

DIGITAL TRADE REGULATORY INTEGRATION

COUNTRY PROFILE

SUDAN



INTRODUCTION

The African Trade Policy Centre of the United Nations Economic Commission for Africa has embarked on a Digital Trade Regulatory Integration initiative with four primary objectives. First, the initiative provides information on digital services trade regulations that has the potential to facilitate the negotiation and implementation of the African Continental Free Trade Area (AfCFTA) protocol on Digital Trade. Second, it intends to inform the development of a digital trade integration index which could then become a component to possible future editions of the Africa Regional Integration Index.¹ Third, it will also 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. Fourth, data from the DTRI and tools derived from it will offer a solid basis for further analytical work by ECA and others on digital trade.

The initiative covering the legal and regulatory environment associated with digital trade will help African countries better understand and address barriers to the growth and development of digital trade and e-commerce. Addressing the issues identified will help promote digital trade and e-commerce and underpin continent-wide commercial transactions between businesses and consumers.

This country profile presents the key findings for Sudan and is based on observations from two datasets developed under the DTRI initiative. The first dataset, modelled on the OECD Digital STRI, compiled information on restrictions to digital services trade from 2014 to 2023. The second covers measures related to digital trade integration, beginning with the effective date of each measure and reflecting the latest available information. The legal and regulatory measures researched in the initiative are categorized into various policy areas in both digital services trade restrictions

and digital trade integration. This country profile's two sections correspond to the two datasets. To avoid repetition where

there is overlap between the indicators, attempts are made to present results only once, to the extent possible.

RESTRICTIVENESS OF THE REGULATORY REGIME FOR DIGITAL SERVICES TRADE

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

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

Each pillar is explained below.

Pillar 1: Infrastructure and connectivity

Sudan's law provides guarantees for interconnection. The Telecommunications Act of 2018 requires licensees and operators to negotiate an interconnection agreement upon request and in accordance with the controls approved by the Telecommu-

nications and Postal Regulatory Authority.² Interconnection has also been mandated by Sudan's preceding Telecommunications Act of 2001.³

The Telecommunications Act of 2018 requires that licensees conclude interconnection agreements with other licensees at prices corresponding to actual costs and wholesale prices. It also sets the conditions for concluding interconnection contracts, which must be examined and approved by the Telecommunications and Postal Regulatory Authority.⁴ The same law does not mandate making interconnection offers publicly available, nor their prices. The International Telecommunication Union reported in 2022 that interconnection agreements and prices were made public, but that vertical separation was not mandated for dominant service providers.⁵

According to the Telecommunications and Postal Regulatory Authority, the dominant suppliers on fixed call origination are Sudatel, with 79% of the market, and Canar

with 21%. In wholesale mobile termination, Zain holds 49% of the market, MTN 26%, and Sudatel 25%.

The Sudan Telecommunications Act does not prohibit or restrict the use of VPNs, and Sudan is not among the countries that have banned VOIP calls.

Sudan currently does not have laws or regulations regulating cross-border data flows.

Pillar 2: Electronic transactions

Sudan's commercial code requires the registration and licensing of any natural or legal person conducting any commercial activity in the country, and the Electronic Transactions Act 2007 does not require additional licensing for electronic commerce.⁶ No government policies, initiatives or incentives support online business.

According to the Income Tax Act of 1986,⁷ Sudan has not made online tax registration and declaration possible for anyone.

Sudan is not a party to the UN Convention on the Use of Electronic Communications in International Contracts, the United Nations Convention on Contract for International Sales of Goods, the UNCITRAL Model Law on Electronic Commerce, or the UNCITRAL Model Law on Electronic Signatures. Therefore, Sudan's national contract rules for cross-border transac-

tion deviate from internationally standardized rules. Sudan has not adopted any policy or regulation that recognizes electronic signatures as legally valid.

Sudan's laws relevant to intellectual property (IP) do not explicitly protect trade secrets.⁸ However, the Competition Protection and Antitrust Act of 2009 mandates that any person or entity involved in an anti-competition investigation must maintain the confidentiality of information and data provided for the investigation, not disclosing it except with the written consent of the party who provided it or with the written consent of the public prosecutor or the competent court.⁹

Sudan's Electronic Transactions Act of 2007 gives electronic signatures the same validity, treatment and effect as handwritten signatures.¹⁰ The same act provides that the General Court shall be the competent court to consider disputes related to the application of the act's provisions, including for digital trade transactions.

Pillar 3: Payment systems

According to rules and regulations from 2013 governing the operation of payment systems, Sudan forbids any party to issue e-money settlement cards (prepaid cards) without first obtaining a licence from the Central Bank of Sudan.¹¹ Furthermore, no person may operate a payment system, in whole or in part, in Sudan without a prior licence from the central bank.

Sudan's national laws do not mandate or mention any international payment security standard. According to the Sudan Central Bank's rules and regulations, the central bank imposes a limit on e-wallet cards and a limit on transfers between accounts in electronic payment systems.¹²

Pillar 4: Intellectual property rights

Sudan's intellectual property (IP) regime is governed largely by the Patent Act of 1971¹³ and the Copyright and Neighbouring Rights Protection and Literal and Artistic Works Act of 2013.¹⁴ The Patent Act required non-residents wishing to register a patent in Sudan to indicate an address for their service within the Democratic Republic of the Sudan (1969–1985).

Sudan has been a party to the Berne Convention since 2000 and to the Paris Act since 1984. Sudan also ratified the WIPO Convention in 1974. However, Sudan has not signed the WIPO Copyright Treaty, nor is it a WTO member.

The Sudan Copyright Act does not discriminate between foreigners and Sudan nationals with regard to the protection of copyright and related rights.

In the Copyright and Neighbouring Rights Protection and Literal and Artistic Works Act of 2013, the allowed exceptions do not follow the fair use or fair dealing model for the lawful use of copyrighted work by

others. The exceptions listed include only educational purposes, quotations, transfer or copying from newspapers, copying for legal proceedings, news reports, photocopying in libraries, and publishing by mass media. The same law specifies judicial and administrative enforcement measures, provisional measures, and criminal enforcement procedures and penalties.

Pillar 5: Other barriers affecting trade in digitally enabled services

According to a regulation from 2020, Sudan's government may engage in internet content filtering and website blockage.¹⁵ Blocked websites include network marketing sites, sites that circumvent blocking systems, and peer-to-peer file-sharing sites.

According to the Press and Publications Act of 2009, Article 9, the National Council on Press and Publications (NCP) issues practical approvals for media companies including advertising agencies.¹⁶ The cost is reported to be 400,000 Sudanese pounds (about \$900).¹⁷

According to the Companies Act of 2015, companies established outside Sudan and wishing to conduct business in Sudan must register a branch in Sudan.¹⁸ But no local presence requirement is found affecting trade in digitally enabled services.

Sudan's Competition Regulation and Monopoly Prevention Act of 2009 provides

a redress mechanism for anticompetitive practices.¹⁹ It mandates that any natural or legal person injured by practices contrary to the provisions of the act may apply for

compensation to the competent court, in this case the Competition and Monopoly Prevention Council.

RESTRICTIVENESS OF THE REGULATORY REGIME FOR DIGITAL TRADE INTEGRATION

This section discusses measures related to the level of digital trade integration in Sudan. The regulatory regime of digital trade integration was assessed under 12 pillars.

- Tariff and trade defense on measures applied to intraregional imports of ICT goods.
- Public procurement for 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.
- Content access.
- Quantitative trade restrictions for ICT goods and online services.
- Technical standards applied to ICT goods and online services.
- Online sales and transactions.

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

Pillar 1: Tariffs and trade defence

Sudan does not impose restrictions on imports of ICT goods and digital services, including on the quantity or volume of ICT goods or services that can be imported. The country's effective tariff rate on ICT goods (applied weighted average) is 12.1%, and its zero-tariff coverage rate on ICT goods is 33.2%.²⁰

Sudan is not a signatory to the 1996 World Trade Organization (WTO) Information.²¹ It has a domestic legal instrument on anti-dumping²² but none on countervailing or safeguard measures, which it has never imposed.

Pillar 2: Public procurement on digital goods and services

Sudan is not a member of the WTO and is not a party to the World Trade Organization (WTO) Agreement on Government Procurement (GPA), nor does it have observer status.²³

No law was found mandating the surrender of patents, source codes, or trade secrets in order to win tenders, nor does any law require the use of a certain type of encryption to win tenders.

According to Sudan's Purchasing, Contracting and Surplus Disposal Act of 2010, priority in contracting to carry out works shall be given to Sudanese individuals and institutions licensed to operate; the ministry may specify some works and contracts whose implementation must be entrusted to Sudanese contractors; and projects can be divided to allow Sudanese contractors to qualify and implement them.²⁴

The same act implements some limitations on foreign participation in public procurement. A foreign bidder must use specific services from local suppliers and must ensure that not less than 20% of the project is undertaken by Sudanese contractors. All contractors are obligated to purchase the tools and equipment they need for the purpose of implementing their contracts from the Sudanese agents in Sudan. They are not allowed to import directly from abroad unless they cannot meet their needs in Sudan.

Pillar 3: Foreign direct investment for digital trade

No information was found on requirements in Sudan for engaging in joint ventures, either to invest or to operate.

According to Sudan's Investment Encouragement Act of 2001, foreign investment is banned in some sectors specified by the minister.²⁵ It is reported that foreign capital participation is banned in most telecommunications and media, including newspaper publishing.²⁶

It is reported that equity investors undergo a detailed screening process known as a "due diligence" procedure, with "equity" defined as having an ownership stake in a company.²⁷

Sudan's Companies Act of 2015 states that companies established outside Sudan and wishing to conduct business in Sudan must register a branch in Sudan.²⁸ Companies contracted to implement projects in Sudan must establish a branch in Sudan for the sole purpose and period of the project's implementation. Moreover, at least one of the directors on the board of any company must be a resident of Sudan.

Sudan does not mandate functional separation for operators with significant market power (SMP) in the telecom market. However, it is reported that there is a requirement for accounting separation.²⁹

Pillar 6: Cross-border data policies

Sudan's laws do not mention any limitation on data transfers abroad, but security reasons impose de facto limitations, especially in strategic and sensitive sectors such as telecom and audiovisual.³⁰

Sudan has not joined any agreement with binding commitments to open transfers of data across borders.³¹

Pillar 7: Domestic data policies

Sudan does not have a comprehensive regime in place for personal data, but it has the Electronic Transactions Act 2007 as a sectoral regulation. A data protection authority has not yet been appointed.³²

It is reported that mobile service providers are required to keep records of their customers' information, including full names, full addresses, other phone numbers, and places of work. The SIM card registration process links phone numbers to users' personal information. It is also reported that under the Telecommunications Law of 2018, telecommunication companies must provide customer data to authorities upon request.³³

According to the Anti-Money Laundering and Combating the Financing of Terrorism Act of 2014, Article 6, financial and non-financial institutions are required to keep

records and data related to customers and transactions and to ensure that these records and information are made available to the competent authorities with reasonable speed.³⁴ The records must be kept for a period of at least five years after the termination of the business relationship or the execution of the incidental transaction, whichever is longer. The article also stipulates that those records and data relating to domestic and international transactions, whether executed or attempted, should be kept for at least five years after the transaction, and such records shall be detailed enough to allow the steps of each transaction to be traced separately.

Pillar 8: Intermediary liability

A basic legal framework on intermediary liability for copyright infringement is absent in Sudan's law and jurisprudence.³⁵

A basic legal framework on intermediary liability beyond copyright infringement is absent in Sudan's law and jurisprudence.³⁶

In Sudan, before receiving and activating a SIM card, a customer reportedly must show a passport and provide a copy of the passport with a filled form at the point of sale.³⁷

It is reported that, in July 2022, the Technical Committee of the Council of Security and Defence in Sudan ordered service pro-

viders to suspend all SIM cards that were not registered with a national ID number.³⁸

No information was found on any monitoring requirements.

Pillar 9: Content access

Sudan received the lowest rating of 1 on the indicator “6.2.4—Government Internet shut down in practice” in the V-Dem Dataset, which tracks whether a government has the technical capacity to make internet service cease (interrupting domestic access) or whether it has decided to do so.³⁹ Specifically, Sudan’s 1 rating means: “The government shut down domestic access to the Internet numerous times this year.”⁴⁰

As noted earlier, practical approvals for media companies including advertising agencies in Sudan reportedly cost 400,000 Sudanese pounds (about \$900). According to the Press and Publications Act of 2009, the National Council on Press and Publications (NCP) issues practical approvals for press companies, institutions, presses, publishers, distributors, service centres, and advertising agencies.⁴¹ Under the act’s Article 21.a, to duly publish a newspaper or other type of press-related publication, one must obtain a permit from the NCP upon payment of the fees provided for in the regulations. Under Article 21.b, authorizations or licences may be renewed on an annual basis upon payment of the fees provided for in the regulations.

It is reported that Sudan’s Cybercrime Act has been used to block access to online news websites: in September 2022, the website of the Al-Sudani newspaper was blocked.⁴²

It is reported that in December 2020, Sudan’s Telecommunications and Post Regulatory Authority (TPRA) approved regulations on content filtering and website blockage. Regulations are said to give TPRA the mandate to block certain categories of websites, including gambling sites, peer-to-peer file-sharing websites, VPN websites, websites which call for atheism, and websites of “any additional classifications that the authority considers.” It is further reported that under Article 8 of these regulations (which are not available online), ISPs must immediately block websites once they receive a TPRA notice or face fines of up to 300,000 pounds (about \$500).⁴³

Pillar 10: Quantitative trade restrictions for ICT goods and online services

Sudan imposes no restrictions on importing or exporting ICT goods or services.

Pillar 11: Technical standards applied to ICT goods and online services

Sudan does not explicitly prohibit foreign businesses from participating in standard

setting or technical committees. According to the Standards and Metrology Act 2008, Article 4.2, the Director General shall propose the constitution of the technical committees.⁴⁴ In the same act, Article 5.2 states that the technical committees may seek the assistance of any person they consider appropriate. The process involves consultation with various stakeholders and is validated by a public inquiry.

It is reported that communication devices must comply with radio communications standards and specifications on frequency bands and transmission power, must meet electromagnetic conditions, and must meet health and environmental safety conditions. All communications-related devices and equipment are to be examined and matched to ensure their conformity with the specifications. An authority is responsible for enforcing inspection procedures for all communications devices imported into Sudan and ensuring their compliance with the approved technical specifications. After the examination and conformity process for the devices, certificates received

from an internationally competent laboratory are verified.⁴⁵

Pillar 12: Online sales and transactions

Sudan has not signed the United Nations (UN) Convention on the Use of Electronic Communications in International Contracts,⁴⁶ nor has it adopted national legislation based on or influenced by the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce.⁴⁷

Domestically, Sudan lacks a comprehensive framework for consumer protection that applies to online transactions.⁴⁸

It is reported that Sudan's de minimis threshold in customs duties—the value below which goods or services are formally exempt from duties—is \$100, below the \$200 threshold recommended by the International Chamber of Commerce (ICC).⁴⁹

CONCLUSION AND RECOMMENDATIONS



Sudan has not consistently enacted legislation to enable digital trade. Although Sudan has signed some international treaties with a view to adopting international standards in areas such as IP, more needs to be done. Restrictive measures in some areas hamper digital trade. And Sudan is not yet a party to key treaties, such as the WTO, the WTO Information Technology Agreement, and the United Nations Convention on Contracts for the International Sale of Goods, commonly known as the Vienna Convention.

The following actions are recommended:

- Sudan should enact laws to protect the economy from the effects of harmful practices in international trade, including subsidies, countervailing, and safeguard measures.
- Sudan should join international institutes and agreements, such as the United Nations Convention on the Use of Electronic Communications in International Contracts, the United Nations Commission on International Trade Law (UNCITRAL), and—most importantly—the WTO and its related agreements.
- Sudan must be a member of the World Intellectual Property Organisation.
- Sudan should establish a comprehensive legal framework for cross-border data flows.
- Sudan should establish a comprehensive legal framework for the protection of personal data.
- To enhance innovation, Sudan should consider establishing a comprehensive regulatory framework on trade secrets.
- Sudan should update laws that have not been updated for decades, such as the Patent Act of 1971.
- Sudan should make its laws available on official websites, both in Arabic and in English translation.

This country report was prepared by Rania Nabil Naguib, International Trade Consultant.

Endnotes

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