

The Digital Trade Protocol of the AfCFTA and Digitally-Driven Development in Africa

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One of the important protocols forming part of the set of agreements within the African Continental Free Trade Area (AfCFTA) is the Digital Trade Protocol ('the Protocol'). This protocol has the very important task of defining the desired digital environment for digital trade within Africa, and by implication, also has bearing on Africa's digital trade with respect to the rest of the world. The Protocol aims to establish harmonized rules and common principles to enable and support digital trade across Africa. It focuses on promoting intra-African digital trade, enhancing cooperation on digital matters among State Parties, and creating a transparent, secure, and trusted digital trade ecosystem.

Key provisions of the Protocol include market access, treatment of digital products, facilitating digital trade, data governance, and consumer trust. It also emphasizes digital inclusion, addressing the participation of underrepresented groups and MSMEs in digital trade, and outlines institutional arrangements and transparency requirements. Technical assistance, capacity building, and cooperation are highlighted to support implementation, with provisions for dispute settlement and periodic review to ensure relevance and effectiveness.

'Digitally-driven development' in the sense that it is used in the title to this blog refers to the potential to economically develop countries, primarily through industrial development ('industrialisation') that is driven by businesses able to access digital services inputs into their production and hire staff that are of sufficient skill levels to be able to utilise and leverage digital and technological tools.

In fact the three most important areas in which governments and regulatory authorities can contribute to digitally-driven development and digital trade would be:

- Creating supportive regulatory frameworks: Developing countries need to implement supportive regulatory frameworks that encourage digital trade while ensuring data protection, cybersecurity, and fair competition. Policies that promote digital literacy, support innovation,

and facilitate access to secure fintech are critical for harnessing the full potential of the digital economy for industrialisation.

- Enhancing internet accessibility: This refers to both the availability of the internet and the speed of access. The speed of access is very important – technology that uses ‘internet of things devices’ (IoT) requires very fast access (5G, fixed line fibre or satellite). Factories and production processes that use sensing technology – e.g., some types of agro-processing, electronics/batteries manufacture and some chemicals manufacturing – increasingly utilize IoT. Satellite internet services have strong potential here – these services can provide fast coverage to remote areas and this is especially important to Africa, with its large land mass and digitally-excluded rural areas. The installation of fixed-line connectivity in certain parts of Africa is prohibitively expensive currently, and satellite is the best alternative.
- Ensuring that tax and customs duties do not create perverse incentives. When governments tax goods or services, they automatically disincentivise the consumption of those goods and services. Industries such as the clothing and textiles industry and some components of the agricultural industry face high tariffs and this is a strong disincentive to import these items versus buying local. Likewise, ‘sin taxes’ such as those implemented on alcohol and tobacco products discourage the consumption of those items with positive long-term outcomes for consumers and the economy. For the same reason, governments should be circumspect with imposing duties on imported digitally-delivered services (DDS), especially those that are inputs into digital development and digitally-driven industrialisation.

The Protocol certainly guarantees duty-free DDS within Africa; article 7 ensures this but makes the requirement subject to the satisfaction of rules of origin (ROO), which is generally the case for goods trade in a free trade area¹. Furthermore, article 8 requires ‘national treatment’ or non-discrimination by State Parties between domestically-produced DDS and competing products from the rest of Africa. The Protocol therefore appears to apply a standard goods-trade approach for a free trade area (FTA) to the case of DDS in Africa.

Hitherto, ROO for DDS have been unheard of, given that all WTO members have adhered to the ‘e-commerce moratorium’. This refers to the consensus among WTO members not to levy customs duties on the imports of DDS, whether or not the source country is a preferential trade area (PTA) partner.

¹ Note that the mechanics of defining ROO for DDS are not specified and in the absence of global norms and standards, this will require original work on the part of the AfCFTA Secretariat.

This has ensured the unfettered growth of the market for DDS, a broad category of services that include both entertainment services (such as video streaming) as well as more commercially focused services such as platforms (e.g., ride-hailing), web hosting, cloud services, fintech and software as a service (SAAS).

The commercial forms of DDS have revolutionized not only the way businesses operate but many other aspects of the economy such as education, health and government (e-government). The value and extent of these services should not be underestimated, but often is, given their relative 'invisibility'. For example, when a motorist uses a maps application to navigate, saving time and reducing emissions, this is done through a DDS. When a business uses an AI application to plan production and optimise resource use, they are using a DDS. Small businesses that use web-based accounting, project management and human resource management applications are all using forms of DDS. These tools enable MSMEs to access business software technology that was until relatively recently, only available to larger and better-resourced enterprises. As a result they are more competitive, agile and adaptive.

The important fact is though, that the overwhelming majority of these cited DDS do not originate on the African continent. While there is certainly potential for African tech businesses to develop home-grown variants in future, for the time being there are important constraints such as in startup finance, local infrastructure and skills sourcing. For this reason, policies implemented by African countries with respect to DDS suppliers in the rest of the world are far more important to development and industrialisation than those outlined in the Protocol that apply between AfCFTA partners.

Unfortunately, there is resistance among some African countries to the extension of the WTO e-commerce moratorium. South Africa (SA), India and Indonesia are opposed to the WTO e-commerce moratorium, and are expected to oppose its extension at MC13. This may make sense for India, which has a domestic DDS industry, but not for SA or Indonesia. Instead, adding customs duties to already VAT-taxed DDS is counterproductive for developing countries, which need their businesses to be able to access cloud and AI services at competitive rates, in order for them to be competitive.

The AfCFTA Protocol on Digital Trade certainly has the potential to advance digitally-driven industrialisation in Africa by fostering a conducive environment for digital commerce and innovation. By establishing harmonized digital trade rules and principles, it can lower transaction costs, enhance access to regional markets, and stimulate digital entrepreneurship. However, these initiatives, while important and of value, are less important than the continued access by Africa's businesses to competitively-priced commercial DDS originating outside of the continent. The asymmetric nature of

Africa's current DDS trade with the rest of the world is not necessarily a permanent feature, however, for the time being it needs to be accepted against the greater good of the digital commercial needs of Africa's development-driving businesses.

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