

Cross-border mutual recognition of trade-related data and documents in electronic form

G2G vs. B2B

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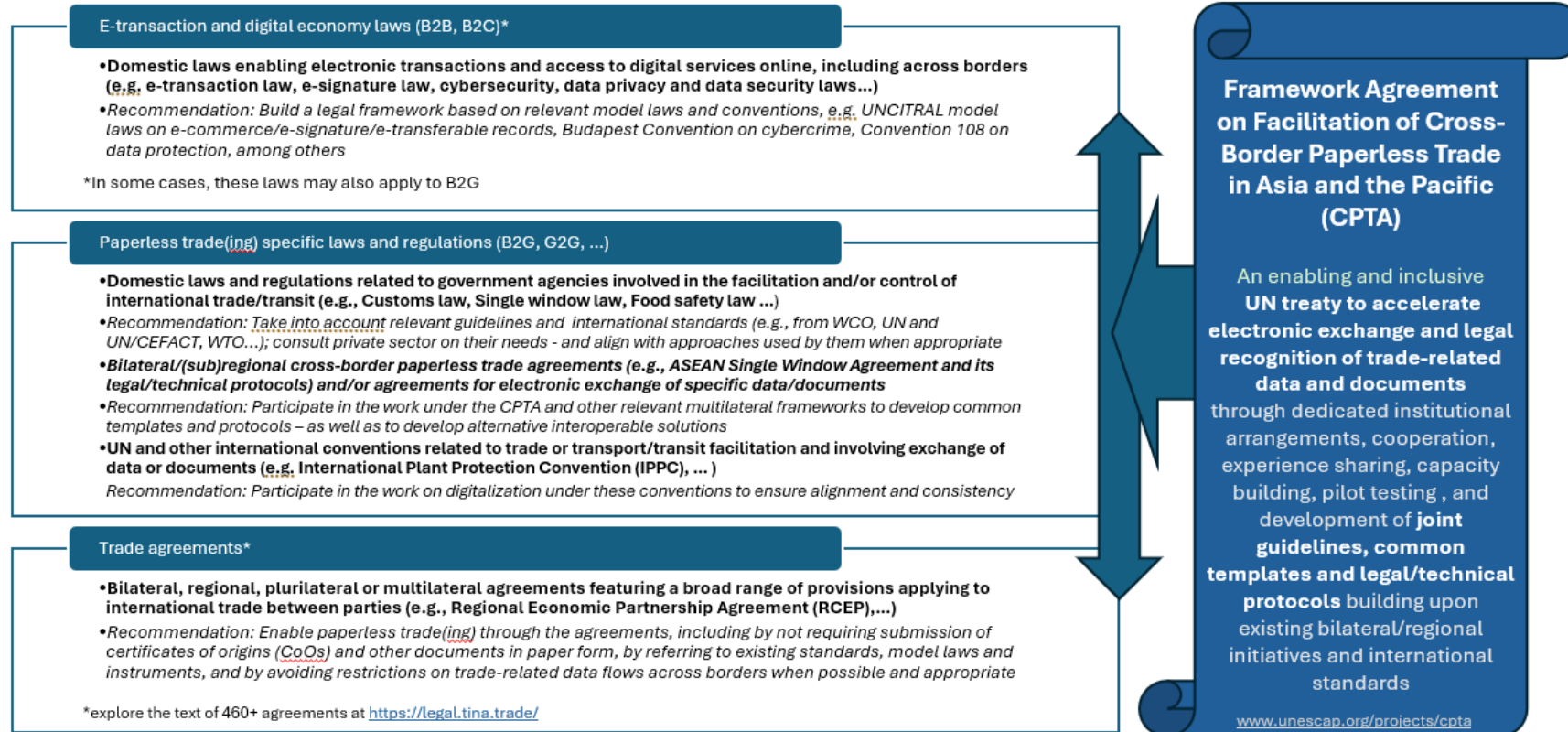
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- **The views expressed in this presentation may incorporate insights from the working group on the Framework Agreement on Facilitation of Cross-Border Paperless Trade in Asia and the Pacific, as well as from other experts (sources are provided). These views are personal and open to discussion.**

A framework for analysis

Key elements of the legal framework for cross-border paperless trade

(including core recommendations and role of the CPTA)



Recommendation: To the extent possible, ensure consistency across laws and regulations in the three areas to achieve seamless flow of goods through international supply chains

Source: United Nations ESCAP

Source: Duval and Xue, Identifying key elements of the legal framework for cross-border paperless trade, <https://www.unescap.org/blog/identifying-key-elements-legal-framework-cross-border-paperless-trade>

Recognition

- **From legal perspective according to UNCITRAL:** The principle of non-discrimination ensures that a document would not be denied legal effect, validity or enforceability solely on the grounds that it is in electronic form.
- **From “trust” perspective:** mutual recognition depends on the comfort and confidence, in short, the trust, of the parties – public or private – in relying on the documents and data to be exchanged between the parties (UNNExT working paper, forthcoming)

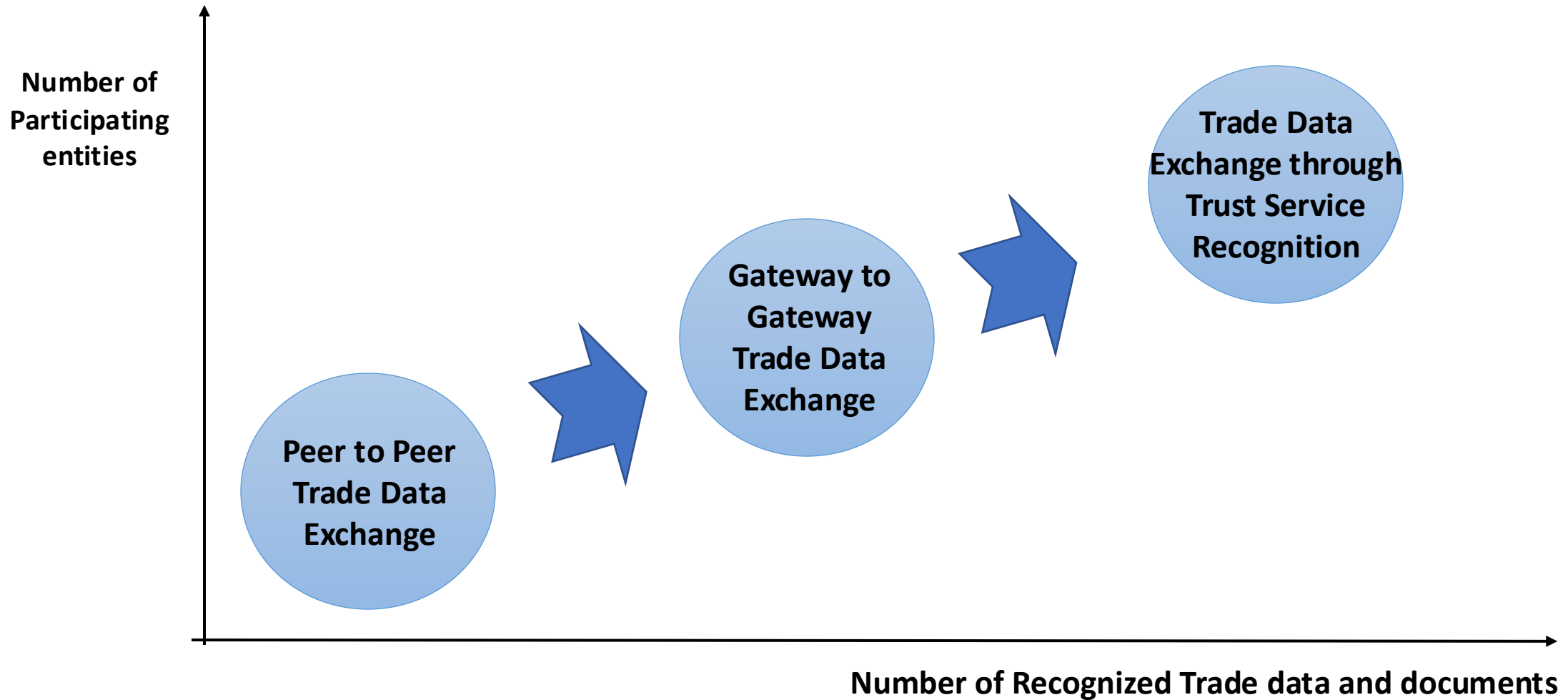
Mutual recognition

- A country give legal force in its own system to electronic data and documents that originate in another country, so long as that other country reciprocates.

Key elements on recognition

- Data vs. document
- G2G vs. B2B...
- ex-ante vs ex-post
- Legal basis
- Technology solutions

MUTUAL RECOGNITION MODELS



Source: Sung Heun Ha for discussion at the CPTA working group

G2G example 1: data sharing

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE ANIMAL, PLANT AND FISHERIES
QUARANTINE AND INSPECTION AGENCY
OF THE REPUBLIC OF KOREA
AND
THE NETHERLANDS FOOD AND CONSUMER PRODUCT SAFETY
AUTHORITY
OF THE KINGDOM OF THE NETHERLANDS
ON THE ELECTRONIC CERTIFICATION

The Animal, Plant and Fisheries Quarantine and Inspection Agency (QIA) of the Republic of Korea and the Netherlands Food and Consumer Product Safety Authority (NVWA) of the Kingdom of the Netherlands (hereinafter referred to as the “Sides”),

Recognizing that the electronic exchange of information between the competent authorities of the two countries on the quality and safety of agricultural and livestock products and consignments is equal to paper certificates and expecting that, in the future, electronic certification will replace the paper certificates;

G2G example 1: continued

1. The Sides will exchange the information of the phytosanitary certificate of seeds for sowing imported and exported between the two countries, together with a paper certificate, through electronic means. And the sides will pursue paperless phytosanitary certification as a natural continuation of the results achieved through the seeds for sowing pilot program.
2. The Sides will endeavour to gradually expand the range of phytosanitary and veterinary products for which data will be officially exchanged through electronic certification.
3. The Sides will jointly promote the digital facilitation of international trade in agricultural and livestock products.
4. This Memorandum of Understanding (MOU) is not intended to create any legally binding obligations under international law. This MOU will be carried out within the framework of the respective laws and regulations of the two countries and subject to the availability of appropriated funds and personnel of the Sides.

G2G example 2: recognition of electronic document

The upgraded protocol of China-Singapore Free Trade Agreement (CSFTA) was effect from 16 October 2019, was introduced a significant digitalization upgrade in the submission for Certificate of Origin. This upgraded protocol included the establishment of the Electronic Origin Data Exchange System (EODES) as the platform that allows the electronic submission of Certificates of Origin^[10]. On 1 November 2019, the EODES enables the electronic submission of Preferential Certificate of Origin (PCO) and the Certificate of Non-Manipulation (CNM) between Singapore and China Customs. With effect from 1 May 2020, China has implemented full transmission of electronic PCO. This eliminates the need for hard copy PCO or CNM to be dispatched overseas^[11].

G2G example 3: ASEAN-Japan Comprehensive Economic Partnership Agreement (AJCEP)

Certificates of Origin will be shifted to issuance in PDF format for the Japan-ASEAN Comprehensive Economic Partnership Agreement. From July 18, 2023, Certificates of Origin will be shifted to issuance in PDF format for the Japan-ASEAN Comprehensive Economic Partnership Agreement

B2B – example 1: Australia-UK FTA Chapter 14 Digital Trade

- **1. Each Party shall maintain a legal framework governing electronic transactions consistent with the principles of the UNCITRAL Model Law on Electronic Commerce 1996 done at New York on 12 June 1996 or the United Nations Convention on the Use of Electronic Communications in International Contracts done at New York on 23 November 2005.**
- **3. The Parties recognise the importance of developing mechanisms to facilitate the use of electronic transferable records. To this end, in developing such mechanisms, the Parties shall endeavour to take into account, as appropriate, relevant model legislative texts developed and adopted by international bodies, such as the UNCITRAL Model Law on Electronic Transferable Records 2017 done at New York on 13 July 2017.**

B2B – example 2: Australia-Singapore digital economy agreement (Article 8)

- **2. Each Party shall maintain a legal framework governing electronic transactions consistent with the principles of the UNCITRAL Model Law on Electronic Commerce (1996) or the United Nations Convention on the Use of Electronic Communications in International Contracts, done at New York on November 23, 2005..**
- **4. The Parties recognise the importance of developing mechanisms to facilitate the use of electronic transferrable records. To this end, in developing such mechanisms, the Parties shall endeavour to take into account, as appropriate, relevant model legislative texts developed and adopted by international bodies, such as the UNCITRAL Model Law on Electronic Transferable Records (2017).**

An elephant in the room

- **UK's Electronic Trade Documents Act is an important step to adopt electronic bill of lading**
- **However, legal uncertainty and operational challenges remain for adopting electronic of lading**

“The reluctance in the use of electronic bills of lading in the past was, on the one hand, based on legal hindrances, such as a lack of conformity with statutory form requirements. These have most been overcome with the application of the international legislation and with the implementation of new United Kingdom (UK) laws ” (source: Carsten Schaal and Lex e-Scripta, Inter-lswer.com)

In which year was the above statement made?

a) 2003; b) 2012; c) 2018; and d) 2024

Issues for consideration

- **Amara's Law: never overestimate the short-term impact of new technologies or underestimate their long-term effects (who still remember Seadocs from 1983?)**
- **Fit for purpose: 1) trust vs. legal obligation; 2) costs vs. risk**
- **The devil is in the details: operational challenges and legal uncertainty**
 - Operational: platforms may mean more exclusive than inclusive
 - Legal: varying levels of recognition and acceptance of eBoLs across different jurisdictions