



Note

Export Challenges Faced by South and Southeast Asian e-Commerce Providers

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Summary

This note aims to summarise some key challenges faced by MSMEs from South and Southeast Asia while engaging in cross-border e-commerce activities. It is based on the views of selected MSMEs collected by CUTS' partners on the ground, compiled into Country Update Notes. The aim is to help trade negotiators better understand the export challenges faced by their constituencies while operating in the e-commerce sector.

Introduction

Cross-border e-commerce trade is expected to witness high growth at a global level in the coming years. South and Southeast Asia represents an emerging hub of the e-commerce market, due to its high and growing population, its increasing access to the internet, smartphone penetration and transport infrastructure.

The use of digital technologies and internet platforms, to seek new customers and boost sales especially for micro, small and medium-sized enterprises (MSMEs), is strong amongst the region's exporters and cross-border traders but some constraints are remaining and legislations are not always appropriate, creating barriers.

This technical note aims to summarise some key challenges faced by MSMEs in this region while engaging in cross-border e-commerce activities. It is based on the views of selected MSMEs collected by CUTS' partners on the ground, compiled into Country Update Notes. The aim is to help trade negotiators better understand the export challenges faced by their constituencies while operating in the e-commerce sector.

Many of the interviewed e-commerce providers aim to export to foreign markets, although a majority presently cater only to the domestic market partly because they face challenges in complying with requirements such as regulations, industry-specific rules, competition and consumer protection laws etc. In addition, many e-commerce providers find it hard to compete on an equal footing with global and foreign companies on their niche market.

Profile of e-exporters from the region : setting the scene

In the region, a large number of e-commerce providers are MSMEs exporting products and services. These engage in cross-border sales and exports mainly through well-known e-commerce platforms such as Amazon.com and Alibaba.com, which provide access to a large and global customer base. In Vietnam for instance, Ms. Han Nguyen, co-founder and CEO of Andre Gift Shop reported that her company started selling on Amazon in 2013, and currently sales via this platform account for over 50% of total turnover.

A diverse range of goods and services are exported from the region via electronic means. In Sri Lanka for instance, e-exporters are proposing tours to foreign tourists, homeware items, souvenirs and accessories, whereas Myanmar's e-exporters are mainly leveraging online platforms to export agricultural products such as Mangoes and nutritional supplements. In Vietnam, digital exports consist mainly of online games although on a modest scale. This industry totals about US\$775mn, accounting for 90% of the total digital contents industry revenue (around US\$895mn).

In terms of export destination, major markets targeted by interviewed e-commerce providers include:

- European Union (EU) and its member states including Austria, Denmark, France, Germany, Ireland, Italy, Spain, Switzerland, and the UK. In the case of Pakistan, according to the respondents, about half of e-exports of goods and services went to EU countries.

- The regional Asian and Southeast Asian markets: China, Japan, South Korea, India, Thailand, Singapore and Malaysia
- North America

Specific challenges faced by e-commerce providers in S&SEA

In the region, interviewed MSMEs engaged in cross-border e-commerce reported facing both internal and external constraints. Internal constraints are those pertaining to organisational resources such as informational, functional or marketing-related barriers. On the other hand, external constraints that firms face during the export process may relate to procedural, governmental or environmental challenges.

Internal constraints faced by S&SEA e-Commerce Providers

From the findings of the interviews, the main internal capacity constraints faced by S&SEA e-exporters could be summarised as : (i) limited human resources capacities; (ii) outdated business processes; (iii) poor market information; (iv) lack of awareness regarding national and international rules and policies; (v) poor online visibility; and (vi) language barrier between the firm and international clients.

One concrete example of those constraints is the lack of human resources and workforce, induced by the lack of flexibility in hiring and firing workers¹ coupled with a strong brain drain as reported in Sri

Lanka. More flexibility and labour regulations revisions could be beneficial to both encourage inactive workers to enter the labour force, as well as retain the local workforce². There is a need to accommodate flexible work arrangements for the IT industry as a whole, in order to support the sector.

The low capabilities regarding product branding and marketing also represent an issue for e-commerce providers when exporting. In the case of Vietnam, Amazon decided to create a dedicated webpage in Vietnamese language (<https://services.amazon.vn>), as well as a fan page on Facebook, to ensure local enterprises would be able to become more familiar with the various functions, utilities and marketing solutions proposed by the platform.

External constraints faced by SSEA e-Commerce Providers

As per the consultations with MSMEs from the region, the external capacity constraints faced by S&SEA commerce providers when exporting could be summarised as: (i) lack of trust in electronic payment; (ii) absence of international payment system providers; (iii) weak protection of intellectual property rights; (iv) poor internet services; (v) stringent national rules and regulations for business start-up and operations; (v) unfavourable political situations; (vi) lack of coordinated support from institutions responsible for digital export promotion; (vii) high taxes & input prices; (viii) product delivery delays and high shipping costs; and (ix) difficult access to new technologies.

¹ EU-Sri Lanka Trade Related Assistance: National Public-Private Dialogue on E-Commerce Platform Policy/ Regulatory Issues held on 2nd April 2019.

² Key Person Interview. Busseat.lk. 7 May 2019.

In Sri Lanka, Pakistan and Myanmar, the fact that International Payment Gateways (IPG) such as PayPal are absent or not fully implemented due to very low volumes of e-commerce transactions, was pointed out as one of the main barriers to operate and expand in the e-commerce sector. Additionally, the local fintech start-ups often suffer from a lack of brand credibility, preventing e-exporters in relying on local non-bank IPGs to deal with foreign customers. These constraints, by making it complex to receive money, strongly undermine the competitiveness of the region's e-commerce operators, especially with regard to cross-border trade.

The policies and regulatory regimes in destination markets represent another concrete example of those external constraints faced by e-exporters. This is particularly the case for digital content exporters. For instance, a major Vietnamese digital content producer reported that exporting to China tends to be very difficult due to the protectionist policy regime of this country. Similarly, while South Korea is endowed with a relatively liberal regulatory framework, it remains a difficult market to penetrate because South Korean businesses receive significant support and incentives from their own government and thus become very competitive.

State of legislation

E-commerce and digital strategies

While some countries in the region have already enacted specific policies, laws and regulation on e-commerce, others still rely on regulatory frameworks that have not been adapted to the digital economy. Nonetheless, many of them are working on it and revising the laws to provide a supportive policy and regulatory framework to their e-commerce providers.

For instance, the Electronic Transactions Act No. 19 of 2006 (ETA) is the primary legislation that applies to the e-commerce sector of Sri Lanka.³ This act was amended in October 2017, making Sri Lanka the first country in South Asia and the second country in Asia to adopt the UN Electronic Communication Convention. This is expected to improve the prospects of local SMEs to engage in trade with other UN ECC countries, and to bring clarity to the use of electronic communication in such cross-border trading.⁴

Myanmar also launched its “Ease of doing business in Myanmar” initiative led by the Ministry of Commerce in collaboration with the World Bank. This initiative not only includes a component on online trade, but also expands the list of countries for visa on arrival, for the purposes of boosting tourism, which is one of the most important digital trade sectors. Italy, Spain, Australia, Switzerland, Germany and Russia are the targeted countries.

³ Daily FT, ‘Geneva ITC Calls for Opening of Sri Lanka E-Commerce Gateways’, 16 March 2018, available at: <http://www.ft.lk/business/Geneva-ITC-calls-for-opening-of-Sri-Lanka-e-commerce-gateways/34-651334> [accessed on: April 2019].

⁴ The Sunday Times, ‘New E-Commerce Laws Major Boost to Sri Lankan Trade and Commerce’, 29 October 2017, available at: <http://www.sundaytimes.lk/171029/business-times/new-e-commerce-laws-major-boost-to-sri-lankan-trade-and-commerce-265516.html> [accessed on: April 2019].

Revising the existing regulations and taxes implemented in the pre-digital era is seen as necessary to ensure these remain relevant to the e-commerce sector which relies on new business models.⁵

Some interviewees also pointed out the lack of programmes supporting specifically e-exporters, as no difference is made between them and traditional exporters. This is the case in Pakistan for instance, according to an official from the Ministry of Commerce⁶. Hence, there are no separate rules devised to specifically encourage e-exports in the country.

Moreover, it is crucial to make sure that regulations are adapted to MSMEs which make the bulk of e-exporters in the SSEA region. Interviewees stressed the need for the regulations to be both easy to understand and to implement, with many citing lack of awareness or understanding of such regulations as a challenge to their activity. For instance, several e-exporters interviewed in different countries stated that they were not aware of specific programmes promoting exports in the e-commerce sector.

In the case of Vietnam, the role of international agreements was highlighted. Indeed, the country signed and ratified the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) in 2018, together with 10 other trading partners.⁷ Containing a dedicated chapter on e-commerce, the CPTPP is expected to have a strong impact on Vietnam's e-commerce landscape and to bring many benefits to Vietnamese

e-exporters. For instance, Chapter 14 contains a number of obligations to ensure the trade-related practices that take place electronically are done efficiently and fairly.

Data localization

The storage of customers' personal data, the privacy and data flows are much talked-about issues when discussing regulatory frameworks for e-commerce. While many countries lack provisions and regulations on these topics, the Central Bank of Sri Lanka took the lead by proposing the introduction of laws making data localization mandatory. This will require businesses to process and store data within the country, whereas a majority of e-commerce providers currently store data outside the country. According to interviewed MSMEs, this is partly due to data storage facilities in Sri Lanka being very costly and not meeting international security standards compared to facilities that e-commerce providers can obtain from overseas.

Vietnam also adopted a data localization regime within the framework of its 2018 Cyber-Security Law, requiring: "Personal information, data of relations of services users, data created by service users in Vietnam collected, analysed, processed by either domestic or foreign enterprises providing services in the telecommunication network, Internet and value-added services in the cyberspace in Vietnam must be stored in Vietnam". Similarly, Pakistan addressed data localization under its Prevention of Electronic Crimes Act of 2016⁸.

⁵ Anushka Wijesinha, The Ceylon Chamber of Commerce, 'E-Commerce: The Great Equalizer in International Trade', 3 November 2016, available at: <http://www.importsection.lk/file/2016/11/TIPS-E-commerce.pdf> [accessed on: July 2019].

⁶ Two public agencies namely Ministry of Commerce and Trade and Development Authority of Pakistan (TDAP) were contacted. It was revealed that e-commerce does not lie in the domain of

TDAP currently and therefore response could only be collated from WTO Wing of Ministry of Commerce (see Annexure).

⁷ Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, Peru, New Zealand, and Singapore
⁸ The Prevention of Electronic Crimes Act 2016, National Assembly. Date accessed: July 8, 2019. Retrieved:

http://www.na.gov.pk/uploads/documents/1470910659_707.pdf

Data flows and privacy

According to the interviewees, only a few e-exporters in the region are aware of data protection measures and laws of the countries to which they export. Additionally, it was pointed out that many e-exporters are operating on the basis of company-specific privacy policies which were often developed to make for the absence of consumer protection and security laws related to e-commerce in their countries. Those policies are often based on international best practices identified⁹.

Reportedly, data privacy rules in export markets are not yet a concern for most Vietnamese enterprises as they still mostly focus on the domestic market. In Pakistan, on the contrary, personal data protection is considered as a fundamental right guaranteed under the Constitution. So at present, there are various provisions in different laws, rules and regulations that provide for protection of personal data.

Generally, the respondents explained that countries which have adopted privacy protection legislations have modelled them based on the General Data Protection Regulations (GDPR) of the European Union or are planning to do so. In Pakistan, a data protection bill has been drafted and presented by the Ministry of Information Technology and Telecommunication (MoITT) in July 2018. The legislative process is still on-going but it is foreseen to impose penalties on companies that do not have sufficient security arrangements for customers' data protection, e.g. seeking consent and notifying them regarding the processing of their personal data.

Having GDPR-like legislation would support e-commerce providers by making the shift to foreign markets less challenging, and also increase the trust of foreign business partners and consumers. Nevertheless, taking into account the local regulations and specificities must not be discarded. Some e-commerce providers in the health sector in Sri Lanka argued that GDPR-like regulations need to avoid contradictions with local regulations.

It was noted that the absence of e-consumer protection frameworks not only adversely affects consumers who make online purchases, but also e-commerce providers and ultimately the e-commerce sector of the country as a whole.¹⁰ In the absence of proper mechanisms to protect their rights, consumers find it hard to trust e-commerce providers. Hacking or leaking of customer data to third parties should also be addressed by such data privacy regulations.

Finally, some viewed the CPTPP Agreement as a potential model given its coverage of a wide range of measures for the protection of consumers in the online environment, with specific provisions addressing personal information protection, consumer protection and unsolicited commercial electronic messages.

Conclusions and recommendations

As reported by private sector representatives as well as government ministries and other relevant stakeholders, e-exporters in the SSEA region are

⁹ EU-Sri Lanka Trade Related Assistance: National Public-Private Dialogue on E-Commerce Platform Policy/ Regulatory Issues held on 2nd April 2019.

¹⁰ Bamunu Achchige Rishanthi Ruwanthika Ariyaratna, OUSL Journal 13, no. 2 (2018): 5–23, 'Protection of Consumer Rights on the Internet: Prospects and Challenges for the Sri Lankan Legal System'.

facing a number of internal and external constraints, and most countries still lack regulations and awareness on data and consumer protection.

Creating a conducive legal and policy environment for the development of digital businesses in the SSEA will require sustained efforts to modernise regulatory frameworks. In particular, regulations should be both easy to understand and implement for MSMEs. In this regard, national policies such as the National Financial Inclusion Strategy in Sri Lanka could inspired other countries in the region

to address the financial concerns raised by interviewed e-commerce providers.

In addition, the adoption of legislation relating to data privacy and consumer protection should be encouraged. Once introduced, businesses should be made aware of such legislation and their provisions, through awareness programmes.



CUTS International, Geneva

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