PART II

Special Chapter on Foreign Investment Issues in the OECD Fisheries Sector

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Executive Summary

This chapter examines the potential benefits from liberalising foreign direct investment in the fisheries sectors of OECD countries. Foreign direct investment (FDI) is defined as an activity in which an investor resident in one country obtains a lasting interest in, and an influence on the operation of, an entity in another country. The analysis reveals that there are significant restrictions on inward FDI to the fish harvesting sectors of most OECD countries. This stands in stark contrast to most other economic sectors in OECD countries where barriers to FDI have fallen significantly over the past few decades and where FDI restrictions are now generally low. In the meantime, restrictions on FDI to the fish processing sector are very low. The paper presents a cross-country comparison of FDI restrictiveness in the sector using an index of restrictiveness based on the type and degree of restrictions in place in each country.

FDI is an important driver of economic growth as the internationalisation of production helps to better exploit the advantages of enterprises and country resource endowments, increase competitive pressures in domestic markets, and stimulate technology transfer and innovative activity. Similar benefits can be expected in the OECD fisheries sector if the restrictions on inward FDI are relaxed. Unfortunately, there is limited empirical evidence on both the scope and impacts of FDI in the OECD fishing sector and so it is difficult to draw definitive empirical conclusions about the potential net benefits from investment liberalisation.

In general, however, FDI is as good or as bad as the domestic policy framework governing the sector to which the investments are directed: the extent to which the potential benefits from FDI liberalisation would be realised depends critically on the management regime in place in the host country. Under effective management regimes with well-defined and enforced access rights, the relaxation of foreign investment rules will lead to improvements in economic efficiency and overall income growth and, depending on the relative profitability between foreign and domestic harvesting, some replacement of domestic fleet may occur. However, open access regimes will result in an inflow of capital to the country, some crowding out of domestic investment and adverse impacts on resource stocks (although the decline in resource sustainability would have occurred without the foreign capital). Under regulated open access regimes, inward FDI could have adverse effects on the profitability of the domestic industry, but no effects on the resource stock.

Three major obstacles to liberalisation of FDI rules are identified in the paper. First is a concern over sovereignty, in particular with respect to national pride, economic wealth and national security. The fish harvesting sector retains particular resonance in the cultural identities of many OECD countries and there is a reluctance to open the sector to the foreign-owned vessels and companies who may compete with the domestic industry for catches. The second obstacle, related to the sovereignty issue, is a desire to protect the

domestic harvesting industry. Calls for domestic industry protection are often bolstered by industry and coastal communities voicing underlying concerns that foreign entry into the sector will potentially alter the pattern of income distribution. Third, concerns over potential difficulties in monitoring and enforcing domestic regulations on foreign companies operating in a country's EEZ have also been an obstacle to liberalisation, particularly if it is believed that such companies may use complex corporate structures to avoid compliance costs. The use of mechanisms such as environmental auditing and performance bonds may help ease such concerns.

The impacts of FDI on the fisheries sectors of developing countries is probably of more immediate policy concern as most flows of FDI are from OECD to non-OECD countries. There is a risk that, in the quest for international investment to assist in increasing economic growth and alleviating poverty, developing countries could engage in regulatory competition. This could potentially induce a "race to the bottom" or "regulatory chill" with respect to environmental regulatory standards for their fisheries sectors. Just as with OECD countries, the ability of developing countries to maximise the benefits of FDI while minimising the adverse effects depends on the regulatory regime in place and the effectiveness with which it is enforced. The key concern for developing countries is therefore adequacy of their domestic institutional frameworks in ensuring sustainable fisheries management while pursuing a range of development objectives, and this is a policy imperative that goes beyond the issue of FDI.

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Introduction

Foreign direct investment (FDI) is defined as an activity in which an investor resident in one country obtains a lasting interest in, and an influence on the management of, an entity in another country (OECD 2003b, p. 157). Such investment is considered to be an important driver of economic growth both in OECD and non-OECD countries as the internationalisation of production helps to better exploit the advantages of enterprises and countries, increase competitive pressures in domestic markets, and stimulate technology transfer and innovative activity (OECD 2003b). As a result, there has been a tendency towards reducing or eliminating hindrances to FDI, as long as this does not conflict with other legitimate policy objectives.

Barriers to FDI have, in fact, fallen significantly in virtually all OECD countries over the past few decades. Overall, FDI restrictions are now generally low in OECD countries. There are almost no restrictions on FDI inflows into manufacturing, aside from economy-wide restrictions such as notification or screening requirements. The bulk of the remaining restrictions are concentrated in the service sector, with electricity, transport and telecommunications being the most constrained, followed by finance. While these sectors have opened up somewhat in recent years, restrictions remain relatively high. For example, FDI barriers have declined in the telecommunications and air transport industries, which were almost entirely closed in the early 1980s, but remain significantly higher than in other service sectors (OECD 2003b, p. 172).

The decline in FDI barriers has been coupled with a significant increase in the flows of FDI within the OECD area in the last half of the 1990s, with most of the activity consisting of mergers and acquisitions (including privatisation deals) of existing businesses. A significant share of FDI in the OECD area takes place between countries bound by regional trade agreements and among geographically close countries. For example, most European countries tend to host relatively more FDI originating from EU countries than from elsewhere. This pattern has become more accentuated over time with greater integration of the EU countries through the single market programme and economic and monetary union.

To a large extent, however, the fisheries sector has not been part of this trend. There remain significant restrictions on FDI in the fisheries harvesting sector in many OECD countries. OECD countries clearly place considerable policy importance on constraining the possibilities for inward FDI in this part of their domestic fisheries sectors; the degree of restrictiveness matches that observed in other sectors that are often seen as "critical" to countries' sovereignty and economic security. Reasons underlying the reluctance of countries to liberalise FDI restrictions in the fisheries sector include sovereignty issues, the need to maintain surveillance and enforcement control over the fishing fleets operating in their EEZs, and protection for the domestic fishing industry and food security.

In contrast, there are fewer restrictions on inward FDI in the processing sector. In general, this sector is similar to other manufacturing sectors in that FDI inflows are primarily subject to economy-wide restrictions such as notification or screening

requirements. The degree of FDI restrictions depends to some extent on the degree of vertical integration between harvesting and processing in the host country by the company undertaking the investment.

The purpose of this paper is to examine the potential benefits of liberalising FDI restrictions in the OECD fisheries sector, the obstacles to such liberalisation, and potential measures for addressing the obstacles. The paper builds on work undertaken in the Committee for Fisheries' previous work on fisheries market liberalisation (OECD, 2003a). The section on FDI in the fisheries sector reviews the motives for seeking to undertake foreign investment and the empirical evidence (or lack thereof) of FDI flows in the sector. The following section discusses different types of barriers to FDI that are in place, while the next section introduces an index of FDI restrictiveness that provides an indicator for cross-country comparison. The potential benefits of liberalising FDI in the sector are addressed in the following section with the main conclusion that the extent to which potential benefits will be realised will depend on the effectiveness of the fisheries management regime in place. The next section reviews the obstacles to liberalisation of FDI flows in the harvesting sector and suggests how some of these obstacles might be approached. The last two sections are: The flow of FDI from OECD to non-OECD countries for fisheries investment raising a number of issues for both sets of countries and the last section with some concluding remarks.

FDI in the fisheries sector

Foreign direct investment in the harvesting sector primarily takes two forms: investment in vessels or the purchase of quota.[1] These two forms of investment are often interlinked as, in some countries, quota is attached to a vessel and is transferred with the vessel (for example, in some fisheries in Norway and Denmark), in which case, the value of the quota is capitalised in the value of the vessel. The main motive for undertaking FDI is to gain access to fisheries resources in the host country. This is fairly obvious in the case of investment in quota and in vessels that have quota attached. Such access will often help in obtaining raw material for processing plants owned by the investing company, or assist in utilising idle vessel capacity. The purchase of vessels without quota is primarily a means of expanding or diversifying the operations of a fishing company. Intangible assets specific to the company (such as technologies, managerial skills, etc.) help to explain such investments, in addition to the company's expectation of obtaining a higher rate of return on the investment than in available alternatives.

The processing sector is closer in nature to industries in the manufacturing sector. Multinational companies undertake international investments in order to ensure their investment portfolio works to maximise the net wealth of the company. The decision to undertake FDI in a particular country's processing sector revolves around a multinational company's desire to locate production closer to raw material inputs, reduce transport costs to final markets, or exploit cost advantages (such as labour costs). They may also be seeking to internalise the benefits from technology that may have been developed by the company, and from vertical integration (Blonigen, 2005; Krugman and Obstfeld, 1994).

Data on FDI flows in the fisheries sector are difficult, if not impossible, to obtain. Such data are masked in official collections of statistics as FDI flows in the fisheries sector are aggregated with FDI flows in the agricultural sector. There are *ad hoc* estimates of FDI flows in particular countries, but these are rare and not useful for comparative purposes. For

example, Ito and Fukao (2005) estimate that the cumulative value of Japanese FDI outflows for the fishery sector between 1950 and 2001 was JPY 257 billion. The authors estimate that there were no FDI inflows to the Japanese fishing sector over the period.

There are some data on the presence of foreign-owned vessels operating in selected OECD countries. In 2004, for example, there were 86 UK registered foreign-owned vessels over 10 metres in overall length and landing at least 2 tonnes of quota stocks fishing against UK quota in 2004 (Table II.1). Of these vessels, 55% were Anglo-Spanish and 37% were Anglo-Dutch. It is worth noting that there has been a 40% decline in the number of foreign-owned vessels in the UK fleet since 1998. There has also been a recent buyout of some very large distant water fishing vessels, with associated quota, by an Icelandic company. Data on the ownership of the UK registered fleet for July 2005 indicate that the foreign ownership of vessels in England and Wales is heavily skewed towards the larger vessels (greater than 30 m in length) (DEFRA personal communication, August 2006). While this information doesn't detail the amounts of FDI that took place in the UK over the period, it does provide an indication that foreign companies place a value on access to the resources of other countries.[2]

Table II.1. **Foreign ownership of vessels in the UK, 1998 to 2003**[1]

Number of vessels

Ownership	1998	1999	2000	2001	2002	2003	2004	2005
Anglo-Dutch	36	34	34	39	38	41	32	32
Anglo-Spanish	97	82	84	77	77	81	47	46
Other[2]	7	6	6	5	6	9	7	9
Total foreign owned	**140**	**122**	**124**	**121**	**121**	**131**	**86**	**87**
Total British owned	**n.a.**	**1 623**	**1 506**	**1 338**	**1 279**	**1 108**	**995**	**973**

n.a.: Not available.

1. Covers British registered fishing vessels over 10 metres in overall length and landing 2 tonnes or more of quota stocks in a year.
2. Includes Anglo-Belgian, Anglo-Icelandic and Anglo-Irish vessels.

Source: DEFRA (2001, 2002, 2005, 2007), Scottish Executive (2006).

Hatcher *et al.* (2002) note that there is also significant Spanish ownership of the French fishing fleet and, to a lesser extent, of the Irish fleet. They also note a Dutch presence in both the Belgian and German fleets. To a large extent, these ownership patterns reflect historical fishing activities and were in place before the advent of the tighter FDI ownership rules in France and Belgium, in particular.

Limited data of inward FDI to the fisheries sector are also available for selected non-OECD countries and are reported in the investment climate reports prepared by the US State Department (US State Department, 2005a, b, c). In 2003, for example, Vietnam had a total of 105 foreign-financed projects in the fisheries and aquaculture sector with a project FDI inflow of USD 290 million (of which USD 150 million has been implemented). FDI inflows to the Moroccan fisheries sector totalled USD 15.4 million in 2003, while Chile's fisheries and aquaculture sector received a total of USD 107 million in inward FDI over the period 1999-2004.

Much of the FDI flows to these countries originate from OECD countries. For example, OECD countries were the source for over 90% of the total FDI inflows to Chile and Morocco for the period 1974-2004 and in 2003, respectively. Such data, while admittedly partial,

indicate that foreign investment flows are a feature of the international fisheries sector, at least with respect to developing countries. The key issues that arise as result of these investment flows to developing countries are discussed later in this document.

Different types of FDI barriers

A range of barriers to inward FDI in the fisheries sector are in place in OECD countries. The results of a survey of FDI restrictions for the fishing and processing sectors in OECD countries are presented in Annex II.A1. A summary of the information from the survey is presented in Table II.2. This is an update of the survey presented in the OECD report on *Liberalising Fisheries Markets* (OECD, 2003a) and is supplemented by information from the OECD Code of Liberalisation of Capital Movements (see Box II.1). Essentially, the results have not changed markedly between the surveys.

The types of restrictions that are applied to the fisheries sector can be grouped into:

- foreign equity restrictions;
- screening and approval procedures; and
- constraints on genuine link, principal office and crew.

Foreign equity restrictions

Restrictions on foreign ownership are the most obvious barrier to inward FDI. They typically take the form of limiting the share of companies' equity capital that non-residents are allowed to hold in a vessel or company in the fish harvesting sector or a company in the processing sector. In those countries where individual transferable quota (ITQ) systems are in place, there may be restrictions on the foreign ownership of quota and the amount of quota that can be held by a given foreign investor.

Harvesting sector

Looking first at equity restrictions in vessels and harvesting companies, it can be seen from Table II.2 that a number of countries allow foreign investment up to a legislated maximum share in the equity of a given company. This limit varies significantly between countries:

- Australia, Canada, Greece and Mexico (< 50% foreign equity is allowed, for non-EU nationals in the case of Greece);
- Norway (< 40%);
- Denmark (< 33% for non-EU nationals); and
- New Zealand and the United States (< 25%).

Korea, Japan and Turkey have no restrictions on inward FDI to the sector. However, as will be discussed below, other restrictions on ownership of vessels in these countries have the effect of presenting significant barriers to FDI inflows. Iceland allows no inward FDI in its harvesting sector.

The situation with respect to the EU countries is more complex. Within the EU, there is an internal market characterised by the abolition between member State of obstacles to the free movement of goods, persons, services and capital. There are also no restrictions on the freedom of establishment of nationals of a member State in the territory of another member State (although some member States have put restrictions on the establishment of nationals from countries that recently acceded to the EU). The decision as to whether EU

Table II.2. **Summary of FDI restrictions in the OECD fish harvesting sector**

	Foreign equity restrictions	Screening and approval	Other restrictions
Australia	< 50%	Notification required if < AUD 50 million National interest test if > AUD 50 million	Owner of vessel must be Australian citizen or company registered in Australia.
Belgium	Restricted to EU nationals	Notification required	Principal office must be in Belgium. Genuine economic link required which can be demonstrated through 50% of the crew being recruited from persons living in the Belgian coast area and actually reside there, or more than 50% of the annual catch is landed in Belgian ports and a substantial part of the catch is offered for sale at local auctions.
Canada	< 50%	Notification required	Must hold Canadian fishing license.
Denmark	< 33% for non-EU nationals	Notification required	Must demonstrate genuine economic link. Ownership limited to registered commercial fishers (largely restricted to Danish nationals).
Finland	Restricted to EU nationals	Notification required	FDI may be allowed through an enterprise incorporated in Finland
France	Restricted to EU nationals	Notification required	Genuine economic link required for quota ownership Vessel must be managed by business operating on French territory Captain and First Officer must be French nationals.
Germany	No restrictions	Notification required	Acquisition to take place through company incorporated in Germany registration in German flag register limited to German nationals or companies incorporated in Germany.
Greece	< 49%	Notification required	
Iceland	No FDI allowed	Notification required	
Ireland	Restricted to EU nationals	Notification required	Registration of vessel requires ownership by citizens of EU and a license to fish in Irish waters.
Italy	Restricted to EU nationals	Notification required	Fishing in territorial waters reserved to Italian nationals.
Japan	No restrictions	Approval and screening from government	Ownership restricted to Japanese individuals, companies where the representatives and ? of directors are Japanese, and companies with head offices in Japan and where all representatives have Japanese nationality.
Korea	No restrictions	Screening and approval from central and provincial governments	Permit or license required.
Mexico	< 49%	Must show economic benefits	Vessels must be registered in Mexico.
Netherlands	Restricted to EU nationals		Ownership restricted to Dutch nationals, companies registered under Dutch law, established in the Kingdom, and having their actual place of business in the Netherlands.
New Zealand	< 25%	Approval from Ministry of Fisheries and Treasury requiring…	
Norway	< 40%	Approval from government	Ownership must be by Norwegian citizen or Norwegian company Ownership reserved for professional fishers.
Poland	No restrictions	Notification required	Quota holding restricted to Polish nationals only Crew must hold Polish certificate of competency
Portugal	Restricted to EU nationals	Notification required	Genuine economic link required
Spain	No restrictions	Notification required	
Sweden	Restricted to EU nationals	Notification required	Half the owners must be Swedish citizens or Swedish juridical persons Genuine link required.
Turkey	No restrictions	Notification required	License restricted to Turkish nationals.
United Kingdom	Restricted to EU nationals	Notification required	Genuine economic link required Must be controlled and directed from within the UK 75% of crew must be EU nationals.
United States	< 25%	Approval required	Company must be incorporated in the US.

countries allow inward FDI from non-EU countries is left to individual countries and this varies significantly between EU countries. A group of EU countries – Belgium, France, Ireland, Italy, Portugal and Sweden – do not allow inward FDI from non-EU countries. Six other EU countries – Denmark, Germany, Greece, Poland, Spain and the United Kingdom – allow FDI from non-EU countries, although Greece and Denmark have restrictions on the amount of non-EU equity. A common restriction on inward FDI in EU countries (even that coming from other EU countries) is that a genuine economic link with the host country must be demonstrated. This is discussed further below.

Box II.1. **OECD Code of Liberalisation of Capital Movements**

The objective of the Code of Liberalisation of Capital Movements, adopted in 1961, is to provide a basis for the progressive non-discriminatory liberalisation of capital movements including the right of establishment in a foreign country for business purposes (OECD 2004). The Code is the only multilateral legally binding instrument that seeks to further liberalise capital movements. Under the Code, OECD member countries undertake to:

- notify the Organisation of any existing measures affecting capital movements;
- apply any measures without discrimination among OECD members;
- liberalise all the operations specified in the Code, except with respect to items against which a reservation has been lodged; and
- not to introduce any new restrictions which would not be covered by reservations (the "standstill" principle).

Implementation of the Code, in particular by removal of restrictions on cross-border capital flows and the lifting of country reservations against the Code, involves "peer pressure" exercised through policy reviews and country examinations to encourage unilateral rather than negotiated liberalisation. Reservations to the Code generally cover investments in the areas of real estate, broadcasting, air transport and fisheries (most notably the harvesting sector).

Source: OECD (2004).

Data are not widely available on the ownership patterns of the EU fishing fleet in response to the restrictions imposed by EU countries. Some data on the ownership structure of the UK fleet was presented in the previous section.

Restrictions on the ownership of quota by foreign interests are also widespread in OECD countries. These restrictions can either be implicit or explicit. Few OECD countries with tradable quota systems allow quota to be bought by foreigners, and even then, there are tight restrictions on the conditions under which the investment is allowed. In Australia, foreigners are allowed to buy quota (subject to the limits in Table II.2), but fishing is only allowed to be undertaken with an Australian registered vessel, or a vessel deemed to be an "Australian boat" which is owned by an Australian company. In New Zealand, foreign ownership of quota is permitted subject to certain national interest criteria being met, such as creation of jobs, development of new export markets, increased market competition, etc. In addition, no overseas person is allowed to have the right to exercise or to control the exercise of more than 40% of voting power. In some other countries, such as Denmark and Norway, the quota is often tied to a vessel and so the same restrictions that are in place for FDI in vessel ownership implicitly apply to quota ownership.

Processing sector

In contrast to the harvesting sector, there are no restrictions on investment in the processing sector in the OECD area in terms of the amount of foreign equity allowed. In countries where forward integration between harvesting and processing occur, there are usually limits on foreign holdings of fishing quota. In Canada, for example, fish processing companies which have more than 49% foreign ownership are not permitted to hold Canadian commercial fishing licences.

Screening and approval procedures

All OECD countries require some form of notification and approval procedures for FDI in both the harvesting and processing sectors. Depending on their implementation, obligatory screening and approval procedures can limit FDI through their constraining effects depending on the implementation of such practices. Prior approval of FDI, such as mandated for several OECD countries, could limit foreign capital if it is taken as a sign of an ambivalent attitude towards FDI, even though it may not be vigorously enforced. Simple pre- or post-notification is unlikely to have much impact on capital flows.

In the fisheries sector, approval procedures range from simple notification of the investment, either pre or post the investment taking place, to the requirement that the investor be able to demonstrate that the investment will result in economic benefits to the host country (for example, in Mexico). A number of countries require a middle course of action where approval is granted unless the investment is contrary to the national interest. In Australia, notification only is required for investments up to AUD 10 million, approval (normally without examination) for investments up to AUD 50 million, and for investments above AUD 50 million, approval is granted unless judged by the government to be contrary to the national interest. As noted in the previous section, New Zealand allows foreign ownership of quota provided it is in the national interest.

Constraints on genuine economic link, principal office and crew

Barriers to FDI also arise through a number of national regulations that impose further restrictions and requirements beyond limits on foreign equity holdings. These can have particularly restrictive effects on investment flows and can significantly increase the transactions costs of FDI. They may limit the freedom with which FDI can be undertaken in a country even if the "headline" restrictions in terms of foreign equity allowed are not, in themselves, very restrictive. Indeed, in some cases, such additional restrictions can be so tight and difficult for foreigners to meet, that FDI cannot be effectively undertaken. This represents a "Catch-22" situation where, for example, foreign investment is technically open, but there are nationality restrictions on who can own a license or quota in order to invest, without which it is not possible to be the foreign owner of a fishing vessel.

Such constraints are evident in a number of countries. In Japan, for example, while there are no restrictions on the amount of equity that a foreign holding may invest in the fishing sector, ownership of vessels is restricted to Japanese individuals, companies where the representatives and two-thirds of the directors are Japanese, and companies with head offices in Japan and where all the representatives have Japanese nationality. Such requirements create barriers and increase costs just as effectively as explicitly limiting the amount of foreign equity. Poland, Denmark and Turkey have similar sets of Catch-22 type restrictions.

As discussed above, a number of countries require potential investors to demonstrate a genuine economic link with the host country before inward FDI proposals can be approved. This reflects a concern by many countries that the exploitation of their fish resources by foreign companies should provide some economic return to the host country. In the absence of fisheries management arrangements that facilitate such trade (such as the use of internationally tradable quota systems or resource rent taxes), countries attempt to ensure an economic return by requiring that foreign investors develop economic links with the host country.

This is particularly the case in the EU many countries require such a link to be demonstrated, even by other EU countries. This requirement arose as a result of the long-running argument within the EU about whether one member State had the right to restrict access to their fisheries from other member States and concerns over "quota-hopping" (EU 1996; Churchill 1990; Morin 2000). It marked a compromise between the need to allow for the free internal movement of capital, the right for each member State to benefit from the fisheries resources in their EEZs and the need to provide some protection for the livelihoods of coastal communities (Lequesne 2004, p. 98). This is because, while the rights to fish in EU waters, to gain access to quota, and to hold a fishing licence are regulated by each member State individually, such regulations must be consistent with overall EU regulations regarding freedom of movement of capital, and maintain the "relative stability" of the distribution of fishing rights within the community. The economic link was a means of balancing the conflicting policy priorities and directions within the EU.

What constitutes a genuine economic link is not generally defined in the legislation of countries, but is often elaborated through the court system (Lequesne, 2004). For example, under legislation in the United Kingdom, fishing vessels are required to demonstrate a real economic link with the UK through one of the following four options:

a) landing at least 50% by weight of the vessel's catch of quota stocks into the UK; or

b) employing a crew of whom at least 50% are normally resident in a UK coastal area; or

c) incurring a given level of operating expenditure in the UK for goods and services provided in UK coastal areas; or

d) demonstrating an economic link by other means (including combinations of the above) providing sufficient benefit to populations dependent on fisheries and related industries.

In the case of Belgium, a real economic link must be demonstrated between the fishing activities of the vessel and the populations dependent on fisheries and related activities (Belgian Sea Fishing Service n.a.). This can be done by ensuring that, during the preceding calendar year, 50% of the crew of a vessel were recruited from among persons who live in the Belgian coast area and actually reside there, or where 50% of the annual catch was landed in ports along the Belgian coast and a substantial part of the catch was offered for sale at local auctions.

Other formal restrictions that can discourage FDI inflows include constraints on the ability of foreign nationals to manage or to work in affiliates of foreign companies and other operational controls on the business. Stipulations that nationals or residents must form a majority of the board of directors or vessel ownership, as is the case in Japan, New Zealand, Norway and Sweden, may undermine foreign owner's control over their holdings and, hence, may make them more hesitant to invest under such circumstances. The requirement that the principal office of the host company be located in the host country is also a common restriction and serves to raise the raising transaction costs of FDI.

With respect to restrictions on the crew of the vessel, France requires that the captain and first officer must be French nationals, and that the other crewmembers be nationals of an EU country. Some countries also require that crew obtain certificates of competency from their national authorities which can restrict hiring practices. For example, Poland requires members of crew to hold a certificate of competency issued and endorsed by the Polish Maritime Administration.

In addition to the formal barriers discussed above, FDI flows can be restricted by opaque informal public or private measures. While there is no systematic evidence of such barriers (due to their very nature), the Catch-22 type restrictions discussed above are representative of the types of labyrinthine processes that investors are required to undergo to meet approval standards in some countries.

An index of FDI restrictiveness

Using the results of the survey of FDI restrictions in the OECD member countries, an indicator of FDI restrictiveness can be developed in order to compare the degree of restrictiveness across countries and, potentially, over time. The concept is based on an aggregate indicator of FDI restrictiveness developed by the Productivity Commission in Australia (Hardin and Holmes, 1997) and further refined by the OECD (Golub, 2003). The indicator aims to systematically capture the main statutory barriers to FDI by weighting the key barriers according to their relative importance and then summing them so that they fall between 0 and 1 (with 1 being the most restrictive and 0 the least restrictive) (see Box II.2). The scores are presented in Table II.3.

Box II.2. **Indicators of FDI restrictions**

Indicators of FDI restrictions have been used as a means of standardising the extent of FDI barriers across countries in a number of studies. These have ranged from a simple count of the number of restrictions to the more complex index developed in the OECD. Following Holmes and Hardin (1997) and Golub (2003), an indicator of FDI restrictions in the fishing sector has been developed which provides a means of systematically pooling information on the various types of barriers to form an aggregate indicator. This can then be used to facilitate cross-country comparisons and, if there are changes in the fisheries FDI regime over time, reductions or increases in FDI restrictions in the future.

The scoring system is based on regulations in each country in three areas: the amount of foreign equity allowed; screening and approval processes; and other restrictions relating to flagging requirements, personnel and licensing. The scores are presented in Table II.3. The highest weights are given to foreign equity limits as foreign ownership is a necessary and essential condition for FDI. A non-linearity is built in to reflect the fact that a total ban on foreign ownership is significantly more restrictive than allowing a small foreign equity stake. Screening and limitations on management are generally less important, although this may mask the restrictiveness of "Catch-22" restrictions that may exist in some countries. The scores are added together to obtain an overall indicator of FDI restrictiveness. It is possible that the various scores sum to slightly more than 1 when foreign equity is not totally banned; in such cases the index is rounded down to 1.

Golub (2003) notes a number of limitations of the measures that need to be borne in mind when interpreting the results. The indicators cover statutory barriers and abstract from the more indirect obstacles affecting FDI, such as those related to corporate governance mechanisms or hidden institutional or behavioural obstacles that discriminate against foreign firms. Such non-statutory barriers, even if known, are very difficult to ascertain and quantify. It is also possible that some countries are more forthcoming than others in self-reporting their restrictions. This could result in more transparent countries receiving higher scores, not because they are more restrictive, but because they are more complete in their reporting. Finally, there is an element of judgment involved both in the scores allocated to various restrictions (which restrictions should carry greater weights?) and in standardising and putting into context idiosyncratic restrictions in individual countries.

Table II.3. **Weighting coefficients on FDI restrictiveness in the fisheries sector**

Type of restriction	Criterion	Weight
Foreign equity limits	No foreign equity allowed	1
	1-19% allowed	0.6
	20-34% allowed	0.4
	35-49% allowed	0.3
	50-74% allowed	0.2
	75-99% allowed	0.1
	no restriction	0
	Restricted to EU nationals	0.3
Screening and approval	Must show economic benefits	0.2
	Approval unless contrary to national interest	0.1
	Notification (pre or post)	0.05
Other restrictions	Genuine or economic link	0.4
	Restrictions on licenses and quota	0.2
	Principal office in the host country	0.1
	Crew restrictions	0.1
Processing restrictions	Conditions on cross-ownership of licences	0.2

The resulting indexes of FDI restrictiveness for the harvesting and processing sectors in OECD countries are depicted in Figures II.1 and II.2. The data are arranged in ascending order of restrictiveness in the harvesting sector. The indexes confirm that FDI in the harvesting sector is significantly more restricted than in the processing sector. Across the OECD, average score in the harvesting sector is around 0.6, while it is 0.1 in the processing sector. By way of comparison, the average score for the OECD across all sectors in 1998 was around 0.18, with the telecommunications sector around 0.34, banking 0.17, air transport 0.39 and manufacturing 0.09. While caution must be exercised in making such comparisons as the indexes differ to some extent in their construction and weighting systems, the comparison reveals the relatively high degree of FDI restrictions in the harvesting sector.

Figure II.1. **Restrictions on FDI in harvesting sector in the OECD**

0 equals least restrictive; 1 equals most restrictive

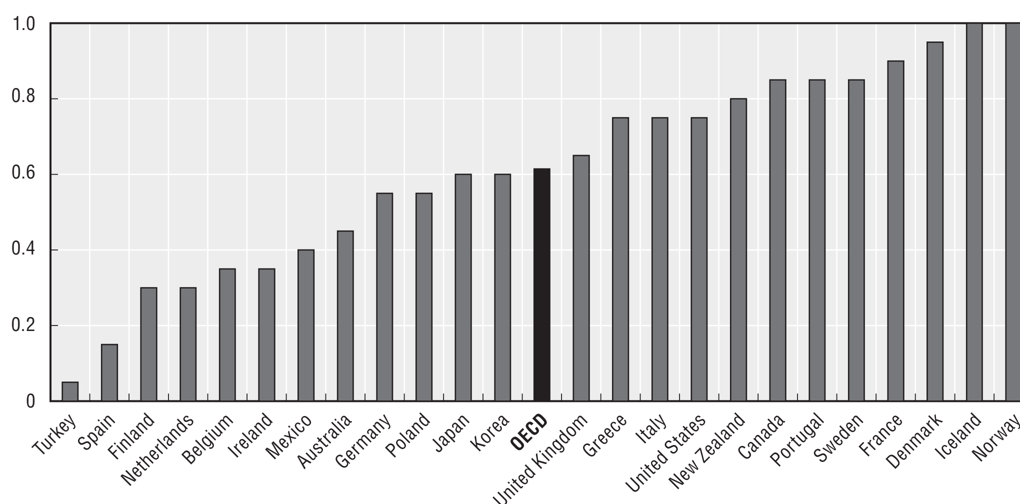
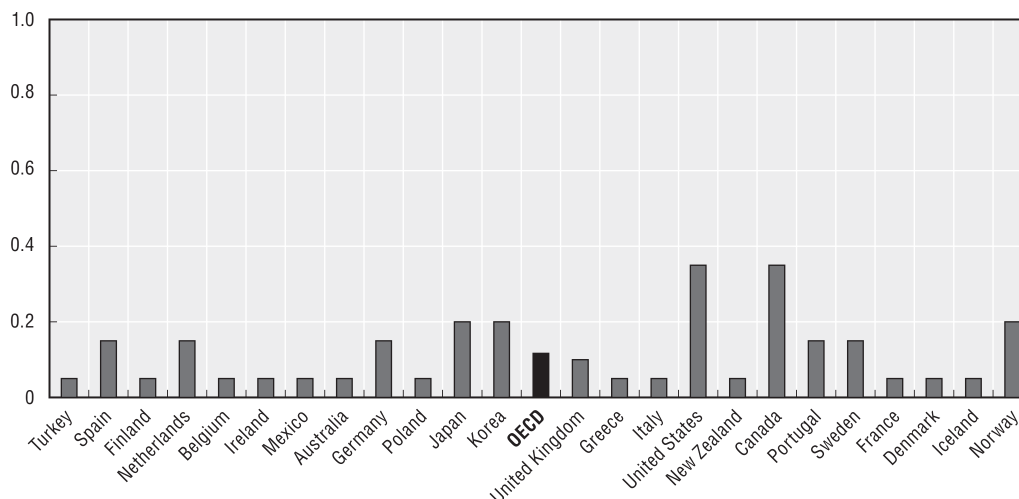


Figure II.2. **Restrictions on FDI in the processing sector in the OECD**

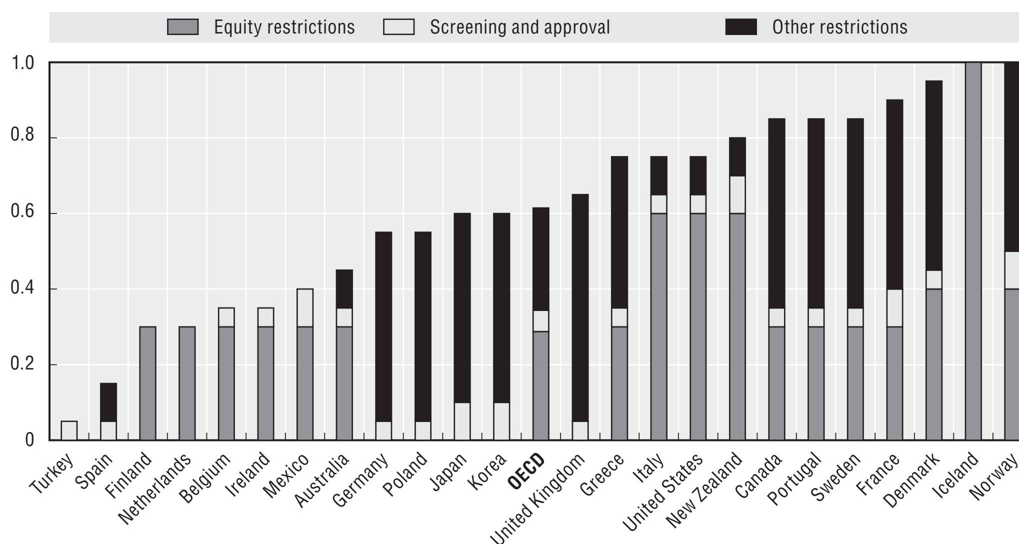
0 equals least restrictive; 1 equals most restrictive



The second main point worth noting is that two countries have scores of 1 in the index for the harvesting sector, yet only Iceland actually prohibits inwards FDI. This underscores the fact that, in some countries, a combination of FDI barriers can work to increase the effective restrictions on FDI to a degree approximating a ban on FDI. This is illustrated more clearly in Figure II.3 which shows the harvesting sector index broken down by the type of restriction.

Figure II.3. **FDI restrictions on the OECD harvesting sector, by type of restriction**

0 equals least restrictive; 1 equals most restrictive



Is there any pattern to the results from the index of FDI restrictiveness in the OECD harvesting and processing sectors? It can be argued that those countries that are relatively more "open" to inward FDI may also be those countries who are more dependent on fisheries exports for their economic performance. Figures II.4 and II.5 map the FDI restrictiveness indexes for the harvesting and processing sectors against the fish export intensity of

Figure II.4. **Fish export intensity and FDI index for harvesting sector**

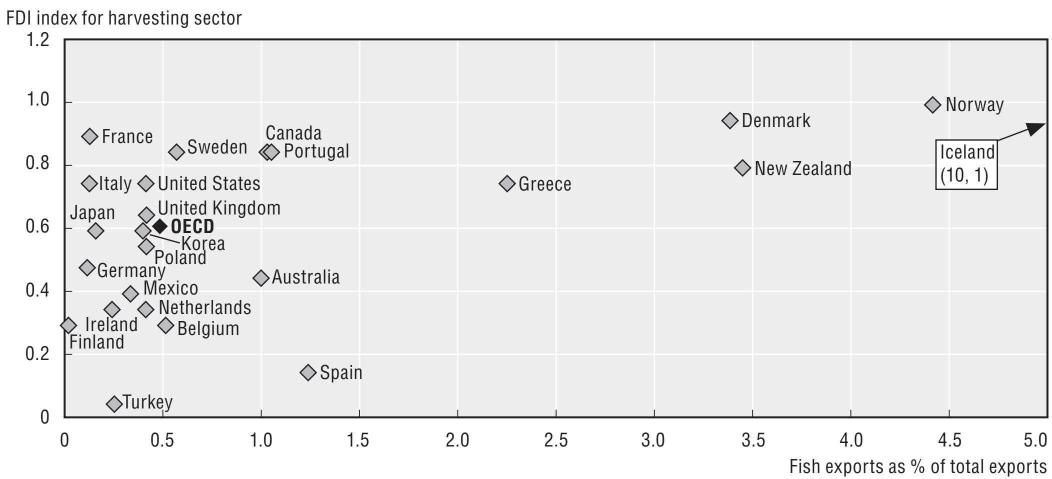
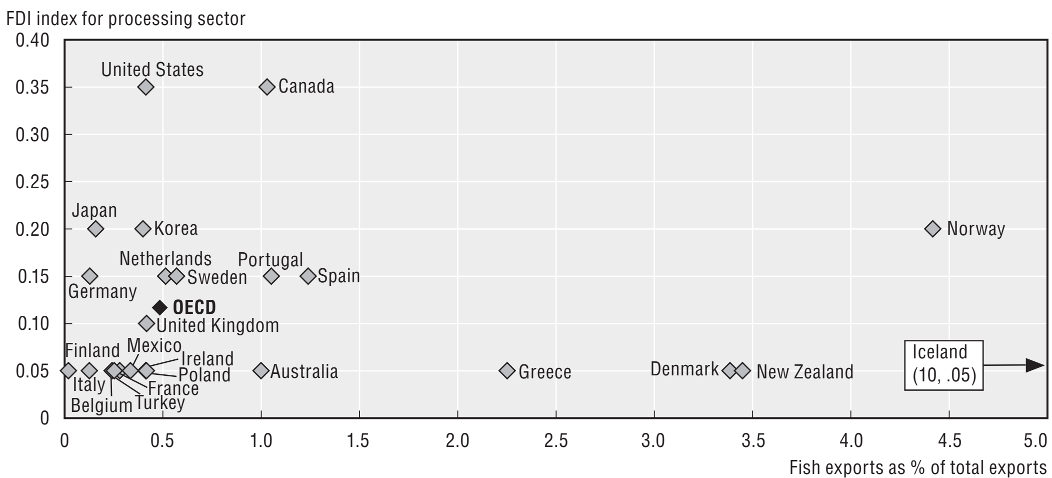


Figure II.5. **Fish export intensity and FDI index for the processing sector**



individual OECD countries, where fish export intensity is defined as the percentage of fish exports in total exports for each country. In terms of the harvesting sector, there is a positive relationship between the importance of fish exports in total exports and the degree of FDI restrictiveness. The opposite holds when considering the processing sector.

A reality check

The survey and the index discussed above portray a harvesting sector with significant restrictions on FDI. But how binding are the constraints in reality? Can foreign investors find their way around the restrictions to undertake investments through more creative arrangements? The empirical evidence for this occurring in the fisheries sector is sparse, but the lessons from other areas of international capital flows suggest that the growing sophistication of the international financial landscape has expanded the scope for individuals and companies to undertake cross-border capital flows (OECD 2002b). Rapid technological change and a widening of products and services have allowed countries to reach a level of economic and institutional development where they can fully integrate into highly developed international financial markets.

There are two main possible paths for avoiding FDI restrictions. First, the use of elaborate and complex corporate structures stretching across many countries and jurisdictions may conceal the true ownership of corporations which purchase controlling interests in vessels or harvesting companies. Such innovative corporate strategies can be used as a means to try and circumvent government restrictions on investment, ownership and so on. The extent to which this is an issue for particular countries will depend on the strength of their corporate and institutional governance, although lifting the "veil of corporate secrecy" in the sector can be difficult. While this goes to the heart of a broader set of issues relating to corporate governance, international company and tax law, recent work on the economic issues of IUU fishing has also highlighted the role of corporate veils in circumventing national restrictions (OECD 2005).

Second, vertical integration may be a means by which effective control can be gained over vessels or companies in the harvesting sector. Inward investment may take place in those upstream areas (processing, wholesale or retail) where FDI restrictions are minimal, and linkages then established down the value chain to the harvesting sector. This may entail the construction of complex corporate structures to blur the line of ownership and control in various functional areas of the company. As noted above, some countries such as Canada expressly prohibit foreign controlled fish processing companies from holding commercial fishing licences.

Potential benefits from liberalising FDI in the fisheries sector

There is broad agreement in the general literature on liberalising FDI that open capital markets can promote more efficient and productive use of resources, realise economies of scale, and improve structural efficiencies (OECD, 2002a; Goldin and Reinert, 2005). FDI contributes to both factor productivity and income growth in host countries, beyond what domestic investment normally would trigger. It is more difficult, however, to assess the magnitude of this "additional" growth impact. The main policy challenge in both OECD and non-OECD countries is to ensure that the host country has a transparent, broad and effective enabling policy and governance environment in which the benefits from FDI can be maximised while ensuring that the potential costs are minimised.

In addition to economic growth, it is recognised that inward FDI can facilitate technology transfer and diffusion in the host country, a fact which may be of particular relevance for developing countries. The spillover effects can reach into the local economy and FDI can provide countries with technology that may not be locally available. There is also evidence that increased competition associated with the entry of foreign firms can upgrade the efficiency and product quality in national firms. By giving firms access to foreign sources of savings, the internationalisation of capital markets can ease financial constraints that may prevent firms from investing in potentially more efficient (and perhaps environmentally preferable) technologies.

It is also recognised that, in the absence of proper governance, liberalising FDI rules may result in adverse impacts on the host country. Such concerns centre on the potential for FDI to crowd out domestic investment, increase environmental degradation, and exploit low-paid workers (Zarsky 2005, pp. 2-3). Some of these concerns have become crystallised in the vocal opposition by some groups to globalisation and the process of increasing international economic integration (*The Economist*, 2005). Furthermore, many of the concerns have been raised in the context of flows of foreign investment into developing countries. The

remainder of this section discusses the potential benefits from the liberalisation of FDI in the fisheries sector, while the following sections addresses the issues in removing obstacles to such liberalisation and some of the developing country dimensions.

The harvesting sector

In the case of the harvesting sector, the realisation of such potential gains from FDI depends critically on the effectiveness of the management regime in place in the host country (OECD 2003a, pp. 178-9). The relaxation of FDI restrictions will bring out any distortions or weaknesses of the existing policy framework and can result in adverse impacts on the sustainability of the resource and on the domestic industry. It is useful to consider three situations: where management is effectively enforced in the host country (that is, the country receiving the FDI); where there is open access in the host country; and where there is regulated open access (between the two extremes).[3]

Under effective management regimes, the relaxation of foreign investment rules will lead to economic efficiency improvements and income growth. If foreign investment in the host country is more profitable than investment alternatives in the home country (for example, through the more efficient use of capital stock or through access to resources), the foreign investor will buy their way into the domestic fishery through the purchase of access rights (catch quotas, effort quotas, vessel quotas, etc).[4] This will occur if the foreign investor believes that they can operate more profitably and pay a higher price for quota than domestic operators. This may result in some of the owners of domestic quotas being replaced by foreigners. As a result, the inward FDI may crowd out some domestic investment, which would then be directed to the next most profitable investment opportunity. Hence, relaxation of FDI restrictions is likely to improve overall resource use efficiency, and income growth, in the host economy.

Under open access regimes, relaxation of FDI restrictions will result in an increase in the capital flowing into the harvesting sector if, the foreign investors have a higher expected rate of return on their investment than the domestic investment.[5] This will initially come as an addition to the domestic investment and may, over time, replace some or all of the domestic investment. As there are no effective controls on effort or catches, this will lead to a further depletion of fish stocks. Depending on whether the fishery is initially underfished or overfished, catches will increase (underfished) or decrease (overfished) in the short term, but will decline in the long run as the stock becomes overexploited. The profitability of the domestic industry will decline, but the host country will gain from moving capital out of fishing and into other uses. However, this efficiency gain needs to be balanced against the negative effects on the resource stock that will result from the combination of increasing capital entering the fishery and an open access management regime.

Under regulated open access regimes where catches are effectively controlled under a total allowable catch (TAC) but where there are few (if any) restrictions on the effort used to take the TAC, there will be no effect on stocks. Some of the domestic fleet may be bought by foreign owners as foreign capital moves into the industry. As is the case under open access, this will reduce the profitability of the domestic fishing fleet but the country overall will gain from moving capital out of the fishing sector.

Empirical evidence on the impacts of FDI on the profitability of domestic fishing operations in OECD countries is very limited. A study by Hatcher *et al.* (2002) based on the data from foreign owned vessels in the UK industry (discussed above) concluded that

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"while from the perspective of some UK fishing communities, the notional socio-economic impact of foreign ownership may seem significant, at the national level the impacts arguably are not great" (Hatcher *et al.* 2002). They also noted that the landing of fish into ports of countries other than the host country is often cited as a concern of domestic fishing communities. However, the desire to land products close to final markets or processing facilities is a pattern of trading that is widespread throughout the industry and is not confined to foreign-owned vessels. Many British-owned vessels land their catches abroad in order to take advantage of better market conditions and to improve profitability.

The processing sector

The effects of liberalising restrictions on investment in the fish processing sector would not be much different from the effects of FDI liberalisation in other manufacturing industries. Unless the industry is vertically integrated, such investment would not have any direct effect on the catches of fish. There could, however, be indirect effects. Foreign investment either through ownership and control or through joint ventures, indicates that the investors expect to be able to increase the profitably of processing operations. This could occur through increased market access opportunities, better technology or better management and operating procedures. If the higher profitability of fish processing flows through to higher fish prices, then this could affect the total catches of fish, depending on what kind of management regime is in place. The extent of such price transmissions up and down the value chain depends on how the raw fish market operates. If there is a competitive market at the point of first sale (for example, through the use of auction houses), then the price transmission is likely to be quite low. On the other hand, if there is vertical integration between harvesting and processing, the extent of price transmission is much less transparent.

The issue of market structure will also influence the extent to which the host country will benefit from the positive externalities (spillovers) that are often associated with technological transfer and diffusion that may result from inward FDI.[6] In general, the evidence of positive spillovers is strongest and most consistent in the case of vertical linkages with suppliers or purchasers in the host country. To some extent, fishing technologies can be bought off the shelf. But there is no doubt that experience in the development, use and diffusion of new technologies can be more easily facilitated within a vertically integrated company. Economies of scale and the internationalisation of research and development can also push the pace of technological change. In the fishing sector, this can also be observed in the increasing demand for quality and traceability right through to the consumer. There is sufficient anecdotal evidence to support the view that vertical linkages in the supply chain tend to push for technological improvements and innovations to meet these market challenges. For example, the increased activity of major processors in ensuring secure supplies of raw material and particular quality standards has helped to force the pace of change in the harvesting sector.

Similarly, this can lead to increased environmental standards and have a positive spillover to domestic industry. Such a "race to the top" has been observed in other resource sectors (such as the mining sector). There is little evidence in the fishing sector of the "regulatory chill" that is sometimes observed in other areas where countries do not seek to increase environmental standards for fear of deterring foreign investment.[7] Indeed, the FDI restrictions in place for the OECD harvesting sector indicate that such policy-based competition for FDI is not an issue. It is an open question, however, if relaxing FDI

restrictions throughout the OECD area would lead to such regulatory chill; unsurprisingly, in the case of the harvesting sector, this will depend on the effectiveness of the management regime in place.

Addressing obstacles to reducing barriers to foreign investment

Given the potential benefits of reducing FDI restrictions in the fisheries sector, why have OECD countries maintained relatively high barriers, particularly in the harvesting sector? Obstacles to FDI liberalisation appear to centre on four interrelated issues: sovereignty; protection of domestic industry; and concerns over monitoring, control and surveillance;. The rest of this section discusses these obstacles and identifies a number of issues that policy makers may wish to consider in the context of possible relaxation of FDI restrictions in the sector.

Sovereignty concerns

Countries attach considerable importance to sovereignty over their ocean areas. This is due to a combination of factors including national consciousness, security and national economic wealth and is reflected in the legislation, policy objectives or political statements of the countries. For example, in a recent speech on his country's his country's High North Policy, Norway's Foreign Minister emphasised the need "to safeguard Norway's interests and security… to promote economic growth, employment, living standards and settlement" (*Siku News*, 2006).

The sovereign right for countries to exploit the fisheries resources that lie within their EEZs is fundamental to national (and international) fisheries management policies. Indeed, such sovereignty underpins many of the mechanisms in the United Nations Convention on the Law of the Sea in determining the rights and obligations of coastal states. This is reflected in the national laws of most OECD countries. In Japan, for example, the Law Concerning the Exercise of Sovereign Rights Concerning Fisheries in Exclusive Economic Zones outlines the limited conditions under which foreigners may engage in fishing activities in the Japanese waters. Canada has a long-standing policy, which dates from the 1970s, which is intended to prevent foreign companies from gaining access to Canada's fisheries resources through the acquisition of Canadian companies having substantial license holdings. The policy does permit minority ownership of Canadian fish harvesting companies by foreign investors.

The strongly held view that a country's fisheries resources are essentially to be reserved for the country's fishers represents a relatively major political obstacle to moves to further liberalise FDI movements in the sector. Reducing the obstacle involves a trade off between the potential for improvements in economic efficiency and potential effects on security and national pride. This calculus is complex and involves a high degree of political judgement as the two sides of the analysis are not necessarily denoted in the same metric.

It is interesting to contrast this emphasis on sovereignty in the fisheries sector with the experience in other resource sectors. In the mining and oil sectors, for example, both large and small multinational enterprises operate across international borders and there are significant capital flows in and out of countries as mineral and oil resources are developed. In general, the ownership of the resources rests with the State, but access for exploitation is provided to companies, often in exchange for royalty payments, or in the case of some energy developments, resource rent taxes. The well-developed property

rights regimes set up for mineral and oil development enable the functional separation of ownership and exploitation and pave the way for FDI to help improve the efficiency of resource use and exploitation (Warhurst and Bridge, 1997).

Of course, there are some fundamental differences in the capital requirements of the mining and fishing sectors. The mining sector is highly capital-intensive and very few countries have the financial or technical resources to undertake major mining projects without the use of foreign capital and expertise. The fishing industry, in contrast, tends not to involve such major investments and expertise in fishing is more widespread amongst fishing nations.

However, the more relevant parallel lies in the way in which access rights are specified in the different sectors and the potential scope for the increased use of stronger access rights regimes to address the separation of the ownership and exploitation functions in the fisheries sector. In OECD countries, the ownership of fisheries resources rests with the State and the rights of exploitation are provided for access to fish rather than over the resource itself. However, there are considerable differences between OECD countries as to how well those access rights are specified with only a portion of OECD fisheries having well-specified, enforceable rights-based regimes which facilitate the efficient use of fisheries resources (OECD 2006). In cases where there are strong access rights, relaxing the restrictions on inward FDI to the fisheries sector will improve the economic efficiency of resource use, without compromising the sovereignty of the state over the resources themselves.

Protection of domestic industry

Closely related to concerns over sovereignty, is a desire by many countries to ensure that the domestic industry is able to exclusively exploit the countries' EEZs. Fears of foreign control of a nation's fisheries resources are generally closely allied to domestic industry protection, often reinforced by the strong political voice of the fishing industry and coastal communities in many countries. This is reflected in the FDI conditions in many countries, including the need for foreign investors to demonstrate a genuine economic link in the host country, requirements for FDI to be undertaken through subsidiaries operated and controlled by host country nationals, and nationality requirements for board members to be primarily of host country nationality.

In the past, the FDI restrictions has been at least partly the result of an infant industry argument mounted by the domestic industry and governments as countries sought to build up their domestic fishing fleets. This was particularly evident in the years following the extension of the EEZ to 200 nautical miles when coastal states suddenly had control over significantly larger resource stocks than prior to the extension. Significant support was provided to domestic fisheries to build up capacity and domestic production. However, it is unlikely that the infant industry argument can be invoked in many OECD countries today. Indeed, the majority of OECD countries have undergone significant fleet reduction and industry rationalisation programmes in the last decade, indicating the industry has proceeded well beyond the infant stage. Even in the case of newly discovered (and hence under-exploited) fish stocks, the infant industry argument is weak; potential market failure resulting from a lack of information on resource availability, or a lack of capital in the domestic industry, can be addressed through appropriate specification of management measures to strengthen access rights and address issues of risk (see, for example, Gooday *et al.* 1999; Cox and Kemp, 1999).

As with the sovereignty argument, concerns over domestic industry protection revolve around the distributional impacts of changing foreign investment policy for the sector. Allowing a less restrictive investment regime in the harvesting sector may result in some changes in income distribution, depending on the management regime in place. Under a system of transferable quotas (either output or effort based), an individual or company that voluntarily sells their quota or vessel is, after having done so, no worse off than before the transaction took place, so the policy concerns over the distributional impacts are significantly reduced. However, under regulated open access or open access management regimes, the resulting shifts in distribution may be a cause for concern, particularly if the affected region(s) or communities have a strong political voice. This, for example, may be significant in some coastal regions. So, in general, liberalising the investment regime may result in an overall improvement in the wealth of the economy, provided that there is appropriate and well-enforced management.

Monitoring, control and surveillance concerns

A third interrelated point focuses on enforcement concerns. It may be harder to control foreign-owned vessels and to enforce sanctions if the owner is not in the country. Such challenges are most evident in the case of prosecutions for IUU fishing where the offending vessel may be captured, but there is little prospect of being able to prosecute the actual owner of the vessel as they are usually located overseas. Similar concerns may be a factor in the reluctance of OECD countries to relax restrictions on investment in the harvesting industry.

Improved domestic fisheries management, with stronger access rights regimes which can be used to both control catches and effort and enlarge financing possibilities, may help address such concerns. Both domestic and foreign fishers are likely to have a greater incentive to abide by the rules imposed by domestic regulators if they have well-defined and enforceable access rights to the fisheries. Both groups of fishers have an incentive to maximise profits, but both have a stake in the longer term health of the fishery.

It is difficult to argue that the actual monitoring of foreign-owned vessels within a country's EEZ is any more difficult than monitoring the compliance of domestic vessels. The surveillance that is undertaken by fisheries authorities both at sea and in ports is equally likely to detect violations in domestic and foreign-owned vessels. The main problem occurs in the enforcement of infringements. One possible solution to this is the use of performance bonds as a surety against non-compliance with management regulations. Such financial guarantees are widely used in other resource sectors, most notably the mining sector (Costanza and Perrings 1990). In the mining sector, performance bonds are used to provide a form of insurance for the government in case a mining company goes bankrupt before a mine site is properly rehabilitated (Allen, Maurer and Fainstein, 2001). The guarantee also provides the company with an incentive to ensure that it undertakes appropriate environmental management in the extraction and post-extraction phases of the mine's life.

More attention could also be paid to requiring a higher level of authentification of the bona fides of the investing company prior to granting approval for investment to take place. Many companies now place significant effort into improving and demonstrating their environmental credentials. The use of environmental auditing processes for companies has become a regular feature of the corporate reporting architecture, along with due diligence

and social responsibility requirements. The extension of such corporate oversight and reporting tools to the fisheries sector has not been widely adopted as yet and there is scope for increasing their use to improve the effectiveness of fisheries enforcement.

Issues for developing countries

Foreign investment has been one of the factors underlying the expansion of the fisheries sectors in many non-OECD countries over the past two decades. While OECD production from harvest fisheries has been stagnant in recent years, production from non-OECD countries has expanded significantly, particularly from China. Similarly, growth in aquaculture production in non-OECD countries has outstripped growth rates in OECD countries. The expansion in the non-OECD fisheries sector reflects a desire by those countries to exploit the comparative advantages offered by their endowments of fisheries resources, the availability of suitable aquaculture sites, and relatively low operating costs. These countries also seek to obtain the benefits from increased economic growth, expansion of the economic base and the transfer of technology and expertise that often accompanies FDI. Multinational seafood enterprises, many of which are based in OECD countries, are naturally attracted to these countries as they seek to maintain and expand their investment and operational portfolio in an increasingly challenging global operating environment. Foreign investment by these companies is part of their corporate strategy to gain access to resources, extend markets, improve efficiencies and, in some cases, acquire strategic assets.

The attractiveness of non-OECD countries as a destination for FDI is often enhanced by host country policies which subsidise inward direct investment. Such subsidies are relatively open and widespread amongst non-OECD countries. In the case of Russia, for example, the government was offering a package of incentives in late 2005 to persuade foreign fishing companies to invest in the country's fishing industry (*Worldfish Report*, 19 October 2005, p. FS/6). These incentives include soft loans and subsidised interest rates and are directed towards the purchase of new fishing vessels, modernising existing vessels, improve processing facilities, and increasing the capacity of hatcheries and fish farms. Similar incentive policies, together with assistance to infrastructure construction, labour training and tax holidays, can also be found in the fisheries sector development policies of many other non-OECD countries.

Empirical research shows that, in general, international investment incentives play only a limited role in determining the international pattern of FDI (Blomstrom *et al.*, 2000). Factors such as market characteristics, relative production costs and resource availability explain most of the variations in cross-country variations in FDI flows. However, it is clear that investment incentives might play a role for multinational company decisions at the margin where incentives can tilt the investment decision towards a particular country. This is particularly the case for financial incentives like grants, soft loans and similar subsidies which lower the initial costs of investment and reduce the risk of the FDI project. The question is whether the host country's costs for providing the incentives are justified; that is, are the investment incentives likely to yield benefits that are at least as large as the costs?

Foreign investment in the fisheries sectors of non-OECD countries raises a particular issue regarding the impacts of FDI on the health of the marine ecosystem and state of the fish stocks. Where the fisheries management regimes and associated environmental regulations are well-designed and enforced, the direct environmental impact of FDI in the

sector will generally be either benign or positive. However, marine ecosystems are a renewable, often fragile, resource, and sustainable management of the sector requires sound scientific basis for setting management policies and effective enforcement of regulations. To reap the full environmental benefits from FDI, adequate local capacities are needed. The technologies and expertise that are transferred to developing countries in connection to FDI tend to be more modern and environmentally "cleaner" than what is locally available. Moreover, positive externalities have been observed where local imitation, employment turnover and supply-chain requirements led to more general improvements in environmental practices in the host country.

A related concern is that the efforts of policy makers' in developing countries to attract FDI may lead to "pollution havens" or a "race to the bottom". While there is some anecdotal evidence of multinational enterprises relocating activities for environmental reasons, empirical studies have found little evidence such practices are widespread (OECD, 2002a). In general, the use of environmentally inferior technologies or practices will not usually be in the better interests of a multinational company and, for companies based in OECD countries, the environmental compliance costs in developing countries are usually minimal from the company's viewpoint (Araya 2005; Zarsky 2005).[8]

A more pressing concern may be the risk of a "regulatory chill" in developing countries. If a fear of discouraging FDI is a factor in the decisions of host country authorities, it could dissuade policy makers from attempting to upgrade and tighten environmental or regulatory standards. Furthermore, regulatory chill may be a factor in those sectors where the costs of complying with more stringent environmental regulations might be greater than average, such as chemicals, steel or mining (Chudnovsky and Lopez 2002). Compliance costs might therefore play a more significant role in the decision making process of companies in such sectors and, hence, induce a greater degree of regulatory competition amongst developing countries. As a publicly owned and regulated renewable resource, the fisheries sector is one of those sectors where the fisheries management and environmental framework can have a significant influence on the profitability of companies' operations. No work has been done as yet on the relative impact of environmental regulations on the costs of fishing operations in developed and developing countries, primarily due to the lack of a counterfactual against which to assess the effects of regulations. The extent of regulatory competition that occurs for international investment in the fisheries, either explicitly or implicitly, could be the subject of further research.

However, the developing country issues go beyond immediate concerns about the risks and benefits FDI. They encompass the broader question of the role of the fisheries sector in the development strategies of developing countries and the tradeoffs that governments are willing to make to achieve goals such as increased economic growth and poverty alleviation. One of the overarching concerns of development agencies, such as the FAO, UNEP and UNCTAD, and international banks, such as the World Bank and the Asian Development Bank, is that the sustainability of fisheries in developing countries is not sacrificed in the pursuit of these other development objectives, but are mutually supportive. The programs of these international agencies place considerable emphasis on the development of technical and institutional capacity in fisheries management in developing countries. The aid agencies of individual countries, such as the UK Department for International Development and Danish Agency for Development Assistance, also seek to enhance the management capacity of developing countries through their aid programmes.

Empirical evidence on the success of these efforts is, unfortunately, lacking at this stage although the efforts to improve governance regimes in developing countries are encouraging. Hersoug *et al.* (2004) observe that institution building has been the main slogan in bilateral development assistance to the fisheries sector for the last fifteen years. There are examples of successful fisheries management in developing countries (see, for example, Cunningham and Bostock, 2005), although the evidence is largely anecdotal and somewhat patchy. The risk that the rapid expansion of production in non-OECD fisheries and aquaculture production has been obtained at some cost to environmental standards remains tangible. The extent to which this is linked to foreign investment undertaken by companies based in OECD countries is open to conjecture and would require further analysis.

In summary, while the economic benefits of FDI to developing countries are real, there is general agreement that they do not accrue automatically (OECD 2002a). To reap the maximum benefits from foreign corporate presence, it is essential that the host country has a healthy enabling environment for business as well as an adequate regulatory framework. In cases where the domestic legal, competition and regulatory frameworks are weak or weakly enforced, then the presence of foreign companies in the sector may not lead to net benefits accruing to the domestic economy. While this requirement clearly also applies to OECD countries, it may present greater challenges for developing countries as they may not have sufficiently strong legal and judicial institutions and traditions to ensure sound regulatory practice.

Conclusion

In a recent book on globalisation, the economist Jagdish Bhagwati observed that foreign direct investment is as good or as bad as the domestic policies governing the sector to which the investments are directed (Bhagwati 2004, p. 178). This observation is even more acute in the case of the fisheries sector. As a common property resource, government policy plays a major role in determining access to fisheries resources and the distribution of those rights. As a result, the impacts of FDI on the sustainability of fish stocks are nested within the effectiveness of the domestic management regime. The oft-quoted concerns about the general impacts of FDI on the environment will largely disappear if effective and enforced management regimes are in place in the host country. Other concerns over the ability to enforce regulations on foreign-owned companies will largely also apply to domestically controlled companies, and may be addressed through the innovative use of reporting and enforcement mechanisms.

Despite the potential benefits from increased efficiency and reduced transactions costs that are likely to flow from liberalising investment in the fishing sector, very few OECD countries have taken this path for their harvesting sectors. One of the major obstacles to liberalisation is a concern that such a policy shift will adversely affect the sovereignty of the host country over its marine areas. A mixture of national pride and national security seem to be at play here, through a perceived loss of control over who exploits the resources and how. Domestic industry protection also appears to be a major obstacle to liberalisation, bolstered by domestic industry and coastal communities voicing concerns over the entry of foreign vessels and companies and the resulting the potential for changes in the pattern of income distribution.

Unfortunately, there is limited empirical evidence on both the scope and impacts of FDI in the OECD fishing sector and so it is difficult to draw definitive empirical conclusions about the potential net benefits from investment liberalisation. In principle, however, it is clear that

effective domestic fisheries management will play a crucial role in determining impacts. Stronger access rights regimes and the use of innovative mechanisms (such as performance bonds), coupled with effective enforcement will increase the likelihood that investment liberalisation will result in an overall increase in the net economic wealth of the host country and in the country of origin of the investment. Nevertheless, the political dimension remains a key factor in addressing the tradeoffs that may be involved in such a process.

The impacts of FDI on the fisheries sectors of developing countries is probably of more immediate policy concern as most flows of FDI seem to be from OECD to non-OECD countries. Even in this case, however, the fundamental message of the work on FDI remains the same: the ability of countries to maximise the benefits of FDI while minimising the adverse effects depends on the regulatory regime in place and the effectiveness with which it is enforced. The key concern for developing countries is therefore adequacy of their domestic institutional frameworks in ensuring sustainable fisheries management while pursuing a range of development objectives. If these are sufficiently well-developed, then inwards FDI to the fishing sector will generally provide net benefits to their economies and support overall development goals.

Notes

1. The leasing of quota is considered as a trade in a service and is not considered further in this chapter.
2. It is also worth noting that the UK situation is at least partly a result of historical fishing activity. A number of the Anglo-Spanish vessels were on the UK register prior to the introduction of restrictive licensing and so did not need to purchase any capacity or quota entitlements (these entitlements were given out free of charge when they were introduced).
3. Regulated open access is defined as management consisting of catch or effort controls, but with no clearly specified, transferable access rights. In the case of catch controls, there would be no explicit limit on effort, while, in the case of effort controls, there would be no explicit catch limits. Hence, this represents a stylised middle ground on the spectrum of management instruments.
4. As was evident from the survey, it is not sufficient for a foreign investor to purchase a controlling interest in a vessel or fishing country. Most countries require the vessel or company to hold access rights to the fishery and that they be licensed to hold such rights.
5. It is questionable whether foreign investors would even be willing to invest in an open access fishery given the lack of effective access rights and the poor long-term prospects for resource sustainability and economic profitability under open access management regimes. Strategic reasons for such behaviour may include a desire to establish a catch history in a country with the possibility of formal access rights being introduced in the future, a high discount rate being held by the company (which would encourage more rapid exploitation of a resource than is socially optimal), or the purchase of a vessel with the intention of shifting operations when the resource availability declined to unprofitable levels.
6. There are, of course, a variety of ways for technology to be introduced into a country's fisheries sector, including through the purchase of off-the-shelf technologies (such as processing lines, filleting machines).
7. This is a more passive version of competition on environmental standards leading to a "race to the bottom".
8. Chudnovsky and Lopez (2002) note that, as environmental costs represent less than 2% of the GDP in industrialised countries, it is difficult to imagine that they have any significant weight in location decisions.

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ANNEX II.A1

Inventory of FDI Restrictions in the Fishing and Processing Sectors in OECD Countries

Australia

In the fishing and resource sectors, proposals for the establishment of new businesses involving a total investment of AUD 10 million or more, and proposals for the acquisition of existing businesses with total assets valued at more than AUD 5 million (more than AUD 3 million if greater than half the assets of the businesses are attributable to rural land) are notifiable. Proposals where the target assets or the planned investment outlays are valued above these thresholds (but below AUD 50 million) will normally be approved without examination. Proposals where the valuation is AUD 50 million or more will be approved – unless judged by the government to be contrary to the national interest.

A reservation has been lodged by Australia on ownership of Australian flag vessels, except if these are owned by an enterprise incorporated in Australia. In order to be registered as an Australian flag vessel, a ship needs to be majority-owned by an Australian national (*i.e.* an Australian citizen, a corporate body established by or under a law of the Commonwealth or of a State Territory).

Belgium

Belgium does not allow acquisition of Belgian flag vessels by shipping companies not having their principal office in Belgium. The right to fly the national flag by vessels and the conditions of ship registration are determined by law.

Canada

Investments in the fishing fleet

The main constraint is the policy that fishing enterprises having a foreign ownership level of more than 49% are prohibited from holding Canadian commercial fishing licenses. This long-standing policy, which dates from the 1970s, is intended to prevent foreign companies from gaining access to Canada's fisheries resources through the acquisition of Canadian companies having substantial license holdings. The policy does permit minority ownership of Canadian fish harvesting companies by foreign investors. However, majority ownership would require the forfeiture of any existing licenses held by that company.

Investments in processing industry

There is no limit on foreign ownership of fish processing companies that do not hold a fishing licence. Canadian fish processing companies which have more than 49% foreign ownership are not permitted to hold Canadian commercial fishing licences.

Other

Foreign flag vessels may be authorised (licensed) to fish in Canadian fisheries waters in accordance with bilateral or multilateral fisheries agreements (*e.g.* the International Convention on Future Multilateral Co-operation in the Northwest Atlantic Fisheries, commonly referred to as the NAFO Convention). In addition, foreign vessels may be permitted to fish in Canadian waters under charter arrangements with Canadian companies. However, it is not a common practice to assign Canadian fishing quotas to foreign-owned or foreign-registered vessels.

In addition, Canada has lodged a reservation to current invisible operations in respect of port regulations and pilot charges for expenditures relating to fishing vessels.

Denmark

According to the basic law "The Fisheries Act" (No. 281 of 12 May 1999), ownership of two-thirds of a fishing vessel is limited to those registered as commercial fishermen so as to ensure that only professional fishermen can influence fishing activities. Registration as a commercial fisherman is only possible when the following conditions are met:

- Danish citizenship or a permanent address in Denmark for a continuous period of at least two years.
- Employment onboard a fishing vessel for the previous 12 months.
- 60% of income during these 12 months must derive from commercial fishing.

To comply with the basic principle of non-discrimination in Community law, other EU and EEA citizens can register as commercial fishermen, although they do not meet the requirements of citizenship or permanent address in Denmark. EU and EEA citizens can register if they can prove a genuine link to Danish commercial fishing.

The genuine link to Danish commercial fishing is documented, for example, when a person has a permanent place of business in Denmark or if a minimum of 50% of all his landings are made in Danish harbours. This list is not exhaustive and other kinds of links can be taken into consideration.

To continue to be registered all the above requirements must be met continuously. This applies to any person who becomes registered, regardless of nationality.

There are no restrictions on the last third of the capital. Danes as well as foreigners, commercial fishermen as well as non-commercial fishermen have free access to ownership.

In Denmark there are no requirements concerning the nationality of the crew. Only the owners are subject to restrictions.

The use of Danish fishing rights is linked to the vessel. Fishing vessels engaged in commercial fishing must be registered in Denmark.

As long as the registration as a commercial fisherman is maintained, Denmark does not distinguish on the basis of nationality. There are equal opportunities for all commercial fishermen to own a fishing vessel and to exercise fishing rights.

There are no specific rules that apply to the processing industry.

Finland

Finland reserves the ownership of Finnish flag vessels to Finnish nationals, including fishing vessels, except through an enterprise incorporated in Finland.

France

Quota allocation for French vessels: Catch quotas allocated to France within the framework of the European Community regulations on conservation and management of fishery resources are reserved to vessels flying the French flag and meeting the following conditions:

- It must have a real economic link with the territory of the French Republic.
- It must be managed and directed from a stable body with a place of business on the French territory.

Fishing operations and use of marine resources: Fishing operations and the use of marine resources in French territorial waters or in the EEZ's of the French Overseas Territories, the French Southern Territories and the French Territories in Antarctica are reserved to the vessels flying the flag of France. Prior administrative authorisation, delivered by the French administration is needed. Derogation to this rule is possible under certain conditions.

Ownership of vessels: The ownership of a vessel flying the flag of France is subject to the following conditions:

- The vessel must be owned by a national of a member State of the Community.
- The vessel must comply with the French safety requirements laid down in Law No. 83-581 of 7 July 1983.
- Crew: the captain and the first officer must be a French national. The other crewmembers must be nationals of a country of the European Union.

Germany

There are no restrictions on foreign direct investment in fishing except that the acquisition of a German flag vessel has to take place through an enterprise incorporated in Germany. Registration in the German fishing fleet register is reserved to ships owned by German nationals or companies incorporated in Germany.

Greece

Foreigners are allowed to hold a maximum of 49% of the capital of a Greek flag vessel for maritime transport or fishing purposes. Non-EU ownership of Greek flag vessels, including fishing vessels, is limited to 49%.

Iceland

Investments in fishing fleets

Iceland has lodged reservations on foreign investments in fishing and primary fish processing (*i.e.* excluding retail packaging and later stages of preparation of fish products for distribution and consumption). Foreign investment in companies engaged in fishing and in companies applying for a licence to carry out whaling within the Icelandic territorial waters is restricted as well as foreign investment in primary fish processing (*i.e.* excluding retail packaging and later stages of preparation of fish products for distribution and consumption).

Investments in the processing industry

No foreign ownership limitations apply to fish processing beyond the stage of primary processing.

Ireland

Ireland has reservation on the acquisition of Irish-registered shipping vessels except through an enterprise incorporated in Ireland. The non-EC nationals' acquisition of sea fishing vessels registered in Ireland may be restricted. The registration of fishing vessels requires ownership by citizens or companies from an EC member State and a license to fish within Irish fishing limits.

Italy

Non-EU ownership of Italian flag vessels, including fishing vessels, is limited to 49%. Companies that seek to invest in Italian vessels need prior authorisation by competent national authorities.

Fishing activity in Italian territorial waters is possible only for vessels holding the Italian flag, owned by Italian or EU subjects and provided with a fishing licence by the relevant Italian authorities.

According to the Italian national legislation, fishing by third countries' nationals is possible only in a framework of reciprocity.

Japan

Japan maintains restrictions on inward foreign direct investments in the fishing industry. Foreign investors wishing to invest in fisheries in Japan are obliged to apply[1] for a permit from the Ministers of Finance and of Agriculture, Forestry and Fisheries, based on the Foreign Exchange and Foreign Trade Law. The Ministers examine the application and can order the change or suspension of the investment if necessary.[2]

Foreigners fishing activities are covered by Article 3 of the Law Regulating Fishing Operations by Foreigners. Except for minor catch activity (*e.g.* jigging by ships of less than three tons) fishing by foreigners in territorial waters of Japan is prohibited. Similarly, fishing by foreigners in the Japanese EEZ, except for minor catching (*e.g.* jigging by ships of less than three tons) are subject to prior permission from the Minister of Agriculture, Forestry and Fisheries according to Article 5 of the Law Concerning the Exercise of Sovereign Rights Concerning Fisheries in Exclusive Economic Zones.

Based on Article 2 of the Fishing Boats Law, the possession of fishing boats is limited to:

- Japanese individuals.
- Companies where the representatives and two-thirds of the directors are Japanese.
- Companies with head offices in Japan and where all representatives have Japanese nationality.

Lending Japanese fishing vessels to foreigners is regarded as exportation. Therefore, prior approval is required from the Minister of International Trade and Industry according to the Export Trade Control Order.

Korea

Investments in aquaculture and capture fisheries

All capture fisheries and mariculture of fish, shellfish and seaweed in Korea require a permit or a license from the Central government (Ministry of Maritime Affairs and Fisheries: MOMAF) or the provincial governments. Foreigners wishing to carry out fishing operation in the EEZ need a fishing permit issued by the MOMAF. For sea farming and marine capture fisheries, the law of fisheries allows foreigners to invest in both fisheries. However, foreigners' investments are conditional, on and subject to, obligatory consultation of the provincial governments with the Ministry of Maritime Affairs and Fisheries.

Investments in processing and exports

There are no special restrictions regarding foreign establishment or investment in processing plants. General rules, mainly regulated by the Ministry of Commerce and Industry, are equally applied to Korean citizens and foreign investors. Imports and exports are regulated through the external trade act. No restrictions are employed as long as exporters are registered with the tariff administration.

Mexico

In Mexico, the Foreign Investment Law determines and defines the rules for foreign investment and the areas of economic activity in which foreign involvement is considered beneficial and necessary. The Foreign Investment Law, supplemented with the provisions of the 1992 Fisheries Law and the Navigation Law of 1994, determines the operation and specific terms of foreign capital participation in fisheries activities.

Accordingly, fishing foreign investors are allowed to participate by establishing joint ventures or mixed-capital companies with a maximum foreign holding of 49% of the capital. The vessels used for this activity must be registered in Mexican and fly the Mexican flag.

Individuals, or legally incorporated Mexican companies, including companies with foreign capital, are allowed to register vessels on their own behalf or deploy them through contracts as Mexican – registered craft. Operators must request and obtain the corresponding Fishing Permits from the National Commission for Aquaculture and Fisheries.

In activities such as storage, distribution and for processing and marketing of fisheries products foreign investors are allowed to participate with up to 100%, *i.e.* unlimited.

In aquaculture activities, foreign capital participation can also account up to 100% if it is allocated in areas or waters within Federal jurisdiction and subject to having an authorisation from the National Commission for Foreign Investment.

Netherlands

Foreign investment in vessels or companies operating in the Netherlands harvesting sector is permitted when two-thirds or more of the investment is provided by a member State of the European Union. There must also be a (sub) office located in the Netherlands. The vessel must be registered in the vessel registry of the Netherlands and must be mostly operated from the Netherlands and mostly harboured in the Netherlands.

New Zealand

An overseas person wishing to own fishing quotas in New Zealand must obtain permission from the Ministry of Fisheries and the Treasurer. An overseas person is:

- a person who is not a New Zealand citizen and who is not ordinarily resident in New Zealand; or
- a company or corporate body that is incorporated outside New Zealand, or any company that is a subsidiary of a company or corporate body incorporated outside New Zealand; or
- a company in which:
  - ❖ 25% or more of any class of shares is held by any overseas person(s); or
  - ❖ the right to exercise or control the exercise of 25% or more of the voting power at any meeting of the company is held by any overseas person(s); or
- any nominee of an overseas person.

More detailed information is available at *www.oic.govt.nz/invest/fishquota.htm*.

Norway

Investments in processing and exports

There are no special restrictions regarding foreign establishment or investment in processing plants. General rules, mainly regulated by the Ministry of Trade and Industry, are valid. Exports are regulated through the Fish Export Act of 1990. No restrictions are employed as long as the exporter is registered with the Norwegian Seafood Export Council, and a yearly fee of NOK 15 000 is paid to the Council. However, as a general rule, processing, packing or re-loading fish, crustaceans and molluscs or parts and products of these, is not allowed on a foreign-controlled vessel inside the fishing limits or the Norwegian Exclusive Economic Zone.

Investments in aquaculture

All farming of fish and shellfish in Norway requires a special permit from the authorities. For sea farming of salmon and trout there is also a system of limited entry. No new licences for salmon and trout were issued between the mid-eighties and 2002. In 2002 and 2003 however 30 and 50 new licences were issued. As of 2004 the total number of licences for aquaculture production of salmon and trout were 913. The central fisheries authorities decide the number and regional distribution of new licences.

Investments in the fishing fleet

Foreign direct ownership

According to Norwegian law, the right to buy a fishing vessel can only be given to a Norwegian citizen or a body that can be defined as a Norwegian citizen. A company is regarded as having equal rights with a Norwegian citizen when its main office is situated in Norway and the majority of the Board members, including the Chair of the Board, are Norwegian citizens and have resided in the country the last two years. Norwegian citizens also have to own a minimum of 60% of the shares and have to be authorised to cast at least 60% of the votes. There are no restrictions on crew nationality.

Obtaining concessions for owning fishing vessels

It is a part of the Norwegian policy that ownership to the fishing fleet shall be reserved for professional fishermen. Therefore, to obtain the right to own a fishing vessel, one has to have a record of active, professional fishing on a Norwegian fishing boat for at least three of the last five years. When this legislation is being applied to companies, it means that at least 50% of a company owning a boat has to be owned by persons who qualify for owning a fishing vessel.

Poland

There are no restrictions to the foreign direct investments in the fisheries sector. However, all catch quotas are reserved for sea fishery vessels of Polish nationality only. Catch quotas may be exchanged within the framework of the IBSFC or under bilateral arrangements. There are no restrictions concerning crew nationality. However, members of crew must hold the certificate of competition issued in accordance with STCW 95 Convention (STCW 95, annex to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers of 7 July 1978, as amended in 1995) and which is issued or endorsed by the Polish Maritime Administration.

Portugal

Ownership of fishing vessels: Decree (Decreto Lei) 525/99 of 10 December 1999 requires that the owners of vessels that have a catch quota entitlement, provide evidence, on an annual basis, of the existence of an economic link with Portugal.

Restrictions on services

Chartering of fishing vessels: Article 9 of Decree (Decreto Lei) No. 278/87 of 7 July 1987 (as modified by Decreto Lei 383/98 of 27 November 1998) lays down the conditions under which fishing vessels from a third country can be chartered. Chartering is subject to previous authorisation of the member of the Portuguese government in charge of fisheries. Authorisation can be granted if the chartering of a foreign vessel is intended to:

- Temporarily replace a vessel whose construction or modification has been authorised, provided has identical fishing characteristics.
- Test new types of vessels, new fishing gear and fishing techniques or explore new fishing areas.

Furthermore:

- The species caught and the "on board" processing by the chartered vessels result in the products as being of Portuguese origin.
- The chartered vessels are subject to the same legal provisions as the ones applicable to Portuguese fishing vessels.

Regulatory Decree (Decreto Reglamentar) 7/2000 of 30 May 2001 in its Article 72 lays down the conditions to grant authorisation for the chartering of vessels. The authorisation to charter foreign vessels is granted for a maximum period of two years. Nevertheless, the authorisation expires when the condition for granting it (Article 9 of Decreto Lei 278/87) ceases to exists.

The chartering of Portuguese fishing vessels is also subject to previous authorisation from the member of the Portuguese government in charge of fisheries. The authorisation is valid for one year and renewable for the same period.

Spain

Spain does not have any restrictions on foreign direct investments in the fishing industry.

Sweden

Ownership of vessels: As a general rule a ship is to be considered Swedish and has the right to have Swedish flag if more than half of the owners are Swedish citizens or Swedish juridical persons. For more detailed information see the Law of the Sea (1994:1009).

Fishing operations and fish quotas: In order to perform a professional fishery the fisher needs fishing vessel permission (fishing license). If you have such a license you are allowed to fish on the Swedish quotas. Licenses are granted according to the stock situation. The fisher must also have a connection to the Swedish fishing industry. This connection can be demonstrated by:

- Landings in Sweden.
- The start of the fishing trip is a Swedish port.
- The fisher lives in Sweden.

For more detailed information see the Ordinance of the National Board (1995:23).

Turkey

Turkey does not have restrictions on foreign investments in aquaculture and fish processing establishments. All fish farms require a license from the Ministry of Agriculture and Rural Affairs. However, according to Fisheries Law No. 1380, Article 21 it is prohibited for non-Turkish citizens to enter the fishing areas and inland waters mentioned in Article 8 of the Territorial Waters Law No. 476, and to practise fishing activities in these areas.[3]

United Kingdom

Under the "Merchant Shipping (Registration of Ships) Regulations 1993" on fishing vessel ownership, for a vessel to be registered in the UK, it must meet the following requirements:

- Legal and beneficial title to the vessel must be vested in one of the following:
  - a British Citizen;
  - a national of a member State established in the UK;
  - a body incorporated in a member State established in the UK;
  - a body incorporated in a member State with a place of business in the UK;
  - European Economic Interest Groupings registered in the UK;
  - a UK local authority.
- It must be managed and its operations controlled and directed from within the UK.
- If legal title to the vessel is vested wholly in someone who is not resident in the UK, a representative must be appointed who is either an individual UK resident or a body incorporated in a member State with a place of business in the UK.

- It is a condition of a vessel's fishing licence that at least 75% of the crew on board the vessel at any time shall be nationals of member States of the European Community or the European Economic Area, or a combination of both.

As from 1 January 1999 fishing vessels will be required to ensure a real economic link with the UK by one of the following four options:

- landing at least 50 % by weight of the vessel's catch of quota stocks into the UK; or
- employing a crew of whom at least 50 % are normally resident in a UK coastal area; or
- incurring a given level of operating expenditure in the UK for goods and services provided in UK coastal areas; or
- demonstrating an economic link by other means (including combinations of the above) providing sufficient benefit to populations dependent on fisheries and related industries.

United States

The United States has no restrictions on investments in shore-side operations such as processing plants. The US does maintain laws that prohibit the transportation of merchandise between points in the US except on US built vessels documented under US law and owned by citizens of the US. These laws are collectively known as the Jones Act.

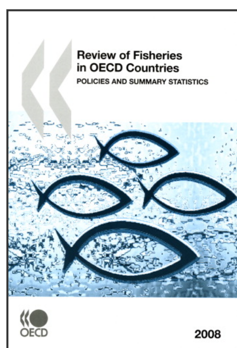
The American Fisheries Act has had a significant impact on foreign direct ownership/ shareholding restrictions. The American Fisheries Act of 1998 made the following changes:

- US ownership requirement has been increased from 51% to 75%.
- Vessels longer than 165 feet, more than 750 GRT, or with engines that generate over 3 000 hp became ineligible for licenses to operate in US Federally managed fisheries, except under certain precisely defined exceptions.
- Responsibility within the US government for administering these requirements in respect of vessels over 100 feet long was given to the Department of Transportation, Maritime Administration.

However, foreign-flag vessels may not fish or process fish in the 200 nautical miles US exclusive economic zone except under the terms of a Governing International Fisheries Agreement (GIFA), or other agreement consistent with US law. Foreign-controlled enterprises may not engage in certain fishing operations involving coastwise trade. In addition, foreigners may not hold more than a minority of shares comprising ownership in companies owning vessels that operate in US fisheries. Also, corporate organisation requirements pertain to the registration of flag vessels for fishing in the US exclusive economic zone.

Notes

1. There has been yet no application for foreign direct investments to fisheries in Japan.
2. These include share acquisition of non-listed companies in stock exchanges, one-tenth or more of acquisition of the total shares of listed companies in stock exchanges, and the establishment of a branch office.
3. In the 7th Paragraph of Article 3, Turkish citizens and foreigners who catch fish for non-commercial or sportive purposes with small scale gears in the areas where fishing is not prohibited are not obliged to get a fishing licence. The matters concerning the methods and principles of this type of fishing are arranged by a regulation.



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