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## Trade Liberalization and Labour Law

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# Trade Liberalization and Labour Law

## **Abstract**

[Excerpt] This general report considers 23 national reports from colleagues in North America, South America, Central America and the Caribbean; in Western, Eastern, Northern and Southern Europe; and in the Asia-Pacific Region. Regrettably, we did not have reports from Africa or the Middle East, or from continental Asian nations.

The national reports reflect complex realities that sometimes converge and sometimes diverge. Their diversity and rich detail make clear that, beyond broad generalizations like those in this general report, separate analyses are required to understand distinct developments in each major region and in each country. North America, Central America and South America each have different realities. So do Northern, Southern, Eastern and Western Europe, and different regions of Asia.

Even finer distinctions flow from analysis of developments within these regions: in sub-regions, in individual countries, and in states and provinces within countries. Participants in this Congress should refer to the national reports for these details and nuances. The attempt here is to provide a broad overview of common themes and key differences that emerge in the national reports.

## **Keywords**

trade liberalization, labor law, social security, North America, South America, Central America, Europe, Asia-Pacific

## **Comments**

### **Suggested Citation**

Compa, L. (2006, September). *Trade liberalization and labour law* [Electronic version]. Paper presented at the XVIII World Congress, International Society for Labour & Social Security Law, Paris.  
<http://digitalcommons.ilr.cornell.edu/conference/6/>

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# **XVIII World Congress**

## **International Society for Labour & Social Security Law**

**Paris, September 2006**

### **Theme 1: Trade Liberalization and Labour Law**

#### **General Report**

**Lance Compa**

**Cornell University**

This general report considers 23 national reports from colleagues in North America, South America, Central America and the Caribbean; in Western, Eastern, Northern and Southern Europe; and in the Asia-Pacific Region. Regrettably, we did not have reports from Africa or the Middle East, or from continental Asian nations.

The national reports reflect complex realities that sometimes converge and sometimes diverge. Their diversity and rich detail make clear that, beyond broad generalizations like those in this general report, separate analyses are required to understand distinct developments in each major region and in each country. North America, Central America and South America each have different realities. So do Northern, Southern, Eastern and Western Europe, and different regions of Asia.

Even finer distinctions flow from analysis of developments within these regions: in sub-regions, in individual countries, and in states and provinces within countries. Participants in this Congress should refer to the national reports for these details and nuances. The

attempt here is to provide a broad overview of common themes and key differences that emerge in the national reports.

## **I. The evolution of labour law under the effect of globalization – ideological debates and labour law**

### **A. Ideological Debates**

All our reporters tell us that labour law is a subject of sharp ideological debate in their countries. At one level, the debate takes place among academics and policy experts. At another level, it occurs among trade unionists, employers, and their allies inside and outside governments.

In broad terms, the debate turns on positive versus negative assessments of globalization and its effects. Positive evaluations emphasize the “creation” in Joseph Schumpeter’s characterization of the market as a process of “creative destruction.” Promoters of globalization see it as a force for economic and social progress. New technologies mean new efficiencies and new opportunities for countries, firms, and workers. New forms of work organization promote a spirit of entrepreneurship. They respond to employers’ need to react quickly to changing market conditions, and to employees’ need for personal growth and professional development.

Negative evaluations emphasize the “destruction” in Schumpeter’s formulation. Critics see globalization having destructive effects on jobs, wages and social cohesion.

Employers introduce new technologies without adequate adjustment measures for affected workers. New forms of work organization benefit firms, but put workers into new forms of precariousness.

The debate over positive and negative aspects of globalization is necessary and healthy. Our colleague from Greece warns us, however, that the debate should be a true exchange of arguments, not just an exchange of slogans.

#### B. The impact of globalization and the tenacity of national labour law systems

National reports confirm that no country is insulated against pressure to change its labour and social security law. Workers and their trade unions are under enormous pressure from the forces of globalization. So are the laws and institutions built up over most of the 20<sup>th</sup> century to protect workers’ rights and benefits through legislated standards and through collective bargaining.

One example in our host country is the struggle earlier this year, noted by our French colleague, over the First Job Contract (CPE). Our other colleagues do not report a similar level of mass mobilization and protest, but they describe serious debates and struggles over labour and social security law in each of their countries. Debates and struggles take place in every region and in countries at every level of economic development.

Our colleagues from Bolivia and other South American countries describe efforts to dismantle labour standards that had been built into their constitutions. Our colleagues from Germany and other Western European nations describe similar efforts to reduce longstanding worker protections. In every case, employers argue that diminished labour standards are needed to be “globally competitive.”

Taken to its logical conclusion, the neoliberal agenda for reforming labour and social security law would uproot national labour law systems and crush workers’ organizations and collective bargaining institutions in a ruthless race-to-the-bottom on labour standards through social dumping. Much of the debate described in our reports focus on this question of whether and to what extent there is social dumping and a race to the bottom.

There is no lack of pessimistic analysts predicting such results. Many countries have indeed adopted labour law reforms that reduce labour standards. But our reports show that reality is far more complicated than the apocalyptic vision of globalization uprooting and destroying protective labour and social security laws and national labour law systems.

Despite alarming trends in many of the reports, the overall conclusion your general reporter draws from them is that workers, trade unions and their allies in many countries still have a capacity to resist these pressures and to defend their labour rights, labour

standards, and labour laws. National labour law systems have been shaken, but have not collapsed, under the pressure of globalization.

To pursue the arboreal metaphor: globalization puts enormous pressure on national labour law systems. Globalization breaks branches and bends trunks. But the roots of labour law systems run deep in the national territory, nourished by each country's culture and history of social struggles. Our reports suggest that globalization and the neoliberal offensive for labour deregulation have *not* managed to uproot and destroy national labour law systems on a wide scale.

Instead, the record is mixed. In some countries, workers and trade unions have suffered severe cutbacks in labour law protections. In other countries, they have been able to prevent anti-labour reforms or to soften the sharpest edges of such reforms. In a few countries, they even won new labour law protections.

Similarly, in the collective bargaining setting, workers and trade unions have made significant concessions in wages, benefits, working hours, and other conditions of employment. But in many countries, they have also preserved important protections and maintained their capacity to represent workers in bargaining and in national political debates, and to mobilize workers when necessary.

### C. The flexibilization offensive

In the arena of labour and social security law, the neoliberal ideology pushes a reform agenda often captured in the word “*flexibilization*.” The word is a technocratic expression for expanding management power and reducing workers’ power. Our national reporters confirm that in every country, employers’ “flexibilization” agenda is a central question in public policy debates.

Neoliberal ideologues endlessly condemn “rigid” labour laws” (in English Google, enter “rigid labour laws” and see the thousands of results). Note the use of language to promote policy aims. “Rigid” has negative connotations, while “flexible” is more alluring – would one rather be known as a rigid personality, or a flexible personality?

But for workers, these so-called “rigid” laws are social protections won over decades of struggle and sacrifice. What neoliberal reformers call “rigid” labour laws can also be seen, from a worker’s and trade union perspective, as “solid” labour laws protecting hard-won gains. These include employment stability, wages, pensions, health care, health and safety regulations, compensation for workplace injury and disease, leisure time, rights to trade union organization and collective bargaining, and more.

The national reports suggest that “flexibilizing” labour laws is not the only demand on the neoliberal agenda. Other demands include privatizing state and quasi-state enterprises, reducing public sector employment, cutting national budgets, abandoning national economic development strategies in favour of integration schemes, and generally creating an “investor-friendly” economic climate.

International investors insist that labour law flexibilization is needed for a friendly business climate. Executives of transnational companies insist that labour law flexibilization is necessary for them to be globally competitive. According to our national reporters, many governments have responded to these demands with reform proposals for more flexibility in labour and social security law.

#### D. The signposts of flexibility

Collectively, our reports describe several labour law reforms that have either been accomplished or that are constantly being promoted as solutions to employment problems. They include proposals to:

- eliminate collective bargaining practices that extend the terms of peak bargaining agreements to the entire sector of activity represented by social partners, and to eliminate national laws that apply the same kind of extension;

- abolish peak bargaining, industry-wide bargaining, or even firm-wide bargaining and instead push bargaining down to the single enterprise level;
- allow enterprise agreements to deviate from standards of higher-level agreements
- allow negotiators to agree to deviate from legal minimum requirement, for example on hours of work and overtime pay;
- eliminate legal requirements that conditions of employment remain in place when collective agreements expire and negotiations for new agreements are still underway;
- enact new restrictions on strikes;
- grant special exceptions for labour conditions in small and medium enterprises;
- expand management's "right to run the business," for example by eliminating employees' rights in job assignments, promotions, layoffs etc.;
- increase substantially the length of probation periods for new employees, during which management can terminate them with no requirement for justifying the dismissal and with little or no severance pay or other social protection

- allow new, specialized individual contracts of employment with reduced social protections, for example by use of temporary contracts, apprentice contracts, youth contracts, training contracts and so on;
- establish longer periods of time for calculating overtime so that employers can extend workers' hours without incurring additional salary obligations.
- reduce rights to paid sick leave, disability leave, vacation, holidays and other forms of what employers prefer to call “pay for work not performed, though for workers it is part of their overall compensation for their work.
- expand the use of temporary employment agencies to provide “just-in-time” workers with reduced social protections.

#### E. Four categories of change

In a modest attempt to synthesize the reports, your general reporter constructs four categories for assessing national reports on changes in labour and social security law under globalization's pressure:

*1) No change in law, but sometimes change in practice*

Some national reporters tell us that workers, trade unions and their allies have had enough political and economic bargaining power to prevent far-reaching flexibilization proposals in their national legislatures. For example, our Mexican and Dominican Republic colleagues describe this outcome thus far in their countries. However, they also caution us that *de facto* deregulation is a common phenomenon. Our colleague from the United States tells of small changes in overtime calculation, but notes these changes were driven by traditional employer concerns internal to the national economy, not by globalization pressures. Basic U.S. labour laws remain unchanged since the 1950 and 1960s.

*2) Incremental change*

Other national reporters inform us that workers, trade unions and their allies have had enough political and economic bargaining power to limit flexibilization proposals to incremental reforms. They have preserved important rights and protections, while turning back proposals for more extreme deregulation. Most of our Western European reporters offered this scenario (sometimes expressed by the term “flexicurity”). Our Brazil reporter also describes a process of incremental change.

### *3) Substantial change*

Some reporters tell us that workers, trade unions and their allies in some countries have a severely negative balance of economic and political strength and have conceded wide flexibilizing reforms. This characterizes several Eastern European countries in their transition from socialist to market economies. Our Peru reporter describes this phenomenon in the 1990s, but adds that some court decisions have softened the most excessive changes.

### *4) Cyclical change*

In another group of national reports, we are told that workers, trade unions and their allies have suffered severe setbacks, but later regained rights and protections when sympathetic political parties return to power. Our reporters from the United Kingdom, New Zealand, Canada, and Argentina point to labour law changes back toward the centre, after sharp turns toward neoliberal extremes. These cyclical changes accompanied the return to power in the UK and New Zealand of each country's Labour party, power-shifting in Canadian provincial governments (which have jurisdiction over most labour laws in Canada), and shifts in Argentina's ruling coalition. Our Argentine colleague identifies three distinct periods of reform and counter-reform, following changes in the composition of the government.

## F. Effects on Courts

Our reporters suggest that globalization debates have affected decisions by national courts in labour law cases, but not on a wide scale. The reporter from Greece suggests that some judges have been influenced by debates over globalization to favour employers' interests. Our colleague from Uruguay says that courts there have become more receptive to changes in the economic winds.

Our German colleague says that many cases deal with effects of globalization, such as rights of workers when their employer shifts jobs to another country. But German courts have usually decided cases based on national labour law principles, not new concepts introduced by debates over globalization.

At the same time, our European colleagues remind us that national courts take EU directives into account, and must engage the European Court of Justice and its opinions in matters of EU competence. Some European colleagues mentioned the important case of the Laval construction firm in Sweden, and whether the ECJ will uphold or overrule the decision of Swedish courts that the Latvian Laval construction firm must pay wages at the level fixed in negotiations between Swedish unions and employers. The result of that case will clearly influence the movement of European harmonization toward a "high road" or a "low road" on labour standards.

No other region has courts with such supranational reach. Our reporters from the Americas did not mention the Inter-American Court of Justice, indicating its negligible involvement in labour cases. According to our reporters outside the EU, most of their national courts still ground decisions in national constitutions and legislation.

Some courts take into account whether a country has ratified ILO Conventions, but usually as background for a discussion of national jurisprudence. Our Canadian colleagues offer the important *Dunmore* case (concerning protection of rights of association of agricultural workers in Ontario province) as an example of such interaction between national and international principles. Our colleague from Mexico mentions Supreme Court decisions against “closed shop” clauses in collective agreements (*cláusulas de exclusion*) and against a legally-mandated trade union monopoly in the public sector. The court treated international principles, but the decisions were mainly grounded in Mexico’s own constitutional guarantees.

In East European countries, market principles have influenced court decisions. Our colleague from Croatia reports that courts there have moved away from the *in favorem laboratoris* principle inherited from the socialist regime and adopted a contractual approach in labour cases, balancing rights of workers and rights of employers. Our New Zealand colleague says that the high court there adopted neoliberal concepts as foundation for some decisions in the 1990s.

#### G. Effects on collective bargaining

Globalization has had measurable effects on collective bargaining *outcomes*. Global competition is the main argument of employers in their often-successful moves to pressure trade unions for concessions at the bargaining table. Many of our reporters describe this dynamic in their countries. Our colleague from Germany, for example, gives cases of trade union concessions in Siemens and in Daimler-Chrysler.

At the same time, our reporters suggest that globalization and related debates have not widely affected collective bargaining *systems*. In most countries, these remain deeply rooted in national law, institutions, and practice. Still, our colleague from New Zealand reminds us that his country experienced convulsive change in the collective bargaining system in the 1990s, only partially corrected since then. Your general reporter is also aware of dramatic changes in Australia's collective bargaining system, although we did not receive a report from an Australian colleague.

We should also be mindful of what our colleagues from Mexico, Bolivia, Peru and other developing countries tell us: that the growth of the informal labour market sector in their countries has important implications for collective bargaining. It puts more pressure on workers, trade unions and firms who negotiate collective agreements in the formal sector, while excluding millions of workers from any form of collective bargaining. Our colleague from Peru informs us that the number of collective bargaining petitions fell from more than 2000 in 1990 to only 535 in 2003.

## H. Consultation between social partners

Most of the national reports suggest that trade unions and employers' organizations are still the main interlocutors in national and international consultation forums. Our colleague from Austria noted that non-governmental organizations occasionally come into the dialogue.

The EU has a highly developed system for consultation between the European Trade Union Confederation and UNICE, the employers' group. Most of our colleagues report that their countries have a system of consultation between the social partners over proposed changes in labour laws. However, our colleague from Ecuador reports that trade unionists have been excluded from consultation on labour law reform, labour rights in trade agreements, and other forums where workers' interests are at stake.

Reporters from Canada, Mexico and the United States say that the NAALC establishes advisory bodies in each country composed of management, labour and "public" (mainly academic) participants. However, according to our colleagues, these have not had noticeable effects. More important has been collaboration among trade unions and NGOs filing complaints under the labour accord and pursuing investigations and public hearings.

Most reporters did not describe consultations involving civil society groups other than trade unions or employers. One exception appears in the Mercosur countries, where the

Mercosur Social-Labour Declaration offers institutional roles for environmental, consumer and other groups.

## **II. Business Law and Labour Law**

Our national reporters noted changes in many countries in connections between labour law and law governing business activities. However, in most cases our reporters did not find significant changes in business laws because of globalization debates and pressures. Our Japanese colleague, for example, describes court decisions and legislation regarding an employee's right to compensation for an invention resulting from the employee's work, and whether the employee may seek compensation greater than an amount set in advance in the employment contract. But decisions and legislation depended on internal legal principles, not on whether one rule or another enhanced the firm's competitiveness in the global economy.

Many reporters provided valuable descriptions of their countries' legal regimes on the positions of employees in transfers of undertakings, in insolvency of the employer, and in collective redundancy procedures. The national reports suggest that trends are mixed. In some countries, reforms have favoured employers. Our Canadian colleagues, for example, mention the debate in Quebec over Section 45 of the provincial labour code, where reforms removed some restrictions on employers' subcontracting powers. In some countries, reforms have benefited workers. Our Croatian colleague describes 2003 legislation strengthening protections for workers in cases of insolvency of the employer

and workers affected by collective redundancies. In some countries, reforms arguably benefit both social partners. Our colleague from Finland describes a 2005 law requiring employers, employees, and government officials to facilitate re-employment of workers affected by layoffs. Overall, most national laws still provide a level of protection for workers in these situations.

Few of our national reporters went into much detail on rules governing employees' ability to compete with former employers after their contract of employment ends. IN general, legislatures and courts calibrate a balance of interests between employers and employees within the national legal framework, without significant impact by debates over globalization.

### **III. Regional Integration**

#### **A. Impact on national labour law: the European Union**

Reporters indicated that most countries are parties to trade agreements or trade consultation arrangements of a regional or bilateral nature (and of course most are members of the World Trade Organization as well). Such regional integration has had varying impact on national labour law and practice, depending on the region.

Our reports suggest that the European Union is a special case. EU labour directives have created movement toward similar policies on non-discrimination, maternity rights,

parental leave, health and safety, works councils, working hours, part-time work and other issues. In a valuable case study, our colleague from the Netherlands provides a detailed account of how the national legal system has implemented the EU directive on posted workers in the service sector.

However, similarities are tempered by various opt-out and derogation opportunities and by limited transposition requirements. Our UK reporter points to Britain's "minimalist" approach to transposing EU directives into national law.

EU membership brought significant changes in national labour law in some of the new entrant countries. Our Croatian colleague, for example, describes efforts to bring national law into compatibility with the *acquis communautaire*. Our reporter from Turkey says that pressure to conform national labour law to EU standards is an ongoing process. But our reports suggest that, for the most part, European integration has not dramatically changed national labour laws and institutions.

Our reporters remind us that decisive elements of national labour law systems – trade union organizing, collective bargaining, and strikes – remain outside the reach of EU directives. These elements reflect a balance of power (which may be more or less favourable to labour or capital) calibrated over a long period of struggle between a nation's working class and its ownership class. This balance does not yield easily to EU regulation.

As is well known, the whole EU project does not follow straight lines from less to more integration or from more to less national sovereignty. Mentioned by several reporters, the defeat of the proposed EU constitution is the latest evidence of complications in the EU project. Some reporters also point to the *Laval un Partneri* case at European Court of Justice (involving Latvian construction workers in Sweden, and whether they must be covered by the Swedish collective agreement or may be paid Latvian wages) as an important test of whether harmonization in European labour standards will take an upward or downward path. This is best left to our European colleagues, not an American reporter, to elucidate for the benefit of the Society and participants in this Congress.

#### B. Outside the EU

If the EU's more advanced integration project has had only limited effect on national labour law systems, other regional integration efforts see even less effect. In North American, the North American Free Trade Agreement (NAFTA) and its parallel labour accord, the North American Agreement on Labour Cooperation (NAALC), have had no measurable influence on labour law and practice in Canada, the United States, or Mexico.

NAFTA has had economic and labour market impacts, increasing trade among the three countries and thus creating trade-related jobs in some sectors. But NAFTA has also brought closures of manufacturing plants and thousands of job losses in the United States as companies move operations to Mexico. However, supposed gains for Mexico are

offset by imports of U.S. agricultural products that destroy the livelihoods of millions of small farmers. Many of these then migrate illegally to the United States.

Labour laws and institutions have not been changed by NAFTA or the NAALC.

Proposals to reform Mexico's *Ley Federal del Trabajo* or the U.S. National Labour Relations Act are stalemated. Where changes have occurred, for example in Canadian provinces where social democratic and conservative parties gain or regain parliamentary majorities, or in U.S. states and municipalities that raise minimum wages higher than the federal minimum wage, they are the product of internal political dynamics. They are not a result of regional integration.

The same can be said of other regional integration arrangements like Mercosur, Caricom, the Andean Pact, APEC and regional groupings among APEC countries, etc. Regional integration affects labour law debates, but mostly in academic and policy circles, which have produced a large body of literature on labour and regional integration. In most cases, however, concrete changes, if they occur, still flow from national conditions and national dynamics, not from regional integration. Our Uruguayan colleague concludes that Mercosur has advanced regional economic development, but not with accompanying social development.

Some countries adopt statements of principle or state their intentions to harmonize labour laws on a regional basis. For example, our colleague from Peru points to such requirements in the Andean Pact, but notes they are only partially implemented and not

enforced. On the other hand, our colleague from Ecuador reports that the Andean Pact contains no labour norms. A clarification here would be helpful.

Our reporters from the Americas note an exception in connection with negotiation of the U.S.-Central America Free Trade Agreement (CAFTA -- the agreement includes the Dominican Republic and is sometimes called DR-CAFTA). Our colleagues from the Dominican Republic, Honduras and the United States provide useful descriptions of the labour chapter in the agreement.

Responding to U.S. concerns, Central American countries gave certain assurances of reforming labour laws to more fully comply with ILO standards. But CAFTA was approved and went into effect before such labour law changes were made. This is in sharp contrast to iron requirements by the United States for changes in intellectual property laws as a condition of approval.

Our colleague from Ecuador informs us that negotiations are still underway between the United States and Ecuador for a free trade agreement that would include a labour chapter similar to that of the U.S.-CAFTA agreement.

In conclusion, to the question “can one speak of ‘regionalization’ of labour law?” the answer seems to be: “only in the European Union.” At the same time, however, our European reporters suggest that, at least with respect to labour law, continental integration has *not* had as much harmonizing effect as expected. Most convergence takes

place in relatively uncontroversial areas like health and safety or non-discrimination. Labour law and practice remain strongly rooted in national systems.

### C. Trade-labour linkage

NAFTA and CAFTA are the only regional arrangements with an explicit linkage between trade and labour law. But the linkage is weak. Member countries commit themselves to effective enforcement of their national labour laws, subject to mutual reviews. These agreements do not establish supranational norms or supranational authorities.

The NAALC and CAFTA's labour chapter hold out a possibility of fines against government or trade sanctions when governments systematically fail to enforce their laws. Our colleague from Honduras points out that such fines would be returned to the offending government to spend on strengthening labour law enforcement. This suggests that the prospect of fines are not a serious deterrent.

In any event, the prospect of such sanctions is remote. No fine or trade sanction has been applied in more than ten years of the NAALC. Our reporters see no reason to believe that results will be any different under CAFTA.

Our colleague from Turkey describes a complex consultation among representatives of trade union federations, the employers' organization, and the government. Their consultation was amplified by a special tripartite group of nine university-based experts,

three chosen by trade unions, three by employers, and three by the government. Their work resulted in a new law regulating individual contracts of employment.

#### D. Generalized System of Preferences (GSP) and labour standards

Although they were not a significant subject of the national reports, Generalized System of Preferences (GSP) schemes of the United States and the European Union contain trade-labour linkage with some effect. Our Peru reporter informs us that the government there has improved national laws on freedom of association and forced labour to meet U.S. requirements for GSP benefits.

Our colleague from Austria discusses important cases under the EU's GSP regime involving Myanmar, Columbia and Myanmar. The EU suspended preferences only in the last case. However, GSP labour clauses can bring positive change even without sanction. For example, to maintain favourable treatment under the EU's GSP program, Sri Lanka granted recognition to independent trade unions in some export processing zones factories.

#### **IV. "Soft Law" and the Emergence of New Actors**

All the national reports contain some discussion of the effects of "soft law" on labour law debates. However, they generally concur that, precisely because they are "soft," these labour norms and principles have not directly brought changes in national labour law and

practice. Within firms, however, codes of conduct and related forms of private rulemaking have some effect.

#### A. Codes of conduct

National reporters from the United States, Canada and Northern Europe inform us that many multinational firms based in their countries have adopted codes of conduct for themselves and their subcontractors. This does not appear to be the case in Japan, our Japanese colleague reports, nor in most other OECD countries outside North America and Northern Europe.

Our colleagues from non-OECD countries report much less movement by multinational firms based in their countries toward codes of conduct. On the other hand, reporters from developing countries tell us that subcontractors in their countries are often affected by codes of conduct required by U.S. and Europe-based multinational firms. Our Honduran colleague mentions Chiquita Brands and its code for banana workers, for example. Our Peru reporter mentions codes in the mining sector and the export processing sector.

The reports indicate that most codes of conduct incorporate one or more of the ILO core labour standards, but they put their heaviest emphasis on non-discrimination and rules against forced labour and child labour. Relatively few codes include workers' freedom of association.

In addition to ILO core standards, many codes contain provisions on health and safety and working hours. On wages, most pledge only to meet minimum wage requirements and otherwise obey the law in countries where they do business.

An alternative approach involves codes of conduct from stakeholder coalitions, and agreement by MNEs to adhere to such codes. Our reporters mentioned such codes in North America such as the Fair Labour Association, the Worker Rights Consortium, and Social Accountability International, and in Europe: the Ethical Trading Initiative, Clean Clothes Campaign, Fair Wear Foundation and others. Our UK colleague added information about norms of socially responsible investment, referring to the example of the “FTSE4Good” index of socially responsible companies.

These stakeholder codes have generated substantial monitoring and reporting activity. Some codes emphasize elimination of subcontracts with suppliers that violate the codes. Others emphasize working with subcontractors to correct violations without imposing an economic sanction. In some cases, intervention under the codes has remedied violations. In a Mexican case, for example, advocates from several stakeholder code groups collaborated with officials from Nike, Reebok and Levi’s to convince a subcontractor in the state of Puebla to recognize an independent union preferred by workers over an *oficialista* union installed by the government and the employer.

In general, our reporters do not see systematic results from codes of conduct. Several reporters suggest the need for more research examining their effects.

## B. Intergovernmental codes

Some national reporters discussed intergovernmental codes like the United Nations' Global Compact, the ILO's Tripartite Declaration, or the OECD's Guidelines for Multinational Enterprises. Our colleagues from Sweden and Finland suggest that these instruments are quite prominent in their countries. Most other reporters did not give them as much attention. All our reporters acknowledge that these soft law measures are mostly exercises in moral exhortation, with no force of law.

## C. Framework agreements

Even more narrowly, now limited almost exclusively to Western Europe, some multinational enterprises have signed "framework agreements" with international trade union federations aimed at fortifying workers' rights in the companies' supply chains. Most such agreements contain commitments to respect ILO core labour standards, and a procedure for taking up "complaints" when potential violations are identified by trade unionists. For example, our colleague from Sweden describes several framework agreements involving IKEA, Skanska, SKF and other Swedish MNEs.

However, these agreements are still relatively new. Reporters did not cite concrete cases where an agreement has been invoked on behalf of workers, though your general reporter

knows of cases involving Chiquita Brands bananas and Danone food products, among others, that brought satisfactory results.

#### D. New actors

Many reporters mention activity by NGOs and other non-trade union and non-employer organizations as a phenomenon involving new actors. These include religious, environmental, feminist, immigrant advocacy and other groups. Most appear to operate at the margins of labour law changes, while trade unions and employers' organizations continue in strong institutional roles. Our French colleague makes the provocative observation that labour *lawyers* have taken on a representative function formerly provided by trade unions, using legal complaints and cases to establish new labour law norms. The same might be said for the United States, where private attorneys bringing class action lawsuits have prevailed in cases bringing millions of dollars in recompense to affected workers.

Despite a large and growing literature describing new “soft law” initiatives in the labour rights field, most reporters found little systematic research on the impact of these measures. Anecdotal evidence cited by our reporters suggests mixed results in specific cases. It is premature to conclude that “soft law” has significantly affected workers' rights and labour standards in the global economy. However, it is clear that more research is needed on this topic. This is an area where members of our Society might make important contributions in years ahead.

## **Conclusion**

I want to thank our national reporters for their efforts to provide us with such valuable accounts of developments in labour law and practice in each of their countries. It is really not possible in this general report to adequately convey the wealth of analysis and detail in the national reports. I recommend to participants in this Congress to carefully study the national reports to fully understand the depth and breadth of changes in our field.