Building an enabling legal environment for trade facilitation

Luca Castellani
Head, UNCITRAL Regional Centre for Asia and the Pacific
Incheon, Republic of Korea

Trade facilitation and paperless trade

- Trade facilitation aims at simplifying procedures and controls governing the movement of goods.
- The goal is to reduce direct and indirect costs associated to trade, with benefits for end users and consumers
- More trade and cross-border trade = increased economic development
- No prejudice to legitimate regulatory objectives.
- ICT may provide great opportunities for trade facilitation through concepts such as paperless trade and electronic single window facilities.

What is paperless trade?

- Notion built around trade facilitation in customs operations through electronic single windows – a B2G transaction
- Goal to set up cross-border single windows – a G2G international transaction
- But international trade is a B2B transaction
- Broader e-government context
- Need to enable paperless trade in all of these dimensions

The intersection of law and technology

- Paperless trade often understood as a technological process
- Legal aspects are equally relevant to ensure enforceability of laws, regulations and contractual agreements
- Need to adopt an enabling legal framework
- Contractual provisions may not suffice: statutory rules are necessary, co-regulation may be desirable

Different legal topics relevant for paperless trade

- E-transactions and e-contracting
- Authentication / security (e-signatures, IdM)
- Data protection and retention
- Liability
- Cybercrime, digital forensics
- … (see UN/CEFACT Rec. 35)

E-transactions and e-contracting law

- Establishes general principles applicable to all electronic transactions, regardless of the subject involved (public or private)
- Often based on the UNCITRAL model laws, high degree of harmonisation across the world
- Limited number of provisions needed to address technological requirements
- General contract law is not affected

General principles of e-transaction law

- Principle of non-discrimination
- Principle of functional equivalence
- Principle of technological neutrality
- Designed for commercial transactions, now widely accepted
- They need to be extended to public sector

Principle of non-discrimination

- A communication shall not be denied validity on the sole ground that it is in electronic form.

Principle of functional equivalence

- Purposes and functions of paper-based requirements may be satisfied with electronic communications, provided certain criteria are met.
  - For instance, written form function is met if the electronic data message is accessible for future reference.

Principle of technological neutrality

- Legislation shall not impose the use of or otherwise favour any technology (EDI, e-mail, Internet, instant messaging, fax, etc.)
  - This is done in order to favour future innovations and their actual use;
  - Possibility to have detailed provisions on technology requirements in secondary legislation (e.g., implementing regulations).

Implementation of enabling legislative environment

- Enabling means no barrier to electronic exchanges (B2B, B2G and G2G)
- Adoption of modern legislation, preferably based on uniform standards
- Application of that legislation to the public sector to the maximum extent possible
- Avoid over-regulation; favour co-regulation
- Transition to paperless environment is an occasion to review and reengineer processes and streamline existing laws

Implementation of enabling legislative environment: concrete steps

- E-transactions / e-contracting is the area where the law is most settled
- Russia is a signatory to the UN Convention on the Use of Electronic Communications on International Contracts
- Quick ratification of that Convention would give Russia the necessary modern legislation without affecting regulation and controls
- Russia has recently changed its e-signature law to adopt a more technology neutral approach
- Other areas can be developed progressively, bearing in mind regulatory requirements
- Other States in the region could follow that example

Thank you for your attention!

For more information:

- UNCITRAL website: www.uncitral.org
- UN NExT website: www.unescap.org/unnext/
- Or send an email to: luca.castellani@uncitral.org