

# **Examining the African Continental Free Trade Area Protocol on Digital Trade: Challenges and Promises**

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**Kariuki Muigua**

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**Examining the African Continental Free Trade Area Protocol on Digital Trade:  
Challenges and Promises**

**Kariuki Muigua\***

**Abstract**

*The African Continental Free Trade Area (AfCFTA) Protocol on Digital Trade was adopted at the 37<sup>th</sup> African Union Heads of States Summit held in February 2024. The Protocol is an integral part of the AfCFTA Agreement and the wider vision of Africa Union's Agenda 2063. It has been hailed as vital in supporting the movement of capital and digital services and products in Africa. This paper critically examines the AfCFTA Protocol on Digital Trade. The paper explores the concept of digital trade and how this idea has been embraced in Africa. It also discusses the effectiveness of the AfCFTA Protocol on Digital Trade and its role in strengthening Intra-African trade in the digital sphere. The paper also highlights some of the challenges likely to arise in the implementation of AfCFTA Protocol on Digital Trade. It further suggests reforms aimed at enhancing the viability of the AfCFTA Protocol on Digital Trade towards strengthening Intra-African trade.*

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## **1.0 Introduction**

The *Agreement Establishing the African Continental Free Trade Area*<sup>1</sup>, establishes the African Continental Free Trade Area (AfCFTA) whose objectives include to create a single market for goods, services, facilitated by movement of persons in order to deepen the economic integration of the African continent and in accordance with the Pan African Vision of “An integrated, prosperous and peaceful Africa” enshrined in Agenda 2063<sup>2</sup>; to create a liberalised market for goods and services through successive rounds of negotiations<sup>3</sup>; to contribute to the movement of capital and natural persons and facilitate investments building on the initiatives and developments in the State Parties and Regional Economic Communities<sup>4</sup>; to enhance the competitiveness of the economies of State Parties within the continent and the global market<sup>5</sup>; to promote industrial development through diversification and regional value chain development, agricultural development and food security<sup>6</sup>; and to resolve the challenges of multiple and overlapping memberships and expedite the regional and continental integration processes<sup>7</sup>.

AfCFTA has been hailed for creating the world’s largest free trade area and a single market for goods and services worth \$3.4 trillion for more than 1.3 billion Africans<sup>8</sup>. It has been argued that AfCFTA is appropriately designed to deepen integration, foster

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<sup>1</sup> African Union., ‘Agreement Establishing the African Continental Free Trade Area.’ Available at [https://au.int/sites/default/files/treaties/36437-treaty-consolidated\\_text\\_on\\_cfta\\_-\\_en.pdf](https://au.int/sites/default/files/treaties/36437-treaty-consolidated_text_on_cfta_-_en.pdf) (Accessed on 02/05/2024)

<sup>2</sup> Ibid

<sup>3</sup> Ibid

<sup>4</sup> Ibid

<sup>5</sup> Ibid

<sup>6</sup> Ibid

<sup>7</sup> Ibid

<sup>8</sup> United Nations., ‘Africa’s Free Trade on Track, More Efforts Needed.’ Available at [https://www.un.org/africarenewal/magazine/january-2023/africa%E2%80%99s-free-trade-track-moreefforts-needed#:~:text=lies%20ahead%2C%20though,-Presently%2C%20intra%20Africa%20trade%20stands%20low%20at%20just%2014.4%25%20of,day\)%2C%20according%20to%20UNCTAD](https://www.un.org/africarenewal/magazine/january-2023/africa%E2%80%99s-free-trade-track-moreefforts-needed#:~:text=lies%20ahead%2C%20though,-Presently%2C%20intra%20Africa%20trade%20stands%20low%20at%20just%2014.4%25%20of,day)%2C%20according%20to%20UNCTAD) (Accessed on 02/05/2024)

trade and investment, enhance the mobility of capital and labour, support industrialization, and the development of a dynamic services sector in Africa<sup>9</sup>. In addition, it provides Africa with a renewed opportunity to steer its economic relations away from a reliance on external donors, foreign creditors and excessive commodity dependence, ushering in a new economic era focused on self-reliant cooperation, deeper integration and higher levels of intra-African trade<sup>10</sup>. It has been noted that implementation of AfCFTA would reshape markets and economies across the continent and boost output in the services, manufacturing and natural resources sectors<sup>11</sup>. AfCFTA also has the potential to increase employment opportunities and incomes, helping to expand opportunities for all Africans<sup>12</sup>. According to the United Nations, the successful implementation of the AfCFTA will lead to the creation of more decent jobs, improved welfare and better quality of life for all citizenry, and Sustainable Development<sup>13</sup>.

The Agreement establishing AfCFTA also contains a *Protocol on Trade in Goods*<sup>14</sup> which aims to create a liberalised market for trade in goods through progressive elimination of tariffs<sup>15</sup>; progressive elimination of non-tariff barriers<sup>16</sup>; enhanced efficiency of customs procedures, trade facilitation and transit; enhanced cooperation in the areas of technical barriers to trade and sanitary and phytosanitary measures<sup>17</sup>; development and promotion of regional and continental value chains<sup>18</sup>; and enhanced socio-economic development, diversification and industrialisation across Africa<sup>19</sup>. It also contains a *Protocol on Trade in*

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<sup>9</sup> Ibid

<sup>10</sup> Ibid

<sup>11</sup> The World Bank Group., 'The African Continental Free Trade Area.' Available at <https://www.worldbank.org/en/topic/trade/publication/the-african-continental-free-trade-area> (Accessed on 02/05/2024)

<sup>12</sup> Ibid

<sup>13</sup> United Nations., 'AU Summit 2023: Powering Trade through AfCFTA' Available at <https://www.un.org/africarenewal/magazine/february-2023/au-summit-2023-powering-trade-through-afcfta> (Accessed on 02/05/2024)

<sup>14</sup> Agreement Establishing the African Continental Free Trade Area., Protocol on Trade in Goods

<sup>15</sup> Ibid

<sup>16</sup> Ibid

<sup>17</sup> Ibid

<sup>18</sup> Ibid

<sup>19</sup> Ibid

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*Services*<sup>20</sup> which aims at creating a single liberalised market for trade in service through measures such as enhancing competitiveness of services through: economies of scale, reduced business costs, enhanced continental market access, and an improved allocation of resources including the development of trade-related infrastructure<sup>21</sup>; promoting sustainable development in accordance with the Sustainable Development Goals (SDGs)<sup>22</sup>; fostering domestic and foreign investment<sup>23</sup>; accelerating efforts on industrial development to promote the development of regional value chains<sup>24</sup>; progressively liberalizing trade in services across the African continent on the basis of equity, balance and mutual benefit, by eliminating barriers to trade in services<sup>25</sup>; and promoting research and technological advancement in the field of services to accelerate economic and social development in Africa<sup>26</sup>.

The Agreement establishing AfCFTA has been described as a highly ambitious trade agreement, with a comprehensive scope that includes critical areas of Africa's economy, such as digital trade and investment protection, amongst other areas<sup>27</sup>. By eliminating barriers to trade in Africa, the objective of the AfCFTA is to significantly boost intra-Africa trade, particularly trade in value-added production and trade across all sectors of Africa's economy<sup>28</sup>. The 37<sup>th</sup> African Union Heads of States Summit held in February 2024 adopted the *AfCFTA Protocol on Digital Trade*<sup>29</sup>. The Protocol is an integral part of the

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<sup>20</sup> Agreement Establishing the African Continental Free Trade Area., Protocol on Trade in Services

<sup>21</sup> Ibid

<sup>22</sup> Ibid

<sup>23</sup> Ibid

<sup>24</sup> Ibid

<sup>25</sup> Ibid

<sup>26</sup> Ibid

<sup>27</sup> East African Community., 'African Continental Free Trade Area (AfCFTA) Agreement' Available at <https://www.eac.int/trade/international-trade/trade-agreements/african-continental-free-trade-area-afcfta-agreement> (Accessed on 02/05/2024)

<sup>28</sup> Ibid

<sup>29</sup> Protocol to the Agreement Establishing the African Continental Free Trade Area on Digital Trade., Available at [https://www.bilaterals.org/IMG/pdf/afcfta\\_digital\\_trade\\_protocol\\_-\\_9\\_february\\_2024\\_draft.pdf](https://www.bilaterals.org/IMG/pdf/afcfta_digital_trade_protocol_-_9_february_2024_draft.pdf) (Accessed on 02/05/2024)

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AfCFTA Agreement and the wider vision of Africa Union's *Agenda 2063*<sup>30</sup>. It has been pointed out that the AfCFTA Protocol on Digital Trade is vital to support the movement of capital and digital services and products<sup>31</sup>.

This paper critically examines the AfCFTA Protocol on Digital Trade. The paper explores the concept of digital trade and how this idea has been embraced in Africa. It also discusses the effectiveness of the AfCFTA Protocol on Digital Trade and its role in strengthening Intra-African trade in the digital sphere. The paper also highlights some of the challenges likely to arise in the implementation of AfCFTA Protocol on Digital Trade. It further suggests reforms aimed at enhancing the viability of the AfCFTA Protocol on Digital Trade towards strengthening Intra-African trade.

## **2.0 The Place of Digital Trade in Africa**

Digital trade entails trade in goods and services enabled by the internet, and other Information and Communication Technologies (ICT)<sup>32</sup>. Digital trade can take several forms including instances where goods or services are ordered digitally and delivered physically<sup>33</sup>; or where goods or services are ordered digitally and delivered digitally<sup>34</sup>. Digital trade can also refer to commerce enabled by electronic means such as

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<sup>30</sup> Africa Union., 'Agenda 2063: The Africa we Want' Available at [https://au.int/sites/default/files/documents/33126-doc-framework\\_document\\_book.pdf](https://au.int/sites/default/files/documents/33126-doc-framework_document_book.pdf) (Accessed on 02/05/2024)

<sup>31</sup> Acquah. I., 'The Digital Trade Protocol: Challenges & Opportunities' Available at <https://www.linkedin.com/pulse/digital-trade-protocol-challenges-opportunities-isobel-afful-mensah-hbyvf/> (Accessed on 02/05/2024)

<sup>32</sup> European Commission., 'Digital Trade Agreements' Available at [https://policy.trade.ec.europa.eu/help-exporters-and-importers/accessing-markets/goods-and-services/digital-trade/digital-trade-agreements\\_en#:~:text=What%20are%20Digital%20Trade%20Agreements,safe%20online%20environment%20for%20consumers](https://policy.trade.ec.europa.eu/help-exporters-and-importers/accessing-markets/goods-and-services/digital-trade/digital-trade-agreements_en#:~:text=What%20are%20Digital%20Trade%20Agreements,safe%20online%20environment%20for%20consumers) (Accessed on 02/05/2024)

<sup>33</sup> Ibid

<sup>34</sup> Ibid

*Examining the African Continental Free Trade Area Protocol on Digital Trade: Challenges and Promises* telecommunications and/or ICT services<sup>35</sup>. It covers trade in both goods and services<sup>36</sup>. It has also been pointed out that digital trade encompasses digitally enabled transactions of trade in goods and services that can either be digitally or physically delivered, and that involve consumers, firms, and governments<sup>37</sup>. In addition, it has been observed that while all forms of digital trade are enabled by digital technologies, not all digital trade is digitally delivered. Digital trade also involves the use of technologies in production or distribution processes such as tracking road cargo in real time to develop more efficient supply chains and the transfer of data across borders<sup>38</sup>.

Digital trade is vital. It has been noted that digitalisation increases the scale, scope and speed of trade<sup>39</sup>. It allows firms to bring new products and services to a larger number of digitally-connected consumers across the globe<sup>40</sup>. It has also been noted that digital trade also enables firms, notably smaller ones, to use new and innovative digital tools to overcome barriers to growth, helping facilitate payments, enabling collaboration, avoiding investment in fixed assets through the use of cloud-based services, and using alternative funding mechanisms such as crowdfunding<sup>41</sup>.

Digital trade is growing in Africa<sup>42</sup>. The continent is experiencing a technological revolution with an upsurge in the use of mobile devices, social media, ICT, and big data,

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<sup>35</sup> European Commission., 'Digital Trade' Available at [https://policy.trade.ec.europa.eu/help-exporters-and-importers/accessing-markets/goods-and-services/digital-trade\\_en#:~:text=Digital%20trade%20refers%20to%20commerce,Digital%20trade](https://policy.trade.ec.europa.eu/help-exporters-and-importers/accessing-markets/goods-and-services/digital-trade_en#:~:text=Digital%20trade%20refers%20to%20commerce,Digital%20trade) (Accessed on 02/05/2024)

<sup>36</sup> Ibid

<sup>37</sup> Organisation for Economic Co-operation and Development., 'Digital Trade' Available at <https://www.oecd.org/trade/topics/digital-trade/> (Accessed on 02/05/2024)

<sup>38</sup> European Commission., 'Digital Trade Agreements' Op Cit

<sup>39</sup> Organisation for Economic Co-operation and Development., 'Digital Trade' Op Cit

<sup>40</sup> Ibid

<sup>41</sup> Ibid

<sup>42</sup> World Trade Organization., 'New WTO-World Bank Project Seeks to Boost Africa's Participation in Digital Trade' Available at [https://www.wto.org/english/news\\_e/news24\\_e/dtech\\_24feb24\\_e.htm#:~:text=The%20project%20%E2%80%94%20entitled%20%E2%80%9CDigital%20Trade,African%20officials%20in%20July%202023.](https://www.wto.org/english/news_e/news24_e/dtech_24feb24_e.htm#:~:text=The%20project%20%E2%80%94%20entitled%20%E2%80%9CDigital%20Trade,African%20officials%20in%20July%202023.) (Accessed on 02/05/2024)

creating new channels for human interactions, and economic opportunities including trade and commerce<sup>43</sup>. Digital trade presents significant opportunities for African countries to enhance economic growth, create jobs and reduce poverty<sup>44</sup>. It has been noted that African governments are increasingly embracing digitalization for trade facilitation, especially in the form of digital portals<sup>45</sup>. The growth of digital trade in Africa will be of particular benefit to micro, small and medium-sized enterprises, which constitute more than 80 per cent of the continent's enterprises<sup>46</sup>.

The *Digital Transformation Strategy for Africa*<sup>47</sup> acknowledges that digital transformation is a driving force for innovative, inclusive and sustainable growth<sup>48</sup>. According to the Strategy, innovations and digitalization are stimulating job creation and contributing to addressing poverty, reducing inequality, facilitating the delivery of goods and services, and contributing to the attainment of Africa Union's Agenda 2063 and the Sustainable Development Goals<sup>49</sup>. The Strategy seeks to harness digital technologies and innovation to transform African societies and economies to promote Africa's integration, generate inclusive economic growth, stimulate job creation, break the digital divide, and eradicate poverty for the continent's socio-economic development and ensure Africa's ownership of modern tools of digital management<sup>50</sup>. It also aims to strengthen digital trade in Africa<sup>51</sup>. The Strategy aims to realize this goal by fostering policies that create an enabling

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<sup>43</sup> United Nations Economic Commission for Africa., 'Concept Note on the ECA on Digital Identity, Trade and Economy Initiative and Center of Excellence' Available at <https://www.uneca.org/sites/default/files/uploaded-documents/DITE-Africa/concept-note.pdf> (Accessed on 02/05/2024)

<sup>44</sup> World Trade Organization., 'New WTO-World Bank Project Seeks to Boost Africa's Participation in Digital Trade' Op Cit

<sup>45</sup> United Nations Development Programme., 'Scaling up Intra-African Trade through Digital Public Infrastructure' Available at <https://www.undp.org/africa/blog/scaling-intra-african-trade-through-digital-public-infrastructure> (Accessed on 02/05/2024)

<sup>46</sup> United Nations Economic Commission for Africa., 'Concept Note on the ECA on Digital Identity, Trade and Economy Initiative and Center of Excellence' Op Cit

<sup>47</sup> African Union., 'The Digital Transformation Strategy for Africa (2020-2030)' Available at <https://au.int/sites/default/files/documents/38507-doc-dts-english.pdf> (Accessed on 02/05/2024)

<sup>48</sup> Ibid

<sup>49</sup> African Union., 'The Digital Transformation Strategy for Africa (2020-2030)' Op Cit

<sup>50</sup> Ibid

<sup>51</sup> Ibid

environment for productive digital trade and digital payment systems to advance opportunities for digital work, fair competition for digital businesses, and contribute to an advantageous position of Africa in the global digital economy<sup>52</sup>. The Strategy also aims to integrate Africa to a single digital market as envisaged under the AfCFTA Agreement in order to create economies of scale and opportunities to grow Africa's economies<sup>53</sup>. It recognizes that the key to unlocking these opportunities is the ability to adapt to digital trade and financial services<sup>54</sup>. It also notes that e-commerce and Digital Financial Inclusion will be the basic enablers in ensuring that Africa becomes a single digital market<sup>55</sup>.

The Strategy notes that while digital trade represents a multi-trillion-dollar market globally, Africa currently claims only a small slice of e-commerce revenues<sup>56</sup>. However, it also points out that digital trade in Africa is rapidly growing and is expected to constitute a growing share of trade towards the AfCFTA<sup>57</sup>. The Strategy sets out policy recommendations and proposes actions towards strengthening digital trade in Africa. These include ensuring inclusive digital society extending to the under-banked and unbanked<sup>58</sup>; promoting the development of cross-border digital commerce<sup>59</sup>; reducing barriers to cross-border digital trade and market access<sup>60</sup>; developing an enabling regulatory framework for e-commerce at the continental level, including common rules for consumer protection<sup>61</sup>; developing a regulatory framework for cross-border mobile money transfer<sup>62</sup>; supporting programmes promoting e-Money adoption, especially in

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<sup>52</sup> Ibid

<sup>53</sup> Ibid

<sup>54</sup> Ibid

<sup>55</sup> Ibid

<sup>56</sup> Ibid

<sup>57</sup> Ibid

<sup>58</sup> Ibid

<sup>59</sup> Ibid

<sup>60</sup> African Union., 'The Digital Transformation Strategy for Africa (2020-2030)' Op Cit

<sup>61</sup> Ibid

<sup>62</sup> Ibid

rural & peri-urban areas<sup>63</sup>; including elements on e-commerce in the digital skills training programmes targeted at Africa's Micro, Small, and Medium Enterprises (MSMEs)<sup>64</sup>; and developing training/outreach campaigns to increase awareness and trust on e-commerce and digital trade<sup>65</sup>.

The Digital Transformation Strategy for Africa is therefore key in enhancing digital trade in Africa. African countries need leverage the AfCFTA to promote the Digital Transformation Strategy for Africa by harnessing digital technologies in order to boost intra-African trade and investment, generate sustainable and inclusive economic growth, and encourage the safe and responsible adoption of emerging and advanced technologies<sup>66</sup>. The adoption of the *AfCFTA Protocol on Digital Trade* is a key milestone towards realizing this goal<sup>67</sup>.

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<sup>63</sup> Ibid

<sup>64</sup> Ibid

<sup>65</sup> Ibid

<sup>66</sup> Gathii. J., 'The AfCFTA's Digital Trade Rules are Not Fit for Africa' Available at <https://www.afronomicslaw.org/category/analysis/afcftas-digital-trade-rules-are-not-fit-africa> (Accessed on 02/05/2024)

<sup>67</sup> Ibid

### **3.0 The AfCFTA Protocol on Digital Trade: Challenges and Promises**

The *AfCFTA Protocol on Digital Trade*<sup>68</sup> seeks to support the attainment of the objectives of the AfCFTA by establishing harmonized rules and common principles and standards that enable and support digital trade for sustainable and inclusive socio-economic development and the digital transformation of Africa<sup>69</sup>. The Protocol defines digital trade as digitally enabled transactions of trade in goods and services that can either be digitally or physically delivered, and that involve natural and juristic persons<sup>70</sup>. The specific objectives of the Protocol include promoting and facilitating Intra-African digital trade by eliminating barriers to digital trade among member states<sup>71</sup>; establishing predictable and transparent harmonized rules, and common principles and standards for digital trade<sup>72</sup>; creating a transparent, predictable, secure, and trustworthy digital trade ecosystem for businesses and consumers<sup>73</sup>; encouraging trusted, safe, ethical, and responsible adoption and regulation of the use of emerging and advanced technologies to support and promote digital trade<sup>74</sup>; promoting digital skills development, innovation, and entrepreneurship<sup>75</sup>; and providing a common legal framework for digital trade among state parties<sup>76</sup>. The Protocol applies to measures adopted or maintained by a state party affecting digital trade but does not apply to government procurement<sup>77</sup>. It also allows states to regulate digital trade within their territories<sup>78</sup>.

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<sup>68</sup> Protocol to the Agreement Establishing the African Continental Free Trade Area on Digital Trade., Available at [https://www.bilaterals.org/IMG/pdf/afcfta\\_digital\\_trade\\_protocol\\_-\\_9\\_february\\_2024\\_draft.pdf](https://www.bilaterals.org/IMG/pdf/afcfta_digital_trade_protocol_-_9_february_2024_draft.pdf) (Accessed on 03/05/2024)

<sup>69</sup> Ibid, article 2

<sup>70</sup> Ibid, article 1

<sup>71</sup> Ibid, article 2 (2)

<sup>72</sup> Ibid

<sup>73</sup> Ibid

<sup>74</sup> Ibid

<sup>75</sup> Ibid

<sup>76</sup> Ibid

<sup>77</sup> Ibid, article 3

<sup>78</sup> Ibid, article 4

In order to foster digital trade in Africa, the Protocol contains provisions on market access and treatment of digital products<sup>79</sup>. It precludes the imposition of customs duties on digital products transmitted electronically originating from other state parties<sup>80</sup>. In addition, the Protocol sets out the principle of non-discrimination of digital products and forbids states from according less favourable treatment to digital products originating from other states compared to those originating within their territory<sup>81</sup>.

The Protocol requires African countries to facilitate digital trade through measures such as allowing electronic trust services including electronic signatures, electronic seals, and electronic time stamps<sup>82</sup>; enhancing electronic authentication<sup>83</sup>; accepting paperless trading<sup>84</sup>; enhancing the regulatory environments for logistics and last mile delivery<sup>85</sup>; embracing electronic contracts; accepting electronic invoicing as the equivalent of paper versions of such invoices<sup>86</sup>; adopting and maintaining digital identity regimes for both natural and juridical persons; and promoting digital payment and settlement systems<sup>87</sup>. The Protocol further requires states to promote the continuous development of digital infrastructure, and provide an enabling regulatory environment to enhance universal access to support participation in digital trade<sup>88</sup>. It requires states to ensure consumers in their territories have access to the internet<sup>89</sup>.

In respect of data governance, the Protocol urges states to allow the cross-border transfer of data including personal data by electronic means provided that the underlying activity

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<sup>79</sup> Ibid, Part II

<sup>80</sup> Ibid, article 6 (1)

<sup>81</sup> Protocol to the Agreement Establishing the African Continental Free Trade Area on Digital Trade., article 7 (1)

<sup>82</sup> Ibid, Part III

<sup>83</sup> Ibid

<sup>84</sup> Ibid

<sup>85</sup> Ibid

<sup>86</sup> Ibid

<sup>87</sup> Ibid

<sup>88</sup> Ibid, article 18

<sup>89</sup> Ibid, article 26

is for the conduct of digital trade by a person of a state party<sup>90</sup>. It also requires state parties to enhance protection of personal data<sup>91</sup>. Further, it urges states to promote and support data innovation<sup>92</sup>. Cybersecurity is also a major theme under the Protocol. The AfCFTA Protocol on Digital Trade requires to adopt and maintain measures to ensure cybersecurity and combat cybercrimes within their jurisdictions<sup>93</sup>.

The Protocol also seeks to enhance digital trade inclusion and require states to promote and facilitate the inclusion and participation of women, youth, indigenous peoples, rural and local communities, persons with disabilities, and other underrepresented groups in digital trade<sup>94</sup>. It also requires states to ensure the participation of MSMEs in digital trade<sup>95</sup>. The Protocol recognizes that digital innovation and entrepreneurship, and digital skills development are key in realizing digital inclusion in Africa<sup>96</sup>. It also requires states to enhance financial technology<sup>97</sup>. In order to achieve its objectives, the Protocol requires states to embrace technical assistance, capacity building, and collaboration in all areas related to digital trade<sup>98</sup>.

The *AfCFTA Protocol on Digital Trade* has the potential to advance digitally-driven industrialisation in Africa by fostering a conducive environment for digital commerce and innovation<sup>99</sup>. It establishes harmonised digital trade rules and principles which can lower transaction costs, enhance access to regional markets, and stimulate digital entrepreneurship<sup>100</sup>. The Protocol can support the movement of capital and digital

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<sup>90</sup> Ibid, article 20

<sup>91</sup> Ibid, article 21

<sup>92</sup> Ibid, article 23

<sup>93</sup> Ibid, article 25

<sup>94</sup> Ibid, article 30

<sup>95</sup> Ibid, article 31

<sup>96</sup> Ibid, article 32 & 33

<sup>97</sup> Ibid, article 35

<sup>98</sup> Ibid, part X

<sup>99</sup> Stuart. J., 'The Digital Trade Protocol of the AfCFTA and Digitally-Driven Development in Africa' Available at <https://www.tralac.org/blog/article/16306-the-digital-trade-protocol-of-the-afcfta-and-digitally-driven-development-in-africa.html> (Accessed on 03/05/2024)

<sup>100</sup> Ibid

services and products in the continent therefore boosting Intra-African trade<sup>101</sup>. The harmonized rules and common principles and standards envisaged under the Protocol can spur an acceleration of technology driven innovation and commerce in Africa<sup>102</sup>. The Protocol covers important areas in digital trade including data governance, data protection, cross-border data transfers, online consumer protection, cybersecurity, and emerging technologies such as Artificial Intelligence<sup>103</sup>. It has been pointed out that for multinational technology companies that operate across Africa, the Protocol is particularly important given the historic and current challenges relating to limited regulatory and commercial inter-operability between jurisdictions, the high cost of compliance and transaction costs, and limited access to regional markets<sup>104</sup>.

The AfCFTA Digital Trade Protocol comes at an opportune time and presents significant opportunities for African countries to build an inclusive, sustainable, and beneficial digital trade ecosystem<sup>105</sup>. It can enable African countries to harness the transformative power of technology for economic development and regional and international competitiveness<sup>106</sup>. By creating a harmonised and robust framework, the Protocol reduces barriers to trade, promoting a more efficient and interconnected continental marketplace<sup>107</sup>. This in turn promotes digital inclusion, generates sustainable and inclusive economic growth, stimulates economic activity, encourages innovation, supports cross-border trade, generates sustainable and inclusive economic growth,

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<sup>101</sup> Acquah. I., 'The Digital Trade Protocol: Challenges & Opportunities'

<sup>102</sup> Ibid

<sup>103</sup> Protocol to the Agreement Establishing the African Continental Free Trade Area on Digital Trade., Op Cit

<sup>104</sup> Mkhize. M et al., 'Africa Technology Regulatory Update: Adoption of the AfCFTA Protocol on Digital Trade' Available at <https://www.covafrika.com/2024/02/africa-technology-regulatory-update-adoption-of-the-afcfta-protocol-on-digital-trade/> (Accessed on 03/05/2024)

<sup>105</sup> State Department for Industry., 'Brief on Kenya as the AfCFTA Digital Trade Champion' Available at [https://www.industrialization.go.ke/sites/default/files/2024-02/BRIEF%20ON%20KENYA%20AS%20THE%20AfCFTA%20DIGITAL%20TRADE%20CHAMPION\\_0.pdf](https://www.industrialization.go.ke/sites/default/files/2024-02/BRIEF%20ON%20KENYA%20AS%20THE%20AfCFTA%20DIGITAL%20TRADE%20CHAMPION_0.pdf) (Accessed on 03/05/2024)

<sup>106</sup> Ibid

<sup>107</sup> Ibid

*Examining the African Continental Free Trade Area Protocol on Digital Trade: Challenges and Promises* attracts foreign investment, stimulates job creation, reduces inequality, and subsequently eradicates poverty<sup>108</sup>. The Protocol is therefore vital in spurring digital trade in Africa.

However, there are some key concerns arising out of the Protocol. It has been pointed out that some of the key elements of the Protocol such as commitments to allow unfettered movement of data could result in governments giving up their regulatory authority to protect their citizens in the digital age<sup>109</sup>. In addition, rules on data transfers and storage under the Protocol could result in technology firms having almost absolute control of data, including personal and sensitive information therefore raising privacy concerns<sup>110</sup>. The cross-border data transfers rules envisaged under the Protocol also give broad rights to companies, regardless of their true national origin in respect of free movement of data, a situation that could be exploited to transfer personal data from Africa to other regions<sup>111</sup>. Further, it has been noted that digital infrastructure is still inadequate in many African countries, a situation that could hinder effective implementation of the AfCFTA Protocol on Digital Trade<sup>112</sup>. It is necessary to address these challenges in order to ensure successful implementation of the AfCFTA Protocol on Digital Trade.

#### **4.0 Conclusion**

The AfCFTA Protocol on Digital Trade has the Potential to boost Intra-African trade by supporting the movement of capital and digital services and products in the continent<sup>113</sup>. Adoption of the Protocol comes at a critical time in light of Africa's digital transformation as envisaged under the *Digital Transformation Strategy for Africa*<sup>114</sup>. The Protocol presents significant opportunities for African countries to build an inclusive, sustainable, and

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<sup>108</sup> Ibid

<sup>109</sup> Gathii. J., 'The AfCFTA's Digital Trade Rules are Not Fit for Africa' Op Cit

<sup>110</sup> Ibid

<sup>111</sup> Ibid

<sup>112</sup> Acquah. I., 'The Digital Trade Protocol: Challenges & Opportunities' Op Cit

<sup>113</sup> Ibid

<sup>114</sup> African Union., 'The Digital Transformation Strategy for Africa (2020-2030)' Op Cit

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beneficial digital trade ecosystem<sup>115</sup>. However, several challenges are likely to emerge in the implementation of the Protocol in areas such as data transfers, privacy, and conflicting national laws<sup>116</sup>. It is necessary to address these challenges in order to ensure effective implementation of the AfCFTA Protocol on Digital Trade. In order to realize the ideal of this Protocol, it is imperative to harmonize domestic laws in key areas such as data privacy and protection, competition law and Intellectual Property as well as building local skills to reduce the growing digital gap between the Global North and the Global South<sup>117</sup>. Adoption of the AfCFTA Protocol on Digital Trade is a welcome idea. It is necessary to actualize this Protocol in order to strengthen digital trade in Africa and accelerate the continent's digital transformation.

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