

COMMENTS

THE SINGLE EUROPEAN ACT AND SOCIAL DUMPING: A NEW APPEAL FOR MULTINATIONAL COLLECTIVE BARGAINING

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1. INTRODUCTION

Multinational collective bargaining attempts in Europe have generally been unsuccessful through the years.¹ Although the Treaty of Rome² acknowledges social policy, the importance of improving employment conditions, and the desire to harmonize social systems,³ no

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¹ Multinational collective bargaining refers to a dialogue between corporations and trade unions that establishes a collective agreement which affects workers in more than one country. For an overview of the subject, see H. NORTHRUP & R. ROWAN, *MULTINATIONAL COLLECTIVE BARGAINING ATTEMPTS: THE RECORD, THE CASES, AND THE PROSPECTS* (Multinational Industrial Relations Series No. 6, 1979); J. ROJOT, *INTERNATIONAL COLLECTIVE BARGAINING: AN ANALYSIS AND CASE STUDY FOR EUROPE* (1978). In this comment, multinational collective bargaining specifically refers to collective bargaining that occurs in the twelve European Economic Community [EEC] nations.

² Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11 (entered into force Jan. 1, 1958) [hereinafter Treaty of Rome]. The Treaty of Rome established the EEC which presently consists of twelve member states. The founding nations were France, West Germany (now Germany), Italy, Belgium, Netherlands, and Luxembourg. D. LASOK & J.W. BRIDGE, *LAW AND INSTITUTIONS OF THE EUROPEAN COMMUNITIES* 16 (1987). In 1973, Denmark, Ireland, and the United Kingdom joined the EEC. *Id.* at 21. More recently, the EEC admitted Greece in 1981 and Spain and Portugal in 1986. *Id.* at 22.

³ Article 117 provides:

Member States hereby agree upon the necessity to promote improvement of the living and working conditions of labour so as to permit the equalisation of such conditions in an upward direction.

They consider that such a development will result not only from the functioning of the Common Market which will favour the harmonisation of social systems, but also from the procedures provided for under this Treaty and from the approximation of legislative and administrative provisions.

Article 118 provides:

affirmative provision establishes the impetus to compel pan-European collective bargaining. However, in 1986, the member states signed the Single European Act (SEA),⁴ a document that amends the Treaty of Rome and serves as the catalyst for an open market of free movement of goods, people, services, and capital.⁵ This document seems to indicate the European Commission's (EC) desire to facilitate multinational collective bargaining through article 118(b), which states, "[t]he Commission shall endeavour to develop the dialogue between management and labour at the European level which could, if the two sides consider it desirable, lead to relations based on agreement."⁶ Yet, the drafters of article 118(b) created an extremely permissive provision which will probably, by itself, have very little impact in establishing a social dialogue between trade unions and multinational corporations.⁷

Without prejudice to the other provisions of this Treaty and in conformity with its general objectives, it shall be the aim of the Commission to promote close collaboration between Member States in the social field, particularly in matters relating to:

- employment,
- labour legislation and working conditions,
- occupational and continuation training,
- social security,
- protection against occupational accidents and diseases,
- industrial hygiene,
- the law as to trade unions, and collective bargaining between employers and workers

Treaty of Rome, *supra* note 2, at 61-62.

⁴ 30 O.J. EUR. COMM. (NO. L 169) 1 (1987) [hereinafter SEA].

⁵ For a broad overview of the SEA, see Myles, *Opportunity or Threat: Guide to 1992*, 9 ST. LOUIS U. PUB. L. REV. 39 (1990); Thieffry, Van Doorn & Lowe, *The Single European Market: A Practitioner's Guide to 1992*, 12 B.C. INT'L & COMP. L. REV. 357 (1989); *Europe's Internal Market*, ECONOMIST, July 8, 1989 (Special Section); *Europe's Internal Market*, ECONOMIST, July 9, 1988 (Special Section). The SEA reflects the significance placed by the twelve member nations on continuing European economic integration and political cooperation, enhancing the individual European's economic and social situation, and improving the coordination of foreign policies in order to produce a single voice on international relations. *The Single European Act*, 3 Common Mkt. Rep. (CCH) ¶ 20,000.

⁶ SEA, *supra* note 4, art. 22, at 9 (inserting article 118(b)). Thus, article 118(b) contemplates some form of European collective bargaining. Treu, *European Unification and Italian Labor Relations*, 11 COMP. LAB. L.J. 441, 450 (1990). For a summary of reactions to the SEA and labor developments, see *Employment Regulation in a United Europe: A Survey of Expectations in the European Community*, Daily Lab. Rep. (BNA) No. 121 (June 22, 1990) (Special Report) [hereinafter *Survey of Expectations*].

⁷ Hepple, *The Crisis in EEC Labour Law*, 16 INDUS. L.J. 77, 85 (1987). Although article 118(b) suggests that multinational collective bargaining agreements are legally possible, it is doubtful that the European Court of Justice will safeguard its legal effects. P.J.G. KAPTEYN & P.V. VAN THEMAAT, INTRODUCTION TO THE LAW OF THE EUROPEAN COMMUNITIES: AFTER THE COMING INTO FORCE OF THE SINGLE EUROPEAN ACT 631-32 (2d ed. 1989).

This comment examines how the SEA has altered both the prospects and the necessity for collective bargaining on a pan-European level. Section 2 discusses trade union membership in the European Economic Community (EEC) nations, as well as the structure and roles of both international trade union organizations and international employer associations. Section 3 outlines the existing obstacles that have prevented constructive multinational collective bargaining. Section 4 explores the relationship of the SEA to the concept of social dumping. Section 5 examines three models, worker participation, pan-European labor standards, and multinational collective bargaining, which would theoretically reduce social dumping, and evaluates their potential success. Finally, section 6 concludes that some legally enforceable directive requiring good faith negotiation between multinational enterprises and labor representatives, which neither prescribes nor limits the terms of contractual agreements, would establish an effective safeguard against social dumping induced by the SEA.

2. EUROPEAN TRADE UNIONS AND EMPLOYER ASSOCIATIONS

European trade unions have strong political and religious ties and the ideology of a trade union is paramount in a worker's membership selection.⁸ The notion of trade union membership heavily permeates European factories and constitutes an important part of European workers' lives.⁹ In addition to the national and local unions, international organizations unite the interests of all European workers,¹⁰ while corresponding employer associations lobby on behalf of free industry.¹¹

2.1. *Union Membership in EEC Countries*

As with collective bargaining,¹² the definition of trade union differs among the EEC countries.¹³ This problem, along with varying cat-

⁸ See E. JACOBS, *EUROPEAN TRADE UNIONISM* 15 (1973) ("[T]he French worker would choose between unions . . . that are in origin either communist, Catholic or socialist."). However, British trade unions differ from their European mainland counterparts in that British unions are most concerned with representing grievances and pursuing the demands of employees, rather than ideological and political activism. Gallic, *Trade Union Ideology and Workers' Conceptions of Class Inequality in France*, in *TRADE UNIONS AND POLITICS IN WESTERN EUROPE* 10 (J. Hayward ed. 1980).

⁹ See *infra* notes 15-17 and accompanying text which detail trade union membership rates of the European labor force.

¹⁰ See *infra* notes 18-29 and accompanying text.

¹¹ See *infra* notes 30-32 and accompanying text.

¹² See *infra* note 40 and accompanying text.

¹³ See K. WALSH, *TRADE UNION MEMBERSHIP: METHODS AND MEASUREMENT IN THE EUROPEAN COMMUNITY* 9-10 (1985) (noting that the definition is more rigid in Ireland and the United Kingdom and broader in West Germany, France, and

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egorizations of unemployed or retired workers, trainees, and students, complicates the determination of union membership in each member nation.¹⁴ A study of union membership density¹⁵ reports that union membership in EEC countries ranges from 19.1% in France to 68.8% in Denmark.¹⁶ However, when calculating these figures using an adjusted labor force denominator, the membership rates increase and range from 25.4% in France to 83.9% in Belgium.¹⁷

2.2. *International Union Organizations*

Global trade union organizations consist of alliances of national confederations primarily concerned with political goals, such as mobilizing international solidarity of workers.¹⁸ These associations consider the interests of all member workers, regardless of industry, in pursuing social reform, and are not involved with specific economic considerations.¹⁹ The three international organizations are the World Federation of Trade Unions (WFTU), the International Confederation of Free Trade Unions (ICFTU), and the World Confederation of Labor (WCL).²⁰ In 1973, the European Trade Union Confederation (ETUC), a regional organization that principally deals with EEC matters, was established and is currently acknowledged as the official rep-

Belgium).

¹⁴ See *id.* at 16-17 (remarking that many unions try to retain their unemployed members and a special membership category sometimes exists for retirees).

¹⁵ This calculation employs an unadjusted labor force denominator, which includes unemployed workers, the armed forces, self-employed workers, and family workers. *Id.* at 107-08.

¹⁶ *Id.* at 109. The membership rates of other EEC countries are Netherlands 32.1%, West Germany 34.9%, Ireland 36.9%, Italy 38.7%, United Kingdom 45.9%, Luxembourg 61.8%, and Belgium 63.4%. *Id.* These figures are from 1981, except for Ireland which is a 1982 computation. The union membership rates of Greece, Spain, and Portugal were not calculated in this study.

¹⁷ *Id.* at 110. Although the adjusted denominator increases the membership rates in all EEC countries by decreasing the labor force, these figures are not completely comparable since the adjustment is not consistent. Denmark (79.0%) only excludes self-employed and family workers from the labor force. *Id.* Belgium, Luxembourg (72.7%), Netherlands (36.0%), and West Germany (41.4%) subtract all unemployed workers, self-employed workers, and family workers. *Id.* However, France, Ireland (47.6%), Italy (60.6%), and the United Kingdom (50.6%) omit the armed forces as well as the previously mentioned other groups. *Id.* Again, these figures are from 1981 and the adjusted rates from Greece, Spain, and Portugal were not computed in the study.

¹⁸ T. DeVOS, U.S. MULTINATIONALS AND WORKER PARTICIPATION IN MANAGEMENT: THE AMERICAN EXPERIENCE IN THE EUROPEAN COMMUNITY 125 (1981).

¹⁹ See *id.*

²⁰ For a description of the operations and membership in these organizations, see Windmuller, *The International Trade Union Movement*, in *COMPARATIVE LABOUR LAW AND INDUSTRIAL RELATIONS* 149, 152-61 (R. Blanpain 3d ed. 1987) [hereinafter *COMPARATIVE LABOUR LAW*].

representative of labor within the EEC.²¹ The ETUC is related neither to any global organization nor any international trade secretariat,²² and affiliates with social-democratic, Catholic, and communist unions.²³ The leaders of the ETUC coordinate projects, such as the establishment of particular industry committees,²⁴ in order to give European workers greater influence on European institutions, and not merely to "express pious hopes of European solidarity."²⁵

International trade union secretariats²⁶ are organizations consisting of national unions which represent workers employed in one particular industry.²⁷ Although these organizations work with the ICFTU, they are independent and vary in size, influence, and national composition.²⁸ Objectives of the secretariats include exchanging information, representing employee interests in international affairs, encouraging union membership, supporting individual unions during labor disputes, and multinational consulting with management on harmonizing wages and other working conditions.²⁹

2.3. *International Employer Associations*

Parallel to the international trade union organizations are employer associations, such as the International Organization of Employers (IOE) and the Union of Industries of the European Community (UNICE), which lobby for free enterprise and minimization of government interference, but are not involved with labor negotiations.³⁰ Additionally, federations consisting of companies in the same industry exist in each EEC country on a national level.³¹ Although these employer associations frequently help represent corporations in collective bargaining, no international organizations have successfully facilitated transnational employee relations on behalf of a multinational

²¹ NORTHROP & ROWAN, *supra* note 1, at 22. For a brief overview of the ETUC, see Windmuller, *supra* note 20, at 161-63.

²² See *infra* notes 26-29 and accompanying text for a discussion of international trade secretariats.

²³ NORTHROP & ROWAN, *supra* note 1, at 22.

²⁴ *Id.*

²⁵ M. STEWART, *TRADE UNIONS IN EUROPE* 25 (1974).

²⁶ For a detailed list of international trade union secretariats and their memberships, see NORTHROP & ROWAN, *supra* note 1, at 15-19.

²⁷ DEVOS, *supra* note 18, at 120.

²⁸ NORTHROP & ROWAN, *supra* note 1, at 19. Most secretariats do have American and Japanese affiliates, but some remain entirely European. *Id.* at 15. Additionally, the secretariats are ideologically socialist-democratic and rarely associate with communist unions. *Id.* at 19.

²⁹ STEWART, *supra* note 25, at 24, 35.

³⁰ *Id.* at 27-28.

³¹ ROJOT, *supra* note 1, at 71.

enterprise.³²

3. EXISTING OBSTACLES TO MULTINATIONAL COLLECTIVE BARGAINING

Researchers have only uncovered a handful of arrangements that possess the fundamental qualities of a multinational collective bargaining agreement.³³ Several reasons for this lack of multinational collective bargaining are traditionally recognized:³⁴ 1) varying laws and practices;³⁵ 2) management opposition;³⁶ 3) union reluctance and lack of coordination;³⁷ and 4) lack of employee interest.³⁸ Moreover, the differing national priorities of the EEC countries have also contributed to the failure of pan-European collective bargaining.³⁹

3.1. *Varying Laws and Practices*

A wide variation of industrial relations laws and practices exists throughout the EEC member nations. Moreover, only several countries actually define the concept of a collective bargaining agreement in legal terms.⁴⁰ Each country has distinct customs and guidelines concerning

³² NORTHROP & ROWAN, *supra* note 1, at 10-11 (noting that a meeting between the Western European Metal Trades Employers' Organization and the European Metalworkers' Federation ended in dispute).

³³ One agreement exists in the European recording and broadcasting industries. Two international organizations, the International Federation of Musicians and the International Federation of Actors, have negotiated with the European Broadcasting Union, an association of chiefly government-owned radio and television companies, for increased rebroadcast fees for union members. *Id.* at 533-34.

Another multinational collective bargaining agreement, initially enacted in 1985, but since renewed indefinitely, exists between Thompson Grand Public, an electrical appliance manufacturer, and the European Metalworkers' Federation. *European Merger Trend Highlights Need for EC Worker Rights, Union Officials Say*, Daily Lab. Rep. (BNA) No. 173, at A-1, A-2 (Sept. 8, 1989) [hereinafter *Merger Trend*]. This agreement provides for biannual meetings of a committee composed of both management and employees to discuss issues that have significant economic impact on the company. *Id.* The sessions additionally focus on health and safety issues, as well as retraining. *Id.* Nevertheless, this dialogue is a major exception to the overall unwillingness of management to develop "Euro-industrial relations." Blanpain, *1992 and Beyond: The Impact of the European Community on the Labour Law Systems of the Member Countries*, 11 COMP. LAB. L.J. 403, 409 (1990).

³⁴ See Levine, *Labor Movements and the Multinational Corporation: A Future for Collective Bargaining*, 13 EMPLOYEE REL. L.J. 382, 390 (1987); NORTHROP & ROWAN, *supra* note 1, at 534-35.

³⁵ See *infra* notes 40-43 and accompanying text.

³⁶ See *infra* notes 44-50 and accompanying text.

³⁷ See *infra* notes 51-54 and accompanying text.

³⁸ See *infra* notes 55-59 and accompanying text.

³⁹ See *infra* notes 60-61 and accompanying text.

⁴⁰ G. PERONE, *THE LAW OF COLLECTIVE AGREEMENTS IN THE COUNTRIES OF THE EUROPEAN COMMUNITY* 1 (1984). The codes of France, Belgium, Luxembourg,

topics such as determination of union representation⁴¹ and the scope and contents of a collective agreement.⁴² For example, several countries restrict managerial discretion of operations without union approval.⁴³ This lack of harmonization of substantive labor law in the EEC undermines any attempt at multinational collective bargaining.

3.2. *Management Opposition*

Most multinational corporations oppose the concept of multinational collective bargaining for several reasons. First, management fears that a third arrangement⁴⁴ would further increase the threat of strikes because a new level of potential work stoppage would result.⁴⁵ Additionally, corporations believe that any multinational agreement would crumble at either the national or local level because of employees' conflicting interests.⁴⁶ A third reservation is the representation of the corporation in a multinational bargaining dialogue.⁴⁷ National and local employee relations are handled by domestic corporate managers or agents from employer associations.⁴⁸ Little coordination exists between foreign subsidiaries of a multinational corporation, hence a special department would need to be formed in order to effectuate competent bargaining strategies.⁴⁹ Moreover, this international department would need to hire persons who are fluent in foreign languages in order to communicate more effectively with labor representatives. Finally, the diversification of many corporations results in a wide assortment of jobs and positions that may not be compatible with broad, pan-European

Netherlands, and West Germany all define collective labor agreement. *Id.* On the other hand, in Ireland, Italy, United Kingdom, and Denmark, no statutory definition exists and the notion is derived from common use. *Id.* at 2.

⁴¹ NORTHROP & ROWAN, *supra* note 1, at 535. In the EEC countries, representation is split between unions and independent work councils whose roles differ in each country. *Id.*

⁴² *Id.* at 536. Management and labor have differing rights and obligations among the EEC nations in matters as fundamental as the "nature of contractual commitment, the legal capacity of partners, and the role of the state." Kolvenbach, *EEC Company Law Harmonization and Worker Participation*, 11 U. PA. J. INT'L BUS. L. 709, 760 (1990). Consequently, no single model of collective bargaining is utilized throughout the EEC. Córdova, *Collective Bargaining*, in *COMPARATIVE LABOUR LAW*, *supra* note 20, at 307, 309.

⁴³ NORTHROP & ROWAN, *supra* note 1, at 536.

⁴⁴ Multinational negotiations would then be followed by national bargaining, and lastly, local discussions would occur. *Id.* See also Enderwick, *Trends in the Internationalisation of Production*, 8 EMPLOYEE REL. 9, 10 (No. 6, 1986).

⁴⁵ NORTHROP & ROWAN, *supra* note 1, at 537.

⁴⁶ *Id.* at 537-38.

⁴⁷ *Id.* at 538.

⁴⁸ *Id.*

⁴⁹ *Id.* at 538-39.

negotiations.⁵⁰

3.3. *Union Reluctance and Lack of Coordination*

National and local unions have not supported multinational collective bargaining for fear that transferring bargaining power to an international organization would reduce their prestige.⁵¹ Without a central agency possessing authority to negotiate on behalf of the local affiliates, constructive and consistent negotiations will fail to occur.⁵² Moreover, representation in international trade secretariats is muddled because of political and religious differences.⁵³ One final consideration is that local and national unions frequently request import quotas and tariffs when unemployment rises.⁵⁴ These demands are completely inconsistent with the notion of a multinational agreement. However, the SEA eliminates the possibility for the national unions to limit import quotas through its policy of unrestricted free trade of goods. Therefore, only the coordination and representation problems remain unresolved on the union side.

3.4. *Lack of Employee Solidarity*

The notion that employees from one country would be willing to forfeit their paychecks to support the cause of those in another country for the sake of solidarity has been previously refuted.⁵⁵ The extent of international employee support consists of informational flyers and letters from foreign unions to the corporation requesting acceptance of the strikers' demands.⁵⁶ This lack of unity among European employees reduces labor's power to develop multinational collective bargaining agreements.⁵⁷ Furthermore, national unions that represent employees

⁵⁰ *Id.* at 538. For instance, a division which is capital intensive greatly differs from a labor intensive division, and broad multinational collective bargaining may result in a subsidiary's inability to handle the costs of the agreement. *Id.*

⁵¹ Levine, *supra* note 34, at 391.

⁵² See NORTHROP & ROWAN, *supra* note 1, at 540-41 (observing the existence of disputed functions and relationships among international secretariats, regional union organizations, and national unions in collective bargaining negotiations).

⁵³ *Id.* at 542. For example, the International Metalworkers' Federation refuses to accept communist unions located mainly in France and Italy. *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at 544. One instance of non-support, although not exclusively European, occurred when United States rubber employees were on strike and sought support from European colleagues. *Id.* at 545. Not only did the European workers fail to engage in any sympathetic actions, but also United States import rates increased drastically. *Id.*

⁵⁶ *Id.* at 545.

⁵⁷ For instance, the leverage of a West German union is diluted when West German employees are on strike, while their Spanish co-workers continue to work. *West German Unions Seek Collaboration around EC*, in *Survey of Expectations*, *supra* note 6, at S-5.

in the less industrialized EEC nations would not refrain from accepting a new facility, even to the detriment of their co-workers in more affluent countries.⁵⁸ This reluctant solidarity results from fear that committing workers to sympathetic acts would “court[] political disaster.”⁵⁹

3.5. Differing National Priorities

EEC members vary widely in terms of economic strength, politics, and social values from poorer, developing countries like Portugal, Spain, and Greece to more industrialized countries such as West Germany, France, and the United Kingdom. These fundamental differences hinder attempts at pan-European collective bargaining at a governmental level. For example, Portugal’s government presumably would not forego potential economic development and increased employment opportunities in exchange for the trade union solidarity which would accompany any multinational agreement.⁶⁰ Moreover, the members of the EEC all agree that support for workers in other countries will not undermine their own national goals.⁶¹

4. SOCIAL DUMPING

“Social dumping” is a term of art used to describe the decision of multinational enterprises that move their facilities from countries with high labor wages to Greece, Portugal, or Spain, where wage rates and other social costs are significantly lower.⁶² An appropriate moniker for this concept in terms of American labor law is the transnational runaway shop.⁶³ National and local labor unions have long been concerned with the potential consequences of social dumping.⁶⁴ However, the signing of the SEA has aroused immediate and alarming concerns

⁵⁸ Protzman, *Affluent German Unions Fear 1992*, N.Y. Times, Mar. 8, 1989, at D1, col. 3, at D5, col. 1.

⁵⁹ NORTHROP & ROWAN, *supra* note 1, at 544.

⁶⁰ See Levine, *supra* note 34, at 392-93.

⁶¹ *Id.* at 393.

⁶² Campbell, *The Social Dimension and 1992*, in *Survey of Expectations*, *supra* note 6, at S-19, S-20; *The Looming Labour Crunch*, INT’L MGMT., Feb. 1989, at 26, 27 [hereinafter *Looming*]. A more technical definition of social dumping is that “companies will invest where the wages and conditions are the cheapest and thereby force the workers in other countries with higher standards to accept lower standards and consequently downgrade the employment conditions.” Blanpain, *supra* note 33, at 404 n.3.

⁶³ Shearer, *Fact and Fiction Concerning Multinational Labor Relations*, 10 VAND. J. TRANSNAT’L L. 51, 53 (1977). A runaway shop occurs when an employer moves his business to another location or temporarily closes his business for anti-union purposes. BLACK’S LAW DICTIONARY 1333 (6th ed. 1990).

⁶⁴ Shearer, *supra* note 63, at 53.

about the increased possibility of social dumping to the effect that the concept has been referred to as the "European unions' nightmare."⁶⁵

This apprehension by the trade unions is hardly unfounded in light of the wage differences among EEC countries. For instance, an international human resource director at the Coca-Cola Company remarked that hourly wages in 1987 ranged from \$3.20 in Portugal to \$19.20 in West Germany.⁶⁶ An unnamed West German company also pays significantly cheaper hourly wages to its workers in Portugal than to its West German employees.⁶⁷ Lower wages, however, are not the only disparities between the poorer EEC nations and the more affluent ones. Other factors such as longer working hours and fewer vacation days also contribute to this temptation to move corporate operations to southern Europe.⁶⁸ One West German legislator, wary of these imbalances, believes that the SEA's objective of free movement of goods will compound and essentially condone these inequalities.⁶⁹

Public project bidding has already become quite heated due to continent-wide advertisements for bids, enabling construction companies with cheap labor costs from southern Europe to outbid their northern counterparts.⁷⁰ Unions fear that similar results will occur throughout the labor sector, eventually causing enterprises located in the northern, industrialized countries to reduce their wages and benefits in order to compete, thus harming the individual worker.⁷¹ Moreover, the ETUC has echoed this concern by noting that the risks of social dumping have been greatly underrated and sufficient safeguards have not been advanced.⁷²

Although trade unions maintain that social dumping will occur

⁶⁵ *The European Community's Single Market Goal: The View from Nam*, 6 Int'l Trade Rep. (BNA) No. 3, at 81, 84 (Jan. 18, 1989) (Special Report).

⁶⁶ *Worsening Unemployment in European Community to Be Replaced by Labor Shortage, Official Says*, Daily Lab. Rep. (BNA) No. 219, at A-3, A-4 (Nov. 15, 1989) [hereinafter *Worsening Unemployment*]. Fiat's Chief Executive Officer noted that the average annual salary of their German employees is \$32,000, while their comparable Spanish auto workers only earn \$13,000 annually. Blanpain, *supra* note 33, at 405. Similarly, employees at Renault in Spain are paid 35% less than their French counterparts. *Id.*

⁶⁷ Betz-Eck, *Breaking Down the Walls: Disparities a Barrier to European Unity*, Chi. Tribune, Sept. 18, 1989, § 4, at 1, col. 2. The approximate hourly wages are reported to be \$1.50 in Portugal and \$15.00 in West Germany. *Id.*

⁶⁸ See Protzman, *supra* note 58, at D5, col. 1. Whereas the average West German industrial worker labors an average of 1,716 hours per year and receives 30 annual vacation days, Portuguese employees toil 2,025 hours annually and take only 22 vacation days. *Id.*

⁶⁹ See Betz-Eck, *supra* note 67, § 4, at 4, col. 1.

⁷⁰ See *id.* § 4, at 1, col. 2, at 4, col. 1.

⁷¹ *Looming, supra* note 62, at 27.

⁷² *The Week in Europe*, Origin Universal News Service Ltd., Oct. 20, 1988.

unless some precautions are implemented, others are skeptical and believe that labor is overreacting.⁷³ Dissenters contend that lower social costs are not dispositive in a corporation's decision to relocate in a different country, and other factors such as banking rates, communication and transportation access, and worker skills are also considered.⁷⁴ Furthermore, these individuals claim that companies were never restricted from moving, and that the SEA will not create any additional opportunities for mass social dumping.⁷⁵ A recent EC report further downplayed the fear of social dumping by asserting that virtually no difference in unit wage costs exists in the twelve EEC nations because lower wages coincide with reduced productivity.⁷⁶ Consequently, the perceived incentive for corporations to relocate in low wage countries is illusory.⁷⁷ Another argument asserts that social dumping will not occur due to the existing industrial relations systems of Portugal and Spain and the national policies that grant the right to form trade unions.⁷⁸ Finally, one commentator notes that while cheap labor costs in Greece, Portugal, and Spain prompt fear of social dumping, no one has cried, "technological dumping," when the EEC industrial nations mass produce goods inexpensively with sophisticated machinery.⁷⁹ Despite these contentions, the SEA does create a fertile ground for social dumping to thrive, and therefore, possible safeguards should be examined.

5. POTENTIAL SAFEGUARDS TO SOCIAL DUMPING

Several mechanisms could help reduce the impact of social dumping. These alternatives include informing and consulting with labor

⁷³ See, e.g., *Worsening Unemployment*, *supra* note 66, at A-5 (noting that Coca-Cola's personnel strategy is based upon "team building and employee involvement, not the absence or presence of unions.").

⁷⁴ *Looming*, *supra* note 62, at 28. See also *Danish Unions, Employers Divided over Need for EC Influence*, in *Survey of Expectations*, *supra* note 6, at S-7, S-8 (indicating that Danisco, Denmark's largest food process technology corporation, explained that it "would be more likely to consider restrictions on biotechnology or taxation rates when considering where to place a plant.").

⁷⁵ *Looming*, *supra* note 62, at 28.

⁷⁶ Kellaway, *EC Study Rules Out Switch by Industries to Low-Wage Areas*, *Financial Times*, July 4, 1990, at 2, col. 4.

⁷⁷ *Id.* Without the increased vocational training of workers by low-wage countries, poor productivity will continue to offset inexpensive labor costs, and therefore, discourage multinational enterprises from moving their facilities from the highly industrialized EEC nations. *Study Shows Few Differences in Labor Costs Throughout EC*, 2 1992 - The External Impact of European Unification (BNA) No. 9, July 27, 1990, at 8.

⁷⁸ *Looming*, *supra* note 62, at 28.

⁷⁹ Amoroso, *A Danish Perspective: The Impact of the Internal Market on the Labor Unions and the Welfare State*, 11 *COMP. LAB. L.J.* 483, 491 (1990).

representatives about significant corporate decisions,⁸⁰ establishing pan-European labor standards on issues such as minimum wage and maximum hours,⁸¹ and facilitating multinational social dialogue.⁸² Although all three suggestions could alleviate the temptation of social dumping, a system of multinational collective bargaining would best balance the competing interests of employees and multinational enterprises.

5.1. *Worker Participation and Consultation*

Co-determination is the term employed to describe the notion of labor representation on corporate boards.⁸³ This concept of employee participation is designed to guarantee workers' rights by compelling disclosure and consultation on pan-European economic decisions directly affecting a company, such as mergers, acquisitions, or plant closings.⁸⁴ Although this alternative could possibly alleviate the effects of social dumping by effecting employee influence on corporate decisions, the Vredeling proposal,⁸⁵ a recommendation for worker participation, was tabled by the EEC in 1986.

5.1.1. *Vredeling Proposal*

The Vredeling Proposal, named after Henk Vredeling, a former member of the Commission of the European Communities, was a directive that would have enabled labor representatives to obtain a general impression of a corporate enterprise's activities in each nation where that company operates a facility.⁸⁶ The amended proposal compelled corporations to provide information voluntarily to employee representatives on an annual basis.⁸⁷ Moreover, if a company planned to make a

⁸⁰ See *infra* notes 83-96 and accompanying text.

⁸¹ See *infra* notes 97-106 and accompanying text.

⁸² See *infra* notes 107-26 and accompanying text.

⁸³ Hopt, *New Ways in Corporate Governance: European Experiments with Labor Representation on Corporate Boards*, 82 MICH. L. REV. 1338, 1343 (1984).

⁸⁴ See *Merger Trend*, *supra* note 33, at A-2.

⁸⁵ *Amendment to the Proposal for a Council Directive on Procedures for Informing and Consulting Employees*, 26 O.J. EUR. COMM. (No. C 217) 3 (1983) [hereinafter *Vredeling Proposal*]. For a detailed history of the drafting of the Vredeling Proposal, see R. BLANPAIN, F. BLANQUET, F. HERMAN & A. MOUTY, *THE VREDELING PROPOSAL: INFORMATION AND CONSULTATION OF EMPLOYEES IN MULTINATIONAL ENTERPRISES* (1983).

⁸⁶ Hoffman & Grewe, *The Vredeling Proposal of the European Commission*, 20 STAN. J. INT'L L. 329, 331-33 (1984).

⁸⁷ Section II, article 3 states:

1. At least once a year, at a fixed date, the management of a parent undertaking shall forward general but explicit information giving a clear picture of the activities of the parent undertaking and its subsidiaries as a whole . . . with a view to the communication of this information to the employees'

decision that would significantly affect the interests of its employees, corporate management was commanded to forward accurate information to corporate subsidiaries. Local management was then required to advise the labor representatives of the plan, and also grant a thirty-day period for reply, during which the corporation was barred from implementing the decision.⁸⁸ Although these procedures for informing and consulting with workers also affected enterprises that are exclusively national in scope, the directive particularly seemed to target multinational corporations, since it applied to parent undertakings employing at least one thousand workers in the EEC.⁸⁹

representatives

2. This information shall relate in particular to:
 - (a) structure;
 - (b) the economic and financial situation;
 - (c) the probable development of the business and of production and sales;
 - (d) the employment situation and probable trends;
 - (e) investment prospects.

Vredeling Proposal, *supra* note 85, at 7-8. However, management is not required to communicate secret and confidential information. Section III, article 7 defines secret information as "[i]nformation . . . which, if disclosed, could substantially damage the undertaking's interests or lead to the failure of its plans." *Id.* at 14.

⁸⁸ Section II, article 4 provides:

1. Where the management to a parent undertaking proposes to take a decision . . . which is liable to have serious consequences for the interests of the employees of its subsidiaries . . . , it shall be required to forward precise information to the management of each subsidiary concerned in good time before the final decision is taken
2. Decisions liable to have serious consequences may in particular relate to:
 - (a) the closure or transfer of an establishment or major parts thereof; . . .
3. [T]he management of each subsidiary concerned shall be required to communicate in writing without delay the information . . . to the employees' representatives, to ask for their opinion, granting them a period of at least 30 days . . . , and to hold consultations with them with a view to attempting to reach agreement on the measures planned in respect to the employees.

Id. at 9-10.

⁸⁹ *An Update on European Community Law: Report by Professor Janice R. Bel-lace of Wharton School, University of Pennsylvania*, Daily Lab. Rep. (BNA) No. 171, at E-1, E-3 (Sept. 1, 1983). Section II, article 2 specifies:

1. This Directive relates to procedures for informing and consulting the employees:
 - of a subsidiary in the Community when a total of at least 1,000 workers is employed in the Community by the parent undertaking and its subsidiaries as a whole,
 - of an undertaking having in the Community one or more establishments when a total of at least 1,000 workers is employed in the Community by the undertaking taken as a whole.

Vehement industry opposition to any social legislation contributed to the failure of the EEC to adopt the Vredeling Proposal.⁹⁰ Businessmen contended that any form of co-determination granting labor representatives substantial power in strategic decision-making would limit "management's freedom to manage," and thus impair corporate efficiency.⁹¹ Another argument stemmed from the concern that the cost of providing the required information would be significant and its preparation would divert attention from genuine corporate issues.⁹² Finally, employers feared that workers would not maintain confidentiality of disclosed, non-secret information⁹³ that a company would prefer to remain private.⁹⁴ Since these contentions still remain, any form of strict, mandated worker participation would be considered unacceptable by industry. For example, a British employer association continues to protest any co-determination proposals because of its fear that employee consultation would lead to increased costs and place British corporate enterprises at a competitive disadvantage.⁹⁵ Nevertheless, insistence upon some mechanism to eliminate future unemployment due to social dumping caused by the implementation of the SEA will endure as an economic and political issue.⁹⁶

5.2. *Pan-European Labor Standards*

Some industrialists believe that the impact of the SEA on job security may spark a quest by the politically active European trade unions to push for specific pan-European labor standards.⁹⁷ These labor

Vredeling Proposal, *supra* note 85, at 7. Therefore, if a subsidiary located in the EEC employs 1,000 workers itself, the subsidiary must also furnish its own information. Hoffman & Grewe, *supra* note 86, at 339.

⁹⁰ *European Community Ministers Seek Report on Need for Vredeling Information Directive*, 3 Int'l Trade Rep. (BNA) No. 34, at 1067, 1068 (Aug. 20, 1986). Technically, the failed adoption is exclusively attributable to the United Kingdom's opposition to the Vredeling Proposal because a unanimous vote is required by internal rules. *Id.*

⁹¹ Fairlamb, *Labor-Business Battle in the EEC*, DUN'S BUS. MONTH, May 1984, at 79, 83 (quoting a director of a management association).

⁹² *Id.* at 83.

⁹³ See *supra* note 87 for the Vredeling Proposal's definition of "secret information."

⁹⁴ Fairlamb, *supra* note 91, at 85.

⁹⁵ Martin & Rider, *Opening up Europe*, EUROMONEY, Sept. 1988, at 20, 22 (1992 Special Supplement). This particular British concern derives from the fact that several other EEC members have enacted national legislation concerning co-determination, and therefore costs, already faced by companies in other nations, would more significantly effect British corporations. *Id.*

⁹⁶ *Vredeling Measure Sent to Back Burner until 1989, but Concept Remains Alive*, 3 Int'l Trade Rep. (BNA) No. 40, at 1234 (Oct. 8, 1986).

⁹⁷ Swoboda, *U.S. Will Soon Face Global Labor Standards*, Wash. Post, May 28,

standards might include a minimum wage, maximum hours, and a minimum working age, in addition to health and safety provisions.⁹⁸ This concern results from the strong regional and national differences among the EEC nations and the fact that West German workers earn more money and have shorter work weeks than their southern European counterparts.⁹⁹ Therefore, by imposing pan-European standards, trade unions believe that social dumping would become less favorable to multinational corporations and would protect the jobs of West German employees, as well as their higher wages, better social benefits, and shorter work weeks.¹⁰⁰ The German and French governments have also supported the proposition of some minimum working conditions in order to counter social dumping.¹⁰¹

However, the United Kingdom is opposed to any social charter of workers' rights specifically or implicitly calling for pan-European labor standards, especially minimum wages.¹⁰² British economists believe that if a standard minimum wage is imposed, unemployment in the United Kingdom would increase drastically.¹⁰³ In addition to the fear that a pan-European minimum wage would result in the growth of unemployment, which would counter efforts to reduce the consequences of social dumping, other drawbacks exist. The actual choice of the minimum wage rate with respect to each member country poses significant difficulty. Since each nation currently possesses its own monetary standard, subject to fluctuating exchange rates, the determination of comparable and fair minimum wages would be elusive. Additionally, if a minimum wage were imposed, its eventual adjustment due to inflation would also cause problems because each country has distinct annual inflation rates.¹⁰⁴ Although employee productivity could guide the standardization of wages, productivity would need to be defined and

1989, at H3, col. 4.

⁹⁸ 1992: *The Bad News*, INT'L MGMT., Sept. 1988, at 22, 25.

⁹⁹ See *supra* notes 66-69 and accompanying text.

¹⁰⁰ 1992, *A Threat to Dogmatic Labour Unions*, INT'L MGMT., Dec. 1988, at 73.

¹⁰¹ Gapper, *Skills Shortage Stalls the Worker's March*, Financial Times, Sept. 5, 1990, at 20, col. 3.

¹⁰² See Kaluzvnska, *Britain Refuses to Budge over Workers' Rights in Community*, Reuters, Oct. 29, 1989.

¹⁰³ The economists project that if the minimum wage was set at 50% of the average wage, then 500,000 jobs would be lost. Moreover, if the minimum wage was equivalent to 68% of the average, unemployment would increase by 1,400,000. *EEC Pay Code 'Will Cost Jobs'*, Sunday Telegraph, Dec. 10, 1989, at 25.

¹⁰⁴ In 1989, the inflation rates of the EEC member nations were: Belgium 3.1%, Denmark 4.8%, France 3.5%, West Germany 2.8%, Greece 13.7%, Ireland 4.1%, Italy 6.2%, Luxembourg 3.4%, Netherlands 1.1%, Portugal 12.6%, Spain 6.8%, and United Kingdom 7.8%. EUROPEAN MARKETING DATA AND STATISTICS 1991, at 147 (26th ed.).

uniformly applied in all collective bargaining agreements.¹⁰⁵ Finally, an enforcement problem would exist, especially in companies where labor representation is not present, and in poorer countries, where individuals might work longer hours for less pay rather than risk unemployment. In the absence of a community-wide policing commission, self-regulation is unlikely, and the system of pan-European labor standards would be undermined. Nonetheless, if these barriers to pan-European labor standards are overcome, doubt exists as to whether the EEC could set minimum wages at a level that would curb social dumping.¹⁰⁶

5.3. *Multinational Collective Bargaining*

A system of collective bargaining that involves negotiations between multinational corporations and employees in more than one country would be the optimal safeguard against the social dumping that could result from the implementation of the SEA. The drafting of pan-European agreements by individual corporations and international unions in areas affecting job security, such as new technology, maximum hours, wage scales, and plant closings would increase workers' rights and prevent potential social dumping.¹⁰⁷ Local union representatives could then discuss more specific terms and conditions of employment with the local management of each facility.¹⁰⁸ By allowing each multinational enterprise and corresponding labor representative to tailor the social dialogue to the particular needs of the employees without dictating mandatory EEC standards, individual and voluntary agreements would be facilitated in a less intrusive manner.¹⁰⁹ Due to differences in the form and content of employee participation within the same country, this more flexible approach toward initiating social dialogue appears attractive.¹¹⁰ Nevertheless, in order for multinational collective bargaining to advance, the obstacles that have previously pre-

¹⁰⁵ Treu, *supra* note 6, at 456.

¹⁰⁶ Jacobs, *The Netherlands and the Social Dimension of the Single European Market*, 11 COMP. LAB. L.J. 462, 468 (1990).

¹⁰⁷ *Regulation of Behavior of Multinationals Advocated by International Metalworkers*, 9 Int'l Trade Rep. U.S. Import Weekly (BNA) No. 28, at 909, 910 (Apr. 18, 1984) (quoting the general secretary of the International Metalworkers' Federation).

¹⁰⁸ *Id.*

¹⁰⁹ See Fairlamb, *supra* note 91, at 85 (declaring that a compulsory system of employee involvement would force many corporations to scrap their currently successful agreements in order to meet mandatory, pan-European structures and standards).

¹¹⁰ Treu, *supra* note 6, at 453. Since the distinct political, cultural, and social identities of each EEC nation are intimately tied to collective labor relations, an approach that would strongly regulate both the structure and content of European collective bargaining agreements would be impracticable. *Id.* at 448-49.

vented social dialogue¹¹¹ must be reevaluated in light of the consequences of the SEA, and furthermore, a more stringent statement of policy than Article 118(b)¹¹² must be implemented.

5.3.1. *Overcoming the Obstacles*

The previously described obstacles of varying laws and practices, management opposition, union reluctance and lack of coordination, lack of employee solidarity, and differing national priorities are surmountable. Obviously, the differing statutory schemes of the EEC nations will continue to exist. However, the EEC can feasibly issue a directive compelling multinational enterprises to open a dialogue with labor representatives without disrupting national laws.¹¹³

Both management opposition and union reluctance hinge on the lack of coordination in conducting multinational negotiations. Yet these administrative problems can hardly be deemed an impediment. Management contends that to facilitate multinational collective bargaining, a special, multilingual personnel department would have to be established. Its reservations result from the additional costs involved in creating such a department. However, since corporations could spread the cost to the general public, this financial argument is meritless. In fact, multinational enterprises might even reduce their overall costs through pan-European collective bargaining agreements.¹¹⁴ On the labor side, international trade union secretariats already exist and could organize a bargaining strategy on behalf of a corporation's employees.¹¹⁵ Moreover, the national and local trade unions' fear of losing prestige would be allayed by the two-tiered bargaining system wherein the local representatives could negotiate for specific, plant-related terms and conditions of employment. Companies also traditionally disfavor any form of labor participation because of the feared interference with the manage-

¹¹¹ See *supra* notes 33-61 and accompanying text which describes in detail the obstacles impairing multinational collective bargaining.

¹¹² See *supra* text accompanying note 6 for the content of Article 118(b).

¹¹³ Multinational collective bargaining agreements would also assist the implementation of subsequent directives into practice, despite the differing labor relations systems of the member states. Kolvenbach, *supra* note 42, at 788.

¹¹⁴ Note, *The Vredeling Directive: The EEC's Failed Attempt to Regulate Multinational Enterprises and Organize Collective Bargaining*, 20 N.Y.U. J. INT'L L. & POL. 967, 991 (1988). If unions could coordinate their representation and focus on collective bargaining issues, then employees would benefit economically, which would enhance productivity, thus decreasing corporate expenses. *Id.* at n.151.

¹¹⁵ The ETUC maintains that pan-European collective bargaining is its ultimate goal. *Union Confederation Focuses Efforts on Implications of Single Market*, in *Survey of Expectations*, *supra* note 6, at S-3, S-4.

rial right to make business-related decisions.¹¹⁶ However, by instituting a system of multinational collective bargaining that neither mandates nor limits topics in an arrangement, each corporation could discuss with the representative trade union or an international labor organization the extent of workers' rights pursuant to a mutually acceptable agreement. This individually tailored contract would act as a compromise that would be less intrusive than either mandatory consultation with workers or strict EEC standards concerning minimum wage and other conditions.

The fourth obstacle, lack of employee solidarity, is concededly difficult to alter, even if trade unions explained to employees the significant consequences that the SEA could have on their job security. However, the implementation of a multinational collective bargaining agreement that regulates specific conditions of employment for workers in several different countries would encourage employees to support their foreign counterparts. Since the agreement would affect workers from several countries directly, feelings of loyalty and solidarity would grow. Therefore, if a multinational enterprise breached the agreement in one country, foreign co-workers would demonstrate their support because the contract would affect their own personal employment. Moreover, a Spanish union official acknowledged labor's desire to create bargaining committees that would coordinate union action at the EEC headquarters of multinational corporations, thus enhancing overall worker solidarity.¹¹⁷

Finally, the national priorities of the twelve EEC nations will always differ to some extent. However, universal government policies include the reduction of unemployment and the bettering of living conditions for citizens. To these ends, multinational collective bargaining presents a way to preserve jobs in the more affluent nations, while increasing existing wages and not discouraging business development in poorer countries.

5.3.2. *Implementation of Multinational Collective Bargaining*

Article 118(b) of the SEA passively indicates a desire to effect multinational collective bargaining in the EEC. However, current voluntary guidelines for multinational corporations demonstrate that un-

¹¹⁶ The UNICE fears that EEC legislation concerning labor participation would jeopardize the economic savings generated by the SEA. *Id.* at S-4.

¹¹⁷ *Modernization Accelerates in Spain in Anticipation of Single Market*, in *Survey of Expectations*, *supra* note 6, at S-9, S-10. For instance, these committees could oppose accelerated production in a Spanish facility while British co-workers are on strike. *Id.*

enforceable and permissive declarations will not assist the facilitation of a social dialogue between labor and multinational enterprise.

On June 21, 1976, the Organization for Economic Cooperation and Development (OECD) announced voluntary guidelines for multinational enterprises on several issues, including disclosure of information, employment, and industrial relations.¹¹⁸ These guidelines, if followed, could have resulted in a system of multinational collective bargaining.¹¹⁹ Management viewed the promulgation of voluntary guidelines favorably, but labor believed that without an enforcement mechanism, the guidelines were not satisfactory.¹²⁰ Despite this favorable endorsement by management and the significant promotion of the guidelines, support from multinational corporations has been less than expected.¹²¹ Furthermore, the guidelines have failed to operate as a dispute mechanism.¹²² Several commentators claim that evidence which shows relatively few alleged infractions provides support of compliance by multinational firms.¹²³ However, similar evidence can also

¹¹⁸ D. CAMPBELL & R. ROWAN, *MULTINATIONAL ENTERPRISES AND THE OECD INDUSTRIAL RELATIONS GUIDELINES 1* (Multinational Industrial Relations Series No. 11, 1983).

¹¹⁹ The OECD guidelines declare that multinational enterprises should:

1. Respect the right of their employees to be represented by trade unions . . . and engage in constructive negotiations, either individually or through employers' organizations, with such employee organizations with a view to reaching agreements on employment conditions . . .

2(b). Provide to representatives of employees information which is needed for meaningful negotiations on the conditions of employment; . . .

6. In considering changes in their operations which would have major effects upon the livelihood of their employees, in particular in the case of the closure of an entity involving collective lay-offs or dismissals; provide reasonable notice of such changes to representatives of their employees . . .

9. Enable authorized representatives of their employees to conduct negotiations on collective bargaining or labour management relations issues with representatives of management who are authorized to take decisions on the matters under negotiation.

B. LIEBHABERG, *INDUSTRIAL RELATIONS AND MULTINATIONAL CORPORATIONS IN EUROPE 80-82* (1980).

¹²⁰ *Id.* at 83.

¹²¹ See R. BLANPAIN, *THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES AND LABOUR RELATIONS 1982-1984*, at 182 (1985) (indicating that the drafters expected multinational enterprises to specifically mention the existence of and compliance with the voluntary guidelines in annual reports). A survey established that less than three percent of the United Kingdom's multinational enterprises publicly endorse the voluntary regulations. Hamilton, *Initiatives Undertaken by International Organisations in the Field of Employee Information and Consultation in Multinational Undertakings (I.L.O., O.E.C.D., U.N.)*, in *EMPLOYEE CONSULTATION AND INFORMATION IN MULTINATIONAL CORPORATIONS* 95, 111 (J. Vandamme ed. 1986). Similar responses were received in France and West Germany. *Id.* at 111-12.

¹²² BLANPAIN, *supra* note 121, at 181.

¹²³ CAMPBELL & ROWAN, *supra* note 118, at 12. See also Note, *The Proposed*

signal labor's belief that alleging a violation is futile because of the ineffective enforcement process.¹²⁴

Regardless of whether multinational corporations presently follow the OECD guidelines, the increased temptation of social dumping resulting from the SEA's implementation requires some legally enforceable, mandatory directive that compels multinational social dialogue. This directive should require that multinational enterprises¹²⁵ initiate a dialogue with labor representatives. Once negotiations have commenced, a good faith bargaining requirement is necessary to ensure the signing of some written agreement. However, particular terms of these arrangements should be individually tailored to satisfy the competing interests of each multinational corporation and its employees. Consequently, the scope of such agreements should not be limited, nor should any specific terms of employment be prescribed. Finally, an EEC body empowered to enforce this proposed directive must be established, otherwise the desired prevention of social dumping could not be achieved and the only safeguard would be voluntary compliance by multinational corporations with Article 118(b) or the OECD guidelines.¹²⁶

6. CONCLUSION

The SEA's goal of free movement of goods, people, services, and capital across the EEC will affect the business of multinational corporations. If the present rules regarding workers' rights remain unchanged, these financially motivated multinational enterprises will have both the unrestrained opportunity and the temptation to move manufacturing facilities from more affluent countries to nations where labor is significantly cheaper. In addressing the imminent threat of social dumping, three potential safeguards exist: a worker participation and consultation model, pan-European labor standards, and multinational

Vredeling Directive: A Modest Proposal or the Exportation of Individual Democracy?, 70 VA. L. REV. 1469, 1495 (1984) (stating that the voluntary code is not subject to widespread abuse by multinational corporations).

¹²⁴ Three reasons are offered for the inadequacy of the voluntary guidelines: 1) the complaint process is lengthy and cumbersome; 2) no authoritative enforcement machinery exists; and 3) many employees are unaware of the existence of these guidelines. Hamilton, *supra* note 121, at 109-11.

¹²⁵ It is impractical for every multinational enterprise to be subject to such a scheme. Therefore, the directive should apply mainly to corporations that would significantly reduce labor costs by implementing social dumping maneuvers. A threshold level of workers necessary to trigger application of the directive would need to be promulgated in order to achieve this result.

¹²⁶ See *supra* notes 118-24 and accompanying text which discount the effectiveness of the OECD voluntary guidelines. No foundation exists to believe that a very permissive EEC amendment, such as Article 118(b), would be any more effective.

collective bargaining. Although both a mandatory worker information and consultation model and standard pan-European working conditions could feasibly eliminate the possibility of social dumping, a scheme that compels multinational collective bargaining would be both less intrusive and more effective. A system of multinational collective bargaining strikes a compromise between workers' rights and corporate function while resolving the issue of social dumping. It balances employees' desires for both job security and a voice in the corporate decision-making process with the economic constraints of competition and management's need for unfettered control. By implementing a legally enforceable directive requiring good faith negotiation, but without requiring or limiting the terms of such an arrangement, this balance can be effectively achieved.