

## **Beyond Policy and Grandiloquence: Africa Continental Free Trade Area (AfCFTA) Protocol as a Vehicle to Accelerate Technology and Innovation**

### **1 Introduction**

Technology, innovation, and the law are frequently regarded as adversaries. Technology and innovation signify improving the quality of life and furthering social development (Walsh, Murphy and Horan “The Role of Science, Technology and Innovation in the UN 2023 Agenda” 2020 154 *Technology Forecasting & Social Change* 2–3). Furthermore, they catalyse economic progression, productivity, employment, and attractiveness. Specifically, the United Nations (UN) General Assembly adopted a resolution founded on what it calls “Agenda 2030 for Sustainable Development” (UN “Resolution on Transforming Our World: The Agenda for Sustainable Development” 25 September 2015 (A/RES/70/1)). This resolution identifies several objectives and goals, namely, the Sustainable Development Goals (SDGs), that ought to arouse universal action for the period ending in 2030. Importantly, the resolution accepts that technology and innovation have an inordinate potential to fast-track development and human advancement (A/RES/70/1). Specifically, these novelties improve the social and economic statuses of the most vulnerable (Goal 1 read with Goal 5 of the SDGs), contribute to the creation of inclusive and equitable quality education (Goal 4 of the SDGs), and support the attainment of clean and renewable energy (Goal 7 of the SDGs).

In South Africa, the National Development Plan (NDP) also recognises the strength or ability of technology and innovation to foster development (NDP, 2030). It provides technology and innovation:

“both deepened and accelerated the world's interconnectedness, enabling higher growth, a leap in trade and a great surge in crossborder investment. The pace is likely to quicken further over the next two decades as information flows and capital movements, trade and migration speed up”. (NDP 76. For further interesting reading, see African Union's (AU) Agenda 2063 (The Africa We Want), September 2015)

However, there is the viewpoint that the law (or legal rules) promotes stagnation, bureaucracy, and stringency (Watson *The Nature of Law* (1977) 35). The long-winded nature of the law-making process is consistently attributed to this unavailability of progress and innovation. This is the case because all the law does is direct societal behaviour and sanction or penalise those undermining this authority (Black *Critical Reflections on Regulation* (2002) 2). Accordingly, the positivist posture of the law, that is, it

is nothing but the multiplicity of commands which are backed by sanctions, gives validity or substantiation to this claim (Watson *The Nature of Law* 35).

Therefore, the question is: What relevance, if any, does the above-mentioned discussion have to the Africa Continental Free Trade Area (AfCFTA) Protocol? The AfCFTA Protocol is a determined or innovative endeavour to accelerate and boost intra-Africa trade. In doing so, it promotes the creation of lucid, translucent, certain, and mutually beneficial norms that regulate trade inside or within the African Continent (Preamble to the AfCFTA Protocol). The Protocol regards technology and innovation as the instruments by which the intra-Africa trade could be expanded, synchronised, and coordinated (Preamble to the AfCFTA Protocol). For example, the AU adopted the Treaty Establishing the African Economic Community on 3 June 1991 (Abuja Treaty). The Treaty sets the scene for formulating and integrating the objectives of the AfCFTA Protocol. In other words, it forecasts the impact that intra-Africa trade will have on Africa. Notably, article 4(2)(e) of the Treaty provides that harmonised national policies are pivotal to promoting Community activities. Community means the organic structure for economic integration established in terms of article 2 of this Treaty and constituting an integral part of the OAU (now, the AU) (see art 1 of the Abuja Treaty). Consequently, it identifies technology and innovation as some of the fundamental community activities to be pursued and endorsed (art 4(2)(e) of the Abuja Treaty). However, the challenge with the law is that legal rules are some of the most perverse barriers to trade (see generally, Handson *Limits to Free Trade: Non-Tariff Barriers in the European Union, Japan and United States* (2010)). Specifically, laws or regulations inhibit entry into the African market or hamper competition. They are likely to be abused by imposing stringent licensing and certification measures, currency controls or transfers, foreign exchange and equity, taxation, and equity of participation regulations (Van Jaarsveld “Legal Barriers to the International Trade in Financial Services” 2001 34 *The Comparative and International Law Journal* 109–110).

Well, there is more that could be learned from the study of the legal barriers to entry. For example, the World Trade Organisation (WTO) established a committee referred to as the “Technical Barriers to Trade (TBT) Committee” (WTO “Committee on Technical Barriers to Trade” [https://www.wto.org/english/tratop\\_e/tbt\\_e/tbt\\_com\\_e.htm](https://www.wto.org/english/tratop_e/tbt_e/tbt_com_e.htm) (accessed 2023-10-18)). In line with its name, the Committee identifies the existing or potential technical barriers to trade (TBT) and serves as the medium for the member countries to address specific trade concerns regarding, *inter alia*, laws and regulations (WTO [https://www.wto.org/english/tratop\\_e/tbt\\_e/tbt\\_com\\_e.htm](https://www.wto.org/english/tratop_e/tbt_e/tbt_com_e.htm)). The TBT Committee accepts that laws and regulations are necessary for guaranteeing the protection of “health, safety and the environment” (WTO “Reducing Trade Friction from Standards and Regulations: Technical Barriers to Trade” [https://www.wto.org/english/thewto\\_e/20y\\_e/tbt\\_brochure2015\\_e.pdf](https://www.wto.org/english/thewto_e/20y_e/tbt_brochure2015_e.pdf) (accessed 2023-10-18)). It continues, however, that they can be “burdensome, technical and complex” (WTO [https://www.wto.org/english/thewto\\_e/20y\\_e/tbt\\_brochure2015\\_e.pdf](https://www.wto.org/english/thewto_e/20y_e/tbt_brochure2015_e.pdf)). Because of this, the WTO supports a trade paradigm that circumvents needless or prejudicial impediments to international trade and preserves the

trading country's right to regulate to protect its legitimate interests (WTO "The WTO Agreement Series: Technical Barriers to Trade" [https://www.wto.org/english/res\\_e/booksp\\_e/tbt3rd\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/tbt3rd_e.pdf) (accessed 2023-10-18)).

Given the above, it is enquired whether Africa has the necessary means to achieve the AfCFTA Protocol's objectives and still alleviate the legal barriers to trade in a manner that improves the necessary instruments and capacity for market accessibility. Simply, does Africa have the instruments needed to create legal rules, regulations, and procedures that extinguish the unnecessary obstacles to trade? The investigation flows from the viewpoint that both the *de facto* and *de jure* integration of technology and innovation are pivotal to accomplishing the principles that underlie the AfCFTA Protocol.

Therefore, this article investigates the existing regulatory and technological structures to lessen the trade barriers. In doing so, it examines the extent to which Africa integrates technology and innovation to achieve the objectives of the AfCFTA Protocol. Furthermore, it scrutinises the degree to which the prevailing legal rules, regulations, and procedures decrease the unnecessary obstacles to trade. To achieve the aforesaid, relevant AU legal instruments and AfCFTA provisions are studied and discussed. Where necessary, inter-country examples are identified and explored to enunciate the strengths and limits of these instruments. The last section of this article is the conclusion. In that section, a summary of the facts presented contains a recommended way forward or suggested ways of improving the prevailing African trade paradigm or paradigms.

## 2 Africa trade framework

### 2.1 General overview

Attempts to integrate trade in Africa have been a subject of debate for many years. This debate finds validation from the philosophical postulations and teachings of prominent African leaders such as Kwame Nkrumah, Julius Nyerere, Nnamdi Azikiwe, and, quite recently, Thabo Mbeki. For example, Nkrumah published a book titled *Africa Must Unite* in 1963 (Nkrumah *Africa Must Unite* (1963)). In that book, Nkrumah chronicles the successes and fluency of trade in Africa prior to the permeation of Western culture and practices (Nkrumah *Africa Must Unite* 2). In doing so, he relied, in part, on an earlier writing by Basil Davidson stating, *inter alia*, that:

"They (Western traders) anchored in havens that were thick with ocean shipping. They went ashore to cities as fine as all but a few they could have known in Europe. They watched a flourishing maritime trade in gold and iron and ivory and tortoiseshell, beads and copper and cotton cloth, slaves and porcelain; and saw that they had stumbled on a world of commerce even larger, and perhaps wealthier, than anything that Europe knew." (Davidson *Old Africa Rediscovered* (1959) 165)

Nkrumah used some of the writings that were captured in the historical centres, for example, Djenné and Timbuktu, to accentuate the idea that African trade should be allowed to flourish, free of needless trade barriers

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(Nkrumah *Africa Must Unite* 2–3). To him, Africa must harness its human, technical, and economic resources to enhance its raw material and embrace innovations in technology (Nkrumah *Africa Must Unite* 38–40. For further interesting reading, see Murungu “Africa Free Trade Area Foretold: A Reflective Analysis of Kwame Nkrumah’s Views for Africa in Line with the Benefits of the Agreement Establishing the African Continental Free Trade Area 2020 13 *International Journal of Sustainable Development* 62). Therefore, these opportunities should, according to Nkrumah, be revived if Africa is to assiduously realise its rightful place as one of the global trade leaders (Murungu 2020 *International Journal of Sustainable Development* 62. See also, Nabudere “The African Renaissance in the Age of Globalization” 2001 6 *African Journal of Political Science* 13–15).

Nkruma’s philosophical teachings accord with Mbeki’s vision for the African Renaissance. Jana states that the latter is an all-embracing concept founded on Africa’s diverse history and cultures (Jana “African Renaissance and the Millenium Action Plan” 2001 XV *Quest* 38). It is ideal to re-energise African development and propel the continent as an essential partner in the global arena (Jana 2001 *Quest* 38). Accordingly, the African Renaissance accelerated, controlled, and sustained the social, cultural, and economic growth of Africa (Mbeki *Africa the Time Has Come: Selected Speeches* (1998) 38).

It is ideas such as those mentioned above that pivoted the establishment and development of, amongst others, the Organization of African Unity (OAU) in 1963 (the OAU (now the African Union or AU) is an inter-governmental structure that was established on 25 May 1963. It serves as a continental body of fifty-five (55) member states, the African Continent’s countries. In terms of article 3 of the Constitutive Act of the AU, the objectives of the AU are to: (a) achieve greater unity and solidarity between the African countries and the peoples of Africa; (b) defend the sovereignty, territorial integrity, and independence of its Member States; (c) accelerate the political and socio-economic integration of the continent; (d) promote and defend African common positions on issues of interest to the continent and its peoples; (e) encourage international cooperation, taking due account of the Charter of the UN and the Universal Declaration of Human Rights; (f) promote peace, security, and stability on the continent; (g) promote democratic principles and institutions, popular participation, and good governance; (h) promote and protect human and peoples’ rights in accordance with the African Charter on Human and Peoples’ Rights and other relevant human rights instruments; (i) establish the necessary conditions which enable the continent to play its rightful role in the global economy and in international negotiations; (j) promote sustainable development at the economic, social, and cultural levels as well as the integration of African economies; (k) promote co-operation in all fields of human activity to raise the living standards of African peoples; (l) coordinate and harmonize the policies between the existing and future regional economic communities for the gradual attainment of the objectives of the Union; (m) advance the development of the continent by promoting research in all fields, in science and technology; (n) work with relevant international partners in the eradication of preventable diseases and the promotion of

good health on the continent), the Monrovia Strategy for the Economic Development of Africa, 1979 (Monrovia Declaration) (the Monrovia Declaration reaffirms, inter alia, the need for the African member states to frameworks that foster the socio-economic transformation of the continent using clear and lucid programmes of “collective self-reliance”), the Lagos Plan of Action for the Economic Development of Africa, 1980 (Lagos Plan of Action) (the Lagos Plan of Action seeks to accelerate the attainment of the measures for rapid self-reliance and self-sustaining development and economic advancement in Africa (see Preamble to the Lagos Plan of Action for the Economic Development of Africa)) and the signing of the Abuja Treaty in 1991 (the Abuja Treaty is referred to as the “Treaty Establishing the African Economic Community”; its objectives are articulated in articles 4(1) and (2) of the Treaty). Specifically, these developments are significant in scaling and improving free African trade and facilitating the creation and subsequent adoption of the African Economic Community in terms of article 2 of the Abuja Treaty.

## 2 1 1 African Economic Community – Free Trade

The theory for creating an African Economic Community that supports free trade or free-flow of products or goods in the African continent can be traced from the principle of “Pan-Africanism”. This principle supports the ideal of collective or shared self-reliance (Okai “Literature as a Tool for National Liberation and Post-Colonial Reconstruction, Anti-Palanguinity and the Pan-Africanist Imperative” in Quist-Adade and Doodoo (eds) *Africa’s Many Divides and Africa’s Future: Pursuing Nkrumah’s Vision of Pan-Africanism in an Era of Globalization* (2015) 8–11). It postulates that solidarity, interrelation, interdependencies, reciprocity, and mutuality are the *sine qua non* for the development and growth of the African continent (Moyo “African Philanthropy, Pan-Africanism, and Africa’s Development” 2014 24 *Development in Practice* 656–671). This occurrence subsists because the existence of unity and humanity in Africa equals or must translate to improving the economic, social, and political advancement of the entire continent (Williams *The Pan-African Imperative: Revisiting Kwame Nkrumah’s Vision for African Development* (2022) 37–40). Achieving this includes establishing a single African currency, a single African central bank, and an African Monetary Union (art 6(2)(f) of the Abuja Treaty).

Realising the goal of maintaining unity to advance African free trade, the African Union established the Regional Economic Communities (hereinafter referred to as the RECs. They are the Arab Maghreb Union (UMA), Common Market for Eastern and Southern Africa (COMESA), Community of Sahel–Saharan States (CEN–SAD), East African Community (EAC), Economic Community of Central African States (ECCAS), Economic Community of West African States (ECOWAS), Intergovernmental Authority on Development (IGAD) and Southern African Development Community (SADC)). The RECs are the regional groupings consisting of the individual African states that serve as the main pillars of the AU. They support economic integration at regional levels and foster the creation of the “African Common Market”. This commitment is evident from the wording of the

individual treaties of the RECs. For example, the Preamble to the COMESA treaty provides:

INSPIRED by the objectives of the Treaty for the Establishment of the African Economic Community and in compliance with the provisions of article 28(1) of the said Treaty.

DETERMINED to mark a new stage in the process of economic integration with the establishment of a Common Market for Eastern and Southern Africa and the consolidation of their economic co-operation ...

Furthermore, the EAC treaty states the following:

CONVINCED that co-operation at the sub-regional and regional levels in all fields of human endeavor will raise the standards of living of African peoples, maintain and enhance the economic stability, foster close and peaceful relations among African states and accelerate the successive stages in the realization of the proposed African Economic Community and Political Union states and accelerate the successive stages in the realization of the proposed African Economic Community and Political Union ...

This language is furthermore encapsulated in article 5 of the SADC Treaty. The latter provides that:

DETERMINED to alleviate poverty, with the ultimate objective of its eradication, through deeper regional integration and sustainable economic growth and development.

FURTHER DETERMINED to meet the challenges of globalization (art 5 of the SADC Treaty).

Overall, the RECs coordinate the efforts of addressing free trade incrementally and gradually within their respective communities (Arts 28(1) and (2) of the Abuja Treaty). They exist following the realisation that the African Economic Community is situated too far from the places or jurisdictions where actual trade happens or is expected to occur.

Realising the necessity to accelerate free trade within the RECs, COMESA, EAC, and SADC developed the Tripartite Free Trade Area (TFTA). This block integrates or seeks to create a common market for Eastern and Southern Africa, East Africa Community, and Southern African Development Community (East African Community “COMESA-EAC-SADC Tripartite Free Trade Area (TFTA) Agreement” <https://www.eac.int/trade/international-trade/trade-agreements/comesa-eac-sadc-tripartite-free-trade-area-tfta-agreement#:~:text=The%20Tripartite%20is%20an%20umbrella,the%20Southern%20African%20Development%20Community> (accessed 2023-11-07)). Specifically, the TFTA member countries signed the “Agreement Establishing a Tripartite Free Trade Area among the Common Market for Eastern and Southern Africa, the East African Community, and the Southern African Development Community” in June 2015 (TFTA Agreement). This accord liberalises trade in goods and services. It enhances trade cooperation frameworks that promote equality, fair competition, and mutual advances for the Tripartite Member States (Preamble to the TFTA Agreement). Furthermore, it recognises the significance of alleviating both the tariff (trading costs) (Tariff barriers include duties (customs and import duties), tariffs, charges or taxes levied to a

trading country for the importation of its goods or services which have the effect of hindering the trading of goods or services (see Quambusch “Non-Tariff Barriers to Trade” 1977 12 *Intereconomics* 80–81 and Surbhi “Difference between Tariff and Non-Tariff Barriers” <https://keydifferences.com/difference-between-tariff-and-non-tariff-barriers.html> (accessed 2023-11-07)) and non-tariff (creating conducive trade environments) barriers (Preamble to the TFTA Agreement. In terms of art 1 of the TFTA Agreement, non-tariff barriers mean any laws, regulations, and administrative and technical requirements other than tariffs imposed by a partner state whose effect is to impede trade).

Having delved into the abovementioned developments, the section below investigates the ways in which Africa inculcates digital technologies to foster intra-Africa trade. First, it explores the measures Africa has adopted in recognition of the essential role digital technologies play or could play in accelerating intra-Africa trade. Secondly, the section examines the strengths and weaknesses of these measures to alleviate the identified barriers to trade. In doing so, it looks at the available data to determine the extent to which Africa has progressed in its use of digital technologies to improve trade within the African continent.

### 3 Digital technologies for trade

#### 3.1 General overview

The speed with which digital technologies, for example, artificial intelligence (AI), machine learning, blockchain, virtual reality, and 3D Printing (3D printing refers to a manufacturing process that operates through the successive super-imposition of layers of materials (e.g., plastics, metals) to produce goods from 3D model data (computer-aided design (CAD) files) using a 3D printer), cybersecurity, and big data, development cannot be emphasised enough. In April 2023, Stanford University published what the latter called *The AI Index 2023 Annual Report* (see in general, Maslej, Fattorini, Brynjolfsson, Etchemendy, Ligett, Lyons, Manyika, Ngo, Niebles, Parli, Shoham, Wald, Clark and Perrault *The AI Index 2023 Annual Report* (2023)). The Report chronicles the accelerated effects of digital technologies on society, business, or consumers and delves into how these technologies foster (or could foster), *inter alia*, production. Thus, the Report states:

Increases in the technical capabilities of AI systems have led to greater rates of AI deployment in businesses, governments, and other organizations. The heightening integration of AI and the economy comes with both excitement and concern. Will AI increase productivity or be a dud? Will it boost wages or lead to the widespread replacement of workers? To what degree are businesses embracing new AI technologies and willing to hire AI-skilled workers? How has investment in AI changed over time, and what particular industries, regions, and fields of AI have attracted the greatest amount of investor interest? (Maslej *et al* *The AI Index 2023 Annual Report* 170)

Flowing from these developments is the ability of digital technologies to perform numerous functions, manipulate and analyse large amounts of data and generate virtual reality images that mimic non-virtual situations. For

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example, 3D Printing is identified as the catalyst for or having the potential to disrupt international trade (Andrenelli and González “3D Printing and International Trade: What is the Evidence to Date?” (2021) <https://www.oecd-ilibrary.org/docserver/0de14497-en.pdf?expires=1699535664&id=id&accname=quest&checksum=4343ED6466AADA82009DDC670B0C775F>) (accessed 2023-11-07). For example, it is estimated that 3D Printing will replace about 22 per cent of the world’s physical trade by 2060 (Freund, Mulabdic and Ruta “Is 3D Printing a Threat to Global Trade? The Trade Affects You Didn’t Hear About” 2022 138 *Journal of International Economics* 1–3 and Leering 3D *Printing: A Threat to Global Trade* (2017) 7–20). Therefore, products or goods will be digitally printed locally, the worldwide supply of the goods will be lessened, and international trade will be incessantly diminished (Mulabdic and Ruta “Trade Effects of 3D Printing (That You Didn’t Hear About)” (2019) <https://cepr.org/voxeu/columns/trade-effects-3d-printing-you-didnt-hear-about> (accessed 2023-11-09)).

The position mentioned above also applies to AI. For example, the OECD submits that AI could ease trade barriers and ultimately support the creation of an enabling environment for trade (Ferencz, López-González and García *Artificial Intelligence and International Trade: Some Preliminary Implications* (2022) 4–9). This is usually linked to the ability of AI technology to spur innovation, encourage the creation of new products or services, and alleviate the costs of trade. In this manner, AI could drive inclusive growth, sustainable development, respect for the rule of law, transparency, and robustness (Agrawal, Gans and Goldfarb *The Economics of Artificial Intelligence: An Agenda* (2017) 2–3).

Accordingly, the section below delves into the ways in which Africa has embraced digital technologies to transform African trade. The starting point is to elucidate the AfCFTA framework for digital or digitalised African trade. Thereafter, the progress made, including those adopted by the respective regional communities, to respond to the AfCFTA provisions is investigated. This discussion will henceforth result in a clear delineation of the strengths and weaknesses of the measures that Africa adopts in taking advantage of the recent technological developments to improve African trade and remove trade barriers.

### 3.2 Towards Digitalised Africa Trade

The path towards digitalised African trade has been an incessant and, sometimes, bumpy journey. It draws its existence from, *inter alia*, article 3(2)(i) of the Protocol on Trade in Services. The latter article states that promoting “research and technological advancement in the field of services to accelerate economic and social development” is central to Africa’s digitalisation agenda. Doing so marks or should signal a shift from reliance on, *inter alia*, physical commodities to intangible value. Specifically, digitalisation ought to ease the member countries’ ability to embrace digital technologies to foster economic expansion, create employment opportunities, and address societal differences.



One of the steps towards realising the above-mentioned is the establishment of the African Union Development Agency-NEPAD (AUDA-NEPAD) in June 2018. AUDA-NEPAD provides knowledge-based advisory support on the development of identified priorities for the AU. Its core functions include incubating “innovative programmes in various fields, including technology, research and development, knowledge management, and data analytics” (Union Development Agency-NEPAD (AUDA-NEPAD) “About Us” add year [https://www.nepad.org/microsite/who-we-are-0#about\\_us](https://www.nepad.org/microsite/who-we-are-0#about_us) (accessed 2023-11-21)). Essential to the work of the AUDA-NEPAD is coordinating and executing the primacies engendered in the AU’s Agenda 2063 (Agenda 2063 of the AU serves as “Africa’s blueprint and master plan for transforming Africa into the global powerhouse of the future. It is the continent’s strategic framework that aims to deliver on its goal for inclusive and sustainable development and is a concrete manifestation of the pan-African drive for unity, self-determination, freedom, progress, and collective prosperity pursued under Pan-Africanism and African Renaissance” (see AU *Agenda 2063: The Africa We Want* (2015) 5). For example, the AU’s Agenda 2063 provides:

By 2063, the necessary infrastructure will be in place to support Africa’s accelerated integration and growth, technological transformation, trade and development. This will include high-speed railway networks, roads, shipping lines, sea and air transport, as well as well-developed ICT and the digital economy.

It is fair to postulate that the AU has made minimal progress towards responding to the AU’s Agenda 2063. For example, AUDA-NEPAD, through its High-Level Panel on Emerging Technologies (APET), convened an expert consultative meeting in May 2022. This meeting examined the possibility of developing an AI strategy for Africa (AUDA-NEPAD “The African Union Artificial Intelligence Continental Strategy For Africa” <https://www.nepad.org/news/african-union-artificial-intelligence-continental-strategy-africa> (accessed 2024-01-18)). The strategy would particularly “enable African countries to enhance policymaking and implementation and improve stakeholder engagements on AI-related challenges and opportunities”. Furthermore, it would assist African countries in developing AI-related technology products and services and safeguard technology through enabling regulatory frameworks (AUDA-NEPAD <https://www.nepad.org/news/african-union-artificial-intelligence-continental-strategy-africa>).

Culminating from the deliberations of the APET meeting was the introduction of a report titled “AI for Africa: Artificial Intelligence for Africa’s Socio-Economic Development” (AUDA-NEPAD *AI for Africa: Artificial Intelligence for Africa’s Socio-economic Development* (August 2021) <https://www.nepad.org/publication/ai-africa-artificial-intelligence-africas-socio-economic-development> (accessed 2023-04-04)). The report promotes the necessity for African countries to harness AI technology in a way that improves African trade. Furthermore, it supports the viewpoint that the amalgamation of AI and trade can improve Africa’s socio-economic development and could lead to the reduction of poverty on the continent (see NEDAP’s Tweet of 18 February 2023 <https://doi.org/10.17159/mnyrb881>

[https://twitter.com/nepad\\_agency/status/1626836646778863616?s=48&t=ITg0LNPsgw-4UsF15Zijwg](https://twitter.com/nepad_agency/status/1626836646778863616?s=48&t=ITg0LNPsgw-4UsF15Zijwg) (accessed 2024-01-18)).

The other remarkable step towards establishing a digitalized African trade is through the introduction of the Digital Transformation Strategy for Africa, 2020–2030. The strategy envisions a human community-centric approach to digital transformation (Digital Transformation Strategy for Africa, 2020–2030 <https://au.int/sites/default/files/documents/38507-doc-dts-english.pdf> (accessed 2023-11-21)). It provides for the establishment of an integrated and inclusive digital society and economy for Africa (Digital Transformation Strategy for Africa, 2020–2030 <https://au.int/sites/default/files/documents/38507-doc-dts-english.pdf>). In addition, the report states that harmonised policies, regulations, and laws are central to building augmented digital networks for intra-Africa trade. These policies, laws, and regulations should facilitate productive digital trade. Furthermore, they ought to do the following:

Advance opportunities for digital work, fair competition for digital businesses, and contribute to an advantageous position of Africa in the global digital economy. (Digital Transformation Strategy for Africa, 2020–2030 <https://au.int/sites/default/files/documents/38507-doc-dts-english.pdf>).

The above-mentioned arises because of the need for Africa to build its digital ecosystem (specifically, the Digital Transformation Strategy for Africa, 2020–2030 <https://au.int/sites/default/files/documents/38507-doc-dts-english.pdf> 20) states that “[M]ember States will need to continue designing customized interventions to strengthen their specific entrepreneurship ecosystems of mutually reinforcing components that include a digital knowledge base and ICT market; a digital business friendly environment; access to finance; digital skills and e-leadership; and an entrepreneurial culture”). In the latter regard, digital technologies are catalysts for building new value and creating innovative products or services (Digital Transformation Strategy for Africa, 2020–2030 <https://au.int/sites/default/files/documents/38507-doc-dts-english.pdf>). In addition, they are the tools needed to address interrelated barriers to trade and stimulate digital entrepreneurship in Africa (Digital Transformation Strategy for Africa, 2020–2030 <https://au.int/sites/default/files/documents/38507-doc-dts-english.pdf> 21–22).

As industrious as the vision of the Digital Transformation Strategy for Africa, 2020–2030 may be, a staggered approach to digitalising trade in Africa persists. This has led to some countries adopting their own respective digital strategies to accelerate digital trade. Two examples, amongst others, illustrate the aforesaid. First, Egypt developed, *inter alia*, the national strategy for AI (Egypt National Artificial Intelligence Strategy, 2021 3–15) and ICT strategy (Egypt ICT Strategy, 2025–2030 4–25) to position the country as a global player in digital technologies and trade. The ICT strategy seeks to create a harmonised system for digital transformation, digital trade, digital infrastructure, and digital innovation in Egypt. Secondly, Kenya introduced what they termed the “Digital Economy Blueprint” (see the Republic of Kenya “Digital Economy Blueprint: Powering Kenya’s Transformation” <https://www.ict.go.ke/wp-content/uploads/2019/05/Kenya-Digital-Economy-2019.pdf> (accessed 2024-01-18)). This policy consolidates digital trade and

integrates society, businesses, and organisations into the country's envisaged digital economy. It defines the digital economy as constituting the following:

The entirety of sectors that operate using digitally-enabled communications and networks leveraging internet, mobile and other technologies.

Therefore, the Digital Economy Blueprint harnesses the benefits of the digital economy and establishes an ecosystem that facilitates digital trade (see Republic of Kenya <https://www.ict.go.ke/wp-content/uploads/2019/05/Kenya-Digital-Economy-2019.pdf>).

Given the need to fast-track the creation of an integrated and inclusive digital society and economy for Africa (see Digital Transformation Strategy for Africa, 2020–2030 <https://au.int/sites/default/files/documents/38507-doc-dts-english.pdf>), the 5th Ordinary Session of the African Union Specialized Technical Committee on Communication and ICT (STC-CICT) met on 23 November 2023. The theme for the meeting is mostly radical and clear, that is, “Powering Africa's Digital Future” (See AU “Powering Africa's Digital Future: AU Ministerial Meeting Set to Ignite Digital Transformation in Africa” <https://au.int/en/pressreleases/20231121/powering-africas-digital-future-au-ministerial-meeting-set-ignite-digital> (accessed 2024-01-18)). However, it is not clear whether, despite the incessant efforts and arranged meetings, success will be attained in igniting a consolidated approach to digital trade in Africa.

## 4 Conclusion

Africa has long recognised or expressed the necessity to promote and support intra-Africa trade. This acceptance led to the establishment of the OAU (now the AU) in 1963 and continued to the signing of the Abuja Treaty in 1991. The principle to encourage the collective and shared self-reliance of the African countries (art 4(1) and (2) of the Abuja Treaty) and improve the essence of harmony, interrelation, interdependencies, mutuality, and affinity is at the forefront of the latter recognition. It postulates that African unity and humanity can be achieved by improving the monetary, communal, and governmental landscape of the African continent. To Africa, establishing the RECs constituted a major step towards synergising the support for intra-Africa trade.

In line with the importance of embracing digital technologies to foster intra-Africa trade, the continent recognises that technology and innovation can accelerate the economic and social development of Africa (art 3(2)(i) of the Protocol on Trade in Services). This includes creating digital infrastructures to fast-track trade and development (see AU Agenda 2063). Doing so requires enhanced policymaking and augmented stakeholder engagements. More specifically, awareness creation detailing the opportunities and challenges emanating from digital technologies is essential. This creation should assist in ensuring the harmonisation or synchronisation of the national policies or regulatory structures that pivot and promote intra-Africa trade (art 1 of the Abuja Treaty).

As elaborate as the AU regulatory structure is, the latter does not adequately prevent (or eliminate) some of the legal barriers to intra-Africa trade. The framework lacks the necessary capacity for improved and shared accessibility to the African market. In other words, it does not fully address the contestation between technologies, innovation, and legal rules. Using AI and 3D Printing as examples provides an excellent illustration. Adopting these technologies could disrupt African trade and affect the production and supply of goods (Mulabdic and Ruta <https://cepr.org/voxeu/columns/trade-effects-3d-printing-you-didnt-hear-about>). Furthermore, the technologies could spur innovation, improve the creation of innovative business value, and alleviate the cost of trade (Agrawal, Gans and Goldfarb *The Economics of Artificial Intelligence: An Agenda* 9–13). Despite these realities, Africa's digital transformation agenda remains imprinted in various instruments and treatises. In other words, there is an absence of practical means to adopt AI in a way that eases trade barriers and creates an enabling environment for intra-Africa trade. Given this insufficiency, it comes as no surprise that countries such as Egypt and Kenya have developed their own digital acceleration strategies to pivot digital trade and remove existential trade barriers (see the Egypt National Artificial Intelligence Strategy, 2021 1–70 and Republic of Kenya Digital Economy Blueprint, 2022–2032 20–135).

Therefore, Africa should develop practical measures that encourage the adoption of digital technologies and innovation to enhance, synchronise and coordinate intra-Africa trade. The mechanisms ought to coherently, apparently, and certainly articulate the role of the RECs in using digital technologies to remove trade barriers and foster economic and sustainable development. Furthermore, they must deal with how this technology and innovation could augment the capacity for African market accessibility or accessibilities. Consequently, both the opportunities and challenges that technology and innovation present to the respective developmental needs of African countries should be spelt out. In other words, the measures ought to accept that the individual African countries' development stages differ. Accordingly, the way they respond or will respond to the opportunities and challenges generated by digital technologies and innovation to enhance inclusive growth and sustainable development is likely to be different.

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