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**Negotiating Job Protection in the Age of Globalization**

**Muneto Ozaki**

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## Introduction

The process of collective bargaining in most industrialized countries and many developing countries has undergone significant changes in the course of the last decade or so. The basic cause of these changes has been economic globalisation that has led to intensified inter-enterprise competition across national borders, and the declining effectiveness of economic policies pursued by national governments. The increased mobility of capital has made employment vulnerable to changes in business strategies pursued by multinational enterprises. The continuous search by enterprise management for ways of enhancing competitiveness, in the context of the fast growing availability of new technology, has threatened employment security throughout the world. Under these circumstances, the protection of employment in the context of a highly competitive business environment has become one of the main issues of concern for workers. Recent changes in the process of collective bargaining reflect growing concern among workers for employment security and among employers for greater competitiveness.

The influence of economic globalisation has been exacerbated in some countries by particular national conditions. A case in point was German reunification of 1990, which severely strained the traditional supremacy of industry-level collective agreements, as explained in detail in a subsequent section, and led to the emergence of “hardship clauses”, which exempted individual enterprises under specified conditions from the application of certain provisions of collective agreements.

Bargaining over job security and competitiveness is not a new phenomenon. Job security has always been one of the main demands of trade unions since their inception, while employers have always tried to improve the competitiveness of their companies. However, the accelerating pace of enterprise restructuring as well as the growing threat to employment stability in the context of economic globalisation have forced the social partners in more and more countries to seek, through negotiation, ways of achieving the dual goals of job security and high competitiveness, often in a more cooperative way than in the past. Because of this integration of two apparently divergent interests into one negotiating process, the transformation of collective bargaining in the past decade can be called “innovative”.

This paper offers a comparative analysis of recent developments in collective bargaining, with particular respect to negotiations on employment and competitiveness, in Australia, Brazil, France, Germany, Ireland, Italy, Japan, the Netherlands, the United Kingdom and the United States. The project leading to the drafting of this paper originally sought to analyse the so-called “employment and competitiveness pacts” concluded within enterprises and plants, as well as other agreements, signed at enterprise - or plant-level, explicitly striking a trade-off between employment protection and enhancement of competitiveness. It became clear, however, that this conceptual framework was not totally appropriate for an internationally comparative work. For one thing, the incidence of collective agreements explicitly integrating trade-offs between employment and competitiveness is still rather limited. There are a few countries, e.g. Germany, where the 1990s witnessed a notable spread of “employment and competitiveness pacts”, but such relatively comprehensive pacts integrating the considerations of employment and competitiveness are still rare in many of the countries studied, in particular outside Western Europe.

In some of the countries, a degree of trade-off is often implicitly accepted by the parties, without appearing explicitly in the texts of the agreements. This is the case for example in Japan, as explained in a later section. Another notable feature of negotiations on employment protection and competitiveness in Japan lies in the fact that the processes of bargaining and consultation are closely intertwined. Often, collective agreements only

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set up joint consultative machinery, and provide for different degrees of union participation in managerial decision-making on different issues. Under such a system, labour-management discussions on managerial initiatives tend to be ad hoc processes, taking place when specific problems arise at the workplace. Issues related to employment and competitiveness are often dealt with in a rather piecemeal way, without leading to comprehensive formal agreements.

In other countries, e.g. the USA and Australia, legal and political factors have fostered negotiations focussed on the enhancement of competitiveness, and have not encouraged the integration of job security considerations into the trade-offs. The assumption underlying this approach was that jobs would be created through higher competitiveness.

All of these forms of collective bargaining are covered by our analysis. Whether job security is implied (as in Japan), or expected as a result of greater competitiveness (as in the USA and Australia), parties to collective bargaining today clearly have both concerns in mind at the bargaining table, and the resulting agreements seek to attain both objectives, albeit less effectively in some countries than in others.

As we adopt such a perspective, this paper is in essence about recent developments in collective bargaining, and other forms of negotiation at enterprise level, especially negotiations on employment security and competitiveness or both. Thus, collective bargaining in this paper includes German works agreements under the German Works Constitution Act and some forms of Japanese joint consultation, where management refrains from implementing plans to which there is strong union opposition.

This paper focuses mainly on enterprise-level bargaining. However, to the extent that bargaining at national, inter-occupational or sectoral (industry) level sets the framework for enterprise-level bargaining on employment and competitiveness, its impact and the issues covered will be discussed.

This paper draws heavily on a series of papers prepared by national experts for the ILO in 1999. The list of these papers is attached as an annex. However, the paper also draws on information which the author has gathered through various published studies and other sources.

## **Framework for negotiating employment and competitiveness: Laws, public policies and industrial relations systems**

The ways in which the parties to collective bargaining try to deal with employment and competitiveness differ significantly from one country to another. They are influenced by various factors prevailing in a particular country, most notably the legal framework, the institutional framework, the continuity of particular public policies, as well as the economic environment. The persistence of some of these factors in a particular country has led to the development of certain behavioural patterns among unions and employers, which in turn tend to affect the ways in which they deal with the issues of employment and competitiveness. These behavioural patterns, or “industrial relations traditions”, tend to persist in spite of the changes currently taking place in the economic environment (globalization) and technology. Globalization and technological change affect the importance of employment and competitiveness as issues of concern to the social partners, but how they deal with them is strongly affected by the factors referred to above.

One implication of this is that countries vary considerably in the predominant ways they deal with employment and competitiveness, in spite of globalization and the

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strengthening of enterprise autonomy in industrial relations. In other words, although there are strong similarities in the issues negotiated today by the social partners from one country to another, the processes for dealing with them are quite different, and these differences often lead to different outcomes.

Although this paper cannot present a comprehensive analysis of all the factors affecting enterprise-level bargaining on job security and competitiveness in all the countries studied, it can highlight some of the factors that significantly affect the ways negotiations are conducted at this level, in particular on issues related to employment and competitiveness. The following paragraphs propose to examine the effects of those factors on the conduct of collective bargaining in the countries covered by this study. Some factors, such as the US legal framework, are today so well enshrined in the country's labour relations system, that they have become virtually one of its traditional features. On the other hand, others are of relatively recent origin. This is the case, for example, of the culture of social partnership that has developed in Ireland, Italy and the Netherlands since the 1980s or the 1990s.

It is important to bear in mind that enterprise-level bargaining in every one of the countries is affected by a number of factors. We have selected just one factor for each country in order to explain how it affects the conduct of collective bargaining at this level, even though it may not be the most important in that particular country. In the United States, the legal framework has perhaps affected the conduct of enterprise-level collective bargaining more than in other countries. The comparison between the United States and Germany will highlight the relative rigidity with which the legal framework binds the conduct of collective bargaining in the former, less so in the latter.

## **Legal framework**

The legal framework for industrial relations is an important factor affecting the conduct of enterprise-level bargaining in every country, but its importance varies from one to another. Of the countries covered by this paper, it is probably in the United States that laws have had the most long-lasting and far-reaching effects on industrial relations, as well as shaping particular patterns of behaviour by employers and unions at the bargaining table. It is true that, in terms of the extent of the legal regulation of employment relations, Brazil surpasses the other countries. However, in Brazil, the extensive regulation of employment relations, combined with extensive judicial intervention, stifled the full development of collective bargaining on employment and competitiveness for decades, rather than shaped particular patterns of enterprise bargaining. Recent developments in industrial relations in that country tend to take the form of the reduction of legal intervention and the development of new spheres of social dialogue, often going beyond the framework of traditional labour relations.

The legal framework for labour relations in the United States, under the National Labor Relations Act, seems to be as important a factor in bargaining on employment and competitiveness in the United States as is its well-known tradition of adversarial collective bargaining. Its effects on the relative scarcity of bargaining on these issues in the United States could be contrasted with the recent development of enterprise bargaining in Germany, another country where enterprise bargaining (mostly between the works council and the management) is relatively highly regulated by law.

The United States National Labor Relations Act, as amended, requires employers and unions to bargain in good faith over matters involving terms and conditions of employment. The interpretation of this provision has given rise to extensive litigation, and an extensive body of case law has developed on the type of managerial decisions that could be regarded as involving terms and conditions of employment. Detailed consideration of

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the case law is beyond the scope of this paper. It suffices here to note that the initial classification of subjects by the court into three categories – mandatory, permissive and unlawful – was subsequently supplemented by another classification of managerial decisions into three types with respect to collective bargaining. The first type of decisions are those that have a substantial effect on the employer but only a minimal or indirect effect on the employment interests of employees (e.g. pricing, financing, advertising). These decisions were defined to be part of the managerial prerogative on which there was no obligation on the part of the management to negotiate. The second type consists of decisions that affect only employment (e.g. wages, working hours, benefits), which carry a bargaining obligation. The third type of decision, most likely to affect competitiveness and employment protection, are the ones in which the National Labor Relations Board (NLRB) is required to determine whether the benefits of bargaining outweigh the burden of costs placed on management by the obligation to engage in bargaining. In 1991, in complying with this requirement and in dealing with this last question, the NLRB created a new distinction between a managerial decision that resulted in a basic change in the nature of the business (which would not trigger a bargaining obligation) and one that did not result in such a change (which would carry a bargaining obligation).

Thus, US law on the duty to bargain, as it has evolved in relation to major employer decisions on investment, production processes, and capital structure, permits employers who so choose to avoid negotiations with a trade union by claiming that the decisions belong to either the first type of decision described above or the third type involving basic changes in the nature of the business. Disagreements tend to be resolved through litigation rather than negotiation.

The result of all this is that the law in the US does not encourage negotiations over matters relating to competitiveness and job protection. The focus of the law is not on linking the issues of competitiveness and job security, but rather on whether or not the employer has the right to make the decision without negotiating with the union about it.

On the other hand, in Germany, the legal framework for enterprise-level bargaining did not prevent the recent development of bargaining on job security and competitiveness at this level, in particular in big companies. The German experience shows many cases of implicit agreement between employers and unions (or works councils) to set aside one of the basic principles underlying the system of collective bargaining in the country. Section 77(3) of the Works Constitution Act provides that works agreements shall not deal with remuneration and other conditions of employment that have been fixed or are normally fixed by collective agreement, except in cases where a collective agreement expressly authorizes the making of supplementary agreements. In contrast with the US situation, however, this provision has not prevented the recent spread of employment and competitiveness pacts, which have been concluded at plant level in many big companies. As explained in more detail in the subsequent chapters, many of these pacts contain provisions which are not totally in conformity with collective agreements, and are therefore incompatible with Section 77(3). However, this flexibility in the implementation of the statutory regulation, which is based on agreement between the parties to the pacts and reflects the shared willingness of the social partners to accept it, has allowed the development of labour-management negotiations on employment and competitiveness.

## **Public policy**

In some other countries, the important role of public policies, often extending beyond the enactment of the legal framework, is notable. This is the case, for example, in Australia, where the continuous implementation of specific public policies has affected the extent to which, and the ways in which, employment and competitiveness are negotiated today in that country. Australian government policy for the past two decades or so, as

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largely shared by the social partners, has consisted of regarding the price of labour as the key to employment creation.

In Australia, since the early 1980s, the Federal Government has experimented with various policies aimed at creating employment (in contrast to protecting employment), in particular at the macro-level, as explained below. On the other hand, employment protection (in contrast to employment creation) has not been a prominent issue in Australian public policy, and has usually only extended to ensuring that employees could not be arbitrarily dismissed by their employers.<sup>1</sup>

The policy of the national Labour Government that was in power from 1983 to 1996, and the Conservative Coalition Government, that has been in power since 1996, shares an important common feature; both governments regarded employment creation mainly as a function of the price of labour. Therefore, control of labour costs has been the Government's main concern in formulating its employment policy.

From a procedural viewpoint, government policy shifted from a highly centralized wage system to strong encouragement of enterprise bargaining. The former policy was implemented for a few years after the conclusion of the "Accord" in 1983, but after the mid 1980s, public policy was characterized by increasingly strenuous efforts to decentralize wage determination. This shift of policy was based on the assumption that decentralized collective bargaining was more conducive to greater competitiveness in the national economy.

Thus, the Industrial Relations Commission (AIRC), which was given the key role in wage determination under the "Accord", made an award in late 1983 which reintroduced wage indexation, and required that each union pledge to make no claims for additional wage increases in return for wage indexation.<sup>2</sup> The Government later abandoned its centralized approach and wage indexation in the face of economic problems. However, various subsequent measures were still focused on the wage system. Thus, in 1986, a two-tier wage system was introduced to take better account of productivity increases at both industry and enterprise level. In 1988, a decision by the AIRC further developed the two-tier wage system, by introducing a so-called "structural efficiency principle" designed to encourage the parties to reach collective agreements on the introduction of multi-skilling, broad-based work classifications and a reduction of demarcation lines. A policy document entitled "Working Nation", was issued in 1994 by the Labour Government of the day which set out three broad elements: better matching of unemployed with job vacancies; wage subsidies paid to employers and the creation of a "training wage" below existing wage rates. The last two measures were clearly aimed at reducing labour costs. As mentioned earlier, the Conservative Coalition Government has also continued policies aimed at containing labour costs as a means of enhancing competitiveness.

Another country covered by this study, where government policy has played a crucial role in shaping the framework for enterprise bargaining on employment and competitiveness, is France. The leading role played by the Government in industrial relations, in particular in the determination of the general orientation of bargaining activities, has always been prominent in France. In the 1990s, government policy shifted its focus from passive social treatment of unemployment (e.g. unemployment allowances, encouragement of early retirement, etc.), which was prevalent in the 1980s, towards (1)

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<sup>1</sup> E.M. Davis and R.D. Lansbury (1998) "Employment Relations in Australia" in G.J. Bamber & R.D. Lansbury, eds., *International & Comparative Employment Relations*, SAGE, p.125.

<sup>2</sup> Ibid.

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more active employment policies such as increased spending on vocational training, a reduction in social security contributions, the retention of workers in employment etc. and (2) promotion of collective bargaining on the reduction of working time, with a view to protecting or creating jobs.<sup>3</sup> The latter policy of encouraging unions and employers to negotiate a reduction in working time was pursued mainly through the promulgation of new legislation, such as the Robien Act (June 1996) and the Aubry Act (June 1998). The latter Act, in particular, has had a crucial impact on the orientation of enterprise bargaining in France up to now. Thus, for example, a report of the Ministry of Employment and Solidarity on the state of collective bargaining in 1999<sup>4</sup> (the latest report at the time of writing of this paper) noted a sharp increase in the number of agreements signed at enterprise level (a trend explained in more detail in a subsequent chapter) in comparison with the previous year, and observed that the increase was due to the application of the 1998 Act, which provided for incentives to enterprises that conclude agreements on reducing weekly working time to 35 hours. A consequence of this was that 60 per cent of enterprise agreements concluded in 1999 concerned reduction of working time. In addition, almost all negotiations that touched on employment, e.g. by way of management's undertaking to recruit new employees or to refrain from dismissals, did so as part of a trade-off for shorter working time. It is worth bearing in mind that the 1998 Act made the disbursement of financial incentives conditional upon the management's commitment to increase or protect employment. A large majority of the enterprises which concluded agreements in 1999 for reducing working time to 35 hours a week requested such financial assistance.<sup>5</sup>

The same report of the French Ministry also revealed a continuous diminution, in the second half of the 1990s, of the percentage of enterprise agreements dealing with wages. Very often, wage issues were dealt with in terms of the effects of cuts in working time on remuneration. As a consequence, less than 25 per cent of the agreements concluded in 1999 dealt with wages under the statutory obligation (introduced in 1982) to negotiate annually on wages and working time; and only some 500 agreements, out of more than 30,000 concluded in that year, dealt with wages independently from agreements on shorter working hours. This shows the crucial importance of the government role in France in setting priorities and generally establishing the framework for enterprise collective bargaining.

In Japan, the traditional preference of enterprise unions and employers is for ad hoc problem-solving through more or less informal joint consultation rather than standard-setting collective bargaining and this is still apparent in the way they deal with the issues of job security and competitiveness today.

## **Macro-level social partnership**

The framework for enterprise bargaining on job security and competitiveness can also be established through central negotiations between the central employers' and workers' organizations. This is one of the basic, and well-known, characteristics of the industrial relations models of the Nordic countries, at least until recently. Today, the influence of

<sup>3</sup> Boulin J-Y (1999) *La contribution de la négociation collective à la création/préservation de l'emploi et à la compétitivité: le cas de France*, unpublished paper written for the ILO.

<sup>4</sup> Ministère de l'Emploi et de la Solidarité (2000), *La négociation collective en 1999*, Tome 1: Tendances, pp. 39-42.

<sup>5</sup> Ibid. p.41.

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such central negotiations on enterprise collective bargaining is prominent in Ireland, Italy and the Netherlands, to mention only the countries within the scope of this paper. The extent to which the Government participates in such central negotiations varies significantly. Detailed discussion of the contents of such central negotiations in these countries will be left to a subsequent section on employment and competitiveness as issues for central and sectoral bargaining. Suffice it here to mention the main central agreements entered into in these countries, as well as their impact on the subsequent development of collective bargaining, in particular at enterprise level, on employment and competitiveness.

In the Netherlands, social partnership seems to be firmly established as an integral aspect of the traditionally Dutch way of doing things, which is often referred to as the “Polder model”. However, a landmark agreement, marking a turning point in social partnership for economic development and employment creation, was signed in November 1982 by representatives of the central employers’ and workers’ organizations in the Foundation of Labour. The agreement, entitled “Central recommendations concerning elements of an employment policy”, since known as the “Wassenaar Agreement”, has formed the basis of Dutch labour relations until today. In this agreement, the parties established a direct relationship between competitiveness and employment by stating that “structural improvement in employment requires recovery of economic growth, stable prices and improved competitiveness of companies coupled with better rewards”.<sup>6</sup>

Since the conclusion of this agreement, more than 80 recommendations and guidelines have been signed between the central employers' and workers' organizations, expanding the agenda for social partnership on the basis of the basic trade-off struck in the Wassenaar Agreement between wage moderation and reductions in working time.<sup>7</sup> The most important of such agreements was “A New Course: Agenda for collective bargaining in 1994”, signed in December 1993, at a time of increasing unemployment in the wake of the 1992 and 1993 crisis in the European Monetary System.<sup>8</sup> The parties reaffirmed the need to improve competitiveness and to protect employment. In dealing with the latter issue, the agreement proposed that employment conditions should be differentiated and tailor-made. The mutual commitments of the parties in this agreement were subsequently renewed by the October 1995 “Declaration regarding consultation on employment conditions, 1996 (and beyond)” and “Agenda 2002 – agenda for collective bargaining in the coming years” (December 1997).

One notable feature of Dutch social partnership since the Wassenaar Agreement is the fact that it involved the withdrawal of the Government from the wage determination process, in contrast with the previous practice of strong government intervention in this area. As wage moderation is one of the basic elements of the trade-off for employment protection and higher competitiveness, this government withdrawal illustrates the tendency over the past two decades towards a growing autonomy of the social partners in the management of the labour market in the Netherlands.

Thus, the central employers' and workers' organizations attempt to determine, often in joint or tripartite consultative or negotiating institutions such as STAR (Foundation of Labour) and SER (Social and Economic Council), in which direction labour policies in

<sup>6</sup> The quotation is from van der Meer M (ed.) (2002), Working Paper 10, *The Trade-off between Competitiveness and Employment in Collective Bargaining: The national consultation process and four cases of company bargaining in the Netherlands*, InFocus Programme on Social Dialogue, Labour Law and Labour Administration, ILO, Geneva.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

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firms should develop. These organizations then try to coordinate the bargaining activities at lower levels through intra-organizational negotiations with local negotiators, although the major employers' associations VNO and NCW (which merged in 1995) ceased overt coordination in 1993, arguing that economic conditions in member companies varied too much to coordinate wage setting effectively.<sup>9</sup> Coordination on the employers' side seems today to be mainly ensured by their major affiliate industrial federations. On the union side, the FNV and CNV seek coordination, but the smaller MHP federation does not.

In addition to coordinating wage-setting within firms, the FNV and CNV try to promote certain issues in lower-level bargaining, e.g. attention to target groups and ethnic minorities; they also conduct major public relations campaigns to draw the attention of the public to problems caused by workload and stress.

While the Dutch experience with central negotiations since 1982 represents a trend towards greater autonomy of the social partners vis-à-vis the Government in labour market matters, social partnership in Italy since 1993 and in Ireland since 1987 is characterized by a strong tripartite approach. The landmark agreement in Italy was the "Protocol on incomes and employment policy, on bargaining structure, on labour market policies and on the support of the productive system", signed in July 1993 by the central organizations of employers and unions, as well as by the Government. It was the result of a negotiation process which had started in 1990, in the context of a deep recession and the decision by the Government to adhere to the narrow EMS limits. The latter factor made it difficult to resort to devaluation as a means of increasing the competitiveness of Italian industry. Thus curbing inflation at macro-level, and containing labour costs at enterprise level became an imperative.

Negotiations that preceded the conclusion of the agreement focused on two issues: reform of the system of automatic indexation of wages to the movement of the cost of living (*scala mobile*) and reform of the structure of collective bargaining. The agreement, however, dealt with two other issues, namely labour market policies and the improvement of production systems, although the agreement on the latter was rather in the nature of statements of programmes and goals, mainly to be implemented through legislation rather than through the commitments of the parties. The part of the agreement dealing with the first two issues was implemented immediately. The wage indexation system was abandoned. As to the reform of the structure of collective bargaining, the system which existed until 1993 consisted of three levels: national inter-occupational; national industrial; and enterprise. There was no coordination among them, and it was possible to negotiate the same issues separately at each level. The new structure made the articulation between the three levels clearer. Under the new structure, the national inter-occupational level ceased to play any direct role in wage bargaining, although it is involved in bi-annual tripartite negotiations on incomes policy. The national industry-level has been designated the main level for bargaining, and enterprise-level bargaining can take place only on issues so defined by national industry-level agreements, and in accordance with the procedures set up by the latter.<sup>10</sup>

Within the framework set up by this agreement, Italy has experienced a significant development of the practice of tripartite negotiations on macro-economic and employment policy-making. The main outcomes of such negotiations are (1) the tripartite Pact for Employment (*Patto per il Lavoro*) of September 1996, which followed up on provisions

<sup>9</sup> Ibid.

<sup>10</sup> Bordogna L. and Pedersini R. (1999), *The Contribution of Collective Bargaining to Employment Protection or Creation and to Competitiveness*, an unpublished paper written for the ILO.

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related to employment and labour market policies in the 1993 agreement, (2) the Social Pact for Economic Growth and Employment (*Patto sociale per lo sviluppo e l'occupazione*) of December 1998, in which the three parties reaffirmed their commitment to the strengthening of social dialogue as an instrument for formulating social and economic policies at all levels, including the implementation of incomes policy as defined by the 1993 agreement, and (3) the so-called “negotiated planning” (*Programmazione negoziata*), namely a group of measures, partly originating in various central agreements of the 1990s and supplementing them, which are aimed at creating economic conditions and a climate of trust at local level conducive to increases in investment and the creation of employment. The “*Programmazione negoziata*” represented a shift in public policy from a highly centralized intervention towards a more decentralized one, based on the involvement of the social partners and other economic and institutional actors at local level. Its main objective is the development of the southern regions. The main instruments are the so-called territorial pacts (*Patto territoriale*) and area contracts (*Contratto d'area*), which are negotiated by public authorities, including local authorities, the social partners and other public and private actors.

These tripartite agreements in the 1990s will be discussed again later in this paper in some more detail. It would however be useful here to highlight a characteristic of Italian social dialogue. It consists of the close linkage between governmental action and bargaining activities. Important elements in most central agreements concluded in the 1990s in Italy included the Government's commitment to take specified measures (e.g. investments in public infrastructure development, or the reform of the education and training systems). Thus the central agreements, in particular those concerning employment creation and protection, cannot normally be implemented directly, but instead have to be translated into law or regulations by the Government. The latter, in turn, sometimes (as was the case with the introduction of the new apprenticeship system) lead to their implementation through lower-level collective bargaining.

In comparison with the collective bargaining systems of the Netherlands and Italy, that of Ireland is characterized by the scarcity of bargaining at industry level, as collective bargaining is mainly conducted at national and enterprise level, more importantly at the former. After experiencing periods of centralized and decentralized bargaining for decades, Ireland has firmly opted for centralized negotiations since 1987. In comparison with the previous experience with central negotiations, social partnership since 1987 has been characterized by the greater commitment of unions, employers and the Government to the partnership, a high degree of consensus among them on the key economic policies as well as the comprehensive substantive coverage of centralized negotiations. The last point refers to the fact that central agreements negotiated since 1987 go beyond purely industrial relations matters, and include broader economic and social goals.<sup>11</sup> Five central agreements, with an average duration of 3 years, have been concluded between trade unions, employers and governments since 1987. The latest agreement “Sustaining Progress: Social Partnership Agreement 2003-2005” was concluded in 2003.

It is widely recognized today that the social partnership, inaugurated in 1987 with the conclusion of the Programme for National Recovery (PNR), has made a crucial contribution to the remarkable improvements in economic and social indicators which Ireland achieved in the 1990s. Thus, while the rate of unemployment was as high as 16.2

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<sup>11</sup> Gunnigle P. and Brosnan K. (1999), *The Contribution of Collective Bargaining to Employment Creation and Employment Protection and to Competitiveness in Ireland*, an unpublished paper written for the ILO.

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per cent in 1992, it fell to the level of full employment in 2001 at 3.8 per cent, although it increased slightly in 2002 to around 4.4 per cent.<sup>12</sup>

The pay deals struck in the first three national agreements, i.e. up to 1997, saw a strict adherence by those at enterprise-level to the basic pay increases agreed in the national agreements. The fourth agreement (Partnership 2000) witnessed the emergence of enterprise agreements which went beyond the increases. This was mainly due to the impact of a tightening labour market. Under “The Programme for Prosperity and Fairness”, concluded in 2000, this trend accelerated. In 2000 alone, it is reported that over 100 enterprise pay agreements settled for increases above the centrally agreed rate, causing wage drift.<sup>13</sup> This may signal an entirely new climate of active bargaining on pay at the enterprise level. The growing wage drift has been described mainly as “market-driven pay adjustments” by companies seeking to recruit and retain highly skilled or scarce employees.<sup>14</sup> Thus, the nature of central agreements seems to be undergoing a certain transformation today.

## **Bargaining on employment and competitiveness: Enterprise level**

### **Growth of enterprise bargaining**

There has been a notable trend in the past decade towards the development of collective bargaining or other forms of negotiation at the level of the enterprise or the plant in most of the countries covered by this study. Some European countries, e.g. Ireland and Norway, still operate relatively centralized systems of collective bargaining. In Spain, the predominant level of collective bargaining still appears to be the provincial, industrial level. However, even in Ireland, we have seen the recent development of bargaining activities at the enterprise level, at least in so far as pay bargaining is concerned. Even in the United States, where collective bargaining has traditionally been decentralized, there has been a trend towards further decentralization since the late 1980s. Thus, multi-employer, pattern bargaining came to an end, as in the steel industry in 1986, or was eroded, as companies withdrew from master agreements, as in the truck industry and the coal-mining industry. Moreover, there has been a shift in the locus of bargaining from company to plant-level. In Japan, where wage bargaining used to be highly coordinated through what is commonly referred to as “*Shunto*”, the disparity of wage increases among companies in the same sector, as well as between sectors, has widened significantly in recent years.

Decentralization of collective bargaining is above all related to the search for higher competitiveness. In places where enterprise collective bargaining has been practised for many years, it has changed from an instrument for obtaining additional improvements in wages and employment conditions above those fixed at sectoral level to a mechanism for obtaining further concessions from workers with a view to enhancing enterprise competitiveness. The quid pro quo is the undertaking by the employer to guarantee job security of the existing employees or to minimize job losses. Some policy makers believe

<sup>12</sup> OECD Main Economic Indicators June 2002.

<sup>13</sup> Irish Labour Relations Commission, Annual Report 2000, p.18.

<sup>14</sup> Ibid.

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that the decentralization of collective bargaining leads to higher competitiveness, although the existing evidence supporting this argument is tenuous.

Let us examine the process of decentralization and its implications in more detail with respect to Germany, Australia, France and the United Kingdom, where the trend towards decentralization has been particularly marked.

## **Germany**

In Germany, plant-level bargaining for additional benefits beyond the sectoral collective agreement has been an integral part of the German industrial relations system for many years. In the 1960s, it was even trade union policy to negotiate at plant level to obtain wage drift (*betriebsnahe Tarifpolitik*). The metal sector wage agreement (*Lohnrahmentarifvertrag II*) in Nordbaden-Nordwürttemberg in 1973 required the management and works councils at plant level to negotiate up to 30 supplementary plant agreements for its implementation; the framework agreement of 1978 in the same sector also contained similar provisions. The German unions' campaign for shorter working hours since the 1980s also fostered the development of plant-level negotiations. In the metal sector, where standardized regulation of working hours in sectoral agreements was the tradition, the 1984 agreements on working time reduction opened the possibility for tailor-made plant-specific working time regimes. Following the 1984 collective agreement, more than 10,000 plant-level agreements were negotiated across the sectors.

This trend towards the greater role of plant-level negotiations on working time reduction in Germany was further fostered by the dichotomy of interests on the employers' side between big firms and small firms. Employers' acceptance since 1984 (in spite of the opposition of small firms) of the principle of reduced working hours created more room for manoeuvre at company level. Employers obviously sought to compensate the cost of working time reduction by productivity improvements through working time flexibility. However, in many cases, this possibility was available only to large companies, which had developed highly sophisticated work schedules for their large workforces. In fact, the majority of small firms were reported to still have a standardized working week towards the end of the 1990s, while more than 80 per cent of big companies did not.<sup>15</sup> This shows that the combination of working time reduction and working time flexibility was negotiated at company level, mainly in big companies.

The decline of the role of sector (industry) agreements was further driven in the 1990s by a factor specific to Germany, namely German reunification. The transfer of the bargaining institutions of West Germany to the former East Germany resulted in high wage agreements in the latter. In 1993, firms in the metal sector in the east, which were unable to pay high wages, denounced the collective agreement. The system was saved by the introduction of so-called "hardship clauses" into the collective agreement. Companies could apply for exemption from the collective agreement which would be granted if they met certain conditions. For the first time in post-war history, a German firm legally bound by a collective agreement, was allowed to derogate from the standards set in that agreement, in order to survive. Between 1993 and 1996, 181 companies in East Germany were reported to have applied for "hardship" exemption.<sup>16</sup> In the context of the severe recession of 1993, hardship exemption clauses soon spread across all industries and spilled over to West Germany.

<sup>15</sup> Hermann et al. (1999), quoted from Hassel and Rehder, *op.cit.*

<sup>16</sup> Bahn Müller, Bispinck et al. 1999.

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Nevertheless, the social pacts of the 1990s introduced fundamental changes in the German system of collective bargaining. Hassel and Rehder identify two aspects.

- Firstly, their spread has reversed the hierarchical order between collective agreements and plant-level negotiations. Although the legal situation has not changed and many social pacts do not violate collective agreements, plant-level negotiations today create new standards autonomously, by superseding collective agreements, and the latter tend to follow current practice at plant level.
- Secondly, in contrast with previous practice, plant-level agreements are no longer to the advantage of employees. They are about workers' concessions in relation to cost-cutting, which often involves greater flexibility and cuts in wages, overtime pay and bonuses. These concessions are given in return for (1) guaranteed employment, (2) investment, or (3) refraining from "delocalization".

In short, plant-level bargaining in the 1960s was mainly for additional pay, and that in the 1970s was mainly for improving working methods in the context of the "humanization of work" programme (Humanisierung der Arbeit). The working time flexibility agreed in the 1980s was at the least ambiguous with regard to its effects on employees since they often gained financially from working time flexibility. The social pacts of the 1990s, on the other hand, were primarily concession-driven. Cost-cutting not only included further flexibility but also unpaid overtime or outright wage cuts.<sup>17</sup>

## **Australia**

In Australia, where a highly centralized system of wage determination was tried out under the so-called "Accord" of 1983, wage increases were in part determined for the first time, in 1987, by unions and management at workplaces. In other words, wage rises were granted after the parties had demonstrated to the Australian Industrial Relations Commission (AIRC) that certain levels of restructuring had taken place and cost saving improvements had been achieved, in accordance with "the Restructuring and Efficiency Principle (REP)". Subsequently, enterprise bargaining was further encouraged by the AIRC, e.g. by the application of the Structural Efficiency Principle (SEP) in 1988, and its extension in 1989. As progress towards the application of these principles was notably slow, the Federal Government and the ACTU pressed for a further encouragement by the AIRC of enterprise bargaining, which was achieved in 1991 through the enterprise Bargaining Principle (EBP), introduced by the AIRC in October 1991. Furthermore, in 1993, an amendment to the Industrial Relations Act opened the possibility, for the first time in Australian industrial relations history, of collective forms of bargaining without union involvement. These measures for decentralizing wage determination were given a new twist towards further individualization of rule-making at the workplace in 1996 when a newly elected Liberal-National Coalition Government passed the Workplace Relations Act. This introduced the system of Australian Workplace Agreements (AWAs), thus creating the possibility for individual employees and their employers to negotiate agreements regulating their employment relations.

A decade after the beginning of formal enterprise bargaining, the system of regulating employment relations in Australia presented some complex features. In 1998, it was estimated that approximately 30 - 40 per cent of employees had at least some of their working conditions regulated by an enterprise agreement. Awards remained the main regulatory form for approximately 35 - 40 per cent of employees. A further 30 - 35 per

<sup>17</sup> Hassel and Rehder, p.14.

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cent of employees were award-free and agreement-free, working exclusively under a contract of employment. AWAs covered only about 20,000 employees or less than 0.25 per cent of the workforce.<sup>18</sup> In 2001, AWAs still played only a minor role in regulating wages and conditions, although the percentage of employees covered by AWAs increased slightly to 1.9 per cent.<sup>19</sup> In the meantime, the coverage of awards may have somewhat declined, as 2000 data indicates that about 20-23 per cent of all employees had their wages and conditions entirely regulated by awards, while 35 per cent relied on a combination of awards and collective agreements; the remaining 40 per cent had their wages and conditions determined mainly by individual arrangements.<sup>20</sup> However, these figures do not, as such, reflect the present state of the regulation of employment relations in Australian workplaces, as a large majority of enterprise agreements are used, mainly by larger enterprises, to change some aspects of the award, or to deal with matters which are not dealt with by the award; by 1998, only about 7 per cent of collective agreements were reported to have completely replaced awards.<sup>21</sup> Thus, the award system still seems to have greater influence on employment relations than the above figures suggest.

## France

In terms of the number of agreements signed at enterprise level, France is probably the country which has experienced the sharpest increase in recent years, in particular since 1998 when the first Act on the reduction of working time to 35 hours a week was promulgated. Indeed, it more than doubled (+ 225 per cent) between 1998 and 1999, to reach 30,000.<sup>22</sup> More than half of these agreements were not signed by trade unions but rather by those employees who had been mandated by unions to negotiate on behalf of their fellow employees. This possibility was created by an Act of 1996, and was extended by the two Aubry Acts of 1998 and 2000. As a high percentage of the agreements negotiated by “mandated employees” was signed in small and medium-sized enterprises, the number of signed agreements reflects a sharp increase in bargaining activities in small and medium-sized enterprises.

As mentioned earlier in this paper, this sharp increase in enterprise bargaining took place under a strong impetus from the Government, in accordance with the French tradition of collective bargaining in which the Government plays a strong leadership role. In so far as the linkage between collective bargaining and employment protection/creation is concerned, the Government intervention took the form of the two Aubry Acts of 1998 and 2000.

However, it is worth bearing in mind that the growth of enterprise bargaining under these Acts on the negotiated reduction of working time did not undermine the practice of branch-level collective bargaining. As a matter of fact, the operation of these Acts has

<sup>18</sup> ACIRRT (1999), *Australia at Work, Just Managing?*, Prentice Hall, p.43.

<sup>19</sup> Australian Bureau of Statistics (ABS) (2001) Cat. No: 6248, Sept. Quarter, Table 6; quoted from M. Baird and R.D. Lansbury (2002), “The Changing Structure of Collective Bargaining in Australia” in *The New Structure of Labor Relations: Tripartism and Decentralization*, H. Katz, W. Lee and J. Lee eds., Ithaca, New York: ILR Press, an imprint of Cornell University Press, forthcoming (2003).

<sup>20</sup> ABS (2000), quoted from M. Baird and R.D. Lansbury (2002), *op.cit.*

<sup>21</sup> H.C. Katz (2001), *op.cit.*

<sup>22</sup> Ministère de l’Emploi et de la Solidarité (2000), *op.cit.* p.11.

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resulted in a significant role for branch level collective bargaining as an instrument for assisting enterprise-level actors in negotiating the reduction of working time, for example by providing them with model shortened working time arrangements.

## **United Kingdom**

Among the countries covered by this paper, the United Kingdom has experienced the most far-reaching decentralization of collective bargaining in the course of the past few decades. For over thirty years, industry-wide bargaining arrangements have been in decline in Britain, but this has accelerated in recent years. With minor exceptions in construction and textiles, for example, collective bargaining in Britain today is totally enterprise-based.<sup>23</sup> This reflects the growing resolve of British managers, confronted by mounting competitive pressure, to challenge the pay levels, the working practices and controls at the workplace, which their predecessors in easier times had allowed the trade unions to build up.

This trend towards a high degree of decentralization has two main implications. Firstly, it fosters the informal character of British collective bargaining. Collective agreements in Britain are not legally enforceable. Within an enterprise, they do not generally exist as distinct documents, but rather as a collection of pay settlements, works rules, minutes of meetings, and often informal understandings.<sup>24</sup> Secondly, decentralization has resulted in a significant decline in the coverage of collective bargaining, reflecting a marked trend towards deregulation of the labour market. It is reported that the proportion of employees covered by either bargained or statutory collective arrangements fell from 83 per cent in 1980 to 36 per cent in 1997.<sup>25</sup> The trend seems to have been somewhat reversed by new government intervention, such as the introduction of national minimum wage regulations in April 1999, but collective bargaining coverage still seems to be far below the level of two decades ago.

### **Concluding remarks**

There is today strong pressure towards decentralization of collective bargaining. One of the factors strengthening this pressure is the predominance of neo-liberal economic thinking among policy makers. In a number of countries, such as Australia and the United Kingdom, it explains why decentralization of collective bargaining is accompanied by the individualization of employment relations.

However, decentralization is not progressing at the same pace or in the same way everywhere. There are countries, such as Ireland, Italy and the Netherlands, where collective bargaining at higher levels, such as national inter-occupational and sectoral levels, still plays the key role in wage setting. As to the way in which decentralization is implemented, there are significant differences between countries. On the one hand, e.g. the Netherlands and, to a lesser extent, Germany, bargaining at a decentralized level is developing within the framework of higher-level collective agreements. Such decentralized bargaining takes place on issues not dealt with by the latter, or where bargaining at

<sup>23</sup> Brown, W (1999), *Collective Bargaining and Employment in Britain in the 1990s*, unpublished paper written for the ILO.

<sup>24</sup> Ibid.

<sup>25</sup> Milner S. (1995), *The coverage of collective pay-setting institutions in Britain, 1895-1990*, British Journal of Industrial Relations, Vol.33i; Cully M. and Woodland S. (1998), *Trade union membership and recognition 1996-1997*, Labour Market Trends, July, quoted from Brown, op.cit.

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enterprise level is encouraged. On the other hand, in countries such as Australia and the United Kingdom, those involved at enterprise-level have been given a free hand to regulate employment relations at the enterprise level.

Another notable feature of the recent growth in decentralized bargaining is the increasing role given to non-union models of workers' representation in collective bargaining. We have seen earlier that, in France, more than 50 per cent of enterprise-level agreements concluded in 1999 were signed by non-union representatives so-called "mandated employees" (*salariés mandatés*). In Australia, since 1993, enterprise-level collective agreements can be negotiated by groups of employees, without union involvement. We could also refer to Germany in this context, as the role of works councils, composed of elected employee representatives, is crucially important in enterprise-level bargaining. The ideologies underlying this development may vary widely. While in some countries e.g. Australia there may be an implicit policy objective of weakening trade unions, in other countries, e.g. France, the introduction of the possibility for "mandated employees" to negotiate collective agreements on working time reduction, is partly aimed at extending the possibility of bargaining to medium and small-sized enterprises, where union organization does not exist.

## **Small enterprises and decentralization**

In many countries, management in small businesses behaves differently towards industrial relations institutions from its counterparts in big enterprises. This is also true with respect to their attitudes in the face of the pressures for decentralization of collective bargaining. However, the attitude of small firms towards sector-level bargaining and enterprise bargaining varies considerably from country to country, reflecting the differences in the strength of unions as well as wage policies pursued by employers' organizations in particular countries.

In general, small enterprises tend to lack personnel resources to conduct enterprise bargaining effectively. Therefore, they may see advantages in relying on sector-level negotiations, carried out by employers' organizations. This seems to account for the fact that, in Australia, the vast majority of enterprises with less than 100 employees were reported in 1998 not to be parties to enterprise agreements, in spite of the strong encouragement given to enterprise bargaining by public policy and legislation.<sup>26</sup> The 1995 Australian Workplace Industrial Relations Survey also revealed that 76 per cent of the management of small private businesses with 5 to 19 employees were of the opinion that the award system, which normally incorporates elements of sector-level negotiations, had worked well for their workplace in the past.<sup>27</sup> One exception to this general tendency may be observed in France, where, as we have just seen above, there has recently been a sharp increase in bargaining activities within medium and small enterprises in the wake of the promulgation of the Acts of 1998 and 2000, promoting collective bargaining for the reduction of working time. However, this trend must be seen against the background of the Acts authorizing non-trade union representatives (mandated employees) to sign enterprise agreements on the reduction of working time.

<sup>26</sup> ACIRRT (1999), op.cit., p.43.

<sup>27</sup> A. Morehead, M. Steele, M. Alexander, K. Stephen & L. Duffin (1997), *Change at Work: The 1995 Australian Workplace Industrial Relations Survey (AWIRS 95)*, Longman, South Melbourne, p.318.

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However, the situation may differ if the employers' organizations are dominated by large firms, and they pursue high wage policies. This is what happened in Germany in the 1990s, where large firms pursued high-skill and high-wage policies, and relied on the flexibility of their internal labour market to maintain a high level of competitiveness. As a result, tensions emerged between large and small companies within employers' associations, as an increasing number of small and medium-sized companies in several sectors complained about their associations' high-wage policies.<sup>28</sup> This eventually resulted in the departure of a number of small firms from the associations. The differences in the behaviour of large and small firms in Germany must be seen in the light of the strength of the German unions, capable of disrupting production by means of industrial action, and their absence in the enterprise, where the employees' interests are normally represented by works councils, where they exist. Within such a framework of industrial relations, large firms regard sector-level bargaining as a process more conducive to industrial peace than enterprise bargaining, as they believe that they, rather than small firms, would be the targets of strike action in the context of decentralized bargaining. Moreover, while large firms are capable of enhancing flexibility in their internal labour market, small firms do not have a sufficiently large internal labour market to do so. Small firms also tend to feel that their managerial discretion would be substantially higher without collective agreements. Thus small firms tend to benefit less than large firms from sector-level wage bargaining, but pay the same costs as the latter.

Small firms in most countries, however, do not engage in collective bargaining even at the enterprise level as widely as large firms. Rather, they tend to introduce measures aimed at enhancing competitiveness through informal arrangements with employees, or through unilateral decisions taken by management. Therefore, small firms are not a factor in fostering trends towards the decentralization of collective bargaining. This is true, for example, in Germany, where the spread of enterprise-level "employment and competitiveness pacts" since the 1990s has been virtually confined to large firms.<sup>29</sup> In Australia, small firms (with less than 100 employees) resorted more than big firms to the Australian Workplace Agreements, which are a form of individual agreement between management and individual employees.<sup>30</sup> However, despite various attempts by successive governments to interest them in enterprise agreements, this form of regulation has largely been ignored by the vast majority of enterprises with less than 100 employees.<sup>31</sup>

## **Employment and competitiveness as issues for enterprise bargaining**

### **Diversity in focus**

Employment and competitiveness are the two key issues of concern today for employers and trade unions, as well as governments, in many countries. However, the ways in which these issues are dealt with through collective bargaining, and the extent to

<sup>28</sup> M. Vökl (1998) *Krise des Flächentarifvertrages und Integrationsfähigkeit von Arbeitgeberverbänden. Eine empirischen Untersuchung an Beispiel zweier mittelständischer baden-württembergischer Branchen. Industrielle Beziehungen 4(2)*, quoted from A. Hassel and B. Rehder (2001), *Institutional Change in the German Wage Bargaining System – The Role of Big Companies*, Max Planck Institute for the Study of Societies.

<sup>29</sup> A. Hassel and B. Rehder (2001), *op.cit.*

<sup>30</sup> Office of the Employee Advocate, 2001, quoted from M. Baird and R.D. Lansbury, *op.cit.*

<sup>31</sup> ACIRRT (1999), *op.cit.*, p.43.

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which collective bargaining explicitly deals with them, as well as the extent to which the two issues are integrated into one set of trade-offs in enterprise bargaining, vary considerably from one country to another, or from one group of countries to another. For example, in continental Western European countries, the past decade witnessed a significant development of enterprise-level bargaining, integrating concerns for enhancing job protection and improving enterprise competitiveness. One of the best examples of such an integrated approach to job protection and competitiveness is offered by the Dutch experience during the 1990s. In the Netherlands, the trade-offs that underlay the search for employment security and enhanced competitiveness during the 1990s took the form of promoting flexibility in employment contracts (in particular, the promotion of part-time work), the protection of part-time workers, the employers' declared intention to refrain from using dismissal as a means of dealing with redundancy and to resort instead to a freeze on recruitment and early retirement, and the unions' offer of wage restraint as a means of coping with sluggish company performance.

On the other hand, in the United States and in some other countries with the Anglo-American tradition of labour relations, enterprise bargaining during the same period tended to focus on improving enterprise competitiveness, on the assumption that jobs would be protected or created by the success of the enterprise in the markets as a result of its competitive edge. However, the focus of bargaining varies significantly between countries, even within this group. For example, collective bargaining in the United States since the 1980s has focused mainly on the reform of work practices, with a view to creating high performance work practices, as a means of achieving high competitiveness. On the other hand, newly developing enterprise bargaining in Australia mostly focuses on increasing flexibility in working time arrangements, as explained in more detail below.

The way collective bargaining tackles employment and competitiveness also varies depending on the state of collective bargaining prior to the onset of the overwhelming pressure of globalization in different countries. For example, in Brazil, until recently, the agenda of collective bargaining used to be narrowly focused on wages. More recently, bipartite negotiations on vocational training have developed as a means of coping with the challenges of global competition and threats to employment.

The substantive issues on which collective bargaining is now focused also vary with the past achievements of collective bargaining in a particular country. This applies to flexibility, which still remains the main tool with which social partners seek to attain the twin goals of employment security and enhanced competitiveness. However, in some countries, labour markets have already been made very flexible. As a consequence, there are countries where the scope for further flexibility in the labour market is limited. This is the case, for example, in the Netherlands, where flexibility in working time was introduced in the 1980s and 1990s, and there is now little room left for further moves in this direction.

### **Enterprise bargaining and national labour relations systems**

In the context of accelerating economic globalization, the last decade witnessed the growth of the influence of multinational enterprises in industrial relations. To a certain extent, this involved the development of enterprise-specific industrial relations systems, and their application across national borders. This trend no doubt affects the role of national systems of industrial relations. Some observers might question the relevance of discussing enterprise bargaining with reference to national systems of collective bargaining. However, the available evidence does suggest the importance of national labour relations systems as a framework for the conduct of enterprise bargaining.

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*Focus on competitiveness through high performance  
work practices: The case of the United States*

In the United States, the use of collective bargaining to address employment protection and competitiveness has been very limited. This is partly due to the legal framework which does not encourage unions and management to cooperate on these issues. One matter that is notably absent in most U.S. collective agreements is some form of job guarantee or agreed measures for making lay-offs unnecessary. This reflects one of the basic principles underlying U.S. labour relations, that employment security and job protection are objectives that should be attained through the success of the firm, rather than through collective agreements. In other words, job security is market-based.<sup>32</sup> It is the market that creates jobs, but it is also the market that destroys them. A survey of collective agreements carried out in 1999 covering 1000 workers or more which were filed by the U.S. Bureau of Labor Statistics, showed that, out of the 1,041 agreements, only 22 of the agreements, covering 2.8 per cent of the employees in the sample, explicitly provided for some form of job guarantee for the life of the agreement.<sup>33</sup> A prominent example of the latter is the 1996 agreement between General Motors and the United Auto Workers (UAW). It provides for a system of Secured Employment Levels (SELs) which prohibits layoffs for any reason except market-related volume reductions, reasons beyond the control of the corporation (“acts of God”), the sale of part of the corporation, model change or plant rearrangement, or layoff of an employee recalled to a temporary vacancy.<sup>34</sup> The UAW further gained plant closing moratoriums, in addition to other benefits, in their four-year agreements signed with the Big Three automakers in the autumn of 1999.<sup>35</sup>

In the United States, competitiveness, at least as an issue for collective bargaining, is above all seen as a function of work practices. The latter determine the degree of management-employee cooperation in the workplace, the degree of employee motivation, and the degree of efficiency of employees’ contributions to the achievement of high performance workplaces. So, the parties to collective bargaining, try to agree on ways of improving competitiveness in the firm by focusing on the transformation of work practices, the introduction of teamwork, total quality management, labour-management committees, etc.

With respect to competitiveness, U.S. collective agreements mainly focus on reform of work practices in order to achieve high performance, typically continuous improvement in quality, productivity and customer service as well as employee involvement. The issues dealt with include production teams, flexible classifications, pay for knowledge, continuous improvement and employee participation programmes. Comprehensive trade-offs between wages (normally wage restraint), working time reduction and flexibility and some sort of employment security, are rare in US collective bargaining.

Some unions and employers in the US do work jointly for higher competitiveness, but their efforts are often ad hoc and not incorporated into agreements. In the US context of legally enforceable collective bargaining and agreements, placing the cooperative process

<sup>32</sup> R.N. Block (1999), *Overview of the Relationship among Collective Bargaining, Competitiveness, and Employment Protection/Creation in the United States*, unpublished paper written for the ILO.

<sup>33</sup> G. Gray, D.W. Myers and P. Myers (1999), *Cooperative Provisions in Labor Agreements: A new paradigm*, Monthly Labor Review, Vol.122, No.1 (January), p.29-45.

<sup>34</sup> R.N. Block (1999), op.cit.

<sup>35</sup> H.C. Katz (2001), “Recent developments in U.S. collective bargaining and employment practices”, Transfer: European Review of Labour and Research, 3/2001, p.446.

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within the requirements of the legal framework is often regarded as inconsistent with the voluntary nature of cooperation.<sup>36</sup>

The above-mentioned changes have not been accompanied by the development of bargaining that integrates concerns for employment protection/creation and the enhancement of competitiveness. Rather, decentralized negotiations normally involved whipsawing by management, with local unions and workers being threatened with the prospect of plant closure if adequate concessions were not made in terms of pay, work rules etc.<sup>37</sup>

***Focus on competitiveness through working time flexibility: the case of Australia***

The current situation in Australia is similar to that in the United States, at least in one important respect. Collective bargaining there since the mid-1990s has focused mainly on improving competitiveness, rather than trade-offs involving employment creation or protection, since public policy regarded employment as a function of the competitiveness of the national economy.<sup>38</sup> However, unlike the United States, Australia had earlier (i.e. in the 1980s), experimented with a public policy aimed at linking collective bargaining to employment creation, particularly at national level. This was done under the so-called “Accord on Prices and Incomes” agreed in 1983 between the Labour Party and the ACTU. Under the Accord, unions accepted the principle of wage restraint in return for a range of federal government initiatives, including improvements in the social wage and policies designed to improve the competitiveness of selected industries. Although the collective bargaining system established under the Accord subsequently underwent various changes, mainly with a view to encouraging decentralized bargaining at enterprise level, which was regarded as more conducive to higher productivity, the Accord remained in force until the election of a conservative Liberal-National Coalition Government in 1996.

In Australia, the new and spreading enterprise agreements mostly focus on the enhancement of competitiveness, like US collective agreements. However, they focus on cost-cutting as a means of enhancing competitiveness. In terms of the bargaining agenda, there has not been much innovation under enterprise bargaining. The most common items in enterprise agreements remain wages and hours, and the innovations which involve cultural transformation of enterprises – such as profit-sharing, worker empowerment, team working, career paths or performance-based pay – are rarely included.<sup>39</sup> Cost-cutting is sought mainly through changes in wage systems and working time arrangements. While wage increases through awards are based on concepts such as the value of work, general economic conditions or comparative wage justice, the predominant criteria used by enterprise agreements are productivity gains (either expected or achieved).<sup>40</sup> As to working time, a notable trend under enterprise agreements in Australia is the absorption of extra payments for overtime into annualized wages. The ACIRRT report of 1999 refers to a landmark agreement at the Sheraton Towers Southgate in Melbourne, which rolled all

<sup>36</sup> R.N. Block (1999), op.cit.

<sup>37</sup> Ibid. p.447.

<sup>38</sup> R.D. Lansbury and M. Westcott (1999), *The Contribution of Collective Bargaining to Employment Protection or Creation and competitiveness: The case of Australia*, unpublished paper written for the ILO.

<sup>39</sup> ACIRRT (1999), op.cit. p.47.

<sup>40</sup> Ibid.

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award penalties (i.e. extra pay for overtime) into a higher weekly wage. Another notable trend under enterprise agreements is an increasing span in normal hours, particularly notable in the retail industry. The ACIRRT report also refers to the case of a large retailer, Coles Myer, which has moved towards 24-hour trading hours, and has negotiated a workplace agreement, increasing the span of normal hours from the old standard of 7 am to 6 p.m. to a new standard of 6 am to 9.30 p.m. Monday to Friday (6 am to 6 p.m. on Saturdays and 8 am to 5 p.m. on Sundays). Overtime is now paid only for night work between 9.30 p.m. to 6.30 am.<sup>41</sup>

On the other hand, bargaining on competitiveness in European countries often involves trade-offs between wage restraint (a measure aimed at reducing labour costs), working time flexibility (a measure for enhancing the firm's ability to adjust production to market fluctuation, optimizing the use of human resources, and reducing labour costs), working time reduction (a traditional demand of trade unions and workers but with a modern connotation involving cuts in labour costs), and some degree of job security.

***Trade-offs between employment protection and cooperation for higher competitiveness: the case of Germany***

Collective bargaining in Germany, and in particular plant-level "employment and competitiveness pacts" (betriebliche Bündnisse zur Beschäftigungs und Wettbewerbssicherung), today function mainly as instruments for achieving trade-offs between employers' commitment to some form of employment guarantee, or to new investment, or more often to the maintenance of investment or productive operations in the plant, in return for the workers' commitment to cooperate with the management on enhanced competitiveness.

To what extent has the practice of negotiating employment and competitiveness pacts spread in recent years? In Germany, such pacts have been increasingly negotiated at company-level since the 1990s. A survey of the 120 biggest companies in Germany, by Hassel and Rehder between 1986 and 2000, showed that, in the course of the 1990s, 55 (46 per cent) of the companies negotiated company pacts. They identified at least 156 such agreements in these 55 companies. Daimler Benz AG has concluded more than 30 agreements, while the majority of companies negotiated only one or two. However, it is clear that a successful plant-level agreement on employment and competitiveness has knock-on effects in the same industry. One can identify waves of plant-level pacts in the car industry (in 1993 and 1997) and in the chemical industry (1997 and 2000).

The emergence of simultaneous negotiations in companies in the same sector is not always an indicator of increased *competition*, but may also indicate a high degree of inter-firm cooperation. For example, the management as well as the works councils of German car manufacturers usually exchange their ideas and experience in the process of negotiating and implementing the pacts.<sup>42</sup>

Hassel and Rehder identify three main dimensions to management's interests addressed by plant-level employment and competitiveness pacts: cutting labour costs, improving productivity by increasing the flexibility of the production process, and redistributing work among the employees (or increasing working time flexibility as well as functional and geographical flexibility of the workforce).

<sup>41</sup> Ibid. p.113

<sup>42</sup> Hassel and Rehder, endnote 7.

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- 53 per cent of the 120 biggest firms in Germany concluded agreements seeking to cut labour costs by reducing employees' income, most often by reducing wage drift between the sectoral agreement and company payment, and lowering bonuses and premiums.
  - 49 per cent of the firms negotiated agreements seeking to adjust working conditions to a specific production process, to the life cycle of the product and to the changes in demand, with a view to optimizing the conditions for capital investment. Typical concessions made by the employees were the extension of working hours (in most cases without wage compensation), measures against absenteeism, changes in organization of work, and changes in pay systems towards a higher share of variable wage components compared to fixed pay. In return, management offered investment or production orders. In the wake of the 1992/93 recession, the car manufacturers (and later other industrial companies) experimented with work reform, in order to organize production in ways conducive to increased productivity. The methods used include lean management, teamwork, and a three-shift-system in one or several plants.
  - 42 per cent of the firms introduced flexibility in working time and/or functional and geographical flexibility of the workforce. Working time flexibility was mostly sought through the adjustment of the employees' working hours to the demands of the market. In those companies that have been confronted with mass redundancy, the increase in working time flexibility normally involved the reduction of working hours and work sharing. Increased labour mobility and functional and geographical flexibility was usually preferred as an alternative to redundancies, and normally involved the replacement of workers under short-term contracts by core employees.

#### ***Ad hoc and piecemeal problem-solving: the case of Japan***

A preliminary observation that may be useful is that the implications of an enterprise agreement cannot be understood only through the analysis of its text. Reference was made earlier in this section to the recent spread of enterprise agreements striking a sort of trade-off between employment protection and competitiveness in many European countries since the 1990s. This does not mean that, in other countries, where these issues are not negotiated as a package in a single round of negotiations, the bargaining partners do not negotiate these issues. In some countries, one of the elements of the trade-off may be implicitly accepted by the parties, so that an explicit clause to that effect may be felt unnecessary. A case in point is Japan. In an employment system that values a stable, long-term employment relationship, there is a strong social consensus that dismissals should be avoided, and, if they turn out to be unavoidable, they should be the last resort. A survey conducted in February 2002 among the companies listed in Section 1 of the Tokyo Stock Exchange, revealed that 53.9 per cent of the respondents were considering the possibility of reviewing the lifetime employment system, against 19.5 per cent which said that they would continue with it.<sup>43</sup> This represents a considerable increase in companies reconsidering the lifetime employment system. The findings of a previous survey undertaken in 1999, more than 50 per cent of the companies surveyed said that, irrespective of the performance of the companies, they would maintain the system in the future.<sup>44</sup> However, the relatively low unemployment rate prevailing in Japan, in spite of the

<sup>43</sup> The JIL Labour Flash Vol.15 of 15.03.2002, quoting the Nikkei Sangyo Shinbun.

<sup>44</sup> *Shakai-Keizai Seisansei Honbu* (Social and Economic Productivity Centre) (1999), *Nihonteki Jinjiseido no Genjo to Kadai* (current situation of, and challenges confronting, the Japanese

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worst recession that the country has experienced for more than half a century, could only be explained by the great reluctance shown by management not only in big firms, but also in small and medium-sized companies, to dismiss their employees.<sup>45</sup> Under these circumstances, parties to collective bargaining in Japan have often assumed that the management would do its best to avoid redundancies. Partly for this reason, unlike Germany, for example, Japan has not witnessed the spread of comprehensive employment and competitiveness pacts.

Such piecemeal treatment of the issues of employment and competitiveness can be incorporated into the process of *Shunto* (or spring labour offensive, i.e. the yearly round of coordinated collective bargaining taking place across the economy). Thus, for example, in the course of the 2002 *Shunto*, the management and unions in the 6 major electric appliances companies (Matsushita, Toshiba, Hitachi, NEC, Fujitsu and Mitsubishi) announced a so-called “labour-management joint message for dissipating the fear of job losses” (*Koyo-Fuan Fusshoku no tameno Roshi Messeiji*). It is not an agreement. It rather sets out the positions of each side on job protection in their companies. In the declaration, the unions “urge the management to continue implementing managerial policies that attach great importance to the job security of employees, as was the case in the past.” The management, on their side, responded that they understood employees’ concerns in this respect, but did not guarantee job security. Instead, they undertook to “fully use the labour-management joint consultative machinery at enterprise-level”, in the event of having to resort to job cuts.<sup>46</sup> This “message” was subsequently implemented in each company through such means as oral confirmation of adherence by the parties, memoranda of understanding in joint consultation, or the preamble or annexes to the management reply to the unions’ demands.

Collective bargaining through *Shunto* itself seems to be losing its effectiveness. In the course of the *Shunto* wage bargaining round in 2002, the five major companies in the electrical appliances industry acceded to the unions’ demand that the annual pay increments should be maintained, but immediately afterwards put forward so-called “emergency measures” which froze the application of the annual increments for six months.<sup>47</sup> It seems that these management proposals were eventually accepted by the unions without modifications. For example, the union in NEC reportedly accepted these emergency measures on condition that the wage bargaining in the following year (i.e. 2003) should start from the wage level incorporating the 2002 annual increments.<sup>48</sup> The fact that the measures were presented for consultation with unions separately from wage bargaining and from negotiations on employment protection, illustrates the piecemeal nature of labour-management negotiations in Japan.

Also in the course of the 2002 *Shunto*, the unions and the management in the five major companies in the iron and metal industry signed a joint declaration in which both sides undertook to “do their utmost to protect jobs in the companies”.<sup>49</sup>

personnel systems), quoted from T. Araki (2001), *Koyou Sisutemu to Roudoujyouken Henkou Houru* (Employment system and law on the modification of employment conditions) p.208

<sup>45</sup> Ibid.

<sup>46</sup> Nikkeiren Times (in Japanese), 14 March 2002.

<sup>47</sup> Asahi Shinbun, 15 March 2002.

<sup>48</sup> Ibid.

<sup>49</sup> Nikkeiren Times, op.cit. 14 March 2002.

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In both industries, negotiations between unions and management resulted in labour-management declarations, which are not formal agreements, and do not create any contractual obligations on either side. This is typical of the negotiating pattern in Japan, not only on issues of employment and competitiveness, but also on all labour relations issues in general.

Apart from wage restraints conceded by Japanese unions in enterprises facing difficulties, collective bargaining normally does not deal explicitly with measures for enhancing competitiveness. Instead, Japanese unions contribute to the achievement of this objective through their willingness to cooperate with the management in the introduction of plans aimed at enhancing the company's competitiveness. This cooperation is extended to their day-to-day activities. As a consequence, it is quite natural that labour-management dialogue on these issues in Japan normally takes the form of joint consultation, a process which is more informal and flexible than collective bargaining, and tends to focus on problem-solving rather than standard-setting. Let us illustrate this point by examples drawn from two companies in the electrical appliance industry.<sup>50</sup>

(i) A major computer maker

The world market for hard-disks, in particular those for desk-top, is dominated by US producers, which had moved their production sites to Southeast Asia earlier than Japanese producers which continued producing hard-disks in Japan until the middle of the 1990s. This major computer producer in Japan, with 48,225 employees (1998), experienced serious difficulties in the early 1990s because of the relatively high production cost of hard-disks. The survival of the hard-disk division of the company was at risk. Under such circumstances, the management decided to transfer the production of small sized hard-disks from a site in the north of Japan (Site "A") to a factory in Thailand, which had been founded in December 1988 with joint investment by this company and three other companies in the same group (Keiretsu). In order to achieve this "delocalization", the management launched a project called "TK project". On completion of the project, the Thai factory had more than 9,000 employees.

However, this project involved more than a simple transfer of production from one site to another. In order to safeguard the existing jobs at Site "A", the company moved the production of magneto-optical disks from another factory (Factory "B") accompanied by the transfer of dozens of employees from the latter to the former site. Factory "B", in turn, absorbed the production of computer-terminals, which had earlier been carried out in another factory (Factory "C"). Nevertheless, there was still a redundancy situation in Factory "B". The management therefore transferred, or seconded, 225 employees in this factory to various sites and subsidiary companies in the course of 1994 and 1995. Factory "C" was converted into a business centre mainly providing computer system services to outside clients. One hundred and fifty four of its former employees were seconded (*Shukko*)<sup>51</sup> or transferred to other worksites of the company or to other associated companies in the region. This included 54 employees who were transferred to another nearby factory.

It is reported that the whole process of this cross-border redeployment was carried out in close consultation between the management and the union. For example, the union reportedly participated in the formulation of the medium-term operational planning of

<sup>50</sup> These case studies draw on Denki Rengo Research & Information Centre (1998), *Nikkei Denki Kigyo no Kaigai Shinshutsu to Kokunai Sangyo-Koyo eno Eikyo*, pp 55-112.

<sup>51</sup> On the types of "Shukko" and its uniqueness in the Japanese employment relationship, see Inagami T., "Shukko-Tenseki no Yakuwari", in *Nihon Rodo Kenkyu Zasshi*, No. 501, April 2002, pp.57-59.

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the company as well as the conduct of the operational forecast,<sup>52</sup> although it is unclear how this union participation took place.

The formal joint consultation took place at headquarters level as well as at factory and work-site level. At headquarters level, it was conducted within the Central Joint Consultation Committee. The management informed the union of the content of the "TK project" when the Committee first met to discuss it in April 1994. The content was as follows:

The magneto-optical disks division would be transferred from Factory "B" to Site "A" by May 1995;

The computer terminal division would be transferred from Factory "C" to Factory "B" by December 1995;

780 employees of Factory "C" would be transferred to Factory "B" as staff in the computer terminal division, without changing their place of residence; 154 other employees would be transferred to other divisions, including 54 to a nearby factory;

Staff movements from Factory "B" to Site "A" would be kept to the minimum necessary, and would involve the secondment of about 60 office workers, and the short-term secondment, not exceeding one year, of about 50 technical staff. 170 other employees of Factory "B" would be transferred within the factory, and 80 others would be seconded to associated companies. In addition, 240 would be transferred to other divisions within the company.

Two points are noteworthy about this first announcement by the management of the restructuring plan, as well as the account of how it was implemented. Both of them are illustrative of characteristic features of Japanese labour relations. Firstly, the management plan was announced at a joint consultative meeting, and subsequently processed through joint consultative machinery, not through collective bargaining. It even seems that the parties never resorted to collective bargaining in the process of implementing the restructuring plan. Secondly, the content of the announcement resembles very much the final outcome of the project. The process of formal joint consultation had very limited impact (if any) on the management's initial plans. This does not necessarily mean that the union had no influence on the process of restructuring. However, union-management consultation, at least at headquarters level, seems to have taken place outside the formal joint consultative committee, and in a much more informal manner. It is difficult for an outsider to know what actually happened during such informal consultations.

At factory and workplace level, joint consultation mainly focused on staff movements, made necessary as a result of the outcomes of central joint consultation. In more concrete terms, joint consultation at these levels focused on the selection of the individual employees to be transferred or detached. The management and the union branch jointly conducted interviews with individual employees to identify their preferences concerning workplaces, and later jointly organized briefing sessions for those employees affected by staff movements.

(ii) An audio equipment producer

This company with 5,679 employees (1996), like other companies in the audio equipment industry, was faced with tough competition, and decided to shift the bulk of its production activities to Southeast Asia. It opened a factory in Malaysia in 1993, and since then the ratio of overseas production to total company production has increased from 20 per cent in 1993 to nearly 50 per cent in 1996. At the same time, the number of

<sup>52</sup> Ibid., p.62.

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employees in overseas workplaces has also increased to nearly 10,000 out of the total company payroll of 22,000 in 1996. Activities within Japan are increasingly focused on design, research and development.

The company implemented a number of restructuring plans between 1993 and 1996 involving inter-factory staff movements. However, as they did not involve workforce reductions, the union had no basic objections to the plans. On the other hand, the restructuring plan announced by the management in the central joint consultative committee meeting of May 1996, involved workforce reductions. The management argued that these rationalization measures were needed to cope with a sharp decline in domestic production, caused by a difficult business environment and the expansion of overseas production. The management further stated that this workforce reduction would include voluntary redundancy.

The union demanded that the issue of workforce reduction be discussed in the light of the overall company-restructuring plan. It was opposed to any restructuring that relied exclusively on workforce reduction. Prior to the extraordinary central joint consultative meeting in July, a number of union members' meetings, workshop meetings and joint consultative meetings were held. According to the union, consensus emerged in the course of these meetings between the union and the management, that it might be possible to limit the scale of redundancies if the employees accepted a lowering of employment conditions and the company shed one of the factories and made it a separate company (Company "H"). Some of the employees of the factory involved were expected to be hired by Company "H", with employment conditions inferior to those in the original company.

On the basis of this consensus, a central union committee meeting approved the commencement of joint consultation on workforce reduction. This was followed by union-management negotiations on the conditions under which the employees involved were to be moved from the company to the newly-formed Company "H" (in accordance with a practice which is commonly referred to in Japan as "*Tenseki*"<sup>53</sup>). These negotiations were reported to have brought about improvements in the compensation to be paid to the employees affected by the move. These employees had to resign from the company and be hired by Company "H". In the process, they incurred a reduction in their lifetime income. The negotiations resulted in an increase in the end-of-service lump-sum payments as partial compensation for the reduction in lifetime income.

Taking into account these developments, the union decided, at an extraordinary meeting of its members, to agree to the management's proposal to call for candidates for voluntary redundancy, to lower employment conditions and to shed a factory and transform it into a separate company, Company "H". The union and the management formally agreed on these points at an extraordinary joint consultative meeting held in August. In the same month, the management issued a call for voluntary redundancies. It was addressed to all employees 27 years old or over, with 5 years of seniority or more. As a result, 998 employees applied for voluntary redundancy, excluding those transferred to Company "H". The union made extensive advisory services available to the candidates.

These two examples illustrate the readiness of Japanese enterprise unions to contribute to the enhancement of competitiveness, by accepting the managements' plans to relocate production to Southeast Asian countries, and, in the second case, to lower the level of employment conditions and to reduce the workforce by shedding part of the company.

<sup>53</sup> "*Tenseki*" (transfer) is usually contrasted to "*Shukko*" (secondment). Both refer to the transfer of workers from one company to another. The former involve the change of the status of the employees; they lose the status of employees of the original company and become employees of the company to which they are transferred. On the other hand, "*Shukko*", in principle, does not affect the status of the employees of the original company, to which they continue to belong.

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The unions' action was most effective in the area of providing advisory and other services to the employees affected by the management's restructuring plans. Although, in the second case, union-management negotiations played a not negligible role in the process of restructuring, the main instrument was joint consultation rather than collective bargaining. Union-management negotiations took place on specific issues, and did not involve comprehensive trade-offs related to competitiveness and job security. The unions attempted to minimize job losses with varying degrees of success. Their approach was ad hoc and piecemeal.

## **Employment and competitiveness as issues for central and sectoral bargaining**

This paper mainly focuses on enterprise bargaining on employment and competitiveness. It deals with higher-level collective bargaining mainly as an institution setting the context for enterprise bargaining. Therefore, this paper does not discuss the substance of centralized collective bargaining in countries such as Ireland, Italy and the Netherlands where central negotiations are functioning effectively. Nevertheless, it seems useful to highlight some of the main features of the outcomes of higher-level bargaining in these countries.

One common feature of central bargaining in these three countries has been the importance of wage issues in trade-offs. In the Netherlands, the trade-off between wage restraint and the shortening of working time has been the basic element of the Dutch social partnership since the Wassenaar Agreement of 1982. The strength of the union commitment to wage restraint is illustrated by the tendency of the national trade unions to indicate the maximum level of wage increases which lower-level union organizations should demand, in their guidance for wage bargaining.<sup>54</sup> In Italy, the containment of wage increases by abolishing wage indexation (*scala mobile*) was one of the main trade-offs embodied in the 1993 tripartite "Protocol on incomes and employment policy, on bargaining structure, on labour market policies and on the support of the productive system."

The developments that followed the signing of the landmark agreements in Ireland and the Netherlands (i.e. the Programme for National Recovery of 1987 in Ireland and the Wassenaar Agreement of 1982 in the Netherlands) present many comparable features. Central negotiations in Ireland go far beyond purely industrial relations matters to include broader economic and social policy-making. Thus the Programme for Prosperity and Fairness (PPF), concluded in 2000, contains the parties' commitments with respect to "family friendly" initiatives, such as better childcare and other measures to improve the "work-life balance." The PPF stresses the importance of policies to support childcare and family life as a cornerstone of future social and economic progress and promotes "family-friendly" policies at enterprise level, e.g. job-sharing, parental leave, flexi-time, home working etc.

The Dutch central negotiations have also expanded the range of issues covered, to include the elderly, ethnic minorities and women. However, a notable feature of the Dutch social partnership was a growing emphasis placed on the differentiation of employment conditions. For example, the "New Course" agreement of 1993, which was signed in the

<sup>54</sup> See van der Meer (2002), Working Paper No. 10, *The Trade-Off between Competitiveness and Employment in Collective Bargaining: The national consultation process and four cases of company bargaining in the Netherlands*, InFocus Programme on Social Dialogue, labour Law and Labour Administration, ILO, Geneva.

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wake of a temporary economic downturn, renewed the social partners' commitment to a policy of responsible wage setting, but also contained another element that had a major impact on collective bargaining.<sup>55</sup> This was the introduction of the principle of the differentiation in working hours and patterns of working time. This represented a major change from the general working time reduction previously practised, involving collective days-off. This was made possible because trade unions, for the first time, dropped their objections to further flexibility while the employers accepted the introduction of working-time reductions and part-time work. For the rest of the 1990s, the focus of the Dutch social partners was on striking a new balance between flexibility and security in employment. Thus, through the "Flexibility and Security" agreement of 1996, the social partners agreed on the introduction of a major change in the law on contracts of employment and dismissals, by reducing core workers' protection from dismissal while enhancing employment protection and social security for atypical workers. This agreement was subsequently incorporated into a government bill and passed by Parliament, and came into force on 1 January 1999.<sup>56</sup> Further, the Foundation of Labour reached another innovative agreement in April 1999, entitled "Towards tailored employment conditions; increased opportunities for choice with regard to employment conditions". This agreement established a so-called "multiple-choice model of employment conditions", providing a trade-off between "time for money" and "money for time".<sup>57</sup>

Central tripartite consultations have also been explored recently in Germany, where traditionally collective bargaining at the sector-level has been the predominant form of industrial relations. In September 1998, the newly elected Socialist-Green Government started formal tripartite talks within the framework of the so-called "Alliance for Jobs", consisting of summit meetings and steering groups. It had originally been proposed in 1995 by the President of IG-Metall. The trade unions would agree to wage restraint for a number of years, in return for employers' commitment to create 500,000 jobs, and the Government's commitment to certain industrial policy. However, the employers subsequently refused to make the commitment. Although the Alliance was a revival of the experiment that had been made in the 1960s under the name of "Concerted Action", informal discussions on social and economic issues, and also on German unification, had taken place between the Kohl Government of the day and the social partners.

The agenda of the Alliance covered such issues as working time flexibility, vocational training and tax cuts. However, the results of the discussions in the Alliance fell short of expectations, although each summit meeting resulted in a joint declaration. In 1998, tax reform as well as some legislative reforms (concerning pension, sick pay and redundancy protection) were introduced by the Government, not so much as a result of the tripartite talks, but of government efforts to satisfy some of the unions' demands.

One big issue challenging the effectiveness of the Alliance was that of pensions reform. It became an important issue by the Autumn of 1999 as the SPD had made an electoral commitment to limit non-wage labour costs to 40 per cent. In the forthcoming collective bargaining round in late 1999, unions were willing to commit themselves to wage restraint, but demanded pensions reform in return. One of the major issues involved was the proposal by IG-Metall for retirement at 60 (instead of 65). The positions of the unions, the employers' organizations and the Government were complex. Within each party, there were differences of opinion and policies. For example, on the employers' side,

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

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although the Employers' Confederation was against such early retirement, large enterprises were in favour of it, as it offered a solution to the prevailing redundancy situation. In the end, the Government unilaterally introduced pension reform in the Summer of 2000.<sup>58</sup>

In those countries with decentralized systems of collective bargaining, negotiations on employment and competitiveness are left to the initiative of those concerned at enterprise level. Normally, no framework or guidelines are applied as to the conduct of such negotiations at enterprise or plant level by higher level organizations, where such exist, on either side of industry. In the USA, for example, the only institutional arrangement for joint discussions on employment and competitive issues is the Collective Bargaining Forum, set up in 1984 by a group of corporate chief executive officers and presidents of international unions, under the auspices of the US Department of Labor. Its purpose was to "address the role of collective bargaining in helping the US maintain a rising standard of living in an increasingly competitive world economy" (Collective Bargaining Forum, 1988, quoted from Block). In its report issued in April 1999, entitled "Principles for New Employment Relationships", the Forum urged union leaders and members to accept their responsibility to work with management to improve the economic performance of their enterprises, and urged employers to accept the principle of employment security and the continuity of employment for their workers, as a major policy objective. However, it is notable that the president of the National Association of Manufacturers (NAM) chose not to sign the report. Thus, the Forum was unable to do more than publicize its view that companies and unions should use collective bargaining to enhance competitiveness and employment protection.

In Japan, another country where decentralized (although coordinated) bargaining predominates, the tradition of concluding central agreements is absent. However, a growing threat to employment, due to the persistent economic recession, prompted the Government and central organizations of employers (NIKKEIREN) and workers (RENGO) to jointly examine appropriate ways of introducing work-sharing into Japanese workplaces. On 29 March 2002, in the course of the 2002 *Shunto*, they agreed on a document setting out their consensus on "basic approaches to work-sharing". They agreed to cooperate in the promotion of two types of work-sharing. The first is work-sharing as an emergency measure, aimed at temporarily safeguarding jobs in enterprises facing serious difficulties. It is meant to be applied for two to three years and involves reductions in working time and corresponding reductions in pay, although the parties agreed that (1) hourly pay should not be reduced, and (2) overtime must be eliminated prior to recourse to this measure. The second type of work-sharing is defined as a medium-term measure aimed at creating jobs by increasing the number of part-time workers. In view of the fact that part-timers in Japan had traditionally been denied many of the rights and benefits granted to regular employees, the agreement proposed to create a new category of workers, "regular employees with short working-time," enjoying most of the rights and benefits granted to regular employees. The Government agreed (1) to promote the diversification of work patterns and the application of fair wages and personnel systems to them; (2) extend the coverage of social insurance to workers with short working-time; and (3) assist implementation of emergency work-sharing financially. Subsequently, on 25 April 2002, the parties agreed on the details of the financial assistance to be provided by the Government. However, many observers doubt the effectiveness of such financial

<sup>58</sup> Based on an interview with Hassel A. in Nov. 2001.

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assistance in promoting work-sharing in Japan, because of the limited size of the budget allocated for the purpose, as well as restrictive conditions attached to it.<sup>59</sup>

This process of tripartite negotiations on work-sharing typically illustrates the basic characteristics of Japanese labour relations on employment and competitiveness in several ways. Firstly, the process has been ad hoc and dealt with issues piecemeal. Rather than dealing with various relevant issues in a comprehensive manner, the parties conducted negotiations on the highly specific issue of work-sharing. Another characteristic feature is the informal nature of the discussions that took place among the parties. They were not negotiations in the strict sense of the term, although they included many elements of negotiation. Instead, they were conducted in the form of “joint working groups to study the problem.” Therefore, the outcome was not a formal agreement committing the parties, but rather an understanding in which the parties express their will to make efforts to take specified action.

To conclude this review of recent practice in central negotiations, it can be observed, firstly, that they tend to acquire dynamism when the social partners, or at least one of the three parties in industrial relations, are confronted with a problem (or the threat of a problem) which can best be solved in cooperation with other parties. In most current cases, such a problem is related to labour costs or to employment. This is illustrated by the pressure exerted by German employers on the Government to revive the Alliance in the Spring of 2002, when a new round of collective bargaining was coming up. Through the Alliance, the employers were seeking to ensure lower wage increases. Secondly, although the initial impetus for starting central negotiations may result from the need to solve immediate problems, the sustainability of social partnership seems to depend on the parties’ ability to expand the agenda to cover new issues of concern to workers and employers, as seems to be the case with the Irish and the Dutch experience. However, the parties’ ability to do so may be affected by a variety of factors, including the country’s macro-economic performance, which may not be exclusively a function of the effectiveness of such central negotiations.

## **Industrial relations institutions in the face of new challenges**

The emergence of new patterns of collective bargaining, as well as the shifting focus on the issues it deals with, have clearly affected traditional systems of industrial relations as well as labour relations institutions. It has certainly affected the relative roles played by union representatives at different levels, as well as by unions in general and other representative institutions (e.g. works councils, where they exist). The pressure for institutional change has varied from one country to another. In some, like Australia, the changes meant a radical departure from the traditional systems of industrial relations. In others, e.g. Germany, although the changes have been important, they did not involve a collapse of the existing system of industrial relations, but rather its transformation while normally maintaining the basic distribution of the roles between the different parties. In many cases, a range of new issues has emerged for negotiation, or the ways in which particular issues are dealt with in negotiations have changed, but the basic framework of industrial relations has remained the same. In yet other countries, like Ireland and the Netherlands, drastic changes took place earlier - in 1987 in Ireland and 1982 in the Netherlands - and subsequent developments may be characterized as the process of building on the new industrial relations culture introduced then.

<sup>59</sup> This paragraph draws on Asahi Shinbun 30 March 2002 and 26 April 2002, as well as the JIL Labour Flash, vol.17 of 15 April 2002, of the Japan Institute of Labour.

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This section analyses briefly the impact on trade unions of the emergence and the spread of collective bargaining on employment and competitiveness, particularly at enterprise level, and then examines the possible emergence of a new sphere for social partnership. We examine first where significant changes have taken place in these aspects of industrial relations, and then examine whether the changes, if any, are the result of the emergence of negotiations on employment and competitiveness.

## Role of trade unions

What role are trade unions playing in the new pattern of negotiations on employment and competitiveness and what impact do the new patterns of negotiations have on trade unions?

In many countries, the last decade saw a significant decline in union density, albeit affecting some countries more than others. Likewise, the degree of trade union influence on the introduction of measures to improve competitiveness, has also varied. In the United States, the declining density, particularly in the private sector, has been considerable, and contributed to a growing diversity in employment conditions, partly as non-union firms have relied on procedures that relate pay and other employment conditions to individual characteristics of workers.<sup>60</sup> In the United Kingdom, union density fell from about 50 per cent in 1980 to 30 per cent in 1997, and in Japan from 30.8 per cent in 1980 to 20.7 per cent in 2001. In both countries, recent changes in employment conditions introduced to enhance competitiveness have been largely initiated by employers, and the role of unions has been marginal. On the other hand, in Germany, although there has been some decline in union density, unions have maintained a relatively high degree of influence in determining employment conditions. In that country, where elected representatives on works councils are statutorily empowered to represent the employees in negotiations with the management, unions have usually joined the bargaining table and signed 55 per cent of the employment and competitiveness pacts concluded in large companies in Germany in the 1990s (Hassel and Rehder). In other cases, although unions did not sign the pacts, they had to be approved by the unions (in particular with respect to the legal aspects) before the works councils signed them. In 35 per cent of cases, the unions acted as a consultant for the works councils with regard to the legal or strategic aspects. Only in 10 per cent of the firms were trade unions not at all involved in the bargaining process, as in the case, for example, of a print works owned by Bertelsmann AG.

In Australia, public policy since 1996 has systematically promoted the individualization of employment relations and the conclusion of non-union agreements. The introduction of the Australian Workplace Agreements (AWAs), referred to earlier, by the Workplace Relations Act, 1996, is an illustration of this policy orientation, although their spread has so far been quite limited, covering only 1.9 per cent of employees. A greater threat to the union role in Australian industrial relations is posed by the steady increase in the number of employees covered by individual common law contracts of employment. It is estimated that up to 38 per cent of employees have their pay set by such contracts and they are employed overwhelmingly in the private sector.<sup>61</sup> In contrast to AWAs, they do not have to be registered with a government agent or even formalized, so may be preferred by employers.

<sup>60</sup> Ibid. p.443.

<sup>61</sup> ABS (2000), *Employee Earnings and Hours Australia*, Cat. No.6306.0 May, quoted from M. Baird and R.D. Lansbury, op.cit.

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## New space for social partnership

One notable feature of the recent drive for job security and higher competitiveness lies in the fact that, in an increasing number of countries, cooperative efforts to achieve these objectives have developed at multiple levels, such as national, sectoral, regional and enterprise. These cooperative efforts often involve new participants alongside the traditional parties in industrial relations. In Brazil, for example, where the effectiveness of enterprise bargaining is inhibited by the rigid legal framework and other factors, innovative forms of negotiation have developed (either formal or informal, and bipartite, tripartite or multipartite) at other levels. Indeed, a new mode of union action (in particular in the metal workers' unions) has led to unions being increasingly effectively involved in, and contributing to, the formation of new multipartite fora for the formulation of public policies.

A notable example of such a development is the creation of the Sectoral Chamber of the Automobile Industry in Brazil in the early 1990s as an important tripartite negotiating experiment between the national and state governments, employers and unions. The tripartite forum was created in order to deal with the crisis facing the sector in the south-east of Greater Sao Paulo, provoked by the trade liberalization and the globalization of production, as well as the loss of the comparative advantages which the region had enjoyed earlier. This body subsequently grew into a multipartite body, involving the main unions, employers, the state government, municipal administrations and civil society organizations, in which the parties discussed ways of tackling a crisis which was no longer confined to one sector, but extended to the whole region. It took the form of the so-called ABC Regional Chamber, in which unions played an active role in negotiating on issues that had previously been dealt with only between urban and metropolitan policymakers and businesses.<sup>62</sup>

The ABC Regional Chamber sought to achieve higher competitiveness for the region through the reduction of the so-called "ABC cost". The reduction of this cost is conceived not only, indeed not even mainly, in terms of labour cost, but rather in terms of the flexibilization of taxes, investment in roads and infrastructure, vocational training and improvements in the education, health and public transport systems. Two concrete examples of instruments agreed on in the Chamber for achieving these objectives were the technological modernization of micro, small and medium-sized companies, accompanied by measures for strengthening inter-company cooperation regarding meals, transport, maintenance, medical assistance, logistics etc., as well as the "Regional Plan for Vocational Qualification."

Also at federal level in Brazil, tripartite management of the Workers Support Fund (FAT) has been initiated. FAT consists of contributions from employers and employees and is responsible for unemployment insurance and financing income generation programmes. The latter consists of subsidized credit and training available for small businesses, provided they generate jobs. The programmes are managed by employment commissions, composed of representatives of unions, employers' associations and local authorities, and may include other members from universities, civil associations (of neighbourhoods, rural producers, traders, unemployed, landless, etc.) as well as financial institutions responsible for the programme.

<sup>62</sup> The discussions on Brazil in this section relies on Araujo Castro N. and Augusto Comin A. (1999), *Competitiveness, Employment Protection and Innovative Bargaining Experiences in Contemporary Brazil*, unpublished paper written for the ILO.

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It may be that this shift in the focus of trade union activity is weakening the ability of the unions to make gains in traditional collective bargaining. However, at a time when the trade unions' ability to do so is weakening anyway, unions in a growing number of countries are understandably seeking to participate in deliberations on a wider range of issues, with new partners at new levels. It may also be that, challenged by the recent success of managerial initiatives in restructuring enterprises, unions in an increasing number of countries are advancing towards a new identity, with new practices aimed at regaining the loyalty of individual workers.

## Concluding remarks

In most of the countries covered by this study, systems of collective bargaining have undergone notable changes. Even in Western Europe, the main role of collective bargaining is no longer a means of achieving wage increases and improving workers' social conditions. Instead, collective bargaining has increasingly become instrumental in managing the process of enterprise restructuring, with a view to enhancing the competitiveness of the enterprise. One can argue, as Hassel did, that the new forms of collective bargaining are concession bargaining, although in Western Europe there is normally a trade-off between concessions and employment guarantees (or minimization of job losses). In this respect, there are fundamental differences between recent European agreements or employment and competitiveness pacts, on the one hand, and the US concession bargaining of the 1980s, on the other.

The extent of the changes varies widely. As to the direction of the changes, although there is a general trend towards decentralization of negotiations on employment conditions, some are coordinated, guided by higher level negotiations, while others take place in a totally free-for-all environment. The Dutch process of decentralization of collective bargaining represents the former type, while the Australian experience since 1996 is typical of the second approach. The differences in processes are also reflected in differences in the outcomes of negotiations. The former type of negotiations normally produces coordinated outcomes, while outcomes of the latter tend to be widely divergent. This justifies calling the former type of decentralization "organized decentralization" (as Traxler did) or "coordinated decentralization" (as Lansbury did) and the latter type "fragmentary decentralization" (Lansbury).

Although decentralization may bring some benefits to workers, as the Dutch social partnership seems to demonstrate, the arguments put forward by its proponents share many common elements with the neo-liberal economic arguments about macro-economic management. There is often a thin line separating decentralization and deregulation. This is illustrated by the recent Australian experience where public policy has gone beyond encouraging decentralized bargaining to attempting to substitute individualized fixing of wages and other employment conditions for collective regulation of these issues through collective bargaining. In the process, it has marginalized the role of two institutions that have traditionally kept management power within the enterprise in check, namely trade unions and the Australian Industrial Relations Commission.<sup>63</sup>

As to the economic effects of decentralization, the available evidence seems to indicate that decentralization in itself does not necessarily lead to improvements in workplace productivity. The improvements tend to be related more to the intensity of

<sup>63</sup> ACIRRT (1999), op.cit., p.36.

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collaboration between management and the workforce than to the structure of bargaining. Therefore, in order for enterprise bargaining to be an effective instrument for advancing higher productivity, it should deal with issues related to wider and deeper labour-management collaboration in promoting and managing change.

In some countries, the traditional labour relations institutions show a greater degree of resilience than in others. This is the case in Germany, where the changes that have taken place, although considerable, have not led to a breakdown of the traditional systems. Big business has been reluctant to get rid of industry-wide agreements, as they are conducive to a relatively high degree of labour peace. Thus, in a way, it is the strength of trade unions in Germany that ensures the relative stability of the German system of industrial relations.<sup>64</sup>

Nevertheless, recent developments in collective bargaining reflect the growing ascendancy of enterprise strategies over labour market regulation. While previously labour market regulation (including collective bargaining) aimed at providing equity in working conditions had an important impact on the formulation of enterprise and production strategies, recent collective bargaining outcomes primarily follow enterprise strategies aimed at market performance and competitiveness. Thus, the order of ascendancy seems to have been reversed.

Where employment security was guaranteed or strongly protected by custom and practice, it has often been questioned at the enterprise level by management and transformed into a contractual matter in the form of employment and competitiveness pacts (Germany) or provisions in collective agreements on employability (Netherlands). This means that the guarantee of employment security is conditional upon some efforts being made by the employees.

Labour costs continue to be one of the main factors affecting the competitiveness of, as well as the volume of employment in, an enterprise, industry or national economy, although there are of course other key factors that affect competitiveness and employment. Therefore, the containment of labour costs constitutes one of the main elements in the trade-offs struck in collective bargaining at all levels, including at central level. The experience from several countries shows that where labour costs have been effectively controlled, the social partners are able to expand the agenda of collective bargaining and social partnership to include new issues and are better able to strengthen the viability of the social partnership.

To conclude, systems of collective bargaining are undergoing profound transformation in many countries, but their importance as a means of cooperation between workers and employers for economic prosperity and job security remains important in most of the countries covered by this study.

<sup>64</sup> See Hansel and Rehder, *op.cit.*