

Legal issues in Cross-border Paperless Trade and E-commerce: Experience from China

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Workshop on Cross-border Paperless Trade Facilitation: Challenges and
Issues for Enabling Environment

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Paperless Trade & E-Commerce

- ◆ Paperless Trade: a definition (Draft Regional Agreement/Arrangement)
 - ◆ Trade taking place on the basis of *electronic communications*, including exchange of trade-related data and documents in electronic form
 - ◆ “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.
 - ◆ Conduct of trade activities on the basis of *electronic* rather than paper documents *e.g. electronic Customs declaration, electronic cert. of origin (TID UNECAP 2012)*
- ◆ E-Commerce: WTO working definition
 - ◆ E-commerce is understood to mean the production, distribution, marketing, sale or delivery of goods and services by electronic means.

Enabling Legal Framework for Cross-Border E-Commerce

- ◆ UNECAP **Resolution** “Enabling paperless trade and the cross-border recognition of electronic data and documents for inclusive and sustainable intraregional trade facilitation” (68/3) May 2012
 - ◆ Avoiding trade barriers
 - ◆ Enabling and facilitating the cross-border recognition and electronic exchange of trade documents
 - ◆ Promoting uniformity and interoperability according to the international standards
 - ◆ Considering the bilateral and sub-regional agreements on the cross-border recognition and exchange of trade-related documents
- ◆ (Draft) Arrangement/Agreement on Facilitation of Cross-border Paperless Trade for the Asia Pacific Region

General Legal Issues

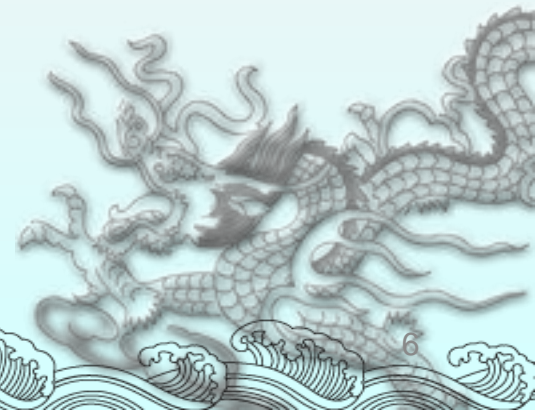
- ◆ International trade law
 - ◆ E.g. UNCITRAL, UNECE, WTO, WCO, FTAs
- ◆ Contract/transactional law
- ◆ Electronic contracts/signatures/authentication
- ◆ Data protection
- ◆ Liability issues (obligations and responsibility)
- ◆ Dispute resolution
- ◆ Intellectual property rights and database ownership
- ◆ Competition
- ◆ Cyber-crimes and security

Remarkable Growth in China

- ◆ Chinese MoC: total e-commerce (B2B+B2C+C2C) gross merchandise volume (GMV) exceed US\$ 2.1 trillion in 2014
- ◆ B2B remained as the dominant e-commerce sector, which made up 80% of total e-commerce GMV.
 - ◆ SME B2B accounted for more than 50% share;
 - ◆ Over 80% of large enterprises use e-commerce services
- ◆ Chinese Premier Mr. Li's Governmental Report at NPC March 2015
 - ◆ National strategic focuses on mobile Internet, cloud computing, big data, etc.
 - ◆ Action Plan for "Internet +"
 - ◆ Internet as cross-cutting stimulus for national economy
- ◆ Developing cross-border e-commerce
- ◆ Accelerating e-commerce lawmaking

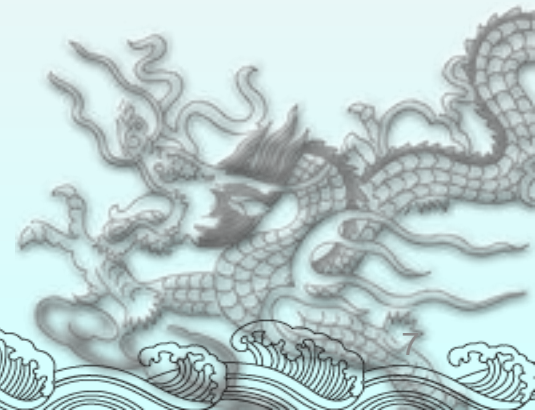
Chinese Legal Framework

- ◆ Existing domestic laws
 - ◆ E-Signature Law (2004)
 - ◆ Contract Law (1999)
 - ◆ Consumer Right Protection Law (2014)
 - ◆ Criminal Law (1997) and amendments
 - ◆ NPC Decision and Ministerial Regulations on protection of personal information



Chinese Laws TBD for Cross-Border E-commerce

- ◆ International trade law
- ◆ National Single Window
- ◆ Cross-border Data Flow
 - ◆ Data protection and confidence
 - ◆ Security, identification, authentication and authorization
 - ◆ G2G Access and share
 - ◆ Data quality
- ◆ Others



Chinese New E-Commerce Lawmaking

- ◆ 21st Century basic economic law
 - ◆ Not confined to any industry or area
 - ◆ Applicable to e-commerce in the territory of China and/or involving Chinese parties
- ◆ Correlation with existing laws
 - ◆ Not to duplicate
 - ◆ Coherence, improvement (e.g. E-Signature Law)
- ◆ Flexibility for future development
 - ◆ Framework and specific rules

Facilitation of Cross-Border E-Commerce

- ◆ International cooperation
 - ◆ Accession to UNECC
 - ◆ Mutual recognition of e-sign, certificates and validity of e-contracts
- ◆ Working toward national Single Window
 - ◆ General Administration of Customs made commitment to establishing NSW in October 2014
 - ◆ Administrative coordination among customs, MoC, AICs, Taxation, Quality Inspection, General Administration of Post
 - ◆ Building e-customs and streamlining customs clearance
- ◆ Data sharing and protection
 - ◆ Principle of free flow of data
 - ◆ Protection of confidential information
 - ◆ Cross administrative data sharing
- ◆ Tax benefits for cross-border platform and supporting services
- ◆ Allowing FDI in cross-border e-commerce services

Conclusion

- ◆ Ambitious goal to establish a comprehensive legal framework to facilitate cross-border e-commerce and paperless trade
- ◆ Narrowing the digital divide in B2G area
- ◆ Holistic approach for strategic economic development

