



Session 8:

Protocol on Digital Trade and E-commerce – Expert responses to comments and discussion

Henry Gao
Professor of Law
Singapore Management University

Introduction on the draft digital trade protocol

Based on international best practices
while taking into account the general
conditions in CAREC countries

A set of common rules that facilitate the
development of digital trade, reduce
regulatory burden, protect interests of the
consumers, while leaving sufficient
regulatory autonomy for the
governments

Substantive comments - 1

Protocol IV on Digital Trade, Article 5: Promotion of Paperless Trading.

It is suggested to add the following paragraph to this article.

3. The Parties recognise the importance of the exchange of electronic records used in commercial trading activities between the Parties' business. To this end, the Parties shall cooperate to promote the adoption and exchange of electronic records used in commercial cross-border trading activities between the Parties' businesses, such as electronic bills of lading.

Status: UNCITRAL Model Law on Electronic Transferable Records (2017)

This page is updated whenever the UNCITRAL Secretariat is informed of changes in enactment of the Model Law.

The UNCITRAL Secretariat also prepares yearly a document containing the Status of Conventions and Enactments of UNCITRAL Model Laws, which is available on the web page of the corresponding UNCITRAL Commission Session.

Legislation based on or influenced by the Model Law has been adopted in 11 States and a total of 11 jurisdictions:

State		Notes
Bahrain	2018	
Belize	2021	
France	2024	
Kiribati	2021	
Mauritius	2025	(b)
Papua New Guinea	2022	
Paraguay	2021	
Singapore	2021	
Timor-Leste	2024	
United Arab Emirates		
Abu Dhabi Global Market	2021	
United Kingdom of Great Britain and Northern Ireland	2023	(a)

Substantive comments - 2

Protocol IV on Digital Trade, Article 10 - Disclosure of Source Code.

The following wording is suggested (marked in yellow)::

1. No Party shall require the transfer of, or access to, source code of software owned by a **natural** person or **legal entity** of another Party, as a condition for the import, distribution, sale, or use of such software, or of products containing such software, in its territory.

For paragraph 2:

It is suggested to define what is mass-market software.

It is suggested to list or define what is critical infrastructure.

PROTOCOL VI: Digital Trade and E-Commerce

Article 1: Definitions

For the purposes of this Protocol:

(a) **Computing Facilities** means computer servers and storage devices for processing or storing information for commercial use.

(b) **Covered Person** means:

- (i) a “covered investment” as defined in Protocol VII;
- (ii) an “investor of a Party” as defined in Protocol VII; or
- (iii) a service supplier of a Party as defined in Protocol IV.

(c) **Electronic Authentication** means the process of verifying or testing an electronic statement or claim, in order to establish a level of confidence in the statement's or claim's reliability.

(d) **Unsolicited Commercial Electronic Message** means an electronic message which is sent for commercial or marketing purposes to an electronic address, without the consent of the recipient or despite the explicit rejection of the recipient.

Substantive comments - 3

Article X: Fostering of Digital Technology

1. Recognizing the importance of an enabling legal and policy environment for digital technologies, the parties shall:
 - (a) ensure that all its measures of general application affecting digital economy are administered in a reasonable, objective and impartial manner;
 - (b) endeavor to ensure technology neutrality and promote interoperability in developing measures affecting digital economy; and
 - (c) endeavor to adopt inclusive and prudent regulatory approaches that seek a dynamic balance between innovation and safety, including through the use of regulatory sandboxes where applicable.
2. The parties recognize the fundamental role of telecommunications infrastructure in fostering digital technologies. The parties also recognize that robust competition is essential for efficient deployment of and inclusive access to telecommunications infrastructure. To this end, a party shall not:
 - (a) prevent suppliers of telecommunications infrastructure from choosing technologies, equipment or services in accordance with commercial considerations in the construction and operation of telecommunications infrastructure; or
 - (b) adopt or maintain discriminatory measures that prevent an enterprise of the other Party from supplying technologies, equipment or services for the construction and operation of telecommunications infrastructure.
3. The Parties shall endeavor to share information, experiences and best practices in the areas referred to in paragraph 1.