



International Society for Labour
and Social Security Law
Société internationale de droit du travail
et de la sécurité sociale
Sociedad Internacional de Derecho del
Trabajo y de la Seguridad Social

Dr.
[type address]

Geneva, 10 August 2006

XVIII WORLD CONGRESS OF LABOUR AND SOCIAL SECURITY LAW

Paris, 5-8 September 2006

Questionnaire on point I

Dear Colleague

Please, find attached a questionnaire concerning Theme I on the Agenda of this Congress: Trade Liberalization and the Labour Law .

I will be very grateful if you can ask a member of your national association to prepare a reply to this questionnaire, which should be sent back to me no later than 30 September 2005. Please, kindly also tell me the name, address and e-mail of the colleague who will be responsible for the reply, so that I can contact he or she in case we need.

Your colleague may wish to prepare a comprehensive national report on the basis of the attached questionnaire. While a national report would indeed be welcome this is; however, not indispensable.

The general reporter on this point is Professor Lance Compa (US). Below are his contacts:

President / Président
Clyde SUMMERS
3400 Chestnut Street
Philadelphia, PA 19104
(USA/Estats-Unis)
E-mail: csummers@law.upenn.edu

Secretary-General / Secrétaire général
Arturo BRONSTEIN
ILO - BIT
Case postale 500
CH-1211 GENEVE 22
(Switzerland/Suisse)
E-mail: bronstein@ilo.org

Treasurer / Trésorière
Irene Petronella ASSCHER-VONK
Catholic University Nijmegen
Faculty of Law
Th. Van Aquinostraat 6
NL-6526 GHD NIJMEGEN
(Netherlands/Pays Bas)
E-mail: I.Asscher@jur.kun.nl

Lance Compa
Senior Lecturer
Cornell ILR School
Ithaca, NY 14853
tel 607-255-7314
lac24@cornell.edu

If you have any question, please do feel free to contact me.

Kind regards

Arturo Bronstein
Secretary General

President / Président
Clyde SUMMERS
3400 Chestnut Street
Philadelphia, PA 19104
(USA/Estats-Unis)
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E-mail: I.Asscher@jur.kun.nl



ASSOCIATION FRANÇAISE DE DROIT DU TRAVAIL ET DE LA SECURITE SOCIALE

INTERNATIONAL SOCIETY FOR LABOUR AND SOCIAL SECURITY LAW

XVIII WORLD CONGRESS OF LABOUR AND SOCIAL SECURITY LAW

Paris, 5-8 September 2006

QUESTIONNAIRE

Theme 1: Trade liberalization and the labour law

Rapporteur: Lance Compa (United States)
Discussants: Luis Lizama Portal (Chile)
Alain Supiot (France)
C. Kollonay Lehoczky (Hungary)
A discussant from Asia

Introduction

The subject covers at least four topics.

1. The construction of the labour law and its evolution under the effects of liberalization of international trade.

The globalization process has brought about a debate on the effects of social protection in general and the labour law in particular on international competitiveness. In light of this debate many countries have considered revising their labour law *to the bottom* with a view to better holding vis-a-vis international competition, or to better attract foreign investment or both. Several countries have actually undertaken market-minded labour law reforms whereas other countries have not. It is suggested:

- To seek if the rhetorics of the market plays a role in the debates and the evolutions of the labour law (and since when).
 - Are differences observable between the law, the collective bargaining, the practice and jurisprudence?
 - To discuss whether certain concepts translate more than others the influence of this rhetoric law/market.
 - To specify which principal orientations takes the labour law under this debate.
2. The relations and links between the labour law and the law which organizes and protects trade and market exchanges (rules on competition, freedom of trade, etc....)

The discussion on this issue may focus on the following:

- Some historical indications
- Forms that may take these links.
- Effects of these links.

3. The impact of economic integration processes on the labour law

During the last decades a number of free trade areas have been established almost everywhere in the world. So far only the European Union has been successful in setting up a political, social and economic project which goes well beyond a mere Common Market. However, other free trade agreements have also had important impact in international economic exchanges, and several of them have tried to integrate a set of social themes in the economic integration agenda. It is suggested to examine:

- How the labour and social agenda is dealt with in these agreements?
- Are there efforts of harmonizing or coordinating the labour laws within the framework of these agreements?
- What links exist, if any, between the liberalization of trade and the respect of certain rules or principles (for example, if the concession of trade advantages to third countries are made dependent upon the respect of certain workers' rights by the latter)?
- Can one speak about *regionalization* of the labour law?

4. The emergence of new stakeholders.

Globalization tends to being accompanied by a process of weakening of the capacity of the states to implement their social policy. But at the same time new actors appear, who advocate the respect of the workers' rights by means distinct from statutory regulation. Three sources of non-official regulation (*soft law*) have been developed these last years, namely (a) private voluntary initiatives such as codes of conduct that mainly American based multinational enterprises (MNEs) seek to impose on their subcontractors, (b) world agreements between mainly European based MNEs and international trade unions, and (c) *social accountability standards* worked out by NGOs, which can also offer independent monitoring leading to some kind of *social labelling* whereby it is certified that a MNE is a *socially responsible* organization. It is suggested to discuss the extent of these practices, the actors they involve, the assets which they offer as much as their limitations and how they are implemented.

QUESTIONS

I. Ideological debates and the labour law

1. Does it exist in your country a debate on the reformulation of the labour law in the light of:
 - (a) The globalization process;

- (b) Technological change;
 - (c) Changes in the organization of work?
2. If your answer to (1) is affirmative, could you give details on the range of this debate and the interlocutors that take part thereon (for example, if it is of an academic type or if it involves also the government, the social actors, the legislature, the financial operators, others)?
3. Is this debate at the origin of proposals of legislative reforms, or of recent reforms as regards the labour law? If it is, could you give details of these reforms, for example, those relating to:
- (a) The contract of employment;
 - (b) Termination of employment (see also question 5, below);
 - (c) Collective bargaining;
 - (d) Wage-fixing methods;
 - (e) Duration of work and organization of the working time;
 - (f) Modification of the terms and conditions of work and employment;
 - (g) Labour mobility;
 - (h) Other topics?
4. Did this debate have a bearing on:
- (a) Court decisions;
 - (b) Collective bargaining processes and issues?

II.- Business law and labour law

5. Have it been any modifications in the labour legislation (or the collective agreements) in connection with business law, for example with regard to the following issues:
- (a) The legal position of employees in the event of the transfer of an undertaking or parts thereof;
 - (b) The inventions of employees;
 - (c) Workers' rights in the event of the insolvency of the employer;
 - (d) Collective redundancy procedures;
 - (e) Freedom of establishment of the workers after the end of their contract of employment (non-competition clauses);
 - (f) Others?

III.- International trade and labour law

6. Is your country a party to an economic integration agreement? If it is, please indicate which.
7. If your answer to (6) is affirmative:
- (a) Please indicate if the legal system set up by the agreement addresses labour issues. If so, please provide a brief description thereof.
 - (b) Do the agreement's rules on labour issues have supranational legal effects? If they do, how are they applied? Can one draw an assessment from their implementation?
 - (c) If the agreement's rules on labour issues do not have supranational effects, please give details on their implementation machinery if such a machinery exists.

8. In developing a social dimension to trade agreements in which your country participates, was civil society (trade unions, NGOs) consulted during the stage of formulating national policy? If so, what form did the consultation take? Is there a permanent consultative role for civil society organizations in the agreement, and if so, how is the role defined and what has been the experience?
9. Were there efforts in your country in order to bring the national labour law closer to that of its principal trade partners? If so, what methodology has been followed for the law to be harmonized?
10. Does your country's law on international trade include provisions which condition the granting of commercial advantages to third states to the respect by the latter of certain basic rights of the workers? If it does, how are these provisions applied? Has your country already applied commercial sanctions pursuant to these provisions?
11. Is your country's labour law affected or is likely to be affected by provisions on the international trade of other countries with which it maintains important trade relations (for example, if your country's trade partner conditions the granting of trade advantages to third states to the respect by the latter of the internationally recognized workers' rights)?
12. If your answer to (11) is affirmative, could you indicate if your country has ever been compelled to revise its law or industrial relations practices so as to avoid losing trade advantages granted by other countries.

IV.- Soft law and the emergence of new actors

13. If your country is the seat of multinational enterprises (MNEs):
 - (a) Have MNEs operating from your country adopted codes of practices relating to workers' rights, which the MNEs subcontractors/providers must abide by? If they have:
 - i. Please provide information on the contents of these codes and their implementation machinery.
 - ii. Please indicate if it has happened that subcontractors/providers not abiding by a code have been excluded as suppliers from a MNE or have been summoned to respect the code.
 - iii. Can one draw an assessment on the implementation of these codes?
 - (b) Have MNEs operating from your country signed a world agreement with a trade-union interlocutor, aiming at the respect of the workers' rights? If they have:
 - i. Please give information on the contents of these agreements and their implementation machinery.
 - ii. Please indicate if it has happened that subcontractors who have been held in breach of the agreement have been excluded as suppliers from a MNE or have been summoned to respect the agreement.
 - iii. Can one draw an assessment on the implementation of these agreements?
 - (c) Have MNEs operating from your country adhered to a *social accountability* standard worked out by a NGO? If they have, please give information on these standards and the way in which their application is monitored.

14. If in your country operate subcontractors of MNEs or other export-oriented enterprises:

- i. Were some of these companies obliged or encouraged to adhere to a code of conduct? If so, please indicate the type of code to which they have adhered.
- ii. Did some of these companies adhere voluntarily to a social accountability standard?
- iii. Are there people certified by NGOs so as they can monitor the respect of a social accountability standard? If they are, are audits frequent? How are they carried out?

15. Is there any evidence in your country that the existence and application of one or more of the following public "soft law" instruments has had any effect on labor law or collective bargaining:

- (a) The OECD Guidelines for Multinational Enterprises
- (b) The ILO Tripartite Declaration of Principles on Multinational Enterprises and Social Policy;
- (c) The ILO Declaration on Fundamental Principles and Rights at Work;
- (d) The United Nations' Global Compact