Digital Trade in the African Continental Free Trade Agreement: Exploring its promises and challenges

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The global advancement in information and communications technology (ICT) has impacted virtually every aspect of the lives of billions of people in the world, without losing sight of the stark variations on access to digital goods and services across and within continents and countries. Trade, be it cross-border or domestic, is no exception. There are many forms of trade in goods or services that can be fully or partly carried out through different ICT-based mechanisms, which previously were provided only through offline ways of trading. Digitalization also affects trade in many other ways. This is why the agenda of trade and digitalization has gained attention in various trade policy forums, including the African Continental Free Trade Area (AfCFTA) and the World Trade Organization.

There are different ways of defining the term “digital trade”. The Organization for Economic Co-operation and Development broadly defined it as “encompass(ing) digitally-enabled transactions of trade in goods and services that can either be digitally or physically delivered, and that involve consumers, firms, and governments.” It, thus, covers transactions in goods or services that are digitally-ordered but delivered offline (e.g. physical delivery of a package ordered online) and/or digitally-delivered, such as a fully online education. The common denominator in these types of transactions is the involvement of ICT as a medium of trade or facilitator of trade.

The eminence of digital trade is based on the many economic opportunities that it can create or boost under the appropriate environment. Yet, as any other product of human beings, there are problems associated with digital trade, which policymakers need to be aware of in order to maximize the benefits and minimize the challenges. This article, therefore, aims at briefly discussing the promises and challenges of digital trade in Africa and indicate what African countries need to do so as to reap the benefits and minimize the multifaceted challenges associated with it, focusing on the AfCFTA.

Opportunities and challenges of digital trade

Many studies show that digital trade can have significant benefits. The UN Economic Commission for Africa stated that digital trade can “reduce transaction costs, deliver goods and services remotely and present new opportunities for entrepreneurship, innovation and job creation.” Particularly, it enabled “[t]ens of millions of small and medium-sized enterprises (SMEs) worldwide (to transform) … themselves into exporters by joining e-commerce marketplaces that are revolutionizing logistics and supply chains.” Hence, digital trade can create significant new opportunities or enhance existing ones, including through facilitating international trade.

While digital trade has been increasingly espoused globally before Covid-19, the pandemic has contributed to its increased use in many parts of the world. According to the United Nations Conference on Trade and Development (UNCTAD), the “crisis has seen growth in the market share of trade and retail taken by e-commerce, particularly in domestic markets where movement restrictions and consumer anxieties about social interaction have encouraged use of online shopping." Due to its potential advantages, the share of digital trade is expected to grow further even after the full recovery of economies from the impacts of Covid-19.

Yet, there are also many and multifaceted challenges that are associated with digital trade. As Carlos Lopes stated, "digital trade, like any other affected by digitalization, innovations can … erode common values and valued standards, such as those pertaining to human rights." These mainly include compromising or abusing digitally-acquired data, exposing digital consumers to various types of risks (such as scams) and cybercrimes. Digital divide, which is "the gap between demographics and regions that have access to modern … ICT, and those that don't or have restricted access", is also another serious problem that policymakers have to grapple with in relation to digital trade. There are also trade policy issues pertinent to digital trade, which include market access and other barriers to trade (tariffs and other treatments of digital goods and services etc.). Other common problems related to digital trade include lack of capacity to adopt policies and regulate digital traders (including on taxation, jurisdiction and other issues), inadequate infrastructure and low level of digital literacy.

Digital Trade in the AfCFTA: advantages and challenges

The AfCFTA is still a work in progress in many aspects, including on issues pertinent to digital trade. It is a free trade area that African Union (AU) Member States established in 2018 with the main objective of promoting intra-African flow of goods, services, capital and persons. The AfCFTA's Protocols on Trade in Goods, Trade in Services and Rules and Procedures on the Settlement of Disputes, which are regarded as "Phase I agreements", entered into force last year. As part of its "Phase II", its Protocols covering investment, intellectual property rights (IPRs), competition policy, e-commerce, women and the youth in trade are currently under negotiation. The importance of digital trade has already been recognized in Africa. The AU's Agenda 2063 emphasizes the indispensability of building digital economies to facilitate continental integration and achieve sustainable and inclusive development. Likewise, its Digital Transformation Strategy for Africa (2020-2030) states that "[i]ntegrating Africa to a single digital market will create economies of scale and opportunities to grow Africa's economies and ***the key to unlocking these opportunities***

is the ability to adapt to digital trade and financial services." It is in this context that the AfCFTA Protocol on E-commerce is being negotiated, although no public information is yet available on the content of the Protocol. It is worth noting that there are similar efforts to promote digital trade in regional economic communities in Africa.

Despite the bold aspiration and plan to promote digital trade in Africa, the volume of digital trade is very low in the continent compared to other regions of the world. The UNCTAD found that "while over half the population in high-income countries shopped online in 2019, this figure was only 2 per cent in low-income countries (including most African countries)". There are also differences among African countries in their experience in digital trade, even among the largest economies in Africa based on GDP. As a case in point, Ethiopia is only catching up its other counterparts in Africa (such as Kenya, South Africa and Nigeria) on building a digital economy, having liberalized its telecom sector in 2019 and with the country's first ever private telecom company preparing to launch its commercial services. These variations are the results of many factors, including the (non-)existence of enabling legal, policy and institutional frameworks on digital trade, infrastructure gaps, capacity limitations and cultural resistance to digital ways of trading.

Notwithstanding the above challenges, many experts agree that Africa has huge potential to use digital trade for the benefit of its population if appropriate policy, legal and institutional frameworks are adopted. With the majority of its population being young and talented, Africa has seen growth in its technology industry. As such, African countries have to encourage and support SMEs to digitally trade, given that SMEs, formally and informally, employ 80% of the continent's workforce. In fact, a study has shown that digital trade has actually boosted incomes, created jobs and offered new opportunities for workers in Africa.

Most African countries have also various trade deals (such as Economic Partnership Agreements) and investment agreements (Bilateral Investment Treaties) with many non-African countries (mainly, China, the EU, the UK and the US), which are their main trading and investment partners. These agreements and the national policies of African countries can help promote investments that are necessary for enabling digital trade and producing goods and services that can be digitally traded. In this regard, it is particularly vital for African countries to improve the infrastructure that are necessary for digital trade (such as ICT, telecom, electricity etc.) and to strengthen their cybersecurity capabilities by attracting investments from countries that have the comparative advantage in these areas of investment, such as China, Germany, the UK and the US.

Within Africa, the broad scope of the AfCFTA, which covers many issues pertinent to digital trade (principally, trade in goods and services, IPRs protection and investment promotion), would also help encourage innovation and investments by giving traders and investors the confidence and predictability on the treatment of their goods and services as well as the protection of their property rights. In this regard, the Protocol on E-commerce is of paramount importance for scaling up the share of digital trade in the continent by providing harmonized rules, which can also serve as guidelines in developing and implementing national rules and policies. The Protocol has to be negotiated and agreed in a way that comprehensively addresses most of the issues associated with digital trade, including market access, non-discrimination of digitally-traded goods and services, tariff and non-tariff barriers as well as other related issues, mainly data protection, consumer protection and prevention of cybercrime. The Protocol must also come up with rules on the expansion of access to digital trade in the continent and address the problem of digital divide. It has been found that “[i]n Africa in 2021, only 33 percent of the population was using the internet, meaning an estimated 871 million people are not realizing digital dividends.” As such, resolving, or at least mitigating, the problem of digital divide demands covering the different aspects of the divide in the continent, including urban-rural population and gender-based divide.

Another important element to achieve significant cross-border digital trade in Africa is the existence of an accessible system for making payments. With more than 40 individual currencies, it has been difficult to make cross-border payments in Africa without the use of third currencies. In response to this problem and to facilitate trade-related payments in the continent, the African Export-Import Bank rightly developed the Pan-African Payment and Settlement System (PPSS) with the cooperation of the AfCFTA Secretariat. This system is expected to enable businesses and consumers in Africa to make cross-border payments in their local currencies, which policymakers have to support.

It is also vital to view digitalization broadly in relation to trade. The effective use of ICT, aside from creating new or increasing existing opportunities, can also facilitate trade even if goods or services are not digitally-ordered or delivered. This is particularly so with respect to trade facilitation. The AfCFTA's Trade Facilitation Agreement (TFA) urges State Parties to adopt ICT in customs and related procedures, such as provision of customs information, submission of documents and goods inspection, in order to facilitate the efficient and low-cost movement of goods across borders.

Finally, in order to effectively reap the benefits of digital trade, African countries have to take lessons from their counterparts in Africa and from the advanced economies on promoting digital trade to integrate and grow their economies. In Africa, Kenya's oft-cited successful experience in expanding access to digital finance can be exemplary for other countries in the continent that are in comparable economic, social and political contexts, particularly those that are lagging behind. African countries must also learn from the advanced economies that have years-long experience in digital trade, such as China and the US, including by facilitating the transfer of technology and know-how from investors of such countries to domestic investors. It is important to examine and draw lessons from the policies and measures that these countries took to promote digital trade, including investment in education, innovation and building regulatory capacity.

Conclusion

In a world where digital trade is expanding fast, the State Parties of the AfCFTA also need to embrace digital trade, for it can help them better integrate and achieve inclusive development. But, in order for the various benefits of digital trade to materialize, they need to have appropriate policies, laws and institutions, including at the continental level (mainly through the upcoming Protocol on E-commerce) and at national level. Through the Protocol, digital trade must be encouraged by easing the market access requirements for digitally-ordered and/or delivered goods and services, not discriminating against them, removing or reducing tariffs on them and by other appropriate ways. Basing trade facilitation on ICT would also contribute to the swift and low-cost movement of goods across borders, which is envisaged in the AfCFTA's TFA. The upcoming Protocols on IPRs and investment would also play important roles by protecting the IPRs of those who engage in innovation that can facilitate digital trade and by promoting investments that can enhance their digital trade capabilities, such as building infrastructure. Nationally, the State Parties have to adopt policies that encourage innovation and entrepreneurship, particularly by SMEs, which are increasingly growing in the continent. Besides, they need to encourage the use of the PPSS and take similar measures to make it practically simple and affordable for businesses and consumers in Africa to make payments related to cross-border digital trade in local currencies. They also have to learn from their African counterparts and from other parts of the world on the policy measures they need to adopt so as to scale up the share of digital trade in the continent and their domestic economies.

Yet, as digital trade has its own challenges, the State Parties have to be aware of them and take measures to address them. These mainly are the risks of lack of or inadequate data and consumer protection, digital divide and cybercrime. They have to adopt and implement policies and laws and establish institutions that can prevent or minimize these challenges, also enhancing their regulatory capacities. Only then can the AfCFTA State Parties actually reap the benefits of digital trade.

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