

International legal frameworks and best practices relevant to Cross-Border Paperless Trade

Article 10 of the Framework Agreement (FA) provides,

(1) the Parties may, where appropriate, adopt relevant international legal instruments concluded by United Nations bodies and other international organizations; and,

(2) the Parties shall endeavour to ensure that the cross-border exchange of trade-related data and documents in electronic form is consistent with international law as well as regional and international regulations and best practices, as identified by the institutional arrangements established under the present Framework Agreement.

As clarified in the Explanatory Note, although the FA does not entail any legal obligation to adopt other international agreements, the FA is aimed at operating in a complex legal environment and interacting with the international legal instruments and other legislative and regulatory standards to promote further harmonization of the law on electronic transactions and cross-border paperless trade. It is worth noting that international legal instruments may support implementation of the FA, while the FA itself may also support their implementation.

Under Article 10.1, the Parties are called upon to take into account and formally **adopt** in their domestic laws the applicable international conventions, for example the United Nations Convention on the Use of Electronic Communications in International Contracts, a treaty that contains the most modern restatement of electronic transactions law with respect to both general principles and operational rules. An illustrative reference list of international legal instruments relevant to Art.10.1 is provided as followed.

- ✧ United Nations Convention on the Use of Electronic Communications in International Contracts (2005)
- ✧ World Customs Organization International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention, 2006)
- ✧ World Trade Organization Trade Facilitation Agreement (2013)

Under Article 10.2, the Parties are encouraged to **ensure** their domestic laws and regulations regarding cross-border exchange of trade-related data and documents in electronic form **consistent** with the relevant and applicable international conventions, standards or best practices, irrespective of regional or global, legally binding or non-binding.

An illustrative reference list of most relevant and applicable international conventions and other instruments are **identified** [with excerpted provisions in the Appendix] for the Parties' consideration in the legal interoperability exercise.

- ✧ United Nations Convention on the Use of Electronic Communications in International Contracts (2005)
- ✧ United Nations Commission on International Trade Law Model Law on Electronic Commerce (1996)
- ✧ United Nations Commission on International Trade Law Model Law on Electronic

Signatures (2001)

- ✧ (Draft) United Nations Commission on International Trade Law Model Law on Electronic Transferable Records (tbd July 2017)
- ✧ World Customs Organization International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention, 2006)
- ✧ World Trade Organization Trade Facilitation Agreement (2013)
- ✧ International Maritime Organization Amendments to the Annex to the Convention on Facilitation of International Maritime Traffic, 1965, As Amended (2005)¹
- ✧ International Maritime Organization Guidelines for the Use of Electronic Certificates (2016)
- ✧ United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) Recommendation and Guidelines on establishing a Single Window (Recommendations 33)
- ✧ United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) Recommendation on Establishing a Legal Framework for International Trade Single Window (Recommendation 35)
- ✧ United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) Recommendation on Single Window Interoperability: Supporting Cross Border Interoperability of Trade Regulatory Single Window Systems (Recommendation 36); *in public review (tbd March 2017)*
- ✧ United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) Technical note on terminology for single window and other electronic platforms; *in public review*
- ✧ Regional Agreements and Guidelines applicable to FA Parties
 - Agreement to Establish and Implement the ASEAN Single Window and related Protocols²
 - APEC Privacy Framework and APEC Cooperation Arrangement for Cross-Border Privacy Enforcement (CPEA, 2010)
 - Relevant paperless trade related provisions in Transfer Pacific Partnership (TPP) and ASEAN-AU-NZ

¹ International Maritime Organization Facilitation Committee enacted the Annex on Mandatory requirements for electronic exchange of information on Cargo, Crew and Passengers to the Convention on Facilitation of Maritime Traffic in April 2016. Because of the technical reason, the full text of that Annex is not found.

² There are two Protocols on legal enforcement and establishment of ASEAN Single Windows respectively, supporting the implantation of the Agreement.

Appendix

Excerpted Provisions of the Identified International Conventions and Other Instruments

For the easy reference of the Parties, the relevant provisions from the illustrative list of the international and regional laws, international standards and guidelines are provided as followed. It is strongly recommended that the Parties look into the full texts of each document to understand all the excerpted provisions in the context.

✧ **United Nations Convention on the Use of Electronic Communications in International Contracts (2005)**

Preamble

Being of the opinion that uniform rules should respect the freedom of parties to choose appropriate media and technologies, taking account of the principles of technological neutrality and functional equivalence, to the extent that the means chosen by the parties comply with the purpose of the relevant rules of law.

Article 4. Definitions

For the purposes of this Convention:

(a) “Communication” means any statement, declaration, demand, notice or request, including an offer and the acceptance of an offer, that the parties are required to make or choose to make in connection with the formation or performance of a contract;

(b) “Electronic communication” means any communication that the parties make by means of data messages;

(c) “Data message” means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange, electronic mail, telegram, telex or telecopy;

(d) “Originator” of an electronic communication means a party by whom, or on whose behalf, the electronic communication has been sent or generated prior to storage, if any, but it does not include a party acting as an intermediary with respect to that electronic communication;

(e) “Addressee” of an electronic communication means a party who is intended by the originator to receive the electronic communication, but does not include a party acting as an intermediary with respect to that electronic communication;

(f) “Information system” means a system for generating, sending, receiving, storing or otherwise processing data messages;

(g) “Automated message system” means a computer program or an electronic or other automated means used to initiate an action or respond to data messages or performances in whole or in part, without review or intervention by a natural person each time an action is initiated or a response is generated by the system;

(h) “Place of business” means any place where a party maintains a non-transitory establishment to pursue an economic activity other than the temporary provision of goods or services out of a specific location.

Article 8. Legal recognition of electronic communications

1. A communication or a contract shall not be denied validity or enforceability on the sole ground that it is in the form of an electronic communication.

2. Nothing in this Convention requires a party to use or accept electronic communications, but a party's agreement to do so may be inferred from the party's conduct.

Article 9. Form requirements

1. Nothing in this Convention requires a communication or a contract to be made or evidenced in any particular form.

2. Where the law requires that a communication or a contract should be in writing, or provides consequences for the absence of a writing, that requirement is met by an electronic communication if the information contained therein is accessible so as to be usable for subsequent reference.

3. Where the law requires that a communication or a contract should be signed by a party, or provides consequences for the absence of a signature, that requirement is met in relation to an electronic communication if:

(a) A method is used to identify the party and to indicate that party's intention in respect of the information contained in the electronic communication; and

(b) The method used is either:

(i) As reliable as appropriate for the purpose for which the electronic communication was generated or communicated, in the light of all the circumstances, including any relevant agreement; or (ii) Proven in fact to have fulfilled the functions described in subparagraph (a) above, by itself or together with further evidence.

4. Where the law requires that a communication or a contract should be made available or retained in its original form, or provides consequences for the absence of an original, that requirement is met in relation to an electronic communication if:

(a) There exists a reliable assurance as to the integrity of the information it contains from the time when it was first generated in its final form, as an electronic communication or otherwise; and

(b) Where it is required that the information it contains be made available, that information is capable of being displayed to the person to whom it is to be made available.

5. For the purposes of paragraph 4 (a):

(a) The criteria for assessing integrity shall be whether the information has remained complete and unaltered, apart from the addition of any endorsement and any change that arises in the normal course of communication, storage and display; and

(b) The standard of reliability required shall be assessed in the light of the purpose for which the information was generated and in the light of all the relevant circumstances.

Article 10. Time and place of dispatch and receipt of electronic communications

1. The time of dispatch of an electronic communication is the time when it leaves an information system under the control of the originator or of the party who sent it on behalf of the originator or, if the electronic communication has not left an information system under the control of the originator or of the party who sent it on behalf of the originator, the time when the electronic communication is received.

2. The time of receipt of an electronic communication is the time when it becomes capable of being retrieved by the addressee at an electronic address designated by the addressee. The time of receipt of an electronic communication at another electronic address of

the addressee is the time when it becomes capable of being retrieved by the addressee at that address and the addressee becomes aware that the electronic communication has been sent to that address. An electronic communication is presumed to be capable of being retrieved by the addressee when it reaches the addressee's electronic address.

3. An electronic communication is deemed to be dispatched at the place where the originator has its place of business and is deemed to be received at the place where the addressee has its place of business, as determined in accordance with article 6.

4. Paragraph 2 of this article applies notwithstanding that the place where the information system supporting an electronic address is located may be different from the place where the electronic communication is deemed to be received under paragraph 3 of this article.

✧ **United Nations Commission on International Trade Law Model Law on Electronic Commerce (1996)**³

Article 5 bis. Incorporation by reference (as adopted by the Commission at its thirty-first session, in June 1998) Information shall not be denied legal effect, validity or enforceability solely on the grounds that it is not contained in the data message purporting to give rise to such legal effect, but is merely referred to in that data message.

Article 9. Admissibility and evidential weight of data messages

(1) In any legal proceedings, nothing in the application of the rules of evidence shall apply so as to deny the admissibility of a data message in evidence:

(a) on the sole ground that it is a data message; or, (b) if it is the best evidence that the person adducing it could reasonably be expected to obtain, on the grounds that it is not in its original form.

(2) Information in the form of a data message shall be given due evidential weight. In assessing the evidential weight of a data message, regard shall be had to the reliability of the manner in which the data message was generated, stored or communicated, to the reliability of the manner in which the integrity of the information was maintained, to the manner in which its originator was identified, and to any other relevant factor.

Article 10. Retention of data messages

(1) Where the law requires that certain documents, records or information be retained, that requirement is met by retaining data messages, provided that the following conditions are satisfied:

(a) the information contained therein is accessible so as to be usable for subsequent reference; and

(b) the data message is retained in the format in which it was generated, sent or received, or in a format which can be demonstrated to represent accurately the information generated, sent or received; and

(c) such information, if any, is retained as enables the identification of the origin and destination of a data message and the date and time when it was sent or received.

(2) An obligation to retain documents, records or information in accordance with

³ 2005 United Nations Convention on the Use of Electronic Communications in International Contracts has updated and renewed the relevant provisions in the 1996 Model on Electronic Commerce. Those provisions that have been updated are therefore not included here.

paragraph (1) does not extend to any information the sole purpose of which is to enable the message to be sent or received.

(3) A person may satisfy the requirement referred to in paragraph (1) by using the services of any other person, provided that the conditions set forth in subparagraphs (a), (b) and (c) of paragraph (1) are met.

✧ **United Nations Commission on International Trade Law Model Law on Electronic Signatures (2001)** ⁴

Article 3. Equal treatment of signature technologies Nothing in this Law, except article 5, shall be applied so as to exclude, restrict or deprive of legal effect any method of creating an electronic signature that satisfies the requirements referred to in article 6, paragraph 1, or otherwise meets the requirements of applicable law.

Article 12. Recognition of foreign certificates and electronic signatures

1. In determining whether, or to what extent, a certificate or an electronic signature is legally effective, no regard shall be had:

(a) To the geographic location where the certificate is issued or the electronic signature created or used; or

(b) To the geographic location of the place of business of the issuer or signatory.

2. A certificate issued outside [the enacting State] shall have the same legal effect in [the enacting State] as a certificate issued in [the enacting State] if it offers a *substantially equivalent level of reliability*.

3. An electronic signature created or used outside [the enacting State] shall have the same legal effect in [the enacting State] as an electronic signature created or used in [the enacting State] if it offers a *substantially equivalent level of reliability*.

4. In determining whether a certificate or an electronic signature offers a substantially equivalent level of reliability for the purposes of paragraph 2 or 3, regard shall be had to recognized international standards and to any other relevant factors.

5. Where, notwithstanding paragraphs 2, 3 and 4, parties agree, as between themselves, to the use of certain types of electronic signatures or certificates, that agreement shall be recognized as sufficient for the purposes of cross-border recognition, unless that agreement would not be valid or effective under applicable law.

✧ **World Customs Organization International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention, 2006)**

3.11. Standard

The contents of the Goods declaration shall be prescribed by the Customs. The paper format of the Goods declaration shall conform to the UN-layout key.

For automated Customs clearance processes, the format of the electronically lodged Goods declaration shall be based on international standards for electronic information exchange as

⁴ 2005 United Nations Convention on the Use of Electronic Communications in International Contracts has updated and renewed the relevant provisions in the 2001 Model on Electronic Signatures. Those provisions that have been updated are therefore not included here.

prescribed in the Customs Co-operation Council Recommendations on information technology.

3.18. Transitional Standard

The Customs shall permit the lodgement of supporting documents by electronic means.

3.21. Transitional Standard

The Customs shall permit the lodging of the Goods declaration by electronic means.

6.9. Transitional Standard

The Customs shall use information technology and electronic commerce to the greatest possible extent to enhance Customs control.

7.4. Standard

New or revised national legislation shall provide for :

- electronic commerce methods as an alternative to paper-based documentary requirements;
- electronic as well as paper-based authentication methods;
- the right of the Customs to retain information for their own use and, as appropriate, to exchange such information with other Customs administrations and all other legally approved parties by means of electronic commerce techniques.

APPENDIX

1. General requirements in respect of seals and fastenings:

The seals and fastenings shall :

- (a) be strong and durable;
- (b) be capable of being affixed easily and quickly;
- (c) be capable of being readily checked and identified;
- (d) not permit removal or undoing without breaking or tampering without leaving traces;
- (e) not permit use more than once, except seals intended for multiple use (e.g. electronic seals);
- (f) be made as difficult as possible to copy or counterfeit.

Specific Annex F

8. Recommended Practice

National legislation should provide for the use of electronic funds transfer for the payment of drawback.

9. Recommended Practice

Travellers should be permitted to make an oral declaration in respect of the goods carried by them. However, the Customs may require a written or electronic declaration for goods carried by travellers which constitute an importation or exportation of a commercial nature or which exceed, in value or quantity, the limits laid down in national legislation.

✧ **World Trade Organization Agreement on Trade Facilitation (2013)**

ARTICLE 7: RELEASE AND CLEARANCE OF GOODS

7.2 Nothing in this Article shall prevent a Member from:

- (a) differentiating its procedures and documentation requirements based on the nature and type of goods, or their means of transport;
- (b) differentiating its procedures and documentation requirements for goods based on risk management;
- (c) differentiating its procedures and documentation requirements to provide total or partial exemption from import duties or taxes;

- (d) applying electronic filing or processing; or
- (e) differentiating its procedures and documentation requirements in a manner consistent with the Agreement on the Application of Sanitary and Phytosanitary Measures.

ARTICLE 10: FORMALITIES CONNECTED WITH IMPORTATION, EXPORTATION AND TRANSIT

10.2 Acceptance of Copies

2.1 Each Member shall, where appropriate, endeavour to accept paper or electronic copies of supporting documents required for import, export, or transit formalities.

2.2 Where a government agency of a Member already holds the original of such a document, any other agency of that Member shall accept a paper or electronic copy, where applicable, from the agency holding the original in lieu of the original document.

2.3 A Member shall not require an original or copy of export declarations submitted to the customs authorities of the exporting Member as a requirement for importation.

10.4 Single Window

4.1 Members shall endeavour to establish or maintain *a single window*, enabling traders to submit documentation and/or data requirements for importation, exportation, or transit of goods through a single entry point to the participating authorities or agencies. After the examination by the participating authorities or agencies of the documentation and/or data, the results shall be notified to the applicants through the single window in a timely manner.

4.2 In cases where documentation and/or data requirements have already been received through the single window, the same documentation and/or data requirements shall not be requested by participating authorities or agencies except in urgent circumstances and other limited exceptions which are made public.

4.3 Members shall notify the Committee of the details of operation of the single window.

4.4 Members shall, to the extent possible and practicable, use information technology to support the *single window*.

ARTICLE 12: CUSTOMS COOPERATION

12.4 Request

4.1 The requesting Member shall provide the requested Member with a written request, through paper or electronic means in a mutually agreed official language of the WTO or other mutually agreed language, including:

- (a) the matter at issue including, where appropriate and available, the number identifying the export declaration corresponding to the import declaration in question;
- (b) the purpose for which the requesting Member is seeking the information or documents, along with the names and contact details of the persons to whom the request relates, if known;
- (c) where required by the requested Member, confirmation¹⁵ of the verification where appropriate;
- (d) the specific information or documents requested;
- (e) the identity of the originating office making the request;
- (f) reference to provisions of the requesting Member's domestic law and legal system that govern the collection, protection, use, disclosure, retention, and disposal of confidential information and personal data.

12.6 Provision of Information

6.1 Subject to the provisions of this Article, the requested Member shall promptly:

- (a) respond in writing, through paper or electronic means;
- (b) provide the specific information as set out in the import or export declaration, or the declaration, to the extent it is available, along with a description of the level of protection and confidentiality required of the requesting Member;
- (c) if requested, provide the specific information as set out in the following documents, or the documents, submitted in support of the import or export declaration, to the extent it is available: commercial invoice, packing list, certificate of origin and bill of lading, in the form in which these were filed, whether paper or electronic, along with a description of the level of protection and confidentiality required of the requesting Member;
- (d) confirm that the documents provided are true copies;
- (e) provide the information or otherwise respond to the request, to the extent possible, within 90 days from the date of the request.

6.2 The requested Member may require, under its domestic law and legal system, an assurance prior to the provision of information that the specific information will not be used as evidence in criminal investigations, judicial proceedings, or in non-customs proceedings without the specific written permission of the requested Member. If the requesting Member is not in a position to comply with this requirement, it should specify this to the requested Member.

12.10 Limitations

A requested Member shall not be required to:

- (a) modify the format of its import or export declarations or procedures;
- (b) call for documents other than those submitted with the import or export declaration as specified in subparagraph 6.1(c);
- (c) initiate enquiries to obtain the information;
- (d) modify the period of retention of such information;
- (e) introduce paper documentation where electronic format has already been introduced;
- (f) translate the information;
- (g) verify the accuracy of the information; or
- (h) provide information that would prejudice the legitimate commercial interests of particular enterprises, public or private.

✧ **Amendments to the Annex to the Convention On Facilitation Of International Maritime Traffic, 1965, As Amended (2005)**

C. Electronic data-processing techniques

16. The existing title “C. Electronic data-processing techniques” is replaced by “Systems for the electronic exchange of information”.

17 In the existing Standard 1.4, the words “electronic data interchange (EDI) techniques” are replaced by the words “systems for the electronic exchange of information required by public authorities for the arrival, stay and departure of the ship, persons and cargo”.

18 In the existing Standard 1.6, the words “electronic data interchange (EDI) techniques” are replaced by the words “systems for the electronic exchange of information”.

19 In the existing Recommended Practice 1.7, the words “electronic data interchange (EDI) techniques” are replaced by “systems for the electronic exchange of information”.

20 In the existing Recommended Practice 1.7(e) and (f), the word “techniques” is replaced by the word “systems”.

21 The following new Recommended Practices 1.7.1 and 1.8.1 are added after the existing Recommended Practices 1.7 and 1.8 respectively:

□ “1.7.1 Recommended Practice. Contracting Governments should encourage public authorities and other parties concerned to co-operate or participate directly in the development of electronic systems using internationally agreed standards with a view to enhancing the exchange of information relating to the arrival, stay and departure of ships, persons and cargo and assuring inter-operability between the systems of public authorities and other parties concerned.

1.8.1 Recommended Practice. Contracting Governments should encourage public authorities to introduce arrangements to enable trade and transport operators including ships to submit all the information required by public authorities in connection with the arrival, stay and departure of ships, persons and cargo, avoiding duplication, to a single entry point.”

22 In the existing Standard 1.8, the words “electronic data interchange (EDI) techniques” are replaced by the words “systems for the electronic exchange of information” and the word “techniques” is replaced by the word “systems”.

✧ **International Maritime Organization Guidelines for the Use of Electronic Certificates (2016)**

4 Features

4.1 Administrations that use electronic certificates should ensure that these certificates have the following features:

1 validity and consistency with the format and content required by the relevant international convention or instrument, as applicable;

2 protected from edits, modifications or revisions other than those authorized by the issuer or the Administration;

3 a unique tracking number used for verification as defined in paragraphs 3.5 and 3.6; and

4 a printable and visible symbol that confirms the source of issuance.

4.2 Administrations that use websites for online viewing or verifying electronic certificates should ensure that these sites are constructed and managed in accordance with established information security standards for access control, fraud prevention, resistance to cyberattacks and resilience to man-made and natural disasters.

4.3 Shipowners, operators and crews on ships that carry and use electronic certificates should ensure that these certificates are controlled through the safety management system, as described in section 11 of the International Safety Management Code.

4.4 Electronic signatures applied to electronic certificates should meet authentication standards, as adopted by the Administration.

5 Verification

Instructions for verifying (see paragraph 3.6) the information contained in the electronic certificate, including confirmation of periodic endorsements, when necessary, should be available on board the ship.

✧ **United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) Recommendation and Guidelines on establishing a Single**

Window (Recommendations 33)

2. Scope

Within the context of this Recommendation, a Single Window is defined as a facility that allows parties involved in trade and transport to lodge standardized information and documents with a single entry point to fulfil all import, export, and transit-related regulatory requirements. If information is electronic, then individual data elements should only be submitted once.

5. Use of International Standards

When implementing a Single Window, governments and trade are strongly encouraged to consider the use of existing recommendations, standards and tools that have been developed over the past number of years by intergovernmental agencies and international organisations such as UNECE, UNCTAD, WCO, IMO, ICAO and the ICC. The use of standards and available tools will help ensure that the systems developed to implement the Single Window are more likely to be compatible with similar developments in other countries, and could also help in the exchange of information between such facilities over time.

6. Recommendation

The United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT), being aware that the establishment of a Single Window facility, as described in this document and the attached guidelines, can harmonise and simplify the exchange of information between government and trade and considering that this will bring real benefits to both governments and trade, recommends that governments and those engaged in the international trade and movement of goods:

- a) Actively consider the possibility of implementing a Single Window facility in their country that allows:
 - parties involved in trade and transport to lodge standardized information and documents with a single entry point to fulfil all import, export, and transit-related regulatory requirements. If information is electronic, then individual data elements should only be submitted once.
 - the sharing of all information in respect of international trade transactions, which is supported by a legal framework that provides privacy and security in the exchange of information;
 - such a single entry point to disseminate, or provide access to, the relevant information to participating governmental authorities or authorised agencies and, where appropriate, to co-ordinate the controls of the various governmental authorities;
 - the addition of facilities to provide trade related government information and receive payment of duties and other charges.
- b) Proceed with the setting up of a Single Window facility at the national level through a collaborative effort with all relevant governmental authorities and the business community.

❖ **United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) Recommendation on Establishing a Legal Framework for International Trade Single Window (Recommendation 35)**

1. SCOPE

11. Within the context of this Recommendation, a legal framework for an International Trade

Single Window is defined as a set of measures that may need to be taken to address legal issues related to national and cross-border exchange of trade data required for Single Window operations.

12. Establishing a Single Window often requires changes to the existing legislation and regulations, for example, laws on electronic submission of documents, electronic signatures including digital signatures, user and message authentication, data sharing, data retention, destruction, and archiving, and electronic evidence, among others. However, it is possible to create a Single Window without major legislative changes. In all cases existing regulations and practices governing the flow of trade-related information influence the choice of the business and operational model for a Single Window facility. A timely analysis of existing and potential legal barriers related to trade data exchange is, therefore, a first major step in establishing and operating a Single Window. Such an analysis should take into account the broader context of international trade in which the Single Window exists. The concept of framework implies an inclusive and systematic approach in addressing the legal issues related to an International Trade Single Window facility.

III. USE OF INTERNATIONAL STANDARDS

14. The use of international standards is a necessary and key component of the Single Window implementation and operation processes. It allows for the scalability of provided services and ensures an easier interaction between all participants in an international supply chain. Since Single Windows are designed for Business to Government (B2G) and Government to Government (G2G) relations, attention should be paid to the fact that their operation is interoperable with existing solutions in Business to Business (B2B), B2G and G2G relations.

15. The United Nations legal codification work in electronic commerce, undertaken by the United Nations Commission on International Trade Law (UNCITRAL) should be taken into account and used, whenever possible as the benchmark for developing the Single Window legal infrastructure for both national and international transactions.

IV. RECOMMENDATION

16. The United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT), recognizing that a sound legal framework is required to support the operations of an International Trade Single Window, recommends that governments and those engaged in the international trade and movement of goods should:

(a) Undertake a study (including e-Commerce legal benchmarking and ‘gap analysis’ studies) to determine an appropriate set of measures that may need to be taken to address legal issues related to national and cross-border exchange of trade data required for Single Window operations (The International Trade Single Window legal framework);

(b) Use the UN/CEFACT checklist and its guidelines (Annexes I and II) to ensure the most frequent legal issues related to national and cross-border exchange of trade data are included in the framework;

(c) Amend existing legislation, regulations, decrees, etc., if necessary, to address the identified legal issues and gaps;

(d) Utilize international standards, international legal instruments, and soft law instruments, where available, throughout the entire process of creating a legally enabling environment for an International Trade Single Window.

Annex I Checklist of Legal Issues for Single Window Operations

1. When a national or regional Single Window is established, legal issues mentioned in this

checklist may arise. It is important to note that this list is not exhaustive. Depending on the actual implementation of the Single Window facility, legal issues not mentioned in this Annex may arise. For many governments, this beginning list of legal issues will provide the basis for discovering other issues related not only to B2G and G2B transactions but also to the broader B2B environment nationally and internationally.

2. In those instances where the implementation of an “electronic” Single Window facility is contemplated, it may be important for a country to review its general legal framework for electronic commerce, including electronic communications and electronic signatures. This may be particularly true in light of the desirability not only for the Single Window interactions with businesses (B2G) in the Single Window but also to promote the use of electronic means outside the Single Window environment.

(a) Has the legal basis for the implementation of the Single Window facility been examined/established;

(b) Has an appropriate organizational structure for the establishment and operation of a Single Window facility been chosen?

(c) Are proper identification, authentication and authorization procedures in place?

(d) Who has the authority to demand data from the Single Window?

(e) When and how data may be shared and under what circumstances and with what organizations within the government or with government agencies in other countries and economies?

(f) Have proper data protection mechanisms been implemented?

(g) Are measures in place to ensure the accuracy and integrity of data? Who are the responsible actors?

(h) Are liability issues that may arise as a result of the Single Window operation addressed?

(i) Are there mechanisms in place for dispute resolution?

(j) Are procedures in place for electronic archiving and the creation of audit trails?

(k) Have issues of intellectual property and database ownership been addressed?

(l) Are there any situations where competition issues may arise?

❖ **United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) Recommendation on Single Window Interoperability: Supporting Cross Border Interoperability of Trade Regulatory Single Window Systems (Recommendation 36); in public review⁵**

Part One

Scope

The scope of this Recommendation covers the interoperability between two or more electronic Single Windows in different countries or economies. The specific recommendations address the fundamentals needed for the exchange of information beyond the domain of the National Single Window.

Consistent with the definition provided in UN/CEFACT Recommendation 33, the Single Windows discussed in this Recommendation are those that facilitate import, export and transit-related regulatory functions. The term “interoperability” in the context of this Recommendation is defined as: the ability of two or more systems or components to exchange and

⁵ This document is still in public review and yet to be an official recommendation.

use information across borders without additional effort on the part of the user.

Although the majority of National Single Window facilities are related in some way to international trade, there is distinction between the information and documents used within a country, and data exchanged between the trading partner countries or economies. This Recommendation concentrates on the information flows exchanged across the border and the interoperability and reusability in another Single Window.

Objectives of this Recommendation

The purpose of this Recommendation is to provide details of the preparations needed and the models for information sharing before implementing bilateral and regional Single Windows, and to give examples of best practice. It presumes that Recommendations 33 on Single Window implementation, 34 on data simplification and standardization, and 35 on the enabling legal environment for Single Window implementation have already been followed.

The objective of the present Recommendation is to highlight the issues, and offer options for the establishment of Single Window interoperability whether the national facility is operated by the public or private sector. The aim of interoperability should be to exchange accurate, complete data (datasets) speedily, seamlessly and securely to the greatest benefit for operators and users. The exchange of information could be bilateral, multilateral (sub-regional, regional) or international.

Recommendation

The United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) recommends that governments and the business community should:

- identify and analyse the primary drivers and needs for Single Window Interoperability (SWI) either current or in the future, including perspectives from public and private sector stakeholders in Trade to determine the type of Single Window interoperability that will be necessary;
- research and examine the type of business processes, and information to be exchanged between the Single Windows, the existing semantic frameworks for this, and possible areas for improvement, notably through harmonisation and standardization of process;
- consider the most appropriate model(s) for governance of the interoperability, at the various stages of planning, implementation and ongoing operation in a way that is both financially and administratively sustainable; and
- research all multinational and bilateral trading agreements and arrangements to ensure specific protocols or legally binding obligations are considered when developing a National Single Window. If these agreements do not cover the identified business needs to ensure Single Window interoperability, stakeholders are encouraged to promote arrangements that ensure the organisational, legal, technical and semantic issues are addressed, as detailed in the guidance for this recommendation.

Part Two Guidelines on Single Window Interoperability (SWI)

Supporting Cross-Border Interoperability of Trade Regulatory Single Window Systems

The Business Needs of Single Window Interoperability

The primary driver of Single Window Interoperability (SWI) is to facilitate traders conducting foreign trade while assisting government agencies to take care of their own tasks. Trade-related information exchange can be utilised by governments and agencies in different countries and economies for the needs and requirements of the countries of export and import, and possibly also the countries of transit. Working towards effective Single Window interoperability

(including regional Single Window implementation) for cross-border information exchange relies on trust between traders and authorities for their readiness and willingness to share relevant trade-related information with authorised parties.

Like business, government agencies also aim to fulfil their responsibilities in the most effective means and ways, while meeting their legal and operational requirements. In addition to that, they should accomplish their task with minimum bureaucracy and cost of compliance for traders, as well as with maximum transparency and predictability of the official procedures.

Scope

Single Window Interoperability within this document refers to the exchange of specified foreign trade-related information in a structured format between two or more Single Window systems in different economies. This exchanged information shall be reused and processed for the purposes of international trade-related (and) administrative services with minimum effort and modification. These Single Windows are regulatory in nature, and the interoperability is cross-border.

Why Interoperability?

There can also be multiple specific needs for interoperability based on the agreements between the economies that are exchanging foreign trade-related information. These should clearly be outlined in the agreements or protocols in order to ensure clarity on the intended usage of the information. Some of the reasons which may be outlined include:

- For regional integration. Single Windows can now be seen in their broader context as tools not only to improve national competitiveness but also to promote regional economic growth.

Within the framework of its Union Customs Code (UCC), the European Union is planning a possible centralised clearance which would allow traders in one member state to make declarations in multiple member states through the Single Window platform of their own country. The member states then exchange the required data for the full import declaration (or the requested economic procedure such as transit, inward processing or warehousing).

- For trade facilitation. Supporting traders with their declaration obligations in countries with which they are not necessarily connected would allow the economic operators to comply with these countries' obligations and to compete in the international market. Such obligations could include licences, permits, certificates etc. The transfer of master files between the authorities could avoid repeating constant basic (header) information such as party identifications and addresses. Finally, trade facilitation includes the concept of a 'data pipeline' where information would travel from origin to destination and could be accessed by appropriately authorised parties to the specific trade transaction.

- For risk-analysis purposes. Receiving information related to the export declaration of the merchandise which is to arrive would allow the government agencies of the importing country to assess any security, safety, fiscal or other risks. This aspect is outlined within the WCO "SAFE Framework of Standards" in the third pillar on Government-to-Government communication. It is also further developed in the WCO project on "Globally Networked Customs" in which the importing country will receive the export declaration-related information from the exporting country in order to perform a comparative risk analysis.

- For advanced security declarations. Building on this principle of risk analysis, many countries have put in place an advance arrival security declaration system. This again is outlined in the WCO "SAFE Framework of Standards" in the first pillar. Now that these systems have

been functioning for a few years, one of the major concerns is with the data quality. The information which is being received is not reliable enough to perform a proper risk analysis. Trying to get the information at the source, in the exporting country, would allow improving the data quality. However, it would be difficult to oblige a foreign exporter to directly file information into the importing country's computer system. Single Window interoperability could assist with this through bilateral agreements between countries where the exporting country's platform would capture all of the necessary data elements; then the exporters would request that these data elements be sent to the importing country (through their own national Single Window platform); then the exporting country's Single Window platform would transfer the information to the importing country's Single Window on behalf of the exporting country.

- For preparation of border volumes. At the very least, exchanging information about volumes which are departing one country and which will arrive in another country on an approximate date would allow the importing country to try to adapt its infrastructure accordingly in order to accommodate the expected trade volumes.

- For combatting illicit activity. When identifying illicit merchandise or suspected illicit activity at export, the exporting country could forewarn the importing country in order to ensure that the merchandise is properly inspected upon arrival. This could also be extended to suspicions of fiscal evasion through the trading transactions, and to allow countries to plan the proper inspection relative to such transactions.

The benefits of Single Window Interoperability

Government and business should not allow improvements generated by a Single Window to cease at the national border. Benefits realized nationally and outlined in Recommendation 33, its Guidelines and its Repository, could be extended to the international movement of goods. Countries currently operating a National Single Window and those planning the introduction of a similar facility should actively and positively consider the development of interoperability as an integral part of the facility.

❖ **United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) Technical note on terminology for single window and other electronic platforms; in public review⁶**

Multiple Single Window mechanisms in a same economy

The UNECE suite of recommendations clearly sets forth an ideal for the establishment of a National Single Window to handle all cross-border trade related regulatory requirements. Therefore, the nomination "National Single Window" (NSW) would indicate that there is only one official Single Window and all government agencies should – either at the outset or progressively – participate within this framework, using the guidance of Recommendations 33, 34 and 35 to streamline the processes and eliminate any redundancies. In this case, no other Single Window should exist within that economy.

Likewise, a "Regional Single Window" (RSW) would be a mechanism that would handle trade related regulatory requirements within a given region. This would either create a collaborative system of NSWs (a network of networks), create an additional level of functionalities (such as shared procedures between economies) or completely replace the NSW; in these cases, no other RSW should exist for trade related regulatory requirements.

⁶ This is still in public review and yet to be an official document.

However, the reality of what is emerging in some countries is the establishment of multiple systems, each claiming to be a Single Window. The principle is that a Single Window system is established with the economic operator as the main user. Consequently, more than one Single Window could in fact co-exist in a same economy each targeting a different type of economic operator. The economic operator, when acting in any particular role, should not communicate with multiple Single Window systems for the same operation. The specific role of these Single Window systems should be clear. This is particularly important if multiple official Single Window systems coexist in a same economy.

Some examples of such nominations include:

- Single Window for importers and/or exporters.
- Single Window for maritime carriers.
- Single Window for air carriers.
- Single Window for financial institutions.

...

Notice that these nominations are not “regulatory Single Window,” “customs Single Window” or “logistics Single Window.” The main reason for this is that this type of nomination is centered not on the user of the system, but the administration ultimately authorizing the system. With such nominations, the economic operators may need to communicate with multiple Single Window systems which in part defeats the trade facilitation objectives.

Participating government agencies (PGAs) derive and offer a broad range of benefits in their respective administrative responsibilities from the Single Window. Multiple government-mandated Single Window mechanisms within one economy may thus negatively affect the role of a PGA if there is a lack of convergence of the submitted data. PGAs may discover data gaps which could seriously diminish their effectiveness. For example, in risk assessment or security analysis requires a holistic approach, confident all available data has been compiled. Indeed, Recommendation 35 identifies a legal liability that could lead to damages for « the use of inaccurate, incomplete, or incorrect data by the users of the Single Window facility ».

PGAs therefore have a direct interest in promoting a National Single Window instead of multiple Single Window systems which may undermine the effectiveness of the facility. PGAs should make every effort that multiple SW systems do not undermine the effectiveness of the NSW.

Other collaborative systems

Other collaborative systems may exist to help facilitate national and cross border trade. Often these systems identify themselves as a ‘Single Window’ which can potentially create confusion among operators both nationally and internationally. Many of these offer to satisfy regulations, such as filing of customs declarations, but lack a clear mandate from the government. Others are pure B2B platforms which self-proclaim to be a ‘Single Window’ even though they fulfill no regulatory function. In order to provide clarity to the user community, the following terms are suggested.

Alternative terms for technical solutions :

- Single Submission Portal. Allows traders to submit all of the information related to a specific activity in a single electronic platform. This platform then redistributes the information to all participants within that portal. A Single Submission Portal differs from a Single Window in that it may or may not handle regulatory procedures and it may or

may not be the only portal within a market.

- Single Environment. This approach brings together ICT systems that work collaboratively to aggregate data related to a transaction with the view to submitting information to satisfy a regulatory requirement. Usually, the systems will establish a certain level of trust and data protection between themselves in order to seamlessly share the information. This can be completely transparent to the trader.

This collaboration between IT systems is, of course, only the technical side of a much larger trade facilitation process of harmonizing and streamlining procedures, business processes, data elements, as described in Recommendation 34 for examples.

Single Window Environment versus Single Submission Environment. In order for the resulting product to be considered a Single Window solution, it will need to be compliant with all five aspects of the Recommendation 33 definition. Where this falls short of any of these aspects, the term "Single Submission Environment" would be more appropriate.

❖ **Agreement to Establish and Implement the ASEAN Single Window**

Article 2 General Definitions

For the purposes of this Agreement:

1. "Customs Administration" means the government agency which is responsible for the administration of Customs law and related national legislation.
2. "Lead agency" means the government agency appointed by Member Countries to take the leading role in the establishment and the implementation of the ASEAN Single Window.
3. "Line ministries and agencies" means government agencies which are responsible for the administration and enforcement of trade laws and regulations as relevant to the release and clearance of cargo.

Article 4 Principles of the implementation of the ASEAN Single Window

Member Countries shall ensure that transactions, processes and decisions under their National Single Windows and the ASEAN Single Window are performed, carried out or made in a manner complying with the principles of:

1. consistency;
2. simplicity;
3. transparency; and
4. efficiency.

Article 5 Obligations of Member Countries

1. Member Countries shall develop and implement their National Single Windows in a timely manner for the establishment of the ASEAN Single Window. Brunei Darussalam, Indonesia, Malaysia, Philippines, Thailand and Singapore shall operationalise their National Single Windows by 2008, at the latest. Cambodia, Lao PDR, Myanmar, and Viet Nam shall operationalise their National Single Windows no later than 2012.

2. Member Countries shall ensure that their line ministries and agencies co-operate with, and provide necessary information to their Lead agency in accordance with their national laws in the development and implementation of their National Single Windows.

3. Member Countries shall make use of information and communication technology that are in line with relevant internationally accepted standards in the development and implementation of their National Single Windows.

4. Member Countries shall work in partnership with industries and businesses to support the establishment of their National Single Windows.

Article 6 Technical Matters of the ASEAN Single Window

Member Countries shall, by means of a Protocol to be agreed upon, adopt relevant internationally accepted standards, procedures, documents, technical details and formalities for the effective implementation of the ASEAN Single Window.

❖ **APEC Cooperation Arrangement for Cross-Border Privacy Enforcement (CPEA, 2010)**

CROSS-BORDER COOPERATION

Cross-border cooperation on enforcement of Privacy Law

9.1 Subject to paragraphs 6 and 7, Participants should assist one another by considering other Participants' Requests for Assistance and referrals for investigation or enforcement, and share information and cooperate on the investigation or enforcement of Privacy Laws.

Prioritisation of matters for cross-border cooperation

9.2 Given that cross-border cooperation can be complex and resource-intensive, Participants may individually or collectively prioritize those matters that are most serious in nature based upon the severity of the unlawful infringements of personal information privacy, the actual or potential harm involved, as well as other relevant considerations. Participants requesting prioritisation of a particular Request for Assistance should specify the reasons in the Request for Assistance form.

❖ **Trans-Pacific Partnership Agreement (2015)**

Article 5.6: Automation

1. Each Party shall:

(a) endeavour to use international standards with respect to procedures for the release of goods;

(b) make electronic systems accessible to customs users;

(c) employ electronic or automated systems for risk analysis and targeting;

(d) endeavour to implement common standards and elements for import and export data in accordance with the World Customs Organization (WCO) Data Model;

(e) take into account, as appropriate, WCO standards, recommendations, models and methods developed through the WCO or APEC; and

(f) work toward developing a set of common data elements that are drawn from the WCO Data Model and related WCO recommendations as well as guidelines to facilitate government to government electronic sharing of data for purposes of analyzing trade flows.

2. Each Party shall endeavour to provide a facility that allows importers and exporters to electronically complete standardised import and export requirements at a single entry point.

Article 14.5: Domestic Electronic Transactions Framework

1. Each Party shall maintain a legal framework governing electronic transactions consistent with the principles of the UNCITRAL Model Law on Electronic Commerce 1996 or the United Nations Convention on the Use of Electronic Communications in International Contracts, done at New York November 23, 2005.

2. Each Party shall endeavour to:

(a) avoid any unnecessary regulatory burden on electronic transactions; and

(b) facilitate input by interested persons in the development of its legal framework for electronic transactions.

Article 14.6: Electronic Authentication and Electronic Signatures

1. Except in circumstances otherwise provided for under its law, a Party shall not deny the legal validity of a signature solely on the basis that the signature is in electronic form.

2. No Party shall adopt or maintain measures for electronic authentication that would:

(a) prohibit parties to an electronic transaction from mutually determining the appropriate authentication methods for that transaction; or

(b) prevent parties to an electronic transaction from having the opportunity to establish before judicial or administrative authorities that their transaction complies with any legal requirements with respect to authentication.

3. Notwithstanding paragraph 2, a Party may require that, for a particular category of transactions, the method of authentication meets certain performance standards or is certified by an authority accredited in accordance with its law.

4. The Parties shall encourage the use of interoperable electronic authentication.

Art. 14.9 Paperless Trading

Each Party *shall endeavor* to:

(a) make trade administration documents available to the public in electronic form; and

(b) accept trade administration documents submitted electronically as the legal equivalent of the paper version of those documents.

Article 14.11: Cross-Border Transfer of Information by Electronic Means

1. The Parties recognise that each Party may have its own regulatory requirements concerning the transfer of information by electronic means.

2. Each Party shall allow the cross-border transfer of information by electronic means, including personal information, when this activity is for the conduct of the business of a covered person.

3. Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that the measure:

(a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and

(b) does not impose restrictions on transfers of information greater than are required to achieve the objective.

❖ **ASEAN-Australia-New Zealand Free Trade Agreement**

Art 8 Paperless Trading

Art. 8 (1) Each Party *shall, where possible*, work towards the implementation of initiatives which provide for the use of paperless trading.

Art. 8(2) The Parties *shall* co-operate in international fora to enhance acceptance of electronic versions of trade administration documents.

Art. 8(3) The Parties *shall* exchange views and information on realizing, promoting and developments in paperless trading.

Art. 8(4) Each Party *shall endeavour* to make electronic versions of its trade administration documents publicly available.

