DEREGULATION

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In the broadest sense, all the reforms, beginning from the laws on cooperatives and state enterprises in Russia, have been steps away from the rigid and ineffective state control of the economy. They all, in other words, met the definition of 'deregulation'. But we propose to use the term 'deregulation' in a narrower sense, to mean the removal of any unconstitutional restrictions on business activities. In other words, the deregulation of the economy means the implementation of the relevant principles and provisions of the Russian Constitution (Article 34 on free enterprise, Part I of Article 37 on free labour and Part I of Article 34 on the freedom of creative activity).

This latter definition encompasses the revision of legislation, the filling in of 'blank spots' in the regulatory framework to leave no room for arbitrary interpretation, and the replacement of edicts by laws. On the other hand, some traditional advocates of greater state regulation propose the concept of 'de-bureaucratisation' as an alternative to deregulation. De-bureaucratisation is interpreted as 'relieving' some 'priority' sectors and enterprises of the rules and requirements set by antimonopoly and budgetary laws. Needless to say, this is very different from what is being proposed here.

The limits of effective deregulation

Deregulation is effective only against a general background of confidence in the law and its enforcement. Not all constraints on liberty are harmful to business; many are beneficial, provided that they are consistently and honestly enforced. Countries with severe restrictions on business, in the shape of high taxation and environmental and social legislation, may nevertheless be more attractive for investors than the countries with formally liberal taxation and minimal formal obstacles to starting a business, but with weak guarantees of private property rights. But protection of property rights is a very different kind of activity from the mass of petty registration, licensing and inspection engaged in by the Russian state. Such activity is restrictive rather than supportive of business; it is against this that deregulation is aimed.

The effectiveness of deregulation also depends on the comprehensiveness of approach. Partial deregulation is often counterproductive. For example, the recent energy crises in the Primorye territory and in California both had their roots in truncated and contradictory deregulation programmes. In both cases, the liberalisation measures covered the process of energy generation, but not its distribution. Fixed rates for delivery of electricity to the end user perpetuated a shortage similar to the chronic shortage in most commodity markets under socialism. The difference between Primorye and California is that in the former case investments were deterred by the governor Nazdratenko, who was hostile to independent external investors, and in the latter case by the policy of California's Green administration, which refused to approve the building of any new power stations.

Sources of regulation: protection of consumers' rights?

Professor A. A. Auzan (head of the Social Contract Foundation and the Confederation of Societies for the Protection for the Rights of Consumers) suggested, at a meeting devoted to the problem of deregulation on April 5, 2001, that regulation in its modern form was a reaction on the part of the state to the influx, beginning in 1992, of a mass of products of which Russian consumers had no knowledge. This created a problem of information asymmetry, not only in the market for sophisticated goods and services, but even in the market for staple foods.

Granted, there was a problem of consumer adaptation in early 1992. But only one government decision had anything to do with the protection of the consumer's rights: the adoption, on February 7 1992, of the Law on the Protection of the Rights of the Consumer. This law dramatically reduced the costs of protecting consumer rights, including the cost of litigation. It provided a great stimulus to private lawyers and various specialised non-profit organisations. One of these is the organisation of which Mr. Auzan has been such an able head for many years. All other official regulatory measures had a fundamentally different intent.

This makes it worthwhile to take a closer look at an alternative hypothesis. Let us consider the question: 'Weren't there, at the very start of reforms, influential groups that stood to benefit from the preservation of state regulation in one form or another?' If not, this lends support to the explanation proposed by Auzan. But if such groups of interests existed then a more complex explanation of what gave rise to excessive regulation suggests itself.

Interest groups that stand to benefit from broader state regulation

In the course of the 1992 reforms, hundreds of former union and republic ministries and agencies were abolished or reorganised. Some of their staff joined the staffs of new ministries; Gosplan employees, for example, ended up at the Economics Ministry. But most had to look for new fields to conquer.

Groups of former bureaucrats and entire collectives declared themselves to be 'concerns' or joint stock companies. They tried to use their old connections to preserve various forms of control over the enterprises formerly within their jurisdiction. They were guided by the noblest of motives, of course.

Some of them created holding structures, which sponged off enterprises such as Rosstankoinstrument. But more often, when their attempts to preserve almost direct control met with vigorous opposition from new agencies such the State Property Committee and the Anti-Monopoly Committee, they had to look for new methods to perpetuate their existence.

The system of managing 'state trade' was a case in point. Under socialism, this system included the Ministry of Trade, entities called torgi (in charge of all state retail enterprises on a certain territory) and state-owned shops. The actual function of the system was not to supply the needs of consumers, but to distribute goods allocated by the state. The direct access enjoyed by state trade employees to these perpetually scarce consumer goods made that system the main mechanism for converting power into material wealth.

With the freeing of prices and the liberalisation of trade, import and currency exchange, the system of administrative distribution collapsed. State trade employees, who still controlled considerable resources, saw the ground slipping fast from under their feet. They faced the threat of losing their source of income and social status. So they formed an aggressive coalition cemented by their common interest in economic survival.

There was no adequate resistance to such interest groups on the part of either society or the government. Lacking the massive support enjoyed by reformist governments elsewhere in Eastern Europe, the Russian reformers tried to compromise with all active interest groups. As a result, they failed to make new allies, and they also further diminished the constituency in favour of deregulation.

Today, the influence of the regulatory coalition has been greatly weakened. This is indirectly evidenced by the abolition of the corresponding ministry and the inclusion of the rump of that ministry as a department within the Ministry of Economic Development and Trade. But the fact that government decree no. 601 remains in force, and that the State Committee for Standardisation and Metrology decree of August 22, 2000 - as well as the package of regulatory documents following last year's 'Law on the Quality and Safety of Food Products' - have been adopted, demonstrates that this interest group still retains considerable influence over decisions relevant to its survival.

Interest groups also demonstrated their strength during the debate on the Bill on Amendments to the Licensing Law before it was even introduced by the government in the State Duma. As a result, the principle of 'one law', a single procedure for all types of licensing, was never implemented. The list of licensed activities still contains a large number of activities - such as, for example, publishing - additional control over which makes no sense in terms of consumer interests.

So we can conclude that the root motive for the interference of state bodies in the economy is the desire to preserve for as long as possible the whole range of benefits that power confers (including the maximisation of long-term rent). The following examples will illustrate the various mechanisms of state regulation.

Market regulation in Russia: the problems of licensing

Federal Law No.158, 'On the Licensing of Specified Types of Activities', which is still in effect, refers to 215 types of activity, 'as well as other types of activities whose licensing is envisaged under other federal laws that came into force before this federal law'. There are also another 100-odd legislative acts prescribing the licensing of concrete activities.

By explicitly exempting from its provisions already existing licensing activities, Federal Law no. 158 violates the principle of uniform state licensing policy. As of today, there are more than 30 federal laws which detail with varying degrees of thoroughness licensing procedures, or grant the right to establish such procedures to corresponding ministries and agencies.

Thus, at least 500 types of activities are subject to licensing. In reality, the number of types of activities for which licenses are issued (some without legal grounds) approaches 2000. A further technique for widening the scope of licensing is known as 'decoding' or 'clarifying and specifying'. Each licensed activity is broken down into a list of specific acts and services, of which features can be identified even in sectors totally unconnected with the activity being licensed. As a result, an individual license can be stretched to cover ten different industries.

All this happens not only on the federal, but also on the regional level. Often one and the same activity has to be covered by several licenses at different levels (federal, regional, municipal) issued by one and the same agency. It is at the regional level that regulatory acts are passed without any legal grounds. Often licensing, abolished in some spheres, is revived in other forms. The issue of 'standard certificates' to enterprises that provide welfare, retail or public catering services is in fact a substitute for the licensing of these activities. Unregulated licensing at the municipal level persists. Sometimes regional administrations stop the illegal introduction of new types of licenses, but often they encourage it.

Regional problems of deregulation

Improving the investment climate is not solely the responsibility of the federal government. Owing to the distribution of jurisdictions between the federation and its constituent parts, the centre is not always in a position directly to regulate certain areas. So federal measures aimed at improving regulation at the regional level must take into account possible limits to federal interference. Of course, violation of federal laws by the regions cannot be tolerated. But some improvement has been achieved in 2000-2001. For example, amendments were introduced by the Constitution of the Republic of Tuva and the Charter of the City of Moscow. But the problem has defied final solution for many years. To avoid a confrontation between the federal and regional authorities we proposed a differentiated approach to various types of violations of federal legislation. 1. Actions that undoubtedly impede the economic development of the country. · The introduction of interregional barriers to the free movement of goods. · The introduction of interregional barriers to the free movement of manpower. · The introduction of regional and local taxes not envisaged under the federal tax code. · The illegal regulation of prices and trade mark-ups. Most such decisions are taken by executive bodies at various levels. Illegal internal customs barriers are typically erected by the governors; illegal taxes are imposed by the heads of city and regional administrations. But such measures are sometimes also taken by the legislatures of the constituent parts, or subjects, of the Federation (which for the most part are controlled by the corresponding executive bodies). Unfortunately, general trial courts have no right to overrule such legislative acts,

it being the prerogative of the Constitutional Court of the Russian Federation. True, in accordance with the recent ruling of the Constitutional Court, they may suspend such acts. The Russian President has no right to cancel or suspend the enactments of regional legislatures. Meanwhile the examination of such cases at the Constitutional Court takes an inordinately long time, sometimes years. Among the more common violations is the ban on the export of farm produce and consumer goods from a region (Krasnodar Territory, Mordovia), and a ban on the import into the region of hard liquor and beer from other regions. Regional charges are often levied on enterprises, or else they are ordered to acquire certain goods. Some regions (Novosibirsk, Altai) charge incoming motorists. More than 40 regions in the Russian Federation have bans or individual restrictions on the movement of goods. More than 25 regions have introduced illegal taxes. The ordinances of regional authorities often regulate more than 20 'staple goods'. The list of such goods includes alcoholic beverages, mineral water and sausages. Regulations are issued containing vague injunctions (for example, to keep prices 'reasonable'), which paves the way for arbitrary interpretation and the imposition of sanctions. This is particularly true of the Krasnoyarsk territory, where one of the governor's orders told businessmen to 'have copies of protocols on the negotiation of prices with consumers'. Sometimes decisions taken at the federal level are vague enough to allow local executive bodies to interpret them arbitrarily and assume functions not within their jurisdiction. 2. Provisions of regional legislation that contradict federal law but are never implemented. These include the provisions of some regional constitutions and charters that say that regional legislation prevails over federal legislation. 3. Actions that contradict federal law but may to varying degrees be considered justified. Two such situations are possible. · The region passed legislative or regulatory acts before corresponding federal laws were adopted. · The federal laws are ineffective and the regional laws are more effective. Immediate steps and prospects for deregulation Under the government's plan, approved by decree no.1072-r of July 26 2000, a package of measures will be developed aimed at limiting the powers of state bodies supervising the production and sale of goods and services. The plan envisages a number of administrative measures, including the implementation of 'one window' registration, increasing responsibility for information provided at registration, simplifying and streamlining the procedure of licensing, and establishing a closed list of activities subject to licensing. In pursuit of these objectives, draft laws have been submitted to the State Duma and have passed through three readings: 'On Protecting the Rights of Legal Persons and Individual Entrepreneurs in the Course of State Control' and 'On State Registration of Legal Entities'. A new edition of the 'Law on Licensing Individual Types of Activities' has passed two readings. Draft government degrees have been prepared to support current work aimed at removing administrative barriers. The next phase of economic deregulation (2001 to the first half of 2002) will see a revision of the regulatory base of state agencies - in the first place the police, the fire authorities and the sanitary authorities - responsible for the oversight of private enterprises. In the medium term (2002-2004), the regulation of the market by non-government institutions is to be encouraged. The aim is to increase the role of self-regulation, and to pass amendments to procedural legislation providing for the possibility of class-action suits. We must do away with the excesses of direct supervision by the state, especially where it involves considerable outlays and the gains are dubious. Examples include sanitary rules, which number over 10,000, building, fire prevention, environmental, labour safety and other rules. Similar problems are encountered with goods safety standards. The state institutions responsible for enforcing these rules do not at present serve the interests of consumers; they merely create obstacles to the conduct of business. While maintaining indirect control, the state must increasingly delegate immediate responsibility to non-governmental bodies. In time, non-state inspection authorities may be formed to check compliance with sanitary, environmental and other safety standards. Such bodies are already widespread in the financial market, in the shape of independent auditors, where they protect the interests of shareholders and investors. They have proved themselves to be just as responsible and efficient as state oversight agencies. In all developed countries, as well as in Russia, consumer organisations are competitive by comparison with state bodies. Consumer organisations are also in the interest of enterprises with a good reputation. Such enterprises need a tougher system of public control to underline their competitive edge. A legal framework is being created for market regulation on the basis of civil and legal institutions. That work includes the drafting of the bills 'On Standardisation and Quality Certification', 'On Self-Regulating Organisations', 'On Introducing Amendments and Additions to the Federal Law on Protecting the Rights of Consumers' and 'On Introducing Amendments and Additions to the Criminal Code of the Russian Federation'. Finally, legislation is needed to reduce the cost to individual consumers of fighting their right to timely and authentic information on the quality of goods and services. Appendix Regulatory Acts · Constitution of the Russian Federation · Federal Law no. 2300-1 of February 7, 1992: 'On Protecting the Rights of the Consumer'. · Federal Law no. 29-FZ of January 2, 2000: 'On the Quality and Safety of Food Products'. · Government Decree no. 601 of May 17, 1997: 'On the Marking of Goods and Products on the Territory of the Russian Federation with Fake-Proof Quality Marks'. · Government Decree no. 347 of March 29, 1999: 'On Measures of State Control of the Prices of Drugs'. · Government Decree no. 883 of November 22, 2000: 'On Organizing and Conducting the Monitoring of Quality and Safety of Food Products and Public Health'. · Government Decree no. 987 of December 21, 2000: 'On State Supervision and Control in Ensuring the Quality and Safety of Food Products'. · Government Decree no. 988 of December 21, 2000: 'On State Registration of New Food Products, Materials and Articles'. · Resolution of the State Committee of the Russian Federation for Standardization and Metrology, no.61 of August 22, 2000. Draft Regulatory Acts · 'On State Registration of Legal Entities.' · 'On Protecting the Rights of Legal Persons and Individual Entrepreneurs in the Course of State Control.' · 'On the Licensing of Individual Types of Activities.'