



General Assembly

Distr.: Limited
31 July 2002

Original: English/French

**United Nations Commission
on International Trade Law**
Working Group on Electronic Commerce
Fortieth session
Vienna, 14-18 October 2002

Legal barriers to the development of electronic commerce in international instruments relating to international trade

Compilation of comments by Governments and international organizations

Addendum

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II. Compilation of comments

A. States

1. Lithuania

[Original: English]

[22 July 2002]

1. The Government of Lithuania expresses its appreciation to the work carried out by the UNCITRAL secretariat in conducting the survey of possible legal barriers to the development of electronic commerce in international instruments.

2. In the view of the Government of Lithuania the methodology used by the UNCITRAL secretariat in the conduct of the survey is appropriate to the project designated by the Working Group. However, the Government believes that it would be meaningful to include in the survey references to the reservations that were made by States to appropriate international instruments if the reservations could create obstacles to electronic commerce (for example, nine States declared, in accordance with articles 12 and 96 of the United Nations Convention on Contracts for the International Sale of Goods, that any provision of article 11, article 29 or Part II of the Convention that allows a contract of sale or its modification or termination by agreement or any offer, acceptance or other indication of intention to be made in any form other than in writing would not apply where any party had its place of business in its territory).

3. Another item suggested for future work would be conducting a survey that might encompass an analysis of the UNCITRAL model laws and preliminary conclusions as to the types of provisions that might create obstacles to electronic commerce.

2. Niger

[Original: French]

[11 July 2002]

1. Niger welcomes the work of UNCITRAL to develop uniform rules on electronic signatures and its efforts to ensure that notions of “writing”, “signature” and “document” in international trade instruments are understood in a manner that accommodates their electronic equivalents. However, Niger considers it desirable for UNCITRAL to take appropriate measures to take care of the concerns of less developed countries in connection with the following conventions, as follows:

(a) The Convention on Transit Trade of Land-locked States (New York, 8 July 1965) served as a basis to promote international transport between land-locked States and coastal States, in particular in Africa. Thus, consideration of problems related to electronic commerce should take into account the interests of those States by associating, in one way or another, the experts of the States concerned;

(b) The Customs Convention on the International Transport of Goods under Cover of TIR Carnets (Geneva, 14 November 1975) covers the deciding and multiple function of the TIR carnet (controls, means of evidence etc.) for the

facilitation of traffic, in particular in Western Africa. Thus, the analysis should be continued and expanded to include African countries.

2. Similar comments could be made in connection with other conventions, in particular the Convention on the Contract for the International Carriage of Goods by Road (Geneva, 19 May 1956) and Protocol thereto (Geneva, 5 July 1978), in view of the role of the consignment note in international trade by road in our region.

B. Intergovernmental organizations

1. European Commission

[Original: English]
[16 July 2002]

The Information Society Directorate-General of the European Commission understands that the scope of the survey focuses on international trade instruments that might contain legal barriers to electronic commerce. Having consulted with other Directorate-Generals in the European Commission, the European Commission is able to inform UNCITRAL that, since the Commission is not a depository for international instruments, it has no additional treaties to add to the inventory. Furthermore, it would appear that legislation of the European Union does not fall within the scope of the UNCITRAL survey.

C. International non-governmental organizations

1. International Chamber of Commerce

[Original: English]
[18 July 2002]

1. The International Chamber of Commerce (ICC) appreciates the opportunity to provide substantive input to UNCITRAL on the proposed project on barriers to electronic commerce in existing international trade-related instruments. ICC members are interested in providing substantive business experiences which hopefully will be useful to UNCITRAL.

2. ICC plans to provide more in-depth comments regarding the proposed projects, including ongoing work on contract formation, prior to the UNCITRAL meetings in October. The following are general comments of ICC on the “omnibus convention” project:

(a) ICC supports this work to the extent that the revision of writing requirements in international conventions would remove barriers to trade. However, ICC thinks it would be very important to define the work clearly, since business has come to rely on the wording of many international conventions;

(b) ICC believes that it would be premature for UNCITRAL to try to determine the form of the work product at this juncture (i.e. interpretation, convention, guidelines or model laws) and instead urges UNCITRAL to pursue the necessary groundwork on the issues which in turn will provide guidance in determining the appropriate form the work product should take in the future. In

general, the ICC perspective is that the work product should supplement rather than re-open existing legislation or conventions;

(c) ICC thinks that UNCITRAL should only begin the drafting process after comprehensive research and an in-depth expert analysis on the issues have been carried out.