Personal Information: Protection and Data Flows

Submitted by: Bruegel
Balancing openness with sound regulation

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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 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
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 exeptions)
Thank you