OECD REVIEWS OF REGULATORY REFORM

REGULATORY REFORM IN SWEDEN

ENHANCING MARKET OPENNESS THROUGH REGULATORY REFORM

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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FOREWORD

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

This report on Enhancing Market Openness through Regulatory Reform analyses the institutional set-up and use of policy instruments in Sweden. 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 Sweden* published in 2007. 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 23 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, drawing on the 2005 *Guiding Principles for Regulatory Quality and Performance,* which brings the recommendations in the 1997 *OECD Report on Regulatory Reform* up to date, and also builds on the 1995 *Recommendation of the Council of the OECD on Improving the Quality of Government Regulation.*

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 and on specific issues, such as multi-level regulatory governance and environmental policy for Sweden. These are presented in the light of the domestic macro-economic context.

This report was prepared by Michael Engman in the OECD Trade Directorate. It benefited from guidance from Anthony Kleitz and Evdokia Möisé in the OECD Trade Directorate, 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 Sweden. 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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SUMMARY

Sweden is in most respects a very open economy. While regulatory reform may still be needed to improve efficiency in parts of the economy, Sweden appears to be fairly advanced in relation to market openness considerations in the regulatory process. This has offered fertile ground for the private sector to do particularly well over the last decade, attracting large amounts of foreign capital, raising productivity at home and succeeding in producing goods and services that are in strong demand abroad. Since the first half of the 1990s, Swedish regulators have been kept busy with a range of issues, covering for instance deregulation, privatisation and accession to the European Union. These reforms have all contributed to a rather solid economic performance and helped the country manage economic and social adjustment to changing external conditions.

Sweden conforms to a large extent to the "efficient regulation" principles which have been developed by the OECD to ensure that new rules and regulations do not have a negative effect on market openness. Swedish procedures for disseminating information in the regulatory process are well developed and information is free, easily accessible and protected by legal obligations for government authorities to publish all relevant material through information technology. The established consultation mechanisms give interested parties the opportunity to provide input in the regulatory process and a number of enquiry points, including the Open Trade Gate Sweden and the SOLVIT system, provide services to foreign traders with the aim to identify and remove unnecessary regulatory barriers.

As a member of the European Union, Sweden is signatory to a growing number of preferential agreements covering trade and investment. Next to the extensive use of the possibilities to exceptions that are allowed in the WTO framework, Swedish regulatory procedures are based on principles that effectively control for discriminatory measures. This study finds little if no evidence that new Swedish regulations treat domestic and foreign companies differently and competition principles are also respected from an international perspective. In addition, Sweden has to a large extent encouraged the use of internationally harmonised standards and been highly active in the work of developing new international standards.

Against this overall positive picture, this study has identified a number of policy areas where regulatory reform from a market openness perspective is likely to be beneficial both to the Swedish economy and to foreign traders. First, while transparency is one of the relative strengths in the Swedish regulatory system, it could arguably be improved in the government procurement process. An increase in the very limited foreign participation would provide more choice, enhance competition and most likely save a fair share of financial resources. Second, Swedish authorities could also improve the measures to avoid unnecessary trade restrictiveness in the regulatory impact assessment process. There is seemingly scope for regulators to increase the quality and rigour of their impact assessments with regard to market openness aspects.

Third, to ensure the free movement of goods and services and given Sweden's participation in several mutual recognition agreements, the country would benefit from better informing certain authorities of requirements in force in other countries and to build trust in the competence of foreign conformity assessment bodies. Finally, two sectoral case studies showed that there is also scope to improve the functioning of the food retailing and construction sectors. While the food retailing sector recently has benefited from increased international competition, the building products and construction services markets suffer from limited competition and a number of regulatory barriers that would call for further reform.

ACRONYMS AND ABBREVIATIONS

ACAA	Agreements on Conformity Assessment and Acceptance of Industrial Products
ACP	African, Caribbean and Pacific
AGP	(WTO) Agreement on Government Procurement
AIS	Automated Import System
CA	Conformity Assessment
CAP	Common Agricultural Policy
CEN	European Committee of Standardizations
CENELEC	European Committee for Electrotechnical Standardization
c.i.f.	cost, insurance, freight
EA	European co-operation for Accreditation
EC	European Communities
ECN	European Competition Network
ECS	Export Control System
EDI	Electronic Data Interchange
EDIFACT	Electronic Data Interchange For Administration, Commerce and Transport
EEA	European Economic Area
EMCS	Excise Movement Control System
ETSI	European Telecommunications Standards Institute
EU	European Union
FDI	Foreign Direct Investment
f.o.b.	free on board
GDP	Gross Domestic Product
GATS	General Agreement on Trade in Services
GSP	Generalised System of Preferences
IAF	International Accreditation Forum
ICN	International Competition Network
ICT	Information Communication and Technology
IEC	International Electrotechnical Commission
ILAC	International Laboratory Accreditation Co-operation
ISA	Invest in Sweden Agency
ISO	International Organization for Standardization
ITS	Informationstekniska Standardiseringen
ITU	International Telecommunication Union
KFS	Kommerskollegiums Författningssamling

LO	Landsorganisationen / The Swedish Trade Union Confederation
LOU	Lagen om Offentlig Upphandling / The Act on Public Procurement
M&As	Mergers and Acquisitions
MFN	Most Favoured Nation
MRA	Mutual Recognition Agreement
n.e.s.	not elsewhere specified
NGO	Non Governmental Organisation
NNR	Näringslivets Regelnämnd / The Board of Swedish Industry and Commerce for Better Regulation
NOU	Nämnden för Offentlig Upphandling / The National Board for Public Procurement
NT	National Treatment
OECD-DAC	OECD Development Assistance Committee
OTGS	Open Trade Gate Sweden
PBL	Plan och Bygglagen / Planning and Building Act
PECA	Protocols to Europe Agreements on Conformity Assessment and Acceptance of Industrial Products
PPP	Purchasing Power Parity
RIA	Regulatory Impact Assessment
SCA	Swedish Competition Authority
SEK	Swedish Krona
SEK	Svenska Elektriska Kommissionen
SFS	Svensk Författningssamling / Swedish Code of Statutes
SIS	Standardiseringen i Sverige / Swedish Standards Institute
SITC	Standard International Trade Classification
SOE	State Owned Enterprise
SOU	Statens Offentliga Utredningar
SME	Small and Medium-sized Enterprises
SPS	Sanitary and Phytosanitary
SSR	Swedish Standardisation Council
SWEDAC	Swedish Board for Accreditation and Conformity Assessment
TBT	Technical Barriers to Trade
TED	Tenders Electronic Daily
TRIS	Technical Regulations Information System
UNCTAD	United Nations Conference on Trade and Development
VAT	Value Added Tax
WTO	World Trade Organization

ENHANCING MARKET OPENNESS THROUGH REGULATORY REFORM

This chapter reviews experiences in Sweden and looks in particular at how market openness is affected by the regulatory process in the country. It is organised as follows. Part one presents an overview of the trade and economic environment in Sweden and the analysis focuses in particular on the country's record as a trade and investment-friendly location. Part two reviews the regulatory process in Sweden – its procedures and policy experiences – and studies how these conform to the six "efficient regulation" principles that are promoted by the OECD. Part three then looks at two sectors that have traditionally been hampered by growth in productivity and high price levels. In food retailing, regulatory reform has recently led to more foreign competition and lower food prices, while the failure to provide regulatory impetus in the construction industry continues to hold back productivity improvements and foreign competition. Part four finally presents the conclusions and recommendations.

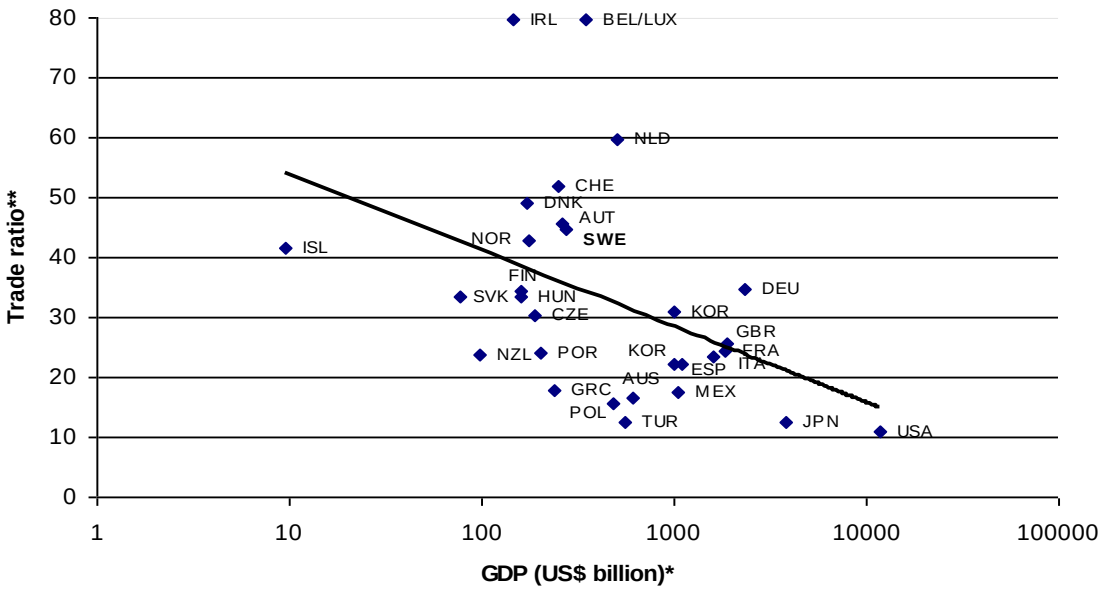
1. Market openness and the trade policy environment in Sweden

1.1 Market openness and the economic environment

Sweden is an open and prosperous economy. Its relative dependence on trade is reflected in the value of imports and exports of goods and services, which amounted to 41% and 49% respectively of GDP in 2005.[1] These figures were noticeably above the OECD averages and in line with other Nordic and medium-sized European economies (see Figure 1). The GDP per capita of USD 30 400 in 2004 was somewhat higher than the OECD (USD 27 700) and EU-15 (USD 28 700) averages and the Swedish economy also grew by an annual 2.8% in 1994-2004 compared to 2.6% in the OECD and 2.2% in the EU-15 as a whole.[2] However, this last decade of solid economic growth, which was partly triggered by regulatory reforms of e.g. product markets and financial markets, followed on a decade of more modest growth which included a severe financial crisis in the early 1990s and the devaluation of the Swedish *krona*. Sweden also benefited from deregulation and privatisation of network industries and improvements in private sector productivity and competition.[3] In addition, Sweden's accession to the European Union in 1995 and participation in the 'internal market' also increased the competitive pressure in many industries and stimulated trade and investment.

Another factor which has significantly boosted the economic growth record is the Swedish industry's success on international markets. International commerce has grown significantly faster than the national economy and the country has recorded a merchandise trade surplus since 1983.[4] While the services trade balance was mostly negative in 1985-2001, it turned positive in 2002 and has grown steadily since then (see Figure 2).[5] This growth in the services trade surplus has made up for a small decline in the merchandise surplus. And as a result, over the last decade the trade balance has been fairly stable, fluctuating between 6 and 8% of GDP. The Swedish trade position also withheld a drop by 13% in Sweden's terms of trade between 1991 and 2005, partly due to its exposure to ICT-production (see more on this in Chapter 1: *'The Macroeconomic Context'*). The trade surplus is entirely due to Sweden's positive trade balance with non-EU countries. As illustrated in Figure 3, trade flows increased modestly between 2000 and 2003 before gaining new momentum in 2004 and 2005.

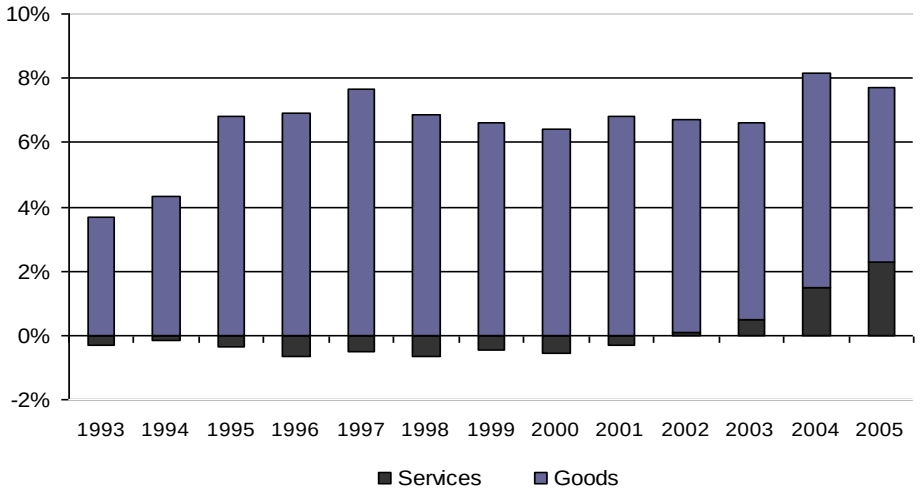
Figure 1. Trade ratios in OECD economies in 2004



* log GDP (PPP).
** Average of exports and imports of goods and services as a share of GDP (PPP).

Source: OECD (2005a).

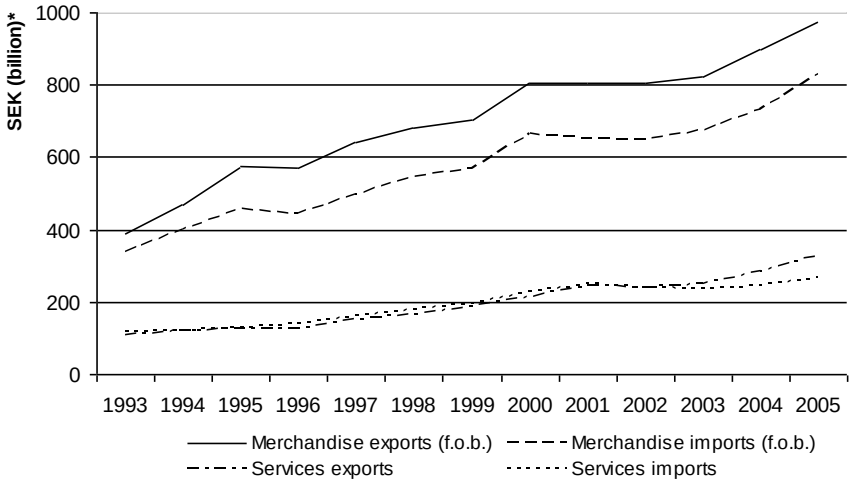
Figure 2. Trade balance 1993-2005 (% of GDP)



Source: Statistics Sweden

Sweden trades predominantly with other OECD countries and in particular with its Nordic and European neighbours. The Nordic countries of Denmark, Finland, Iceland and Norway, with a combined population of 16 million, amounted to 24% of goods imports and 22% of goods exports in 2005.[6] Germany is the single largest foreign provider of goods to the Swedish market with an 18% share of Swedish imports. The EU-25 region provided 71% of Swedish imports in 2005 and the United States is the only non-EU member state among the country's ten largest import and export markets (see Table 1). In terms of exports, the United States and Germany both absorb more than one-tenth of Swedish goods exports. The strength of the above-mentioned trade relations is illustrated by the fact that the United States imported more Swedish goods and services than all the Asian countries combined (102 SEK billion versus 100 SEK billion).[7]

Figure 3. Merchandise and services trade flows, 1993-2005



* Nominal prices

Source: Statistics Sweden.

Although Swedish companies mostly trade with markets in Western Europe and the United States, trade has lately expanded more quickly with a number of emerging markets. Between 2000 and 2005, Swedish imports from Russia (+336%), China (+152%), Poland (+142%) and the Czech Republic (+124%) grew particularly fast. During the same time, Swedish goods exports expanded substantially to Iran (+239%), Russia (+214%), India (+166%) and South Africa (+73%). Trade with the East Asian countries and customs territories of Japan, Taiwan, Hong Kong, Thailand and Malaysia all fell in the last five-year period while trade with most of the new EU member states and countries which are negotiating EU membership increased rapidly, often recording three-digit growth figures.[8]

Table 1. Major trading partners in 2005

Imports (c.i.f.)		Exports (f.o.b.)	
1. Germany	18.1%	1. USA	10.6%
2. Denmark	9.5%	2. Germany	10.4%
3. Norway	8.2%	3. Norway	8.7%
4. United Kingdom	6.9%	4. United Kingdom	7.4%
5. Netherlands	6.7%	5. Denmark	6.9%
6. Finland	6.0%	6. Finland	6.1%
7. France	5.1%	7. France	4.9%
8. Belgium	4.0%	8. Netherlands	4.5%
9. USA	3.4%	9. Belgium	4.3%
10. Italy	3.3%	10. Italy	3.5%
Nordic countries	24%	Nordic countries	22%
EU 25	71%	EU 25	58%
OECD	86%	OECD	83%

Source: Statistics Sweden

Sweden's two largest export sectors are road vehicles and telecommunications. In 2005, foreign sales of road vehicles amounted to nearly 14% of Swedish merchandise exports, up from 12% in 2000. Following the worldwide downturn in the information communications and technology (ICT) sector in the early 2000s, Swedish exports of telecommunications equipment as a share of merchandise exports dropped from 16% to less than 10%. This drop resulted in significant layoffs and structural adjustment in the telecommunications sector.[9]

Table 2 presents the product composition of Swedish merchandise exports and it shows the country's relative strength in engineering-intensive and process-intensive products. A similar product composition breakdown of Swedish imports would present a quite similar distribution, illustrate the importance of intra-industry trade, and explain the country's high share of trade with the OECD area. Table 2 also shows that traditional Swedish industries that are based on processing the country's abundance of natural resources still account for a significant amount of trade. But agriculture, forestry and fishing represented less than 2% of GDP in 2004 and exports of agricultural products[10] made up less than 3% of total goods exports.[11] Importation of agricultural products was significantly higher at 7% in 2003.[12]

Table 2. Product composition of merchandise exports in 2005 (SITC Rev.3)

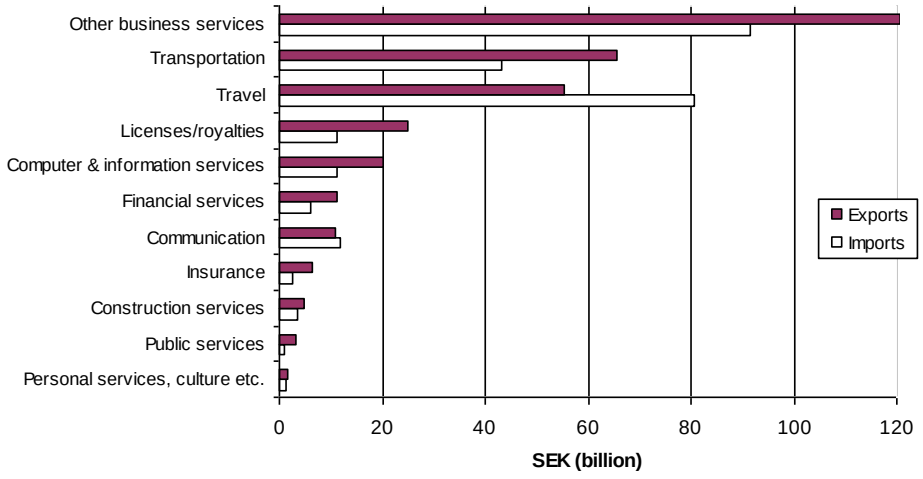
Road vehicles (78)	13.7%
Telecommunications etc. equipment (76)	9.5%
Paper, paperboard and articles thereof (64)	7.1%
Industrial equipment n.e.s. (74)	6.5%
Iron and steel (67)	5.9%
Medicinal and pharmaceutical products (54)	5.5%
Petroleum, petroleum products and related materials (33)	4.6%
Electrical machinery, apparatus and appliances, n.e.s. (77)	4.4%
Machinery specialized for particular industries (72)	4.3%
Power-generating machinery and equipment (71)	3.5%
Miscellaneous manufactured articles, n.e.s. (89)	3.1%
Manufactures of metals, n.e.s. (69)	2.8%
Miscellaneous	28.9%

Source: Statistics Sweden

The Swedish service sector makes up around 75% of the national economy but represents a relatively small but fast growing share of exports.[13] Services exports more than doubled in 1998-2005 and expanded one and a half times faster than merchandise exports. Services excluding capital returns made up 25% of total exports and 24% of total imports.[14] The relatively high growth in services trade is expected to be sustained as Swedish multinationals – many of which are traditional manufacturers of engineering and technological products – increasingly provide ancillary services. An example is Ericsson which now offers its clients maintenance and servicing support for the networks they supply.

Figure 4 presents a breakdown of some of the data in Figure 3. It shows that Sweden posted trade surpluses in most services categories and in particular in transportation and other business services. Travel – or travel currency – was the major services category in which Sweden recorded a significant trade deficit.

Figure 4. Composition of services trade in 2005



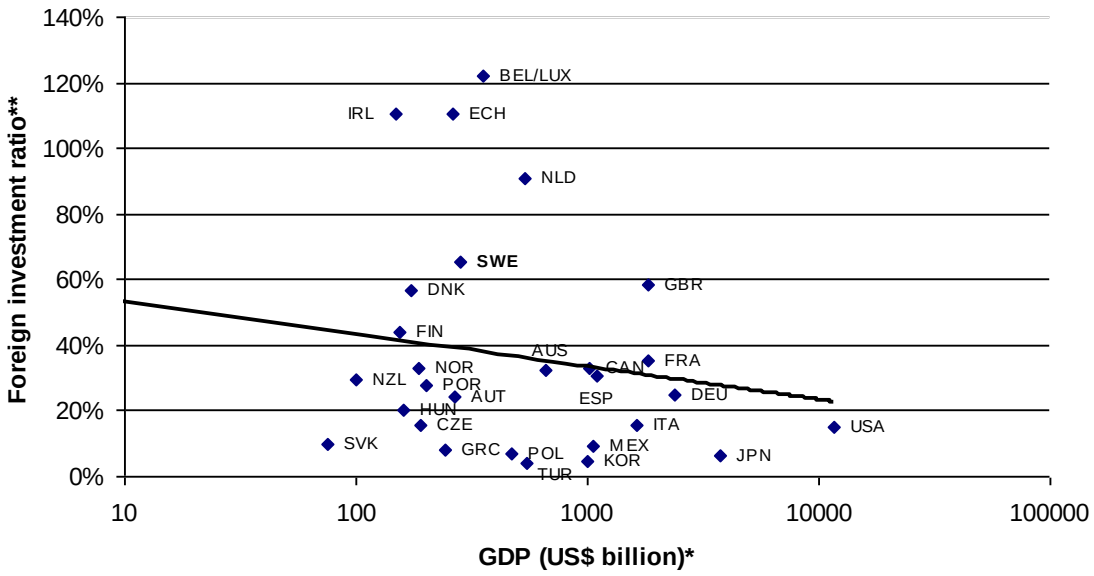
Source: Sveriges Riksbank

Sweden is in relation to the size of its economy relatively open to foreign direct investment: e.g. in 2005, it had more than twice as high a share of inward and outward FDI stocks in relation to GDP as the OECD average.[15] Figure 5 shows that a significant share of the Swedish economy is controlled by foreign owners and Swedish interests hold significant assets abroad. The position is well in line with the view of companies surveyed for the Global Competitiveness Report produced annually by the World Economic Forum.[16] According to survey results from 117 countries, companies established in Sweden find to a great extent that the Swedish rules governing FDI are relatively 'beneficial and encouraging FDI' (Sweden ranked 20th out of 117 countries). The same survey also revealed that foreign ownership of Swedish companies is to quite some extent 'prevalent and encouraged' (Sweden ranked 12th out of 117 countries).[17] The relatively high level of inward foreign investment was supported by Sweden's high ranking (6th out of 140 countries) in the 'UNCTAD Inward FDI Potential Index 2001-2003'.[18] Sweden's attractiveness as a destination for foreign investment is also a result of the transparency and quality of its public institutions.[19]

There has been a marked rise in foreign participation in the Swedish market and Swedish participation in foreign markets over the last decades. There has also been a successive reduction in the gap between the stocks of inward and outward investment. In 1990, the outward stock of FDI was significantly lower than the inward stock of FDI (see Figure 6). Today, this gap has largely been closed with outward stocks growing fairly constantly while inward stocks have grown more modestly in 2000-2004. This development is also significant in a European perspective: in 1990, the value of foreign stocks of inward investment was

only 5.3% of GDP as compared to the EU average of 10.7%. By 2004, this ratio had increased to 52% in Sweden and 32% in the EU.[20] United States (SEK 256 billion), Netherlands (SEK 235 billion) and the UK (SEK 233 billion) were the countries with largest stocks of investment in Sweden. During the last decade, there has been considerable consolidation in some major Nordic services markets, comprising cross-border M&As in sectors such as banking and finance, telecommunications, media, utilities and IT services.

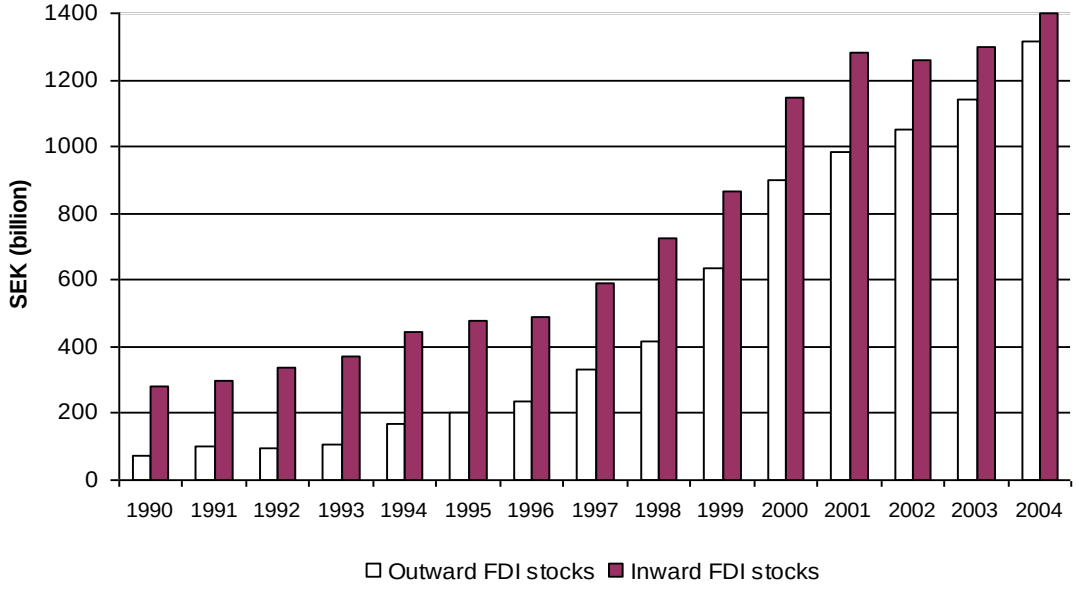
Figure 5. Share of stocks of inward and outward direct investment in GDP in 2004



* log GDP (PPP).
** Average of inward and outward investment relative to GDP (PPP).

Source: Statistics Sweden and OECD databases

Figure 6. Stocks of inward and outward FDI in 1990-2004



Source: Persson (2006)

Some ten thousand foreign-owned companies employed 557 496 workers in Sweden in 2003. This workforce represented 23% of the total number of employees in the private sector.[21] Foreign-owned companies have been found to be more R&D-intensive, to pay higher salaries, and to enjoy a higher labour productivity and a higher share of exports to total revenue than Swedish companies. They are also less profitable and reinvest less of their revenue than Swedish companies do.[22] And in 2004, Sweden was the largest recipient of Swedish and foreign risk capital per GDP among the EU countries. Thus it is fair to conclude that the Swedish economy has become increasingly open and today greatly benefits from its relatively open markets.

1.2 Trade policy

Sweden is an open market in particular for merchandise trade. As a member of the EU, Swedish trade policy is "communautarised", as for all the EU member states. The Swedish Government has its priorities regarding trade policy and seeks to influence the EC to the extent possible. Successive rounds of multilateral trade negotiations have brought down most Swedish and other OECD countries' border-related trade barriers, such as tariffs and quotas. This trend has shifted the attention to national "behind-the-border" regulations, which increasingly are regarded as the main restrictions to trade in OECD markets. The *OECD Economic Surveys: Sweden* recently concluded that Sweden has been one of the OECD area's better-performing economies over the past decade. While the report advised Swedish policy-makers to consider a number of policy options to further improve the economic environment, none of the issues identified were directly related to market access and restrictions affecting foreign companies.[23]

As a country with a limited domestic market, parts of the private industry have always been outward looking and dependent on foreign markets. In the EC, Sweden pursues an agenda encompassing more thorough environmental regulation but also market openness and the removal of anti-dumping measures and more extensive reform of the Common Agricultural Policy (CAP). It is also trying to implement more trade and development-friendly policies, especially towards the group of least developed counties.[24]

Swedish policies for effective structural adjustment have proven beneficial, and trade protectionism costly. This was something Sweden learnt from experience, e.g. when it unsuccessfully tried to protect its ship-building industry. The Swedish Government has been aided in its relatively liberal approach to foreign trade by the support it has obtained from Swedish trade unions. Landsorganisationen (LO), which is a large central organisation with 15 affiliates that organise workers within the private and the public sectors, has traditionally supported a policy where protection is focused on workers rights and benefits rather than on the jobs themselves. This has resulted in an open market for trade and investment.

This policy, however, has been intensively debated following the recent EU enlargement and the prospective nature of new competition in the labour market. Sweden, Ireland and the UK were the only EU members that prior to the eastern EU enlargement on 1 May 2004 did not introduce transitional rules restricting the free movement of workers. The free movement of workers in the enlarged EU is perceived by some observers to threaten current labour standards based on the Swedish tradition of negotiating collective wage agreements without a minimum wage policy. A public contract awarded to a Latvian construction company to build a school in Vaxholm recently fuelled this debate in Swedish media. The company, which employed Latvian and Russian workers covered by existing Latvian wage agreements and not by a Swedish collective wage agreement, faced a blockade from trade unions and later went bankrupt.[25]

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

An important step to ensuring that regulations do not unnecessarily reduce market openness is to build "efficient regulation" principles into the domestic regulatory process for social and economic regulations, as well as for administrative practices. "Market openness" refers to the ability of foreign suppliers to compete in a national market without encountering discriminatory or excessively burdensome or restrictive conditions. In 1997, OECD presented its efficient regulation principles in *The OECD Report on Regulatory Reform*, and later developed these further in the OECD Trade Committee.[26] In 2005, OECD published *OECD Guiding Principles for Regulatory Quality and Performance*, which reviews these principles and presents guiding principles on regulatory quality and performance.[27] For market openness, the efficient regulation principles are:

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

Trade policy makers have identified the six principles as key to market-oriented and trade and investment-friendly regulation. They reflect the basic principles underpinning the multilateral trading system. The intent behind the OECD country reviews of regulatory reform is not to judge the extent to which a country has 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 these principles and successfully contribute to market openness.

As this chapter will show, Sweden in effect subscribes to the efficient regulation principles in designing domestic policies and establishing rules and procedures. The substance of these principles is in many instances acknowledged as a formal basis when developing domestic regulation. There are nevertheless areas where the Swedish government may want to consider further initiatives to improve its procedures to ensure that the implementation of regulations actually abide by these principles. The following review and analysis is structured around the six efficient regulation principles for market openness.

2.1 Transparency and openness of decision making

In order to ensure international market openness, the process of reviewing, creating, reforming or enforcing regulations needs to be transparent and open to foreign companies and individuals seeking access to a market, or expanding activities in a given market. From an economic point of view, transparency is essential for market participants in several respects. Transparency in the sense of information availability offers market participants a clear picture of the rules on which the market operates. It thus enables them to base their production and investment decisions on an accurate assessment of potential costs, risks and market opportunities. Transparency is also a safeguard of equality of competitive opportunities for market participants, which enhances the security and predictability of the market.

Such transparency can be achieved through a variety of means, including systematic publication of proposed rules prior to entry into force and use of electronic means to share information. Transparency of decision making further refers to the dialogue with affected parties, which should offer well-timed opportunities for public comment, and rigorous mechanisms for ensuring that such comments are given due consideration prior to the adoption of a final regulation. Market participants wishing to voice concerns about the application of existing regulations should have appropriate access to appeal procedures. Such dialogue allows market forces to be built into the process and helps avoid trade frictions. This part discusses the extent to which such objectives are met in Sweden and how. It also provides insights on two specific areas — technical regulations and government procurement — in which transparency is essential for ensuring international competition. The reader is referred to Chapter 2: *'Government Capacity to Assure High Quality Regulation in Sweden'* for a more general discussion regarding regulatory quality in Sweden.

2.1.1 Dissemination of information

The process of disseminating information regarding laws and ordinances is well developed in Sweden. It includes both legal requirements and non-legal initiatives to share information through the means of weekly and annual paper publications, online databases and websites, and centralised contact points where foreign interest parties can direct their inquiries.

Acts and ordinances, including amendments, are published in the Swedish gazette for regulations *The Swedish Code of Statutes* (Svensk författningssamling, SFS). New statutes and amendments are published every Tuesday, and an annual hardcover edition is published towards the end of each year. According to custom, new regulations should be published within four weeks of their entry into force. *The Swedish Code of Statutes* is available at public libraries and subscriptions are offered to the public. This follows the Instrument of Government (Chapter 8, § 19), the Law (SFS 1976:633) on Publishing of Rules and Regulations, and the Governmental Ordinance (SFS 1976:725) on the Code of Statutes.

More detailed rules are published in the gazette for individual authorities and around sixty authorities have their own gazette. Many government agencies also publish regulations on their respective websites, including English translations.[28] Some government authorities routinely send finalised versions of regulations directly to the different actors that have been involved in the referral process. This is sometimes done together with a compilation of the different comments and submitted along with a motivation of the final wording of the regulation.

The Governmental Ordinance on Legal Information stipulates that any person should have free access through information technology to all statutes currently in force and information on impending legislation (SFS 1999:175, § 1, § 3-5 and § 8)[29]. The information covered by this ordinance is available on the website *www.lagrummet.se*, which contains a database with consolidated versions of laws and ordinances.

When new regulations have been approved, the 'principle of public access' to official documents guarantees all individuals – independent of nationality – access to official documents. All documents held by public authorities, received or dispatched, letters, decisions and reports are in principle public documents and must be made available for anyone to read (see Box 1).

A number of enquiry points are available where foreign parties can obtain more tailor-made information about Swedish regulations and impending regulations. It is also possible to contact central units within the government offices for information regarding WTO and the EU, including proposals for new national technical regulations that are provided by the unit for International Trade Policy and the unit for Export Promotion and the Internal Market. The enquiry point services are predominantly administered by the National Board of Trade, which is a Government agency dealing with foreign trade and trade policy. The Board acts as a contact/enquiry point for companies and individuals and collects complaints about existing or potential regulatory trade restrictions.[30] The main enquiry points are:[31]

- **The Swedish WTO-TBT and Directive 98/34 Enquiry Point,** which provides EU and WTO-related information, and notification procedures for national technical regulations.

- **SOLVIT**, which provides all EU regulations, directives and decisions, as well as proposals and reports from the EC and judgements from the European Court of Justice upon request.

- **Open Trade Gate Sweden (OTGS)**, which acts as a one-stop information centre for exporters in developing countries wishing to export their goods to Sweden. The OTGS Secretariat provides information about Swedish and European trade rules and regulations on matters such as labelling, health, standards, sanitary requirements and customs procedures (see section 2.3.2 for more information)

Box 1. The Swedish Principle of Public Access

The 'principle of public access' implies that all individuals – independent of nationality - and media have access to information about state and municipal activities. Any individual may read official documents of public authorities. In fact, Swedish citizens have enjoyed the right of access to official documents for more than two centuries. Civil servants and others who work for the state or municipalities are entitled to say what they know to outsiders and they have special powers to disclose information to newspapers, radio and television. The public and mass media are entitled to attend trials and meetings of the chamber of the Swedish Parliament, the municipality assembly, county council and other such entities. However, the right of public access is subject to two restrictions: first, the public only enjoy the right to read such documents that are regarded as *official documents*; and second, the public is not entitled to read those official documents classified as secret.

Source: Government Offices (2000, 2004).

2.1.2 Consultation mechanisms

Consultation with affected parties is in principle mandatory for the Governments Office and for government agencies in the legislative process. The Instrument of Government (SFS 1974:152, Chapter 7, § 2) states that *"in preparing Government business the necessary information and opinions shall be obtained from the public authorities concerned. Organisations and private persons shall be afforded an opportunity to express an opinion as necessary."*[32] This rule holds for domestic and foreign actors alike and it is the task of the Division for Legal and Linguistic Draft Revision within the Ministry of Justice to control that the obligation is fulfilled.

The practice of consulting external and affected parties in the drafting process of new regulations is well integrated in the legislative process.[33] Swedish regulators state that the consultation process contributes to regulatory quality by bringing new ideas, perspectives and data to their attention. Various interest parties including trade unions, business organisations and consumer groups also indicate that they are rather satisfied with their ability to provide input. Mostly large companies, including both domestic and foreign-owned companies, are regularly participating in the consultation process and companies established abroad can make their voice heard if they take the initiative to do so.

Before the Government takes up a position on the recommendations of a commission of inquiry, the committee report is referred to relevant bodies for their consideration. These may be central government agencies, special interest groups such as business or consumer organisations, trade unions, academic societies, courts, regional and local government authorities or other bodies whose activities may be affected by the proposals. The National Board of Trade serves as a consultant and discussion partner within this formal consultation procedure and analyses if new rules and regulations conform to international commitments and have a minimal impact on foreign trade and investment. However, all concerned ministries are consulted and those responsible for trade issues, including the Swedish Customs Service and the group responsible for the regulatory environment for businesses, can also influence the decisions.

Formal referrals must be made in writing and the relevant bodies must be given at least three months to submit their opinions. Only in exceptional cases can other forms be used (e.g. referral meetings). Formal referrals are occasionally combined with consultations at earlier stages of the drafting process, such as consultation meetings, reference groups or test panels. The authorities and interested parties that the proposal is referred to are invited to give comments on the complete proposal. The purpose is to make the rules as effective as possible. Several government agencies publish their referrals of legislative proposals for comments on their websites together with background documents such as Regulatory Impact Assessments (RIAs).

In addition to the formal channels of providing comments, any Swedish or foreign party can submit comments directly to the regulatory authorities without being explicitly invited to do so. Various stakeholders such as companies often take the initiative to communicate opinions and preferences of changes on legislation to the Government or the regulatory authority concerned. While the Swedish Government's consultation mechanisms for new domestic regulation are appreciated by the business community, the information and consultation mechanisms for new EU regulations, which by extension directly affect companies operating in Sweden, are not as well developed.[34] This is hardly a unique Swedish situation, however, and companies normally tackle a shortage of information by investing in initiatives to monitor the developments in the EC – either by own establishment or by subscribing to information from industry associations established in Brussels. These establishments can then be used to lobby the EC directly, or indirectly by approaching the Swedish Government about EC matters.

2.1.3 Appeal procedures

A high level of compliance is required if regulation is to be effective. High levels of compliance are encouraged by effective, efficient, and fair enforcement policies. The Swedish regulatory system does not have an explicit guarantee for appeals by foreign companies per se but appeals are possible whenever a foreign company is subject to a decision or directly affected by a decision taken by a Government authority. The company can then claim that the decision is not taken in accordance with national law. Broadly speaking, there is no recognised discrimination or divergence in terms of appeals procedures between national or foreign citizens or interest parties. While the overall picture is positive, the following section presents the appeals procedures in the case of government procurement. This area has been discussed for some years since there are no special sanctions in the case a procuring entity fails to comply with a decision from a court – something which is further elaborated in Section 2.1.5.

The Act on (SFS 1992:1528) Public Procurement (LOU) provides legal remedies for a supplier – domestic or foreign – that has not been treated in accordance with the rules.[35]. During an ongoing procedure (until the conclusion of a contract) a supplier that considers itself to have been harmed or at risk of being harmed may apply to the County Administrative Court. The County Administrative Court may decide that the award procedure shall be recommenced or that it may not be concluded until the infringement has been rectified. The court can also make an interim decision pending a final decision.

Reviews have priority at the County Administrative Courts. Appeals against the decision of a County Administrative Court can be lodged at the Administrative Court of Appeal. The contracting authorities/entities must give notification of the date on which the contract will be signed. In the interim it shall be possible for a potential complainant to submit an application for an administrative review (change) of the selection of the supplier. A reasonable period must be allowed between the selection of the supplier and the conclusion of the contract, normally no less than ten days.

When an award procedure has been concluded (a contract concluded or the procurement terminated), a supplier who considers that he has been harmed can claim damages against the contracting entity in a district court. Appeal can be made against rulings in these cases to a court of appeal. In cases where suppliers consider that they have been wrongly treated, there is also the possibility to appeal to the EC Commission or to the National Board for Public Procurement (NOU). However, the latter authority only reviews cases that are of general or principle interest. This appeal procedure has proven to work well in many instances as several local authorities have been found guilty of breaking the rules in the LOU. But there are no effective sanctions and some local authorities that have been found guilty of ignoring the opinion issued by the NOU.

2.1.4 Transparency in the field of technical regulations and standards

With respect to the EU *harmonised* sphere of technical rules, the application of WTO transparency requirements is the responsibility of the EC as to the WTO procedures. In the EU *non-harmonised* sphere, Sweden provides information on draft technical regulations and regulations on services in the information society field according to notification obligations in the Directive 98/34/EC and for draft technical regulations according to procedures in the WTO.

The development of mandatory technical regulations follows the same basic procedures as for other regulations when it comes to transparency requirements. In addition, the Ordinance (SFS 1994:2029) on Technical Rules sets out the requirements that government authorities[36] must respect regarding technical rules for goods and certain services.[37] The ordinance stipulates that an authority which formulates a technical rule must ensure that the rule is: a) least-trade restrictive; and b) that it does not impede trade in goods and information society services which fulfil similar requirements according to the rules in other EU

countries (including in Turkey for merchandise trade) (3 §). It also stipulates that an authority which intends to formulate a new, or modify an existing technical rule, must examine whether there is any international or European standard already available, or proposed, and which fulfils the same objectives (4 §). If there is such a rule, then the new formulation should match the existing international or European standard.

The Ordinance further requires the relevant authority to consult the National Board of Trade in case there is a risk that the technical rule may impede trade (5 §). Consultation should in principle take place a minimum of sixteen weeks before a decision is expected on the matter (KFS 1998:1, 2 §). In case the National Board of Trade assesses that the proposed rule may negatively affect the country's trade relations it must notify the Government (12 §), which takes a decision whether the rule should be notified to the EC and the WTO (6 §) or not. The authority proposing the technical rule must also await an acceptance by the Government in case it deviates from international rules in such a way that it may impede trade or affect the country's trade relation with another country or inter-governmental organisation (19 §).

The National Board of Trade is responsible for making authorities aware of the obligation to notify draft technical regulations to the EU and the WTO in accordance with the 98/34/EC-procedure and the WTO agreements on Sanitary and Phytosanitary (SPS) Measures and Technical Barriers to Trade (TBT). The Board, however, has no power to force government authorities to notify their drafts. The Division for Export Promotion and the Internal Market within the Ministry for Foreign Affairs is responsible for the overall co-ordination in the Government Offices of the procedure according to Directive 98/34/EC and must be consulted by other ministries in all issues relating to the procedure. The relevant ministries are responsible for the final version of responses and reactions to draft regulations.

To the extent that notified draft regulations have a significant effect on trade and are not based on relevant international standards, Sweden notifies them to the WTO Secretariat and other WTO members in accordance with the obligation laid down in Article 2.9 of the TBT Agreement. The three Swedish standardisation organisations adhere to the standard code of Annex III in the TBT Agreement, including its transparency provisions. The Swedish Standardisation Council (SSR) has a supervisory role in this respect.[38]

With regard to the notifications, the National Board of Trade is thus instructed to act as the interface between the Swedish Government on the one side, and the EC and the WTO on the other side. In general, it provides the Government with background information and analysis concerning market openness issues and publishes notices and recommendations regarding trade in the regulatory process (SFS 1994:2029, § 10). It also acts as a watchdog for market openness concerns in the regulatory process and it has seemingly worked to the great benefit of foreign traders. Section 2.3.1 provides more information about its work.

The draft technical regulations notified in the EU are made available to all interested parties via the TRIS website.[39] The notification messages as well as the notified drafts are translated into all official languages of the EU. Via the TRIS website it is possible to subscribe to special areas of notifications. All Swedish drafts that are notified to the EU are hence accessible via the web. In 2003, Sweden notified 38 technical regulations under the Directive 98/34/EC procedure. Most of the notifications covered transport (13 notifications) and foodstuffs and agricultural products (11 notifications).[40] Based on the 38 notified regulations, Sweden received 12 observations from EU member states, and 6 observations and 3 detailed opinions from the EC. In 2004, Sweden notified another 23 technical regulations and the areas of transport (5 notifications) and foodstuffs and agricultural products (4 notifications) were again the two most affected sectors. The frequency of Sweden's newly adopted and notified technical regulations are close to the EU-15 average, with larger economies normally implementing more regulations.[41]

There is an obligation in Articles 8.2 and 9.2 of Directive 98/34/EC for the notifying Member State to take reactions from the EC and the other member states into account as far as possible. Indeed, in Sweden, reactions from the EC or other member states have frequently led to modifications of existing drafts. A recent example is "The Swedish Maritime Administration's administrative provisions and general guidance on hull construction, stability and freeboard". The EC issued a detailed opinion according to Art. 9.2 in Directive 98/34/EC stating that the original draft contravened Directive 94/25/EC (recreational craft). As a response, the Swedish Maritime Administration amended its draft and inserted a clause explicitly stating that the regulation was not applicable to crafts which are covered by Directive 94/25/EC.

For the notification procedures under the WTO TBT and SPS agreements, the comment and consultation procedures are open to all WTO Members. The National Board of Trade frequently receives requests from WTO members to share draft regulations, including for comments. Canada and the United States are among the countries that occasionally have offered comments to such drafts.

Directive 98/34/EC has enhanced the level of transparency in Sweden in the sense that trading partners as well as the EC have the opportunity to comment on proposed regulatory measures in the area of technical regulations and standards. The so-called Securitel judgement from 1996 of the European Court of Justice has interpreted the Directive to mean that non-notified technical regulations cannot be enforced.[42] The observance of the notification obligation according to 98/34/EC is therefore vital and affected parties in any of the 30 countries (EU-25, EEA and some candidate countries) that participate in this information procedure can bring their comments to the issuing regulating authority via their national contact points. The Securitel judgement has not only increased transparency in terms of technical rules in Sweden and other EC and EEA countries but also removed many potential trade barriers stemming from technical rules which are not easily found by foreign traders. The fact that Sweden's technical rules are both advertised in a central registry and translated to several languages greatly benefits traders.

Council Decision 95/3052/EC, which provides a procedure for the exchange of information on national measures derogating from the principle of the free movement of goods within the Community, has been incorporated into the Swedish Ordinance SFS 1996:830 and implementing regulation KFS 1996:3. This EU legal act was supposed to provide information on technical barriers to trade and goods emanating from other member states but it has of late only produced a few notifications, and a possible new proposal is currently being prepared by the EC.

2.1.5 Transparency in government procurement

Sweden's annual volume of total public procurement amounts to approximately SEK 450 billion or some 17% of the country's gross domestic product of SEK 2 673 billion in 2005.[43] This can be compared with 15% in neighbouring Norway which also has a large public sector.[44] Given the large share of government procurement in total consumption, an open, fair and transparent procurement process is paramount to make efficient use of taxpayers' money. While the Swedish rules and policies for government procurement conform to best practices presented in the EC directives and the WTO Agreement on Government Procurement, there are concerns regarding the lack of sanctions that can be used to enforce decisions ordering public authorities to recommence the tendering procedure.

There is also significant scope for further foreign participation and bidding for government contracts. Foreign companies are estimated to be involved in a rather modest share[45] of public procurement. The low level of foreign participation is hardly a unique issue for Sweden: in the UK, which is one of the EU members with the highest share of public procurement advertised in the Official Journal of the European Union, the value of imports of total public procurement is not thought to exceed 5%.[46]

The National Board for Public Procurement (*NOU – Nämnden för offentlig upphandling*) is an independent central government agency under the Ministry of Finance. Its tasks include to supervise compliance with the Public Procurement Act (LOU) and the WTO Agreement on Government Procurement (GPA); to work for efficiency in public procurement; and to distribute information by means of telephone, newsletters, publications, seminars and conferences. NOU publishes *NOU Info* which is a quarterly newsletter in Swedish mainly targeting contracting entities and suppliers to the public sector. The newsletter is available at the NOU website (*www.nou.se*) and it is possible to subscribe to a paper version. The website also offers access to other information regarding government procurement in Sweden.

The Act (SFS 1992:1528) on Public Procurement (LOU) regulates the "purchase, leasing, rental or hire-purchase of supplies, public works or services" involving contracting entities such as state, local or other authorities, decision-making bodies in municipalities and county councils as well as certain public-owned companies, foundations, societies and associations (Chapter 1, 5 §). The rules applicable to government procurement depend on the value of the awarded contract. For procurement *above* threshold values, the LOU is based predominantly on EC directives.[47] For procurement *below* threshold values, the provisions are national and the EC directives do not apply (see Table 3 for the latest threshold values which are updated biannually). Certain non-prioritised service contracts, secret contracts and the like, and defence procurement are mainly covered by national rules.

As a general rule, all public procurement must be advertised except for some procurement that according to the procurement directives are explicitly excluded from such requirements. The negotiated procedure without prior advertisement could be used e.g. when, for technical or artistic reasons, or due to the protection of exclusive rights, a service may be provided only by a particular company. Direct procurement, which according to the national rules may be used when the value of the procurement is low or when there are exceptional reasons, is also excluded from the advertisement requirement. Contract documents must be prepared by contracting entities and these must comprise a specification of the goods/services required, commercial terms, administrative conditions, award criteria, and qualification requirements in respect of suppliers. A contracting entity which finds it necessary to alter its requirements during the award procedure must normally recommence the procedure. Another general rule is that requests to participate as well as tenders must be submitted in writing for procurement above threshold values.

Table 3. Threshold values for public procurement (SEK)

	Classical sectors		**Utilities sectors**
	Central government agencies	Other procurement agencies	
Goods and services	1 253 000	1 826 000	3 653 000 (5 480 000 for certain contracts)
Public works	45 670 000		45 670 000
Source: www.nou.se and SFS 2005:1119 and input by Swedish Authorities.			

Contracting entities must furthermore maintain a record of the reasons for their decisions and any other matters of importance to the procurement process, including documents such as the advertisement, contract documents, a list of suppliers circulated, applications to tender, tenders, working documents regarding contacts with suppliers, a record of the evaluation, documents indicating the reasons for selection of tenderers and suppliers as well as the reasons for rejecting applications to tender. These rules are highly useful for detecting corruption and discriminatory behaviour.

To increase transparency and inform any interested party about forthcoming and concluded procurements, ***procurement above threshold values*** requires advertisement of:

a) the procurement planned each budget year for certain product areas, for special services categories and planned public works;
b) the procurement in question; and
c) contracts awarded

in the Supplement to the Official Journal of the European Union. Furthermore, candidates and tenderers shall be informed of decisions concerning the award of a contract and the reasons for the decision. Any interested party can access information regarding government procurement in the Official Journal and the Tenders Electronic Daily (TED) database (http://ted.europa.eu/).[48] There are three types of procurement procedures: open procedure, restrictive procedure and negotiated procedure. For open procedure, any interested party is invited to tender and the date of receipt of tenders must be at least 52 days from the dispatch of the contract notice.[49] For restrictive procedure, the minimum time for application is 37 days. While procurement above the threshold values are required to be advertised in the Official Journal (TED database), advertisements are often also presented on the website of the procuring entity and in newspapers and trade magazines.

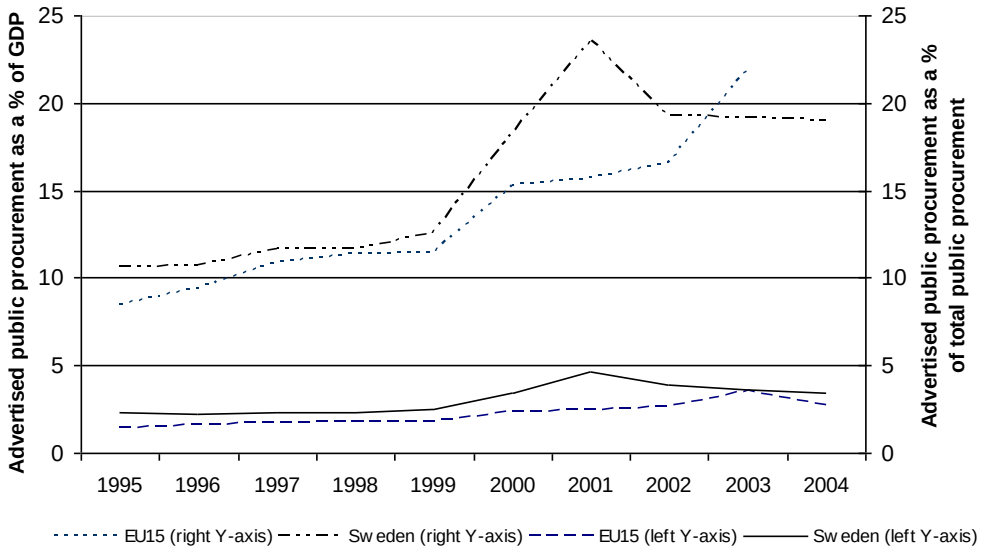
Procurement below threshold values, defence supplies and the like and certain non-prioritised services (B-services) are regulated in LOU (Chapter 6) and covers three types of procurement procedures: simplified procedure, selective procedure and direct procedure. For simplified procedure, the authority shall advertise the procurement in a publicly available electronic database or in other media such as major newspapers or trade magazines. Selective procedure also requires publication of notices in publicly accessible electronic databases. For direct procedure, if the value is low or if there are particular reasons, procurement without formal requirements may be used. For procurement below threshold values, the time period allowed for the submission of applications to tender may never be less than ten days from the date of publication (Chapter 6, 5a §).

Tenders and applications to tender are subject to absolute secrecy until the procurement process is concluded. A contracting party may not provide any information about the entities it has approached; whether it has received tenders or applications; and whether a given entity has submitted a tender or application to tender. However, when the contract has been awarded, all documents regarding the procurement are public official documents, which any interested party can access. Only if there are particular reasons to assume that the disclosure of information would harm the supplier or the authority may such information in a document be considered secret. If a contracting authority (including a company owned by a local government) refuses to release documents relating to the procurement, an appeal can be lodged against the decision in an Administrative Court of Appeal.

OECD (2004) has previously reported that Sweden has experienced difficulty in ensuring full compliance of its requirements with the EC Public Procurement Directives (and so have many other EU members). While Sweden in the past has advertised a slightly higher share of its procurement in the Official Journal than the EU average, in 2003, for the first time, Swedish advertisement represented a smaller share of public procurement than the EU15 average (see Figure 7). This may be partly explained by a particularly high contribution to the EU-15 average by the UK Government and the Swedish figures

for 2000-2004 are significantly higher than for the 1995-1999 period. Nevertheless, since 2001, Sweden has experienced a slightly negative trend as indicated in Figure 7. A proposal for legislation that implements new EC-directives on public procurement (Directive 2004/18/EC and 2004/17/EC) is at present revised by the Law Council (*Lagrådet*) and they contain detailed provisions on advertising throughout the Community.

Figure 7. Public procurement advertised in the Official Journal



Source: Eurostat

OECD has previously argued that reasons for the record of notifications in the Official Journal may include certain weaknesses in the legislative and institutional framework as well as reluctance by some municipalities and state institutions to put activities out to tender.[50] Burdensome rules with regard to procurement are the primary reason why many companies choose not to bid for public contracts in the first place, as reported by the private sector association Företagarna.[51] The increased complexity of procurement rules stems from different society objectives that have been incorporated in the procurement process, and these rules may have a disproportionately negative effect on the participation by foreign companies. Foreign companies are mainly participating in the bidding for larger contracts such as infrastructure projects.

An illustration of how society objectives potentially could increase the complexity in the procurement process is offered by the recent debate centred on whether new procurement rules should be created that oblige companies that obtain public sector contracts to have collective agreements, or apply terms of employment on a similar level with such agreements.[52] Since many SMEs and foreign companies do not have such agreements in place, they would either need to rethink their labour policy or be excluded from the government procurement process if such a condition were to apply.[53] This type of regulation would risk reducing the already limited participation of foreign companies in the Swedish government procurement process.[54] A regulation that was recently implemented (1 July 2006) provides anti-discrimination clauses in public contracts (SFS 2006:260). The regulation obliges certain government authorities to establish special conditions related to Swedish anti-discrimination laws when awarding a contract that fulfil certain time and value conditions.

Several Government Committees and public authorities have raised concerns related to shortcomings in Sweden's implementation of current EC directives on public procurement.[55] In spite of the fact that Sweden has implemented binding provisions in these directives, there are no sanctions that would force authorities that are found to have violated procurement rules to better comply with court decisions.[56] There have e.g. been some cases where municipalities have lost review cases under the Act on Government Procurement (LOU) but ignored the Court rulings. The lack of sanction provisions with respect to public procurement and cases of abuse do not help in ensuring trust in fair and competitive government procurement. Nor do they enhance the interest of prospective foreign bidders to approach the Swedish market.[57]

Another issue concerns procurement by state-owned enterprises (SOEs). The State Audit Institution (*Riksrevisionen*) recently published a study which concluded that ambiguities in the mandate of the National Board for Public Procurement (NOU) to monitor procurement by SOEs have led the agency to leave out many SOEs from its monitoring activities.[58] The different interpretations by SOEs and NOU about whether a certain SOE is covered by the LOU or not may well have had a negative effect on competition and left SOE's procurement decisions to their own discretion.[59] The study further found that SOEs breaking the LOU rules were unlikely to be caught, and even if they were found guilty, there are no effective sanctions against them to enforce court rulings.[60]

Conclusion: The Swedish procedures for disseminating information in the regulatory process are well developed. Information is free of charge, available through various channels and the legal obligation for government authorities to publish all relevant material through information technology is particularly helpful for foreign companies. The established consultation mechanisms in the regulatory process provide interested parties the opportunity to provide input and this process is another commendable area in which there are few concerns. The National Board of Trade provides information services and recommendations to government authorities in the regulatory process and acts as an interface between the Swedish Government and the WTO and EU. Its role as a kind of supervisory body or *ombudsman* for market openness concerns is seemingly working well too. An area where Sweden could do more to increase transparency is the government procurement process where there is limited foreign participation and where there is scope to further improve compliance with existing rules regarding advertisement.

2.2 Measures to ensure non-discrimination

The application of non-discrimination principles in making and implementing regulations aims at providing effective equality of competitive opportunities between like goods and services irrespective of country of origin. The Most Favoured Nation (MFN) and National Treatment (NT) principles are the two principal codes of conduct employed to ensure non-discrimination. The application of the MFN principle means that all foreign producers and service providers seeking entry to the national market are given equal opportunities while NT implies that foreign producers and service providers are treated no less favourably than domestic producers and service providers. The extent to which these two core principles of the multilateral trading system are actively promoted when developing and applying regulations is a helpful gauge of a country's overall efforts to promote a trade and investment-friendly regulatory system.

2.2.1 Non-discrimination in domestic regulation

Sweden is obligated to apply the principles of most favoured nation and national treatment in its trading relations due to its commitments in the WTO. As a member of the European Community, Sweden may neither conclude international agreements nor enact national commercial policy measures within the common commercial policy in absence of specific authorisation by the EC.[61] However, the members of the EC have retained certain powers in particular as regards services and intellectual property, and Sweden has listed a number of exceptions related to services. According to the Swedish Authorities, these exceptions apply to investment by established foreign-controlled enterprises in the areas of:

- **Accountancy**: Investment in the accountancy sector (more exactly: legal persons carrying out statutory audits) by persons not supervised by the Swedish Supervisory Board of Public Accountants may not exceed 25%, or, where there are particular grounds, 50%.

- **Air transport**: Cabotage is reserved to national airlines.[62]

- **Air transport**: Foreign enterprises may be restricted from access to international air routes unless bilateral inter-governmental agreements provide otherwise.

- **Fishing**: A legal entity owned up to 50% or more by foreign citizens may require permission to pursue commercial fishing activities in Swedish waters (unless it holds a private fishing right).

- **Maritime transport**: Cabotage is reserved to vessels flying the national flag.[63]

The Swedish GATS Schedule of Specific Commitments also lists a number of limitations on national treatment with regard to the formation of legal entities in addition to the list above.[64] For example, one horizontal limitation states that while a limited liability company may be established by one or several founders, a founding party shall either reside within the European Economic Area or be a legal entity formed pursuant to the laws of a state within the European Economic Area. And although there are exceptions, the managing director and at least 50% of the members of the board shall reside in the European Economic Area. This is a concern that foreign companies often raise with the Invest in Sweden Agency.

The Swedish exemptions to GATS Article II (Schedules of Concessions) are presented in Annex 1. A number of measures aimed at promoting Nordic cooperation are in place and covers e.g. financial activities of the Nordic Investment Bank, the Nordic Fund for Project Exports, the Nordic Industrial Fund and the Nordic Environment Finance Corporation. Exemptions are also listed for audiovisual services; production and distribution of cinematographic works and television programmes which are applied to preserve and promote the regional identity of the Nordic and European countries. Sweden further applies an exemption for Switzerland with the objective of providing for the movement of all categories of natural persons supplying services.[65]

In addition, some government procurement made with the support of rules agreed in a multilateral framework or subject to rules on secrecy is exempted from the provisions in the Act on Public Procurement. There are also a few exceptions that are in line with the contracts exempted from the coverage of the European directives on public procurement.

These reviewed cases of discrimination are mainly related to legal exceptions and exemptions from the WTO framework. WTO allows certain discrimination between trading partners if the discriminatory measures were notified to the WTO and conform to the WTO legal framework. New regulatory measures that discriminate against foreign exporters are generally not allowed and trade-related complaints directed to Sweden have not been related to discrimination.

2.2.2 Preferential agreements

The GATT non-discrimination principles are core components of the EU common commercial policy but the EC makes extensive use of the scope under GATT Article XXIV (Exceptions to the Rule of Non-discrimination) to conclude preferential trade agreements with non-EU countries. Preferential trade agreements are necessarily discriminatory as they generally involve trade and investment liberalisation which do not benefit non-parties to the agreement. Through its membership in the EU, Sweden is a party to preferential agreements such as[66]:

- Customs Unions:
  - Andorra, San Marino and Turkey;
- Free Trade Agreements:
  - Switzerland, Denmark (Faroe Islands), Chile, Mexico and South Africa, and "certain overseas countries and territories";
  - Europe Agreements with EU candidate countries Bulgaria and Romania;
  - European Economic Area (EEA) Agreements with Norway, Iceland and Liechtenstein;
  - Stabilisation and Association Agreements with Croatia and FYR of Macedonia
  - Euro-Mediterranean Agreements with Algeria, Egypt, Israel, Jordan, Lebanon, Morocco and Tunisia. Negotiations are under way with Syria and there is an interim Euro-Mediterranean Agreement with the Palestinian Authority.

The number of preferential agreements is likely to grow in the future as EU is negotiating free trade agreements with other countries or trade blocs such as Mercosur and the Gulf Cooperation Council. In addition, the EU grants developing countries preferential access to its single market under the Generalised System of Preferences (GSP).[67] Information to third parties on these agreements is available through notifications to the WTO and on the EC website. Sweden is a signatory to the Cotonou Agreement (successor to the Lomé Convention), which covers trade provisions and provides for non-reciprocal preferential access to the internal market. The EC seeks to expand its economic ties with developing countries in some specific regions and it is currently negotiating Economic Partnership Agreements with 79 African, Caribbean and Pacific (ACP) countries.[68]

EU member states are entitled to have in force certain bilateral friendship, trade and navigation treaties with third countries, governing matters covered by the common commercial policy within the meaning of Article 133 of the Treaty of the European Union. Annex 2 lists Sweden's bilateral agreements with non-EU member states. These do not, however, imply any specific preferential agreements and they were signed before Sweden joined the EU in 1995.

Conclusion: The review above of Swedish exceptions to GATS, GATT Article XXIV and Swedish membership in a growing number of preferential agreements that cover trade and investment indicate that Sweden has made extensive use of the possibilities to exceptions that are allowed in the WTO framework. The regulatory procedures that are in place today are based on principles that effectively control for discriminatory measures and there is little if no evidence that new Swedish regulations have treated domestic and foreign companies differently.

2.3 Measures to avoid unnecessary trade restrictiveness

To attain a particular regulatory objective, policy makers should favour regulations that are not more trade restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create. Examples of this approach would be to use performance-based rather than design standards as the basis of a technical regulation, or to consider taxes or tradable permits rather than regulations to achieve the same legitimate policy goal. At the procedural level, effective adherence to this principle entails consideration of the extent to which specific provisions require or encourage regulators to avoid unnecessary trade restrictiveness and the rationale for any exceptions; how the impact of new regulations

on international trade and investment is assessed; the extent to which trade policy bodies as well as foreign traders and investors are consulted in the regulatory process; and means for ensuring access by foreign parties to dispute settlement.

2.3.1 Assessing the impact of regulations on trade

Burdensome regulations not only affect domestic companies, but they also impact market openness. Although unnecessarily burdensome regulations and administrative practices may affect domestic and foreign companies without distinction from the perspective of the regulator, they often impact foreign trade and investment disproportionately due to the advantage domestic companies have in terms of knowledge of local customs and procedures. Foreign multinationals are often able to overcome unnecessarily restrictive rules and regulations due to their significant resources, but foreign SMEs are particularly disadvantaged due to limited resources and administrative capacities. The impact of red tape on foreign SMEs is compounded not only by size, but also by lack of familiarity with local business and regulatory culture.

According to the Board of Swedish Industry and Commerce for Better Regulations (NNR), there are approximately 1 000 laws, 2 000 ordinances and 7 000 official regulations and general recommendations in Sweden.[69] These cover some 20 000 pages of business regulations of which 40% are EU-related. Roughly 5 000 changes are adopted each year and this represents an annual regulatory inflation of 2-4%. Against this backdrop it is clear that guidelines for best-practises in the regulatory process are crucial in order to achieve regulatory objectives while minimising potentially negative side effects. Regulatory Impact Assessments (RIAs) with consideration taken to the potential impact on foreign competition is the best way forward to ensure that new regulations are least trade restrictive.

The general procedures for conducting RIAs in Sweden are described in detail in Chapter 2: *'Government Capacity to Assure High Quality Regulation in Sweden'* of this report and the reader is kindly referred to that section to get a better view of the non-trade related procedures and issues of RIAs (See also Box 2). While the quality and frequency of conducting RIAs are acknowledged by business associations and many ministry officials to have dropped over the last years – including for reasons such as resource and time constraints – the transparency and consultation procedures are still respected throughout the process. But rigorous analysis of the prospective regulatory impact is seldom conducted and there are no clear formal sanctions, or stop-mechanisms, of assessments of low quality. Still, during the drafting procedure, the Better Regulation Unit at the Ministry of Industry, Employment and Communications can demand amendments to RIAs and different units at ministerial level also have the possibility to comment on RIAs to ensure that their interests are taken into account.

Trade and foreign entry issues may not be quite as high up on the RIA agenda and considered at an early stage as e.g. environment, competition and consumer issues but the National Board of Trade is still frequently consulted by government authorities to provide analyses, recommendations and proposals on trade policy issues, including on trade barriers and how to avoid them in the legislative process. Before the Swedish Government formulates a legal proposal, the matter may be investigated by a commission of inquiry (i.e. the *inquiry stage*), which produces a report that is subsequently circulated to a number of bodies for their consideration (i.e. the *referral process*). It is in the referral process that bodies like the Competition Authority and the National Board of Trade are normally consulted to provide input from a market openness perspective.

Each year the National Board of Trade offers its opinion on approximately 100 reports with recommendations from the commission of inquiry. In this procedure of "transparency and control", the National Board of Trade requests and examines data and exerts its influence on the recommendations for new legislation before the ministry responsible for the legal proposal produces a Government bill in consultation with all ministries concerned and which is thereafter passed on to the Swedish Parliament (*Riksdag*) for the democratic decision making process. The National Board of Trade has no formal right to force a ministry to amend the proposed recommendations to take its concerns into account.

Thus, government authorities like the National Board of Trade and the Competition Authority that examine market openness issues mostly exercise their influence at the referral stage. Market openness issues could possibly be identified at an earlier stage if such authorities were consulted more frequently in the inquiry stage but this holds for any area of concern such as competition and so forth. At the Government Offices level, it is the internal consultation with all relevant ministries – including the Ministry for Foreign Affairs, which is responsible for the internal market and international trade issues, and the Ministry of Industry, Employment and Communications, which is responsible for competition policy and high quality regulation – that shall ensure that negative effects on market openness are limited. The current system of checks and balances for market openness concerns is perceived to operate rather well.

Next to the legislative procedures and the work of the National Board of Trade, the Invest in Sweden Agency (ISA) is instructed by the Government to inform it about factors that negatively affect foreign direct investment (FDI). This is mainly done in an annual publication, *The report on the climate for foreign investments in Sweden*, in which ISA presents recommendations to changes in domestic regulations which would improve foreign investment and competition (ISA, 2005). Within the Government administration, a special inter-ministerial group meets twice yearly to discuss how to further improve conditions for foreign direct investment in Sweden.

Box 2. Trade-related checks and balances for new regulations

The Swedish Ordinance (SFS 1994:2029) on Technical Rules requires government authorities to consider a number of market openness aspects when preparing technical regulations, including that the proposed regulation shall be least trade restrictive, respect mutual recognition provisions which fulfil equivalent requirements in member states within the internal market (including EEA and Turkey), and when there is an international or European standard covering the area to be regulated, the authority shall as far as possible make sure that the regulation complies with the standard. This chapter shows that these checks and balances work rather well in Sweden although there are some difficulties in implementing the mutual recognition principles in action. In the Guidelines of the Prime Minister's Office – "Control by regulation – Check-list for legal drafters" – legal drafters are also instructed to take into consideration obligations at an international level and whether there is a need to discuss the proposal with any particular international organisations.

According to § 5 of the Swedish Ordinance, authorities are obliged to consult the National Board of Trade if they suspect a proposed technical rule could give rise to technical barriers to trade. Other provisions in the National Board of Trade implementation regulation KFS 1998:1 on Technical Rules require that an impact assessment should be sent to the National Board of Trade when new drafts are to be notified according to Directive 98/34/EC. The National Board of Trade indicates that some of these impact assessments could be more rigorous with regard to market openness aspects.

In addition, according to the Ordinance (SFS 2005:894) on Conformity Assessment, all authorities are obliged to consult with SWEDAC before issuing regulations which include requirements on conformity assessment. SWEDAC is thus given a coordinating and supervisory role with regard to conformity assessment procedures in legislation. Furthermore, the Committees Ordinance (SFS 1998:1474) requires that a Committee of Inquiry has to examine all new or amended legislation in a small business perspective and describe the consequences of its proposals. The assessment must also report whether the proposal can lead to the distortion of competition

2.3.2 Simplification of administration for businesses

OECD's ongoing work on product market regulation (PMR) in the OECD area reveals that Sweden is a relatively liberal country with regard to product market regulation.[70] It belongs to the group of countries whose PMR estimates are more towards the "liberal" than "restrictive" side within the OECD. Sweden's PMR estimate is close to those of neighbouring Denmark and Finland but relatively more restrictive than e.g. in the UK, United States and Australia. Between 1998 and 2003, Sweden broadly maintained its PMR position but made progress in reducing the extent of state control and barriers to entrepreneurship. Sweden

also sharply reduced its estimator value for 'discriminatory procedures' and 'tariffs' as measures for barriers to trade investment. Swedish regulatory barriers remained very low as in most other OECD countries while the estimator for ownership barriers was constant and slightly below the OECD average.

The World Bank report *Doing business in 2006* measures the ease with which business is conducted in some 155 economies. Table 4 presents some of the variables it uses to rank a country's regulatory and administrative efficiency, or "ease of doing business". Sweden currently ranks as the 14th easiest country in which to conduct business, and second economy when it comes to the ease of trading – as measured by the efficiency of the procedures starting from the final contractual agreement between two parties and ending with the delivery of the goods. On average, import procedures require one signature and three documents, and take six days of which only one day is taken up by government intervention of the Customs Service.

Foreign companies that choose to establish themselves in Sweden want to spend only a minimum of time and resources before they can start operating. In Sweden, the administrative procedures are relatively fewer and the duration to register a company and property are shorter than the OECD average. However, while an entrepreneur needs to wait for 16 days in Sweden to register a business, it takes 2 days in Australia, 3 days in Canada and 5 days in Denmark and the United States. An advantage in Sweden though is that it is relatively cheap to register a company but it is still more costly than in the average OECD country to deal with licenses and permit requirements. Market exit indicators are not very different from the OECD average and it takes more or less the same amount of time to close a business. The same goes for enforcing a contract. The regulatory burden is somewhat stricter though when it comes to taxes and employing workers. In particular SMEs are concerned about the current regulatory burden relating to e.g. environmental and health inspection, and in acquiring building permits.

The Global Competitiveness Report 2005-2006 surveys companies in some 117 countries to investigate how regulations affect private sectors around the world.[71] Although the survey results are dependent on the individual perceptions and expectations in each country, the results are arguably comparable across the OECD area. In general, the country surveys put the Swedish regulatory system in a rather positive light compared to other OECD countries (even if the differences often are minor). Swedish regulations are perceived to be rather stringent and sometimes burdensome but at the same time fair and transparent.

Table 4. Indicators for doing business in 2005

Indicator	Sweden	OECD
Starting a business		
Procedures (number)	3	7
Time (days)	16	20
Cost (% of income per capita)	1	7
Minimal capital (% of income per capita)	35	41
Dealing with licenses		
Procedures (number)	8	14
Time (days)	116	147
Cost (% of income per capita)	120	75
Registering property		
Procedures (number)	1	5
Time (days)	2	32
Cost (% of property value)	3	5
Trading across borders		
Documents for export (number)	4	5
Signatures for export (number)	1	3
Time for export (days)	6	13
Document for import (number)	3	7
Signatures for import (number)	1	3
Time for import (days)	6	14
Protecting investors		
Investor protection index (the higher the better)	5	6
Enforcing contracts		
Procedures (number)	23	20
Time (days)	208	226
Cost (% of debt)	6	11
Closing a business		
Time (days)	2	2
Cost (% of estate)	9	7
Recovery rate (cents on the dollar)	75	74

Source: World Bank (2005) www.doingbusiness.org

The surveyed companies point out that tariff and non-tariff barriers have a very minor effect on the ability of imported goods to compete on the Swedish market. They also perceive standards on product/service quality, energy and other non-environmental regulations to be stringent, and environmental regulations to be among the world's most stringent. However, environmental regulations are perceived to be rather stable and enforced consistently and fairly, and compliance with environmental regulations is perceived on average to be of some help for long-term competitiveness by encouraging improvements in products and processes. The Swedish industry finds it moderately burdensome to comply with administrative requirements, such as permits, regulations and reporting, issued by the Swedish Government. But the Swedish companies do not find Swedish regulations more or less burdensome than companies in OECD members such as Canada, Japan, Norway, Spain or United States find their domestic regulations. When it comes to bureaucratic red tape, senior management of Swedish companies spend among the least time dealing or negotiating with government officials.

Regulatory simplification is a particularly high priority to Swedish companies, which are estimated to incur an annual cost of SEK 50 billion by administering government regulations.[72] Another report estimates that 25% of the operating costs for companies are reporting and compliance related.[73] Regulatory simplification is also an explicit priority of the Swedish Government and the opposition alike. The Swedish

Government has adopted the simplification of business regulations as a key issue of its economic policy.[74] In recent years, several initiatives have been taken, e.g. to measure companies' costs of complying with tax, labour-market, environmental and agricultural legislation (see more on this in Chapter 2: *'Government Capacity to Assure High Quality Regulation in Sweden'*). However, the Board of Swedish Industry and Commerce for Better Regulation (NNR) argues that more work can be done to further facilitate the administrative procedures for companies.[75]

According to the annual review series of RIAs produced by Swedish authorities, NNR concludes that an important Government objective should be to improve the quality and rigour of RIAs. The organisation also proposes the Swedish Government to set more ambitious targets, e.g. quantitative targets, to reduce administrative burden for companies. Such quantitative targets have worked well in neighbouring countries like Denmark and the Netherlands and the Swedish Government has stated that it intends to set such a target sometime in 2006.[76] And while several positive measures to reduce the administrative burden are being implemented by the Swedish Government, the burdens on companies are still growing according to the NNR Regulation Indicators for 2005.[77] A major reason for this – according to the evaluations – is the Government's perceived lack of a coherent policy for regulatory simplification. So while the stated ambition of the Government is supportive, parts of the business community are calling for a more coordinated and measurable action plan to be implemented.[78]

Next to the procedural measures implemented to avoid new non-discriminatory regulations, Sweden offers two inquiry services which aid traders that experience problems with the Swedish regulatory framework. First, the SOLVIT-network[79] offers some support to those who experience problems with national rules which deviate from EC rules in harmonised and non-harmonised areas of the EU internal market.[80] These types of problems can have a marked effect on foreign companies' ability to export their goods and services to the Swedish market. SOLVIT acts as an informal channel for dispute resolution, which works quicker than formal complaints.[81] However, the SOLVIT-system cannot impose sanctions or represent clients in formal procedures. SOLVIT covers policy areas such as border controls, market access for products and services, and public procurement. Examples of cases handled by the Swedish SOLVIT-team include discrimination of temporary movement of service workers, sales bans on fruit products related to labelling, and the failure to recognise accredited conformity assessment results within Europe.

A second inquiry service is the Open Trade Gate Sweden (OTGS). OTGS acts as a one-stop information centre and targets exporters in developing countries – as defined by the OECD DAC-list – who encounter trade barriers in Sweden. OTGS tries to solve problems either directly or by influencing Swedish or EU policies. One of its significant merits is that OTGS offers its services in English, French, Portuguese and Spanish, thus covering large parts of Africa, America and Asia. A typical inquiry can be e.g. how a Swedish government body interprets and implements an EC Directive; complaints about overly burdensome requirements to acquire health certificates or particularly restrictive taxes that impede Swedish imports. Other issues that are often raised include regulatory matters such as labelling, standards, sanitary requirements and customs procedures. As for the SOLVIT-network, OTGS does not have any judicial power to remove trade barriers but rather presents proposals of changes and recommendations to facilitate competition from foreign products and services.

Both SOLVIT (established in 2002) and OTGS (established in 2004) are relatively new services and it is too early to evaluate their impact on the regulatory process. If the proposals and recommendations that are increasingly produced based on the information collected from the two systems receive real consideration in the national regulatory process, then this type of problem solving networks can have a very positive effect on market openness in the medium and long term. The networks provide direct input to the Swedish authorities. The data reveal the concerns and priorities of domestic and foreign traders and this information can be monitored over time. It is a helpful and commendable initiative which many OECD members have advocated but not necessarily put in place.

Yet there are challenges related to this type of services: government authorities do not only need to establish the physical infrastructure and have the necessary manpower to provide fast and accurate information, but also to reach out to traders in foreign countries. While the service may be difficult to advertise to developing country traders directly, it works through linking the web-based service to other trade and government websites that traders may use when searching for online information relating to Swedish rules and regulations. In the Swedish case, the National Board of Trade has a few professionals collecting and handling the inquiries and complaints they receive. The Swedish SOLVIT-team and OTGS centre are complemented by the 'Export Helpdesk' that the EC has established to provide trade-related information to developing countries, and which Sweden was helping to initiate.[82]

Foreign companies that experience problems related to commercial presence and investments are also recommended to contact the Invest in Sweden Agency (ISA) or one of its regional or local partners. ISA collects and handles complaints within its "after care programme", and helps foreign companies in their contacts with government agencies. ISA is instructed to inform the Swedish Government about factors that negatively affect foreign direct investment in an annual report that is publicly available on its website.[83]

2.3.3 Promoting trade through facilitated border procedures

The Swedish Customs Service is one of the more business-friendly customs authorities within the OECD area. It has been a model in reducing the administrative workload and in shortening the time dedicated to border procedures. According to the World Bank (2006), only Denmark can boast more time-effective import and export procedures. While these procedures take an estimated five days in Denmark and six days in Sweden, the average OECD country requires more than twice that time (see Table 4 above and Annex 4 for a review of the procedures the traders needs to go through).

The Swedish Customs Service has been offering electronic customs solutions since 1990 and automated risk analysis since 1997. In order to achieve the operational objective of offering safe and trade-friendly procedures, a customs authority needs to co-operate with the business community and other public authorities. The vision of the Swedish Customs Service sets out a number of targets, including that 90% of customs declarations should not require manual handling and that the costs for society caused by the traffic in narcotic drugs, alcoholic beverages and tobacco products should be reduced by 25%. Another goal is for the Customs Service to collaborate with other customs authorities and become renowned for fresh ideas, simplifications and innovative working methods.[84]

To achieve this, it has developed and implemented systems such as a single window connecting seven government ministries for matters concerning import, export and transit of goods. Customs tariffs are available to any interested party on the Internet and customs information is available 24 hours a day via Internet, telephone and e-mail. There is also a solution called 'Customs Internet Declaration' for smaller companies to transmit electronic import and export declarations over Internet. Internet declarations carry legal significance due to the use of electronic signatures. Customs declarations can also be made via Electronic Data Interchange (EDI). According to the Swedish Customs Service, 96% of customs declarations were electronic in 2005 and the goal for 2006 is to reach 100%.[85] 84% of import and export declarations were cleared automatically in 2005 and automatic clearance takes around 90 seconds. The aim is to increase this ratio to 90%. Box 3 presents The Stairway and Green Corridor initiatives that the Swedish Customs Service has taken recently to facilitate trade.

In addition to domestic or regional initiatives, the Customs Service is also part of the EU "Customs 2007 project" and promotes customs capacity building in developing countries through its involvement in the WCO. The Swedish Customs is currently working together with the EC and other EU member states to establish common EU-systems on pre-notification of import, export and transit shipments as well as systems for Export Control (ECS), Automated Import (AIS) and Excise Movement Control (EMCS). These projects may close some perceived gaps regarding the co-ordination of customs procedures within the Single market.[86]

Box 3. The Stairway and the Green corridor

The Swedish Customs Service has developed a system for customs clearance called The Stairway in partnership with the Swedish business community. The Stairway was implemented in 2001 and it is an accreditation and certification system for importers, exporters, brokers, freight forwarders, carriers, terminals, warehouses and ports. Companies can receive simplified handling of their goods at customs by having their customs routines quality accredited. In obtaining certification, companies declare their goods in electronic format to a single-window system either on the customs website or through EDI/EDIFACT from the company's business system. The Customs Service offers different levels of quality accreditation to cater to both SMEs and multinationals. The objective is to provide companies with a more efficient handling of their customs procedures by minimising unnecessary administration and checks. The Stairway is open for all importers, exporters and forwarding agents, regardless of size or line of business. The benefits of Stairway accreditation, however, are almost exclusively enjoyed by Swedish producers as the stringent quality and safety procedures have discouraged all but a few foreign companies so far. Around 224 companies are certified for the Stairway covering more than 30% of the value of total trade flows but in 2005, the number of companies certified in the upper levels of the Stairway dropped from 56 to 43 companies.

Another customs initiative is the 'Green corridor' which is a customs solution based on co-operation between the customs authorities in Finland, Russia and Sweden. Established in 2003, the Green Corridor is based on the accreditation of customs processes and a fully electronic chain of information, starting with the Swedish trader and ending with the Russian customs officers at the point of entry. Via the Internet, Russian Customs has access to the trader's customs declaration and can thus better plan and perform control measures. This enables mutual risk analyses and ensures that control measures are performed only when high risk is perceived. Special measures ensure the authenticity of submitted information and electronic signatures guarantee consistency from consignor to consignee. Electronic sharing of information has helped customs officials manage processes with greater speed and at reduced cost. An approved Swedish trader joining the Green Corridor enjoys a release time of a maximum of two hours when entering Russian territory. This is a lead-time reduction of more than 97%, something that gives Green Corridor members a significant advantage. The Green Corridor promotes compliance on the international level and makes use of the e-solutions implemented within the Virtual Customs Office of Swedish Customs.

Source: OECD (2003b), Karlsson (2005) and the Annual Report of the Swedish Customs Service 2005.

Conclusion: Sweden has implemented a number of initiatives to avoid unnecessary trade restrictiveness. The Swedish Customs Service is in some respects at the forefront with regard to facilitated border procedures for merchandise trade. The Open Trade Gate Sweden is an interesting new initiative that together with the services provided by the Swedish SOLVIT-team may help to further increase market openness in Sweden. The Swedish Government is also in the process of simplifying regulations and administrative procedures affecting the business community – although the business community argues that there is more work needed to achieve this objective.

The one area where the Swedish authorities could particularly improve their measures to avoid unnecessary trade restrictiveness concerns the RIA process. There is a rather widespread perception among the people interviewed within the public administration and private sector that the frequency and quality of RIAs have dropped over time. While the ability of the National Board of Trade to comment and present recommendations on commission enquiry proposals for new legislation seems satisfactory, there is significant scope for legislating ministries to increase the quality and rigour of its impact assessments with regard to market openness aspects.

2.4 Measures to encourage use of internationally harmonised standards

The application of different standards and regulations for like products in different countries – often explained by natural and historical reasons relating to climate, geography, natural resources or production traditions – confronts companies wishing to engage in international trade with significant and sometimes prohibitive costs. There have repeatedly been strong calls from the international business community for reform to reduce the costs created by regulatory divergence. One way to achieve this is to rely on

internationally harmonised measures, such as international standards, as the basis of domestic regulations, when they offer an appropriate answer to public concerns at the national level. The use of internationally harmonised standards has gained prominence in the world trading system with the entry into force of the WTO TBT Agreement. It encourages countries to base their technical requirements on international standards and to avoid conformity assessment procedures that are stricter than necessary to create market confidence.[87]

Sweden early realised that internationally harmonised standards would greatly benefit Swedish industry due to the relatively limited size of the domestic market and its dependence on foreign markets. As a member of ISO, the European Union and the WTO, Sweden participates in a number of initiatives to harmonise standards within the European Community and the world. And Sweden has generally paid close attention to the international standards framework and taken an active role in formulating new ones in relevant standards forums. Approximately 90% of Swedish standards conform to European or international standards. This share of international standards applied in Sweden is slowly increasing because the share of newly adopted standards is even higher and conforms in 98% of the cases to international standards. Of the roughly 2 000 standards created every year, less than 20 are Swedish: and of those, some are complements to international standards while the great majority are unique. In comparison with many other countries, these numbers are relatively high. For example in Finland, in 2001, 17% of the stock of SFS standards were original national standards but only 1% of new standards adopted that year were original national standards.[88] In Norway, more than 95% of Norwegian standards adopted annually are common European standards.[89] In France, in 2002, 36% of new standards adopted by AFNOR were of international origin, 52% of European origin, and 12% of purely French origin.[90]

The Swedish standards that are unique have traditionally been found in the health care sector, but these standards are continuously being replaced by European standards. There are exceptions to the rule, however, and in some cases the Swedish authorities have considered the safety level in international standards to be insufficient. When this is the case, the exceptions need to be duly defended in notifications to The National Board of Trade as described in section 2.1.4.

Sweden is bound by the obligations of the WTO TBT and SPS Agreements under which regulators in Sweden must as a general rule take international standards as a basis for technical regulations and standards at the domestic level. International standards are frequently adopted as European Standards and according to the statutes of the European standards bodies, European standards must be implemented as national standards and conflicting national standards be removed within six months of their adoption.[91] A high degree of respect for international standards is hence guaranteed, and this also applies to standards containing certification requirements. The requirements to adopt internationally harmonised standards are stated in the Ordinance (SFS 1994:2029, 4 §) on Technical Rules, which incorporates the relevant rules of the WTO TBT and SPS Agreements, EC Directives 98/34/EC and 98/48/EC into the Swedish legal framework. It stipulates that regulators who intend to change, remove or develop a new technical rule are required to adapt their technical rules to international and European standards whenever possible.

Box 4. Harmonisation in the European Union: the New Approach and the Global Approach

The need to harmonise technical regulations when diverging rules from Member States impair the operation of the common market was recognised by the Treaty of Rome in Articles 100 to 102 on the approximation of laws. By 1985 it had become clear in the EU that relying only on the traditional harmonisation approach would not allow the achievement of the Single Market. 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 ensure the free movement of goods instituted by the Single Market. The way to achieve this was opened by the European Court of Justice, which in its ruling on *Cassis de Dijon*[92] interpreted Art. 30 of the EC Treaty as requiring that goods lawfully marketed in one Member State are to 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, and not the technical solution for meeting the level of protection.

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

On the basis of the New Approach manufacturers are only bound by essential requirements, which are written with a view to being generic, not requiring updating and not implying a unique technical solution. They are free to use any technical specification they deem appropriate to meet these requirements. Products that conform are allowed free circulation in the European market. For the New Approach, detailed harmonised standards are not obligatory. However, they do offer a privileged route for demonstrating compliance with the essential requirements. The elaboration at European level of technical specifications which meet those requirements is no longer the responsibility of the EU government bodies but has been entrusted to three European standardisation bodies mandated by the Commission on the basis of General Orientations agreed between them and the Commission. The CEN (European Committee for Standardisation), CENELEC (European Committee for Electrotechnical Standards) and ETSI (European Telecommunications Standards Institute) are all signatories to the WTO TBT Code of Good Practice. When harmonised standards produced by the CEN, CENELEC or ETSI are identified by the Commission as corresponding to a specific set of essential requirements, the references are published in the Official Journal. They become effective as soon as one standards body has transposed them at the national level and retracted any conflicting national standards. These standards are not mandatory. However conformity with them confers a presumption of conformity with the essential requirements set by the New Approach Directives in all Member States.

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

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

Source: OECD (2003d), p. 39-40.

Sweden is one of the larger contributors to the international standards process and the chairman of the Swedish Standards Institute (SIS) was recently elected president of the International Organization for Standardization (ISO).[93] ISO is a network of 157 national standards institutes and the world's largest developer of standards. Thus ISO standards are used around the world and easily recognised by traders on all continents. A country that wants to add a national amendment to an ISO standard needs to present a very convincing argument for its merits. So far, Sweden has adopted less than 250 national amendments to the 15 649 ISO international standards and standards-type documents that were established in total towards the end of 2005.[94] However, given the limited size of the Swedish market, the Swedish standardisation bodies are well aware that new internationally harmonised standards are crucial to ensure that no foreign competition is unnecessarily left out because of technical barriers. The annual number of Swedish modifications to ISO standards has become increasingly rare with time.

The Swedish Standardisation Council (SSR) has appointed three standardisation bodies to represent Sweden in European and international standardisation work: Swedish Standards Institute (SIS) in CEN and ISO; Svenska Elektriska Kommissionen (SEK) in CENELEC and IEC; and Informationstekniska Standardiseringen (ITS) in ETSI and the standardisation work in the International Telecommunication Union (ITU). These three standardisation bodies have subscribed to the WTO TBT Code of Good Practice and are independent organisations under private law and run by their members including companies, industry federations, NGOs and public agencies. They decide themselves on their priorities as well as positions to proposed standards.

Some concerns about Swedish technical regulations and standards have occasionally been raised for example in the sectors of food processing and the construction industry (e.g. regarding construction regulations). Some of these issues are assessed in part 3 of this chapter.

Conclusion: Sweden has to a great extent encouraged the use of internationally harmonised standards. It has not only adopted international standards in the national standards framework but also been highly active in the work of developing new international standards.

2.5 Recognition of equivalence of foreign regulatory measures and conformity assessment

In cases where the harmonisation of regulatory measures is not considered feasible or necessary, the recognition of equivalence of other countries' regulatory measures in attaining the same regulatory objective may be the most appropriate avenue for reducing technical barriers related to regulatory divergence. Despite the development of global standards, there are still many areas where specific national

regulations prevail, preventing manufacturers from selling their products in different countries and from enjoying full economies of scale. Additional costs are also raised by the need to demonstrate the compliance of imported products with applicable regulations in the import country through testing and certification accepted in that country. Recognising the equivalence of differing standards applicable in other markets or of the results of conformity assessment performed elsewhere can greatly contribute in reducing these costs.

The Swedish system for conformity assessment (CA) was changed considerably during the 1990s as Sweden prepared for EU membership and implemented the EU framework for conformity assessment procedures.[95] A major transformation was the separation of the twin duties of government authorities to set rules and conduct testing operations in a monopolistic market. In the new system, regulatory state agencies set the rules and monitor the market. Another state agency, the National Accreditation Board (SWEDAC), assesses and accredits, in consultation with the relevant regulatory agency, independent (predominantly) private certification and inspection bodies and laboratories that act in a competitive market. This system which is referred to as the "open system" is also used for voluntary certification, including for quality, environment and work environment. It is more business-friendly, or customer-friendly, than the old system. Many large CA bodies are currently acquiring smaller ones to create "one-stop shops" and the market is benefiting from the relatively low entry barriers to the CA market.

In the EU-harmonised areas – which cover most products – all CA procedures follow procedures prescribed by the relevant legal acts of the EU. In the EU legal acts of the last two decades, these procedures are for industrial products mostly standardised in accordance with the EU Council Decision of December 1989 on CA procedures (modules), which in turn are based on ISO/IEC standards. In the harmonised areas, the EU legal system requires in all cases mutual recognition of CA results between the Member States and parties to the EEA (see Box 4).

According to the European Court of Justice, CA results from accredited bodies in the EEA or bodies that can demonstrate their competence by other means should be recognised as equivalent to results from Swedish accredited bodies. Accordingly, most Swedish technical rules contain mutual recognition clauses. In addition, many of the private conformity assessment bodies participate in international arrangements on mutual recognition. These arrangements mostly concern acceptance of test results.

In non-harmonised areas, the Act (SFS 1992:1119) on Conformity Assessment prescribes that mandatory conformity assessment should be carried out in Sweden by bodies accredited by the Swedish Board for Accreditation and Conformity Assessment (SWEDAC). SWEDAC is a state agency subordinate to the Ministry for Foreign Affairs and it acts as the national accreditation body conducting appraisals of the competence of CA bodies. As a member of the European Co-operation for Accreditation (EA), the International Laboratory Accreditation Co-operation (ILAC) and the International Accreditation Forum (IAF), SWEDAC has undertaken to follow international standards and guidelines in all its accreditation which is also stipulated in SFS 1992:1119, § 14. As a signatory to the EA multilateral agreement, SWEDAC is subject to regular peer-assessment by other accreditation bodies every fourth year.

According to § 1 of the Ordinance (SFS 2005:894) on Conformity Assessment, all government authorities are obliged to consult with SWEDAC before issuing regulations which include requirements on conformity assessment. This rule has proven to work rather well although there are some minor exceptions, particularly in the agricultural sector. To improve compliance with the rule, clarifications were issued with regards to Ordinance (SFS 2005:894) on 1 January 2006 and SWEDAC is currently consulting with the Swedish Board of Agriculture (*Jordbruksverket*) on how cooperation can be enhanced. The mutual recognition principle applies to both products and services when it comes to measures that are not harmonised within the EU. Due to the fact that EU law takes precedence over national law, this obligation applies irrespective of whether it has been explicitly included in a national legislative act or not. However,

for reasons of legal certainty, clauses of mutual recognition are often included in legislation. Approximately two-thirds of such clauses concern mutual recognition of product specifications and one-third conformity assessment.

According to the Ordinance (SFS 1994:2029) on Technical Rules, government authorities are also obliged to consider a number of aspects when preparing technical regulations. First, it is recommended that the regulation respects mutual recognition in the sense that products and information society services which fulfil equivalent requirements in EU member states (including EEA and Turkey) can be marketed in Sweden (§ 3). Second, when there is an international or European standard covering the area to be regulated the authority shall as far as possible make sure that the regulation complies with that standard (§ 4). In addition, there is an obligation according to § 5 for authorities to consult the National Board of Trade if they believe a proposed technical rule could give rise to technical barriers to trade (see section 2.1.4). Internal consultation within the Government Offices with all concerned ministries also needs to be carried out before a bill is passed to the Parliament.

The WTO TBT Agreement provides a number of provisions with respect to conformity assessment and mutual recognition in § 5-10 and these are principles applied in the national and European frameworks discussed above. Products that fail to comply with the regulations are mainly discovered in surveillance activities. If such a product is covered by EU legislation the assessment of the product must be carried out in relation to the harmonised legislation. Products covered by national legislation could according to the EU rules only be assessed in relation to their potential danger to essential societal interest regardless of their capability to comply with all details in national regulations.

A report by the National Board of Trade in 2002 concluded that the principle of mutual recognition could be handled in a more satisfactory manner and that it negatively affected the free movement of goods in the internal market.[96] The report recommended the Swedish Government to aim as far as possible for harmonisation to be undertaken in all areas where exemptions are currently available in Article 30 of the Treaty Establishing the European Community. The National Board of Trade later conducted a survey about the Swedish experiences and views with regard to mutual recognition within the European Union and received very few complaints from the private and public sectors.[97] One major reason for this could be that the great majority of companies that face trade restrictions within the internal market choose to modify their products to comply with national requirements.[98] This is a costly and often unnecessary action but companies must in many instances have a rationale for doing it, including for reasons that authorities do not necessarily abide EU rules. A follow up study later found that 85 clauses about mutual recognition directly related to EC Directive 98/34/EC had been incorporated into Swedish rules and regulations but that many government agencies and authorities still had scant knowledge about these provisions[99]. In Sweden, as in many other EU member states, the lack of trust between different countries' authorities – in this case with regard to testing results – make regulatory cooperation work less well in practise than on paper.

As a member of the European Union, Sweden is not only bound by the above mentioned legislation on mutual recognition within Europe, but also by sectoral MRAs with non-EU countries United States, Canada, Japan, Switzerland, Australia and New Zealand. The scope of these MRAs is mutual recognition of results of conformity assessment made in the exporting party according to the regulations of the importing party. The agreements are mostly within the EU harmonised areas and thus the technical provisions are already in force in Sweden.[100] The main sectors covered are medical devices, pharmaceuticals, telecommunication and electrical equipment, pressure vessels, machinery, aircraft, automotive and lawn mowers, recreational craft, and marine equipment.[101]

The EU is also negotiating or considering PECAs (Protocols to Europe Agreements on Conformity Assessment and Acceptance of Industrial Products) with Romania, Bulgaria and Croatia; and ACAAs (Agreements on Conformity Assessment and Acceptance of Industrial Products) with FYR of Macedonia, Ukraine, Bosnia and Herzegovina, Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestinian Authority, Syria and Tunisia.[102] The outset for the negotiations is the adoption by these countries of the relevant EC legislation.

Conclusion: Sweden is party to several mutual recognition agreements with non-EU countries and recognises the equivalence of foreign regulatory measures and conformity assessment to the extent it has agreed to do so. These agreements mostly affect Sweden through its membership of the EU. The operation of these agreements generally works smoothly. However, the impact on trade is probably limited since the technical requirements still differ and industry normally has to produce different versions of the products. A bigger challenge is the application of the principle of mutual recognition as established within the EU for non-EU harmonised areas. The principle is difficult to apply in practice in all member states, both for enterprises and authorities. More initiatives seem to be needed in order to ensure that this works better and not unnecessarily restrict the free movement of goods and services.[103]

2.6 Application of competition principles from an international perspective

The benefits of market access may be reduced by regulatory action overlooking anti-competitive conduct or failing to correct anti-competitive private action that has the same effect. It is therefore important that all regulatory institutions – not just the competition authority – make it possible for both domestic and foreign companies affected by anti-competitive practices to present their position effectively. The existence of procedures for hearing and deciding complaints about regulatory or private actions that impair market access and effective competition by foreign companies, the nature of the institutions that hear such complaints, and adherence to deadlines (if they exist) are thus key issues from an international market openness perspective. These very narrow issues are the focus of this section and a general review of the role of Swedish competition policy in regulatory reform is presented in Chapter 3: *'The Role of Competition Policy in Regulatory Reform in Sweden'*.

The Swedish Competition Act contains prohibitions against anti-competitive co-operation, abuse of a dominant position, and rules governing the control of mergers. In parallel with the Competition Act, the Swedish Competition Authority (SCA) also applies the EU competition rules which contain equivalent prohibitions. Articles 81 and 82 of the EC Treaty are applied if trade between Sweden and another EU member is affected.

Foreign companies or private persons that suspect anti-competitive behaviour in the Swedish market can contact SCA. SCA has a dedicated unit which collects and processes tip-offs and complaints regarding potential infringement of competition rules.[104] Oral and written tip-offs and complaints are the basis of SCA's work in tracking down and taking action against infringements of competition legislation. In 2005, it received around 750 such notifications from Swedish and foreign actors. Any company or individual, irrespective of origin, can access this service by telephone, mail, e-mail or the SCA website. No distinction is made between domestic or foreign companies and there are no reports of any biased treatment based on the nationality of the complainant.

A tip-off which gives rise to real suspicion leads to a preliminary investigation of the matter. If the SCA chooses to pursue the matter further, it may address the Stockholm City Court for an on-the-spot investigation. Based on the evidence that SCA finds, it may call for hearings. It then shares a preliminary assessment with the parties and processes their responses. If it believes there has been an infringement, it may initiate an enforcement action in the Stockholm City Court. Any appeal to the following court decision is handled by the Market Court.

SCA is party to a number of international co-operations, including on a Nordic, European (European Competition Network, ECN) and international (International Competition Network, ICN) level. A foreign company could potentially use a route of lodging a complaint at its domestic competition authority which could then formally raise the issue with SCA if necessary. However, a direct complaint to the Swedish Competition Authority is still the normal way to proceed for foreign companies. While some Swedish markets are (or have been) effectively shielded from foreign competition, there are no indications that the Swedish administration would fail to apply competition principles from an international perspective. Based on the two sector studies presented in the next part, the Swedish administration is increasing the pressure and targeting some markets which have traditionally been dominated by a small number of Swedish actors.

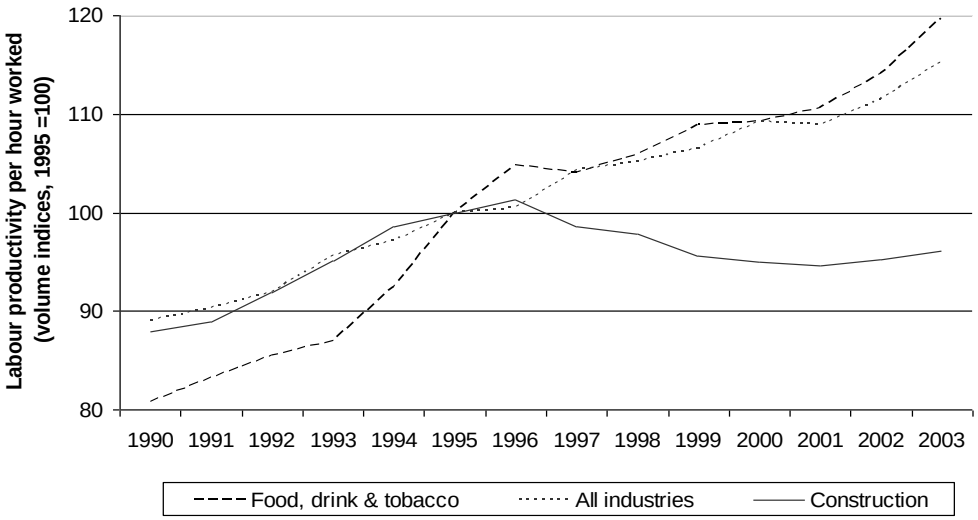
Conclusion: There are no indications that Sweden fails to apply competition principles from an international perspective. Nor are there any indications that international competition is more of a priority than competition in itself.

3. Assessing results in selected sectors

This part examines the implications for market openness arising from Swedish regulations in the food retailing and construction sectors. These two sectors have been identified by the Swedish Competition Authority and a number of analysts to face regulatory challenges that may have acted as barriers to foreign competition. For both sectors, this study seeks 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 applied.

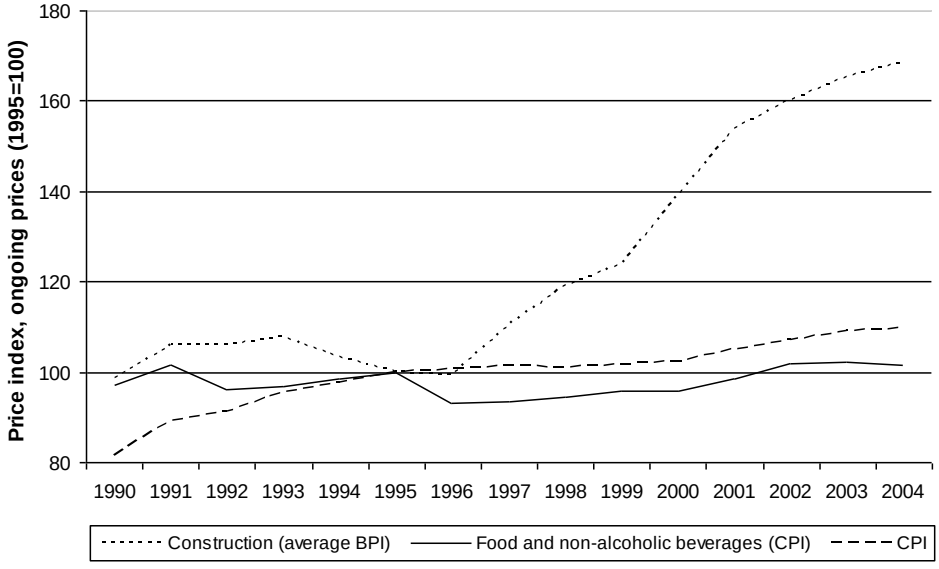
Figures 8 and 9 show labour productivity and price trends in the construction and food sectors as compared to trends for all industries. The two sectors have developed differently. For the construction sector (private houses and multiple dwellings/flats), productivity rose between 1990 and 1996 and prices fluctuated but stayed essentially the same during the period. Starting in 1996, productivity declined or remained flat until 2003, while the price index grew by nearly 70% between 1996 and 2004. In the food, drink and tobacco sector, productivity grew more or less throughout the entire 1990-2003 period and slightly faster than the average productivity in all sectors. The price index dropped significantly between 1995 and 1996 when the VAT on foodstuffs was reduced from 25% to 12% and Sweden acceded to the EU. It then moved more or less in parallel with the consumer price index.[105]

Figure 8. Swedish labour productivity in selected sectors, 1990-2003



Source: Groningen Growth and Development Centre, 60-Industry Database.

Figure 9. Swedish price indices in selected sectors, 1990-2004



Source: Statistics Sweden

3.1 The construction sector

The Swedish construction market has experienced low productivity growth and rapid price inflation over the last decade. There is limited foreign participation and only a few Swedish companies are operating on a national scale and capable of undertaking large housing construction and infrastructure projects. Of the larger Swedish companies, two are among the world's top 20 construction companies. Despite the Swedish construction sector's evident success in international markets, building prices in Sweden have risen rapidly over the last decade (as illustrated in Figure 9). A market with limited entry barriers would in this scenario normally attract foreign participation. In Sweden, imports of construction services have remained at very low levels. While weak productivity growth in the construction industry has plagued many countries – see Annex 5 – the overall Swedish productivity level in the construction sector was low compared to many other countries. In 2003, labour productivity in the construction sector was at par with Germany but 15% lower than in the United States and 19% lower than in France.[106]

The Swedish construction market can be divided broadly into two sub-sectors: housing construction and civil engineering. Both these sub-sectors have relatively high entry barriers for a number of reasons. In housing construction, national building codes can reduce import competition. For example, EU´s Construction Products Directive (89/106/EEC) does not specify *how* buildings are to be built and market actors operating in an EU member state have to comply with national regulations. Rules for accessibility for functionally disabled, fire safety and energy efficiency are examples of such rules on national level. Invitations to tender are also often formulated in a way that leaves out smaller construction companies.[107] An example is a public procurement agreement which explicitly states that the contract must not be divided up and sub-contracted. But there are no rules that prevent contracts from being divided into smaller sub-contracts and this contract model is increasingly being used with an estimated cost saving of up to 20% compared to other models.[108] Foreign companies wishing to enter the Swedish housing construction market have in the past often chosen to acquire an established local company with a solid expertise of local conditions.

The civil engineering market is dominated by a few vertically integrated companies that offer construction services and also manufacture strategically important input materials such as ballast and asphalt. As a result, small companies and foreign companies often need to procure input materials from their large Swedish competitors that can regulate both the availability and price of the inputs. Over time, prices for building materials have risen strongly while demand has dropped.[109] At the same time, there may be signs that certain building materials increasingly are being imported from low-cost producers in other EU countries. The costs of building material and installation material make up around 40% of total housing construction costs and price inflation of building materials is one reason why the building price index has increased so significantly.[110]

Importation of building materials is rather limited. The manufacturing of ballast, concrete and asphalt requires large investments due to the nature of the process and time-consuming licence application procedures and extensive paper work due to environmental legislation. Sweden has performance-based requirements on buildings that provide a base for free choice of construction products. Some of the main reasons for the low levels of importation may be lack of competition, conservatism in the sector, long transports and other barriers that remain between EU countries. In an interview in 2002, the Director-General for the Swedish Competition Authority argued that oligopolistic markets and trade restrictions were the main reasons why Swedish building material prices were 20% higher than the EU average and that some building materials were up to 90% more expensive. One of the barriers to imports of more cost-effective building materials is the lack of a European standardisation framework for building materials.[111]

One approach to try and create a more competitive market for construction products is to harmonise product descriptions. The EC is currently working to harmonise some 500 material standards, but the project is not expected to be completed until 2007.[112] Building products that meet harmonised standards or technical specifications can be CE-marked and CE-marking may help to boost import competition in the future, especially given the fact that the industry is relatively conservative towards building materials that it is unfamiliar with. Full implementation of the European internal market has been hampered by slow progress in resolving the technical issues of the Construction Products Directive (89/106/EEC).[113] This Directive covers harmonisation of standards, conformity assessment and accreditation for certification bodies directly relevant for the construction industry.

However, while internationally harmonised standards and mutual recognition of the results of conformity assessment bodies may greatly facilitate trade; those are only part of the solution to the competitive challenges facing a sector where only 25% of building materials are imported.[114] The architecture and engineering consulting segments of the market are also dominated by a few large companies, and their common practice of specifying Swedish materials and products may make it difficult for imported materials to make inroads.[115] Successful implementation of the EC Construction Products Directive may improve competition.

Foreign competition is also affected by anti-competitive behaviour by local companies and the sometimes slow and costly process to acquire building permits as regulated in the Planning and Building Act (PBL). The PBL increases the cost of FDI as it slows down certain investments, in particular large industry projects and green-field investments. To obtain a building permit to construct a new factory or store can take a considerable amount of time and be prolonged if somebody appeals against the decision of granting a permit.

The Swedish Competition Authority has investigated several suspected cartels and some investigations have led to legal proceedings. In 2003, SCA filed an enforcement action against eleven companies in the civil engineering and asphalt surfacing industry, which it suspected of cartel behaviour. When the asphalt cartel was brought to light, asphalt prices quickly dropped by 25-30% in some parts of Sweden.[116] But this recent event is not unique: around one-third of the cartel investigations carried out by the SCA has targeted the construction industry.[117] The repeated investigations suggest that tougher enforcement of competition law may help eliminate the tendency towards collusive behaviour in the sector. The huge price inflation in the sector is also a clear signal that the Competition Authority has much work to do in the near future.

The Swedish Government is currently studying the construction sector. A proposal by the Construction Committee to improve the functioning of the Swedish construction sector is expected to be presented to the Swedish Government in December 2007 (Direktiv 2004:138). The Construction Products Directive is undergoing an assessment and evaluation by the EU Commission that has also declared that the Directive is to be amended.

3.2. Food retailing

The food retailing sector is another segment of the Swedish economy that has suffered from limited competition and high prices by international standards. Competition has been impeded by regulatory procedures and domination of the market by a small handful of vertically integrated food chains. International competitors and domestic SMEs have faced considerable entry barriers, among others the application of the Planning and Building Act (SFS 1987:10), which has left plenty of discretion to municipalities that provide permissions for establishment. Some recent investigations have shed light on the food retailing market and debated the regulatory implications (see also Chapter 5: *'Multi-level regulatory governance'* for a discussion on the basic multi-level structure of the food regulatory regime and the system for enforcement, compliance and inspections which is carried out mainly at the local government level).

3.2.1 Prices and competition

Swedish food prices, excluding VAT, were 17% higher than the EU-15 average in 2001.[118] This price differential was estimated by the EC one year before the first foreign food retailer decided to enter the low-price segment of the Swedish food market.[119] Danish retailer Netto entered in 2002 through a joint venture with the largest Swedish food retail chain, ICA, and was followed a year later by German retailer Lidl. Already by the first half of 2004 these food retailers had captured 0.4% and 0.8% respectively of the Swedish food market. Swedish food prices, excluding VAT, were 8.3 % higher than the EU-15 average in 2004. On a country level, Swedish food prices were 11.4% higher than in the Netherlands, 9.7% higher than in Germany, 4.6% higher than in Finland, 3.3% higher than in the UK and 0.7% higher than in France.[120]

Labour productivity in the food, drink and tobacco sector has grown rapidly since 1995 when Sweden joined the EU. Between 1995 and 2003, labour productivity growth was roughly on par with the Netherlands, higher than in France but lower than in Finland (see Annex 6). While the gap between Swedish and European food prices has come down somewhat over the years, there is still a difference in price, which analysts have failed to fully explain with other arguments than that there is a lack of competition. Swedish transport costs are relatively high and driven mainly by great distances. But these are not of a magnitude that would represent any significant part of the price gap between Sweden and other countries in the EU – many of which have higher GDP and labour costs and yet significantly lower food prices.[121] The "wholesale and retail trade" sector, which covers the food products, recorded the highest number of tips and complaints of anti-competitive behaviour at the Swedish Competition Authority during the first half of 2004.[122]

Three groups – ICA, Coop and Axfood – control more than 90% of the Swedish food retailing market. Concentration is thus high in retailing, and these groups are also vertically integrated into wholesale distribution.[123] The effects of such high market concentration on food prices are ambiguous: fewer competitors should result in higher prices while scale economies should have a downward effect on prices.[124] Competition does not necessarily need to be negatively affected by a limited number of actors as long as they are exposed to pressure from potential competitors. But research does show that potential competitors face entry barriers in the Swedish food retailing market. These barriers may be due both to the vertically integrated market structure, as mentioned above, and regulatory issues, as discussed in the next section.

Apart from the vertical integration and high concentration in the wholesale distribution and retailing business, a more recent trend is that Swedish food retailers increasingly produce food products under their own labels. In 1992, about 2% of the sales of food retailers were private-label products. Today this share is closer to 10% and two of the three major Swedish retailers have declared that they aim to increase this share to 25%.[125] This trend may weaken food product suppliers which make up the third pillar of the supply chain next to wholesale distributors and retailers. But while the proliferation of private labels may reduce consumer choice in the long run, prices may also come down since private-label products usually compete in low-price segments.

3.2.2 Examples of regulations affecting trade and competition

The Swedish Competition Authority has concluded that one of the main reasons why Swedish food prices are well above the OECD-average is the procedures that municipalities use to distribute building permits.[126] The municipal planning process has impeded competition by favouring the three major food retailers in several instances. Municipalities' decisions have been found to determine not only the location of food stores but also affect how many and how large food stores are in a region. A recent case is the Åre municipality, which decided to sell land for the establishment of a food store by Swedish retailer Coop for SEK 1 million rather than accept a bid of SEK 6.6 million offered by German retailer Lidl, an action that triggered a Swedish think tank to bring the case to the European Commission.[127]

Swedish municipalities often employ experts to assess the likely effects of providing land sites for food retailers. These assessments focus normally on the negative consequences of new establishments, and little emphasis is given to the positive implications of greater competition. The planning process can be slow and costly, and it leaves plenty of discretion to the municipality that takes the decisions. Environmental regulation also slows down the process, as does the exercise of citizens' rights to appeal against a building decision. The three large food retailers have long experience of dealing with this process, important contacts within the municipalities and the resources required to sustain the lengthy process. Smaller entrepreneurs and prospective foreign competitors seldom have such contacts and market intelligence, which have proven crucial in the past to establish new food stores in Sweden.[128]

The OECD has previously recommended that the Swedish authorities modify the planning process to require that the benefits of increased competition be explicitly taken into account when municipalities are evaluating applications for supermarket sites.[129] This is in line with SCA's recommendations, which also proposed to improve knowledge among city planners of the welfare benefits from competition and apply better tools for assessing the positive effects of entry. The Invest in Sweden Agency has supported this position, since foreign investors have faced difficulties and delays.[130] The entry barriers due to the application of the Planning and Building Act (SFS 1987:10) have recently been analysed and the recommendations by SCA and OECD were adopted by a recent Government Committee (SOU 2005:77) which studied the Act and proposed legal modifications to take competition considerations better into account.[131] The committee report concluded that the problems concerning competitions issues are due to the practice and implementation of the rules rather than the rules themselves.

If the proposed changes to the Planning and Building Act were adopted, they would remove, or at least reduce, this barrier to market entry. The food retailing market is nevertheless slowly starting to change as foreign discount stores have managed to enter the Swedish market. An intense public debate on food quality and food prices, resulting partly from the studies by the SCA and media, has put increased pressure on municipalities to enhance transparency in the decision making process.

The production and sale of food is regulated to protect consumers' health and welfare. Country-specific food regulation which unnecessarily deviates from other countries regulations can impede trade and restrict competition. It is hence important that the benefits of a new regulation are estimated and compared to the costs, e.g. related to higher prices and limitation of choice. Two relevant examples for the Swedish food retailing sector are the Swedish veterinary checks affecting the meat market, which have been tested in the European Court of Justice, and the reform of the system for recycling of food and drink containers.[132]

Sweden has previously been complimented by the EC for incorporating EU Directives into its national legislation. But a recent ruling by the European Court of Justice found that Sweden had failed to fulfil its obligations related to free movement of agricultural products. In its ruling, the Court stated that it is an infringement of Directive 89/662/EEC, § 5, if an EU member state imposes control on meat that has already been controlled in another member state.[133] The Court ruled that *"…a Member State cannot rely on a possible infringement of Community law by another Member State in order to justify its own default. Therefore, a Member State may not under any circumstances unilaterally adopt, on its own authority, corrective or defensive measures designed to obviate any such failure, but is bound to act within the context of the procedures and legal remedies laid down to that effect by the Treaty."* Thus, the Swedish veterinary checks related for example to its salmonella policy for foreign meat products failed to honour Sweden's obligations of free movement of goods, creating an unnecessary barrier to trade.

The reform of the Swedish recycling systems is another illustration. Sweden used to have two types of return systems, which distinguished between aluminium containers and non-aluminium containers (such as glass and PET bottles). This division was due to a legal monopoly of aluminium recycling. The Swedish

Competition Authority studied the Swedish return and deposit system in 2003 and concluded that the return systems had led to weak competition due to unclear rules, complicated public supervision, free rider problems and illegal trade. It also found that the return systems had led to higher costs for small providers and the prohibition to put brands on PET bottles acted as a trade barrier. As a result of the study, action was taken to abolish the monopoly for aluminium cans, and it is now compulsory for deposit systems with a dominant position to allow entry of other players. New requirements for handling permits and fees for participation in deposits systems were also implemented. In addition, a single monitoring agency was established, and it has taken initiatives to ensure access for foreign companies on a non-discriminatory basis.[134]

4. Conclusions and options for policy reform

Sweden is in most respects a very open economy. The private sector has done particularly well over the last decade, attracting large amounts of foreign capital, raising productivity at home and succeeding in producing goods and services that are in strong demand abroad. There are yet some service sectors where high entry barriers restrict both domestic and foreign competition and the Swedish Government retains some monopolies for public moral, health and safety reasons. While regulatory reform may still be needed to improve efficiency in parts of the economy, this chapter has found Sweden to be fairly advanced in relation to market openness considerations in the regulatory process. Sweden conforms to a great extent to the "efficient regulation" principles which have been developed by the OECD to ensure that new rules and regulations do not have a negative effect with regards to market openness. This chapter has concluded that:

- The process of disseminating information and consulting with affected parties regarding laws and ordinances is well developed and covers both legal requirements and non-legal initiatives. Information on rules and regulations are free of charge and available through various channels such as Internet, something that is particularly helpful for foreign companies. The consultation mechanisms established to provide interest parties the opportunity to offer their views and input in the regulatory process works effectively.

- Although Sweden makes use of several exceptions to GATS and is party to a growing number of preferential agreements that cover trade and investment, the regulatory procedures that are in place today are based on principles that effectively control for discriminatory measures. The role of the National Board of Trade as a supervisory body for market openness concerns is seemingly working well.

- Some recent initiatives to implement mechanisms to avoid unnecessary trade restrictiveness are commendable: the Open Trade Gate Sweden and the Swedish SOLVIT-team provide direct services to foreign traders with the objective to further increase market openness; the Customs Service has been particularly successful in facilitating trade at its borders; and if the Swedish Government succeeds in its stated objective to simplify regulations and administrative procedures affecting the business community, it will further improve Sweden's status as a relatively attractive destination for trade and investment.

- The use of internationally harmonised standards is generally encouraged and Sweden has been highly active in the work of developing new international standards. As a party to several mutual recognition agreements, Sweden generally recognises the equivalence of foreign regulatory measures and conformity assessment to the extent it has agreed to do so. In addition, there are no indications that Sweden fails to apply competition principles from an international perspective.

Broadly speaking, there is little evidence of any regulatory discrimination targeting foreign traders, including with regards to legal procedures and anti-competitive behaviour. There is nevertheless scope for improvement in some areas to enshrine market openness principles in the regulatory process. The following recommendations are based on the recommendations and policy frameworks of the 1997 OECD *Report to Ministers on Regulatory Reform* and on the 2005 OECD *Guiding Principles for Regulatory Quality and Performance*.

Recommendations

1. Strengthen the regulatory impact assessment process, ensure more frequent analysis and oblige regulators to consider the regulatory footprint from a market openness perspective.

While transparency and consultation mechanisms are well embedded in the Swedish regulatory system, a culture to assess the regulatory impact is not necessarily as well in place as it could. The quality of RIAs has dropped over the last decade and they are less frequently conducted. Society is evolving faster with globalisation and technological progress – decisions and responses to new issues are expected in less time. However, the regulatory impact on international trade and investment is also likely to increase due to this process.

The lack of rigorous investigation in the RIA process affects the authorities' ability to properly consider the effects a proposed regulation is likely to have with regard to market openness. The recommendations provided by the National Board of Trade are normally respected, not least because of the checks and balances that Swedish rules and regulations face within the EC. Nevertheless, the drop in quality and the frequency of conducting RIAs increases the risk that new rules and regulations may be more trade restrictive or burdensome than necessary. Earlier consultations with the National Board of Trade in the regulatory process may be one way to somewhat reduce this risk but the best way forward is to demand more rigorous impact assessments with regard also to market openness aspects (broader policy implications of the RIA system and recommendations are presented in section 5 of Chapter 2: *'Government Capacity to Assure High Quality Regulation in Sweden'*).

2. Promote the principles of mutual recognition in Europe and internationally and invest the resources necessary to ensure that the administration and other entities responsible for their implementation are informed and comply with the principles.

As a member of the EU, Sweden is party to several mutual recognition agreements and recognises the equivalence of foreign regulatory measures and conformity assessment to the extent it has agreed to do so. According to the mutual recognition principle of the EU, member states are also obliged to recognise regulatory measures and results of conformity assessment performed in other countries within the Single market if they are deemed to be equivalent. This principle applies to both products and services in the non-harmonised area. Research conducted in Sweden shows that some authorities ignore this principle and most companies respond by modifying their products. Thus the principle of mutual recognition has not yet been implemented in a satisfactory manner and it negatively affects the free movement within the internal market. This is clearly a burden to companies both within and outside the Single market.

Since this failure to a great extent is based on mistrust or a lack of information of foreign procedures, Sweden should continuously invest in educating and informing civil servants and other entities responsible for assessing and handling foreign products and services. When partners to mutual recognition agreements comply with the rules, trade is greatly facilitated and such agreements should be promoted to the extent they are feasible and the benefits exceed the related costs. An even better way forward in liberalising trade would be to make increasing use of harmonisation principles.

3. Enhance transparency in the government procurement process by further improving the notification process, including more international advertisements, and introduce sanctions for authorities that are found to have broken rules in the procurement process.

Given the large share of government procurement in total consumption in Sweden, an open, fair and transparent procurement process is crucial for the public sector to make efficient use of its resources. Sweden appears broadly within the European average in advertising procurement to the Official Journal, although some countries have been significantly more transparent and advertised a higher share of contracts. While Sweden advertises a higher share of its public procurement than its Nordic neighbours Denmark and Finland, countries like Greece, Spain and the UK have generally done better in terms of international transparency.

There is scope for further foreign participation in the bidding for government contracts since foreign companies currently supply a rather modest share of public procurement. Given the country's positive experiences in a number of services sectors where reduced entry barriers have stimulated foreign competition and led to reduced prices, the Swedish public administration would benefit from a procurement process that encourages a wider participation, including from foreign companies. This could be achieved by further enhancing the transparency of the system and seek to simplify the administration of procurement contracts within the EC framework.

Sweden has yet to legislate on effective sanctions that would force authorities that are found to have violated procurement rules to better comply with court decisions. In this area there is also ongoing work at the EU level, concerning in particular the sanctioning of contracts which breach certain provisions. The lack of sanction provisions with respect to public procurement and cases of abuse – where local authorities have ignored court orders – do not help in ensuring trust in fair and competitive procurement. Nor does it enhance the interest of prospective foreign bidders to approach the Swedish market.

4. Modify the Planning and Building Act to ensure that competition aspects are taken into account, complementing the action by the Competition Authority, and fasten the application and appeal processes of issuing building permits. Work towards further international harmonisation for building materials.

Competition in the construction and food retailing sectors is held back by the application of the Planning and Building Act. First, the application of the Act involves discretion in the decision-making process of local authorities issuing building permits. The concern includes in particular limited consideration of competition aspects in this decision process. Second, application and appeal procedures in issuing building permits are time consuming and sometimes give rise to high costs. A more effective application of the Planning and Building Act would facilitate competition by lowering entry barriers to both domestic SMEs and foreign companies.

Different standards for building materials may erect further barriers to entry for foreign companies. The construction sector is not sufficiently exposed to international competition and the building price index has increased significantly over the last decade. The adoption of more internationally harmonised standards for building materials could help reduce such trade barriers and Sweden should pursue its active involvement in this field. These initiatives should preferably be complemented by effective action by the Competition Authority to tackle suspected cartels in the sector.

ANNEXES

Annex 1. Final list of Article II (MFN) exemptions of Sweden (GATS/EL/82) of 15 April 1994

Sector or sub-sector	Description of measure indicating its inconsistency with Article II	Countries to which the measure applies	Intended duration	Conditions creating the need for the exemption
All Sectors	Extension of full national treatment to investors from another country in relation to every kind of investment asset	Côte d'Ivoire Madagascar Senegal	Minimum 11 years	The measure reflects special investment conditions contained in bilateral treaties
	Measures aimed at promoting Nordic cooperation, such as: - guarantees and loans to investment projects and exports (The Nordic Investment Bank) - financial support to R&D projects (The Nordic Industrial Fund) - funding of feasibility studies for international projects (The Nordic Fund for Project Exports) - financial assistance to companies* utilizing environmental technology (The Nordic Environment Finance Corporation)	Denmark, Finland, Iceland, Norway and Sweden (*) Applies to East European companies, which are co-operating with a Nordic company	Indefinite	To maintain and develop Nordic cooperation
All Sectors	Measures based on bilateral agreements between Sweden and Switzerland with the objective of providing for the movement of all categories of natural persons supplying services	Switzerland	Indefinite	The agreement reflects a process of progressive trade liberalisation between Sweden and its regional trading partners
Maritime transportation	Reciprocal measures based upon existing or future agreements exempting vessels registered under the foreign flag of a specified other country from the general prohibition to operate cabotage traffic	All countries with which bilateral or plurilateral agreements are in force	Indefinite	To regulate cabotage traffic based on reciprocal agreements
Road transport (passenger and freight)	Provisions in existing or future bilateral or plurilateral agreements on international road transport (including combined transport - road/rail) reserving or limiting the provision of a transport service into, in, across and out of Sweden to the contracting parties to vehicles registered in each contracting party, and providing for tax exemption for such vehicles	All countries with which bilateral or plurilateral agreements are in force	Indefinite	The need for exemption is linked to the regional characteristics of road transport services

Sector or sub-sector	Description of measure indicating its inconsistency with Article II	Countries to which the measure applies	Intended duration	Conditions creating the need for the exemption
Audiovisual services; transmission of audiovisual programmes to the public	Measures adopted for the implementation of and in conformity with regulations such as the EC Television Broadcasting Directive (No. 89/552) and which define programmes of European origin in order to extend national treatment to audiovisual programmes meeting specific origin criteria	Parties to the Council of Europe Convention on Transfrontier Television and other European countries with whom an agreement may be concluded	Indefinite	The promotion of cultural identity within the broadcasting sector in Europe, as well as achievement of certain linguistic policy objectives. Preservation and promotion of the regional identity of the countries concerned
Audiovisual services, production and distribution of cinematographic works and television programmes	Measures that are adopted for the financing of and implementation of benefits from such support programmes as MEDIA and EURIMAGES to audiovisual programmes, meeting specific European origin criteria	European countries	Indefinite	Preservation and promotion of the regional identity of the countries concerned
Audiovisual services; production and distribution of cinematographic works and television programmes in Nordic countries	Measures that are adopted for the granting of broadcasting facilities for programmes from Nordic countries and for the financing of and implementation of benefits from such support programmes as the NORDIC FILM and TV FUND which are intended to enhance production and distribution of audiovisual works produced in Nordic countries	Nordic countries	Indefinite	Preservation and promotion of the regional identity of the countries concerned
CRS and sales and marketing of air transport services	Provisions, whereby the obligations of CRS system vendors or of parent and participating air carriers shall not apply where equivalent treatment to that applied under Swedish regulations is not accorded in the country of origin of the parent carrier or of the system vendor	All countries where a CRS system vendor or a parent air carrier is located	Indefinite	The need for the exemption results from the insufficient development of multilaterally agreed rules for the operation of CRS

Annex 2. Sweden's bilateral friendship, trade and navigation agreements

Partner country	Type of agreement	
Albania	Treaty of commerce	6.12.1984
Argentina	Treaty of friendship, commerce and navigation	17.7.1885
	Exchange of notes in regard to commercial relations	20.1.1960
Australia	Ministerial notes on exchange of goods	25.5.1953
Belarus	Treaty of commerce	10.3.1994
Brazil	Ministerial notes on regulating trade relations	16.10.1931
	Exchange of notes in regard to commercial relations	28.7.1936
Bulgaria	Exchange of notes in regard to commercial relations	31.12.1923
	Long-term treaty of commerce	29.9.1980
Chile	Treaty of commerce and navigation	30.10.1936
China	Treaty of commerce	15.5.1979
	Agreement on changes in the treaty of commerce of 15 May 1979	30.6.1997
Colombia	Treaty on regard to commercial relations	9.3.1928
Egypt	Exchange of notes in regard to commercial relations	7.6.1930
El Salvador	Exchange of notes in regard to commercial relations	23.6.1936
Guatemala	Exchange of notes in regard to commercial relations	11.7.1936
India	Exchange of notes in regard to commerce	31.5.1955
Indonesia	Treaty of commerce	29.7.1954
Iran	Treaty of establishment, commerce and navigation	10.5.1929
Ivory Coast	Treaty of commerce	27.8.1965
Japan	Treaty of commerce and navigation	19.5.1911
	Treaty of commerce	5.3.1952
	Treaty on the development of commerce and economic relations	17.12.1971
Kazakhstan	Treaty of commerce	23.3.1994
DPR of Korea	Treaty of commerce	20.11.1973
Madagascar	Treaty of commerce	2.4.1966
Morocco	Treaty of commerce	25.4.1986
Mozambique	Treaty of commerce	19.8.1981
New Zealand	Exchange of notes in regard to commercial and navigational relations	24.5.1935
Peru	Exchange of notes in regard to treaties on commerce and navigation	19.10.1944
Romania	Treaty of establishment, trade and navigation	7.10.1931
	Long-term agreement on commerce	8.11.1980
Russian Federation	Treaty on commercial relations	4.2.1993
Senegal	Treaty of commerce	24.2.1967
Thailand	Treaty of friendship, commerce and navigation	5.11.1937
Tunisia	Treaty of commerce	20.9.1977
Turkey	Treaty of commerce and navigation	29.9.1929
	Additional agreement to the treaty of commerce and navigation	24.3.1939
	Exchange of notes revoking tariff concessions in the treaties of 1929 and 1939	28.12.1960
		27.01.1962
		19.02.1962
	Treaty of commerce	7.6.1948
	Exchange of notes on the extension of the treaty of 1948	30.6.1953
Uruguay	Treaty of commerce and navigation	13.8.1936
Vietnam	Treaty of commerce	1.12.1976

Source: Ministry for Foreign Affairs.

Annex 3. Trading across borders in Sweden

Nature of Import Procedures	Procedure No.	Duration (days)
Assemble and process documents for import	1*	1
Conclude purchase	2*	4
Berthing and unloading	3*	1
Terminal handling activities	4*	1
Customs inspection and clearance	5*	1
Arrange transport	6*	1
Inland transportation to final destination	7*	1
Totals:	***7***	***6***

Nature of Export Procedures	Procedure No.	Duration (days)
Packing goods	1*	1
Assemble and process documents	2*	2
Conclude sales contract and secure letter of credit	3*	4
Arrange transport; waiting for pickup and loading on local carriage	4*	1
Inland transportation to port of departure	5*	1
Terminal handling activities	6*	1
Waiting for loading container on vessel	7*	1
Customs inspection and clearance	8*	1
Technical control, health, quarantine	9*	1
Payment of export duties, taxes or tariffs	10*	1
Totals:	***10***	***6***

** simultaneous procedure*

Source: World Bank (2006)

Annex 4. Bilateral Agreements on Promotion and Reciprocal Protection of Investments

Country	Date of signature	Date of entry into force	Swedish Treaty Series
Cote d´Ivoire	27 Aug 1965	03 Nov 1966	SÖ 1966:31
Madagascar	02 Apr 1966	23 Jun 1967	SÖ 1967:33
Senegal	24 Feb 1967	23 Feb 1968	SÖ 1968:22
Egypt	15 Jul 1978	29 Jan 1979	SÖ 1979:1
Yugoslavia	10 Nov 1978	21 Nov 1979	SÖ 1979:29
Slovenia	10 Nov 1978	21 Nov 1979	SÖ 1979:29, SÖ 1993:49
Croatia	10 Nov 1978	21 Nov 1979	SÖ 1979:29 SÖ 1998:6
Malaysia	03 Mar 1979	06 Jul 1979	SÖ 1979:17
Pakistan	12 Mar 1981	14 Jun 1981	SÖ 1981:8
China	29 Mar 1982	29 Mar 1982	SÖ 1982:28
China (Protocol)	27 Sep 2004	27 Sep 2004	
Sri Lanka	30 Apr 1982	30 Apr 1982	SÖ 1982:16
Yemen	29 Oct 1983	23 Feb 1984	SÖ 1983:110
Tunisia	15 Sep 1984	13 May 1985	SÖ 1985:25
Hungary	21 Apr 1987	21 Apr 1987	SÖ 1987:79
Poland	13 Oct 1989	04 Jan 1990	SÖ 1990:2
Bolivia	20 Sep 1990	03 Jul 1992	SÖ 1992:19
Morocco	26 Sep 1990	Provisional application	SÖ 1991:76
Czech Republic	succession	01 Jan 1993	SÖ 1991:42 SÖ 1995:52
Slovakia	succession	01 Jan 1993	SÖ 1991:42 SÖ 1995:51
Argentina	22 Nov 1991	28 Sep 1992	SÖ 1992:91
Latvia	10 Mar 1992	06 Nov 1992	SÖ 1992:93
Lithuania	17 Mar 1992	01 Sep 1992	SÖ 1992:92
Estonia	31 Mar 1992	20 May 1992	SÖ 1992:94
Indonesia	17 Sep 1992	18 Feb 1993	SÖ 1993:68
Chile	24 May 1993	30 Dec 1995	SÖ 1995:69
Vietnam	08 Sep 1993	02 Aug 1994	SÖ 1994:69
Bulgaria	19 Apr 1994	01 Apr 1995	SÖ 1995:12
Hong Kong/China	27 May 1994	26 Jun 1994	SÖ 1994:19
Peru	03 May 1994	01 Aug 1994	SÖ 1994:22
Belarus	20 Dec 1994	01 Nov 1996	SÖ 1996:35
Albania	31 Mar 1995	01 Apr 1996	SÖ 1996:7
Russian Federation	19 Apr 1995	07 Jun 1996	SÖ 1996:39
Oman	13 Jul 1995	06 Jun 1996	SÖ 1996:8

* Will replace agreement 1978

Source: Swedish Authorities (December 2005)

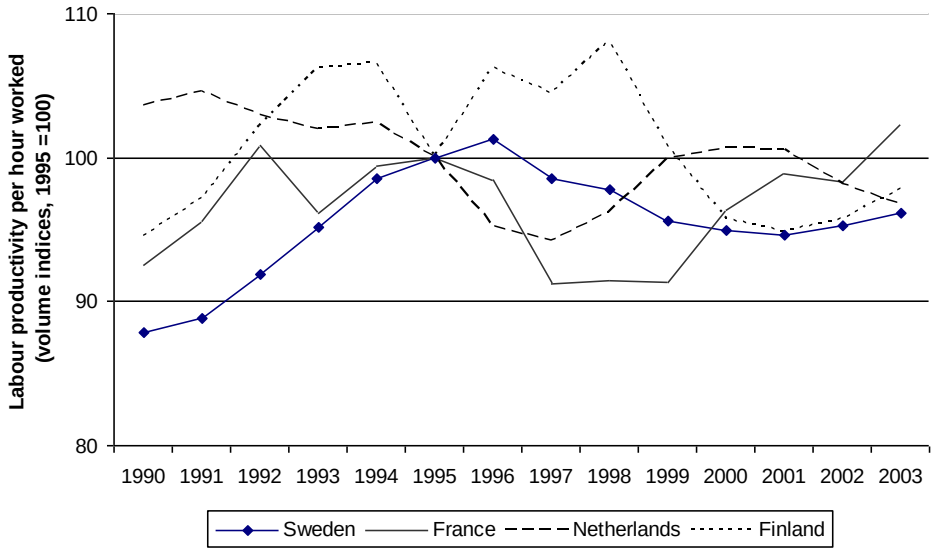
Annex 4: Bilateral Agreements on Promotion and Reciprocal Protection of Investments, *cont.*

Country	Date of signature	Date of entry into force	Swedish Treaty Series
Ukraine	15 Aug 1995	01 Mar 1997	SÖ 1996:38
Rep. of Korea	30 Aug 1995	18 Jun 1997	SÖ 1997:5
Laos	29 Aug 1996	01 Jan 1997	SÖ 1996:37
Venezuela	25 Nov 1996	05 Jan 1998	SÖ 1998:4
Turkey	11 Apr 1997	08 Oct 1998	SÖ 1998:27
Zimbabwe	06 Oct 1997		
Uruguay	17 Jun 1997	01 Dec 1999	SÖ 1999:77
FYR of Macedonia	07 May 1998	01 Oct 1998	SÖ 1998:25
South Africa	25 May 1998	01 Jan 1999	SÖ 2000:66
Nicaragua	27 May 1999		
Philippines	17 Aug 1999		
Malta	24 Aug 1999	01 Jan 2000	SÖ 1999:37
Tanzania	01 Sep 1999	01 Mar 2002	SÖ 2002:58
Slovenia*	05 Oct 1999	12 May 2001	SÖ 2001:74
Kuwait	07 Nov 1999	10 May 2002	SÖ 2002:16
United Arab Emirates	10 Nov 1999	15 Mar 2000	SÖ 2000:4
Thailand	18 Feb 2000	23 Nov 2000	SÖ 2001:66
Bosnia & Herzegovina	10 Nov 1978	21 Nov 1979	SÖ 1979:29
India	04 Jul 2000	01 Apr 2001	SÖ 2001:2
Mexico	03 Oct 2000	01 Jul 2001	SÖ 2001:14
Bosnia & Herzegovina*	31 Oct 2000	01 Jan 2002	SÖ 2002:1
Croatia *	23 Nov 2000	01 Aug 2002	SÖ 2002:23
Uzbekistan	29 May 2001	01 Oct 2001	SÖ 2001:44
Ecuador	31 May 2001	01 Mar 2002	SÖ 2002:6
Lebanon	15 Jun 2001	02 Nov 2001	SÖ 2001:48
Mozambique	23 Oct 2001		
Kyrgyzstan	08 Mar 2002	01 Apr 2003	SÖ 2003:3
Nigeria	18 Apr 2002		
Romania	29 May 2002	01 Apr 2003	SÖ 2003:2
Algeria	15 Feb 2003	01 Apr 2005	SÖ 2005:8
Mongolia	20 Oct 2003	01 Jun 2004	
Guatemala	12 Feb 2004	01 Jul 2005	
Mauritius	23 Feb 2004	01 Jun 2005	
Kazakhstan	25 Oct 2004		
Ethiopia	10 Dec 2004	01 Oct 2005	
Iran	5 Dec 2005		
Armenia	8 Feb 2006		

* Will replace agreement 1978

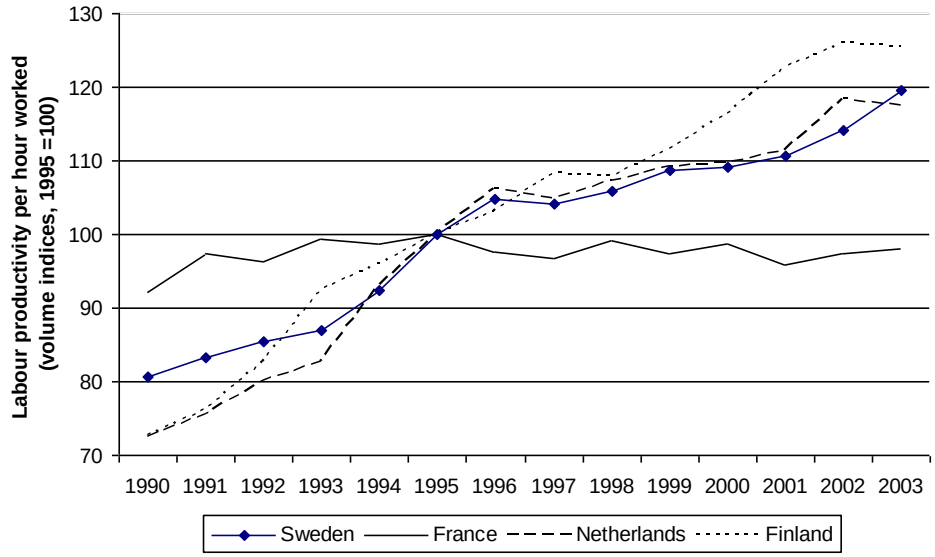
Source: Swedish Authorities (December 2005)

Annex 5. Labour productivity in the construction sector, 1990-2003



Source: Groningen Growth and Development Centre, 60-Industry Database.

Annex 6. Labour productivity in the food, drink & tobacco sector, 1990-2003



Source: Groningen Growth and Development Centre, 60-Industry Database.

NOTES

1. According to data provided by Statistics Sweden (*www.scb.se*).
2. OECD (2005a). GDP adjusted for PPP.
3. See Chapter 2 and 3 for a detailed analysis of these factors. See also Bengtsson *et al.* (2006).
4. Merchandise trade data are provided by Statistics Sweden and services trade data by Sveriges Riksbank.
5. Persson (2006).
6. Derived from data provided by OECD (2005a) and Statistics Sweden (*www.scb.se*).
7. Persson (2006).
8. Statistics Sweden (*www.scb.se*).
9. For an extensive analysis of issued related to trade and structural adjustment, including in telecommunications in Sweden, see OECD (2005b).
10. Defined as SITC 0.
11. EIU (2006)
12. OECD (2005a)
13. According to officials in the Swedish Ministry for Foreign Affairs.
14. Persson (2006).
15. *Ibid*.
16. World Economic Forum (2006).
17. World Economic Forum (2005-2006)
18. Available on *www.unctad.org/Templates/WebFlyer.asp?intItemID=2472&lang=1*.
19. ISA (2005).
20. ISA (2005) and ITPS (2004)
21. *Ibid*.
22. *Ibid*.
23. OECD (2005c).

24. See *e.g.* Government Bill 2002/03:122 on "Shared Responsibility: Sweden's Policy for Global Development".

25. The case is currently reviewed by the European Court of Justice.

26. See OECD (1997).

27. See OECD (2005d) or chapter 8 in OECD (2005e) for a more extensive discussion.

28. General information in English about Swedish legislation can be found *e.g.* at the Government Offices of Sweden (*www.sweden.gov.se*), the Swedish Parliament (*www.riksdagen.se*) and the Swedish Judiciary (*www.dom.se*).

29. See Ministry of Justice (1999).

30. A few other organisations are also able to guide foreign interest parties to different sources of information. These include the Swedish Trade Council, the Import Council of the Swedish Trade Federation, Invest in Sweden, and the Chambers of Commerce.

31. Other sources or enquiry points also exist where information can be obtained about Swedish regulations and impending regulation. These include the Swedish Agency for Economic and Regional Growth and the Swedish Work Environment Authority, which functions as the Swedish liaison office within the meaning of the Posting and Workers Directive (96/71/EC).

32. *http://riksdagen.se/templates/R_PageExtended____6324.aspx*

33. According *e.g.* to the business and consumer organisations that were consulted in this study. See more on this in Chapter 2: *'Government Capacity to Assure High Quality Regulation in Sweden'*.

34. At the same time, the private sector's participation in test panels or reference groups linked to new regulations could also be stronger (*e.g.* the European Business Test Panel).

35. See *www.nou.se/loueng.html.*

36. 'Government authority' or 'authority' will be used interchangeably: it usually refers to a government ministry.

37. The National Board of Trade has issued new implementing regulations on technical rules with further details concerning the application of the Ordinance on Technical Rules (1994:2029) as amended by Ordinance (1995:1022) and (1998:1470).

38. A catalogue of Swedish standards in force is published on the SSR Web site (*www.svenskstandard.se*).

39. *http://ec.europa.eu/enterprise/tris/index_en.htm.*

40. According to the Annual Statistics report on the TRIS website: (2004/C 216/02).

41. According to the Annual Statistics report on the TRIS website: (2005/C 158/05).

42. See Judgment of the European Court of Justice, 30 April 1996, 'CIA Security International SA v Signalson SA and Securitel SPRL', *http://ec.europa.eu/enterprise/tris/194_94/index_en.pdf*.

43. NOU (2006) and Statistics Sweden. The scope of further public procurement (or other forms of exposure to competition) has been estimated to 11-12% of GDP by the Swedish Competition Authority (Konkurrensverket, 2002).

44. See OECD (2003a).

45. The only estimate available to the OECD Secretariat of the share of government procurement supplied by foreign companies indicates that foreign participation is low, or around 1%. However, this estimate warrants a word of caution since it is based on data collected from the award notices published in the Tender Electronic Daily. The award notice does not ask for the origin of the winning supplier/service provider. It is therefore likely that the statistics deriving from the award notice shows neither foreign companies being part of a joint venture with Swedish partners nor foreign companies submitting tenders through subsidiaries or branches established in Sweden. According to Swedish authorities, the European Commission also argues that the statistics may underestimate the full extent of cross-border procurement.

46. See OECD (2002).

47. Relevant directives include 93/36/EEC (supplies), 93/37/EEC (public works), 92/50/EEC (services), 93/38/EEC (supplies, public works and services within the public supply sectors water, energy, transport and telecommunications), 97/52/EC (amendments to 93/38/EEC, 93/37/EEC, 92/50/EEC). 98/4/EC (amendments to 93/38/EEC), 89/665/EEC and 92/13/EEC (directives on remedies).

48. Information is also available at www.offentlig.kommers.se/eng/affarer.asp.

49. The period may be shortened in special cases (see Chapter 2, 13 §; chapter 3, 18 §; chapter 4, 17 §; Chapter 5, 20 §).

50. OECD (2004).

51. Företagarna (2005a).

52. Företagarna (2005b).

53. According to Swedish Authorities, Swedish courts have ruled that such a condition is not compatible with the Act on Public Procurement.

54. According to Swedish Authorities, the interest of integrating social considerations in public procurement is recognised on EU-level, see *e.g.* Article 26 of Directive 2004/18/EC and Article 38 of Directive 2004/17/EC. The limit for designing criteria or conditions concerning social conditions is ultimately set by the European Court of Justice.

55. See *e.g.* Konkurrenskommissionen (2003). Sweden is currently in the process of implementing EC Directives 2004/18/EC and 2004/17/EC.

56. The EC Remedies Directives do not explicitly oblige EU member states to have systems with sanctions. The EC is currently preparing a proposal to amend the Remedies Directives with the objective of ensure better compliance with Community provisions on public procurement, and Sweden participates actively in this work. See also Chapter 3 of this report on government procurement.

57. A contracting entity, which has failed to observe the provisions of the act on Public Procurement shall pay compensation for the injury this may have caused a supplier (chapter 7, 6-8 §§ of the Public Procurement Act). The damages awarded to a supplier may also include the positive contract interest (*e.g.* lost profits). The EC is currently preparing a proposal for a directive amending the EC directives on review procedures.

In this context, one main issue concerns sanctioning the conclusion of contracts in breach of certain provisions.

58. The concern does not cover all SOE but rather SOEs with a special society responsibility such as Svenska Spel AB (the national gaming company) and Posten AB (the former Swedish post monopoly).

59. The issue of deciding whether or not an SOE is covered by the LOU is a question for the judiciary and in the last instance the European Court of Justice.

60. Riksrevisionen (2006).

61. C-41/76 Donckerwolcke v. Procureur de la République [1976] ECR 1921 para 32.

62. Cabotage refers to the exclusive right of a country to operate the air traffic within its territory.

63. Cabotage refers to trade or navigation in coastal waters.

64. "Sweden: Schedule of Specific Commitments", GATS/SC/82, 15 April 1994.

65. WTO (1994a, 1994b).

66. EC (2005).

67. See *http://ec.europa.eu/comm/trade/issues/global/gsp/index_en.htm for more information*.

68. See *http://ec.europa.eu/comm/trade/issues/bilateral/countries/index_en.htm*.

69. *www.nnr.se/inenglish.htm*.

70. Convay *et al*. (2005).

71. World Economic Forum (2005).

72. According to the Board of Swedish Industry and Commerce for Better Regulation (NNR).

73. Both estimates were provided during the meeting with the Swedish private sector associations.

74. NNR, 2005.

75. *Ibid*.

76. In a written communication to the Riksdag (2004/05:48).

77. The NNR provides regulatory indicators which try to capture changes in the quality of Government RIAs. The basic methodology is to study fluctuations in the fulfilment of eleven quality variables, including *e.g.* how RIAs incorporate competition aspects, present cost evaluations and offer early consultations.

78. An extensive review of the Swedish Government's Action Plan to Reduce the Administrative Burden for Enterprises is available in Section 4 of Chapter 2: *'Government Capacity to Assure High Quality Regulation in Sweden'*.

79. Established in July 2002, SOLVIT is a free on-line service without legal proceedings in which EU member states work together to solve problems for citizens and businesses alike, caused by the misapplication of Internal Market law by public authorities. There is a SOLVIT centre in every EU and EEA member state.

The EC passes on formal complaints it receives to SOLVIT if it perceives that the problem can be solved without legal action.

80. See *http://ec.europa.eu/solvit/site/about/index_en.htm*.

81. However, it is estimated that less than one-fourth of targeted prospective clients are aware of SOLVIT and its services according to The National Board of Trade (2002).

82. See *http://export-help.cec.eu.int/*.

83. *www.isa.se/templates/Normal____38707.aspx.*

84. See *www.tullverket.se/se/Om_oss/vadgorvi/.*

85. *www.tullverket.se/NR/rdonlyres/24DA1377-1AFC-4FA5-84F9-373506DFCCC9/0/larsberattelse_2005_eng.pdf.*

86. See EC — Selected Customs Matters: www.wto.org/english/tratop_e/dispu_e/cases_e/ds315_e.htm.

87. Around 75% of new standards within the EU are due to requests by the market and the standards initiated by regulators are in a clear minority (SIS, 2006).

88. See OECD (2003c).

89. See OECD (2003a).

90. See OECD (2003d).

91. Unless it conflicts with national legislation.

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

93. See *www.sis.se/upload/632810440074522455.pdf*.

94. See "ISO in figures for the year 2005" at www.iso.org/iso/en/aboutiso/isoinfigures/January2006-p2.html.

95. Swedish Ministry for Foreign Affairs, 2005. See Proposition 1991/92:170 by the Ministry of Industry, Employment and Communications.

96. The National Board of Trade (2002).

97. The National Board of Trade (2004a)

98. The National Board of Trade (2002).

99. National Board of Trade (2004b). See also National Board of Trade (2002) for comments on the knowledge of European and Swedish rules.

100. EU and Israel have in addition an Agreement on Chemical Good Laboratory Practise.

101. WTO (2004).

102. See Koke (2006) for a detailed overview.

103. New EC-legislation is under preparation which will define common requirements on certification and accreditation bodies. The Swedish Government is strongly in favour of this initiative.

104. See the annual report of SCA at *www.kkv.se/eng/publications/pdf/aran_eng2005.pdf*.

105. Please note that the sector definitions may be slightly different in the two figures.

106. Bengtsson *et al*. (2006).

107. Konkurrensverket (2004).

108. According to Swedish Authorities. Regulations concerning procurement and contracts relate to public works.

109. See Konkurrensverket (2000) and Boverket (2005).

110. Boverket (2005) further concluded that quality of building materials on international markets were similar to the quality of building material produced in Sweden.

111. Vår Bostad (2002).

112. Konkurrensverket (2004).

113. The Directive has been amended by Directive 93/68/EEC and Regulation (EC) No 1882/2003.

114. OECD (2004).

115. *Ibid*.

116. Norgren (2005).

117. SOU 2002:115

118. As reported by the EC and cited in Konkurrensverket (2002).

119. Norwegian retailer *Rema 1000* tried to enter the Swedish food market in the 1990s but was unsuccessful and shortly exited the market.

120. The statistics are based on calculations on the price differences (excluding VAT) by the Swedish Competition Authority using data from the Eurostat database.

121. Konkurrensverket (2003).

122. Konkurrensverket (2004).

123. The combined market share of the three largest full-range grocery stores was 94% in 2003 (Konkurrensverket and Fri Köpenskap, 2004). See also OECD (2004).

124. Persson (2005).

125. Konkurrensverket (2004).

126. Konkurrensverket (2001).

127. Hyltner (2005, 2006).

128. Konkurrensverket (2001).

129. OECD (2004).

130. ISA (2005).

131. See SOU 2005:77, “Får jag lov? Om planering och byggande”, Slutbetänkande av PBL-kommittén, 2005.

132. The Nordic Competition Authorities (2005).

133. Case C-111/03 – The Commission of the European Communities v Kingdom of Sweden, 20 October 2005.

134. The Nordic Competition Authorities (2005).

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