

COUNCIL
WORKING PARTY ON SHIPBUILDING

THE GLOBAL SHIPBUILDING INDUSTRY- A TRADE UNION PERSPECTIVE

[Paper by the International Metalworkers' Federation (IMF)]

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Recommendations

- That the OECD working party on shipbuilding to further develop analysis on the impact of overcapacity on the industry. In particular the likely impact on employment and working conditions.
- That the OECD working party on shipbuilding to provide information on the types of employment in the industry, in particular analysis of the employment relationship and its influence on health and safety conditions.
- That the working party promote respect for basic human rights and to ensure employers work to international recognised labour standards. In addition the working party looks at compliance with the OECD guidelines for multinational corporations in shipbuilding.
- That the OECD Working party on shipbuilding continues to work towards establishing a stable development for world shipbuilding industry.
- That the OECD Working party considers dialogue with other industries such as steel to exchange experiences, concerns and progress.
- That the OECD Working party considers reactivating discussion on the subject of market distortion and government subsidies in order to establish fair market rules.

Background

1. The International Metalworkers' Federation (IMF) and the Trade Union Advisory Committee to the OECD (TUAC) continue to take a close interest in the Council Working Party on Shipbuilding and its attempts to negotiate a new shipbuilding agreement to bring normal competitive conditions to the global shipbuilding market.

2. From an employment perspective there are several factors which distinguish the shipbuilding industry and trade union organisations in it. Because of the relatively large scale of most shipbuilding yards in nearly all-significant shipbuilding countries the rate of trade union organisation is high, trade unions are a significant stakeholder in the industry. The IMF believes that adequate investment in education, training and continuous skill development are shared goals and areas in which unions can constructively work with employers.

3. Since 2003 the shipbuilding industry has experienced yearly records in order books and production. An increase in global trade has driven a boom in the sector. The current level in order books seems to suggest that the positive trend will still continue at least for the coming three years.

4. The upward trend has also had a positive effect on the prices of new ships, which are at the moment at a record level. At the same time we have experienced a continuous growth of global shipbuilding capacity. Remarkable expansion has happened in the Far East. China is expected to double its capacity by 2010. China is not the only country increasing its shipbuilding capacity, other countries both well established shipbuilders and new entrants are also investing heavily.

5. Some observers claim the trends similar to the early 1970s. At that time the first oil crisis triggered a production crisis and a deep recession in the shipbuilding industry, finally leading to the closedown of some shipyards. Prices sank and profitability was low. A second recession in the 1980s saw all shipbuilding yards worldwide suffer a heavy decrease of orders, the net effect of both crises was about half of the shipyards worldwide disappeared from the map and employment was halved.

6. In terms of the number of ships, the container fleet has increased by over 180% between 1990 and 2005. The OECD has provided a prediction for the period 2000 to 2007 concerning growth rates of the production capacities in world shipbuilding. Within these seven years, China will have raised shipbuilding capacities by 52%, the biggest increase by far worldwide.

7. The South Korean shipyards increased their production capacities nearly 18% in the same period, while the capacities of the Japanese shipyards will grow about 8% during the same period. Europe has also experienced some small increases but nothing close to that of South Korea or China.

8. During the 1970s crisis many countries introduced temporary public subsidies to help shipyards survive. Henceforth it has become obvious that these temporary help systems were difficult to get rid of. The likelihood of overcapacity in the future means it is to be expected that subsidies distorting competition will be reintroduced in several countries.

9. Several countries are making substantial investments in capacity especially developing countries. In particular China, Vietnam, Philippines and India. These investments often have resulted from government policy or intervention and often have financial assistance from shipbuilders. Although every country has the right to development, capacity expansion can not continue indefinitely and all parties must accept some responsibility.

10. Despite full order books and record high prices of vessels at the moment, it is to be expected that competition will become fiercer and ultimately it will be workers who feel the real impact of over capacity. It is difficult to predict the time of the coming overcapacity crisis and the actual factors to trigger it off. The up trend in world trade can continue still for a long time. The faster the economic growth, rising demand and expanding capacities are, the deeper the crisis will be.

Workers' Rights in Shipbuilding

11. The global shipbuilding industry continues to play a major role in the world's economy. While much discussion has taken place over several technical issues and how these issues impact the industry, scant attention has been paid to the workers that have played a significant role in the industry's success. But if the industry is to continue in its success, meaningful attention must urgently be provided to ensure that workers in the industry enjoy all fundamental human rights. Compliance with OECD's own guidelines for multinationals is a useful reference point and the ILO instruments are parallel and consistent with each other and complementary.

12. Respect for fundamental human rights is not only a social issue: it is an economic issue as well. Indeed, if workers do not enjoy basic rights to freedom of association, or to engage in collective bargaining, the "free" labour market will be severely distorted. This distortion has resulted in unsafe work conditions and suppressed wages, among other things. Such distortions in the market are resulting in a "race to the bottom" as countries and the companies they host continue to seek to exploit labour.

13. The internationally recognised labour standards that must be acknowledged, respected and enforced in the industry are well known and non-controversial. The second United States /European Union (US/EU) Symposium on Codes of Conduct and International Labor Standards consisted of representatives from government, business, labour, academia, and non-government organisations from the United States and the

European Union.¹

14. Participants disagreed with each other on a number of issues discussed. However, consensus was reached on one point: the “applicability of core labor standards to be a starting point and a bare minimum.”² Indeed, the report notes, “[p]articipants from across the spectrum of interests unequivocally gave their support to the universal applicability of the ILO’s [International Labour Organisation] core labour standards as set out in the June 18, 1998, ‘Declaration on Fundamental Principles and Rights at Work.’”³ The principles include the right to freedom of association and collective bargaining, as well as the prohibition of discrimination, compulsory or forced labour, and child labour.⁴ These rights are generally referred to as the ILO core labor standards.

15. The ILO standards can serve as guidance on what the standard actually means. In many cases, the background discussion of the specific ILO standard in question is extremely helpful.⁵

Further elaboration for these standards is provided below.

ILO Conventions 87 and 98

16. ILO Conventions 87 and 98 establish a number of fundamental rights. These Conventions outline basic workers’ rights to establish their own organisations, elect their own representatives, organize their own activities, formulate their own programs and draft their own constitutions and rules.⁶ In addition, they describe union rights to join other federations and confederations as well as affiliate with international organisations.⁷ They further address the rights of trade unions to be free and independent from company interference, including prohibitions on employer organisation attempts to dominant them.⁸

17. Other Conventions address such matters as the rights of worker representatives to “carry out their functions promptly and efficiently.”⁹The ILO Committee of Experts is responsible for the “supervision of the observance of member States of their standards-related obligations.”¹⁰ In discussing these

¹ Much of the following discussion on international labour standards is either paraphrased or taken directly from, Owen Herrnstadt, “Voluntary Corporate Codes of Conduct”, THE LABOR LAWYER, 2001.

² U.S. DEP’T OF LABOR Joint Report on the Main Issues Emerging from the US-EU II Symposium on Codes of Conduct and International Labor Standards 5 (Sept. 1999).

³ *Id.*

⁴ See Diller, *supra* note 8; THE SWEATSHOP QUANDARY: CORPORATE RESPONSIBILITY ON THE GLOBAL FRONTIER (Pamela Varley ed., Investor Responsibility Research Center (1009).

⁵ As mentioned *supra* note 8, this is not to say that other issues are not essential for codes. Indeed, fundamental rights to livable wages, safe and healthy workplaces, non-excessive work hours, and so forth, should also be included. The ILO standards given specific focus in this article are the ones for which there now appears to be a certain degree of consensus for their inclusion in codes.

⁶ ILO Convention 87, Freedom of Association and Protection of the Right to Organise, July 5, 1948, art. 2, 3.

⁷ *Id.* at art. 5.

⁸ ILO Convention 98, Right to Organise and Collective Bargaining, July 1, 1949, art. 2.

⁹ ILO Convention 135, Workers’ Representatives, June 23, 1971, art. 2.

¹⁰ ILS Handbook or Procedures Relating to International Labor Conventions and Recommendations, Section VI, *Regular Machinery for Supervising the Observance of Obligations Arising Under or Relating to Conventions and Recommendations*, at 52 (visited Oct. 22, 2000) <http://www.ilo.org/public/english/standards/norm>.

Conventions, the ILO Committee of Experts noted that in order for workers to fully exercise their rights to engage in collective bargaining, information must also be exchanged with workers.¹¹ This information should include a variety of matters for ascertaining the “economic situation of the enterprise.”¹²

18. The ILO Committee on Freedom of Association, which is tripartite in nature, considers cases, which allege the infringement of the freedom of association.¹³ The ILO Committee on Freedom of Association has stated, “[I] legislation preventing bargaining on such subjects as wages, working hours, leave and conditions of work, is contrary to Convention No. 98.”¹⁴ In addition, the Committee on Freedom of Association has stated that in order for these Conventions to be effective, there is a “need to provide expeditious, inexpensive and wholly impartial means of redressing grievances caused by acts of anti-union discrimination, as well as of national machinery which, in addition to being speedy, should not only be impartial but should also be seen to be such by the parties concerned.”¹⁵

19. The ILO Committee of Experts considered this topic of “remedies” to include adequate compensation as well as penalties for violators: “Penalties may include fines or imprisonment or both, and have the dual functions of punishment and acting as a deterrent to anti-union discrimination. In order to provide adequate protection, they should be included in national legislation.”¹⁶

ILO Conventions 29 and 105

ILO Conventions 29 and 105 Forced or Compulsory Labour--cover a variety of cases of compulsory or forced labour, including the following:

- (a) As a means of political coercion or education or as punishment for holding or expressing political views...;(b) as a method of mobilizing labour for ...economic development; (c) as a means of labour discipline; (d) as a punishment for having participated in strikes; (e) as a means of racial, social, national, or religious discrimination.¹⁷

20. Codes of conduct that refer to forced or compulsory labour, which do not adequately incorporate these ILO standards, also fail to adequately reflect the Declaration on Fundamental Principles and Rights at Work.

¹¹ HÉCTOR BARTOLOMEI DE LA CRUZ ET AL., THE INTERNATIONAL LABOR ORGANIZATION: THE INTERNATIONAL STANDARDS SYSTEM & BASIC HUMAN RIGHTS, AT 221 (1996) (citing CE, General Survey, 1994, para. 246).

¹² *Id.*

¹³ See Harold Dunning, *The origins of Convention No. 87 on freedom of association and the right to organize*, 137 INT’L LAB. REV. 149 (1998); see also, Geraldo von Potobsky, *Freedom of Association; The Impact of Convention No. 87 and ILO Action*, 137 INT’L LAB. REV. 1995 (1998). The Committee’s mission is to note the “extent to” which the position in each state appears to conform to the terms of the Conventions and the obligations accepted under the ILO Convention. The Committee is characterized by its “independence, impartiality, and objectivity.”

¹⁴ DE LA CRUZ ET AL., *supra* note 20, at 221

¹⁵ *Id.* at 216-17,

¹⁶ *Id.* at 218 (citing CE, *General Survey*, paras. 219 and 222).

¹⁷ ILO Convention 105, Abolition of Forced Labour, June 25, 1957, art. 1,

ILO Conventions 138 and 182—Child Labour

21. Convention 182 is the most recent ILO Convention.¹⁸ Convention 182 applies to all people under the age of eighteen years.¹⁹ It specifically addresses “the worst forms of child labour” as slavery and similar practices, child prostitution or use in pornography, use of children in other illicit activities and other work harmful to their health, safety or morals.²⁰

ILO Conventions 100 and 111—Discrimination—Equal Pay

22. These Conventions are aimed at national policies, which would eliminate discrimination in employment. Under Convention 111, discrimination is broadly defined as including “any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin.”²¹

23. Convention 100 is directed at promoting the principle of “equal remuneration for men and women workers” for work of equal value.²² The principle applies to all forms of payment. The Convention also states that rates of pay must be set on the basis of objective job criteria and not on sex discrimination.²³

Market Distortion by government subsidies and concrete measures (Abolition of the subsidies)

24. As explained earlier trade unions are a major stakeholder in the shipbuilding industry and in times of crisis it is always workers that pay the price through job losses or reduced terms and conditions of employment. It is important for us to raise these issues from the standpoint of the trade unions.

25. The IMF recalls that the world shipbuilding industry faced a 10 year depression from the late 1970s to the beginning of 1990s triggered by the effects of the two oil crises. During this period, most of the shipyards in the world exercised rationalisation measures. These rationalisations were exercised as measures to address the gap between orders and supplies and had a global impact. For example shipbuilding facilities in Japan experienced severe job losses resulting in the total number of workers in the shipbuilding and repair industry being cut from 173,000 to just 81,000 today.

26. For stable development and in order for the world shipbuilding industry to provide secure employment in the future, it is necessary to establish globally applicable rules for the market. The restoration of fair market conditions governing competition is one of the basic prerequisites for an industry acting in a global market like shipbuilding. The IMF recognise the difficulties that surround establishing rules for the shipbuilding market, and the complexity surrounding national interests but doing nothing now will inevitably lead to serious trade tensions in the near future. If shipbuilding countries are to overcome a situation in which a cost cutting race is triggered, a race that will damage the future prospects for the industry including the repression of technological development, then only fair market rules establishing a level-playing field will achieve this.

27. The IMF is therefore advocating that OECD member states renew their efforts to conclude an OECD

¹⁸ ILO Convention No. 182, Worst Forms of Child Labour, June 17, 1999.

¹⁹ *Id.* at art 2.

²⁰ *Id.* at art. 3.

²¹ ILO Convention 111, Discrimination (Employment and Occupation), June 29, 1951, art. 1.

²² ILO Convention 100, Equal Remuneration, June 29, 1951, art. 1.

²³ *Id.* at art. 3.

shipbuilding agreement that addresses the questions of direct and indirect subsidies as well as pricing mechanisms. In order to be effective, such an agreement would also have to include effective remedies and insure sufficient geographical coverage:

28. In addition, an agreement will be able to maintain and improve working conditions, which have in many cases declined and in other cases are under threat. Shipbuilding companies are already involved in a cutthroat competition with each other. Shipbuilders operate in a single market, but the rules of engagement vary greatly from country to country. Government subsidies are a market distortion and there are various systems and forms of government subsidies that at present prevent the establishment of a global level playing field.

29. However the WTO has already set regulations on government subsidies and practical steps to the abolition of government subsidies will be extensions of the WTO regulations. Looking at the ASCM (Agreement on Subsidies and Countervailing Measures) of the WTO; the WTO is focusing on specified subsidies to be regulated by the ASCM. However, only export subsidies and domestic products favoured as a result of subsidies are clearly prohibited. The scheme for countervailing duties plays an important role to ensure effectiveness of the agreement. This WTO agreement on subsidies would not work entirely if it were applied to the shipbuilding industry because the industry has a unique market system. This is why the IMF considers it necessary to conclude a shipbuilding-specific OECD agreement on the subject.

30. Therefore, regarding government subsidies for industries such as shipbuilding, subsidy schemes with a high possibility of market distortion should be prohibited. Consideration of the characteristics of the industry is a vital component and subsidy schemes which provide an unfair advantage, distort competitiveness or aim to build interests in the industry should be prohibited.

31. The IMF recognises that most countries have subsidy schemes which are common for many industries, and it is not the place of this committee to develop a blanket approach but develop an agreement specifically for this industry.

32. The IMF and TUAC have followed closely the discussions and developments from the beginning of the OECD Shipbuilding Agreement which was started in the 1990s and will continue advocating the conclusion of an OECD shipbuilding agreement.

33. The IMF believes that subsidies which distort the world market should be prohibited and in particular those that jeopardise the employment opportunities of workers throughout the world. In order to achieve these aims' reviews of the subsidy schemes of each country should be carried out in order to secure transparency about the schemes and to start discussion towards a reduction of these subsidy schemes. We believe that this would be a step forward in establishing fair market rules and contribute to the stable development of the world shipbuilding industry.