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Personal Information: Protection and Data Flows

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Negotiations on Trade Related Aspects of
E-Commerce
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Balancing openness with sound regulation

Hamid Mamdouh



Essentials of a trade friendly e-commerce ecosystem

Openness

- Competitive open market conditions
- Stability and predictability in trading conditions
- Rules based frameworks

Regulation

- The right (and need) to regulate
- Procompetitive rules
- Transparent rules with clear rational

The “regulatory interface”

- The interface between trade liberalization and regulation aims at ensuring that:
 - Trade liberalization does not intrude on regulatory sovereignty
 - Trade rules ensure the “least trade restrictiveness” of regulatory measures
- The concept is not new (e.g. TBT and SPS)
- Challenging in the case of digital trade because:
 - Intangible products traded
 - Absence of internationally agreed standards to establish a “rebuttable presumption” of least trade restrictiveness

The role of trade agreements on non-trade issues

The WTO and other trade agreements are not standard setting instruments for the attainment of regulatory objectives (privacy, consumer protection, cybersecurity, etc..), they:

- Define obligations to refrain from introducing or maintaining restrictions on trade (goods and services)
- Define obligations to facilitate trade
- Provide for trade rules is to ensure least trade restrictiveness while not intruding on regulatory sovereignty
- Provide for disciplines for non-discriminatory regulatory cooperation
- Provide for clear exceptions to protect policy objectives
- Provide a forum for trade negotiation and settlement of disputes
- Respect the right to regulate to pursue domestic policy objectives

Main Challenges

- Diversity of policy objectives and concerns within the same jurisdiction
- Diversity of regulatory approaches to some concerns across jurisdictions
- The limited role of trade agreements on non-trade issues
- The multi disciplinary nature of “digital trade” across goods and services trade
- Using regulatory cooperation for trade facilitation
- Capacity building

Distinguishing between WTO's and RTAs' outcomes

- RTAs are required and expected to be more far reaching than WTO outcomes (liberalization and regulatory cooperation)
- So often aim at deeper integration going beyond trade
- Different treaty architecture with different implications
- Fertile grounds for innovative solutions among smaller groups of Members
- Complementarity of respective roles of WTO and RTAs

A road to a trust worthy market environment

International cooperation is needed on different tracks:

- Trade negotiations addressing the “regulatory interface” focusing on least trade restrictiveness of regulation
- Refine instruments of regulatory cooperation to avoid discriminatory outcomes (e.g. mutual recognition, adequacy, etc.)
- More cooperation among governments to develop common ground on data governance matters (e.g. privacy, cybersecurity, online consumer protection, etc.)
- Build on regional efforts to develop standards (e.g. APEC and OECD on privacy rules)
- Build on existing multilateral trade rules (obligations, disciplines and exceptions)

Thank you