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TRADE AND DEVELOPMENT BOARD

Commission on Enterprise, Business Facilitation and Development

Expert Meeting on Capacity-Building in the Area of

Electronic Commerce: Legal and Regulatory Dimensions

Geneva, 14-16 July 1999

Agenda item 3

ELECTRONIC COMMERCE: LEGAL AND REGULATORY DIMENSIONS

Agreed conclusions and recommendations *

1. The Expert Meeting on Capacity-Building in the Area of Electronic Commerce: Legal and Regulatory Dimensions, having examined various legal aspects of electronic commerce, decided to bring the following conclusions and recommendations to the attention of the Commission on Enterprise, Business Facilitation and Development at its fourth session:

2. The importance of electronic commerce as a vehicle for promoting the participation of developing countries in global trade and development should be recognized. To do so, the legal issues of electronic commerce need to be addressed and monitored on a regular basis.

* As adopted at the closing plenary meeting on 16 July 1999.

3. Although the current legal infrastructure is generally applicable to the electronic environment, most legal infrastructures and laws were developed in the absence of electronic systems. Therefore, these laws may create uncertainty in the electronic environment because they may not have the same legal effect as that seen in the traditional paper-based environment.

A. Addressed to national Governments

4. Governments are urged to examine their existing legal infrastructure to see if paper-based form requirements prevent laws from being applied to electronic transactions and to determine whether such form requirements should be adjusted to make their laws technology-neutral and permit their interpretation and application in an electronic environment.

5. In reviewing their legal infrastructures, Governments are encouraged to give consideration to using the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce, as well as other instruments on electronic commerce prepared by UNCITRAL and other organizations, as a basis for preparing new laws or adjusting current laws. Where appropriate, Governments should also consider the introduction of rules to give certainty with regard to the legal effect of using specific technologies within a technologically neutral legal infrastructure.

6. Governments are encouraged to participate in the preparation of various legal instruments being considered in international forums.

7. Governments are urged to promote public awareness and education of all aspects of electronic commerce and the opportunities and benefits it offers.

8. Governments are encouraged to foster cooperation among the public and private sectors and academia in the study, development and establishment of policies and rules on electronic commerce.

9. Governments are encouraged to promote investment in, and access to, telecommunications and information technology infrastructures in order to take advantage of the benefits they offer to all sectors

of society, especially the public and private sectors and academia, in order to promote the development of electronic commerce.

10. Developed country Governments are urged to dismantle barriers to global electronic commerce for developing countries by removing restrictions on the export of technology, especially with respect to state-of-the-art encryption systems and products, as well as associated technologies and computer systems.

11. Governments of developed and developing countries, especially those who are members of regional economic groupings, are encouraged to establish cooperative relationships so as to increase their capacity to deal with the complexity of the issues that have arisen due to the development of information and communication technologies in such areas as taxation, customs, intellectual property, domain names, computer crime, Internet content regulation, privacy and data protection, consumer protection, certification authorities, and the role of accreditation and standardization bodies.

B. Addressed to the international community

12. International organizations involved in electronic commerce should cooperate and coordinate their activities to ensure an adequate exchange of information and to avoid duplication of efforts.

13. International organizations are encouraged to strengthen their assistance to developing countries in the following areas:

- Reviewing and adapting their national laws to accommodate electronic commerce;
- Promoting awareness, education and training; and
- Developing/strengthening electronic commerce infrastructures.

14. International organizations involved in preparing legal instruments and rules should continue and complete their work without undue delay, including on instruments concerning issues or topics referred to in paragraphs 11 and 15 herein.

C. Addressed to UNCTAD

15. UNCTAD should keep under review and monitor developments pertaining to legal and regulatory aspects of electronic commerce and keep countries informed thereof, particularly on the following questions: jurisdiction, applicable law, dispute resolution mechanisms, taxation, intellectual property, domain names, privacy and data protection, consumer protection, computer crime, Internet content regulation, authentication, legal rules on certification authorities and their impact on cross-border recognition of certificates, and the role of accreditation and standardization bodies. In doing so, close cooperation should be maintained with the relevant international organizations, such as UNCITRAL, Economic Commission for Europe, World Intellectual Property Organization, World Trade Organization, and Organisation for Economic Cooperation and Development. UNCTAD should also examine the implications of electronic commerce for the multilateral commitments undertaken by countries in the field of liberalization of international trade.

16. UNCTAD should create means for the dissemination of information relating to legal issues of electronic commerce, especially through the combination of Web-based tools of information management/dissemination and its linkages with the concerned international organizations.

17. UNCTAD, in cooperation with other relevant international organizations, should seek to assist developing countries, upon request, in preparing legislation to accommodate electronic commerce.

18. UNCTAD should intensify its training activities in the field of legal aspects of electronic commerce, especially for developing countries and their small and medium-sized enterprises. Particular attention should be given to including a special segment on legal aspects of electronic commerce in UNCTAD's existing training programmes, such as TRAINFORTRADE.

19. UNCTAD should give consideration to the convening of a follow-up meeting of experts to review and discuss legal and regulatory developments and problems at the international, regional and national level and to determine possible approaches and solutions pertaining to legal issues of electronic commerce.