OECD REVIEWS OF REGULATORY REFORM

REGULATORY REFORM IN FRANCE

ENHANCING MARKET OPENNESS THROUGH REGULATORY REFORM

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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AND DEVELOPMENT

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

FOREWORD

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

This report on *Enhancing Market Openness Through Regulatory Reform* analyses the institutional set-up and use of policy instruments in France 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 France* published in June 2003. 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 prepared by Evi Moïsé and Roya Ghafele of the OECD Trade Directorate. 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 France. The report was peer-reviewed by the 30 member countries of the OECD. It is published under the authority of the OECD Secretary-General.

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ACRONYMS AND ABBREVIATIONS

ACP	African, Caribbean and Pacific States
AFAQ	Association française assurance qualité [French Quality Assurance Association]
AFNOR	Association française de normalisation [French Standardisation Association]
ART	Autorité de régulation des telecommunications [Telecommunications Regulatory Authority]
BTI	Binding Tariff Information
CADA	Commission d'accès aux documents administratifs ["Commission on access to official documents"]
CCED	Commission de conciliation et d'expertise douanière [Customs Conciliation and Adjudication Commission]
CEN	European Committee for Standardisation
CENELEC	European Committee for Electrotechnical Standardisation
CEPII	Centre d'études prospectives et d'informations internationals ["International Research and Information Centre"]
COFRAC	Comité français d'accréditation [French Accreditation Committee]
COSA	Commission pour les simplifications administratives [Commission for Administrative Simplification]
CRE	Commission de régulation de l'énergie [Energy Regulatory Commission]
DATAR	Délégation à l'aménagement du territoire et à l'action régionale ["Delegation for Territorial Development and Regional Action"]
DGCCRF	Direction Générale de la concurrence, de la Consommation et de la Répression des Fraudes [General Directorate of competition, consumer affairs and fraud]
DGDDI	Direction Générale des douanes et droits indirects [Customs and Excise Office]
DGEMP	Direction générale de l'énergie et des matières premières [General Directorate of Energy and Raw Materials]
DREE	Direction des relations économiques extérieures [Office of Foreign Economic Relations]
EA	European Co-operation for Accreditation
EC	European Communities
EDI	Electronic Data Interchange
EFTA	European Free Trade Association
ETSI	European Telecommunications Standardisation Institute
EU	European Union
FDI	Foreign Direct Investment
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GPA	Agreement on Government Procurement
IAF	International Accreditation Forum
IEA	International Energy Agency
IEC	International Electrotechnical Commission
ILAC	International Laboratory Accreditation Co-operation
IOSCO	International Organisation of Securities Commissions
ISO	International Organisation for Standardisation
ITU	International Telecommunications Union
JORF	Journal officiel de la République française [Official Journal of France]
MFN	Most-favoured nation
MINEFI	Ministry of Economy and Finance
MRA	Mutual Recognition Agreement
NAFTA	North American Free Trade Agreement
NGO	Nongovernmental organisation
NICT	New information and communication technologies
NSO	National standardisation organisation
OJEC	Official Journal of the European Communities

PDD	Procédure de dédouanement à domicile ["Local Clearance Procedure"]
PDS	Procédure de déclaration simplifiée ["Simplified Clearance Procedure"]
PECA	Protocol to the European Agreements on Conformity Assessment
RIA	Analyse d'impact de la réglementation ["regulatory impact assessment"]
SAD	Single administrative document
SGCI	General Secretariat of the Interministerial Committee for European Economic Co-operation
SME	Small and medium-sized enterprises
SOFI	Système opérationnel pour le fret international [Computerised System for International Freight]
SPS	Agreement on the Application of Sanitary and Phytosanitary Measures
SQUALPI	Sous-direction de la qualité pour l'industrie et la normalisation [Industrial Quality and Standardisation Office]
TABD	Transatlantic Business Dialogue
TBT	(Agreement on) Technical Barriers to Trade
TRIS	Technical Regulations Information System database
UN/ECE	United Nations Economic Commission for Europe
VAT	Value Added Tax
WCO	World Customs Organisation
WTO	World Trade Organisation

EXECUTIVE SUMMARY

As traditional barriers to trade have fallen, the impact of domestic regulations on international trade and investment has become more apparent than ever before. While regulations aim at improving the functioning of market economies in a range of fields, such as market competition, business conduct, the labour market, consumer protection, public health and 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 regulation that promotes global competition and economic integration, thereby avoiding trade disputes and improving trust and mutual confidence across borders. This chapter assesses how the French regulatory system performs 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.

From the perspective of opening the market to international competition, the French record is on the whole positive. The French government and administration have gradually distanced themselves from the interventionist and paternalistic tradition of the State and have committed themselves to developing a regulatory framework supportive of sound market functioning. Nevertheless, there are still some shortcomings in terms of achieving a market-friendly regulatory environment, and these need to be addressed for the country to retain benefits from the progress achieved to date. Available evidence shows that the principles of favouring harmonised standards and of streamlining conformity assessment procedures are widely respected in practice, in particular under the influence of EU and WTO disciplines. Observance of competition principles also offers sound guarantees for the international openness of the French market, and the telecommunications sector offers a good example of such successful opening to competition. In sectors where incumbents still dominate the market, like in the electricity and gas sectors, the role of incumbents will be soon modified owing to the liberalisation of the European market.

With respect to the other principles underlying market openness, a number of official or unofficial steps in the right direction have recently been taken. The principles relating to transparency and openness of the decision-making process are also well respected. Prior consultation with interested parties is becoming normal practice with the French administration, although the openness of the decision making process could be improved if such consultation were put on a formal and systematic basis. The principle of non-discrimination is generally observed in regulatory practices, although a number of exceptions persist.

From the viewpoint of market openness, the major weakness in the French regulatory framework has long been the cumbersome rigidity of a system that generated unnecessary restrictions on trade and was regularly criticized by economic players. A number of measures have been taken in recent years to improve and simplify the regulatory framework, and still others are in the course of preparation. These measures are likely to improve the quality of regulation and to create a regulatory environment supportive of market openness, but they are still handicapped to some extent by the persistence of old practices within the administration and the climate of mistrust that has long existed between the administration and the business world. The effectiveness of measures under way can only be assessed in the long term, but France will need to ensure that adopted plans of action translate into concrete changes in the day-to-day workings of government and backed up with communication efforts directed at the business community.

Enhancing Market Openness Through Regulatory Reform

The globalisation of production and the resulting deeper integration of national markets have reinforced the link between domestic policies and trade liberalisation. As traditional barriers to trade have fallen, the impact of domestic regulations on international trade and investment has become more apparent than ever before. While regulations generally aim at improving the functioning of market economies in a range of fields, such as market competition, business conduct, the labour market, consumer protection, public health and safety or the environment, they may directly or indirectly distort international competition and affect resource allocation and productive efficiency. Thus regulations should be made in a way that is consistent with an open trading system and that supports strong international competition. This chapter considers whether and how French regulatory procedures and content affect market access and presence in France. An important reverse scenario -- whether and how inward trade and investment affect the fulfilment of legitimate policy objectives reflected in social regulation -- is beyond the scope of the present discussion.

1. MARKET OPENNESS AND REGULATION: THE ECONOMIC AND POLICY ENVIRONMENT IN FRANCE

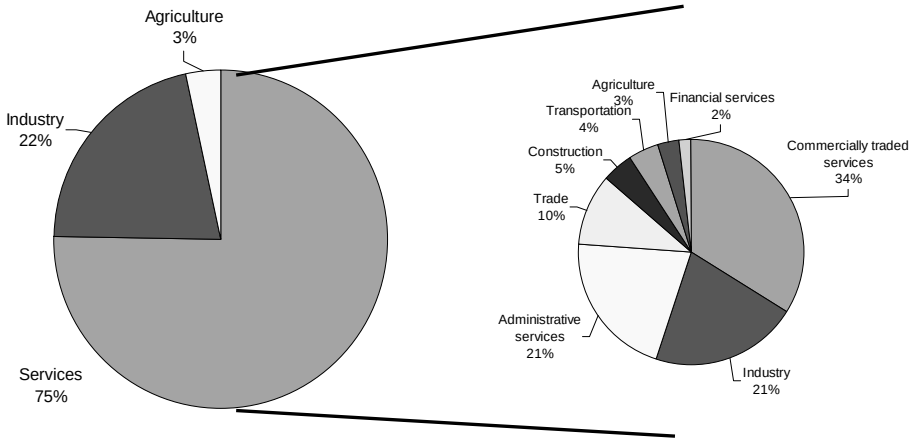
1.1. The economic environment

France is the fifth-largest economy in the world, with a per capita GDP of €24,031 in 2001 and the highest growth rate among the G8 countries (averaging 3% between 1998 and 2000). The French economy is highly diversified. Services account for 75% of GDP, having expanded sharply over the last two decades. Agriculture and the agrifood industry also play a significant role, not so much in terms of economic activity (they represent only 3% of GDP) than as a factor of social cohesion, in a society that was predominantly rural until the middle of the 20th century. Today, moreover, farming preserves a particular food model with which a large portion of the population identifies closely.

The State retains an important role in the French economy. The 2001 budget deficit, which amounted to €33.8 billion, was partly attributable to a central government deficit equal to 1.4% of GDP (INSEE, 2003). Despite two successive waves of privatisation during the 1980s and 1990s, a significant part of the country's economic activity remains in the hands of the State. A dozen enterprises are controlled by the State, including EDF (Electricité de France), the post office and the airports of Paris. The State also has significant equity holdings in at least 10 enterprises that are traded on the stock exchange, such as France Télécom, Air France and Renault (OECD, 2001a).

The structure of France's foreign trade reflects the country's close integration into the European Union, and in particular the strong ties between the French and German economies. Germany is France's principal trading partner, both for imports and exports. Spain's accession to the EC in 1986 gave a boost to Franco-Spanish trade, and Spain has been France's third-largest export market since 1999. Exports to the United Kingdom and Italy are also an important factor in France's trade surplus.

Figure 1. Structure of the economy and breakdown for the services sector (as a percent of GDP, 2002)



Source: INSEE, 2003

Table 1. Public enterprises in 2000

Traded enterprises with State holdings	***Principal Activity***	***Residual State holding (as a percentage)*****
Air France	Transportation	54,4
France Télécom	Telecommunications	64
Thomson Multimédia	Electronics	52
Aérospatial-Matra	Aerospace	48 of which 20 through Sogepa
Renault	Automobiles	44
Thales	Electronics	33
Bull*	Information technology	17
Crédit Lyonnais	Finance	13
Altadis	Tobacco	2.5
Caisse nationale de prévoyance	Finance	2
Main non-traded enterprises with State holdings	***Principal Activity***	***Residual State holding (as a percentage)*****
EDF	Electricity	100
GDF	Gas	100
La Poste	Postal services	100
SNCF	Transportation	100
RATP	Transportation	100
Commissariat à l'énergie atomique	Research and development	100
GIAT Industries	Machinery and equipment	100
SNECMA	Manufacture of transportation equipment	100
Aéroports de Paris	Airport services	100
Cie financière Hervet	Finance	100

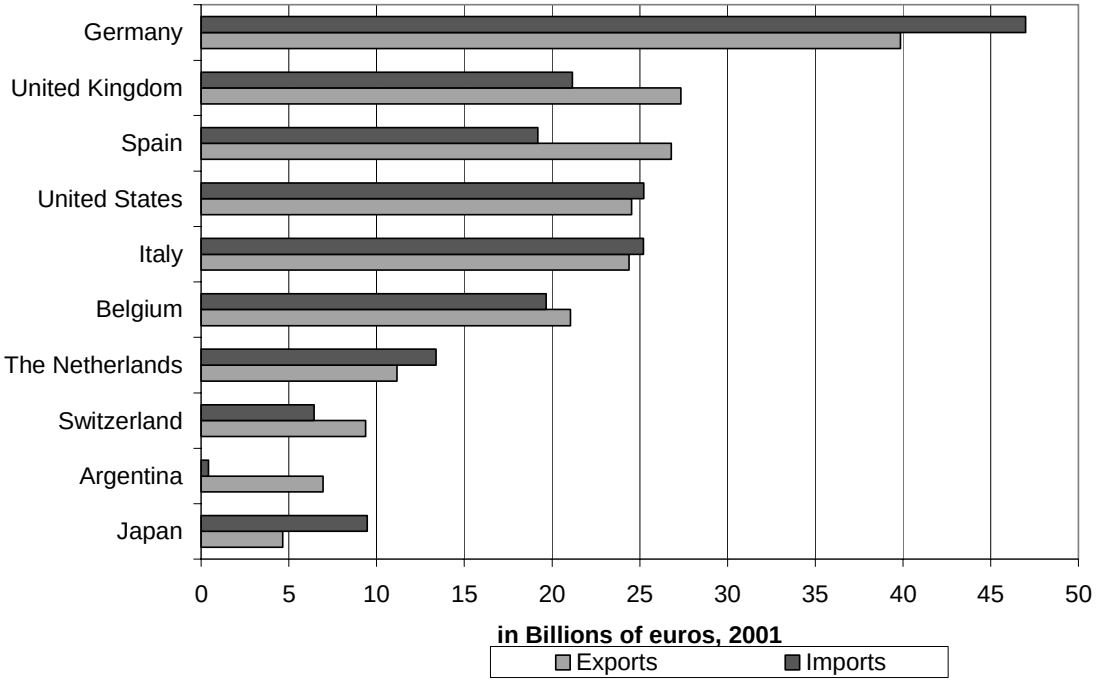
Source: Ministère de l'économie, des finances et de l'industrie

* Public institutions other than the State retain a large shareholding interest.

** Residual State holdings include distribution of "free shares"

Outside the European Union, the USA is the country's most important trading partner. France occupies a dominant position in the foreign trade of most Francophone African countries. While the level of such trade is of little significance to France, it is very important for these partner countries. For example, in 1999 France supplied 64% of Gabon's imports, 34% of those of Cameroon and Senegal, 28% for Burkina Faso and 26% for Cote d'Ivoire. These African countries' imports from France are largely in the form of value-added products and services. At the same time, some 20% of the exports of Gabon, Cameroon and Senegal went to France in that year. African exports to France consist primarily of agricultural products such as coffee, cocoa and groundnuts (The Economist Intelligence Unit, 2002b).

Figure 2. Principal Trading Partners

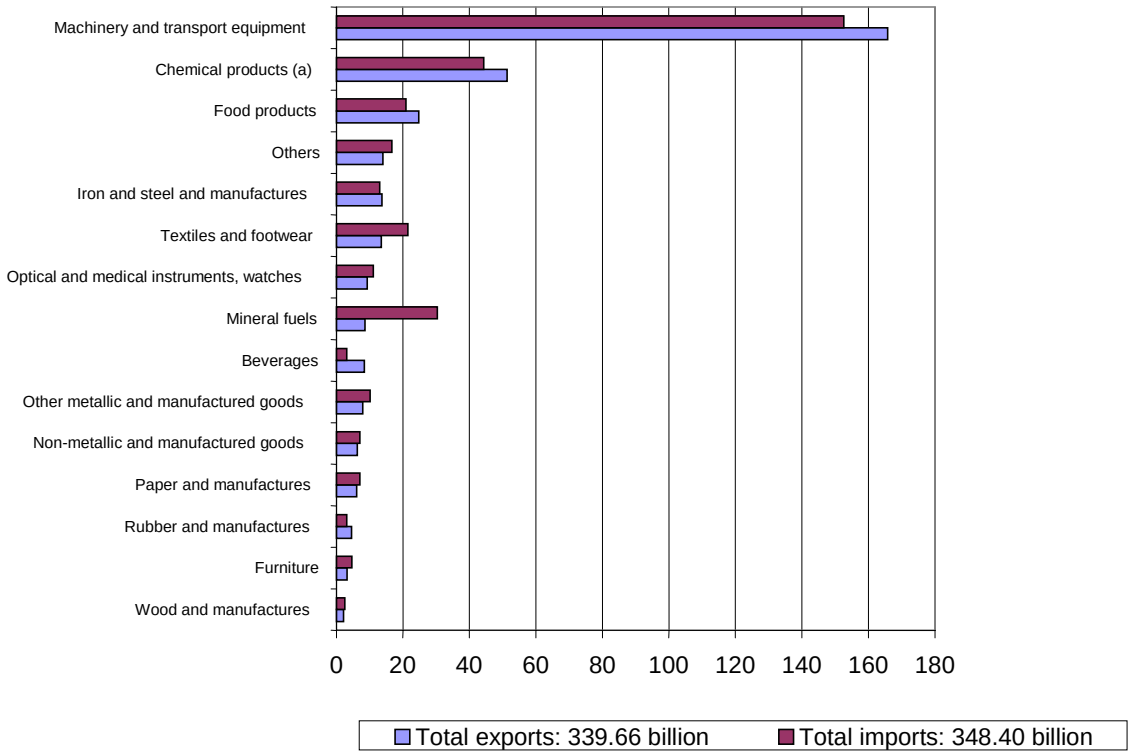


Source: OECD, 2002a

In 2000 the trade surplus declined sharply to €1.722 billion, a tenth of its 1999 level. This drop was related to the effective devaluation of the euro, and to higher oil prices. In 2001, the trade surplus rose again, to €7.623 billion, although it was still far below the historic peak of the late 1990s.

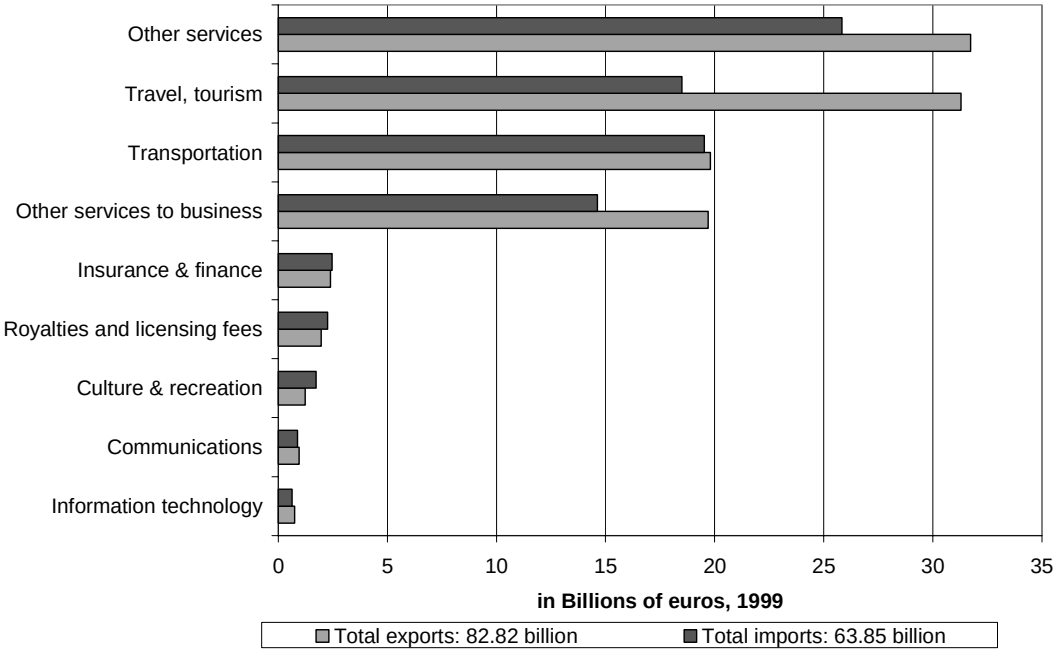
France is the world's second-largest exporter of agricultural, and more particularly of agri-food, products. French imports consist primarily of industrial goods, intermediate goods and capital goods. Since the first oil crisis of the 1970s, France has sought to maintain self-sufficiency in terms of energy supplies. Tourism contributes the most important share of services exports. French SMEs accounted for 21% of imports and 31% of exports (by value) in 2001 (INSEE, 2003).

Figure 3. Structure of trade in goods in billions of euros, 1999



(a) including fertilisers, plastics, photographic equipment
(b) including precious metals and jewellery
Source: OECD, 2002b

Figure 4. Structure of trade in services

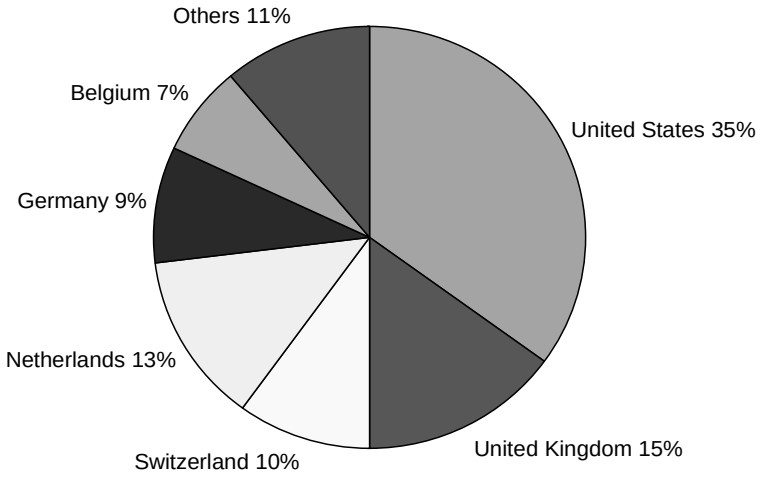


Source: OECD, 2003a

Foreign direct investment in France rose steadily between 1998 and 2001, and reached €42.6 billion in 2002, placing France in second position in the world, after China. On the other hand, French investment abroad has exceeded foreign investment in France by a wide margin since 1985. In 2001, France ranked second among countries investing abroad (at €76.7 billion), after the United States (€118.5 billion)[1]. The value of French investment abroad in 2000 amounted to €170.8 billion, or 3.6 times the level of 1998.

In 1998, 12% of the turnover of firms installed in France was generated by foreign firms. More than half of them operate in the area of industry, a third in trade, and only 12% in services. Of these foreign firms, 35% are of US origin, 15% from the United Kingdom and 13% from the Netherlands. According to the 2002AmCham survey[2], foreign firms come to France because of its geographic location, its well-trained work force (19% of the total population speaks English), its sound infrastructure, the size and potential of its market, reflecting a high purchasing power, and the quality of life in the country. The survey also indicated that foreign firms mainly complain about the fiscal environment for businesses and employees, labour market regulation, and manpower costs. Foreign investors are on the whole rather negative about the 35-hour workweek and the wealth tax.

Figure 5. Origin of parent firms of foreign enterprises



Source: INSEE, 2003

This state of mind is well reflected in the results of a number of studies commissioned by the French government (Badre/Ferrand 2001; Charzat 2001). According to the Badre/Ferrand report, the situation in France is not exceptional, and is indeed typical of most EU countries. The attractiveness of France as a business site is a complex phenomenon that relies on both natural and acquired advantages and

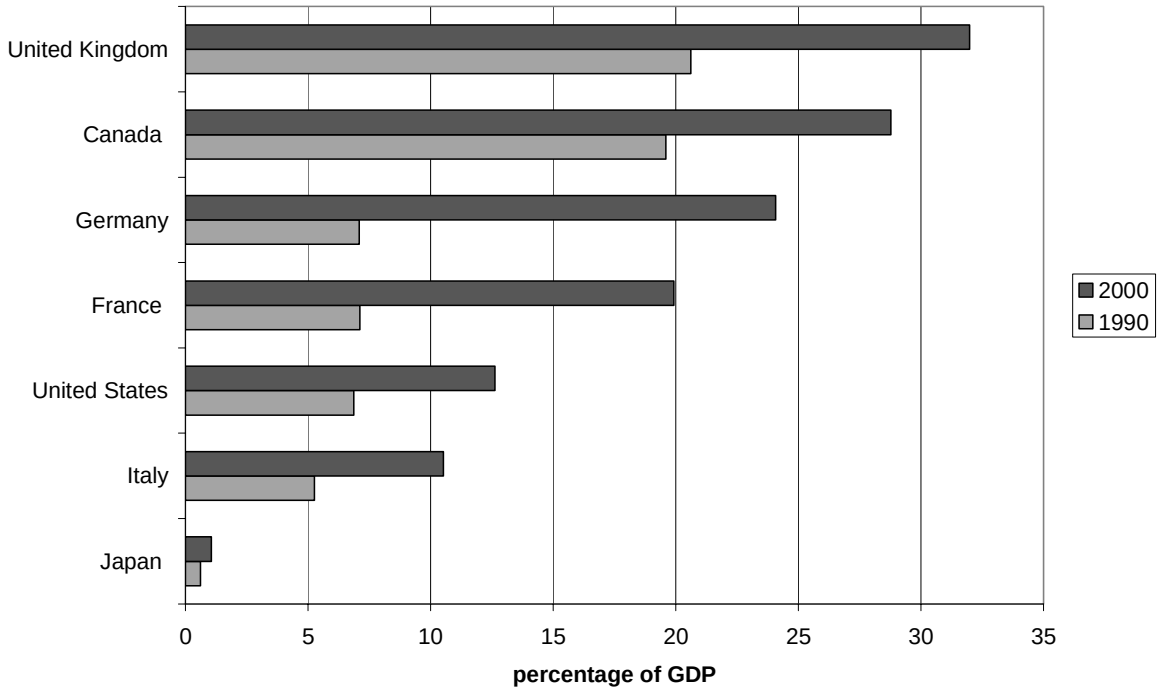
1. This figure owes much to the aggressive merger and acquisition policy of the entertainment and multimedia industry (OECD, 2002c).

2. 90 American CEOs in France participated in the 2002 AmCham survey. This sample represents a turnover of €36.7 billion and employs 76,376 people. (AmCham/Bain 2002)

that can consequently be reinforced through a conscious awareness of the importance of opening the market. The report stresses the importance of an education system that insists on the mastering of at least two foreign languages and on familiarity with civilisations around the world. At the same time, the authors stress the importance of research and innovation as key factors of success in the knowledge economy. According to them France should develop further the competitiveness and attractiveness of its research system so as to aim attracting highly qualified scientists and researchers from around the world, rather than enduring a brain drain. The Charzat report comes to a similar conclusion.

Those two reports also show that France suffers from a legal and social environment that is considered relatively unfriendly to business, not only because of rigidities and red tape, but also because of a lack of predictability and consistency. This point would seem to apply in particular to the taxation systems, as well as to social legislation, for example the law governing job dismissals, where there is a lack of stability and legal security. The authors stress the importance of modernising the State and reducing the restrictive impact that regulation has on businesses and individuals alike (see below, section 2.3), and the need to develop a more attractive fiscal and social framework.

Figure 6. Stock of inward FDI (as a percentage of GDP)



Source: OECD, 2002

The "Invest in France" Agency (*Agence Française pour les Investissements Internationaux*, AFII), created by the 2001 law on new economic regulations, is in charge of promoting international investment in France, prospecting and supporting potential investors. Under the terms of the 2001 law, national efforts in favour of international investments, which were previously conducted through an international investment prospecting network run by DATAR, are now coordinated by a single authority. The AFII provides information on the general conditions applicable to investments, seeks to mobilise public assistance, and works with DATAR and subnational levels of government to identify and propose the most attractive offers for hosting investments. It also provides guidance to firms on the regulatory framework and on administrative, taxation and social matters. It provides its services free of charge. Its activities are intended not only to support potential investors in the course of their prospecting but also to

reinforce the country's territorial development policy, which seeks to reduce inter-regional growth disparities.

1.2. Economic and trade policy

France's economic and trade policy is strongly influenced by the country's international and regional relations. Its membership in the GATT, and subsequently in the WTO, has played a key role in creating a general context of government action that is favourable to reform and to the opening of international markets. Multilateral trade agreements to which France is a party as a Member of the European Community have reduced tariffs on goods to unprecedented low levels, and have led to the gradual liberalisation of trade in services. As a founding member of the European Community, France has benefited from the removal of regulatory barriers to trade in the course of creating the single market. Customs duties, quotas and other restrictive measures affecting industrial goods were completely eliminated by the beginning of the 1990s. Commitments to implement the Directives on the internal market have had the effect of gradually opening key sectors such as telecommunications and energy to competition. On the other hand, France has sometimes requested exemptions and has been slow in implementing European Union Directives. This has delayed reform and has reduced the favourable economic impact of competition. The White Paper on European Governance placed France in 14th position among the 15 EU members in terms of giving effect to European regulations. This assessment was based on the rate of violations as well as on the application and implementation of European treaties and regulations (European Commission, 2001).

In comparison to other EU member countries, the French State plays an especially important role in the economy. The 1993 privatisation regulations allowed the State to preserve a "golden share" in a number of enterprises. The State also intervenes in cases of potential mergers and acquisitions affecting French enterprises. Regulations applicable to foreign direct investment in France have been liberalised since 1996: FDI is now only subject to a requirement of prior declaration, unless they take place in areas related to security, defence or public health, where they are still subject to authorisation. There are also quotas for foreign direct investment in certain industries considered sensitive, such as the audiovisual sector (where FDI may not exceed 20%). Foreigners are barred from oil extraction, while investment in the aerospace and finance sectors requires special authorisation and is subject to reciprocity provisions. The State seeks to moderate the centralised nature of the country through a programme aimed at encouraging foreign direct investment in the less prosperous regions.

The reform programme currently undertaken by France has three main aspects:

- decentralisation, together with greater regional autonomy;
- simplification of the regulatory framework and its management;
- development of e-government.

These three aspects are mutually reinforcing. The pursuit of decentralisation is a primary political objective that requires and at the same time contributes to simplifying the regulatory framework. The decentralisation plan gives the regions the legal status of "territorial authorities", conferring on them the possibility of exercising direct democracy in the form of local referendums. At the same time, it gives them financial autonomy. The notion of "overseas territory" (TOM) has been replaced by that of "overseas authorities".

The goal of this reform is to take into account territorial disparities and institutional complexities. The decentralisation plan facilitates pursuit of the policy for sustainable territorial planning and

development, but it makes use of other tools. The region was until now simply an administrative structure with no democratic legitimacy, and its funding was centralised. Under the decentralisation plan this is no longer the case. The fact that various regions show considerable discrepancies in their budgets is an important challenge.

In order to simplify the structure of the regulatory framework, the French government has created three new bodies: the Office for Modernisation of Public Management and State Structures (*Délégation à la modernisation de la gestion publique et des structures de l'état*); the Office for Users and Administrative Simplifications (*Délégation aux usagers et aux simplifications administratives*); and an agency for the development of e-government. Their mission is to coordinate policies for the alleviation of administrative formalities and to help make bureaucratic language clearer and more intelligible. In addition, these bodies are expected to identify and promote measures and actions to improve the relationship between government and users and in this way to enhance the quality of service. France also seeks to increase the number of administrative formalities available on line, but needs at the same time to take account of the "digital divide" that, as in other OECD countries, implies the exclusion of a considerable portion of the population from these new technologies. All three institutions are involved in the effort to improve the quality of regulations (National Assembly, 2003).

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

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

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

They have been identified by trade policy makers as key to market-oriented, trade and investment friendly regulation. They reflect the basic principles underpinning the multilateral trading system, concerning which many countries have undertaken certain obligations in the WTO and other contexts. The intention in the OECD country reviews of regulatory reform is not to judge the extent to which any country may have undertaken and lived up to international commitments relating directly or indirectly to these

principles but rather to assess whether and how domestic instruments, procedures and practices give effect to the principles and successfully contribute to market openness.

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

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

2.1.1 Information dissemination

Information on existing regulation

It is a general principle of French law that any legislation or regulation must be published before it is applied. Without publication legislative or regulatory provisions cannot have legal effect, and failure to respect this requirement opens the possibility of appeal in order to annul the provisions. There is no fixed rule concerning the time that must elapse between publication of a regulation and its entry into force: the effective date is determined on a case-by-case basis, so as to allow concerned constituencies to familiarise themselves with the new provisions. For example, the public procurement code was published in the Official Journal on March 8, 2001, with an effective date of September 9, 2001, i.e. six months after publication, given the importance and complexity of its provisions. The publication of official information on regulations is the responsibility of the Prime Minister's Office (specifically the Directorate of Official Journals). The primary channel is the Official Journal of France (JORF), and specifically the section entitled "Laws and Decrees". The Official Journal is also available online (www.journal-officiel.gouv.fr ; www.legifrance.gouv.fr), on CD ROM, via Minitel and on microfilm. As soon as the necessary legislative amendments are in place, laws and decrees will have to be posted online at a special site at the same time as they are published in hard copy.

In addition to laws and regulations, the Official Journals Directorate publishes official codes, collective contracts, economic and financial bulletins (such as the bulletin of procurement notices), reports of the Economic and Social Council and the Court of Accounts, as well as debates of the National Assembly and the Senate. Codified texts are generally available in English and Spanish as well (http://www.legifrance.gouv.fr/html/codes_traduits/liste.htm).

Apart from the Official Journal, there are several other means for publicising information, such as the official bulletins that each government administration publishes, on at least a quarterly basis,

publications of the prefecture or mayor's office, or legal notices, as appropriate. For example, any Directive, instruction, circular, notice or ministerial response that involves interpretation of applicable law or a description of administrative procedures must also be published by the office concerned. By virtue of Law 78-753 on the right of access to administrative documents, an Administrative Documents Access Commission (CADA) oversees the accessibility of non-personal[3] administrative documents and will issue a notice in response to a complaint by a citizen. The deconcentrated authorities (local State services) or decentralised authorities (regions, departments, municipalities and other territorial authorities) use their own channels to publish any regulatory provisions they may adopt. They also maintain a publicly available compilation of provisions in force.

As a follow-up to official publication, administrations are increasingly making use of digital dissemination, either through passive consultation sites (at general or specialised Internet sites) or through direct contact with the parties concerned, using e-mail lists. This digital dissemination also allows them to update the information more readily. For example, publications of the General Directorate of Energy and Raw Materials (DGEMP), including its annual reports, statistical notices, records, studies and information reports and quarterly newsletters on energy issues, can be consulted at its web site (http://www.industrie.gouv.fr/energie/publi/se_pub_p.htm).

The mechanisms for publicising information thus offer a significant guarantee of transparency, but the volume and complexity of the regulatory framework are such as to make it difficult to understand by the public, and foreigners in particular. In this context, the existence of "information windows", where economic operators can obtain an accurate reading of their obligations, takes on special importance. Economic operators can obtain information on the applicable legislative and regulatory framework by applying to the information services of the government entity concerned, such as the customs office or the industry services. In the trade field, the Office of External Economic Relations (DREE) relies essentially on its network of commercial missions abroad, as well as on its domestic network of Regional Foreign Trade Offices in order to provide or facilitate access to the requested information. Given the specific characteristics of some sectors, the DREE has also established dedicated sectoral networks that can provide responses to specialised questions (NICTs, environment or telecommunications networks, for example)

For its part, the Customs and Excise Office (DGDDI) offers comprehensive information through the various regional and interregional customs offices, via the Internet or by telephone. Information on applicable regulations is regularly updated through the official Customs Bulletin, which can also be consulted online. The bulletin publishes all regulatory instructions relating to the application of domestic laws, decrees and decisions, and international provisions (in particular those adopted by Community bodies: regulations, Directives, decisions and notices). It also publishes a broad range of practical information, including decisions to issue or withdraw authorisations for special import and export clearance procedures and local clearance procedures, and the creation, closing or modification of Customs offices, as well as their scope of activities and any changes to their business hours.

When it comes to the enforcement of regulations and applicable procedures, businesses and individuals may turn to the Customs information centres, to Customs officers posted abroad, or to the 40 business advisory units. On request by traders, the Customs administration can provide Binding Tariff Notices (BTN) having a mandatory reach throughout the Community area for six years. The business advisory offices offer free information on Customs procedures and regulations and will help businesses to select custom-made solutions on the basis of an analysis of their needs from the financial, logistic, information processing and commercial viewpoints. Because they are operationally oriented, these advisory offices are an extremely useful mechanism that should be developed further, although businesses have not yet taken full advantage of the services offered. At the moment it would seem that businesses do

3. With the exception of documents relating to national defence.

not trust sufficiently the advisory offices, arguing that Customs officers have difficulty keeping their dual advisory and enforcement functions separate (see below, section 2.3.2).

Advance information

An important factor enhancing the predictability of the French legislative framework is the release of advance information on laws and regulations in preparation. The Official Journal includes a section on "Parliamentary Debate", while the *Legifrance* site allows the consultation of legislative records including draft bills, parliamentary committee reports and opinions, and debates in the National Assembly and the Senate. Early release of this information is particularly helpful for planning economic activities, and it could be even more useful if it were extended to cover regulations, for example through publication of the biannual Government Work Programme. In fact, many offices already publish drafts that they consider to be of significant public interest, although this practice is not yet systematic. For example, when the government decided an overhaul of the proposed reforms to the public procurement code, the Ministry of Economy posted online the most recent version of the text.

2.1.2 Consultation mechanisms

Prior consultation of parties with a stake in a draft text or a new policy is not only a powerful means of involving economic players and civil society in the process of developing government policies, it is also a very useful tool that the authorities can use to enlist the specific expertise of the private sector. This practice is increasingly common in the French administrative system, particularly when it comes to government regulatory activities (parliamentary procedures, of course, have their own controls for ensuring democratic legitimacy and the input of expert advice), but this is neither compulsory nor systematic. Such consultation can take place through official consultative bodies that include non-government individuals selected as being particularly representative or knowledgeable, employers' and employees' associations, representatives of civil society, or local officials. Given the structure of the bodies, there is little representation of foreign parties as such, but their views can be made expressed through participating French associations. An interesting example is the Customs-Business Forum, a standing coordination body recently instituted by the DGDDI for consulting business associations on planned regulatory changes and for giving them the possibility to report on their problems so as to seek solutions. The forum has 22 permanent members drawn from the business chambers, umbrella or sector-specific federations representing major exporters and importers, the logistics industry and government officials. The possibility exists for other interested groups not now represented to join. In recent months the forum has conducted two surveys, one to determine the factors that have prevented one-time SME exporters or importers from continuing, and the other to determine why the special Customs regimes are underused.

Prior consultation can also be conducted more informally, through ad hoc groups reflecting interests that are not always represented in the official coordination bodies, specific consultations with interested parties identified by the administration, or fact-finding missions entrusted to selected individuals who will consult all parties concerned by a proposed measure. For example, for the reform of the public procurement code, consultations were organised with local officials and with various categories of public buyers and professional associations of procurement agents. These consultations dealt not only with the substance of the draft text but also with ways to make it more readable and understandable.

Regulatory proposals that may have an impact on trade are often discussed with the relevant professional associations. In addition, the network of foreign missions and regional foreign trade offices DREE has put in place in order to promote international transactions is widely used to contact national or foreign operators for information purposes. As well, foreign embassies and representatives of foreign private interests frequently provide officials with their views on the proposed measures or policies of which they become aware, and France's trading partners generally find this practice satisfactory.

Apart from direct contacts, the growing use of information technologies has led to a sharp increase in upstream contacts between government and interested parties. These contacts take the form of Internet discussion groups where ideas can be aired and the general public can react to regulatory or policy proposals (an example was the consultation on the draft regulation to implement the electronic signature law). This kind of "notice and comment" mechanism has long been widely used in other OECD countries, but was not used in France before the advent of the Internet. It is open to all without distinction and therefore offers an additional response channel to economic players who are not yet installed in the French market. Since 2001 every public Internet site posting information on national policies is supposed to allow for public discussion on specific issues and to include a link to the public service portal (www.service-public.fr). This portal will progressively display the list of all public forums and consultations and offer an archive of public reports and data on topics of current interest and on government policies.

These mechanisms seem to offer a sound guarantee of quality and legitimacy, but they could be made even more effective if the consultations were reinforced by argumentation for and against the proposed measure or policy so as to allow informed opinions to be developed. A further improvement would be to follow up these consultations with information on the nature and content of the major opinions expressed and on whether and how the government has taken them into account.

2.1.3 Appeal procedures

The French administrative framework provides for a range of administrative and judicial appeals [for further details see Chapter 2, GOV/PUMA/REG(2003)3]. Administrative appeals can be lodged at any point during the preparation of an administrative measure or act, as a complement, and without prejudice, to any possible judicial appeal, which may be filed only after the fact. The administrative appeal may be addressed to the authority that made the decision (appeal for reconsideration or *recours gracieux*) or to the next level in the hierarchy (*recours hiérarchique*). A judicial appeal can be lodged with the competent regional administrative tribunal or, in certain cases, with the Council of State.

To be eligible to lodge an appeal, the party must demonstrate that the act in question has a direct effect on its private interest. On the other hand, there is no condition relating to nationality. Parties who are not represented before an administrative tribunal and who have their residence abroad must elect a domicile within the jurisdiction of the tribunal; a lawyer's office will typically be selected for these purposes.

2.1.4 Transparency in the field of technical regulations and standards[4]

Transparency in the field of technical regulations and standards is essential to firms facing diverging national product regulations, as transparency reduces uncertainties over applicable requirements and thereby facilitates access to domestic markets. In this field France provides information to its trading partners and gives them the opportunity to comment, consistent with its notification obligations to the European Commission and the WTO. The notification takes place when the proposed measure is at the final draft stage. France responds to all comments received, in order to clear up ambiguities and if necessary to amend the initial draft. These exchanges of comments and responses take place through the Office for Industrial Quality and Standardisation (SQUALPI), which is the national contact point for these notification procedures.

4. It is recalled that, in accordance with established terminology in the WTO TBT agreement, technical regulations are documents with which compliance is mandatory, while standards provide rules and guidelines for common and repeated use but compliance with them is not mandatory.

Member countries of the European Economic Space are kept systematically informed of new regulations under preparation by virtue of Directive 98/34, which requires notification to the European Commission of all draft product regulations that are not pure transpositions of UE harmonising directives, as well as draft standards that diverge from international or European standards. The EU notification system has enhanced the transparency of the process as it allows trade partners to scrutinise national regulatory activities and provides for an early-warning mechanism of potential barriers to trade that may stem from product regulations.

WTO member countries are also informed by virtue of the Agreement on Technical Barriers to Trade, which requires notification of any technical regulation that might have a "significant" effect on international trade. To the extent that proposed regulations notified pursuant to Directive 98/34 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 obligation laid down by article 2.9 of the TBT agreement. Similarly, notifications required under other WTO provisions (such as Article 7 of the Agreement on the Application of Sanitary and Phytosanitary Measures, or the WTO agreements on agriculture, rules of origin, import licensing, etc.) are made to the WTO by the European Commission, on behalf of Member States. Reactions within the framework of the TBT agreement are very rare. Apart from the asbestos issue, which has been taken to the dispute settlement stage, the French authorities have received reactions to a proposed regulation only once over the last five years. This was a case dealing with the recovery and recycling of used tires that gave rise to concerns from Malaysia, fearing that the proposal would affect its exports and impose burdensome constraints on its exporters. The subsequent French explanation was apparently satisfactory to Malaysia, and the regulation was adopted without change.

Apart from these notification mechanisms (and as a complement to information obtained through them), any party, official or private, French or foreign, may obtain information on notified proposals through the SQUALPI or the French Standardisation Association (AFNOR). SQUALPI publishes an annual report on implementation of Directive 98/34/EC that not only lists notifications during the year but also provides information on applicable procedures, on the relevant doctrine and jurisprudence of the Court of Justice of the European Communities and on the conditions for triggering the TBT procedure. For its part, AFNOR publishes all notifications references at its Internet site and provides a semi-annual report on its activities under Directive 98/34 and the TBT agreement. Under a contract that is renewed each year, SQUALPI provides financial assistance to AFNOR in connection with these tasks.

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 harmonised directives. This notification obligation covers all regulations at the national or regional level, which introduce technical specifications, the observance of which is compulsory in the case of marketing or use; but also fiscal and financial measures to encourage compliance with such specifications, and voluntary agreements to which a public authority is a party. Directive 98/48/EC recently extended the scope of the notification obligation to rules on information-society services. Notified texts are further communicated by the Commission to the other Member States and are in principle not regarded as confidential, unless explicitly designated as such.

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

Although primarily directed at Member States, the procedure benefits private parties by enhancing the transparency of national regulatory activities. In order to bring draft national technical regulations to the attention of the European industry and consumers the Commission publishes regularly a list of notifications received in the Official Journal of the European Communities, and since 1999 on the Internet. Any firm or consumer association interested in a notified draft and wishing to obtain further information or the text may contact the Commission or the relevant contact point in any Member state. The value of the system for private operators has been enhanced with the initiative of the Commission in 1999 to publish notifications on the Internet. A searchable database of notifications (Technical Regulations Information System -TRIS-)[5] going back to 1997 gives access to the draft text and the notification itself, including the rationale of the regulation and the status of the proposal.

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

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

5 . http://europa.eu.int/comm/enterprise/tris/

Notification obligations in the field of technical regulations and standards are complemented by a procedure[6] requiring Member States to notify the Commission of national measures derogating from the principle of free movement of goods within the EU. The procedure has come in response to the persistence of obstacles to the free movement of goods within the Single Market. Member States must notify any measure, other than a judicial decision, which prevents the free movement of products lawfully manufactured or marketed in another Member State for reasons relating in particular to safety, health or protection of the environment. For example Member States must notify a measure which imposes a general ban, or requires to modify the product or withdraw it from the market. So far, this procedure has produced limited results.

Prior consultation of interested parties is an integral component of the procedures for preparing technical standards and regulations that affect international market openness. All the authorities responsible for preparing technical regulations are required to provide the appropriate information in advance. SQUALPI oversees compliance with this rule, and while its role vis-à-vis the "lead" authority in each case is purely advisory, it seems to have sufficient influence to perform its tasks effectively. SQUALPI also tries to sensitize the Strategic Orientation Committees (COS) of AFNOR, which consist of professionals, federations, laboratories, consumers' organisations and government departments involved in a given industry, on the need for transparent development of standards. AFNOR and the standardisation offices take the necessary steps to ensure that domestic parties with an interest in the work of a standardisation commission are represented within it.

AFNOR prepares the French standardisation programme, which contains an inventory of all standardisation initiatives underway at the national level, and their forecast publication dates. The programme is available free of charge at the AFNOR web site (www.afnor.fr). The drafts are classified by major programme and by field (a series of homogenous normative activities focused on products or topics). AFNOR submits draft standards to a public enquiry process, which is notified in the JORF, in the Official Bulletin on Standardisation, and in the specialised press. This enquiry is directed at French parties identified as having an interest in the draft standard (for example members of the Standardisation Commission, ministerial departments and public services, organisations representing interests affected by the draft standard), but it is also open to any other interested parties. During the enquiry (which normally lasts two months, and never less than 15 days), any interested person may purchase the draft text from AFNOR or consult it free of charge at AFNOR offices and at the five regional service centres. The process is currently supplemented by an electronic consultation system at the AFNOR web site, which will be fully operational by early 2004. The system is accessible to all, and anyone can download the draft and submit comments online.

The comments received are examined, without distinction as to their origin, at a meeting of the standardisation commission concerned, in which all those who have submitted comments are free to participate. Depending on the responses, the draft standard may be amended or revised. Otherwise it will be approved as a French standard. The catalogue of French standards can be purchased or consulted free of charge at the AFNOR web site, which provides information on the status of the standard, its degree of consistency with European or international standards, and any relationship it may have to a French regulation or a NF (*Norme française*, or French Standard) certification mark. A summary of the standard is also freely available, and the full standard can be ordered online.

6 . This procedure was established by a December 1995 Decision of the European Council of Ministers and the European Parliament (Decision 3052/95) and came into effect on 1st January 1997.

2.1.5 Transparency in government procurement

Given the amount of purchases by central governments and decentralised authorities, public procurement represents huge opportunities for international trade. Transparency in government procurement is essential for ensuring that the market for public works, supplies and services is effectively open to international competition. Most of the rules governing French policy on public procurement are shaped by EC provisions, applicable to all public purchases beyond a certain threshold (see box 2). Public procurement policy seeks in particular to guarantee the transparency of contracting procedures, through publication of notices in the Official Journal of the European Communities. The OJEC in fact publishes notices from more than 3000 French authorities (3,186 in 1998). In the case of France, contracts thus published represent 17% of the total value of public contracts, where the European average is about 15%. In addition there is a national publication specifically devoted to public procurement, the Official Bulletin of Public Tenders (*Bulletin Officiel des Annonces des Marchés Publics*), which allows notices concerning future procurement to be circulated widely to potential suppliers.

Box 2. EU rules on public procurement[7]

Public procurement in the European Union represents today approximately 1000 billion euros, or around 14% of EU GDP. Because of its economic importance it has been considered as one of the cornerstones of the Single Market[8] and led to the adoption of a series of rules aimed at promoting a climate of transparency and non-discrimination and securing enhanced competition in the area of public works, supplies and services. A separate regime is applied to utilities (energy, water, telecommunications and transport). Some of the major requirements of EU rules on public procurement are the following:

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

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

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

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

7 . Applicable directives on this subject are currently under revision.

8 . European Commission, *The cost of non-Europe in public procurement* (Cecchini Report), 1988

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

As in most OECD countries, France aims at striking a fair balance between accountability and transparency, on one hand, and the efficient pursuit of procurement activities, on the other. French law defines quite broadly the type of authorities that are subject to its provisions, covering both central and deconcentrated administrations, independent administrative authorities, public administrative institutions, local authorities, public enterprises and enterprises that enjoy special or exclusive rights. Public industrial or commercial companies competing in the marketplace are not covered. Two thirds of all contracts are awarded by local authorities. To allow for economies of scale and mutual support with procurement procedures, particularly for small-scale buyers for whom public procurement is a mere adjunct to their main activity, the procurement code provides for the pooling of orders. The scope of the law with respect to the types of procurement covered is primarily defined through thresholds. Contracts in the defence sector are subject to special provisions, but these provisions are for the most part similar to the general framework.

Table 2. Total public procurement contracts, original and amended (amounts in millions of francs)

	Central Government		Local authorities		Total	
	Number	Amount	Number	Amount	Number	Amount
1999	35,983	74,644	217,628	173,550.1	253,611	248,194.1
2000	34,920	81,211.5	233,097	158,677.3	268,017	239,888.8

Source: MINEFI

The thresholds triggering implementation of the European provisions are intended to bring greater transparency to procurement that may be of interest to European and international suppliers. Similarly, the thresholds in national legislation should guarantee transparency in procurement at the national and local levels. For the sake of impartiality and integrity, thresholds in the French regulatory framework have been established well below the European ones, a fact that sometimes generates procedural costs out of proportion to the value of the contract. The recent opening of this provision for review has sparked considerable public debate, reflecting the difficulty of reconciling efficiency with transparency in this field. In any case, the establishment of appropriate thresholds is not the only procedural guarantee available to the authorities: thresholds should be complemented by objective and transparent selection criteria, in order to identify the best bid while shielding the purchaser from unwarranted litigation, and by greater transparency in the justification of awards. Further thoughts in the coming months may also be influenced by the practices of other OECD countries with respect to the choice of procurement methods, including the use of purchase cards for recurrent purchases of low value.

In terms of the choice of method, the French system explicitly favours procedures that involve tendering. Simplified bidding procedures, negotiated contracts or other simplified mechanisms are exceptions to the rule and can only be applied under strictly defined conditions. The great majority of

tenders involve open bidding procedures, with the exception of service contracts, which often call for greater leeway for public buyers.

As with any administrative action, appeals concerning the publication and handling of tenders, the exclusion of a bidder or the award of a contract can be lodged with the authority that made the decision, or with a higher authority, or can be brought before the local administrative tribunal. In addition to these ordinary procedures, the code of administrative justice provides for a specific type of appeal in the area of government procurement, including contracts for the delegation of public services. This is an emergency procedure known as the "pre-contract referral" (*référé précontractuel*), whereby the procurement process can be interrupted in cases where the rules relating to publicity and competition have been violated, until the breach is repaired. In contrast to ordinary procedures, where there is no fixed time limit for rendering a ruling, in the case of a pre-contract referral this must by law be done within 20 days.

Table 3. Public procurement of supplies, services and works. Contracting procedures in 2000

	Open		Restricted		Negotiated	
	Number	Amount [c]	Number	Amount [c]	Number	Amount [c]
Supplies						
Central government [a]	5 329	9 147 624	1 875	4 789 784	2 638	3 240 461
Local authorities [b]	40 201	23 203 695	1 020	1 369 667	23 490	10 262 792
Services						
Central government [a]	2 634	2 703 888	1 883	4 106 824	3 615	2 832 369
Local authorities [b]	14 096	15 299 817	1 568	2 075 348	22 971	7 740 719
Works						
Central government [a]	5 792	7 133 183	3 129	4 898 597	2 684	1 585 432
Local authorities [b]	86 700	52 950 573	6 798	9 154 906	36 253	11 734 483

a: Central government and public administrative institutions
b: Local authorities and their public companies
c: Estimated amounts in thousands of francs, excluding VAT

Source : MINEFI

The pre-contract referral is a means of compelling officials who violated the rules to respect their obligations, of annulling decisions and suppressing clauses or prescriptions that have been taken in violation of the rules, and of suspending the award of a contract or the execution of related decisions until the matter is decided, up to a maximum of 20 days. The administrative judge may hear any person claiming injury through the alleged violation, and his decision is final. Except where its own procurement is involved, the State itself may resort to this procedure in cases of violation of publicity and tendering obligations resulting from EU rules or from the agreement on the European Economic Area, and where such violation has been notified by the Commission of the European Communities.

If the procurement in question concerns the water, energy, transportation or telecommunications sectors, the referral court may also establish a time limit for compliance by the official who violated the rules, and it may set a provisional daily fine for every non-compliance day beyond the time limit if the injury to the public interest does not exceed the advantages of the measure. A definitive fine can also be imposed if the violation has not been corrected, unless the failure to correct it can be laid to an extraneous cause. The fine, whether provisional or definitive, is independent of money damages.

Public procurement in France is open to European suppliers, in accordance with the rules of the European Union. Suppliers from member countries of the European Economic Area and from countries that have concluded "Europe agreements" with the European Union enjoy similar rights. Suppliers from third countries enjoy the rights[9] accorded under the WTO Government Procurement Agreement (GPA), which has been in force within the European Union since January 1, 1996. France is thus committed to countries that, like it, are parties to this plurilateral agreement to "*provide immediately and unconditionally to the products, services and suppliers of other Parties (…) treatment no less favourable than that accorded to domestic products, services and suppliers, and that accorded to products, services and suppliers of any other Party*". Failure to respect the principles of free access and equality of treatment is a violation entailing annulment of the contract or of the decision to award it. The field covered by the GPA is defined by the lists of national procuring entities established by each country party to the agreement.

2.2 Measures to ensure non-discrimination

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

2.2.1 Non-discrimination in domestic regulation

As a member country of the WTO, France adheres to the principles of most-favoured nation (MFN) and national treatment. By ratifying the 1994 Marrakech Treaty, France has recognised these principles as keystones of the international trading system. Respect for these principles, through the various policies adopted by the government, is supervised by the General Secretariat of the Interministerial Committee on European Economic Co-operation (SGCI), which reports to the Prime Minister and is responsible for co-ordinating French positions on European and OECD issues and for overseeing the enforcement of EU law in France (see below, section 2.3).

9. In particular, those relating to qualification of suppliers, invitations to tender, time limits, tender documentation, publication of notices of intended procurement and award notices. The GPA also requires the publication of all laws, regulations and court decisions, generally applicable administrative decisions and procurement procedures, and lists in Appendix IV the publication means used by each party (which for France are the Official Journal of the French Republic for legislation, the compilation of decrees of the Council of State for jurisprudence, and the public procurement bulletin).

Non-discrimination principles also find their expression in France's macroeconomic and industrial policy, which seeks to attract foreign direct investment by creating a stable economic climate and an attractive site for French and foreign investors.

Cultural services

Within the European Union, France advocates the concept of cultural exception, as do several other WTO Members, such as Canada. Cultural exception mainly implies withholding any liberalisation offer for cultural and audiovisual services in the WTO and is a means in the service of cultural diversity. The concept of cultural diversity recognises cultural values as a public good that cannot be subjected solely to the rules of the market. According to this concept, cultural values, identity, and the preservation of a country's language and its stories and myths are matters that go beyond a purely economic rationale. Maintaining cultural diversity contributes to the quality of life and serves as a source of collective identity by preserving the memory of the past while serving as a guide for the future of society (Gordon, 2000). While culture and the marketplace have a reciprocal influence on each other, the French government supports the notion that the cultural services sector should be subject to special considerations. By refusing to liberalise the sector, France has been able to retain its policies for protecting certain industries considered as carriers of cultural diversity. In this sense the notion of cultural diversity is for France not only a cultural issue but also a considerable economic issue (Lalumière 2000).

In practice, this approach translates into a variety of restrictions. The European Union as a whole, like the majority of WTO Members, has not made any commitments to liberalise audiovisual services under the GATS. In addition, France maintains exemptions for press services, telecommunications and entertainment services (theatre, live bands, circus services). Foreigners may not hold more than 20% of the capital or voting rights of press agencies publishing in French, the purpose being to protect French suppliers. Access to the French market is subject to conditions of reciprocity. Commercial presence (GATS mode 3) in telecommunications services is also limited. Persons from outside the European Union may not hold more than 20% of the capital or voting rights of any company that establishes or could establish radio infrastructures in order to provide telecommunications services. In the field of entertainment services, France imposes limitations on the presence of natural persons (GATS mode 4). Temporary admission to the market is granted only to artists who have an employment contract from an authorised entertainment enterprise. The work permit is delivered for a period not exceeding nine months, and can be renewed for three months

Investment

Foreign purchases of existing French companies in excess of 33.33% of capital or voting rights (20% for publicly quoted companies) are subject to special rules. Investments of less than 7,6 million euros in French firms with a turnover not exceeding 76 million euros are free, after a delay of 15 days following prior notification of the investment and verification that the amounts are met. For other investments, authorisation is tacitly granted after a period of one month following prior notification, unless, in exceptional circumstances, the Minister of Economic Affairs exercised its right to postpone the investment. Foreign participation in newly privatised companies may be limited to an amount determined by the government on a case-by-case basis. Investors from third countries are virtually excluded from sectors regarded as affecting the national interest (20 in total), such as defence or arms production.

Movement of natural persons

The presence of third-country citizens (GATS mode 4) in key positions in the economy is in some cases limited by law, or impeded de facto. Nationality of an EU member country is required in order to serve as managing director of a company in the accounting, architecture, hospitals and finance sectors.

For financial services, nationality is a condition for acceding to the post of director-general, president of the Board of Directors, and no less than two-thirds of the administrators in closed-end investment companies (*sociétés d'investissement à capital fixe)*. In the sectors of accounting and architectural services, nationals of third countries may hold management positions subject to the approval of the Ministry of Economy and Finance. Apart from these cases it is possible for nationals of third countries to hold managerial positions. Experts, people holding knowledge particularly useful for the firm, may also hold positions in services firms in France. However, the director of an industrial, commercial or artisanal services firm must have a special authorisation card, the "trader's card", unless he or she holds a permanent residence permit. Obtaining this card involves a lengthy administrative procedure that can take more than a year.

Nationality of an EU member country is also required for exercising medical and paramedical professions such as medicine, veterinary medicine and pharmacy, research and development activities, education services, and certain trades in the tourism sector. Entry into the medical profession is however open in the context of certain annual quotas. Pharmacy services may be supplied by of third-country nationals holding a French university degree in pharmacy. Temporary entry of researchers is subject to an economic needs test. Researchers must have an employment contract from a research body and their work permit is delivered for a maximum of nine months, renewable for the duration of the contract. The authorities may grant the right to provide education services, subject to demonstration of competence. Other activities, such as veterinary medicine, brokerage services in markets of national interest, or tourist guide services are closed to foreigners.

Although the general regulatory framework is highly respectful of the principle of non-discrimination, the provisions described above make for quite a long illustrative list of restrictions. Although France is not an exception among OECD Member countries, being the second largest services exporter in the world imposes careful thinking about its position in this respect. While cultural diversity represents a legitimate objective, the means used to achieve it may raise some questions. Restrictions on foreign investment, on commercial presence, and on the presence of natural persons in the cultural field not only tend to distort competition by creating artificial monopolies but they also limit consumer choice and constrain creativity. In the knowledge economy, the free circulation of new ideas is essential for maintaining a satisfactory level of innovation and for reaping the attendant economic advantages. There is room for debate, then, as to whether a discriminatory policy designed to promote cultural diversity may itself impede such diversity by fostering a narrow vision of cultural products. Moreover, reducing the entry obstacles for regulated professions would also have a broader impact by boosting competition and economic growth. Some of these obstacles, in particular the trader's card, are currently the subject of review.

2.2.2 Preferential agreements

While preferential agreements give more favourable treatment to specified countries and are thus inherent departures from the MFN and NT principles, the extent of a country’s participation in preferential agreements is not in itself indicative of a lack of commitment to the principle of non-discrimination. In assessing such commitment, 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. In addition, substantive approaches to regulatory issues such as standards and conformity assessment can introduce potential for discriminatory treatment of third countries if, for example, standards recognised by partners in a preferential agreement would be difficult to meet by third countries.

The most important preferential agreement to which France is party is obviously the European Communities, through which France is further committed to a series of other preferential agreements that form an integral part of the common European Union trade policy (namely the agreements with EFTA countries, the association agreements with Central and Eastern European countries and Mediterranean countries, the Cotonou Convention with ACP countries and agreements in the context of the Generalized System of Preferences for developing countries). Preferential trade agreements are managed by the European Commission in a highly transparent manner. Information is readily available to interested non-parties through a variety of avenues, including the Internet or publications such as the *European Bulletin.* In addition, information on preferential agreements is made available to third countries through notifications to the WTO. The WTO Committee on Regional Trade Agreements reviews all preferential agreements in a process that consists, among other things, of written questions and answers. Within this context recourse is available for third countries which consider they are adversely affected by these agreements. In considering proposals for new preferential agreements, the European Council addresses a number of strategic questions, including compatibility with all relevant WTO rules, the impact on the Community's other external commitments and the likelihood that the agreement would support the development of the multilateral trading system.

2.3 Measures to avoid unnecessary trade restrictiveness

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

2.3.1. Assessing the impact of regulations on trade

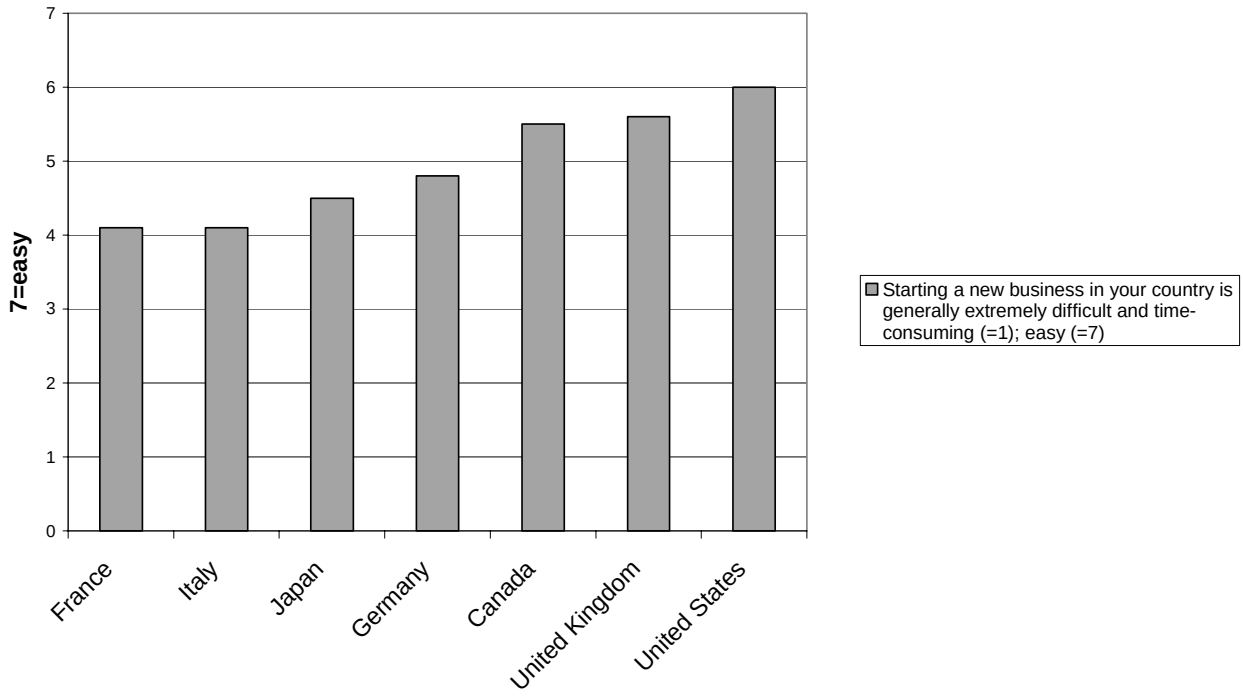
France has no specific provisions to prevent regulations and administrative practices from unduly restricting trade. It is up to each ministry, agency or administration to prepare and apply regulations and administrative practices that do not hamper the free flow of goods, services and investment. Yet the country's relatively complex regulatory environment and its tradition of paternalistic government have created rigidities and burdens, as well as a certain lack of understanding between government and the business world.

Red tape and administrative burdens are a major source of complaint among economic operators in the French market, whether they are nationals or foreigners. According to the Global Competitiveness Report 2002, reflecting the perceptions of the business community, France ranks 60th among the 75 surveyed countries in terms of the burden of regulations, 57th in terms of the administrative burden for start-ups, and 35th in terms of the cost of institutional change.

France is increasingly aware of this weakness and has taken various steps to remedy it, the most recent being the adoption of Law 2003-591 of July 2, 2003, authorising the government to simplify the regulatory framework. This law deals, among other things, with simplifying and harmonising taxation procedures and systems, streamlining the collection of statistical data, and simplifying the legal provisions governing business. It also addresses the current procedures for obtaining prior administrative approvals and provides that, where these are not absolutely necessary, they may be replaced by a sworn statement,

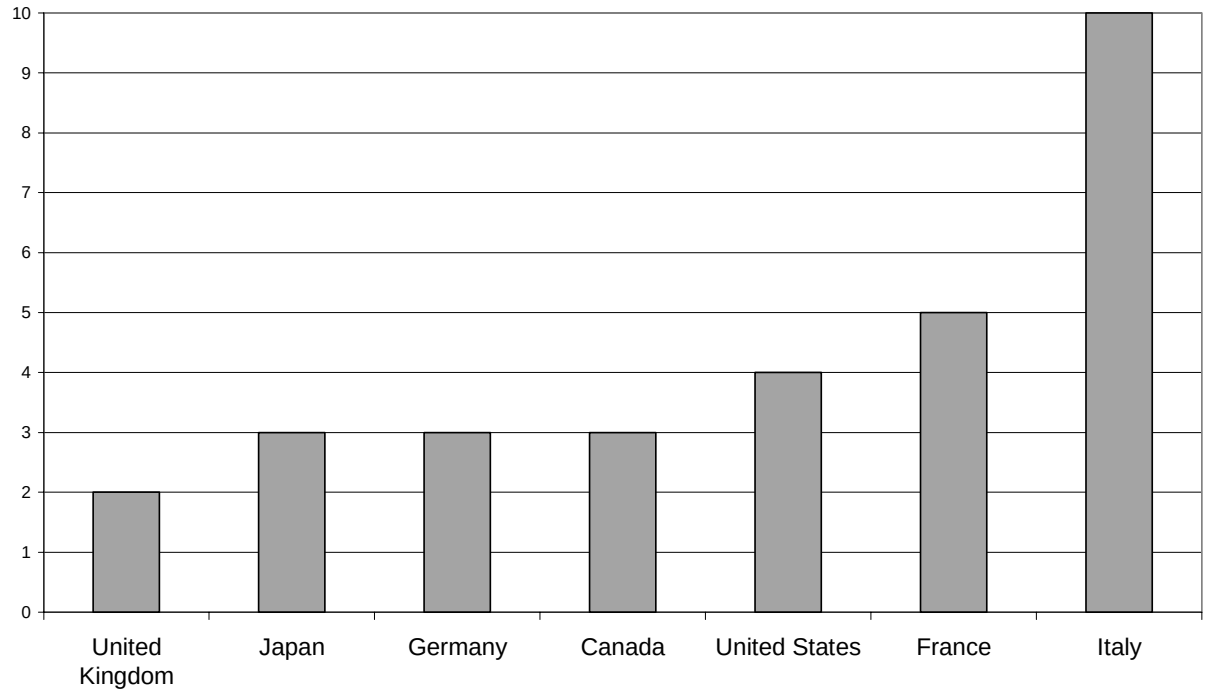
complemented by random ex-post controls. The law allows the government to speed up the simplification process by empowering it to make the necessary legislative provisions by ordinance. It is therefore only the first step in the context of a broader effort, the success of which will have to be judged on the basis of the concrete measures contained in the implementation orders. Its rationale, however, according to which *".. administrations are expected to control the complexity of the procedures imposed on the public*", holds promise for the future, provided that the government entities in question actually put it into effect.

Figure 7. Index of the administrative burden for start-ups



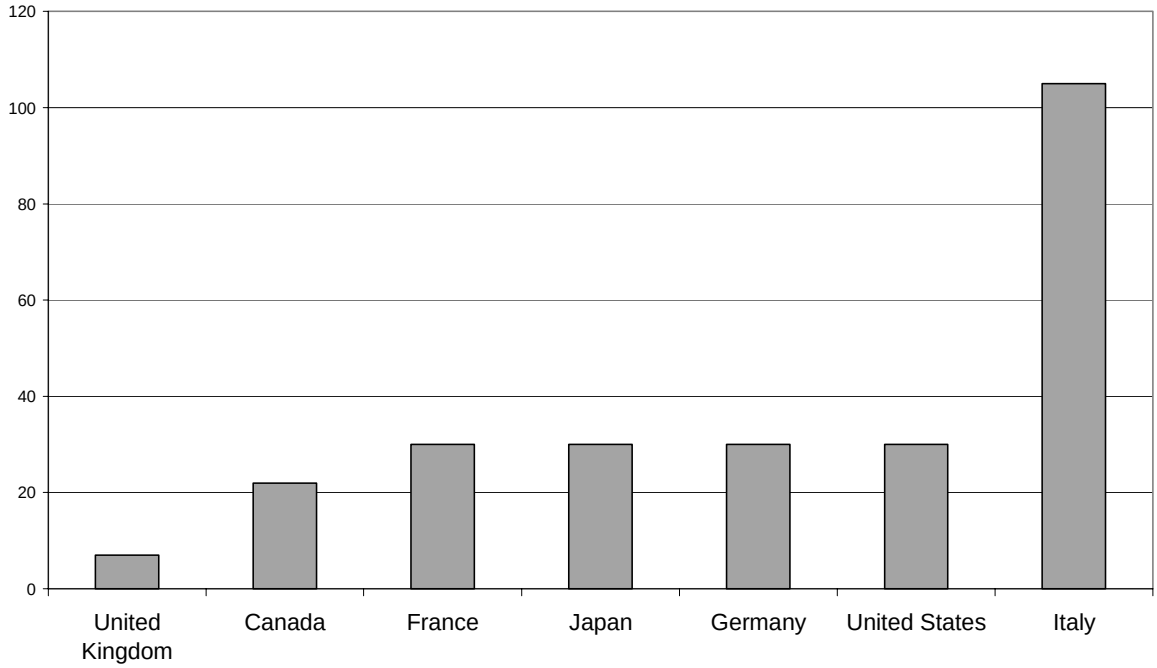
Source: Global Competitiveness Report, 2002

Figure 8. Number of permits needed to start a new firm (index reflects average)



Source: Global Competitiveness Report, 2002

Figure 9. Number of days required to start a new firm



Source: Global Competitiveness Report, 2002

An agency reporting to the Prime Minister, the Administrative Simplification Commission (COSA) is responsible for promoting and coordinating government efforts to simplify administrative formalities. Ministerial departments provide COSA with their simplification plans, together with an impact analysis measuring the expected effects on private and business users. Between 1999 and 2002 COSA conducted a review of all administrative forms, reducing the number in force by 40 percent and eliminating the requirement to attach supporting evidence were such evidence was no longer deemed necessary. Several of these forms are now available online.

The government has also introduced electronic procedures to make it easier for businesses to deal with government services. A web portal for enterprises (www.dads.cnav.fr/netentreprises.html) allows businesses to file most of their social security declarations online. Certain tax declarations have also been computerised, including VAT declarations and settlement, and the filing of tax and accounting data.

The potential impact of prospective regulations on trade and investment is not formally assessed. There is currently a requirement to conduct a regulatory impact assessment (RIA) to determine in advance the administrative, legal, social, economic and budgetary effects of proposed measures, but this assessment does not specifically cover the impact on market openness. Moreover, although the impact analysis is supposed to measure the regulatory impact on business activity and assess the overall microeconomic and macroeconomic effects, many such studies are conducted only at a late stage and are of uneven quality, so that they do not provide sufficient guidance to the decision-making process [for further detail see Chapter 2, GOV/PUMA/REG(2003)3].

In the absence of a RIA tool suitable for these purposes, the principal advance "filter" for regulations that may have an undue impact on international trade and investment is the interministerial procedure for preparing regulatory texts. This procedure, conducted under the authority of the SGCI, the

General Secretary of which is by tradition the adviser on European affairs to the Prime Minister, ensures that regulatory authorities are aware of issues under debate at the European level, and that proposed regulations are consistent with France's European and international obligations.

The SGCI is regularly consulted on all EU issues and is kept informed by the Prime Minister's Office of other issues that may bear upon France's European and international commitments. There are specific units that are devoted full-time to monitoring highly technical questions that can easily give rise to unintentional error, in areas such as government assistance, technical barriers and competition. The SGCI is also responsible for ensuring that the ministries concerned[10] are involved in the preparation of French positions on Community issues, so that these positions will be consistent and complete. When a new European measure is being negotiated, the lead ministry prepares a legal impact analysis in order to anticipate potential transposition problems. This mechanism has proved highly effective in terms of ensuring legal conformity with France's international commitments but it is not designed to detect measures that, while consistent with those commitments, may have an impact on market openness.

Moreover, in the normal course of preparing legislation or regulations, the minister responsible for foreign trade must be consulted on aspects that fall within his jurisdiction, and must countersign any measures that concern him directly or indirectly. DREE is responsible for disseminating widely general or specialised information needed in order to understand well the various aspects of foreign trade policy. At SGCI technical meetings, DREE normally reports on the status of trade policy issues in order to reach an interministerial position on the debated questions. If necessary, it will present an analysis on the compatibility of national or Community regulations under preparation with applicable WTO provisions. For example, DREE has drawn attention to the provisions in the draft directive on cosmetics that would prohibit the marketing of products tested on animals.

Apart from the reports it prepares to assist the work of the SGCI, DREE may also prepare analytical reports at the request of other public entities, such as the Parliament and the Senate, MINEFI or other ministries. In 2002, for example, it provided information on implementation in other EU member States and identified potential private competitors in the French market, in order to support discussions in the Senate on the opening of rail freight in the EU; it advised the MINEFI on the choices facing France in the wake of the draft European directive on liberalisation of energy markets; and it helped most of the technical Ministries (Education, Ecology, Justice, Culture) and in particular the Ministry of Transport to prepare the French offers to the GATS in the transportation sector.

DREE is not required to undertake a RIA in pursuit of its regulatory responsibilities. The positions it takes on different proposals are based on coordination with NGOs and professional organisations, and on its own evaluation reports, prepared by its trade policy and economic analysis unit with input as needed from the Centre for International Research and Information (CEPII), the Forecasting Division and French research institutions. The evaluation is based primarily on information and studies supplied by DREE's network of economic missions abroad. Multilateral aspects are monitored by a network of correspondents in place for the last two years in 20 major developed and developing countries. The network was set up to provide intelligence from abroad on multilateral trade issues for the benefit of businesses, for use in defining French and European positions, and for taking foreign positions into account in French thinking on the preparation of trade policy. Other, more specialised networks have also been instituted, for example in the field of intellectual property (in the Maghreb, the Near East, ASEAN).

10. Other governmental players, including the independent regulatory authorities, report on these matters to their own minister, who must communicate their position.

2.3 .2. The example of customs procedures

As tariff levels have declined through GATT/WTO rounds, the costs imposed by customs procedures have attracted growing attention from businesses. Customs procedures encompass formalities and procedures in collecting, presenting, communicating and processing data requested by customs for and related to the movement of goods in international trade. Costs are generated by compliance with documentary requirements (acquiring and completing the documents and paying for their processing) and by delays of cargo processing at borders. The aims of customs procedures (to collect revenue, to compile statistics, to ensure that trade occurs in accordance with applicable regulations, such as those aiming at protection of human safety and health, protection of animal and plant life, environmental protection, prevention of deceptive practices, etc.) should be pursued so as to ensure that the procedures do not create unnecessary obstacles to international trade. In other words, the lowering of trade barriers may not achieve the full efficiency of liberalisation without harmonised, simplified, fast and secured customs procedures.

French customs procedures are defined by the European rules set forth in the Community Customs Code, and are based on the "single administrative document" (SAD), which is harmonised across the European Union. These procedures are almost entirely computerised and 95% of them are handled by professional freight forwarders. Under standard procedures, a shipment can be cleared in an average of 14 minutes. Operators are served by 300 Customs offices, 250 of which are "physical", throughout the national territory, although it is estimated that about 40 of these offices account for half of clearances by volume.

France has started up the process for adhering[11] to the revised Kyoto Convention[12] of the World Customs Organisation (WCO), and it is working with its European partners to achieve simultaneous ratification by all member countries, once internal legal and parliamentary procedures have been completed. However, like other EU customs authorities, France has adopted trade facilitation measures in anticipation of that international convention, including pre-arrival clearance of imports.

Efforts to reduce the burden on commercial operators rely in part on computerising formalities and using information and communication technologies. The first system for the electronic exchange of customs data, introduced in 1974 and known as SOFI (*Système Opérationnel pour le Fret International* or "Operational System for International Freight") even served as the model for customs computerisation in a number of developing countries. SOFI covers 60 percent of standard customs procedures, including clearance formalities, payment of duties and collection of statistics, but not local clearance procedures (clearance at the importer's/exporter's own premises), which represent 40 percent of cleared transactions, or the cargo manifest, which has been computerised through a separate system. Initial attempts to overhaul the entire architecture of the computerised system, which were costly and time-consuming to introduce[13],

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11. DGDDI, in co-operation with the Ministry of foreign affairs, is in charge of following up the process of France's accession to this convention. Following approval by the Council of State in July 2003, the draft accession law has been brought in the National Assembly.

12. The objective of the International Convention on the Simplification and Harmonisation of Customs Procedures (the "Kyoto Convention"), which entered into force in 1974, was to simplify and harmonise Customs procedures in all countries. In June 1999, the WCO Council adopted a revised version of the convention, in order to adapt it to the current international trade situation. The new procedures will improve transparency and will harmonise customs procedures further by making use of new information technologies and modern clearance techniques based on risk assessment. The revised convention is now open for signature and will come into effect three months after 40 contracting parties have signed the protocol of amendment without reservation.

13. UNIX, the most important of these new systems, was swiftly rendered obsolete with the advent of the Internet and was abandoned in 2001.

have been abandoned in favour of a modular approach whereby currently non-computerised procedures, such as the handling of shipments in airports and the movement of goods in transit, will be computerised first, in such a way as to allow for linkages between the modules. SOFI is to move to the Internet in 2006.

At the same time, the French Customs service is promoting the notion of partnership between Customs and businesses and is seeking to introduce greater balance between its conventional control duties and its facilitation services. This effort is reflected in the establishment of Trade Advisory Units (*cellules-conseil*), the offer of expert audits of the logistics chain, the possibility for firms to conclude contracts with the Customs services for "customised" clearance procedures and the establishment of the Customs-Business Forum (see paragraph 29). The notion of partnership is a quantum leap for the French Customs administration, which used to be notorious for its repressive mentality. It calls for serious educational efforts in order to overcome the strong mistrust on the part of businesses, left as a legacy from the Customs' past, and to change officials' attitude in the field. Moreover, the criminal connotation of the system and the severity of imposed penalties, while appropriate in cases of major fraud, may be disproportionate when it comes to minor or unintended breaches. The Customs administration is aware of the problem and works to make a distinction between major and minor infringements. For instance, a "Customs Charter", such as the DGDDI plans to develop by 2005-2006, could help to change mentalities. As well, the establishment of a mediator who would intervene after an administrative appeal and before recourse to the Customs Conciliation and Adjudication Commission (CCED)[14] could help to ease dispute proceedings.

In addition to standard procedures, the Customs and Excise Service offers simplified Customs procedures, such as the Simplified Clearance Procedure (PDS) and the Local Clearance Procedure (PDD), whereby it is possible to ship or forward goods directly to or from the importer's or exporter's premises, without passing through the Customs office. The customs declaration consists of an entry in the firm's "Customs clearance account". A settlement form is then filed, within a time limit established at the choice of the beneficiary of the facility, not to exceed one month. This settlement form is proof that duties and taxes have been paid, and is also used for compiling statistics on foreign trade.

These simplified Customs procedures are reserved to reliable operators. A prior approval audit is conducted by the responsible local Customs Director before these facilities are granted. The most commonly used facility, the Local Clearance Procedure (PDD) will shortly be computerised, which will reduce still further the time needed for clearing merchandise. Finally, operators have had the ability since 2001 to obtain clearance at a single Customs office for good arriving at different sites in the national territory (PDD at a single address).

Handling of the various Customs formalities and declarations, either electronically or on paper could greatly benefit from the establishment of "single windows", allowing operators to submit to a single account all information at once[15], regardless of the regulatory purposes or the ministry concerned (for example Customs, the Ministry of Industry or the Ministry of Agriculture). Single windows would thereby reduce the costs of compliance by removing the risk of duplicate demands for information and avoiding wasting the time and resources involved in submitting documents to several government offices. In France there is only one example of single window, in the Havre local directorate, which centralises all information necessary for obtaining import licenses from the general directorate. DGDDI is currently

14. The CCED is a "pre-jurisdictional" Commission composed of judges. It provides non-judicial rulings that can be used for a transaction or for future legal proceedings. On average, two-thirds of cases brought before the CCED are decided in favour of Customs.

15. Physical controls are much more difficult to co-ordinate: for example, sanitary controls are not only incompatible with local clearance procedures, but they relate as well to the production process and not only to the imported product itself.

taking a close look at other possible forms of "single windows", including the possibility of having the Ministry of Agriculture develop a risk grading system that Customs could use to tailor its controls, and extending the existing type of single window to other local directorates.

France is therefore firmly committed to facilitating trade, through a range of measures to promote transparency, simplification and harmonisation. The measures currently under study are certainly moving in the right direction. However, in order to make sure that these measures really work, educational efforts to "sell" the policy to officials responsible for implementing it should go with important communication initiatives for making it credible among users.

2.4. Encouraging the use of internationally harmonised measures

The application of different standards and regulations[16] for like products in different countries -- often explained by natural and historical reasons relating to climate, geography, natural resources or production traditions -- presents firms wishing to engage in international trade with significant and sometimes prohibitive costs. There have been strong and persistent calls from the international business community for reform to reduce the costs created by regulatory divergence[17]. One way to achieve this is to rely on internationally harmonised measures, such as international standards, as the basis of domestic regulations, when they offer an appropriate answer to public concerns at the national level. The use of internationally harmonised standards has gained prominence in the world trading system with the entry into force of the WTO TBT Agreement, which encourages countries to base their technical requirements on international standards and to avoid conformity assessment procedures that are stricter than necessary to create market confidence.

2.4.1. The European influence

France's current approach to technical regulation is shaped in large part by the European Union's policy in this regard. It reflects not only a clear commitment to European and international harmonisation but also a willingness to limit State intervention as far as possible to defining the essential requirements, leaving the technical details to be established by the process of standard-setting, testing and approval (see box 4). These principles form part of the French institutional framework relating to standardisation.

In France, policy regarding standardisation and conformity assessment is the province of the Ministry of Economy, Finance and Industry, and in particular the Office for Industrial Quality and Standardisation (SQUALPI). International standards recognised by international standardisation bodies (ISO/IEC, ITU, IMO, Codex Alimentarius) are systematically used in those industrial sectors that are largely dependent on international regulations, or where markets are highly globalised. National standardisation activities are closely related to European standardisation, and in fact are pursued only in fields not covered by European standardisation work. The trend in European regulation, with its "new approach" directives and the new directive on general product safety, is leaving progressively less room for national standard setting.

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

17 . This call has been made in particular by the European and American business communities in the context of the Transatlantic Business Dialogue (TABD). In its reports, the TABD has advocated governments to overcome diverging positions at an early stage of the policy-making process and to give more emphasis on international standards in the regulatory framework, with a view to promoting global competitiveness (for example, see TABD, 1999).

As a basic principle, European standardisation follows subsidiarity with respect to global standards, based on the assumption that conformity of European standards to global standards is likely to facilitate access of European products to world markets. Apart from the standardisation work mandated by the Commission (see Box 3), most standards are prepared at the request of industry. On the one hand, a growing number of European and national standards are in fact transpositions of international standards produced by ISO, IEC and ITU; on the other hand, various initiatives have been developed at the European level to promote transparency and co-operation at the international level:

- the standardisation process is undertaken in close co-operation with all parties involved, such as the Member States (through the membership of all European Union national standardisation bodies), industry and consumers (through the representation of industry, consumers, and trade unions associations on the technical committees and working parties responsible for the preparation of the standards) and trading partners (through the association with EFTA and other countries and the co-operation agreements described below); the standards produced are available by means of paper and electronic publications of the standardisation bodies.

- the numbering of European standards clearly indicates the relationship with international standards, for instance, whenever a CEN standard is a transposition of an ISO standard it will be referenced by the same number by simply adding the EN prefix in front of the ISO prefix (f.i. EN-ISO 5079 on textile fibres); the same applies for national references (f.i. NF-EN-ISO 5079).

- in the area of telecommunications European directive 2002/21/EC introducing a common regulatory framework for electronic communications networks and services (called “framework” directive) defines conditions for encouraging the use of standards at the European level; this directive is currently in the process of being transposed into French law.

- co-operation agreements have been signed between ISO and CEN (Vienna Agreement) and between IEC and CENELEC (Dresden Agreement) to secure the highest possible degree of approximation between European and international standards and avoid duplication of work. A similar agreement is being prepared by ETSI and ITU to take into account the specificities of telecommunications.

- furthermore, the European Union is a party to the UN-ECE 1958 Agreement on Automotive Standards. This agreement provides a basis for the technical approval of motor vehicle equipment and parts. It has been supplemented by additional regulations developed by the UN-ECE Working Party on the Construction of Vehicles. UN-ECE regulations have played a major role in the harmonisation process of regulations within the European Union. 35 of them have been recognised equivalent to EU directives that specify technical requirements for the type approval of motor vehicles.

Box 3. Harmonisation in the European Union[18]: the New Approach and the Global Approach

The need to harmonise technical regulations when diverging rules from Member States impair the operation of the common market was recognised by the Treaty of Rome in Articles 100 to 102 on the approximation of laws. By 1985 it had become clear that relying only on the traditional harmonisation approach would not allow the achievement of the Single Market. As a matter of fact, this approach was encumbered by very detailed specifications which were difficult and time consuming to adopt at the political level, burdensome to control at the implementation level and requiring frequent updates to adapt to technical progress. The adoption of a new policy towards technical harmonisation and standardisation was thus necessary to actually ensure the free movement of goods instituted by the Single Market. The way to achieve this was opened by the European Court of Justice, which in its celebrated ruling on *Cassis de Dijon*[19] interpreted Article 30 of the EC Treaty as requiring that goods lawfully marketed in one Member State be accepted in other Member States, unless their national rules required a higher level of protection on one or more of a short list of overriding objectives. This opened the door to a policy based on mutual recognition of required levels of protection and to harmonisation focusing only on those levels, not the technical solution for meeting the level of protection.

In 1985 the Council adopted the **"New Approach"**, according to which harmonisation would no longer result in detailed technical rules, but would be limited to defining the essential health, safety and other[20] requirements which industrial products must meet before they can be marketed. This "New Approach" to harmonisation was supplemented in 1989 by the "**Global Approach**" which established conformity assessment procedures, criteria relating to the independence and quality of certification bodies, mutual recognition and accreditation. Since the New Approach calls for essential requirements to be harmonised and made mandatory by directives, this approach is appropriate only where it is genuinely possible to distinguish between essential requirements and technical specifications; where a wide range of products is sufficiently homogenous or a horizontal risk identifiable to allow common essential requirements; and where the product area or risk concerned is suitable for standardisation. Furthermore, the New Approach has not been applied to sectors where Community legislation was well advanced prior to 1985.

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

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

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

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

20 . Energy-efficiency, labelling, environment, noise

standards body has transposed them at the national level and retracted any conflicting national standards. These standards are not mandatory. However conformity with them confers a presumption of conformity with the essential requirements set by the New Approach Directives in all Member States.

The manufacturer can always choose to demonstrate conformity with the essential requirements by other means. This is clearly necessary where harmonised European standards are not (or not yet) available. Each New Approach directive specifies the conformity assessment procedures to be used. These are chosen among the list of equivalent procedures established by the Global Approach (the so-called "modules"), and respond to different needs in specific situations. They range from the supplier's declaration of conformity, through third party type examination, to full product quality assurance. National public authorities are responsible for identifying and notifying competent bodies, entitled to perform the conformity assessment, but do not themselves intervene in the conformity assessment. When third party intervention is required, suppliers may address any of the notified bodies within the European Union. Products which have successfully undergone the appropriate assessment procedures are then affixed the CE marking, which grants free circulation in all Member States, but also implies that the producer accepts full liability for the product[21].

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

Source: Swann, 1995; European Commission, 1994, 1996a, b; ETSI 1996

2.4.2. Standardisation activities

The national standardisation agency is the *Association Française de Normalisation* (AFNOR), which was created in 1926 and reports to the SQUALPI. A 1984 decree gave it the central role in the French standardisation system, consisting of 26 sectoral standardisation offices, public authorities and some 20,000 experts. AFNOR works closely with professional organisations and with a number of national and regional partners. Its work is financed primarily through membership subscriptions, the sale of standards and the provision of services, while the remaining 21 percent of the budget is directly financed by the French government.

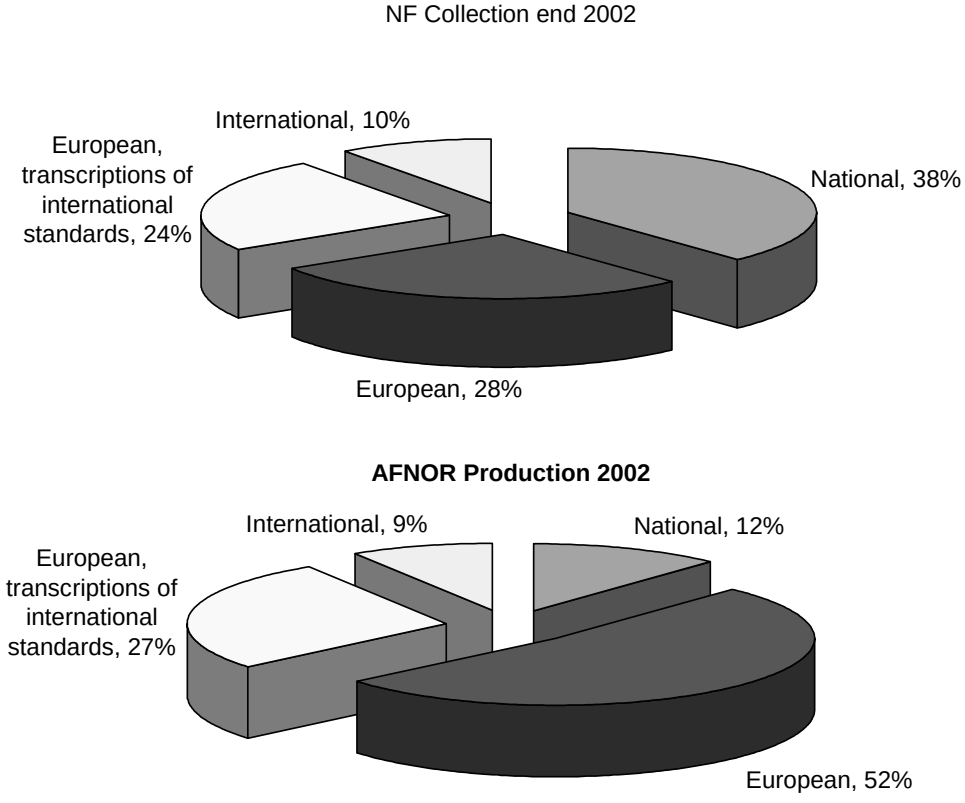
Since October 25, 1995, AFNOR has accepted the WTO Code of Good Practice for the Preparation, Adoption and Application of Standards. It is a member of the International Organisation for Standardisation (ISO) and plays an active role in support of its technical work, providing the secretariat for 85 technical committees and subcommittees and chairing 188 working groups. It also contributes to standardisation work as a member of 609 technical committees and subcommittees out of 738 (or more than 80% of the total).

21 . 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.

In the electricity field, the Technical Union for Electricity and Communication (UTE), an independent, non-profit association recognised as a standardisation office by the Minister of Industry, is the national member of the International Electrotechnical Commission (IEC), in which it is very active. It provides the secretariat for 30 of the 179 technical committees and subcommittees.

This active involvement of the French standard-setting system in international standardisation work helps to ensure consistency between French standards and international ones. In 2002, 36 percent of the documents adopted by AFNOR were of international origin, 52 percent of European origin and only 12 percent of purely French origin, while the volume of purely French standards in AFNOR's collections declined, from 52 percent in 2001 to 38% in 2002. In total, a third of the national standards inventory consists of transpositions of international standards. In the telecommunications field (and more generally that of electronic communications), there is no more standardisation work being done at the national level: standardisation is essentially conducted now at the European level (ETSI, CEN and CENELEC) or the world level (ITU, ISO).

Figure 10. Production of French norms



Source: AFNOR

The national output of standards is essentially limited to certain new subjects in which French operators have a greater interest than is found internationally. Two recent examples of standardisation undertaken in the national level related to removal services, which has since been taken up by the WG4 working group of the CEN's Technical Committee 320, and indoor sports and training equipment. Particular circumstances on the national market may also give rise to standardisation activities. For example, standard NF-C1500 on electrical installations for buildings was developed because the building

industry needed to demonstrate their compliance with EDF requirements on electrical safety and to avoid the risk of civil liability. Initially voluntary, the standard has gradually acquired a mandatory character. The addition of new subjects to the French standardisation programme is notified to European bodies in accordance with Directive 98/34/EC, which allows a matter to be taken up at the European level if there is sufficient interest.

There is also a great deal of certification activity in the French market, supported by entities such as the French Quality Assurance Association (AFAQ), AFNOR CERTIFICATION, an affiliate of AFNOR, and major international players such as BVQI and SGS. One of the major purposes of SQUALPI is to promote certification and quality control in support of industrial competitiveness, particularly for small and medium-size enterprises. In co-operation with the French Quality Movement (MFQ) it sponsors the French Quality Prize and French Quality Month, and is involved in the enforcement of regulations governing certification bodies for industrial products and services. In 2001, SQUALPI indicated that there were 15,000 French firms that were certified ISO 9000, 4400 firms entitled to use the NF mark, 2000 accredited testing and calibration laboratories, and 39 certification bodies for industrial products and services.

2.5 Streamlining conformity assessment procedures

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

2.5.1 Intergovernmental initiatives

Within the European Union the principle of mutual recognition applies among Member States (see above, Box 4). This means that all products lawfully produced or marketed in one Member State must be accepted by the others even when they have been manufactured in accordance with technical regulations differing from the domestic ones[22]. The principle of mutual recognition has helped build progressively a Single Market for European products, even though the European Commission considers that much remains to be done and has developed mechanisms to better monitor and enhance the application of the principle[23].

22. The limits of this principle, such as the exception in Article 36 of the EEC Treaty, led to the efforts for harmonisation of technical specifications for products and subsequently to the adoption of the "New Approach".

23 . Such as the notification of all derogations, according to European Parliament Decision 3052/95 and the drawing of evaluation reports. See European Commission, "Principle of mutual recognition: Working towards more effective implementation", *Single Market News n° 17,* July 1999

Table 4. Indicative list of recently negotiated MRAs

Partner	Partner	Sectors	Effective date	Type of recognition
EU	Australia	Telecom terminal equipment Electrical safety Electromagnetic compatibility Machines Pressure vessels Medical devices Pharmaceutical GMP* Motor vehicles	01 01 1999	Conformity assessment dealing with certification (except for the annex on Good Manufacturing Practices)
EU	Canada	Pharmaceutical GMP Medical devices Telecommunications equipment Electrical safety Electromagnetic compatibility Recreational craft	01 11 1998	Conformity assessment dealing with certification (except for the annex on Good Manufacturing Practices)
EU	Japan	Telecommunications equipment Electrical equipment Electromagnetic compatibility Pharmaceutical GMP* (good laboratory practices)	01 01 2002	Conformity assessment dealing with certification (except for the annexes on Good Manufacturing Practices and Good Laboratory Practices)
EU	New Zealand	Telecommunications equipment Electrical safety Electromagnetic compatibility Machines Pressure vessels Medical devices Pharmaceutical GMP (good laboratory practices)	01 01 1999	Conformity assessment dealing with certification (except for the annexes on Good Manufacturing Practices and Good Laboratory Practices)
EU	Switzerland	Telecommunications equipment Electromagnetic compatibility Electrical safety Personal protection equipment Pharmaceutical GMP* Medical devices Pressure vessels Machines Motor vehicles Protective equipment and systems for use in an explosive environment Toys Building materials Measuring instruments Construction machinery and materials	01 06 2002	Conformity assessment dealing with certification (except for the annexes on Good Manufacturing Practices and Good Laboratory Practices)
EU	United States	Telecommunications equipment Electromagnetic compatibility Electrical safety Recreational craft Pharmaceutical GMP* (good laboratory practices) Medical devices	01 12 1998	Others*
OECD	OECD	Chemical products		- Good laboratory Practices and Guides - Mutual recognition of data

* Excludes recognition of standards, conformity assessment dealing with acceptance of data, and conformity assessment dealing with certification.

NB. The above list of MRAs reflects the list of agreements negotiated and concluded by the European Community with third countries, to which France is a party.

Beyond its effect on the movements of European products, the principle of mutual recognition in the framework of the Single Market has perceptibly benefited third country manufacturers, which no longer need to face the requirements of each and every EU member they seek access to, as long as they satisfy the requirements for one. Access to European markets is further assisted by European policies aimed at recognising the equivalence of regulatory measures and results of conformity assessment performed in third countries. These policies are elaborated at the European Union level, although their implementation is partly incumbent on national authorities or institutions. They are based on the negotiation and adoption of Mutual Recognition Agreements (MRAs), which are for the time being limited to mutually recognising the results of conformity assessment performed in third countries.

Each MRA includes a general framework agreement and a series of sectoral annexes. The framework agreement specifies the conditions under which each party accepts the results (studies and data, certificates and marks of conformity) of conformity assessment issued by the other party's conformity assessment bodies, in accordance with the rules and regulations of the importing party. These rules and regulations are specified on a sector-specific basis in the sectoral annexes. A certification by a conformity assessment body in the exporting country that a product covered by a MRA is in conformity to the rules and regulations of the importing party has to be accepted as equivalent by the importing party. This is particularly beneficial to small-and-medium sized enterprises that will be able to use less costly local testing facilities for the examination and certification of products for export. On the basis of negotiating directives issued by the Council in 1992 the European Commission has signed agreements on the mutual recognition of conformity assessment with Australia, Canada, Japan, New Zealand, Switzerland and the United States (see table 4), and Protocol Agreements on Conformity Assessment (PECA) with candidate countries of central and eastern Europe.

Beyond agreements concluded by the European Community as a whole, bilateral MRAs would not be compatible with the rules of the European internal market. The reason is that, despite the fact that bilateral commitments under an MRA are binding only on the two parties that concluded it, a product that would be considered legal in France by virtue of an MRA negotiated with a third member country would have to be regarded as legal throughout the Community.

2.5.2. Accreditation mechanisms

Accreditation is a procedure whereby an authoritative body gives formal recognition that a body or person is competent to carry out specific tasks[24]. Accreditation mechanisms are used to assess and to audit at regular intervals laboratories, certification and inspection bodies by a third party as to their technical competence against published criteria. They provide confidence on the competence of conformity assessment bodies, which is essential for the success of mutual recognition. In that sense, international co-operation on accreditation is seen as an important supporting measure to promote recognition of equivalence in regulatory systems.

The principal French accreditation agency is the French Accreditation Committee (COFRAC), a non-profit association of certification organisations and laboratories, firms making use of those organisations, consumers' associations and the public authorities. COFRAC is involved in international accreditation work as a signatory of multilateral agreements concluded through such international bodies as the European Co-operation for Accreditation (EA)[25], the International Accreditation Forum (IAF)[26], and

24. ISO/IEC Guide 2, EN45020

25. EA is an umbrella grouping of nationally recognised accreditation bodies of the member countries of the European Union and EFTA. Its aim is to encourage the negotiation of mutual recognition agreements among its members, so as to maintain equivalency among these bodies and to ensure that products once tested and approved are accepted everywhere.

the International Laboratory Accreditation Conference (ILAC)[27]. This means that foreign conformity assessment and certification bodies can be recognised on the basis of their accreditation by a foreign body with which COFRAC has concluded a mutual recognition agreement, instead of seeking accreditation by COFRAC directly.

2.6. Application of competition principles from an international perspective

The benefits of market access may be reduced by regulatory action condoning anti-competitive behaviour 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 by foreign firms, the nature of the institutions that hear such complaints, and adherence to deadlines (if they exist) are thus key issues from an international market openness perspective. These issues will be the focus in this sub-section, while a more detailed discussion of the application of competition principles in the context of regulatory reform can be found in Chapter 3.

Competition law has evolved drastically in recent years, resulting in a veritable paradigm shift. The introduction of competition policy at the European level marked a major break with the French administrative tradition, which historically confined competition authorities to controlling price levels (an activity that impeded rather than stimulated competition). The introduction of Community law was accompanied, as well, by the beginning of privatisation, the removal of economic affairs from the purview of criminal law, and the transfer of powers from an independent administrative authority to a judicial authority

Extension of the powers of the Court of Appeal of Paris, a second-tier jurisdiction, to include competition matters may be considered a revolution in the regulatory framework governing competition in France. For the first time, the dividing line between administrative and private jurisdiction has been relaxed. Recognition that competition law involves public law as well as private law is thus only recent, and may be regarded as a reconfiguration of public action. This reconfiguration has posed a challenge to the judges, who were not accustomed to handling both sides in a single case. At a more abstract level, subjecting public authority to the principle of competition has called into question the myth of the benevolent State, wielding all powers necessary to defend the public interest (De Marais, 2003).

The new approach, however, has not yet called into question the particular status of public enterprises in the market. Working in sectors with a monopolistic structure, these long-time operators enjoy certain advantages, which suggest that competition in newly opened markets is still not fully achieved. Public services benefit from preferential financing and from privileged access to information, through their links with government, and they are not subject to bankruptcy law, thus enjoying fewer constraints on optimisation and profitability. Even if these circumstances are temporary, public services are in a favoured position to acquire market share, vis-à-vis other operators.

France has established the necessary competition authorities. The General Directorate for Competition, Consumer Affairs and Fraud (DGCCRF) is part of the Ministry of Finance, where it oversees

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26. The International Accreditation Forum is a group of accreditation bodies in various countries, including Australia, Canada, France, Japan, Mexico, the United Kingdom, New Zealand and the United States. It is particularly active in the certification of quality systems.

27. The International Laboratory Accreditation Conference promotes international co-operation among the world's test laboratory accreditation systems, and in particular the negotiation of mutual recognition agreements among members on the basis of the ISO/CEI standard 17025 on laboratory accreditation.

the functioning of market competition. It has horizontal powers, with both conceptual and field responsibilities. The Competition Council enforces competition law in all areas of business. It deals with anticompetitive practices, abuse of dominant position and illegal understandings, and maintains a watch against cross-subsidies. It is a quasi-judicial body with the power to impose penalties, and it is also consulted in the preparation of regulations relating to pricing or having a restrictive effect on competition. When it comes to control over collusion, its powers are merely advisory and nonbinding.

One fundamental difference between the DGCCRF and the Competition Council is that the former is part of the executive branch, while the latter is an independent agency. The role of the DGCCRF is to investigate and bring cases before the Competition Council, but the Council can also initiate cases in its own right. In that event, however, it often asks the DGCCRF for staff assistance with the investigation. The advantage of this division of labour is that the Competition Council can act as an independent and objective tribunal. The Competition Council can therefore position itself as representing private interests that may not find expression within government priorities. Private parties also have the right to initiate action on their own, and they do so frequently. However, while private action may result in payment of damages, it cannot seek a cease and desist order for the anticompetitive behaviour. In the course of approving mergers, the Competition Council has only an advisory role. The DGCCRF has the power to approve a merger without consulting the Council, but it must seek the Council's advice if it intends to reject or to place conditions on a merger. However, in either case it is not obliged to follow such advice.

In the energy and telecommunications sectors, the regulatory authorities perform their function in parallel with the Competition Council and the DGCCRF. The Energy Regulatory Commission (CRE) is an independent administrative authority responsible for overseeing the opening of electricity and gas markets, which are currently estimated to account for 30 percent of the sector's total value (in France, the market opening by law accounts for 37 percent of the electricity sector and for 38 percent of the gas sector). This suggests that the agency will become more important once the sector is completely opened in 2007. In the gas sector, the necessary intervention powers conferred by the European Directive as transposed into the domestic regulation are exercised by the CRE since 2003. The telecommunications regulatory authority (ART) is also an independent administrative authority that shares responsibilities with the Ministry of Telecommunications. Instituted in 1997, one year after the telecommunications market was liberalised, its objective is to ensure neutrality, continuity and efficiency. In contrast to the CRE, which is however consulted on regulatory texts relating to its field of competence, ART may issue an opinion before the government takes a decision.

The Competition Council enforces national provisions relating to practices that produce anticompetitive effects on French territory, even if the firms in question are operating outside France. In applying the "effects doctrine", the Council may intervene if a firm's practice affects the national territory of France. It may exert its authority, then, even if the headquarters of the firm in question is located outside France, or if the anticompetitive activity occurs abroad. On the other hand, the extraterritorial effects of practices within France or involving French firms are immune from its jurisdiction. The key element in determining whether intervention is justified is the turnover of the firm concerned. This must be sufficiently high to have an impact on competition. The examination is not affected by the location of the firm's headquarters or the existence of a legal establishment in France. France has given a fairly broad interpretation to the notion of "effect". It will consider itself affected and will make the necessary provisions even if the anticompetitive effect of a firm's behaviour is of worldwide scope. As well, the Competition Council is now ready to implement the relevant provisions of the EU treaty, which means that it will review anticompetitive behaviour that has an effect on an EU member country other than France. No such action has been taken to date, however.

The Competition Council co-operates with the Competition Directorate of the European Commission, as do the competition authorities of other member countries of the European Union. The

Competition Directorate has an advisory role in transnational issues that have an impact on France. The partnership of the European Commission with the French competition authorities benefits from the latter's competence and experience in the application of articles 81a and 82 of the Rome Treaty. With the redistribution of powers between the European Commission and national competition institutions, France will thus be ready to play the necessary role in a more federalist application of European regulations. This is particularly true, since the French approach, which is to apply statutory criteria directly instead of resorting to notifications and exemptions, is closely aligned with the new approach adopted at the European level as a result of the modernisation of competition policy.

The competition authorities recognise the international dimension of competition, and are seeking to offer a regulatory framework appropriate to global market integration. France has invested heavily in international co-operation. The DGCCRF participated in the work of creating a European competition authority (ECD, Enterprise Competitiveness Division) in 2001, and is actively engaged in the worldwide competition network (ICN), as well as in initiatives at the OECD and WTO. The DGCCRF also provides technical assistance. Through such European programs as PHARE, PECO and TACIS it organises advisory missions, provides advice and promotes the transfer of skills. The Competition Council also co-operates with international institutions such as the OECD, the United Nations and the WTO. The sectoral regulation authorities also have international relations units.

The competition framework in France is in a period of transition. While the country's competition policy culture may not have been in phase with that of the Single Market, France has taken the necessary steps to adapt. Further work is however needed in some areas, particularly in the area of public services and liberalisation of the electricity and gas markets. With respect to these markets France applies the level of liberalisation required by the European directives. As France has only recently established sectoral competition authorities, their definitive positioning within the regulatory framework remains to be determined.

3. ASSESSING RESULTS IN SELECTED SECTORS

This section examines the implications for international market openness arising from current French regulations in five sectors: electricity; gas; telecommunications services; telecommunications equipment; and automobiles and components. For each sector, an attempt has been made to draw out the effects of sector-specific regulations on international trade and investment and the extent to which the six efficient regulation principles are explicitly or implicitly applied. Particular attention is paid to product standards and conformity assessment procedures, where relevant. Issues addressed here include efforts to adopt internationally harmonised product standards, use of voluntary product standards by regulatory authorities, and openness and flexibility of conformity assessment systems. Telecommunications (services and equipment) are reviewed in greater detail in Chapter 6.

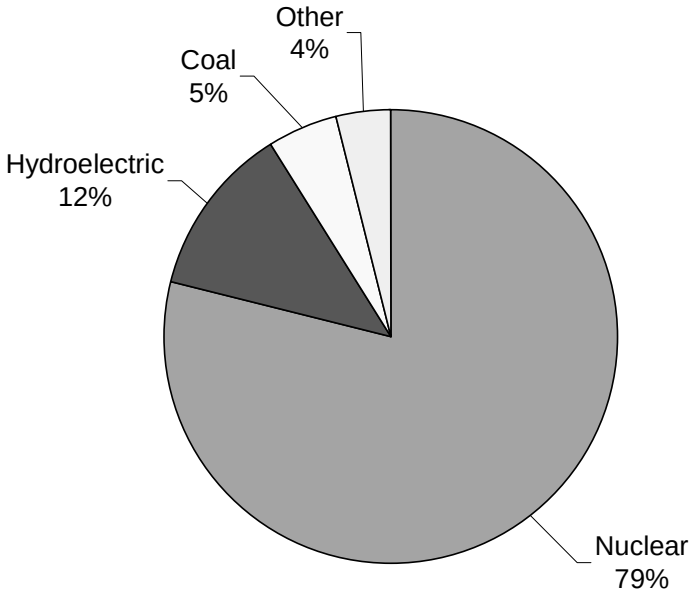
3.1. Electricity

In France, maintaining self-sufficiency in energy production is one of the most important goals of national energy policy. France has always sought to limit dependence on energy imports. In response to the energy crises of the 1970s, it moved to reduce its level of oil imports and replace them with domestic energy production. Since the country is poorly endowed in natural energy resources, the solution seemed to be to invest in nuclear energy. Oil imports have declined sharply since that time, and nuclear power now contributes between 75 and 80 percent of electricity output, one of the highest rates in the world.

France is the second-largest producer of nuclear energy in the world after the United States. This nuclear-centred strategy produces a seasonal surplus of power, which has led France to pursue the prospect of electricity exports to neighbouring countries.

Other factors explaining the direction that France has taken in the energy sector include the notion of public service and the general interest, the assurance of low-cost energy supply, and concern for environmental impacts (IEA, 2000). As early as 1928, public service was defined as "any activity the accomplishment of which must be ensured, provided, regulated and controlled by the government because this activity is indispensable to the realisation and development of social interdependence" (Duguit, 1928). The 2000 Energy Act seeks to translate this notion in the context of the energy sector. Article 1 of the Energy Act indicates that "… bringing about the right to electricity as an absolutely essential product, the public service in electricity is managed in accordance with the principles of equality, continuity and adaptability … and … is organised respectively by the State, the municipalities or their public co-operation organisations" (Act on the Modernisation and Development of the Public Service of Electricity", nº 2000-108 of February 10, 2000). In the energy sector, therefore, the notion of public service is expressed in the approach to competition and the maintenance of State enterprises. It is also reflected in the level and structure of prices.

Figure 11. The structure of the French energy production as a percentage of the energy source used



Total: 506,9 TWH in 1998
Source: International Energy Agency (IEA), 2000

Electricity prices in France are among the lowest in the European Union. The production of nuclear energy makes it possible to offer electricity at low prices, and this helps not only to keep electricity affordable to all, but also to strengthen the international competitiveness of French industry. However, some of the prices are not set by the market but by the French government and are accompanied by a policy of differentiated taxation. Regulated prices are those applied to non-eligible customers, which as of 2003 consume less than 7GWh per year. These prices are defined by an order of the Council of State following consultations with CRE and the Competition Council. On the other hand, electricity sales prices for eligible customers, whose annual consumption is above the legal threshold, are negotiated freely with

electricity suppliers and depend entirely on the free play of the market. Unregulated prices apply to 37 percent of the electricity market. From 1st July 2004 they will extend to all professional customers and from 1st July 2007 to all customers.

From the viewpoint of protecting the environment and public health, the nuclear choice may raise some difficult questions, such as the question of nuclear waste management, but it also makes it possible for France to have some of the lowest CO2 emission levels per electric kWh in the world. As a signatory to the Protocol to the Kyoto Convention on Climate Change, France is committed to reducing greenhouse gas emissions to their 1990 levels by 2008-2012, an objective that is quite realistic given the importance of nuclear power in the country's energy output. With respect to nuclear end-of-cycle operations, the "Bataille" Act of 30 December 1991 has allowed to launch research on the long term management of waste. This research will make it possible for Parliament to consider the most efficient management of the nuclear end-of-cycle operations by 2006. Having opened a second centre in August 2003, France currently has two centres, at Aube, for the disposal of low-level nuclear wastes.

Electricity of France (EDF) is a public enterprise. When it was created by nationalisation in 1946, it was viewed as a sensible response to French concerns about energy production. EDF is highly integrated, both vertically and horizontally, and not only dominates the French market but is the largest electricity enterprise in Europe. In 2002 EDF produced 91 percent of France's entire electricity output. The manager of the public electrical transmission network (RTE) and the manager of part of the public electric distribution networks (DEGS) also belong to EDF, which has remained an integrated operator. However, in accordance with directive 96/92/EC and the Act of 10 February 2000, EDF is subject to strict rules of accounting separation between its activities that are open to competition and those which are still monopolistic, so as to avoid cross-subsidisation or distortion of competition. In particular, EDF is bound to establish, in accordance with CRE rules and under its supervision, separate accounts for its production activities, its transport activities and its distribution activities. As a result, the benefits drawn from EDF monopoly in running the transportation and distribution network cannot be used to the advantage of its production and supply activities.

In addition to its dominant position in the French market, EDF is very active internationally. 92 percent of its turnover is in Europe. Apart from France, it regards Germany, the United Kingdom, Italy and Spain as priority markets. In South America it is present in Brazil, Argentina and Mexico. In Asia it has invested primarily in China, where it anticipates sharp market growth. It is the major contributor of net French energy exports, which represent 14 percent of domestic production.

The government appoints the President of EDF and a third of its Board of Directors. Another third is made up of experts and the remaining third of elected staff representatives. The government influences the enterprise's strategy through staff policy and through the multiyear plan agreements.

The European Union electricity directive has been transposed by two laws, in 2000 and 2003. Since then and in accordance with this directive

- electricity production is an activity taking place in accordance with the principle of freedom of establishment but subject to a system of ministerial authorisation;
- import and export are free;
- electricity trading is subject to a declaration;

- to access the network a transparent and non-discriminatory system is put in place: regulated network access for third parties. Issues related to network access come under the authority of an independent regulator, the CRE.

Prior to the Act of 3d January 2003 the fact that measures regulating trade were still in force at such a late date had given rise to questions as to whether the regulatory framework was really favourable to market openness. Since then electricity imports to France are free and are not subject to any prior administrative authorisation. The 2000 Act provides explicitly that eligible customers can buy electricity from any supplier they choose within the territory of Member countries of the European community, or, in the context of applicable international agreements, within the territory of third countries. There are no restrictions either on the purchases a foreign supplier may wish to make in France with a view to resale. The administrative authorisation that was required for purchases by French electricity producers with a view to resale has been abolished by the 2003 Act. The only requirement that is henceforth imposed on traders is to make a declaration to the Minister in charge of energy. In the past all supply contracts had to have a duration of at least three years. However, the provision in the 2000 Act that regulated the duration of supply contracts was already impossible to apply, as it was not really compatible with the right of eligible customers to define their electricity supply as they see fit. In any case, this provision has been abolished by the 2003 Act: the duration of supply contracts is now freely negotiated between customers and suppliers without any restriction.

The challenge will clearly be to modify EDF's current status with a view to accommodating greater competition. France has reacted quite cautiously to the idea of opening the energy market out of concerns about securing electricity provision, and maintaining and renewing French nuclear installations in a way that would preserve public service. Opening the market to international competition, in particular, was long viewed as being in conflict with the country's strategic objectives. So far, reforms have led to the legal opening of 37 percent of the market (of which EDF has lost a quarter, or 9.25 percent of the market), but the goal is to achieve an opening of 70 percent by 2004 and a total market opening by 2007. Currently, 20 to 30 percent of industrial clients have changed their supplier since the opening of the electricity market to competition. Apart from the number of clients having changed their supplier, other quantitative criteria can be used to assess the openness of the French market to competition. From the standpoint of the amount of electricity corresponding to the market share legally open to competition (170 TWh), France is the fifth more open market in Europe. If we distinguish between clients that have left the incumbent supplier to opt for a European supplier and those that have opted for a national supplier, half of the customers having changed their supplier opted for a foreign supplier in the course of the first half of 2003. Nonetheless, the fact remains that operators other than EDF (such as SNET, CNR, SHEM) are still groping for their place in the French electricity market. France has been slow in transposing European Union directives, and has taken no initiative so far that goes beyond the strict minimum indicated by that framework.

EDF currently retains its significant historic advantage in terms of preferential access to information, including information on competitors active in France. The question of vertical and horizontal integration will also be subject to review. EDF, however, is used to competition, because it is active in the most competitive international energy markets. To guarantee the environmental security of the international community, the question of high-level radioactive wastes and the risk of nuclear proliferation will also have to be addressed. So far, France has made substantial progress, but there is still room for improvement (IEA, 2000).

3.2. Gas

Gas accounts for 14 percent of total energy consumption, a level that is lower than the average for the European Union (21 percent). In contrast to electricity, nearly all gas consumption is imported, and

only 5 percent is produced domestically. Imports are fairly well balanced by origin: in 1999, 31 percent came from Norway, 28 percent from Russia, 24 percent from Algeria, and 12 percent from the Netherlands (IEA, 2000).

From the international viewpoint, France has the advantage of a transportation network that is well adapted to an integrating European market, although only in the north part of the country. France also holds a key position in gas storage technology, enjoying an international advantage in a market characterised by its seasonality.

International economic operators face a regulatory framework that closely resembles that for electricity, with the difference that gas does not require the same security measures as nuclear energy. Markets are highly concentrated. GDF (Gaz de France), which was also established in 1946, is a national enterprise that still retains exclusive import and export rights and a dominant position in the transport, distribution and supply of gas. This will have to change soon, however, in response to European directives implementation. Today, GDF distributes 88 percent of gas consumption.

The Board of Directors is currently composed by one third of French administration representatives, and the President is appointed by the Council of Ministers. The government has announced in 2002 that GDF will become a limited company. Gas prices are regulated for non eligible customers according to a tariff-setting formula agreed between the State and GDF based on the opinion by the CRE. They are unregulated for eligible customers.

The gas sector falls primarily under the responsibility of the Minister of Industry and the CRE and is guided by the same public service philosophy as that for the electricity sector. The objectives of regional and social cohesion (described in the preceding section) imply a certain pricing level. GDF is required to keep reserve stocks for reasons of energy security. About one third of the country's storage capacity is kept in reserve in case of supply disruption. This strategy is not necessarily a guarantee of regional cohesion, however, since there are some municipalities that are not supplied by GDF, for financial reasons.

The provisions of the 1998 European Directive call for gradual opening of markets to competition, the separation of transport, distribution and storage activities, and third-party access to the network, with the goal of offering consumers a broader choice. As with the electricity directive, France has transposed these rules in 2003, instead of in 2000 as expected. Today, 38 percent of markets have been liberalised, which is more than the minimum of 28 percent required by the European regulatory framework. The degree of real openness, measured by the number of customers that have switched suppliers, is at most 5 percent in France, close to the European average (General Directorate for Energy and Raw Materials, DGEMP, 2003).

In adopting the European Directives, France has recognised that the notion of public service is not incompatible with a competitive market, and does not require vertical integration or a high degree of market concentration.

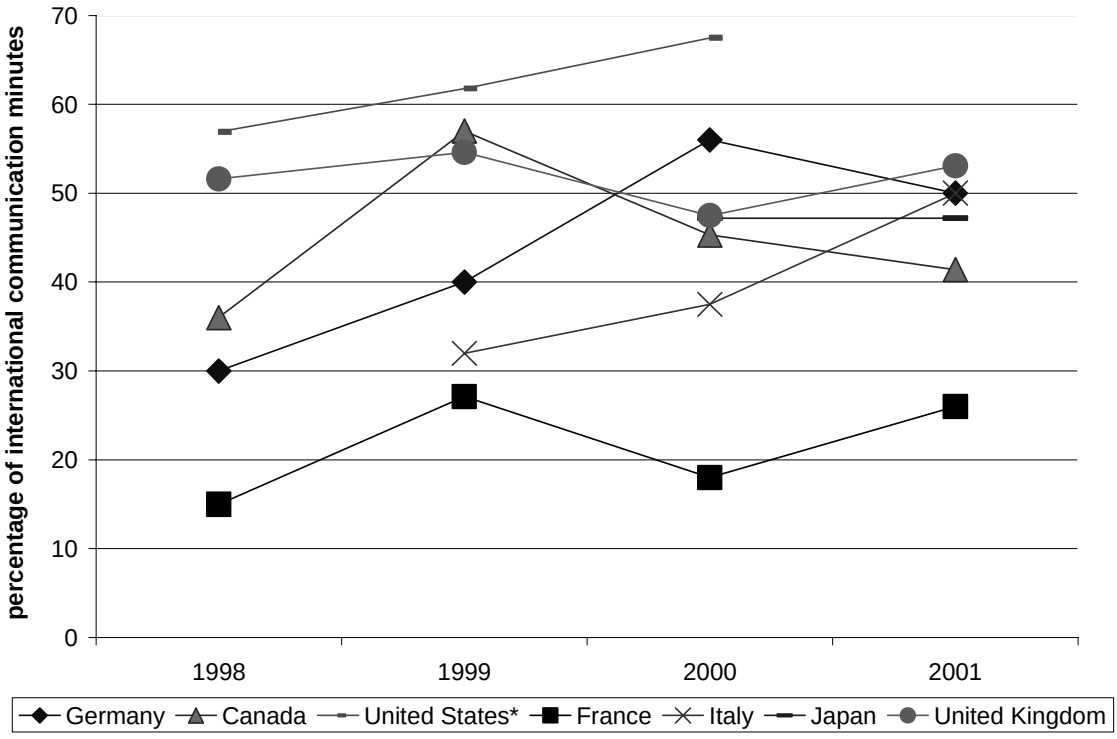
3.3. Telecommunications services

Over the last five years the telecommunication services sector has undergone substantial change. The opening of the market, initiated in the mid-1980s in the area of telephone directories, then pursued in 1990 in the area of mobile phones, has been completed in 1998 transforming a market that was organised along monolithic and monopolistic lines (the fixed telephony market) to a multi-form, competitive sector. France has pursued the trend of other OECD countries in liberalising the sector. At the beginning of 2003

all OECD countries except Turkey (which is preparing to open its markets to competition by the year 2004) had liberalised the telecommunications market.

Competition has continued to expand in France, as can be seen in the growing market share taken by new operators (see Figure 12). In the fixed telephony sector there are a number of new operators, engaged primarily in long-distance communications for the businesses market segment and representing 38 percent of that market segment. By the end of 2002, new operators represented 20 percent of the local communications market, but this field is evolving rapidly in the wake of the decision that extended carrier selection to local calls. At the end of 2001 there were 113 licensed operators, despite the fact that the consolidation that began in 2000 led to a reduction in the number of players (from 131 in 2000 to 113 the following year). The presence of numerous operators has been of benefit primarily to consumers, for whom communication tariffs have been cut by half, on average.

Figure 12. New operators' share of the international market



Source: OECD, 2003b

The mobile phone sector is significant from an industrial point of view. In 2002, 64 percent of the population owned a mobile phone, placing France at the average of OECD countries. By comparison, the proportion of mobile telephone subscribers was 73.7 percent in Italy, 68.1 percent in the United Kingdom, 58.5 percent in Germany, 48.3 percent in Japan and 40.7 percent in the United States. In terms of operators, the market is quite concentrated, as only three licenses have been granted. France Telecom, through Orange, is the most important operator, with 49.4% of the mobile phone market. SFR is in second position, with a 35% share. SFR is part of Cegetel, a group that is 70% owned by Vivendi, the world's third-largest multimedia company. Cegetel also has 10% of the fixed telephony market. In 2001 it was the first private company to offer local communications services. It is also the most important operator when it comes to long-distance communications, carrying some 120 million minutes of calls daily. With a market share of 15.6%, Bouygues is the third-largest mobile phone operator in France. In contrast to the other two

operators, Bouygues has a highly diversified profile. Apart from its communications business, it is also active in public works and environmental services (Standard & Poor's, 2003).

With respect to recent mobile telephony developments and the introduction of 3d generation systems, France has, in accordance with the timetable recommended by the European Commission, launched an invitation to tender with a view to opening the sector further to competition. In the framework of two tenders in 2001 only three licences have been granted, to Orange, SFR and Bouygues Telecom, for want of other interested candidates. In addition, an invitation to tender was issued in 2001 by ART with a view to attributing licences for radio local loop operators. The tender allowed to select on a regional basis about twenty operators committing to cover the territory and to put in place an alternative offer to the network of the incumbent. France Telecom did not participate in the process. A year later the assessment of this process is very mixed, as the technology did not develop other than in a few places.

The role of the incumbent has also evolved, as market conditions have changed. The partial privatisation of France Telecom began in 1997, and yet the company is still majority owned by the State, a situation which may well have helped France Telecom to handle its debts. Having invested abroad and being accustomed to operating in competitive markets outside its own market, France Telecom has reacted to the opening of the French market by reducing its long-distance tariffs a year before liberalisation came into effect. In the mobile phone market, France Telecom has successfully sought to strengthen its position outside France with the acquisition in 2000 of the well-known British operator, Orange. France Telecom, like most incumbents, also owns the infrastructure of fixed telephony, which may constitute an advantage over new operators. France has recognised this as a potential problem, however, and the telecommunications regulatory authority (ART) is taking steps to unbundle the local loop.

The local loop, which may be defined as that portion (the "last mile") of the telecommunications network that lies between the subscriber's telephone jack and the local central office, occupies a key position in the telecommunications infrastructure. The existing local network in France belongs to France Telecom. For economic reasons new operators do not necessarily choose to duplicate the local network fully or partially, and so they must rely on the existing network to establish a connection with their customers. In response to European directives, the ART has been committed since 2000 to opening the local loop for new operators. In the field, operators have been sharing France Telecom sites since 2001, and in the following year the unbundling process took the first steps toward the commercial phase. Unbundling the local loop is a key feature of any regulatory system designed to ensure competitive markets. In taking the necessary initiatives, France has thus made a significant effort to offer consumers the benefits of information technology.

The telecommunications regulatory authority (ART) has played an essential role in the liberalisation process since the late 1990s. With the creation of ART, the preparation of regulations was separated from their enforcement. ART wields important powers as the regulatory and competition authority for the sector. As the independent administrative authority it must reflect the concerns and objectives of public policy. It establishes and manages the national numbering plan and manages the frequencies allocated by the Prime Minister to ART for "commercial" telecommunications. It also allocates frequency and numbering resources to operators and users under objective, transparent and non-discriminatory conditions. It issues licenses for the establishment and operation of independent private telecommunications services networks reserved to persons or entities constituting a closed user group.

As the sectoral competition authority, ART draws up annually a list of important operators active in markets deemed "relevant" in terms of competition law and approves the standard interconnection catalogue of public network operators whose market share exceeds 25 percent. It can also insist that interconnection agreements between two operators be amended, if this is necessary to guarantee equality of competitive conditions or interoperability of services. ART can impose sanctions on operators for any

breech of legislative and regulatory provisions, and can order the temporary or definitive suspension of a license or impose a fine of up to 5 percent of sales when the offence is repeated. It may be called upon to play a conciliation role to settle disputes that do not fall under the dispute settlement procedure. In addition to the Minister responsible for telecommunications, any individual or legal entity, any professional organisation or consumers' association may thus refer matters to the regulator, which in turn informs the Competition Council. ART is entrusted with settling disputes between operators in three areas:

- refusal to make an interconnection, conclusion and performance of interconnection agreements and telecommunications network access conditions;
- bringing into conformity agreements with clauses excluding or making restrictions of a legal or technical nature on the supply of telecommunications services over cable networks;
- possibilities and conditions for shared use of existing facilities located on public or private property.

The ultimate goal of the regulatory authority is to ensure competition that will be beneficial to all users, through efficient market regulation. ART thus reflects the French conception of competition, which sees it not as an end in itself but as a means for bringing benefits to consumers. ART serves regional development goals by guaranteeing that telecommunications networks and services cover the entire national territory. It also seeks to ensure that economically disadvantaged groups have access to telecommunications services. In pursuit of these missions, ART has a staff of 150 and a 2002 budget of €16.1 million.

Liberalisation has entailed sharp changes in the sector's structure and conditions, to which economic operators and the regulatory authorities alike have had to adapt. The learning curve in France has been quite positive, even if the level of competition could be more intense in the mobile phone sector and in short-distance services. The law has abolished many of the privileges of the incumbent, and new operators enjoy a regulatory framework that is favourable to competition. In particular, the regulatory authority's efforts to unbundle the local loop are quickly reducing the favoured position of the incumbent. ART is a recent institution and it has significant powers and resources, which it could still put to greater use.

3.4. Telecommunications equipment

France is a major player in the world market for telecommunications equipment. In 2001 trade in the communications equipment sector, including telecommunications, represented 3.8% of French goods exports and 2.8% of French goods imports. The value of telecommunications equipment exports amounted to €2.4 billion in 2001, thanks primarily to Alcatel, which is present in 130 countries and had a turnover of €16.5 billion in 2001. Alcatel's main markets are in Eastern Europe (43%). At €1.5 billion, imports play a much less important role in the French economy. As in other OECD countries, France experienced strong growth in the sector, but this has been disrupted by the worldwide recession since 2000. For France, this growth declined by 15% between 2000 and 2001.

The regulation of telecommunications equipment in France is essentially patterned on European regulations. The principal framework is established by the two "new approach" directives, Directive 98/13/EC on telecommunications terminal equipment and satellite earth stations, which was replaced by Directive 99/5/EC on radio equipment and telecommunications terminal equipment (known as the R-TTE Directive). Standards consistent with those Directives are prepared by the European Telecommunications Standards Institute (ETSI). The R-TTE Directive instituted a self-certifying regime, imputing full

responsibility for ensuring the conformity of the marketed goods to the manufacturer or the person marketing the product, in accordance with the following principles:

- only products that meet the essential requirements may be marketed and brought into service;
- conformity is presumed if the good complies with harmonised standards (regulatory use standards) published in the Official Journal of the European Communities.
- exceptionally, the conformity assessment procedure may involve consultation with one of the EC notified bodies.

The marketing of products is thus no longer subject to type approval. The producer may present a declaration of conformity, based on harmonised standards or, where such standards do not exist, by supplying technical documentation demonstrating that the product conforms to requirements. In addition, a number of MRAs concluded with non-EU countries also apply to telecommunications equipment and allow, under certain circumstances, for the acceptance of conformity assessments performed in Australia, New Zealand and NAFTA countries.

3.5. Automobiles

Due to the historic dynamism of global economic activity in the automotive sector and traditionally interventionist policies of some governments aimed at protecting domestic automotive industries, trade tensions related to domestic regulatory issues in general, and to standards and certification procedures in particular, have long figured on bilateral and regional trade agendas. This reflects the fact that automobiles remain among the most highly regulated products in the world, primarily for reasons relating to safety, energy conservation and the environment. Divergent national approaches to the achievement of legitimate domestic objectives in these key policy areas are therefore likely to remain a significant source of trade tensions as global demand for automobiles continues to rise.

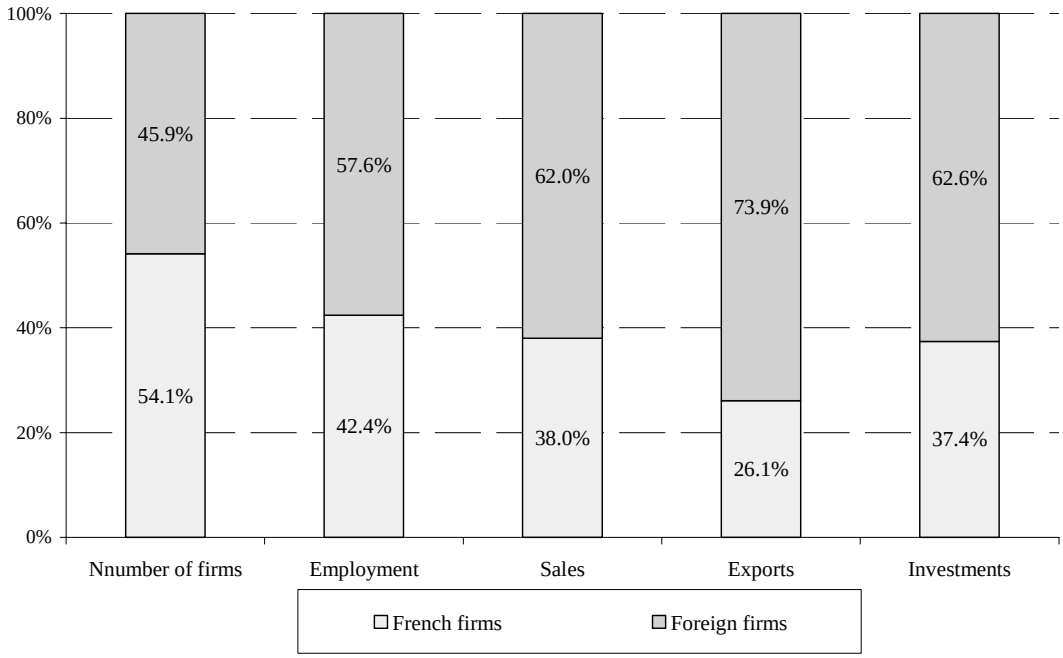
The automotive industry is of great importance to the French economy. Car manufacturing generated a turnover of about €92 billion or 15 percent of national industrial turnover in 2002, and employed more than 150,000 people. The automotive equipment sector employed nearly 134,000 people in 590 establishments, with an annual turnover around €25 billion. After Germany, France is the second-largest producer in this sector in the EU and, contrary to other EU producers, its growth rate has risen in 2001 reaching 2 percent. More than 70 percent of vehicles and 42 percent of equipment produced in France are exported.

As in other automobile-producing countries, the structure of the automotive manufacturing industry in France shows a degree of concentration (PSA and Renault dominate the market, with 31% and 28.2% respectively of vehicle registrations in 2001), a fact that reflects the significant sunk investment required to launch an activity. Apart from these two French automakers, 11 other manufacturers are present, with 21 assembly plants producing 21 passenger car models, six utility models and seven bus and truck models. French models are among the most widely sold in Europe. In 2001 the Peugeot 206 was the second-largest seller (with a market share of 4.2%) and the Renault Mégane was third (3.8%) in the European market (where the Volkswagen Golf held first place, with a market share of 4.4%). Within France, the most widely sold car is the Renault Clio, with 188,000 cars sold in 2002 (penetration rate of 8.8%). By contrast, the automotive equipment industry is dominated by foreign plants.

Foreign penetration in the French market is made difficult by the very structure of demand. Among the 10 highest selling models in France in 2002, there was only one foreign make, the Volkswagen

Golf, which held ninth place (with a market share of 2.6%). French consumers would seem to be quite loyal to domestic products. The French market is fairly saturated. Around 70% of the population between the ages of 25 and 65 has a car. On the other hand, consumers seem ready to pay more for cars that offer greater safety and less environmental pollution. Since the vast majority of the population is not ready to give up the automobile, the trend among carmakers is to produce vehicles that offer value-added in these categories. The development of technologies for achieving these two objectives thus confers an additional advantage on French producers (Comité des Constructeurs Français d'Automobile, CCFA, 2003; International Organisation of Motor Vehicle Manufacturers, OICA, 2003).

Figure 13. Foreign presence in the equipment manufacturing sector



Source: SESSI-EAE

France's heavy integration within the EU is also reflected in automotive trade. In 2002, around 95 percent of French exports went to the EU, of which 23 percent to Spain, 16 percent to Germany, 16 percent to the United Kingdom and 11 percent to Italy. In terms of imports, 35 percent of automobiles come from Germany and 21 percent from Spain. Remaining imports from the EU are widely scattered among member countries (OECD, 2002b; CCFA, 2003).

On the regulatory front, the opening of the sector among EU countries was accompanied by harmonisation of regulations within the European Union. Technical requirements for automobiles are set out in a number of directives and are used consistently in all member States. Harmonisation in this industry is based on the "old approach" which, in contrast to the new approach, provides for comprehensive harmonisation. Since the industry is subject to full harmonisation, all questions relating to international openness must first be dealt with at the European level. As well, transparency and the preparation of rules are essentially dependent on the EU regulatory system[28].

28. On this point, the process of preparing EU Directives calls for consultation with interested parties. Draft Directives or amendments to Directives are prepared by the European Commission and published in the

Table 5. France's main automotive trading partners, 2001

	Imports (billions of euros)	Exports (billions of euros)
OECD	27.78	31.55
Europe	25.59	30.17
Of which: Germany	9.98	5.10
Spain	6.68	7.32
UK	1.68	5.33
Italy	2.71	3.67
NAFTA	0.47	1.05
Asia & Pacific	1.73	0.33
Non-OECD	0.90	4.32
Europe	0.36	0.90
Africa	0.10	1.70
Latin America	0.08	0.67
Near and Middle East	0.01	0.81
Asia & Pacific	0.36	0.23
Others	0.02	0.20
World	28.70	36.06

Source : OECD, 2002b

With a view to opening the sector to third countries, the EU has joined Working Party 29 (WP29) of the United Nations Economic Commission for Europe (UN-ECE), which is promoting multilateral co-operation in favour of worldwide harmonisation in the automobile industry. The EU's participation in WP 29 has done much to secure mutual recognition of foreign regulations, since the EU has recognised several UN-ECE regulations as equivalent to its own technical provisions.

Official Journal of the European Communities. During the consultation period, the Commission consults a motor vehicle task force consisting of representatives of member States and the European industry. Following these consultations, the Commission proposes the text to the EU Council for approval. The new Directive enters into force once it is published in the Official Journal of the European Communities.

Box 4. 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 World Forum for Harmonization of Vehicle Regulations (previously the Working Party on the Construction of Vehicles and 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. By January 2002, more than 110 regulations have been developed. They provide for safety requirements and set environmental protection and energy saving criteria for governments and vehicle manufactures in the 38 contracting parties.

Source: European Commission, 2002

4. CONCLUSIONS AND OPTIONS FOR POLICY REFORM

4.1. General assessment of current strengths and weaknesses

From the perspective of opening the market to international competition, the French record is on the whole positive. The French government and administration have gradually distanced themselves from the interventionist and paternalistic tradition of the State and have committed themselves to developing a regulatory framework supportive of sound market functioning. Nevertheless, there are still some shortcomings in terms of achieving a market-friendly regulatory environment, and these need to be addressed for the country to retain benefits from the progress achieved to date. In 1999, the summary indicators of product market regulation prepared by the OECD (Nicoletti et al., 1999)[29] placed France among the OECD countries with the least market-friendly regulatory environment. That position was not related to outward-oriented policies, where France achieved a high ranking, but reflected above all a restrictive domestic environment, and more particularly a significant degree of government intervention (public ownership of commercial enterprises and government intervention in the operations of private businesses), as well as a lack of regulatory and administrative transparency. The overall picture has improved since then, but mentalities still have some distance to go in freeing themselves from the regulatory mindset of the past.

Although the six "efficient regulation" principles on which this analysis relies are not expressly codified in French administrative and regulatory oversight procedures, efforts have been made to apply them in practice. Available evidence shows that the principles of favouring harmonised standards and of streamlining conformity assessment procedures are widely respected in practice. WTO and EU disciplines have played a key role in placing these principles in the forefront of the regulatory environment.

29. These indicators, prepared on the basis of a questionnaire circulated to member governments, attempted to measure the likely influence of regulations on the market choices and opportunities of firms. They represented a summary of indicators on inward-oriented policies (Government intervention, obstacles to business) and outward-oriented policies (explicit obstacles to trade and investment).

Observance of competition principles also offers sound guarantees for the international openness of the French market. Implementation of the European directives has changed drastically the French administrative tradition, calling into question the traditional concept of the benevolent State watching over its citizens, and has opened the way to a series of noteworthy steps in favour of competitive markets. The telecommunications sector is an example of successful market opening, and while there is room for further progress in the field of local communications, the unbundling of the local loop now underway will heighten the degree of competition.

Yet incumbents still dominate the market in a great many sectors, supported by State intervention in the economy, particularly in the context of public enterprises. These enterprises do not operate on an equal footing with private players, given the considerable advantages they enjoy, but it is clear that their privileged position will be readjusted in the coming years. In the electricity and gas sectors, in particular, where the current vertical and horizontal integration of markets is not conducive to competition, the role of incumbents will be sharply modified once the European directives are applied in 2005.

With respect to the other principles underlying market openness, a number of official or unofficial steps in the right direction have recently been taken. The principles relating to transparency and openness of the decision-making process and of appeals procedures are also well respected. The government offers a wide range of information sources on regulations in force, and the information windows that are available in specific areas of economic activity help businesses to better understand a regulatory framework that is still fairly complex. Information is widely available on legislation in the course of preparation, in contrast to the situation with draft regulations, where transparency could be enhanced. Prior consultation with interested parties is becoming normal practice with the French administration in recent years, although the openness of the decision making process could be improved if such consultation were put on a formal and systematic basis. Nevertheless, in a context where the effectiveness of consultation still depends on the goodwill of the official bodies involved, it can be said that, in the field of international economic activities, the consultation mechanisms are functioning satisfactorily.

The principle of non-discrimination is generally observed in regulatory practices, although a number of exceptions persist. In particular, the number of restrictions that France applies in the framework of the GATS casts some doubt on its non-discriminatory treatment of foreigners in the economy, limits choices for French consumers, and restricts the potential for economic growth.

From the viewpoint of market openness, the major weakness in the French regulatory framework has long been the cumbersome rigidity of a system that generated unnecessary restrictions on trade and was regularly criticized by economic players. Efforts to address the situation are seriously compromised by the absence of any effective mechanism for analysing the impact of regulation and in particular for taking account of its effects on market openness. Despite their relevance and their quality, analyses designed to clarify the various aspects of foreign trade policy can compensate only partially for this absence.

Nevertheless, a number of measures have been taken in recent years to improve and simplify the regulatory framework, and still others are in the course of preparation. Notable among the steps taken to avoid unnecessary restrictions on trade are the efforts that have been made to simplify administrative language and procedures, the increased use of information technologies to promote electronic government, the introduction of mechanisms to simplify administrative formalities, and the pursuit of various initiatives to facilitate border procedures. All of these measures are likely to improve the quality of regulation and to create a regulatory environment supportive of market openness, but they are still handicapped to some extent by the persistence of old practices within the administration and the climate of mistrust that has long existed between the administration and the business world. Since most of these measures are still recent, it is difficult to assess their effectiveness in terms of fostering a well-functioning market. It is clear,

however, that if current and future reforms are to succeed, France will need to ensure that adopted plans of action translate into concrete changes in the day-to-day workings of government and backed up with communication efforts directed at the business community.

4.2. Policy options for consideration

This section identifies possible avenues for making the regulatory system more market-friendly. The recommendations are based on the assessment outlined in this chapter, and on sound regulatory practices compiled by the OECD.

- *Continue to promote regulatory reforms favourable to the openness of the French market and to international competition. Try to garner French public support by investing in public relations activities.*

- *Rethink the extent of State intervention in the economy. Address the preferential status of public enterprises in the economy. Establish a clear separation between the functions of government and those of the private sector.*

- *Continue to encourage sound regulatory practices already instituted in the area of transparency and openness of the decision-making process. Maintain the specific information windows now in existence and ensure that they continue to have the financial and human resources needed to function effectively. Improve the disclosure of advance information on proposed regulations by publishing the government's work programme.*

- *Systematise the mechanisms for prior consultations with parties interested in the preparation of new regulations*. Even where prior consultation seems to work well, it should not depend on the goodwill of the official bodies involved, but should become a quality-control tool upon which citizens can rely. *Reinforce consultation procedures by offering arguments for and against the measure or the approach proposed.* This argumentation could be derived from regulatory impact analysis undertaken before formulating the proposal. *Give more regard to the comments and suggestions offered by the parties consulted. Publish the comments expressed during the consultation, and the government's position on those comments.* Obviously this does not mean that the government should conform to all the opinions expressed during the consultations, but if it explains the extent to which it has taken comments into account, and why, it could win greater acceptance from the parties concerned, and facilitate subsequent implementation.

- *Strive for a proper balance between efficient public procurement procedures on the one hand and guarantees of accountability of purchasers and the transparency of contracts on the other. In the context of the new procurement provisions now in preparation, supplement the selection of appropriate thresholds with other procedural guarantees such as objective and transparent selection criteria and publication of the rationale underlying the award.*

- *Rethink the relatively limited engagement towards liberalising many services markets.*

- *Improve mechanisms for analysing the impact of regulations and include an assessment of their potential impact on trade and investment*. The mechanisms now used by DREE and SGCI could serve as the basis for this assessment, provided they are not confined to evaluating legal conformity. *Encourage DREE to pursue its evaluation work through its network of correspondents abroad*.

- *Continue and expand efforts to simplify the regulatory framework for economic activities and ensure that those efforts are reflected in the daily functioning of government. Invest in training and awareness campaigns in the public service so as to speed the shift of mentality in favour of market mechanisms.*

- *Try to strengthen Customs orientation towards partnership with businesses.* In addition to measures already adopted and in order to ensure their efficiency, the development of a Customs Charter could help strike a better balance between control and facilitation. In this context training and communication activities would be necessary in order to make sure that the Customs administration espouses the notion of partnership and to convince the business world about this approach. *Separate routine Customs revenue controls from activities to combat fraud. Ease dispute proceedings, for instance by instituting a mediator who will become involved before resort to the Customs Conciliation and Adjudication Commission. Encourage initiatives to establish single windows covering the various authorities responsible for border formalities.*

- *Continue to encourage resort to international standards as the basis for national standards, and promote international harmonisation at the European, regional and international levels.*

- *Continue with the reform of competition regulations.*

- *Encourage the separation of energy distribution and production activities for electricity and gas, in order to allow for greater competition.*

- *Reconsider the possibility of granting more licenses for mobile telephone service.*

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