

Readiness Assessment for Cross-Border Paperless Trade: Philippines

Readiness Assessment for Cross-Border Paperless Trade: PHILIPPINES

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Foreword

Trade is one of the essential means of implementation identified in the 2030 Agenda for Sustainable Development. Efficient and transparent trade procedures are essential for making trade more inclusive and for minimizing the negative impacts associated with moving goods across borders on the environment. While the COVID-19 pandemic has had a devastating effect on people and economies across the globe, it has also highlighted the importance of trade facilitation and the need to streamline trade procedures. Many countries, including the Philippines, have renewed their efforts to simplify and digitalize trade.

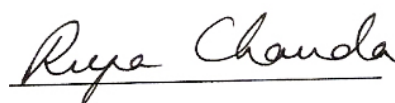
This report provides an assessment of the Philippines' readiness for cross-border paperless trade, i.e., conducting international trade based on electronic data and documents, following readiness checklists developed by the ESCAP Interim Intergovernmental Steering Group on Cross-Border Paperless Trade Facilitation, which the Philippines is a member.

The Philippines has made significant progress in implementing trade facilitation measures in recent years, with its implementation level now significantly above the Asia-Pacific regional average. Still, implementation of paperless trade and cross-border paperless trade measures in the Philippines remains uneven among agencies and stakeholders.

The Philippines has already demonstrated strong political will in accelerating cross-border paperless trade, becoming the first ASEAN country to accede to the Framework Agreement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific in 2019. The readiness assessments, together with the action plan featured in this report, can serve as a foundation for elaborating more detailed activities at the national and agency levels in this area, with identifiable timelines and potential key agencies. It is hoped that the recommendations in the report will support the Philippines in establishing leadership, including by enabling it to establish its National Single Window, developed as part of the Association of Southeast Asian Nations (ASEAN) Single Window (ASW) Agreement, as a model for others to learn from and follow.



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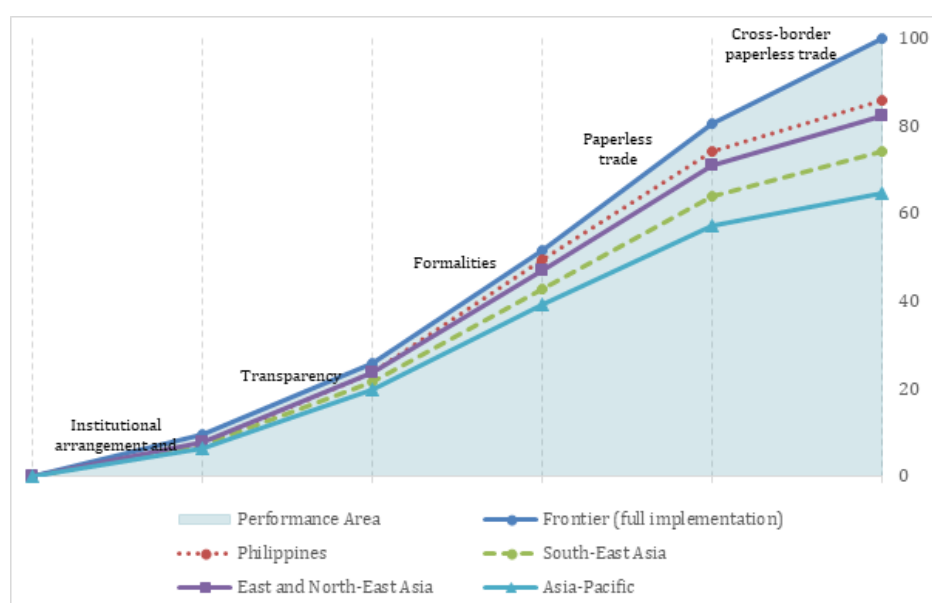
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Executive Summary

This report provides an assessment of the Philippines' readiness for cross-border paperless trade, i.e., the conduct of international trade based on electronic data and documents. Following a brief overview of trade facilitation implementation in the Philippines, findings from the technical and legal readiness assessments for cross-border paperless trade are presented. Recommendations on the technical and the legal aspects of cross-border paperless trade are then provided, followed by an initial action plan for the Philippines to move forward.

The Philippines has made significant progress in implementing trade facilitation measures in recent years, despite the COVID-19 pandemic, with its implementation level exceeding the Asia-Pacific regional and South-East Asia subregional averages. Several initiatives support the implementation of trade facilitation measures in the Philippines. Still, implementation in paperless trade and cross-border paperless trade have room for further improvements. The Philippines could reduce trade costs and improve its competitiveness by accelerating its efforts to digitalize trade procedures.

Figure. Cumulative implementation score of core groups of trade facilitation measures, 2021



Note: Maximum possible implementation score is 100.

Source: United Nations Global Survey on Digital and Sustainable Trade Facilitation, untfsurvey.org, 2021

The report notes that despite the overall progress made in implementing trade facilitation measures, implementing paperless trade and cross-border paperless trade in the Philippines remains uneven among agencies and stakeholders. At the same time, it is pointed out that the progress is trending in the right direction. The Philippines has implemented several paperless trade systems with BOC as the focal agency for

cross-border trade. Aside from BOC, several government agencies have established their own systems to facilitate information processing in completing trade transactions. The Philippine NSW was developed to interconnect government agencies involved in the processing of import and export shipments. Consequently, the TradeNet platform was developed to operate as the new NSW. The implementation of these projects is expected to as well as the TradeNet platform, which will operate as the new NSW, will further advance paperless trade systems in the Philippines.

The report also examined trade facilitation measures implemented in response to COVID-19 pandemic. Paperless trade was recognized as an effective way to mitigate trade disruptions during the COVID-19 crisis, providing more seamless and resilient trade opportunities. Therefore, BOC and other relevant agencies accelerated their efforts to enable paperless trade systems, also improving ICT infrastructure to support it.

Recommendations emerging from the technical readiness assessment include the following key areas: (a) continuing with trade-related electronic systems and other trade IT projects; (b) updating the PNSW to handle all types of documents in cross-border trade; (c) implementation of, among others, the National Government Data Center Project, the National Government Portal, and the Integrated Business Permits and Licensing System; (d) adherence to the National ICT Ecosystem Framework; (e) implementation of the e-Government Master Plan 2022; (f) conducting the annual Vulnerability Assessment and Penetration Test (VAPT) and ensuring stability of e2m; (g) aligning the development and implementation of the CBPT with the NICTEF; (h) strict implementation of the ARTA Law; (i) data harmonization according to available international standards such as UN EDIFACT and WCO; (j) a greater focus on capacity-building and budgetary support; and (k) the full implementation of the AEO Program.

From a legal point of view, the Philippines has the Electronic Commerce Act of 2000 (ECA), which is primarily modelled after the United Nations Commission on International Trade Law (UNCITRAL). The ECA is fundamental to the recognition under Philippine law of paperless transactions, whether between domestic Parties or involving cross-border transactions. However, there is a glaring issue in defining the term “electronic data message.” ECA adopted UNCITRAL's definition of “data message” but deleted the phrase “including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy.” The Philippine Supreme Court ultimately ruled that facsimile transmissions are not considered “electronic data messages.” The ECA also states that electronic documents will have the legal effect, validity, or enforceability of any other document or legal writing; thus, there is a specific and unambiguous enabling of paperless trade involving the Philippines.

Among the remaining legal impediments to implementing full paperless trade is the lack of rules involving electronic notarization systems and the treatment of authenticated electronic signatures or digital signatures as “disputable presumptions” subject to rebuttal by a party disputing their authenticity.

Recommendations emerging from the legal readiness assessment include the following three key areas: (a) legislative amendments to the ECA to ease the requirements for the recognition of electronic and digital signatures, facilitate electronic notarization and expressly recognize contracts formed by automated message systems as recognized under the United Nations Convention on the Use of Electronic communications in International Contracts (2005); (b) accession to the Electronic Communications Convention to govern the legal recognition of cross-border electronic transactions, while domestic law will continue to govern domestic transactions; and (c) enactment of a law related to the management of the PNSW, and the rights and obligations attached to the use of the said system.

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