APPENDIX A: ADVANCE NOTICE LAWS IN OTHER COUNTRIES

Many countries now have legislative requirements for advance notice of plant closings and mass layoffs. A 1980 International Labour Office (ILO) report identified at least 38 countries with laws requiring employers to provide some form of advance notice of work force reductions or collective dismissals of workers.104

Advance notice laws are particularly common in Western Europe, Most members of the European Community (EC) have complied with a 1975 directive from the EC governing council that called on member states to "approximate in law" some common requirements for notice and consultation with workers when undertaking collective dismissals.los Many non-EC members in Western Europe also have adopted advance notice requirements, and in some cases these go beyond the EC directive.

In North America, advance notice laws are in effect in several Canadian Provinces, and for employers under the jurisdiction of the Canadian federal government; Mexico has procedures for government review of collective dismissals of employees. A number of African and Asian countries require advance notice or government review of the decision to dismiss workers,

Besides special provisions that apply to collective dismissals, many countries also have laws requiring employers to give notice before dismissing individual employees. In some countries, the requirements for individuals also apply in work force reductions or collective dismissals. Japan, for example, requires employers to provide 30 days' notice before dismissing workers except in cases of inevitable cause (such as a natural calamity) or when the worker is to blame for the dismissal,106 The discussion below focuses on laws specifically related to collective dismissals.

The Mechanics of the Advance Notice Process

A wide range of approaches is apparent in different countries' programs related to work force reductions. Some require only that employers provide advance notice to the employees, an employee representative, or a government agency. In other countries, the employer must consult, and in some cases negotiate, with the employee representative before making a final decision to dismiss the workers. Several countries, mostly in the developing world, require employers to request approval from a government agency before going ahead with the dismissals.

Notice provisions may be tied to other requirements as well. In some countries, for example, employers must consider measures to minimize the dismissals (e.g., by retraining workers for different jobs within the firm, or relocating workers to different branches of the firm); some require employers to give severance pay to dismissed workers.

The discussion that follows is based mainly on advance notice requirements in several Western European countries and Canada. In many of these countries, advance notice is only one part of a package of adjustment services available to displaced workers and their communities. These adjustment services, and economic development programs as well, are an important part of the context in which notice takes place. This discussion is confined mostly to advance notice, and its relationship to prompt delivery of services to workers, but does not extend to the broader context of economic development or community adjustment programs.

Notice or Consultation With Employees

The ILO study identified at least 19 countries that required employers to provide advance notice to employees, either directly or through an employee representative such as a union.107 Notice requirements differ greatly among countries; they may also vary according to the purpose of notice, the size of the company, and the number of workers to be dismissed.

Consultation provisions are common in many Western European countries. In France, West Germany, and Ireland, for example, employers must

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104 International Labour Office, ***Termination of Employment at the Initiative of the Employer,*** International Labour Conference, 67th sess., 1981, Report VIII(1) (Geneva: 1980). In the discussion below, OTA has used ILO's terms wherever possible to avoid confusion. "Work force reduction" refers to the dismissal or long-term layoff of workers because of economic, technological or structural changes affecting an enterprise. The term "collective dismissal" is used to refer to special procedures governing the dismissal of more than one worker. Some countries also have special procedures governing the dismissal of individual workers.

105 "'' Council Directive of 17 February 1975 on the Approximation of the Laws of the Member States Relating to Collective Redundancies, " ***Official Journal of the European Communities,*** 75/129/EC No. L 48/29-30, Feb. 22, 1975.

106 Tadashi A. Hanami, "Japan," ***Workforce Reduction in*** Undertakings: ***Policies and Measures for the Protection of Redundant Workers in Seven Industrialized Market Economy Countries,*** Edward Yemin (cd,) (Geneva: International Labour Office, 1982), p. 181. In addition, Japan has several laws designed to protect workers in certain depressed industries from redundancy, or to facilitate their adjustment to new employment. For a discussion, see Ibid., pp. 168-169, and T.A.Hanami, "Japan, " ***International Encyclopedia for Labour Law and Industrial Relations*** (The Netherlands: Kluwer Law and Taxation Publishers, 1985 supplement).

107 1nternational Labour Office, op. Cit., p. 74.

provide information and consult with a works council or an employee representative about avoiding or reducing the number of dismissals, and mitigating the impact of the dismissals. In the United Kingdom, employers must consider the views of the trade union or other employee representative, and give reasons if they do not act on these views.

In a few countries, the consultation process may lead to negotiations between the employer and employee representatives. In Sweden, for example, an employer cannot dismiss the workers until after the union is given the opportunity to negotiate. If an acceptable outcome to the two parties still is not reached, a labor court must rule before dismissals can be carried out.

Notice to Government Agencies

ILO reported in 1980 that some 33 countries had laws requiring employers to notify a government agency in advance of collective dismissals of workers. In some countries, notice to the government agency follows or is concurrent with notice to the employees or the workers' representative, while in other countries the employer is required only to notify the government.

Often, the purpose of notifying the government agency is not explicitly stated in the law, but several purposes may be deduced. In some cases, the main purpose is to allow the government time to plan and mobilize assistance for workers and communities, In others, the advance notice also gives the government a chance to consult with the employer or employees' representative about the dismissal decision. In some countries, a government agency can delay the impending dismissals for a specified period of time; and in some, the government can deny permission to dismiss the workers.

The purpose of notice may determine what government agency is to be notified. For example, if negotiation or review of the employer, decision is authorized, notice is sometimes given to an industrial court or arbitration body. If the aim of the notice is to help provide services to workers, the agency receiving notice is likely to be an employment office or a labor ministry.

Canada is an example of how advance notice can be combined with rapid provision of services to workers affected by plant closings or mass layoffs. Seven of the twelve Canadian Provinces and territories have notice requirements; certain classes of workers are also covered by national law. About three-quarters of Canada's work force is covered by advance notice requirements.

When government agencies receive notice of a closing or mass layoff, a small Federal agency, the Industrial Adjustment Service (IAS), immediately steps in with an offer to help the workers find new jobs. Providing technical and modest financial assistance, the IAS helps to establish labor-management adjustment committees that work to place workers in *new* jobs as quickly as possible. The committee is headed by an independent chairman, selected from a list of experienced people. IAS services are available throughout Canada, and usually begin well in advance of the layoffs or closings. In Provinces that do not require notice, employers may volunteer information about impending layoffs or closings, or IAS may learn of them through news accounts or word of mouth.

When is Notice of Coiiective Dismissals Required?

The circumstances that trigger notice vary considerably. The laws in Western Europe often take into account the number of workers to be dismissed, the size of the firm, and the time period over which the dismissals are to occur. For example, in Denmark, the collective notice requirements are triggered when enterprises employing 20 to 99 workers plan to dismiss 10 or more wage earners in a 30-day period. Enterprises employing 100 to 299 workers must provide notice when 10 percent or more of the work force would be dismissed over the 30-day period; those firms that employ 300 or more workers must provide notice when at least 30 dismissals are called for,

This approach is one of two options given to EC members to comply with the European Council's 1975 directive on collective redundancies. The other option would require notice when at least 20 workers would be dismissed over a period of 90 days, regardless of the number of people normally employed in the establishment.

Length of notice varies, as well, In Canada, the federal notice provisions (which apply only to a small proportion of the Canadian work force) require that employers notify the Minister of Labour 16 weeks before dismissing 50 or more employees who have worked 3 consecutive months or more. Six of the seven laws—those of Manitoba, Newfoundland, Nova Scotia, Ontario, Quebec, and the Yukon—require at least 8 weeks' notice when 50 workers are to be dismissed, and 16 weeks when dismissals will affect 500 or more workers. Some are more stringent; Nova Scotia and Quebec, for

example, require 8 weeks' notice when as few as 10 workers are dismissed, and the Yukon requires 4 weeks' notice when 25 to 49 workers would be dismissed. New Brunswick's law, passed in 1982 but not fully proclaimed in effect until December 1985, applies only to group dismissals of workers covered by collective agreements. It requires employers to provide 4 weeks' notice before dismissing 25 or more such workers if they comprise at least 25 percent of the work force.

Several Provinces (Manitoba, New Brunswick, Nova Scotia and Ontario) allow employers to use payment in lieu of notice in group dismissals. Some Provinces also require the employer to keep benefits in effect during this period. (These options and requirements should not be confused with mandatory severance payments, which employers have to pay certain workers when making group dismissals in Ontario and under the federal code,)

Among EC members, employers generally consult with an employees' representative before officially notifying a government agency, Sometimes, the period of formal notice to the government may be quite brief. The 1975 directive of the EC (which most members have complied with) requires only 30 days' formal notice to a government agency before dismissals can begin.105 However, this notice is preceded by open-ended consultation with the workers' representatives, and does not obviate any provisions governing individual rights in dismissals.1[09] The EC directive also suggests that member countries empower the government agency to extend the notice period so that the agency can "seek solutions in the problems raised by the projected redundancies, ''no

In Sweden, which is not an EC member, the district labor board must be given 2 months' notice when 5 to 25 workers are to be dismissed; 4 months' notice when 25 to 100 workers are involved, and 6 months' notice when more than 100 workers are to be dismissed. The union must be notified at least 1 month before the dismissals; however, since employers must give the union an opportunity to negotiate, notice to the workers is often the first step in the process.

[108]Countries can grant the government authority the power to reduce or extend the notice period,

[109]Technically, the directive does not state that consultation with workers must begin before notification of the public authority. However, the notification is to contain, among other things, all relevant information about consultations with workers' representatives. This indicates that the consultation process must precede notice.

[110]"Council Directive of 17 February, 1975," Op cit., Section 3, article 4.

Consultation and Information Requirements

In countries that require notice but not consultation, the employer may have to provide a written statement of intent to dismiss a certain number of workers at a certain time, but beyond that has few obligations to offer information about the dismissals. Where the law requires consultation, the employer may have to provide much more information.

Under the EC directive, for example, an employer planning collective dismissals is to consult with the workers' representative "with a view to reaching an agreement. " At the very least, the consultations are to address "ways and means" to avoid the dismissals or reduce the number of workers affected by them, and ameliorate the consequences of the dismissals. The employer must supply "all relevant information, " and give a written account of the reasons for the proposed dismissals, the number of workers to be dismissed, the number of workers ordinarily employed at the establishment, and the time period for the dismissals. The same information must be provided to the relevant government agency, together with information about the results of the consultation with the workers' representatives.

Some EC countries require more information than the minimum specified in the directive. In England, for example, the employer must disclose to the union the methods proposed for selecting employees to be dismissed, and for carrying out the dismissals.[111] In France, the information provided to the government must include (among other things) the economic, technical, or financial reasons for the dismissals, and the efforts made to reduce the number of dismissals and encourage the reemployment of the workers.[112]

Many Western European countries also require companies to give works councils—and, in some cases, government agencies—substantial information about future plans that might affect employment. For example, in West Germany, an employer must disclose to the works council any proposed plans for changes in the organization that could lead to redundancies or otherwise disadvantage the work force. Also, West German employers must notify the regional employment agency of foreseeable changes over the next year that might lead to the dismissal of workers or downgrading of personnel. The opinion of the works council on the change

[111]*Halsbury's Statutes of England,* vol. 45, Continuation Volume 1975 (London: Butterworths, 1976), p. 2412.

[112]Jean Pélissier, "France," ***Workforce Reductions in Undertakings: Policies and Measures for the Protection of Redundant Workers in Seven Industrialised Market Economy Countries,*** op. cit., p. 63.

is appended to the notice. The purpose of the notice, according to one source, is to facilitate "long-range observation of labour market developments and to permit all parties concerned to take preparatory steps that would smooth the transition to new employmerit.[113]

Consultation is not generally required in Canada; however, in some jurisdictions, employers maybe required to participate in developing an adjustment program after formally notifying a government agency of planned dismissals. This is mandatory for employers who fall under the jurisdiction of the federal labor code. Upon giving notice to the government, these employers must establish joint planning committees, comprised of representatives of management and labor. The committees have the task of developing an adjustment program to eliminate the need for dismissals or to minimize their impact on workers and help the workers find new jobs. In some Provinces (Manitoba, Ontario, and Quebec), the Provincial labor minister, upon being given notice, can require employers to cooperate in adjustment programs.

Government Review of the Decision To Dismiss Workers

Several countries require employers to seek government authorization for collective (and in some cases individual) dismissals. The ILO survey identified 15 countries as having explicit requirements for government authorization of work force reductions (Algeria, Chile, Colombia, France, India, Iraq, The Netherlands, Panama, Portugal, Peru, Senegal, Sri Lanka, Spain, the Sudan, and Zaire). In several other countries (the Congo, Indonesia, Venezuela, and Mexico), prior authorization from a disputes board or arbitration body is needed.

As the list suggests, requirements for government consent are more common among developing countries than among highly industrialized countries.114 However, in France, employers must consult with an employee representative before giving notice of a planned dismissal to the Labour Director of the department. After getting the notice, the Director has 30 days to review the case (7 days when fewer than 10 dismissals are involved). If the Director does not deny the request, the dismissals can proceed. Appeals, by either the employees or the employer, can be taken to the Ministry of Labour or an administrative tribunal,

International Organizations: Agreements, Standards, and Guidelines

European Community (EC)

Several provisions from the February 1975 directive of the Council of the European Community on advance notice and consultation on collective dismissals have been discussed in the relevant sections above. To sum up, the EC directive pertains to collective dismissals for reasons not related to the individual worker concerned. It gives two options for determining the number of dismissals that trigger notice and consultation requirements, It specifies a procedure by which employers are to consult with workers' representatives when considering collective dismissals, It also specifies that employers are to provide at least 30 days' notice to a public authority before undertaking collective dismissals. As of May 1986, 10 of the 12 member states of the EC have enacted or revised laws to comply with the directive.

International Labour Organisation (ILO)

The ILO is a special agency of the United Nations. In June 1982, delegates to the ILO adopted a convention concerning termination of employment at the initiative of the employer. The convention contains supplementary provisions on consultation with workers' representatives and notification of the competent public authority in the event of termination of employment for economic, technological, structural or similar reasons.[115]

The ILO delegates also adopted a recommendation that, among other things, urged: 1) employer consultation with workers' representatives on major changes in undertakaings; 2) consideration of measures to avert or minimize dismissals (measures such as internal transfers, training and retraining, restrictions on overtime and reduction of normal work hours); 3) establishment of criteria for termination of employment; 4) provision of a certain priority of rehiring to the dismissed workers; and 5) adoption of measures by a competent authority to place workers as soon as possible in alternative em-

[113] Werner Sengenberger, "Federal Republic of Germany, " ***Workforce Reductions in Undertakings: Policies and Measures for the Protection of Redundant Workers in Seven Industralised Market Economy Countries,*** op. cit., pp. 91-92.

[114] Edward Yemin (cd.), "Comparative Survey, " ***Workforce Reductions in Undertakings: Policies and Measures for the Protection of Redundant Workers in Seven Industralised Market Economy Countries,*** op. cit., pp. 12-13.

[115] International Labour Conference Convention 158, "Convention Concerning Termination of Employment at the Initiative of the Employer," adopted June 22, 1982.

ployment, with training or retraining where appropriate.

Organisation for Economic Cooperation and Development (OECD)

In 1976, OECD issued voluntary guidelines for multinational enterprises operating in the territories of member countries. A voluntary guideline on advance notice was included. It recommends that enterprises,

> . within the framework of law regulations and prevailing Iabour relations and employment practices, in each of the countries in which they operate, should: in considering changes in their operations which would have major effects upon 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, and where appropriate to the relevant government authorities, and co-operate with the employee representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects.[117]

[116] International Labour Conference Recommendation 166, "Recommendation Concerning Termination of Employment at the Initiative of the Employer," adopted June 22, 1982.

[117] *The OECD Guidelines for Multinational Enterprises* (Paris: Organisation for Economic Co-operation and Development, 1986], pp. 15-16.