Evolution of Treaty Provisions on E-commerce

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General

• Promoting efficiency and trust through digitalized documents and processes
• Saving business costs through paperless trade
• The value in collaboration on digitalization issues
• E-commerce and electronic documents – legal recognition and security for business certainty
• The role of laws and international agreements
The international trade environment and digitalization
Trade Facilitation and Cross-border Trade

- Facilitation of trade through elimination/reduction of paper documents
- Heightened sense of urgency due to the pandemic

- Trade Facilitation Treaty Provisions include:
  - WTO – TFA
  - UNESCAP – CPTA
  - FTA trade facilitation commitments
    - e.g., Single Customs Windows, paperless documentation

- The value of collaborating on clear rules and standards
- The value of Model Laws
- The value of treaty commitments
Paperless Trade and Digital Commerce

Understanding trade documentation: examples

- Commercial invoice
- Bill of Lading – example of a transferable document in law
- Certificate of origin
- Insurance certificate
- Goods declaration documents e.g., sanitary/phytosanitary certificates

>> Possible use of blockchain platforms for such documents if digitized
Digitalization in Cross-border Business: Role of National Laws and International Agreements

National Laws

International Agreements e.g.
FTAs
DEAs
Plurilateral agreements under JSIs

Model Laws relating to electronic commerce
Evolution in E-commerce Provisions in International Agreements

• FTAs – elimination/reduction of barriers in goods and services, promoting trade facilitation, investment protection, etc
• More recently >> E-commerce Chapters
Examples: CPTPP, RCEP

Provisions on a number of issues including electronic signatures, transfer of data across borders, data localization commitments, disclosure of source codes, collaboration on digital issues, etc.
References to international standards and Model Laws

Note also other non-FTA agreements e.g., ASEAN Agreement on E-commerce
DEAs

• Objectives and functions
• Examples
  ➢ Chile, New Zealand and Singapore
  ➢ Australia- Singapore
  ➢ UK-Singapore
  ➢ South Korea-Singapore (KSDPA)

References to international standards and Model Laws
Article 2.3: Domestic Electronic Transactions Framework

1. Each Party shall maintain a legal framework governing electronic transactions consistent with the principles of:
   
   (a) the UNCITRAL Model Law on Electronic Commerce (1996); or
   
   

3. Each Party shall endeavour to:
   
   (a) avoid imposing 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 8

Domestic Electronic Transactions Framework

1. For the purposes of this Article:
   (a) “electronic transferable record” means an electronic record that satisfies the requirements set out in Article 10 of the UNCITRAL Model Law on Electronic Transferable Records (2017), and may include an electronic bill of lading; and
   (b) “international bodies” means international bodies to which both Parties are participants or members.


3. 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, including in relation to trade documentation.

4. The Parties recognise the importance of developing mechanisms to facilitate the use of electronic transferable records. To this end, in developing such mechanisms, the Parties shall endeavour to take into account, as appropriate, relevant model legislative texts developed and adopted by international bodies, such as the UNCITRAL Model Law on Electronic Transferable Records (2017).
ARTICLE 8.60

Domestic Electronic Transactions Framework and Electronic Contracts


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.

3. The Parties recognise the importance of facilitating the use of electronic transferable records. To this end, each Party shall endeavour to establish a legal framework governing electronic transferable records consistent with the UNCITRAL Model Law on Electronic Transferable Records 2017.

4. Except in circumstances otherwise provided for in its domestic law, neither Party shall deny the legal effect, legal validity or enforceability of an electronic contract, solely on the basis that the contract has been concluded by electronic means.

5. Recognising the importance of transparency for minimising barriers to digital trade, each Party shall maintain on a publicly accessible website a list.
The WTO and E-Commerce Work

- 1998 – Adoption of E-Commerce Work Programme by WTO General Council (WT/L/274, 30 September 1998)

"Exclusively for the purposes of the work programme, and without prejudice to its outcome, the term 'electronic commerce' is understood to mean the production, distribution, marketing, sale or delivery of goods and services by electronic means".

- Moratorium on customs duties on electronic transmissions
- 2019 – announcement by 76 WTO members on start of work on e-commerce negotiations; co-convenors are Australia, Japan and Singapore.
China and U.S. among 76 WTO members pushing for new e-commerce rules

See generally https://www.wto.org/english/tratop_e/ecom_e/joint_statement_e.htm
Annex

JOINT STATEMENT ON ELECTRONIC COMMERCE

Ministers representing the following Members of the World Trade Organization (WTO): Albania; Argentina; Australia; Bahrain; Brazil; Brunei Darussalam; Canada; Chile; China; Colombia; Costa Rica; El Salvador; European Union; Georgia; Honduras; Hong Kong, China; Iceland; Israel; Japan; Kazakhstan; Korea, Republic of; Kuwait, the State of; Lao PDR; Liechtenstein; Mexico; Moldova, Republic of; Malaysia; Mongolia; Montenegro; Myanmar; New Zealand; Nicaragua; Nigeria; Norway; Panama; Paraguay; Peru; Qatar; Russian Federation; Singapore; Switzerland; Chinese Taipei; Thailand; the former Yugoslav Republic of Macedonia; Turkey; Ukraine; United Arab Emirates; United States; and Uruguay, welcome the progress made toward WTO negotiations on electronic commerce since the Eleventh WTO Ministerial Conference at Buenos Aires.

We confirm our intention to commence WTO negotiations on trade-related aspects of electronic commerce.

We will seek to achieve a high standard outcome that builds on existing WTO agreements and frameworks with the participation of as many WTO Members as possible.

We recognise and will take into account the unique opportunities and challenges faced by Members, including developing countries and LDCs, as well as by micro, small and medium sized enterprises, in relation to electronic commerce.

We continue to encourage all WTO Members to participate in order to further enhance the benefits of electronic commerce for businesses, consumers and the global economy.
Excerpts from statement of December 2021:

We welcome the substantial progress made to date in the negotiations. We have achieved good convergence in negotiating groups on eight articles – online consumer protection; electronic signatures and authentication; unsolicited commercial electronic messages; open government data; electronic contracts; transparency; paperless trading; and open internet access. The outcomes already achieved in these areas will deliver important benefits including boosting consumer confidence and supporting businesses trading online.

In addition, we have seen the consolidation of text proposals in other areas, including on customs duties on electronic transmissions, cross-border data flows, data localisation, source code, electronic transactions frameworks, cybersecurity, and electronic invoicing, as well as advanced discussions on market access. We will intensify negotiations in these areas from early 2022. We note that provisions that enable and promote the flow of data are key to high standard and commercially meaningful outcome.

June 2022 Statement: participants aim to have a revised Consolidated negotiating text by end 2022.
Summary

- Clear rules on digital economy issues can facilitate trade.
- Various instruments and initiatives have been developed to promote this, including Model Laws and trade facilitation agreements.
- Apart from FTA E-commerce chapters, other arrangements are evolving such as DEAs and the work under the JSI by participating WTO members.

Thank you for your kind attention.