ESCAP - UNCITRAL Capacity Building Workshop: Navigating Digital Trade Law Landscape
Implementing FTAs and RTAs through the adoption of UNCITRAL texts
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UNCITRAL’s mandate and work

• The United Commission on International Trade Law (UNCITRAL) core legal body of the United Nations system in the field of commercial law
• A Commission with universal membership active for more than 50 years
• UNCITRAL’s goal is the harmonization and modernization of business law.
• UNCITRAL deals with the law of electronic transactions, electronic contracting and electronic signatures, by
  – Preparing legislative and guidance texts;
  – Inserting provisions in texts on other subjects (e.g., arbitration, carriage of goods, public procurement)
UNCITRAL texts on electronic commerce

- UNCITRAL Model Law on Electronic Commerce, 1996
  - Enacted in over 80 States.
- UNCITRAL Model Law on Electronic Signatures, 2001
  - Enacted in about 40 States
- United Nations Convention on the Use of Electronic Communications in International Contracts, 2005:
  - 18 signatories, 16 States parties
  - 20+ States have enacted domestically its provisions
- UNCITRAL Model Law on Electronic Transferable Records, 2017
  - Enacted in 7 jurisdictions
- UNCITRAL Model Law on the Use and Cross-border Recognition of Identity Management and Trust Services, 2022
- Texts, status, preparatory and explanatory materials are available on the [UNCITRAL website](#)
FTAs and other treaties relevant for e-commerce

- Model RTA e-commerce chapters:
  - CPTPP and RCEP
- Dedicated international agreements:
  - WTO Trade Facilitation Agreement
  - ESCAP Framework Agreement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific
  - Digital Economy (Partnership) Agreement
  - Plurilateral Joint Statement Initiative on e-commerce
- UNCITRAL texts are instrumental to implementing these treaties by establishing a harmonised enabling legal environment
E-commerce provisions in FTAs

- Increasing interest for promoting cross-border e-commerce in free trade agreements through the adoption of an enabling legal environment
- In e-commerce chapters:
  - Firstly, selected provisions
  - Later, a more comprehensive approach
- In chapters on customs or trade facilitation:
  - provisions on paperless trade facilitation
- Often these provisions are soft commitments
  - If binding, the enforcement mechanism is left to States.
- However, lack of implementation hinders e-commerce development
UNCITRAL texts and FTAs

• An enabling legal environment may be established:
  – Through the adoption of treaties
  – Through the harmonisation of national laws on the basis of uniform legal standards, when they exist
    • Standards may be global (UNCITRAL) or regional (e.g., APEC Data Privacy Pathfinder and Cross Border Privacy Rules).
    • This approach is endorsed in article 10 of the FA-PT
• Accordingly, UNCITRAL texts may interact with FTAs in three manners:
  1. Direct reference
  2. Incorporation of UNCITRAL provisions
  3. Indirect reference
• Chapter 14 of the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) aims to promote e-commerce and paperless trade facilitation
• It provides a comprehensive restatement of e-commerce provisions relevant for an FTA
• Articles 14.5 (Domestic Electronic Transactions Framework) and 14.6 (Electronic Authentication and Electronic Signatures):
  1. Pursue mutual legal recognition and interoperability;
  2. Endorse the principles of non-discrimination and technology neutrality;
  3. Explicitly refer to a duty to adopt UNCITRAL texts (ECC and MLEC);
  4. Allow the use of specific technologies for certain types of transactions.
RCEP Article 12.10: Domestic Regulatory Framework

1. Each Party shall adopt or maintain a legal framework governing electronic transactions, taking into account the UNCITRAL Model Law on Electronic Commerce 1996, the United Nations Convention on the Use of Electronic Communications in International Contracts done at New York on 23 November 2005, or other applicable international conventions and model laws relating to electronic commerce.

2. Each Party shall endeavour to avoid any unnecessary regulatory burden on electronic transactions

- Example of direct reference
- It is satisfied by adopting UNCITRAL texts:
  - The MLEC and the ECC
  - Any subsequent UNCITRAL legislative texts (or regional models based on them)
1. Except in circumstances otherwise provided for under its laws and regulations, a Party shall not deny the legal validity of a signature solely on the basis that the signature is in electronic form.

2. Taking into account international norms for electronic authentication, each Party shall:

(a) permit participants in electronic transactions to determine appropriate electronic authentication technologies and implementation models for their electronic transactions;

(b) not limit the recognition of electronic authentication technologies and implementation models for electronic transactions; and

(c) permit participants in electronic transactions to have the opportunity to prove that their electronic transactions comply with its laws and regulations with respect to electronic authentication.
RCEP Article 12.6: Electronic Authentication and Electronic Signature

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

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

- Example of incorporation
  - Principle of legal recognition (non-discrimination) of electronic signatures
  - Principle of technology neutrality of electronic signatures
- Domestic law must comply with it
CPTA Article 5: General Principles

The present Framework Agreement shall be guided by the following general principles:

(a) Functional equivalence;
(b) Non-discrimination of the use of electronic communications;
(c) Technological neutrality; […]

• Example of indirect reference
• These are the principles underpinning UNCITRAL texts.
• They make trade and supporting documents in electronic form legal equivalent of paper ones.
• They have been already adopted in more than 25 Asia-Pacific States.
Final considerations

- UNCITRAL texts have been adopted in more than 100 States
  - Many of them are developing and least developed countries
- The promotion of enabling legal texts is needed to balance regulation
- The references to UNCITRAL texts in CPTPP and RCEP has not created issues
- Challenges may arise at the implementation stage
  - Awareness of legal and business actors
  - Coordination with other laws
- Need to ensure adequate resources to implement an enabling legal framework
- The CPTA provides vision and resources to support law reform work