



**Asia-Pacific
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Session 15

SME Cross-Border Contracting and Enforcement

Submitted by: US-ATAARI



**Seminar on Use of International Instruments to
Strengthen Contract Enforcement in Supply Chain
Finance for Global Businesses Including Micro,
Small, and Medium Enterprises
Nha Trang, Viet Nam
24-25 February 2017**





What is so important about SMEs and Trade?

“MSMEs make up over 97 percent of all enterprises and generate more than 70 per cent of all jobs in the region.” - The 22nd APEC Small and Medium Enterprise Ministerial Meeting

“Social media are enabling a new kind of social enterprise: micro-multinational companies. They’re small, Web-wired startups that are using social media to find, then recruit, the best new talent from around the globe and leverage it for immediate innovation, impact and sustainability.” – Stanford Social Innovation Review

APEC notes that MSMEs account for only 35% of regional exports and calls for major expansion efforts - The 22nd APEC Small and Medium Enterprise Ministerial Meeting

“Micro-multinationals are ready to capitalize on untapped opportunities outside our borders. Now we need to act to establish domestic and global trade standards that empower local small businesses to compete effectively in the world market and grow on a global scale.” – US Secretary of Commerce, Penny Pritzker

YOU'RE THE BOSS | Growing American Exports, One Small Business at a Time

Growing American Exports, One Small Business at a Time

By DEB WEIDENHAR | OCTOBER 20, 2014 2:00 PM

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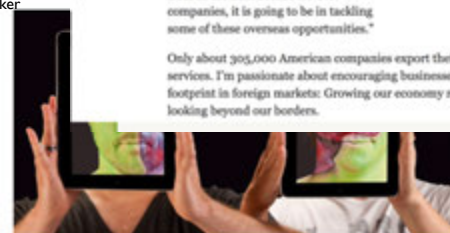
The International Trade Administration is like no other federal agency. Its theme for this year is “Dare to Be Great” – not the kind of rallying cry you expect from government administrators.

I’ve written before about the United States Commercial Service and how it can help small companies looking to do business overseas. Recently, I met with Stefan M. Selig, America’s under secretary for international trade. Mr. Selig heads the International Trade Administration, which oversees the group.

“We are the only part of the government that is charged specifically with helping businesses,” he said. “There is no topic more important to a C.E.O. than how they grow their business – and if you talk about where growth is going to come from in the next decade for U.S. companies, it is going to be in tackling some of these overseas opportunities.”

CAPITALIZING ON CHINA
An American tries to expand into China.

Only about 305,000 American companies export their goods and services. I’m passionate about encouraging businesses to get a footprint in foreign markets: Growing our economy requires looking beyond our borders.



Key Considerations in Capacity Building

- *The research angle* - What do we know about demand for a level playing field for enforcement?
- *The assistance angle* – How do we support? Harmonization of laws/regulations? Better contracting habits among MSMEs? Legal Education? ODR platform?
- *The results angle* – How do we measure success?

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The Research Angle

- Very few studies of barriers to entry consider lack of contract enforcement as a barrier to entry
- Because it is not often discussed, little analysis of cross-border MSME behavior around contracting and enforcement is available
- Surveys are of limited use – *MSMEs don't know what they don't know*



Assumptions about the case

- The value of the claim is equal to 200% of the economy's income per capita or \$5,000, whichever is greater.
- The dispute concerns a lawful transaction between two businesses (Seller and Buyer), both located in the economy's largest business city. For 11 economies the data are also collected for the second largest business city. Pursuant to a contract between the businesses, Seller sells some custom-made furniture to Buyer worth 200% of the economy's income per capita or \$5,000, whichever is greater. After Seller delivers the goods to Buyer, Buyer refuses to pay the contract price, alleging that the goods are not of adequate quality. Because they were custom-made, Seller is unable to sell them to anyone else.

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The Research Angle

- We do not know enough about how MSMEs contract in the absence of access to commercial justice.
 - Do they absorb risk?
 - Do they shift risk?
 - Do they engage in more relational contracting?
- *Each of these increases transaction costs*



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The Assistance Angle

- Focus of assistance
 - Harmonization
 - Laws as well as implementation
 - MSME-level support in contracting
 - Relational versus arm's length
 - Legal education
 - ODR platform

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The Assistance Angle

How assistance is provided

- Donor programs
- Academic community – Establishing a relationship between law faculties and APEC
- Professional communities



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The Results Angle

How do we measure success?



Though Vinomfo was launched in 2011, it really started life back in 2007 in the garage of brothers-in-law and fellow wine geeks Justin Dry and Andre Eikmeier, who just wanted to do something cool for wine geeks and producers.

Andre was excited by the “voice of the people”, the idea of real people rating and reviewing wines and sharing their recommendations, and Justin had discovered Facebook whilst travelling in South America, and wanted to create a social network for wine nerds.



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Key Considerations

- **Research** – No one really knows exactly how MSMEs contract
- Consideration of the **links** between ODR and other APEC initiatives
– E.g. Digital Economy, SME growth, Services, GVCs, Trade Facilitation
- **Dialogue** on legal, regulatory and institutional gaps
- University consortium?
- Legal and regulatory **harmonization**
- **Technology Platform**
- Private Sector Partnerships

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