



# Building an enabling legal environment for paperless trade

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# Trade facilitation and paperless trade

- Trade facilitation aims at simplifying procedures and controls relating to movement of goods.
- The goal of trade facilitation is to reduce direct and indirect trade costs
  - benefits for end users and consumers
- More cross-border trade = economic development
- No prejudice to regulatory objectives, but mutual reinforcement
- ICT may provide great opportunities for trade facilitation through concepts such as paperless trade and electronic single window facilities

# The intersection of law and technology

- Paperless trade often understood as a technological process
- Legal aspects are equally relevant to ensure enforceability of laws, regulations and contractual agreements
- Need to adopt an adequate legal framework
- Contractual provisions do not suffice: statutory rules and implementing regulations are necessary
- Voluntary standards (co-regulation) may also be useful

# Elements of paperless trade

- Notion built around trade facilitation in customs operations through electronic single windows
  - a B2G transaction
- Goal to set up cross-border single windows
  - a G2G international transaction
- But international trade is a B2B transaction
- Key legislative challenge: legally enable G2B exchanges, including cross-border
- Need to take into account the broader e-government context

# Implementation of enabling legal environment

- Enabled means no barrier to electronic exchanges
  - B2B, B2G and G2G
- Adoption of modern legislation, preferably based on uniform texts (such as those of UNCITRAL)
- Application of that legislation to the public sector to the maximum extent possible
- Avoid over-regulation; consider co-regulation
- Transition to paperless environment is an occasion to review and reengineer processes and streamline existing laws

## Factors relevant for paperless trade

- Technological: model chosen for paperless trade
  - E.g., single window architecture
- Cultural: prevailing economic model and legal tradition
  - Legal: regulatory elements vs. enabling elements

## Legal topics relevant for paperless trade

- E-transactions and e-contracting
- Authentication / security (e-signatures, IdM)
- Data protection and retention
- Liability of SW facility operator
- Cybercrime, electronic evidence
- ...
- (See UN/CEFACT Rec. 35)

## E-transactions law

- Establishes general principles applicable to all electronic transactions
  - Ideally, regardless of the nature of the subject involved (public or private)
- Often based on the UNCITRAL model laws
  - High degree of harmonisation across the world
- Limited number of provisions needed to address technology requirements

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