

## The Micro Small and Medium Sized Enterprises (MSME) Discussion at the WTO

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In the past two years, the MSME theme has become popular. In various quarters, MSMEs are being cited for the reason to introduce certain issues in the WTO:

Argentina, Brazil, Paraguay and Uruguay (JOB/GC/127, 9 June 2017) called for 'an Agenda at the MC11' on MSMEs. They would like Members to adopt Ministerial Decision creating a Work Program that addresses the specific needs of MSMEs (see para 3.3). Amongst other issues, they suggest the following in the Work Programme:

- Information and transparency – online helpdesks and contact points with information; enquiry points; strengthening of notification and publication requirements in the WTO
- Trade Facilitation – facilitate paperless trading, single window etc.
- E-Commerce to increase export opportunity for MSMEs – promote cross border recognition of electronic signatures, international electronic payments etc.
- Possibly measures related to transparency in procurement procedures.

In Japan's most recent E-Commerce proposal (JOB/GC/130, 14 July 2017), it notes that the '*advancement of digitalization*' will '*reduce the cost of doing business, and allows MSMEs to reach a wider market over the internet*'. The proposal calls for enlarging the issues under discussion in E-Commerce (including cross-border flow of information; ensuring internet users/ service suppliers a choice of where to transfer, process, and store information, i.e. disciplines on localisation etc) and a year after MC11, for Members to decide whether or not to initiate negotiations.

The EU et al has also submitted a proposal on Transparency of Regulatory Measures for Trade in Goods in order to facilitate SME trade (TN/MA/W/144/Rev.2, 7 Aug 2017). This proposal requires governments '*to the extent practicable*', to publish in advance, the regulatory measures they propose to adopt, and also to '*provide a reasonable opportunity to interested persons to provide input*' on these proposed measures.

Comments on these proposals and the MSME discussion:

### 1. Developing and African Members already de facto take positions at the WTO for MSMEs

It is not clear why there should be a special agenda for MSMEs. Most of our economic actors in developing and African countries are MSMEs and hence developing Members' positions at the WTO are already de facto for MSMEs.

### 2. Changing the model of S&D at the WTO?

A danger of having a new MSME agenda or Work Programme at the WTO is that this could replace S&D treatment in the WTO. Thus far, S&D is offered based on the level of development of a Member. Now there is an attempt to have special treatment rules for all Members' MSMEs/ SMEs. This also ignores the very different situation of MSMEs in many developing countries, as compared to the MSMEs in the big developed Members. (In the EU, an MSME is an enterprise with up to 249 employees).

### 3. New E-Commerce Rules are Good for MSMEs?

The one area where new rules are frequently cited for MSMEs is E-Commerce. Yet, the type of rules put forward by E-Commerce proponents are likely to harm rather than support Africa and most developing countries' MSMEs.

The various suggested new rules by proponents include amongst others:

- E-authentication/ E-signatures (which is about not allowing for local content requirements in the area of domestic technologies),
- no localisation requirements (data processing; servers location – no local content in the area of data transmissions);

- free data flows (once again no localisation of data<sup>1</sup>);
- no requirements to disclose source code (which is the machine readable language behind software);
- no forced technology transfer etc.

If rules on E-Commerce that are good for MSMEs are to be suggested, they should instead be based on the following, which provide policy space for developing countries to digitally industrialise:

- Clarifying the existing GATT, GATS, TRIPS rules in relation to E-Commerce, which is what the 1998 E-Commerce Work Programme suggests. This is because these existing agreements are based on progressive and selective liberalisation, as opposed to the above rules which would lead to comprehensive liberalisation
- Rules that encourage localisation of data and infrastructure e.g. servers to support local/ regional industries and regional digital industrialisation
- Binding technology transfer etc.

#### 4. EU's Transparency Measures Will be Burdensome, Curb Domestic Regulatory Freedom, and Do not Address the Issues MSMEs Face in the area of SPS and TBT

The EU et al proposal (TN/MA/W/144/Rev.4) suggests very intrusive obligations and will 'internationalise' domestic regulatory processes. The proposal is also completely different from developing countries' proposals on SPS and TBT under the Doha S&D para 44 discussions – where financial and technical assistance is being requested from developed Members when they change their SPS/ TBT regulations so that loss of trade will not take place or will be minimised for developing Members.

#### 5. Is the MSME Agenda Being Put Forward a Front for the Developed Members' Corporate Interests?

This is a serious question, since the agenda put forward by the ICC and G20 are exactly those being suggested by key Members at the WTO, particularly in the area of E-Commerce. The ICC and G20 have a very detailed list of new digital rules they want at the WTO.<sup>2</sup>

#### 6. An MSME Agenda Will Be a Distraction from the Remaining DDA Issues

Developing and African delegations daily take positions at the WTO for their MSMEs – since these are their predominant stakeholders. Furthermore, the areas of further flexibility needed by these countries are already in the existing negotiating mandates e.g. in Agriculture; and in the DDA e.g. para 44 Special and Differential Treatment negotiations which includes TRIMS (flexibility for local content requirements in goods); TRIPS (technology transfer); Art XVIII (balance of payments issues; infant industry flexibilities); SPS and TBT (technical and financial assistance to meet changed standards of importers) etc.

Completing this existing negotiating agenda will go a very long way to supporting developing countries and Africa's MSMEs. The suggested new agenda for MSMEs is likely in fact to undermine domestic and regional markets, and most developing and African countries' MSMEs.

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<sup>1</sup> The WTO's TRIMS Agreement disallows local content requirements in goods. However, in services, technology, data, such local content requirements are still allowed.

<sup>2</sup> See Trade Dialogues: WTO Business Focus Group 1 – MSMEs and E-Commerce, Final Report Sept 2016, <https://cdn.iccwbo.org/content/uploads/sites/3/2016/09/WTO-Business-focus-Group-1-MSMEs-and-e-commerce.pdf>