



South-South Ideas

**E-Commerce and
Trade Agreements in
the Global South:**
Lessons for the African
Continental Free Trade Area

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United Nations Office for South-South Cooperation

United Nations Development Programme
304 East 45th Street New York, NY 10017 USA

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SOUTH-SOUTH IDEAS PAPER

E-Commerce and Trade Agreements in the Global South:

Lessons for the African Continental Free Trade Area

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Abbreviations and acronyms

AfCFTA	African Continental Free Trade Area
AANZFTA	ASEAN-Australia-New Zealand Free Trade Area
ASEAN	Association of Southeast Asian Nations
B2B	Business-to-Business
B2C	Business-to-Consumer
C2C	Consumer-to-Consumer
CET	Common External Tariff
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
GCC	Gulf Cooperation Council
MERCOSUR	Southern Common Market
RCEP	Regional Comprehensive Economic Partnership
SME	Small- and Medium-sized Enterprise
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNOSSC	United Nations Office for South-South Cooperation
WTO	World Trade Organization

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Executive summary

While digitalization has triggered the so-called “Fourth Industrial Revolution,” it has also exacerbated discrepancies in technological advancements between developed and developing nations, as well as urban and rural communities. Digital transformation has contributed to nation’s overall economic development with digital economies becoming a great contributor to growth in national Gross Domestic Product (GDP) and an upsurge in the importance of new business models, such as e-commerce and cross-border e-commerce.

At the global level, the World Trade Organization has taken steps to regulate cross-border e-commerce, establishing a dedicated ‘Joint Initiative on E-Commerce’ with over 80 members. Similarly, the United Nations has provided support, particularly to developing nations, through training and capacitation building, funding and other digitalization initiatives. eTrade Readiness Assessments led by the United Nations Conference on Trade and Development (UNCTAD) have identified challenges and opportunities to enhance e-commerce and provided policy recommendations to several governments, which will help understanding the current scenario in Africa.

Advances in infrastructure, logistics, online payment systems and favourable legislation suggest that further alignment could improve cooperation in cross-border e-commerce. Regionally, economic blocs have incorporated e-commerce related provisions aiming to create propitious environments that facilitate online business among and between their members. The Association of Southeast Asian Nations (ASEAN) has contributed greatly to the harmonization of laws to foster cross-border e-commerce and is regarded as the best practice on this topic as compared to other blocs in the global South. However, even within ASEAN, much can still be done, as was identified throughout the development of this paper.

Nationally, nations started incorporating e-commerce and cross-border e-commerce into their development agenda. Support from international organizations has provided them with additional guidance on the next steps to be taken. Tunisia, for instance, is one of the latest nations to have engaged with UNCTAD to further develop its digital economy through a series of programmes, which include the Easy Export initiative, Innovative Startups and Small and Medium Enterprises Project and amendments to its foreign exchange laws to enable e-trade.

This paper focuses on the African region because informal trade has grown in recent years despite constraints that have been identified. For example, in many African countries most online transaction payments are done through cash on delivery, and the delivery infrastructure particularly for cross-border e-commerce is not yet developed.

The African Continental Free Trade Area (AfCFTA), one of the latest agreements in the global South, promises to build economic strength in a market of over 1.3 billion people across over fifty nations. Efforts to advance trade relations among its members through e-commerce have the Digital Trade Protocol as its main pillar. However, unlike cross-border e-commerce provisions in other economic blocs, the Protocol does not have binding elements that offer a concrete roadmap for actionable results for market access.

The recommendations herein have as their main objective to suggest a progressive agenda to bolster cross-border e-commerce based on supra-national and national-level approaches. Proposed approaches include legal revisions to those policies that currently pose a barrier to cooperation, a simplified taxation scheme to be implemented by national customs bodies, implementation of a shared database containing country member e-commerce-related laws for easy access and knowledge sharing, and the future creation of an intra-bloc, online, cross-border marketplace that provides the necessary logistic services and digital payments for AfCFTA members.

INTRODUCTION



Rapidly growing trade in the digital economy has largely been made possible by an increase in internet penetration rates and mobile telephone usage.

Rapidly growing trade in the digital economy has largely been made possible by an increase in internet penetration rates and mobile telephone usage. This is causing profound changes in the structure and dynamics of the economies of developing countries (as well as developed ones), allowing businesses to reach to a wider range of customers national and internationally at relatively lower operational costs compared to traditional modes of trade.

Covid-19 pandemic restrictions negatively impacted traditional business models hence provoking a paradigm shift towards the digital economy. At present, global South countries have varying levels of digitalization and e-commerce readiness, with diverse regulation frameworks, policies and approaches. Understanding the current e-commerce provisions of selected trade agreements is thus paramount to maximize opportunities associated with e-commerce growth. In recent years, regional blocs from the global South have negotiated and implemented trade agreements to strengthen cooperation, including the Regional Comprehensive Economic Partnership (RCEP), the Southern Common Market (MERCOSUR), the African Continental Free Trade Area Agreement (AfCFTA), and others.



Covid-19 pandemic restrictions negatively impacted traditional business models hence provoking a paradigm shift towards the digital economy.

Similarly, these blocs have negotiated exclusive trade deals with other regions to enhance international development cooperation, such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and Australia. However, enough attempts have not yet been made to foster inter-region trade agreements between global South countries.

The African region is the focus of this paper, covering current digital developments and future implementation of e-commerce directives within AfCFTA. To define a clear agenda on how e-commerce can foster trade in Africa, also in the intra-bloc context, an overview of the actual e-commerce panorama in the global South is necessary, backed up by data from UNCTAD e-Trade Readiness Assessments, roadmaps and reports of the United Nations Task Force on Digital Finance and other information from international institutions.

However, updated data on e-commerce and cross-border e-commerce is lacking on both domestic and international levels, in particular data on the impact of the Covid-19 pandemic, although it is known that the pandemic forced greater use of digitalization, and with it both e-commerce and cross-border activities increased accordingly.

Lastly, constructing global rules on e-commerce and digital trade by tackling various common interests will have a significant impact on societal changes, since “the countries of the global South have contributed to more than half of the world’s growth in recent years; intra-South trade is higher than ever, accounting for more than a quarter of all world trade (...) (DESA, 2021).”



This paper aims to:

- » analyse current e-commerce provisions in trade agreements;
- » tap into experiences in digital trade, particularly during the Covid-19 pandemic;
- » propose policy recommendations which can be applicable to AfCFTA; and
- » indicate actionable plans to enhance cross-border e-commerce (in goods) in the Africa region.

Chapter 1 introduces e-commerce as one of the main pillars of the digital economy and highlights the need to assess the challenges and requirements of countries for improvement in e-commerce amid growth of formal and informal online businesses.

Chapter 2 brings an overview of internet penetration and the e-commerce situation in African countries, based on an analysis of their infrastructure vulnerabilities (online payment systems, logistics and funding).

Chapter 3 reviews e-commerce provisions, chapters and protocols from bilateral, regional and multilateral trade agreements in the global South, having as its main goal an understanding of best practices and gaps to facilitate cooperation through e-commerce.

Chapter 4 lays out supra-national and national policy recommendations for policymakers, which are suggested to be implemented through AfCFTA, as well as being coordinated with individual governments for optimum results. It also presents lessons for AfCFTA with action plans to facilitate cooperation, such as a shared database of the main e-commerce and cross-border e-commerce marketplaces, which is a best practice primarily based on ASEAN and the Gulf Cooperation Council (GCC).

Chapter 6 provides concluding thoughts.

2. The e-commerce landscape in Africa

The United Nations Conference on Trade and Development (UNCTAD, 2015) describes e-commerce as “the sale or purchase of goods or services, conducted over computer networks by methods specifically designed for the purpose of receiving or placing of orders.” UNCTAD adds that the purchase and payment of goods and services may be initiated on electronic platforms, while delivery occurs offline. E-commerce transactions can be made between enterprises, households, individuals, governments and other public or private organizations (ibid).

While it is challenging to measure global e-commerce (Economic Commission for Africa, 2019), various projections and estimates have been made. UNCTAD (2021)¹ estimated that between 2013 and 2019, the value of global online trade jumped from US\$16.3 trillion



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¹ Report available at: https://unctad.org/system/files/official-document/tn_unctad_ict4d18_en.pdf.



McKinsey (2013) projected that the value of e-commerce in Africa will reach \$75 billion in annual sales to the overall growth of the Gross Domestic Product of the continent by 2025.

to \$26.7 trillion. McKinsey (2013)² projected that the value of e-commerce in Africa will reach \$75 billion in annual sales to the overall growth of the Gross Domestic Product of the continent by 2025, enabled by an increase in internet penetration rates and overall improvements in infrastructure. While a need exists to further improve connectivity, regulatory landscapes and overall investments in infrastructure in Africa, an opportunity exists to export a greater number and diversity of goods to a larger pool of countries through cross-border e-commerce (International Trade Centre, 2017).

The correlation of internet penetration with business-to-consumer (B2C) e-commerce growth is one of causation, but it is not the only metric to assess e-commerce potentialities. The overall internet penetration rate in Africa was 43 percent in 2020 while the global average was 68.6 percent. However, the penetration rate may not mirror use: according to the World Economic Forum and International Trade Centre (ITC) report Africa E-Commerce Agenda Roadmap for Action (2019), “only a quarter of Africa’s population regularly uses the internet. Costs are high. On average, 1GB of data is 9 percent of monthly income (...) Digital literacy is also low.”

Logically, African countries with higher internet usage and penetration percentages score higher on the UNCTAD B2C e-commerce index. However, due to the latest economic recession, largely sparked by the Covid-19 pandemic, alongside poor e-commerce infrastructure, internet penetration rates can be high but B2C online shopping rates can be low. Most online purchases in the Africa region are paid for in cash upon delivery, rather than via online payment. Mauritius, South Africa and Tunisia have both relatively high internet use penetration percentages of population and high B2C e-commerce index values. Meanwhile, Algeria, Gabon and Libya have relatively high penetration percentages of population and low B2C e-commerce index values, which indicates that internet usage is not the only factor that contributes to the development of online business.

Internet penetration and B2C e-commerce index in selected African countries

African country	Internet users	Penetration % of population	Internet growth 2000-2021	B2C e-commerce Index
Algeria	25,428,159	57.00%	50,756%	38.2
Angola	8,980,670	26.50%	29,835%	30.4
Benin	3,801,758	30.50%	25,245%	21
Botswana	1,139,000	47.50%	7,493%	41
Burkina Faso	4,594,265	21.40%	45,842%	18.8
Burundi	1,606,122	13.10%	53,437%	9
Cabo Verde	352,120	62.70%	4,302%	n/a
Cameroon	7,878,422	28.90%	39,292%	32

2 Report available at: www.mckinsey.com/~/media/McKinsey/Industries/Technology%20Media%20and%20Telecommunications/High%20Tech/Our%20Insights/Lions%20go%20digital%20The%20Internets%20transformative%20potential%20in%20Africa/MGI_Lions_go_digital_Full_report_Nov2013.pdf.

Central African Rep.	557,085	11.30%	37,039%	n/a
Chad	2,237,932	13.20%	223,693%	8.5
Comoros	193,700	21.80%	12,813%	13.1
Congo	833,200	14.70%	166,540%	14
Congo, Dem. Rep.	16,355,917	17.70%	3,271,083%	13.8
Côte d'Ivoire	12,253,653	45.30%	30,534%	31.3
Djibouti	548,832	54.80%	39,102%	28.6
Egypt	54,741,493	52.50%	12,064%	39.4
Equatorial Guinea	362,891	25.00%	7,2478%	n/a
Eritrea	248,199	6.90%	4,864%	n/a
Eswatini	665,245	56.70%	6,552%	31.3
Ethiopia	21,147,255	17.90%	211,372%	31.1
Gabon	1,367,641	60.00%	9,017%	38.3
The Gambia	442,050	19.00%	11,713%	n/a
Ghana	14,767,818	46.50%	49,126%	42.8
Guinea	2,551,672	18.90%	31,795%	14.3
Guinea-Bissau	250,000	12.40%	16,566%	n/a
Kenya	46,870,422	85.20%	23,335%	49
Lesotho	682,990	31.60%	16974%	28
Liberia	760,994	14.70%	152,098%	16.7
Libya	5,857,000	84.20%	58,470%	37.4
Madagascar	2,864,000	10.10%	9,446%	22
Malawi	2,717,243	13.80%	18,015%	19.7
Mali	12,480,176	59.80%	66,284%	21.5
Mauritania	969,519	20.30%	19,290%	16.5
Mauritius	919,000	72.20%	956%	68.4
Mayotte (FR)	107,940	38.60%	n/a	n/a
Morocco	25,589,581	68.50%	25,489%	43.4
Mozambique	6,523,613	20.30%	21645%	21.7
Namibia	1,347,418	52.10%	4,391%	45.3
Niger	3,363,848	13.40%	67,177%	5.4
Nigeria	154,301,195	73.00%	101,484%	53.2
Réunion (FR)	608,000	67.40%	367%	n/a
Rwanda	5,981,638	45.10%	119,532%	30.9
Saint Helena (UK)	2,300	37.80%	n/a	n/a
Sao Tome and Principe	63,864	28.60%	882%	n/a
Senegal	9,749,527	56.70%	24,273%	42.7
Seychelles	71,300	72.10%	1,088%	n/a
Sierra Leone	1,043,725	12.80%	20,774%	20.1
Somalia	2,089,900	12.80%	852,550%	n/a
South Africa	34,545,165	57.50%	1,339%	54.5
South Sudan	900,716	7.90%	n/a	n/a

Sudan	13,124,100	29.20%	43,647%	25.6
Tanzania	23,142,960	37.60%	20,024%	43.3
Togo	1,011,837	11.90%	912%	26.2
Tunisia	8,170,000	68.40%	8,070%	58.4
Uganda	18,502,166	39.30%	46,155%	38.8
Western Sahara	28,000	4.60%	n/a	n/a
Zambia	9,870,427	52.20%	49,252%	26.4
Zimbabwe	8,400,000	55.70%	16,700%	33.1
Total Africa	590,296,163	43%	12,975%	29
Rest of the world	4,463,594,959	68.6%	88.3%	55

Source: Internet World Stats, Africa Internet Users, 2021 Population and Facebook Statistics; UNCTAD, B2C E-commerce index value in Africa in 2019.



UNCTAD'S B2C e-commerce index report reviews countries' readiness in a ranking from zero to one hundred based on an analysis of their internet usage, security, account ownership and postal reliability.

UNCTAD'S B2C e-commerce index report³ reviews countries' readiness in a ranking from zero to one hundred based on an analysis of their internet usage, security, account ownership and postal reliability. Mauritius comes in first with a 68.4 score, while Niger is the lowest (for which a score is available) with a 5.4 score.⁴ The metric that contributes the most to Mauritius scoring highest, according to UNCTAD's studies, is the percentage of population having a bank or mobile money account (90 percent). The overall index for Africa is 29, which compared to Switzerland, which has the highest score in the rank at 95.9 out of 100, highlights the gap between higher income countries and lower income countries, not only in B2C e-commerce but in overall digitalization. A lack of updated data is the main obstacle to assess the conditions of individual countries and further investigate areas for improvements.

Benin, Burkina Faso, Lesotho, Liberia, Madagascar, Malawi, Mali, Niger, Togo, Senegal, Tanzania, Uganda and Zambia have cooperated with UNCTAD's 'eTrade for All' to receive technical assistance to ameliorate their e-commerce environment. The United Nations Development Programme (UNDP) established a partnership with Uganda's food delivery start-up, Jumia Food, to implement contactless delivery and cashless payments in 2020. The initiative aimed to provide solutions to agricultural product supply chains and bring new development opportunities in rural areas through e-commerce.

The proliferation of electronic channels, such as marketplaces and e-commerce websites, are transforming the nature of work, investment, and trade across industries and this extends beyond the simple sale of goods to the use of e-commerce channels by governments and companies. Digital-based businesses are emerging across economic sectors, including financial services, media, healthcare, sector mutual funds and logistics. Private sector e-commerce forms include: i) proprietary channels, managed by entrepreneurs and businesses; ii) marketplaces, where merchants and consumers are aggregated; and iii) social-commerce platforms, which are social media channels that offer e-commerce functions. In the public sector, governments have increasingly

3 Report available at: https://unctad.org/system/files/official-document/tn_unctad_ict4d14_en.pdf.

4 No data is available for Cabo Verde, Central African Republic, Eritrea, Gambia, Sao Tome and Principe, the Seychelles and South Sudan.

adopted technology solutions for the delivery of services. E-government portals allow users to request and receive a range of services, such as civil registration, visas, business incorporation and tax payments.

At the national level, e-commerce is supervised by policies, regulations and laws instituted by the country, and in some cases, emanating from supra-national instruments. In the absence of an international document regulating e-trade, similarly to what the World Trade Organization has implemented for traditional modes of trade, cross-border e-commerce is typically governed by bilateral, regional or free trade agreements. Digital trade and e-commerce provisions now feature in agreements within global South regional blocs and in agreements of these blocs with other regions. These mechanisms arose due to governments acknowledging the importance of both e-commerce and cross-border e-commerce to economic growth amid growing digitalization.

In the context of Africa, AfCFTA promises to provide solutions for the growth of cross-border e-commerce, with its Protocol on Digital Trade. Building on the objectives and aims of the Lagos Plan of Action (1980) and the treaty to establish the African Economic Community (Abuja Treaty, 1991), AfCFTA is intended to overcome the fragmentations created by national borders, resolve the complexities associated with overlapping memberships of various regional economic communities (RECs) and bolster the creation of regional value chains to supply a continental market. Importantly, AfCFTA is explicitly intended to diversify the trading portfolio of African countries, specially away from exports dominated by commodities towards value-added goods. (Besada, 2021) By implication, the variety in the product basket should also lead to diversification of trading partners.

In January 2019, the Executive Council of the African Union (mandated by the African Union Commission), the Economic Commission for Africa and development agencies and institutions on the continent developed a digital trade and digital economy strategy to facilitate the implementation of AfCFTA and support Africa's leveraging of the Fourth Industrial Revolution. An African Union Digital Transformation Strategy was adopted by the African Union Heads of State and Government Summit in February 2020. This Summit also announced that Phase III of AfCFTA negotiations would be dedicated to e-commerce.

E-commerce is critical to the implementation of AfCFTA. It is both a driver and outcome of increased levels of intra-African trade, particularly in the context of South-South cooperation. Practically speaking, trade between various actors-traders, service providers and governments is likely to occur through digital channels. While difficulties have been observed in measuring e-commerce, particularly across borders, evidence points to an increased use of e-commerce platforms and transactions. Importantly, digital trade presents a pathway for diversification of trade away from commodities, amid an overall increase in international trade in the region over the last few years.

Typical assessments of levels of intra-African trade are concerned with trade in goods and not trade in services. Digital platforms are a useful channel for the growth and facilitation of trade in cross-border services. For example, services in entertainment, education and



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the financial sectors can be exported within the continental market and to other regions through digital channels. Similarly, services which are physically consumed, such as in the transport and tourism sectors, can be traded digitally as well.

The formulation of an African position on e-commerce through AfCFTA is important not only for intra-African trade, but for Africa's e-commerce-driven trade with other regions. At the World Trade Organization (WTO), a work programme on e-commerce was agreed upon in 1998 to consider the plethora of trade issues related to e-commerce. There was little movement on this work programme until the 11th Ministerial Conference in 2017, at which Member States submitted a variety of positions for consideration,⁵ ranging from support for the current work programme, establishment of a new working group on e-commerce and establishment of a working party imbued with a mandate for future negotiations.

The African Group⁶ has opposed the introduction of e-commerce rules at the WTO on the basis that several of the definitional issues have not been settled, e.g., whether products delivered by electronic means are goods, services or both. Other issues raised by the African Group include the reality that many of its members continue to grapple with transformations associated with digitalization and their preference to prioritize trade negotiations in other areas, particularly agriculture. In addition, the African Group highlighted constraints to domestic policy and industrial aspirations, the potential for e-commerce rules to amount to a liberalization agenda and expressed concerns about the capacity of African micro-, small- and medium-sized enterprises (SMEs) to compete favourably against technology giants from outside the region.⁷

This position of the African Group, particularly Kenya and Nigeria, is aligned with the Friends of E-Commerce for Development Group which welcomes negotiations on e-commerce. In 2017, the African Group announced intentions to explore discussions preparatory to future WTO negotiations on the topic, which calls for the acceleration of e-commerce efforts.

⁵ Work Programme on Electronic Commerce, Report by the Chairman, WT/GC/W/739, 1 December 2017.

⁶ The Group of African States, or African Group, is one of the five United Nations regional groups and is composed of 54 Member States from the African continent.

⁷ The Work Programme on Electronic Commerce, Statement by the African Group, document WT/MIN (17)/21, 6 December 2017.

3. E-COMMERCE IN TRADE AGREEMENTS IN THE GLOBAL SOUTH

To draw lessons for AfCFTA from the global South, it is necessary to review e-commerce provisions, chapters and protocols from existing bilateral, regional and multilateral trade agreements in the global South. The investigation points to various mechanisms used by regional blocs that help harmonize regulations and encourage e-commerce among, and even outside of, membership. This helps illuminate best practices and gaps encountered when facilitating regional cooperation in e-commerce.

The global South concept

The term “global South” has been defined based on mainly three approaches: economical, geographical and political. First, it refers to “economically disadvantaged nation-states and as a post-Cold War alternative to terms such as ‘Third World’ or ‘Developing Countries.’” This definition has been conventionally used by intergovernmental development organizations to define countries that are newly industrialized. Two commonalities can be considered, as follows: i) history of colonization by Northern countries, mostly located in Europe, which contributed to economic reliance on the colonizing economies; and ii) reliance on the exports of commodities of mostly products with low aggregated value, which causes deficits in the balance of trade (Mahler, 2018).

Second, the term captures “a deterritorialized geography of capitalism’s externalities and means to account for subjugated peoples within the borders of wealthier countries, such that there are economic Souths in the geographic North and Norths in the geographic South;” and this reiterates their uneven development levels (Mahler, 2018). Exponential economies, such as Brazil, China and India, can hardly be compared to the largest economies in Africa, such as Egypt, Nigeria and South Africa. In addition, Mauritius has a very high human development index, ranking 66 globally, while Niger has one of the lowest scores, ranking 189 globally. Thus, huge development disparities can be found within the same region, in this case, Africa.

Third, global South refers to “the resistant imaginary of a transnational political subject that results from a shared experience of subjugation under contemporary global capitalism” (Mahler, 2018).

When the “Souths” in the regions of Asia, Africa, Latin America and Oceania recognize one another and view their conditions (Prashad, 2012), shifting from a central focus on development toward an emphasis on geopolitical relations of power. Thus, the Global South concept arises from solidarities among multiple Souths and moves beyond the operation of power towards networked theories of power within contemporary global capitalism.

When countries within the global South, viewing their conditions as shared, collaborate and cooperate in different industries it is referred to as South-South cooperation



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(United Nations DESA, 2019). Furthermore, South-South cooperation is “an exchange of knowledge and resources in the political, economic, social, cultural, environmental or technical domain between developing countries” to promote knowledge and expertise exchanges through programmes, projects and initiatives that have helped solve various development vulnerabilities (UNOSSC, 2021).

3.1 Asia: Association of Southeast Asian Nations



The Association of Southeast Asian Nations (ASEAN) is a free trade area agreement signed in 1992 in Singapore, comprising 10 member states (Brunei Darussalam, Cambodia, Indonesia, Lao People’s Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam). It is a plurilateral agreement in the East Asia region and notified under the enabling clause of the WTO. The main objective of the agreement is to increase ASEAN’s competitive edge as a production base in the world market through the elimination of tariffs and non-tariff barriers and attract more foreign direct investment.

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For ASEAN to achieve both growth and inclusion will require countries in the region to pursue greater integration, their respective agendas of reform and liberalization. The ASEAN Economic Community (AEC) Blueprint 2025, adopted in 2015, covering topics such as infrastructure, data protection, education and technology competency, modernization of legal frameworks, security of electronic transactions, competition, logistics and e-commerce frameworks, visualizes an AEC by 2025 that is highly integrated and cohesive.

ASEAN member countries have made significant progress in lowering intra-regional tariffs. The ASEAN free trade agreement does not apply a common external tariff on imported goods. Each ASEAN member may impose tariffs on goods entering from outside ASEAN based on its national schedules. However, for goods originating within ASEAN, ASEAN members are to apply a tariff rate of 0-5 percent (the more recent members of Cambodia, Myanmar, Lao People’s Democratic Republic and Viet Nam, also known as the CMLV countries, were given additional time to implement the reduced tariff rates). The tariff scheme is known as the Common Effective Preferential Tariff (CEPT) (ASEAN, 2021).

Recognizing that China has become an increasingly important destination of ASEAN exports of components and capital goods indicates the presence of a production network involving ASEAN and China.



ASEAN Member States signed an agreement on electronic commerce in 2018 to develop and promote e-commerce within ASEAN Member States (ASEAN, 2019). The role of each Member State is to provide an enabling legal and regulatory environment, a conducive and competitive business environment and to protect the public interest. ASEAN also pioneered legal harmonization between its members.

The provisions in the ASEAN E-Commerce Agreement include the following:

General provisions

» Definitions

The Agreement defines the terms 'electronic authentication,' 'electronic signature' and 'personal information.'

Enabling digital trade provisions

» Paperless trading (Article 7.1)

The Agreement includes provisions promoting paperless trading between businesses and government, such as electronic format customs forms.

Electronic authentication/signatures (Article 7.2)

The provision refers to a mutual recognition of the electronic process of identity verification of electronic signatures. It prohibits the denial of the legality of a signature solely because it is in an electronic format. It encourages members to adopt measures based on international norms for electronic authentication.

Cross border transfer (Article 7.4)

The provision allows cross-border transfer of information by electronic means and prohibits data localization for certain activities. The provision encourages members to allow flow of information for business purposes and to minimize or eliminate barriers to information flow.

Regulatory measures provisions

» Cybersecurity (Article 8)

The provision adopts risk-based approaches and preventive practices as more effective ways than prescriptive regulation in addressing cyber threats. Members are encouraged to use existing cooperating mechanisms to cooperate on matters relating to cybersecurity.

Protection of users of electronic commerce provisions (Articles 7.3 and 7.5)

These provisions are related to consumer protection, in different forms. They contain a binding obligation for governments to adopt or maintain consumer protection laws, protect personal information of e-commerce users and stem unsolicited electronic messages. These provisions encourage members to support measures that protect consumers using e-commerce similar to the protection afforded users of other forms of commerce. Member States also should maintain measures that ensure protection of personal use of information.

Dispute settlement (Article 15)

The Agreement specifies whether e-commerce provisions are covered or not by the dispute settlement mechanism established under the regional trade agreement protocol.

While this e-commerce agreement exists for the bloc, it fails to define a digital or e-commerce product. What exactly constitutes a digitally traded product? How are non-physical digital goods and services to be treated as compared to physical ones? This gives rise to several questions. Secondly, the classification of services is blurred because of non-definition and classification. Finally, the terms in the agreement are less prescriptive, and exactly how ASEAN member states address these issues is left largely to their discretion, anchored in what ASEAN member states have under their respective legal and regulatory frameworks.



Its main objective is to promote a common space that generates business and investment opportunities through the competitive integration of national economies into the international market.

3.3 South America: the Southern Common Market

The Southern Common Market (MERCOSUR) is a Customs Union and Economic Integration Agreement composed of five sovereign member states: Argentina, Brazil, Paraguay, Uruguay and Venezuela (the latter has been suspended since December 2016). The agreement was signed in 1991 and entered into force on 29 November 1991 for trade in goods and signed in 1997 and entered into force on 7 December 2005 for trade in services. Its main objective is to promote a common space that generates business and investment opportunities through the competitive integration of national economies into the international market. The agreement is divided into six chapters and contains e-commerce resolutions. Supervising institutions are the Council of the Common Market and the Common Market Group (Chapter 2, Article 9).

In accordance with the provisions of the Treaty of Asuncion and as an essential condition for the deepening of the integration process, a MERCOSUR Common External Tariff (CET) has been in effect since 1995 (Organization of American States, 2021). The terms-of-trade externalities among MERCOSUR's members have been internalized in the CET. MERCOSUR's tariff schedule has as many as 6,000 tariff lines. The implementation of the CET did not include the total universe of products of the nomenclature because the countries decided to establish exceptions to the CET as a solution to the differences arising in the negotiation process. For imports of productive inputs, capital goods,



informatics and telecommunications, the countries set National Tariffs (NTs), whose levels should converge towards the CET, within a time agreed by the countries.

MERCOSUR recognized the advancement of electronic signatures and the adoption of electronic means in customs operations in Argentina, Bolivia, Brazil, Paraguay, Uruguay and Venezuela. These provisions are established in Resolution No. 37/06 on the recognition of the legal effectiveness of the electronic document, the electronic signature and the advanced electronic signature within the scope of MERCOSUR and Resolution No. 34/06 for the conclusion of mutual recognition agreements of advanced electronic signatures within MERCOSUR. Member states are free to enact their own laws on digital trade since the provisions do not prescribe any standards or measures.

3.4 Middle East: Gulf Cooperation Council

The Gulf Cooperation Council (GCC) is a customs union and a plurilateral regional trade agreement covering the Middle East regions signed on 31 December 2001 between six member states: Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates. It entered into force on 1 January 2003 and was notified under GATT Art. XXIV and the Enabling Clause accordingly. The objective of the Agreement is to enhance cooperation, coordination and economic integration through the adoption of specific programmes and workable mechanisms (Article 2).

The Agreement covers goods and is divided into nine chapters. The main provisions are Customs Union (Chapter I), Common Market (Chapter II), Economic and Monetary Union (Chapter III), Development Integration (Chapter IV), Human Resources Development (Chapter V), Cooperation in the Fields of Scientific and Technical Research (Chapter VI), Transportation, Communications, and Infrastructure (Chapter VII) and Settlement of Disputes (Chapter VIII). The Agreement also encourages trade exchange through electronic means (Article 25). The supervising institution is the GCC Working Committee and the Secretariat General (Chapter VIII).

The GCC applies a CET of 5 percent, levied on most goods imported from countries outside the GCC (GCC, 2021). Certain goods are exempt from the CET. For instance, goods manufactured within the GCC states are exempt from any duties when transported within the union. On 1 January 2003, the GCC Member States achieved an important step by establishing the Customs Union where a common external tariff of 5 percent was levied on all imports. Such CET was implemented on 1 January 2003. However, several essential commodities were exempted from customs duties as well as the customs exemptions provided for in the Common Customs Law and the WTO tariff bindings of some Member States. Duty-free commodities account for some 10 percent of the imported goods. Customs procedures have been applied to all foreign goods at the first point of entry into any of the Member States.

GCC has a single provision on e-commerce (Article 25) which imposes an obligation on Member States to take all necessary actions to facilitate banking and trade exchange through electronic means of communication and unify their electronic commerce



The objective of the Agreement is to enhance cooperation, coordination and economic integration through the adoption of specific programmes and workable mechanisms

legislation. However, just like MERCOSUR, the provision allows member states to enact their own laws on digital trade without prescribing any standards or measures and, therefore, the extent of unification and regulating what constitutes a 'digital product' lacks strong regulatory measurements.

3.5 Agreement with other regions

Some of the above-mentioned trade blocs also have trade agreements (in force and proposed) with the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), Regional Comprehensive Economic Partnership and Australia and New Zealand, as summarized below.

3.5.1 ASEAN-Australia-New Zealand Free Trade Area



The ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) agreement is a Free Trade Agreement and Economic Integration Agreement signed on 22 February 2009 between ASEAN states and New Zealand and Australia seeking to progressively liberalize and facilitate trade in goods and services, promote investment and provide special and differential treatment.

The ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) agreement is a Free Trade Agreement and Economic Integration Agreement signed on 22 February 2009 between ASEAN states and New Zealand and Australia and entered into force on 1 January 2010. It is a plurilateral agreement covering the East Asia and Oceania regions, seeking to progressively liberalize and facilitate trade in goods and services, promote investment and provide special and differential treatment.

The Agreement is divided into 18 chapters and four annexes structured to cover a wide range of issues related to goods and services. The main provisions are Trade in Goods, Rules of Origin (Chapter 3), Trade in Services, Investment, Intellectual Property, Competition, Economic Cooperation, Dispute Settlement and Consultations (Chapter 17).

An entire chapter of this free trade agreement is dedicated to e-commerce (Chapter 10), which states the role of each party to enable domestic laws and regulations considering the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce 1996 to implement: i) electronic authentication and digital certificates; ii) online consumer protection; iii) online data protection; iv) paperless trading; and v) co-operation on electronic commerce, including research and training activities. The supervising institution is the Free Trade Agreement Joint Committee (Chapter 16).

3.5.2 Comprehensive and Progressive Agreement for Trans-Pacific Partnership

The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPT) is a Free Trade Agreement and Economic Integration Agreement signed on 8 March 2018 and entered into force on 8 December 2018. It is a pluralistic agreement covering the regions of East Asia, Oceania, North America and South America. The current signatories are Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Viet Nam. The objective is to create a comprehensive regional agreement that promotes economic integration to liberalize trade and investment, bring

economic growth and social benefits, create new opportunities for workers' businesses, contribute to raising living standards, reduce poverty and promote sustainable growth.

The Agreement contains 30 chapters, and the main provisions are National Treatment and Market Access for Goods (Chapter 2), Rules of Origin (Chapter 3), Investment (Chapter 9), Intellectual Property (Chapter 18), Dispute Settlement (Chapter 28). It also has a full chapter dedicated to e-commerce (Chapter 14). The supervising institution is the Trans-Pacific Partnership Commission (Chapter 27). None of the trade blocs have an Agreement with the CPTPP even though some South-South countries are signatories.

The ANZNA has a relationship with the CPTPP by New Zealand, as a member of the CPTPP. It has been clarified that the AANZFTA and CPTPP agreements provide different forms of treatments for an exporter or investor who is a member of both blocs, through which investors are allowed to claim the most favourable treatment accorded.

3.5.3 Regional Comprehensive Economic Partnership

The Regional Comprehensive Economic Partnership (RCEP) is an agreement between the ten member states of the ASEAN and six of ASEAN's free trade agreement partners: Australia, China, India, Japan, New Zealand and South Korea. RCEP aims to create an integrated market with 15 countries, facilitating trade of products and services of each of these countries to be available across this region. Collectively, the RCEP represented 47.4 percent of the total global population, 29.2 percent of global trade and 32.2 percent of global output in 2018. The Agreement entered into force on 1 January 2022.

General provisions

- » Definitions

The Agreement defines terms such as electronic authentication, electronic signature and personal information.

Enabling digital trade provisions

- » Paperless trading (Chapter 10, Article 6)

This is a soft 'endeavour' obligation to promote the use of, and accept, paperless trading, with least developed countries having a five-year grace period to comply.

Electronic authentication/signatures (Chapter 10, Article 7)

This provision provides that a signature cannot be rejected solely because it is in electronic form. Governments can, however, set performance and/or certification requirements for a particular category of electronic transactions in their laws or regulations. This rule would prevent RCEP governments from requiring certain levels of cybersecurity, such



The Regional Comprehensive Economic Partnership (RCEP) is an agreement between the ten member states of the ASEAN and six of ASEAN's free trade agreement partners: Australia, China, India, Japan, New Zealand and South Korea. RCEP aims to create an integrated market with 15 countries, facilitating trade of products and services of each of these countries to be available across this region.

as two-factor authentication for online encryption of credit card details, unless the government has treated them as a special category.

Cross-border transfer (Chapter 10, Article 16)

This allows cross-border transfer of information by electronic means and prohibits data localization, which allows flow of information for business purposes, minimizing or eliminating barriers.

Market access provisions

- » Customs duties on electronic transmissions (Chapter 10, Article 12)

The RCEP maintains the current WTO moratorium on customs duties. However, electronic transmissions are not defined. That leaves it unclear whether the moratorium applies to all material transmitted electronically, including content, or does not apply to electronically transmitted goods and services. If there is a new outcome from the 1998 WTO Work Programme on Electronic Commerce, it is left to each RCEP party to decide whether to adjust its approach to reflect that new position.

Regulatory measures provisions

- » Unsolicited electronic message (Chapter 10, Article 10)

Parties are to adopt measures on spam, but these may be limited to modes of delivery, such as email, rather than the more lucrative forms, such as unsolicited advertising. The content the measures must contain is weak with unspecified “recourse” against those who fail to comply.

Domestic regulatory framework (Chapter 10, Article 11)

Parties must maintain a legal framework to govern electronic transactions that “takes into account” the relevant UNCITRAL, United Nations or other international conventions and model laws on electronic commerce. Parties must also “endeavour” to avoid “any unnecessary regulatory burden on electronic transactions.” This is a version of the disciplines on domestic regulation of services that require light handed approaches to regulation and which many developing countries have resisted in the WTO.

Cybersecurity (Chapter 10, Article 14)

The Agreement refers to cybersecurity, but without binding mechanisms. The implementation of the e-commerce chapter determines the transmission of cross-border data freely without guaranteed data security. This provision suggests the creation of regulations in each member country that will only strengthen the control and management of data by large companies.



Protection of users of electronic commerce provisions (Chapter 10, Articles 8 and 9)

This provision requires the Parties to have consumer protection measures and to ensure protection of personal use of information. While no minimum standard exists, a party must “take into account” international standards of relevant international bodies.

Obligations in other chapters (Chapter 10, Article 3.5)

The e-commerce chapter makes it clear that the Parties’ obligations, and related exceptions, in the trade in services and investment chapters still apply. Those chapters are more complex than the e-commerce chapter, for several reasons. Many of the measures referred to in the e-commerce chapter might arguably fall under that description, where a Party has committed the relevant service in its schedule (for a positive list) or not explicitly protected it (under a negative list approach).

Generally, transactions on digital products, such as multimedia (video, music, games, social media, books) and electronic services (consulting, marketing, other services), are yet to be regulated. The e-commerce chapter also has not discussed the mechanism for digital product transactions and payments that harm almost all member countries and only provide benefits to certain companies.

3.5.4 Comprehensive and Progressive Agreement for Trans-Pacific Partnership

Through the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), member countries have agreed to a set of rules that will facilitate economic growth and trade opportunities fostered by e-commerce. These rules will also address its latest barriers.

General provisions

» Definitions

The Agreement defines terms such as electronic authentication, electronic signature and personal information for the trade of products, such as computer programmes, texts, videos, images, sound recordings or other products, that are digitally encoded, produced for commercial sale or distribution and that can be transmitted electronically (Chapter 14, Article 1).

» Non-discriminatory provisions (Chapter 14, Article 4)

The provision prohibits discriminatory treatment of so-called “digital products” created or manufactured in another member state, which includes computer programmes produced for commercial sale and that can be transmitted electronically.



Through the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), member countries have agreed to a set of rules that will facilitate economic growth and trade opportunities fostered by e-commerce.

Enabling digital trade provisions

- » Paperless trading (Chapter 14, Article 9)

This provision requires trade administration documents to be made available to the public in electronic form, as well as trade administration documents submitted electronically as the legal equivalent of the paper version of those documents.

- » Electronic authentication/signatures (Chapter 14, Article 6)

This provision provides that a legal signature cannot be rejected solely because it is in electronic form unless the government has treated them as a special category. It also prevents measures that prohibit parties to an electronic transaction from mutually determining the appropriate authentication methods for that transaction.

- » Cross-border transfer (Chapter 14, Article 11)

The Agreement allows the cross-border transfer of information by electronic means, including personal information, when this activity is for the conduct of the business of a covered person.

Market access provisions

- » Customs duties on electronic transmissions (Chapter 14, Article 13)

These provisions prohibit the imposition of customs duties on electronic transmissions, including content transmitted electronically, between a person of one Party and a person of another Party.

Regulatory measures provisions

- » Unsolicited electronic messages (Chapter 14, Article 14)

These provisions prescribe that each Party shall adopt or maintain measures regarding unsolicited commercial electronic messages that require suppliers of unsolicited commercial electronic messages to facilitate the ability of recipients to prevent ongoing reception of those messages.

- » Domestic regulatory framework (Chapter 14, Article 15)

This provision prescribes that each Party shall maintain a legal framework governing electronic transactions consistent with the principles of the UNCITRAL Model Law on Electronic Commerce 1996 or the United Nations Convention on the Use of Electronic Communications in International Contracts.



» Cybersecurity (Chapter 14, Article 16)

Members are to adopt risk-based approaches and preventive practices as more effective ways rather than prescriptive regulations in addressing cyber threats.

Protection of users of electronic commerce provisions (Chapter 14, Articles 7 and 8)

Each Party shall adopt or maintain consumer protection laws to prevent fraudulent and deceptive commercial activities that cause harm or potential harm to consumers engaged in online commercial activities. To this end, each Party shall adopt or maintain a legal framework that provides for the protection of the personal information of the users of electronic commerce. In the development of its legal framework for the protection of personal information, each Party should take into account principles and guidelines of relevant international bodies.

» Dispute settlement (Chapter 14, Article 18)

This Article gives special and differential treatment to member states on dispute settlement. For example, with respect to existing measures, a party shall not be subject to dispute settlement under Chapter 28 (Dispute Settlement) regarding its obligations under Article 14.4 (Non-Discriminatory Treatment of Digital Products) and Article 14.11 (Cross-Border Transfer of Information by Electronic Means) for a period of two years after the date of entry into force of this agreement.

Generally, this Article grants businesses the freedom to outsource data storage and processing to any other CTPP jurisdiction without limitation. As the Chapter does not require Parties to adopt privacy laws, this could create meaningful barriers for the protection of privacy. In addition, some companies may rely on the lack of a physical presence in a particular jurisdiction to argue that they need not comply with the privacy and consumer protection laws of that country. This provision therefore significantly undermines the ability of governments to secure their citizens' data against unauthorized or unlawful processing or accidental loss or destruction of, or damage to, personal data in these contexts.

3.5.5 Summary of agreements with other regions

The existing agreements in the global South which contain e-commerce provisions aim to enable market access by suggesting the creation of a regulatory framework that facilitates contractual relations ruled by UNCITRAL model law. If on one hand ASEAN, RCEP and CPTPP leapfrogged the others in terms of enabling recognition of online signature and consumer protection, for instance, on the other hand, none of the above-mentioned agreements contain provisions that stipulate a clear agenda with a roadmap and with implementation schedules that are actionable.



In other words, e-commerce-related provisions appear to be included in many of these agreements due to its growing importance, but not for the reason of regarding e-commerce as one of the priority topics for intra-bloc cooperation with simplified and unified regulations and tariffs.

4. THE WAY FORWARD: KEY POLICY RECOMMENDATIONS AND ACTION PLANS

The studies and diagnosis presented herein, based on an analysis of the various types of arrangements above, underline the notion that intra-bloc cooperation in e-commerce is quite feasible for AfCFTA. Yet, an imminent need exists to implement mechanisms that will foster and deepen integration. As shown in previous chapters, e-commerce development in African countries regarding online payment and infrastructure are dissimilar, despite growing opportunities as seen by the proliferation of informal trade.

The proposed measures in this section have as a main objective offering solutions to these concerns, keeping in mind that cross-border e-commerce evolves with characteristics that differ substantially from regular trade, requiring more simplified regulations.

The policy recommendations below are: the promotion of mutual legal assistance and harmonization of laws of AfCFTA countries; formulation of a standardized and binding supra-national regulatory framework; and the promotion and implementation of these directives through nation-level policies, which should be guided by a future AfCFTA e-commerce committee. In addition, two action plans regarding cross-border e-commerce are herein presented, which are: a shared database containing country members' e-commerce-related laws; and the creation of an online intra-bloc cross-border marketplace.

4.1 Mutual legal assistance and harmonization of laws of AfCFTA countries

Mutual legal assistance and harmonization of laws contribute to reduced discrepancies between national legal systems by creating standards based on best practices at the international level through an integrated framework. Taking the examples of existing e-commerce in trade agreements, it is notable that despite not being a new practice, mechanisms to boost online business are still incipient. Trade and e-commerce should be approached in dissimilar ways since the first relates to import and export of goods and services mostly between countries, while the second, in the forms of business-to-business (B2B), business-to-consumer (B2C) and other variants, have a broader reach globally, without regionalization restriction, yet being limited to an online consumer base. E-commerce is a form of trade with a more simplified process compared to general trade; hence it should have less bureaucratic barriers.

The agreements discussed in Chapter 3 contain e-commerce provisions for online consumer protection, privacy and authentication, nonetheless the lack of legally binding measures and lack of duties schemes are the main reasons intra-bloc cross-border e-commerce is not further explored in the global South. Issues resulting from limited



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data regulations and lack of effective intellectual property protection are accentuated in new forms of trade, such as cross-border e-commerce. In addition, the definition and differentiation between online trade in business and online trade in services is necessary to prioritize key industries for policy implementation accordingly. The suggested measures to be covered and implemented are:

- » market access with unified customs duties and non-discriminatory rules;
- » electronic transactions, contracts and e-signatures;
- » data protection and privacy;
- » consumer protection;
- » cybersecurity and cybercrime;
- » intellectual property rights; and
- » investment and funding terms for infrastructure.

To avoid fragmentation, a unified e-commerce and cross-border e-commerce legal document that incorporates the above-mentioned elements would be more adequate, since mostly e-commerce is integrated into trade agreements through chapter, provisions, or random clauses. Africa, through AfCFTA, already has different initiatives for cross-border e-commerce cooperation, which include a marketplace, a reporting website for non-trade barrier identification and a scheduled protocol to a guiding framework for data protection and privacy policies. This last item poses as an opportunity to adopt concrete measures amid growing importance of e-commerce in the region. The AfCFTA Protocol on Trade in Goods identified the need to eliminate non-trade barriers,⁸ which result in low levels of intra-Africa trade due to incipient regulation and high operational costs.⁹

A joint report of the Overseas Development Institute, the African Trade Policy Centre and the Economic Commission for Africa highlights the main challenges to cross-border e-commerce within AfCFTA, which are: lack of integrated taxation schemes and reduced duties together with double taxation and VAT regulations; lack of awareness of national and regional rules and regulations; and deficient customs duties and customs procedures (Banga, 2021). All these issues can be tackled by enhancing mutual legal assistance and harmonization of laws between nations.



Cross-border e-commerce requires joint efforts to level the ability of country members to create an environment for enhanced cooperation.

4.2 Standardized supra-national regulatory framework within the scope of AfCFTA

Cross-border e-commerce requires joint efforts to level the ability of country members to create an environment for enhanced cooperation. Though a series of policy recommendations can be suggested, for the purpose of this paper, customs clearance processes and tax schemes are the main topics to be addressed and explored.

⁸ Some examples of non-trade barriers are import bans, discriminatory measures against specific countries of origin, quotas and subsidies, among others.

⁹ AfCFTA has an online reporting, monitoring and eliminating mechanism where entities can report non-trade barriers (https://tradebarriers.africa/register_account).



The European Union and China are used as examples (below) of bodies that have contributed to the development of cross-border e-commerce based on transparency and mechanisms that enable steady growth.

In early January 2021, the European Union, through its 2014-2019 Digital Single Market Strategy, implemented the simplification of VAT rules and tariffs for cross-border sales of goods and services to end consumers (B2C), aiming to benefit start-ups and SMEs.

Although China does not provide any preferential cross-border duties or regulations with an economic bloc or to individual nations, it has reached a certain level of efficacy and success to be regarded as an object of analysis. China’s Positive List on Cross-Border E-Commerce of Imported Commodities at Retail (B2C) defines a list of permissible goods to be sold through cross-border websites or marketplaces as per the definitions of the Harmonized Commodity Description and Coding System. Goods sold via general trade – with complex import procedures – or shipped from a foreign territory to mainland China via direct mail are regulated differently. In addition, the Notice of Improving the Tax Policy of Cross-border E-commerce Retail Imports Regulation (“The Notice”) defines the tax rate by product, varying from 9.1 percent to 23.05 percent. The highest rates are applicable for higher-priced goods, such as apparel, cosmetics and accessories. In addition, the purchase threshold is defined as 5,000 Yuan (around \$749) per transaction or 26,000 Yuan (around \$3,900) per annum per individual.

Referring to these two examples, this paper recommends specific customs clearance processes and tax schemes for AfCFTA, as presented in the table below.

	General trade (B2B)	Direct mail (postal or express postage)	Cross-border e-commerce (B2C)
Applicability	Goods stored in the country can be sold via e-commerce and/or physical retail	Goods shipped from abroad to final consumers suitable for informal trade and shipment of smaller quantities	Goods shipped from abroad to final consumers
Customs clearance process	Full customs clearance process, inspection certificates, labelling, etc.	Randomly, for selected parcels	Pre-registration for clearance (items are only imported upon order payment and delivery)
Tax type	Import tax and VAT	Not applicable OR personal consumption tax	Personal consumption tax (charged to the consumer, not to the merchant)
Tax rate	Unified tax scheme per category	1. Tax waiver for a defined order value bracket 2. Unified tax rate per category for order value above the defined amount	Unified tax rate per category

Purchase limit	N/A	Define a value to be considered B2B; this model is regulated by the general trade rules	N/A
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The definition of standard charges, with preferential tariff treatment for products sold through cross-border e-commerce compared to general trade, can provide a propitious environment particularly for SMEs. Having well-established customs procedures and tax rates which differentiate C2C, B2C and B2B models – also based on different shipping models – is recommended, particularly considering the African region peculiarities. For instance, C2C business should be tax exempt if the quantity of commercialized goods does not surpass a certain threshold, while B2B business has the highest tax brackets due to commercialization of goods for distribution or re-distribution. Such implementations should be integrated into AfCFTA's Protocol on Digital Trade.

Informal Cross-border Trade¹⁰ in the African continent is important for local businesses (Bouët; Brahim; Fousseini, 2020) and it is estimated to correspond to 30-40 percent of the total cross-border trade in the sub-Saharan region (Stuart, 2020). This shows an eminent opportunity exists to improve overall trading conditions, hence being a relevant topic to be carefully considered by governments.



National-level policies have the role to define actionable plans, given the need to align supra-national and national directives with AfCFTA.

4.3 National-level policies

National-level policies have the role to define actionable plans, given the need to align supra-national and national directives with AfCFTA. They have a complimentary role to supra-national provisions, while taking into consideration current opportunities and areas that need further attention. Each countries' ministries of commerce or cross-border e-commerce-designated agencies should coordinate with the Economic Commission for Africa on best practices to promote cross-border e-commerce. In particular, post-pandemic economic recovery can be achieved easier through mechanisms of cooperation to leverage the e-commerce momentum gain.

To exemplify, Tunisia collaborated with UNCTAD to identify institutional barriers to e-commerce developments through the 'eTrade Readiness Assessment of Tunisia' ("Tunisie: Évaluation de l'état de préparation au commerce électronique;" UNCTAD/DTL/STICT/2022/3). An absence of supra-national policies and ineffective coordination between various institutions were some of the main objects of concern, despite Tunisia having among the highest internet penetration rates (68.3 percent) and best B2C e-commerce index (58.4) in Africa. Tunisia is currently engaged in developing the e-commerce and cross-border e-commerce industry by: i) facilitating cross-border e-commerce with efficient export procedures and package fulfilment through "Easy Export;" and ii) creating an environment for digital entrepreneurship through launching an innovative start-ups programme (startup.gov.tn), along with several projects and

10 UNCTAD defines Informal Cross-border Trade (ICBT) as "trade between neighbouring countries conducted by vulnerable, small, unregistered traders. Typically, it is proximity trade involving the move of produce between markets close to the border. The informality refers to the status of the trader (unregistered), not necessarily to the trade itself (captured or unrecorded by the official customs system)."



funding mechanisms. Likewise, other AfCFTA members can build similar cross-border e-commerce capacities based on their own realities.

The table 'Internet Penetration and B2C E-Commerce Index in Selected African Countries' analysed on Chapter 2 highlights the discrepancies of internet penetration and B2C indexes between countries in the region. Further investigation of countries' regulations and overall e-commerce readiness is necessary to elaborate a Standardized Supra-national Regulatory Framework (within the AfCFTA Digital Trade Protocol), to support national-level policymaking processes and to better assist and harmonize applicable laws for cross-border e-commerce in goods.

E-commerce helps nations forge interdependent economic relations since there is less need for many of the bureaucratic procedures required with general trade, such as establishing local entities, product registration and laboratory testing, to name a few. However, the main deficiencies that curb a propitious environment for developing online commerce and cross-border e-commerce are economic imbalances, non-existent or non-supportive legal environments, and non-existent or inefficient governmental policies.

4.4 Shared database containing country members' e-commerce-related laws

One of the most controversial topics for e-commerce-related laws is the global information sharing environment, particularly regarding legal controls on data and personal data transfer.

Data localization and data residency laws are one of the main barriers to e-commerce as they impose mandatory local storage and processing of data. Data localization can make cross-border data transfer sluggish and thwart international trade cooperation. As a solution, "countries can shape domestic legislation on cross-border data flows that enables and facilitates global information exchange while protecting important regulatory goals" if data governance ensures a top-down approach that is mutual and fair (World Economic Forum, 2019).

Mitchell and Mishra, in "Regulating Cross-Border Data Flows in a Data-Driven World: How WTO Law Can Contribute" (2019), point out that "regulatory frameworks addressing online consumer protection at an international/transnational level are absent because rights and remedies available to consumers are largely addressed through contracts and domestic laws." This creates debates and controversies regarding the need to further explore solutions to diverse data regulations and a common database.

Data has thus become one of e-commerce's main assets: it is a tool to minimize gaps between physical and online retail to create better consumer experiences, being necessary to the delivery process. The industry's dynamism exposes an eminent need to balance protection and enablement. The importance of ethics to Artificial Intelligence, and more specifically to data protection, relies on the need to develop an international framework for control, compliance and enforcement to avoid the risks of reverse



Data protection is often analysed considering consumer protection, which is usually subject to domestic laws. Understanding data breach implications can be applicable to the overall improvement of international and online trade activities.

engineering and misuse of data (Herschel and Miori, 2017). Some countries, such as Nigeria, have enacted data protection regulations that contain provisions for local data storage. If there is no global initiative to promote cross-border e-commerce with loosened yet harmonized regulations, its growth might be compromised (Saluzzo, 2017).

In terms of cross-border e-commerce, domestic laws have an accentuated role due to limited international instruments, especially applicable to the global South. As noted by the Asian Development Bank (2014): "In a number of cases, the gap between the adequacy of laws and the absence of implementation resides in ill-equipped judiciaries. Also, where there is an opportunity for regional dialogue and consensus, there is a lack of any concrete follow-through action because of the absence of a permanent oversight body to fill the gap in the shared understanding of the various areas of law."

The accountability of data transfer in cross-border e-commerce must also regard different business models, a marketplace model and a stand-alone store model, which contributes to the complexity of the theme. While the marketplace model offers pre-existing data protection mechanisms and joint liability for consumer protection, the stand-alone store model requires further analysis. In either case, merchants need to be aware of compliance mechanisms and liabilities to avoid international transaction burdens and personal data information breaches.

Nonetheless, data protection is often analysed considering consumer protection, which is usually subject to domestic laws. Understanding data breach implications can be applicable to the overall improvement of international and online trade activities.

The African Union Convention on Cyber Security and Personal Data Protection, aka the Malabo Convention, was adopted in 2014 and ratified by Angola, Ghana, Guinea, Mauritius, Mozambique, Namibia, Rwanda and Senegal (African Union, 2020). However, conflicting domestic legislation exacerbates limits to a bloc's ability to operate in cross-border e-commerce amid negotiations to include a protocol on e-commerce. An agreement is needed between African countries that can determine a process for data sharing within an encrypted database, for example, similar to the Mutual Legal Assistance Treaties (MLAT) system that securely compiles and exchanges information for law enforcement purposes.

The compilation of e-commerce-related laws and legislation into a database would facilitate information sharing and create a foundation for legal assistance that could help countries enact or amend existing regulations and promote harmonization. Creating a legal framework through AfCFTA that moves the region towards cross-border e-commerce integration would boost the region's enormous potential, considering its 55 countries comprise a market of 1.3 billion people (World Bank, 2020).

4.5 The creation of an online intra-bloc cross-border marketplace

Cross-border e-commerce is an important export method for SMEs that have limited growth in domestic markets due to low consumption, a common issue in countries with



higher poverty rates and limited investment capacity to engage in international trade. The creation of an online platform in the AfCFTA region that serves as a cross-border e-commerce B2B and B2C marketplace, supported by public-private partnerships, would create opportunities for local businesses and allow their international expansion. The inclusion of a B2C marketplace could be fundamental to decrease the region's reliance on low-value products and commodities and to promote high-value technological and industrialized products instead.

A best practice example of this type of platform is the 2016 World Electronic Platform (eWTP), an Alibaba-led initiative with WTO and with support from other international organizations. The main goal of the eWTP is to contribute to the creation of a global e-trading system to empower SMEs, hence involving multiple stakeholders is paramount.

The eWTP provides cross-border e-commerce information, such as rules and regulations, and enhances cooperation between its member countries (Belgium, China, Ethiopia, Malaysia, Rwanda and Thailand). Several examples exist of how the eWTP has successfully promoted cross-border trade among different regions. In 2020, a major deal took place between Cainiao, Alibaba's logistics network, and Malaysia airports' Aeropolis to establish a joint venture to create a fulfilment hub in Malaysia to serve local SMEs. Belgium entered a Memorandum of Understanding (MOU) with Cainiao for a similar project (Thiebaut, 2021), bringing several opportunities for European products in China. The eWTP has also benefitted Africa, with the United Nations Economic Commission for Africa supporting the eWTP to promote Ethiopian and Rwandan SMEs producing coffee and other products through the platform.

Other governments have launched similar initiatives to facilitate digital procurement processes and/or government-funded marketplaces, such as Tradeling, a B2B marketplace backed by the Dubai government through the Dubai Airport Free Zone Authority, and Trade Africa Online. Tradeling has particular importance to the African continent since its main markets as of now are Africa and the Middle East. Though the platform is still new and has limitations regarding the business scope and categories listed, it offers an alternative for African SMEs to engage in cross-border e-commerce. Trade Africa Online was recently launched by the Center for Strategic African Initiatives (CSAI) and the Pan-African Chamber of Commerce and Industry (PACCI) to promote African cross-sectorial products to online consumers, with the support of DHL, the logistics partner. The initiative resulted from AfCFTA's Action Plan for Boosting Intra-Africa Trade (BIAT).

The Pan-African e-Commerce Initiative (PeCI) by Ghana, Kenya, Rwanda and the East African Community (EAC) is a project that aims to boost B2B cross-border trade for SMEs through a series of training and other initiatives with the final goal of implementing a 'blueprint' that improves electronic payment systems for digital trade in the East African Community, supported by the Smart Africa Secretariat.

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arguments for a common cross-border marketplace extended to other global South countries, as a form of inter-bloc initiative. The largest marketplaces and internet players in Africa, such as Jumia, takealot.com, Souq, Konga, Bidorbuy and Kallimall, to name a few, have played an important role in developing the African e-commerce landscape through cooperation, sharing of expertise and infrastructure building, often with the support of local governments.

The expansion of cross-border e-commerce initiatives from the AfCFTA region to other Southern countries in Asia, as herein suggested, could be an important global initiative led by the global South. This would be particularly poignant after the Covid-19 pandemic exposed the vulnerabilities of the African e-commerce foundations, albeit while opening up opportunities for innovation and cooperation across countries and across regions.

One part of such an initiative would see governments providing small businesses with support and funding, such as value-added and excise taxes reductions or exemptions, and the other part would see private industry supplying existing know-how and infrastructure; both would be necessary and complimentary to these initiatives. The establishment of inter-bloc e-commerce cooperation between AfCFTA and ASEAN, for instance (because of ASEAN's advancements in e-commerce compared to other economic blocs and due to existing informal trade of a variety of Asian goods in Africa, such as fuels and pharmaceutical products), could facilitate the construction of an inclusive e-commerce agenda, which is currently mostly limited to actions within trade blocs and associations or between individual countries (Stuart, 2020).

5. CONCLUSION

The Covid-19 global pandemic accelerated global e-commerce growth, often supported by governmental initiatives to create opportunities for SMEs, such as previously seen in the Tunisian case. Companies and individuals utilized e-commerce as a larger or new source of revenue in the face of accentuated infrastructure deficiencies and lockdown restrictions. For companies and individuals, online business broadened sales opportunities by making them no longer constrained by specific demographics and geographies, while for nations, the cross-border aspect of online business was revealed to be an instrument for strengthening bilateral and multilateral relations.

However, current cross-border e-commerce mechanisms to strengthen South-South cooperation are incipient, due to: i) unclear definition and differentiation between sales in goods and services; ii) lack of harmonization of laws regarding tariffs, technology transfer, data protection and cybersecurity; iii) limited knowledge sharing; and iv) inexistence of clear measurements for cooperation. Nonetheless, economic blocs have enacted provisions on e-commerce for enhanced intra-bloc cooperation. ASEAN, for instance, has the most advanced provisions, particularly regarding harmonization of laws in the fields of online signature, consumer protection, data protection and cybersecurity. Yet, efforts to implement practical customs directives to increase cross-border e-commerce between its members are still limited.

Africa has shown improvements in overall digital infrastructure and the Covid-19 pandemic increased online activities. According to a report released by the Standard Chartered Bank (2021), "more than 30 percent of consumers surveyed in Nigeria and Kenya said they are shopping online more frequently amid the pandemic. In South Africa, e-commerce sales were forecast to more than double in 2020."

Having conducted an in-depth analysis of other regional trade agreements and studied the current e-commerce landscape in the Africa region, this paper suggested five measures which are necessary to increase cross-border e-commerce in the Africa region. These are: i) the promotion of mutual legal assistance and harmonization of laws, ii) formulation of a standardized and binding supra-national regulatory framework; iii) the promotion and implementation of these directives through nation-level policies, which should be guided by a future AfCFTA e-commerce committee; iv) a shared database containing country members' e-commerce-related laws; and v) the creation of an online cross-border and multi-stakeholder marketplace within the AfCFTA context, which can be extended to other South countries in the near future.

The incorporation of an agenda in AfCFTA that brings concrete measurements to promote cross-border e-commerce will create favourable environments for governance, encouraging actionable and concrete projects to be put into place. With less complex procedures and with unified tax schemes, the Africa region would not only create business opportunities among AfCFTA members, but also enhance cross-border e-commerce trade within the wider global South and beyond.



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