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OCCASIONAL PAPER

FORMAL AND INFORMAL INVESTMENT BARRIERS IN THE G-7 COUNTRIES: SUMMARY AND CONCLUSIONS

Occasional Paper Number 1, Volume 2
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This paper has been prepared to encourage discussion and debate of impediments to direct investment. Comments would be appreciated.

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PREFACE

In this era of globalization, international investment serves as an integrating force among the world economies. Multinational enterprises (MNEs) have been the principal actors in the globalization process, primarily through their foreign direct investment (FDI) decisions. As a result, investment policies, particularly as they relate to foreign direct investment and the regulation of MNE activity, are of considerable interest and importance in an international policy context.

Some time ago, in light of the preceding trends and in response to the increasing interest in international investment and globalization, a study was undertaken at Industry Canada of the foreign investment regimes in the G-7 countries. That project has resulted in the production of two papers - *Occasional Paper No. 1, Volume 1 – Formal and Informal Investment Barriers in the G-7 Countries: The Country Chapters*; and this paper, *Occasional Paper No. 1, Volume 2 - Formal and Informal Investment Barriers in the G-7 Countries: Summary and Conclusions*. Volume 1 is a descriptive study of the investment regimes in each of the G-7 countries. It also contains an analysis of the effects on foreign investment of the establishment of EC 1992. This volume is a synthesis of the country chapters. Its role is to draw out the major lessons of the analysis.

The project that led to these papers was born out of a strong interest in investment regimes, particularly in the context of globalization. It grew out of the belief that to date, much of the writing and argument on the subject of investment regimes has had a formal and legal orientation, but has been missing important elements related to less tangible formal and informal investment barriers which in practice can play significant roles in blocking the entry of foreign direct investment.

Starting from this viewpoint, it was first necessary to fully describe the international investment regimes in the G-7 countries before efforts were made to theorize about investment impediments and develop policy perspectives. In Volume 1 we carefully describe investment regimes trying, above all, to focus on how they actually work, taking into account economic structures and institutions. As a result, it is virtually impossible to summarize all of the detailed information provided in Volume 1. In each case, however, the approach taken to describe the international investment environment is similar.

Each chapter begins with a short **Introduction**, followed by a section on **Institutional Developments**, which outlines the recent changes in investment regimes in each country. That is followed by a section on **Recent Investment Patterns**, which examines the pattern of inward and outward direct investment stocks and flows, as well as the pattern of merger and acquisition activity in each G-7 country during the 1980s. This section is included so that the reader can develop a sense of the relative importance of foreign direct investment in each country. We do caution the reader against linking too strongly any differences in investment performance with differences in the characterizations of the international investment environment across the G-7 countries. No attempt has been made in this paper to empirically link the two.

Next, **Formal Barriers to Direct Investment** in each country are surveyed. This section focuses on traditional FDI barriers, including such legal and regulatory restrictions as foreign investment review requirements, antitrust provisions, and sectoral restrictions. In the case of each country, the institutional mechanisms that exist for applying the formal investment regulations are fully described. It appears from the descriptions that even though there has been significant liberalization of formal investment regulations in recent years, in most countries the machinery to block foreign investment remains in place should there be the political will to do so.

The primary objective of this project has been to broaden the examination of investment impediments to include barriers to foreign investment about which little has been written, such as the role of administrative procedures, institutions, and market models in deterring foreign investment. In the section entitled **Informal Barriers to Direct Investment**, a number of those informal barriers have been identified and described for each country. Included are share ownership restrictions, the size and depth of the stock market in each country, tactical barriers to investment in corporate articles of association, government and business linkages, commercial and financial linkages, and the role of state-controlled companies.

The size and functioning of the stock markets in the G-7 countries demonstrate an important point about informal investment barriers generally and how they can be hidden. Table 1 in this volume lists the market capitalization of domestic firms in the G-7 countries. In terms of the number of firms listed, the United Kingdom has the most, followed by Japan, the United States, Canada, Germany, France, and Italy. On the basis of this quantitative evidence alone, it would appear that Japan is open to investment, with a large number of potential takeover targets trading on its stock exchange. In fact, though, the keiretsu business structures in Japan limit the extent to which shares are actually traded freely; so the economy is, in reality, relatively closed to foreign investment.

To demonstrate how investment barriers work and interact in practice, each country chapter contains a section which includes **Case Studies**, providing a number of concrete examples of investment impediments at work. The drawback with case studies, however, is that they cannot capture how both the formal and informal barriers operate successfully to preclude foreign investment entirely, thus creating no cases for review. Case studies can, however, effectively illustrate how many of the investment barriers do work, often in tandem. The case of Pirelli of Italy's attempt to take over the German firm Continental AG provides a good example of how restrictions on voting rights and the power of the banks in Germany succeeded in heading off a hostile takeover, while the case of the Hongkong Shanghai Bank attempting to take over the Royal Bank of Scotland demonstrates how antitrust provisions serve to deter foreign takeovers in the United Kingdom.

A short **Conclusion** then summarizes the findings for each country, and at the end of Volume 1 is an Appendix entitled **The European Community: Influences on Foreign Direct Investment.** The Appendix reviews the impact of the establishment of the European Community on foreign direct investment in Europe. The study recognizes that a number of EC policy actions – liberalization of internal capital movements and efforts to control state aids – have provided for freer movement of international investment flows. However, EC merger and acquisition policy and key trade policy actions have imposed important influences on international capital movements. It is the area of trade policy where international concern most consistently arises with respect to EC actions. Since the second half of the 1980s, the EC has made significant use of various trade instruments, particularly rules of origin, local content and anti-dumping measures. A number of these actions have been seen by other countries as attempts to influence direct investment flows.

The identification and description of informal investment barriers are the unique contribution of the analysis of the investment regimes in each G-7 country. Volume 1 demonstrates that the presence, or absence, of formal obstacles and barriers to foreign direct investment does not sufficiently reflect any openness to foreign direct investment. Efforts to characterize countries on that basis alone do not capture the full picture. In fact, investment asymmetry among G-7 countries appears to result more from differences in economic structures, corporate ownership patterns and linkages between various economic actors than it does from the presence of foreign investment review provisions and sectoral investment restrictions.

In an effort to explore the conclusions and lessons of the G-7 analysis to the fullest, this paper entitled *Formal and Informal Investment Barriers in the G-7 Countries: Summary and Conclusions* was prepared. It serves as a concluding chapter for the project, takes stock of the combined effects of formal and informal investment impediments in the G-7 countries, and draws out the similarities and differences among the countries. This paper also points to the major international policy issues that become evident from a review of the investment regimes in each country. A summary of the major issues covered in the paper follows.

While investment-rule liberalization has been popular since the 1980s, this paper suggests that there has really been little change in foreign investment accessibility. The reason is twofold. First, the liberalization of formal rules has not necessarily led to an increase in the transparency of investment regimes; second, informal investment barriers are now relatively more important because formal barriers have been eased, and globalization has heightened the significance of all impediments to investment. The conclusion that overall investment accessibility has changed little in recent years is true to a greater or lesser extent for every single G-7 country.

Another conclusion reached from this analysis is that the G-7 countries can be divided into three groups. The United Kingdom, the United States, and Canada appear to have similar investment regimes, with few informal barriers and with formal investment regimes that are often considered relatively liberal but, are arguably, at least partially non-transparent. Examples of the operation of Exon-Florio in the United States and the antitrust provisions in the United Kingdom tend to confirm this conclusion. Canada falls into this category because of its similar Anglo-Saxon traditions. In reality, Canada lies somewhere between the United States and the United Kingdom in this category and Italy and France in the next category, given its corporate concentration and the preponderance of family-owned firms, coupled with a foreign investment review process on the formal side.

Italy and France are similar in that family ownership acts as an effective informal investment barrier, while there is a general lack of transparency on the formal side stemming from the operation of the foreign investment review process in France and the antitrust process in Italy.

Finally, Germany and Japan's foreign investment regimes are characterized by financial-commercial linkages that effectively block foreign takeovers. This impediment stems from a different market model than is found in Anglo-Saxon countries. The rather extreme impenetrability of Japan, particularly to foreign direct investment, is evidence of the effectiveness of such informal investment barriers.

A number of international investment policy issues became evident through this comparative analysis of investment regimes. In particular, this volume echoes the calls of many international policy analysts for multilateral rules governing investment, just as there are multilateral rules governing trade. Increasingly, bilateral and regional trade deals are leading to regional investment discrimination. Further, the use of reciprocity to pry open foreign investment markets poses threats to a more comprehensive and coordinated liberalization of investment regimes. This paper highlights concerns raised by Sylvia Ostry and others that Canada, as a small country, can only lose out as the larger powers conclude such bilateral deals.

In addition, this analysis clearly points to the growing importance of domestic policies and institutions as determinants of investment accessibility and this suggests that as investment liberalization proceeds, new attention will have to be given to structural economic institutions and relationships. Changing the focus of negotiations on investment away from legal restrictions on foreign investment to issues like the role of market models and institutions in influencing the accessibility of foreign investment will not be easy. Such informal barriers reflect cultural and historical differences among societies which will be difficult to address and reconcile.

At the same time, there is growing interest in the role of institutions and in the role of corporate governance in influencing overall economic growth and productivity. New theories of economic growth have elevated the significance of structural features of economies in determining performance and increasingly efforts are being made to analytically gauge to what extent there is a causal linkage. In this project, corporate governance issues (such as financial-commercial linkages, management board structures, and ownership concentration) were instrumental in conditioning the international investment environments in each of the G-7 countries. In particular, the financial-commercial linkages which characterize Japan (keiretsu structures) and Germany are significant, if not impenetrable, hurdles for potential foreign investors. At the same time, many have argued that these linkages are key to the strong economic performances of those countries. Thus there are important linkages between this project on barriers to investment in the G-7 and work that is now getting underway on the role of corporate decision making in economic performance.

There are also a number of policy issues which emerged in this volume relating to policy harmonization and transparency. Some argue that in an era of globalized markets, domestic policies worldwide should converge to some norm so that MNEs face a level playing field, regardless of where they choose to invest. If, as argued, domestic policies and structures are increasingly to be examined in the international arena, then it will get more and more difficult to reconcile various countries' practices, many of which have always been seen in the domain of national law, with some international norm. As a result, working towards increased policy transparency appears to be a more realistic goal for international investment negotiations, and policy harmonization efforts should be directed at ensuring that policies with an international orientation are generally consistent and non-distorting across jurisdictions.

As a closing note, a caution to the reader is required. Both Volumes 1 and 2 have been written in a way that sets out an institutional framework for understanding formal and informal barriers to investment. In the absence of this framework, there is danger that readers will infer spurious links between differences in institutional structures, which are clearly evident and differences in performance, which are also clearly evident. In addition, there are limits to the lessons that can be learned from comparisons among countries because each has unique characteristics which often reflect the particular social and individual preferences of that society.

INTRODUCTION

This Occasional Paper develops a comprehensive portrait of the practices, rules, and regulations that can impede foreign direct investment (FDI) in the G-7 countries. It serves to summarize and synthesize the companion Occasional Paper on the G-7 countries, which provides detailed analysis of the investment regimes in each jurisdiction. It takes stock of the combined effects of formal and informal barriers in the G-7 countries and demonstrates how the interaction between the different types of barriers actually works. It also highlights the principal lessons derived from the analysis and draws out the policy implications.

An important theme of the companion Occasional Paper is the emerging role of informal investment barriers. In this concluding paper we argue that just as in the trade field, where many have testified to a rise in non-tariff barriers in response to the gradual elimination of formal trade barriers, informal investment barriers have, in recent years, become a more significant impediment to the flow of international investment. This rise in informal barriers has occurred for two reasons. First, globalization and the integration of world markets permit the structural characteristics of domestic economies to have a significant impact on international economic relationships. Increasingly, these structural characteristics are proving to be impediments to the flow of international investment. Second, world economies have gradually relaxed their formal investment barriers in response to globalization, thereby leaving informal barriers to regulate foreign direct investment (FDI).

Another major theme evident from the analysis is that increasingly domestic policy pertaining to investment is about to become the focus of attention in the international arena. On the "formal" barrier side, competition policy and sectoral investment restrictions will come under increasing scrutiny. Moreover, informal investment barriers of an inherently domestic nature will get pulled into international discussions more and more as future efforts proceed to liberalize investment regimes.

A major conclusion related to these themes and the companion Occasional Paper is that even after a period of significant liberalization of formal barriers to investment, the G-7 countries are not equally accessible to foreign investors. The companion Occasional Paper repeatedly demonstrates how elements of their respective regimes have been liberalized. It is argued here, however, that while there has been significant liberalization, there remains considerable scope for further policy action, especially when informal barriers are taken into account. These informal barriers offer special challenges because they often lack transparency and involve discriminatory practices that have until recently been primarily considered to be of domestic concern only. On this point, Sylvia Ostry has said that "... the problem of asymmetry of investment access will not be solved by ... harmonization. ... The problem is rooted in the nature of corporate governance (the horizontal *keiretsu* in Japan; the role of banks in Germany, etc.). Harmonization of corporate governance systems along Anglo-Saxon lines seems unlikely to me. So there is no obvious or easy answer to this problem...."[1]

At the outset, it is essential to clarify what is meant by "formal" and "informal" barriers. Formal investment barriers are defined as the set of controls on FDI explicitly introduced through legislation and government regulation. These policies typically concern the right of establishment in key sectors. In contrast, informal barriers to investment are defined as an array of impediments to FDI in a host country that can arise from: administrative procedures and unpublished policies; structural rigidities in the market; and political, cultural, and social institutions that work to deflect FDI. These barriers mainly concern impediments to transborder takeovers rather than the establishment of new greenfield investments.[2]

Concerning the liberalization of formal investment barriers, practically all exchange-control restrictions on the financing of inward and outward direct investment in the G-7 countries were eliminated

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[1] Sylvia Ostry, Comment on Fred Bergsten's "New Rules for International Investment", in Industry Canada Research Volume entitled *Multinationals in North America* (forthcoming).

[2] A. E. Safarian, *Governments and Multinationals: Policies in the Developed Countries* (Washington: British–North American Committee, December 1983), pp.1-3.

during the 1980s.[3] Broad-ranging requirements for prior authorization of inward direct investment were progressively replaced in a number of countries by simple notification or verification procedures for administrative or statistical purposes. Obstacles to the creation of new businesses with FDI were in large part removed by all G-7 countries during the 1980s. Only certain sectoral restrictions on greenfield investments remain.

Also during the 1980s, many sectoral restrictions limiting foreign participation were removed or relaxed, and the remaining regulations made clearer and more transparent.[4] The sectors that have been singled out for protection are remarkably similar across countries. In particular, financial services, air and maritime transportation, energy, and cultural industries have been given special protection from foreign investors. In recent years, financial services have witnessed the most liberalization. Many restrictions remain in other sectors, however. Widespread privatization and demonopolization policies in some G-7 countries in the 1980s have also been instrumental in opening up new sectors to private enterprise and foreign direct investment.

The liberalization of formal investment rules, however, is hardly complete. A. E. Safarian noted that the liberalization in these barriers in the 1980s produced a convergence in policies towards MNEs however, "such convergence ... [was] not necessarily in the direction of non-intervention. Generalized intervention directed at foreign-owned MNEs has often given way to selective intervention in an international context."[5] This selective intervention is made possible because, although liberalized, the regulatory machinery and the legislative authority to block FDI for broad reasons related to national security or the national interest continue to exist in most G-7 countries. This means that selective interventions can take place if the political will exists to do so. Also, consistent with these practices, the formal, regulatory process is not always transparent. It is fair to

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[3] Appendix A, "Regulatory Process and Machinery", provides summaries of the formal foreign investment regimes currently found in the G-7 countries.

[4] Appendix B, "Sectoral Obstacles and Impediments to FDI", summarizes the sectoral restrictions on FDI that exist in the G-7 countries.

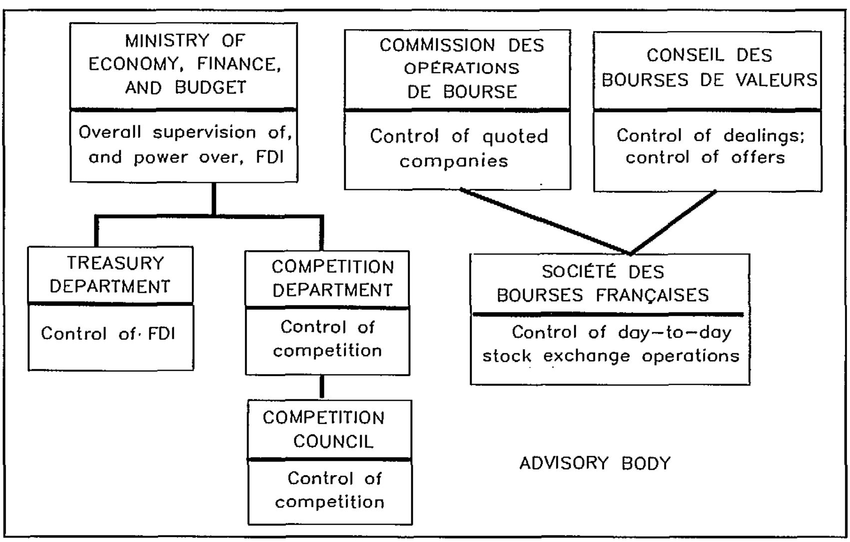
[5] A. E. Safarian, *Multinational Enterprise and Public Policy: A Study of the Industrial Countries* (Aldershot, Hants: Edward Elgar Publishing Limited, 1993), p. 470.

say that to some extent every country lacks transparency in the international investment game.

For illustration, Chart 1 outlines the agents responsible for the regulation of FDI in France. Charts outlining the regulatory frameworks in the other G-7 countries can be found in Appendix A.

Two departments of the Ministry of Economy, Finance, and Budget – namely, the Treasury and Competition departments – administer regulations that have an impact on MNE investment. A Competition Council advises the government on competition-related issues, and a set of agencies exist to monitor and administer stock trading regulations.

Chart 1
Regulatory Framework for Control of Foreign Direct Investment in France



Source: Industry Canada.

While the agents responsible for the regulation of FDI in France are easily identified, the regulatory process behind the structure is not always clear. Large foreign investments are evaluated on a "case-by-case basis" and are examined to determine their "consistency with national objectives". This provides the government with the scope to treat similar investments differently, depending on political or other considerations. Further, in France, there are two levels of investment thresholds, one for EC and another for non-EC investors. At the same time, however, the guidelines for determining into which category companies with mixed ownership fall are not clear. There is, therefore, considerable discretion available to the government within the context of France's regulatory structure, thereby limiting the transparency of the process and making selective intervention possible.

It would be inappropriate to suggest that France is alone in this respect. The absence of real transparency in formal investment regimes is an issue for all G-7 countries. For example, even the United Kingdom and the United States, often considered to be the economies most open to foreign investment, maintain the machinery and the legislative authority to block foreign takeovers – the first, primarily by means of antitrust mechanisms; the second, through mechanisms established to defend national security. In every country, there is always the danger that the broad review mechanisms available for national security or for national interest sake might be misused. Legitimate government intervention to stall or block foreign takeovers is possible if the political will exists.

Beyond the question of the extent to which formal regulatory systems have been liberalized in recent years is the issue of the role of informal investment barriers. The true degree of openness to foreign investment of any country is masked by the existence of less visible deterrents to FDI; these can be found to a greater or lesser extent in all G-7 countries. In both of these papers concerning the formal and informal investment barriers in the G-7 countries, an effort has been made to provide a comprehensive picture of FDI barriers by paying particular attention to the informal barriers to investment. Such a discussion of these informal investment impediments demonstrates the significant role that economic structures and institutions can play in limiting the ability of MNEs to invest abroad.

One type of these informal investment barrier is the ownership barrier to takeovers that stems from the relative importance of stock exchanges as markets for corporate ownership and control in each

G-7 country. Table 1 presents the market capitalization of the major stock exchanges in each G-7 country.

As is evident from Table 1, there are considerably more firms listed on the stock exchanges of the United Kingdom, the United States, Canada, and Japan than there are on those of Germany, France, and Italy. In addition, the combined market capitalization of domestic companies listed on the stock exchanges of France, Germany, and Italy is less than a third of the market capitalization of the New York stock exchange alone. This implies that the number of potential targets for a takeover are relatively fewer in countries such as Italy, France, and Germany than, for example, in the United States.

Table 1
Market Capitalization of Domestic Firms in the G-7 Countries, 1989

Country[1]	Number of domestic firms	Total market value of shares of domestic firms (US$ millions)
United Kingdom	1,758	814,321
United States	1,458	2,903,546
Canada	1,146	291,367
France	462	337,572
Italy	217	169,417
Germany	628	365,176
Japan	1,597	4,260,383

[1] Germany represented by Federated German Stock Exchanges; United Kingdom, by London; Canada, by Toronto; France, by Paris; United States, by New York; and Japan, by Tokyo.
Source: Fédération Internationale des Bourses de Valeurs (International Federation of Stock Exchanges) 1989. *Activities and Statistics 1989 Report.*

The pattern of shareholdings within and between companies is also at issue here. For example, over half of the approximately 400 listed companies in France are under family control, with extensive state and cross shareholdings, which also make takeovers difficult. In Germany, only a quarter of approximately 2,500 stock corporations are actually listed on the stock exchanges. In Italy, studies indicate that only seven of the two hundred publicly quoted companies have more than 50% of their shares in public hands; of those, five are effectively controlled by family groupings. Canada, relative to the United States and the United Kingdom, also has a relatively large number of family holdings.

In the case of Japan, the relatively large number of firms listed on the stock exchange does not reflect the extent to which Japanese firms can become targets of takeover attempts. Long-term ties among Japanese corporations characterized by extensive mutual stockholdings within keiretsu business structures have the effect of significantly reducing the extent to which shares are actually traded freely on the Japanese stock exchange. In 1990, for example, almost 80% of the over 1,600 companies listed on the Japanese stock exchange belonged to keiretsu groupings. In addition, roughly a quarter of the listed companies that belong to the keiretsu business structure are dominated by banks.

These relationships demonstrate an important point about informal investment barriers and how they can be hidden. Table 1 suggests, on the basis of quantitative evidence alone, that Japan is open to foreign investment; however, its informal practices - the commercial and financial linkages in its economic structure - make the economy virtually closed. The lesson is, and this is a premise of the paper, that quantitative measures alone cannot capture the openness of regimes to foreign investment. The analyst must look beyond the numbers to see how the investment regimes actually operate in a broad economic and political context that takes into account the structures and institutions of each country.

As with Japan, a major structural obstacle to takeovers in Germany is the dominant role played by banks as a source of corporate finance. The issue is the extent of financial and commercial linkages in the economy. Banks in Germany are "universal" banks that provide a host of services. Through the proxy voting rights of shares held for their clients, the banks often control shareholders' meetings. This practice gives the banks considerable power in determining the outcome of takeover bids. They also play the role of lender and of adviser to corporations. The broad influence of the banks in German business is a significant barrier to non-German investors hoping to launch a hostile takeover.

In addition to the informal ownership barriers to takeovers, are the "technical" or "tactical" barriers are sometimes employed. These are strategic, legal measures adopted under company law or in Articles of Association (by-laws) of corporations that tend to protect and maintain existing management. The barriers vary, but all are designed to counter hostile bids. In Canada, for example, many public companies issue non-voting or subordinate equity securities that are publicly traded on the stock exchanges. In that way, companies remain controlled by a family or other founding group that holds a relatively small number of common voting shares even though the vast majority of the common equity is held by the public in the form of non-voting or subordinate voting shares.

The last kind of informal barrier considered relates to institutional relationships and the actions of government. In some jurisdictions, there is scope for the regulatory authorities to intervene and block foreign takeovers because of the discretionary room available to them under the law. In the United Kingdom, for example, a merger review is initiated primarily, though not exclusively, on competition grounds, and the main criterion considered in such a review is whether the takeover is against the public interest. While usually the emphasis is on competition, the government has used, and can use, powers under its competition law to block foreign takeovers on grounds relating to other social and economic issues as well.

Another example pertains to the United States, where the states are free to challenge negotiated settlements reached between the federal antitrust agencies and a corporation wishing to acquire or merge with a domestic firm. They also have the right to challenge transactions that the antitrust agencies elect not to block. State regulations may, therefore, frustrate investment attempts even after the federal government has approved proposals.

Finally, there is the matter of state ownership in some of the G-7 countries and the role it can play in deterring FDI. While all countries have taken steps to privatize state firms, considerable portions of some economies (e.g., in France and Italy) still remain under state ownership. Moreover, when privatization does occur, strict limits are usually applied to the degree of foreign control that can be attained under private ownership of the companies.

This Occasional Paper and the companion country chapters do not, nor cannot, address all the conceivable types of informal investment barriers. Corporate tax structures, accounting practices, disclosure rules, and labour-management relations are not covered, for example. Nor is the use of investment incentives and subsidies discussed in the country chapters or in this conclusion. Yet all of these are important policy issues that deserve attention and study.[6]

A number of policy questions that emerge from a discussion of investment barriers are examined in this Occasional Paper. Of particular interest is the issue of investment liberalization. There is every reason to expect that the trend toward investment liberalization will continue in the future; however, it is not clear how the change will proceed (i.e., through multilateral or bilateral or sectoral arrangements). In addition, change is likely to become more difficult as countries get pushed even further into examining their antitrust policies, their sectoral policies, and their corporate governance traditions, as well as the impact of those domestic characteristics on their international investment climate.

In terms of future liberalization, policy harmonization across countries has been suggested as the direction to follow in a number of areas such as competition policy, intellectual property, and financial market regulation.[7] Greater policy transparency will be most appropriate in other instances, particularly in relation to informal investment barriers that arise because of different market models.

Other important policy issues examined include the changing definition of national security, reciprocity and the treatment of FDI, and the regional investment discrimination that accompanies regional trading arrangements.

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[6] Safarian, *Multinational Enterprise and Public Policy*, gives considerable attention to the issue of investment incentives.

[7] Sylvia Ostry, "The Place of Intellectual Property Rights in the Evolution of Innovation Policy" in *Global Rivalry and Intellectual Property: Developing Canadian Strategies*, ed. Murray G. Smith (Ottawa: The Institute for Research on Public Policy, 1991).

This Occasional Paper has four sections. The second section explains how the formal and informal barriers in the G-7 countries interact to impede FDI. Comparisons are made across countries, and the similarities and differences in their approaches to the regulation of FDI are highlighted. The third section examines a number of important international policy issues that emerge from the discussion of formal and informal investment barriers in the G-7 countries. A brief conclusion appears in the fourth section.

HOW IT ALL WORKS - CASE STUDIES

This section provides overall conclusions relating to the operation of foreign investment barriers in each G-7 country, along with illustrative case studies. It is based on the more detailed chapters, and in particular the case studies reviewed there. The purpose is to demonstrate how in practice both formal and informal barriers, sometimes interacting, can serve to block foreign investment, particularly foreign mergers and acquisitions.

We have chosen to divide the G-7 countries into three groups with relatively similar approaches to foreign investment. These groupings set out a range of continuum related to barriers to direct investment, and place countries on it from the more open to the more closed, taking into account both formal and informal barriers.

First, the United Kingdom, the United States, and Canada – herein referred to as the Anglo-Saxon Triad – are roughly similar in terms of their investment accessibility. There are relatively few informal investment barriers in those countries, and the regulatory structure is relatively transparent; takeovers by foreign multinationals are not uncommon there.

France and Italy, two Mediterranean countries, make up the second grouping. These countries, in contrast to the Anglo-Saxon Triad, are characterized by a relative lack of transparency in their formal investment regimes. In both cases, the criteria for the review and treatment of FDI proposals are not always clearly set out; government discretion appears to play a significant role in the assessment of investment proposals; and government intervention is not uncommon. Their approaches to FDI are also similar in that a high degree of state and family ownership effectively precludes FDI in many of the existing businesses in those countries.

Germany and Japan, the third grouping, are unique among the G-7 countries in that informal barriers – especially the structural features of business ownership – are particularly strong barriers to FDI. The web of cross-ownership structures between the commercial and financial elements in the economy make hostile takeovers virtually impossible in those countries. Corporate governance practices there depart significantly from the Anglo-Saxon tradition. Formal legal barriers to FDI in Germany and Japan are not particularly at issue because the informal barriers are so effective in blocking foreign takeovers.

While the case studies are useful illustrations, they do not always reflect the extent to which FDI barriers deter potential investors from attempting direct investments. Where informal barriers are particularly strong and where a high degree of state and family ownership effectively limits the number of takeover targets, cases simply do not arise because investment is deterred from even happening. It is important to recognize that case study material of the kind that follows has its limitations.

The Anglo-Saxon Triad

The United Kingdom, the United States, and Canada have about the same degree of openness to FDI. Their international investment regimes are based on a system with relatively open stock markets and a relatively large number of traded companies. Of the three, the United Kingdom appears to have the most-open investment environment
(see Box 1).

United Kingdom

The United Kingdom has one of the most liberal foreign investment regimes among the industrialized economies. There is no law that relates exclusively to investment by non-residents nor any regulatory body through which foreign investments must be screened. In the late 1970s, the United Kingdom abolished all forms of exchange controls on inward and outward direct investment, thereby stimulating capital flows. While the government retains statutory powers under the *Industry Act 1975* to block foreign acquisitions of important U.K. manufacturing undertakings, to date those special powers have never been used.

In 1990, the U.K. government experimented with rigorous treatment of FDI involving state-owned enterprises from other countries, particularly France. The government introduced a policy to refer all takeovers to the Monopolies and Mergers Commission (MMC) when state-controlled foreign companies were involved as investors. This measure, which was later dropped following objections by the EC Commission, was apparently taken in order to avoid so-called "back-door nationalizations". The new policy represented a backlash against takeovers by "state-owned" enterprises – a concern that was particularly acute in the United Kingdom in the late 1980s.

BOX 1
INTERNATIONAL INVESTMENT ENVIRONMENT OF THE UNITED KINGDOM

- The United Kingdom has adopted interventionist industrial policies in the past; however, it is now quite open to FDI.
- There are no general screening or approval processes for FDI into the United Kingdom; however, the government does have broad discretionary power to block foreign investments for reasons of national interest, although this broad authority has never been used.
- The sectoral investment barriers generally demand reciprocity. The existence of state ownership constrains investment in some sectors.
- The merger regulation process is most important in regulating FDI in the United Kingdom, and reciprocity has been a key issue especially with regard to non-EC investment.
- The antitrust process in the United Kingdom is based on the protection of broad public interest; and, while the government has been stressing the importance of competition issues, issues that have non-competition rationales have been used to justify the suspension of takeovers. Considerable government discretion is available.
- If an absence of reciprocity in non-EC markets can be judged to be against the public interest, then foreign investments can be blocked under the U.K. antitrust regulations.
- In the United Kingdom, the distribution of shareholdings is such that the market is conducive to takeovers. There are very few tactical weapons that U.K. companies can use to avoid hostile takeovers; the corporate culture runs counter to the use of poison pills, etc.
- The government has imposed limits on foreign participation in privatized state-owned corporations.
- For a brief period between July 1990 and October 1991, all foreign takeovers in the United Kingdom by state-owned companies from other countries were automatically referred to the Monopolies and Mergers Commission for review. The practice was abandoned following EC complaints.

During that period, the only state-controlled takeover found to operate against the public interest by the MMC involved the acquisition of ICI's nitrogenous fertilizer business by Kemira Oy, a Finnish state-owned chemical company. Interestingly, however, the MMC's decision on the takeover was based principally on concern about the impact of the merger on competition as a result of the substantial market share that Kemira Oy would have after the merger and not about the fact that Kemira Oy was state-controlled.

In most cases, the United Kingdom tends to rely on its antitrust policies to regulate FDI, the regulations being sufficiently broad to ensure that, when required, social and economic issues beyond competition concerns can be given significant weight in the antitrust process. The U.K. antitrust regulation is based on the determination of harm to the "national interest", with "national interest" not being specifically defined. The following case studies are illustrative of how the process works.

In 1988, the Kuwait Investment Office (KIO), the government of Kuwait's investment agency, attempted to acquire British Petroleum (BP). The Monopolies and Mergers Commission found in its review of the purchase that the merger would operate against the public interest because the interests of the Kuwaiti government would probably come into conflict "sooner or later" with those of BP (a downstream supplier of oil), keeping in mind that oil is "a most important strategic commodity." Eventually the Secretary of State for Trade and Industry forced a reduction of KIO's shareholding in BP from 21.6% to less than 10% in 1989. Here, competition concerns were not the principal rationale for rejecting the foreign investment. Concern about the strategic nature of the oil industry and perhaps about takeovers by other state-owned interests provided the MMC with sufficient reason to stop the investment.

In 1981, the Hong Kong and Shanghai Banking Corporation launched a contested takeover bid for the Royal Bank of Scotland. The Hong Kong Bank initially approached the Bank of England to obtain formal consent to bid for the Royal Bank, the fifth largest British clearing bank. The deal eventually became a hotly contested political battle. In submitting its recommendation against the transaction, the Monopolies and Mergers Commission cited the "public interest" as the major reason for blocking the takeover, explaining that it would "diminish confidence and morale in Scottish business". The prospect of having a British clearing bank controlled from outside the jurisdiction of the Bank of England appeared to be the overriding concern.[8]

Table 2 summarizes the case studies that can be found in the chapter on the United Kingdom.

Table 2
Summary of Case Studies - United Kingdom

Case Studies	Barriers					
	Formal			Informal		
	Screening	Sectoral	Antitrust	Structural	Tactical	Linkages
Highland Distilleries / Hiram Walker (1980)			X			
Davy Corporation / Ensech Corporation (1981)			X			
Anderson Strathclyde / Charter Consolidated (1981)			X			
Royal Bank of Scotland / Hong Kong Shanghai Bank (1981)			X			
Sotheby / Stephen Swid-Marshall Cogan (1983)			X			
Westland / Sikorsky (1986)						X
British Leyland / General Motors (1986)		X				
British Petroleum / Kuwait Investment Office (1988)			X			
British Caledonian / Scandinavian Airlines (1988)			X			
Woodchester / Crédit Lyonnais (1990)			X			
ICI / Kemira Oy (1990)			X			

[8] *Euromoney*, "International Mergers and Acquisitions" (1986), pp. 44-45.

With the absence of a formal screening process or of specific FDI reporting requirements and with few structural impediments to takeovers, the United Kingdom is perhaps the easiest country in which to launch a hostile takeover. Furthermore, there are no specific barriers to other forms of FDI. The broad authority to block FDI that threatens manufacturing interests does exist but has never been used. In general, the United Kingdom has few informal barriers to FDI; however, the relative flexibility of the antitrust process and the discretion available to U.K. officials under those regulations can act to deter FDI in that country.

United States

The interesting story about FDI barriers in the United States is the recent *trend* in those barriers. The United States has traditionally been the bastion of free enterprise and the champion of free markets, as a world leader in direct investment abroad. Yet, recent years have witnessed an increase in formal barriers that impede foreign investment in that country, consistent with a shift in trade policy that places more emphasis on bilateralism and managed trade.

Exon-Florio and related amendments have in essence led to the development of an *ad hoc* FDI screening mechanism in the United States predicated on the notion of protecting national security. Most important is the fact that the legislative infrastructure currently in place in the United States is sufficiently broad that the government could make it into a protectionist "economic security" weapon without having to introduce legislative changes. Box 2 summarizes the international investment environment in the United States.

One example of the Exon-Florio amendment in action is the 1990 case of an attempt by the China National Aero-Technology Import and Export Corporation (CATIC) to purchase MAMCO of Seattle, a fabricator of metal parts for commercial aircraft. MAMCO had no classified contracts, but export controls governing some of its products did exist. Up to 90% of MAMCO's business was with Boeing, also of Seattle. The takeover was not permitted, the government having cited national security concerns in its February 2, 1990, order to divest. There have been suggestions, however, that this decision was based as much on broad foreign policy considerations as it was on national security. CATIC is state-owned, and the transaction took place not long after the Tiananmen Square massacre. In addition, it was also reported that CATIC had violated U.S. export control laws in 1984 when it purchased two CFM-56 General Electric aircraft engines and then engaged in "reverse engineering" by taking them apart in order to learn manufacturing secrets. Other concerns seemed to have played as much of a role as national security in that case.

A further example of the use of Exon-Florio was the proposed Thomson-CSF acquisition of LTV Corporation's Missile Division. This was undoubtedly the most important transaction considered by the Committee on Foreign Investment in the United States (CFIUS) since the adoption of the Exon-Florio provisions in 1988. The case acted as a catalyst, leading to the most recent changes in the Exon-Florio Law (the Byrd Amendments of 1992), which require a mandatory review of takeovers involving defence technology companies. The case involved a bid (eventually withdrawn) by the French government-controlled enterprise Thomson-CSF to acquire the Missile and Aerospace Division of LTV Corporation of Dallas, Texas. LTV Corporation is an important U.S. defense contractor that produces several important weapon systems, including the Multiple Launch Rocket System, and the ENRINT advanced anti-missile system. Thomson CSF is a French electronic company whose parent company, Thomson SA, is 60% owned by the government of France.

LTV Corporation had been operating under bankruptcy court protection for nearly six years when the takeover bid was launched. Thomson first notified CFIUS of its intention to purchase LTV's missile division in April 1991. It teamed up with General Motors Corporation's Hughes Aircraft Company Division and the Carlyle Group, a Washington merchant bank, in order to make the bid; however, both companies withdrew as the deal became controversial.

Concerns were raised about the potential Thomson-LTV deal and the possibility of it jeopardizing U.S. national security by giving the French access to critical U.S. defense technology. Technology transfer to third countries was also cited as a concern, in view of Thomson's sales of weapons systems to countries like Libya and Iraq. Additional concerns were raised that the deal could lead to job losses for U.S. workers since Thomson might shift LTV subcontractor work from U.S. suppliers to suppliers in France.

BOX 2
INTERNATIONAL INVESTMENT ENVIRONMENT OF THE UNITED STATES

- The United States has always been relatively open to FDI, but new measures suggest that it could easily move away from liberalization in the years to come.
- The Exon-Florio regulations have provided the government with a vehicle to screen foreign investments for their national security implications. Because national security can have a broad interpretation and because the President faces no time limits before which he must review foreign investments that have not been notified, many foreign investors are submitting their investment proposals for review even when the national security concerns are not immediately evident. This practice, in effect, means that an *ad hoc* FDI screening procedure has been created in the United States.
- Because national security is not defined, it is possible that Exon-Florio could, through a broad interpretation, become a protectionist tool, without any change in the regulations.
- Sectoral restrictions are important in the United States, and some have national security rationales; defense industry takeovers must receive prior approval.
- In recent years the United States has strongly pursued regional arrangements such as the FTA and NAFTA.
- The U.S. antitrust law has not been a significant FDI barrier.
- The United States is a particularly difficult place for small foreign businesses to set up. For example, the size and complexity of the country, the business culture, as well as certain state environmental provisions and product liability regulations, are onerous.
- The stock market in the United States is large, and trading is active.
- It is not uncommon for foreign investors facing an Exon-Florio review of their investment proposal to agree to performance requirements so that the investment can proceed.
- To avert hostile takeovers in the United States, a target can invoke the Exon-Florio process, thereby gaining time to defend itself.
- Limits on foreign involvement in technology consortia in the United States could act as FDI barriers.
- Tactical takeover defense weapons are available under state laws.

Pressure from Capitol Hill regarding the LTV-Thomson deal was intense. In a 93-to-4 vote, the Senate condemned the deal in a non-binding resolution. In July 1992, Thomson withdrew its bid and attempted to restructure it. But within a few weeks, its efforts to acquire only a minority interest in LTV collapsed. Eventually, LTV's aerospace business was acquired by a group of U.S. firms: Loral Corporation, the Carlyle Group, and Northrop Corporation.

Table 3 summarizes the case studies that can be found in the chapter on the United States. It appears from the review of its international investment environment that the United States is headed towards a strengthening of its FDI regime, particularly for domestic high-technology companies. This contrasts with the liberalizing trend noted in other countries and raises the question of how other industrialized countries will respond should the United States follow that direction.

Table 3
Summary of Case Studies - United States

	Barriers					
	Formal			Informal		
	Screening	Sectoral	Antitrust	Structural	Tactical	Linkages
Armstrong World Industries / Belzberg Family (1988)					X	X
Monsanto Elec-tronic Materials Co. / Huels A.G. (1989)	X	X				
MAMCO / CATIC (1990)	X					
Norton Co. / BTR PLC (1990)						X
Semi-Gas / Nippon Sanso K.K. (1990)			X			
LTV Corporation / Thomson-CSF (1991)	X					

Canada

Canada is the third most accessible country to FDI of the three Anglo-Saxon G-7 countries (see Box 3). While Canada does have a foreign investment review process, unlike most other industrialized economies, it currently has no broad legislative provisions that would enable it to block FDI for reasons of national security. The rules governing FDI in Canada are much more flexible today than they were in the early 1980s. The passage of the *Investment Canada Act* in June 1985 signaled a major shift in policy towards foreign investment in Canada. The policy today actively seeks to promote foreign investment that is of "net benefit" to Canada. The review process remains relatively transparent, with strict deadlines. The Canada-U.S. Free Trade Agreement created a foreign investment review process that distinguishes between U.S. and non-U.S. investment, with the latter being subject to greater scrutiny.

In Canada, takeovers are sometimes subject to voluntary performance requirements. Many of the undertakings requested of foreign investors are often, however, already included in their business plans for the Canadian enterprises. Such undertakings are an important factor in assessing takeovers of high-technology firms, in particular. The following case illustrates the kinds of undertakings that are sometimes requested of foreign firms wishing to acquire existing firms in Canada.

In 1989, Institut Mérieux, a French state-owned enterprise, was allowed to acquire Connaught Biosciences, a Canadian-owned public company traded on the Toronto, Montreal, and New York stock exchanges. Connaught BioSciences, through its two operating subsidiaries, Connaught Laboratories and BioResearch Ltd., was engaged in the health care products field and was an internationally acclaimed vaccine maker. The deal was one of the most controversial takeovers in Canada. It produced counter bids from other competing pharmaceutical companies. Mérieux eventually outbid its rivals and succeeded in acquiring Connaught. It had to agree to substantial undertakings in order to receive approval, however. Among the major undertakings, Mérieux gave assurances to spend not less than $160 million (in 1988 Canadian dollars) on R&D in Canada over the 1990-94 period; to spend $15 million on R&D on vaccines and in related immunobiological areas during a 10-year period; to build a Biotechnology Centre at Willowdale, Ontario; to offer to sell up to 49% of its voting shares to Canadian investors; to appoint "resident Canadians" to the board of directors of Institut Mérieux; and to provide technology transfer with respect to proprietary production technology on the microcarrier culture and purification process.

BOX 3
INTERNATIONAL INVESTMENT ENVIRONMENT OF CANADA

- In Canada, there is a formal process governing the review of large acquisitions. Direct takeovers by non-U.S. investors that exceed $US 4.3 million ($CDN 5 million) and indirect acquisitions valued at $US43 million ($CDN 50 million) must be reviewed. Following the implementation of the FTA, only direct acquisitions by U.S. investors that are valued at $US 128.5 million ($CDN 150 million) must be reviewed. NAFTA will result in an extension of U.S. thresholds to Mexico.
- Investors submit plans and in some cases undertakings (i.e. performance requirements) to the government in support of their acquisition.
- Foreign investment in Canadian cultural industries is sensitive.
- Canadian merger policy does not play a big role in regulating FDI in Canada. It is non-discriminatory with regard to foreign and domestic firms. Invoking the competition process could, however, buy time to avert a hostile takeover.
- There are few hostile takeover bids in Canada, largely because the number of potential targets is small and because the firms tend to be concentrated in the small-to-medium size range. Shares in publicly traded companies in Canada are not widely held. Foreign multinationals are important in Canada, and they constitute 60% of the value of the country's largest stock exchange. Friendly, agreed-bid takeovers are more common in Canada.
- The issuance of non-voting or subordinate voting shares ensures that family or founding-group control continues while the public actively trades shares with no, or limited, voting privileges.
- In the province of Quebec, where ownership linkages between the financial and commercial sectors are strong, foreign takeovers are especially rare. The goal of what has become known as "Quebec Inc." is to keep the ownership of Quebec-based companies in provincial hands.
- In some cases, foreign ownership in privatized companies is restricted.

In terms of the other elements of the Canadian investment regime, antitrust policy is basically neutral with respect to domestic or foreign ownership. Foreign investments have, however, been the subject of concern in Canada for competition-policy reasons. For example, in 1989 a takeover proposal was made by ABB (a wholly owned subsidiary of ABB Ltd. of Switzerland) to acquire part of the operations and assets of the power transformer division of WECAN in London, Ontario (a wholly owned subsidiary of Westinghouse Electric Corporation of Pittsburgh, Pennsylvania) and essentially all of the assets of Transelectric Technology Inc. (TTI) of Guelph Ontario, a manufacturer of power transformers and related equipment (TTI was established by WECAN). The transaction raised many complex issues related to competition, since it would have given ABB an effective monopoly in the large power transformer segment and almost three-quarters of the medium transformer segment. The Director of the Bureau of Competition Policy expressed his intention to challenge the deal before the Competition Tribunal. The competition concerns were eventually resolved, and the investment proceeded after a number of undertakings were given to Investment Canada.

Table 4
Summary of Case Studies - Canada

	Barriers					
	Formal			Informal		
Case Studies	Screening	Sectoral	Antitrust	Structural	Tactical	Linkages
Connaught BioSciences / Institut Mérieux (1989)	X					
Lumonica Inc. / SHI Acquisition Corp. (1989)	X					
Westinghouse Canada Ltd. / Asea Brown Boveri Inc. (1989)	X		X			

In terms of market structure, it is less easy to attempt a hostile takeover in Canada than it is in the United States or the United Kingdom. This results from the small size of the stock market and the relative concentration of share ownership. In the province of Quebec, in particular, the extensive web of shareholdings among the financial and commercial sectors makes hostile takeovers in that province particularly rare.

In recent years Canada has been active in promoting itself as an attractive investment location, and the recent trade agreements with the United States (FTA) and with Mexico (NAFTA) have seen the review thresholds for U.S. and Mexican investments in Canada raised (see Box 3). Since 1985 no large foreign takeovers have been turned down. Table 4 summarizes the case studies that can be found in the chapter on Canada.

As discussed in Appendix A, the agents responsible for the regulation of foreign investment in Canada have recently been reorganized. Before June 25, 1993, there was a separate government agency, Investment Canada, charged with reviewing foreign takeovers in Canada, as well as a separate department, Consumer and Corporate Affairs, that administered the country's Competition law. These departments have now merged with the country's Industry, Science, and Technology Department to form the new Department of Industry.

The Mediterranean Countries

Of the remaining G-7 countries, France and Italy can be paired. Their formal foreign investment regimes are not similar, but a lack of transparency exists in their approaches to FDI. Furthermore, both countries have had a history of government intervention, and hostile takeovers are uncommon in both because of the high degree of state and family ownership.

France

In France, like Canada, a foreign investment review process is in place that distinguishes between two groups of investors – EC versus non-EC investors in the case of France; and U.S. versus non-U.S. investors in the case of Canada (see Box 4 for a description of the international investment environment in France). Canada's investment review threshold is lower than that of France; in France, non-EC investments of approximately $US 9 million or more are reviewed, whereas in Canada, non-U.S. investments of approximately $US 4 million or more are reviewed.

There are, however, relatively better-defined criteria for reviewing foreign investments in Canada than in France. The Canadian criteria, the "net-benefit" test, is defined in legislation and functions as a guide for foreign investors wanting to invest in the country. In France, each investment is evaluated on a case-by-case basis, with approval based on the relationship of the investment to national objectives. This provides the government with considerable discretion in reviewing foreign investment.

One example of the use of that discretion is the 1988 case involving the U.K. publishing group Pearson PLC, which came to an agreement with the owners to purchase the French newspaper *Les Echos*. Because Rupert Murdoch, an Australian newspaper magnate, owned 20% of Pearson, the French government ruled that Pearson was not an EC company, and it disallowed the acquisition. The acquisition later proceeded because of requests from the newspaper owners. This case points to the lack of transparency in distinguishing EC from non-EC investors and to the discretion available to the government in making that distinction.

Government discretion and the lack of transparency in the French FDI regime were also evidenced by the case of a proposal to acquire French sponge manufacturer Spontex by the U.S. company 3M in 1989. The government rejected the recommendation of its Competition Council to approve the takeover, thus appearing to have preferred a "French solution". The intervention paved the way for a French consortium to take over Spontex.

Other features of the French FDI regime are similar to those of Canada but are even more pronounced. The limited number of publicly traded companies and a strong concentration of family-controlled companies create barriers for hostile takeovers. In addition, various features of company law and the Articles of Association of various companies tend to entrench control in existing management and make hostile takeovers virtually impossible. The large public sector and the prevalence of state-owned enterprises also act as effective barriers to FDI.

Traditionally, French governments protected domestic industries from foreign investments, but today the government promotes such investment. In this context, France has recently relaxed some of its formal barriers to foreign direct investment. In particular, controls pertaining to EC investors have been significantly liberalized, while the process for screening investments originating from non-EC countries has speeded up considerably.

BOX 4
INTERNATIONAL INVESTMENT ENVIRONMENT OF FRANCE

- Current government policies advocate investment promotion on a selective basis.
- In recent years there has been significant liberalization of the formal rules governing FDI in France, but foreign investment review machinery continues to exist.
- The formal review process requires prior *notification* for EC investors and prior *authorization* for non-EC investors, provided that the non-EC investment is valued at more than $US 9.2 million.
- Evaluation of proposals is done on a case-by-case basis to ensure that the investment conforms to national objectives. Criteria for evaluation are not transparent.
- France has been active in extracting commitments from foreign investors in such areas as employment and technology transfer.
- There are several sectoral investment barriers in France; reciprocity is often the key to gaining access. Cultural industries are protected.
- Antitrust policy has not been used as a tool to block FDI.
- There is an absence of widespread share ownership in France, with families and the banks and other institutions dominating holdings; the government sector is large, controlling 30% of GDP and 15-20% of the stock market; and only a small number of potential takeover targets are traded on the stock market.
- A number of tactical weapons, such as limits on voting rights and the possibility of issuing shares with double voting rights, are available to block hostile takeovers.
- Review procedures provide authorities with discretion that can be used to stall takeover proceedings while white knights are found.
- Corporate culture is such that hostile takeovers are not common.

Table 5 summarizes the case studies covered in the chapter on France. It will be noted that few of the cases cited actually illustrate the role of informal investment barriers, such as the importance of family and state ownership in France in the blocking of foreign takeovers. Depending on the extent to which governments or families control certain corporations, foreign investors rarely even attempt a takeover. In those instances there will be no specific example of the barrier at work. Moreoever, the structural features of business ownership can limit the number of potential takeover targets in a country and constrain the number of avenues open for foreign investment.

Table 5
Summary of Case Studies - France

Case Studies	Barriers					
	Formal			Informal		
	Screening	Sectoral	Antitrust	Structural	Tactical	Linkages
Cabot / Ashland (1984)			X			
Valeo / Carlo de Benedetti (1985)	X					X
Saint Louis / Ferruzi (1987)			X			
Les Echos / Pearson PLC (1988)	X					
Leroy / Taka Shimaya (1988)	X					
Spontex / 3M (1989)			X			X
Rivaud Bank / Pathé France Holding Co. (1990)		X				
Chapelle Darby / Stora (1990)			X			
Bull / NEC (1991)		X				

Current French policies remain broadly defined to provide the government with the ability to act in a restrictive manner SHOULD it choose to do so. Authorities continue to screen large investments on a case-by-case basis, weighing the pros and cons of each proposal. There continues to be a lack of transparency and room for discretion, depending on the case. The government continues to act to protect "key sectors" from foreign takeovers, often by facilitating a "French solution". Moreover, the foreign investment regime provides for a thorough and active follow-up to ensure that conditions attached to investments are fulfilled.

France has been aggressive in the area of investment requirements and local-content rules when it comes to foreign investment in that country. This aggressiveness could be seen as a deterrent to foreign investment. As well, France's mergers and acquisition regulations, which can be invoked to buy time for a target company to seek a French solution, have also functioned as effective barriers to foreign investment. The importance of state and family ownership in France limits the extent to which takeovers can be successfully undertaken.

Italy

The second country in this grouping, Italy, is somewhat like the United Kingdom insofar as its antitrust policy serves to regulate foreign investment (see Box 5). Italy's antitrust policy provides for the blocking of foreign investments for reasons of national interest and requires prior approval of FDI in key sectors. There are no general FDI screening mechanisms or authorities, however, as is the case with France. There is a history of government intervention in Italy that tends to obscure the workings of the regulatory process. In addition, family and state ownership (i.e. informal barriers) limit the market for takeovers in that country.

Its antitrust regulations provide considerable discretion to the Italian government, and given the history of intervention in Italy, there is reason to conclude that foreign investments will be treated differently depending on the will of the Italian government. An illustration of this is the case of Ford Motor Company's attempt to acquire Italy's state-owned car manufacturer Alfa Romeo. While the government gave assurances of its neutrality, the takeover attempt failed when Fiat made a rival bid that was ultimately favoured by the workers, government, and Alfa Romeo's management.

BOX 5
INTERNATIONAL INVESTMENT ENVIRONMENT OF ITALY

- No formal review procedures exist for FDI.
- Greenfield investments are subject to authorization.
- Antitrust legislation permits the government to block foreign investments for crucial reasons pertaining to the national economy; reciprocity is the key issue with respect to EC investors but for non-EC investors, there is more discretion available in defining the crucial reasons that would justify blocking an investment.
- The antitrust policy as it relates to FDI is not transparent.
- Foreign investors must receive prior authorization to invest in industries of national interest (i.e. banking, insurance, broadcasting and the media).
- The small size of the Italian stock market, coupled with the concentration of share ownership in family groupings, the dominance of the state as an owner of large companies, and the requirement that authorization be obtained for the sale of state-owned business effectively preclude mergers and acquisitions that are not of a friendly or private nature.
- Corporate organizations have developed to ensure that family ownership continues.
- Tactical barriers exist but are not widely used.
- The state has encouraged the formation of joint ventures with foreign companies to gain access to foreign technology and other kinds of expertise.

Informal barriers play a significant role in constraining the movement of FDI in Italy. In particular, the lack of a sizable stock market and the closely held ownership of most public companies under family or state control make hostile acquisitions very difficult. A large part of the economy is ultimately controlled or owned by the state, which sets limits on the participation of foreign capital in many sectors of the Italian community. Foreign (as well as domestic) enterprises face a competitive disadvantage vis-à-vis state enterprises in securing government contracts and preferential loans and subsidies.

Italy is peculiar among the G-7 countries in that it requires approval of all greenfield investments. This seems to arise because there are incentives available for investments made in the underdeveloped regions of Italy, particularly the Mezzogiorno. Examples of investment in the Mezzogiorno region include that of Texas Instruments Italia in business expansion, research centres, projects, and training in 1989 and of Bull Italia and its parent, Bull HN, who created two new research facilities and software production facilities in Italy in 1990.

Table 6
Summary of Case Studies - Italy

Case Studies	Barriers					
	Formal			Informal		
	Screening	Sectoral	Antitrust	Structural	Tactical	Linkages
Alfa Romeo / Ford (1986)			X			X
Texas Instruments Italia Expansion (1989)	X					
Bull Italia (1990)	X					

Table 6 summarizes the case studies that can be found in the chapter on Italy. Again, as with France, the case studies cannot fully illustrate the absence of transparency in the regulatory structure or the characteristics of stock ownership that effectively deter foreign investors from even attempting a takeover.

Countries Dominated by Invisible Informal Barriers

Germany and Japan (the third grouping) are similar in that their barriers to FDI are generally invisible and are of a less formal nature than legal regulatory barriers. The FDI regimes in these countries are dominated by structural characteristics that, for the most part, have a historical or cultural basis.

Germany

At the regulatory level, Germany appears to be a country that is relatively open to FDI. There are no general screening provisions and few sectoral restrictions on FDI (see Box 6). Broad authority exists to block FDI if it threatens national security, but that power has never been used.

BOX 6
INTERNATIONAL INVESTMENT ENVIRONMENT OF GERMANY

- No general screening of FDI exists, and national treatment is generally extended to foreign investors.
- The government does have authority to block foreign investments for foreign policy, exchange, or national security reasons, but that authority has never been used.
- There are relatively few sectoral barriers to FDI. No barriers exist for national security reasons; a few sectors restrain foreign operations, but there are generally no limits on the levels of foreign ownership. Reciprocity is often demanded in restricted sectors. Monopolies preclude investment in some sectors.
- The antitrust policy of Germany is viewed as relatively restrictive, but it is non-discriminatory.
- There are very few quoted companies on the stock exchanges of Germany, and the firms are generally half the size of U.K. firms. Most companies in Germany are small-to-medium-sized and are owned by entrepreneurs, families, or limited partnerships. There is also a concentrated pattern of stock ownership in Germany, with institutions holding major stakes in publicly traded companies.
- There are a number of tactical weapons available against takeovers. These include restrictions on voting power, as well as cross shareholdings. These weapons are less prevalent than in France and Italy.
- Complex management structures are common in Germany, with the banks playing critical roles.
- The corporate culture in Germany is not conducive to hostile takeovers.

Germany is said to have a relatively rigorous antitrust policy, and foreign investment into Germany has been frustrated by that process. In 1976, the Federal Cartel Office blocked a merger between the British group, Guest, Keen, and Nettleford, a manufacturer of automotive parts, and Fichtel and Sachs (F&S), Germany's leading supplier of automobile clutches (with a 70% market share). The acquisition was blocked on the basis that if F&S were to be acquired by a financially stronger company, it would improve its own financial performance and reinforce its market dominance.

Yet strict formal rules are not really needed to block FDI in Germany because of the presence of informal investment barriers that are effective deterrents to FDI. As in Italy and France, there are few quoted companies on the German stock exchange, and the companies tend to be small. The most important factor limiting foreign takeovers in Germany is, however, the role of the banks. Banks not only provide banking services; they own shares in corporations and provide considerable advice to German companies. As well, complex management and board structures have arisen to make hostile takeovers difficult in Germany. The corporate culture tends to support the long-term needs of corporations and not short-term shareholder interests.

In some listed companies in Germany, the Articles of Association provide for voting restrictions on shareholdings, irrespective of the number of shares held. An example of the use of this tactical investment barrier and the important role of banks in blocking FDI in Germany can be found in the Pirelli/Continental case study. In 1991, Pirelli of Italy, the world's fifth largest tire manufacturer, attempted to acquire Continental AG, a Hanover-based German tire company. While Pirelli had acquired a 34% stake in the company, Continental AG's Articles of Association limited the voting rights of any single company or individual to 5%. Furthermore, Deutsche Bank AG and Allianz AG, Europe's largest insurance company, each holding 5% of Continental AG, were against the acquisition. In an effort to block the takeover, Deutche Bank AG convinced the three major German automakers – Daimler-Benz, Volkswagen, and BMW – to each also acquire 2% in Continental AG. Since the Continental AG Articles of Association also required a 75% majority of voting shares to win several important motions put before stakeholders, the contingent against the Pirelli bid only required a

25% block of voting shares to stop the acquisition. Pirelli was not successful in changing the voting-right limitation in Continental's Articles of Association and, as a result, was unable to gain control of the company.

Table 7 summarizes the case studies to be found in the chapter on Germany.

Table 7
Summary of Case Studies - Germany

	Barriers					
	Formal			Informal		
Case Studies	Screening	Sectoral	Antitrust	Structural	Tactical	Linkages
Fichtel and Sachs AG / Guest, Keen & Nettleford (1976)			X			
Firestone France / Bayer AG (1980)			X			
Feldmuhle Nobel / Flick Brothers (1987)					X	
Bibliographisches and FA Brockhaus / Maxwell Communications (1988)				X		
Continental AG / Pirelli (1991)					X	X

Japan

Japan is the least accessible of the G-7 countries to FDI, and international investment stock-and-flow data support that conclusion. Japan has an FDI notification procedure and an approval process for investments in key industries. In addition, the government has the authority to block foreign investments that threaten national security. Review procedures even extend to cover strategic alliances and joint ventures, which can be disallowed should they be deemed unfair to Japan. There is also considerable discretion available to the government in administering the FDI regulations. The following case studies illustrate the Japanese process.

In 1989, T. Boone Pickens was denied a seat on the Board of Directors of Koito Manufacturing Company even though he had acquired 25% of the shares in the company. Shareholders voted against granting Pickens a seat on the Board. By March 1990, Pickens' shareholding in Koito had risen to 30% of the shares.

In 1985, Trafalgar-Glen International Finance Services Company launched an acquisition bid for Minebea Company, Japan's leading manufacturer of ball bearings. Documents had to be filed with the Ministry of Finance (MOF) because the foreign firm intended to buy over 10% of Minebea's shares. The MOF postponed a quick decision on the case ostensibly because part of Minebea's shares were defence-related. This delay provided Minebea with the time required to make defensive preparations against Trafalgar's bid. By placing shares with friendly shareholders and diluting Trafalgar's holdings by issuing new bonds, Minebea was successfully able to avert the acquisition.

In 1980, the Fair Trade Commission (FTC) deemed as unfair a joint venture between Komatsu, a Japanese construction machinery firm, and U.S. Bucyrus-Erie. In particular, the contract called for Bucyrus-Erie to provide Komatsu with the technical knowledge to build power shovels. In return, the U.S. firm would control Komatsu's exports of the product, as well as have the authority to veto the introduction of competing products by Komatsu in Japan. This arrangement was judged to be unfair to Japanese interests and was disallowed.

A key feature of the Japanese economy that deters foreign investment is the *keiretsu* form of business organization, where there are extensive cross-shareholdings of shares between businesses and large institutions. As in Germany, these linkages serve the long-term investment needs of companies. In this environment, however, hostile takeovers are nearly impossible. Since this feature of the Japanese economy in essence precludes foreign takeovers, there are no case studies that can illustrate the phenomenon.

In addition, Japan is a highly regulated economy that complicates business operations, especially for foreign enterprises. In particular, the practice of "administrative guidance" in Japan, where rules and regulations are communicated orally to businesses instead of through the more formal means generally available to all domestic and foreign firms, makes Japan a difficult environment in which the foreign firms would have to operate. In addition, the distribution system in Japan is complex and rigid, which would also make it difficult for foreign firms to operate there. The nature of the Japanese business culture is exclusionary. These factors combined make Japan the most impenetrable country for foreign investors.

BOX 7
INTERNATIONAL INVESTMENT ENVIRONMENT OF JAPAN

- Despite recent efforts to liberalize, Japan remains relatively closed to FDI.
- Japan has recently replaced prior notification for all FDI in that country with ex post reporting. Prior notification and approval are required in certain industries, particularly primary industries that are of national importance.
- As with most other G-7 governments, Japan has the power to suspend investments that threaten national security.
- Prior notification is required of technology agreements with foreign nationals.
- Sectoral restrictions exist, particularly in primary industries, aerospace, and energy.
- Strategic alliances are reviewed and can be suspended if they are deemed to be against the national interest.
- The ownership of companies traded on the stock exchange is concentrated in Japanese institutions. The Keritsu form of business organization permits an extensive web of cross-shareholdings among financial and commercial interests. The long-term objectives of corporations and management are well served by this business structure.
- The Japanese distribution system is complex and rigid. There are very high real estate costs in Japan. Complex and onerous regulations govern the retail sector.
- Japan has a highly regulated economy with the practice of administrative guidance governing business activities.
- The distinctiveness of the Japanese culture makes it difficult for foreigners to operate businesses in Japan.

There is, however, growing international pressure for Japan to change its policies and practices to encourage and facilitate greater trade and investment flows into that country. The Structural Impediments Initiative talks with the United States are one example of such pressure. Because of the large U.S. trade deficit, it is likely that the heat will be kept on Japan to liberalize further its trade and investment rules. Box 7 describes the international investment environment in Japan, and Table 8 outlines the case studies covered in the chapter on Japan.

Table 8
Summary of Case Studies - Japan

	Barriers					
	Formal			Informal		
Case Studies	Screening	Sectoral	Antitrust	Structural	Tactical	Linkages
Komatsu / Bucyrus-Erie (1980)			X			
Mitsubishi / Caterpillar Tractor (1980s)			X			
Mineba Co. / Trafalgar-Glen International (1985)	X					
Sansui Electric / Polly Peck International (1989)						X
Koito Manufacturing / T. Boone Pickens (1990)					X	

Despite recent steps to liberalize its treatment of direct investment, the remaining formal and informal barriers keep the Japanese market relatively closed to FDI. The variety of informal barriers that continue to exist make it particularly difficult to judge the benefits of recent liberalization in formal investment barriers. It is clear that the informal practices in Japan are more effective than formal barriers to FDI. These informal barriers include: the *keiretsu* (especially the cross-holdings and intercorporate financial and business links); the lack of transparency of Ministry policies and regulations under the system of "administrative guidance"; structural problems in the labour market relating to the practice of lifetime employment and the acute shortage of qualified personnel; a complex distribution network; exorbitant land prices; and, more broadly, the Japanese culture and language.

Japan is much more open to the establishment of foreign subsidiaries than it is to the takeover of Japanese companies by foreign interests. The fact that, to date, foreign investors have made only three uncontested acquisitions of Japanese publicly quoted companies bears testimony to the relative impermeability of the Japanese market to foreign takeovers.

Conclusions

This review of the FDI regimes (supported by the individual country studies) suggestS that while there has been a trend towards liberalizing investment barriers, each G-7 country has retained the capacity, in terms of both legislation and machinery, to block foreign investments should there be the political will to do so. The countries differ, however, in the tools that they have chosen to keep on hand for those occasions. In the United States, it is the Exon-Florio amendment; in Canada and France, it is a foreign investment review process; in Italy and the United Kingdom, it is antitrust policy; in Germany and Japan, the market structures and linkages between the commercial and financial sectors of the economy are the principal barriers. These are the main tools used in each country; but, depending on the circumstances, other policy instruments can be used as well.

In this kind of environment, where transparency is not the norm, it is often difficult to reach firm conclusions about the openness of an economy to foreign investment. In fact, the treatment of FDI often varies from case to case within countries. Part of the difficulty results from the fact that some of the safeguards in place are rarely used (e.g., the broad national security provisions). Another element making it difficult to judge market openness is the role of business practices, corporate culture, and corporate ownership structures; these do not formally restrict foreign investment, but they are in essence exclusionary. This points to the recurring theme that domestic policies are becoming more and more a part of the international rules of the investment game.

POLICY IMPLICATIONS

The foregoing discussion of investment impediments among the G-7 countries is suggestive of a number of broad policy issues. A brief discussion of some of these issues is given below.

International Rules Governing Investment

A theme of the earlier chapters and preceding discussion is the increasing importance of international investment. To compete in global markets, investments are undertaken by MNEs that complement and in some cases lead trade. A report by the United Nations Conference on Trade and Development (UNCTAD) summarizes the issues and the factors behind these trends:

> In a world where FDI is more important than trade in delivering goods and services to foreign markets, where a sizeable part of trade itself is intra-firm and where MNEs are central economic actors, international economic negotiations need to be more and more from the perspective of FDI as opposed to trade alone.[9]

In sum, with investment leading the globalization process, international rules that govern FDI are becoming more and more crucial to the effective operations of the world trading system.

The goal of a more stable and transparent international *investment* environment highlighted in this paper becomes even more relevant in this context. International fora and strategies for negotiations are required to liberalize further and to clarify international investment rules. More importantly, informal investment barriers represent significant impediments to investment flows that deserve to be addressed in an international arena.

The question remains of how best to continue the liberalization of FDI barriers. The current strategy of many countries appears to be multifaceted, involving bilateral, multilateral, and regional arrangements. In this regard, Sylvia Ostry and others have pointed to the dangers of a proliferation of bilateral investment and trade deals.

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[9] UNCTAD, *World Investment Report, 1993* (New York: United Nations, 1993), p. 225.

They argue that multilateralism is to be preferred to managed trade, especially by small- and medium-sized countries that tend to lose out when larger powers conclude bilateral and sectoral deals. Being a medium-sized country, it is difficult for Canada, for example, to pursue a strategy significantly different from that of the rest of the world.

It is not clear whether the existing multilateral trade forum of the GATT will provide a vehicle capable of dealing with issues that will arise in the new complex world of globalized international business. The GATT "must go from governing the old multilateral order, that was based on trade in goods ... to governing the new, vastly more complex, order with growing trade in services, and with international investment as much a vehicle of foreign competition as the exchange of goods."[10] If the GATT cannot meet the challenge, it has been suggested that perhaps other organizations such as the OECD may be able to provide leadership in bringing these issues forward for discussion.

Sectoral Investment Restrictions

In terms of the continued liberalization of formal rules governing investment, the G-7 countries might now move to liberalize many sectoral investment restrictions. The UNCTAD has noted that "in services, which now account for over half of total FDI flows from the major home countries, the regulatory framework for foreign investment could be opened up further...."[11] In particular, telecommunications, transportation, public utilities, and insurance were cited as sectors where further liberalization would be desirable. As with the informal barriers, efforts to liberalize sectoral restrictions will be difficult because these are policy areas formerly considered to be of domestic concern only. In addition, sectoral investment liberalization in the past has been achieved through special bilateral agreements between countries and has never been the subject of a multilateral approach.

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[10] Richard Lipsey, *Economic Growth: Science & Technology and Institutional Change in a Global Economy*, Canadian Institute for Advanced Research, Publication No. 4, Toronto, May 1991, p. 137.

[11] UNCTAD, *World Investment Report, 1993*, pp. 102-103.

Reciprocity

As liberalization of investment proceeds and MNEs are awarded national treatment, the focus of concern vis-à-vis international business will increasingly be on the issue of reciprocity. Most countries already have reciprocity conditions built into their foreign investment regimes. The United Kingdom, for example, defines its national interest in terms of reciprocal access, and Italy applies the principle as well in its antitrust regulations. Increasingly, countries will demand reciprocal access for their companies in exchange for permitting investment in their own jurisdictions. Reciprocity has been, and will continue to be, a significant feature of sectoral investment barriers.

Recently, reciprocity has begun to play a more significant role in the liberalization of investment regulations. The United States, in particular, has used reciprocity to pry open other countries' markets and to ensure that there is a balance in the benefits achieved from U.S. liberalization. One example of this is the reciprocity used in recent measures to relax anti-trust laws for joint ventures.

National Security

All of the G-7 countries except Canada have broad legislative authority in place to block foreign investment for reasons of national security or national interest. Increasingly, agreements between countries do provide for the maintenance of such restrictions (e.g. GATT, Treaty of Rome, FTA, NAFTA). There is a legitimate use for a provision that contains a narrow definition of national security and applies only when the security of a country is legitimately threatened. In recent years, however, there has been an interesting evolution in thinking, particularly in the United States, with regard to what constitutes national security.

> Broadly speaking, national security concerns ... are shifting in the direction of economics in the sense that, relative to foreign policy objectives and other goals usually associated with national security, economic goals have become more explicit and more pronounced. This general shift reflects a growing realization that the strength of a national economy is inseparable from its national security.[12]

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[12] Ellen Frost and Edward Graham, "Multinationals and North American Security", quoted on p. 2 of *Multinationals in North America*, Industry Canada Research Volume (forthcoming).

Discrimination across Trading Blocks

An interesting feature of the foreign investment regimes of the G-7 countries is the increasing incidence of discrimination across trading blocks. For example, in Canada, as part of the Free Trade Agreement with the United States, foreign investment review thresholds were raised for U.S. firms wishing to invest in Canada (and these threshold limits will be extended to Mexico once the NAFTA is ratified). As well, the United States makes exceptions allowing the participation of Canadian companies in technology consortia in the United States that are not extended to other countries.

Another example of regional discrimination is the case of France, where the foreign investment review thresholds are higher for EC than for non-EC countries. In the financial services industries in the United Kingdom and Italy, there are also EC and non-EC distinctions made in the treatment of FDI in those industries. For Europe generally, the Appendix to the companion Occasional Paper includes a description of the effects of EC 1992 on foreign investment. Generally speaking, it appears that EC policy actions have provided for freer movement of investment flows in Europe. The European Community has, however, used various trade instruments, particularly rules of origin, local content, and anti-dumping measures, to influence direct investment flows.

The trend in discrimination across trading blocs reflects the emergence of regional trading relationships, which in turn have led to favourable regional investment relationships. The trend is likely to continue; but, as mentioned before, small and medium-sized countries tend to lose out when such regional relationships develop.

Policy Contradiction

The discussion of impediments to the free movement of investment capital points to an interesting contradiction in the policies of some G-7 countries.[13] This contradiction relates to the continuing presence in some countries of barriers to FDI while, at the

[13] A. E. Safarian, Rapporteur's Comments, in *Corporate Globalization through Mergers and Acquisitions* (Calgary, The University of Calgary Press, 1991), p. 247.

same time, intensive investment promotion efforts are being aimed at attracting inward foreign investment. It has been noted that:

> most governments in the developed countries have followed a dual policy toward multinational enterprises. Such governments are likely to welcome and even to subsidize investments by such enterprises. They are also likely to ban them from some sectors of production, regulate their establishment or performance, and discriminate against them after establishment. The emphasis given to attracting rather than regulating such firms can vary even over short periods, partly because of changes in economic circumstances and in governments.[14]

In maintaining these conflicting policy stances, countries are attempting to maximize the benefits associated with attracting FDI, which include employment opportunities, technology transfers, and integration into the emerging international production system, and at the same time guard against the perceived costs of FDI, which include loss of sovereignty and threats to national security. This policy duality needs careful examination to ensure that the interaction of the two approaches to MNEs does in fact produce the best outcome.

Domestic Policies Increasingly the Focus of Attention

As noted in the review of the G-7 investment policies, formal regulations are not the only vehicles used to regulate FDI; domestic policies and market models also regulate FDI. It is inevitable, therefore, that attempts to liberalize further the international investment environment will address the roles of domestic policies, institutions, and procedures. As Sylvia Ostry has said, "in the world of the 1990s there will be little distinction between domestic and international policy."[15]

One element of this issue, for example, relates to the ease with which domestic firms can be acquired. In Japan, Germany, Italy, and France, the high degree of government-business-institutional cross-ownership and the high degree of family ownership are significant impediments to business takeovers. These practices generally deter

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[14] Safarian, *Multinational Enterprise and Public Policy*, p. 3.

[15] Taken from a speech entitled *Canada in the Global Arena*, delivered to the Toronto Association of Business Economists, Toronto, January 1990.

FDI activity from taking place at all; hostile takeovers, if attempted, are virtually impossible. In the United States, the United Kingdom, and Canada, by comparison, stocks are widely held, making it relatively easier to launch takeovers successfully.

Future efforts to liberalize investment rules must address issues related to informal investment barriers and domestic policies. It will be difficult, however, to proceed with liberalization in those areas because of their nature. They are firmly entrenched; they have evolved from differences in cultures and traditions; and they will be difficult to remove mostly because they are difficult to identify. The first imperative, therefore, is to gauge the extent to which there can be harmonization or greater transparency in these policy areas.

Policy Convergence

From this perspective, there are incentives for countries to consider policy harmonization, not only in international policy areas but in a number of formerly domestic policy areas as well. Richard Lipsey, in paraphrasing Sylvia Ostry's remarks about "system frictions"[16], says:

> ...different systems of domestic policies used to be accepted as background noise to the international game of competition in selling goods. Today, with the growing importance of services, investment, and other related matters, these different systems impinge in major ways on international trading and investment relations. Different national systems come into conflict and strong pressures are exerted either to harmonize them or manage the trade that is affected by them.[17]

This raises particular problems in the case of informal investment barriers, which are usually of a cultural or historical nature and hence would not (or perhaps should not) be easily internationalized. For example, the structure of corporate shareholdings in Japan and Germany is such that takeovers are difficult, particularly foreign takeovers. The web of financial and commercial ownership has furnished Japanese and German companies with long-term, committed capital that has permitted them

[16] See Ostry, "The Place of Intellectual Property Rights".

[17] Richard Lipsey, *Economic Growth*, Canadian Institute for Advanced Research, May 1991, p. 136.

to become world leaders in many industries. In North America, on the other hand, firms often lament the lack of "patient" capital. Lester Thurow, among others, has linked the future competitiveness of North American firms to the adoption of these complex business ownership structures that appear to serve Japanese and German companies so well. The point here is that while corporate governance traditions might limit some kinds of foreign investment, it is not necessarily a "good" thing in terms of each individual country's interest in harmonizing policies to make hostile takeovers easier.

Policy harmonization in the domain of international investment, then, will have its limits. The liberalization of rules governing FDI is more likely to proceed by first increasing policy transparency. Multilateralization of regulations governing international investment will not be possible or desirable in all cases.

With globalization, countries that are successful in attracting MNEs are likely to experience more growth. As more and more companies enter global markets, the investment climate and the rules that govern or limit international investment become relatively more important determinants of the competitiveness of those countries. It can be expected that through the mechanism of trying to create attractive investment environments countries will move to the coordination of policies that influence investment.

Transparency and Openness to FDI

The fact is that policy convergence in all areas impinging on international investment is not an attainable goal, given that countries have different social preferences and political requirements. Increasing policy transparency and consistency are more realistic objectives.

Transparency in both domestic and international policies and regulations is needed to ensure that the proper signals are provided to MNEs making decisions regarding their investment, trade, and innovation activities. While transparency of investment regimes is more of an issue for some countries than for others, it can be argued that while the G-7 countries continue to maintain broad national security clauses or discretion to intervene in antitrust cases, then all will suffer from a diminished transparency in their investment regimes.

Globalization has meant that we must broaden our ideas of "openness" to international investment. Greater transparency in all policy areas that affect FDI is needed if the openness of countries to international investment is to be defined. As negotiations proceed to liberalize investment regimes further, greater transparency should be the primary goal.

CONCLUSION

This Occasional Paper serves two purposes. It has summarized and integrated the findings of the companion G-7 country chapters, and it has raised some of the policy issues and questions that are evident from the discussion of impediments to FDI. Five major themes emerge from this review:

- Informal investment barriers, which exist to some extent in all G-7 countries, are relatively more important today as impediments to FDI today than they were in the past;

- A particular challenge facing the G-7 countries will be the question of how to deal with informal investment barriers. These impediments to FDI are deeply rooted in cultural and social differences among countries and will likely prove difficult to remove. Efforts to liberalize international investment regimes still further among the G-7 countries will provide governments with an opportunity to level the playing field with regard to direct investment flows and maximize the economic welfare of citizens by clearing the way for MNEs to make locational choices for investments, unhindered by irritants and restrictions. At the same time, however, countries will have to deal with bringing their domestic policies and market structures into some kind of international alignment.

- There is a lack of transparency with regard to the treatment of FDI in the G-7 countries. For some countries this is more of an issue than for others. That lack of transparency arises because of the increasing importance of informal barriers but also because the formal regulatory process is not always clear and is often subject to government discretion and intervention;

- Further liberalization of foreign investment regimes among the G-7 countries will necessarily have to deal with such issues as how countries approach corporate governance, differences in market models, sectoral investment restrictions, and the role of discretion available under the law. All of these are areas that were formerly considered to be domestic policy concerns. In this era of globalized markets, however, domestic and international policy are intertwined; and

- The G-7 countries face a number of important international investment policy questions in the years to come. These include: What are the best vehicles for future liberalization - multilateral, bilateral, or regional arrangements? How will largely domestic policy areas be harmonized or made more neutral in their influences on FDI? Will regional discrimination continue? Will protection of national security continue and will the definition of national security be broadened? Will reciprocity be a driving force in the treatment of FDI?

One future area of research suggested by this work on international investment barriers relates to measurement of the costs of investment barriers. To support efforts to define a country's openness to FDI and to drive home the message that investment barriers are as costly as trade barriers, there is the need to look now at investment barriers in an analytical way to identify the costs associated with their use. This is particularly true of informal barriers. The distortionary effects of barriers need to be examined and better understood, and the international welfare effects stemming from the use of those barriers also needs examination.

In conclusion, international investment is an element of growing importance in international business strategies, as well as a reflection of the impact of globalization. Clear international rules governing FDI are required if MNEs are to make optimal, undistorted investment locational decisions. A. E. Safarian noted that

> ... at the international level, one can point to the overriding need to have enforceable rules on the way in which both governments and firms compete and how they collaborate. It is the re-establishment or preservation of an open system which provides the best guarantee that such competition and collaboration ultimately serves more than a parochial interest.[18]

The G-7 paper points to how difficult it will be to achieve the openness needed to ensure the establishment of a level playing field demanded in an era of globalized and integrated markets. It

[18] Safarian, *Multinational Enterprise and Public Policy*, pp. 510-11.

highlights the fact that the barriers to FDI that remain today are of a nature not easily identified, quantified, or removed. Given the complexity of the FDI regimes and the increasingly important role of domestic rules and regulations in governing FDI, the G-7 countries will face special challenges as they respond to pressures for greater transparency and harmonization.

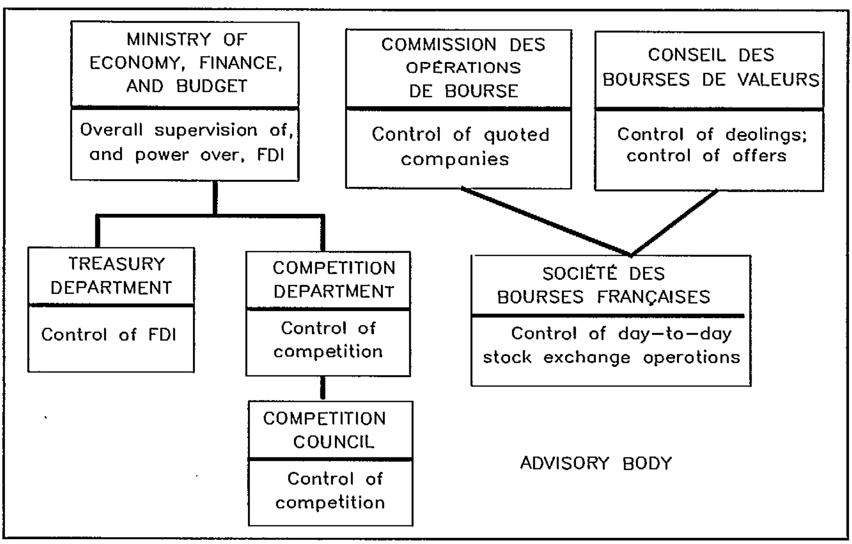
APPENDIX A
Formal Investment Barriers: Regulatory Process and Machinery

Two G-7 countries, France and Canada, continue to have a formal regulatory process that requires prior authorization of foreign direct investment that is above certain threshold levels. In both countries the processes are very similar.

France

In France, the Ministry of the Economy, Finance and Budget (MEF) is the principal agent involved in the review of mergers and acquisitions, and foreign investment. The Treasury Department of the MEF screens and controls FDI, while the Competition Department of the MEF is entrusted with overseeing France's antitrust policy.

Chart 2
Regulatory Framework for the Control of Foreign Direct Investment in France



Source: Industry Canada

Other actors involved in the regulatory treatment of foreign direct investment are the Commission des Operations des Bourses, which regulates quoted companies and enforces various disclosure rules pertaining to takeover bids for publicly traded companies; the Conseil des Bourses de Valeur, which regulates stock market dealings and takeover offers; and the Societés des Bourses Françaises, which regulates day-to-day security transactions.

The regulatory review process in France makes a distinction between foreign direct investment by EC and non-EC investors, with the review process being more rigorous for non-EC investments. Acquisitions of existing French firms by EC investors are not subject to prior authorization, but the MEF must be notified following an acquisition. EC investors, wishing to avoid the notification requirement, can request "permanent community status" if their total sales exceed Ffr 1 billion (US$ 184 million) a year and if they have completed three fiscal years of operation.

With regard to the EC/non-EC distinction, a lack of transparency in the French process can potentially function as a foreign investment barrier. As a U.K. Department of Trade and Industry study notes, "there appears to be some confusion as to what level (between 10% and 50%) non-EC shareholding is viewed by the French government as affecting a company's own EC status".[19] The absence of a clear definition of what constitutes an EC company provides authorities with considerable discretion in reviewing foreign takeover proposals from companies with a mixture of EC and non-EC investors.

Non-EC acquisitions of companies with assets of Ffr 50 million (US$ 9.2 million) or more are subject to prior authorization. The MEF may suspend an acquisition within 30 days of receipt of the application for approval; otherwise, the transaction is deemed approved. Acquisitions by non-EC investors below the above threshold are subject to prior notification.

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[19] U.K. Department of Trade and Industry, *The Barriers to Takeovers in the European Community*, Coopers and Lybrand. Study for Reference EC 1339/89, Volume 2: France, p. 42.

In France, greenfield investments and business expansions by both EC and non-EC investors are exempt from prior notification and authorization requirements.

French law provides for the review and blocking of foreign investments that are believed to compromise national security. Regardless of the nationality of a non-resident investor, the MEF can, within 15 days of notification, decide to prohibit an investment on the grounds that public health, order, security, or defence is considered to be in danger.

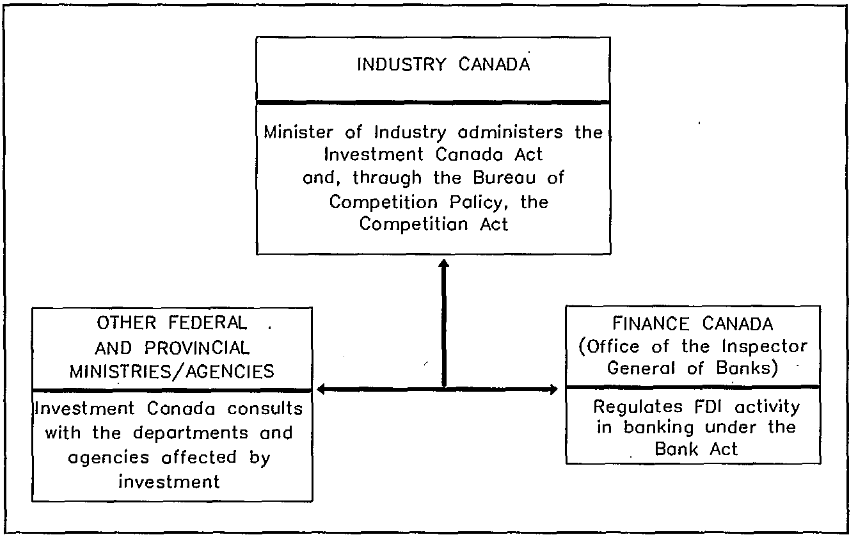
The MEF is also responsible for regulating merger and acquisition activity in France. When deemed necessary, the MEF refers mergers and acquisitions to the Competition Council, an independent consultative body that advises it on competition issues. The antitrust framework in France has at times been used to frustrate foreign investment efforts.

Canada

In Canada, the new ministry of Industry Canada is the principal agent that regulates foreign direct investment, as well as mergers and acquisitions in Canada. The ministry was recently formed by merging parts of what was formerly Investment Canada (the agency charged with the review of foreign investment in Canada), Consumer and Corporate Affairs Canada (which, among other things, was responsible for the administration of the country's competition policy through the Bureau of Competition Policy), and Communications Canada with the former department of Industry, Science, and Technology. At the time of writing, legislation had not yet been passed legally establishing the new department. As a result, the *Investment Canada Act* and *Competition Act* continue to provide legislative authority for the review of foreign investments and the regulation of merger and acquisition activity.

Industry Canada screens relevant foreign investments and, in consultation with other ministries and the provinces, makes a recommendation to the Minister regarding approval or disapproval of an investment. The Department of Finance regulates FDI in the banking sector. The Bureau of Competition Policy administers Canada's antitrust regulations.

Chart 3
Regulatory Framework for Control of Foreign Direct Investment in Canada



Source: Industry Canada.

In Canada, the foreign investment review process makes a distinction between U.S. and non-U.S. investors, with the thresholds for review being much higher for U.S. investors. Non-U.S. direct acquisitions of businesses with assets valued at more than C$5 million (US$ 4.3 million) or indirect acquisitions of businesses (where control is acquired through the purchase of another non-Canadian company) valued at more than C$50 million (US$ 43 million) are subject to prior authorization by Industry Canada. In the case of U.S. investors, under the Canada-United States Free Trade Agreement (FTA) of 1989, only direct acquisitions above C$150 million (US$ 129 million) are now subject to review and authorization, while indirect takeovers are no longer screened. Upon ratification of the North American Free Trade Agreement (NAFTA), these review thresholds will also be extended to Mexico.

All foreign acquisitions or investments to establish new businesses in cultural sectors may be subject to review in Canada. The *Investment Canada Act* (ICA) also requires that the government be notified of small acquisitions and greenfield investments by foreigners.

Foreign investments that are subject to review are required to pass the test of yielding "net benefit" to Canada. "Net benefit" is defined in terms of the impact of the foreign investment on such factors as employment and R&D spending.

The formal regulatory barriers to FDI in France and Canada are very similar. In France the foreign investment review thresholds are higher, meaning that more relatively small foreign investments are reviewed in Canada than in France (US $9 million in France versus US $4.3 million in Canada).

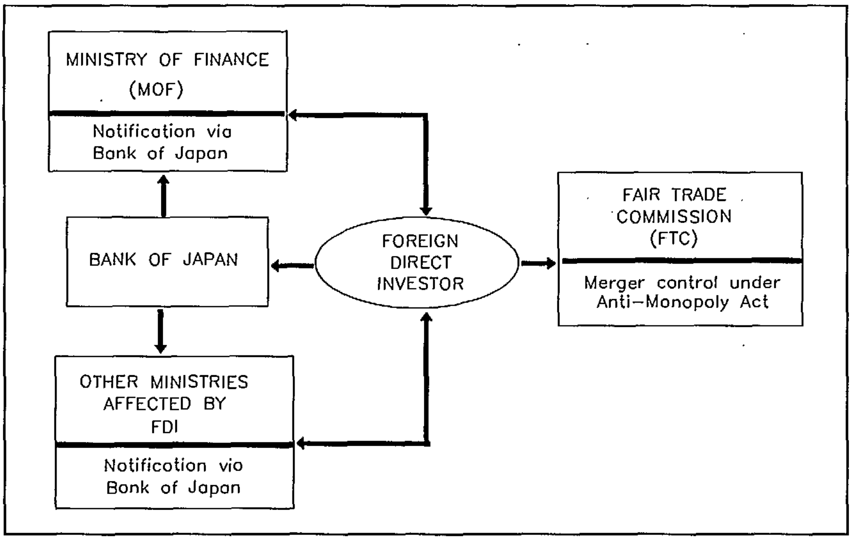
These structures of review processes are reflective of the increasing discrimination evident across major trading blocs. Both review regimes provide for discriminatory treatment of FDI, depending on the country of origin of the foreign investor. In Canada, easier access is given to U.S. (and soon to Mexican) investors, while in France, investors from other EC countries enjoy a greater ease of access than do investors from outside the EC. The implications of this increasing trend toward discrimination across trading blocs runs counter to the goals of policy consistency and internationalization discussed in the policy implications section. It also runs counter to the multilateral approach to liberalizing investment barriers, which is suggested to be of preference for small and medium-sized countries.

Japan

Until recently Japan also required that foreign investment proposals undergo review and approval prior to initiation. Prior notification is now only required for investments in certain designated primary industries and in sectors that concern national security or related interests, as provided for in the law. A review of investments must be completed within 30 days of notification.

The Ministry of Finance is the principal agent with whom foreign direct investors must interact in Japan. When notification of a direct investment is required, the Bank of Japan is the point of contact. Other ministries that regulate activity in the sector in which the investment will take place must also be notified. On the antitrust side, the Fair Trade Commission controls mergers under the *Anti-Monopoly Act.*

Chart 4
Regulatory Framework for Control of Foreign Direct Investment in Japan



Source: Industry Canada

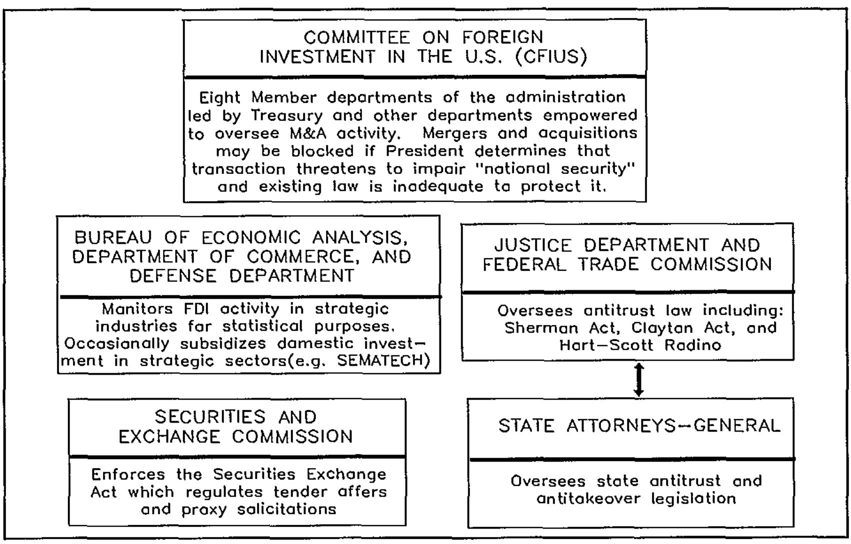
A distinctive feature of Japanese regulations is that authorities can order alterations or suspensions of provisions in investment deals, including such arrangements as joint ventures and technology-transfer agreements, which are considered harmful to the national interest. The Japanese government also retains broad powers under the *Foreign Exchange and Control Law* to block FDI that might imperil national security, disturb the maintenance of public order, or hamper the protection of the safety of the general public.

The competition policies of Japan do not appear to play a big role in regulating or frustrating foreign investment in Japan. It is the informal investment barriers that are most effective at keeping foreign investment out of Japan.

United States

In the United States, the Committee on Foreign Investment in the United States (CFIUS) is responsible for screening foreign investment. The legislative authority to do so comes from the Exon-Florio regulations. The Departments of Commerce and Defense monitor FDI activity for statistical purposes. On the antitrust side, the Department of Justice and the Federal Trade Commission are the principal agents, with the State Attorneys-General also playing a role. The Securities and Exchange Commission regulates tender offers and proxy solicitations.

Chart 5
Regulatory Framework for Control of Foreign Direct Investment in the United States



Source: Industry Canada

The U.S. government has no general investment screening or blocking authority; however, the President has authority under the Exon-Florio provisions of the *Omnibus Trade and Competitiveness Act 1988* to investigate and block takeovers that threaten national security. These powers have been used only once to block a foreign takeover; however, the very existence of the regulation might well act as a deterrent to investment in many cases. Notification of takeovers with national security implications is not mandatory but voluntary. If notification is given, a 90-day review process is launched to determine whether the takeover proposal will be approved or disallowed.

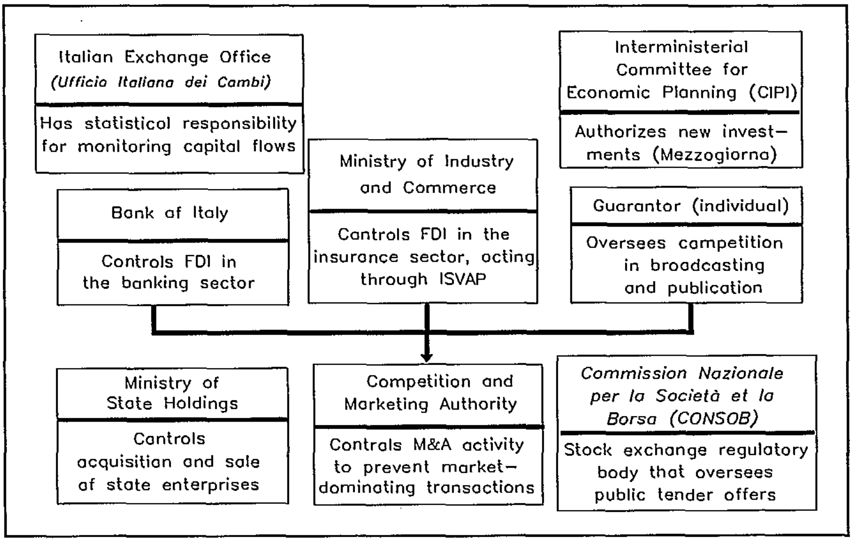
An interesting feature of the Exon-Florio provisions is that the President may, at any time, review and suspend takeovers that have not been previously notified and that, *ex post*, are found to threaten national security. As a result, those contemplating investments in the United States have been urged to notify the U.S. government of their intentions before proceeding, even when the link to national security is not entirely evident. As a result, it has been argued that a *de facto* screening of foreign investments does take place in the United States.

Italy

In Italy, the Italian Exchange Office maintains a statistical tracking of foreign capital flows. The Interministerial Committee for Economic Planning reviews applications for greenfield investments and business expansions. As part of the antitrust framework, the Bank of Italy administers regulations regarding FDI in the banking sector; the Ministry of Industry and Commerce controls FDI in insurance, acting through the Comptroller of private insurance companies, ISVAP. The Guarantor oversees competition and FDI regulations in broadcasting and publishing. The Competition and Market Authority has overall responsibility for the control of merger and acquisition activity in Italy. In addition, the Ministry of State Holdings controls the acquisition and sale of state-controlled enterprises. With regard to securities regulation, Commission Nazionale per la Società et la Borsa (CONSOB) oversees public tender offers.

In Italy, there is no general FDI registration or approval process currently in place, although under the country's antitrust legislation, sectoral limitations on foreign investment do exist, and prior authorization is required for investment in industries of national interest. Also, authorization is required for large greenfield investments and existing business expansions. These requirements appear to relate to Italy's development policies for its lesser developed regions.

Chart 6
Regulatory Framework for Control of Foreign Direct Investment in Italy



Source: Industry Canada.

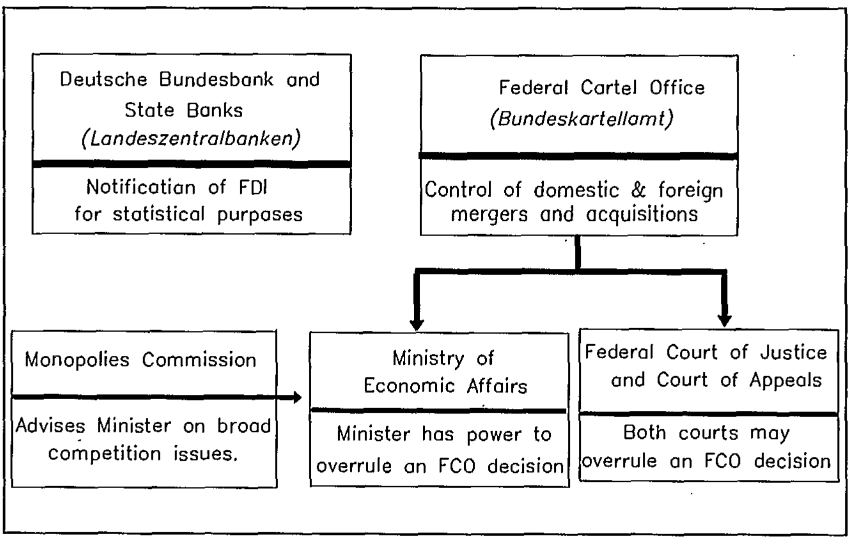
Italy's newly enacted antitrust legislation empowers the government to prohibit a transaction in Italy for "crucial reasons pertaining to the national economy". It appears that with respect to non-EC investors, the Italian government has discretion in determining the national interest. In the case of EC investors, however, the reciprocal treatment of acquisitions by Italian companies in the home country is the criterion whereby the transaction is approved or disallowed.

There are also provisions in the antitrust legislation that discriminate against foreign acquisitions on a sectoral basis. For example, restrictions that are defined as being of "national interest" apply to foreign investment in certain state-controlled banks. Foreign nationals may acquire shares in those banks, but non-EC investors are not entitled to voting shares. Mergers and acquisitions involving newspaper publishing concerns in Italy that would result in direct or indirect control by non-residents are prohibited. Any transfer of shares in violation of those rules is considered null and void.

Germany

Foreigners wishing to make a direct investment in Germany are required to notify the Bundesbank and the relevant state banks when 25% or more of the capital in a company is acquired. In terms of competition policy, the Federal Cartel Office (FCO) is charged with reviewing competition cases and making recommendations to the Ministry of Economic Affairs regarding the impact of mergers and acquisitions on competition. The Monopolies Commission reviews FCO activities, provides commentary on specific competition issues, and advises the Minister on applications for special permission, where a merger has been prohibited. Germany has a judicial antitrust system, and decisions on competition cases can be appealed to the courts.

Chart 7
Regulatory Framework for Control of Foreign Direct Investment in Germany



Source: Industry Canada.

Germany has one of the least restrictive regulatory processes when it comes to FDI. There is no general screening authority; however, the government is authorized under the *Foreign Trade and Payments Act* to restrict non-residents from taking over domestic companies, real estate, vessels, and securities for reasons of foreign policy, foreign exchange, and national security. These powers, however, have never been used. The FDI reporting requirements serve mainly statistical purposes.

Germany, however, is said to have the most restrictive antitrust legislation of all the G-7 countries. Its competition policy is the most significant formal hurdle that foreign investors must face. The antitrust polices have, however, never been used to block FDI. Germany does not have to rely on its antitrust policies to block FDI because, like Japan, the barriers on the informal side are effective in limiting foreign direct investment.

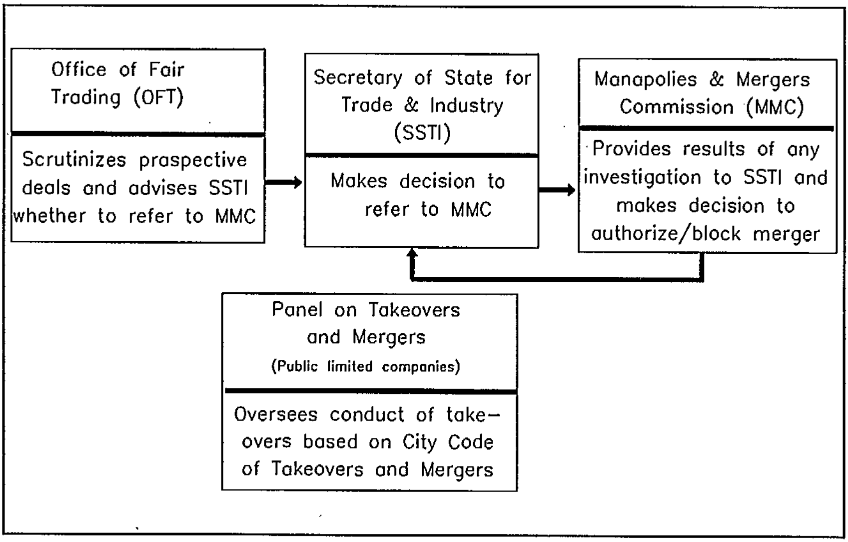
United Kingdom

There is no regulatory body that screens FDI in the United Kingdom, so the FDI regulatory framework is the U.K. antitrust framework. The Office of Fair Trading scrutinizes prospective mergers and acquisitions with a view to making a recommendation to the Secretary of State for Trade and Industry (SSTI) about whether the deal should be referred to the Monopolies and Mergers Commission for a full review. When a referral is made, the Commission conducts an investigation and makes a recommendation to the SSTI about whether to approve or disallow the transaction. With regard to takeover bid regulations, it is the Panel on Takeovers and Mergers that administers the City Code on Takeovers and Mergers. The Code attempts to ensure equality of treatment for all shareholders, equality of information, and fairness and clarity in public offers.

The United Kingdom, which is arguably the most accessible country to foreign investment, has no screening authority for FDI, but the *Industry Act 1975* empowers the government to prohibit acquisitions of important manufacturing undertakings by non-residents when such acquisitions are deemed to run counter to the national interest of the United Kingdom. These provisions have, however, never been used.

Further provisions requiring reciprocal access to non-EC countries in exchange for the approval of certain mergers and acquisitions form part of the U.K. antitrust framework.

Chart 8
Regulatory Framework for Control of Foreign Direct Investment in United Kingdom



Source: Industry Canada

Having no FDI screen has increased the role of antitrust policy in regulating foreign investment activity in the United Kingdom. Further use of antitrust policy to regulate FDI in the United Kingdom came in 1990 when the government decided to refer all takeovers initiated by state-controlled companies from other countries for a review, on competition grounds. That measure, which was adopted to avoid "back-door nationalizations", was later dropped following protests from the EC Commission.

Most G-7 countries operate merger control laws that do not discriminate between domestic and foreign takeovers. Italy and the United Kingdom are exceptions. The U.K. merger control legislation discriminates against non-EC investors in that a merger or takeover involving such investors may be prohibited or subjected to certain conditions if the absence of reciprocity in the home country causes the merger or takeover to be "against the public interest" of U.K. citizens.

APPENDIX B
Formal Investment Barriers: Sectoral Obstacles and Impediments to FDI

General Observations

All G-7 countries impose sectoral restrictions on foreign direct investment. In general, sectoral restrictions range from outright foreign investment prohibitions to restrictions on the level of foreign participation in the capital of an enterprise. In some sectors, authorization of foreign investment is required on a case-by-case basis. There has been some suggestion that sectoral restrictions will become the next area on which countries should focus as the liberalization of investment barriers proceeds.

Sectoral investment restrictions sometimes arise because of national security concerns, although that rationale is less and less justified in the changing economic environment.

Among the G-7 countries, there is considerable similarity in terms of the sectors in which FDI is restricted or prohibited. The FDI restrictions occur principally in service industries, such as air and maritime transport, telephone operations, radio and TV broadcasting, financial services, and insurance. Restricted sectors like air and maritime transport remained closed to FDI throughout the 1980s. The most remarkable liberalization of FDI occurred in the financial services sector. Access to some industries is often contingent upon international agreements or permitted on the basis of reciprocal access only.

Financial Services

In all of the G-7 countries, access of foreign investors to the financial services industry was liberalized during the 1980s. The majority of G-7 countries (France, Germany, Japan, the United Kingdom, and the United States) now permit the establishment of *subsidiaries* of foreign banks, insurance companies, or brokerage houses. There are a relatively greater number of restrictions on the establishment of *branches* of non-resident enterprises in this sector.

In Canada and Italy, the establishment of foreign banks and financial institution subsidiaries requires prior authorization. The governments can impose stringent operational requirements on these foreign subsidiaries that generally do not apply to domestic institutions in the same industry. Canada does not allow the establishment of a branch by a non-resident bank, and Italy does not allow foreign non-financial intermediaries to establish branches in the financial sector. Canada applies asset thresholds to foreign participation in the banking sector. Special preferential provisions apply to U.S. financial institutions, and there are additional restrictions on aggregate non-U.S. ownership in Canadian-controlled banks and federally chartered, Canadian-controlled trust or loan companies. Italy prohibits similar participation in its banks of "national interest".

In insurance, the establishment of subsidiaries in the G-7 countries is relatively easy; however, in most cases, reciprocity requirements apply. As with the banking industry, the establishment of a branch of an insurance company is generally more difficult. This certainly is the case in Canada and Italy. The transfer of control of Canadian-owned insurance firms to non-residents is prohibited. Germany requires reciprocal access to the foreign country's insurance industry before approving foreign entrance into its market.

Air and Maritime Transport

Both air and maritime transport represent sectors where relatively little progress has been achieved in terms of FDI liberalization. In addition to limits on foreign equity participation in national airlines and vessel operations, foreign direct investment in air and maritime transport is also constrained by nationality and/or residence conditions for ownership.

In air transport, cabotage (transport between two points within a country) is still largely closed to foreign investors in the G-7 countries. Limits on shareholding in airlines are imposed by Canada, Italy, Japan, the United States, and the United Kingdom. In the United Kingdom, an airline operating licence may only be awarded to a domestic interest unless the government decides otherwise. In Italy, foreign-controlled airlines have no access to ground services. Only German nationals have the right to control airlines operating exclusively within Germany.

In maritime transport, foreign vessels' access to cabotage is relatively closed in France, Japan, and the United States. A ship registered in Germany, France, and the United Kingdom must be wholly, or mainly owned, by nationals and/or residents.

Other Industries

In a few G-7 countries, cultural industries receive special protection. These sectors are closely linked to activities that promote national identity. Investment in film production and distribution, as well as the operation of cinemas, in France is permitted by non-residents if the investor is a national of a country with which France has entered into national assimilation or reciprocity agreements. France does not, in principle, allow a foreign-controlled enterprise to hold more than 20% of the capital of a publishing company or to invest in more than one newspaper publication appearing at least monthly. Similarly, Canada permits only minority or non-controlling, foreign investment in book publishing and film production.

In some G-7 countries, FDI activity in the natural resource sectors like mining, oil, and energy are restricted because of their strategic importance to the country. Foreign participation in mining and oil drilling is limited in Japan. In France, access to mining and oil drilling is subject to reciprocity requirements. The United States allows foreign enterprises in oil and mining to operate if they establish U.S. subsidiaries. Downstream activities of distribution/transportation and/or importing of oil products are subject to authorization/concession arrangements in France and Japan. In the United States and France, authorization is required to operate nuclear power stations.

Public, Private, and Mixed Monopolies

In all G-7 countries there are additional restrictions on access to markets that are protected from domestic and foreign competition by virtue of their operation as monopolies or concessions. In some G-7 countries, a substantial portion of the production of various goods and services is sourced from monopolies – whether public, private, or semi-public – or from concessions granted to economic agents in the private sector. Industries that operate as public, private, or mixed monopolies or concessions are most often found in the service sector and in the provision of infrastructure – i.e. in the production of so-called "public" services.

Table 9
Sectoral Impediments to Inward Investment Affecting All or Some FDI Activity

Industry / Country	United Kingdom	Japan	United States	France	Italy	Germany	Canada
Banking	O	O		R,O	R,O	O	R,O
Insurance	O			R,O	R,O		R,M
Other financial services and auditing				R,O			
Press, publishing, and printing				O,M			R,M
Broadcasting, audio, and film	R,M	R		R,O	R,M	M	R
Post, telephone and telecommunications	M	O		M	M	M	M
Air transport	R	O		R,M	R	R,M,O	R
Maritime transport	R	O		R	R	R	O
Real Estate							R,M
Land transport				R,O,M	M	M	R
Fishing		R					R
Mining and minerals		R					R
Petroleum		R		R,O,M	R		
Agriculture		R		R,O			
Forestry		R					
Leather and leather products		R					
Energy	M	O		R,O,M	M		
Tobacco		M		M			
Tourism; casinos	O			R,O	M	M	
Health and social security				R			

ERRATUM
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Sectoral Impediments to Inward Investment Affecting All or Some FDI Activity

Industry / Country	United Kingdom	Japan	United States	France	Italy	Germany	Canada
Banking	O	O	O	R,O	R,O	O	R,O
Insurance	O		O	R,O	R,O		R,M
Other financial services and auditing				R,O			
Press, publishing, and printing				O,M			R,M
Broadcasting, audio, and film	R,M	R	R,M	R,O	R,M	M	R
Post, telephone and telecommunications	M	O	R,M	M	M	M	M
Air transport	R	O		R,M	R	R,M,O	R
Maritime transport	R	O	R	R	R	R	O
Real Estate			R				R,M
Land transport			R	R,O,M	M	M	R
Fishing		R	R				R
Mining and minerals		R	R				R
Petroleum		R	R	R,O,M	R		
Agriculture		R		R,O			
Forestry		R					
Leather and leather products		R					
Energy	M	O	R	R,O,M	M		
Tobacco		M		M			
Tourism; casinos	O			R,O	M	M	
Health and social security				R			
Water				R,O			
Legal profession, teaching, merchants, and craftsmen				R,O			
Armaments and explosives				M			

Note: The "R" represents a reservation to the OECD Capital Movements Code; "O" represents some other restriction, such as legislative limit on foreign ownership; and "M" represents the presence of monopolies.

ERRATUM
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Obstacles sectoriels à l'IED visant une partie ou la totalité des activités

Pays	Royaume-Uni	Japon	États-Unis	France	Italie	Allemagne	Canada
Banques	O	O	O	R,O	R,O	O	R,O
Assurances	O		O	R,O	R,O		R,M
Autres services financiers et de vérification				R,O			
Presse, édition et impression				O,M			R,M
Radiodiffusion, audio et cinéma	R,M	R	R,M	R,O	R,M	M	R
Postes, téléphone et télécommunications	M	O	R,M	M	M	M	M
Transports aériens	R	O		R,M	R	R,M,O	R
Transports maritimes	R	O	R	R	R	R	O
Immobilier			R				R,M
Transports terrestres			R	R,O,M	M	M	R
Pêche		R	R				R
Exploitation minière et minerais		R	R				R
Pétrole		R	R	R,O,M	R		
Agriculture		R		R,O			
Exploitation forestière		R					
Cuir et produits en cuir		R					
Énergie	M	O	R	R,O,M	M		
Tabac		M		M			
Tourisme; casinos	O			R,O	M	M	
Santé et sécurité sociale				R			
Eau				R,O			
Avocats, notaires, enseignants, négociants et artisans				R,O			
Armements et explosifs				M			

Nota : La lettre «R» signifie qu'il y a des réserves vis-à-vis du Code de la libération des mouvements de capitaux de l'OCDE; la lettre «O» désigne l'existence de certaines restrictions, par exemple, une certaine limite sur la propriété étrangère imposée par la loi; et la lettre «M» indique la présence de monopoles.

Industry / Country	United Kingdom	Japan	United States	France	Italy	Germany	Canada
Water				R,O			
Legal profession, teaching, merchants, and craftsmen				R,O			
Armaments and explosives				M			

Note: The "R" represents a reservation to the OECD Capital Movements Code; "O" represents some other restriction, such as legislative limit on foreign ownership; and "M" represents the presence of monopolies.

Vital services such as transport, basic telecommunications services, and infrastructure, as well as public utilities like gas, electricity, and water supply, have remained sealed off from both domestic and foreign competition. In certain jurisdictions, deregulation and privatization have led to monopolies being dismantled. In most cases, however, limitations on foreign ownership continue to apply to the private entities. Some examples are Canada's privatized airline and oil company (Air Canada and PetroCanada) and Britain's British Aerospace PLC and Rolls Royce PLC.

For example, in the telecommunications sector, activities peripheral to the basic telecommunications function (e.g. sale and installation of equipment) have been placed in the private sector in Canada, France, Germany, Japan, and the United Kingdom, with limited foreign participation in some cases. Basic services (telephone and telegraph) remain, however, a public, private, or mixed monopoly in most countries with the exception of Canada, the United States, and Japan. In transport, the provision of rail infrastructure and rail transport is still under public monopoly in all G-7 countries except, again, Canada, the United States, and Japan. In energy-related activities, electricity-generation monopolies exist in Canada and France, and electricity-distribution monopolies exist in Canada (at the provincial level), France, Italy, and the United Kingdom (where area electricity boards were privatized recently).

Table 9 summarizes the sectoral restrictions by country.

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