

Trade in Services

Update on the AfCFTA

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Overview

- What are services and how are they traded?
- *Digital trade: digitally ordered and digitally delivered trade*
- Services regulation: ***sector regulation and economy-wide regulation (including investment and competition regulation)***
- ***AfCFTA trade in services agenda - update***
- Keep in mind also: **Protocol on Digital Trade (closely connected to trade in services)**

Definitions



Digital trade is defined as encompassing “digitally-enabled transactions of trade in goods and services that can either be digitally or physically delivered, and that involve consumers, firms, and government.” (OECD)

A **digitally enabled transaction** is a transaction enabled by the internet. The term defines a broad range of transactions beyond those in traditional e-commerce where products are purchased on a web shop and physically shipped. Examples include mobile app purchases the purchase of software services purchases made within online games.

Physical delivery includes postage, courier, self-collection, or a third-party distribution point whereas **digital delivery** can take place through downloading, streaming, or accessing of cloud services. The digitally-enabled transaction may not include either type of delivery in the case of **non-digital services** such as ride-hailing or cleaning services where the buyer receives the value offline.

Digital Trade: Overview

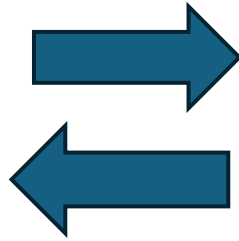
<https://www.tralac.org/documents/resources/booklets/5586-digital-trade-in-africa-tralac-guide-september-2024/file.html>



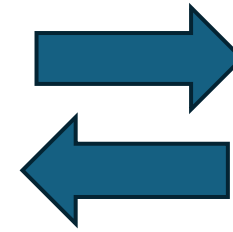
Services, trade in services - role in digital trade (digitally ordered trade/ecommerce)



Trade In Goods



Trade In Services



Digital Trade



Delivering for e-commerce

Trade Facilitation:
Beitbridge border post

Services in your business



Trade
facilitation



Services -
regulation
matters

How services are traded

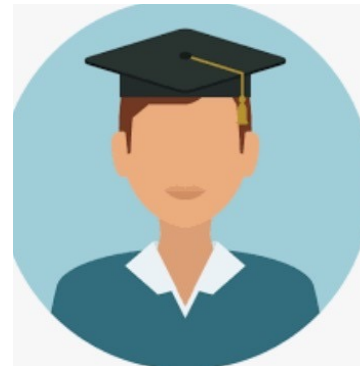
Supply of a service from the territory of one Member State into the territory of any other State Party – tech/digitally supplied

Mode 1: cross-border supply



Person from one Member State travels to consume a service in the territory of another State Party

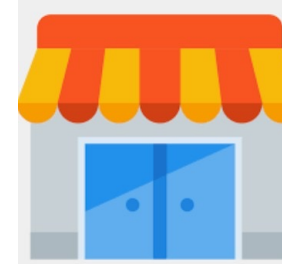
Mode 2: consumption abroad



How services are traded: Modes of supply

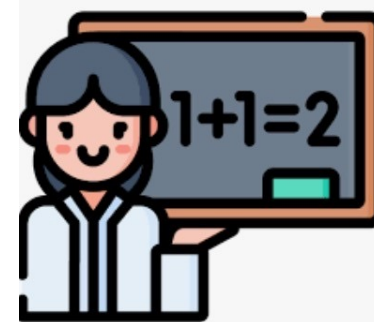
Establishment of commercial presence in a foreign territory by a service supplier – to supply services in that territory e.g. as a branch of a bank, agency, or wholly-owned subsidiary

Mode 3: establishment of commercial presence



Services supplier enters a foreign territory (temporary stay) to supply of a service in that territory (lawyer, architect, teacher)

Mode 4: temporary presence of natural persons to deliver services

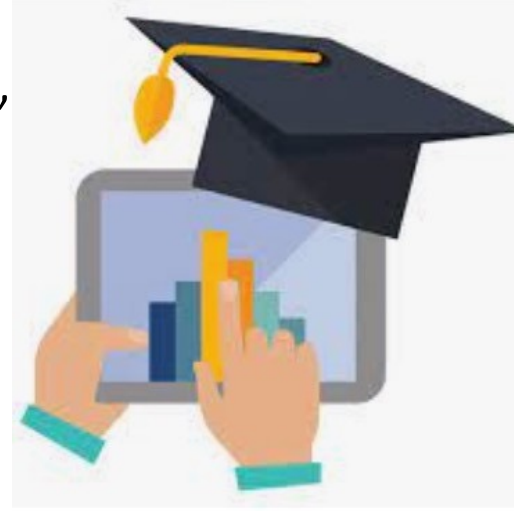


Trade in Services in the AfCFTA

Priority Services Sectors: Financial services, Tourism, Transport services, and Communication services and Business services

State Parties can - and will - add other sectors, including: **distribution**, education and healthcare, construction....

Note: WTO Compatibility (GATS Article V – substantial sectoral coverage) – 12 sectors in total



12 Sectors

- 1.**Business Services**: Includes professional services: legal, accounting) and computer services.
- 2.**Communication Services**: Services related to telecommunications and postal and courier services.
- 3.**Construction and Engineering Services**: Services provided in construction projects.
- 4.**Distribution Services**: Services such as wholesale and retail trade, franchising.
- 5.**Educational Services**
- 6.**Environmental Services**: Services related to the protection of the environment.
- 7.**Financial Services**: Including banking and insurance.
- 8.**Health-related and Social Services**: Services provided in hospitals, clinics, and other health facilities.
- 9.**Tourism and Travel-related Services**: Hospitality and travel-related services.
- 10.**Recreational, Cultural, and Sporting Services**: Services related to leisure activities.
- 11.**Transport Services**: Maritime, air, and road transport.
- 12.**Other Services**: not covered elsewhere

Africa's Regional Economic Communities (RECs) – some also have trade in services agenda

Eight RECs are recognised by the African Union as building blocks for the African Economic Community (AEC) – this is outlined in the Abuja Treaty (1991). They are:

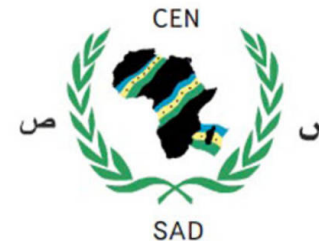
- Arab Maghreb Union (AMU)



- Common Market for East and Southern Africa (COMESA)



- Community of Sahel-Saharan States (CENSAD)



- East African Community (EAC)



- Economic Community of West African States (ECOWAS)



- Economic Community of Central Africa States (ECCAS)



- Intergovernmental Authority on Development (IGAD)



- **Southern African Development Community (SADC)**



- In addition to these RECs, there are others such as the Southern African Customs Union (SACU) which is the oldest customs union in the world

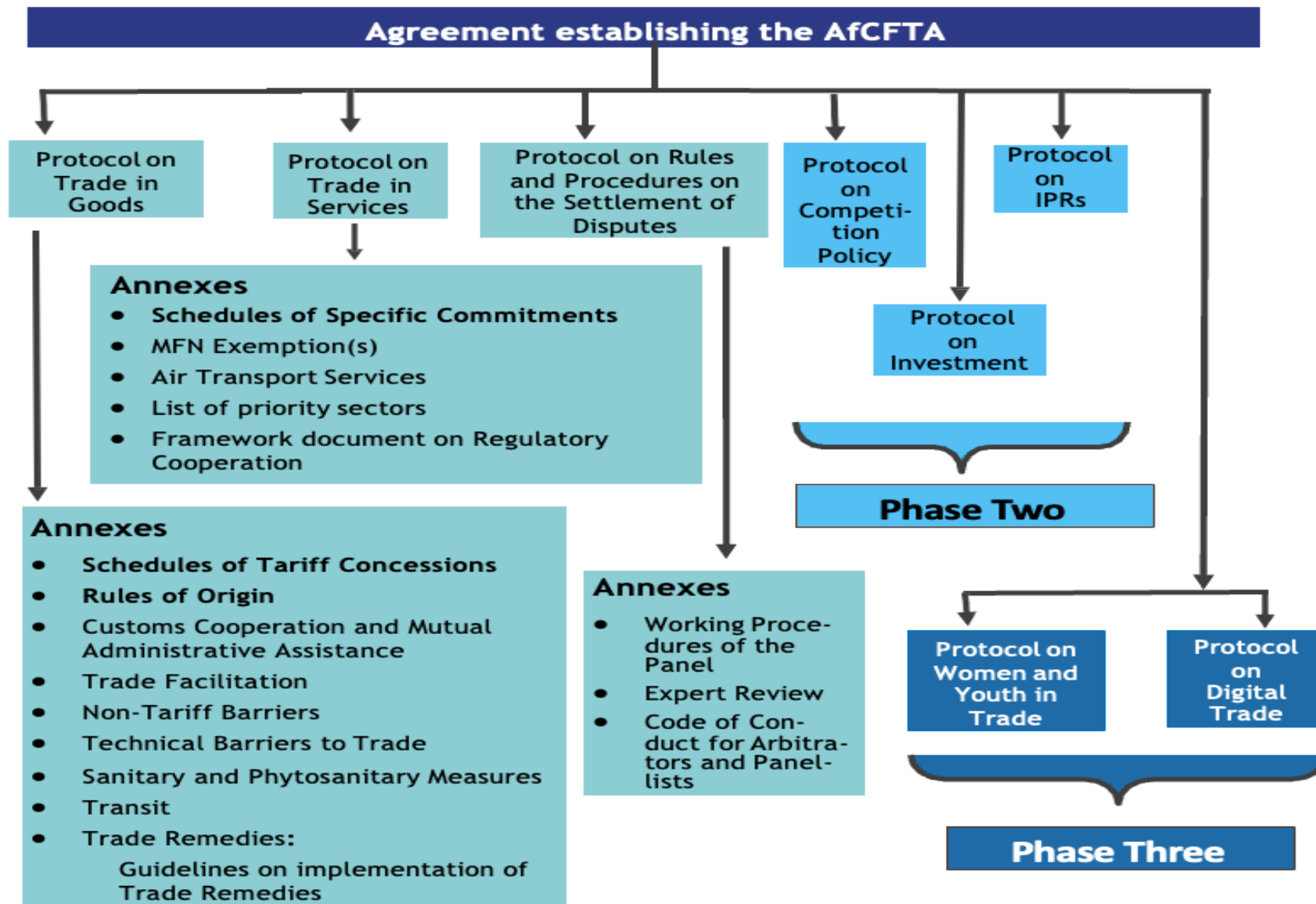


AfCFTA Protocol on Trade in Services

What is covered (Scope of Application (Art 2))

...any service in any sector except services supplied in the exercise of governmental authority.... (ie any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers)

The AfCFTA: many legal instruments



General Obligations – select provisions

Art 4 – MFN (not about favours – but about treating all equally - no discrimination)

- Any *measure* introduced by one State Party provides a benefit to services and service suppliers of any third country - that benefit should be extended to all State Parties
- *If there is a pre-existing measure or preference a State Party shall not be obliged to extend preferences agreed with any third party prior to the entry into force of the Protocol, of which that State Party was a member or a beneficiary. However, the State Party may afford opportunity to the other State Parties to negotiate the preferences granted therein, so long as this is on a reciprocal basis.*

Art 5 – Transparency

Obligated to publish promptly all relevant measures in a medium that is accessible affecting market access and national treatment or operation of the Protocol

Domestic Regulation (Art 9)

Member states retain the *right to regulate* but do not abuse this to impair rights and obligations arising under Protocol; for specific commitments general measures must be reasonable, transparent and impartial administration

Note: Development of Regulatory Frameworks (cooperation and hopefully harmonisation) Financial, Transport, Communication Services (currently being developed)

Mutual Recognition (Art 10)

- Recognise the education or experience obtained, requirements met, or licenses or certifications granted in another State Party.
- **Not on MFN basis** - **reciprocity** (opportunity to negotiate) – bilateral agreements to recognise e.g. qualifications, experience and professional registration

More provisions

Anti-competitive business practices (Art 12)

General obligations on State Parties to ensure that **monopoly and exclusive service suppliers do not engage in anti-competitive practices**, and to open consultation channels with other State Parties with a view to eliminating such practices

Payments and Transfers (Art 13)

State Parties obliged not to apply restrictions on international transfers and payments for current transactions relating to its specific commitments EXCEPT in event of serious balance of payments or external financial difficulties.

Conclusions

- Services play a very important role in all our business, in our daily lives (e.g. communication services provides access to financial services, including cross-border payments, to education/training..... with no borders, but regulations matter)
- Services contribute to our country's economic performance: employment, economic activity (GDP), facilitate trade in goods, digital trade and can be traded

Keep in mind: when you have a digital presence, you are visible to ALL (no boundaries) – you are open for international trade!