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NATIONAL REPORT SWEDEN

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INTRODUCTION

Domestic labour standards and labour costs have an impact on the international competitiveness. Domestic manufacturers can lose market chares as a result of high labour costs. Multinational companies are willing to invest in countries with low labour costs. A consequence of this could be unemployment in countries with high labour costs, and also a downward pressure on labour standards; social dumping or a race to the bottom. There is also an ethical and moral question about solidarity with workers in low-paid countries.[1]

For a country like Sweden, small and trade-oriented, with high labour costs, comparatively a large number of multinationals and a society built upon a notion of solidarity all the above mentioned arguments could be of interest. The Swedish Minister for Industry and Trade in a speech 2005 said: "I am confident that this increased exchange across boarders done on the right terms brings economic growth and development for all countries. But not at any price… ..Business have responsibilities for humans rights and the environment. This is particularly the case in countries where fundamental norms and principles are not fully accepted…..In Sweden we can see a shift from "Yes – this is important!" to "but how do we do it?" and many companies are now exploring how to put principles and guidelines into practice."[2]

The Swedish labour market is highly organised. Most employees, over 80 per cent, belong to a trade union. Historically, the Swedish state has always avoided involving itself in dealings

[1] See Malmberg, Jonas/Johansson, David, Social Clauses and other Means to Promote Fail Labour Standards in International Fora. National Institute for Working Life, 1998.
[2] The WTO Minister Meeting in Hong Kong, December 2005, www.ud.se/ga

between the social partners, whenever possible. The state has sought to remain neutral and has tried not to introduce unnecessary severe measures. The traditional Swedish model of regulating employment relationships is through collective agreements, not legislation. Nevertheless, legislation in the labour law area has grown rapidly during the last 35 years. In the 1970s several new laws were enacted in order to increase the rights of employees and trade unions. The present regulatory system has however, its fundamental roots in collective agreements between the Trade Union Confederation (LO) and the Employers´ Federation (SAF)[3].[4] Sweden became a member of the European Union (EU) in 1995, and since then legislative measures to implement European labour law has extended the area of labour legislation in Sweden even more.

The Social Democratic Party has for a long time dominated Swedish political life. Except for a few short periods the Party has led Swedish Governments since 1932. There is close cooperation between the Social Democratic Party and the LO. This has shaped modern-day Swedish society with a high level of social welfare and a high level of taxes and social insurance costs. Apart from wages employers have to pay insurance contributions for their employees according to a.o. the Social Insurance Contribution Act. These supplementary wage-costs amount to more than 30 per cent of an employee's pay. The state social insurance system is to a large extent supplemented by various provisions under collective agreements. This results in further about 10 per cent wage costs in accordance with collective agreements on insurance. In addition to this, there are other payments for the employer in forms of sick pay, holiday pay etc. Consequently total labour costs are high in Sweden.

The European economic integration goes hand in hand with the challenges from the increasing globalised economy, especially competition from China and India. These developments raise high demands on Swedish business and employees. The comparatively high labour costs need to be balanced by other factors, and Sweden tries to compete with quality, speed, reliability, flexibility etc. The social partners, business, legislation and labour market policies are important parts of these developments. A high level of education, competence and flexibility are considered to be advantages for Swedish employees.

I. IDEOLOGICAL DEBATES AND THE LABOUR LAW

1-2. As early as by the turn of the previous century, many of Sweden's major companies had begun to look abroad for new markets. This process has continued and Swedish business is now some of the most globalised in the world. Some 4,000 of the 60,000 or so multinationals in the world are of Swedish origin. Swedish companies buy and sell products and services and have set up manufacturing and subsidiaries in numerous countries.[5]

During the last decades there has been an ongoing discussion in Sweden regarding the Swedish labour law system and the systems for taxes and social security. The globalisation process is one of the reasons behind this debate. It has been argued, mainly from the employers´ side, that the costs for production, in particular the total cost for labour (wages + various forms of social security insurances paid by the employer, see supra), are too high in Sweden in an international perspective. It has also been argued that the Swedish legislation about employment protection is an obstacle to necessary changes and adaptations. From

[3] In 2002 the SAF amalgamated with the Federation of Swedish Industries into the Confederation of Swedish Enterprise, SN.

[4] In this report I have tried to use the English expressions and definitions that are used in the European Employment and Industrial Relations Glossary: Sweden, by Reinhold Fahlbeck and Tore Sigeman. Sweet & Maxwell, Office for Official Publications of the European Communities, 2001.

[5] In 2000 Swedish international aid accounted to EUR 1 billion. The same year Swedish multinationals invested more than EUR 5 billions in poorer parts of the world. (Source: Confederation of Swedish Enterprise.)

the trade union side anxiousness about unemployment, lower wages and so called social dumping has been expressed.

In Sweden the employers´ right to direct and allocate work (managerial prerogative) – as well as the employee's obligation to work - is rather wide, and the possibility to adapt the undertaking to changes in technology and the organisation of work is consequently extensive. A Swedish dissertation published in 2004 has compared Swedish, English and German managerial prerogative and the employee's obligation to work, and concludes that in the context of numerical flexibility the Swedish system is limited due to legislation on employment security, but there is – through the managerial prerogative - a wide scope for functional flexibility.[6]

Integration in Europe has increased and the enlargement of the EU with ten countries from central and east Europe in 2004 was a big step. Labour costs are estimated to be more than five times higher in Sweden than in e.g. Estonia and the Czech Republic. This has led to some migration of certain categories of employers in, for example construction and cleaning; sectors where international competition earlier was very limited. This has raised discussions in Sweden regarding minimum wages. Sweden has no legislation regarding minimum wages. Numerous collective agreements contain minimum wage rules, but it is not possible to extend collective agreements to cover others than the contracting parties by some kind of decree or legislation. Instead, the Swedish system is built upon the notion that foreign employers temporary established in Sweden should conclude Swedish collective agreements and follow the wage rules according to the agreement (see further infra).

Collective agreements in Sweden should (according to the 1976 Co-determination Act) be in writing. They are binding on the contracted social partners and their members; it binds all individual members on both sides. It is also possible for a trade union to conclude a collective agreement with an individual employer who does not belong to a signatory employers association. This means essentially, that the employer undertakes to apply the collective agreement envisaged in the sectorial agreement that covers the branch of activity in question. This is called an "application agreement". Such an agreement only contains a reference to the collective agreement that the trade union has concluded with the employers´ organisation at national sector level. Here is not very much to negotiate about, these agreements are usually signed on a "take-it-or-leave-it basis". About 2.000 application agreements are concluded a year in Sweden and in 50-100 cases the trade unions are forced to give notice about industrial action. During the last years it is noticeable that foreign employers have been more frequent in these disputes. This may indicate both that the Swedish labour market has become more internationalised, and that trade unions pay greater attention to the problems with so-called social dumping. Since Sweden has no legislation on minimum wages, the most prominent means of combating social dumping is for trade unions to conclude an application agreement with foreign employers. In August 2005 the social partners on the private labour market (SN, LO and a negotiation cartel for the private white collar employees´ organisations, PTK[7]) agreed that foreign employers with activity in Sweden could be temporary members of a Swedish employers´ sectorial organisation and thereby bound by the sectorial agreement with certain adoptions especially made for foreign employers. The sectorial social partners have transformed this agreement in sectorial agreements.[8]

[6] Rönnmar, Mia, Arbetsledningsrätt och arbetsskyldighet. Jurisförlaget i Lund, 2004. (Summary in English.)

[7] When trade unions share a common employers´ organisation on the other side in collective bargaining, they often collaborate in negotiating cartels or coalitions. One such grouping in the private sector is the cartel here in question, the Federation of Salaried Employees in Industry and Services, PTK.

[8] It could however, be questioned how many foreign employers, with temporary activity in Sweden, that are interested in join Swedish employers´ organisations.

In order to force the employer to sign a collective agreement, sometimes it is necessary to make use of industrial conflict. Another, by the employers, criticised part of the Swedish labour law system is the wide-ranging opportunities for the labour market parties to use industrial action and in particular sympathy action (secondary action). Some years ago Swedish LO initiated a discussion within the global trade union movement on how to secure globally the right for trade unions to take cross-border sympathy action when core labour standards are violated. Earlier, this was initiated within the EU and the Swedish Government has also raised this question on the European level.[9]

The notion that it is up to the labour market parties in the first instance to regulate the Swedish labour market by means of collective agreements, the high level of union influence, and the high level of protection in both the labour law system and the social security system, are some of the cornerstones of the Swedish society. Therefore it is rather unusual that the foundations of the labour market system are questioned. It is more common that parts of the system, especially employment security and hereunder the possibility to conclude fixed-term contracts and to dismiss employees, are under debate. Employers, employers´ organisations and some economists have questioned employment security legislation and argued that the strict rules result in unemployment and higher costs. The question about minimum wages and collective agreements are much debated at the moment (see further infra). Here, we have an example of a discussion that touches upon a fundament of the Swedish model: the collective agreement. Therefore, these discussions have involved practically all interests in labour affairs, especially the social partners, academics, the government and other politicians.

3. Debates and proposals of legislative reforms have lead to very few changes in the Swedish labour law system since the 1970s. Since Sweden became a member of the EU in 1995 practically every change in labour legislation in Sweden has been made in order to implement EC-law. Nevertheless, there have been marginal changes regarding security of employment to simplify for the employer to conclude fixed-term contracts of employment. At the moment, there is a Government proposal that intends to go even further on this point.

Public procurement is in Sweden regulated in the 1992 Public Procurement Act, which is based on EC law. The degree, to which the Act permits a purchasing body to impose social-policy requirements on tenders for public purchase contracts, e.g. an obligation to observe collective agreements, is a controversial issue. Some Swedish municipalities have decided to require collective agreements in procurement, but it is quite probable that this does not comply with EC law.

Sweden has not ratified ILO-convention 94 from 1949 about social clauses in public contracts.[10] The Conventions deals with requirements according to collective agreements and the requirement of fair labour standards. Ratification was discussed in Sweden in 1950, but rejected because it was not considered to be relevant in Sweden where the issues in question are regulated in collective agreement. Ratification was discussed again during the 1990s´ but it was considered uncertain if ratification is in accordance with EC law. With the enlargement of the European Union in 2004 and competition from service providers from the new member states (about this, see also V infra), the question about ratification became relevant again and a State Committee is at the moment reviewing the matter as well as the overall problem with the possibility to use social clauses in public procurement.[11]

[9] See also Hepple, Bob, Labour Laws and Global Trade. Hart Publishing, 2005, pp. 186 ff.

[10] www.ilo.org

[11] Nya upphandlingsregler. Delbetänkande av upphandlingsutredningen 2004, SOU 2005:22 (New rules about public procurement. A first report from the Commission on Public Procurement). The final report is expected at the end of March 2006.

4. Collective bargaining and collective agreements probably have answered more to changes in the Swedish society and on the labour market than legislation. The wage-setting process, working-time etc. are important subjects almost entirely regulated by collective agreements.

Traditionally collective bargaining in Sweden is much centralised. For about 40 years, until the late 1980s, national agreements were centrally negotiated by, on the one hand LO and PTK, and on the other hand SAF. Since 1990, however, it is the sectoral union and employers association that have negotiated national agreements. During the past ten to fifteen years wage formation has been increasingly decentralised and individualised for large sectors of the Swedish labour market. The influence of local partners on the wage formation has grown. In certain areas the important wage-setting process is left entirely to the local partners. Although the ongoing decentralisation process, collective bargaining in Sweden still is comparatively centralised.

An interesting example of the long Swedish tradition of making solutions by collective bargaining and collective agreements, and how flexible this system is, is how pay and working conditions have been regulated in temporary work agencies. Many trade unions are opposed to temporary work, but it was legalised in Sweden in 1991 and is now used in increasingly more trades on the Swedish labour market. The trade unions adapt to the situation and conclude collective agreements that give temporary employees in principle the same labour standards as other groups.

II. BUSINESS LAW AND LABOUR LAW

5. In 1974 legislation about employment protection was introduced. The 1982 Employment Protection Act has later replaced it. Before 1974 the employer's "right to fire at will" embraced large groups on the Swedish labour market, but the new legislation introduced a just cause requirement for dismissal. The Act prescribes that employment of an unspecified duration is the normal case and permits fixed-term employment in some limited cases. Most of the provisions in the Act are mandatory in favour of the employee, but certain provisions may be derogated from by collective agreements. Special provisions in both sectoral and local collective agreements about fixed-term employment are very common. Rather often there are small changes compared to the Act, but sometimes the derogations are rather long going in their adaptation to a special branch of activity.

The implementation of the EC Directive 77/187/EEC on transfers of undertakings (now Directive 2001/23/EC) resulted in some amendments of the Employment Protection Act. A transfer of an enterprise, a business or part of enterprise or business from one employer to another is not just cause for dismissal. The employees´ employment relationship with the former employer, together with the associated rights and obligations are automatically transferred to the new employer. Unlike what was previously the case under Swedish law, there need not necessarily be any legal connection between the former and the new operator of the business. This is an important change. Before the implementation of the Directive it was considered to be redundancy at the old employer who then had a just cause for dismissal and the employees had no right to be transferred. A new rule had also to be added to the 1976 Co-Determination Act. The underlying principle in the Co-Determination Act is that an employer has a duty to negotiate on managerial decisions only towards the trade union with which he has concluded a collective agreement. The new provision prescribes that an employer who is not bound by any collective agreement yet is obliged to enter into negotiations in matters relating to a transfer of undertaking with all unions that have at least one member affected by the transfer. A corresponding change was made to implement the Council directive 75/129/EEC (now 98/59/EC) on collective redundancies.

The general rule in labour law is that the employee's work results belong to the employer. Intellectual property law, however, has the opposite principle as the main rule: a person who creates something acquires sole rights. A special act, the 1949 Employee Inventions Protection Act regulates employees´ inventions. The starting point in this regulation is that employees have the same rights to their inventions as other inventors but certain rights also are granted to the employer, especially in cases where the employee's main task is research and inventions. The law differs between employees employed to conduct research and other employees, and if the invention has a connection with the normal course of employment or not. The Act is supplemented by collective agreements.[12]

Legislation about state pay guarantee in case of the insolvency of the employer was introduced in Sweden in 1970 and is nowadays regulated by the 1992 Pay Guarantee Act. It provides for the settlement of claims relating to pay in the event of the employer's bankruptcy. The system is financed from a social insurance contribution paid by employers. The Swedish rules have been changed a couple of times and restrictions in order to counteract misuse of the system were introduced during the first half of the 1990s´. The implementation of the EC Directive 80/987/EEC led to some changes in Swedish legislation that extended employees´ rights.

There is no legislation in Sweden regarding non-competition clauses. The possibility to include such clauses in individual contracts of employment is entirely regulated by collective agreements and court decisions. During the last years such clauses have been more common and have spread to more trades. It has been suggested by a State Committee that legislation should be introduces in this matter, but this does not seem to be of current interest. During the validity of the employment contract the main rule is that the employee should be loyal and not compete with the employer. After the employment relationship has ended the point of departure is that a former employee has his/her entire freedom to compete with the employer. Although, it is possible for an employee to undertake to refrain form competing with the employer also after the employment relationship has ended. Such clauses are valid, but can be moderated or set aside entirely by a court decision. The use of competition clauses could also be regulated in collective agreements. The dominating agreement in this area is a 1969 collective agreement regarding white-collar workers in manufacturing industry. The agreement stipulates certain limits on the use of competition clauses. The principles laid down in the agreement have become regarded as general binding principles in Swedish labour law, also applicable to other areas than the 1969 agreement covers.

Although Sweden is a very small country, a number of multinationals are active within its borders. It has been estimated that there are some 90 Swedish-owned companies, which are covered by the requirements of the European Works Council Directive 94/45/EEC. Additionally, there are also around 240 foreign owned companies that are covered.[13] The Directive is implemented in Sweden by way of the 1996 European Works Councils Act, and according to the Act the main purpose is that an employee representative body should be established in order to provide for transnational information and consultation.

III. INTERNATIONAL TRADE AND LABOUR LAW

International labour standards could have different aims. First, they could aim to promote labour standards in other countries with low standards. Secondly, the aim could be to protect labour standards at home. A third aim could be to promote labour standards in the own

[12] There is at the moment a State Committee reviewing the rules about inventions made by a special group of employees, namely university teachers.
[13] Fahlbeck/Sigeman pp. 125-126.

country, and a fourth to protect free trade from protectionist demands. From a Swedish perspective the first and the fourth aims are important.

6. Sweden is a member of the OECD, and takes part in the WTO-talks. Sweden is also since 1995 a member of the European Union (EU).[14]

7-12. One way of promoting international labour standards is through voluntary codes of conduct for multinational enterprises. The OECD Guidelines is the most prominent in this field. They are directed towards employers and not binding. The Swedish Government actively encourages Swedish business to behave responsibly by striving to comply with the OECD Guidelines. Participants in the Swedish National Contact Point (NCP) are actors representing the Government, business organisations and trade unions. The principal social partners are involved in the NCP. Since the launch of the Swedish Partnership for Global Responsibility in 2002 (see infra), NGO´s have shown an increased interest in the OECD Guidelines and the work of the NCP.[15]

Sweden has no general legislation governing basic rights of workers in international trade contracts or any legislation that give Swedish multinationals a duty to respect workers´ rights in foreign countries. But the Swedish Government has an explicit policy that it should promote sound business behaviour within state-owned companies, and the Swedish Export Credits Guarantee Board reminds all companies applying for export credit guarantees of the OECD Guidelines and that they are supposed to follow them. In state investments and public procurement the Guidelines also are paid attention to. The National Pension Funds shall take account of environmental and ethical considerations in the investment activities without comprising on the overall target of earning high return.[16]

Being a member of the European Union Sweden has to implement EU legislation aimed to harmonise labour law in the member states. Sweden's principal trade partners are the EU member states. EU has a system of labour legislation that covers a wide range of labour market topics. This legislation has supranational legal effects. EU-legislation in form of regulations is binding on all Member States and directly applicable, i.e. they are taken to be parts of national legal systems automatically. Legislation in form of Directives – the most common instrument regarding labour legislation – are binding as to the results to be achieved, but has to be implemented into the national legal system by means of (in principle) legislation. Member States may be liable to individuals in damages for non-implementation or incorrect implementation of a Directive, and sometimes individuals can rely directly on a Directive against the State.

There is EU-legislation aiming at harmonisation between the Member States in several labour market and labour law areas, above everything, free movement of workers and posting of workers, equal treatment and non-discrimination, employment protection in the event of the transfer of an undertaking and in the event of collective redundancies, working conditions, working time, the employment contract, wages in the event of the insolvency of the employer, works councils, information and consultation.[17]

Furthermore, the EU has gradually incorporated social and human rights clauses in its bilateral trade agreements with third countries. [18] In 2002 the European Commission adopted

[14] During 1994 Sweden took part in the EEA agreement, a free trade area between the ten Member States of the EU plus a number of other European countries. The agreement is built on the principle of free movement of goods, persons, services and capital: the Single Market..

[15] OECD Guidelines for Multinational Enterprises: Swedish Annual Report 2004-05.

[16] Prop 1999/2000:46 AP-fonden i det reformerade pensionssystemet (*The General Pension Fund in the the reformation of the pension system)*, p. 76 ff, Law on National Pension Funds 2000.

[17] Hepple pp. 165 ff, 193 ff.

[18] Since 1995 the EU´s Generalised System of Preferences (GSP) contain social clauses, see Hepple pp. 101 ff and pp. 122 ff.

a new strategy on Corporate Social Responsibility (CSR). The Commission has also set up a European multi-stakeholders forum on CSR drawing together enterprises, consumers, employers, trade unions, business networks, investors and NGOs.[19]

The Swedish trade unions are pushing for a social dimension to trade agreements but also multinational Swedish companies are active, see also infra. There are also other actors, i.e. the Swedish Federation of Trade is a private organisation for importers, traders, wholesaler and retailers. Ethic in trade and corporate social responsibility are key topics in their dialogue with members.

IV. SOFT LAW AND THE EMERGENCE OF NEW ACTORS

13. Today, there is pressure on companies with regard to ethical issues. There are companies that claim that in practice there is not any question of voluntary action. More and more customers – and other stakeholders as well – are making demands of companies´ ethical, social and environmental awareness.

Corporate social responsibility (CSR) is often described as a voluntary responsibility that goes beyond the demands of national legislation. The Swedish Minister of Industry and Trade said in a speech in 2005: "For Sweden Corporate Social Responsibility is about establishing a floor for human decency in business. The starting point should be internationally negotiated and universally accepted norms, such as the ILO Core Standards."[20]

Rules and regulations that constitute the core of CSR are the UN´s Global compact and its nine principles relating to human rights and freedoms and environmental protection. The OECD Guidelines for multinational enterprises include additional principles. The ILO´s eight core conventions are included as central parts of both Global Compact and the Guidelines. All these rules enjoy broad international recognition.

Companies can be responsible on different levels. It seems quite natural that companies are responsible for respecting rights and freedoms related to the company's own operation in another country. But companies can also to some extent be supposed to be responsible for other actors, for example activities related to suppliers.

Swedish Partnership for Global Responsibility

In 2002 the Swedish Prime Minister launched the Swedish Partnership for Global Responsibility. This is a platform and a way for the Swedish Government to work with companies and other organisations for human rights, labour rights, sustainable development and anti-corruption. The point of departure is international conventions and other codes of conduct formulated in the OECD Guidelines and in the UN´s Global Compact's 10 principles. The Partnership is a crosscutting function within the Government Offices, based in the Ministry for Foreign Affairs but working closely with other Departments and Government Agencies. The aim is to bring clarity to the debate on CSR, highlight good examples, bring different actors and stakeholders together as well as assist individual companies. The Secretariat carries on intensive information work on e.g. international developments in CSR, international systems of rules and conventions and practical experience and research results. Companies can join the Swedish Partnership for Global Responsibility by in writing expressing a will to support and strive to fulfil the OECD Guidelines and the ten principles of the Global Compact. Here is an institutionalised forum for discussions between employers and other actors that are engaged in foreign countries.

[19] COM (2001) 416 final.
[20] The WTO Meeting in Hong Kong, December 2005.

The following companies had joined the Swedish Partnership for Global responsibility at the end of 2005: ICA (individual retailers for food etc. make joint purchases, establish stores and share marketing costs.)[21], Löfbergs Lila (coffee company)[22], the Body Shop[23], Folksam (a mutual owned insurance company)[24], Hennes & Maurits (H&M) (see infra), OMX (security markets and marketplace services)[25], ITT Flygt (producer of submersible pumps, mixers and accessories)[26], Vattenfall (energy production, state-owned)[27], KPA (administration of pension funds)[28], SWECO (consulting-services in the fields of engineering, environmental technology, architecture)[29], Banco (investment)[30], V&S group (producer and distributor of spirits and wines, owned by the Swedish State)[31], Lernia (staffing, skills enhancement, downsizing advisory and services)[32], Apoteket AB (sole retailer for medical products in Sweden, owned by the State)[33], Akademiska Hus (property company fo higher education and research)[34], SJ (state-owned, train transportations)[35], Sveaskog (state-owned, owns 15 per cent of the forest land in Sweden)[36].

Several of the above-mentioned companies – and many others - have also accepted responsibilities in forms of standards etc., like Rättvisemärkt (labelled with a guarantee of fair trade), KRAV (labelled with a guarantee of organic production). The Fair Trade Label (Rättvisemärkt) guarantees a.o. that small independent farmers get a fair price for their products, that workers employed get fair wages and corking conditions and have the right to organise, that children are not employed and that production in compliance with the ILO Core Conventions[37]

It has already been mentioned that although Sweden is a very small country, a number of multinationals are active within its borders. There are also a comparatively large number of Swedish multinationals active on other markets. It is not possible to give more than a couple of examples. In this report two large multinationals have been chosen as examples; IKEA[38] and H&M[39].

IKEA

Sales for the IKEA Group for the financial year 2004 were 12,8 billion euros. The group has around 84,000 co-workers and business operations around the world. IKEA has few factories of its own. Instead production takes place at around 1,600 suppliers in 55 countries in Europe, Asia and North America, frequently in low-cost countries. [40]

[21] www.ica.se
[22] www.lofbergslila.se
[23] www.thebodyshop.se
[24] www.folksam.se
[25] www.omxgroup.com
[26] www.flygt.com
[27] www.vattenfall.com
[28] www.kpa.se
[29] www.sweco.se
[30] www.banco.se
[31] www.vinsprit.se
[32] www.lernia.se
[33] www.apoteket.se
[34] www.akademiskahus.se
[35] www.sj.se
[36] www.sveaskog.se
[37] www.rattvisemarkt.se
[38] The IKEA Way – Social and Environmental Responsibility, www.IKEA-group.IKEA.com
[39] www.HM.se, http://seit26.hm.com/codeofconduct
[40] www.IKEA-group.IKEA.com, see also Blanpain, Roger (ed.), Multinational Enterprises and the Social Challenges of the XXIst Century. Bulletin of Comparative Labour Relations 37, Kluwer 2000, pp. 353 ff.

The IKEA Code of Conduct "The IKEA Way on Purchasing Home Furnishing Products" (IWAY) describes minimum requirements on social and working conditions, together with environmental demands at suppliers on the IKEA range. It is based on the eight core conventions defined in the Fundamental Principles of Rights at Work, ILO declaration June 1998 and the Rio Declaration on Sustainable Development 1992. Further IKEA recognises the Fundamental Principles of Human Rights, laid down by the Universal Declaration of Human Rights (UN 1948). Suppliers must comply with national laws and regulations and with international conventions concerning Social and Working Conditions, Child Labour and the protection of the Environment. Suppliers shall effectively communicate to all its subcontractors the content of the IWAY.

Regarding social and working conditions, IKEA expects its suppliers to respect fundamental human rights, to treat their workforce fairly and with respect. Suppliers must provide a healthy and safe working environment, pay at least the minimum legal wage and compensation for overtime, and - if housing facilities are provided - suppliers must ensure reasonable privacy, quietness and personal hygiene. IKEA suppliers must not make use of child labour, forced or bonded labour, discriminate, use illegal overtime, prevent workers from associating freely with any workers´ association or group of their choosing or collective bargaining, or accept any form of mental or physical disciplinary action, including harassment. To the overall document IWAY are added a special Code of Conduct on Child Labour "The IKEA Way on Preventing Child Labour" and the appendix IWAY Standard "Minimum requirements for environment, social & working conditions and wooden merchandise" with more detailed requirements.

IKEA has a network of Trading Service Offices that supports their suppliers to improve their operation, specially trained inspectors who visit suppliers all over the world, checking that IWAY criteria are met. IKEA also employs independent auditors to carry out random checks and verify working methods and results. IKEA does not break off relations due to non-compliance only, as long as there is a willingness to improve in the right direction. But repeated violations will result in the termination of co-operation.

IKEA also carry out contacts with organisations such as Unicef, Save the Children and Business for Social Responsibility. In 1998 IKEA signed an agreement with the global union confederation the International Federation of Building and Wood Workers (IFBWW), see further infra. In 2001 they entered a new agreement based on the IKEA code of conduct IWAY. IKEA and IFBWW have set up a Monitoring Group that meet twice a year to exchange experiences on working conditions and social responsibility.

Each year IKEA publishes a report on environmental and social responsibility. Topics in the common violation areas regarding labour are: The employee has no contract of employment, time registration is not correct or manipulated, overtime is not registered and overtime compensation not paid, upholding freedom of association could also be difficult.

H&M

H&M is a strongly expanding company that published its first code of conduct in 1997. H&M does not own or operate any factories, H&M byes garments and other good from about 700 independent suppliers, primarily in Asia and in Europe.[41]

The H&M Code of Conduct prescribes that all suppliers must follow national laws in countries they are operating. H&M does not accept child labour. The policy regarding child labour is based on the UN Convention on The Rights of the Child. If a child is found working in any of the factories producing for H&M they will not immediately ask the factory to dismiss the child, but in co-operation with the factory try to find a satisfactory solution. If a supplier does not

[41] www.HM.se

accept the policy on child labour H&M will not continue the co-operation. H&M recommend factories with predominately female workers to arrange day care for small children. H&M require from the suppliers that workers´ safety should be a priority at all times. All workers producing garments for H&M should be entitled to basic rights. H&M does not accept that bonded workers, illegal workers or prisoners are used in the production, that suppliers or their subcontractors use corporal punishment or other forms of mental or physical disciplinary actions or engage in sexual harassment. All workers should be free to join associations of their own choosing and to bargain collectively. No worker should be discriminated against and all workers should be entitled to an employment contract. Wages should be paid regularly, weekly working time not exceed the legal limit and overtime voluntary and properly compensated. The workers should be granted stipulated annual leave and sick leave without repercussions and female workers their stipulated maternity leave. Dismissal of pregnant female workers is not acceptable. If a factory provides housing facilities rules about safety and building conditions should be followed.

H&M has Code of Conduct auditors and quality controllers. H&M can make unannounced visits to factories producing their goods at any time and also uses independent third parties to make inspections. If a supplier not complies with the Code of Conduct H&M is willing to work with their suppliers to achieve solutions in each individual case, but H&M will not compromise on its basic requirements regarding safety and human rights. If a supplier does not comply with the Code and corrective measures are not taken within a time limit, H&M will terminate the business relationship. After repeated violations the co-operation will also be terminated.

When addressing compliance issues H&M notices interest from their stakeholders in understanding the Code. H&M concludes that child labour is very uncommon, but can be difficult to detect as well as violations of worker's basic rights. Documents shown in order to check wages and working hours are often misleading or a reporting system is more or less lacking. Procedures to maintain good safety levels also are lacking and personal protective equipments frequently not used since the workers have not been sufficiently educated about the purpose of the protection.

Furthermore, H&M has cooperation with Unicef and a collective agreement with UNI (see infra).

The Social Partners, International Collective Agreements

Companies may use its Codes of Conduct for marketing purposes. If this information turns out to be wrong consumers or public agencies for consumer protection could attack this as misleading. During the last years there is an obvious trend that large Swedish companies integrate ethical and socials information in their standard annual reports.[42]

The Confederation of Swedish Enterprise (SN) wrote in a booklet in 2004 "If companies ignore their social responsibilities – regarding human resources issues, for example - they may loose skills, which would also affect profitability. …. The Confederation of Swedish Enterprises believes that CSR is a process whereby a decent, global level of basic, internationally accepted values that apply to businesses is created. Taking this view, CSR is primarily relevant in countries in which the national judicial system is unable to guarantee these values. In practise, this refers to the developing world and some recently industrialised countries." [43]

[42] This has raised interest from academics, see a.o. Samulesson, Per "Konkurrerande modeller för bolagsstyrning pp. 459 ff, in Liber Amicorum to Reinhold Fahlbeck, Juristförlaget Lund 2005.
[43] The role of business in society. Questions and answers to the role of business in society. Svenskt Näringsliv 2004.

Swedish trade unions welcome voluntary codes of conduct but underline that these voluntary initiatives never could be enough, because there are no credible monitoring systems. It is somewhat worrying that standard setting and supervision are privatised. LO and TCO (the Swedish Confederation of Professional Employees) support the efforts to include social clauses in the WTO agreements.

The best solution though, according to LO, is binding Multinational Guidelines.[44] LO also wants international framework agreements that make it possible to create better monitoring systems, and here Swedish companies are at the forefront. Very soon totally six Swedish multinationals have signed such agreements with their global trade union counterparts. In 1998 IKEA and the IFBWW (the International Federation of Building and Woodworkers) concluded a first agreement.[45] In 2001 the construction company SKANSKA concluded an agreement with IFBWW. H&M and UNI (Union Network) concluded an agreement in 2004[46], SKF and IMF[47] (International Metalworkers´ Federation) and the SKF World Council in 2003, SCA[48] and ICEM[49] in 2004. During March 2006 an agreement between Securitas and UNI and the Swedish Transport Workers´ Union will be signed.

It will go too far to give details of all the agreements. Three examples will be given:

The Framework Agreement between Skanska and IFBWW was signed on 8 February 2001. Skanska commits itself to comply with national legislation, all ILO Conventions and recommendations that are relevant to the company's operations. This means for example the right to form trade unions and negotiate collective agreements, the prohibition of slaved and child labour, non-discrimination and the promotion of health and safety measures. Wages, salaries and employment conditions in general shall meet all minimum requirements mandated by national agreements and laws. The best occupational safety practice available on the market shall be promoted for protection against accidents and preventive purposes. Threats, physical violence and sexual or other forms of harassment are strictly forbidden. The parties deem it important that the contents of the agreement should be made known to the company's sites in the language of the respective site, and that subcontractors will be informed of the agreement. An application group comprising of Skanska´s Human Recourses director, the executive committee of the Skanska European Works Council, and IFBWW will handle reporting on the compliance with the agreement and any departures from it. They will also visit and inspect selected worksites at least once a year. (This agreement is similar with the agreement IFBWW has signed with IKEA.)

The international framework agreement between SKF and the SKF European Works Council, also representing the IMF, was signed in November 2003. The SKF Code of Conduct that covers the responsibilities towards employees has been copied. Non-discrimination, prohibition of forced labour and child labour, respect for the right to form and join trade unions and to bargain collectively, fair wages, safe and healthy workplaces, opportunities to train for job enrichment, and a fair chance to compete for job opportunities are some of the contents. SKF also ensures that employee data is treated with strict confidentiality. Group Management and the World Works Council presidium will regularly supervise the observance of the Code of Conduct. SKF encourages its suppliers to adhere to similar codes of conduct.

[44] Mr. Ulf Edström, Head of International Department, The Swedish Trade Union Confederation, speech at the Symposium "Legal Perspectives in a Global Business Environment, Lund, 19-20 August 2004.
[45] See supra and www.ifbww.org, see also Blanpain pp. 359 ff.
[46] See supra, and www.union-network.org
[47] www.imfmetal.org
[48] Svenska Cellulosa Aktiebolaget, SCA. See also Code of Conduct www.sca.com
[49] www.icem.org

The Global Framework Agreement between SCA, the ICEM and the Swedish Papers Worker's Union was signed on 15 April 2004. The agreement cites adherence to the Core Conventions of the ILO on workers´ rights and states that such standards "should guide SCA ´s activities and its relations to the employees". As a minimum SCA will comply with all applicable legislative requirements, strive to continuous improvement to health and safety standards at the workplace, strive towards full non-discriminatory policies, and provide employees with opportunities to train for job enrichment. SCA commits to paying fair wages and benefits according to relevant market standards, support the effective elimination of forced labour and child labour and will make these criteria the choice of suppliers and sub-contractors. The agreement also contains a process of dispute resolution and all parties will meet annually to review the agreement. The company will encourage sub-contractors and licensees to comply with the same standards.

The six above-mentioned agreements are of a somewhat varied nature. They are all built on the ILO Core Labour Standards and contain clauses about implementation. The latest agreement, which will be signed on March 30 2006, is viewed as a new step developing experiences from the older agreements. Its aim is to effectively implement the company's Code of Conduct.

14. The point of departure is that foreign employers operating in Sweden are supposed to follow Swedish labour law. Within the EU it is the Rome Convention from 1980 that governs what national legislation should be applied. The effect of the Convention is that the applicable law of a (temporary) posted worker normally will be the country from which the worker is posted. If a foreign employer only operates in Sweden temporarily and with his own employees from his home country, there is still Swedish labour legislation to be followed according to the implemented EC Directive (96/71/EC) on posted workers. The Swedish posting of Workers Act 1999 is applicable towards all foreign employers, not only employers from other EU countries. The Act contains an enumeration of the provisions in Swedish legislation that should be applied to foreign-posted workers, a.o. working time, health and safety, non-discrimination and equal treatment. According to the Directive minimum rates of pay should be included, but the Swedish Act has no reference to minimum pay, due to the fact that there is no legislation on minimum wages in Sweden. Swedish trade unions are trying to persuade all foreign employers to conclude Swedish collective agreements and, as mentioned earlier, in 2005 SN concluded an agreement with LO and another with PTK, that means that foreign employers operating in Sweden not longer than a year can become temporary members of a Swedish employers´ organisation within the SN and should be presented an adapted collective agreement.

One of the cornerstones of Swedish industrial relations is that the chief responsibility for wage formation and condition of employment lies with the social partners. It is also the responsibility for the trade unions to survey that collective agreements and labour law are followed. There is only one government authority on the labour market and that is the Work Environment Agency that has the responsibility to control work environment issues.

15. The OECD Guidelines for Multinational Enterprises, the ILO Tripartite Declaration on Principles on Multinational Enterprises and Social Policy, the ILO declaration on Fundamental Principles and Rights at Work and the United Nations´ Global Compact have influenced collective bargaining with Swedish unions in Swedish multinationals, see supra.

Within the European Union there is an ongoing process towards harmonisation of labour legislation between the Member States. Regarding trade between the EU and third countries the European Union seems to continue with soft-law measures.

V. CONCLUSIONS

International competitiveness is under discussion in Sweden. Enterprises close down in Sweden and moves to countries with lower labour costs, or companies established in Sweden invest in new production-sites in low-costs countries. This has been going on since the 1960s´. Sweden became a member of the European Union in 1995, and especially since the enlargement of EU in 2004, the Swedish labour market has faced a new phenomenon: Foreign employers carrying out work in Sweden with their own employees, or foreign employers hiring out their own employees to carry out work in Sweden. This is a result of the free movement of services within the European Union. The Posted Workers Directive is supposed to protect a hard core of working conditions for posted workers, but the Swedish implementation of the Directive does not cover minimum wages. According to the general model on the Swedish labour market Swedish trade unions demand a foreign employer to sign a collective agreement. (In the same way as they would ask a Swedish employer to sing a collective agreement.) In 2004 a Latvian company, which hires out labour from Latvia to companies carrying out work in Sweden, was subject of Swedish trade unions industrial actions. The Latvian company was not bound by a collective agreement with any Swedish trade unions. It was, however, bound by two collective agreements with a Latvian trade union. A Swedish trade union took industrial action in order to force the Latvian company to sign a Swedish collective agreement. Another Swedish trade union took secondary action in order to support the first trade union. The Latvian employer took the case to the Swedish Labour Court arguing that the industrial action, as well as the secondary action, was unlawful, because the employer already has signed a collective agreement and the Swedish trade union took industrial action with the purpose of circumventing the Latvian collective agreement. The company claimed that industrial action in this case was in breach of Community law. The Swedish Labour Court has found that, in the context of the points of Community law that arise in the present case, there is reason to request a preliminary ruling form the Court of Justice of the European Communities (the EJC). The Swedish Labour Court has asked as to whether the industrial action taken against the company to force through the application of the Swedish Building Agreement within the Latvian company is compatible with the ban on discrimination in Article 12 and the basic right of free movement of services in Article 49 of the EC Treaty and the Posted Workers Directive. The case is followed with greatest interest. From the new member states Swedish trade unions (that are supported by the present social democratic Swedish Government) are accused of social protectionism.

A traditional national labour market institution – the right to strike – has suddenly turned out to be a globalised question!

International labour standards can be promoted in different fora and in various ways. The main Swedish track to promote fair labour standards in international trade are within the ongoing dialogue with the social partners on national and international level, NGO´s, multinationals, Swedish Partnership for Global Responsibility and within the Swedish National Contact Point (NCP) for the OECD Guidelines. Sweden is pressing for free trade with respect for human rights and sustainable developments in international trade. Many Swedish companies work voluntary with Codes of Conduct and the interest and experiences are growing. Differences between voluntary initiatives and regulated questions, between soft law and legislation, seem gradually to diminish. Already in 1998 a Swedish scholar concluded, “There are no single solution to the problem of how to promote fair labour standards. Instead we have to use a multi-track approach, and the most important question is not which track is most effective, but which tracks are possible.”[50]

[50] Jonas Malmberg in Malmberg,/Johansson p: 33.