Links between the AfCFTA Protocols on Trade in Services and Digital Trade

Trade in services and digital trade are closely linked and in some respects, complementary. Trade in services involves the international exchange of intangible economic activities such as financial services, education, tourism, transport and communication. Digital trade involves the digital or physical delivery of services or goods ordered using digital technologies. These include e-learning courses, software downloads, and online travel booking.

Here we discuss the link between trade in services and digital trade within the context of the AfCFTA, particularly focusing on the AfCFTA Protocols on Trade in Services and Digital Trade.

In the African Continental Free Trade Area (AfCFTA), trade in services and digital trade are dealt with under two different legal instruments, i.e. the Protocol on Trade in Services and the Protocol on Digital Trade. Trade in services and digital trade are defined differently under the Protocols on Trade in Services and Digital Trade.

Digital trade is defined under the Protocol on Digital Trade as “digitally enabled transactions of trade in goods and services that can either be digitally or physically delivered and that involve natural and juridical persons.”[1]

Trade in Services is defined under the Protocol on Trade in Services as the “supply of services from the territory of one State Party into the territory of any other State Party, in the territory of one State Party to the service consumer of any other State Party, by a service supplier of one State Party, through commercial presence in the territory of any other State Party, by a service supplier of one State Party, through presence of natural persons of a State Party in the territory of any other State Party.”[2]

Under the AfCFTA Protocol on Digital Trade, digital trade is defined as follows: (i) digitally ordered services that can be digitally delivered (e.g., services like software, music, education courses, or consulting delivered electronically (e.g., downloads, streaming), (ii) digitally ordered services that can be physically delivered (e.g., services like travel bookings, hotel reservations, or car rentals ordered online, but fulfilled offline), and (iii) digitally ordered goods that can be physically delivered (e.g., a book ordered online but physically delivered).
Article 1 of the Protocol on Digital Trade clarifies that a digital product is not a good or a service.

The Protocol on Trade in Services focuses on the liberalisation of trade in services, via the modes of services supply, which includes digitally-enabled delivery of services (via mode 2 – cross-border supply). The Protocol on Digital Trade focuses on addressing issues like market access for digital products, digital trade facilitation, online consumer protection, data governance issues, and emerging technologies.

The Protocols on Trade in Services and Digital Trade overlap in some instances. Some digital services might be covered by both protocols, depending on their nature. The Protocol on Digital Trade could be seen as an extension of the Protocol on Trade in Services tailored to digital trade in services. For instance, the Protocol on Trade in Services provides a framework for general service trade principles, which the Protocol on Digital Trade expands upon in the context of digital trade in services.

The Protocols on Digital Trade and Trade in Services are an integral part of the AfCFTA and are meant to be complementary and support the achievement of the AfCFTA objectives. The Protocol on Trade in Services sets out general rules or principles for how State Parties must treat each other's services and service providers, such as non-discrimination and national treatment. The Protocol in Digital Trade is a more specific agreement that focuses on the trade of digital products and services and goods by electronic means.

The Protocol on Digital Trade clarifies the relationship between the Protocol on Digital Trade and the Protocol on Trade in Services. Protocol on Digital Trade does not derogate from or modify the rights and obligations of the State Parties under the Protocol on Trade in Services. That means, the commitments by State Parties under the Protocol on Trade in Services, particularly the schedules of specific commitments are not changed by the Protocol on Digital Trade.

In addition, Article 44(2) of the Protocol clarifies what happens in the case of any conflict or inconsistency between the Protocol on Digital Trade and the Protocol on Trade in Services. That is, where there is a conflict or inconsistency between the Protocol on Trade in Services and the Protocol on Digital Trade in relation to matters specifically governed by trade in services, the Protocol on Trade in Services prevails.

[1] Article 1(g) of the Protocol on Digital Trade.


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