

**Considerations in Building a Trade Facilitation
Cluster in Pan-European Corridor X
ICEIRD 2009**

**Single Window Legalities:
Creating the Legal Infrastructure for
Cross-Border Interoperability**

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DISCLAIMER

Please note that the views and analysis that are provided here are not necessarily those of any organization with which I may be involved. They represent my views on these legal topics.

Introduction

- **International recognition of the importance of the legal infrastructure of the Single Window for International Trade over the past few years.**
- **Regional Developments: ASEAN, APEC, SEE, EurAsEC (CIS Countries Customs Union), The European Commission, and others**
- **Leading International Organizations**
 - The World Customs Organization (WCO)
 - United Nations Commission on International Trade Law (UNCITRAL)
 - UN Centre for Trade Facilitation and Electronic Business (UN/CEFACT)
- **Industry Groups**

Introduction (Continued)

- **Customs New Role in Trade Facilitation**
- **International Trade Development**
- **The Technical Development of the Single Window**
- **The Complexities of the Legal Issues in Cross-Border Single Window Operations**
- **Private Sector Concerns**

UN/CEFACT Recommendations

- **Recommendation 33 - *Recommendation and Guidelines on Establishing a Single Window to Enhance the Efficient Exchange of Information between Trade and Government***
 - Published by UN/ECE in 2005
- **Legal Group, in cooperation with the International Trade and Business Processes Group – International Trade (TBG15), began work on Recommendation 35 in 2006**
- **Draft Recommendation 35 approved for Public Review in November 2008 at the UN/CEFACT international Forum in Saly, Senegal**

UN/CEFACT Recommendation 35

1. *Undertake a study (including e-Commerce legal benchmarking and 'gap analysis' studies) in order to determine an appropriate set of measures that may need to be taken to address legal issues related to national and cross-border exchange of trade data required for Single Window operations (The International Trade Single Window Legal Framework.)*
2. *Use the UN/CEFACT checklist and its guidelines (Annexes A and B) to ensure that the most frequent legal issues related to national and cross-border exchange of trade data are included in the framework.*
3. *Amend existing legislation, regulations, decrees, etc., if necessary, to address the identified legal issues and gaps.*
4. *Utilize international standards, international legal instruments, and soft law instruments, where available, throughout the entire process of creating a legally enabling environment for an International Trade Single Window.*

UN/CEFACT Recommendation 35

- **Guidelines to the Recommendation on Establishing a Legal Framework for the International Trade Single Window**
 - **Annex A: Checklist of Legal Issues for Single Window Operations**
 - **Annex B: Checklist Guidelines**
 - **Annex C: Toolkit**

UN/CEFACT Recommendation 35

- **Annex B: Checklist Guidelines**
 1. **A legal basis for implementing a Single Window facility**
 2. **SW facility structure and organization**
 3. **Data Protection**
 4. **Authority to access and share data between government agencies**
 5. **Identification, authentication, and authorization**

UN/CEFACT Recommendation 35

- 6. Data quality issues**
- 7. Liability issues (obligations and responsibility)**
- 8. Arbitration and dispute resolution**
- 9. Electronic documents**
- 10. Electronic archiving**
- 11. Intellectual property rights and database ownership**
- 12. Competition**

WCO-UNCITRAL Joint Legal Task Force

- **WCO's international role in assisting Customs Administrations**
- **Technical Development Activities**
- **Recognition of the importance of the legal issues related to the Single Window in cross-border transactions**
- **The growing role of Customs Administrations in trade facilitation**

WCO-UNCITRAL Joint Legal Task Force

- **UN Commission on International Trade Law:**
 - The core legal body of the UN General Assembly in the field of international trade law
 - Private international law focus
 - *UN Electronic Communications Convention*
 - UNCITRAL Model Law on Electronic Commerce
- **Joint Legal Task Force Goal: *Develop a High-Level Reference Document on the Legal Issues for the International Single Window in Coordinated Border Management***
- **Governments, other Intergovernmental Organizations, involved.**

WCO-UNCITRAL Joint Legal Task Force

- **Inaugural Session of the JLTF**
 - Brussels - November 2008
- **Country Participation:**
 - Angola, Columbia, El Salvador, Indonesia, Netherlands, Panama, Philippines, Singapore, Turkey, and the United States
- **International Organizations:**
 - European Commission, UN/ECE/CEFACT
- **Private Sector:**
 - International Chamber of Commerce (ICC)
 - International Air Cargo Association (TIACA)

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- **Preliminary Set of Legal Issues:**
 - Creating a legally enabling environment at the domestic level (i.e., enabling legislation);
 - Authorization to exchange and share information (in data messages) between government agencies both nationally and internationally;
 - Authorization to access to information by other agencies and governments;
 - Identity management;
 - Privacy and confidentiality requirements in the areas of personally identifiable information and trade and competitive data;

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- Legal validity and authentication of documents exchanged in electronic form;
- Electronic and digital signatures;
- Cross-border authentication and mutual recognition;
- Data protection and information security;
- Data collection, sharing, amendment, deletion, accessibility, retention and archiving;
- Risk management considerations (especially for OGA's/PGA's);
- Liability issues related the operation of Single Window facilities (including domestic and cross-border MOUs, interconnection security agreements, service level agreements, end-user agreements, disclaimers etc.);

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- Transferable records including, e.g., electronic transport records (negotiable and non-negotiable) and electronic registries;
- Intellectual property rights issues;
- The implications of international standards, including data and the normative definitions prescribed in legislation that might need to be altered by agencies;
- Ensuring that enforcement actions can still be carried out, for example, through possible implications on the laws of evidence and jurisdiction over individuals;

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- **Data ownership (including national Government interests);**
- **The extent to which the revised Kyoto Convention (and other WCO instruments including the SAFE Framework) might be adjusted owing to the legal implications of the Single Window;**
- **The impact of “click-through” agreements, online help facilities and other possible Single Window services;**
- **Considerations related to government duties, taxes and fees collection/distribution and refunds;**
- **Integrated risk assessment;**
- **The legal implications of different technical architectural options for Single Window facilities.**

Single Window Legalities:

The Adventure Continues!

Thank you

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