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Effective and Sustainable Regulatory Reform: The Regulatory Guillotine in Three Transition and Developing Countries[©]

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Bold and Sustainable Regulatory Reform: The Regulatory Guillotine in Three Transition and Developing Countries

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Summary

1. Reforming the business environment is a broad agenda, but at its core is regulatory reform, particularly for small enterprises that are disproportionately harmed by regulatory costs, barriers to entry, risks and uncertainties, and associated costs of corruption. This paper assesses experience with an innovative reform instrument that is designed to overcome the imposing difficulties of broad regulatory reforms and to accelerate and sustain business environment reforms into the future.
2. Economic transition requires massive legal change. Such legal change goes beyond policies and formal legal instruments, since the role and style of regulation in society is deeply embedded in traditions, capacities, interests, and the organization of power. Far-reaching legal change, called here “regulatory reform,” stretches from the collection of existing legal instruments into the institutions, processes, and capacities of government, and even further, into the institutions of the rule of law and the changing relationship between the state, market, and society.
3. Much development work is focused on adjustments to the legal system to support new economic and democratic needs. But such work is very slow. The challenge is finding ways to shift this complex system of instruments and behaviors to support the rapid economic growth needed to produce the ambitious poverty reductions promised in many countries. There are always time lags between market change and legal change; the task here is to shorten the lag so that legal systems “catch up” with market needs.
4. What tools should be considered, and what are the roles of donors in tackling this reform agenda? Reformers often underestimate or are intimidated by the sheer scale of the problem. Kenya’s businesses suffer from over 1,300 business licenses and fees imposed by 178 state bodies, and the government is still counting (indeed, regulators are continually producing new licenses). Moldova’s reformers originally estimated that its 67 inspectorates had created 300-500 regulations for businesses: the actual number revealed through the guillotine was more than 1,100, many of them illegal and never

¹ The paper is entirely the responsibility of the authors, but Scott Jacobs thanks several people for their valuable feedback and improvement of earlier drafts of this paper. They include Irina Astrakhan of the World Bank, the primary author of section VII on the role of donors; Cesar Cordova and Jeff Hill, Directors of Jacobs and Associates, Ben Musau of B.M. Musau & Co. Advocates in Nairobi; Eugen Osmochescu and Denis Gallagher of USAID/BIZPRO Moldova; and Andrey Astrakhan of Jacobs and Associates in Kiev. Additional material on Ukraine was made available by Patrick Rader, USAID|BizPro Director for Ukraine - Moldova – Belarus. USAID|BizPro is a regional economic growth project funded by the U.S. Agency for International Development and implemented by Development Alternatives, Inc. (www.dai.com).

published. Reforms aimed at single processes and rules will never catch up with the productive capacities and incentives of governments to create regulations and controls. The issue is clearly a systemic one.

5. In shifting this tangle of rules, institutions, and interests, no single approach will be sufficient. First, sustainable regulatory reform must be part of a larger program of supportive microeconomic, microeconomic, and governance changes. Second, there is no magic bullet – these reforms should be incorporated into a sustained action program that starts promptly and focuses on results, enjoys political commitment, adapts a range of tools proven in other countries facing similar problems, and invests in institutional capacities and human resources. Donors, even those looking for fast results, are beginning to realize that isolated and one-off reforms usually do not produce concrete, lasting benefits for the private sector.

6. Driven by work at the OECD and more recently in the World Bank, studies are emerging about how large-scale and sustainable regulatory reforms occurred in countries such as South Korea, Mexico, and Eastern Europe, and how these experiences can be used in designing reforms in other countries. Increasingly, this work examines the political economy of reform and attempts to relate the design of reform processes and instruments to the constraints posed by the larger political economy in each country.

7. In that vein, this paper examines three recent cases (Moldova, Ukraine, and Kenya) in which an innovative reform instrument, called the regulatory guillotine², is used to launch bold and top-down reforms to the existing stock of regulations, and to lay the foundations for continued, sustainable improvement in how governments regulate in future (the flow).

8. The regulatory guillotine is intended for those situations where governments are moving rapidly through the transition process from state-led growth to market-led growth. It is based on the view that the regulatory problem is vast and systemic, and that isolated and marginal reforms must be replaced by broad-scale and systematic reforms that extend across the public sector. It is expressly designed to:

- Reverse incentives in the reform process, and so overcome some of the barriers that have slowed or blocked broad-based regulatory reforms in the past. These barriers include high political and administrative costs, intense and passive insider resistance to change, and lack of planning on how to sustain change into the future. It is designed to reduce the costs of reform within a political and legislative system that is already overburdened with difficult reforms;
- Create a sustainable process for future quality control and legal security, mainly by establishing a quality checklist and review process and creating a comprehensive and central regulatory registry with positive security;
- Create the institutional infrastructure for continuous and effective regulatory reform implementation, including establishment of mechanisms for inter-ministerial coordination and cooperation, strengthening the engines of reform, and building core capacities for regulatory analysis.

9. The guillotine has now completed first phases in all three countries. In all three countries, orderly, transparent and public-private processes were created to rapidly review regulations, and substantial numbers of regulations are being eliminated. The reviews

² The term regulatory guillotine has been used for several years to describe variations of the basic reform, but Regulatory Guillotine™ is a trademark of Jacobs and Associates Inc.

varied in scope and timing. They were carried out in 8 weeks in Kenya, 6 months in Moldova, and 3 months in Ukraine. The number of regulatory instruments eliminated is itself a poor proxy for cost, since governments can easily cut trivial regulations without much impact on cost levels. However, qualitative assessments of the content of the guillotines in Moldova, Kenya, and Ukraine suggest that, in fact, important regulations with substantial cost and rent-seeking implications were eliminated.

10. Problems with resistance, weak capacities, and organization reduced the effectiveness of the reforms, but the results in the three countries suggest that the guillotine process:

- Can be adapted to work in countries with low administrative skills and high levels of capture and resistance in the public sector. Kenya, Moldova, and Ukraine each successfully adapted the regulatory guillotine to its own legal, political, and administrative structures. This flexibility suggests that the guillotine has potential for broader application in developing countries;
- Produces rapid results in reducing the number of regulations and, apparently, regulatory costs on businesses;
- Improves understanding and management of the regulatory problem by mapping out the full scale of regulatory interventions;
- Increases reform capacities by reducing the political and administrative costs of reform and eroding the capacities of insiders to block change;
- Creates the processes and organizational conditions for continued reform to the regulatory role of the public sector;
- Stimulates the development of active private partners for reform that will be useful in sustaining momentum.

11. The most important benefit lies in how well the guillotine prepares governments to move forward to a more sustainable strategy of reform. Here, the strategy seems to perform well. A good indicator is that the first phase reforms are being expanded to more ambitious and longer-term reforms in all three developing countries. The second-phase reforms are universally aimed at institutionalizing the quality controls that were piloted and developed in the first phases through strategies such as institutionalizing central units for regulatory reform, creating systematic consultation procedures, and building capacities for regulatory impact analysis (the OECD Agenda). This is persuasive evidence of the sustainability of this kind of strategy even in countries with poor records of sustaining difficult, medium-term reforms.

12. The role of donors was important in each of the three developing countries that undertook the guillotine. Donor support through grants, technical assistance, and conditionality added substantial value to key success factors for regulatory reform: (i) strong commitment to reform at a high political level; (ii) development and adoption of a comprehensive reform strategy shared by a broad range of local stakeholders; (iii) availability of sufficient technical expertise, knowledge, and skills to conduct regulatory reviews of existing regulatory stock and improve the quality of regulatory flows; (iv) existence or creation of an institutional infrastructure capable of driving the reform and managing it efficiently. In Moldova, the path to the broad business environment reform was paved by the Investment Climate Assessment (ICA) by the World Bank, followed by World Bank and USAID support. Over the medium-term, development of the comprehensive medium-term regulatory reform strategy provides good opportunities for

donors' coordination: planning and sequencing the support and in pursuing a comprehensive approach to assistance rather than supporting piecemeal activities and fragmented interventions. Existence of a clear, comprehensive strategy for regulatory reform also helps donors by facilitating provision of budgetary support and technical assistance in a systemic and consistent manner over extended periods.

13. The regulatory guillotine is not the only tool that governments can use to accelerate regulatory reform and to break the logjam of paralysis clause by ineffective governments and captured policies. There will always be a need for focused reforms that target specific rules and procedures that are particularly onerous or complex. But the guillotine is an illustration of the kinds of intelligent reforms that are needed to move beyond the narrow and one-off reforms that are so common in the field today, and that are too often producing marginal and disappointing results.

I. The Modern Regulatory System: From Deregulation to Quality Assurance

14. The public regulatory system of a country – the collection of public policies, legal instruments, processes and institutions that establish legal constraints on private behavior – is at the core of its relationship with the economy and society at large. Development of a modern regulatory system is neither simple nor fast. The problem is vast, and sustainable change requires not only reforms to thousands of instruments, but also new institutional capacities and a shift by the public administration from a culture of control and rent-seeking to a culture of results-orientation and client services.

15. There is no ideal model for the “right” regulatory system. The precise role that markets and governments can play varies from country to country and from sector to sector. Successful countries show much variation. However, a growing body of literature on the determinants of growth suggests that the state will need to:

- increase the scope for markets to work efficiently by eliminating state-owned and legal monopolies, barriers to entry and exit such as unnecessary licenses, and other interventions into commercial decisions such as price controls (these simplification, liberalization, and deregulation policies usually aim to intensify market competition);
- provide a market framework of policy, regulatory, and judicial functions to protect property rights, promote competition by controlling market abuses, carry out competitive procurement, and provide efficient services to the private sector such as registration, licensing, and a contractual system for economic transactions. The market framework requires that the State effectively operate a range of institutions for market supervision, adjudication, enforcement, licensing, and standard-setting (these capacity-building reforms usually aim to “enable” businesses to compete by setting out neutral and transparent market rules);
- expand its attention to social policies such as funding transfer payments that underpin the welfare state, educating, providing health services, financing universal service programs, and promoting safety, health, environmental quality, energy security, and other objectives that may not be properly valued in the market (these protective and welfare functions of the State are rapidly becoming its core functions). Even in traditional public services, however, governments are increasingly relying on private sector initiatives, while providing funding to deal with affordability concerns.

16. These reforms improve private sector performance in two ways: by freeing up the market and stimulating competition so that enterprises can adapt and innovate more quickly, and by enhancing the capacity of the public sector to provide an enabling environment of sound regulation and efficient public services.

17. Moving to the modern regulatory role of the state is a “good governance” agenda, not a narrow “deregulation” agenda. The “deregulation” agenda is only one element of the broader “good regulation” agenda that enables governments to regulate in a market-friendly way. Regulatory reform is a multifaceted strategy that includes deregulation, re-regulation, simplification and institution-building (including public sector reforms), consistent with the approaches taken by the OECD in the 1990s and since adopted by most international development banks.³

³ There is no generally accepted definition of regulation applicable to the very different regulatory systems around the world. In most analyses, regulation refers to the diverse set of instruments by

18. Regulatory reform requires changes to the role and mode of the state itself. In fact, an effective market strategy aimed at the “enabling environment” typically requires more reforms in the public sector than in the private sector, in contrast to the focus in many developing countries on providing supports to businesses to “enable” them to compete. In the longer-term, the goal is to move governments from a culture of ownership and control over the private sector to a culture of arms-length regulation, based on client service, and facilitator of market forces.

19. This wider context has specific implications for regulatory reform. Governments must learn when and how to regulate in a market economy. The OECD, for its part, calls for a “pro-active “quality assurance” role” for the regulatory functions of government.⁴ Regulatory reform today focuses less on reducing specific burdens to businesses and more on the institutions and incentives and relations with civil society that shape the style and content of regulation. For most developing countries, the major regulatory challenges over the next few years are to systematically unwind extensive state involvement in the economy, discourage entrenched habits of rent-seeking, build new regulatory capacities in the public administration, and create the market-based regulatory regimes and institutions that will support investment, innovation, and vigorous competition.

20. The experiences to date with regulatory reform show that a regulatory reform strategy that focuses only on the liberalization, simplification, and deregulation agenda can produce some immediate results that can be satisfying politically, but that have limited longer-term value for business growth because gains are easily reversed by bureaucracies operating under old habits and incentives. This problem is often seen. In Moldova, for example, the reform and consolidation of most government licenses into the central Chamber of Licenses was a successful reform if judged on short-term goals, but one whose net benefits have been minimal because over time the ministries simply replaced their old licensing functions with a similar instrument called “authorizations” that have the same negative effects on businesses. As a result, businesses now face two layers of red tape, rather than one.

which governments set requirements on enterprises and citizens. Regulations include laws, formal and informal orders and subordinate rules issued by all levels of government, and rules issued by non-governmental or self-regulatory bodies to whom governments have delegated regulatory powers. Regulatory reform is often used to refer to changes that improve regulatory quality, that is, enhance the performance, cost-effectiveness, or legal quality of regulations and related government formalities. Reform can mean revision of a single regulation, scrapping and rebuilding an entire regulatory regime and its institutions, or improvement of processes for making regulations and managing reform. Deregulation is a subset of regulatory reform and refers to complete or partial elimination of regulation in a sector to improve economic performance. This definition is based on OECD (1997) OECD Report on Regulatory Reform, Paris.

⁴ OECD (2002) *Regulatory Policies in OECD Countries: From interventionism to regulatory governance*, OECD, Paris

Box 1: Why are bad regulations so common?

Why are poor regulations so universal? It seems odd that governments claim to want business growth and private sector development but actually hinder the private sector through costly rules and administrative barriers. The reason for the paradox is partly that governments try to achieve many objectives at the same time, and partly that developing countries in transition from planned economies suffer from the legacies of over-control, due to earlier state-led development strategies.

But the more enduring reason is that regulations fall into that class of fragmented, institutional, and crosscutting issues that governments are the least capable of tackling

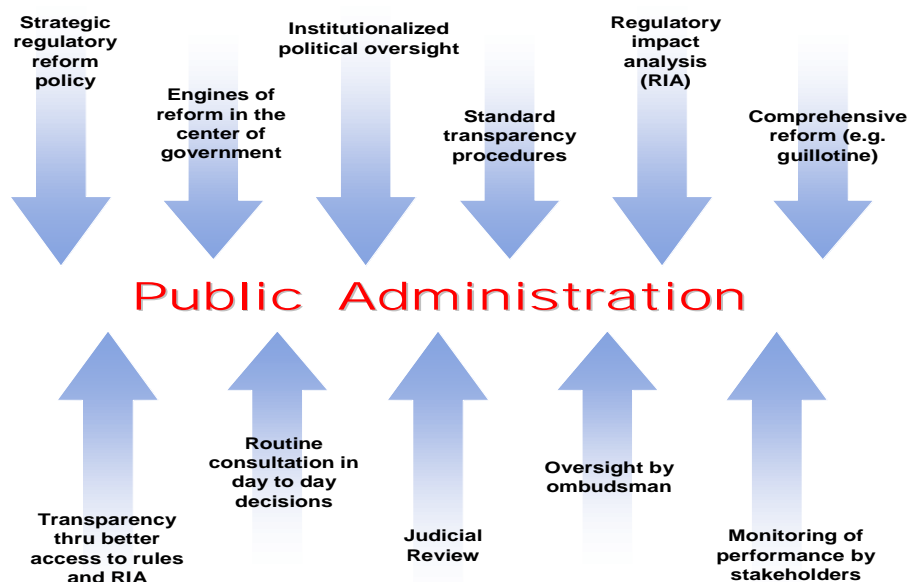
- Unlike spending through fiscal budgets, there is no accounting system for the hidden costs of regulation. Therefore, governments tend to treat the business costs of responding to government demands and of waiting for decisions as a free good, with zero opportunity cost
- Another cause is structural: the most common cause of governance failure is lack of coordination across multiple legal and bureaucratic jurisdictions, which lead to excessive and overlapping demands on businesses.
- The political economy of policies where benefits are concentrated, but costs are widely dispersed, is difficult to reverse. Administrative formalities generate rents for many interests, such as lawyers who sell services to help businesses, civil servants who sell favors such as faster processing, and incumbent producers who want to reduce entry. Every administrative barrier is fiercely guarded by stakeholders, and in fighting them, politicians can expend vast political resources with little political gain.

These problems of incentives, information, and structure are exceedingly difficult to address in a sustainable way. They require much more than marginal changes to a few procedures. Developing countries face a triple legacy of 1) numerous interventions into business decisions from previous state-led economic models, 2) poor institutional capacities to implement them, and 3) weak reform and corrective mechanisms to remedy problems. The resulting overly complex, multi-layered, arbitrary, and interventionist administrative and regulatory environments make it difficult to create a transparent and predictable business environment. Sustainable changes require institutional reforms to the state.

21. Most regulatory reforms today focus solely on reducing the costs of existing instruments and procedures. A focus on reducing operational costs for businesses, and entry and exit barriers, is encouraged by the Doing Business indicators of the World Bank. These can be indeed useful indicators of “trouble spots” in the regulatory map. However, sustainable fixes to those kinds of problems cannot be achieved by simply eliminating some processes and revising others.

22. Sustained results are achieved by changing regulatory behaviors. Change is induced by redesigning institutions and constructing new checks and balances that bring continual pressures on the public sector for change. Such checks and balances must be built both top-down and bottom-up. Figure 1 demonstrates a range of disciplines and checks-and-balances used to improve the quality of regulations and administrative practices.

Figure 1: Checks and balances for regulatory quality in the public administration: top-down and bottom-up



Source: Jacobs and Associates, 2005[®]

23. This broad program of reform is not easy to accomplish. Reform usually falters, not because governments do not know what to do, but because they lack the skills and capacities to do it. While many countries have launched many regulatory reforms, most have difficulties in achieving solid results. These difficulties are mostly problems of design and implementation, including coordinating across government, involving stakeholders, prioritizing goals, focusing on bottlenecks, identifying practical solutions, implementing on schedule, and monitoring results. These challenges go to the entire governance process surrounding them, including coordination, content development and implementation.

24. The OECD, too, found that even in countries where reform has advanced far, what seemed like easy reforms of deregulation were “slowly revealed as a difficult, complex and multifaceted reform agenda that most reformers did not have the influence or the tools to carry out. Worse, regulatory reform was revealed as a task singularly ill-suited to the political cycle.”⁵

25. Sustaining an expanding program of reform is among the most difficult tasks for developing countries. By reducing barriers to entry and regulatory compliance costs, governments aim to change the incentives underlying commercial decisions in the market. This kind of reform is explicitly market-based, aiming at bottom-up, sustainable private sector growth. It stands in welcome contrast to the costly investment incentives, trade zones, market protections, subsidized credits, and other top-down supports for investment projects that are common in developing countries. For that reason, governments must be committed to a broader program of private sector-led growth if they are to be successful in regulatory reform.

⁵ OECD (2002), op cit. p 20.

26. The key is momentum and institutionalization. The reform program should be based on an accelerating, expanding strategy that engages a wider and wider group of interests. Government reforms that are credible and produce results change the political economy inside the country, releasing reform energies, and reinforcing a growing consensus about market reform. As reforms stimulate changes, they help governments overcome governance bottlenecks, such as the ability of "insider" groups to stop consideration of options contrary to their interests.

II. The Four Tasks of Regulatory Reform, or the Swimming Pool

27. The main tasks of regulatory reform full into four categories.

- The most obvious task in the current regulatory system is modernizing the enormous stock of existing laws and other kinds of regulations that go back decades or even longer. This is the goal of the guillotine. This stock of regulations is incoherent in most countries. It developed over time, over different economic strategies, and over political regimes that are remembered only in the history books. The regulatory stock in most countries has become a museum of old ideas and old problems. Outdated regulations and inefficient regulatory techniques survive deep in the regulatory jungle because there is no accountability for their performance, and no review and updating process in place. Countries in transition face an enormous task of reviewing and updating the legacy of laws, rules, and other instruments. Most of what is today called regulatory reform tries to address problems such as excessive costs and corruption stemming from the stock of regulations and associated paperwork and procedures.
- The second task is controlling the flows of new laws and other regulations. Production of new regulations is increasing in volume and cost in most countries.⁶ This is because governments, even while they are deregulating in some areas, are producing more regulations in many policy fields, such as safety and health, consumer protection, and environmental protection, and are building new regulatory regimes for sectors such as financial services, utilities, and other emerging private markets. Many reforms in OECD countries are focused on improving the quality of new regulations through tools such as regulatory impact analysis, but these disciplines have not yet reached the tool boxes of most donors or developing countries.
- The third task is building the capacities of the whole panoply of institutions that develop and implement regulatory instruments. These are the ministries themselves that develop regulations, the central agencies such as the Council of ministers, and the parliament itself, the inspectorates that enforce them, the adjudicating institutions such as the administrative and criminal courts, and the many other institutions that deal with various aspects of regulation, such as the national gazette. It also includes those procedures used to consult with stakeholders such as the private sector. Outside of the liberalized utility sectors, most reforms of the regulatory system have avoided changes to these underlying institutions, though these kinds of reforms are those most likely to yield lasting benefits.

⁶ This global phenomenon of increasing regulatory flows has been called "regulatory inflation" by the OECD.

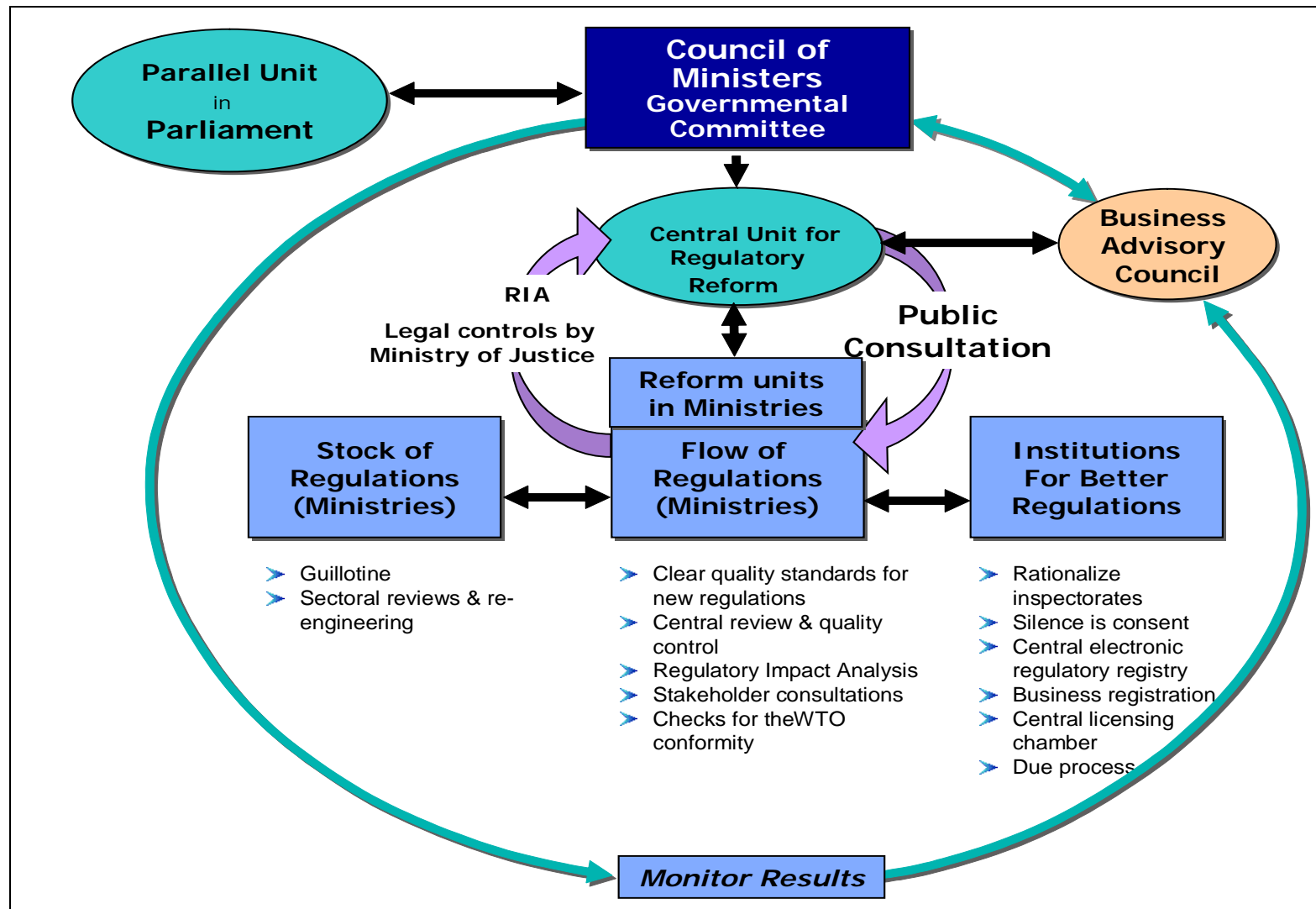
- The fourth task is improving the capacity for reform by building new incentives and institutions to drive the other three tasks. This capacity is stunted and underdeveloped in most countries, while the task of taking on the other three elements is difficult, costly, inter-ministerial, and multi-year in nature. Most OECD countries and an increasing number of transition countries have developed wholly new “engines of reform” at the center of government tasks accompanied by reforms to the regulatory system of government. These have been thoroughly documented by the OECD.

28. Figure 2 shows how the modern regulatory system consists of interlocked institutions and procedures that together create checks and balances that promote good regulation. As this figure suggests, a medium-term, sustainable regulatory reform strategy must address all four tasks. As reformers have seen too frequently, changing rules without changing the way that the ministries regulate does not sustain change – the ministries usually re-regulate and extend their powers once again. The reform effort must control the ‘flow’ of new rules as well as the ‘stock’ of old rules. Jacobs and Associates often uses the analogy of the swimming pool: to keep the water in a swimming pool healthy and clean, the owner of the pool must clean the water already in the pool, and then ensure that any new water going into the pool is filtered and cleaned.

29. Corresponding to the four regulatory reform tasks, then, the four pillars of regulatory reform strategy are:

- modernizing the existing regulatory stock to remove barriers to entry, reduce regulatory costs, and fill in regulatory gaps;
- controlling the regulatory flow by adopting processes and tools for checking and assessing the quality of new laws and regulations, such as central review bodies, impact assessment, principles of good regulation, and meaningful stakeholder consultation;
- building better regulatory institutions throughout the public sector such as by improving transparency mechanisms and due processes, and improving the application of laws and regulations through improvement of inspection and testing functions;
- building capacities for reform by adopting a medium-term reform strategy and strengthening capacities to implement it through central “engines of reform” and private participation, with powers to promote, oversee, and monitor results over the medium-term.

Figure 2: Illustrative elements of a modern regulatory system®



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III. The Design of the Regulatory Guillotine

30. The guillotine is primarily aimed at the first pillar of reform. In essence, it is a means of rapidly reviewing a large number of regulations, and eliminating those that are no longer needed without the need for lengthy and costly legal action on each regulation. Like its namesake, it is clear, decisive, and fast.

31. But if that is all it did, it would be a very partial reform. It is a quick scan process, and does not replace the more detailed reviews and revision that are needed for many regulations, and that can occur in later phases. For many regulatory sectors, re-engineering from first principles is needed, and this cannot be done in the guillotine process. Rather, the guillotine should be seen as an entry point to implementation of reforms within a sustained strategy. Consistent with the reform strategy recommended above, the guillotine is meant to establish the procedures, the constituencies, and the institutions that can be used to build the rest of the reform strategy in later phases. In that sense, the regulatory guillotine should be the first phase of a medium-term, inter-ministerial reform strategy. Its full set of goals is to:

- Reduce the political and administrative costs of rapidly eliminating large numbers of unneeded rules;
- Change the incentives within ministries from passive resistance to “pro-reform” with a credible enforcement scheme;
- Establish active consultation processes for businesses and other stakeholders;
- Create a sustainable process for future quality control and legal security, mainly by establishing a quality checklist and review process and creating a comprehensive and central regulatory registry with positive security;
- Create the institutional infrastructure for continuous and effective regulatory reform implementation, including establishment of mechanisms for inter-ministerial coordination and cooperation, strengthening the engines of reform, and building core capacities for regulatory analysis.

32. To understand the top-down and systematic guillotine, it is useful to contrast it with more traditional approaches to reducing the cost of the existing regulatory structure. A common – and ineffective – regulatory reform method is the bottom-up “listing” approach. The listing approach typically consists of asking businesses or ministries to put together a list of problem regulations or formalities and consolidating those lists into a reform package of many individual reform “items”, and then systematically working to correct each problem. Governments usually report that they have completed a certain percentage of the list as a performance measure of success.

33. The listing approach has many variations, but its common characteristic is that it is bottom-up and interest group-driven. It can produce transitory gains, but these gains rapidly disappear, for three reasons:

- **Bottom-up “lists” of items are ad hoc and biased toward unimportant effects.** Lists usually have little in the way of a strategic focus. This is a natural result of the bottom-up approach driven by interest groups such as the ministries or businesses. Ministries and businesses can produce an almost infinite number of “items” for action. The value of these items is quite another matter. Ministries and other regulatory bodies usually target regulations that are trivial, no longer applied, or that can be easily replaced through other instruments. Businesses, for their part, target regulations that impose the largest operating costs, that is,

that directly interfere with business development and profits. Neither group tends to choose regulations that reduce competition, consumer welfare, innovation, or that otherwise threaten the status quo. Hence, governments usually waste much time on trivial matters.

- ***The listing approach imposes high political and administrative costs, and encourages delay and passive resistance.*** The listing approach places the burden of proof on the reformers to show why regulations must be changed or deleted. This means that the battle for reform continues with every regulation on the list, which strengthens the insiders who protect existing rules. Small skirmishes deplete over time the political capital of reforms. Even worse, there are strong incentives for passive resistance and counter-productive strategic behavior, because delay works on behalf of the status quo. To postpone the decision is to maintain the current regulations. As a result, political and administrative reformers rapidly become exhausted with reform fatigue, and the momentum for reform disappears.
- ***The listing approach is unsustainable.*** Because it does not include any further disciplines on the creation of new controls and regulations, creeping re-regulation can quickly reverse the gains. The listing approach does not change incentives or capacities in government institutions. It is not a basis for coherent, consistent, and sustained programs of reform, nor for changing deep-seated habits and cultures in the public administration.

34. The OECD⁷ found that Japan's traditional "item by item" approach to regulatory reform -- based on a series of actions that aim to remove regulatory restrictions one by one, but with no clear strategy or endpoint for introducing competition into the sector -- resulted in partial and delayed benefits to consumers. The item by item approach proved slow and not very effective in producing concrete results in economic and policy performance.

35. The guillotine is and designed to avoid these three reform weaknesses by changing the incentives within the reform process. The essential principles of the guillotine are that:

- ***There is no selection bias*** in that all regulations in the scope of the guillotine are reviewed. That is, the scope is determined top-down and comprehensive in the field of regulations included in the guillotine;
- ***The burden of proof is reversed in favor of reform.*** In the listing approach, reformers must make the case for why reform is needed. This is reversed in the guillotine. The presumption is that all regulations in the scope of the guillotine will be eliminated UNLESS they are shown to meet basic standards of need, legality, and market friendliness within the timeframe of the reform. In other words, those who want to keep the regulations must defend them. This threat provides the key incentive for cooperation in the reform.
- ***The review is fast and the final decision is taken collectively by the Council of Ministers or the Parliament without the need for an individual decision on each affected regulation.*** This avoids reform fatigue and reduces the capacity of insider interests to block change.
- ***The filters and criteria*** used for the guillotine review process ***can be used on an ongoing basis*** to review new regulations within the scope of the guillotine.

⁷ OECD (1999) Regulatory Reform in Japan, Paris.

that is, the guillotine is the first step of the larger regulatory strategy. This ongoing regulatory quality management is strengthened by the establishment of an electronic registry of regulations with positive security that is self-enforcing.

36. These basic principles of the guillotine process are implemented through careful design and implementation. The guillotine process that was used in Moldova and Kenya is illustrated in Figure 3. This process can be broken down into the following steps:

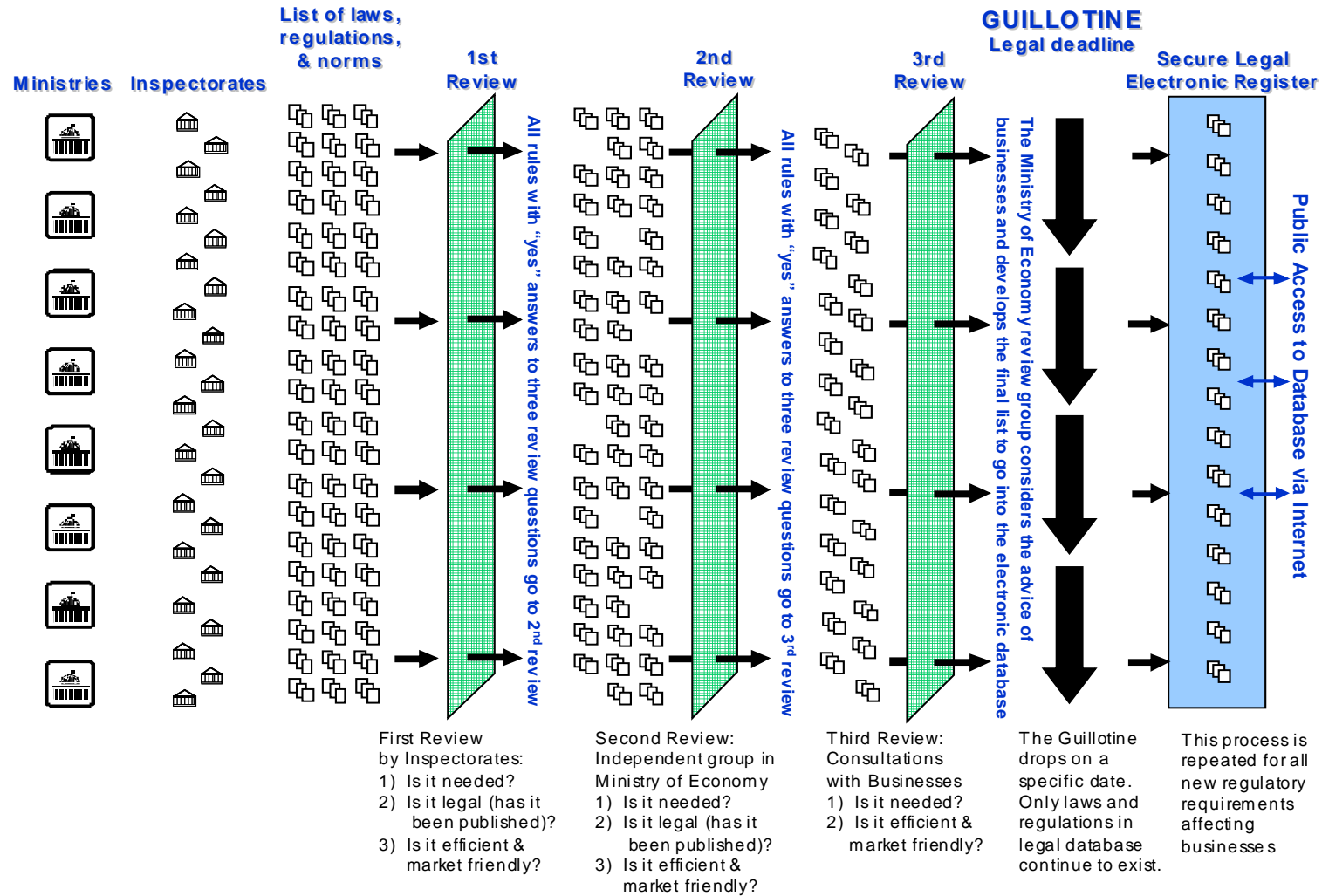
1. The government establishes the scope of the guillotine, that is, defines precisely the kinds of regulatory instruments to be included.
2. The government adopts a legal instrument that sets out the guillotine process, schedule, and institutions.
3. The legal instrument contains a set of explicit and simple criteria that define which regulations pass and which regulations fail. Three common criteria are:
 - Is the regulation legal (has it been published and is it authorized by parliamentary law)?
 - Is the regulation necessary for the future policy priorities of the country?
 - Is the regulation business friendly?
4. The regulations are passed through three filters or review processes. In each filter, unnecessary, outdated, and illegal rules are identified, and excluded from the list;
 - In the first review, all government agencies establish lists of their regulations within the scope of the guillotine by a certain date, and justify those regulations that they want to keep;
 - In the second review, the lists are reviewed by a central review unit which carries out the same review of regulations that passed the first review;
 - in the third review, the lists are reviewed by stakeholders and recommendations are given to the central review unit.
5. Once the final review is completed, a centralized list is created by adding all the ministries' lists together. When the deadline is reached, any regulation not on the list is automatically cancelled without further legal action or further legal action is scheduled to eliminate any rules not on the list (the guillotine drops).
6. The list defines the contents of a comprehensive electronic registry of all regulations in force, and is recognized in law as the legal database of regulations for purposes of compliance.
7. In future, all new regulations and changes are entered in the registry within one day of adoption and/or publication. The registry should have legal security – no regulation not in the registry can be enforced against a business.

37. This process is explicitly a top-down and rather brutal approach to reform. It is designed to break through the paralysis and interest group capture that so often slows and blocked reforms. Its implementation requires careful design of three strategies:

- An administrative strategy to enable a highly structured “top-down” review process with clear filters and incentives for reform;
- A legal strategy for an over-arching legal process within the legal system of the country;
- A political strategy to support the brave ministers who champion this reform, and to gain and sustain support for a radical reform affecting many stakeholders.

Figure 3:

The Guillotine Strategy to Rapidly Reform Existing Regulations®



IV. Experience with the Regulatory Guillotine, 1984-2005

38. The regulatory guillotine is not new. It has been used through several variations for the past 20 years since it was first pioneered in 1984 by the Swedish government which was facing regulatory confusion caused by a century of accumulation of rules. The spread of the regulatory guillotine is itself an interesting story about the dissemination of policy reforms across countries. While that story is not discussed here, this dissemination was largely a result of the efforts of the OECD to identify, assess, and promote effective regulatory practices to its Members.

39. The novel element that is discussed in this paper is the extension of the guillotine from the middle-income countries undergoing rapid economic change to developing countries with lower levels of institutional endowments and higher levels of poverty. The question posed here is whether the guillotine is sufficiently flexible and robust to produce good results in the political and institutional settings characteristic of developing countries.

40. This section is divided into two parts. The first part briefly discusses the experience of the guillotine in four OECD countries, including Sweden, but focusing mainly on countries undergoing very rapid economic and legal transformation, namely, Hungary, Mexico, and Korea. The second part presents more detailed cases of the operation of the guillotine in 2005 in three transition and developing countries: Moldova, Kenya, and Ukraine.

A. The Guillotine in OECD Countries

41. **Sweden:**⁸ In the 1980s, Sweden enacted its well-known “guillotine” rule nullifying hundreds of regulations that were not centrally registered. In 1984, the government found that it was unable to compile a list of regulations in force. The accumulation of ministerial rules across a large and poorly-monitored network of regulators meant that the government could not itself determine what it required of private citizens. To establish a clear and accountable regulatory structure, it was decided to compile a comprehensive list of all agency rules in effect.

42. The approach proposed by the Government and adopted by the Riksdag was simple. The Government instructed all government agencies to establish registries of their ordinances by July 1, 1986. As these agencies prepared their lists (over the course of a year), they culled out unnecessary rules. Ministry officials also commented on rules that they thought were unnecessary or outdated, in effect reversing the burden of proof for maintaining old regulations. When the “guillotine rule” went into effect, ““hundreds of regulations not registered... were automatically cancelled,” without further legal action. All new regulations and changes to existing ones were henceforth to be entered in the registry within one day of adoption.

43. This approach was considered a great success. In the education field, for example, 90% of rules were eliminated. The government had for the first time a comprehensive picture of the Swedish regulatory structure that could be used to organize and target a reform program. The registry may also have had the indirect effect of slowing the rate of growth of new regulations, and by 1996 the net number of regulations had indeed dropped substantially.

⁸ This discussion is taken from OECD (2002) op cit, p. 88.

44. **Hungary**⁹ also used the guillotine effectively in reviewing, eliminating, and replacing regulations not consistent with a market democracy. Its reform was divided into two stages. Hungary tailored its guillotine to the regime change in which a socialist non-democratic society became a market democracy. The first phase of reform concentrated on laws and regulations adopted before 30 June 1990 (pre-democracy); the next 18 months focused on the review of regulations enacted after that date (democratic phase).

45. The Ministry of Justice prepared a precise inventory of existing laws and regulations. Based on this inventory, a specifically appointed Government Commissioner reviewed over a few months the lists presented by the ministries under a detailed review schedule. A submission process was designed which included a checklist. A special justification memorandum was required to keep any regulations adopted before 23 October 1989. The Government Commissioner could recommend that the government reject such regulations or could ask for further analysis. Finally, the Ministry of Justice prepared a specific "deregulation instrument" to be presented to the Parliament to eliminate the hundreds of unnecessary regulations that were rejected in the reviews.

46. **Mexico**¹⁰ also used the Guillotine in the late 1990s to review its formalities. The guillotine marked a historic change from the listing and bottom-up approach, which after years of struggle had produced little real reform, to a systematic reform approach driven by strong political leadership and organization at the center.

47. This move from bottom-up to faster and more coordinated top-down reforms was driven partly by external imperatives. A key aim of the systemic reforms was to ensure compatibility and raise governance standards to that of Mexico's NAFTA partners. This evolution was accelerated by the major macro-economic crisis that occurred in late 1994. In the aftermath of the 'Tequila Crisis', a new administration launched in November 1995 a more wide-ranging reform under an executive order entitled "The Agreement for the Deregulation of Business Activity" (ADAE).¹¹ The ADAE can be considered the first explicit Mexican regulatory policy, as defined and influenced by the OECD.¹²

48. The ADAE organized the reform strategy under three distinct components: dealing with existing regulations, reorganizing how new regulations are prepared, and setting up a strong institutional "engine of reform" to enforce them. Hence, the guillotine was incorporated into a longer-term regulatory reform strategy that included not only reducing the costs of the stock of regulations, but also creating the institutions and capacities for better regulation in the future. This is an important point.

49. To improve the stock of regulations, the ADAE expanded the mandate of the Unidad de Desregulación Económica (UDE or Economic Deregulation Unit), a small but powerful department under the Trade Ministry (Secretaría de Comercio y Fomento Industrial - SECOFI). The UDE mandate was enlarged to give it authority to advocate reform and deregulation of the existing regulatory framework. Importantly, it added to its previous remit the launching of the first systematic review of all business formalities. This was a massive undertaking that was since called the Regulatory Guillotine.

50. The ADAE ordered 12 ministries and Mexico City, which was still a federal entity at the time, to submit to the UDE in a homogenous format and under a precise timeline, all

⁹ This discussion is adapted from OECD (1999) Regulatory Reform in Hungary, Paris.

¹⁰ This is adapted from Cesar Cordova Novion (forthcoming 2006) Regulatory Impact Analysis in México, to be published by the University of Manchester, UK.

¹¹ Acuerdo Para la Desregulación de la Actividad Empresarial, DOF, México, November 24, 1995.

¹² OECD (1997) OECD Report on Regulatory Reform, Paris, and OECD (2002), op cit.

formalities¹³ that were required to open and operate a business. All formalities not submitted were considered unjustified and would be automatically repealed at the end of the general review.

51. For each submission, ministries needed to complete a template for each formality containing a small RIA checklist based on the OECD 1995 Recommendations.¹⁴ The RIA assessed the legal and economic justification, and described the positive and negative impacts of the formality (i.e. what would happen if the formality was eliminated), as well as the existing human and budgetary resources required for enforcement. The lists of formalities together with the RIA checklists were posted immediately on a database in the internet.

52. Based on this submission, the UDE together with an *ad hoc* private-sector Economic Deregulation Council completed a thorough revision of each formality before allowing the formality into the Federal Registry of Formalities and Services if it was deemed sufficiently justified and simplified.

53. The process took longer than expected. The revision of nearly 3,000 formalities took more than five years.¹⁵ In particular, the UDE realized that the filter on new formalities was not tight enough, and subsequently mandated in the new Federal Administrative Procedure Law a full-fledged RIA for all regulations including formalities.

54. However, the whole initiative was considered a success - in particular, the first phase when the massive submission process froze the production of new formalities by the federal regulatory machinery. In a matter of six months, the UDE compiled a list of all formalities and posted them in the internet. Importantly, the RIA process encouraged ministries to rapidly develop evidence-based capacities. During the process of submitting their initial lists, many ministries failed to report certain formalities and thus tacitly eliminated a significant number. The final results: almost half of formalities were eliminated and almost 100% of those remaining were simplified (Table 1).

Table 1: Results of Mexico's Guillotine in Selected Ministries, 1995 – 2000

Ministry	Before	After	Reduction (%)	Simplification (%)
Trade and Industry	227	142	37.4	85.0
Foreign Affairs	24	22	8.3	76.0
Health	115	81	29.6	98.0
Labor and Safety	72	38	47.2	93.0
Tourism	67	49	26.9	92.0
Environment	222	205	7.7	99.0
Education	146	42	71.2	100.0
Agriculture	49	43	12.2	100.0

¹³ A formality was defined as a requirement on paper or electronic copy that had to be completed and given to a government agency in order either to start operations or day to day ordinary business operation.

¹⁴ OECD 1995

¹⁵ An electoral year and the change of administration, as well as the enacting of the reforms of the LFPA (see below) explain in part the very long time needed to establish the final Registry.

Energy	179	115	35.8	99.0
Transport	856	289	66.2	100.0
Interior	81	77	4.9	100.0
Total	2038	1103	45.8	97.0

55. **Korea.**¹⁶ At the end of 1997, Korea suffered one of the worst economic crises ever experienced by an OECD country. Stabilization of the crisis and re-creation of the foundations for sustainable growth was accomplished through an ambitious program of regulatory, financial, and structural reforms. As part of this recovery program, Korea embarked in 1998 on a radical regulatory reform program to review and eliminate a huge number of laws and regulations not consistent with an open market

56. The systematic and top-down reform approach adopted in 1998 was partly a reaction to the failures of earlier "bottom-up" approaches to regulatory reform. Under the Korean "bottom-up" approach, regulators themselves were responsible for determining which regulations to reform or abolish. Although some efforts were made to collect suggestions from the private sector, the regulating bureaucrats always had the final authority to make decisions on whether the suggestion would be accepted. When there was strong opposition to changes from any concerned ministries, changes would not take place. Even if such changes were enforced upon a ministry by political pressures, the ministry could dilute the effect of changes when implementing the reform. Such problems were worsened by regulatory capture. Many Korean ministries have maintained a long "cooperative" relationship with interest groups and organizations under their jurisdiction.

57. The Korean regulatory reform had both evolutionary and radical factors. There were two key initiatives in the 1998 reform program. The first was a deregulation initiative in which the President ordered each government ministry to eliminate 50 percent of all of its regulations. The second was an enduring institutional reform, most notably the establishment of the Regulatory Reform Commission (RRC) and various mechanisms to promote reform and monitor and guarantee regulatory quality and process at the center of government. Previous reforms had focused on the stock of regulations, with no controls over the flow.

58. Hence, while the reformers were improving existing regulations, new regulations were continuously introduced. Hence, like Mexico, the Korean guillotine was firmly embedded into a larger regulatory reform strategy that included institutionalization of regulatory quality disciplines into the machinery of government itself.

59. The first step in the Korean reforms was adoption of the historic Basic Act on Administrative Reforms (BAAR). The BAAR created a much more powerful and long-term regulatory reform body, the RRC,¹⁷ and mandated regulatory quality controls such as regulatory impact analysis (RIA). It included a requirement for a "Comprehensive Regulatory Improvement Plan," in which all existing regulation was to be reviewed by

¹⁶ Adapted from Kim Jong Seok, Kim Tae Yun, Yang Junsok, and Scott Jacobs (2005 forthcoming) CASE STUDIES OF REFORM IMPLEMENTATION EXPERIENCE: REGULATORY TRANSFORMATION IN KOREA, to be published by FIAS.

¹⁷ The RRC is an official government body directly accountable to the President, and is co-chaired by the Prime Minister, so it is meant to have sufficient political and bureaucratic strength to lead the government-wide reforms. The RRC is co-chaired by the Prime Minister and a civilian co-chairman.

ministries in conjunction with the Regulatory Reform Commission. It required that all regulations be, for the first time, registered in a central registry

60. The ministries reviewed all their regulations to determine which regulations were to be eliminated. The reviews were carried out under the following principles:

- All regulations must be examined on a “zero-basis”. Regulations that hinder competition and the market are to be eliminated; but those regulations that are required for the preservation of environment, public safety or health should be modified to achieve their goals as efficiently as possible.
- All regulations without legal basis would lose their status by the beginning of 1999. Thus, if regulation does not have a legal basis, it must either be eliminated, or appropriate legislation must be introduced to establish a legal basis.
- The Ministries reviewed all regulations to determine which regulations were to be eliminated, and submitted (as required by BAAR) plans to reform the existing regulations to the RRC.
- The RRC and its Secretariat reviewed the plans and each regulation -- clause by clause -- and asked the Ministries to justify any problems. This led to detailed discussions regarding the reforms between a ministry and the RRC.

61. This process was not as smooth as this short description indicates. Because of intense Presidential pressure, and an impending deadline set by the President, the process was perhaps rather more hurried than warranted. However, given the reluctance of the bureaucracy, it is questionable whether this massive deregulation would have taken place without such political and time pressure.

62. Direct measures of the reform outputs are clear. By the end of 1998, as a result of the Presidential order, of the 11,125 regulations in place prior to the Presidential order, 5,430 (48.8%) were eliminated, and another 2,411 (21.7%) were revised. By 2002, though, new regulations had begun to increase the number, and the reduction was only 33 percent compared to 1998, an indication of the difficulty of sustaining the gains of reform, even in countries that invest in checks on the regulatory flow. Table 2 lists the number of regulations in place, eliminated and modified in 1998 and 1999 for the central government as a whole, and for the ministries which had more than 500 regulations before the reform effort began.

Table 2. Numbers of Regulations 1998-2002 for All Government and Selected Ministries

	All Govt	MoW	MoCT	MoMA	MoA	MoCIE	FSC	MoE	MoFE
1998 (Initial Figures)	11125	1703	917	778	701	667	630	643	509
Eliminated in 1998	5430	857	467	422	362	345	315	224	255
Modified in 1998	2411	256	232	169	165	174	131	170	137
End of 1998*	6820	883	606	535	423	355	407	536	336
Eliminated in 1999	503	90	23	53	23	16	35	25	12
Modified in 1999	570	36	33	38	15	25	64	67	28
End of 1999*	6308	793	583	482	400	339	372	511	324

End of 2002*	7435	765	754	567	491	410	541	576	434
% reduction 1998-2002	33.17%	55.08%	17.78%	27.12%	29.96%	38.53%	14.13%	10.42%	14.73%

Note: MoW = Ministry of Welfare, MoCT = Ministry of Construction and Transportation, MoMA = Ministry of Maritime Affairs, MoA = Ministry of Agriculture, MoCIE = Ministry of Commerce, Industry and Energy, FSC = Financial Supervisory Committee, MoE* = Ministry of Environment, MoFE = Ministry of Finance and Environment

Note: * = includes previously omitted, newly established or newly found regulations.

Source: Regulatory Reform Commission website (www.rrc.go.kr)

63. Unlike in the other countries, some research has been done on the economic effects of the guillotine reform. The 1998 deregulation measures touched virtually all areas of Korea's economy and Korean life. Often-cited examples of individual reform measures include easier dismissals of workers, more flexible work and employment rules, increased access to foreign exchange markets, reduction of regulations on foreign ownership of land,¹⁸ privatization of state owned enterprises (SOEs), corporate reform measures and reduction of privileges for SOEs.

64. In the area of FDI, the guillotine measures were generally deemed successful in making inward investment easier. One indicator of the effect of the broad-brushed deregulation is shown in Table 3. Korea's growth policies had resulted in numerous entry barriers, such as licensing, permission, nomination, government monopoly and reporting requirements. According to a 1997 government study, 63 per cent of all industries -- 205 out of 325 -- had regulations controlling market entry.¹⁹ A private-sector study in 2002, which used more detailed industry categorization, found a decline in the number of sectors affected by entry barriers.²⁰ From 1992 to 2001, the industries subject to entry barriers had dropped from around 45 percent to 35 percent. Even more important, strong barriers had dropped by more than half.

Table 3: Entry barriers in Korea (number of industries)

	Total industries	Strong barriers	Weak barriers	Total industries with barriers	Per cent of all industries
1992					
Manufacturing	585	103	85	188	32.1
Non-manufacturing	610	249	104	353	57.9
Total	1 195	352	189	541	45.3
2001					
Manufacturing	585	42	73	115	19.7
Non-manufacturing	610	147	165	312	51.1
Total	1 195	189	238	427	35.7

Source: Jaehong Kim (2002).

¹⁸ Controls on foreign ownership of land had often been cited as the most serious FDI barrier by various foreign investors.

¹⁹ Korea Development Institute (1997), "Moving toward a Competitive Market Structure", Seoul, mimeo (in Korean)

²⁰ Kim, Jaehong (2002), "Entry Regulation: Theory and Practice", Korea Economic Research Institute, Seoul (in Korean).

65. Ha attempted to estimate the macroeconomic effects of the 1998 deregulation.²¹ His study mainly examined regulatory reforms in economic fields such as employment, entry barriers, price cap, inward investment, environment, and the land use regulations are mainly treated in. First, he estimated the direct effects and the direct net benefits of the 1998 deregulation measure, which are given in Table 4. Then, using input-output table analysis, he estimated the effects of deregulation on major sectors of the Korean economy. He then used these results in a macroeconomic model to estimate an overall economic effect of the deregulation measure. The estimated overall macroeconomic effects from 1998 deregulation are given in Table 5. Ha estimates that the level of real GDP in Korea would rise by 8.57% in ten years, compared to the base case where there was no deregulation. Such increase in the level of GDP is equivalent to an addition of 0.64% in the annual Korean growth rate. Further, the deregulation effort would lower consumer prices by 7.18% and lower the unemployment rate by 0.91% in ten years compared to the base case without deregulation.

Table 4: Direct Net Benefits of 1998 Deregulation Measures

Areas	Net Benefits
Creation of Jobs	1,066,200 Jobs
Reduction of Public Burden	18.69 trillion won (4.4% of GDP in 1997)
Reduction of Government Costs	590 billion won
Increased Foreign Direct Investment	Increase of 36.5 billion dollars expected over 5 years.

Note: These are estimated direct costs and benefits arising between 1999 and 2003

Source: Ha et al. (1999) p.22

Table 5: Macroeconomic Effects of 1998 Deregulation (in ten years) (unit: %)

Real GDP	Consumer Prices	Employment	Real Wages	Unemployment Rate
8.57	-7.18	0.94	-0.95	-0.91

Source: Ha et al. (1999) p.22

66. From the stakeholders' point of view, the deregulation of 1998 seems to have had a positive effect. Han (1999) used a relatively simple index measure of regulatory burden to measure the impact of the 1998 reforms. Han rated various regulations according to their perceived burdens, then calculated an index of these ratings before and after the 1998 deregulation measures. For example, when Han evaluated the burdens of firm entry regulations, he gave five points for cases where regulations effectively acted as an entry barrier; four points for cases where regulations required relatively easily obtained approvals, three points for cases where regulations required registration, two points for cases where regulations required a relatively easily obtained registration, one point for cases where regulations required only a notice, and zero points where regulations

²¹ Ha, Byung Ki, et al. (1999) The Economic Effects of Korea's Regulatory Reform, KIET (in Korean), Seoul.

specified no requirements. Points were assigned in a similar fashion for other types of regulations. Based on Han's assessment, the regulatory burden index fell from 60.6 to 31.9, implying that the regulatory burden fell almost by half.

67. However, as to be expected, he found that regulations were more likely to be eliminated or revised if they were relatively unimportant, and if there were no substantial opposition to the elimination or revision. This finding seems natural considering that the research dealt with only 1998 reform measures. The RRC also recognized this limitation of the 1998 drastic push and employed the concept of major targets of regulatory reform, so called "essential tasks" which included not only important or pet items from a Ministry's perspective, but also regulations on which the Ministry did not agree.

68. In the 1997 Global Competitiveness Report compiled by the World Economic Forum (WEF), Korea had ranked 48th out of 53 countries in terms of burden from administrative regulations. However, in the 2002 Report, Korea ranked 26th out of 75 countries in terms of general burden from regulation.²² The improvement seems to indicate that the regulatory burden had fallen between 1997 and 2001.

B. The Guillotine in Three Transition and Developing Countries

69. **Moldova:**²³ The centerpiece of Moldova's recent regulatory reforms was the initiation of radical regulatory reform by adoption by the Moldovan Parliament, on 16 December 2004, of a *Law on Optimization of the Normative Framework for the Regulation of Business Activity*. This so-called "Guillotine law" became effective on February 6, 2005. The law laid out a guillotine approach to review and streamline, over a six-month period, what was originally anticipated to be a total of 300-500 regulations affecting business activity. This reform was intended to assist the government in rapidly and substantially simplifying the regulatory environment for businesses, and so support investment, start-ups, and job creation, particularly for SMEs.

70. The wider context is that the Moldovan government wished to accelerate the transition to a market-led economy, and to do so in a way in which concrete benefits of liberalization are seen early. The transition itself was already well underway. After a 'catastrophic' decade, during which GDP slumped 60% from its 1991 level, economic growth resumed in 2000. Since 2000, the economy had grown more than 30 percent cumulatively, which helped bring down poverty rates from 71 percent in 1999 to less than 50 percent by 2003. The Government carried out sound fiscal and tight monetary policies, bringing inflation below 10 percent, and had implemented important policy reforms to promote economic growth and reduce poverty. External factors were also important. Moldova joined the World Trade Organization (WTO) in 2001, and plans to integrate into the Single Market of the European Union.

71. However, the recovery was tenuous at best and future growth was not assured. A very low level of investment slowed productivity growth in the real sector and hampered

²² Yang, Junsok and Kim Hong-Youl (2001) *OECD Regulatory Studies: Regulatory Compliance*. Korea Institute for International Economic Policy, Seoul (in Korean), p.130. Note that the categories used by WEF had changed between 1997 and 2002.

²³ Adapted from Jacobs, Scott (2005) *Regulatory reform and administrative simplification in Moldova: A medium-term framework for action, 2005-2010*, Prepared for the Ministry of Economy and Trade, Republic of Moldova (available on request). Substantial assistance was provided by Eugen Osmochescu, Manager, Policy and Regulatory Reform Department, USAID|BizPro Moldova, with comments from Denis Gallagher, USAID|BizPro Country Director, Moldova.

competitiveness and exports. Healthy economic growth could not be sustained without increased competitiveness and productivity in the real sector.

72. Unusual among transition countries, Moldovan reformers already had a track record of government-wide regulatory reforms aimed at cleaning up its interventionist and corrupt regulatory environment. These included government-wide reforms in 2003-2004 to simplify and centralize licensing, and other reforms in 2004 to reduce conflicts of interest between the inspections role and testing role of the inspections agencies. The results of these reforms were not as expected, but the government had demonstrated a willingness to consider bold reforms.

73. As in Mexico and Korea, the decision of the government of Moldova to move toward bolder and more systematic reforms was due in part to concerns about the effectiveness of earlier reforms. By mid-2005, despite successes in some areas such as business registration and reducing corruption in inspections, the overall business environment was not improving and for some businesses, particularly SMEs, seemed to be worsening. Carrying out a series of targeted reforms for specific problems had not proven to be a sustainable strategy for general improvement, because regulatory habits are deeply embedded in the style of governance, and reforms can be undermined or reversed.²⁴ Many reforms, even relatively good laws such as secured transactions and bankruptcy laws, have been poorly implemented and monitored.

74. The 2004 guillotine law was intended to produce more visible results. The reform was championed by two successive Ministers of Economy and received considerable political, financial, and technical support from key donors, particularly the World Bank and its consultant, Jacobs and Associates, and USAID/BIZPRO.²⁵

75. The law itself set new standards for regulatory quality. It identified several principles of good regulation “to eliminate inefficient and anti-market regulations” that were applicable to regulatory functions across the whole of government. A drawback is that these principles focused only on legal quality (ensuring legality and the rule of law) rather than economic quality (ensuring need and market development). The economic principles proposed by the government were unfortunately deleted by the Parliament during its debates. Among the principles included in the final law:

- transparency and stability in business regulation;
- no interference in business activity, and/or suspension of business operation is allowed unless in circumstances expressly defined in the law;
- segregation of regulatory, control and inspection functions of administrative authorities from services for which fees are charged, such as compliance assessment and testing. Institutions with inspection and regulatory powers shall be financed through the budget unless otherwise provided in law;
- no additional fees should be required and charged by administrative authorities for issuing licenses, permits and other certificates for business operation other than those expressly defined in laws or Government and Parliament decrees that specify the type of service and fee to be charged for such services;

²⁴ For instance, as noted above, simplification and centralization of business licenses was substantially reversed by new authorizations required by individual ministries.

²⁵ USAID/BIZPRO is a regional economic growth project funded by the U.S. Agency for International Development and implemented by Development Alternatives, Inc. (www.dai.com).

- no documents should be required and sought for issuing licenses, permits and other certificates for business operation that are not expressly and exhaustively stipulated in laws or Government or Parliament decrees.

76. The guillotine reviews were carried out in a highly structured process of standardized filters by three bodies that were previously created, but newly tasked with carrying out the guillotine. Under Government Decision no. 141 of 17 February 2004, the Government of Moldova established:

- The *National Commission for State Regulation in Business Activity*, chaired by the Minister of Economy and Trade, with the mandate to reduce the costs of doing business; cut the time needed to obtain licenses, authorizations, and permissions; and limit the number of supervisions and inspections. The Commission is also empowered to examine the functions, structure and procedures of Ministries and other bodies involved in the implementation of state policy and initiatives affecting entrepreneurship.
- The *National Commission for State Regulation in Business Activity* is supported at the working level by a public-private *National Working Group on Implementing Regulatory Reform* that undertakes the day-to-day expert work, such as formulating reforms for approval by the National Commission, implementing the Regulatory Guillotine law, and carrying out public consultation. Half of its members are civil servants and the other half are business representatives.
- a dedicated *Secretariat* of about 10 people is based in the Ministry of Economy and Trade, and carries out the actual analysis, project management, and preparation functions to assist the National Working Group.

77. The Moldova guillotine was designed around the basic approach described above in Figure 3, and that was adapted in Korea and Mexico. The government moved quickly in February 2005 to contact the ministries and inspectorates to direct them to begin the guillotine process. The government sent a directive to 34 government ministries and agencies asking that lists and texts of regulations and justifications for keeping them be submitted to the National Working Group by the second week of March 2005.

78. A hotline telephone was set up and received 200 public comments and complaints. The Ministry of Economy and Trade and USAID/BIZPRO launched a national publicity campaign on the guillotine and the hotline to generate public interest.

79. By July 2005, the National Working Group and its Secretariat of around 4 economists and 8 lawyers had reviewed 1,130 formal acts, far more than anticipated. A final report was sent to the State Commission and the Government in August. On August 10, the Council of Ministers adopted the Governmental Decision on the Registry of Official Acts, so that formally the guillotine fell.²⁶ The Decision specified that:²⁷

- 426 formal acts met the criteria of review and shall be included in the Registry;
- 285 formal acts (or 35 % of those relevant to businesses) shall be amended; and

²⁶ The Guillotine was triggered under law through the publication of lists of the discarded formal acts; acts subject to amendments and subsequent publication in the *Monitorul Oficial*; and acts proposed for annulment by institutions independent from the Government. The surviving acts proposed for inclusion in the Registry of formal acts were also published.

²⁷ See also www.moldova.md and www.bizreforma.md

- 99 formal acts (or 12 % of those relevant to businesses) shall be discarded. Many of these were simply illegal, that is, had not been published or authorized by higher level laws;
- The remaining formal acts submitted by central government authorities did not affect the business environment and so fell outside the scope of the Law.

80. The total time for the project and results was less than 6 months.

81. The guillotine process covered all regulations affecting businesses. In the course of the reform, the Government decided to use the Guillotine process to reduce and streamline a particularly costly form of regulation: authorizations, certificates, and permits imposed by public authorities on entrepreneurs, particularly SMEs. A separate Government Decision established a Registry of such authorizations, permits and certificates. The Decision listed 128 formal permits, of which only 47 are issued under authority of law or international treaty. Under the Decision, these permits must be issued within 10 days (unless otherwise provided by a law or international agreement). This requirement should reduce the delays and risks associated with waiting for government decisions and approvals associated with business activities.

82. The cost-savings and associated economic impacts of the Moldovan guillotine have not been quantified, and in any case are too recent to show up in any indicators. Such an assessment would require that cost savings associated with the regulatory eliminations and revisions be quantified, and compared to overall regulatory costs facing businesses in Moldova. Moldova is fortunate in that the government and donors have been financing for four years an annual Cost of Doing Business survey that asks businesses detailed questions about the quality of the regulatory and administrative environment. The 2006 survey should be able to identify concrete impacts, if any, from the guillotine, as part of the overall environment for businesses.

83. Qualitative assessments by the reformers and external valuations are positive, however, and are mostly founded on the success of the guillotine in improving the legal security of businesses by:

- carrying out the first comprehensive identification of business regulations imposed by state authorities, revealing a much more heavily-regulated environment than previously known. This was the first step to a comprehensive inventory of rules. When the regulatory universe is not known, as in Moldova, the comprehensive “inventory” approach taken under the guillotine is particularly valuable, because the act of assembling the initial list greatly improves the transparency of the current regulatory environment, as well as creating a management tool for further reforms;
- revealing regulatory behaviors contrary to legal security. The guillotine revealed a significant problem: many ministerial regulations were not even published in the *Monitorul Oficial*, and ministries were simply creating new regulations in stealth. Hundreds of regulations were found to be non-published, and hence illegal. As a result, businesses and citizens were bearing high costs to discover their legal obligations, and most existed in a state of perpetual legal uncertainty. The problem of stealth regulations was considerably reduced by the guillotine;
- rapidly reforming many unnecessary and illegal regulations; and in
- setting the stage for further reforms.

84. The institutional and political economy benefits are important. The central reform institutions were considerably strengthened by their success in organizing and carrying out a government-wide reform of this scale so rapidly, particularly against the growing resistance of line ministries and insider interests throughout the process. Partners for reform in the business community became more active throughout the reform, and expectations for reform increased. The guillotine enhanced the credibility of the reform strategy and increased the potential for further, more aggressive reforms in future.

85. The guillotine process was not a complete success. It had several weaknesses that the government plans to remedy in the next phase of the reform:

- The fact that there were far more regulations than predicted reduced the depth of review of each regulation, and probably resulted in letting through more bad regulations. Rather than the 300-400 business regulations anticipated, the actual number was finalized at well over 1,000.
- Economic issues were mostly neglected in the reviews, which is why the percentage of rules eliminated (12%) was lower than in other countries. As noted, the law itself neglected economic issues, mostly due to unfortunate revisions in the guillotine law during the parliamentary process that deleted the economic criteria proposed by the government. Concrete economic criteria were nevertheless included in the checklist used by the Secretariat. In particular, the checklist sought to identify for elimination regulations that contain: price controls, barriers to entry for reasons other than public safety, protectionism (discrimination against foreigners), or restrictions on normal commercial activity (advertising, shop hours). However, given the shortness of time and the lack of clear legal authority for such criteria, the final recommendations did not reflect a thorough economic assessment, and the ministries successfully resisted attempts to discuss the policy need and economic rationale for their regulations.
- The guillotine was restricted to “regulatory acts issued by the Government and other administrative authorities.” That is, only lower-level regulations were included, and the laws were not included. Although this restriction limited the impact of the reform, it was a necessary restriction in the first phase. The procedural and legal issues of the reform, already complex enough for lower-level regulations, were much more complex for reform of parliamentary laws.

86. Another weakness was the result of the hastiness of the reform. The original plan of the guillotine was to create an electronic regulatory registry that was, by definition, complete. This kind of legal database would have *positive security*, that is, anything not in the registry could not be enforced. In most countries that have established central regulatory registers, the principle of positive security has been adopted. Positive security has two advantages:

- For the user, positive security provides certainty that, if all rules on the register have been met, full compliance with the law is met. The regulator cannot demand compliance with rules or variations of rules not contained on the register, and the register is the authoritative source where any dispute arises as to different variants of a rule;
- Positive security also provides strong incentives for regulating bodies to ensure that all rules are registered and thereby ensures the integrity of the register.

87. Unfortunately, Moldova's law setting up the guillotine did not provide positive security to the database. This was because of legal concerns that the guillotine did not comply with procedural requirements of the Moldova legal system. This problem may well be corrected in the next phase of the reform since there has been opportunity for wider discussion of the legal issues, and wider acceptance of these innovative changes by the conservative legal community.

88. **Kenya.**²⁸ On 24 February 2005, the Kenyan Ministry of Finance circulated a circular to 178 ministries and public bodies throughout the public sector. The circular, titled "Streamlining the regulatory environment for business activity", launched an unprecedented regulatory guillotine that, at first, attracted little attention from regulators, but, as its significance became clearer, gained a higher profile and increasing passive resistance.

89. The circular was meant to attack a key problem in the domestic business environment. Business growth and competitiveness in Kenya are hampered by many inefficient and costly licenses, permits, and certifications of businesses. Many diagnostics have concluded that the bureaucratic procedures associated with licenses have increased the cost of doing business and contributed to making the private sector less competitive. The scale of the problem was large but unknown. At the beginning of 2005, the number of licenses in Kenya that directly affected trade and investments was substantially underestimated at 600, but the guillotine revealed the existence of at least 1,300 such licenses (including 600 local authority licenses), and more were being published every day.

90. Even worse, the ministries and regulatory bodies, including at local levels, have a direct financial interest in creating new licenses and business fees because these revenues support increased staff and increased opportunities for corruption. Indeed, FIAS had concluded in its review of administrative barriers in Kenya that one of the most burdensome licenses, the single business permit, was "a tax by nature, not a real license....The SBP does not have a regulatory function and the Licensing Departments on local level do not conduct any substantial examination of the applicants in terms of health, skills, or safety of the premise. In fact, the local government is solely interested in the collection of revenues, since the SBP is their main source of income."

91. Some reforms to specific licenses had been carried out over ten years, but businesses felt no improvement. In fact, some reforms made things worse. After years of effort to improve the single business permit, the 2004 Index of Economic Freedom concluded, "Businesses complain that they sometimes have to "pay more for a single business permit than they have paid before for many trading licences."

92. By 2004, there was a growing consensus among reformers that it was time to consider bolder and more aggressive reforms. This was partly a consequence of changes in the political environment created by Kenya's first new president in almost 25 years, and partly due to growing fears of Kenya's declining competitiveness, not only globally but also in Africa. There were concerns that Uganda and Tanzania had moved ahead of Kenya on regulatory reforms. The time was ripe in Kenya for the guillotine.

93. As noted, the guillotine strategy requires political, administrative, and legal implementation strategies. In Kenya, political support was needed from the two key

²⁸ This review draws substantially from materials supplied by Ben Musau, Senior Partner, B M Musau & Company, Advocates, Nairobi, who chaired the Working Committee on Regulatory Reforms for Business Activity in Kenya.

players, the Permanent Secretaries of the Ministry of Trade and Industry and the Ministry of Finance for the proposed reform. To support these key ministries, a reform coalition was quickly constructed from high-level representatives of the Attorney General's Office, the Kenya Law Reform Commission, and the Investment Promotion Agency, all of which were critical partners in the implementation of the reform. With the support of these bodies, the Ministry of Finance agreed to use its authority to launch the guillotine process, which would be overseen by the Ministry of Trade and Industry. Throughout the process, the Kenyan government received substantial external political, financial, and technical assistance, both in the form of World Bank conditionality and of technical assistance from the Foreign Investment Advisory Service.²⁹

94. The legal strategy was critical, because licenses in common-law Kenya are mostly detailed in the parliamentary laws, not in ministerial decisions as in civil-law Moldova. The decision was to use the annual budget process to propose, in one package, revisions to the numerous laws that contain unnecessary licenses. With this approach, the parliament could adopt the legal revisions in a single decision, rather than debating each law individually. To support this legal strategy, key parliamentary committees were briefed through the process and their support for the reforms was obtained.

95. A critical decision was who would be responsible for managing the administrative process, in light of the need for an independent review authority, of the challenges posed by hundreds of licenses and resistant ministries, and of the very scarce resources in the Ministry of Trade and Industry itself. The Ministry decided to create a Working Committee on Regulatory Reforms for Business Activity in Kenya that would be inter-ministerial in nature, with members from reform-minded institutions, but that would be chaired by an influential private lawyer with a long track record in pushing reforms. This proved to be an effective strategy, because it used the expertise of the ministries but was led by an independent chair who was dedicated to the success of the project and who was hired specifically for this work.

96. In light of this large workload and limited resources, the administrative strategy was divided into two phases.

- In the first phase, which took only 12 weeks, the committee would put together the complete inventory of licenses and conduct reviews of selected licenses that it considered to be the highest priority.
- In the second phase, over about eight months, the committee would complete the review of the other 1,200 licenses and put into place the institutional machinery needed to sustain the reform, such as completion of the electronic registry of licenses, institutionalization of a permanent quality review unit as an ongoing function of quality control, and examination of other tools such as regulatory impact analysis.

97. The schedule of the two phases was planned as follows:

- 24 February 2005: Circular from PS Finance to 178 ministries and public bodies "Streamlining the regulatory environment for business activity"
- March 2005: Creation of Working Committee on Regulatory Reforms for Business Activity in Kenya.

²⁹ The main technical consultant to FIAS and the Ministry of Trade and Industry for this work was Jacobs and Associates Inc.

- 18 March 2005: All 178 bodies were required to submit lists of all business licences and fees to the Ministry of Finance. In reality, there was substantial passive resistance and lack of understanding in the regulatory bodies and this process was significantly delayed.
- 22 April 2005: The Working Committee completed reviews of 86 licenses and submitted recommendations to the Minister of Finance. As part of the reviews, the Committee consulted with public and private sector stakeholders through workshops and bilateral contacts.
- 8 June 2005: Finance Minister included the recommendations and legal revisions in his 2005 Budget Speech. The recommendations will be adopted once Parliament passes the Statute Law (Miscellaneous Amendments) (No. 2) Bill, 2005 and the President assents to it.
- June 2005 – June 2006: Remaining licences should be reviewed by an appropriate body and a second reform package should be prepared for the 2006 Budget speech.
- June 2006: Comprehensive electronic registry created in Office of the AG and is maintained for all new licenses. A permanent quality review unit for new business licenses is set up by 31st December 2006.

98. Selecting from the original estimate of 600 licences, the Committee reviewed 86 licenses in March and April. Of these, based on the committee's recommendations, the Government proposed to eliminate 35 licenses and simplify 4 others. In his budget speech of 8 June 2005,³⁰ the Minister of Finance told the Parliament that "These measures should help to make the private sector more competitive and contribute to economic growth and poverty alleviation." As of November 2005, the parliament had adopted part of the Government's proposals, notably, elimination of the costly trade license that affected every enterprise in Kenya. Parliamentary action is still pending on the other recommended reforms.

99. Phase 1 is being concluded successfully, but the guillotine will have little effect unless it is institutionalized within Kenya's larger regulatory reform strategy over the next several years to avoid creeping re-regulation. In that respect, Phase 2 is critical. By 31 March 2006, the reform body intends to complete the guillotine for the other 1,200+ business licenses. At the same time, it is carrying out the more detailed reviews of many licenses identified in the first phase as requiring simplification. It has completed an independent study of the laws of Kenya and has, for the first time, developed a complete list of all business licenses in Kenya as a preparatory step to the setting up of a comprehensive e-registry for business licenses.

100. Critically, the Committee is examining how the Kenyan government should establish a permanent quality review unit for all new licences in Kenya. One option under consideration is to place such responsibility in the National Economic and Social Council, the leading adviser to the Government on economic and social issues.

101. As in Moldova, the economic impacts of the guillotine in Kenya have not yet been assessed. This should be a priority at the conclusion of phase 2. On a purely subjective level, many of the licenses that will be eliminated have been repeatedly criticized as quite

³⁰ Speech delivered to the National Assembly on 8th June, 2005, by Hon. David Mwiraria, E.G.H., M.P., Minister for Finance, Republic of Kenya, when presenting the Budget for Fiscal Year 2005/2006

burdensome to businesses. That is, the Committee targeted some of the most important licenses, and did not restrict its activities to trivial matters. Their elimination should have a visible effect in reducing burdens on businesses.

- For example the trade license affects every business in Kenya. The committee recommended that it be rejected with the following rationale: “The licence has no clear policy function for the current market economy in Kenya. It imposes unnecessary burden on business without providing any proportionate benefit. The original idea of protecting local businesses from foreign competition is not relevant any more and after abolition of the licence fee in 1998, the procedure does not even serve the purpose of revenue generation. The control of foreigners into Kenya should be done under the Immigration Act.”
- The Motor vehicle components & accessories license reduces competition in an important sector. The Committee proposed its elimination: “The Act governing this licence was introduced shortly after independence in response to increasing incidences of car theft for spare parts due to their scarcity...With the liberalisation of the Imports, Exports and Essential Supplies Act (Cap. 502), and the repeal of foreign exchange regulations, non availability of spare parts at reduced prices is no longer an issue.”

102. The success of Phase 2 is not assured. A potential problem is that passive and active resistance is building. Phase 1 was conducted so quickly that the regulatory bodies were taken by surprise. That is not the case for phase 2. Some licensing authorities are concerned with the reduced discretion and the reduction of opportunities for corruption. Hence, a political strategy for the guillotine will probably be the most critical element in sustaining reform.

103. **Ukraine.**³¹ On 12 May 2005, Presidential Decree No. 779/2005 “On Liberalization of Entrepreneurship and State Support for Entrepreneurship” was issued, quickly followed on 1 June by an implementing decree³² and resolutions of the Cabinet of Ministers. These mandates launched Ukraine’s “quick review” of regulations which was conducted from June through August 2005. The guillotine mechanism was the basis of Ukraine’s quick review, although the government did not use the term “guillotine”.

104. During the summer of 2005, reviews undertaken at all levels of the Ukrainian government examined about 10,000 regulations. Over half of those were identified as being business-unfriendly and burdensome for entrepreneurs, and over 4,900 of them were repealed by October 2005. The scale of the guillotine initiative in Ukraine was reminiscent of the far-reaching reforms in Mexico and Korea. In parallel, Ukraine launched other regulatory reforms to streamline permits.

105. The political strategy for change in Ukraine was not the most difficult constraint. Partly due to the historic political changes that occurred in 2004, and partly due to several years of evolution of the national regulatory reform strategy, the political environment for economic reform in Ukraine in 2005 welcomed radical change. The idea of “quick deregulation” fit well with the new political mandate for faster growth and integration into Europe. As discussed below, political decisions to move forward were supported by

³¹ This discussion is based substantially on materials provided by Dr. Andrey Astrakhan of Jacobs and Associates, who is working in Kiev with USAID/BizPro to support the regulatory reform efforts of the government of Ukraine. Additional materials were provided by Patrick Rader, USAID|BIZPRO Director for Ukraine - Moldova - Belarus.

³² No. 901 “On Measures to Ensure Implementation of State Regulatory Policy”

several prior years of work on regulatory reform, supported by USAID/BizPro, which had built up capacities and created a readiness among reformers for more radical steps at national and regional levels.

106. The legal strategy also was not the major problem in Ukraine, since ministers were generally supportive of the objectives of the reform and proved it by readily adopting the recommendations for elimination. In its first phase, the quick review process was restricted to Government, ministerial and lower-level forms of regulation (as in Moldova), and did not include parliamentary laws.

107. The real constraint in Ukraine was the administrative strategy, given the huge size of a fragmented and decentralized regulatory state, and the passive and active resistance of Ukraine's powerful bureaucracies stretching from national to local levels.

108. The administrative strategy was based on the capacities and reforms already accomplished in previous years. With donor assistance, the government of Ukraine had begun reforming the regulatory environment in the mid-1990s at the national level. It created a State Committee for Entrepreneurship Development, later named the *State Committee on Regulatory Policy and Entrepreneurship* (SCRPE) with an expanded role in developing and implementing regulatory policy. Due to a lack of political will and state capture, however, the early regulatory reforms did not produce good results at the national level.

109. More progress was seen at regional levels, where the political environment was more positive. With support from USAID/BizPro, many capitals of oblasts launched more systematic approaches, such as implementation of a one-stop-shop (OSS) concept for business registration.³³ By February 2005, the first OSS was operational, and 39 were being completed. Donor support also helped the regional governments build capacities for regulatory impact analysis, independent review, evaluation, and consultation when drafting local regulations, in effect putting into place the OECD agenda for regulatory quality management. Consultation and public communication strategies helped build a mass of regulatory reform proponents across the country.

110. The regional efforts, in turn, pushed reform at the national level. In 2003, a stronger law "On the Principles of State Regulatory Policy in the Sphere of Economic Activity" (the Regulatory Policy Law or RPL) was adopted, and went into effect in 2004. This law provided a framework and guidelines for regulatory policy based on:

- general principles of good regulation, which were used as the national criteria for reviewing regulations in the guillotine process;
- mandatory RIA for regulations drafted at all levels of government;
- mandatory public consultation with businesses and NGOs on draft regulations;
- mandatory evaluation of the effects of existing regulations, based on measurable indicators.

111. The evolution of a national regulatory policy in Ukraine provided a framework for quick progress on the guillotine. According to material prepared by Development Alternatives, Inc., between March and May of 2005, seven regions of Ukraine began to implement "quick deregulation" by order of governors and mayors. In May and June 2005, President Yuschenko signed the decrees "On Liberalization of Entrepreneurship and State

³³ A handbook was developed from the Ukraine reforms: *Business Start-ups & One-stop Shops: Principles for Success from Ukraine and Abroad*, Buryy, Morford, Snider (2002)

Support for Entrepreneurship” and “On Measures to Ensure Implementation of State Regulatory Policy” which applied to the national level and remaining oblast authorities the quick deregulation method being used in the 7 regions. The deadline for completion of the reviews was set for August 31, 2005, only a few weeks later.

112. Central coordination was critical in getting this job done on schedule. As noted, Ukraine already had established SCRPE and, in 2002-2005, with assistance from USAID/BizPro, SCRPE had already begun developing regulatory quality tools such as regulatory impact analysis. Hence, SCRPE was already somewhat familiar with the basic principles of economic review. In the guillotine, SCRPE carried out two important functions. First, it monitored and coordinated the overall process of implementation of the strategy in Ukraine. It provided a steady stream of reports and assessments to the Government, which permitted rapid correction and political intervention when problems emerged, such as delays in the reviews. Second, SCRPE, jointly with the Minister of Justice, provided the second filter of review of the regulatory documents that had been initially. Tiny SCRPE could not carry out detailed reviews of thousands of regulations, but its oversight provided an important incentive to the reviewers in the first face.

113. To do the real job of review, dozens of working groups were established at all levels of government, building on the work of local capacity-building supported by USAID/BizPro since 2002. These groups were established by central and regional Ukrainian executive bodies (Ministries, State Committees, State Commissions, Oblast and Rayon Administrations). These were public-private bodies -- at least half of their members had to be representatives of businesses and civic associations. The most important groups had member from the USAID/BizPro team to assist. These groups were responsible for the first filter: assessing regulations against the principles of the state regulatory policy (see Box 1) and making recommendations to repeal or amend those regulations not consistent with the principles.

Box 1: Regulatory Assessment Methodology in Ukraine’s Guillotine

To carry out the regulatory reviews consistently across the country, Ukraine established clear and standard criteria of legality, need and economic justification, and market friendliness. These standards of review were explained as follows:

Consistency with Superior Legal Acts and the Scope of the Government Authority

The first criterion any regulation must meet is that there is a valid legal basis for the act/acts. Does the government authority have the power to issue the regulation under current legislation (was the regulation issued within or beyond the scope of the government authorities’ powers)? The regulation should then be assessed to determine if it is at variance with superior legal acts. The review must then assess the timeframe for which the regulation was issued (this analysis is not done for regulations of unlimited duration). A final assessment is needed of whether the regulation was officially published, as required by Article 57 of the Constitution of Ukraine.

A negative response to any part of this legal assessment was grounds for putting the regulation on the list of regulations to be repealed immediately. In that case, the regulation’s consistency with the second and third criteria is not assessed.

Economic Soundness and Justification of Need for Keeping a Regulation

This analysis began by determining if the regulation had an regulatory impact analysis (RIA) if the regulation was developed and adopted after the enactment of the Law of Ukraine “On the General Principles of State Regulatory Policy in the Sphere of Economic Activity”. Absence of an RIA, if it

was required, was grounds for putting the regulation on the list of regulations to be repealed immediately.

Next, the reviewers asked if regulation serves an identified purpose: Is the problem the regulation was designed to address in fact resolved? If it is resolved, will the problem resurface if the regulation is repealed? Is it necessary to amend the regulation to address the problem? What amendments are needed? How does the state benefit from the regulation, not a particular government authority?

Costs were examined. What categories of subjects incur costs as a result of the regulation? What kind of costs? Subjects of legal relations should be classified into three categories: the state, business, and the general public. Did any extra problems arise while the regulation was in force?

For regulations accompanied by an RIA, answers to the above questions should have been in the RIA. Depending on the answers, a regulation may be put on the list to be repealed immediately, or on the list to be amended, stating provisions to be amended and explaining proposed changes and additions.

Market-Friendliness and Transparency of Regulations

Assessment of the consistency with the third criterion was based mainly on the opinion of business representatives and civic associations included in the working groups and independent experts. Business representatives assessed the cost of doing business – in terms of money and time – created by the regulation. If costs could be reduced by modifying the regulation, the opinion must state the need for such a modification. If costs are excessive and cannot be reduced by amendment, the regulation was to be put on the list of regulations to be repealed immediately.

The final stage of the assessment was examination of the regulation's transparency. Members of the working groups identified provisions that were unclear to an average citizen, or can be misinterpreted in applying the regulation or interpreted ambiguously both by government officials and business entities, which may potentially lead to corruption by government officials.

Should the regulation fail to meet the third criterion, it was to be included in the list of regulations to be repealed immediately, or the working group could propose revisions.

Source: Presidential Decree of 12 May 2005 No. 779/2005 "On Liberalization of Entrepreneurial Activity and State Support for Entrepreneurship"

114. The working groups did not work in isolation. The quick reviews became a national pastime. National and local regulatory authorities, local self-governance authorities, representatives of entrepreneurial, employer, and consumer associations, and academic institutions were involved in the review process.

115. In such a large operation involving so many different institutions and interests, clear principles and procedures are essential to avoid chaos. The progress made in the reviews in Ukraine are due partly to good organization, particularly:

- application of standardized assessment criteria and working group operation standards. The Government took many measures to resolve problems in creating working groups and to ensure that deadlines were met. These included telephone conferences, new resolutions on "Top Priority Measures to Improve the Situation in Quick Regulatory Review and Streamlining Registration and Permit Procedures", and resolutions to speed up the reviews;

- transparency of the review process by involving entrepreneurs, employer, and consumer associations, and academic institutions in the process. More than 3,400 professionals were invited to engage in regulatory review at the national and local levels;
- adoption of a credible, final completion date for the reviews. The Government of Ukraine ordered authorities to ensure that regulations not consistent with principles of state regulatory policy be repealed in full by September 1, 2005.

116. The pace and scale of the regulatory review indicate the effectiveness of the organization. The results rival those of Mexico and Korea. Reviews of almost 10,000 regulations found that 56.8% were not consistent with the principles of the state regulatory policy. The kinds of regulations inconsistent with principles of state regulatory policy were:

- 249 acts of the Cabinet of Ministers (4.4%).
- 737 regulations of national executive power authorities (13.2%). At the national level, the Ministry of Fuel and Energy, Ministry of Industrial Policy, state Construction Committee, and State Customs Service had the most regulations that did not meet regulatory policy standards.
- 4,613 regulations of local executive power authorities (82.4%). Oblast state administrations produced the highest numbers of bad regulations.
- In addition, 66 presidential acts were found to be inconsistent with regulatory policy standards.

117. In such a large and rapid reform, problems emerged. The speed and quality of the reviews were undermined by a lack of understanding by civil servants of regulatory policy standards, by a lack of skills and commitment in the working groups, and by a sheer lack of time that left over 2,000 regulations outside of the review. The reviews were sometimes superficial and effectiveness was undermined by the low level of skills and understanding of how to apply the review criteria. Information on costs was consistently poor. Deadlines were missed, which slowed down the work.

118. However, in general compliance with the review process seems to have been pretty good. For example, 90.8% of the draft decisions to repeal/amend regulations that were submitted to SCRPE for approval were posted on the official web sites of the responsible authorities. Action to actually repeal regulations on the hit list also seems to be moving pretty quickly. As of September 1, legal action had been taken to implement 95 percent of the recommendations.

119. As noted, implementation of the quick review procedure was done at the level of oblast and municipal governments as well as the national government. As of September 1, the process of repealing/amending regulations had been completed in 17 oblasts and Crimea. Six oblasts – Vinnytsya, Volyn, Zakarpattia, Ivano-Frankivsk, Kharkiv, and Cherkassy – and the cities of Kyiv and Sevastopol have completed the repealing process and are approaching completion of the amendment process.

120. A good example is the city of Donetsk. The mayor of Donetsk signed a Resolution in April 2005 to launch a quick review of city council and mayor regulations. The Donetsk working group examined over 300 documents submitted for review. Out of 92 regulatory acts reviewed, the working group recommended that 17 be abolished, and that 13 be changed. Its recommendations were implemented in August 2005. The abolished regulations seem likely to have substantial positive effects in reducing business costs. For example, a Decision of the Executive Committee of the Donetsk City Council “On

Concluding Agreements on Social and Economic Cooperation Prior to Land Plot Allocation” was declared invalid. This notorious regulation had resulted in bureaucrats pressuring entrepreneurs to sign so-called “Agreements on Social and Economic Cooperation” that resulted in transfers of substantial amounts of money into administrative funds, despite the fact that these agreements should have been voluntary. Other notorious and burdensome regulatory procedures were included on the hit list.

121. The economic impacts of the quick review procedure in Ukraine have not yet been comprehensively assessed, and it is too early to do so. USAID/BIZPRO has prepared estimates suggesting that the guillotine, by reducing regulatory costs and delays, will boost employment, export performance, FDI, and, ultimately, GDP growth. It is encouraging that many of the early targets for elimination were regulations and procedures that were especially criticized by businesses as vulnerable to corruption and nontransparent payments. The negative selection bias seen in other reform strategies (focusing on regulations with trivial impacts) were at least partially overcome in Ukraine due to the comprehensive guillotine approach (which forced the inclusion of even the regulations important to rent seeking).

122. Qualitative benefits seem to have been important. The quick review process enabled the government to make an inventory of all existing regulations, which will significantly improve the transparency of the regulatory system in Ukraine. The quick review procedure depended on, and further developed, the dialogue and public-private participation that were built in the earlier years of regulatory reform under the national regulatory policy. Businesspeople and authorities who participated in the working groups learned how to maintain a constructive dialogue and compromise to solve problems. Entrepreneurs who participated in the working groups stated that they gained more knowledge about the national regulatory policy that will allow them to better protect their rights in the future.

123. The quick review procedure in Ukraine will produce sustainable change only if it is part of the continuing institutionalization, under an evolving national regulatory policy, of “good regulation” disciplines and processes in the machinery of government at all levels. This point is well understood in Ukraine. Ukraine has an advantage over Kenya and Moldova in that it has a national regulatory policy already in place, and several years of effort and capacity-building to sustain further change. The President and Government of Ukraine have, with the support of USAID/BizPro, already adopted several decisions to prepare for further phases of implementation of the national plan. Decisions in September and October made several important steps:

- Approved an Action Plan for State Regulatory Policy Implementation for the year 2006;
- Committed to conducting a comprehensive assessment of the systemic nature and consistency of regulations in industries/sectors of the economy in partnership with the working groups involved in the quick review;
- Committed to designing a mechanism for reviewing Ukrainian laws with regard to their consistency with principles of state regulatory policy;

V. Results of the Regulatory Guillotine

124. The regulatory guillotine is intended for those situations where governments are moving rapidly through the transition process from state-led growth to market-led growth. It is based on the view that the regulatory problem is vast and systemic, and that therefore

isolated and marginal reforms must be replaced by broad-scale and systematic reforms that extend right across the public sector. This view was already embedded in the national regulatory policy of Ukraine, but was not well understood in Kenya and Moldova.

125. Everyone who works in this field knows that implementing reform is difficult. The guillotine is expressly designed to reverse incentives in the reform process, and so overcome some of the barriers that have slowed or blocked broad-based regulatory reforms in the past. These barriers include high political and administrative costs, intense and passive insider resistance to change, and lack of planning on how to sustain change into the future.

126. What can we conclude from the experiences in OECD countries and more recently in three developing countries? Five criteria for assessment are proposed here:

- Does the guillotine reduce regulatory costs?
- Does the guillotine reduce regulatory risks?
- Does the guillotine enable development of a sustainable strategy of regulatory quality improvement?
- Does the guillotine perform better than other strategies of regulatory reform?
- Is the guillotine suitable for countries with weak institutional and governance arrangements?

127. In terms of reducing the number of regulations, the OECD countries showed large and significant results that had positive economic impacts. However, there is as yet little quantitative assessment of cost-savings in the three developing countries. The number of regulatory instruments is itself a poor proxy for cost, since governments can easily cut trivial regulations without much impact on cost levels (this is a major criticism of bottom-up deregulation efforts). However, qualitative assessments of the content of the guillotines in Moldova, Kenya, and Ukraine suggest that, in fact, important regulations with substantial cost implications were cut. Elimination of the trade license in Kenya and costly and highly corrupt land-use regulations in Ukraine were good signs that the guillotine can enable reformers to make genuine cost-savings even in areas where resistance to reform is high.

128. One indicator of performance is revealed preference. In all three developing countries, the governments have decided to continue and expand the guillotine process into more difficult areas, such as parliamentary law in Moldova and Kenya. The governments seem to like the guillotine because it has produced dramatic and rapid results, in some countries in only a few weeks. For governments and ministers seeking to enhance reform credibility, speed is an attraction, particularly in countries facing a tight political cycle. Compared to other short-term and quick-fix reforms, the guillotine seems to demonstrate a high benefit cost ratio in producing documented outputs in terms of reducing the numbers of regulations on the books. Yet all three are not stopping with the quick-fix – they feel empowered to move forward with continued reforms.

129. The guillotine seems to have benefits in reducing regulatory risks that stem from unclear, nontransparent, and unaccountable regulatory systems. It is striking that one of the most important benefits cited in the OECD countries is that, for the first time, the government was able to build a comprehensive inventory of regulatory instruments that enabled reform. In the three developing countries examined in this paper, the inventories revealed that the regulatory problem was far larger than previously known, and that there was substantial illegal behavior among regulators that was imposing large and unknown costs on businesses due to regulatory insecurity. To resolve a problem, it is necessary to

measure the problem, and against the guillotine, seen solely as a measurement tool, seems beneficial. Of course, using the inventory to establish an electronic registry with positive security is the way to sustain these benefits into the future.

130. A more important benefit lies in how well the guillotine prepares governments to move forward, where possible in partnership with the private sector, to a more sustainable strategy of reform. Here, the strategy seems to perform very well, as indicated in all of the OECD countries with the exception of Hungary, and in all three of the developing countries. The guillotine seems to work both in countries with longer histories of reform, such as Ukraine, and in countries where reform has been very fragmented, such as Kenya. A good indicator is that the first phase guillotine reforms are being expanded to more ambitious and longer-term reforms in all three developing countries. In Kenya and Moldova, the second-phase reforms are universally aimed at institutionalizing the quality controls that were piloted and developed in the first-phases through strategies such as institutionalizing central units for regulatory reform, creating systematic consultation procedures, and building capacities for regulatory impact analysis (the OECD agenda). These disciplines were already in place in Ukraine, but were further strengthened by the guillotine approach.

131. The public-private component of the reform process was critical in all three countries in strengthening reformers, and in creating the political environment for expansion in the future. This is persuasive evidence of the sustainability of this kind of strategy even in countries with poor records of sustaining difficult reforms.

132. Compared to other reform strategies, the guillotine seems to deserve serious consideration. Of course, there will always be a need for reforms that focus on specific rules and procedures that are particularly onerous. The Doing Business indicators of the World Bank and the administrative barrier reviews of the Foreign Investment Advisory Service are aimed at those kinds of barriers and costs that are considered particularly significant. The guillotine is not a replacement for such reforms, but is a way to sustain the gains of single and one-off reforms through more systemic solutions. That is, the guillotine and its follow-up program of institutionalizing new regulatory practice can easily be conducted in parallel with a program of focused reforms to specific problems.

133. These conclusions seem to answer the fifth criterion. Kenya, Moldova, and Ukraine each successfully adapted the regulatory guillotine to its own legal, political, and administrative structures. In fact, the guillotine seemed to work even in situations where there was a very low level of skills, and a high level of resistance and capture. The flexibility of the guillotine in operating in difficult and different circumstances suggests that it has potential for far broader application in developing countries.

134. In short, the preliminary results suggest that the regulatory guillotine can be a useful tool that:

- Can be adapted to work in countries with low administrative skills and high levels of capture and resistance;
- Produces rapid and potentially important results in reducing the numbers of regulations, and, where documented, regulatory costs on businesses;
- Improves understanding and management of the regulatory problem by mapping out the full scale of regulatory interventions, which is poorly understood by most governments. Its top-down and comprehensive approach has helped countries create inventories of regulatory interventions from the government that reveal weaknesses and provide the first management tools for future systematic reform;

- Increases reform capacities by reducing the political and administrative costs of reform and eroding the capacities of insiders to block change;
- Creates the processes and organizational conditions for continued reform to the regulatory role of the public sector;
- Stimulates the development of active private sector partners and civil society constituencies for reform that will be useful in sustaining momentum.

VI. Lessons Learned about Implementing the Regulatory Guillotine

135. How can governments decide if the guillotine is right for them? The preconditions for the use of the regulatory guillotine appeared to be the following:

- ***Incorporation into medium-term policy objectives of the government.*** In all three of the transition and developing countries, the governments had already defined clear and urgent agendas of economic reform. In all three countries, moreover, fears of declining competitiveness were mounting. The rationale for the guillotine was easy to incorporate into the governments' existing priorities, particularly given disappointment with the results of earlier reforms. A medium-term perspective is essential if the guillotine is to contribute to sustainable reform. Governments that are interested only in quick fixes are likely to be poor clients for the guillotine.
- ***Coalition of reformers at the center of government.*** Commitment from a core group of ministerial-level reformers with the authority to act is essential to this kind of top-down, bold reform. The probability of success seems to increase if constituencies for reform are put together inside the government. The first phase of the guillotine is a quick strike from the center, not a laborious process of building consensus. The Kenya example shows how the key ministries and associated legal centers worked together to create the political, administrative, and legal strategies for success. The ministerial supporters should include key ministries with crosscutting authority, such as the prime ministry, the Ministry of Finance, and the Ministry of Economy. Such commitment from key politicians can be usefully supported by external pressures, such as World Bank policy loans, and by external supports, such as technical assistance. This is discussed in more detail below.
- ***Public-private participation and support.*** Participation of private sector and other relevant stakeholders such as media and academia is important for two reasons: 1) stakeholder groups are needed to mobilize the political system for continued change. That is, pro-reform elements of the private sector must act as a pressure group for change; 2) the private sector holds unique information about regulatory impacts that will greatly boost the impact of the guillotine. The quality and credibility of the review process are increased with feedback from the private sector. While there is a risk of capture by anti-reform business interests, experiences in all three countries show that, if the guillotine process is transparent, the risk of capture is reduced. Rather, as the guillotine proceeds, pro-reform elements are emboldened, strengthened, and become more vocal. Moldova and Ukraine placed private sector representatives directly on the review working groups. Kenya consulted with the private sector as part of its process. The Moldova experience highlighted the importance of open and transparent communication with the public as part of the guillotine to reduce the risk of capture and back-door deals. An education/communication/branding campaign was

launched, resulting in increasing public expectations and reducing the risk of backtracking by the line ministries.

- **Creation of a central expert unit to organize and carry out a large, inter-ministerial reform.** The guillotine will not work without the existence or creation of an expert, dedicated, core body to implement the reform across the government and an engine of implementation. Ideally, this is a central review unit that is independent from the line ministries but that has the expertise to review detailed laws and regulations. The regulatory guillotine faces the same difficult challenges of government structure and capacity constraints faced by other reforms. An important constraint is the difficulty of inter-ministerial coordination. The top-down approach to reform requires that someone somewhere in the government is able to impose a set of requirements for listing, assessing, and participating in the process. In all three countries, the central authority for reform took a very proactive role in pushing, promoting, and threatening the regulatory bodies to comply with the reform strategy. The guillotine is well-suited to such a process, because it does not depend on the active support of the regulators to succeed. Unlike the traditional forms of short-term reforms, it can proceed based on the actions of determined reformers at the center. Moldova built up an independent review unit by using outside expertise, while Kenya put together a team composed of representatives from key reform ministries, but chaired by non-government lawyer.
- **A workable legal strategy.** The guillotine strategy must be carefully devised for each country so that it respects the traditions of law and due process in the legal system.

136. Political economy constraints are probably decisive in deciding if the guillotine is appropriate. The radical nature of the proposed reform and its impacts on ministries and regulatory bodies right across the government require strong reform leadership from the center and active partnerships in the private sector. Considerable effort has to be made in persuading these leaders that the risks of failure of the regulatory guillotine are outweighed by the benefits of success. Such benefits are not only diffuse economic benefits, but also the highly visible benefits of showing concrete results in areas of high political priority.

137. Yet, in many countries, political economies are now changing in favor of such bold reform. It is interesting that in both Ukraine and Kenya adoption of the guillotine occurred after historic political change created new political elites and new reform opportunities. In all three countries, concerns about competitiveness, and more vocal and active private sectors, are opening new opportunities for action. Governments are under more pressure to show results, rather than engaging in small reforms that leave businesses frustrated year after year with the difficulties they face.

VII. Role of Donors in Supporting Regulatory Reform Design and Implementation

138. Broad-based regulatory reform is among the most difficult of tasks of any government, due to the fragmentation of regulatory jurisdictions, wide-spread capture, low skill levels, and strong incentives for rent-seeking. What value can donors add to launching and sustaining such reform?

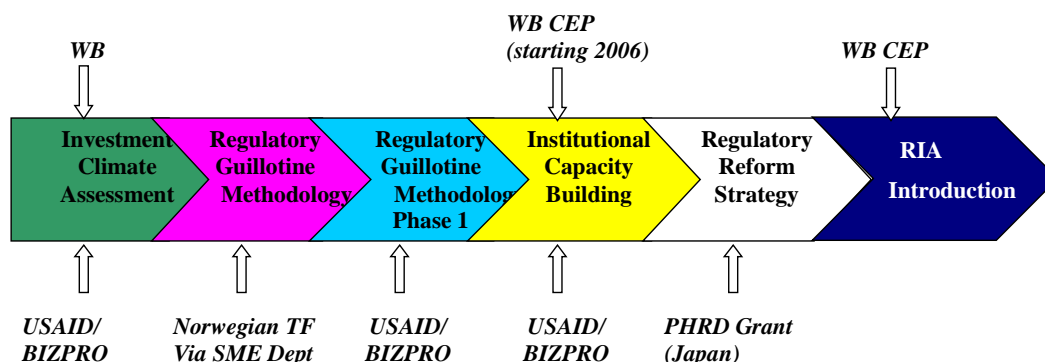
139. The role of donors was important in each of the three developing countries that undertook the guillotine. Donor support added substantial value to several of the key success factors for regulatory reform: (i) strong commitment to reform at a high political level; (ii) development and adoption of a comprehensive reform strategy shared by a broad range of local stakeholders; (iii) availability of sufficient technical expertise, knowledge, and skills to conduct regulatory reviews of existing regulatory stock and improve the quality of regulatory flows; (iv) existence or creation of an institutional infrastructure capable of driving the reform and managing it efficiently.

140. As noted, once commitment to the reform is in place, the guillotine review of the regulatory stock becomes a natural starting point for reform implementation. The first stages of regulatory guillotine implementation can create demand for establishment of institutional framework for efficient reform management, followed by development of a coherent and comprehensive reform strategy.

141. At these initial stages of the reform process, grants can be an appropriate method of financing assistance for designing approaches to regulatory reform measures, defining sequencing, tailoring the methodology of the regulatory guillotine to specific conditions of a particular country, conducting awareness training and building capacities of core reform institutions. In all three countries, technical assistance was important. The Ukraine reforms, for example, had been supported by several years of technical assistance on regulatory reform under the USAID/BizPro program. As regulatory reform unfolds, it can be further strengthened by technical assistance and development policy loans. Typically, technical assistance grants available for direct support of the World Bank counterparts are limited in amount and mainly related to the process of new project preparation. The timeframe for their use is limited as well. In this regard, close cooperation with bilateral donors and Private Enterprise Partnerships (PEP) managed by the IFC can be extremely beneficial for all parties. The support for regulatory reform in Moldova is an example of close cooperation and synergy of efforts of different donor agencies.

142. In Moldova, as Figure 4 shows, the path to the broad business environment reform was paved by the Investment Climate Assessment (ICA) conducted by the World Bank with participation of the local stakeholders in early 2004. Following the ICA findings, the SME Department of the World Bank Group solicited resources from a Norwegian trust fund to finance the design of the regulatory guillotine methodology, which was developed by Jacobs and Associates Inc. The government of Moldova adopted the proposed approach. Implementation of the first stage of the regulatory reform, which included drafting and adoption of the Guillotine Law, establishment of the Inter-Ministerial Committee for Regulation of Business Activity and its technical Secretariat was supported by USAID/BizPro. In parallel, preparation of the World Bank Competitiveness Enhancement Project (CEP) was started with the support of the PHRD Grant of the government of Japan. The project preparation included *inter alia* development of a medium-term regulatory reform strategy that equipped the government and other local stakeholders with reform concepts and outcomes, and recommendations for priority measures for implementation. At present, USAID continues to support drafting of the framework law on principles of state regulation of business activity and assists the government in preparation of an expanded version of the regulatory guillotine. The recently signed CEP, complemented by the grant funds of the government of Japan, will focus support on quality improvement of the regulatory flow by building capacity for RIA implementation.

Figure 4: Donor Support for Regulatory Reform in Moldova



143. Over the medium-term, development of the comprehensive medium-term regulatory reform strategy provides good opportunities for donors' coordination. This strategy should identify the existing needs and suggests the reform measures to address them, which allows donor agencies to carve their assistance in a most efficient way and avoid overlapping in support. When different mechanisms of operation pose challenges for effective donor coordination, development of a medium-term regulatory reform strategy can create a solid basis to consolidate donor efforts. Medium-term regulatory reform strategy helps in planning and sequencing the support and in pursuing a comprehensive approach to assistance rather than supporting piecemeal activities and fragmented interventions. This is especially important for programmatic operations (e.g., World Bank development policy loans (DPL), poverty reduction strategy credits (PRSC)), which typically cover three year periods.

144. Development of the regulatory reform strategy also helps to build a constituency for the reform, unite stakeholders, and initiate public-private dialogue on the issues of business concern.

145. Existence of a clear, comprehensive strategy for regulatory reform also helps donors by facilitating provision of budgetary support and technical assistance in a systemic and consistent manner over extended periods. Typically, the strategy or its key elements are approved at a high political level - by resolution of Cabinet of Ministers (e.g., Strategy for establishment of the system of electronic registries in Bulgaria), decree of President (e.g., strategy for massive regulatory review in Ukraine, supported by the existing parliamentary law on the national regulatory strategy), or legislative act of Parliament (e.g., so-called Guillotine Law in Moldova). Once the strategy is adopted, it creates a solid ground for continuity of reform, promotes stability, safeguards reform implementation from potential impact of political changes, thus also ensuring an efficient use of donor funds.

146. Donor agencies and development banks in particular, can help support implementation of regulatory reforms by including the most important milestones of the reform as conditions for aid provision. In the case of the World Bank, the most important expected outcomes of the regulatory reform program can be reflected as benchmarks in development policy lending to IBRD countries and poverty reduction strategy credits to IDA countries. Linking budgetary support to the achievements in implementation of the regulatory reform, regulatory guillotine reviews included, can help reformers overcome the resistance of bureaucracy to changes that aim at eliminating rent-seeking opportunities.

147. Donors can play other important roles in helping to overcome resistance to reform and in supporting implementation by (i) raising public awareness of good regulatory

practice; (ii) transferring skills and building local capacity to conduct the regulatory reform efficiently; (iii) helping governments to absorb the costs of the guillotine review and introduction of Regulatory Impact Analysis by providing budget support and by funding technical assistance and knowledge transfer. The best results can be achieved by combining development policy lending with well targeted technical assistance operations.

148. The role played by USAID/BizPro in Moldova and Ukraine can be performed by bilateral donors or IFC-managed facilities in other countries. Projects and facilities located in the field have an obvious advantage of being close to the client. This allows them to provide well-tailored technical assistance in a timely manner over an extended period, conduct continuous monitoring of the reform progress, and its outcomes. Knowledge transfer, institutional capacity building, and training would benefit from on-going assistance and advice. For example, Regulatory Impact Assessment (RIA) cannot be introduced quickly. It requires understanding of its importance and main features, introduction of the relevant changes in the legislative process, creating core expertise in RIA implementation in the center of the government, while developing RIA skills and strengthening RIA units across the ministries. The same applies to the establishment of an institutional framework for regulatory reform implementation, including creation and capacity building of a core body responsible for the reform implementation.

149. In summary, there is scope and potential for efficient cooperation between different donor agencies and synergy of their efforts in supporting the regulatory reform process. Table 6 provides more details on the objectives of assistance at different stages of reform implementation and the applicable instruments.

Table 6: Donor Support through the Implementation Process

Main Stages of Regulatory Reform	Objectives of Donor Support	Possible Methods of Donor Support
Creating commitment for regulatory reform implementation	Raise awareness of policy makers	Funding for enterprise surveys and analytical studies; International benchmarking data (e.g., Doing Business Report, BEEPS, Governance Datasets and Indicators, Corruption Perception Index of Transparency International) Best practice examples
Modernizing the existing regulatory stock, including regulatory guillotine	Support commitment to reform and ensure availability of required technical skills and expertise	TA grants for tailoring and adjusting regulatory guillotine methodology ; TA grants/credits for legal and economic expertise for regulatory reviews implementation, new laws/regulations drafting; Development policy loans and credits supporting regulatory guillotine implementation (DPL, PRCS, PAL)
Improving quality of regulatory flow, including introduction of RIA	Develop quality control mechanisms and capacity for their implementation	TA grants/credits/loans for RIA introduction : <ul style="list-style-type: none"> ○ Adjusting RIA methodology; ○ Building capacity for RIA implementation; ○ Best practice sharing in RIA implementation;

		<ul style="list-style-type: none"> ○ Institutionalizing of RIA training ○ Development policy loans and credits supporting introduction of RIA (DPL, PRCS, PAL)
Strengthening core bodies for regulatory reform and building institutional capacities across the government for reform implementation	Build capacity and expertise for regulatory reform coordination and implementation	TA grants/credits/loans for: <ul style="list-style-type: none"> ○ Developing regulatory reform strategy; ○ Building capacity of core bodies – “engines“ of the reform; ○ Technical expertise for the reform implementation, particularly, at the initial stages of reform (e.g., technical secretariat, experts in particular areas, etc.); ○ Supporting transparency and stakeholders consultations;
Monitoring reform implementation and assessing its impact	Assess reform’s immediate results and longer-term impact, introduce corrections	TA grants/credits/loans for: <ul style="list-style-type: none"> ○ Designing monitoring instruments; ○ Conducting enterprise surveys; ○ Conducting independent impact studies; ○ Recommending correction measures.

VIII. Conclusions: What role for bold reforms such as the guillotine?

150. The regulatory guillotine is only one example of the kinds of reforms that can simultaneously produce both short-term results, and laid a foundation for sustainable change. The preliminary results in three developing countries that are presented in this paper show that, given the right conditions such as administrative and legal strategies combined with political commitment, the guillotine can work well. This is a tool that merits further attention, assessment, and implementation.

151. It should be clear that narrow and one-off reforms to reduce regulatory and administrative costs do not generally produce sustainable and visible results in better business environments. It is also clear that unsystematic and ad hoc reforms, such as the “listing approach”, and reforms that are bottom-up and driven by insider interests are likely to fail in producing visible benefits.

152. Yet governments and donors find narrow and one-off reforms to be very appealing. This is because such reforms seem to promise rapid results and provide quick fixes to highly visible regulatory problems. This pressure for the “quick fix,” rather than investment in sustainable institutions in capacities, is unlikely to abate, particularly given the emphasis today on short-term and process-specific indicators of the business environment, such as those contained in the World Bank’s Doing Business database. This is not a criticism of those indicators, but the conclusion here is that an effective regulatory strategy cannot be based solely on improving relative performance in these kinds of indicators.

153. The solution seems to be to develop a strategy in which short-term quick fixes feed into a sustainable reform strategy, that is, are contained within and contribute to a longer-term strategy of reform. The OECD has found that there are no exceptions to the rule that,

to keep reform on track, a clear medium-term map for regulatory reform must be developed. The business environment can be improved only with a determined, coordinated and strategic approach based on market principles and reform authority applicable across the whole of the administration. This is not an argument for a “Big Bang” approach. Tactically, the government might start with small, manageable reforms that can be accomplished rapidly, but the big picture over 4-6 years is important to keep reform moving in the right direction and to reassure investors.

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