Legislative Reform to Create an Enabling Legal Environment for Digital Trade

Submitted by: International Chamber of Commerce
LEGISLATIVE REFORM TO CREATE AN ENABLING LEGAL ENVIRONMENT FOR DIGITAL TRADE

APEC Digital Trade Symposium – Advancing Digital Trade Transformation and Connectivity in APEC

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THE CHALLENGE TODAY

- The current legal treatment of electronic transferable records inhibits market demand and innovation.
- Most jurisdictions continue to require paper-based trade documentation.
- To go paperless, parties to a transaction are forced to use private law contracts within closed-loop trading platforms.
- As a result, organizations must adopt multiple products for customers in different jurisdictions to enable the transferal of electronic records.
- This is inefficient for large organizations and cost-prohibitive for SMEs.
THE SOLUTION: MLETR

The UNCITRAL Model Law on Electronic Transferable Records (MLETR) creates an enabling legal environment for paperless trade. It:

✓ provides an international framework to align national laws and enable the legal use of electronic documents of title (electronic transferable records or “ETRs”) both domestically and across borders;

✓ builds on the principles of non-discrimination against the use of electronic means, functional equivalence, and technology neutrality underpinning all UNCITRAL texts on electronic commerce;

✓ enables the use of all technologies including registries, tokens and distributed ledgers;

✓ was drafted in a multi-year, inclusive and transparent process by the United Nations Commission on International Trade Law, a subsidiary body of the UN General Assembly with a mandate to further the progressive harmonization and modernization of international trade law.
IN FOCUS: KEY VIRTUES OF MLETR

1. Technology neutrality (a foundational principle throughout the Model Law)
2. Functional equivalence (Articles 8 – 11)
4. Practical – can replace a transferable document with an electronic one (Article 17) and vice versa (Article 18)
5. Cross-border recognition (Article 19)
6. Preserves substantive law – does not overreach
ADVANTAGES FOR SMES

☑ Enables SMEs to leverage a wide range of trade documentary flow solutions.

☑ Prevents SMEs from having to sign up to multiple different documentary flow solutions with different rules and legal jurisdiction requirements.

☑ Simplifies operating models and risk profiles of all shippers, customs departments, banks, buyers and sellers.

☑ Incentivizes new business models and greater global inclusion.
ADVANTAGES FOR STATES

☑ Enhanced local and global value chain resilience to financial crises, commodity price movements, criminal activities and pandemic events.

☑ Promotion of rules-based trade documentation governed by state legislation not private contracts.

☑ Encourages modernization of business models, increasing market efficiency and enabling technological advancements.

☑ Contributes towards attainment of the UN Sustainable Development Goals.
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<tr>
<th>SDG</th>
<th>Benefits</th>
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<td>1</td>
<td>Digitization can alleviate poverty and reduce inequalities by facilitating global trade, reducing trade barriers, and promoting shared prosperity. Paperless trade will lead to trade-related efficiencies and tackle the trade finance gaps that dampen economic growth and job creation, lifting people from poverty and improving living standards.</td>
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<td>Paperless trade will reduce the cost of trade finance, enhance inclusion for MSMEs by eliminating costly paper-based processes, reduce due diligence costs, simplify risk mitigation actions, and vastly reduce process turnaround times. These factors will enhance the sustainability of trade as an engine of economic growth.</td>
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<td>An estimated 4 billion trade documents are in circulation. If stacked on each other, the documents would be 520,000 meters high and constitute approximately half a million trees.</td>
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<td>Current technologies that could be enabled by legislative reform, including distributed ledger technology, will substantially reduce fraud risk via smart contracts, bringing greater trust to the international trade finance system.</td>
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ECONOMIC ADVANTAGES FOR ALL

According to a study conducted by Coriolis Technologies and commissioned by ICC United Kingdom, modernizing laws across G7 economies will unleash SME growth and:

- Reduce costs as a share of total trade across the G7 by 76% (from 3% of transaction values to 0.7%)
- Reduce time spent on cross-border trade by around 81% across the G7
- Cut the number of days associated with border compliance from an average of 25 days to less than one day
JURISDICTIONS THAT HAVE ADOPTED MLETR

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<th>Jurisdiction</th>
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<tr>
<td>Bahrain</td>
<td>2019</td>
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<td>Singapore</td>
<td>Feb 2021</td>
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<td>ADGM</td>
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<td>Kiribati</td>
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<td>Belize</td>
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JURISDICTIONS IN THE PIPELINE

- Paraguay
- United Kingdom
- Papua New Guinea
- Trinidad & Tobago

E-COMMERCE JOINT STATEMENT INITIATIVE

- UK and Singapore reintroduced a provision in the E-commerce JSI, as follows:

  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.
G7 MINISTERIAL DECLARATION

“Paper-based transactions, which still dominate international trade are a source of cost, delay, inefficiency, fraud, error and environmental impact. It is our shared view that by enabling businesses to use electronic transferable records we will generate efficiencies and economic savings. This will strengthen the resilience of our global economic system and play a crucial role in trade recovery across the G7.”

Digital and Technology Ministerial Declaration

Framework for G7 Collaboration on ETRs
RESOURCES

- Case for Adoption / El Caso de la Adopción
- ADB, *Digitalizing Trade in Asia Needs Legislative Reform*
- Economic analyses of trade digitalization for G7, Germany, UK, Commonwealth countries (forthcoming)
- UNCITRAL MLETR Explanatory Note – official, expert annotations to each article of the Model Law
Thank you

Raoul.RENARD@iccwbo.org
dsi.iccwbo.org/policymakers