ENHANCING MARKET OPENNESS, INTELLECTUAL PROPERTY RIGHTS, AND COMPLIANCE THROUGH REGULATORY REFORM IN

ESTONIA

ABSTRACT

This report presents an analysis of Estonia's trade policy-related institutions and regulations taking into account their potential influence on market openness. The analysis covers the following dimensions: transparency, non-discrimination, trade restrictiveness of regulations, harmonisation towards international standards, streamlining of conformity assessment procedures, intellectual property rights and compliance. Where appropriate, the working paper puts forward recommendations for regulatory reform with a view to further enhancing market openness and thus Estonia's capacity to leverage international trade and investment for economic growth.

Keywords: Estonia, Trade policy, Market openness, Investment, Transparency, Non-discrimination, Trade restrictiveness, Conformity assessment, Intellectual property rights, Standards, Regulatory reform, Trade reform, Compliance.

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The Working Party of the OECD Trade Committee discussed this report and agreed to make the findings more widely available through declassification under its responsibility. The study is available on the OECD website in English: *www.oecd.org/trade*.

Table of contents

Tables

Figures

Boxes

Acronyms and abbreviations

BCCA	Baltic Sea Chambers of Commerce Association
BIAC	Business and Industry Advisory Committee
BOI	Binding origin information
BRIICS	Brazil, Russia, India, Indonesia, China and South Africa
BSA	Business Software Alliance
BTI	Binding tariff information
CCG	Country Commercial Guide
CEN	European Committee for Standardisation
CENELEC	European Committee for Electrotechnical Standards
CET	Common External Tariff
CRTA	Committee on Regional Trade Agreements (WTO)
EC	European Commission
ECCI	Estonian Chamber of Commerce and Industry
ECS	Estonian Centre for Standardisation
EOCP	Estonian Organisation of Copyright Protection
EEA	European Economic Area
EEK	Estonian kroons
EIU	Economist Intelligence Unit
ESEA	Estonian Business Association
ETSI	European Telecommunications Standards Institute
EU	European Union
EUR	Euro
EVEA	Estonian Association of SMEs
EVS	Estonian Centre for Standardisation
FDI	Foreign direct investment
FIE	Foreign invested enterprise
FTP	File transfer protocol
GATS	General Agreement on Trade in Services (a WTO agreement)
GATT	General Agreement on Tariffs and Trade (a WTO agreement)
GDP	Gross domestic product
GPA	Agreement on Government Procurement (a WTO agreement)
IAF	International Accreditation Forum
ICT	Information and communication technology
IEC	International Electrotechnical Commission
IFPI	International Federation of the Phonographic Industry
IIPA	International Intellectual Property Alliance
IPR	Intellectual property rights
ISO	International Organisation for Standardisation
ISPs	Internet service providers
IT	Information Technology
MFN	Most Favoured Nation

MRA	Mutual recognition agreement
NT	National Treatment
NTE	National Trade Estimates (a USTR publication)
OECD	Organisation for Economic Co-operation and Development
Operational Programme	*Operational Programme for the Development of Economic Environment*
P2P	Peer-to-peer
PCT	Patent Cooperation Treaty
PPA	*Public Procurement Act*
RIA	Regulatory impact assessment
RTA	Regional trading arrangement
SDoC	Suppliers' declaration of conformity assessment
SIMAP	System of Information on Public Procurement
SME	Small and medium-sized enterprises
SPS Agreement	Agreement on the Application of Sanitary and Phytosanitary Measures (a WTO agreement)
SPS measures	Sanitary and phytosanitary measures
TCB	Tax and Customs Board
TBT Agreement	Agreement on Technical Barriers to Trade (a WTO agreement)
TED	Tenders Electronic Daily
TRIPS	Trade-related intellectual property rights
TRPM	Trade Policy Review Mechanism
UNCTAD	United National Conference on Trade and Development
UPOV	Union for the Protection of New Varieties of Plant
USFCS	United States Foreign Commercial Service
USTR	United States Trade Representative
VAT	Value added tax
WCO	World Customs Organisation
WCT	WIPO Copyright Treaty
WIPO	World Intellectual Property Organization
WPPT	WIPO Performances and Phonograms Treaty
WPTC	Working Party of the Trade Committee

Executive Summary

A strong commitment to meeting the Maastricht criteria by the end of 2009, and entering the Euro zone at the latest in 2011, is underpinned by the Government's *State Budget Strategy of Estonia* which supports a balanced budget over the medium- and long-term. In combination with an open and non-discriminatory regulatory framework for trade and investment, this commitment to sound macroeconomic policy has contributed to a domestic economy delivering rates of real GDP growth averaging more than 8% *per annum* from 2000 through 2007. Estonian economy was hard hit by the financial crisis in 2008 resulting in a GDP contraction of -3.6% for 2008, and it is projected to contract by -8.5% in 2009. A return to positive GDP growth is expected in 2010. Conscious effort by Estonian policymakers to shift activities towards high-tech sectors was important for economic growth *prior* to the international financial crisis. Continued effort on this front is likely to be an important component of recovery, once under way.

Although Estonia's external trade policymaking falls under EU competence, it nevertheless maintains a trade bureaucracy to represent Estonian national interests at the EU level. Its trade bureaucracy also plays an important role in supporting the domestic implementation of trade policymaking at the EU level. Estonia applies an active infrastructure for regulatory transparency, and has a history of requiring rulemaking processes to be conducted over the internet in a publicly accessible format. The principle of non-discrimination is consciously supported under the regulatory framework particularly in the area of investment policy, but is grounded in domestic law primarily though international commitments. To reduce unnecessary trade restrictiveness, Estonia applies regulatory impact assessments (RIAs) on a sectoral basis with a focus on reducing costs associated with administrative burdens. Estonia's efforts to harmonise domestic towards international standards have been driven by the need to establish a standards regime after 1991. Today, less than 2% of domestic standards are unaligned with international ones. Estonia applies EU approaches to streamlining conformity assessment procedures and enables non-EU economies to benefit from its general trade policy of openness where possible under EU regulations. Estonia views its intellectual property rights (IPRs) regime as a component of an articulated national strategy on innovation, and has substantially improved its quality of enforcement over recent years. Compliance related activities in Estonia are closely intertwined with those of the European Union and the EU's relationship with the WTO. The present review found no evidence of compliance–related concerns.

Thematic synopses and policy options for consideration

Estonia's efforts to ensure **transparency** in its regulatory processes are underlined by requirements that all stages of the legislative process be conducted on publicly accessible internet portals. The government has also undertaken a commendable effort to integrate all national legal databases within a single publicly accessible internet portal. Such processes are also subject to comment *via* internet prior to implementation. Domestic standards are developed in working groups.

Policy options

- While the vast majority of standards applied in Estonia are internationally aligned, some domestic standards exist which are not available in English. To burnish an already transparent regulatory environment, authorities may consider translating into English those domestic standards currently available only in Estonian.

Since regaining independence, the Estonian regulatory regime has undergone a major review on its observance of **non-discrimination** as part of its accession to the WTO. However, the WTO principles were introduced into Estonian trade agreements already before the accession to the WTO. Although Estonia's legal tradition has not historically addressed the principle of non-discrimination, the approach to non-discrimination reflected in its economic policy since independence, has been among the most consistent. This consistency can be found in terms of the near zero tariff rate policy applied in the period before accession to the Euro, as well as Estonia's investment policy which disallows providing incentives to attract foreign investors which are not equally available to domestic ones.

Policy options

- No recommendation.

Estonia has made significant progress in **use of the least trade restrictive regulations** through its selective application of RIAs to reduce administrative burdens. According to the World Bank Doing Business Indicators, its ratings in this regard surpass the average for the OECD area. Its current programme of applying RIAs in a number of pre-selected regulatory areas coheres with OECD best practices, particularly in providing for *ex post* assessments on the performance of the corresponding reforms after implementation. The focus of Estonia's RIAs on reducing administrative burdens does however appear to overlook the possibility that regulations could negatively impact trade and investment, despite not creating administrative burdens.

Policy options

- Consider making assessments of trade and investment impacts a regular component of RIAs.
- Consider applying RIAs on a systematic basis to all draft legislation.

In establishing its domestic standards regime beginning in 1991, Estonia has adopted primarily international standards and consequently set a high standard in terms of **international harmonisation of domestic standards**. However, a small minority of domestic standards remain unaligned with international ones.

Policy options

- Consideration could be directed towards reviewing Estonian standards not aligned internationally for possible alignment.

In the area of **streamlining conformity assessment,** Estonia clearly sets a high standard as confirmed in its rating under the Trading Across Borders index of the World Bank Doing Business Indicators. Estonia's policy of maintaining an open trading regime is apparent in its efforts to accept conformity assessments from non-EU members where possible under EU regulations.

Policy options

- As opportunities arise with trading partners and at the EU level, promote openness by sharing experience in streamlining conformity assessments.

Estonia has a system of **intellectual property rights** that is well developed from a legal perspective. Significant amendments and modifications have been made in recent years to bring the Estonian system closer to the international norms of developed economies, particularly during the process of adapting domestic legislation to become a member of the European Union.

Policy options

- Assess avenues for further progress with respect to administration and enforcement of intellectual property rights. One area to consider is reducing the rate of internet piracy in copyrighted goods. Further capacity building and adoption of international best practices could be practical avenues for authorities in Estonia to explore as next steps.
- Consideration should also be directed towards enhancing the domestic economy's capacity both to produce and to employ intellectual property. This may entail review of policy in favour of investment in research and development, particularly with respect to the private sector, as well as reinforcement of higher education systems with respect to fields critical for innovation.

Compliance in Estonia's trade and regulatory regime is addressed through its membership in the European Union and the WTO. In both cases, a large number of regulations are in force, none of which have been subject to compliance action whether at the EU or WTO level.

Policy options

- No recommendation.

Introduction

The approach taken by this review draws on Market Openness Chapters of the well-established Country Reviews of Regulatory Reform programme carried out by the Governance Directorate in co-operation with the Trade and Agriculture Directorate.[1] However, unlike the Market Openness Chapters, the reviews of market openness prepared for the accession process are stand-alone documents. In terms of format, they are dissimilar from traditional reviews of market openness in that they omit treatment of what is traditionally the sixth principle of market openness (i.e. competition policy), while covering two new areas (i.e. intellectual property rights and compliance).

Examining market openness is important because it provides insights concerning a country's ability to reap the benefits of globalisation and international competition as a consequence of eliminating or minimising the trade distorting impact of border and behind-the-border measures. Improving a country's economic efficiency and competitiveness depends in part on its domestic capacity to integrate market-oriented trade and investment approaches into regulations and regulatory practices. From a market openness perspective, regulatory reform is in the interest of the domestic economy, but yields significant benefits for national and foreign stakeholders alike.

High quality regulation can be achieved without compromising market openness, and open market policies can be enhanced through strong regulatory underpinnings. This review of market openness prepared as part of the Trade Committee's accession process thus examines to what extent domestic regulations directly or indirectly distort or facilitate international competition, and suggests policy options to improve the domestic regulatory framework for international trade and investment liberalisation.

1. The economic and policy environment

Estonia pursues a conservative macroeconomic policy founded on a currency board arrangement and reliable fiscal policy. All successive governments in Estonia have committed to a balanced budget from the medium- and long-term perspective. The tradition of conservative fiscal policy reflected in six consecutive years (2001-2007) of sizeable fiscal surpluses, is testimony to Estonia's commitment to meet the Maastricht criteria by the end of 2009 and to join the Euro zone at the latest by 2011.[2] The liberal trade and investment policies accompanying Estonia's stable macroeconomic policies since its independence in 1991 contributed to a domestic economic environment delivering robust expansion, with rates of real GDP growth averaging more than 8% *per annum* during the period from 2000 to 2007.[3] Estonia was hard hit by the financial crisis, resulting in a GDP contraction of -3.6% in 2008 and a projected contraction of -8.5% in 2009. A return to positive GDP growth is expected in 2010.

Estonian economic policy has consistently supported export diversification and initiatives designed to shift economic growth towards high-technology activities. Trade in services, especially information technologies (IT), transportation and construction services, have become key growth sectors in recent years. The largest component of Estonian economy is a services sector representing 68.6% of GDP. Other sectors, i.e. agriculture, non-manufactured and manufactured goods represent 4%, 10.9 and 18.5 respectively of GDP.[4]

1.1 Trade policy developments

A small economy dependent highly on foreign trade, Estonia's trade policy seeks to ensure and improve access for its goods and services to its most important markets, and to create a domestic business environment hospitable to domestic and foreign investment. Located in the Baltic Sea region, Estonia is capturing an increasing share of the rapidly growing Baltic Sea trade. Its three major ports including the Port of Tallinn (which includes the harbours of Muuga, Old Town, Paljassaare and Paldiski South), the Ports of Pärnu and Kunda each offer easy navigational access, deep waters and good ice conditions. Estonian ports have proven excellent locations for value-added logistics services and distribution centres for the Baltic Sea Region.[5] The bulk of Estonia's exports and imports are made up of machinery, equipment, fuel and mineral products, wood and paper products.

During the period after regaining independence in 1991 and before joining the European Union, the cornerstone of Estonia's trade strategy was one of reform and liberalisation resulting in a nearly tariff-free and open market economy. Table 1 illustrates the extent to which tariff reductions in the early 1990s left Estonia as one of the most open countries based on the tariff structure. An amendment to the Custom Tariff Law of 1997 replaced the annex containing the maximum levels of most favoured nation (MFN) tariff rates and unilateral preferential tariff rates with the relevant parts of Estonia's WTO accession goods schedule.

Estonia essentially applied near 0% tariffs on its imports until 1995 when it began harmonising its MFN tariff rates towards the EU's Common External Tariff (CET). Today, Estonia applies the CET along with all EU members *vis-à-vis* goods imports. Upon Estonia's accession to the WTO in 1999, the annex of the Custom Tariff Law listing the MFN and unilateral preferential tariff rates was replaced with the relevant parts of Estonia's WTO accession goods schedule.

Table 1. Estonia's simple and trade-weighted statutory tariffs* prior to EU accession

		Estonia					OECD average				
		1995	2000	2001	2002	2003	1995	2000	2001	2002	2003
Total Trade	Simple Average	0.07	1.60	1.60	1.59	1.58	8.24	6.38	6.48	6.80	6.20
	Weighted Average	0.39	0.98	1.02	0.91	0.89	5.01	4.09	4.18	4.67	4.05
Capital goods	Simple Average	..	..	..	..	..	6.54	3.88	3.43	4.29	3.26
	Weighted Average	..	..	..	..	..	4.02	2.67	2.82	3.00	2.73
Consumer goods	Simple Average	0.07	1.75	1.73	1.71	1.71	10.29	9.56	9.66	9.21	8.83
	Weighted Average	0.80	1.25	1.42	1.38	1.42	6.72	5.79	5.60	5.80	5.27
Intermediate goods	Simple Average	0.05	1.13	1.13	1.13	1.13	7.74	5.45	5.43	5.83	4.94
	Weighted Average	0.03	1.06	0.90	0.60	0.68	4.51	3.61	3.67	3.93	3.63
Raw materials	Simple Average	0.25	5.51	5.50	5.50	5.46	7.35	5.44	6.96	7.90	8.48
	Weighted Average	0.08	4.09	4.29	3.35	3.24	4.17	4.28	4.83	8.91	4.70

* "Statutory tariffs" are MFN tariff rates and do not account for tariffs applied under preferential trade agreements.

Source: UN Trains.

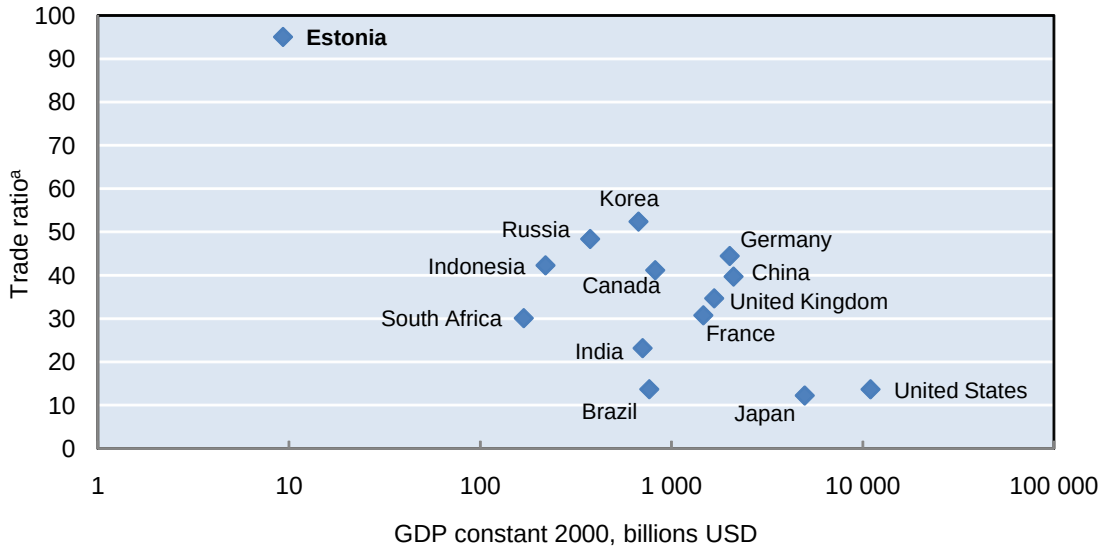
1.2 Trade openness

Trade openness can be measured by the ratio of total exports and imports to GDP. This ratio is often used as an indicator to measure a country's "openness" or "integration" in the world economy but is influenced by various endogenous factors, such as the size of the economy, distance from major or dynamic markets and variations in economic growth. The trade turnover/GDP ratio of Estonia sets it apart as peerless *vis-à-vis* the BRIICS (Brazil, Russia, India, Indonesia, China and South Africa) and the OECD countries appearing in Figure 1. Estonia's export growth from 1995 through 2006 was impressive, particularly during the period following Estonia's entry into the European Union in 2004 (Figure 2).

Estonia's main trading partner consists of the rest of the European Union (Figure 3), and particularly Finland and Sweden as well as its Baltic neighbours Latvia and Lithuania. Other major trading partners include the United States and Russia. China is also growing steadily in importance, particularly as a source of imports.

Estonia is diversifying from natural resource based economic activities towards processing goods, and technology-based services. It guarantees free internet access to its citizens as a basic right, and as part of its strategy to enhance national economic competitiveness. Its capital Tallinn is already a centre for information and communications technology (ICT) expertise and a city in which innovative firms such as Skype have established research centres.[6] Progress towards the goal of concentrating development efforts in higher value added sectors such as industrial goods, equipment and certain services is reflected in the substantial shares for these sectors shown in Figures 4 and 5.

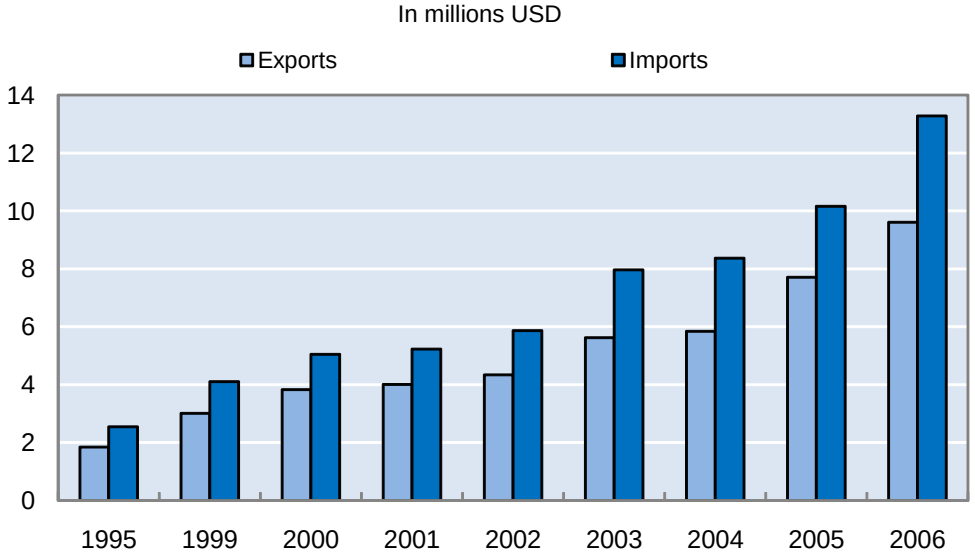
Figure 1. Trade ratios[a, b] in BRIICS countries and selected OECD countries, 2006[c]



a) Average of exports and imports of goods and services as a share of GDP constant 2000.
b) Logarithmic scale on the horizontal axis.
c) 2005 for Canada, Japan and the United States.

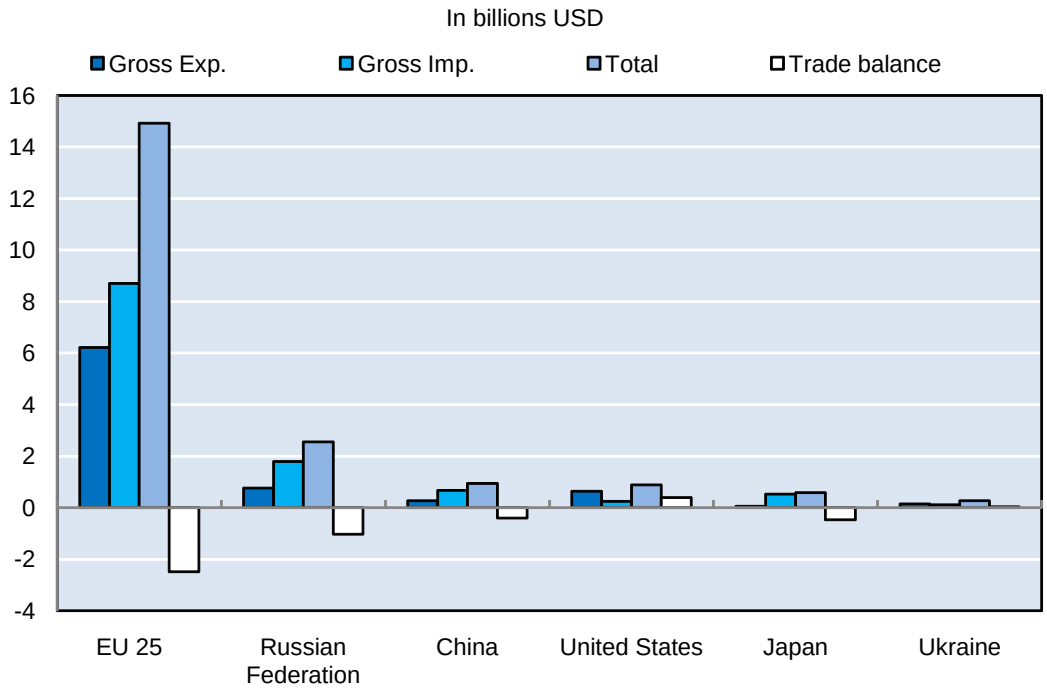
Source: WDI.

Figure 2. Estonia's trend in foreign trade, 1995-2006



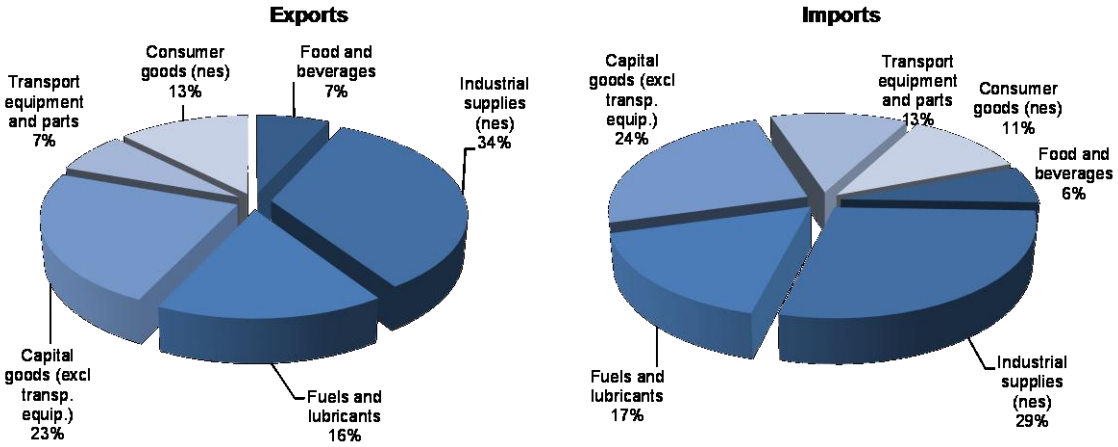
Source: UN ComTrade Database (2007).

Figure 3. Estonia's top trading partners, 2006



Source: UN ComTrade Database.

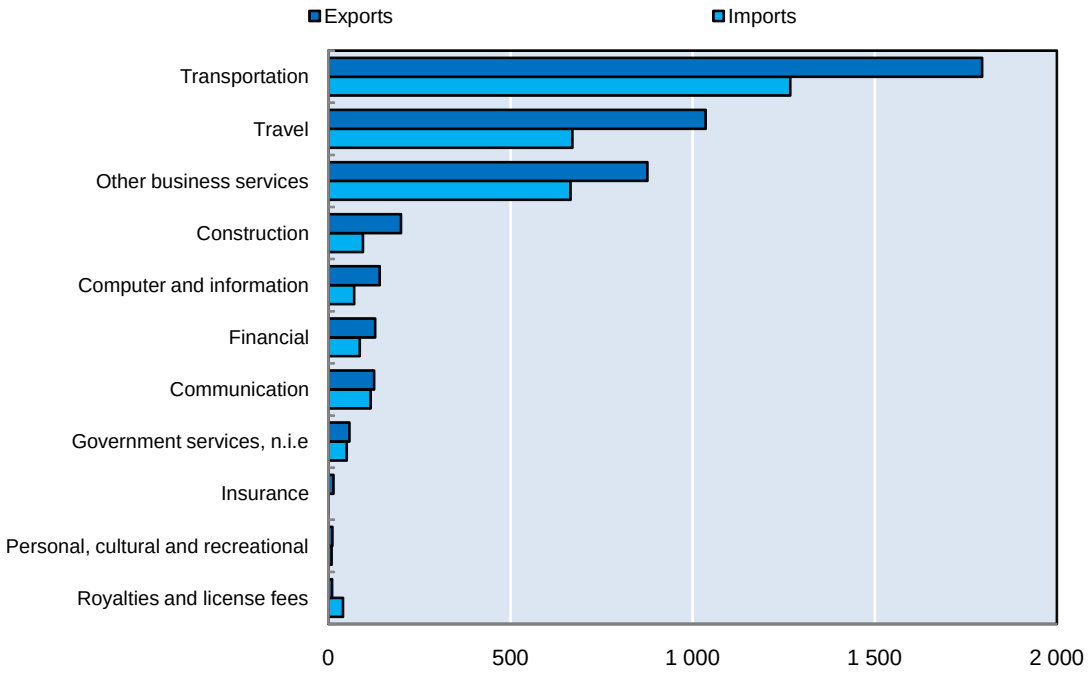
Figure 4. Estonia's foreign trade product structure, 2006



Source: UN ComTrade Database.

Figure 5. Estonia's services trade composition, 2007

In millions USD



Series shown on the chart are ordered by the value of exports in 2007.

Source: IMF (2008), *Balance of Payments*.

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

With the expansion of economic globalisation and the fall of traditional barriers to trade, the complementarities of market openness and regulatory reform are increasingly

important. Trade and investment liberalisation can be an important factor in successful regulatory reform, while regulatory reform can play a strong role in ensuring that liberalised conditions for trade and investment bring the expected benefits in terms of economic performance. When designed and implemented properly, regulatory reform establishes domestic regulatory environments that improve efficiency and increase the flow of international trade and investment. Good regulation encourages productivity gains, investment and innovation, job creation, and boosts growth and competitiveness. The prospect of these domestic benefits is the basic and indispensable rationale behind regulatory reform.

Box 1. The OECD efficient regulation principles for market openness

To ensure that regulations do not contradict and reduce market openness, "efficient regulation" principles should be built into the domestic regulatory process and practices. Trade policy makers have identified these six principles as key to market-oriented trade and investment-friendly regulations. They reflect the basic principles underpinning the multilateral trading system.

Transparency and openness of decision making: Foreign firms, individuals and investors seeking access to a market must have adequate information on new and revised regulations so that they can base their decisions on accurate assessment of potential costs, risks and market opportunities.

Non-discrimination: Non-discrimination means equality of competitive opportunities between like products and services irrespective of country of origin.

Avoidance of unnecessary trade restrictiveness: Governments should use regulations that are not more trade restrictive than necessary to fulfil legitimate objectives.

Use of internationally harmonised measures: Compliance with different standards and regulations for like products can burden firms engaged in international trade with significant costs. When appropriate and feasible, internationally harmonised measures should be used as the basis of domestic regulations.

Streamlining conformity assessment procedures: When internationally harmonised measures are not possible, necessary or desirable, recognising the equivalence of trading partners' regulatory measures or the results of conformity assessment performed in other countries can reduce the negative effects of cross-country disparities in regulations and duplicative conformity assessment systems.

Application of competition principles from a market openness perspective: Market access can be reduced by regulatory action ignoring anti-competitive conduct or by failure to correct anti-competitive practices, particularly by incumbent firms which are normally also domestic.

Source: OECD (2002), "Integrating Market Openness into the Regulatory Process: Emerging Patterns in OECD countries" [TD/TC/WP(2002)25/FINAL], 17 February 2003.

An important step to ensure that regulations do not unnecessarily reduce market openness is by building efficient regulation principles into domestic regulatory processes for social and economic regulations, as well as for administrative practices. Trade policy makers have identified six principles as key to market-oriented, trade and investment friendly regulation. They reflect the basic principles underpinning the multilateral trading system. The OECD's six efficient regulatory principles for market openness are: (i) transparency and openness of decision making processes; (ii) non-discrimination; (iii) avoidance of unnecessary trade restrictiveness; (iv) use of internationally harmonised measures; (v) streamlining conformity assessment procedures; and (vi) application of competition principles from a market openness perspective (Box 1). This report looks at Estonia's market openness from the perspective of its regulatory infrastructure with respect to the first five principles. Regulation with respect to competition is treated

separately in the context of the OECD accession process (i.e. under the auspices of the Competition Committee).

2.1. Transparency and openness of decision making

Transparency in domestic regulatory processes is a fundamental determinant of market openness for both domestic and foreign participants. It is important for market participants to fully understand the regulatory environment in which they are operating to have opportunities to contribute to regulatory decision-making processes, thus supporting the quality and effectiveness of market access.[7] 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 that 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 by 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 in 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 *via* the internet. Transparency of decision making further refers to dialogue between regulators and 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 become part of the regulatory process thus facilitating the avoidance of trade frictions.

Regulatory transparency, that is equal access to information on the legal and regulatory framework, is a pre-requisite for effective competition. It is essential to all market participants, but particularly to foreign operators coping with additional obstacles such as language barriers and country specific business practices. Regulatory transparency has three main aspects: (i) access to information on existing regulations, (ii) openness to the rulemaking process through public consultation prior to the adoption of final regulations, and (iii) the possibility of market participants to access appropriate appeal procedures. In addition, transparency is essential for ensuring international competition in two specific areas: (iv) technical regulations and (v) government procurement.

Information dissemination

The first aspect of transparency is easy and open access to information. Every firm operating in the market should have information about regulations, procedures, and other measures that affect its interests and indicate the conditions, constraints and risks that firms will encounter in the market. Having all this information reduces uncertainties over applicable requirements, helps companies to better foresee the costs and returns of their trading activities and investments. Access to information is particularly relevant for foreign firms and new market entrants as they are often unfamiliar with the local

regulatory environment, and at times the economic, political, social and cultural environments.

In Estonia, transparency in terms of information dissemination is guaranteed under the Public Information Act requiring all public bodies and agencies to maintain internet websites for disseminating information to the public, including: the Chancellery of the Riigikogu (the parliament of Estonia), the Office of the President of the Republic, the Office of the Chancellor of Justice, the State Audit Office, courts, the General Staff of the Defence Forces, government agencies and legal persons in public law. Dissemination of information relating to draft laws by electronic means has for some time been a standard at all stages of the Estonia's legislative process. Similarly, efforts are underway to make public access to existing laws and to the norms in their application accessible *via* a single internet portal.

The Riigi Teataja (State Gazette) is the official publication of the Republic of Estonia, and is published in paper format as well as electronically on the internet. Regulated by the Riigi Teataja Act, legislation, notices and other documents appearing in the State Gazette whether published in paper and or electronic format have equal legal force. At present, reform is already under way to make the State Gazette a purely electronic publication.

Dissemination of information relating to draft laws within the public administration is governed by Government regulation no. 160 "Fixing the Rules of the Government of the Republic". The decade old regulation is one of the earliest requiring co-ordination of draft laws and regulations among government bodies exclusively *via* an online information coordination and consultation website titles "*e-Law*" (*http://eoigus.just.ee*). When draft laws have completed the co-ordination phase, all comments received are compiled within a table indicating both comments incorporated within a revised draft law, and those not incorporated together with explanations for their non-incorporation. It is this revised draft law together with the table outlining comments from various government bodies that is presented to a Government session, at which agreement must be reached on a version of the draft law for transmission to the Parliament. Once this draft law is forwarded to Parliament, its subsequent progress through legislative process can be followed on the parliamentary website (*www.riigikogu.ee*).

Due to its membership in the European Union, regulations on trade policy created at the European level are applied by Estonia, but not published in the Riigi Teataja. Regulations of general application (i.e. binding in their entirety and directly applicable in all Member States) are established by the Council of the European Union and the European Commission and published in the Official Journal of the European Union (*http://eur-lex.europa.eu/*) in all the official languages of the European Union.

Box 2. Establishing a public database for legal research in Estonia

The Government of Estonia has embarked on an innovative project to integrate all databases containing information on law-making, laws in force, their translations, definitions and court decisions. During the first phase, the Ministry of Justice was tasked with developing the concept of an integrated legal information database. The result was the identification of the fifteen existing databases containing legal information regularly consulted by citizens and officials for consolidation and integration under this project. In the following phase, a working group was assembled from officials representing the Ministry of Justice, the Ministry of the Interior, the State Chancellery, the Chancellery of the Riigikogu, the Centre of Registers and Information Systems and the Supreme Court. This working group reviewed a prototype for the system developed by the Centre of Registers and Information Systems, and in April 2009 proposed a project plan for the information system to the Government of the Republic. The project consists of a number of stages including the following:

1. Co-ordination of legislative proceedings regarding a legal act through five information systems – from the electronic approval system for draft legislation until publication of the legal act in the Legal Gazette;
2. Publication of court decisions and their analysis;
3. Disclosure of the dates of court sessions;
4. A service that enables e-mail based subscriptions for various types of information about modification of laws;
5. Improvement of the search engine.

In the second stage, legislation at the level of local government and that at the level of the European Union will be incorporated within the information system.

Source: Government of Estonia.

A significant effort to make information on existing Estonian law readily accessible to the general public is also well under way. The Programme of the Coalition for 2007-2011 includes a provision for creating an integrated legal information database on which all legal acts and their explanatory memoranda by the Legal Gazette can be accessed (Box 2). The project seeks to integrate all existing domestic legal databases containing current laws and their manner of application within a single integrated and searchable public internet portal.

Consultation mechanisms

A second fundamental aspect of transparency refers to the openness of the regulation-making process, in particular, providing an opportunity for all stakeholders to participate in formal or informal consultations. Consultations and the equality of access to them have important effects on the quality and enforceability of regulations in general, on the efficiency of economic activities, and on the level of market openness.

The minimum standards relating to the conduct of consultations on new laws and acts in Estonia are established in the Administrative Procedure Act which provides that "interested persons … whose rights may be affected … have the right, within a designated term, to submit proposals and objections concerning the draft…", and that authorities should provide a "designated term" not shorter than two weeks from the "display of the draft of the legal act and application for issue thereof". This general obligation to consult is also subject to specific obligations to consult in specialised areas such as standards (see below). Similarly, clause 25 of the Regulations of the Government of the Republic of Estonia indicates that draft legislation presented to the government must first undergo co-ordination with other government agencies including the ministries and the State Chancellery. Where legislation may impact local authorities, the draft

legislation must also be co-ordinated with Estonian Associations of Local Authorities. Similarly, when the interests of other institutions and stakeholders are concerned, they too should be consulted.

In practice, ministries responsible for draft legislation send initial full text versions of draft laws: to all ministries concerned; to the national local government associations, when draft laws touch upon the interests of local governments; and to affected stakeholders in society. Although draft regulations are sent directly to the identified stakeholders through the post, the fact that first drafts of legislation also appear on the *e-Law* portal means that full text of initial draft legislation are accessible to all interested parties. When draft laws have implications for the private sector, the Ministry of Justice regularly sends draft legislation to "umbrella organisations" representing groups of enterprises including:

- The Estonian Chamber of Commerce and Industry
- The Network of Estonian Non-Profit Organisations
- The Estonian Business Association
- The Estonian Association of Small and Medium Size Enterprises (SMEs)

No restrictions exist against foreign invested enterprises (FIEs) joining these umbrella organisations and they are most heavily represented in the Estonian Chamber of Commerce and Industry. Among the features of the *e-Law* website is a facility allowing subscribers to receive automatic email notifications when new documents are posted to the system. This feature allows any interested party to receive notifications of all draft legislation in Estonia.

The Government's best practices approach to consultations in Estonia is elaborated in the document *Good Engagement Practices* (*www.valitsus.ee/?id=5603).* The Good Engagement Practices document articulates that an effective plan for engaging consultations must clarify the goal of the consultations, the stakeholders to be contacted and the format for consultations. The document similarly indicates that at the end of the consultations, a summary should be prepared for all stakeholders recording the outcome. When consultations take place over extended periods, interim summaries should be prepared during the course of consultations to facilitate progress. Finally, assessments must take place over the conduct of the consultations and the results they achieve. As a general rule, each ministry must designate a contact person responsible for supporting colleagues in planning and implementing consultations.

At the state level, the State Chancellery is responsible for co-ordinating consultations. When draft laws address issues of general applicability, consultations with the public are implemented through the public consultations website (*www.osale.ee*) dedicated to managing consultations with citizens and stakeholders. In cases where draft legislation does not appear on the public consultation website (i.e. because it does not touch upon issues of general interest), interested parties including foreign ones are nevertheless able to get information about draft laws from the *e-Law* system or contact directly the civil servant responsible for the draft legislation.

Appeal procedures

A third important aspect of transparency is the openness of appeal procedures. Market participants having concerns about the application of existing regulations may find it important to have access to appeal procedures. Regulations are better accepted and work more efficiently if both domestic and foreign economic actors have access to remedies when they are confronted with overly burdensome or unclear regulatory requirements or unsatisfactory results. These remedies can be included in formal legislation, or they might be part of effective informal channels for lodging and advancing complaints that are open to domestic and foreign parties. In either case there should be clearly defined time limits for appeals processes, and adequate explanations, for example when requests are denied.

Under the Estonian legal system, FIEs registered in Estonia are accorded legal treatment equivalent to domestic enterprises including in terms of access to local courts of law. Consultations with representatives of foreign businesses indicate that the quality of transparency and consultation mechanisms make the need for such appeals rare. No mention of appeals processes were made during the course of general consultations with representatives from the business community. This is in-line with an interpretation that in cases (if any) where appeals procedures have been accessed, the business community has been satisfied with the openness of their conduct including in terms of clearly defined time limits.

Transparency in the field of technical regulations and standards[8]

Transparency in the field of technical regulations and standards is essential for firms facing diverging national product regulations. Transparency reduces uncertainty over applicable requirements and thereby facilitates access to domestic markets. Best practice in transparent regulatory regimes entails not only access to information, but transparency in the standards setting process. In the area of standards development, a process that is open to all stakeholders, including foreign ones, can help to encourage adoption of standards that are both effective and efficient in attaining regulatory objectives.

With respect to the elaboration of technical regulations in Estonia, transparency requirements require that draft regulations be published and that sufficient time be provided for all interested parties, whether foreign or domestic, to comment; these comments must be duly taken into account. Transparency is further ensured in the comment process *via* a general requirement that the ministry or agency preparing the standards must make available to the public responses to any significant comments received at the time the final technical regulation or conformity assessment procedure is published. In some areas, further requirements apply due to obligations under international agreements.

In Estonia, the elaboration of technical regulations is carried under the same procedures applying to the creation of new legislation. The ministry or agency responsible for the subject addressed by the proposed regulation must publish a notice on *e-Law*, together with the draft technical regulation or conformity assessment procedure it is proposing to adopt. The notice must include an abstract or full text of the draft technical regulation or conformity assessment procedure, indicate the purpose of the draft regulation or procedure, and the reasons for the approach adopted. If the draft act contains technical specifications not deriving from EU law and that could constitute a technical barrier to the trade, it is also to be notified to the European Commission and to other EU members in accordance with directive 98/34/EC (Box 3).

Box 3. Provision of information in the field of technical regulations and standards: Notification obligations in the European Union

In order to avoid erecting new barriers to the free movement of goods which could arise from the adoption of technical regulations at the national level, European Union Member States are required by Directive 98/34 (which has codified Directive 83/189) to notify all draft technical regulations on products, to the extent that these are not a transposition of European harmonised directives. This notification obligation covers all regulations at the national or regional level, which introduce technical specifications, the observance of which is compulsory in the case of marketing or use; but also fiscal and financial measures to encourage compliance with such specifications, and voluntary agreements to which a public authority is a party. Directive 98/48/EC recently extended the scope of the notification obligation to rules on information-society services. Notified texts are further communicated by the Commission to the other Member States and are in principle not regarded as confidential, unless explicitly designated as such.

Following the notification, the concerned Member State must, except in case of urgency related to the protection of public health or safety, the protection of animals or the preservation of plants, refrain from adopting the draft regulations for a period of three months. During this period the effects of these regulations on the Single Market are vetted by the Commission and the other Member States. If the Commission or a Member State emit a detailed opinion arguing that the proposed regulation constitutes a barrier to trade, the standstill period is extended for another three months. Furthermore, if the preparation of new legislation in the same area is undertaken at the European Union level, the Commission can extend the standstill for another twelve months. An infringement procedure may be engaged in case of failure to notify or if the Member State concerned ignores a detailed opinion.

Although primarily directed at Member States, the procedure benefits private parties by enhancing the transparency of national regulatory activities. In order to bring draft national technical regulations to the attention of the European industry and consumers the Commission publishes regularly a list of notifications received in the Official Journal of the European Communities, and since 1999 on the Internet. Any firm or consumer association interested in a notified draft and wishing to obtain further information or the text may contact the Commission or the relevant contact point in any Member state. The value of the system for private operators has been enhanced with the initiative of the Commission in 1999 to publish notifications on the Internet. A searchable database of notifications (Technical Regulations Information System -TRIS-) going back to 1997 gives access to the draft text and the notification itself, including the rationale of the regulation and the status of the proposal. The incentive of countries to notify, and thus the efficiency of the system, has been strongly reinforced by the 1996 *Securitel* decision of the European Court of Justice (Decision of 30 April 1996, CIA Security International SA versus Signalson SA and Securitel SPRL). The decision established the principle that failure to comply with the notification obligation results in the technical regulations concerned being inapplicable, so that they are unenforceable against individuals.

As far as standards are concerned, Directive 98/34 provides for an exchange of information concerning the initiatives of the national standardisation organisations (NSOs) and, upon request, the working programmes, thus enhancing transparency and promoting co-operation among NSOs. The direct beneficiaries of the notification obligation of draft standards are the European Union Member States, their NSOs and the European Standardisation Bodies (CEN, CENELEC and ETSI). Private parties can indirectly become part of the standardisation procedures in countries other than their own, through their country's NSOs, which are ensured the possibility of taking an active or passive role in the standardisation work of other NSOs.

In the field of standardisation, essentially the same transparency requirements are applied. In some areas, however, international obligations provide more detailed consultation requirements. The Estonian Centre for Standardisation (EVS) is the national standardisation body responsible for co-ordinating the standards elaboration process. Standards are elaborated in the technical committees or temporary working groups. After elaboration of a draft standard, the EVS holds a public consultation allowing all interested

parties to consult the drafts and to provide comments. Information about drafts and public consultations is available on the EVS website.

As a member of the WTO, Estonia is obligated to publish internationally the texts of sanitary and phytosanitary (SPS) measures and technical regulations. In accordance with these obligations, Estonia has established a WTO National Notification and Authority and Enquiry Point that serves to notify new Estonian standards to the WTO and to receive comments from WTO members under the Agreement on Technical Barriers to Trade (TBT) as part of these obligations (Box 4). Estonia has also implemented regulations to conduct reporting requirements under EU obligations under Directive 1998/34/EC. For example, pursuant to Article 9(2) of Directive 98/34/EC, the European Commission required Estonian authorities to amend the draft text of the regulation "Conditions for using radio frequencies and technical requirements for radio equipment exempted from a frequency authorisation".[9] As part of the consultations process accompanying this amendment, Estonian authorities took the requirements into consideration. Under both of the international agreements indicated above, ministries in charge of draft laws must take comments from international stakeholders into consideration and reply, either accepting or rejecting them. The approach of providing public explanations of the rationale for decisions not to incorporate comments into technical regulations and standards is a strength of Estonia's approach to regulatory transparency.

Box 4. WTO/TBT National Notification and Authority and Enquiry Point

Estonian Centre for Standardisation (EVS)
Aru 10
10317 Tallin, Estonia

Telephone: +372 605 50 62
Fax: +372 605 50 63
E-mail: enquiry@evs.ee

EC TBT Enquiry Point
Enterprise and Industry Directorate-General
Rue de la Loi 200
1049 Brussels, Belgium

Telephone: +32 2 295 18 60
Fax: +32 2 299 80 43
E-mail: ec-tbt@ec.europa.eu
Website: ec.europa.eu/comm/enterprise/tbt/

Source: WTO (2008b).

Transparency in government procurement

Transparency of procedures and practices relating to government procurement is another critical determinant of market openness. Government procurement is covered by rules under the WTO Government Procurement Agreement (GPA), which is a plurilateral agreement. WTO members joining the agreement are bound to provide enterprises from other members of the GPA non-discriminatory access if they bid on government contracts above pre-specified thresholds.[10] Possibly more important than opening domestic procurement markets to foreign bidders are the transparency provisions that must be applied once a WTO member becomes party to the GPA. The benefits of transparent government procurement procedures can be substantial given that government procurement can account for 15 to 20% of GDP in most countries.

As a member of the European Union (Box 5) and the GPA, Estonia's Public Procurement Act (PPA) and the Public Procurement Office of the Ministry of Finance administrating it fall under the disciplines of at least two international agreements. In 2007, government procurement in Estonia amounted to EEK 21 billion (EUR 1.4 billion) of which procurement from foreign suppliers amounted to EEK 0.7 billion. The PPA covers procurements by central government authorities and agencies, regional and local

authorities, bodies governed by public law, legal persons in private law as well entities in utilities sectors. Public procurement contract notices and contract award notices are published in the State Public Procurement Register, which is publicly accessible through the internet free of charge.

Box 5. EU rules on public procurement

EU rules

Government procurement includes purchase of goods and services and the commissioning of works by public authorities such as national governments, local authorities or their dependent bodies. Opening such contracts to foreign suppliers has fostered increased competition among suppliers in the European Union, reduced prices and improved the quality of services for citizens. Over the years, the European Union has introduced legislative provisions to modernise and facilitate the contract award process. These improvements have increased transparency, fairness and interoperability through such facilities as the TED (Tenders Electronic Daily) database, the single classification system establishing common vocabulary for the public contracts and the System of Information on Public Procurement (SIMAP).

Public procurement contracts in the European Union constitute a significant 16% of the EU's gross domestic product or roughly some EUR 1600 billion (PPN, 2006). Its economic importance has made it one of the cornerstones of the Single Market thus leading to the adoption comprehensive rules promoting a climate of transparency and non-discrimination and securing enhanced competition in the area of public works, supplies and services. A separate regime is applied to utilities (energy, water, telecommunications and transport). Some of the major requirements of EU rules on public procurement are the following.

Information

Contracting authorities must prepare an annual indicative notice of total procurement by product area, that they envisage awarding during the subsequent 12 months, if they take the option of shortening the established time limits for the receipt of tenders. The annual indicative list and any contract whose estimated value exceeds specific thresholds must be published in the Official Journal of the European Communities. Tenders must indicate which of the permitted award procedures is chosen (open, restricted or negotiated) and specify objective selection and award criteria. Contracting authorities must also make known the result of the tender procedure through a notice in the Official Journal of the European Communities. Provisions setting minimum periods for the bidding process ensure effective opportunity of interested parties to participate in the tender.

Remedies: Member States must provide appropriate judicial review procedures of decisions taken by contracting authorities. In particular, they must provide for the possibility of interim measures, including the suspension of procedures for the award of public contracts, for setting aside decisions taken unlawfully and for awarding damages to parties affected by the infringement. The EU Directives require that these procedures be effectively and quickly enforced. Effectiveness and speed may however be difficult to judge in practice, given the diversity of judicial systems across EU member states.

Non-discrimination: This principle, applicable among EU member states, is set by the Treaty of Rome which prohibits any discrimination or restrictions in awarding contracts on the grounds of nationality and prohibits the use of quantitative restrictions on imports or measures with equivalent effect.

Use of international standards: EU rules require the use of recognised technical standards in defining specifications, with European standards taking precedence over national standards. Progress on this front can be found in the single classification system for public procurement established to standardise the terminology contracting authorities and entities employ in their contracts.

In May 2000 the European Commission introduced proposals aimed at consolidating and modernising the regulatory framework on public procurement. Their main features are the consolidation of the directives on public works, supplies and services into a single text; incentives for a wider use of information technologies in public procurement; and an improved and more transparent dialogue between awarding authorities and tenderers in determining contract conditions.

Source: Useful comments on current developments in EU rules on government procurement were provided by the Government of Slovenia (also applicable in the case of Estonia). Public Procurement Network (PPN) (2006), EU Rules, PPN.

The PPA specifies both a domestic and an international threshold above which public procurements in Estonia are subject to publication requirements. For public procurements above domestic thresholds, the PPA establishes an obligation for contracting authorities and entities to publish contract notices and contract award notices in the State Public Procurement Register. Article 16 (6) of the PPA additionally requires procuring entities to publish information about public tenders on their websites or, if non-existent, in the local or county newspaper when contract values (not including VAT) exceed EUR 20 000 in the case of products or services or EUR 130 000 in the case of public works. In the utilities sector, these publication thresholds are EUR 40 000 for products or services and EUR 250 000 for public works. When public procurements rise above international thresholds, information relating to them is transmitted to the Office for Official Publications of the European Communities to be published in the TED (Tenders Electronic Daily) in accordance with Estonia's EU obligations. The international thresholds are established by the European Commission every two years in accordance with the GPA of the WTO.

Non-discrimination is a general principle of the PPA, Article 3 of which indicates that procuring entities shall treat suppliers located in Estonia – but based in EU member states, European Economic Area Agreement signatories or GPA signatories – no less favourably than domestic counterparts. Notably, government officials are aware of no laws or regulations that would prevent foreign suppliers from participating in government procurements even when they fall below international thresholds established under the GPA.

2.2 Measures to ensure non-discrimination

The application of the non-discrimination principles, Most Favoured Nation (MFN) and National Treatment (NT), in drafting and implementing regulations aims at providing equality of competitive opportunities between like goods and services irrespective of country of origin and thus at maximising efficient competition in the market. In theory, the application of the MFN principle would mean that all foreign producers and service providers seeking entry to the national market be given equal opportunities. The national treatment principle would mean that foreign producers and service providers are treated 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.

To derive maximum benefit from market openness, OECD best practice supports applying these principles to all trade partners independent of WTO membership. Yet, integration of these two basic principles into relevant legislative acts is often insufficient. For the regulatory principle of non-discrimination to provide equal competitive opportunities for like-goods and services from all sources, both domestic and foreign, the regulators themselves must consistently support them.

The principle of non-discrimination is anchored in Estonia's regulatory system primarily through international obligations resulting from its memberships in the WTO and European Union. The two treaties contain robust disciplines supporting MFN and NT in such fields as commerce, trade and investment. Estonia however applied the MFN and NT principles even before joining the WTO and the European Union. For example, the conclusion of the free trade agreement (FTA) with the European Free Trade Association in 1995 included MFN obligations. When Estonia joined the WTO in 1999, the

ratification of the Protocol of Accession of Estonia to the Marrakesh Agreement Establishing the World Trade Organization clearly established the MFN and NT principles as part of the Estonian legal framework. The Estonian Constitution provides that if laws or other legislation of Estonia are in conflict with international treaties ratified by the Riigikogu (the parliament of Estonia), the provisions of the international treaty shall apply.

From the perspective of Estonia's external trade policy, a tradition of support for MFN can be traced back to the near-zero tariff import regime it applied from 1991 until the initiation of the EU accession process, which culminated in the adoption of the EU CET. In general, foreign and local enterprises and products are treated equally. Foreign products must have the CE marks in accordance with EU directives. Estonia applies non-discrimination within its domestic regulatory framework in line with EU internal market principles applying to all EU member countries.

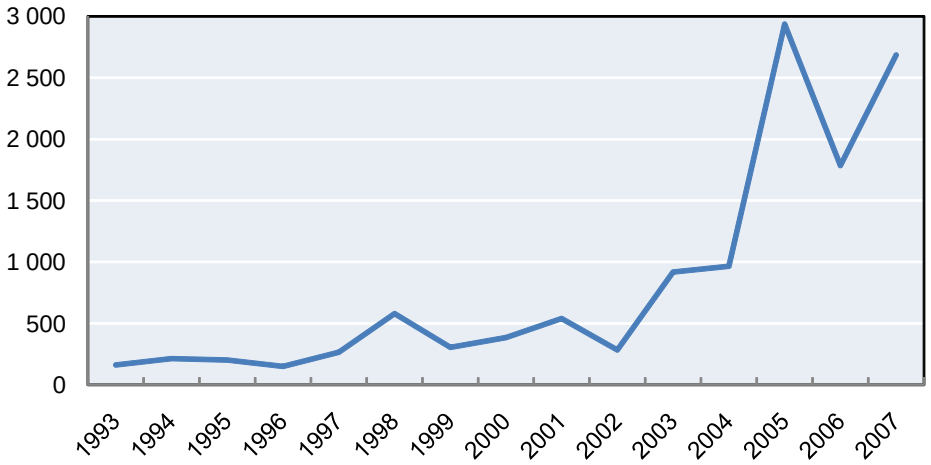
The following sections review progress in non-discrimination by examining two further areas of the regulatory system. The first looks at investment and restrictions on entry and operations of foreign firms and the second reviews preferential trading agreements.

Restrictions on entry and operations of foreign firms

Estonia's location at the crossroads between East and West has made it an attractive destination for inward foreign direct investment (FDI) over recent years particularly in the transportation and communications sectors.[11] Investment from older EU members has been a key driver of economic transformation in new EU members such as Estonia FDI has financed green-field investment, mergers and acquisitions, as well as the privatisation of state-owned enterprises.[12] In 2007, Estonia received well over USD 2.5 billion in inward FDI (Figure 6) and recorded outflows of over USD 1.5 billion.[13]

Figure 6. Growth of FDI inflows, 1993-2007

In millions USD



Source: OECD (2009a), p. 7.

Creating favourable conditions for FDI and openness to foreign trade is a fundamental component of Estonia's economic strategy. Estonia's approach to FDI

explicitly promotes a basic principle that foreign and domestic capital should be treated identically. This means in practice that foreign investors should receive neither special investment incentives nor favoured treatment. Similarly, no performance requirements are applied to foreign investments that are not equally applied to domestic investments. Under domestic laws, foreign and domestic firms and individuals are entitled to conduct foreign trade. Legally registered foreign trade operators are also able to import and export goods and technology without obtaining administrative approval, and in what appears an effort to enhanced equality of access to trading rights, a percentage of foreign trading rights for special products are reserved for formerly unauthorised companies. This market access has enabled traders to conduct business without intermediaries thus providing easier access to global markets and reducing transaction costs.

Foreign investments are not screened in Estonia, but licenses are required in some sectors.[14] The Estonian Central Bank, for example, issues licenses for foreign interests seeking to invest in or establish a bank. Licensing is not intended to restrict foreign ownership but only to regulate it and clearly establish ownership responsibilities. Government review and licensing have proven to be routine and non-discriminatory.[15] Foreign investors may purchase buildings and land for production purposes, and establish, buy and fully own companies. A license is required for non-nationals to purchase agricultural land and forests.[16] In addition, a prohibition applies for the acquisition by non-European Economic Area (EEA) nationals and legal persons for the acquisition of land and other real estate in Estonia's islands (except the four biggest ones) and in areas along the Russian border. These restrictions are covered by a reservation under item I/A of the Code of Liberalisation of Capital Movements.[17] Although the programme of privatisation was conducted under the Privatisation Act of 1993, which provided for the possibility of limiting foreign ownership as of the time of its most recent amendment in 2006, such limitations were never exercised in practice. The privatisation programme is now complete and no property is sold under the Privatisation Act.[18]

Preferential agreements

Regional trading arrangements (RTAs)[19] are necessarily discriminatory as they normally involve trade and investment liberalisation with respect to parties joining the agreements and the market opening is 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 economies such as Switzerland no longer view negotiating RTAs as strategy to gain preferential access to the markets. Negotiating RTAs is now considered an approach to removing discrimination against domestic firms competing in foreign markets.[20]

As a member of the European Union, Estonia's RTAs are defined by that relationship. Estonia is part of the EU internal market that effectively removes barriers to trade among its members. It is also part of all the trade agreements that the European Union has negotiated with non-EU members. Information on these agreements is available at the international level in a number of ways. Firstly, information on all RTAs entered into by the European Union can be found on the Bilateral Trade Relations website of the European Commission.[21] The full text of the agreements is also available online through the Treaties Office Database of the European Commission.[22] A variety of publications and fact sheets relating to preferential trade agreements are prepared by the European Commission for dissemination on the Bulletin of the European Union website.[23] The European Community notifies all preferential trade agreements to the WTO Committee on Regional Trade Agreements (CRTA) under Article XXIV of the GATT or Article V of

the GATS. The CRTA then conducts reviews during which third countries are able to comment and to submit questions on them.

Box 6. Individual EU members can impact EU trade policy

The EU trade negotiations are prepared and conducted by the European Commission within the scope of the mandate that is given to the Commission by the Council of the European Union which represents the EU members. EU members are nevertheless able to individually pursue their interests within the processes of EU trade negotiations. Individual EU members are able to present official positions to the Commission and the EU membership as a whole by circulating working documents and taking the floor during the weekly trade policy co-ordination meetings of the competent Committee of the Council (the Article 133 Committee).

EU members are also able to forward positions at expert meetings related EU trade negotiations. These ad hoc meetings are convened in Brussels to discuss specialised topics, for example ongoing trade negotiations with an EU trade partner or on a specific topic relating to several negotiations presently under way. They allow experts from the capitals of EU members to introduce their positions in detail before the Commission and other EU members.

EU members may also directly contact European Commission officials responsible for the trade negotiations of specific interest. As the conduct of trade negotiations fall under the competence of the Commission within the limits of the mandate given by the Council, individual EU members are normally unable to participate in actual negotiations with EU trade partners. Nevertheless, in some cases, particularly where negotiations cover subject matter falling under the competence of EU members, representatives of the EU members may join such meetings as observers. In this case, the conduct of the negotiations fall under the competence of the Presidency within the limits of the position agreed by the Member States.

Source: Developed with inputs from the Governments of Estonia and Slovenia.

Despite its small size, Estonia has successfully pursued its national economic interests in the development of EU trade policy on a number of occasions. Estonia's pursuit of trade and economic interests with specific countries through EU FTAs can be found in its strong support for the initiation of talks between the European Union and Ukraine. Similarly, Estonia supported the EU's extension of autonomous trade preferences to Moldova. Estonian national trade policy interests were also pursued with some success within the scheme of generalised preferences applied by the European Union. In each instance, the goal was greater liberalisation, albeit within a regional context.

There is no dedicated Estonian body for trade experts charged with participation in the EU-level trade negotiations *per se* (Box 6). Officials participating in EU trade policy co-ordination processes are drawn from different ministries according to their competence and the nature of the issue at hand. These officials are normally drawn from the External Trade Division of the Ministry of the Foreign Affairs, the Internal Market Department of the Ministry of Economic Affairs and Communications and the Trade Policy Bureau at the Ministry of Agriculture. Where highly specialised topics are under negotiation, for example those relating to intellectual property rights, officials from the Ministry of Culture and Ministry of Justice may also be involved. Most if not all ministries have officials based in Brussels as part of the permanent representation of Estonia to the European Union, and through them engage meetings relating to EU-level trade policy making. Where such meetings require, domestically based officials with required competences travel to Brussels from capital. This is also the case for meetings requiring participation by higher level officials.

2.3 Measures to avoid unnecessary trade restrictiveness

Even when regulations are applied in a non-discriminatory manner, market openness can still deviate from its optimal level if regulatory measures are more restrictive *vis-à-vis* trade and investment than is necessary to achieve their intended policy goals. In these cases the objectives, design or implementation of regulations may be set in a way that creates unnecessary impediments to the free flow of goods, services or investment. Such negative effects can originate from poor regulatory quality and the absence of regulatory mechanisms to assess the impact that regulations have on market openness. Unnecessary restrictions on trade may be reduced if regulators examine the trade effects of proposed and existing regulations and give preference to regulatory measures and solutions that lead to the achievement of economic and societal objectives, but at the same time minimise disturbances on the flow of trade and investment.

OECD governments most commonly employ several tools and mechanisms to ensure that regulations effectively avoid unnecessary trade restrictiveness. Examples include the use of management- or performance-based regulation rather than design standards regulations. Enterprises generally find it easier and less costly to comply with regulations that specify product requirements in terms of performance rather than design or descriptive characteristics. Another tool is to conduct regulatory impact assessments (RIAs). At a conceptual level, an RIA requires regulators to ask whether regulation is the most appropriate means to achieve the desired policy outcome. An RIA also involves a systematic process of identification and quantification of important benefits and costs likely to flow from the adoption of a proposed regulation or a non-regulatory policy option under consideration. It may be based on benefit/cost analysis, cost effectiveness analysis, or business impact analysis. A third tool is administrative simplification. The simplification initiatives that aim to reduce administrative burdens on enterprises are also important ways for governments to minimise the trade restrictiveness of regulations.

Assessing the impact of regulations on trade

Unnecessarily burdensome regulations disproportionately impact market openness. Although such regulations and administrative practices or "red tape" may affect domestic and foreign enterprises without distinction when viewed from the perspective of the regulator, they normally impact foreign trade and investment more significantly. This is because local enterprises generally have an advantage due to their knowledge of local customs and circumstances. While large foreign firms are often able to overcome unnecessarily restrictive rules and regulations due to 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 also by lack of familiarity with local business and regulatory culture. For this reason, the input of foreign SMEs should, to the extent possible, be elicited to support the development of domestic rules and regulations.

The regulatory environment provided by Estonia to businesses compares favourably against norms for countries in its region, the BRIICS and the OECD based on the World Bank's Doing Business index (Table 2). This result stems in part from Estonia's application of RIAs to assess and to reduce costs imposed by regulatory burdens. Estonia's favourable regulatory environment is also supported by the efforts of its authorities to minimise conflicting or inconsistent regulations between itself and the European Union, through the process of co-ordination for the free circulation of goods and services within the EU internal market. Estonia's successful efforts to simplify the

process of starting a business are reflected in Figure 7; for the selected comparisons, it stands out as a leader in every category of the Starting a Business index, except in comparison to the OECD average for capital requirements. Notably, it is possible to start certain types of business in Estonia over the internet from a foreign country in less than two hours.[24]

Table 2. Doing Business, 2008

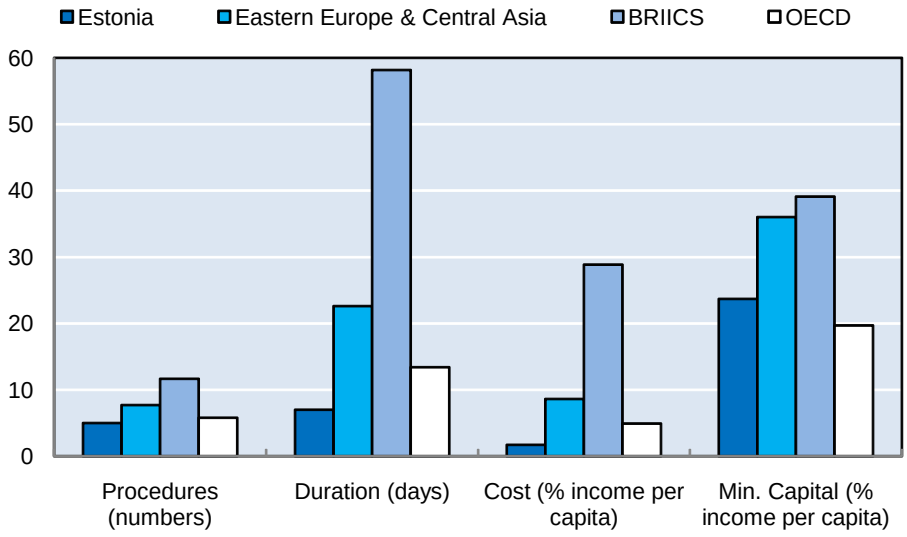
Ranking of 181 countries

Countries	Estonia	Eastern Europe and Central Asia	BRIICS	OECD
Ranking	**22**	**76.2**	**101.8**	**27.3**

The region "Eastern Europe and Central Asia" is defined as including: Albania; Armenia; Azerbaijan; Belarus; Bosnia and Herzegovina; Bulgaria; Croatia; Estonia; Georgia; Kazakhstan; Kyrgyz; Republic; Latvia; Lithuania; Macedonia, FYR; Moldova; Montenegro; Poland; Romania; Russian Federation; Serbia; Slovenia; Tajikistan; Turkey; Ukraine; and Uzbekistan.

Source: World Bank (2009), *Doing Business*.

Figure 7. Starting a business, 2008



Source: World Bank (2009), *Doing Business*.

Although the law requires RIAs to be performed on new domestic legislation, it does not provide requirements for uniform quality in their implementation. Estonia has also implemented RIAs on a sectoral basis for over a decade. Among other considerations, RIAs employed by Estonia apply the standard cost model focussing on reducing administrative burdens imposed by government on enterprises and citizens.[25] The process first identifies the most burdensome obligations for enterprises in each sector, and then applies the standard cost model and other considerations to estimate the economic outlays represented by reporting obligations. In the second step, reform proposals are developed to reduce administrative burdens, and their potential benefits are similarly estimated

based on the standard cost model. Examples of sectors in which regulators have already applied RIAs (but not necessarily implemented reforms) include the following:

- *Trucking law*. Administrative burdens imposed on internal and international freight were estimated at EEK 4.3 million *per annum* in 2005. Regulatory reforms since applied in this sector are estimated to have reduced the costs of administrative burdens by 35%. This result was achieved through reforms including extending the validity of licenses.
- *Employment contract law*. Administrative burdens relating to labour were estimated at EEK 146 million *per annum* in 2006. Although it is estimated that reforming regulations relating to employee identification cards, service records and internal regulations would reduce the costs of administrative burdens by EEK 40.6 million *per annum*, such reforms were not addressed in the new employment contract law.
- *VAT law*. Administrative burdens imposed by the VAT law in 2005 were estimated at EEK 243 million *per annum*. An assessment of regulatory burdens in this area suggested that reducing the frequency of VAT reporting from a monthly to quarterly basis (three months), would reduce compliance costs by 6.6%. No reforms have yet been applied in this area.
- **Data submission requirements**. Statistics Estonia requirements for submission of payments data were estimated in 2004 to cost EEK 70 million *per annum*. Reducing the frequency of reporting requirements would similarly reduce such costs.

A current RIA programme scheduled for completion in 2009 evaluates administrative burdens in four sectors of regulation including the environment, social policy, commercial administration, and building and planning laws. The programme foresees that reforms developed under this exercise will be implemented in 2010. Consonant with OECD best practices in regulatory quality, the programme provides for *ex post* evaluation of how well the reforms perform following a pre-specified period of operation. A notable component of this programme is the establishment of a database designed to support assessments of the extent to which administrative burdens have been reduced. Post-evaluation is currently planned for 2012, and the conclusion of this evaluation will be reported to the European Commission. Separately in 2010, plans are in place to develop a handbook that officials may rely upon when assessing the administrative burdens their decisions entail.

When considering approaches to improve upon Estonia's already notable achievements in reducing administrative burdens on trade and investment, consideration may be directed towards the 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*. OECD experience with country reviews of regulatory reform indicate that by assessing the potential impact of proposed and existing regulations on foreign trade and investment *via* co-ordination between trade and regulatory agencies, governments can improve the economy's overall regulatory framework with respect to market openness.

Although RIAs carried out in Estonia do not regularly assess trade and investment impacts, regulators do consider the international dimension when developing regulatory and other standards. In general, the trade and investment impacts of new regulations having force in Estonia are only likely to be assessed when they are regulations affecting

external trade drafted at the European level by the European Commission, or the implementing acts of the Directives that must normally be ratified by Parliament. In these cases, the draft law must be presented by the responsible ministry together with an explanatory letter which may include an impact assessment on inward and outward trade performed by the ministry.[26] The procedures and scope of the assessments are decided on case-by-case basis depending on the nature of the draft law. The explanatory letter accompanying the draft law presented to the government is made publicly available.[27]

Estonia is also able to comment on EU trade legislation that is under development. When engaging in such consultations, the Ministry of Foreign Affairs often seeks input from the Estonian Chamber of Commerce and Industry. The Chamber represents a large number of Estonian companies from different fields accounting for over 85% of Estonia's total exports. The Estonian Chamber of Commerce and Industry thus provides an overview of the business community's interests, including potential impacts on trade and investment.

In the case of negotiations between the European Union and trading partners for FTAs, independent and comprehensive studies (Sustainability Impact Assessments[28]) are normally carried out to assess potential impacts on the three dimensions of sustainable development including the economic one. These studies are carried out by external consultants based on academic research and extensive consultation with stakeholders. They are made publicly available and also provide input for domestic policymaking through policy recommendations intended to enhance positive effects (and mitigate negative ones) arising from the European Union's trade agreements, with respect to both the European Union and partner countries.

Example of customs procedures

More clearly than in other areas, declining tariffs worldwide have made arbitrary or excessively burdensome 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, reduces delays at borders that create inefficiencies, a concern that has grown in importance as product cycles have shortened. Estonia performs well in this regard, but there may be a potential for further gains, especially in terms of consistency in the application of new rules.

By a comfortable margin, Estonia leads its regional, the BRIICS and the OECD averages on every indicator of the World Bank's Trading Across Borders index (Table 3). This enviable result is supported by the development of an annual work plan by the Ministry of Finance each December, which identifies customs regulations and guidelines to be reviewed and reformed over the following year. Proposals for changes often come from the Tax and Customs Board (TCB) Board itself, as customs officers provide information on difficulties encountered when implementing customs rules. Also informing the development of the work plan is an annual survey carried out by the TCB among its clients (e.g. traders, passengers, warehouse keepers), which often form the basis for reforms in the management of customs services. Recent progress and indicative performance include streamlining online declaration procedures, implementing a risk management system and providing a system for receiving advanced rulings on the application of customs regulations.

Table 3. Trading Across Borders, 2008

	Estonia	Eastern Europe & Central Asia	BRIICS	OECD
Documents for export (number)	3.0	7.1	7.0	4.5
Time for export (days)	5.0	29.7	21.5	10.7
Cost to export (USD per container)	730.0	1649.1	1095.7	1069.1
Documents for import (number)	4.0	8.3	8.2	5.1
Time for import (days)	5.0	31.7	24.5	11.4
Cost to import (USD per container)	740.0	1822.2	1120.0	1132.7

Source: World Bank (2009), *Doing Business*.

The publicly available web-based customs declarations' processing system is user-friendly and allows for the submission of customs declarations in advance of importation by entering data within the electronic system. For customs to accept the customs declaration, however, goods must be brought into the customs territory and presented to customs. Simplified customs procedures can be accessed by applicants that have not committed serious or repeated infringements of customs rules during the six months *prior* to the application. The applicant must also have completed an application and self-assessment questionnaire and presented a guarantee to secure import duties.

Over recent years, the system of electronic declarations has been significantly simplified and improved. The Minister of Finance amended regulations based on drafts prepared in close co-operation between lawyers from Ministry of Finance and experts from the TCB. Under the current regime, both domestic and foreign firms are able to complete electronic customs filings. The only requirements are that the enterprises must register with the TCB, and in cases of indirect representation that the transactions with the TCB are conducted by an individual that has passed a qualification examination for customs agents. Foreign carriers implementing transit procedures are not required to be registered in Estonia. Some of the changes in legislation and customs electronic information system are related to the World Customs Organization (WCO) recommendations and changes in EU legislation. Carriers are obliged to lodge in advance the electronic entry/exit summary declarations for safety and security purposes by the beginning of 2011.

The implementation of a risk management system has improved targeting of illegal shipments thereby increasing the efficiency of enforcement resources while streamlining border formalities for compliant importers and exporters. The risk-management procedure targets the most damaging sectors of risk thereby replacing burdensome random searches with an objective risk evaluation system yielding a 90% success rate in terms of searches uncovering violations. The system allows for quick adjustments to criteria employed for detecting risky companies and persons in light of new information. The risk management system thus greatly reduces unnecessary searches while better targeting limited enforcement resources towards noncompliant shipments.

To enhance transparency and reduce uncertainty, customs authorities provide facilities allowing traders to receive advanced rulings from customs authorities on how customs legislation will be applied in relation to imports or exports. Importers are able to request *binding tariff information* (BTI) or *binding origin information* (BOI) on written request.[29] Traders are similarly able to receive advanced decisions from customs authorities on how customs rules unrelated to BTI and BOI will be applied in specified

circumstances. Such request must also be made in writing and decisions are normally received within thirty days.[30]

2.4 Encouraging the use of internationally harmonised measures

The application of different standards and regulations[31] 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.[32] 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 and SPS Agreement, which encourages countries to base their technical requirements on international standards and to avoid conformity assessment procedures that are stricter than necessary to attain regulatory objectives.[33]

Box 7. Harmonisation in the European Union:[a]
The New Approach and the Global Approach

The need to harmonise technical regulations when diverging rules from Member States impair the operation of the common market was recognised by the Treaty of Rome in Articles 100 to 102 on the approximation of laws. By 1985, it had become clear 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[b] 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.

In 1985, the 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[c] 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 that conform are allowed free circulation in the European market.

continued

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 that have successfully undergone 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.[d]

The strength of the New Approach and the Global Approach lies in limiting legal requirements to what is essential while 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 depends heavily 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.

Recent developments

Lessons learned from previous revisions of New and Global Approach and their implementation have been joined by new measures in 2008. These measures are known as the "New legal framework" or the New package for goods" consisting of three legal acts:

- Regulation (EC) No 764/2008 of the European Parliament and of the Council of 9 July 2008 laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State and repealing Decision No 3052/95/EC
- Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93
- Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC

This package establishes market surveillance structures designed to detect and remove unsafe products from the EU market, and supports actions against fraudulent goods. The testing, certification and inspection bodies are now subject to more stringent controls in the form of accreditation, in order to ensure a level playing field for manufacturers and the bodies themselves.

continued

A new measure will clarify the definitions of commonly used terms such as "manufacturer, distributor and authorised representative" thereby identifying the responsibilities of each in relation to specific products. Decision 768/2008 will be integrated within the EU legal framework as sectoral specific directives are revised and updated. The new rules seek to enhance confidence and trust in the CE marking thus increasing transparency and strengthening the system.

It should be noted that not all goods fall under Community legislation and approximately one quarter of all intra-Community trade is not covered by harmonised rules. Many companies continue to encounter difficulties when selling their products in Member States other than their own, and are thus discouraged from venturing beyond their domestic market due to burdens relating to proving fulfilment of technical requirements in destination Member States. Regulation 764/2008 shifts the burden of proof that products do not conform to importing Member States. This facilitates trade in covered goods making it easier for manufacturers to access new markets, thereby promoting intra-community trade.

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a. See Dennis Swann (1995), *The Economics of the Common Market*, Penguin Books; 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

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

c. Energy-efficiency, labelling, environment and noise.

d. 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.

Source: The "Recent Developments" section was provided by and the Government of Slovenia (also relevant in the case of Estonia). Swann (1995), European Commission (1994, 1996a, b) and ETSI (1996).

As an economy with a young standards regime, Estonia has relatively fewer standards than most countries. The field of standardization and certification is co-ordinated by the Ministry of Economic Affairs and Communications. It is able to recommend the incorporation of specific standards within draft legislation during the co-ordination phase of the legislative process. Estonia applies a variety of standards including national, European and international ones, but clearly follows EU practices in the development of its standards regime (Box 8). The vast majority of standards applied in Estonia are internationally harmonised or directly transcribed from international sources (Box 8). Less than 2% of Estonian standards are unaligned internationally. The International Electrotechnical Commission (IEC) 17000 series standards are for instance the basis for accrediting conformity assessment authorities.

Box 8. Standards in Estonia
as of 1 March 2009

	Number of valid Estonian standards	Available in Estonian
Domestic standards[1]	**279**	**279**
Implemented European standards[2]	**21 720**	**677**
European Committee for Standardisation (CEN)	12 799	554
CLC	4 953	110
European Telecommunications Standards Institute (ETSI)	3 968	13
Implemented international standards[3]	**312**	**193**
International Organisation for Standardisation (ISO)	277	169
International Electrotechnical Commission (IEC)	35	24
Total	**22 311**	**1 149**

1 Domestic Estonian standards are drafted in Estonian and are not available in other languages, generally.

2 Implemented European Standards are generally available in English and some of them in Estonian, also. Other languages are available depending on the existence of official text.

3 Implemented International Standards are generally available in English and some of them in Estonian, also. Other languages are available depending on the existence of official text.

Source: EVS (2009), Number of Estonian Standards: *www.evs.ee/StandardidjaEL/Eestistandarditearv/tabid/96/Default.aspx*, accessed 25 April 2009.

2.5 Streamlining conformity assessment procedures

Conformity assessment refers to measures taken to assess the conformity of products, processes and services to specific requirements or standards. These procedures may have the effect of facilitating trade, or they may create a technical barrier to trade. Public policy objectives like health, safety and the environment often require rigorous and careful conformity assessment procedures. When designed in a manner that considers the costs and time burdens born by producers, these procedures facilitate market openness by increasing consumer confidence in imported products. Likewise, firms are likely to regain the invested costs, as their ability to demonstrate that their products and services meet these strict requirements can lead to high consumer confidence and increased sales.

Although reliance on internationally agreed standards has been increasing, many internationally traded goods continue to be subject to specific testing and certification procedures in importing countries. Reducing multiple assessment procedures can considerably cut down trade transaction costs. Different procedures and mechanisms have been developed in OECD countries to facilitate acceptance of conformity assessments conducted by foreign conformity assessment bodies as equivalent as those conducted by domestic ones. Such mechanisms include mutual recognition agreements (MRAs) and suppliers' declaration of conformity (SDoCs). By concluding sectoral MRAs, trading partners agree to mutually accept conformity assessments carried out by accredited conformity assessment bodies located in partner countries for a sub-set of products or services.

SDoCs are a more flexible approach, leaving the producers to choose the modalities of conformity assessment with technical requirements. These suppliers' declarations of conformity are usually based on in-house procedures or implemented by private organisations and are normally limited to low risk products. SDoC regimes are regularly supported by post-market surveillance and robust penalties for non-compliance. In general, SDoCs require a high level of mutual trust between all parties concerned, including the end-users. The European Union "Global Approach" is an example of mutual recognition and accreditation procedures enabling the products recognised in conformity to be freely marketed throughout the EU Single Market. It relies heavily on the SDoC approach for its efficacy.

Recognising the results of conformity assessment based on accreditation is strongly supported by OECD best practices. Doing so requires the existence of adequate domestic capacities for accreditation, in particular, the establishment of efficient accreditation mechanism and accreditation institutions. National accreditation bodies, which usually operate under the supervision of the public authorities, are responsible for inspecting and acknowledging the competence and reliability of conformity assessment and share inspection results through international networks, such as the International Accreditation Forum (IAF).

Estonian authorities recognise at least three possible means by which conformity assessments performed in foreign countries can be accepted for imports. One is the principle of mutual recognition deriving from the case law of the Court of Justice of the European Community, which supports the free movement of goods within the internal market. Among EU members, mutual recognition applies to products not subject to Community harmonisation legislation and to aspects of products falling outside the scope of such legislation. The second is EU legislation directly addressing recognition of conformity assessments. Finally, international conventions may regulate recognition of conformity assessments performed in third countries.

The principle of mutual recognition of conformity assessment is applied by Estonia on imports from EU members. Not a party (individually) to MRAs with non-EU economies, Estonia's domestic regulatory framework does not have independent regulatory measures for recognising conformity assessments performed in third countries. In the absence of an MRA between the European Union and a non-EU economy, the New Approach directives do not allow notified EU conformity assessment bodies to recognise conformity assessments performed in non-EU economies. Unilateral or even bilateral recognition of conformity assessments performed in third countries by Estonia could be a departure from EU law.

In cases where products fall within non-harmonised areas (in terms of EU rules), however, Estonian authorities have discretion to decide what documents to accept as proof of product conformity. Under EU rules concerning non-regulated areas, Estonian authorities are able to accept SDoCs. In general, products falling within the non-harmonised area also fall also under non-regulated area, and thus Estonia is able to accept SDoCs from non-EU countries for such products. In practice, Estonia's relatively liberal policies regulating product compliance mean that in cases where they have discretion, regulators often do not distinguish or discriminate products from EU and from non-EU economies.

3. Intellectual property rights

Estonia has experienced an extended period of rapid economic growth. According to OECD (2009), its PPP adjusted GDP per capita grew from USD 6278 in 1995 to USD 20 350 in 2007, thus surpassing levels in Turkey, Mexico, Poland, Hungary and the Slovak Republic, and is quickly approaching that of Portugal. This progress has not fully translated into corresponding economy-wide development, as the economy remains reliant on sectors with relatively low-productivity.

Estonia's competitiveness is largely based on cheap production inputs, but the *Operational Programme for the Development of Economic Environment* (Operational Programme) showed that since 2005, growth in real wages substantially exceeded growth of value added per employee, thus highlighting the need for restructuring towards technology-intensive production. Innovation can play an important role in boosting economic performance in sectors with higher levels of value addition. In this regard, an appropriate regime of intellectual property rights can be an important means to strengthen incentives for innovators and other rights holders to create or make additional technology and products available. This section provides a brief overview of domestic innovation policy in Estonia and then reviews the intellectual property rights regime.

3.1 Domestic innovation policy

According to Global Competitiveness Report 2008-2009, Estonia has a relatively high level of macroeconomic stability (ranking 23 out of 134 countries), but is still behind most OECD countries in innovation (ranking 31 out of 134 countries).[34] The Operational Programme showed that while foundations for innovation exist, Estonia was generally well behind OECD countries in terms of capacity for innovation. Estonia's gross expenditure on research and development was 0.94% of the GDP in 2005,[35] a figure well below half the OECD average at 2.26%, but nonetheless higher than six OECD economies.[36] Compared to other countries from Central and Eastern Europe, Estonia was

behind the Czech Republic and slightly behind Hungary, but ahead of Poland and the Slovak Republic.

In addition, businesses and enterprises represent a relatively small proportion of research expenditures in Estonia. According to the Operational Programme, a large share of research expenditures is spent on acquisition of machinery and equipment, which indicates a focus on process innovation rather than development of products and services. Collaboration on research and development between suppliers and clients is extensive in comparison to that with universities. However, the government has set out clear objectives to increase the total level of outlays for research and development. The *Estonian Research and Development and Innovation Strategy* establishes goals for increasing gross expenditure on research and development to 1.9% by 2010 and 3% by 2014.

While these goals may be overly optimistic in light of the current economic and financial turmoil, the ratio did increase from 0.71% in 2001 and 0.88% in 2004. The robust GDP growth recorded throughout this period means that research and development has increased considerably in absolute terms. The *Global Competitiveness Report 2008-09* ranked Estonia 40 out of 134 countries in companies' spending on research and development in comparison to 35 out of 75 countries in the 2001-2002 ranking.[37] Estonia's score was slightly above average in the 2008 report and slightly below average in the 2001 report.

The relatively limited availability of highly skilled human resources in key areas may be an important constraint on research and development, despite the fact that 33.2% of the population aged 25-64 hold tertiary degrees.[38] Although this statistic in line with advanced OECD countries, the *Estonian Research and Development and Innovation Strategy* states that the number of PhD graduates is very small, especially in the fields of engineering and natural sciences, and assesses that the shortage of such specialists is an obstacle for progress in research and development.

The number of Estonian triadic patent families, i.e. innovations protected by patents in United States, European Union and Japan, is only 2.19 per million of the population.[39] This is well below the OECD country average with some exceeding a figure of 100 per million. The figure is nevertheless higher than that of seven OECD countries. Foreign co-inventors are involved in 48.5% of Estonian patents at the European Patent Office.[40] This figure is higher than in all but three OECD countries, indicating that international collaboration in an important basis for innovation in Estonia. This finding is not unexpected as Estonia has sought (successfully) over recent years to acquire foreign innovation resources both through European Community Framework Programmes for research and development and through direct foreign investment.

Improving the innovative capacity of Estonia is a multidimensional challenge. Recommended reforms include incentives to stimulate investment in research and development (particularly by the private sector), and measures to develop the human resource base through an enhanced system of higher education. Other complementary measures may include improvements to the intellectual property rights regime and increased implementation of information technology.

3.2 Basic premises for the review of intellectual property rights

Under the current framework for international trade, respect for intellectual property rights constitutes both an international commitment and a policy in favour of economic development. Respect for these rights is related to market openness in that it provides rights holders with the opportunity to enter markets – particularly for intellectual-property-intensive products and services – with the assurance that property conforming to the requirements of the system will be recognised and easily tradable. At the same time, it provides rights holders a means to defend such property from abuse. Moreover, an effective system of intellectual property rights can stimulate innovation by innovators and other stakeholders by allowing them to benefit from successful research initiatives. Such a system can promote dissemination of knowledge through required disclosure and facilitates access to intellectual property *via* technology markets and licensing. It can provide, in addition, a relatively general incentive system that is consistent with specialization in those sectors offering the greatest scope for productivity improvement relative to research cost.[41] Such factors, among others, suggest that enhancements to the system of intellectual property rights can be an important element of a national strategy for economic development.

The Secretariat employed a few key premises in conducting the present review. In the absence of an OECD instrument covering the full scope of trade-related intellectual property rights, the assessment makes reference to the accords that underpin the international framework for intellectual property rights, in particular the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and key treaties administered by the World Intellectual Property Organisation (WIPO) as well as illustrative regional, bilateral and unilateral institutions. Bilateral and regional trade agreements permit the signatory parties to adjust and extend the commitments made in multilateral treaties. The European Union and United States both make extensive use of this option. Voluntary and unilateral adaptation to best practices constitutes remains a further option.

The international harmonisation of intellectual property rights has a number of benefits. For example, harmonisation of standards facilitates cross-border trade and investment by reducing the transaction costs associated with multinational business activities. At the same time, the review aims to account for an effective intellectual property policy based on institutions and political instruments, and various international and bilateral permitting a degree of institutional flexibility and adaptation to national interests. Experience from OECD countries shows that an effective policy should be balanced and leverage multiple instruments to foster innovation and knowledge accumulation. One advantage of this allowable institutional flexibility is that standards or practices can be adjusted within limits to meet local needs and interests. For example, countries with a comparative advantage in intellectual-property dependent sectors may wish to capitalise on this by extending a comparatively high level of protection.[42]

3.3 The intellectual property rights regime

As a member of the European Union, Estonia's regime of intellectual property rights is similar in terms of legal standards to most OECD countries. WIPO (2008) notes that it grants protection to copyrights and related rights, trademarks, geographical indications, patents, industrial designs, topographies of integrated circuits, plant varieties and undisclosed business secrets. Utility models are also granted protection. The regulatory framework for intellectual property rights has, like most regulations in Estonia, undergone extraordinary changes in the short time between 1991 and its accession to the European Union in 2004.

Estonia signed a number of international treaties following its independence. In 1994, Estonia's accession to the WIPO Convention, the Berne Convention, the Paris Convention and the Patent Cooperation Treaty (PCT) entered into force. Even before completing its accession to the EU, Estonia had joined other international treaties including: the Madrid protocol in 1998, the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) in 1999 and the Rome Convention in 2000. Estonia is also a signatory to the Patent Law Treaty which entered into force in 2005.

As part of its EU accession, Estonia amended domestic legislation including the Patent Act, Industrial Design Protection Act, Trademark Act, Copyright Act and Utility Model Act to align it with the *acquis*, i.e. current EU legislation. The Copyright Act, in particular, required a number of amendments to meet EU requirements. Estonia has signed but not yet ratified the so called WIPO Internet treaties (i.e. the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty). Notably, a number of OECD members from the European Union have yet to ratify these treaties. Estonia supports the development of a single patent system covering the entire European Union (Community Patent System) as well as the creation of a single patent court, as outlined in Estonia's European Union Policy 2007-2013 (2007). It however maintains that such a system must also be accessible to small- and medium-sized enterprises and cost effective in handling non-official EU languages. Preparation for EU accession also included restructuring lines of authority among domestic institutions. Copyright and related rights areas fell under the Media and Copyright Department of the Ministry of Culture. A Copyright Committee was formed to carry out assistance and coordination functions, thus complementing the governmental structure. Industrial property came to be handled by the Ministry of Economic Affairs and Communications and the Estonian Patent Office. No specific copyright court exists and cases are handled in the general court system. An overview of Estonia's IPR policies can be found in Table 4.

It its 2003 progress report, the European Commission (2003) commented that while the alignment of Estonian legislation was almost complete and administrative structures were in place, the fight against piracy and counterfeiting in Estonia did not have sufficient priority. Improved administrative capacity and increased co-operation between bodies such as customs, the police, local governments and the judiciary, were required, as well as further training of judges and public prosecutors in the field of IPR. Similar concerns were expressed by the International Intellectual Property Alliance (IIPA) (2006), which alleges that customs and police lacked both the will and the resources for criminal enforcement. It was also suggested that the Estonian enforcement agencies and prosecutors were disinclined to participate in training events.

Table 4. An overview of Estonia's IPR policies

Are intellectual property rights (IPRs) included as an explicit element in the national economic strategy of your country?	Yes
Has your country taken any recent economic policy initiatives in relation to trade and IPRs?	Yes
i) Unilateral initiatives to strengthen IPRs in order to attract high technology trade or foreign direct investment	No
ii) Participation in regional trade agreements with IPRs provisions that go beyond the requirements of the WTO TRIPS Agreement.	Yes
iii) Special public campaigns to ensure compliance with the WTO TRIPS Agreement or raise awareness of IPRs issues such as counterfeiting and piracy.	Yes
Are there policy objectives to ensure an adequate and effective enforcement of IPRs and to combat infringements thereof?	Yes
Does your country have a national, inter-ministerial strategy or plan for coordinating a response to piracy and counterfeiting through law enforcement and other public policy tools?	Yes
Has your country acceded to any international IPR related Agreements/Conventions, and particularly those administered by the World Intellectual Property Rights Organisation (WIPO)?	Yes
Has your country ratified the WIPO Internet Treaties?	No
Does your country have legally established limitations on patentable subject matter?	Yes
Please name these Agreements/Conventions and mention if their implementation by domestic regulations (if required) has been finalized. • Copyright (Rome Convention), Act (Accession), 09/12/1999 • Copyright (Phonograms Convention), Act (Accession), 09/12/1999 • Copyright (Berne Convention), Act (Accession), 18/05/1994 • Paris Convention for the Protection of Industrial Property 24/08/1994 (re-acceded) • Convention on Establishing the World Intellectual Property Organization (Stockholm,1967) 5/02/1994 • Patent Cooperation Treaty (Washington, 1970) 24/08/1994 • Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of Registration of Marks (1957), 27/05/1996 • Budapest Treaty on the International Recognition of the Microorganisms for the Purposes of Patent Procedure (1977), 14 /09/1996 • Locarno Agreement Establishing an International Classification for Industrial Designs (1968), 31 /10/1996 • Strasbourg Agreement Concerning the International Patent Classification (1971), 27 /02/1997 • Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (1989), 18/02/1998 • Trademark Law Treaty (1994), 7/01/2003 • Geneva Act of the Hague Agreement Concerning the International Deposit of Industrial Design (1999), 23 /12/ 2003 • Patent Law Treaty (2000), 28/04/2005 • Singapore Treaty on the Law of Trademarks, signed 28/03/2006	
All necessary amendments to national legislation were implemented prior to ratification of international treaties.	
What is the term of copyright protection in your country? The term of protection of copyright shall be the life of the author and seventy years after his or her death, irrespective of the date when the work is lawfully made available to the public. Duration of related rights shall not expire before the end of a period of fifty years.	
What is the average pendency period for patent and trademark applications in your country? Average pendency period for the patents is 52 months and for the trademark applications 12 months.	

Source: Government of Estonia (correspondence with OECD Secretariat).

In its 2008 report, the Property Rights Alliance scored Estonia at 6.6 thus ranking it 27 out of 115 countries under its International Property Rights Index.[43] The score is an average of three indexes including: Legal and Political Environment, where Estonia scored 6.9 (rank 23); Physical Property Rights, where Estonia scored 7.4 (rank 20); and Intellectual Property Rights, where Estonia scored 5.4 (rank 43). Each of these three indexes considers a number of factors based on data from different sources. The relatively high score on Legal and Political Environment is also confirmed by additional indicators. In regard to the efficiency of the legal framework, the Global Competitiveness Report 2008-2009 ranks Estonia well above average at 31 out of 134 countries, indicating a fairly efficient and neutral process. The 2008 Corruption Perception Index measuring perceived levels of public-sector corruption ranks Estonia at 27 out of 180 countries.[44] While behind many OECD members, especially the Nordic countries, Estonia is just below France and slightly ahead of Spain, ranking considerably better than the world average.

This brief summary of intellectual property rights in Estonia provides evidence that the framework of intellectual property rights is extensive and is being implemented with reference to international standards. It is also clear that Estonia has taken important steps to strengthen its system of intellectual property rights and to comply with its international and European obligations. Evidence of shortcomings remains, however, particularly in enforcement.

3.4 Intellectual property rights challenges

A general indication of progress in the Estonian IPR regime can be found in the evolution of its intellectual property protection rankings in successive Global Competitiveness Reports. In the 2001-02 edition, Estonia was ranked 36 out of 75 countries, with a score of 4.0 compared to the 4.1 average.[45] In the most recent Global Competitiveness Report, Estonia was ranked 32 out of 134 countries with a score of 4.8 compared to the 3.8 average.[46] It is notable that very few countries enjoyed such an improvement during this period. Estonia now ranks well above the world average and a number of OECD members.

Estonian authorities acknowledge that internet piracy remains a problem in the economy. During 2005-08, the growth of internet piracy, especially *via* file transfer protocol (FTP) servers and peer-to-peer (P2P) systems, grew significantly. Anti-piracy efforts have been promoted since 1999 by the Estonian Organisation of Copyright Protection (EOCP), which operates on a non-profit basis. Its organisational objective is to protect the rights of music producers, the film and interactive game industries, and the interests of its members. Cooperating closely with police and customs, the EOCP also provides expert statements on copyright violations in courts and for national institutions conducting investigations (more information is available at: *www.eako.ee)*. In 2001, a Memorandum of Understanding between EOCP and various Estonian internet service providers (ISPs) was signed to enable the removal of infringing materials. This memorandum was updated in 2004 to allow for removal of illegal copyright material from the public servers of major ISPs thus expanding its coverage beyond homepages. The memorandum has been implemented with some success. In 2008, 957 home pages were closed, 69 417 files removed from public FTP-servers and 1053 warnings sent to online-advertisers.

Until May 2008, the Copyright Committee made proposals to the government twice a year for amendments to domestic legislation based on its monitoring of Estonia's compliance with its international obligations. In that year, amendments to the Copyright

Act signaled that the statutory obligation was no longer viewed as necessary. Estonian authorities consider that recent challenges can be solved with *ad hoc* proposals to the government, various ministries or other authorities.

Despite improvements in the regulatory framework for intellectual property rights in Estonia, there remain areas for improvement. One particular area for progress concerns the level of piracy in Estonia. According to the Fifth Annual BSA and IDC Global Software Piracy Study, the piracy rate for business software in Estonia was 51% in 2007 – a decline from 55% in 2004[47] – but still high in comparison to North America (21%), Western Europe (33%) and the world average (38%) in 2007. Rates for OECD countries in Central and Eastern Europe tended to be lower: 39% in the Czech Republic, 42% in Hungary and 45% in Slovakia, but 57% in Poland. In comparison, the overall average for Central and Eastern Europe was 68%. In Greece and Turkey, the figures were, respectively 58% and 65%. In comparison to neighbouring countries, Estonia's piracy rate was lower than Latvia, Lithuania and Russia – but considerably higher than Finland's rate of 25%. The Recording Industry's 2005 Commercial Piracy Report claimed that the level of music piracy in Estonia was over 50% in 2004, a rate similar to countries in Central and Eastern Europe.[48]

The IIPA (2006) indicated problems with internet and optical disc piracy, highlighting particularly what it perceived as insufficient effort by Estonian Customs and police to stem the flow of optical discs into Estonia from Russia and Latvia, and the export of optical discs to Finland and Sweden.

Such relatively high levels of piracy in copyrighted goods and counterfeiting of trademarked products may indicate that the enforcement of intellectual property rights has not been sufficient and penalties for infringement are insufficient for deterrence in Estonia. Some corrective actions have already been taken and more are underway. Further capacity building and adoption of international best practices could be practical next steps for authorities in Estonia to consider.

4. Compliance

The European Commission manages the regulation of external trade as a policy field common to all EU members. Currently, several pieces of legislation that may affect the EU trade regime are under consideration and can be consulted over the internet in the PreLex database.[49] In terms of draft domestic legislation not falling under external trade policy, but which may affect the openness of the trading regime, consultations with the External Trade Division of the Ministry of Foreign Affairs as part of Estonia's transparent process of coordinating draft legislation places a check on the possibility of conflicts with international trade obligations.

Periodical review of EU trade obligations *vis-à-vis* non-EU members is provided in the WTO framework through the Trade Policy Review Mechanism (TPRM) and the Transparency Mechanism for Regional Trade Agreements conducted by the Committee on Regional Trade Agreements (CRTA). Under the TPRM, the trade policy of the European Union is reviewed every two years and the WTO secretariat prepares a report as part of each review. Along with all other EU members, Estonia is provided an opportunity to comment on Report of the Government prepared by the European Commission for submission to the WTO as part of the TPRM process, but has not to date made substantial comments on these draft reports. Estonia is not directly participating in

any consultations between European Union and non-member economy regarding potential trade violations.

The European Union has no mechanism for periodically reviewing the conformity of EU members with EU trade obligations. However, the European Commission is responsible for ensuring that Community law is correctly applied in EU members, including the observance of Community law relating to trade matters. In this respect the Commission has powers with respect to EU members failing to comply with Community law, including referral to the European Court of Justice. Estonia does not have a regulatory mechanism acting periodically to examine the consistency of its domestic laws and regulations with international trade obligations. This results largely from the absence of competence by domestic regulators in relation to external trade. In the unlikely event of divergence between national legislation or regulations and an international treaty ratified by the Riigikogu (the parliament of Estonia), the Constitution of Estonia provides for the superiority of international obligations.

5. Conclusions and policy options

Although Estonia's external trade policymaking falls under EU competence, it nevertheless maintains a trade bureaucracy to represent Estonian national interests at the EU level. Its trade bureaucracy also plays an important role in supporting the domestic implementation of trade policymaking at the EU level. Estonia applies an active infrastructure for regulatory transparency, and has a history of requiring rulemaking processes to be conducted over the internet in a publicly accessible format. The principle of non-discrimination is consciously supported under the regulatory framework particularly in the area of investment policy, but is grounded in domestic law primarily though international commitments. To reduce unnecessary trade restrictiveness, Estonia applies RIAs on a sectoral basis with a focus on reducing costs associated with administrative burdens. Estonia's efforts to harmonise domestic towards international standards have been driven by the need to establish a standards regime after 1991. Today, less than two per cent of domestic standards are unaligned with international ones. Estonia applies EU approaches to streamlining conformity assessment procedures and enables non-EU economies to benefit from its general trade policy of openness where possible under EU regulations. Estonia views its IPR regime as a component of an articulated national strategy on innovation, and has substantially improved its quality of enforcement over recent years. Compliance related activities in Estonia are closely intertwined with those of the European Union and the EU's relationship with the WTO. The present review found no evidence of compliance–related concerns.

5.1 General assessment and main challenges

Estonia's efforts to ensure **transparency** in its regulatory processes are underlined by requirements that all stages of the legislative process be conducted on publicly accessible internet portals. The government has also undertaken a commendable effort to integrate all national legal databases within a single publicly accessible internet portal. Such processes are also subject to comment *via* internet prior to implementation. Domestic standards are developed in working groups.

Policy options

- While the vast majority of standards applied in Estonia are internationally aligned, some domestic standards exist which are not available in English. To burnish an already transparent regulatory environment, authorities may consider translating into English those domestic standards currently available only in Estonian.

Since regaining independence, the Estonian regulatory regime has undergone a major review on its observance of **non-discrimination** as part of its accession to the WTO. However, the WTO principles were introduced into Estonian trade agreements already before the accession to the WTO. Although Estonia's legal tradition has not historically addressed the principle of non-discrimination, the approach to non-discrimination reflected in its economic policy since independence, has been among the most consistent. This consistency can be found in terms of the near zero tariff rate policy applied in the period before accession to the European Union, as well as Estonia's investment policy which disallows providing incentives to attract foreign investors which are not equally available to domestic ones.

Policy options

- No recommendation.

Estonia has made significant progress in **use of the least trade restrictive regulations** through its selective application of RIAs to reduce administrative burdens. According to the World Bank Doing Business Indicators, its ratings in this regard surpass the average for the OECD area. Its current programme of applying RIAs in a number of pre-selected regulatory areas coheres with OECD best practices, particularly in providing for *ex post* assessments on the performance of the corresponding reforms after implementation. The focus of Estonia's RIAs on reducing administrative burdens does however appear to overlook the possibility that regulations could negatively impact trade and investment, despite not creating administrative burdens.

Policy options

- Consider making assessments of trade and investment impacts a regular component of RIAs.

- Consider applying RIAs on a systematic basis to all draft legislation.

In establishing its domestic standards regime beginning in 1991, Estonia has adopted primarily international standards and consequently set a high standard in terms of **international harmonisation of domestic standards**. However, a small minority of domestic standards remain unaligned with international ones.

Policy options

- Consideration could be directed towards reviewing Estonian standards not aligned internationally for possible alignment.

In the area of **streamlining conformity assessment,** Estonia clearly sets a high standard as confirmed in its rating under the Trading Across Borders index of the World Bank Doing Business Indicators. Estonia's policy of maintaining an open trading regime is apparent in its efforts to accept conformity assessments from non-EU members where possible under EU regulations.

Policy options

- As opportunities arise with trading partners and at the EU level, promote openness by sharing experience in streamlining conformity assessments.

Estonia has a system of **intellectual property rights** that is well developed from a legal perspective. Significant amendments and modifications have been made in recent years to bring the Estonian system closer to the international norms of developed economies, particularly during the process of adapting domestic legislation to become a member of the European Union.

Policy options

- Assess avenues for further progress with respect to administration and enforcement of intellectual property rights. One area to consider is reducing the rate of internet piracy in copyrighted goods. Further capacity building and adoption of international best practices could be practical avenues for authorities in Estonia to explore as next steps.

- Consideration should also be directed towards enhancing the domestic economy's capacity both to produce and to employ intellectual property. This may entail review of policy in favour of investment in research and development, particularly with respect to the private sector, as well as reinforcement of higher education systems with respect to fields critical for innovation.

Compliance in Estonia's trade and regulatory regime is addressed through its membership in the European Union and the WTO. In both cases, a large number of regulations are in force, none of which have been subject to compliance action whether at the European Union or WTO level.

Policy options

- No recommendation.

Notes

1. Country reviews of regulatory reform normally contain chapters on regulatory quality, market openness and competition. Their objective is to assess domestic regulatory frameworks and suggest policy options for enhancing economic performance in countries under review. To date, the OECD has played a key role in promoting regulatory reform by carrying out assessments of the policies and practices of more than 20 member countries, Brazil, China and the Russian Federation.
2. EIU (2008).
3. OECD (2009b).
4. WEF (2008).
5. USFCS (2001).
6. OECD (2008c).
7. For descriptions of OECD's six efficient regulation principles, this paper draws from P. Czaga (2004).
8. 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.
9. Technical Regulations Information Systems (TRIS) (2009).
10. Currently, there are 39 members of the GPA: *www.wto.org/english/tratop_e/gproc_e/memobs_e.htm#memobs*.
11. USFCS (2001).
12 Commission of the European Communities (2009).
13. OECD (2009a), p. 7.
14. Examples include mining, energy, gas and water supply, railroad and transport, waterways, ports, dams and other water-related structures, and telecommunications and communication networks.
15. USFCS (2001).
16. OECD (2009a), p. 10.
17 Ibid. p. 35.
18 Ibid, p. 11.
19. The term RTA is used here as a generic term which includes free trade agreements (FTAs), customs unions (CUs) and preferential trading areas (PTAs) which are not necessarily limited to regional groupings.
20. OECD (2006b), p. 25.
21. European Commission (2009), Bilateral Trade Relations: *ec.europa.eu/trade/issues/bilateral/index_en.htm*, accessed 27 April 2009.
22. European Commission (2009), Treaties Office Database: *ec.europa.eu/world/agreements/searchByCountryAndContinent.do?id=4&letter=A*, accessed 27 April 2009.

23. European Commission (2009), Bulletin of the European Union: *europa.eu/bulletin/en/welcome.htm*, accessed 27 April 2009.

24. OECD (2009a), p. 9.

25. Administrative burdens are defined as the costs involved in obtaining, reading and understanding procedures and regulations, developing compliance strategies and meeting mandated reporting requirements, including data collection, processing and storage.

26. Technical rules for drafts of legislative acts (2009).

27. Public Information Act (2009).

28. Sustainability Impact Assessments (2009).

29. The issuing procedure is described in articles 6 and 7 of the Community Customs Code Implementing Provisions (*eur-lex.europa.eu/LexUriServ/site/en/consleg/1993/R/01993R2454-20060701-en.pdf*).

30. The following information shall be included in a written decision of the customs authorities:

    1) the name of the customs office that made the decision;
    2) the name and position of the official who prepared the decision;
    3) the name, number and date of the decision;
    4) the name and postal address of the person with regard to whom the decision has been made;
    5) the reason for the decision together with references to the corresponding provisions of the customs rules;
    6) the applicable sanctions upon non-compliance with the decision; and
    7) the procedure for contesting the decision.

31. 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".

32. 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. See for example, TABD (2007), "Establishing the Barrier-Free Transatlantic Market", March 2007: *www.tabd.com/ceo_reports*.

33. Although examples cited in this review focus on TBT related standards, the principle of harmonisation towards international standards applies equally to SPS as it does to TBT standards.

34. WEF (2008).

35. OECD (2009).

36. OECD economies with lower research expenditures included Greece, Mexico, Portugal and Turkey.

37. WEF (2001 and 2008).

38. OECD (2009c).

39. *Ibid*.

40. *Ibid*.

41. *Ibid*.

42. From a systemic perspective, it can also be argued that some experimentation with local and national designs of intellectual property rights in combination with international trade and investment generate institutional competition and may lead to improved efficiency in the global system of intellectual property rights over the long run. Limited experimentation and competition, particularly in new sectors and in times of significant technological change, may contribute to evolving best practices and improving market institutions.

43. Property Rights Alliance (2008).

44. WEF (2008) and Transparency International (2008).

45. WEF (2001).

46. WEF (2008).

47. BSA (2007).

48. IFPI (2005).

49. See: *http://ec.europa.eu/prelex/apcnet.cfm?CL=en*. The external trade related proposals can be separated by using the Advanced search function to search for proposals that have ART 133 as their legal basis.

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