

IV. BEZPIECZEŃSTWO EKONOMICZNE, BEZPIECZEŃSTWO ENERGETYCZNE

NATIONAL ECONOMIC SECURITY IMPLICATIONS OF FOREIGN DIRECT INVESTMENT WITHIN THE FRAMEWORK OF „REVERSE GLOBALIZATION”

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Abstract. The article traces the development of theory and practice of national economic security, and describes the relationship between economic activity and national security. Special attention has been given to potential risks and threats to national economic security posed by mergers and takeovers of developed economies' assets by multinationals from emerging countries (reverse globalization). The growing number of acquisitions and takeovers of companies operating in developed countries initiated by dynamic multinationals from emerging countries, as well as the 2008/2009 global financial crisis have contributed to adaptation or amendment by several Western European countries and the United States laws on inward foreign direct investment (IFDI) in some sectors classified as "strategic industries". Implementation of restrictive policies and practices by highly developed economies with the aim of limiting the IFDI has been criticised by emerging countries as protectionist steps undertaken to improve their competitive position. Finally, implications of inward FDI for Poland's national economic security and protection of her strategic industries are also discussed. Also, some measures for enhancing this type of security are proposed.

Introduction

At present, economic security is as important part of national security as a military policy. The recent vicissitudes of societies in an increasingly integrated global economy have spurred renewed interest in national economic security and forced redefinition thereof. The growing number of acquisitions and takeovers of companies from developed countries initiated by dynamic multinationals from emerging countries as well as the 2008/2009 global financial crisis have had a special contribution to the fact that several Western European countries and the United States have adopted or amended laws on foreign investment in certain economic sectors classified as "strategic industries". Such steps are officially justified due to the concern accompanying acquisitions of domestic companies by foreign state-owned companies (SOCs) or sovereign wealth funds (SWFs).

Three levels of economic security have been distinguished¹: macro (state, interstate relations, world), mezo (enterprises business associations), and micro (individuals, families, societies). This paper discusses only the macro level of economic security i.e. the level of the state, interstate, the world.

The paper has the following structure: first, different approaches to the definition of “national economic security” (NEC) are discussed; next the new phenomenon of “reverse globalization, acquisitions and takeovers by emerging countries multinationals (up-stream FDI) in developed economies are presented followed by an analysis of the steps undertaken by developed countries as part of redefinitions of “threats to national economic security” caused by inward FDI from emerging economies; finally implications for foreign economic policy towards inwards FDI and potential threats to Polish strategic industries and national economic security are discussed, and some solutions to that problem proposed.

1. Definitions of national economic security versus level of economic development

The notion of “national economic security”, applied in the literature and official documents, is rather misleading. In the real world, multinational states are abundant which means that the notion of “economic security of states” should be employed rather than “national economic security”².

When referring to economic activity and its role in providing national security, it is worth noting that, besides military power, *economic power* is a traditional “lever” of national security. Serbian experts rightly underline the role of economic/financial power in ensuring national security. In their opinion:

“Money buys arms, while the work force can be redirected from the civil sphere to the military industry and military service; thus, wealth can be equalized with the potential for military mobilization. In addition, economic power can also be viewed as an achievable functional substitute for military power, for both offensive and defensive purposes. Economic wars, blockades and sanctions are applied with the goal of disabling the enemy country’s economy and, indirectly, its military potential. Also, economic power can give a huge contribution to national security by, in case of economic warfare, making the country invulnerable. For this reason it was thought that “economic self-sufficiency” (economic independence, i.e. the existence of sufficient domestic raw material and production capacities and a sufficient

¹ See B. Udovič, *Economic security, Large and small states in enlarged European Union* (Research Paper). “University of Ljubljana Centre of International Relations”, Ljubljana 2002, p. 10.

² In Polish literature, the notion of “national economic security” is also interpreted as “bezpieczeństwo ekonomiczne państwa” (economic security of state). See K. Raczkowski, (ed.) *Bezpieczeństwo ekonomiczne. Wyzwania dla zarządzania państwem*, Wolters Kluwer Business, Warszawa 2012.

domestic market, i.e. economic independence from imports and exports) is a means of successful defence i.e. of national security. This is why the national economy has the status of a “high security issue” in the theory and practice of national security”³.

In the United States, the best developed economy in the world since the World War II, for a very long time the issue of “national economic security” almost did not exist because it enjoyed both the economic power to dictate economic order to the world as well as guarantee their national security.⁴ It was in the US’ interest to promote “free trade”, a free flow of investment and services because US multinational corporations had dominated the world market.

On the other hand, *economically underdeveloped and dependent* nations and states, which must satisfy their own and their populations’ needs through imports, do not have the capacities or power to be on an equal footing in international relations with wealthy and developed countries. As a result, they are more prone to making concessions following pressure and/or sometimes blackmail as reflected on all levels of their state security where economic security is no exception.

This is why each country, depending on its level of economic development, global competitiveness and economic power is bound to differently perceive national economic security. From the perspective of the world’s economic history it is clear to see that states which dominated the world’s economic scene and dictated economic order always preached “openness”: free trade, a free flow of capital and services (the United Kingdom in the XVIII/XIX century and the U.S. after WW II) while they care less for economic security. The situation changed when they began losing their competitive positions in certain industries. At that time, they decided to promote the “fair trade” concept rather than “free trade” – provided that they themselves defined the meaning of “fair”. This was exactly the situation when the world began the second decade of the twenty-first century.

For developed economies like the US, Canada and members of the European Union, “national economic security” is rather secured by their economic power and leadership in the global economy. Such an approach has been described by the U.S. Congressional specialist in the following way⁵.

“The United States has long been accustomed to pursuing a **“rich man’s” approach to national security**. The country could field an overwhelming fighting

³ S. Mijalković, N. Milošević, *Correlation between economic, corporate and national security*. In: *Development of institutional capacities, standards and procedures for fighting organized crime and terrorism under conditions of international integrations*, “Academy of Criminalist and Police Studies”, Belgrade, Vol. 8 (2) 2011, p. 439.

⁴ J.K. Jackson, *Foreign Investment and National Security: Economic Considerations*, “Congressional Research Service”, Washington, March 11, 2011 (Summary).

⁵ D.K. Nanto, *Economics and National Security: Issues and Implications for U.S. Policy*, “Congressional Research Service”, Washington, January 4, 2011, p. 1.

force and combine it with economic power and leadership in global affairs to bring to bear far greater resources than any other country against any threat to the nation's security. The economy has always been there both to provide the funds and materiel for defence and to provide economic security for most households. Policies for economic growth and issues such as unemployment have been viewed as domestic problems largely separate from considerations of national security”.

The above quotation explains the fact that a concern with economic security became “hot” rather late – i.e. about 2001. In the USA PATRIOT ACT, the definition of “critical infrastructure” was used and defined as: “systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would be debilitating impact on security, **national economic security**, national public health or safety, or any combination of those matters”⁶. Other provisions in this act specified sectors of the economy which the Congress considered as elements of the nation's critical infrastructure. These sectors include: telecommunications, energy, financial services, water, transportation sectors, and “cyber and physical infrastructure services critical to maintaining the national defence, continuity of government, economic prosperity, and quality of life in the United States”⁷. By including in the Patriot Act the notion of “national economic security” within the terms “critical infrastructure”, “homeland security”, and “key resources”, the Congress recognised the fact that economic activities are separately identifiable components of national security, and therefore, should be protected from foreign investment that transfers control to foreigners or shifts technological leadership abroad⁸.

The above figure provides an simplified overview of how economy enters into national security considerations in a developed country like the United States⁹. Among many economic factors affecting its economic security, links with the world economy through trade and **capital flows** (like inward FDI) may also threaten its economic security as an important part of national security.

In the case of developing countries like China, economic security is defined as “the ability to provide a steady increase in the standard of living for the whole population through national economic development, while maintaining economic independence”¹⁰. As the Chinese scholar understands it, there are two sides to the economic security ‘coin’: competitiveness and independent economic sovereignty. Competition generates healthy development while a degree of autonomy guards

⁶ Ibidem.

⁷ Ibidem, p. 15.

⁸ See Jackson.

⁹ See Nanto, pp. 5-6.

¹⁰ Jiang Yong, *Economic Security: Redressing Imbalance*, China Security, 2008, p. 66.

against undue external influence on the economy. Economic competitiveness is vital not only to stimulating national economic growth but also to penetrating the international market.

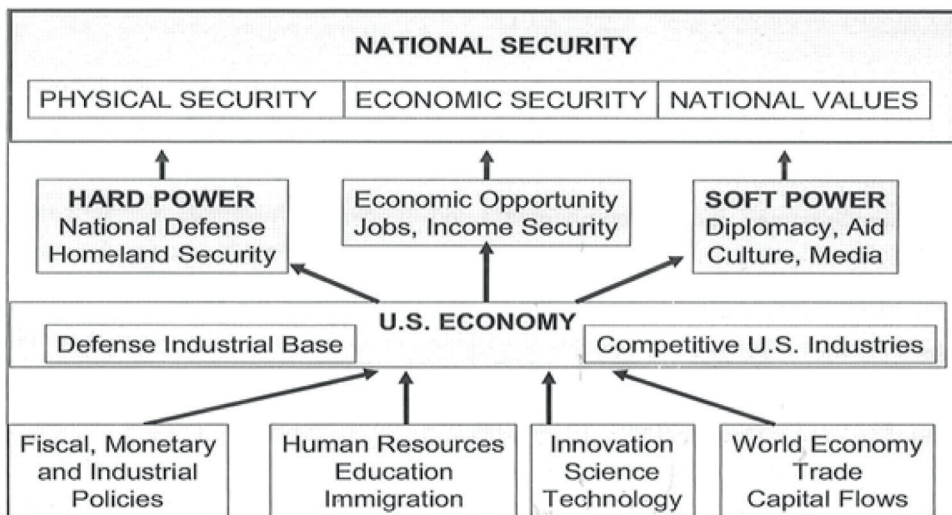


Figure 1. The Economy and National Security
Source: Congressional Research Service (Nanto, p. 6)

The other side of the proverbial coin is *economic sovereignty* which should be seen as a measure of the control a country has over its own economic development and key industries and enterprises as well as its ability to resist external intervention.

What particularly counts in the Chinese expert's opinion is the national *economic power* and the *level of economic development*. In the era of globalization, the existing international order is shaped by developed economies. Their multinational corporations successfully use their powerful competitive forces to encroach on the sovereignty of other, less developed countries. Although a lot of developing countries gain by opening up their economies to the international market, their economic sovereignty is increasingly violated.¹¹

Another Chinese expert also underlines the importance of economic sovereignty when defining "national economic security". He understands it as "the status of no/low risk of nation's economic strategy benefits, in which no serious harm is made to

¹¹ Ibidem at 67.

the nation's basic economic policies and to its economic sovereignty and the factors that might cause the financial crisis are under control"¹²

Polish scholars, authors of a basic collective textbook for students of the Academy of National Defence¹³, define *national economic security* as a "national security of state", (*bezpieczeństwo ekonomiczne państwa*) which is "such state of development of a country's economic system which secures effectiveness of its functioning – through proper use of internal factors of development as well as ability to successfully object to pressure from the outside which may hinder development"¹⁴. Another expert defines it a little bit differently, as "an ability of a state's economic system (group of states) for such use of internal development factors and international economic **interdependence** which guarantee its unthreatened development"¹⁵ In the most recent book on economic security, Raczkowski¹⁶ defines "national economic security" (national security of states – in Polish) as „...a relatively balanced endo- and exogenic state of functioning of the national economy in which the risk of distortions of the equilibrium is kept within a determined and accepted organisation-legal norms/standards and principles of **social coexistence**".

2. "Reverse globalization": the new stream of global FDI's flows

It is generally understood that economic globalization increases the economic integration of national economies as a result of a rapid increase of cross-border flows of goods, services, technology and capital. It has been characterised mainly by the downhill flow of foreign direct investment from developed economies integrating with less developed ones. However, "Reverse globalization" is a relatively new term, not yet fully "confirmed". In a broader sense, it is understood as a likely long-term uphill flow of capital from emerging to developed countries¹⁷ either as:

Firstly, "bringing back activities" by companies withdrawing from overseas ventures (e.g. as a consequence of increased transportation costs from higher oil prices, which may outweigh the other cost advantages from moving manufacturing to

¹² Y. Wei-Ping, *Exploring the Definition of National Economic Security and its Evaluation Index System*, "Journal of Renmin University of China", 2010 Vol., Issue(4): 93-98, p. 1/2.

¹³ *Bezpieczeństwo Ekonomiczne Rzeczypospolitej Polskiej* ("Economic Security of the Republic of Poland"), AON, Warszawa 2003.

¹⁴ Z. Stachowiak, *Bezpieczeństwo ekonomiczne*, In: *Ekonomika obrony*, (ed.) W. Stankiewicz, AON, Warszawa 1994, p. 189.

¹⁵ Z. Kołodziejak (red.), *Bezpieczeństwo ekonomiczne. Teoria i praktyka*, Wyd. Uniwersytetu Łódzkiego, Łódź 1986, p. 10.

¹⁶ Raczkowski, 2012, p. 1.

¹⁷ B. Setser, *Reverse globalization*, "Brad Setser Blog", March 20. 2007 (retrieved from: http://www.rgemonitor.com/setser-monitor/186514/reverse_globalization, on 2009-11-11).

low-cost emerging markets¹⁸, or a politically motivated decision to preserve working places, as was the case of FIAT's decision to bring back production of the PANDA from Poland to Italy); and/or

Secondly, reversal of technology flows to developed economies – the new situation when companies from emerging markets bring technology and capital and e.g. California, provide the labour and consumer market. According to Dan Herman Research & Consulting, nearly 50% of the solar needs of California State are met by Chinese companies¹⁹, and/or

Thirdly, emerging markets outbound mergers and acquisitions (M&A) in developed economies, as a mode of outward foreign direct investments (OFDI). Nasser al-Shaali, the CEO of Dubai International Financial Centre (DIFC), defined in 2007 “reverse globalization” as a new situation „...when you have emerging market players going out and acquiring developed institutions – (which) is a tide that no matter how to try to swing against it, will be very, very prevalent in the years to come”²⁰. That is **why in the narrower definition, the “reverse globalization” will be mainly understood as outbound acquisitions of emerging markets, buying companies rather than just bonds – in the developed world**²¹.

The above defined new trend in the internationalization process is perfectly illustrated by Figure 1.1. designed by Ramamurti²². It differentiates between “down-market” (or North-South) FDI which flowed from advanced (developed) economies to less developed ones (see Cell 2 in Figure 1.1.), and the “Up-market” (or South-North) FDI, originating in emerging countries (i.e. developing and transition economies) and destined to developed countries (Cell 4). According to Ramamurti, the most recent – the second wave of those South-North (or “Emerging to Developed” – E2D) FDIs could no longer be ignored in a situation when those deals represented in 2010 about 47 per cent of total deals in developed to emerging markets (D2E)²³.

¹⁸ J. Rubin, B.Tal, 2008.

¹⁹ Danxherman, January 22, 2010.

²⁰ Nasser al-Shaali speech at the Reuters Middle East Investment Summit in March 2007. Retrieved from: <http://www.reuters.com/assets/print?aid=USL2854717320070328>, on May 22, 2010.

²¹ See Setser.

²² R. Ramamurti, Why study emerging-market multinationals? In: R. Ramamurti, J.V. Singh, *Emerging Multinationals in Emerging Markets*. N. York: Cambridge University Press, 2009, p. 6.

²³ KPMG: Press Release of 8 March 2010.

		Destination of FDI	
		Developed country	Developing country
Source of FDI	Developed country	Cell 1 North–North FDI	Cell 2 North–South FDI <i>(Down-market FDI)</i>
	Developing country	Cell 4 South–North FDI <i>(Up-market FDI)</i>	Cell 3 South–South FDI <i>(Mostly down-market FDI)</i>

Figure 1.1. Source and destination of FDI.

Note: Down-market FDI refers to investment from a more developed country to a less developed one, and up-market FDI refers to the opposite

Source: Ramamurti (2009, p. 6)

The long term tendency and proportions between outward foreign investments (OFDI) flows from developed economies and emerging economies, based on a forecast from 2006²⁴ is presented below in Figure 3.

In 2010, cross-border deals initiated in emerging economies were on an increase again, while the deals initiated in developed economies had declined for the fourth consecutive period, according to 2 KPMG's Emerging Markets International Acquisition Tracker (EMIAT) for that year. KPMG also reported that in 2005-2009, 1022 emerging-to developed (E2D) deals were recorded, including:

- 393 – by Indian corporations,
- 121 – by Russian,
- 108 – by Chinese,
- 97 – by Central & East European.

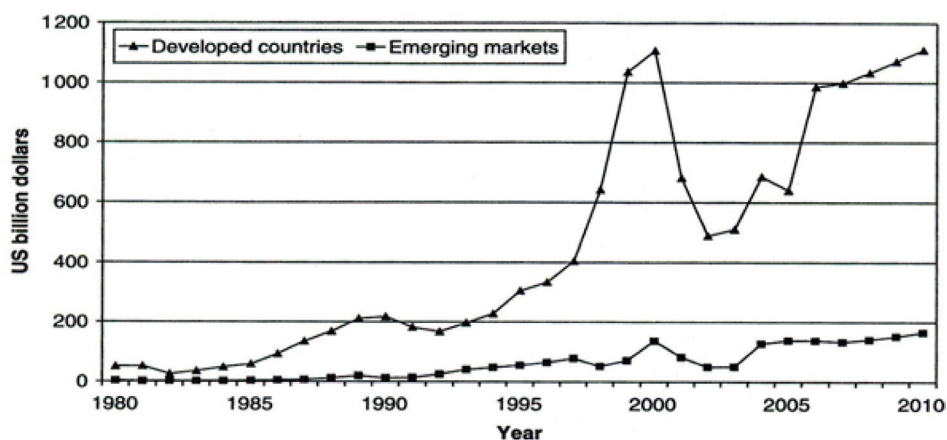
According to Dealogic, a business data company, 2009 was the first year when “takeovers by emerging world companies of developed world groups exceeded takeovers going the other way – the former valued at \$ 105 bln, the latter at \$74.2 bln”²⁵.

By 2005/2007, some of the spectacular takeovers of companies in developed economies acquired by emerging transnational corporations (ETNCs) started to make headlines, not only in glossy magazines but also in leading world business

²⁴ L. Kekic, K.P. Sauvant (eds.), *Word Investment Prospects to 2010: Boom or Backlash*, EIU an Columbian Program on International Investments: N.York, London, Hong Kong 2006.

²⁵ See S. Wagstyl, *Business: A change in gear*, FT. com, 11 May 2010.

magazines like “The Economist”, Business Week, Forbes, when the readers realised that family or state-owned companies from the former colonies or post-communist countries have now the courage and resources to buy “family jewels” like the Jaguar, Land-Rover or IBM.



Note: Data for 2006–2010 are forecasts for 82 countries responsible for the bulk of all OFDI flows from both developed and emerging markets; Data for 2006–2010, Kekic and Sauvart (2006).

Source: Data for 1980–2005, UNCTAD 2006.

Figure 1.1. OFDI flows from developed countries and emerging markets 1980–2010

TABLE 1

Some of the most spectacular E2D deals by BRIC corporations:

Who?	Whom?	When?	Price
Mittal Steel (India)	Arcelor (France)	2006	\$ 32 bln
Lenovo (China)	IBM (personal computer division)	2004	\$ 1.75 bln
TATA (India)	Corus (UK/Netherlands)	2007	\$ 13.5 bln
TATA Motors (India)	Jaguar LandRover (UK)	2008	\$ 2.3 bln
LUKOIL	Nelson Resources Ltd.(UK); Getty Oil (US)	2005	\$ 2 bln
		2001	\$ 71 m
CBRD (Brazil)	INCO (Canada)	2007	\$ 16.7 bln
Geely (China)	VOLVO (car unit)	2010	\$ 1.8 bln

Source: Lawniczak (ed.) 2011, p. 205

In the 1980s, the U.S.’ global industrial competitiveness emerged for the first time as a major issue. IBM and General Motors, giants of the previous age, were

fighting to survive in global markets. The big corporate structures which had worked well in a time of stability were bureaucracies too cumbersome to adapt to the vast changes in world markets.

It is hardly surprising that a dramatically growing number of examples of large take-overs by emerging markets companies has been accompanied by a growing opposition of the European and US public opinion. It is primarily related to businesses from developed countries, governments and peoples: fears, national pride, concerns about the “established order of the industrial hegemony”, the existing stereotypes and different types of prejudice, the opinion that EMIs are beneficiaries of unfair state aid, and political reasons.

These arguments are reflected in an escalation of protectionism, especially on the grounds of **national security**²⁶ and preservation of jobs. State-controlled companies from China and Russia are particularly likely to run into trouble (particularly in the U.S.) over perceived political and security risks. One of the most characteristic examples was provided by Huawei, the Chinese communication equipment maker, which as far back as 2008 was blocked on national security grounds by the Bush administration in a bid to take over 3Com. In 2010, US officials again raised arguments about the company’s alleged ties to the People’s Liberation Army, and even espionage²⁷.

3. Developed economies’ newly defined/interpreted notions of “threats to national security” and “strategic industries” (critical infrastructure)

The phenomenon of “reverse globalisation” has raised much controversy in highly developed countries’ policy making circles, around the notion of incoming FDI (IFDI) as a potential threat to “strategic industries” and national security. As was underlined in the OECD document of 2008, “in recent years, a number of OECD and other governments have reassessed their investment policies in response to a changing context for national security and the increasing prominence of new investors, including large investors controlled by foreign governments”.

In the opinion of Spanish scholars²⁸, both EU, the U.S. and most other developed countries “were rightly criticized for increasing the implementation of restrictive policies and practices within an aim to limit IFDI, as well as raising protectionist barriers to investment from emerging markets”.

The increased implementation of restrictive policies and practices towards inward FDI from developing and emerging countries revolves around protecting “strategic

²⁶ See Mayer Brown’s article, by T.J. Keeler & S.M. Kriesberg, *United States: United States Rejects Chinese Investment on Nation Security Grounds*, 22.12.2009.

²⁷ See FT.com of 4 April 2010.

²⁸ J. Clifton, D. Diaz-Fuentez, *The European Union, Southern Multinationals and the Question of the Strategic Industries*, 2009, Retrieved from: <http://ssrn.com/abstract=1699654>.

industries". Traditionally, such concern focused on "military-related sectors". However, following September 11, and the financial crisis of 2008/2009, this notion has been broadened to embrace also the "network industries": energy, telecommunication, transportation and water, as well as the financial and banking sectors. Following the OECD guidelines, there are national governments which have the final word in the defining which industries may be recognized as "strategic" to the country, as well what degree of protection those industries need from the competition of inward foreign direct investments.

3.1. The OECD benchmark

Definitions of what constitutes a "strategic industry" and/or "potential threat to national security" vary from one country to another²⁹ and even from one government ministry to another. The definition of strategic industries employed by the Organisation for Economic Cooperation and Development (OECD) could be applied as a benchmark. The OECD guidelines³⁰ allow for identification of *strategic industries* as entire sectors – energy, military supplies, financial institutions, infrastructure – which can be protected from foreign takeovers because they are crucial to the functioning of the home economy.

For a long time OECD, described also as a "rich man's club" made efforts to develop legally non-binding arrangements as the OECD Code of Liberalization of Capital Movements and the Code of Liberalization of Current Invisible Operations (covering also cross-border trade in services). OECD has also issued a basic statement on foreign investment, *The Declaration on International Investment and Multinational Enterprises*. However both the United States as well as other signatories to the OECD arrangements recognized that an **exception** to the open investment policies provided for in the OECD instruments should be accepted. Additionally, the OECD regulations recognise that each state is best equipped to assess its own security interests and to decide whether essential security interests are at stake relative to certain types of investments.

Over time, a number of governments of the OECD member countries have started to review their policies on inward foreign investment in response to a "changing context for national security and the increasing prominence of new investors, including large investors controlled by foreign governments" and tighten their regulations on security grounds.

Following this development, in June 2006 the OECD initiated the *Freedom of Investment, National Security and Strategic Industries* project which continued through 13 rounds of meetings, including the latest one held in October 2010. The

²⁹ M. Schulz, *A Return of Protectionism? Internal Deregulations and External Investment Restrictions in the EU*, (Discussion Paper 08-04), "Tokyo: Fujitsu Research Institute, Economic Research Center". 2008.

³⁰ OECD, 1991;2008.

final summit statement once more emphasized the group's continuing support for the OECD project on *Freedom of Investment, National Security and "Strategic Industries"*. As a final result of the above mentioned project, a voluntary *OECD National Treatment Instrument* has been accepted. Countries that choose to adhere to this regulation retain the option of excluding sectors of their economy on the grounds of *essential security interests* from the national treatment standard. In such cases, nations use discriminatory practices to restrict foreigners from investing in sectors of their economies that are deemed to be important to national security.

As part of the general area of *essential security concerns* associated with foreign investments, numerous nations have focused on the concept of *critical infrastructure*³¹ as a separate area of concern within the rubric of *essential security interests*. In most cases, national definitions of critical infrastructure differ among countries and are formulated as a broad statements that provide national governments with a wide latitude for deciding which assets or sectors will be deemed critical. That may also change depending on the circumstances.

3.2. North America states and the IFDI policy changes

The above described phenomenon of "reverse globalisation" may be interpreted as the best proof that over time, developed countries are losing their global competitive positions. As a response, they have chosen the easier way - instead of intensifying their economic policy to strengthen competitiveness, they have started simply to refine the notions of "threats to national security" and "strategic industries/ critical infrastructure".

Case: the United States

The U.S. policy toward foreign direct investment is officially based primarily on the conclusion that direct investments benefit (rather than "can benefit" – author's remark) both the home and the host country and that the benefits of such investment outweigh the costs. Such approach is based on an assumption rather convenient to a more developed economy that "All pigs are equal" – resorting to the famous quotation from Orwell's *Animal farm*.

However, in spite of the fact that the U.S. is considered as the most developed economy of the world, for many years the United States applied a number of notable exceptions from the principle of "openness". These exceptions are classified as

³¹ National definitions of *critical infrastructure* differ among countries, although most of the countries surveyed by the OECD define critical infrastructure as "physical infrastructure that provides essential support for economic and social well-being, for public safety, and for the functioning of key government responsibilities".

“sectoral restrictions that exclude foreign ownership from certain sectors of the economy and approval procedures for mergers, acquisitions, and takeovers of existing U.S. firms that could be used to block infrastructure investments that are deemed to pose threats to essential national security”³².

This way foreign investors are constrained by U.S. laws that bars foreign ownership in such industrial sectors as maritime, aircraft, mining, energy, lands, communications, banking, and government contracting”. Generally, these sectors were closed to foreign investors to prevent public services and public interest activities from falling under foreign control, primarily for national defence purposes. The second category of restrictions applies to foreign investment in the existing U.S. firms through mergers, acquisitions, or takeovers, but does not apply to foreign investors who establish new businesses.

One of the first legislative acts applying to foreign investments in the existing U.S. firms through mergers, acquisitions and takeovers was the 1988 “Exxon-Florio provision”. It was the Fujitsu-Fairchild transaction which gave a major impetus to the passage of this legislative act. It authorized the President or his designee to investigate foreign acquisitions to determine their effects on national security. To oversee the national implications of foreign investment in the economy, an interagency organization Committee on Foreign Investment in the United States (CFIUS) was established.

The terrorist attacks on the United States on September 11, 2001 gave some Members of the Congress and others a good excuse to call for re-examination of elements of the environment in the United States traditionally open to foreign investment. The Exxon – Florio provision as well as the CFIU appeared for some members of the Congress out of touch in the new situation. They argued that the Exon-Florion provisions viewed national security primarily in terms of national defence, and downplayed or even excluded a broader notion of “national economic security”³³.

Based on these arguments, after the September 11 terrorist attack, the Congress passed the USA PATRIOT Act of 2001. This act provided for special support for “critical industries”, which was defined as “systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, **national economic security**, national public health or safety, or any combination of those matters”. This rather broad definition is enhanced to some degree by other provisions of the act which specifically identify **sectors** of the economy that the Congress considers to be elements of infrastructure critical to the nation. These sectors include “**telecommunications, energy, financial services, water, transportation sectors, and the cyber and physical infrastructure services** critical to maintaining the national defence, continuity of government, economic prosperity, and quality of life in the United States”.

³² See Jackson, p. 13.

³³ Jackson, id., p. 16.

In 2007 an amendment to the CFIUS process was motivated by a controversial Chinese bid for a U.S. firm. The Foreign Investment and National Security Act²³ codified and clarified the CFIUS process in direct response to CNOOC's politically charged and ultimately withdrawn bid for Unocal. This Act introduced another important change – it shifted the burden of proof that a particular transaction of acquisition or takeover does not threaten impairment of U.S. national security onto firms owned or controlled by foreign governments. By issuing the U.S Patriot Act” of 2001 and later the “Foreign Investment and National Security Act” of 2007, the Congress fundamentally altered the meaning of national security defined in the 1988 Exxon-Florio provision by including *critical infrastructure* and *homeland security* as areas of concern comparable to *national security*.

The above described steps to introduce more restrictive policy towards inward foreign direct investments were strongly criticised by emerging countries which accused the United States and other developed economies of unjustified economic protectionism. Among others, a Chinese expert emphasized that³⁴ “there is no precise way to estimate the exact dollar amount for the economic costs and benefits of national policies that attempt to direct or restrict foreign direct investment for national security concerns. Also, it can be difficult to determine if foreign investment policies ultimately result in enhanced national security or are a form of economic protectionism”.

American experts also agree that a very broad definitions of “critical infrastructure”, “threats for national security” applied in the above mentioned legal acts allow a broad interpretation, may be used to apply protectionist steps instead of accepting government industrial policy measures to improve the competitive position of a threatened industry. The problem is, that:

“The United States has historically been afraid to formulate an industrial policy. Somehow, industrial policy is equated with “picking winners and losers,” and this will interfere with the free market, which is the only force that should exist”³⁵.

Case: Canada

On March 12, 2009, the Canadian federal government passed significant amendments to the *Investment Canada Act* (ICA), Canada's foreign investment law of general application. Though the amendments generally liberalize important aspects of the Canadian foreign investment review regime, they also include a broadly worded national security test that now allows the relevant Minister to review proposed investments in Canada with respect to national security. On 11 July 2009, the government published draft regulations that provide the details of the new national security review process

³⁴ Liu Li, id.

³⁵ Nanto, id.

3.3. EU member states' corrections of the IFDI policy

Case: Germany

In September 2008, the German government introduced a new law to restrict the IFDI by approving a new bill that would allow the prospective IFDI. This regulation demands that in case when 25 per cent or more interest in a company is acquired by non-European firms, the transaction should be screened for approval. In fact, as early as 2004 the new section 7 of the German Foreign Trade and Payments Act was enacted, establishing the limits to free movement of capital into Germany on grounds of "security"³⁶. In 2007, the German Chancellor Angela Merkel expressed an opinion that Germany would need a "light CFIUS"³⁷.

Case: France

The French government also presented in 2005 a new list of "strategic" and "sensitive" industries in which foreign investors would be subjected to government screening³⁸. By defending this step against the Commission's criticism, the French government put forward an argument of the ultimate duty to defend its "national interest" as well as legal obligation to define what represents a "strategic" industry³⁹.

4. Implications for Poland

The political, social and economic transition from the planned economic system to market economy, brought among others the domination of the mainstream/neoliberal economic theory. It promoted a message that openness of the economy to foreign direct investment will mainly bring positive results for each of the former socialist countries. Based on such theoretical assumptions, Poland liberalized step by step its foreign economic policy regulations on foreign direct investments and applied an economic policy strategy to encourage inflow of foreign investments⁴⁰. Such policy has been based on an argument that our economy needs capital, and that inward FDI will contribute to Poland's growth and long-term development.

³⁶ Clifton & Diaz-Fuentes, 2010 J. Clifton, D. Diaz-Fuentes, *The European Union, Southern Multinationals and the Question of the "Strategic Industries"*, 2009. Retrieved from: <http://ssrn.com/abstract=1699654>, p. 301.

³⁷ B. Benoit, *Germany Plans for Own CFIUS Deal Watchdog*, "Financial Times", September 27, 2008.

³⁸ See UNTAD 2006; OECD 2007.

³⁹ Clifton & Diaz-Fuentes, id. p. 302.

⁴⁰ See. Plan strategiczny Ministerstwa Gospodarki, Ministerstwo Gospodarki: Warszawa, grudzień 2009, p. 14.

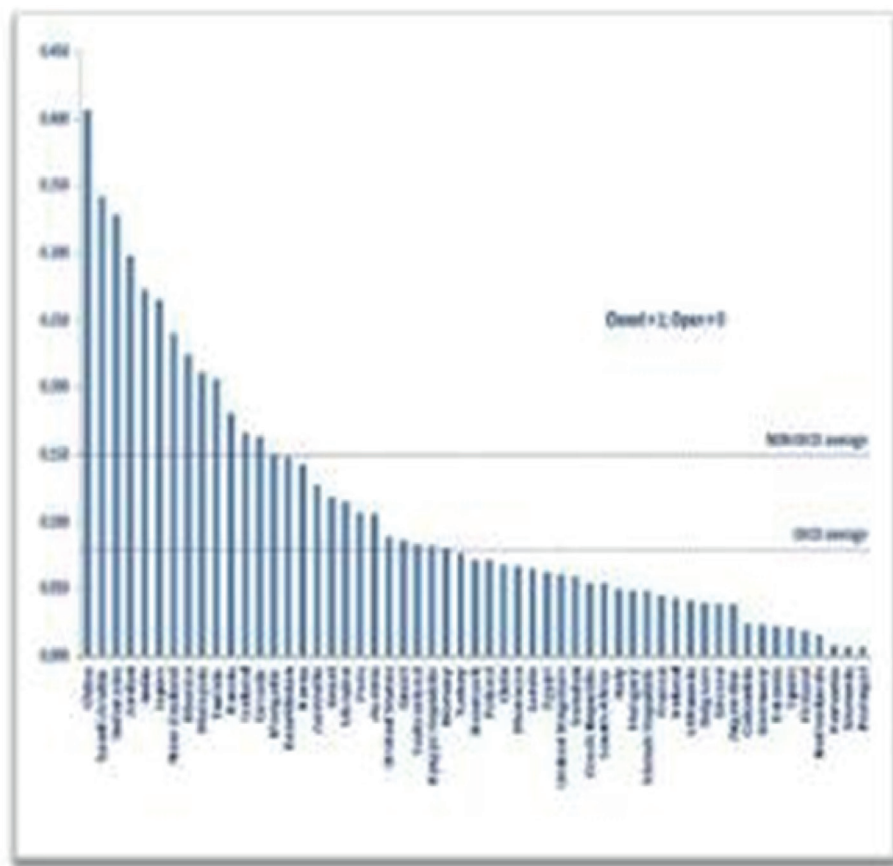


Fig. 2. The FDI regulatory restrictiveness index, 2012⁴¹

Source: OECD, www.oecd.org/investment/inex

It is a paradox that, as a result, of it this dominating theoretical approach and policy of “openness”, Poland – a much less developed economy, became more “open” to FDI from developed market economies into almost all sectors than numerous much more developed OECD countries or EU member states. This fact is very well illustrated by the OECD FDI Regulatory Restrictiveness index below⁴². One may

⁴¹ The FDI Index gauges the restrictiveness of a country’s FDI rules by looking at the four main types of restrictions on FDI:

I Foreign equity limitations.

II Screening or approval mechanisms.

III Restrictions on the employment of foreigners as key personnel.

IV Operational restrictions, e.g. restrictions on branching and on capital repatriation or on land ownership.

⁴² Compare the OECD FDI regulatory restrictiveness index, 2012.

argue that a **grey area has been created between market liberalization on the one hand, and the nationally defined “security interests” on the other.**

5. Missing legislative framework for protection of strategic industries – a loophole in the Polish national security system

By steadily improving its global competitiveness (by means of attracting large inflows of foreign capital and encouraging imports of Western goods, to name a few), to a large extent Poland has gained advanced technologies, management experience, training of local talent and a rapid market development. Foreign capital has played an active role in helping Poland to improve her competitiveness.

On the other hand, however, economic sovereignty and national economic security considerations have been neglected in the government's privatisation policy. So far, mainly representatives of the opposition parties⁴³ have raised criticism of the government's privatisation policy and continued practice of selling out, or allowing acquisition of Polish “sensitive industries to foreign owners and this way threatening our national security”. On top of that, Polish-owned print media (“Nasz Dziennik”, 17.05.2010; “Przegląd”, 1 03.2009) and digital media (ONET.pl; NEWSLETTER dziennik.pl. 6.08.2013) have increasingly more criticised the coalition government's “Privatisation plans for 2008-2011”, as well the draft of the new draft of the “Privatisation plan for years 2012-2013” for selling out to foreign “strategic investors” many companies from the “strategic sectors of the economy”.

The affected companies come, among other industries, from the energy sector: ENEA, Tauron, Energa, PGE, LOTOS. Selling out shares of companies from the financial sector continues ⁴⁴ state-controlled banks like PKO BP, BGZ.; the Warsaw Stock Exchange, as well as the largest Polish insurance company PZU has raised further criticism. On top of that, negotiations accompanying disposal of the PKP Cargo and the Polish airlines LOT from the transportation sector have been well advanced.

In the opinion of a critical Polish expert⁴⁵

“since the very beginning, the process of disposing of the country's resources... has been instigated without a fundamental legal act i.e. an act on the directions and rules of privatisation and securing the interest of the state and the society. Neither of the changing MPs or governments have ever attempted to introduce such an act. A model of the economy based on handing over to foreign capital all important areas of the economy where strategic decisions about the Polish state will be made outside the country

⁴³ Bogucki blog. 2011 (www.jacekbogucki.pl).

⁴⁴ Sz. SYP, *Czy czeka nas prywatyzacja absolutna PKO BP i PZU?*, „Gazeta Finansowa”, 24 października 2010.

⁴⁵ K. Zaręba, *Prywatyzacyjne bezprawie*, „Przegląd”, 1 marca 2009.

while a transfer of profits to the foreign owners will strip the country of budget-related and growth funds will for decades determine the state's lack of growth prospects, poverty and economic underdevelopment".

Another group of legal experts noted rightly that

"The effective '*Act on the State Treasury's special competence and execution thereof in limited companies of significant importance to public order or public safety*' of 3 June 2005 does not suffice. It is based on the so-called rule of a "golden move" i.e. a solution which allows the relevant minister to oppose activities of companies operating chiefly in the energy, transport and telecommunication industries. The ordinance related to this act of 4 September 2007 lists specific companies affected by the state's special competence"⁴⁶.

However, the thing is that the subsequent governments made use of a gap resulting from this legal act and, as part of subsequent privatization plans, they sold to the so-called foreign "strategic investors" shares in state-owned companies operating in the energy, transport, telecommunication and finance industries i.e. exactly in the sectors which the governments of highly developed countries like US or the EU members states had deemed specially protected and subjected to special restrictions to foreign investments with the national independence in mind and possible jeopardising a state's economic position⁴⁷.

Based on the above quoted critical voices, one may argue that at present Poland's national economic security is endangered. There is no legal clarity in the protection of both military as well as strategic/economic interests. The existing legal and regulatory framework (documents: *Bezpieczeństwo Ekonomiczne Rzeczypospolitej*, AON 2003; *Strategia Bezpieczeństwa Narodowego*, MON 2007; *Plan Strategiczny Ministerstwa Gospodarki*, MG 2009; *Strategia Rozwoju Bezpieczeństwa Narodowego RP 2012-2013*, MON (projekt z kwietnia 2012) offers a conclusion that there is a loophole in the Polish national security system. The Polish regulatory framework does not provide appropriate provisions nor institutions protecting the country's economy from losing its economic sovereignty.

Interesting, however, is the fact that the Polish public opinion and mainstream press (e.g. "Rzeczpospolita" newspaper) as well as the relevant government institutions (e.g. ABW – Internal Security Agency) have noticed the threats to Polish national economic security posed **only** by potential Russian foreign acquisitions of some plants from strategic sectors. It happened after the ABW's warning to the government that the potential takeover of a nitrogen plant in Tarnów by the Russian giant Arcon would

⁴⁶ B. Cichocki, B. Konarzewska, A. Niewiadomski, Ł. Pacuła, *Amerykańska Ustawa o inwestycjach zagranicznych i bezpieczeństwie narodowym a podobne uregulowania w Unii Europejskiej, Rosji i Chinach*, „Bezpieczeństwo Narodowe”, Nr 7-8, 2008, p. 200.

⁴⁷ *Id.* P. 190-191.

pose a threat not only to the Polish chemical industry but also to the energy sector. In that case the Treasury Ministry prevented a hostile takeover of the Tarnów plant⁴⁸.

With examples of much more developed and competitive economies like the U.S., Canada, Germany, France and other as well as former socialist countries like Russia⁴⁹ and China in 2011⁵⁰ one may conclude that there is an urgent time to review Polish legislation and foreign economic policy on inward FDIs in order to redefine and protect Poland's strategic industries/sectors. One may strongly support the opinion of Jacek Saryusz-Wolski, a member of the European Parliament and one of the leading politicians of the governing Civic Platform (PO) that "just like any other country, Poland needs to thoroughly check the firms willing to invest in strategic sectors"⁵¹.

To justify such steps, contrary to the expected rejection by the EU Commission, Poland's government should officially stress that (like e.g. Germany) the policy framework is only adopted to the US, Canadian or UK model, and that such urgently needed new bills should be interpreted as a move away from relative openness towards the OECD/EU average. What is more, following the French government's argumentation in a similar procedure, the Polish government may claim that it has an ultimate duty to defend the "national interest" as well as legal responsibility to define a "strategic" industry."⁵² **To be more precise, Poland needs an institution and procedures like the American CFIUS**⁵³.

The first step in this direction has already been taken. A seminar organized by the Economic Institute of the National Bank of Poland⁵⁴ was an extremely important and characteristic event held on 10 December 2012. Two authors (S. Kawalec and M. Gozdek), representatives of the Capital Strategy, presented theses a report on the opportunities and modes of increasing the share in Poland's financial system of locally controlled banks i.e. a desirable ownership structure of the Polish banking sector in the near future.

They reminded that as a result of the model of privatising the Polish banking sector preferred over a dozen years ago, 69% of assets of banks operating in Poland is owned by foreign financial groups. This structure had its benefits: it allowed to quickly

⁴⁸ Quoted after the article: *Poland Seeks to Keep Russian Capital Away from Strategic Industries*, BBC Monitoring International Reports", July 20, 2012.

⁴⁹ In 2008 Russia introduced a new *Federal Law of the Russian Federation on Foreign Investments in Companies Having Strategic Importance for State Security and Defence*, effective from May 7. According to Heath (2010, p. 501) the new law on protection of strategic sectors pinpoints industries and situations when foreign ownership should be limited. It also establishes procedures for investors to apply for acquisitions.

⁵⁰ 47 In February 2011 also the People's Republic of China's Ministry of Commerce (MOFCOM) released regulations to institute security reviews for foreign mergers and acquisitions (M&A) that relate to China's national security.

⁵¹ Interview for the Polish daily "Rzeczpospolita" on July 17, 2012.

⁵² See: J. Clifton, D. Diaz-Fuentez id.

⁵³ Germany plans for the country's own CFIUS. See Del Watchdog ("Financial Times", September 27, 2007). Quoted after Benoit 2007.

⁵⁴ http://nbp.pl/home.aspx?f=aktualnosci/wiadomosci_2012/20121210_seminarium.html.

reinforce and modernise the sector. However, in the future it may pose problems to the Polish economy. One such problem demonstrated itself following the outburst of the global crisis. In 2009-2010, banks dependent on their foreign owners decreased credits for Polish companies by 12.5% while locally controlled banks increased them by 20.6% and cooperative banks even by 35.4%. The sector's existing structure with dominant banks dependent on foreign groups may also impede regular financing of the government debt and will further limit local macro-precaution policies. These threats to national economic security would be less serious if the sector's structure were more balanced and locally controlled banks enjoyed a strong position. According to the authors, within the next 10 years or so, the share of banks dependent on foreign groups should decrease by half to approximately 30-35%. The government should officially adopt a "re-polonization" strategy for a segment of the banking sector.

CONCLUSION

1. The importance of economic security to the entire system of national security, even that of highly developed countries, has become increasingly obvious as a result of globalisation, a shift in economic power and international competitive position of emerging nations (*reverse globalisation*), the economic crisis of 2008/2009 and more recently – the Snowden affair.
2. The country's *level of economic development* and its *economic power* should be considered as the most important determinant of *national economic security*.
3. In the mainstream economic textbooks, inflow of foreign investment is considered as a key driver of growth and sustainable development. Freedom of investment is also declared to be a core value of the OECD. However, even in the most developed countries of the OECD like U.S. and other, concerns about international investment and, in particular, takeovers of national enterprises by multinationals from emerging countries (*reverse globalisation*) have been on the rise.
4. As concerns about globalisation have moved up on political agendas, elected officials have more frequently made statements about whether foreign takeovers of national enterprises are "welcome". Governments have reassessed their priorities in response to a changing international environment for national security.
5. To address these challenges and help all countries reap the benefits from an increasingly interdependent global economy, the OECD has embarked on a project entitled *Freedom of Investment, National Security and 'Strategic' Industries*. A large majority of the countries participating in the project do take into account protection of national security and other essential interests in their investment policies and maintain sectoral restrictions to this effect.
6. *Double standards* are used to "legalize" such acts of economic coercion. The double standards are also reflected in developed countries' pressures and demands of further

liberalization of emerging countries regulations on inward FDI, as well as different interpretations of international law, and in different reactions to equivalent cases from different states' security practices.

7. Poland however, being also the OECD member, has steadily continued her "openness" policy based on rather idealistic/naive assumption that foreign direct investment should be encouraged, and it does not pose threats to national economic security. Based on such wrong assumptions, interest in key sectors of the economy (considered by more developed countries as strategic and thus put under special control) like e.g. energy, transport, financial sector, infrastructures, are continuously sold to the so-called foreign "strategic investors".

8. At a time when many jurisdictions, including the U.S., Canada and other OECD member states, are from many years applying notable exceptions to the open investment policies and their FDI Regulatory Restrictiveness index is often higher than Polish (in spite of much higher level of development), it is paradox that the Polish government has so far not put a similar process in place.

9. Poland needs urgent legislative steps as well as institutional changes (a set of new measures, institution and instruments like the U.S. CSFIUS) to regain her national economic security. However, it should be based on fine-tuning not to lose the benefits of openness.

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WPŁYW BEZPOŚREDNICH INWESTYCJI ZAGRANICZNYCH NA BEZPIECZEŃSTWO EKONOMICZNE W RAMACH „ODWROTNEJ GLOBALIZACJI”

Streszczenie. Głównym tematem artykułu jest ewolucja i przemiana teorii i praktyki działania w odniesieniu do bezpieczeństwa ekonomicznego państwa, przy ukazaniu realcji, jakie występują między aktywnością ekonomiczną a bezpieczeństwem narodowym. Autor zwraca szczególną uwagę na związane z „odwrotną globalizacją” potencjalne ryzyko i zagrożenia fuzji i przyjęć, środków ekonomicznych rozwiniętych państw przez rozwijające się ekonomicznie kraje. Według różnych wskazań ma to przełożenie na bezpieczeństwo państwa. Rosnąca liczba przejęć i nabyć firm działających w krajach ekonomicznie rozwiniętych, zainicjowanych przez multinarodowe firmy rozwijających się gospodarek, a także globalny kryzys finansowy z 2008/2009, wpłynęły w niektórych krajach Europy Zachodniej i Stanach Zjednoczonych na próby adaptacji oraz przyjęcie nowych lub poprawkę starych praw. Dotyczą one bezpośrednich inwestycji zagranicznych w sektorze określanym jako „strategiczny”. Wdrożenie tych prawnych restrykcji w odniesieniu do obcych inwestycji zostało skrytykowane przez rozwijające się gospodarczo kraje jako protekcjonizm wpływający na próbę utrzymania konkurencyjnie lepszej pozycji w stosunku do ich możliwości. Zasadniczo, jak autor zauważa w odniesieniu do Polski, problematyka ta nie może pozostać niezauważona, gdyż ma przełożenie na polski sektor strategiczny, co jest częścią rozważań podjętych w artykule. Dodatkowo zaproponowane zostają instrumenty przeciwdziałania tego typu zagrożeniom.