

DIRECT INVESTMENTS IN THE FISHING SECTOR¹

Introduction

When the OECD was formed in 1960, its Member countries agreed in the founding Convention "to pursue their efforts to reduce or abolish obstacles to the exchange of goods and services and current payments and maintain and extend the liberalisation of capital markets". This commitment was given concrete expression by the adoption in 1961 of the OECD Code of Liberalisation of Current Invisible Operations which has been the international framework agreement for the liberalisation between Member countries of current payments as well as the major services activities. The companion Code of Liberalisation of Capital Movements was adopted at the same time. The two Codes are Decisions of the OECD Council, which means they are legally binding instruments.

The underlying liberalisation objective of both Codes is that residents of different OECD Member countries should be as free to transact business with one another as are residents of a single country. Central to each code therefore is the commitment by Member countries to remove restrictions on listed categories of operations between residents and non-residents.

The Committee for Capital Movements and Invisible Transaction (CMIT) has been entrusted, since 1961, with the surveillance of the application of the two codes. The surveillance by the CMIT is done by experts nominated by the Member countries. The task includes the undertaking of periodic reviews of the restrictive measures Member countries maintain with respect to their liberalisation obligations, examining the justification of the restrictive measures in light of changing circumstances and, where appropriate, recommending that certain measures be relaxed or dropped.

In 1988 the CMIT instructed the Secretariat (Directorate for Financial, Fiscal and Enterprise Affairs) to gather information on the nature of restrictions affecting the ownership of fishing vessels and fish-processing plants or any other restraints to inward direct investment in fishing or fish-processing activities. This work was done via the issuing of the questionnaire reproduced in Annex I.

The information provided by Member countries will constitute a part of a general survey on measures affecting direct investment in OECD Member countries. At a later stage, measures included in the survey will be examined against the background of various Member countries' obligations according to the Code.

In the Code of Liberalisation of Capital Movements, direct investment, which is one of the most important capital movements covered by the Code, is defined as "investment for the purpose of establishing lasting economic relations with an undertaking such as, and, in particular, investments which give the possibility of exercising an effective influence on the management thereof". Direct investments may take place in several forms, in particular the creation or extension of a wholly-owned enterprise, subsidiary or branch, or the acquisition or participation in a new or existing enterprise (see Annex I).

¹ Information in this paper refer to the situation prior to 1990

The CMIT has earlier looked at fisheries as well as other natural resource-based industries and has concluded that, in addition to measures directly restricting foreign investments, the Committee would also regard as restrictions in the sense of the Code measures restricting foreign ownership of real property, including ships. In applying this rule the Committee has considered "ships" to include "fishing vessels"². From the country notes, which follow, it will be seen that restrictions on direct investments and/or ownership are applied mainly in the harvesting sector. Only two countries -- Iceland and Japan -- reported restrictions that effectively prohibit foreigners to invest in the processing industry.

The following provides a synopsis of the information submitted so far to the Secretariat on laws, policies, etc., which might affect direct investments in the fishing sector followed by country replies.

The information should contribute to improving the transparency on various measures considered in connection with the study on economic assistance. The possible impacts of restrictions on direct investments in the fishing sector are discussed in other documents to be considered by the Committee for Fisheries and by the Ad Hoc Expert Group on Fisheries in March 1991.

Synopsis

Provisions which restrict direct investment in the harvesting sector include:

- ownership/Share holding restrictions;
- obtaining concession for owning fishing vessels;
- special authorisation granted only on a case by case basis;
- allocation of catch quotas reserved for nationals;
- nationality and residence of company officials (CEO);
- crew restrictions.

It has been possible to identify three categories of countries for the harvesting sector. There is a group of countries which provides free access to foreigners, either individuals or through companies and company holdings, without limitations. Germany and the Netherlands belong to this group. In addition, as far as EEC nationals are concerned, the Treaty of Rome offers all nationals of a Member State of the EEC free movement of labour and capital within this area.

Most countries, however, restrict the access of foreigners to the harvesting sector by imposing more severe measures than for their nationals. In some countries, individuals are barred from fishing whereas registered foreign companies (in some countries ownership can be limited +/- 50 per cent owned) can fish. Other countries restrict the issuing of fishing licences e.g. New Zealand, where quotas can only be bought by nationals. In the United States, vessels of more than 5 net tons should have US majority interest while no rules are applied for vessels under this limit.

² In order to get a more complete picture of the coverage of the direct investment of the Code, reference is made to the CMIT report to the Council doc. C(83)106 "Inward Direct Investment under the Code of Liberalisation of Capital Movements" and "Introduction to OECD Codes of Liberalisation", OECD, 1987.

Finally, there is a group of countries where foreigners are barred from fishing, no matter how they enter the territory, i.e. directly or through acquisitions.

It is important to recognise, however, that the possibility to bar foreign fishing activities can be through direct investment rules, through entry (management) rules or through rules such as ownership attached to the vessels, etc.

In *Belgium*, fishing vessels of over 25 grt should be at least 50 per cent Belgian owned. In addition, due to limited fishing quotas, only Belgian vessels will be licensed for fishery.

Canadian fisheries policy provides that a wholly-owned foreign enterprise, its branch or subsidiary, cannot obtain a fishing licence. Foreign ownership level is limited to 49 per cent of a company which holds a fishing licence. Foreign vessels have to obtain a permit to land their catch in Canada and foreign vessels may be granted quotas only on surplus fish stocks.

In *Denmark* limitations concern individuals who wish to engage in fishing i.e. no limitations on investments. To be a fisherman one has to be a Danish citizen or has to have been living in the country for two years. In addition, the individual has to have been engaged in fishing for at least a year before commencing as a commercial fisherman. Companies can be registered as fishing, if two-thirds of the participants are registered as active fishermen. Fishing vessels must be registered in Denmark and two-thirds of the crew must be Danish citizens or must have been living there for no less than two years.

Fishing in the *Icelandic* economic zone is reserved for Icelandic nationals and only Icelandic registered vessels may be used. For joint stock companies wishing to engage in fishing, at least half the capital has to be owned by nationals of Iceland, the company domiciled in Iceland, the directors must be Icelandic nationals and at least half the board of directors must live in Iceland.

In *Ireland* fishing is subject to licensing which is granted to an Irish national or an Irish registered company. There is no restriction on ownership, including foreign, on the registered company. At least three-quarters of the crew must be Irish or EEC nationals. Foreigners are not allowed to participate in fish processing on land.

Italy requires that 50 per cent of the fishing vessel be Italian owned. Fishing in the territorial sea is reserved for Italian nationals. There are no restrictions on investments in land-based processing plants.

There is no restriction on the investments in fishing activities in *Germany*. The fisheries regulations do not differentiate between nationals and foreigners.

In *Japan* a licence, permission or approval has to be obtained to run a fishing business. However, foreigners are limited to minor activities. Non-residents are not allowed to own a Japanese fishing boat.

In *New Zealand* fish quotas are not allocated to overseas individuals or companies with overseas control.

A fishing licence in the *Netherlands* is only issued to persons that have office in the country. No other restriction applies.

Norwegian nationals or joint-stock companies seated in *Norway*, where all members of the board are shareholders and Norwegian nationals with residence in Norway (and at least 60 per cent of the capital is owned by Norwegian nationals) can be granted a concession to acquire a fishing vessel.

In *Portugal*, foreigners may acquire vessels only with prior authorisation. Access to the Portuguese EEZ is regulated and presently concerns Spanish vessels following border agreements, and a bilateral agreement concerning Japan.

Besides special rules governing the fishing between nationals of the neighbouring countries of *Sweden*, fishing by foreigners is subject to having been resident in Sweden for at least two years.

In *Turkey* foreigners may not fish or trade fish in Turkish waters. For the registration of vessels, owners must be Turkish nationals or companies should have majority Turkish shareholdings.

While there are no restrictions on direct investments, *United Kingdom* fishing vessels of over 10 metres overall length are required to hold a licence. In order to qualify for a licence, the fisherman must have an entitlement based on historical fishing rights; the vessel must be registered in the UK, Channel Islands or Isle of Man; 50 per cent by weight of landings must be in the UK or UK ports must be visited at least four times in each half year; and at least 75 per cent of the crew must be British or nationals of another Member State of the European Community.

In the *United States* vessels of over 5 net tons engaged in fishing must be built and documented in the US, and US citizens must own a majority interest in any corporation owning such vessels. There are no restrictions on foreign investments in vessels of less than 5 net tons. In addition, certain US fisheries are controlled by either State or Federal law, e.g. Alaskan salmon fisheries and Atlantic surf clam, where these fisheries are managed on an individual quota basis. Foreign investors can acquire these fishing quotas if they can own and operate the vessel required for the fishery.

Country notes

Belgium

The Law of 2nd April 1965 together with the Commercial Code stipulate that all vessels of 25 grt and over which habitually fish at sea, belong at least 50 per cent to Belgian citizens who reside in Belgium or to a Belgian company which has its head office in Belgium.

All vessels fishing in the Community's fishing zone require a licence. These licences are based on the EEC quota system and the quantities which may be fished by the national fishing fleet is determined by Member States. With the limited quota given to Belgium, the Ministry for Agriculture introduced a licensing system which authorises a restricted number of Belgian vessels to operate in Community waters (Royal Decree of 28th January 1988).

Canada

Federal foreign ownership restrictions exist in the fish harvesting sector (Provinces license fish processing plants). The Fisheries Act provides the Minister of Fisheries and Oceans with complete discretion to issue licenses. The Act and accompanying regulations make no reference to foreign ownership, but commercial fisheries licensing policy for eastern Canada (1990) does. An identical policy

exists for western Canada. Under this policy, fishing licenses must be relinquished by Canadian firms if foreign ownership levels exceed 49 per cent. Foreign-owned firms may buy out minority shareholdings of other foreign subsidiaries in Canadian operations provided these foreign firms are of the same country.

Denmark

There are no general limitations on direct investments or on the establishment by foreigners in the Danish fisheries sector. However, there are certain limitations concerning individuals wanting to engage in commercial fishing in Denmark. These limitations are found in Law No. 306 of 4th June 1986, and include the following:

- one has to be a Danish citizen or has to have been living in the country for an uninterrupted period of no less than two years;
- one has to be engaged in commercial fishing no less than 12-months preceding the beginning of the fishing season in Denmark.

Furthermore, limited companies, co-operative societies and the like can only be registered as entitled to engage in commercial fishing in Denmark when no less than two-thirds of the participants are registered as active fishermen.

Finally, fishing vessels engaged in commercial fishing must be registered in Denmark. In addition, two-thirds of the crew members must either be Danish citizens or be able to produce valid Danish residence permits for a continuous period of no less than two years.

However, the above mentioned provisions will only be applied as long as they are in accordance with the obligations following Denmark's membership of the EEC.

Finland

There are no limitations on ownership of fishing vessels or fish processing plants. However, in order to sail under the Finnish flag, 60 per cent of the vessels must be owned by Finnish nationals or companies.

Germany

There are no regulations affecting direct investment or establishment by non-residents or foreigners in fishing and fish processing activities.

The fishing laws do not differentiate between German nationals and foreigners registered under the German flag. Furthermore, there are no policies or administrative practices which discriminate between residents and non-residents or German nationals and foreigners in these areas.

Iceland

Law No. 33/1922 relating to fishing rights within the fishery limits (economic zone) provides in Article 1 that fishing within the fishery limits may be carried out by Icelandic nationals only and that only

Icelandic boats or vessels may be used in such fishing, cf. Articles 3,4,5,6,8 and 9 of the Law, all of which provide for very limited rights for foreign parties to fish and operate within the fishery limits.

Article 11 of the Law states that joint stock companies shall have the right to engage in fishing and fish processing within the fishery limits only on condition that the entire capital be owned by Icelandic nationals. Joint stock companies in which nationals of foreign States are shareholders may, however, engage in fishing within the fishery limits provided that more than half the capital is owned by Icelandic nationals, that the company is domiciled in Iceland, that its directors are Icelandic nationals and that half their number is domiciled in Iceland.

Furthermore, Law No. 4/1925, supplementing Law No. 33/1922, provides in Article 1 that those entitled to fish within the Icelandic fishery limits are not permitted to use foreign vessels for fishing around the country, neither within nor outside the fishery limits.

According to law No. 30/1969, amending Law No. 33/1922, the competent Minister is authorised to permit landing of catches from foreign fishing vessels in Icelandic ports.

The Ministry of Fisheries interprets the above-mentioned Law No. 33/1922 strictly, i.e. that foreigners are not allowed to engage in fish processing in Iceland (on land).

In the 1987-88 session, a bill on investment of foreigners in industrial activity in Iceland was submitted to the Icelandic Parliament, the Althing. The main provisions as regards fishing and fish processing are as follows:

Fishing

Fishing within the Icelandic fishery limits may only be carried out by Icelandic nationals and those legal persons domiciled in the country and vessels wholly owned by Icelandic nationals or other Icelandic parties.

Only Icelandic boats or vessels may be used for fishing within the Icelandic fishery limits, Icelandic meaning, in this law, boats or vessels registered in the country.

Fish processing

Foreigners are not allowed to engage in fish processing in Iceland, fish processing meaning any kind of processing, preparation or treatment of fish and other marine products. Foreigners are not allowed to own a part in an Icelandic industrial firm engaging in fish processing in Iceland if the firm concerned also engages in fishing within the Icelandic fishery limits. The combined shares of foreigners in an Icelandic industrial firm, which engages in fish processing in Iceland and does not also engage in fishing within the Icelandic fishery limits, may at any time be no more than 50 per cent unless the Minister of Commerce grants a special exemption there from.

Remarks

According to existing legislation, foreigners may own up to 49 per cent of joint stock companies engaging in fishing within the fishery limits but they may not own shares in such companies which engage

in both fishing and fish processing within the limits. The Ministry of Fisheries interprets the law as not allowing foreigners to participate in fish processing on land.

According to a bill which was submitted to the Althing at its 1987-88 session and which may be reintroduced during the present session, (1) the right of foreigners to own shares in fishing companies operating within the fishery limits is abolished, (2) as before, foreigners have no right to own shares in companies engaging in both fishing and fish processing, whereas (3) rights of foreigners to own a part in firms engaging in fish processing on land -- which the Ministry of Fisheries' interpretation of the existing legislation excludes -- will be allowed up to 50 per cent and even more with a special exemption granted by the Minister of Commerce.

Ireland

All Irish sea fishing boats must be licensed prior to registration. Under Section 222B(4)(a) (inserted by the Fisheries (Amendment) Act, 1983) of the Fisheries (Consolidation) Act, 1959, a licence to fish for sea fish may only be granted to an Irish national, or to an Irish registered company.

To qualify for the licence, the company must be Irish registered. No distinction is made between the treatment of a branch or a subsidiary. There is no restriction or limit on non-resident participation in an Irish registered company. At least 75 per cent of the members of the crew must be Irish or other EC nationals, excluding until 1st January 1993, Spanish or Portuguese nationals with certain exceptions.

A licence under Section 222B of the 1959 Act is required prior to the registration of a vessel; such a licence may only be issued to the owner of a vessel, who must be an Irish national or an Irish registered company; there is no provision for reciprocity. Only sea fishing vessels registered under Part IV of the Merchant Shipping Act, 1894 and, if over 35 feet in registered length, Section 18 of the Mercantile Marine Act, 1955, may fly the Irish flag. These are also the only vessels which may fish against quotas allocated to Ireland; vessels over 65 feet in registered length must, in addition, have at all times the licence on board. Vessels fishing for certain stocks (herring, mackerel and hake) must have an additional licence.

Licences and thus fishing opportunities are granted only to the owner of an Irish registered vessel; the licence relates solely to the vessel in respect of which it is granted. There is no provision for leasing boats or transferring fishing opportunities.

Licences to fish for mackerel or herring or to fish by means of beam trawls are limited in that a licence for a new vessel may only be granted if an existing boat, active in these fisheries, is removed from the register.

Fish processing sector

There are no laws, policies or practices that differentiate between residents/nationals and non-residents/non-nationals in respect of direct investment, in or establishment of, fish processing enterprises.

Italy

Fishing in territorial waters is reserved for Italian nationals.

Ownership of vessels by foreign-controlled companies or citizens is possible if the vessels are over 50 per cent owned by Italian nationals, Italian public institutions, companies established and having headquarters in Italy or private institutions whose capital and management are over 50 per cent Italian.

Installations for processing fish onboard come under the same regulations as land-based installations. If fish is processed at land-based processing units, no restriction is made with regard to foreign investments.

Japan

Under the Foreign Exchange and Foreign Trade Control Law, prior notification to the Minister of Finance and to the Minister(s) in charge of the industry involved is required before any foreign investment can be undertaken. In most cases, foreign investment is automatically allowed except when it involves the following industries:

- agriculture, forestry and fisheries;
- mining;
- oil;
- leather and leather product manufacturing,

all of which have been reserved under the Code.

For fisheries, if the foreign investment might adversely affect the activities of the domestic fishery business, the Ministers concerned may recommend or give directives to alter the details of that direct investment or to suspend the execution thereof.

Direct investment shall be understood to mean either:

- acquisition of any company's stock or shares;
- substantial alteration of the objective of a company's business;
- establishment of a branch, or
- money lending.

A licence, permission or approval is required under the Fishery Law to run a fishery business. Just as other countries impose restrictions on fishery activities carried out by foreigners in their fishing zones, so Japan prohibits fishery activities and the capture of marine life in its territorial waters by foreigners, except for minor activities under the Law for Regulation of Fishing Operations for Foreign Nationals. Furthermore, under a tentative law concerning Japan's fishing zone, permission is required by the Minister of Agriculture, Forestry and Fisheries before a foreigner can run fishery activities or catch

marine life in Japan's fishing zone (200-mile zone). Permission is given only when it is recognised that the fishery activities or the capture of marine life will be undertaken in accordance with international agreements or other measures, that the amount of capture will not exceed the amount determined by Japan and that the foreign country involved will show proper consideration to the fishing activities of Japanese fishermen.

For fishing vessels, non-residents are not allowed to own Japanese vessels under Article 1 of the law which deals with vessel registration and under Article 2 of the fishery law which defines Japanese fishing boats. While foreigners cannot own fishing boats, the fishing boat law does not prohibit foreigners from using fishing boats, and thus, no restrictions exist on borrowing and using fishing boats.

Netherlands

The laws, policies and administrative practices in the Netherlands pertaining to fishing and fish processing activities, do not discriminate between domestic and foreign enterprises. Any foreigner or foreign enterprise may set up, acquire or participate in an enterprise.

Licences are issued only to persons or enterprises that hold office in the Netherlands. Holders of licences have access to the Netherlands fish catch quota.

No limitations or special regulations exist with regard to activities in the fish processing sector.

No public, private or mixed monopolies exist in the fishing or fish processing sector.

New Zealand

Fish quota may not be owned by any organisation that is foreign controlled. In addition, no foreign controlled organisation may register a fishing vessel, inclusive of foreign charter vessels. An organisation is defined as "foreign controlled" in the Fisheries Amendment Act 1986 if 25 per cent (or more) of the voting power is held by foreigners.

Norway

Concessions to acquire fishing vessels or shares in a company which owns such vessels is only granted to Norwegian nationals or joint-stock companies seated in Norway, where all members of the Board are shareholders and Norwegian nationals with residence in Norway, and further that at least 60 per cent of the equity capital is owned by Norwegian nationals. Fishing with trawls from Norwegian vessels is reserved for Norwegian nationals and the type of company mentioned above.

Portugal

In accordance with the Treaty of Adhesion of Portugal to the EEC and related Community Regulations, within the national EEZ the only vessels which may operate, other than those mentioned in the regulations, are Spanish vessels not included in frontier agreements which have historically fished in that area. Japanese vessels, under EEC Regulation 529/879, may fish for albacore between 1st March and 30th June.

Apart from the conditions mentioned above, foreign charter vessels can only operate in the Portuguese EEZ under the following conditions:

- to replace a vessel where construction or modification has been authorised;
- for experimental reasons, e.g. new techniques of fishing or exploiting new fishing zones.

The Ministry of Agriculture, Fisheries and Food can authorise the chartering of vessels according to certain conditions, e.g. the chartering of a foreign vessel is granted up to a maximum of two years and the authorisation lapses once the purpose for chartering the vessel has been fulfilled.

Under the charter agreement, all species taken, as well as processed products originating from these, are considered to be national products and charter vessels are subject to the same legal conditions as Portuguese national vessels. Licences are given according to the conditions mentioned in the paragraphs above.

With regard to ownership of Portuguese vessels by foreigners, this is subject to agreement by the national authorities and according to the terms of capital operations under the conditions concerning foreign investment in Portugal and coming under Decree Law no 214/86 of 2nd August.

Sweden

The Swedish law differentiates strictly between non-residents and residents as concerns professional fishing in Swedish waters, which is laid down in the Swedish Fisheries Ordinance. Fishing by foreigners in Swedish west coast waters is governed by non-licence agreements between Sweden and Denmark (1932, covering the Kattegatt area) and between Sweden, Denmark and Norway (1966, covering the Skagerrak area), whereas foreign fishing rights within the Swedish fishing zone in the Baltic Sea is ruled by a licence system.

Fishing rights for foreigners

Section 25: In the Skagerrak and Kattegat north of a straight line between Skagen lighthouse and the Titstlarn lighthouse, commercial fishing may be carried out by Danish and Norwegian fishing vessels in the Swedish territorial sea in the area beyond 4 nautical miles from the base-lines and in the Swedish fishing zone.

Section 26: Subject to special permission, commercial fishing from foreign fishing vessels may be carried out:

- from Danish fishing vessels, in other areas in Swedish territorial waters than are prescribed in Section 25, in the area beyond 4 nautical miles from the base-lines and in the Swedish fishing zone;
- from Finnish vessels in the Baltic, including the Aland Sea, the whole of the Gulf of Bothnia in Swedish territorial waters in the area beyond 4 nautical miles from the base-lines and in the Swedish fishing zone;

- from fishing vessels flying the flag of the Soviet Union, Poland or the German Democratic Republic or of another Member State of the European Economic Community than Denmark in the Swedish fishing zone.

Questions concerning permission are dealt with by the National Board of Fisheries. Permission may apply to a certain fishing vessel or a number of fishing vessels from another state and may be subject to conditions.

Section 27: Foreigners may fish with such hand equipment as is referred to in Section 20a of the Act on the right to fish in the Swedish fishing zone in public waters at the sea coasts, in public waters in lakes Vanern, Vattern and Hjalmaran, and Storsjon in the county of Jamtland, as well as in private waters to the extent applied for Swedish citizens according to sections 6,12,13,15 and 20a of the Act on the right to fish.

Section 28: Subject to special permission, foreigners who do not have the same status as Swedish citizens pursuant to Sections 4 or 21 of the Act (1950:596) on the right to fish, may engage in fishing with other mobile equipment than that referred to in Section 27 in the fishing zone, in public waters at the sea coasts and in private waters to the extent stated in Sections 6-20 of the Act on the right to fish.

Question concerning permission are dealt with by the County Administration. Permission may be subject to the condition that the fish caught in such fishing may not be sold.

Act on the right to fish

Sections 6-20 deal exclusively with the rights of Swedish citizens.

Section 21: Foreigners, who have been permanent residents in Sweden for at least two years, have the same rights as Swedish citizens regarding fishing, according to the rules in Sections 6-20. In other respects, a foreigner may fish according to these rules only to the extent that the Government or other authority appointed by the Government so permits.

Turkey

Under Fisheries Law No. 1380, foreigners may not fish or deal in fish processing activities within Turkish waters. However, under the Encouragement of Foreign Capital Law No. 6224, foreign companies established in Turkey may deal in fishing processing activities but they may not hold a licence to fish.

Under the Turkish Trade Law No. 6762, for the registration of sea-going vessels, owners must be Turkish nationals or companies must have a majority of Turkish shareholders.

United Kingdom

There are no United Kingdom laws, policies or administrative practices in these sectors which differentiate between non-residents (or foreigners) and residents (or nationals) and might concern the

creation or extension of a wholly-owned enterprise, the acquisition of 100 per cent of a new or existing enterprise, participation in a new or existing enterprise or any public, private or mixed monopolies.

In order to fish for any stocks of sea fish (other than mackerel by hand-held line, salmon or migratory trout) all fishing vessels over 10 metres overall length are required to hold a valid licence, issued by one of the United Kingdom's fisheries departments. All such licences are subject to the following conditions:

- The vessel must be registered under Part IV of the Merchant Shipping Act 1894, or the Merchant Shipping Act 1988, in accordance with the Merchant Shipping Registration requirements for the time being in force.
- In order to ensure that the vessel to which this licence relates has a real economic link with the United Kingdom, Isle of Man or Channel Islands, the following requirements must be met at all times during the validity of the licence:
 - The vessel must operate from the United Kingdom, Isle of Man or Channel Islands; without prejudice to the generality of this requirement a vessel will be deemed to have been so operating if, for each six-month period in each calendar year (i.e. January to June and July to December); either

At least 50 per cent by weight of the vessel's landings or transhipment of stocks to which this or any other licence in force at the relevant time relates have been landed and sold in the UK, Isle of Man or Channel Islands; or transhipped by way of sale within British Fishery Limits; or

Other evidence is provided of the vessel's presence in a UK, Isle of Man or Channel Islands port on at least four occasions at intervals of at least 15 days.

- At least 75 per cent of the crew must be British citizens, or EC nationals (excluding until 1 January 1993 any Spanish or Portuguese nationals who are not the spouse or children under 21 of Spanish or Portuguese workers already installed in the United Kingdom in accordance with the transitional arrangements on the free movement of workers following the accession of Spain and Portugal to the Communities as provided for in the relevant Accession Treaties) ordinarily resident in the UK, Isle of Man or Channel Islands: resident means residence on shore and for this purpose service aboard a British ship does not count as residence in the UK, Isle of Man or Channel Islands.
- The skipper and all the crew must be making contributions to UK National Insurance or equivalent Isle of Man or Channel Islands schemes; this would include Class 1, Special Mariners, Class 2 or Class self-employed contributions.

Limitations on the ownership or leasing of real property relevant for fishing or fish processing activities are covered by the Merchant Shipping Act 1988. Part II of the Act provides that a fishing vessel shall only be eligible for registration as a British fishing vessel if it is British owned and managed, its operations are directed and controlled from within the UK and any charterer, manager or operator of the vessel is a qualified person or company. British ownership means that the title must be vested wholly in one or more qualified persons as to not less than 75 per cent of the property in the vessel.

A qualified person is a British citizen resident and domiciled in the UK or a UK local authority; and a qualified company is one incorporated and having its principal place of business in the UK, at least 75 per cent of whose share are legally and beneficially owned by British citizens resident and domiciled in the UK and at least 75 per cent of whose directors are British citizens resident and domiciled in the UK.

United States

There are no restrictions on foreign investment in, or establishment of, a fish processing facility on land within the geographic limits of the United States. Such facilities are usually incorporated under the laws of a State in order to limit the liability of the investors to the extent of their investment. Many land-based fish processing facilities are partially or fully owned by foreign investors.

There are restrictions on the extent of foreign investment allowed to qualify for initial documentation of vessels that will be used in the US EEZ or in State waters. Vessels to be engaged in fishing, fish processing and fish tendering must be built and documented in the US and US citizens must own a majority interest in any corporation owning such vessels. Vessels documented prior to 28th July 1987, may be owned by a foreign owned corporation provided that a majority of the board of directors and the chief executive officer (CEO) of the corporation are US citizens.

Foreign-built vessels which before 28th July 1987 were (1) documented in the United States and operated as fish processors or fish tendering vessels; or (2) contracted to be purchased by a US citizen, may be used for fish processing or tendering, if documented in the US and owned as described above.

There are no restrictions on foreign investment in vessels smaller than 5 net tons which are not documented and are only required to be numbered by State authorities. Such vessels are generally operated by their owners. Immigration laws would control whether non-resident aliens could operate or be employed in such fisheries.

There are no restrictions on foreign investment in vessels that will be operated in fisheries beyond the US EEZ except for the US citizen CEO and majority of the board requirements.

There are no restrictions on foreign acquisition of a shore-based fish processing enterprise.

With respect to new vessels larger than 5 net tons, US citizens must hold a majority interest in any corporate owner in order to qualify for documentation. Such documentation is required to operate as a domestic vessel within the US EEZ and State waters. Vessels smaller than 5 net tons and vessels operating beyond the US EEZ may be owned entirely by foreign investors.

As indicated above, foreign investors may build or acquire full ownership of shore-based processing facilities. Foreign investors also may acquire full ownership of vessels (1) larger than 5 net tons documented prior to 28th July 1987, (2) smaller than 5 net tons, or (3) larger than 5 net tons if the area of operation of such vessels is entirely beyond the US EEZ.

Access to certain US fisheries is controlled by either State or Federal law. The west coast and Alaskan salmon fisheries, the Atlantic surf clam fishery and some shellfish grounds are reserved to historic participants in those fisheries in order to limit harvesting pressure to available stocks. Foreign investors generally can acquire these rights if they can legally own and operate the vessels that would participate in these fisheries.

US citizens have priority rights to harvest fish within the US EEZ and State waters. These rights accrue to vessels documented under Federal law (larger than 5 net tons) or numbered under State law (smaller than 5 net tons). The ownership requirements described above would apply.

Vessels not meeting the documentation or numbering requirements are treated as foreign vessels. Within the US EEZ, foreign vessels are entitled to catch or process only that amount of fish that is surplus to the requirements of US fishing vessels or US based fish processing facilities (some of which may in fact be foreign owned as described above). Likewise, foreign vessels are not allowed to land fish in US ports if such fish was taken aboard the vessel on the high seas, i.e. beyond the territorial sea of any nation.

Only US documented or State numbered vessels may fish within State boundaries. Foreign processing vessels may process fish within State boundaries only when the Governor or the State certifies that US processors will not be able to fully process the available harvest.

There are no restrictions on foreign purchase of real property to construct or operate shore-based processing facilities.

The restrictions on ownership of fishing vessels, tender vessels and fish processing vessels are described above and depend upon such factors as when the vessel was first documented and where the vessel will operate. U.S. documented or State documented vessels (some of which may be foreign owned, in whole or in part) enjoy a preference to catch and to process fish within the US EEZ and within State waters.

Additionally, the carriage of fish (and other cargo) between two or more points within the US is limited to vessels licensed for the coast trade. All documented vessels employed in the coast trade must be owned by a US citizen, a partnership of US citizens, or a corporation in which the CEO, a majority of the board and 75 per cent of the stock holders are US citizens.

As described above, access to certain US fisheries is controlled by State or Federal law. Generally, such licences to fish may be acquired by foreign investors, although the documentation and numbering requirements described above would control the ownership and operation of the vessel required to participate in these fisheries. Most recently, foreign investors purchased the largest US surf clam operator and thereby acquired the largest share of the rights to participate in that limited access fishery.

ANNEX I

QUESTIONNAIRE ON MEASURES AFFECTING INWARD DIRECT INVESTMENT OR ESTABLISHMENT IN REGARD TO FISHING AND FISH-PROCESSING ACTIVITIES

Please describe any laws, policies or administrative practices in your country that might affect direct investment or establishment by non-residents or foreigners in the field of fishing (including deep-sea and coastal fishing) or fish processing activities (including both on-shore and shipboard processing). In particular, please indicate any laws, policies or practices that differentiate between non-residents (or foreigners) and residents (or nationals) and that might concern:

1. The creation or extension of a wholly-owned enterprise, whether in the form of:
 - a) a branch, or
 - b) a subsidiary.
2. Acquisition of 100 per cent of a new or existing enterprise.
3. Participation in a new or existing enterprise. (Please specify any specific limits applying to foreign or non-resident participation.)
4. Licences or concessions needed for any fishing or fish-processing activities, including any conditions differentiating between non-residents (or foreigners) and residents (or nationals), e.g. a condition of reciprocity, conditions governing registration to carry the national flag for fishing and/or merchant marine purposes, access to fish catch quotas.
5. Limitations on the ownership or leasing of real property relevant to fishing or fish processing activities, e.g. fishing vessels or ships registered in your country or real estate or other natural resources. Please also indicate whether any activity in your country (fishing in particular zones, transport, etc..) is accessible only to owners of such real property (e.g. registered ships) or on conditions different from those applying to non-owners of such property.
6. Any public, private or mixed monopolies (i.e. where a sector of activity is limited by legal or administrative provisions to the operation of one or very few enterprises under exclusive licences or permits).