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PROVISIONS ON SMALL AND MEDIUM-SIZED ENTERPRISES IN REGIONAL TRADE AGREEMENTS

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ABSTRACT: This paper reviews the different types of provisions explicitly addressing small and medium enterprises (SMEs), including micro firms (MSMEs), in regional trade agreements (RTAs). The analysis covers the 270 RTAs currently in force and notified to the WTO as of April 2016. The analysis shows that half of all the notified RTAs, namely 136 agreements, incorporate at least one provision mentioning explicitly SMEs. These SMEs-related provisions are highly heterogeneous and differ in terms of location in the RTA, language, scope and commitments. Many of the SMEs-related provisions are only found in a single or couple of RTAs. A limited but increasing number of RTAs incorporate specific provisions in dedicated articles or even chapters on SMEs. Although the number of detailed SMEs-related provisions included in a given RTA has tended to increase in recent years, most SMEs-related provisions remain couched in best endeavour language. The two most common categories of SMEs-related provisions found in RTAs are provisions (1)

trade facilitation,

electronic commerce, intellectual property, or transparency.

KEYWORDS: Regional Trade Agreements, Small and Medium-Sized Firms (SME).

JEL CLASSIFICATIONS: F13, F15

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1 INTRODUCTION

Trade agreements, including regional trade agreements (RTAs)

Unless specified otherwise, SMEs-related provisions are defined as any provisions mentioning explicitly small and medium enterprises, including micro firms. The following keywords have been used to identify SMEs-related provisions: small, medium, micro, SME, and start-up.³ In addition to specific SMEs-related provisions, there are many provisions in RTAs potentially relevant to SMEs, even though these provisions do not make explicit reference to SMEs or distinction between firm size. Some of these provisions relevant to SMEs will be discussed in Section 5 presenting the typology of SMEs-related provisions.

RTAs provisions can be analysed from different perspectives, such as their nature, their location in the agreement, and their degree of enforcement. Since no paper has analysed provisions related to SMEs, a comprehensive typology of provisions referring explicitly to SMEs in existing RTAs will be constructed based on the (non-exhaustive) criteria listed in Table 1:

Table 1: RTAs' analysis criteria

Structure of the provision	Location of the provision	Type of commitment
Footnote	Main text of the RTA	Recognition/Affirmation
Within article	Annex to the RTA	Encouragement
Sub-article	Side agreement	Recommendation
Specific article		Obligation
Specific chapter		

SMEs-related provisions can take different forms. The term SME can be mentioned in a footnote, or more generally within an article covering various issues, including SMEs. SMEs-related provisions can also be a sub

3 OVERVIEW AND TRENDS OF SMEs-RELATED PROVISIONS

As highlighted in Figure 1, the number of RTAs with SMEs-related provisions has increased steadily since the late 1990s and early 2000s. As of May 2016, 136 RTAs, representing 49% of all the notified RTAs, include at least one provision mentioning explicitly SMEs. This trend mirrors the expansion of RTAs in the last 25 years, both in terms of number and scope (WTO, 2011). While only 17 RTAs entered into force between 1970 and 1990, RTAs have proliferated between 1990 and May 2016 with the entry into force of 253 RTAs.⁴

Figure 1: Evolution of RTAs with provisions explicitly mentioning SMEs

Source: Computations based on WTO RTA database.

In addition, and as depicted in Figure 2, the share of RTAs incorporating SMEs-related provisions has been trending upward to the point where provisions on SMEs are included in almost 80 per cent of all the RTAs that entered into force in and c

As shown

In addition to the rise in the number of RTAs with provisions mentioning explicitly SMEs, the number and level of details of these SMEs-related provisions in these agreements have also increased significantly since 2000. The Japan-Thailand economic partnership agreement is currently the agreement with the highest number of SMEs-related provisions. These provisions are found in the RTA's chapters on intellectual property and cooperation, as well as in the dedicated chapter on cooperation in the field of SMEs of the implementing agreement associated with the trade agreement. The RTAs to which Japan is a party with Malaysia, the Philippines, Viet Nam and Singapore also incorporate a relatively high number of provisions on SMEs. Similarly, the free trade agreement between Colombia, El Salvador, Guatemala and Honduras includes detailed SMEs-related provisions in the chapters on electronic commerce, cooperation, administration of the treaty and annexes to the chapters on government procurement and cooperation. More recently, the EU-Central America association agreement also incorporate several provisions on SMEs, including a specific article on cooperation. The RTAs negotiated by the EU with South Africa and Cameroon contain also several SMEs-related provisions, mainly on cooperation. Other RTAs with various SMEs-related provisions involve mainly China.

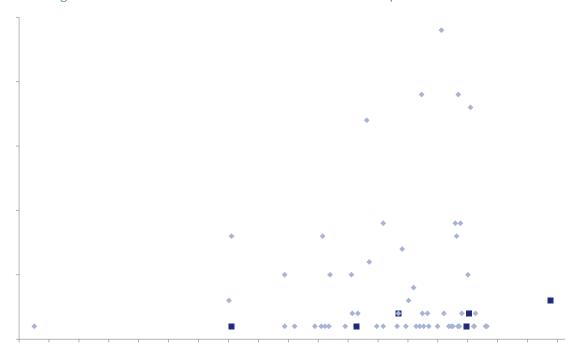


Figure 3: Evolution of the number of SMEs-related provisions in RTAs

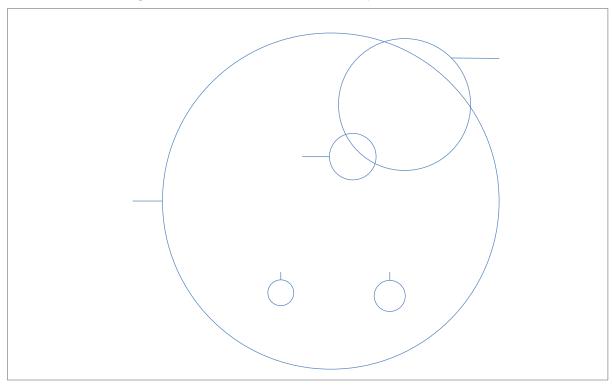
Source: Computations based on WTO RTA database.

Figure 4: Number of RTAs with provisions referring to SMEs by country

Source: Computations based on WTO RTA database.

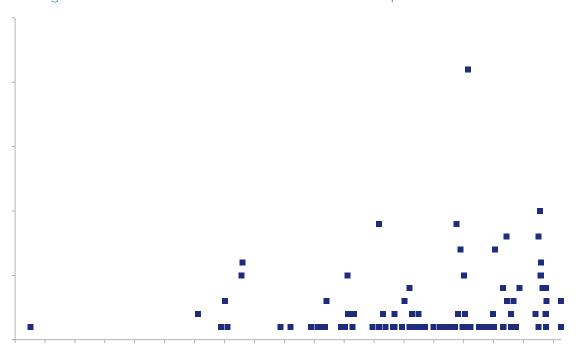
As depicted in Figure 4, the RTAs negotiated by Japan, Colombia, China, Honduras, Guatemala, El Salvador, Peru and Costa Rica have, on average, a higher number of SMEs-related provisions. The inclusion of SMEs-related provisions remains however a dynamic process. For instance, the RTAs concluded by the EU prior to 2011 tended to include a limited number of provisions on SMEs, while the most recent agreements to which the EU is a party incorporate, on average, relatively more SMEs-related provisions. Ultimately, the decision $tEU-6371\ 261.5r[(,)4(\ 444.a3\)-60(t)-5(h)6(e)-3(\)-60(d)$

Figure 5: Structure of SMEs-related provisions in RTAs



Note: Proportions not respected. Source: Computations based on WTO RTA database.

Figure 6: Evolution of the structure of SMEs-related provisions in RTAs



Source: Computations based on WTO RTA database.

The RTAs to which Japan is a party with Malaysia, the Philippines, Viet Nam, Singapore and Thailand are the only agreements to include a specific chapter on cooperation in SMEs. Furthermore, the Japan-Thailand economic partnership agreement is the only notified RTA to include SMEs-related provisions taking the form of (two) within articles, a specific article and a specific chapter. The agreement's intellectual property chapter incorporates a specific article on assistance for acquisition of intellectual property rights for SMEs. The article establishing the subcommittee on intellectual property rights also lists utilisation and commercialisation of intellectual property rights for SMEs as one of its topics of discussion. SMEs are also identified as a field of cooperation in the cooperation chapter. In addition to the main RTA, the associated implementing agreement includes a specific chapter on cooperation in the field of SMEs detailing areas and forms of cooperation, as well as the establishment of a sub-committee on SMEs. Similarly, the economic agreement partnerships negotiated by Japan with Malaysia, the Philippines, and Viet Nam include a dedicated cooperation chapter on SMEs in their respective associated implementing agreement.

As highlighted above, SMEs-related provisions not only take different forms, but can also be found in various places of the RTAs. As shown in Figure 7, provisions mentioning explicitly SMEs are mainly located in the chapters on cooperation, government procurement, electronic commerce and trade facilitation. SMEs-related provisions are also included in a large number of annexes, in particular to the RTAs' chapters on government procurement, services and cooperation.

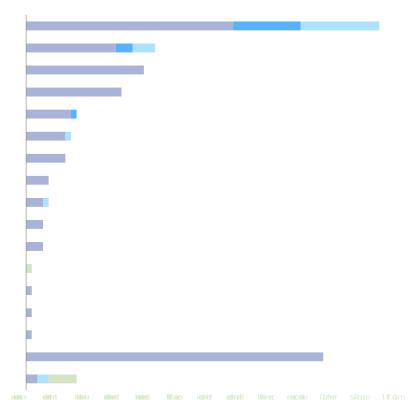


Figure 7: Location of provisions referring to SMEs in RTAs

Source: Computations based on WTO RTA database.

Specific articles on SMEs are mainly included in the chapters on cooperation and government procurement. As mentioned previously, the Japan-Thailand economic partnership agreement is the

As shown in Figure 8, the scope of most SMEs-related provisions refers to small and medium-sized enterprises, businesses or companies, although an increasing number of provisions also cover explicitly micro enterprises. In some cases, the terminology used stems from the provision's location in the RTAs. For instance, the concept of individual or small investors and creators is mentioned in a specific article on intellectual property of the Japan-Thailand RTA, which commits the parties to stimulate the creation and development of intellectual property by each party's persons, particularly individual inventors and creators and SMEs. In certain cases, the SMEs-related provisions refer to a specific sector. For instance, the implementing agreement associated with the economic partnership agreement between Japan and Peru identifies sustainable development of small-scale agriculture and rural area as a potential area of cooperation.

5.1 Main forms of SMEs-related provisions

Despite the high heterogeneity characterizing most SMEs-related provisions, the comparative analysis of the 136 RTAs with provisions referring explicitly to SMEs has enabled to identify eight main forms of provisions. SMEs-related provisions range from the parties' recognition of the importance of the role of SMEs to cooperation activities to firmer commitments and exemptions.

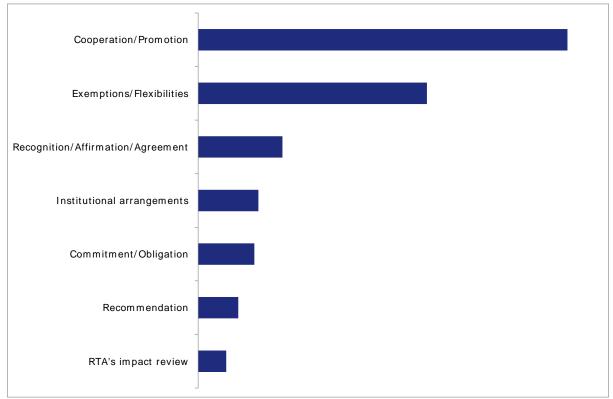


Figure 9: Main forms of SMEs-related provisions in RTAs

Note: Total number of RTAs with at least one SMEs-related provision belonging to the respective category. Source: Computations based on WTO RTA database.

As highlighted in Figure 9, the most common form of SMEs-related provisions, included in 93 RTAs, identifies and promotes cooperation on SMEs among the parties. Cooperation provisions on SMEs are mainly included in the cooperation chapter, but are also found in others chapters, such as government procurement, investment, electronic commerce, labour, environment and SMEs. As will be discussed below, some provisions only identify SMEs as an area of cooperation. Other provisions specify the cooperation activities' objectives without specifying the means. Conversely, other provisions are more specific and list the precise areas and forms of cooperation. In addition, the language used to devise these cooperation provisions differ significantly across agreements. Some RTAs only foresee a possible cooperation, while other RTAs appear to be more committed with firmer language.

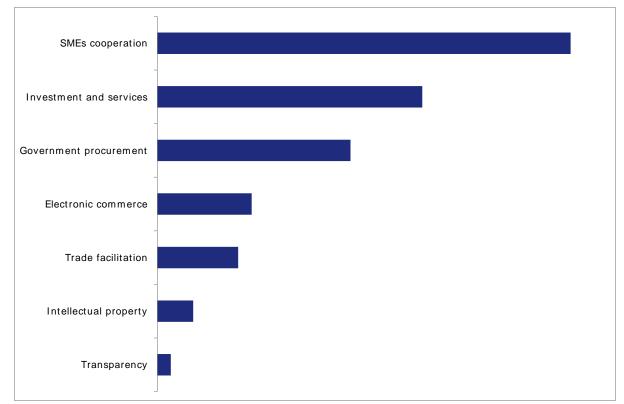


Figure 11: Main areas of SMEs-related provisions in RTAs

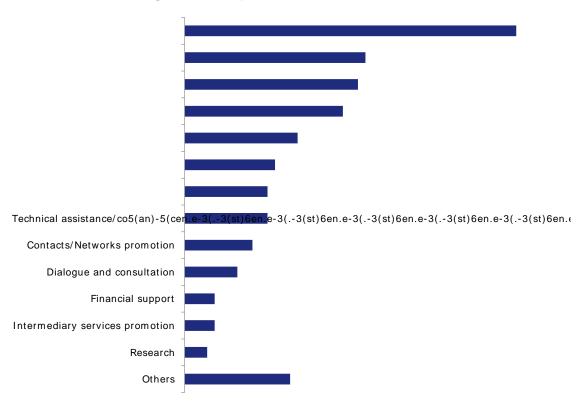
Note: Total number of RTAs with at least one SMEs-related provision belonging to the respective category. Source: Computations based on WTO RTA database.

5.2.1 Cooperation on SMEs

Cooperation provisions are not only the most common form of SMEs-related provisions, but are also by far the most heterogeneous type of SMEs-related provisions across agreements. 92 RTAs include at least one provision on cooperation mentioning SMEs.

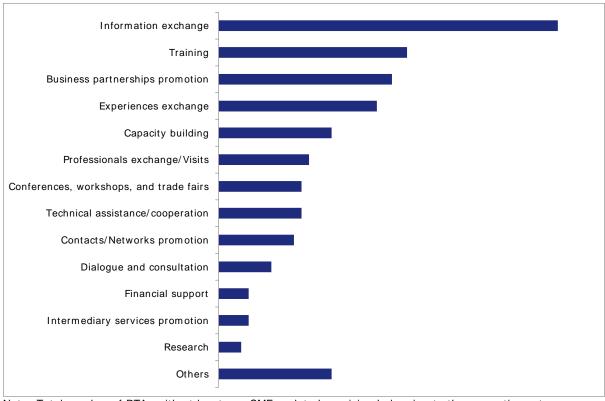
Part of this high heterogeneity stems from the scope of these cooperation provisions. As highlighted in Figure 12, certain cooperation provisions address general issues which are not limited to SMEs. For instance, the RTA between the EU and South Africa explains that cooperation in the field of trade development shall focus on the development of the private sector, in particular SMEs engaged in trade. Other types of cooperation provisions address more specific issues, for which SMEs receive a particular focus. The EU-Central America association agreement specifies that cooperation and technical assistance on technical barriers to trade may include activities to facilitate the comprehension and compliance with the EU's requirements, in particular by SMEs. In other provisions, SMEs is only listed as a general area of cooperation without providing any additional details or defining any actions. For instance, the RTA between Australia and Thailand specifies that the parties shall develop cooperation in sectors that are not covered by existing cooperation arrangements, through *inter alia*, SMEs capacity enhancement. Conversely, other cooperation provisions are more specific and mentions explicitly the topic and/or form of cooperation activities related to SMEs.

Figure 13: Cooperation areas on SMEs



Note: Total number of RTAs with at least one SMEs-related provision belonging to the respective category. Source: Computations based on WTO RTA database.

Figure 14: Cooperation forms on SMEs



Note: Total number of RTAs with at least one SMEs-related provision belonging to the respective category. Source: Computations based on WTO RTA database.

As highlighted in Figure 15, the RTA between the EU and Central America includes the most detailed provisions on cooperation related to SMEs. The agreement foresees cooperation and technical assistance on SMEs in the context of employment and social protection, services, technical barriers to trade, artisanal goods and organic goods. In addition, a specific article on cooperation on MSMEs identifies a number of cooperation actions such as the promotion of productive linkages process, exchange of experiences and best practices, encouragement of joint investments, partnerships and business networks, and identification and reduction of obstacles to access financial sources and the creation of new financing mechanisms. Other RTAs with relatively detailed SMEs-related pro

Figure 16

The free trade agreement between Costa Rica and Singapore is the only RTA to explicitly stipulate in the article on scope and coverage that nothing in the government procurement chapter shall prevent the parties from using government procurement to promote industry development including measures to assist SMEs within their territory to gain access to the government procurement market. Similarly, the RTA between the Cooperation Council for the Arab States of the Gulf (GCC) and Singapore is the only agreement to include an article on SMEs in the government procurement chapter, which specifies

5.2.4 Electronic commerce

The rapid development of information and communication technologies, such as internet, has enabled to further reduce transaction costs associated with information search by improving access to information on new markets, competitors and potential customers. The creation of a website can complement or replace physical market presence by establishing direct contacts with potential new foreign customers, making it possible to place international orders and enhancing customer service and support (Lorhke et al., 2006; Morgan-Thomas, 2009).

In the last 15 years, provisions on electronic commerce have increasingly been incorporated in RTAs. The type of issues and commitments covered in these RTAs' specific chapter on electronic commerce differ substantially across agreements. A moratorium on customs duties on electronic transmissions between the parties, transparency commitments and cooperation activities are among the most common provisions on electronic commerce. A limited but increasing number of RTAs also address specific domestic regulation issues, such as regulatory barriers, electronic authentication, online consumer protection, online personal data protection and unsolicited commercial electronic messages (Herman, 2010). Provisions promoting and facilitating the development of electronic commerce can potentially help SMEs to reach new customers.

Besides these provisions that apply to firms of any size, a limited but increasing number of RTAs, namely 21 agreements, incorporate also different provisions mentioning explicitly SMEs in the electronic commerce chapter. SMEs-related provisions on electronic commerce refer to either facilitating the use of electronic commerce by SMEs or overcoming obstacles encountered by SMEs in the use of electronic commerce. As highlighted in Figure 18, three main different types of SMEsrelated provisions on electronic commerce have been identified. Many of these provisions are specific to one or a couple of tral3sages (H04ts.] TJETBT1 140.3 3-C(H04ts.] TJ5 /Sp5(13(238.3 3-C(H04)m -0

The first type of provisions, included in 13 RTAs, recognizes or affirms the importance of SMEs in electronic commerce. For instance, the free trade agreements negotiated by Canada with Colombia, Honduras, the Republic of Korea and Peru, specifies that the parties recognise the importance of facilitating the use of electronic commerce by MSMEs. The remaining provisions of this type of SMEs-related provisions on electronic commerce refer to cooperation among the parties. In eight agreements, such as the United States-Panama, Chile-Colombia, and Singapore-Chinese Taipei RTAs, the parties recognise the importance of working together to overcome the obstacles encountered by SMEs. A relatively similar provision is included in the RTAs to which Canada is a party with Colombia, Honduras, the Republic of Korea and Peru, in which the parties affirm the importance of working together to facilitate the use of electronic commerce by MSMEs. The provision included in the free trade agreement between Canada and Panama is slightly more specific by stating that the parties recognise the importance of sharing information and experiences on laws, regulations and programmes in order to facilitate the use of electronic commerce by MSMEs.

The second type of SMEs-related provisions on electronic commerce refers to cooperation activities. For instance, the RTA between the Republic of Korea and Peru mentions the parties' commitment to working together to facilitate the use of electronic commerce by SMEs. Similarly, the free trade agreements to which Japan is a party with Australia and Switzerland stipulates that the parties shall cooperate to overcome obstacles encountered by SMEs in using electronic commerce. In other cases, such as the agreement esBT1 0 0 104(as)-e5(v)5(i)-5(si)-500/aarl tr67(co)8(o)-572

In addition to these trade facilitation provisions that apply indifferently to SMEs or large firms, four main types of SMEs-related provisions on trade facilitation have been included in 18 RTA, mainly the trade facilitation chapter, as noted in Figure 19. The first type of SMEs-related provisions on trade facilitation, found in 10 RTAs, recommends taking into account the interests of SMEs. For instance, eight agreements negotiated by the EFTA states, including with Canada, Serbia, Ukraine, and Hong Kong, China, stipulate that the parties shall consult their respective business communities on their needs with regard to the development and implementation of trade facilitation measures, noting that particular attention should be given to the interests of SMEs. The language of this type of provisions in the free trade agreement between EFTA states and Central American states (Costa Rica and Panama) is slightly firmer by specifying that each party shall consult its business community on its needs with regard to the development and implementation of trade facilitation measures, giving particular attention to the interests of SMEs. In a broader context, the provision in the interim agreement between Cameroon and the EU stipulates that the customs procedures should be transparent, efficient and simplified in order to reduce costs and increase predictability for economic operators, including SMEs.

Figure 19: Types of SMEs-

The remaining types of SMEs-related provisions on trade facilitation refer to cooperation. The RTA between Colombia and Northern Triangle explicitly lists trade facilitation as a topic of cooperation on SMEs. In particular, the parties agree to develop information exchange and internship programmes of officials and technicians in the field of trade facilitation, as well as technical assistance and training of human resources. The Association of Southeast Asian Nations (ASEAN) Free Trade Area (AFTA) further commits its member states to develop and implement a comprehensive ASEAN Trade Facilitation Work Programme, which sets out all concrete actions and measures with clear targets and timelines of implementation necessary for creating a consistent, transparent, and predictable environment for international trade transactions that increases trading opportunities and help businesses, including SMEs, to save time and reduce costs.

5.2.6 Intellectual property

Many SMEs, in particular those that engage in international trade, are often more innovative than similar firms that do not engage in export activities (Esteve-Pérez and Rodriguez, 2012). Innovation enables firms to adapt to market changes and foreign customers' diversified preferences. In that context, the protection of intellectual property rights can be of particular relevance to SMEs, including the so-called "born globals" or "international new ventures" that tend to be more knowledge intensive than traditional firms.

The number of RTAs with intellectual property provisions has accelerated since the WTO's crea624 538.87 fce

to its MSMEs with respect to the other parties' MSMEs, shall endeavour to reduce such measures. In addition, the party maintaining measures providing preferential treatment is committed to ensure that such measures, including eligibility criteria, are objective and transparent. The parties are also called upon to provide information with respect of their measures used to help, promote, encourage or facilitate MSMEs' participation in government procurement and to cooperate in the

7 CONCLUSIONS

Provisions mentioning explicitly SMEs have been incorporated into an increasing number of RTAs. As of May 2016, 136 RTAs, encompassing half of all RTAs notified to the WTO, incorporate at least one provision that mentions explicitly SMEs. In parallel, the number of detailed SMEs-related provisions included in a given RTA

REFERENCES

Anderson, R. D., Müller, A. C., Osei-Lah, K., Pardo de Leon, J., and Pelletier, P., 2011. "Government procurement provisions in regional trade agreements: a stepping stone to GPA accession?". In S. Arrowsmith & R. D. Anderson (Eds.), The WTO Regime on Government Procurement: Challenge and Reform, pp. 561–656.

Anderson, R. D., Locatelli, C., Müller A. C., and Pelletier P., 2014. "The Relationship between Services Trade and Government Procurement Commitments: Insights from Relevant WTO Agreements and Recent RTAs", WTO Staff Working Paper ERSD-2014-21.

Bhardwaj, A., 2007. "Regional Trade Agreements and SMEs in Developing Countries: Challenges and Options." Background paper prepared for the World Export Development Forum, October 2007.

Esteve-Pérez, S. and Rodríguez, D., 2012. "The dynamics of exports and R&D in SMEs", Small Business Economics, Vol. 41(1), pp 219-240

Cernat, L. and Lodrant M., 2016. "SME Provisions in Trade Agreements and the Case of TTIP", in SMEs in International Economic Law (Thilo Rensmann, ed. forthcoming), Oxford University press.

Herman, L., 2010. "Multilateralising Regionalism: The Case of E-Commerce", OECD Trade Policy Papers, No. 99.

Lohrke, F.T., Franklin, G.M. and Frownfelter-Lohrke, C., 2006. "The internet as an information conduit: A transaction cost analysis model of US SME internet use", International Small Business Journal, Vol. 24(2), pp. 159 178.

Molina, A. C., and Khoroshavina, V., 2015. "TBT provisions in Regional Trade Agreements: To what extent do they go beyond the WTO TBT Agreement?", WTO Staff Working Paper ERSD-