

**OECD REVIEWS OF REGULATORY REFORM**  
**REGULATORY REFORM IN THE UNITED KINGDOM**

**ENHANCING MARKET OPENNESS THROUGH  
REGULATORY REFORM**



**ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT**

## ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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

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## FOREWORD

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

This report on *Enhancing Market Openness through Regulatory Reform* analyses the institutional set-up and use of policy instruments in the United Kingdom. It also includes the country-specific policy recommendations developed by the OECD during the review process.

The report was prepared for *The OECD Review of Regulatory Reform in the United Kingdom* published in November 2002. The Review is one of a series of country reports carried out under the OECD's Regulatory Reform Programme, in response to the 1997 mandate by OECD Ministers.

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

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

This report was prepared by Evdokia Moisé, in the Trade Directorate of the OECD. It benefited from extensive comments provided by colleagues throughout the OECD Secretariat, as well as close consultations with a wide range of government officials, parliamentarians, business and trade union representatives, consumer groups, and academic experts in the United Kingdom. The report was peer-reviewed by the 30 member countries of the OECD. It is published under the authority of the OECD Secretary-General.



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## EXECUTIVE SUMMARY

As traditional barriers to trade have fallen, the impact of domestic regulations on international trade and investment has become more apparent than ever before. While regulations aim at improving the functioning of market economies in a range of fields, such as market competition, business conduct, the labour market, consumer protection, public health and safety or the environment, they may directly or indirectly distort international competition and prevent market participants from taking full advantage of competitive markets. Maintaining an open world trading system requires regulation that promotes global competition and economic integration, thereby avoiding trade disputes and improving trust and mutual confidence across borders. This chapter assesses how the British regulatory system performs from these perspectives and how regulatory reform may contribute to enhancing market openness and the benefits which consumers and producers can reap from open markets.

Free market approaches and the reduction of state intervention in the economy have been major engines of regulatory reform undertaken by successive UK governments since the early 1980s. Although British participation in the process of European integration has certainly enhanced the liberalisation of the domestic market, in many respects the UK has been in the forefront of reform efforts. These efforts have shaped a regulatory environment that is among the most supportive of market openness in the world, displaying low barriers to trade and investment, a neutral stance in regulating economic behaviour and low barriers to entrepreneurship. Regulation applying to the British market is generally transparent and non-discriminatory and largely avoids unnecessary trade restrictiveness. Regulatory requirements make satisfactory use of internationally harmonised measures and recognise to a great extent the equivalence of other countries' measures. The recent reshaping of the framework for competition policy has strengthened the enforcement powers of competition authorities, boding well for an enhanced application of competition principles. In sum, the UK presents a regulatory environment which is well oriented towards market openness and adapted to the conditions of a global economy. From a market openness point of view, future reform efforts should mainly focus on preserving this environment.

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

## **1. MARKET OPENNESS AND REGULATION: THE ECONOMIC AND POLICY ENVIRONMENT IN THE UNITED KINGDOM**

### **1.1 *The policy environment***

The United Kingdom has a reputation as having a regulatory environment that is among the most supportive of market openness and global competition in the world. Free market approaches and the reduction of state intervention in the economy have been major engines of regulatory reform undertaken by successive UK governments since the early 1980s. The centuries-long history of the United Kingdom as a trading nation with links to all world regions has created a tradition of open trade and prepared it well for an open investment climate too. The international propensity of British firms was instrumental in shaping open-mindedness towards inward investment and the contribution of foreign companies to wealth creation has been widely understood.

This market openness orientation has been asserted through the participation of the UK as a founding member of the GATT and ensuing commitment to WTO obligations. As the UK has geared its domestic and international policies to enhance both the attractiveness of the domestic market for foreign businesses and the international competitiveness of British firms, it has been very active in trade liberalisation both in the European and international context. The loss of competitiveness in a number of manufacturing sectors which had formed the basis of British industrial development (see below, paragraph 7) has led UK governments to encourage significant restructuring of these sectors, reduce related regulatory interventions and favour the participation of foreign investors in the attempt to revitalise the economy. In accordance with this approach, UK governments have long maintained liberal policies towards foreign direct investment. The UK has rarely been at the centre of trade or investment disputes<sup>1</sup>. It has sought to provide a trade-friendly business environment and foreign trading partners surveys consistently express a high degree of satisfaction with the British regulatory environment<sup>2</sup>.

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1. The most notable exception being the complaint by the EU to the WTO against the “United States Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the UK”, dated 30 June 1998 (WT/DS138/1). The Panel and Appellate Body reports (issued on 23/12/99 and 10/05/2000 respectively) found that the countervailing duties imposed on the basis of subsidies granted to British Steel Corporation were in violation of the SCM Agreement.
  2. See, for example, the US Department of Commerce “UK Trade Regulations and Standards” and “UK Investment Climate” in the United Kingdom Country Commercial Guide of October 1999, at [www.usembassy.org.uk/fcs/fcscg.html](http://www.usembassy.org.uk/fcs/fcscg.html), the Canadian Ministry of Industry site at <http://strategis.ic.gc.ca>, the New Zealand Trade Country Profiles at [www.tradenz.govt.nz](http://www.tradenz.govt.nz), or the French Service d’Expansion économique note of January 2001 on “Investissements étrangers et régime d’investissement au Royaume Uni”.

Regulations and the regulatory process in the UK of course have to be viewed also in the light of British membership in the European Union. In the UK, as in all other European Union Members, a considerable amount of domestic regulation is shaped by the regulatory process at the European level and thus indirectly influenced also by the policies and regulatory culture of the other Members. The liberalisation of the British market has been enhanced by the ongoing process of European integration and the Single Market undertaking. It is considered that on balance the implementation of the internal market programme has improved the conditions under which third countries can access EU Member markets<sup>3</sup> and this has added to the generally liberal UK tradition.

With a firmly entrenched trade- and investment-friendly regulatory environment, market openness for foreign suppliers has not been a key issue in the reform efforts undertaken in recent years in the UK. However regulatory reform efforts undertaken in other areas indirectly affect market openness. This is particularly the case with respect to reforms in the field of competition policy (see Section 2.6), or endeavours to reduce regulatory burdens on small businesses (see Section 2.3 and also Chapter 2, PUMA/REG(2001)16).

## **1.2      *The economic environment***

The United Kingdom is a services-driven economy. The services sector presently accounts for approximately 70% of GDP, while the financial and business services sector alone contribute almost one-fifth of GDP. London, along with New York and Tokyo is one of the world's three largest financial centres, with a dominant role in several international financial markets, including crossborder bank lending, international bond issuance and trading, foreign-exchange trading, over-the-counter derivatives, fund management and foreign equities trading. It has also the world's largest insurance market, the leading exchange for dealing in non-precious metals, the largest spot gold and gold lending markets, the largest shipbrokering market and the highest number of foreign banks and investment houses. Ancillary maritime services, such as insurance, shipbrokering, law and arbitration, and information and classification services are very important, even if the UK shipping fleet itself, once the world's largest, now accounts for less than 2% of the world fleet by ownership. The communications sector has also been growing fast, although its share of GDP at current prices has remained stable due to falling prices.

As in other OECD countries, the share of manufacturing in the economy has declined relative to the services sector and currently represents only 21% of national output. Certain industries, such as basic steel, textiles and clothing, shipbuilding, suffered from competitive advantage moving to less developed countries and experienced a decline in manufacturing capacity and employment that was not subsequently reversed. However, the apparent contraction of manufacturing has also been magnified by the growing trend for UK businesses to contract out non-core activities, so that activities once carried out in-house and recorded in statistics as manufacturing are now classified as services. Agriculture, even with forestry and fishing included, accounts for just 1.5% of GDP. However, high productivity and a favourable climate ensure that the agriculture sector supplies nearly two-thirds of the country's total food requirements. The UK has the largest energy resources of any country in the European Union, with important supplies of coal, oil and natural gas. These enabled the UK to become self-sufficient in energy in net terms during the 1980s. Supplies of other minerals are limited and most of the demand for industrial raw materials is met by imports.

The UK runs a deficit on its goods trade, which is normally cyclical, rising during economic upturns. It has widened from 1.5% of GDP in 1997 to an estimated 3% of GDP in 1999, due to the contraction of foreign demand associated with the emerging market crises of 1997-98 and to export market share losses linked to the strength of the national currency (although this factor has forced British firms to

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3.      OECD "*The European Union's Trade Policies and their Economic Effects*", ECO/GEN(97)4



adjust). Currently the UK is a net importer of foodstuffs and raw materials other than fuels, clothing and footwear, electrical machinery and motor vehicles (foreign-owned car plants established in the UK export a major share of their production to the rest of the EU). The UK is a net exporter of petroleum and petroleum-related products, chemical products and in particular pharmaceuticals, tobacco, beverages (notably whiskey) and mechanical machinery. 58.7% of UK exports are headed to the EU, where also originate 53.8% of its imports. The two largest export markets are the USA and Germany, while UK exports to Asia were badly hit by the financial crisis in 1998, but have started recovering. On the other hand, the UK runs a consistent surplus on invisible transactions, principally from insurance, finance and business services.

Foreign direct investment plays an important role in the British economy, while the UK itself has always been an important source of capital exports, both direct and portfolio investment. Net international investment represents over 17% of the UK annual GDP, the gross assets and liabilities exceeding £2 trillion. The UK receives almost 10% of global direct investment and more than 25% of all direct investment coming into the EU. UK is the most important destination for US outward investment, and the location for around 40% of Asian direct investment in the EU. Inflows of direct investment into the UK in 1999 totalled £51 billion, an all-time record. According to the Office of National Statistics, by 1996 inward investors represented in the manufacturing area 1.6% of enterprises, 19% of employment, 34% of net capital expenditure and 28% of net output, and around 50% of UK's gross exports are provided by inward investors.

UK attractiveness to inward direct investors is a result of a number of factors, including the state's relatively unobtrusive role in the economy, a traditionally relaxed official attitude to foreign take-overs of British companies, deregulated product markets, the breadth and depth of the capital markets, a relatively flexible labour market, a low tax burden by EU standards and the status of English as the leading business language. Macroeconomic and industrial policies are geared towards enhancing the attractiveness of the UK for foreign investors through the creation of a stable macroeconomic environment, high rates of growth and a level playing field for domestic and foreign investors. On the other hand, regulatory measures specifically aimed at attracting foreign direct investment or otherwise influencing potential investment decisions are quite exceptional. Grants and financial incentives are mainly offered by regional development agencies for investments in "Assisted Areas", designated by the UK government and the EU Commission (Regional Selective Assistance – RSA). RSA is directly related to employment created or safeguarded and may be supplemented by some local support related to physical infrastructure or training support. No grants are payable, nor tax benefits available specifically to foreign investors. Over 50% of the RSA budget and around 90% of all projects supported to date were for British-owned businesses. For the period 1995-1997 the UK provided just 4.4% of all EU government support to the manufacturing industry, representing to lowest percentage in value added (merely 0.9%).

Invest UK, the British investment promotion agency, was created in 1977, at a moment of decline in traditional industries, with the aim to create new sources of employment. It had originally a minimalist role, working as a facilitation agency, reacting to client enquiries without aggressively seeking out new prospects. Gradually it became more active in "attracting, retaining and adding value to inward investment" and has also developed an important "aftercare" role, to support and encourage further investment from companies already operating in the UK. Invest UK does not manage or grant any financial support to investment. It works under the umbrella of British Trade International, marketing the UK abroad

as a unified location and co-operates with its partner agencies in Wales, Scotland, Northern Ireland and the English Regional Development Agencies (RDAs) to secure projects. Financial support may on occasion be available from the regional agencies.

## **2. THE POLICY FRAMEWORK FOR MARKET OPENNESS: THE SIX “EFFICIENT REGULATION” PRINCIPLES**

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

- *transparency and openness of decision making;*
- *non-discrimination;*
- *avoidance of unnecessary trade restrictiveness;*
- *use of internationally harmonised measures;*
- *recognition of equivalence of other countries’ regulatory measures; and*
- *application of competition principles*

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

### **2.1 *Transparency, openness of decision making and of appeal procedures***

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

allows market forces to be built into the process and helps avoid trade frictions. This sub-section discusses the extent to which such objectives are met in UK and how. It also provides insights on two specific areas, technical regulations and government procurement, in which transparency is essential for ensuring international competition.

### 2.1.1 *Information dissemination*

Information with respect to adopted regulation is primarily provided through publication by Her Majesty's Stationary Office in printed form, as well as on the Internet, in principle within 24 hours of the printed publication. This covers all legislation enacted by the UK Parliament, delegated legislation (statutory instruments) and related official materials. Much of this information can also be found on the websites of the Cabinet Office, relevant Departments and independent regulators. Entry into force normally takes place 12 weeks at a minimum after the promulgation of the regulation. This standing practice has been recently formalised into an administrative rule.

In addition to these information sources, domestic and foreign businesses may access regulatory information with respect to business launching and operation on specific websites, such as the Direct Access Government <http://www.dag-business.gov.uk>, the Small Business Start-Up Service <http://www.sbsonline.org>, or the Business Link <http://www.businesslink.org>, all developed by the Small Business Service. Foreign firms that wish to obtain information about the regulatory and economic environment in the UK may also enquire at the Invest UK Agency in London or one of its offices in British embassies and consulates around the world. Invest UK also offers information online through its site <http://www.investuk.org>. The wealth of regulatory information offered online by the UK administration is impressive. However, the presentation may sometimes be erratic and the links between different sites proposing similar information are not always clear, creating risks of confusion. UK was among the first OECD countries to convert to e-government. So far, however, government web site development has been patchy. Some departments and agencies have made considerable progress, but in many cases apart from providing "electronic brochures", the provision of more advanced and interactive services (such as allowing the citizen to download forms, input information, interrogate databases and conduct electronic transactions) is not well developed yet. The Government's declared ambition is to enable a quarter of all transactions between citizens and state to be conducted electronically by 2002, and all of them by 2005.

Information on prospective regulation is systematically brought to the attention of domestic constituencies and foreign parties at large through publication on the concerned department's website, and also through direct contact with the relevant Trade Associations, the Small Business Service, the businesses affected and other stakeholders. These mechanisms cover not only primary and secondary regulation introduced by the UK government, but also regulations to implement European legislation, as well as regulatory proposals by the EU Commission. The British administration makes extensive use of "notice and comment" procedures and prefers this type of public consultation over closed consultations specifically addressed to particular constituencies. Examples of prospective regulation made available to the public by the Department of Trade and Industry include a draft guidance to the Gas and Electricity Markets Authority on its contribution to the government's social and environmental policies; a proposal to implement the EU Electronic Signatures Directive; the monthly update of temporary duty suspensions and tariff quotas; and a proposal by the EU Commission to reform the EC Competition Regime.

In order to ensure the widest possible public awareness of the issues on which consultations are being held or will be undertaken in the near future, a web-based Central Register of current public written consultations is presently under preparation. Once operational, the Register site will also offer users the possibility of being notified by email of consultations in particular areas.

### 2.1.2 Consultation mechanisms

As noted above, regulatory proposals are systematically put out for consultation with concerned constituencies, before they enter the primary or secondary legislative process, through “notice and comment” mechanisms. The launching of a consultation is publicised by a press release and the consultation material is made available on the Internet, through paper copies and in specialist newspapers and magazines. Prior consultation is open to all without any qualifying conditions and foreign parties can participate on the same terms as domestic ones. Following complaints about the timeliness of consultations and the time available for commenting, government departments and agencies are now required to give consulted parties a minimum of twelve weeks to comment on the proposal. Circumstances of urgency, or EU, international, or domestic statutory deadlines may exceptionally impose a shorter period. For large or evolving projects, several consultations at different stages of the development of the proposal may take place. The text of the prospective regulation brought to the attention of the public is accompanied by a “consultation document”, including a summary description of the proposal and the issues at stake, including competing arguments relevant to a decision, as well as the main questions the government seeks views on. Many consultation documents include the Regulatory Impact Assessment (RIA) that has been conducted on the proposal.

More targeted consultations, seeking views from professional bodies or departmental trade unions, regional or local consultations or consultations with local governments may also take place. Targeted consultations can be conducted through mailings, e-mail notifications and visits to, and meetings or seminars with, representative groups and other interested parties. Umbrella bodies, such as trade associations or business organisations, may also be used to avoid imposing extra burden on people and organisations with limited resources, such as SMEs and small NGOs, provided that representativeness has been established. For example, the DTI has established a *Trade Policy Consultative Forum*, bringing together around 25 representatives from businesses, consumers, trade unions and other NGOs, where trade policy issues are regularly debated. Consultation documents are required to explain which people and groups are aimed at and in what capacity, while inviting suggestions about others to whose attention the document should be drawn. In addition to “notice and comment” and targeted procedures, consultations may also take the form of listening events or of more pro-active research, such as surveys of consumers and the general public and in-depth interviews with focus groups. Government departments also conduct informal consultations on a subject-specific basis with established networks of relevant people. Such informal practices seem particularly appreciated by NGOs who find consultation mechanisms overly formalist. The introduction of facilitators, such as the DTI Communication Strategy Co-ordinator, has also been praised by domestic constituencies.

A *Code of practice on written consultation* applies to all consultation documents issued after the 1<sup>st</sup> January 2001 by all UK government departments and agencies, while non-departmental public bodies are also invited to abide by its principles. According to the Code, the main aims of consultation are to improve decision-making by bringing new ideas, perspectives, data and experience to the regulators, to ensure that the interests of affected parties have been taken into account and to guarantee the accountability of the government by avoiding the risks of privileged access. Responses of consulted parties may be made public unless confidentiality is specifically asked for. In any event the results of the consultation are made widely available, with an account of the views expressed and reasons for the decisions finally taken.

### 2.1.3 Appeal procedures

Market participants wishing to voice concerns about administrative measures or the absence thereof can appeal in a first instance either directly to the competent administrative authority or to its superior authority. All public bodies that have significant dealings with the public are required to have well publicised and easy-to-use complaint procedures. Alternatively, the appeal can be brought to an external adjudicator for independent review. This adjudicator can be either specific to a given public body, or an

independent Ombudsman having jurisdiction for several public bodies, such as the Parliamentary Ombudsman, the Welsh Administration Ombudsman, or the Local Government Ombudsman. Finally, decisions can be brought for judicial review by the courts, although such review will mainly bear on the legality of decisions and may not discuss whether the decision was well founded. Accessibility to ombudsmen's services and to judicial review is however subject to a number of conditions (see Chapter 2, PUMA/REG(2001)16). Access to administrative or judicial remedies is available to all parties whose rights or interests are affected by an administrative decision, action or omission, irrespective of citizenship or domicile.

#### 2.1.4 *Transparency in the field of technical regulations and standards*

Transparency in the field of technical regulations and standards is essential to firms facing diverging national product regulations, as transparency reduces uncertainties over applicable requirements and thus facilitates access to domestic markets. In this field the UK provides information to its trading partners and gives them the opportunity to comment as part of its notification obligations to the European Commission and the WTO. Draft product regulations that are not pure transpositions of EU harmonising directives, as well as draft standards that are distinct from international or European standards, are notified to the European Commission by virtue of Directive 98/34. The EU notification system has enhanced the transparency of the process, as it allows for a strong scrutiny of trading partners over domestic regulatory activities and provides for an early-warning mechanism on any potential obstacles to trade stemming from product regulations.

To the extent that notified prospective regulations are not based on relevant international standards, the European Commission transmits<sup>4</sup> the information to the WTO Secretariat and other WTO Members in accordance with the obligation laid down by Article 2.9 of the WTO Agreement on Technical Barriers to Trade. Similarly, notification required under other WTO provisions (such as Article 7 of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, or regular notifications in the framework of WTO Agreements on agriculture, rules of origin, import licensing, etc.) is made to the WTO by the European Commission on behalf of Member States.

At the domestic level, the British Standards Institution (BSI) relies on public consultation in the development of standards in order to ensure their public acceptance and adequacy to the needs and requests of the user industry. Two announcements are made in a monthly BSI publication during the preparation of national, European and international standards: the announcement of the initial intention to prepare a particular standard and the publication of the draft standard for public comment promote awareness of the standardisation work and provide an opportunity for anyone to contribute. Information on the standards work programme is available via the BSI website through the Projectline database ([www.bsi-global.com/Pline](http://www.bsi-global.com/Pline)). Once a draft standard is available comments are welcome from any source. Standards-making is governed by the British Standard "BS0".

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4. This notification procedure is separate from that of Directive 83/189/EEC

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

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

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

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

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

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5. <http://europa.eu.int/comm/dg03/tris/>

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

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

#### 2.1.5 *Transparency in government procurement*

Given the amount of purchases by central and local governments, public procurement represents huge opportunities for international trade. Transparency in government procurement is essential for ensuring the effective opening of the markets for public works, supplies and services to international competition. UK policy with respect to government procurement is in line with EC rules in this area, applying to all procurement over a certain threshold (see Box 2). Obligations under the EC rules include *inter alia* the publication of requirements in the Official Journal of the European Communities. Some 100 government agencies and departments, 400 local authorities and 400 National Health authorities publish their requirements in the OJEC. There is no pan-governmental publication for public procurement, but certain contracting authorities also publish requirements in the professional and trade press.

Each government department or agency is responsible for its own procurement and the compliance with procedural requirements. Co-ordination for the overall coherence of civil procurement activities lies with the Office for Government Commerce (OGC), an Office of HM Treasury. The OGC is also responsible for handling cases of infringements of EC rules brought by the European Commission against the UK government. The UK government's procurement policy requires contracting authorities to "obtain value for money", by requiring competition among potential suppliers. The performance of departments in implementing this policy is subject to audit by the National Audit Office. Furthermore, the Local Government Act requires contracting local authorities to abide by the same principle, overseen by the Department of Transport, Local Government and Regions (DTLR). Appeals related to the publication and conduct of the procurement exercise, the exclusion of a candidate or the award of the procurement contract may be made ultimately to the head of the contracting authority. However, if such an appeal does not lead to a satisfactory outcome, complaints can also be brought to the courts in accordance with Regulations implementing EC rules. Courts cannot order interim suspension measures if the contract is already awarded. In this case relief can be obtained in the form of damages, including damages for lost profits.

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

Public procurement markets in the UK are open to European suppliers in accordance with EC rules. Similar access is afforded to suppliers within the European Economic Area and those which have entered into Europe Agreements with the EU. Third country suppliers enjoy the rights afforded by virtue of the WTO Government Procurement Agreement, in force in the European Communities since the 1<sup>st</sup> January 1996. The value of imports within a total of £60 billion of public procurement (of which an estimated £13 billion of central government civil procurement) is not thought to exceed 5%.

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

Public procurement in the European Union represents today approximately 1000 billion euros, or around 14% of EU GDP. Because of its economic importance it has been considered as one of the cornerstones of the Single Market<sup>7</sup> and led to the adoption of a series of rules aimed at promoting a climate of transparency and non-discrimination and securing enhanced competition in the area of public works, supplies and services. A separate regime is applied to utilities (energy, water, telecommunications and transport). Some of the major requirements of EU rules on public procurement are the following:

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

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

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

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

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

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



## 2.2 *Measures to ensure non-discrimination*

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

### 2.2.1 *Non-discrimination in domestic regulation*

In the United Kingdom, the requirement that domestic regulations comply with the MFN and national treatment principles stems from the international obligations to which the country has subscribed in the context of its membership to the EU and the WTO. It finds its expression in British macroeconomic and industrial policy which seeks to attract FDI by creating a stable macroeconomic environment and a level playing field for domestic and foreign investors. The observance of non-discrimination principles is monitored in the framework of the legal assessment of each regulatory proposal by the government department in charge and supervised by the Treasury and DTI for compatibility with the UK's international obligations and liberal trade and investment objectives (see below, Section 2.3.1).

In the area of services trade the UK maintains no additional exceptions to the non-discrimination principle beyond what was provided in the EC schedule of commitments for EU Members as a whole. In the context of the GATS Agreement, the list of exemptions to MFN treatment as well as the schedule of commitments to market access and national treatment have been decided at an EU-wide level and have been submitted to the WTO by the European Commission. These are composed of EU-wide exemptions and commitments as qualified by the additional restrictions attached by individual Member States (often replacing full commitments by partial commitments or unbound limitations). EU-wide commitments short of the additional individual restrictions are generally considered to be among the least restrictive in the WTO context<sup>8</sup> and the UK has been among the EU Members which introduced the fewest limitations to this relatively liberal stance (veterinary services can be provided by natural persons only; medical services are subject to manpower planning; and commercial presence is needed for certain types of banking services).

### 2.2.2 *Preferential agreements*

While preferential agreements give more favourable treatment to specified countries and are thus inherent departures from the MFN and NT principles, the extent of a country's participation in preferential agreements is not in itself indicative of a lack of commitment to the principle of non-discrimination. In assessing such commitment, it is relevant to consider the attitudes of participating countries towards non-members in respect of transparency and the potential for discriminatory effects. Third countries need access to information about the content and operation of preferential agreements in order to make informed assessments of any impact on their own commercial interests. In addition, substantive approaches to regulatory issues such as standards and conformity assessment can introduce potential for discriminatory

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8. See, for instance, USITC "*General Agreement on Trade in Services: Examination of Major Trading Partners' Schedules of Commitments*", Publication 2940, December 1995.

treatment of third countries if, for example, standards recognised by partners in a preferential agreement would be difficult to meet by third countries.

The most important preferential agreement in which UK participates is obviously the European Communities, while all other preferential trade agreements that it applies form an integral part of the common European Union trade policy (namely the agreements with EFTA countries, the association agreements with Central and Eastern European countries and Mediterranean countries, the post-Lomé Agreement with ACP countries and the General System of Preferences for developing countries). In addition, the UK has signed bilateral Investment Promotion and Protection Agreements (IPPAs) with 93 countries and bilateral Double Taxation Agreements (DTAs) with 103 countries. All IPPA and DTA texts are published and freely available from the Stationery Office. DTAs are also available online. Preferential trade agreements are managed by the EU Commission in a highly transparent manner. Information is readily available to interested non-parties through a variety of avenues, including the Internet or publications such as the *European Bulletin*. In addition, information on preferential agreements is made available to third countries through notifications to the WTO. The WTO Committee on Regional Trading Agreements reviews all preferential agreements, in a process that consists among other things of written questions and answers. Within this context recourse is available for third countries which consider they are prejudiced by these agreements. In considering proposals for new preferential agreements, the European Council addresses a number of strategic questions, including compatibility with all relevant WTO rules, the impact on the Community's other external commitments and the likelihood that the agreement would support the development of the multilateral trading system.

### **2.3 *Measures to avoid unnecessary trade restrictiveness***

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

#### **2.3.1 *Assessing the impact of regulations on trade***

Trade and investment friendliness are among the main threads of British macroeconomic and industrial policy. The impact of proposed regulations on trade and investment, including any effect on firm competitiveness, is formally assessed during the regulatory-making process. A Regulatory Impact Assessment (RIA) is undertaken for all proposed regulations which could affect businesses, charities or the voluntary sector in terms of costs, benefits and risks, unless the proposal imposes no or negligible additional costs or savings. RIAs are to be undertaken at the very early stages of the policy making process. They cover the risks, benefits, costs and compliance issues associated with all the possible policy options and provide the elements for a cost-benefit analysis of the proposed regulation and available alternative options. RIAs are considered as a tool for ensuring the quality, cost efficiency and proportionality of the regulation and for avoiding unintended effects. A tool which is also used to further enhance the transparency, predictability and accountability of the regulatory-making process, since a partial RIA must be submitted with any proposal needing intra-governmental co-ordination and agreement, and included with all public consultation documents. The assessment included in consultation documents

should present the key assumptions, regulatory and non-regulatory options and implementation issues and focus in particular on the impact of regulatory proposals on the groups likely to be affected.

The assessment of the costs and of the benefits of the proposed regulations covers:

- identifying who benefits and who bears the costs; this implies identifying not only the type of businesses likely to be affected, but also estimating the number of enterprises and jobs involved and considering whether other groups, such as consumers may also be indirectly affected.
- identifying the costs and benefits themselves and how these vary according to the various options or the various groups affected. Indirect costs and benefits, induced by the modifications in the behaviour of affected people, and dynamic effects in the development of markets should also be taken into account. Special emphasis is expected on the effect on small firms, as regulation can impact disproportionately on them. Regulatory costs include time and opportunity costs involved, as well as effects on firm competitiveness. For instance, if stricter environmental regulations are likely to raise production costs and lead to a loss of export or domestic sales in a particular industry, this will be taken into account in calculating the impact of the proposed regulation on that industry and factored into the cost-benefit analysis for that regulation.
- quantifying and valuing costs and benefits, expressing them in monetary terms wherever possible, or, if not, using qualitative indices and comparing relevant measurements with and without the regulation. The analysis should explain underlying assumptions and provide all information necessary to ensure transparent policy-making and a constructive public debate.

The Cabinet Office Guide to Regulatory Impact Assessment specifically invites to factor in implementation costs (otherwise termed “red-tape costs” or “burden of the regulation”), as costs associated with new regulations that cannot be directly attributed to the policy goal. Such costs include among others legal and other consultancy fees associated with understanding the requirements of the regulations; training staff costs; paperwork costs; inspection and licence fees; purchases of necessary new equipment.

One of the principles that underlie policy-making in general and the RIA in particular is that the government should not intervene in private sector market unless the resulting costs and benefits represent an efficient use of national resources. Regulators are invited to consider alternative options that limit or avoid altogether regulatory intervention, such as relying on consumer choice, competition and innovation; improving advice or information; using economic instruments (user charges, taxes or tax concessions); encouraging self-regulation by industry; simplifying or sun-setting existing regulation.

The effects of proposed regulation on trade and investment are also assessed from the more formal point of view of their compliance with EU and WTO rules in the process of scrutinising the legal quality of the draft regulation. Moreover, in the context of interdepartmental co-ordination, any regulatory proposal with a significant impact on trade and investment will be scrutinised by the Treasury and the Department for Trade and Industry. This scrutiny takes place not only during the elaboration of the draft regulation by the relevant department, but also at a much earlier stage, when the department just considers whether or not to prepare regulation on a given issue. Information on forthcoming regulation is regularly shared among government departments so as to enable Ministers to review the coherence of the overall regulatory framework (the “early warning system”, co-ordinated by the Cabinet Office). In this context an initial consideration of the possible trade and investment impacts of a proposal and of the necessary trade-offs between policy objectives will be made at the political level. In addition, the monthly information-sharing and forward-planning discussions in the Trade Policy Group, bringing together officials from DTI and other departments on trade policy related issues, will allow an early scrutiny of future proposals at the

administrative level. Disputes among departments on the appropriateness of a regulatory proposal will be arbitrated by the Cabinet Office.

The devolution of powers<sup>9</sup> that has taken place in 1998 has not affected the responsibilities of the Government and the Parliament of the United Kingdom with respect to international relations and relations with the European Union, including the regulation of international trade: these matters remain centralised. However, responsibility for observing and implementing UK international and EU obligations which concern devolved matters rests with the devolved administrations. Arrangements between the regional assemblies and the UK government on the handling of these issues are set out in the Concordat on International Relations and the Concordat on Co-ordination of European Policy Issues. Co-operation in particular areas is governed by concordats between the devolved administrations and the relevant UK government departments, such as the Concordat with Treasury and the DTI on Public Procurement and Related International Obligations. UK Ministers have the power to intervene in order to ensure that UK international and EU commitments are given effect and to impede actions which would be incompatible with these commitments. The devolved administrations are directly accountable to the domestic courts for shortcomings in their implementation or application of EC law and bear the responsibility for any penalties, damages or costs imposed on the UK as a result of any failure to implement UK international commitments.

The devolved administrations participate in the intra-governmental discussions about the formulation of UK positions on all EU and international issues which touch on devolved matters, especially where implementing action by them may be required. Disputes between the UK and devolved administrations on international issues are normally resolved by consultations between the responsible officials, or else reported to the First Minister and the Secretary of State for Foreign and Commonwealth Affairs who will seek to resolve the issue within the framework of the Joint Ministerial Committee

### 2.3.2 *Reducing administrative burdens on businesses*

The establishment of a commercial enterprise in the United Kingdom is completely free, and carrying out the administrative formalities for setting up a company takes less than three days. Since 1979, when foreign exchange controls were abolished, no prior authorisation is needed to invest in the UK. The regulatory burden for business start-ups and direct investment in such ventures is among the lightest in the OECD area. Nonetheless, business associations in the UK do express concerns about regulatory burden with respect to tax and employment regulations. But although firms in the UK benefit from one of the most favourable regulatory environments in the world, entrepreneurial activity as measured by business start-ups and direct investment in such ventures is only around half that in the USA. The UK government has introduced a series of tax breaks and other measures to encourage entrepreneurs and reward risk-taking. These measures are essentially aimed at small firms, and concerns have been expressed that they may act as a disincentive for small firms to expand beyond the positive discrimination threshold.

The UK government puts particular emphasis on reducing administrative burdens on small businesses. This emphasis is reflected in the “Think Small First” strategy of the government, published by the Small Business Service in January 2001, and inviting all parts of government to “*provide the most appropriate support required by (...) small businesses, so that they can compete effectively and meet the challenges of a global economy*”. One of the three pillars of the strategy is the regulatory framework for business, which should be kept as simple as possible. The Small Business Service, an agency of the DTI,

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9. In 1998 a constitutional reform provided for the decentralisation of powers to regional assemblies in Scotland, Northern Ireland, Wales and the Greater London area. Regulatory and executive powers for most aspects of domestic economic and social policy were thus transferred to these assemblies (and also legislative responsibilities for these issues in the case of Scotland). On the issue of devolution, see Chapter 2.

provides information and advice to small firms and runs telephone helplines, as well as providing support on Internet.

**Box 3. Promoting competitiveness through the improvement of the business environment. Simplification initiatives in the European Union<sup>10</sup>.**

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

SLIM, which was launched in 1996, consists of an *ex post* regulatory impact assessment and consolidation mechanism. Small teams, composed of Member State officials and of users of the legislation, review Community legislation in particular sectors with a view to identifying concrete suggestions for simplification. These suggestions, which are not binding, may then be used as a basis for amendments proposed by the Commission to the Council. The focus is on provisions that give rise to excessive implementation costs and administrative burdens, diverging interpretations and national application measures and difficulties in application. Areas for review may be proposed by regulators or business associations, who should indicate what are the problems to be addressed and the benefits anticipated from simplification. Reviewed legislation is usually at least 5 years old in order to allow its strengths and weaknesses to be properly identified.

Since 1996, SLIM reviews have taken place in 14 sectors, including ornamental plants, classification of dangerous substances, pre-packaging, construction products, fertilisers, electromagnetic compatibility, banking, insurance and company law, recognition of diplomas, social security rules, VAT, internal trade statistics and nomenclature for external trade. The Commission has proposed amended legislation on six of these and three have been adopted by the Council and the Parliament. Proposals on the remaining sectors are underway. The effectiveness of the project has recently been reviewed by the Commission, which highlighted the importance of an appropriate follow up by EU institutions of the concrete suggestions put forward by the SLIM teams. Indeed, SLIM recommendations are formulated on average within six months but the process afterwards is quite protracted. As regulatory costs and red tape related to national and regional regulation, were estimated at 3-5 % of the EU GDP, some SLIM teams

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10. See European Commission "Communication from the Commission to the European Parliament and the Council. Review of SLIM: *Simpler Legislation for the Internal Market*" COM(2000)104 final; European Commission "Communication from the Commission to the European Parliament and the Council. *The Strategy for Europe's Internal Market*" COM(1999)464; European Commission "Action Plan to Promote Entrepreneurship and Competitiveness" COM(1998)550 final; European Communities "Report of the Business Environment Simplification Task Force", Vol.I and II, 1998; European Commission "Communication from the Commission to the European Parliament and the Council. *The Business Test Panel. A Pilot Project*", 1998

have tried to incorporate parallel reviews of national implementation of the reviewed Community legislation. However, these attempts were too ambitious for the means and resources of the teams to ever be successful. It was thus proposed to complement SLIM reviews with co-ordinated parallel exercises in the Member States.

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

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

During the trial phase Business Test Panels were convened to assess proposals on VAT fiscal representation, Accounting and Waste from Electrical and Electronic Equipment. They allowed consulting from 1067 to 1744 businesses around Europe. The response ratio to the questionnaire was from 35% to 43%. After each consultation a report was issued explaining the opinions of respondents and the steps the Commission envisages in view of these opinions. After two consultations on less contentious matters, the Panel on Electrical and Electronic Waste showed that 77% of the affected businesses found the proposal to be an administrative burden and around half of them that it would require additional investments. The Commission will take into account these concerns when finalising its proposal.

#### 2.3.4 *The example of customs procedures*

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

HM Customs and Excise, which is the British regulatory authority with respect to customs, have taken measures to simplify customs procedures in the framework of the European rules set in the EU Common Customs Code. These include the establishment of simplified and harmonised procedures, such as the Single Administrative Documents, the Simplified Declaration Procedure and the Local Clearance

Procedure. For example, the Customs Freight Simplified Procedures (CFSP) enable the traders to obtain immediate release of the goods by filing only a minimum of information to Customs at the frontier and submitting the bulk of fiscal and statistical information electronically at a later stage. These reforms lead to shorten the procedural time and reduce demurrage expenses in the private sector.

Efforts to reduce the trade operators' burden are also based on the computerisation of the procedures and the use of information and communication technologies. A customs electronic data interchange (EDI) system was developed, known as CHIEF (Customs Handling of Import and Export Freight). This went live for exports in 1992 followed by imports in 1994. CHIEF enables trade operators to make and file applications and declarations to Customs and to receive their decisions and permissions electronically. The current system contains some constraints. For example, the system requires use of another computer system maintained by Community Systems Providers<sup>11</sup> "as a matter of Customs policy", and traders operating in a region where such a system does not exist do not have access to CHIEF. Moreover, while 98% of import declarations are currently lodged electronically, this is the case for only 20% of export declarations. A number of new developments are currently underway in this field. Following the "Modernising Government" White Paper<sup>12</sup>, HM Customs and Excise endeavours to ensure by 2005 that 100% of the customs services are offered electronically, wherever possible through a common Government portal, and a take-up rate for these services of at least 50%. One corresponding measure is a change in communication routes to CHIEF. Through this modification, all traders regardless of their location will be able to send import declarations directly to the Customs' CHIEF system over the Internet.<sup>13</sup> A New Export System is also being developed in close consultation with various stakeholders. There is however some reluctance and concern in certain trade bodies.

Currently no "Single Window" is available with respect to various official border procedures, by means of either electronic declaration or paper-based declaration. Such a Single Window would enable trade operators to submit all information at once to one account, regardless of regulatory purpose or concerned government department (such as Customs, DTI, or the Department of Environment, Food and Rural Affairs -DEFRA). It could thus reduce compliance costs by the possible elimination of duplicate information requirements, and through saving time and resources in lodging documents to several different government bodies. A Single Window project was launched in 2000 and it is envisaged that certain Single Window services, including in relation to customs border procedures will be up and running by 2003. At the same time, a Single European Authorisations (SEA) project is ongoing at the European level, to allow businesses to declare and pay their customs duties in the one authorising member state and as a consequence permits information sharing by different EU Member States' customs services. UK Customs and Excise has participated in the SEA project and currently runs a pilot program with voluntary business participation, on which no significant obstacles have been reported to date. Additional pilot schemes will be launched shortly.

The HM Customs and Excise Charter<sup>14</sup> sets out the standards of service to be expected from HM Customs and Excise staff, and provides a list of contacts for further enquiries, which substantially increases transparency and predictability. Details of service standards include, for example, the expected procedural times for cargo release: within 4 hours for electronically submitted declaration; within 12 working hours

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11. Community Systems Providers are: Cargo Community System; Community Network Services; DHL Worldwide Express; Dover Harbour Board; and Maritime Cargo Processing. These systems are called the Direct Trader Input (DTI) systems.

12. [www.cabinet-office.gov.uk/moderngov/whpaper/](http://www.cabinet-office.gov.uk/moderngov/whpaper/)

13. In reality messages will be sent to the Customs CHIEF mechanism through a common government gateway.

14. [www.hmce.gov.uk/general/search/index.htm](http://www.hmce.gov.uk/general/search/index.htm)

for manually filed declaration or those selected for documentation verification; and within 24 working hours for declarations selected for documentation and physical examination

The United Kingdom has not acceded to the World Customs Organisation (WCO)'s revised Kyoto Convention<sup>15</sup>, but, along with its EU partners, is working towards simultaneous EU ratification as soon as all internal legal and parliamentary procedures are completed in the Member States. However, along with other EU customs authorities, HM Customs and Excise have implemented trade facilitation measures provided by this international convention, such as pre-arrival import declarations. The UK has also been working in the G7 on measures to standardise and harmonise customs controls including in particular a common dataset specifying what electronic information is needed for the customs clearance of goods. This will enable for most non-controlled or restricted goods the same information to be provided for export as for import. It will also enable quicker than current systems and provide end-to-end auditability. UK Customs are currently prototyping the dataset. These measures, taken together, have significantly improved transparency in customs regulations and operations, and accelerated customs clearance, without compromising regulatory objectives, such as revenue collection. The international trading business community has strongly voiced its hope to see advanced countries in this field, such as the UK, taking a leading role in tackling remaining obstacles and acceding to the revised Convention as soon as possible.

#### **2.4 Measures to encourage use of internationally harmonised measures**

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

The United Kingdom has a century long tradition of standardisation activities, principally led by industry. The current British policy with respect to technical regulations and standards, shaped to a large extent by British membership in the European Union, follows this tradition. It entails not only a limitation

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

16. In accordance with established terminology in the WTO TBT Agreement, mandatory technical specifications are referred to as “technical regulations”, while voluntary technical specifications are referred to as “standards”.

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



of government intervention wherever possible to the setting of essential requirements, leaving technical details to be worked out by means of standardisation, testing and certification by and for industry (see Box 4), but also a clear commitment towards European and international harmonisation. General responsibility for standardisation and conformity assessment policy in the UK lies with the Department of Trade and Industry. DTI is also responsible for ensuring the respect of UK obligations under the TBT Agreement.

As a basic principle, European standardisation follows subsidiarity with respect to global standards, based on the assumption that conformity of European standards to global standards is likely to facilitate access of European products to world markets. Apart from the standardisation work mandated by the Commission (see Box 4), most standards are prepared at the request of industry. On the one hand, a growing number of European and national standards are in fact transpositions of international standards produced by ISO, IEC and ITU; on the other hand, various initiatives have been developed at the European level to promote transparency and co-operation at the international level:

- the standardisation process is undertaken in close co-operation with all parties involved, such as the Member States (through the membership of all European Union national standardisation bodies), industry and consumers (through the representation of industry, consumers, and trade unions associations on the technical committees and working parties responsible for the preparation of the standards) and trading partners (through the association with EFTA and other countries and the co-operation agreements described below); the standards produced are available by means of paper and electronic publications of the standardisation bodies.
- the numbering of European standards clearly indicates the relationship with international standards, for instance, whenever a CEN standard is a transposition of an ISO standard it will be referenced by the same number by simply adding the EN prefix in front of the ISO prefix (f.i. EN-ISO 5079 on textile fibres); the same applies for national references (f.i. ELOT-EN-ISO 5079).
- co-operation agreements have been signed between ISO and CEN (Vienna Agreement) and between IEC and CENELEC (Dresden Agreement) to secure the highest possible degree of approximation between European and international standards and avoid duplication of work. A similar agreement is being prepared by ETSI and ITU to take into account the specificities of telecommunications.
- furthermore, the European Union is a party to the UN-ECE 1958 Agreement on Automotive Standards. This agreement provides a basis for the technical approval of motor vehicle equipment and parts. It has been supplemented by additional regulations developed by the UN-ECE Working Party on the Construction of Vehicles. UN-ECE regulations have played a major role in the harmonisation process of regulations within the European Union. 35 of them have been recognised equivalent to EU directives that specify technical requirements for the type approval of motor vehicles.

#### **Box 4. Harmonisation in the European Union<sup>18</sup>**

##### **The New Approach and the Global Approach**

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

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

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

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

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

20. Energy-efficiency, labelling, environment, noise

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

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

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

The national standards body, British Standards Institution (BSI), is the world’s oldest national standards body, celebrating its centenary in 2001. It was founded in January 1901 by five British professional associations as an independent private body under the name of Engineering Standards Committee in order to undertake the standardisation of engineering materials. In recognition of the public interest in standardisation it received financial support from the government since 1902 and was granted a

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

Royal Charter in 1929. BSI operations are based on some 3000 technical committees and subcommittees, bringing together manufacturers, users, research organisations, government departments and consumers. The standardisation activity is financed mainly by the subscriptions of its members and the sales of standards, with the British government providing direct financial support (9% of the BSI budget) and assistance to the entities involved in the standards preparation work. BSI relationship with the government is subject to a Memorandum of Understanding agreed by both parties. The standardisation activity is 'ring-fenced' from the other commercial businesses of testing, quality control certification services and inspection.

BSI elaborates standards of interest to industry and business, oversees the implementation of management systems, tests products against applicable specifications and certifies their conformity, and provides a range of related support services. Its activities are clearly geared towards the adoption of standards harmonised at the European and international level and it is an active member of the International Standardisation Organisation (ISO) and the International Electrotechnical Commission (IEC), in close co-operation with the British Electrotechnical Committee. In 1999, 69% of ISO standards and 82% of IEC standards were adopted as British standards across all sectors, while all CEN and CENELEC standards are adopted as a matter of course. BSI is a signatory to the WTO TBT Code of Good Practice for the preparation, adoption and application of standards and is thus committed to operate according to the principles set therein.

The number of purely national standards has steadily declined over the years as the scope for European harmonisation has increased and limited the need for national standards. When BSI adopts European standards as national standards it withdraws all conflicting national standards. However, purely national standardisation activities still take place in areas where harmonised standards are not (or not yet) available, such as construction materials, services standards, information technology products, traceability of food products or the three-pin plug. Moreover, BSI may decide not to adopt an international standard as a British standard if there is no interest from the industry in the matter covered by the standard. Specifications initially elaborated in BSI that might be of interest to the international community are put forward for consideration to ISO or CEN working groups, depending on progress opportunities. Perhaps the most famous example of BSI work that found its way to the international stage is standard BS 5750 on customer satisfaction and complaints management that widely contributed in shaping the ISO 9000 quality standards. On the other hand, in the area of technical regulations a decision not to conform to an internationally harmonised measure will primarily be based on human, animal or plant health and safety reasons.

BSI, along with many other organisations and companies, is also very active in the area of quality control, testing and certification. It works closely with DTI to promote quality control, certification and testing as a means for enhancing industrial competitiveness, in particular for SMEs. In the area of products BSI performs testing to assess conformity to regulatory requirements of British government departments, regulatory bodies and trade associations, as well as to specific requests and needs of private enterprises (customer requirements). It has concluded reciprocal agreements on the acceptance of its test reports with testing and certification entities in all EU Member States, Japan, the USA, Australia, New Zealand, China, Russia and South Africa. In addition to the CE marking it has developed its own certification scheme, known as the Kitemark, which is among the most reputed product quality marks in the world. In the area of management systems it awards certificates of conformity to industry-respected practices with regard to internal quality (ISO 9000), environmental impact (ISO 14001), security of company and customer information (BS 7799) and occupational health and safety (OHSAS 18001). It is estimated that approximately 60000 quality certificates have already been awarded.

## 2.5 *Recognition of equivalence of other countries' regulatory measures*

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

### 2.5.1 *Intergovernmental initiatives*

Within the European Union the principle of mutual recognition applies among Member States (see above, Box 3). This means that all products lawfully produced or marketed in one Member State must be accepted by the others even when they have been manufactured in accordance with technical regulations differing from the domestic ones<sup>22</sup>. The principle of mutual recognition has helped build progressively a Single Market for European products, even though the European Commission considers that much remains to be done and has developed mechanisms to better monitor and enhance the application of the principle<sup>23</sup>.

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

Each MRA includes a general framework agreement and a series of sectoral annexes. The framework agreement specifies the conditions under which each party accepts the results (studies and data, certificates and marks of conformity) of conformity assessment issued by the other party's conformity assessment bodies, in accordance with the rules and regulations of the importing party. These rules and regulations are specified on a sector-specific basis in the sectoral annexes. A certification by a conformity assessment body in the exporting country that a product covered by a MRA is in conformity to the rules and regulations of the importing party has to be accepted as equivalent by the importing party. This is particularly beneficial to small-and-medium sized enterprises that will be able to use less costly local testing facilities for the examination and certification of products for export. On the basis of negotiating

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

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

directives issued by the Council in 1992 the European Commission has signed agreements on the mutual recognition of conformity assessment with the United States<sup>24</sup>, Canada<sup>25</sup>, Australia and New Zealand<sup>26</sup>, Israel<sup>27</sup> and Japan<sup>28</sup>. By June 2000, the European Commission had also completed negotiations with Switzerland and undertaken negotiations with central and eastern European countries.

**Table 1. Mutual Recognition Agreements concluded or under negotiation by the E.U.**

	Mutual Recognition Agreements							PECAs <sup>d</sup>			
	Australia	New Zealand	United States	Canada	Israel	Japan	Switzerland	Czech Republic	Hungary	Estonia	Latvia
Construction plant & equipm.							✓				N
Chemical GLP <sup>a</sup>			N	N							
Pharmaceutical GMP <sup>b</sup>	✓	✓	✓	✓		N	✓			N	N
Pharmaceutical GLP <sup>a</sup>					✓		✓			N	N
Medical devices	✓	✓	✓	✓		N	✓		N		
Veterinary medicinal products			N								
Low voltage electrical equipm.	✓	✓	✓	✓			✓	N	N	N	N
Electromagnetic compatibility	✓	✓	✓	✓		N	✓	N	N	N	N
Telecom terminal equipment	✓	✓	✓	✓		N	✓			N	
Pressure equipment	✓N <sup>c</sup>	✓N <sup>c</sup>				N	✓	N			
Equipment & systems used in explosive atmosphere							✓	N			
Fasteners			N								
Gas appliances & boilers							✓	N			
Machinery	✓	✓				N	✓	N	N	N	N
Measuring instruments							✓				
Aircraft	N	N									
Agricultural & forestry tractors							✓				
Motor vehicles	✓						✓				
Personal protective equipment							✓	N	N		
Recreational craft			✓	✓							
Toys							✓				
Foodstuffs										N	N

✓ Concluded. N Under Negotiation.

a Good Laboratory Practices.

b Good Manufacturing Practices.

c The Agreement covers simple pressure equipment. Extension to other pressure equipment is considered.

d Protocols on European Conformity Assessments. In February 1997 the European Commission signed an agreement with Poland regarding preparatory steps on conformity assessment, precursor for a real PECA.

Source: European Commission.

### 2.5.2 Accreditation mechanisms

Accreditation is a procedure whereby an authoritative body gives formal recognition that a body or person is competent to carry out specific tasks<sup>29</sup>. Accreditation mechanisms are used to assess and to

24. Entered into force on 1/12/98

25. Entered into force on 1/11/98

26. Entered into force on 1/1/99

27. Entered into force on 1/5/00

28. Formal ratification by the EU Council of Ministers and the Japanese Parliament pending as of June 2001

29. ISO/IEC Guide 2, EN45020

audit at regular intervals laboratories, certification and inspection bodies by a third party as to their technical competence against published criteria. They provide confidence on the competence of conformity assessment bodies, which is essential for the success of mutual recognition. In that sense, international co-operation on accreditation is seen as an important supporting measure to promote recognition of equivalence in regulatory systems.

British, as well as foreign conformity assessment and certification bodies can be accredited by the United Kingdom Accreditation Service (UKAS), although such accreditation is not mandatory. UKAS, a private non-profit distributing company, is recognised by the UK government as the only national body responsible for assessing and accrediting testing, certification and conformity assessment bodies and also for negotiating private sector-led mutual recognition agreements with other national accreditation bodies, in co-ordination with DTI. This means that foreign conformity assessment and certification bodies also have the possibility, instead of being accredited by UKAS, to be recognised on the basis of their accreditation by a foreign accreditation body with which UKAS has a mutual recognition agreement. These agreements can be either bilateral or concluded in the framework of international fora such as the European Co-operation for Accreditation (EA)<sup>30</sup>, the International Accreditation Forum (IAF)<sup>31</sup>, or the International Laboratory Accreditation Co-operation (ILAC)<sup>32</sup>. UKAS is a member to all of these fora. UKAS also acts as an advisor to the government with respect to the negotiation of the intergovernmental mutual recognition agreements described above. UKAS relationship with the government is subject to a Memorandum of Understanding agreed by both parties.

## 2.6 *Application of competition principles from an international perspective*

The benefits of market access may be reduced by regulatory action condoning anti-competitive behaviour or by failure to correct anti-competitive private actions that have the same effect. It is therefore important that regulatory institutions make it possible for both domestic and foreign firms affected by anti-competitive practices to present their positions effectively. The existence of procedures for hearing and deciding complaints about regulatory or private actions that impair market access and effective competition by foreign firms, the nature of the institutions that hear such complaints, and adherence to deadlines (if they exist) are thus key issues from an international market openness perspective. These issues will be the focus in this sub-section, while a more detailed discussion of the application of competition principles in the context of regulatory reform can be found in Chapter 3.

The regulatory framework for competition policy in the UK is defined by the 1973 Fair Trading Act and the 1998 Competition Act, which reshaped the domestic system adopting the EC's "prohibition" approach to applying competition rules. The national competition enforcement authority is the Office of Fair Trading (OFT), headed by the Director General for Fair Trading (DGFT). The DGFT, assisted by the OFT, initiates investigations *ex officio*, or following a complaint, of the compliance with competition provisions on mergers, monopolies, anti-competitive agreements and abuses of dominance, takes the relevant decisions and imposes penalties. Competencies with respect to competition issues in the

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30. The European Co-operation for Accreditation is an association of nationally recognised accreditation bodies of the Member countries of the EU and EFTA. It aims at promoting the conclusion of mutual recognition agreements among its members, so as to maintain the equivalence of competence of such bodies and ensure that products "*tested or certified once are accepted everywhere*".

31. The International Accreditation Forum is a group of accreditation bodies from various countries, including Australia, Canada, Japan, Mexico, the UK, New Zealand and the United States.

32. The International Laboratory Accreditation Co-operation is an international co-operation between the various laboratory accreditation schemes operated throughout the world and aims, *inter alia*, at the conclusion of mutual recognition agreements between members on the basis of the ISO/IEC 17025 on laboratory accreditation.

telecommunications, gas and electricity, water and rail sectors are shared with sectoral regulators in these areas (OFTEL, OFGEM, etc., see below Section 3). In addition to the DGFT and the OFT, the Competition Commission is an independent public body which carries out investigations into matters referred to it concerning monopolies, mergers and the economic regulation of utility companies, while the Appeals Tribunals of the Competition Commission hear appeals from decisions by the DGFT and sectoral regulators applying the Competition Act. Final decisions about monopolies and mergers are taken by the Secretary of State for Trade and Industry.

The DGFT has jurisdiction over anti-competitive behaviour that affects or may affect trade within the country, even if it concerns agreements, mergers or collusive practices of firms taking place outside the UK or if it relates to firms that have no establishment in the UK, as long as the agreements are implemented in the UK. On the other hand, there are no provisions in the law to redress anti-competitive behaviour in the UK that impairs competition in other markets outside the UK, unless such behaviour has an effect on British trade too. Agreements, mergers, collusive practices or abuse of dominance that do not affect trade within the UK but which have an impact on trade between EU Members will be a matter for the European Commission.

Firms wishing to advance complaints against alleged anti-competitive behaviour can either informally voice their concerns, or register formally a complaint with the DGFT or the relevant sectoral regulator. The 1998 Act has strengthened the powers of investigation of the DGFT. The procedures apply equally to foreign and domestic firms and provide for effective means of presenting positions and responding to charges. Recently the Secretary of State for Trade and Industry decided to prohibit Interbrew's acquisition of Bass Brewers on the basis of the recommendation of the Competition Commission under the 1973 Act. Following an application for judicial review by Interbrew, the High Court announced that the decision should be quashed as the Competition Commission had not given Interbrew an opportunity to respond to their concerns about the efficacy of a possible alternative remedy. The court ordered the Secretary of State to reconsider his decision. Decisions applying the Competition Act by the DGFT or the sectoral regulators can be appealed to the Appeals Tribunals of the Competition Commission. Further recourse is possible against the decision of the Appeals Tribunals to the Court of Appeal on points of law or on the amount of imposed penalties. Private parties can also seek injunctive relief and damages from the courts.

### **3. ASSESSING RESULTS IN SELECTED SECTORS**

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

#### **3.1 *Telecommunications services***

The UK was one of the first countries to liberalise its telecommunications services sector, allowing competition with respect to value-added services since 1981. The previously state-owned monopoly, British Telecom (BT), was privatised in two stages in 1984 and 1991. The UK has also been a leader in allowing cable companies to supply both television and telephony services. The network itself is entirely in private hands and more than 100 licences have been awarded. The UK has one of the highest



numbers of Internet users per head of population outside the USA and the Nordic region and also hosts some 50% of call centres in the EU. Since BT was privatised and the sector was opened to competition, overall charges are estimated to have fallen by around half in real terms (more precisely by 4.8% for national calls and by 36% for international calls over the period 1999-2000), while service quality has improved. Telecommunications services are a large source of employment, providing more than 200 000 jobs and 2% of GDP. It is estimated that by 2003, the annual turnover of the telecommunications sector should reach £31.5 billion, a 41.3% increase compared to 1999. During the 1999-2003 period, fixed-line connections are expected to pass from 38% to 33% of the total market, while the part of mobile phone subscriptions should increase from 25.8% to 33.1%.

The two principal operators for fixed lines telephony are BT (88% of the market), and Cable and Wireless Communications (CWC, a merger of Mercury Communications, NYNEX Cablecomms, Bell Cablemedia and Videotron, servicing mainly professional clients and covering 9% of the market). Several foreign operators, including AT&T, MCI, ACC, Telia and Telstra, are also present in the market but hold very small parts of the market, sharing the remaining 3%. On the other hand there has been a significant entry of foreign operators in the mobile segment of the market. By the end of 1999, there were 24 millions mobile phone subscriptions in the UK, representing an annual growth rate of 85%. The market is shared between Vodafone (around 33% of the market in January 2000), BT Cellnet, owned by BT (29 %), Orange, owned by France Telecom (21%) and One2One, owned by Deutsche Telecom (17%). 5 UMTS licences have been awarded in 2000 to the above mobile phone operators and to TIW UMTS UK. The DTI and the Radiocommunications Agency (RA) had organised several public consultations as early as summer 1997, in order to well understand the stakes in UMTS markets and to define the timetable, criteria and conditions for granting the licences, as well as the modalities of transition from the GSM to the UMTS. It was decided to award the licences principally on the basis of the financial reliability of the bidders.

The regulatory framework is defined by the 1984 Telecommunications Act, which suppressed the exclusive right of BT to exploit the telecommunications networks. An independent regulator, the Office of Telecommunications (OFTEL) regulates the sector, except that issuing the licences to operate is the responsibility of the DTI, and the radioelectric spectrum is regulated by the RA, a body depending from the DTI. OFTEL is generally regarded as an independent and efficient regulatory authority, although there have been some complaints by new entrants that OFTEL takes too long to consider their requests for access to the existing network and infrastructure for cellular telephony and that the access modalities it proposes are discriminatory<sup>33</sup>. OFTEL powers in the competition field are concurrent with those of the Office for Fair Trading (OFT) and its decisions under the 1998 Competition Act are subject to appeal to the Competition Commission. Foreign service providers' access to telecommunications services is on an MFN and national treatment basis, as trade in this sector is regulated by the WTO Agreement on Basic Telecommunications of April 1997, under which the European Union did not ask for any exceptions.

### **3.2 *Telecommunications equipment***

Regulations relating to telecommunications equipment have been mainly driven by the harmonisation process at the EU level. The main framework has been set with two "New Approach" Directives, Directive 98/13/EC on telecommunication terminal and satellite earth station equipment superseded by Directive 99/5/EC on radio and telecommunication terminal equipment. Standards to meet the Directives requirements are currently being developed by the European Telecommunications Standardisation Institute (ETSI). By June 2001, 67 out of 74 standards had been published in support of Directive 98/13, with another 2 finalised and under approval, and 110 out of 160 standards had been

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33. According to the US Foreign Trade Barriers report for 2001, delays by BT in providing collocation in the most desirable exchanges has caused some competitors to withdraw from the market. Non-discriminatory "cageless" collocation is still not available in the UK and BT has yet to allow line-sharing.

published in support of Directive 99/5, with another 28 finalised and under approval. Industry and others participate in the development of these standards and the British Standards Institution (BSI) is responsible for transposing European standards into British standards.

In accordance with EC provisions, all terminal equipment connected to the British telecommunications network must meet the essential requirements set by the EC Directives. The placing of the product to the market is no longer subject to type approval. The manufacturer can draw up a declaration of conformity either on the basis of harmonised standards, or, where such standards are not available, through the provision of technical documentation demonstrating the conformity of his product to the requirements. On the other hand, a number of MRAs with non-EU countries, which also apply to telecommunications equipment, allow under certain conditions for the acceptance of results of conformity assessment performed in Australia, New Zealand, the United States, Canada and Switzerland.

### **3.3 *Automobiles and components***

Concerns about market openness and domestic regulation of automotive industries around the world are not new. Due to the historic dynamism of global economic activity in the sector and traditionally interventionist policies of some governments aimed at protecting domestic automotive industries, trade tensions related to domestic regulatory issues in general, and to standards and certification procedures in particular, have long figured on bilateral and regional trade agendas. This reflects the fact that automobiles remain among the most highly regulated products in the world, primarily for reasons relating to safety, energy conservation and the environment. Divergent national approaches to the achievement of legitimate domestic objectives in these key policy areas are therefore likely to remain a significant source of trade tensions as global demand for automobiles continues to rise.

The United Kingdom is the fourth largest car manufacturer in Europe after Germany, France and Spain, with a production of more than 1.6 million units in 2000. Its share in EU car production rose from under 8.5% in 1986 to 12.2% in 1998. The UK has a broad vehicle manufacturing base with over 40 producers of cars, vans, trucks and buses, the majority of which are under foreign ownership. The UK is in particular an important engineering and production centre for motor sport cars, components and technology. The eight major car manufacturers are Ford (including Jaguar and Land Rover), GM, MG Rover, Peugeot, BMW, Nissan, Honda and Toyota. The most important component manufacturers are international groups such as TRW, GKN, T&N, TI Group and Unipart. The subcontractor market is largely dominated by British SMEs. The UK vehicle and component manufacturing sector has an estimated annual turnover of over £40 billion -nearly 5.5% of GDP- of which approximately £4.8 bn for motor sport engineering and services.

In line with the globalisation of the sector world-wide, international trade and investment play a major role in the British automobile sector. In terms of units produced, more than two-thirds of total UK car production is exported (64.6% in the year 2000), which represents a fivefold increase since 1986. In 1998 car exports represented more than 11.3% per cent of total UK exports. On the other hand, the share of the UK market accounted for by imports has been steadily rising during the last decade. In 2000 71.7% of some 2.2 million cars sold in the UK market were imported. Corporate vehicles represent 75% of new registrations on average. It should be recalled that along with France, Italy, Spain and Portugal, the United Kingdom applied restrictions to Japanese imports in the 1980s. This policy was replaced by an arrangement concluded in July 1991 between the EU and Japan, which provided for the gradual opening of the European market, finally reached at the end of 1999. Foreign Direct Investment originates mainly from Japan, the USA and Germany.

Technical regulations applicable to the automobile sector in the UK have followed the process of harmonisation of regulations within the European Union. Since 1993, detailed technical requirements for motor vehicles have been set by EC Directives and commonly applied in all EU and EFTA Member States

(harmonisation in this sector thus follows the “Old Approach” of full harmonisation and not the New Approach defined above). As of June 2000, the UK had transposed 164 out of 165 Directives related to motor vehicles, against an average of 143 transposed directives for all Member States. The EU participates in the international harmonisation in the automotive sector developed by the Working Party on the Construction of Vehicles (usually referred to as WP29) of the United Nations Economic Commission for Europe (UN-ECE) (see Box 5). As a result, several UN-ECE regulations are deemed equivalent to relevant EC technical regulations. The scope for mutual recognition of foreign regulations on this basis has been expanded in July 1999 when the Council approved an agreement negotiated under the UN-ECE on the establishment of global technical regulations for wheeled vehicles, equipment and parts to be fitted on or used by them. This agreement allows the participation of new countries that were not parties to the 1958 agreement.

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

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

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

While harmonisation has enhanced openness of national markets, some obstacles to integration remain as shown by the persistence of a significant average price differential for automobiles across national markets. Car prices appear to be systematically higher in the UK. Differences in taxation, market strategies of producers, and exchange rates may partly explain these gaps, but they also largely reflect the persistence of regional market segmentation. This segmentation was made possible by the block exemption of the motor vehicle distribution and service agreements under Article 85 (3) of the EC Treaty, allowing car manufacturers and dealers to enter into exclusive territory and exclusive marketing rights distribution arrangements and which expires at the end of September 2002. The natural and less permeable border and right-hand driving specification in the United Kingdom has further allowed manufacturers and dealers to define prices for the British market without fearing outside competition. Moreover, recent studies have found that the lowest pre-tax prices in the European Union occur in the highest-tax countries, suggesting that cross-border subsidisation is taking place at the expense of consumers in the United Kingdom and in favour of consumers in countries like Denmark.

The long-standing evidence of higher prices prompted in 1999 the Competition Commission to inquire as to restrictive business practices in relation to the supply of new cars. It found evidence of collusive behaviour by independent manufacturers and importers. It has also argued that the presence of a sizeable company car market (around half of the market for new cars) where steep discounts were typically granted led to some cross-subsidisation from the retail to the fleet market. The Competition Commission concluded that prices paid by UK private customers were likely to be, on average, about 10% too high even after taking into account of discounts, trade-in allowances and financial benefits. Following the Commission's recommendations, the government issued an Order on the supply of new cars prohibiting, *inter alia*, price discrimination between fleet customers and retailers for the supply of similar volumes of cars, price-setting restrictions imposed on dealers, and agreements aimed at deterring imports. The system of selective and exclusive distribution at the core of the problem is currently being reconsidered by the European Commission.

### 3.4 *Electricity*

The UK electricity market system is based on the operation of the New Electricity Trading Arrangements (NETA). Introduced in March 2001, NETA replaced the previous Electricity Pool system for the trading of electricity between generators and suppliers of electricity in England and Wales. The Pool provided a mechanism for setting a single wholesale price and despatching plant to meet demand. Under NETA, bulk electricity is traded forward through bilateral trading between generators, suppliers, traders and customers. NETA allows participants to trade in the electricity market by establishing contracts. The contracts can be struck over long and short timescales e.g. from several years ahead to on the day markets.

The market is regulated by an independent regulatory authority, the Office of Gas and Electricity Markets (OFGEM). The Competition Commission, and to a lesser extent the Office of Fair Trading, may also play a role in this sector concerning competition issues. The government and in particular the DTI is responsible for setting the overall framework within which OFGEM must operate. However, within this framework, OFGEM has considerable discretion to act in the manner which it considers most likely to fulfil its statutory duties. The regulatory framework is defined by the 1986 Gas Act, the 1989 Electricity Act and the 2000 Utilities Act. This framework is fully in line with the Electricity Directive 96/92/EC. There are three separate and differently organised electricity markets: England and Wales, Scotland and Northern Ireland. The first two are fully liberalised since May 1999 and all consumers are free to choose their supplier. The market in Northern Ireland has been opened only to respect the minimum requirements of the Directive 96/92/EC (30.29% in 2000) and is regulated by a separate regulator.

The three largest generators in England and Wales are Innogy (11.5%), PowerGen (14.8%) and British Energy (17%), privatised in 1990 and 1997. In Scotland there are two fully vertically integrated electricity companies, Scottish Power and Scottish and Southern Energy, which are connected to the England and Wales network via one interconnector. Independent production has developed rapidly since the introduction of competition and none of the 35 generating companies active in the market has more than 17% of the total market share. 57% of the electricity market in England and Wales is made up of new entrant companies who were not active in the market prior to 1990 (such as the French EdF who has around 6% of the UK market share). Producers using renewable resources benefit from a price differential, which is then refunded to the distributors through a fossil fuel levy on electricity consumption. The construction of generation capacity is subject to an authorisation procedure by the DTI or the local planning authorities depending on the capacity, on the basis of well-publicised criteria. The decisions by DTI can be appealed to the courts and those of the local planning authorities to the Secretary of State.

The transmission system operator is the National Grid Company (NGC), a privately owned company. Transmission and distribution tariffs are both regulated by OFGEM. The distribution networks are owned and managed by Public Electricity Suppliers, who are also engaged in retail supply. In the

Scottish market, the licence granted to the two companies covers generation, transmission, distribution and supply. The Utilities Act will change this existing position so that distribution activities and supply activities will have to be done in separate licensed undertakings. Access to the transmission and distribution network can only be refused in certain clearly defined circumstances, such as for safety reasons. A number of public service obligations accompany the distribution and supply licences, including the obligation to supply, the continuity and quality of supply, service performance according to standards, environmentally efficient use of electricity, etc. Beyond these obligations there are no restrictions on electricity trade.

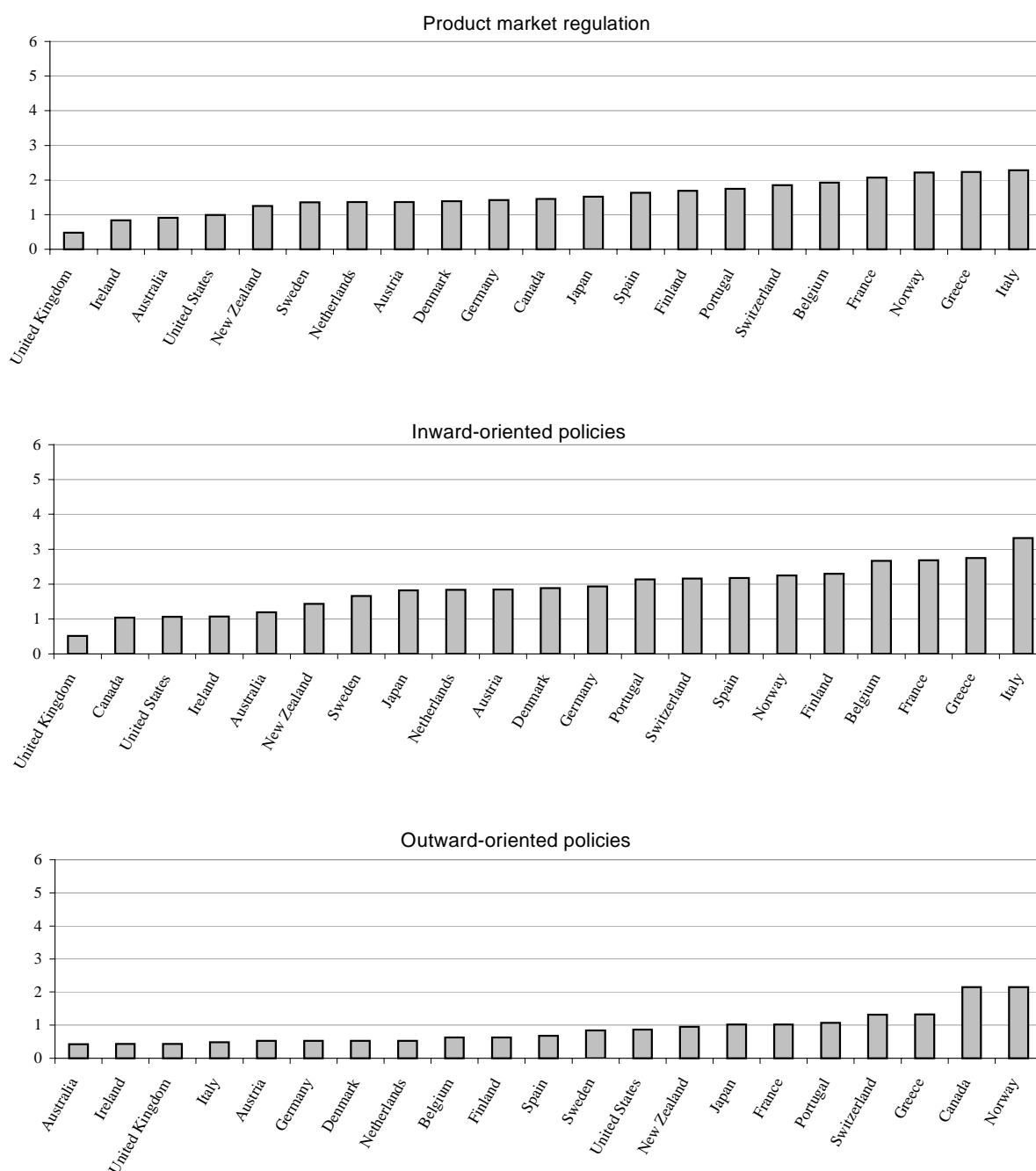
Trade in electricity between the UK and the European continent takes place exclusively through a submarine cable interconnector that has linked the UK and France since 1986, which has a total capacity of 1998 MW in either direction. The interconnector is owned jointly by NGC and the French Réseau de Transmission d'Electricité (RTE), which is part of EDF. Its operational costs are recovered through the fee paid for its use. Until March 2001, use of the interconnector was reserved under a management agreement exclusively to EDF exports into the UK. After the expiry of the agreement and following consultations with the European Commission, the owners opened up access to the interconnector without any reservation being made in favour of a particular company. The interconnectors capacity was partly allocated through tender for a three-year contract, and partly through yearly and daily auctions. This new regime was implemented since April 2001. Furthermore RTE engaged to ensure transit rights of third parties in France compatible with the transmission rights in the interconnector. NGC has launched, in agreement with the Norwegian grid operator Statnett, the development of an interconnector between the UK and Norway, which is expected to be completed by late 2005 or early 2006. It is also in the process of reviewing the feasibility of building additional interconnectors between the UK and the Netherlands, and between Wales and Ireland.

## **4. CONCLUSIONS AND POLICY OPTIONS FOR REFORM**

### **4.1 *General assessment of current strengths and weaknesses***

A review of the national regulatory system in the United Kingdom shows that domestic policies, just like trade policies have been effectively geared to enabling international competition in the British market while enhancing the international competitiveness of British firms. OECD indicators on product market regulations (Nicoletti et al., 1999), reflecting the relative friendliness of these regulations to market mechanisms, suggest that the overall regulatory intensity in the United Kingdom is the lowest in the OECD area. This reflects low barriers to trade and investment, the small number of state-owned enterprises left to privatise, the market-friendly way of regulating economic behaviour and low barriers to entrepreneurship.

**Table 2. Restrictiveness of overall regulatory approaches in OECD countries<sup>34</sup>**



Source: Nicoletti Giuseppe et al. (1999), reproduced from OECD Economics Department Working Papers n°226

34. *Product market regulation* indicators aim at measuring the likely influence of regulations on the choices and market opportunities of firms. They are the synthesis of indicators on *inward-oriented policies* and *outward-oriented policies*. Inward oriented policies refer to *State control* (public ownership and involvement to business operation) and *barriers to entrepreneurship* (regulatory and administrative opacity, administrative burdens on start-ups and barriers to competition). Outward-oriented policies refer to *explicit barriers to trade and investment* (ownership barriers, tariffs and discriminatory provisions) and *other barriers* (regulatory barriers). Indicators were built on the basis of a questionnaire filled in by Member country governments. The scale of indicators is 0-6 from least to most restrictive.

Although the six “efficient regulation” principles examined in this review are not all explicitly codified in British administrative and regulatory oversight procedures, they seem to be well observed within the domestic regulatory process. Available evidence suggests that all these principles are given ample expression in practice. Continued impetus behind pro-competitive reform in given sectors, the clear market orientation of regulatory impact assessment, and the increased reliance on input from domestic and foreign business communities all contribute to the steady, progressive enhancement of UK market openness. A business-driven approach to market-opening regulatory reform has allowed early identification of issues of material concern to industry and joint development of possible solutions to sectoral and crosscutting issues. At the same time, UK market openness might be further enhanced by streamlining the profusion of information sharing and consultation mechanisms and by taking a less literal and more performance oriented approach to the implementation of international obligations. Furthermore, as the six principles reflect fundamental tenets of the multilateral trading system, the continuing UK engagement to progress in multilateral liberalisation will further strengthen domestic efforts to achieve quality regulation.

In terms of transparency and overall regulatory coherence, the co-ordination of regulatory reform with efforts at the level of the devolved administrations is likely to become increasingly relevant from the perspective of international market openness. Enhancing market openness at one but not other levels, particularly in areas of overlapping jurisdiction, would risk mitigating the effectiveness of continued reform efforts. In accordance with WTO obligations, central governments must take “reasonable measures” to ensure compliance by regional and local governments with international obligations. However, nothing in the present relationship between the UK government and devolved administrations warrants any particular concerns about market openness or the respect of international obligations.

#### **4.2 Policy options for consideration**

This section identifies avenues for future action. The following recommendations are based on the assessment presented above and the policy recommendations set out in the 1997 OECD Report to Ministers on Regulatory Reform. Founded on international consensus on good regulatory practices and on concrete experiences in OECD countries, they are intended at fine-tuning a regulatory environment, which appears already well oriented towards market openness and adapted to the conditions of a global economy.

- *Continue to foster good regulatory practices already instituted in areas such as transparency and openness of decision-making. Streamline and improve the coherence of Internet-based information sources. Pursue efforts to ensure the interactivity of government web-sites.*
- *Heighten awareness of and encourage respect for the OECD efficient regulation principles in devolved regulatory activities affecting international trade and investment.* The decentralisation of regulatory and executive responsibilities should go hand-in-hand with an accrued sensitisation of concerned authorities to the UK international obligations, as already provided in the Memoranda of Understanding between these authorities and the UK government.
- *Continue to promote pro-competitive regulatory reform in the WTO context.* The pro-active role played by the UK in European fora and through them in the WTO usefully contributes to the consolidation world-wide of efficient and open markets for industry and consumers alike.
- *Encourage the continued involvement of the UK and international business communities in the domestic regulatory process.* Wider government-to-business partnering on regulatory issues holds strong potential for pragmatic, result-oriented reform attuned to evolving business realities.
- *Continue to encourage the use of international standards as a basis for national standards and to promote international harmonisation in the European and international fora.*