

Trade Agreements and the World Trade Organization:

Lessons for the Micro, Small, and
Medium-Sized Enterprises Joint
Statement Initiative

August 2020

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Acronyms and Abbreviations

ADA	Anti-Dumping Agreement
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
CETA	Comprehensive Economic and Trade Agreement (Canada–European Union FTA)
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
EU	European Union
FTA	free trade agreement (free trade area)
GATS	General Agreement on Trade in Services
GPA	Government Procurement Agreement
GRP	good regulatory practices
ITC	International Trade Centre
MSME	micro, small, and medium-sized enterprise
OECD	Organisation for Economic Co-operation and Development
RTA	regional trade agreement
SADC	Southern African Development Community
SME	small and medium-sized enterprise
SPS	Agreement on the Application of Sanitary and Phytosanitary Measures
TBT	Agreement on Technical Barriers to Trade
TFA	Trade Facilitation Agreement
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
USMCA	United States–Mexico–Canada Agreement
WTO	World Trade Organization

Introduction

It is hard to deny the importance of micro, small, and medium-sized enterprises (MSMEs) and their contribution to economic activity, job creation, new technologies, and economic dynamism around the world. MSMEs represent 95% of companies globally, accounting for 60% of total employment and 50% of total value added (International Trade Centre [ITC], 2016). In developing countries, MSMEs can create societal benefits that go well beyond job creation and other economic gains, such as by enabling women to take part in these smaller firms or lead them, though recent research shows that these companies still have a long way to go when it comes to boosting domestic GDP levels. One study found that developing country MSMEs make up just over one-third of domestic GDP, while the share in advanced economies is considerably higher at approximately half of domestic GDP (Trade Dialogues, 2019). Moreover, their share of manufacturing exports is barely half that of their large company counterparts, according to the World Bank Enterprise Survey (WTO, 2016).

Some factors that hinder MSME participation in international trade include the following: lack of skills; limited access to information about international markets; non-tariff barriers (NTBs); cost of compliance of trade procedures, including onerous regulations and border procedures; poor access to the necessary finance; and lack of transparency in administrative procedures. While some of these obstacles are also faced by bigger companies, their impact on MSMEs is significantly higher because trade-related fixed costs weigh more heavily on MSMEs due to their smaller size than on their larger competitors (ITC, 2016). Such constraints tend to be experienced most intensively by women-owned MSMEs as a result of gender-based discriminatory forces in the domestic economy.

Some policy responses to foster MSME participation in international trade and to address these challenges have involved the inclusion of MSME-related provisions in regional trade agreements, often in the context of chapters on small and medium-sized enterprises (SMEs) or side documents.

In the WTO context, limited attention had been paid until recently to the specific MSME perspective. This has changed over the past few years, especially since the adoption of the MSME Joint Ministerial Statement by a group of WTO Members during the Eleventh Ministerial Conference in Buenos Aires, Argentina, in 2017. Signatories of this document agreed to establish an Informal Working Group on MSMEs and to develop a work program for consideration at the next ministerial.¹

¹ “With the utmost degree of transparency, the group will discuss, among others, issues of relevance to MSMEs, related to improved access to information for MSMEs; ways to promote a more predictable regulatory environment for MSMEs; reduction of trade costs, including areas such as trade facilitation, shipping and logistics, and procedures and requirements related to origin; promotion, including through cooperation with other multilateral institutions, of better access to trade finance for MSMEs; identification of issues of particular interest to MSMEs that could be addressed in WTO Trade Policy reports; and consideration of how technical assistance and capacity building initiatives could take into account the trade needs and challenges of MSMEs” (WTO, 2017c).

While these initiatives show a growing discussion by governments in support of MSME participation in international trade, this participation remains limited, and thus the next line of action needs to address ways to make such developments operational, especially in terms of helping developing countries benefit from them.

Paper Objective and Key Questions

This issue paper aims to help developing countries better understand the practical policy implications of the typical MSME-related provisions in regional trade agreements (RTAs), as well as the role of the WTO in facilitating the participation of MSMEs in global trade. The research findings are derived from an analysis of trends of MSME-related provisions in RTAs, highlighting those that can be relevant to the MSME Joint Statement Initiative (JSI) discussion among various WTO Members. On that basis, the paper provides insights and recommendations for meaningful capacity building in relation to those discussions. This discussion aims to serve as an explanatory guide for governments and other stakeholders to advance their interests in the JSI context and to better integrate MSMEs into the multilateral trading system.

In particular, the paper aims to:

Identify MSME perspectives in trade agreements, including

- Trends in MSME-related provisions in RTAs
- Specific MSME-related provisions, the purpose for their inclusion, and the approaches and levels of commitments that have been accepted by countries
- MSME-related RTA provisions involving gender issues
- Practical policy implications of MSME-related RTA provisions

Examine the role of the WTO in facilitating the participation of MSMEs in the multilateral trading system, including through

- References made to MSMEs in WTO agreements
- WTO talks, discussions, and informal work programs among some WTO Members regarding the MSME perspective in the WTO context
- Roles and policy implications of the WTO agreements and WTO initiatives to facilitate MSMEs' participation in the global trading system.

Unless specified otherwise, within the scope of this paper the term “MSME-related provisions” refers to specific provisions that explicitly name MSMEs/SMEs or use seemingly comparable terms.² Admittedly, MSME-related provisions have traditionally focused on small and medium-sized companies, while the addition of “micro” businesses is relatively new, either within the WTO context or at RTA level. Since there has not been a common definition for each type of micro,

² The seemingly comparable terms are analyzed in Section 1.

small, medium-sized enterprises across RTAs or the WTO, however, their differences have not been clearly defined. Thus, despite the fact that the majority of RTA provisions make references to SMEs instead of MSMEs, the general use of “MSME-related” provision instead of “SME-related” provision is intended to reflect the latest trends, interests, and concerns that countries have dedicated to their smaller exporters. Hence, within this paper, even if the RTA provision solely refers to small and/or medium-sized enterprises, it remains within the scope and under the heading of “MSME-related” provisions.

The paper is divided into five sections.

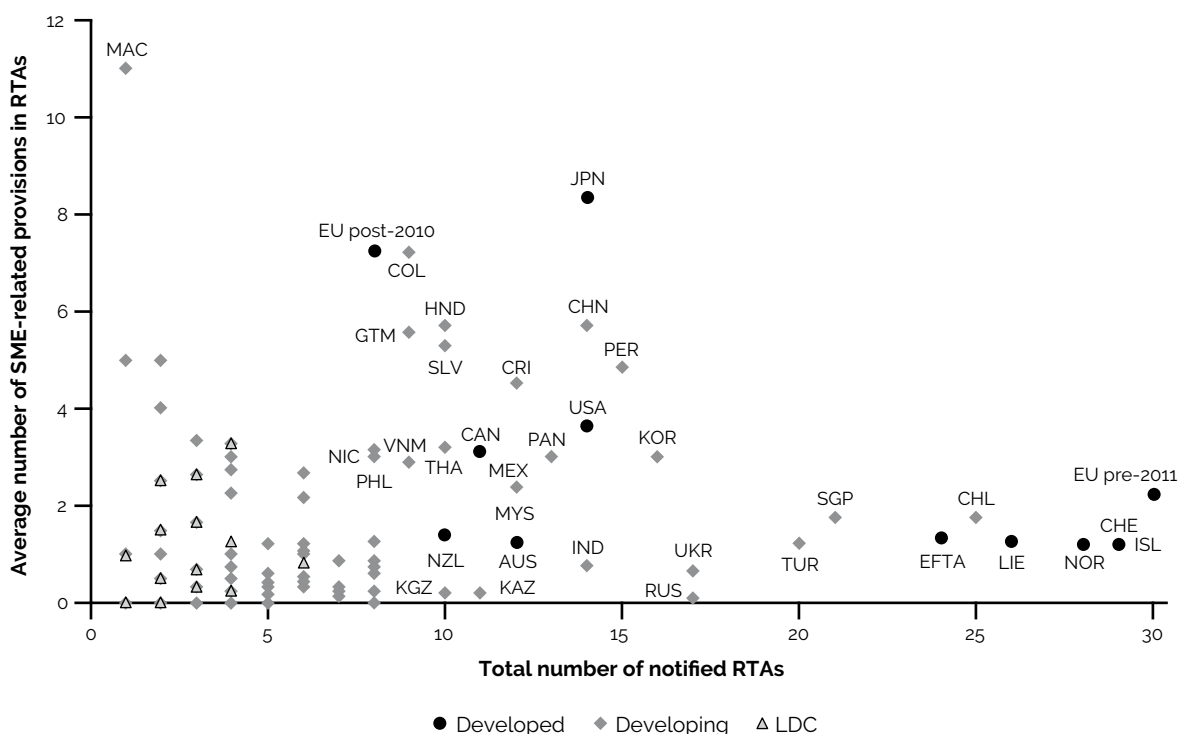
The first section provides a review of observable trends in MSME-related provisions in RTAs, along with exploring issues relevant to developing countries’ interests. The second section focuses on specific MSME-related RTA provisions devoted to the specific challenges faced by MSMEs as well as those categories that are under consideration in the JSI context. Some practical policy implications of MSME-related RTA provisions in general and possible impacts toward MSMEs are identified. Section 3 specifically addresses the issue of gender in RTAs from an MSME angle, i.e., women-owned MSMEs. Section 4 identifies references made to MSMEs within existing WTO agreements to explore the extent to which the WTO has engaged in promoting or facilitating MSMEs’ participation in the multilateral trading system. Section 5 further builds on that by presenting selected outstanding topics based on the work conducted by WTO Members under the Joint Statement Initiatives on e-commerce, investment facilitation, and women’s economic empowerment.

The paper concludes with suggestions on the way forward, outlining some points for governments to consider as they seek to advance the MSME perspective in trade agreements and within the JSI context.

Section 1. General Trends of MSME-Related Provisions in RTAs

The role of micro, small, and medium-sized enterprises is increasingly important, and this general trend is reflected in a large number of RTAs that include MSME-related provisions aimed at facilitating the participation of MSMEs in international trade. Out of 312 RTAs notified to the WTO as of 2019, 166 agreements have chapters or articles that make direct reference to SMEs, including micro enterprises (WTO, 2019). This trend has recently increased and has especially flourished with the introduction of new-generation RTAs.³ Because these new-generation trade agreements have a broader coverage and deeper level of commitments than traditional free trade agreements (FTAs), the scope and range of MSME-related provisions have also been enlarged and evolved: this reflects the growing awareness of the challenges MSMEs face when engaging further in international trade. At a glance, it is observed that even though developing countries and LDCs have increasingly participated in RTAs with provisions referring to MSMEs, developed economies such as the EU and Japan are among those who most frequently incorporate MSME-related provisions into their RTAs (see Figure 1).

³ “New-generation FTAs” generally refers to free trade agreements that go beyond traditional topics, e.g., tariff and non-tariff barriers for trade in goods and trade in services, to include other trade issues that are not currently under the framework of the WTO, such as competition and e-commerce. These may also include other policy areas, such as labour and environment. At the same time, for issues regulated by the WTO, these FTAs often generate deeper levels of commitments. Some of the typical “new generation FTAs” include the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the Canada-European Union Comprehensive Economic and Trade Agreement (CETA), and the European Union-Vietnam Free Trade Agreement (EVFTA).

Figure 1. Number of RTAs with SME-related provisions, organized by WTO Member

Source: Reprint from WTO 2016, Figure E.3, p.119

Figure 1 shows the number of provisions that directly or explicitly make reference to SMEs, including micro businesses. Aside from these, however, it is recognized that other RTA articles/chapters could nevertheless generate significant consequences for these businesses, even if these provisions lack any explicit reference to SMEs or MSMEs. Hence, RTAs can have two types of provisions: (i) general provisions that could be relevant to support MSMEs without mentioning these enterprises, and (ii) MSME-specific RTA provisions/chapters referring explicitly to MSMEs/SMEs themselves (Cernat & Lodrant, 2017). While recognizing that “micro” is actually a newer term compared to “small” or “medium,” this paper focuses on those provisions which directly refer or make explicit reference to any kind of micro, small, and medium-sized enterprises, i.e., MSME-related provisions. Therefore, provisions mentioning MSME or SME or using any other comparable terms referring to these enterprises would also be covered under the scope of MSME-related provisions.

The inclusion of MSME-related provisions in RTAs can be traced back to the 1980s. The nonreciprocal South Pacific Regional Trade and Economic Cooperation Agreement between Australia and New Zealand was the first RTA to include specific provisions on SMEs, followed by the Cartagena Agreement establishing the Andean Community (Monteiro, 2016). Interest in MSMEs has since accelerated, with a significant increase in the number of RTAs incorporating MSME-related provisions. At the same time, this upward trend mirrors the proliferation of RTAs in general and the increasing participation of developing countries as RTA signatories. According

to the WTO World Trade Report (WTO, 2016), as of 2016, 65% of North–South (88 agreements) and 31% of South–South RTAs (42 agreements) incorporate MSME-related provisions, while only six North–North RTAs agreements do so (WTO, 2016).

Recently, newly signed and ratified trade agreements such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the Canada–European Union Comprehensive Economic and Trade Agreement (CETA) and the United States–Mexico–Canada (USMCA) are among those new-generation FTAs that incorporate the most advanced provisions supporting small, medium-sized enterprises, including micro companies.

MSME-related provisions in RTAs often take the form of dedicated articles in specific contexts or even as stand-alone chapters. However, this analysis must be considered with one major caveat: the lack of a standard definition for these types of small companies within trade agreements, which is reflected in how these RTAs are drafted. The impact of these provisions can therefore vary significantly. As indicated in the World Trade Report 2016, approximately 50 seemingly comparable terms have been devised to refer to SMEs. These terms are used within more than 460 different MSME-related provisions, out of the 271 RTAs notified to the WTO as of May 2016. Of these, the most common terminology involves the phrasing “small and medium-sized business/company/enterprise,” included in 117 agreements, i.e., almost half of the number of RTAs under examination, while the terms “small business/enterprise/supplier/economic operator” are used in 28 RTAs, followed by “micro, small, and medium-sized enterprise/company” which appear in 26 RTAs. It is noteworthy that 10 RTAs use the terms small-scale farmers/agriculture/fishery/mining/trade, while some others employ terminologies such as artisans, start-ups, individual creators, micro and craft enterprises to refer to MSMEs (WTO, 2016).

The lack of a common expression/terminology and understanding of MSMEs may consequently lead to difficulties in defining a threshold level in, for instance, promoting trade facilitation measures for MSMEs.

Box 1. General Observations on MSME-Related Provisions in RTAs

Regarding their content and coverage, MSME-related provisions cover a broad range of areas. The 2016 analysis by José-Antonio Monteiro found that these could involve investment and services (59 RTAs), government procurement (43), electronic commerce (21 RTAs), trade facilitation (18 RTAs), intellectual property (eight RTAs), transparency (three RTAs), and notably SME cooperation (92 RTAs).

MSME-related RTA provisions are mostly expressed in the following forms:

- Cooperation/facilitation (92 RTAs)
- Exemptions/flexibilities (57 RTAs)
- Recognition/affirmation/agreement (21 RTAs)
- Institutional arrangements (15 RTAs)

- Commitments/obligations (14 RTAs)
- Recommendation (10 RTAs)
- RTA's impact review (7 RTAs)

The common categories that could be observed, according to Monteiro, include provisions (1) following a cooperative approach to promote cooperation on MSMEs in general or in particular policy areas; and (2) excluding MSMEs or programs supporting MSMEs from general or specific RTAs' obligations.

For the latter, Monteiro found that the coverage of MSME-related exemptions includes:

- Government procurement (38 RTAs)
- Financial services (20 RTAs)
- Services (21 RTAs)
- State aid (2 RTAs)
- Subsidies (2 RTAs)
- Other (1 RTA)

Source: Monteiro, 2016, pp.11–12

Based on the order of frequency, cooperation is the most common form of provision found in a large number of RTAs, even though the actual contents vary. Some cooperation clauses contain broad commitments requiring countries to promote a favourable environment for the development of MSMEs in general,⁴ while others address cooperation to support MSMEs in specific policy areas, namely intellectual property, transparency, and e-commerce, among others. Of these, supporting MSMEs in government procurement has been the issue that receives the most attention from RTA parties.⁵

Some RTAs contain provisions or chapters dedicated to MSMEs, and so the term MSME was explicitly included in the titles of these provisions or chapters.⁶ At the same time, other RTAs refer to MSMEs only as an issue to be considered within the context of promoting trade relations among RTA parties, without having specific MSME-related articles or chapters.⁷ In this regard, it is important to emphasize that the existence of dedicated article(s) or a stand-alone chapter on MSMEs does not necessarily reflect the level of commitments made under these MSME-related

⁴ For instance, the China–Republic of Korea RTA, Article 17.9

⁵ This issue is further discussed in Section 2 of this paper

⁶ For instance, Article 14.16 – Participation of MSMEs of the Colombia–Republic of Korea RTA; Chapter 24 – Small and Medium-Sized Enterprises of the CPTPP.

⁷ For instance, Article 13.3 – Cooperation priorities of the EU–SADC that reads: “This cooperation includes, amongst others, ... improvement of the trade and business environment and support to small and medium enterprises in the fields of agriculture, fisheries, industry and services.”

provisions. Hence, considerations based on the location of MSME provisions (main text of the agreement or annexes; specific article/specific chapter/within articles or mixed) could generally reflect the status of MSME-related provisions in RTAs, but could hardly be an indicator to measure the depth and breadth of the commitments under these provisions.

While North–North RTAs utilize the cooperative approach more, and North–South RTAs mainly include cooperation clauses in limited policy areas, South–South trade agreements tend to focus on providing flexibilities and exemptions from obligations for MSMEs. Exemptions are found in policy areas such as government procurement, trade in services (usually within parties’ services schedules), and state aid. In essence, these provisions allow RTA parties to provide special or preferential treatment for MSMEs in respective areas by stating that domestic policies supporting MSMEs are not covered by certain provisions. RTAs basically give members flexibility and freedom to regulate or develop programs for MSMEs, and so these measures are not considered inconsistent with RTA obligations. While these exemptions/flexibilities show how RTA parties recognize the importance and vulnerability of MSMEs to ambitious commitments, these considerations do not create an obligation for parties to further promote or facilitate the participation and integration of MSMEs in international trade. That task is left for parties to act on at their discretion and outside the purview of the RTA.

Assessing the level of commitment, on the other hand, largely depends on the wording and language used in MSME-related RTA provisions and whether the provision is covered by any dispute settlement mechanism to make it legally binding and enforceable. For instance, even if it is part of a binding treaty and hence is a hard-law type provision, its characteristics may include language, wording, or an explicit exclusion from dispute settlement that may render that provision as a soft obligation and thus difficult to enforce.

Despite having different shapes and forms, from a practical perspective MSME-related provisions generally share the common feature of being couched in “best-endeavour” language. Usual terms or phrases such as “the Parties recognize/affirm/agree on the importance of SMEs,” “the Parties endeavour to cooperate/strive to work together/agree to maintain a dialogue,” or provisions to encourage parties paying attention to SMEs in the form of a recommendation rather than an obligation have been used in a large number of RTAs.⁸ Even in some of the most recent RTAs such as the CPTPP, the use of “best-endeavour” language prevails across policy areas mentioning SME/MSMEs.

In practice, CPTPP is considered to be a typical new-generation FTA, covering issues at a broader and deeper level compared to more traditional agreements. CPTPP is also among the most ambitious “mega-regional” FTAs to date with respect to its coverage, level of commitments, and the number of parties involved, which include both developed and developing countries. Mega-regional FTAs, especially those that have entered into force after 2010, tend to pay more attention to challenges faced by MSMEs in international trade and on a broader range of policy areas, as noted by Moria-Jaeger and Borchert. Of these, CPTPP has set the most recent

⁸ MSME-related RTA provisions’ level of commitments is further discussed in Section 2 of this paper.

benchmark in RTA negotiations when it comes to its support of SMEs. It contains some of the best-in-class provisions addressing SME concerns, both for those provisions that make explicit reference to SMEs and those that do not (UK Trade Policy Observatory, 2020).

Box 2. MSME-Related Provisions in CPTPP

The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) is a trade agreement signed on March 8, 2018, aimed at fostering trade among 11 members across the Pacific Ocean: Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam. CPTPP has entered into force for seven of the 11 signatories and is expected to significantly affect trade among them. These seven include Australia, Canada, Japan, Mexico, New Zealand, Singapore, and Vietnam, and those pending are Brunei Darussalam, Chile, Malaysia, and Peru. Apart from being the biggest “next-generation” FTA in Asia, CPTPP—whose 11 members represent approximately 500 million consumers and 13.5% of global GDP—is also one of the most advanced and ambitious trade agreements covering a broad range of issues in 30 chapters, where provisions are deeper and broader than in other FTAs (see Government of Canada, 2020). For addressing SMEs’ concerns, relevant provisions are stipulated under different chapters of various policy areas and in a stand-alone SME chapter, Chapter 24.

In the CPTPP’s Preamble, members recognize the importance of MSMEs and resolve to “support the growth and development of micro, small and medium-sized enterprises by enhancing their ability to take advantage of the opportunities generated by this Agreement.” Chapter 20 then encourages parties to specifically assist SMEs in their participation in global markets while strengthening cooperation and capacity building. Admittedly, provisions on cooperation appear in almost all chapters of CPTPP covering different policy areas. Of these provisions, however, only some make explicit references to SMEs and are mostly couched in best-endeavour language.⁹ These are provisions stipulated in Chapter 14 for e-commerce, Chapter 18 for intellectual property, Chapter 5 for trade facilitation, and Chapter 15 for government procurement.¹⁰

CPTPP also provides for a dedicated Chapter 24 for SMEs, which includes three provisions. These involve Information Sharing (Article 24.1), Committee on SMEs (Article 24.2), and Non-application of Dispute Settlement (Article 24.3). Article 24.1 requires parties to establish or maintain a website containing information relevant to and designed for SMEs, whereas Article 24.2 lists

⁹ Topics where cooperation clause was incorporated, yet without referring directly to MSMEs, include Chapter 3 on rules of origin, Chapter 7 on SPS, Chapter 8 on TBT, Chapter 14 on e-commerce, Chapter 15 on government procurement, Chapter 18 on intellectual property, Chapter 19 on labour, Chapter 20 on environment, Chapter 21 on cooperation and capacity building, Chapter 22 on competitiveness and business facilitation, Chapter 23 on development, Chapter 25 on regulatory coherence, and Chapter 26 on transparency and anti-corruption of the CPTPP. Nevertheless, these provisions help facilitate MSMEs’ participation in international trade by making the tasks easier for MSMEs in respective areas.

¹⁰ For instance, Article 15.22 of CPTPP reads: “1. The Parties recognise their shared interest in cooperating to promote international liberalisation of government procurement markets with a view to achieving enhanced understanding of their respective government procurement systems and to improving access to their respective markets. 2. The Parties shall endeavour to cooperate in matters such as: (a) facilitating participation by suppliers in government procurement, in particular, with respect to SMEs; ...”

a range of activities for the Committee on SMEs which includes, for instance, assisting SMEs in capacity building and taking advantage of CPTPP commitments and submitting regular reports to the CPTPP Commission. The Committee on SMEs also reviews and coordinates work programs with other committees, i.e., the Committee on Government Procurement under Chapter 15 and the Committee on Competitiveness and Business Facilitation in Chapter 22, so as not to duplicate the work. In short, in addition to the new provision on information sharing, the SME Committee is established specifically to assist and facilitate the participation of SMEs in international trade through capacity building, exchanging information, experiences and best practices to support SME exporters, and development of programs for SMEs to engage effectively in global supply chains.

For RTAs that include developing country members, the CPTPP could be considered a representative agreement in providing support to MSMEs in general. Being covered under various chapters of CPTPP, however, MSME-related provisions are generally best-effort clauses, in which parties recognize the importance of SMEs in different policy areas and are mostly recommended to promote cooperation/facilitation in that specific area. The SME Committee, established under Chapter 24 of this Agreement, must meet at least once in the first year of the CPTPP's taking effect, yet meets only as necessary thereafter. At the same time, Article 24.3 excludes the use of the CPTPP's dispute settlement mechanism, which means that enforcement of this chapter on SMEs depends on parties' discretion and determination. In other words, even if the provisions are legally binding, i.e., hard law (in countries where CPTPP has entered into force), the obligations in this chapter are rather soft, and some of the topics receive more attention than others. The existence of a specific SME chapter could be considered one of the most remarkable developments in supporting SMEs so far; however, from a practical point of view, with the non-application of dispute settlement and in the absence of a dedicated Secretariat for the CPTPP to regularly coordinate among members, CPTPP members are at best encouraged to follow certain steps while implementation of provisions in this chapter and their effectiveness remain uncertain.

Other recent North–North RTAs to which the EU is a party, such as the EU–Japan Economic Partnership Agreement (EPA) and CETA, also provide some meaningful MSME-related provisions. Apart from provisions supporting SMEs in policy areas such as e-commerce and government procurement, the EU–Japan EPA provides for a stand-alone chapter on SMEs, i.e., Chapter 20, which includes provisions on information sharing and the establishment of SME contact points.¹¹ Compared to the CPTPP, the information-sharing provisions provide a more detailed task list and guidance for members, while the “SME contact points” are considered more effective than the “SME Committee” as these points can advise SMEs on a regular basis.¹²

¹¹ Chapter 20 of the EU–Japan EPA is also not subject to a dispute settlement mechanism. While not having a dedicated chapter on SMEs, the joint committee under CETA also recommended the establishment of contact points that meet regularly to assess SME-related issues under CETA. See Government of Canada (2018).

¹² Article 20.3 of the EU–Japan RTA. See further at: UK Trade Policy Observatory, 2020, p. 31

Notably, CETA includes a new type of MSME-related provision in the section on “Resolution of investment disputes between investors and states” in the agreement’s investment chapter. Article 8.19(3) reads: “The disputing parties may hold the consultations *through videoconference* or other means where appropriate, such as in the case where the investor is a small or medium-sized enterprise” (emphasis added). If the investor is an SME, “the respondent shall give sympathetic consideration to the request” to have the case heard by just one of the tribunal’s members (Article 8.23). Also, the financial burden on claimants who are SMEs is reviewed by the CETA joint committee, taking into account the amount of compensation sought.

Based on the above information and examination, the following trends in MSME-related provisions in RTAs can be observed:

1. First, even though developing countries are increasingly interested in stipulating MSME-related provisions in their RTAs, developed economies such as the EU, Canada, and Japan have some of the most advanced MSME-related provisions in their RTAs. These include the stand-alone SME chapter that provides for the establishment of an SME contact point under the EU–Japan EPA or the CETA provision giving consideration to SMEs in an investment dispute. Notably, agreements with ambitious commitments on MSMEs are mainly extra-regional RTAs, while the EU remains the leading economy advocating for MSMEs’ support in RTAs.
2. Developing countries have shown an appetite for providing exemptions/flexibilities in certain policy areas, while developed countries have a tendency to create obligations requiring RTA parties to provide support to MSMEs. One of the reasons could be that many developing countries already have their MSME-related trade policy in place since MSMEs often account for a large part of their total enterprises, and exemptions are provided in order to prevent MSMEs from costly RTA obligations.
3. RTA commitments for MSMEs are generally best-endeavour provisions. The existence of the SME chapter in some RTAs is remarkable, yet the chapter is not subject to dispute settlement. Hence, it may take a long time before the aims and objectives of effectively facilitating the participation of MSME in global trade can be fully achieved.

Beyond RTAs, another visible trend that could be observed is the regional or group initiative to provide support for MSMEs. These include efforts undertaken within the framework of the Asia-Pacific Economic Cooperation (APEC), the Organisation for Economic Co-operation and Development (OECD), and the Association of Southeast Asian Nations (ASEAN). In recognition of the importance of SMEs for economic growth, job creation, social cohesion, and the role played by women and youth entrepreneurs, the OECD Bologna Process on SME and Entrepreneurship Policies was launched in 2000 to “foster global SME partnerships and enhance the availability of financial and non-financial instruments to promote SME development” (OECD, 2000). It should be noted that in addition to OECD members, another 14 non-members who

are developing countries participated in this initiative at the Bologna Conference.¹³ The OECD has since encouraged cooperation between OECD countries and non-member economies, other international institutions, and non-governmental organizations (NGOs) in supporting SMEs.

For APEC economies, MSMEs are significant contributors to economic growth, trade, employment, poverty alleviation, and innovation, accounting for 97% of total enterprises and more than 50% of the workforce (APEC, 2018). Given this context, the APEC economies adopted five years ago an extensive set of “priority actions” aimed at supporting MSME participation in international trade, known as the “Boracay Action Agenda to Globalize MSMEs” (BAA-MSMEs). Notably, BAA-MSMEs builds on APEC members’ work on regional economic integration, and thus its content reflects what has been discussed extensively at the regional level. The 25th APEC SME Ministerial Meeting in 2019 reviewed progress in this regard and highlighted inclusive growth and women-owned MSMEs as a priority (APEC, 2019).

Box 3. APEC's Boracay Action Agenda to Globalize MSMEs – The eight priority actions

The below list is an abridged version of the action agenda, replicated for the reader’s reference.

Priority Action 1: *“Facilitate the access of MSMEs to FTAs/RTAs by simplifying and streamlining rules of origin (ROO) procedural and documentary requirements and harnessing IT to ease documentation and procedures.”*

Priority Action 2: *“Streamline customs-related rules and regulations and assist in the compliance of MSMEs.”*

Priority Action 3: *“Provide timely and accurate information on export and import procedures and requirements.”*

Priority Action 4: *“Widen the base of Authorized Economic Operators (AEO) and trusted trader programs (TTP) to include SMEs in order for them to contribute to security, integrity and resilience in supply chains.”*

Priority Action 5: *“Support measures to widen options on financing for MSMEs and further develop the infrastructure to facilitate lending to them.”*

Priority Action 6: *“Expand internationalization opportunities for micro and small enterprises providing goods and services through ICT and e-commerce.”*

Priority Action 7: *“Strengthen institutional support for MSMEs.”*

Priority Action 8: *“Strengthen focus on MSMEs led by women.”*

Source: APEC, 2018.

¹³ Other 14 non-members economies include: Algeria, Argentina, Brazil, Bulgaria, Egypt, India, Indonesia, Morocco, Philippines, Romania, Russian Federation, South Africa, Tunisia, and Viet Nam.

MSMEs' role is significant within the ASEAN region.¹⁴ Despite their small size, together these businesses account for between 89 to 99% of total enterprises, employ between 52 to 97% of the workforce, contribute between 23% and 58% of GDP and between 10% and 30% of total exports across ASEAN economies (ASEAN, 2014). These MSMEs have also facilitated greater participation of youth and women-led enterprises into the economy (ASEAN SME Working Group, 2015). Since 1995, ASEAN has developed several initiatives to foster MSMEs' engagement in international trade, which also link to ASEAN member states' implementation of MSME-related provisions in their RTAs.

Box 4. ASEAN Strategic Action Plan for SME Development (2010–2025)

Below we summarize two action plans that ASEAN has undertaken since 2010, breaking down their key component parts briefly.

From 2010 to 2015, important deliverables of the ASEAN Strategic Action Plan to SME Development (ASEAN SAP) included:

- ASEAN SME Policy Index: Assessing policy and legal framework for SMEs
- ASEAN SME Service Web Portal: Providing information with regional linkages
- ASEAN SME Online Academy: Working as an e-learning platform for SMEs
- ASEAN Guidelines on One Village One Product (OVOP): making rural/local products more competitive for exports
- Common Curriculum for Entrepreneurship in ASEAN: Nurturing entrepreneurship at an early stage of development
- Directory of Outstanding SMEs in ASEAN 2015: Provide a list of more than 800 SMEs in ASEAN Priority Integration Sectors

For 2016–2025, the ASEAN SAP for SME Development has some features as below:

- **Vision:** “Globally Competitive and Innovative SMEs”
- **Mission Statement:** “To create globally competitive, resilient and innovative SMEs seamlessly integrated into the ASEAN community for inclusive growth and sustainable development in the region.”
- **Supporting Elements:** (i) vibrant; (ii) “resilient and innovative”; (iii) well-positioned to take advantage of the ASEAN Economic Community; (iv) “seamlessly integrate into the ASEAN community”; and (v) sustainable growth and equitable development of the region.

¹⁴ The Association of Southeast Asian Nations, or ASEAN, dates back to 1967 and was founded by Indonesia, Malaysia, Philippines, Singapore, and Thailand, with Brunei Darussalam, Viet Nam, Lao People's Democratic Republic, Myanmar, and Cambodia joining over the subsequent years. See ASEAN SME Working Group, 2015.

- **Strategic Goals:**
 - Promote Productivity, Technology, and Innovation
 - Increase Access to Finance
 - Enhance Market Access and Internationalisation
 - Enhance Policy and Regulatory Environment
 - Promote Entrepreneurship and Human Capital Development

Source: ASEAN, 2012b, 2012c.

Section 2. Analysis of MSME-Related Provisions in RTAs

This section provides insights on selected issues, as indicated in the analysis of trends of MSME-related provisions in RTAs, that are relevant to developing countries. It does so with a specific focus on discussions underway at the WTO. Issues are selected based on an analysis of the challenges faced by MSMEs and specific categories under consideration in the WTO context.¹⁵ These are: cooperation; access to information and transparency; good regulatory practices and the Small Business Lens principle; and specific areas of support for MSMEs such as trade facilitation, government procurement, e-commerce, intellectual property, and gender issues for women-owned/led MSMEs.

The provisions analyzed in this regard refer either directly or explicitly to SMEs/MSMEs. Aside from these specific MSME-related provisions, however, it is recognized that other RTA provisions may generate significant impact on MSMEs without explicitly referring to them. Emphasis will be on RTAs that involve developing countries, whereas references to North–North RTAs would be made to compare and contrast, thereby reflecting similarities, differences, and trends.

Cooperation

The most common form of MSME-related RTA provision is the cooperation clause, which could appear as a single provision or be found in the chapter on cooperation in respective RTAs. The majority of these cooperation chapters contain broad commitments to promote a favourable environment for the development of MSMEs, while most of the agreements that make explicit reference to MSMEs list this topic as an area for cooperation. A cooperation clause would otherwise appear in chapters covering specific issues such as government procurement or e-commerce.

As of May 2016, 92 out of the 271 RTAs under study include at least one provision on cooperation referring directly to MSMEs (Monteiro, 2016, pp.11–12). Although the structure of RTAs may vary, the language and wording used in the cooperation clause often appear in the form of: “[t]he parties recognize the importance of the participation of micro, small and medium enterprises in”¹⁶ Other phrases that can be used interchangeably with “recognize the importance” are “affirm the importance,” “work together to,” or “make the best effort.” Since parties to an RTA are generally encouraged to follow certain steps to support MSMEs, these provisions serve more like a declaration to show parties’ efforts in facilitating the participation of MSMEs in the global trading regime. The level of commitment also depends on whether the

¹⁵ See Schaap (2018).

¹⁶ For instance, the Colombia–Costa Rica RTA, the Pacific Alliance Agreement, the China–Singapore RTA, and the Gulf Cooperation Council (GCC)–Singapore RTAs.

provisions specify a number of cooperative activities and how detailed they are, or whether these just ask parties to recognize the important role of MSMEs in general.

In terms of content, provisions on cooperation may address cooperation issues not limited to MSMEs. For instance, the European Union–Southern African Development Community Economic Partnership Agreement (EU–SADC EPA) requires parties to cooperate in supply-side competitiveness which includes, among other objectives, “development of the private sector, improvement of the trade and business environment and support to small and medium enterprises in the fields of agriculture, fisheries, industry and services” (Article 13.3). The EU–Central America Association Agreement¹⁷ requires parties to cooperate in supporting the execution of trade and investment policy while bearing in mind, among other considerations, the development of rural and urban MSMEs and their representatives’ organizations (Article 41.2 (b) Social cohesion). They may list MSMEs as an area of cooperation without providing further elaboration, as seen in the Vietnam–Japan Economic Partnership Agreement and the Australia–Malaysia Free Trade Agreement, which identify SMEs as a field of cooperation in their respective cooperation chapters.¹⁸ They may include cooperation provisions in specific sectors, as seen in the FTAs between Canada and Honduras, Panama and Peru, or the EU and Japan. These each include detailed MSME-related provisions in the chapters on e-commerce, government procurement, or intellectual property,¹⁹ respectively. Finally, they can provide general provisions on cooperation for SMEs such as Article 17.9 on SMEs Cooperation in the Colombia–Korea Free Trade Agreement.²⁰

¹⁷ This Association Agreement dates back to June 2012, with the provisional application of its trade pillar taking effect from August 2013, on a provisional basis. The exact date varied depending on the Central American country involved. See European Commission (2020).

¹⁸ According to Article 16.2(3) of Chapter 16 – Economic and Technical Cooperation of the Australia–Malaysia agreement, “The Parties may include the following other areas of cooperation: ... 10. small and medium enterprises.”

¹⁹ In the Singapore–Chinese Taipei RTA, Article 13.1 on Intellectual property states: “Recalling the contributions achieved in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights, the areas of the cooperation may include: ... endeavouring to facilitate industrial property exploitation with each Party’s private sector industries, in particular small and medium enterprises”; Article 11.7 provides: “Recognising the global nature of electronic commerce, the Parties affirm the importance of: working together to promote the use of electronic commerce by small and medium enterprises....”

²⁰ Article 17.9- SMEs Cooperation of the Colombia–Korea FTA states: “Cooperation to facilitate SMEs: (a) designing and developing mechanisms in order to foster partnerships and the development of productive chains; (b) promoting cooperation between the economic agents of the Parties in order to identify areas of mutual interest and to obtain the maximum benefits possible of trade, investment, and small and medium-sized enterprises; (c) fostering more dialogue and exchange of information on mandatory procedures, enhanced access to trade promotion networks, business fora, business cooperation instruments, and any other relevant information for small and medium-sized enterprises exporters; (d) promoting training and exchange programs for small and medium-sized enterprises exporters of the Parties; (e) promoting exchange of experiences between the public agencies of the Parties on initiatives and policy instruments for the development of enterprises, with a special focus on small and medium-sized enterprises; and (f) encouraging public and private institutions related to small and medium-sized enterprises to cooperate in areas such as environmental management, ICT, nanotechnology, biotechnology, renewable energy, and other subjects of mutual interest.”

Box 5. Types of MSME-related RTA Provisions on Cooperation

The below listing is drawn from Monteiro's research in 2016.

- “Specific cooperation on SMEs” (53/271 RTAs)
- “Specific cooperation but not limited to SMEs” (33/271 RTAs)
- “General cooperation on SMEs” (33/271 RTAs)
- “General cooperation but not limited to SMEs” (23/271 RTAs)

Source: Monteiro, 2016.

An RTA may certainly include more than one type of cooperation provision, such as by providing for cooperation on SMEs in general and featuring other provisions encouraging cooperation in specific policy areas. Additionally, there are RTAs that further establish a joint committee, sub-committee (e.g., sub-committee of a trade committee²¹), or working group on SMEs. The latter could be in charge of, “inter alia, reviewing and discussing issues concerning the chapter on cooperation on SMEs, exchanging views and information on the promotion of SME cooperation, as well as identifying and recommending avenues of further cooperation” (APEC, 2019b). For example, the Colombia–Korea agreement, in its chapter on government procurement, not only includes a detailed clause on the participation of SMEs but also another provision on cooperation with explicit reference to MSMEs.²² Similarly, the CPTPP has a stand-alone chapter on SMEs and establishes a committee on SMEs that is tasked to assist SMEs in taking advantage of commercial opportunities developed by the CPTPP, sharing best practices and encouraging capacity building. The EU–Japan EPA provides for the creation of “SME contact points” in its specific chapter on SMEs.

Various issues and forms of cooperation have been proposed in RTAs to promote and support the activities of MSMEs, including, for instance, providing technical assistance and capacity building; strengthening institutional frameworks; promotion of transfer of both technology and knowledge and support to innovation, research, and development; and access to finance, promotion of diversification, and value addition.²³

Apart from these topics, issues relating to social cohesion, innovation, and growth, which would greatly benefit MSMEs with or without making explicit reference to them, are areas for cooperation highlighted in a number of RTAs. Particularly, in Article 42 – Employment and Social Protection of the EU–Central America Association Agreement, the parties agree to cooperate in order to, inter alia, “ensure decent work for all; create more inclusive and well-functioning labour markets”; “ensure the respect for the fundamental principles and rights at

²¹ Article 13.3 – Trade Committee of the EU–Colombia, Peru, and Ecuador RTA.

²² Chapter 14, Article 14.16 – Participation of MSMEs and Article 14.17 – Cooperation of the Colombia-Korea FTA

²³ For instance, Article 70- MSME of the Central America–EU RTA; Article 42 of the EU-Cameroon FTA

work identified by the International Labour Organization's Conventions” and “equal treatment between men and women”; and in particular, “stimulate job creation and entrepreneurship by strengthening the institutional framework to the creation of small and medium-sized enterprises and facilitating access to credit and micro-finance.”

Access to Information and Transparency

Improving transparency has received much attention from RTA signatories and/or parties. Admittedly, lack of information, access to information, or transparency of the business environment hinder MSMEs from taking advantage of the opportunities generated by RTAs. A survey conducted in 2015 in Indonesia pointed out that 63% of businesses (out of 200 SMEs) were not familiar with how to use FTA-related forms, therefore choosing not to use them when exporting their products. This was also one of the main reasons why several Malaysian SMEs did not use FTAs (ADB, 2015). Another class of businesses, i.e., informal enterprises, are in part incentivized to trade in an informal way because of procedural complexities and lack of information and transparency at borders. As a result, governments are deprived of customs revenue to a greater or lesser extent. These types of enterprises constitute a very large share of businesses in many countries, but “informal” trade is excluded from official trade statistics (ADB, 2015).

Acknowledging that MSMEs remain the backbone of many economies, the WTO's World Trade Report found a growing trend in RTA negotiations to include transparency-focused chapters, which also refer to “the interest of MSMEs.” Moreover, the WTO analysis found that these were not standalone chapters, but rather that the same RTA would also address transparency issues in other areas of the agreement, with the report giving as examples the chapter on technical barriers to trade (TBT) and even the chapter on SMEs (WTO, 2016). There can be two types of chapters/provisions in this regard: (i) transparency chapters/provisions promoting a more transparent business environment across all sectors covered by the RTA and hence for SMEs also without making explicit reference to them, and (ii) those fostering transparency and access to information specifically for SMEs. For the former, although the language of this chapter/provision varies depending on the RTA, the phrasing often involves requiring parties to provide “an efficient and predictable regulatory environment for economic operators, especially small ones,” including SMEs (Monteiro, 2016).²⁴ As to the latter, new-generation FTAs such as the CPTPP or EU–Japan include provisions promoting access to information for SMEs in their respective SME chapters. The Australia–Hong Kong RTA also has a specific provision on transparency for SMEs²⁵ (Article 16.6).

²⁴ Article 4.4 – Transparency of the Switzerland–China FTA reads: “Each Party shall consult its respective business community on its needs with regard to the development and implementation of trade facilitation measures, noting that particular attention should be given to the interests of small and medium-sized enterprises.”

²⁵ Article 16.6 on SMEs of the Australia–Hong Kong Free Trade Agreement.

Regarding its content, some transparency provisions may require RTA parties to simply give particular attention to the interests of small and medium-sized enterprises, while others elaborate specific steps to be taken to provide access to information, laws, and regulations for MSMEs.²⁶ In general, obligations to promote transparency and access to information for SMEs could be in the form of requiring parties to maintain their domestic arrangement on transparency, establish or maintain their available websites, and regularly review the information and links to the website to make sure they are up to date;²⁷ or asking them to cooperate, facilitate, and support the development of an MSME database.²⁸

As an example of a model provision, the EU–Japan EPA provides a detailed and comprehensive provision on information sharing, requiring parties to (a) establish or maintain their own publicly accessible website; (b) include in the website useful links to other websites of government authorities with respect to trading, investing, or doing business; (c) ensure the linked websites provide information relating to different areas such as customs legislation and procedures, intellectual property rights, technical, and sanitary and phytosanitary measures (TBT, SPS), business registration procedures, and taxes collected; (d) include in its own accessible website a link to an electronic database that is searchable by tariff nomenclature and other information on customs duties and charges; (e) review the information and links to make sure they are up to date; (f) ensure user-friendly information and endeavour to make information available in English; and (g) provide free access to information to persons of either party.²⁹

Specific Areas of Support

Important policy areas that take into account MSMEs' interests and make explicit reference to MSMEs in their respective chapters include trade facilitation, government procurement, intellectual property, and e-commerce. These topics are among the priorities set by countries when engaging in a trade agreement and deserve further analysis. It should be noted that references to North–North RTAs are made in order to reflect the most recent trends in these topics at the RTA level.

Trade Facilitation

Even though general provisions on efficient custom operations, transparency in advance rulings and customs procedures, and access to information on custom duties and charges would generally benefit MSMEs, provisions on trade facilitation in a number of RTAs across regions explicitly refer to MSMEs and thus take their interests into account. Through these efforts, MSMEs can benefit from reduced transportation costs and delays as well as lower transaction costs, which

²⁶ See: EU–Japan RTA, Article 20.2 – Information sharing vs. Article 4.4 of the Switzerland–China FTA.

²⁷ Article 16.6 – Transparency of the Australia–Hong Kong, China FTA.

²⁸ Article 42.2, EU–Cameroon: “Subject to the provisions of Article 36, the Parties agree to cooperate, including by facilitating support, in the following areas: ... (c) development of MSME databases.”

²⁹ Article 20.2, Chapter 20 on SMEs of the EU–Japan EPA.

then could make MSMEs more competitive in international markets. There are mainly two types of MSME-related provisions on trade facilitation: (i) specific clauses regulating, among other issues, customs legislation and procedures with direct reference to MSMEs; and (ii) clauses on trade facilitation included under cooperation or transparency in respective MSME-related provisions.

As a general obligation, for example, the EU–SADC EPA requires parties to ensure that procedures that allow companies the right to file appeals when dealing with customs and other administrative agencies are “easily accessible, including to small or medium enterprises, and create an environment for the effective enforcement of legislative requirements.”³⁰ Within the EU–Japan EPA, Article 4.6 on customs procedures provides that countries “shall work towards simplification of its requirements and formalities for customs procedures in order to reduce the time and costs thereof for traders or operators, including small and medium-sized enterprises.” Meanwhile, Article 4.4 of the Switzerland–China FTA refers to implementation of trade facilitation as an issue under transparency where parties shall give due attention to MSMEs; Article 24.1 of the CPTPP mentions useful information for MSMEs relating to customs legislation and procedures as an issue under information sharing. In addition, some MSME-related provisions on cooperation, even without referring to trade facilitation, list a range of trade-facilitating initiatives.³¹

Apart from the SME chapter, the CPTPP makes explicit reference to MSMEs under its Chapter 5 on Competitiveness and Business Facilitation. While the chapter provides for several initiatives to enhance SME participation in regional supply chains and to “promote seminars, workshops, or other [capacity-building] activities” with appropriate experts, it should be noted that the only paragraph referring directly to MSMEs is Article 5.7(f) (Comprehensive and Progressive Agreement for Trans-Pacific Partnership, 2018). This article provides for an exemption of customs duties for express shipments valued at or below a fixed amount (i.e., the *de minimis* threshold) set under each party’s law. Parties then have to review the “fixed amount” while taking into account, among other considerations, the rate of inflation, effects on trade facilitation, and impact on SMEs. There is not yet an agreed threshold for all members.

Government Procurement

Participation in government procurement by SMEs has been identified as a crucial element to fostering sustainable economic development and improving the business environment (Nicholas & Müller, n.d.). Governments have been working to include these provisions in their RTAs, either as separate provision(s) or as part of a chapter on government procurement. As a general rule, even though developing countries are generally not parties to the WTO’s Government

³⁰ Article 43.2.(d) – Customs legislation and procedures of the EU–SADC FTA.

³¹ For instance, Article 17.9 of the China–Republic of Korea FTA.

Procurement Agreement (GPA),³² GPA rules and principles are still incorporated in these RTA provisions, with or without the participation of developing countries in that agreement.

Box 6. Types of MSME-related RTA Provisions on Government Procurement

This box also summarizes Monteiro's analysis on such provisions.

- Exemptions/Flexibilities (38/271 RTAs)
- Cooperation (13/271 RTAs)
- Recognition/Affirmation/Agreement (8/271 RTAs)
- Institutional arrangement (8/271 RTAs)

Source: Monteiro, 2016

While Monteiro's analysis found four categories for procurement-related provisions, in terms of obligations rendered, these clauses could be put under two categories, namely exemptions and non-exemption types. The exemptions provide flexibilities that allow RTA parties to exclude programs aimed at supporting SMEs from the usual costly RTA obligation, while non-exemption provisions create obligations for countries to further promote or facilitate MSMEs' participation in the respective field.

Regarding the content, RTAs often include some provisions providing general obligations,³³ which are then followed by specific tasks to be undertaken to facilitate MSMEs' participation in covered procurement of this RTA.³⁴ The usual phrases such as "Parties to recognize," "Parties are encouraged," or "Parties affirm/agree to" have been used, thus couching the provisions in best-

³² Parties to the WTO GPA are: Armenia, Australia, Canada, European Union (including its 27 Member States: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden; and the United Kingdom), Hong Kong China, Iceland, Israel, Japan, Korea, Liechtenstein, Republic of Moldova, Montenegro, Netherlands with respect to Aruba, New Zealand, Norway, Singapore, Switzerland, Chinese Taipei, Ukraine, and the United States. Source: WTO (n.d.b).

³³ For instance, Article 13.20(1) of the USMCA between the United States, Mexico, and Canada specifies that "Parties recognize the important contribution that SMEs can make to economic growth and employment and the importance of facilitating the participation of SMEs in government procurement."

³⁴ For instance, Article 13.20(3): "To facilitate participation by SMEs in covered procurement, each Party shall, to the extent possible and if appropriate:

- (a) provide comprehensive procurement-related information that includes a definition of SMEs in a single electronic portal;
- (b) endeavour to make all tender documentation available free of charge;
- (c) conduct procurement by electronic means or through other new information and communication technologies; and
- (d) consider the size, design, and structure of the procurement, including the use of subcontracting by SMEs."

endeavour language. In terms of obligations, for example, the Peru–Japan EPA requires parties to develop concrete measures such as training and orientation programs for government personnel and suppliers, while giving special attention to small businesses in each party.³⁵ RTA members can also choose to provide special and differential treatment to MSMEs as in Article 6.8 of the Singapore–Gulf Cooperation Council RTA, which reads: “The Parties reserve the right to apply a ten percent (10%) price preference for the Small and Medium-Sized Enterprises (SMEs) in their respective countries.”

As previously mentioned, MSME-related government procurement clauses could be put in a chapter in which RTA parties establish a committee or sub-committee on government procurement (the Peru–Japan EPA established a sub-committee).³⁶ Within the framework of the CPTPP, Chapter 15 includes not only a provision promoting cooperation but also specific clauses for facilitation and setting up a procurement-focused committee under Articles 15.22, 15.21, and 15.23, respectively. The Committee on Government Procurement is then tasked with addressing issues relevant to the operation and implementation of Chapter 15 and especially making it easier for SMEs to take part in bidding for government contracts. Since the work of this committee will be reviewed and coordinated by another committee on SMEs established under Chapter 24, it appears that, within the CPTPP, efforts spent on this specific topic are considerably greater than for other policy areas such as e-commerce and intellectual property. In language similar to many provisions of CPTPP, the Additional Protocol of the Pacific Alliance also recognizes the importance of MSMEs, promotes transparency in providing preferential treatment for SMEs, and refers to MSMEs in relation to developing cooperation on government procurement.³⁷

E-commerce

The UN’s World Economic Situation and Prospects 2019 Report found that 88% (74 agreements) of total RTAs addressing e-commerce issues involve developing countries, and 37% (43 agreements) of these represent small developing ones (UN, 2019).

Out of the 271 RTAs counted in another study conducted by the WTO, the prevailing form of MSME-related RTA provisions on e-commerce (appearing in 13 RTAs) require parties to recognize, affirm, or work together to, for instance, facilitate the use of electronic commerce of MSMEs.³⁸ Other provisions focus on promoting cooperation among RTA parties to support MSMEs in overcoming obstacles when engaging in e-commerce, through research and training

³⁵ Similarly, the Peru–Australia FTA stipulates in its chapter on government procurement that Parties shall endeavour to “develop and implement, concrete measures for the cooperation, which may include training and orientation programs for government personnel or interested suppliers regarding such aspects as how to identify government procurement opportunities and how to participate in the respective government procurement markets. In developing such measures, special attention should be given to Small and Medium Enterprises (SMEs).”

³⁶ Article 166.3 of the Peru–Japan EPA.

³⁷ Article 8.21 and 8.22 of the Pacific Alliance.

³⁸ For example, Canada–Colombia, Canada–Honduras, Korea–Peru RTAs. Source: WTO, 2016.

activities,³⁹ or avoiding undue hurdles to digital trade.⁴⁰ As a general note, related provisions could be found as either separate clauses or being put under one stand-alone chapter on e-commerce (Monteiro & Teh, 2017). Some MSME-related e-commerce provisions are found under the cooperation clause, which also include other policy areas such as intellectual property and government procurement as well as information sharing.

For its content, there are provisions stipulating parties' general obligations to support MSMEs on e-commerce,⁴¹ while others specify some tasks to be taken (which is also the case in other areas such as government procurement). For instance, the Canada–Panama RTA specifies that both parties should endeavour to share information and experiences on laws and regulations relating to electronic commerce. Additionally, Article 13.3 of the EU–Colombia/Ecuador/Peru Trade Agreement stipulates that: “To the extent necessary and justified, the Trade Committee may establish a working group with the aim of performing, among others, the following tasks: recommending mechanisms to assist Micro and SMEs in overcoming obstacles faced by them in the use of electronic commerce.” It is, so far, the only agreement that involves its trade committee in supporting MSMEs on issues relating to e-commerce.

For an update on recent trends in RTA provisions on e-commerce in general, the CPTPP and the EU–Japan EPA are noteworthy cases. While the CPTPP follows the prevailing form of emphasizing the facilitation of e-commerce activities including data flows, the EU–Japan EPA tends to “put more consideration on consumer privacy and security” (UK Trade Policy Observatory, 2020, pp. 25–30). Both types of initiatives, which help reduce obstacles in the use of e-commerce, are meaningful for MSMEs. Within the CPTPP, moreover, for topics including e-commerce and intellectual property rights, each chapter contains an MSME-related provision to promote cooperation among parties in respective areas, but does not establish corresponding committees. Since these topics are not specifically included in the SME Committee's agenda as stipulated under Chapter 24 of this Agreement, it remains unclear how cooperation would be promoted in these areas.⁴² Conversely, the SME Committee established under the USMCA notably covers e-commerce.

Intellectual Property Rights

Arguing that protection of intellectual property rights can contribute to innovation, creativity, economic growth, and employment, many RTA negotiators have pushed to include intellectual property rights provisions into more recent agreements, many of which build on the WTO's Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS). These provisions

³⁹ For instance, the ASEAN–Australia–New Zealand FTA (AANZFTA).

⁴⁰ Canada–Colombia, Article 1502.2(e); other RTAs include EU–Central America or China–Singapore

⁴¹ Article 11.7 of the Singapore–Chinese Taipei reads: “Recognising the global nature of electronic commerce, the Parties affirm the importance of: working together to promote the use of electronic commerce by small and medium enterprises.”

⁴² See further at: UK Trade Policy Observatory, 2020, pp.15–25.

effectively based on the TRIPS Agreement aim at higher levels of intellectual property rights protection.

The number and type of MSME-related provisions on intellectual property vary widely across RTAs. There are provisions dedicated for intellectual property that require members to “[endeavour] to facilitate industrial property exploitation with each Party’s private sector industries, in particular small and medium enterprises,”⁴³ or provisions that refer to intellectual property as an area of cooperation, or that promote transparency.⁴⁴ Some provisions are formulated as a general obligation, others are couched in slightly firmer language, as in the Honduras–Peru agreement, which requires parties to exchange information and take other measures to foster IP-related development, especially when it comes to smaller companies.⁴⁵ Other agreements, such as the EU–Japan EPA, may establish a committee to further “[promote] the efficient and transparent administration of the intellectual property system, such as the utilization and commercialization of intellectual property rights for SMEs.”

Good Regulatory Practices and the Small Business Lens Principle

Good regulatory practices (GRP) are a set of practices to ensure efficient and effective regulation, which, on the whole, could influence the activities of MSMEs (WTO, 2019). GRPs include processes and administrative simplification, impact assessments, and stakeholder engagement. These are meant to improve the quality of the regulatory environment for business and citizens, while contributing to each party's ability to achieve its public policy objectives (including health, safety, and environmental goals) at the level of protection it considers appropriate.⁴⁶ The CPTPP and the EU–Japan EPA are among those recent RTAs that include a chapter on GRP, together with the newly ratified USMCA.

⁴³ Article 13.1– Intellectual property of the Singapore–Chinese Taipei FTA

⁴⁴ For instance, Article 16.6 – Transparency of the Australia–Hong Kong, China FTA

⁴⁵ The Honduras–Peru, Article 9.8 (1)b: “The Parties shall exchange information and material on education and dissemination projects regarding the use of intellectual property rights, in accordance with their national laws, regulations and policies, with a view to: ... (b) stimulate the creation and development of intellectual property within the territory of the Parties, particularly of small inventors and creators, as well as of micro, small and medium enterprises.”

⁴⁶ USMCA, Chapter 28, Article 28.2.

Box 7. The OECD Guidelines on GRP

The discussion of the Informal Working Group on MSMEs referred to the OECD Guidelines on GRP, whereby good regulatory practices are expected to:

- “1. Serve clearly identified policy goals, and be effective in achieving those goals
2. Have a sound legal and empirical basis
3. Produce benefits that justify costs, considering the distribution of effects across society and taking economic, environmental and social effects into account
4. Minimize costs and market distortions
5. Promote innovation through market incentives and goal-based approaches
6. Be clear, simple, and practical for users
7. Be consistent with other regulations and policies
8. Be compatible as far as possible with competition, trade and investment-facilitating principles at domestic and international levels.”

Source: WTO, n.d.a (INF/MSME/W/9)

The USMCA explicitly recognizes the importance of good regulatory practices to “reduce or eliminate unnecessarily burdensome, duplicative, or divergent regulatory requirements” and thus GRPs are “fundamental to effective cooperation” (USMCA, 2018).⁴⁷ To achieve these GRP objectives, the CPTPP recommends that parties conduct regulatory impact assessments (RIAs), though what these entail can vary.⁴⁸ In such a case whereby the impact on MSMEs is included as part of the Regulatory Impact Assessment, this subcomponent is called the Small Business Lens principle.⁴⁹ In essence, the Small Business Lens principle, being a part of GRP, takes into account MSMEs’ interests through measuring possible impacts of laws and regulations on these enterprises.

In this connection, it is worth noting that the Small Business Lens principle is likely to apply to women-owned MSMEs. Although there is no overall estimate, there is evidence that the distribution of women-owned enterprises by size is skewed toward the smaller end. According to the World Bank (Dassanou et al., 2014), women-owned (formal) enterprises are indeed smaller than male-owned, in terms of 1) higher share of sole proprietorships/individual entrepreneurs

⁴⁷ USMCA, Chapter 28, Article 28.2.

⁴⁸ CPTPP, Chapter 25, Article 25.5: “To assist in designing a measure to best achieve the Party’s objective, each Party should generally encourage relevant regulatory agencies, consistent with its laws and regulations, to conduct regulatory impact assessments when developing proposed covered regulatory measures that exceed a threshold of economic impact, or other regulatory impact, where appropriate, as established by the Party. Regulatory impact assessments may encompass a range of procedures to determine possible impacts.”

⁴⁹ WTO, n.d.

(54% vs. 39%); 2) total assets (the ratio of women- to men-owned enterprise assets is approximately 1:2.5); and 3) mean number of employees (40 versus 44).

Before the negotiation of the CPTPP or the EU–Japan EPA, a number of other agreements already included the Small Business Lens principle in their legal texts, mostly by countries in North America and South America such as Canada, Colombia, Honduras, and Peru. It could be a provision requiring the need to have input and views from MSMEs with respect to any working group recommendations as in Canada–Colombia, Chapter 20, Article 2001⁵⁰ or US–Colombia, Chapter 20, Article 1, and US–Peru, Chapter 20, Article 1. Otherwise, it could be in the form of requiring the assessment of RTA impacts on MSMEs. For example, Article 17.1, 3 (e) of the Honduras–Peru FTA reads: “The commission shall: review the impacts of the Treaty on the micro, small and medium enterprises of the Parties.” Similar language also appears in Costa Rica–Colombia, Panama–Peru, and Colombia–US agreements.

The recent trend on GRP and the Small Business Lens principle is embedded in, among others, the EU–Japan EPA and the newly signed USMCA. Within the EU–Japan EPA, there is Chapter 18 on Good Regulatory Practices and Regulatory Cooperation, in which Article 18.8.2 on impact assessment explicitly provides: “When carrying out an impact assessment, the regulatory authority ... shall establish and maintain processes and mechanisms under which the following factors will be taken into account: (c) to the extent possible and relevant, the potential social, economic and environmental impact...on small and medium-sized enterprises.” The language used here is slightly firmer than that under USMCA, where Article 28.11.1 on regulatory impact assessment asks that each party “should encourage the use of regulatory impact assessments in appropriate circumstances when developing proposed regulations that have anticipated costs or impacts exceeding certain threshold.” The provisions are formulated in a more detailed manner reflecting the possibility of increasing regulatory inclusion for MSMEs.

⁵⁰ Canada–Colombia, Chapter 20, Article 2001: “The Parties hereby establish a Joint Commission, comprising cabinet-level representatives of the Parties, or their designees. The Commission may review the impacts, including any benefits, of this Agreement on the small and medium-size businesses of the Parties (...) and make relevant recommendations to the Commission, including working plans focused on the needs of small and medium-size businesses.”

Section 3. Gender and MSMEs in RTAs

In recognition of the importance of promoting gender equality in the context of trade, countries have included gender-related provisions in their RTAs, a trend that has steadily increased since the 1990s (Hughes, 2019). As a preliminary note, an RTA may address either MSMEs' concerns or gender issues or both, yet these matters are usually not under the same chapter or not in relation with each other. Put differently, MSME-related chapters/provisions generally facilitate the participation of MSMEs without making explicit reference to those that are owned or led by women. Likewise, gender-related provisions often aim to enhance women's economic empowerment and participation in the global economy without referring directly to MSMEs.

For the sake of clarity, we may have two separate types of MSME-related and gender-related RTA provisions, but not specific provisions for women-owned/led MSMEs, even though these could interact if an MSME is owned or led by women. In other words, gender-related provisions may refer to gender issues in general, not necessarily in an MSME or women-owned MSME. RTA provisions, however, may potentially be relevant to gender issues without explicitly referring to gender.

Generally speaking, the approach to gender-related provisions in RTAs is standard and broadly aligned with the MSMEs-related provisions. As noted by Monteiro (2018), the number of RTAs that contain gender-related provisions is limited (74 RTAs out of 573 under study with explicit provisions on gender issues, as of 2018) while most of these clauses are couched in best-endeavour language. For example, Article 47 – Gender under Title III, “Social Development and Social Cohesion” of the EU–Central America Association Agreement provides that, among other considerations, “Cooperation shall promote the integration of the gender perspective in all the relevant fields of cooperation”; “Cooperation shall also help to facilitate equal access of men and women to all services and resources allowing them to fully exercise their fundamental rights”; and “Particular attention shall be given to programmes addressing violence against women, in particular through prevention,” all couched in best-endeavour language.

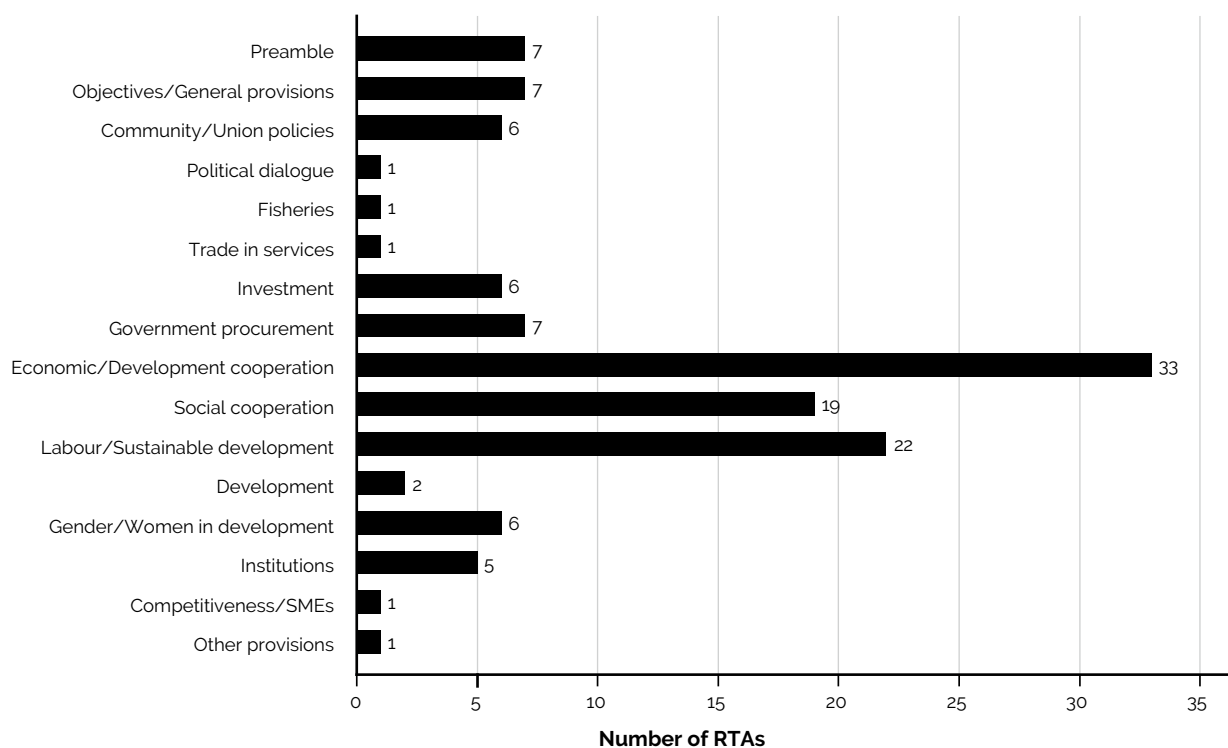
It should be noted that MSME-related provisions use varying terminology to refer to gender issues embedded in RTAs. These include gender (in 46 RTAs), women/woman (in 43 RTAs), maternity/mother (15 RTAs), female (10 RTAs), sex (13 RTAs), women and girls (3 RTAs) or even pregnancy/pregnant (5 RTAs) (Monteiro, 2018, p. 17). Additionally, there are provisions that could be relevant for gender issues since they implicitly refer to gender equality through language that calls for parties to “enhance and enforce basic workers' rights,”⁵¹ or even address human rights and labour discrimination in a more generalized way.

In terms of form, gender-related clauses could be enumerated as separate provisions or could be featured in a dedicated chapter on gender, annexes, or side agreements. Of these, the most common type is still the cooperation provision in gender and gender-related issues, such as

⁵¹ Preamble, Canada–Chile FTA.

those that relate to labour or public health (see Figure 2). For instance, Annex 16.5 of Central America–Dominican Republic FTA (CAFTA-DR) provides that the Labour Cooperation and Capacity Building Mechanism may “initiate bilateral or regional cooperative activities” on labour issues. These include gender issues and the elimination of employment-related and occupation-related discrimination. On the same topic of labour, the Canada–Chile FTA requires its council to promote cooperative activities between the two sides, such as on workplace equality and equal pay.⁵²

Figure 2. Location of gender-related provisions in RTAs



Source: Reprinted from Monteiro, 2018.

Some RTAs, such as the Canada–Chile, Chile–Argentina, or Canada–Israel FTAs, dedicate a chapter to gender issues. Apart from some general provisions acknowledging the contribution of women’s enhanced participation to sustainable and inclusive growth, parties to these FTAs affirm the need to implement the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), along with other gender-related accords that they are party to. In addition, parties also undertake to develop programs for cooperation activities to enable women to have access to and fully benefit from the opportunities created under each of these FTAs. Areas of cooperation include promoting female entrepreneurship, advancing women’s leadership, and developing women’s networks, capacity building, and skills enhancement. Other areas include advancing care policies and programs with a gender

⁵² Annex 1, Agreement on Labour Cooperation of the Canada–Chile FTA.

and shared social responsibility perspective.⁵³ The Canada–Chile FTA provides for the establishment of a Trade and Gender Committee composed of representatives from each party, which would be responsible for organizing and facilitating the cooperation activities listed.⁵⁴ Meanwhile, the Canada–Israel FTA is the only agreement so far where the parties can use, “by consent,” the deal’s dispute settlement chapter.⁵⁵ Undoubtedly, the inclusion of a dedicated chapter on trade and gender in RTAs is remarkable and considered a milestone in the evolution of gender-related provisions. Yet their effectiveness remains to be seen and evaluated, as all three FTAs reviewed here have only recently entered into force.

With respect to their content, gender-related chapters/provisions address gender equality between men and women in general, or refer specifically to female workers, business owners, and female entrepreneurs. For example, Article 23.4 on women and economic growth of the CPTPP refers directly to both workers and business owners and Chapter N bis of the Canada–Chile FTA mentions female entrepreneurs. That latter chapter is devoted to trade and gender. Yet, even so, these gender-related RTA provisions do not make any reference to MSMEs in general, or MSMEs led or owned by women in particular.

⁵³ Chapter N *bis* of the Canada–Chile FTA; Chapter 15 of the Chile–Argentina FTA; and Chapter 13 of the Canada–Israel FTA.

⁵⁴ Article N *bis*-04, Canada–Chile FTA.

⁵⁵ Article 13.6 of the Canada–Israel FTA.

Section 4. MSME References in WTO Agreements

Several WTO agreements make reference to the needs of smaller companies, either explicitly or implicitly. Some of the WTO's plurilateral agreements and work programs do as well, along with the institution's technical cooperation efforts. Many of the initiatives were made in response to the call to level the playing field for SMEs and thus promote global trade inclusiveness.

MSMEs are not an entirely new issue, since certain WTO agreements, work programs, and policy initiatives explicitly address them.⁵⁶ For instance, Article 6.13 of the Anti-Dumping Agreement (ADA) reads: "The authorities shall take due account of any difficulties experienced by interested parties, in particular small companies, in supplying information requested, and shall provide any assistance practicable." Similar language can also be found in the Subsidies and Countervailing Measures (SCM) Agreement,⁵⁷ as well as in the more recently adopted Trade Facilitation Agreement (TFA).⁵⁸

General Agreement on Trade in Services (GATS)

As mentioned, the legal text of the GATS does not make any reference to MSMEs, even though the modes of supply (i.e., Mode 1 on cross-border trade, Mode 3 on commercial presence, and Mode 4 on presence of natural persons) may directly affect MSMEs when engaging in international trade in services.

For instance, as Adlung and Soprana (2012) note, restrictions on cross-border trade (Mode 1) mean that larger firms may have an easier time in setting up a "permanent presence" overseas relative to their smaller counterparts, who may also struggle with establishing "commercial presence" under Mode 3 if they can only do so by setting themselves up as local corporations. Other measures that can be assumed to have similar effects include "minimum capital requirements, training obligations, residency requirements, and the granting of subsidies to domestic SME suppliers only."⁵⁹ Since Mode 4 refers to natural persons (i.e., individuals, professionals, or the self-employed) restrictions on this mode of supply may affect MSMEs adversely.

MSME-related provisions can be found in Members' schedules of commitments, which remain an integral part of their services commitments within WTO. For instance, Caribbean countries reserved "a number of small business opportunities for nationals" in the market

⁵⁶ For a more detailed analysis please refer to Leal Campos et al.(2020).

⁵⁷ Article 6.13 of the ADA and Article 12.11 of the SCM Agreement.

⁵⁸ Articles 3.9(d) and 7.7.2(b) of the Agreement on Trade Facilitation (WTO, 2017a).

⁵⁹ World Trade Report, 2016, p. 90.

access column and on a horizontal basis in their schedules of commitments. On that basis, their governments can protect their MSMEs by raising barriers under Article XVI of the GATS on market access for other large firms to penetrate their domestic market.⁶⁰ Also, for national treatment limitations, Mexico reserved the right to provide government support for research and development only for locally owned “small service enterprises”—without further defining the term (See Rensmann, 2017).

Non-Tariff Barriers

Non-tariff barriers (NTBs) encompass a range of behind-the-border measures, such as quantitative restrictions/quotas, or import licensing systems, along with technical barriers to trade, and sanitary and phytosanitary measures, to name a few. These can make it more challenging for companies to engage in trade, especially smaller ones (Fliess & Busquets, 2006). The OECS/APEC survey states that SMEs are less affected by “arbitrary tariff classification and unfavourable quotas or embargoes” (OECD, 2008), though the degree that such measures affect SMEs depends on how much they are integrated into international markets. It should also be noted that MSMEs, either in OECD or developing countries, often find it difficult to utilize the intellectual property protection and enforcement system of another country. Even if trade-restrictive impact generally depends on the size of the exporters, restrictive health, safety, technical standards, or procedures that are more burdensome than necessary are further barriers restricting participation of SMEs.

For intellectual property rights, technical barriers to trade, and sanitary and phytosanitary measures, the respective WTO agreements tasked with those subjects do not provide an explicit reference to MSMEs. As a general obligation, for instance, the WTO’s Agreement on Technical Barriers to Trade (WTO, 2014) aims to “ensure that technical regulations, including packaging, marking and labelling requirements, and procedures for assessment of conformity with technical regulations and standards do not create unnecessary obstacles to international trade,” which certainly benefits MSMEs as well.⁶¹ Meanwhile, the TRIPS Agreement allows WTO Members “to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of [the] Agreement.”⁶² Accordingly, discussions have been triggered at the WTO on how to support MSMEs using IP-related initiatives.

Trade Facilitation Agreement

The Trade Facilitation Agreement (TFA) was concluded at the 2013 WTO Ministerial Conference and entered into force on February 22, 2017, after two-thirds of the WTO’s 164

⁶⁰ See further at: Adlung and Soprana, 2012, p. 45.

⁶¹ WTO, 2014, Preamble.

⁶² WTO, TRIPS, Article 8.

Members ratified it and deposited their instruments of acceptance with the WTO Secretariat. The TFA applies to those WTO Members that have ratified it (WTO, 2017a).

The TFA makes explicit reference to SMEs under two specific circumstances, as stipulated under Articles 3(9) and 7(7.2). In Article 3(9), the TFA explicitly recognizes the challenges encountered by SMEs and requires Members, when requested to make an advance ruling, to provide less restrictive requirements while particularly considering the specific needs of small and medium-sized enterprises. These requirements must be “clear and transparent and not constitute a means of arbitrary or unjustifiable discrimination” (WTO, 2017a).⁶³ Article 7(7.2) requires Members to not restrict the participation of small and medium-sized enterprises as authorized operators, to the extent possible.

In addition, other TFA provisions may generate positive impacts toward MSMEs, without directly referring to these enterprises. These include Article 1 on the operation of an enquiry point to reduce information asymmetries, or Article 3, which provides traders with the opportunity to comment on the proposed laws and regulations relating to the “movement, release, and clearance of goods, including goods in transit” (WTO, 2017a).

The articles of particular importance for SMEs are Article 6.13 in the ADA and Article 12.11 in the SCM Agreement, both of which make explicit reference to small enterprises. Article 6.13 reads: “The authorities shall take due account of any difficulties experienced by interested parties, in particular small companies, in supplying information requested, and shall provide any assistance practicable.” However, these provisions have not received much attention in practice, partly because it remains unclear how to understand a Member's obligation to “take due account of any difficulties,” and what kind of special treatment or support schemes should be provided with respect to small companies. As Potschke (2017) observes, the overall functioning and effects of Article 6.13 of the ADA remain obscure, and the interpretative effect of Article 6.13 of the ADA applies only to the procedural aspects of an anti-dumping investigation, rather than to the actual determination of whether or not to apply dumping duties.

Using the same language as the ADA, the SCM Agreement's Article 12.11 on Evidence requires Members to “take due account of any difficulties” of parties, including small companies.

Government Procurement Agreement

The revised version of the WTO's plurilateral GPA refers directly to SMEs in its final provisions under Article XX, which requires the committee established under this agreement to undertake further work to facilitate the implementation of the Agreement through the adoption of work programs that address SME-related issues, among others.

To conclude, while there may be references to SMEs/MSMEs within existing WTO agreements, the WTO has not yet systematically embraced the challenge. The approach to date has been

⁶³ Article 3(9)d, TFA.

piecemeal and has focused selectively on exemptions for the protection of domestic SMEs, taking SMEs' interest into account, or giving particular consideration or attention to SMEs, rather than fostering their integration into the global trading system (European Commission, 2015, pp. 27–28).

Section 5. Other Activities in the WTO Since the Eleventh WTO Ministerial Conference

Several WTO Members have, undoubtedly, made efforts to further facilitate the participation and integration of MSMEs into the international trade framework through, for instance, activities initiated by the group of “Friends of MSMEs.” Of note in this regard are several Joint Statement Initiatives (JSIs) adopted by subsets of WTO Members at the Eleventh WTO Ministerial Conference in Buenos Aires, Argentina, in 2017. This section briefly touches upon MSME aspects of the JSIs on investment facilitation and on e-commerce, as well as on the Declaration on Trade and Women’s Economic Empowerment. A related paper published under this project addresses the history of the JSI on MSMEs in detail.⁶⁴

Investment Facilitation

The Joint Ministerial Statement on Investment Facilitation for Development involves at least 100 WTO Members as of early 2020 (Baliño et al., 2020). Participants in those discussions are working toward a multilateral framework on investment facilitation, with the objective of presenting a concrete outcome toward that framework at the Twelfth WTO Ministerial Conference (MC12). Some participating WTO Members showed interest in addressing MSME issues under a dedicated section within the framework that deals with cross-cutting issues. Others said there was no need to have separate provisions for MSMEs since the elements under discussion (for example, availability of information) were “relevant for all enterprises across sectors and regardless of their sizes.” At the same time, other Members were of the view that further consideration is needed for the inclusion of MSME issues within a multilateral context.⁶⁵ Regarding the fees and charges that are of particular importance for MSMEs investing abroad, the current view is that these should be reasonable, transparent, and not in themselves a restriction to investment.

E-commerce

E-commerce is, undoubtedly, becoming more important in business strategy and economic development. This is, however, also where MSMEs are facing many challenges that could hinder their participation, including the requirement for the initial investment to adopt new technology, maintain a certain security level for e-transactions and respect privacy, and other factors such as information and communication technology (ICT) infrastructure or digital literacy of both producers and users.

⁶⁴ Leal Campos et al., 2020.

⁶⁵ WTO, n.d., pp. 2–3.

The Joint Statement on E-commerce (WTO, 2019) was adopted during the WTO's Eleventh Ministerial Conference in 2017, with signatories launching exploratory work in preparation for related negotiations. The statement refers to the particular circumstances involving developing countries, least developed countries (LDCs), and MSMEs. After a year of exploratory work, negotiations were launched in early 2019.

MSME-related issues have been raised in the JSI process through communications by participating members. For instance, the EU proposes (in INF/ECOM/10) a provision for “ensuring that national legal systems allow contracts to be concluded by electronic means, and that legal requirements for contractual processes neither create obstacles nor result in such contracts being deprived of legal effectiveness”, since legal certainty that electronic contracts will be recognized is necessary to assure companies, especially SMEs (WTO, 2018c, para. 2.1). Meanwhile, Singapore is promoting the use of paperless trading in trade facilitation as well as making available electronic versions of trade administration documents to the public,⁶⁶ and New Zealand is proposing the use of e-invoicing to ensure timely payment of invoices since it is a critical issue for business, in particular SMEs.⁶⁷

Gender

To date, the Buenos Aires Declaration on Trade and Women's Economic Empowerment remains an important instrument to discuss promoting the participation of women in trade (WTO, 2018a). The declaration (INF/ECOM/10), also from the 2017 ministerial, marked the first time in history that various WTO Members and Observers endorsed collectively a text that sets out “the key role that gender-responsive policies can play in achieving sustainable socioeconomic development” (WTO, 2017b). However, the Declaration provides a global approach to the issues at hand, and thus concrete initiatives need to be further developed, especially at the national level, to connect and support businesses, especially MSMEs, owned or led by women in cross-border exchange of goods and services (WTO, 2018a).

Programs of work under WTO-sponsored initiatives and organizations, i.e., the Aid For Trade initiative, the Enhanced Integrated Framework, and the International Trade Centre (ITC) as the joint UN-WTO agency, all contain a focus on women-owned MSMEs and thus provide various practical examples of what can be done.

⁶⁶ INF/ECOM/6, Annex A, paras. 1.1–1.3 (WTO, 2018b).

⁶⁷ INF/ECOM/2 (WTO, 2019).

Taking the MSME Agenda Forward

In recognition of the growing importance of MSMEs for economic growth, social inclusion, women's empowerment, and employment generation, related provisions and initiatives have been included under a growing number of RTAs, as well as in the WTO context. While the regulatory approach within the WTO has generally been piecemeal and selective, analysis of trends of MSME-related RTA provisions shows a wide range of issues being covered and with a deeper level of commitments.

Even though parties to RTAs have tried to make it easier for MSMEs to integrate themselves into the international trading system, their provisions are mainly couched in best-endeavour language following a soft regulatory approach. Some RTAs provide for the establishment of a committee/ sub-committee on SMEs, yet the scope of activities remains limited mostly to providing information and cooperation.

Moreover, the fact that the trade-related chapters on SMEs are often not subject to dispute settlement means that these RTAs allow considerable freedom to implement the obligations in the manner suitable to the specific situation and level of development in each party. Since the implementation of these provisions depends on the discretion of the country, their effectiveness remains to be seen and evaluated through, for instance, comprehensive analysis assessing the practical impacts of MSME-related RTA provisions upon MSMEs themselves. It is also worth noting that even though developing countries are increasingly interested in stipulating MSME-related provisions in their RTAs, developed ones such as the EU, Canada, and Japan have embraced some of the most advanced MSME-related provisions to date in their RTAs.

RTA provisions are certainly the results of negotiations of WTO Members at the regional level, and they thus reflect some Members' trade interests. Hence, these provisions have the potential to become the basis for further discussion within the WTO framework. Taking this into account, possible approaches for coherently taking the MSME agenda forward in the JSI and RTAs can include the following:

- Widening the scope of provisions of interest to MSMEs in, for instance, trade facilitation, government procurement, e-commerce, and intellectual property rights, while acknowledging that provisions or initiatives are most likely couched in best-endeavour language.
- Promoting transparency, access to information, and regulatory inclusion following GRP for MSMEs through different channels, at the national and international levels.
- Sharing best practices and cooperation among countries to promote trade by MSMEs, particularly on ways to facilitate MSME exporters' access to foreign markets.
- Specifically addressing the gender aspect in the context of MSMEs.
- Gradually enhancing the level of MSME-related provisions through firmer language.

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