Labour Relations and Dutch-American Exchanges: Freedom of Association as a non-issue in Dutch-American economic relations

Tom Etty
Former adviser on international Affairs of the FNV (Confederation of Netherlands Trade Unions);
former member of the Governing Body of the International Labour Organisation

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So close, yet so far away

Dutch business is a major investor in the USA and American multinationals make an important contribution to the foreign direct investment skyline of The Netherlands. These intensive economic relations have a history of many decades. During these decades the countries have grown closely together economically as well as in other spheres of life. This has happened in a way and at a pace which will have been hard to conceive for most people who witnessed the origins of this development in the immediate post-World War II years.¹

Still, in some respects the USA and The Netherlands are not only worlds apart, but they are likely to remain so for a long time to come. One of these, in the realm of economics, is industrial relations.²

In neither of the two countries there is love lost between trade unions and employers. But while on this side of the Atlantic domestic companies and the associations representing their interests respect labour as a fact of life and a legitimate and reliable (though sometimes difficult) partner, American business generally despises trade unions. Not only do many companies try to avoid them- they spend a lot of money actively fighting them. Their attitude has given rise to US-legislation which, in many States, is overtly anti-union. Their labour law denies or jeopardizes workers’ fundamental rights as laid down in the ILO Conventions 87 and 98 on the right to organize and on collective bargaining. A thriving “union busting” industry of specialized law firms has emerged.³

This virulent anti-unionism is, in my view, the fundamental difference between the Dutch and the American system of industrial relations.
At first (and I would say: also at second) sight the widespread allergy of organized labour carried by so many businesses and politicians is hard to understand. Since the end of World War II the USA has understood itself as a democracy leading by example, and in the immediate after-war years the Government explicitly saw trade unions as important allies in “making the world safe for democracy”. Business agreed with that and acted accordingly. For the sake of human rights and democracy, it cooperated with the Government and with the American trade union movement in the International Labour Organisation (ILO) to expose “slave labour” under, and gross violations of fundamental workers’ and trade union rights by, communist regimes. In the meetings in Geneva, they attacked, side by side with the workers’ representatives in this specialized agency of the UN for social and labour issues, the Soviet Union and its allies, including the so-called trade unions and employer organizations of these countries, exposing the absence of the right to organize, the right to strike, the right to bargain collectively. They were jubilant about the emergence of Solidarnosc in Poland and hailed their leaders as heroes. They were involved in joint activities with the American unions to promote “business unionism” in developing countries. Like several renowned academics, specialists in (comparative) industrial relations, they were interested in the possible “export” of the American system of industrial relations the crusade against communism.4

In the bitter debates in the ILO, which lasted until the breakdown of the communist regimes in the late 1980s, the latter drew the attention in their counter-attacks that they had ratified the fundamental ILO Conventions on Freedom of Association (No. 87) and on the Right to Bargain Collectively (No. 98) while the United States had not done so. On that basis, they contested the moral right of the US Government to sit in judgment on them. The reply of the US Government (and employers) invariably was that the main reason the USA was not a party to these key Conventions of the ILO was their federal structure. However, they maintained that the Government were implementing the two Conventions in law as well as in practice, as the Constitution of the ILO requires. But if one makes the effort of looking into that law and practice it is not difficult to find grave, systematic and long lasting violations of the Conventions. Several of them have been exposed, in the course of years, by the Committee on Freedom of Association of the Governing Body of the ILO, acting upon complaints filed by American unions. This Committee is, as almost everything in the ILO, tripartite and its decisions are taken by consensus. The criticism expressed was thus shared by the Employers’ Group in the organization.

Since the late 1970s this shared enthusiasm for the fundamental trade union freedoms of the US Government, employers and unions (at least in foreign countries) has slowly crumbled. The employers even participated in attacks on the right to strike in the ILO. Many companies which had been on the Board of the American Institute for Free Labor Development resigned and those
remaining were eventually removed in the 1980s by the AFL-CIO. These developments and others ran parallel to and ever stronger campaign within the United States against the right to organize and the right to bargain collectively.

American companies coming from this anti-union context of US industrial relations, some of them strongly committed to it, have found their way to The Netherlands as foreign investors. Dutch companies, any of them born and all of them bred in the “Polder Model” tradition of constructive relations with unions, have set up subsidiaries in the United States. Many of them did so in the twenty-two so-called “Right to Work States” in the South notorious for their trade union right violations.

How have these companies, Dutch and American, behaved in an industrial relations environment so fundamentally different from their home country? Were there any clashes of these almost diametrically opposed traditions, and if there were such clashes how did the relevant actors (companies, employers’ organizations, workers and trade unions, Governments) in the host and in the home country of the company react?

The United States

The USA have a long tradition of employer hostility against trade unions. It was President Roosevelt’s National Labor Relations Act which in 1934 recognized freedom of association (at least on paper) and put some limits to the crudest and most brutal anti-union activities of companies to preserve an “open shop” or “right to work”. Unfortunately, weaknesses and loopholes of various natures have surfaced since. At the same time, this legislation opened a new market for providers of more subtle measures, like specialized law firms, personnel psychologists, and “strike management firms”. They were in high demand, and as from the 1970/80s they even found themselves in a booming business: more than 1000 firms, employing or working with a large army of well-paid consultants. A recent publication of a well known London School of Economics specialist in industrial relations says: “By the 1990s, the union avoidance industry had developed into a multimillion-dollar concern and consultant campaigns, with over two-thirds of employers recruiting consultants when faced with a union drive (…).” And why is this? Because a large majority of American employers are convinced that an organized plant means automatically higher labour costs, reduced profits, loss of productivity, and bad industrial relations.

The success of the “union busters” has contributed significantly to the drop in unionization of workers in the market sector of the US-economy. Not even 8% of them are organized in a union. The overall unionization level of private and public sector combined stands as 12%, a drop of some 40% in the past quarter of a century. 29 States score lower than this national average of 12%, and the overwhelming majority of them are in the South. “Organizing” has become the major issue for the
American trade union movement; they have identified it as a matter of life and death. Controversies about it have become one of the main factors leading to the dramatic split of the AFL-CIO, the national trade union confederation, which at its Convention of 2005 saw seven of its largest member unions break away and set up the rival organization Change To Win. The union movement contributed massively to the election campaign of President Obama who, as they hope, will now help to create conditions under which they will have a fairer chance to regain some of the ground they have lost. The main quid pro quo which they expect of the President now is the Employee Free Choice Act which, the unions think, will remove crucial barriers to the unionization of workers. Protection and strengthening the right to organize is, beyond any doubt, one of the major issues if not the major issue between labor, business and the Government in the USA today- as it has been (at least) since the Reagan years.  

Efforts to organize plants (the US system of industrial relations requires unions to organize workers plant by plant in order to win the right to bargain for them, once again, plant by plant; there is generally no bargaining per sector of an industry, or per company) have repeatedly escalated in bitter, often violent and protracted industrial conflicts. Some have lasted for months and even years. Many of the big American brands, well known in Europe, have been involved. Companies like Coca-Cola, General Electric, Heinz, Honeywell, IBM, Mars, or Texas Instruments, to name but a few, have built a long and eloquent history of anti-unionism. The industrial relations climate they have helped to create is intoxicating. Subsidiaries of companies based in countries with less adverse industrial relations, like Germany or Finland, have also become involved. And even if such foreign companies allow organizing, sometimes, after initial efforts to prevent it, they embrace union bashing policies later in the day.

Take the example of BASF, the chemical giant from Germany. It is not reputed as anti-union in Germany and German unionists play an important role in it under co-determination legislation. However, in June 1984 it locked out 370 members of the Oil, Chemical&Atomic Workers (OCAW) in Geismar, Louisiana, in a conflict which started over wages, occupational safety and health and environmental hazards. It turned out to be the longest lock-out in the history of US industrial relations: five and one half years. BASF hired strike breakers and used other methods which they would not dare to use at home. They also tried to de-certify the union. They had taken the same sort of actions earlier in their subsidiaries in the States of New York, New Jersey, and Michigan. According to the OCAW, management in Geismar had declared that “there was nothing personal in this”, but that they were under orders of BASF-headquarters in Germany which had told them to get rid of the unions in the USA. OCAW took Geismar (as well as the other conflicts) to the National Labor Relations Board. The AFL-CIO filed a complaint with the ILO under the Freedom of Association procedure. The indignant German unions used national and international instruments at their disposal to put pressure on BASF.
headquarters. The case got ample attention in the German media, mainly due to the efforts of the unions and the Green Party. In American courts and in the ILO the company was found guilty of unfair labour practices like refusing to bargain collectively, discrimination against trade union leaders and members, and bringing in strike breakers. The Geismar case was eventually solved in a way satisfactory to the union. The company had to give in on almost all major issues which had arisen. The strikers were reinstated. Practically the whole workforce of 500 had joined the union and they won a three years contract. However, when the conflict came to an end, the union had lost most of the 2000 members they had in BASF establishments in the USA overall when their problems with the company started, back in 1979.8

There are but few examples of Dutch companies involved in similar ugly attacks on the right to organize of workers and even fewer which have a clear union busting-touch. Mostly, their involvement in the conflicts in the USA was indirect. In fact, I have only witnessed five in my thirty years at the International Department of the FNV.

One has become a notorious case in American industrial relations history. It concerns the mining firm Massey Coal, in which Shell played a role. Shell acquired this fourth largest coal producer of the USA, operating some 50 mines with 5500 employees, in 1981 through its subsidiaries Scallop Coal and St. Joe Minerals. In 1987 it sold off its interests to Fluor, a large Texas based engineering and construction firm. In the six years’ period of Shell’s (co)ownership, Massey went through a series of extremely bitter disputes with the United Mineworkers of America (UMWA), which had organized some of its plants. Just before the takeover, Massey had embarked on an aggressive anti union policy, aimed at reducing wages and benefits as laid down in the existing contracts, breaking the union in those mines which were organized, and keeping the UMWA out of the non-union establishments in West Virginia, Kentucky, and Tennessee. Shell, as the new owner, apparently did not see any reason to change this policy. Strikes broke out in 1984 over a new contract and soon escalated to levels of extreme violence. The company dismissed some 2500 strikers and brought in replacement workers, protected by an army of armed guards. By the time the conflict had reached its peak, Massey reported that it spent 200,000 dollars a month on security. There was not only virtual war at the picket lines, but also intense activity in court rooms. Eventually, the National Labor Relations Board ruled in December 1985 that Massey had been involved in “unfair labor practices”. It had to return to the bargaining table and had to offer reinstatement to all dismissed UMWA members The union claimed victory on the basis of the verdict and on paper they probably were, but so did the company which was able to negotiate a contract with far less favorable conditions than the expired one. After Shell ended its acquaintance with Massey, the conflicts in Massey owned mines continued and flared up again, culminating in 1989-1990 in the famous Pittston Coal strike. The confrontational policy of Massey and other mining companies in the 1980s and 1990s has been extremely successful from an employers’
point of view. Coal mining used to be heavily organized with a “union density” of over 80%, today the figure is less than 20%.  

It should be noted here that, in the period 1981-1987 while all this was going on, the UMWA did not approach the FNV or (as far as I know) its relevant affiliate, the Industriebond FNV (Industrial Workers’ Union) with a request for solidarity. One explanation may be that, after the closure of the coal mines in The Netherlands decades earlier, there was no Dutch miners’ union left. On the other hand, the UMWA certainly was aware of the ownership structure and the Industriebond FNV does organize Shell workers. What may have played a role also is that the UMWA in these years was not affiliated to the AFL-CIO. Therefore, the American trade union confederation may not have contacted their Dutch counterpart. Whatever the reasons have been- the FNV became aware of the (indirect) role of Shell in the Massey strikes only years later.

I have briefly discussed some other cases with a Dutch touch in my contribution to *Four Centuries of Dutch-American Relations 1609-2009*, like the efforts of the United Steel Workers (USWA) in 1991/92 to organize an establishment of Ravenswood Aluminum Company in Charleston, West Virginia or the organizing campaigns in the early 1990s of the Service Employees’ International Union at Apple Computers in Silicon Valley, California, and John Akridge Corp. in Washington, D.C.  

In addition to these four examples I can mention the conflict between Unite Here, a union representing i.a. textile workers, with the healthcare laundry company Angelica Textile Services in 2004/05.

Except for the Massey conflicts, there was no involvement of a Dutch (or partially-Dutch) parent-company in the cases mentioned. The Dutch connection was either a bank servicing the company (ING in the Ravenswood case, ABN Amro in Angelica) or a pension fund investing in the American company. The reason why the American unions turned to their Dutch colleagues for help in these cases can be found in the rule in the General Policies chapter of the OECD Guidelines for Multinational Enterprises which states that companies should encourage, where practicable, business partners, including suppliers and subcontractors, to apply principles of corporate conduct compatible with the Guidelines. The relevant principles, in this context, are i.a. respect for the workers’ right to organize and to bargain collectively with representatives of their trade unions, as laid down in the Guidelines’ chapter on Employment and Industrial Relations.

If participants are interested, I will give details in my oral presentation in Session VI of the Conference illustrating and explaining the vicious and sometimes criminal nature of these labor conflicts and the systematic violation of fundamental human and trade union rights they provoke.
There may have been more such cases in which Dutch companies, large multinationals or smaller firms, have been involved. Many of the States with legislation curtailing trade union freedoms have brought their “comparative advantages” to the attention of potential overseas investors, often with the help of the American Chamber of Commerce which has establishments in many countries, including The Netherlands. South Carolina, to mention just one example, advertises itself as a “Right to Work” State (the euphemism used for the policies and practices discussed here) with low wages and low costs, and with a low level of unionization (under 3%), where local Chambers of Commerce offer special training courses for human resource managers on how to beat unionization and where specialized law firms offer customers to screen job applicants for their potential inclination to trade unions. I have not done field research, and I cannot say how many Dutch firms have been positively impressed by such statements when selecting a “Right to Work State” for their investments. But on the basis of experience as well as a strong interest in these issues, which I have tried to feed throughout my years in the Dutch and the international trade union movement, I think I can safely say this: so far, there have been no examples of subsidiaries of Dutch companies which have tried to copy the brutal union busting practices of so many American firms. Their subsidiaries in the USA may not have been forthcoming to unions. And certainly, they have been involved in serious labour conflicts with them. On wages, for instance (like the Gamma/National Wire Fabric case in Star City, Arkansas, in 2006/07 mentioned in my article referred to above), or on relocation and jobs (like Ahold/Tops Supermarkets in Buffalo, New York, in 1996/97. In these conflicts, union recognition inevitably played a role too, and there have been allegations of intimidation of and discrimination against trade union activists in both instances. But it would go too far, in my view, to present these as part of a strategy of union busting implemented by Gamma or Ahold. I have never been made aware by my American colleagues of Dutch companies hiring union busting consultancy firms. The FNV would, undoubtedly, have taken action in The Netherlands if evidence of such practices had been presented to them by the AFL-CIO or unions affiliated to the American trade union confederation.

The Netherlands

Employers and unions in this country do not passionately love each other, but unlike the USA there are no loud and influential business voices here pleading for the elimination of trade unions and for replacing collective bargaining by individual contracts. Unions are well established institutions in society and respected by many. Even if the level of unionization is low compared with fifty years ago, it is slightly less than twice the average American figure and what is also important: public opinion polls show regularly that a large majority in the population think that unions are doing a good job, not only for their members but also for the unorganized, the unemployed and for elderly people. Not everybody in the country is always happy with the Dutch system of industrial relations- in recent decades appreciation has oscillated between lamenting about the “Dutch disease” and self-sufficient
feelings about the broadly applauded “Polder Model”. But people see that, most of the times, it works and that the Dutch economy is not undermined by it- on the contrary, Dutch workers and their unions are not reputed for their strike proneness, but the country regularly gets its fair share of industrial conflict, both in the public and the private sector. Workers’ and trade union rights are, generally speaking, well respected. Only a few large Dutch companies are notorious for their anti-union policies, like C & A Brenninkmeyer, but these policies are by no means as aggressive as those in the USA. Other large multinationals with roots, or parts of their roots, in The Netherlands show a relatively low level of unionization and one of the reasons for that may be more or less subtle discouragement by the employer as practiced by C & A Brenninkmeyer. There have been one or two Freedom of Association-cases in the ILO concerning Dutch companies, concerning alleged violations of workers’ and trade union rights; not in The Netherlands but in developing countries. The last time that The Netherlands was on the agenda of the ILO for what was considered as a significant domestic violation of the rights to organize and to bargain collectively was in the late 1970s and early 1980s, when Government policies to interfere in the outcome of free collective bargaining in the market sector as well as the semi-public sector were successfully challenged by the FNV and the Law on Wages had to be amended.

This is the industrial relations environment American companies find themselves in when they make a direct investment in The Netherlands. In this environment, the most important contracts are bargained collectively at the sector of industry. Subsequently, in several cases, a company contract is negotiated on the basis of that sectoral contract. There are no negotiations, as in the USA, at the individual plant level.

And still, several American companies have exported their deep disaffection with unions to this very environment. If one looks at the arguments for their attitude in their home country, it is difficult to see that these are valid here- if they are valid at all.

In Ben Wubs’ contribution on “US multinationals in The Netherlands: the cases of IBM, Dow Chemical, and Sara Lee” in Four Centuries of Dutch-American Relations 1609-2009, it is said that Dow (reputed for its anti union policies in the USA) kept their home practices largely in place when they invested here. “In labor relations Dow did not adapt to the Dutch collective arrangements either. When possible, it introduced its own compensation programs. From 1979 until this very day Dow has not signed Collective Labor Agreements (CAOs) with its employees. Dutch trade unions have been powerless as a great majority of Dow’s staff have signed individual labor agreements. Besides, arguing too much with the largest employer in the region would endanger too many jobs.” This quote comes from an interview with the vice president of the Board at Dow Benelux, Mr. De Graaf, of March 2006. Mr De Graaf is obviously misrepresenting the real situation, except from the statement of
fact which he makes on his company’s views and preferences in the area of industrial relations. Like many other firms in the chemical industry, Dow does not sign a collective agreement with the unions. However, the main reason for this is not that they succeeded in keeping the unions out. The adequate explanation for this is that the unions did not need to negotiate contracts with the Dow factories in The Netherlands in order to settle the working conditions. In the Dutch system, the unions in the chemical sector negotiate a collective agreement with the employers’ federation which represents the enterprises in that sector, and Dow Chemical is a member of that federation. But even if Dow had chosen not to become a member of the employer-party to the collective agreement, as several subsidiaries of American multinationals in The Netherlands do, it would still be bound by the collective agreement for the sector for the simple reason that, usually, the Minister of Social Affairs and Employment declares it binding for all parties in the sector, workers and employers, organized or not organized. It is correct to say that Dow does not have an additional collective agreement for the company, something which many large enterprises have and which covers additional elements. But the key point to make here is that Dow is covered by a collective agreement, and that, if it signs individual contracts with its employees, these contracts must satisfy the standards of the collective agreement of the chemical sector. No doubt, Dow’s vice president is aware of that.

Other (though not all) well known American companies in The Netherlands take the same line as Dow. Every now and then, there is an article in the press about this—for The Netherlands—unusual phenomenon of union avoidance. IBM has figured in such publications., Texas Instruments, Heinz. The most recent clippings I have concern Mars (Masterfoods) in Veghel with a workforce of 1200. The union complains about intimidation of their members by management and obstruction of interest representation by the union. Despite the negative attitude taken by Mars, the union claims that unionization has risen in recent years and is at approximately 30% now. That is not bad at all in a reputed anti-union firm.

That the unions are far from powerless in terms of their opportunities and capacity to represent the interests of their members and the whole workforce in the enterprise (and in the sector as a whole) is, probably, the main reason for the lack of noise they make about it. What certainly also plays a role is that they are not keen to advertise their relative weakness in certain big enterprises. However, it should be clearly stated that anti-union policies are no real threat to the Dutch unions. They would certainly welcome a change of attitude, but they know that what IBM, Dow Chemical and other do is not, in this country, a key factor behind the slow but steady drop in the rate of unionization and does not represent a serious threat to their effectiveness in collective bargaining and in representing the interests of their members otherwise.
That is also the reason why they have reacted in a rather sober and measured way to efforts in the 1980s and 1990s of some of the more prominent American union busting consultancy firms to export their services to Europe. In July 1979, the Industriebond (Industrial Workers’ Union) FNV decided not to take action against a seminar organized in London by Advanced Management Research on “Practicing Preventive Labor Relations in the U.S.” which offered potential European customers the possibility of avoiding “union intrusion or government regulation”. The AFL-CIO had suggested such action. “If we don’t pay attention, they will have no publicity”, the union told their confederation, the FNV. And they proved to be right.

Despite some irritation, there were similar relaxed union reactions to a remarkable promotion movie, produced by the LIJOF- investment bank of the province of Limburg in the mid-1980s. It tried to convince potential American investors to come to Limburg, spelling out the province’s comparative advantages. One of these was, according to the responsible provincial authorities as well as the (Dutch) director of the subsidiary of the American firm Medtronics in the city of Kerkrade who figured prominently in the film, the weakness and lack of influence of trade unions in the province. Medtronics, a producer of pacemakers, practiced a strong anti union policy. “We thought: if we want to sound appealing to the Americans we must speak their language, And for Americans, trade unions are something quite different than for us” was the apologizing comment made by the province when questioned by the press. It remained unclear on which basis the bank made its claim about union weakness.

Dutch-American exchanges: something for the future

I have raised these issues regularly with representatives of the Dutch companies involved and with representatives of their employers’ federations in the OECD and in the ILO, as well as with civil servants representing the Ministries of Foreign Affairs, Economic Affairs and Social Affairs and Employment who were dealing with human rights policy, the OECD Guidelines and ILO affairs. None of them showed great interest in these aspects of the industrial relations environment of business in the USA and in The Netherlands.

There is no Dutch-American business discourse on the issues discussed here. The Dutch business community seems to take relevant law and practice in the USA for granted, not only in the past but also in the present context of a lively national debate about ethical business, corporate social responsibility, and sustainable policies which has inspired so many companies to formulate codes of conduct. They do not oppose the OECD Guidelines and claim that they respect them. Their national confederation play their loyal part in the ILO supervisory system. However, neither industrial relations legislation in the USA which is at odds with fundamental ILO standards, nor the bad and quite often
even violent and disruptive practices which have grown characteristic for labour relations in American firms which violate the OECD Guidelines have, as far as I know, ever prompted them to raise these issues with their overseas colleagues when setting up operations in the USA, participating in trade missions, or when discussing policy issues in their own international federations or in international institutions. This is what I have learned from my contacts both with representatives of the Dutch national employers’ confederation VNO-NCW and of some large Dutch multinationals. American employers, on the other hand, don’t have a strong desire to raise them with the Dutch, not in the USA and also not here. Ironically, many of the companies identified here as anti-union and sticking to that attitude after setting up a business in The Netherlands mention the “stable labor relations” as one of the comparative advantages of their host country.

Governments, the Dutch Government too, which have witnessed so many American Freedom of Association cases in the ILO and which have seen several OECD Guidelines-complaints (and the almost provocative lethargy of the American National Contact Point in dealing with them) act as if they think that the implementation of fundamental ILO Conventions like those on the Right to Organise an on Collective Bargaining (Nos. 87 and 98), are an internal affair of the United States. They have criticized other Governments for violations of these Conventions, sometimes in harsh terms, but never the US. The only exceptions were the communist regimes during the Cold War period. Such partiality of Member States does not reinforce the credibility of the ILO’s supervisory system, to put it mildly. If only for that reason, open and frank discussions on law and practice in the USA and on the industrial relations practices of many US based companies are long overdue. The ILO and the OECD provide good opportunities for bilateral and multilateral exchanges, discrete if necessary, on the issues raised in this paper. As far as I know, however, these have never been used by the Dutch and the American Governments. I am also pretty sure that trade missions exchanged between the countries have never mentioned them.

Will that situation change shortly? I don’t think so. The only party, except for the trade unions, which should have a well founded interest is the Dutch Government. For it is the Dutch Government which has proclaimed human rights as a cornerstone of its foreign policy and the OECD Guidelines for Multinational Companies as the spearhead of its policies to promote corporate social responsibility. They acknowledge that labour rights are human rights, and that the fundamental human rights (or “core”) labour standards require special attention. Unfortunately, the promotion and protection of socio-economic rights is not the most impressive part of its human rights strategy (which is practically limited to the issue of child labour). And the performance of the Dutch National Contact Point for the OECD Guidelines, which is supposed to promote the guidelines and to keep an eye on non-implementation by companies, has been less than impressive, so far. They have been very reluctant to act on cases brought up by the trade unions, even if action required little more than encouraging their
American counterpart to become active in cases in the USA where Dutch and American companies were involved. Since the OECD Guidelines were created, the FNV has repeatedly suggested the Contact Point to become a bit more assertive in dealing with complaints and also just a bit more proactive and investigate plausible cases of violation of the Guidelines at its own initiative. One should not have unreasonable expectations of a small policy outfit which works primarily in the sphere of influence of the Ministry of Economic Affairs, but it would seem that an interesting issue for them to investigate would be the well known and self-proclaimed anti-union policies of subsidiaries of American firms in The Netherlands of which some in the National Contact Point are well aware.

Needless to say, however, that I do not expect such a demonstration of pro-activity in the next decade.

Government initiatives, if they come, have to be triggered by the trade union movement. In The Netherlands, as I have argued, the attitude of anti-union US companies does not seriously harm them. Taking action, like lodging a complaint against the policies of these companies and so putting pressure on their Government to address them, would primarily be an act of solidarity with their American colleagues. As a matter of fact, it would also fit nicely in the implementation of the plan of action on “Organising” of the European Trade Union Congress, adopted at its latest Congress in Seville in 2007. If well timed and coordinated with similar complaints by fraternal organizations in other European countries, and if well publicized, it could be a helpful gesture towards the American unions once the Obama administration tries to get the Employee Free Choice Act, intended to remedy the important deficits in the US labour legislation, adopted in Congress.

1 See for a broad overview of this process the sixteen contributions to Chapter 5 (The Cold War and Beyond, 1945-2009, Economics and Society) in Hans Krabbendam, Cornelis A. van Minnen and Giles Scott-Smith, eds., *Four Centuries of Dutch-American Relations 1609-2009*, Boom, Amsterdam, pp. 739-928).

2 That came out clearly at a symposium held in commemoration of the Bicentennial of US-Dutch Diplomatic and Official Trade Relations on May 7 and 8 1982 at the Social-Economic Council (SER), The Hague. Organisers were the SER and the United States International Communication Agency (USICA). A large number of high level politicians, diplomats, civil servants, business and trade union representatives and academics participated. The deficits in the exchange of ideas on industrial relations in the context of national socio-economic objectives and political decision making identified in the discussions have not been reduced significantly in the past twenty-five years. See SER, *Socio-Economic Policy-making in The Netherlands and The United States of America*, The Hague, 1982.

4 Abundant material documenting the polemics in the ILO can be found in the Provisional Records of the Committee on the Application of Conventions of the annual International Labour Conferences in this period, both in the general discussion and in the discussion of “individual cases”. A striking, and in the trade union movement not uncontroversial, example of employer/union collaboration on the promotion of free and independent trade unionism is the American Institute for Free Labor Development (AIFLD), chaired jointly by AFL-CIO President George Meany and J. Peter Grace, President of the chemical and health care firm W.R. Grace and actively supported by 95 multinational companies. The AIFLD, which was financially supported by the US Government, had been set up in 1962 to combat communism in Latin America by means of promoting and supporting trade unions considered to be Free and independent by the partners in AIFLD. Academics who contributed to the debate on export of the US system of industrial relations (including a strong role of trade unions) included John P. Windmuller of Cornell University, Solomon Barkin of the University of Massachusetts, Charles A. Myers of the Massachusetts Institute of Technology, and others. See, e.g., Charles A. Myers, “The American System of Industrial Relations: Is It Exportable?”, in: Gerald G. Somers, ed., Proceedings of the 15th Annual Meeting, Pittsburg, December 27-28, 1962, IRRA, Madison, Wisconsin, 1963, pp. 2-14.


14 In 1982, the FNV lodged a complaint against C &A’s anti-union policies under the OECD Guidelines. As the company’s policies were usually implemented in relatively subtle ways, the union pinpointed the complaint on the companies’ failure to comply with the OECD Guidelines on disclosure of information and offering certain facilities to workers’ representatives. The Dutch National Contact Point was not able or willing to investigate the case seriously and the OECD Committee on International Investments and Multinational Enterprises (CIME) eventually put an end to the complaint procedure, four years after it started, by formally informing the General Secretary of the Trade Union Advisory Committee at the OECD (TUAC) that his Committee was unable to provide a “clarification” on the issue.

15 The most recent one was a case against the ING bank in Chile where, two of its subsidiaries were found guilty in court of anti-union practices in 2002/2003, like refusal to bargain collectively, unlawful dismissal of trade union leaders and members, refusal to recognise a trade union, and pressure on union members to resign from membership. The problems were eventually settled in line with the views and decisions of the administrative and legal authorities in Chile and the recommendations of the ILO. The company maintained that it had never violated workers’ and trade union rights. See ILO, Committee on Freedom of Association, 342nd *Report*, Case No. 2337, Geneva, 2006.

16 See for the details of this case the extensive report and the findings of John P. Windmuller, appended by the ILO’s Committee of Experts to their annual report on the application of ratified Conventions by the Member States in 1984.


19 Letter of 10.7.1979 by Industriebond FNV to FNV on the AMR Seminar “Practising Preventive labour Relations in the US, London, May 8th and 9th 1979. FNV President Wim Kok had been approached by AFL-CIO President Lane Kirkland on May 7th, 1979 with background documentation and the following request:” It would be most helpful if your organization could provide the AFL-CIO with any information on the activities of American consulting firms that are similar to the seminar held in London, as well as any counter-actions that you or your affiliates have taken with companies under your jurisdiction that have invested in the U.S.”


the Implementation of the Human Rights Strategy “Human Dignity for All, Ministry of Foreign Affairs, The Hague, 2009. See, in particular, the sections on child labour (pp. 27-30) and on sustainable business (pp. 73-75) of the Report.

22 See e.g. the NCP’s handling of the Gamma/National Wire Fabric case (footnote 10, above)

23 After long lasting and mounting dissatisfaction in the Dutch trade union movement and among the Dutch NGO community, the Government has decided recently to review and, eventually, to reorganise the National Contact Point. It is now no longer a substructure of the Ministry of Economic Affairs, but a body composed of independent individuals coming from different backgrounds and served by civil servants, i.a. of the Ministry of Economic Affairs. One of the independent members of the new look NCP is the former FNV president, mr De Waal.