"Domestic Regulation" Rules in the World Trade Organization (WTO)

A dangerous corporate agenda is behind the effort to have new rules limiting domestic regulation of services, within the General Agreement on Trade in Services (GATS) of the WTO. Some countries announced a "plurilateral" agreement to handcuff domestic regulation of services in the WTO in December 2021 that breaches the WTO's own rules. They aim to implement this agreement by 2023 by having countries notify the WTO that they intend to adhere to it. This is not the only breakaway plurilateral negotiation. Several others, involving electronic commerce and investment facilitation, were launched around the same time but are not finished. So, if this is allowed to succeed, it will set a very bad precedent for similar rulemaking on almost any topic those powerful states want to call "trade".

This agreement, on "Domestic Regulation" (DR), would restrict the types of rules that governments can make even if those rules are applied the same to foreign and domestic companies. They would even apply to *domestic* (non-traded) services (like construction) as well as services that are traded (like air travel). The proposed rules would apply to private companies as well as to public services not covered by the narrow public services exception.

Proponents argue that the "right to regulate" would still be safeguarded, but the WTO has ruled that "Members' regulatory sovereignty is an essential pillar of the progressive liberalization of trade in services, but this sovereignty ends whenever rights of other Members under the GATS are impaired." So, the "right to regulate" ends where the WTO rules begin.

To which levels of government would the proposed rules apply?

- If these rules are brought in under the GATS, national governments will have to take such "reasonable measures as may be available" to ensure that regional and local governments and authorities observe them. So, they would apply to all levels of government, but the national government would not have to "force" provincial and local governments to comply on issues where the provinces and local governments have legal autonomy.
- The rules would only apply to service sectors that a country has committed to liberalise under the GATS.
- These rules would apply to *existing* laws and regulations and how they are administered, as well as new ones in the future!

What are the types of regulations that would be disciplined by the proposed new rules?

- **Qualification requirements and procedures** for professional services providers. These are the requirements that professional need to obtain to provide a service, such as a requirement that a doctor must have a medical degree and take exams in order to have qualify to practice, and the procedures to obtain the qualification.
- **Licensing requirements and procedures** for companies and individuals. These involve the requirements they must meet in order to obtain a license to provide a service, for example the amount of capital a bank must have or requirements to do environmental impact assessments before opening a mine or conditions a lawyer must satisfy to get a practising certificate.
- **Technical standards**. These are the standards that must be complied with in the provision of a service. This would involve, for example, how clean the water must be that is supplied by the water company; the safety procedures in nuclear power stations; nurse to patient ratios in hospitals; etcetera.

Why is this being called a lobbyists charter?

- The most important gain for the transnational corporations is the right to comment on proposed new laws and regulations that affect that affect licensing requirements and procedures, qualification requirements and technical standards **before they are adopted**.
- They have to provide a "reasonable opportunity" to comment, must consider the comments they receive and are supposed to explain the purpose and reasoning behind the final version.
- Governments are also "encouraged" to seek comments before they adopt procedures and administrative rulings as well.
- This guarantee applies to foreign governments and well as the corporations of any country that has also adopted this agreement.
- Many countries don't provide this right to their citizens, so this would give foreign corporations and governments privileged rights to influence a country's laws; even where that right does exist for citizens, the lobby power and pressure from corporations and governments will give them influence.
- When governments are adopting technical standards that are developed through similar processes, including standards developed in international organisations like the various United Nations or professional bodies.

How would the proposed DR negotiations interact with the proposals on e-commerce and the digital economy?

- These rules apply whether the service is provided in the country or across the border, especially by Internet. The digital economy poses huge new challenges for governments to regulate in response to: abuse of dominant market power by the biggest digital companies; their advantage of benefiting from first mover network effects and economies of scale; the fact that they own the latest technologies to process big data; the disruptions to traditional suppliers posed by platforms; the automation of production and services which the world is only now seeing begin. Governments will try to deal with

this through licensing and technical standards. Big Tech already spends more than any other corporates on political lobbying so it will use the guaranteed right to lobby on new laws, regulations and procedures to the absolute max.

The rules also restrict the ways that governments decide whether their requirements are met.

- When a corporate or individual needs authorisation to deliver a service they will need to prove they meet the necessary requirements and standards. Often governments try to ensure they have enough flexibility to decide whether an applicant meets the objectives behind the requirements. These rules say the criteria that governments use must be "objective" and "transparent", which means no discretion or generalised terms.
- The rule says the government's criteria can include health or environmental requirements, but they still need to meet that test. It doesn't refer to culture, employment, development, or human rights requirements.
- Procedures for authorising corporations or individuals to provide a service must be "impartial". If the state were to put more emphasis on investigating offshore providers they are not familiar with they could be accused of being not "impartial!"
- Considerable burdens would be placed on the regulatory authorities in the administration of the above measures, such as providing a single window for applicants; meeting timeframes; accepting electronic applications and documents; providing information online; keeping applicants informed, responding to their queries and helping them re-apply, if rejected, etcetera.
- Authorisations that are granted must take effect without undue delay (subject to its terms and conditions). This means if the government changes its mind due to new information, a new political party coming to power, or a referendum etc, the licence (eg for a nuclear power station) must still take effect without delay.

How can this agreement affect government revenue?

The fees that governments may charge for granting authorisation to deliver a service must be "**reasonable**" and "**not restrict the supply of the service**."

- What is "reasonable" is not just up to the government to decide. If challenged, whether a fee is reasonable could be decided by a panel of foreign trade lawyers.
- In some countries fees for licenses and permits are an important source of revenue. Some local governments may rely heavily on that income, for example to pay for police and fire departments, health clinics, street lighting and rubbish collection. If they have to cut fees that the corporations have to pay, they will have to find another income source or cut the service.
- Some governments use fees to dissuade activities they want to reduce, such as using high licensing fees for casinos to reduce gambling.
- It is unclear what "authorisation" fees will cover – for example, would they include a climate change levy. All we know is that fees for use of natural resources (such as mining/forestry), mandated contributions for universal service protection and auctions such as of 4G phone spectrum are excluded.

What about development issues in the Domestic Regulation negotiations?

- Quite a few developing countries want to ensure their services professionals can work offshore. That is known in the GATS as Mode 4, the movement of natural persons. The provision for development of "necessary" DR rules was initially meant to address that issue. However, that goal and the process to achieve it have been side-lined by developed countries through this breakaway negotiation. What was agreed in 2021 highly imbalanced and is not in the interests of developing countries or in the public interest in any country.
- The costs and benefits for DR rules will depend on whether a Member is a services exporter facing various barriers entering others' markets, or a net services importer. Most developing countries are net importers. They stand to lose more and will have to open their markets more with these new disciplines, than if they were net exporters. But the rules will also always benefit large services corporations to the detriment of the public interest.
- The African Group has noted that the DR negotiations prioritized "the right to regulate and the interlinkages between regulations and broader domestic economic imperatives" and that the current proposals "would significantly constrain African Members' right to regulate for legitimate public policy objectives."

What is the state of play in the Domestic Regulation negotiations in the WTO as of 2022?

- Signatories to the Reference Paper on Domestic Regulation in 2021 include: Albania, Argentina, Australia, Bahrain, Brazil, Canada, Chile, China, Colombia, Costa Rica, El Salvador, European Union, Hong Kong, China, Iceland, Israel, Japan, Kazakhstan, Liechtenstein, Mauritius, Mexico, Moldova, Montenegro, New Zealand, Nigeria, North Macedonia, Norway, Paraguay, Peru, Philippines, Russian Federation, Saudi Arabia, Singapore, South Korea, Switzerland, Taiwan, Thailand, Turkey, Ukraine, United Kingdom, United States, Uruguay.
- Almost all of the African Group, a few Latin American and Asian countries have steadfastly opposed the conclusion of the negotiations.
- Any countries not on the above list are likely being actively pressured to join.
- Countries signal their adherence to the rules by sending a notification to the WTO to that effect. But even if their names were on it last year, they must consult domestically – let's make sure they do not agree to such rules in the WTO!

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