UN/CEFACT PPP-TF Study Working Group

“Public Private Partnership in Trade Facilitation”

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Project Exit
UN/CEFACT Forum Sardinia
October 17, 2014 morning
PPP-TF Study Project WG meeting

Proposed schedule

09:00  Presentation of PPP-TF final draft
09:20  Project proposal for a Recommendation
09:45  Presentation of Georgetown conference
10:30  Coffee break
11:00  Discussion
12:00  Other points
Definitions

• PPP definition copy-pasted from UNECE “Guidebook on Promoting Good Governance in Public-Private Partnerships” of 2008

• Trade Facilitation definition proposed by former TBG15 Chair, Gordon Cragge
  - This definition was proposed with a view to be reusable in other ITPD or UN/CEFACT projects
Structure of the sections

• Based on the UNECE Good Governance document, attempting to identify the aspects in each section which are specific to trade facilitation PPPs
PPP in Trade Facilitation

1. BASIC PRINCIPLES

• 1.1 Definition of PPPs

Public-Private Partnerships (PPPs) aim at financing, designing, implementing and operating public sector facilities and services.

“Guidebook on Promoting Good Governance in Public-Private Partnerships” (UNECE, 2008)

They refer to ‘innovative methods used by the public sector to contract with the private sector, who bring their capital and their ability to deliver projects on time and to budget, while the public sector retains the responsibility to provide these services to the public in a way that benefits the public and delivers economic development and an improvement in the quality of life’. 
PPP General Presentation

• PPP is not privatization
• PPP is not public procurement
  o Often the selection of PPP private partner is conducted through a procurement process

PPP in Trade Facilitation

1. BASIC PRINCIPLES

1.1 Definition of PPP

Main Characteristics:

• Long-term (sometimes up to 30 years) service provisions;

• The transfer of risk to the private sector; and

Different forms of long-term contracts drawn up between legal entities and public authorities:

  o Joint venture

  o Contractual (includes concessions)
UN/CEFACT ITPD & PPP

• PPP are often used to create key infrastructure:
  o Transport Projects (e.g. roads), Hospitals, Water Treatment, Social Housing, Energy...

• The area of activity of ITPD is “Trade Facilitation”
  o Therefore, the only PPP that we should be concentrating on are those which have a direct impact on Trade Facilitation. These may include:
    ▪ Electronic systems (for customs clearance, single window...)
    ▪ Outsourced border controls
    ▪ Trade – Transit Corridors
PPP – Some Key Actors

• UNECE
    o UNECE PPP ICoE (International PPP Centre of Excellence)

• UNCITRAL
  o Model Law on Public Procurement
  o International Colloquium on PPP 2-3 May, Vienna

• WTO
  o Government Procurement
    ▪ [http://www.wto.org/english/tratop_e/gproc_e/gproc_e.htm](http://www.wto.org/english/tratop_e/gproc_e/gproc_e.htm)
PPP General Presentation
• Various models of responsibilities & risk:

Figure 1. The Scale of Public-Private Partnerships

Source: The Canadian Council for Public-Private Partnerships

PPP in Trade Facilitation

1. BASIC PRINCIPLES

Source: UNICTRAL

Build-Operate Transfer (BOTs) Procurement?

CHANGES
PPP’s IT
Project finance market

MIGA (The World Bank): 60% of New Investments in Developing Countries are PPPs*

PPP in Trade Facilitation

*PPP in Trade Facilitation
Concerns have been expressed that PPPs represent a new area for financial, legal and Government institutions, and are not adequately handled as a result; there is a lack of understanding by stakeholders; many projects are bedevilled with disputes, and concerns are raised by civil society representatives.
CONCERNS

How to keep the investors happy?

1) Risk of legal changes
2) Risk of contracts
3) Risk of expropriation

*Source: Privately-Financed Infrastructure Projects, 3-4 October 2013, Georgetown Univ., Washington DC, USA.*
CONCERNS

PPPs Projects

30%

30/40%

Conflits based on:
• Legal
• Contract
• Treaties (BIT)

*Source: MIGA, Privately-Financed Infrastructure Projects, 3-4 October 2013, Georgetown Univ., Washington DC, USA.
CHALLENGES

• Building a Model Convention for PPP (MCPPP) under the UNCITRAL.

The MCPPP will operate like the International Court of Justice (ICJ) for assisting both parties during PPPs negotiations. An MCPPP should be a guiding document leading to legal text.

• Launching the International Court of Justice for Public and Private Partnerships (ICJPPP’s), with a specific budget (UNCITRAL).
CHALLENGES
Provide structure required to catch the conflict so early to avoid disputes

MIGA (2013-2016):
1.- Create a Legal Agency (reforms of IA, PPPs).
2.- Investor Agreements Tracking System ($ problem). How to evaluate proposals in PPPs where there is no price paid by the Government, should be considered for inclusion in any future work.

*Source: MIGA Privately-Financed Infrastructure Projects, 3-4 October 2013, Georgetown Univ., Washington DC, USA.
How to calculate damages in PPPs Projects?

1) Method of Compensation.
2) Life of the business
3) Discount rates
4) Taxes
5) Synergies
6) Inflation Rate

Source: Privately-Financed Infrastructure Projects. Georgetown Univ., October 2013,
How to calculate damages in PPPs Projects?

1) Method of Compensation.

A) The standard for compensation on fair market value in both international and national legal systems is the responsibility to put the injured party in that kind of position that it would be immuted if the damage did not occur. (Most legal systems...if it is possible to calculate).

B) If the transaction had never occurred in the first stage, the compensation will be in the way they give them back the money invested in the transaction – what they received and then it is adjusted for the time money value rate.

Unsuccessful & Successful

Source: Privately-Financed Infrastructure Projects. Georgetown Univ., October 2013,
How to calculate damages in PPPs Projects?

2) Life of the business in a single contract (concessions..)

Bridge Contracts ➞ Limited life

Fair Market Contract ➞ Indefinitely life

Bridge Contracts ➞ Fair Market Value
How to calculate damages in PPPs Projects?

Bridge Contracts ≠ Fair Market Value

3) Discount rates: « The Defaulting Courty »

In long-term contract → discount rate to discount back to the present

Source: Privately-Financed Infrastructure Projects. Georgetown Univ., October 2013,
How to calculate damages in PPPs Projects?

Bridge Contracts ≠ Fair Market Value

4) Taxes (USA example)

MONEY PERCEIVED = COMPENSATION - TAXES

Bridge Contracts ➔ Pre-Paid Taxes (36%)

Fair Market Contract ➔ Taxes (15%)

Source: Privately-Financed Infrastructure Projects. Georgetown Univ., October 2013,
How to calculate damages in PPPs Projects?

5) Synergies

Bridge Contracts ≠ Fair Market Value

Example: authentication PPP + Single Window PPP contract

Investment Value ⟷ Fair Market Value

Source: Privately-Financed Infrastructure Projects. Georgetown Univ., October 2013,
How to calculate damages in PPPs Projects?

Bride Contracts ≠ Fair Market Value

6) Inflation Rate

Example: Cerro Negro (Venezuela)

Sold Value ← Award value

Bridge Contracts ← Fair Market Value

Source: Privately-Financed Infrastructure Projects. Georgetown Univ., October 2013,
CONCERNS

Concerns have also been raised about the impact of a lack of uniform rules on the use of PPPs as a tool for infrastructure development and the provision of public services.

The European Union has not yet promulgated specific rules on PPPs, but has issued a series of texts on concessions. Nonetheless, several member States have expressed the view that there is a need for a common set of European Union rules on PPPs, and there is a proposal for a new Directive on Concessions (2004).
CHALLENGES

Options for any future text on PPPs

Harmonizing public procurement and PPP legislation – conceptual issues

Directive on PPPs

Legislative Guides on different types of PPP

Detailed comments and clarifications on Legislative Guides for regions and countries (in context of the current legislation)

National PPP legislation
UN/CEFACT ITPD & PPP

• Some factors that ITPD would most likely want to concentrate on:
  o Cost of solutions resulting from PPP (ensure that it does not create an unreasonable financial barrier for operators)
  o The public agency in charge (ensure that it is an actor on the supply chain that is involved in international trade)
  o Reference to best practices
PPP in Trade Facilitation

1. BASIC PRINCIPLES

• 1.2 Trade Facilitation – A Practical Definition

The fundamental purpose of trade facilitation is to simplify, harmonize and standardize the trading process whether domestic or international. To achieve this objective trade facilitation aims at transparency in all rules concerning trade procedures in order to allow the trading community to prepare and be in compliance (i.e. United Nations Convention against Corruption).
Scope of PPP in TF

1. BASIC PRINCIPLES

• There is less guidance for specifically trade facilitation PPPs. We proposed a scope of these:
  o A National Trade Facilitation Organisation
  o Single Window
  o Port Communities
  o Trade Corridors
  o Coordinated Border Management
  o Infrastructure
  o Aligned Documents
  o Mobile Trade Facilitation
PPP in Trade Facilitation

1. BASIC PRINCIPLES

• 1.3 Scope of TF PPP (Some Examples)

1) A National Trade Facilitation Organisation

UNECE Recommendation 4 and its Guidelines outline the partnership which should be put in place between Government Authorities, Providers of trade and transport services and Users of trade and transport services. It further outlines how these actors should work together through a trade facilitation body in order to foster consensus on key issues and how such organisms could be funded and could be beneficial in achieving these aims.
PPP in Trade Facilitation

1. BASIC PRINCIPLES

• 1.3 Scope of TF PPP (Some Examples)

2) Single Window

• UNECE Recommendation 33 foresees the establishment of Single Window facilities through a collaborative effort with all relevant governmental authorities and the business community (recommended practice 6b). In 2005, this recommendation identified that two out of the twelve single windows that were implemented were led by PPPs.
PPP in Trade Facilitation

1. BASIC PRINCIPLES

• 1.3 Scope of TF PPP - *Single Window in Ghana*
PPP in Trade Facilitation

1. BASIC PRINCIPLES

• 1.3 Scope of TF PPP - *Single Window in Ghana*

The difficulties associated with the manual process

· Duplication of tasks
· Difficulty in revenue reconciliation between banks and customs
· Audits virtually impossible
· Ineffective monitoring of transit goods
· No transparency and inconsistencies in the clearance process (long, tedious and redundant)
· Customs considered the root cause for delays in clearance.
PPP in Trade Facilitation

1. BASIC PRINCIPLES

1.3 Scope of TF PPP - Single Window in Ghana:

- MOF
- Customs
- GPHA
- Freight Station
- Shipping Lines
- Min Trade
- Traders
- Freight Fwdr
- Banks
- Conroll. Ag
- PSI
PPP in Trade Facilitation

1. BASIC PRINCIPLES

• 1.3 Scope of TF PPP - *Single Window in Ghana: TradeNet*

The benefits arising from this concept are the following:

• Reduction in number of steps in the customs clearance process
• Removes data-entry duplication
• Eliminates all stamps and seals
• Enables declaration validation 24h/day 7 days/week
• Starts the clearance process before arrival of the vessel
• Provides advance notice to Freight Stations of forthcoming physical examinations
• Provides means of performance feedback for continuous improvement.
PPP in Trade Facilitation

1. BASIC PRINCIPLES

• 1.3 Scope of TF PPP - *Single Window in Ghana: TradeNet*

Benefits:
Mediam clearance times has been reduced from 8 to 2 days
Bank payments have been reduced from several hours to 10 minutes
1400 individuals (including customs officers, employees from clearing companies, shipping agents and freight stations companies), were trained in computer skills over one year
TradeNet has become platform to extend efficiency and transparency in other Government services:
  o Vehicle registration
  o Inland Revenue Service
  o VAT
  o Standard Board
  o Transit Control

Customs revenues from imports increased by 35%!!!!.
PPP in Trade Facilitation

1. BASIC PRINCIPLES

Single Window in Ghana: TradeNet

II
Easy and Corruptive Environment

I
Easy and Non Corruptive Environment

III
Difficult and Corruptive Environment

IV
Difficult and Non Corruptive Environment
PPP in Trade Facilitation

1. BASIC PRINCIPLES

Single Window in Ghana: TradeNet
PPP in Trade Facilitation

1. BASIC PRINCIPLES

• 1.3 Scope of TF PPP - *Single Window in Ghana: TradeNet*

How can these unexpected results be explained?

• The full transparency and post-event monitoring capacity act as a preventive mechanism to fraudulent behavior by all parties involved and

• The reduced transaction cost involved in this process for traders are a strong incentive for improved compliance.
PPP in Trade Facilitation

1. BASIC PRINCIPLES

• 1.3 Scope of TF PPP - *Single Window in Ghana: TradeNet*

The Ghana Community Network was financed by a cash-out investment of roughly $10M.

Financed by the Foreign Investor (60%) and by local stakeholders (Banks) and the Ministry of Finance and Customs (40%). Government was an in-kind contribution of computers financed under the World Bank Gateway Programme.

The operation and return on the investment is financed by a 0.4% ad valorem fee to be paid by importers, while exports - to provide a special incentive - are exempt from paying fees.
PPP in Trade Facilitation

1. BASIC PRINCIPLES

Single Window in Ghana: TradeNet
PPP in Trade Facilitation
1. BASIC PRINCIPLES

• 1.3 Scope of TF PPP (Some Examples)

*Port Communities*

• The combination of public and private actors that usually are present in a port (Customs, port authority, freight Forwarders, customs agents and so on) makes the PPP a plausible.
PPP in Trade Facilitation

1. BASIC PRINCIPLES

• 1.3 Scope of TF PPP (Some Examples)
• Trade Corridor

Corridors provide for a spatial framework to organize cooperation and collaboration between different countries and public sector agencies involved in providing trade facilitation infrastructure and services.
PPP in Trade Facilitation

1. BASIC PRINCIPLES

• 1.3 Scope of TF PPP (Some Examples)

Coordinated Border Management

• This can include involvement of software and IT services companies to ensure that the appropriate platform is built to allow this coordination to operate smoothly.

• The WCO Research Paper No.2 on Coordinated Border Management from June 2009 clearly indicates that multiple agencies within government should be involved, but it also outlines the importance of including the private sector in the development and implementation of border management and cooperation (Section 5).
PPP in Trade Facilitation

1. BASIC PRINCIPLES

• 1.3 Scope of TF PPP (Some Examples)

*Infrastructure*

• In many countries the infrastructure surrounding a sea- or air-port may have a deleterious effect on the efficiency of the port operations. An efficient consortium to address these issues is a PPP where private sector funding and expertise enables the national or local government to afford the desired upgrade.
1.3 Scope of TF PPP (Some Examples)

**Aligned Documents**

- The development of aligned documents through a consultative approach (for the needs and requirements). To meet the needs of the administration and business needs... Both parties may be investing their work and intellectual property to the process.
PPP in Trade Facilitation

1. BASIC PRINCIPLES

• 1.3 Scope of TF PPP (Some Examples)

*Mobile Trade Facilitation*

• It is time for trade facilitation to become mobile-enabled. A recent UNECE report ‘Mobile Business’ highlighted the importance of this medium. The European Commission has recently launched a new policy framework for 4G technology, acknowledging its fundamental importance in all spheres of business. A high-level PPP, similar to that outlined above, could ensure that international traders keep up with the game.
PPP General Presentation

• The role of public governance in PPP in seven key principles:
  o A coherent PPP policy
  o Strong enabling institutions
  o Legal framework « fewer, better, simpler »
  o Cooperative risk sharing and mutual support
  o Transparency in procurement process
  o Putting people first
  o Achieving sustainable development

Policy

• Involve all parties to have a policy regarding Trade Facilitation.
• A Policy for an organization could for example include items such as:
  o We use standardized data elements in communication when possible
  o We use standardized code lists when possible
  o We use standardized messages when appropriate
  o We use Business Process Analysis Methodology (BPA) when appropriate
  o Etc.
• When a Public and Private organizations form a PPP and each has a Policy it is much easier to agree and implement TF measures. This will speed up the partnership and bring benefits faster to the project.
• A stated policy also has the benefit of identifying areas in which TF cannot be done.
Capacity Building

• Sustainability of project / continuous development / evolution /
• Achieving sustainable development
• Must not create barriers to trade
• Training and ensuring that the users take possession of the tool
• Ensure that capacity building is done within the country – build local capacity
• Change management (human nature is perhaps resistant to change)
Improving Legal Framework

• Special attention for service providers based outside the country with the PPP project.
  o Must define the applicable legal framework
  o There may be some laws to which the provider may need to adhere to within their headquarters’ jurisdiction even for services provided in third countries
    ▪ The UK anti-bribery law for example must be applied by British-based companies no matter where they do business in the world.
Risk

• There can be risks that are specific to Trade Facilitation PPPs such as policy change. These can be seen in WTO negotiations, for example.
• Another example, if you implement a standard like UNTDED, the time to resolve problems related to other code lists which are only national and the government does not want to risk time to exploit, etc.
• The legal framework in multiple countries can also be a potential source of risk
PPP Procurement

• Harmonisation should be achieved before a contract is let
  o Where harmonisation does not exist, the contract specific
    conflicts must be identified and addressed, along with an
    assessment of the associated risk and how it will be shared.
• The contract should be designed such that legislative risk
  never sits with the contractor.
• Contracts should be issued and held by a Prime Agency.
• Output specifications should be based on appropriate
  standards at the supranational level to ensure equality of
  service for the entire length of the relevant PPP project.
• Where data transfer is required between third parties, best
  practice would be to ensure outputs require compatibility
  and interoperability with mirrored systems.
Putting people first

Source: Public-Private Partnerships to enhance SPS capacity: What can we learn from this collaborative approach? Standards and Trade Development Facility and IADB (April 2012)-
PPP in Trade Facilitation

3. Some Considerations

• Overall, the answer is that PPPs avoid the often negative effects of either exclusive public ownership and delivery of services, on the one hand, or outright privatization, on the other.

• In contrast, PPPs combine the best of both worlds: the private sector with its resources, management skills and technology; and the public sector with its regulatory actions and protection of the public interest.
PPP in Trade Facilitation

3. Some Considerations

• PPP can often be a source of innovation. It allows for flexibility, innovation and creativity, which will facilitate the realisation of sustainable development and related socioeconomic goals.
Conclusions of the Study Project

• Through this study, the working group concludes that there are aspects that are specific to Trade Facilitation PPPs.
• It has been concluded that it would be positive to propose a UN/CEFACT recommendation project on the subject to not only provide guidance for these aspects which are specific, but to also regroup information which is general to all types of PPPs, creating a single reference document which could be used by governments and practitioners.
Conclusions of the Study Project

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Project Proposal for a Recommendation

• Governments and those involved in international trade should actively consider Public-Private Partnership as an alternative method of financing and implementing trade facilitation measures.

• When implementing or funding trade facilitation through Public-Private Partnership, all parties involved should cohere to UNECE “Good Governance in PPP” document.

• Furthermore, all parties should consider the aspects which are specific to trade facilitation measures and which are further detailed in the Guidelines of the current recommendation.
Project Proposal for a Recommendation

• Much of the same text is reused from the PPP-TF Study Project

• Three exit criteria:
  o Document on Recommendation on PPPs in Trade Facilitation
  o Document on Guidelines on PPPs in Trade Facilitation
  o Online files for Case Study Repository

• Project leadership:
  o Maurice DIAMOND, Project chair
  o Paloma BERNAL TURNES, Editor
Relationship with other projects in UN/CEFACT

• Trade/Transport PDA – ITPD
  o Single Window (Rec33, Rec36)
  o Consultation approaches
  o Proposed projects:
    ▪ Coordinated Border Management
    ▪ Trade Corridors
    ▪ ...

• Conference call on November 11 at 3pm CET-Paris? (2pm GMT-London, 9am US-EST-Washington)?
If you are interested in this project

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