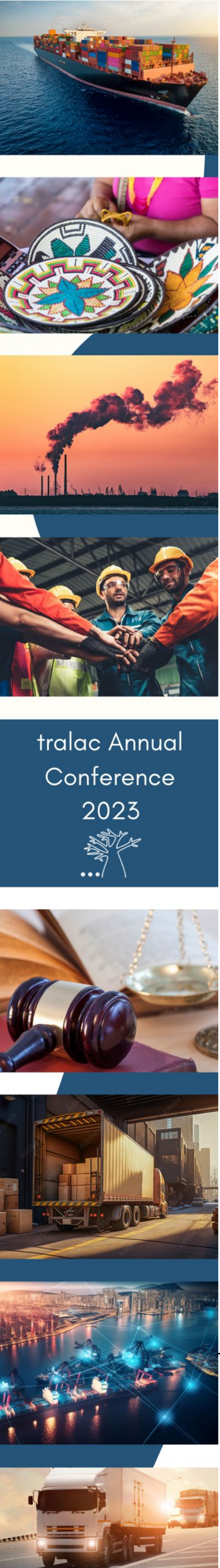

How can the AfCFTA Protocol on Digital Trade increase intra-Africa digital trade?

Digital trade – defined as "digitally-enabled transactions for the trade in goods and services that can either be digitally or physically delivered"[1] – is transforming the modern global economy and international trade. It is fundamental to the growth, development and prosperity of economies.

Digital trade is contributing significantly to the world economy and creating millions of jobs, especially for young people. Digital trade and technologies have become a new engine of economic growth and have has spurred innovation and accelerated development.

However, intra-Africa digital trade is currently low. Intra-Africa digital trade is inhibited mainly by fragmented regulatory frameworks, inadequate digital infrastructure, lack of trust and confidence in the digital economy, and the digital divide between and within African countries.

In February 2020, the Assembly of the Heads of State and Government of the African Union (AU Assembly) decided to include a Protocol on Electronic Commerce (E-Commerce) in the framework of the African Continental Free Trade Area (AfCFTA). E-commerce was subsequently changed to digital trade. The negotiations of the AfCFTA Protocol on Digital Trade are ongoing.

The Protocol on Digital Trade presents many opportunities for the African continent. For instance, the Protocol could boost intra-Africa trade in goods and services and investment, deepen the economic integration of Africa, transform societies and economies, generate sustainable and inclusive economic growth, stimulate job creation and reduce inequality.

[1] https://www.oecd.org/trade/topics/digital-trade/

The Protocol aims to boost intra-Africa digital trade by eliminating barriers to digital trade, establishing clear and predictable harmonised rules, common principles and standards for digital trade, creating a secure and trustworthy digital trade environment, as well promoting interoperability of frameworks and systems necessary to facilitate digital trade.

As a trade agreement, the Protocol is expected to foster "stable market conditions in which buyers and sellers can trade across borders subject to known rules and with known costs, and in which investors can invest in the confidence of market stability."[2]

The Protocol must ensure that African businesses access other African countries' digital economies to enable them to invest and operate freely and in fair competition. This includes an obligation not to impose customs duties on electronic transmissions and products or content thereof, as well as not to accord less favourable to digital products from other African economies.

In addition, the Protocol should promote open digital markets and tackle potential barriers to market access, such as the risks of forced use and location of computing facilities as well as forced transfer or disclosure of source code as conditions for market access.

Furthermore, data underpins digital trade. The Protocol should allow cross-border transfers of data to increase State Parties' services trade, especially in digitally intensive sectors such as telecommunications, computer and information services. Also important to note is that cross-border data transfers are important beyond the services sector. Data is also becoming increasingly important in traditional sectors including mining, agriculture and manufacturing. Cross-border data transfer needs to be complimented by protection of personal information and data.

As noted earlier, a lack of trust in the digital economy is one of the main barriers to digital trade in Africa. The Protocol should seek to enhance safeguards for consumer and business trust and confidence in digital trade. This includes imposing obligations on States to protect users of digital trade from cyberattacks and protecting the rights of consumers online, including laws and regulations that ban misleading, fraudulent and deceptive commercial activities that may cause harm to consumers.

Equally important, the Protocol could boost intra-Africa trade by cutting red tape and making trade cheaper, faster and more secure. This will require safeguarding digital traders from unnecessary regulation and bureaucracy. The Protocol should oblige States to maintain domestic regimes that do not discriminate

[2] https://www.tralac.org/blog/article/15739-digital-trade-in-trade-agreements-lessons-for-the-afcfta.html

between digital and paper-based transactions and documents, including the legal validity of electronic contracts and documents. Such provisions are necessary to increase intra-Africa trade in goods by reducing the time and cost of trading across borders, especially for micro, small and medium enterprises. The Protocol could boost intra-Africa digital trade by tackling barriers to the participation of micro, small and medium enterprises, women, youth, persons with disabilities and rural communities, among other marginalised groups, in the digital economy.

Further, the Protocol should aim to ensure that digital payments are affordable, real-time, safe, inclusive and responsible.

The Protocol could increase trade by fostering mechanisms to promote mutual recognition and interoperability of electronic trade documents, electronic authentication, electronic signatures, digital payments, digital certificates, digital identities, cross-border data transfers and digital infrastructure.

The Protocol should also aim to promote affordable, accessible and reliable digital infrastructure considering its importance in enabling and facilitating digital trade.

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