

Global business – rules that help and hinder

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MAY 2007



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The appendices can be found on the Confederation of Swedish Enterprise's website www.svensktnaringsliv.se

Foreword

Globalisation opens up fantastic business opportunities. World trade has trebled in the last thirty years. Hundreds of millions of people are beginning to demand goods and services in regions in which Swedish companies have excellent opportunities to do business. At the same time, competition is increasing and new companies – with lower costs and even better products – are challenging those that are already established.

Many Swedish companies have also been highly successful in internationalising. For example, according to the UN body UNCTAD's annual World Investment Report, Sweden has just over 4,200 multinational companies. This is more than the USA and Canada combined and an impressive figure in comparison to some 77,000 multinational companies that UNCTAD estimates exist globally.

However, companies often encounter problems associated with laws and regulations. The companies in the study have, to a large extent, overcome the difficulties and built up an international business but, with simpler rules, considerably more could have benefited considerably easier from the opportunities offered by globalisation.

There is great potential for a simplification of the rules where the Swedish Government, with a formulated strategy, is able to contribute to the development of the business community. Proposals are made in this report as to what can be done.

Practical advice for companies who want to exploit the global market is also required. We also set out proposals here as to what the Swedish State can do to assist companies.

The report has been drafted by lawyers Anders Stenlund, Anne Wigart, Eva Jarnvall, Karin Lundberg and Nicklas Skår. The company, Studentkraft, has assisted in conducting the interviews. Economists Göran Wikner, Hanna Widell Norström and Jonas Frycklund are responsible for the contents of appendix 1.

In conclusion, we would also like to thank those people in companies, public authorities and organisations who gave up their time for our interviews.

Stockholm, May 2007

Göran Norén

1. Introduction

The success of Swedish companies on the world market is obviously due to a number of different reasons, but the ability to deal with different business cultures and other legal systems and regulatory regimes is an important factor. In a more open world with tougher competition, this ability will be very important for more and more Swedish companies, including small and medium-sized companies. Therefore, it is important that those companies, as well as public authorities and politicians, are well aware of the barriers that can be faced in global business and how to deal with them.

Such awareness has been found among public authorities, organisations and companies but, thus far, an overall impression of the reality that companies faces on a global market has been lacking. There has also been no general discussion as to the measures that can be taken on a national level, within the EU and internationally. This report is an attempt to address these shortcomings.

The report is based on some 90 interviews with company representatives and representatives from public authorities and organisations. The company interviews consisted of both in-depth interviews with small and large companies and telephone interviews consisting mainly of yes or no questions. The result of the company interviews confirms the impression we had previously and corresponds to a large extent to the view of the problems raised by public authorities and organisations in our interviews with them.

We present in the report a selection of the challenges and problems that companies may face on different markets. The objective is to provide a view of the importance of regulatory systems for globalisation, not to deter companies from venturing out on the international markets. On the contrary, both from an overall Swedish social perspective and from the perspective of many individual companies, this is a desirable and necessary development. The companies participating in the study have also, to a large extent, overcome the difficulties and built up an international business. However, it is usually prudent to be well prepared for such ventures. Faced with the great opportunities offered by globalisation, companies that are well equipped and aware of the challenges will increase their possibilities of succeeding.

One of the conclusions drawn in the report is that the regulatory work carried out within the EU and in various other global bodies, which aims at harmonising regulatory regimes and simplifying procedures, is highly important in facilitating the entry into new markets, not least for small companies. Cooperation with the business community is central to such international regulatory work.

Another conclusion is that the Swedish institutions that, in various respects, give advice and support to companies can play an important role in facilitating companies' foreign ventures by providing sound basic information and by giving assistance and advice in dealing with problems when they arise. Companies are not always aware that this assistance is available.

2. Globalisation – enormous opportunities for Sweden

In the last few decades, globalisation has resulted in a substantial increase in international trade and cross-border investments. Not the least, technical breakthroughs have contributed to a dramatic reduction in transaction costs. As a result, an even greater part of the world is rapidly being integrated into the global economy. Countries that were characterised by poverty considerably less than a generation ago, are today in several areas serious competitors to the mature industrial nations. The force and speed of this development – which we refer to as globalisation – is impressive.

However, globalisation is not a new phenomenon. As far back as even 100 years ago, the Swedish domestic market was too small for many of our companies, and the increase in foreign trade and expansion into distant countries which followed to a large extent provides an explanation for the explosion of prosperity that Sweden experienced between 1870 and 1970. The expression "the export industry built the country" is therefore quite accurate. In the past 150 years, Sweden's foreign trade has grown on average six per cent each year, whilst the volume of trade during this period has become around 600 times larger. In 2006, the export of goods and services exceeded 50 per cent of the gross national product (GNP). Due to the fact that Sweden is a small country and highly dependent on its foreign trade, particularly with the EU countries, this trend will most likely continue. Sweden's export share in relation to GNP will continue to be high.

The increase in imports has been the subject of less attention but is no less important, since it maintains competitive pressure on the domestic market and access to priceworthy goods for consumers, and since it ensures that the business community has access to raw materials and input goods. The latter aspect has become increasingly important for the competitiveness of the Swedish business community from the 1960s onwards in line with the increase in specialisation. Globalisation has resulted in lower transport costs and reduced barriers to trade, which facilitates the import of goods from countries where it is considerably cheaper to produce goods.

To date, the trade in services is relatively small. This is partly naturally explained by the fact that it is more difficult to move a service to another country since you personally have to move to be able to perform the service. But there are also "unnatural" explanations, such as national regulatory regimes that prevent companies from performing services in a country other than their own. In spite of this, the service sector's share of foreign trade has increased, both with respect to exports and imports, since 1980, at which time the service sector accounted for around 15 per cent of Sweden's total foreign trade. The service sector currently accounts for around 25 per cent of the total foreign trade.

The historic importance for Sweden of increased trade and investment is, in other words, indisputable. During periods of "turbo-globalisation", this link applies to an even greater extent. Sweden is a nation that is wholly dependent on foreign trade for growth, jobs and welfare. No country in the world (with the possible exception of Switzerland) has so many multinational companies *per capita*.

With respect to trade flows, the situation looks about the same as it did 25 years ago. The biggest change is that Sweden has doubled its exports to the USA. The table below shows Sweden's export markets concerning the export of *goods*.

Sweden's export markets

Per cent of total value of export of goods, current prices

	1980	1995	2006
Europe	76.4	73.5	73.7
EU-25	62.0	61.5	59.7
Rest of Europe	14.3	12.0	14.0
USA	5.4	8.1	9.3
Asia	9.3	11.9	10.1
Other regions	9.0	6.5	8.0

Source: SCB (Statistics Sweden)

Europe, predominantly the EU countries (EU-25), is our largest export market. Germany is currently the single largest export country (10 per cent of total exports, i.e. the export of both *goods and services*, in 2006). Norway lies in second place (9 per cent). The USA decreased in importance in 2006 and is now our third largest export market (8 per cent), closely followed by the United Kingdom (7 per cent).

Much is said about the increased importance for Swedish foreign trade of China, India, Russia and the new EU countries. The export shares to several of these countries have increased but, as a percentage of total exports, still represent a tiny proportion of exports to these regions. For example, exports to Poland accounted for 2.3 per cent, exports to China for 1.6 per cent and exports to Russia for 1.4 per cent of Sweden's exports in 2006, in comparison with exports to the rest of Scandinavia, which accounted for 23 per cent.

In terms of imports, Europe also constitutes clearly the largest market for Sweden. Germany is the single largest import country (18 per cent of the *total imports* of goods and services in 2006), followed by Denmark (9 per cent) and then Norway (8 per cent), with The Netherlands in fourth place (7 per cent).

A more detailed description of Sweden's role in the global economy is contained in appendix 1 to this report. The appendix can be found on www.svensktnaringsliv.se.

The global business of Swedish companies has thus for a long time been a prerequisite for our prosperity, and it is important for Sweden that companies also in the future can operate successfully on the international market.

3. How can Swedish companies benefit from globalisation?

Even though the Swedish business community is, in certain respects, well equipped for globalisation, with many internationally-orientated companies and international cutting-edge expertise in many areas, there are storm clouds on the horizon. Swedish exports have lost market shares compared with other EU countries (EU-15), both overall and on new key markets such as China.

Today, our 10 largest companies account for nearly 40 per cent of Swedish exports. We see that the 100 largest companies together account for two-thirds of the export value. It is already a fact that these companies are, to an even greater extent, locating their operations outside Sweden. It is also now more common for service companies to have significant operations abroad, where previously it was most often manufacturing companies that had employees abroad.

Expanding SME companies will therefore be a highly important prerequisite for future Swedish growth and employment. The importance of small and medium-sized companies for employment has increased and nothing indicates that this trend will be broken. The *number* of employees in large companies is generally unchanged compared to 20 years ago, while the number of employees in medium-sized and small companies has increased substantially during the same period. The trend has meant that the *proportion* of employees in small and medium-sized companies has increased, while the proportion in large companies has decreased by around 7 percentage points since 1986.

A prerequisite for the growth of small companies will, in many cases, be a greater international focus. The potential is there – in 2003, companies with 0-49 employees accounted for almost 10 per cent of Sweden's exports and companies with up to 199 employees for 18.7 per cent. Corresponding figures for imports are 23.2 per cent and 35.8 per cent, respectively, of Sweden's imports.

Within the manufacturing sector, electronics sector and wholesale sector, 50% or more of small companies export. In total, Swedish companies with 20-49 employees export around 15 per cent of their sales. Most exports from Swedish small companies go to Scandinavian countries, mainly Norway. Their exports to the EU, excluding Scandinavia, are increasing slowly.

If these companies can grow and develop through increasingly venturing onto international markets, these are excellent conditions for maintaining strong economic growth in Sweden. If we do not succeed in achieving this, social welfare is likely to be threatened, at least in the long-run. Therefore, the creation of favourable conditions to allow Swedish companies, both large and small, to grow globally is of crucial importance for growth and welfare in Sweden.

3.1 THE STRUCTURE OF THE REGULATORY REGIME MATTERS...

A favourable general business policy climate is the basis for dynamic and healthy enterprise. The way in which the business policy in the broad sense of the term is therefore, although not crucial in itself, still of great importance for the development of competitive companies. Through well-structured rules for the business community both in Sweden and internationally, we can:

- stimulate new enterprises and innovations
- provide stable conditions for investment

- create business opportunities on new markets
- ensure free and healthy competition
- guarantee due process and security

The regulatory regime is thus important for companies' possibilities to exploit the opportunities of globalisation. Well-functioning rules and legal systems make it simpler, cheaper and safer for companies who wish to sell on new markets, outsource production or import input goods. Standardised and flexible rules for international business are a great advantage, particularly for small companies without their own legal expertise.

Sweden's membership of the EU has resulted in crucial improvements in this regard. The creation of a common market, on which goods and services can move freely and without barriers is of great importance for Swedish companies. Today, there are harmonised regulations, standardised product requirements and common practices in a number of important regions. This has led to substantial simplifications for companies that operate on the European market.

But, both within the EU and in the rest of the world, many barriers remain to global business.

3.2 ...BUT ADVICE AND OTHER SUPPORT ARE ALSO IMPORTANT

In addition to the formulation of a regulatory regime, the provision of advice and assistance to facilitate business through various types of promotion efforts can also play an important role. More specifically, this may involve assistance in attacking trade barriers and discriminatory regulations in other countries, and assistance and advice to small companies as to how they can deal with the essential protection of intellectual property rights, competitive export finance procedures or, quite simply, information regarding the rules in other countries.

All developed countries currently allocate considerable resources for providing their business community with this type of assistance in order to succeed in international competition. Despite the fact that regulatory regimes, at both the global and EU level, set restrictions with regard to various types of public aid, there is a great deal of room for manoeuvre for countries to structure institutions and procedures which assist in smoothing the path for the national business community. Not least with respect to small companies, a well structured and "customer-adapted" support structure can play an important role as regards the willingness and possibility to participate in, and meet the opportunities and challenges of, globalisation.

4. Experiences of laws and regulations on a global market

As stated in the previous chapter, regulatory regimes have generally been important for enabling Swedish companies to benefit from globalisation. In order to improve the opportunities for Swedish companies to operate and expand on the global market, it is thus important to work towards greater international harmonisation of regulatory regimes. It is also important to improve attitudes with respect to the application of the rules, so that they are not used for protectionist purposes. However, it is unrealistic to believe that all regulatory problems will disappear. Therefore, it must be ensured that small Swedish companies in particular have access to qualified support and advice when they are venturing out into the world.

In order to achieve these objectives, knowledge of the company's situation, the barriers that they face and the support that they may need is, of course, necessary. The Confederation of Swedish Enterprise has therefore interviewed close to 70 small and medium-sized companies, as well as some fifteen large companies, all with multinational operations. The companies have responded to questions as to the difficulties that they have faced regarding regulatory regimes in different countries. They have also recounted how they have dealt with these difficulties and how regulatory regimes have affected their business activities.

We have also interviewed a number of public authorities and advisory bodies who often come into contact with companies operating internationally. These authorities have given us their impression of the problems that can arise when Swedish companies, in particular small companies, venture out into the world.

In this chapter, we provide a summary of the results of the study. A more detailed account of the responses from the company interviews can be found in appendix 2 to this report. The appendix can be found on the Confederation of Swedish Enterprise's website www.svensktnaringsliv.se.

What the companies interviewed recounted corresponds to a large extent with the advisors' impression of the difficulties and the experiences that we at the Confederation of Swedish Enterprise have of problems with international regulatory regimes experienced by companies.

Virtually all of the companies interviewed have something to say about the complications involved in, and barriers to, conducting business. The companies that we talked to have all possessed the desire and ability to get around the problems and still build up an international business. But they have often been forced to come up with individual, less practical solutions to overcome the barriers. They have also been hit by higher costs. In certain cases, the companies, in particular the small companies, considered the difficulties so great that it was not worth conducting business in certain countries.

Nearly 3 out of 10 small companies in our study report that they abandoned operations on one or more markets due to problems with the regulatory regime. Here, Swedish companies have missed out on opportunities to benefit from globalisation.

It should be noted in particular that problems also arise on the common EU market which we currently often take for granted. As mentioned above, the EU has resulted in major improvements, and companies reap the benefits of a common market. Even so, primarily small and medium-sized companies testify that barriers still exist which make them refrain from conducting business within the Union. The companies thus demand closer harmonisation.

According to the interviews, regulatory problems affect the companies' business activities in several ways.

- **They opt out of globalisation fully or partially by forgoing certain markets, from outsourcing production or from importing input goods**
- **They are forced to come up with organisational solutions which are not commercially optimal, e.g. by cooperating with a local company or placing certain production in the export country**
- **Costs increase and profitability is reduced, for example through high customs duties or through the need for products to be specially adapted to certain markets**

These three types of consequences and the reasons for them are described in more detail in the following sections. Under these three headings, we have grouped together examples of problems which, according to the companies interviewed, often result in such types of impact on the business. There are problem areas that may result in several kinds of consequence, e.g. customs regulations and product requirements. These problems are thus discussed under more than one of the headings.

The three types of consequence are not mutually exclusive – high costs and low profitability naturally lead to a certain limit which causes a party to refrain from conducting business, etc. However, it is clear that certain types of recurring legal problem are given by companies as a reason for certain types of action, and we have therefore chosen to present the problem areas under these headings.

4.1 LEGAL PROBLEMS THAT MAKE COMPANIES OPT OUT OF GLOBALISATION

When a company considers entering a new market, starting to import, or placing production abroad, naturally many different factors come into play. Laws and regulations are only one aspect. But it is often an important aspect, and it can sometimes be of crucial importance in making a decision. Even the largest companies in our study reported that legal problems, in many cases, were a strong contributory factor in deciding to forgo certain markets.

Complications with laws and regulations may, for example, result in a company wholly refraining from selling to or establishing itself on certain markets. Companies may also avoid imports from certain countries or refrain from purchasing services abroad. They may also opt out of the possibility to produce in other countries.

According to the study, the most important reasons for such attitudes appear to be discriminating public procurement procedures, corruption, problematic legal systems and differences in product and environmental requirements.

4.1.1 DISCRIMINATION IN PUBLIC PROCUREMENT PROCEDURES

A means of entering a market may be to win a public procurement procedure. Public procurement procedures should be a natural means, certainly within the EU with its freedoms of movement. But only around 4 per cent of public procurement procedures are cross-border and here all types of companies attest to problems.

"On occasion we refrained from placing bids in EU countries because, based on previous experience, it wasn't worth the hassle."

Both small and large companies experience public procurement procedures as problematic. Problems occur both in EU countries and in the rest of the world. The procedures and requirements laid down often make it difficult for foreign companies to participate. For example, the requirements may be drawn up in accordance with a domestic system, which may be both difficult to understand and to adapt to. Just over half of the SME companies that experienced such problems within the EU have also chosen to refrain from placing bids. This is in spite of the fact that public procurement procedures within the EU are harmonised.

"We have placed bids and experienced problems with the fact that public procurement requirements are based on the particular country's mindset and traditions. We experienced this in France and Germany and we refrained from placing bids for the reasons stated above."

Examples of public procurement requirements favouring domestic companies can be found both in Europe and in the rest of the world. One entrepreneur recounts how it was a requirement in Norway to have an agent or a distributor in the country. In the USA, the "Buy American Act" provides that the company have a certain amount of production within the country in order to participate in public procurement procedures. In South Africa, the rules on Black Empowerment are significant. Sometimes, requirements relating to environmental marking systems may mean that a company is unable to participate in the bidding process.

Several companies experience that it is almost impossible in certain countries for a non-domestic company to win a procurement process even if the particular requirements are fulfilled.

"On the markets in which we are a domestic company, we probably have an advantage, but it is impossible to get in in France or Italy. This does not appear in the regulations but that's how it is."

Several SME companies have also come across this problem when they planned to place bids in the neighbouring Scandinavian countries. Finland is mentioned by several to be difficult.

"We considered it, but experienced barriers in the form of a high level of loyalty and protectionism. We came across this problem in Denmark, Norway and, in particular, Finland. It is as a result of such barriers that we experienced that we too gave up."

4.1.2 CORRUPTION

"Problems with corruption are an important contributory factor as to whether one chooses to remain in a country."

Corruption expresses itself in different ways. It can involve anything from difficulties in obtaining necessary permits to court proceedings being unjust. Many report in particular that they experience problems in dealings with customs or being refunded excess VAT. It can also involve demands for small payments, *facilitation payments*, to facilitate or speed-up processing times at public authorities or customs.

Corruption can also make it almost impossible to do business in an honest way; without a bribe, it is difficult to get the contract. SME companies to a greater extent than large companies provide examples of where they avoided or pulled out of corrupt countries.

"If we had known that a bribe was required to get the contract in Poland, we would not have bothered to spend three weeks' work on a bid."

The companies have a number of examples of corruption, and regions which are mentioned are the Baltic States, Poland and parts of Eastern Europe, Africa, the Middle East and parts of Latin America and Asia. Examples of corruption in Russia recur time and again both from large companies and SME companies.

"The system of bribery and corruption is developed in Russia and, since it is unthinkable for our company to give in to such a system, we often experience that it takes a long period of time to implement different transactions. A document can, for example, be sent back, the reason being that the signature looks strange."

In order to deal with the problems, both small and large companies describe that it is important not to give in, but rather to stand one's ground and be stubborn.

"In Indonesia we got into a completely unnecessary dispute about a tax, and we know that we're right. If you pay a sum of money, the entire problem disappears; otherwise you have to live with a dispute for four years. However, paying is an all too short-term solution and, if you give in to corruption, you only end up with bigger problems. You should be hard as stone, but realise that without a doubt corruption makes it difficult in certain countries."

It can thus be stated that an important means of opening up the markets around the world, particularly for small companies, is to take a strong stand against corruption.

4.1.3 CRIMINALITY

"In response to the question as to why we don't go into Russia, we usually respond that we're a service company, not a military organisation."

The majority of the large companies have been exposed to criminality at some time or another. The risk of being exposed is something which is taken into consideration, and in really exposed countries perhaps another form of presence is chosen, e.g., through local distributors. It is not as common among SME companies to have been exposed to theft, but many report that they are aware of the risks and have taken extra precautions and preventative measures.

The majority of those interviewed mention Russia in this context. Latin America is also a region where criminality can be a reason for forgoing markets. But also in Eastern Europe, Asia and Africa, companies claim that they have some type of problem with criminality.

"Argentina has a mafia which poses problems. This is why we don't conduct much business in Argentina but choose Brazil and Chile instead, which are easier to conduct business in."

4.1.4 RISKY LEGAL SYSTEMS

Risks of entering into expensive and burdensome legal disputes deter companies from entering certain markets. This is mainly true of the USA.

"All in all, the problems are so big that one can question conducting business in the USA. We do so, but it should not be taken for granted."

Both small and large companies think that American legal proceedings cause major problems. Several of the large companies that conduct a lot of business in the USA quite simply believe that such proceedings constitute the biggest problem for them. Several companies say that this is reason enough to reflect carefully upon whether the US market is worth the risk.

"Many Swedish companies should think twice before doing business in the USA because it may cost them a great deal. In one case, we received documentation amounting to 14 million pages from the counterparty to read. The system is unpredictable in the sense that there are no limits as to where inventive arguments can lead. A dispute which goes to court is almost always settled for several millions."

Patent disputes, employment law disputes and product liability-related cases constitute the most common examples of legal proceedings in the USA. Cases regarding product liability in particular often involve class actions, i.e. a large number of consumers join together and bring an action. They do not risk being liable to pay the company's litigation costs, and proceedings are therefore fairly risk-free.

"Class actions in product liability-related issues often leave you in situations akin to a form of blackmail. We should be on our guard, so Europe does not also end up like this."

All companies active in the USA mention the importance of taking out insurance, because you should count on being sued. A number of companies choose not to go into the USA solely because of the extensive product liability.

"We have avoided going into the USA. Product liability there is frightening."

Russia is named by a number of companies as being highly uncertain from a legal point of view. This may be due both to corruption but also to the fact that the legal system as such is new.

"Russia has an immature legal system and lies somewhere between total absence of due process and some kind of middling due process. The legal system appears to be totally arbitrary. For example, from one day to the next we have had a permit revoked, for no reason at all."

Companies attest that they do not dare go into the Russian market as a result of these uncertainties.

4.1.5 PRODUCT AND ENVIRONMENTAL REQUIREMENTS

Different markets have different requirements for local certifications, particularly standards and special markings. It can be very expensive to adapt to several systems. This becomes insurmountable for small companies, and large companies may also be forced to forgo markets.

"The USA has special rules regarding pressure vessels. We have chosen not to upgrade because it's an expensive process, and therefore we can't export there either."

"The EC marking applies only to Europe. Canada has other rules and they are different. For example, an entirely different component is to be included in their system so we have difficulty meeting those requirements."

Differences in rules and systems create problems, and it becomes even more difficult if the regulations are changed on a regular basis. A large company whose products are dependent on local certifications recounts that changes to requirements at short notice resulted in their being forced out of markets.

Differences in environmental requirements may also result in companies being excluded from markets.

"Environmental marking requirements constitute a problem because the application of marking requirements between countries is different. We see an incipient problem with competing

environmental marking systems; if an authority chooses a particular system, we can be totally excluded despite the fact that the markings do not differ from a quality perspective."

The differences can lead to extremely high adaptation costs which, for a small company, means that it has to forgo the market.

"In Japan, our products are not allowed to contain a certain chemical. This has resulted in our creating our own production and our own distribution for Japan. It cost SEK 100 million."

The companies that experience problems with environmental regulations mainly have problems with certification systems that do not correspond to each other or differences in the implementation of EC directives. An example of the former can be taken from a branch of industry which must adapt to rules from three different systems, the European, the American and the Japanese. Within these three systems, environmental requirements for emissions are different, which results in different requirements for components, etc. In addition, more stringent local rules are common, which are often unpredictable and implemented with short transitional periods. Such local restrictions are common both in Europe and the USA.

Within the EU, environmental requirements have been partly harmonised, but problems remain when the implementation is different in different countries. One example is the WEEE Directive (*Waste Electric and Electronic Equipment*) whereby the producers are required to recycle products they have sold. The Directive has been implemented with a large number of differences and many individual solutions exist, at the same time that a number of countries are behind in the implementation. This creates problems for companies that want to be operational in several European countries.

4.2 REGULATORY REGIMES THAT FORCE COMPANIES TO CHOOSE INFERIOR SOLUTIONS

In many cases, companies nevertheless succeed in finding ways around problems. But, in many cases, the way to establish oneself on the market involves being forced to choose different organisational solutions and structures than they would rather have had. This often entails both commercial and practical drawbacks.

Examples of such solutions include being required to construct special procedures for payment and profit repatriation, or being forced to maintain an unnecessarily complicated company structure. It is also common to be forced to work with a local partner, e.g. through a joint venture or as a sub-contractor. This can sometimes have its advantages, but at the same time means that they are not in complete control of the business. In addition, part of the growth is created elsewhere than in the Swedish company.

Regulatory regimes also often result in being required unwillingly to produce products locally instead of exporting from Sweden. This thus means that the global expansion does not create jobs in Sweden to the extent that the company would like.

Occasionally, the rules entail that a company cannot establish itself with its own subsidiaries and factories without being forced to purchase local companies and plant. Conversely, occasionally the rules may prevent cooperation or company acquisitions which would be beneficial for the company.

Tax and company rules, rules relating to foreign establishments, and customs regulations that favour local production are examples of regulatory regimes that dictate solutions which are not commercially optimal.

4.2.1 TAXES AND FINANCIAL TRANSACTIONS

National regulatory regimes can make different types of financial transactions more difficult. Requirements are often imposed regarding the use of local banks, but other regulatory regimes can also result in difficulties.

"A genuine problem is the capacity to repatriate profits and carry out other financial transactions when different countries' currencies are convertibles in different ways. Such an example is Brazil, where it is very difficult to repatriate profits. Tax rules, currency rules, and knowledge-transfer rules together create a system of rules which is difficult to penetrate."

In China, special permits are required for exports and imports, which are only granted to certain companies. There are also a number of restrictions relating to the conversion to and from the local currency. Other countries mentioned are e.g. South Africa, China, Russia, Taiwan, Malaysia, Morocco and South Korea.

"Capitalising a company in China is a bit tricky; converting to a local currency involves a great deal of difficulty."

Taxes mainly affect large companies that have a lot of cross-border business. Almost all of the large companies interviewed report that company structures and the organisation of operations are often determined by taxes.

"Many companies would probably have a simpler structure if they were not required to take account of tax effects."

Taxes are important when planning new operations. The companies point out that it is not about the tax plans to evade taxes, but rather planning so that the entire profit from a country is not lost. Many would like to see harmonisation in the tax area, in particular with respect to VAT and transfer taxes. Another problem is that it is very expensive to move employees between countries.

"It is tax legislation which causes the greatest problems. It is the legal area that we would like to do something about. Many improvements could be made since they have not even begun."

4.2.2 COMPANY LAW

"It would be ideal to have harmonised company law because it would have simplified a great deal from a structural point of view."

It is primarily the large companies that stress the importance of harmonising company law. Different rules create problems and prevent financially justified restructuring within the business community.

"It would obviously make it easier for a limited company if the rules were the same. The EU has done a great deal of work in this area but there is still a great deal to do. In order to make the harmonisation effort easier, perhaps one should identify a number of issues which are particularly problematic in Swedish law and a focus should be given to dealing with them."

Several companies are trying to reduce the number of subsidiaries that they have, particularly in Europe. That is why many companies think that the EU's European Company (SE) is a good idea. However, in order for the European Company to be of practical use, the company law rules need to become more similar and the tax rules simplified.

"The European Company could be interesting when it becomes a little more developed, because if the regulatory system is still different in different countries the entire point is lost."

The larger companies point out that the legal company structures are not adapted to international business in such a way that legal responsibility and line responsibility do not coincide. A group CEO can sit in the head office in one country and give orders to a CEO of a listed company in another country, but the latter bears the legal responsibility. This means that decisions are taken in London, for example, but it is the CEO in Sweden who ends up in prison if something goes awry.

4.2.3 ESTABLISHMENT PERMITS

"We establish ourselves only if we consider it necessary. There are establishment difficulties in many countries."

Special rules that make it difficult for the establishment of foreign companies are common. Restrictions on foreign ownership often take the form of the requirement that the company has domestic partners. The companies think that it is generally more common in non-European countries and in developing countries. However, several companies with experience of establishments on this type of market report that the tendency is towards these rules becoming fewer. But there are examples of such difficulties also from Europe.

A common example is the requirement for joint ventures, in which a foreign and a domestic company participate fifty-fifty. This type of requirement is also found, for example, in Russia, Indonesia and India.

Different forms of permits may be prescribed instead of a joint venture. China has many different types of restrictions relating to establishment. There used to be a requirement for a joint venture for foreign companies, but now permits are required instead for wholly-owned subsidiaries. These permits may be quite expensive.

"We would like pressure to be put on China to make establishment easier and remove customs barriers."

4.2.4 CUSTOMS REGULATIONS THAT FAVOUR DOMESTIC PRODUCTION

"Local production requirements are used as barriers to establishment pretty much everywhere, particularly in Southeast Asia. The trend is probably that it is opening up more and more but this might take another fifteen years."

Customs duties are, of course, highly significant for companies operating internationally. The customs duties can be so high that they become crucial to the organisation of the business because high customs charges can easily result in the loss of profits.

"When we decide where production will be carried out, customs duties are often a crucial factor."

Several companies name Russia, China, India, Iran, Saudi Arabia and Brazil as examples of countries with trade barriers in the form of high customs duties and other customs regulations.

"In India the duties are so high that it actually pays off to produce locally."

However, one company points out that local production can be associated with other types of problems.

"It is not only the customs duties in China which steer towards local production, but a number of types of barriers are created for those who do not produce locally; at the same time, local production is very much governed by and associated with a lot of conditions."

Regulations are often imposed on composite products that require a certain part of the content of the product to be produced locally. There are examples from Russia and Brazil. One company reports that customs duties are commonly imposed on the parts and on the final product, which results in one choosing to bring in separate parts and then assemble them in the country. But this is not always a solution.

"In China, the products must be listed, and then the applications have to be made in separate groups and you have to pay for each group. This leads to high costs if you have a composite product whose components belong to many different groups."

4.3 COMPLICATED RULES THAT MAKE GLOBALISATION LESS PROFITABLE

Even where companies succeed in conducting their global business as planned, complications with laws and regulations cause extra costs for the companies. If the rules could be simplified, globalisation would result in greater profits and higher growth for Swedish companies.

An important factor driving costs is the problems of individual product requirements, etc. described above. If you can't sell the same product in every country, one must produce in smaller runs, which produces higher costs. Consequently, a lack of harmonisation results in lower profitability.

But there are also other regulatory regimes that damage profitability in global business.

First and foremost, the costs of international business are high because most things in each country have to be dealt with separately – permits, patent protection, lawsuits, etc.

Furthermore, where the rules are more complicated, lawyers need to be engaged to deal with those. Bureaucratic public authorities with requirements for forms, stamps and fees take time and cost money to deal with.

In addition, there is a risk of losing business because it takes time to obtain permits and approvals or get one's goods through customs. The company may also be affected by problems if it takes a long time to get paid and if it is difficult to collect unpaid debts.

Examples of problems which result in higher costs and lower profitability are a lack of harmonisation and coordination, complicated rules and bureaucracy, and customs regulations.

4.3.1 LACK OF HARMONISATION

As referred to above, a lack of harmonisation of product requirements etc. leads to high costs. On the other hand, many report that the reason for why they did *not* experience any problems is the fact that the rules were properly harmonised. Several SME companies also recount that they previously experienced problems in certain countries, but that the countries' entry into the EU has improved the situation.

However, a particular issue that is taken up by many companies is that harmonisation does not always succeed. The companies experience recurring problems with countries within the EU implementing directives differently.

"The implementation of EC directives is a major problem. It seems as if the political will to produce a common document ceases upon implementation."

Within the EU, harmonisation most often takes the form of a directive which each member state is required to implement into its national legislation. Occasionally, a large scope for interpretation is provided in the directive which leads to the implementation of the provisions in a different way. Differences may also be caused by countries being given the capacity to make the requirement more stringent beyond the level provided for in the directive. This is reported to be a problem in, among other countries, Sweden, Germany, the United Kingdom, Ireland and The Netherlands.

One example is the MID Directive (*Measuring Instrument Directive*), which prescribes the standards for measuring instruments. The Directive is not mandatory but, if the sector is regulated, this must take place in accordance with the provisions of the Directive. One company affected by these rules points out that differences remain in implementation which mean that different adaptations need to be made for, among others, The Netherlands and France.

"We want to see an improvement in the implementation of EC directives in the most flexible way possible for the business community. The large differences in implementation currently create great uncertainty."

It is clear that it is felt to be extra burdensome to have to expend great resources into an area where the point is that the rules should be the same.

"There is an EC Directive and the idea is that it should be simple, but there are always some differences in implementation which mean that a careful analysis is nevertheless always required."

4.3.2 LACK OF COORDINATION BETWEEN NATIONAL SYSTEMS

Despite the fact that the economy today is global, the law to a large extent is still national. Legislation, public authorities and courts are national, often also in areas where EU harmonisation means that the content of the rules is similar. This leads to high costs for companies that wish to operate on several markets. The following are examples:

4.3.2.1 Patents

Patents are national. There is no worldwide patent; there is not even an EU patent. If protection is required for a product in several countries, a patent needs to be obtained in each country. This is expensive and burdensome. In addition, the protection requirements are different in different parts of the world. Several companies demand a more standardised system.

"One should try to equalise the EU and the USA with respect to patenting principles, and move this issue to the EU. The European system, which corresponds to systems in Asia, should be taken to the USA, instead of moving the American system here."

A particular problem for Swedish companies is that it is significantly more expensive for them to obtain protection on their domestic market, Europe, than for competitors in the USA and Asia. In order to obtain protection in the whole of the EU, 27 national patents are required, all of which need to be translated into the local language and for which fees are payable to the patent offices in each and every country. To obtain protection in other large markets such as the USA, Japan or China, only one patent, one language and one fee is necessary.

Furthermore, if someone copies a protected product, it is complicated and expensive to intervene. One needs to go to court in every one of the countries where the copying took place. This of course means that small companies cannot afford it and are forced to give up.

4.3.2.2 Personal data

"A simplification so that the rules are based on an abuse principle rather than approval would facilitate the procedure considerably. In the Netherlands, these rules are currently so complicated that we are considering leaving the country."

Forwarding of personal data between countries is becoming increasingly common where both customers and employees are located in a number of countries. Here, the companies point out the need for both improved harmonisation and a better regulatory system on a basis that takes into account globalisation's need for a free flow of information. However, the companies see possible solutions to the problem.

"The area of data inspection could be rationalised with a one-stop-shop solution such that personal data could be notified to one location, and this would be sufficient."

4.3.2.3 Competition law

Competition authorities have to grant their approval of company mergers and acquisitions in different countries. Sometimes the European Commission is also required to approve the merger or acquisition. These parallel reviews are administratively burdensome and costly.

"Notifications of mergers and acquisitions can be messy; one must decide which countries not to bother about. Several one-stop-shops would of course be preferable."

4.3.3 COMPLEX REGULATORY REGIMES

The biggest problems are finding out how the rules will be applied in practice. Russia is reported to have a particularly complex regulatory regime which is very difficult to get to grips with and the legal application of which is unclear.

"In Russia, it is extremely difficult to get to grips with formalities. In addition, there is a shortage of skilled Russian lawyers and you also need the assistance of Swedish lawyers who have an understanding of both systems. The legal system as such is a young product and the lawyers are inexperienced; in addition, there is a paucity of case law which, all in all, makes it very difficult to predict the outcome."

Problems arise when the regulatory regime from a different legal tradition is copied and then combined with domestic special rules. This often results in legislation that looks sophisticated on paper but does not work. There are examples from Asia, but also Eastern Europe.

"We feel that India is unbelievably complicated. They have implemented the entire English system, but with Indian extras concerning application and bureaucracy, which means that you find your way neither in nor out."

The Netherlands and the United Kingdom are mentioned by both small and large companies as simple countries in which to find information. In the Netherlands, the regulatory regime is available in English. The regulatory regime as such is also considered to be easy to deal with and the public authorities forthcoming.

"In the Netherlands and the United Kingdom, you can basically deal with most things yourself; the regulatory regime and the public authorities are very forthcoming. You just need to download forms from the Internet and, if you need help to fill them in, you get it.

4.3.4 BUREAUCRACY

The companies say that bureaucracy is something one gets used to but which requires a great deal of resources. One company states that they have fifteen employees in Russia who simply go to the public authorities to get papers stamped.

Several point out that Sweden is an unusually unbureaucratic country to work in compared to, for example, Eastern Europe, France, Germany, Belgium and Italy.

"It is barely worth being in France. We have moved branches there, which entails an enormous amount of bureaucracy."

In Poland, if a company has entered into an agreement involving a Polish party, the agreement must be drafted in Polish. Therefore, both a translator and a notary public have to be involved in drafting the agreement. This creates high costs.

Japan has a number of local regulations surrounded by a great deal of bureaucracy. One company interviewed has e.g. big problems with the Japanese foodstuffs regulations.

"In Japan, they count the bread prick holes on loaves of bread and measure the distance between them."

The bureaucracy in Latin America is reported to require a great deal of resources. For example, there are a lot of formal requirements. Brazil and Argentina are referred to in particular. One large company states that the Latin American countries cause two-thirds of the group's legal costs despite the fact that they only account for 20 per cent of the group's turnover.

Other than the fact that bureaucratic systems create lower profitability, it is also important to note that bureaucracy is often employed for protectionist objectives and is also a breeding ground for corruption.

4.3.5 CUSTOMS REGULATIONS

As stated above, customs regulations are often used, for example, to elevate local production. It is clearly also the case that customs duties and other barriers to trade generally increase the costs of imported goods. This is often particularly problematic for SME companies.

"Different kinds of trade barriers may mean insurmountable barriers for our Swedish sub-contractors who want to follow us out into the world", points out a large industrial company.

The companies give examples of countries with high protective customs duties which result in a reduction in profitability. But the actual customs procedure can also obstruct trade due to the inefficiency of customs clearance, the fact that the terms are unclear and complicated or are just simply changed on a regular basis. In this regard, Russia is often mentioned.

"Crossing borders to Russia is difficult and the rules change regularly. Our customer there usually asks us to deliver an entire annual supply in one go."

"We were to take in property in kind contributed to the Russian subsidiary, and this led to endless difficulties with customs and a great deal of time and resources being expended."

However, companies often find solutions to their problems, but this results in costs that reduce profitability. One large company has, for example, set up a separate company to deal with customs issues in Russia. Another built a customs office adjacent to its factory and assisted customs with digital procedures.

Remarkably, a number of SME companies that trade with Norway think that customs clearance is administratively complicated. One entrepreneur that produces tools recounts that their goods usually have an aftermarket, but taking back the goods over the border is simply too expensive. Many think that it should be easier to deal with one's closest neighbour, and several SME companies report that the most important issue for them is that the border crossings between Sweden and Norway are made easier. Many of the problems are undoubtedly due to the fact that Norway is outside the EU, which says something about how much the EU actually makes things easier for companies.

In light of Norway's importance for international business conducted by the Swedish companies (see chapters 2 and 3), measures should, however, be taken to minimise such difficulties.

5. How do we create a better regulatory regime for global business?

Entrepreneurs are people who see opportunities and want to find solutions to problems. In many cases, entrepreneurs are able personally to overcome obstacles placed in their path. But in our interviews, both small and large companies attest that there are serious problems with which they need assistance. In some cases, this concerns rules which need to be changed and Sweden as a country, in different international contexts, can try to ensure that obstacles are removed and opportunities increased. This is described in detail in this chapter. Chapter 6 describes the way in which Sweden and Swedish public authorities, other than through changes to legislation, can assist and support Swedish companies operating internationally.

5.1 WHAT IS THE CONFEDERATION OF SWEDISH ENTERPRISE DOING?

Improving international regulatory regimes to make companies' operations simpler and smoother is a huge and long-term task, which spans many areas and is conducted in a number of different quarters.

The Confederation of Swedish Enterprise is working nationally, within the EU and internationally to indicate which rules need to be changed and how harmonised rules can be drawn up. The international issues that we and our member associations see as a priority include the following:

- Increased free trade and lower duties on both goods and services
- Simplified and harmonised customs and trade procedures
- The realisation of the EU's internal market
- Well-functioning rules and systems for approving products, particularly within the EU
- Harmonised and non-discriminatory rules to start up and run companies
- Standardised accounting rules
- A voluntary and consolidated common basis for corporation tax
- Improved tax rules with respect to internal cross-border transactions and opportunities for cross-border tax loss equalisation
- Simplified VAT rules for companies' cross-border trade
- Combating bribery and other corruption
- More efficient and cheaper patent systems enabling the protection of inventions internationally
- Well-functioning international competition rules with co-ordinated application, particularly within the EU
- Quicker and simpler administration in respect of the supervision by competition authorities of company mergers and acquisitions where several countries are involved
- International harmonisation of environmental regulations
- Functional and efficient implementation of EU environmental legislation without individual national solutions
- International cooperation on climate policy to make rules and procedures cost-effective.

We will not go into the details of this extensive task in this report. More information about the Confederation of Swedish Enterprise's work in relation to individual issues can be found on our website www.svensktnaringsliv.se.

In this report, we would prefer to point out some more overall and structural issues which are significant to the result of the international work.

5.2 A GLOCALISED REGULATORY REGIME - THE WORK BEGINS AT HOME!

The phenomenon behind the majority of problems and barriers which comes out of our interviews can be expressed briefly as follows: "Global business – local rules." There is thus a marked tension between, on one hand, the continually growing proportion of international economic activities involving cross-border agreements and transactions and, on the other hand, the legal frameworks for them which, in general, are mainly national. It could be said that there is a kind of legal lagging behind, i.e. the legislation has not been globalised to the same extent as the economy for which it lays down rules. On the other hand, that of course does not mean that the existing international regulations, for example EC law, different conventions and treaties, are of no importance. It is just that they don't go far enough, quickly enough.

One should also not be under the impression that the law's national roots are on the way to losing their significance. Legal rules are typically applied in a specific local context and are dependent on there being a functioning legal infrastructure in place and, to a certain extent, this will always reflect prevailing legal traditions, culture and social circumstances. It is not this that is the problem but, rather, that the national legal systems are not *adapted*, materially and administratively, to a globalised environment. Clearly what is needed is a stronger system of common substantive rules and greater administrative and procedural coordination. Certain issues also require the development of more "supra-structures" to obtain efficient administration – e.g. with regard to complex permit or registration matters. Multiple applications are known to be difficult to deal with, thus more "one-stop-shops" and similar mechanisms are required which either apply automatically or can be chosen where a certain threshold of complexity has been reached.

We must put in place a national and international regulatory regime and mechanisms which "fit together" and run on a synchronised basis instead acting as counteracting forces. It used to be a truism that "all business is local", but even if the local connection still applies, it is affected by globalisation and thus now the phrase is "all business is glocal". It can be said that if "all business is glocal, then all laws also need to be glocal."

It is clearly these aspects that need to be taken into consideration in our own legislative work so that the Swedish regulatory regime adapts to the demands of globalisation. Such thinking certainly exists; but the question is whether it is sufficiently developed and methodical. It could perhaps be noted that our decision-making is nevertheless heavily circumscribed and that most things are governed mainly by EC law, as well as other international law in conventions and agreements. This is of course an accurate observation, but not a valid objection, and rather a demand to seek to influence legislation more heavily.

The conclusion is that Sweden should develop overall objectives, guidelines and strategies as to what one would like to achieve and the way in which one works with the different sets of legislation and instruments. This, of course, relates in particular to EC law, and also to e.g. international conventions and bilateral agreements. Sweden should develop an established view on the structure, formulation and direction of EC law, and pursue this view, both generally and in different legislative matters.

This should contain a clear view as to which instruments can be effective in different contexts. It is not certain that problems are always best solved with legislation or only legislation. It has, of course, to do with their character, and also with getting the most out of scarce resources. A combination of fundamental and principle-focused legislation and self-regulation or what is commonly known as co-regulation can be successful, among other things because it allows different resources to be concentrated where they are most beneficial. In certain situations, it may also be more appropriate to work with international recommendations or go forward with "soft harmonisation" through standardisation.

5.3 SUCCESS FACTORS FOR A BETTER GLOBAL REGULATORY REGIME

Our proposals as to the way in which Sweden and other parties can endeavour to create a better global regulatory regime can be summarised as follows:

Domestically

- The Swedish Parliament and its standing committees should play a more active role in Sweden's work with international legislation, which requires expertise, resources and speed.
- The Government should have a co-ordinated policy and strategies for international regulatory work (EU, conventions, international organisations, cooperation with public authorities)
- Consultation with the business community should be more systematic and characterised by greater transparency and speed

Work within the EU

- A genuine common market and enhanced European competitiveness must be placed above the national perspective – also in tangible legislative projects.
- The legislative processes must be directed towards genuine harmonisation and have an overall perspective from proposal to implementation, application and interpretation
- "Better regulation" is an excellent project but must comprise both quantity and quality
- Sharper instruments are required for harmonisation – a greater number of regulations, more full harmonisation, fewer national derogations
- Better support for standardised application – guiding "preparatory works", reformed EC court
- Implementation in member states must be improved – better supervision is needed
- Reforms and changes in attitude are required in all stages of the legislative chain

Internationally

- Multilateral conventions are of great importance for the international simplification of rules, and the work within e.g. the WTO and WIPO should be prioritised despite current difficulties in reaching agreements
- The work of international organisations to simplify rules is often valuable and should be actively supported, e.g. OECD/BIAAC
- International networks of public authorities can improve efficiency but should be used with due consideration
- Standardisation often results in meaningful results on a practical level and is positive in most areas

In the following sections, these proposals and views are developed in more detail.

5.4 DOMESTICALLY: BETTER WORK IN SWEDEN PROVIDES BETTER EU RULES

Few countries have more to gain from an integrated and well-functioning EU market than Sweden. The EU work should therefore be carried out highly actively and with expertise, commitment and a support basis. Sweden and Swedish companies benefit from harmonised, high quality European rules. This must be the starting point. Swedish insular thinking is stillborn; it is the European model that counts. This does not mean in any way that Sweden should blindly accept e.g. proposals of the European Commission or the like. On the contrary, Sweden should have developed ideas about suitability and detailed formulation and push forward its views with force, but from a European perspective. A rule is not necessarily good in the European context just because it's Swedish!

The Swedish Parliament should play an important role for the legitimacy of, and deeply rooted support for, Swedish positions. Hitherto, the committees have largely been "dependent on" pending legislative matters in the EU. In the EU committee, the issues usually come up at a late stage when many things have already been determined.

However, from the beginning of this year, a new procedure applies whereby the Parliament's standing EU committee is retained but the committees are activated in respect of EU issues within their respective areas. The Government is responsible for cooperating with the Parliament on issues on which it makes decisions, and the idea is that the committees will come in at an early stage, e.g. when there is a green paper in place.

This is excellent, but is conditional on the work of the Parliament being carried out with the expertise and resources that the matter requires. The Parliament/the committees should therefore draw up guidelines as to how this is to be achieved in detail and ensure that the committee secretariats have the capacity that they need. Openness should be the byword i.e. the committees should collect written or oral statements, organise hearings, etc. The work should also be carried out as the issue develops so that the issuance of statements does not constitute closing the stable door after the horse has bolted.

If the Parliament follows its new procedures, the Government secretariat will be forced to state its positions more often, earlier and more systematically. However, preparations at the ministries also needs to be more open and to take place by way of an organised consultation procedure with the business community to ensure that relevant views are given methodically and as early as possible. Speed is more important than form.

The Government should, on a six-monthly basis, notify their strategies for ongoing and upcoming EU work. Such a document has been published for spring 2007 and will hopefully be produced on a regular basis. The situation in more important advisory groups should also be stated on the websites of relevant ministries.

5.5 WITHIN THE EU: "THINK EUROPEAN" – CHANGED ATTITUDES AND REFORMED LEGISLATIVE PROCESS

The EU is and will continue to be the most important commercial market for Swedish companies. A well-functioning internal market on which goods and services can move freely is thus crucial to ensure that Swedish companies will be able to exploit the opportunities offered by globalisation. The significance of this comes across clearly in our interviews, but a large number of shortcomings remain in the functioning of the internal market.

A dynamic European perspective needs to permeate the EU's legislative process. The realisation of a genuine common market and the strengthening of European competitiveness should also be prioritised in the specific legislation project. This applies to member states individually and in the Council of Ministers, as well as the European Parliament and individual members. The tendency to defend national specific solutions and the will to get them incorporated into the relevant directive/regulation, or at least permitted/exempted, must be pushed back. This is basically a question of attitude but the process itself must also be directed towards, and support, this objective. The process needs to be seen as a whole, from proposal to implementation, application and interpretation.

In statements from, among others, the European Commission, it is stated that the EU should limit itself to issues to which European rules or activities contribute a clear added value. It is

easy to say, but requires that individual legislative projects are subjected to an analysis of whether this is in fact the case.

It is often politically expedient to resort to legislation without it being certain that the measure is the most sufficient. It can often be effective for statutes to be limited to fundamental provisions that enable non-serious companies to be taken to task, while additional aspects can be dealt with by self-regulation and complaints bodies.

Deficiencies and shortcomings that can be found in the original proposal produced by the European Commission can easily be reproduced in the process, and exacerbated rather than corrected. It is well known that internal disagreements within the Commission quite often explained the poor quality of a proposal. It is very important that this kind of in-fighting ceases. Therefore, it is positive and promising that the Commission has established new internal supervisory functions and means of control.

5.5.1 BETTER REGULATION

The European Commission's initiative for improved regulation – "Better Regulation" – aims not only to ensure a high technical standard, but also that the legislation, at both the EU level and nationally, is directed towards achieving enhanced competitiveness in accordance with the new Lisbon Agenda. Significant components are impact assessment, simplification and withdrawal of failed proposals. This is said to be mainly aimed at, among other things, the danger of over-regulation. The political support is considered to be strong because the Council of Ministers supported the initiative and requested the Commission to develop methods for measuring the burden imposed by rules and an impact assessment procedure.

The programme will result in, among other things, a clear regulatory framework in which a more complete analysis is involved with the aim of ensuring that the basis of the legislation is clear and solid. According to the Commission, this should result in the Council of Ministers and the EU Parliament being able to adopt new proposals without major delays. The Commission underlines that success depends on the support of all those referred to. If this is to succeed in the long term, we think that it is dependent on being able to find an efficient - and attractive! - European regulatory framework. Low-content directives obviously in themselves entail a risk of national deviations; they quite simply invite them. Uncertainties mean that a reasonably standardised application cannot be guaranteed. A tendency towards "short-sightedness" can also be seen, i.e. rules are made on the basis of a prevailing situation, which leads to regulations that are not particularly durable. It is clear that EU laws which are perceived as "poor regulation" easily arouse national opposition and a will to preserve the status quo, i.e. proceed on the basis of existing rules and make as few changes as possible.

The Commission also recently adopted a programme of action which aims at a 25 per cent reduction in the administrative regulatory burden by 2012. The Council has supported this programme and encourages the member states to adopt equivalent national objectives. It is clear that the project for "Better Regulation" has thereby placed a particularly strong focus on the reduction of the administrative burden for companies. It is in itself a notable ambition, but does not resolve more than a portion of the problems. It is ominous that the member states were not able to jointly adopt a 25 per cent target, but chose to treat this as the individual business of each of them.

5.5.2 HOW CAN REGULATORY QUALITY BE ACHIEVED?

Even if the Commission's new proposals aim directly at ensuring regulatory quality, it is at any rate unclear as to whether and to what extent this will address the serious problem of "superficial" or "false" harmonisation, i.e. common directives, etc. are transposed to national

laws which are quite different in practice. The primary regulatory regime will also sometimes be "surrounded" by closely-related domestic rules and requirements that further reduce the effects of harmonisation and act as a barrier to market entrance. A number of interacting measures and instruments are certainly required to increase the level of genuine harmonisation.

It would obviously be efficient to use regulations to a greater extent, since they are directly applicable and do not require national implementation. Political support for this is probably weak in the current climate, but – on the other hand – this depends to a large extent on a basic attitude problem.

Another method could be to introduce stronger substantive control in the directives, e.g. so that central concepts and requirements have to be used in the legislation which implements the relevant directive. This would still give the member states a great deal of freedom to adapt the rules to their own legal system but prevent them being clothed in an entirely new dress with the risks of deviations that this naturally entails. This could possibly be combined with a requirement that a directive be implemented in one piece and not divided into different national statutes.

Directives and statutes must cover their intended area of application and not provide loopholes (derogations). The use of derogation clauses should be minimised.

5.5.3. APPLICATION PROBLEMS

Even with high quality legislation, it is difficult to establish reasonably standardised interpretation and application in a region the size of the EU. Authoritative rulings can, in principle, only be provided by the European Court of Justice, but case law develops slowly and the protracted time in conjunction with advanced rulings is an increasing problem. Much can be said for the need for court reform or at least the ability to make use of the opportunity to establish what are commonly referred to as "judicial panels".

One can sympathise with the system whereby the text of the law applies and that it is the task of the courts to interpret such text and, where necessary, seek the European Court of Justice's clarification of the contents. However, in practice, it is often troublesome that so little explanation of the legislator's views is available beyond the compressed preambles. The Commission's proposals, on the other hand, are accompanied by an Explanatory Memorandum. Consideration should be given to including a similar document in that which is finally adopted by the Council and The Parliament. This should be seen as guidance and explanatory without being binding on the courts.

It is also necessary to use other instruments to maintain the same application. It may be a question of the Commission being required to work more systematically with the notifications and guidelines (cf. competition law). However, this requires the development of a methodology and procedure to produce such documents, which ensure transparency, objectivity and high legal quality.

5.5.4 IMPLEMENTATION

Within the scope of its programme for "Better Regulation" the European Commission has advised that they intend to tighten their supervision of the implementation by member states of the more important directives by, among other things, being active in the early stages. This is a good thing and obviously necessary, but one observation is that even an entirely correct implementation in practice also gives member states quite a lot of leeway.

A greater and more systematic exchange between the member states, both in the implementation phase and afterwards, through the use of expert groups, advisory committees, networks, etc. is another means of creating "natural pressure" towards genuine harmonisation. These mechanisms are already used but are often closed and secret. They must be opened up and able to receive views from other interested parties. Different forms can be envisaged – hearings, reference groups, observers, etc.

5.5.5 THE PROCEDURE

The programme for better legislation is to a large extent commendable - and necessary. The European Commission plays a key role. However, our view is that the procedures in the Council and the Parliament also need to be changed. It is not sufficient that the Commission's proposals for legislation are quality-checked and that other institutions declare in general terms their loyalty to the objectives concerning "Better Regulation". Even if well-supported and skilfully formulated Commission proposals work against it, there is still a clear risk that they will end up in tatters once dealt with by the Council and the Parliament. Through "interinstitutional agreement(s)", important mechanisms are being established to ensure that the whole procedure works. However, we think that this is not enough. Internal, more radical reforms are also required.

The fact that both sides allocated funds for an impact assessment of their own more important amendment proposals is certainly notable, but should have been obvious a long time ago. For the time being, there is also uncertainty as to when this will be used in practice. On the other hand, it is clear that the handling by the Council and the Parliament of the Commission's simplification proposals is so unwieldy that it becomes a burden in itself, which is revealing and confirms the need for reform.

The work of the Council needs to become significantly more transparent, so that during negotiations it can be discerned which viewpoints have been put forward and the reasons therefor. There can be no question of conducting negotiations in the full glare of publicity, but there is also no reason not to show established national positions.

The work of the Council should be guided by established "European criteria" which counter national or purely protectionist requirements having an impact. Such criteria can be developed within the framework of the Commission's legislation model, and also apply to the Parliament.

The procedure in the Parliament should be given a better structure which enables the Parliament to put forward clearer amendment proposals, focused on essential points in the relevant legislation. The Parliament is currently made up of 785 members and even now this figure indicates a significant risk that, in certain cases, this may result in a mass of proposals that are difficult to process in a fair and transparent manner, which at the end of the day also results in appropriate legislation. Naturally, there cannot be any question of depriving individual members of the basic right to put forward views and make demands. However, a procedure within the Parliament is required which results in proposals being collated and consolidated, e.g. within party groups. This would avoid situations of hundreds of amendments which are very difficult to take in and the handling of which often appears almost unfathomable to an outsider. A more effective proposal structure would thus strengthen The Parliament's democratic function and also lead to better legislation.

It is heartening that the Parliament decided to set up a working group for the reform of internal procedures, among other things with a focus on "Better Regulation" and the quality of the legislation.

An additional possibility is to establish an independent review during the procedure at the different institutions. This can apply to the impact assessment and whether it has obtained the "correct" impact in reviewed proposals, as well as the technical formulation.

5.6. INTERNATIONALLY – DIFFERENT WAYS TO SIMPLIFY RULES

At the international level, there are a number of different arenas and methods to achieve harmonisation and simplification. These different ways are all valuable, but multiplicity also makes the work difficult to grasp. In order to ensure that Swedish efforts are focused on prioritised issues, it is important that there are coordinated objectives and strategies for the work in different fora. The work on the international level must also be coordinated with the EU work. Consultation and cooperation with the business community are naturally also very important in ensuring that the reform work leads to meaningful results in practice.

5.6.1 MULTILATERAL CONVENTIONS OR BILATERAL AGREEMENTS?

Multilateral agreements are very important for the international simplification of rules, but the negotiation of such conventions is characterised at the moment in many areas by considerable difficulties in reaching agreements. Examples are the negotiations within the WTO (World Trade Organisation) and within the UN's intellectual property law organisation WIPO (World Intellectual Property Organisation).

The Confederation of Swedish Enterprise considers that, despite the problems, it is important to retain the multilateral perspective, since global trade benefits most from general agreements which cover as many countries as possible. General reductions in, or the entire removal of, customs duties, along with the phasing out of technical barriers to trade, nearly always results in strong economic growth which favours both poorer and richer countries. We therefore support e.g. the efforts to complete the Doha round relating to a new multilateral trade agreement within the WTO as well as the work at WIPO regarding an international convention on the harmonisation of patent law.

Bilateral agreements between different countries can be positive in themselves and in the trade policy position which has now arisen, many countries are keen to conclude e.g. separate free trade agreements. But for the globalised business community, such agreements can sometimes lead to further problems. The agreements always contain a lot of detailed rules to ensure that the products which are covered really are of the "correct" origin, which results in a lot of hassle and high administrative costs for companies that acquire their components from a number of different countries and customs regions.

5.6.2 INTERNATIONAL ORGANISATIONS

Within many international organisations, valuable regulatory reform work is being carried out. This work often takes place in close consultation with the business community and can be a lot more effective than the work in fora of a stronger political nature.

An example of regulatory reform work is that of the OECD (Organization for Economic Cooperation and Development), which has been going on since 1995. The OECD has, among other things, carried out evaluations of the regulatory regime in some twenty countries. Among other things, a report on Sweden has recently been published and an evaluation of China is in the pipeline. They have also produced guiding principles for regulatory quality, the most recent being published in 2005 (OECD Guiding Principles for Regulatory Quality and Performance).

The OECD is also involved in extensive work with respect to fighting corruption. The work of the OECD in stopping the bribery by companies of foreign officials in connection with international deals is considered e.g. by the international organisation Transparency International to be extremely important to also counteract the "supply side" of corruption.

These projects are being carried out in consultation with the business community, primarily through the advisory committee BIAC (Business and Industry Advisory Committee to the OECD) which consists of business organisations in the OECD's member states. BIAC has, for example, pending the OECD's regulatory reform work in China, contributed with extensive reports on the existing problems and the areas that should be prioritised. This type of cooperation results in higher quality of work in relation to international regulatory reforms and should therefore be strived for.

5.6.3 INTERNATIONAL NETWORKS OF PUBLIC AUTHORITIES

International legislation is often a sluggish phenomenon with long lead times for preparation, negotiation, adoption and implementation. At the same time, the need and demand for cooperation and harmonisation are also on the increase. A phenomenon which can probably be seen as a reaction to this is the international networks, often of national public authorities, which are created for coordination, exchange of experience and development of procedures, etc. One example is the International Competition Network (ICN), which brings together competition authorities from throughout the world. Another example is the close cooperation that the European patent authority EPO has with the American and Japanese patent offices, the so-called Trilateral Co-operation. Within the EU, there are also more or less regulated structures of this type, with the Commission being the driving force. One example is the so-called Article 29 group, which ensures that the Data Protection Directive is complied with, and which is made up of the data protection authorities of member states.

Through such networks, important results in practice can be achieved which would not otherwise be possible with respect to coordinated handling, allocation of matters, harmonised information requirements, etc. This is of course positive. However, something that should be discussed is the level of insight and supervision that these networks should be subject to. Only ICN has a great deal of openness and an organised cooperation with the business community. This is, however, not always the case.

5.6.4 STANDARDISATION

Technical standardisation has for a long time played an important role for efficient production, quality assurance, distribution, etc. However, standardisation which occurs at the national, regional and international level has been significantly broadened and has increasingly encroached on other areas, such as management systems, safety, the environment and handling of information. "Softer" issues, e.g. social responsibility (corporate social responsibility, CSR) and the like are also now objectives for standardisation.

Standardisation can be an alternative to regulation. It can also be combined with legislation through provisions which refer to stated standards. Along with an increased need for globally applicable standards, one can also predict an increasing desire for international standards, i.e. ISO standards. This is essentially a positive development. The standardisation work is generally focused on producing standards that work in practice.

However, not everything is suitable for standardisation. Questions can be raised in particular when it comes to ideas for standards for things such as entry codes and self-regulation procedures. Experience shows that these often run out of steam if they are exposed to intense control "from outside".

It can also be said that many of the procedures for standardisation that currently exist are slow, hard to work and costly for companies and organisations to participate in. Making international standardisation work more efficient is therefore an important factor in order to establish common standards more simply.

6. How can Sweden support companies operating globally?

Every problem cannot be legislated away and, in some countries with undeveloped legal systems, crucial improvements cannot be expected in the near future. Therefore, it is important that the companies receive help to deal with any difficulties.

6.1 WHAT SUPPORT DO COMPANIES NEED?

Based on our interviews with companies and with public authorities, advisory bodies and other parties who encounter Swedish companies operating internationally and their problems, we have identified the following areas where it is valuable that companies receive advice and support.

6.1.1 GENERAL ADVICE AND INFORMATION

Many companies may need assistance at an early stage in order to find out how to go about planned overseas operations and to receive general information about the relevant country. Some of the authorities that we interviewed think that small companies in particular are often unaware of the legal risks that they take in their international operations. It is therefore important to raise the ability of companies so that they know where the pitfalls lie and can take a calculated risk. Unnecessary set-backs are then also avoided.

"One might wish that they had investigated things a little more thoroughly before they proceeded. If anyone sets out and thinks that everything will be the same as in Sweden, there is a risk that they will tire of the bureaucracy."

There are certainly also companies that worry about the difficulties. Through accurate and easily accessible information, these companies can be supported in venturing to take the step abroad and taking advantage of the global market.

"We sometimes experience some opposition from companies and often have to play down the step out into the world by objectively explaining what is required to go out."

6.1.2 TANGIBLE ASSISTANCE WITH SPECIFIC MATTERS

The companies may also need more hands-on help as to how to deal with specific issues. These may take many different forms and may e.g. relate to procuring permits, getting a product approved or establishing a company. According to the public authorities that we spoke to, common questions include how directives regarding product requirements have been implemented in different countries, how to deal with long payment times and where to turn to in order to obtain a VAT refund.

The interviews that we carried out with the companies demonstrate that the problems clearly vary from country to country. It is therefore important that the companies can get help to find advisors who have expert knowledge about the relevant country.

6.1.3 LOCAL PARTNERS

One way to get a foreign business up and running is to work with a local cooperating partner. This is often a simple way to get around the bureaucracy and establishment difficulties. Many of the small companies interviewed cooperate with local partners and think that, by doing so, they avoid any problems. Sometimes a local partner, e.g. in the form of a joint venture, is also a requirement for establishment.

A good way to assist Swedish companies to start up on the international market is therefore to offer help in finding a suitable and reliable partner.

"It is very common that this is how it is when they start. There seems to be a tendency in our view that the companies come here and want to get hold of a partner. It is sometimes difficult and time-consuming to find the right one but if one does so, it often works well."

Examples of measures which may be valuable are brokering contacts with companies in the country of establishment and assistance in obtaining credit rating information and other information about conceivable cooperating partners. It can also be important to obtain assistance in avoiding the problems that can arise in a cooperation, e.g. how the ownership in a company will be divided up and what should be agreed upon in advance.

6.1.4. ASSISTANCE WHEN PROBLEMS ARISE

As in all business operations, problems sometimes arise for companies that operate abroad. This can involve purely commercial disputes where, for example, legal means need to be resorted to in order to get paid or where there is disagreement as to how a contract should be interpreted. In such cases, the companies may need assistance mainly in finding suitable local lawyers or other advisors.

Discrimination or trade barriers can also be experienced. In such cases, it may be necessary to act vis-à-vis local authorities, which is of course facilitated if support is received from a Swedish party with knowledge of the local conditions.

6.2 WHAT CAN BE IMPROVED?

There are currently a number of different public authorities, advisory boards and other parties who in different ways work to support Swedish companies in their international business. These parties give advice and assistance in different situations, with different problems and for different regions. Examples include ALMI Företagspartner, Euro Info Centre, Exportrådet (the Swedish Trade Council), Kommerskollegium (the National Board of Trade) and SOLVIT Centre, trade organisations, chambers of commerce and the Foreign Ministry through embassies and consulates. A brief presentation of these parties and how they can assist companies is contained in appendix 3 (which can be found on www.svensktnaringsliv.se). You can also find the website addresses of the parties.

Within the scope of this study, we have not carried out any evaluation as to how the different parties function or whether they offer all the necessary expertise. What can be noted is that small companies appear to be quite unaware of these parties. The only parties that are mentioned by the small companies interviewed were the Swedish Trade Council and (by some individual companies) the Swedish Chamber of Commerce. It is likely that many small and medium-sized companies do not know where to turn to get support and advice.

It can also be noted that there is a large number of parties. Multiplicity of parties is in itself not a disadvantage. It is positive that there are many entry points to assistance and that there are

different types of parties that can meet different needs. However, it is important that the companies can find the right parties and that these have the expertise they require.

A first measure that the Government can take could thus be to **identify and make a list** of the various parties and the way in which they can assist. They should also investigate whether **complementary efforts** are required and, if so, how they should be organised. It should be considered whether the efforts of the different parties (mainly governmental) can be **coordinated** better to ensure that the company seeking support always gets as complete support as possible.

Improvements can also be made with respect to the **accessibility and visibility** of the existing parties. This can be achieved by creating a national hub for this type of information, for example through a special Internet portal, with links to and from a number of different websites. This way, the different parties can become more visible and connected together in a clearer network, so that companies can more easily search for different types of assistance.

Finally, it could also be considered to give some authorities or organisations the task of producing **summarised directions and checklists** in relation to international operations in a similar way that NUTEK's website did in relation to information about new enterprises. The information can both relate to general aspects of international business and more specific factors which should be paid attention to in different countries/regions. This information must naturally be limited to basic advice as to what one should think about and where one can turn to receive information and assistance. More detailed advice should, of course, be provided on an individual basis.