POLICIES AFFECTING FARMLAND MOBILITY

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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FOREWORD

This study is a component of the Directorate's work on Policies and Adjustment in the Agro-food Sector, which is undertaken in response to the specific commitment expressed by the OECD Council at its meeting at Ministerial level in May 1988 "... to study the possible contribution to agricultural reform that might be made by measures ...aimed at facilitating structural adjustment". The broad guidelines of the structural adjustment work provided by OECD Agriculture Ministers, at their March 1992 meeting and confirmed by the OECD Council at its meeting at Ministerial level in May 1992 emphasised the need for an integrated approach to structural adjustment, environment and rural development with a greater inter-sectoral approach to policy formulation.

This report attempts to address one aspect of this work by reviewing policies affecting farmland mobility. Such a review may have various implications for policy makers in the formulation of measures to facilitate structural adjustment in the agricultural sector.

The report examines relevant policies both in the context of transfers of land rights and changes in land uses. A number of land mobility policy issues of relevance to the process of agricultural policy reform are discussed, including legal instruments affecting farmland markets (i.e. transfers of farmland ownership and lease), physical planning and zoning, and taxation concessions applied in relation to farmland.

The Secretary-General has agreed to the derestriction of this report on his own responsibility as recommended by the Committee for Agriculture.
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I. INTRODUCTION

In the Ministerial Communiqué of May 1988, OECD Member countries reaffirmed their 1987 commitment to agricultural policy reform and invited the Organisation "to study the possible contribution to agricultural reform that might be made by measures...aimed at facilitating structural adjustment". Since that time, a major emphasis in the Organisation's work on the agriculture sector has been on this subject. For example, a study analysing the effects of agricultural policy reform on farm employment was published in 1994, which addresses one aspect of this mandate. This study, foreshadowed in the Policies and Adjustment component of the Programme of Work, addresses another aspect by dealing with issues and policies affecting the use of land, an essential factor of agricultural production. It attempts to sharpen understanding of key issues arising from these policies, with particular emphasis on impediments to the adjustment process or to agricultural policy reform.

Policies and regulations relating to land differ considerably across OECD countries. This can be explained partly by the differing land use patterns which have emerged from the history, the prevailing physical conditions (such as size, climatic, geographic and demographic circumstances) and the economic incentives available for particular types of activity. Policies have also been influenced importantly by government objectives for the sector or the country as a whole. Underlying policy objectives in some cases encompass rather specific efforts to direct structural conditions in agriculture; other objectives reflect more general public interest concerns in areas such as the environment and cultural or social values.

Various developments in OECD countries have highlighted the importance of policies which affect the use of farmland. Pressures for structural adjustment towards a more market-oriented agriculture sector have drawn attention to the rigidities associated with aspects of support policies commonly applied in OECD countries. This paper concentrates on some selected areas of policy intervention affecting land markets, which are potentially important from the viewpoint of land mobility. These include legal instruments affecting farmland markets (i.e. transfers of farmland ownership and lease), physical planning and zoning, and taxation concessions applied in relation to farmland. In the areas covered, notwithstanding differences of approach among OECD countries, policy interventions are extensive and there appear to be grounds to suggest that Member countries might wish to review current approaches from the viewpoint of their impact on market-oriented reform of the sector.

However, pressures for structural adjustment have been arising from other key issues as well. An important example is restrictions on output or inputs which have progressively been implemented in association with support measures; another is the impact on farmland prices of support arrangements through its capitalisation into land values. Other pressures affecting the mobility of land as a factor of production in the farm sector include the range of environmental, landscape and related policies intended to minimise negative environmental consequences of agricultural production or to enhance the positive benefits. Related concerns emerge from changing perceptions of the social role of the sector and economic decline in some rural areas. A number of these issues are, however, under examination in different parts of the Secretariat's Programme of Work. Specific projects include a study of agricultural adjustment and diversification and its implications for rural economies; a study of the environmental effects of land
diversion schemes being prepared under the auspices of the JWP on Agriculture and the Environment; and a review planned for 1996 of the linkages between government support and land values.

The paper examines policies affecting farmland mobility,¹ both in the context of transfers of land use (rights) within the agricultural sector and between the sectors. The three issues covered in this study constitute major impediments to transfers of land use in both senses across Member countries, while the issue of physical planning and zoning mainly affects the mobility of farmland between sectors (i.e. conversion of land to other uses). All factual information contained in the study has been derived from the Secretariat’s literature survey or obtained through informal contacts with capitals and organisations.

Throughout the text, an attempt is made to describe the main policies in place in each category across OECD countries. The paper mainly covers relevant policies implemented by the national government. However, for policies for which the sub-national or local government plays an important role (e.g. physical planning or zoning), and for countries where land policy in general is the responsibility of sub-national governments (e.g. Canada and the United States), the paper attempts to review those policies implemented at the sub-national or regional level as much as possible. Where appropriate the situation in one selected country is explored more closely. Factors influencing the choice of countries for detailed attention include the existence of policies which illustrate relevant issues clearly, the availability of information and the desirability of drawing illustrations from a range of different Member countries.

The final section of the paper summarises some of the findings of the paper with a view to suggesting approaches compatible with an increasingly market-oriented agro-food sector. While Agriculture Ministries generally have some shared responsibility for the policies explored, the combined impacts of such measures on the structure of agriculture are not well understood. In this regard, policy makers are encouraged to review current practice in their countries in some of these fields to assess the consistency or coherence across policies and the possible need for adjustments of relevant policies.

¹ In the report, the term "transfer of farmland rights" means any legal change in the person of the owner or lessee of the land. The term "conversion of (farm) land use", means any change in the use of the land from agricultural to non-agricultural uses. The latter does not necessarily involve the transfer of farmland rights. However, when the report refers to the term "farmland mobility", it implicitly includes both meanings, i.e. transfer of farmland rights and conversion of farmland to other purposes.

The report normally uses the term "farmland" to express the land used for farming activities, while in some cases "agricultural land" is used to include forestry land and/or land for non-agricultural activities closely related to farming. However, due to the possible inconsistency across different original sources of information, this distinction may not be strictly maintained throughout the text.
II. POLICIES AFFECTING FARMLAND MOBILITY

1. Policy intervention in farmland markets

This section discusses various measures in OECD countries which may affect farmland mobility, focusing on a range of government interventions affecting transfer of land rights. Measures are classified into 3 major categories: legislation restricting ownership and lease (except those included in other sub-sections), issues arising from direct public operations affecting farmland markets, and limitations on foreign ownership.

Legislation restricting transfers of farmland ownership and lease

Various OECD countries employ legal instruments to control the transfer of farmland rights, whether ownership or lease/rent of land. In most cases they aim to prevent landholding patterns regarded as undesirable for structural and other policy reasons or to maintain favourable conditions for family farm units. For example, some countries preclude farmland from being subdivided into lots below a specified size to avoid further fragmentation of land, while others restrict aggregation of farmland exceeding stated upper area limits to discourage the depopulation of rural districts or to avoid excessive concentration of land. Some countries also require acquirers or lessees of farmland to live in adjoining areas with a view to consolidating social structures in rural communities and furthering more efficient farming.

This sub-section attempts to identify how these regulations differ across Member countries and explores ways in which they may affect farmland transfer. The analysis concentrates, on broadly applicable land transfer legislation, i.e. essentially law that applies generally to all farmland. It does not, therefore, examine temporary restrictions on disposal or use of farmland when it has been included in specific public programmes such as land consolidation. Specific issues in relation to lease contracts between landlords and tenants are also discussed separately in the next sub-section, followed by a brief review of inheritance arrangements in relation to farmland.

The major forms of land transfer legislation in particular Member countries are divided into four groups as reflected in Table 1.

Control over transfers of both ownership and leasehold

Danish land legislation covers both transfer of ownership and lease. To achieve targeted goals such as maintaining land in agricultural uses and preserving animal health, nature and the environment, the law requires farmers to observe “good agricultural practice”. For example, those who actually manage registered agricultural holdings are required to live permanently on them, whether they are owners or tenants. The law also sets upper limits on the addition of further plots to an existing farm through acquisition or lease of adjoining land and on the acquisition or lease of separate units. In the case of amalgamation, the upper limit for an aggregated area is 150 hectares unless the farmer can prove that he needs more land for the disposal of livestock manure and no neighbouring farmer can claim priority. The
road distance between amalgamating holdings or areas may not exceed 2 km. In the case of separate holdings, the upper limit is determined by the total number of holdings (a maximum of 5) and the distance of the land from the farm building (a maximum of 10-25 km). One of the 5 holdings may be substituted by several holdings provided the area of these holdings does not exceed 30 hectares in total. The number of holdings may be extended if the farmer needs more land for the disposal of livestock manure. However, acquisition or lease of a whole holding is subject to several regulations as explained in the next paragraph.

Persons who wish to acquire or rent an agricultural holding must fulfil certain conditions, one of which is that the purchaser or tenant live on the farm permanently for at least 8 years. If the area of the holding exceeds 30 hectares, they have to demonstrate an appropriate professional qualification, and they have to run the farm by themselves for at least 8 years (i.e. the farm cannot be leased out during this period). Acquisition of up to a maximum of 3 farms is allowed provided that road distance from the farm residence does not exceed 10 km and that no neighbouring farmer claims priority. Acquisition of an agricultural holding may not be allowed if such acquisition is made for capital investment purposes, or if the purchase price is regarded as disproportionate to value.

A rule of priority may apply by amalgamation of farms or areas and by acquisition of farms if the farmer in question will own more than 70 hectares after the operation. In this case a neighbouring farmer (i.e. a farmer living within 1 km from the land in question), who owns less than 70 hectares, may claim priority if he offers the market price for the land. If the priority claim is recognised, the amalgamating or acquiring farmer will have to satisfy the claim or give up the considered amalgamation or purchase.

A limited company may acquire an agricultural holding provided an individual fulfilling the conditions for personal acquisition holds shares representing the decisive majority and not less than 10 per cent of the shared capital. Apart from that, the general rule is that only individuals and not legal entities are allowed to acquire or rent agricultural holdings in agricultural zones.

Finally, authorisation is required for a farm to be subdivided and is only granted if the newly created holding is regarded as viable. This limits subdivision of farmland into small enterprises, for example, on inheritance.

<table>
<thead>
<tr>
<th>Type of control</th>
<th>Main aim of restriction</th>
<th>Countries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulation on transfer of ownership and leasehold</td>
<td>To encourage qualified farmers (skills, residence, dependence on farms, etc.)</td>
<td>Denmark, Germany, Japan</td>
</tr>
<tr>
<td></td>
<td>To avoid excessive aggregation of land</td>
<td>Denmark, Germany, New Zealand, Switzerland</td>
</tr>
<tr>
<td></td>
<td>To avoid undue subdivision of land</td>
<td>Denmark, Germany, Ireland, Italy, Japan, Portugal, Spain, Switzerland</td>
</tr>
<tr>
<td>Regulation on transfer of ownership or leasehold</td>
<td>To encourage qualified farmers</td>
<td>Norway</td>
</tr>
<tr>
<td></td>
<td>To avoid excessive aggregation of land</td>
<td>Spain</td>
</tr>
<tr>
<td></td>
<td>To avoid undue subdivision of land</td>
<td>Ireland, The Netherlands, Norway</td>
</tr>
<tr>
<td>Regulation on changes in operator</td>
<td>To avoid excessive aggregation of land</td>
<td>France</td>
</tr>
<tr>
<td></td>
<td>To avoid undue subdivision of land</td>
<td>France</td>
</tr>
</tbody>
</table>

1. It should not be inferred that countries not listed above have no restrictions on transfers of farmland ownership or leasehold.

Source: OECD Secretariat.
Germany maintains statutory controls over any change in the ownership or lease of agricultural land. The transfer of any farmland rights is subject to authorisation which may be withheld in three cases. The first is when a transfer is thought to lead to an undesirable distribution of farmland; for example, transfer of farmland to non-farmers rather than to farmers is generally considered undesirable. If there is competition for an acquisition farmers are given priority over non-farmers. The remaining two grounds for restriction are where a transfer would result in either undue fragmentation of land (a minimum of 1 hectare) or excessive aggregation of land (a maximum of around 400 to 500 hectares; this applies only to areas in the former Federal Republic of Germany), or where the sale price is thought to be seriously disproportionate (more than 50 per cent) to value. With respect to farmland lease, the authority may order the parties concerned to modify or cancel a contract for reasons similar to those outlined above in relation to sale. Although as a general principle no authorisation is required to convert from agricultural to non-agricultural land use, other laws such as physical planning are likely to govern changes in land use (see Section II.2).

In 1994, Switzerland enacted new Federal agrarian legislation called the "Farmland Ownership Act" (Loi fédérale sur le droit foncier rural) which attempts to ensure over the long term that farmland remains owned by operators to a great extent. This underlies the structural goal of the Act that the size of farms remain between a statutory minimum and maximum. The statutory minimum size is that judged large enough to require 0.75 of a worker or 2,100 working hours per year for farming. While the maximum is defined as that sufficient to provide a reasonable income for 2.5 to 3 on farm workers. The notion of 0.75 of a worker or 2,100 working hours per year is defined on the basis of the size of the management; it is supposed to correspond to, for example, 5 to 7.5 hectares of farmland in lowland with fodder-growing and crop-growing. Transfers of ownership of farmland may not be permitted if they result in creation of management units outside this range. A similar arrangement applies to leasing parcels of farmland though the statutory minimum size is that judged adequate to provide reasonable income of 1.5 to 2 workers.

In Italy and Portugal (and also Spain), restrictions are imposed on the division of farmland below certain minimum sized plots. The transfer of farmland ownership or lease is prohibited if it involves the division or separation of parts of farmland in contravention of 'minimum viable units'. This means an area of land which is defined for each zone of the country as necessary and sufficient for the work of a family farming the land in an appropriate manner according to the principles of proper agriculture. However, the effectiveness of this provision is unclear; in Italy no legislative procedures exist for establishing this 'minimum viable unit' (Porru, 1992).

In Japan, those who wish to acquire or rent farmland must apply for authorisation which is granted, in principle, only when all of the following conditions are met:

a) individuals will cultivate all the farmland that they own;
b) individuals or at least one of their family members shall be engaged on a regular basis in the farm operation on the land;
c) the total area of farmland after the acquisition or lease reaches 0.5 hectare (2 hectares in Hokkaido) or more, except for some types of intensive farming;
d) individuals are considered capable of managing farming effectively on the land, in the light of their financial situation and the location of their residence.

Generally, legal entities are not allowed to acquire or rent any farmland unless they are authorised as ‘agricultural legal persons’, which are stated by the law. The qualification for this includes,
among other things, that all of the members of an ‘agricultural legal person’ should in principle consist of those who have invested farmland in that legal person or are working there on the regular basis.

In New Zealand, in the period of early European settlement larger-scale estates were established, employing agricultural labourers. A policy framework evolved to foster wider ownership of farmland and to favour family farming. The legislation tries to avoid undue aggregation of farmland by requiring most purchase or lease of over 2 hectares of farmland to be subject to authorisation.

Control over transfers of either ownership or leasehold

Reflecting its policy goal of preserving owner-operated family farms as the predominant operating unit, Norwegian legislation is designed to control transfers of farmland ownership (Box 1). Only limited regulations on transfers of lease exist.

In the Netherlands, more than 30 per cent of the agricultural area is leased and around half of the farm holdings are totally or partly leased. Given the importance of land leasing, Dutch law makes all transfers of farmland lease subject to authorisation. Various factors are taken into account, such as whether the rent is reasonable. There is also provision for account to be taken of possible impacts of land transfer on agricultural structures (such as the break-up of farms or accumulation of tenure). In practice, however, the authorities do not scrutinise leases rigorously from a structural perspective. If authorisation is withheld, the lease contract must be amended in accordance with the relevant law or it is cancelled. Although a law to control transfers of the farmland ownership has been promulgated, it has not yet come into practice.

Under Spanish land law, farmland lease is not permitted when the tenant fails to meet personal prerequisites (farming skills, etc.) or when he farms more than 50 hectares of irrigated land, 500 hectares of non-irrigated land or more than 1 000 hectares of extensively used pasture land.

Ireland has a statute that prohibits leasing and sub-leasing of farmland (as well as subdivision) without official consent. The aim of the policy is to foster self-management and to prevent the institution of new tenancy arrangements. This is partly explained by the history of extensive Irish tenancy under foreign ownership. As a consequence, the proportion of agricultural area rented in Ireland was just 12 per cent in 1989/90, the lowest among 12 EU countries (see Table 2 below).

Control over changes in farm operator

In France, a complicated system for controlling land transfer has been in place for more than 30 years. It does not regulate transfers of farmland ownership in a general sense, but requires authorisation for any transfer if it involves the change in the actual farm operator, whether owner or tenant. For example, if the owner of farmland changes but the farmer remains the same upon the lessor’s transfer of the leased property, there is no requirement for approval. Conversely, a lessor wishing to recover leased land in order to farm it himself would be subject to authorisation.

Authorisation is granted, or even not required, if a transfer is not considered to be in conflict with the notion of ‘family farm holding with personal liability’, which is prescribed by the law as an ideal type of holding. As the basis for authorisation procedures, a minimum settlement acreage (Surface minimale d’installation: SMI) is set by the legislation. One SMI is defined as an ‘acreage of a holding operated by two man-work units, with a rational management and providing regular income’. The national SMI is
Box 1. Policies Affecting Farmland Mobility: Norway

-- Regulations on the Transfer of Ownership
Transfers of farm real estate, apart from those associated with inheritance and other intra-family transfers, are subject to the Concession Act, which regulates all real estate transactions. The Act, which was amended in May 1974 to strengthen the control of the land use, aims at protecting a limited farming area, bearing in mind the different interests of agriculture, horticulture and forestry, the needs of urban development and the general interest of society with respect to recreation and protection of nature. The Act also seeks to control increases in farm real estate prices, to limit the capitalisation of agricultural assistance into land prices.

The general rule is that real estate cannot be acquired without a concession granted by the king. To obtain this concession, the acquirer must be able to demonstrate professional qualifications for operating a farm and must take up residence on the farm and operate it for at least five years. Certain transfers of land ownership are exempt from the provision concerning professional training: plots of land to be used for house construction; holdings of less than 0.5 hectares; and farms transferred to close relatives under certain conditions. The administration could deny the concession if, for example, there is reason to believe that acquirer intends primarily to invest in farmland, and especially if the acquisition is a short-term investment. These regulations have prevented the development of rental farming.

-- Restrictions on Subdivision
The Land Act aims at promoting efficient land use with regard to the interest of society and of those employed in agriculture. Under this Act, subdivision of farms is prohibited without approval of the authority. The authority can only grant its approval for subdivision if it is not thought to negatively affect the economically viable management of the farm or is otherwise justified by the common interests of society, where the subdivision is part of a farm rationalisation project.

-- Pre-emption
To achieve the general objectives of the Concession Act, the State is given a pre-emptive right over real estate which the Act encompasses. This right applies also to farms and farmland to be used for structural rationalisation in agriculture. In general, administration of the Act assumes that farm rationalisation should take place on the initiative of farmers themselves; however, the Norwegian Government has intervened in certain cases. Pre-emptive rights may also be applied for the establishment of smaller holdings if the employment situation in the area warrants it. When pre-emption is enforced, the State takes on the rights and obligations of the buyer.

-- Farming Requirements (Good Husbandry)
The Land Act provides the legal basis for protection of farmland and it requires arable land to be used in agricultural production in accordance with normal farm management practice. In a case of mismanagement, the farmer may be compelled to lease to others; in other words, the owner has an obligation to preserve cultivated land, keep it in proper condition and actually use it for farming. In exceptional cases, the State can expropriate property and transfer it to others.
fixed once for every 5 years and is currently set at 25 hectares. The local SMI is also fixed to take account of regional differences, with 30 per cent of the national SMI being the lowest possible local SMI. There is no upper threshold. Local adaptations for specific crops are possible (Lorvellec, 1992).

When a farmer wishes to enlarge the size of a management unit by acquiring any title to adjacent parcels, he must apply for prior authorisation if the enlargement results in aggregation of more than 2 to 4 times the SMI (depending on the local scheme). Similarly, authorisation is necessary if an enlargement involves break-up of another existing holding into parcels of less than 2 SMI. While new settlements are also subject to authorisation in general, young and skilled entrants may be exempted from this obligation. Where authorisation is required, French law gives precedence to skilled farmers with high reliance on agriculture over other farmers or legal entities.

Other restrictions

Some Member countries at present appear to exercise no major broad control on the transfer of farmland, preferring a fundamentally free-market approach. These may include, Australia, Belgium, Canada, Greece, Luxembourg, the United Kingdom and the United States. This does not mean, however, that restrictions on disposal may not apply to certain categories of farmland or certain types of farmland transactions in these countries. For example, public ownership of agricultural land is one of the tools for addressing environmental and other concerns in Australia.

In addition, some more general regulations may apply for certain types of farmland transfer even in these more market-oriented countries, such as limits on ownership by businesses and foreign entities. In the United States, for instance, 13 states (especially in the important Midwest farming region) restrict non-agricultural business entities from acquiring farmland. Family farm corporations, where the majority of the shares belong to family members and at least one of them participates in the operation of the farm, are not restricted in general. (Issues concerning foreign ownership are discussed more fully below).

Farm tenancy law (lease term and rent)

In many OECD countries, farmland leases are important in agricultural structures. National legislation concerning farm tenancy often gives tenants preferential conditions to encourage improvement of the farm businesses and capital expansion. There are marked variations among Member countries, however, in the degree of public intervention in the relationship between landlord and tenant. This sub-section briefly reviews government interventions in the farmland leasehold in different countries. It focuses on the issues of lease duration and rent determination in order to avoid repetition of issues treated in the previous sub-section.

In some countries, the United States for example, farm leases are a matter of contract with minimal legislative intervention (Table 2). Australia, Canada and New Zealand also broadly fit into this category. In other countries, however, a complex system of regulation applies.

Duration of leases

Most of the legislation in force in European countries provides a minimum duration for agricultural leases, sometimes with a distinction according to whether the lease involves a whole farm or just a parcel of land. In some countries (the Netherlands for example) farm leases can be concluded for a
Table 2. The duration and rent in farmland lease contracts

<table>
<thead>
<tr>
<th>Country</th>
<th>Duration and rent in lease contracts</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States</td>
<td>The term depends on the contract; short-term leases (e.g. 1 year) are common. Rent is determined by the market.</td>
</tr>
<tr>
<td>(42.8%: 1992)</td>
<td></td>
</tr>
<tr>
<td>United Kingdom</td>
<td>The term depends on the contract; annual leases are common. Rent is fixed by an arbitrator.</td>
</tr>
<tr>
<td>(38.4%)</td>
<td></td>
</tr>
<tr>
<td>Iceland</td>
<td>The term depends on the contract. Rent is determined under guidelines laid down by the law.</td>
</tr>
<tr>
<td>Norway</td>
<td>Minimum 3 years. Rent is determined by the market.</td>
</tr>
<tr>
<td>Portugal</td>
<td>Minimum 10 years for farmers who employ salaried labour. Otherwise, 7 years. Rent is determined by the market.</td>
</tr>
<tr>
<td>(19.9%)</td>
<td></td>
</tr>
<tr>
<td>France</td>
<td>Minimum 9 years. Rent is determined under guidelines laid down by the law.</td>
</tr>
<tr>
<td>(56.2%)</td>
<td></td>
</tr>
<tr>
<td>Spain</td>
<td>Minimum 6 years; generally maximum 15 years. Rent is determined on the basis of the standard established by the authority.</td>
</tr>
<tr>
<td>(19.9%)</td>
<td></td>
</tr>
<tr>
<td>Belgium</td>
<td>Minimum 9 years. Maximum rent is determined by legislation.</td>
</tr>
<tr>
<td>(66.2%)</td>
<td></td>
</tr>
<tr>
<td>Netherlands</td>
<td>Minimum 6 years for land without buildings, 12 years for a whole farm. Rent is determined by legislation.</td>
</tr>
<tr>
<td>(31.5%)</td>
<td></td>
</tr>
<tr>
<td>Luxembourg</td>
<td>Minimum 6 years for plots of land, 9 years for a whole farm. Rent is determined by the market.</td>
</tr>
<tr>
<td>Switzerland</td>
<td>Minimum 6 years for land without buildings, 9 years for a whole farm. Rent is determined under guidelines laid down by the law.</td>
</tr>
<tr>
<td>(18.4%)</td>
<td></td>
</tr>
<tr>
<td>Italy</td>
<td>Minimum 15 years in general, 6 years for mountainous regions. Rent is determined on the basis of the standard established by the authority.</td>
</tr>
<tr>
<td>(13.1%: 1994)</td>
<td></td>
</tr>
<tr>
<td>Norway</td>
<td>A term longer than 10 years is subject to authorisation. Rent is determined by the market.</td>
</tr>
<tr>
<td>(21%: 1984)</td>
<td></td>
</tr>
<tr>
<td>Germany</td>
<td>The term depends on the contract; the agricultural tribunal may extend contracts up to maximum 12 years for plots of land, 18 years for a whole farm. Authority may withhold a contract if the rent is regarded as distorted.</td>
</tr>
<tr>
<td>(42.0%)</td>
<td></td>
</tr>
<tr>
<td>Japan</td>
<td>Minimum 15 years in general, 6 years for mountainous regions. Rent is determined on the basis of the standard established by the authority.</td>
</tr>
<tr>
<td>(18.4%)</td>
<td></td>
</tr>
<tr>
<td>Denmark</td>
<td>Maximum 30 years for a whole farm. Rent is determined by the market.</td>
</tr>
<tr>
<td>(19.1%)</td>
<td></td>
</tr>
</tbody>
</table>

1. Figures in brackets indicate the percentage share of rented area in the total agricultural area. For EU countries, data are 1989/90. For Germany, ex-GDR Länder are not included.

shorter period than the statutory minimum lease term, subject to the approval of the authorities. In most countries, however, such termination would be allowed only exceptionally. The fact that a minimum duration is not set for Norway, Japan, and Denmark, and only set for a short period for Ireland, appears to reflect the limited importance of tenant farmers in these countries (see left columns in the table for reference to percentage shares of rented area). Denmark establishes a maximum duration (30 years); Danish law disallows any lease renewal to avoid long-term leases and encourage tenants to become landowners. After the expiration of the stipulated period of the lease agreement, some countries provide a renewal or a prolongation of the lease agreement. In some cases the period of prolongation is less than the minimum duration of the primary period.

Rent determination

Tenants and landlords freely negotiate rents in Denmark, Ireland, Greece, Luxembourg and Norway. In other countries, the amount of rent the landlord can lawfully charge may be regulated, though procedures vary considerably. In the United Kingdom, the two parties can agree on the initial rent, but later reviews by arbitration are controlled under a formula. The law provides for regulatory or administrative mechanisms in Iceland and France. Authorities may control rents by establishing the maximum or the standard rent on which determination of an actual rent in each contract is to be based as in Netherlands, Spain, Belgium, Portugal, Italy and Japan. The rent is normally expressed in terms of cash irrespective of the price of agricultural products, for example on the basis of potential yield.

Inheritance arrangement

In some countries, special arrangements related to farmland succession play an important role in maintaining farmland within families and avoiding undesirable subdivision of farm property. Since transfers of farmland most frequently occur within families, this issue is worth discussing as a separate subject. This sub-section briefly surveys various inheritance arrangements across OECD countries, with particular attention to the structural implications for the agricultural sector.

Civil inheritance law, which is usually based on the equality of all heirs (if without a will), may result in either a fragmentation of farmland through inheritance of a farm by a number of heirs or one heir acquiring the whole farm but with high debts due to compulsory payments in compensation to other co-heirs. In order to avoid such a loss of viability, most countries have introduced special instruments for succession of farmland. Although they differ significantly, there are two prominent features by which differences of systems can be characterised: how to decide on the criteria for selecting the inheritor of the farmland, and how to arrive at the amount of compensation to be paid to the remaining heirs. As to the first issue, OECD countries can be classified into three groups based on a recent work on inheritance arrangements (Winkler, 1991). (See Box 3 for a comment on compensation).

The North and Central European Group (Preference for a single-heir inheritance)

This group comprises countries influenced by German Civil Code (Germany, Austria, Switzerland and Greece), and also Scandinavian countries (Denmark, Sweden, Norway and Finland) where the legal systems are based on collections of individual laws rather than a comprehensive code. These countries share a common feature in their relevant laws: the legislation allows one heir to succeed to a whole farm in return for monetary compensation to other heirs.
For example, specific laws in several north west German Länder are based chiefly on the principal heir system. On the testator’s death, the farmland is not included in the community of property between heirs but passes to a single “principal” heir who is determined sometimes by the court. Some laws require that such a “principal” heir should be capable of managing a farm independently or has worked on a farm or possesses agricultural qualifications. In principle, application of these specific laws is optional; in other words, the testator may subordinate his farmland to the ordinary inheritance law (Civil Code). For the rest of Länder the Civil Code applies, under which farmland is, as a principle, to be equally divided into heirs. However, the German Civil Code also allows a testator to bequeath his land to an heir and determine the claims of co-heirs. This geographic divergence in inheritance arrangement partly explains the structural difference currently observed between the two regions in the former Federal Republic of Germany: larger-sized farmlands in the north and fragmented, smaller farms in the south.

In Norway, the Allodial Act pursues two structural goals: securing farm population in all districts by way of maintaining owner-operated family farms, and preventing undue fragmentation of farmland. To achieve these, it gives priority rights to the eldest child to take over ownership of the farm. In the case of inheritance or other forms of transfer within a family, the Act gives the person who holds first priority the right to take over ownership of the farm undivided. This Act is imperative, inasmuch as it entirely precludes the testator’s freedom of will. Furthermore, it secures the relatives of the new owner the allodial right (i.e. a right to purchase the ancestral farm if the new owner decides to sell the farm to someone outside the circle with allodial right). Persons who take over a farm pursuant to their allodial right must live on and manage the farm for at least 5 years.

In Sweden, authorisation is required for any kind of acquisitions of farmland, including acquisitions within or from outside of families. For example, authorisation may not be granted for the division of a profitable or potentially viable farmland if such a division entails substantial loss of viability for the farm. This provision also applies to the partition of farms on succession. In those cases where authorisation is not granted, the heirs must either sell the farm undivided or lease it. This explains the relatively high proportion of leased land in Sweden (approximately 40 per cent) comparing with other Nordic countries.

The Roman Law Group (Principle of Egalitarian)

The second group consists of those countries which have assimilated, or have been influenced by, the 1804 French Civil Code. France, Belgium, Luxembourg, the Netherlands, Italy, Spain and Portugal are to fall in this category. The most salient feature of this group was distinctly egalitarian cast, designed to ensure the equal treatment of all heirs. A major consequence of this principle was the fragmentation of farmland, since farmers were often too poor to succeed a whole farm in return for compensation payments to other co-heirs. In this regard, Turkey could also be considered a member of this group (see Box 2). However, this egalitarian aspect of the “Napoleonic” rule has been mitigated during the 20th century due to the need to preserve economically viable farm units. Various measures have been introduced to maintain farmland intact in the context of inheritance.

In France, for example, “preferential allotment” can be applied if a farmland is to be divided. Under this system, a most qualified heir can be chosen by a trial court as the only allottee, and he may ask, under certain conditions, to be allowed to pay monetary compensation to others over a period of up to 10 years. The system is reinforced by complementary devices of allotment; one of them is to establish a farmland grouping (Groupement foncier agricole: GFA). An inherited farmland may be assigned to GFA which comprises plural co-heirs wishing to jointly take ownership of the land for the purpose of farming, and possibly third parties. Another mechanism is called “deferred wages” (salaire différé), whereby a
descendant who has participated in the operation of the farm after the age of 18 without remuneration is entitled to claim his “deferred” salary on partition of the land. Usually this benefits an heir who is succeeding to the farm. These modified forms of allocation make allowances for the difficulties that an heir willing to continue farming might experience in paying off monetary compensation.

While the basic structure of the inheritance arrangement generally follows the French law, Italy has specific legislation tailored to protect the family farm. In case of distribution of the estate or of parcelling out of the farmland, and if one of the family members is to sell his share, the other members working in the farm business are entitled to the right of pre-emption (i.e. first right to purchase). Furthermore, family members enjoy a mandatory right of purchase at a fair price determined by the agricultural authorities if a member no longer participates in the operation of the farmland and does not sell his share within 5 years.

The Common Law Group (Freedom of Will)

The last group includes countries in the common law tradition, characterised by the testamentary freedom which supersedes the principle of egalitarian between heirs. For instance, in England of the United Kingdom, the testamentary freedom allows an heir to be designated as a single farm successor by testator’s will and to inherit a whole farm even without any obligation to pay monetary compensation to other co-heirs. While this type of inheritance arrangement can be regarded as freer from legislative intervention than European Continent, such an arrangement could be the most efficient inheritance device in the light of avoiding undue subdivision of farmlands and hence preserving economically viable farm units. The (former) Commonwealth countries, i.e. Australia, Canada, Ireland, New Zealand and the United States are included in this group. In addition, Japan could be included here in the light of its commonly-observed practice where farmland is inherited undivided within a consensus of family members, though the Japanese legislative structure is fundamentally influenced by laws in the laws of Continental Europe.

Box 2. Farmland inheritance and fragmentation: Turkey

The large number of multi-parcel agricultural land holdings in Turkey is in part a consequence of its 1926 Civil Code. The inheritance provisions of this law specify that, upon the death of a land-owner, 25 per cent of the land should pass to the owner’s spouse (if still alive), and the rest should be distributed equally among the surviving children. The result, after successive generations of inheritance, has been greater and greater fragmentation of ownership. The effects on agriculture of the high degree of fragmentation of ownership is partially alleviated by the fact that some farmers are operating farms on behalf of absent family owners.

<table>
<thead>
<tr>
<th>Number of plots</th>
<th>Number of farm holdings (1 000)</th>
<th>Share in total (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>337</td>
<td>578</td>
</tr>
<tr>
<td>2-3</td>
<td>933</td>
<td>1 139</td>
</tr>
<tr>
<td>4-5</td>
<td>797</td>
<td>904</td>
</tr>
<tr>
<td>6-9</td>
<td>791</td>
<td>760</td>
</tr>
<tr>
<td>10 or more</td>
<td>701</td>
<td>587</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>3 559</strong></td>
<td><strong>3 967</strong></td>
</tr>
</tbody>
</table>

*Source:* State Institute of Statistics, Agricultural Census, Turkey.
Public bodies affecting the farmland market

Several OECD countries have specific public organisations which may intervene directly in the farmland market through purchasing, holding and selling land. These organisations could be seen as “land bank” style operations but differ in that they are designed for the pursuit of targeted structural policies in the agricultural sector. These bodies aim to guide farmland transfer in directions seen as desirable for structural adjustment. This could be done without causing distortions in the farmland market if the scale of operations were limited and as long as market prices determined transactions. However, since they often intervene in the market with the objective of maintaining the agricultural use of land, they may curtail demand for farmland among potential non-agricultural purchasers. They may in some cases provide financial assistance for a farmer who wishes to buy or sell farmland to the bodies.

This section first describes relevant legislation currently applied in different Member countries, then looks more closely at a selected example.

Box 3. Preferential Assessment on Value of Farmland: Selected European Countries

For countries in the North and Central European Group and the Roman Law Group, a key issue in regard to farmland inheritance might be how to avoid further land fragmentation (or encourage land consolidation for economic efficiency gains) without causing unbearably high debts on successors. Inheriting a whole farm normally forces heirs to pay compensation to other co-heirs, often resulting in high debts on successors who are willing to continue farming. One option used to address this issue is the preferential assessment to appraise an inheritable value of farmland. It reduces the financial burden of a farming successor by, for example, assessing farmland on the basis of its productive value (or current agricultural value) rather than market value. In other words, preferential assessment upon farmland benefits a successor in the same manner as tax concessions (see II.3).

This issue is not important for non-European OECD countries, since most of them belong to the Common Law group where testamentary freedom is highly respected. In Europe, although the market value is predominantly used, various forms of preferential assessment are applied as below.

<table>
<thead>
<tr>
<th>Country</th>
<th>Preferential Assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Denmark</td>
<td>60% of market value</td>
</tr>
<tr>
<td>Germany</td>
<td>Productive value (annual net revenue multiplied by 18)</td>
</tr>
<tr>
<td>The Netherlands</td>
<td>50% of market value</td>
</tr>
<tr>
<td>Norway, Luxembourg, Spain, Switzerland</td>
<td>Productive Value</td>
</tr>
</tbody>
</table>

A. Policies in OECD countries

In Belgium, the Flemish Land Company (in Flanders) and the Walloon Office for Rural Development (in Wallonia) are entitled to acquire farmland should it come on the market. They are also empowered to override other candidates, where necessary, in purchasing land offered for sale. The aim is to facilitate implementation of land reallocation projects, thus applies only to land included in such projects. (In Norway, a similar function is fulfilled by the State and the municipality, see Box 1).

The Dutch Bureau for Agricultural Land Management is responsible for the purchase of farmland for non-urban purposes if the land is located in rural areas. The role of the Bureau includes the acquisition at the market price, temporary management and disposal of real property to carry out specific projects such as land development and land reservation. The Bureau has also pre-emptive rights by the law.

In Germany, Länder have a state-owned organisation (Siedlungsgeselkchaft) to buy farmland from farmers or non-farmers and to resell it to farmers. The organisation can purchase farmland only when land parcels of over 2 hectares come on the market and when there are no farmers wishing to buy the land. Pre-emptive rights may be executed over non-farmers but not over farmers.

An Italian special agency, the Cassa per la formazione della proprietà contadina, has been created to act as intermediary between potential sellers and buyers of farmland and as a long-term, low-interest lender to the buyers. It is authorised to acquire farmland for the purpose of selling it to “qualified” farmers who are eligible for the Cassa’s 30-year mortgage loans with very low rates of interest (usually about 1/3 to 1/4 of the market rate). The qualification for this includes, among other things, that the applicant be a resident operator of the farmland in question, that the total family labour force is not less than one-third of the total labour requirement for normal farming operation on the land and that the land can be neither converted nor subdivided for at least 30 years.

In Japan, the Corporation for Rationalisation of Farmland Holding has powers over the acquisition, temporary holding, resale, and lease of farmland. Whereas the principal function may appear similar to the French SAFERs (see below), its position in the farmland market is much less important. The proportion of the ownership and leasehold transfer dealt with by the Corporation covered only 7 per cent of the total farmland area subject to transfer in 1993. Some tax concessions are provided for the activities of the Corporation.

B. Case study -- SAFERs in France

Unlike other European countries, France does not have specific agrarian land legislation to control farmland ownership, although it does control changes in farmland operators. An exception is the institutional status given to the SAFER (Sociétés pour l’aménagement foncier et l’établissement rural) whose important role in the French farmland market warrants closer study.

Organisation and objectives

The SAFERs were established by an Act of 1960 as non-profit public corporations controlled by the government and owned by farmers’ unions, mutual parties and other administrative or agricultural entities such as Crédit agricole (Figure 1). Their principal objectives are to help certain farmers expand
the scale of their management, facilitate settlement or maintenance of viable farm units and thereby improve agricultural structures, mainly through buying and selling operations in the farmland market. They also implement research and investigation relevant to farmland use, environmental protection or rural development. There are currently 26 SAFERs.

Figure 1. Basic structure of French SAFER

Operations in farmland market

The SAFERs can buy farmland should it come on the market. Under law, a landlord wishing to sell farmland has to give a 2-month prior notification to the SAFER. SAFERs’ purchases of land are at the market price and they are made when judged necessary to achieve structural goals. The area of farmland purchased by the SAFERs increased steadily from the early 1980’s and their proportion of total national farmland areas purchased has reached a very high 25 per cent in the most recent years (Figure 2). SAFERs thus have a significant controlling interest in France’s farmland market.

A pre-emptive right for a SAFER’s acquisition may be exercised where necessary. If pre-emption is triggered, the SAFER can override all buyers other than the tenant of the land. However, the share of farmland area purchased with the use of pre-emption was below 6 per cent of the total area acquired by the SAFERs in 1994.
The SAFERs have to sell their purchased lands within a limited period (5 years in principle, 10 years at maximum) to new farm entrants or to foster sustainable farm units. Though no clear rule is provided for the determination of resale price, it is normally set at the purchase price plus the value added by SAFER (e.g. land improvement\(^2\)), as well as the handling costs. No explicit standard is set for the eligibility of a buyer. However, as described in the previous section, the underlying policy target is to foster an ideal type of holding which is defined by the law as ‘family farm holding with personal liability’. This notion is based, among other things, on a minimum settlement acreage (SMI). The SAFERs may also dispose of stocks for national projects such as TGV and highways, and for residential, industrial and commercial purposes, except if the land has been acquired with the use of pre-emption.

Figure 2. Area of farmland purchased by the SAFER

![Area of farmland purchased by SAFER](image)

Source: SAFER/SCAFER

In 1994, 62 per cent of the land area disposed of by the SAFERs went towards enlargement of existing farms, while 16 per cent of them helped the settlement of new entrants. 92 per cent of disposals were for agricultural use.

The SAFERs may lease farmland but only under certain conditions. First, the SAFERs can behave as an intermediary between lessors and lessees but cannot let their own stocks be rented. Second, the farmland to be leased should be small enough to be regarded as a non-viable unit by itself; the criterion for this is less than twice the SMI. Third, the lease should be temporary, within 6 years in principle but 12 years at maximum. SAFERs also implement research and investigation concerning land

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\(^2\) Land consolidation is an important aspect of the SAFER’s operations and projects in this area are believed to have reduced agricultural production costs.
use. **Surveillance** of the farmland market including price developments is a key activity in which they have a comparative advantage.

Financial difficulties

The net price of farmland in France had been rising consistently to the middle of 1970’s. To mitigate the adverse effects of price increases, the SAFERs were active in farmland purchase with a view to holding cheaper reserves to be released as prices rose. As a consequence the area of SAFERs’ yearly acquisitions reached 92 000 hectares in 1980, more than twice the 1960’s average of 41 000 hectares. This was accompanied by an accumulation of year-end stocks that reached a peak of 179 000 hectares in 1981, a considerable increase from 95 000 hectares in 1968 (Figure 3). As in other European countries, however, various factors such as a fall in real prices of agricultural products, a decrease in rural population and recession led to a fall in the net price of farmland. The price index of arable land at constant market price (1985 = 100) turned downward after a record of 171.9 in 1978 to 72.8 in 1993. This has caused serious financial problems for the SAFERs. Under “flat” market conditions they were obliged to sell stocks at lower than purchased prices. Moreover, they faced difficulties finding buyers because of expectations of further price decreases. Consequently, their financial crisis was serious with a high level of depreciated stocks.

![Figure 3. SAFERs’ year-end stocks and index of farmland price (net) in France](image)

Significant **financial support** was provided for 9 of the 34 SAFERs at the end of 1980’s. The loss associated with farmland transactions during the period 1985-94 was estimated to be at least FF 300 million, which was compensated for in 1988 and 1989 by the parties concerned. They include Crédit agricole, the government, the SAFERs themselves, and the partnership of the SAFERs. While the proportion of loss absorption among these parties is not available, it is substantial compared with the
SAFERs’ total capital property value of FF 370 million in 1994. In 1995 financial support was again given to one SAFER in the south of France, though the scale of aid was much less than in the late 1980’s.

Recent developments

Reforms have been implemented in the SAFERs’ management with legislative changes in 1990. Apart from institutional restructuring, there have been three important changes. First, they are now oriented to more moderate management in marketing operations and may buy farmland only when they expect re-sale. They may have become more like a temporary farmland holding agency, as illustrated in recent developments in year-end stocks. Second, the SAFERs have wider authority to sell farmland for non-agricultural purposes. The limitation on disposal of land involving conversion of use was relaxed under a new law, although the area of land so disposed has not sharply increased. Finally, as discussed above, the SAFERs may lease land under certain conditions.

Foreign ownership

This section describes various restrictions on foreign ownership of farmland in Member countries. It also examines the main concerns underlying such restrictions, with particular attention to the countries where such regulations are of relatively greater importance than in other OECD countries.

The issue of foreign ownership of land has received significant attention from other OECD committees. The Committee on Capital Movements and Invisible Transactions (CMIT) has been dealing with the issue from the viewpoint of limitations on investment by non-resident business entities set at the time of entry and establishment of such companies, in the discussion for the establishment of the OECD Codes of Liberalisation of Capital Movements. The treatment accorded to foreign-controlled business entities operating in Member countries, including new investment by existing business entities, has been dealt with by the Committee on International Investment and Multinational Enterprises in the context of the OECD’s National Treatment commitment. Description in this section is broadly based on information derived from these sources. While these committees have tended to discuss measures affecting real estate transactions in general, the analysis here focuses on cases where sector-specific regulations are applied to farmland ownership by foreigners.

A. Policies in OECD countries

As has been noted in CMIT discussions, agricultural land or rural land is the area where the most frequent restrictions on foreign investment in real estate are observed. The severity of restrictions in practice varies by country and, where relevant, by sub-national territory in a country (Table 3).

In countries where the population is small relative to the size of the national territory and where therefore the potential for foreign investment in agricultural and rural land is felt to be disproportionately large, some limitations on foreign ownership of such land have been called for in the national interest. These countries include Australia, Canada and the United States, where restrictions have been maintained by certain states or provinces but not at the national level, and also New Zealand.
Table 3. Regulations on foreign ownership in OECD countries

<table>
<thead>
<tr>
<th>Existence of restriction</th>
<th>National or sub-national</th>
<th>Countries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Restriction exists on foreign-ownership of farmland:</td>
<td>National level:</td>
<td>Ireland, Japan, Mexico, New-Zealand</td>
</tr>
<tr>
<td></td>
<td>Sub-national level:</td>
<td>Australia, Canada, United-States</td>
</tr>
</tbody>
</table>

1. Some other countries maintain restrictions on foreign ownership of real estate in general, either at national or sub-national level. These include Austria, Czech Republic, Iceland and Turkey.


For example in **New Zealand**, specific provisions pertain to the acquisition of rural land by non-New Zealand citizens (irrespective of their place of residence) or foreign-controlled enterprises. Where they wish to acquire an option to purchase or leasehold of farmland of 2 hectares or more located in rural areas, an authorisation by the Land Valuation Tribunal must be obtained. The criteria for approval include the requirement that the proposed investment makes a significant contribution to agricultural and/or rural development. For example, the purchaser or lessee must demonstrate that the investment will introduce new technology or business skills, create new job opportunities, add market competition and enhance efficiency or productivity. Authorisation is granted automatically when an applicant is ordinarily resident in the country.

In **Australia**, authorisation is required in Western Australia for transfer of pastoral leases held by foreign-controlled business entities to ensure majority Australian ownership. Some other regulations exist at national and sub-national level to control foreign ownership of real estate in general, but are rarely exercised.

Perceived problems associated with the acquisition of land by foreigners have led several **Canadian** provinces to implement provisions to discourage or prohibit the ownership of farmland by non-residents, including Canadians living outside the province. In Alberta and Manitoba, specific legislation limits non-residents to 20 acres of farmland ownership. In Ontario and Quebec, the land transfer tax for agricultural land is higher for non-residents than residents. Moreover, Alberta and Saskatchewan have specific programmes under which “qualified” farmers receive interest rebates on loans they obtain to buy farmland; the eligibility for this is generally restricted to Canadian citizens or landed immigrants normally resident in these provinces. Nova Scotia and Prince Edward Island also restrict non-resident ownership of agricultural land. Conversely, Newfoundland and New Brunswick have been positive towards foreign investment in farmland.

In most **European countries** restrictions on foreign ownership of farmland have been either liberalised or unimportant due to the existence of more general controls over the real estate transactions, though some specific regulations remain. In **Ireland**, for historical reasons foreign investment in agricultural land and particularly investment by non-residents remains sensitive. All non-Irish citizens, excluding EU nationals and those who have been resident in Ireland for 7 years or more, must seek written approval from the Land Commission if buying agricultural land for farming. **France** also requires prior
notification and authorisation for direct investment of FF 50 million or more by non-EU nationals or companies controlled by such nationals to acquire vineyards.

Japan has long maintained broad restrictions on inward direct investment in the agricultural sector as a whole, i.e. not only investment in farmland but also in all other elements of the industry. One justification given for this has been Japan’s concern about securing stable food supply. Although proposals for such investment may be turned down, or modified if authorities consider it undesirable, criteria for approval have not been made clear. The same restriction applies to forestry and fishery sectors.

B. Case study -- The United States

The Federal Agricultural Foreign Investment Disclosure Act of 1978 (AFIDA) does not restrict foreign ownership of farmland but requires all foreign persons or foreign-controlled business entities who hold, acquire or dispose of farmland to report such holdings or transactions to the Secretary of Agriculture. The same treatment is applied to land used for forestry or timber production.

As of the end of 1993, foreign persons (individuals and corporations) owned 7.3 million acres of the United States farmland (Table 4). This accounts for slightly less than 1 per cent of the 878 million acres of privately owned farmland in the United States. Pastureland is the most important component of total area owned by foreign persons, which has moderately increased from the 1981 level of around 5 million acres. European and Canadian foreign owners are predominant (Table 5).

Actual restrictions on farmland ownership by foreigners are maintained by individual states; currently 28 states have some types of statute restricting ownership of land by foreigners. Most of them are directed at non-resident foreigners only. A clearer picture is outlined in a recent report “State Restrictions on Landownership by Aliens and Businesses, December 31, 1992” (J. David Aiken) as follows:

“The restrictions vary greatly in the degree of their severity. Idaho, for example, merely restricts the acquisition of state-owned land or interests therein by foreigners. Other states, Kansas for example, restrict the acquisition of land generally or agricultural land specifically. Still other states (Georgia, Kentucky, Maryland) limit their restrictions to “enemy” aliens. Indiana and other states restrict the amount of acreage that foreigners may hold. Finally, some states, Minnesota, for example, prohibit alien ownership of land, but they generally have exceptions to those prohibitions for certain land uses, such as for mining or research.”

In many states, restrictions are only directed to the ownership by nationals of countries designated as enemies or to public land, or targeted to non-farming land such as desert. Only 17 states have statutes with clear restrictions on foreign ownership of farmland.

Restrictions on foreign ownership in these 17 states can be grouped into 4 general categories. The first category is characterised by requirements that applicants for land acquisition receive United States citizenship within a specified period of time. In Kentucky, for example, a national of a country designated as a non-enemy, after declaring an intention to become a United States citizen, may acquire or hold any interest in land (real property) as if a citizen of the state, but the land is subject to forfeit if citizenship is not obtained within 8 years from the time of acquisition. Illinois, Indiana, Mississippi, and Wyoming impose similar requirements. The second category of restrictions limits the maximum area of land that may be owned by a foreigner. For example, non-resident foreigners are prohibited from acquiring more than 640 acres of land in Wisconsin. Indiana, Pennsylvania, and
South Dakota also apply size limits. The third category restricts foreign ownership most severely. Oklahoma, for example, prohibits non-resident foreigners from acquiring title to any land (real property).
Table 4. Proportion of foreign-owned land to all privately owned land in farms
(49 states of the United States, December 31, 1993)
(Unit: 1,000 acres)

<table>
<thead>
<tr>
<th></th>
<th>Private land (a)</th>
<th>Foreign-owned land total (b)=(c)+(d)+(e)</th>
<th>of which:</th>
<th>Pasture (d)</th>
<th>Other (e)</th>
<th>Share (%) (b)/(a)×100</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total of 49 states</td>
<td>878,469</td>
<td>7,251</td>
<td>2,509</td>
<td>4,032</td>
<td>711</td>
<td>0.83</td>
</tr>
<tr>
<td>of which:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total of restricted</td>
<td>400,758</td>
<td>996</td>
<td>549</td>
<td>411</td>
<td>36</td>
<td>0.25</td>
</tr>
<tr>
<td>17 states</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total of remaining</td>
<td>477,711</td>
<td>6,255</td>
<td>1,960</td>
<td>3,620</td>
<td>675</td>
<td>1.31</td>
</tr>
<tr>
<td>32 states</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1. The 17 restricted states are defined as those where actual prohibition or effective quantitative restriction exists on the acquisition of land in farms by aliens. They are Illinois, Indiana, Iowa, Kansas, Kentucky, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, North Dakota, Oklahoma, Pennsylvania, South Dakota, Wisconsin and Wyoming.
2. Alaska is not included in the 49 states.
3. Figures in column (a) are 1987 data.
4. “Land in farms” refers to cropland, pasture and other agricultural land.
Source: Gertrude S. Butler and J. Peter DeBraal “Foreign Ownership of U.S. Agricultural Land Through December 31, 1993: County Level Data”, USDA “Agricultural Resources and Environmental Indicators”.

Table 5. Foreign-owned land in farm by country of foreign owner
(50 states of the United States, December 31, 1993)

<table>
<thead>
<tr>
<th>Origin of foreign owner: selected countries</th>
<th>Area owned (1,000 acres)</th>
<th>Share in total (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Germany</td>
<td>1,154</td>
<td>15.9</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>754</td>
<td>10.4</td>
</tr>
<tr>
<td>Canada</td>
<td>620</td>
<td>8.6</td>
</tr>
<tr>
<td>The Netherlands Antilles</td>
<td>497</td>
<td>6.9</td>
</tr>
<tr>
<td>Switzerland</td>
<td>424</td>
<td>5.8</td>
</tr>
<tr>
<td>Mexico</td>
<td>416</td>
<td>5.7</td>
</tr>
<tr>
<td>The Netherlands</td>
<td>408</td>
<td>5.6</td>
</tr>
<tr>
<td>Japan</td>
<td>376</td>
<td>5.2</td>
</tr>
<tr>
<td>France</td>
<td>267</td>
<td>3.7</td>
</tr>
<tr>
<td>Other</td>
<td>2,336</td>
<td>32.2</td>
</tr>
<tr>
<td>Total</td>
<td>7,251</td>
<td>100.0</td>
</tr>
</tbody>
</table>

1. Area includes acreage owned by corporations in which foreign shareholders have a significant interest or substantial control.
2. See Table 4 for the definition of “Land in farm”.
Source: Gertrude S. Butler and J. Peter DeBraal (see Table 4).
while Kansas and Nebraska restrict not only non-resident aliens but virtually all foreign entities. Restrictions in Iowa, Minnesota, and North Dakota apply only to agricultural land. The last category of restrictions, exemplified only by New Hampshire, simply prohibits non-resident foreigners from taking title by descent.

Table 4 indicates that the proportion of farmland owned by foreigners in the United States is smaller in the restricted 17 states, reflecting their regulations. However, even in the “freer” or completely free states, the share of foreign-owned farmland is only around 1 per cent. Foreign ownership of farmland in individual states represents a relatively small proportion of total farmland except in Hawaii, where it is more than 18 per cent. Though some unrestricted states, such as Florida, Nevada, Arizona, New Mexico and California, have larger proportions of foreign ownership than the national average, they all fall within a range of 2 to 4.5 per cent (Figure 4). While not conclusive, this information suggests that the restrictions have some effects on foreign ownership; however, given the small percentage of foreign ownership in general, the necessity of control might appear questionable.

Figure 4. Proportion of Foreign-Owned Land to All Privately Owned land in Farms
(49 States in the United States, December 31, 1993)

Note: Alaska is not included.
Source: see Table 4.
2. Physical planning or zoning

In most OECD countries, protection of farmland is closely related to physical planning or zoning legislation. The designation of land as farmland by physical planning procedures is used widely to maintain land for agricultural uses. Land designated as farmland in some cases also benefits from preferential assessment (e.g. productive versus actual market value); this is often closely linked to the issues of inheritance and tax concessions (see Sections II.1 and 3). In these ways zoning and planning legislation influences the transfer of land from the agricultural sector to other sectors. This section discusses various physical planning policies in Member countries, with a particular emphasis on how they contribute to preserving farmland through limitation on converting such land into other uses.

A. Policies in OECD countries

Administrative aspects

In many cases, the formulation of land use planning requires the involvement of several levels of government. Though there is a considerable variety in the hierarchy of planning authorities, depending on the structure of general administration of the countries concerned, typically there are three levels of government involved.

The national government usually determines overall principles and provides guidelines for the lower authorities. Among these, the preservation of agricultural land (or rural areas) from urban sprawl is often included, but nature and environmental considerations have recently been regarded as of greater importance. The next level is often a regional plan through which the regional administrations can articulate land use policy. Such plans may indicate the main categories of future development for the region, or may specify physical zoning within the region, to implement the nationally targeted land use policy goals. A regional plan may then provide the basis for municipal authorities to establish planning policies and to issue relevant directives. They are often responsible for the actual administration and implementation of the physical zoning in the territory.

These tiers of government are sometimes closely interrelated. In some countries lower authorities are obliged to remain within limits set by the land use policy of the higher authorities and there may be requirements for the lower level physical planning to be subject to the approval of the higher level government. Conversely, in other countries, the lower authorities are, in principle, free to determine their own policy and plans.

Instruments to protect farmland

In some countries, the influence of physical planning is significant. In the Netherlands, for example, agricultural land is designated on a map drawn up by each municipality along the lines laid down by the local Land Use Plan (Table 6). Developments on such land are only permitted if they relate to agricultural activities (e.g. agriculture-related buildings, etc.) and conform with the Plan. The Land Use Plan directly binds the citizen and the authorities; it can impose restrictions on the citizen’s right to use property.

Similarly, in Belgium, an agricultural zone delimited on the basis of the planning policy of the regions (such as Flanders and Wallonia) specifies agricultural activity, only buildings belonging to farms
being allowed on it. **Denmark**, also, has a statute under which rural zones designated by local plans are protected from residential and industrial development. Permission must be obtained in rural zones when developing or building, as well as changing the use of land without building. This rule does not apply, however, in the case of a building or land intended for agricultural purposes. Local plans in these two countries are legally binding. (**German** legislation in relation to physical planning has a similar characteristics to these countries, as described below.)

In 18,000 of the 36,000 **French communes** a physical zoning map called **POS** (*Plan d’occupation des sols*) has been formulated. The specify ‘natural districts’ for agricultural uses where only buildings necessary for the farm are permitted. Although the other 18,000 **communes** do not have a zoning chart, the standard national regulation that limits building projects may be applied in such areas. Rules aimed at avoiding sporadic urban development are also in force, though in many cases not very rigorously. Moreover, farmland in special agricultural districts zoned by each of the 94 French **départements** is protected from tree or timber plantation.

City and county councils in **New Zealand** are obliged to prepare district schemes on land use, which have binding power on landlords and, in certain circumstances, the Crown. District schemes designate land for different purposes. Practically all district schemes have statutes to prevent sporadic subdivision and urban development in rural areas and also to protect land having a high actual or potential for agricultural production from encroachment of urban development. As to farmland subdivision, many schemes forbid creation of areas below a certain size (often set as 100 acres), unless used for intensive agriculture rather than pastoral farming.

While no physical zoning has been adopted as instrument to implement land use policy, the **United Kingdom** has planning legislation under which permission is required whenever ‘development’ is proposed on any land. Development is defined to include, among other things, the construction of buildings on land and the making of any material change in the use of land. Normally the conversion of open farmland to other non-agricultural uses (such as residential buildings) is restricted. However, agricultural development is broadly exempted from the requirement of planning permission.

Conversely, in other countries, physical planning or zoning legislation plays only a limited role in protecting farmland from various other influences. In the **United States**, for example, only about 400 local governments employ agricultural zoning and 3 states (Hawai, Oregon, and Wisconsin) have enacted state-wide zoning programmes that mainly target farmland protection. This means that the majority of US farmland is not zoned (i.e. not delimited from urban boundaries).

**Table 6. Physical planning and zoning policies in OECD countries**

<table>
<thead>
<tr>
<th>Type of policy</th>
<th>Policy instruments</th>
<th>Countries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agricultural zoning</td>
<td>Restriction of non-farm development</td>
<td>Germany, Belgium, Canada, Denmark, United States, France, Japan, New Zealand, The Netherlands</td>
</tr>
<tr>
<td></td>
<td>Prevention of undue subdivision</td>
<td>United States, New Zealand</td>
</tr>
<tr>
<td></td>
<td>Small building lot allocation</td>
<td>United States</td>
</tr>
<tr>
<td>Other planning policy</td>
<td>Restriction of non-farm development</td>
<td>Canada, United States, United Kingdom</td>
</tr>
</tbody>
</table>

1. It should not be inferred that countries not listed above have no physical planning or zoning legislation to protect farmland. For example, Australia has enacted the land use planning legislation in the context of environmental protection.

**Source:** OECD Secretariat.
Where agricultural land is zoned, two predominant approaches are observed in the United States. One is non-exclusive agricultural zoning, which is by far the most popular method for preserving farmland. In areas so zoned, non-farm buildings are allowed but discouraged by several techniques. The most frequent is a minimum lot size restriction, which precludes land in agricultural zones from being broken into parcels below a designated size (e.g. 10 to 640 acres for one single family). Large lot size requirements are intended to deter the construction of most non-farm buildings. Another technique allows development of only one small building lot for each land unit of a specified size; the number of buildings allocated per acre is fixed or decreases as farm size increases. The other approach, exclusive agricultural zoning which prohibits non-farm buildings, is unpopular and is utilised only in the 3 states referred to in the previous paragraph.

Although in the United States zoning does not effectively protect most farmland from conversion to other uses, other forms of legislation at the State level are designed to keep rural land in farm use, mainly by providing farmers with financial incentives. For example, development restrictions (so-called conservation easements or purchase of development rights) separate the right to develop land from ownership of the land, allowing an owner to sell or donate to an authorised agency the development right attributable to his land at an authorised price (normally the difference between fair market value and agricultural value of the land). The legally binding terms of the easement restrict the owner from developing the farmland for other uses, while the title to the land is retained by the farmland owner, thereby allowing continued farming. Conservation easements are thought to have been effective in preserving farmland as they are normally permanent. As of April 1994, state easement programmes had protected nearly 300 000 acres of farmland, and as of September 1995, the top 10 county easement programmes had protected nearly 200 000 acres of farmland (“Farmland Preservation Report”).

Faced with a substantial decrease in relatively scarce agricultural land due to rapid urbanisation, some Canadian provinces have introduced specific legislation to address the issue. For example, British Columbia has enacted the law under which agricultural land may be designated as an agricultural land reserve on which all non-agricultural land use is prohibited. Similar legislative schemes exist in Quebec and Newfoundland, while other provinces rely on ordinary planning controls.

In Italy, despite the fact that some of the regional authorities have established rules for stopping urban sprawl, there seem to be no comprehensive and effective instruments at the national level to preclude conversion of farmland to urban use. A recent research (Porru, 1992) explains this as follows:

“...in the Italian legal system ... land use for agriculture is not legally protected. This is proven by the fact that in urban environmental plans, which are significant for the identification of the basic instruments of land-use planning, land use for agriculture has always been, and largely still is, a merely residual use: agricultural land is the area that is not -- or is not yet -- suitable for serving towns. On the agricultural land, which on the maps normally appears as white space, a town can spread itself at will.”

The Japanese zoning legislation defines agricultural zones as districts where conversion to non-agricultural uses is, in principle, prohibited. About four-fifths of total farmland areas (5 million hectares) are delimited within these zones. Expansion of urban development is also controlled by the urban zoning legislation. The effectiveness of such legislation for controlling conversion of farmland, however, has not been clearly demonstrated in the face of strong demand for urban development. This may be partly explained by the fact that farmland conversion in rural or peripheral areas accounts for about 80 per cent of the total areas of farmland that have been converted to other purposes (30 000 hectares in 1993).
B. Case study -- Germany

In Germany, growing and conflicting demands for land use have resulted in extensive land use planning. There are two general types of land use planning: comprehensive planning that is empowered to co-ordinate and control various demands for land; and planning for specific activities that involve the specification of land use for particular reasons such as land consolidation, protection of nature and landscape and transportation.

Comprehensive land use planning

The Federal Act on Land-use Planning formulates principles (Raumordnungsprogramm) that have a binding effect on planning activities of the Länder, while the Länder are responsible for detailed legislation. The most important principle stated in relation to farmland protection is that the maintenance of a rustic agriculture, which is characterised by family farming dependent on soil cultivation, with limited numbers of livestock, should be guaranteed as an important unit of the national economy. It also provides the policy basis for restricting conversion of farmland to other purposes (Figure 5). Consideration for natural and environmental conservation and the need to address excessive depopulation in rural areas are also stated as principles.

16 Länder, or sometimes regions (above the local level) of the Land, also formulate their own land use planning (Landesplanung), aiming to implement the Federal principles. The land use planning of the Land binds the plans and activities of the lower authorities. In the process of planning by the Land special interests such as agriculture may be taken into account; Land may designate areas to be used for agricultural purposes but physical zoning is usually implemented by the lower authorities.

Comprehensive land use planning at the municipal level affects agriculture in various ways. Individual municipalities establish two types of local plans; zoning and alignment plans. Zoning plans (Flächennutzungsplan) serve as guidance for municipalities through designating areas for different uses (e.g. housing, industrial activities, recreation and agriculture). While zoning plans are supposed to cover the entire area of a municipality, they are formulated on an arbitrary basis and do not have binding effect. Alignment plans (Bebauungsplan), which are formulated arbitrarily as well but should be done so in conformity with the zoning plans, have binding force. They usually target only some parts of the municipal territory, containing detailed provisions for various types of land use to be followed. Though alignment plans generally work as urban planning tool, they delimit areas to be used for agriculture where necessary. These local plans must not contradict the lines laid down in plans of the higher authorities.

Principles at the Federal level aiming to protect farmland are reflected in the local plans. First, in an “Agricultural Area”, as designated in the zoning and alignment plans, farmland is generally excluded from non-agricultural development and can be converted to other uses only to a limited extent. Second, in principle construction of non-agricultural building is prohibited in any “Undeveloped Area” (Außenbereich), which is not identical to “Agricultural Area” and defined as that part of municipal territories not designed as developed areas (built-up areas and areas covered by alignment plans).

A recent survey (Japan, 1991) revealed that more than half of 8 506 municipalities in the former Federal Republic of Germany had formulated their own zoning plans by 1987. This requires a considerable amount of time since a balance between different interest groups has to be achieved. On average 5 years, and up to 12 years in certain extreme cases, has been required to complete the process. The same applies to alignment plans; on average it takes 36 months to establish a new plan, 24 months to replace an old plan with a new one, and 23 months to modify an existing plan.
It is estimated to take 5 years on average for municipalities to formulate the zoning plans. Co-ordination of conflicting demand for different land uses requires complex procedures.

Source: OECD Secretariat.
Agriculture and other specific planning

Agricultural structure plans are established mainly by Länder, which often bear the major responsibility for planning and implementation of German land consolidation projects. Land consolidation projects, aimed at improving agricultural structures, promoting soil preservation, and encouraging rural development, are implemented in conformity with the policy goals of the comprehensive land use planning of Länder. Consideration is also given to the location of the “Agricultural Area” authorised by municipalities, when designating the area for land consolidation projects.

Since zoning and alignment plans are more or less urban-planning tools and designate “Agricultural Areas” to protect farmland from urbanisation, “Agricultural Areas” tend to be zoned carefully at the discretion of the municipal planning authorities. Conversely, area for land consolidation projects is often zoned more ambitiously. Thus, in some cases co-ordination is necessary between the two land use plans.

Farmland may also be significantly affected by other specific forms of planning, when such land is used for certain other purposes or in special preserves. They may include: zones assigned as road and railway construction plots or reserves destined to preserve nature and landscape upon which the land uses are severely restricted.

Procedures to co-ordinate conflicting demands for land use

Practical questions arise about how these different plans can be well co-ordinated vis-à-vis the conflicting demands for different land uses. Recent work (Winkler, 1992) explains the procedures involved as follows:

“Various laws contain special clauses that inter-link the comprehensive land-use planning and special planning. Two types of clauses may be distinguished. First, clauses may limit themselves to the co-ordination of the various procedures by providing participation (information, hearing) to authorities of the comprehensive land-use planning in special projects. Other clauses may provide for co-ordination in a substantive manner by prescribing that the aims and the principles of general land-use planning must be observed. In a more direct manner, agricultural interests may be protected by participation of agricultural authorities in the proceedings concerning certain special projects.”

While it appears common for the comprehensive land use planning of the Länder to supersede or take priority over special plans, in many cases it requires considerably complex procedures and instruments to co-ordinate comprehensive land-use planning and other plans. Accordingly, the time and administrative resource required can be significant as in the case of zoning plan and alignment plans.

3. Tax concessions

A wide range of tax policies applied by different Member countries can have implications for farmland mobility. They are not limited to land (or property) tax; any inheritance tax, gift tax, income tax, capital gain tax, sale or value added tax may affect farmland whenever the ownership is held or transferred. The impact on mobility of farmland depends on the degree to which concessions change the absolute level of costs associated with land ownership or use. This section attempts to identify tax policies which may change the relative costs incurred for farmland vis-à-vis the other types of land. The
discussion is focused on tax concessions which are designed in a sector-selective manner only for farm (or rural) land holding or transaction. Though in most countries tax concessions are provided for various sectors, farmland is among those areas in which concessions are most commonly applied.

A. Policies in OECD countries

Tax on land holding

The main tax concessions affecting farmland are land (real estate, property) taxes. In some countries, farmland is fully exempted from the land tax base. In Australia, for example, primary production land is commonly exempted from land tax, which is administered by individual states and levied on the land value at highest and best use (Table 7).

Similarly, agricultural land and buildings are exempt from property taxes known as “Business Rates” throughout the United Kingdom. This tax legislation, imposed upon non-residential property as measured by its annual rental value, is enacted by the central government, while the rates are set by and the revenue is redistributed to the individual local authorities. In Ireland, land used for agriculture, horticulture and forestry is exempt from “Rates”, a land tax levied by local authorities on the occupiers of certain types of immovable property. Owners of agricultural and forest lands in Sweden are exempt from the property tax, which is restricted to lands in housing districts and buildings. The Dutch municipal tax on immovable property is not imposed upon land which forms part of property listed in the Nature Conservation Act, and, therefore, farmland is generally exempt from the tax.

Partial exemption from land property tax has also been an important feature of farmland-related tax concessions, especially in North America, where provinces or states tax real property as the primary source of tax revenue available to most local governments. In general, the tax base is appraised annually on the basis of market value according to its highest and best use. In most Canadian provinces and all states in the United States, however, preferential assessment reduces the tax burden upon eligible farmland by assessing its taxable value on the basis of current agricultural value. The principal objective of this treatment is to minimise the speculative value imposed on farmland, in urban fringe areas in particular and hence to encourage the continuation of farming which might not be viable if taxes associated with market values were imposed. Valuation methods vary between provinces and states but are based in general on the value of the land in continued agricultural production.

19 states in the United States have only preferential assessment laws: owners of farmland are not required to repay the amount of tax concessions already provided to them even when the farmland is converted to a non-qualifying use. The other 31 states have statutes that combine preferential assessment with deferred taxation or restrictive agreements, where a deferred tax (calculated as equal to the amount of taxes that would have been paid for a specific rollback period if there were no preferential assessment) is payable if the farmland is converted to a non-qualifying use. A few states have statutes requiring payments to be made by the states to local governments in lieu of taxes to partially compensate for the loss of revenue on exempt property such as farmland.
### Table 7. Tax concessions related to farmland

<table>
<thead>
<tr>
<th>Country</th>
<th>Tax on:</th>
<th>Type of concession</th>
<th>Scope</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>AUS</td>
<td>Land</td>
<td>Exemption</td>
<td>Primary</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Production land</td>
<td></td>
</tr>
<tr>
<td>CAN</td>
<td>Property</td>
<td>Preferential assessment</td>
<td>Farmland</td>
<td>In most provinces</td>
</tr>
<tr>
<td></td>
<td>Capital gain</td>
<td>Deferral payment</td>
<td>Farm property</td>
<td>Applied to in-family transfer</td>
</tr>
<tr>
<td></td>
<td>Capital gain</td>
<td>Base deduction</td>
<td>Farm property</td>
<td>By C$ 500 000</td>
</tr>
<tr>
<td>DNK</td>
<td>Land</td>
<td>Preferential assessment</td>
<td>Farmland</td>
<td>If zoned as rural areas</td>
</tr>
<tr>
<td>ESP</td>
<td>Real estate</td>
<td>Lower rate(0.4 to 0.3%)</td>
<td>Rural property</td>
<td></td>
</tr>
<tr>
<td>USA</td>
<td>Property</td>
<td>Preferential assessment (with deferred taxation)</td>
<td>Farmland</td>
<td>In all states (In 31 states)</td>
</tr>
<tr>
<td>FIN</td>
<td>Wealth</td>
<td>Preferential assessment</td>
<td>Farmland</td>
<td></td>
</tr>
<tr>
<td>FRA</td>
<td>Inheritance</td>
<td>Exemption</td>
<td>Farm property</td>
<td>Property under long-term lease</td>
</tr>
<tr>
<td>GRC</td>
<td>Inheritance</td>
<td>Exemption</td>
<td>Farmland</td>
<td>If &lt; Dr 20 million and &lt; 8 hectares</td>
</tr>
<tr>
<td></td>
<td>Transfer</td>
<td>Exemption</td>
<td>Farmland</td>
<td>If &lt; Dr 300 000 and &lt; 4 hectares</td>
</tr>
<tr>
<td>IRL</td>
<td>Land</td>
<td>Exemption</td>
<td>Farmland</td>
<td>By max. Ir£ 0.2 mil.</td>
</tr>
<tr>
<td></td>
<td>Inheritance</td>
<td>Base deduction (by 55%)</td>
<td>Farmland</td>
<td></td>
</tr>
<tr>
<td>ITA</td>
<td>Capital Gain</td>
<td>Exemption</td>
<td>Farmland</td>
<td></td>
</tr>
<tr>
<td>NLD</td>
<td>Transfer</td>
<td>Lower rate (6 to 1%)</td>
<td>Farmland</td>
<td>If designated by Nature Conservation Act</td>
</tr>
<tr>
<td></td>
<td>Real estate</td>
<td>Exemption</td>
<td>Farmland</td>
<td></td>
</tr>
<tr>
<td>PRT</td>
<td>Transfer</td>
<td>Lower rate (10 to 8%)</td>
<td>Other than building land</td>
<td></td>
</tr>
<tr>
<td>GBR</td>
<td>Property</td>
<td>Exemption</td>
<td>Farmland</td>
<td></td>
</tr>
<tr>
<td>SWE</td>
<td>Property</td>
<td>Exemption</td>
<td>Farmland</td>
<td>Taxable only on residential properties</td>
</tr>
<tr>
<td>CHE</td>
<td>Property</td>
<td>Preferential assessment</td>
<td>Farmland</td>
<td></td>
</tr>
</tbody>
</table>

1. “Inheritance” includes both succession and gift.
2. “Transfer” tax means real estate transfer tax, which is usually payable by the buyer.
3. It should not be inferred that countries not listed above do not have any tax concessions in relation to farmland.

**Source:** Various sources. See relevant information listed in the bibliography below.

The situation described above for the United States is also reflected in Canada, except that a significant feature of tax treatment of farmland in some provinces is the use of tax rebates as opposed to reduced taxes for favoured property types. Under this system, full taxes are paid initially; any rebates come from the provincial government which authorised the preference.

The standard for valuation of Swiss property tax (levied at cantonal and communal level) on agricultural property is based on its productive value, i.e. the income-capitalisation method, whereas appraisal of properties in general is determined according to the normal market value. In Finland, although the basic rule of taxation of net wealth is that real estate is assessed at its market value, the
assessed value of farmland is determined in practice as about 5 per cent of the market value (Virtanen, 1994). Under Danish land tax rules, farmland zoned in rural areas is valued according to its agricultural use. However, once it is rezoned as urban land, its taxable value is assessed as urban property on the basis of its full cash value at highest and best economic use, even though the use of the land remains agricultural. It should be noted that zoning system in Denmark is so restrictive and effective (see Section II.2) that the market value of farmland located in rural zones approaches its current use value.

Reduction in rates of land property tax is another form of concession commonly observed in relation to farmland. However, as rates for such taxes are often administered and frequently re-established by local governments, availability of relevant information is severely limited. One example is illustrated by Spain, where the national law prescribes rates of real estate tax (local tax) beneficially for rural property at 0.3 per cent, in comparison with 0.4 per cent for urban.

Tax on land transfer (Inheritance and purchase)

In many countries, farmland has also been constrained from conversion to other uses through the tax legislation governing the land transfer, i.e. tax on commercial land transfer and on inheritance (or gifts). Preferential tax treatment is provided to farmland under such taxation, generally in the form of partial rather than complete exemption.

In Greece, for example, transfers of farmland up to Dr 20 million in value and 30 stremmata (8 hectares) in area per recipient are exempted from inheritance tax if the heirs or recipients engage in farming as their principal occupation and the land is to be used for farming for 15 years or more. Similar arrangements also apply to real estate transfer taxes. France provides that rural property on long-term lease may be free of inheritance tax; this serves as a counter weight to France’s agrarian legislation regarded as preferential to tenants over landlords. In Ireland, the market value of agricultural property is deducted from the inheritance and gift tax base up to 55 per cent and/or to a maximum of £Ir 200 000, if the heir and recipient are farmers. Rural farmers are eligible for preferential tax rates in Portugal, where the rate of municipal real estate transfer tax is 10 per cent for urban buildings and building land but 8 cent for others. Similarly, lower rates are provided for the acquisition of agricultural land under tax on legal transaction in the Netherlands (1 per cent vis-à-vis standard 6 per cent).

Capital gains tax

In a few countries tax concessions are granted in relation to capital gains for farmland. In Canada, capital gain tax is imposed upon 75 per cent of total capital gain accrued on a property when it is sold, whereas farmers are eligible for preferential tax treatment both through tax base deduction and deferral tax payment. Up to a maximum C$ 500 000 can be exempted from the tax base calculation in the case of farm property, while C$ 100 000 for other capital properties. Moreover, on inter-generational transfers of farm property, the taxation of capital gains can be deferred as long as the property belongs to the family and remains in the farm use. In Italy, land transferred as inheritance or as gift within a family cultivating its own farm is exempt from communal tax on appreciation of immovable property.
B. Case study -- Japan

Background

Tax concessions provided for farmland are an important feature of Japanese agrarian land policies. An important underlying reason, common to many OECD countries but perhaps most significant for Japan, is that rapidly progressing urbanisation stimulated farmland price increases which would impose a significant cost burden for farmers in the absence of exemptions. The urban sprawl, partly the result of rather ineffective zoning regulations, has accelerated this phenomenon particularly in peripheral zones.

If farmland is converted to housing use, the market price of that land rises sharply, almost to residential land price levels. The price of farmland converted to housing use was ¥ 3,113 million per hectare in Tokyo in 1993 (Table 8). This affects the market price of farmland in urban areas appraised at current use (¥ 531 million per hectare, national average). The price of farmland located in peripheral districts assessed at current use (¥ 161 million per hectare) and in agricultural areas (¥ 20 million per hectare) are also affected to the degree of urban influence. Consequently, the price of farmland in agricultural areas, which may be regarded as most suitable for agriculture, is almost 6 times higher on national average than the theoretical productive price calculated by the income-capitalisation method (¥ 3.6 million per hectare); the latter is estimated as net land return divided by an interest rate of 5 per cent.

Tax on land holding

Various tax concessions have been provided to farmland in Japan (Table 9). Amongst the most important are taxes on farmland holdings. The municipal Fixed Assets Tax is an example, levied on the value of assets at a standard rate of 1.4 per cent. Preferential assessment is provided for farmland under this tax regime. In general, the taxable base for land assets is normal market value (hereafter referred to as Appraised Value for Fixed Assets Tax (AVFAT)), while farmland is eligible for preferential assessment with the taxable base assessed at 55 per cent of normal market value.

Table 8. Comparison of farmland price, paddy field in Japan, 1993

<table>
<thead>
<tr>
<th>Type of farmland price</th>
<th>Price (million ¥/hectare)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Market price (converted to housing use, urban zone, Tokyo)</td>
<td>3113</td>
</tr>
<tr>
<td>Market price (urban zone, national average)</td>
<td>531</td>
</tr>
<tr>
<td>Market price (peripheral zone, national average)</td>
<td>161</td>
</tr>
<tr>
<td>Market price (agricultural zone, national average)</td>
<td>20</td>
</tr>
<tr>
<td>&quot;Agricultural Investment Price&quot; (1) used for inheritance tax (Tokyo)</td>
<td>9.5</td>
</tr>
<tr>
<td>Productive price (2) (rice production, national average)</td>
<td>3.6</td>
</tr>
</tbody>
</table>

1. "Agricultural Investment Price" is defined as the hypothetical market price on farmland assuming that it be permanently devoted to agricultural use. See texts for further information.

2. Productive Price = net land return (3-year average)/interest rate (0.05).

Source: National Chamber of Agriculture in Japan, “Farmland Price Survey”
Table 9. Principal forms of taxation relevant to farmland in Japan

<table>
<thead>
<tr>
<th>Land tax on:</th>
<th>Description</th>
<th>Concessions given to farmland</th>
</tr>
</thead>
<tbody>
<tr>
<td>Holding:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Land value tax</td>
<td>0.3%, the base assessed in the same way as in inheritance tax</td>
<td>Exemption</td>
</tr>
<tr>
<td>Special land</td>
<td>(1.4% of the acquisition cost)</td>
<td>Exemption</td>
</tr>
<tr>
<td>Holding tax (1)</td>
<td>(Fixed assets tax)</td>
<td></td>
</tr>
<tr>
<td>Fixed assets tax (1)</td>
<td>1.4% of AVFAT (2)</td>
<td>Preferential assessment (value assessed as 55%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>of normal market price)</td>
</tr>
<tr>
<td>Inheritance:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Inheritance tax</td>
<td>Progressive rate, the base being assessed in principle according to</td>
<td>Preferential assessment (current use value)</td>
</tr>
<tr>
<td></td>
<td>normal market value</td>
<td>with deferred tax payment</td>
</tr>
<tr>
<td>Purchase:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Real estate</td>
<td>4% of AVFAT</td>
<td>Deduction (reduction of base by 1/3 to 1/4 of</td>
</tr>
<tr>
<td>Acquisition tax (1)</td>
<td></td>
<td>the AVFAT; for transfers under the public land</td>
</tr>
<tr>
<td></td>
<td>(3% of the acquisition cost)</td>
<td>program, etc.)</td>
</tr>
<tr>
<td>Special land</td>
<td></td>
<td>Exemption</td>
</tr>
<tr>
<td>Holding tax (1)</td>
<td>(Real estate acquisition tax)</td>
<td></td>
</tr>
<tr>
<td>Capital gain:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Income tax</td>
<td>(Capital gain -- ¥ 1 million) * 0.3 for land in general</td>
<td>Deduction (from the base by ¥ 8 to 15 million;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>for transfers under the public land program,</td>
</tr>
<tr>
<td></td>
<td></td>
<td>etc.)</td>
</tr>
</tbody>
</table>

1. Local (prefectures or municipalities) tax.
2. AVFAT: Appraised Value for Fixed Assets Tax, which is estimated according to normal market value.

Source: Information provided by the Ministry of Agriculture, Forestry and Fisheries (MAFF), Tokyo.

Farmers also benefit from the preferential tax treatment which generally exempts farmland from Land Value Tax and Special Land Holding Tax (municipal). The former is levied on land assets, as assessed according to their normal market values, at a rate of 0.3 per cent. The latter is taxed as 1.4 cent of the acquisition cost of land minus taxes imposed on the same land by Fixed Assets Tax. The two taxes both include various kinds of exemptions and other conditions, farmland being just one of the areas concerned.

Inheritance tax

In Japan, one of the most important farmland tax concessions is provided under Inheritance Tax. Preferential base assessment and deferral of taxation are allowed. Valuation of an inherited estate is normally based on its normal market value; in principle this applies to farmland as well as other types of land. Farmland in rural (agricultural) areas is evaluated at AVFAT, despite it being adjusted by the use of actual price records derived from other farmland transactions in the region. Moreover, valuation of farmland located in urban or peripheral zones may be determined according to the observed price of residential land nearby.

Farmland can be exempted from this standard valuation, however, through an alternative approach which is almost identical with current use value assessment. An “Agricultural Investment Price” is estimated and used instead of a market price. It is defined as the hypothetical market price on
farmland assuming that it be permanently devoted to agricultural use. As a result of this preferential arrangement, assessed value of farmland as a taxable base tends to be much lower than the actual market price (Table 8).

The “bonus” attributable to the preferential base assessment (defined as the difference between levies taxable on farmland assessed at its normal market value and at its current use value) is eligible for the deferment of tax payment. Under this scheme, payment of the “bonus” part can be deferred where both the heir and the recipient are farmers and as long as the latter continues farming that land. Moreover, the payment is exempt if the successor has managed farming on that land for 20 years or more. If the farmland is converted to other uses, or if the successor abandons farming on that land before 20 years, he is subject to a roll-back tax as if the land had not been assessed preferentially throughout the period. The roll-back tax is also subject to an interest rate of 6.6 per cent.

The “bonus” described above has tended to be considerable as a consequence of very high urban land prices, particularly during Japan’s so-called “bubble” economic boom. The OECD Secretariat’s estimate on deferred taxation per hectare of inherited farmland increased to around ¥ 50 million in 1991 (Figure 6, see notes for methodology). Since this value is estimated as national average, tax concessions benefiting farmland in peripheral or urban zones would be very substantial indeed. Although the level of this “bonus” has been declining in recent years, it still provide an important incentive for landlords to stick to farming and pass control of their lands only to their children.

Figure 6. Deferred taxation on farmland under inheritance tax (1), Japan

1. In Japan, payment of inheritance taxation on farmland can be partly deferred, and the liability to pay the deferred taxation is exempted where the recipient has managed farming on the same farmland for 20 years or more. From 1992, this statute is no longer applicable to the succession of farmland located in Metropolitan areas; the taxation on such land can be deferred and exempted only when the recipient transfers the ownership to his successors during his life or at death.
2. Taxation deferred per hectare = (Average value of deferred taxation on farmland under inheritance tax)/(Average scale of farmland per farm-household, for all farm-households).
Source: MAFF, National Tax Agency, Japan.
Tax on land purchase

**Real Estate Acquisition Tax** is imposed upon the acquisition of real estate by municipal governments, calculated as AVFAT multiplied by a rate of 4 per cent. Various forms of tax relief are incorporated into this tax to encourage farmland transfer which conforms with structural adjustment programmes implemented by the authorities. For example, where a farmer purchases farmland in accordance with an authorised plan, he is eligible to claim the base deduction against the purchased farmland up to 1/4 to 1/3 of its AVFAT. Farmers in hilly and mountainous regions are also eligible, in certain conditions, for similar preferential tax treatment under another public programme.

**Special Land Holding Tax** is also levied upon the acquisition of land. The taxation is calculated as 3 per cent of the acquisition cost minus already-paid taxes on the same land under the Real Estate Acquisition Tax provisions. Farmland is generally exempted from this tax.

Capital gains tax

In Japan, capital gains are taxed by **Income Tax**, under which the capital gain accrued in relation to a land disposition is separated from other revenues and taxed independently. As with the Real Estate Acquisition Tax, various tax concessions are also provided to encourage farmland transfer which conforms with structural adjustment programmes.

Recent developments

Faced with the need to address skyrocketing land prices in urban areas, the government recently decided to remove part of the tax concessions for farmland located in metropolitan areas. Since 1992, farmlands in 196 municipalities neighbouring the three largest metropolitan areas (Tokyo, Osaka and Nagoya Metropolitan districts) no longer benefit from tax concessions associated with **Fixed Assets Tax**, unless the land is designated as “productive green” area. These areas can be zoned by the municipal authorities as part of urban land, the requirement for which includes that the owner agree to let the land stay in agricultural production for at least 30 years. Preferential treatment under the **Land Value Tax** will be terminated in 1996 on the farmland in above-mentioned three Metropolitan districts (except farmland authorised as “productive green” area). Moreover, from 1992, the same farmland is no longer eligible for preferential assessment and deferred taxation of **Inheritance Tax**.

Reflecting these changes in the tax regime, there has been an increase in farmland mobility in these three Metropolitan districts. Around 15 000 hectares of farmland, which accounts for only 34 per cent of total farmland in these districts, have been designated as “productive green” areas by January 1994. The reminder, some 30 000 hectares of farmland, are considered as lands to be converted into urban use after some transitional period. This is simply because farmers owning such land are not likely to be able to afford the steep urban-land taxation which would be levied if they remain in farming.
III. SUMMARY AND CONCLUSIONS

Motivation for land policies

No country allows "unfettered market forces" to determine land use for agriculture, but the extent, type and complexity of intervention varies across countries; this implies that there are externalities not being taken into account in the market place, leading to "public choice" decisions (either by administrative departments or by elected bodies) as to the extent of intervention and its type.

Factors affecting agricultural structure and structural policies in the agricultural sector differ considerably across OECD countries. Some countries are endowed with vast expanses of fertile land which are highly suitable for agricultural production, other countries have limited arable land resources due to specific climatic and geographic conditions. Such constraints may limit the size of plots of farmland and hence the possibility to improve farming structures. Some areas have quite large farm sizes, while efficiency is hampered in others by very small or fragmented farm units. Tenant farmers prevail to a significant extent in some regions but not in others. Attitudes to land ownership have been influenced in some countries by the experience of foreign occupation, some others have experience of liberation of numerous tenants from feudal exploitation. Certain countries wish to constrain urban sprawl developments that may have contributed to rise in farmland prices, whereas others are grappling with adjustments triggered by substantial falls in the price of rural land. For some countries environmental concerns are a critical policy preoccupation, for others depopulation in rural areas may occupy greater prominence in the policy agenda. These different circumstances are all reflected in the variety of farmland policies which are currently in force among Member countries.

Countries with smaller scale farm units may intervene in an attempt to concentrate land on qualified and efficient farmers and to avoid further fragmentation of farm units. This often results in more interventionist policies in relation to transfers of farmland rights, whether in the form of ownership or lease. Rules and practices affecting farmland purchase or lease and inheritance seem in many cases to be based on notions about "desirable" farm structures. They are explicitly or implicitly associated with the maintenance of "viable family farm" operations, together with other general cultural considerations (such as equity in the process of farmland inheritance) which are usually embodied in constitutional laws or basic civil laws. The maintenance of such farm operations can involve establishment of minimum and sometimes, maximum, farm size regulations, based on ideas about the land area required to support a viable family farm size and about a balanced rural development.

Some countries have entrusted part of the task of promoting structural improvement to specific administrative bodies, which can directly intervene in the farmland market. Some of these organisations provide financial assistance for certain types of farmers to encourage them to transfer farmland.

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1 The theme of “agrarian reform”, which aims to attain a fair distribution of land between farmers, is still a highly sensitive issue and continues to generate political debate in certain Member countries (e.g. some CEE countries and Mexico).
Conversely, countries where it is more common to purchase big land estates, e.g. countries with relatively large land areas and small population densities tend to share a concern about foreign land ownership, with perceptions of national interest or national identity resulting in some limitations on foreign ownership of farmland. In some cases, this has been reflected in prohibitions on non-resident ownership.

Land use policies are developed mainly where conflicting pressures on land use are occurring from various economic agents, which is generally the case in densely populated regions. Protecting farmland from urban sprawl developments appears to be a common policy target across OECD countries. Equally, there is a growing importance for sustainability and other environmental concerns, although this paper does not closely discuss these specific issues. Urbanisation may have also resulted in upward price pressures on farmland in peripheral or rural zones. In response to these concerns, zoning and physical planning legislation have been broadly adopted; they may curtail urban expansion by designating rural areas as agricultural zones, sometimes imposing specific environmental rules, where non-agricultural development is often severely restricted.

Tax concessions benefiting farmland have been provided in most countries as one of the measures to mitigate against the burden imposed on farmers. They may reduce farmland conversion to the extent that they reduce costs. Preferential assessment upon farmland in the context of inheritance is also applied in several countries to reduce the financial burden upon farming successors.

**Policy questions**

Overall, there may be good reasons why governments put some limits on the market-driven mobility of farmland if this conflicts with other societal (non-market) preferences for land use. However, such policies could result in creating obstacles to structural adjustment in the agricultural sector, although in many OECD countries the lease market has tended to contribute to farmland mobility rather than changes in the ownership. Thus, it is important that policy makers are aware of the costs and benefits of making alternative choices and actions. The following section raises some policy questions arising from the findings contained in this study.

Are the costs associated with legal provisions affecting farmland mobility fully recognised?

Information collected by the Secretariat for other projects has underlined the steady change and increasing diversity in farm structures in OECD countries. Long term trends which appear to be relevant include increasing farm size, greater use of non-family labour and growing engagement of farm family members in off-farm employment. While these long term trends can be clearly identified, the variation within as well as between countries is highly significant. These differences might partly reflect differing competitive advantage of particular farm operations and very rapid technological change in the sector; they appear also to reflect choices about the balance between off and on farm employment which are affected by economic and social factors.

In these circumstances, rigid application of regulations aimed at maintaining a particular small-sized farm structure might be costly from the economic efficiency viewpoint, constraining market-oriented adjustments in the use of land as a factor of production and possibly maintaining inefficient management structures. Moreover, the restrictions being applied might be of limited value from a social or rural policy perspective compared with alternative policy options such as facilitating off-farm employment opportunities for farm family members or providing support for local infrastructure or welfare services.
Could land use regulation constrain potentially viable economic activities?

Physical planning and zoning regulations may also have adverse effects on efficient resource allocation in the sector, or in the economy more generally. Clearly these regulations are intended to respond to public preferences in OECD countries for land use patterns which reflect social and environmental as well as economic needs. Nevertheless, as material in this paper shows, procedures and practices are in some cases cumbersome, involve lengthy delays and can result in unintended distortions in the value and mobility of farmland. Increasingly, diversification and the emergence of off-farm employment opportunities are seen as crucial to the viability of rural economies. Excessively restrictive land use regulation could constrain potentially valuable upstream or downstream activities related to the farm sector, or discourage employment in other sectoral activities which could be useful as a "cushion" to adjustment in the farm sector. At the very least, review of the objectives underlying planning programmes might be desirable. The emergence of wider concerns, such as those related to the environment and rural development, would require further consideration in relation to land use, as governments and other public agencies are more frequently consulted in this respect during the implementation of planning and zoning policies. Overall, there may be a growing need for greater policy coherence in order to avoid hampering economic development and structural adjustment. Attention could also be given to the efficiency of the interactions between levels of government with a view to encouraging planning procedures which take proper account of implications for the sector.

Are current policies efficient in meeting their objectives?

Some questions are raised by the evidence in this paper about the effectiveness of measures in place in some Member countries. In relation to tax concessions, for example, there could be merit in reviewing prevailing arrangements to identify the income circumstances of beneficiaries, their dependence on farm income and the actual effect of the benefit. Unintended effects may include in some cases significant benefits to those not significantly engaged in the sector (part-time or hobby farmers) and the maintenance of non-viable operations in order to retain the taxation benefit, possibly with a view to a later capital gain. Concessions currently granted for farmers in urban or peripheral zones could be reconsidered.

Some unintended effects can also be observed in the case of public commercial operations in the land market. Material in this study suggests that operations of such public agencies could be costly, partly because they constraint non-agricultural demand for conversion of farmlands. Careful framing and targeting on the scale of public operations appear desirable if serious distortions are to be avoided.

Should more attention be paid to the effectiveness, transparency and flexibility of regulations?

Another area where regulation could have damaging distortionary effects on the sector, but where policies might not have been particularly effective, is restrictions on foreign ownership of farmland. Only small differences in the extent of foreign ownership were detected in the US between regions which impose restrictions and those which do not. Moreover, the potential benefits of foreign investment from the viewpoint of providing capital, technology and linkages to export markets should not be underestimated. Questions are also raised on the basis of some experience to date in relation to the efficacy of extensive public commercial intervention in the farmland market, such as public operations to buy and sell farmland.
A general case can be made for improved transparency and flexibility in the regulatory process. Tenancy contract approvals and planning or zoning procedures are cases in point. Administrative procedures are complex and sometimes lengthy, and the impact on the farmland market is difficult to determine. Streamlining and improving the transparency of procedures is suggested.

**Review and updating -- a challenge for Agriculture Ministries?**

As noted above, policies in the areas reviewed in the paper attempt to reflect public policy objectives in a range of areas, and the balance between multiple objectives is not easy to determine especially when competitions for, and social concerns on, land use have been increasing. Nevertheless, in a period of market-oriented reform for the sector as a whole, a sufficient number of concerns appear to emerge in areas where some significant government interventions are being applied.

While policy makers in Agricultural Ministries generally have some shared responsibility for the establishments and implementation of the wide range of regulatory measures reviewed, the combined impacts of such measures on the structure of agriculture are not well understood. Ministries might wish to explore the situation in their countries in the light of contemporary information about agricultural structures and in the light of evolving policy objectives for the sector and for rural economies. There could be merit in drawing from the experience of Member countries where interventions have been minimised.
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