

# DIGITAL TRADE REGULATORY INTEGRATION

## COUNTRY PROFILE

### **Namibia**





# 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.<sup>1</sup>
- 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 Namibia.

<sup>1</sup> See <https://arii.uneca.org/>.

# CONTEXT

Namibia is a small country with a population 2.58 million and a GDP of US\$10.7 billion.<sup>2</sup> In 2021, the country's trade in commercial services was valued at US\$413 million for services exports and US\$589 million for services imports.<sup>3</sup> The country is part of the Southern African Customs Union, along with Botswana, Eswatini, Lesotho, and South Africa, and a member of the Southern African Development Community and the African Union. Namibia has also ratified the African Continental Free Trade Area (Af-

CFTA). Within Namibia internet penetration is low, at 41 per cent of the population, indicating a need for more investment in broadband infrastructure. Internet penetration has a huge impact on trade in commercial services since a large proportion of trade in services has moved online. Limited internet access or expensive broadband connections will impede trade in digital services and the adoption of digital services within a country. Mobile penetration is also key in delivering digital services.

<sup>2</sup> Data from UNCTADStat.

<sup>3</sup> Data from UNCTADStat.



# 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 infrastructure and connectivity pillar is concerned primarily with interconnection regulations, vertical separation and cross-border data flows. Namibian regulations require interconnection among all carriers, subject to agreed interconnection rates and an approved interconnection permit by the regulator.<sup>4</sup> Vertical separation is not required, apart from accounting separa-

tion.<sup>5</sup> Namibia lacks a data protection regulation framework which means the country has no regulations governing cross-border data flows. In consideration of these requirements there are relatively few barriers to entry in the country's digital space.

Namibia currently places no restrictions on what digital services or products individuals are permitted to use. Connectivity depends mainly on the availability of broadband infrastructure. The International Telecommunications Union estimates that as of 2020, 69 per cent of the Namibian population was connected to the 3G mobile network and 39 per cent to the 4G mobile network.<sup>6</sup>

## Electronic transactions

Namibia does not restrict electronic transactions and e-commerce companies are not required to register separately. This means that establishing an e-commerce business is relatively easy, considering the payments infrastructure, regulations and internet penetration. While the Electronic Transactions

<sup>4</sup> [https://www.cran.na/wp-content/uploads/2019/12/Communications\\_Act\\_8\\_of\\_2009.pdf](https://www.cran.na/wp-content/uploads/2019/12/Communications_Act_8_of_2009.pdf).

<sup>5</sup> [https://namiblii.org/akn/na/act/2009/8/eng@2020-07-15#sec\\_54](https://namiblii.org/akn/na/act/2009/8/eng@2020-07-15#sec_54).

<sup>6</sup> <https://www.itu.int/en/ITU-D/Statistics/Dashboards/Pages/Digital-Development.aspx>.

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## DIGITAL TRADE REGULATORY INTEGRATION

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Act of 2019 allows for electronic signatures, Section 20 of the agreement covering electronic signatures is not yet in force.<sup>7</sup> Lack of enforcement may present a challenge to businesses and transactions that rely heavily on electronic signatures. As of 2019, online tax registration and declaration have been available to non-resident foreigners. The 2019 Bank of Namibia Risk-Based Oversight Policy Framework indicates that the Central Bank expects international standards to be followed, although no specific standards are noted.<sup>8</sup>

### Data governance profile

Key to a successful data-driven economy is an enabling regulatory environment based on a robust data governance framework. The absence of such a framework creates uncertainty in the market, limits participation and impedes development of a data-driven economy.

Namibia does not have a robust data governance framework. The Electronic Transactions Act of 2019, which came into force in March 2021, addresses some critical aspects of data that support digital governance, such as electronic signatures (not yet in force), consumer protection, contracts and liability of service providers for unlawful material.<sup>9</sup> However, it does not address a number of the most important aspects, including cross-border data flow, data localization, personal data protection and trade in digital products. This absence creates an un-

certain environment and limits investments in digital platforms, negatively affecting digital trade. Encouragingly, a draft bill on data protection has gone through consultations but as of this writing has not moved further. Finally, while there are no specific data protection policies or regulations, the Constitution of Namibia establishes privacy as a fundamental right.<sup>10</sup>

Namibia does not have any laws or regulations that require the localization of data by firms.

### Intellectual property rights

Namibia's intellectual property laws are outdated. They fail to deal with issues such as source code, encryption and trade secrets in the digital economy. The laws cover mainly traditional areas of intellectual property rights, such as patent and copyright laws. This is a particular deterrent to foreign companies that wish to establish operations in the country. Protection of intellectual property rights is essential to ensuring that a business's competitive advantage is not compromised by piracy of its source code, for example.

Cases of intellectual property piracy have been recorded in the country, though a comprehensive tally of the number of cases is not clear. These cases may reflect badly on enforcement and remedies available to affected parties. Strict enforcement regulations could reduce piracy.

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<sup>7</sup> <https://namiblii.org/index.php/akn/na/act/2019/4/eng%402019-11-29#>

<sup>8</sup> <https://www.bon.com.na/Bank/Payments-and-Settlements/Oversight/Risk-Based-Oversight-Policy-Framework.aspx>

<sup>9</sup> <https://namiblii.org/index.php/akn/na/act/2019/4/eng%402019-11-29#>

<sup>10</sup> <https://www.dataguidance.com/jurisdiction/namibia>

Namibia is a party to some international conventions on the protection of intellectual property rights of foreign companies that wish to do business in or with the country including The Bern Convention for the Protection of Literary and Artistic Works, World Intellectual Property Organization (WIPO) Copyright Treaty, WIPO Performances and Phonograms Treaty, Madrid International Trademarks System, and Patent Cooperation Treaty.

### **Other barriers affecting trade in digitally enabled services**

The following other barriers affecting trade in digitally enabled services are not found in Namibia:

- Performance requirements.
- Limitations to downloads and streaming.
- Restrictions on online advertising.
- Commercial and local presence required to provide cross-border services.

# INDICATORS OF DIGITAL TRADE INTEGRATION

This section discusses measures related to the level of digital trade integration in Namibia. 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.

## **Tariffs and trade defence mechanisms**

ICT products such as smart phones, tablets, laptops and desktop computers are essential in the delivery of and access to digital services and products. It is important that a country enhance access to these products to enable the provision of and universal access to digital services. Namibia does not have any import or export restrictions on ICT products. Furthermore, Namibia is a signatory to the World Trade Organization's (WTO) Information Technology Agreement (ITA) of 1996, which requires signatories to eliminate and bind customs duties to zero on a most favoured nation basis for a list of specified ICT goods. ITA II expands product coverage. This improves access to ICT products in the country at relatively affordable prices.

In addition, Namibia has no local content requirement to produce ICT-related products. This enables production of digital products without restrictions on their supply chain.

## Public procurement

The Public Procurement Act of 2015 allows preferential treatment of Namibian companies over foreign companies in public procurement.<sup>11</sup> Without explicitly identifying ICT goods and digital services, the act does mention goods, works or services in general as subject to this procurement preference. This is interpreted to be on a case-by-case basis. In addition, the Namibian Procurement Act does not include any requirements for firms to surrender patents, source codes or trade secrets to win tenders.

## Foreign direct investment

Namibia's Communications Act of 2009<sup>12</sup> requires that any postal, telecommunications or broadcasting company that wishes to operate in the country have at least 51 per cent ownership by Namibian citizens. This requirement may restrict investments in the sector by investors who want to retain 100 per cent ownership of their companies. The lack of competition in the telecommunications sector may have an impact on access to internet services and on innovation that drives down the cost of broadband and encourages the adoption and use of digital services. There are no ownership laws, however, that prohibit shareholding in sectors other than those that fall under the Communications Act.

There are also no laws that require digital product platforms to be majority owned by a Namibian citizen or that prohibit foreign board members. This means that foreigners can retain control from a shareholder and

operations perspective. Regarding investment promotion, Namibia allows for online tax registration for foreigners and imposes no restrictions on international payments for digital products. This allows digital businesses to operate in the country effectively.

## Telecommunications infrastructure and competition

According to the World Economic Forum's *Global Information Technology Report* of 2016, which features the latest iteration of the Networked Readiness Index, Namibia scores 3.9 out of 7 for the Infrastructure and Digital Content pillar which indicates that the country's infrastructure network is fair. The pillar considers mobile network coverage, international internet bandwidth and security of internet servers.

Despite liberalization of the telecommunications sector under the Communications Act of 2009,<sup>13</sup> which was intended to promote competition in the sector, state-owned entities still dominate the sector and provide the bulk of telecommunications services in the country. The lack of private sector competition impedes development of the sector and of the digital economy and digital trade.

The Communications Regulatory Authority of Namibia requires that applications for telecommunications equipment certification be made to the regulator. The results of third-party testing of telecommunications equipment are not accepted. The Communications Act stipulates that the Communications Regulatory Authority must ensure

11 [https://namiblii.org/index.php/akn/na/act/2015/15/eng%402015-12-31#sec\\_71](https://namiblii.org/index.php/akn/na/act/2015/15/eng%402015-12-31#sec_71).

12 [https://namiblii.org/index.php/akn/na/act/2009/8/eng%402020-07-15#sec\\_46](https://namiblii.org/index.php/akn/na/act/2009/8/eng%402020-07-15#sec_46).

13 [https://namiblii.org/index.php/akn/na/act/2009/8/eng%402020-07-15#sec\\_46](https://namiblii.org/index.php/akn/na/act/2009/8/eng%402020-07-15#sec_46).

that its regulations of equipment and standards are the minimum necessary to ensure safe and efficient telecommunications in the country. This implies that only necessary and non-restrictive standards should be prescribed, which is in conformity with international standards.

### **Cross-border and domestic data policies**

Namibia does not have a data protection authority that is tasked with instituting and ensuring compliance with data policies. The Ministry of Information and Communication Technology is responsible for information technology, telecommunications, broadcasting, media and postal sectors in Namibia. However, without the right regulations in place, there are gaps within the regulatory and policy environment on data governance.

As with measures related to digital services trade restrictions, Namibia does not have any general or specific laws governing data localization. Data-driven companies can operate in the country without establishing a local commercial presence or data storage facilities in the country. However, the Communications Act stipulates that the Regulator “may prescribe a mandatory period for the retention of records [or data] which may not exceed eight” years.

### **Intermediary liability and content access**

Namibia’s Electronic Transactions Act of 2019<sup>14</sup> protects service providers against liability for unlawful material that users might

post on their platform. Liability protections are critical to insulate platform providers from responsibility in cases where a platform is abused by its users. This protection encourages businesses to establish digital services in the country. In addition, service providers are not required to monitor users or data transmitted on their platforms.

### **Online sales and transactions**

There is no applied de minimis threshold in Namibia. This means that the country does not have a minimum value of goods below which no duties and taxes are collected by the customs authorities. Thus, even goods with very low values can be subjected to paying tax in Namibia. A low de minimis threshold has the potential to discourage the development of online sales and transactions in the country. Namibia does not restrict any online sales, delivery or advertising. These online components are critical in promoting e-commerce and digital trade policies.

Namibia has signed and ratified the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce of 1996. While knowing that there is legal predictability in the country should boost investor confidence, this may not be enough because Namibia has neither signed nor ratified conventions such as the United Nations Convention on the Use of Electronic Communications in International Contracts (2005), which is important for enabling and facilitating online transactions, and the UNCITRAL Model Law on Electronic Signatures (2001).

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<sup>14</sup> <https://namiblii.org/index.php/akn/na/act/2019/4/eng%402019-11-29#>.



# CONCLUSION AND RECOMMENDATIONS

It is important for a country's growth and economic development to create an enabling environment for a data-driven economy with the policy and regulatory environment being the starting point. Namibia has some necessary policies in place, but these existing measures should be more holistic to stimulate growth of the digital economy and digital trade. Despite having few barriers to entry, the country has a limited framework of supporting structures within the digital economy space. Addressing the weak links is critical to provide support for the digital economy to flourish.

The following are key recommendations:

- As the starting point for creating an enabling environment for digital trade and the digital economy Namibia should develop a digital economic and data framework that would set a foundation for all the necessary critical components. The framework would identify the missing policy and regulatory links for successful development of the country's digital economy.
- Because of differences in country size, economic profile, and demographics

copying models from other countries are unlikely to work effectively. Therefore, Namibia must identify its priorities in the digital economy and then develop and deploy a model that works for itself.

- Namibia should develop clear, comprehensive regulations and policies that can eliminate uncertainties in the business environment so that firms can operate properly.
- Namibia should establish a data protection authority to oversee enforcement of data regulations in the country. This is a matter of urgency to enhance trust across the spectrum of market participants, from private sector firms to consumers.
- To strengthen the data framework, the digital economy framework and the regulatory environment Namibia should improve broadband connectivity by investing in broadband infrastructure. Investors are attracted by good infrastructure that will serve their business operations well.
- Finally, Namibia should consider signing onto the following UN conventions to build confidence for stakeholders

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## DIGITAL TRADE REGULATORY INTEGRATION

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involved in the digital economy and stimulate growth of the different facets of the digital economy:

- Electronic Communications Convention of 2005.
- UNCITRAL Model Law on Electronic Signatures (2001).
- UNCITRAL Model Law on Electronic Transferable Records (2017).

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Printed in Addis Ababa, Ethiopia by the ECA Printing and Publishing Unit.  
ISO 14001:2015 certified. Printed on chlorine free paper.