Implementing regulatory reform

REGULATORY REFORM AND BUSINESS ENVIRONMENTS IN SOUTH ASIA: A CALL FOR ACTION

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The enabling environment

- “Enabling” reforms are aimed at releasing the energies of private entrepreneurs, investors, and innovators so that they participate more fully in broad, sustainable economic and social development.

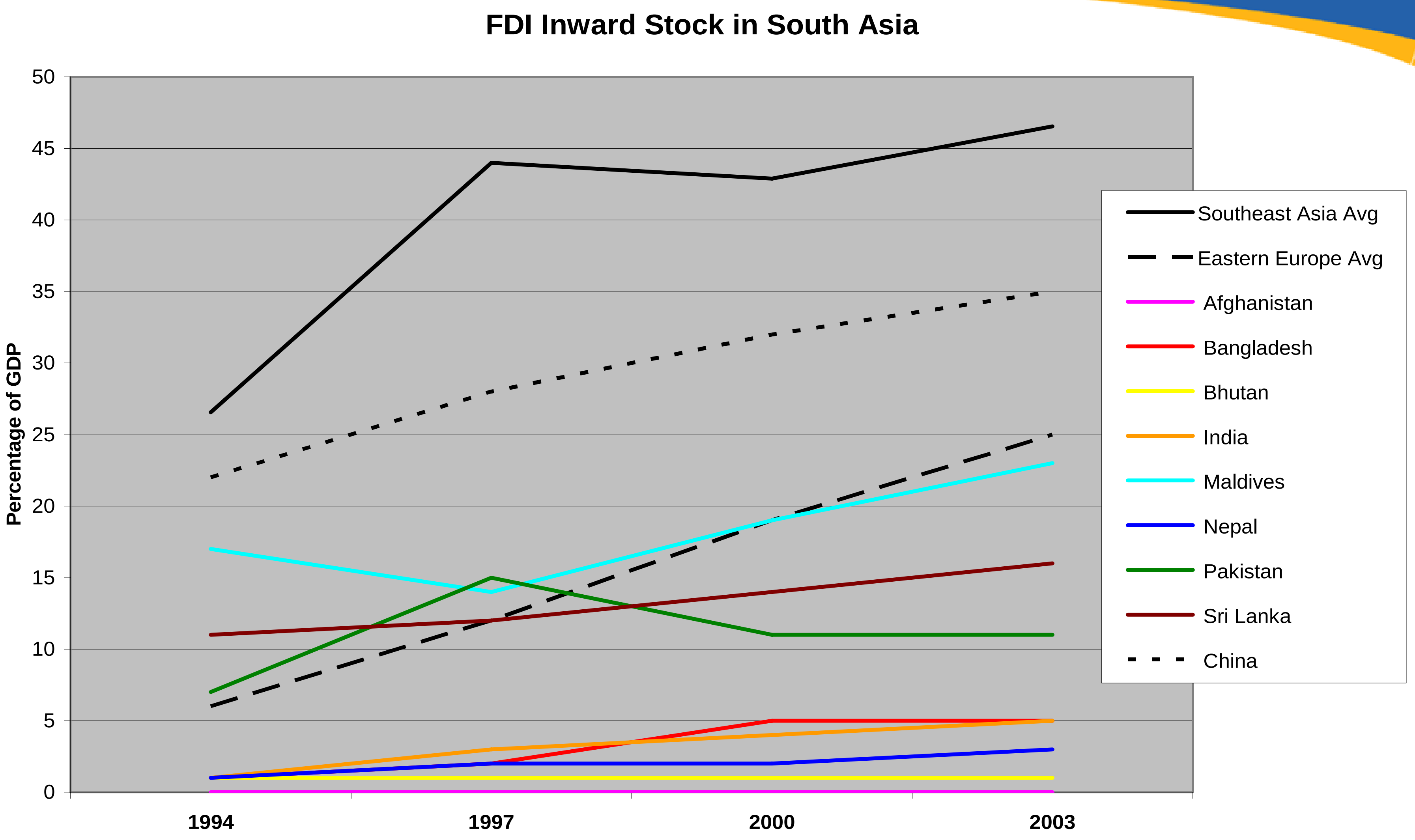
- At the core of wider “enabling” strategy is improvement in the quality of the domestic legal, regulatory, and administrative environment within which businesses operate.

Most important business environment reforms South Asia, 1990-2005

- Increased market openness -- due to tariff structure reforms and liberalization of import and export controls -- boosted productivity;
- Reduction of overt barriers to foreign investment has increased in investor interest in the region;
- Reductions in costly forms of regulation such as licensing in some countries has reduced barriers to entry, regulatory risks, and operating costs;
- Privatization although stalled and incomplete in many sectors, and de-monopolization opened new opportunities for private involvement.

Yet business environment reforms have been timid

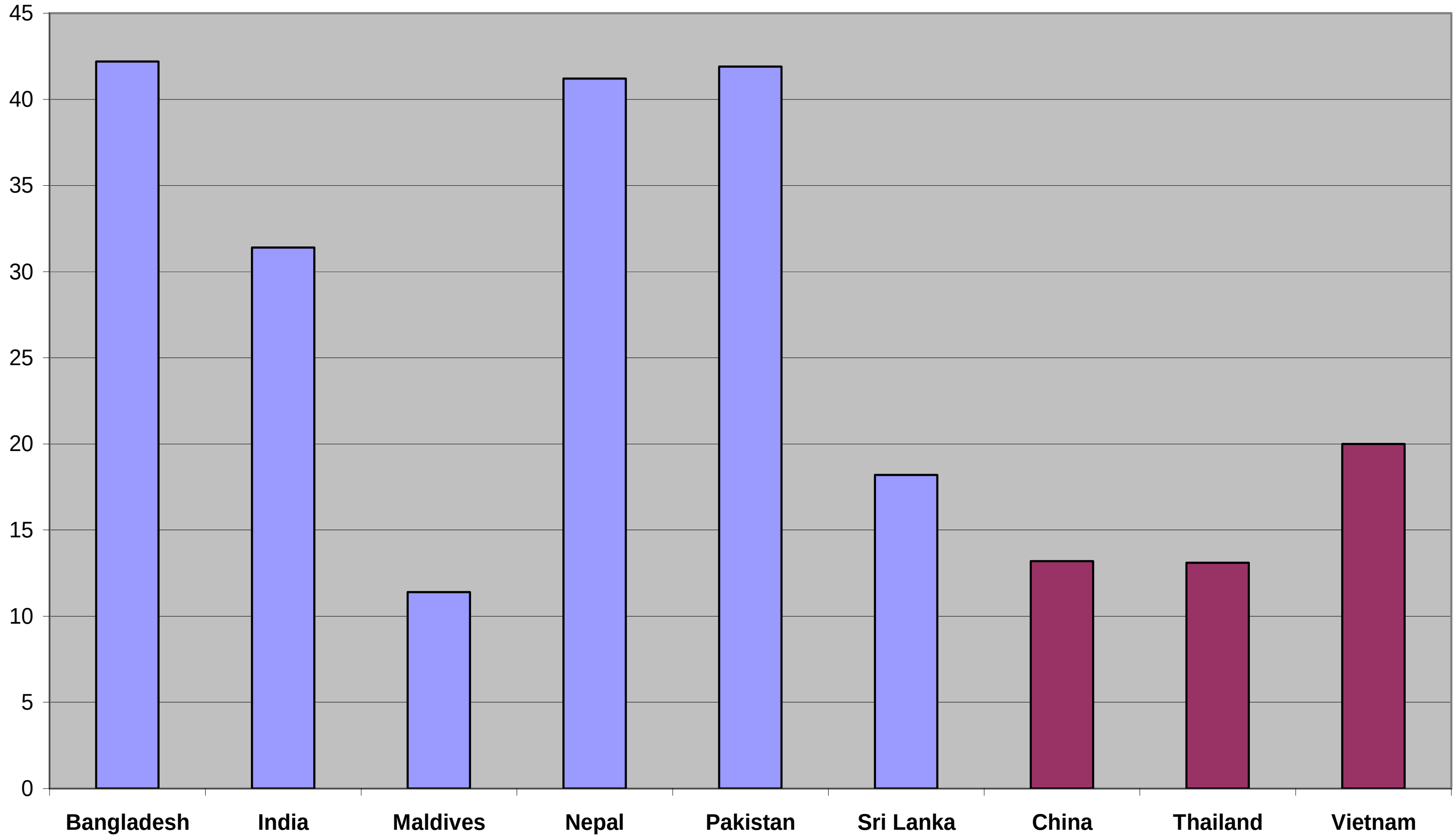
- Reforms have focussed on the easiest targets – reducing barriers to entry such as border barriers, eliminating overt barriers to FDI, and simplifying red tape and procedures.
- No country in the region is effectively addressing the systemic, structural, and institutional problems that impede business environments.
- South Asia is lagging behind



Source: UNCTAD's Major FDI Indicators (www.unctad.org)

Note, Southeast Asia Avg includes Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand & Vietnam; Eastern Europe Avg includes 19 countries from Albania to Ukraine.

Human Poverty Index for Developing Countries 2004

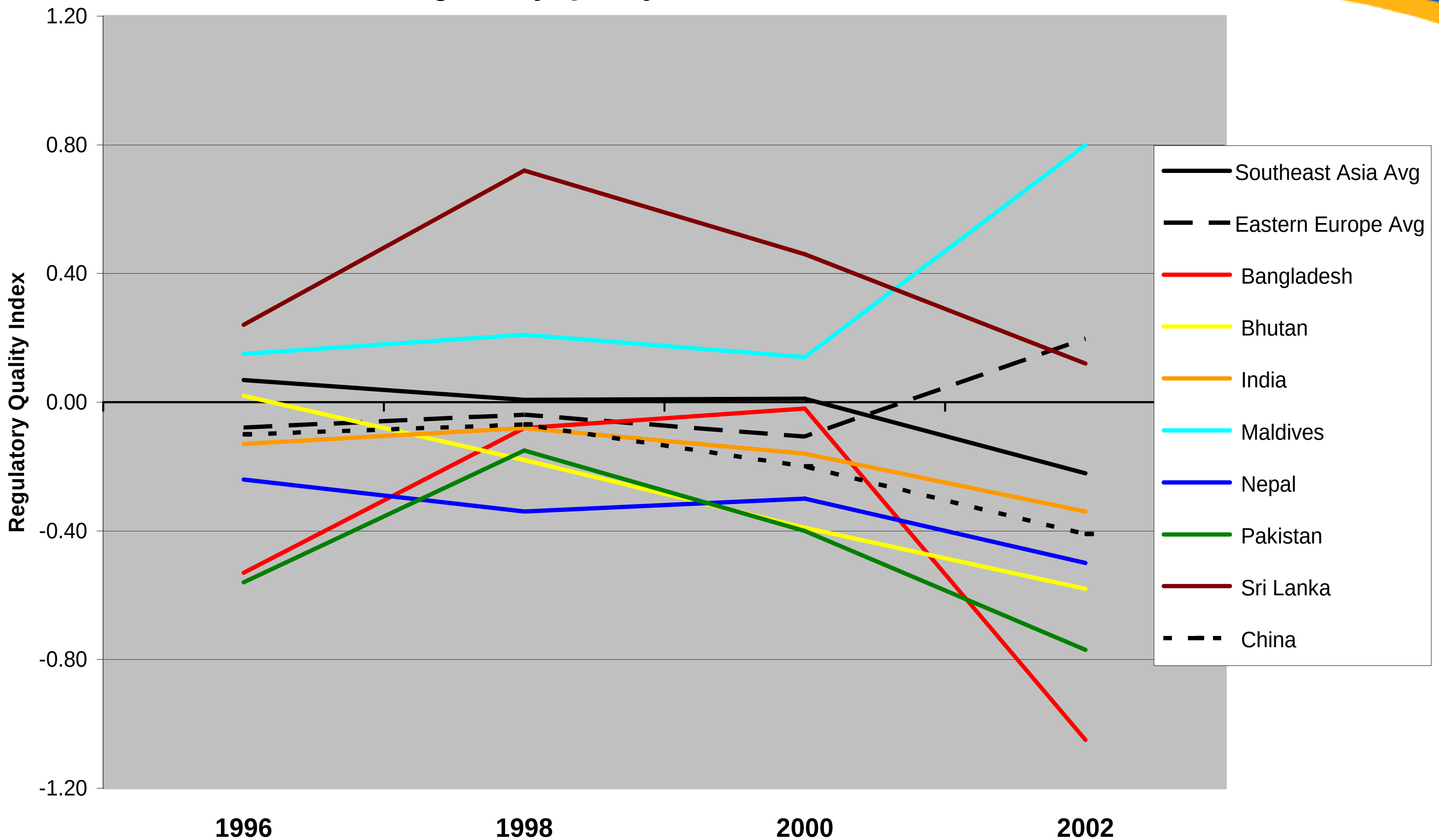


Source: UNDP's Human Development Report 2004
Note: no data available for Afghanistan Bhutan and Korea

Key systemic problems slowing reforms

- Lack of commitment to market reforms by political elite
- Habits of intervention in the public sector, with a lack of understanding and skills in how to regulate the market
- Poor working relations between the public and private sectors
- Lack of attention to competition and violation of competition principles in public policy and private sector regulation
- Lack of civil service reform, hence weak accountability, poor coordination, little focus on results, corruption, and weak customer orientation in the public sector
- Weak due process and property rights protection in the administration and judiciaries
- Rigid labor laws

Regulatory Quality in South Asia 1996 - 2002



Note: Afghanistan fell below this range with a reg quality index of -3.57 in 2000 & -1.82 in 2002

Source: Governance Matters III: Governance Indicators for 1996-2002, Kaufmann, Kraay & Mastruzzi, The World Bank, June 2003.

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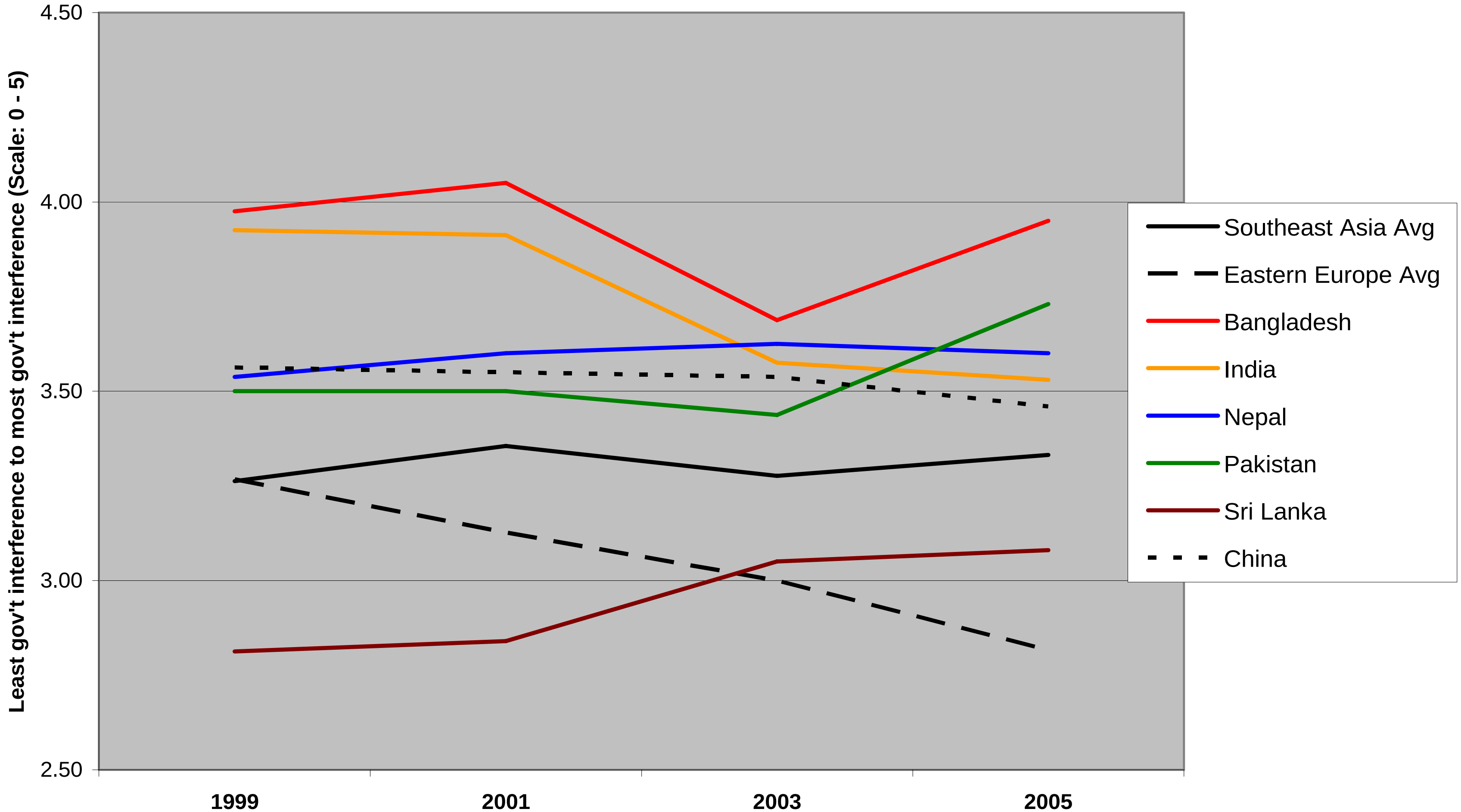
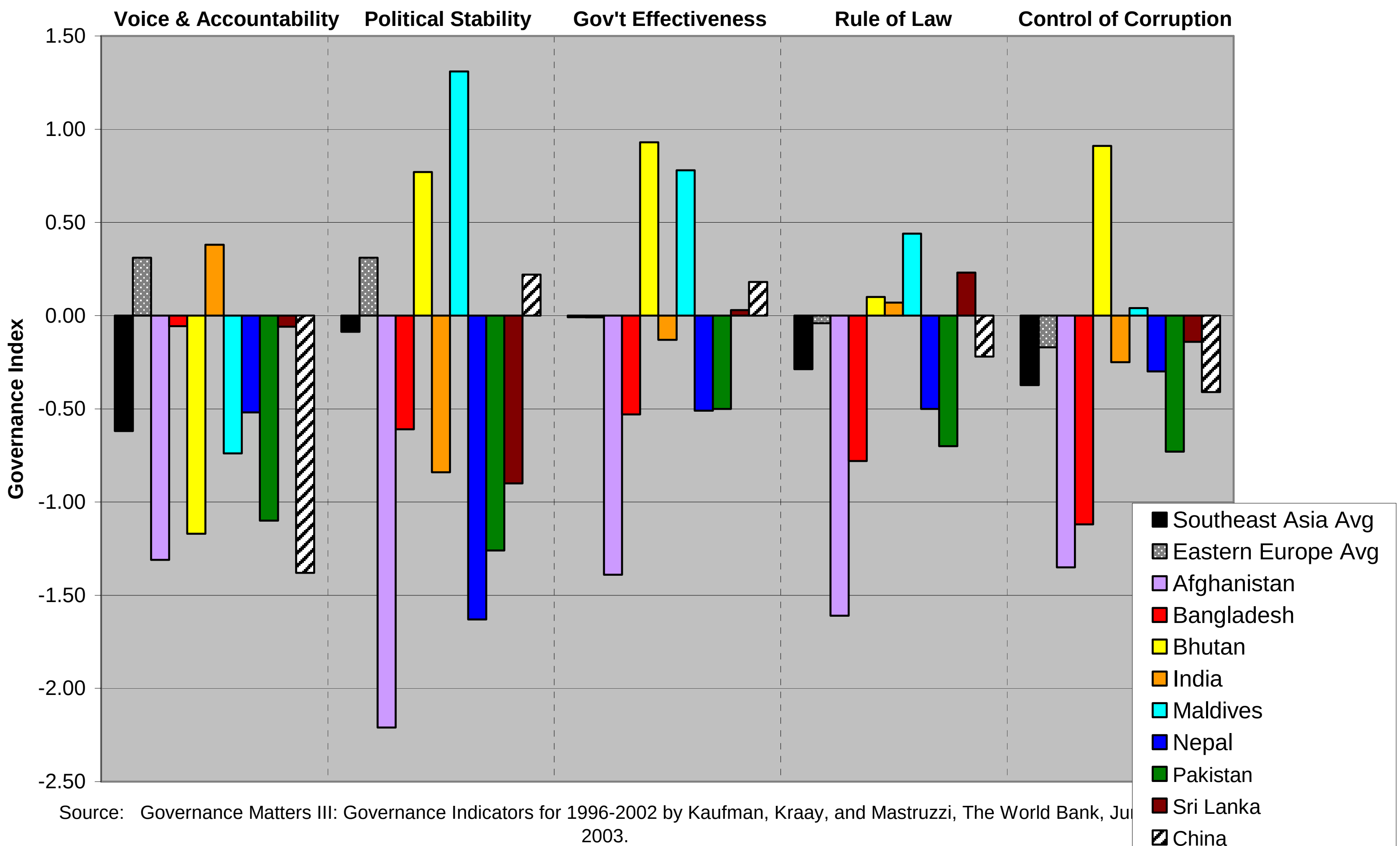
Index of Economic Freedom



Source: The Heritage Foundation's Index of Economic Freedom 1999-2005 (www.heritage.org)

Southeast Asia average includes Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore & Thailand.

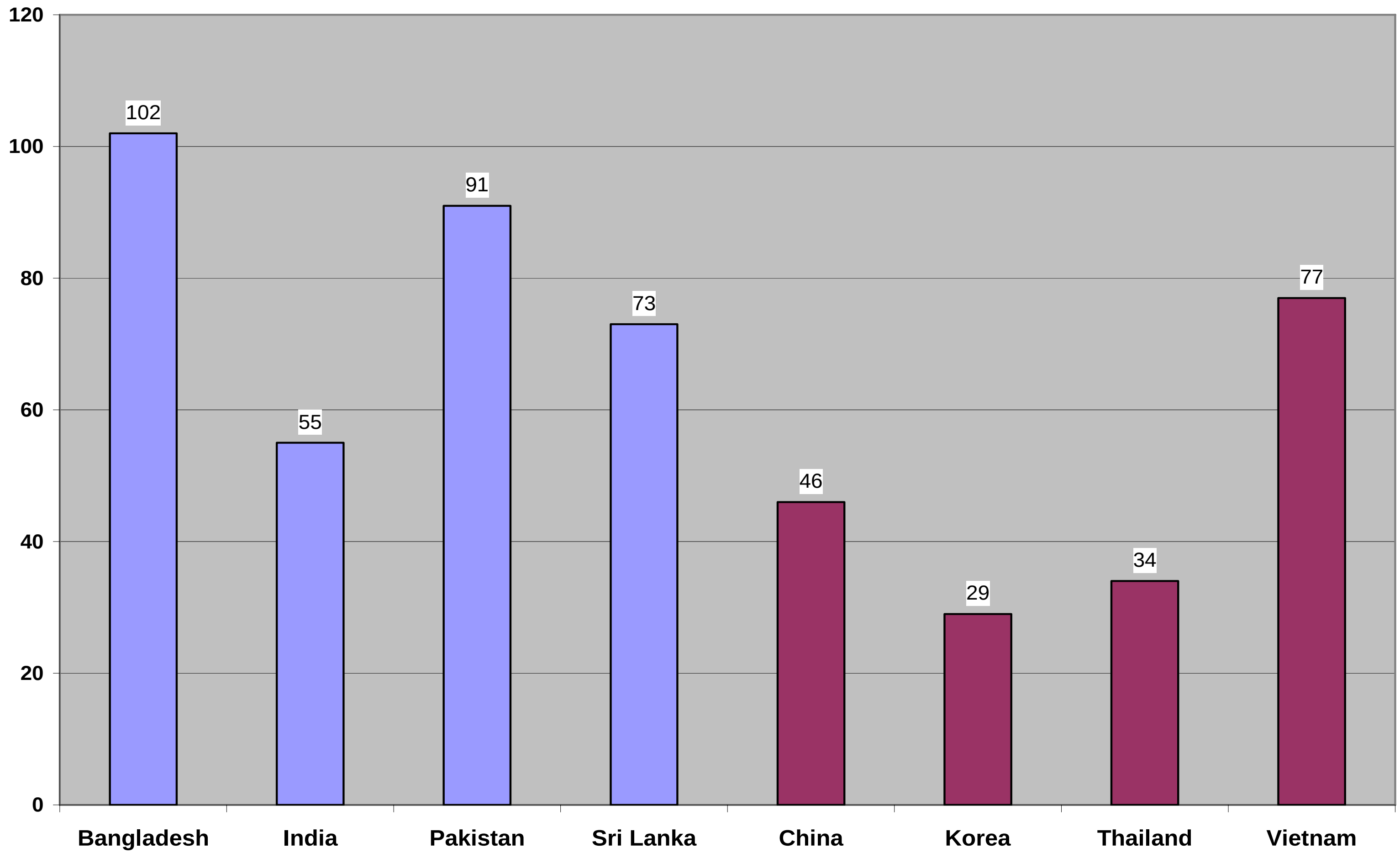
2002 Governance Indicators for South Asia



Source: Governance Matters III: Governance Indicators for 1996-2002 by Kaufman, Kraay, and Mastruzzi, The World Bank, Jun 2003.

Southeast Asia average includes Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand & Vietnam.

Growth Competitiveness Index -- 2004 Rankings



No ranking available for Afghanistan, Bhutan, Maldives and Nepal

Private investment in infrastructure 1990-2003

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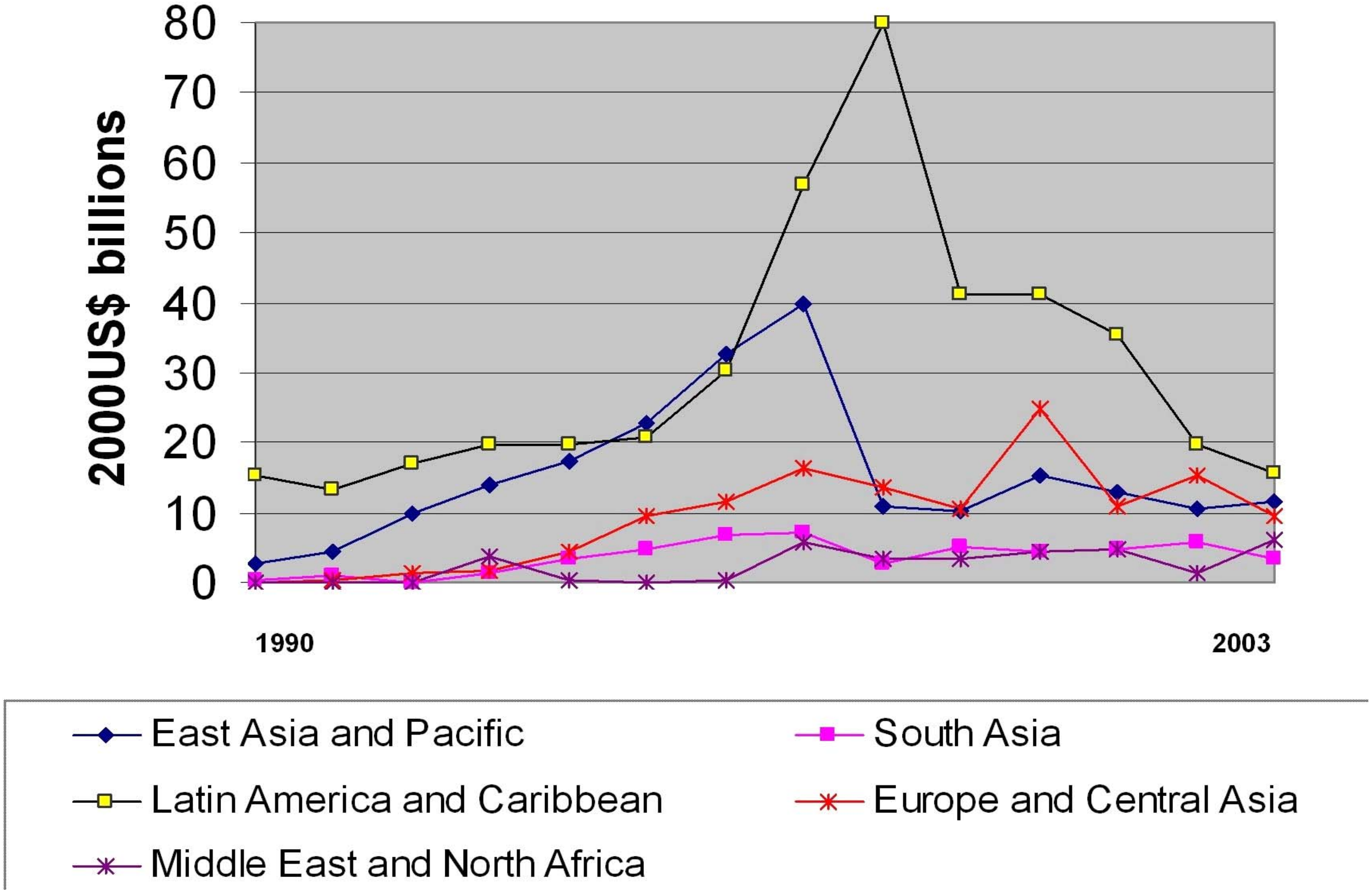


Investors today are worried about the quality of governance

- Deregulation and simplification are good starts, but insufficient principles for market reform. We also need good regulation.
- The focus today is not the size of the state, but its role and its effectiveness, that is, its quality.
- Conclusion: South Asia needs smart government, not small government.
- Better regulation is the guiding principle for reform. the next steps should be building good regulatory regimes, institutions, and a more capable public sector.

What is better regulation? Five characteristics of modern regulatory systems

- **Security** (legal security, consistent respect for market solutions, predictable enforcement)
- **Transparency** (clear and simple rules, openness through the entire policy process, less corruption)
- **Legitimacy** (must protect safety, health, environment, consumers, public interests)
- **Efficiency** (low-cost rules, orderly and timely decisions, move swiftly to meet market needs**)**
- **Expertise** (good regulatory skills and understanding of complex markets and technologies)

Key areas for reform of the business sector

1. Quality of the domestic legal and regulatory environment
2. Anti-corruption and civil service reform
3. Due process: judiciary and appeals
4. Local governance reform
5. Privatization and liberalization
6. The informal sector The needs of informal firms in business environment reforms have been systematically neglected.
7. SME access to capital
8. Access to labor – labor market rigidities
9. SME access to global markets – border issues such as customs
10. Competition problems in domestic markets

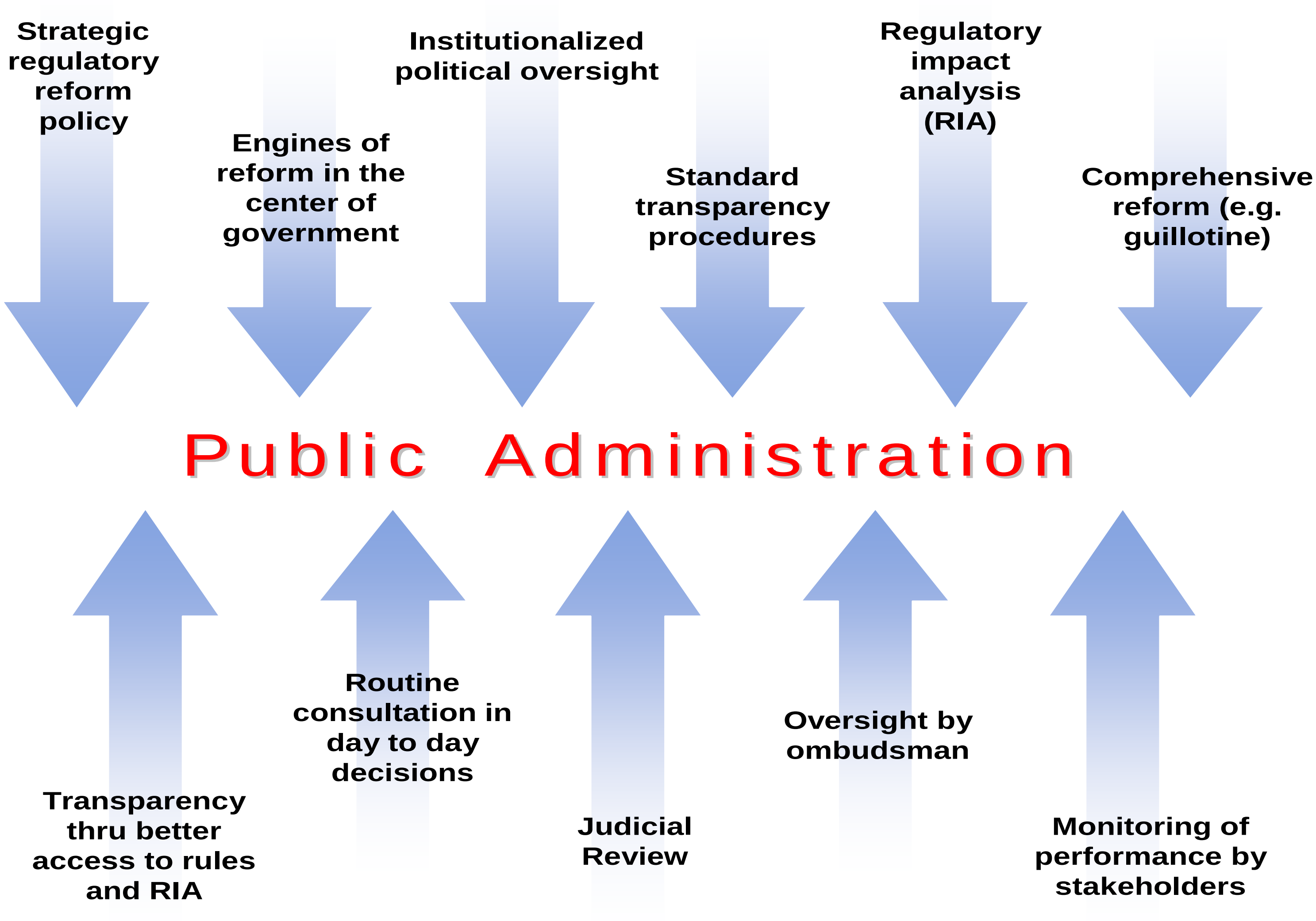
Top priority: the capacity to reform

- **Reform usually falters, not because governments do not know what to do, but because they lack the skills and capacities to reform.**

- **Political capacities for building consensus around market reforms are weak**

- **Weak institutions at the center of government to organize, coordinate, and oversee a multi-year, inter-ministerial reform plan, resulting in half-hearted, incomplete, and poorly implemented market reforms that are vulnerable to reversal.**

Checks and balances for regulatory quality in the public administration



A strategy for the business environment

- **No South Asian country has an explicit regulatory and administrative reform policy. Business environment reforms are scattered through a variety of plans.**

- **Good international practice: every country with an organized, multi-year program of regulatory reform has found it necessary to establish an explicit policy statement on reform at the highest levels of government**

- **The more complete the principles, and the more concrete and accountable the action program, the wider and more effective is reform.**

The OECD Checklist for Regulatory Quality

1. Is the problem correctly defined?

2. Is government action justified?

3. Is regulation the best form of government action?

4. Is there a legal basis for regulation?

5. What is the appropriate level (or levels) of government for this action?

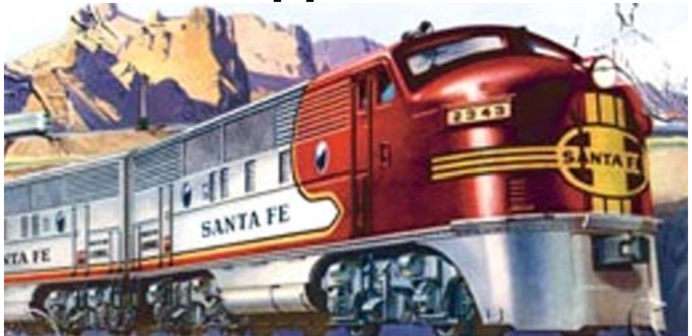
The OECD Checklist for Regulatory Quality (cont.)

- 6. Do the benefits of regulation justify the costs?
- 7. Is the distribution of effects across society transparent?
- 8. Is the regulation clear, consistent, comprehensible and accessible to users?
- 9. Have all interested parties had the opportunity to present their views?
- 10. How will compliance be achieved?

Engines of reform

- **No South Asian country has a central regulatory reform unit. Economic policy reforms have been mostly top-down, driven by strong prime ministers or Finance Ministers.**

- **A well-organized and monitored reform process, driven by "engines of reform", is needed. Three steps:**
  - Institutionalize **political will for reform.**
  - Assign operational responsibility **for oversight and management – the engine of reform -- to a ministerial body that is capable of handling an inter-ministerial process and that has clear accountability for results.**
  - Finance an expert technical Secretariat **to support the reforms.**

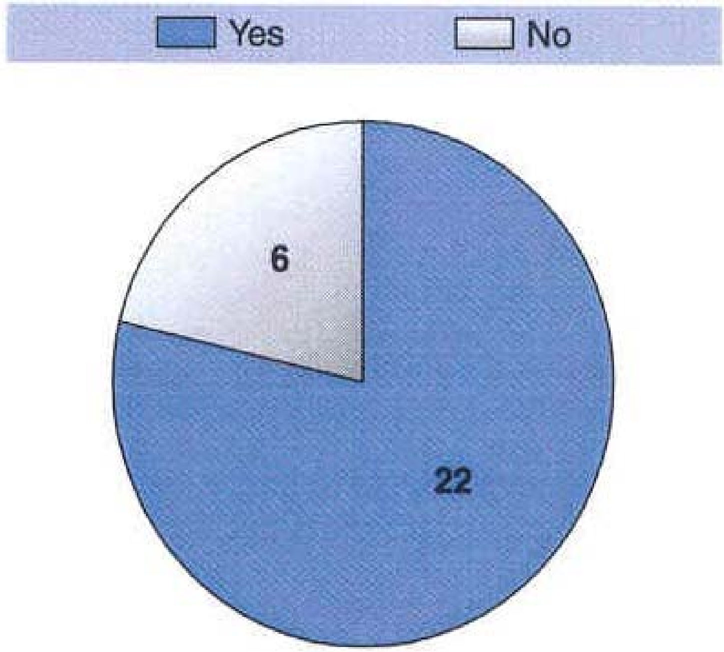


Two levels of oversight: Ministerial committee and an expert Secretariat

- **A ministerial-level body for regulatory reform is needed to oversee reforms at the political level and insist on ministerial action.**
- **A dedicated and expert group is needed at the working level, usually as a Secretariat to the ministerial committee**
- **Inter-ministerial coordination must be developed as part of both processes.**

Put a minister in charge of regulatory reform…

Responses to the question: Is a specific minister accountable for promoting government wide progress on regulatory reform?

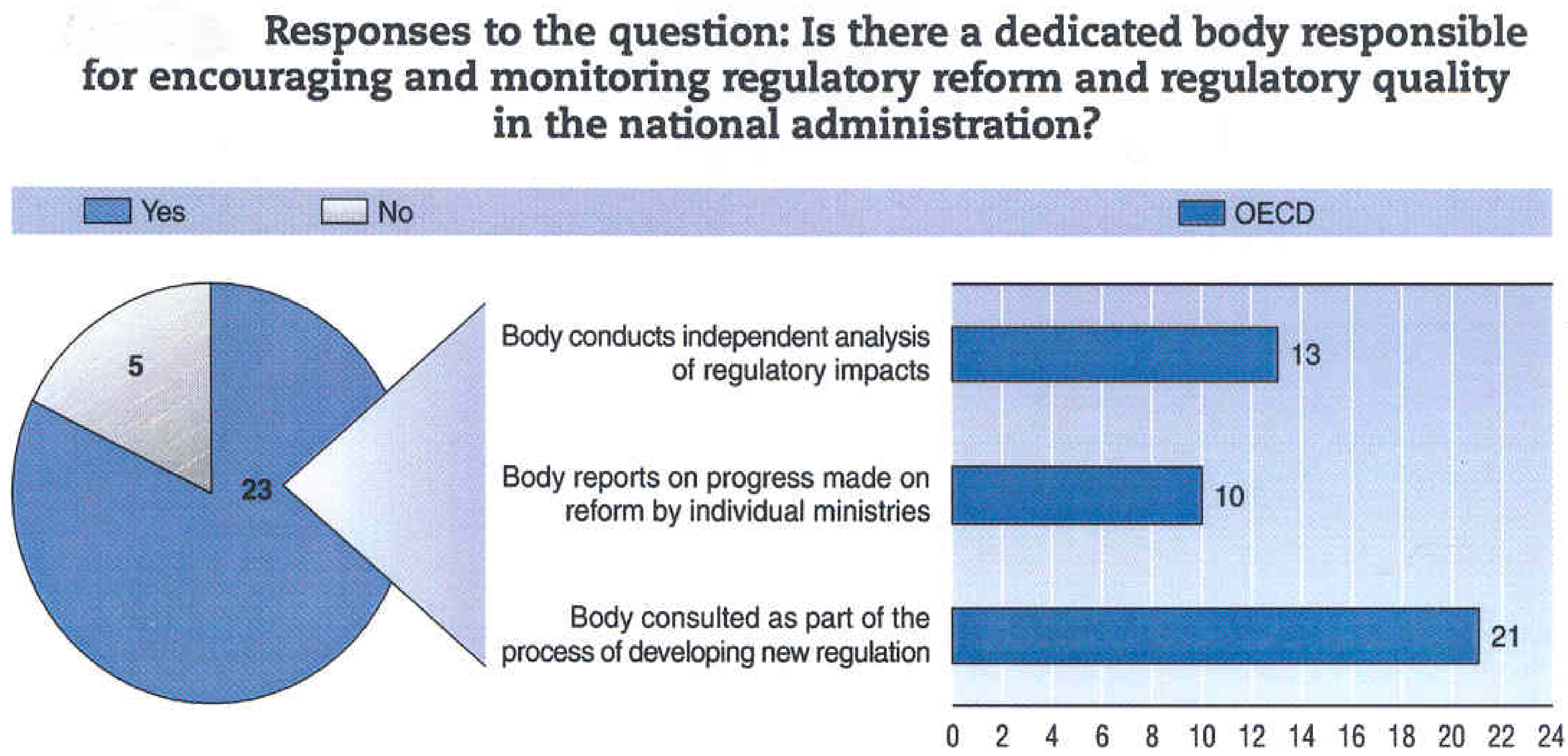


Sustain political commitment through good program design…

Institutionalize political will by:

- **assigning accountability to a high-ranking Minister or to a committee of the Cabinet or Government;**
- **linking reform goals to the country's development goals and to international commitments such as WTO compliance**
- **ensuring accountability for clear results through setting targets and monitoring progress;**
- **producing visible results early to strengthen the allies of reform;**
- **improving transparency in the policy design; and**
- **engaging a wide range of stakeholders in the planning and monitoring process.**

…backed up by expert oversight of regulatory reform



Source: OECD (2000) Responses to the Survey on Regulatory Capacities in OECD Countries, Paris.

Checklist for choosing location of the central reform unit

- *Have a longer-term agenda and mandate*. **Sustained focus and influence over several years.**
- *Have an active inter-ministerial component* **to coordinate the parts of the public administration that will have to actually implement reforms.**
- *Be authorized, connected, and accountable for results to the centre of government* **to strengthen policy coordination and oversight capacities.**
- *Have strong relations and an active involvement with the private sector*, **and include those parts of the government who are champions of private sector development.**
- *Command the resources needed to get the job done*, **including a dedicated secretariat with the right skills and financing to move reform forward.**

Open up the regulatory process by building new transparency and consultation mechanisms

- Consultation processes between public officials and civil society must be a routine part of decision-making, rather than ad hoc, and must be structured to avoid bias and uneven access by more powerful interests

- Centralize a register of formalities accessible by Internet

Two main regulatory reform tasks

- **Picture the regulatory system as a swimming pool**
- **To create a healthy, clean pool for businesses you must:**
  - **Clean the water in the pool (the regulatory stock)**
  - **Filter new water coming into the pool (the regulatory flow)**

Use reform strategies that attach problems systematically or globally

- Countries in transition face an enormous task of reviewing and updating the legacy of laws, rules, and other instruments dating back decades.
- Yet updating imposes huge administrative, legal, and political costs, and takes a long time.
- Consider the regulatory guillotine for rapid review and updating

Silence is consent

- Businesses in South Asia face long delays in uncertainties when they ask for decisions from the public administration

- The “silence is consent” rule switches the burden of action : if administrators fail to act within pre-set time limits (usually two weeks to 30 days), the business is automatically granted approval.

Use RIA to inform policy makers about impacts on the business environment

- **No South Asian country routinely uses regulatory impact analysis in developing new laws and rules, although Sri Lanka has made the most progress.**

- **One of the most important capacities of a modern regulator is the ability to assess the market impacts of a regulation before it is adopted.**

- **The major tool used around the world to examine the costs and benefits of government decisions is regulatory impact analysis (RIA).**

RIA is an evidence-based process of making regulatory decisions

RIA is a process of:

- **asking the right questions in a structured format to support a wider and more transparent policy debate.**
- **systematically and consistently examining selected potential impacts arising from government action or non-action,**
- **communicating the information to decision–makers and stakeholders**

Conclusions: A call to action

- **Small reforms are unsustainable with improvement in systemic problems.**

- **More attention to building new, market-oriented regulatory regimes, skills, roles, institutions and capacities for change in South Asia could bring large benefits in stabilizing and sustaining rapid growth.**