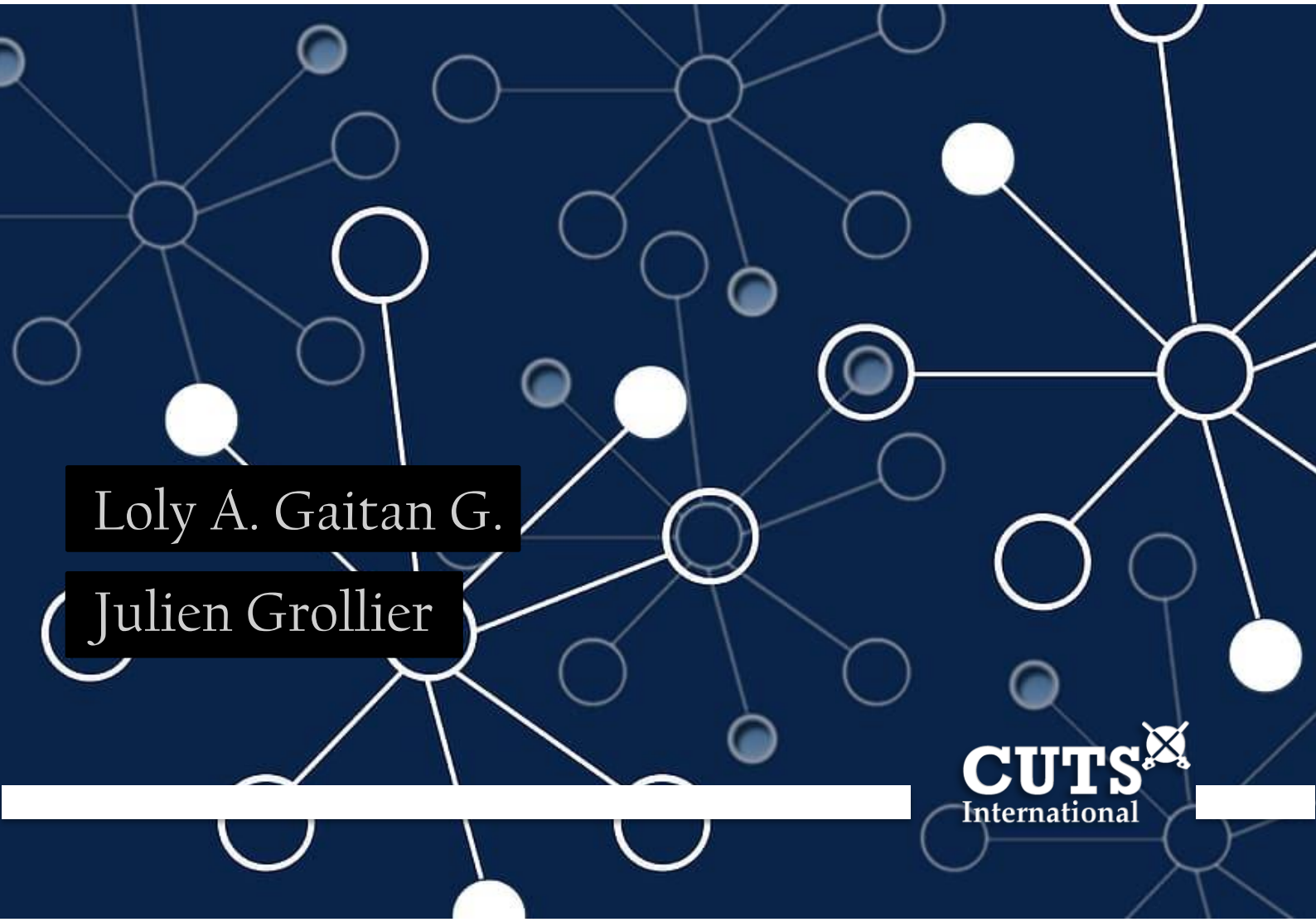
STUDY

Electronic Commerce in Trade Agreements

Experience of Small Developing Countries



Loly A. Gaitan G.

Julien Grollier

CUTS International

Electronic Commerce in Trade Agreements: Experience of Small Developing Countries

Authored by:

Loly A. Gaitan G
Julien Grollier

Published by:

CUTS INTERNATIONAL, GENEVA
Rue de Vermont 37-39
1202 Geneva, Switzerland
www.cuts-geneva.org
Also at: Jaipur, New Delhi, Chittorgarh, Kolkata, Hanoi, Nairobi, Lusaka, Accra, Washington DC

Funded by:

GERMAN FEDERAL MINISTRY FOR ECONOMIC COOPERATION AND DEVELOPMENT (BMZ)
With inputs and support by:
Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

This paper was undertaken by Loly A. Gaitan G and Julien Grollier. It is published under CUTS International Geneva's project "E-Commerce and African Regional Integration", undertaken with funding support from the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ).

Citation: GAITAN G., L., GROLLIER, J. (2020). *Electronic Commerce in Trade Agreements: Experience of Small Developing Countries*. Geneva: CUTS International, Geneva.

Disclaimer: The views expressed in this publication represent the opinions of the author, and do not necessarily reflect the views of CUTS or its funders.

Cover Photo: Bethan Phillips

Table of Contents

Acknowledgements

The author wishes to thank the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) and CUTS International, Geneva for the initiative and support in undertaking the present study. In particular, special thanks and acknowledgement go to Mr. Julien Grollier for his guidance and many valuable substantive inputs into the research, analysis of provisions and country experiences in the field of electronic commerce policy and negotiations, as well as thorough editing of the final product.

Thanks also to participants in the WTO Public Forum 2019 session "Keeping Pace with a Changing World: Africa Trading Forward" for providing insightful comments towards the finalisation of the study. Finally, thanks to Charles Muller for his comments on an earlier version of the paper, and to Hong Son Pham for helpful research assistance.

Abbreviations

AfCFTA	African Continental Free Trade Area
ASEAN	Association of Southeast Asian Nations
CARICOM	Caribbean Community and Common Market
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
EAC	East African Community
EAEU	Eurasian Economic Union
EC	European Community
EPA	Economic Partnership Agreement
EU	European Union
FTA	Free Trade Agreements
GVCS	Global Value Chains
ILO	International Labour Organization
ITC	International Trade Centre
ITU	International Telecommunication Union
LDC	Least Developed Countries
MSME	Micro, Small and Medium Enterprise
OECD	Organisation for Economic Co-operation and Development
PDR	People's Democratic Republic
RTA	Regional Trade Agreement
SADC	Southern African Development Community
TFA	Trade Facilitation Agreement

TPP	Transpacific Partnership
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UN-ECA	United Nations Economic Commission for Africa
UPU	Universal Postal Union
WCO	World Customs Organization
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

Introduction

The rapid growth of ecommerce can be used as the main driver of economic gain in developing countries. Internet based platforms and global data flows enable businesses of all sizes in LDCs and developing countries to engage with trade, gain market information and expand their market locally and across borders. However, the digital divide imposes numerous challenges on developing countries and prevent them to fully participate in digital commerce, especially cross-border e-commerce.

Yet, e-commerce is growing fast globally with online retail sales expected to reach US$4 trillion by 2020. Developing countries should not fall behind, but rather put themselves in a position to harness the many opportunities it offers for development and poverty reduction. This will require implementing sound policies to promote the sector, within the policy space allowed by international agreements and frameworks. In this area, countries have been pursuing policy objectives such as privacy, consumer protection, promoting domestic champions etc.

The rise of e-commerce in trade agreements

In recent years, the connection between the technical aspects of ecommerce and trade issues has seen increased interest. While still at an initial stage in WTO plurilateral negotiations in parallel with the WTO multilateral work programme on e-commerce, e-commerce has been firmly introduced on the agenda of trade policy makers through the increasing inclusion of dedicated e-commerce provisions in regional and other trade agreements and negotiations.

Initial developments on international principles and frameworks on trade and e-commerce date back to 1990s and were primarily undertaken by the World Trade Organization (WTO) and the Organisation for Economic Co-operation and Development (OECD). At the WTO, members established a Work Programme on Electronic Commerce in 1998 as a forum to facilitate continuous development of e-commerce policy. While tangible outcomes so far have been limited, members have built a better understanding of the issues at the interplay of trade and e-commerce, including on the following internal working definition of the term:

> "Exclusively for the purposes of the work programme, and without prejudice to its outcome, the term 'electronic commerce' is understood to mean the production, distribution, marketing, sale or delivery of goods and services by electronic means."

Other early initiatives included the 1998 OECD Action Plan for Electronic Commerce, which ministers adopted with a view to outline areas of work to address the inherently cross-border nature of e-commerce. Proposed areas of cooperation included: (i) building trust for users and consumers; (ii) establishing ground rules for the digital Marketplace; (iii)

enhancing the information infrastructure for electronic commerce; and (iv) maximising the benefits of electronic commerce.[1] Since then, several of these issues have effectively become part of trade agreements and negotiations, such as online consumer protection, data privacy, and authentication.

In fact, the past few years have witnessed a significant increase in the number of Regional Trade Agreements (RTAs) with specific provisions related to e-commerce. As of June 2019, 84 RTAs included e-commerce provisions in their texts, either in the form of a standalone chapter or in dedicated articles.[2] Although the total number of RTAs incorporating such provisions is still limited, more than half of the WTO members - including many developing countries - have signed at least one RTA that contain a standalone e-commerce provision.

Participation of developing counties

While developing countries were parties to most (74) of these agreements, emerging markets made the bulk of their participation.[3] Internet uptake in such markets has grown significantly over the past decades, as well as their readiness for policy-making and negotiations in the digital sphere. For many smaller, non-emerging developing countries however, digital matters remain a novel policy field in which they are just starting to build experience. As a result, only 32 RTAs with e-commerce provisions have been adopted with the participation of smaller developing countries.

The principles, rules and standards emerging from RTAs will play a decisive role in the development of their digital sector, and may present both challenges and opportunities to reckon with when engaging in such negotiations. Given their capacity limitations, many developing countries are prone to adopting measures and approaches that have been developed earlier by regulatory champions. Yet, these approaches are tailored to other interests and may not be optimal for them.

The measures outlined in RTAs with e-commerce provisions have been extensively covered in a number of studies (Wu, 2017; Monteiro & Teh, 2017 etc.), which provide an inventory of various legal disciplines and obligations found in trade agreements and describe them in detail. Other studies also identified broad regulatory approaches to e-commerce found in RTAs (Skougarevskiy, 2017; Ciuriak and Ptashkina, 2018), as promoted by different regulatory champions of the digital economy (US, EU, Japan, China etc.).

However, little analysis has specifically focused on the participation of smaller developing countries in such RTAs, and even less on the implications for them of different approaches they can encounter in negotiations. The experience of small developing countries who have taken part in the 32 above-mentioned RTAs with e-commerce provisions can provide useful lessons for others who may consider doing so in the future. For instance, while very few African country have signed such RTAs so far, this may soon change under the auspices of

[1] OECD (1998). OECD Action Plan for Electronic Commerce. OECD Ministerial Conference: «A Borderless World: Realising the Potential of Global Electronic Commerce", Ottawa, 7-9 October 1998. SG/EC(98)9/FINAL

[2] WTO RTAIS

[3] "emerging markets" are as categorised by UNCTAD. https://unctadstat.unctad.org/en/classifications.html

the African Continental Free Trade Area (AfCFTA).

Study Objectives

The main goal of this study is to identify the approach taken by small developing countries in negotiating RTAs with e-commerce related provisions and the commitments they have taken under three main categories as identified in Ebrahimi (2017), including their potential implications at the policy and regulatory levels. It particularly aims to help negotiators and policy makers from Africa and other small developing countries better understand the practical policy implications behind typical existing and upcoming ecommerce-related RTA provisions. In particular, the study aims to:

- Identify trends in e-commerce-related provisions in RTAs
- Identify e-commerce-related topics where small developing countries have shown more appetite in RTAs.
- On identified topics organised under the three categories of CUTS' framework, identify the purpose for their inclusion, as well as the approaches and levels of commitment accepted by small developing countries.
- Assess the regulatory implications of such e-commerce provisions considered by small developing countries.

In pursuance of the above objectives, analysis in the study focuses on a sample of 32 RTAs which have at least one small, non-emerging developing country as a party. The full list of sampled agreements is provided in Annex 1.

This study unfolds over five sections, incorporating examples derived from relevant agreements. In the first section, a review of trends in provisions for e-commerce in RTAs is presented, with the diverse perspectives on e-commerce provisions and the participation of developing countries in negotiating trade agreements being explored. The second section identifies specific topics related to e-commerce in which small developing countries have shown a particular interest. The third, fourth and fifth sections explore in-depth the approach, commitments and policy implications for small developing countries on e-commerce issues covered in RTAs, in the categories of market access, trade facilitation as well as rules and regulatory aspects. It concludes with a set of recommendations for negotiators from small developing countries concerning the approach of e-commerce related provisions in RTAs, based on lessons learnt.

.

SECTION 1

Participation of developing countries in RTAs with e-commerce provisions

1.1 E-Commerce in trade agreements

The inclusion of provisions that specifically refer to e-commerce is not new, and can be traced back to 2001 and the inclusion of an article on paperless trading in the New Zealand-Singapore RTA. This was followed soon thereafter by Japan-Singapore and US-Jordan, which included a chapter on paperless trading and an article on electronic commerce respectively.

In 2003, the Australia-Singapore RTA introduced for the first time a specific standalone chapter on e-commerce (Monteiro & Teh, 2017). Over the next two years, four other such RTAs championed by the US, Australia or Singapore were signed with standalone e-commerce chapters presenting evident similarities. These included US-Chile, US-Singapore, US-Australia and Thailand-Australia.

To date, 84 RTAs in force contain e-commerce provisions, either in the form of a standalone chapter or in dedicated articles. Although the number of RTAs incorporating e-commerce is still limited, there has been evident growth both in terms of number and depth of such provisions. On average, Monteiro & Teh (2017) found that 60% of all RTAs that entered into force between 2014 and 2016 included such provisions. The authors also noted that, among developed countries, Japan, Canada and Switzerland recorded the highest increase in e-commerce provisions since 2009. In the same period, the most active developing countries were Chile, Mexico, Thailand and China.

While a number of countries have been active signatories of such provisions, there is high heterogeneity in their content even among RTAs signed by the same country. As a result, no clear "model" preferred by certain champions can be identified in a straightforward manner. Nevertheless, some negotiating "hubs" have shown comparably higher or recently increasing similarities in the provisions they have adopted, namely: Australia, Canada, EFTA, United States, and more recently Japan and the EU. Overall, it can be noted that e-commerce provisions adopted in US and Australian RTAs can be found more often in other RTAs, as compared to Japanese or EU RTAs.[4]

Besides the increasing inclusion of standalone chapters, it is also common to find e-commerce related provisions in other parts of the agreements. For instance, articles

[4] Monteiro and Teh, 2017

specifically handling e-commerce matters can be found under provisions related to Information and Communications Technology (ICT), intellectual property, public purchase regulations, information flows etc. Canada-Ukraine (2017), whose e-commerce chapter contains only two articles, is a case in point for many other chapters contain relevant provisions such as: (i) Chapter 10 on government procurement, referring to electronic means; (ii) Chapter 4 on trade facilitation; (iii) Chapter 11 on intellectual property, containing special measures against copyright infringement online etc. In addition, some RTAs such as Canada-Costa Rica have addressed e-commerce outside the principal RTA document, e.g. through joint statements, letters or annexes.

Canada-Costa Rica (2002)

E-commerce provisions can also be found outside the principal RTA documents, such as joint statements, letters or annexes. This is the case of Canada-Costa Rica (2002). Even though no formal provisions are included in the RTA yet, the countries have shared a vision to support the growth of e-commerce for the development of a global information society since the signature of the agreement. Alongside the agreement, the countries concluded a Joint Statement on Global Electronic Commerce intended to promote the development of e-commerce along with the implementation of the signed RTA.

In this context, parties committed to an action agenda to work jointly with governments, businesses, and consumers in key areas of electronic commerce. The main focus of this agenda was to create a positive environment for the growth of e-commerce by: (i) building trust for users and consumers; (ii) establishing transparent, objective ground rules for the digital marketplace; (iii) enhancing the information infrastructure; (iv) maximizing the social and economic benefits; and (v) promoting global participation.

Typology of e-commerce provisions

As noted above, and as is often the case for issues covered in RTAs, e-commerce provisions are highly heterogeneous and have covered a wide range of issues including customs duties, electronic signatures, paperless trading, consumer protection, non-discrimination of digital products, data privacy etc.

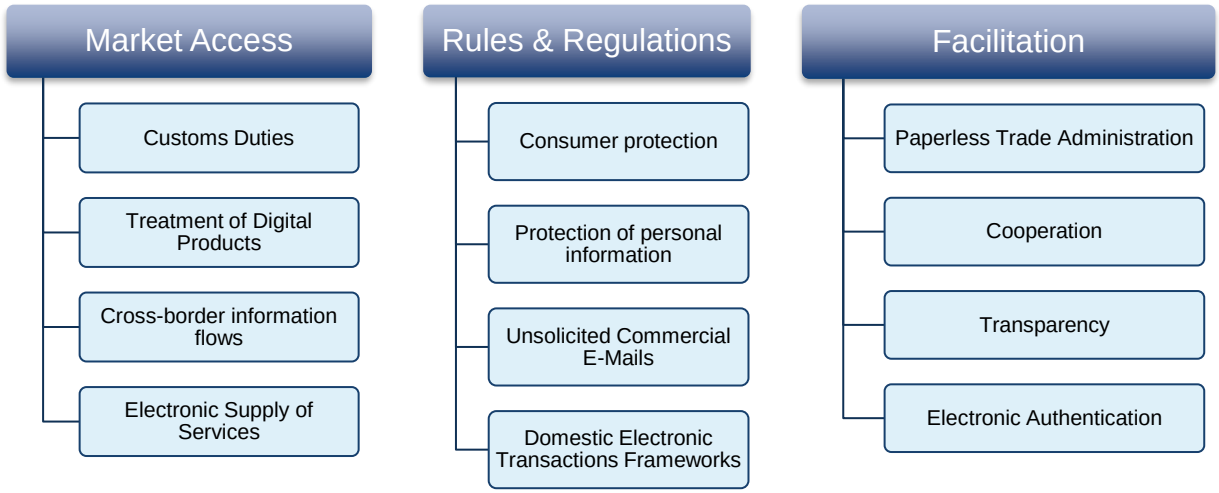
In terms of depth and breadth, it can be noted that while many e-commerce provisions in RTAs remain broad and often addressed through cooperation, some have shown more specificity. For instance, the Pacific Alliance RTA included attachments with specific legal bodies and provisions on e-commerce. As the share of e-commerce in trade grows, sound legal vehicles are increasingly needed to secure trust among all parties engaged in cross-border e-commerce transactions, and the breadth and depth of provisions is expected to increase (Ptashkina, 2018).

Different classifications have been used to analyse and categorise e-commerce provisions found in RTAs. This study will be based on a standard, three-category framework as found in *inter alia* Darsinouei

Ebrahimi (2017), categorising such provisions into: (i) market access; (ii) rules and regulations; and (iv) facilitation. While outside the scope of our research, other relevant categories for e-commerce analysis could include so-called "enabling issues" such as ICT infrastructure and digital skills.[5]

For the purpose of this study, the three-category framework will be used to analyse 12 of the most commonly found e-commerce issues covered in RTAs signed by small developing countries. As provided in Figure 1 below, these include for each category: (i) market access: customs duties, treatment of digital products, cross-border information flows, electronic supply of services; (ii) rules and regulations: consumer protection, protection of personal information, unsolicited commercial e-mails, domestic electronic transactions frameworks; and (iii) facilitation: paperless trade administration, cooperation, transparency, electronic authentication.

Figure 1: E-commerce Framework in RTAs by category and sub-category



Source: Author, based on Darsinouei Ebrahimi (2017)

1.2 Participation of developing countries

In 2001, New Zealand-Singapore and US-Jordan became the first RTAs involving developing countries to adopt dedicated articles on e-commerce. In the latter agreement, the parties would "seek to refrain" from: (i) deviating from its existing practice of not imposing customs duties on electronic transmissions; (ii) imposing unnecessary barriers on electronic transmissions, including digitized products; and (iii) impeding the supply through electronic means of services subject to a commitment under the article on trade in services. They also committed to transparency provisions in this area, i.e. to make publicly available all relevant laws,

[5] Kaukab, R. (2017).

regulations, and requirements affecting electronic commerce.

Today, while the total number of RTAs incorporating e-commerce provisions remains limited, more than half of the WTO members have so far signed such RTAs including many developing countries. In fact, 74 of these agreements have been signed with the participation of 61 developing countries, either as North-South RTAs (64%) or South-South RTAs (36%).

In terms of geographical repartition, countries from Latin America and the Caribbean have been most forthcoming in adopting such provisions. These represent 41% of participating developing countries, with the most active countries being Colombia, Chile, Peru and Costa Rica. In the Caribbean Community and Common Market (CARICOM) treaty of 2001 however, e-commerce was only envisioned to be elaborated in a future protocol, which has not yet been developed to date. Nevertheless, regional digital integration is fast concretising, most notably with the adoption in 2017 of the Single ICT Space as the digital layer of the Caribbean Single Market and Economy (CSME).

The next most active region is Asia with 25% of participating developing countries, including Singapore as the most forthcoming with 15 RTAs in force. E-Commerce has been high on the agenda of the Association of Southeast Asian Nations (ASEAN), culminating in the adoption of a dedicated ASEAN Agreement on Electronic Commerce in 2018. Besides this, several developing countries from the region [6] signed the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) in 2018; arguably the most ambitious RTA covering e-commerce to date.

Bringing up the rear, Africa is the least-represented region (10%) with only 6 countries having adopted three RTAs, two of which with only broad reference to e-commerce. In the EU - Eastern and Southern Africa States Interim EPA (2012), development cooperation areas outlined in the matrix include ICT policy, infrastructure and services. In EU-Ghana (2016), the reference to e-commerce is limited to the parties endeavouring to facilitate the conclusion of a global EPA with West Africa, which should cover *inter alia* trade in services and electronic commerce. The most significant RTA with an African country is US-Morocco, where a detailed article on digital products commits parties to non-discriminatory treatment.

The above geographical trends are illustrated in Figure 2 below, where the number of RTAs with e-commerce provisions signed by each developing country is represented on a map.

[6] Malaysia, Singapore, Viet Nam

Figure 2: Number of RTAs with e-commerce provisions signed, by developing country

Source: Author, based on WTO RTAIS data

To date, only a handful of Least Developed Countries (LDCs) have signed such agreements. Most notably, Cambodia, Lao PDR and Myanmar as ASEAN members are part of the ASEAN-Australia-New Zealand RTA, where detailed e-commerce provisions cover *inter alia* consumer protection, data privacy, spam, domestic regulatory frameworks, transparency, paperless trading and electronic authentication. The only other LDCs having taken part in relevant RTAs are Madagascar as part of the EU-ESA EPA and Haiti as part of the CARICOM, both of which with limited provisions on e-commerce.

In fact, developing countries which signed such RTAs are largely emerging markets (39%), whereas smaller developing countries have engaged in only 32 out of 74 RTAs. These will constitute our sample for analysis over the next sections of the study.

Priorities of small developing countries

Little analysis has specifically focused on the participation of small developing countries in RTAs with e-commerce provisions, and even less on the implications for them of different approaches they can encounter in negotiations. Yet, the rules emerging from such RTAs could go a long way shaping their digital policies, e.g. by fostering policy harmonization with trading partners or helping tap into their experience, but also possibly limiting their available policy space for digital industrialisation.

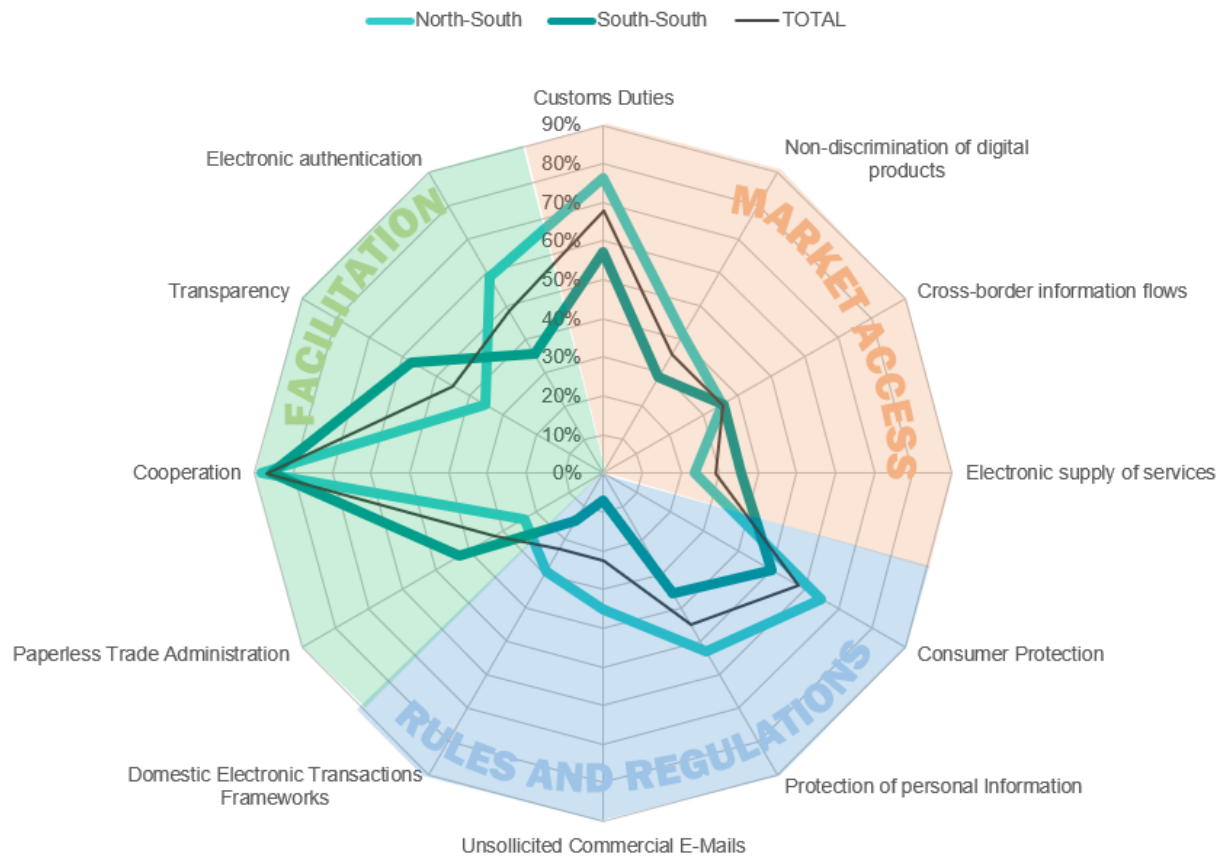
Small developing countries need to understand and factor these implications in their negotiating strategies when engaging in RTA discussions. Given their capacity constraints and limited policy experience on the matter, many of these countries however find themselves in a taker's position by adopting approaches crafted earlier by their trading partners. Yet, existing approaches are

tailored to the experience and interests of others, and may not be optimal for them.

Nevertheless, they can draw lessons from the experience of fellow small developing countries with similar circumstances and capacities. At the national policy level, initiatives such as UNCTAD's eTrade Readiness Assessments already provide a useful starting point in this regard, particularly for comparing the policy state of play in different LDCs. Similarly, at the international level, analysing the experiences of developing countries with comparable features will be a valuable resource to inform their future participation in RTAs on digital matters.

Towards this end, this study focuses on analysing the participation of small, non-emerging developing countries in the 32 RTAs with e-commerce provisions they have participated in, based on the three-dimensional framework introduced above. Figure 3 below provides an overview of the extent to which each of the 12 issues and 3 categories have been included, as a share the total RTA sample. This provides an indication of the areas small developing countries have tended to prioritise. As a further indication, the figure also shows variations in issue inclusion between North-South and South-South RTAs, as an issue may have been deemed of greater relevance by the parties based on their different or similar development levels.

Figure 3: Share of sampled RTAs containing e-commerce provisions, by topic and type



Source: Author´s own elaboration, based on WTO RTAIS

At the broader category level, Figure 3 shows a clear preference for facilitation provisions such as cooperation. There, small developing countries tend to include paperless trade and transparency more often in their South-South RTAs, where electronic authentication is less prioritised. The next most-included category relates to rules and regulations such as consumer protection, although interest appears to be stronger in North-South RTAs as compared to South-South ones. Finally, market access provisions tend to be more limited, except for frequent commitments on not imposing customs duties on digital products or electronic transmissions.

In terms of specific issues, small developing countries have primarily adopted provisions related to cooperation (87%), customs duties (68%) and consumer protection (58%) respectively. Interest for the latter has however been stronger when signing North-South RTAs, and is outranked by transparency provisions in South-South RTAs. Conversely, least consideration has been given to provisions related to electronic supply of services (29%), unsolicited commercial e-mails and domestic electronic transactions frameworks (23%). Detailed analysis of the depth and breadth of provisions addressing these issues will be made in the coming sections.

SECTION 2

Market Access

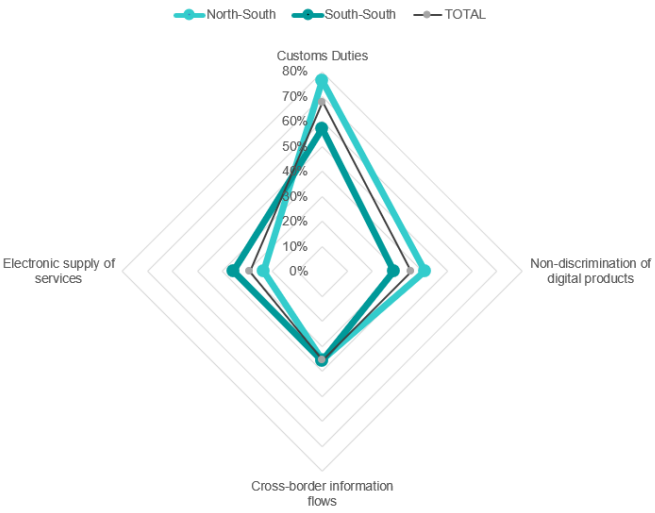
With the rise of electronic commerce as a key driver of global trade, data and digital policy have become of strategic importance for many economies. Control over data is a growing priority for many countries, which are increasingly regulating its collection, processing and transfer across borders in order to address concerns related to data privacy, cybersecurity or the promotion local digital industries.

In this context, some countries have raised concerns that increased government interventionism in the digital sphere may be used as "data protectionism", creating barriers to trade and hindering market access for their firms. Possibly relevant measures in this regard are many, and may pertain to *inter alia* tariffs, data localization requirements, quotas, geo-blocking and web filtering, access to network infrastructure and the internet, net neutrality, taxation, technical standards, forced technology transfer etc.[7]

In RTAs, parties have sought to address such market access barriers by disciplining the use of several types of measures, including the following areas which will be analysed in this section: (i) customs duties; (ii) treatment of digital products; (iii) cross-border information flows; and (iv) electronic supply of services.

Figure 4 below provides an overview of the extent to which each of the four above-mentioned areas has been included in the 32 RTAs sampled for this study. This provides an indication of the types of market access provisions which small developing countries have tended to prioritise when considering e-commerce provisions in trade agreements. As a further indication, the figure also shows variations in inclusion between North-South and South-South RTAs, as an issue may have been deemed of greater relevance by the parties based on their different or similar in development levels.

Figure 4: Share of sampled RTAs with provisions on market access, by issue and type



Source: Author, based on WTO RTAIS data

As evident from the above figure, customs duties are by far the most common market access provision included in RTAs signed by small developing countries (68%). Data-related issues of cross-border information flows and non-discrimination of digital products come next (35%), with appetite for the latter being more

[7] Metschel, Manuel (2018). The World Trade Organization in times of digital trade: Addressing digital protectionism? Barcelona: Universitat de Barcelona

pronounced in North-South RTAs. Electronic supply of services is included in 29% of RTAs. The scope, depth and breadth of commitments made by small developing countries on each issue differs across agreements, as analysed in the sections below.

2.1 Customs duties

As trade in electronically-transmitted products and services is taking a more strategic importance for many economies, government interventionism and barriers to trade are increasing in the digital sphere. While many such measures are novel and specific to digitalisation, more classic trade measures such as customs duties could also be used as protectionist practices.

In 1998, through the Declaration on global electronic commerce, WTO members adopted moratorium whereby they agreed to "continue their current practice of not imposing customs duties on electronic transmissions". However, the declaration did not provide a definition of what "electronic transmissions" entail. While there is an understanding that the prohibition to levy customs duties only applies to online deliveries (i.e. not to products physically delivered), members have expressed diverging views on whether this prohibition is: (i) only applicable to transactions *per se* (i.e. the medium); or (ii) also extends to the transmitted content (e.g. digital products). The implications are significant, as the latter interpretation would require resolving the deeper, long-standing debate of whether to classify digital content as goods, services or any other.

Indeed, agreeing on the classification of digital products would clarify what type of customs duties are implied by the moratorium, as well as the revenue implications of not levying them. More importantly, this clarification would have even more far reaching implications on the type of trade rules (GATT, GATS) applicable to digital products, and hence the extent of their liberalization as well as the tools and means for liberalizing or protecting them. While some countries like the US have favoured the more liberal GATT rules (referring to "products delivered electronically" in their RTAs), the EU has tended to favour their categorization as services falling under the more protective GATS framework.

While the technical difficulties of levying customs duties on either transmissions *per se* or their content were long preventing it anyway, the debate is becoming more practical and clarity is increasingly needed. Indeed, based on their understanding that the moratorium only relates to transactions *per se* and not to content, some countries have started to introduce tariff lines for levying customs duties on certain digitally transmitted digital products such as movies, e-books, music etc. Case examples include Australia, New Zealand, EU, Indonesia and India.[8]

The issues surrounding customs duties on electronic transmissions are one of the most-commonly addressed e-commerce topics in trade agreements, and are found in 68% of our sampled RTAs. There is however a high level of heterogeneity among these provisions in terms of scope, depth and breath.

In most of the analysed RTAs, parties agree not to impose customs duties, fees, or other charges on or in connection with the importation or exportation of digital products by electronic transmission. An example of such language can be found in Costa Rica-Singapore:

[8] Banga, R. (2019). Growing Trade in Electronic Transmissions: Implications for the South. Geneva: UNCTAD, Palais des Nations

> "Article 12.4: Digital Products
> 1. Neither Party shall impose customs duties, fees, or other charges on or in connection with the importation or exportation of digital products by electronic transmission.
> 2. Each Party shall determine the customs value of an imported carrier medium bearing a digital product based on the cost or value of the carrier medium alone, without regard to the cost or value of the digital product stored on the carrier medium."

As in the above, the many provisions referring to "digital products" imply that the prohibition also applies to the digital content, including when such content is sold on a "carrier medium" (e.g. a CD). It this case, customs duties may be levied only on the value of the carrier medium, as per the modalities defined in the provision. In addition, such articles are accompanied by definitions of "digital product" and "carrier medium". Continuing with the above example, the Costa Rica-Singapore adopts the following definitions:

> "Article 12.2: Definitions
> For purposes of this Chapter:
> * carrier medium means any physical object capable of storing the digital codes that form a digital product by any method now known or later developed, and from which a digital product can be perceived, reproduced, or communicated, directly or indirectly, and includes an optical medium, a floppy disk, and a magnetic tape;
> * digital products means computer programs, text, video, images, sound recordings, and other products that are digitally encoded, regardless of whether they are fixed on a carrier medium or transmitted electronically;
> * electronic transmission or transmitted electronically means the transfer of digital products using any electromagnetic or photonic means; and using electronic means means employing computer processing"

However, other RTAs refer to "electronic transmissions" rather than digital products.

2.2 National Treatment of Digital Products

Digital products refer to "digitizable" products which were traditionally in physical form but can now be encoded and hence delivered by electronic means. These include images, videos, sound recordings and computer. In the context of trade negotiations, the concept of 'treatment of digital products' entails that parties should not discriminate against digital products from other parties by according less favourable treatment to digital products originating from another party than that it accords to other like digital products.

In our sampled RTAs, 35% have addressed the issue of non-discrimination of digital products. These mainly refer to the national treatment principle, committing parties in relatively firm terms ("shall", "may") to grant no less favourable treatment to digital products originating from abroad to that granted to its own like digital products. For instance, US-Panama contains one of the most common forms of this provision:

> "Article 14.3: Digital Products
> 3. Neither Party may accord less favorable treatment to some digital products transmitted electronically than it accords to other like digital products transmitted electronically:
> (a) on the basis that
> (i) the digital products receiving less favorable treatment are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms outside its territory; or
> (ii) the author, performer, producer, developer, or distributor of such digital products is a person of the other Party or a non-Party, or
> (b) so as otherwise to afford protection to the other like digital products that are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in its territory."

From the above, it can be noted that such national treatment provisions are also extended to "non-parties" on an MFN basis. Other national treatment provisions relate to exceptions and exclusions from the scope of application, e.g. for government, procurement, subsidies etc.

2.3 Cross-border information flows

It has become commonplace to term data as the "new oil" of modern times, not without reason. Collecting, storing, processing, analysing and transferring internet user data has become a main driver of trade globally, is the main staple of ever more numerous digital firms, and their free flow across borders underpins or maximises value for many others. Control over data is therefore a growing priority for many countries, which have increasingly regulated their cross-border transfer through measures such as data localization, requiring that data be stored or processed locally. Motivations for adopting such measures may include addressing concerns related to data privacy and cybersecurity, or promoting development of local digital industries.

In countries with established digital sectors, such measures have sometimes been criticised as "data protectionism" for creating barriers to digital trade and making it harder for foreign firms who become disadvantaged. In order to restrict the use of such policies, some countries have resorted to RTAs where they may seek commitments from their trading partners that such measures cannot be used as a condition to conduct business.[9]

Only two RTAs signed by small developing countries include specific provisions related to cross-border data flows, namely Mexico – Panama and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). Importantly, the latter uses strong "shall" language committing parties to allow the cross-border transfer of information by electronic means in the context of business transactions, while allowing some level of flexibility for pursuing legitimate policy objectives:

> "Article 14.11: Cross-Border Transfer of Information by Electronic Means
> 1. The Parties recognise that each Party may have its own regulatory requirements concerning the transfer of information by electronic means.
> 2. Each Party shall allow the cross-border transfer of information by electronic means, including personal information, when this activity is for the conduct of the business of a covered person.
> 3. Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that the measure:
> (a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and
> (b) does not impose restrictions on transfers of information greater than are required to achieve the objective."

From the above, it should be noted that the transfer of information extents to personal information. This is important from a policy point of view as governments have tended to apply different regulations depending on the personal or non-personal nature of data, e.g. in their data privacy regulations. Data may be classified as personal and nonpersonal. Personal data refers to information on consumers, their education, health and consumer choices. Non-personal data may vary and contains more general information on certain sector or industry.

[9] Irfan, M. (2019). Data Flows, Data Localisation, Source Code: Issues, Regulations and Trade Agreements. Geneva: CUTS International, Geneva.

2.4 Electronic supply of services

Online delivery has become a main mode of supply of products, whose categorisation as goods or services has been subject to debates. Lack of clarity in this regard poses challenges in terms of identifying the applicable rules. For instance, while physical goods are subject to VAT, their digitization and electronic delivery has implications on the applicable taxation regime which require clarifications. Moreover, e-commerce has made it more difficult to distinguish between mode 1 (electronic delivery) and mode 2 (consumption abroad), in situations where a service is being delivered electronically.

In order to clarify applicable rules, parties to trade agreements have adopted provisions that specify that other chapters of the agreement are applicable to services delivered electronically. This primarily includes chapters related to cross-border supply of services, as well as investment and financial services in several cases. In particular, parties would seek to clarify that nothing in the e-commerce chapter should be interpreted as an obligation to allow the electronic supply of a service.

In our sample, 29% of RTAs incorporated such provisions. The most common formulation refers to the applicability of other chapters in a way similar to that found in US-Panama:

> "Article 14.2
> Electronic Supply of Services
>
> For greater certainty, the Parties affirm that measures affecting the supply of a service using electronic means are subject to the obligations contained in the relevant provisions of Chapters Ten (Investment), Eleven (Cross-Border Trade in Services), and Twelve (Financial Services), subject to any exceptions or non-conforming measures set out in this Agreement, which are applicable to such obligations."

2.5 Policy implications for small developing countries

In the area of market access, the main commitment sought in RTAs relate to the prohibition of imposing customs duties on digital products and electronic transmissions. In this regard, various studies have analysed the revenue implications of such a decision for developing countries. However, estimates of the revenue implications of the moratorium vary widely across studies, ranging from USD 280 million to USD 8.2 billion depending on the trade flows

covered and tariffs applied (actual, MFN or bound), as well as other underlying assumptions.[10]

At the higher end of the range, UNCTAD (2019) estimated that for WTO developing member countries as a group, the per annum tariff revenue loss of the moratorium would amount to USD 10 billion using average bound duties and USD 5.1 billion using average MFN applied rate. Potential tariff revenue loss from the Moratorium is found to be higher for Sub-Saharan African countries and WTO LDC countries as compared to WTO high-income countries. The study also found that tariff revenue loss on physical imports of digitizable products for developing countries is 30

[10] OECD (2019). Electronic transmissions and international trade – Shedding new light on the Moratorium Debate. Paris: OECD. TAD/TC/WP(2019)19/FINAL

times higher than that for developed countries, and that developing countries could generate 40 times more revenue by imposing custom duties on electronic transmissions as compared to developed countries.[11]

While trade in electronic transmissions is growing faster than physical trade, most developing countries remain net importers of electronic transmissions. In this context, a number of developing WTO delegations have been resisting efforts to make the moratorium permanent in order to secure policy space for digital industrialisation. In RTAs, provisions addressing customs duties on digital products and electronic transmissions may have the effect of making this moratorium permanent for signatories. Therefore, small developing countries should ensure consistency in their positions across fora, for coherent approach to digital trade policy.

With regard to cross-border transfer of information, developing countries may have several motivations for regulating data flows. For instance, some of them may see localisation requirements similar advantages as local content requirements in conventional trade and investment policies, i.e. encouraging foreign firms to partner with local ones, who can thereby acquire capacities and know-how. Similarly, retaining data ownership locally can foster its use for the more efficient provision of public services, development of local digital platforms, and building of data infrastructure and processing skills.[12]

Already, several small developing countries have subjected data flows to specific requirements. For instance, Vietnam forbids direct access to the Internet through foreign ISPs and requires domestic ISPs to store information transmitted on the Internet for at least 15 days. It also requires certain online companies (e.g. social networks, online game providers) to have at least one server in Vietnam.

Interestingly, the above has not prevented Vietnam from signing to the CPTPP, arguably the strictest RTA disciplining data localization and the regulation of data flows. An explanation is that Vietnam managed to secure several carve-outs in this area, namely: (i) an exception whereby Vietnam will not be subject to dispute settlement for these existing data localization measures for two years; and (ii) a side letter whereby Canada, Japan and New Zealand extend this peace clause to five years.

[11] Banga, R. (2019). Growing Trade in Electronic Transmissions: Implications for the South. Geneva: UNCTAD, Palais des Nations

[12] Irfan, M. (2019). Data Flows, Data Localisation, Source Code: Issues, Regulations and Trade Agreements. Geneva: CUTS International, Geneva.

SECTION 3

Rules and Regulations

Besides market access, domestic frameworks and regulations put in place by governments may improve or curtail the ability of firms and consumers to engage in online transactions with counterparts abroad. For instance, the jurisdiction in which a consumer is based may require that not only local but also foreign providers comply with its domestic data privacy requirements. Legal frameworks and regulations are hence an essential element of e-commerce, ensuring policy certainty for the parties involved who need to be aware of their rights and obligations while engaging in such transactions, as well as the redress systems available to them.

In the wake of the digital economy, many governments have put in place laws and regulations governing online transactions. The general principles underpinning a majority of such frameworks are in the 1996 UNCITRAL Model Law on Electronic Commerce (MLEC), on which the legislation of at least 74 countries based to date.[13] In domestic frameworks, some of the key areas where online transactions may be regulated typically include, *inter alia*, electronic transactions and electronic signatures; cybersecurity and computer crime; data protection and privacy; and consumer protection.

Ensuring consumer's confidence is the cornerstone of e-commerce, and many countries have sought to protect online consumers as effectively as offline ones. In the absence of physical interaction, online consumers face new risks and concerns related to the quality, safety and redress options for products they may order online, particularly if purchased from foreign suppliers. Regulations related to online consumer protection have been increasingly referred to in RTAs - although with varying scope, depth and breadth - in order to improve consumers' trust in their cross-border e-commerce transactions.

More particularly, at a time when internet user data has become the "new oil" of the digital economy, the protection of personal data has been under growing scrutiny, at the crossroads of consumer protection and cross-border data flows debates. While consumers increasingly demand that their personal data will be treated safely and preserve their privacy, digital firms may be concerned that data protection requirements could increase the cost of doing business or even be used as disguised protectionism.

In RTAs, small developing countries have adopted a number of provisions whereby they agree to observe certain principles when regulating electronic transactions. These mainly pertain to four areas which will be analysed in this section: (i) domestic electronic transactions frameworks; (ii) consumer protection; (iii) protection of personal information; and (iv) unsolicited commercial electronic communications, i.e. spam.

Figure 4 below provides an overview of the extent to which each of the four above-mentioned areas has been included in the RTAs sampled for this study. This provides an indication of the areas

[13] UNCITRAL Model Law on Electronic Commerce (1996) – Status. Url: UNCITRAL Model Law on Electronic Commerce (1996) – Status. Url: https://uncitral.un.org/en/texts/ecommerce/modellaw/electronic_commerce. Accessed on April 22, 2020./status. Accessed on April 22, 2020. Accessed on April 22, 2020;

small developing countries have tended to prioritise when signing RTAs with e-commerce provisions. As a further indication, the figure also shows variations in inclusion between North-South and South-South RTAs, as an issue may have been deemed of greater relevance by the parties based on their different or similar in development levels.

Figure 4: Share of sampled RTAs with provisions on selected rules and regulations, by type

Source: Author, based on WTO RTAIS data

From the above figure, it can be observed that regulatory provisions tend to be more often included in RTAs with developed countries than in those negotiated with fellow developing countries. This is particularly the case for unsolicited commercial emails, nearly all instances of which being found in North-South RTAs. Consumer protection stands out as the regulatory issue most commonly considered by small developing countries (58%), followed by protection of personal information (45%). At the other end of the spectrum are the issues of domestic electronic transaction frameworks and spam, both found in only 23% of RTAs.

The scope, depth and breadth of commitments made by small developing countries varies across issues, as analysed in the sections below.

3.1 Domestic regulatory frameworks

Legal frameworks allowing for the conclusion of contracts online are an essential element of the digital economy, ensuring policy certainty for the parties involved. In the context of cross-border e-commerce, such certainty remains needed when concluding online transactions with foreign counterparts.

In this regard, international principles and guidelines developed by international institutions are widely recognised, most notably the 1996 UNCITRAL Model Law on Electronic Commerce (MLEC) on which the legislation of at least 74 countries based to date.[14] The document aims to enable and facilitate commerce conducted using electronic means by providing national legislators with a set of internationally acceptable rules aimed at removing legal obstacles and increasing legal predictability for electronic commerce. In particular, it is intended to overcome obstacles arising from statutory provisions that may not be varied contractually by providing equal treatment to paper-based and electronic information.[15]

A number of RTAs include commitments related to domestic transaction frameworks, including 23% of those signed by small developing countries. These include (i) commitments to

[14] UNCITRAL Model Law on Electronic Commerce (1996) – Status. Url: UNCITRAL Model Law on Electronic Commerce (1996) – Status. Url: https://uncitral.un.org/en/texts/ecommerce/modellaw/electronic_commerce. Accessed on April 22, 2020./status. Accessed on April 22, 2020. Accessed on April 22, 2020;

[15] UNCITRAL Model Law on Electronic Commerce (1996) – Status. Url: https://uncitral.un.org/en/texts/ecommerce/modellaw/electronic_commerce. Accessed on April 22, 2020.

adopt or maintain domestic laws and regulations governing electronic transactions; (ii) the need to avoid unnecessary regulatory burden on electronic transactions; and (iii) facilitating the participation of interested stakeholders in the development of their respective legal frameworks. These provisions are complementary to other more specific regulation-related provisions, e.g. on consumer protection.

In the agreements analysed for this study, all such provisions (4) contained a commitment to adopt or maintain domestic laws and regulations governing electronic transactions. While starting with firm "shall" language, most RTAs except for the CPTPP soften the provision is with qualifiers such as "endeavour to" or "as soon as practicable". In all but one, specific reference was made to the need for taking into account the UNCITRAL Model Law on Electronic Commerce. As a typical example, ASEAN - Australia - New Zealand states:

> "Article 4. Domestic Regulatory Frameworks
> Each Party shall maintain, or adopt as soon as practicable, domestic laws and regulations governing electronic transactions taking into account the UNCITRAL Model Law on Electronic Commerce 1996."

It is worth noting that the RTAs signed by small developing countries which first addressed the issue are fairly recent, starting with Canada-Panama (2013) and Canada-Honduras (2015). These early occurrences tended to be limited to general provisions recognising the importance of clear, transparent and predictable domestic regulatory frameworks to facilitate the development of e-commerce. Articles dedicated to domestic regulatory frameworks were later adopted in Republic of Korea-Vietnam, Japan-Mongolia, and most recently the CPTPP and ASEAN Agreement on e-commerce.

Other provisions encourage parties to avoid unnecessary regulatory burden on electronic transactions (CPTPP), and/or to facilitate inputs by and take into account the interests of different stakeholders.

3.2 Consumer protection

Consumers benefit from e-commerce in many ways. They have easier access to a greater choice of - often cheaper – goods and services, which they can compare and purchase around the clock right from their home. Their buying experience can also be tailored to them by analysing data from their browsing behaviour. But in the absence of physical interaction, online consumers face new risks and concerns. Will the product be eventually delivered? Will it match their expectations, e.g. in terms of quality and safety? If not, are there satisfactory options for return, refund or redress even if the provider is located abroad? Are there any privacy-related risks of providing personal data to a provider based abroad? Etc. Ensuring consumer's confidence is the cornerstone of e-commerce, and they need to be reassured they can trust the transactions they engage in and are protected against potential abuses even when purchasing from foreign jurisdictions.

Through adapting their consumer protection policies and legislations to the e-commerce context, many governments have already sought to ensure that consumers benefit from the same level of protection whether they purchase online or offline. Relevant international guidelines to support this endeavour include the UN Guidelines on Consumer Protection (UNGCP), as well as the OECD Guidelines for Consumer Protection in the Context of Electronic Commerce. For instance, the latter provides good practices in areas such as: (i) fair business practices; (ii) advertising and marketing practises; (iii) transparency of online business identity and transactions; (iv) secure

payment mechanisms; (v) dispute resolution and redress; (v) privacy protection etc.[16]

In the context of RTAs, such regulations on consumer protection have been found relevant in that they can both promote and impact cross-border electronic commerce. Parties have adopted a number of provisions aimed at improving consumer trust in this area, with varying scope, depth and breadth. These range from broad language recognising the importance of online consumer protection, to firmer commitments on adopting or maintaining such regulations.

Consumer protection is the second type of provisions most commonly adopted by small developing countries in our sampled RTAs (58%), mainly through a dedicated article. This is consistent with the findings of other studies (Wu, 2017) covering a broader range of agreements with e-commerce provisions, and estimating that two-thirds contain provisions in favour of online consumer protection.

Where provisions exist, half of them have favoured language focused on cooperation in this area, whereby the parties agree on e.g.: (i) soft language recognising the importance of adopting and maintaining transparent and effective measures; (ii) firmer endeavours to maintain dialogue and information exchange on regulatory issues and national approaches to online consumer protection, as seen in several agreements involving the EU. Some RTAs adopting a cooperation-centric approach include Colombia - Northern Triangle, Costa Rica-Colombia and Canada-Honduras, with the latter reading:

> "Article 16.4: Consumer Protection
> 1. The Parties recognize the importance of maintaining and adopting transparent and effective measures to protect consumers from fraudulent or deceptive commercial practices in electronic commerce.
> 2. To this end, the Parties should exchange information and experiences related to national approaches for the protection of consumers engaging in electronic commerce."

Other common provisions (42%) commit members through firm language ("shall") to provide online consumers with a level of protection at least equivalent to that afforded by offline consumers in any existing domestic laws, regulations and policies. Such commitments were taken in four RTAs (two South-South, two North-South) involving small developing countries from the Asia-Pacific region. A typical example can be found in ASEAN - Australia - New Zealand:

> "Article 6: Online Consumer Protection
> 1. Subject to Paragraph 2, each Party shall, where possible, provide protection for consumers using electronic commerce that is at least equivalent to that provided for consumers of other forms of commerce under its relevant laws, regulations and policies."

It should be noted that such provisions do not necessarily imply a commitment to adopt regulations where they do not already exist. The aforementioned RTA is however one of the rare cases where an explicit link is made with adopting or maintaining measures to protect online consumers, as the article continues by stating:

> "2. A Party shall not be obliged to apply Paragraph 1 before the date on which that Party enacts domestic laws or regulations or adopts policies on protection for consumers using electronic commerce."

In a few RTAs, the adopted article more firmly binds parties to "adopt or maintain" measures

[16] OECD (2000). Guidelines for Consumer Protection in the Context of E-Commerce

aimed at protecting consumers engaged in e-commerce (e.g. Republic of Korea – Viet Nam), or even consumer protection laws in rare cases. With regard to the latter, small developing countries which are parties to the CPTPP (e.g. Viet Nam) have adopted such an obligation through the following article:

> "Article 14.7: Online Consumer Protection
> 1. …
> 2. Each Party shall adopt or maintain consumer protection laws to proscribe fraudulent and deceptive commercial activities that cause harm or potential harm to consumers engaged in online commercial activities."

In Latin America, it can be observed that both Costa Rica – Colombia and Mexico - Central America have adopted provisions related to the promotion of alternative cross-border dispute settlement mechanisms in the context of online consumer protection.

3.3 Protection of personal information

Related to the above issue of consumer protection, as well as to cross-border data flows, concerns over the protection of consumers' personal information and privacy have been growing with the increasingly central role played by data in fuelling e-commerce. Fast technological developments including artificial intelligence are allowing sheer amounts of user data to be stored, accessed and processed, and consumers increasingly demand assurances that their personal data exchanged during a transaction will be protected.[17] On the other hand, data flows have boosted trade and business for many firms, who may fear that privacy regulations could restrict their activity.

In recent years, national regulations have been updated to better protect privacy and personal data collected from internet users. Among the most far-reaching examples is the EU's General Data Protection Regulation (GDPR), which poses privacy as a fundamental human right and aims to give greater control to internet users over their personal data by creating specific requirements for collecting, storing, accessing, transferring and processing it. Other strict regulations on the matter also exist in China which restrict data flows of both personal and non-personal data on cybersecurity grounds.[18]

Data privacy has become a glaring modern example of the old debate over balancing trade liberalisation and the pursuance of legitimate public policy objectives, as proponents free data flows have sometimes labelled the EU approach as overly restrictive or protectionist.[19] In particular, the United States have traditionally been vocal critics of the trade-restrictive effect of EU's data protection framework.[20]

Among the RTAs analysed for this study, almost half (45%) address the protection of personal information of e-commerce users. Until 2015, these provisions tended to be included as part of cooperation or general articles outlining the objective and principles of the chapter (e.g. EFTA-Central America, EU-CARIFORUM, Panama-Singapore). More recently, while some have

[17] UNCTAD (2016) Manual on Consumer Protection. Geneva: Palais des Nations

[18] Svetlana Yakovleva, Kristina Irion, Pitching trade against privacy: reconciling EU governance of personal data flows with external trade, International Data Privacy Law, ipaa003, 30 March 2020, https://doi.org/10.1093/idpl/ipaa003

[19] UNCTAD, 'Data Protection Regulations and International Data Flows: Implications for Trade and Development' (United Nations Publications, 2016) 106 <http://unctad.org/en/PublicationsLibrary/dtlstict2016d1_en.pdf>

[20] Susan A Aaronson, 'Redefining Protectionism: The New Challenge in the Digital Age' IIEP Working Paper, 2016, 87 <https://www2.gwu.edu/~iiep/assets/docs/papers/2016WP/AaronsonIIEPWP2016-30.pdf>

addressed the issue as part of the article on online consumer protection, many RTAs have included specific articles dedicated to the protection of personal information. These include EAEU-Vietnam (2017), Mexico-Panama (2016), Korea-Vietnam (2016) and Colombia-Costa Rica (2016).

The coverage of these provisions range from commitments to adopt or maintain measures for the protection of personal information, to cooperation and the simple recognition of the importance to protect personal data. It is worth noting that few of our sampled RTAs containing a dedicated article provide an explicit definition of "personal information", except for Mexico-Panama and the CPTPP. The latter defines it as: "personal information means any information, including data, about an identified or identifiable natural person".

The most common type of provision (70%) relates to soft ("shall endeavour) commitments to adopt or maintain measures aimed at the protection of private data of electronic commerce users. The type of expected measures is often specified, ranging from "legal frameworks" and "laws, regulations or administrative measures" generally to more specific "legislative measures" (KOR-VNM). The only agreement through which small developing countries have adopted a binding commitment to protect personal data is the CPTPP:

> "Article 14.8: Personal Information Protection
> 1. …
> 2. To this end, each Party shall adopt or maintain a legal framework that provides for the protection of the personal information of the users of electronic commerce. In the development of its legal framework for the protection of personal information, each Party should take into account principles and guidelines of relevant international bodies.
> 3. Each Party shall endeavour to adopt non-discriminatory practices in protecting users of electronic commerce from personal information protection violations occurring within its jurisdiction.
> 4. …
> 5. Recognising that the Parties may take different legal approaches to protecting personal information, each Party should encourage the development of mechanisms to promote compatibility between these different regimes. These mechanisms may include the recognition of regulatory outcomes, whether accorded autonomously or by mutual arrangement, or broader international frameworks. To this end, the Parties shall endeavour to exchange information on any such mechanisms applied in their jurisdictions and explore ways to extend these or other suitable arrangements to promote compatibility between them."

In the above, it is also interesting to note that point 3 reflects concerns that such frameworks should not be used in a discriminatory manner which could favour domestic firms at the expense of foreign ones. This specification is not found in other agreements.

However, the reference to taking into account international data protection frameworks, principles, standards or guidelines while adopting such measures is commonly found in other RTAs (e.g. CRI-COL, EAEU-VNM, JPN-MNG, MEX-PAN). A number of such guidelines have been developed since the 1980s at the international (e.g. OECD Privacy Guidelines) and regional (e.g. EU's Convention 108, GDPR) levels. Most recently in 2019, the first ISO standard for privacy information management was published (ISO/IEC 27701).

Other provisions relate to cooperation, transparency as well as exchange of information and experiences, either on a best endeavour basis or sometimes in firmer terms. For instance, RTAs with the EU tend to address most e-commerce provisions through a cooperation-centric article on "regulatory aspects of e-commerce", which is however binding on parties as they "shall maintain a dialogue on regulatory issues raised by electronic commerce". Unsurprisingly, the CPTPP goes the farthest on transparency by requiring that parties "should publish information

on the personal information protections it provides to users of electronic commerce", specifying this includes remedies and business compliance requirements.

Notwithstanding provisions aimed at protecting personal data, it should be noted that, in the two cases where RTAs signed by small developing countries include articles allowing cross-border data flows, [21] such flows may include personal data as long as compliant with relevant protection regulations:

> "Article 14.10: Cross-border information flows
> Each Party shall allow its persons and the persons of the other Party to transmit electronic information, from and to their territory, when required by said person, in accordance with the legislation applicable in terms of personal data protection and taking into account international practices."
>
> Source: Mexico-Panama, translated from Spanish original

3.4 Unsolicited Commercial Emails

Unsolicited commercial communications by e-mail (i.e. spam) have long been a concern for undermining the necessary consumer trust in e-commerce. Indeed, spam is associated with risks in areas such as privacy, deception of consumers, protection of minors and human dignity, extra costs for businesses, and lost productivity. Yet, it is estimated that spam represents over half of global e-mail traffic. [22] Moreover, email is an essential part of most companies' marketing strategy, who may be negatively impacted if consumers stop using or trusting emails.

Besides the above-mentioned provisions related to consumer protection and data privacy, some RTAs are increasingly referring to the need to address the issue of unsolicited commercial emails. In our sample, 7 RTAs made reference to the issue, mainly through soft language in cooperation-related provisions. However, only the CPTPP provides an explicit definition:

> "Article 14.1: Definitions
> For the purposes of this Chapter:
> [...]
> - unsolicited commercial electronic message means an electronic message which is sent for commercial or marketing purposes to an electronic address, without the consent of the recipient or despite the explicit rejection of the recipient, through an Internet access service supplier or, to the extent provided for under the laws and regulations of each Party, other telecommunications service."

In the majority of cases (71%), the issue is simply mentioned as one of many areas identified for cooperation as part of the cooperation article. These are mainly on a best endeavour basis, although it is included in the above-mentioned EU article on "regulatory aspects of e-commerce" which adopts firm language on cooperation between parties.

In two agreements however, parties have adopted a dedicated article to the adoption of appropriate measures against Unsolicited Commercial E-mails (e.g. spam). While Japan-Mongolia takes a soft "shall endeavour" approach, the CPTPP binds parties to "adopt or maintain measures" in this area (providing specifications in this regard), as well as "provide recourse against suppliers" of such messages.

[21] CPTPP, MEX-PAN

[22] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on unsolicited commercial communications or 'spam' (Text with EEA relevance) /* COM/2004/0028 final

3.5 Policy implications for small developing countries

In the area of regulatory frameworks, the main commitment sought in RTAs relate to adopting or maintaining domestic laws and regulations governing electronic transactions that take into account the UNCITRAL Model Law principles. On the positive side, these principles have gained broad acceptance internationally and already underpin the legislation of at least 74 countries to date including a large number of developing countries.[23] This suggests that many developing countries have already incorporated at least part of these principles in their legal frameworks, and have accumulated practice of application.

As a result, the adoption and implementation of this provision could be expected to be relatively unproblematic in many developing countries. Nevertheless, legislation in some countries may not yet full match the match the UNCITRAL standard in specific areas, and consistency of the country's legislation with it would first need to be analysed and ascertained. Where developing countries' legislation is up to the standard, it may also need some time to be fully and duly implemented so as to factor-in the experience in their RTA positions.

In the area of consumer trust and data privacy, lack of consumer trust remains one of the key bottlenecks to e-commerce uptake in many developing countries, particularly as it relates to online financial transactions. [24] According to UNCTAD Cyberlaw Tracker data, data privacy legislation exists in about 40% of Asian and African countries, and developing countries' e-legislations continue to lag behind in the area of online consumer protection.[25]

Comparing when RTAs with related provisions entered into force with the introduction of online consumer protection or data privacy legislations in their parties, it can be observed that several small developing countries having adopted such provisions already had related national legislation beforehand. For instance, Vietnam already had a national law on data protection and privacy since 2010, prior to negotiating related RTAs since 2016.

Similarly, in the ambit of consumer protection, Panama already had legislation in force since 2002 (with additional developments in 2007, 2008 and 2009) before entering into RTAs with Singapore (2007) and United States (2012). The same observation can be made for Colombia, which had national regulation in force since 2008 when the Colombia-Northern Triangle RTA entered into force in 2012.

However, other parties to the Colombia-Northern Triangle RTA did not have an online consumer protection legislation beforehand, and have followed different evolutions since then. On the one hand, Guatemala did not have an online consumer protection legislation when entering this agreement, and still doesn't. On the other hand, El Salvador and Nicaragua adopted or strengthened consumer protection legislation covering e-commerce in 2013, the year following the RTAs' entry into force, whereas the agreement used soft cooperation-centric language on the matter.

---

[23] UNCITRAL Model Law on Electronic Commerce (1996) – Status. Url: UNCITRAL Model Law on Electronic Commerce (1996) – Status. Url: https://uncitral.un.org/en/texts/ecommerce/modellaw/electronic_commerce. Accessed on April 22, 2020./status. Accessed on April 22, 2020. Accessed on April 22, 2020;

[24] Ebrahimi Darsinouei, A. (2017). Understanding E-Commerce Issues in Trade Agreements: A Development Perspective Towards MC11 and Beyond. Geneva: CUTS International, Geneva

[25] UNCTAD (2016) Manual on Consumer Protection. Geneva: Palais des Nations

SECTION 4

Facilitation

In today's digital era, transactions happen online and across borders. These are simultaneously subject to various regulations, whose level of interconnection are creating unprecedented complexities for businesses, consumers and policymakers.[26] There is consensus globally on the need to take coordinated measures for simplifying and facilitating such transactions, and speeding up the movement of goods and services across borders.

In this regard, trade agreements can play an important role and have helped countries coordinate on relevant trade facilitation measures related to e-commerce, e.g. in areas such as paperless trading, electronic authentication and electronic signatures. Indeed, transactions conducted online require that electronic contract and signatures be as legally valid as their paper equivalent. Similarly, the recognition of electronic trade administration documents on both sides of the border can significantly improve the efficiency of commercial procedures and reduce red tape in trade.

Facilitation provisions analysed in this section will focus on four main topics: (i) Cooperation; (ii) Electronic Authentication and Signatures; (iii) Transparency; and (iv) Paperless Trade Administration. An overview of the extent to which each of these areas has been included in North-South, South-South and all of our sampled RTAs is provided in Figure 5 below.

Figure 5: Share of sampled RTAs with facilitation provisions, by issue and type

Source: Author, based on WTO RTAIS data

As per Figure 5, cooperation is by far the type of facilitation provisions on e-commerce that has been most considered by small developing countries in signing RTAs (87%). Electronic authentication comes next (48%), with a more notable presence in North-South RTAs. Finally, Transparency (45%) Paperless trading (32%) are the least included, although higher interest for them is seen in South-South RTAs.

4.1 Cooperation

[26] Ptashkina, Maria. 2018. Facilitation 2.0: E-Commerce and Trade in the Digital Age. RTA Exchange. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and Inter-American Development Bank (IDB).

As noted above, cooperation in e-commerce is by far the most common type of provisions found in RTAs adopted by small developing countries. This largely stems from the fact that, in addition to being a substantive topic *per se*, cooperation is also a preferred means for addressing other areas of e-commerce in soft, non-binding language. As a result, 87% of RTAs with e-commerce provisions adopted by small developing countries refer to at least one form of cooperation in this area.

Such cooperation is mainly addressed through a dedicated article under the e-commerce chapter, or embedded in other articles on e-commerce such as general provisions. In one case, EFTA-Central America, cooperation in the form of exchange of information is made part of an annex dedicated to e-commerce, referred to in the general provisions of the agreement.

The most common form of cooperation pertains to maintaining dialogue, exchange of experience and information on regulatory issues relevant to e-commerce, the most often listed being data privacy, consumer confidence, cyber-security, electronic signatures, intellectual property rights, and electronic government. The below paragraph (b) from the Dominican Republic - Central America - United States Free Trade Agreement (CAFTA-DR) is a good classic example in this regard:

> "Article 14.5: Cooperation
> Recognizing the global nature of electronic commerce, the Parties affirm the importance of:
> (a) working together to overcome obstacles encountered by small and medium enterprises in using electronic commerce;
> (b) sharing information and experiences on laws, regulations, and programs in the sphere of electronic commerce, including those related to data privacy, consumer confidence in electronic commerce, cyber-security, electronic signatures, intellectual property rights, and electronic government;
> (c) working to maintain cross-border flows of information as an essential element in fostering a vibrant environment for electronic commerce;
> (d) encouraging the private sector to adopt self-regulation, including through codes of conduct, model contracts, guidelines, and enforcement mechanisms that foster electronic commerce; and
> (e) actively participating in hemispheric and multilateral fora to promote the development of electronic commerce."

Other provisions mentioned in paragraphs (a) to (e) above article are also commonly found with few variations in 9 other RTAs, whereby parties "affirm the importance" of cooperation to: (i) facilitate the use of electronic commerce by small and medium enterprises; (ii) aiming to maintain cross-border flows of information as an essential element for electronic commerce; (iii) Encouraging the private sector to adopt self-regulation through codes of conduct, model contracts, guidelines, and enforcement mechanisms that foster electronic commerce; and (iv) Actively participating in regional and multilateral fora to promote the development of electronic commerce.

Besides such best endeavour language, some RTAs envision cooperation on firmer terms requiring that parties "shall" encourage, maintain or endeavour to cooperate. In addition to information exchange and dialogue, other forms of cooperation mentioned also include *inter alia* research, training, business exchanges, and joint electronic commerce projects. Interestingly, and unlike most other RTAs, Japan-Mongolia applies different strengths of commitment depending on the type of cooperation at stake:

> "Article 9.12 Cooperation
> 1. The Parties shall, where appropriate, cooperate bilaterally […]
> 2. The Parties shall, where appropriate, share information and experiences […]
> 3. The Parties shall cooperate to overcome obstacles […]
> […]

> 5. The Parties recognize the importance of working to maintain cross-border flows of information as an essential element for a vibrant electronic commerce environment.
> 6. The Parties recognize the importance of further enhancement of trade in digital products."

It can also be noted that, in addition to Article 14.15 on cooperation, the CPTPP is the only agreement to also include a dedicated article to cooperation on cybersecurity matters specifically:

> "Article 14.16: Cooperation on Cybersecurity Matters
> The Parties recognise the importance of:
> (a) building the capabilities of their national entities responsible for computer security incident response; and
> (b) using existing collaboration mechanisms to cooperate to identify and mitigate malicious intrusions or dissemination of malicious code that affect the electronic networks of the Parties."

Finally, it is noteworthy that specific consideration is also given to development cooperation and assistance on digital matters in a few North-South agreements (3). These are mainly found in cooperation provisions of EU and ASEAN - New Zealand - Australia RTAs, envisioning activities in the form of capacity building, training, technical cooperation and assistance in areas such as ICT infrastructure, regulatory and standards compliance, promotion of paperless trade administration etc. Box 2 below provides relevant extracts from such provisions.

Box 2. References to Capacity building and Technical Assistance: Selected extracts from North-South RTAs

ASEAN - New Zealand - Australia

> "Article 9:
> Co-operation on Electronic Commerce
> 1. Recognising the global nature of electronic commerce, the Parties shall encourage co-operation in research and training activities that would enhance the development of electronic commerce. These co-operative research and training activities may include, but are not limited to:
> (a) promotion of the use of electronic versions of trade administration documents used by any other Party or Parties;
> […]"
> (e) exploring **ways in which a developed Party or Parties could provide assistance to the developing Parties** in implementing an electronic commerce legal framework;
> (f) encouraging co-operation between the relevant authorities to facilitate prompt investigation and resolution of fraudulent incidents relating to electronic commerce transactions;"

EU – Central America

> "Article 56
> Cooperation on Establishment, Trade in Services and Electronic Commerce
> 2. Cooperation **includes support for technical assistance, training and capacity building** in, inter alia, the following areas:
> (a) improving the ability of service suppliers of the Republics of the CA Party to gather information on and to meet regulations and standards of the EU Party at the European Union's level and at national and sub-national levels;
> (b) improving the export capacity of service suppliers of the Republics of the CA Party, with particular attention to the needs of small and medium-sized enterprises;
> […]
> (e) promoting exchange of information and experiences and providing technical assistance regarding the development and implementation of regulations at national or regional level, where applicable;
> (f) establishing mechanisms for promoting investment between the EU Party and the Republics of the CA Party, and enhancing the capacities of investment promotion agencies in the Republics of the CA Party."

4.2 Electronic Authentication and Signatures

Transactions conducted online generally entail that contracts are concluded and signed electronically. The legal value of such contracts requires that electronic signatures be granted equal treatment to signatures done on paper, and be admissible as evidence in legal proceedings. The recognition of digital signatures is beneficial to businesses and consumers alike, who can conclude transactions quickly on distance.

The term "authentication" is predominantly used with respect to determining if an electronic signature is genuine and associated with the signatory. In order to prevent potential misdealing, countries may define specific requirements for a digital signature to be deemed valid. Since e-commerce users might operate on different levels and thus use different technologies, a certain degree of compatibility, harmonisation or mutual recognition between countries is required. Therefore, parties to RTAs have sought to agree on the allowed level of flexibility in establishing requirements with respect to the complexity of electronic signatures.

In our sample, 48% of agreements include provisions on electronic authentication and signatures, almost all in dedicated articles. While the exact wording (and hence scope) of these provisions differ across agreements, they generally entail a commitment from parties to maintain or adopt (or endeavour to adopt) measures or legislation for electronic authentication. Examples of this commitment can for instance be found in Republic of Korea - Viet Nam:

> "Article 10.3: Electronic Authentication, Electronic Signatures and Digital Certificates
> 1. Each Party shall endeavor to adopt or maintain legislation for electronic authentication that would:
> (a) permit parties to an electronic transaction to mutually determine the appropriate authentication technologies and implementation models for their electronic transactions;
> (b) permit parties to an electronic transaction to have the opportunity to prove that their electronic transaction complies with the Party's domestic laws and regulations in respect to electronic authentication; and
> (c) not limit the recognition of authentication technologies and implementation models.
> 2. The Parties shall, where possible, endeavor to work towards the mutual recognition of digital certificates and electronic signatures that are issued or recognized by them based on internationally accepted standards.
> 3. The Parties shall encourage the interoperability of digital certificates used by business."

As in the above, the provision usually requires that the said measures "permit", "do not limit" or "do not prevent": (i) parties to a transaction to determine appropriate authentication technologies; and (ii) proving their compliance authentication requirements. In the most common formulation of the provision, parties also seek to work towards the mutual recognition of digital certificates and electronic signatures, as well as encourage the interoperability of digital certificates used by business. Reference is also commonly made to need for e-signatures to meet internationally accepted standards.

4.3 Transparency

As in other areas of trade, transparency of relevant legal frameworks is a necessary precondition for engaging in cross-border transactions, and is required to secure business and consumer trust in the e-commerce domain. Countries are already subject to transparency requirements in multiple trade-related areas, such as publishing and making publicly available relevant laws, policies and regulations.

In our sampled agreements, 45% of RTAs with e-commerce provisions signed by small developing countries contain provisions related to transparency. The approach to this measure is standard, since many of the articles address transparency as the commitment of parties to publish or make available laws, regulations, procedures and other administrative rulings of general application that affect electronic commerce public.

Some agreements do not refer to transparency for electronic commerce specifically, but for the RTA as a whole. However, the aim is the same, which is to ensure that all regulations of general application respecting any of the matters covered by the agreement are promptly published and available to interested parties.

A slightly different case is that of the ASEAN Agreement on Electronic Commerce, in which Article 13 on Transparency also includes a provision for Member States to be responsive to any request concerning measures affecting the implementation of the agreement. Therefore, transparency in this context is not only the obligation of parties to *promptly publish* all relevant measures or other regulations related to e-commerce but also to *promptly respond* to any request made by another Member State about its measures.

4.4 Paperless Trade Administration

Similar to the logic underpinning provisions on electronic authentication and signatures, the digitisation of trade administration documents can significantly improve the efficiency of commercial procedures. Such documents may include, for instance, forms issued by a country which importers or exporters are required the complete. In particular, the use of electronic versions can reduce the cost and time associated with the submission, processing and approval of trade administration documents. This requires that trading partners grant equal treatment and recognition to electronic documents as their paper versions.

In this regard, parties to trade agreements have sometimes sought to promote the use of paperless trading. However, only 32% of our sampled RTAs signed by small developing countries address this area. These include both South-South and North-South RTAs, such as ASEAN - Australia - New Zealand:

> "Article 8
> Paperless Trading
> 1. Each Party shall, where possible, work towards the implementation of initiatives which provide for the use of paperless trading.
> 2. The Parties shall co-operate in international fora to enhance acceptance of electronic versions of trade administration documents.
> 3. In working towards the implementation of initiatives which provide for the use of paperless trading, each Party shall take into account the methods agreed by international organisations including the World Customs Organization."

Overall, the characteristics of articles on paperless trading include three main elements: (i) Public domain: the parties commit to make trade administration documents available to the public in electronic form; (ii) Immediate equivalence: trade administration documents submitted electronically are accepted as the legal equivalent of the paper version of such documents; and (iii) International cooperation: parties endeavour the cooperate bilaterally and in international fora to enhance the acceptance of electronic versions of trade administration documents and work towards the implementation of initiatives, which provide for the use of paperless trading.

4.5 Policy implications for small developing countries

Digital trade facilitation is a relative "zone of comfort" for many developing countries, which have started gaining experience in the run up to concluding the WTO Trade Facilitation Agreement (TFA), as well as in its implementation. It can therefore be expected that small developing countries find facilitation provisions, especially commitments to cooperation, beneficial to secure the successful implementation of the agreement and to further develop e-commerce-related areas.

Similarly, legal framework allowing regulating e-signatures is an essential element of the e-commerce ecosystem, supporting the conclusion of most types of contractual and accessory instruments electronically. In this area, some of the rules explored in RTAs are rather simple and mainly based on the UNCITRAL Model Law on Electronic Commerce. The principles contained in the model law also provide room for the inclusion of exceptions.

According to UNCTAD's Cyberlaw tracker, 79% of countries already have legislation on e-transactions, recognising the legal equivalence of paper-based and electronic forms of exchange in place, and 9% of countries have a draft. Many small developing countries have hence accumulated practice of application on electronic authentication and signatures, which might well simplify their implementation. In countries with more limited experience, or where legislation is not yet at par with UNCITRAL principles, a review of the existing framework may be worth considering ahead of negotiating RTA provisions.

In the field of paperless trade administration, small developing countries could anticipate some implementation challenges in the short term given their capacity constraints, low digital uptake and lacking infrastructure. In order to mitigate these while harnessing the trade benefits of paperless trade provisions, they may consider subjecting their commitment to the provision of technical assistance, on the model of the WTO TFA.

Conclusion and Recommendations

In recent years, the connection between the technical aspects of ecommerce and trade issues has seen increased interest. While still at an initial stage in WTO plurilateral negotiations, e-commerce has been firmly introduced on the agenda of trade policy makers, including from many developing countries, through regional and other trade agreements. In fact, 74 RTAs with e-commerce provisions have so far been signed by developing countries, particularly emerging markets. As far as smaller, non-emerging developing countries are concerned, their participation has been limited to 32 RTAs. Therefore, existing literature on e-commerce provisions found in RTAs is unlikely to reflect an accurate picture of the latter type of countries.

This study aimed to provide a complementary view in this regard, by focusing its analysis on the e-commerce provisions adopted specifically by small developing countries in RTAs. In particular, it sought to identify the approaches they have taken in negotiating such agreements, as well as their potential implications at the policy and regulatory levels. The experience of these countries can provide useful lessons for others who may consider negotiating e-commerce provisions in the future, e.g. under the auspices of the AfCFTA.

Analysis focused on 12 of the most commonly found e-commerce issues covered in the sampled RTAs across three categories: (i) market access: customs duties, treatment of digital products, cross-border information flows, electronic supply of services; (ii) rules and regulations: consumer protection, protection of personal information, unsolicited commercial e-mails, domestic electronic transactions frameworks; and (iii) facilitation: paperless trade administration, cooperation, transparency, and electronic authentication.

At the broader category level, small developing countries have tended to favour the inclusion of facilitation provisions, particularly cooperation which is found in 87% of cases. This is however largely due the fact that cooperation is not only a substantive topic *per se*, but also a preferred means for addressing other areas of e-commerce in soft, non-binding language.

The next most-included category relates to rules and regulations, particularly consumer protection (58%) and protection of personal information (45%). This is despite the fact that developing countries are lagging behind in the area of online consumer protection legislations, which exist in only about 40% of Asian and African countries.

In this regard, the study notes that several small developing countries having adopted RTA provisions on online consumer protection already had related national legislation beforehand. This suggests that the existence of prior trade agreements or domestic policies regulating the a given area is likely to be – or should – be an important determinant of the nature and depth of RTA commitments conceded in this area.

Another main commitment commonly sought by trading partners, more so in North-South RTAs, relates to adopting domestic regulations governing electronic transactions that take into account the UNCITRAL Model Law principles. In fact, many developing countries have already incorporated at least part of these principles in their legal frameworks, which could make the implementation of the provision relatively unproblematic for them. Nevertheless, ahead of committing in RTAs full consistency of the

country's legislation with UNCITRAL principles would need to be ascertained, and experience acquired in their implementation.

The least-included category of provisions is market access, except for frequent commitments on not imposing customs duties on digital products or electronic transmissions (68%). In this regard, various studies have analysed the revenue implications of such a decision for developing countries, based on the experience of the WTO moratorium. However, estimates of the revenue implications of the moratorium vary widely across studies, ranging from USD 280 million to USD 8.2 billion depending on the methodology adopted. In a context where most small developing countries remain net importers of electronic transmissions, country RTA and WTO negotiators should ensure coordinated positions. Indeed, committing to the provision in RTAs may have the effect of making the WTO moratorium permanent for them, something some developing countries have been resisting at the multilateral level.

Finally, lessons are drawn from the experience of small developing countries on the issues of cross-border data flows and localisation which have been receiving increased attention in recent years. It is found that some of these countries which have already put in place limitations to data flows have been able to secure carve-outs in agreements which otherwise strictly discipline data localisation. Vietnam is a case in point, for it secured a peace clause in the CPTPP on its existing regulation for two to five years.

References

Banga, R. (2019). Growing Trade in Electronic Transmissions: Implications for the South. Geneva: UNCTAD, Palais des Nations. https://unctad.org/en/PublicationsLibrary/ser-rp-2019d1_en.pdf

Brusick, P. (2018). Competition Concerns in Cross- border E-Commerce Implications for Developing Countries. CUTS International, Geneva. http://www.cuts-geneva.org/pdf/KP2018-Study-Competition_Concerns_in_Cross-border_E-Commerce.pdf

Ciuriak, D., & Ptashkina, M. (2018). The Digital Transformation and the Transformation of International Trade Acknowledgements Acknowledgements. (January). Retrieved from https://www.ictsd.org/sites/default/files/research/rta_exchange-the-digital-transformation-and-trade-ciuriak-and-ptashkina.pdf

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on unsolicited commercial communications or 'spam' (Text with EEA relevance) /* COM/2004/0028 final */. https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=celex%3A52004DC0028

Ebrahimi Darsinouei, A. (2017). Understanding E-Commerce Issues in Trade Agreements: A Development Perspective Towards MC11 and Beyond. Geneva: CUTS International, Geneva. http://www.cuts-geneva.org/pdf/STUDY%20-%20E-Commerce%20Towards%20MC11.pdf

E-Commerce Readiness Study in the SADC sub-region. Presentation of the Validation Workshop. Mauritius, 2012. https://www.icta.mu/mediaoffice/2012/SADC_Validationworkshop.htm

https://unctad.org/en/Pages/DTL/STI_and_ICTs/ICT4D-Legislation/eCom-EastAfrican.aspx

https://unctad.org/meetings/en/Presentation/CII_EM5_P_RAchieng_en.pdf

Irfan, M. (2019). Data Flows, Data Localisation, Source Code: Issues, Regulations and Trade Agreements. Geneva: CUTS International, Geneva. http://www.cuts-geneva.org/pdf/WTOSSEA2018-Study-Data_Flows_Localisation_Source_Code.pdf

Kaukab, R. (2017). Understanding E-Commerce Issues in Trade Agreements: A Development Perspective. Presentation at WTO Public Forum – Session 45: “Digital Age, Development, Trade Rules: Behind the Rhetoric “. Geneva, Switzerland.

Kerry A Chase, Trading Blocs: States, Firms, and Regions in the World Economy (University of Michigan Press, 2009).

Mark S Copelovitch and Tonya L Putnam, “Rationality in Context: Rethinking Approaches to the Design of International Agreements,” 2010.

Maxwell, W., & Bourreau, M. (2014). Technology Neutrality in Internet, Telecoms and Data Protection Regulation. Computer and Telecommunications L. Rev. Available at SSRN: https://ssrn.com/abstract=2529680 or http://dx.doi.org/10.2139/ssrn.2529680

Metschel, Manuel (2018). The World Trade Organization in times of digital trade: Addressing digital protectionism? Barcelona: Universitat de Barcelona. http://diposit.ub.edu/dspace/bitstream/2445/123738/1/TFM-MOI_Metschel_2018.pdf

Monteiro and Teh (2017). Provisions on Electronic Commerce in Regional Trade Agreements. Geneva: World Trade Organization. https://www.wto.org/english/res_e/reser_e/ersd201711_e.pdf

OECD (1998). OECD Action Plan for Electronic Commerce. OECD Ministerial Conference: "A Borderless World: Realising the Potential of Global Electronic Commerce", Ottawa, 7-9 October 1998. SG/EC(98)9/FINAL. http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=SG/EC(98)9/FINAL&docLanguage=En

OECD (2000). Guidelines for Consumer Protection in the Context of E-Commerce. https://www.oecd.org/sti/consumer/34023811.pdf

OECD (2019). Electronic transmissions and international trade – Shedding new light on the Moratorium Debate. Paris: OECD. TAD/TC/WP(2019)19/FINAL. https://one.oecd.org/document/TAD/TC/WP(2019)19/FINAL/en/pdf

Ptashkina, Maria. 2018. Facilitation 2.0: E-Commerce and Trade in the Digital Age. RTA Exchange. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and Inter-American Development Bank (IDB). https://www.ictsd.org/sites/default/files/research/rta_exchange_-_ptashkina_-_facilitation_2.0_-_e-commerce_-_ptashkina_0.pdf

Susan A Aaronson, 'Redefining Protectionism: The New Challenge in the Digital Age' IIEP Working Paper, 2016, 87 <https://www2.gwu.edu/~iiep/assets/docs/papers/2016WP/AaronsonIIEPWP2016-30.pdf>

Svetlana Yakovleva, Kristina Irion, Pitching trade against privacy: reconciling EU governance of personal data flows with external trade, International Data Privacy Law, ipaa003, 30 March 2020, https://doi.org/10.1093/idpl/ipaa003

UNCITRAL Model Law on Electronic Commerce (1996) – Status. Url: https://uncitral.un.org/en/texts/ecommerce/modellaw/electronic_commerce/status. Accessed on April 22, 2020.

UNCITRAL Model Law on Electronic Commerce (1996). Url: https://uncitral.un.org/en/texts/ecommerce/modellaw/electronic_commerce. Accessed on April 22, 2020.

UNCTAD (2016) Manual on Consumer Protection. Geneva: Palais des Nations. https://unctad.org/en/PublicationsLibrary/webditcclp2016d1.pdf

UNCTAD Global Cyberlaw Tracker https://unctad.org/en/Pages/DTL/STI_and_ICTs/ICT4D-Legislation/eCom-Data-Protection-Laws.aspx

UNCTAD, 'Data Protection Regulations and International Data Flows: Implications for Trade and Development' (United Nations Publications, 2016) 106 http://unctad.org/en/PublicationsLibrary/dtlstict2016d1_en.pdf

UN-ECA. (2019). Assessing Regional Integration in Africa IX.

Wu, M. (2017). Digital Trade-Related Provisions in Regional Trade Agreements: Existing Models and Lessons for the Multilateral Trade System. (November) https://e15initiative.org/wp-content/uploads/2015/09/RTA-Exchange-Digital-Trade-Mark-Wu-Final-2.pdf

Annex 1: RTA Sample

RTA Name	Entry into force	Signatories
United States - Jordan	17/12/2001	Jordan; United States of America
Caribbean Community and Common Market (CARICOM)	07/04/2002	Antigua and Barbuda; Bahamas; Barbados; Belize; Dominica; Grenada; Guyana; Haiti; Jamaica; Montserrat; Saint Kitts and Nevis; Saint Lucia; Saint Vincent and the Grenadines; Suriname; Trinidad and Tobago
Canada - Costa Rica (Joint Statement)	01/11/2002	Canada; Costa Rica
China - Macao, China	17/10/2003	China; Macao, China
Jordan - Singapore	22/08/2005	Jordan; Singapore
United States - Morocco	01/01/2006	Morocco; United States of America
Dominican Republic - Central America - United States Free Trade Agreement (CAFTA-DR)	03/01/2006	Costa Rica; Dominican Republic; El Salvador; Guatemala; Honduras; Nicaragua; United States of America
Panama - Singapore	24/07/2006	Panama; Singapore
Nicaragua - Chinese Taipei	01/01/2008	Chinese Taipei; Nicaragua
EU - CARIFORUM States EPA	29/12/2008	Antigua and Barbuda; Bahamas; Barbados; Belize; Dominica; Dominican Republic; Grenada; Guyana; Jamaica; Saint Kitts and Nevis; Saint Lucia; Saint Vincent and the Grenadines; Suriname; Trinidad and Tobago; Austria; Belgium; Bulgaria; Croatia; Cyprus; Czech Republic; Denmark; Estonia; Finland; France; Germany; Greece; Hungary; Ireland; Italy; Latvia; Lithuania; Luxembourg; Malta; Netherlands; Poland; Portugal; Slovak Republic; Slovenia; Spain; Sweden
Colombia - Northern Triangle (El Salvador, Guatemala, Honduras)	12/11/2009	Colombia; El Salvador; Guatemala; Honduras
ASEAN - Australia - New Zealand	01/01/2010	Australia; New Zealand; Brunei Darussalam; Myanmar; Cambodia; Indonesia; Lao People's Democratic Republic; Malaysia; Philippines; Singapore; Viet Nam; Thailand
Mexico - Central America	09/01/2012	Costa Rica; El Salvador; Guatemala; Honduras; Mexico; Nicaragua
EU - Eastern and Southern Africa States Interim EPA	14/05/2012	Madagascar; Mauritius; Seychelles; Zimbabwe; Austria; Belgium; Bulgaria; Croatia; Cyprus; Czech Republic; Denmark; Estonia; Finland; France; Germany; Greece; Hungary; Ireland; Italy; Latvia; Lithuania; Luxembourg; Malta; Netherlands; Poland; Portugal; Slovak Republic; Slovenia; Spain; Sweden

Canada - Jordan	01/10/2012	Canada; Jordan
United States - Panama	31/10/2012	Panama; United States of America
Costa Rica - Singapore	07/01/2013	Costa Rica; Singapore
Canada - Panama	01/04/2013	Canada; Panama
EU - Central America	01/08/2013	Costa Rica; El Salvador; Guatemala; Honduras; Nicaragua; Panama; Austria; Belgium; Bulgaria; Croatia; Cyprus; Czech Republic; Denmark; Estonia; Finland; France; Germany; Greece; Hungary; Ireland; Italy; Latvia; Lithuania; Luxembourg; Malta; Netherlands; Poland; Portugal; Slovak Republic; Slovenia; Spain; Sweden
EU - Georgia	09/01/2014	Georgia; Austria; Belgium; Bulgaria; Croatia; Cyprus; Czech Republic; Denmark; Estonia; Finland; France; Germany; Greece; Hungary; Ireland; Italy; Latvia; Lithuania; Luxembourg; Malta; Netherlands; Poland; Portugal; Slovak Republic; Slovenia; Spain; Sweden
EFTA - Central America (Costa Rica and Panama)	19/08/2014	Costa Rica; Panama; Iceland; Liechtenstein; Norway; Switzerland
Canada - Honduras	01/10/2014	Canada; Honduras
Mexico - Panama	07/01/2015	Mexico; Panama
Korea, Republic of - Viet Nam	20/12/2015	Korea, Republic of; Viet Nam
Japan - Mongolia	07/07/2016	Japan; Mongolia
Costa Rica - Colombia	01/08/2016	Colombia; Costa Rica
Eurasian Economic Union (EAEU) - Viet Nam	05/10/2016	Viet Nam; Armenia; Belarus; Kazakhstan; Kyrgyz Republic; Russian Federation
EU - Ghana	15/12/2016	Ghana; Austria; Belgium; Bulgaria; Croatia; Cyprus; Czech Republic; Denmark; Estonia; Finland; France; Germany; Greece; Hungary; Ireland; Italy; Latvia; Lithuania; Luxembourg; Malta; Netherlands; Poland; Portugal; Slovak Republic; Slovenia; Spain; Sweden
China - Georgia	01/01/2018	China; Georgia
Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)	30/12/2018	Australia; Brunei Darussalam; Canada; Chile; Japan; Malaysia; Mexico; New Zealand; Peru; Singapore; Viet Nam
Hong Kong, China - Georgia	13/02/2019	Georgia; Hong Kong