factories in Sri Lanka. Having regard to the holistic approach adopted by the programme through which competitive and compliance issues are jointly addressed, this programme also received the attention and support of many multi-national (MNE) buyers, among other stakeholders.

FIP-I

The first programme, FIP-I, was offered to the apparel industry in 2002 through the ILO. A National Programme Manager was entrusted with the overall responsibility for delivery. Having promoted the FIP concept and the programme by the ILO, eight factories were chosen for participation. A reputed consultancy company with experience in the apparel sector was recruited to make the programme operational. The criteria adopted in the selection of factories included among other aspects the following:

- capacity for over 150 machines;
- location within a radius of 100 km from the capital Colombo; and
- a commitment from the CEO and the involvement of the senior management for a holistic approach to factory improvement along the lines of the objectives of the programme and the training modules on offer.

The funding available for FIP-I was sufficient to meet approximately 75% of the total cost of the programme. Approximately 25% was met by a subsidized participation fee paid by the factories involved. In FIP-I this fee amounted to S.L.Rs 35'000 per month, the equivalent of US\$350.

FIP Methodology

The methodology adopted for FIP-I (which continued to operate without any substantive changes for FIP-II and FIP-III, subject to a few modifications made mainly through a process of learning by experience) is as follows:

An expert, or team of experts, is contracted in respect of each of the identified training modules. Roughly one to one-and-a-half months is set aside for each module. The training module is initially started off with a two day training programme (workshop) with the participation of the relevant factory managers. Two managers from each factory are required to participate in each of the workshops. One manager will be the focal point of the FIP and the other will be responsible for the relevant subject area for each workshop.

The training programme, which takes place as an interactive workshop with the expert, concludes with action plans and follow up activities in each factory to achieve the identified objectives. The experts thereafter visit the factories along with the programme support team, which in FIP-I consisted of staff from the above-mentioned consultancy company, and assist factories in making their action plans operational.

While the experts themselves make two visits to each factory per module, the programme team follow up with more visits and are always at hand for support and assistance.

FIP and the Employers' Federation of Ceylon (EFC)

During the operation of FIP-I, an expert – engaged for the Workplace Cooperation module who was familiar with the tripartite concept and approach of the ILO – invited the Employers' Federation of Ceylon (EFC) to make an input to the programme through a half-day session addressing 'National Labour Laws and Industrial Relations'.

The EFC established in 1929 is the principal and only active Employer Organization in Sri Lanka. It is the recognized employer constituent in Sri Lanka by the ILO and also the Sri Lankan Ministry of Labour.

The reasons which prompted the setting up of the EFC in 1929 was the then growing need for a separate employer body with specialist skills and competence in labour laws and industrial relations to meet the developing challenges of trade unionism.

Whereas that role was adequately played in the first four to five decades of the EFCs existence, the challenges posed to the EFC were varied after 1978, with the 'opening' of the Sri Lankan economy and the increasing global economic integration thereafter. Survival and competitiveness in business became major concerns for its members. The EFC in turn responded by introducing new services which initially came in the form of training and development of human resources.

Since the early 1980s the EFC Human Resources training and developmental activities and programmes have grown in demand by employers. The regular programmes on offer encompass subjects involving Labour Laws, Industrial Relations, Human Resource Management and Occupational Safety and Health. Other ad hoc programmes to facilitate enterprise competitiveness are periodically arranged.

The EFC is also consulted by members in relation to developing human resource policies, practices and strategies and it has in the context of its stated mission, consistently adopted a holistic approach to addressing enterprise competitiveness on a sustainable basis.

EFC Vision

Promote social harmony through productive employment

EFC Mission

To encourage workers, their organizations and the Government to cooperate with business for the attainment of the following objectives:

- a) to make employees more efficient and quality conscious;
- b) to achieve better terms and conditions of employment;
- c) to prevent industrial strife and where disputes have arisen to resolve them in a fair and expeditious manner;
- d) to generate employment opportunities; and
- e) to provide members with services to achieve objectives of growth and stability.

Currently, the EFC has a membership of almost 500 enterprises from different sectors, directly employing a total of approximately 400'000 persons. Notwithstanding its large, representative membership, the EFC membership in the apparel industry has been restricted to a few large players. The reasons for this, among others, can be attributed to the concentration of a large number of garment factories in the export processing zones and the relatively low rate of worker unionization in the industry. Apart from the human resource training and developmental activities already referred to, the EFC is also engaged in numerous other programmes and activities in the following subject areas:

- Promotion of the ILO Declaration on Fundamental Principles and Rights at Work;
- The Global Compact; and
- Diversity in the Workplace and Social Inclusiveness.

The latter has led to EFC involvement in subjects such as Gender Equality, Prevention of Sexual Harassment, Employment of the Disabled and HIV/AIDS at the Workplace. The nature of the FIP was naturally attractive to the EFC in the foregoing context and the offer to conduct a half-day seminar on 'National Labour Laws and Industrial Relations' for FIP-I was accepted by the EFC without any conditions. The presentations and discussions in this half-day workshop centred around the following:

- Laws relating to Freedom of Association and Collective Bargaining;
- Laws relating to Terms and Conditions of Employment;
- Laws relating to Dispute Settlement; and
- Laws relating to the Termination of Employment.

This half day seminar was repeated for FIP-II and FIP-III also.

FIP-II

After the conclusion of FIP-I in June 2003, FIP-II was initiated. The EFC accepted the invitation by the ILO to be the implementing agency for FIP-II. The Joint Apparel Associations Forum (JAAF) also came forward as a partner in promoting the programme. The EFC entered into an agreement with the consulting company that was engaged in FIP-I for the full-time release of a member of its professional staff to be the National Programme Manager. In addition, the company also undertook to provide technical backstopping for the programme during its duration and assist the National Programme Manager. The EFC recruited two Programme Coordinators. The programme team reported to the Director General of the EFC and was housed in the EFC office premises with relevant support services made available.

Twelve factories were chosen out of over 35 that demonstrated interest in joining the programme. The participation fee in respect of each factory was increased to S.L.Rs 55'000 per month, i.e. US\$550 and the funding available through the ILO was correspondingly reduced from that of FIP-I. Another significant feature was that, as opposed to contracting foreign experts – as was the case for all training modules in FIP-I apart from two local co-experts in respect of Workplace Cooperation – only two foreign experts were engaged in FIP-II with respect to two modules. In the case of one of these two modules, local expertise was also co-opted.

The changes to the operational structure in implementing FIP-II and the increase in participation fees of the factories was a clear demonstration towards building local capacity to sustain the programme.

From the point of view of the EFC, in addition to conducting a half-day seminar on labour laws as it was done in respect of FIP-I, the EFC also volunteered to provide advice without any additional charge to the participating factories on labour laws and industrial relations during the period of the programme – a service which is generally made available only to members. The EFC was also involved in providing logistical support to the programme team.

FIP-II which commenced work in November 2003 was completed in September 2004.

FIP-III

The successful completion of FIP-I and FIP-II encouraged the parties to launch FIP-III. The EFC continued as the implementing agency for FIP-III. The programme team consisted of two National Programme Managers with the ILO making available to the programme the services of its Regional Specialist in this area who became the National Programme Manager in FIP-I, to directly oversee operations. The programme team continued to be housed at the EFC and reported to the Director General of the EFC.

The major share of funding for FIP-III was from the participating factories. The fee paid was S.L.Rs 65'000 per month, i.e. US\$650. In addition to funding through the ILO, the EFC part-funded the project through assistance from the Norwegian Employers' Organization.

Notwithstanding the distinct advantage of the experience gained in FIP-I and FIP-II, promoting FIP-III posed a major challenge – particularly in view of a massive productivity improvement programme offered with government financial assistance to the apparel industry.

Of the eleven factories chosen for participation in FIP-III, two dropped out just prior to the commencement of the first training module and the programme commenced with two factories (the programme commenced in April 2005). It was also unfortunate that four of these nine factories had to pull out of the programme midway. This was not due to any stated shortcomings in the programme itself as acknowledged by these factories. In the case of one, it was shut down by its foreign owners after paying due compensation to all its employees; another became engaged in a major restructuring programme directed from overseas and was prevented in these circumstances from effectively participating in the programme. In the case of the other two, financial difficulties led to their withdrawal.

Notwithstanding problems arising out of the withdrawal of factories during the programme, FIP-III was successfully implemented in March 2006, without additional costs to the remaining participant factories.

In addition to the role played by the EFC in FIP-II, its own resource persons acted as core experts to the Workplace Cooperation module in FIP-III.

In respect of FIP-III, with the exception of an ILO official whose expertise was obtained for the Workplace Cooperation module, all other modules were handled by local experts.

Impact / Results of FIP at Factory Level

The impact and results at factory level under each of the programmes have been monitored closely by the programme teams and recorded in detail. The progress made in each participating factory was tracked during and after the programme. On the basis of information recorded and feedback from the factories, each of the programmes had a positive impact from the point of view of overall factory performance in qualitative and quantitative terms. In brief, the improvements and achievements in the areas covered under the FIP and as recognized by the ILO Regional FIP Specialist are listed as follows:

Quality:

- introducing good house-keeping practice for a cleaner and better environment for workers;
- orderliness in the workplace which facilitates workers;
- an orderly work-floor which enables workers to be more productive;
- cleaner canteen and toilets with better facilities (equipment, lighting and water);
- worker/supervisor meetings for problem solving;
- worker/supervisor meetings for idea generation;
- reporting on quality, to improve worker generated solutions;
- obtaining the participation of floor-level employees to improve and enhance the quality culture throughout the factory;
- implementing a proper statistical quality control system in keeping with customer requirements;
- setting realistic objectives in terms of improving in-line and final quality;
- the proper use of measuring equipment and calibration of it to conform to international or national standards; and
- creating the awareness for quick decision-making from data that is collected and focusing on critical defect generating operations.

Productivity:

- training provided for the multi-skill of workers (job enrichment);
- training provided to workers to improve skill levels (job enhancement);
- improvements in ergonomics, resulting in a more comfortable working position (stress mats, seating, table and machine heights/distances);
- Incentive schemes – improvements to incentive schemes to compensate higher productivity;

- worker recognition scheme – the introduction of worker recognition;
- introduction of new technology and methodology, to improve worker productivity (cutting and sewing techniques, placing scissors, adding, foots and folders);
- displaying of information to workers – for example: production plans (in advance), factory’s quality and production performance;
- worker participation through daily/weekly production meetings – problem solving and idea generation;
- team concept – introducing the “team concept’ and reducing supervisor pressure and a move towards greater worker empowerment;
- target-setting for production – clearly communicated targets given to operators in a manner that is achievable and motivating them 100%;
- creating importance to ‘planning’ and making available realistic plans that are achievable and motivating to the workers;
- obtaining regular participation of floor-level employees to improve and enhance productivity throughout the factory;
- a cost-based approach was recommended to be appropriately disseminated throughout the plants (to reduce unproductive activity);
- the quantification of lost time/down time/rework time, needed to be calculated and converted to USD or SLR and communicated throughout and action initiated;
- managing the men to machine ratio to 1.8:1 and maintaining competitiveness and sustainability resulting in reduction of additional overheads;
- marker drawing and fabric usage techniques to avoid excess fabric wastages;
- ensuring compliance with labour regulations and law (wages, overtime hours, holidays, etc.);
- improving the monitoring overtime hours of employees to ensure adherence to the regulations in force; and
- adopting fair-pay practices, with computations known to the employees and the submission of a single salary slip to them within the regular payment period.

Workplace Relations and Social Dialogue:

- introducing in-house worker representation groups/employee councils, comprising workers who are:
 - a) appointed by the workers;
 - b) allocated time-off for conducting meetings; and

c) able to bring worker issues to management and obtain solutions.

- forming worker-level team(s) and a management level team;
- introducing and implementing a suggestion box scheme, where workers are given the opportunity to be heard and solutions widely communicated;
- provision of training for worker groups;
- introducing an enterprise dialogue profile/procedure to support employee councils;
- introducing a laid down grievance procedure that is communicated;
- job rotation – encouraging job rotation where workers experience a variation in their job, reducing boredom leading to greater job satisfaction and increased mobility.

Human Relations Management:

- establishing human resources procedures benefitting workers;
- recruitment policy – which ensures the elimination of any sort of form of discrimination;
- promotion policy – based on competencies and performance, thus avoiding other personal biases;
- carrying out and analyzing the demographic survey of employees taking affirmative action as appropriate;
- educating staff on discrimination and on their rights – developing an acceptable code of conduct in the factory;
- worker training – encouraging planned training to all workers;
- providing skills training for all employees (job related: such as technical, managerial, people skills – and life skills) without discrimination, regardless of their long or short-term employment outlook; and
- reviewing human resources policies and developing an HR manual for the company.

Occupational Safety and Health:

- involving workers in the health and safety committee. Workers appointing their own representatives;
- develop and implement a safety policy for the company which must be signed and dated;
- providing appropriate training for the safety committee (agenda, minutes, communications to workers, training on safety);

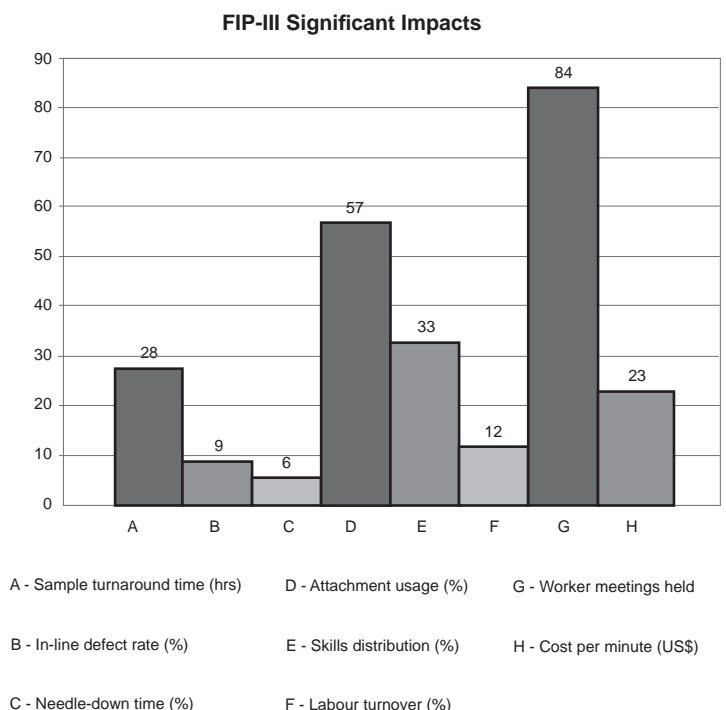
- maintain an accidents register and use the information – should not be just limited to a record book;
- displaying floor diagrams indicating fire points, exits and fire assembly points for employee/worker information;
- developing an emergency/evacuation plan and conducting fire drills, to enable quick worker evacuation;
- enforcing the installation and use of needle, belt and pulley guards and PPE (Personal Protection Equipment) for worker safety;
- pinning up of safety posters in identified locations and rotating the pictures periodically;
- carrying out safety competitions (poster) and award appropriately;
- providing badges of identification to health and safety personnel to be worn always;
- marking all exits, passages kept clear and doors to open outwards;
- displaying a list of chemicals used in the factory and having relevant MSD (Material Safety Data) sheets available and translated for worker information and safety;
- educating the worker on handling and storing of chemicals for greater safety within the work place;
- enforcing appropriate levels for lighting, and sound levels and unlocked emergency exits and advising on ventilation;
- introducing and implementing routine cleaning programmes for a cleaner and healthier work environment for workers; and
- introducing systems for periodic checking of premises from a safety aspect (checklists).

Continuous Improvement:

- assisting factories to set up a Continuous Improvement (CI) team with senior management and worker involvement to continue to build on projects/activities from previous modules;
- continuous tracking of Key Performance Indicators (KPI) and acting on results;
- documenting best practices in the factory;
- establishing procedures for planning and implementing CI projects; and
- training of steering committee and CI team members.

Overall Programme Results

A quantitative analysis was carried out to determine the overall impact the programme has had on participating factories. This analysis is based on the monthly indicators and averaged the initial and the last three months of the programme so as to negate any inconsistent or unusual fluctuations.



According to the data in terms of skills distribution an increase of 33% was indicated for ‘A Grade’ operatives. During the entire programme *In Factory Training* sessions including briefings and training, development, review and guidance sessions accounted for 137 days with a cumulative participation in excess of 1’900 persons (managerial, supervisory and workers) with the larger proportion being that of workers consisting of an overall approximation of 60% to 40% female to male ratio. Extreme increments not given in the chart above include; Accidents Logged, 117%; Worker Manager Meetings, 275%; and Grievances Received, 4’625%.

Highlighted in the box below is a remarkable achievement by one of the participating factories which they attribute to two crucial factors. First the involvement throughout the programme of the CEO, Director and Senior

Management and second, Management support for worker involvement and participation in the initiatives and projects selected by the factory.

At the presentation made in January 2006 at the EFC by FIP-III participant factories to prospective enterprises for FIP-IV, the Director of a participant factory explained some significant gains they had made during the programme in quantified terms which were as follows:

- increase in average exports from 56'000 in March 2005 to 62'000 pcs in March 2006,
- savings in electricity – USD 550 per month,
- savings in needle costs – USD 500 for the year,
- increase in cut to ship ratio amounted to a gain of USD 31'000 in 5 months,
- reduction in defects by 6%, re-deploying 15 checkers, saving USD 1'370 per month,
- improved production techniques saved a total of USD 9'300 over three months.
- re-organizing the warehouse gained a saving of approximately USD 18'000 in useable materials.

The Relationship between International Labour Standards and Companies

By Adam Greene – Vice-President Labour Affairs and Corporate Responsibility, United States Council for International Business (USCIB) and the IOE Secretariat

Globalization has connected countries and companies in an unprecedented way. Supply chains stretching across the globe connecting tiny companies to the largest multinational enterprises (MNEs) are now a permanent feature of commercial life. In this context, International Labour Standards¹ (ILS) devised by the International Labour Organization (ILO) are increasingly relevant to the operations of MNEs – particularly those operating in weak governance zones (WGZ) or in less developed countries (LDC). Stakeholders concerned about the easy flow of capital are using ILS to get MNEs to adhere to standards that may be well-above those found in the jurisdiction in which they are doing business. The upshot is that a number of MNEs are including references to ILS in their Codes of Conduct and more recently in the international framework agreements that they are signing with trade unions.

But what are the implications for companies who sign agreements that commit them to giving effect or adhering to ILS? Can the ILO be of assistance to companies in this respect?

The most authoritative and renowned source of such interpretation of ILS is a group of experts independent of the ILO referred to as the Committee of Experts. The Committee of Experts meets at least once a year to discuss the application of the ILS to ratifying Member States, from which a Report is generated. The Experts also publish an annual report referred to as the ‘General Survey’ in which they consider one group or theme of ILS.

Though the International Labour Office (the Office)² refers to the voluminous works of the Committee of Experts in providing interpretation of the different

¹ ILO standards take the form of International Labour Conventions (international treaties subject to ratification by ILO Member States), and Recommendations (non-binding instruments – typically dealing with the same subjects as Conventions) which set out guidelines that can orient national policy and action. In order to assess how Member States are fulfilling their obligations under ratified Conventions, a Committee on the Application of Standards meets at every conference.

² The International Labour Office is the permanent secretariat of the International Labour Organization and focal point for the overall activities. The Office employs some 1’900 officials at the Geneva headquarters and in 40 field offices around the world in addition to the 600 experts it hires to undertake missions in various regions under the programme of technical cooperation.

instruments, neither the Committee of Experts nor the Office would be helpful to companies trying to understand the obligations flowing from their commitment to give effect to the ILS. The Office would, rightly, hesitate to provide the kind of interpretative guidance to companies since their role is to provide such guidance to governments. ILS are aimed and targeted at governments for their ratification and transposition to national law. They are not a mechanism that was designed for application *by anybody else*.

Even, as some advocate, if companies just take on board ‘the principles’ of certain ILS, it is not at all straightforward. Who interprets the principle? *Who decides what are the universally understood principles for such complex matters such as ‘discrimination’?*

To illustrate the issue, this article will examine four areas of interest to companies. These are not exhaustive and are only part of a long list of issues addressed by ILS that are of interest to companies. The International Organisation of Employers of which the USCIB is an active member, is engaged in further analysis about how ILS can be used to provide guidance to companies in the context of their codes of conduct, as well as international framework agreements.

In addressing the four selected areas, reference is made to the most relevant ILO instruments, the opinions of the Committee of Experts, as well as the USCIB’s knowledge and experience of the dynamics of the ILO and its instruments.

Overtime

We have committed to giving effect to ILS in the application of overtime. What are the maximum hours of overtime that can be worked according to the relevant ILS?

There is a plethora of ILO instruments that directly or indirectly address working time, including overtime. The main Conventions are Convention N° 1 (Hours of Work – Industry, 1919) and Convention N° 30 (Commerce and Offices, 1930). In addition to these, there are at least fourteen other conventions and eleven recommendations that address hours of work and overtime in some way. These other instruments are generally targeted at specific industries (such as mining, transport, fishing, etc.) or at specific groups of people (such as older workers, night workers, pregnant or nursing workers, etc.). In answering the question, reference will be made to the two that have the broadest application, namely Conventions N° 1 and N° 30.

Convention N° 1 applies to persons employed in any public or private industrial undertaking or in any branch thereof, other than an undertaking in which only members of the same family are employed. It limits hours of work to eight per day and 48 per week in industrial undertakings in general, and 56 hours in cases of processes which are required by reason of their nature to be carried on continuously by a succession of shifts. The Convention calls for regulations to

be made after consultation with employers' and workers' organizations in fixing the maximum number of additional hours that may be worked. It also specifies that the rate of pay for these overtime hours shall not be less than one and one quarter times the regular rate.

While Convention N° 1 covers industrial workers, Convention N° 30 applies the same principles of the 48-hour working week and the 8-hour working day to persons employed in the commerce and office sectors. Under Convention N° 30, the maximum hours of work (48 hours) may be so arranged that hours of work in any day do not exceed 10 hours. Unlike Convention N° 1, Convention N° 30 does not prescribe any specific requirement with respect to authorization procedures for any such arrangement.

Given this, the short answer to the foregoing question is that there are no maximum overtime hours specified in the two main ILO instruments addressing working time.

Unfortunately, the answer is not as simple as that. These are very old Conventions drafted in 1919 and 1930 when the world of work was a very different place. At the time, Conventions N° 1 and N° 30 would have been seen as important instruments to protect workers from inhuman working conditions in the various branches of industry, commerce, offices, trade and maritime employment. As such, the underlying purpose of these Conventions was not to determine the maximum number of hours after which point overtime pay must be paid. Instead, the purpose was to set a basis for the absolute maximum number of hours that should be worked in a week.

The fact that these instruments were drafted in a different time and their lack of relevance to the modern world of work is evidenced by the moderate ratification rates. Convention N° 1 only has 52 ratifications (out of 179 Member States) – a low rate considering it was the ILO's first ever Convention. Convention N° 30 enjoys a mere 30 ratifications. Even the Committee of Experts, which generally takes very liberal positions in the interpretation and application of ILO instruments, has acknowledged that these two instruments are overly rigid and conflict with today's demands for more flexibility. Reiterating their view that it remains important and relevant to provide for minimum standards of working hours, in their 2005 General Survey they recommended a revision of Conventions N° 1 and N° 30. The ILO's response to this recommendation remains to be seen.

As can be seen from the foregoing, ILS may not be very helpful in trying to gauge an international standard in relation to overtime. As such, the best approach for companies is to focus on ensuring that they are complying with national laws (as well as any applicable collective agreement).

Minimum Wage

Can ILS provide guidance in establishing minimum wages?

In answering this question, it is very important to recall that ILO instruments including Conventions N° 26 (Minimum Wage-Fixing Machinery, 1928), and N° 131 (Minimum Wage Fixing, 1970) are targeted at the legislative bodies of the ILO Member States who ratify these Conventions. Instead of defining minimum wage, the instruments provide criteria (those referred to in the question) and a process that must be followed by Member States in fixing minimum wages. The role of companies in this context is to ensure that it complies with the minimum wage requirements of the jurisdiction in which it does business.

It is useful to note that Convention N° 26 is one of the most widely ratified Conventions with 103 ratifications and that Convention N° 131 enjoys at least a moderate ratification rate at 47. Unlike other policy areas where ratification rates may be lower and the pressure on business to fill the gap may be higher, these minimum wage instruments enjoy broad acceptance. Ratifying States are subject to the ILO's supervisory machinery in their minimum wage policies, which is important in ensuring that the responsibility for setting minimum wage remains where it should be: with governments.

Of course the answer to this question would be incomplete without at least a brief mention of a concept that is gaining prominence at the international level, particularly in the context of compensation paid by MNEs, namely the concept of the 'living wage'.

The ILO's two most important documents: the ILO Constitution³ and the Declaration of Philadelphia⁴ both refer to the need to provide a minimum 'living wage' but they do not define what this means or how it is different from minimum wage. The Committee of Experts addressed the issue in their 1992 General Survey. In it, the Experts claim that the establishment of a minimum wage system is often portrayed as a means of ensuring that workers (and in some cases, their families) will receive a basic minimum that will enable them to meet their needs (and those of their families). However, they also refer to the preparatory work leading up to the adoption of Convention N° 131 in which an analysis of government replies to the questionnaire sent out by the International Labour Office concerning the criteria to be used in setting minimum wage level was conducted. This analysis revealed that although it was necessary to consider the needs of workers and their families as a basic, or the basic, purpose of minimum wage fixing, it should also be recalled that minimum wage fixing

³ <http://www.ilo.org/public/english/about/iloconst.htm>

⁴ <http://ilo.law.cornell.edu/public/english/about/iloconst.htm#annex>

alone cannot suffice for the overcoming of poverty and the satisfaction of the minimum needs of all workers. Minimum wage fixing is only one part of a comprehensive policy aimed at promoting a better life for workers.

Where does this leave companies in the debate surrounding living wages?

First, it is critical for companies to comply with national legislation and this approach must be promoted above all. Second, because ‘living wage’, by its very nature, can only be defined at the national level, it may not be appropriate to address it in a code with international application. Third, if companies are challenged about the wages that they pay, it may be useful to point to the overall compensation, as well as the compensation paid in relative terms. For example, the 8th Survey concluded in March 2006⁵ on the ILO’s *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy*⁶ (the ‘MNE Declaration’) stated: “Many respondents reported that wages, benefits and conditions of work in MNEs were generally better than those of comparable national employers in the host country (paragraph 67).”

Finally, and perhaps most important, there are a number of credible and widely recognized instruments that may provide guidance and serve as useful references for business on the question of wages and standards of living. These include: the MNE Declaration, which addresses wages at paragraphs 33 and 34; the OECD Guidelines⁷ also contain guidance for companies in Part IV – Employment and Industrial Relations; and the Universal Declaration of Human Rights⁸.

Freedom of Association

ILO Conventions N° 87 and N° 98 address freedom of association and the right to collective bargaining, which is often referred to as the most important of all fundamental ILO principles. How do these ILS apply to companies in jurisdictions where the law does not provide for freedom of association and right to collective bargaining – in China for example?

One point to stress in answering this question is that the mandate of the ILO is not to require companies to adhere to its standards. Its standard setting instruments apply only to Member States which means that the strict detail contained in the above-referenced Conventions does not apply to companies. Some instruments such as the ILO Constitution or the *ILO Declaration on Fundamental Principles*

⁵ <http://www.ilo.org/public/english/standards/relm/gb/docs/gb295/pdf/mne-1-1.pdf>

⁶ <http://www.ilo.org/public/english/employment/multi/download/english.pdf>

⁷ <http://www.oecd.org/dataoecd/56/36/1922428.pdf>

⁸ <http://www.un.org/Overview/rights.html>

*and Rights at Work*⁹ (the 'ILO Declaration') apply to Member States by mere virtue of their membership to the ILO. Other instruments such as Conventions require the added step of ratification before they become binding on them. But none of them are designed to directly set standards for business.

As such, the ILO is of little assistance to companies facing the dilemma of companies operating in China. If it were to answer the question, the ILO would likely state that it is up to governments (including China) to take steps to ensure that the principles of freedom of association are respected at the national level.

The challenge is that this answer may not satisfy companies' stakeholders such as consumers and NGOs. There is a common perception that companies are benefiting from the inadequate protection of workers WGZ's or LDC's such as China. As such, a more comprehensive response might have to be formulated.

Companies asking themselves the foregoing question should focus on the actions that they can take within national legal frameworks to promote freedom of association within their sphere of influence. This might include creating mechanisms through which employees can approach management including through employee committees (grievance, safety, etc.), employee-selected representatives, regular meetings, etc.

Working within existing networks is also a very useful approach. The Global Compact, which derives its four labour principles directly from the ILO Declaration, is gaining prominence in China. A Global Compact meeting took place in Shanghai in late 2005. The USCIB has a committee that addresses the challenges faced by companies doing business in China and which also recently met in China. Companies should join the national Chinese employers' organization (the China Enterprise Confederation, which, like USCIB, is the national member federation of the IOE) and help to influence policy through them since it can be more effective to affect change from within an existing network rather than from outside.

Above all, however, it is important to remember that trade unions exist in China. It is a widely known fact that these are not independent within meaning of the ILO principles and standards. However, they are present. Some large MNEs are working with the national trade union movement in the unionization of their workforce in China. This may not be perfect but it is a start and it provides a vehicle, however imperfect, for employees to represent their interests within companies.

Regardless of the means of action, companies cannot replace the role of governments – even in cases such as China, and it must comply with local laws even if these are not yet at the level one might hope. However, voluntary

⁹ <http://www.ilo.org/dyn/declaris/declarationweb.indexpage>

company-driven initiatives can help to promote the ILO's fundamental principles. Companies operating in WGZs and LDCs cannot take over the role of governments but they should also not be seen to be profiting from any gaps in the passing and enforcement of adequate laws. In such cases, the best response is to publicize the value and benefit that a company brings to the host country, as well as the efforts it is making to contribute its positive development.

Effectiveness

What can companies do when operating in jurisdictions such as China where there is low ratification and companies are under pressure to give effect to ILS, particularly the ILO's core Conventions?

As stated above, there is a growing movement among stakeholders such as NGOs, consumers, investors, etc. that expects companies to directly 'apply' ILO or other international instruments in the course of their operations. Again, this expectation is based on the suspicion that companies are profiting from the reduced employment protection offered to employees in WGZ or LDC.

This point of view reflects a lack of understanding of international instruments and in particular ILO instruments, which are drafted for governments. As in the case of the instruments addressing minimum wage addressed above, ILO instruments often focus on requiring Member States to implement mechanism for establishing standards, as well as procedures of enforcement of these standards, that are simply not possible for companies to take on. The other ILO instruments that do specify the standard that must be applied are intended for governments to implement in their legislation.

As stated above, companies cannot and should not take on the role of governments, even in WGZ or LDC such as China. But it is also a reality that this answer alone will not satisfy the stakeholders of company members. For this reason, the following approach is suggested.

The ILO Declaration on Fundamental Principles and Rights at Work (the 'ILO Declaration') is an ILO instrument that, like all the others, is targeted at governments. All Member States of the ILO are required to respect, promote and to realize its four principles.¹⁰ These principles were derived from the ILO's eight core Conventions¹¹

¹⁰ a) Freedom of association and the effective recognition of the right to organise; b) the elimination of all forms of forced or compulsory labour; c) the effective abolition of child labour; and d) the elimination of discrimination in respect of employment and occupation.

¹¹ Convention N° 87 (Freedom of Association and Protection of the Right to Organise, 1948); Convention N° 98 (Right to Organize and Collective Bargain 1949); Convention N° 29 (Forced Labour, 1930); Convention N° 105 (Abolition of Forced Labour, 1957); Convention N° 138 (Minimum Age, 1973); Convention N° 182 (Worst Forms of Child Labour, 1999); Convention N° 100 (Equal Remuneration, 1951); and Convention N° 111 (Discrimination Employment and Occupation, 1958).

and apply to Member States by mere virtue of their membership to the ILO. Unlike in the case of conventions, there is no need for ratification. Even if it is targeted at governments, by virtue of it being rooted in principles rather than prescriptive requirements, the ILO Declaration is an instrument that is accessible to all constituents of the ILO including employers and workers. This means that employers can take steps to promote these principles within their sphere of influence. The ILO Declaration does not specify how this is to be achieved and it is up to companies to determine their level of engagement depending on their means and objectives.

In determining how to give effect to the principles, companies may wish to go one step further and to seek guidance from the texts of the eight core Conventions. Companies may find it useful to draw from them in designing their policies and practices. For example, many companies have policies that reflect the minimum age requirements contained in Convention N° 138 even in jurisdictions that have not ratified this convention, or in jurisdictions that have done so but have not yet had the will or means to translate its terms into national legislation. As previously stated, not all provisions of these conventions will have any relevance to companies.

It is worth highlighting that the ILO Declaration, which was in fact born out of an initiative from the employers' group, can serve as a reference for any company and does not require an explicit commitment as the Global Compact requires. As such, even if the Global Compact principles were taken from the ILO Declaration, the foregoing applies even to companies who are not participants of the Global Compact.

In addition, the international instruments referenced earlier may also be useful in providing guidance to companies.

The Debate continues...

The answers provided above may seem less than satisfactory. Many companies have expressed a desire for some universal set of standards to be developed that they could simply comply with and move on. They argue that it would take the guesswork and headache out of trying to please their stakeholders if they could just comply with a clear set of universally agreed standards from a credible source such as the ILO. Unfortunately, no such standards exist. The fact that different companies face different challenges in the various jurisdictions they operate makes it difficult to imagine that any one set of standards could meet all of their needs.

At the end of the day, ILS are a mechanism for governments. All companies can realistically do is to support governments in the application of national legislation in the jurisdiction in which they operate. There are unfortunately 'no quick fixes'. For its part, the USCIB continues to work with the IOE to promote an approach whereby appropriate standards are left to be set at the national level.

The Role of Business within Society¹

The debate concerning the role of business within society today continues. Businesses face an ever-increasing range of initiatives by civil society organizations, trade unions and governments that look to the private sector to deliver not only profit, resources and employment, but also social improvement and sometimes even the “non-commercial” delivery of public goods. These debates are occurring nationally and internationally. The key questions then become: What is the role of business in society? What expectations should there be of business with respect to social objectives and conduct? How does CSR fit in? Are there limits? What are the roles of other players?

This paper reflects the IOE’s view – as outlined in the IOE’s paper “CSR: An Employers’ Approach” – that CSR is “Initiatives by companies voluntarily integrating social and environmental concerns into their business operations and in their interaction with their stakeholders”. It is an attempt to openly reflect the views of the international employer community and which, by the IOE’s very representative nature, covers the views of a wide range of national economic actors – from very small businesses through to the very big – on how employers’ organizations see the role of business in society.

Overview

Business has always recognized that it has an important role, alongside other actors, in the economic and social development of its communities. It is an integrated part of any society and is committed to operating in a responsible and sustainable manner. Corporate Social Responsibility (CSR) is the name now most commonly applied to the multitude of innovative and positive initiatives by business in both the marketplace and the wider community.

Today, the developing CSR debate has raised the issue of where the line is between the responsibilities of Government and the role business can play through voluntary social action. Increasingly social actors are looking to companies to fill what they perceive as “gaps” in, or failures of, State action – particularly in the enforcement of legal frameworks.

This is leading to a conflict in expectations between what Governments should do and what companies can contribute. This conflict has wide implications for all players. Firstly, it distorts CSR and undermines the status of law. Secondly, it

¹ Position Paper as adopted by the IOE General Council in May 2005

can lead to unrealistic and unrealisable expectations from within society. Finally, it can open companies to criticism for not delivering to these expectations, as well as diverting companies from their vital role in providing the primary means for wealth creation within a society through profitable activity.

Today, the issue of how those profits are made is, however, becoming more important and CSR has emerged from the need to address the issue of business conduct with regard to its operations and interactions with others.

At the heart of the relationship with society is the obligation on companies to comply with the law. CSR, on the other hand, is a business decision to move beyond compliance and is done for business reasons alone and is contingent upon the economic health of the business and its needs. It is, therefore, voluntary and varied by nature.

The current CSR debate frequently ignores these realities.

The reasons for a business to move beyond compliance and undertake a CSR initiative are many and varied but, where businesses do, they do so because it makes economic sense. Given the dynamics of business today, CSR cannot be seen as a rigid engagement and therefore needs to be seen in a different context than the engagement in environmental, social or economic issues by governments.

Most countries have legislation that reflects internationally-recognized values and principles, which provide an adequate framework of reference for what a company's responsibilities are. The problem often lies in poor enforcement of the law. It is the responsibility of governments to ensure the rule of law and the enforcement of those laws across its society.

While the line between government and business activity is not always a definitive one, it is important to realize that governments have a clear role in society through the provision of certain services – such as health and education, wealth redistribution, and as a guarantor of security, amongst others. At times when governments fail or are unable to fulfil their role, companies may consider it makes good business sense to play a part in filling the gap through voluntary CSR initiatives. However, there are limits to what any business can achieve through CSR. Enterprises are not an alternative to government and CSR is not an alternative to appropriate legislation.

Governments, should look to promote and support the adoption of responsible attitudes and good practice by companies.

Similarly, other players also need to realize that there are limits to company CSR activity and therefore should frame their expectations grounded in reality.

In this paper the IOE provides a business response to where those lines of responsibility are amongst the various actors in the CSR debate and seeks to

clarify the role business can play in today's society through voluntary CSR initiatives.

Business within Society

Businesses are the community at work, be they small, medium or large, and national or international in their scope. They reflect the views, social realities and rules of the wider communities in which they operate. Those members of society that come together to form a business do so for a specific purpose: to create goods and services to sell to their community - and maybe beyond – and, by doing so, to make a profit within the obligations set for them by society. This profit is crucial to a business: it is used as a return to investors, to invest in new technologies and new products, to meet the wage and career expectations of its employees, and to pay taxes and make other contributions to government as specified by legislation and regulation. In other words, without profit there is no business, and without business there is no wealth creation in society.

In recent years, the way profits are made and the way business is conducted have come under increased scrutiny. The lexicon of Corporate Social Responsibility (CSR) has arisen from the need to address the issue of business conduct with regard to its operations and its interaction with others. The overwhelming majority of businesses are responsible whether or not they are able to allocate specific resources to identified CSR initiatives. Responsible behaviour is not related to business size, nor does it require specific investments.

At the heart of enterprises' relationship with society are their obligations under law, including those in the area of governance. CSR, however, stems from a business decision to move beyond compliance and is done for business reasons alone.

A business's ability to invest in CSR initiatives is contingent upon the economic health of the business and its needs. This is true regardless of the size of the business. For an enterprise to engage in CSR without the economic means required or as a clear route to enhancing the business would be to divert resources away from other investments necessary for the well-being of the business. That is not good business sense, and that is why it is essential for each individual company to decide whether there is a business case for CSR engagements and whether or not it undertakes such activity.

The current debate often ignores these fundamentals and the realities of how a business actively works within society. Too often the language and rationale of CSR are being misused as non-business players seek to address failures in the enforcement of legal and regulatory frameworks. That not only distorts what CSR is but, more importantly, also undermines the status of the law.

CSR is a means by which businesses are managed. By understanding its stakeholders, a business is better able to manage its own development and

impact. The “drivers” of this CSR engagement are therefore many and varied. Externally they are as diverse as the CSR initiatives themselves, and originate from the activities and pressures exerted by investors, consumers, public authorities, NGOs, trade unions and others. Internally these drivers can be grouped generically around six main realities: reputation, brand, profitability, efficiency, recruitment, competitiveness and risk management. It is these which determine engagement in CSR.

Expectations and Obligations

Expectations and obligations are different things. All social actors, be they citizens or companies, must respect the obligations placed on them by laws and regulations. However, there are also expectations placed on each actor to behave generally in a manner based on societal values and mores.

There are other levels of behaviour with respect to which there can be neither obligations nor expectations, philanthropy being a case in point. Whether or not anyone engages in philan-thropic activities is an individual decision. However, not doing so is not the same as failing to comply with law. No one is punished for failing to make a charitable donation for example.

While expectations do not carry an obligation of law, they do require managing. A business, like any social actor, is in the same position. It must comply with the law, but taking steps to respond to any “expectation” beyond that is for it to determine by weighing the business risks of failing to meet that expectation. The drivers outlined above then come into play. Those drivers help internalize the impact of, in this example, an external expectation, and enable business engagement to satisfy the “business case” for a CSR initiative.

The Obligations and Expectations of Businesses

	OBLIGATION	EXPECTATION
Compliance with Law	Yes	Yes
CSR	No	This is where the debate is.
Philanthropy	No	No

The Diversity of CSR

As has been stated, whether or not a business decides to undertake CSR initiatives is a decision of management, taking into account the situation of the business, the satisfaction of the business case and its interaction with

stakeholders. However, publicly-listed businesses are often primary targets for CSR engagement by other actors.

Publicly-listed businesses are grounded in a legal framework which must be respected. For businesses with shareholders, the managers owe a duty to ensure that their decisions enhance shareholder value and protect that value from risk. Hence for such businesses all decisions, including the engagement in CSR, need to be taken with that duty at the forefront. Managers of these businesses are accountable to the shareholders who own the business and they do not have the right to expend large monies if such expenditure is not approved or would not enhance shareholder value. Managers, therefore, may often have to obtain shareholder approval or identify how CSR expenditure can enhance shareholder value, mostly connected with the internal drivers of reputation, ethics, risk management and profitability and the others already mentioned. Of course, managers have to balance the cost of a CSR project with that of the results which may or may not have positive effects on the business and shareholder value in the long run.

Private businesses without public shareholders may also need to make decisions about whether to enhance the value of the business through CSR activity, but the governance and accountability rules that cover them may allow them more freedom to forego profit, if the owner so decides, as they directly assume the risk of such a decision. This enables them to act in ways not always open to shareholder businesses.

This distinction is important when one looks at publicly-listed businesses and what it is they can do, as in numerous instances the expectations many actors have of them are actually unrealistic given the legal requirements and competitive pressures associated with maintaining or increasing shareholder value.

So, publicly-listed businesses cannot be seen as a homogeneous group. No two are the same. How or whether a business can consider CSR as an investment in addition to normal operating costs are decisions which are as individual as each business and will always be a reflection of the particular circumstances and context in which that business operates.

Interacting with the Community

Businesses interact within their community in different ways and for different reasons and their interaction with it is an important part of social integration and conduct. In the past that interaction was largely limited to their local environment, consisting of the people from whom the business drew its employees and where it mostly sold its goods and services. There was a local relationship and philanthropy played a large part in how the business interacted

with its community. Others however went further and saw a role in improving working conditions and in the development of wider social infrastructure, such as housing, education and health care.

Businesses have, therefore, always played a key role in the economic and social development of the communities in which they operate. As outlined above, they generate employment opportunities and profits and thereby contribute substantially to improving the quality of life for their stakeholders. The issues they face in their operations are predominately local ones, requiring local solutions with local actors. That social interaction is not seen by them as corporate social responsibility; rather, it is just part of business acting within the society.

For the vast majority of businesses today that local nature of their engagement remains fundamental – this is true even of the operations of multinationals. These businesses employ locally, trade locally and are a part of the local community. This reality is important when considering the economic and social impact of multinational enterprises (MNEs).

The Evolving Environment

As businesses have changed over the last 30 years the view of them has also evolved and they, in turn, have adapted the way that they react with the communities in which they operate. These developments have largely coincided with the increase in the number of MNEs operating throughout the world. These MNEs are diverse. Some are very large, whilst others are in fact small enterprises that seek business opportunities abroad. All of them contribute to the spread of technology, good business practices and the generation of wealth across the globe.

The debate relating to the role of business in society is a debate that focuses on the businesses commonly associated with well-known brands.

Such a focus ignores the vast majority of businesses, the realities of those businesses and, perhaps more importantly, their capacity. Calls are made to “business” in its broadest sense although the calls themselves are predicated on what many believe large MNEs can or should do for society. This introduces a distortion into the debate and impacts negatively on smaller businesses which seek to access the global market through links with MNEs.

The response by many campaigners, when this issue is raised, is to argue that “tools” are needed for SMEs to enable them to become CSR actors. This firstly fails to recognize that capacity often lies at the heart of an enterprise’s ability to undertake CSR activity and secondly it ignores the fact that, for many, simply responding to certain CSR expectations does not make good business sense.

The IOE believes that meeting the obligation of legal compliance should in itself be enough. Anything else must by necessity be optional and the decision not to respond to such expectations is not, nor should it be seen as, a failure by that business. However, the IOE recognizes that a business failing to comply with applicable legal regulation is not acting responsibly, and that a key issue is to ensure that where companies are failing in their duties under the law they are held to account.

Governments are at different levels of economic and social development. Local customs and religion also shape how many governments respond to local issues. These realities are important when considering the regulatory framework they adopt. The fact that local regulations do not appear to match similar regulations in developed countries is no reason why they should not be respected. Most countries' legislation does reflect internationally-recognized values and principles, which provide an adequate framework of reference for what a company's responsibilities are. The main problem in many developing countries is poor enforcement of the law, though this is rarely an issue for the formal sector businesses in those countries. Many multinational enterprises and international buyers, through their operations, assist developing country suppliers to meet their legal obligations.

The reasons for a business to move beyond compliance and undertake a CSR initiative are many and varied. When a business is challenged about its environmental, social (labour and human rights) or economic impact, it acts initially to protect "value" (which can be defined as increasing the prospects of being a successful company, and includes profitability, reputation, brand image, etc.). Where businesses proactively engage in CSR, they do so because it makes economic sense for them and through such an activity they can enhance "value" and, most often, also enhance their position in the market. CSR needs, therefore, to "add" to the business in terms of either enhancing or protecting that value and position. Businesses, like society itself, are not static. Competition and market forces all require a business to adapt to changing circumstances. Such adaptation can lead to product or service improvements, new products or services created or old ones dispensed with. Premises may open or close, grow or decline, remain in- country or go off- shore. This business dynamic also applies to CSR initiatives since it is both a management tool and a delivery mechanism for the achievement of business goals, helping to effect change and innovation within the business. Therefore, what makes sense for a business to do now may change over time. What capacities a business can contribute towards CSR may decline over time. CSR cannot then be seen as a rigid engagement, but rather such engagement needs to be seen in a different context than the engagement in environmental, social or economic issues by governments.

Supply Chain Issues

In today's debate on CSR there are many who believe that the main focus should be on getting companies to enforce standards across their supply chain. In some cases, this can inhibit the access of developing countries to global markets or hit the more prosperous segments of developing country economies. Another risk is placing on business the responsibility of the state for enforcement of law, a role it is not equipped for. While many enterprises are active in working with suppliers to ensure that their products or services are produced in a manner consistent with local law and their own values, that engagement is not the same as making them "responsible" for the enforcement of national legal systems.

Only governments have the primary responsibility to effect national social improvement. The focus on what are seen as MNE responsibilities within supply chains deflects the debate from the real issue of the adequacy of government action to effect sustainable social improvements, or enforce legislation across all enterprises at national level, the majority of which may not be associated with a supply chain and may not even be a part of the formal economy.

The Roles of Enterprises

Because each company is different, it is not possible to give a definitive view of how business engages in CSR, but the following considerations need to be taken in to account:

- The primary role and focus of an enterprise in society are to succeed in its markets and deliver the product, wealth, employment and incomes that people depend upon. Expectations on enterprises should never place that role at risk or detract from that focus;
- The vast majority of enterprises not only adhere to the law and regulations, they are also frequently making additional contributions to social well-being as they attempt to enhance their brand, reputation, employer base, and so on. There are often unreasonable expectations heaped on enterprises to do even more.
- While the line between government and business activity is not always a definitive one, it is important to realise that governments have a clear role in society, through the provision of certain services, such as health and education; redistribution of wealth; as guarantor of security, and others. At times, however, where governments fail or are unable to fulfil their role, enterprises may consider it makes good business sense to play a part in filling the gap through voluntary CSR initiatives. But there are limits to what any business can achieve through CSR.
- However, enterprises should not seek or be expected to replace the state or local authorities and other actors need to also ensure that

their expectations of enterprises do not undermine the role of the state. It is through such understandings, on a case-by-case basis, that CSR initiatives can work and the role of the state, as the long-term provider of public goods and sustainable development policies that accommodate the needs of all, can be enhanced.

- Enterprises are not an alternative to government. CSR is not an alternative to appropriate public legislation and public engagement and enterprises need to be careful to ensure that, in acting, they are not circumventing national policy debates or priorities. This is widely recognized and well-established in, for instance, the OECD MNE Guidelines.
- Where enterprises are engaging in large infrastructure projects, education or health development or in other areas of traditional public goods, CSR activities should look to ensure their efforts are complementary to national policy and development. They should also look to partner with government rather than be in competition with it and should seek to retain government involvement in the issues in the longer term – e.g. whilst building a road it should vest the result in the government as a means of ensuring its longer-term interest in its maintenance.
- Enterprises need to consider whether or not by acting in a particular way in a particular context they will encourage government disengagement – e.g. health issues. Governments are usually able to bring greater sustainability to public health and welfare issues than companies. Enterprises come and go and change over time and, unless the issue of sustainability is addressed by government, the CSR initiative may lack any long-term impact and the improvement sought may diminish – if not cease – if the enterprise either departs or disengages.
- Enterprises need to continually monitor the impact of their operations to ensure legal compliance or, in those areas where legal regulation is lacking, act to ensure that they are not negatively impacting on the society through their activities. For many larger MNEs this will often be by adopting at national level responses inspired by their own good practice in their home countries or from elsewhere. For some, voluntary reporting on CSR will also be seen as a useful means of making their impact transparent. However, like CSR initiatives themselves, how or even if a business reports or informs on its CSR initiatives should remain a decision for the business itself to determine.
- Enterprises need to identify who their real stakeholders are. In many instances demands are made of companies by groups who are not stakeholders and represent no one relevant for that business. Managing stakeholders requires engagements to be concentrated on those that affect those with whom the business has a relationship and whose expectations

are relevant to the business's operations. Too often, CSR initiatives fail or are diluted by extraneous engagements with non relevant actors.

- Enterprises need to be clear as to the nature of their CSR engagement. They need to manage the expectations of recipients of their programmes, being clear about the limits, and thereby avoiding misunderstandings and possible downstream negative effects. Understanding the “shorter” term engagement reality of many CSR initiatives can help clarify the true nature of that initiative and avoid disengagement problems later on.

The Role of Governments

- Governments' role is to provide and enforce rules for all actors in society. Enterprises are required to comply with those laws and regulations – as are other social actors – and should support efforts by governments to promote and enforce those laws. However, businesses do not have the mandate to enforce laws on others.
- Governments need to work to create the right environment for dialogue with employers and workers. Such dialogue can act as a means by which the role of the state and the legal obligations of all other actors can be defined having regard to the need to create a positive environment for growth, job creation and productivity.
- Governments do have a role in promoting and supporting the adoption of responsible attitudes and good practice by enterprises as a means to improve the impact of government action in many areas. However, this should not lead to an obligation, or even an expectation, for the private sector to assume the role as a long-term alternative to government with respect to the delivery of social outcomes.

The Role of Other Players

- Other players have a role to ensure that, where enterprises wish to pursue CSR activities, they engage in constructive partnerships in order to maximize the benefits to society of enterprise interventions through CSR.
- Other players need to realise that there are limits to enterprise CSR activity and frame their expectations accordingly.

The IOE

This paper describes the framework within which the IOE will continue to work with its members and enterprises on addressing their CSR issues in practical ways:

- The IOE provides an access point for member federations and enterprises looking for workable solutions to the labour and social issues of CSR.
- Because of its recognized position and experience in the international community, the IOE has particular understanding and knowledge of the various international labour instruments that are the most common points of reference for companies in the CSR debate.
- It provides advice and assistance to members and their enterprises on both CSR and compliance issues and, through its unique international network, can draw on national experience to identify appropriate responses and assistance for businesses, particularly MNEs.
- It supports its members in national CSR debates and provides advice and assistance in framing their CSR initiatives.
- The IOE supports the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (“MNE Declaration”) as the ILO point of reference for business in the CSR debate.
- The IOE supports the ILO’s role in strengthening the capacity of governments to implement and enforce their national laws.
- Through its CSR Working Group the IOE is able to advise members on CSR matters from an international perspective and keep members informed on international developments.
- The IOE will be guided by its paper entitled “CSR: An Employers’ Approach” and will continue to promote the voluntary nature of CSR and will oppose initiatives which, through conditionality or other mechanisms, seek to oblige companies to engage in CSR.



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