Regulatory Reform in Italy

Enhancing Market Openness through Regulatory Reform

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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 Italy. 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 Italy* published in 2001. 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 telecommunications, and on the domestic macro-economic context.

This report was principally prepared by Sophie Bismut, Consultant, of the Trade Directorate in 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 Italy. The report was peer-reviewed by the 30 member countries of the OECD. It is published under the authority of the OECD Secretary-General.

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ACRONYMS

AAMS	Amministrazione Autonoma dei Monopoli dello Stato
AEG	Autorità per l'Energia Elettrica e il Gas (Electricity and Gas Authority)
AGC	Autorità per le Garanzie nelle Communicazioni (Communications Authority)
AGCOM	Autorità Garante della Concorrenza e del Mercato (Competition Authority)
AIPA	Autorità per l'Informatica nella Publica Amministrazione (Authority for the Development of Information Technologies in the Public Administration)
ATN	Analisi Tecnico-Normativa (Technical Legal Analysis)
BEST	Business Environment Simplification Task Force
CEI	Comitato Elettronico Italiano (Italian Electrotechnical Committee)
CEN	European Commission for Standardisation
CENELEC	European Committee for Electrotechnical Standards
CNEL	Consiglio Nazionale dell'Economia e del Lavoro (National Council of Economy and Labour)
CONSOB	Commission Nazionale per le Società e la Borsa (National Commission of Stock Exchange)
DAGL	Dipartimento Affari Giuridici e Legislativi (Department of Legal and Legislative Affairs)
EA	European Co-operation for Accreditation
EC	European Commission
EFTA	European Free Trade Agreement
ETSI	European Telecommunications Standardization Institute
EDI	Electronic Data Interchange
EU	European Union
FDI	Foreign Direct Investment
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariff and Trade
GDP	Gross Domestic Product
GPA	Government Procurement Agreement
GSP	General System of Preferences
GU	Gazzetta Ufficiale della Republica Italiana (Official Journal of the Italian Republic)
IAF	International Accreditation Forum
IEC	International Electrotechnical Commission
ILAC	International Laboratory Accreditation Co-operation
ISO	International Standardisation Organisation
ISTAT	Istituto Nazionale di Statistica (National Statistical Institute)
ISVAP	Istituto per la Vigilanza delle Assicurazioni private e di interesse collettivo (Institute for the Supervision of the Insurance Market)
MFN	Most Favoured Nation
MRA	Mutual Recognition Agreement
NCTS	New Computerised Transit System
NSO	National Standardisation Organisation
OECD	Organisation of Economic Co-operation and Development
RIA	Regulatory Impact Analysis
RUPA	Rete Unitaria della Pubblica Amministrazione (Public Administration Unified Net)
SINAL	Sistema Nazionale per l'Accreditamento di Laboratori (Laboratory Accreditation National System)
SINCERT	Sistema per l'Accreditamento degli Organismi di Certificazione (Accreditation System of Certification Bodies)
SLIM	Simpler Legislation for the Internal Market
SME	Small and Medium Enterprise
SPS	Agreement on the Application of Sanitary and Phytosanitary Measures
TABD	Transatlantic Business Dialogue
TAR	Tribunali Amministrativi Regionali (Regional Administrative Tribunals)
TBT	Agreement on Technical Barriers to Trade
TIM	Telecom Italia Mobile
UN-ECE	United Nations Economic Commission for Europe
UNI	Ente Nazionale Italiano di Unificazione (Italian National Standardisation Body)
WCO	World Customs Organisation
WTO	World Trade Organisation

Executive Summary

Background Report on Enhancing Market Openness through Regulatory Reform

As trade barriers to trade have fallen, the impact of domestic regulations on international trade and investment has become more apparent than ever. While regulations aim at reaching arguable objectives such as health, safety or the environment, they may directly or indirectly distort international competition, and prevent market participants from taking full advantage of competitive markets. Maintaining an open world trading system requires regulations that do not put unnecessary restrictions on flows of goods and services, thereby promoting global competition and avoiding trade disputes. This report assesses to what extent Italian regulations perform from these perspectives and how regulatory reform may contribute to enhancing market openness and the benefits which consumers and producers can reap from open markets.

In the 1990s, a wide range of reforms has reinforced market principles throughout the Italian economy. Key sectors of the economy have been opened more widely to competition, a sweeping programme of privatisation has considerably reduced the interventionist role of the government, and administrative reforms have been introduced to improve the quality and transparency of the regulatory system. Still, a relatively low level of inward foreign direct investment has underlined the need to take further steps to foster the competitiveness of the Italian economy. A regulatory framework better adapted to international competition would contribute to this aim as part of a wider strategy that includes the labour market and research policies.

When considering the efficient regulation principles for market openness defined by the OECD, non-discrimination, the use of international standards and the recognition of equivalence of foreign measures appear well integrated in the regulatory framework. The number of specific Italian technical regulations and standards has declined, as standardisation activities increasingly deal with the transposition of European rules. Mutual recognition of regulatory requirements applies for all goods coming from other EU Member States, and mutual recognition agreements concluded by the European Union have reduced the costs of conformity assessments in specified sectors. The establishment of an independent authority on competition in 1990 has reinforced the application of competition principles. Procedures for hearing and deciding complaints about anti-competitive action that impairs market access apply equally to foreign and domestic firms, and provide for effective means of presenting positions.

Transparency and avoidance of unnecessary trade restrictiveness appear as the two areas that call for better integration in the Italian regulatory system. The Italian regulatory system is complex, which raises the cost of entry in the market, particularly for foreign firms. Public consultation is under-developed relative to other OECD countries. Since 1990, and with a stronger impetus since 1997, the Italian authorities have made significant efforts to increase the transparency of the regulatory system and reduce the burdens imposed by regulations. They have launched a programme for e-government to facilitate access to information on enforceable rules, regulations under development and opportunities in public procurement. They have also undertaken an ambitious program to review and streamline administrative procedures, improve the quality of new regulations through impact analysis, and facilitate the establishment of firms by setting up one-stop shops. These efforts have been underpinned by European disciplines, in particular in the area of technical regulations and public procurement.

Reforms have begun to produce positive results for the business environment. However, while reforms have supported international competition, further integrating an international perspective and the application of all the efficient regulation principles in the regulatory framework could promote market openness and foster the competitiveness of the national economy. In particular, more attention needs to be given to the impact on trade and investment when developing new regulations or streamlining the stock of regulations.

1. MARKET OPENNESS AND REGULATION: THE POLICY ENVIRONMENT IN ITALY

The globalisation of production and the resulting deeper integration of national markets have reinforced the link between domestic policies and trade liberalisation. As tariff barriers to trade have fallen, the impact of domestic regulations on international trade and investment has become more apparent than ever before. Although regulations generally aim at achieving arguable objectives in a range of fields such as health, safety or the environment, they may directly or indirectly distort international competition and lead to negative effects on the economy. Thus regulations should be made in a way consistent with an open trading system and support strong international competition. This report considers how the Italian regulatory environment affects the access of foreign firms to the Italian markets, 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 and investment affect the fulfilment of legitimate policy objectives reflected in social regulation – is beyond the scope of this review.

Over the past ten years, there has been a considerable shift towards market-oriented policy in Italy, as a wide range of policies have been implemented to raise the efficiency of markets and increase the competitiveness of the economy. The reform process is based on a number of factors that, together with the creation of a new post-war political landscape, have supported wholesale change in the centralised, highly-regulated Italian state. Reform was speeded up by the need to reduce public sector debt following the 1992 crisis and meet the criteria of public debt and fiscal deficit required for entering the European Monetary Union, and has been supported through six successive governments. The long-standing involvement of the government in the economy has been considerably reduced as a result of the sweeping programme of privatisation. Competition has been reinforced through the removal of barriers to entry in numerous regulated sectors, such as telecommunications services, financial services, and more recently retail, gas and electricity sectors. A comprehensive competition law was adopted in 1990, and an independent authority was established to enforce and advocate competition rules. Administrative reforms have been introduced to improve the transparency, accountability and efficiency of the public administration, and to strengthen the competitiveness of Italian businesses. These reforms have included devolution of powers from the central administration to the regional and local administrations, a process that started in the 1970s.[1]

Since the early post-war period, Italy has been actively involved in all major international agreements to remove barriers to trade. Within the European Union (EU), it has also been an active promoter of an open common external trade policy. The most recent initiative is the identification of quality regulation in the Lisbon agreement as a European priority, which was championed by the Italian government, among others. Multilateral trade agreements have resulted in historically low tariffs for products, and set trade in services on the path of progressive liberalisation, in Italy and elsewhere. The development of the Single Market has led to the removal of regulatory barriers to trade within the European Union countries. Implementation of internal market directives has thus opened some key sectors, such as the telecommunications or energy sectors, to competition. Italy long used to be among the EU countries with the largest backlog of directives to be transposed. In recent years, Italy has sped up its transposition process of EU legislation. As of October 2000, its transposition deficit stood at 3.2%, down from 7.6% in 1997.

The integration of the Italian economy in the European Union is reflected in the predominant share of EU countries in foreign trade. In 1998, EU countries accounted for 56% of exports and 62% of imports. The share of EU countries in the total exports is however less pronounced in Italy than in other EU countries of the Euro area (Table 1). Exports currently account for 26% of GDP and imports for 23% of domestic demand, up from a little less than 20% at the beginning of the 1990s. Small-and-medium sized companies largely contribute to international trade, with companies of less than 250 employees cumulating almost 60% of exports (Table 2). This goes in line with the predominant role played by small and medium sized family owned companies in the Italian economy. Most of them are located in the Northeast and Centre of the country, and are geographically

specialised in a specific industry, in particular machine tools and high-quality consumer goods, such as clothing or furniture. These companies are connected in a web of local economic relations usually referred to as industrial districts and supported by networks of associations that promote their interests, including selling their products on overseas markets.

Table 1. **Geographical structure of foreign trade**

In per cent

	Italy		Euro area	
	Exports	Imports	Exports	Imports
OECD	77.9	78.4	83.7	82.6
European Union	56.4	52.2	64.0	50.1
Non-OECD	21.6	21.4	15.7	17.2
Europe	5.7	5.3	3.8	3.4
Africa	4.1	5.9	3.0	3.1
America	3.9	2.3	2.3	2.0
Middle East	3.5	2.1	2.2	1.4
Far East	4.4	5.7	4.3	7.2
Unspecified	0.5	0.2	0.6	0.2

Source: OECD. Partially reproduced from OECD (2000*a*).

Table 2. **Manufacturing and service companies with international trade activities, by size (1996)**

	Number of employees							
	Small companies			Medium companies		Large companies		
	1-9	10-19	20-49	50-99	100-249	250-499	500+	Total
Share in total imports (%)	10.7	7.3	12.5	8.8	14.5	8.7	37.5	100.0
Share in total exports (%)	9.6	7.8	14.8	11.4	15.7	9.6	31.1	100.0
Number of exporting companies in total number of companies (%)	2.7	26.9	44.3	57.5	63.8	64.7	67.9	4.3

Source: ISTAT (1999).

In recent years, the specialisation strategy of these companies has however been questioned as they have come under increasing pressure from international competitors. The Asian crisis of 1997 has in particular strongly affected their performance on overseas market, and their recovery has been slower than that of their main European partners. In 1999, Italy's share of world exports dropped to its lowest level, from 4.4% of total world exports in value in 1998 to 3.9%. This trend has raised some concerns over the competitiveness of the Italian economy, in particular in high technology goods.[2] As the participation in the Euro no longer provides the benefits of regular devaluation of the local currency, competitiveness factors such as the capacity to invest in high technology, labour costs, and also the quality of the domestic regulatory framework, have become more apparent.

Even though inflows of foreign direct investment (FDI) have risen in Italy in the last ten years, in particular in 1999, when they nearly doubled, the overall level has been well below many other OECD countries. In 1999, flows of direct investment accounted for less than 0.5% of GDP in Italy, against 3.1% for all EU countries, and 2.7% for all OECD countries (Table 3).

There are few specific formal restrictions on international trade and investment in Italy, in line with the country's commitment to the multilateral trading system and participation in the European Union. However, as seen in other countries, domestic regulations can create significant behind-the-border barriers to entrepreneurship and affect the capacity of new operators, whether domestic or foreign, to enter the market and expand their activities. Regulatory reform can contribute to further enhancing such openness by promoting domestic regulations that are more friendly to trade and investment, and better adapted to international competition.

Table 3. **Inflows of Foreign Direct Investment, 1996-99**

In per cent of GDP

	1996	1997	1998	1999*
Italy	0.3	0.3	0.2	0.4
OECD	1.0	1.3	2.1	2.7
European Union	1.3	1.5	2.8	3.1
Austria	1.9	1.8	1.7	1.1
Belgium-Luxembourg	4.9	4.6	8.5	6.0
France	1.4	1.6	2.0	2.6
Germany	0.3	0.5	1.0	2.5
Ireland	2.6	2.1	4.6	6.0
Spain	1.1	1.1	2.0	1.6
United Kingdom	2.2	2.5	4.6	5.8

* Provisional data.
Source: OECD International Direct Investment database and National Accounts.

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: transparency and openness of decision-making, non-discrimination, 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 (OECD, 1997*b*). 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 Italy may have 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. Transparency and openness of decision-making and appeal procedures

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 often create barriers for foreign firms not only because of differences in the substance of regulatory requirements, but also of difficulties to obtain information regarding

the actual operation of regulations. 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 consultation of concerned parties, 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 two specific areas, technical regulations and government procurement, in which transparency is essential for ensuring international competition.

2.1.1. Information dissemination

In recent years, the Italian authorities have engaged an active policy to disseminate information on existing and draft regulations through the use of the Internet. Publication in the Italian official journal (*Gazzetta Ufficiale della Repubblica Italiana* – GU) is the established and mandatory tool for communication on laws and subordinate regulations, as in most countries. In recent years, the authorities have also resorted to the Internet for communicating information. Various ministries publish laws and circulars on their websites, although the scope, user-friendliness and availability of information in English on these sites can significantly vary from one ministry to another. In June 2000, the authorities announced an action plan for the development of a comprehensive e-government, which should give stronger efficiency to these scattered initiatives.[3] This includes the creation of an electronic information gateway to the administration. Already, a website called *Norme in Rete* ("regulations on the net") is being worked out. Launched in 1999, it offers a common access to various sources of information.[4] The objective is to build on this system to create a single gateway to all regulations that are currently available on the various institutional websites, with a search engine, allowing for rapid location by subject matter and area. In addition, although there is no obligation to publish proposed regulations, the increased use of the Internet by the authorities has provided better insight on the rulemaking process in recent years. The Chamber of Deputies and the Senate publish all draft laws on their websites.[5] In addition, the site of the Prime Minister's Office[6] provides an overview on regulations under development. It includes a searchable database, going back to October 1998, which covers all regulations initiated by the government, from drafts approved by the Council of Ministries to their publication in the *Gazzetta Ufficiale*.[7] On the website of the Ministry for Public Administration (www.funzionepubblica.it), the Nucleo has begun publishing for notice and comment the drafts of consolidated texts and simplification decrees.

Publication of enforceable rules, even though a basic and essential element of transparency, may not be enough to create a transparent regulatory framework in cases where the number and degree of complexity of rules make it difficult to identify which regulations apply in a given field of activity. In Italy, getting information on regulations is indeed made more difficult by the complexity of the legislation. The number of existing regulations (over 35 000 national and regional laws[8]) and their frequently lengthy and detailed content can make it difficult for market participants to understand the Italian regulatory framework and raise the cost of entry in the market for new players. This can be even more the case for foreign entrants into the market. Moreover, the difficulty in understanding the applicable regulations often extends to the administration itself, which favours discretion in the application of regulations by officials, and increases uncertainty for businesses (Cassese and Galli, 1998).

This issue has been tackled with the "Bassanini reforms" of 1997, which aim at simplifying the administration under a permanent approach, through annual simplification laws, and speeding up the delegislation process. The policy is based on three main pillars: streamline the existing stock of laws and regulations, examine the quality of new laws and regulations, and pursue the continuous simplification of the public administration. These policies are discussed in more detail in the background report to Chapter 2. The government has launched several actions to improve the quality of regulations, including the implementation of impact analysis in the rule making process. A particular aspect of the reform, "regulatory reorganisation", could contribute to improving the transparency of Italian legislation in future. The reforms[9] have established a process under which the Parliament can mandate the administration to prepare consolidated texts (*testi unici*) of regulations. These texts bring together and streamline all primary and secondary level regulations applicable to

a specific field in a single text. The authorities have planned the preparation of eleven consolidated texts by the end of 2001 and had completed several by early 2001. Consolidated texts could prove powerful in clarifying the regulatory framework, particularly as the initiative is combined with a streamlining of the legislation and efforts at enhancing the quality of the texts (see further in Section 2.3).

In recent years, the administration has set up various contact points where market participants can ask for information. Such contact points are considered as helpful in overcoming difficulties related to the understanding of the regulatory system. According to a 1993 law, each public administration should have an office for public relations (*Ufficio Relazioni con il Pubblico*) that is ready to respond to requests for information, and provide explanation on regulatory requirements. Another business-oriented, initiative is the launch of one-stop-shops (*sportelli unici*) at the local level.[10] This is discussed in Section 2.3 below. In the Annual Simplification Bill for 2000, the government has foreseen the establishment of a central electronic registry of formalities of administrative procedures and formats for businesses and citizens.

2.1.2. Consultation mechanisms

When preparing regulations, Italian authorities usually proceed to a preliminary round of informal consultation. Procedures for making regulations do not provide for any legally binding requirements to organise consultation or to publish requests for comments, as the Parliament has usually been considered as the only legitimate place where the debate over draft regulations should take place. For Statute laws, Parliamentary Standing Committees may order hearings of officials, experts or concerned parties, in order to collect facts and information in the preliminary scrutiny of each bill. The choice of consulted parties is at the discretion of the Committees. Consultation with employers, trade unions (referred to as "social partners") and local authorities is however carried out at the ministerial level. The main forum for this type of consultation is the *Consiglio Nazionale dell'Economia e del Lavoro* (CNEL – National Council of Economy and Labour). In recent years, this mechanism has tended to be more formalised and open to other organisations, such as consumers or environmental associations.[11] In addition to this formal consultation, each minister when preparing a draft usually consults concerned parties in a discretionary way. In sum, consultation schemes and procedures in Italy are still weak and compare unfavourably to international best practices though the administration has started to provide on-line consultation of draft regulations. Many SMEs have complained that they are seldom consulted and that most of the opinions reflect concerns by large firms or directly involved firms.[12] Furthermore, informal consultation concerns draft bills that are nearly final, and rarely affects subordinate regulations. As many countries have discovered, late public consultation reduces the quality of laws and regulations, because at this stage it becomes more difficult to assess the different alternatives to achieve the regulatory goal at minimum cost. Poor consultation also tends to reduce the acceptance of the rule by regulated entities, and thus reduces the rate of potential compliance, undermining policy effectiveness.

Partly to solve such problems, the government established through Law 50/99 a permanent consultative body known as "*Osservatorio sulle semplificazioni*" formed by: i) one delegate from each Ministry, ii) 34 representatives of the "social partners",[13] and iii) ten representatives of the regions and local governments chosen by the "*Conferenza unificata*" (see Section 2.4).[14] As the advisory body on administrative simplification affairs of the Minister in charge of the Reform of the State, the Observatory should play a crucial role in reforms. Although not explicit in its mandate, the Nucleo has expressed the view that the Observatory should discuss and review legal and regulatory drafts and future RIAs. To ensure accountability, the Observatory will prepare an annual report to the Ministry. As noted, the Nucleo has begun publishing for notice and comment the drafts of consolidated texts and simplification decrees and, according to the annual simplification bill for 2000, the notice and comment will become an ordinary measure, following OECD recommendations. Consultation has also been developed, in a limited way, by some newly established independent regulators. For example, the Regulatory Authority for Electricity and Gas has organised periodic hearings and introduced notice-and-comment procedures, an opportunity which foreign firms have used on several occasions to date (see Section 3.3).

2.1.3. Openness of appeals procedure

The Italian legal system provides for different remedies for parties wishing to obtain enforcement of regulations or to appeal against a decision of the regulator, all of which are opened to all market participants, regardless of nationality. The first remedy is to address a petition to the superior authorities in the administration. It used to be a *sine qua non* condition before going to the administrative courts. As it became possible to have a direct access to administrative courts, it has tended to lose importance, which suggests that this remedy was not efficient. The second remedy is to address an appeal to the Regional Administrative Tribunals (*Tribunali Amministrativi Regionali* - TAR), which are the first instance bodies of the administrative jurisdiction. Their decision can be appealed to the Council of State. The application of administrative acts that are appealed before the administrative jurisdictions can be suspended until a decision is taken. The suspending clause is granted in half appeals, presumably as the appeal process is long (over four years in average for TARs), which constitutes a major obstacle to its efficiency.

Some clarification has been brought to the process for appealing against administrative acts in recent years. Until 1997, the administrative judge could control the "legitimate interest", that is the legality of administrative acts, and declare an act null, while the ordinary judge controlled the legality of civil acts performed by public authorities and was the only judge competent for granting damage. This distribution of competence was not always clear. In addition, in some cases specified by law, the administrative judge had an exclusive competence, but could not make decisions on damage. A Legislative Decree of 1998 and a decision of the Supreme Court in 1999[15] have brought major changes. First, they have extended the field of exclusive competence of the administrative judge to disputes relating to three key areas, public services, town planning and construction. Second, they have given the administrative judge the competence to decide over damage in all fields for which it has such exclusive competence. This measure has increased the efficiency of the appeal process as it is no longer necessary to add the long delay of the administrative process to the long delays of the civil process (around eight years) (Cassese, 1999).

2.1.4. Transparency of technical regulations and standards

In the area of technical regulations and standards, transparency has been strengthened by regional and international discipline mechanisms. As divergent national product regulations are considered as major obstacles to access to domestic markets, information in this area is essential to firms as it reduces uncertainties over applicable requirements and more generally facilitates the understanding of market conditions.[16] As part of its notification obligations to the European Commission and the WTO, Italy provides information to its trading partners on the making process of national technical regulations and standards,[17] and gives them opportunity to comment. According to Community rules, all draft technical regulations must be notified to the Commission when they are not the direct transposition of EU harmonising directives. The responsibility for prompt notification of draft regulations lies with the Ministry of Industry, while the Italian standardisation bodies are required to notify draft (voluntary) standards that are not the direct transposition of European or international standards.[18] In this system, Member States and the Commission can make comments on the draft regulation during a standstill period of three months, and Italy cannot ignore these comments (for details on the EU notification procedure, see Box 1).

The EU notification system has enhanced the transparency of the process for making technical regulations and standards, in Italy as well as in other EU Member States, as it allows for a strong scrutiny of trading partners over domestic regulatory activities. It provides for an early-warning mechanism on any potential obstacles to trade stemming from product regulations. The efficiency of this system in providing transparency has been strongly reinforced with the initiative of the Commission in 1999 to publish notifications on the Internet. A searchable database of notifications going back to 1997[19] gives access to the draft text and the notification itself that lays down the reasons for the regulation, and indicates the status of the proposal.[20]

Box 1. **Provision of information in the field of technical regulations and standards: Notification obligations in the European Union**

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

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

Although primarily directed at Member States, the procedure benefits private parties by enhancing the transparency of national regulatory activities. In order to bring draft national technical regulations to the attention of the European industry and consumers the Commission publishes regularly a list of notifications received in the Official Journal of the European Communities, and since 1999, on the Internet. Any firm or consumer association interested in a notified draft and wishing to obtain further information may contact the Commission or the relevant contact point in any Member State.

The incentive of countries to notify, and thus the efficiency of the system, has been strongly reinforced by the 1996 *Securitel* decision of the European Court of Justice (Decision of 30 April 1996, CIA Security International SA versus Signalson SA and Securitel SPRL). The decision established the principle that failure to comply with the notification obligation results in the technical regulations concerned being inapplicable, so that they are unenforceable against individuals.

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

Similar notification obligations apply, through in a less intensive way, under WTO Agreements. To the extent that notified draft regulations are not based on relevant international standards, the European Commission transmits the information to the WTO Secretariat and other WTO members in accordance with the obligations laid down by the WTO Agreement on Technical Barriers to Trade (TBT). Other notifications are made to the WTO on behalf of Member States under other WTO provisions, such as the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS), or Agreements on agriculture, rules of origin, import licensing, etc.

2.1.5. The case of public procurement

Italy has made significant progress over the past ten years to provide information on existing opportunities in the field of public procurement, which is essential for ensuring the effective openness of these markets to international competition. Several laws were adopted in the 1990s to make public procurement more transparent and efficient, in particular in the field of public works with the so-called "Merloni laws".[21] Previously, while rules on public procurement included transparency requirements, their high level of fragmentation and complexity had favoured an opaque system in which administration had a large discretionary power. The actions of the legislator in the 1970s and 1980s were not based on a clearly defined objective, but rather responded to specific issues (AGCM, 1992). Along with the prevalence of restricted tenders over open tenders, the lack of clear specifications and award criteria, the complexity of the regulatory framework resulted in an inefficient system. This was reflected in the higher level of cost of public contracts and the significant gap between the planned and the effective cost compared to other European countries (ISAE, 2000). The complete implementation of EU rules has reinforced discipline and transparency of public procurement for contracts under specified thresholds. This includes the obligation to publish tenders, the definition of criteria for selecting a tender procedure, the requirement to lay down detailed specifications and award criteria and limits on the possibility to increase the value of contracts without a new tender (for more on EU rules in public procurement, see Box 2).

The benefits drawn from increased efficiency of the procurement system can be further enhanced by the effective openness of bids for public contracts to international competition. Participation in tenders is opened to all EU firms. In addition, the commitment of the European Union to the 1994 WTO Agreement on Government Procurement (GPA) gives non-EU countries that are parties to the GPA access to the Italian procurement market. This openness cannot be effective unless potential bidders have timely and full information on opportunities and can legally challenge the decisions of contracting authorities. In this regard, access to information has been facilitated by the development of electronic procurement at the EU level.[22] The Italian government has launched a similar initiative in favour of e-procurement, which entered into an experimental phase at the end of June 2000. A specific Internet site has been set up,[23] which provides a virtual catalogue of all tenders by the public administration, including those whose value is under the EU-defined threshold. The government plans to have the system fully operative by June 2001. This represents a significant improvement towards transparency as it gives all firms, including foreign firms, timely and full information on opportunities regarding the supply of goods and services to the Italian public administration. Confidence in the system could however be increased by providing for means of action against entities that do not respect the publication requirements.

Box 2. **EU rules on public procurement**

Given the amount of purchases by central and local governments, public procurement represents huge opportunities for international trade. In the European Union, it currently amounts to approximately 1000 billion Euro, or around 14% of the EU GDP. The size of the market has made public procurement one of the cornerstones of the Single Market[24] and led to the adoption of a series of rules aimed at securing enhanced competition in the area of public works, supplies and services. A special framework is applied to utilities (energy, water, telecommunications and transport). Some of the major requirements of EU rules on public procurement are the following:

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

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

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

Use of international standards: EU rules require the use of recognised technical standards in defining specifications, with European standards taking precedence over national standards.

In May 2000, the European Commission introduced proposals for the consolidation and modernisation of the regulatory framework on public procurement. They include the consolidation of the directives on public works, supplies and services into a single text; incentives for a wider use of information technologies in public procurement; and an improved and more transparent dialogue between awarding authorities and tenderers in determining contract conditions. In addition, as utilities, starting with telecommunications, are opened to effective competition, they will be progressively excluded from the regulatory coverage.

At the national level, closer monitoring of procurement has been promoted, in particular in the field of public works. The first Merloni law of 1994 provided for the creation of an independent body, the *Autorità per la Vigilanza sui Lavori Pubblici* (Authority on Public Works), to ensure the enforcement of rules in public works.[25] The Authority, which became operative in 1999, is specifically charged with supervising the application of rules, signalling any major disfunctions and making proposals for changes in legislation. Specific efforts have also been undertaken to promote co-operation between municipalities in dealing with public procurement, as implementation at the local level appears more difficult.[26]

The progress made in transparency of public procurement over recent years has been noted by some trading partners who report better access of their domestic firms to Italian public contracts (USTR, 2000). Still, an obstacle is posed by the general complexity of the regulatory system. Simplification procedures will be important for further improvements to procurement.

These efforts are enhanced by the involvement of Italian authorities in regional initiatives. Italy participates in an EU Pilot Project on public procurement that was launched at the end of 1998. Its objective is to contribute to the achievement of a genuine EU-wide procurement in the field of public procurement through co-operation between national authorities. In particular, participants in the project try to find rapid and informal solution to problems encountered by suppliers in getting access to public contracts.[27] This experience has enabled the Italian authorities to benefit from the experience of other EU Member States, to detect implementation issues, such as an increase in the number of emergency procedures.[28] It should also be noted that the adoption by the European Commission of a package of amendments to simplify and modernise the EU Directives on public procurement in May 2000 should contribute to making the EU rules more comprehensible to market participants and fostering transparency at the national level.

2.1.6. General overview

Within the general trend in Italy to improve economic performance and efficient governance, significant progress has been achieved to increase the transparency of the regulatory framework. Active use of the Internet has provided easier access to information on regulations, and the general project of the authorities to set up e-government is likely to enhance these efforts. New disciplines partly prompted by EU rules have promoted transparency for technical regulations and public procurement. Still, the Italian regulatory framework remains complex, which can make difficult the access of foreign firms to the Italian market. In addition, despite some recent initiatives to increase the transparency of rulemaking, public consultation remains underdeveloped, which increases market uncertainties.

2.2. Non-discrimination

The application of the non-discrimination principle, through most-favoured nation treatment (MFN) and national treatment, in making or implementing regulations aims at providing equal competitive opportunities between like products and services irrespective of origin, 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 one 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 developing and applying regulations is a helpful gauge of the overall efforts of a country to promote a trade-and-investment friendly regulatory system.

In the field of economic relations, Italy has subscribed to the non-discrimination principle in the context of its membership to the WTO. MFN treatment and national treatment apply to all fields in which Italy has undertaken certain WTO commitments. While there is no other overarching requirement in the legal system for ensuring that the MFN principle be incorporated in domestic regulations, some specific provisions promote the principle of national treatment. For example, article 16 of the preliminary provisions of the Civil Code grants personal and legal foreigners the same rights as Italian citizens, under the condition of reciprocity. A 1998 law has established in greater detail that foreigners legitimately living in Italy enjoy the same rights as Italian citizens.[29]

Preferential agreements in which Italy participates as an EU member give more favourable treatment to specified countries and are thus inherent departures from the MFN and national treatment principles.[30] Participation of a country in preferential agreements is not in itself indicative of a lack of commitment to the principle of non-discrimination. In assessing the application of this principle, it is relevant to consider the attitudes of participating countries towards non-members in respect of transparency and the potential for discriminatory effects. Third countries need access to information about the content and operation of preferential agreements in order to make informed assessments of any impact on their own commercial interests. Submission of notification to the WTO in accordance with international obligations establishes a first avenue of information on preferential agreements. The WTO Committee on Regional Trading Agreements reviews all preferential agreements, in a process that consists amongst others of written questions and answers. Within this context, recourse is available for third countries that consider that their interests are prejudiced by these agreements. The European Union also provides information on preferential agreements through the Internet or publications such as the *European Bulletin*.

As do other OECD countries, Italy maintains some exceptions to the non-discrimination principle for the supply of services, in particular professional services. Contrary to the unconditional application of the national treatment principle to imported products set by the General Agreement on Tariff and Trade (GATT), the obligation not to discriminate between domestic and imported services that is established by the General Agreement on Trade in Services (GATS) is limited to the sectors where specific commitments have been undertaken by countries. The agreement also provides for some exemptions to the MFN treatment, as specified by countries. This list of exemptions as well as the schedule of commitments to national treatment has been decided at the EU level. They are made up of EU-wide exemptions and commitments as qualified by additional restrictions attached by individual Member States (often replacing full commitments by partial commitments or unbound limitations). Italy thus maintains some barriers to the access of foreigners to some specific activities. For example, nationality, residence and professional domicile requirements are conditions for the exercise of the accounting profession (*ragionieri-periti commerciali*) and for admission to the Italian bar (which is necessary for providing legal services in Italy, including advice on foreign and international law). Beyond formal limitations, there can be some cases in which regulations may be designed and implemented in ways that give rise to discriminatory effects. Liberalisation of a sector may not imply an open market for foreign and domestic operators alike if implementing measures have such *de facto* effects. In the field of professional

services mentioned above, the liberalisation promoted at the EU level has proved difficult to implement at the national level. In the case of Italy, some directives are not incorporated yet into national legislation,[31] or their implementation still gives way to discrimination. This is for example the case of legal services. According to the European Commission, the current aptitude test for lawyers takes more than one year and includes a large number of subjects (more than is required of Italian lawyers) (EC, 1999*a*).

As regards investment, Italy maintains an open regime towards foreign investors, except in a few instances. There is in general no limit on foreign ownership of Italian firms, nor any screening or blocking procedures directed only at foreign investors. Some exceptions are however made to the application of the national treatment principle (which are specified in the OECD Code of Liberalisation of Capital Movements and of Current Invisibles Operation, and National Treatment Instrument). Some activities are reserved to national operators (fishing in territorial water) or EU national operators (air transport and maritime cabotage). In the film industry, only EC companies can get access to government subsidies.

2.3. Measures to avoid 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,[32] and applies accordingly in Italy. It is also implicit in the participation of Italy in the European Single Market. However, implementing the principle into the domestic regulatory system requires appropriate mechanisms. In this respect, assessing *ex ante* the impact of planned regulations on trade and investment and consulting trade experts or 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.

2.3.1. Assessing the impact of regulations on trade

Until 1999, the impact of draft regulations was assessed only by the budget cost analysis required by the Constitution and intra-ministerial consultation. Trade officials could be consulted on an *ad hoc* basis by the Ministry in charge of preparing the regulation, in cases where the draft contained provisions with obvious trade relations. Participation in the Single Market has also entailed exposure to the scrutiny of European trading partners. As seen above (Section 2.1.4), this has been particularly the case for technical regulations. Indeed, the obligation to notify national draft technical regulations means that other EU Member States and the European Commission are given the opportunity to raise any objection concerning the potential restrictive effects of regulations on trade, before these regulations come into effect. With respect to the conformity of regulations to international commitments, ministries and the Parliament are responsible for checking the quality of draft regulations, and the Council of State holds similar responsibilities for secondary regulations.[33]

In 1999, the Parliament adopted a law that set up thorough and systematic analysis tools in the making process of regulations. The new rule introduced the obligation for central administrations to perform an impact analysis when preparing new regulations to be attached to the proposed text.[34] The March 2000 application decree of the law[35] requires that all ministries carry out a technical legal analysis (*Analisi Tecnico-Normativa*, ATN) as well as a regulatory impact analysis (RIA) when preparing new regulations (be they primary or secondary legislation). These analyses are subject to the scrutiny of the Department of Legal and Legislative Affairs (*Dipartimento Affari Giuridici e Legislativi* – DAGL), and of a special technical unit in the Prime Minister's Office, the *Nucleo*.[36] The ATN includes verifying conformity of the text with the Constitution, European law and regional and local acts. The RIA includes an explanation of the reason and objectives of the regulation, an assessment of the impact of the proposed regulation on the administration, on business and on citizens, and a search for alternatives. Guidelines on RIA have been released for administrative bodies.[37]

The RIA, as it is currently considered, will include international trade and investment in the factors to be examined. The March 2000 Decree provides that the RIA includes an analysis of the indirect economic effects of the proposed regulations on sectors not directly targeted by the proposed regulation. The RIA guidelines specifically mention of international trade and investment in this economic analysis.[38] An interesting feature of the programme is that it associates impact analysis with public consultation. The decree requires that justification of regulatory action rely, among others, on transparent and open consultation. The authorities currently consider to resort to business surveys and focus groups.

2.3.2. Reducing administrative burdens on businesses

The simplification of administrative procedures has been a core objective of the reforms that have been carried out in Italy over the past decade. This policy has been given stronger impetus and become a more permanent objective since 1997, when the Parliament authorised the government to adopt specific measures to simplify administrative procedures. This law requires the government to present a draft law to the Parliament each year, which lays down the administrative procedures to be reviewed and streamlined. This represents a key policy, as the high number of regulations, the ambiguity, contradictions and overlapping requirements, have put unnecessary burdens on businesses. According to a survey co-ordinated by the Italian statistical institute in 2000, administrative costs account for about 1% of overall costs, against 0.5% in average for the rest of Europe, and Italian exports carry a 2% burden of administrative costs, compared to 0.5% in the rest of Europe.[39] Such costs can affect the capacity of local firms to compete in the global economy and also create significant obstacles to the establishment of foreign firms in the domestic market. Various business surveys indeed indicate that burdensome administrative procedures have been major impediments to the competitiveness of the Italian business environment, compared to other countries, and may have contributed to the relatively low level of FDI in Italy, with other factors such as infrastructure and labour market conditions.[40]

The simplification policy has produced positive effects on the business environment in Italy. As the background report to Chapter 2 relates in more detail, the law on administrative reforms[41] introduced the rule of silent consent for the delivery of licenses and replaced authorisations with simple declarations in specified cases. The annual simplification law has abolished the ratification procedure by the tribunal for the constitution of companies, which will sharply reduce the time needed to start up a company (a procedure that used to take one to four months). Another example is the simplification of anti-mafia certifications in 1998,[42] which imposed a heavy burden on firms. Beginning 1 January 2001, notification of competitions for employment in the public administration is accessible at one or more information sites. From 30 June 2001, other enterprises and consortia which carry out public works and public services, will furnish information on competitions for employment at these information sites. A consolidated text containing all of the rules and regulations regarding foreign trade will be prepared to co-ordinate national and regional competences in the field of international business. The publication of corporate acts regarding mergers and breakups in the Official Gazette will be discontinued. Such acts are made public by means of the registration of the business in any event. This will eliminate costs, that for a medium-sized business, add up to 10-12 million lire. Provincial legal announcement papers — an archaic form of publicity ill-suited to notification in the modern information society — will be discontinued as well. The new annual simplification bill proposes to strengthen the "pro-competition principle" in the simplification process (through, for example, systematic transformation of the "*concessioni amministrative*" into authorisations).

Box 3. **Promoting competitiveness through the improvement of the business environment**
Simplification initiatives in the European Union

Efforts to improve the business environment by enhancing regulatory quality and reducing regulatory burdens have been central to the European strategy for the achievement of the Single Market. Initiatives aimed at simplifying the business environment in Europe include the Simpler Legislation for the Internal Market (SLIM) project, the Business Environment Simplification Task Force (BEST) and the European Business Test Panel.

SLIM, which was launched in 1996, consists of an ex post regulatory impact assessment and consolidation mechanism. Small teams, composed of Member State officials and of users of the legislation, review Community legislation in particular sectors with a view to identifying concrete suggestions for simplification. These suggestions, which are not binding, may then be used as a basis for amendments proposed by the Commission to the Council. The focus is on provisions that give rise to excessive implementation costs and administrative burdens, diverging interpretations and national application measures and difficulties in application. Regulators or business associations may propose areas for review and should indicate what are the problems to be addressed and the benefits anticipated from simplification. Reviewed legislation is usually at least five years old in order to allow its strengths and weaknesses to be properly identified.

Since 1996, SLIM reviews have taken place in 14 sectors: ornamental plants, classification of dangerous substances, pre-packaging, construction products, fertilisers, electromagnetic compatibility, banking, insurance and company law, recognition of diplomas, social security rules, value-added tax, internal trade statistics and nomenclature for external trade. The Commission has proposed amended legislation on six of these, and the Council and the Parliament have adopted three of them. Proposals on the remaining sectors are underway. The Commission recently assessed the project and highlighted that the concrete suggestions put forward by the SLIM teams need to be appropriately followed up by the EU institutions. Indeed, SLIM recommendations are formulated on average within six months, but the process afterwards is quite protracted. As regulatory costs and red tape related to national and regional regulation, were estimated at 3-5% of the EU GDP, some SLIM teams have tried to incorporate parallel reviews of national implementation of the reviewed Community legislation. However, these attempts were too ambitious for the means and resources of the teams to ever be successful. It was thus proposed to complement SLIM reviews with co-ordinated parallel exercises in the Member States.

BEST was created in 1997 to investigate the regulatory and administrative environment and support measures that directly affect the competitiveness of small-and-medium enterprises (SME). It was composed of business representatives, public officials and academics. Recommendations focussed on access to financing, human resources management and training, innovation and technology transfer, as well as all aspects of public administration and its contacts with the enterprises. As regards the improvement of public administration, it was stressed that the assessment of regulatory impact on business should be central to the decision-making process; that the launching of SMEs should be facilitated by simplifying applicable procedures; and that the transparency and efficiency of rules of operation should be enhanced. An Action Plan was established in 1999 on the basis of the BEST report. Most of its actions are currently underway.

European Business Test Panels were first set up in 1998 as a pilot tool for the system of impact assessment on business developed by the European Commission. The Panels were designed as a complement to the existing consultation procedures and aimed at assessing compliance costs and administrative burdens, especially in the area of trade and industry, and identifying alternative solutions. They would be set up at the national level in each Member State that volunteered to participate, and operate according to the Member's consultation traditions and procedures. Panels would bring together representative firms from the concerned sectors and work under very short time scales to avoid delaying the legislative process. Their conclusions would then feed into the cost-benefit analysis undertaken by the Commission.

During the trial phase Business Test Panels were convened to assess proposals on value-added tax fiscal representation, accounting, and waste from electrical and electronic equipment. From 1067 to 1744 businesses around Europe were consulted. The response ratio to the questionnaire was from 35% to 43%. Following each consultation, a report was issued explaining the opinions of respondents and the steps the Commission envisages in view of these opinions. After two consultations on less contentious matters, the Panel on Electrical and Electronic Waste showed that 77% of the affected businesses found the proposal to be an administrative burden. The Commission will take into account these concerns when finalising its proposal.

Source: EC (2000d, 1999e, 1998a, 1998b, 1998c).

The creation of one-stop-shops for business (*sportelli unici*) in 1999 has also facilitated the process for starting a new business[43] These bodies, which are locally based, are in charge of co-ordinating all authorisations for starting, expanding or restructuring a business. They thus reduce the procedures for setting up a business to one formality since they are in charge of obtaining authorisations from all relevant administrations. The system includes some mechanisms to ensure effective functioning. First, for complex cases, the shop can resort to conferences of services (*conferenza di servizi*), which brings together all public authorities involved in a procedure. Second, the system sets up deadlines. The procedure must be concluded within 10 months, and if the decision has still not made at this date, the application can be taken to the Cabinet, which must provide a decision within 30 days. The institution of *sportelli unici* has so far significantly reduced the time needed to set up a business, as it now takes in general three months, or eleven months at maximum instead of 2-5 years to complete the process.[44]

Three elements are particularly interesting. First, the programme goes beyond the simple establishment of a facility to promote a systematic use of simplification tools for the set of main business administrative procedures. Municipalities are encouraged to use notification, self-certification and the 'silence is consent' mechanisms, as well as setting up conferences of services for complex authorisations (*e.g.* in the case of environmental impact assessment). Second, the backbone of the programme is the reliance on information technology. Lastly, to hasten the adoption and full operation of the programme, the government created financial incentives (positive and negative) to accelerate the spread and the scope of one-stop-shops.

In 2000, the government reinforced the capacity of one-stop-shops. This represents a positive step as the efficiency of one-stop shops in effectively simplifying administrative procedures will largely depend on the co-operation of each administration and on the capacity of the shops to deal efficiently with administrations involved. The two-to-five-year period previously needed for establishing a business suggests that the number of procedures may not be the only issue at stake. A lack of co-ordination and efficiency in the various administrations involved in the process probably also contributed to the delay. One-stop shops need the capacity to get quick responses from administrations, to avoid adding another layer of procedures for business that would still have to go through each administration to have their case moving on. In August 200, the Council of Ministers addressed this issue by stipulating that, once one-stop-shops are in place, instructions given by other administrations are null and that administrations must transmit any request from firms to the competent one-stop-shops and inform the firm of this action. In May 2000, the government adopted an action plan to promote an adequate operation of one-stop-shops, which includes training and support programmes to the shops and information in the various public administration (tutoring, consulting services, purchase of software and hardware, assistance during the introductory phase of the one-stop-shops). Implementation of this programme, including its funding, was announced in August 2000. The development of intra-electronic information system, which has been given stronger impetus with the adoption of the action plan for e-government) could also support the activities of the one-stop-shops, as the *Rete Unitaria delle Pubblica Amministrazione* (RUPA – Public Administration Unified Net) allows easy exchange of information and databases among different administrations.

The authorities have made a clear and strong commitment to simplification of administrative procedures and taken significant measures.[45] However, some points need specific attention. First, some measures, such as the rule of silent consent, apply unless otherwise specified. Therefore, their application can be limited by specific regulations that exclude them or make them only an option. Second, simplification cannot be effective without controls on the quality of new regulations. The implementation of RIA will play a key role in the effectiveness of the simplification policy. The efforts to simplify administrative procedures at the national level also need to be co-ordinated with those undertaken at the EU level (see Box 3). These initiatives may not only promote a more competitive business environment through regulations of better quality, but also foster similar policies within national administrations. Participation in the pilot project of "Business Test Panels" has thus given the Italian administration experience in carrying out business-oriented consultations.

2.3.3. Facilitation of customs procedures

Italian customs authorities (*servizi doganali*) have taken measures to simplify customs procedures in the framework of the European rules set in the EU Common Customs Code. Italy has not acceded to the World Customs Organisation (WCO)'s revised Kyoto Convention,[46] as there remains legal-technical issues to be resolved within the EU. However, along with other EU customs authorities, the Italian authorities have implemented trade facilitation measures provided by this international convention, such as pre-arrival import declarations. These measures have significantly improved transparency in customs regulations and operations, and accelerated customs clearance, without compromising regulatory objectives, such as revenue collection.

The use of electronic means started at a rather late date in Italy compared to other G7 countries, but significant progress has been made in recent years. The customs system was computerised in January 1997 with a view to streamlining the cross-border movements of goods. This allows downloading customs declaration and checking its details electronically, but still requires the importer to submit a paper-based declaration to the customs office. While it has had limited effects on the speed of the clearance process, computerisation has been very useful in harmonising the interpretation and implementation of customs regulations across all border points. A significant step has been recently taken with the implementation of an updated customs electronic data interchange system (EDI system),[47] which will accelerate the clearance process. The EDI system enables importers to submit import declaration and to receive the customs permission electronically. It also includes the adoption of electronic signatures and electronic fund transfers, which allows customs clearance without intervention of customs officials in cases when cargoes are not subject to regulations other than taxation.[48] The on-line system integrates the inspection process. The decision to inspect documents or perform physical inspection is based on an assessment of risk,[49] drawn from a database of risk probability that is continuously being updated. This system permits to target inspections, to harmonise practices between different border points and to facilitate information sharing, thereby reducing the number of red tape, increasing the efficiency of controls, and enhancing the predictability of the system to operators. Before the system was established, 95% of operations were subject to control of documents, and 5% to physical inspection. There was no communication of information between border points, and the ratio of detected fraud amounted to 0.01%. Under the current system, 20% of customs operations are subject to control of documents, and around 7% subject to physical inspection. Communication between border points has been developed, and the ratio of detected fraud has risen to 4%.[50]

2.3.4. Overview of measures to avoid unnecessary trade restrictiveness

The recent introduction of regulatory analysis and the efforts undertaken to simplify administrative administration represent positive steps in favour of regulations that are less restrictive to trade and investment. The ongoing project of regulatory analysis includes tools for consideration of the impact of proposed regulations on the economy, and reinforces the mechanisms for checking their conformity with international law. Major measures have also been taken to simplify administrative procedures. In particular, the development of one-stop-shops since 1999 has accelerated the process for setting up a business. Customs procedures have been modernised, with the development of an electronic data interchange system and the introduction of risk assessment. However, given the complexity of the Italian regulatory system, these efforts will require time and political determination to show concrete results. If they integrate an international perspective, the RIA and ATN are likely to produce results on the trade-friendliness of the regulatory framework, but only slowly, as new regulations are introduced in the legislation. Such policy requires a long-standing commitment from all parts of the administration. With regard to the stock of existing rules, reviewing and streamlining regulations, including with regard to their potential restrictive effects on trade, can produce, and to some extent already has produced, positive results on the business environment.

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 these costs created by regulatory divergence.[51] 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. Within the European Union, the reduction of standards-related barriers to trade within the Single Market has also been a high priority. This objective is clearly reflected in the "New Approach" on technical harmonisation defined in 1985 by the European Council. Under this approach, public authorities in the EU define common legally binding requirements in order to achieve a certain general objective such as safety, but do not specify technical solutions and mandate European standardisation bodies to draw up European standards that meet these requirements. In principle, manufacturers are free to choose the appropriate solutions that comply with these requirements. However, they have a clear advantage in using European harmonised standards as it gives their products a presumption of conformity with the essential requirements (for more, see Box 4).

Box 4. **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 (Articles 94-97 of the Treaty of Amsterdam). 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*[52] 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[53] requirements which industrial products must meet before they can be marketed. This "New Approach" to harmonisation was supplemented in 1989 by the "Global Approach" which established conformity assessment procedures, criteria relating to the independence and quality of certification bodies, mutual recognition and accreditation. Since the New Approach calls for essential requirements to be harmonised and made mandatory by directives, this approach is appropriate only where it is genuinely possible to distinguish between essential requirements and technical specifications; where a wide range of products is sufficiently homogenous or a horizontal risk identifiable to allow common essential requirements; and where the product area or risk concerned is suitable for standardisation. Furthermore, the New Approach has not been applied to sectors where Community legislation was well advanced prior to 1985.

On the basis of the New Approach manufacturers are only bound by essential requirements, which are written with a view to being generic, not requiring updating and not implying a unique technical solution. They are free to use any technical specification they deem appropriate to meet these requirements. Products, which conform 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 Standardisation 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.[54]

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.

Source: Swann (1995), EC (1996*a*, 1996*b*, 1994).

The two Italian standardisation bodies take an active part in international standardisation. The *Ente Nazionale Italiano di Unificazione* (UNI, Italian National Standardisation Organisation) is a private, non-profit association, recognised by the Italian government and the European Union as the only Italian national organisation charged with the preparation, the publication and the promotion of national standards for all industrial sectors, except the electrical sector. The *Comitato Elettronico Italiano* (CEI, Italian Electrotechnical Committee) holds similar responsibilities in the electrical, electronics and telecommunications sector. Both bodies have subscribed to the WTO TBT Code of Good Practice. In preparing standards, they must take into account international standards. They have the obligation to transpose European standards within six months of their approval, and to withdraw conflicting national standards. They also actively participate in the work of international standardisation bodies, both at the European and the international level. In 1999, UNI was responsible for handling 140 secretariats of technical committees, subcommittees and working groups in the CEN and 51 secretariats in ISO.

The number of purely Italian draft standards has declined as the scope for European harmonisation has increased and limited the need for national standards. A very large majority of standards prepared by UNI and CEI are now transposition of European standards, which are increasingly harmonised against standards of the International Standardisation Organisation (ISO) and of the International Electrotechnical Commission (IEC).[55] In 1998, 79% of standards adopted by UNI were transposition of European standards, 4% of ISO standards, and 17% were purely national standards. Ten years before, the proportion of purely national standards stood at 75%. Italian standardisation activities are thus now mainly geared towards the adoption of European standards. Harmonisation against ISO standards accounts for a limited part of the standardisation activities of UNI, as this work is increasingly done by the CEN. The collection of UNI standards consists of 12 209 documents, a third of which are European standards.

The decline in the production of specific regulations is also reflected in the number of draft technical regulations notified to the European Commission as part of the procedure for the provision of information in the field of technical standards and regulations (see Box 1 and Section 2.1). In 1999, Italy notified 25 technical regulations to the European Commission, compared to a total number of 625 for all EU countries during the same year. The number of notifications has tended to decline in the 1990s (Table 4). The number of notifications relating to foodstuffs has declined too, but this sector remains at the top of the list of notifications. This prevalence is also found in the rest of EU countries, which reflects the partial level of European harmonisation in this area. Overall, statistics from the EU notification system do not indicate a particularly strong activity in devising national technical regulations in Italy, compared to other EU countries. Most technical regulations are devised in areas where European harmonisation is not complete or where European standards are not available yet.

Table 4. **Draft technical regulations notified by Italy to the European Commission, 1992-99**

	1992	1993	1994	1995	1996	1997	1998	1999
Foodstuffs and agricultural products	20	20	17	11	8	11	7	12
Transport	3	6	3	3	7	3	1	1
Machinery	3	1	5	10	2	2	7	5
Chemical products	2	4	2	0	4	6	7	2
Telecommunications	5	2	2	2	2	4	1	1
Building and construction	4	2	3	4	1	1	5	0
Other products	3	1	2	1	3	4	4	4
Total	40	36	34	31	27	31	32	25

Source: European Commission.

Within efforts to restructure the Ministry of Industry, a special unit was created in 1999 to oversee the use of internationally harmonised standards and certification procedures. A Legislative Decree gives the "Agency for Standards and Technical Controls" responsibility for assessing the conformity of equipment, plants and industrial products and setting technical rules for product certification in the areas under the responsibility of the Ministry of Industry.[56] The Agency is also specifically charged with monitoring the activities of standardisation and certification bodies. The authorities have not yet published the application decrees. Therefore, the Agency is not at the moment operative, and it is not clear what effective contribution it will play in promoting international standardisation compared to the current situation.

2.5. Recognition of equivalence of regulatory measures taken by other 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, creating additional costs and possible redundant conformity testing when selling in different markets. When the objectives of the regulation are substantially equivalent among countries, mutual recognition can significantly reduce these costs. Mutual recognition agreements can cover product regulations themselves or procedures used to assess the conformity of given products or services to applicable regulatory requirements.

2.5.1. Mutual recognition within the European Union

As an EU Member State, and according to the prevailing principle of mutual recognition within the Single Market, Italy accepts all products coming from any other EU Member State. The principle of free circulation of goods that was established in the Treaty of Rome was given full substance by the European Court of Justice in its ruling on *Cassis de Dijon* in 1979. It indicated that all products manufactured in any Member State must be accepted by the others, even when they have been manufactured in accordance with technical regulations that differ from those laid down in national legislation, provided they meet the marketing conditions in the originating Member State. This measure benefits exporters, including those from non-EU countries, since one product marketed in any one of the EU country can circulate freely in all other EU countries. These benefits however depend on the effective implementation of the principle of mutual recognition in each Member State.

The promotion of effective application of mutual recognition does not seem to have attracted much attention in Italy, although there is no evidence of major problems. Over the period 1996-98, the European Commission raised 23 infringement cases against Italy concerning mutual recognition in the area of products, against 228 cases for the 15 Member States. Italy stood at the third place among countries for the highest number of cases, with an average number of cases well below the first two countries however (EC, 1999*a*). Recently, the European Commission has stressed the need for political attention to be directed towards the effective application of mutual recognition, and has insisted on the responsibility of each Member State in doing so (EC, 1999*b*). In 1995, the European Parliament and the European Council decided that Member States should notify the Commission of any derogation from mutual recognition, that is any measures imposing a general ban or requiring a product to be modified or withdrawn from the market.[57] So far, the level of notifications has remained very low, which according to the Commission indicates that the mechanism is under-used (EC, 2000*a*). Italy has not made any notification. A recent report by the Commission on the implementation of the notification procedure seems to indicate that Italy has taken limited action to promote the awareness and understanding of various administrations concerning this notification requirement (EC, 2000*b*).

2.5.2. Mutual recognition agreements with non-EU countries

Italy is also involved in the policy engaged by the European Council in 1992 to negotiate mutual recognition agreements (MRA) with third countries. These agreements do not entail the mutual recognition of regulatory requirements, but the mutual recognition of results of conformity assessment procedures. They allow manufacturers to have their products assessed for third country criteria by bodies in their own countries, thereby reducing the cost and time needed to achieve market access. Each MRA includes a general framework agreement and a series of sectoral annexes. The framework agreement specifies the conditions by which each party will accept the results of conformity assessment procedures made by the conformity assessment bodies of the other party, in accordance with the rules and regulations of the importing party. These results include studies and data, certificates and marks of conformity. The requirements covered by the agreements are defined

on a sectoral basis in the annexes. As a result of these agreements, if a conformity assessment body in the exporting country certifies that a product covered by a MRA is in conformity with the requirements set by the importing country (and defined in the MRA), this certificate must be accepted by the importing party. As of June 2000, the European Union had signed MRAs with the United States, Canada, Australia and New Zealand, completed negotiation with Switzerland and Israel, and undertaken negotiations with Japan and central and eastern European countries (for details on the agreements, see Table 5).

2.5.3. International co-operation in the field of accreditation

Italy has engaged in international co-operation in the field of accreditation of conformity assessment bodies, which helps building confidence in the national certification systems and thus contributes to supporting mutual recognition agreements. Accreditation in the field of conformity assessment is a procedure by which a third party audits laboratories, certification and inspection bodies at regular interval, assesses their technical competence against published criteria and gives formal recognition that these bodies have the competence to carry out conformity assessment procedures. Since 1995, SINAL and SINCERT, the Italian accreditation bodies,[58] have signed multilateral agreements with foreign accreditation bodies of 15 European countries and 4 non-European countries (Australia, Hong Kong, New Zealand and South Africa) for the mutual recognition of certification issued by accredited certification bodies. In addition, SINAL and SINCERT are members of as the European Co-operation for Accreditation (EA), the International Accreditation Forum (IAF), and the International Laboratory Accreditation Co-operation (ILAC). The objective of these organisations is to promote the international acceptance of certificates and reports issued by organisations accredited by their members. In January 1998, Italy signed a MRA with 16 other States that was concluded in the context of the IAF for the mutual recognition of certificates. Such MRAs between accreditation bodies benefit exporting companies, as they need not repeat the certification procedures in each country.

Table 5. **Mutual Recognition Agreements concluded or negotiated by the European Union**

	Mutual Recognition Agreements							PECAs [d]			
	Australia	New Zealand	United States	Canada	Israel	Japan	Switz-erland	Czech Republic	Hungary	Estonia	Latvia
Construction plant & equipment							✓				N
Chemical GLP[a]			N	N							
Pharmaceutical GMP[b]	✓	✓	✓	✓		N	✓			N	N
Pharmaceutical GLP[a]					✓		✓			N	N
Medical devices	✓	✓	✓	✓		N	✓		N		
Veterinary medicinal products			N								
Low voltage electrical equipment	✓	✓	✓	✓			✓	N	N	N	N
Electromagnetic compatibility	✓	✓	✓	✓		N	✓	N	N	N	N
Telecommunications terminal equipment	✓	✓	✓	✓		N	✓			N	
Pressure equipment	✓N[c]	✓N[c]				N	✓	N			
Equipment & systems used in explosive atmosphere							✓	N			
Fasteners			N								
Gas appliances & boilers							✓	N			
Machinery	✓	✓				N	✓	N	N	N	N
Measuring instruments							✓				
Aircraft	N	N									
Agricultural & forestry tractors							✓				
Motor vehicles	✓						✓				
Personal protective							✓	N	N		

	Mutual Recognition Agreements							PECAs [d]			
	Australia	New Zealand	United States	Canada	Israel	Japan	Switz-erland	Czech Republic	Hungary	Estonia	Latvia
equipment											
Recreational craft			✓	✓							
Toys							✓				
Foodstuffs										N	N

✓ Concluded
N Under negotiation.
a Good Laboratory Practices.
b Good Manufacturing Practices.
c The agreement covers simple pressure equipment. Extension to other pressure equipment is considered.
d Protocols on European Conformity Assessments. In February 1997 the European Commission signed an agreement with Poland regarding preparatory steps on conformity assessment, precursor for a real PECA.
Source: European Commission.

2.6. Application of competition principles from 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.

In Italy, complaints about perceived anti-competitive business practices can be filed with the *Autorità Garante della Concorrenza e del Mercato*, usually referred to as the Antitrust Authority. This independent body was created by the 1990 Competition Act and given responsibility for advocating and enforcing competition policy in all sectors, except the banking sector (which is under the responsibility of the Bank of Italy). The Authority can open investigations to examine whether a firm is abusing a dominant position, whether a merger creates or strengthens a dominant position, and whether an agreement restricts competition. In case of violation, the Authority can issue orders to correct infringing conduct and, in serious cases, it can impose fines based on turnover. Its decisions can be (and in practice are in the vast majority of cases) appealed to the Latium Regional Administrative Tribunal. In many cases involving cross-border flows, the European Commission is however competent for the investigations. The distribution of competence does not depend on the nationality of firms, but on the impact on the domestic market as regard abuses of dominant position, and on the turnover made at the national level, as regard mergers.

The procedures apply equally to foreign and domestic firms, and provide for effective means of presenting positions and responding to charges. On the basis of a preliminary examination, the Authority decides whether or not to carry out an investigation. While the complainant has no legal power to ensure that the Authority deals with its case, in practice the Authority considers every complaint lodged, and notifies the complainant of the follow-up given to its complaint. In the investigation process, parties concerned are informed of the alleged violations and evidence collected by the Authority. They take part in the hearings and have access to all non-confidential information. The Authority must proceed under deadlines set by statute or internal rules.[59] Decisions about complaints concerning abuses and agreements are usually taken within nine months; a shorter deadline is provided for mergers: 30 days for the first phase and 45 days for the second phase (for more on the procedure, see background report to Chapter 3). It can also be noted that the Antitrust Authority makes its work widely available to the public. In addition to its Annual Report, the Authority publicise all its decisions and advocacy work (such as reports on particular legislation) in its weekly bulletin and website.[60]

Independently from any action taken by the Antitrust Authority, a firm affected by an anti-competitive practice may use private rights of action to get redress. It can file an action in the regional Court of Appeal to have declared null a practice that is prohibited by the competition law. It can also ask for damages caused by the violation of the law and for interim relief. In the same time, ordinary courts have a general competence in matter of unfair competition and can apply EU competition law. Here again, these procedures are open to all firms, regardless of nationality. Private rights of action have not been frequently used in Italy to deal with competition issues, and have not proved to be very successful either. The length of procedures and a lack of familiarity of judges with competition issues may explain the limited role of civil courts in enforcing competition policy (see background report to Chapter 3).

The national treatment granted to foreign firms in terms of procedure seems also to prevail as regards substantive legal analysis. With regard to mergers, a provision permits the Authority to consider "major general interests of the national economy in the process of European integration" when making a decision, on the basis of criteria promulgated by the Council of Ministers. The underlying objective seems to be the possibility of permitting concentration among domestic firms to create stronger competitors within the European market. But this provision has never been used, and has not been given much attention, as the Council of Ministers has not promulgated the criteria. In practice, the decisions of the Authority regarding mergers have not provided any evidence of discriminatory treatment against foreign firms (in addition, it should be recalled that the European Commission has been competent in reviewing most mergers involving foreign firms).

As markets become increasingly global, competition policy and enforcement process cannot be effective unless they incorporate aspects of international trade and investment. Within the European Union, EU law covers practices that affect trade between Member States. The European Commission can thus take actions against practices that limit access of foreign firms to domestic markets. It has done so in several cases involving Italy in the past. For example, in 1998, the Commission fined AAMS (*Amministrazione Autonoma dei Monopoli dello Stato*), a cigarette producer and distributor that had a dominant position in Italy for the wholesale distribution of cigarettes, for imposing distribution contracts which limited the access of foreign cigarettes to the Italian market and favoured its own production.

This international dimension has also been integrated into the actions of the Authority. Since 1996, it has had the power to apply EU competition law directly. As the domestic market gets increasingly integrated in the European market, the Authority has come to extend the scope of analysis beyond domestic borders in assessing competition issues in cases for which the European Commission has not initiated proceedings. The most striking example in this regard has been its examination in 1996 of the merger of Mannesmann Demag AG with Innocenti Santeustacchio Spa. In this case, the Authority considered that the market affected, which was the design and manufacture of seamless pipe rolling mills using specific technologies, was world-wide, and it based its decision to permit the acquisition under certain commitments on an analysis of the effect of the merger on competition within the European Union.

The authority has been active in applying competition policy to newly deregulated sectors, in particular in acting against abuse of dominance by incumbent firms. It has in particular tackled discrimination or extension of a dominant position into other liberalised markets in sectors such as air transport, telecommunications or electricity in which competition is getting increasingly international. It took actions against incumbent firms for using their power to impede access of competitors to essential facilities. For example, it imposed fines on Telecom Italia for restricting access to high capacity transmission lines or against Alitalia for discriminating in assigning airport operating slots at Rome and Milan's international airports. The efficiency of this enforcement policy may however have been limited by the difficulty in getting interim relief against a denial of access to the market in Courts of Appeal.

While non-discrimination, transparency and speed of competition and regulatory authorities have supported an effective competition policy in terms of international market openness, entry into the market of many service sectors is still hampered by regulations. Some of these obstacles stem from the reluctance of some regional or local authorities to embrace competition. Regions have thus delayed the opening to competition of the retail sector. Until recently, the development of this sector was subject to a set of controls that impaired the growth of the industry and permitted to ration the openings of new large stores. As a result, the structure of the retail sector in Italy is fragmented with low market shares of large stores, which can make difficult the access of new suppliers to the sector. In 1998, the Parliament adopted a law that laid down general principles for lifting many restrictions on opening, relocating and expanding outlets. However, the implementation of the reform has depended on regional governments, which need to take specific actions by programming shopping centres and integrate them into urban development plans. The effects of the reforms on large sales outlets, for which global competition has developed in past years, have been limited until recently, as regional authorities have dragged to issue the rules.[61]

3. ASSESSING RESULTS IN SELECTED SECTORS

This section examines the implications for market openness arising from Italian regulations in four sectors: telecommunications services, telecommunications equipment, electricity and automobiles. For each sector, an attempt has been made to assess the effects of sector-specific regulations on international trade and investment and the extent to which the six efficient regulation principles are applied. Particular attention is paid to product standards and conformity assessment procedures, where relevant. Issues addressed include efforts to adopt internationally harmonised product standards, use of voluntary product standards by regulatory authorities and flexibility of conformity assessment. Electricity and telecommunications are reviewed in detail in the background reports to Chapter 5 and Chapter 6 respectively.

3.1. Telecommunications services

In recent years, the telecommunications sector in Italy has been liberalised and has developed very quickly. What used to be a monopolistic sector has become a sector opened to competition with a large number of participants. Telecommunications services are on a MFN and national treatment basis, as trade in this sector is regulated by the WTO agreements on Basic Telecommunications of April 1997 under which the European Union did not ask for any exceptions. The Antitrust Authority has played an active role in the liberalisation process since the beginning of the 1990s. It has brought a number of actions against anti-competitive actions, for example against discriminating practices or anti-competitive pre-emption behaviour in different markets of the incumbent operator, Telecom Italia, or against collusive practices in the mobile market. The openness of the market to competition has in practice resulted in the acquisition of Telecom Italia, the incumbent operator, by Olivetti (with only 3.65% of the shares still in the hands of the Treasury). Along with a pro-competitive environment, this has favoured a significant entry of foreign operators in the Italian market, often through joint ventures with local operators. OPI, which is now controlled by Mannesmann (following the sale by Olivetti), is the second largest mobile operator behind Telecom Italia Mobile (TIM), the subsidiary of Telecom Italia. Its sister company, Infostrada, holds a significant share of the fixed segment of the market. Deutsche Telekom, France Télécom and British Telecom have also entered the market through joint ventures with Italian companies.

The entry of new operators has reduced the position of the incumbent on the market, which held a share of 68% of the international calls segment and 49% of the mobile segment at end-1999. The increase in competition has already resulted into a strong increase in employment, tariff reductions, and larger scope of available services. With over 34 million mobile terminals in use as of July 2000, Italy is now by far the largest mobile market in Europe, and the third largest in the world, after the United States and Japan. New steps

towards increased liberalisation are scheduled to take place in 2000. They include the introduction of number portability, unbundling of the local loop and issuance of wireless local loop licences that would offer alternatives to infrastructure.

An independent regulator, the *Autorità per le Garanzie nelle Communicazioni* (AGCOM - Authority for Communications), which started its activities in July 1998,[62] has been charged with the development, supervision and enforcement of regulations in the telecommunications, media and press sectors. The AGCOM has been entrusted with most of the regulatory powers, with the Ministry of Communications still holding direct responsibility for frequency assignment and for non-public telecommunications services. Since its creation, the AGCOM has taken important decisions in the telecommunications sector, for example regarding the setting of a price-cap, fixed-to-mobile tariffs, universal service, unbundling of the local loop, numbering, and the interconnection regime.

The regulators have undertaken efforts to increase the transparency and efficiency of the licensing procedures, which had raised some concerns in the first year of operation. A large number of licenses have been issued (70 licenses as of December 1999, 122 as of July 2000). However new entrants, including foreign entrants, have considered the process to be lengthy and confusing, and have reported delays in the issuing of licenses (three months on average instead of the six weeks provided by the national legislation). They have also complained about the difficulties for interested parties to have access to license conditions (USTR, 2000; EC, 1999*d*). The AGCOM has undertaken to review and simplify the procedure. The modified regulation[63] has eliminated the obligation to provide investment targets as regards R-D financing and to lodge a performance bond linked to the targets contained in the business plan provided by the applicants, which was considered as unnecessarily burdensome (AGCOM, 2000). This has resulted in a time-reduction of the licensing procedure to six weeks.[64] A difficult transfer of responsibilities from the Ministry to the Authority, in particular confusion over the sharing of responsibilities with regard to licenses, may have largely contributed to the difficulties encountered in the first months of operation, along with delays in recruitment and inadequate staffing of the AGCOM (EC, 1999*d*).

Since 1999, the regulators have taken significant steps towards increased transparency, by facilitating access to information and setting up consultation mechanisms. The AGCOM has developed a comprehensive website that contains information on applicable regulations and decisions, part of it in English.[65] The rules of the AGCOM also provide for the establishment of working groups with the incumbent and the licensed operators. These groups are open to interested parties, including consumers. In addition, the President of the AGCOM participates in hearings in the Parliament on various subjects (eight hearings for the period July 1999 - July 2000). A more promising consultation tools has been the development of public consultations on key issues for the future development of telecommunications. Between July 1999 and July 2000, the AGCOM thus launched public consultations on the Internet, some of them in English, concerning wireless local loop, the general authorisation regime, and, in co-operation with the Ministry of Communications, the allocation of UMTS licenses (third generation mobile communications systems). The consultation on the UMTS was launched in September 1999, with ample publicity on the site of the Ministry and the AGCOM.[66] Twenty-three telecommunications operators participated, including a large number of foreign operators, and results were made available to the public. The regulation on the award of UMTS licenses, which was issued in December 1999, provides for a competitive auction, preceded by a pre-selection of candidates on the basis of their technical, financial and commercial capacities. The criteria of selection were published on the website of the AGCOM and of the Ministry of Communications at the end of July 2000.

3.2. Telecommunications equipment

While Italy's regulatory reform programme was already well underway, the EU harmonisation process has played a major role in the development of regulations relating to telecommunications equipment in Italy as in other EU countries. The main framework has been set with two "New Approach" Directives, Directive 98/13/EC on telecommunications terminal and satellite earth station equipment and Directive 99/5/EC on radio and telecommunications terminal equipment. The production of standards meeting these requirements by the ETSI, the European standardisation body in the area of telecommunications, is near completion. By the end of 1999, 49 out of 56 standards had been published in support of Directive 98/13 and 90 standards were under development for Directive 99/5, most of which are expected to be published by the end of 2000 (EC, 2000*a*).

The *Comitato Elettronico Italiano* (CEI – Italian Electronical Committee), a non-profit association founded in 1909, participates in the development of these standards as an ETSI member and is in charge of transposing European standards into Italian standards. With respect to the elaboration of mandatory technical regulations, there are no specific procedures applying to telecommunications equipment. The Ministry of Industry is responsible for defining technical regulations and certification procedures, and must notify any specifically national regulation to the European Commission (as required by the procedure described in Box 1). As for other products, any equipment lawfully manufactured in any other EU Member State must be accepted in the Italian market. In addition, a number of MRAs with non-EU countries also apply to telecommunications equipment, and allow under certain conditions for the acceptance of results of conformity assessment performed in Australia, New Zealand, the United States, Canada and Switzerland.

3.3. Electricity

As discussed in the background report to Chapter 5, recent reforms have deeply transformed the electricity sector in Italy. Prior to 1992, the sector was a public monopoly and ENEL had a sole concession for generation and supply. ENEL has since then been transformed into a joint-company, partly privatised in 1999. An independent regulator, *l'Autorità per l'Energia Elettrica e il Gas* (AEG – Authority for Electricity and Gas) has been in operation since 1997. In 1999, the Legislative Decree[67] that implemented the EU Directive 96/92 on electricity in Italy, introduced competition into generation and supply to large consumers, beyond the minima set in the Directive.

Some uncertainty remains on the role that imports could play in fostering competition in the Italian market. In 1999, Italy imported 42.5 MWh, which represented 15% of its domestic generation. ENEL produces three-quarters of the total electricity and buys at regulated prices almost half of the electricity generated by independent producers. Import capacities are fully used, and most of them are taken up until 2007 by long-term contracts temporarily held by ENEL and will be transferred to the single buyers. The allocation of interconnections is under the responsibility of the AEG. In 2000, the regulator decided to allocate half of available transfer capacities from abroad to supply liberalised consumers, and half to supply franchise consumers. In addition, a reciprocity clause applies that limits imports as eligible customers in Italy cannot import energy from countries where they are not entitled to buy in the competitive market. Whether consumers will benefit from foreign competition in future will thus depend on the extension of transmission capacities from other countries and on a non-discriminatory access to the grid.

In the medium and long term, competition will also depend on the conditions for entry in the market. New entrants, be they domestic or foreign, would create additional capacities available for sale to the free market. In the current situation, the licensing procedures for new generating plants are slow, but the government plans to change them into a standard and simplified procedure (see Box 4 in the background report to Chapter 5). This reform would be a positive step towards increased competition as it would facilitate the entry of new producers in a market that currently provides for limited capacities to customers.

In a larger perspective, as new reforms are introduced, a transparent rulemaking process can enhance the quality of new rules. In this regard, the AEG has taken account of criteria of transparency in adopting general rules and decision, and in particular has established consultation processes. This constitutes a major improvement compared to the situation in the general administrative system. Internal rules provide for consultation with concerned parties, including consumers association, environmental associations, trade unions, business associations through the circulation of documents and the organisation of periodical hearings. In addition, any interested party may submit written comments on the issue examined.

3.4. Automobiles

The historical dynamism of global economic activity in the automobile sector and frequent interventions of some governments aimed at protecting domestic producers have often led to trade tensions in the sector, in particular in the fields of standards and certification procedures. Automobiles remain among the most highly regulated products, primarily for reasons relating to safety, energy conservation and environmental protection. Divergent national approaches to the achievement of legitimate domestic objectives in these policy areas can thus create significant sources of trade tensions as the industry gets increasingly globalised.

The production of automobiles in Italy is concentrated in one single industrial group, the Fiat, while the production of parts and components is undergoing a slow process of concentration through mergers and acquisitions. The globalisation strategy of the national producer, with the development of production facilities in overseas markets, has led to a gradual reduction of the national production in the 1990s. The number of exported cars has also declined in absolute terms, but not relatively to the production. In terms of units produced, almost half of the Italian production of automobile was exported in 1999, against 36% in the early 1980s. Imports have also steadily increased, as gross estimate show that the share of imported vehicle in the number of new registered vehicles has risen from a little less than 50% in the early 1980s to 66% at the end of the 1990s. In 1997, the financial inducements to car replacements gave rise to an increase of nearly 40% in the number of new registered cars over the previous year, which benefited both foreign and domestic producers. The domestic production rose by 20% (in number of units), and was reoriented towards the internal market, with a slowdown in exports, while imports grew by 30% (CCFA, 1996, 1998; OICA, 1999).

The integration process of the Italian automobile sector is first of all integration in the European market. EU countries cumulate 70% of Italian exports of automobiles and 84% of its imports (Table 6). It should be recalled that along with France, the United Kingdom, Spain and Portugal, Italy applied restrictions to Japanese imports in the 1980s. This policy was replaced by an arrangement concluded in July 1991 between the EU and Japan, which provided for the gradual opening of the European market that was finally reached at the end of 1999.

Table 6. **Structure of foreign trade in the automobile sector, 1998**

In per cent of total exports/imports

	Exports	Imports
European Union, *of which*	70.7	83.7
Germany	21.1	35.9
France	17.1	17.6
United Kingdom	11.2	7.8
Spain	6.9	11.5
Other European countries	11.5	6.5
Non European countries, *of which*	11.8	9.8
Japan	1.1	4.2
South Korea	0.1	2.3
United States	4.4	0.7

Source: ISTAT (1999).

The integration process of the Italian automobile sector in the European market has accompanied the harmonisation of regulations within the European Union. Since 1993, detailed technical requirements for motor vehicles have been set by EU Directives and commonly applied in all EU and EFTA Member States (harmonisation in this sector thus follows the "Old Approach" of full harmonisation and not the New Approach defined above). As of June 2000, Italy had transposed 157 out of 165 directives related to motor vehicles, against an average of 143 transposed directives for all Member States (EC, 2000*a*).

The EU takes part in the multilateral efforts in favour of international harmonisation in the automotive sector developed by the Working Party on the Construction of Vehicles (usually referred to as WP29) of the United Nations Economic Commission for Europe (UN-ECE) (see Box 5). The participation of the EU in the WP29 has produced tangible results in terms of use of mutual recognition of foreign regulations as the EU has deemed several UN-ECE regulations as equivalent to relevant EU technical regulations. The scope of this policy has been enhanced by the approval of the Council in July 1999 of an agreement negotiated under the UN-ECE on the establishment of global technical regulations for wheeled vehicles, equipment and parts to be fitted on or used by them. This agreement allows the participation of new countries that were not parties to the 1958 agreement.

Concerning certification, a new Community-wide type approval system for vehicles was introduced in 1996 and became mandatory in 1998. National approvals are no longer allowed for new types. Each vehicle type, whether domestically produced or imported, must be brought to a regulatory body testing facility, tested and certified that it meets relevant technical regulations defined in the 54 basic Directives for passenger cars and their modifications. Once a passenger vehicle is granted type-approval certification in a recognised testing facility in any one of the Member States, the certificate is valid in all EU states. This mutual recognition of type-approval certification was extended in 1998 to all vehicles of category M1 (passenger and light commercial vehicle).

Box 5. **The role of the UN-ECE in international harmonisation of technical regulations in the automotive sector**

The United Nations Economic Commission for Europe (UN-ECE) has played a major role in moving the automotive sector towards international harmonisation of motor vehicle safety and environmental regulations and co-ordination of vehicle safety and environmental research. A specialised ECE body, the Working Party on the Construction of Vehicles (commonly referred to as WP 29) has become a *de facto* global forum for the international harmonisation of technical standards for motor vehicles. WP 29 brings together regulators and non-governmental organisations representing manufacturers of vehicles and parts, consumers and other stakeholders from a wide range of countries. Since the signature of the first agreement in 1958, 104 regulations have been developed. They provide for equal safety requirements and set environmental protection and energy saving criteria for governments and vehicle manufactures in the 25 European countries contracting parties to the 1958 agreement. In June 1998, a new agreement was reached on "Global Regulations for Wheeled Vehicles". It will apply in parallel to the existing 1958 agreement and allow the participation of countries, such as the United States, Canada, Australia and Japan, which were not parties to the 1958 agreement.

While harmonisation has enhanced openness of national markets, some obstacles to integration remain as shown by the persistence of a significant average price differential for automobiles across national markets. Differences in taxation, market strategies of producers, as well as exchange rates may largely explain these gaps in the past as seen in the slight reduction of the gap between members of the Euro zone during 1999.[68] They may however also reflect the persistence of regional market segmentation. The proposed Directive on registration documents for motor vehicles should contribute to eliminating obstacles set by differences in national registration procedures (EIU, 1999). Strong enforcement of competition is also necessary against commercial practices that aim at fragmenting the market. The European Commission has taken some actions in this regard. In 1998, it fined Volkswagen for pursuing a market-partitioning policy in Europe by forcing its dealers in Italy to refuse to sell Volkswagen and Audi cars to foreign buyers, at a time when price differentials were particularly advantageous for buying in Italy (OECD, 1999*a*).

As the sector is subject to full harmonisation, the quality of the regulatory framework in terms of international openness needs to be assessed at the EU level in the first place. The use of international standards and recognition of certificates of conformity in particular stem from EU level policy. Transparency of regulations and rulemaking also depends essentially on the EU level regulatory system.[69] However, each Member State, including Italy, plays a major role in contributing to the definition of common rules, in transposing them into national law, in disseminating information and in enforcing law in its territory. The progress made in recent years in Italy to achieving better transposition of EU directives, the general administrative reform in favour of increased transparency and the implementation of an effective competition authority are thus positive steps towards increased openness in the automobile sector.

4. CONCLUSIONS AND POLICY OPTIONS

4.1. General assessment of current strengths and weaknesses

Over the past decade, the strong impetus given to reforms has permitted significant progress in favour of market openness. Market principles have been strongly reinforced through privatisation and liberalisation, while administrative reforms have been geared to increasing the quality of regulations. Considerable efforts have thus been made to change the role of the State in the economy. They are conducive to a more open and competitive business environment, which can reap the benefits of market liberalisation. The Italian society has shown strong support for a deep change in the system. The challenge of integration in the European Union, and more particularly in recent years of participation in the EMU, has provided a strong incentive for reforms.

The disciplines set by WTO and EU rules have been complemented by an active policy at the domestic level to promote the application of the efficient regulation principles examined in this review in the regulatory framework. Not all the six principles are expressly codified in Italian administrative and regulatory oversight procedures to the same degree. The weight of available evidence suggests that the principles of non-discrimination, use of international standards and recognition of equivalence of foreign measures are given ample expression in practice. Considerable progress has also been made in providing an appropriate competition policy. Authorities have taken positive steps to increase the transparency of the regulatory framework and reduce unnecessary restrictions created by regulations. These two latter principles however still appear as those for which stronger action can contribute to creating a trade-and-investment-friendlier environment.

The government has taken a large number of measures to simplify the regulatory framework and make it easier to understand. Innovative instruments have been used to this end. The creation of one-stop-shops, the impetus given to the development of e-government in Italy, the introduction of regulatory impact analysis are examples of a strategy that favours a better quality and trade-friendlier regulatory framework. Strong action has also been taken in specific fields. Reforms have been undertaken to open public procurement to effective competition, by ensuring better transparency and setting up stricter pro-competitive rules. Significant efforts have also been done to simplify and speed up customs procedures by developing a modern computerised system.

A certain number of issues however call for stronger action. Some sectors remain largely closed to competition, in particular in the area of professional services. The quality of public consultation has improved but is still undeveloped. Reforms to review and simplify regulations have started to produce some results, but in some areas the regulatory framework remains difficult to understand. This is the case for public procurement, in which rules are still very complex, limiting the positive effects of progress towards transparency and competition in recent years. The creation of an independent authority on public works may permit a reinforced surveillance. However, its scope of action does not cover procurement of supplies and goods.

Reforms have benefited from Italy's involvement in international co-operation. Within Europe, Italy has promoted the adoption of good regulatory principles as part of the structural reform programme for European competitiveness. With regard to administrative reforms, Italian authorities have officially referred to the OECD principles in the adoption of new measures. Participation in EU level initiatives, such as the Pilot Project on public procurement or the Business Test Panels, has also enabled the authorities to learn from the experiences of trading partners and detect issues in the domestic regulations. While reforms have indeed produced positive results on the market openness, more focused efforts could however be made to integrate an international perspective in the reform process. Some major initiatives, such as the creation of one-stop-shops and the introduction of regulatory impact analysis, could boost market openness as specific attention is given to integrating principles such as unnecessary trade restrictiveness and transparency in implementing them.

4.2. The dynamic view: challenges for future reforms

As many reforms are still very recent, it is too early to assess their results. However, results are only partially perceived by business, including foreign business, and that scope remains for further progress. Despite recent progress, for example on procedures for setting up a business, the Italian regulatory framework remains complex. Reviewing and streamlining regulations will be an important step in favour of a more competitive environment. Codification of regulations will increasingly produce such results and should focus on areas affecting the business environment. As the Government has recognised, ensuring quick and effective implementation of reforms and reinforcing their impact on market openness will be keys to their success in providing a more efficient regulatory framework that can promote the development of Italy's place in the world economy.

Effective implementation will require sustained political and financial investment at national, local, and regional levels. Incentives for compliance with new regulatory disciplines could be reinforced by monitoring mechanisms. The Italian authorities have put in place some monitoring, for example on the development of one-stop-shops, but more could be done in other areas, such as public procurement and application of mutual recognition.

In an increasingly globalised economy in which border barriers are losing their significance, the existence of a regulatory framework that supports market openness – in particular by avoiding unnecessary restrictiveness to trade and investment flows – is critical for underpinning the competitiveness of the national economy. The relatively low level of FDI in Italy stems from any factors, but this review of the regulatory environment suggests that there is scope for further progress toward an open business environment. The authorities have recognised the need to integrate the economy into the global economy, not only through the internationalisation of Italian firms, but also through an increased openness of the domestic market. As mentioned in a report of the Ministry of Trade, "for too long, internationalisation has been considered only on the "outward" side, that is in terms of exports and investments from Italy to foreign countries. Globalisation, on the contrary, increasingly requires an "inward" internationalisation, from abroad into Italy"[70] (Government of Italy, 1999). The same report supports the development of marketing tools to promote Italy as a place for business.

4.3. Policy options

This section identifies avenues for future actions. These recommendations are based on good regulatory practices, as described in the 1997 OECD report on regulatory framework, and on various experiences in OECD countries. Their objective is to enhance the adaptation of the Italian regulatory framework to the conditions of a global economy.

- *Build on current initiatives to facilitate access to information on regulations by establishing, as foreseen in the Annual Simplification Bill 2000, a centralised registry of all administrative procedures with positive security.*

The on-going development of e-government will expand dissemination of information on the Internet. Co-ordination between different administrations will improve transparency and availability of information. The on-going project of a central gateway to the administration will be essential. This gateway could be used as a central contact point for business, providing co-ordination with all parts of the administration at the central and local levels. It could be used to collect requests or comments from any interested parties. Its impact on market openness would be enhanced if specific efforts were made towards foreign business by providing information in English or other languages.

Creation of a registry of all administrative procedures and requirements affecting the operation of business (including authorisations, licensing requirements, technical regulations) would greatly facilitate understanding of the Italian regulatory framework. The Annual Simplification Bill 2000 foresees the creation of such a registry, based on OECD recommendations. Such registry would need to be easily accessible on the Internet, user-friendly, including for foreign business, and updated on a regular basis.

- *Improve the transparency of the rulemaking process, by publishing draft regulations at an early stage and setting up transparent consultation mechanisms, for example with the introduction of notice and comment procedures.*

More consistent efforts should be made to make prospective regulations available to market participants. The introduction of "notice and comments" would permit reduction of discretion in the selection of parties to be consulted, and an increase in the predictability of the system. It would also provide regulators with potentially valuable input from market participants allowing them to better adapt regulations to the needs of the market. Recent steps to expand the use of notice and comment procedures are useful in this regard.

This consultation needs to be organised in an adequate timeframe, so as to allow interaction between market participants and the administration. It needs to take place at an early stage of the rulemaking process to that the comments of affected parties can effectively be taken into account.

Specific efforts need to be made to ensure the transparency of the consultation system, so as to ensure that the administration is accountable for its application, and to avoid it being captured by special interests. It is therefore important that each stage of the process be made public, including notification of regulations, comments received and responses of the administration.

- *As RIA is implemented in accord with the new Guidelines, specific attention will be needed to the assessment of trade and investment-related impacts of draft regulations.*

The recent introduction of RIA is a major initiative in favour of efficient regulations. The inclusion of international trade and investment in the checklist will help regulators consider alternatives that can be less restrictive to trade and investment.

If trade and investment issues are to be given sufficient attention in the RIA, the DAGL and the *Nucleo* will need to sustain attention to these issues in their quality checks. Administrations involved in the process will need to be vigilant of these issues. Methods for assessing trade and investment impacts should be included in the training sessions, for example, or trade experts could have a greater role in quality checks.

- *Accelerate efforts to streamline administrative procedures affecting business and eliminate any unnecessary restrictions on trade.*

The authorities have engaged in efforts to codify rules, which should facilitate the understanding of regulatory requirements by all operators in future. These efforts should be pursued and accelerated, with attention given to key areas affecting the operation of business in order to produce clear results. Areas could include labour regulations, rules on establishment of businesses, taxes, or public procurement.

Constraints on entry into regulated services markets, such as concessions and licenses that are imposed at the central or local level should be examined, including constraints that affect the entry of foreign operators.

- *Reinforce monitoring mechanisms to strengthen attention to results and ensure effective implementation of reforms, in particular with regard to administrative procedures for setting up businesses, public procurement and mutual recognition.*

Ensuring compliance with new measures requires that the government be made accountable for their implementation. It is therefore important that monitoring mechanisms be set up, to measure the effective application of reforms. This would provide a useful tool for reformers, to gain additional support for reform and fight inertia in various administrations. To be efficient, results of monitoring need to be published (for example through the publication of regular reports) and given publicity. Monitoring in the area of simplification of administrative procedures, public procurement and mutual recognition would be particularly important for enhancing the impact of reforms on market openness.

Specific attention need to be paid to the development and operations of *sportelli unici*, in particular to their capacities of getting the participation of all administrations involved and in effectively shortening the process for setting up a business. Particular attention could be paid to their use by foreign operators.

In the area of public procurement, the surveillance mechanism set up with the creation of the Authority on Public Works should not be limited to public works, but include all types of procurement as they are closely interrelated. Qualitative and quantitative benchmarking of public procurement at all levels of the administration would permit detection of potential implementation issues and focus efforts on the major issues. Benchmarking could include data on the value of contracts, number of entities that publish tenders, type of tenders, share of imports in procurements.

The reduction of trade barriers through mutual recognition can be accelerated if specific attention is paid to the smooth application of MRAs in the domestic market. Developing monitoring in connection with a central contact point for business would allow detection of potential trade-related issues at an early stage and could offer avenues for quick resolution.

- *Additional measures could promote the efficiency of customs procedures.*.

Italy has made considerable progress toward a modern customs system, but additional measures could promote efficiency of customs procedures. To further develop the EDI system, introduction of on-line clearance could be considered. Such a procedure would facilitate and speed up export and transit operations, resulting in time savings and cost reductions.

NOTES

1. These reforms are analysed in the first three chapters of the report. Chapter 1 provides a macroeconomic perspective on the reform, Chapter 2 examines the administrative reforms, while Chapter 3 addresses the role of competition policy in regulatory reform.

2. See *Financial Times*, "Italian alarm after sharp fall in exports", 14 July 2000.

3. The action plan for e-government is detailed in a report adopted by the Council of Ministers in June 2000: "e-government action plan", available on the website of the Prime Minister's Office at <www.funzionepubblica.it/home/fr_apeg.html >.

4. To date, the site covers all community legislation in force, laws adopted during the ongoing legislation, laws adopted by regions and autonomous provinces, as well as selections of laws provided by specific ministries and ministerial departments. Participating ministries are the following: Ministries of Finance, Justice, Industry, Communications, University and Scientific Research, Department of Public Administration.

5. <ww.camera.it> and <www.senato.it>.

6. <www.palazzochigi.it/servizi/provvedimenti/index.asp>.

7. This includes Decree-Laws, Legislative Decrees, Decrees of the President of the Council, Decrees of the President of the Republic, directives of the President of the Council, and draft laws. For each measure, information includes the title, an executive summary, the text approved by the Council of the Ministries, the press release, monitoring of the text as well as the official text once adopted and published in the GU.

8. According to the official inventory made by the Chamber of Deputies.

9. Introduced in Law No. 59/97, article 20, and developed in Law No. 50/99, article 7.

10. As provided by Decree No. 447 of 1998.

11. A few sectoral consultation bodies exist. Since 1998, the Ministry of Industry has thus consulted the Consumers National Council. The Ministry of Environment operates a special forum for consultation with non-governmental organisations on environmental issues. In September 2000, the Department for European Policies gave an institutional framework to the consultation it holds with social partners and local authorities in matters relating to the Single Market.

12. Document prepared by Confartigianato*, Incontro Confartigianato – OCSE,* May 2000.

13. The same representatives that signed the "Christmas Agreement".

14. Article 2.2 of Law 50/99 and Prime Minister Decree of April 1999. An informal note prepared by the Nucleo regulates its rules and procedures.

15. Legislative Decree No. 80, 31 March 1998 and Corte di Cassazione, sec. Un., Decision No. 5000, 22 June 1999.

16. For an analysis of trade-related issues in the field of product regulations, see OECD (1997a).

17. Technical regulations refer to mandatory product specifications set in regulations, while standards refer to specifications established by standardisation bodies, for which compliance is not mandatory but voluntary.

18. In addition to the central government, the regions and some independent regulatory bodies are required to notify draft technical regulations to the European Commission. Concerned independent regulators are listed in the European Official Journal. They include the Bank of Italy, the CONSOB (which supervises the stock exchange), the ISVAP (which supervises the insurance market), the authority for communications, the authority for the

protection of personal data, and the AIPA (which co-ordinates, plans and controls the development of information technology within the governmental central bodies and agencies).

19. europa.eu.int/comm/dg03/tris/p1/owa_p1/owa/pisa_database_en

20. Until 1999, the notification system, which had been conceived as an intra-governmental mechanism, could be used by business to collect information only to a limited extent. Access of firms to draft voluntary standards was possible, as they could participate in the making process. However, the notification system did not require EU Member States to make draft texts of technical regulations available to the public, even though notified texts were not considered as confidential either, unless specifically required. The main channel for public information thus used to be the publication of the title and a brief summary of notifications in the Official Journal of the European Communities.

21. The three "Merloni laws" on public works are the following: Law No. 109 of 11/2/1994, Law No. 216 of 2/6/1995, Law No. 415 of 18/11/1998 that has been implemented with the Bargone Decree (Presidential Decree No. 34 of 25/1/2000).

22. In addition to publication in the Official Journal of the European Communities, tenders subject to EU rules can also be consulted for charge on the TED (Tenders Electronic Daily) website at <http://ted.eur-op.eu.int>.

23. <www.acquisti.tesoro.it>

24. See the Cecchini Report (EC, 1988).

25. Article 4 of Law related to public works, No. 109 of 11 February 1994.

26. As suggested in the prevalence of cases involving local administrations in the listing of infringement procedures published by the European Commission (see http://europa.eu.int/comm/internal_market/en/update/infr/index.htm).

27. Six countries participate in the Pilot Project: Denmark, the Netherlands, Germany, the United Kingdom, Spain, and Italy. The main objective is to identify methods to obtain reliable and speedy informal solutions to market access problems at the national level with respect to public procurement. Another objective is to promote the exchange of information between participating countries and to identify any areas of improvements for EU rules.

28. Communication of the Italian government to the OECD, May 2000.

29. Law No. 40 of 6 March 1998.

30. These preferential agreements include the Free Trade Agreements with the EFTA (European Free Trade Association), several European Agreements with Central and Eastern European Countries and several Euro-Mediterranean Agreements. In addition, the European Union has entered into preferential non-reciprocal agreements with several countries in the context of the Lomé Convention and the EU General System of Preferences (GSP) in favour of developing countries.

31. The European Directive 98/5/CE guarantees the free circulation of professionals within the European Union. In 1999, the Italian Parliament mandated the government by the Law No. 526/99 to adopt a legislative decree for the implementation of this Directive. The decree is currently under preparation, and the government expects it to be issued by the end of November 2000.

32. By virtue of the TBT and SPS Agreements, countries should not use regulations that are more trade restrictive than necessary to fulfil a legitimate objective. In addition, article VI of the GATS stipulates that measures applied to supplies of services such as qualification or licensing requirements should "not constitute unnecessary barriers to trade".

33. According to Law No. 400/88, article 17.

34. Article 5 of Law No. 50 of 1999.

35. Decree of the Presidency of the Council of Ministers of March 27, 2000.

36. The DAGL of the Prime Minister's Office was established in 1988. It is in charge of co-ordinating the regulatory activity of all ministries, both for primary and secondary level regulations. The *Nucleo per la semplificazione delle norme e delle procedure* (Unit on Simplification of Legal Texts and Procedures) was created in 1999. Attached to the Prime Minister's Office, it is charged with providing technical assistance to the DAGL in the development of regulatory reform. It is made up of 25 professionals with expertise in economics, law, political science, European affairs and linguistics. For more, see background report to Chapter 2.

37. For more on RIAs in Italy, see background report to Chapter 2: "Government Capacity to Assure High Quality Regulation".

38. Communication of the Government of Italy to the OECD, August 2000.

39. Survey done by the ISTAT in co-operation with Unioncamere. Communication of the Italian government to the OECD, May 2000.

40. See for example the business survey conducted by the Economist Intelligence Unit in co-operation with Business International (Business International, 2000). Labory and Malgarini (2000) provide an overview of several surveys, including the EIU survey.

41. Law No. 241/90.

42. Presidential Decree No. 36/98, No. 252.

43. Based on Presidential Decree No. 447/98 on the simplification of authorisation procedures for the establishment, expansion, restructuring and conversion of firms.

44. Communication of the Department of Public Administration, May 2000.

45. See the business surveys mentioned above in Section 1.

46. The objective of the "International Convention on the Simplification and Harmonisation of Customs procedures" (the so-called "Kyoto Convention") that entered into force in 1974 was to simplify and harmonise customs procedures across countries. In June 1999, the Council of the WCO adopted a revised text in order to adapt the convention to the development of international trade. The new procedures will increase transparency and harmonisation of customs procedures by using new information technology and modern clearance techniques based on risk analysis. The revised convention is now open for signatures. It shall enter into force three months after forty contracting parties will have signed the amendment protocol without reservation. As of end June 2000, ten members of the WCO have signed it.

47. The establishment of a computer network between customs offices and traders allow the latter to submit customs declarations electronically, which are then automatically processed by the customs computers. It addresses bottlenecks and cuts back communication time. For details on the EDI system in customs procedures, see OECD (1999*b*).

48. The reform also provides for an interface between the new Italian EDI system and the EU transit system (New Computerised Transit System - NCTS). Once implemented, the interface will enable information registered by a customs authority in one unloading point (*e.g.* Rotterdam) to be valid in the importing country (*e.g.* Italy). This will accelerate the customs clearance time and reduce the burden on the importer in collecting information and registering into the customs EDI system of the destination country.

49. With regard to customs procedures, "risk assessment" refers to a technique for estimating to which degree each customs declaration does not comply with customs law. The objective is to "determine which persons and which goods, including means of transport, should be examined and the extent of the examination" (extract from the revised Kyoto Convention General Annex, Article 6.4).

50. Communication of the Italian Customs Authorities to the OECD, May 2000.

51. This call has been made in particular by the European and American business communities in the context of the TABD (Transatlantic Business Dialogue). The TABD has advocated governments to overcome diverging positions at an early stage of the making process of regulations and to give more emphasis on international

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

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

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

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

55. Through the implementation of the ISO-CEN Vienna agreement, CEN is committed to the use of ISO standards. About one third of all CEN standards are identical to ISO standards, about one-third are based on ISO standards, and about one third are the result of CEN's own work alone. CENELEC has a similar co-operation with the IEC, on the basis of the Dresden Agreement (EC, 2000*c*).

56. Article 31 of Legislative Decree No. 300 of 30 July 1999.

57. Decision 3052/95 of the European Parliament and of the Council, which came into effect on 1 January 1997.

58. SINAL (*Sistema Nazionale per l'Accredimento di Laboratori*), a non-profit association created in 1988, is responsible for the accreditation of laboratories, specifically for assessing their technical and management capacities for performing specific tests or types of testing. SINCERT (*Sistema per l'Accreditamento degli Organismi di Certificazione*), established in 1991, has the competence to accredit inspection bodies and certification bodies for quality systems, products, personnel and environmental management systems.

59. The deadline for the examination of mergers is however set by law as 45 days.

60. www.agcm.it.

61. For more on the reform of the retail sector in Italy and in other European countries, see Pellegrini (2000).

62. The Authority for Communications was established in 1997 by Law No. 249, which also provided guidelines on the regulations of the Italian communications sector.

63. Decision of the AGC No. 217/99, modifying the Ministerial Decree of 25 November 1997.

64. Communication of the Government of Italy to the OECD, August 2000.

65. The home address of the Authority on Communications is: http://www.agcom.it/intro.htm.

66. The content and the results of the consultation are available (in Italian) at the following address: http://www.comunicazioni.it/consultazioni/index.htm.

67. Legislative Decree No. 79/1999.

68. For more, see the Internet website of the Directorate-General for Competition of the European Commission (http://europa.eu.int/comm/dg04/aid/en/car.htm).

69. In this regard, the making process of EU Directive provides for consultation of affected parties. Draft directives or amendments to directives are submitted by the European Commission and published in the Official Journal of the European Communities. During a consultation period, the Commission consults a Working Party on Motor Vehicles composed of representatives of Member States and the EU industry. Following the consultation, the Commission proposes the text to the EU Council for approval. The new Directive comes into effect after its publication in the Official Journal of the European Communities.

70. Unofficial translation of the Secretariat.

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