



**Asia-Pacific
Economic Cooperation**


2017/SOM1/EC/SEM/014
Session 14

Supply Chain Dispute Resolution with ODR: Accelerating Justice, Accelerating Trade

Submitted by: United States



**Seminar on Use of International Instruments to
Strengthen Contract Enforcement in Supply Chain
Finance for Global Businesses Including Micro,
Small, and Medium Enterprises
Nha Trang, Viet Nam
24-25 February 2017**



APEC

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Silicon Valley

1. **WHAT IS ODR?**
2. **Why APEC Supply Chains Need ODR**
3. **Where ODR Stands Today in APEC**
4. **The Way Forward For ODR in APEC**
 - a. Harmonizing Law Using Existing Instruments
 - b. Building a Sustainable ODR Platform
 - c. Harmonizing ODR Rules
 - d. Building Capacity


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... ?
 = *enhanced by technology*



... ?
... definition

According to UNCITRAL, ODR is:
designed to assist buyers and sellers in resolving disputes in a simple, fast, flexible and secure manner, without the need for physical presence at a meeting or hearing.
UNCITRAL Technical Notes on Online Dispute Resolution, para. 1, available at www.uncitral.org



United Nations
UNCITRAL


- * UNCITRAL's work on ODR follows sharp increase in online cross-border transactions and resulting increase in disputes.
- * UNCITRAL finalized ODR instrument in July 2016 to provide technological best practices for ODR platforms.

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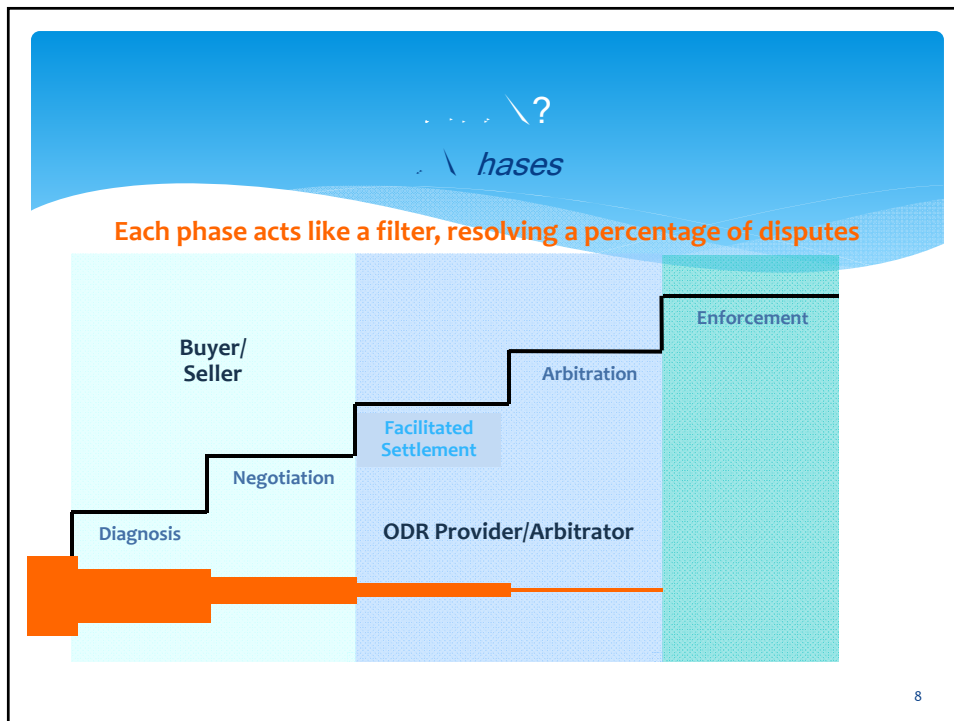
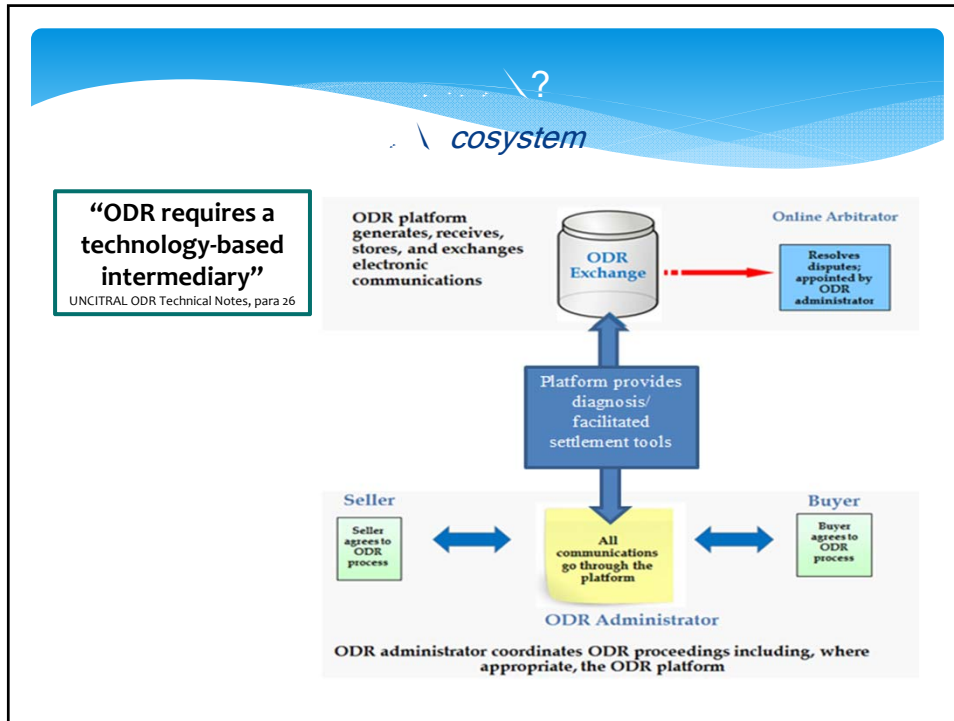
Information communication technology provides time and cost savings:

1. Enables direct negotiation using a messaging platform, without need for a third party;
2. Provides an outcome without need for in person meeting or hearing;
3. Reduces timeline and brings cost in proportion with underlying transaction.



UNCITRAL ODR Technical Notes, supra, Overview of ODR.

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Global Trade Flows



APEC's total trade increased more than seven times to \$22 trillion between 1989 and 2013.

Explosion of Internet Economy

- * 3.5 billion people now connected to the Internet.
- * B2B digital commerce will top \$1.13 trillion and account for 12.1% of all B2B sales in the U.S. by 2020. Forrester, US B2B eCommerce Forecast: 2015 to 2020, <https://www.forrester.com/report/US+B2B+eCommerce+Forecast+2015+To+2020/-/E-RE5115952>
- * 10 out of the top 20 economies for internet users are APEC economies. <http://www.internetworldstats.com/top20.htm>

Internet Users (in millions)

Rank	Country	Internet Users (in millions)
1.	China	721
3.	USA	287
5.	Japan	115
6.	Russia	103
8.	Indonesia	88
10.	Mexico	69
13.	Philippines	54
15.	Vietnam	49
18.	Korea	45
19.	Thailand	38

Source: <http://www.internetworldstats.com/stats.htm>

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E-Commerce Disputes Growing

- * “Electronic commerce has rapidly developed over the past decade, based largely on the exponential diffusion of the Internet, increased broadband access and the rise of mobile commerce throughout the world.” Report of 2010 UNCITRAL Colloquium on ODR, UN Doc. A/CN.9/706, para 8.
- * 3% to 5% of all transactions, online and offline, result in a dispute. See Ethan Katsh & Colin Rule, *What We Known and Need to Know About Online Dispute Resolution*, 67 S.C. L. Rev. 329, 333 (2016).
Colin Rule, *Redesigning ODR Processes for the Future*, at 6.

Worldwide E-Commerce disputes per year (in millions)

Year	Worldwide E-Commerce disputes per year (in millions)
2012	423.2
2013	500.4
2014	602
2015	708.4
2016	821.2
2017	942.8

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Conflicts in supply chain inevitable

Conflicts bound to arise across supply chain due to different partners, cultures, and languages.

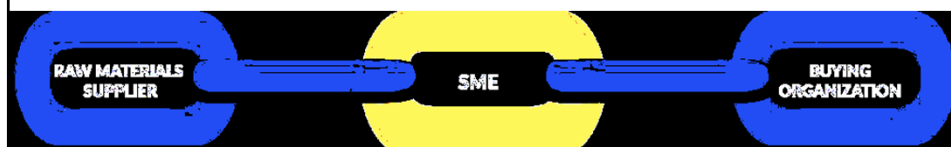
Dispute resolution mechanism must resolve disputes quickly in order to preserve trust between supply chain partners.



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Justice via ODR a lifeline for MSMEs

- MSMEs in APEC account for 97% of businesses and are increasingly global. APEC Iloilo Initiative (2015).
- Digital technology provides MSMEs unprecedented access to international trade via the global supply chain but MSMEs often find themselves caught in middle of supply chain disputes.
- Justice via ODR fosters buyer & seller trust in cross-border e-commerce and the supply chain.
- Speedy dispute resolution is “essential for small enterprises which may lack the resources to stay in business while awaiting the outcome of a long court dispute.” WB Doing Business 2016, APEC at 88.



Traditional Justice not an option

- * APEC EoDB indicator for Enforcing Contracts measures time, cost and procedural efficiency for resolving commercial domestic lawsuits.
 - * No improvement over the course of EODB.
 - * Time and costs have increased.
 - * 446.2 days on average to enforce contracts in APEC.
 - * 33.9 percent of claim on average taken by administrative fees.
APEC's Ease of Doing Business 2017 Assessment. APEC Policy Support Unit
- * In cross-border disputes, traditional judicial relief not only slow but creates jurisdictional, choice of law, and enforcement difficulties.




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Arbitration too slow, expensive

- * In cross border trade, arbitration is predominant form of international dispute resolution.
- * But arbitration often too expensive/slow for e-commerce/supply chain disputes.
- * ODR relies on same legal framework as offline dispute resolution and arbitration, but is much faster.
- * ODR should use same standards as arbitration: fairness, due process, transparency, and accountability.

UNCITRAL ODR Technical Notes, *supra*, para. 52.

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- * “Sharp increase in online cross-border transactions has raised a need for mechanisms for resolving disputes that arise from such transactions, and one mechanism is online dispute resolution.”
 - * “Online dispute resolution can assist the parties in resolving the dispute in a simple, fast, flexible and secure manner, without the need for physical presence at a meeting or hearing.”
 - * “The technical notes on online dispute resolution . . . reflect the principles of impartiality, independence, efficiency, effectiveness, due process, fairness, accountability and transparency.”
 - * “Technical notes are expected to contribute significantly to the development of systems to enable the settlement of disputes arising from cross-border low-value sales or service contracts concluded using electronic communications.”
 - * “Technical Notes will significantly assist all States, in particular developing economies and States whose economies are in transaction, online dispute resolution administrators, online dispute resolution platforms, neutrals and the parties to online dispute resolution proceedings in developing and using online dispute resolution systems.”

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Private Sector

- ODR in the global marketplace is a dynamic but fragmented field.
- So far, none of these initiatives has resulted in widespread use of ODR in B2B disputes involving supply chain/MSMEs.
- Emerging ODR systems for e-commerce are B2C focused.







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Government Initiatives

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* **Mexico:** Concilianet provides government-run ODR platform for B2C. Participation is mandatory for domestic vendors.
Available at http://www.profeco.gob.mx/Folleto/Queja_ing.pdf
- 

* **Republic of Korea:** e-commerce dispute resolution committee mediates disputes in e-commerce transactions between consumers & providers.
Available at <https://www.ecmc.or.kr/>
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* **Colombia:** government promotes ODR for disputes involving e-commerce, chargebacks, simplified insolvency, and shareholder disputes.
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* **China:** e-courts offered in Hangzhou Province (home of Alibaba) for e-shopping, copyright, and online financial services disputes (since August 2015). All materials filed online; courtroom replaced by three-way video conference.
Available at http://www.chinadaily.com.cn/bizchina/2015-12/12/content_22708965.htm

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Regional Organizations

- * Proposed OAS ODR regional platform would establish model law/cooperative framework and procedural rules to govern ODR proceedings including arbitration of disputes.
 - Available at http://www.oas.org/esq/CIDP/it/protectcion_al_consumidor_united_states_guia_legislativa_anexo_A.pdf
- * OAS Inter-American Juridical Committee recently adopted a resolution in support of ODR mechanisms for cross-border consumer transactions.
 - Inter-American Juridical Committee, International Protection of Consumers, CJI/RES. 227 (LXXXIX-O/16) (Oct. 13, 2016).
- * EU ODR regional platform allows submission of complaints within EU via online form (operational Feb. 2016).
 - Regulation No. 524/2013 on online dispute resolution for consumer disputes, available at <http://eur-lex.europa.eu/jel/UriServ/Uri?uri=OJ:L:2013:165:0001:0012:EN:PDF>.
 - See also Directive 2013/11 on alternate dispute resolution for consumer disputes, available at <http://eur-lex.europa.eu/jel/UriServ/Uri?uri=OJ:L:2013:165:0063:0079:EN:PDF>.
- * EU refers complaint to competent national ADR entity, which provides online mediation/arbitration.



Organization of American States

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Regional Organizations

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Harmonizing Existing Instruments

- * Effective use of ODR across APEC requires adoption of relevant laws and treaties by member economies:
 1. **New York Convention** ratified by 19 APEC member economies;
 2. **UNCITRAL Model Law on International Commercial Arbitration** (revised in 2006) enacted by 17 APEC economies;
 3. **UNCITRAL Model Law on Electronic Commerce** followed in 14 APEC economies;
 4. **UN Convention on the Use of Electronic Communication in International Contracts** ratified by 2 APEC economies;
 5. **UN Convention on Contracts for the International Sales of Goods (CISG)** ratified by 13 APEC member economies.
- * “In Writing” must include electronic communications.

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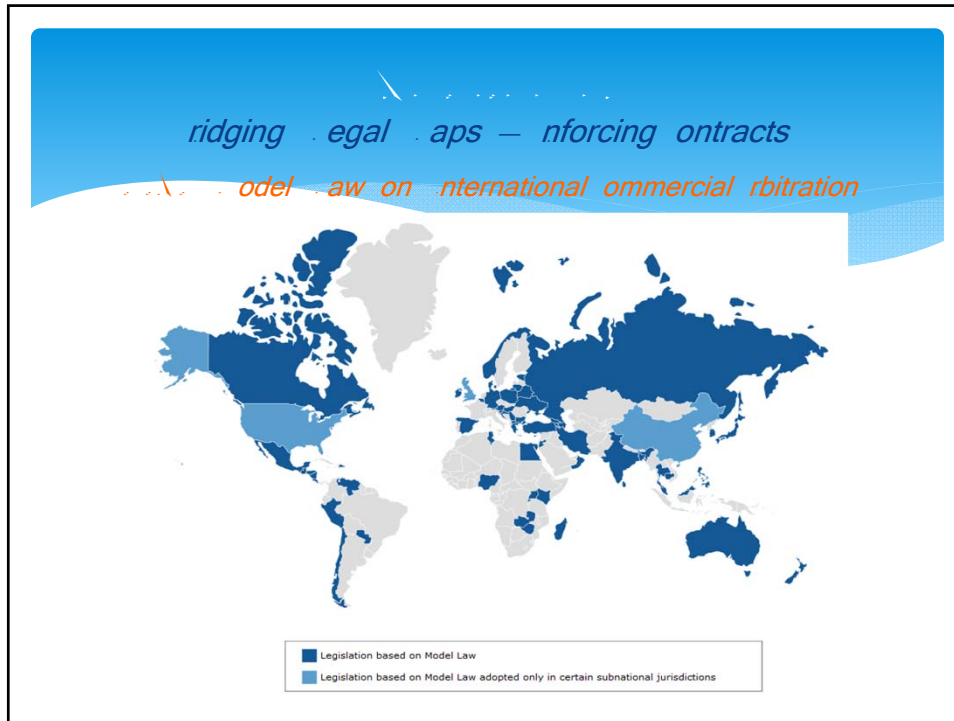
Enforcing Contracts

New York Convention

New York Arbitration Convention Status: 2011



156 Parties



Implementation of existing instruments

	NY Convention	ML on Arbitration	ML on Electronic Commerce	Convention on Use of Electronic Comm ¹	CISG
Australia	✓	✓	✓	--	✓
Brunei	✓	✓	✓	--	--
Canada	✓	✓	✓	--	✓
Chile	✓	✓	--	--	✓
China	✓	✓	✓	✓	✓
Hong Kong	✓	✓	✓	--	--
Indonesia	✓	--	--	--	--
Japan	✓	✓	--	--	✓
Malaysia	✓	✓	✓	--	--
Mexico	✓	✓	✓	--	✓

Implementation of Existing Instruments

	NY Convention	ML on Arbitration	ML on Electronic Commerce	Convention on the Use of Electronic Communication	CISG
New Zealand	√	√	√	--	√
New Guinea	--	--	--	--	--
Peru	√	√	--	--	√
Philippines	√	√	√	--	--
Rep. Korea	√	√	√	--	√
Russia	√	√	--	√	√
Singapore	√	√	√	√	√
Chinese Taipei	--	--	--	--	--
Thailand	√	√	√	--	--
USA	√	√	√	--	√
Vietnam	√	--	√	--	√

Building a Sustainable Platform

In order to offer ODR as a turnkey solution, a common technological platform must be established.

All communications in ODR proceedings should take place via the ODR platform.

The ODR platform should meet the highest standards of data security, privacy, integrity, and preservation as well as fraud detection and prevention.



armonizing \ules

- * “Efforts have remained disjointed, i.e. applying different standards of due process to participants, largely addressing only domestic online disputes, failing to offer effective enforcement mechanisms, and are often not readily apparent options to buyers compared to mainstream litigation and ADR.”
- * “... why it is crucial that a global harmonizing instrument or set of principles be created ... to support online dispute resolution systems that can handle cross-border disputes across the commercial spectrum...”

Note supporting work on online dispute resolution by UNCITRAL, Institute of International Commercial Law, UN Doc. A/CN.9/710 at 2-3 (2010) (co-sponsored by 35 organizations).

- * APEC might recognize/design a common set of ODR procedural rules for B2B cross border e-commerce within the APEC region.
- * “The General Assembly recommends that all States and other stakeholders use the Technical Notes in designing and implementing online dispute resolution systems for cross-border commercial transactions.”



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armonizing \ules: ccelerating ustice

- * **APEC rules should provide fast-track ODR procedures that comply with due process requirements.**
- * Major challenge to building an ODR system for low-value disputes involving supply chain/MSMEs is cost.
- * By making the ODR process more structured, easier, faster, and less expensive to complete ODR improves redress and access to commercial justice.
- * Accelerates Justice, Accelerates Trade

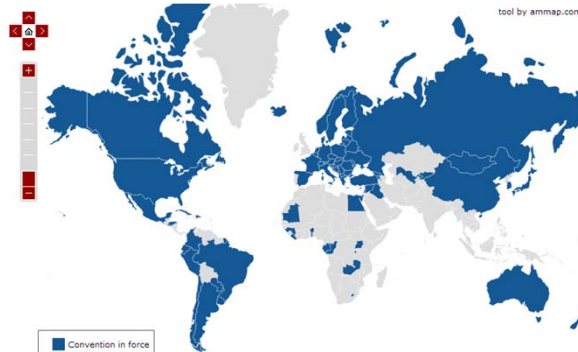


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Harmonizing Rules: Applying

Status map

United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980)



Estimates show share in cross-border trade of 85 contracting parties to the CISG represents over 75% of total volume of international trade.

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Building Capacity

- * Key implementation issue is getting businesses to agree to ODR.
- * Requires businesses to understand and trust ODR.






APEC could take the lead in explaining ODR to private sector, governments, and legal community and build capacity by leveraging finance from donors, law facilities and corporate social responsibility programs.



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* * * *

Implementation of APEC-wide legal framework for ODR will:

				
Promote and maintain strong relations with business partners in global supply chain	Provide SMEs with opportunity to compete and flourish in supply chain	Build capacity for economic growth based on trade, not aid	Empower women to participate more fully in the global chain	Accelerate and Extend real access to justice for all

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Thank you

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