Regulatory Reform in Spain

Enhancing Market Openness through Regulatory Reform

OECD

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FOREWORD

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

This report on *Enhancing Market Openness through Regulatory Reform* analyses the institutional set-up and use of policy instruments in Spain. 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 Spain* published in 2000. The Review is one of a series of country reports carried out under the OECD's Regulatory Reform Programme, in response to the 1997 mandate by OECD Ministers.

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

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

This report was principally prepared by Denis Audet, of the Trade Directorate with the participation of Sophie Bismut, Didier Campion and Mark Warner. 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 Spain. 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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Executive Summary

Background Report on Enhancing Market Openness through Regulatory Reform

The accession of Spain to the European Communities (now the European Union) in 1986, the transposition of EU Single Market Directives and its recent qualification for the European Monetary Union have fundamentally changed the Spanish trade and investment environment. As a result, Spain has effectively moved away from a managed approach to foreign competition and towards full free movement of goods, services, capital, and people with EU member states and much more open trade relationships with non-EU countries. The Single Market Directives, aimed at eliminating internal obstacles to trade, have acted as policy anchors and brought benefits to the world community through several of their attributes, including transparency and non-discrimination requirements. Spain is generally recognised by member states for its diligent implementation of EU Directives, which have required considerable changes in the overall Spanish legal system.

Efforts were recently made to improve the elaboration process of domestic laws and regulations through the use of more transparent procedures and added recourse to justify and evaluate new laws and regulations. A legalistic approach still predominates in the elaboration process of domestic regulations and technical regulations with in practice limited use of economic instruments as benchmarks to evaluate the estimated economic costs and benefits of regulations. The process of public consultation is also characterised by the exercise of a certain degree of discretionary power by sponsoring ministries. Although draft regulations are not systematically assessed against the "efficient regulation principles", evidence is available to suggest that the principles of non-discrimination, use of international standards, and recognition of equivalence are given ample expression in practice.

Spain uses the Internet for disseminating central government formalities and regulations to the public. The use of the Internet for soliciting comments on draft regulations and for facilitating government procurement procedures can be improved as a means to improve transparency. Spain is among the leading EU member states in the implementation of an electronic-based customs system. At the EU level, higher priority should be assigned to the task of speeding-up the implementation of an EU-wide electronic-based system for customs procedures to respond more efficiently to the requirements of the Single Market, including transit operations.

Considerable efforts have been made to reduce the role of government in economic activities through a comprehensive privatisation programme. Efforts have been made to establish an institutional competition infrastructure through the Competition Defence Service, the Competition Tribunal and specialised commissions to regulate the telecommunications and the energy sectors. Evidence shows that the Spanish government has demonstrated a strong commitment to liberalising the telecommunications and electricity sectors and in promoting enhanced competition in these sectors. Nevertheless, continuous efforts are required to minimise the risk of the potential abuse of dominant position by certain firms in these sectors and the adverse effects that this situation may cause on the ability of both domestic and foreign firms to compete in Spain. In the automobile sector, Spain has attracted significant foreign investment, which has boosted its exports significantly. However, Spain has achieved this success against the background of relatively high tariff protection (the EU common external tariff) and a contradictory competitive stance by the EU Commission, although recent EU Commission positions have definitely been pro-competitive.

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

The accession of Spain to the European Communities (now the European Union) in 1986 and its subsequent participation in other EU-based integration initiatives have fundamentally changed the Spanish trade and investment environment. During the process, Spain has effectively moved away from a managed approach to foreign competition and towards full participation in the EU Single Market and more open trade relationships with non-EU countries. As a consequence of its accession, the United Nations graduated Spain from a developing country status to a developed country status. There is a symbolic value in this graduation but, underneath it, Spain made irreversible commitments within the EU and the World Trade Organisation (WTO) implying systemic policy changes, which have transformed the Spanish economy and brought benefits to the world community.

The EU accession has had a profound influence on Spanish policy formulation, because of the scope and pace of the policy reform that it has involved. By integrating into the EU Customs Union, Spain has foregone the right to follow an independent trade policy but in return gained improved market access to other EU member markets and a voice in the elaboration process of the EU common external trade policy. In particular, it meant the phasing-out of the prevailing Spanish customs tariffs over a seven-year period for most products originating from the EU and the European Free Trade Association (EFTA) countries, with a 10 year period for some agricultural products. For imports originating from other countries, differentials in duty rates between prevailing Spanish duties and EU common external duties were phased out during a seven-year transitional period.[1]

In addition to customs tariffs, Spain had over 4 500 quantitative restrictions (QRs) in application in 1986, which affected a whole range of imports from both EU and non-EU countries. In the context of the implementation of the European Single Market in 1993, these were dismantled along with QRs maintained by other EU member states. On this occasion, some 6 000 QRs applied by EU member states were unilaterally dismantled and few national QRs were converted into Community-wide quotas.[2]

Accession also meant that Spain had to assume all prevailing EU rights and obligations, the "*acquis communautaire*", some of it immediately upon accession and the rest over a transitional period.[3] In essence, Spain was required to provide free movement in the areas of goods, services, capital, and people -- the four freedoms -- to other EU member countries in return for similar commitments. These requirements have necessitated considerable changes in the overall Spanish legal system, including constitutional, administrative, fiscal, labour, and commercial laws. As an illustration of the scope of legislative changes involved, Spain along with other member states integrated some 1 400 EU Directives between 1985 and 1997.[4] The Single Market Directives themselves aimed at eliminating internal obstacles to trade have acted as strong policy anchors against the temptation to backtrack.

Prior to its accession, Spanish authorities estimated that the average rate of duty applied on industrial products from non-EU member countries was 11.3% in 1985. In 2001, once all EU tariff reduction commitments undertaken during the Uruguay Round are fully implemented, the average unweighted tariff rate on industrial products is scheduled to be 3.7% (3.0% taking account of tariff elimination commitments of the recent WTO Information Technology Agreement).[5] As expected, this regional integration process modified significantly the geographical composition of Spanish trade, with a jump in the share of total imports coming from EU countries, increasing from 39.1% in 1985 to 62.7% in 1990 and over 67% in 1998 (see Table 9). Reflecting trade liberalisation measures, the goods and services propensity ratios for Spain, measured in both current and constant pesetas, increased significantly particularly after 1990 (see Table 1). The goods propensity ratios (import plus export in current pesetas) had initially declined between 1986 and 1990 but increased steadily afterward from 29.1% in 1990 to 43.7% in 1998.

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Table 1. **Trade propensity ratios for Spain**

Trade propensity ratios	1986	1990	1995	1998
Goods and services (constant)[1]	37.58	45.05	60.96	N/A
Goods and services (current)[1]	37.37	37.34	46.77	58.4
Goods propensity ratio[2]	32.5	29.1	36.9	43.7
Import propensity	14.5	11.3	16.4	19.7
Export propensity	18.0	17.8	20.5	24.0

1. The Goods and services propensity ratios in constant and current pesetas represent the combined goods and services imports and exports as a percentage of gross domestic product (GDP).

Source: Prepared by the *Ministerio de Economia y Hacienda*.

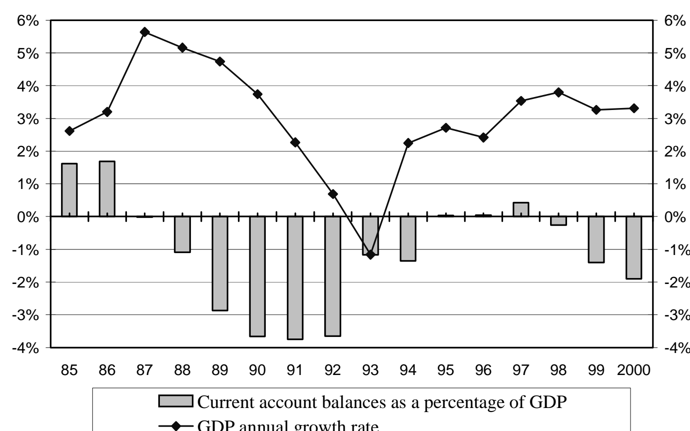
2. The Goods propensity ratios are the sum of the import and export propensity ratios and they do not include trade in services. The import and export propensity ratios represent imports or exports as a percentage of GDP.

Source: OECD Main Economic Indicators.

The Spanish foreign investment regulatory framework was radically modified in 1985 in preparation for the accession. It involved the removal of several restrictions on capital flows and the adoption of EU compatible technical regulations. Some restrictions were maintained, including the need for prior authorisation for investment in five special sectors (gambling, radio, television, air transport, and defence-related), the obligation to formally register through Spanish notaries and various obstacles to the transfer abroad of profits and dividends and the repatriation of capital.[6] In 1992, exchange controls were repealed to transpose the EU Directive on the deregulation of capital flows. In April 1999, a new investment regime has been approved by Royal Decree that transposes various EU provisions relating the application of the Maastrich Treaty. It also eliminates remaining obstacles with respect to the clearance system, the registration through Spanish notaries and the prior authorisation for non-EU residents for investment in the special sectors, except in the defence-related sector.

Trade and investment liberalisation commitments have contributed to stimulate economic growth and to inject a dose of competition in the previously closed or semi-closed economy. Real GDP growth rate jumped from about 2.6% in 1985 to more than 5% in 1987 and 1988 and 4.7% in 1989. The opening of the economy was also accompanied by a series of sizeable annual deficits in the current account. The current account balance has been relatively stable since 1995 with three consecutive years of small surpluses. The outlook for 1999 and 2000 is for moderate but growing current account deficits.

Figure 1. **Spain real GDP growth rates and current account balances**



Source: OECD *Economic Outlook*, June 1999 (data is estimated for 1999 and is projected for 2000).

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Due to its trade and investment liberalisation, Spain attracted sizeable levels of foreign direct investment (FDI) in both physical assets (see Direct FDI in Table 2) and portfolio investment (due to changes in the statistical time series of FDI, data is not available before 1992). For a combination of market factors, the level of direct investment marked a pause between 1995 and 1997 but resumed in 1998. Portfolio investments have fluctuated widely during the 90s and the volatile nature of these investments makes it very difficult to provide the explanatory factors behind these fluctuations. In 1997, large outflows (Spanish investment abroad) of capital emerged, underpinned by sustained domestic savings and dynamic financial institutions pursuing market opportunities on a world basis and, in particular, in Latin America. Spanish investors have made significant investment in Latin American countries taking advantages of privatisation initiatives in this region. Outflows multiplied by a factor of more than seven between 1996 and 1998.

Table 2. **Inflows and outflows of foreign direct investment in Spain**

(Euro billion)

Year	1992	1993	1994	1995	1996	1997	1998
Inflows	15.8	48.3	-9.1	20.4	7.5	16.7	25.6
Direct FDI	8.2	6.2	*7.6*	4.7	5.1	5.6	10.2
Portfolio	7.6	42.1	-16.7	15.7	2.4	11.1	15.4
Outflows	3.0	7.3	4.7	3.1	7.0	25.3	55.1
Direct FDI	1.3	2.0	3.1	2.7	4.2	11.0	16.5
Portfolio	1.7	5.3	1.6	0.4	2.8	14.3	38.6

Source: Banco de España, *Boletín Económico*, March 1999.

In recognition of the economic inefficiencies caused by under-performing public enterprises providing critical inputs to the rest of the economy, a reform of the public enterprise sector was launched to accelerate the process of restructuring and privatising. Initial efforts began in 1985 with the privatisation of some state enterprises and the restructuring of loss-making industries which resulted in significant labour shedding in the coal mining industry, the shipyards, rail and air transport companies. Between 1985 and 1996, some 65 state enterprises were totally or partially privatised from several sectors, including textiles, footwear, fertilisers, automobiles, and food. In 1996 the Spanish government launched a wider exercise known as the Modernisation Programme with the objective of improving the efficiency of state enterprises during the restructuring and privatisation process and selling all but a few selected enterprises over a five-year period. This market-based approach has yielded significant opportunities for foreign investors. Table 3 gives an indication of the scope and receipts from the privatisation process. Taking into account more recent privatisation developments, Endesa, Repsol, Telefonica, and Gas Natural are now completely privatised.

This privatisation exercise went beyond EU-based prerogatives to open up EU national telecommunications and electricity markets to competition, as well as by the convergence criteria for qualifying entry into the European Monetary Union. While the sales of shares in the telephone, oil, gas, steel, aluminium, electricity, and other public enterprises raised over two trillion pesetas in 1996 and 1997, which was equivalent to 3% of 1997 GDP, the privatisation proceeds are not incorporated into budget revenues under the Maastricht rules.[7] Over four trillion pesetas were raised when 1998 privatisation receipts are included. For the time being, remaining public enterprises are in the sectors of coal mining and public television, and the Spanish government has no immediate plan to privatise them because they implement public policies. Postal services have been partially privatised and railways are now open to private initiatives. However, the postal services are the subject of EU Directives seeking to open-up EU national postal services to competition.

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Table 3. **Main privatisations in Spain, 1985-1998**

Sector	**Society**	**Date**	**Percentage of capital sold**	**Receipts (billions ptas)**
Electronics	Secoinsa	1985	69.0	-
	Telesincro	1986	100.0	-
Tourism	Viajes Marsans	1985	100.0	-
	Entursa	1986	100.0	-
Textiles	Textil Tarazona	1985	70.0	-
	Intelhorce	1989	100.0	-
Automobile	Seat	1986	75.0	19
	Seat	1990	25.0	20
	Enasa-Pegaso	1991	100.0	-
Electricity	Endesa	1988	20.0	74
	Endesa	1994	8.7	138
	Endesa	1997	25.0	660
	Endesa	1998	41.1	1 490
Oil	Repsol	1989-93	57.4	345
	Repsol	1995	19.0	130
	Repsol	1996	11.0	140
	Repsol	1997	10.0	169
Bank	Argentaria	1993	49.9	168
	Argentaria	1996	25.0	155
	Argentaria	1998	25.1	325
Telephone	Telefonica	1987	-	82
	Telefonica	1995	12.0	165
	Telefonica	1997	20.9	630
	Telefonica International	1997	23.8	131
	Retevision	1997	70.0	181
Gas	Gas Natural	1996	3.8	36
	Auxini	1997	100.0	-
Steel	CSI (Aceralia)	1997	100.0	222
	Elcano	1997	100.0	6
Aluminium	Inespal	1998	100.0	62
Duty free shops	Aldeasa	1997	100.0	56
Tobacco	Tabacalera	1998	52.4	310

Source: *La Caixa*, *Informe Mensual*, January 1999 and OECD Secretariat.

More recently, spurred by EU convergence requirements to qualify for the European Monetary Union, Spain made considerable improvement in its fiscal position. One policy consequence for Spain and other EU qualified members is that they no longer have the option of devaluating domestic currencies as a policy instrument to improve the international competitiveness of their domestic firms. In this new context, the importance of establishing a sound regulatory framework that minimises domestic obstacles to growth is more crucial than ever. Against this background, Spain would maximise the return of its comprehensive liberalisation initiatives and market-based approach by pursuing additional efforts in applying a set of efficient regulation principles as discussed in this review.

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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 the "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, 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.

– Recognition of equivalence of other countries' regulatory measures.

– Application of competition principles.

They have been identified by trade policy makers as key to market-oriented and trade and investment-friendly regulations. They reflect the basic principles underpinning the multilateral trading system, concerning which 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. Similarly, the OECD Country Reviews are not concerned with an assessment of trade policies and practices in Member countries.

In sum, this report considers whether and how Spanish regulatory procedures and content affect the quality of market access and presence in Spain. 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. This latter issue has been extensively debated within and beyond the OECD from a range of policy perspectives. To date, however, OECD deliberations have found no evidence to suggest that trade and investment *per se* impact negatively on the pursuit and attainment of domestic policy goals through regulation or other means.[8]

2.1. Transparency, openness of decision making and appeal procedures

To ensure international market openness, foreign firms and individuals seeking access to a market (or expanding activities in a given market) must have adequate information on new or revised regulations so that they can base their decisions on an accurate assessment of potential costs, risks, and market opportunities. Regulations need to be transparent to foreign traders and investors. Regulatory transparency at both domestic and international levels can be achieved through a variety of means, including systematic publication of proposed rules prior to entry into force, use of electronic means to share information (such as the Internet), 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.[9] Market participants wishing to voice concerns about the application of existing regulations should have appropriate access to appeal procedures. This sub-section discusses the above transparency and transparency-related considerations in Spain and how they are met.

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2.1.1. Transparency in the elaboration of Spanish regulations

An important aspect of transparency arises from the administrative procedures put into place for the elaboration and adoption of domestic regulations. It is therefore essential to review some of the key steps involved in order to assess the transparency-friendliness of these procedures. The background report on Government Capacity to Produce High Quality Regulation provides a detailed discussion of the Spanish process for elaborating new regulations and offers detailed recommendations for improving the transparency of the process and the institutional setting.

Spain's administrative procedures were reformed in 1997 with the Government Law (50/1997). The elaboration of new regulations involves the preparation of a "Normative Dossier" by the sponsoring Ministries (hereby referred to as regulators). The "General Commission" *(Comisión General de Secretarios de Estado y Subsecretarios*) (CGSYS) approves the regulatory projects and transmit them to the Council of Ministers for final approval. When economic interests are involved the approval of the Commission for Economic Affairs (*Comisión Delegada del Gobierno para Asuntos Económicos)* is required before concerned regulatory projects can be transmitted to the Council of Ministers. The proposed regulations come into force generally 20 days after their publication in the Spanish Official Journal (*Boletín Oficial del Estado*). The elaboration of Ministerial Orders, which include the most important rules elaborated by ministries, also requires the preparation of a Normative Dossier but are rarely reviewed beyond the sponsoring ministry.

During the preparation of the Normative Dossier, regulators must organise public consultations and prepare a series of reports that are added to the Dossier as the process follows its course. The Dossier is composed of: a report on the necessity of proposed regulations; an "Economic Memorandum"; the opinion of the Council of State (*Consejo de Estado)* on the legality of the proposal; an assessment of the realised consultation process; and as necessary the opinion of the Ministry of Public Administration (MPA).[10] Draft laws and regulations to be discussed by the Council of Ministers have to be accompanied by an "Evaluation Questionnaire". The Questionnaire is a summary of the Normative Dossier, which is only available to the Council of Ministers.

Evidence suggests that in practice the preparation of the Normative Dossier and the Economic Memorandum is well done for draft laws having significant economic impact. However, for the elaboration of draft regulations, the qualitative assessment of the Economic Memorandum is often limited to an accounting impact on the public budget of draft regulations. The preparation of the Normative Dossier, including the Economic Memorandum, may be compared to a Regulatory Impact Analysis (RIA) in the sense of the OECD best practices.[11] However, during the preparation of the Normative Dossier, regulators are not explicitly asked to assess the quantitative impact of the draft regulations on society nor to do a formal cost and benefit analysis. Also, regulators are not asked to verify the respect of the efficient regulation principles in particular the non-discrimination or the least trade restrictiveness principles.

Public consultations on regulatory matters are a constitutional requirement in Spain, called *trámite de audiencia.* The 1958 Administrative Procedure Law provided specific consultation procedures. These were reformed in November 1997 by the Government Law (50/1997) and in 1992 by the Law (30/1992) on the Legal Regime of Public Administration and Common Administrative Procedures. Regulators are required to provide a reasonable period for public consultation, which in general must not be less than 15 working days, although it can be reduced to seven working days under certain conditions.[12] They are required to prepare a written statement, to be included in the Normative Dossier, summarising the consultations and justifying the consultation mechanism used. The regulators must answer all comments and the responses can be done in a generic way answering simultaneously all consulted interested parties only if they refer essentially to the same matters. Three different mechanisms of consultation are identified: consultation of interested parties; consultation with organised groups; and the notice and comment mechanism. At the end of the elaboration procedure for proposed regulations, the Council of State assesses the extent and results of the consultation (except for Ministerial Orders and some laws).

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The law (50/1997) specifies that the regulators should consult citizens if the proposed regulation affects their "legitimate rights and interests" either "directly or through the representative organisations and associations legally established ... and whose objectives are directly connected with the goal of the proposal". While the law identifies various consultation mechanisms, it does not define the moment of consultation; the elements of the Normative Dossier to be provided to the consulted parties; the criteria to evaluate the quality of the consultation nor the decisions taken by the regulators on the selected consultation mechanism. In practice, regulators have discretionary power in deciding who are the interested parties that will be included in the consultation process and what information they have at their disposal to evaluate the proposed regulations.

On 23 April 1999, the "Inter-Ministerial Commission for Administrative Simplification" was created by Royal Decree (670/99) and it is composed of several Secretaries of States, Deputy-Secretary of all Ministries and it is under the chairmanship of the Minister of Public Administration. This Inter-Ministerial Commission has the specific mandate to "eliminate all unnecessary formalities before April 2000". The establishment of this Commission will certainly raise the priority assigned to administrative simplification, permit the reduction of existing authorisations, permits and licences, and improve the application of the remaining ones. However, this Commission's mandate does not include assessing the stock of existing regulations against economic criteria, such as a cost and benefit analysis or the efficient regulation principles.

Overall, significant efforts were recently made to improve the elaboration process of domestic laws through the use of more transparent procedures and added recourse to justify and evaluate new laws and regulations. The process of public consultation of domestic regulations could be improved. For example, the transparency of the process can be improved if draft regulations were published in the Official Journal and made available through the Internet. Similarly, consulted parties should have access to the Normative Dossier. These steps would contribute to minimise the exercise of discretionary power by regulators in selecting who are considered as affected interested parties and what information consulted parties have at their disposal to assess the draft regulations. Also, it remains that the elaboration process does not explicitly require the assessment of draft laws and regulations, neither against the efficient regulation principles nor against a formal cost and benefit analysis. Therefore the elaboration process of regulations can be improved by implementing across the administration a step-by-step programme for improving regulatory impact assessment, based on OECD best practice recommendations for all new and revised regulations. From the perspective of market openness, the criteria of non-discrimination and least trade restrictiveness should be specifically added in the regulatory impact assessment process. The background report on Government Capacity to Produce High Quality Regulation provides detailed recommendations for strengthening the transparency and the institutional setting as well as minimising the discretionary powers of regulators.

2.1.2. Transparency in the elaboration of government-sponsored technical regulations

The Spanish elaboration of government-sponsored technical regulations (technical regulations) follows the same procedure as for Spanish draft regulations, discussed above. However, there are additional opportunities for interested foreign parties to take part in the elaboration process arising from the notification procedures resulting from Spain's obligations as a member of the EU and the WTO. These procedures aim at preventing the emergence of technical barriers to trade. They give interested parties the opportunity to comment on the regulatory decision-making process at a relatively early stage, before technical regulations are published and enter into force, and to raise any objections against technical regulations which could create obstacles to trade. They also provide for the creation of information points, which help disseminate the information on regulations.

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In all EU member states, when draft technical regulations are not pure transpositions of EU harmonising Directives, they must be notified to the European Commission.[13] The obligation gives the European Commission and other EU member states the opportunity to comment on new or modified national rules for a period of three months, which may be extended for an additional three or 12 months depending on the circumstances. They can, for example, raise questions of interpretation, ask for further details, or challenge the conformity of prospective rules with Community law while they are still at the drafting stage. Failure to notify or to respond to comments can result in the Commission launching an infringement procedure (see Box 1 for details).

Box 1. **EU notification requirements**

Provision of information in the field of technical regulation in the European Union

To avoid erecting new barriers to the free movement of goods, which could arise from the adoption of technical regulations at the national level, EU 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 recently extended the scope of the notification obligation to rules on information-society services. Notified texts are further communicated by the Commission to the other member states and are in principle not regarded as confidential, unless explicitly designated as such.

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

Similarly, as far as standards are concerned, Directive 83/189 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 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.

Although first directed at member states the procedure benefits the private sector in the EU by opening a window on national regulatory activities. Each week the European Commission publishes the titles of draft national technical regulations in the Official Journal of the European Communities. Any private individual or firm interested in a notified draft technical regulation can obtain the text from the administration. In this way, firms may anticipate the adoption of future regulations or participate more or less directly in the regulatory making process. They may submit comments to the Commission or their government (both can send official comments to the notifying member state). The European Commission's website will soon include information on notifications. This initiative should significantly promote the awareness of all interested parties, whether European or not, as regard national regulatory activities within the EU.

The notification procedure has enhanced the transparency of the regulatory decision making process all over the European Union, thus reducing the risks of regulatory capture. Since its inception in 1985, the procedure has helped build the principle of transparency into the regulatory practices of European countries as far as the technical rules are concerned. Enforcement is ensured through the infringement procedures, which the Commission can initiate when countries fail to notify their prospective rules. Between 1995 and 1997, the Commission launched six infringement procedures against Spain out of a total of 96 for all EU countries. The incentive of countries to notify, and thus the efficiency of the

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system, has been strongly reinforced by the 1996 "Securitel" decision by the European Court of Justice.[14] 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.

In the EU, the notification procedure has recently been complemented by a new procedure requiring member states to notify the Commission of national measures derogating from the principle of free movement of goods within the EU.[15] This procedure was established in view of persisting 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 any measure which imposes a general ban, or requires a product to be modified or withdrawn from the market. Whereas the notification procedure for draft technical regulations mentioned above acts on the period preceding the adoption of technical regulations, this procedure deals with measures taken after the adoption of technical regulations. So far, the new procedure has produced limited results. The general level of notifications remains very low (33 in 1997, 68 between 1.1.98 and 15.10.98) which, according to the European Commission, may indicate that the mechanism is under-used.[16]

To the extent that notified prospective regulations are not based on relevant international standards, the European Commission transmits the information to the WTO Secretariat and other WTO members in accordance with the WTO Agreement on Technical Barriers to Trade (TBT). Similarly, notification required under other WTO provisions, such as the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS), or regular notifications in the framework of WTO Agreements on Agriculture, Rules of Origin, Import Licensing, etc., is made to the WTO by the European Commission on behalf of member states. WTO members may comment on the drafts and the notifying country has to react. If not, the case may be raised in the WTO system via the TBT Committee and if this does not lead to an acceptable solution, then it is dealt with through the dispute settlement procedure. Following the TBT and SPS Agreements, an enquiry point about standards and technical regulations has been established in Spain.

Overall, as the technical regulations are subject to the EU Directives on notification requirements, this acts as an important check and balance feature to minimise the emergence of obstacles to the free movement of goods within the EU. The effectiveness of the notification requirement is likely to be proportional to the amount of information available and the facility with which interested parties can effectively use the three-month period to influence or pre-empt the adoption of trade inhibiting standards. In this respect, two aspects of the notification requirement are worth emphasising. First, only the titles of draft technical regulations are published in the Official Journal of the European Communities but underneath an abstract title important dimensions may miss the attention of observers. Second, the notification process is basically a member-to-member process in which the concerned of private citizens or organisations must first be processed through the government of one EU member or the EU Commission before it is transmitted to the author member of the draft technical regulations. Therefore the access is indirect. The creation of an Internet site by the EU Commission for the dissemination of information about draft technical regulations has the potential to improve further the transparency in the elaboration of technical regulations.

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2.1.3. Transparency in the elaboration of voluntary technical standards

The only Spanish national standardisation body entrusted with the responsibility to prepare voluntary technical standards (standards) is AENOR (*Asociación Española de Normalización y Certificación).* It is not allowed to subcontract the drawing up of standards. It is required by law to elaborate national standards with the open participation of all interested parties, without any nationality-based discrimination. It is the Spanish member of the European Standardisation Committee (CEN) and the European Committee for Electrotechnical Standardisation (CENELEC).

AENOR participates in the development of European standards and is responsible for the transposition as UNE (*Una Norma Española*) standards of all standards published by other European Standardisation Bodies, as well as for their diffusion, promotion and marketing. It is the national standardisation body in Spain for the European Institute of Telecommunications Standards (ETSI) and is responsible for managing the public consultation process in Spain and for adopting ETSI standards. AENOR is a member of the Pan American Technical Standards Commission (COPANT). At the international level, it is the Spanish member of the International Standardisation Organisation (ISO) and of the International Electrotechnical Commission (IEC). It has also adopted the WTO TBT Code of Good Practice for the Preparation, Adoption and Application of Standards.

The creation of a UNE or voluntary standard takes place in one of AENOR's 136 Technical Standardisation Committees (TSC) in charge of developing standards in specific fields of activity. The TSCs gather manufacturers, consumer associations, government representatives, testing laboratories and certification bodies, and other entities that can be affected by the development of standards. When a draft is under preparation, the firms and other interests, which are considered most affected by the project, are informed and invited to participate in the meetings. AENOR's rules indicate that committees must consider the participation of other standardisation bodies, which are members of CEN/CENELEC. More broadly the participation of foreigners, including from outside the European Union, is not restricted. Decision-making is based insofar as possible on consensus and an attempt is made to avoid resorting to the voting system. Any business or professional organisations, including any manufacturer or individual, can call for the creation of a standard on concrete technical specifications.

Once a draft standard is approved by the concerned TSC, the title of the draft standard is published in the Spanish Official Journal and any individuals and legal entities are invited to submit comments. The time period for public consultation is set on a case by case basis. AENOR's publication, *UNE magazine*, plays a role in raising attention by publishing a list of new works initiated and of projects that will be subject to public consultation. After examining the comments, the TSC prepares a final proposal, which has to be approved by the governing bodies of AENOR.

Eventually, the finalised standard is notified in the Official Journal and included in AENOR's catalogue. AENOR provides information on all stages of the process, from the initiation of work to publication, in its monthly publication. Its Internet website (www.aenor.es) includes a search engine for Spanish standards and draft standards. New or modified voluntary standards are also subject to the notification obligations set up under the EU Directive 98/34. Overall, the preparation of voluntary technical regulations is subject to more stringent transparency and public consultation procedures than official technical regulations.

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Box 2. **The structure of AENOR**

AENOR was established in 1986. It is a private and independent non-profit association. It is the only Spanish national standardisation body entrusted with the responsibility to prepare voluntary technical standards. AENOR is accredited by ENAC (*Entidad Nacional de Acreditación*), the Spanish accreditation body, as a certification body for quality systems ISO 9000, environmental management system ISO 14001, and quality system QS 9000 for the automobile sector as well as certification products (EN 45011 and EN 45018).

According to its statutes, any individual or any legal entity, public or private, which shows a special interest in the development of standardisation and certification activities can be admitted as a member of the Association. There is no discrimination based on nationality. Among its 937 members, there are 139 corporate members (professional business organisation representing all the economic and industrial sectors as well as national consumers associations), 660 joined members (firms), and 138 individual members.

The structure of AENOR is composed of a Board of Management, a Standing Committee and is headed with a president. The composition of the Board of Management, which cannot have more than 70 members, must guarantee an adequate representation of the different types of members and interested parties. It includes ten representatives of public authorities and eight members chosen by the Assembly from among organisations interested in the activities carried out by AENOR. The remaining members are elected on a sectoral basis. The president, a minimum of six members, and a representative of public authorities form the Standing Committee.

The European Commission has recently taken further initiatives to promote transparency and facilitate the understanding by market participants of the rules governing the Single Market. In a 1998 report, the Commission called for further efforts to bring standardisation and standards to the attention of market participants, in particular SMEs.[17] The European Commission has created new information points, notably on its Internet website. A one-stop Internet shop for business recently opened on the European Commission Internet website under the name “Dialogue with Business”.[18] It provides business with general information on Single Market rules and some key issues, such as technical standards or public procurement. The site is linked to “Euro Info Centres”, which are set up all over the European Union and specialise in technical standards. They can provide business with information on the application of standards, conformity assessment procedures, CE-marking or quality initiatives in Europe. The European Commission has also very recently opened a new website in co-operation with the European standardisation bodies, which gives information on European New Approach directives and harmonised standards.[19]

Overall, the elaboration of voluntary technical standards is subject to rigorous criteria in terms of transparency and public consultation. First, the titles of draft standards are published in the Spanish Official Journal. Second, in terms of public consultation, participation in AENOR’s Technical Standardisation Committees is not restricted. Third, AENOR provides information on all stages of the elaboration process of voluntary standards, including the availability of draft and finalised voluntary standards through the Internet. These act as major check and balance features to minimise the emergence of obstacles to the free movement of goods within the EU. The world community benefits directly from the application of the transparency procedures and indirectly through the reduced risk of regulatory capture.

2.1.4. Government procurement

In OECD countries, although government procurement procedures are in principle transparent, the cost of retrieving relevant information can be substantial for small-, medium-sized and foreign enterprises. Specifications with no obvious relationship to the nature of the contract involved can be used to disqualify bids. Appeal procedures may not be clearly established or may be so burdensome that contractors will not even consider recourses in cases of alleged infringement of procedures. In this connection, foreign and domestic participants have legitimate expectations about the appropriate degree of transparency that domestic government procurement procedures should abide to.

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The Spanish legal framework on government procurement procedures transposes the guiding principles provided for in the EU Government Procurement Framework, which is based on six substantive Directives.[20] The substantive Directives apply to procurement procedures of all member states and their regional and municipal administrations. They provide for the principles of transparency, non-discrimination and equal treatment, which altogether enhance competition.

Box 3. **The EU government procurement framework**

The transparency principle is applied concretely through various requirements. Contracting authorities must prepare an annual indicative notice of total procurement, by product area and exceeding an annual minimum threshold, which they envisage awarding during the subsequent 12 month period. The annual indicative list and any contract whose estimated value exceeds specific thresholds must be noticed in the Official Journal of the European Communities. Contracts must indicate which of the permissible award procedures is chosen (open, restricted, or negotiated procedures) and they must use objective criteria in selecting candidates and tenders, which criteria must be known beforehand. Contracting authorities are also obliged to make known the result of contract procedures through a notice in the Official Journal of the European Communities.

Member states are also obliged to provide appropriate procedures for judicial review of decisions taken by contracting authorities that infringe Community laws or national implementing laws. In particular, they have to provide for the possibilities to implement interim measures, including the suspension of contract award procedures, for setting aside decisions taken unlawfully and for awarding damages to persons harmed by an infringement. The EU Directives require that these procedures shall be effectively and rapidly enforced. The appreciation of these qualitative criteria is likely to be a difficult task in practice due to the diversity of culture and judicial systems among EU member states.

With respect to the twin principles of non-discrimination and equal treatment, the main requirements involve: the use of minimum periods for the bidding process; the use of recognised technical standards, with European standards taking precedence over national standards; and the prohibition against discrimination as provided under the Treaty of Rome. The latter prohibits any discrimination or restrictions in awarding of contracts on the grounds of nationality and prohibits the use of quantitative restrictions on imports or measures with equivalent effect. It also provides for the freedom of nationals of one member state to establish themselves in the territory of another member state and the freedom to provide services from any member state. The EU Directives on mutual recognition of professional services and the New Approach for technical standards (see Box 3 in Section 2.4) further contribute to minimise potential incidences of discrimination.

In Spain, the "*Ley de Contratos de las Administraciones Públicas*" (Law 13/1995) consolidates the various legislative instruments applied to transpose prevailing EU Directives. Spain benefited from derogation periods to transpose the Remedies Utilities Directive (92/13) and the Public Supplies Directive (93/36) (a similar derogation was granted to Portugal and Greece). Although the Commission has sent some letters of formal notice to Spain for non-transposition of procurement Directives at the required deadlines, the issues were resolved without recourse to the advance stages of the EU infringement procedures (the delivery of reasoned opinion by the Commission or references to the Court of Justice). A draft law was recently submitted to Parliament with the objectives of modifying certain provisions of the Law 13/1995 to incorporate recent amendments to EU Directives that implement the WTO Government Procurement Agreement. The draft law also provides for a set of tighter rules to better protect contracting authorities against requests by contractors for additional payments due to unexpected cost overruns on top of the agreed terms spelled out in the contract.

Overall, by virtue of the application of the transparency, non-discrimination and equal treatment principles, firms and individuals from EU member states directly gain significant benefits in terms of equal opportunities to compete for public contracts from Spanish awarding authorities. Non-EU firms and individuals directly gain from the overall transparency of binding EU procurement rules and indirectly through the enhanced competitive conditions conferred by the openness of the Spanish investment rules, the non-discrimination and equal treatment principles. The European Commission also undertook specific commitments in the context of the WTO Government Procurement Agreement (GPA), which lists the contracting authorities of each EU member state, including Spain, that are subject to the Agreement.

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2.1.5. *Customs procedures*

In any country, importers can incur significant cost overruns when shipments are held in customs warehouses as a result of inefficiencies in customs procedures. The corruption of customs officials is also encouraged when regulations provide them with wide discretionary powers. As customs tariffs are generally low within OECD countries, cumbersome customs procedures are increasingly perceived by traders as major trade obstacles and are often assimilated as non-tariff barriers. Against this background, achieving greater efficiency in customs procedures, through transparent and even application (non-discrimination) of procedures, is a necessary complement to trade liberalisation initiatives.

Similarly, the lack of transparency or uneven application of customs regulations and procedures between various ports of entry can encourage traders to engage in port shopping to find out which entry ports will provide them more favourable conditions. The implications go far beyond the simple loss of government incomes. Inconsistency and lack of transparency undermine the trade policy framework and provide competitive advantages to traders that have benefited from more favourable treatment. Trade flows may then be diverted from entry ports for reasons other than transportation efficiency.

Box 4. **The EU customs procedures**

There are over 3 000 customs entry ports within the European Union distributed within its 15 member states to respond to air, sea and land border crossing points. EU customs procedures are carried out in the 11 official languages. Customs officials are not only responsible for the administration of trade policy measures, including customs duties, rules of origin and tariff-quotas, but also for the application of respective national value-added taxes, excise taxes, and a whole range of country-specific national regulations, covering pornography, weapons, health and sanitary protection. In total, EU customs authorities estimate that they are responsible for the application of over 400 different regulatory measures. The task of managing in a coherent way which ensures an even application of EU customs procedures throughout the 15 different national administrations is therefore colossal, by any standards.

Within the EU, the administration of customs procedures is decentralised among the member states and the Commission assumes a co-ordinating role. Harmonisation of customs procedures is provided by the application of the Community Customs Code for all member states and a structure of EU committees is set up for ensuring a proper cohesion. One of these committees is the EU Customs Code Committee, which examines necessary amendments to the Customs Code. The latter contains over 250 articles and some 900 amendments were approved since 1996, when the last consolidation of the EU Customs Code was realised. In March 1998, Spain has published a Spanish compilation of the EU Customs Code and its amendments, which are now available on the Internet.

Amendments to the Customs Code must be properly notified in the Official Journal of the European Communities before they are enforced. Keeping track of EU amendments is the day-to-day reality for professional customs brokers and their ignorance can imply significant transaction cost overruns and additional administrative burdens on them or their clients. The EU Customs Code and its amendments are not yet available on the Internet. The Commission is currently considering the creation of an Internet site to disseminate the relevant information.

The implementation of the Single Market in 1993 and the Schengen Treaty, eliminating intra-EU border checking for several EU member states, have stretched the limits of the EU paper-based transit procedures and exposed its weaknesses.[21] A temporary Committee of Inquiry was established in December 1995 by the European Parliament to examine the alleged problems with the Community transit system. The four-volume report of the Committee concluded that transit procedures were indispensable for the functioning of the Single Market and recommended a series of recommendations, including the adoption of a comprehensive computerised transit system and the reform of the guarantee system.[22] The Commission has effectively modified several provisions of its transit system and has invested in the development of a new computerised transit system (NCTS). The Commission hopes to implement its first pilot project on the NCTS in 1999. Spain was selected to be among the first EU member states to implement the pilot project on the NCTS in recognition of the advanced development of its computerised transit system.

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The Spanish Customs authorities oversee 125 customs entry ports distributed throughout the Spanish territory. They have effectively applied a computerised system based on the United Nations Electronic Data Interchange Protocol and harmonised data-set (UN/EDIFACT) since 1994 for export transactions and 1996 for import transactions.[23] The EDI system enables users to submit their import and/or export declarations to customs authorities and to receive customs permissions through electronic exchange. Spanish authorities estimate that EDI declaration forms are used on about 70% of import declarations and 95% of export declarations. With the proper use of EDI-based declaration forms, goods can be customs cleared within a few seconds. Before the implementation of the computerised EDI-based system for imports, Spanish authorities estimated that the average customs clearance time was four hours per transaction.

The Spanish authorities and other EU authorities apply the principle of risk assessment for the physical inspection of shipments and more in-depth verification of documentary forms. Carrying out a physical inspection of all shipments would result in significant delays for users in entry ports and translate into inefficiency costs for both users and customs authorities. A simplified declaration system is also used, based on periodical entry declarations to facilitate customs procedures for frequent and reliable users. It is estimated that this simplified procedure is now used in Spain on about 30% of the total import traffic.

Overall, ensuring that transparency and non-discrimination are effectively enforced in the application of EU customs procedures is a very complex task given the number of entry ports involved and the cultural diversity of EU member states. Pursuing greater simplification and harmonisation of customs procedures is a necessary complement to trade liberalisation initiatives as cumbersome procedures can hinder trade and translate into high transaction costs for traders. In the light of the efficiency gains for parties concerned, the EU Commission should attach a top priority to the following: the implementation of an EU-wide electronic-based system for customs procedures; the implementation of a new computerised transit system (NCTS) throughout the EU; the development of a comprehensive Internet site; and the preparation of a new consolidation of the EU Customs Code.

2.1.6. Multilateral transparency commitments

The General Secretariat for External Trade from the Ministry of Economy and Finance (*Ministerio de Economía y Hacienda*) oversees the implementation of transparency provisions relating to Spanish obligations contained in the WTO and other trade agreements. This oversight concerns not only obligations regarding transparency but those concerning non-discrimination and national treatment. The EU Commission also plays a similar role at the EU level for subjects falling within its purview. With regards to the elaboration of domestic regulation, the General Secretariat reviews all draft regulations that may have an impact on trade and investment.

The General Secretariat also participates actively in the Inter-ministerial Commission for WTO negotiations (CIOMC), which has two main functions. The first is to play a co-ordinating role for determining Spanish positions concerning WTO trade negotiations. The second is a co-ordinating role in encouraging government-wide awareness of and respect for international obligations relating to domestic regulatory matters, such as the WTO/GATT Article III (national treatment on internal taxation and regulation) and regulatory commitments arising from other WTO Agreements, such as the Technical Barriers to Trade (TBT) and the Sanitary and Phytosanitary Measures (SPS). Units of the General Secretariat act as the contact points for both the TBT and SPS Agreements.

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2.1.7. *Autonomous communities in Spain*

In Spain, sub-national and supranational levels are inextricable elements of the regulatory framework, and developments at one level can affect developments at the others. From a highly centralised system in which there were two levels of government, Spain has moved to a three-tier system composed of central, regional, and local governments. The regional level is made up of 17 self-governing or autonomous communities established between 1978 and 1983. The local level is sub-divided into two tiers: 50 provinces and about 8 000 municipalities. Given the important responsibilities of the autonomous regions and large cities, the potential would exist for conflicting regulations that would frustrate the free circulation of goods and services within the Spanish territory. However, to the extent that EU Single Market Directives also apply to the autonomous regions and large cities of Spain, the potential risk of conflicting regulations is considerably reduced.

With a political momentum toward devolution, the central government has concentrated its resources in reinforcing co-operation instruments. A web of intergovernmental boards or "sectoral conferences" has been created since the early 1980s to prevent conflict and improve communication between the national government and the autonomous communities. In mid-1999, 27 sectoral conferences are operating. Chaired by the responsible national minister, each conference specialises in policy areas (education, health, industry and energy, labour, etc.). The meetings cover the subjects of interest to both parties, though the central government decides whether a consultation is necessary. It is through these fora that each national ministry consults with the autonomous communities on legal proposals and European Directives before they are submitted to Parliament.

As a complement to the sectoral conferences, the central government also established in January 1999 new institutions and co-operation instruments. The Bilateral Co-operation Commissions (*Comisiones Bilaterales de Cooperación*) between the central government and individual autonomous communities is intended to permit a more focused and prompt approach to problems. The 1999 reform also established a new form of agreement, "co-operative convenants", that provides an institutional framework to develop joint plans and programmes between the different governments on particular issues. Assessing the application of the efficient regulation principles by the autonomous and large cities is beyond the scope of the current study. Through the co-operation institutions between the central government and autonomous communities, the central government should promote the awareness and encourage respect of the efficient regulation principles. The background report on Government Capacity to Produce High Quality Regulation provides more detailed information about the co-ordination between levels of government.

2.2. *Measures to ensure non-discrimination*

Application of non-discrimination principles aims to provide effective equality of competitive opportunities between like products and services irrespective of country of origin. Thus, the extent to which respect for two core principles of the multilateral trading system -- Most-Favoured-Nation (MFN) and National Treatment (NT) -- is actively promoted when developing and applying regulations is a helpful gauge of a country's overall efforts to promote trade and investment-friendly regulation.

Article 1 of the Spanish Constitution includes a general prohibition against discrimination and through membership in the WTO Spain subscribes to the MFN and national treatment principles. It falls upon the General Secretariat for External Trade to act as an oversight agency to ensure that the implementation of non-discrimination and national treatment provisions stemming from the WTO and other international trade and trade-related investment agreements are effectively implemented. Within the WTO dispute settlement process, trading partners have the opportunity to request consultation with Spain and/or the EU Commission, depending on the area of competence, for alleged infringement of any WTO

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obligations including MFN or national treatment obligations. If the consultation does not lead to a mutually satisfactory outcome, trading partners have the right to request the establishment of panels which will examine the case and prepare a report on the compatibility of the alleged measures with WTO obligations.

In early 1999, there were no outstanding consultations or panel deliberations directly targeting Spanish policies. However, given the EU Commission competence on trade issues, there were several outstanding dispute settlement procedures in which trading partners are alleging infringement of WTO obligations by the EU. Since the EU acts on behalf of its member states on trade policies, it is not possible disassociate any member state, including Spain, from EU trade policy stances. The majority of the complaints involved the EU agricultural policies and its import regime for agricultural products covering such products as: bananas, butter, coffee, rice, grains, cereals, processed cheese and meat (hormones). Conversely, the EU on behalf of its member states is pursuing several WTO dispute settlement procedures against alleged incompatible measures by trading partners. The EU is one of the largest trading partners in the world and it has a strong interest in preserving the integrity of the WTO dispute settlement procedures. Overall, it is acting in good faith in responding to complaints by trading partners and in abiding to the WTO Panel decisions.

Overtly discriminatory regulatory content is fairly exceptional when viewed from an economy-wide context and against the wide WTO and regional trade commitments entered into by the EU. Existing measures that discriminate against foreign ownership are the exceptions to an overall liberal investment regime. EU and non-EU foreign investors are still subject to an authorisation requirement for investing in the defence-related sector. These types of exceptions are fairly limited in scope and complete or partial deregulation across many sectors of the economy has already generated attendant pro-competitive effects for international market openness. A few areas deserve some attention, however, such as preferential trade agreements and trade in services. Each of these is reviewed below.

2.2.1. Preferential trade 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 commitments, 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 assessment of any impact on their commercial interests. In addition, substantive approaches to regulatory issues such as standards and conformity assessment can introduce the 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.

Since its EU accession in 1986, Spain has *de jure* participated in all preferential trade agreements entered into by the EU. The most relevant ones are the Free Trade Agreements (FTAs) with the European Free Trade Association (EFTA), the European Economic Area (EEA), several European Agreements with Central and Eastern European Countries (CEECs), and several Euro-Mediterranean Agreements.[24] The European Union has entered into preferential non-reciprocal agreements with several Mediterranean countries, in the context of the Lomé Convention and the EU General System of Preferences (GSP) in favour of developing countries.

To the extent that the various FTAs are comprehensive in scope, the likelihood is that these will generate trade creation processes larger than the trade diversion inherent in any FTA. In the context of the increasing number of FTAs entered into by the EU, Spain has gradually been exposed to incremental levels of increased competition and, conversely, gained preferential access to new markets. The EU Commission is currently negotiating a free trade agreement with Mexico.

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The attitude of participating countries towards non-members may be assessed against their willingness to extend on a multilateral basis the benefits of their preferential agreements. In this connection, Spain supports the European Commission's position seeking to maintain the momentum in trade liberalisation and for the launching of a comprehensive round of multilateral trade negotiations in the WTO. In particular, the Commission favours a global approach for WTO negotiations that would seek to improve market access for industrial goods, agricultural products and services. It would also seek improvement in multilateral rules in the areas of trade facilitation, government procurement, investment and competition dimensions.

2.2.2. Trade in services

As a member in the WTO General Agreement on Trade in Services (GATS), Spain has undertaken international commitments in the field of services, including in the sectoral annexes to the GATS and more recently the Financial Services and Basic Telecommunications Agreements concluded in 1997. Under the GATS, specific commitments and the list of exemptions from MFN treatment are made according to four modes of supply for each services sector concerned (cross-border supply, consumption abroad, commercial presence, and presence of natural persons). For the then 12 EU member states, a single schedule of specific commitments was decided at the EU-wide level and submitted to the WTO on behalf of the EU. The specific commitments are composed of EU-wide commitments and exemptions as qualified by the additional restrictions attached by individual member states.

To evaluate the level of market access and national treatment afforded by the EU and Spain, in particular, it is necessary to examine the range of activities covered in each services sector and the limitations on market access and national treatment pertaining to the different modes of supply, including any specific additional limitations by Spain. In addition, since the EU has tabled a list of MFN exemptions, this must be examined in order to assess the extent to which the Commission gives preferential treatment to, or discriminates against, one or more trading partners.

While it is not the purpose of this study to examine in detail the extent of EU and Spanish commitments and exemptions under the GATS, the following gives some examples. The EU schedule shows that the EU undertook sector-specific commitments in a large number of sectors. However, it did not offer any commitments in the following sectors: postal services; courier services; audio-visual services; other education services; libraries, archives, museum and other cultural services; maritime transport; internal waterways transport; space transport, and pipeline transport.

By mode, the EU limitations are mostly at member state level for cross-border supply (*e.g.* business and financial services sectors); while consumption abroad is mostly bound as no restrictions. The principal limitations to commercial presence arise from requirements on the legal form of the service provider at both EU-wide and individual member state level; some of these are limitations on national treatment, as they apply only to third country providers. Movement of natural persons is subject to general limitations applying to all sectors; with some additional member state limitations at sectoral level (*e.g.* education services, professional services, financial services). The list of MFN exemptions tabled by the EU shows a number of sectoral exemptions, which apply in Spain, including audio-visual services; road transportation services (passenger and freight); the marketing of air transport services; and direct non-life-insurance.

Spain maintains few additional limitations concerning certain professional services, mainly relate to commercial presence. In telecommunications services, Spain temporarily limited market access to one additional nation-wide licence between January and December 1998, after which full liberalisation was granted. Concerning the movement of natural persons for architectural services and engineering services, Spain limits market access to natural persons and requests the recognition of their professional qualifications.

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2.3. Measures to avoid unnecessary trade restrictiveness

To attain a particular regulatory objective, policy makers should seek 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, to use tariffs instead of quantitative restrictions requiring the allocation of import permits, 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.

In Spain, the principal tool for measuring the potential effects of proposed regulations is the Evaluation Questionnaire, which is prepared by ministries. As discussed in Section 2.1.1, its quantitative assessment is limited to a budgetary accounting exercise. There are no specific parameters by which to analyse the economic impacts of draft regulations and no explicit efficiency principles to guide officials in deciding which regulatory instruments are best suited in the circumstances. In this connection, no attempts are made to assess draft regulations against the principle of avoidance of unnecessary trade restrictiveness.

It may be argued that this principle is informally taken into consideration when the Inter-Ministerial Commission for WTO Negotiations meets to consider draft regulations that have potential effects on trade and investment. As well, nothing bars the General Secretariat for External Trade from suggesting or promoting alternative regulation that is least trade restrictive. However, since the principle of avoidance of unnecessary trade restrictiveness is not codified in any official manner when draft regulations are elaborated and considered, there is no guarantee that it would effectively be taken into consideration.

There is at least one case that illustrates the absence of consideration of the unnecessary trade restrictiveness principle. It involves the EU banana import regime, which provides for the use of both a quota in favour of selected developing countries and a tariff as regulatory instruments. Given the European Commission's competence in trade issues, the member states are jointly responsible for EU trade stances. This case is directly relevant for Spain, given that it produces bananas on the Canary Islands, which represent about 80-85% of Spanish consumption and about 10% of the EU banana consumption. The allocation of import licences is restraining trade and causing significant trade distortions. It has been the subject of long trade disputes with trading partners within the GATT and the WTO. The issue at stake is not to question the policy legitimacy of the EU banana import regime nor its WTO compatibility. The issue here is whether other regulatory instruments can simultaneously achieve the desirable policy objectives and, at the same time, avoid unnecessary trade restrictiveness. This case illustrates the need to systematically check draft regulations against the principle of avoidance of unnecessary trade restrictiveness, along with the other economic principles, when draft regulations are elaborated. This illustrative case of trade restrictive regulations on banana imports also suggests that the Commission should apply the efficient regulation principles when elaborating trade regulations on behalf of member states.

2.4. Use of internationally harmonised measures

Compliance with different standards and regulations for like products in different markets often presents firms wishing to engage in international trade with significant and sometimes prohibitive costs. Thus, when appropriate and feasible, reliance on internationally harmonised measures (such as international standards) as the basis of domestic regulations can facilitate trade flows. National efforts to

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encourage the adoption of regulations based on harmonised measures, procedures for monitoring progress in the development and adoption of international standards, and incentives for regulatory authorities to seek out and apply appropriate international standards are thus important indicators of a country's commitment to efficient regulation.

As an EU member state, Spain takes part in the harmonisation process, which was launched in the field of technical regulations and standards to achieve the Single Market. Since 1985, harmonisation has been guided by the "New Approach" adopted by the European Council. Under the New Approach, EU technical regulations no longer seek to define detailed rules, but rather define the "essential requirements" which products placed on the EU market must meet if they are to benefit from free movement within the EU. This more flexible policy approach is applied where possible, instead of harmonisation of detailed technical specifications for products.

Following a mandate issued by the European Commission, the European standardisation bodies have the task of drawing up the technical specifications meeting those essential requirements (such specifications are referred to as "harmonised standards"). Compliance with harmonised standards is voluntary but it grants products a presumption of conformity with the essential requirements. Under the New Approach, manufacturers are free to use any other technical specification they deem appropriate to meet the essential requirements defined by EU Directives. The New Approach benefits European manufacturers, but also non-European manufacturers, as they too are not required to use specific technical rules, but simply have to demonstrate compliance with the essential requirements (for further details on the New Approach, see Box 5).

The notification procedure of national draft standards and technical regulations under EU law aims at ensuring the transparency of national initiatives, but it also plays a role in promoting the European harmonisation process. The notification procedure enables the Commission to propose the approximation of laws in areas where barriers are likely to appear and harmonisation is necessary. The Commission can intervene at an early stage and suggest harmonisation before barriers have actually emerged. It can impose a blockage of draft national regulation for twelve months when the regulation deals with a matter covered by a Commission's proposal. The Directive establishing the notification procedure also gives the Commission the possibility to mandate European standardisation bodies with the task of elaborating European standards in a given field. In such cases, national standardisation bodies must observe a standstill period during which they cannot carry out any work on the mandated subject.

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Box 5. **The New and Global Approaches**

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, with its celebrated ruling on *Cassis de Dijon,*[25] which interpreted Article 30 of the EC Treaty. In effect, the ruling required 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[26] 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.

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 indispensable. 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 these are transposed at least in one member state. These standards are not mandatory. However conformity with them confers to the products a presumption of conformity with the essential requirements set by the New Approach directives in all Member States. In this case the product may be CE-marked.

The manufacturer can always choose to demonstrate conformity with the essential requirements by other means. This is clearly necessary where harmonised 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 they do not intervene in the conformity assessment. When third party intervention is required, suppliers may address any of the notified bodies within the European Union. Products which have successfully undergone the appropriate assessment procedures are then affixed the CE marking, which grants free circulation in all member states, but also implies that the producer accepts full liability for the product.[27]

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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 put 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.

The Spanish standardisation body, AENOR, is committed to using international standards as a basis for national standards. This commitment is clearly referred to in the Founding Act which lists as one of its objectives: "*To promote the co-ordination of standardisation work and the drawing up of norms and their harmonisation with the norms and recommendations internationally recognised*". In line with this objective, AENOR signed the Code of Good Practice for the Preparation, Adoption and Application of Standards of the WTO Agreement on Technical Barriers to Trade. It is therefore subject to the obligation to use international standards as a basis for the preparation of its own standards. The Spanish legislation also specifically requires that national standardisation bodies be a member of European and international organisations for standardisation and actively participate in their work.[28] AENOR is thus active in regional and international standardisation organisations and takes part in the development and diffusion of international standards.

Membership in European standardisation bodies implies that AENOR must transpose as Spanish standards all European standards elaborated by the European Committee for Standardisation (CEN) and the European Committee for Electrotechnical Standardisation (CENELEC). When a European standard is approved, AENOR must make a public notice of the code and title of the European standard, transpose it as a national standard within six months following the date from which the European standard is available in the three official languages, and eliminate any national standards technically divergent. This obligation stands even in the cases where AENOR voted against the adoption of the standard. AENOR is also responsible for adopting, publishing and marketing the standards published by the European Telecommunications Standards Institute (ETSI). ETSI standards are available on its internet site (www.etsi.org).

Reflecting the harmonisation effort in the EU, Spanish standards increasingly result from the transposition of European standards. In recent years the number of standards in AENOR's catalogue has expanded significantly, as a result of a growing number of European standards which AENOR transposes. This number rose by 50% between 1996 and 1998, a trend confirmed by the high number of current draft standards transposing European standards (over 4 000, accounting for 80% of the overall number of draft standards). Consequently the share of purely national standards in the catalogue of standards is on the wane. Within two years, between 1996 and 1998, it decreased from nearly 50 to 40% of the total number of standards. Purely national standards account for less than 10% of standards currently under preparation, and their number in the catalogue has decreased in recent years, as new standards do not fully replace withdrawn standards.

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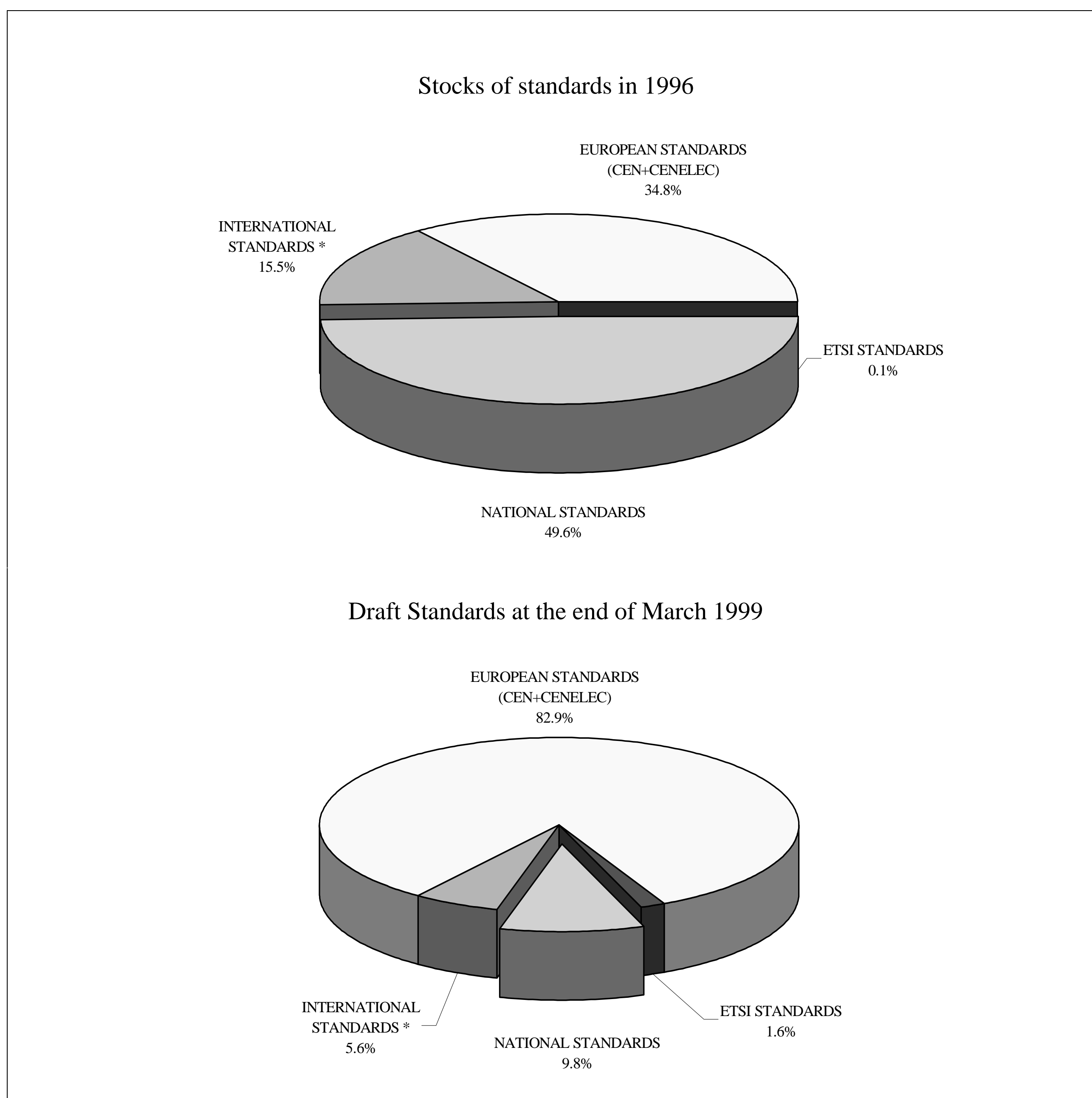
Transportation of international standards into Spanish standards is mainly achieved through the harmonisation process at the European level. European standardisation bodies increasingly harmonise according to international standards. A growing number of European standards adopted by AENOR are in fact the result of the transposition of international standards. Additionally, AENOR is committed to the adoption of international standards itself, being 5% of the standards currently under preparation result from the direct adoption of international standards. The basic principle underlying the European standardisation is "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.

Figure 2. **AENOR standardisation activities**



Source: OECD on the basis of figures provided by AENOR.

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In addition, various initiatives have been developed to promote co-operation in standardisation at the international level. European standardisation bodies have signed co-operation agreements with international standardisation bodies in order to reach the highest possible degree of convergence between European and international standards, and to avoid duplication of standardisation work. In 1991, CEN concluded an agreement with the International Standardisation Organisation (ISO), usually referred to as the "Vienna Agreement". The agreement set up various technical co-operation mechanisms between the two standardisation bodies: exchange of information; possibility for ISO to attend CEN's technical committees as an observer, and conversely; examination by CEN of the opportunity, when a need for a new standard emerges, to ask ISO to undertake the work; parallel approval of drafts by ISO or CEN technical committees; adoption by CEN of existing ISO standards. CENELEC and the International Electrotechnical Commission (IEC) have established a similar co-operation agreement (referred to as the "Dresden Agreement"), and ETSI is a party to various international co-operation agreements, notably with ISO, IEC and the International Telecommunication Union (ITU).

Due to the achievement of the Single Market and the subsidiarity principle, measures to encourage the use of measures harmonised at the international level are mainly related to Spain's membership in the European Union. Integration in the Single Market implies that Spain adopts European Directives, takes part in the harmonisation of technical regulations, and transposes European standards into its own set of standards. By promoting transparency and consultation processes, the EU notification procedures of technical rules provide for safeguards. They put a brake on the elaboration of specific technical rules by national authorities and prevent the emergence of barriers to trade, at least within the Single Market. As for standards, AENOR produces a significant number of purely national standards each year, but it is clear that most of its standards are increasingly European standards (which themselves increasingly rest on international standards).

Harmonisation with Single Market rules is however not total and there are still a significant number of specific national rules produced each year. Over the period 1995-1997, Spain notified 79 technical regulations, which were purely national regulations. Over 75% of these notifications concentrated in four sectors: building and construction, machinery, telecommunications, and foodstuffs and agricultural products (see Figure 3). The persistence of a significant national activity in devising technical rules, which is far from specific to Spain, can be related to the absence of European harmonisation in some areas, but it is also observed in areas where there is EU legislation, but European standards are not available. Member states can thus elaborate new rules in response to quick technological developments, for example in telecommunications. They can consider that safety requires the adoption of detailed rules making the implementation of the essential requirements more precise.

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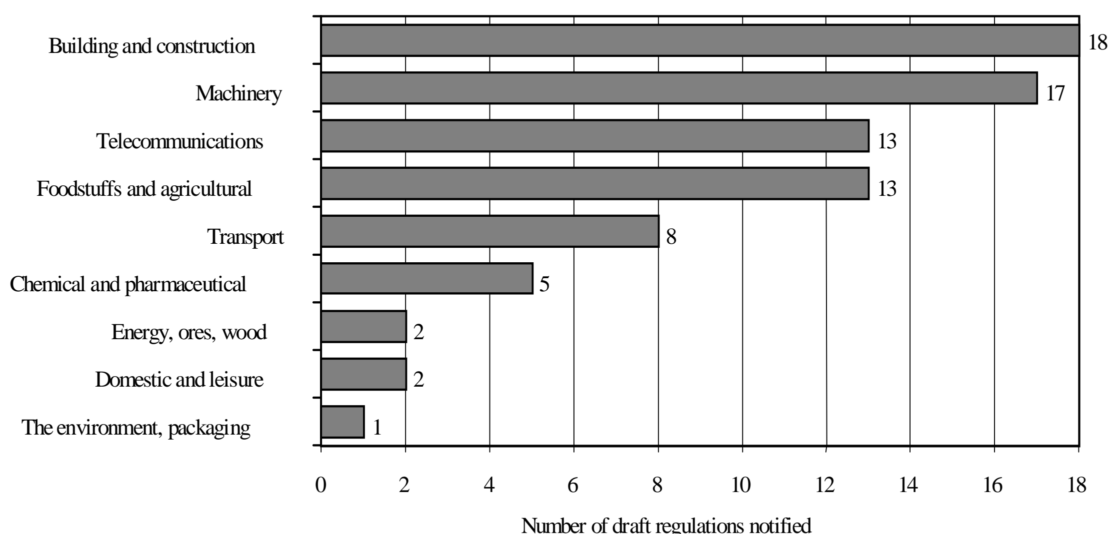
Figure 3. **Draft technical regulations notified by Spain to the European Commission**

between 1995 and 1997



Source: Official Journal of the European Communities.

2.5. Recognition of equivalence of other countries' regulatory measures

In cases where the harmonisation of regulatory measures is not considered feasible or necessary, the recognition 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 specific national rules, which prevent manufacturers selling their products in different countries and from enjoying full economies of scale. Exporters are also increasingly required to demonstrate the compliance of their products with the rules of the country of import through independent testing and certification of the import country, giving rise to additional costs. Reducing trade barriers through recognition of other countries' regulatory measures can be achieved by accepting the equivalence of the standards and technical requirements applicable in other markets, and of conformity assessment results too.

Within the European Union the principle of mutual recognition applies among member states. In its ruling on *Cassis de Dijon* of 1979, the European Court of Justice gave substance to the EU Treaty's principle of free circulation of goods by providing the key elements for mutual recognition. All products lawfully manufactured in one member state must be accepted by the others even when they have been manufactured in accordance with technical regulations which differ from those laid down by existing national legislation, provided they meet the marketing conditions in the originating member state. This benefits EU manufacturers and non-EU countries as well since any product, including a product originating from a third country, marketed in one of the EU country, can circulate freely within the Community (for more details see Box 5 on the New and Global Approaches).

As an EU member, Spain is involved in the Mutual Recognition Agreements (MRAs) negotiated by the European Commission with non-EU countries. Following the adoption of the Global Approach, when the Council stated the need for the Community "*to promote international trade in regulated products, in particular by concluding recognition agreements*"[29], the European Commission has engaged negotiation of MRAs in the field of conformity assessment with trading partners. These agreements intend

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to promote efficient, transparent and compatible regulatory systems, reduce costs and delays associated with obtaining product approvals in third country markets, and avoid duplication of testing procedures and unpredictability incurred in obtaining approvals.

Box 6. **The EU Mutual Recognition Agreements**

The EU has concluded MRAs with Canada, the United States, Australia, and New Zealand, which have recently entered into force.[30] It has also reached an agreement with Switzerland and Israel and negotiations with Japan are underway. The Community has also launched negotiations on "Protocols on European Conformity Assessment" (PECAs) with the Central and Eastern European Countries (CEECs) in view of these countries' eventual accession to the European Union. The main difference between these PECAs and other MRAs is that PECAs are based on the implementation of the *acquis communautaire* in the area of product regulations in these countries.

Each MRA includes a framework covering general principles and sectoral annexes, which contain provisions for facilitation of trade and the mutual recognition of mandatory conformity assessment procedures (for details on sectoral coverage, see Table 4). The framework agreements specify the conditions under which each party accepts the results of conformity assessment procedures issued by the other party's conformity assessment bodies in accordance with the rules and regulations of the importing party. The results of conformity assessment procedures include studies and data, certificates and marks of conformity. The requirements covered by the agreement are specified on a sector-specific basis in the sectoral annexes.

Under these MRAs, there is no recognition between the parties of the equivalence of their respective regulatory requirements. However, if a conformity assessment body in the exporting country certifies that a product covered by a MRA is in conformity to the requirements set by the importing party, this certification has to be accepted as equivalent by the importing party. In the case of Good Manufacturing Practices and Good Laboratory Practices the parties recognise their manufacturing and laboratory practices respectively. Prospective agreements with the CEECs also provide for the alignment of their legislation with the European legislation to allow for their economic integration into the European Union.

The Spanish accreditation body (ENAC) has signed multilateral agreements (MLAs) sponsored by the European co-operation for Accreditation (EA) in the field of calibration, testing, certification, and environmental management systems. Under these agreements, based on peer evaluation accreditation, bodies accept each other's accreditation systems, recognise and promote the equivalence of each others' certificates and reports issued by bodies accredited under these systems. The need for multiple assessments is thereby reduced or eliminated, as a supplier will only need one certificate or report to satisfy several markets. EA-sponsored MLAs do not only include EU countries, but also non-EU European countries and non-European countries such as Australia, New Zealand, South Africa, or Hong Kong.

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Box 7. **European accreditation**

Accreditation is a procedure by which an authoritative body gives formal recognition that a body or person is competent to carry out specific tasks.[31] An accreditation body requires that laboratories, certification and inspection bodies, both in regulatory and non-regulatory spheres, are regularly assessed and audited by a third party as to their technical competence against published criteria. There may be more than one national accreditation body as long as there exists a clear distribution of tasks.

The European Commission has mandated harmonised standards in the EN 45000 series which lay down, *inter alia*, criteria concerning the technical competence, impartiality and integrity of accreditation bodies. Most are equal to international standards and the remainder are based on them.[32] Accreditation to the relevant EN 45000 standard gives a presumption that a body is competent to carry out conformity assessment according to the Global Approach.

The European Co-operation for Accreditation (EA) (http://www.european-accreditation.org/) came into being in 1997. EA aims to promote the international acceptance of certificates and reports issued by organisations accredited by its members. Nationally recognised accreditation bodies in EU and EFTA countries and the EU candidate countries can apply for full membership. Members of EA must fulfil criteria as specified in the relevant European standards published in the EN 45000 series.

EA has established multilateral agreements (MLAs) among its members in the fields of calibration, testing and the certification of respectively products, quality systems, personnel and environmental management systems. EA has also signed bilateral agreements with accreditation bodies in Hong Kong China, Australia, New Zealand, and South Africa. Signatories to the MLAs and to bilateral agreements are subjected to regular peer evaluations.

International co-operation on accreditation is seen as an important supporting measure to promote mutual acceptance of certificates and reports issued by accredited conformity assessment bodies. The International Accreditation Forum (IAF) with members from Europe, Asia and America has established a MLA in the field of quality systems certification and has signatories from 19 countries as of December 1998. The next step may be to expand this MLA to include certification bodies for personnel and environmental management systems.

A corresponding development in the field of laboratory accreditation is underway within the International Laboratory Accreditation Co-operation (ILAC) (http://www.ilac.org/). ILAC was formalised as a co-operation in 1996 when 44 national bodies signed a Memorandum of Understanding (MOU). This MOU provides the basis for the eventual establishment of a multilateral agreement between ILAC member bodies. Such an agreement will further enhance and facilitate the international acceptance of test data, and the elimination of technical barriers to trade.

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Table 4. **Mutual Recognition Agreements concluded or under negotiation by the European Union**

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

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

ENAC participates in international fora, which aim at enhancing confidence in the accreditation and certification system. At the European level Spain is involved in the activities of the European Organisation for Testing and Certification (EOTC) which was set up in 1990 following the adoption of the Global Approach. EOTC itself does not certify products but acts as a focal point for conformity assessment in Europe. It promotes mutual confidence between all parties concerned with conformity assessment by assuring that mutual recognition agreements, concluded by testing and certification bodies, comply with agreed criteria and by promoting them. ENAC also participates in the International Laboratory

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Accreditation Co-operation (ILAC) and the International Accreditation Forum (IAF). These fora aim at promoting confidence in the accreditation systems and at reducing obstacles to trade by supporting the development and implementation of ISO/IEC standards and guides, exchanging information and establishing multilateral agreements on the equivalence of accreditation programmes operated by their members. A MLA has thus been signed at the international level on quality system accreditation, of which ENAC is a party.

2.6. Application of competition principles from an international perspective

The benefits of market access may be reduced by regulatory action condoning anti-competitive conduct or by failure to correct anti-competitive private actions that have the same effect. It is therefore important that regulatory institutions make it possible for both domestic and foreign firms affected by anti-competitive practices to present their positions effectively. The existence of procedures for hearing and deciding complaints about regulatory or private actions that impair market access and effective competition 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.

In Spain, complaints about perceived business practices that restrict competition may be submitted to the Competition Defence Service (*Servicio de Defensa de la Competencia*), which is part of the General Directorate for Economic Policy and Protection of Competition in the Ministry of Economics and Finance (Ministry). The Competition Defence Service proceeds with a preliminary legal assessment and decides whether or not to refer the complaint to the Competition Tribunal (*Tribunal de Defensa de la Competencia*). The Tribunal, an independent decision-maker, proceeds with an inquiry and may hold hearings but is not required to do so. The background report on The Role of Competition Policy in Regulatory Reform provides greater details about the institutional arrangements.

The Competition Tribunal may issue orders to cease and desist and to eliminate the effects of the violations, and it may impose fines. Since the Tribunal's decisions are administrative, they may be appealed to a special Chamber of the Supreme Court for administrative matters. Criminal proceedings are also possible, in principle, under general provisions of the administrative law. However, in the event of a criminal case, the administrative proceedings in the Competition Tribunal would be suspended. In addition, the Competition Act of 1989 provides that courts can award damages under the civil code, because anti-competitive practices are prohibited *ab initio.* The private remedy through the courts has rarely been used in practice, at least in part, because of the backlog of cases in the courts.

The Competition Defence Service and the Tribunal can exercise a policy advocacy role in the reviewing of legislative and administrative initiatives, *i.e.* privatisation and deregulation. In addition, the Tribunal may on its authority, or upon request, issue reports to any power or organ of the state. However, other regulatory bodies are not required to follow up on the opinion expressed in these reports.

It appears that national treatment applies in the application of the procedures described above, so foreign firms may have effective means of seeking redress for perceived anti-competitive problems. Of course, the fact that a foreign firm and a domestic firm are treated in a like manner does not necessarily mean that the burdens of a complex administrative process might not hamper market access to foreign firms or new entry by domestic firms.

While foreign and domestic firms may receive equivalent treatment in terms of procedures, it is also important to consider the treatment of foreign and domestic firms in substantive legal analysis. A potential problem may arise with the Spanish merger law. The Competition Service is responsible for deciding when to refer a merger to the Tribunal for review of its likely effects in Spain. The Tribunal then recommends to the Council of Ministers what disposition should be applied with respect to the merger.

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The Tribunal must consider both competition and public interest factors such as industrial or social policies. However, the government makes the ultimate decision. In recent years, Spain has had a fairly lenient approach to mergers. Still, the facts that the government makes the decision and the standards for decision are imprecise and raise a risk that foreign firms may not always be treated equally. It should be underlined that if the Tribunal restricts itself to competition analysis, while leaving to the Council the task of weighing the other public interest factors, this concern would not be eliminated.

There is a general exemption from Spanish competition law for regulated conduct. While the exemption may apply to both foreign and domestic firms, it may inhibit market access by foreign firms as well as new entry by domestic firms. This may be a particular problem with regard to monopolies authorised by local or regional regulation. For instance, regional governments' limitations on the establishment of new large scale stores and regulation of opening hours may impede the efficient distribution of products offered by new entrants, including foreign entrants, which might require economies of scale in order to access the retail distribution system.

A particular setting for concern is the exertion or extension of market power by a regulated or protected monopolist into another market. The substantive problem, sometimes called "regulatory abuse," is not always reachable by laws about abuse of dominance or monopolisation, or by regulatory laws applied to particular markets. Foreign firms and trade could be implicated in two ways. First, an incumbent domestic regulated monopolist might gain an unfair advantage over foreign products or firms in an unregulated domestic market. Or, an incumbent foreign regulated monopolist might use the resources afforded by its protection at home to gain an unfair advantage in another country.

Recent privatisation and deregulation initiatives have created or strengthened the position of incumbents who might be able to impose strategic barriers that raise the cost of entry to foreign and domestic rivals. Furthermore, the advantage so gained in the domestic market may afford an unfair advantage in foreign markets where such firms compete against their foreign rivals. This might be a concern in network industries, such as telecommunications and electricity. However, recent decisions by the Tribunal against Telefonica for abusing its dominant position and the success of foreign operators in gaining sizeable market shares in the Spanish telecommunications market may help to alleviate this concern. The Tribunal's decisions also demonstrate both that Telefonica may be increasingly subjected to more vigorous competition in its domestic market and that the competition enforcement institutions are willing to take actions to prevent or end the incumbent's anti-competitive practices.

Spain should remain vigilant to ensure that foreign and domestic firms receive equivalent treatment in procedural and practical terms. It also needs to remain vigilant in applying competition policy to newly deregulated sectors and privatised enterprises to ensure that access and entry are not impeded. The background report on The Role of Competition Policy in Regulatory Reform discusses in greater detail competition and competition enforcement dimensions in Spain. It also contains a set of recommendations to further the process of regulatory reform in this area.

3. ASSESSING RESULTS IN SELECTED SECTORS

This section examines the implications for international market openness arising from Spanish regulations currently in place for four sectors: telecommunications equipment, telecommunications services, automobiles and components and electricity. 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. Electricity and telecommunications are reviewed in greater detail in the background reports on Regulatory Reform in the Electricity Industry and Regulatory Reform in the Telecommunications Industry respectively.

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Particular attention is paid to product standards and conformity assessment procedures, where relevant. Other 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. In many respects, multilateral disciplines, notably the WTO TBT Agreement, provide a sound basis for reducing trade tensions by encouraging respect for fundamental principles of efficient regulation such as transparency, non-discrimination, and avoidance of unnecessary trade restrictiveness.

3.1. Telecommunications services

The Spanish telecommunications market is the fifth largest in the European Union and it is projected to grow from about US$16.5 billion in 1996 to about US$25 billion in the year 2000. Since 1 December 1998, the Spanish market is officially fully opened to competition, in conformity with relevant EU Directives.[33] Several foreign competitors are now effectively established in the Spanish market, including France Telecom, Telecom Italia and British Telecom, enhancing competitive conditions and bringing in modern technology.[34] As a result, customer choices and quality of service are improving and long distance prices are declining.

Spain had initially negotiated a five year-grace period with respect to EU Directives to open-up national telecommunications markets to competition by 1 January 2003. The delay was sought to guarantee the achievement of universal telephone coverage and to allow the emergence of another national operator. The delay was subsequently reduced to three years and finally to 11 months.[35] Despite the derogation period, a limited number of operating licences were granted to new competitors prior to 1 December 1998.[36] The official opening of the Spanish market brought an end to the 74-year-old monopoly for fixed telephony retained by Telefonica, the main Spanish Telecommunications Company, although competition was introduced in 1995 for mobile telephony. The former state-monopoly has been completely privatised during a 4-phase process, which ended in February 1997.

Another reason advanced by the Spanish Authority for the derogation period was that Spain was lagging behind the OECD average in terms of teledensity and network modernisation.[37] Table 5 shows the number of access line in Spain in relation to the OECD average between 1985 and 1997.

Table 5. **Access lines per 100 inhabitants, 1985-1997**

	1985	**1990**	**1995**	**1996**	**1997**
Spain	24.3	32.1	38.1	38.8	39.9
OECD average	32.9	39.2	46.1	47.4	58.9

Source: OECD, *Communications Outlook* 1999, Paris.

The starting point of the Spanish market liberalisation came in December 1987 with the Telecommunications Regulation Act, which was the first basic statute to provide a legal framework specific to telecommunications. However, the dynamic changes in this sector combined with the liberalisation process prompted by EU Directives and the 1997 WTO Agreement on Basic Telecommunications Services made this Act outdated. In April 1997 and April 1998, Spain promulgated respectively the Telecommunications Liberalisation Act and the General Telecommunications Law.

The main objectives of the 1998 General Telecommunications Law are the unification of the legal framework in accord with EU Directives. The latter requires the promotion of competition among service operators, the equality of opportunities through the abolition of exclusive or special rights and the promotion of development and use of new services, networks and technologies. The EU Commission has therefore played a major role in driving the regulatory reform in Spain and in other EU member states as well and it continues to be responsible for guarding against abuse of a dominant position and anti-competitive behaviour at the EU level.

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The *Secretaría General de Comunicaciones* of the Ministry for Development has traditionally assumed all the regulatory responsibilities over the Spanish telecommunications sector. In 1998, a new commission with various regulatory responsibilities over the sector was established, the *Comisión del Mercado de las Telecomunicaciones* (CMT).

The CMT Commission is constituted as an independent national regulatory authority for telecommunications, as required by EU Directives, and began its operations in 1997. The instruction, resolutions, decisions, and requests for information issued by this Commission are binding and, if ignored, will be considered a serious breach of the telecommunications law. It is not financed by the government but by contributions levied on telecommunications operators.

The 1998 General Telecommunications law has granted the Commission for Economic Affairs (*Comisión Delegada del Gobierno para Asuntos Económicos*) (CDGAE) some role in the area of price regulation. The CDGAE discuss and approves, based on a proposal by the Ministry of Development, and following a report from the CMT, provisionally set maximum and minimum prices or lay down the criteria for the setting and mechanisms for price control in the light of actual costs. For this objective, network and service operators shall be obligated to furnish detailed information on their costs subject to whatever criteria and conditions shall be established by regulation. Currently, price regulation is applied only to Telefonica's basic services and analogue mobile services.

Enforcement of competition policies in Spain is within the purview of the Competition Defence Service and the Competition Tribunal. If the CMT detects signs of practices liable to restrict competition, it is required to inform the Defence of Competition Service of these practices along with factual details. When the Defence Competition Service considers the issue to be serious, it refers the case to the Competition Tribunal for enquiry, judgement and penalty, as the situation may dictate. Telefonica has been sanctioned several times by the Competition Tribunal and was imposed fines amounting to some 854 million pesetas for resisting new entry.

Spain maintained some investment restrictions on non-EU telecommunications companies. These could not hold more than 25% of the equity in a company granted an individual licence. This regime is currently maintained for non-WTO countries. However, under the WTO Fourth Protocol on the Basic Telecommunications Agreement, the 25% limit is lifted for foreign companies originating from other members to the Agreement. Since January 1997, any individual or corporation, whether national or foreign, is required to obtain a government authorisation to gain control of 10% or more of the capital of Telefonica.

Market entry has been liberalised for both fixed wire-line and mobile services with several new licenses already awarded, especially since December 1998. Several new entrants have plans to develop technologically advanced network facilities, and this will enhance the prospects for infrastructure competition. There is clear recognition from the Spanish government of the need for effective pro-competitive regulation with an increasing role for competition law as the number of service providers increases and competition intensifies. In particular, some pro-competition measures have already been taken. For example, the CMT has scored an early success in achieving a pro-competitive initial reference interconnection offer from Telefonica that resulted in the interconnection charge falling by more than 30%. This provides increased scope for new entrants to reduce prices in competition with Telefonica.

Another example of pro-competitive measures is the 16-month *moratorium* imposed by the Spanish government, which prevents Telefonica from providing cable, Internet access and telecommunications services to homes and businesses. The reason was mainly to make sure that the new companies could have time to establish themselves before Telefonica enters the industry. In the light of difficulties confronting the efforts of new entrant cable operators to establish operations, CMT sought

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successfully an extension of the *moratorium* to 24 months. While discrimination between providers must not exist with regard to the granting of "rights of way", new entrants are encountering significant difficulties in obtaining permits from local governments for the construction of cable network infrastructure. Delays in obtaining construction-related permits are highlighting the diverse nature of regulatory obstacles that new entrants are confronted with.

Another area of concern is the division of regulatory responsibilities between the CMT and the Ministry for Development. The latter continues to advise the government on telecommunications policy and retains a major role in the new regulatory regime. There appears to be a reluctance to transfer real decision-taking authority to the independent regulator CMT in important areas (*e.g.* price regulation and licensing of mobile operators). It is important for effective regulation that the relationship between CMT and the government is transparent and that CMT materialises its potential to be an independent national regulatory authority.

The regulations of interconnection charges are a critical factor in the development of effective competition. Effective competition in telecommunications services should also result in lower prices, network development and modernisation, improved quality of service, services based on leading edge technology and infrastructure, increased product range, and increased customer choice. Telefonica's strong incumbent position also continues to restrain competition.[38] There have been complaints that Telefonica has been slow to provide the new interconnection conditions to new entrants. Delays in providing number portability and carrier pre-selection have also slowed the development of effective competition. If Telefonica's competitors offer only a small range of telecommunication services, customers are less likely to switch to another operator (*e.g.* long distance calls), if they still depend on the dominant operator for several other services.

Overall, Spain has opened its telecommunications markets to competition, including to foreign competitors, and an independent Commission, CMT, has the regulatory authority to pursue pro-competition objectives. The opening of the Spanish telecommunications market was initiated in the context of the implementation of the EU Single Market to which Spain is committed. There are sings that the market opening has achieved some success in permitting competitors to establish themselves. Telefonica recently discloses that as of May 1999, it has lost 14% of market shares for intercity calls, 11% for international calls and 4% for provincial calls. In the mobile telephony, Telefonica is estimated to have a 70% market share with Airtel and Retevision sharing the remaining 30%. There are signs also that the Spanish regulatory reform is generating benefits for Spanish consumers even though liberalisation is only recent. Taking into account the experience of other OECD Members that have liberalised their communications market previous to Spain, Spanish consumers should expect an additional decrease in telecommunications prices and an improvement in services.

– Terminal equipment such as telephone hand sets, answering machines and fax machines.

– Wireless communications equipment relating to cellular, pagers and personal communications systems.

– Satellite communications system and satellite-related ground equipment.

– Fibre optics products including optical fibre and fibre optic cable.

– Search and navigation equipment such as radar and sonar systems and surveillance equipment.

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– Radio and television broadcasting equipment including closed circuit and cable television transmission equipment, and studio (audio and video) equipment.

– Microwave communications equipment.

With respect to the elaboration of technical standards for satellite earth station equipment and terminal equipment, the EU Directive (98/13) provides for harmonised European standards and mutual recognition of their conformity. CEN, CENELEC or ESTI develops these technical standards. As indicated in Section 2.1.4, AENOR must transpose as Spanish standards all European standards elaborated by CEN and CENELEC. AENOR is also responsible for managing the public consultation process in Spain and for adopting ETSI standards. With respect to the elaboration of technical standards for other telecommunications equipment, there are no telecommunications-specific procedures. The generic elaboration procedures for technical regulation and standards apply and are subject to the EU notification requirements (see Section 2.1.2) and EU harmonisation as guided by the New Approach (see Section 2.4). At the international level, AENOR is the Spanish member of the International Standardisation Organisation (ISO) and of the International Electrotechnical Commission (IEC). A number of mutual recognition agreements are also applicable to telecommunications equipment (see Table 4 in Section 2.5).

Table 6. **Spanish trade in telecommunications equipment in 1996**

(Thousand US$)

Telecommunications equipment	Imports	Exports
Telephone sets	131 952	117 472
Switching equipment	194 189	92 015
Transmission equipment	663 904	94 721
Receivers	11 141	6 438
Television receivers	531 725	850 380
Radio broadcasting receivers	459 423	44 103
Other equipment (line telephony)	1 081 558	515 757
Other equipment (wireless/broadcasting)	355 269	127 747
Total	3 429 161	1 848 633

Source: OECD (1999), *OECD Communications Outlook 1999*, Paris.

3.2. Automobiles and components

Concerns about market openness and domestic regulation of automotive industries around the world are not new. Due to the historic dynamism of global economic activity in the sector and traditionally interventionist policies of some governments aimed at protecting domestic automotive industries, trade tensions related to domestic regulatory issues in general and 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 tension as global demand for automobiles continues to rise.

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The Spanish automobile industry is now highly integrated in the EU automobile market. With EU accession in 1986, Spain attracted significant investment in production facilities designed to supply the whole EU market. Exports of motor vehicles, parts and accessories are the largest export sector of the Spanish economy, accounting for 25.3% of total exports in 1997. Harmonised EU safety standards for motor vehicles based on a type approval system and, more recently, the mutual recognition of certification of conformity procedures among EU member states, have also been instrumental in this integration process. Between 1980 and 1998, the export propensity (exports expressed as a percentage of domestic production) of the Spanish automobile sector jumped from 45.7 to 78.6% for passenger vehicles and 29.8 to 81.2% for commercial vehicles, with the overwhelming majority of exports destined to EU partners. During the first quarter of 1999, sales of automobiles jumped by 21.6% relative the same quarter in 1998 back by strong economic conditions.[39] Spain has steadily increased its imports of motor vehicles since 1980, as reflected by the levels of apparent imports shown in Table 7. Measured in terms of import propensity ratio (apparent imports divided by production), the import propensity ratio of passenger vehicles increased from 8.7% in 1985 to 32.4% in 1998.

Within the EU, technical requirements for motor vehicles have been fully harmonised since 1993 -- they are not elaborated on the basis of the New Approach (see Box 5). Detailed technical requirements are specified in various EU Directives and applicable throughout the EU and EFTA countries. Draft Directives or amendments are submitted by the Commission and published in the Official Journal. During a consultation period, the Commission consults a Working Party on Motor Vehicles composed of representatives of member states and the EU industry. Following the consultation, the Commission proposes the new Directive or an amendment to the EU Council for approval. The new Directive comes into effect after it is published in the Official Journal.

Table 7. **Production, exports, domestic registration, and apparent imports of motor vehicles in Spain between 1980 and 1998**

Year	1980	1985	1990	1995	1997	1998
Production						
Passenger vehicles	1 028 813	1 230 071	1 679 301	1 958 789	2 010 266	2 216 571
Commercial vehicles	152 846	187 533	374 049	374 998	551 213	608 247
Export						
Passenger vehicles	470 170	761 887	1 066 009	1 537 182	1 640 396	1 742 234
Commercial vehicles	45 515	77 193	183 550	275 105	451 138	493 599
Export Ratio						
Passenger vehicles	45.7%	61.9%	63.5%	78.5%	81.6%	78.6%
Commercial vehicles	29.8%	41.2%	49.1%	73.4%	78.0%	81.2%
Shares of World Exports						
Passenger vehicles	-	-	7.8%	10.6%	9.8%	12.5%
Commercial vehicles	-	-	7.5%	10.1%	12.5%	13.8%
Domestic Registration						
Passenger vehicles	504 051	575 051	988 270	834 369	1 014 077	1 192 843
Commercial vehicles	105 934	131 941	262 629	185 447	242 424	284 181
Apparent Imports *						
Passenger vehicles	-54 592	106 867	374 978	412 762	644 207	718 506
Commercial vehicles	-1 397	21 601	72 130	85 554	142 349	169 533

* The level of apparent imports is obtained by subtracting the difference between production and export from the level of domestic registration. Due to change in stocks, the level of apparent imports can be negative.

Source: Comité des Constructeurs Français d'Automobiles (1995), *Analyse et statistiques; Annuaire Statistiques Juin 1998, et Brochure de statistiques Février 1999*.

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The certification of these requirements is done through a system of type-approval of motor vehicles. Under the type-approval system, a national Regulatory Body certifies that a type of vehicle or separate technical units satisfy technical requirements as specified in relevant EU Directives. Each vehicle type, whether domestically produced or imported, must be brought to a Regulatory Body testing facility, tested and certified that it meets relevant technical regulations. Each member state grants the type-approval to any vehicle, which meets the technical requirements of the 54 separate basic Directives for passenger cars. There are also some 100 modifications to the basic Directives. In its Framework Directive (70/156) as amended, the EU has deemed several UN-ECE Regulations to be equivalent to relevant EU technical Directives – in 1999 35 UN-ECE Regulations are recognised as equivalent as well as those listed in Annex II of Directive 97/836.

A multistage type-approval process can be followed in which the technical requirements of the relevant Directive must be met separately - this means that if type-approval has been granted for a braking system, the type-approval is valid for other vehicle models using the same braking system. Since 1996, when a passenger vehicle was granted EU type-approval certification in one member state, the conformity of the type-approval certificate is valid in all other member states and the vehicle can be registered or permitted for sale in all EU states. Before 1996, the EU type-approval certification was optional as manufacturers had the choice of obtaining either a national type-approval or the EU type-approval for that country. Since 1998, mutual recognition of EU certification of conformity is extended to all vehicles belonging to category M1 (passenger and light commercial vehicles). Vehicles produced in small series, less than 500 units, can be exempt from certain administrative requirements and member states have to decide within a three-month period whether to grant the type-approval.

Box 8. **Global technical regulations for wheeled vehicles**

In recent years, support was voiced for strengthening the legal and administrative capacity of the 1958 Agreement of Working Party 29 of the United Nations -- Economic Commission for Europe (UN-ECE) as the principal body for common development of technical standards and regulatory requirements for motor vehicles. As a result of multilateral negotiations, a new agreement was reached on 25 June 1998 on Global Technical Regulations for Wheeled Vehicles which shall facilitate the full participation of countries operating either the type-approval or the self-declaration systems of conformity of standards. The UN-ECE Global Agreement is entitled “Agreement concerning the establishment of global technical regulations for wheeled vehicles, equipment and parts, which can be fitted and/or be used on wheeled vehicles”.

The Agreement opens up the possibility for establishing “global technical regulations” proposed by its contracting parties and which must be approved by consensus. The USA has already ratified the Agreement and the adhesion of Canada, Australia and Japan is expected. The European Community became a contracting party to the 1958 Agreement in March 1998 and accession to the Global Agreement is under consideration -- the Commission has recently submitted a proposal for approval by the EU Parliament.

Certain EU Directives or measures have competition and transparency implications for the automobile sector. In some cases, they have been designed in an attempt to mitigate any anti-competitive effect. Conversely, the export monitoring arrangement for motor vehicles between the EU and Japan (referred to as “Elements of Consensus”) has the opposite effect on competition within the EU. These are discussed below.

Within the EU, motor vehicle distribution must conform to specific legislation as a condition of its exemption from anti-competitive proceedings. The regulation is known as the block exemption Regulation on the Selective and Exclusive Distribution of Cars, which was renewed in 1995 and extended until September 2002.[40] This regulation seeks to safeguard consumers’ access to vehicle and parts supply in any EU member state at favourable terms. It provides dealers with enhanced freedoms to acquire additional franchises and to resist the imposition of sales targets by manufacturers. Although the franchise

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agreement can provide for exclusive geographical zones, it is prohibited for dealers to reject sales to a consumer who is a resident of another EU member state, the so-called prohibition against parallel imports. In 1997, Volkswagen was sanctioned for preventing its distributors to sales vehicles to EU residents of other EU states. It was fined a 101 million ECU penalty.

In June 1998, the European Commission declared illegal the Spanish Industrial Renovation Plan enforced between 1994 and 1996, by which the government was subsidising the acquisition of replacement industrial vehicles by private companies. As the grants were restricted to the acquisition of vehicles made in Spain, the plan was sanctioned for its anti-competitive effects. Spain has appealed against this decision. The plan was recently reintroduced in a modified version, in which special grants are offered for the acquisition of replacement industrial vehicles, irrespective of their fabrication sources.

As a competition enhancement measure, Directorate-General IV (Competition) carries out a survey of retail car prices for 76 identical models within 12 EU member states every six months. The survey shows the price of individual models in local currencies and in ECU and indices are calculated for each country (the lowest car price has the reference index of 100%). It enables to readily identify price differentials for the 76 models being surveyed. The last survey for 1 November 1998 shows that price differentials among member states generally vary within a range of 20% for most models and exceeding 50% on certain models, *i.e.* the Rover 214 in the UK has an index of 151.9%. The survey reveals that car prices in Spain are relatively low within the EU -- 21 models are at 2% or less than the cheapest EU prices, 64 models are at 10% or less than the cheapest EU prices and the highest price differential is 17% for one model. The price differentials reflect several factors, including national retail taxes, but are also indicative of regional market segmentation.

In the 1980s and 1990s, several countries sought to limit competition from imports through either the negotiation of formal voluntary restraint arrangements (VRAs) or by persuading the exporting country to impose unilaterally a voluntary export restraint (VER). In 1991, the EU and Japan reached a bilateral solution, the so-called Elements of Consensus, providing that individual VRAs between Japan and respectively France, Italy, Spain, Portugal, and the United Kingdom would be formally terminated in January 1993. It also stipulated that Japan would monitor its vehicle exports (vehicles of less than five tonnes) to the Community and the five member states until the end of 1999. The Japanese share of the EU market is expected to reach 8% in 1999. Under the Elements of Consensus, forecasts of Japanese exports are adjusted every six months according to fluctuations in the market. This vehicle VRA is the only vehicle VRA still in force among WTO Members. It is specifically mentioned in the WTO Safeguards Agreement that this VRA will be terminated on 31 December 1999.

One particular dimension of the Elements of Consensus for Spain is that the level of Japanese exports is specified in two Spanish regions, mainland Spain and the Canary Islands. This was negotiated to prevent the potential disappearance of non-Japanese vehicle distributors from the small Canary Islands' vehicle market. Table 8 shows the agreed and realised levels of imports for both regions and for Spain as a whole. It appears that some flexibility was applied in respect of the allocation of realised import levels between the mainland and the Canary Islands as realised import levels for the mainland have exceeded the agreed levels in 1993 and 1998.

Table 8. **Imports of motor vehicles in Spain from Japan**

	1993		**1996**		**1998**		**1999**
	Agreed	**Realised**	**Agreed**	**Realised**	**Agreed**	**Realised**	**Agreed**
Mainland	15 800	17 615	30 400	26 170	54 200	55 273	
Canary Islands	13 500	7 476	15 800	6 233	15 800	10 874	
Total	29 300	25 091	46 200	32 403	70 000	66 147	79 000

Source: Ministerio de Economía y Hacienda.

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Overall, Spain has attracted significant foreign investments in this sector, which have boosted its export propensity significantly. However, this success was achieved against the background of a relatively high tariff protection by OECD standards, *i.e.* the EU import tariff is 10%.[41] The harmonised EU safety standards for motor vehicles and the mutual recognition of certification of conformity procedures among EU member states have brought benefits to EU consumers. As a result, a member state can no longer refuse the registration of any passenger vehicle on the grounds that its certification of conformity was agreed to into another EU member state. Nevertheless, significant price differentials still persist on motor vehicles among EU member states. It is therefore crucial for the Commission to tightly monitor the application of the EU block exemption on car distribution to ensure that manufacturers and distributors are not hindering the capacity of consumers to enter into parallel imports within the EU. The Commission has already sanctioned a large manufacturer and the Spanish Industrial Renovation Plan on the grounds of anti-competitive practices. These sanctions attest to the pro-competitive stance of the Commission. Conversely, the Elements of Consensus between the EU and Japan have the opposite effect on competition within the EU.

3.3. Electricity

Spain is engaged in a long process of reforming the electricity sector, spurred by the objective to restructure public enterprises providing critical inputs to the rest of the economy and EU Directives on the Single Market in electricity. The main legal instrument is the Electric Power Act of 1997, which is built on a decade of reforms. The Act provides for the creation of an open wholesale market, the choice of suppliers to the largest electricity customers and mandated price decreases to those remaining under regulated tariffs. Further legislative amendments and Royal Decrees brought in December 1998 and April 1999 have widened the choice more quickly to medium-sized consumers, cut regulated prices more deeply than originally planned and encouraged greater activity in the wholesale market by lowering access tariffs.

In 1998, the Spanish electricity generation capacity was composed of coal generation for 35%, nuclear (31%), hydroelectric (20%) and smaller contributions from gas, oil and renewables, accounting respectively for 7, 6 and 1% of total capacity. Peak demand in mainland Spain was 29.5 GW against an overall capacity of 49 GW, implying a significant excess capacity. Total import interconnection capacity is estimated at about 1.7 GW with links to France, Portugal, Morocco and Andorra. As an EU member state, Spain has the power to impose reciprocity requirements on utilities wishing to import electricity into Spain (Article 19 of the EU Directive 96/92). Unlike other countries, Spain has chosen not to enforce this provision for the time being. National utilities in France, Belgium, Portugal, and Morocco are licensed to import electricity into the Spanish market.

In 1990, the Spanish electricity sector was composed of a dozen independent electricity firms, with Endesa, then a state-owned generation and transmission enterprise, controlling about a quarter of the market. Through acquisitions and consolidation, the number of main firms was reduced to four by 1998, two of which supply over three-quarters of the electricity produced in Spain. Endesa produces 48% of the Spanish electricity production, Iberdrola produces 26%, Union Fenosa 10%, and Hidrocantabrico 4%.

The privatisation process of Endesa began in 1988, when 20% of its capital was sold, and was completed in 1998 (see Table 3). In electricity transmission, *Red Eléctrica España* (REE) operates a high voltage transmission network and controls about 30% of the 220 kV lines in Spain and the rest of the network is owned by the four utilities. In early 1999, the government controlled 60% of REE and each of the four utilities held 10% -- the maximum permissible share of total capital per individual owner. In May 1999, the government announced its plan to sell a tranche of 35% to small shareholders and institutional and foreign investors. The government will maintain the remaining 25%.

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Electricity prices for industry in Spain are in the middle range of price levels among OECD countries but they are among the highest for household consumers before taxes (see the background report on Regulatory Reform in the Electricity Industry). As in many countries, the price structure provides for important cross subsidies. There are also several compensatory charges and taxes paid by Spanish consumers which altogether account for about 15 to 20% of total electricity prices in Spain. These include support for the domestic coal industry, compensation to the utilities for the nuclear moratorium, subsidies for the special regime production, demand management and quality of service enhancement, and the extra-peninsular system as well as the transitional competition transition charge and capacity payment.

The Ministry of Industry and Energy assumes policy responsibilities for the reforms and it also has the most significant regulatory functions. In particular, it is responsible for setting regulated retail tariffs, network access tariffs and various charges. It authorises new generators and approves transmission projects. The *Comisión Nacional del Sistema Eléctrico* (CNSE) is an independent regulatory commission established in 1994 whose principal functions are advisory and dispute-related resolution. It approves mergers and acquisitions into transmission and distribution companies. It also plays a role in instances of anti-competitive practices in the sector. In October 1998, the National Commission for Energy (*Comisión Nacional de Energía*) was established and took over the responsibilities for the energy sector and the hydrocarbon fuels.

Enforcement of competition policies in Spain is the purview of the Competition Defence Service and the Competition Tribunal. If the CNSE detects signs of practices liable to restrict competition, it is required to notice these practices along with factual details to the Competition Defence Service. When the Competition Defence Service considers the issue to be serious, it refers the case to the Competition Tribunal for enquiry, judgement and penalty, as the situation may dictate. Finally, the European Commission has EU-wide jurisdiction over competition issues.

Several competition cases have already arisen in this sector. The Competition Tribunal is reviewing a joint venture between a Spanish and a Portuguese firm to build a transmission line. The joint venture between Gas Natural (the privately-owned gas transportation monopoly) and Endesa was referred to the Competition Tribunal for investigation of potential market foreclosing effects. Complaints about access have been filed with the Competition Defence Service and reviewed by the Competition Tribunal, which has decided on at least three cases in this sector so far.

Overall, the Spanish government has shown a strong commitment to the liberalisation of the electricity market and is moving further and more quickly than required by EU Directives on the Single Market in electricity. The reform has already materialised in concrete benefits in terms of lower electricity prices, higher labour productivity, and new foreign entrants have announced plans to invest in gas generating capacity. On the institutional regulatory side, an independent Commission (CNSE) although having primarily an advisory role, has greatly enhanced transparency of the industry's regulation.

Despite these reforms, the short- and medium-term prospects for added competition from imported electricity are considered fairly limited given Spain's current excess generation capacity and the specificity of its geography. A more immediate concern lies with the current duopoly that has emerged through acquisitions during the 90s with Endesa and Iberdrola now controlling three-quarters of the market. This situation raises the concern about the potential abuse of their position, which could impinge on the expected benefits from enhanced competition through trade and foreign investment. The background report on Regulatory Reform in the Electricity Industry discusses in greater detail regulatory- and competition-related dimensions and market developments. It also contains a set of recommendations to further the process of regulatory reform in this sector.

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4. CONCLUSIONS AND POLICY OPTIONS FOR REFORM

4.1. General assessment of current strengths and weaknesses

Not all of the six efficient regulation principles examined in this review are expressly codified in Spanish administrative and regulatory oversight procedures to the same degree. However, the weight of available evidence suggests that the principles of non-discrimination, use of international standards and recognition of equivalence be given ample expression in practice. Integration in the EU Single Market implies that Spain adopts EU Directives and takes part in the harmonisation of technical regulations.

The quality of the public consultation carried out during the elaboration of domestic regulations can be improved by providing more widely access to the information contained in the Normative Dossier for consulted parties. Similarly, the transparency of the process can be improved by publishing in the Official Journal the text of draft regulations and in making them available through the Internet along with the respective Normative Dossier.

The Spanish elaboration process lacks in the application of modern policy evaluation tolls, such as cost and benefit analysis or the OECD-sponsored Best Practices. The application of these tools throughout the ministries would act as consistent guiding principles for elaborating regulations and reinforces the desirable attribute of a rigorous analytical culture in respect of elaborating regulations.

With regards to the Spanish government procurement regime, which transposes the requirements of EU Directives, the transparency and non-discrimination principles take concrete applications. Firms and individuals from EU member states directly gain significant benefits in terms of equal opportunities to compete for public contracts from Spanish awarding authorities. Non-EU firms and individuals directly gain through the enhanced competitive conditions conferred by the openness of the EU investment rules, the transparency and non-discrimination principles.

Ensuring that transparency and non-discrimination are effectively enforced in the application of EU customs procedures is a very complex task given the number of entry ports involved and the cultural diversity of EU member states. Pursuing greater simplification and harmonisation of customs procedures is a necessary complement to trade liberalisation initiatives as cumbersome procedures can hinder trade and translate into high transaction costs for traders. Higher priority should be assigned by the EU Commission to the implementation of an EU-wide electronic-based system for customs procedures, including the new computerised transit system, and the development of a comprehensive Internet site and of a new consolidation of the EU Customs Code.

Considerable efforts were made to reduce the role of government in economic activities through a comprehensive privatisation programme and by exposing previously sheltered firms to competition forces. Efforts were made to establish an institutional competition infrastructure with the Competition Defence Service, the Competition Tribunal and two specialised commissions to regulate the telecommunications and electricity sectors respectively. Although the Spanish government has demonstrated a strong commitment in liberalising these two sectors, there are still concerns about the potential abuse of dominant position by certain firms and the adverse effects that this situation may cause on the ability of foreign firms to compete in Spain.

In the automobile sector, Spain has attracted significant foreign investments, which have boosted its export propensity significantly. However, Spain has achieved this success against the background of a relatively high tariff protection (the EU common external tariff) and a contradictory competitive stance by the EU Commission, albeit recent Commission's positions have definitively been pro-competitive.

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4.2. The dynamic view: the pace and direction of change

Globalisation has dramatically altered the world paradigm for the conduct of international trade and investment, creating new competitive pressures in Spain and elsewhere. At the same time, the progressive dismantling or lowering of traditional barriers to trade and increased relevance of “behind the border” measures to effective market access and presence has exposed national regulatory regimes to a degree of unprecedented international scrutiny by trade and investment partners, with the result that regulation is no longer, if ever it was, a purely “domestic” affair. Trade and investment policy communities have generally kept pace with these twin phenomena. Concrete steps to increase awareness of and effective adherence to the efficient regulation principles and deepen international co-operation on regulatory issues are encouraging trends in this context.

The accession of Spain into the European Union in 1986 and its subsequent participation in other EU-based integration initiatives, *i.e.* the Single Market and the European Monetary Union, have fundamentally changed the trade and investment environment of Spain. As an EU member state, Spain has effectively moved away from a managed approach of foreign competition towards full participation in the EU Single Market and more open trade relationships with non-EU countries, as attested with the elimination of some 4 500 quantitative restrictions on imports. The Single Market Directives, themselves aimed at eliminating internal obstacles to trade, have acted as strong policy anchors against the temptation to backtrack.

Trade and investment liberalisation measures were also complemented in 1985 with initial efforts in restructuring loss-making public enterprises providing critical inputs to the rest of the economy. These were strengthened in 1996 when the decision was taken to privatise all except a few selected enterprises over a five year period. This opening process has yielded significant opportunities for foreign traders and investors. With its qualification for the European Monetary Union, the Spanish government recognises the increasing importance of removing domestic obstacles to growth in order to assist Spanish citizens and firms in competing domestically and internationally.

4.3. Potential benefits and costs of further regulatory reform

The need for all governments to address market failures through sound regulatory action is an undisputed sovereign prerogative. Nonetheless, ill-conceived, excessively restrictive or burdensome regulation exacts a heavy price on commercial activity, domestic or foreign, and places a disproportionately heavy burden on small-and medium-sized enterprises. Foreign firms established in the Spanish market face the same regulatory burden as domestic firms.

Trade and investment friendly regulations need not undermine the promotion and achievement of legitimate Spanish policy objectives. High-quality regulations can be trade-neutral or market-opening, coupling consumer gains from enhanced market openness with more efficient realisation of domestic objectives in key areas such as the environment, health and safety. However, it is doubtful that this can be achieved in the absence of purposeful, government-wide adherence to the principles of efficient regulation.

Market-opening regulation promises to promote the flow of goods, services, investment and technology between Spain and its trading partners. Expanded trade and investment flows generate important consumer benefits in terms of greater choice and lower prices, they raise the standards of performance of domestic firms through the impetus of greater competition and boost GDP.

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The scope and depth of the EU integration-based initiatives has modified significantly the geographical composition of the Spanish trade flows (Table 9). The share of total imports coming from the EU-15 jumped from 39.1% in 1985 to 62.7% in 1990 and continued to increase, albeit at a slower growth rate, throughout the 90s, with a share of 67% in 1998. France, Germany and Italy, the largest three trading partners, have increased their import shares significantly, in particular the share of Italy more than doubled between 1985 and 1998. Conversely, the import share from NAFTA countries dropped from 17.1 to 6.9%, with imports from Mexico being particularly affected.

On the export side, the share of total exports to EU-15 countries increased from 54.3 to 71.1% between 1985 and 1998. Portugal, which also acceded to the EU at the same time as Spain, became the fourth largest export destination of Spanish exports, increasing from 2.2 to 9.1% of total exports in 1997. The share of exports to NAFTA countries dropped sharply between 1985 and 1990 and has remained relatively stable since 1995, hovering between 5.3 to 5.7%.

Changes in the product composition of foreign trade usually provide potentially interesting indications about the relative competitiveness of sectors of the country concerned. In the case of Spain, the share of manufactured goods in total exports increased from 59.9 to 65.2% between 1988 and 1997, with simultaneously slight reductions in the shares of other categories, *i.e.* agriculture and food, oil and mineral products, and semi-manufactured goods.

Within manufactured goods, the share of transport equipment, electric and electronic goods in total export increased significantly reflecting the competitiveness of these sectors. Exports of motor vehicles, parts and accessories now represent the largest sector of exports and the second largest sector of imports, equivalent to 25.3% of total exports in 1997. These exports almost tripled in value during the period as a result of large investment in motor vehicles and parts production facilities. Between 1988 and 1997, the share of textiles, clothing and footwear exports declined from 9.1 to 7.4% and the share of electric and electronic goods in total exports jumped from 4.2 to 7.2%.

Table 9. **Regional composition of Spanish trade**

(US$ million and percentages)

Year	**1985**	**1990**	**1995**	**1998**
Total exports	24 267	55 517	91 043	109 178
OECD (29)	71.9%	83.9%	82.2%	82.7%
EU(15)	54.3%	71.6%	71.0%	69.9%
NAFTA	12.0%	7.5%	5.3%	5.6%
Asia-Oceania	2.0%	1.8%	2.4%	1.9%
Non-OECD Total	28.1%	16.1%	17.8%	18.5%
Non-OECD America	4.9%	2.9%	5.2%	5.6%
Total imports	30 002	87 551	113 316	132 960
OECD (29)	62.9%	81.2%	80.7%	81.6%
EU(15)	39.1%	62.7%	64.9%	67.0%
NAFTA	17.1%	10.6%	7.9%	6.9%
Asia-Oceania	4.3%	5.5%	4.6%	4.5%
Non-OECD Total	37.1%	18.8%	19.3%	18.4%
Non-OECD America	5.7%	3.0%	3.5%	3.2%

Source: OECD Trade Statistics.

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Table 10. **Product composition of Spanish trade**

(US$ million and percentages)

Year	1988	1990	1995	1997
Total exports of goods	40 221	55 517	91 043	106 241
Agriculture and food	17.8%	15.5%	15.9%	16.3%
Oil and mineral products	5.5%	5.6%	2.9%	3.4%
Semi-manufactured goods	16.7%	15.2%	15.8%	15.1%
Manufactured goods	59.9%	63.7%	65.4%	65.2%
Total imports of goods	60 144	87 551	113 316	124 418
Agriculture and food	11.8%	11.3%	14.5%	12.3%
Oil and mineral products	13.0%	13.4%	9.8%	10.4%
Semi-manufactured goods	16.6%	16.7%	19.8%	18.8%
Manufactured goods	58.5%	58.6%	55.9%	58.5%
Commercial services				
Exports of services	12 600	27 600	39 700	43 700
Imports of services	4 200	15 200	21 700	24 200

Source: OECD Trade Statistics and World Trade Organisation, Annual Reports.

Spain is also a large exporter of commercial services and has systematically maintained a high trade balance surplus in commercial services. Spain is particularly successful in exporting travel services, which account for more than half of its total exports of commercial services.

The gradual implementation of the electronic-based system (UN-EDIFACT) for import and export transactions by Spanish Customs Authorities has already resulted in tangible benefits in terms of a drastic fall in the average time required to complete customs procedures. The full-computerised integration of EU Customs operations raises the prospects of additional savings in terms of quicker response time among parties in completing forms or retrieving them for their correction or modifications and the potential elimination of all paper forms.

4.4. Policy options for consideration

This report is not a comprehensive review of regulation and market openness in Spain. Despite the progress made in recent years in the areas reviewed, recurring weaknesses also appear in Spain's regulatory regimes. This section identifies actions that, based on international consensus on good regulatory practices and on concrete experiences in OECD countries, are likely to be beneficial to improving regulation in Spain. They are based on the recommendations and policy framework in 1997 OECD Report to Ministers on Regulatory Reform.

1. *Enhance transparency through the publication in the Official Journal of the text of draft regulations, including draft technical regulations and draft ministerial orders with information about the period of public consultation and the sponsoring ministries; and through the availability of draft regulations on the Internet.* These steps would improve the transparency of the elaboration process of new regulation and provide information more rapidly to potentially affected parties.

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2. *Adapt the preparation of the Normative Dossier and approval of draft regulations to include explicit references to the "efficient regulation principles"; expand the analytical content of the "Economic Memorandum" to make sure that the anticipated economic costs and benefits of draft regulations are measured; and make the Normative Dossier, including the Economic Memorandum, widely available to consulted parties, possibly through the Internet.* The Spanish elaboration process currently makes insufficient use of modern policy evaluation tools, such as cost-benefit analysis or the Regulatory Impact Analysis (RIA) in the sense of OECD Best Practices. Although some of the efficient regulation principles, such non-discrimination, the use of international standards and the recognition of equivalence are fairly extensively applied in practice, the six principles could more rigorously be applied in respect to elaborating regulations.

3. *Heighten awareness of and encourage respect for the efficient regulation principles by the autonomous regions and large cities in their regulatory activities.* Through the co-operation institutions between the central government and autonomous communities, the central government should promote the awareness and encourage respect of the efficient regulation principles.

4. *Enhance the transparency and the uniform application of customs procedures by assigning higher priority to faster implementation of an EU-wide electronic-based system that responds more efficiently to the requirements of the EU Single Market, including transit operations; prepare a new consolidation of the EU Customs Code; and create a comprehensive Internet site providing access to the EU Customs Code, all its amendments, formulas and official communiqués.* Pursuing greater simplification and harmonisation of customs procedures is a necessary complement to trade liberalisation initiatives as cumbersome procedures can hinder trade and translate into high transaction costs for traders. Significant efficiency gains can be realised for both users and customs authorities through enhanced use of electronic-based systems.

5. *Continue to encourage the use of international standards as a basis for national standardisation activities and to promote international harmonisation in the European and international fora.* A strong commitment to an efficient and reliable standardisation system not only enhances market opportunities for Spanish firms but also greatly contributes to the consolidation world-wide of efficient and transparent markets for industry and consumers.

6. *Encourage stronger enforcement of competition policy, recognising its increasing importance for market openness; and implement the measures recommended in the background report on The Role of Competition Policy in Regulatory Reform, including an increase in the professional staff for the Competition Tribunal and to maintain the Tribunal's independent advocacy function.* With the recent privatisation of a large number of state enterprises and sectoral reforms exposing previously sheltered firms to competition forces, concern remain about potential anti-competitive practices, including the potential abuse of dominant positions. Therefore, strong enforcement of competition policy is needed to prevent regulatory or private actions that would impair market access and effective competition by foreign firms.

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NOTES

1. When the difference between the Spanish and the EU duties in absolute terms was less than 15%, the EU common external tariff was applied from the accession. When the difference was larger, the Spanish tariff would approach the EU tariff in a seven-year transitional period.

2. Excluding quantitative restrictions applied in conformity with the WTO Agreement on Textiles and Clothing, few quantitative restrictions were converted into Community-wide quotas, including products such as bananas, automobile import arrangement with Japan, certain consumer products from China and steel products from the former Soviet Union.

3. In 1986, Spain had a number of bilateral agreements concerning fish and fishing rights, which were then adopted by the EU following its accession. Spain also lost its developing country status and it was no longer able to obtain the benefits of GSP treatment on some of its exports from various developed countries. Before accession, Spain was not providing GSP treatment on its imports from other developing countries. Following its accession, imports from developing countries were entitled to the benefits of the EU common external policy, including the prevailing GSP preferential import treatment.

4. See, Trade Policy Review, European Union, 1997, World Trade Organisation, page 14.

5. In 1997, the EU simple average tariff rate across all products stood at 10%. The average rate for agricultural products (HS 1-24) stood at 20.8% in 1997. See, Trade Policy Review, European Union, 1997, World Trade Organisation, page 44-45.

6. In 1991, residents from EU member states were exempted from the prior authorisation requirements for the special sectors with the exception of the defence-related sector.

7. For a more detail discussion of the reform of the Spanish pubic sector see, *OECD Economic Surveys*, 1997-1998 Spain, pages 82-132 Chapter on Reforming the Public Enterprise Sector.

8. See, in particular OECD “Open Markets Matter. The Benefits of Trade and Investment Liberalisation”, Paris 1998, OECD “The Environmental Effects of Trade”, Paris 1994 and the 1995 Report on Trade and Environment to the OECD Council at Ministerial level.

9. See related discussion in OECD (1997), Chapter 2: "Regulatory Quality and Public Sector Reform", *The OECD Report on Regulatory Reform, Volume II: Thematic Studie*s.

10. The opinion of the MPA is required when the proposal has an impact on the distribution of responsibilities between the central government and autonomous regions; it contains administrative procedures, or it has an effect on the human resources policies of the administration.

11. See OECD (1997), *Regulatory Impact Analysis, Best Practices in OECD Countries*, Paris.

12. The minimal consultation period can be reduced to seven working days if the sponsoring body provides “motivated” reasons in its final written statement on the consultation process.

13. As provided by Directive 98/34/EC of 22 June 1998. The Directive codified and replaced Directive 83/189/EEC, which had established the procedure and had been subsequently amended.

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14. "CIA Security International *vs.* Signalson SA and Securitel SPRL", Decision of the European Court of Justice of 30 April 1996 (Case C-194/94).

15. The procedure was established by a December 1995 Decision of the EU's Council of Ministers and the European Parliament (3052/95) and came into effect on 1 January 1997.

16. See *Single Market Scoreboard*, European Commission, October 1998.

17. European Commission (1998), *Efficiency and Accountability in European Standardisation Under the New Approach, Report from the Commission to the Council and the European Parliament*, SEC(98)291, May.

18. http://europa.eu.int/business/en/index.html.

19. http://www.newapproach.org.

20. The Public Supplies Directive (93/36/EEC); the Public Works Directive (93/37/EEC); the Public Services Directive (92/50/EEC); the Public Remedies Directive (89/665/EEC); the Utilities Directive (93/38/EEC); and the Remedies Utilities Directive (92/13/EEC).

21. The transit procedures aim at facilitating trade within a given customs territory or between separate customs territories. Its essence is to allow the temporary suspension of customs duties, excise and VAT payable on goods originating from and/or destined for a third country while under transport across the territory of a defined customs area.

22. For more details, see Committee of Inquiry into the Community Transit System, Final Report and Recommendations, February 1997, European Parliament, PE 220.895.

23. The United Nations rules for Electronic Data Interchange for Administration, Commerce and Transport comprise a set of internationally agreed standards, directories and guidelines for the electronic interchange of structured data, and in particular that related to trade in goods and services between independent, computerised information systems. For more information consult the Internet site (www.shedi.net.cn/edi-stand).

24. In early 1998, the EU had the following free trade agreements: Europe Agreements with Hungary, Poland, Czech Republic, Slovakia, Romania, Bulgaria, Romania, Estonia, Latvia, Lithuania, Slovenia; and Euro-Mediterranean Agreements with Cyprus, Malta, Israel, Tunisia, Morocco and Palestinian Authority.

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

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

27. 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.

28. This obligation is provided by the Royal Decree 2200/1995, which set up the conditions for recognition as a national standardisation body.

29. See European Council (1989*), Council Resolution of 21 December 1989 on a Global Approach to Conformity Assessment* (90/C 10/01).

30. The MRA with Canada entered into force on 1 November 1998, the MRA with the United States on 1 December 1998 and the MRA with Australia and New Zealand on 1 January 1999.

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31. The EU Directives are composed of: Terminal Equipment Directive (88/301/EEC); Services Directive (90/388/EEC); ONP Framework Directive (90/387/EEC) and ONP Leased Lines Directive (92/44/EEC). Other EC Directives include: Satellite Directive (94/46/EC); Cable Directive (95/51/EC); Mobile Directive (96/2/EC); Full Competition Directive (96/19/EC) and Licensing Directive (97/13/EC). Finally ONP Interconnection Directive (97/33/EC): ONP Amending Directive (97/51/EC); Telecom Data Protection Directive (97/66/EC); ONP Voice Telephony Directive (98/10/EC).

32. EN 45003, EN 45011, EN 45012, EN 45020 are transpositions of ISO Guides; EN 45001, EN 45002, EN 45004 are based to various degrees on ISO Guides.

33. EN 45020 (1988) Standardisation and Related Activities -- General Vocabulary Corrected 1998-02-26 = ISO/IEC Guide 2:1996.

34. In 1999, the major operators in the Spanish telecommunications fixed line are:

Telefonica (*Telefónica de España*): Spain's largest telecommunications company. **Retevision**: it is a former TV and radio transmission company and is building its own network. Retevision is free to set prices lower than those stipulated for Telefonica. **Lince**: is the third telephony operator with France Télécom and Cableuropa as main shareholders. **Euskatel**: it is the first regional phone company operating in the Basque region since January 1998 and is associated with Telecom Italia. **Jazztel**: it is investing heavily in deploying a broadband network, as well as the installation of a submarine cable between Bilbao and United Kingdom. **BT Tel**: it is a subsidiary of British Telecom and it has for several years operated Spain's second largest data communication network.

In mobile services, the main companies are:

Telefonica: it has about 70% of the Spanish mobile phone market with its two subsidiaries Movistar and Moviline. **Airtel**: a private consortium using GSM 900 technology, has been competing with Telefonica since 1995. In March 1999, it had about 30% of the Spanish mobile market. **Retevision Movil**: it was awarded Spain's third mobile phone license in May 1998.

35. Extension periods were also accorded to Luxembourg (1 July 1998), Ireland and Portugal (1 January 2000) and Greece (31 December 2000).

36. A licence was granted to *Retevision*, which began operations in January 1998 and a third licence was granted to the *Lince* Consortium in May 1998.

37. The number of mainlines per capita is still much below the OECD average. Although in 1995 only 56% of the fixed network were digital compared with an OECD average of 82%, in 1998 the percentage had increased 86.2%.

38. While the Reference Interconnection Offer, RIO, has been concluded, interconnection conditions are still problematic for new entrants. Telefonica has evidently been reluctant to provide interconnection in these terms to some operators.

39. See, *El Pais* of 21 May 1999, "Seat, Renault y Nissan invertiran 600 000 milliones hasta el 203 en sus plantas en España".

40. The Commission Regulation (EC) No 1475/95 on the application of Article 85(3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements was adopted in June 1995 and applies until September 2002.

41. In the EU post-Uruguay Round tariff on passenger cars is 10%, unchanged since 1974. Post-UR tariff (2000) in the USA will be 2.5%; zero in Japan and 6.1% in Canada. See, OECD "Market Access Issues in the Automobile Sector", 1997, Paris.

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