



MICRO, SMALL AND MEDIUM-SIZED ENTERPRISES (MSMEs)

Since 2015, the theme of Micro, Small and Medium-Sized Enterprises (MSMEs) has emerged after the Philippines submitted a proposal on this issue in the WTO, calling for discussions to take place in a more sustained way.

Yet, at present, the theme of MSMEs is mostly pushed by the major economic powers advocating new binding disciplines and increased market access. In particular, new WTO E-commerce disciplines are being pushed by the international business community (represented by the International Chamber of Commerce (ICC)/B20) as an MSME issue. However, this E-commerce MSME agenda is in fact the agenda of large corporations. The envisaged binding E-commerce rules would subject MSMEs in developing countries to competition with the digital giants even as these developing countries' MSMEs face very real digital and technological challenges and would need policy space to establish their own domestic and regional E-commerce platforms. If rules would in fact serve developing countries' MSMEs, these should be binding technology transfer arrangements to bridge the digital and technology divides, and binding financial assistance for infrastructure. However, these are not the type of rules being proposed.

Given this context, this Note recommends that developing countries should not agree to have MSMEs as a horizontal issue within the WTO.

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OUTLINE

This paper looks at the issue of Micro and Small and Medium-Sized Enterprises (MSMEs) and the WTO. Section A introduces the 2015 Philippine proposal. Section B looks at the outcomes of the discussions on MSMEs in 2016. Section C questions the need to seek appropriate arrangements within the existing WTO framework to discuss the issue of MSMEs in a more sustained manner. Section D focuses on the ICC/B20 report 'MSMEs and e-commerce' which proposes a new WTO e-commerce agreement. Section E provides a conclusion.

A) INTRODUCTION OF PHILIPPINES' MSME PROPOSAL IN 2015

In June 2015, Philippines indicated in the WTO's Committee on Trade and Development that it would welcome discussions on Micro, Small and Medium Enterprises (MSMEs) with a view to widening and deepening their involvement in global trade¹. Two weeks earlier, on 24 May 2015, APEC trade ministers endorsed the Boracay Action Agenda to Globalize MSMEs in which ministers had agreed to address barriers to trade and investment that are thought to disproportionately impact MSMEs relative to larger businesses. Trade facilitation, trade finance, e-commerce and institutional support were listed as priorities for cooperation.²

Consequently, in July 2015, Philippines proposed an initiative that aims to put 'micro, small and medium enterprises' (MSMEs) at the front and centre of global and regional trade.³ In particular, it was proposed that trade ministers at the 10th WTO Ministerial Conference in Nairobi (MC10) would decide that

- 1) the Council for Trade in Services, the Council for Trade in Goods, the TRIPS Council, and the Aid For Trade initiative to continue discussion and examination on aspects of MSMEs relevant to their respective areas of competence
- 2) WTO Secretariat to prepare a study to take stock of discussions and initiatives on SMEs and
- 3) The General Council to consider the most appropriate arrangement to facilitate discussions on MSMEs in a horizontal manner.

By September 2015, Philippines was joined by other ASEAN countries and the proposal was slightly revised and presented in the form of a Draft Ministerial Decision.⁴ According to proponents, the proposal had modest aims. They were asking for a more focused and sustained discussion on MSMEs in some of the regular (as opposed to negotiating) bodies of the WTO, as these discussions currently are sporadic and diffused among several fora.

The proposal could not garner consensus as several developing countries considered that the issues of the Doha Round had priority in MC10. Also it raised systemic questions including whether WTO disciplines and flexibilities could target MSMEs specifically.⁵

¹ WT/COMTD/M/95 of 30 July 2015, Note of the meeting of 9 June 2015

² Boracay Action Agenda to Globalize MSMEs, Fostering the Participation of APEC MSMEs in Regional and Global Markets, Boracay, Philippines 24 May 2015, http://www.apec.org/Meeting-Papers/Sectoral-Ministerial-Meetings/Trade/2015_trade/2015_mrt_standalone.aspx

³ JOB/GC/80 of 22 July 2015, Communication from the Philippines. The media reports the initiative as 'Philippines-led', e.g. <http://www.mb.com.ph/ph-proposes-boracay-action-plan-for-apec/>

⁴ Brunei Darussalam, Lao PDR Malaysia and Singapore. WT/GC/W/702 of 24 September 2015, Communication from Malaysia and Philippines, WT/GC/W/708 of 19 November 2015 and Add.1 of 27 November 2011

⁵ WT/GC/M/160 of 23 February 2016



In February 2016, proponents laid out an indicative three-point work plan for continuing the dialogue on MSMEs in 2016:

- 1) A seminar on trade policy and MSMEs (held 21 June 2016);
- 2) MSMEs as a theme for the 2016 edition of WTO's annual World Trade Report⁶;
- 3) A session at the annual Aid for Trade Review, on the issue of Trade Policy and MSMEs, organized back to back with WTO's Public Forum (September 2016).

The result of those three activities would be assessed and analysed at the end of the year and would provide the basis for charting a new course for MSMEs in 2017.⁷

B) OUTCOME OF THE DISCUSSIONS ON MSMEs IN 2016

In February 2017, the Philippines provided an account of the three MSME-related activities that took place during 2016.⁸

According to this submission, "in our conversations, we learned that there are four main elements that facilitate participation of MSMEs in international trade"; namely

- Access to information (notifications, trade data, market intelligence),
- Improving MSMEs absorptive capacity (building linkages and knowledge)
- Developing global MSMEs (innovation, standards, e-commerce, trade finance)
- MSMEs crossing borders (Rules of Origin, conformity assessments, trade facilitation, e-commerce).

The paper stresses that "MSMEs crossing borders" requires regional and international cooperation, whereas the other three pillars rest heavily on national interventions. This appears to be an implicit suggestion that Rules of Origin, conformity assessments (disciplined under the TBT Agreement), trade facilitation and e-commerce would be focus areas for future work in the WTO, in the view of the Philippines.

In the submission, the Philippines identifies the following concrete actions that could be pursued at the WTO, under the heading "How can the WTO help MSMEs integrate in the global market? How WTO rules enable MSMEs to take an active role in the global trading system" (paragraphs 1.12 to 1.18 of the submission):

- Increase access to information provided by governments to the WTO (para 1.13)
- Improve implementation of the Trade Facilitation Agreement, and addressing possible improvements for low value shipments of MSMEs in terms of procedural requirements (para 1.14, 1.20)
- In relation to countervailing duty investigations under the Agreement on Subsidies and Countervailing Measures (ASCM), introduce a 'rebuttable presumption' that MSMEs are too small to cause injury to a domestic industry in other countries (para 1.15)
- Continue and improve technical assistance and capacity building, among others through establishment of a TBT counterpart to the Standards and Trade Development Facility (STDF) (para 1.17, 1.20)

⁶ World Trade Report 2016: Levelling the trading field for SMEs,
https://www.wto.org/english/res_e/booksp_e/world_trade_report16_e.pdf

⁷ WT/GC/M/161 of 15 April 2016

⁸ WTO document WT/GC/W/731 of 24 February 2017



In addition, reference was made to some other 'suggestions and ideas that have floated'. Some of these 'floating' suggestions are not identified by Philippines as concrete actions (i.e. these actions are not necessarily endorsed by Philippines through this submission). They are:

- Simplification of non-preferential rules of origin (para 1.20)
- Exploring trade facilitation in services (para 1.20)
- Pursuing e-commerce in the context of development (para 1.20).

Philippines concluded by stating that "there is a need to continue our conversation on MSMEs by pursuing more substantive and concrete interventions in the specific committees to enhance participation of MSMEs by seeking appropriate arrangements within the existing framework of the WTO and its subsidiary bodies. Given the interest by policy makers on the subject of MSMEs and trade, the membership can also consider a more sustained discussion on how the Multilateral Trading System can impact and benefit MSMEs, with particular consideration to the needs and interests of developing and least-developed countries."

This concluding statement seems to be expressing the wish of the Philippines to work within the existing committees and mandates.

C) IS THERE A NEED TO SEEK APPROPRIATE ARRANGEMENTS FOR A (MORE) SUSTAINED DISCUSSION ON MSMEs?

The Note questions the need to seek appropriate arrangements for a more sustained discussion on MSMEs for the following reasons:

- 1) An MSME focus could de-emphasize agriculture negotiations
- 2) Where a separate work programme on SME exists in WTO, it is to reduce policy space for domestic SMEs
- 3) An MSME agenda can be a distraction from the remaining DDA issues
- 4) There is no need to have a separate discussion on MSMEs, it can be discussed already within existing mandates
- 5) Most importantly, the MSME agenda can be captured for the offensive interests of developed countries and their multinational companies (see also Section D below).

1) MSME focus could de-emphasize agriculture negotiations

There is no common global or regional definition of what constitutes an 'MSME'. Generally, developed countries' definitions of MSME generally encompass much larger enterprises than developing countries' definition of MSMEs. In the European Union, any company with less than 250 employees is considered a MSME. In most African countries, a company with more than 100 employees is a large company. Annex I presents some definitions across African countries.

MSMEs often do not include farmers, self-employed people or the informal sector. MSMEs are almost by definition registered enterprises. In other words, the informal sector is usually not covered. Even if it is covered, it is difficult to estimate the size of the informal sector. Most MSME definitions require at least one employee. This implies that self-employed farmers, fisher folk or professionals are usually not considered MSMEs.



Most importantly, the definition of MSMEs excludes most farmers. As an illustration, in India, MSMEs are considered separate from agriculture. The Minister of State (Independent charge) for Micro, Small and Medium Enterprises was quoted as saying:

Micro, small and medium enterprises (MSME) provide huge employment in rural and semi-urban areas and also act as a mechanism for distributing wealth. They come next only to agriculture in providing employment...⁹

Turning to the Philippines, in 2010, about 11.96 million persons were employed in the agriculture sector comprising around 30 percent of the national employment, according to figures from the Philippines Statistical Authority.¹⁰ In the same year, combined MSME employment in the 'Agriculture, hunting and forestry sectors' was 139,177 people.¹¹ This implies that by and large, the MSME definition in Philippines does not comprise people employed in agriculture.

Consequently, one possible implication of a continued discourse on MSMEs could be the de-emphasization of the agricultural negotiations.

2) Reducing policy space for domestic MSMEs: The example of the Government Procurement Agreement (GPA) Work Programme on SMEs

In the WTO today, there is a precedent in terms of a Work Programme on SMEs. Unfortunately, under this work programme, rather than giving domestic SMEs more policy space and support, the opposite seems to be the case!

A work programme on SMEs is active within the WTO's plurilateral Committee on Government Procurement, agreed upon as part of the revised Government Procurement Agreement.¹² This could provide some pointers on how an SME work programme in the WTO could work.

The stated goal of the GPA Committee Decision on a Work Programme on SMEs is to avoid discriminatory measures that favour only domestic SMEs. The Work Programme foresees a multi-year process starting with an SME survey of GPA parties in which very detailed information is requested on measures and policies used to assist, promote, encourage, or facilitate participation by SMEs in government procurement. This is followed by a compilation of this information by the WTO Secretariat (GPA/WPS/SME/16 of 10 February 2016) and a further exchange of information and series of questions and answers (on-going). After that, GPA Parties would have to identify 'best practices' to encourage and facilitate participation of SMEs of the Parties in government procurement.

With respect to 'other measures', i.e. those that are not considered 'best practice', **the GPA Committee shall encourage the Parties that maintain such measures to review them with a view to eliminating them or applying them to the SMEs of the other Parties.**

⁹ 'MSME industries next only to agriculture in generating employment', The Hindu, 10 January 2010, <http://www.thehindu.com/news/national/tamil-nadu/msme-industries-next-only-to-agriculture-in-generating-employment/article78585.ece>

¹⁰ Selected Statistics on Agriculture 2012, Philippines Statistical Authority, <https://psa.gov.ph/sites/default/files/Selected%20Statistics%20on%20Agriculture%202015.pdf>

¹¹ The MSME sector at a glance, Philippines Senate Economic Planning Office (SEPO), March 2012, <https://www.senate.gov.ph/publications/AG%202012-03%20-%20MSME.pdf>

¹² Decision of the Committee on Government Procurement on a Work Programme on SMEs', Annex C of Appendix 2 of document GPA/113 ('Adoption of the results of the negotiations under Article XXIV:7 of the Agreement on Government Procurement, following their verification and review, as required by the Ministerial Decision of 15 December 2011 (GPA/112), paragraph 5')



The Work Programme on SMEs foresees a review process to consider the best practices that would further enhance participation by SMEs as well to consider the effect of 'other measures' on the participation by SMEs of the other Parties in the government procurement of the Parties maintaining such measures. (i.e. to ensure non-discriminatory access to government procurement opportunities by all SMEs of GPA Parties).

In other words, in the context of public procurement and SMEs, the objective of the work programme on SMEs is to reduce policy space for measures that favour domestic SMEs.

3) MSME agenda can be a Distraction from the Remaining DDA Issues Ministers had Prioritised

At this juncture, many developed countries are attempting to disengage from the Doha Round. Ultimately, if WTO Members agree to embark on the MSME issue and start discussing constraints and issues for MSMEs to participate in world trade, it could lead to distracting attention away from the remaining Doha issues, and picking up only those issues from Doha that have formerly been or currently are proposed as 'SME/MSME issues', or even the identification of areas for future negotiations and the launch of such negotiations, for example on e-commerce.

4) No need to have a separate discussion on MSMEs, many issues can be discussed within existing mandates

Philippines' assessment in beginning of 2017 was that the WTO could already do certain things within the existing framework of the WTO, such as coordinating technical assistance and capacity building, making existing information notified to the WTO better available and addressing possible improvements for low value shipments of MSMEs in terms of procedural requirements (within the mandate of the newly established Committee on Trade Facilitation).

Other issues mentioned by the Philippines could be addressed within the existing framework, such as harmonization of non-preferential rules of origin and e-commerce (under the Work Programme on Electronic Commerce):

- **Rules of Origin:** Article 9.2 of the Agreement on Rules of Origin mandates a work programme to harmonize non-preferential rules of origin, to be completed three years after the entry into force of the WTO Agreement (i.e. in 1998). This mandate has not yet been completed.
- **Trade Facilitation Agreement.** The TFA entered into force recently, on 22 February 2017. The Committee on Trade Facilitation that supersedes the Preparatory Committee on Trade Facilitation (PCTF) has the mandate to establish procedures for the exchange of information about implementation of certain provisions. Such procedures remain to be negotiated within the Committee on Trade Facilitation. For instance, Article 10.1.2 TFA: "The Committee shall develop procedures for the sharing by Members of relevant information and best practices, as appropriate."

Discussions about expanding the TFA seems to be premature. Both donors and developing countries are scrambling to start the process of implementing the TFA. Many have not yet submitted what they would choose to be their Category B commitments (provisions to be implemented after a transitional period) and Category C commitments (provisions needing



technical assistance), as well as their corresponding definitive dates of implementation. Developing countries have to notify definitive dates of implementation of Category C commitments by the end of 2019, and LDCs by 2022.¹³

- On **e-commerce**, there is a Work Programme on Electronic Commerce (WPEC) adopted by the General Council on 25 September 1998.¹⁴ Philippines refers in its submission to the idea of “pursuing e-commerce in the context of development”. This, in fact, is already mentioned in the WPEC: “The Committee on Trade and Development shall examine and report on the development implications of electronic commerce, taking into account the economic, financial and development needs of developing countries. The issues to be examined shall include:
 - effects of electronic commerce on the trade and economic prospects of developing countries, notably of their small- and medium-sized enterprises (SMEs), and means of maximizing possible benefits accruing to them;
 - challenges to and ways of enhancing the participation of developing countries in electronic commerce, in particular as exporters of electronically delivered products: role of improved access to infrastructure and transfer of technology, and of movement of natural persons;
 - use of information technology in the integration of developing countries in the multilateral trading system;
 - implications for developing countries of the possible impact of electronic commerce on the traditional means of distribution of physical goods;
 - financial implications of electronic commerce for developing countries.”¹⁵

5) Most importantly, the MSME agenda can be captured for the offensive interests of major economies and their multinational companies

In the Doha Round, developed countries have used the banner of MSMEs to convince other WTO Members of the need to agree to negotiation proposals in the area of trade facilitation, service liberalisation as well as e-commerce.

In the recent years and months, various organisations and institutions including OECD, World Bank, WTO Secretariat, B20 and the International Chamber of Commerce (ICC) have identified issues that they consider important for MSMEs. These issues give some indication of issues that might be expected to be raised under a potential sustained MSME discussion within the WTO. In particular, the international business community, represented by ICC and B20 have recently come out with a report on MSMEs and e-commerce, recommending a new WTO e-commerce agreement with new binding disciplines (elaborated below under Section D).

In addition, since end of January 2017, a group of developed countries is pushing for an MSME agenda within the TRIPS Council. This shows that developed countries are already actively appropriating the issue of MSMEs to tailor their agenda on intellectual property rights. Before that, intellectual property rights did not feature at all as a particular issue for MSMEs (see Section B above).

¹³ These dates could be later if donor Members do not provide timely information to the Committee on the arrangements maintained or entered into that are necessary to provide assistance and support for capacity building to enable implementation of Category C), see Article 16 TFA.

¹⁴ WTO document WT/L/274 of 30 September 1998

¹⁵ Ibid., paragraph 5.1



Finally, international business as represented by the International Chamber of Commerce (ICC) and the B20 have presented their proposal for a new WTO e-commerce agreement as an MSME issue (see Section D).

MSME / SME agenda of developed countries in the Doha Round- some examples

Trade Facilitation

In the Trade Facilitation negotiations, various specific proposals were brought forward that emphasized the benefits for SMEs. In 2005, the United States stressed that “express shipments are particularly important to small and medium size enterprises around the world, which often rely on nimbleness in operation to compete.”¹⁶ In 2002, the EU called for specific provisions on data and documentary requirements and procedures stating that “Smaller traders, typically in developing countries and Small and Medium Sized Enterprises (SMEs) may be particularly affected by unduly burdensome procedures, since they both drain manpower and resources which SMEs can ill afford, and they also act as a fixed cost regardless of the size of the consignment”¹⁷ These examples show how WTO Members used the issue of (M)SMEs to support their offensive interests (conclusion of the TFA).

Services liberalisation (market access)

In 2001, Canada submitted a proposal to ‘encourage consideration in these negotiations of barriers limiting the participation of small and medium sized enterprises (SMEs) in the global trade of services’ including the following:¹⁸

- “To increase their participation in the international trade, service SMEs have to overcome barriers related to a discriminatory, burdensome and non transparent regulatory environment. For example, onerous licensing, registration requirements and excessive user fees can create barriers that are particularly burdensome for SMEs.”
- “TRANSPARENCY. Market access for service SMEs can be strongly hampered by a lack of information on regulatory regimes and requirements. “
- “Due to their size and resource constraints, we believe that SMEs export services primarily by using mode 1 (cross border) and mode 4 (movement of natural persons) because these are the least expensive and most effective ways for them to conduct business. However, many countries require businesses to establish a commercial presence before they will allow services to be imported into their market. This makes it very difficult for service SMEs to export to these markets because they cannot afford to establish a commercial presence in the foreign market. In order to help service SME exporters, in the negotiations, Members should explore ways to remove unwarranted mandatory commercial presence requirements on the cross border supply of a service.”

In 2002, United States also submitted a proposal on SMEs and services.¹⁹ The US paper states that “Services SMEs face trade barriers similar to those of larger service suppliers; however, these barriers disproportionately impact small business, which lacks the capital, human resources, technical

¹⁶ TN/TF/W/15 of 4 February 2005

¹⁷ G/C/W/394 of 12 July 2002

¹⁸ S/CSS/W/49 of 14 March 2001, Initial Negotiating Proposal on Small- and Medium-Sized Enterprises, Communication from Canada

¹⁹ TN/S/W/5 of 1 October 2002, « Small and Medium-Sized Services Enterprises »



expertise and presence in foreign markets necessary to overcome barriers. Key barriers affecting SMEs, and recommendations for addressing them in the GATS negotiations, include:

- Transparency in Domestic Regulation
- Commerce presence requirements
- Movement of natural persons
- Commitments in services: “SMEs rely upon a number of related services (from distribution, express delivery, computer, advertising, financial, telecommunications services, advertising, legal services, and accounting services) to enter foreign markets.”

In a 2005 submission, ‘Working to Ensure Benefits from the GATS for Members’ Small and Medium Sized Enterprises (SMEs)’ Canada suggested, among others, the following commitments in order to maximize the benefits of GATS for SMEs:²⁰

- Ambitious outcome in sectors where the greatest export potential for services SMEs lies, such as computer and related services, research and development, marketing and various business services.
- Ambitious outcome in key infrastructure services.
- Additional commitments on mode 1 would help SMEs take advantage of new technologies. SMEs would benefit from additional commitments by Members on business visitors, contract service suppliers and independent professionals.
- Eliminate specific regulatory “measures” that are particularly problematic for SMEs. Regulations that require that services be supplied through commercial presence or through local partnership are some of the most visible measures that discriminate against SMEs. These types of requirements force substitution across modes, limiting market access to smaller firms to whom commercial presence is not financially feasible. Other restrictions listed in Members’ GATS schedules that may disproportionately affect services SMEs include taxes that are specific to foreign service suppliers, restrictions on remittances, capital transfers and currency conversion, residency and nationality requirements, registration requirements and fees that are specific to foreign companies, and technology transfer requirements.
- Regulatory transparency and predictability.

OECD and World Bank views on areas for multilateral trade cooperation for SMEs

In 2015, the OECD and World Bank submitted a report to G20 Trade Ministers, entitled “Inclusive Global Value Chains: Policy Options in Trade and Complementary Areas for GVC Integration by Small and Medium Enterprises and Low-Income Developing Countries”²¹

This report focuses on how to make Global Value Chains (GVCs) more “inclusive” by overcoming participation constraints for Small and Medium Enterprises (SMEs) and facilitating access for Low Income Developing Countries (LIDCs). A major recommendation is to establish a ‘trade and investment action plan for inclusiveness’. Amongst the items proposed for ‘collective action’ (i.e. at the multilateral level) in order to achieve inclusive GVCs for SMEs and LIDCs are

²⁰ TN/S/W/36 of 22 February 2005, Working to Ensure Benefits from the GATS for Members’ Small and Medium Sized Enterprises (SMEs), Communication from Canada

²¹ Inclusive Global Value Chains - Policy options in trade and complementary areas for GVC Integration by small and medium enterprises and low-income developing countries, OECD and World Bank Group, Report prepared for submission to G20 Trade Ministers Meeting Istanbul, Turkey, 6 October 2015, <https://www.oecd.org/trade/OECD-WBG-g20-gvc-report-2015.pdf>



- Reform, nationally and in coordination with other G20, business services sectors in key network industries such as logistics, supply chain management services, ICT-related services, e-commerce, and professional services, by removing barriers to entry and improving pro-competitive regulation
- Engage GVC lead firms, turnkey suppliers, global buyers, and SMEs in identifying binding constraints and solutions to investment attraction and promotion, for improving investment climate (..)
- In the area of IP, ‘minimize transaction costs for SMEs by streamlining procedures and ensuring high-quality examination to increase IP signalling value’.

MSME agenda of developed countries in the TRIPS Council

A group of developed countries has proposed to discuss MSMEs and IPRs in the regular TRIPS Council during 2017 under three loosely defined themes.²²

- The first TRIPS Council meeting discussed “MSME collaboration” – sharing experiences on how MSMEs have successfully collaborated with other entities (..) and how IPRs have fostered this collaboration
- The June 2017 TRIPS Council will discuss “MSME growth” which includes issues such as specialized IP courts, simplified enforcement procedures, arbitration and mediation schemes, ‘personalized support services’, the use of IP as collateral for lending institutions.
- The third regular 2017 TRIPS Council (under the topic of “MSME Trade”) will discuss how MSME’s can benefit from their product’s underlying IP.

This process shows that the MSME theme is now actively picked up by developed countries, after initially being proposed by Philippines. These discussions might eventually result in recommendations or rules to strengthen (the implementation or enforcement of) IPRs.

²² IP/C/W/622 of 27 January 2017 and IP/C/W/625 of 625. Proponents of this proposal include Australia, EU, Japan, Switzerland, US and Chinese Taipei.



D) MSME AGENDA OF INTERNATIONAL BUSINESS (B20, ICC): A NEW E-COMMERCE AGREEMENT IN THE WTO?

1) “WTO Trade Dialogues”

Since 2016, the WTO Secretariat actively supported direct exchanges between business representatives from various companies and organizations across the WTO membership, under a process called “WTO Trade Dialogues”. These Dialogues include representatives from B20 and the International Chamber of Commerce (ICC). The B20 coalition is a group of business associations from G20 countries. The International Chamber of Commerce (ICC) is an umbrella organisation of chambers of commerce, business associations and multinational companies.

On 30 May 2016 WTO facilitated a high-level event for the business community, ‘the first of its kind to be held at WTO’, at the request of the International Chamber of Commerce (ICC) and the B20.²³

“The leaders said that existing Doha issues are still important for business and work needs to continue in these areas. At the same time, they identified a number of other areas that require work in the WTO.”

2) ICC/B20 report on MSMEs and e-commerce

After the May 2016 meeting, two ‘WTO Business Focus Groups’ were established, one on ‘MSMEs and e-commerce’ and the other on ‘Market Access, Trade in Services and Investment Facilitation’²⁴ The report on MSMEs and e-commerce was published in September 2016.²⁵ Subsequently it was presented at the WTO during the Public Forum in 2016.²⁶

Effectively, what the ICC and B20 recommend are the key issues that US, EU and Japan want in new E-commerce disciplines at the WTO including free flow of data, no localisation rules, liberalisation of financial services (national treatment in licensing regimes), and liberalisation of other services sectors, amongst others.

²³ Summary of elements raised by business leaders at the WTO ‘Trade Dialogues’ event, 30 May 2016, WTO Headquarters, Geneva, https://www.wto.org/english/news_e/news16_e/bus_30may16_e.pdf

²⁴ WTO Trade Dialogues/ICC/B20, WTO Business Focus Group 2, Market Access, Trade in Services and Investment Facilitation, Final report, March 2017,

https://www.b20germany.org/fileadmin/user_upload/documents/BFG2_recommendations_FINAL_logos.pdf

²⁵ WTO Trade Dialogues/ICC/B20, WTO Business Focus Group 1 MSMEs and E-Commerce, Final report September 2016, WTO Trade Dialogues, <https://cdn.iccwbo.org/content/uploads/sites/3/2016/10/WTO-Business-focus-Group-1-MSMEs-and-e-commerce.pdf>

²⁶ WTO Public Forum 2016 Session 53 - Trade Dialogues: Business ideas on inclusive trade rules,

https://www.b20germany.org/fileadmin/user_upload/documents/Events/2016-09-28-wto-trade-dialogues.pdf



Examples of rules in a new WTO e-commerce agreement to boost MSME e-commerce, as proposed by ICC and B20:²⁷

- Expand the scope of WTO telecommunication rules including the Reference Paper on Telecommunications Services
- Allow duty free import of low value goods
- Make it mandatory for governments to provide advance rulings on any applicable treatment for duties and taxes
- Minimize the information required by customs and other regulatory bodies when a product is imported
- Establish a globally harmonized programme for 'trusted e-commerce shippers' (i.e. Amazon, Alibaba would be automatically recognized as an 'authorized operator' and get the same treatment in each country)
- Liberalise market access for retail, on-line platform, transportation, logistics, warehousing, delivery, electronic payments and other related services
- Commit to cross-border consumer protection standards and dispute settlement procedures for cross-border e-commerce
- Prohibit customs duties for digital products
- Ensure free flow, storage and handling of all types of data in any sector, exceptions to be limited to public policy objectives and subject to GATS Article XIV (security exceptions)
- Limit liability for on-line platforms that handle user content and transactions
- National treatment in licensing regimes for financial services
- Ensure access to Internet services and application, subject only to reasonable network management

3) "The triumph of the small business in the internet era never happened" - will binding e-commerce rules in WTO bring triumph for MSMEs?

The philosophy behind many of the e-commerce rules advocated by ICC/B20 is to open markets through free data flows. This is being marketed by equating it to a 'free, open' Internet in terms of information flows. [It is of course very difficult to argue against free information flows]. Free data flows would mean that wherever they are located globally, companies big and small can export their products and services all over the world.

According to the WTO Secretariat in their publication 'E-commerce in Developing Countries: Opportunities and Challenges for Small and Medium-Sized Enterprises':

'E-commerce has been hailed by many as an opportunity for developing countries to gain a stronger foothold in the multilateral trading system. E-commerce has the ability to play an instrumental role in helping developing economies benefit more from trade. Unlike the requirements necessary to run a business from a physical building, e-commerce does not require storage space, insurance, or infrastructure investment on the part of the retailer. The only pre-requisite is a well-designed web storefront to reach customers. Additionally, e-commerce allows for higher profit margins as the cost of running a business is markedly less.'

The assumptions made about e-commerce as the magical low cost and accessible trade route for MSMEs/ SMEs are questionable. Even enterprises in Europe are challenged in terms of cross-border

²⁷ Building for Success: A World Trade Agenda for the Buenos Aires Ministerial, March 2017, <https://cdn.iccwbo.org/content/uploads/sites/3/2017/03/ICC-Building-for-Success-A-World-Trade-Agenda-for-the-Buenos-Aires-Ministerial-ECIPE-report.pdf>



e-commerce. UNCTAD's 2015 Information Economy Report notes that 16% of enterprises in the EU28 in 2012 sold online to their own domestic markets. Only 7% reported e-sales to other European Union countries. Trust issues even within Europe are a major barrier.

Platforms such as E-bay are often cited as the opportunity that SMEs can avail of. The same UNCTAD 2015 Information Economy Report notes that e-Bay allows products to be sold on their site from only 24 countries – of which 9 are developing countries. Most have difficulties making it onto these platforms.

James Curran in 'Misunderstanding the Internet' concludes that the Internet has not created a level playing field between small and large enterprise: "the triumph of the small business in the internet era never happened because competition remained unequal."²⁸

In the 1990s, Curran notes it was widely claimed that the internet would generate wealth and prosperity for all. 'The internet is changing the terms of competition by establishing a level playing field between corporate giants and new start-ups... It is lowering costs, and enabling low-volume producers to satisfy neglected niche demand in a global market... a small company can look as large as a big company and be accessible...'.²⁹

He notes that 'The internet is presented as a stepping-stone in the building of a new, progressive social order. The central weakness of this theorising is that it assess the impact of the internet not on the basis of evidence but on the basis of inference from internet technology. Yet, readily available information tells a different story: the impact of the internet does not follow a single direction dictated by its technology. Instead the influence of internet is filtered through the structures and processes of society...'³⁰

Small and medium sized firms continue to have difficulties in accessing foreign markets, caused by language, cultural knowledge, the quality of telecommunications infrastructures and computer access, among others. Furthermore, the size of corporations continue to matter for being able to capture benefits from the internet: "Large corporations have bigger budgets, and greater access to capital, than small companies. Big corporations also have greater economies of scale, enabling lower unit costs of production; generally greater economies of scope, based on the sharing of services and cross-promotion; and concentration of expertise and resources that assist the launch of new products and services. They can seek to undermine under-resourced competition by temporarily lowering prices and by exploiting their marketing and promotional advantage. In addition, they can try to 'buy success' by acquiring promising young companies – the standard strategy of conglomerates."³¹

Overall, the book notes that in reality, the Internet in its current development has many of the problems associated with unregulated globalisation, including "corporate dominance, market concentration, controlling gatekeepers, employee exploitation, manipulative rights management,

²⁸ 'Rethinking internet history', James Curran, Chapter 2 of 'Misunderstanding the Internet' by James Curran, Natalie Fenton and Des Freedman

²⁹ 'Reinterpreting the internet', James Curran, Chapter 1 of 'Misunderstanding the Internet' by James Curran, Natalie Fenton and Des Freedman

³⁰ Ibid.

³¹ 'Rethinking internet history', James Curran, Chapter 2 of 'Misunderstanding the Internet' by James Curran, Natalie Fenton and Des Freedman



economic exclusion through ‘tethered appliances’ and encroachment upon the information commons.”³²

4) WTO rules on e-commerce would make it more difficult for MSMEs to benefit from the internet economy

Several of the rules proposed in the new WTO e-commerce agreement would strengthen the power of large corporations making it even more difficult for MSMEs to benefit from the internet economy. Some examples:

- Ensuring free flow, storage and handling of all types of data in any sector

“Land was the raw material of the agricultural age; iron was the raw material of the industrial age; data is the raw material of the information age”, according to Alex Ross, author of the book ‘The Industries of the Future’.³³

Data is a raw material in the internet economy. Companies able to access, analyse and combine data from various sources will be the ones that can generate enormous profits. Governments around the world would like to have such companies. During the 1970s and 1980s, South Korea recognised that access to iron was important for its industrial development and heavily supported their domestic steel industry through subsidies and high import tariffs. This eventually paid off, including through the emergence of related industries such as shipbuilding and car manufacturing.

Likewise, restrictions on data flows are part of a policy toolkit to nurture domestic Internet companies and to create an enabling environment for downstream and related industries.

The founder of the US-based Information Technology indicated that restrictions on data flows would bring countries jobs and investments, increase innovation and foster market share of local companies, to the detriment of the US:

“When nations impose restrictions on data flows, the U.S. economy is harmed in at least three ways. First, policies such as requiring localization of data or computing infrastructure will move activity from the United States to these nations, reducing jobs and investment here and raising costs for U.S. firms. Second, cross-border data restrictions will increase costs and limit innovation for U.S. firms. Third, if the restrictions preclude U.S. firms from participating in foreign markets, then U.S. firms will lose global market share to competitors that are based in those protected markets”³⁴

³² ‘Conclusions’, James Curran, Des Freedman and Natalie Fenton, Chapter 7 of ‘Misunderstanding the Internet’ by James Curran, Natalie Fenton and Des Freedman

³³ ‘The Industries of the Future’, Chapter 5, Alec Ross

³⁴ Testimony of Robert D. Atkinson, Ph.D. Founder and President Information Technology and Innovation Foundation Before the Committee on Ways and Means Trade Subcommittee Hearing on “Expanding U.S. Digital Trade and Eliminating Barriers to Digital Exports, 13 July 2016, <https://waysandmeans.house.gov/wp-content/uploads/2016/07/20160713TR-Atkinson-Testimony.pdf>



- National treatment in licensing regimes for financial services

This proposal essentially means that on-line banks should get the same treatment as bank established locally. This could imply that on-line banks do not need to establish local offices, hire local employees etc.

It would also have implications for national financial stability and exchange rate stability, as money would flow out and in the country more easily. On-line banks might escape appropriate regulatory supervision by the Central Bank and financial authorities, making financial systems more fragile. This could result in a higher incidence of crises which would have a negative impact on the business climate of the entire country, including for MSMEs.

- Liberalise market access for retail, on-line platform, transportation, logistics, warehousing, delivery, electronic payments and other related services

This proposal essentially means that foreign service suppliers would be able to provide these services domestically. As the figures on MSMEs show (Annex I), micro-enterprises of developing countries are more prevalent in the 'trade sectors' (such as retail), whereas developed countries are more active in other services. This means that MSMEs in developing countries will be faced with more foreign competitive pressures.

Furthermore, these services are essentially covering the entire chain of sales over the internet from the factory to final delivery. This would maximize market access opportunities for countries with strong productive capacities.



E) CONCLUSIONS

1) MSME issue is being used by those wanting to push the agenda of major corporations

Since 2015, the theme of MSMEs has become more prominent after the Philippines and some other ASEAN countries proposed to discuss Micro, Small and Medium sized Enterprises (MSMEs) in the WTO in a more sustained way. Philippines' assessment in the beginning of 2017 was that WTO could do certain things, and is open to 'seeking appropriate arrangements' within the existing framework of the WTO (see Section B above).

Yet, at present, the theme of MSMEs is mostly pushed by the major economic powers that want to discuss or negotiate new disciplines and increase market access including in the following areas:

- Services liberalisation
- E-commerce
- Trade facilitation; customs-related rules and regulations (expanding beyond the TFA)
- Rules of origin (making them less stringent; procedural and documentary requirements)
- Competition policy
- Improvement of access to public procurement markets
- Investment attraction and promotion
- Trade finance
- Intellectual property rights

(See Section C5 above)

2) MSMEs and e-commerce

Of particular relevance is the report published by the International Chamber of Commerce (ICC) and B20 titled "MSMEs and e-commerce", under a process facilitated by the WTO Secretariat. A new WTO e-commerce agreement is being proposed by the international business community (represented by ICC/B20), in order to benefit MSMEs. However, this MSME agenda is in fact the agenda of large corporations under the cloak of MSMEs.

Until now, the Internet has not created a level playing field between small and large enterprise, "the triumph of the small business in the internet era never happened because competition remained unequal." Proposed rules to be included in a new WTO e-commerce agreement would reinforce the dominance of major corporations and restrict the policy space for developing to establish and nurture their domestic MSMEs including in establishing domestic and regional e-commerce platforms.

Eventually such rules could lead to a single digital global market where the biggest companies are the winners. This is also inconsistent with efforts of developing countries across Africa, Latin America and Asia to build regional markets.



3) If there are new rules, what kinds of E-Commerce rules would serve developing countries' MSMEs?

Should there be E-commerce rules that support MSMEs? If so, what would they be?

Indeed, there could be rules on E-commerce for MSMEs. However, if they are to be a real support to developing countries' MSMEs, they would include rules such as

- binding technology transfer arrangements to bridge the digital and technology divides, and
- binding financial assistance for infrastructure and for upgrading of technology both in the area of information and communication technologies (ICTs) and also in terms of production processes. For example, in developed countries, huge amounts of money are being poured into Artificial Intelligence research that will be used in the production of all kinds of smart products and also in the provision of online services. Most developing countries will require enormous support in order to bring their production processes up to speed with these new developments.

However, these are not the type of rules being proposed. In fact, the US e-commerce proposal at the WTO in 2016 explicitly says that Members should not have forced technology transfer requirements: 'Requirements that make market access contingent on forced transfers of technology inhibit the development of e-commerce and a flourishing digital economy. Trade rules may be developed to prohibit requirements on companies to transfer technology, production processes, or other proprietary information'.³⁵

4) Do Not Agree to Take Up 'MSMEs' as a horizontal issue within the WTO

Going forward, care is needed to ensure that MSMEs or SMEs are not used as the bandwagon for others to push through their own corporate agenda. For developing countries, some protection of their domestic and regional markets is still extremely important. For small players from developing countries, these are the market(s) they can sell on and the 'playground' in which they can gain strength. Developing countries' domestic and regional markets therefore should not be completely opened, and certainly, this should not take place in the name of MSMEs. [The analogy is that of tariffs in the WTO. All countries have their own strategic tariff policies – in some areas, the domestic market is wide open, and in other sensitive sectors it is more protected].

Furthermore a focus on MSMEs will be a distraction from negotiations on the remaining DDA issues, and could lead to de-emphasizing the agriculture negotiations (as farmers are usually not considered MSMEs, see Annex I). It also does not bode well that the only place where a separate work programme on SME exists in the WTO - the Work Programme on SME within the Government Procurement Agreement Committee – contains disciplines that reduce policy space for domestic SMEs, not to enlarge their policy space. (See section C1-C3 above).

Lastly, many issues that could be seen as relevant for MSMEs from developing countries can be discussed within existing mandates, which would appear to obviate the need for any additional arrangements (See section C4 above).

Given this, this Note recommends that developing countries should not agree that the MSME issue is taken up as a horizontal issue within the WTO.

³⁵ JOB/GC/94 4 July 2016 'Work Programme on Electronic Commerce: Non-paper from the United States'.



F) ANNEX I: DEFINITION OF MSMEs AND THEIR CHARACTERISTICS

MSME definitions

MSME stands for Micro, Small and Medium-sized Enterprise. The term SME (without the 'micro') was previously often used but it has become fashionable to talk about MSME instead of SME. Often the terms MSME and SME are interchangeable, and simply mean any enterprise that is not 'large'. In almost any country, SMEs make up the bulk of all enterprises. For instance, in China, SMEs account for more than 98 per cent of industry and contribute to 60 per cent of China's GDP, 75 per cent of its industrial value-added output and 50 per cent of its revenue (as of June, 2012).³⁶

There is no common definition of an MSME. The most frequent characteristic used in the definition of micro, small and medium sized enterprises by governments and statistical agencies is the number of employees. Sometimes this is combined with annual turnover, balance sheet total or fixed assets.

The table below compiles information from the International Finance Corporation's Micro, Small and Medium Enterprise Country Indicators (IFC MSME-CI), providing an overview of MSME definitions across Africa as well as EU and Canada.

Table - MSME definitions of selected African countries (number of employees)³⁷

African region	Country	Micro	Small	Medium
West	Ghana	1-5	5-29	29-99
	Nigeria	1-5	6-20	21-50
North	Morocco	1-9	10-49	50-199
	Tunisia	1-9	10-49	50-249
	Egypt.	1-5	6-10	11-100
East	Kenya	1-10	11-50	51-100
	Rwanda	1-10	11-30	31-100
	Tanzania	1-4	5-49	50-99
	Uganda	1-9	10-49	50-99
Central	Cameroon	1-9	10-49	50-149
South	Botswana	1-5	6-25	26-100
	South Africa	Agri <10, other <20; turnover <R 6mln	<50; turnover <R 32mln	Agri <100; other <200; turnover <R 64mln
	Malawi	0-4	5-20	21-50
<i>Memo items</i>				
	EU ³⁸	1-9; turnover or annual balance sheet total < EUR 2mln	10-49; turnover or annual balance sheet total < EUR 10mln	50-249; turnover <EUR 50mln or annual balance sheet total < EUR 43mln
	Canada	1-9	10-49	50-249

³⁶ Integrating small and medium-sized enterprises into global trade flows: the case of China, Zhang and Xia, Chapter 3, 'Connecting to global markets, https://www.wto.org/english/res_e/booksp_e/cmark_chap3_e.pdf

³⁷ Source: IFC Micro, Small and Medium Enterprise Country Indicators (MSME-CI), unless otherwise indicated. See www.ifc.org/msmecountryindicators. The IFC is part of the World Bank Group

³⁸ User guide to the SME Definition, European Commission, Ref. Ares(2016)956541 - 24/02/2016, http://ec.europa.eu/regional_policy/sources/conferences/state-aid/sme/smedefinitionguide_en.pdf

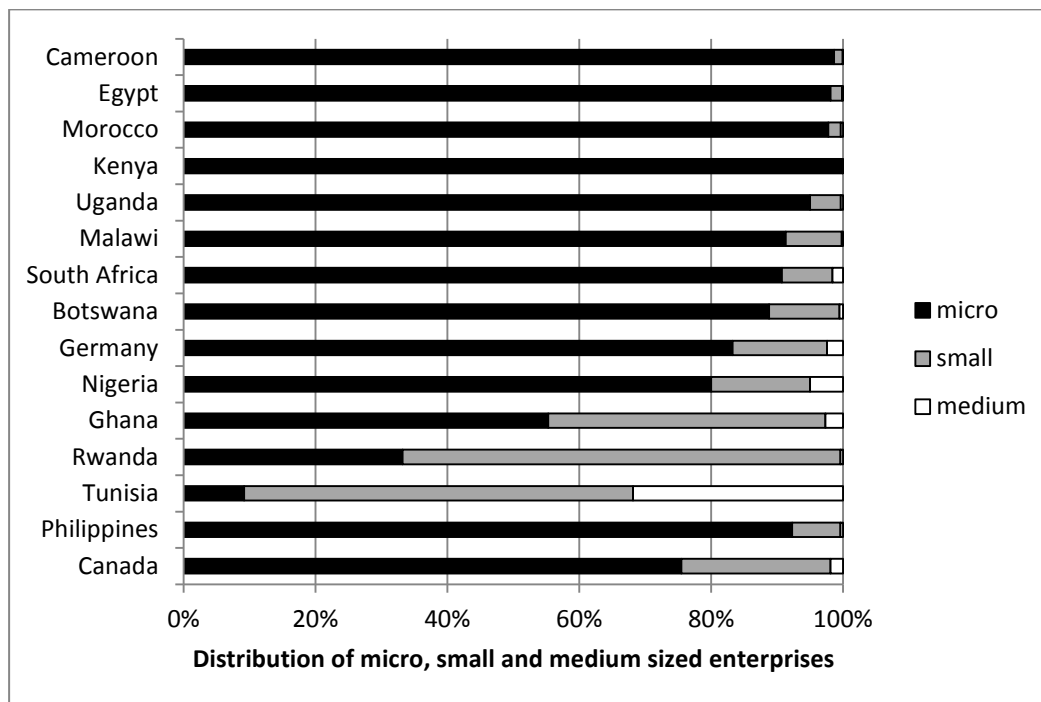


Notes: according to IFC data, some African countries do not differentiate between micro, small and medium sized enterprises (e.g. Algeria, Burkina Faso, Ethiopia). South Africa has differentiated MSME definitions for various sectors.

Micro-enterprises constitute the bulk of MSMEs in most countries

According to figures from the IFC, micro-enterprises make up the bulk of MSMEs in most countries across the globe (using country-specific definition of ‘micro’-enterprises). Eighty per cent (80%) of German MSMEs and 75% of Canadian MSMEs are considered ‘micro’-enterprises. Likewise, percentages are high for African countries for which IFC has obtained separated data on micro, small and medium sized enterprises. Interestingly, some African countries appear to be outliers. Rwanda and Tunisia appear to have a low prevalence of micro-enterprises - more research is needed what drives this result. But the general conclusion remains - in most countries ‘micro’ enterprises are most prevalent among MSMEs regardless of level of development.

Table - most MSMEs are ‘micro’



Source: IFC

Micro-enterprises in developed countries are concentrated in services

The IFC MSME-CI database provides information about the sectors in which micro-enterprises are active. IFC categorizes economic activities into 4 sectors: manufacturing, trade, services and agriculture/other.

The economic activities covered by the trade’ and ‘services’ sector are both considered ‘services’ in the WTO. In most cases, the ‘trade sector’ covers retail, wholesale and repair. In some countries, ‘trade sector’ also includes restaurants and hotels. The ‘services sector’ covers other services including professional and business services.



The data shows that in developed countries, micro enterprises are mainly in ‘Services’ whereas developing countries’ micro-enterprises are most prevalent in the ‘trade sector’. Remarkably this data seems to tell us that micro-enterprises in developing countries are already mainly in the business of trading. The picture that comes to mind are street vendors and ‘mom and pop’ shops (local stores run by family members).

Two observations can be made here. First, most MSMEs are in the services sector and not in manufacturing or agriculture. Thus, a focus on MSME or micro-enterprises in WTO is likely be related with services liberalisation and rules. Second, on average, developing country micro enterprises are active in different sectors than developed country micro enterprises – mostly in the retail, hotel/restaurant, and wholesale sectors. Tentatively, one can infer from this data that developing countries have fewer services to export since retail, wholesale, hotel/restaurants are mostly domestically oriented.

Table – distribution of micro enterprises by sector

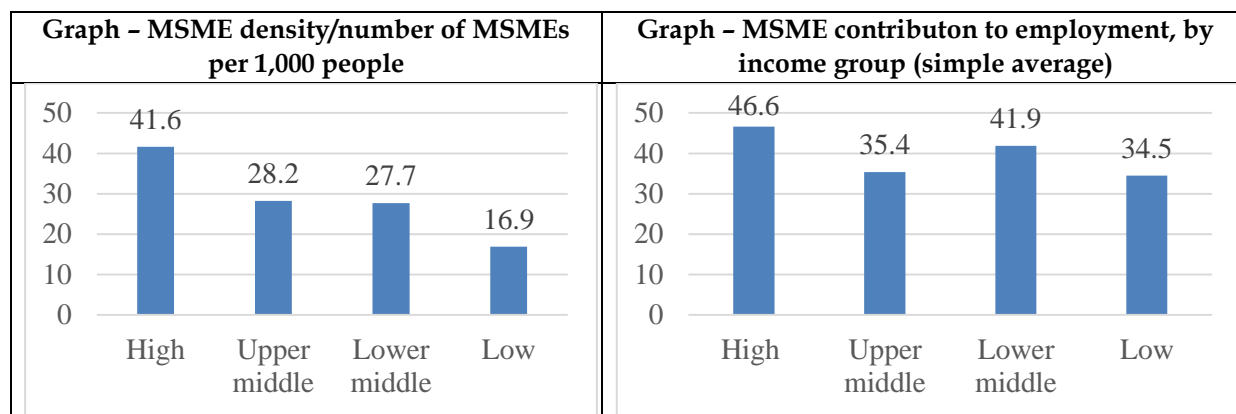
Income Group	Average of micro_manufactu ring	Average of micro_Trade	Average of micro_Services	Average of micro_Agri/Other
High	4%	30%	65%	1%
Upper middle	11%	38%	50%	1%
Low	17%	50%	26%	8%
Lower middle	12%	53%	26%	9%
Grand Total	11%	43%	42%	5%

Source: author’s calculations based on IFC data

Developed countries have more MSMEs than developing countries and their MSMEs are more important for employment

The IFC MSME-Country Indicator database shows that MSME density is related to income level. Higher income countries have more MSMEs than lower income countries, measured per 1,000 people. This might not come as a surprise, as the informal and agricultural sectors in developing countries are larger than in developed countries and these are not always captured by the MSME definition. Furthermore, lower income countries might have fewer enterprises in general.

The contribution of MSMEs to employment appears to be highest in high-income countries. MSMEs employ around 47% of employees in high-income countries. This figure ranges from 35.4% to 41.9% in middle income countries and 34.5% for low income countries (all figures are simple averages by income group).



Source: calculations based on IFC MSME Country Indicators

