

Capacity Building Workshop on Facilitation of Cross-Border Paperless Trade

Legal Issues in Cross-border Paperless Trade

[Session 4]

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DISCLAIMER

**Please note that all views
presented or discussed are
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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”
 - UNESCAP Draft *Agreement [Framework Agreement] on Facilitation of Cross-border Paperless Trade for the Asia Pacific Region*. <http://www.unescap.org/events/ad-hoc-intergovernmental-meeting-regional-arrangement-facilitation-cross-border-paperless>
- 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

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

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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