OECD REVIEWS OF REGULATORY REFORM

REGULATORY REFORM IN POLAND

FROM TRANSITION TO NEW REGULATORY CHALLENGES

ENHANCING MARKET OPENNESS THROUGH REGULATORY REFORM

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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FOREWORD

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

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

The report was prepared for *The OECD Review of Regulatory Reform in Poland* published in July 2002. The Review is one of a series of country reports carried out under the OECD's Regulatory Reform Programme, in response to the 1997 mandate by OECD Ministers.

Since then, the OECD has assessed regulatory policies in 16 member countries as part of its Regulatory Reform programme. The Programme aims at assisting governments to improve regulatory quality — that is, to reform regulations to foster competition, innovation, economic growth and important social objectives. It assesses country's progresses relative to the principles endorsed by member countries in the 1997 *OECD Report on Regulatory Reform*.

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

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

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As border barriers to trade fall, the impact of domestic regulations on international trade and investment becomes more apparent. While regulations aim at reaching objectives such as health, safety or the environment, that may be in the public interest, they may at the same time directly or indirectly distort international competition, and prevent market participants from taking full advantage of competitive markets. Maintaining an open world trading system requires that regulations do not put unnecessary restrictions on flows of goods and services, thereby promoting global competition and avoiding trade disputes. This chapter assesses to what extent regulations in Poland achieve these objectives and how regulatory reform may contribute to enhancing market openness and the benefits which consumers and producers can reap from open markets.

Over the past decade, bold reforms have turned the Polish economy into a market-oriented economy open to international competition. Strong growth of imports has reflected the increased openness of the domestic market. Poland's trade policy has geared towards liberalisation through multilateral, regional and bilateral agreements, although some parts of the economy, mainly the agriculture, have so far been partly sheltered from international competition. Foreign investment has played a major role in the restructuring and modernisation of the economy, particularly since the second half of the 1990s. Poland's endeavour to join the European Union has largely driven the reform agenda and changes in the regulatory framework as the country has undertaken to incorporate EU rules in a number of policy areas, including competition, product regulation or government procurement.

The efficient regulation principles for market openness, which have been identified in the 1997 OECD report on regulatory reform, have been built into the Polish regulatory framework. Domestic regulations in general give foreign market participants equivalent competitive opportunities. The number of restrictions on foreign investment has been reduced although exceptions remain in some areas, in particular professional services, government procurement and real estate. Competition policy and institutions have been developed. As required by the accession process to the EU, Poland has undertaken to reform its standardisation and certification system, whose complexity and burdensome requirements were considered as significant obstacles to trade. Recent progress has been made to adapt the legislative framework to allow for the adoption of EU rules on product regulation, which should lead to a reduction in mandatory certification requirements and an increase use of more flexible and market-oriented conformity assessment systems.

The process of making laws entails a check of conformity of proposed regulations with international commitments, but more could be done to give a stronger voice to market openness issues in the rulemaking process. The preparation of regulations does not provide for a thorough economic analysis of their impact on trade and investment. Public consultation is in general underdeveloped by international standards and does not allow for a meaningful interaction with the private sector, which could promote the elimination of numerous barriers to business created by regulations. The Polish government is considering the implementation of regulatory impact analysis, including with regard to international competitiveness, combined with increased public consultation, based on OECD guidelines, which could represent a positive step towards international transparency and avoidance of unnecessary trade restrictiveness.

More could also be done to improve the business environment through a more simplified and predictable implementation of regulations. The government has undertaken to reduce administrative procedures and set up a specific task force to this end. However, business compliance with administrative regulations still requires numerous and, to some extent, unpredictable procedures. Further government efforts to streamline regulations and improve their implementation could help improve the Polish business environment, for both foreign investors and domestic companies, and promote the competitiveness of the Polish economy in the global economy. In general, while much progress has been done on adapting the legislative framework, efforts will need to be pursued to ensure effective implementation of reforms and reinforce the effective application of efficient regulation principles.

The globalisation of production and the resulting deeper integration of national markets have reinforced the link between domestic policies and trade liberalisation. As border barriers to trade have fallen around the world, the impact of domestic regulations on international trade and investment have become more apparent than ever before. Although regulations aim at achieving objectives in a range of fields such as health, safety or the environment, that are in the public interest, they may at the same time directly distort international competition and lead to negative effects on the economy. Regulations should be made in a way consistent with an open trading system and support international competition. This chapter considers how the Polish regulatory environment affects the access of foreign firms to the Polish market, whether they do it through exporting goods or services, or through setting up their own presence to operate in the market. Another issue –whether and how inward trade investment affect the fulfilment of legitimate policy objectives reflected in social regulation- is beyond the scope of this review.

1. MARKET OPENNESS AND REGULATION: BACKGROUND ECONOMIC AND POLICY ENVIRONMENT

Since the beginning of the 1990s, Poland has undergone a deep transformation from a centrally planned economy to a market economy open to international competition. Radical economic reforms were implemented in the early 1990s to establish the foundations of a market economy with sharp cuts in state subsidies, removal of almost all price controls, and widespread liberalisation of the economy. Following this first "shock therapy", structural reforms have been continued to restructure and privatise state-owned enterprises, create a legal framework for business operations based on market mechanisms, and develop capital markets. Increased openness of the market to international trade and investment has been a major element of Poland's transformation process. Easier access to imports and sizeable inflows of foreign direct investment (FDI) have supported growth in productivity and contributed to economic performance.

Poland's goal to join the European Union (EU) has largely driven the reform agenda since the early years of the transition. The first step in the process was the signature of the Europe Agreement with the European Communities in December 1991. Poland formally applied for membership in 1994 and negotiations on accession started in 1998. The drive towards EU membership has strongly oriented Poland's trade and economy policy and given impetus to structural reforms. The accession process has entailed a huge legislative activity to incorporate EU rules into Polish legal system, and has required changes in legislation and institutions. It has involved the entire Polish legislation insofar as particular policy areas are subject to EU rules, and has in particular affected competition policy, taxation, product regulation, government procurement or industrial policy. The transposition work, which started in 1998, has intensified since mid-2000. As of April 2002, 22 out of the 29 chapters opened for negotiations were provisionally closed. In its report of November 2001 on Poland's progress towards accession, the European Commission concluded that "Poland is a functioning market economy. Provided that it continues and intensifies its present reform efforts in a consistent policy environment, it should be able to cope with competitive pressure and market forces within the European Union in the near term". While the Commission highlighted Poland's progress in adopting EU legislation in key areas of the internal market acquis, standards and certification and state aids, it insisted on the need to focus on the implementation of the legislation and the accompanying administrative capacity.[1]

Subsequently to its commitments on trade in goods in the Uruguay Round and on trade in services under the General Agreement on Trade in Services (GATS), Poland took further commitments to open its market and reduce barriers to trade in the framework of the WTO agreements on basic telecommunications, financial services and information technology in 1998. It is an observer to the plurilateral WTO Agreement on Government Procurement. Accession to the OECD in 1996 required further liberalisation of capital movements. At the European level, the trade-related part of the Europe Agreement provided for the establishment of free trade in industrial products between the EU and Poland and reciprocal concessions in agriculture. In the 1990s, Poland concluded other free-trade agreements, notably with the EFTA and CEFTA in 1992 (Box 1).

Box 1. **Poland's preferential agreements**

The European Union

In the early 1990s the European Union concluded trade and co-operation agreements with the countries of central Europe. In December 1991, it thus signed an Association Agreement (the Europe Agreement) with Poland, which entered into force in February 1994. This association agreement can be considered as the first step in Poland's endeavour to join the European Union. It includes a range of commitments towards the establishment of a free-trade area as well as the promotion of political dialogue, economic, monetary and industrial co-operation, education and training, and harmonisation of legislation.

The trade-related part of the agreement, which became operative in March 1992, aims to gradually establish a free trade area, with a quicker liberalisation on the EU side than on the Polish side. It provides for:

- Elimination of tariffs and quantitative restrictions on imports of industrial goods, by 1/1/1995 on the EU side (except for coal and steel imports, which became duty free on 1/1/1996, and for textiles which became duty free on 1/1/1997 and no longer subject to quantitative restrictions on 1/1/1998); and by 1/1/1999 on the Polish side (except for petroleum products, which became duty free on 1/1/2001, and for vehicles older than ten years, trucks, except those older than six years old, car bodies and chassis from above-mentioned vehicles, two-cycle engine vehicles, chassis with two-cycle engine, which are subject to ban on import until 1/1/2002).

- Reciprocal concessions in the form of lower tariffs and less restrictive quotas on agricultural imports.

- A prohibition against the introduction of new duties or quantitative restrictions, supplemented with exception mechanisms, some applicable by both sides (safeguard, anti-dumping, shortage, agricultural policy and balance-of-payment measures), and some by Poland only (infant industries, restructuring, social problems).

- Progressive liberalisation of trade in services.

The agreement also provides for commitments related to the establishment and movement of workers, public procurement, competition rules, intellectual, industrial and commercial property.

European Free Trade Agreement (EFTA)

Poland and the EFTA Member States concluded a free trade agreement in December 1992. The agreement provided for a phased reduction of duties on industrial products to be completed by 1/1/1999 on Poland's side (except steel, petroleum products and vehicles by 2002) and by 1/1/1993 on EFTA's side (except chemical products in Norway by 1996, textiles and clothing by end 1997 and tariffs on oil products to Iceland). Poland also has bilateral agreements with individual EFTA Member States on some agricultural products.

CEFTA

Along with the Czech Republic, Hungary, and the Slovak Republic Poland is a founding member of the Central Free Trade Agreement that was established in 1992. Slovenia, Romania and Bulgaria joined the CEFTA in 1997, 1998 and 1999 respectively. The objective of CEFTA was to establish a free trade area by 2001 through bilateral liberalisation schedules based on common rules. The agreement provided for a phased reduction of duties on industrial products. By 1 January 1999, tariffs had been abolished on industrial products, except for cars, which are due to be removed by 2002.

Bilateral agreements

Estonia (November 1998): phased removal of duties on industrial products by January 2002, tariff quotas on some Estonian exports of agricultural products to Poland and removal of duties on Polish exports of agricultural products.

Latvia (April 1997): phased removal of tariffs on industrial products by January 2001 (except cars by 2002), tariff concessions on some agricultural products, elimination of duties on some fish products by 2000.

Lithuania (June 1996): phased removal of duties on industrial products by January 2001 (except cars by 2002) and tariff rate quotas on some agricultural products.

Israel (July 1997): elimination of tariffs on industrial products by January 2001 (except cars by 2002) and tariff rate quotas on some agricultural products.

Turkey (October 1999): elimination of duties on industrial products by January 2002, tariff concessions on some agricultural products.

Reforms have underpinned an impressive economic performance, based on a quick expansion of the private sector that now accounts for three-quarters of GDP. After a deep recession in the aftermath of the first reform measures in 1990-91, the economy picked up from 1992 and the recovery intensified in the second half of the 1990s, with growth rates of real GDP averaging 5.5%. Unemployment has however remained among the highest in the OECD, reaching 15% at the end of 2000. Despite a slowdown in growth since 2000, prospects for future growth appear favourable.[2] Growth has come along with a significant decrease in inflation and rise in productivity. Living standards have improved, although rural poverty remains a key problem as a result of low productivity and underemployment in agriculture.[3] Despite its declining share in GDP, which reached 3.4% in 1999, the sector still employs a quarter of the workforce.

Steady and strong growth in imports has reflected the increased openness of the domestic market and the sustained growth in capital investment that has fuelled growth in productivity. The share of imports in GDP rose sharply in the 1990s, from 25% in 1991 to around 33% in 1999. Exports have also grown, but at a slower rate than imports. Over the past decade, Poland has run trade deficits, which reached over 9% of GDP in 1998-99 in the aftermath of the Russian crisis, and decreased in 2000 as exports to the EU expanded. The pattern of trade has significantly evolved following the disintegration of the COMECON market (Table 1). The European Union has become Poland's main trading partner, with two thirds of imports and exports. Within the EU, Germany is now Poland's main source of imports (with a share of 26%) and its leading export market (accounting for a third of total exports). In parallel, the country' exports have moved up the added value ladder and exports of manufacturing goods now account for 80% of total exports, up from around 60% in the early 1990s while the share of primary and agricultural products has declined.

Table 1. **Polish foreign trade in goods**

(customs basis, USD million)

	1995	1996	1997	1998	1999
IMPORTS	29 050	37 137	42 308	47 054	45 911
Developed countries	21 595	27 326	31 107	35 270	34 017
EU	18 781	23 738	26 998	31 027	29 826
EFTA	902	939	1 045	1 051	1 145
Other	1 912	2 649	3 064	3 192	3 046
Central and Eastern Europe	4 476	5 616	6 170	6 252	6 507
CEFTA	1 625	2 161	2 652	2 974	3 071
Others	2 641	3 455	3 518	3 278	3 436
Developing countries	3 189	4 195	5 030	5 532	5 387
EXPORTS	22 895	24 440	25 751	28 229	27 407
Developed countries	17 189	17 535	17 792	20 758	20 936
EU	16 036	16 196	16 526	19 270	19 326
EFTA	359	535	395	468	561
Other	794	804	871	1 020	1 049
Central and Eastern Europe	3 885	4 911	6 043	5 971	4 652
CEFTA	1 245	1 481	1 738	2 026	2 237
Others	2 640	3 430	4 305	3 945	2 415
Developing countries	1 821	1 994	1 916	1 500	1 819

Source: Central Statistical Office, Poland.

Growth in foreign trade has been supported by a trade policy geared towards liberalisation. Subsequently to the Uruguay Round, Poland has reduced tariffs on imports and increased the number of bound tariff lines from zero to 96%. In 1999, MFN tariffs on imports from WTO members averaged 15.9% (with an average of 32.8% on agriculture products and 10.9% on industrial products). Over three quarters of Polish trade is however conducted under preferential agreements and subject to much lower barriers. In particular, customs duties on imports of industrial products from the EU, EFTA and CEFTA members were phased out by January 1999 (except for some items, see Box 1). Upon accession to the EU, Poland will adopt the common external MFN tariff, which will significantly decrease the current gap between its preferential and MFN rates. Liberalisation in services has progressed too, following commitments undertaken in the framework of the WTO. Against a general trend toward liberalisation, the agricultural sector has remained largely sheltered from international competition. In addition to price support to farmers, Poland has continued to apply selective border measures such as tariff quotas and has on several occasions resorted to safeguard actions to restrict imports.[4]

Foreign investment has been another major element in the successful transition of the economy. The country has received over 30 billions USD of FDI over 1990-1999, which have largely financed the current account deficits. Foreign investment to Poland has been smaller than in other countries of Central and Eastern Europe, in terms of cumulated FDI per capita. However, inflows have strongly accelerated since the mid 1990s and in recent years, Poland has become the major recipient of FDI in the region. In 1999, FDI inflows accounted for 4.2% of GDP (Table 2). The acceleration of FDI has been partly supported by liberalisation of capital movements as part of Poland's accession process to the OECD in 1996 and by progress in large scale privatisation schemes with the participation of foreign strategic investors. Nearly 90% of FDI has originated from OECD member states, and two-thirds from the European Union, led by Germany and France (Table 3).

Table 2. **Foreign direct investment**

	Annual inflows of FDI								Cumulated FDI 1990-1999	
	USD billion							% of GDP	Inflows in USD billion	Per capita
	1993	1994	1995	1996	1997	1998	1999	1999		
Czech Republic	0.6	0.9	2.6	1.4	1.2	2.5	4.9	9.1	15.2	1 504
Hungary	2.3	1.1	4.5	2.0	2.1	2.0	1.9	3.9	19.6	1 940
Poland	0.6	0.5	1.1	2.7	3.0	6.3	6.5	4.2	30.6	794

Source: OECD, International Direct Investment database and National Accounts.

Table 3. **Structure of foreign direct investment**

(end 1999)

By country of origin (in % of total)	
OECD countries	97.1
North America	11.7
European Union	79.5
Germany	20.7
France	11.9
Netherlands	25.6
Italy	4.2
Other OECD countries	9.4
Non-OECD countries	2.9
Multinational enterprises	7.4
By sectors	
Manufacturing activities	44.7
Food products, beverages, tobacco	13.7
Transportation equipment	6.7
Financial services	24.3
Trade and repair	14.0
Construction	5.0
Transportation and communication	7.1
Others	4.9

Source: National Bank of Poland.

The biggest part of foreign capital has been absorbed by the manufacturing industry, although the share of the manufacturing sector has declined in recent years in favour of services. By end of 1999, the food processing and transportation equipment sectors had attracted nearly half of cumulated investment in the manufacturing industry. In services, the largest recipient of FDI has been the financial sector, with 22% of total cumulated FDI. Foreign banks have established local banks and bought large stakes in former state-owned institutions at the time of their privatisation. As a result, the Polish banking system has become one of the most internationalised among OECD countries with foreign investors holding over 60% of the capital of Polish commercial banks. The involvement of foreign companies in the Polish insurance sector has also grown significantly since 1999, following further liberalisation of the sector and the establishment of private pension funds.

Foreign firms have largely contributed to the restructuring and modernisation of the economy. They have brought in capital, technology, expertise and management know-how, which have resulted in large productivity gains and product innovation. Their share in total investment outlays increased from 20% in 1994 to 40% in 1996 and reached 52% in 1998.[5] The development of networks of suppliers by foreign companies is expected to have spill-over effects on the economy as local SMEs get better access to technology and are integrated into global production and distribution networks. The recent increase in FDI in service sectors, in particular the financial services, has contributed to lowering transaction costs for making business in Poland and thereby promoted the competitiveness of the economy. While the strategy of foreign investors initially focused on serving the domestic market, the largest consumer pool in Central and Eastern Europe, it has turned increasingly to foreign markets. In 1999, they generated 52% of total exports and 56% of total imports,[6] reflecting the gap in terms of investment plans and international competitiveness with local firms.

2. THE POLICY FRAMEWORK FOR MARKET OPENNESS: THE APPLICATION OF THE SIX EFFICIENT REGULATION PRINCIPLES

In a global economy, regulations need to be market-oriented and friendly towards trade and investment. The 1997 OECD report on regulatory reform identified six "efficient regulation principles" for building these qualities in regulations: non-discrimination, transparency and openness of decision-making, avoidance of unnecessary trade restrictiveness, use of internationally harmonised measures, recognition of equivalence of regulatory measures taken by other countries, and application of competition principles. They reflect the basic principles underpinning the multilateral trading system, for which many countries have taken obligations. The objective of this section is not to assess the extent to which Poland has lived up to international commitments relating directly or indirectly to those principles. It is rather to examine whether and how domestic regulatory procedures and practices give effect to the principles and can successfully contribute to market openness.

2.1. Non-discrimination

The application on the non-discrimination principle, through most-favoured nation treatment (MFN) and national treatment, in making or implementing regulations, aims at providing equal competitive opportunities, irrespective of origin of products and services, and thus at maximising efficient competition on the market. MFN treatment means that all foreign countries seeking entry to the national market are given equal opportunities, while national treatment means that imported products or services are granted a treatment that is no less favourable than the treatment granted to domestic products or services. The extent to which respect for these principles, which are among the central principles and objectives of the multilateral trading system, is actively promoted when making and implementing regulations is a helpful gauge of the overall efforts of a country to promote a trade-and-investment friendly regulatory system.

The non-discrimination principle has been reinforced in Polish legislation. First of all, it is applied in the area of economic relations, in accordance with Poland's commitment in the framework of the WTO. It has also received a constitutional standard as the 1997 Constitution of the Republic of Poland stipulates that "No one can be discriminated in the political, social or economic life, for whatever reason" (Art. 32, section 2). The principle is also stated in the 1999 Business Activity law, which defines the rules of undertaking and conducting economic activity. The Business Activity Law has replaced the Economic Activity Act and the Law on Companies with Foreign Participation, and given a common legal framework for all firms, irrespective of origin. Under Article 6 of the law, foreign parties with permanent residence or seat in Poland are treated on equal basis with domestic parties, under the condition of reciprocity. In the absence of reciprocity, however, foreign persons may establish limited liability companies, joint stock companies and limited partnerships, but not branches, and may purchase shares of those companies.

Foreign firms have equal access to appeal procedures as domestic firms. The first step for appealing against administrative decisions is the superior administrative body, as established by the Code of Administrative Procedures. Once this appeal has been exhausted, action can be brought before the Supreme Administrative court.

In the first years of transition, Poland established a liberal regime for inward direct investment. There was in particular limited screening mechanism on foreign firms making a greenfield investment or taking over or participating in an established company, and no limits on foreign ownership, except in specified cases. These restrictions have been further reduced following accession to the OECD. Restrictions on foreign ownership remain in a few sectors. Foreign participation cannot exceed 33% of shares of companies running broadcasting radio and television programs, and is subject to specific rules in gambling activities.[7] It is capped at 49% in air transport. Access to fishing on inland waters is limited, and access to fishing on territorial sea waters is closed to foreign investors, unless international agreements provide otherwise. The Business Activity Law eliminated mandatory concessions in maritime transport.

In addition, special permits or licenses are also required from Polish authorities for mineral exploration and some manufacturing activities, including pharmaceuticals, postal services, banks, radio and television broadcasting, telecommunications services, tourist services. These licensing requirements apply to domestic and foreign investors alike, except for air transport for which foreign firms must obtain permission from the Minister of Transport and Maritime Economy to buy shares of a company. Further liberalisation of the sector has been proposed in a draft law under discussion at the Parliament.

Poland maintains a certain number of restrictions on access of foreign investors in specific areas. As is common in other OECD countries, restrictions on entry in some professional services are applied through citizenship or authorisation requirements (such as for the commercial presence of accountants and lawyers). Poland also maintains restrictions on the acquisition of real estate by foreigners. These restrictions have been relaxed to allow foreigners to purchase small parcels of land. They now mainly affect farming land. Acquisition of land by foreigners still requires a permit from the Ministry of Internal Affairs and Administration and an additional permit from the Minister of Agriculture and Rural Development in case of the purchase of farming land. But no approval is longer required for the acquisition of up to 0.4 hectares of land in urban areas under specific conditions.[8]

Another exception to the application of the non-discrimination principle is public procurement. The 1994 law on public procurement provides as a general rule that domestic and foreign suppliers participate in public procurement proceedings on an equal basis, but some exceptions concerning national preference limit the scope of this rule.[9] In evaluating tenders for the delivery of goods and services and for construction, the procuring party must lower by 20% the price of tenders submitted by domestic suppliers. In addition, a local content requirement applies for the delivery of goods, services and construction works in order to benefit from the national preference clause.[10]

The national preference clause does not totally preclude the participation of foreign companies, as the law considers foreign companies, which are established in Poland as domestic suppliers. The Office of Public Procurement, which oversees government procurement in Poland, can also waive domestic preference or reduce the local content requirement in case of shortage of domestic materials or insufficient national suppliers to ensure competitions. The national preference clause however creates an obstacle to the participation of firms that are not registered in Poland in public procurement, and the local content requirement limits the scope of competition. International agreements signed by Poland, in particular the Europe Agreement, require this clause to be removed. The law on public procurement, which was adopted by the Parliament in June 2001, foresees this elimination upon accession to the EU, but maintains it in the interim.

Poland participates in a number of preferential agreements (see above, Section 1), and in particular the Europe Agreement. Preferential agreements give more favourable treatment to signatory countries and imply departures from the non-discrimination principle. However, the extent of a country's participation in preferential agreements does not in itself indicate a lack of commitment to non-discrimination. Assessing such commitment requires considering the situation of countries that participate in the agreement vs. non-participants and the potential of these agreements for discriminatory effects. In particular, third countries need access to information on the content and operation of preferential agreements in order to make informed assessments of the impact on their own business interests.

Preferential agreements signed by Poland for the establishment of free trade areas have indeed resulted in larger liberalisation of trade with signatory parties. In terms of tariffs, upon joining the EU, Poland will adopt the EU external rates, which will reduce the current gap between imports under preferential treatment and others. This restriction on MFN principle is set within the limits established by the WTO and applied in a transparent way. At the national level, information on preferential agreements is ensured through publication in the Journal of Laws (Dziennik Ustaw) and various information bulletins published by the government. In addition, the Ministry of Economy notifies all preferential agreements to the WTO for information and examination in the relevant committee.

2.2. Transparency

International market openness requires that all market participants, including foreign participants, be fully aware of the regulatory requirements, so that they can base their decisions on an accurate assessment of potential costs and opportunities. Differences in business environment make the entry of foreign firms into national markets generally more difficult. Language barriers, specific consumer tastes and business practices entail additional learning costs. Regulations too can often create barriers for foreign firms, not only because of differences in the content of regulations, but also of difficulties to get informed on their actual operation. Creating a transparent national regulatory framework for all market participants can thus facilitate access to the market and contribute to effective competition. Transparency requires access to information on regulations, openness of the rulemaking process through public consultation, as well as appropriate and clear access to appeal procedures for market participants wishing to voice concerns about the application of existing regulations. This section considers these three aspects and provides an insight on government procurement.

As a rule, all legal acts must be published in the official journals of the Republic of Poland, that is the Journal of Laws (Dziennik Ustaw) and in the Official Gazette of the Republic of Poland (Monitor Polski).[11] In January 2001, the authorities started to display the official journals on the Internet,[12] which should contribute to facilitating access to information on existing regulations, in particular for foreign parties. As for subordinate regulations, the Ministry of Justice holds a register of regulations issued by ministers, for which no central electronic version is yet available. The use of the Internet for disseminating information is spreading. The Parliament publishes the text of legal acts in force and draft laws that are under parliamentary debate on its website, and ministries increasingly publish information on their website (see Chapter 2).

As part of a general policy to attract foreign investors, a specific governmental body was created to encourage foreign companies to choose Poland as an investment location and plays the role of a contact point for potential foreign investors. The Polish Agency for Foreign Investment, a joint stock company owned by the State Treasury, acts as an intermediary between potential investors and the administration. It provides firms with information regarding investment conditions and procedures, assists in contacts with Polish authorities and business authorities, and is also charged with facilitating business partnerships.

Formal and informal consultation has developed in the process of making regulations in the past ten years in Poland. The rules and procedures of the Council of Ministers provide for all governmental draft regulation to be submitted to all members of the Council of Ministers for consultation. Specific laws require public consultation to be held with specified groups. Chambers of commerce and trade unions are generally consulted in areas on major laws, in particular within the Socio-Economic Tripartite Committee created by the government in 1996. An increasing number of sectoral laws require consultation with specific groups such as employers' organisations, consumers organisations and professional representative bodies. Overall, the list of consulted organisations can reach 80 bodies. In cases there is no mandatory consultation, public consultation is left to the discretion of the minister and wide-scope consultations have developed in recent years, for example on social or environmental issues. In practice, foreign parties can thus be consulted, either as members of chambers of commerce, or upon request of the responsible ministry. However, the practice of listed consulted bodies can leave out some organisations from the consultation procedure. Notice-and-comment have been introduced in some cases, such as the law on procurement whose draft was posted on the Internet for comment, but the practice is not common yet. In addition, consultation is often done in very limited time, which does not give effective opportunity to provide comments. Part of the problem has been due to the heavy legislative activities first for setting up a market oriented regulatory system and in recent years for preparing for EU accession.

Consultation with trading partners on regulations can also take place in the framework of the WTO. This is particularly the case for technical regulations and standards. The Agreements on Technical Barriers to Trade (TBT) and on the Application of Sanitary and Phytosanitary Measures (SPS) indeed include requirements to notify draft technical regulations and standards to the WTO. The Polish Standardisation Committee (PKN), which is responsible for elaborating standards, notifies its annual programme of work and draft standards to the WTO Technical Barriers Committee. At the national level, the list of draft standard is published in its publication and on its Web site. At this stage, any party, including foreign parties, may submit comments on the draft.

The public procurement act of 1994 created a uniform public procurement system and introduced a legal framework for competition in the area of public procurement. It was amended several times mostly to harmonise with EU regulations on public procurement. The 1994 law defined the notion of public procurement and established rules for the choice of tendering procedures. The law provides for the publicity of the procedures, with some limits related to commercial secrecy. The primary procedure for conducting public procurement is unlimited tender, and other procedures can be used only on certain conditions.[13] An Office of Public Procurement was created in January 1995, at the time the law entered into force. The responsibilities of the President of the Office of Public Procurement include the publication of tenders, preparing draft regulations on public procurement, approving the choice of bidding procedures for public procurement, and collecting information on performance of the public procurement system. All tenders above a certain threshold (EUR 30 000 for unlimited and two step tendering) must be published in the Public Procurement Bulletin of the Public Procurement Office, which is accessible on the Internet.[14] Better access to information has resulted in an increase in the average number of bids received per tender in recent years. Tendering authorities have tended to resort to very detailed formal requirements, which has in some cases resulted in the exclusion of some bidders on procedural grounds.

2.3. Avoiding unnecessary trade restrictiveness

Among the alternatives available for reaching a particular objective, policy makers should favour the regulatory measures that have the least restrictive effects on trade. This principle is included in several WTO agreements, and applies accordingly in Poland. However, implementing the principle into the domestic regulatory system require appropriate mechanisms. In this respect, assessing ex ante the impact of planned regulations on trade and investment and consulting trade experts and foreign business can help

integrate an international dimension into the rulemaking process and prevent the creation of barriers to trade and investment. Streamlining procedures can also help facilitate access to the market, while maintaining the legitimate objective of the regulations. This section examines these two avenues, and focuses on the example of customs procedures, an area in which many countries have endeavoured to simplify procedures with a view to facilitating trade flows.

Assessing the impact of regulations on trade and investment

The resolution adopted by the Council of Ministers in 1997, which established the procedure for preparing regulations in Poland, has provided for an assessment of the effects of a draft regulation.[15] Draft laws submitted to the Council of Ministers must include a "justification" of the proposal, that explains the need for a new law, describes the current situation in the area to be regulated, spells out the predicted social, economic, legal and financial effects of the law. The minister in charge of preparing the draft must hold inter-ministerial consultations. Ex ante analysis is performed for all drafts, but tends to have a limited scope. In practice, impact analysis at the stage of preparing a regulation has mainly focused on the budgetary implications of the draft regulations.

In the process of interministerial consultation, trade and competition experts are consulted on draft regulations. Compatibility of the draft regulations with WTO commitments or EU rules is checked when preparing the justification report. Regulations that introduce a restriction on foreign trade in goods are subject to consultations with other ministers and President of the Office for Competition. The overall consultation process can be effective in identifying regulatory requirements that could violate international obligations. However, it may not provide for a thorough analysis impact of the regulations on trade and investment, which could permit to identify possible alternatives with less restrictive effects on trade especially in cases where the area to be regulated is not directly related to trade. It is also not clear that it has resulted in practice in removing measures that would restrict trade. For example, the OCCP has generally not gone against import constraints that other competition agencies often oppose as anti-competitive.[16]

Since September 2000, the Polish government has started to develop a more comprehensive system of regulatory impact analysis, based on the OECD Best Practices. Under the current project, ministries will prepare a separate RIA, within the justification report. The Government Legislative Centre will oversee the preparation of the RIA. The RIA will focus on the impact to the State budget, the labour market, regional development, and domestic and foreign competitiveness. The government is working on the methodology for preparing the RIA and on guidelines for the authorities responsible for preparing drafts regulations. The proposed procedure represents an important step towards increased transparency, as it provides for the publication of draft laws, including justification report and RIA, on the Internet.

This initiative could favour the development of regulations better adapted to open markets, especially since the project specifically mentions international competitiveness. As seen in other countries that have developed RIA, the implementation of a fully-fledged impact analysis in the making process of regulations faces a number of challenges, including frequent lack of resources, time and experience of regulators. With regard to the specific dimension of trade and investment, the challenge is to go beyond checking the legal compliance of the draft with international commitments, to assess the effective impact in terms of possible impact on exports and imports, and on international investment. This requires that the international dimension be integrated in the guidelines and training for drafters of regulations. The presence of trade experts within the Government Legislative Centre could facilitate such integration. Consultation with panels of firms could also help identifying the cost and benefits in terms of trade and investment.

Facilitating access to the market through reduction of administrative burdens

Administrative procedures frequently result in significant delays, uncertainties and costs for businesses. Accordingly, the simplification of the legal framework for undertaking and conducting business has become a significant aspect of international competitiveness. Reducing or eliminating unnecessary requirements can help create a competitive business environment, that is favourable to the development of domestic firms and contribute to attracting foreign investors. The Polish government has recognised the need to establish a business friendly environment and has taken steps to address shortcomings in this area. A specific task force was set up in 1997, within the Economic Committee of the Council of Ministers, to review existing laws that affect business and eliminate unnecessary barriers to conducting business and minimise the risk of corruption. The Business Activity Law, which was adopted at the end of 1999, has reinforced the legal environment in which businesses can operate. It has reduced the number of activities subject to licensing. In some cases, licenses have been replaced by permits, which has contributed to smoothen the process for undertaking and conducting business.

Despite this progress, scope for improvement remains to simplify administrative procedures and increase their predictability. Complaints from business concern burdensome requirements, discretion in officials, and the time spent on handling administrative procedures. A report commissioned by the Polish Agency for Foreign Investment on the opinions of foreign investors about the conditions for business activity in Poland underlined some difficulties related to administrative procedures. Criticisms of investors included legal loopholes and lack of cohesion in the regulatory system, too frequent changes of regulations and excessive detailed level of regulations. The administrative procedures most frequently cited by investors as burdensome were building permits, real estate acquisition, work permits, and residence permits. Results showed however significant progress in comparison with previous surveys.[17]

The conditions for undertaking and conducting business could be improved by a thorough review of administrative procedures with a view to eliminating unnecessary requirements and reducing the cost of managing administrative procedures. Change in procedures is however not sufficient by itself, as firms experience difficulties with being aware of effective requirements. Reduction of administration burdens must thereby go along with an increase in transparency. The creation of a central registry of procedures, easily accessible, which would identify all procedures in details, would permit to reduce discretion of officials, and create a more stable and predictable business environment.

Simplification of customs procedures

In the area of customs, Poland has faced major challenges with the need to harmonise its rule with the EU acquis and to cope with a large increase in traffic, partly due to the importance of transit traffic through its territory, which has resulted in long waiting times at borders. Concerns raised in this area have also related to administrative difficulties due to unclear procedures, lack of uniform application of rules between border points and abuse of discretion by some customs officials. The government has taken several steps to improve the situation in recent years. In October 1999, the Council of Ministers adopted a customs business strategy, which set out as main priorities of the Polish Customs Administration the elimination of bureaucratic barriers to trade, along with adaptation to EU requirements, the efficient and effective collection of customs and tax duties, and supervision of trade in goods that are subject to restrictions. The implementation of the strategy is subject to monitoring with the publication of an annual progress report.

With regard to legislation, adaptation to EU rules has been mostly achieved with the adoption of the new Customs Code, which entered into force on 1 January 1998, and additional alignment measures. An amendment to the Customs Code, adopted by the Parliament in late 2000, has introduced a new system of customs duty exemptions. It has included measures that will facilitate clearance and reduce costs, including the elimination of 27 handling fees that were inconsistent with EU rules. The fight against corruption, a concern raised by trading partners, is an important feature of the customs business strategy. A Code of ethics of customs officials, which entered into force in 2000, has been integrated in the recruitment and training system of customs officials. Other measures have included implementation of permanent monitoring, survey of customs officials' satisfaction, and increase in temporary control activities for clearance procedures.

Reducing administrative burdens at the border, while increasing the efficiency of duties and tax collection, has been a major feature of the strategy for customs procedures. The customs administration has promoted the use of simplified procedures through better information of businesses. The possibility to use simplified procedures has been extended to customs agencies, which will facilitate clearance procedures for SMEs which frequently resort to these services. The number of authorisation for simplified procedures has increased from around 300 in 1999 to 1 000 in 2000, and the objective is to double this number every year. To lower the number of controls at the border and increase their efficiency, the customs administration has also undertaken to develop a selective system of control, based on risk analysis, and introduced in the largest border point with the German border.

Progress has been achieved in recent years in facilitating customs procedures, which needs to be put in line with the considerable increase in traffic through Poland over the past decade.[18] However, there remains significant scope for improvement, as the use of simplified procedures is still at a low level and computerisation is very limited. It is for example not possible to submit declarations electronically, except in two border points that have been selected for a pilot project. The implementation of a fully-fledged electronic data interchange system, which would integrate risk analysis, faces serious difficulties. Computerisation of customs offices is limited and systems between border points are frequently not interconnected, which has impeded the development of an efficient reporting and information exchange system. Other obstacles to the development of simplified and electronic procedures are the complexity of the tax code and absence of legal rules on electronic signature. The latter issue should be overcome in near future, as the draft law on electronic signature has been presented to Parliament. Consistent application of risk analysis has also been undermined by a lack of co-ordination between authorities at the border.

2.4. Use of internationally harmonised measures

Compliance with different regulations and standards can create significant and sometimes prohibitive costs for firms that operate in different national markets. The international business community has made repeated calls for reform to reduce the costs created by regulatory divergence. One way to reduce these barriers is to use international standards, whenever they offer an appropriate answer to public concerns at the national level. The use of internationally harmonised standards has gained prominence in the world trading system with the entry into force of the WTO TBT agreement, which requires that countries should base their technical requirements on international standards.

Poland's momentum towards the adoption of international standards has largely stemmed from the accession process to the EU, which has required Poland to adapt to the EU system of technical regulations and standards. In the framework of the Europe Agreement, Poland has committed to promote the use of European technical regulations, standards and conformity assessment procedures, to seek the conclusion of agreements on mutual recognition in these fields and to participate in the work of European standardisation bodies. The European Union committed to provide technical assistance to help Poland reach these objectives.

A first major step towards adoption of international standards in Poland was the adoption of the Standardisation Law in 1993. It established a clear distinction between voluntary standards, whose use is left to the judgement of consumers and producers, and legally binding technical regulations set by the government to protect the safety of people or the environment. According to the law (art 16), Polish standards should take account of international and regional standards. The Polish Committee for Standardisation (PKN), a state body under the supervision of the Prime Minister's office, was charged with the development and publication of voluntary standards and participation in international co-operation in the area of standardisation. A more recent step was the adoption of the Law on Conformity Assessment dated 28 April 2000 and entered into force in January 2001, which established the legal framework for the implementation of the EU New and Global Approach principles. The Polish Committee for European Integration adopted a schedule of implementation of New Approach Directives in March 2001, which foresees the entry into force of these directives in the Polish legal framework by July 2002. As of September 2001, Poland had transposed New Approach Directives related to low voltage, machinery and medical devices.

Harmonisation with EU rules has involved changes in the Polish system of standards, testing and certification. Poland had developed a large number of specific standards and an extensive system of certification. Exporters to the Polish market have frequently cited Polish certification procedures as burdensome and source of obstacle to trade.[19] In particular, the 1993 law on testing and certification required a "B" safety certificate, issued only by Polish accredited testing bodies, for imports and domestic production of a large number of goods. Adaptation to the EU system has required adoption of EU standards, elimination of mandatory certification procedures, and more generally a comprehensive rethinking of product regulation and of its enforcement. Under the EU system, regulation is limited to defining essential requirements in order to achieve specific objectives, such as safety, without specifying technical solutions. Public authorities mandate European standardisation bodies to draw up European standards that meet these requirements. Compliance with these standards is not mandatory, but provides a presumption of conformity with the requirements (Box 2). Manufacturers are in principle free to choose the solutions that comply with these requirements, but have a clear advantage in using harmonised standards.

In recent years, the work of the Committee for Standardisation has focused on reviewing and harmonising Polish standards with EU standards, a large party of which are actually based on international standards. As of April 2001, there were 18 000 Polish standards, of which 75% are European standards and 10% comply with international standards that have not been adopted by the EU. PKN had adopted 45% of the total amount of European standards, up from 30% a year before an amendment to the 1993 Standardisation Law, which entered into force in December 2000, has provided the ground for an accelerated process of adoption of EU standards, by enabling the endorsement of European standards in one of the official languages of the European standardisation organisations without translation into Polish. Poland also needs to adapt its sanitary regulations to EU rules, but little progress has so far been made in this respect.[20]

Box 2. **Harmonisation in the European Union: 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 that were difficult and time consuming to adopt, burdensome to implement and required frequent updates to adapt to technical innovation. 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*[21] interpreted Article 30 of the 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 requirements[22] which industrial products must meet before they can be marketed. This "New Approach" to harmonisation was supplemented in 1989 by the "Global Approach" which established conformity assessment procedures, criteria relating to the independence and quality of certification bodies, mutual recognition and accreditation. Since the New Approach calls for essential requirements to be harmonised and made mandatory by directives, this approach is appropriate only where it is genuinely possible to distinguish between essential requirements and technical specifications; where a wide range of products is sufficiently homogenous or a horizontal risk identifiable to allow common essential requirements; and where the product area or risk concerned is suitable for standardisation. Furthermore, the New Approach has not been applied to sectors where Community legislation was well advanced prior to 1985.

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

For the New Approach, detailed harmonised standards are not indispensable. However, they do offer a privileged route for demonstrating compliance with the essential requirements. The elaboration at the 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 Standardization 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 Member State 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 intervene in the conformity assessment. When third party intervention is required, suppliers may address any of the notified bodies within the European Union. Products which have successfully undergone the appropriate assessment procedures are then affixed the CE marking, which grants free circulation in all Member States, but also implies that the producer accepts full liability for the product.[23]

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

With regard to certification, Poland has shortened the list of products subject to mandatory certification following the 1993 law on testing and certification and the Protocol dated 30 July 1998 on conformity assessment with the EU. Poland committed to align its legislation with EU rules and eliminate mandatory certification for products free from certification in the EU. As a result, the number of products subject to mandatory certification has decreased. As of April 2001, around 10% of products were subject to mandatory certification, against 30% in 1997. However, there have been reports of remaining difficulties partly due to the non-implementation by some of the certifying bodies of new procedures related to the automatic issuing of certificates and to the fact that some products which require no certification in the EU have not been removed from the list of products subject to mandatory certification.[24]

The 1993 law also introduced the declaration of conformity by the suppliers for some products, which were previously subject to mandatory certification by Polish testing bodies. The implementation of self-declaration of conformity has however been postponed by the absence of legislation of production liability. The law was adopted in 2000, which should permit the development of self-declaration of conformity. In July 2001, the Committee for European Integration adopted a strategy on the future organisation of market surveillance and appointed an inter-ministerial working group that will be responsible for its implementation.

Progress has been made in Poland in relying on internationally harmonised measures in the area of product regulation, mainly through the momentum of the EU accession process. Harmonisation with EU rules will facilitate access of the Polish market to producers selling on EU markets and will also facilitate access of Polish producers to EU markets. Reliance on essential requirements for defining standards and the introduction of manufacturer's declaration of conformity will promote a market approach in product regulation, giving producers more flexibility and reducing burdens associated with certification requirements. A major step has been the adaptation of the legislative framework. Future progress will largely depend on the effective implementation of the new system. Some delays have been reported in the implementation of the Agreement with the EU, and remaining mandatory certification procedures can still create significant barriers in the related areas. The new standardisation system implies radical change in the operation of product regulation and the work of the certification bodies. It also requires the creation of an effective surveillance of the market. Dissemination of information and training among the staff of bodies involved in conformity assessment and among business in this area will therefore be important to increase the awareness of all economic and regulatory operators as to the changes and facilitate their adaptation to these changes.

2.5. Recognition of equivalence of regulatory measures adopted by foreign countries

In cases where internationally harmonised measures are not available, trade barriers due to divergent regulatory requirements can be reduced when trading partners mutually agree to accept their regulatory measures as equivalent. Despite the development of international standards, there are still many specific national rules that prevent full access to global markets. In addition, producers are increasingly required to demonstrate compliance of their products with national rules, which creates additional costs and possible redundant conformity testing when selling in different markets. When the objectives of the regulation are substantially equivalent, mutual recognition can significantly reduce these costs. Mutual recognition agreements (MRA) can cover product regulations themselves or procedures used to assess the conformity of given products or services to applicable regulatory requirements.

Polish legislation on product legislation establishes the basis for the negotiation of mutual recognition in the area of standardisation and conformity assessment. The law of 3 April 1993 on testing and certification authorised the Polish Centre of Testing and Certification, which is the national body in charge of organising and overseeing testing and certification system, to conclude agreements with foreign institutions on recognition of test reports, certificates of conformity and manufacturers' declaration of conformity. The PCBC has thus signed several agreements with foreign partners on co-operation in the area of mutual recognition of test results and certificates.

Poland has asked for negotiating a Protocol to the European Agreement on conformity assessment (PECA) with the EU. PECAS are MRAs specifically designed for supporting the progressive alignment of legislation in applicant countries with the acquis communautaire and the facilitation of trade and market access, by extending certain benefits of the internal markets in sectors for which the applicant country has aligned its rules with Community legislation. The PECA is made up of a framework agreement that establishes general principles and procedures for mutual recognition of results of conformity assessment procedures and for the mutual acceptance of industrial products, and of sectoral annexes. Once into force, the PECA allows EU exporters (but not non EU exporters) to test and certify their products to EU harmonised requirement, and then gain access to the market of the applicant country without any further conformity assessment requirements, thereby reducing costs and delays involved in having a product approved for placing on the market. PECA offers similar advantages to domestic firms in the applicant country, and facilitate their access to the European market. In the case of Poland, negotiations have not started yet and are pending on progress made by Poland in aligning its legislation with EU rules. Progress permitted by the PECA could even be more significant as trading partners have pointed out that costs associated with conformity assessment requirements are particularly high in Poland.

The institutional framework for certification and accreditation, a necessary step for building the confidence of market participants in the Polish certification system and reaping the benefits of MRAs, has been reinforced with the adoption of the law on conformity assessment of 28 April 2000. The law separated certification and accreditation activities. An independent "Polish Accreditation Centre" was created, which became operational in January 2001. This was an important step as it provided the basis for an independent accreditation system. Participation of the newly established body in international bodies, though limited, has progressed. It is a member of IAF and IlAC and has applied for membership to the EA. These bodies aim at promoting confidence in the accreditation systems and at reducing obstacles to trade by supporting the development and implementation of ISO/IEC standards and guides, exchanging information and establishing multilateral agreements on the equivalence of accreditation programmes operated by their members. Under these agreements, based on peer evaluation, accreditation bodies accept each other's accreditation systems, recognise and promote the equivalence of each others' certificates and reports issued by bodies accredited under these systems. The need for multiple assessments is thereby reduced or eliminated, as a supplier will only need one certificate or report to satisfy several markets.

2.6. Application of competition principles in an international perspective

The benefits of market access may be reduced by regulatory action condoning anti-competitive conduct or by failure to correct anti-competitive private actions that have the same effect. It is therefore important that regulatory institutions make it possible for both domestic and foreign firms affected by anti-competitive practices to present their positions effectively. The existence of procedures for hearing and deciding complaints, about regulatory or private actions that impair market access and effective competition, the nature of the institutions that hear such complaints, and adherence to deadlines (if they exist) are thus key issues from an international perspective. This sub-section will focus on these issues, while a detailed analysis of competition policy in the context of regulatory reform in Poland can be found in Chapter 3.

As part of the first wave of reforms, legislation counteracting anti-competitive conduct was introduced in 1990 and an independent enforcement agency was established. Changes to the law have been introduced over the past decade to adjust law to economic changes and further harmonise Polish legislation with EU rules. Full conformity with the *acquis communautaire* was achieved with the latest law dated 15 December 2000 on consumers and competition protection, which became effective on 1 April 2001. Polish competition legislation includes the prohibition of anti-competitive agreements and of abuse of dominant position, and ex ante control of mergers. Enforcement has so far concerned mostly dominance issues. With the new law about state aids that came into effect on 1 January 2001, the role of the OCCP has expanded to monitoring and controlling state aids, which can significantly distort competition, including at the international level.

Polish legislation prohibits firms from engaging in monopolistic practices that have an effect in Poland. It protects firms regardless of the location as long as they are active on the Polish market and regardless of symmetric protection of Polish firms abroad. The law on competition and consumers protection thus applies to foreign firms exporting to Poland. However, as in most national laws, the legislation does not however cover conduct in Poland that has anti-competitive effects only abroad and does not permit to combat export cartels.

With regard to mergers, firms must notify the OCCP for approval when their combined annual turnover exceeds EUR 50 million and their combined market share exceeds 20%. The President of the OCCP must approve mergers that do not create or strengthen a dominant position, which is presumed at market shares over 40%. However, the office has discretion in authorising a merger that would reinforce a dominant position if it has a positive impact on the national economy. The President of the OCCP must take it decision within 2 months of notification. Nearly all mergers have been approved without conditions, and the notification has in practice not been an obstacle to the acquisition of local firms by foreign firms. Two cases in which the OCCP did not authorise a take-over by a foreign firm were overruled following appeal to the Antimonopoly Court by the firms.[25] According to the OCCP, there has been a general positive co-operation with foreign firms in merger processes.

The OCCP has developed international co-operation with other competition offices. It has thus signed bilateral agreements with France, Russia, Lithuania and Ukraine. Co-operation has consisted in study visits of employees and regular contacts between managerial, exchange of information on respective activities that may affect the other party and notification of changes in legislation. In the case of the agreement signed with French authorities, co-operation has mainly involved expertise help from the French party.

3. SELECTED SECTORS

3.1. Telecommunications

The modernisation of the Polish telecommunications network and improvement of telecommunications services have been an essential condition for the development of the economy and for its international competitiveness. The Polish telecommunications market has grown significantly, but the sector is still in need of investment and modernisation. Since the second half of the 1990s, the overall telephony market has grown at an average rate of 15% per year in terms of revenue. The density of fixed lined telephones has increased from less than 10% in 1989 to 28% in 2000, which is still far behind most OECD countries, and the country still has long waiting lines for telephone connections. Mobile telephony has expanded quickly in recent years. The number of subscribers doubled between 1998 and 1999, and again almost doubled between 1999 and 2000 to reach a penetration rate of 17.5%.

Regulatory reform in telecommunications started relatively late in Poland. The 1990 Communications Law allowed for competition in local and domestic long-distance calls. However, in practice, competition has been limited, mainly due to interconnection difficulties and high licensing charges.[26] In 2000, Telekomunikacja Polska S.A. (TPSA), which was established in 1992 out of the former state-owned company of post and telephones, still held 93% of the local telephony market. The Communications Act opened the local telephone market to foreign investors without limitation, but imposed restrictions for other services. Foreign companies could not own more than 49% of a long-distance, international or cellular mobile telephone company. The majority of board members had to be Polish citizens domiciled in Poland.

The new Telecommunications Law of 21 July 2000, which came into effect in January 2001, has laid the foundations for increased liberalisation of the sector. It has abolished restrictions on foreign ownership in telecommunications operators, except for the provision of international fixed-lined telephony and removed obstacles to entry of new operators. It has in particular replaced the licensing system by an authorisation system. The law also sets up an independent regulatory authority. However, it has maintained TPSA's monopoly in international voice telephony until the end of 2002. The reform of 2000 was mainly driven by the need to conform to EU rules as well as by commitments taken in the framework of the WTO. There has also been progress in privatisation in recent years. Following a first stage in 1998, the share of the state was reduced to 22.6% in 2000 and 2001 with the sale of share capital to a strategic partner. The largest shareholder is now the joint-venture of France Telecom and Kulczyk Holding, which together hold a 47.5% share.

The telecommunications equipment sector has been opened to competition. In addition to a decrease in customs duties, following the implementation of the Information Technology Agreement and of preferential agreements with the EU, EFTA and CEFTA, recent reforms should also reduce obstacles to trade created by certification procedures. Previously, the Minister of Post and Telecommunications was in charge of assessing conformity of telecommunications equipment with existing Polish standards and did not recognise certificates issued by foreign bodies. The new Telecommunications Act has introduced the self-certification procedure, by allowing for manufacturer's declaration of conformity with the so-called essential requirements. Imports have grown quickly since the mid 90s, as a result of a rapid expansion of mobile telephony and growth in wire telephone networks. Two-thirds of imports originate from the European Union (Table 4). Domestic manufacturers supply their products mainly to the domestic markets, and exports of telecommunication equipment are low and are connected with supply networks of international corporations, which have established in Poland.

Table 4. **Foreign trade in telecommunications equipment**

(UDS million)

	1995	1996	1997	1998	1999
Exports	29	41	68	74	68
Imports	355	581	871	1014	1206

Source: PAIZ (based on statistics of the Central Statistical Office).

3.2. Electricity

Poland has built the legal basis for opening the electricity market to competition. Until 1990, the whole electricity sector was owned by the State. The first changes in 1990 included the unbundling of the power company into around 40 generation enterprises, 33 distribution companies and a transmission company, the Polish Power Grid Company (PSE) acting as a single buyer for the system. In 1997, a new energy law created a solid legal framework for a competitive energy market, based on third party access and a licensing system. It established an independent regulator, the Energy Regulatory Authority. The law set out the timetable for end-users to select their electricity supplier. It foresaw a gradual opening of the market, starting in 1998 and to be completed by the end of 2005. The last piece to the development of a competitive market was the creation of a power exchange, which began operating in July 2000 on the model of the Nordpool system. However, trading has so far been seriously limited, as around 70% of electricity supplied to final consumers is covered by long-term contract between generators and PSE.

The 1997 Energy Law has also paved the way to privatisation of power companies and the entry of foreign firms on the market. By March 2001, nine power generation companies and one distribution company had been privatised. All of them but one were sold to foreign strategic investors. The State has retained a majority or minority blocking interest share in privatised companies.

As in other Central European countries, the international connections of the electricity grid have been reoriented from Eastern to Western Europe. In 1992, the grid was disconnected from the Ukrainian grid and the Polish transmission company participated in the establishment of CENTREL, which now groups the transmission companies from Poland, Hungary, the Czech Republic and Slovakia. CENTREL started synchronous operation with the UCPTE in 1995. Additional interconnections have been established since then, including connections with the Slovakian grid in 1999 and the Swedish grid in 2000.

The EU accession process has driven the opening of the Polish electricity market to international competition. Until now, the liberalisation process of electricity access has covered only electricity generated in Poland and PSE has held monopoly on international trade. In 1999, imports accounted for 2.5% of electricity consumed in Poland, and 6% of the production of electricity was exported. Upon accession to the EU, international access will be available to customers with an annual consumption higher than 100 GWh, implying an estimated market opening of 37% to international competition. The opening goes beyond EU minima requirements of 33% of the market to be opened by 2010.

Foreign competition could act a strong stimulus towards modernisation of the Polish electricity sector and increased competitiveness of the economy, by giving end-users access to cheaper source of energy. The effects of foreign competition in the electricity sector could however be undermined by the use of the reciprocity principle. Under this principle, which other European countries have also integrated in their liberalisation plan, authorities can prohibit imports from countries less open to international competition, raising a serious obstacle to the development of international competition. Pressure to limit

imports could arise if the openness of the market seriously disrupts the domestic sector. The Polish generation sector is still in need of investment to raise efficiency and meet EU environmental protection standards. In this regard, foreign investment can play a significant role in increasing competitiveness of the Polish electricity sector by providing capital and expertise. As generation mostly relies on coal and lignite, phasing out restriction on imports of coal as part of the restructuring of the hard coal mining sector would also contribute to fostering reduction in production costs of electricity.[27]

3.3. Automobiles

The automobile sector, which was one of the first industries to be privatised in the early 1990s, has been one of the fastest growing industries in Poland. Sales of new passenger cars have increased steadily since 1992. With over 600 000 new cars sold in 1999, the Polish car market stands out as the largest in Central Europe and ranks eighth in Europe. Imports have grown steadily to reach nearly 200 000 cars in 1998. Exports have also risen, but at a much slower rate. The development of the automobile industry has been accompanied by a strong involvement of foreign firms. The transport equipment sector has attracted 11% of total FDI in Poland, and nearly a quarter of foreign investment in the manufacturing industry. The development of the car industry has resulted in a surge in imports of car components, as well as the development of automobile parts production as foreign firms have gradually built up networks of local suppliers

Table 5. **Foreign trade in the automobile sector**

(USD million)

	1994	1995	1996	1997	1998
Passenger cars					
exports	524	659	784	771	1 010
imports	376	467	920	1 102	1 380
Car parts					
exports	61	117	187	282	392
imports	246	422	715	1 052	1 227

Source: PAIZ (based on CSO).

The government policy to support the restructuring process of the Polish car industry focused on encouraging foreign firms to set up production plants in Poland. At the same time, several measures were taken to shelter the domestic sector under restructuring from the competition of imported cars, partly to improve the attractiveness of the Polish market to foreign suppliers.[28]

- From 1994 to 1996, Poland applied a 35% customs duty rate on imports of vehicles. This measure adopted in 1993 provided for a scheduled reduction between 1997 and 2002 for imports from EU countries (which are currently subject to a 15% rate). Some EU manufacturers received additional preferential access to the Polish market under bilateral duty-free tariff quotas. This created an exemption to the phasing out of customs duties scheduled under the Europe Agreement. On the contrary, imports of car components were exempted of duties, which encouraged foreign firms to set up assembly plants in Poland.

– A temporary ban on the import of used vehicles older than three years was introduced in 1993. The measure was relaxed in 1997 and 1998. The threshold age for cars was raised to 10 years for passenger cars, 6 years for lorries, and abolished for buses, tractors and two stroke engine cars.

– Higher excise taxes are applied on imported cars than on domestically produced cars. The rates for imported cars reach 6.4% and 17.6%, depending on engine size, against 6.0% and 15% for domestic cars.[29] According to Polish authorities, the gap compensates for using different tax bases.[30]

Following international commitments, in particular the Europe Agreement, Poland has undertaken to gradually reduce the protection of the domestic market from EU imports. With regard to technical regulations, Poland has implemented the regulation on type approval of vehicles implementing several EU Directives. Conformity assessment follows conditions set out in the Geneva Agreement of 1958. Certification is mandatory and carried out by two Polish certification bodies. Additional tests are however not required for vehicles with a certification document issued by a recognised certification body of a country which is subject to the Geneva Agreement. Similar requirements apply to imports of some car components.

Against this general progress towards mutual recognition of certificates, some obstacles to trade created by technical requirements remain. Some car parts are still subject to B safety mark, which are issued only by Polish certification bodies, including when they are fitted in a car that already has a recognised certificate. In a recent measure, the government also resorted to technical requirements to limit imports. Following a slowdown in domestic sales and an increase in imports, the government decided to impose additional inspection requirements on imports of used cars. The measure was justified by concerns related to safety and environmental protection, but appears to have also been taken to reduce the trade deficit and protect domestic producers from increased competition.

4. CONCLUSIONS AND POLICY OPTIONS

4.1. General assessment

Foreign investment has played a major role in the development of the economy, while stronger exposure to international competition has contributed to building up a more competitive economy. Over the past decade, Poland has removed numerous restrictions on entry of foreign firms and reduced a number of regulatory barriers to trade while building up an investment friendly regulatory framework. International commitments taken in the framework of the WTO and the accession process to the EU have resulted in increased exposure of the domestic regime to international scrutiny, creating a strong impetus towards pro-competitive reforms. Further progress in integrating market openness principles into the regulatory framework can contribute to attracting needed foreign investment and to improving the competitiveness of the local private sector. The ultimate goal of improving the business environment is not specifically limited to attracting foreign investment, but is rather to increase the competitiveness of the environment for all firms.

A review of the national regulatory system in Poland shows that progress in trade and investment liberalisation has been accompanied by stronger integration of the principles for market openness in the domestic regulatory framework. The non-discrimination principle generally prevails, although a number of restrictions remain with regard to professional services, real estate and public procurement. The regulatory system has become overall more transparent and adapted to a market economy. Competition policy has been developed, and an independent regulator charged with its enforcement.

The national system of standardisation and certification, which has long been one of the major regulatory barriers to trade in Poland, has been reformed to adapt to the EU system, which should lead to the integration of more international standards and simplification of certification requirements. Progress in the field of mutual recognition, in particular with the future protocol on conformity assessment signed with the EU, will also in future reduce obstacles to trade stemming from certification requirements. The legislative framework is thus more in line with the efficient regulation principles, and the effective results on access to the market will depend on the implementation of the reform and the capacity of the related bodies to adapt to the new system.

While a number of restrictions have been reduced, administrative procedures still frequently require burdensome and unpredictable requirements from business, resulting in additional costs. Despite progress in transparency, the consultation process in the regulatory framework is still underdeveloped. Better participation of business could help identify potential issues and contribute to the development of a business-friendly environment. The cost of complying with regulations for business could also be reduced by more transparent and predictable administrative procedures. Streamlining administrative procedures and increasing their transparency can also help reduce the potential for abuse of discretion by officials in the implementation of laws. Improving the conditions for business does not only require changes in the rules, but also further adaptation in the daily handling of procedures, as the culture of control must give way to co-operation with the private sector.

National regulatory systems have been increasingly subject to international scrutiny. In the case of Poland, the EU accession process has generally acted as another major source of pro-competitive reforms. Reforms should however not be limited to meeting EU standards, and building a regulatory framework adapted to the conditions of open markets requires strong commitment at the national level. This is all the more necessary as increased competition on the domestic market can give rise to calls for government intervention to protect the market. The reduction in traditional barriers to trade may give rise to the emergence of pressures for the use of domestic regulations as a protection of the domestic market. Such pressures can originate from domestic producers, including foreign investors, in particular in sectors lagging behind in competition. They can also stem from the administration itself, to protect the domestic industry or to deal with current account deficits Transparency will be essential in avoiding that regulatory action favours specific interests. Re-balancing the voice of consumers and better taking account of the trade and investment dimension in the making process of regulations can significantly contribute to promoting a trade and investment friendly regulatory framework.

4.2. Policy options

The following recommendations are based on the assessment presented above and the policy recommendations set out in the 1997 OECD report on regulatory reform. Considering the potential benefits of market openness that could be induced by further regulatory reform, Poland is encouraged to consider the following options:

Improve the business environment by streamlining administrative procedures

Efforts should be further pursued to review and streamline administrative procedures, with a view to eliminating unnecessary requirements. The creation of a central registry of administrative procedures would also foster transparency and predictability of rules. Such initiatives would limit the degree of officials' discretion in the implementation of regulations (such as issuance of licenses or authorisations, work permits, tax compliance).

Specific attention needs to be paid to proper enforcement of regulations. Monitoring on implementation of regulations and training of officials has progressed, as seen in government procurement and customs procedures, and needs to be pursued.

Develop a consistent practice for assessing the impact of proposed regulations on business and on trade and on investment.

The Polish government plans to introduce a formal regulatory impact analysis in the making process of regulations. This tool should cover not only laws, but also secondary legislation. The tool should specifically include trade and investment in the assessment criteria. Such assessment should not be limited to regulations that directly affect trade and investment, but be done in other cases too, such as product regulation or environmental regulations. Assessment of the impact on trade and investment can be done by reviewing the compliance of the prospective draft with the efficient regulation principles for market openness, including non-discrimination, avoidance of unnecessary trade restrictiveness, transparency, use of international standards.

In cases when negative effects on trade and investment are identified, the RIA should include search for alternatives that create less barriers to trade and investment. The inclusion of requirements having negative effects on trade and investment should be justified.

Widen the opportunities of all stakeholders to provide input in the rulemaking process.

Stronger development of public consultation could improve the quality of regulations and their adaptation to a market economy open to international competition. The development of "notice and comment" procedures could enhance the predictability of the regulatory framework and provide regulators with inputs from market players allowing them to better adapt regulations to the need of the market.

The organisation of public consultation must provide adequate timeframe for effectively allowing market participants to provide inputs. Publication of comments and responses of the administration can foster the implementation of public consultation as it will increase the accountability of the administration and limit the risk of public consultation to be diverted by specific interests.

In the process of developing public consultation, specific attention needs to be paid to reinforce the voice of all constituents, and not limit it to incumbent producers or employee representatives.

Pursue progress in use of international standards and mutual recognition of conformity assessment results.

Progress in this area is likely to continue, driven by the EU accession process. Specific attention however needs to be paid to training officials of certification bodies to allow for a smooth transition of the system, and in providing information to local producers to help them adapting to new standards and certification rules.

Effective market surveillance will also be necessary to ensure the development of the manufacturers' declaration of conformity. Progress made in adapting the legislative framework needs to be followed by effective implementation through adequate administrative capacities.

Continue modernisation of customs procedures

Focus should concentrate on raising the use of simplified procedures and implementing an EDI system. This requires investment in computerising the system. Efforts to establish co-operation between different border officials and to fight against corruption need to be pursued.

NOTES

1. European Commission, "2000 Regular Report from the Commission on Poland's Progress Towards Accession" 8 November 2000.

2. OECD Economic Survey, Poland, 2000-2001.

3. OECD Economic Survey, Poland 2000-2001.

4. Polish legislation permits safeguard actions (The following safeguard acts are currently into force: law dated 11 April 2001 on the Safeguards against an Excessive Importation of Goods into the Polish Customs Territory, which replaced a law of 1997, and the law dated 11 December 1997 on the safeguards against an excessive importation of some textiles and clothing goods.). In the Uruguay Round Poland reserved the right to take transitional actions on agricultural products tariffied in line with the WTO agreement on agriculture. According to the agreement, Poland can impose additional customs duties pursuant to the law dated 28 June 1995 on the rules, conditions and procedures of imposition of additional customs duties on some imported agricultural goods. Poland has accordingly taken safeguard actions against imports on several occasions. In the framework of regional agreements, Poland has also used safeguard provisions to restrict imports, such as a withdrawal of tariff preference on EU yoghurt imports in 1999. Poland has also introduced specific safeguard legislation covering imports of textiles and clothing in 1997. See WTO, Trade Policy Review, 2000.

5. Source: Foreign Trade Research Institute, Foreign Investment in Poland, 1999 and 2000.

6. Foreign Trade Research Institute, foreign investment in Poland, 2000.

7. According to the law dated 29 July 1992 on gambling, betting and automatic games, business can be run by joint-stock companies or limited liability companies established in Poland, shareholders of which are exclusively Polish nationals. Therefore, foreign firms cannot: 1) possess directly or indirectly (through dependent entities) the majority of votes in companies running games; 2) be entitled to convoke or dismiss majority of management members of companies running games. In addition, more than half of management members cannot hold managerial functions in foreign firms or a body dependent from a foreign firm.

8. In particular, no authorisation is required for the acquisition of land by foreign corporate bodies or commercial companies without legal status established in Poland, provided that the aggregate area of the property nation-wide does not exceed 0.4 hectares of non-developed land in urban areas, excluding border areas, and one hectare in rural areas. No authorisation is either required for the acquisition of apartments, and in cases of foreign parties that have resided in Poland for over five years (except for the acquisition of over 1 hectare in rural areas).

9. The application of domestic preference is specified in the Ordinance of the Council of Ministers of 28 December 1994.

10. For the delivery of goods, preference must be given to suppliers who use at least 50% of domestically-produced materials and products. For the delivery of services and construction products, suppliers must use at least 50% of domestic products if they want to benefit from national preferences.

11. Law 62 of 20 July 2000 on the publication of normative acts and certain other legal acts.

12. www.gpkprm.gov.pl

13. Single source procedure is permitted for procurement valued EUR 3 000 or less. Simplified proceedings are possible for procurement between EUR 3 000 and 30 000. For procurement valued over EUR 30 000, and in cases defined by law, the use of procedures other than unlimited tender is defined by conditions set

by law. Permission of the Chairman of the Office of Public Procurement is also necessary in the case of procurement valued over EUR 200 000 in cases other than unlimited tenders.

14. www.uzp.gov.pl.

15. Resolution of the Council of Ministers 13 of 25 February 1997. A "justification report" must be annexed to the draft law, containing: 1) a presentation of the existing situation in the area to be regulated and explanation of the need for and purpose of the regulation; 2) expose of the differences between the existing law and the proposed draft law; 3) character of the foreseen social, economic, legal and financial effects of the regulation, including those regarding limitation of discretion and simplification of procedures, and the internal coherence of the legal system, with indication of the sources of financing; 4) presentation of the results of the public consultation, in particular if the obligation to consult result from law. The justification report must comply with the requirements of the Constitution and of the Rules and Procedures of Sejm. The draft regulation must also be accompanied by the preliminary opinion concerning compliance with European law.

16. On the advocacy role of the Office for Competition, see Chapter 3.

17. Report commissioned by the Polish Agency for Foreign Investment. The sample included 814 firms with foreign participation.

18. The survey conducted by DHL in 1999 confirms improvement in Polish customs procedures. 27% of western multinationals considered Poland has having straightforward customs procedures (up from 12% in the previous survey of 1997). Poland ranked third in the region, behind the Czech Republic and Hungary, and well ahead of other countries. The main complaints of multinational firms concerned delays and frequent changes in rules. The DHL report is based on a survey about business perception of customs procedures in Central and Eastern Europe, which involved 100 multinational firms. ("Red Tape Curtain Only Partially Raised Over Central/Eastern Europe", April 1999).

19. In the USTR report on foreign trade barriers, standards and certification requirements are considered among the major obstacles to doing business in Poland. According to the report, exporters of US products to Poland complain about the complexity of the system, lack of transparency of requirements, and arbitrary implementation by officials. (USTR, 2001 National Trade Estimate Report on Foreign Trade Barriers). The Market Access Database issued by the European Commission reports similar issues. Specific examples related to construction machines, mining wire ropes or milk packaging mention procedures that can take up to six or seven months, lack transparency as decisions are not motivated and certifications can be handled by different institutions, and are frequently costly (European Commission, Market Access Database).

20. European Commission. Regular report on Poland's progress towards accession.

21. Decision of 20 February 1979, Cassis de Dijon, Case 120/78.

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

23. See the Council Directive 85/734/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.

24. EU Regular Report on Poland's Progress Towards Accession, November 2001.

25. See Chapter 3.

26. This issue was raised by some foreign firms. The USTR report of 2001 indicates that some firms complained about the lack of transparent criteria for interconnection agreements and TPSA's preferential treatment of some service providers, which has blocked them from using their domestic long-distance licenses.

27. For an analysis of reforms in the coal sector, see Chapter 5.

28. See Polish Ministry of Economy, Poland's Report Industry in 1999, Warsaw 2000.

29. Regulation of the Minister of Finance on the excise tax, of 22 December 2000 (Dz.U. 119, item 1259).

30. Value at customs plus customs duties for imports and manufacturer's price before VAT and including the excise tax.