

DIGITAL TRADE REGULATORY INTEGRATION

COUNTRY PROFILE

Zambia



INTRODUCTION

The African Trade Policy Centre of the United Nations Economic Commission for Africa (ECA) has embarked on a Digital Trade Regulatory Integration (DTRI) initiative with four primary objectives:

- Provide information on digital services trade regulations that could facilitate the negotiation and implementation of the African Continental Free Trade Area (AfCFTA) Protocol on Digital Trade.
- Inform the development of a digital trade integration index that could become a component of the Africa Regional Integration Index.¹
- Inform the addition of African countries to the Digital Services Trade Restrictiveness Index (Digital STRI), as developed by the Organisation for Economic Co-operation and Development.
- Offer a solid basis for further analytical work by ECA and others on digital trade.

The DTRI initiative researches the legal and regulatory environment associated with digital trade and will help African countries bet-

ter understand and address barriers to the growth and development of digital trade and e-commerce. Addressing the issues DTRI identifies will help promote digital trade and e-commerce and make it a more plausible choice for commercial transactions between businesses and consumers.

This country profile is based on observations from two datasets developed from the DTRI initiative. The first includes information on restrictions to digital services trade from 2014 to 2021 and is modelled after the Digital STRI. The second covers measures related to digital trade integration, beginning with the effective date of each measure, and reflects the latest available information. The legal and regulatory measures researched are categorized into policy areas in both digital services trade restrictions and digital trade integration, and the results are presented in the corresponding section of the profile. Where policy areas overlap, the profile presents results only once, to the extent possible.

This country profile presents the key findings for Zambia.

¹ See <https://arii.uneca.org/>.

CONTEXT



Zambia's legal and regulatory framework for digital services trade is evolving. Lawmakers are trying to balance the desire for innovation and acceleration of digital services against the need for national security and consumer protection. In addition, lawmakers are trying to keep up with the growing number of digital innovations that need to be regulated and taxed. Due to fiscal pressures, the government is considering taxing undertaxed or nontaxed services, such as mobile money, which could impede digital trade. A new government elected in August 2021 has committed to increasing access to and use of digital services, and a minister of technology and science has been appointed to oversee this charge.

Global events such as the Covid-19 pandemic have forced the government to shift its thinking about the digital economy in several ways. The use of digital services has increased exponentially, from financial ser-

vices to delivery services. Entrepreneurs, local and foreign, have used the internet to venture into different types of businesses to serve the domestic market. The costs of digital services infrastructure and accessing the internet, however, remain prohibitive.² In light of the rising use of e-commerce and digital payments since the imposition of Covid-19, the government has increased its rhetoric on use of the digital economy to strengthen the overall economy.

The SMART Zambia Initiative is meant to direct the government's efforts to digitalize. The Bank of Zambia has long been a proponent of Zambia being more of a cashless economy, which would strengthen payments through the national switch. The government is working to create an e-commerce strategy, but such strategies tend to take a long time to roll out because of the need for stakeholder engagement, consensus building and financing.

RESTRICTIVENESS OF THE REGULATORY REGIME FOR DIGITAL SERVICES TRADE

To assess the degree of restrictiveness among digital services trade in Botswana, an in-depth review of policies, legislation and regulations on digital services trade restrictions was conducted under the five pillars of the Digital STRI:

- Infrastructure and connectivity.
- Electronic transactions.
- Payment systems.
- Intellectual property rights.
- Other barriers affecting trade in digitally enabled services.

Infrastructure and connectivity

The Zambia Information Communications and Technology Authority (ZICTA) determines interconnection in the telecommunications sector. ZICTA publishes a list of dominant firms in the market. Over the years, dominance has fluctuated between MTN and Airtel, with Zamtel dominating in voice. There are no restrictions on the use of communications services.

Electronic transactions

There are no special licenses for engaging in e-commerce or discriminatory practices favouring local businesses over foreign businesses.

Payment systems

The payment system is regulated by the Payment Systems Act of 2007.³ In addition, the Payment Systems Strategy 2018–2022⁴ guides the sector through goals for the growth of electronic payments. The national switch is now in place, which provides for interoperability. Due to the increased restrictions to access brick and mortar facilities, Covid-19 accelerated the shift to e-payments.

Intellectual property rights

Zambia is not a member of the Berne Convention for the Protection of Literary and Artistic Works. The Copyright and Perform-

³ <https://www.boz.zm/NationalPaymentSystemAct2007.pdf>.

⁴ <https://www.boz.zm/payment-systems-vision-and-strategy.htm>.

mance Rights Act and the Trade Mark Act protect intellectual property rights locally.

Other barriers affecting trade in digitally enabled services

In addition to non-tariff barriers, the government has threatened arbitrary decisions related to taxation of social media. For example, in August 2018, the government used a statutory instrument to impose a social media tax (including on voice over internet protocol) of 30 ngwee a day.⁵

⁵ <https://cipesa.org/2018/08/zambia-introduces-daily-tax-on-internet-voice-calls/>.

INDICATORS OF DIGITAL TRADE INTEGRATION

This section discusses measures related to the level of digital trade integration in Zambia. The regulatory regime of digital trade integration was assessed under 11 pillars:

- Tariff and trade defence on measures applied to intraregional imports of information and communications technology (ICT) goods.
- Public procurement of digital goods and services.
- Foreign direct investment for digital trade.
- Intellectual property rights.
- Telecommunications infrastructure and competition.
- Cross-border data policies.
- Domestic data policies.
- Intermediary liability and content access.
- Quantitative trade restrictions.
- Standards.
- Online sales and transactions.

Since the findings for some of these pillars are discussed in the previous section on Digital STRI, to the extent possible, a duplicative discussion is avoided in this section.

Foreign direct investment

Zambia is considered a liberal jurisdiction with respect to foreign investment because there are no restrictions on what foreigners can buy or own in digital services trade or other sectors. The government encourages foreigners to invest by providing tax incentives and special economic zones, which provide even more incentives. The relevant laws and policies that govern foreign investments are the Companies Act of 2017,⁶ the Zambia Development Agency Act 2017,⁷ the National Local Content Strategy 2018–2022⁸ and the Information and Communication Technologies Act of 2009.⁹

6 <https://osall.org.za/docs/2019/07/Zambia-Companies-Act-10-of-2017.pdf>.

7 <https://www.zicta.zm/storage/posts/attachments/kdY43PezHP2RGpGw6r3Uqvvp2PkednPKsLXSwJv9.pdf>.

8 https://www.mcti.gov.zm/?wpfb_dl=21.

9 <https://www.parliament.gov.zm/sites/default/files/documents/acts/Information%20and%20Communication%20Technologies%20Act%2C%202009.pdf>.

Cross-border data policies

Zambia previously regulated data privacy and protection under the Electronic Communications and Transactions Act of 2009. Following enactment of the Electronic Communications and Transactions Act of 2021¹⁰ and the Data Protection Act of 2021,¹¹ a framework is now in place. The act requires the consent of the data owner to use their data, domestically or abroad. There are no restrictions on data transfer, local processing, local storage or infrastructure requirements.

Domestic data policies

Several laws regulate domestic data policies. The Data Protection Act of 2021¹² regulates the collection, use and processing of personal data, and the Cyber Security and Cyber Crimes Act of 2021¹³ regulates behaviour on the internet. There is a broad consumer protection framework, and the banking sector has additional regulations related to the use and protection of customers' data.

Zambia has been a relatively accommodating jurisdiction for press freedom, including online publications. However, since 2017, the Zambian government has faced allegations from Freedom House and other nongovernmental organizations that its internet monitoring is becoming increasingly oppressive as a means of restricting the free speech of opposition leaders.

Intermediary liability and content access

While there is no specific law that restricts content access, there have been incidents since 2015 where the government has threatened to tax social media in order to restrict access. In light of high fiscal deficits, some commentators have argued that such proposed taxes were intended to increase revenue collection. Local media outlets were threatened and restricted for engaging in reporting that was viewed as anti-government. Nongovernmental organizations have continued to highlight such wrongs. Despite a constricted civic activism space, there have not been any threats to foreign-owned companies or their commercial interests in domestic or cross-border businesses.

10 https://www.parliament.gov.zm/sites/default/files/documents/acts/Act%20No.%204%20of%202021,%20The%20Electronic%20Communications%20and%20Transactions_0.pdf.

11 <https://www.parliament.gov.zm/node/8853#:~:text=An%20Act%20to%20provide%20an,data%20controllers%20and%20licencing%20of.>

12 <https://www.parliament.gov.zm/node/8853#:~:text=An%20Act%20to%20provide%20an,data%20controllers%20and%20licencing%20of.>

13 <https://www.parliament.gov.zm/node/8832>.

CONCLUSION AND RECOMMENDATIONS

From the research focused on the pillars of the Digital STRI and the regional digital trade integration component, the following can be concluded:

- Zambia's digital services industry is open and unrestrictive of foreigners and cross-border trade (for instance, no local or commercial presence is required). Despite a National Content Strategy, there are no cases of strict enforcement in the digital services sector.
- The financial services sector is more advanced than other sectors in regulation and supervision, including consumer protection. The national payment switch enables interoperability within payment systems, which has increased the use of digital channels.
- Zambia has the potential to increase digital trade, especially if it is able to build a more competitive digital economy. In that sense, Zambia ought to consider and act on the following:
 - Increase investment in and distribution of tower infrastructure in rural areas and reduce mobile network fees to lower costs. Challenges to the innovation and entrepreneurship ecosystem, such as costly access to fi-
- nance, high cost of internet, and unreliable power and thus internet, make it hard for businesses to grow.
- Increase policy and regulatory innovation to spur growth in digital services trade. The introduction of a regulatory sandbox, regulated by the Securities and Exchange Commission, is a step in the right direction in policy innovation.
- Expand local capacity to fulfil demand locally and abroad. While local and global e-commerce vendors are present in Zambia and local vendors sell locally and regionally, government, the development community and venture capitalists need to increase the digital capacity and skills of small and medium-size enterprises as a leverage to trade.
- Conduct information campaigns on the benefits of doing business in Zambia and the benefits of digital trade. Zambia is an attractive investment destination in many ways, such as the ease of registering foreign companies and strong intellectual property and other protections, but greater efforts are needed to inform potential investors.

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