OECD REVIEWS OF REGULATORY REFORM

REGULATORY REFORM IN SWITZERLAND

ENHANCING MARKET OPENNESS THROUGH REGULATORY REFORM

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AMÉLIORER L'OUVERTURE DES MARCHÉS GRACE A LA RÉFORME DE LA RÉGLEMENTATION

FOREWORD

Regulatory reform has emerged as an important policy area in OECD and non-OECD countries. For regulatory reforms to be beneficial, the regulatory regimes need to be transparent, coherent, and comprehensive, spanning from establishing the appropriate institutional framework to liberalising network industries, advocating and enforcing competition policy and law and opening external and internal markets to trade and investment.

This report on *Enhancing Market Openness through Regulatory Reform* analyses the institutional set-up and use of policy instruments in Switzerland. It also includes the country-specific policy recommendations developed by the OECD during the review process.

The report was prepared for *The OECD Review of Regulatory Reform in Switzerland* published in March 2006. The Review is one of a series of country reports carried out under the OECD's Regulatory Reform Programme, in response to the 1997 mandate by OECD Ministers.

Since then, the OECD has assessed regulatory policies in 22 member countries as part of its Regulatory Reform programme. The Programme aims at assisting governments to improve regulatory quality — that is, to reform regulations to foster competition, innovation, economic growth and important social objectives. It assesses country's progresses relative to the principles endorsed by member countries in the 1997 *OECD Report on Regulatory Reform.*

The country reviews follow a multi-disciplinary approach and focus on the government's capacity to manage regulatory reform, on competition policy and enforcement, on market openness, specific sectors such as telecommunications, and on the domestic macro-economic context.

This report was prepared by Charles Tsai and Anthony Kleitz in the Trade Directorate of the OECD. It benefited from extensive comments provided by colleagues throughout the OECD Secretariat, as well as close consultations with a wide range of government officials, parliamentarians, business and trade union representatives, consumer groups, and academic experts in Switzerland. The report was peer reviewed by the 30 member countries of the OECD. It is published under the authority of the OECD Secretary-General.

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ACRONYMS AND ABBREVIATIONS

AGP	WTO Agreement on Government Procurement
BKB	Purchasing Commission of the Federal Government
BUPK	The Swiss Conference of cantonal directors for public works, land management and environmental protection
CB Scheme	The IECEE Scheme for the Mutual Recognition of the Testing Certificates for Electrical Equipment
CEN	European Committee of Standardizations
CENELEC	European Committee for Electrotechnical Standardization
CMCC	Confederation/Cantons Government Procurement Commission
ComCo	Federal Competition Commission
ComCom	Federal Communication Commission
CRM	Government Procurement Appeals Commission
DDPS	Federal Department of Defence, Civil Protection and Sports
EA	European co-operation for Accreditation
EEA	European Economic Area
EEC	European Economic Community
ElCom	Electricity Comission (established under ELPS)
EL	Amendment to the Electricity Law
ELPS	Draft Law on Electricity Power and Supply
ETSI	European Telecommunications Standards Institute
EU	European Union
GATS	General Agreement on Trade in Services (a WTO agreement)
IECEE	Worldwide System for Conformity Testing and Certification of Electrical Equipment
IAF	International Accreditation Forum
IEA	International Energy Agency
IEC	International Electrotechnical Commission
ILAC	International Laboratory Accreditation Co-operation
ISO	International Organization for Standardization
KBBK	Government Procurement Commission: Federal State-Cantons
KBOB	Coordination of federal construction and real estate services
MLA	Multilateral Agreement
MFN	Most Favoured Nation
NT	National Treatment
GDP	Gross Domestic Product
GNI	Gross National Income
SICTA	Swiss Information and Communications Technology Association
SME	Small and medium-sized enterprises
RO	Official collection of Swiss federal law
RS	Systematic collection of Swiss federal law
SAS	The Swiss Conformity Assessment Accreditation Body
SDR	Special Drawing Rights of the International Monetary Fund
SECO	State Secretariat for Economic Affairs
RS	Classified Compilation of Federal Laws and Decree
THG	Federal Law on Technical Barriers to Trade
WCR	World Competitiveness Report
WTO	World Trade Organisation

ENHANCING MARKET OPENNESS THROUGH REGULATORY REFORM

In recent years several trends have reinforced the link between domestic regulatory environment and international market openness. First, as tariffs have receded over the course of successive rounds of trade liberalization, national regulations increasingly describe the contours of market access. Second, increasing global flows of trade and investment mean that domestic regulations applied in a single country may increasingly impact economic activities globally. In this light, the quality and efficiency of the domestic regulatory systems should increasingly be assessed in terms not only of their efficiency in securing stated regulatory objectives, but also according to the degree to which they contribute to market openness. Reform of regulations to secure stated regulatory objectives, in a manner no more trade restrictive necessary will maximise the contribution that market openness can bring to Switzerland in the form of lower domestic price levels, increased consumer choice and the competitiveness of the domestic economy.

Enhancing the integration of market openness principles and pro-competitive product market policies into domestic regulatory systems reduces the barriers to inward flows of goods, services and investment upon which the globally competitive export industries located in Switzerland rely. Related to this argument – under conditions of open global markets, when tariffs and quotas no longer significantly limit potential exports – costs imposed by unnecessarily heavy or divergent regulations will increasingly determine not only the success of enterprises both in foreign markets, but also domestically. In domestic markets, inefficient regulations can benefit foreign firms at the expense of domestic ones and can result in the loss of domestic market share to competitors from countries rooted in more efficient regulatory regimes. For instance, a domestic firm may have relatively low production costs, but face high costs when complying with regulations in its home country. If these costs are high enough, they can undercut efficiency and locational advantages and lead to losses of domestic and international market share to otherwise less efficient foreign suppliers. Increasingly, the competitiveness of the domestic economy will be anchored to the efficiency of domestic product market regulations and the quality of market openness reflected within them. By the same token, enterprises operating in an efficient regulatory environment provided by home countries will be better placed to compete both in foreign and domestic markets.

The relatively low scores recorded by Switzerland in terms of the market openness of its domestic regulatory system in combination with high domestic price levels (as described in the sections below) demonstrate the substantial room for progress in better integrating market openness considerations within the Swiss regulatory system. They also indicate the substantial scope for improving the efficiency, competitiveness and the economic rate of growth in an already prosperous Swiss economy.

1. Market openness and regulation: the economic and policy environment in Switzerland

1.1. The economic environment

Switzerland is a small prosperous economy. Its per capita gross national income (GNI) of USD 40 680 ranked it as fourth in the world behind only Luxembourg, Bermuda and Norway in 2003.[1] The rate of growth in Swiss gross domestic product (GDP) has been behind the OECD average for some time however. The high standard of living achieved in Switzerland is strongly linked to its successful economic relationship with the world economy. The Swiss economy recorded trade in goods with the outside world equal to more than half of GDP in 2003. Combining goods and services, Swiss trade with the outside world

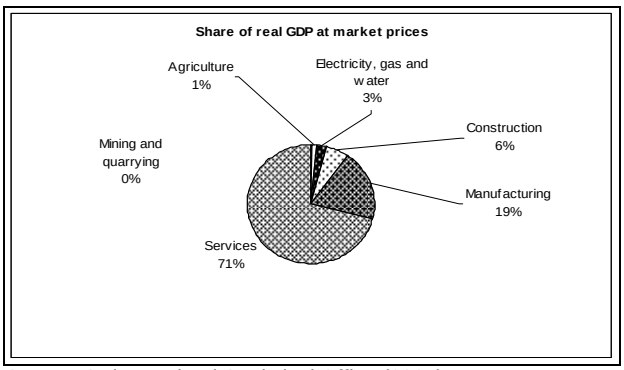
totalled 81% of GDP for the same year.[2] The high degree of integration between the Swiss and the international economy means that the health of the international economy has significant bearing on the Swiss domestic economy. The recession recorded for the first quarter of 2003 can largely be explained by external factors resulting from the global economic slowdown recorded in 2000-01.

Recent trends, however, should not obscure long-term policy challenges. The pronounced nature of the recent economic downturn in Switzerland when compared either to the United States or the European Union is considered in the 2004 *OECD Economic Survey: Switzerland* to be evidence of structural rigidities in domestic product markets which underlie the long-term decline of Swiss economic growth relative to the OECD as a whole. The 1¼% trend GDP growth rate recorded for Switzerland over the last two decades is less than half the OECD average of 2¾%.[3] Anaemic product market competition is a key impediment to the growth in total factor productivity that must take place if the Swiss economy is to reduce its gap in economic growth *vis-à-vis* other OECD economies. Regulatory reform to stimulate product market competition will not only enable more rapid economic growth, but will facilitate the flexibility necessary for rapid adjustment to external economic shocks including global economic slowdowns.

A symptom of deficient product market competition and market openness in the Swiss economy lies in the persistence of high prices levels throughout the Swiss economy. The high level of integration between the Swiss and the international economy (particularly with EU members) makes it remarkable that domestic price levels are roughly 40% above those of the EU.[4] A partial explanation may be found in survey results appearing in the 2004 *World Competitiveness Report* (WCR) ranking the openness of the Swiss economy a low 50 out of the 60 countries based on the question "Does protectionism in your economy negatively affect the conduct of your business?"[5] Despite the high level of international trade and investment reflected in the Swiss economy, business managers find that protectionism hinders commercial processes and increases costs. Enhancing the openness of the Swiss economy to imports of goods, services and investment from efficient foreign economic partners would reduce costs for businesses based in Switzerland including those that export, and allow cost savings to be transferred to consumers through lower prices and greater selection across the variety of goods and services. According to the WCR, Switzerland ranks among the top 7% per cent of countries surveyed in terms of a cost-of-living index which seeks to compare the cost of living in the world's major cities.[6]

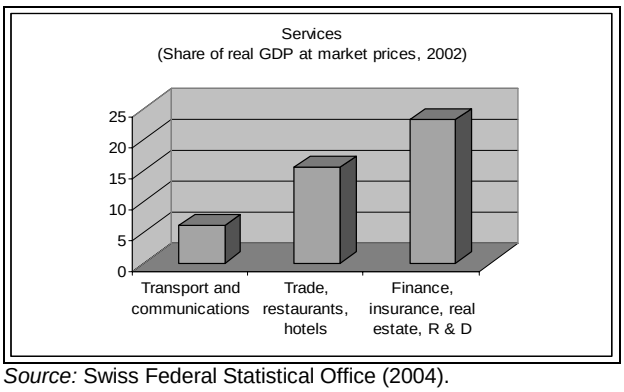
The results of the survey data indicated above are further supported by the results of OECD work seeking to develop indicators for product market regulations (PMR) that are comparable across OECD countries. A recent assessment of PMRs among OECD countries ranked Switzerland among the bottom third of OECD countries in terms of the openness of the regulatory system to foreign trade and investment.[7] The dramatic difference in domestic and international price levels apparent in the Swiss economy suggest that more market openness throughout the Swiss economy – particularly through the application of competition policy from a market openness perspective – could make important contributions to increasing the domestic and hence international competitiveness. Better integration of the six principles of market openness (described in the following section) throughout the Swiss regulatory system will better enable the Swiss economy to benefit from its relationship with the international economy.

Figure 1. Structure of the economy



Source: Swiss Federal Statistical Office (2004).

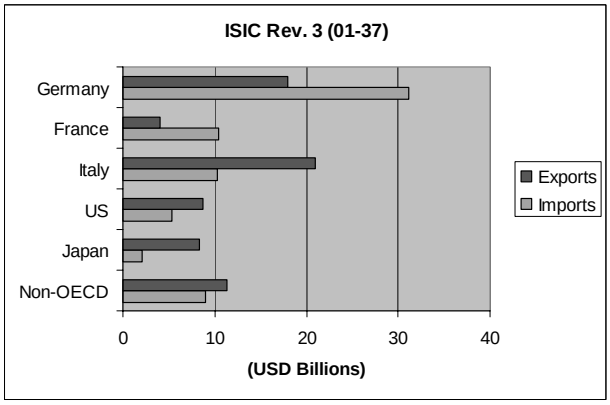
Figure 2. Breakdown of services



Source: Swiss Federal Statistical Office (2004).

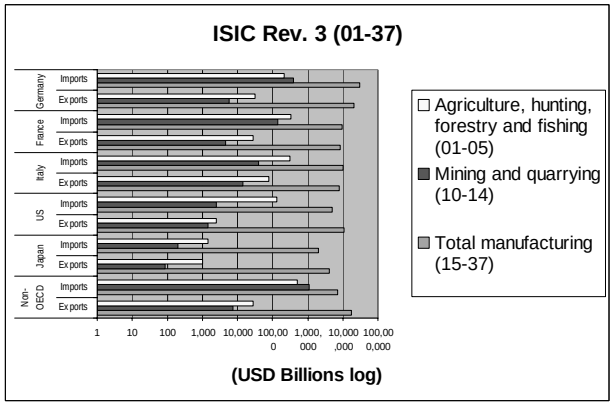
The structure of the Swiss economy reflects continued transition from a manufacturing to a services sector based economy. The services sector already makes up nearly three quarters of Swiss GDP. The recent economic slowdown has accelerated this process by stimulating rationalisation in the industrial sector. Broad use of new labour saving technologies was made.[8] While manufacturing continues to decline in importance, notably in terms of employment, globalisation has supported growth in the financial services industry. The WCR has ranked Switzerland among the lower half of surveyed countries in terms of relocation of production as a threat to the future of the domestic economy.[9] Between 1995 and 2002, employment in the services sector grew by 12% while employment in the manufacturing sector decreased by 8%.[10] This trend has further marginalised the agricultural sector which represented 5.1% of total employment and 1.3% of total GDP for the same year.[11]

Figure 3. Swiss trade with the world



Source: OECD, 2005e.

Figure 4. Structure of trade in goods with selected trade partners

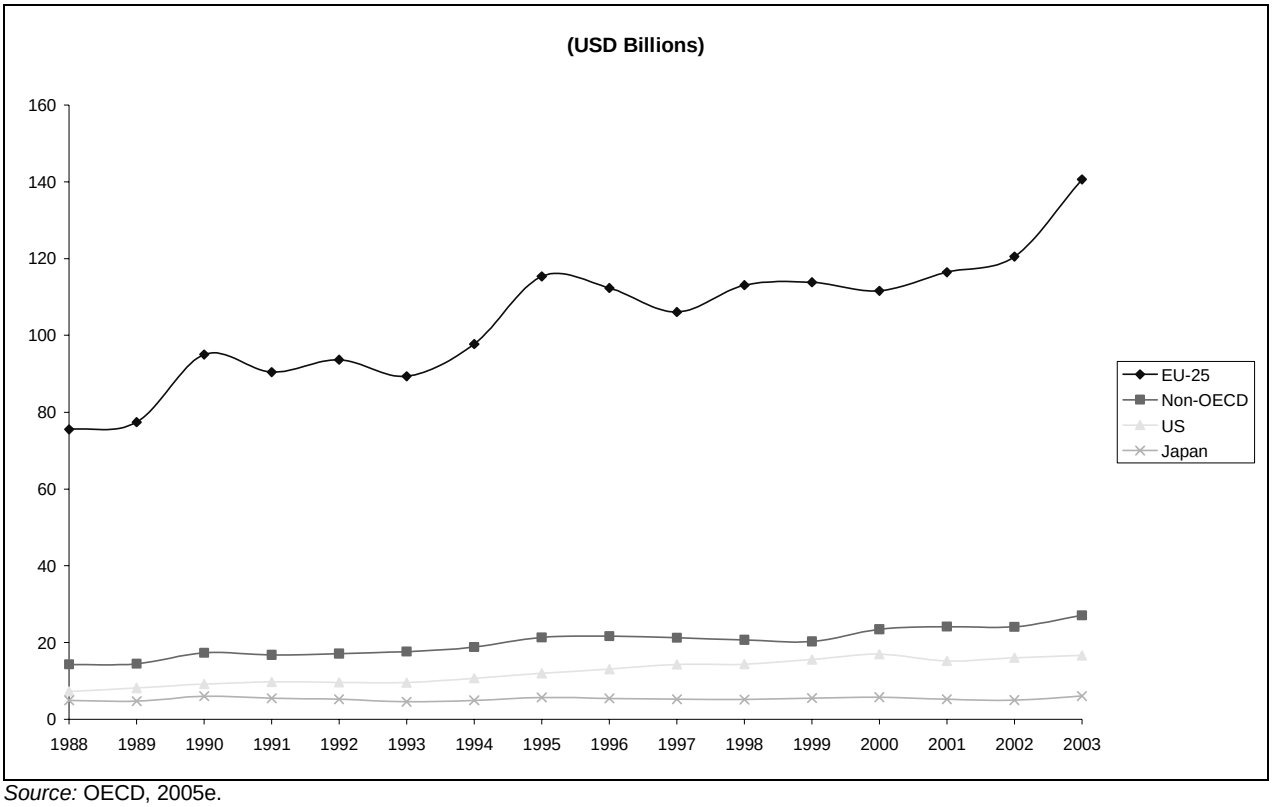


Source: OECD, 2005e.

With a trade surplus of nearly USD 4.3 billion for 2003, Switzerland retained an overall current account surplus of USD 43.3 billion, which was equal to 13.5% of GDP for that year. The high level of interdependence between the Swiss and the international economy is highlighted by an intensive economic relationship with the EU which absorbed 63% of Swiss exports and provided 83% of Swiss imports in 2004.[12] The US was the single largest non-EU trading partner for Switzerland absorbing 11% of Swiss exports and providing 4.3% of Swiss imports. The Swiss economic relationship with Japan recorded

figures of 3.8% and 2.1%, respectively. In contrast to its trade with the US and Japan, Switzerland maintains trade deficits with its two largest trading partners Germany and France.

Figure 5. Development of Swiss trading relationships



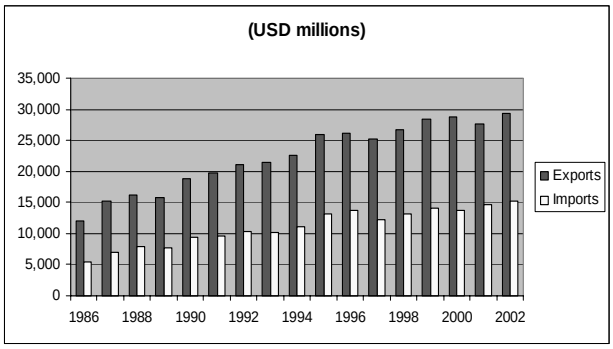
Source: OECD, 2005e.

Swiss trade is dominated by manufactured products (Fig. 4). In the countries and groupings indicated, Swiss trade in agricultural and mining products are in deficit *vis-à-vis* its trading partners without exception. Switzerland is mainly an importer of primary and intermediate goods and an exporter of final goods. Swiss trade with non-OECD economies consistently reflects imports of agricultural and mining products in combination with large surpluses in manufactured products. What is notable is that with the exception of the large trade deficit in manufactured goods with Germany, the trading relationship between Switzerland and Germany and that with non-OECD members are similar in terms of the pattern of traded goods. The absence of further more detailed analysis makes further generalisations at this level of aggregation difficult. However, the large scale of total trade and of the trade surplus in manufactured goods that Switzerland maintains with non-OECD members as a whole indicates that attention to the more dynamic of the non-OECD countries would complement the sharp acceleration of trade observed with EU members in recent years as seen in Figure 5. The contribution of the preferential trading arrangements between the Switzerland and the EU should be assessed in terms of advantages resulting from increased integration with the EU countries as well as offsetting disadvantages resulting from the distortion of trade away from more economically vibrant regions.

Although the services sector represents nearly three quarters of domestic economic activity, trade in services amounted to just over a fifth of total Swiss trade with the world. Swiss services exports have grown along with services imports over the last two decades (Fig. 6). Significantly, Swiss trade in services were in surplus under every major category recorded in Figure 7 with only minor deficits in "Communications" and "personal, cultural and recreational" services. The dominance of "Financial" and "Other business" services in Swiss trade far exceeds their relative importance within the domestic

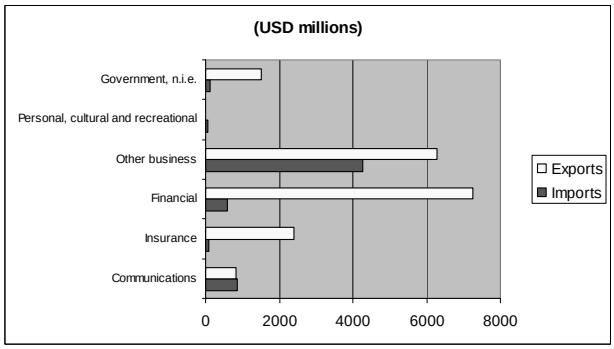
economy. Between 1989 and 2000, exports of financial services soared nearly three fold peaking at USD 8.6 billion in 2000 and then declining to USD 7.3 billion in 2002. By contrast, exports of other business and insurance services both surged in 2002 with other business services only experiencing a slowdown in 2001, and insurance services recovering from a decline between 1999 and 2000.[13] Overall the development of Swiss trade in services reflects continued albeit declining rates of growth based on past trajectories.

Figure 6. Swiss trade in services



Source: OECD, 2004b.

Figure 7. Composition of Swiss trade in services



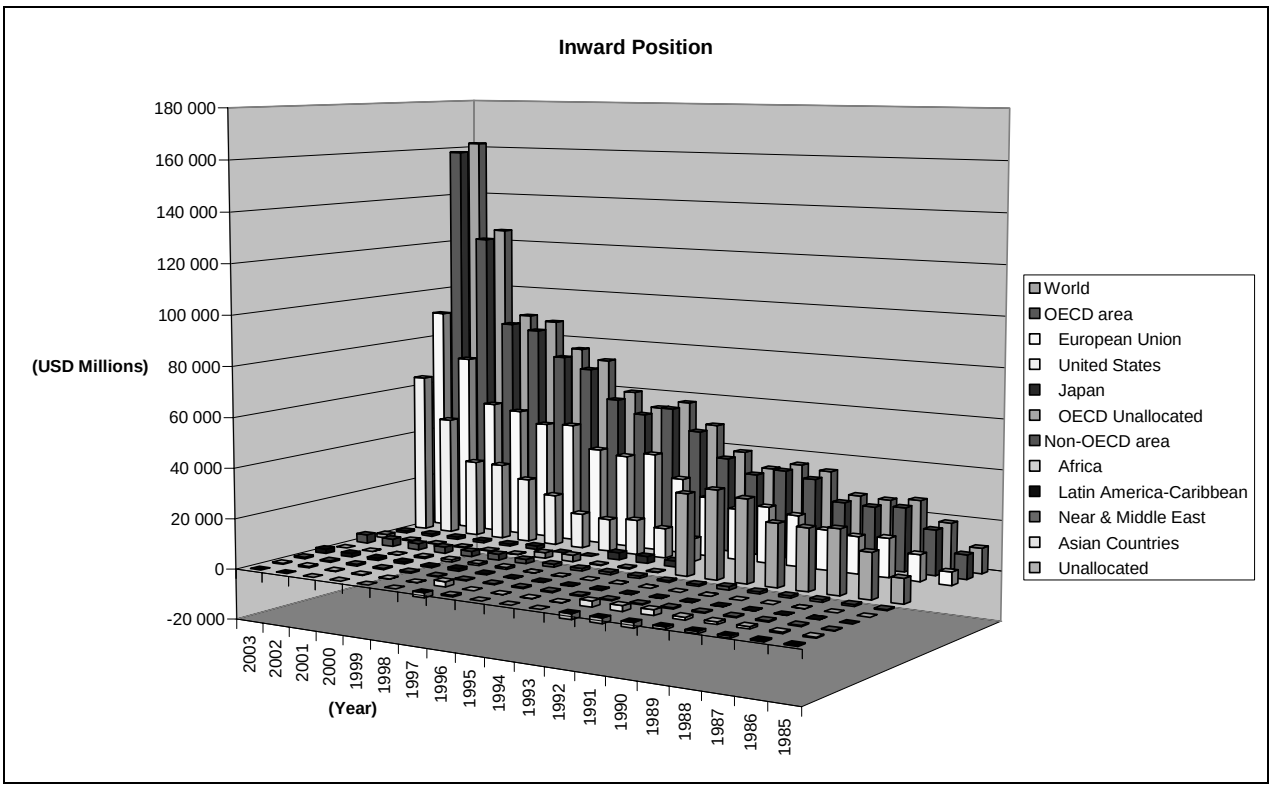
Source: OECD, 2004b.

Both of the commercial guides to the Swiss market produced by the US Department of Commerce and the European Commission indicate that the Swiss market is hospitable to Foreign Direct Investment (FDI).[14] Two issues have been identified as areas where progress can be made. Discrepancies in regulatory practices between the 26 Swiss cantons hamper the ability of investments to benefit from economies of scale in what is already a small national market.[15] Inadequate enforcement of competition laws deters investments in sectors reflecting anticompetitive practices.[16] The WCR ranked inward FDI in relation to size of GDP as one of Switzerland's 10 weakest criteria for economic performance.[17]

Switzerland's accumulated stock of assets held overseas is roughly twice that of domestic Swiss assets owned by investors in foreign countries, which is down from a peak of nearly three-fold in 2001. Notably, Switzerland maintains an accumulated investment deficit – *i.e.* net investment outflow – with every economy or economic grouping indicated in Figure 8. Switzerland recorded an USD 1.45 billion net annual investment surplus for 2003 which was a turning point from deficits that had continued uninterrupted since 1987. This rebound comes only three years after the largest recorded annual investment deficit reached in 2000 at USD 25.4 billion. It should be noted that this reversal resulted largely from what may be a one-off surge in investment from the EU resulting in a bilateral surplus of USD 5.6 billion, which offset deficits with other regions.

Switzerland's inward stock of FDI (see Fig. 8) comes primarily from OECD countries whereas Switzerland's outwards stock of FDI is again focused within the OECD region, but significant and rapid build-ups of Swiss FDI in the Non-OECD area have been recorded in over the last decade. Geographically, inward FDI into Switzerland comes predominantly from the EU, which provided USD 10.2 out of the 16.6 billion total recorded for 2003. The US was the largest single investor in Switzerland for the same year representing roughly a third of all inward FDI. Outside the EU and US, the next most important region in terms of inward FDI was Latin America and the Caribbean, which represented USD 0.6 billion in 2003.

Figure 8. Inward stock of FDI[18]

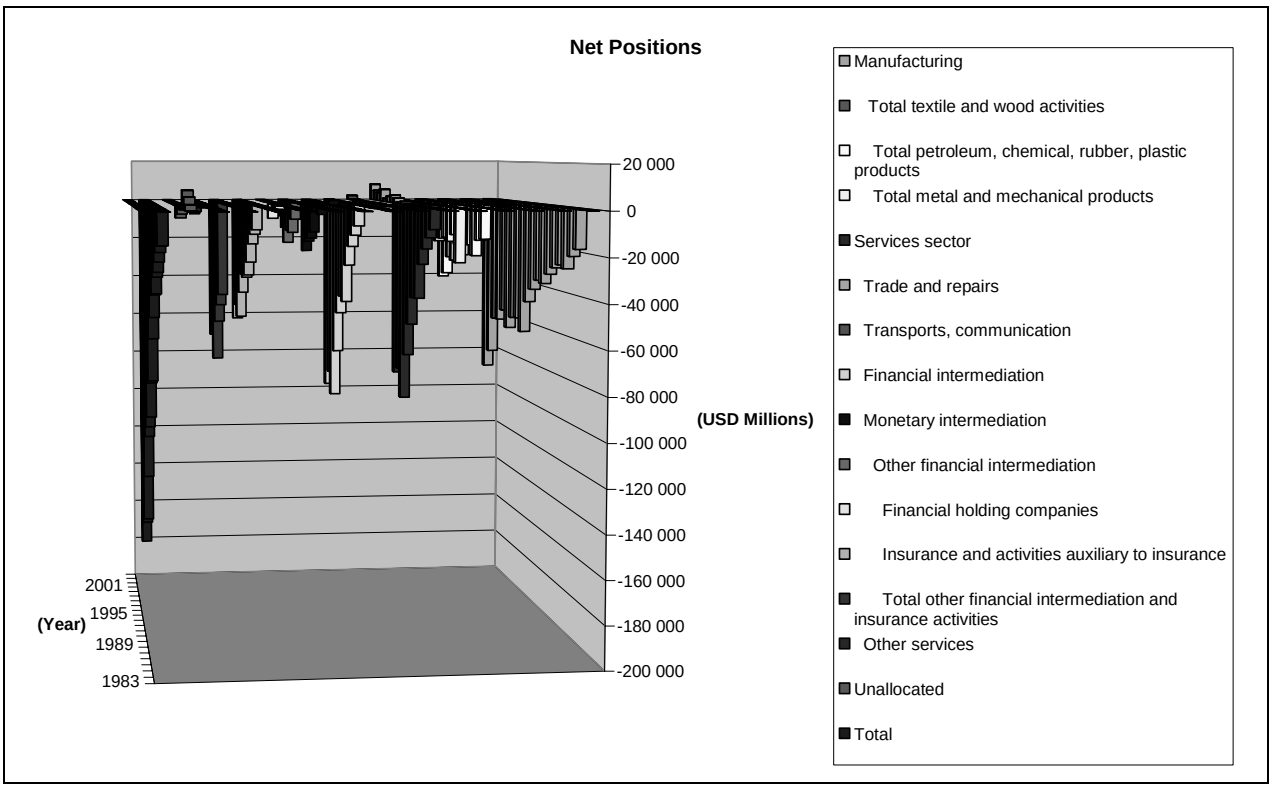


Source: OECD, 2005b.

In terms of Switzerland's outward stock of FDI, a strong relationship is again reflected with the EU and the US appear again with the EU receiving 43% and the US receiving 19% of the total. Notable positions are also recorded in Latin America and the Caribbean representing 57% of total Non-OECD FDI at USD 57.9 billion. In addition, Switzerland maintains an outward stock of FDI in Asia amounting to USD 16.7 billion.[19] The Latin American and the Caribbean regions are most notable in terms of the rate of build up in terms of the FDI stocks from Switzerland over the last decade. Swiss enterprises effectively employed 1.8 million persons outside Switzerland in 2003, of which 42% were in the EU and 18.1% in the US.

Switzerland's maintains a large net accumulated investment deficit which is broken down by sector in Figure 9. The sectoral distribution of Switzerland's inward and outward accumulated stock of FDI reflects great similarities in both patterns and proportions although magnitudes differ. If one were to imagine a hypothetical chart of the Switzerland's accumulated inward stock of FDI broken down by the sectors used in Figure 9, it would be similar to a chart showing the stock of accumulated outward investment, but generally in the reverse and much larger in magnitude. The accumulated inward stock of FDI into Switzerland is highest in the services sector where the total rested at USD 135 billion in 2003. Unlike in the case of bilateral investment partners with which Switzerland maintains a larger accumulated stock of outward investment in every instance, Switzerland maintains a surplus of accumulated inward stock of FDI on a sectoral level in several of the services categories including under "trade and repairs", where it has been in surplus since records have been kept. The accumulated stock of FDI surplus in this category was joined by "Transports, communication" in 2002. In terms of annual flows, services is notable for the reversal of a deficit amounting to USD 1.6 billion in 2001 to a surplus of USD 6.1 billion in 2002. Several other sectoral outliers (*i.e.* overall surplus of inward over outward flows of investment) were recorded in specific years including "metals and mechanics products" which recorded a surplus of USD 5.1 billion for the year 2000 and the "Financial" and "Monetary intermediation" related categories which recorded a net annual investment surplus of USD 3.7 billion in 2002.

Figure 9. Sectoral distribution of the balance of FDI stock (inward FDI – outward FDI)



Source: OECD, 2005b.

The Swiss government has established "Location: Switzerland" as a single window designed to assist foreign investors to enter the Swiss market. The website of the Location: Switzerland (*www.standortschweiz.ch/seco/internet/en/index.html*) provides a variety publications related to investing in Switzerland including practical guides covering legal, financial and tax related issues as well as practical self-assessment checklists to assist in project planning. Headquartered in Bern, Location: Switzerland's European Union office is located in Zurich and foreign offices include North America, Japan and China. In addition to providing customised business counselling services, Location: Switzerland also hosts a busy calendar of trade shows.

1.2. Economic and trade policy

Cognisance of the gap between economic growth in Switzerland and those of comparable economies, has led the efforts and focus of recent policymaking in Switzerland since as early as 1992, when a Swiss referendum rejected accession to the European Economic Area (EEA). Absent the impetus joining the EEA would have brought by unpinning a broad range of domestic regulatory reforms, efforts to strengthen economic growth become more incremental. Recent work on regulatory reform has been notable for the level of ambition and the challenges it faces. At the same time, the important democratic tradition of the Swiss referendum continues to be the litmus of policymaker effectiveness in communicating the value and necessity of proposed reforms. The failure of two significant reform initiatives to pass referendum including the first bill on electricity market liberalisation in 2002 and a package of financial measures to improve the system of direct taxation in 2004 underscore the difficulties facing the implementation of structural reforms in Switzerland. Conveying the relevance of complex structural reforms to maintaining standards of living in Switzerland over the long-term will remain a challenging undertaking in the highly decentralised and democratic context of Switzerland.

Sweeping regulatory reforms remain under way. These reforms in support of enhanced economic performance seek to promote this objective by establishing a more coherent single market out of the 26 cantons making up the Swiss state. By reducing regulatory barriers to inter-cantonal economic activities, competitive firms and activities will be enabled to grow and contribute more effectively to domestic economic performance. These reforms add to the progress achieved by the recent improvements to competition policy legislation to address the sub-optimal record of enforcement. The respective responsibilities of the confederations and cantons have been improved and public procurement rules are to be harmonised across all levels of government. Although all the reforms interact in some manner with international economic agreements such as those with the EU and the WTO, the vast majority are internally driven and domestically focused.

In its report to the WTO Trade Policy Review Body in late 2004, Swiss officials indicated that the overarching theme of creating conditions for improving economic performance is being pursued *via* three primary objectives including: 1) supporting competitive sectors by enhancing the efficiency of inward oriented economic sectors, 2) improving the supply and quality of labour and 3) minimising the negative impacts of the State on domestic economic growth. To attain these objectives, the Federal Council has approved a package of 17 measures based on the recommendations of an inter-ministerial working group.[20] This package of measures is now part of the 2003-07 legislative work programme (Box 1).

Box 1. Summary of the 17 measures for growth

The underlying purpose of the 17 measures concern fostering conditions in support of business, notably the dynamic, productive and competitive segments of the economy. Measures affecting all businesses comprise:

- Reforming company taxation to guarantee in particular greater fairness in the taxation of different legal forms and different types of capital;
- improving company management through better transparency;
- revising the Law on the Domestic Market to heighten competition between companies on this market;
- revising the Federal Law on Government Procurement in order to continue desegmenting markets that are overly diverse;
- simplifying the VAT and reducing distortions it creates on investments;
- examining the need to adapt to developments in the services market, particularly in the EU; and
- cutting down on administrative burdens.

A secondary purpose of the package of 17 measures is to ensure that the dynamic, productive and competitive segments of the economy have increased access to resources. This objective may be implemented by increasing the availability of factors of production, or by limiting the use of inputs by less competitive segments of the protected domestic sector through such policies as:

- Extending the free movement of persons to the new EU member States;
- encouraging persons aged between 55 and 67 to participate in the job market;
- eliminating the structural deficit and stabilizing State expenditure, in particular with a stabilization plan;
- revising the Law on Health Insurance to give a greater economic orientation to the health system;

- revising disability insurance to limit the growth of social insurance expenditures while ensuring effective attainment of its objectives (namely, if possible, reintegration in the labour market);

- continuing reforms of agricultural policy to improve productivity in agriculture and prepare for greater international openness;

- opening up the electricity sector in a manner compatible with EU directives.

Source: WTO, 2004, p. 11.

Three criteria were required for a measure to be adopted as part of the growth package: 1) it should be essential on a macroeconomic as opposed to sectoral level, 2) implementation by the Federal Council during the current legislature should be possible; and 3) it should be compatible with lowering state expenditure and conform with the principles of a market economy.[21]

Six of the 17 measures put into effect the approach of forging a more unified single market and developing a culture of competition. The goal is to allow productive processes to range freely across cantonal borders thus benefiting from economies of scale, and at the same time enabling the diffusion of efficient economic activities throughout the economy as a whole. The fact that reforms should be domestically oriented and focused[22] is based on the observation that it is the low rate of *domestic* productivity growth which is hindering economic progress.

On the international level, the report by Switzerland to the Trade Policy Review Body of the WTO late in 2004 highlighted that efforts towards structural reforms are distinct from those in the fields of international trade and investment. Still, the link between opening up the market domestically and to international competition and the objective of improving the efficiency of the economy and the competitiveness of internationally exposed sectors in terms of cost is acknowledged. Concluding bilateral agreements including deepening relations with the EU is indicated as relevant to the attainment of economic policy objectives.[23] While recognising the outstanding importance of an efficient multilateral trading regime for small open economies like Switzerland, Swiss trade policy is currently also responding to the recent and rapid growth in preferential trading arrangements (PTAs) by more vigorously engaging discussions with new partners both under the European Free Trade Association[24] umbrella and bilaterally. The Swiss trade policy objective in this context is not to support that PTAs "take the place of trade liberalization on the world level but to eliminate discrimination faced by Swiss exporters" resulting from PTAs to which Switzerland is not part.

While implementation of the 17 reforms may be viewed primarily from a domestic regulatory perspective, they will all – to varying degrees – have implications for the market openness of the Swiss economy: some directly as in the case of liberalisation commitments, and others in more indirect but no less important ways as in the case of government procurement. In contexts where regulatory reforms are domestically oriented, lack of attention to market openness considerations within the design and implementation of reforms could have the effect of unintentionally reducing market openness. It is conceivable that in some cases, the economic costs created by unanticipated reductions in market openness stemming from reforms may outweigh the anticipated benefits of the intended reforms. Conversely, attention to market openness considerations within the design and implementation of regulatory reforms may serve to increase market openness as a by-product of reforms to achieve non-trade or investment related regulatory objectives, thus increasing the positive economic impact of the reform. Attention to market openness within the design and implementation of regulatory reform will be increasingly important to ensuring that maximum benefits are derived from existing liberalisation commitments, and those expected from future liberalisations are efficiently realised.

Significant benefits can result from allocating appropriate resources to market openness considerations within a larger reform process. Engineering greater market openness throughout a regulatory system may have significant implications on the ability of domestically oriented regulatory reforms to deliver increased product market competition, more competitive domestic firms, and growth in total factor productivity: independently of further commitments to liberalise trade and investment. In dispatches sent to Parliament and in motivations supporting proposals for legislative amendment, a special chapter is included in which the compatibility of the future legislation with the rules of Switzerland's most important trading partners is assessed.

2. The policy framework for market openness: the six "efficient regulation" principles

An important step to ensuring that regulations do not unnecessarily reduce market openness is to build "efficient regulation" principles into domestic regulatory process for social and economic regulations, as well as for administrative practices. "Market openness" refers to the ability of foreign suppliers to compete in a national market without encountering discriminatory or excessively burdensome or restrictive conditions. These principles, which have been described in the 1997 OECD *Report on Regulatory Reform* and developed further in the Trade Committee, are:

- *transparency and openness of decision making;*
- *non-discrimination;*
- *avoidance of unnecessary trade restrictiveness;*
- *use of internationally harmonised measures;*
- *streamlining of conformity assessment procedures; and*
- *application of competition principles*

Trade policy makers have identified the six principles as key to market-oriented, trade and investment friendly regulation. They reflect the basic principles underpinning the multilateral trading system which many countries have undertaken certain obligations in the WTO and other contexts. The intention in the OECD country reviews of regulatory reform is not to judge the extent to which any country may have undertaken and lived up to international commitments relating directly or indirectly to these principles but rather to assess whether and how domestic instruments, procedures and practices give effect to the principles and successfully contribute to market openness.

2.1. Transparency, openness of decision making and of appeal procedures

In order to ensure international market openness, the process of creating, enforcing, reviewing or reforming regulations needs to be transparent and open to foreign firms and individuals seeking access to a market, or expanding activities in a given market. From an economic point of view, transparency is essential for market participants in several respects. Transparency in the sense of information availability offers market participants a clear picture of the rules on the basis of which the market operates, enabling them to base their production and investment decisions on an accurate assessment of potential costs, risks and market opportunities. It is also a safeguard in favour of equality of competitive opportunities for market participants and thus enhances the security and predictability of the market. Such transparency can be achieved through a variety of means, including systematic publication of proposed rules prior to entry into force and use of electronic means to share information, such as the Internet. Transparency of decision making further refers to the dialogue with affected parties, which should offer well-timed opportunities for public comment, and rigorous mechanisms for ensuring that such comments are given due consideration prior to the adoption of a final regulation. Market participants wishing to voice concerns about the application of existing regulations should have appropriate access to appeal procedures. Such dialogue

allows market forces to be built into the process and helps avoid trade frictions. This sub-section discusses the extent to which such objectives are met in Switzerland and how. It also provides insights on two specific areas, technical regulations and government procurement, in which transparency is essential for ensuring international competition.

2.1.1 Information dissemination

Information on existing regulation

Dissemination of existing laws and ordinances within Switzerland is well developed, but has seen recent improvements and will see further improvements in the near term. The availability of most laws and ordinances on the internet means that the transparency of existing domestic laws and ordinances *vis-à-vis* foreign producers and service providers is high and likely to improve. Transparency within the context of the law *making* process is guaranteed under Article 180 of the Federal Constitution which states that the Federal Government "…shall inform the public timely and fully of its activity, unless preponderant public or private interests prevent this".

Provisions and principles for transparency in the legislative process at the federal level (*e.g.* information-, consultation-, and co-operation requirements in the government and administration) are articulated in Law and in the relevant Ordinance on the organisation of the government and the administration.[25] The Federal Chancellery supervises the legal implementation of this law and ordinance in Switzerland and is responsible for administering the dissemination of information and consultation mechanisms on the national level. Proposals to Parliament for revising federal legislation are accompanied by an officially published dispatch where in a special chapter the conformity of the proposal with the country's international obligations is examined.

The Law on Publications, which entered into force on 1 January 2005, clarifies the procedural and substantive obligations of the government in terms of disseminating existing laws and ordinances.[26] Specifically, the law on publication clarifies the conditions under which laws will appear in full text within the Official Collection (RO) of Swiss Federal Law, and when a reference in the RO including information on the location of the full text is more appropriate. The Law on Publications also contains an explicit legal basis for the publication of laws on the internet and specifies the functions and principal tasks of the Systematic Collection (RS). The RS (www.admin.ch/ch/f/rs/index.html) contains a comprehensive collection of Swiss laws, ordinances and international agreements to which Switzerland is part. Accessibility benefits from the fact that legislation is always published in consolidated form, *i.e.* in the RS amendments are integrated in the existing text of the law or ordinance.

A new Law on Transparency has been adopted by Parliament and is expected to come into effect on 1 January 2006. This new law would provide any person the right of access to official documents, including those that must be obtained from authorities. In cases where the official document is already published in the body of a publication or on an internet page of the Confederation, the right of access to the documents is considered to have been fulfilled. The law on transparency foresees exceptions related to national security in which the right of access to official documents is limited. A shortcoming of this progressive legislation is that it applies only at the administrative level and not with respect to the Federal Council.

2.1.2 Consultation mechanisms

The practice of consultation is well developed in Switzerland and domestic regulators indicate the benefits that constructive feedback from specialists attending consultations bring to development of efficient regulations. Recent changes to the consultation process have focused on clarifying and streamlining the process. The access of foreign producers within this process while not explicitly specified under the Federal law on Consultation Procedure due to enter into force August 2005, appears possible. Also foreign businesses with domestic presence are regularly allowed to join Swiss trade associations that are normally consulted in cases where they may be impacted by proposed laws or ordinances.

Guaranteed in Article 147 of the Federal Constitution, which states that "[the] Cantons, the political parties, and the interested circles shall be heard in the course of the preparation of important legislation and other projects of substantial impact, and on important international treaties", consultations are an important institution within the Swiss political system. Currently, the Ordinance on the Consultation Procedure passed in 1991 remains in force under which: legislation, international treaties and other projects of substantial impact that are deemed important by the Federal Council will be subject to consultations. Proposed Federal laws with substantial political, economic, financial, legal and cultural implications are normally considered to qualify for consultations. Federal ordinances, which are subject to consultations at the official level are infrequently subject to public consultations. The public consultations themselves normally include cantons, political parties, and interested parties, which may include: economic associations, organizations of workers, business associations and others.

The Federal Law on the Consultation Procedure due to enter into force in August 2005 will further clarify the operation of consultation procedures. Under this law, the number of subjects qualifying for consultations would be reduced. The Federal Council would maintain its authority to decide on which laws would be subject to consultation while the Federal Chancellery would be responsible for opening the proceedings, scheduling deadlines (normally three months) and ensuring the availability of relevant documents. The law supports the implementation of consultations by external bodies of the federal administration. In cases when the parliamentary commission is administering the consultations, the law leaves open the possibility of requests for support from the federal administration. It should be noted that outside the formal consultation process, a variety of means including special meetings, public forums and popular discussions may form part of the consultation process.

At the cantonal level, consultations are carried out in much the same manner as at the federal level, but the level of complexity will vary depending on the various capacities of the cantonal administrations. Significantly, an important conduit for local perspectives to be injected within the law making process at the federal level is *via* cantonal representatives and administrations and representatives. This mechanism is provided for in Article 45 of the Federal Constitution which indicates that "[i]n the cases foreseen by the Federal Constitution, the Cantons shall participate in the decision-making process on the federal level, in particular in federal legislation." Additionally, "[t]he Confederation shall inform the Cantons timely and fully of its plans; it shall consult them if their interests are affected." The level of consultation between the federal and local authorities is well developed in law and in practice. A further indication of the degree to which local perspectives are articulated within the federal policy process derives from the existence of the Federal Law on Cantonal Participation in Foreign Policy under which cantons with developed interests in the conduct of foreign policy may be heard within the foreign policy process.

The potential for constitutional amendments or legislation to face "direct democracy" in the form of public referenda after passage provides a strong rationale for the uncommonly transparent and participative process of consultation traditionally found in Switzerland. Swiss rulemaking is often described in terms of longer rulemaking processes resulting in higher level of compliance with new and existing rules. The public is better aware of new rules and a broader spectrum of concerns have been acknowledged or

addressed than in less comprehensive processes in other countries. Two changes have occurred since the tradition of direct democracy came into practice which have contributed to an evolution of this democratic tradition. The number of signatures required for initiation has declined significantly as a proportion of the total Swiss population due to fact that the initiation thresholds were developed when the Swiss population was much smaller. In addition, political parties and special interest groups rather than individuals are launching a growing proportion of initiatives. These and other factors have resulted in a significant rise in the number of referendums and initiatives in recent years but may also have resulted in declining voter turn out rates.[27] The instruments of direct democracy are symmetric (Box 3), they allow for pause and reflection as well decisive and rapid change. The factors indicated above in combination with the high level of complexity represented in some recently proposed domestic reform measures and international treaties results in a situation where amendments to existing legislation are both an important source and an important object of change in the economy.

Box 2. Direct democracy in Switzerland

Direct democracy comes in different forms, which include the ability to negate legislation in the form of referendums *and* the ability initiate a rulemaking process in the form of popular initiatives.

Referendums come in two forms including obligatory *constitutional referendums* which are required for all constitutional amendments and ratification of international treaties involving collective security or membership to supranational bodies. By contrast, optional *people's referendums* are initiated by collecting 50,000 signatures or on the request of eight cantons, and are applicable to generally binding decisions of Parliament and a selection of more important international treaties.

Two types of popular initiatives exist, both are initiated following the collection of 100,000 signatures within an eighteen-month period. *Constitutional people's initiatives* result in changes to the Federal Constitution if they are backed by more than half of voters at the national level and the majority of cantons. A new instrument established in 2003, the *general people's initiative* allows voters to propose legal changes in general terms. If Parliamentarians decide that the change would involve the constitution, then the process for competing a constitutional people's initiative would apply (if uncontested by the initiators of the process). In cases where the change would involve only statutory law, a modified version of the general proposal may be prepared by authorities, which if accepted by the initiators and passed by parliament, would take effect without further public input.

2.1.3 Appeal procedures

The Swiss regulatory system does not have an explicit guarantee for appeals by foreign enterprises per se. Appeals are possible whenever a foreign enterprise is subject of a decision or directly affected by a decision taken by an administration. The company then can claim that the decision is not taken in accordance with national law. If new legislation is discriminating against foreign enterprises foreign businesses may address concerns to the State Secretariat for Economic Affairs (SECO) via their government representatives regarding issues relating to federal level law and ordinances and directly to cantonal and municipal authorities for issues relating to laws and ordinances at that level. Some sectors under which Switzerland has made international liberalisation commitments such as government procurement, electricity and telecoms do have regulations concerning appeals that preclude discrimination between domestic and foreign enterprises.

2.1.4 Transparency in the field of technical regulations and standards[28]

Transparency in the field of technical regulations and standards is essential to firms facing diverging national product regulations, as transparency reduces uncertainties over applicable requirements and thereby facilitates access to domestic markets. Under the Law on Publication[29], all technical regulations at the federal level must be published in print and in electronic form, with similar obligations existing on the cantonal level, before their entry into force. These publications are generally available in German, French

and Italian and are accessible to interested parties abroad as they are published on the internet. Information on new and adopted regulations is published in the Official Compilation of Federal Laws and Decrees (RO). According to article 7 of the Law on Publication, the texts of adopted regulations must be published five days before its entry into force at the latest. Based on the RO, a consolidated version of the regulations in force is published in the Classified Compilation of Federal Laws and Decrees (RS). The RS is normally updated four times a year. Both, the RO and the RS are available in German, French and Italian and are available as printed documents as well as on the internet.

In addition, Switzerland provides information to its trading partners and opportunity to comment consistent with its obligations under the World Trade Organization (WTO). In accordance with these agreements, Switzerland notifies draft technical regulations before their adoption to the WTO in cases where it considers that new regulations might lead to new barriers to international trade. Based on these notifications foreign producers and service providers may transmit comments regarding Swiss draft technical regulations to Swiss standards setting bodies for consideration within the standards setting process.

Swiss notifications under the WTO Agreements on Technical Barriers to Trade (TBT) and on Sanitary and Phytosanitary (SPS) measures appear on the website of the WTO and are thus accessible to foreign firms. These notifications contain a summary of proposed technical regulations and the full texts of draft regulations in German and French can be ordered from the Swiss enquiry point established under the WTO Agreements indicated above. Under the existing domestic regulatory framework[30], only governmental institutions can submit comments and request clarifications on draft technical regulations. Foreign industry representatives, however, can indirectly bring in their comments *via* their national authorities to Swiss enquiry points established under the WTO TBT and SPS Agreements. Regulatory authorities must take account of the comments that are relevant and comments by WTO member states are considered in tandem with the domestic consultation process. The notification of draft technical regulations to the WTO occur in parallel with the domestic consultation process, which engages the cantons, political parties, industry and other civil society organizations (CSOs) to comment on the draft technical regulations.

Consonant with the general obligation under the WTO TBT and SPS Agreements, a centralized enquiry point has been established to provide information on domestic technical regulations, standards and conformity assessment procedures. WTO member states and interested parties in these countries enabled to access the Swiss Standardization Association (SNV) as the official TBT and SPS enquiry point in Switzerland (*www.snv.ch*). Although constituted as a private institution, the SNV operates on the basis of the Ordinance on the Notification of Technical Regulations and Standards.[31] As indicated above the ordinance contains no legal obligation for the SNV to respond to questions or consider comments not submitted *via* the governments of WTO members, but the SNV is not prevented from responding to questions or considering comments submitted directly by non-official interested foreign parties. Foreign enterprises with a commercial presence in Switzerland are generally able to participate within rulemaking processes and foreign firms with a commercial presence in Switzerland are not legally prevented from becoming associations with the SNV. However, the SNV is under no obligations to respond to or consider comments from foreign parties under Swiss law.

2.1.5 Transparency in government procurement

A significant 8% of Swiss domestic consumption was represented by government procurement of goods, services and construction in 2000. Representing 25% of total government spending for that year, government procurement totalling CHF 30 billion was shared between the Federal Government (19%), the cantons (38%) and the communes (43%).[32] Between 1995 and 2004, Switzerland fell five rankings to 50th place out of the 60 countries in WCR under the criteria related to the openness of public procurement

contracts. Acknowledging the shortcoming of having one federal and 26 only partially harmonised cantonal legislations in this area, improving government procurement was placed among the 17 measures for growth to be addressed as part of the current three-year legislative cycle (Box 1). Improving openness in government procurement practices in Switzerland represents significant potential for improving the efficiency and effectiveness of the government and economy. Significant institutional capacity has been implemented but progress has been limited particularly in areas not covered under international obligations.

Efforts to improve the openness and competitiveness of government procurement in Switzerland have taken place at the domestic and international levels in recent years. Domestic reforms to improve trade between cantons in the area of government procurement preceded the DML which seeks to facilitate overall economic activities between the cantons.[33] The Inter-Cantonal Agreement on Government Procurement entering into force in 1994 essentially transcribed the obligations of Switzerland under the WTO Agreement on Government Procurement (AGP) into domestic laws so that firms would not be put at a disadvantage *vis-à-vis* foreign firms situated in AGP member economies.[34] Reinforcing this point, Article 6 of the DML guarantees firms located in the cantons treatment equivalent to those granted to foreign firms under international agreements including the AGP. The DML specifically provides for non-discrimination at the cantonal and local levels with respect to most commercial activities, thus facilitating the creation of a more coherent national economy.

The transposition of international agreements into national legislation occurs either at the federal or cantonal level, depending on the competencies as assigned by the constitution. The legal framework on government procurement by the federal administration is the 1994 Federal Law on Government Procurement and the 1995 Ordinance that accompanies it.[35] Setting forth a government procurement regime in conformity with Switzerland's obligations as member of the AGP, the law administers the adjudication processes and appeals procedures for contracts above threshold levels beyond which government procurement at the central level of government is required to be open to bidding by suppliers from other AGP members (Table 1). The ordinance provides clarifications regarding the treatment of government procurements not covered by the AGP, including those occurring below AGP threshold levels and those which are not covered under Switzerland's schedule of concessions under the AGP. Notably, the ordinance also provides rules concerning non-discrimination among eligible bidders including foreign bidders.

Table 1. Thresholds for coverage of government procurements under different laws (thresholds according to international obligations)

	AGP	Federal Procurement Law	Inter-Cantonal Procurement Law
Supplies			
Central government	SDR 130 000	CHE 263 000	N/A
Sub-Central	SDR 200 000	N/A	CHE 403 000
Sectors	SDR 400 000	N/A	CHE 806 000
Services			
Central government	SDR 130 000	CHE 263 000	N/A
Sub-Central	SDR 200 000	N/A	CHE 403 000
Sectors	SDR 400 000	N/A	CHE 806 000
Works			
Central government	SDR 5 000 000	CHE 10 070 000/806 000	N/A
Sub-Central	SDR 5 000 000	N/A	CHE 10 070 000/806 000
Sectors	SDR 5 000 000	N/A	CHE 10 070 000/806 000

Source: WTO and RS.

The overarching coordinating body for government procurement at the federal level is the Purchasing Commission of the Federal Government (BKB). The sixteen members of the BKB are elected by the Federal Council and are mandated to facilitate coordination among over 40 purchasing units for goods and services present at the federal level. Including the BKB, a total of four bodies have been established to coordinate and facilitate government procurement practices at all levels of government within Switzerland (Box 3). At the federal level, two bodies function to coordinate procurement of goods and services (BKB) and construction services (KBOB). One body (KBBK) acts as a bridge between the federal and cantonal level and operates under a mandate to facilitate implementation of Switzerland's international obligations with respect to government procurement by cantonal authorities. Finally, the BUPK is responsible for facilitating inter-cantonal government procurement for goods, services and construction.

Box 3. The institutional setting for government procurement in Switzerland

In Switzerland, several commissions at the federal and cantonal levels deal with public procurement and are responsible for disseminating information and holding consultations on government procurement regulations, tenders and awards:

Purchasing Commission of the Federal Government (BKB) The purchasing Commission is a policy and coordination body of the Federal Government in the areas of goods and services.

Coordination of Federal Construction and Real Estate Services (KBOB) The KBOB has, in the area of construction, the same competences as the BKB. These entities have been kept separate because they deal with significantly different fields. Membership is made up of the units of the Federal Government dealing with most of the construction projects.

Government Procurement Commission: Federal State-Cantons (KBBK) The KBBK seeks faithful implementation by Switzerland of its international obligations in the area of government procurement. Its membership is composed of representatives of the cantons and the Federal Government involved in government procurement.

The Swiss Conference of the Cantonal Directors for Public Works, Land Management and Environmental Protection (BUPK) is the inter-cantonal authority in charge of government procurement. The BUPK has the competence to modify the Inter-cantonal Agreement, edict rules on tender procedures, modify thresholds, check the implementation of the inter-cantonal Agreement and adopt rules of procedures and organisation. The BUPK has elaborated executive directives and non-binding recommendations. The BUPK is also an information and advice organ to the cantons. At the level of each canton, no uniform structure has been established to control government procurement administratively. In general terms, the department or the unit in charge of government procurement follows and coordinates the implementation of the legislation.

Source: Swiss Authorities.

Strengthening transparency in government procurement is essential for ensuring that the market for public works, supplies and services is effectively open to international competition. In Switzerland, the Ordinance accompanying the Law on Government Procurement was amended in 2002 to require that all private or state-owned companies such as utilities, transportation, communications, defence, and construction that submit tenders for government procurement exceeding CHE 250,000 must make their bids public.[36] Government procurement announcements are increasingly being made through the internet by the government agencies conducting the procurement. The bilateral agreement between the EU and Switzerland on government procurement requires that procurement contracts at the central government level be published on the internet. At the central government level, a variety of announcements related to public procurement take place through the Swiss Official Gazette of Commerce (*www.shab.ch*). Similar official newspapers exist at the cantonal level. A Swiss Information System for Government Procurement (*www.simap.ch*) is currently built up. An indication of the breadth of agencies involved in procurement contracts appears on the Internet, see *e.g.* the website of the Federal Department of Defence, Civil Protection and Sports (DDPS) (to be found at *www.gr.admin.ch/internet/armasuisse/en/home.html*).

Difficulties concerning government procurement persist despite the implementation of a multilayered system of laws and institutions designed to assure market openness and transparency across the various public procurement entities of Switzerland. Evident progress in terms of publishing procurement contracts on the internet has been recorded. Sources highlight preference for the use of discretionary tendering processes in domestic procurement as an area for progress.[37] The employment of single tendering procurement processes has been more prevalent when procurements have taken place below AGP thresholds, meaning that procurements processes may have been more open in instances where the international obligations have been present.[38] At the cantonal and the communal levels, unsuccessful bidders for government procurement contracts may request and receive an explanation for an unfavourable decision, which is different from experiences at the federal level under which there is no obligation for the provision of procedural and technical transparency.[39] This would appear to overlook reasonable expectations related to Swiss obligations under the AGP if the instances occurred in procurement processes covered under Swiss concessions appearing in the AGP.

The establishment and designation of institutions to conduct appeal regarding decisions for the award of procurement contracts at both the federal and sub-federal levels have not produced unchallenged outcomes. At the federal level, a Government Procurement Appeals Commission (CRM) has been specifically established for the implementation of the AGP, which is independent and composed of a permanent president, six judges (including three lawyers), an information technology specialist, an architect and an engineer. At the cantonal level, appeals can be brought to the administrative court although each canton has its own procedures based on cantonal law. A parliamentary study published in 2002 identified a number of structural shortcomings within the context of government procurement in Switzerland.[40] Included among the findings were instances where decisions by the Federal Tribunal and CRM were sometimes in conflict. A weakness in process design appears to result in a situation where the cost of appeals processes sometimes outweighed expected benefits. Suppliers shared concerns by suppliers regarding the potential for retaliation by procuring bodies if they initiated appeals. Notably, appeals by surveillance bodies such as the Competition Commission are not possible. Similarly, absent a breach of international obligations, the BKB is likewise constrained. The context of government procurement in Switzerland reflects significant efforts towards progress and open room for improvement. Acknowledging these shortcomings, consultations were initiated late in 2004 regarding modifications to the Law on Government Procurement that would simplify and harmonise tendering procedures across all levels of government. With a comprehensive system of institutions addressing each level of government and facilitating coordination between them, a tangible foundation for progress is already in place.

2.2 Measures to ensure non-discrimination

The application of the non-discrimination principles, Most-Favoured-Nation (MFN) and National Treatment (NT), in making and implementing regulations aims at providing effective equality of competitive opportunities between like goods and services irrespective of country of origin and thus at maximising efficient competition on the market. The application of the MFN principle means that all foreign producers and service providers seeking entry to the national market are given equal opportunities, while national treatment means that foreign producers and service providers are treatment no less favourably than domestic producers and service providers. The extent to which these two core principles of the multilateral trading system are actively promoted when developing and applying regulations is a helpful gauge of a country's overall efforts to promote a trade and investment-friendly regulatory system.

2.2.1 Non-discrimination in domestic regulation

As a member of the WTO, Switzerland is obligated to apply the principle of most favoured nation (MFN) and national treatment (NT) in its trading relations. The key piece of legislation obliging Swiss Authorities to respect non-discrimination in the establishment and application of technical regulations (including SPS measures) is Article 4 of the Federal Law on Technical Barriers (THG). SECO is responsible for implementing the THG and thus for facilitating the administration of Article 4 of the THG within the context of the development and implementation of technical regulations. SECO is also responsible for implementing most of the WTO Agreements on trade in goods and services including the principles of non-discrimination reflected in those agreements.

SECO intervenes within Swiss regulatory processes to address discrimination by overseeing the development of regulations and by acting as a focal point for receiving and addressing information to other parts of the administration about discriminatory aspects of existing regulatory provisions and practices. Normally consulted at an early stage in the process of developing technical regulations, SECO acts in cases where draft regulations appear to depart from the principle of non-discrimination. On the basis of Article 4 of the THG or obligations under international agreements, SECO is able to provide comments or request modifications of draft regulations to improve alignment with the principle of non-discrimination. In cases where the improvements suggested by SECO do not result in satisfactory changes, SECO may take issues to a higher level of government generally the Federal Council.

In relation to difficulties arising from the application of existing regulations, SECO is mandated to receive and to address complaints relating to violations of non-discrimination principles. Although SECO is not required to respond directly to foreign enterprises, it is the designated office for governments acting on behalf of their enterprises to direct comments. In such cases, SECO is able to recommend modifications to legal provisions or administrative practices causing discriminatory impacts. In cases where SECO is unable to affect the necessary changes, it can bring issues to the attention of authorities at a higher level, again normally the Federal Council.

Cultural services

Switzerland is among the countries that maintain exemptions on the MFN obligation in the context of liberalisation under the GATS. With such MFN-exemptions, Switzerland seeks to secure the possibility of maintaining discriminatory measures vis-à-vis third countries in a number of services sectors, in contrast to the general GATS principle of progressive liberalisation of trade. For example, three such MFN-exemptions out of twelve relate to the audiovisual sector. First, with the member countries of the Council of Europe and with Canada (with which plurilateral or bilateral agreements exist), national treatment is granted on coproductions in the field of audiovisual works, which includes access to funding and distribution. Second, with European countries generally, Switzerland cooperates: in granting support through MEDIA and EURIMAGES; in measures related to allocation of screentime under the Council of Europe Convention on Transfrontier Television; and in other relevant measures. Finally, relevant to regulating access to a small market to protect the development of culture, concessions for the operation of radio and television stations are normally granted on the basis of bilateral agreements with non-Swiss persons from "[a]ll countries with whom cultural cooperation may be desirable".[41] Switzerland's list of exemptions from the non-discriminatory principles provides a perspective on the boundaries of non-discrimination as a legal principle and practical experience.

Investment

The degree to which foreign investors perceive that foreign invested businesses are treated in a non-discriminatory manner *vis-à-vis* domestic enterprises will often be factored into these investment decisions. Switzerland is generally viewed as an economy that welcomes foreign investment.[42] There is no pre-screening of foreign investment, no sectoral or geographic preferences for investments and no exchange controls or restrictions on capital flows. A longstanding difficulty stemming from the inability of foreigners to purchase residences and commercial property has been partially improved. Difficulties persist in terms of nationality requirements for the establishment of limited liability companies.

Swiss laws have historically prevented foreigners from purchasing property for commercial or residential reasons. This created difficulties for large investments which normally foresee purchases of land for facilities and foreign managers expecting to reside in Switzerland for durations long enough to justify purchasing a home. In 1997, the law was changed to enable the purchase of commercial real estate. In addition, it now allows foreigners to purchase homes as "primary residences", which is a significant step forward. However, a drawback remains in the fact that expatriate managers who do not reside in Switzerland for the required number of days on an annual basis remain unable to purchase homes in Switzerland.

Another context in which foreign investors perceive unequal treatment is in the area of corporate law. Although there are no laws that support or authorise private firms to limit or prohibit foreign investment or participation, the board of directors of a company in Switzerland must be composed of a majority of Swiss citizens residing in Switzerland. Additionally, one board member must be authorised to represent the company for issues such as signing documents and that person must also be a Swiss citizen residing in Switzerland. In some cases, these requirements do not seem to have posed significant difficulties while for others they have.[43] There is currently a legislative process working to remove this nationality requirement, and it is expected to come into force in 2007.

2.2.2 Preferential agreements

Regional trading arrangements (RTAs) are necessarily discriminatory as they generally involve trade and investment liberalisations to parties joining the agreements that are not equally applied to non-parties. Thus, RTAs represent a departure from the principles of MFN and NT. Growth in the numbers of RTAs over recent years has reached a level where countries such as Switzerland view negotiating RTAs as an exercise not so much to gain preferential access to the markets of trading partners, as to remove discrimination against domestic firms competing in those markets.

Attention to market openness considerations when negotiating RTAs is an important way to minimise discrimination *vis-à-vis* third countries and ensure that maximum benefits are attained from RTAs. Multilateralising liberalisation commitments reached at the bilateral or plurilateral level is an ideal approach that has been achieved only very rarely (such as in the case of Mexico with regard to investment liberalisation negotiated bilaterally and implemented multilaterally). But attention to market openness may also be assisted by attention to the transparency of RTAs so that third parties may more accurately forecast the impact of such agreements on their trade.

Box 3. An illustrative list of trade agreements to which Switzerland is a party

Customs Union Switzerland-Liechtenstein

EFTA (European Free Trade Association) Convention

Free Trade Agreement between Switzerland and the European Community, including a 2004 amendment on processed agricultural products

Agreement between the European Community and the Swiss Confederation on trade in agricultural products

Free Trade Agreements concluded in the framework of EFTA with the following countries: Turkey, Israel, Romania, Bulgaria, Morocco, PLO (Palestinian Liberation Organisation), Macedonia, Mexico, Croatia, Jordan, Singapore, Chile, Lebanon, Tunisia (and separate bilateral agreements on trade in agricultural products concluded in conjunction with the EFTA agreements)

Free Trade Agreement between Switzerland and Faroe Islands

Agreement on insurance services between Switzerland and the European Community Agreement on the Free Movement of Persons between Switzerland and the European Community

Agreement on Air Transport between Switzerland and the European Community

Agreement on Overland Transport between Switzerland and the European Community

Agreement on Public Procurement Markets between Switzerland and the European Community

Mutual Recognition Agreement between Switzerland and the European Community

Mutual Recognition Agreement between Switzerland and Canada

Mutual Recognition Agreement between Switzerland and the EEA EFTA States

Source: Swiss Authorities.

A commonly cited negative outcome from non-tariff related trade agreements is the case of mutual recognition agreements (MRAs) which are which are authorised under the WTO TBT Agreement as well as Article 14 of the THG. MRAs can reduce trade barriers existing between participants due to different technical regulations or standards; yet they tend to favour imports from partner countries while at the same time reducing market openness towards non-parties in relative terms with real discriminatory impacts on their exports in economic terms. The MRA between Switzerland and the EU is probably one of the most comprehensive MRAs outside of that existing between the EU member countries. This agreement applies only to products originating in the EU, the EEA, EFTA States and Switzerland. Currently, the contracting parties to this Agreement are in the process of changing the origin requirements in the MRA. Swiss Authorities have indicated that: "[a]s a consequence, the provisions of the MRA will, in future, be applicable to products irrespective of their origin." Consolidation and implementation of such an agreement would be a significant indication of multilateralising – or implementing in a non-discriminatory manner – liberalisation negotiated at a sub-multilateral level.

In order to make the agreement – contained in the first package of bilateral accords with the EU-15 in 2002 – to liberalise the movement of natural persons economically meaningful, the liberalisation of movement (which falls under mode 4 of the GATS) was accompanied by the mutual recognition of professional qualifications. This liberalisation is of significant value to the Swiss economy, particularly given that immigration is often a source of innovation. Mutual recognition may have the effect of reducing the market openness of the Swiss regulatory system to immigration from third countries. In this respect it is important to take into account the strict limitations imposed on immigration from non-EU-countries. Based on the Domestic Market Act/Law, citizens of non-EU-countries, when holding resident status, can invoke rules on the recognition of professional qualifications applying between the EU and Switzerland. Switzerland has a relatively liberal investment regime but similar to other OECD countries and as a means to meet the regulatory objective of maintaining high standards of service provision, it has not undertaken obligations under GATS to recognise professional qualifications from other jurisdictions. A difficulty in the implementation of the mutual recognition agreement on professional qualifications with the EU has been the need to create regulations to govern professions which presently are not under any formal regulatory regime such as air-traffic controllers. The vote this year on where to extend the liberalisation of the free movement of persons to the ten new EU members that joined in May 2004. Passage of the vote would increase the pool of labour available to contribute to economic growth in Switzerland and yet have complex overall implications for principle of non-discrimination.

2.3 Measures to avoid unnecessary trade restrictiveness

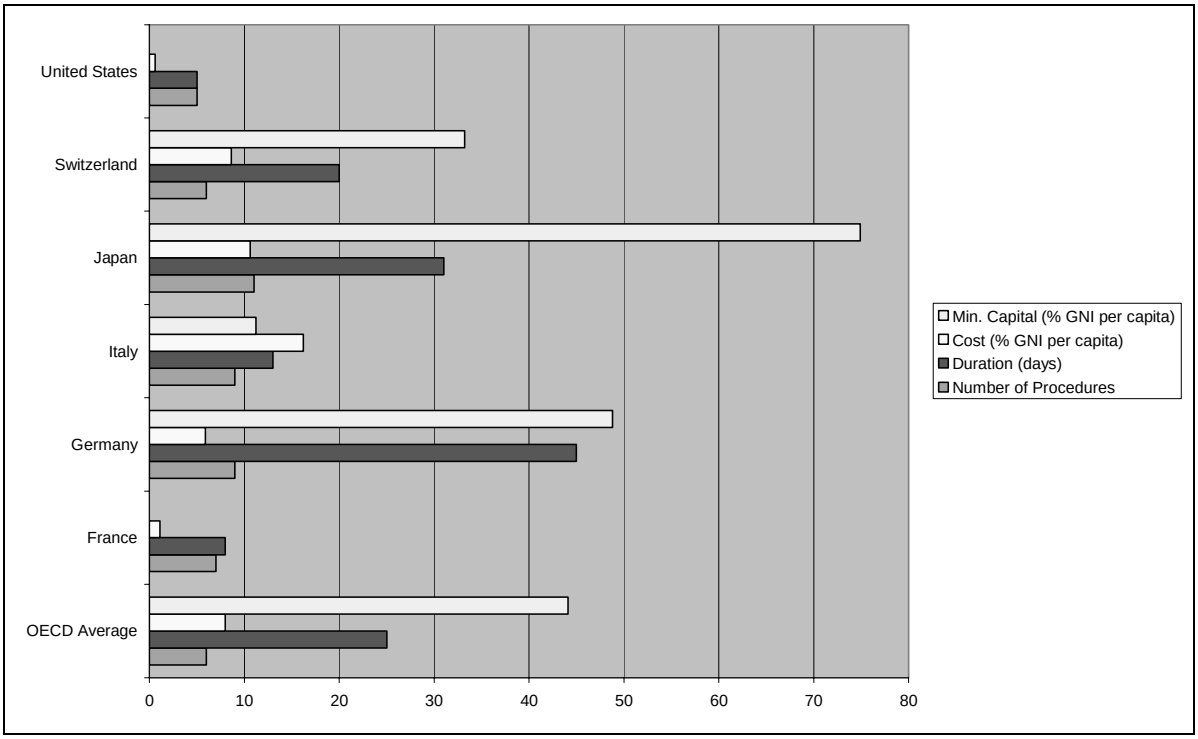
To attain a particular regulatory objective, policy makers should favour regulations that are not more trade restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create. Examples of this approach would be to use performance-based rather than design standards as the basis of a technical regulation, or to consider taxes or tradable permits in lieu of regulations to achieve the same legitimate policy goal. At the procedural level, effective adherence to this principle entails consideration of the extent to which specific provisions require or encourage regulators to avoid unnecessary trade restrictiveness and the rationale for any exceptions; how the impact of new regulations on international trade and investment is assessed; the extent to which trade policy bodies as well as foreign traders and investors are consulted in the regulatory process; and means for ensuring access by foreign parties to dispute settlement.

2.3.1. Assessing the impact of regulations on trade

Switzerland has a specific law designed to address the impact that regulations have on international trade. Similar to the TBT Agreement of the WTO, Article 4 of the THG (see non-discrimination) establishes as a principle that technical regulations should not create technical barriers to trade. Exceptions to this principle are allowed in cases of legitimate regulatory objectives including the: protection of public health, protection of the environment, prevention of deceptive practices and others, but, only if they do not constitute a means of arbitrary discrimination or a disguised restriction on trade. As in the case of potentially discriminatory aspects of proposed or existing regulations, SECO retains an oversight function and maintains regular contact with the different regulatory authorities on issues related to the impact of their regulations and practices on trade and investment. All proposals of draft regulations presented for adoption must contain a regulatory impact assessment (RIA), a statement concerning their compatibility with the international obligations resulting from the internal consultation and, within the context of TBT and SPS issues, the results of international notifications to the WTO member states.

Unnecessarily burdensome regulations also impact market openness. Although unnecessarily burdensome regulations and administrative practices or "red tape" may affect domestic and foreign enterprises without distinction from the perspective of the regulator, they often impact foreign trade and investment disproportionately due to the advantage local enterprises have in terms of knowledge of local customs and circumstances. While large foreign firms are often able to overcome unnecessarily restrictive rules and regulations due their more substantial resource base, small and medium-sized enterprises (SMEs) are particularly disadvantaged due to limited resources and administrative capacities. The impact of red tape on foreign SMEs is compounded not only by size, but by lack of familiarity with local business and regulatory culture. For this reason, the participation of foreign SMEs should to the extent practicable be sought out within the context of consultations regarding the development of rules and regulations.

Figure 10. Index of the administrative burdens for start-ups



Source: World Bank, 2005a.

With respect to regulations affecting investment, Switzerland ranks above the OECD average in the areas of minimum capital required to start a business and number of days required to complete the process, but matches the OECD average in terms of number of procedures and is below in terms of the cost of the process itself (see Fig. 10). Perhaps surprisingly, the amount of time necessary to start up a business in Switzerland is more than twice that of France despite the fact that the French process requires more procedures. It is important to note here that regulatory practices among the various cantons can diverge significantly.[44]

The utility of a well functioning RIA process to creating efficient regulation is underscored by a significant body of OECD work on regulatory reform, endorsed in the *1995 Recommendations of the Council of the OECD on Improving the Quality of Government Regulation* and re-affirmed in the *2005 Guiding Principles for Regulatory Quality and Performance*. In 1999, the Federal Council adopted the Guidelines of the Federal Council on RIA[45], partly as a result of the findings in a study conducted in 1997 which showed that roughly two thirds of federal legislative acts dated back less than twenty years. The cause of this growth in legislation was largely attributable to the need to design institutions to regulate such new fields as environment, social policy and international agreements. These regulations were increasing costs for businesses and undercutting economic growth.

Presently, RIAs must be addressed by all new federal laws and ordinances but the degree of analysis is less in-depth for ordinances and variations in the depth of analysis overall have been noted. At the cantonal level, only Berne and Soleure out of a total of twenty-six cantons apply a RIA similar to the one applied at the Federal level. Operationally, SECO is the key oversight body responsible for implementing the RIA process. Under the Swiss RIA, the regulatory agencies under which new regulations are being considered must prepare the actual RIA reports. SECO's role is to consult with the relevant agencies and to provide guidance and analytical support where necessary to assist in the development of the report. As the oversight body, SECO is also responsible for maintaining consistency in content of the RIA reports across agencies and over time. The RIA reports themselves must address five key points:

1. Is there an economic justification and is state intervention possible to address the regulatory objective?
2. What are the consequences of the proposed regulation on different categories of actors?
3. What are the implications for the economy as a whole?
4. Are there alternatives to regulation that can reasonably address the regulatory issue?
5. What are the practical aspects of implementation?

Shortly after the implementation of RIA in Switzerland, systematic consultations with SMEs about the implications of new laws and ordinances were introduced and are now customary. This step includes not only consultations with the SME Forum, but the implementation of an SME Compatibility Test to assess whether proposed laws and ordinances would impose unnecessarily negative impacts on SMEs.[46]

The implementation of RIA in Switzerland marked an important step towards instituting a process for ensuring more open and efficient regulations, however further progress in the quality of this new process remains on the horizon (see Chapter 2). Many of the general areas for improvements are related to insufficient political support behind the RIA process and lack of analytical resources. Areas for improvement from a market openness perspective include explicit consideration of trade and investment impacts within the RIA, which may to some degree already be assessed under point 2 above, but is not mandatory. As indicated earlier in the section on transparency, although foreign enterprises are not prevented from joining business associations regularly part of consultation processes, their ability to do so is not guaranteed under law. Given that an explicit objective of the consultation process is to tap expertise from the private sector in developing better regulations, more directed attention to soliciting quality input from foreign enterprises – which may have experience with similar regulatory objectives within a greater variety of regulatory environments – may be source of innovative and useful approaches.

From a market openness perspective, it is important to recognise that SECO, which is mandated to ensure implementation of international obligations, including those related to trade and investment is also the key body overseeing the development of the Swiss RIA. The Federal Constitution of 1848 placed foreign affairs, trade, tariffs and commerce within the exclusive competence of the Federal Government. The field of product safety legislation in the majority of product areas is regulated at federal level. In practice, some laws are implemented by Federal authorities while others are delegated to cantonal authorities for implementation with federal authorities playing a oversight function by ensuring consistency in application. In this light, the fact that most technical regulations adopted in Switzerland have been amended to some extent based on recommendations by SECO suggests that general aspects of market openness are considered within the development of the regulatory environment in Switzerland. Explicit and consistent inclusion of input from foreign parties could play a useful role in terms of diversifying input and supporting market openness.

2.3.2. The example of customs procedures

More clearly than in other areas, declining tariffs worldwide have made unnecessary administrative requirements in the area of customs a focus of attention in international trade negotiations. Increased customs efficiency serves to reduce costs related to border fees and, often more importantly, to reduce delays at borders that create costs inefficiencies, have gained importance as product cycles have shortened. The Swiss Customs Law[47] dating back to 1925 has recently been amended to create better coherence with EU customs regulations and to take account of advances in information technology. Currently, 90% of customs clearances are conducted online.[48] The Swiss Customs Administration generally receives support from the private sector for its reliability and efficiency, but some uncommon features exist which may be improved and external policy changes may create increasing challenges, as explained below.

An uncommon feature of the Swiss customs system is the design of the tariff system which can lead to increasing average applied tariff rates over time and thus reduce overall market openness. The Swiss customs system relies on specific tariffs based on the weight of imported goods for all tariff lines as opposed to the more common practice among advanced WTO members of applying specific tariffs to a selection of agricultural products, and relying on *ad valorem* tariffs for most other products. Due largely to the decreasing prices of agricultural imports between 2000 and 2004, the application of this system has resulted in an average applied tariff rate that increased from 8.9% to 9.3% at a time when most WTO members are decreasing their overall rates of tariff protection.[49] This system also has a regressive effect in the sense that heavier and generally less sophisticated goods are taxed more heavily than high quality and more expensive similar goods which will tend to be lighter, thus keeping domestic prices higher for less expensive goods and the reverse. Additional difficulties from the uncertainty faced by importers as duties are normally assessed on gross as opposed to net weight meaning that the weight of containers and packing material are taxed. Compounding this difficulty, a system of *tares* assesses an extra change on imported goods that are not adequately packed for shipment. Authorities are now considering modifying the system of *tares* to simplify requests for assessment of duties based on net weight.[50]

Unnecessarily strict application of rules may create economic and social costs beyond what is necessary to secure regulatory objectives. A case of this has been raised by business associations. Business associations believe here that a change in customs procedure would not require modification of existing rules or regulations but only improvement of administrative practice. To create incentives for accuracy by clerks employed to complete customs declarations, the Swiss Customs Law allows for the imposition of a sizable fine as well as criminal proceedings in cases of statistical errors – whether they lead to under or overpayment of duties. Although the law provides for discretion in the application of these penalties (depending on the severity of the offence), both the fine and criminal prosecution are routinely levied. While firms sometimes pay the fines on their employee's behalf, the clerk is left with a criminal record in a society that strongly stigmatises criminal records. In 2004 alone, 11 291 filing infringements were conducted under criminal law for statistical violations and fines totalling CHE 2.4 million were assessed. The turnover for clerks is above normal in Switzerland and the costs imposed on businesses are increased as a result. It is possible that more calibrated application of penalties may achieve regulatory objectives while reducing unnecessary economic and social costs.

Overall, the Swiss customs administration is considered efficient and modern. The Swiss customs system does have some unique features that may benefit from reconsideration, but resource difficulties may be more significant issue to consider in the near future. At a time when import volumes are increasing, cutbacks in funding for the customs administration may lead to shorter working hours at border checkpoints. Shorter office hours may negatively impact shipping times for goods flowing into and out of Switzerland and thus incur cost inefficiencies to Swiss exporters and increase prices for imports of intermediate and consumer goods. In addition, the process of continuing integration with the EU has led to deliberations over the redeployment of Swiss immigration officials from customs checkpoints (where they

are normally stationed) to inland positions. As a result, resources for immigration personnel may no longer be pooled with customs personnel at border checkpoints, thus potentially leading to further resource constraints on customs border administrations at a time when cross-border trade volumes are growing.

2.4. Encouraging the use of internationally harmonised measures

The application of different standards and regulations[51] for like products in different countries – often explained by natural and historical reasons relating to climate, geography, natural resources or production traditions – confronts firms wishing to engage in international trade with significant and sometimes prohibitive costs. There have been strong and persistent calls from the international business community for reform to reduce the costs created by regulatory divergence.[52] One way to achieve this is to rely on internationally harmonised measures, such as international standards, as the basis of domestic regulations, when they offer an appropriate answer to public concerns at the national level. The use of internationally harmonised standards has gained prominence in the world trading system with the entry into force of the WTO TBT Agreement, which encourages countries to base their technical requirements on international standards and to avoid conformity assessment procedures that are stricter than necessary to create market confidence.

2.4.1. The European influence

The Swiss approach to the development of standards is strongly influenced by its economic and geographic relations with the EU. Article 4 of the THG states that Swiss standards should be harmonised to those of its largest trading partner. In practice, this has generally meant harmonisation towards EU standards. While facilitating trade with the EU, this policy may or may not have negative impacts on market openness towards third countries. Swiss standards setting bodies apply the New and Global Approach concepts of the EU as the basis for elaborating technical regulations in Switzerland. In accordance with these two approaches, the technical regulations themselves include references to standards elaborated at the international level. In practice, fulfilment of theses standards by a manufacturer supports the perspective that the essential safety and health requirements encompassed by relevant technical regulations had been fulfilled. The New and Global Approach concepts cover mainly industrial products.

Box 4. The New and Global Approaches to harmonisation adopted by the European Union[53] and applied by Switzerland

The high level of integration between Switzerland and the EU – along with the intention to further this process – parallels with the need to harmonise technical regulations when diverging rules from EU Member States impair the operation of the common market; as recognised in the Treaty of Rome in Articles 100 to 102 on the approximation of laws. By 1985 it had become clear in the EU that relying only on the traditional harmonisation approach would not allow the achievement of the Single Market. As a matter of fact, this approach was encumbered by very detailed specifications which were difficult and time consuming to adopt at the political level, burdensome to control at the implementation level and requiring frequent updates to adapt to technical progress. The adoption of a new policy towards technical harmonisation and standardisation was thus necessary to actually ensure the free movement of goods instituted by the Single Market. The way to achieve this was opened by the European Court of Justice, which in its celebrated ruling on *Cassis de Dijon*[54] interpreted Article 30 of the EC Treaty as requiring that goods lawfully marketed in one Member State be accepted in other Member States, unless their national rules required a higher level of protection on one or more of a short list of overriding objectives. This opened the door to a policy based on mutual recognition of required levels of protection and to harmonisation focusing only on those levels, not the technical solution for meeting the level of protection.

The *Cassis de Dijon* principle recently implemented as a guiding principle for the development of Swiss regulations builds on the earlier adoption of the New and Global Approaches already operating in the EU. In 1985 the European Council adopted the **"New Approach"**, according to which harmonisation would no longer result in detailed technical rules, but would be limited to defining the essential health, safety and other[55] requirements which industrial products must meet before they can be marketed. This "New Approach" to harmonisation was supplemented in 1989 by the "**Global Approach**" which established conformity assessment procedures, criteria relating to the independence and quality of certification bodies, mutual recognition and accreditation. Since the New Approach calls for essential requirements to be harmonised and made mandatory by directives, this approach is appropriate only where it is genuinely possible to distinguish between essential requirements and technical specifications; where a wide range of products is sufficiently homogenous or a horizontal risk identifiable to allow common essential requirements; and where the product area or risk concerned is suitable for standardisation. Furthermore, the New Approach has not been applied to sectors where Community legislation was well advanced prior to 1985.

On the basis of the New Approach manufacturers are only bound by essential requirements, which are written with a view to being generic, not requiring updating and not implying a unique technical solution. They are free to use any technical specification they deem appropriate to meet these requirements. Products, which conform, are allowed free circulation in the European market.

For the New Approach, detailed harmonised standards are not obligatory. However, they do offer a privileged route for demonstrating compliance with the essential requirements. The elaboration at European level of technical specifications which meet those requirements is no longer the responsibility of the EU government bodies but has been entrusted to three European standardisation bodies mandated by the Commission on the basis of General Orientations agreed between them and the Commission. The CEN (European Committee for Standardisation), CENELEC (European Committee for Electrotechnical Standards) and ETSI (European Telecommunications Standards Institute) are all signatories to the WTO TBT Code of Good Practice. When harmonised standards produced by the CEN, CENELEC or ETSI are identified by the Commission as corresponding to a specific set of essential requirements, the references are published in the Official Journal. They become effective as soon as one standards body has transposed them at the national level and retracted any conflicting national standards. These standards are not mandatory. However conformity with them confers a presumption of conformity with the essential requirements set by the New Approach Directives in all Member States.

The manufacturer can always choose to demonstrate conformity with the essential requirements by other means. This is clearly necessary where harmonised European standards are not (or not yet) available. Each New Approach directive specifies the conformity assessment procedures to be used. These are chosen among the list of equivalent procedures established by the Global Approach (the so-called "modules"), and respond to different needs in specific situations. They range from the supplier's declaration of conformity, through third party type examination, to full product quality assurance. National public authorities are responsible for identifying and notifying competent bodies, entitled to perform the conformity assessment, but do not themselves intervene in the conformity assessment. When third party intervention is required, suppliers may address any of the notified bodies within the European Union. Products which have successfully undergone the appropriate assessment procedures are then affixed the CE marking, which grants free circulation in all Member States, but also implies that the producer accepts full liability for the product.[56]

The strength of the New Approach and the Global Approach lies in limiting legal requirements to what is essential and leaving to the producer the choice of the technical solution to meet this requirement. At the same time, by introducing EU-wide competition between notified bodies and by building confidence in their competence through accreditation, conformity assessment is distanced from national control. The standards system, rather than being a means of imposing government-decided requirements, is put at the service of industry to offer viable solutions to the need to meet essential requirements, which however are not in principle binding. The success of the New and Global Approaches in creating a more flexible and efficient harmonised standardisation process in the European Union heavily depends on the reliability of the European standardisation and certification bodies and on the actual efficiency of control by Member States. First, European standardisation and certification bodies need to have a high degree of technical competence, impartiality and independence from vested interests, as well as to be able to elaborate the standards necessary for giving concrete expression to the essential requirements in an expeditious manner. Second, each Member State has the responsibility to ensure that the CE marking is respected and that only products conforming to the essential requirements are sold on its market. If tests carried out by a notified body are cast in doubt, the supervisory authorities of the Member State concerned should follow this up.

Source: OECD (2004d), p. 39-40.

2.4.2. Standardisation activities

As a member of WTO, Switzerland is bound to the obligations of the WTO TBT and SPS Agreements under which regulators in Switzerland must take international standards as a basis for technical regulations at the domestic level (including certification procedures) and standards. Implementation of these obligations domestically is supported by Article 4 of the THG (see above) which provides that technical regulations, including conformity assessment procedures, are not prepared with the effect of creating technical barriers to trade.

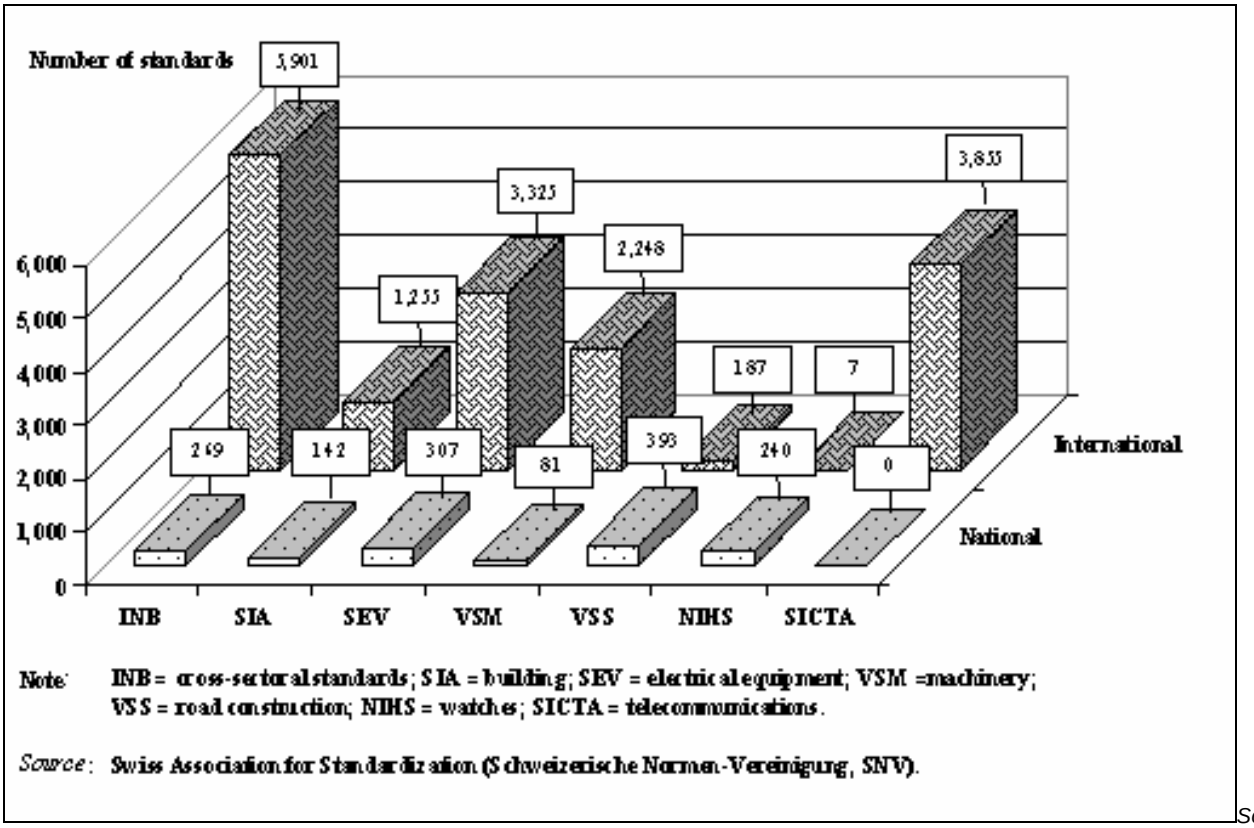
As illustrated in Figure 11, the vast majority of Swiss standards are already harmonised to international standards. The very few national standards that are not harmonised to international standards are explained by Swiss Authorities as ones which generally have no equivalent international counterpart which could replace the remaining national standard.

In Switzerland, the development and adoption of standards is performed by private standardization organizations which operate independently of the government. SNV, which is the main institution for interdisciplinary standardisation is joined by members including Electrosuisse, for standardization in the electrotechnical field, and the Swiss Information and Communications Technology Association (SICTA), in the telecommunication sector. Only for the fulfilment of duties defined in the ordinance on the notification of technical regulations and standards is there contract between the SNV and the Swiss Government.[57] Notably, the SNV is responsible for the operation of the Swiss enquiry point under the WTO TBT and SPS Agreements. The SNV and all its member bodies including Electrosuisse and SICTA subscribe to the WTO TBT Code of Good Practice.

These three standardisation bodies take account and participate actively in standardisation work at the international level. The SNV is member of CEN and International Organization for Standardization (ISO) and Electrosuisse is member to CENELEC and the International Electrotechnical Commission (IEC) while SICTA is member of the ETSI. As members in these international standards setting bodies and in accordance with the WTO TBT Code of good practice, Swiss standards setting organisations make broad use of standards developed at the international level.

SECO is responsible for implementing the THG which supports the development and implementation of technical regulations (including certification procedures) in a manner that creates a barrier to trade. This also means that whenever technical regulations refer to standards, SECO assess the degree to which international standards were referenced. Regulators have limited abilities to intervene in the activities of private standardization bodies. Concerns and comments regarding standards in Switzerland may be directly transmitted to SNV. Where Swiss standards are developed in a manner that departs from the WTO TBT code of good practice, foreign enterprises may transmit comments to SECO *via* their national authorities.

Figure 11. Progress in international harmonisation



Source: Swiss Authorities.

2.5 Streamlining conformity assessment procedures

In cases where the harmonisation of regulatory measures is not considered feasible or necessary, the recognition of equivalence of other countries' regulatory measures in attaining the same regulatory objective may be the most appropriate avenue for reducing technical barriers related to regulatory divergence. Despite the development of global standards, there are still many areas where specific national regulations prevail, preventing manufacturers from selling their products in different countries and from enjoying full economies of scale. Additional costs are also raised by the need to demonstrate the compliance of imported products with applicable regulations in the import country through testing and certification accepted in that country. Recognising the equivalence of differing standards applicable in other markets or of the results of conformity assessment performed elsewhere can greatly contribute in reducing these costs. The success of international endeavours to achieve mutual recognition is naturally reliant on the quality of testing, certification and accreditation. In order to ensure the adequacy of these activities to the needs of evolving markets, governments increasingly leave them in the hands of private entities.

2.5.1 Domestic and intergovernmental efforts

The implementation of legislation allowing for the recognition of equivalence is an important counterpart (or substitute) to conducting mutual recognition agreements (MRAs) (Table 2). It allows for the entry of products which meet regulatory objectives without incurring unnecessary costs or burdens on imports. It is also particularly important in the Swiss case where alignment of domestic regulations to EU standards may reduce market openness to some suppliers (Box 1). Swiss laws provide explicitly for the

recognition of foreign conformity assessments even in cases where no formal MRA exists with the originating country of the foreign producer. Paragraph 2 of Article 18 of the THG sets out two conditions that must be met in order for foreign conformity assessments to be considered equivalent to Swiss standards for import:

1. The conformity assessment procedures applied abroad fulfil the relevant requirements applicable in Switzerland and

2. The foreign conformity assessment body fulfils equal competence criteria as those required by Swiss law.

In cases where conformity assessment results by Swiss bodies are not recognized in a foreign country, Swiss Authorities are authorised to deny conformity assessment results produced in that country under paragraph 3 of Article 18. More a policy instrument than a policy objective, this provision of the THG allows Swiss Authorities to address situations where Swiss conformity assessments results are not recognised abroad. At the time this report is being written, this instrument has never been employed. Disuse of this instrument may result from the fact that its use requires the adoption of an ordinance taking into account overall economic effects. Responsible for implementing paragraph 2 of Article 18 of the THG, SECO is able to intervene, to the extent justified, in cases where domestic regulatory authorities are unwilling to recognise conformity assessment results.

Table 2. Indicative list of recent MRA initiatives

Partner	Partner	Sectors	Concluded	Effective date	Type of recognition
EU[58]	Switzerland	Telecom equipment		1.6.2002	CERT
		Electromagnetic compatibility		1.6.2002	CERT
		Electrical safety		1.6.2002	CERT
		Equipment and protective systems for use in potentially explosive atmospheres		1.6.2002	CERT
		Pharmaceutical GMP		1.6.2002	CERT
		Medical devices		1.6.2002	CERT
		Pressure equipment		1.6.2002	CERT
		Machinery		1.6.2002	CERT
		Personal protective equipment		1.6.2002	CERT
		Motor vehicles		1.6.2002	CERT
		Measuring instruments		1.6.2002	CERT
		Toys		1.6.2002	CERT
		Chemicals (GLP)		1.6.2002	CERT
		Construction plant and equipment		1.6.2002	CERT
		Gas appliances		1.6.2002	CERT
		Tractors		1.6.2002	CERT
Canada	Switzerland	Pharmaceutical GMP		1.5.1999	CERT
		Electromagnetic compatibility		1.5.1999	CERT
		Electrical safety		1.5.1999	CERT
		Telecom equipment		1.5.1999	CERT
		Medical devices		1.5.1999	CERT
UN ECE	UN ECE	Motor vehicles		28.8.1973	CERT
OECD	OECD	Chemicals	yes		- Guidelines and Good Laboratory Practices - Acceptance of Data

Source: Swiss Authorities.

Swiss conformity assessment bodies also participate in private-sector led initiatives. For instance, the Swiss conformity assessment bodies are members of the Worldwide System for Conformity Testing and Certification of Electrical Equipment's (IECEE) Scheme for the Mutual Recognition of the Testing Certificates for Electrical Equipment (CB Scheme) in the electrotechnical field. In the field of gas and water appliances, private sector led initiatives exist between the conformity assessment bodies of Switzerland, Germany, Austria, France and the Netherlands. The Swiss Authorities are not aware of all private sector led initiatives between Swiss and foreign conformity assessment bodies which may include approaches such as recognition on the basis of inter-laboratory comparisons programs and others.

2.5.2. Accreditation mechanisms

Recognition of the results of conformity assessment based on accreditation is strongly supported by Swiss Authorities. Accreditation in Switzerland is an activity of public authorities. The Swiss Accreditation body (SAS) participates actively in the different European and international cooperation schemes including: the European co-operation for Accreditation (EA); International Laboratory Accreditation Co-operation (ILAC); and the International Accreditation Forum (IAF), and has signed the relevant multilateral agreements.

2.6. Application of competition principles from an international perspective

The benefits of market access may be reduced by regulatory action condoning anticompetitive behaviour or by failure to correct anticompetitive private actions. It is therefore important that regulatory institutions make it possible for both domestic and foreign firms affected by anticompetitive practices to present their positions effectively. The existence of procedures for hearing and deciding complaints about regulatory or private actions that impair market access and effective competition by foreign firms, the nature of the institutions that hear such complaints, and adherence to deadlines (if they exist) are thus key issues from an international market openness perspective. These issues will be the focus in this sub-section, while a more detailed discussion of the application of competition principles in the context of regulatory reform can be found in Chapter 4.

The precise relationship between competition and market access are not always clear cut, but the Swiss context in which regulatory barriers to entry[59] are unlikely to be the main impediment overall (due to harmonisation with EU standards), supports the analysis that anticompetitive practices are an important reason for the significantly higher prices in Switzerland. From a market openness perspective, consideration of market openness principles within the evolution and implementation of competition policy in Switzerland could potentially do more to enhance the efficiency of the Swiss economy and lower prices, than increasing competition between domestic producers and services providers alone.

The Swiss competition policy framework is headed by the Federal Competition Authority (ComCo) run by a commission composed of between 11 and 15 members including a President and two Vice Presidents nominated by the Federal Council. The commission together with a modest permanent staff comprise ComCo and implements the Law on Cartels. Based on institutional resources devoted to competition policy, Switzerland ranked next to last out of 20 OECD countries included in a recent survey.[60] Revision of the law in 1995 led to the disappearance of some of the more transparent cartels in Switzerland, but these early successes were not followed by significant progress until 2003 when further revisions to the law and accompanying ordinances brought improvements. Among the more significant of these changes was a provision allowing for the fines to be applied upon a finding of illegal anticompetitive practice in contrast to previous rules which provided only a warning on the first affirmative determination and allowed for fines only after a second affirmative determination. In addition, the implementation of a leniency provision allowing for lesser fines to be applied to cooperating parties will facilitate the collection of information by ComCo. Presently, administrative sanctions may be implemented for horizontal, quantity and market sharing cartels, certain types of vertical agreements and abuses of dominant position and fines are capped at 10% of revenues over previous three-year period.

Broadly speaking, enhancing the competitive environment supports market openness by favouring the entry of efficient products, producers and service providers – whether domestic or foreign. Shortcomings in the Swiss competition framework when viewed from a purely domestic perspective are largely in line with those existing for competition policy from a market openness perspective, but nuances do exist. Institutionally, the political independence of the competition commission is particularly important as ensuring impartiality from a purely domestic perspective requires different institutional checks than ensuring consideration of the interests of foreign producers and service providers, particularly where the commission is constituted from domestic actors. Similarly, enhancing qualitative and quantitative capacity of staff should not overlook the benefits of training to increase understanding of the complex relationships between competition policy *vis-à-vis* market openness, and trade and investment impacts. Improving on deficiencies in international cooperation on competition matters is likely to be beneficial in both of the areas indicated above, beyond facilitating the effectiveness of ComCo on a technical level by providing increased access to information on foreign cartels.

The development of competition policy in Switzerland is marked by a recent beginning and gradual improvement. The deterrence effect of the currently competition policy framework has yet to be clearly reflected in domestic price levels. A 2003 report by the Price Inspector (a government agency implemented to monitor administered prices and eventually sanction abusive price setting by parties holding a dominant market position in Switzerland) declared that the lack of competition in the Swiss economy was the primary reason for high prices in Switzerland when compared internationally.[61] The characteristics of competition policy in Switzerland are similar to that existing under the related topic of government procurement, the relevant laws and institutions are already in place for progress beyond the current situation.

3. Assessing results in selected sectors

This section examines the implications for international market openness arising from current Swiss regulations in three sectors: electricity; telecommunications services; and automobiles and components. For each sector, an attempt has been made to draw out the effects of sector-specific regulations on international trade and investment and the extent to which the six efficient regulation principles are explicitly or implicitly applied.

3.1. Electricity

Although Switzerland has not made any commitments on energy services under the General Agreement on Trade in Services (GATS), it is highly dependent on trade in energy products and services to supply its domestic energy requirements.[62] Amounting to well over three quarters of its primary energy supply including fossil and fissile fuels, imports represented over 22% of total energy expenditures and 3.4% of total imports.[63] Switzerland is a net exporter of electricity and records an average annual trade surplus valued at CHE 0.5 - 1 billion. Reflecting Switzerland's geographic position in the heart of Europe, international trade and investment in electricity is important to the Swiss economy in terms of inward and outward flows. Cross-border flows of electricity have increased significantly over recent years, particularly with Italy. In 2002, cross-border capacity with France, Germany, Austria and Italy stood at 5350MW, 2750MW, 3000MW and 4550MW, respectively. In early 2005, new capacity totalling 1300MW was commissioned to ease chronic bottlenecks at the San Firoano-Robbia interconnection with Italy, where net transfer capacities (NTC) for Swiss operators was increased to 3850MW for 2005 (up from 2800MW in the previous year). Swiss electricity providers have made considerable investments abroad in such diverse economies as Italy, Hungary, the Czech Republic and Norway. Foreign companies have also made sizable investment in Switzerland. Major suppliers such as Atel and BKW have foreign shareholdings upwards of 11.7% and 20% and AnAlpin 100%.

The domestic electricity sector is dominated by four large providers[64] and derives 60% of total output from hydroelectricity and the remainder from five nuclear plants. The Swiss electricity sector is highly fragmented with distribution networks that are under local and cantonal ownership and control. Competition is limited due to *de facto* and – in some cantons – legal monopolies. The regulation of electricity is further complicated at the local level where grid owners have authority over pricing decisions and access to their networks in a situation where surplus revenues from electricity tariffs often cross-subsidise commercial and social activities (*e.g.* public lighting) to which communities have become accustomed. This diversity of influences is reflected in the wide variation of prices charged across different types of consumers that result in differentials of up to four fold in some cases. On average, households pay 55% more than large business with negotiating power and SMEs are often able to secure discounts of up to 30% percent.[65] Despite progress since 1997 when the cost of electricity in Switzerland was ranked second highest among International Energy Agency member countries, Switzerland ranked fourth in 2002.[66]

The high price of electricity has been a key concern of policymakers that have worked to bring more competition within the domestic electricity sector. Added support for reform results from the new EU directive[67], which requires increased liberalisation within electricity markets to enable efficient trade among EU member economies and could negatively affect Swiss-EU trade without further domestic reforms. A significant setback for regulatory reform in Switzerland generally and specifically for the electricity sector resulted from a popular referendum in 2002 that rejected important reforms to implement a framework to enable greater competition across the domestic electricity sector. A blackout in neighbouring Italy occurring in 2003 stimulated further discussions within Switzerland over three key issues behind the 2002 referendum including universal grid access, security of supply and the need for strong regulatory authority. More recently, a legal ruling at the federal level found that the Competition Law (specifically designed to address trade-restrictive) does provide sufficient basis for removing certain regulatory barriers to entry concerning electricity at local level. Cantons might however try to attempt to oppose a legal monopoly to counter the federal competition law.

Extensive public consultations have in the second half of 2004 resulted in the Draft Law on Electricity Power Supply (LEPS) and an Amendment to the Law on Electricity (LE, currently in force). Passage of the LEPS and the LE over which Parliament began deliberations at the beginning of this year would represent a significant step in the reform of the electricity sector and the market openness of the sector. The Federal Council wanted passage of the LE in 2005, allowing Switzerland to meet the essential requirements of an EU regulation on reforms to facilitate cross-border electricity trade.[68] Under the LEPS, liberalisation was foreseen in two steps including liberalisation for all non-household consumers upon promulgation in 2007. Five years later, liberalisation would have been offered to households. In case of approval of this further step in the reform, households would then have been able to choose to remain with incumbent suppliers under specified conditions for service, or to choose new providers from the market. However, the Parliamentary Commission has not treated the LE with priority and has instead modified the LEPS such that it now provides for a complete market opening, including for households, by entry into force of the LEPS. The LEPS enables fines of up to CHE 100 000 to address illegal activities including: the prevention of unbundling of supply and transmission; failure to pass cost reductions on to consumers; and the calculation of tariffs based on inflated costs and prevention of third party access to transmission networks.

Existing and potential foreign electricity providers will benefit from the LEPS which creates an Electricity Commission (ElCom) with authority over cross-border electricity trade and relevant aspects of the Swiss electricity market and transmission networks. Consonant with market openness principles, it is mandated to ensure non-discriminatory cross-border trade and in that connection has jurisdiction over areas of electricity not already covered by other regulatory bodies including in the area of standards. Reflecting market openness principles in its mandate, ElCom has authority to prohibit discrimination between market entrants provided they meet general Swiss business laws and in the case of investment in facilities, the Electricity Law. Although ElCom is not itself enabled to sanction firms, it is able to order third party

access to transmission networks in the form of an injunction. Within the areas under its jurisdiction, ElCom is able to review and order end-use tariffs subject to a transition period, but defers to the Competition Authority on non-network pricing issues such as mergers, and received input from the Price Surveillance Authority on price decisions. Attention to addressing public concerns is reflected in ElCom's mandate not only to ensure third party access and non-discrimination, but to monitor the market for medium- and long-term threats to security and supply as well as to pursue goals to territorial solidarity. Passage of the LEPS and LE would mark significant progress by establishing a framework for improving competitiveness within the electricity sector founded on market openness principles and democratic input.

3.2. Telecommunications services

Switzerland's market access commitments under the Fourth Protocol of the GATS along with subsequent revised commitments make the domestic telecoms sector "one of the most liberal and competitive environments among WTO" according to the 2004 Trade Policy Review of Switzerland conducted by the WTO Secretariat. Although issues concerning unbundling of the local loop remain to be fully resolved, liberalisation and market openness in the Swiss telecoms services sector has improved significantly since the implementation of the 1998 Telecommunications Act. Prices for fixed-line usage dropped by 15% in 1999 and by a further 25% in 2000.[69] Swisscom (previously the government monopoly suppler for telecoms services) continues to hold market shares of 84, 66 and 47% for local, national and international calls, respectively, partly as a result of anticompetitive practices. Contrasting with the situation in the electricity sector, prices for residential fixed-line usage is lower than for businesses. Presently, more than 50 Swiss and foreign companies offer fixed-line services in Switzerland. Liberalisation of the market for mobile phones in 1999 has seen the emergence of three main companies although Swisscom still maintains a 68.1% market share.

The telecoms sector in Switzerland demonstrates both the benefits of market liberalisation and an incomplete consolidation of gains expected from liberalisation due to competition related shortcomings in market openness. With similarities to the electricity sector, the fixed-line telecoms market is fragmented. Although the average cost of access to leased lines is lower than international averages, wide variations existing across regions with particularly high prices in non-metropolitan areas where alternatives to Swisscom are not present.[70] Legislative and regulatory efforts since the implementation of the 1998 Telecommunications Act have focused on removing the barrier to access represented by Swisscom's continued control over the local loop. A reform to the Law on Telecommunications implemented in April 2003 was though to have been sufficient at the time to enable the Federal Communication Commission (ComCom) to order Swisscom to provide unbundled access to the local loop. However, a decision in February 2004 by ComCom that Swissscom provide unbundled access (which included specification of rates to be charged for fixed-line leases to competitor Sunrise) was overturned at the federal level in October of that same year. The decision at the federal level cited that the absence of a law specifically regulating fixed-line charges and indicated that without such a law, ComCom does not have the authority to make a decision in that area. Work began in the lower house of Parliament in October 2004 to amend the Telecommunications Act in a manner that would allow ComCom to implement unbundling.

3.3. Automobiles

Switzerland's historical effort to support harmonisation towards international standards reflects a clear economic interest and current effort to liberalise the domestic automotive and parts market could have important and positive implications for market openness. Switzerland does not have an entirely indigenous automobile industry but is an important developer and manufacturer of high-tech and high-precision parts and equipment-making machines for the international automotive industry. The automotive sector in Switzerland is a major employer and source of economic activity that contributes roughly USD 60 billion to the domestic economy annually. Prominent automobiles manufacturers such as the Mercedes and BMW

incorporate components such as doors, heating and insulation systems, safety belts and others that have been developed and produced in Switzerland.

Switzerland was party to the Agreement of the United Nations Economic Commission for Europe of 1958 concerning the Adoption of Uniform Technical Prescriptions (UN ECE Agreement). Under the framework of the UN ECE Agreement the member states have so far adopted around 120 regulations establishing technical requirements for automobiles and parts. The 1958 Agreement should lead to mutual recognition of national authorizations in those fields where the different member states transpose into national law and implement the mentioned regulations. To date, Switzerland has implemented most of the 120 regulations.

The link between regulatory reform and market openness is underlined in this example where reform in the area of competition policy will likely foster significant improvements in market openness that are independent of explicit international liberalisations. With similarities to the previous two sectors, the Swiss market for automobiles and parts has traditionally reflected high levels of market segmentation due to the establishment of selective trading arrangements by major auto producers and importers that have resulted in new car prices ranging from 5% below to 25% above those in the EU.[71] Reforms that came into force at the beginning of 2003 seek to liberalise the Swiss automobile and parts industry which realised a turnover of over 271 thousand vehicles in that year.[72]

In 2002, ComCo decided to liberalise the Swiss automobile industry by making a number of practices illegal in Switzerland which had formerly been allowed under EU law based on a "block exemption".[73] Already prior to the reform of the general competition legislation where the transition period ended on 1 April 2005, a number of vertical arrangements imposed by producers on car dealers were declared illegal (*e.g.* the interdiction of passive sales to customers out of territory assigned to the dealer, the ban on intra-brand trade among dealers, fixing of minimal or fixed resale prices); this occurred by way of an amicable settlement (Citroen) and a consecutive interpretative "communication" by Comco based on the then existing cartel law. The manufacturer practice of voiding new vehicle warranties on cars purchased in neighbouring countries or *via* parallel import (which previously kept this market segment down at roughly 3% of the Swiss market) also became illegal.[74] Same mark dealers based in Switzerland are now able to sell, service and repair vehicles brought in from third countries without violating warranty rules. Independent auto parts producers and dealers are also expected to benefit from the new rules as dealers are now able to enter into service contracts and provide repairs in which they offer original equipment, original equipment manufacturer (OEM) or aftermarket parts of "matching quality" to customers without violating warranty rules. These changes are likely to have important market openness implications for auto parts producers internationally. The reforms implemented to stimulate competition in the automobile and parts market are expected to change the structure of the Swiss market and provide increased demand for garage dealerships that have declined by between 3 to 5% over the past three years to roughly 5 400 companies and 39 000 people employed.

4. Conclusions and options for policy reform

4.1. General assessment

Switzerland is a prosperous medium-sized economy that has strong trade and investment linkages with the global economy. Switzerland's prosperity is a reflection of its ability to manage its economic relationship with the global economy successfully, but the current slow rate of economic growth underlines significant shortcomings in domestic product market competition. Gains in the efficiency of the domestic economy resulting from regulatory reform will be needed for Switzerland to bridge the gap that has opened up between its domestic rate of growth and that of most other OECD countries. Attention to market openness principles throughout this process of reforms will ensure that the development and implementation of regulatory reforms enable the gains expected.

Switzerland has been described as a trade agreement among 26 cantons. Seen in this way one could qualify market integration within Switzerland as very high with respect to the free movement of goods and as imperfect in the case of services. With respect to labour no barriers exist except for foreigners who do not have yet the status of residents. The movement of capital is free but may be distorted due to differences in taxation at the sub-federal level. Efforts to reform the domestic economy seek to create a higher level of coherence between the cantons that will enable efficient economic activities to displace inefficient ones throughout the domestic economy. The efforts of policymakers to facilitate regulatory reform towards this end are evident in the multitude of institutions, laws and amendments to laws that have been implemented over the last decade. The Domestic Market Law (DML) is clear in its objective of removing regulatory barriers to economic activities between the Swiss cantons and municipalities. The Law on Technical Barriers to Trade (THG) enhances the DML and market openness by addressing regulatory barriers to trade that are not necessary to achieving legitimate regulatory objectives, whether they are domestic of affect international trade. Recent reforms of the Law on Cartels seek to assist efficient economic activities to grow and spread to areas where they have previously been blocked by anticompetitive behaviour.

4.2. Recommendations

1. Better integrating market openness perspectives within the reform process would benefit growth and welfare, including the establishment of an official channel to receive comments from foreign parties on regulations and administrative practices.

An element of the reform process posing a significant challenge for policy makers is the potential for deadlock due to the rights to popular referenda. In Switzerland, the work of regulatory reform is therefore as much an issue of good communication as it is about good design and implementation. As a result, the Swiss reform process is most meticulous about transparency; current reforms in this sector appear to focus on making it more efficient also. However, although foreign parties are not prevented from learning about proposed legislation, there is no explicit obligation to solicit foreign input within the legislative process.

Swiss legislation, most notably the THG (law on technical obstacles to trade) explicitly seeks to reduce *discrimination* in areas of economic activity that have been liberalised to foreign entry. The State Secretariat for Economic Affairs implements this law by overseeing the development of laws and ordinances and reviewing existing ones over which complaints have been received from the governmental authorities of foreign enterprises. By reducing the number of steps needed to share comments with authorities, positive interactions for reforms would be facilitated.

2. Implementing a standardised process allowing foreign enterprises to lodge appeals would further strengthen market openness.

Formal decisions by authorities usually indicate available means of appeal. It is more difficult to engage action in court when practices by authorities do not give rise to formal decisions.

3. Attention to maintaining transparency within the negotiating process will reduce the discriminatory impact of such agreements on third parties.

The growth in regional trading arrangements (RTAs) over recent years has made the negotiation of agreements a matter of reducing discrimination against own firms competing in foreign markets, rather than seeking preferential access to those markets.

4. A specific obligation for Swiss RIAs to consider market openness implications will help to ensure against mis-assessments of proposed regulatory impacts.

The recent establishment of a mandatory regulatory impact analysis (RIA) at the federal level is an important step towards *reducing unnecessary restrictiveness in regulations* and promoting the emergence of a more liberal economic environment. However, the uneven distribution of analytical capacity across the Swiss regulatory system affects the quality of RIA reports. The lack of formal commitment to consulting foreign parties and the absence of an obligation to consider impacts on foreign trade and investment within RIAs, enhances the potential that market openness impacts (negative or positive) may be overlooked in the assessment of proposed regulations.

5. Strengthening rather than safeguarding market openness towards trade and investment with economically vibrant regions economies outside Europe should become a priority.

Geographic and economic proximity as well as the size of the EU market makes the *harmonisation* of Swiss regulations *to international standards* developed in EU bodies a clear approach to increasing trade with its largest trading partner. Rapid progress in alignment of Swiss to EU standards is evident, but attention should be paid to reducing the possibility of *de facto* discrimination *vis-à-vis* third countries. The rules on accepting the *equivalence* of foreign conformity assessments contained in the THG reduces this possibility. Overall, by engaging harmonisation towards international standards via mutual recognition agreements and by establishing a framework for accepting the equivalence of foreign conformity assessments, Switzerland has adopted an integrated policy approach to market openness in the areas of standards. Continued efforts to develop market openness in a more general sense will go well beyond the approach of standardisation and will become increasingly important.

6. Increase the capacity of competition policy authorities to emphasise the importance of trade rules and market openness principles, as this will enable better consolidation of economic benefits from already implemented liberalisation commitments as well as from future liberalisations.

Competition in Switzerland is affected by the consensus-based culture, the product of a severe environment that has rewarded co-operative behaviour. The consensus-based culture is also reflected in the institutional requirement to consult all interested parties. The complex topography and the long confederate history of the country have further supported the development of distinct regional approaches to regulating a variety of areas in the modern economy. The use of surplus revenue from locally regulated prices to support economic or social activities in other regulatory fields, *i.e.* the existence of cross-subsidisation makes the implementation of effective competition both a regulatory reform and a cause of reform. Yet, the greatest gains to domestic economic competitiveness and market openness will result from further progress in stimulating domestic market competition for goods and services including in areas that remain beyond the remit of strong government interference today. The significance of gains that result from the reform of competition policy in the automotive sector demonstrates the critical importance of market openness considerations in the design and implementation of competition policy.

NOTES

1. World Bank (2005b). This figure is based on the Atlas method and purchasing power parity (PPP).
2. Ibid.
3. OECD (2004), p. 9.
4. OECD (2004), p. 15.
5. WEF (2004), p. 493.
6. Ibid.
7. Cotis, Jean-Phillipe (2005), p. 11.
8. EIU (2004), p. 29.
9. WEF (2004), p. 493.
10. Ibid.
11. WTO (2004c), p. 2.
12. Bureau de l'intégration. Trade statistics record the export country as the country where the last transformation of the product occurred. This has an impact on landlocked Switzerland. For instance, crude oil imports will be recorded as originating from the country in which it was refined e.g. the Netherlands, and not necessarily from where it was sourced, e.g. from Libya.
13. See Annex I.
14. See: USFCS (2004b) and DG Trade, European Commission (2005).
15. See: USFCS (2004b).
16. Switzerland ranked 41 out of 60 countries in a survey of business managers based on the question: "Competition legislation in your economy is not efficient in preventing unfair competition."
17. WEF (2004), p. 493.
18. Coverage of countries varies by topics period, more detail can be found in OECD (2005b). OECD area: Australia, Austria, Belgium-Luxembourg, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States. Non- OECD area: Baltic countries: (Bulgaria, Croatia, Romania, Russia, Slovenia, Ukraine, Serbia and Montenegro); Asia (non-OECD): (China, Chinese Taipei, Hong Kong (China), India, Indonesia, Malaysia, Philippines, Singapore and Thailand, Near and Middle East, Africa, and Latin America: (Argentina, Brazil and Chile).
19. OECD (2005b).
20. See: Groupe de travail interdépartemental "Croissance" (2002): Mesures pour une politique économique orientée vers la croissance", Secrétariat d'Etat à l'économie (SECO), série d'études no.8f.
21. WTO (2004b), p. 10.
22. Ibid., para. 35.
23. Ibid., para. 26.

24. Members include: Iceland, Liechtenstein, Norway and Switzerland.

25. RVOG RS 172.010 and RVOV RS 172.010.1, respectively.

26. RS 170.512.

27. EIU (2004), p. 8-9.

28. In accordance with established terminology in the WTO TBT Agreement, technical regulations are documents with which compliance is mandatory, while standards provide rules and guidelines for common and repeated use but compliance with them is not mandatory.

29. RS 170.512.

30. According to Article 7 of the Law on Technical Barriers to Trade (THG; RS 946.51) and section 3 of the Swiss Ordinance on the notification of technical regulations and standards (NV; RS 946.511), the texts of adopted technical regulations shall be communicated upon request at an international level according to the obligations of applicable international Agreements (e.g. Article 10 of WTO TBT Agreement). Provided by Swiss Authorities.

31. RS 946.511.

32. WTO (2004c), p. 67.

33. RS 943.02.

34. RS 172.056.4.

35. RS 172.056.1; RS 172.056.11, respectively.

36. USTR (2005), p. 587.

37. Ibid.

38. WTO (2004b), p. 121.

39. USFCS (2004b).

40. Organe parlementaire de contrôle de l'administration (2002).

41. WTO (1995), p. 2.

42. WTO (2004c), USFCS (2004b) and DG Trade (2005).

43. USFCS (2004b) and WTO (2005b), p. 23-4, respectively.

44. USFCS (2004b).

45. Directives du Conseil fédéral du 15 septembre 1999 sur l'exposé des conséquences économiques des projets d'actes législatifs fédéraux 1999, FF 2000 986.

46. See Chapter 2 for further details regarding the SME Forum.

47. RS 631 0.

48. WTO (2004c), p. 44.

49. Ibid., p. 45.

50. Ibid.

51. In accordance with established terminology in the WTO TBT Agreement, mandatory technical specifications are referred to as "technical regulations", while rules and guidelines provided for common and repeated use but with which compliance is not mandatory are referred to as "standards".

52. This call has been made in particular by the European and American business communities in the context of the Transatlantic Business Dialogue (TABD). In its reports, the TABD has advocated that governments overcome diverging positions at an early stage of the policy-making process and to give more emphasis on

international standards in the regulatory framework, with a view to promoting global competitiveness (for example, see TABD, 1999).

53. See Dennis Swann "The Economics of the Common Market", Penguin Books, 1995; European Commission "Documents on the New Approach and the Global Approach", III/2113/96-EN; European Commission, DGIII Industry, "Regulating Products. Practical experience with measures to eliminate barriers in the Single Market"; ETSI "European standards, a win-win situation"; European Commission "Guide to the implementation of Community harmonisation directives based on the new approach and the global approach (first version)", Luxembourg 1994.

54. Decision of 20 February 1979, Cassis de Dijon, Case 120/78, ECR p.649.

55. Energy-efficiency, labelling, environment, noise.

56. See the Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the liability for defective products.

57. RS 946.511.

58. A parallel agreement (same product scope) has been concluded with the EEA EFTA States (Norway, Iceland, Liechtenstein). The Agreement also entered into force on 1 June 2002.

59. With the potential exception of agriculture.

60. RS 251 and OECD (2004a), p.104.

61. Price Inspector (2003).

62. "However, under "Business services", both Switzerland and Liechtenstein have undertaken specific commitments on "Services incidental to mining, excluding prospection, surveying, exploration and exploitation (part of CPC 883 and part of 5115)". Under the GATT, import duties have not been bound on gas, petroleum, and related products." See: WTO (2004c), p. 110.

63. Ibid.

64. OECD (2004a), p. 107.

65. Ibid.

66. WTO (2004c), p. 113.

67. Directive 2003/54/EC.

68. Regulation 1228/2003/EC.

69. EIU (2004), p. 20.

70. WTO (2004c), p. 119.

71. USFCS (2004c).

72. Ibid.

73. Ibid.

74. Ibid.

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