Capacity Building Workshop on Facilitation of Cross-Border Paperless Trade

Legal Issues in Cross-border Paperless Trade
[Session 4]

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Contexts for “Paperless” Trade

• **Paperless Trade**: “Trade taking place on the basis of electronic communications, including exchange of trade-related data and documents in electronic form”

• **Trade-related documents**: “Documents, both commercial and regulatory, required in completing commercial transactions”
  

• Regulatory Legal Issues

• Commercial Legal Issues
Challenges for “Paperless” Trade

• ‘Regulatory’ Issues
  – Enabling Law
  – ICT Law Infrastructure
    • Electronic Transactions
    • Electronic Signatures
    • Electronic Evidence
    • Cross-border Authentication and Mutual Recognition
Challenges for “Paperless” Trade

• **Business Issues, *inter alia*.**
  – Electronic Commerce Transactions
    • E-Filings (submissions & notices)
    • Electronic Payments
    • E-Transport/Shipping Documents
  – Enforceability Issues (E.g., e-Evidence)
  – Security, Confidentiality & Privacy
  – A *Harmonized* Legal Environment for Cross-border Trade
    • Predictability –*Ex Ante* Certainty
Challenges for “Paperless” Trade

- Creating a legally enabling environment at the domestic level (e.g., enabling legislation)
- Authorization to exchange and share information (in data messages and as e-docs) between government agencies and across borders
- Identity management
- Privacy and confidentiality requirements in the areas of personally identifiable information as well as in trade and competitive data
Challenges for “Paperless” Trade

• Data protection and information security
• Legal validity and authentication of documents exchanged in electronic form
• Electronic and digital signatures
• Cross-border authentication and mutual recognition
• Data collection, sharing, amendment, deletion, accessibility, retention and archiving
Challenges for “Paperless” Trade

- Liability issues related the operation of Single Window facilities (including domestic and cross-border MOUs, interconnection security agreements, service level agreements, end-user agreements, disclaimers etc.)
- Transferable records including, e.g., electronic transport records (negotiable and non-negotiable) and electronic registries
Challenges for “Paperless” Trade

- Ensuring that enforcement actions can still be carried out, for example through possible implications on the laws of evidence
- Data ownership
- The extent to which the revised Kyoto Convention (and other WCO instruments including the SAFE Framework) might be adjusted owing to the legal implications of Paperless Trade

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Challenges for “Paperless” Trade

• The impact of “click-through” agreements and other online Single Window services

• Considerations related to government duties, taxes and fees collection/distribution and refunds;

• Integrated risk assessment

• The legal implications of different technical architectural options for Single Window facilities
Global/Regional Legal Initiatives

• **UNCITRAL**
  – Electronic Communications Convention, Model Laws on e-Commerce and e-Signatures
  – International Use of Authentication & Signature Methods
  – The *Rotterdam Rules* [Electronic Transport Documents]
  – Electronic Transferability of Rights in Goods [e.g., e-Bills of Lading, Warehouse Receipts, etc.]

• **World Customs Organization**
  – *Globally Networked Customs* (GNC)
  – Recommendation Of The Customs Co-Operation Council On The Dematerialization Of Supporting Documents (June 2012)

• **Joint UN Regional Commissions**
Global/Regional Legal Initiatives

- **UN/CEFACT**
  - Revised Recommendation 14 – Authentication of trade documents by means other than [manual] signatures
  - Recommendation 35 – Legal Framework for the International Single Window
  - Recommendation 36 – Single Window Interoperability (Under Development)

- **UNESCAP**
  - *Electronic Single Window Legal Issues: A Capacity Building Guide*
  - *Draft Agreement [Framework Agreement] on Facilitation of Cross-border Paperless Trade for the Asia Pacific Region*

- **WTO**
  - *Negotiation on Trade Facilitation*

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Implementing the ESCAP Regional Arrangement for Paperless Trade

At 10,000 M:

• International Collaboration and Coordination
• Establishing Regional (International) Standards for Paperless Trade
• National Law, Policy and Development
• Inclusive Development (e.g., SMEs)
Implementing the ESCAP Regional Arrangement for Paperless Trade

• Develop a full understanding of what the legal implications of the Regional Agreement will be.
  – E.g., Mutual Recognition, a key element of cross-border trade, is defined as “… reciprocal recognition of the validity of trade-related data and documents in electronic form exchanged across borders between two or more countries….”
  – This would apply to both commercial parties as well as governments.
  – Can ‘technology’ help?

• Understanding the range of Liability Issues that might arise and addressing them in national law.
  – E.g., commercial liability for ISPs, Certificate Service Providers, data warehousing providers, etc.
  – Government liability, e.g., in the SW environment
Implementing the ESCAP Regional Arrangement for Paperless Trade

- National Single Window development
- **General Principles** (Article 5):
  - Technology neutrality
  - Functional equivalence
  - Non-discrimination
  - Promotion of interoperability
  - Improved trade facilitation and regulatory compliance
  - Cooperation between the public and private sectors
  - [Geographic Neutrality]
- **Institutional Arrangements** (Article 12)
  - Broad participation
- **Capacity Building** (Article 15)
Thank you!

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