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Bridging Distance for Development: Regulatory Cooperation Applied to Consumer Rights, Parcel Delivery and Sales Tax

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Abbreviations and Acronyms

CESL	Common European Sales Law
EAC	East African Countries
EU	European Union
FTA	free trade agreement
GVC	global value chain
ICT	information communication technology
IRC	international regulatory cooperation
MNE	multinational enterprise
MR	mutual recognition
MSME	micro, small, and medium enterprise
OECD	Organisation for Economic Co-operation and Development
SDG	Sustainable Development Goal
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
VAT	value-added tax
WTO	World Trade Organization

Abstract

This paper examines the need to encourage more widespread and inclusive participation of micro, small, and medium enterprises in global markets as a component of the Sustainable Development Goals. It puts forward recommendations on how international regulatory cooperation can take a central role in facilitating Internet-enabled trade.

1. Introduction

Last year's trade report by the World Trade Organization (WTO) focused entirely on micro, small, and medium enterprises (MSMEs) and how to encourage more widespread and inclusive participation in global markets (WTO 2016). The reason for this is very simple: while most countries' enterprise populations are dominated by MSMEs, they remain underrepresented in trade despite internationalisation being central to a firm's productivity, growth, and survivability. Increasing small business trade participation across the world is central to the Sustainable Development Goals (SDGs) of the United Nations (UN). Particularly relevant in this context are goals 8 on sustained, inclusive, and sustainable economic growth and goal 10 on reducing inequality between and within countries.

Small businesses making up about 90 percent of most countries' enterprise populations; hence, they are numerous. Therefore, to successfully achieve the goal of increased trade participation by small businesses, it will be necessary to take into account trade models that can support huge numbers of firms. One such model is the platform-based strategy to internationalisation.

Already today, micro and small firms, in particular, are leveraging the online commerce platform to build truly global customer bases on their own terms. Platform-enabled trade is distinct to both traditional trade and global value chains (GVCs) in that it allows for independent internationalisation, directly involves consumers, and supports small business trade participation on a large scale. This is a trade model that is inclusive to firms irrespective of their place of operation. Our research finds that the online commerce platform enables internationalisation in both emerging and advanced economies as well as across countries.

International regulatory cooperation (IRC) should have a central role in facilitating this type of trade. Internet-enabled trade flows are global and dynamic: the platform-based strategy to internationalisation allows firms to reach on average about 30 different countries and to flexibly adapt to changes in demand and macroeconomic fluctuations. More than ever will we need solutions that bridge regulatory differences on a multinational level.

This paper argues that a key objective of IRC should be to promote sustainable development. This requires IRC mechanisms that support and complement the way the online commerce platform reduces the negative effect of distance in international transactions for small businesses and consumers. This paper puts forward suggestions for how traditional concepts of IRC could be applied to areas that raise or impose costs on Internet-enabled trade: diverging consumer rights, costly and opaque parcel delivery services, and sales/consumption taxes on distant sales.

2. Small Business Participation in Trade

2.1. Traditional Limitations

Traditional ways of trade — intra-enterprise and arm's length trade — have been largely closed to micro and small enterprises, owing to the costs associated with long-distance transactions. Small businesses are usually less equipped to deal with challenges, such as access to market information, locating customers, and complying with foreign laws than larger firms with greater financial and human resources (European Commission 2010).

In terms of opening opportunities for small traders, policy discussions have, therefore, turned to GVCs as a promising way for MSMEs to benefit from internationalisation. GVCs have emerged from the globalisation of the activities that lead a product from conception to market. It is mostly large multinational enterprises (MNEs) that organise and lead GVCs, with MSMEs contributing as intermediary suppliers. The supposed benefit is MSMEs accessing global markets, at low cost, via MNEs (OECD 2008). The scale of this model is thus limited.

This GVC model of MSME trade might also create economic dependence and power imbalances between the supplying MSMEs and the lead MNE. These downsides may be aggravated during a macroeconomic dip as large retailers and producers may lower their purchases with severe financial consequences for the dependent MSME supplier (UNCTAD 2010). An economic crisis could create a domino effect within GVCs as well as affect the whole national economy where those MNEs account for a considerable portion of the country's economic output (European Commission 2015).

2.2. Independent Internationalisation

By basing their operations on an online commerce platform, small firms can overcome the traditional costs of expanding geographically and internationalise on their own terms. They adopt a platform-based strategy to direct participation in world trade.

For instance, across the EU's 28 member states, 93 percent of eBay commercial sellers[1] (predominately micro-sized firms) serve foreign markets, reaching on average 18 different countries in a year (eBay 2015). 40 percent are truly global, selling into four or more different continents. This is not specific to Europe. For example, across 18 countries, covering the Americas, Europe, Africa, Asia, and Australia and both emerging and advanced economies, eBay commercial sellers leverage the online commerce platform to reach on average 27 different countries. In emerging countries, eBay is used as a pure export platform, with the majority serving four or more continents and, for instance, commercial sellers in Thailand reaching as many as 46 different countries on average in a year (eBay 2016a).

The realities of these firms differ, but they all view the online platform as a tool to broaden their customer bases, both nationally and internationally.[2] The platform is part of a strategy to internationalise and reach customers worldwide. While some firms specifically target certain markets, many pursue a truly global strategy, focusing on customers rather than countries.

[1] Commercial sellers are firms with more than US$10,000 in annual sales on the eBay Marketplace. All research by the eBay Public Policy Lab is based on data limited to transactions by commercial sellers to ensure the community of small commercial enterprises on eBay is properly captured. The Policy Lab's research is available at: http://www.ebaymainstreet.com/lab

The corollary is that firms will be serving customers in both unforeseen and large number of markets.

This type of independent internationalisation entails a great degree of adaptability in terms of responding to changes in demand. For example, during the recent economic and financial crisis, companies in general attempted to rebalance their export destinations in response to a significant decrease in demand within Europe (European Commission 2016). Large firms were more adaptable and flexible than smaller-sized firms, expanding their exports outside the European Union (EU) exports by 26 percent over the period 2009 to 2013. However, EU eBay commercial sellers (the majority of which are micro-sized) proved by far the most adaptable, increasing their share of extra-EU exports by 52 percent (eBay 2016b).

2.3. Consumer-Driven Trade Flows

The online commerce platform is used to execute a business strategy of serving customers globally. This, of course, includes investments and efforts to reach customers in specifically targeted countries. However, as Lendle and Vezina (2015) show, the destination of platform-enabled trade is also the result of action by the consumer and made possible by the global visibility of the online commerce platform.[3] The finding presented above on how eBay commercial sellers were more adaptable in terms of changing their export destinations in response to changes in demand is a good illustration of these more consumer-driven trade flows.

[2] Profiles of three sellers to illustrate: https://www.youtube.com/watch?v=RBvH2eCdADM&feature=youtu.be

[3] Lendle and Vezina apply a "balls-and-bins" statistical model that predicts firm-level export patterns to various destinations, finding that platform-enabled trade displays a higher degree of "randomness" than traditional trade.

In this manner, online commerce has "propelled consumers to the forefront of international trade" (UNCTAD 2017). For the first time, consumers have a direct role to play in trade, and this makes consumers an actor in achieving the SDGs through the choices they make. The consumer's role in shaping trade through purchasing choices is recognised in the policy roadmap recently presented by "Friends of E-Commerce for Development." The roadmap pledges to promote trust and certainty for consumers and businesses at home and across borders, which includes supporting an "underlying environment for consumer protection."

3. Technology Lowering Trade Costs

The World Economic Forum has remarked that platform-based online commerce has opened new export avenues and facilitated access to low-cost imported inputs for many small businesses (Dadush, et al. 2016). This is the result of how the online commerce platform reduces the negative effect distance has on international commerce in general and on small retailer internationalisation in particular.

Economic research has long found that trade decreases with distance: a 10 percent increase in the geographical distance between trading partners reduces international trade by about 15 percent to 20 percent. Applying this kind of regression analysis to international transactions over the eBay Marketplace presents a very different picture (Lendle et al. 2015). For example, analysing the effect of distance on eBay cross-border transactions worldwide, we found that a 10 percent increase leads to a drop in transactions of 3 percent (eBay 2014). The same analysis covering the 28 EU countries suggests a reduction by 4 percent (eBay 2015).

Distance has less of a negative effect on platform-enabled trade, owing to the way the online commerce platform helps overcome some traditional trade issues, like uneven access to information and difficulties in matching supply and demand. It reduces "many non-tariff barriers to trade, most importantly information" (Dadush, et al. 2016) through the services it provides sellers access at low cost: marketing, information, communication channels, and dispute resolution. The WTO concludes that those enterprises that leverage the online commerce platform are benefiting the most from the information communication technology (ICT) revolution, because they profit from, inter alia, enhanced buyer information and trust (WTO 2016).

4. Regulatory Cooperation for Development

The previous sections have described how the online commerce platform supports trade by small firms by reducing trade costs related to visibility, information, and communication. The platform-based trade model is capable of supporting a large number of firms, and it reaches firms in remote and underprivileged locations. Facilitating this type of trade, and supporting its potential as a development tool, through IRC boils down to identifying IRC mechanisms that can further reduce the costs of platform-enabled trade, in particular, for enterprises in developing countries.

4.1. Target Areas

In terms of reducing the negative effect of distance on international transactions, research suggests that free trade agreements have a greater impact on traditional trade than on platform-enabled trade (Lendle et al. 2016; eBay 2016). At the same time, participation in a common market appears to have a positive impact on platform-enabled small business exporting. We have found that membership in the EU increases cross-border trade on the eBay Marketplace than for offline trade (eBay 2012). Our studies of cross-border commerce on the eBay Marketplace also suggest that a country's process of joining a common market has a positive effect on platform-enabled small business trade (eBay 2012).

This implies that deeper regulatory cooperation, among a block of countries, may positively impact small business trade participation. When it comes to the subject-matter of such cooperation, the very nature of platform-enabled trade provides guidance:

- Our research has confirmed that shipping costs are more of an impediment to Internet-enabled trade than traditional trade. Shipping costs tend to represent a larger share of the value of Internet-enabled transactions, as these are individual parcels shipped directly to the consumer and not mass quantities. We have found the trade-reducing effect of shipping cost to be about four times larger for transactions over an online commerce platform compared with traditional trade (Lendle et al. 2016; eBay 2012).

- With the consumer "propelled to the forefront of trade," ensuring consumer confidence, buying online from foreign traders becomes a form of trade facilitation (Meltzer 2014). The following then constitute examples of the new trade barriers: consumers feel more confident buying online domestically than cross-border (Eurobarometer 2015); have limited knowledge of online consumer rights; and distrust their governments protecting online consumer rights (ConPolicy 2017).

In sum, IRC mechanisms aimed at facilitating trade participation at scale and in particular flows from developing countries should (i) be capable of covering any country or at least a block of countries; (ii) support the way technology solutions currently reduce trade costs, such as in the area of visibility, communication, and trust building; (iii) address those areas where trade costs remain high for Internet-enabled trade, such as delivery; and (iv) target costs that affect the competitiveness and attractiveness of remote traders.

4.2. Recommendations

Here are three recommendations for IRC measures focused on platform-enabled trade as a tool for development.

4.2.1. Standardisation of consumer online rights

Online commerce platforms provide functionalities that allow the buyer and the seller to trust each other as well as the transaction, owing to instance rating and recommendation systems, dispute resolution processes, and guarantees. One interesting lesson here is how a system of rules, running in parallel to (and complementing) applicable national laws, can create a foundation of trust for transactions.

This understanding provided a basis for the European Commission's proposal in 2011 for a so-called Common European Sales Law (CESL). The proposal was to offer an optional law that a trader and a consumer could, on a case-by-case basis, agree to govern their cross-border transaction. This would be an instrument separate from both the trader's and the consumer's national laws (OECD 2014). The aim is to overcome divergences or gaps in consumer protection laws and thereby reduce complexities for firms and strengthen consumer trust in cross-border commerce.

The rationale for this type of parallel instrument is twofold:

1. Complete harmonisation of national laws has proved extremely difficult. The Organisation for Economic Co-operation and Development (OECD) has therefore suggested that modern regulatory cooperation should instead be about finding flexible options to manage cross-border interactions (OECD 2013). The proposed parallel instrument would be the choice of the trader and the consumer.
2. UNCTAD's mapping of the state of e-commerce legislation revealed that of the 125 countries for which data exists, 97 have adopted consumer protection legislation related to e-commerce (that is only 50 percent of all 194 member countries).[4] The proposed parallel instrument could fill a gap and offer inspiration for designing national laws.

The OECD 2016 Recommendation on Consumer Protection in E-Commerce should be a starting point for developing this instrument, an exercise that could be carried out for example, by UNCTAD. The final text would then be available for countries to sign and treat as national law: it would become a second legal regime within the national law of those countries. Businesses and consumers in countries that have adopted the instrument could then voluntarily agree to base a cross-border transaction on it — instead of the applicable national law(s).

Furthermore, the instrument itself could amount to a framework for further cooperation in the area of consumer policy (Ahmed and Melin 2016). Rights and obligations could be translated into universal symbols or icons that traders can use in their communications with customers.[5] The symbols or icons would create a common language between countries as well as between remote traders and consumers. At the same time, the very process of reaching a "common language and definitions [would] contribute to trust building and form the foundations of collaborative relations" (OECD 2013). The benefits of this approach include some of those identified for international standards as an IRC mechanism: it is a flexible, voluntary, and demand-driven approach; it can be used in domestic legislation at low cost; and it supports a multilateral approach to regulatory conformity (OECD 2017).

[4] See http://unctad.org/en/Pages/DTL/STI_and_ICTs/ICT4D-Legislation/eCom-Global-Legislation.aspx

[5] This could be compared with the informational function of apparel and textile care symbols and the process toward harmonisation of such symbols carried out within the North American Free Trade Agreement.

4.2.2. Good regulatory practices in the area of delivery

Affordable and reliable parcel delivery services are key enablers of Internet-enabled trade. Improved delivery of goods is a top priority for the EU to grow cross-border online commerce. Toward that end, the EU has identified a need to (i) increase transparency and information for all actors; (ii) improve availability, quality, and affordability of delivery solutions; and (iii) enhance complaint handling and redress mechanisms for consumers (European Commission 2016a). To promote the potential of Internet-enabled trade for development, these three objectives should be extended to trade between the EU and its trading partners. A way to do this would be the use of free trade agreements (FTAs).

An FTA can be seen as a portal to different IRC instruments that promote transparency and encourage cooperation (OECD 2017). This could be leveraged for the purpose of elevating parcel delivery for small businesses to a trade facilitation measure.

The EU is in the process of improving its regulatory oversight of the parcel delivery sector and introducing transparency on price and quality. This is a regulatory process that could be made inclusive to the EU's trading partners, for example countries like Vietnam, West Africa, and the East African Countries (EAC) with which the EU is in advanced negotiations.

For instance, an objective of the Economic Partnership Agreement between the EU and the EAC is developing the trade capacity of the EAC. Toward that end, it specifies a number of cooperation areas, including transport, but not parcel delivery services. It is the same for the agreement between the EU and Vietnam, where a provision under the section on Electronic Commerce calls for regulatory cooperation on a number of issues without recognising the importance of parcel delivery. This is unfortunate, as quality and costs of delivery services are frequently mentioned as a primary barrier for small firms wishing to sell into other areas, such as the EU.[6]

FTAs would make ideal platforms for:

1. Joint initiatives to modernise the domestic parcel delivery market and develop interconnectivity between the systems of the trading countries.

2. Institutionalise cooperation on improving the regulatory framework, the information available to regulatory authorities, and the oversight processes.

Focusing IRC on jointly improving the functioning of a sector, with the goal of developing trade capacity, should help promote regulatory quality, build confidence in the regulatory framework and institutions, and facilitate other IRC approaches in this area while preserving the regulatory sovereignty of the parties (OECD 2017).

4.2.3. Mutual recognition of small business trade costs

The ability of small, often remotely located, firms to support local operations by also serving customers directly in a large number of foreign markets is a new phenomenon made possible by the Internet and technology. It has great potential to ensure trade promotes sustained, inclusive, and sustainable economic growth as well as reduced inequality between and within countries (SDGs 8 and 10).

Supporting the potential of Internet-enabled trade to promote the UN SDGs requires a commitment by governments to refrain from imposing costs, such as taxes, on remote small business trade not linked to

[6] For example, during a seminar on 21 June 2017 in Stockholm (organised by UNCTAD and the Ministry for Foreign Affairs of Sweden and the National Board of Trade), Ms. Candace Nkoth Bisseck, Country Manager of Jumia Group in Cameroon, described shipping as a challenge, in particular given the lack of reliable postal services. She heralded the postal system as a future infrastructure for small business trade.

public sector services received or to costs incurred on infrastructure or social services. An example here is sales tax or value-added tax (VAT) collected in the country of the consumer. These taxes burden the remote trader, who is already in a disadvantaged position when attempting to serve customers, who generally prefer domestic offerings (ConPolicy 2017), without a local facility, and with added shipping costs and time delays, etc. Moreover, the distant small trader does not receive services from the foreign government or impose costs on the foreign country's infrastructure or social services in remotely the same manner as domestic merchants. Levying sales or consumption taxes on such trade introduces a market access barrier for individual traders and frustrates the attainment of the SDGs 8 and 10 in general.

A solution would be to use IRC to overcome resistance towards de minimis systems that exclude low value items from local sales tax and/or VAT. The idea is to use mutual recognition (MR) as a way to cooperate on lowering market access costs for remote small traders. In IRC, MR implies that regulated goods or services produced in one country enjoy unhindered market access in another country based on these countries accepting as equivalent each other's rules and/or assessment procedures. Could this notion of recognition and equivalence be applied to the market access costs of remote small business traders?

A suggestion is that, in a quid pro quo, parties to an FTA would accept as equivalent each other's offers to lower or do away with local taxes or administrative fees not sufficiently linked to received services or incurred costs. For instance, in the context of the EU-Vietnam FTA, the EU would not require VAT on online trade by micro and small firms from Vietnam directly to consumers in the EU; in return, Vietnam would reduce select taxes or fees for a certain category of EU firms. In this context, it should be noted SDG 10 specifically calls out reducing inequality within a country; the process contemplated here could cover the market access costs of small firms in remote, less privileged EU regions.

The purpose of suggesting that the IRC mechanism of MR be used in this novel fashion is twofold:

1. More generally, to move the issue of de minimis away from a tax debate and toward a discussion about fair and effective market access.

2. In the context of a specific FTA, to encourage a greater understanding of the costs that small businesses face in cross-border online commerce.

5. CONCLUSION

The platform-based business strategy to internationalisation, described in this paper, is a bottom-up approach to increasing the participation of MSMEs in world trade. The global reach of the Internet coupled with the services and functions of the online commerce platform reduce the negative effect distance has on commerce and empower micro-sized enterprises to expand across large distances. This development can be supported by measures ensuring:

1. Internet connectivity at low cost without gatekeepers.
2. Access to global and online platform-based commerce and payments services.
3. Availability of logistics and postal networks, globally and seamlessly connected at parcel level.
4. Public policy and legal instruments supportive of direct MSME-to-consumer global commerce.

IRC is a central element of the fourth enabler as it ultimately aims at borderless legal and regulatory systems. The question arises as to what type of IRC solutions would help further reduce the negative effect of distance on technology-enabled trade. This paper has suggested to apply traditional IRC mechanisms to three novel areas: standardisation of consumer rights online through a second legal regime, good regulatory practices to improve domestic and cross-border parcel delivery services, and MR to do away with sales and consumption taxes on remote small business online trade.

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