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EDITORIAL

Asbestos@wto

We cannot stress too often the importance, not just to workers but the public, too, of Canada's complaint to the WTO against France's 1996 decision to outlaw the marketing and use of asbestos and asbestos-containing products. France is being represented by the European Union in the case, and the United States has joined issue as a third party.

In 1998, the ETUC pressed all European governments and the Commission to back France in the dispute. It was against any WTO proceedings likely to undermine EU rules and international conventions protecting workers and the public against asbestos. The Commission's decision of 26 July 1999 to ban the marketing and use of asbestos EU-wide from 1 January 2000 was a major prop to France's decision, and a big step forward in reducing asbestos exposure for the public and many workers. Of course, even that was too little too late for the countless victims reported in French figures published by us (*Newsletter*, N° 4, November 1996).

More still has to be done to ensure that many workers still exposed on building demolition work and dismantling asbestos-containing installations do not suffer the same fate. The Social Affairs Council wants the Commission to revamp the present Directive on the protection of workers against asbestos. Consultations with the Member States began in September 1998, but the social partner consultations required by article 137 of the Treaty are still nowhere in sight !

The WTO's Dispute Settlement Body (DSB) is now poised to deliver its findings. Its decision will give a new take on the validity of public measures to protect consumers and workers against asbestos and its derivatives. We are talking about a product known for over a century to be dangerous, and as cancer-causing for 40 years ! Never before has the WTO been asked to rule on a dispute directly relating to workplace health and safety standards, although it has previously dealt with public health issues (e.g., bovine growth hormones).

It is also the first time that the DSB will produce findings - after appointing a panel of experts - under the TBT (Technical Barriers to Trade) Agreement, set up mainly to ensure that technical regu-

lations and standards do not create "unnecessary" obstacles to international trade. Its ruling, which is bound to be appealed, has to be handed down within 90 days of the complaint being notified by the complainant, defendant or both, but has been put back more than once. It is now expected for summer 2000, and will place a series of question marks over the role of the WTO, the dispute settlement procedure (especially its lack of transparency), and the likely deregulatory effect of the TBT Agreement rules. One issue which cannot be ducked about the role of the WTO is its health and safety jurisdiction. This is an area covered by other international institutions like the ILO, WHO and UNEP, and where the WTO has no specific remit other than to prevent the creation of "unnecessary" obstacles to international trade.

EU trade unions know all about the impact trade barriers have on public safety and health protection measures. Their agenda is for common policies based on a high level of protection. These common policies need to be supplemented by labour rules setting minimum standards, i.e., leaving governments free to set better protection for workers. One thing market rules must not in any circumstances do is tie governments' hands to set tougher requirements where they are based on higher interests like public health or environmental protection. Freed of that context, market rules could turn back the tide of social progress, and the odds are that the most advanced national social, health or environmental laws will be the target of constant attack as potential barriers to trade.

The unions will have to give their take on this DSB decision, which is bound to set a precedent. They will have of take their own governments to task and hammer home the undeniably appalling social costs of asbestos. They must join forces to demand that the EU clarify both the role of the TBT Agreement on measures to protect occupational health, public health and the environment, and its own policy on asbestos in a globalizing world.

The TUTB will be ready to do its bit in whatever action European trade unions take when the WTO ruling is published. ■

Marc Sapir, Director of the TUTB

TUTB NEWSLETTER

THE EUROPEAN TRADE UNION TECHNICAL BUREAU FOR HEALTH AND SAFETY was established in 1989 by the European Trade Union Confederation (ETUC). It provides support and expertise to the ETUC and the Workers' Group of the Advisory Committee on Safety, Hygiene and Health Protection at Work. The TUTB is an associate member of the European Committee for Standardization (CEN). It coordinates networks of trade union experts in the fields of standardization (safety of machinery) and chemicals (classification of hazardous substances and setting occupational exposure limits). It also represents the ETUC at the European Agency for Health and Safety in Bilbao.

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The vital issues in the WTO asbestos dispute

By Sam Zia-Zarifi*

The TUTB asked Sam Zia-Zarifi and Mary Footer of the Erasmus University in Rotterdam to analyse the row over asbestos between Canada and France in the World Trade Organization. Their report[1] will help inform the debate on the problems of expanding the WTO's reach into other areas, especially labour/social policy. The issues raised by this dispute - the precautionary principle, health risk assessments, the choice of experts on the panel, the standing of civil society, especially the unions, to put over their views on the marketing of products mainly affecting workers' health - are indicative of the forthcoming debates and the bounds which need setting to the sphere of activity of organizations like the WTO.
In this article, Sam Zia-Zarifi outlines the big issues at stake in this dispute, which marks another, if not the final, chapter in the long-running saga which ended with a ban on the marketing of asbestos in Europe, which the TUTB *Newsletter* has tracked every step of the way (see box p. 5).

The decision of the WTO panel was initially scheduled for November 1999, but was put back first to March, and now July 2000.

The growing importance of the World Trade Organization in the process of economic globalization can be seen from the fact that the fate of Europe's legislation to ban all asbestos use is now in the hands of WTO trade lawyers and diplomats. Given the pace of economic globalization, it is imperative for civil society, and especially labour unions whose interests are most closely bound to the process of economic globalization, to recognize the WTO's new role and to engage the organization in a constructive but critical dialogue.

Canada's complaint

Canada initiated a challenge[2] in the WTO dispute settlement body (DSB) against France's decree banning asbestos from its markets. Canada argues that the French Decree hurts Canada's production and export of asbestos and therefore violates the WTO's trade liberalization rules. This dispute (in which the European Communities represent France[3]) represents the culmination of a longstanding effort by Canada to maintain its asbestos mining industry in the face of growing global regulation. The adoption of a total ban on asbestos use by France and the EC threatens not just Canada's entry into these markets, but also, and perhaps more importantly, Canada's ability to export asbestos to developing countries that might follow the lead of their more industrialized peers.

If the WTO agrees with Canada, it has the authority to ask the EC to repeal the French Decree or, should the EC fail to do so, to authorize import fines by Canada on European exports to the extent of financial injury suffered by Canadian asbestos exporters. It should be noted, however, that a WTO decision against the French Decree does not automatically cover asbestos bans enacted by other European countries or the EC itself. Therefore, it is highly unlikely that the EC will overturn its asbestos ban even if it loses this dispute; rather, as indicated by past European response to contrary WTO decisions on matters of controversial social policy, it is more likely that the EC will simply accept the imposition of relatively minor import tariffs on its products. Should Canada lose its challenge, it is highly unlikely that it will challenge other asbestos bans, even though it is technically able to do so under the WTO rules.

An early analysis of the case, based on the material available at this time, suggests that Canada will most likely lose its challenge. Nevertheless, the Asbestos dispute is significant not just because it affects the long struggle against the dangers of asbestos, but because it potentially constitutes the most significant expansion of the WTO's reach into areas of human health and worker safety once exclusively reserved for sovereign States.

The "scientific" basis of risk assessment

Canada's challenge relies mainly on a particular subset of the WTO Agreements known as the Technical Barriers to Trade Agreement. In order to comply with the TBT's requirements, Members must engage in a risk management exercise, whereby they:

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1 To be published by the TUTB later this year.

2 On 28 May 1998.

3 The European Communities represent individual Member States in WTO disputes because they have exclusive jurisdiction in international trade relations.

- scientifically assess the risks posed to achieving a legitimate objective (such as national security or human health) by a particular imported product;
- consider the availability of alternative methods of regulating the product's risk, including those set out in international guidelines; and
- objectively base their technical regulation on this assessment.

Thus, one of the central issues of inquiry under the TBT Agreement is the scientific basis of the technical regulation in dispute. This elevation of scientific principles is intended to minimize the role of political considerations in establishing regulations that may inhibit international trade by limiting the choices available to policy makers to those established through scientific assessment alone. But the WTO dispute settlement system was designed to address questions of international economic law and diplomacy, and it is not well-suited to dealing with issues implicating significant social and scientific problems.

To help explain the scientific basis of the technical regulation in dispute, the panels hearing disputes may rely on a group of 4 to 6 experts selected in consultation with the parties. The experts are intended to clarify the scientific basis of the technical regulation at issue. These experts are drawn from a list prepared by relevant international organization, the parties, and the WTO Secretariat. While there are some procedural safeguards for assuring the impartiality of the experts and their testimony, they still fall far short of satisfying legal standards of due process.

Then the WTO must determine that the challenged technical regulation is objectively and rationally based on a scientific assessment of the risks from a certain product. This evaluation must also consider economic factors and the availability of alternative, less trade-restrictive measures. These concepts have not yet been fully fleshed out, and whether the WTO interprets these concepts narrowly or broadly will decide the extent and impact of the TBT Agreement's impact on the ability of Members to protect their citizens.

First challenge under the TBT

The TBT has never been the subject of WTO dispute settlement. If the WTO's analysis of this first dispute under the TBT Agreement follows previous analogous disputes, the central question in this dispute will be the quality of the risk assessment conducted by France before enacting its Decree. If the WTO finds that France properly assessed the probability of the risk caused by controlled use of asbestos and its Decree is rationally based on this assessment, then it is highly likely that the French Decree will survive Canada's challenge. Informal information from the process indicates that the four experts used to help the WTO judge the French Decree all agreed that "controlled use" of asbestos was not a realistic option and that the existing science supported totally banning the use of asbestos. The panel is due to publish its decision in July.

Squaring away trade liberalisation and national sovereignty on health protection

But the Asbestos dispute further implicates some very important nonscientific, political and trade policy issues, which also indicate that the WTO is likely to reject Canada's challenge. The WTO has tried in recent disputes to respond to public criticism about the WTO's intrusiveness into areas of social policy by supporting the right of Members to protect their citizens and their environment. A decision against Canada in the present dispute would allow the WTO to articulate its support for the sovereignty of its Members at fairly minimal cost to the principles of international trade liberalization. In effect, by accepting a ban on asbestos (a product with a fairly low international trade value), the WTO could discourage bans on other products whose hazards are not as well known as asbestos. Since this dispute is the first heard under the TBT Agreement, a decision against Canada allows the WTO to establish this Agreement as a serious instrument of international trade liberalization without casting it as another source of public criticism of the process of economic globalization.

The WTO's agenda reflects the wishes of its Members to surrender part of their sovereignty in exchange for facilitating international trade, while maintaining their sovereign ability to discharge their primary responsibility of protecting their citizens' well-being. It is now clear that the WTO's rules at times tilt this balance unduly toward trade and away from Members' concerns for the well-being of their citizens. This substantive bias is strengthened by the institutional bias of the WTO (and in particular, its dispute settlement body), whose functionaries are drawn primarily from the world of trade lawyers and diplomats. As a result of this imbalance, the WTO as it currently functions is at times incapable of adequately protecting the ability of its Members to

An article by Laurent Vogel "The WTO asbestos dispute: workplace health governed by trade rules ?" setting the asbestos dispute in context can also be found on our Internet site (and will be published in French, in *L'année sociale* later this year, and in English in *European Trade Union Yearbook 1999*, ETUI, Brussels).
http://www.etuc.org/tutb/en/tutb-info1.html

vouchsafe their citizens' lives and their environment in the face of economic globalization.

This is not to accuse the WTO of conspiring against workers and their safety. It is simply that the WTO was designed by its Members to liberalize international trade. However, it would be incorrect to imagine that the WTO is completely close to other interests. Rather, the existing (perceived) isolation of the WTO from various sectors of civil society represents at least in part a failure of these sectors to engage the WTO. The Asbestos dispute, regardless of its outcome, should alert labour unions and other segments of civil society to the growing importance of the WTO, and the increasing urgency of assuring that the WTO assumes a more balanced approach that supports human health above mere trade interests. ■

Internet sites

WTO : www.wto.org

ICFTU : www.icftu.org/findex.html

French Ministry of Labour, special page on asbestos :
http://www.travail.gouv.fr/actualites/sante-f.html

Articles published in past TUTB *Newsletters*:

- *Asbestos ban: towards a European consensus (I)*, by Karola Grodzki, No 7, December 1997
- *Asbestos ban in France: too late for many*, by Jean Claude Zerbib, No 4, November 1996
- *Asbestos and substitute fibres: international trade unions demand ratification of ILO Convention No. 162*, No 7, December 1997
- *ILO Convention No 162: its impact on Spain*, No 7, December 1997
- *Asbestos ban: towards a European consensus (II)*, by Karola Grodzki, No 9, June 1998
- *Asbestos ban: towards a European consensus (III). Asbestos-free Europe next stop?*, by Karola Grodzki, No 10, December 1998
- *ETUC Resolution on a Europe-wide ban on asbestos*, No 10, December 1998
- *Eternit and Saint-Gobain in Brazil*, No 10, December 1998
- *Asbestos ban: towards a European consensus (IV). Final page turned in an epic tale?*, by Karola Grodzki, No 11-12, June 1999

All these articles are available on our Internet site :
http://www.etuc.org/tutb/en/newsletter1.html

Brazil moves towards an asbestos ban

Brazil is one of the world's main asbestos producers. But Brazilian trade unions, environmental campaigners and asbestos victim support groups have long been fighting to get it outlawed. Their pleas have long been stonewalled by President F.H. Cardoso's government's support for asbestos multinationals. Hence Brazil's backing for Canada's WTO complaint against France's asbestos ban.

Combined labour and public action seems finally to be turning the tide, however. Environment Minister Mr José Sarney spoke out for an asbestos ban in July last year. In April 2000, major progress was achieved when the federal government's advisory body, the National Environment Council (CONAMA), threw its weight behind an asbestos ban. Industry employers' organizations are now resigned to the inevitable. They have given in on the principle, but are holding out for an eight year adjustment period. The Environment Minister is backing the CONAMA's majority view that an asbestos ban should be in force by 1 January 2005 at the latest (also the European Union's planned date). The new legislation should be on the statute books before year-end. The jury is still out on the Brazilian government's attitude in the WTO dispute. Will it stick by Canada's complaint while gearing up to impose its own ban ?

Sources : Estadão de São Paulo, 13 and 17 April 2000; Fernanda Giannasi (e-mail : giannasi@telnet.com.br)
http://www.estado.com.br/editorias/2000/04/13/ger512.html

From technical transpositions to political debates

Legislation to implement the Framework and other health and safety directives went through largely undebated in most EU countries. Most governments saw it simply as updating existing legislation to correct the odd technical hitch in preventive systems whose general operation was by and large satisfactory. Once that was considered done, the mood turned upbeat. Set-ups had been modernized - time for a break from new legislation and political debate.

The difficult transition to practice, and especially, worsening working conditions, shattered this break in several countries. Debates are on the move, especially nationally, where significant differences remain. It soon became clear that while the Framework Directive was an effective device for setting ground rules in workplaces, it was not up to the challenges of prevention. National prevention policy also had to be reviewed and properly resourced. That is one reason why the national debates have not yet led on to a Community debate. Another is the head-in-the-sand policy adopted by the EU institutions in failing to shoulder their responsibilities for joint discussion of common problems in an area where Community legislation is a benchmark. So, the Portuguese Presidency's priorities for the Lisbon Jobs Summit offer an upbeat assessment of the future information society, but totally gloss over present-day working conditions and the health damage they are wreaking.

In France, asbestos was clearly instrumental in triggering the first public debate for nearly a quarter of a century. After decades of downplaying the risks of asbestos, the French government decided to get tough in 1996 and ban asbestos completely (See TUTB *Newsletter*, No. 4). Asbestos rapidly became a litmus of the failings of the preventive system's different functions (policy-making, research, use of medical surveillance data to set prevention priorities, problems of jointly-run occupational risk compensation bodies, links between public health and occupational health, etc.). The trade unions launched a common discussion and 2000 will doubtless be a year for evaluating and overhauling the preventive system.

Particularly alarming figures on reported employment injuries, the failings of joint industrial bodies set up at different levels, the many problems left unaddressed by the 1994 legislative decree implementing the Framework Directive (See TUTB *Newsletter*, No. 2) sparked off the first major political debate for twenty years in Italy on the workings of the preventive system. The government called a major conference in December 1999.

In the United Kingdom, the main questions are coming from trade unions and the academic community, but also for the first time in two decades, the Health and Safety Executive's upbeat and anodyne assurances have given way to a more qualified assessment of achievements and, especially, a genuine concern about the preventive system's ability to address the new challenges.

In Spain, like Italy, the immediate trigger for debate was the stark employment injury figures and the manifest links they reveal between the spread of insecure jobs and the rising accident toll. The euphoria of 1996-97 which followed the passing of the Safety at Work Act has yielded to concerns that it is not being applied properly in most workplaces, and that the enforcement and penalty system is not working. The debate in Spain is not just an institutional one, but is underpinned by mass workers' action, as witness the call to a two-day general strike in the building industry on 24 and 25 February 2000. The two main trade union confederations (Comisiones Obreras and UGT) have an agenda focussed on health and safety, and against job insecurity.

The debates in other countries may not be quite so intense, but a ground swell of common concerns is emerging about how to enforce the rules, how to address changing patterns of work, how effective have the prevention policies of recent years been? Deregulation, the watering down of enforcement systems, ineffective or no employee representation in small and medium-sized firms have mostly been important factors. But behind these problems with preventive systems lies a more fundamental issue. Employment policies have led to more job insecurity. And the coming debates on the future of preventive systems must take into account that an insecure job is also an unhealthy job. ■

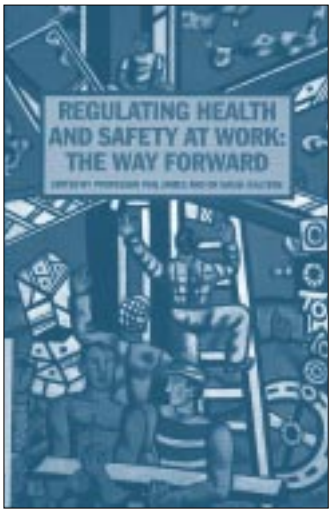
A timely critique of the British regulatory system.

Regulating health and safety at work: the way forward

David Walters*

This article outlines the main findings of a project that has reviewed the structure and operation of the present legal framework for occupational health and safety in the United Kingdom. It describes the background to the study and the rationale behind its recommendations, which are often in sharp contrast with the largely complacent and self-congratulatory celebration that characterises other contemporary assessments of the supposed success of the Health and Safety at Work Act.

The findings of the project outlined in this article were published at the end of 1999 as **Regulating health and safety at work : the way forward**, eds Phil James and David Walters, Institute of Employment Rights. London, December 1999 http://www.ier.org.uk



Why a Review?

The Health and Safety at Work Act 1974 constitutes the core of the current legislative framework for occupational health and safety in the UK. Its introduction stemmed from the 1972 report of the Robens Committee, which identified fundamental defects in the legal system then in place and made a range of recommendations aimed at remedying them. In particular, the committee called for:

- the creation of a central national authority for health and safety at work;
- the introduction of a set of general duties on employers, and others, which would set out the standards of protection to be provided and place more emphasis on health and safety management;
- less reliance on prescriptive regulatory requirements and greater use of goal-orientated requirements and codes of practice;
- the establishment, more generally, of a legal system which placed more emphasis on self-regulation by employers and workers;
- new powers for inspectors to issue enforcement notices.

The Robens Committee's recommendations, although far from universally accepted, received substantial political support and subsequently provided the basic building blocks for what was to become the Health and Safety at Work Act. At the time of its introduction the Act was seen to represent a radical departure from the previous approach to the regulation of workplace health and safety, and to provide the basis for securing substantial improvements in standards of worker protection. Since its introduction, its measures and its philosophy have come to represent the quintessence of the British approach to regulating health and safety and have been influential in legislative reforms in other countries, particularly those whose legal systems are based on the British model, such as Australia and New Zealand.

How far the Act has in practice delivered on this promise of improved standards is an issue on which widely differing views are expressed. For example, while it is true that fatal and serious injuries have fallen considerably over the years since the Act was introduced, it is also the case that during the same period employment in high-risk industry has also drastically reduced. Indeed, the HSE attributes at least half of the reduced injury rate to changes in the pattern of employment. Whatever the cause of its improvement, it is clear, however, that the scale of work-related harm suffered by workers remains enormous, as do the costs associated with it. For example, the available evidence indicates that thousands of workers and former workers die each year as a result of work-related injuries and ill health. It also suggests that over a million employees, representing around 4% of the workforce, suffer a work-related injury each year; that more than two million people, or around 5% of the population of workers and ex-workers, suffer from an illness which they believe was caused or made worse by their work; and that in excess of 25,000 workers who have been injured or made ill by work leave the workforce each year.

Such harm imposes enormous costs on both workers and their families via loss of income, pain and suffering and disruption of social and domestic life. It also imposes a heavy burden on not only employer finances, but the taxpayer through medical treatment provided by the National Health Service and the payment of social security benefits. Indeed, the Health and Safety Executive estimated that in 1990, work-related injuries and illness cost British employers between £4.5 and £9.5 billion and that the total costs to the economy amounted to between £11 and £16 billion. That is, between 1-2% of Gross Domestic Product. More recently, the HSE has revised these estimates upwards, indicating the total costs of failure in health and safety to be in excess of £18 billion.

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These statistics alone clearly suggest that there is a strong case for re-considering the current legal framework for occupational health and safety. This case is strengthened when account is taken of the changes that have occurred in the world of work during the twenty-five years that the Health and Safety at Work Act has been in force.

The Robens report was prepared at a time when a large proportion of work activity was undertaken by male, full-time employees working for large, unionised companies in the manufacturing and extractive industries. The world of work has changed dramatically since then. Employment in the services sector and small and medium-sized enterprises, for example, has become far more important, trade union membership and recognition has fallen significantly, and there has been a marked growth in "non-standard" forms of employment, such as self-employment and part-time and temporary working. In addition, within larger organisations, management structures have tended to become much more decentralised and devolved, with the result that the degree of central co-ordination of work activities has often been reduced, and the intensity of work has increased considerably.

In addition to these changes to the structure and organisation of work and the labour market there have also been marked shifts in societal expectations and public perceptions and awareness concerning the relationship between work and worker and public well-being. Such shifts can be demonstrated in a number of ways. For example, during the last two decades there has been:

- growing intolerance of risk on the part of the public;
- a shift from concern about workers' health and safety per se to a wider concern about the impact of business activity on the public;
- greater media attention to health and safety issues, such as the control of asbestos, occupational asthma, work-related upper limb disorders and the psychosocial effects of the intensification of work;
- an increased readiness to press for retribution and compensation where harm has been caused by work activities;
- widespread public and media interest in the development of corporate manslaughter law particularly in the aftermath of work-related incidents in which members of the public have died;
- increased public expectation of access to information, and demands for transparency and accountability;
- greater demand for public involvement in decision-making processes affecting public safety.

Some of these changes result from changed perceptions of the nature and acceptability of work-related risks. Some represent changes in public values and an increased unwillingness to accept the pronouncements of Government, employers and experts at face value. They reflect growing concern with environmental risks which sociologists argue is symptomatic of a society in which the social production of wealth is systematically accompanied by the social production of risk. Others reflect societal resistance to the global economic, social, personal and cultural changes occurring as a result of the massive impact of new technology in post-industrial society. Whatever its causes, a shift of societal expectation in relation to health and safety at work represents a major challenge to the existing system for the regulation of work-related risks that requires a response from Government and health and safety regulators.

Such changes, when considered alongside the evidence relating to the current scale and nature of work-related harm, therefore raise major questions about the appropriateness of the present legal framework. For example:

- are goal-orientated general duties understandable and useful to small and medium-sized employers ?
- are traditional methods of enforcement sufficient to combat work-related illnesses, such as musculoskeletal disorders and stress-related conditions, which are intimately connected with the way in which work is designed ?
- are health and safety duties still appropriate and relevant to the risks of the modern work environment ?
- are duty holders sufficiently accountable for their transgressions ?
- are penalties sufficiently deterrent ?
- is self-regulation still a viable approach to regulation in an environment marked by diminished trade union recognition, greater use of non-standard forms of employment and a growth of employment in SMEs ?
- do employers currently have sufficient economic and legal incentives to manage health and safety effectively ?

The Organisation of the Project

It was to answer these and other questions that the Institute decided to launch its project. It commenced with the establishment of a steering committee of trade unionists, lawyers and academics. An interim report was produced in which the case for a review was developed[1]. Following its publication in 1998, the steering committee established a number of working groups to address the

[1] Walters, D. and James, P., *Robens Revisited, The Case for a Review of Occupational Health and Safety Legislation*, Institute of Employment Rights, London, 1998.

following issues in detail:
- the current architecture of the law;
- the way in which the present legal framework is administered;
- the arrangements in place for trade union and worker representation;
- the adequacy of health and safety management; and
- the compensation and rehabilitation of the victims of work-related harm.

The work of these groups, which in combination involved over 30 health and safety specialists, was supplemented by a number of committees of enquiry. These provided the opportunity for individuals and organisations representing a wide range of people affected by health and safety issues at the workplace to give evidence of their experiences and concerns. They also allowed other specialists, including staff from the Health and Safety Executive, an opportunity to give their views on a number of central issues. Finally, each of the groups prepared a report, the contents of which form the basis for the book.

Fundamental Conclusions

The working groups' reports identified a host of problems in respect of their areas of interest and put forward recommendations as to how these problems could be addressed. Altogether there are over forty recommendations on reforms aimed at employers and their legal duties, administration of the statutory framework for health and safety regulation, worker representation on health and safety and the amelioration of work-related harm. In essence these recommendations, are aimed at six main objectives:
- laying down clearer and more onerous duties on employers, particularly with regard to the management 'organisation and arrangements' that need to be put in place to ensure improved health and safety performance;
- ensuring that employers have access to necessary health and safety expertise;
- encouraging employers to adopt a broader and more holistic approach to 'health and safety at work' that recognises the need to create working environments that take adequate account of the physical and psychological capabilities of workers;
- strengthening the effectiveness and coverage of systems of worker representation;
- increasing the likelihood of non-compliance with the law being identified and meaningfully penalised;
- creating a compensation system that provides employers with a financial incentive to reduce the scale of work-related harm.

Some of the specific recommendations within these broad categories include :
- On employers' "organisation and arrangements":
  - removal of the qualification of employers' duties in terms of reasonable practicability and its replacement by one that requires employers' actions to be evaluated in terms of their adequacy;
  - creation of a statutory framework requiring employers to have access to prevention services of specified quality under the joint control of employers and workers' representatives.

- On compliance:
  - expansion in the resources of the regulatory agencies to provide for more inspection and control;
  - introduction of decentralised measures to promote greater regional and sectoral activity;
  - statutory measures requiring 'third party' auditing of employers' health and safety arrangements and performance;
  - a wider range of penal sanctions including, proportionate and equity fines, the use of pre-sentencing reports, probation orders and the removal of current restrictions on the use of imprisonment;
  - enhanced rights for workers and their organisations to initiate private prosecutions.

- On worker representation:
  - increased rights for worker representatives to stop the job and to issue provisional improvement notices;
  - action to establish mobile health and safety representatives covering small firms;
  - removal of the scope for employers to claim they consult directly with employees as an alternative to making arrangements for worker representation;
  - establishment of a general legal framework for worker representation to cover situations where trade unions are not recognised and to ensure that health and safety representation is located and supported by broader mechanisms of worker representation;
  - adoption by the regulatory agencies of a more rigorous approach to enforcing the operation of measures on worker representation in health and safety.

- On compensation and prevention systems:
  - establishment of a system of employer-funded sectoral insurance associations to administer earnings-related benefits to those suffering from work-related harm;
  - creation of a system under which employers' contributions to these associations vary according to their claims experience and/or standards of health and safety prevention;
  - use of the sectoral associations to provide

health and safety advice to employers, fund regional occupational health and safety services, and industry-based systems for roving safety representatives;
• imposition of duties on employers to appoint rehabilitation co-ordinators and rehabilitation plans for workers harmed by work;
• introduction of duties on employers to provide vocational rehabilitation through occupational health and safety services.

Linking the book's key objectives is a recognition of the underlying need to establish a much closer synergy between the systems in place to prevent work-related harm, to provide compensation to those who suffer such harm, and to rehabilitate ill and injured workers. In this respect it relates to an approach increasingly advocated in current British Government thinking in which, in common with social democrat governments in many other EU countries, a renewal of social democracy is sought at the same time as the creation of a revitalised, and globally competitive economy. One of the central arguments in the book is that workers' health and safety are most constructively viewed as one aspect of this much wider scenario - which includes the response to the globalisation of the economy, societal perceptions of risk and environment, the transformation of the welfare state and the role of the state in the protection of workers and regulation of business. It suggests that as a result, perhaps uniquely in its history, the governance of health and safety currently has the potential to emerge from its traditional peripheral role to join issues which occupy the centre stage of social and economic policy development. In its recommendations, the IER urges the Government and its regulatory authorities as well as the representatives of employers, workers and others affected by health and safety, to take up this challenge.

The lexicon on which the Government has drawn to construct its current policies in these areas is replete with references to forging "new partnerships", engaging and involving "stakeholders", and undertaking more "joined up" working across government Departments. The same is true of its policy on health and safety, in which much is made of partnership and linkages across traditional barriers.

However, the book's message indicates that to keep pace with wider political and economic changes, any project for health and safety reform will require more than mere dipping into a politician's thesaurus. Meaningful results will not be achieved by merely tinkering with existing statutory frameworks and relying on a continuation of the British voluntary tradition and the discretion of employers. To create an environment in which social investment, socially responsible business and new partnerships can contribute effectively to improved health and safety outcomes, it is important that the relevance and usefulness of the existing regulatory framework is carefully scrutinised and its appropriateness redefined. Thus it is argued that while greater synergy could be created theoretically through the establishment of closer administrative linkages between the different elements of the systems for preventing, compensating and ameliorating work-related harm, it would be most effectively achieved by repealing the Health and Safety at Work Act and replacing it with a statute that simultaneously:

- lays down the core responsibilities of employers with regard to the management of health and safety and the protection of workers;
- provides meaningful enforcement and penalties;
- contains comprehensive rights for workers and their representatives to participate in matters which affect their well-being at work;
- creates a system of employer-funded sectoral insurance associations to provide compensation to ill and injured workers; and
- imposes obligations on employers regarding the rehabilitation of such workers.

The book concludes by arguing that such a broader-based statute would address not only the prevention of work-related harm, but also the provision of compensation and rehabilitation to the victims of such harm. This would more clearly create an awareness on the part of employers that the management of health and safety and the costs and benefits associated with it needs to be viewed in a much wider context than is currently the case. It would be more likely to stimulate an integrated approach to health and safety management embodying greater co-ordination between health and safety specialists, occupational health practitioners and human resources staff. It would also facilitate a role for the HSE in monitoring the operation of the recommended sectoral-based insurance associations and employer compliance with their obligations relating to rehabilitation alongside those relating to prevention. ■

Safety at Work Charter 2000 in Italy

Claudio Stanzani*

The Italian Ministry of Labour unveiled its proposed **Safety at Work Charter 2000** at a national conference held last December[1]. The Charter's contents and aims were worked out jointly with official occupational safety and health agencies, trade unions and employers' organizations. In the past three years, the two sides of industry have set up area joint industrial bodies for health and safety under inter-branch agreements to coordinate awareness-building campaigns, training and dispute mediation activities.

The "Charter" sets out to promote the practical application of legislation through three-cornered consultations to identify the best and most efficient ways of preventing work-related accidents and diseases with the highest safety standards for workers.

The government and social partners settled on a joint approach and "wish list" at the Conference, and will be sitting down together after 100 days to transform them into firm undertakings. The "Charter 2000" measures cut across a range of areas.

1. Completing existing legislation and bringing it into line with Community directives and the salient features of the Italian productive apparatus (a large SME base).

2. Completion of the national health plan 1998-2000 under which a package of health and safety at work information, training, assistance and monitoring measures will be rolled out through area preventive health departments. Nationally, tighter coordination is planned between all relevant government agencies (the Labour Ministry, the Health Ministry, the ISPESL - National Institute for Preventive Occupational Safety, etc.) and an overhaul of all public responsibilities.

3. A raft of incentives for business (cuts in compulsory employment accident and occupational disease insurance premiums, streamlined safety procedures) and training measures for young people and workers. Specific occupational health and safety modules will form a part of all compulsory education and training courses up to the age of 18. There will also be specific measures for those in vocational training, continuing training, apprenticeships, and agency workers, as well as for certain categories of workers in specific or high-risk jobs (building sites, ports, chemical works, etc.). The Charter sets training certification requirements and gives a key role to the area joint industrial bodies (set up by the unions and employers) in all these measures.

4. There will be more workers' OSH reps (*RLSs*) with a wider role in all workplaces. They can call on "effective control instruments" and have disputes mediated by the area joint industrial bodies, sue in court, and, with trade unions, sue for civil damages in prosecutions for health and safety offences. The Charter also provides that small firms will be covered by district workers' OSH reps (*RLSTs*).

5. Finally, public supervisory and enforcement activities will take a more preventive approach, with more checks on whether safety standards are being really applied, and more available information being circulated. The INAIL (the national employment accident and occupational disease insurance institute) has pledged to provide the public authorities and social partners with weekly statistical reports on work-related health claims broken down by sector and region. ■

The full **Safety at Work Charter 2000** is on the Italian Ministry of Labour website: (www.minlavoro.it) and the CISL's health and safety at work site (www.626.cisl.it, on the page: *informazioni/dossier documenti a cura del Punto Incontro CISL / Carta 2000*).

* CISL, Italy

[1] 3 to 5 December 1999, in Genoa, supported and participated in by the Italian Presidency of the Council of Ministers.

Strong response to strike for building site safety in Spain

Casualisation has produced a sharp upturn in building industry accidents in Spain. Between 1993 and 1999, the number of fatalities rose from 230 to 289, serious accidents from 2,169 to 2,882, and all accidents together from just under 100,000 to over 200,000. Employment growth in the industry (from approximately 800,000 to about 1,100,000) alone cannot explain the trend.

A general strike called by the Workers' Committees (CC.OO.) and UGT unions brought Spain's construction industry to a standstill on 24 and 25 February 2000. Under the rallying cry "STOP WORKPLACE ACCIDENTS!" the strike aimed to put protection of workers' health and lives at the top of the agenda. More specifically, it aimed to cut down labour-only subcontracting and stem the rise in casualisation. Available figures indicate that over 85% of industry workers took part in the strike. Thousands of picket lines took the strike to building sites where employers had threatened workers with reprisals. Attempts by some employers to break the strike had tragic consequences. At Onteniente, in the Alicante region, a contractor forced employees into work on 24 February. Just hours later, one of them lay crushed to death by machinery. The strike call is reproduced below. ■

STOP WORKPLACE ACCIDENTS!

General strike in the Spanish construction industry
For stable, quality employment and workers' rights

In recent years in Spain there has been significant economic growth, which has been particularly spectacular in the construction industry - as always when there is a "boom".

This increase in activity in the sector has clear and sole beneficiaries - the employers. Workers, on the other hand, instead of reaping the benefits of the development and expansion in the sector, are suffering the consequences. Workers are living with a constant deterioration of working conditions which, among other problems, is producing more and more accidents.

The shocking number of workplace accidents in construction has now become the biggest and most important problem in the industry. Furthermore, far from improving, the situation is getting worse every day. Just looking at a few figures we see that in 1993 12% of building workers suffered an accident, in 99 that figure shot up to more than 18%.

The unions have been continually pointing out the causes of these accident rates: the lack of compliance with health and safety law; lack of training for workers; the absolute passivity of government; and the lack of action on the part of health and safety inspectors.

But behind these very important causes lurks the real killer, the most important problem of all: PRECARIOUS CONTRACTUAL CONDITIONS AND DEREGULATION OF WORKING CONDITIONS. Well over 70% of workers in the industry are on temporary contracts, and the situation is aggravated by the SUBCONTRACTING CHAIN which has turned the industry into a real jungle, where workers are dependent on the subbies and gangers who prowl the industry's sites.

Common practice in the industry: the systematic flouting of the legislation and agreements; making workers sign blank contracts; ever longer working hours; the intensification of work rates; piece work; and countless hours of overtime. All of this makes workers feel defenceless and makes it practically impossible for them to exercise their rights. All of this means serious health and safety hazards for workers, it's hardly surprising that 95% of serious and fatal accidents are among subcontracted workers.

Given this degrading situation of lousy working conditions and the outrageous rise in workplace deaths and injuries, the two biggest unions in the sector FECOMA -COMISIONES OBRERAS and MCA-UGT are calling on all workers in the construction industry to demonstrate our absolute rejection of this situation. We demand that those who are responsible - the employers and government - establish all necessary measures to drastically reduce accidents. That they regulate working conditions and employment conditions to achieve stable employment in the sector.

SPECIAL REPORT

Women, work and health

Rio 2nd International Congress

Around 800 people (overwhelmingly women) from 32 countries attended the 2nd International Congress on "Women, work and health" held in Rio de Janeiro from 19 to 22 September 1999. Delegates came from all regions of the world, but American contingents (from Latin America and Quebec especially) were particularly strong. It followed a first Congress held in Barcelona in April 1996[1] (see *TUTB Newsletter* No. 3) but forged a much closer link between multidisciplinary scientific research and trade unionism, and was more socially and politically engaged. Which is why the Rio Congress was not just a showcase for research work, but also a forum for critical debate on women's struggle with global capitalism for healthy working conditions. The high standard of dialogue between the scientific community, trade unionists and militant feminists made the Congress an exceptional experience in many respects.

But there were heart-wrenching moments, too. The setting first: Rio, one of the world's finest cities, where most of the people live in squatter shacks unfit for humans, sometimes on the doorstep of residential districts. You cannot shut your eyes to this social divide, which stands as a microcosm of mankind's future if the widening inequality gap is not closed. The Congress kicked off on a political note, with a speech by the Vice-Governor of the State of Rio, Benedita da Silva, a long-time activist in the 'favelas' (shanty) organizations and leader of the left-wing opposition Workers Party, which is in the coalition government of the State of Rio. The contract killing of two nursing union leaders on 20 September sent shockwaves through the meeting. The leaders, Edma Rodrigues Valadao and Marcos Otávio Valadao, had spoken out against corruption in the health service and consistently opposed the federal government's creeping privatization of health care under President Cardoso. Even death threats had not silenced them. Their murders are the latest of many attempts to stifle opposition carried out by the official forces of repression (like the slaughter of 19 peasant farmer activists in the Mouvement des Sans Terre dispossessed action group on 17 April 1996), or private militias.

The Congress organizing committee of Brazilian scientists and trade unionists was advised by an international consultative committee, which included the TUTB. There is not enough space here to do justice to the wealth of papers and debates. Over a hundred reports and oral presentations, plus 200-odd posters, addressed a vast range of issues, including:

- the gender impact of changing production systems;
- mental health and gender;
- workplace violence and health;
- the gender perspective of ageing;
- interdisciplinarity and the production of knowledge;
- work, sexuality and reproductive health;
- child labour;
- domestic violence;
- trade union action;
- how women workers deal with musculoskeletal disorders; etc.

[1] The Barcelona Congress documents are available (in Spanish) at: http://nodo50.ix.apc.org/mujeresred/salud-caps.htm

Most of these issues were addressed from a cross-disciplinary angle (anthropology, sociology, psychology, ergonomics, medicine, toxicology, etc.). Sectoral reports provided the basis for searching debates based on the experience of women working in teaching, the health service, the metalworking industry, farming, telecommunications, and so on.

The long series of papers presented, lively and instructive debates, many first-hand contacts between researchers, trade unionists and scientists led to the working out and consensus approval of a hugely complex final document. What was notable, though, was the lack of interest in the Congress from most national workplace health agencies. Almost all but those of Quebec, Sweden, Finland and Brazil still tend to largely play down the health impacts of the sexual division of labour.

What the Congress also did was to show that the link between health, work and equality is not just an issue in wealthy countries. Globalization widens disparities, and this particularly affects women workers in dominated countries. Reports on the situation in Asia, Africa and Latin America showed that working conditions were getting materially worse, the net effect of which is that public health and education systems are crumbling. Women have been the main focus of the "structural adjustment policies" pushed by the International Monetary Fund and World Bank, prompting the Quebec trade unions to call for all Congress participants to support the world march of women (see p. 19).

The participants also felt the Congress was an experience well worth repeating on a regular basis, so a new Congress is scheduled for early June 2002 in Stockholm. It will be organized by Sweden's National Institute for Working Life[2], consulting with trade unions, feminist organizations, the research community and public health bodies. The question of whether employers' organizations should also be involved provoked a heated debate. Most participants stressed that the Swedish tradition of tripartite cooperation had to be differentiated from the reality of workplace relations in most other countries. Broad agreement was reached on ring-fencing the Congress from possible employers' pressure and preserving the close links between scientific research and social movements fighting for the empowerment of women workers. The European Trade Union Confederation will be working to step up European trade union participation in the Stockholm Congress. European unions were fairly thin on the ground in Rio: the TUTB apart, only Spanish, Portuguese, Swedish and Italian unions were represented.

Stockholm 2002 will be followed by India 2005, but between Congresses there is a huge job of work to do - not least in the trade unions - to mainstream equality into workplace health. ■

[2] Information on the Institute for Working Life in English on: http://www.niwl.se/default_en.asp

This special report was written by
Laurent Vogel, TUTB researcher (lvogel@etuc.org)

The 2nd Rio International Congress: Summary of work

The summary conclusions approved at the Congress final session are reprinted below.

1. The social organization of work and structural adjustment policies have created job insecurity, lower pay, and rising unemployment at the cost of men and women workers' health.
The Congress' priorities include:
- linking actions in different countries to prevent risks and harsh, dangerous working conditions being exported from wealthy countries to poor countries;
- supporting the creation of an international working health defence network, especially for the prevention of work-related sickness like musculoskeletal disorders.

2. Established social gains must be guaranteed and occupational health rights and legislation developed to restore dignity and citizenship.
The Congress made a forceful call for action in support of overhauling ILO C130 Maternity Protection Convention (see p. 20).

3. Rural work includes specific aspects of the division of labour which also have specific health implications.
Priorities include giving visibility to all forms of health damage in rural work so as to eliminate the many damaging aspects from the production process.

4. New patterns of work and new production technologies have subjective psychosocial, ethical, ethnic and generational outcomes which create psychological distress and new forms of illness.
Priorities include the way job insecurity undermines self-esteem and mental health.

5. All forms of gender-, class-, race- or ethnic group-related disparity and violence in employment relations, social and health services must be abolished.

6. The impact of working conditions on sexual and reproductive life must be examined to extend social rights. The Congress underscored its opposition to pregnancy and HIV testing and sterilization certificates as a job or continued employment requirement.

7. The conspiracy of silence on violence against women is being broken down. The Congress considers that violence against women should be recognized as a public health issue and that sexual harassment is a workplace hazard which causes psychological and physical illness.

8. A stimulus must be given to the production of multi-disciplinary methods in partnership with NGOs and trade unions.
Priorities include:
- increased involvement by trade unions and other social organizations in occupational health research;
- study of the paid work-domestic work continuum based on specific survey techniques like social time analysis;
- recognizing bioethics as a highly political field requiring thought about the health- and work-related applications of biotechnology.

9. Eradicating child labour.
The Congress stressed the links between this and guaranteed quality public education, as well as creating awareness among consumers.

10. The link between domestic work and health is difficult to study because of the invisibility of domestic work at the public-private life interface and the resulting loss of social and economic esteem.

11. Public occupational health policies must address the gap between paper law and fact from a gender perspective. ■

The 2nd Rio International Congress: a kaleidoscope of contributions

Brazilian trade unionism, women and health

Maria Ednalva Bezerra de Lima, Denise Motta Dau, Nair Goular, Léa Santos Maria*

We try to take women's health issues beyond maternity protection into all occupational health issues. At the end of the day, the working class consists of two sexes and women's health is not just about their reproductive rights.

We pushed the unions to find out more about women workers in their industry branch, especially the different physical and health outcomes working conditions have for women.

These measures form part of the range of affirmative actions run by the three central labour bodies - CUT, CGT and Força Sindical. The affirmative action policy ranges widely from the workplace, through training and issue-based organization of women, up to setting quotas so that neither sex has fewer than 30% of the seats on central union and confederation policy bodies.

The feedback from the training and organization of women in different industries and regions has clarified women's key occupational health concerns. Repetitive strain injuries (RSI) are rife in computing and banking, as are aches, eyestrain, cystitis, and psychological stress. 53% of public health workers in the State of Sao Paulo have no appropriate health protection equipment, and 24% report work-related health problems. Teachers complain to us about voice strain, chalk dust allergy and stress.

Women in the chemical and textile industries report tendinitis, chemical- and noise-induced miscarriages, hormonal disorders and restrictions on lavatory use. Building industry workers have to contend with sinusitis, varicose veins, back strain, RSI and a high prevalence of sterility. Workers in the household electrical goods industry report problems associated with robotization, long working hours, attention deficit disorders, and competitive work practices. Problems in the metalworking industry include RSI, restrictions on lavatory use, noise levels and the rapid introduction of new technologies. Farm women complain about varicose veins caused by long hours of arduous work, days, pesticide poisoning and sunlight-induced skin problems. Stress, depression and emotional upset are common to all industries.

All these health outcomes are specifically work-related, but together they are also fundamentally the consequences of new forms of work organization across all industries.

Quality control systems, service outsourcing, time-pressure working and, computer-controlled automation all spread during the 80s, while layers of management were cut and "participation programmes" brought in, which bumped up job qualifications.

These new management patterns now permeate the production system. Multi-skilling, behavioural training, productivity pay, new supervisory responsibilities, profit sharing and flexitime are the new watchwords.

Neo-liberalism prevails. The free market, productivity, competitiveness affect not just production, but all aspects of social and employment relationships. High unemployment, enforced flexibility of established gains (through outsourcing and home work) and the emphasis on "re-skilling" enjoin us to become "employable". Men require physical strength, skills, abilities and excellence. Women require gentleness, patience, agility, submission, dexterity, grown-up children and even good looks - a requirement that cloaks racism and ageism.

There are now many more women in the workforce, but they are confined to a narrow range of jobs. Nearly 80% of women's jobs are in domestic service, farming and sales, nursing, clothing and household electrical goods manufacture. Women accounted for 39% of the unemployed total in 1991, and 45% in 1997.

This cross-industry survey of health problems helps us to map out a trade union response. The health of women workers must be a focus of the trade union agenda.

Women workers' health demands must be brought into collective bargaining. Some industries have already worked out specific demands, like:

- regular health and safety information campaigns and activities;
- seminars on women's rights;
- training and electing women to CIPAs (health and safety committees) and CONSATs;
- support women's health demands and give male CIPA members training on it;
- set up checks on overtime work generally, which is unhealthy;
- set up workplace sexual harassment complaint committees with trade union participation;
- get collective agreements to guarantee that sexual harassment victims do not get sacked;

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[1] In Brazil as elsewhere, the term "repetitive strain injury" (RSI) is preferred to "musculoskeletal disorders" (MSD). It describes the same medical conditions, but creditably, indicates the main cause.

- carry out and publish regular surveys on the gender aspects of health, safety and reproductive health;
- workplace creche provision;
- breast-feeding room provision;
- proper hygiene facilities for women workers;
- guaranteed equal access to retraining and vocational training;
- guaranteed job retention after termination or childbirth. ■

The Brazilian trade union documents on Internet: http://www.sindicato.com.br/sbrasil.htm

Occupational and environmental health of women farm workers in South Africa

Sophia Kisting, F. OMar, H. Mtwebana, J. Cornell, D. Edwards, P. Lewis, S. Mbuli et L. Caimcroos*

Farming is a main employer in South Africa. Around 500,000 women work on commercial farms; about 60% of them are casualised. They work in isolated rural areas with inadequate infrastructure and acute transport problems. The legacy of apartheid and internal migration-based work systems is still clear to see.

The Industrial Health Research Group (IHRG) works with trade unions and has set up seminars with women fruit production workers. A subsequent survey confirmed their perceptions of their arduous working conditions. The survey focused on:

- social and rural infrastructure, lavatory facilities;
- psychological aspects: stress, workload, job insecurity;
- chemicals and agrichemicals (pesticides, fertilizers, etc.);
- biological factors, organic waste;
- equipment, tractors;
- ergonomic factors: ladders, standing positions;
- physical factors: sun, heat, noise.

The women described their chronic health problems and exposure to most of the above factors. Their workplace is generally also their home. The work is hazardous, and health damage takes the form of chronic pain, poor quality of life and in some cases, death. Exposure to pesticides is common, and is increasingly affecting reproductive health and development. They are low-paid.

Agrarian reform remains central to improving these women's lots. Other problems identified include a lack of occupational health services, especially for reproductive health; violence against women; lack of childcare provision; lack of quality leisure time; unfulfilled other basic needs, like housing, electricity, transport, lack of representation in trade union structures.

In 1996, women farm workers organized a landmark conference to speak up for themselves and develop a forum to address invisibility and isolation. There is a big job of work ahead. Only a radical rethink of priorities will change power and gender relationships, and hand rural women the economic and training resources they need to tackle the challenges. ■

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Swedish programme on gender and work

Asa Kilborn*

During the '90s, many Swedish women saw their working conditions worsen. The rising proportion of women in part-time or insecure jobs coupled to significantly increased productivity demands pushed up perceived stress levels. Society's support to child and elder care was cut back, leaving women to shoulder the added burden at home. Swedish women are still better off than women in other countries, but it is a worrying turn of events.

Gender equality has slipped down Swedish women's priority scale. That may be linked to a growing class divide between immensely successful women with high-profile jobs and those whose situations are getting worse.

The Swedish Institute for Working Life has launched a research and development programme on "Gender and work". Social and natural science researchers, especially in disciplines like psychology, sociology, economics, ergonomics and medicine, from different departments in the Institute, were brought together to work on a multi-disciplinary basis. (...)

They looked at the situation in three municipalities with different labour markets and social conditions to try and plumb the mechanics behind gender-related inequality, segregation and health problems. They found a three-way interaction between society, the workplace and the individual. The programme should contribute towards equality and a comparison between sectors, in particular expanding and failing industries. ■

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Rural work, gender and health in India

Sunita Kaistha*

The paper outlined the basics of the situation of women workers in India. Of 403 million women, 90 million (22.73%) work outside the home. Most of these work in rural areas, where 87% of them are farm workers. Of them, 34.8% are unpaid family workers. Only a minority of women (about 4.5 million) work in the formal sector of the economy (public and private).

Rural workers' working conditions are determined by the seasonal nature of the work, the shortage of paid jobs, internal migrations and gender-based pay disparities.

Poverty is a key influence on women's health. Its outcomes include:
- nutritional deficiencies;
- lack of access even to free health care because transport and medicines are costly, and they cannot stop work without foregoing a family income;
- they cannot send their children to school or access adult education programmes;
- they cannot think beyond immediate problems and a of hand-to-mouth survival approach;
- the denial of their human dignity.

Significantly, the health care share of the Indian budget declined from 3% in 1951 to 1.05% in 1998. The situation is little different in education.

India is a major food producer, but one child in two suffers from malnutrition, a third of newborns are low-weight, three in five of all women and three quarters of pregnant women suffer from anaemia.

The talk concluded by pointing up the link between rural women's occupational health and agrarian reform, the democratization of land, water and forest tenure and the broader struggle for economic and social justice. ■

* Jesus & Mary College, International Youth Center, Delhi University

Migrant women: marginalised through work

Hélène Bretin*

Research into the link between women's health and work has made great strides in France (...). By contrast, little attention has so far been paid to ethnicity aspects for two main reasons:
- occupational health remains very much a fringe area of French research;
- sociological studies of the ethnic aspect of labour relations and racism at work are fairly new and do not directly address the health issue.

Migrant women are involved at first-hand in the historical link between work and immigration. Joining their migrant husbands, they looked after the home and the male labour force. But they also entered the workplace, and their labour force participation rate rose more rapidly than that of women generally. They tend to work in unskilled, part-time, casual jobs.

(...) Based on two research studies, one on cleaning jobs, the other on long-term unemployment, we hope to show that health damage is a factor in exclusion from the working world and that the health impacts of radical changes in work organization undermine the position and status of these women within our society. ■

* Paris XIII University

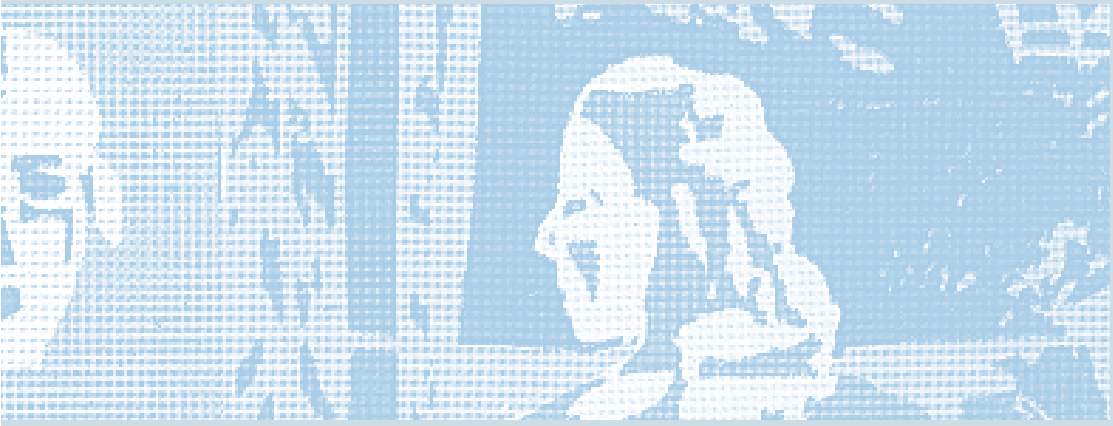
The world march of women

Quebec trade unions presented the world march of women. Starting on 8 March up to 7 October, women across the world will stage actions and marches against poverty and violence. The European leg will be launched in Geneva, and the marchers will arrive in Brussels on 14 October. The march will end up on 17 October 2000 in front of the UN headquarters building. Over 130 countries and 2.000 groups are involved.

The idea to hold a world march of women in the year 2000 was born out of the experience of the Women's March Against Poverty, which took place in Québec in 1995. This march, initiated by the Fédération des femmes du Québec, was hugely successful. Three contingents of 850 women marched for ten days to win nine demands related to economic justice. Fifteen thousand people greeted them at the end of their ten-day walk. The entire women's movement mobilized for the march as did many other segments of the population.

The aims of the march are:
- to undertake a vast process of popular education during which all women can analyse by and for themselves the causes of their oppression and the liberating alternatives that are possible;
- to work on the national scale to identify demands related to poverty and violence against women and to start acting to get them implemented;
- to foster solidarity among women of all continents through exchanges, common projects and unifying actions. In the context of market globalization, solidarity between North and South has become crucial in building a resistance movement;
- to promote our world demands by presenting them wherever decision-makers must take them into account;
- finally, to lay the foundations of an international feminist network where dedicated, militant, creative feminists will want to unite to provoke major changes in the order or disorder of the world. ■

For further information:
http://www.ffq.qc.ca/marche2000/



The revision of ILO C130 Maternity Protection Convention

The Rio Congress had misgivings about the revamp of International Labour Organization Convention No 103 to protect pregnant workers and those who have recently given birth, chiefly due to the employers' pressure to water it down, with the backing of many governments, including EU states on certain points.

The revision should be completed at the next ILO general session in June 2000.

The new proposal may improve the existing Convention on some specifics, but its general thrust remains worrying. Its pro-flexibility stance would allow states which ratify it to create exclusions which seriously curtail the rights of some categories, or all, women workers.

The proposal under discussion is also not on all fours with Community law.

- Some of its provisions could improve existing rules. Article 7, for instance, which prevents employers from dismissing workers during their pregnancy or maternity leave improves on the Community directive by putting the onus on the employer to prove that the reasons for dismissal are unconnected with pregnancy, childbirth or their consequences.
- Article 9 on the right to take breast-feeding breaks also improves on the Community directive.
- On the other hand, many other provisions fall short of the directive's standards.

What is alarming is how ready some European States are to negotiate "cut price" terms for women workers in other parts of the world, almost as if they wanted to free their multinationals from having to give the same fundamental rights to women workers that they employ in other parts of the world.

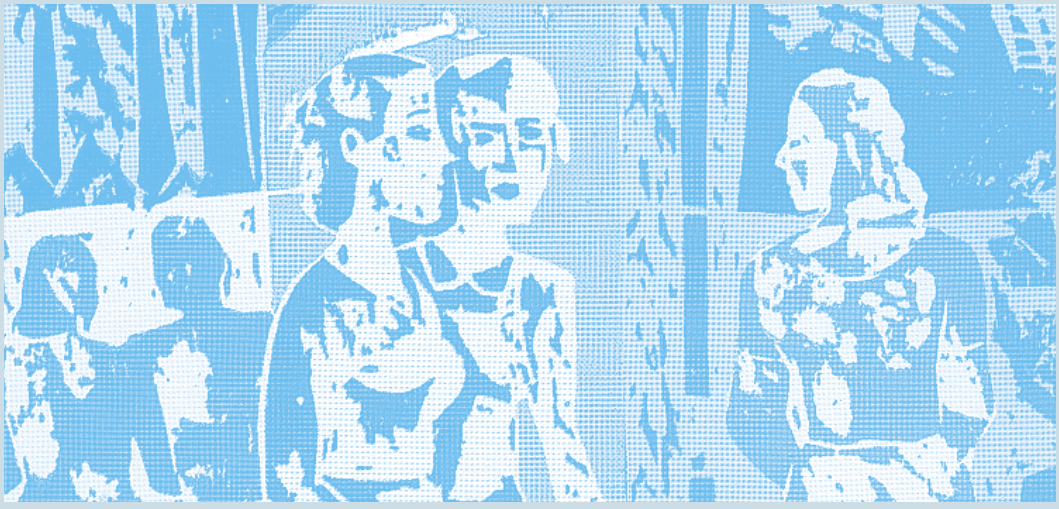
The most dangerous aspects of the proposal are:

- The scope, which allows states to exclude certain categories of workers or enterprises.
- The previous convention provided a period of at least twelve weeks' maternity leave, six of which were compulsory. The employers managed to cut out any definition of the length of compulsory leave, and the current draft leaves it to the individual State to specify its own period.
- The current wording does not effectively guarantee the levels of social security benefits paid during maternity leave.

The European Union, as such, was unable to get the Member States to take a common line even on issues which were covered by a Community directive. So, only Denmark came out firmly against excluding categories of workers and firms from the scope.

As to whether a State which ratifies the convention should review and extend the twelve weeks minimum maternity leave at regular intervals, most EU States apart from the United Kingdom were in favour. The British government thought the better option was family-friendly employment policies and more flexibility.

Sweden was among the minority of EU States to oppose setting a period of compulsory maternity leave. Its objection that a reference to compulsory leave would be a decisive obstacle to Sweden's ratification of the convention smacks of disingenuousness, however, when Sweden is bound by a Community directive to grant compulsory leave ! ■



Trade union initiatives across Europe

ITALY: Women, health and work task force in Milan

Milan's three trade union confederations, CGIL-CISL-UIL, set up a women's occupational health task force of trade unionists, public prevention service technicians and doctors, and workers' safety reps in 1996. Its areas of study have included repetitive work by women in different industry and service sectors, as well as biological risks, maternity protection and night work.

The special report of the French magazine *Santé et Travail* (pages 25-27), sent along with the French issue of our *Newsletter*, has an article on the group's activities. Below is a translation of this article. ■

Italian MSD survey: Women taking the strain

Marina Finardi*

The living is anything but easy for Italy's women workers: many suffer severe musculoskeletal pains from fast-paced, repetitive precision work. Now, a nine-company survey by a women's occupational health task force collecting data for a risk analysis has let them be heard... and action has followed.

Looking back at the film *Modern Times* where Chaplin's worker frenetically fails to keep up with his assembly line, you might think the bad old days of "man against machine" were long gone. But are they really, for all of us ? That was the issue on the agenda of the "women's occupational health task force" of women workers' safety reps, union reps, technicians and medical officers of workplace safety agencies, set up by the three Milan-based trade union confederations CGIL, CISL and UIL to look into various aspects of women's health in the workplace from an ergonomics perspective. Its work lifted the veil on a state of affairs hitherto disregarded even in highly unionised workplaces: the large number of women engaged in fast-paced work.

The task force got a specialised ergonomics agency of the public industrial safety service to carry out a survey of nine workplaces in different industries (food, metalworking/engineering, industrial laundries, toy manufacture, computer data entry) where women are employed. The lack of specific model methods for this type of survey meant that an experimental procedure had to be worked out for organizing each individual safety rep involved in the project. They were given a half-day's training in how to administer questionnaires detailing disorders and illnesses reported by women workers, and work organization problems to be addressed in the risk analysis. The survey covered 380 women and 12 men.

Women or machines?

The women workers gave tremendous input. Just the opportunity to voice their problems was enough to open the floodgates. The relief at finally gaining recognition as human beings - and above all as women - produced an outpouring of all the disorders and pain caused by the way they were forced to work the machines.

The hazards involved are very different from the manual handling of loads, which is mainly done by men. This is because women are regarded as more dextrous than men, and better suited to finicky work requiring fast, precision movements demanding extension motions within a limited range rather than great physical strength. Looking at the types of movement required of the women in terms of frequency, lack of rest breaks, uncomfortable postures, application of force, and contributing risk factors (poorly-designed machinery, vibrations, damp atmosphere, etc.) it is clear that they can be placed under considerable strain.

"I can't even do my own hair, now"

The upper limbs are worst-affected, with overstraining of arm muscles, tendons and ligaments. "*I can't get to sleep at night my arm hurts so much, as if I've lost all use of it*", said one industrial laundry worker. "*It's costing a bomb at the hairdresser's, because I can't lift my arm to dry or brush my hair!*". Like many of her fellow workers, she has carpal tunnel syndrome. She has already had one operation, but will need another. Often, one individual will suffer different strain disorders in different parts of the body. Apart from carpal tunnel syndrome, other common disorders include shoulder tendinitis (especially acute painful shoulder), lateral and median epicondylitis (tennis elbow), breathing difficulties, cervical radiculopathy, and so on. Many of the women interviewed had doctor's certificates mentioning one of these problems, but no-one had ever considered there might be a link with their work.

Although ignored by occupational health doctors, some problems are symptomatic of work-related disorders: tingling, numbness and pain in the fingers, hand, wrist, arm and shoulder first during the daytime, then at nighttime, too. The problem steadily gets worse, sometimes to the point where movement is impossible.

Working in increasingly arduous conditions, in visibly declining health, being unable to perform certain daily living activities, feeling isolated, being told that your illness is nothing to do with work, builds up a head of physical and mental stress. Some may end up on tranquillizers, which may do more harm than good, or increasingly frequent sick leave, and be branded as a "skiver". Unless proper steps are taken, the final stage may be resignation or the sack.

Hopeful signs

After the survey, the Cemoc ergonomists went through the questionnaires and picked out workers in need of a medical check-up. In most of the firms surveyed, serious problems were brought to light, with a very high rate of repetitive movements in some cases (from 40 to 60 actions per minute). In all, 29.7% of the

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women were affected by work-related disorders. Meetings were then set up with the workers' safety reps, union reps, and doctors in the workplaces concerned to put the next stage of the work into operation - further medical examinations and collective risk assessments, compensation claims and securing recognition as an occupational disease[1]. At the same time, a campaign was mounted to raise awareness among industrial employers, doctors and workers' reps.

The firms involved accepted this as a responsible survey and did not try and deny its findings. All agreed to foot the bill for further medical investigations and have these previously-disregarded hazards assessed. All but one of the doctors worked willingly with the project, and did their duty in reporting all the occupational diseases observed. Some adjustments needed to reduce hazards have already been suggested and made (cutting out certain operations, a more appropriate division of tasks and work loads, changing the worst-affected workers to other jobs, etc.). Even the less well capitalized companies are - slowly, let it be said - improving workplace health and safety. Things are still far from perfect, but the women and their workers' safety reps all recognise that they are on the right track. The survey administrators hold regular meetings with the reps to review progress.

Closing the gender gap

The women's occupational health task force thinks it has done a fair job of moving forward a process based on the EU Framework Directive's prevention principles. But its aim was to create an umbilical cord between health protection and equality of opportunity, so the biggest hurdle still to overcome is the continuing gender division of work roles.
Other issues on the task force's agenda include working hours, night work, employment injuries and maternity protection, to underscore that work hazards are not "gender blind". Simply that biological, physical and especially sociocultural factors dictate that men and women, old and young, migrants and natives, the hale and the halt, are not exposed in the same way. ■

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The women's occupational health task force survey found that 29.7% of women workers were suffering work-related diseases. Doctors for the nine firms surveyed had failed to make the link between the disorders and working conditions...

[1] Until recently, Italy's occupational risk insurance agency (Inail) did not recognise, and so did not compensate, this type of injury. More extensive investigation by the public prevention services and a series of court decisions are achieving movement on this front, however.

SWEDEN: Women shoulder burden of savings

The salaried employee's union, TCO, is campaigning against gender discrimination created by the revision of the rules on recognition of occupational diseases. This 1993 revision of the Occupational Risks Insurance Act 1976 was chiefly a cost-saving measure, and changed the basis on which occupational diseases were recognised. Under the Act, an occupational injury was defined as the consequence of an accident or other harmful factor at work. Since 1993, other factors can be taken into consideration only if it is "highly probable" that they caused the reported injury.

The Act also created a presumed causal link in the worker's favour between the harmful factor and the injury "unless there is substantially stronger evidence to the contrary". The 1993 revision seriously watered down the presumption in favour of the worker. Now, the grounds in favour of the causal relationship must be "predominant". In practice, that shifts the onus of proof firmly to the injured party.

The effects of the 1993 legislative revision were quick to filter through. The number of recognized occupational diseases plummeted by nearly 90% between 1992 and 1997. This partly reflects the decline in reported diseases for two reasons: there is no certainty of success in the new system, so workers are not claiming, and the financial benefits of recognition (compared to the general health insurance scheme) have been dramatically reduced. Also, the proportion of claims rejected has risen sharply (66% between 1994 and 1997 compared to 31% in 1992).

This dramatic decline has created adverse-effect discrimination. The invisibility of women's work hazards makes it very hard to establish a cause-effect link between work-related risks and specific diseases. Of the 100 employment injuries recognized in the period 1994-1997, 70 concerned men and 30 women. Recognition of musculoskeletal disorders fell particularly sharply.

The discriminatory effect of the new system is shown in the table above. It shows the ratios of employment injuries recognized to employment injuries reported between 1994-97.

Another factor of disparity is part-time work, which affects women much more than men. Incapacity and invalidity benefit levels are wage-related. Women who downscale to part-time work temporarily and suffer an occupational disease or employment injury during the period, will find their benefits calculated at a lower rate than for a normal full time wage, even if they intended to return to full-time work later. The Swedish courts have repeatedly refused to review the basis on which invalidity pensions are calculated.

	Women	Men	Total
Musculoskeletal disorders	21	39	28
Chemical agents	47	62	57
Employment or work organization-related causes	10	10	10
Total	**23**	**44**	**34**

As part of its campaign, TCO lodged a complaint with the European Commission on 8 March 1999 to force Sweden to fulfill its obligations under Community sex equality legislation. It is unfortunate that, as Community law stands, default proceedings as still entirely at the mercy of the Commission's political will, and trade unions cannot bring proceedings directly before the Court of Justice. ■

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SPAIN: the unseen face of the tourist industry

Angeles Niño López*

Since the Safety in the Workplace Act (see *TUTB Newsletter*, No 2-1996) came in, we have developed a training programme for prevention reps. The main focus in on basic training in the hospitality industry, which currently employs 50,000 workers in the Balearic Islands (17% of the employed workforce), 52% of them women.

Productivity demands in the hospitality industry have risen sharply (by around 170% between 1990 and 1997). This has been achieved at the cost of working conditions, reflected in rising accident and sickness tolls. Musculoskeletal disorders (MSD) are our main concern. The courses for hotel industry safety reps prompted us to wage a campaign on the theme.

Most of the course participants are women room cleaning staff whose health problems - backache, sciatica, and other illnesses plus their psychological after-effects leading to many days' lost work - made them highly receptive. They also worry about doctors' reflex responses of prescribing painkillers, a few anti-inflammatories, two or three days off, then back to work.
We negotiated with the Balearic Islands' main industry employer - the biggest hotel chain on the islands - to set up an information and trade union training campaign on MSD in the group's thirty-odd hotels.

Training takes place on hotel premises. It is for all staff, and comprises 3 x 4 hour sessions:
- what MSD are, their symptoms, and practical exercises to pinpoint problems on workers' own bodies;
- how MSD fit into risk assessments and job design, with a focus on how room cleaning staff can help identify high-risk jobs and formulate proposed improvements;
- drawing up a prevention plan which incorporates all the workers' proposals and suggestions.

This training-cum-survey is much-appreciated by the workers, in giving them a chance to share their problems, and freeing them from the isolation and loneliness which typifies their work.

It also helps identify problems which clearly have nothing to do with hormones or age, as doctors tend to suggest, but are directly work-related. They include:
- rooms per worker: 22;
- fast-paced, sustained work;
- no breaks;
- casual jobs, so poor follow-up of problems;
- hotels' purchasing policies do not include ergonomic design requirements. So, furniture is designed with foreign customers in mind - mirrors positioned too high-up, beds too big for the total room area, etc.

Proposals made by workers throughout the courses collected by the members of the health and safety committee, included:
- poorly-designed work equipment: brush handles too long, vacuum cleaner flex too short, problems with linen and cleaning product trolleys;
- workers to clean rooms in pairs so as to reduce isolation and physical strain;
- rest breaks to recover from muscle fatigue, especially at peak times like guest check-ins and check-outs.

After the training, we tackled risk assessment which had not yet been applied to MSD. Safety was the main focus. There was no available data on MSD, and preventive services had not enlisted help from ergonomists or social psychologists.

In discussions with preventive service technicians, we stressed that the findings of the room cleaning staff survey, data on absences and information provided by workers in training had to be taken into account.

We know the problems involved in dealing with things like the pace of work, number of rooms per worker, breaks, etc. But the information collected from workers and the cost of sickness gave us ammunition to prove the need for a proper, across-the-board evaluation of working conditions.

This provided the basis for preventive action. Health and safety committees now discuss the hazards of each job to agree on an assessment. We keep on at the preventive services to use the data supplied by workers. We keep up pressure on the employer to recruit prevention personnel. At present, ergonomic and social psychology services are contracted out to an accident insurance agency, so there is no coordination with the employer's own in-house prevention activities.

One important thing to say is that room cleaners, whose working conditions are particularly hard, had played little part in the health and safety committees or in purchasing decisions. This campaign encouraged us to demand a say everywhere decisions were taken affecting prevention, both in the firm and within our own union. ■

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UNITED KINGDOM: The TUC gender agenda

The TUC has set out a gender agenda for health and safety to increase the profile of women's health and safety, based on the 3 November 1998 seminar, the safety rep survey reported to it[1], and subsequent discussions at the TUC 1999 Safety Convention.

In January 1999, the TUC published *Violent times*, a report on physical and verbal assaults at work, which revealed that young women were more likely than any other group to be assaulted. As a direct result, Ministers asked the Health and Safety Commission to develop a programme of work to combat workplace violence.

On 28 April 1999, International Workers' Memorial Day was devoted to women's health and safety. The TUC issued *Restoring the balance*, guidance for safety reps on how to build women's health and safety into their employer's health and safety work (a direct proposal to arise from the safety rep survey) and published a report called *A woman's work is never safe*, by Jacqueline Paige. This set out the risks faced by working women, notably stress, RSI and back strain.

On the evening of Workers' Memorial Day, Minister for Women and for Public Health Tessa Jowell MP gave the first Workers' Memorial Day lecture at the TUC's headquarters in London, endorsing the TUC's gender sensitive approach and announcing the next step in the Government's back strain initiative, Back in Work.
In May, partly at the behest of the TUC, the Health and Safety Commission's first ever three year corporate plan committed the HSC/E to social equality (including gender) as one of its five strategic themes.

The TUC is continuing to press the HSC/E to:
- take on board the steps proposed in *Restoring the balance* in inspecting workplaces;
- improve the sensitivity of HSE staff, so that they understand the need for a gender sensitive rather than gender neutral approach;
- deal with gender issues as a matter of course in the collection and analysis of data about health and safety; and
- promote positive images of women at work in HSE publicity so that women are aware that health and safety is about their concerns, as well as men's.

In September 1999, the TUC set up an occupational health website at www.tuc.org.uk with a specific section devoted to women's health and safety. This will complement a new training module for workplace safety reps which is being developed.

In October 1999, the TUC and the National Back Pain Association mounted a campaign to prevent back strain among working women with guidance for safety reps, posters and a report on women's experiences.

The TUC is also surveying safety reps on occupational health aspects of the change of life (reported as a priority in the 1998 safety reps surveys). Another priority is to ensure an appropriate gender balance in TUC representation in the Health and Safety Commission's different consultative committees. ■

For further details:
http://www.vl28.dial.pipex.com/women.htm

[1] See also on the TUC Survey: *TUTB Newsletter*, No 10, December 1998, p.9.

The CINBIOSE group (Centre for the study of biological interactions in environmental health at Quebec University in Montreal) are key players in the links between academic research and the trade unions to promote gender-sensitive occupational health policies. In 1999, the TUTB published the results of joint action-oriented research under the editorship of Karen Messing.

Integrating Gender in Ergonomic Analysis. Strategies for Transforming Women's Work

Scientists, employers, decision-makers and even women themselves seem to have difficulty in coming to grips with women's work-related health problems. This stems partly from traditional perceptions of women's work. The widespread belief that women's jobs are safer than men's means that women's health problems are dismissed as women "not being up to the job" or "imagining it". This has held back efforts to improve their occupational health. Prolonged standing which leads to problems of circulation, or repetitive movements which cause micro-strains, seem much less dangerous than the risk of falling from scaffolding or metal saw injuries. Karen Messing and her team point up the interactions between gender, work organization and working conditions. The results show the immense contribution that action-oriented research can make to improving equal opportunities and working conditions.

TUTB, 1999, 192 pages, (19.83 euros)
In English and French. Portuguese, Italian and Greek versions will be published in 2000.
Details on the TUTB Internet site: www.etuc.org/tutb

From the end of 1999, some of CINBIOSE's works will be published in an e-zine on the web.

PISTES is a cross-disciplinary free e-zine dealing with social and human aspects of work and the links with human health. It focuses on workplace research, especially new issues in work and health. It publishes full articles in French (with English abstracts) to foster discussion between researchers and practitioners in the French-speaking world. It also aims to promote the transfer of work-derived knowledge in a range of work- and health-related areas.

http://www.unites.uqam.ca/pistes/menu_p.html

New ECJ case: the interpretation of the Working time Directive

To date, the Court of Justice of the European Communities has given only one ruling on Directive 93/104 concerning certain aspects of the organization of working time - the judgement of 12 November 1996 on the United Kingdom's application to have it quashed (*TUTB Newsletter* No. 5, February 1997). That case turned mainly on policy issues about article 118A (incorporated as amended by the Amsterdam Treaty into the current article 137 EC). There, the actual wording was less important to the decision on the challenge. But it is one of the most complex Directives to have been adopted under article 118A, and some national implementing rules have put conflicting interpretations on it. This is because of its woolly drafting and bending over backwards to accommodate deregulationist pressures from employers and some governments. It has created enormous uncertainty in the law. It is reasonable to query whether the Directive can deliver its aims unless its provisions are at least clarified.

The ECJ is being asked to interpret the Directive on a reference for a preliminary ruling in a case between the Spanish public health service doctors' trade union (SIMAP) and the public health authority of the Autonomous Community of Valencia.
The main provisions of the Directive at issue are:

- Do casualty department doctors come within the scope of the Directive ?
- Does time spent on-call by duty doctors count as working time within the meaning of the Directive ?
- Can the individual exemptions provided for in article 18.1 be implemented by collective agreement ?
- Does the work done by on-call doctors count as night work and shift work within the meaning of the Directive ?

Advocate General Mr Antonio Saggio submitted his opinion on 16 December 1999[1].

The Advocate General broadly endorses the SIMAP's submissions, and rejects the Commission's proposed narrow interpretation on the key issue of what constitutes working time. The real interest of his opinion lies in his approach to interpreting Directives designed to achieve upward harmonization which takes account of national legislation and international labour law.

The scope

The Advocate General argues that casualty doctors fall firmly within the scope of the Directive.

- He dismisses the Generalidad Valenciana's Health and Consumer Protection Board's claim that public hospital casualty departments are covered by the Framework Directive exemption which states that it is not applicable "where characteristics peculiar to certain specific public service activities… inevitably conflict with it" (article 2.2). The Advocate General is categorical that the Framework Directive envisages only public service activities related to exceptional circumstances (war, natural disaster, maintaining public safety). Here, the Advocate General endorses the Commission's position that only public service activities which, due to their nature or purpose, are carried out in situations where it impossible to eliminate all risks to the health and safety of workers can be equated to exceptions to the Framework Directive.
- He sees no justification for extending the Directive 93/104 exemption relating to doctors in training to casualty doctors.

The notion of working time

The issue of working time is central to this case. The question is : is working time within the meaning of the Directive limited to the period when the worker is working in the workplace, at the employer's disposal and carrying out his activity or duties ? The Commission, United Kingdom and other States who intervened on this issue (Finland and Spain) all argue that it is. If so, then all time spent on-call without actually carrying out activities could be classed as a rest period.

It is a crucial issue. The history of labour law is riven with disputes over what constitutes working time. Employers want to limit it only to time which they see as directly productive, excluding periods recovering from physical or mental fatigue, other non-directly production-related time spent at work, etc. Workers see it differently: actual production is a side-issue, and any period in which the individual is not free to dispose of his time as he wishes should be recognized as working time. Labour law has tended to develop along a compromise path, by which an employer's work organization rights include cutting out "slack" or "idle" time, covering all the periods in which a worker should be effectively available to perform specific work regardless of whether every moment within his prescribed working hours is productive or not[2]. And while workers have won concessions on total working hours (daily, weekly, annual), pressure of work has been largely ignored in labour law.

Following the Commission or United Kingdom's interpretation would have opened up a Pandora's

[1] The Advocate General's opinion is available (in French, Spanish and Italian only) on the Court of Justice website (http://europa.eu.int/cj/index.htm). Reference: Case C-303/98 Simap v Consellera de Sanidad y Consumo de la Generalidad Valenciana.

[2] For a historical approach, see F. Meyer, Travail effectif et effectivité du travail: une histoire conflictuelle, *Le Droit ouvrier*, October 1999, pp. 385-389.

box. Many types of work include periods when the worker is at work and at the employer's disposal although not carrying out his productive activity or duties. A shop sales assistant may be "unproductive" from the employer's view if not assigned to other duties like shelf-stacking or bookkeeping between serving two customers. A switchboard operator is strictly-speaking "productive" only when putting a telephone call through. But it is long-established (especially under International Labour Organization Conventions) that waiting time associated with the intermittent character of work cannot be deducted from working hours. Indeed, one of the Directive's own recitals expressly requires account to be taken of International Labour Organization Conventions - a fact so rare in Community Directives that it cannot go unremarked.

The Advocate General notes that the Directive is not clearly worded. For a start, it refers back to national practices. Also, it lays down three conditions two of which are self-contradictory ("being at the employer's disposal" and "carrying out his activity or duties"). But beyond the dangers of interpreting unclear provisions literally, the Advocate General points out that "the combined application of the three requirements is not easily accommodated by the aims and hence the essential purpose of the Directive, which is nothing if not to ensure workers a reasonable rest period. The fact is that to require the worker to be at work (an ambiguous wording which, in the light of the other requirements, seems to require that the worker should be physically present in the workplace), carrying out his activity or duties and be at the employer's disposal when calculating working hours would mean that the working hours did not include all those periods in which the worker is carrying out his activity or duties although not present in the workplace, and all the periods in which - and this is what concerns us here - the worker is present in the workplace but not carrying out his activity or duties, but is at the employer's disposal" (point 34). This interpretation, which I endorse, is also borne out by a rapid comparative examination of the legislation of some Member States and ILO Convention No 30[3]. The Advocate General stresses that equating the time spent at work at the employer's disposal with rest periods would be to admit that "the Council had deliberately decided to downgrade Community social policy compared to developments in the Member States' domestic policies".

The Advocate General argues that the Directive's three conditions are disjunctive, not cumulative.

The Advocate General suggests that "being at the employer's disposal" (where there is work in the workplace) be distinguished from merely being accessible (contactable and at the employer's disposal for work away from the workplace). But he accepts that even just accessibility cannot be simply equated with a rest period and must at least be taken into account when calculating rest periods. On this point, the Advocate General goes beyond the Directive's rigid view that any period which is not working time is a rest period.

The interpretation upheld by the Advocate General is also important to clarify the requirement of reference back to "national laws and/or practices" frequently found in the health at work Directives. This does not mean any national law or practice which is compliant with Community law. It must also be one which does not emasculate the Directive. That is the case with the Spanish legislation at issue in the present instance, which regards the on-call work of public health service doctors neither as normal work nor unsocial hours work, but special work paid at a flat-rate regardless of the volume of work done. While the pay implications of such a rule are not challenged, it is unacceptable from the health protection viewpoint, which is the point of the Directive. This interpretation is based on employment law precedents like the rulings in the two cases of Commission v United Kingdom of 8 June 1994 on collective redundancies and transfers of undertakings[4]. In both judgements, the Court used the same form of words to set the limits to a Member State's discretion where a Directive refers to national laws and practices: "national legislation which makes it possible to impede protection unconditionally guaranteed to employees by a directive is contrary to Community law".

Derogations

Directive 93/104 contains a complicated and dangerous set of derogations. Articles 17 and 18 are particularly poorly drafted. Article 17 allows derogates to be made to the Directive's provisions by laws, regulations or agreements. Article 18 allows Member States not to apply article 6 of the Directive (maximum weekly working time not more than forty eight hours, including overtime) by individual derogations. Only the United Kingdom has availed itself of individual derogations, which do not guarantee workers sufficient freedom of choice to work in conditions which are not damaging to their health. Above all, however, it is a massive step back from the principle on the order of priority of labour law rules as accepted in most Member States, by which an individual contractual agreement between a worker and his employer can only exclude public rules if it contains provisions that are more favourable to the worker.

The preliminary ruling referral did not require the Advocate General to look at the derogation arrangements in depth. He therefore simply concluded that the procedures and conditions laid down by article 17 (for sectoral derogations) were not complied with and that for the application of article 18, agreement

[3] ILO C30 Hours of Work (Commerce and Offices) Convention. It defines hours of work as "the time during which the persons employed are at the disposal of the employer; it does not include rest periods during which the persons employed are not at the disposal of the employer".

[4] *ECR* 1994, I., p. 2435 and p. 2479.

by a trade union could not replace the worker's own expression of his individual will. The Advocate General also said that article 18 should be regarded as "making Member States' option not to apply article 6 conditional on taking the measures needed to ensure that various conditions are met, including the employer's duty to seek and get the worker's agreement, and measures to ensure that no worker incurs detriment by refusing to accept the conditions imposed by his employer". In fact, he could have simply concluded that Spain's implementing rules did not intend to take up the option offered by article 18, in common with all the EU States, apart from the United Kingdom.

Night work and shift work

The Advocate General specifies that on-call time must be taken into account in deciding whether a doctor is a night worker within the meaning of the Directive. On the same basis, he argues that Spanish on-call doctors are shift workers because they work to a rota system.

Conclusions

While endorsing the Advocate General's reasoning and most of the conclusions he draws from it, it has to be said that once again the Commission's inertia has undermined certainty in the law. So far, there have been no irregularity proceedings leading to a ECJ ruling on an article 118A Directive other than for a Member State's failure to notify national incorporating measures. For many reasons, references for preliminary rulings cannot address all the issues of interpretation which would ensure that Directives were better applied. So much was made clear in the ECJ ruling on the Italian legislation incorporating the VDU Directive (*TUTB Newsletter* No 5). In 1999, the Commission announced a series of default procedures against Member States relating to article 118A Directives.

To the best of my knowledge, no default procedure has been started in relation to Directive 93/104. On the other hand, two other referrals for preliminary rulings will shortly be coming up in the ECJ. One again concerns the definition of working hours for casualty doctors (case C-241/99 Confederacíón Intersindical Galega (C.I.G) v Servicio Galego de Saude (SERGAS). The other relates to the thirteen weeks length of service requirement for paid annual leave in the United Kingdom (C-173/99 The Queen v Secretary of State for Trade and Industry).
Hopefully, the Commission will get its act together (belatedly - the first series of article 118A Directives came into force in 1992) and apply consistent criteria based on the upwards harmonization concept to ensure compliance with Community law.

Also, the Commission's control duties should not be completely separated from its legislative duties. It should bring forward proposed amendments based on an analysis of the ambiguous, ineffective or inadequate provisions of existing Directives. In this respect, the current revision of the Working Time Directive has been a missed opportunity to review some of its woolliest and most questionable provisions[5]. Essentially, it covers only the sectors excluded by the Council. It is also time to face up to the hard fact that adopting article 18 was a dangerous give-in to the British Conservative government's demands for an opt-out of a social Directive. Article 18 has not been used by any other Member State and several came out firmly against these derogations in a declaration annexed to the Council minutes. It is a mystery why it should take until November 2003 to review the terms of a compromise already thrown into question on the excluded sectors issue. Likewise, article 17 is a confused rag-bag of derogations by a mix of procedures for many categories of workers. The legal uncertainty created by this article is heightened by preceding the list of categories cited for the widest set of derogations (which also refers to the weekly working hours) by the adverb "particularly", indicating that other categories may be added to the list on the basis of very unclear criteria.

Finally, the issue of trade unions bringing proceedings in the Court of Justice in their own name to enforce compliance with Community social law remains unresolved. Should the forthcoming Intergovernmental Conference finally write fundamental social rights into the Treaty, then logically, it ought also to look at ways of making them exercisable. ■

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[5] The proposal for a directive amending Directive 93/104 published on 18 November 1998 covers only excluded sectors and activities but does not address other contentious aspects of the Directive. It applies the common rules to non mobile workers in transport undertakings and doctors in training, but introduces new derogations and exemptions. The new provisions are very limited for mobile workers (except railway workers) and are supplemented by other proposals for particular Directives (road transport, seafarers). The European Parliament gave its opinion on the Council's common position on the amendment of Directive 93/104 on 16 November 1999. It proposed a series of amendments. Parliament and the Council are currently locked in co-decision procedure negotiations. On 24 January 2000, the Council rejected the European Parliament's amendments and decided to launch the conciliation procedure.

How the ECJ ruling may affect the United Kingdom

A Court of Justice ruling in line with the Advocate General's opinion could have much more impact in the United Kingdom even than in Spain[1]. This is because, after the ECJ had rebuffed its challenge to get the Directive quashed, Britain's Conservative government brought in regulations in December 1996 attempting to implement only the rock-bottom minimum of the Directive. On some aspects, it could point to the Directive's own real failings. On others, it offered questionable interpretations of the exemption and derogation rules which would leave the Directive all-but toothless. It did this mainly by leaving most of the Directive's vague and imprecise wording intact (e.g., the duration of working time which cannot be measured or predetermined). Also, making the annual leave entitlement dependent on thirteen weeks' consecutive service[2] clearly discriminates against fixed-contract workers and is at odds with the Directive's overall aim of alleviating the health effects of overwork independently of any other employment issues with a particular employer. It is a general failing of all national implementing rules, moreover, not to have addressed the multiple jobholding issue. Eurostat figures for 1997[3] estimate that over 5 million workers are in this situation in the European Union. In some countries, like Denmark, the Netherlands, Portugal and Sweden, it accounts for more than 5% of the employed labour force.

The new labour government improved matters to some extent, but did not throw into question the main thrust of Conservative plans to exclude as many activities and sectors as possible from full application of the common rules and to allow employers to derogate from the maximum weekly working hours through individual arrangements with their workers. Such individual arrangements could also change the definition of "night worker" in a clear breach of the Directive's provisions. Also, employers can negotiate exemptions by sidelining the trade union. To that end, the British regulations introduce the notion of "workforce agreements" concluded with workers' representatives elected by procedures set unilaterally by the employer. Where these agreements relate to a group of twenty or fewer workers, representatives do not even have to be elected.

Initial reports on the application of individual exemptions are quite alarming. Most of the workers who were working more than 48 hours a week before the working time regulations came in have been registered as individual exemptions. A survey for the BBC put the number affected at 2.7 million workers. 20% of those registered as exempted felt they were pressured into it[4].

The 1998 regulations were further watered down by two amendments which came into force in December 1999. One aims to make it even easier to make "individual agreements" excluding workers from the application of the 48 hour maximum weekly working time rule by allowing employers simply to keep of a list of workers covered by such agreements. The other further extends the categories of workers whose working time putatively cannot be measured.

The British regulations' definition of working time is based on a cumulative interpretation of the Directive's conditions. Three conditions have to be met - "working", "at the employer's disposal" and "carrying out his activity or duties". On top of this very narrow definition comes training time and any additional period considered as working time within the meaning of the regulations by a collective agreement (this final point was added to the initial draft by the Labour government).

The Department of Trade and Industry's guidance is categorical. For time to count as working time "all three elements must be satisfied". It goes on: "Time when a worker was "on call" but otherwise free to pursue their own activities would not be working time, as the worker would not be working. Similarly, if a worker is required to be at the place of work "on call" but was sleeping though available to work if necessary, a worker would not be working and so the time spent asleep would not count as working time"[5].

Public health unions have managed to limit the damage of this definition of working time. An agreement between the unions and the national health service provides that the time during which staff are "on call" in NHS premises will count as working time, but staff who are on-call away from the workplace are regarded as working only from when they are required to undertake any work-related activity.

If the Court of Justice rules in line with the Advocate General's proposed interpretation, the British definition would be over-restrictive under Community law, as, in my view, would the Irish requirement of the conjunctive application of at least two factors: being at the place of work or at the employer's disposal, and carrying out the activities or duties of his or her work (s. 2(1), Organisation of Working Time Act 1997).

Also, the Advocate General's suggestion that the application of article 18 (individual derogations) should be seen as contingent on the Member State's taking all necessary steps to protect the health of the

1 See J. Fairhurst, The Working Time Directive: A Spanish Inquisition, *Web Journal of Current Legal Issues*, No 3-1999.

2 The Conservative government's draft regulations put this requirement at 49 weeks. It was reduced to 13 weeks in the regulations enacted by the Labour government.

3 EUROSTAT, *Labour Force Survey, Results 1997*, Brussels, 1998.

4 See *The Safety and Health Practitioner*, October 1999, p. 3.

5 *DTI Guidance*, August 1998, paragraph 2.1.2.

workers concerned would appear to throw the present British regulations open to question, especially following the additional deregulatory measures which came into force in December 1999. On three points at least, the British regulations go beyond the limits set in articles 17 and 18 :

- it is questionable whether "workforce agreements" can count as "agreements between the two sides of industry", especially in light of the employer's freedom, where twenty or fewer workers are concerned, to send a list around and consider that an agreement has been concluded if a majority of the workers sign it;
- some of the British regulations' provisions mix up the scopes of articles 17 and 18 by allowing individually agreed derogations to the definition of "night worker" (the directive only allows individual derogations from the 48 hour maximum working week);
- in practice, the 1999 amendment extending the definition of work which cannot be measured to "hybrid" situations where work is partly measurable and partly performed "voluntarily" by the worker over and above what can be measured cancels out the few guarantees offered by article 18 for these categories of workers.

All these issues (along with others not addressed in this article) could well find their way into the courts, and be referred for a preliminary ruling to the ECJ. What is disturbing is the Commission's failure so far to fulfill its role as "guardian of the Treaties" by initiating a default procedure against the United Kingdom over Directive 93/104. ■

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TUTB Chemical Network:
hard time getting unions' voice heard in European and international debates

The TUTB Chemical Network met in Brussels on 15 and 16 December 1999, when experts from ETUC member organisation discussed a range of European issues relating to chemicals. But the trade union experts' brief extends to a range of areas spilling over from a purely European framework, like protecting workers against asbestos, drawing up exposure limit values, the classification of substances and simplification of legislation.

Asbestos

After the Commission's decision to ban nearly all remaining uses of asbestos by adopting Commission Directive 1999/77/EC[1] on 26 July 1999, the Directorate General for Employment and Social Affairs began to re-examine the directive governing the handling of asbestos in the workplace[2] in order to:

- focus on the groups of workers now considered to be most at risk, like those involved in removal of asbestos and repair and maintenance workers in asbestos-containing buildings;
- ensure adequate risk assessment provisions reflecting the different risks;
- take into consideration different information and training needs of workers depending on the type of exposure involved;
- emphasise the prevention or minimisation of exposure;
- revise the concentration levels, exposure limits, and measurement methods;
- review the assessment of asbestos fibres in air (new WHO method for counting fibres).

Without involving the social partners, the Employment and Social Affairs DG has begun consulting the Member States on a draft proposal which contains some crucial points (in particular the OELs and limitation of protective measures where the total time of exposure of workers is no more than two hours).

It was agreed at the December meeting to collect from network members any training material which might prove useful for the aspects already included in the draft proposal.

Saman Zia-Zarifi from the University of Rotterdam presented his report, commissioned by TUTB, on the background to the WTO asbestos dispute, the real underlying reasons, the possible scenarios and implications of a verdict in favour of Canada for health and safety at work legislation at European level and world-wide (see this issue's editorial and the article *The real issues in the WTO asbestos dispute*, pp. 1, 2 and 3).

The trade union experts also discussed the asbestos-related work of the Bilbao Agency's "Thematic Network Group - Good Practice", and a project on "Asbestos Literature for Union Members", presented by the editor of the *British Asbestos Newsletter* Laurie Kazan-Allen.

Guidelines for the application of the Chemical Agents Directive

Chemical Agents Directive 98/24/EC of April 1998 requires the Commission to develop guidelines for the application of various of its provisions:

- standardised methods for the measurement and evaluation of workplace air in relation to occupational exposure limit values (Article 3.10 of the Directive);
- guidelines for the determination and assessment of risks and for their review and, if necessary, adjustment (Article 4.6);
- practical guidelines for preventive measures to control risks (Article 5.2);
- practical guidelines for protection and prevention measures to control risk (Article 6.2);
- practical guidelines for biological monitoring and medical surveillance, including recommendations of biological indicators and biological monitoring strategies for lead and its ionic compounds (Annex II.1.3).

The Article 3.10 and Annex II 1.3 matters will be dealt with in the Luxembourg Advisory Committee's Ad Hoc Group (AHG) on Limit Values. The other three guidelines will be covered by a single document to be developed and discussed in the new AHG on Guidelines for the Chemical Agents Directive.

[1] See *TUTB Newsletter*, No. 11-12, June 1999.

[2] Council Directive 83/477/EEC of 19 September 1983, amended on 25 June 1991 by Directive 91/382/EEC.

The thing is that none of these guidelines have yet been worked out. But Member States have to comply with the Directive not later than 5 May 2001 by taking account of the guidelines in drawing up their national policies. Also, the employers have already announced that without the guidelines, no application and compliance will be possible. Not much time is now left to draft these guidelines, especially as the meetings of the Advisory Committee's AHG planned for 1999 had to be cancelled due to financial restrictions within the Commission.

The guidelines on exposure control and risk assessment of chemicals (the *COSHH Essentials*) developed in the UK by the Health and Safety Executive (HSE) in co-operation with the TUC, were presented by Alastair Hay from the University of Leeds (see *Controlling exposure to chemicals: a simple guide on how to do it*, p. 32). The Network members discussed the possibility of speeding up the process at European level by taking these guidelines as a basis for drawing up the European guidelines.

Occupational exposure limits

Another key agenda item in the context of the Chemical Agents Directive was the ongoing process of establishing OELs at European level and the recent developments in the Luxembourg Advisory Committee's Ad Hoc Group on Limit Values.

Two TUTB working groups were set up: one dealing with trade union strategy toward occupational exposure limit values for genotoxic carcinogens; the other on setting exposure limit values. The first working group was a response to Dutch union demands to put their risk-based approach on a European level agenda. The Dutch model was presented at the TUTB's December 1997 conference[3]. The reason for the second working group (not yet decided) is the need to respond to the employers' criticisms of the key SCOEL[4] document published in June 1998 setting out its rationales on OEL setting. Connected with this discussion is the Commission's proposal to eventually set a binding limit value for NO2 due to the employers' refusal to accept a health-based value proposed by SCOEL.

The TUTB expert network also discussed isocyanates, with a presentation of the Swedish unions' campaign to improve the existing measurement standards and laws at national and European level[5].

Also on the agenda were other key issues relating to chemical substances, including:
- international harmonisation of classification and labelling of dangerous substances and preparations;
- future Commission policy on dangerous substances (classification, marketing restrictions, risk assessment, risk management);
- future initiatives like the SLIM simplification exercise on Directive 67/548/EEC in 1999.

Trade unions should - indeed must - not only be seen but heard in all these debates. ■

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[3] See: The setting of risk-based threshold limit values for carcinogens in the Netherlands, *TUTB Newsletter*, No. 8, March 1998, p. 31.

[4] Scientific Committee on Occupational Exposure Limits.

[5] See: Isocyanates: new measurement techniques reveal a significant under-estimation of risks, *TUTB Newsletter*, No. 9, June 1998.

Controlling exposure to chemicals: a simple guide on how to do it

Alastair Hay*

Controlling exposure to chemicals in the workplace will be much easier in future as a result of a guide published recently by the UK Health and Safety Executive (HSE). Known as COSHH Essentials, the guide is a simple 5-step procedure which allows anyone using chemicals to devise an appropriate control strategy to reduce exposures. Instead of just setting desirable safety goals, as was done until recently, the guide is a very specific toolkit which will suit a wide range of users. Using information that is readily available the guide shows managers and safety representatives how to devise a control procedure. You do not need to be a trained occupational hygienist to use it.

Occupational Exposure Limits

For many years UK law has required the management of companies to have procedures in places of work to control exposure to chemicals. These 'in-house' procedures together with some 650 occupational exposure limits (OELs) for specific chemicals were meant to provide the necessary protection for UK workers. This was the theory. In practice it was not nearly as protective as it was designed to be.

Part of the problem was that the law required managers of companies of all sizes to carry out their own risk assessments. Larger organizations found it much easier to do this than smaller companies. Big companies could afford to employ hygienists to do the work and to devise controls. Small and medium sized enterprises (SMEs) have generally either been unclear about what to do or found risk assessment difficult and expensive.

This is not just guesswork. Several years ago the HSE carried out a survey of companies which used chemicals to find out how much managers knew about the limit–setting process. Telephone interviews were conducted with 1000 managers responsible for health and safety in SMEs and with 150 trade union safety representatives. Most of those interviewed claimed to know about OELs. On closer questioning however, it became clear that real knowledge about OELs was very limited. Only about 20% of those interviewed had a real knowledge of the limits and a similar percentage knew how to assess an OEL. Even fewer knew the difference between the two types of OELs in force in the UK. These are the health-based Occupational Exposure Standards (OESs) and the Maximum Exposure Limits (MELs) for substances like DNA-damaging carcinogens and chemicals which cause asthma. The survey also indicated that trade union safety representatives knew more about limits than managers.

It would be fair to say that the results of this survey were painful for the HSE. For the first time the organization had asked those whom it both advised and policed how they were coping. The answer was that they were doing rather badly. Help was needed. Those managers who were expected to use the OELs did not know what they meant. If they did not know this, how could they possibly implement the limits ?

A new approach

It was clear to everyone that a completely new approach was required, which would take account of the limited knowledge base about hygiene and the lack of understanding of risk assessment. It was no good complaining that managers ought to carry out proper risk assessments. UK law had required them to do precisely that for many years, but the telephone survey showed that most of those interviewed would be unable to perform them properly. What the survey did show, however, was that managers were concerned about their workforce and were likely to have some controls in place. Most of the guidance managers relied on for what was necessary would have come from information sent by the suppliers of chemicals. Thus, the controls

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would have been based either on what was printed on a label or the contents of a safety data sheet. It was also clear that the situation was unlikely to change much in years to come. So, what was to be done?

After considerable debate it was agreed that the primary objective had to be a procedure that allowed those who used chemicals to work out how to handle them safely. If such a procedure could be devised, then it would help to control exposure to most hazardous substances being used, and not just those for which there were exposure limits.

COSHH Essentials

A working group of hygienists, toxicologists, epidemiologists and others from industry, trade unions as well as independent scientists, was established by the HSE to work out a procedure. The group met many times over more than two years to shape and reshape a procedure which was both acceptable and easy to use. At particular stages of the work there was further consultation with both industrial users and TU safety reps to make sure that we had taken the right approach. Feedback from these consultation exercises was very positive and many good ideas for modifications came in through these routes. The end result of this work was the COSHH Essentials guide.

COSHH Essentials is what might be called a generic risk assessment guide. In other words it is a general, but all-embracing approach to risk assessment which will cover many situations. The foundation for the scheme was based on well recognized principles. These were that risk was the combination of hazard and exposure. No matter how hazardous a substance is, if there is no exposure, there is no risk. So the procedure we adopted was based on the following flow diagram :

As most of those interviewed said that they used information from suppliers to help devise controls, we decided to construct a guide which used this source of information. Details about the hazard of chemicals can be found in safety data sheets. Hazardous chemicals that are sold in the EU are given risk phrases (R phrases) depending on their particular properties. In COSHH Essentials these R phrases are allocated to one of five hazard bands, band A being the least hazardous and band E the most. Band E is for substances which damage DNA , and can cause cancer; it also includes substances which can cause asthma.
To help inform the discussions about which R phrase should be in which hazard band, the working group used data from over 100 substances which had well-validated occupational exposure limits in the UK regulatory system. In the end, the scheme is slightly precautionary in that it allocates some substances to hazard bands which provide more control than the occupational exposure limits require. We see this as a necessary precaution.

For the next step - that of exposure - we adopted a simple approach. It was the possibility of exposure that we were concerned about. In the case of solids, this would be determined by how much is used and how dusty they are. For liquids, it is both the volume used and their volatility.

To make it simple, but also to reflect how hygienists consider exposures, we used 3 measures of quantity. For solids, the amount used is either grams, kilos or tonnes. With liquids, it is millilitres, litres or cubic metres.

There are also 3 categories of dustiness for solids: very dusty (e.g., talcum powder); medium dusty (e.g., soap powder) or low dustiness (e.g., waxed flakes). The volatility of liquids is determined by reference to a simple graph. A knowledge of both the boiling point of the solvent and the process operating temperature enables you to work out whether it is a low, medium or high volatile solvent that is being processed.

Although the length of time for which someone is exposed is also important, we did not include this in the scheme because it does not change the air concentration caused by a particular process.

The next step was to consider what exposures would be generated by combining physical properties with amounts used, e.g., gram quantities of medium dusty material, etc. In the end, occupational hygienists on the working group agreed that 4 exposure bands could be predicted.

The control options available to hygienists include general ventilation; engineering control; containment; or special facilities where expert advice is needed. Using these four options, the hygienists considered how each control measure would alter airborne concentrations in each of the 4 exposure predictor bands. Through this approach, it was possible to see how tighter controls would be able to push concentrations down to a particular range.

Our final step was to match the predicted exposure ranges and control options with the various hazard bands. This allowed us to determine the exposure ranges appropriate for particular hazards and to apply further refinements. This last step closed the loop. It meant that in future, by using a combination of hazard band, quantity used, degree of dustiness or volatility, and control approach we could predict what airborne concentrations were likely to occur. All of the options have been thoroughly reviewed by a number of occupational hygiene society working groups and they agree with what we have done.

Using COSHH Essentials

So those who use the scheme will need safety data sheets to locate R phrases. This will allow them to determine the appropriate hazard band. Combining this information with the quantity to be used and an assessment of how dusty or volatile the substance is, users of COSHH Essentials will be guided to a particular control approach. The guide also has a number of detailed diagrams and information to show how these controls work in practice. Feedback from industry and TU safety reps has been very positive. Many are saying that they wished they had had this guide years ago, as it would have made their work so much easier.

COSHH Essentials will also help industry consider how to reduce costs. At each step, those using the guide are asked to consider substituting a particular substance for something less hazardous, or less volatile, or in a less dusty formulation, i.e., using waxy pellets instead of fine powders. These strategies will reduce both the level of control needed, and also costs.

The way forward

We believe that COSHH Essentials is only the start of a much longer process. The approach taken in the guide can be adapted to deal with more complex tasks where a range of substances are used in a variety of operations. In the UK, this is now being done for the printing industry. Other industry groups are likely to follow.

It is also clear that COSHH Essentials could be exactly what is needed for the Chemical Agents Directive. The Directive is due to come into force in May 2001. However, before it can become law, it will require an agreed procedure for determining, assessing, preventing and controlling risks. If the experience of SMEs in Europe is the same as that in the UK, it is clear that they will also need help to do what the Directive requires. COSHH Essentials, suitably adapted to the needs of other European states would provide that help. ■

TUTB-SALTSA Conference

Working without limits ?
Re-organising work and reconsidering workers' health
Brussels, 25-27 September 2000

European working life in the 1990s underwent profound changes and new forms of work organisation emerged. Expressions like down-sizing, lean production, just-in-time, flexible hours, teleworking, outsourcing, contingent work, casualisation, internationalisation and multi-skilling are being used to describe different aspects of these changes, but the overall trend is towards dissolution of known rules and limits, not least job security.

Too little is known about the health effects of these organisational changes, but their impacts on the mental and physical well-being of workers can readily be imagined.

As well as academic studies, knowledge based on workplace experience can help to identify the problems arising from these organisational changes, giving visibility to many ignored or underestimated health effects. It can contribute to integrating workers' needs more closely in the political agenda, and a more systematic inclusion of working aspects in collective bargaining.

This conference is a joint undertaking by the TUTB and SALTSA, the Joint Programme for Working Life Research in a European Perspective (Sweden).

P R O G R A M M E

The conference will be organised around four plenary sessions and three parallel workshops.

MONDAY 25 SEPTEMBER

SESSION I: Labour Market and Work Organisation Trends
Chaired by MARCEL WILDERS, Dutch Trade Union Confederation (FNV), Amsterdam, Netherlands

- The New Labour Market and the Third Industrial Revolution
  LARS MAGNUSSON, National Institute for Working Life, Stockholm, Sweden
- Changing Work Organisation in Europe
  PETER TOTTERDILL, The Nottingham Trent University, Centre for Work and Technology, Nottingham, United Kingdom

SESSION II: Casualisation and Flexibility: Impact on Worker's Health
Chaired by MARCEL WILDERS, Dutch Trade Union Confederation (FNV), Amsterdam, Netherlands

- Contingent Employment/ Enforced flexibility and Health
  ANNIE THEBAUD-MONY, Research Centre for Challenges in Public Health, Bobigny, France
- From Intensive to Sustainable Work Systems: The Quest for a New Paradigm of Work
  FRANS M. VAN EIJNATTEN, Eindhoven University of Technology (TUE), Faculty of Technology Management (TM), Netherlands
- Work and Job Casualisation: a Reality Check
  ELISABETH WENDELEN, National Research Institute on Working Conditions, Brussels, Belgium

Poster session

TUESDAY 26 SEPTEMBER

SESSION III: Tools for Assessment - Tools for Action

Chaired by PETER DOCHERTY, National Institute for Working Life, Stockholm, Sweden

- Bringing Workers' Experiences to bear on Working Conditions Assessments
  LAURENT VOGEL, European Trade Union Technical Bureau for Health and Safety, Brussels
- Third European Survey of Working Conditions
  PASCAL PAOLI, European Foundation for the Improvement of Living and Working Conditions, Dublin, Ireland
- Experiences of Transmission from Occupational Health to Working Health Research
  CHRISTER HOGSTEDT, National Institute for Working Life, Stockholm, Sweden

PARALLEL WORKSHOP SESSIONS: case studies

Road transportation

Chaired by DANNY BRYAN, European Federation of Transport Workers, Transport and General Worker's Union, London, United Kingdom

- Introductory report: Patrick Hamelin, INRETS, France
- Paper sessions

Health and hospital professions

Chaired by JON RICHARDS, European Federation of Public Service Unions, Unison, London, United Kingdom

- Introductory report: MARIANNE DE TROYER, Université Libre de Bruxelles, Belgium
- Paper sessions

Metal industry

Chaired by STEFAN SCHAUMBURG, European Metalworkers' Federation, IG Metall, Germany

- Introductory report: JOSÉ IGNACIO GIL, Metalworkers' Federation Technical Agency, CC.OO., Spain
- Paper sessions

SESSION IV: Towards New Prevention Strategies

Chaired by CHRISTER HOGSTEDT, National Institute for Working Life, Stockholm, Sweden

- Ageing and Sustainable Work Ability
  JUHANI ILMARINEN, Finnish Institute of Occupational Health, Vantaa, Finland
- Work Environment Management & Occupational Health Services
  JOAN BENACH, University Pompeu Fabra, Barcelona, Spain

WEDNESDAY 27 SEPTEMBER

REPORTS FROM THE PARALLEL WORKSHOPS

REVIEW OF THE CONFERENCE SESSIONS

PER LANGAA JENSEN, Department of Technology and Social Sciences, Technical University of Denmark and SERGE VOLKOFF, Centre for Research and Studies on Age and the Labour Force, Paris, France

ROUND TABLE: Perspectives for the Future

with representatives from the European Commission, the French Presidency of the European Council, the Swedish Government, the European Parliament, ETUC, UNICE. Moderators: STURE NORDH, President of the TCO, Chairman of the SALTSA Programme, Stockholm, Sweden and MARC SAPIR, Director of the TUTB, Brussels, Belgium

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Full programme, practical information and registration form are available on our Internet site: http://www.etuc.org/tutb/uk/conference2000.html

Enlargement cold-shoulders workplace health

On 13 October last year, the Commission published progress reports on the thirteen countries with applications in to join the European Union (ten Central and Eastern European countries, Cyprus, Malta and Turkey). Sad to say, both the country reports and the general overview skirted round workplace health issues. Mostly, they were dismissed with a curt nod towards pending legislation and doubts about the state's ability to enforce its laws. Also, the very few occupational health cooperation projects running are underfunded (rarely more than a million euros per country). Alarm bells should start to ring if the Commission is seen to put free movement of goods and capital before social and environmental policies in the membership process. ■

Source: documents COM (1999) 500 to 513

France: unions against job-related genetic tests

France's 5 trade union confederations - CGC, CGT, CFDT, CFTC and FO - have set out their stalls clearly on the issue of job-related genetic testing. In a letter of 2 October 1999 to the Chair of the Senate (Upper House) Scientific and Technological Options Evaluation Board they say that "we believe there must be a ban on the use of genetic tests both in recruitment and on the job". They add that: "although section 3 of the Act [of 29 July 1994] lays down ethical principles to guarantee the inviolability of the individual, and prohibits the organized genetic selection of people, we oppose genetic tests which, under the cover of so-called predictive medicine, will permit selection both before and during employment. A ban would square with the fundamental principles prohibiting all forms of discrimination in employment". ■

The ETUC also took a stand against genetic tests at a round table on work-related genetic testing staged on 6 March 2000 by the European Group on Ethics in Science and New Technologies (EEG).

See our Internet site : http:// www.etuc.org/tutb/en/tutb-info2.html

German referral for a preliminary ruling on Directive 90/270/EC upholds prevention aims of individual directives

On 24 February 2000, Advocate-General Antonio Saggio submitted his opinion on case C-11/99 - a reference from a German court for a preliminary ruling on the substantive scope of VDU Directive 90/270. A German TV station video editor, supported by the European Commission, said the monitors used in video clip editing should be classed as display screen equipment within the meaning of the Directive. The Netherlands and the WDR (employer) want a narrow interpretation, arguing that film clips are not a graphic display within the meaning of the Directive.

The Advocate-General's reading of the Directive takes account of its protective aim, based on the linkage between the individual directive and the framework directive. He refutes the WDR's narrow interpretation of the Directive's scope, relying on technical standard DIN 15996. He argues that the expression "graphic display" covers the display of all kinds of images, including the reproduction of picture material - whether analog or digitised - on control monitors. He argues that "control cabs for... machinery" (excluded from the scope of the directive) relate only to a job in which an operator manipulates machinery or a technical installation using a system for the generation of technical data limited to the on-screen display of data which the operator enters into the system or which are generated by the system during the production process.

More than a satisfactory solution to the case in point, what the Advocate-General offers is a germinal interpretation which ties the individual directives into the framework directive's prevention principles and clarifies their aims. He points up the different basic principles underlying the directives laying down market rules (based on article 100A) and those with a social purpose. ■

Spain: workplace injury toll soars

An editorial in the Spanish daily *El Pais* for 28 December 1999 calls attention to the sharp rise in industrial injuries in Spain. Over the first eleven months of the year, there were 1,010 fatal accidents - up 18% on 1998. The editorial writer stresses that Spain's workplace safety legislation is being disregarded not just by many employers, but also by central and regional (autonomous community) government agencies whose job is to police and enforce it. The editorial concludes: "There must be an effective system for imposing penalties when rules are flouted and setting the justice system in motion when there is evidence of offences. The Public Law Officer's Department must act promptly against attitudes actions or omissions which put the life of people in the workplace at risk".

Job insecurity adds hugely to the problem. A survey on reported employment injuries in the Valencia region in 1995 and 1996 found that short-term employees (fixed contract or agency workers) were twice as likely to be injured at work than permanent employees. Some large firms are starting to systematically outsource all hazardous work. This is one reason behind the recent Spanish Decree 216/99, which tightened up safety requirements for agency workers. Among other things, it outlaws the use of agency workers in mining and building, and in high-risk jobs involving exposure to carcinogens, biological agents, work in explosive atmospheres, on offshore rigs, etc. Employers using agency labour will now have to attach to their contract with a temp agency a risk assessment for each job on which agency staff are to be employed.

But it is not just industrial injuries that Spanish unions are concerned with. They claim that exposure to toxins in workplaces is killing large numbers of workers whose deaths are going unrecognised by occupational disease schemes. The Workers' Committees (CC.OO) secretariat for health and environment estimates that 8,400 workers died in 1996 as a result of toxic exposures. ■

Sources: articles in *El Pais*, 26 June, 21 August and 28 December 1999 reproduced in CC.OO. *Resumen de prensa, salud laboral, 1999*

Compromise on Working Time Directive amendments

The Council-European Parliament Conciliation Committee finally came to a meeting of minds on 3 April 2000 on the proposal for a directive extending the scope of Council Directive 93/104/EC of 23 November 1993 to previously excluded sectors. Five million workers are likely to be affected by the decision. The Directive will cover doctors in training, offshore and railway workers, and all non-mobile workers in the excluded sectors. For mobile workers in air, road and waterway transport, the Directive lays down appropriate rest periods, four weeks' annual leave and restrictions on their working time.

The main stumbling block was the working time of doctors in training. The proposed solution, as with other deadlocked directives, was for a transitional period to defer the introduction of certain provisions. The Conciliation Committee suggested reducing the working time of doctors in training to an average 48-hour week after 9 years, including the four years allowed for

Member States to incorporate the directive into their national laws, and a further five year transitional period to bring their average working week down from 58 to 48 hours. An additional two years was even provided in exceptional circumstances for some Member States faced with particular difficulties in complying with the directive. However, any state wanting to use the extension will have to give notice and very good reasons. ■

Occupational health management systems: what next from ISO ?

The British Standards Institution (BSI) has asked the ISO to set up a Technical Committee to frame an international standard for occupational health management based on the existing British standard BS 8800: 1996. The ISO's Technical Management Board (TMB) should have voted on it on 10 March, but the decision was put back to 12 April at the United States's request. The lack of support for an international standard found at an ISO seminar for 45 countries on the matter in Geneva in 1996 led the ISO to drop the idea of framing standards for occupational health management systems in early 1997. The general feeling had also been that any international OHSMS standard ought to come from a tripartite body like the ILO. In 1998, however, the ISO General Assembly decided to canvass member organizations on current national standards, and asked them not to rule out the idea of an international standard indefinitely.

Meanwhile, the ILO commissioned a report from the IOHA (International Occupational Hygiene Association) on existing occupational health management systems documents: standards, guidance and codes of practice. This provided the basis for an ILO guide to occupational health management systems which is due to be put out to consultation to the governments of the different countries concerned, the social partners and the ISO this year. An initial draft document was submitted to the ISO in November 1999. Early consultations between the two organizations confirmed the findings of the ISO's 1996 seminar and the ILO's role in framing an international document in this area, as well as the importance of avoiding overlapping of work between the two organizations. The BSI's request puts a question mark over these agreements. The ISO could start work on its own international standard if the British proposal wins 2/3 of the votes.
Watch this space for news on developments in the ISO and ILO.

The ILO/IOHA report is available on the Internet:
http://www.ilo.org/public/english/protection/safework/cis/managmnt/ioha/index.htm
Other websites of interest:
ISO - www.iso.ch and
ICFTU - www.icftu.org

See also: New turns in the debates on occupational health management systems, Laurent Vogel, *TUTB Newsletter*, No. 11-12, June 1999. ■

Application of the Mobile Construction Sites Directive

The European Federation of Building and Wood Workers has published an analysis of the incorporation and application of Mobile Construction Sites Directive 92/57 EEC. As well as a comparative study of national implementing legislation, it recounts experience of putting the Directive into practice in Germany, Spain, Belgium, and a large company: Vivendi. It also addresses a series of related issues, like employee representation, the role of health and safety committees, and linkages with health and safety management systems. ■

It is available in English, German, French, Spanish, Dutch, Danish and Italian from: Rolf Gehring, EFBWW, Rue Royale, 45, bte 3, B-1000 Brussels
E-mail: efbh.fetbb@skynet.be

Market surveillance of personal protective equipment in France.

Legal and practical aspects

Ian Fraser

The EU's so-called "New Approach" Directives, which harmonise safety rules for a range of industrial goods, play up the role of private players on the market: manufacturers, standards bodies, certification bodies. Ian Fraser's report focusses on the role of that other crucial, but often-overlooked, player - government. He looks in detail at French public surveillance of the market for one of the products covered by European Directives - personal protective equipment (PPE) - and compares the French system with the position in other EU countries.

Public surveillance is vital to ensure that all players shoulder their responsibilities properly. But its overarching aim is to protect the end-users of products - in this case, workers who actually use personal protective equipment. What this equipment mainly has to do is to meet the essential safety requirements set by the directives and put into practice by European technical standards. Where PPE are concerned, this may literally be a matter of life and death, because they are all that stands between the user and injury.

It is now ten years since the Machinery and PPE Directives were passed, and an effective European policy to ensure their consistent application is still wanting. The fact is that in many countries, inspection bodies are underfunded and understaffed, penalties, if any, are inadequate and there is no joined up system of surveillance. The outcome of the debate on this is a key issue in the credibility of the Community system. Ian Fraser's report makes a major contribution to that debate. ■

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806 BEF (20 euros)
Also available in French

Risk Assessment at the Workplace.

A Guide for Union Action

Pere Boix and Laurent Vogel

Hundreds of thousands of workers' health and safety reps are active in workplaces across the EU. Since the 1989 Framework Directive passed into law, employers have had a duty to carry out risk assessments, and workers' reps must be involved in them in ways which vary widely between countries and, indeed, companies.

Risk assessment is a new idea for many countries. As yet, there is no real European model for it.

This guide forms part of a trade union strategy on risk assessment. It stems from the fact that consultation of workers' reps remains a legal requirement rarely put into practice. When it does take place, it is treated as a technical exercise carried out by experts, which makes no allowance for feedback from workers' own experiences. In some cases, it is just a paper formality.

The TUTB has consistently argued that more real involvement by workers in prevention activities is essential if Community Directives to improve the working environment are to have practical effect. This guide has been designed as a work tool to help workers' health and safety reps of all kinds to assess working conditions on the shopfloor. ■

ISBN: 2-930003-25-1, 72 pages, 21 x 29,5 cm
800 BEF (19.83 euros)
Also available in French

TUTB Observatory

Occupational Health in Central Government Administration.

A comparative study of the implementation of selected provisions of the Framework Directive in Austria, Spain, France and the United Kingdom

Laurent Vogel

One singular fact about the Framework Directive is that it does not distinguish between private sector workers and the different categories of public and civil service employees - an entirely new approach to some States. This report is looking at what effects the Framework Directive 1989 had produced in the central civil service of four countries - Austria, Spain, France and United Kingdom - through a comparative study of selected aspects. It focuses on three aspects in particular:

- worker representation;

- the operation of preventive services;
- training.

The first thing we found is that, in four countries, the State is still inclined to see itself as a case apart, standing selectively outside the rules of ordinary law. This report shows how this outlook has led to various failings and delays in transposing the Framework Directive. But it is practical implementation that is most fraught with problems, with glaring shortcomings in the inspection and enforcement machinery, and inadequate arrangements for preventive services and staff representation provision. ■

ISBN: 2-930003-31-6, 60 pages, 21x29,5 cm
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Those publications can be ordered from our internet site: http://www.etuc.org/tutb/uk/publication.html

Europe under Strain

The TUTB and the ETUC, backed by the International Labour Organization, are adding fresh momentum to the trade union awareness-building campaign on workplace MSD.

Millions of workers across all sectors of European industry suffer from musculoskeletal disorders. 30% of them experience back pain and 17% muscle pains. MSD are in the top ten most frequent occupational diseases in Europe. The misery they cause to sufferers, mostly women, is still hugely underrated.

MSD result from work organization factors, often acting together: they may be physical (repetitive movements, uncomfortable work postures, vibrations, ...) or psycho-social, like mental stress, time pressures or job insecurity.

These health problems take a heavy toll in many ways, mainly on sufferers themselves, but also in costs to firms, the economy and the health care system. The ETUC and the TUTB, with the backing of the ILO, aim to get workers a say in taking their own health in hand in the workplace.

The ETUC and the TUTB are demanding Community initiatives:

- to ensure that the European Manual Handling of Loads, Work with Display Screen Equipment and Work Equipment Directives, plus obviously the Framework Directive, are fully applied and revised to cover the different types of MSD risk properly;

- get guidelines drawn up for harmonised risk assessment and application of these directives;
- get the European Schedule of Occupational Diseases revised to include the different types of muscle and joint injury;
- get a consistent set of ergonomic technical standards drawn up to improve machinery and work equipment design. ■

The TUTB has a **Reference document** available for its Newsletter readers which sets out: the focal points of trade union action, the TUTB's activities, materials plus a campaign **poster**. This document is available in English, French, German, Spanish and Swedish.

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www.etuc.org/tutb/uk/msd.html

Prevention

Union action across Europe

The ETUC through its Trade Union Technical Bureau (TUTB) joined with the magazine *Santé et Travail* published by the French mutual insurance organization Mutualité Française to mark ten years of the framework Health and Safety at Work Directive. *Santé et Travail* published a jointly-produced special report in October 1999 reviewing good prevention practice sponsored by workers' representatives across Europe.

The TUTB circulates this special 38 page report to the readers of its *Newsletter* in French. The readers interested in receiving a copy of this report (only available in French) may contact Janine Delahaut at TUTB (e-mail : jdelahau@etuc.org). ■

Santé et Travail magazine is available from:
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