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US Multi-Nationals and the German Industrial Relations System**

This paper critically reviews literature on the behaviour of US-based Multi National Companies (MNCs) in Germany in relation to the historic institutions of the German labour market: works councils and industry wide collective bargaining. The German system is becoming increasingly company-rather than sectorally centred, and US-based companies have reinforced a wing of German employer opinion seeking to further these developments. Surveys show US-based companies generally accepting works councils and sectoral bargains but case study evidence also shows them seeking to weaken links with parts of the system external to the company. A typology is proposed and it is argued that many US-based companies appear to follow a 'formal compliance/content avoidance dichotomy' tending to exacerbate the system's existing tendencies towards disarticulation. They also tend to explore all options available to them within the existing system. A research agenda is suggested.

Key words: US Multinationals, Germany, Industrial Relations

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Introduction

This paper critically reviews literature on the industrial relations behaviours of US-based multi-national companies (MNCs) operating in Germany. Though many management practices indirectly impact industrial relations, we restrict ourselves to considering managers' activities in dealing *directly* with representative institutions.

US companies are the biggest foreign investors in Germany; investment of around one hundred billion Euros makes Germany the country with the highest concentration of US capital abroad (www.amcham.de accessed on 12 July 2004). US-based MNCs' activities have recently attracted considerable interest, often located within the general discussion of 'convergence' and 'divergence' of business practices (see for example Streeck 1997 and Lane 2000 for two different views on the issue in relation to Germany). Some research has concentrated on companies' employment practices and their consequences in Europe or Germany (for example Gooderham et al. 1999; Edwards/Ferner 2002).

Both national economies are in different ways highly successful, and act as models elsewhere. The German system constitutes the core of the European social model. Despite debates about whether it is eroding in Germany, German requirements for informing and consulting employee representatives are currently being extended, albeit in diluted form, in Europe within and beyond the EU. The encounter between US MNCs and the German environment is one between two very different economies, described variously as 'Liberal' and 'Coordinated' Market Economies [LMEs/CMEs] (Hall/Soskice 2001) or as 'Compartmentalised' and 'Collaborative' (Whitley 1999). Both characterisations recognise that German industrial relations are central to its business system and highly regulated in comparison to the American. In Whitley's analysis (1999: 60), compartmentalised systems such as the USA's are characterised by low market regulation, 'low to some' union strength and low bargaining centralisation. Collaborative systems such as Germany's are characterised on the other hand by high market regulation, high union strength and high bargaining centralisation. However, business systems do not simply determine company practices abroad, where significant internal (employee expectations) and external (public relations) constraints exist. Ferner et. al have argued that the links between the US business system and US MNCs' behaviours are inadequately demonstrated in the literature (Ferner et al. 2004).

Moreover, the 'business systems' approach underemphasises historical dynamics and changes within models. US MNCs have a long history in Germany, marked by waves of German interest in US methods. Inter-war German employers and unions showed a great interest in American production methods, championed by German industrialists' associations (REFA) from 1924 onwards (Müller-Jentsch 1997: 250). Exchange between the two countries' management education institutions was intense before 1939 and contributed after 1945 to considerable interest in US management methods (Wächter et. al. 2003: 15) US MNCs' policies continue to attract considerable interest from their German counterparts. Business schools and management publications (Hartmann 1963; Kipping 1997), collective employer institutions (such as the American Chamber of Commerce in Germany, founded in 1903 and currently containing many German companies as members) and consultancies have constituted

conduits of ideas and political views. In 1951, for example, the US National Association of Manufacturers intervened in debates around co-determination laws, saying that American capital could not be expected to flow into Germany if stockholders' rights were insufficiently secure (Jacoby, 1999:23). The American government has also been a player. The US government intervened against the extension of codetermination in 1976 on the grounds that it violated property rights (Wächter et al. 2003: 12). Recent analyses of German management journals show that contributions from US HR managers/academics greatly exceed those of other nationals. IBM and Hewlett Packard have been rated by their German counterparts as having 'the best' HRM strategy (Wächter et al. 2003: 25-6).

Recognition of the usefulness of US models in context cannot however be equated with adopting them. German interest in American methods has always retained a critical perspective and Gergs and Schmidt have argued that simple adoption of American management models by German employers is therefore unlikely (Gergs/Schmidt 2002). The process may have been one of *mutual* accommodation. The age of some important US-owned manufacturing plants such as Ford and Opel suggests well established internal IR systems, typical of German manufacturing and this is confirmed in Opel's case by recent research (Martens 2002). It is nevertheless noteworthy that the current period is one of renewed interest in US models from German managers. American criticisms of the German system, long present, have recently been given more attention because Germans are themselves discussing them.

Wever has suggested that American companies show a strong wish for unilateral management discretion rather than control negotiated through employee representatives (Wever 1995). They exercise strong central influence over IR questions and attempt to develop strong company cultures inimical to outside bodies such as unions (Muller 1998). On the other hand, Gooderham and his colleagues have shown that German employment practices are relatively impervious to external influences from US-style unilateralist HRM (Gooderham et al. 1999). Some researchers suggest that HR and IR practices are likely to diffuse from systems that are dominant and comparatively successful but how far this has actually occurred in the German case is not entirely clear (Edwards/Ferner 2002; Tempel 2002).

The recent German context has been one of sharp challenges to existing industrial relations bodies and their operation. Corporate and political commentators are most disaffected with these institutions (Lane 2000). The main German employers' representative bodies (BDI and BDA) and the American Chamber of Commerce have called for a reduction in the system's regulatory content and increased rights for works councils and employees to agree change without union consent. Unions oppose this and the system is now the subject of intense public political debate.

American MNCs may be expected to vary in their strategies (Strauss 2001) 'Institutional underdevelopment' in the USA (Ferner 2002) allows for great scope in interpreting and implementing HRM and relating to employee representation. Nevertheless, certain traits such as anti-statism, a emphasis on direct communications with employees, individualised pay systems and anti-unionism are apparent within US companies (Wever 1995; Ferner 2002; Wächter et al. 2003). Some authors have suggested that anti-unionism can itself take various forms (Ferner 2002; Edwards/Ferner 2002).

This has been subject to variation when circumstances demanded, as during the ‘Progressive Era’. Fantasia (1988: 25) shows that company unions were established to ward off inter-company forms of worker organisation. There are therefore significant US antecedents for an approach allowing and even encouraging *in-company* vehicles of employee voice, while seeking to marginalise trade unions. Such an approach is compatible with the German ‘dual system’ where the separation of works councils and trade unions allow its replication.

Thus US MNCs can draw on earlier US history as well as their own ‘business system’ when operating in Germany. They should not be conceived of as simple advocates of their own business system, which in any case allows great variation in company practices. The question addressed by our literature review is therefore: *how far are US MNCs accepting, or seeking to accommodate to, to shape or to challenge the German IR system’s institutions?*

The paper is structured as follows. The first two sections provide essential context. In the first section, we describe the German IR system in theory. In the second, we review debates about its current condition. In our third section, we review literature on US MNCs in Germany, considering works councils first and then collective bargaining. Finally, we draw conclusions, develop a typology of US MNC behaviours and propose a research agenda.

The German system of industrial relations: stability or erosion?

In this section, we describe the system in a theoretical sense (i.e. as ‘ideal type’) and then review recent debates about its stability in practice.

The system in theory

The German system is commonly described as a dual model (Jacobi et al. 1992; Müller-Jentsch 1997), functionally differentiated between sectoral collective bargaining and workplace co-determination. In the first arena, employers’ associations and unions bargain mainly over issues such as wages and working time; in the second, elected works councils (established on workers’ request) represent employees’ interests irrespective of union membership. This last feature *potentially* means that they are representative institutions faithfully reflecting employee opinion and are therefore a crucial part of industrial democracy (Kotthoff 1994). The system’s pillars have legal bases in the concepts of ‘Tariff autonomy’ (*Tarifautonomie*) enacted in the *Tarifvertragsgesetz 1949/1999*, i.e. the right of unions and employers to bargain without state interference and *Betriebsverfassung*, or the idea of workplace co-determination enacted in successive laws (*Betriebs-* and *Personalvertretungsgesetze*). Works councils have legal responsibility for implementing sectoral agreements at workplace level and deal with a range of social issues there. They are bound to work with employers in a ‘spirit of co-operation’ and have rights of co-determination, consultation and information across a wide range of issues. They must not initiate industrial action. In recent years, they have in many sectors taken on bargaining roles for locally-negotiated deviations from the sectoral contract, or ‘opening clauses’. These allow companies under certain conditions and to specified extents to modify or diverge from the agreed standards (Müller-Jentsch 1997; Bispinck/Schulten 1999).

The system has always allowed employers to opt out of sectoral agreements by simply not joining employer's federations other than 'OT' ('without tariff') federations, minority federations not requiring observation of sectoral agreements. Alternatively, they may strike separate company agreements or *Haustarifverträge*, as have major employers such as Volkswagen. Unions were historically amenable to *Haustarifverträge* because, although they constituted an exception, they frequently provided improvements to sectoral bargains. The system also allows works councils without union representation.

Though the two parts of the dual system are envisaged as separate arenas, employers' associations, unions and works councils are in fact interdependent. Unions and collective bargaining on the one hand and works councils on the other have mutually supportive functions. Employers' associations have a policing role on employers shared with works councils. In practice, there have been strong ties between unions and works councils (Schmidt/Trinczek 1999: 106). They can play an important role in assisting works councils by education, access to information, and networking. Conversely, unionists on works councils provide unions with access to the workplace. It is also notable that it contains more options for employers (*Haustarifverträge*, OT employers' associations, opening clauses, non-union works councils) than is often recognised

The System in Practice: Recent debates

The system was long regarded as solid, with high adaptive capacity (Jacobi et al. 1992). Until the late 1990s, the stability of co-determination in particular was unquestioned with some authors detecting increased works council involvement in management (see Kotthoff 1998 for a review of the discussion). Recently, however, debates have arisen over how far the theoretical description continues accurately to describe the current situation. Re-unification in 1989 played a large part in these debates because of the lack of co-determination and free trade union traditions in the ex-DDR. Change has been reflected in the development of a sizeable 'co-determination-free zone' outside of large companies in both East and West, and increased decentralisation through 'opening' clauses allowing bargained deviations from collective agreements at company level. 'Wildcat co-operation' (Streeck 1984) between works councils and managements, a term used to describe local council-management collusion to allow variations in terms and conditions in defiance of sectoral agreements has called the system's stability into question. One interpretation claims that the collective bargaining system has displayed 'far-reaching institutional continuity' (Streeck/Rehder 2003: 345). 'Opening clauses' showed adaptive capacity rather than systemic erosion. In this view, devolving issues to company level that were traditionally regulated sectorally was seen as a reconfiguration rather than a fundamental problem. Hence Jacobi (2003:37) concludes that employers continue to value the stability and predictability of German industrial relations.

Other researchers have argued that the system is eroding (Hassel 1999, 2002) as it is being both by-passed and internally undermined. While declining coverage of collective agreements in the West does not result from employers opting out (but rather to sectoral change, i.e. the number of manufacturing firms declining and new entrants not joining federations) in the East sizeable numbers of employers have left employ-

ers' associations and are outside sectoral agreements (Kohaut/Bellmann 1997; Ellguth 2004). Schmidt et al. (2003) show that whereas in 1989/1990, 90% of employees were covered by collective agreements (including sectoral agreements and *Haustarifverträge*) by 2001 the equivalent figures were 71% in the West and 57% in the East. During the 1990s, the number of *Haustarifverträge* roughly doubled in the West and increased four-fold in the East. Schmidt and his colleagues studied the metal and electronics industries in the East (excluding Sachsen-Anhalt) and found a majority of enterprises unconnected to the sectoral agreement. Among the *Haustarifverträge* these researchers examined nearly 60% of them paid *less* than the sectoral bargain. Artus (2003) reached similar conclusions from her studies of the East.

As Ellguth (2004: 178) has argued, any assessment of the systems' actual operation must combine analysis of the number of works councils with analyses of union-council relations, the observation of standards in workplaces and councillors' capacity to act.

According to Schmidt and Trinczek (1999) decentralisation poses real challenges to the system's operation in workplaces. They enumerate a range of further problems including unions' decreasing capacity to provide training and advice to councillors dealing with increasingly complex and differentiated employee issues. Croucher and Singe demonstrated the crucial significance of such support in dealing with issues of working time flexibility (Croucher/Singe, 2004). Even where companies remain covered by sectoral agreements and workplace representative institutions, pressure on works councillors to make concessions has increased. A recent survey of private sector works councillors found 15% of respondents admitting to breaches of collective agreements (Bispinck/Schulten 2003). Although these trends are more observable in the East than the West, Brinkmann (2003) suggests that employers consciously use the East as a 'laboratory' for changes they wish to introduce in the West.

Perhaps the most significant point is that it is now seen as appropriate to debate the system's operation. The two interpretive approaches outlined above in large part draw attention to two different aspects of the system: its *forms* and the *quality* of the social relations. Yet the vital links between different parts are clearly becoming less robust. The system's articulations (Kjellberg 1983) are weakening and sometimes disappearing altogether. We examine below how US MNCs contribute to this disarticulation process.

US-Based MNCs- attitudes and behaviours

Below we deal in turn with US MNCs in relation to works councils and collective bargaining.

Works Councils

Works councils mediate between management and workforce interests (Müller-Jentsch 1997, 2003). Some authors have asserted that they function as 'democratic' and 'representative' institutions (Schmitt 2003). To the extent that this is the case, US managements would be expected to avoid them as infringing their capacity to manage unilaterally. Others have argued that they may be strongly affected by management attempts to shape them, and can function as tools for internalising management logics

(Kotthoff 1994). If this were so, then US MNCs could be expected to support them. The key question we examine in this section is therefore whether US MNCs seek to avoid works councils, or to accept and influence them?

Cooke's (1997) survey of American companies' preferences for overseas investment showed that they preferred company, rather than sectoral-based, bargaining arrangements. He found less concern among companies with regard to employee representation through, for example, works councils, than with outside involvement with employers' associations or trade unions. Cooke and Noble (1998) later confirmed these results and showed that investment and an obligation to establish works councils were positively related. Hence, works councils were seen as a positive advantage. Schmitt (2003) surveyed 297 companies including 119 US and 46 UK subsidiaries of MNCs operating in Germany. He used German-based companies as a control. He distinguished on occasions between British- and American-based firms but found little difference. However, nor was there much difference between the 'Anglo-Saxon' firms and their German counterparts. Indeed, the former were at least as likely to have works councils as native German firms. Schmitt argues from this that, contrary to some other researchers' arguments, US multi-nationals are not seeking to erode the 'co-determination pillar' of the German dual system. He suggests that this is for reasons of both internal (with employees) and external (with outside stakeholders) legitimacy.

The content of relationships is a more complex issue. A small survey of 43 multinational companies by Vitols (2001) sampled foreign companies generally, including about one third US-based companies. All the companies sampled had works councils, relations between management and councillors were overwhelmingly described as 'co-operative' or 'very co-operative' and council engagement on issues such as restructuring was intensive. He found that managers regarded elements of the German system such as plant-level agreements and the dual training system positively. Respondents were evenly divided on the advantages and disadvantages of works councils. Some reported improved communication and employee 'buy-in' but others also reported slower decision-making. This, along with trade unions and legal protection against dismissal was viewed negatively. The survey raises the question of how different US MNCs are from those from other country bases.

Kluge and Vitols (2001) survey of the 400 largest foreign owned firms also found that managers of UK and US origin value the 'legitimacy effect' works councils can have on management decisions. Councils can help to successfully transmit management decisions from the (American) centre to the workforce and also help management develop an understanding of workers and workplace traditions.

Wever (1995) conducted case studies of the extent to which 'strategic diversity' was possible for companies in the German system, including IR issues in her scope. She found considerable 'strategic diversity' among US and German MNCs chemical companies operating in Germany. Wever conducted four case studies from the first (three were US companies and one a wholly-owned subsidiary) and four from the second group. The US companies favoured a 'unilateral' management model, stressed individualism, and 'direct' communication with employees rather than through works

councils. The US companies showed a preference for rapid change even if conflict arose with employee representatives.

Muller (1998) also conducted case studies of HR/IR practices in nine US-owned companies, comparing these with a control group of twelve German companies (four British firms were also examined). Focussing on the chemicals and finance industries, he demonstrated substantial differences between many of the US MNCs' practices and those of the comparable British and German companies. The US companies attempted avoidance of works councils by various means including forming separate companies. Only five of the US companies had works councils (including two in which there were no works councils in major parts of their operation), compared to all of the German companies. Co-determination, where it existed, reduced companies' scope to introduce world-wide remuneration systems, but respondents suggested that works councils caused delays in organisational change and this was the main reason why they were avoided. In two cases, works councils were pressurised to obtain their agreement to change and in one of these employee representatives rejected their union's advice (whether this happened in the German control group is not discussed). These effects existed in both sectors examined, but were shown to be especially significant in the finance companies where the US banks were small. Muller stresses the significance of small size in successful works council avoidance as very few large companies of any description have successfully avoided councils. His sample construction for the finance sector has been justifiably criticised by Schmitt (2003) on the grounds that home country effects cannot be differentiated from size and workforce structure effects. The criticism illustrates a general difficulty, that of establishing comparability on the appropriate variables. Nevertheless, Muller's findings for the chemicals industry remain untouched by this problem.

Wächter et al. (2003) analyse the behaviour of US MNCs in Germany from an institutionalist perspective and explore the interactions of actors and institutions. They present ten case studies from different sectors. Three of these are of companies long-established in Germany and are presented in greater detail. The authors conclude that outright avoidance strategies towards works councils are rare. The study shows attempts to de-couple works councils and unions: *'Within the legal framework, they try to keep unions out of the company'* (Wächter et al. 2003: 93). They found that *'in most cases there is close co-operation between management and works councils. However, the closer it is, the more union involvement and union members on work councils are prevented'* (ibid.: 91) One company (apparently HP) involves works councillors in decision making at an early stage and co-operation is said to be characterised by 'rationality and trust' (ibid.: 37). Of 100 works councillors only five are IG Metall union members, and union density is only 1%. HP recently attempted to bar IG Metall from its premises, but lost a legal case brought by the union (Standpunkt 2003). However, IG Metall finds it difficult to gain a foothold amongst a workforce traditionally alien to unionisation. 75% of HP's employees are college graduates. HP might thus be one case where works councils effectively become integrated into company HRM strategies.

Another company, producing and distributing photographic equipment and supplies, has a 'welfare capitalist' background (Wächter et al. 2003: 58). It has remained

union free in the US and union density in its German operations stands at 10%. Works councils exist but management prefers direct communication with employees.

Thus, in terms of the existence of the institutions, the literature displays some coherence: US MNCs generally allow works councils to be established on employee request. They prefer direct communication with employees and rapid change, attempting to exert relatively strong influence over works councils. However, some companies prioritise works council avoidance, and we now turn to these.

Longitudinal research on McDonald's by Royle (2002) shows a company prepared to go to great lengths to avoid works councils. It adopted what Royle categorised as a 'legal form' of avoidance by changing its company structure. Employees were screened prior to employment. Where this was not possible, those in favour of works councils were pressurised or dismissed; entire workforces were dismissed in some restaurants. Premises were temporarily closed when council elections were imminent. By the 1990s some councils had nevertheless been established, in around 5% of restaurants. The company formed management-supported slates for works council elections and exerted pressure on other councillors, including paying considerable amounts of money to some councillors to resign from their posts.

Wal-Mart, the world's largest retailer, entered Germany in 1997 and by 2000 employed around 18,300. Though it has remained virtually union-free in the USA, it announced on entering Germany that it would respect both German legislation and customs (Köhnen 2000; Köhnen/Glaubitz 2000). The Wal-Mart case differs from McDonald's because the former entered Germany by acquiring existing companies (*Interspar* and *Wertkauf*) and works councils were therefore 'inherited' (Köhnen 2000). Wal Mart is known for its developed company 'family' ethos. There are reports of attempts to obstruct council activities, ranging from disputing the conduct of council elections to preventing joint meetings of councils from different parts of the enterprise. Management has also tried to put slates of candidates from management ranks in council elections in a similar fashion to Mc Donald's (Köhnen 2000).

These strategies are relatively easily pursued in this sector in comparison with others. The fast-food and retail sectors have strong product and service market competition, high levels of (female) part-time and immigrant employment, high labour turnover and strong efforts by companies to generate strong customer service cultures and induce employee loyalty. Employees lack access to information and experience to enforce the provisions of co-determination law.

These company behaviours are consistent with those of German competitors especially those in the 'discount segment' (such as Aldi, Schleckner and Lidl) as recently publicised by the ver.di union. Lidl only has works councils in five of its 2500 outlets and has used a range of tactics to prevent the introduction of councils (ver.di Publik 2004).

An anonymous example of initial avoidance and subsequent adaptation is given in Wächter et al. (2003). This company operates in delivery and transport services and leads the American market. It began its operations in Germany in 1976 and avoided works councils until the 1990s. The company used subcontractors when it appeared possible that a council would be requested. 80% of employees are now represented by

councils but the study contains little information about how and why change came about. There are indications that management switched from avoidance to colonisation of the council machinery, since the majority of members on the company works council (i.e. the most relevant institution) are managers.

In this section we have demonstrated that surveys show US MNCs in Germany to recognise works councils, though there have been cases of determined avoidance, mainly in the fast-food and retail sectors. In this sector, they may not differ substantially from their German counterparts and it is difficult to distinguish between country-of-origin, sectoral and company size effects. Employee perceptions and traditions are an important variable, i.e. constraining companies wishing to pursue policies that are as unilateral as possible. The simple existence of the institution tells us little about the actual operation of councils. Wächter et al. (2003) suggest that US MNCs seek particularly strongly to influence the operation of works councils. There is also evidence of by-passing councils by direct communications to employees. Further research on US MNC behaviour, particularly in the more traditional blue collar environments that remain important in Germany is clearly necessary.

Collective Bargaining

Trade unions and employers' associations conduct collective bargaining. These institutions represent constraints on unilateral management control, especially in the use of international company-based pay systems. However, as shown above, the German system contains options. The question addressed in this section is therefore: how far have US companies adhered to the mainstream arrangements, and how far have they either avoided them or used the options already available within the system?

Reliable empirical data on US behaviour towards collective bargaining remains scarce (Tempel 2002). Schmitt's (2003) survey found US MNCs in Germany to show no greater propensity to make decentralised arrangements than their German equivalents; in fact they adhere more strongly to centralised bargaining (362). Muller (1996) even describes one US company (IBM) as having a reputation for being innovative in IR issues because of their negotiation of remuneration and framework agreements that became models in Germany.

Contrary evidence also exists. Vitol's (2001) small study found US managers to have a negative approach towards unions and industry wide collective bargaining. Wever (1995) also stressed the importance to US companies of relating pay to individual performance and how this was difficult to achieve in the context of sectoral agreements. In Muller's work (1996, 1998) five of the nine firms of American origin did not participate in collective bargaining at all, three were covered by industry wide agreements and one had struck a company agreement. Wächter et al. (2003: 87) found that companies of US origin challenged the system much more than their German counterparts as '*(...) all the companies have a definite stand towards unions and almost all have adopted an active policy of keeping unions out of the firm if at all possible.*'

Some American companies have clearly successfully avoided the collective bargaining institutions. Wal Mart has avoided collective bargaining with ver.di, despite being pressurised by a public union campaign (www.verdi.de). Neither Microsoft nor HP, which left the employers' federation in 1976, are covered. One anonymous

American bank abandoned collective bargaining in some of its operations and planned to introduce a franchising system, to further undermine collective agreements (Wächter et al. 2003: 90).

Strategies have in some cases changed over time. IBM has a history of movements in and out of different employers' associations. It left the *Gesammetall* employers' association in 1992 specifically to avoid the engineering agreement. The then chairman of IBM Germany, subsequently president of the umbrella employers' federation BDI, Hans-Olaf Henkel, argued publicly that leaving the metalworkers' employers' association *Gesammetall* was necessary to challenge the German 'collective bargaining cartel'. The company created a holding structure and subsidiary companies, separating highly unionised production facilities from its service operations; while the former re-joined the employers' association, the latter did not. IBM then struck a company agreement with the non-DGB, white-collar only DAG union in 1993 although this union had very few members in the company (Henkel 2000, 2001). Further examples of option-exploring by MNCs trying to avoid assertive unions and strike agreements with weaker ones are given in Wächter et al. (2003).

McDonald's also successfully explored the options. It refused to join the employers' association on opening its first restaurant in 1971. By 1989, it had modified its stance in response to external pressure from campaigning journalists and recognised the NGG union. It simultaneously established a separate employers' body, the BdS, as an alternative to the existing association, DEHOGA. The BdS has attracted other, mainly US, companies into membership. McDonald's pressurised NGG by threatening to de-recognise it in favour of the tiny *Ganymed*, which has under 1,500 members in total (Royle 2002: 96). Therefore, the company recognises both a trade union for collective bargaining purposes and has membership of an employers' association, but has also contributed to de-stabilising the IR *status quo* in the retail food sector. German companies in the same sector such as Blockhouse have also followed recognisably similar policies (Royle 2002).

Wächter et al. (2003: 88) argue that managers in German subsidiaries are under considerable pressure from the US centre to remain union-free. Reluctance to join employer's associations might also be stimulated by the fact that US MNCs can exert little influence over associations dominated by large German employers.

In sum, the behaviour of US companies towards the collective bargaining institutions is difficult to establish with clarity. Surveys indicate high coverage, but case studies provide little support for their findings. Case studies focus on sectors in which German employers also show considerable deviation from the German mainstream. In the retail sector, there has certainly been some exploration of the existing options.

Conclusion: Towards a research agenda

The literature is relatively sparse, particularly when the importance of the topic to the future viability of the European model of employment relations is taken into account. Nevertheless, some conclusions may be drawn in answer to our initial question for investigation.

The key findings of our review are now summarised. Survey evidence generally shows relatively high degrees of compliance by US-based MNCs with both works

councils and the sectoral bargain. Case study evidence, on the other hand, shows two quite different phenomena: works council avoidance, and high levels of pressure on works councillors to divorce themselves from unions. This latter phenomenon is of course compatible with observance of the sectoral bargain and may help to explain the differing results of surveys and case studies. Where councils exist in US-owned companies, these may tend towards the ineffective forms conceptualised by Kotthoff (1994). A tendency for US companies to explore options in the German system by forming separate employers' associations and recognising small unions is also apparent.

US MNCs behaviours may be categorized into four categories, as set out below. These categories may be used to describe companies' predominant behaviours at any given historical point. However, the categories are far from mutually exclusive and the last three may also be seen as a range of options which may be adopted by different companies according to circumstances:

(1) *'Support/innovation'*. Active support for and innovation with the German IR system. An example is IBM policy until some twenty years ago and it is revealing that the company has changed its views so radically. This may be a largely historic category.

(2) *'Formal compliance/content avoidance'*. Complying with the strict terms of the law but seeking to avoid its democratic possibilities and external links. In some cases, for example in well-established manufacturing plants (e.g. Hewlett Packard), such practices may differ little from those of German companies in the sector. Where possible use may be made of works councils to assist management efforts to get employees to internalize management logics and reject trade union links. Apparently a widespread behaviour pattern.

(3) *'Option exploration/system avoidance'* Using various methods to explore the possibilities inherent in the German system and/or take steps to avoid compliance. Recognition of minor unions, formation of non-mainstream employers' associations. Use of 'legal avoidance' methods (Royle 2002) Compliance with works councils only under strong pressure. Many examples are found in the food and retail sectors.

(4) *'Public criticism'*. Campaigning publicly to reduce the regulatory content of current legislation. IBM's current behaviour places it in this category though many German companies have also shown similar behaviour. This is also characteristic of collective bodies such as AmCham.

There is little doubt that US companies are affecting the German IR system. Dörre (2001, 2002) has argued that the US business system is influencing large German enterprises, where shareholder value ideas are gaining importance with negative consequences for employee participation. US companies in categories (2) and (3) above are certainly playing a role in eroding the articulations between unions and works councillors, and those between employers and mainstream employers' associations which have historically made the system function. They are doing so in ways consistent with many German employers' practices. As Kotthoff (1994) and others (Trinczek 2004) have shown, considerable variation is also evident among German

managers in their attitudes to co-determination and unions, and US-based employers probably cluster at the sceptical end of the spectrum.

The need for further valid and reliable data for all companies, including foreign-owned MNCs is apparent. The divergence between surveys and case studies reviewed is striking and although some possible partial explanations have been offered, there is a real need for more extensive high-quality exploration of mechanisms as well as the extent of institutions. Attention has been drawn to the 'micro-political processes' within which external constraints are defined and interpreted by central and local actors in MNCs, and to the contingent oscillations in modes of operation that these can generate (Ferner et al. 2004). In the German case, we know that local management can use German circumstances as a bargaining tool in internal negotiation with US management (Geppert et al. 2002, 2003). However, too little is known about these micro-political processes in Germany. This might help to resolve tensions within the existing literature between reports of widespread observance of the mainstream German system and avoidance and 'option exploration' shown by companies whose behaviour has been analysed in depth.

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