

DIGITAL TRADE REGULATORY INTEGRATION

COUNTRY PROFILE

United Republic of Tanzania



United Nations
Economic Commission for Africa



INTRODUCTION

The African Trade Policy Centre of the Economic Commission for Africa conducted the digital trade regulatory integration project in 11 African countries to promote digital trade within African countries. The present study analyses and quantifies regulatory restrictiveness that is likely to affect digital trade integration in Africa. Data were collected on measures relevant to the Organization for Economic Cooperation and Development digital services trade restrictiveness index and measures pertaining to digital trade integration. The study will inform trade policymaking by African member States and regional organizations and thus promote intraregional trade and Continental Free Trade Area initiatives. The present brief report presents recent developments and the current situation of digital trade regulatory integration in the United Republic of Tanzania.

Information technology and telecommunications are vibrant sectors of the Tanzanian economy. The Tanzania Communications Regulatory Authority has regulated the industry since 2003. The Government

has produced policy, legal and regulatory instruments to ensure the efficient and effective operation of the sectors. These instruments include the Electronic and Postal Act of 2010, the Cybercrime Act of 2015, the Electronic Transactions Act of 2015, the Finance Act of 2017 and several regulations and policies.

The penetration of mobile phones has grown steadily; mobile penetration is now at 89 per cent, while Internet penetration is at 49 per cent.¹ Massive mobile phone use has led to financial inclusion through mobile money services, thus building more resilient communities. As a result of these developments, the country has attracted investment in the digital services trade. Several digital trade companies operate in the country, such as ride-hailing platforms (Uber and Bolt) and online trading through social platforms (WhatsApp, Instagram and Facebook).

Although the digital development of the country is still in its infancy, the Government is working hard to create a conducive

¹ See www.tcra.go.tz/uploads/text-editor/files/december_1619156689.pdf.

environment to attract investment in the digital sector. As an example, to enhance its trade competitiveness in the fourth industrial revolution, the Government aims to boost Internet penetration to 80 per cent by 2025.² However, regulatory restrictions of various kinds hinder the advancement of digital trade. Creating a conducive regulato-

ry environment is likely to attract local and international investors and consumers to the digital market. Several factors are vital to promoting digital trade regulations. They include infrastructure connectivity, electronic transactions, payment systems, intellectual property rights, intermediary liability and content access.

² See www.ikulu.go.tz/speeches (accessed on 5 May 2021).

KEY FINDINGS RELATED TO RESTRICTIONS ON DIGITAL SERVICES TRADE

To assess the degree of restrictiveness in the digital services trade, an in-depth review of policies was conducted as specified under the five pillars of the digital services trade restrictiveness index: infrastructure and connectivity; electronic transactions; payment systems; intellectual property rights; and other barriers.

Infrastructure connectivity

A regulatory framework for infrastructure connectivity is essential to create a conducive environment to facilitate digital trade. Infrastructure connectivity has four aspects: interconnection, vertical separation, market dominance and cross-border data flow. Regulations on accounting separation and interconnection require infrastructure service providers to separate accounts and interconnect between service providers. The interconnection requirement is vital to reduce the entry barrier for new entrants in digital trade. Furthermore, the Tanzanian mobile telecommunications market has three leading players among seven, where no player has a dominant position. In addition, data protection laws are crucial to guarantee the smooth flow of cross-border

data. Despite ongoing development efforts in the country, there are, as yet, no data protection regulations.

Electronic transactions

A regulatory framework for electronic transactions is vital to facilitate digital trade. The Electronic Transactions Act was passed in 2015 to help the country tap the potential of the digital economy by regulating electronic transactions. Although efforts have been made to create an environment conducive to electronic transactions, both locally and internationally, improvement is still needed. Electronic transactions, digital signatures and contracts are legally recognized and the tax regulatory authority is digitizing its systems to facilitate online registration and declaration, while, through the Bank of Tanzania, the Government requires the interconnectivity of mobile money providers, an intervention that has removed cross-platform transaction barriers and increased mobile financial transactions. The country does not adhere to internationally standardized rules for cross-border transactions, however. The legislation and regulations in force do not explicitly protect

confidential business information or offer an online mechanism for cross-border trade dispute settlement.

Payment system

Payment is the major component for facilitating digital trade integration. The National Payment System Act regulates digital payment systems in the country. The Act does not discriminate against specific payment settlement methods if they abide by the laws in force. Furthermore, the Act does not impose restrictions on Internet banking or insurance transfer but allows financial service providers to set a limit. Despite these developments, the Government partially adheres to the international payment security standards. For instance, the United Republic of Tanzania has adopted ISO/IEC 7816, an international standard for electronic identification cards with contacts, but has not enacted the Model Law on Electronic Commerce of the United Nations Commission on International Trade Law.

Intellectual property rights

Intellectual property rights regulations are primary determinants for digital trade investment. Legislation on intellectual property rights ensures the protection of trademarks, trade secrets, copyrights and other rights. The Trade and Service Marks Act of 1986, amended in 2002, the trade and service marks regulation of 2000, and the Copyright and Neighbouring Rights Act of 1999 regulate intellectual property rights. The legislation provides trademark and copyright protection for foreign and local firms without discrimination. It sets out judicial enforcement measures and remedies, as well as criminal enforcement proceedings and penalties. For example, if a person's intellectual property rights are in imminent danger of being infringed upon or have been infringed upon, they may institute proceedings in the United Republic of Tanzania.

KEY FINDINGS RELATED TO REGIONAL DIGITAL TRADE INTEGRATION

Five pillars of regional digital trade integration are covered by the present study: on-line sales and transactions; intermediary liability and content access; cross-border data policies; foreign investment; and domestic data policies.

Foreign investment in sectors relevant to digital trade

Creating a conducive environment for foreign investors is essential to boost investment in the private sector and its contribution to economic growth. Partnership between foreign and local investors is highly desirable to ensure that part of the profits remain in the country and for capacity-building purposes. The United Republic of Tanzania adopted the Converged Licensing Framework in 2010. The regulator (Tanzania Communications Regulatory Authority) issues four types of licences in the telecommunications sector: for network facilities, network services, application services and content services. The Government welcomes foreign investment in the sector but reserves a percentage of the share for local investors. Holders of licences for network facilities and network services are re-

quired to offer a minimum of 25 per cent of the company's share to the public through an initial public offering on the stock market. Majority shareholders of content service licensee companies should be Tanzanian citizens.

Intermediary liability and content access

Intermediary liability protection is the core and critical foundation of digital trade policies in the platform economy. The Cyber-crime Act of 2015 offers safe harbour provisions concerning intermediary liability. Thus, service providers have no general obligation to monitor the data transmitted by or stored on their platform, but they are required to terminate or suspend any subscriber account for sharing prohibited content within two hours of reporting. Furthermore, the online content regulations issued in 2020 require all online service providers, including bloggers, to have an operating licence.

Domestic data policies

Domestic data policies are vital to ensure the safety of personal and business data. In-

vestors and consumers feel more confident about investing in or using digital services when the safety of data is guaranteed by law. There is no data protection law in the United Republic of Tanzania, which is a problem, but a data protection bill has been under discussion since 2006. The draft data protection bill of 2014 is still under discussion. Currently, the Government (police officers) can access personal data with a search warrant (without a court order) in the context of a criminal investigation. Sections 34 and 35 of the Cybercrime Act allow a police station or a law enforcement officer to collect or record traffic or content data associated with a specified communication during a specified period. The licensee is required to store subscriber communication data for a period of one month and then submit it to the Tanzania Communication Regulatory Authority. The licensee is not permitted to share the data with a third party.

Online sales and transactions

Online sales and transactions are an important component of regional trade integration because most intraregional trade will be conducted online in the future. It is therefore essential to have a proper mech-

anism and interoperability to facilitate international trade. In the United Republic of Tanzania, a separate licence is not required to engage in e-commerce activities; an ordinary business licence is sufficient. Online content creators do require a licence, however. The Electronic Transaction Act imposes no restrictions on the delivery of legal products. The importer must pay the taxes required by law and there is no de minimis on digital trade. Furthermore, businesses must be registered under Tanzanian law to qualify for the local domain (co.tz).

Consumer protection legislation is essential to boost the usability of digital services by ensuring their safety and guaranteeing value for money. The country does not have a consumer protection law, so it is sections 28–32 of the Electronic Transaction Act that make provision for consumer protection in digital trade. The Act is not clear on the mechanism for handling complaints and disputes, however, something that is likely to lower consumer confidence in digital trade. Similarly, the Electronic and Postal (Consumer Protection) Regulations of 2018 do not contain provisions on online dispute resolution procedures.

CONCLUSION AND RECOMMENDATIONS

There are gaps in legislation that are likely to restrict digital trade services and integration. The Government needs to update legislation to enhance digital trade competitiveness. For example, it has not yet enacted data protection legislation or consumer protection legislation, both of which are crucial to promote investment, facilitate international trade and guarantee consumer safety and confidence in digital markets. Such legislation would create a more conducive environment for digital trade. Nor has the country enacted legislation or adopted international standards on digital trade, which are crucial to ensure interoperability and guarantee intellectual property rights when conducting international trade. Lastly, the Government does not offer any de minimis for digital trade that might encourage the adoption of digital trade.

Efforts are therefore still needed to boost and attract investment in digital trade. The following legislation should be considered:

- Data protection legislation: the Government should consider fast-tracking the drafting and enactment of data protection legislation, which is crucial to protect personal data (processing of data and movement of data).
- Consumer protection legislation: the Government should consider drafting a consumer protection bill on top of the consumer protection regulations under the Electronic and Postal Act of 2010. The current consumer protection regulations lack vital components to protect consumers in the digital market. Consumer protection legislation would promote consumer confidence in digital trade.

- De minimis rule: the Government should consider conducting further research on the de minimis threshold to foster digital trade competitiveness and attract consumer involvement in the digital market.
- International standards and laws: the Government should consider adher-

ing to international standards, especially on payment security and intellectual property rights. Compliance with international standards guarantees protection for both investors and consumers.

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The country profile is part of the training and research initiative on digital trade regulatory integration in Africa, launched by the Economic Commission for Africa towards the end of 2020 to collect specific data on digital trade regulations and integration. The United Republic of Tanzania was selected as one of the pilot countries for the initiative.