

**ENHANCING MARKET OPENNESS,
INTELLECTUAL PROPERTY RIGHTS, AND COMPLIANCE
THROUGH REGULATORY REFORM IN**

ISRAEL



ABSTRACT

This report presents an analysis of Israel's trade policy-related institutions and regulations taking into account their potential influence on market openness. The analysis covers the following dimensions: transparency, non-discrimination, trade restrictiveness of regulations, harmonisation towards international standards, streamlining of conformity assessment procedures, intellectual property rights and compliance. Where appropriate, the working paper puts forward recommendations for regulatory reform with a view to further enhancing market openness and thus Israel's capacity to leverage international trade and investment for economic growth.

Keywords: Israel, trade policy, market openness, investment, transparency, non-discrimination, trade restrictiveness, conformity assessment, intellectual property rights, standards, regulatory reform, trade reform, compliance.

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The Working Party of the OECD Trade Committee discussed this report and agreed to make the findings more widely available through declassification under its responsibility. The study is available on the OECD website in English: www.oecd.org/trade.

Table of contents

Executive Summary	7
1. The economic and policy environment	12
1.1 Trade policy developments	13
1.2 Trade openness	14
2. The policy framework for market openness: the OECD efficient regulation principles, IPR and compliance	18
2.1. Transparency and openness of decision making	19
2.2 Measures to ensure non-discrimination	26
2.3 Measures to avoid unnecessary trade restrictiveness	30
2.4 Encouraging the use of internationally harmonised measures	34
2.5 Streamlining conformity assessment procedures	35
3. Intellectual property rights	37
3.1 Domestic innovation policy	38
3.2 Basic premises for the review of intellectual property rights	39
3.3 The intellectual property rights regime	39
3.4 Remaining intellectual property rights challenges	42
4. Compliance	44
5. Conclusions and policy options	45
5.1 General assessment and main challenges	45
Bibliography	53

Tables

Table 1. Israel's statutory and trade-weighted tariffs	13
Table 2. Israel's free trade agreements	29
Table 3. Doing Business Index, 2008	31
Table 4. Trading Across Borders, 2008	33
Table 5. Internationally harmonised standards in Israel	34
Table 6. An overview of Israel's IPR policies	41

Figures

Figure 1. Trade ratios in BRIICS countries and selected OECD countries, 2006	15
Figure 2. Israel's trends in foreign trade, selected years	15
Figure 3. Israel's top trade partners, 2006	16
Figure 4. Israel's foreign trade product structure	17

Figure 5. Israel’s services trade composition.....	17
Figure 6. Israel’s inward FDI flows.....	28
Figure 7. Starting a Business, 2008	32

Boxes

The OECD Efficient Regulation Principles for Market Openness	18
Israel WTO Enquiry and Contact Point	Error! Bookmark not defined.
Examples of foreign participation in domestic consultation processes	22
WTO/TBT National Notification and Authority and Enquiry Point	25

Acronyms and abbreviations

ASTM	American Society for Testing and Materials
ATA Convention	The Customs Convention on the ATA Carnet for the Temporary Admission of Goods
BIAC	Business and Industry Advisory Committee to the OECD
BDV	Brussels Definition of Value
BRIICS	Brazil, Russia, India, Indonesia, China and South Africa
BS	British Standard
CCC	Customs Co-operation Council
CIPM	International Committee for Weights and Measures
CU	Customs union
DIN	Deutsches Institut für Normung e.V.
DSB	Dispute Settlement Body (WTO legal body)
EFTA	European Free Trade Association
EU	European Union
FDI	Foreign direct investment
FICC	Federation of Israeli Chambers of Commerce
FIE	Foreign invested enterprise
FOI Law	Freedom of Information Law
FTA	Free trade agreement
GATS	General Agreement on Trade in Services (a WTO agreement)
GATT	General Agreement on Tariffs and Trade (a WTO agreement)
GDP	Gross domestic product
GPA	Agreement on Government Procurement (a WTO agreement)
HS	Harmonized System
IAF	International Accreditation Forum
IEC	International Electrotechnical Commission
IIPA	International Intellectual Property Alliance
IP	Intellectual property
IPR	Intellectual property rights
ISO	International Organization for Standardization
ICT	Information and communications technology
IT	Information technology
MENA ¹	Middle East and North Africa
MERCOSUR	The customs union among Argentina, Brazil, Paraguay and Uruguay
MFN	Most favoured nation
MOITL	Ministry of Industry, Trade and Labour
MRA	Mutual recognition agreement
NMI	National Meteorology Institution

1. The MENA Region includes: Algeria, Bahrain, Djibouti, Egypt, Iran, Iraq, Israel, Jordan Kuwait, Lebanon, Libya, Malta, Morocco, Oman, Qatar, Saudi Arabia, Syria Tunisia, United Arab Emirates, West Bank and Gaza, and Yemen

NSF	National Science Foundation
NT	National treatment
OECD	Organisation for Economic Co-operation and Development
PCT	Patent Cooperation Treaty
QIZ	Qualified Industrial Zone (programme under the United States-Israel FTA)
RIA	Regulatory impact assessment
RTA	Regional trading arrangement
SBA	Software Business Alliance
SDoC	Suppliers' declaration of conformity
SII	Standards Institute of Israel
SME	Small and medium-sized enterprises
SPS	Sanitary and phytosanitary
TBT Agreement	Agreement on Technical Barriers to Trade (a WTO agreement)
TRIPS	Trade-related intellectual property rights
UNCTAD	United National Conference on Trade and Development
UL	Underwriter Laboratories
UPOV	Union for the Protection of New Varieties of Plants
USSR	Union of Soviet Socialist Republics
VAT	Value added tax
WCO	World Customs Organisation
WCT	WIPO Copyright Treaty
WIPO	World Intellectual Property Organization
WPPT	WIPO Performances and Phonograms Treaty
WPTC	Working Party of the Trade Committee

Executive Summary¹

Over the last two decades, Israel has opened its economy to international trade and investment by lowering tariffs and improving the domestic regulatory environment for business. This review describes progress on regulatory reform in Israel, including through its forward looking eGovernment programme, which suggests these overall trends will continue. The results of these reforms can be considered in light of significant increases in inward foreign direct investment (FDI) and the shift of Israel's economy from one with a significant agrarian sector to one which is much more reliant on the high tech sector today. The liberalisation of trade has been consistently and effectively conducted by the institutions overseeing the process, but scope remains for further improving the quality of market openness in domestic regulatory practices, particularly in areas not subject to international obligations. Recent reforms such as the implementation of a risk based arrangement on streamlining conformity assessment for imports indicate a positive approach to continued reform. Further reforms to enhance the market openness of Israel's regulatory framework for trade will enable it to better consolidate the benefits from the trade liberalisations already undertaken.

The Ministry of Industry, Trade and Labor (MOITL) takes the lead as the conduit between international trade obligations and Israel's domestic regulatory system. Transparency in the sense of information dissemination is well developed for primary legislation enacted by the Knesset (Israel's parliament). All primary and secondary legislation is published in the *Official Gazette* and can be found on the website of the Ministry of Justice. Most directives and administrative guidelines appear on the websites of the government bodies that administer them. However, the implementation of consultation processes for secondary legislation, directives and administrative guidelines is less consistent in terms of transparency than those for primary legislation. Non-discrimination in Israel is promoted indirectly *via* adherence to international obligations. Reduction of unnecessary trade restrictiveness is advanced primarily through eGovernment related programmes. Israel does not implement any systematic form of regulatory impact assessments (RIAs). The adoption of international standards (or basing new standards on international ones) is encouraged by law in Israel, and a recent resolution seeks to further harmonise existing Israeli standards internationally. Israel promotes streamlining of conformity assessment procedures by pursuing mutual recognition agreements (MRAs), allowing domestic conformity assessment bodies to sign MRAs with foreign ones and, more recently, implementing a risk based arrangement to support the process. Israel has also undertaken a broad and active effort to augment the economy's ability to benefit from an enhanced regime for intellectual property rights (IPRs). This includes increasing the resources of the patent office, upgrading enforcement activities as well as implementing programmes to bring ideas funded by government research to the market. In the area of compliance, Israel has never been party to a WTO dispute, despite a relative absence of institutional and regulatory processes dedicated to ensuring compliance with international trade obligations. Israel is also in the process of preparing a new Export and Import Law to replace the existing law dating from 1939 which, by modernising domestic rules for international trade, may further improve market openness.

Thematic synopses and policy options for consideration

The passage of the Freedom of Information Law in 1998 coincided with a series of regulatory and structural reforms in the Israeli economy that have formed a cornerstone for advances in **transparency**. A primary challenge to further improvement of transparency in the domestic economy is to promote coherence among the three levels of legislation as well as between the differing subjects of regulation. This is particularly so with respect to the portion of secondary legislation not subject to approval by Knesset, as well as directives and administrative guidelines.

Policy options

- A key means to improve the transparency of the regulatory system would be to promote greater coherence between levels of regulations – particularly where they overlap on specific regulatory subjects – in order to ensure greater compatibility with international (WTO) obligations. One approach to addressing this deficiency would be to require that all secondary legislation not subject to review by the Knesset be circulated to all ministries during the consultation period. Due to the MOITL's role as the government body responsible for international trade policy, consideration should be given to designating it as the competent authority for addressing discriminatory and market openness aspects of any proposed regulation. Consideration should be given to anchoring this proposal by means of legislation.

Although Israel does not have legislation in force directly ensuring the principle of **non-discrimination**, foreign invested enterprises (FIEs) are generally accorded legal rights equivalent to their domestic counterparts, except where specific legislation indicates otherwise. Such areas are few but include some important dimensions of the economy such as government procurement and regulatory practices in the area of conformity assessment.

Policy options

- Reconsider the system of providing preferences for domestic bidders and applying performance requirements in the area of government procurement. Doing so could enhance the efficiency and efficacy of government procurement, by increasing the pool of suppliers and thus the quality of competition.
- Balance the enforcement of mandatory standards in terms of imported goods and their domestically produced counterparts.

Significant advances in reducing the **trade restrictiveness** of the domestic regulatory framework have been recorded in the area of eGovernment. The approach of establishing quantifiable objectives in the form of World Bank Doing Business indexes is a notably straightforward approach to guide reforms.

Policy options

- Echoing a policy option under transparency, we would suggest that it may be useful to consider implementing a review of coherence among the three levels of legislation – particularly where they overlap on specific regulatory subjects – whether as a one-off or as a gradual exercise. Particular attention should be devoted to reviewing substantive

coherence between secondary legislation not subject to approval by the Knesset together with directives and administrative guidelines, against primary and secondary legislation subject to approval by the Knesset. Strengthening coherence in regulatory approaches increases the predictability of the regulatory system, and can significantly reduce unnecessary trade restrictiveness.

- Consider putting into place a programme for conducting regulatory impact assessments (RIAs) if only on a pilot basis, which includes analysis of trade and investment impacts of regulations.

Israel has legislation supporting **international harmonisation** when developing new standards, whether mandatory or voluntary. Implementation of the “Improvement of Terms of Trade - Standardization” resolution seeks to align an additional 25% of domestic mandatory standards towards international ones, and to propose solutions for standardising technical orders and regulations. Advancing the harmonisation of overlapping domestic standards relating to the same subject, but differing in regulatory approach, may be as important as further progress in harmonisation towards international standards.

Policy options

- Consider raising the goal, under the resolution, of aligning 65% of domestic towards international or regional standards to 75%.
- Consider including orders, regulations, directives and administrative guidelines not already covered under the resolution within the exercise to propose solutions for standardisation.
- Again consistent with the policy option under transparency, it may be useful to consider conducting a review of coherence among all mandatory and voluntary standards, particularly those between regulatory subjects, whether as a one off or gradual exercise. Strengthening coherence in the approach to design and implementation of standards reduces unnecessary trade restrictiveness arising from inconsistent or contradictory regulations, and amplifies the benefits of predictability on a systemic level.

Israel generally applies international standards when **streamlining conformity assessment** and actively seeks to conduct government-to-government mutual recognition agreements (MRAs). Its private conformity assessment bodies have conducted at least one significant MRA. The ongoing implementation of a risk-based arrangement to streamline conformity assessment procedures for non-food imports, could support significant progress depending on its development. Much will depend on the manner in which it is implemented.

Policy options

- Depending on the effectiveness of this risk-based arrangement for streamlining conformity assessment procedures in terms of ensuring consumer safety for standards already covered in Groups 2-3, set an objective of enlarging the scope of standards covered by these two groupings wherever reasonable.

- Increase efforts to conduct government-to-government MRAs, and enhance the capacity of domestic conformity assessment bodies to conclude multilateral recognition agreements.

Israel's considerable capacity to produce innovation is underpinned by its internationally competitive research institutions and its skilled scientists, engineers and workers. Its regime of **intellectual property rights** ranks high against international averages, however, a number of improvements would bring Israel closer to the practice generally found in OECD countries. Such improvements generally relate to enhancing protection in specific areas of copyright and patent protection and improving administrative efficiency.

General policy options

- Consideration may be directed towards improving the effectiveness and efficiency of the administrative procedures relating to IPR, particularly in terms of allocating additional resources to shorten patent examination periods.
- The process for granting marketing approvals for new pharmaceutical products should be streamlined and augmented with increased resources. Reducing the time necessary to receive marketing approvals would benefit all stakeholders whether domestic or international including generic producers, pharmaceutical companies and the general public.
- The effectiveness of the Israeli patent system may benefit from a shift in procedures from pre-grant opposition to rely primarily on post-grant opposition. An overly broad right to oppose in advance and thus cause significant delays in the granting of new patents creates incentives for rent-seeking and strategic behaviour, which reduces the regulatory efficiency of the IPR system.
- Copyright enforcement is a growing challenge including among OECD countries. Increasing domestic capacity for enforcement is an important means to enhance compliance. Strengthening international cooperation on enforcement is also an important component of making the regulatory regime effective. Further efforts in both areas could yield positive results for Israel.

Beyond these general policy options, some Members recommend that Israel strengthen its IPR laws to more closely conform to international standards. Further, some Member countries have identified the following areas as being in particular need of improvement: strengthening protection against unfair commercial use of undisclosed test or other data submitted for marketing approvals for pharmaceutical products; strengthening patent term extension given to pharmaceutical products to compensate for delays in the marketing approval process; strengthening copyright legislation; and increasing copyright enforcement efforts. These Members stress the importance of specific intellectual property reforms with respect to copyright and patent policy:

Copyrights

- Ratification and effective implementation of the World Intellectual Property Organization (WIPO) Internet Treaties² in order to reinforce Israel's framework for

protecting technological measures and digital rights management used for protecting copyrighted works.

- Modifications in Israel's copyright legislation in order to prevent unauthorised communication of protected audiovisual works (that are at times retransmitted *via* local television stations without paying appropriate remuneration), in conformity with international treaties, and to encourage the activity of collective management organisations.

Patents and data protection

- Action to ensure that registration or product approval delays for new substances (15 to 18 months) attributable to the regulatory authority do not negatively affect any type of market exclusivity granted to innovative pharmaceutical products registered in Israel, including in the field of patent term extension and data exclusivity.
- Action to provide for an effective and full five-year period of data exclusivity from the date of obtaining product market approval in Israel.
- Action to provide for an additional exclusivity period to new therapeutic indications which, during the scientific evaluation prior to their authorisation, are held to bring significant clinical benefit.
- Action to ensure that a patent term extension can be granted to any product having received an equivalent patent term extension in just one of the so-called Recognised Countries.
- Publication of patent applications within 18 months from the date of filing or, if priority has been claimed, from the date of priority.
- Moving the possibility of opposition procedures from the pre-grant phase to the post-grant phase (pre-grant opposition allows competitors to extend the review process during which the patent applicant cannot claim damages for infringements).

Israel does not have significant experience with **compliance**; it has never been an initiator or respondent in the Dispute Settlement Body (DSB) of the WTO.

Policy options

- No recommendation.

Introduction³

The approach taken by this review draws on Market Openness Chapters of the well-established Country Reviews of Regulatory Reform programme carried out by the Governance Directorate in co-operation with the Trade and Agriculture Directorate.⁴ However, unlike the Market Openness Chapters, the reviews of market openness prepared for the accession process are stand-alone documents. In terms of format, they are dissimilar from traditional reviews of market openness in that they omit treatment of what is traditionally the sixth principle of market openness (i.e. competition policy), while covering two new areas (i.e. intellectual property rights and compliance).

Examining market openness is important because it assesses a country's ability to reap the benefits of globalisation and international competition by eliminating or minimising the trade distorting impact of border as well as behind-the-border measures. Improving a country's economic efficiency and competitiveness depends in part on its domestic capacity to integrate foreign trade and investment perspectives into regulations and regulatory practices. From a market openness perspective, regulatory reform is in the interest of the domestic economy, but yields significant benefits for national and foreign stakeholders alike.

High quality regulation can be achieved without compromising market openness, and open market policies can be enhanced through strong regulatory underpinnings. This review of market openness, prepared as part of the Trade Committee's accession process, examines to what extent domestic regulations directly or indirectly distort or facilitate international competition, and suggests policy options to improve the domestic regulatory framework for international trade and investment liberalisation.

1. The economic and policy environment

Israel has a diversified economy with substantial economic activities in agriculture, industrial products, high-technology, minerals and financial services.

Israel's strong commitment to economic development and its skilled work force supported economic growth rates during the nation's first two decades frequently exceeding 10% *per annum*. The successful economic stabilization plan implemented from 1985, and the subsequent introduction of market-oriented structural reforms, paved the way for rapid growth throughout the 1990s and beyond.

Two developments helped to transform Israel's economy from the beginning of the 1990s. The first was waves of Jewish immigration, predominantly from the former Union of Soviet Socialist Republics (USSR), which brought over one million of new citizens to Israel. These new immigrants, many of them highly educated, now constitute some 16% of Israel's 6.5 million population. The second was the unprecedented inflow of foreign investment into Israel over the past few years as companies increasingly view Israel as a component of their global strategies. Foreign investment in Israel totalled over USD 14 billion in 2006. Israeli companies, particularly in the high-tech sector, had until recently enjoyed considerable success raising money on Wall Street and other world financial markets. Israel ranks second among foreign countries in the number of its companies listed on United States stock exchanges.

The global financial crisis beginning in 2008 impacted the Israeli economy as it has affected many other economies. The unfolding of the crisis coincided with progressive declines in Israel's annualised GDP growth rates from 5.1%, to 4.1% and then to 2.3% in the first, second and third quarters of 2008. This decline is expected to continue through 2009.⁵ The Bank of Israel has, in response, taken a number of measures for boosting consumption and keeping inflation in check, to mitigate the effects of the crisis on the economy. During the first quarter of 2008, private consumption decreased by 2.9%, investment by 16.5% and exports of goods and services by 13.4%. Unemployment reached 5.9% in 2008 and may surpass to 7% in 2009. Israel's Minister of Finance recently announced fiscal stimulus measures of EUR 4.3 billion for public investment and jobs creation, and EUR 2.2 billion for bank credit guarantees and social safety nets.⁶

1.1 Trade policy developments

International trade plays a vital role in the economy of Israel. Its integration within the global trading system has been supported by multilateral and bilateral trade agreements as well as unilateral trade liberalisation and structural reforms. Table 1 reflects gradual but consistent declines in Israel's average and simple applied tariffs from 1993 through 2007. The larger declines in the weighted versus the simple average applied tariffs indicate that the reductions were weighted towards heavily traded products thus enhancing benefits beyond what the figures for simple average tariff reductions would suggest. Although tariffs applied to raw materials actually increased slightly, they remained low on average. The most pronounced declines occurred in the consumer goods category. Reductions in tariffs together with a number of concomitant policies were credited with increasing competition within the private sector and stimulating entrepreneurial activity, both of which substantially increased domestic and foreign investment. Much of this investment has taken place in the internationally competitive domestic technology, research and knowledge based industries.

Table 1. Israel's statutory and trade-weighted tariffs

		Israel						OECD Average					
		1993	2004	2005	2006	2007	2008	1993	2004	2005	2006	2007	2008
Total Trade	Simple Average	7.81	5.38	5.33	5.28	5.14	5.15	7.19	6.57	5.70	5.50	4.65	3.96
	Weighted Average	4.93	2.71	2.60	2.64	2.52	2.61	5.11	4.15	3.53	3.63	2.84	3.02
Capital goods	Simple Average	4.91	3.49	3.46	3.45	3.47	3.47	5.92	3.92	2.95	2.74	2.03	2.15
	Weighted Average	4.65	2.40	2.28	2.29	2.20	2.31	3.70	2.48	2.15	2.22	1.28	1.81
Consumer goods	Simple Average	14.70	8.63	8.52	8.49	8.26	8.32	10.55	9.13	8.31	7.75	6.50	6.67
	Weighted Average	10.38	6.82	6.58	6.59	5.84	5.96	7.15	5.15	5.06	5.03	4.02	4.58
Intermediate goods	Simple Average	5.63	2.92	2.88	2.87	2.73	2.64	6.37	5.65	4.57	4.33	3.56	2.90
	Weighted Average	4.48	1.11	1.13	1.18	1.15	1.15	4.54	3.18	2.77	2.74	2.01	2.18
Raw materials	Simple Average	2.11	9.09	9.12	8.75	9.31	8.87	3.28	7.34	7.17	8.16	8.00	3.63
	Weighted Average	0.31	0.80	0.65	0.68	0.92	0.81	3.60	9.28	3.67	4.76	4.70	2.47

Source: UN TRAINS.

Israel's trade policy employs the range of international agreements and commercial arrangements and seeks to balance efforts among the multilateral, bilateral and unilateral levels. Israel defines its trade policy objectives as:

- Continuing the integration of the Israeli economy into the global trading system through the use of policy instruments that relate to trade in goods, services, investments, competition, environment, intellectual property, development and other areas.

- Promoting and maintaining Israel’s export competitiveness by expanding and updating the network of international agreements designed to promote trade, facilitate market access, eliminate non-tariff barriers and achieve sustainable economic growth.
- Increasing the efficiency of resource allocation, by enhancing reforms that aim at the introduction of greater competition and increased transparency in the domestic market.
- Creating an attractive climate for investors, businesspeople, consumers and the public as a whole.⁷

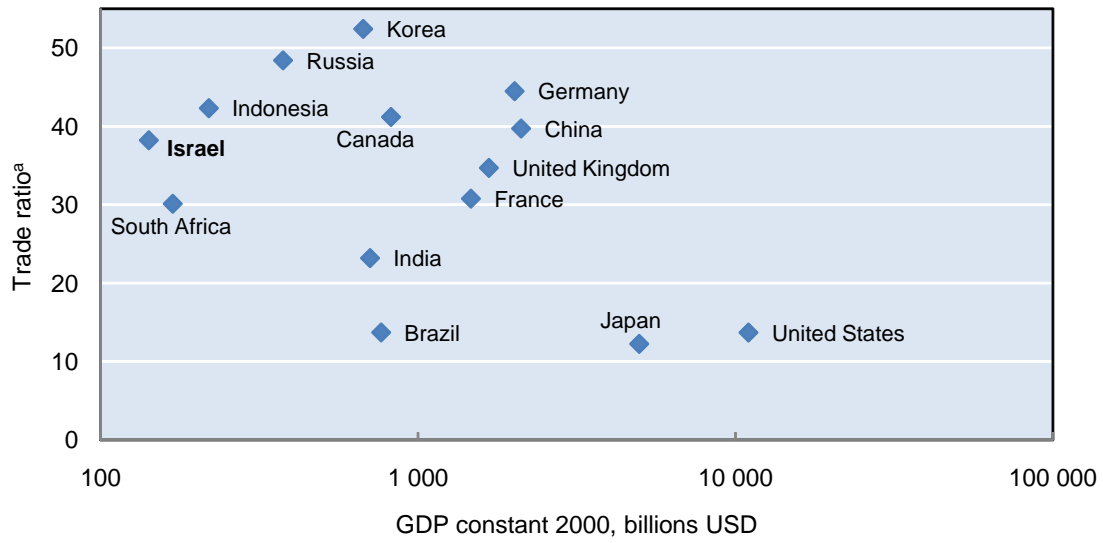
The procedure to change tariffs in Israel entails a proposal to an internal committee within the Customs Administration (titled the Ordinance Committee), and in collaboration with the Ministry of Industry, Trade and Labor (MOITL) to ensure that the proposed change corresponds to international commitments and obligations. At the next stage, the Taxation Committee of the Customs Administration and Ministry of Finance reviews the proposal. Finally, the proposal must secure the signature of the Minister of Finance. In cases where tariffs are raised, the Finance Committee of the Knesset (Israel’s Parliament) must also approve the proposal.

1.2 Trade openness

Israel’s trade openness can be measured by the ratio of total exports and imports in GDP. This ratio is often used as an indicator to measure a country’s “openness” or “integration” in the world economy but is influenced by various endogenous factors, such as the size of the economy, distance from major or dynamic markets and variations in economic growth. Israel’s trade turnover/GDP ratio compares favourably *vis-à-vis* the BRIICS (Brazil, Russia, India, Indonesia, China and South Africa) as well as OECD countries (Figure 1). Although Israel’s export growth is impressive, particularly after a period of restructuring in 2001-2003, it maintains a small year-on-year trade deficit (Figure 2).

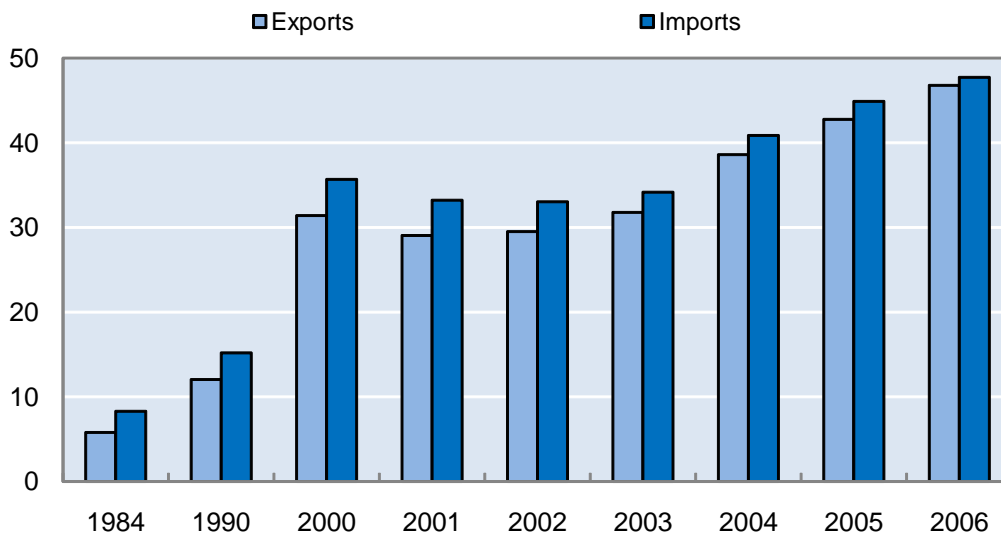
The European Union and the United States are Israel’s largest trading partners by far, accounting for roughly three quarters of Israel’s foreign trade.⁸ The United States is Israel’s single largest export destination, importing USD 18 billion in goods from Israel in 2006 (Figure 3). The European Union absorbed roughly USD 12 billion in the same year and exported roughly USD 18 billion to Israel, in comparison to the United States’ exports of USD 6 billion. Hong Kong, China; China; and India represented, respectively, USD 2.8, 1 and 1.3 billion export markets for Israel in 2006.

Figure 1. Trade ratios^{a, b} in BRICS countries and selected OECD countries, 2006^c



a) Average of exports and imports of goods and services as a share of GDP constant 2000 USD.
 b) Logarithmic scale on the horizontal axis.
 c) 2005 for Canada, Japan and the United States.
 Source: WTI.

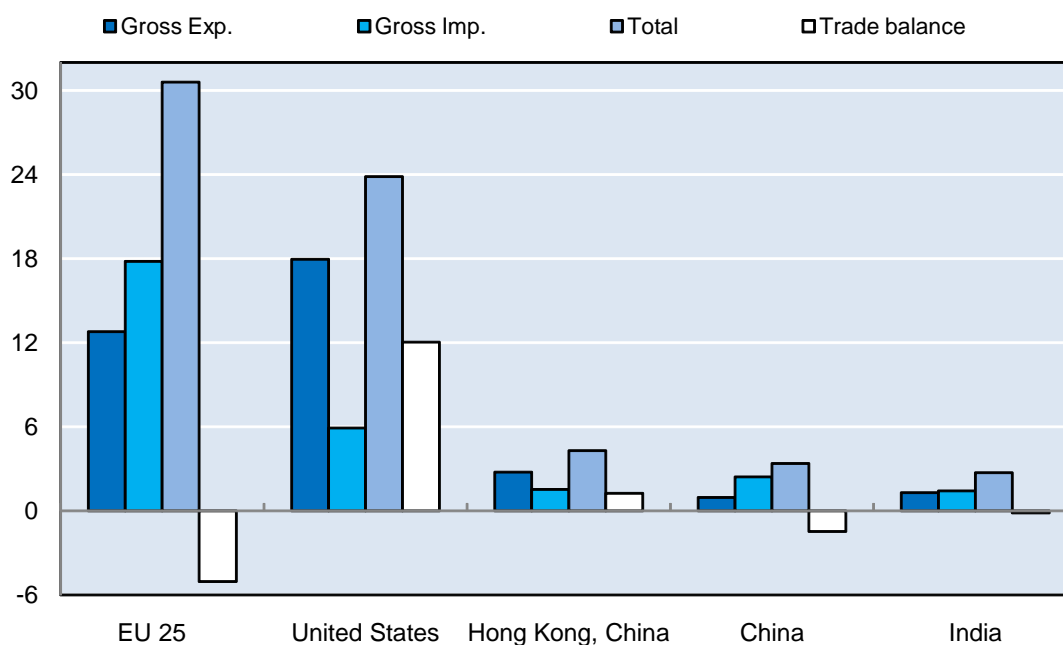
Figure 2. Israel's trends in foreign trade, selected years



Source: UN ComTrade.

Figure 3. Israel's top trade partners, 2006

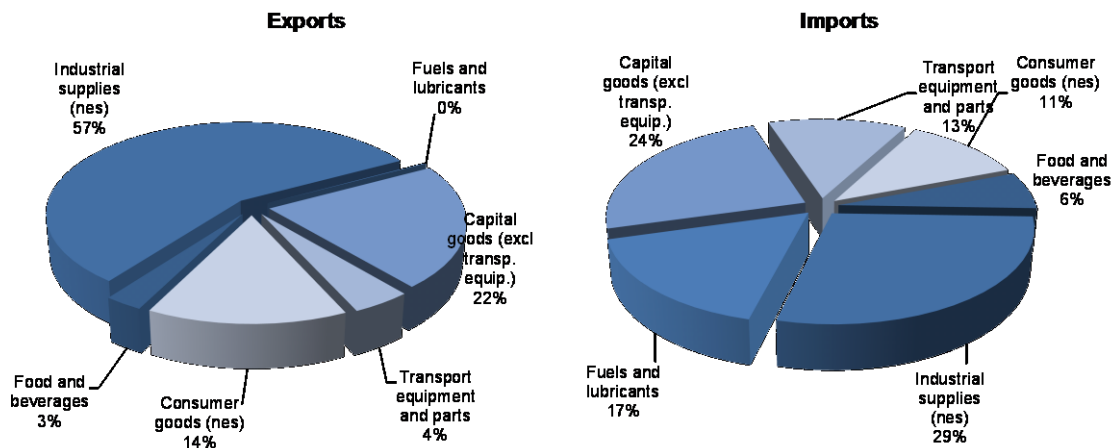
USD Billions



Source: UN ComTrade.

Israel has evolved from an economy relying on primarily on agriculture, light industry and labour-intensive production in the early 1990s. It is now reliant primarily on a highly skilled, educated and innovative workforce. From 2000 onwards, Israel emerged as a knowledge-based and technologically advanced market economy with internationally competitive industries spanning such industries as medical electronics, agro-technology, telecommunications, fine chemicals, computer hardware and software, and diamond cutting and polishing. By occupation, Israel's labour force is employed in: agriculture, forestry and fisheries (2.5%); manufacturing (20.2%); construction (7.5%); commerce (12.8%); transport, storage and communication (6.2%); finance and business (13.1%). The services and industrial sectors are major sectors accounting for 66.6% and 30.8% of domestic economic activity. Today, Israel's structure of trade in goods and services reflects that of a modern industrial economy (Figures 4-5).

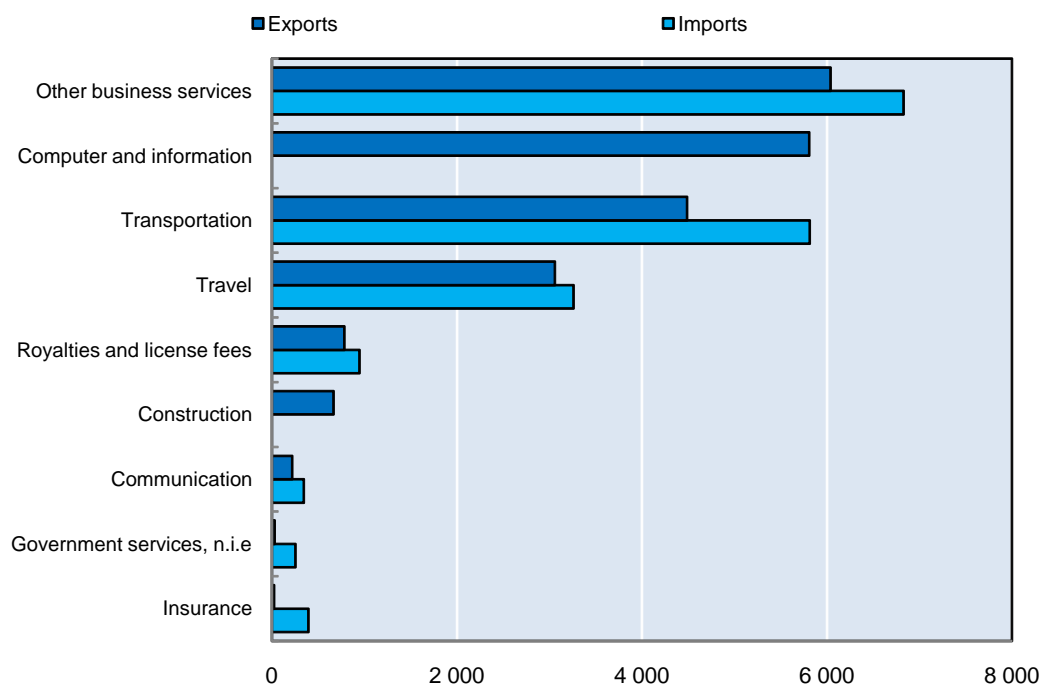
Figure 4. Israel' foreign trade product structure



Source: UN ComTrade.

Figure 5. Israel's services trade composition

USD Millions



Series shown on the chart are ordered by the value of exports in 2007.

Source: IMF (2008), IMF Balance of Payments.

2. The policy framework for market openness: the OECD efficient regulation principles, IPR and compliance

The expansion of economic globalisation and the fall of traditional barriers to trade have made the complementarities of market openness and regulatory reform increasingly important. Trade and investment liberalisation can be an important factor in successful regulatory reform, while regulatory reform can play a strong role in ensuring that liberalised conditions for trade and investment bring the expected benefits in terms of economic performance. When designed and implemented properly, regulatory reform establishes domestic regulatory environments that improve efficiency and increase the flow of international trade and investment. Good regulation encourages productivity gains, investment and innovation, job creation, and boosts growth and competitiveness. The prospect of these domestic benefits is the rationale behind regulatory reform.

Box 1. The OECD Efficient Regulation Principles for Market Openness

To ensure that regulations do not contradict and reduce market openness, “efficient regulation” principles should be built into the domestic regulatory process and practices. Trade policy makers have identified these principles as key to market-oriented trade and investment-friendly regulations. They reflect the basic principles underpinning the multilateral trading system.

Transparency and openness of decision making: Foreign firms, individuals and investors seeking access to a market must have adequate information on new and revised regulations so that they can base their decisions on accurate assessment of potential costs, risks and market opportunities.

Non-discrimination: Non-discrimination means equality of competitive opportunities between like products and services irrespective of country of origin.

Avoidance of unnecessary trade restrictiveness: Governments should use regulations that are not more trade restrictive than necessary to fulfil legitimate objectives.

Use of internationally harmonised measures: Compliance with different standards and regulations for like products can burden firms engaged in international trade with significant costs. When appropriate and feasible, internationally harmonised measures should be used as the basis of domestic regulations.

Streamlining conformity assessment procedures: When internationally harmonised measures are not possible, necessary or desirable, recognising the equivalence of trading partners’ regulatory measures or the results of conformity assessment performed in other countries can reduce the negative effects of cross-country disparities in regulations and duplicative conformity assessment systems.

Application of competition principles from a market openness perspective: Market access can be reduced by regulatory action ignoring anti-competitive conduct or by failure to correct anti-competitive practices, particularly by incumbent firms which are normally also domestic.

Source: OECD (2002), “Integrating Market Openness into the Regulatory Process: Emerging Patterns in OECD countries” [TD/TC/WP(2002)25/FINAL], OECD, Paris.

An important step to ensure that regulations do not unnecessarily reduce market openness is by building efficient regulation principles into domestic regulatory processes for social and economic regulations, as well as for administrative practices. Trade policy makers have identified six principles as key to market-oriented, trade and investment friendly regulation. They reflect the basic principles underpinning the multilateral trading system. The OECD’s six efficient regulatory principles for market openness are: (i) transparency and openness of decision-making processes; (ii) non-discrimination; (iii) avoidance of unnecessary trade restrictiveness; (iv) use of internationally harmonised measures; (v) streamlining conformity assessment procedures; and (vi) application of competition principles from a market openness perspective (Box 1). This paper looks at

Israel's market openness from the perspective of its regulatory framework under the first five of these principles (with competition being treated elsewhere in the accession process), plus the additional issue areas of intellectual property rights and compliance.

2.1. Transparency and openness of decision making

Transparency in domestic regulatory processes is a fundamental determinant of market openness for both domestic and foreign participants. It is important for market participants to fully understand the regulatory environment in which they are operating in order to have opportunities to contribute to regulatory decision-making processes, thus supporting the quality and effectiveness of market access. In order to ensure international market openness, the process of creating, enforcing, reviewing or reforming regulations needs to be transparent and open to foreign firms and individuals seeking access to a market, or expanding activities in that 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 by which the market operates, enabling them to base their production and investment decisions on an accurate assessment of potential costs, risks and market opportunities. It is also a safeguard in favour of equality in competitive opportunities for market participants and thus enhances the security and predictability of the market. Such transparency can be achieved through a variety of means, including systematic publication of proposed rules prior to entry into force and use of electronic means to share information, such as *via* the internet.

Transparency of decision making further refers to dialogue between regulators and 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 seek clarifications about the application of existing regulations should have appropriate access to appeal procedures. Such dialogue allows market forces to become part of the regulatory process thus facilitating the avoidance of trade frictions.

In Israel, both laws and government policies guide the practice of regulatory transparency. Transparency in Israel is governed primarily by the Freedom of Information Law (FOI Law) that entered into force in 1998 and articulates the right of the public to receive information from public authorities. Within the context of the FOI law, the term "information" is defined broadly as "all information found in the possession of public authorities, which is written, recorded, filmed, photographed or computerized". The FOI Law covers the public authorities as defined therein and requires that each ministry appoint a director of public information responsible for putting the information at the disposal of the public, and addressing requests for information and implementing the provisions of the FOI Law. Public bodies are also obligated under the FOI Law to publish administrative directives governing their activities, which are relevant or important to the public.

Procedures for requesting information from public bodies are also established under the FOI Law, which provides that authorities have discretion to reserve confidential or commercial information under certain circumstances, after balancing the merits of the request for release of information and the public interest as well as private interest, subject to Articles 9, "Information whose disclosure is prohibited or not mandatory", and 10, "Considerations of the Public Authority", of the FOI Law. Under such circumstances, the

authorities' discretion relates, *inter alia*, to situations where disclosure might substantially harm professional, commercial or economic interests. The FOI Law additionally provides that prior to disclosing information which is likely to harm a third party, that party will be provided an opportunity to express a position on the matter. The Government of Israel considers that the exceptions to the disclosure provisions have in general been interpreted narrowly.

Regulatory transparency, that is equal access to information on the legal and regulatory framework, is a prerequisite for effective competition. It is essential to all market participants, but particularly to foreign operators coping with additional obstacles such as language barriers and country specific business practices. Regulatory transparency has three main aspects: (i) access to information on existing regulations, (ii) openness to the rulemaking process through public consultation prior to the adoption of final regulations, and (iii) the possibility of market participants to access appropriate appeal procedures. In addition, transparency is essential for ensuring international competition in two specific areas: (iv) technical regulations and (v) government procurement.

Information dissemination

The first aspect of transparency is easy and open access to information. Every firm operating in the market should have information about regulations, procedures, and other measures that affect its interests and indicate the conditions, constraints and risks that firms will encounter in the market. Having such information reduces uncertainties over applicable requirements, and helps companies to better foresee the costs and returns of their trading activities and investments. Access to information is particularly relevant for foreign firms and new market entrants as they are often unfamiliar with the local regulatory environment, and at times the economic, political, social and cultural environments.

The legal system in Israel is essentially three-tiered. At the first level is primary legislation or laws that are enacted by the Knesset. At the second level are regulations and orders some of which must be approved by the Knesset, and others which can be directly enacted by ministers. At the third level are directives and administrative guidelines which are adopted at the discretion of individual ministries.

Today, all primary and secondary legislation can be found on the website of Ministry of Justice after their enactment. Most directives and administrative guidelines appear on the websites of the government bodies that administer them. In line with trends among advanced economies, the internet has increasingly become the basis as opposed to a supplementary medium for disseminating laws and regulations in Israel. All laws and regulations at the first two levels are published in the "Reshumot" the *Official Gazette*, which is itself also published on the internet website of the Ministry of Justice (www.justice.gov.il/MOJHeb/Reshumot/). However, in rare cases, certain laws allow regulators to publish regulations in an "open-to-the-public" format defined in those laws. Legislative proposals can also be found on the website of the Knesset (www.knesset.gov.il/laws/heb/law_main.asp).

In areas where Israel has made international commitments, it complies with its obligations to publish or otherwise communicate such regulations to the public prior to entry into force, in a manner accessible at the international level. In keeping with its WTO commitments, Israel has established an enquiry point to provide WTO members, enterprises, individuals and the public with trade related information and authoritative replies on the interpretation of Israeli laws and regulations relating to trade.⁹

Consultation mechanisms

A second fundamental aspect of transparency refers to the openness of the regulation-making process, in particular, providing an opportunity for all stakeholders to participate in formal or informal consultations. Consultations and the equality of access to them have important effects on the quality and enforceability of regulations in general, on the efficiency of economic activities, and on the level of market openness. Provision of draft legislation with adequate time for meaningful consultations with all relevant stakeholders are the cornerstones of a predictable regulatory environment that is conducive to large and long term investments, which maximise overall welfare.

The implementation of public consultations in Israel is conducted in accordance with the guidelines of the Attorney General (2.3100 and 60.010 as adopted in the Government Rules of Procedure). The guidelines of the Attorney General provide the objectives of consultations and the areas in which they must be conducted, but do not provide guidance on mandatory periods of consultations. According to the guidelines of the Attorney General, during the process of preparing draft legislation and regulations, consultations must expand beyond governmental bodies to include non-governmental bodies that may be affected or that could possibly contribute to proposed legislation. The legislative process creates the opportunity for non-governmental bodies to submit comments and to contribute to discussions in the Knesset committees before adoption of new or modified regulations.

The guidelines of the Attorney General specify that primary legislation or laws that are enacted by the Knesset must be subject to publication and comment prior to enactment without exception. At the level of regulations and orders, two categories are established including those requiring approval by the relevant Knesset committee, and those that ministers have the power to enact directly. In the case of orders and regulations requiring approval by the Knesset, the necessity for the order or regulation to pass through the Knesset guarantees their universal publication for public comment prior to enactment. In the case of regulations or orders that ministers are able to enact directly, the implementing ministry retains discretion to decide on relevant counterparts with which to engage consultations prior to enactment. At the level of directives and administrative guidelines, adoption is at the discretion of the individual ministries and their enactment is not subject to requirements for consultations with other ministries or the public.

The full text of proposed government primary legislation and secondary legislation requiring the approval of the Knesset is published in the *Official Gazette* and on the website of the Ministry of Justice. In the case of legislation proposed by Knesset members, the full texts are made available on the website of the Knesset, Israel's parliament (www.knesset.gov.il/privatelaw/). It should be noted that draft bills originating from the MOITL are published on its website (www.moital.gov.il) with an official request for comments on the proposed legislation from the public. Other ministries, such as the Ministry of Justice and the Ministry of Infrastructure also publish draft bills on their websites.

In the case of secondary legislation not subject to approval by the Knesset, the guidelines of the Attorney General require that the legal advisor of each ministry, together with the relevant professional staff of that ministry, prepare a list of bodies that would be advisable to consult when preparing regulations. These should include bodies that will be substantially, legally, economically or socially affected by the proposed regulations. The guidelines of the Attorney General (2.3100) also recommend that proposed secondary

legislation be sent to non-governmental bodies at the same time that they are sent to other government ministries for comments where any of the following criteria are met:

- Consultations coincide with the democratic principle of the public being involved in the legislative process;
- The consultations may add to the information or considerations which may influence the contents of the regulations;
- The consultations may encourage cooperation from bodies or individuals that are subject of the regulations.

The guidelines of the Attorney General contain no provisions preventing foreign individuals from joining consultation processes. As all proposed legislation to be addressed in the Knesset appears on public websites, foreign individuals are able to receive such information and to prepare comments to be addressed directly within the legislative process (Box 2). More often, however, comments from foreign individuals are transmitted through local representatives. In terms of secondary legislation not addressed by the Knesset, no rules prevent foreign enterprises from appearing on lists of non-governmental bodies with which ministries regularly consult.

Box 2. Examples of foreign participation in domestic consultation processes

Examples of international comments within the domestic legislative process include the following:

- During the enactment of the Copyright Law of 2006, submissions were received by the United States Trade Representative as well as from American intellectual property trade associations (e.g. International Intellectual Property Association and the Motion Picture Association). The comments were considered and analyzed.
- More recently, the European Spirits Organization, a representative body for the European spirits industry submitted written comments to the Customs Authority and to the Foreign Trade Administration of the Ministry of Industry, Trade and Labor on proposed changes in taxation arrangements on the imports of spirit drinks to Israel. These comments are being analyzed by the relevant authorities
- An example of comments that were successful in changing an Israeli Standard occurred during the process of forming a mandatory standard for toys, comments were received by the National WTO/TBT Enquiry Point from the American Chemistry Council Association, through the U.S. WTO/TBT Enquiry Point, and from the European Council for Plasticizers and Intermediates. The U.S. body proposed to remove Israel's ban on six phthalates in children's toys and teething rings. Upon consideration of the argument of the American representatives, the Commissioner of Standardization returned the standard to the Technical Committee in the Standards Institution of Israel for review. The Technical Committee decided to remove Di-isononyl phthalate (DINP) from the list of banned phthalates appearing in Israel Standard 562 Part 3.

Source: Government of Israel.

In terms of consultation periods, the guidelines of the Attorney General require the provision of at least 21 days for comments on draft bills suggested by the ministry, before the government addresses the request to approve it as a governmental bill. This period can be shortened in special cases. With the exception of this period, no uniform standard exists on the time between publication for comment and entry into force of new laws and regulations. Consultation periods are determined on a case-by-case basis or governed by

more specific rules relating to the subject of the draft law or regulation. In terms of mandatory standards, Article 8(c) of the Standards Law of 1953 indicates that the official standard will come into force no less than 60 days after its publication in the *Official Gazette*. In such cases, MOITL has discretion to extend the period (but not to shorten it) beyond 60 days. Mandatory standards are also subject to international rules concerning consultations which will be addressed later in this review.

Appeal procedures

A third important aspect of transparency is the openness of appeal procedures. It is important for enterprises with concerns regarding the application of existing regulations to have appropriate access to appeal procedures. Regulations are better accepted and work more efficiently if both domestic and foreign economic actors have access to remedies when they are confronted with overly burdensome or unclear regulatory requirements or unsatisfactory results. These remedies can be included in formal legislation, or they might be part of effective informal channels for lodging and advancing complaints that are open to domestic and foreign parties. In either case, there should be clearly defined time limits for appeals processes, and adequate explanations when requests are denied. Systematic and transparent procedures for appeals remain an important instrument of transparency as they allow misinterpretations of laws and regulations to be reviewed and corrected. A smoothly operating appeal system clarifies the meaning of laws by reducing the uncertainty created when instances of misinterpretations are left unchallenged.

Foreign individuals are not restricted *a priori* from filing appeals within courts of law in Israel. The appropriate court of appeal may however vary depending on the subject of the regulation which domestic or foreign individuals seeks to initiate a request for judicial review. In the case of appeals relating to customs, for instance, Chapter 8 of the Customs Ordinance of 1957 provides that in order to be able to request an appeal, the importer must first have stipulated on the import declaration form that customs duties were in dispute and paid under protest. The initial appeal must be filed with the High Customs Authority and subsequently in domestic courts of law. No limitations exist on the types of customs decision over which an appeal can be initiated, and most appeals are settled within three months.¹⁰

Transparency in the field of technical regulations and standards¹¹

Transparency in the field of technical regulations and standards is essential for firms facing diverging national product regulations. Transparency reduces uncertainty over applicable requirements and thereby facilitates access to domestic markets. Best practice in transparent regulatory regimes entails not only access to information, but transparency in the standards setting process. The area of standards development is one in which the ability of all stakeholders, including foreign ones, to contribute to the process will lead to the adoption of standards that are both effective in attaining regulatory objectives and are efficient in the manner that they do so.

The Standards Law of 1953 governing the elaboration and implementation of standards requires public consultations with representatives of manufacturers and consumer organisations. No laws exist which explicitly prevent foreign enterprises, particularly those based in Israel, from joining consultations over the preparation of standards. Technical Committees regularly include representatives from bodies including: the Manufacturers Association of Israel, the Standards Institution of Israel (SII), consumer organizations, government, chambers of commerce and the private sector. Indeed, when

formulating new standards or revising existing ones, key interests are normally well represented on Technical Committees, which can include representatives from foreign enterprises.

In Israel, product specific requirements take the form of "mandatory standards" or regulations. Standards are elaborated by SII as voluntary standards. In cases where the Minister of MOITL considers it to be in the public interest, he may declare voluntary standards as mandatory by following certain procedural requirements. The procedural requirements include the conduct of consultations with representatives of the public, including manufacturers, importers, trade associations and consumers, and the publication of notice in the *Official Gazette*. The Standards Law requires that "the rules shall include provisions on the participation of State authorities, and of representatives of producers and consumers that have an interest in a certain standard in the preparation of that standard." In practice, a Technical Committee under the SII develops and publishes draft versions of new or revised Official Israel Standards. Publication is followed by mandatory 30-day periods for public comment, and the conduct of consultations with representatives from producer and consumer groups. Following additional consultations with interested sectors such as manufacturers, importers, contractors and consumers, the standards may be revised to account for comments and may then be proclaimed as mandatory or official by the Minister of Industry, Trade and Labor. The proclamation is published in the *Official Gazette* declaring part or all of a certain standard to be an Official Israel Standard. It should be emphasized that there is complete separation between the elaboration of voluntary standards by the Technical Committees of the SII and their declaration as Mandatory or Official by the Minister of Industry, Trade and Labor.

Various ministries may, within their competencies, separately enact "technical regulations" but such regulations are not standards which can be elaborated only by the Standards Institution of Israel. The rules for consultations are identical to those for secondary legislation. As a result, specific ministries including those for infrastructure, communication, health and transportation exercise significant discretion over which counterparts are selected to join consultations including other ministries as well as representatives from the private sector and civil society. Notably, voluntary standards may be adopted as part of technical regulations promulgated by ministries, and thus become mandatory standards without passing through the more rigorous consultation requirements for establishing official standards.

In areas covered by specific international obligations such as those under the WTO Agreements on Technical Barriers to Trade¹² (TBT) and on Sanitary and Phytosanitary (SPS) Measures,¹³ Israel conducts notifications to WTO committees in accordance with transparency requirements. Accordingly, Israel has implemented WTO/TBT Enquiry Point under the Commissioner of Standardization of MOITL (Box 3). The WTO/TBT Enquiry Point is responsible for providing information on proposed mandatory technical standards and providing replies to comments received within the minimum 60-day comment period, in accordance with Article 10 of the WTO/TBT Agreement. The Enquiry Point can be reached through the MOITL website (www.moital.gov.il).

Box 3. WTO/TBT National Notification and Authority and Enquiry Point

Technical Regulations (Article 10.1)

WTO-TBT Enquiry Point
Ministry of Industry, Trade and Labor
Commissioner of Standardization
86 Menahem Begin Road
Tel-Aviv 67138, Israel

Telephone: +972 3 565 2700/972 3 563 4204

Fax: +972 3 565 2710

E-mail: Yael.Friedgut@moital.gov.il

Standards (Article 10.3)

Commissioner of Standardization
Standardization Administration
Ministry of Industry, Trade and Labor
5 Bank of Israel St.
Jerusalem 91036, Israel

Telephone: +972 2 666 2295

Fax: +972 2 666 2943

Source: WTO (2008b), p 21.

Due in part to the varying levels of consultation requirements at differing levels of legislation and regulation, deficiencies exist in the quality of coherence among them. Consultations with business representatives suggest that deficiencies in transparency result from insufficient coherence among the levels of legislation, and across the subjects of regulation. For instance, some construction materials that are legal for import into Israel are nevertheless considered as unsatisfactory for use in residential or commercial construction by the Ministry of the Interior. An importer(s) of such construction materials may successfully import construction materials only to find them impractical for actual use. Thus, despite the fact that all standards are publicly available, insufficiencies in coherence among regulatory fields and thus predictability in the regulatory environment remain an area in which regulatory transparency can be advanced.

Transparency in government procurement

Transparency of procedures and practices relating to government procurement is another critical determinant of market openness. Government procurement is an area not covered by WTO rules except for those members that join the WTO Government Procurement Agreement (GPA). WTO members joining the agreement are bound under the GPA to provide enterprises from other members of the GPA non-discriminatory access when bidding on government contracts above pre-specified thresholds. Possibly more important than opening domestic procurement markets to foreign bidders are the transparency provisions that must be applied once a WTO member becomes party to the GPA.

Israel is signatory to the GPA and represents a government procurement market of about USD 25 billion. Procurement by government bodies in Israel falls under the rules of the Mandatory Tenders Law of 1992 and its implementing regulations. The coverage of the Law is broad and applies to all government offices and their related offices, government corporations and their subsidiaries, municipal corporations, religious councils, institutes of higher education and government health care services. The Mandatory Tenders Regulations of 1993 requires that tenders be published in a daily newspaper and on the internet. The rules also require that tender notices must contain information including: the nature of the proposed contract and a description of its subject, period of the contract, preconditions if any, the time and place where additional details and the tender documents may be obtained and the last date and place of the submission for proposals. Every government procurement decision is made by a tenders committee

comprised of at least three members: legal advisor, director general the general accountant of the office or their representatives. The committee is able to draw on the advice of experts when required.

A recent amendment to procurement regulations seeks to increase the efficiency and transparency of the national procurement system *via* new procurement practices integrating advances in IT technology. The reform objectives include reducing unnecessary exemptions from general procurement practices and increasing the responsibility of procuring entities to ensure observance of labour standards by service suppliers. To reduce unnecessary exemptions, each ministry has established an “Exemptions Committee” to oversee authorised exemptions to general procurement practices such as reliance on “sole providers” in government procurements. In the case of sole providers, the Exemption Committees are now able to confirm whether procurements relying on sole providers are actually justified (e.g. by lack of competing suppliers in the local market), with little resource outlays *via* internet based procedures. Significantly, exemptions are now made public for comment prior to their coming into effect. In the case of enhancing workers rights, the amendment, referring to tenders in service supply, contains provisions on verifying labour rights compliance by suppliers, and for removing suppliers failing to conform from procurement rosters.

2.2 Measures to ensure non-discrimination

The application of the non-discrimination principles, most favoured nation (MFN) and national treatment (NT), in drafting and implementing regulations aims at providing equality of competitive opportunities between like goods and services irrespective of country of origin and thus at maximising efficient competition in the market. The application of the MFN principle means that all foreign producers and service providers seeking entry to the national market are given equal opportunities. The national treatment principle means 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.

To derive maximum benefit from market openness, however, OECD best practice supports applying these principles to all trade partners independent of WTO membership. Yet, integrating these two basic principles into relevant legislative acts is often insufficient. For the regulatory principle of non-discrimination to provide equal competitive opportunities for like-goods and services from all sources, both domestic and foreign, the regulators themselves must support them.

WTO disciplines have played a key role in removing discriminatory policies and supporting reform of discriminatory regulatory behaviour. While some discriminatory measures (*e.g.* certain kinds of subsidies, some preferences in government procurement, restrictions affecting foreign investors and service providers, and preferential trade agreements) are permitted, they remain subject to WTO rules on transparency, non-discrimination and some other specific obligations, in particular under the General Agreement on Trade in Services (GATS).

The principle of non-discrimination is not explicitly addressed as a legal subject by formal law in Israel as the country is not governed by a constitution but a selection of basic laws from which other laws and regulations derive. No core or body of law in Israel addresses substantively the subject of discrimination. Nevertheless, authorities indicate

that non-discrimination (e.g. MFN and national treatment) is a basic legal principle that the public sector is obliged observe. As such, the law does not explicitly protect foreign enterprises from discriminatory rules or regulations. Perhaps more importantly, the law does not as a general principle prevent foreign invested enterprises (FIEs) based in Israel from access to treatment under the law as do locally financed enterprises.

Particularly in the trade field, the principle of non-discrimination reflected in Israel's regulatory practices derives support from its accession to the WTO. Since Israel's accession to the WTO, any minister, but specifically the Minister of MOITL is responsible for the implementation of the WTO Agreements.¹⁴ It is in this light that MOITL is responsible for ensuring that primary legislation respects the principles of MFN and national treatment in line with Israel's international obligations under the WTO and other international trade agreements to which Israel is a party. In practice, an important means by which MOITL carries out this duty is by reviewing proposed legislation and submitting comments to the Government Committee of Legislation and Law Enforcement, from which all bills must receive approval if they are to be supported by the government prior to their entry into the legislative process of the Knesset.

Thus, mechanisms do exist which indirectly seek to ensure that the national treatment and MFN principles are applied by primary legislation in conformity to the WTO Agreement and other international agreements to which Israel is a party. In the case of secondary legislation such as ordinances and regulations, mechanisms to review adherence to the principles of international agreements are not consistently applied. This is largely because MOITL may not receive an opportunity to comment in cases where secondary legislation does not require approval by the Knesset and the relevant ministry is not aware that such regulations may impinge on Israel's obligations in relation to principles of non-discrimination. For the same reasons, little if any review occurs at the level of administrative directives.

Underlining the importance of the regulators themselves supporting the principle of non-discrimination are instances where non-discriminatory laws and regulations are applied in a manner that is nonetheless more favourable to domestic than to foreign products or enterprises. A clear example is that of the ban on imports of non-Kosher meat which is estimated to block USD 10 million of such imports *per annum* under circumstances where domestic production of non-Kosher meat is permitted.¹⁵ The Federation of Israeli Chambers of Commerce (FICC) highlights standards as an area in which non-discrimination principles could be further advanced. It indicates that costly testing of imported products for conformity with Israeli standards is rigorously enforced, but that testing for domestically produced counterparts is uncommon thus placing imported products at a disadvantage.¹⁶ Similarly, one trade partner reports that stringent labelling requirements are applied on wine imports are not equally enforced with respect to domestically produced wine.¹⁷ Authorities nonetheless maintain that the labelling of domestically produced wine is stringently enforced by the Commissioner of Standardization at the factory and in the market.

The area of government procurement is one in which Israel conforms with international obligations, but could benefit by improving the quality of non-discrimination integrated within regulations not subject to them. Israel applies two types of policies which favour domestic over foreign suppliers. First, government agencies and state-owned companies are required to follow an "off set" policy requiring that all international procurements above USD 500 000 include an "industrial cooperation" clause. This clause requires that international suppliers sub-contract local suppliers for at least 35% of the

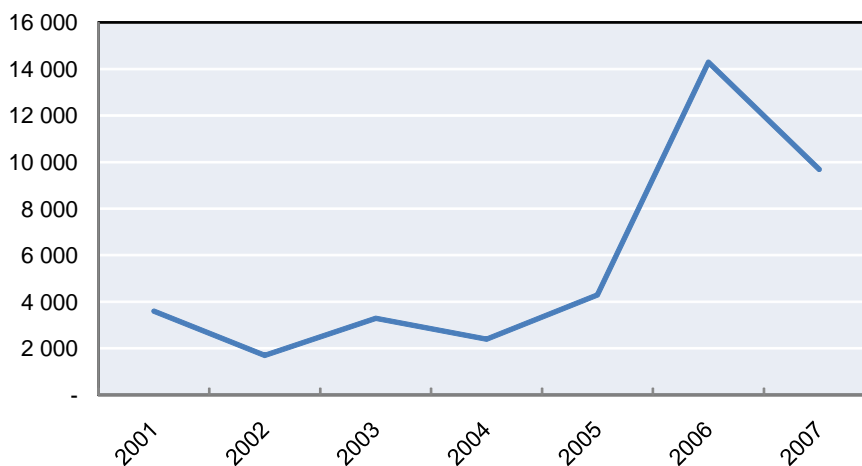
total procurement, or 20% (as of 1 January 2009) in the case of tenders covered by the GPA. Second, government procurements not covered under the GPA are generally allowed to provide price preferences of up to 15% to local suppliers. For domestic suppliers located in priority development areas, an additional 5% to 15% price preference can be awarded.¹⁸

Such practices reduce the attractiveness of the Israel's government procurement market to the most efficient and advanced providers of goods and services, and blunts their ability to support improvements to Israel's government facilities and national infrastructure. Strengthening the market openness of Israel's government procurement market *vis-à-vis* international providers of goods and services, is an important way to enhance Israel's government capacity to provide a high quality regulatory environment, and to ensure a competitive domestic economy. Advancing the quality of non-discrimination applied in areas of the domestic regulatory system not subject to international obligations, is an important means towards that end.

Restrictions on entry and operations of foreign firms

Israel's efforts to promote the openness of its domestic economy since the 1990s have been successful from the perspective of FDI. Inward flows grew 200% to USD 14.3 billion between 2005 and 2006 (Figure 6). The country actively encourages inward FDI particularly in export industries, tourism, telecommunications and high technology. Few general restrictions condition inward investment, and the overall level of restrictiveness in Israel's regulations *vis-à-vis* inward FDI is below the OECD average.¹⁹

Figure 6. Israel's inward FDI flows
Growth of FDI inflows, 2001-2007 (USD millions)



Source: OECD (2008a), p 7.

With the exception of instances relating to national security, it is uncommon for investments by foreign enterprises to be subject to significant screening requirements.²⁰ FIEs receive the same treatment as local firms under regulations relating to acquisitions, mergers and takeovers. Foreign investments in regulated sectors undergoing privatisation are regularly screened by domestic authorities.²¹ It is however in regulated sectors that foreign investments require government approvals, and in cases such as banking and

insurance, further requirements apply to non-resident investors.²² Where other regulations apply, such as requirements for government licenses, they have traditionally been implemented on a national treatment basis.²³

Preferential agreements

Regional trading arrangements (RTAs)²⁴ are necessarily discriminatory as they normally involve trade and investment liberalisations to parties joining the agreements that are not equally applied to non-parties. Thus, RTAs represent a departure from the principles of MFN and NT. Growth in the numbers of RTAs over recent years has reached a level where some countries no longer view negotiating RTAs as strategy to gain preferential access to the markets, but as an instrument to remove discrimination against domestic firms competing in foreign markets. Information contained in these agreements is notified to the WTO Committee on Regional Trade Agreements in accordance with Israel's multilateral commitments under the WTO.

Israel's bilateral trade agreements cover a substantial portion of its international trade, and have been in place well before the most recent surge in RTA activity. Its free trade agreement (FTA) with the European Union has been in force since 1975, with the United States since 1985 and with the European Free Trade Association (EFTA) states since 1993. In 1995, Israel expanded its bilateral trade agreement with the European Union beyond trade in goods. This expansion also enabled Israel to participate in EU Research and Development Framework Programs. More recently, Israel and the EU have signed agreements and protocols to further liberalise trade in agricultural goods, to include Israel within the Pan-European system of cumulation of origin, and to allow Israel to participate in the EU's Galileo space project. Over the last two years, Israel has further engaged the EU's European Neighbourhood Policy framework to cover issues including negotiations on standardisation, services and dispute settlement procedures. As part of its policy to further expand its market opportunities, and maintain export competitiveness, Israel has also signed FTAs with Canada, Turkey and Mexico (Table 2).

Table 2. Israel's free trade agreements

Country or Group of Countries	Type of Agreement	Signature Date	Date of Entry into Force
Mexico	Free Trade Agreement	10 April 2000	1 July 2000
EC	Free Trade Agreement	20 November 2000	1 June 2000
Turkey	Free Trade Agreement	14 May 1996	1 May 1997
Canada	Free Trade Agreement	31 July 1996	1 January 1997
EFTA	Free Trade Agreement	17 September 1992	1 January 1993
United States	Free Trade Agreement	11 April 1985	19 August 1985

Source: WTO (2009).

The RTA policy of Israel is to seek new opportunities for increasing access to overseas markets through multilateral and regional agreements. Focus has turned towards the Asian and Latin American regions as their importance in world trade has grown. Israel has already signed an FTA with MERCOSUR (Argentina, Brazil, Paraguay and Uruguay) which is currently awaiting ratification. The importance of the Middle East region to Israel is also apparent in the regional trade arrangements that it has joined under the Qualified Industrial Zone (QIZ) Agreements. Operating under the framework of the U.S.-

Israel FTA, such agreements have already been concluded with Jordan (1997) and Egypt (2004). The QIZ Agreements have contributed significantly to growth in Israel's bilateral trade with Jordan and Egypt. All agreements are published on the website of the Foreign Trade Administration MOITL (www.trade.gov.il), as well as the website of the Ministry of Foreign Affairs (www.mfa.gov.il).

2.3 Measures to avoid unnecessary trade restrictiveness

Even when regulations are applied in a non-discriminatory manner, market openness can still deviate from its optimal level if regulatory measures are more restrictive *vis-à-vis* trade and investment than is necessary to achieve their intended policy goals. In these cases the objectives, design or implementation of regulations may be set in a way that creates unnecessary impediments to the free flow of goods, services or investment. These negative effects originate from poor regulatory quality and the absence of regulatory mechanisms to assess the impact that regulations have on market openness. Unnecessary restrictions on trade may be reduced if regulators examine the trade effects of proposed and existing regulations and give preference to regulatory measures and solutions that lead to the achievement of economic and societal objectives, but at the same time minimise disturbances on the flow of trade and investment.

OECD governments most commonly employ several tools and mechanisms to ensure that regulations effectively avoid unnecessary trade restrictiveness. Examples include the use of management- or performance-based regulation rather than design standards regulations. Enterprises generally find it easier and less costly to comply with regulations that specify product requirements in terms of performance rather than design or descriptive characteristics. Another tool is to conduct regulatory impact assessments (RIAs). At a conceptual level, RIA requires regulators to ask whether regulation is the most appropriate means to achieve the desired policy outcome. RIA also is a systematic process of identification and quantification of important benefits and costs likely to flow from the adoption of a proposed regulation or a non-regulatory policy option under consideration. It may be based on benefit/cost analysis, cost effectiveness analysis, or business impact analysis. A third tool is administrative simplification. The simplification initiatives that aim to reduce administrative burdens on enterprises are also important ways for governments to minimise the trade restrictiveness of regulations.

Assessing the impact of regulations on trade

Unnecessarily burdensome regulations disproportionately impact market openness. Although such regulations and administrative practices or “red tape” may affect domestic and foreign enterprises without distinction when viewed from the perspective of the regulator, they normally impact foreign trade and investment more significantly. This is because local enterprises generally have an advantage due to their knowledge of local customs and circumstances. While large foreign firms are often able to overcome unnecessarily restrictive rules and regulations due to their more substantial resource base, small and medium-sized enterprises (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. For this reason, the input of foreign SMEs should, to the extent possible, be elicited to support the development of domestic rules and regulations.

OECD countries apply RIAs *ex ante* to assess the impact of proposed laws and regulations. They also apply RIAs *ex post* and to systematically assess the quality of

existing regulations. The utility of a well functioning RIA process in creating efficient regulation is underscored by a significant body of OECD work on regulatory reform, endorsed in the *1995 Recommendations of the Council of the OECD on Improving the Quality of Government Regulation* and re-affirmed in the *2005 Guiding Principles for Regulatory Quality and Performance*. OECD experience with reviews of regulatory reform in OECD countries find that integrating the potential impact of proposed and existing regulations on foreign trade and investment *via* co-ordination between trade and regulatory agencies, is an important way to improve an economy's entire regulatory framework *vis-à-vis* foreign trade and investment. Systematically applying RIAs across an economy can help to ameliorate uneven regulatory quality among regions within economies, which is a key obstacle to reducing geographic and rural-urban economic inequalities.

Table 3. Doing Business Index, 2008

Ranking of 181 countries

Countries	Israel	MENA	BRIICS	OECD
Ranking	30	90.3	101.8	27.3

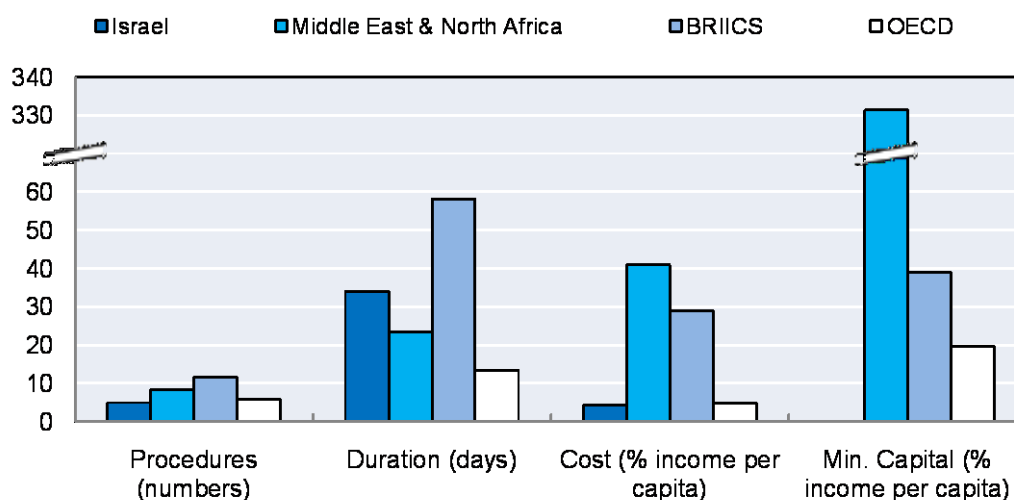
Source: World Bank (2009), *Doing Business*.

Long experience conducting reviews of regulatory reform in the OECD also suggest that the involvement of the trade ministry in the regulatory reform process contributes significantly to the quality of market openness throughout domestic regulatory systems. The ministry responsible for maintaining economic relationships with the WTO and trading partners is often the most cognisant of the manner in which domestic regulations impact international trade and investment. Israel does not have the capacity to implement RIAs systematically when creating new regulations, but does already apply elements of RIAs including public consultations in the area of technical rules and standards. Although MOITL reviews primary legislation and some secondary legislation for conformity with international agreements relating to trade and investment, no formal assessments of trade and investment impacts are conducted on a systematic basis. The absence of systematically applied RIAs has not prevented Israel from establishing a climate for business which, according with the World Bank's overall Doing Business index, places it well ahead of regional and BRIICS averages, and very close to that of the OECD (Table 3).

Much of the progress in reducing administrative burdens and improving the domestic business environment in Israel results from the eGovernment programme articulated in 2004 under Decision No. 1912. This Decision set a deadline for government ministries to complete the implementation of eGovernment by 2006. The objective of eGovernment is to systematically apply IT based solutions to government services that increase accessibility, convenience and expedience for end users including the public and businesses. eGovernment operates under the philosophy that as global technologies advance, including the internet, government services must evolve accordingly. The Decision required the publication of tenders by government ministries for the implementation of the project, the establishment of infrastructure for electronic payment, the allocation resources for the completion of the process and cooperation by the Director Generals of government ministries to implement the program.

The eGovernment programme is currently developing systems for electronic forms and payments. Enabling the development of these systems requires the creation of new regulatory mechanisms allowing for the principles of general law to be implemented *via* electronic means. For example, the Electronic Signature Law of 2001 was established to regulate the legal status and validity of electronic signatures. Regulations have been promulgated which set forth the technological requirements for accepting electronic signatures. This Law serves as the fundamental basis for eGovernment as activities carried out electronically can now be legally valid including those of citizens *vis-à-vis* government offices. A government website prepared in English containing electronic forms and payment instructions can be viewed at: www.gov.il/firstgov/english/.

Figure 7. Starting a Business, 2008



Source: World Bank (2009), *Doing Business*.

The Ministry of Finance is implementing an initiative to improve the registration process under the Business Licensing Procedures. A special committee led by the Budget Director of the Ministry has drafted legislation seeking to simplify and reduce administrative burdens *via* technological initiatives such as eGovernment. More recently, the Director General of the Ministry of Finance has initiated a new programme, with the support of representatives from the private sector, which aims to improve Israel's rankings under the World Bank's *Doing Business* programme. A special team is already designing a strategic plan to reduce bureaucratic procedures under different indexes in the *Doing Business* programme including "Starting a Business" (Figure 7), "Paying Taxes", and "Registering Property." The Ministry of Finance has set an objective of achieving a five point increase in its overall ranking within the next three years.

Example of customs procedures

More clearly than in other areas, declining tariffs worldwide have made arbitrary or excessively burdensome administrative requirements in the area of customs a focus of attention in international trade negotiations. Increased customs efficiency serves to reduce costs related to border fees and often more importantly reduces delays at borders that create costs inefficiencies that have gained importance as product cycles have shortened.

Israel has achieved a high level of efficiency in the area of customs facilitation. It outperforms regional and BRIICS averages under every measure of the World Bank's Trading Across Borders index (Table 4). In comparison to the OECD average, Israel remains closely behind by all measures except for costs to export and import where it holds a significant advantage. In terms of transparency, all of Israel's customs information is available through the internet on the website of Israel's Tax Authority (www.mof.gov.il/taxes). To increase regulatory transparency, importers are able to receive pre-rulings on classification of imports *via* the internet or at regional Customs Houses. Furthermore, questions related to customs can always be sent through e-mail addresses appearing on the customs website.

Table 4. Trading Across Borders, 2008

	Israel	MENA	BRIICS	OECD
Documents for export (number)	5.0	6.5	7.0	4.5
Time for export (days)	12.0	23.3	21.5	10.7
Cost to export (USD per container)	665.0	1024.4	1095.7	1069.1
Documents for import (number)	4.0	7.6	8.2	5.1
Time for import (days)	12.0	26.7	24.5	11.4
Cost to import (USD per container)	605.0	1204.8	1120.0	1132.7

Source: World Bank (2009), Doing Business.

Israel holds memberships to a number of international customs agreements and conventions including: Customs Co-operation Council (CCC), Brussels Definition of Value (BDV), Harmonized System (HS), PACK, Professional Equipment, Exhibition Fairs, the Customs Convention on the ATA Carnet for the Temporary Admission of Goods (ATA Carnet), Scientific Equipment, Pedagogical Material and others. Most of Israel's customs procedures are based on the recommendations of the Revised Kyoto Convention on Customs. Today, customs procedures for importation are conducted exclusively by electronic means. Import documents may be submitted before the goods arrive, but clearance is not given before the goods actually arrive at the port. There is no formal periodic review of regulations and requirements, but the Customs Directorate conducts routine reviews or initiates them following requests from importers and customs brokers. The Foreign Trade Administration, MOITL, additionally organises regular meetings with various ministries responsible for authorizing import licenses and approvals (in accordance with the Free Import Order-2006), as a vehicle for consultation and coordination on issues relating to import policy.

To conduct trade, all importers and exporters need only register with the Registrar of Companies and with the value added tax (VAT) authorities. No further registration for importers is necessary. Although Israel does not apply any specific custom regulations based on past records, profiles of importers and customs brokers are kept by the customs computer system. Importers with records of good compliance clear their goods according to the same regulations as other importers, however, such importers are chosen less often for inspection by the profiling system. Israeli Customs is currently conducting a pilot program of pre-clearance for importers with a past record of good compliance. Analysis of entries for inspection is conducted by the profiling system, and customs uses post audit control in addition to inspections at the time of clearance.

2.4 Encouraging the use of internationally harmonised measures

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 firms wishing to engage in international trade with significant and sometimes prohibitive costs. There have been strong and persistent calls from the international business community for reform to reduce the costs created by regulatory divergence. 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 Agreement on Technical Barriers to Trade and the Agreement on the Application of Sanitary and Phytosanitary Measures, which encourages countries to base their technical requirements on international standards and to avoid conformity assessment procedures that are stricter than necessary to attain regulatory objectives.

Table 5. Internationally harmonised standards in Israel

As of 31 December 2008

Body	Adopted	Based on	Total
European Committee for Standardization (CEN)	342	11	353
Deutsches Institut für Normung e.V. (DIN)	1	..	1
International Electrotechnical Commission (IEC)	345	3	348
International Organization for Standardization (ISO)	412	13	425
(ISO/IEC)	61	..	61
British Standard (BS)	12	..	12
NSF International	1	..	1
Underwriters Laboratories (UL)	3	..	3
American Society for Testing and Materials (ASTM)	27	2	29

Source: The Standards Institution of Israel.

The concept of internationally harmonised measures refers to two distinct scenarios: reliance on international standards as the basis of domestic regulations (where this is feasible and appropriate) and acceptance of foreign measures as equivalent to domestic measures, even where these may differ, provided that such measures meet the underlying regulatory objective. Standard setting can be a benign exercise in regulatory oversight, but in some circumstances may also be conducted in a manner that favours domestic firms over foreign enterprises. Such divergent standards have the potential to create significant barriers to trade and increase the cost of compliance for foreign firms, thus reducing the market openness of the economy to the trade and investment that it seeks to promote. International standards bodies insufficiently reflect the interests of developing economies, but they also fail to recognise the difficulties developing countries face in adopting international standards.

Israel's regulatory framework for standards expressly advocates international harmonisation, and a resolution has recently been adopted to advance the international harmonisation of domestic standards not already aligned to international ones. Article 7(b) of the Standards Law of 1953 (as amended in 2000) indicates, "in setting standards, the Institution shall, as a rule, adopt international standards used in developed countries."

Prior to this amendment of the Standards Law, a number of government decisions had already been passed encouraging the policy of international harmonisation.²⁵ Subsequent government decisions have further extended this principle within the domestic regulatory framework.

The Commissioner of Standardization, appointed by the Minister of Industry, Trade and Labor is responsible for changing the status of standards from voluntary (as created by the SII) to mandatory, and enforcing mandatory standards as well as designating (approving) testing laboratories. The Commissioner is also responsible for overseeing the use of relevant international standards when elaborating mandatory standards. Depending on the type of standard, other government bodies including the Ministries of Health, Communications, Agriculture and Rural Development and the Ministry of National Infrastructure are also involved in developing and enforcing the relevant standards. As a measure to enhance regulatory transparency, the entire standard, as well as the methods that will be employed to analyse and assess conformity with it, must be specified at the time it is adopted. The Standards Institution of Israel is responsible for elaborating and implementing voluntary standards, and is similarly encouraged under Article 7 of the Standards Law to adopt ones that are internationally harmonised.

Efforts to revisit the existing stock of mandatory domestic standards and to align those not already internationally harmonized to international ones are codified in the resolution “Improvement of Terms of Trade - Standardization” passed by the Cabinet in August 2007. Currently, about 40% of 700 mandatory domestic standards are based on or identical to international ones (Table 5).²⁶ The stated objective of the resolution is to have 65% of all mandatory standards aligned towards regional or international ones by 2010. Resources allocated to supporting this resolution include a special budget of USD 5 million for the Standards Institution of Israel.²⁷ The cabinet resolution also called for the establishment of a committee headed by the Attorney General to examine non-standard technical orders and regulations in secondary legislation, and to provide recommendations on whether and how they may be replaced with standard ones.

2.5 Streamlining conformity assessment procedures

Conformity assessment refers to measures taken to assess the conformity of products, processes and services to specific requirements or standards. These procedures may have the effect of facilitating trade, or they may create a technical barrier to trade. Public policy objectives like health, safety and the environment often require rigorous and careful conformity assessment procedures. When designed in a manner that considers the costs and time burdens born by producers, these procedures facilitate market openness by increasing consumer confidence in imported products. Likewise, firms are likely to regain the invested costs, as their ability to demonstrate that their products and services meet these strict requirements can lead to high consumer confidence and increased sales.

Although reliance on internationally agreed standards has been increasing, many internationally traded goods continue to be subject to specific testing and certification procedures in importing countries. Reducing multiple assessment procedures can considerably cut down trade transaction costs. Different procedures and mechanisms have been developed in OECD countries to facilitate acceptance of conformity assessments conducted by foreign conformity assessment bodies as equivalent to those conducted by domestic ones. Such mechanisms include mutual recognition agreements (MRAs) and suppliers’ declaration of conformity (SDoCs). By concluding sectoral MRAs, trading partners agree to mutually accept conformity assessments carried out by accredited

conformity assessment bodies located in partner countries for a sub-set of products or services.

SDoCs are a more flexible approach leaving the producers to choose the modalities of conformity assessment with technical requirements. These suppliers' declarations of conformity are usually based on in-house procedures or implemented by private organisations and are normally limited to low risk products. SDoC regimes are regularly supported by post-market surveillance and robust penalties for non-compliance. In general, SDoCs require a high level of mutual trust between all parties concerned, including the end-users. The EU "Global Approach" is an example of mutual recognition and accreditation procedures enabling the products recognised in conformity to be freely marketed throughout the EU Single Market. It relies heavily on the SDoC approach for its efficacy.

Recognising the results of conformity assessment based on accreditation is strongly supported by OECD best practices. Doing so requires the existence of adequate domestic capacities for accreditation, in particular, the establishment of efficient accreditation mechanism and accreditation institutions. National accreditation bodies, which usually operate under the supervision of the public authorities, are responsible for inspecting and acknowledging the competence and reliability of conformity assessment and share inspection results through international networks, such as the International Accreditation Forum (IAF).

The policy of some ministries, such as the MOITL, the Ministry of Health and the Ministry of Communications, is to encourage, where feasible, recognition of the equivalence of regulatory measures and results of conformity assessment performed in other countries. Officials in Israel seek to complete MRAs with respect to conformity assessment certificates at the government-to-government level, and Designated Conformity Assessment Bodies are free to sign MRAs on test results with corresponding foreign bodies. The Commissioner of Standardization is responsible for the results of the recognition of equivalence of regulatory measures and of conformity assessment performed in other countries. Israel is a signatory to the Metric Convention. Its National Metrology Institution (NMI) is a signatory to the Multilateral Recognition Agreements of the International Committee for Weights and Measures (CIPM) for Calibration Certificates issued by NMI.

When foreign trade partners and their conformity assessment bodies have been unable to provide reciprocal recognition of the equivalence of Israel's regulatory measures and results of conformity assessment, Israel has found it difficult to accept the equivalence of corresponding measures and results from such countries. As a result, the Federation of Israel Chambers of Commerce highlights difficulties faced by importers due to non-recognition of overseas standards testing and thus duplicative testing requirements.²⁸ Indicating that it considers that the Standards Institution of Israel has only one significant MRA in the form of the CB Scheme for testing electrical and electronic goods, the FICC encourages increased effort by the government and domestic conformity assessment bodies to conduct MRAs.

Israel is currently implementing a partially *ex post* based approach to risk management under an arrangement for conformity assessment of non-food product imports, which may significantly streamline conformity assessment procedures for benefiting product categories. Formulation of the approach was influenced by a number of surveys commissioned by the Commissioner of Standardisation assessing injuries suffered by infants, children and adults, and at least one random survey conducted at the retail

level, which found that only 69% of electrical appliances for domestic and similar use conformed with mandatory standards.

The rationale and objectives of this new arrangement include: facilitating examinations of imported goods for conformity to official standards; lowering barriers to foreign trade; supporting existing trade concluding agreements for mutual recognition of conformity standards (or similar agreements); establishing a regulatory principle of “Presumption of Conformity” placing greater responsibility on importers; and strengthening enforcement at the marketing phase. The overall approach of the programme is to establish four levels of inspection based the potential risk that such products pose to consumers:

- **Group 1: Highest level of risk:** This group includes products such as toys, electrical home appliances, fire extinguishers for which no changes to existing procedures will take place. For such products, each shipment will continue to be examined and will require an official release from customs for importation.
- **Group 2: Medium level of potential risk:** This group includes products such as pipe fittings, carpets and bottles which will require a one-time type approval test. Subsequent shipments of goods identical to the authorised type will require only an SDoC from the importer. For such products, inspections of each shipment by customs will no longer be necessary.
- **Group 3: Inherent low level of risk:** This group includes products such as sunglasses, ceramic wall tiles, sanitary fixtures and materials which will require only an SDoC from the importer. For such products, inspections by customs will no longer be required.
- **Group 4: Goods solely for industrial use (not for direct consumer use):** This group is typified by electrical industrial items. For such products, release of shipments from customs will not require even an SDoC.²⁹

Recently introduced, this arrangement established new procedures for 11 standards in Group 4 and 39 standards in Group 3 during 2005. By January 2006, the arrangement covered imports under 140 standards in Group 2. As a counterbalance to the increased convenience and responsibility provided to importers, the arrangement also incorporates stricter enforcement of mandatory standards, particularly in benefiting product categories, and maximum fines of USD 55 thousand, a ten-fold increase from the previous level. The Commissioner has also been given discretion to require shipments by “unreliable” importers to complete Group 1 procedures. As the arrangement is relatively new, little is known about the extent to which it has further streamlined conformity assessment procedures in practice, particularly as the total number of mandatory standards that will eventually be covered within Groups 2-4 remains unclear. The arrangement is nevertheless structured in a manner that holds out the possibility for significant improvements.

3. Intellectual property rights

Israel is an innovative economy with capacity for innovation surpassing that of many advanced economies. Over the recent decades much of Israel’s economic growth and export performance has been reliant on research-intensive industries and companies that are dependent on intellectual property rights (IPRs). Israel’s dynamic venture capital market has delivered a stream of substantial investments in research and development. Its

academic research institutions are of very high international standards and its economy is populated by highly skilled scientists, engineers and workers. Israel's intellectual property rights regime has shifted practices typical in OECD countries over recent years, although further improvements are needed to bring Israel's IPR regime closer to that of most OECD members. Its innovation policy and its regime for protecting intellectual property are generally well above the international average, but in some areas are below the "highest international standards".³⁰ Areas in which Israel's IPR regime may be further improved towards practices typical in OECD countries relate mainly to copyright protection, protection for patents, protection against unfair commercial use of undisclosed test or other data submitted for marketing approvals for pharmaceutical products, enforcement and administrative efficiency of systems for registration. This section provides a brief overview of domestic innovation policy in Israel and then reviews the intellectual property rights regime.

3.1 *Domestic innovation policy*

Israel is one of the world's most innovative economies. It has a world-renowned venture capital market and a continuous flow of research-based, internationally oriented, start-up companies. It has world-class academic institutions and among the most well-educated populations in the world. Its innovation policy is a well-balanced and has proven to be very successful. The OECD *Science, Technology and Industry Outlook* found that the innovation capacity is a key factor in Israel's competitiveness. This is also consistent with evidence from the Global Competitiveness Report 2008-2009³¹, which ranks Israel at 6 out of 134 countries with respect to innovation.

Israel has a comparative advantage and specialisation in sectors that are research intensive, particularly information and communications technology (ICT). Its gross expenditure on research and development is 4.53% of the gross domestic product, which is the highest in the world and twice the OECD average of 2.26%. Business and enterprise expenditure on research and development in Israel represents 3.50% of GDP and is thus higher than of any OECD country. These measures are consistent with the Global Competitiveness Report 2008-2009, which ranks Israel at 8 out of 134 countries in companies' spending on research and development. Israel's score is well above the average of all countries in the sample.³²

Ranking third in the world with 45.36% of the population aged 25-64 holding tertiary degrees, Israel has a highly educated workforce with approximately one in four university graduates studying science and engineering. Research output is high with the rate of scientific publications at 1037.57 per million of the population, higher than all OECD countries except Switzerland and Sweden. The number of patent families protected by patents in United States, EU and Japan (so called triadic patents) is 60.28 per million of the population, which again is significantly higher than in most OECD countries. The share of patents in Israel which involve foreign co-inventors (16.21%) is lower than most OECD countries, confirming the high level of domestic innovation.

According to the World Intellectual Property Organization (WIPO), 2 584 patents were granted in Israel during 2006, of which only 381 applications (15%) had a first-named applicant resident in Israel. Of the 5665 trademarks registered in 2006, 1 671 of them (29%) were registered to residents of Israel according to WIPO. Israel also holds a relatively large share of domestic industrial designs. WIPO reports that 758 (61%) of the 1 246 industrial registered during 2006 had residence in Israel.³³

3.2 *Basic premises for the review of intellectual property rights*

Under the current framework for international trade, respect for intellectual property rights constitutes both an international commitment and a policy in favour of economic development. Respect for these rights is related to market openness in that it provides rights holders with the opportunity to enter markets – particularly for intellectual-property-intensive products and services – with the assurance that property conforming to the requirements of the system will be duly recognised and hence made more easily tradable. At the same time, it provides rights holders a means to defend such property from abuse. Moreover, an effective system of intellectual property rights can stimulate innovation, whereby innovators and other stakeholders are able to benefit from investment in successful research initiatives. Such a system can promote dissemination of knowledge through required disclosure and facilitates access to intellectual property *via* technology markets and licensing. It can provide, in addition, a relatively general incentive system that is consistent with specialization in those sectors that offer the greatest scope for productivity improvement relative to research cost.³⁴ Such factors, among others, suggest that enhancements to the system of intellectual property rights can be an important element of a national strategy for economic development.

The Secretariat employed a few key premises in conducting the review. In the absence of an OECD instrument covering the full scope of trade-related intellectual property rights, the assessment makes reference to the accords that underpin the international framework for intellectual property rights, in particular the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and key treaties administered by the World Intellectual Property Organisation (WIPO) as well as illustrative regional, bilateral and unilateral institutions. Bilateral and regional trade agreements permit the signatory parties to adjust and extend the commitments made in multilateral treaties. The European Union and United States both make extensive use of this option. In the European Union-Israel Association Agreement it is stressed that Intellectual Property shall be protected in accordance with the “highest international standards.” Voluntary and unilateral adaptation to best practices remains a further option.

The international harmonisation of intellectual property rights has a number of benefits. For example, harmonisation of standards facilitates cross-border trade and investment by reducing the transaction costs associated with multinational business activities. At the same time, the review aims to take into account that an effective intellectual property policy is a set of institutions and political instruments and that the various international and bilateral accords permit a degree of institutional flexibility and adaptation to national interests. Experience from OECD countries shows that an effective policy should be balanced and leverage multiple instruments to foster innovation and knowledge accumulation. One advantage of this allowable institutional flexibility is that standards or practices can be adjusted within limits to meet local needs and interests. For example, a country that has a comparative advantage in intellectual-property dependent sectors may wish to capitalise on this by extending a comparatively high level of protection.³⁵

3.3 *The intellectual property rights regime*

Intellectual property rights in Israel provide protection to copyrights and performers’ rights, trademarks, geographical indicators, patents, industrial designs, topographies of integrated circuits, plant breeds and undisclosed business secrets. A new copyright act came into effect in May 2008 under which copyright protection lasts the life and 70 years

after the death of the author. The term of protection of performers' rights is 50 years from the date of the performance. The most significant change in the new law is that it strikes a slightly different balance between authors' rights and users' rights. Most notably, it extends the right to fair use of copyrighted material.

Israeli law also explicitly recognises copyright in compilations and databases. However, works are not protected unless they incorporate original creativity. Israel is neither a member of the WIPO Copyright Treaty nor the WIPO Performance and Phonogram Treaty, and is thus not under the international obligation as specified in these treaties to protect digital rights management and other technical measures to protect copyrighted material. In this context, some OECD Members have underscored the importance for Israel to join and implement the WIPO Copyright Treaty (which currently has 70 contracting parties) and the WIPO Performance and Phonogram Treaty (which currently has 68 contracting parties) in order to conform with these international standards. These Members also suggest that Israel should weigh the merits of providing protection for technological protection measures and rights management information and that Israel should also consider strengthening its enforcement efforts against Internet piracy and provide an appropriate mechanism for payments for the cable retransmission of over-the-air broadcasts in accordance with Berne Article 11*bis*.

The government of Israel has introduced a draft Electronic Commerce Bill which seeks to balance the interests of copyright holders and the freedom of speech. Under the proposed provisions resembling the rules of the European Union, an internet service provider is responsible for removing allegedly infringing material if the "uploader" or publisher fails to refute the charges of copyright infringement within three days.

Trademark registration is valid ten years from the date of the application and the registration can be renewed for periods of 14 years. Israeli law also protects goodwill from misappropriation by others. Patent protection in Israel is twenty years from application. Israel gives priority status to holders of foreign applications as required by the Paris convention. The Israeli patent office has so far refused to grant protection to business methods. Novel industrial designs are also protected for five years and can be renewed twice allowing for up to fifteen years of protection. Design protection is an important complement to copyright as Israeli copyright law denies protection of design elements in industrial articles.

Under Israeli law, trade secrets (i.e. confidential information providing the owner a competitive advantage) are protected from unlawful appropriation and unauthorised use. In addition, imperfect intellectual property is protected under the Law of Unjust Enrichment, if traditional intellectual property rights fail to protect the intellectual property and infringement involves bad faith or unfair competition.

Convention and a member and signatory to the TRIPS agreement. Israel is also a member of the Paris Convention (industrial property) and has recently joined the Madrid Protocol, which came into effect in 2007. In addition, it is a member of the Patent Cooperation Treaty (PCT), the Nice Agreement (trademarks), the Lisbon Agreement (geographical indicators), the Strasbourg Agreement (patents), the Geneva Convention (phonograms), the Budapest Treaty (microorganisms) as well as Union for the Protection of New Varieties of Plants (UPOV).

Israel is a member of the Berne convention (copyright), the Universal Copyright Israel's legal framework for intellectual property rights is extensive and generally coherent with international standards, though with some exceptions in the areas of

copyrights and patent protection. Important steps have also been taken to strengthen Israel's system of intellectual property rights and to comply with its international obligations. The Global Competitiveness Report 2008-2009 ranks the efficiency of the legal system in Israel at 48 out of 134 countries, just slightly above the average score, indicating some problems with efficiency or neutrality in the process.³⁶ The Ginarte-Park index of patent protection indicates that Israel's level of protection was slightly above average in 1995, and close to the highest level in 2005.³⁷ Israel similarly ranks 29 out of 115 under the International Property Rights Index.³⁸

Table 6. An overview of Israel's IPR policies

Are intellectual property rights (IPRs) included as an explicit element in the national economic strategy of your country?	Yes
Has your country taken any recent economic policy initiatives in relation to trade and IPRs?	Yes
i) Unilateral initiatives to strengthen IPRs in order to attract high technology trade or foreign direct investment	Yes
ii) Participation in regional trade agreements with IPRs provisions that go beyond the requirements of the WTO TRIPS Agreement.	Yes
iii) Special public campaigns to ensure compliance with the WTO TRIPS Agreement or raise awareness of IPRs issues such as counterfeiting and piracy.	Yes
Are there policy objectives to ensure an adequate and effective enforcement of IPRs and to combat infringements thereof?	Yes
Does your country have a national, inter-ministerial strategy or plan for coordinating a response to piracy and counterfeiting through law enforcement and other public policy tools?	Yes
Has your country acceded to any international IPR related Agreements/Conventions, and particularly those administered by the World Intellectual Property Rights Organisation (WIPO)?	Yes
Has your country ratified the WIPO Internet Treaties?	No
Does your country have legally established limitations on patentable subject matter?	Yes
Please name these Agreements/Conventions and mention if their implementation by domestic regulations (if required) has been finalized.	
GATT-TRIPS Agreement, the Paris Convention, the International Convention for the Protection of New Varieties of Plants (UPOV), the Patent Cooperation Treaty, the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, Agreement of Madrid for the Prevention of False or Misleading Indications of Source, Lisbon Agreement for the Protection of Appellations of Origin, the Berne Convention, the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, the Geneva Convention (protection against unauthorized duplication of phonograms).	
What is the term of copyright protection in your country?	
For most classes of works, including photographs, the term of protection runs for the life of the author plus an additional 70 years. Duration of copyright in sound recordings and works made by the State is 50 years from the date of making of such master sound recording or State produced work.	
What is the average pendency period for patent and trademark applications in your country?	
Patent examination processes resulting in either the acceptance or rejection of an application currently take approximately 36 to 48 months to complete, depending on the field of technology, as measured from the date that such application enters its national examination phase in Israel (either as an application that is first filed in Israel or as an application that arrives in Israel through the Patent Cooperation Treaty).	
Trademark examination processes resulting in either the acceptance or rejection of an application currently take approximately 18 months to complete.	

Source: Government of Israel (correspondence with OECD Secretariat).

3.4 *Remaining intellectual property rights challenges*

Scope for specific but significant improvement remains in Israel's regime for protecting intellectual property rights. Although Israel's capacity for innovation ranked it as 10 out of 134 countries surveyed by the Global Competitiveness Report 2008-2009, its ranking under protection of intellectual property rights at 39 out of 134 placed it below most OECD countries.³⁹ Moreover, Israel's relative level of intellectual property protection has not improved significantly since the 2001 edition of the same report, when it was ranked 22 out of 75 countries.⁴⁰ Surveys of business executives in both editions similarly reflected that intellectual property protection in Israel is less effective than in most OECD countries.

Regarding enforcement of intellectual property rights, the Fifth Annual BSA and IDC Global Software Piracy Study found that the piracy rate for business software in Israel was 32% in 2007, which is an improvement from 35% in 2003.⁴¹ Rates in other parts of the world were 21% in North America, 33% in Western Europe and 38% total worldwide in 2007. In terms of recorded music, the International Intellectual Property Rights Alliance (IIPA) estimated the piracy rate at 50% in 2006 and 2007.⁴² Similarly, the piracy rate for motion pictures was estimated as 61% in 2005, and for entertainment software at 84% in 2006.

Innovation in the pharmaceutical and agrochemical sectors is also an area where Israel's intellectual property regime has drawn international attention. Although trade partners have indicated room for progress in the area of piracy, attention has been focussed more precisely on issues related to pharmaceutical products. Concerns relate to what is viewed as inadequate protection against unfair commercial use of undisclosed test data, which is generated to obtain marketing approval for pharmaceutical products. In this context, some Members recommend that Israel amend its laws to provide increased protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical products. Another issue relates to laws that are considered as granting insufficient periods of protection for pharmaceutical patents when compensating for delays in obtaining marketing approvals.⁴³ In this context, some Members note that Israel should amend its laws to increase the effective patent term extension provided to pharmaceutical products to compensate for delays in the regulatory approval process. Delays in the area of patent registrations have also been noted as an area where administrative efficiency could be increased and rules regarding pre-grant opposition reformed. In this context, some Members encourage Israel to complete its regulatory marketing approval reviews within Israel's stated goal of six months.

Israel has less extensive IPR protection for pharmaceutical products compared to the United States and the European Union. It provides data exclusivity for new active ingredients, but not for new indications. Patent extension is limited by reference to patent term extension in a set of recognized countries (notably the United States and EU). In this context, some Members request that Israel amend its laws to narrow this set of reference criteria for patent term extension. Data exclusivity is also linked to protection in the recognized countries. Data exclusivity is neither granted for orphan nor paediatric drugs. Parallel trade with pharmaceutical products is permitted.

Pugatch (2006) computed an index for the strength of national pharmaceutical intellectual property regimes and found that Israel had weaker protection for pharmaceuticals than the United States, Singapore and the United Kingdom in 2005, due to a combination of less coverage and more limited terms for protection.⁴⁴

As a party to the TRIPS Agreement, Israel has an obligation to grant protection to undisclosed test data from unfair commercial use provided that the data required considerable effort to generate and that it involves a new chemical entity. The TRIPS Agreement does not set a prescribed minimum standard for the period of data exclusivity granted to an original applicant. In 2005, Israel introduced new legislation to protect regulatory registration data. The confidential test data cannot be relied upon to approve equivalent subsequent generic drugs for marketing in Israel for a period of five and a half years from the date the original product was first approved in a recognized country (i.e. EU-15, United States, Canada, Norway, Switzerland, Iceland, Japan, Australia and New Zealand) or five years from the date of registration in Israel, whichever comes first. In principle, this may be consistent with Israel's TRIPS obligations. However, one Member notes that because of significant delays by the Ministry of Health in granting marketing approvals, data protection is in practice much less than the 5.5-year maximum currently available under Israeli law and further notes that OECD Members should strive to provide a higher level of IPR protection in concert with the most developed nations in the world.

The exportation of non-approved generic products does not rely upon exclusive registration data. Neither registration nor marketing approval in Israel is required for exports. The criteria for exports are that the product is produced under good manufacturing practices and registered in the country of destination or approved for importation.

Although patent term restoration is not required under the TRIPS Agreement, the European Union-Israel Association Agreement, which supports applying the highest international standards in relation to intellectual property rights, is considered by some trade partners as justifying some form of patent term restoration within Israel's IPR regime.

Israel amended its Patent Law in 1998 to provide for Patent Term Extensions, and updated this amendment in 2006 by revising a number of its provisions. Currently, the Patent Law provides an option to extend the term of a patent where the owner has been unable to enjoy the full period of exclusivity resulting from delays in obtaining a regulatory license or approval. A pre-condition for obtaining an extension order in Israel is that the applicant shows that parallel extension orders have been granted in the United States and at least one EU country, if the product has been registered in both the United States and the European Union. Patent term extension is limited to the period of protection in a set of recognized countries, i.e. United States, EU-15, Switzerland, Norway, Iceland, Japan and Australia.

Aspects of Israel's IPR regime for research-based pharmaceutical companies focus on three areas including: the duration and scope of protection for regulatory test data, the duration of patent term extensions and the linkage established between domestic enforcement of exclusivity to that in other countries. Issues relating to limited protection of test data are augmented by delays normally encountered in the approval process and the limits imposed by the link to the shortest period of protection in a pre-defined list of "recognized countries". Obtaining a marketing approval from the Ministry of Health can take more than one year and new applications are not granted additional protection, as in the United States and European Union. The result is that the effective term of protection for pharmaceutical products in Israel is substantially shorter than in most OECD countries. In this context, one Member requests that Israel amend its laws to narrow the set of pre-conditions for obtaining protection of data in Israel, such that pharmaceutical

companies will be able to obtain improved protection of data for innovative products in Israel. Such an amendment would bring Israel's laws in line with the level of protection provided by most other OECD countries.

In the area of patent term extension, attention focuses on the fact that a patent examination for a new pharmaceutical product in Israel typically takes longer, on average six years, than the effective patent extension period, which is determined by the shortest period of protection in a list of pre-specified "recognised countries". Under section 17(c) of the Israeli Patent Law, it is possible to request acceptance of a patent application based on the grant of a foreign patent. This expedited procedure normally shortens the examination period substantially. However, this possibility is only a partial solution to the innovator's concerns as the reference to international protection may still limit the period of effective protection in Israel. The administrative delay associated with a local examination limits the number of choices attractive to the patent applicant.

The Israeli system of determining the period of protection for regulatory test data and patent term extension is based on protection in a number of recognised countries. Thus, to obtain the longest possible period of effective protection in Israel, the pharmaceutical companies have an incentive to launch new products in Israel at the same time as in the European Union and the United States. The system creates incentives for firms to conduct "first launches" in Israel. But, the patent examination and marketing approval procedures in Israel are less effective than in most OECD countries, thus reducing Israel's attractiveness as a first launch country. In this context, one Member requests that Israel amend its laws to increase IPR protection in these areas and to bring Israel's laws in line with the level of protection provided by OECD countries such as the United States and the European Union.

4. Compliance

Israel has mechanisms for supporting compliance with international trade agreements and is currently preparing legislation expected to enhance the openness of Israel's trading regime. This legislation – still under preparation – is to replace the Import and Export Ordinance dating from 1939. The objective of the exercise is to streamline the import and export process as well as to make the rules which impose restrictions on trade more transparent.

The absence of a formal mechanism to periodically review Israel's conformance with international trade obligations is tempered by the fact that Israel has never initiated or been a respondent in a case within the Dispute Settlement Body (DSB) of the WTO. Israel is not engaged in consultations with any trade partners on potential violations and does not have any draft legislation to address a compliance issue. Ensuring that primary legislation conforms to existing trade obligations is the fact that the Government Committee of Legislation and Law Enforcement must approve draft legislation prior to its consideration by the Knesset. Under government Decision No. 4702 of 17 January 1995, the Minister of Industry, Trade and Labor and the Minister of Foreign Affairs are responsible for the implementation of the WTO Agreements, and MOITL ensures that all new primary legislation is reviewed for conformance with international trade agreements through the process of the Government Committee of Legislation and Law Enforcement.

In accordance with the guidelines of the Attorney General, 60.010, ministries are obligated to circulate bills that will become primary legislation to all other ministries as well as concerned non-governmental bodies for comments. MOITL for instance circulates

bills to institutions of higher learning, the Supreme Court, the National Labor Court, the Israel Bar Association, the National Labor Union and the Coordinating Bureau of Economic Bodies (Israel's Federation of Chambers of Commerce and the Manufacturer's Association of Israel), and provides a minimum 21-day comment period. As discussed in previous sections, checks on legislation at the secondary level, particularly by MOITL, are less consistent.

5. Conclusions and policy options

Over the last two decades, Israel has opened its economy to international trade and investment by lowering tariffs and improving the domestic regulatory environment for business. This review describes progress on regulatory reform in Israel, including through its forward looking eGovernment programme, which suggests these overall trends will continue. The results of these reforms can be considered in light of significant increases in inward foreign direct investment (FDI) and the shift of Israel's economy from one with a significant agrarian sector to one which is today much more reliant on the high tech sector. The liberalisation of trade has been consistently and effectively conducted by the institutions overseeing the process, but scope remains for further improving the quality of market openness in domestic regulatory practices, particularly in areas not subject to international obligations. Recent reforms such as the implementation of a risk based arrangement on streamlining conformity assessment for imports indicate a positive approach to continued reform. Further reforms to enhance the market openness of Israel's regulatory framework for trade will enable it to better consolidate the benefits from the trade liberalisations already undertaken.

5.1 *General assessment and main challenges*

The passage of the Freedom of Information Law in 1998 coincided with a series of regulatory and structural reforms in the Israeli economy that have formed a cornerstone for advances in **transparency**. A primary challenge to further improvement of transparency in the domestic economy is to promote coherence among the three levels of legislation as well as between the differing subjects of regulation. This is particularly so with respect to the portion of secondary legislation not subject to approval by Knesset, as well as directives and administrative guidelines.

Policy options

- A key means to improve the transparency of the regulatory system would be to promote greater coherence between levels of regulations – particularly where they overlap on specific regulatory subjects – in order to ensure greater compatibility with international (WTO) obligations. One approach to addressing this deficiency would be to require that all secondary legislation not subject to review by the Knesset be circulated to all ministries during the consultation period. Due to the MOITL's role as the government body responsible for international trade policy, consideration should be given to designating it as the competent authority for addressing discriminatory and market openness aspects of any proposed regulation. Consideration should be given to anchoring this proposal by means of legislation.

Although Israel does not have legislation in force directly ensuring the principle of **non-discrimination**, foreign invested enterprises (FIEs) are generally accorded legal

rights equivalent to their domestic counterparts, except where specific legislation indicates otherwise. Such areas are few but include some important dimensions of the economy such as government procurement and regulatory practices in the area of conformity assessment.

Policy options

- Reconsider the system of providing preferences for domestic bidders and applying performance requirements in the area of government procurement. Doing so could enhance the efficiency and efficacy of government procurement, by increasing the pool of suppliers and thus the quality of competition.
- Balance the enforcement of mandatory standards in terms of imported goods and their domestically produced counterparts.

Significant advances in reducing the **trade restrictiveness** of the domestic regulatory framework have been recorded in the area of eGovernment. The approach of establishing quantifiable objectives in the form of World Bank Doing Business indexes is a notably straightforward approach to guide reforms.

Policy options

- Echoing a policy option under transparency, we would suggest that it may be useful to consider implementing a review of coherence among the three levels of legislation – particularly where they overlap on specific regulatory subjects – whether as a one-off or as a gradual exercise. Particular attention should be devoted to reviewing substantive coherence between secondary legislation not subject to approval by the Knesset together with directives and administrative guidelines, against primary and secondary legislation subject to approval by the Knesset. Strengthening coherence in regulatory approaches increases the predictability of the regulatory system, and can significantly reduce unnecessary trade restrictiveness.
- Consider putting into place a programme for conducting regulatory impact assessments (RIAs) if only on a pilot basis, which includes analysis of trade and investment impacts of regulations.

Israel has legislation supporting **international harmonisation** when developing new standards, whether mandatory or voluntary. Implementation of the “Improvement of Terms of Trade - Standardization” resolution seeks to align an additional 25% of domestic mandatory standards towards international ones, and to propose solutions for standardising technical orders and regulations. Advancing the harmonisation of overlapping domestic standards relating to the same subject, but differing in regulatory approach, may be as important as further progress in harmonisation towards international standards.

Policy options

- Consider raising the goal, under the resolution, of aligning 65% of domestic towards international or regional standards to 75%.

- Consider including orders, regulations, directives and administrative guidelines not already covered under the resolution within the exercise to propose solutions for standardisation.
- Again consistent with the policy option under transparency, it may be useful to consider conducting a review of coherence among all mandatory and voluntary standards, particularly those between regulatory subjects, whether as a one off or gradual exercise. Strengthening coherence in the approach to design and implementation of standards reduces unnecessary trade restrictiveness arising from inconsistent or contradictory regulations, and amplifies the benefits of predictability on a systemic level.

Israel generally applies international standards when **streamlining conformity assessment** and actively seeks to conduct government-to-government mutual recognition agreements (MRAs). Its private conformity assessment bodies have conducted at least one significant MRA. The ongoing implementation of a risk-based arrangement to streamline conformity assessment procedures for non-food imports, could support significant progress depending on its development. Much will depend on the manner in which it is implemented.

Policy options

- Depending on the effectiveness of this risk-based arrangement for streamlining conformity assessment procedures in terms of ensuring consumer safety for standards already covered in Groups 2-3, set an objective of enlarging the scope of standards covered by these two groupings wherever reasonable.
- Increase efforts to conduct government-to-government MRAs, and enhance the capacity of domestic conformity assessment bodies to conclude multilateral recognition agreements.

Israel's considerable capacity to produce innovation is underpinned by its internationally competitive research institutions and its skilled scientists, engineers and workers. Its regime of **intellectual property rights** ranks high against international averages, however, a number of improvements would bring Israel closer to the practice generally found in OECD countries. Such improvements generally relate to enhancing protection in specific areas of copyright and patent protection and improving administrative efficiency.

General policy options

- Consideration may be directed towards improving the effectiveness and efficiency of the administrative procedures relating to IPR, particularly in terms of allocating additional resources to shorten patent examination periods.
- The process for granting marketing approvals for new pharmaceutical products should be streamlined and augmented with increased resources. Reducing the time necessary to receive marketing approvals would benefit all stakeholders whether domestic or international including generic producers, pharmaceutical companies and the general public.

- The effectiveness of the Israeli patent system may benefit from a shift in procedures from pre-grant opposition to rely primarily on post-grant opposition. An overly broad right to oppose in advance and thus cause significant delays in the granting of new patents creates incentives for rent-seeking and strategic behaviour, which reduces the regulatory efficiency of the IPR system.
- Copyright enforcement is a growing challenge including among OECD countries. Increasing domestic capacity for enforcement is an important means to enhance compliance. Strengthening international cooperation on enforcement is also an important component of making the regulatory regime effective. Further efforts in both areas could yield positive results for Israel.

Beyond these general policy options, some Members recommend that Israel strengthen its IPR laws to more closely conform to international standards. Further, some Member countries have identified the following areas as being in particular need of improvement: strengthening protection against unfair commercial use of undisclosed test or other data submitted for marketing approvals for pharmaceutical products; strengthening patent term extension given to pharmaceutical products to compensate for delays in the marketing approval process; strengthening copyright legislation; and increasing copyright enforcement efforts. These Members stress the importance of specific intellectual property reforms with respect to copyright and patent policy:

Copyrights

- Ratification and effective implementation of the World Intellectual Property Organization (WIPO) Internet Treaties⁴⁵ in order to reinforce Israel's framework for protecting technological measures and digital rights management used for protecting copyrighted works.
- Modifications in Israel's copyright legislation in order to prevent unauthorised communication of protected audiovisual works (that are at times retransmitted *via* local television stations without paying appropriate remuneration), in conformity with international treaties, and to encourage the activity of collective management organisations.

Patents and data protection

- Action to ensure that registration or product approval delays for new substances (15 to 18 months) attributable to the regulatory authority do not negatively affect any type of market exclusivity granted to innovative pharmaceutical products registered in Israel, including in the field of patent term extension and data exclusivity.
- Action to provide for an effective and full five-year period of data exclusivity from the date of obtaining product market approval in Israel.
- Action to provide for an additional exclusivity period to new therapeutic indications which, during the scientific evaluation prior to their authorisation, are held to bring significant clinical benefit.

- Action to ensure that a patent term extension can be granted to any product having received an equivalent patent term extension in just one of the so-called Recognised Countries.
- Publication of patent applications within 18 months from the date of filing or, if priority has been claimed, from the date of priority.
- Moving the possibility of opposition procedures from the pre-grant phase to the post-grant phase (pre-grant opposition allows competitors to extend the review process during which the patent applicant cannot claim damages for infringements).

Israel does not have significant experience with **compliance**; it has never been an initiator or respondent in the Dispute Settlement Body (DSB) of the WTO.

Policy options

- No recommendation.

Notes

1. The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.
2. WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).
3. *The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.*
4. Country reviews of regulatory reform normally contain chapters on regulatory quality, market openness and competition. Their objective is to assess domestic regulatory frameworks and suggest policy options for enhancing economic performance in countries under review. To date, the OECD has played a key role in promoting regulatory reform by carrying out assessments of the policies and practices of more than 20 member countries, Brazil, China and the Russian Federation.
5. Le Monde (2009). p 125.
6. *Ibid*, p.125.
7. MOITL (2008), pp 28-29.
8. EIU (2009), p 7.
9. Enquiry and Contact Point
Director, International Agreements Division
Foreign Trade Administration
Ministry of Industry, Trade and Labor
5 Bank of Israel Jerusalem 91036
Israel
Telephone: +972 2 666 2676
Telefax: +972 2 666 2956
E-mail: foreign-trade@moital.gov.il
10. WTO (2006a), p 21.
11. In accordance with established terminology in the WTO TBT Agreement, technical regulations are documents with which compliance is mandatory, while standards provide rules and guidelines for common and repeated use but compliance with them is not mandatory. This is not the case in Israel, where standards are elaborated as voluntary but can be proclaimed mandatory at a later time.
12. Articles 2, 9 and Annex 3.
13. Article 7 and paragraph 5 of Annex B.
14. In accordance with Government Decision No.4702 dated 15.1.95.
15. USTR 2009, p. 260.

- 16 Lynn (2009).
- 17 USTR (2008).
- 18 WTO (2007a), p 48.
- 19 See paragraph 8 of OECD (2008a). Summaries of restrictions on inward investment and other operations can be found in paragraphs 8-10 of OECD (2008a).
- 20 For detailed treatment on screening requirements, see paragraphs 33 onwards and Annex 5, section A.I.a of OECD (2008a).
- 21 The government reserves the right, in certain cases, to impose restrictions on foreign investment through so called “Vital Interest Orders”. See paragraph 42 of OECD (2008a).
- 22 Further detail on other requirements applying to non-resident investors can be reviewed in chapters 2 and 3 and Annexes 2 and 3 of OECD (2008a).
- 23 An up to date and detailed list of areas exempted from national treatment can be found in Annex 4 of OECD (2008a).
- 24 The term RTA is used here as a generic term which includes free trade agreements (FTAs), customs unions (CUs) and preferential trading areas (PTAs) which are not necessarily limited to regional groupings.
- 25 Several government decisions to reduce the burden of technical regulations in the import process including through the adoption of international standards in place of national standards and encouraging the signing of mutual recognition agreements include: Government Decision No. 6025 from 27.8.95, Government Decision No. 1782 from 4.4.04, Government Decision No. 437 from 12.9.06 and Government Decision No. 2191 from 12.8.07.
- 26 Lynn (2009).
- 27 Deitch (2009).
- 28 Lynn (2009).
- 29 Deitch (2009).
- 30 “Highest International Standard” corresponds to language in the EU-Israel Association Agreement.
- 31 WEF (2008).
- 32 *Ibid.*
- 33 Several indicators presented concern international co-operation in patenting activities. The OECD *Compendium of Patent Statistics: 2008* uses cross-border ownership of patents as an indicator of the internationalisation of science and technology activities in a country, mainly as a result of the activities of multinationals. About 25% of PCT filings originating in Israel are owned or co-owned by foreign residents, whereas the global average of foreign ownership or co-ownership of patent applications filed under the PCT stands at 15.7%. Israel sports a greater percentage of foreign ownership of patents than a number of OECD Members. See OECD (2008b), p.28. A further measure of international co-operation, according to the *Compendium*, relates to the share of patents involving inventors with different countries of residence, indicating either international collaboration within a multinational corporation or a research joint venture among several firms or institutions. More than 15% of PCT filings originating in Israel have at least one foreign co-inventor, whereas the global average of patents

- involving international co-inventions stands at 7%. Israel reflects a greater share of patents having a foreign co-inventor than a variety of OECD Members. See OECD (2008b), p.30.
- 34 WEF (2008).
- 35 From a systemic perspective, it can also be argued that some experimentation with local and national designs of intellectual property rights in combination with international trade and investment generate institutional competition and may lead to improved efficiency in the global system of intellectual property rights over the long run. Limited experimentation and competition, particularly in new sectors and in times of significant technological change, may contribute to evolving best practices and improving market institutions.
- 36 WEF (2008).
- 37 The Ginarte-Park index of patent protection for Israel increased from 3.14 in 1995 to 4.13 in 2005. The maximum score of all countries increased from 4.35 to 4.87 during the same period. See Park (2005).
- 38 The score is an average of three indexes; Legal and Political Environment for which Israel's score is 6.0 (rank 39), Physical Property Rights for which Israel's score is 7.2 (rank 26), and Intellectual Property Rights for which Israel's score is 6.3 (rank 29). See IIPA (2008).
- 39 Israel's score was 4.5 compared to the average of 3.8. See WEF (2008).
- 40 Israel's score was 4.9 compared to the average of 4.1. See WEF 2001).
- 41 BSA (2007).
- 42 IIPA (2008).
- 43 USTR (2008).
- 44 On a scale between 0 and 5, Israel's scored 2.9, while the US scored 4.8. The UK and Singapore had intermediate scores, with 4.59 and 4.39 respectively.
- 45 WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).

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