Should There be An MSME Agenda at the WTO ?

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In the recent 2-3 years, the topic of Micro, Small and Medium Sized Enterprises (MSMEs) has become a favourite topic at the WTO. It may even be that at MC11, there could be a push for the Ministerial to give a mandate to have a rule-making Work Programme for MSMEs. This raises many questions:

1. Developing and African countries' stakeholders are mostly if not all MSMEs. Developing country negotiators already put forward positions that are for their stakeholders i.e. MSMEs. Why the need for another category of rules specially for MSMEs?

   In the EU, MSME can cover an enterprise that has between 1- 249 employees. If this definition is used, it would cover almost all smaller developing countries' companies. Take for example Africa - are not African negotiators de facto already negotiating for their MSMEs?

2. A Change in the Model of Special and Differential (S&D) Treatment?
   Thus far in the WTO, more flexible rules are directed not to a certain type of stakeholders in Members' economies. Instead, the special treatment has been given to certain groups of Members that need flexibility because of their level of development i.e. developing countries and LDCs.

   Are we now witnessing a change in S&D treatment, so that flexibility is now given to MSMEs in all Member countries, but there is no or only extremely limited S&D to developing countries (perhaps only for LDCs)?

   Do developing countries want to see flexibilities given to developed and developing countries alike?

3. Would MSME rules be about providing more Flexibility? If so, Why Not Engage in the Para 44 S&D Discussions Instead? Why Reinvent the Wheel?
   Developed countries have not wanted to move on the Doha Declaration's para 44 S&D discussions despite having promised that S&D would be a priority issue in the DDA negotiations. Para 44 S&D issues include TRIMS, Art XVIII, TRIPS flexibilities, SPS, TBT etc. Why reinvent that discussion?

4. The WTO does not make rules for separate categories of economic actors
   WTO rules are not categorized according to the stakeholders within Member countries. It is up to governments to balance the interests within their country.

5. MSMEs May Be Used to push Corporate Interests
   How genuine is the MSME agenda? The ICC has made a big push to have digital rules in the WTO in order to serve MSMEs. This agenda seems to be the same trade agenda as the big digital giants. The WTO website[1] explains how the ICC, B20 report on 'MSMEs and E-Commerce' came into being. This report[2], carried on the WTO's website calls for the following digital rules:

'We believe there is an opportunity for WTO members to establish a balanced package of measures to promote an open, trusted and secure Internet, which would drive down transaction costs and frictions for businesses trading online. Given that a large share of international data flows (critical to the success of e-commerce) are intra- and inter-company, efforts to tackle impediments to e-commerce

[1] https://www.wto.org/english/news_e/news17_e/bus_06apr17_e.htm
[2] https://cdn.iccwbo.org/content/uploads/sites/3/2016/09/WTO-Business-focus-Group-1-MSMEs-and-e-commerce.pdf

should not only focus on business-to-consumer barriers to sale, but also business-to-business transactions.

‘New WTO disciplines could also play a significant role in building consumer trust in e-commerce, while promoting an online ecosystem in which MSMEs can thrive. Specific measures should include:

- ‘Commitments on cross-border consumer protection standards and dispute settlement to build consumer trust and confidence in cross border e-commerce.
- Disciplines to promote technological innovation to enhance online security and reliability based on broadly agreed industry guidelines.
- A prohibition on customs duties for digital products to ensure that customs duties do not impede the flow of music, video, software and games.
- Establishment of a WTO rule to ensure the free flow, storage, and handling of all types—in any sector—of data across borders. Any exceptions to this rule under applicable privacy or security regulations should be limited to public policy objectives and subject to GATS XIV. Such a framework could build on the APEC Cross Border Privacy Rules system and the OECD guidelines on the protection and privacy of trans-border flows of personal data
- Commitments to promote the growth of open digital markets across borders, including appropriate limitations on liability for online platforms that handle user content and transactions.
- Disciplines to promote a free, open and globally-interoperable Internet that enables competition, consumer choice and unhindered access to online content.
- Provisions to embed technological neutrality online, in that all technologies are given the chance to compete in the marketplace—subject to legitimate security or privacy let-outs.
- National treatment in licensing regimes for financial services.
- Provisions that establish and recognize the benefits for consumers of access to Internet services and applications, subject only to reasonable network management.’

6. <u>Are New E-Commerce Rules of the Type the ICC has Proposed Really Good for MSMEs? The Idealisation of the Internet and MSMEs</u>

James Curran, of the University of London, in ‘Misunderstanding the Internet’ talks about how the internet in the 1990s was claimed to be able to generate wealth and prosperity for all because it could change the terms of competititon between corporate giants and new start-ups. *‘The internet is presented as a stepping-stone in the building of a new progressive social order’*. However, he notes that *‘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 if filtered through the structures and processes of society’*.[3]

Curran goes on to observe how SMEs continue to have difficulties accessing foreign markets despite the internet. This is caused by quality of telecoms infrastructure, compter access, knoweldge etc. In short, he concludes that the size of corporations continue to matter in being able to capture the benefits of the internet.

<u>i.Marginalising MSMEs in their Own Markets ?</u>

According to analyst Parminder Jeet Singh, there is huge amount of talk that e-commerce will provide the oppotunity for developing countries’ MSMEs to find new markets for niche products (e.g. women making artisanal baskets, ornaments etc). But the fact is that 99.9 percent of our economies are not made up of such niche products but very mundane products for which opening the online route could simply lead to very fierce competition for local suppliers – possibly even wiping them out.

[3] Curran J 2012 ‘Reinterpreting the Internet’, Chapter 1 in Misunderstanding the Internet, Routledge.

He gives the example of Kikuu, a fairly new African platform selling cheap Chinese manufactured goods – from plumbing related goods to light bulbs, scissors, motor parts, cosmetics, garments, toys etc. Currently, Kikuu supplies to 6 countries : Congo, Cameroon, Tanzania, Uganda, Ghana, and Nigeria.

One site promotes Kikuu as follows :
'The KiKUU app helps you find and purchase a wide selection of quality products direct from Chinese manufacturers. No matter where you are, get access to awesome features all from the comfort and ease of our user friendly app. Best of all, free standard shipping is included in all orders. Download KiKUU and experience the art of buying today!'[4]

Parminder Jeet Singh notes that 'This clearly competes directly with African suppliers. Without this platform, some of these markets may have been too small to be serviced efficiently by individual chinese manufacturers of different kinds of goods -- but a platform like Kukuu changes all that.'[5] The site also provides complementary e-commerce services for payment, logistics, delivery etc.

<u>ii.High Concentration in Digital Markets</u>

The fact that levels of concentration in the digital markets are even more pronounced than in the traditional economy is now becoming clearer. This raises questions about the ability of MSMEs to easily succeed. The challenges are likely to be even more severe. Governments and even fairly conservative analysts have been questioning this increasing concentration :

- The recent EU case against Google for anti-competitive practices – prioritising the sale of their own goods and services
- Bloomberg in July 20, 2017 running an Article 'Should America's Tech Giants be Broken Up : Apple, Amazon, Google, and Facebook may be contributing to the U.S. economy's most persistent ailments'[6]
- The New York Times, April 22, 2017 'Is it Time to Break Up Google ?'[7]
- The Economist, May 6, 2017 'Regulating the Internet Giants : The World's Most Valuable Resource is No Longer Oil but Data. The data economy demands a new approach to antitrust rules'[8]
- MIT Technology Review, June 27, 2017 'Why Tesla Is Worth More than GM'[9].

In the MIT Technology Review article, the plight of a large company like General Motors is highlighted. Despite having sold over 10 million cars in 2016, compared to Tesla's 76,000, GM's market capitalisation is $52 billion, compared to Tesla's $59 billion. Why ? Not even big companies like GM can gather enormous amounts of data and analyse it efficiently. The digital companies have a headstart in data collection and analysis, and this is a powerful tool. Tesla cars are now logging in 5 million miles a day. Making self-driving cars depend on machine learning, which requires reams of data that Artificial Intelligence learns from. According to the author James Surowiecki, '*Tesla's advantage in data is likely to translate into a huge advantage in making safe and effective self-driving cars'.*

Surowiecki observes, '*A few companies that master digital technologies are capturing huge chunks of the economy. Does this explain the persistence of slow growth?'* He writes that
'The silicon Valley dream of starting a company in your garage and making it into a huge business has become less realistic than ever. Even though billions continue to be poured into venture funding

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[4] http://www.davidbanjoko.com/2016/12/21/kikuu-app-aims-to-help-you-buy-chinese/
[5] Jeet Singh P, forthcoming in a Commonwealth Secretariat publication.
[6] https://www.bloomberg.com/news/articles/2017-07-20/should-america-s-tech-giants-be-broken-up
[7] https://www.nytimes.com/2017/04/22/opinion/sunday/is-it-time-to-break-up-google.html?mcubz=0
[8] https://www.economist.com/printedition/2017-05-06
[9] https://www.technologyreview.com/s/607954/why-tesla-is-worth-more-than-gm/

(more than $200 billion between 2011 and 2016), and even though the number of so-called high-growth startups has not declined in recent years, work by the MIT economists Scott Stern and Jorge Guzman shows that fewer of those startups are succeeding than did in the past. Of course, we still have the Teslas and Ubers (or Lyfts) of the world. But they are rarer than they once were. And one plausible reason is the sheer scale and scope of the Big Five [Apple, Alphabet, Microsoft, Amazon, Facebook] which can meet competitive challenges either by copying the innovation of others (as Facebook arguably did with Snapchat), and thereby making them seem superfluous, or simply by buying potential competitors at an early stage. Regardless of why it's happening, though, the result is less dynamism in the economy, and less spreading of the wealth'.

In sum, the internet should not be idealised to be a magic wand for developing countries' MSMEs. Even the big companies such as GM are struggling.

7. <u>New Rules in E-Commerce Favourable to MSMEs would Look Very Different from Those which Proponents are Putting Forward</u>

If in fact there are new rules in the WTO that could bring genuine benefits for MSMEs, these could include:

- Binding technology transfer
- Encourage the disclosure of source codes (human readable language behind softwares)
- Localisation requirements to build domestic infrastructure and technical capacities in data processing and analysis
- Binding financial assistance in acquiring technological know-how and in infrastructure

The new rules proposed unfortunately are going in exactly the opposite direction.

8. <u>An MSME Work Programme Will be a Distraction from the DDA</u>

If Members at MC11 adopt a Work Programme on MSMEs, this will no doubt draw attention and focus away from the remaining DDA issues, which Ministers at Nairobi had prioritised.

9. <u>Many issues of concern to MSMEs can already be discussed under the existing mandates</u>

If there is a major concern about MSMEs, many of the discussions and solutions can already be found under the existing mandates of the DDA, as well as the 1998 Work Programme on E-Commerce (See point 10 below). In particular, developing countries have been pushing for the following in the DDA, and as yet, very little has emerged (or what has emerged is not in keeping with the spirit of the mandates):

-Agriculture : A robust permanent solution in Public Stockholding; a good Special Safeguard Mechanism (SSM); a robust trade solution in cotton – this is needed in C4[10] but also many other developing countries; a real domestic supports solution that brings real equity to the WTO's agriculture rules (not one that is only comestic)
- Special and Differential Treatment: real efforts to give flexibility in TRIPS (technology transfer), TRIMS (allowing local content requirements in order to support MSMEs), SPS (the WTO's Sanitary and Phytosanitary Agreement) and TBT (Technical Barriers to Trade) etc.

10. <u>Rules in E-Commerce (including for MSMEs) Must be Based on the Existing Agreements in Accordance with the 1998 Work Programme</u>

There is already a Work Programme in E-commerce at the WTO. It has an examination and discussion mandate. Its focus is to align the GATS, GATT and TRIPS Agreements with E-Commerce. Discussions along these lines are urgently needed to give clarity to WTO's existing rules.

The big digital companies are impatient with the existing Agreements – since liberalisation is patchy. They are aiming (eventually, not by MC11) to have across the board liberalisation (hence free data

[10] The Cotton 4 or C4 countries include Benin, Burkina Faso, Chad and Mali.

flows, disciplines disallowing localisation requirements etc). This is a different model from the more 'strategic liberalisation' approach of the existing agreements.

Developing countries have fully affirmed discussions under the 1998 Work Programme. The door should not be opened for new issues such as free data flows, no localisation, or internet governance issues that may seem innocuous at first sight, but aim to eventually open domestic and regioanl markets.

The option that E-Commerce proponents in MC11 are likely to suggest is to change the 1998 mandate to enlarge the issues for discussion and to eventually have negotiations. The issues will include :

- New liberalisation rules –E-authentication, consumer protection, free data flows, no loncalisation
- Assistance to bridge the digital divide, especially for MSMEs.

Developing countries would do well not to bite this bate, appealing as it might be. Countries will be asked to compete in open markets even as they are still trying to get their basic infrastructure in place.

If developing countries e.g. Africa want to build their domestic, regional markets in the digital era, it will need the policy space provided under the existing WTO Agreements (underpinned by 'progressive liberalisation'), not the new model being paddled : free data flows, e-authentication (i.e. the supplier can dictate the technology to be used i.e. no local content rules in the area of technology), no technology transfer requirements, no disclosure of source code etc.

In Conclusion

The MSME agenda that has been put forward by ICC, the B20 and others, particularly the consistent and persistent reference to E-Commerce and new rules required, has a good chance if pursued, to hamper rather than facilitate the growth of developing countries' MSMEs. Developing and African countries are already supporting their MSME interest through the positions they take daily at the WTO.

Indeed, all countries will have to get on the digital economy train. We should do so by building on the WTO's existing Agreements – examining and discussing current obligations in the GATS, GATT, TRIPS to clarify grey areas.[11] These Agreements allow developing countries to strategically or progressively liberalise, and to put in place measures such as local content requirements[12] (e.g. data has to be processed domestically / regionally) to support domestic and regional digital industrial strategies. This policy space will be critical, including for Africa's 2063 transformation agenda.

[11] These grey areas include the issues of classification, technological neutrality, the meaning of Member's current GATS and GATT schedules, what is 'likeness' in the digital, traditional sectors etc.
[12] The current TRIMS agreement at the WTO only applies to goods, but does not apply to services, or technology, or data transmissions.