



State Authority in Regulating International Business Transactions: Between Sovereign Regulatory Power and International Commercial Norms

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Abstract

*This article examines the dynamics of state authority in regulating international business transactions at the intersection between sovereign regulatory power and international commercial norms. On one hand, the state holds a constitutional mandate to establish regulations that ensure legal certainty, protect national interests, and maintain domestic economic stability. On the other hand, economic globalization demands harmonization with commercial norms shaped by *lex mercatoria*, multilateral trade agreements, and transnational contractual standards. Tensions arise when domestic policies that are protective or interventionist are perceived as potential barriers to the flow of international investment and trade. Through a normative juridical approach and comparative analysis, this article explores how states navigate their regulatory space to preserve normative sovereignty while remaining aligned with international commercial principles emphasizing efficiency, predictability, and non-discrimination. The findings indicate that the effectiveness of domestic regulation in international business transactions depends largely on the ability of states to adopt adaptive, proportional, and internationally consistent regulatory models. Thus, the dialogue between sovereign regulatory power and international commercial norms is not merely a site of conflict, but an opportunity to build a more responsive national legal regime in the face of global economic dynamics.*

Keywords: state authority; international business transactions; sovereign regulatory power; international commercial norms.

Introduction

Economic globalization has accelerated cross-border transactions and expanded economic interdependence among countries. Increasingly intensive international trade and investment activities have created a complex regulatory interaction space, in which countries no longer stand as fully autonomous entities in setting their domestic economic policies. This complexity requires countries to have the ability to manage the balance between national interests and evolving global trade norms. It is in this context that sovereign regulatory power faces a new dynamic, namely the need to ensure that public policy remains compatible with international trade and investment legal regimes.

In the modern international legal framework, the authority of a country to regulate is inherent and attached to its sovereign status. Countries have the legitimacy to enact policies to protect economic stability, social welfare, public security, and environmental sustainability. This regulatory sovereignty serves as an instrument to manage the direction of national development and regulate the behavior of business entities within the jurisdiction of the state. However, as countries become integrated into various international agreements, these regulatory practices must take into account the boundaries of international law that have been voluntarily agreed upon by countries.

The development of international agreements such as WTO Agreements, Bilateral Investment Treaties (BITs), and Free Trade Agreements (FTAs) has resulted in legally binding global trade and investment norms. These norms emphasize the principles of transparency, legal certainty, non-discrimination, and protection of foreign investors.

In many cases, domestic policies that affect the activities of international businesses will be tested for their compatibility with the country's obligations under these agreements. When incompatibilities arise, countries may face international lawsuits or trade sanctions. Regulatory tensions become particularly apparent when domestic regulations are perceived to create trade barriers or pose potential losses to foreign investors.

Many investment disputes show that state actions, even when undertaken in the public interest, can be categorized as indirect expropriation if they result in a significant impact on the value of foreign investment. This dynamic illustrates the complexity of the relationship between the state's right to regulate and its obligation to respect substantive protections for investors as set out in the BIT regime.

In international dispute settlement mechanisms such as ICSID, states are often confronted with questions regarding the limits of the right to regulate. ICSID rulings show a pattern in which states are still recognized as having legitimate policy space, but that space must not be exercised arbitrarily, discriminatorily, or disproportionately to the public policy objectives to be achieved. Thus, the principle of proportionality has come to play a key role in determining whether a state's regulatory actions are legally justifiable under international law.

In the realm of international trade, the WTO Dispute Settlement Body provides important guidance on the relationship between domestic policy and global trade obligations. Many WTO rulings emphasize that countries can implement public policies such as health protection, food safety, or environmental preservation as long as these policies do not violate basic WTO principles

such as Most-Favored Nation (MFN) and National Treatment. Thus, the WTO provides a framework that allows for the harmonization of domestic objectives and global commitments.

The interaction between sovereign regulatory power and international commercial norms creates challenges for countries in formulating policies that are not only effective domestically but also defensible internationally. Countries need to consider the international consequences of any economic policy they implement, especially if it has an impact on foreign businesses. This requires a deep understanding of the structure of international obligations and the ability to assess whether domestic actions comply with the principles of international law.

The existence of global standards governing trade and investment behavior also influences the preferences of investors and trading partner countries. Countries that are considered inconsistent with international norms risk losing investor confidence, facing trade barriers, or facing international litigation that can result in significant financial losses. Therefore, compliance with global commercial norms is an important factor in maintaining a country's reputation on the international economic stage.

At the same time, countries still have room to formulate strategic economic policies as long as such actions are based on the principles of transparency, non-discrimination, and clear public objectives. This policy space opens up opportunities for countries to reaffirm their regulatory sovereignty without violating international commitments. In this context, the process of formulating domestic policies must be carried out with consideration of international implications so as not to cause disputes that could harm the country in the future.

Thus, a deep understanding of the relationship between state regulatory authority and international commercial norms is crucial to ensure that states can maintain their sovereignty in regulating economic activities, while maintaining legal certainty and stability in the global business environment. Analysis of these dynamics enables states to develop regulatory strategies that are harmonious, effective, and remain in line with agreed international commitments.

Methods

This study uses a normative juridical method that aims to examine law as a norm through analysis of written regulations, both at the national and international levels. The study combines several approaches, namely the statute approach to trace domestic regulations related to trade and investment; the treaty approach to examine international obligations in WTO Agreements, BITs, and FTAs; the conceptual approach to explore concepts such as the right to regulate and international commercial norms; and the case approach to analyze ICSID and WTO decisions as illustrations of conflicts between state authority and international obligations. A comparative approach was used optionally to examine other countries' practices in balancing regulatory rights and international compliance. The legal materials consisted of primary legal materials in the form of national regulations, international agreements, and court decisions; secondary legal materials in the form of books, journals, and reports from international institutions; and tertiary legal materials such as legal dictionaries and encyclopedias. Materials are collected through literature studies and searches of international legal databases, then analyzed using descriptive-prescriptive, interpretive, systematic, and argumentative methods. These methods are designed to produce a comprehensive understanding of the limits of state regulatory authority, the

influence of international commercial norms on domestic policy, and the policy space still available to states within the framework of global economic law.

Results and Discussion

An analysis of the national legal framework shows that the state has fairly broad authority to regulate cross-border economic activities, particularly for the purpose of protecting the public interest, such as economic stability, consumer safety, fair competition, and environmental protection. This authority stems from the basic principle of sovereignty, namely the right of the state to regulate all activities within its jurisdiction. In various national regulations such as those governing investment, trade, and consumer protection the state is given an explicit mandate to set standards that are binding on both domestic and foreign businesses. However, the state's authority is not absolute. When domestic regulations intersect with the activities of international businesses, the scope of the state's authority depends on the limitations that arise from international agreements and ratified legal commitments.

This causes the authority of the state in the global context to become relative and must be viewed in relation to binding international norms. International commercial norms formed through WTO agreements, BITs, FTAs, and international dispute settlement practices serve as limiting factors on the regulatory authority of the state.

Norms such as national treatment, most-favored-nation (MFN), fair and equitable treatment (FET), and the prohibition of expropriation without compensation form an international standard on how states should treat foreign business entities. These norms work through direct restriction mechanisms, namely international agreement provisions that compel countries to avoid discriminatory regulations, as well as indirect restrictions in the form of reputational pressure and expectations of international practices such as OECD guidelines or UNCITRAL standards. In the context of international business transactions, countries often have to adjust their domestic policies to align with international expectations, for example by ensuring regulatory transparency, providing equal market access, and non-discriminatory treatment for foreign investors.

Conflicts between sovereign regulatory power and international commercial norms arise when domestic policies intended for public purposes are considered to hinder the interests of international businesses. Such conflicts can take the form of regulations that are seen as barriers to trade, allegations of indirect expropriation when state regulations cause significant losses to foreign investors, or differences in interpretation of the concept of the "right to regulate." Several ICSID cases show that states do have regulatory space, but that space is limited by international tribunals' interpretation of the principles of FET, proportionality, and the legitimacy of public objectives. Ultimately, these conflicts are not only legal in nature, but also political and economic, as they concern development priorities and the protection of public interests.

A balance between state authority and international commercial norms can be achieved through a number of principles that have developed in international law. The principle of proportionality asserts that states may continue to regulate as long as the measures are not excessive and are proportionate to the objectives to be achieved. The principles of transparency and legal certainty require domestic regulations to be drafted openly, consistently, and

predictably so as not to violate legitimate investor expectations. The doctrine of police powers is increasingly recognized in various arbitration decisions as a legitimate basis for the state to regulate for the sake of public health, the environment, and public safety.

On the other hand, harmonizing national policies with international commitments is also considered crucial to reducing the potential for disputes and affirming the state's consistency with the global legal order. The implications of the discussion show that the state needs to develop regulatory policies that maintain policy space in establishing public regulations, but do not violate international commercial norms that could potentially trigger disputes.

The state is required to improve the quality of regulations through public consultation, regulatory impact assessments, and inter-agency harmonization. In addition, it is necessary to strengthen institutional capacity to understand the international implications of each domestic policy, given that regulations that are not in line with international commitments can lead to the risk of disputes and undermine the confidence of global business actors. A country's success in maintaining its regulatory sovereignty is greatly influenced by careful, evidence-based regulatory design that is adaptive to developments in global norms.

A country's effectiveness in managing its regulatory authority is also greatly influenced by the extent to which internal coordination mechanisms between government agencies function properly. Common challenges that often arise are regulatory disharmony, overlapping authorities, and differences in policy interpretation between agencies, which cause domestic policies to be inconsistent with international commitments. Such inconsistencies can trigger regulatory uncertainty, which has an impact on reducing the confidence of international business actors. Therefore, regulatory harmonization, the development of cross-sector implementation guidelines, and increased bureaucratic capacity are necessary so that national policies are not only internally consistent but also in line with global trade norms.

Overall, this analysis shows that the interaction between a country's regulatory authority and international commercial norms is a dynamic process. Countries can no longer formulate domestic policies in isolation because every policy has significant cross-border implications. This condition necessitates an adaptive, responsive regulatory approach based on a deep understanding of developments in international economic law. With well-designed regulations and appropriate harmonization strategies, countries can maintain their sovereignty while building a stable, competitive business climate that is trusted by global businesses.

Conclusion

An analysis of the dynamics between state authority and international commercial norms shows that states continue to play a central role in regulating international business transactions as a manifestation of their regulatory sovereignty. but this sovereignty is no longer absolute because it is framed by international commitments arising from trade agreements, investment agreements, and international dispute resolution practices that prioritize legal certainty, non-discrimination, and protection for foreign businesses. Potential conflicts arise when domestic policies aimed at protecting the public interest are deemed to be contrary to the principles of free trade or potentially detrimental to international investors, even though international law still provides space for the state through the doctrine of the right to regulate, the principle of

proportionality, and the recognition of regulatory actions based on legitimate public objectives. Therefore, the balance between national interests and international norms is crucial so that countries do not lose their policy space while avoiding the risk of disputes that could disrupt economic stability. Thus, a proper understanding of the interaction between sovereign regulatory power and international commercial norms enables countries to design effective, rational policies that are in line with developments in international law to maintain the legitimacy of sovereignty and strengthen the trade and investment climate in an interconnected global economic system.

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