

State of Vermont

House of Representatives



Montpelier, Vermont

Joint House Resolution

J.R.H. 65

Joint resolution relating to the “disciplines,” or rules, being developed as part of the General Agreement on Trade in Services (GATS)

Offered by: Representatives Keenan of St. Albans City, Deen of Westminster, Kitzmiller of Montpelier, Marek of Newfane and Morley of Barton

Whereas, the current round of negotiations at the World Trade Organization (WTO), called the “Doha Round,” appears to be gaining momentum, and

Whereas, included in the Doha Round is a Working Party on Domestic Regulation (WPDR) that is negotiating “disciplines,” or rules, to be part of the General Agreement on Trade in Services that other countries could use to challenge state laws or administrative regulations in some circumstances, and

Whereas, on January 23, 2008, the chairman released a fourth draft of these proposed rules which would apply to sectors in which the United States has made commitments under the General Agreement on Trade in Services, and

Whereas, the chair of the WPDR has asked nations to finish consulting with domestic regulators before the next meeting in mid-May of this year, and

Whereas, GATS covers over 90 service sectors in the United States, and the domestic regulation rules could affect state and local regulation of energy, clean air and climate, utility infrastructure, health insurance, health facilities, higher education, coastal zone management, commercial zoning, and distribution of goods, and

Whereas, the most recent draft of the domestic regulation rules does not recognize and protect non-discriminatory state policy objectives, but only federal or “national” policy objectives, in contrast to the provisions of an earlier draft, and

Whereas, many service sectors are areas traditionally regulated by states, and the federal government plays little or no regulatory role, and

Whereas, recognizing only federal policy objectives could be problematic in situations in which there is no federal policy but there are important state policies and could result in very important state policy objectives being discounted or ignored, and

Whereas, this provision on “national” policy objectives has obvious and serious consequences for federalism and the right of state governments to set policy objectives in sectors where regulation is traditionally reserved to the states, and

Whereas, the chairman’s draft also requires that regulations be based on “objective criteria,” which could challenge criteria that provide for a balancing of interests or consideration of the public interest, such as when the public service board considers whether to grant certain certificates of public good, and

Whereas, the chairman’s draft also requires that regulations be “relevant to the supply of services to which they apply,” which threatens laws that have criteria related to other issues, such as the environmental or quality-of-life considerations including, for example, the impact of a shopping center on a nearby residential neighborhood, and

Whereas, the chairman’s draft requires that regulations be “pre-established,” a vague requirement that fails to specify before what event or time pre-establishment must take place and that may rule out permit conditions that are developed, for example, as part of a municipal or state permitting process, as required by Vermont law in order to assure that undue impacts to valuable resources do not take place and to enable land use permits to be issued, and

Whereas, the chairman’s draft also prohibits laws from being a “disguised restriction on trade,” a term which was not construed as being limited to concealed or unannounced measures by the WTO’s Appellate Body in a decision that determined that the condition existed in a case involving completely transparent measures, and

Whereas, the chairman’s draft also would require that licensing and qualification procedures be “as simple as possible,” a vague requirement that is left to a dispute panel to further define and that may limit the ability of states to set the appropriate level of complexity necessary to achieve regulatory objectives, and

Whereas, in the past, the United States negotiators commendably have resisted “necessity” tests and other attempts to expand the scope of these potentially intrusive disciplines, now therefore be it

Resolved by the Senate and House of Representatives:

That the U.S. negotiators be commended for their past opposition to provisions such as those specified in this resolution, and be it further

Resolved: that U.S. negotiators be urged to continue to resist language in the current draft specified in this resolution that might undermine principles of U.S. federalism and constitutional guarantees of state and local authority, and be it further

Resolved: that the secretary of state be directed to provide copies of this resolution to Vermont’s congressional delegation, the Intergovernmental Policy Advisory Committee, the National Conference of State Legislatures, the United States Trade Representative, the office of the President of the United States, and Governor of Vermont James Douglas.

Gaye R. Symington
Speaker of the House

Attested to:

Brian E. Dubie
President of the Senate

Donald G. Milne
Clerk, House of Representatives