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EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

20 December 2024

Case Document No. 5

Confederación Intersindical Galega (CIG) v. Spain
Complaint No. 231/2023

SUBMISSIONS OF THE GOVERNMENT ON THE MERITS

Registered at the Secretariat on 20 December 2024



MINISTERIO
DE LA PRESIDENCIA, JUSTICIA
Y RELACIONES CON LAS CORTES

ABOGACÍA GENERAL DEL ESTADO

SUBDIRECCIÓN GENERAL
DE ASUNTOS CONSTITUCIONALES
Y DERECHOS HUMANOS

TO THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

OBSERVATIONS ON THE MERITS

**COLLECTIVE COMPLAINT
No. 231/2023**

**CONFEDERACIÓN INTERSINDICAL GALEGA (CIG)
v. Spain**

EMAIL:

aetedh@mjusticia.es

C/ MARQUÉS DEL DUERO, 4
28001 MADRID

On 10 October 2023, the Committee notified the Kingdom of Spain of the collective complaint submitted by the trade union CONFEDERACIÓN INTERSINDICAL GALEGA (CIG), registered on 3 October 2023 with reference number 231/2023.¹

On 16 October 2024, the Committee to which we respectfully address issued a decision declaring the complaint admissible under Article 7 § 1 of the Additional Protocol to the European Social Charter (the “Charter”) providing for a system of collective complaints. The Committee invited the Spanish Government to submit their written observations on the merits by 20 December 2024.

Accordingly, we hereby submit on behalf of the Kingdom of Spain our observations on the merits of the complaint within the time-limit granted.

I. DESCRIPTION OF THE COMPLAINT AND SUMMARY OF THE POSITION OF THE KINGDOM OF SPAIN

1. The complainant organisation (CIG) requests the Committee to declare that the national minimum wage set by Spanish legislation does not comply with Article 4 § 1 of the Revised European Social Charter, since “it is clearly less than 60% of the national average wage” (§3 of the Complaint).
2. As we explain in this submission, contrary to the complainant’s allegations, the minimum wage in Spain has reached the Government’s target of 60% of the average wage. This has been the result of gradual increases in recent years, including the largest increase (22%) in 2019.

For this reason, the complaint is manifestly unfounded.

3. We will also explain that the Complaint cannot be upheld in any event. On the one hand, CIG’s claim ignores the public and transparent calculations and figures used to determine the minimum wage, based on official statistics, and provides no further data or assessment to support its conclusion. But even if the amount did not reach exactly 60% of the average wage, this would not *per se* constitute a violation of Article 4 § 1 of the Charter.

¹ The Committee’s decision on admissibility erroneously indicates the date of registration as 6 June 2023.

II. REGULATORY FRAMEWORK

4. In Spain, the Government sets a minimum wage for workers. On this mandatory basis, collective agreements may increase such minimum amount and individual employment agreements may further improve upon them.
5. The regulatory framework for setting the national minimum wage, referred to by CIG in §§ 27 et seq. of the Complaint, is essentially the following:

- i. **Spanish Constitution of 1978**

Article 35 of the Spanish Constitution enshrines, in addition to the right to work, the right of workers to “sufficient remuneration to satisfy their needs and those of their families.”

- ii. **Workers’ Statute**

To fulfil the above constitutional mandate, Article 27 § 1 of the Workers’ Statute² requires the Government to review the national minimum wage annually:

“Article 27. National minimum wage

1. *The Government will set the national minimum wage on an annual basis, following consultation with the most representative trade union and business associations, taking into account:*

- (a) The consumer price index.*
 - (b) National average productivity.*
 - (c) The increase in labour’s share in national income.*
 - (d) The general economic situation.*

A six-monthly review will take place if price index forecasts are not met.

The revision of the national minimum wage will not affect the structure or the amount of professional wages when these, as a whole and on an annual basis, are higher than the aforementioned minimum wage.”

6. The Government must therefore set a national minimum wage annually for all workers, regardless of their category, sector, age, sex or territory. The goal is to establish a

² The legislation currently in force is the consolidated text of the Workers’ Statute, approved by Royal Legislative Decree 2/2015 of 23 October.

mandatory floor wage and to quantify a minimum level of sufficiency for all workers to meet their needs and those of their families.

iii. Royal Decrees fixing the national minimum wage

7. In compliance with the above mandate, the Government has periodically approved royal decrees to set the annual minimum wage, based on legal criteria and after consultation with social actors.³
8. At the time the Complaint was filed (i.e., 3 October 2023), Royal Decree 99/2023 of 14 February set the national minimum wage for 2023 at €15,120 per year (€1,080 per month in 14 payments, or €1,260 per month in 12 payments).
9. This royal decree was extended to 2024, until approval of the minimum wage for that year.
10. **In 2024**—after the filing of the Complaint—a new royal decree set the minimum wage for this year, with retroactive effect from 1 January. It **increased the amount by 5% compared to 2023** (Royal Decree 145/2024 of 6 February setting the national minimum wage for 2024, attached as Document no. 1). In particular, the amount is set at €15,876 per year (€1,134 per month in 14 payments, or €1,323 per month in 12 payments).
11. According to the preamble of this royal decree:

*“According to the Minimum Wage Advisory Committee Report of June 2021, this five percent increase effectively ensures the right of workers to fair remuneration sufficient for a decent standard of living for themselves and their families. It also **achieves and reinforces the objective that the minimum wage should reach 60 per cent of the average wage by 2023**, thereby meeting the Government’s commitment and the requirements of the European Committee of Social Rights under the European Social Charter.”*

➤ **Special reference to the significant increase in the minimum wage in Spain in recent years**

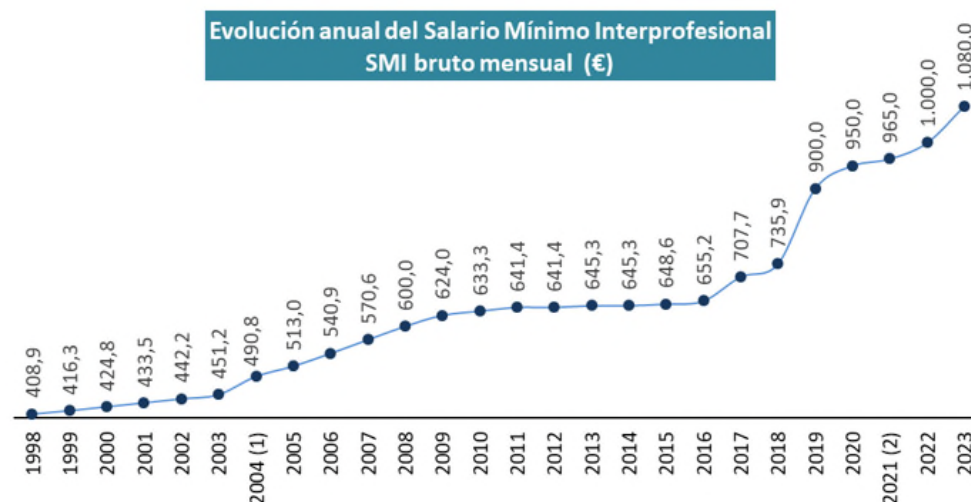
12. Over the last decade, the national minimum wage has experienced a significant and continuous increase.

³ In addition, the Minimum Wage Advisory Committee (CAASMI) was set up on 28 January 2021, with representatives of the Ministry of Labour and Social Economy, the Ministry of Economy, Trade and Business, and the Ministry of Finance, social agents, and researchers and experts in the field.

13. In gross terms, the minimum wage has risen from €649 per month (14 annual payments) in 2015 to €1,134 per month in 2024—i.e., a **75% increase**.



14. The following graph covers a longer period (since 1998) and shows a sharp increase from 2017 onwards—especially in 2019 and 2023, with an annual growth of 22.3% and 8% respectively:

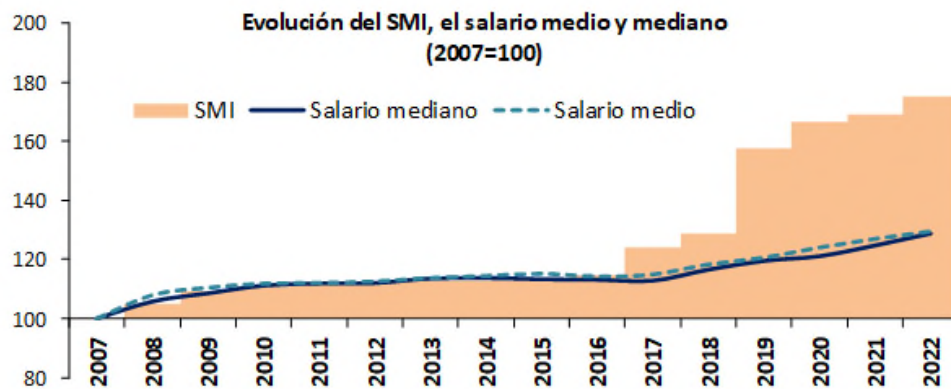


(1).- Año 2004: R.D. 1793/2003 y R.D.Ley 3/2004

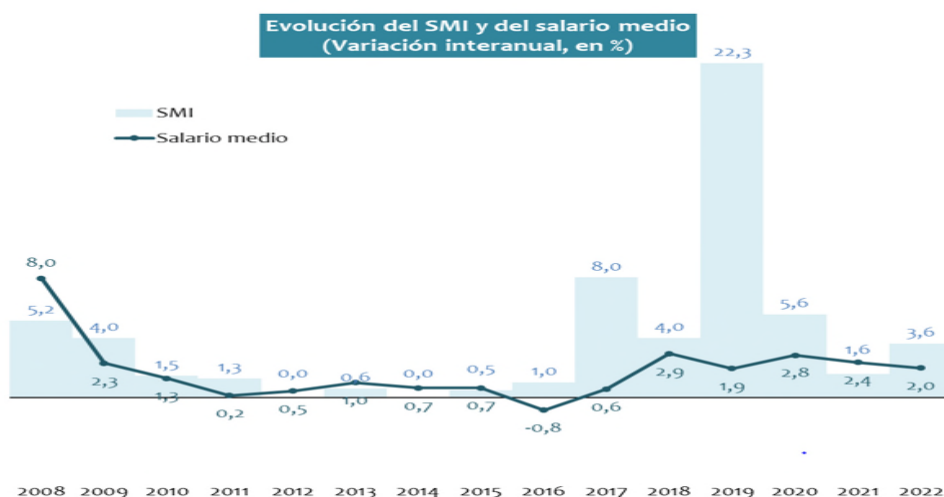
(2).- Año 2021: R.D. 231/2020 y R.D. 817/2021

15. Average and median wages from 2017 onwards also increased, albeit at a lower rate. Their growth is significantly below that of the minimum wage, as shown in the following graph:⁴

⁴ Graph based on data from the Labour Force Survey, EPA (National Statistical Institute, INE).



16. The graph below depicts the trend of minimum and average wages in Spain in recent years:⁵



17. Strikingly enough, the Complaint fails to mention or recognize the efforts made by national authorities (in continuous dialogue with social actors) to achieve such a significant increase in the minimum wage, with the purpose of meeting Spain's international commitments and align with the Committee's interpretation of Article 4 § 1 of the Charter.
18. As we have explained, the gradual increase in the minimum wage is not over. After reaching 60% of the average wage with an 8% increase in 2023, a new 5% increase was approved in 2024—exceeding Spain's general wage growth.⁶

⁵ Graph based on data from the Labour Force Survey, EPA (National Statistical Institute, INE).

⁶ The objectives of the Minimum Wage Advisory Committee (CAASMI), in its first mandate, were to estimate 60% of the average wage and the growth path required for the period 2021/2023 to achieve the 60% average wage target, as recommended by the European Social Charter and the European Committee of Social Rights.

III. LEGAL CONSIDERATIONS ON THE MERITS

➤ **On workers' right to "sufficient remuneration" under Article 4 of the Charter and other international instruments. Preliminary remarks.**

19. Article 4 § 1 of the Charter establishes the right of "*all workers to a fair remuneration sufficient for a decent standard of living for themselves and their families.*" It is basically the same wording as that of the 1961 Charter.
20. "Sufficient remuneration" is an undefined concept. It must be interpreted on a case-by-case basis to determine whether a State signatory to the Charter fulfils its commitment in this regard.
21. However, the Charter does not clarify what exactly is to be understood as a "decent standard of living" to meet the requirement of "sufficient remuneration" under Article 4 § 1. Nor does it provide guidelines, either in absolute terms (a fixed minimum amount) or in relative terms (one or more formulas for determining the "sufficient" amount in each country).
22. Below, we refer to the Committee's interpretation of the notion of "sufficient remuneration" for the purposes of assessing whether a given State respects the right enshrined in Article 4 § 1 of the Charter. Subsequently, we review the Committee's case law in this regard.

The June 2021 report proposed a range of increases between 6.4% and 10.4% until 2023 (i.e., between €61 and €99). As for the growth path, the report established different scenarios from a starting point of €950: a rise between €12 and €19 in 2021; between €24 and €40 in 2022; and between €25 and €40 in 2023.

In its second mandate, CAASMI had two complementary objectives: to estimate the average wage for 2022 in order to comply with the Charter's recommendations, thus setting a minimum wage for 2023 that would reach 60% of 2022's average net wage; and to address the potential impact of the minimum wage increase on poor or at-risk-of-poverty households.

CAASMI's December 2022 report⁶ included four estimates for the 2023 national minimum wage: €1,046, €1,054, €1,066 and €1,082 per month, in 14 payments, corresponding to four different simulations based on the average net full-time wage.

In September 2021, after consulting the social agents and in line with CAASMI's proposals, the Ministry of Labour and Social Economy finally approved for the first year an €15 increase (€965 annual minimum wage in 14 payments); in January 2022, an €35 increase (€1,000 annual minimum wage); and an €80 increase for 2023 (€1,080 annual minimum wage).

23. Other international instruments establish the right to sufficient remuneration in similar terms to the Charter.
24. For instance, within the UN human rights system, Article 7 of the International Covenant on Economic, Social and Cultural Rights recognises workers' right to "fair wages" and "decent living" for themselves and their families.
25. Likewise, the right to a decent wage has been a major concern of the International Labour Organisation since its inception. The Preamble of its Constitution⁷ invokes the need to provide "an adequate living wage," while various statements and standards refer to the right to a "decent wage," a "minimum living wage" or an "adequate minimum wage, statutory or negotiated," among other similar expressions.

Below, we summarize the conclusions of the Meeting of Experts on Wage Policies, including Living Wages,⁸ held on 19-23 February 2024:

- The concept of "living wage" is analysed in depth, including references to different definitions used by various organisations.
- The concept of "living wage" should cover the needs of workers and their families, taking into account economic factors (such as productivity, companies' capacity to pay wages, competitiveness or profitability, aggregate demand and consumption, job creation and labour market conditions).⁹
- The "needs" that should be covered by the minimum wage to ensure a "decent standard of living" vary over time and in each country depending on historical and cultural factors, among others.

⁷https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:55:0::NO::P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:KEY,en,ILOC,/Document

⁸ Wage policies, including living wages. Report for discussion at the Meeting of Experts on Wage Policies, including Living Wages, available at:

https://researchrepository.ilo.org/view/pdfCoverPage?instCode=41ILO_INST&filePid=13123626510002676&download=true

Report of the Meeting of Experts on wage policies, including living wages, available at: <https://www.ilo.org/media/520776/download>

⁹ Thus, it is stated that "considering only the needs of workers and their families may result in wages that are above the capacity of many enterprises to pay, possibly leading to job losses, increased informality, reduced investment and lower export competitiveness. Conversely, focusing only on certain economic factors, such as export competitiveness, might result in unduly low wages, working poverty or stagnating wages and aggregate demand."

- The methodology to estimate living wages should include a calculation of the cost of living based on data from national statistical offices.

➤ **Committee's case law on the interpretation of Article 4 § 1 of the Charter**

26. As we have seen, the Charter does not specify an exact amount for “sufficient remuneration,” nor does it provide a precise formula for Member States to calculate it.

The reason is that the “decent standard of living” is a variable concept that depends on numerous factors, including the economic context or social and cultural elements.

27. The Committee has interpreted Article 4 § 1 of the Charter in the following terms:

- This concept should cover necessities such as food, clothing or housing, and *“includes resources necessary to participate in cultural, educational and social activities.”*¹⁰
- To determine the content of “sufficient remuneration” for these purposes, *“social transfers—e.g. social security allowances or benefits—are taken into account only when they have a direct link to the wage.”*
- For a wage to be fair, *“the lowest wage should not fall too far behind the national average wage in a given country.”*

In this respect, the Committee found it appropriate to set a threshold (as a percentage of the average wage) below which the lowest wage should not fall. It is not a fixed absolute amount, but it can vary over time according to numerous factors.

- That threshold should be at least 60% of the national average wage (Conclusions XIV-2 (1998), Statement of Interpretation on Article 4§1), calculated net—i.e., after deduction of social security contributions and taxes.

This threshold is presumed to provide workers with a decent standard of living, with the caveat that *“a wage does not meet the requirements of the Charter, irrespective of the percentage, if it does not ensure a decent living standard in real terms for a worker, i.e. it must be clearly above the poverty line for a given country.”*

¹⁰ Conclusions 2010, Statement of interpretation on Article 4§1.

- Likewise, it may be the case that a wage does not reach 60% of the average wage, and yet in the country in question it allows a decent standard of living. For this purpose, it is important to consider the context and the public services and infrastructures (health, education, family benefits, transport system...) accessible to workers for little or no consideration: *“Where the minimum wage is low, the Committee may, when assessing compliance with Article 4§1, take into consideration other elements, such as whether workers are exempt from the co-payment in respect of health care or have the right to increased family allowances”* (Conclusions XVI-2 (2004), Portugal, Article 4 § 1).

The Committee thus considers that a net minimum wage between 50% and 60% of the average net wage may be compatible with Article 4 § 1 of the Charter.

➤ **On the assumption underlying the Complaint**

28. The Complaint is based on the erroneous assumption that Article 4 § 1 of the Charter directly requires that the national minimum wage must be higher than 60% of the national average wage.
29. The complainant organisation bases its claim regarding Spain’s alleged non-compliance with Article 4 § 1 of the Charter on the sole argument that 60% of the average wage is not reached. In CIG’s view, meeting that threshold ensures compliance, while failing to do so implies a violation.
30. CIG contends (erroneously, as we will see) that the minimum wage set by the Spanish Government does not reach the required threshold. Consequently, the complainant requests the Committee to declare Spain’s non-compliance with Article 4 § 1 of the Charter without considering additional factors or providing further arguments.
31. As we will show, the data contradict CIG’s assertion that the minimum wage does not reach 60% of the average wage in Spain.
32. In any case, the Committee has emphasised that, to determine whether a system is in breach of the Charter, it is essential to consider various economic, social and cultural factors—irrespective of the percentage. CIG blatantly disregards these factors in its Complaint.

Notably, it overlooks Spain's social welfare system, which is crucial for determining the "needs" covered by wages.

Without delving into further detail (as the Complaint has not been raised from that perspective), it is important to note that Spain offers free public healthcare, with no co-payment required. Likewise, public education is free from nursery school through compulsory secondary education, including baccalaureate, so that workers do not have to pay for their children's education during this period.

There is also protection for large families—applicable to both working and non-working people—and numerous other areas covered by the welfare system. The Complaint itself refers to the Committee's case law on the need to consider access to public services and infrastructures.

➤ **Spain's minimum wage has reached 60% of national average wage**

33. Attached as **Documents 2 and 3** are reports from the Ministry of Labour and Social Economy, and the Ministry of Economy, Trade and Business. They refute the Complaint and provide detailed explanations, supported by official statistical data, indicating that the net minimum wage has already reached 60% of the average net wage in Spain. Specifically, in 2024 it stands at 60.59% of the net average wage, as shown by the Wage Structure Survey and the Quarterly Labour Cost Survey.

This is the result of a considerable increase in the minimum wage in recent years, following the guidelines of the "II Report of the Minimum Wage Advisory Committee." A well-designed tax policy has also contributed to this goal: in 2024 the tax-free income threshold was raised to €15,876, exempting minimum wage earners from tax withholdings or payments on account.

➤ **Justification for the calculation (Ministry of Economy, Trade and Business)**

34. The Annex to the attached Report of the Ministry of Economy, Trade and Business explains in detail the calculation methodology, following the guidelines of the Minimum Wage Advisory Committee. The conclusion is that the minimum wage reaches the threshold of 60% of the average wage.
35. Therefore, under the applicable regulations, **the net minimum wage in 2024 is €1,059.50 per month** (14 annual payments), calculated as follows:

- The starting point is the gross minimum wage fixed by law for 2024 (i.e., €1,134 per month or €15,876 per year in 14 payments).
- The net minimum wage results from deducting social security contributions and personal income tax:
 - Social security contributions amount to 6.57% of workers' gross wage (i.e., €74.50), comprising (i) common contingencies (4.70%); (ii) unemployment (1.55%); (iii) Wage Guarantee Fund-FOGASA (0.20%); and (iv) Intergenerational Equity Mechanism-MEI (0.12%).
 - In 2024 the maximum amount exempt from income tax withholding was set at €15,876, so that **minimum wage earners' income is exempt from taxation.**
- After deducting social security contributions from workers' gross wage, the net minimum wage for 2024 is €1,059.50.

36. **The average net wage in 2024 was €1,749 per month** (14 payments), which represented a 3.65% increase compared to 2023 (the annual increase in 2023 was 5.53%).

37. After reviewing different wage statistics, the Minimum Wage Advisory Committee found the Wage Structure Survey (EES) to be the most suitable for these purposes.

Therefore, the estimated average net wage for 2024 is based on the most recent four-yearly Wage Structure Survey (i.e., that of 2022).

Based on these data, the average net wage for 2023 and 2024 is calculated by applying the growth rate of the ordinary wage cost for those years, obtained from the Quarterly Labour Cost Survey.

As a result, 2024 average net wage is €1,749 (14 payments).

38. Hence the conclusion: the *net* minimum wage has reached 60% of the national average *net* wage.

➤ **Clarifications on CIG's allegations regarding the calculation by the Ministry of Labour and Social Economy**

39. It is worth quoting the following excerpt of the attached report by the Ministry of Labour and Social Economy:

First, the complainants' methodology involves calculating the net wage as 60% of the average gross wage instead of calculating 60% of the average net wage to compare it with the net minimum wage. This approach narrows the tax gap between gross and net amounts, artificially inflating the net wage with respect to ECSR's interpretation of Article 4 § 1 of the Charter.

According to this interpretation, the 60% threshold should be applied to average wage net of social security contributions and income taxes. Therefore, the complainants' calculation is based on a false premise, leading to incorrect results.

Second, under current legislation, minimum wage earners are not subject to income tax withholdings and are not required to file a tax return if they have only one payer. But even if they did file a tax return, they would not have to pay income tax after deducting social security contributions, difficult-to-substantiate expenses, reduced net income from work, and the personal minimum. Therefore, gross and net minimum wage only differ in these contributions.

Third, paragraphs 57 and 58 of the complaint assert that 60% of the average net wage should be calculated based on the average gross wage provided by Eurostat due to the government's alleged failure to provide information on the average net wage. However, Eurostat's website indeed provides information on the average net wage for Spain. Furthermore, as the complainant is undoubtedly aware (since it is publicly known), both reports issued to date by the Minimum Wage Advisory Committee calculate the average net wage—thus contradicting any claim of intentional concealment.

Finally, at the time of the decision to raise the minimum wage, the average wage for the relevant year is not known. Therefore, any consideration that the net minimum wage for 2023 is already above 60% of the average net wage must take the wages from the previous year as a reference. In fact, the minimum wage on 1 January of any given year (i.e., when the measure is adopted) is closer to 31 December of the previous year than to 31 December of the year in progress, with year-end logically serving as the reference date for wage statistics."

Accordingly, **the Government of Spain REQUESTS the Committee:**

- **To declare the collective complaint submitted by Confederación Intersindical Galega to be manifestly unfounded, for the reasons set out in these Observations and, in any event, to declare that the setting of the**

minimum wage in Spain is in conformity with Article 4 § 1 of the Revised European Social Charter.

Madrid, 20 December 2024

THE AGENT OF SPAIN



Heide-Elena Nicolás Martínez

Annexes

Annex 1. Royal Decree 145/2024 of 6 February setting the national minimum wage for 2024.

Annex 2. Report of the Ministry of Labour and Social Economy.

Annex 3. Report of the Ministry of Economy, Trade and Business.