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TOWARD THE DIGITAL PROTOCOL OF THE AFRICAN CONTINENTAL FREE TRADE AGREEMENT

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ALLIANCE FOR ETRADE DEVELOPMENT

TOWARD THE DIGITAL PROTOCOL FOR AFRICAN CONTINENTAL FREE TRADE AGREEMENT

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Prepared by:

Dr. Kati Suominen, Founder and CEO, Nextrade Group; Technical Director, Alliance for eTrade Development

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I. INTRODUCTION

African governments have taken various measures to promote digitization and ecommerce in their economies, and have also come together, including under the auspices of the African Union, to discuss ecommerce development approaches.¹ In February 2020, the 33rd African Union Ordinary Session resolved that the Phase III Negotiations of the African Continental Free Trade Agreement (AfCFTA) would focus on the AfCFTA Protocol on Ecommerce, today called Digital Protocol. AfCFTA negotiators are amid discussion on the contents of this Protocol.

These are constructive steps toward enabling African micro, small, and medium-sized enterprises (MSMEs) to use ecommerce as a growth lever and create new jobs. They are also highly consequential. The ecommerce rules that African countries establish today will have far-reaching implications for African firms that engage in ecommerce.

More broadly, given that just about all African businesses and local and national governments are in one way or another digitizing and leveraging technologies and data to streamline and scale their operations and customer and vendor relationships, ecommerce-related rules will critically shape the trade and productivity of practically all firms in Africa and the attainment of a dynamic, trade-creating AfCFTA.

The purpose of this policy brief is to contribute to the discussions on the content of the future AfCFTA Digital Protocol. The thinking here is informed by empirical reports on the state of MSME ecommerce in Africa and on the types of ecommerce-related policies and data privacy and transfer regimes African governments have adopted, as well as on an analysis of the ecommerce provisions in free trade agreements and regional integration groupings around the world.

The following sections discuss:

- The proposed purposes of the Digital Protocol and measures for its success;
- Proposed content of the Digital Protocol – in light of the emergence of a common template for digital trade agreements around the world in the last few years and African businesses' interest in adopting it; and
- Proposed process for monitoring the implementation of the Digital Protocol.

II. PURPOSE OF THE DIGITAL PROTOCOL: WHAT IS SUCCESS?

The AfCFTA Digital Protocol should be aimed at two goals: (1) solving problems facing African businesses as they engage in trade and seek to improve their productivity; and (2) drive inclusive trade and economic growth and employment in Africa's digitizing economy. In particular, the Digital Protocol should:

- Enable African firms to transact with ease with buyers and sellers across borders, grow their sales, and create new jobs.
- Enable African countries and cities to attract domestic and foreign investment in their technology sectors and to promote high-quality jobs, a major objective of the AU Digital Transformation Strategy.²
- Promote inclusive digital trade and development, facilitating women-led, rural firms, and youth participation in the digital economy.

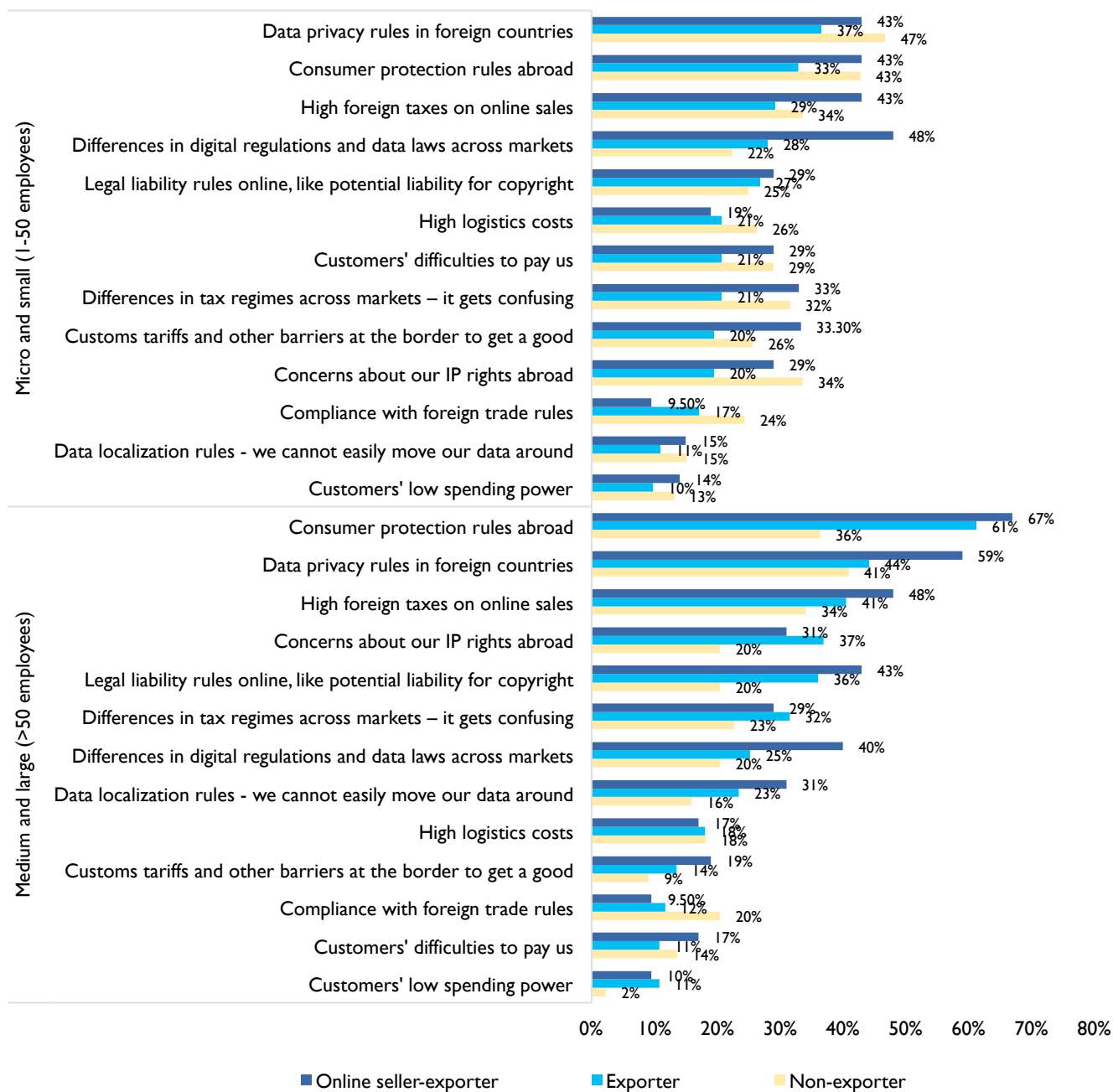
There are challenges in each of these areas.

First, Africa has the lowest intra-regional cross-border trade and ecommerce volumes in the world. One of the deterrents to cross-border ecommerce is arcane customs procedures; these are dealt with in other parts of the AfCFTA. However, another major problem the Digital Protocol needs to address is the limited interoperability among national digital regulations, such as consumer protection and data privacy and transfer rules. Lack of compatibility among African countries' digital regulations poses particular challenges to small multimarket online sellers and exporters that now have to deal with several, if not dozens, of distinct national policies when seeking to diversify their exports; for example, in such areas as consumer protection. Firms also struggle to know about and comply with digital regulations and worry about the rise of data localization mandates that could splinter Africa's digital economy and limit cross-border ecommerce.

Online sellers that export report that proliferating and inconsistent data privacy rules represent a major obstacle for them to grow their export sales (figure 1)— in part because foreign rules can be hard to keep up with and decipher, and in part because multimarket sellers struggle to deal with the many disparate national data privacy regimes.

This setting will further be shaped by outcomes of the Joint Statement Initiative on ecommerce negotiations at the World Trade Organization (WTO). Six AfCFTA members are part of these talks; it would be critical to pursue greater compatibility among the plurilateral agreement and the digital policies of African countries.

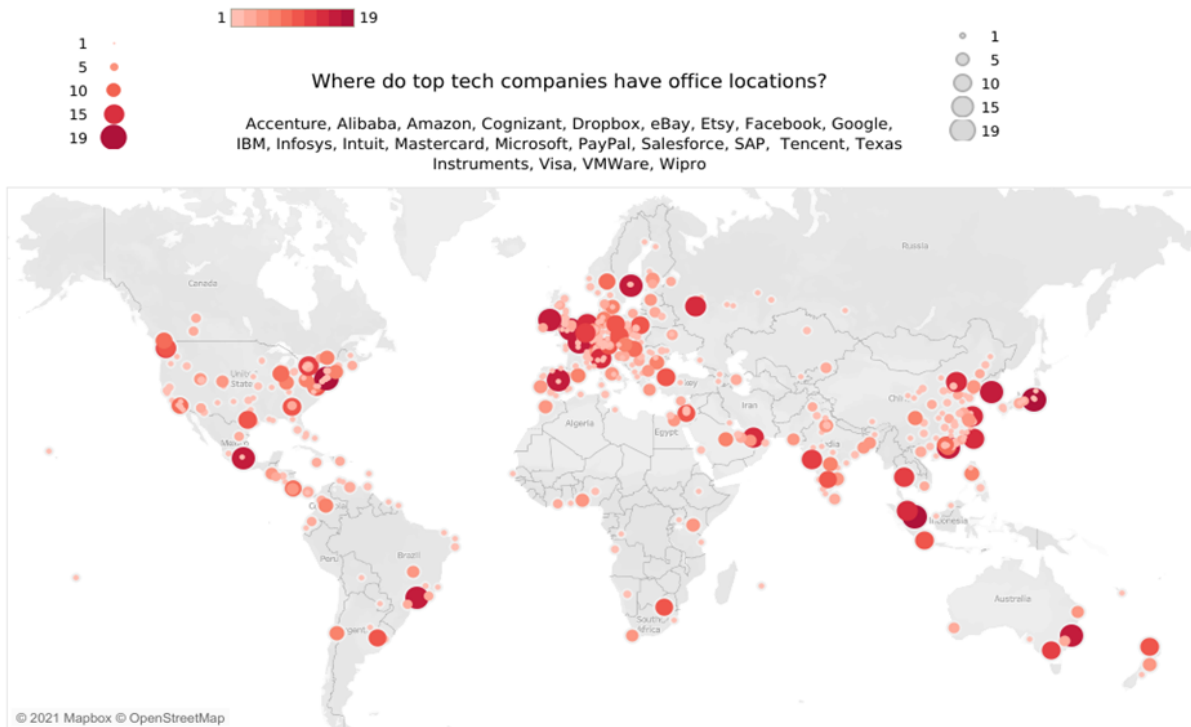
Figure 1: African firms' main perceived challenges in exporting products or services online, by size, export status, and type of seller



Source: Suominen and Vambell (2021): <https://www.allianceforetradedevelopment.org/data-transfer-in-africa>

The second challenge the AfCFTA Digital Protocol can help solve is Africa's low level of FDI in its ecommerce and technology sectors (figure 2). This owes in part to insufficient digital training and digital workforce readiness, in part to the region's still small digital markets, and in part to regulatory uncertainty and complexity.

Figure 2: Locations of leading US, European, and Chinese technology and ecommerce companies, 2021

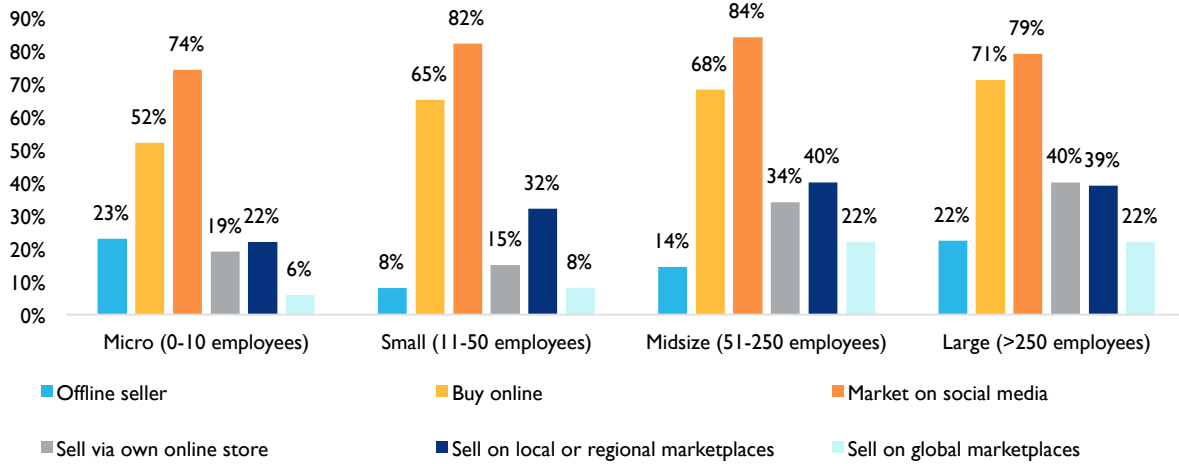


Source: Nextrade Group.

Third, the inclusion of women and rural firms in Africa’s trade and digital economy is still a work in progress. In a very positive development, technologies are enabling even the smallest African firms to participate in the digital economy and transact beyond their borders. Our data shows that micro enterprises in Africa are onboarding local and regional marketplaces such as Jumia and Konga, and leveraging digital services and technologies to scale their sales and streamline their operations. In addition, ecommerce appears to be closing gender disparities: African women-led firms that are selling online do just as well, and often better, than men-led firms.

At the same time, micro and small enterprises still trail large firms in digital transformation, and women-led firms in particular still face challenges to acquire technologies and set up businesses— there are very significant disparities between comparable urban and rural firms in the use of ecommerce and views on the enabling environment for ecommerce (figures 3-4). These disparities call for regional rules conducive to inclusive digital trade – rules that are easy to implement and facilitate doing digital business across the continent.

Figure 3: Ecommerce adoption and digitization among African businesses, by size



Source: Suominen (2020): <https://www.allianceforetradedevelopment.org/msme-ecommerce-in-africa>

Figure 4: Africa’s comparable rural vs. urban firms’ views on the enabling environment for ecommerce (10 = excellent, 1 = very poor)



Source: Suominen (2020): <https://www.allianceforetradedevelopment.org/msme-ecommerce-in-africa>

The success of the digital protocol should be judged by its response to these three major challenges, and measured in:

- The growth of cross-border ecommerce in goods and services;
- The expansion of domestic and foreign investment in technologies and digital services; and
- Improved inclusion – growth of the share of women-led, rural, and micro enterprises in Africa’s digital economy.

III. CONTENT OF THE DIGITAL PROTOCOL: ALIGNING WITH GLOBAL BEST PRACTICES AND AFRICAN BUSINESSES' NEEDS

In crafting the Digital Protocol, African governments have an excellent opportunity and responsibility to leverage existing models and experiences around the world to develop an ecommerce protocol that is conducive to cross-border ecommerce, investment, and inclusion. There are three important considerations for the contents of the protocol.

First, numerous regional integration groupings in Asia, the Americas, and Europe have established common digital rules to meet the aspirations for greater interoperability and expanded and more secure cross-border digital transactions. These agreements, described in detail in Appendix I, offer useful guidance to African policymakers negotiating common digital rules. In addition, many regions like the Southeast Asian countries and the Pacific Alliance in Latin America offer ideas on how to further collaboration on ecommerce-related issues, facilitate implementation of common commitments, foster the responsible growth of emerging technologies, and promote digital inclusion.

Especially pertinent for the Digital Protocol, in recent years, a growing number of governments have included in their free trade agreements dedicated ecommerce chapters. These have proliferated since the formation of the U.S.-Korea FTA in 2014 and the CPTPP in 2018; some examples include the Chile-Uruguay FTA of 2019, Australia-Peru FTA, U.S.-Mexico-Canada Agreement (USMCA) of 2020, and UK-Australia of 2021. Recent agreements between the United Kingdom and Singapore, and between South Korea and Singapore, are specifically dedicated to addressing and promoting data flows, digital innovations, digital standards, and technical regulations.

Ecommerce chapters in these agreements typically include sophisticated provisions to facilitate cross-border data flows, ban server localization, protect source code, and promote data privacy and consumer protection (table I; Appendix I). The language of the provisions is practically the same across these agreements; thus, a global template of high-standard digital trade rules is effectively in place. Since African companies are also trading with extra-regional vendors and clients, and as online sellers are likely to diversify to extra-regional markets (and one day may call for deeper extra-regional agreements in the areas of digital trade), it is useful to aspire to some level of convergence between the AfCFTA ecommerce protocol and the various chapters, protocols, and agreements that are already in place around the world.³

Table I: Digital Trade Provisions in Leading Trade Agreements

Provision	Korea-U.S. FTA (2011)	CPTPP (2018)	Chile-Uruguay FTA (2018)	USMCA (2019)	U.S.-Japan DTA (2020)	RCEP (2020)	DEPA (2020)	SADEA (2020)	UK-Australia FTA (2021)	UK-New Zealand FTA (2022)	UK-Singapore Digital Economy Agreement (2022)	Korea-Singapore Digital Partnership Agreement (2021)
Moratorium on customs duties on electronic transmissions and digital products	●	●	●	●	●	○	●	●	●	●	●	●
Non-discriminatory treatment for digital products	●	●	●	●	●		●	●	●	●		●
Ban on data localization (localizing “computing facilities” such as servers)		●	●	●	●	○	●	●	●	●	●	●
Free cross-border transfer of data of personal information	○	●	●	●	●	○	●	●	●	●	○	●
Protect consumers’ personal information		●	●	●	●	○	●	●	●	●	●	●
Consumer protection laws preventing deceptive commercial activities	○	●	●	●	●	○	●	●	●	●	●	●
Measures against spam or unsolicited messages		●	●	●	●	○	●	●	●	●	●	●
Prohibit forced transfer of source code as a condition for market access		●	●	●	●			●	●		●	●
Collaboration on cybersecurity management		●	●	●	●	○	●	●	○	●	●	●
Safe harbor for internet intermediaries				●	●							
Open government data				●	●		●	○	○	○	○	○
Interoperable electronic invoicing							○	○	○	○	○	○
Interoperable electronic payments system							○	○	○	○	○	○
Interoperable digital identities							○	○	○	○	○	○
Cooperation in fintech sector							○	○	○	○	○	○
AI governance							○	○	○	○	○	○
Data innovation									○		○	○
Digital innovation and emerging technologies										○	○	
Logistics best practices											○	○
Standards and technical regulations											●	●
Open internet access to consumers											●	●
Cooperation on digital inclusion							●	●	●	●		

● Binding ○ Best endeavor ○ Non-binding

Source: Suominen (2022): <https://www.csis.org/analysis/implications-european-unions-digital-regulations-us-and-eu-economic-and-strategic>

The second consideration African countries should take into account in the adoption of common digital trade rules is the availability of emerging empirical evidence on the impact of regional digital regulations put in place some time ago in other markets. For example, research on highly demanding data privacy and transfer regimes such as the European Union’s General Data Protection Regulation (GDPR)

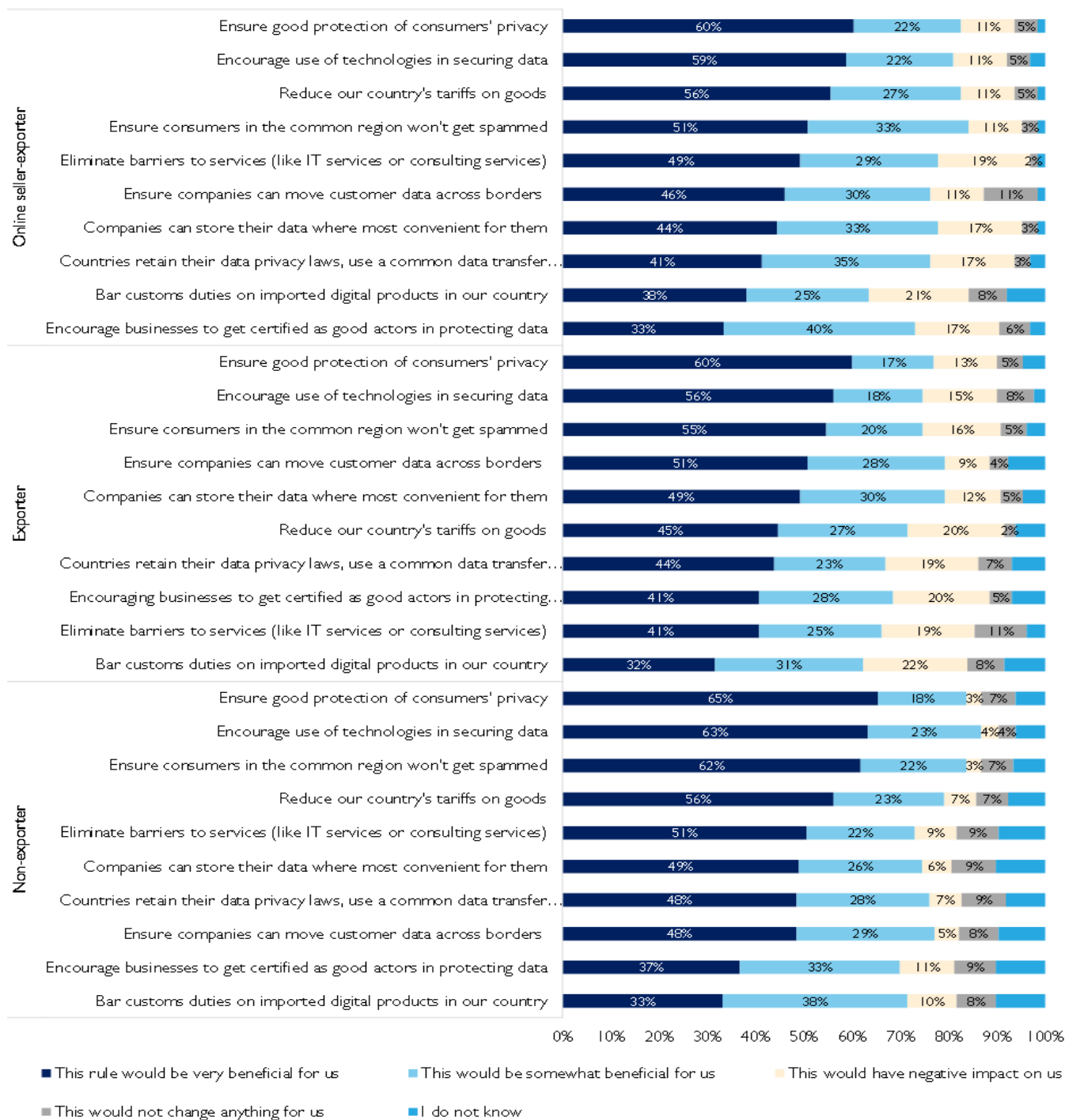
suggests that overly stringent or complex regulatory protocols can entail significant new challenges both for the governments responsible for enforcing them and firms that must implement them.⁴ There is ample evidence on the negative economic effects of policies that limit firms' ability to move data across borders, require firms to store data on local servers, or establish burdensome liability regimes for user-generated content. There is also evidence on the positive effects of policies, such that facilitate digital invoicing and cross-border interoperability of digital payments.

Third, and most powerfully, African businesses have a vested interest in the types of rules that have already been put in place around the world. For example, vast majorities of African firms agree that common regional ecommerce provisions akin to those in the CPTPP and USMCA would be positive for their businesses, and thus facilitating the interoperability of the diverse national digital policy regimes is preferable (figure 5).

In addition, it is important to consider policies that address emerging and leading-edge technologies such as the cloud and AI. As African companies and governments engage in a digital transformation and look for cloud-based solutions, the AfCFTA Digital Protocol could promote common norms on cloud computing, such as to ensure foreign cloud service providers are not discriminated against in terms of licensing, procurement or other laws, prevent cloud service provider lock-in, and promote cross-country interoperability.

Common AI regulations will be important at the time when AI applications are permeating all parts of the economy, such as to ensure national AI regulations contain anti-discrimination provisions, adopt risk-based AI governance principles, support public access to and use of government data sets for the design, development, and deployment of AI applications, ensure data provenance and attribution, and enable interoperability in AI governance with other nations.

Figure 5: African firms' views of selected ecommerce-related provisions in the CPTPP and USMCA, by type of seller



Source: Suominen and Vambell (2021): <https://www.allianceforetradedevelopment.org/data-transfer-in-africa>

IV. AFCFTA'S IMPLEMENTATION AND MONITORING

A key consideration for the success of the Digital Protocol is rigorous implementation. Africa has various prior experiences in seeking common rules in digital issues, for example on data privacy rules – some efforts have worked, while others have been less successful, as countries have neglected to ratify or implement common agreements. To be successful and credible, the AfCFTA Digital Protocol will need to include binding disciplines in core areas backed by a dispute settlement mechanism and be accompanied by technical assistance for African countries to implement the agreement.

In addition, AfCFTA members could also break new ground globally by agreeing to monitor the implementation of the Digital Protocol, for example through:⁵

- Annual technical reviews of members' progress on implementing the agreement.
- Regular public-private dialogues to harvest African businesses' views on the impacts of the Protocol on their operations and trade. One example is the Korea-Singapore Digital Economy Partnership agreement concluded in December 2021, which calls for a "Digital Economy Dialogue" among the member governments and other interested stakeholders, such as researchers, academics, and industry representatives.
- An annual survey of businesses - both SMEs and large corporations - in the member countries on their views on implementation.
- An analysis and discussion on emerging good digital policies and practices in Africa that support the Protocol's goals.
- Dialogue on potential improvements in the methodologies to measure members' implementation of their commitments—specifically, ways to access data on a broad spectrum of SMEs and technology companies that are using the Digital Protocol.

This process could be carried out through the establishment, as done in the CPTPP, of a Digital Trade Committee that is tasked entirely to monitor the implementation of the Digital Protocol.

V. CONCLUSION

The AfCFTA Digital Protocol is a historic step and opportunity for African countries to promote cross-border e-commerce and trade, foreign investment into Africa's technology sectors, and digital inclusion.

The Protocol would be optimally designed to advance these aims, align with similar agreements in other parts of the world, and its implementation monitored and discussed among the African governments and private sector on an ongoing basis.

APPENDIX I:

EXAMPLES OF DIGITAL TRADE PROVISIONS IN REGIONAL INTEGRATION SCHEMES AND FREE TRADE AGREEMENTS

African countries have been adopting domestic digital regulations that enable ecommerce, such as digital signatures and electronic transactions laws, and, to various degrees, data privacy, consumer protection, online copyright, and ecommerce taxation laws. As African economies look to promote intra-regional ecommerce and regional digital integration, they can learn from the work that has already been pursued by other regional integration groupings. For example:

- **Association of Southeast Asian Nations (ASEAN)** consisting of ten members has long focused on ecommerce development, including to enable MSME ecommerce. The region is implementing the 2017-25 ASEAN Work Program on Ecommerce, which includes mandates for the ASEAN sectoral bodies on digital infrastructures, consumer protection, secured transactions, and trade logistics. The ASEAN Economic Community Blueprint 2025, Masterplan on ASEAN Connectivity 2025, and the Digital Integration Framework Action Plan (DIFAP) support specific aspects of cross-border ecommerce in the region, such as electronic payments, trade facilitation, and convergence of national commerce-related regulations. These build on a visionary set of documents such as the 2015 AEC Blueprint which established a roadmap for policy and legal reforms to enable ecommerce in the region and to implement the e-ASEAN Framework Agreement of November 2000.⁶ Also ongoing is the implementation of the ASEAN Strategic Action Plan on SME Development 2016-2025, which covers several topics pertinent to MSMEs' ecommerce development. Some ASEAN members also participate in deep trade agreements with binding ecommerce provisions, such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), to open new ecommerce opportunities for firms in their economies.
- **ASEAN Agreement on Electronic Commerce** aims to facilitate cross-border ecommerce transactions in the ASEAN region through creating an environment of trust and confidence in the use of ecommerce; deepening cooperation among member states to promote the use of ecommerce and narrow development gaps in the region; enabling a legal and regulatory environment that is conducive to ecommerce development and a competitive business environment; and cooperation in areas such as ICT infrastructure, technological skills, online consumer protection, legal and regulatory frameworks, electronic transaction security, including protection of online personal information, electronic payments and settlement, trade facilitation, IP rights, competition policy, cybersecurity, and ecommerce logistics. In September 2021, ASEAN adopted a Work Plan on the Implementation of the ASEAN Ecommerce Agreement 2021-2025, and a commitment to launch a study on an ASEAN Digital Economy Framework Agreement whose negotiations are expected to be launched before 2025.
- **ASEAN Model Clauses and Data Management Framework (DMF)**. In January 2021, the Association of Southeast Asian Nations (ASEAN) approved “model contractual clauses” for cross-border data flows. Known as the ASEAN Model Clauses, these are voluntary and aim to get businesses in the ASEAN region to adopt key data protection obligations and reduce compliance costs. They apply to controller-to-controller transfers and controller-to-processor

transfers and are described in guides that are easy to understand. Each ASEAN country's national regulators are to promote the Model Clauses and the ASEAN DMF also of January 2021, which supports the region's firms' compliance with data privacy laws. For example, the DPA for Singapore encourages organizations in the country to use the DMF and the ASEAN Model Clauses to meet the requirements for international transfer under Singapore's Personal Data Protection Act.⁷

- The 21-country **Asia-Pacific Economic Cooperation (APEC)** has various workstreams on digital policies and trade, and has created the Cross-Border Privacy Rules (CBPR) system, a government-backed data privacy certification that private companies voluntarily join to demonstrate compliance with international data privacy protections. Unlike EU's General Data Protection Regulation (GDPR), CBPR does not replace or change a country's domestic data privacy laws and regulations, nor does it determine whether a country's privacy protections are "adequate." CBPR is recognized by Australia, Canada, Japan, Mexico, the Philippines, South Korea, Singapore, Taiwan, and the United States. Several others such as Indonesia, Chile, Vietnam and Malaysia are said to be actively considering CBPR membership.
- **Southern Common Market (Mercosur)** consisting of Argentina, Brazil, Paraguay, and Uruguay issued in April 2021 an ecommerce agreement, committing to such common policies as free cross-border transfers of data required for commercial activities, protection of ecommerce users' personal data, and promotion of self-regulation in the private sector.⁸ The members also banned duties on electronic transmissions.
- **Pacific Alliance** consisting of Chile, Colombia, Mexico and Peru have since 2017 been working on a common digital economy agenda. They have among other things assessed the opportunities and barriers associated with ecommerce, worked on the implementation of a common electronic signature, promoted interoperable e-government services, and exchanged experiences in the use of data and cybersecurity management. The member countries' customs and border agencies and relevant private sector actors have also recently worked on a common trade facilitation agenda for ecommerce.⁹ There is also ongoing work on promoting trade and integration in digital services.¹⁰

Table 4: Data transfer provisions in various regional groupings and trade agreements in the Asia Pacific and the Americas

Agreements or instrument	Contents related to data transfer	Other key commitments to members related to digital trade	Binding or voluntary	Member countries
APEC Cross-Border Privacy Rules (CBPR) system (2011)	<p>Free cross-border transfer of personal data among companies that have been CBPR-certified, specifically a recognized system to protect the data that is transferred across borders.</p> <p>Participating businesses like Apple, Box, HP, IBM, Lynda.com, Merck, Rimini Street, Workday, and Intasect develop and implement data privacy policies consistent with the APEC Privacy Framework.</p> <p>These policies and practices must be deemed compliant with the minimum program requirements of the APEC CBPR system by an accountability agent (the only US-based accountability agent is TRUSTe) and be enforceable by law.</p>	<ul style="list-style-type: none"> • Provide governments and organizations with a ready-built, internationally recognized framework to ensure adequate protection of personal information while enabling the secure flow of data 	Voluntary	<p>Australia Canada Japan Mexico Philippines South Korea Singapore Taiwan United States</p>
Comprehensive and Progressive Agreement for Trans-Pacific Partnership (2018)	<p>Parties are to allow the cross-border transfer of information, including personal information, by electronic means.</p> <p>Financial services data is exempted.</p> <p>Parties can adopt measures inconsistent with this rule to achieve a legitimate public policy objective, provided that the measure:</p> <p>(a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and</p> <p>(b) does not impose restrictions on transfers of information greater than are required to achieve the objective.</p>	<ul style="list-style-type: none"> • Put data privacy protections in place • Cooperation on consumer protection in ecommerce activities • Framework to prevent unsolicited commercial electronic messages • Promote cooperation on cybersecurity • Ban localization of computing facilities • Ban duties on electronic transmissions • Nondiscriminatory treatment of digital goods 	Binding	<p>Australia Brunei-Darussalam Canada Chile Japan Malaysia Mexico Peru New Zealand Singapore Vietnam</p>
United States-Mexico-Canada Agreement (2020)	<p>Parties are to allow the cross-border transfer of information, including personal information, by electronic means.</p> <p>Financial services data is exempted.</p> <p>Parties can adopt measures inconsistent with this rule to achieve a legitimate public policy objective, provided that the measure:</p> <p>(a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and</p> <p>(b) does not impose restrictions on transfers of information greater than are required to achieve the objective.¹¹</p> <p>Member States are to promote data privacy and can retain data privacy laws.</p> <p>APEC CBPR-consistent cross-border data transfers.</p>	<ul style="list-style-type: none"> • Put data privacy protections in place • Cooperation on consumer protection in ecommerce activities • Framework to prevent unsolicited commercial electronic messages • Promote cooperation on cybersecurity • Ban localization of computing facilities • Ban duties on electronic transmissions • Promote safe harbor laws for internet intermediaries • Nondiscriminatory treatment of digital goods 	Binding	<p>Canada Mexico United States</p>

Korea–United States FTA (KORUS) (updated 2019)	Parties shall endeavor to refrain from imposing or maintaining unnecessary barriers to electronic information flows across borders.	<ul style="list-style-type: none"> • Cooperation on consumer protection in ecommerce activities • Ban duties on electronic transmissions • Nondiscriminatory treatment of digital goods 	Binding	Korea United States
United States–Japan Digital Trade Agreement (2019)	<p>Parties are to allow the cross-border transfer of information, including personal information, by electronic means.</p> <p>Financial services data is exempted.</p> <p>Parties can adopt measures inconsistent with this rule to achieve a legitimate public policy objective, provided that the measure:</p> <p>(a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and</p> <p>(b) does not impose restrictions on transfers of information greater than are required to achieve the objective.</p>	<ul style="list-style-type: none"> • Put data privacy protections in place • Cooperation on consumer protection in ecommerce activities • Framework to prevent unsolicited commercial electronic messages • Promote cooperation on cybersecurity • Ban localization of computing facilities • Ban duties on electronic transmissions • Promote safe harbor laws for internet intermediaries • Nondiscriminatory treatment of digital goods 	Binding	Japan United States
Digital Economic Partnership Agreement (2020)	<p>Parties are to allow the cross-border transfer of information, including personal information, by electronic means.</p> <p>Financial services data is exempted.</p> <p>Parties can adopt measures that are inconsistent with this rule to achieve a legitimate public policy objective, provided that the measure</p> <p>(a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and</p> <p>(b) does not impose restrictions on transfers of information greater than are required to achieve the objective.</p>	<ul style="list-style-type: none"> • Put data privacy protections in place • Cooperation on consumer protection in ecommerce activities • Framework to prevent unsolicited commercial electronic messages • Promote cooperation on cybersecurity • Ban localization of computing facilities • Ban duties on electronic transmissions • Cooperation on interoperable digital identities, electronic invoicing, electronic payments, and in such areas as AI governance and digital inclusion 	Binding	Singapore Chile New Zealand
Singapore–Australia Free Trade Agreement (SAFTA) (2017) and Singapore–Australia Digital Economy Agreement (SADEA) (2020)	<p>Parties are to allow the cross-border transfer of information by electronic means, including personal information.</p> <p>Parties can adopt measures that are inconsistent with this rule to achieve a legitimate public policy objective, provided that the measure</p> <p>(a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and</p> <p>(b) does not impose restrictions on transfers of information greater than are required to achieve the objective.</p>	<ul style="list-style-type: none"> • Put data privacy protections in place • Cooperation on consumer protection in ecommerce activities • Framework to prevent unsolicited commercial electronic messages • Promote cooperation on cybersecurity • Ban localization of computing facilities • Ban duties on electronic transmissions • Nondiscriminatory treatment of digital goods • In 2020, MOUs on: AI, data innovation, digital identities, personal information protection, e-invoicing, trade facilitation, and e-certification of agricultural commodities 	Binding	Singapore Australia

Regional Comprehensive Economic Partnership (RCEP) (2020)	<p>Parties are to allow the cross-border transfer of information by electronic means, including personal information Financial services data is exempted.</p> <p>Parties can adopt measures inconsistent with this rule to achieve a legitimate public policy objective, provided that the measure (a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and (b) does not impose restrictions on transfers of information greater than are required to achieve the objective.</p> <p>However, members can exempt themselves at will from the ban on data localization to protect their “essential security interests.”</p>	<ul style="list-style-type: none"> Put data privacy protections in place Cooperation on consumer protection in ecommerce activities Framework to prevent unsolicited commercial electronic messages Promote cooperation on cybersecurity Ban localization of computing facilities Ban duties on electronic transmissions 	Agreement is binding, but ecommerce chapter is carved out and not subject to dispute settlement, rendering it nonbinding	<p>Brunei Darussalam Cambodia Indonesia Laos Malaysia Myanmar Philippines Singapore Thailand Vietnam</p> <p>Australia China Japan Korea New Zealand</p>
ASEAN approved “model contractual clauses” (2021)	Free cross-border transfer of personal data, with templates setting out responsibilities, required personal data protections, and related obligations of the parties.	<ul style="list-style-type: none"> Establish contractual terms and conditions that may be included in the binding legal agreements between parties transferring personal data to each other across borders 	Voluntary	<p>Singapore Brunei Cambodia Indonesia Lao Malaysia Myanmar Philippines Thailand Vietnam</p>
Southern Common Market (Mercosur) Ecommerce Agreement (2021)	<p>Parties are to allow the cross-border transfer of information by electronic means, including personal information.</p> <p>Parties can adopt measures inconsistent with this rule to achieve a legitimate public policy objective, provided that the measure (a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and (b) does not impose restrictions on transfers of information greater than are required to achieve the objective.</p>	<ul style="list-style-type: none"> Put data privacy protections in place Cooperation on consumer protection in ecommerce activities Framework to prevent unsolicited commercial electronic messages Promote cooperation on cybersecurity Ban localization of computing facilities Ban duties on electronic transmissions 	Binding	<p>Argentina Brazil Paraguay Uruguay</p>

Some key examples of trade agreements with ecommerce chapters include the following:

- **The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)** breaks new ground especially in freeing cross-border data flows and trade in digital goods, banning server localization, protecting consumer privacy, banning tariffs on trade in digital goods and “electronic transmissions,” and promoting consumer potential. CPTPP members have signed further trade agreements that adopt very similar ecommerce provisions to those included in the CPTPP, including the 2017 Singapore-Australia Free Trade Agreement (SAFTA), and the Chile-Uruguay FTA of 2018 and Chile-Argentina FTA of 2019 that incorporate practically word for word the CPTPP’s ecommerce chapter.
- **The U.S.-Canada-Mexico Agreement (USMCA)** includes similar and somewhat deeper provisions than CPTPP, for example pointing to CBPR as a common data transfer regime for the members, and also includes provisions on open government data and limits the liability of online platforms for user-generated content, for example ensuring that social media companies are not liable if users upload content that infringes copyrights.

- **Digital Economy Partnership Agreement (DEPA)** of 2020 between Singapore, Chile, and New Zealand, an important grouping of small economies that punch above their weight in global digital trade policymaking that originated CPTPP as TPP in 2005 (case I). DEPA includes similar provisions as CPTPP, but goes even further in calling for interoperable payments, digital identities, and invoicing; common e-procurement practices, open government data, and digital inclusion.
- In 2020, Singapore and Australia formed the **Singapore-Australia Digital Economy Agreement (SADEA)** which bolsters the existing digital trade provisions of the 2017 Singapore-Australia Free Trade Agreement and echoes DEPA. CPTPP's digital trade provisions were originally largely crafted by the United States and partly inspired by the U.S.-Korea FTA – and they are mirrored in the U.S.-Mexico-Canada Agreement (USMCA), which includes even more robust rules on the governance of data transfer.
- **The Regional Comprehensive Economic Partnership (RCEP)** signed in November 2020 between seven CPTPP signatories (Australia, Brunei, Japan, Malaysia, New Zealand, Singapore and Vietnam) and Cambodia, China, Indonesia, Laos, Myanmar, the Philippines, South Korea, and Thailand has a very similar digital trade chapter as CPTPP – however, major elements such as commitment to free cross-border data flows, ban on server localization, and dispute settlement on digital trade are not binding or subject to the agreements' dispute settlement provisions. In addition, members can exempt themselves at will from the ban on data localization to protect their “essential security interests”. RCEP also has a generous grace period for the less developed countries and a problematic permission to members to

Case I - Next generation digital integration – for Africa as well? Learning from the Digital Economic Partnership Agreement (DEPA)

The Digital Economic Partnership Agreement (DEPA) of 2020 between Singapore, New Zealand, and Chile can offer a blueprint also for Central America, of forward-looking digital policies. Like most digital trade chapter and agreements, DEPA includes:¹²

- **Moratorium on customs duties** on electronic transmissions.
- Strong data privacy and consumer protection rules.
- Free transfer of data across borders.
- **Interoperable digital identities:** Promote the interoperability between their respective regimes for digital identities.
- **Interoperable electronic invoicing:** Ensure implementation of e-invoicing in their own countries and promote the global adoption of interoperable e-invoicing systems, sharing best practices and collaborating on promoting the adoption of interoperable systems for e-invoicing.
- **Interoperable cross-border electronic payments:** Support the development of efficient and secure cross-border electronic payments, including by fostering the adoption and use of internationally accepted standards, promoting interoperability and the interlinking of payment infrastructures.
- **Innovation in payments:** Cooperate to foster innovation and competition in the payments ecosystem.

- **Fintech innovation:** Promote cooperation among parties' Fintech sectors and the development of Fintech solutions for business or financial sectors.
- **AI governance:** Promote the adoption of ethical and governance frameworks that support the trusted, safe and responsible use of AI technologies.
- **eProcurement.** Cooperation on how the use of technology enabled government procurement processes impact existing and future international government procurement commitments
- **Digital inclusion:** Cooperation on the participation of women, rural populations, low socio-economic groups and Indigenous Peoples in the digital economy.
- **Digital SME Dialogue:** Digital SME Dialogue with governments, private sector, non-government organizations, academic experts and other stakeholders from each Party.

The Singapore-Australia Digital Economy Agreement (SADEA) of 2020 echoes DEPA and bolsters the existing digital trade provisions of the 2017 Singapore-Australia Free Trade Agreement. SADEA also includes seven MOUs to operationalize the DEA modules in AI, data innovation, digital identities, personal information protection, e-invoicing, trade facilitation and e-certification on agricultural commodities.

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³ Suominen

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⁹ Customs Administrations, border agencies and private sector’s representatives, was a unique opportunity for participants to exchange good practices in the implementation of measures aimed at facilitating e-Commerce in the region and learn the challenges and recommendations identified from the private sector.

¹⁰ <https://alianzapacifico.net/en/world-bank-supports-internationalization-of-service-smes-of-the-pacific-alliance/>

¹¹ USMCA adds a clause that “A measure does not meet the conditions of this paragraph if it accords different treatment to data transfers solely on the basis that they are cross-border in a manner that modifies the conditions of competition to the detriment of service suppliers of another Party.”

¹² See “ Digital Economy Partnership Agreement (DEPA),” <https://www.mti.gov.sg/-/media/MTI/Microsites/DEAs/Digital-Economy-Partnership-Agreement/Text-of-the-DEPA.pdf>