

ANNEX

EXAMPLES OF PROVISIONS ON DIGITAL IDENTITY THAT COULD BE INCLUDED IN TRADE AGREEMENTS¹

ARTICLE 1: MUTUAL RECOGNITION OF TRUSTED DIGITAL IDENTITIES

1. The Parties recognize that trusted digital identity schemes contribute to more secure and agile supply chains and can be a catalyst in facilitating trade.
2. The Parties agree to develop or maintain an enabling legal framework for a trusted digital identity system. Such framework should be consistent with UNCITRAL principles and other relevant principles and standards already in existence.
3. The Parties agree on mutually recognized procedures for issuing and for proofing identities (legally incorporated entities in the Parties jurisdiction), including:
 - (a) Agreement on the minimum level and type of information (or attributes) to be proofed and validated for issuing trusted identities. This “digital identifier”² will consist of one or more attributes that can uniquely characterize an entity.
 - (b) Agreement on electronic information or data sources to be used to document that an entity is a legal entity under the Parties’ specific jurisdiction.
 - (c) All Parties must ensure that updates to the legal status of an entity are continuously maintained and immediately communicated. As soon as a legal entity changes status, this new information should be available online to all interested parties who intend to interact with the legal entity.
 - (d) Each Party has the right to authorize an agency (trusted party) to approve the establishment of a legal entity within its jurisdiction.
 - (e) Agree on which institutions can act as the trusted party (for instance financial institutions) that confirms the validity of a physical proof of incorporation (and subsequently issues a digital identity). These trusted parties need to be agreed as trustworthy by all Parties.
 - (f) Proposed new trusted parties should be agreed upon by all Parties to the Agreement.
 - (g) If a digitalization process is not already in place, the trusted authorities of each Party shall work towards digitalizing the process of legal entity incorporation as soon as practically possible.
4. Each Party shall endeavour to avoid any unnecessary regulatory burdens.
5. The Parties shall endeavour to recommend the use of existing standards where possible and develop and develop common standards where necessary.
6. All Parties should adopt or maintain laws and regulations for the protection of personal information provided. The trusted digital identity system should be executed in a way that allows involved institutions to protect sensitive data and recognize cultural and ethical expectations about data protection and privacy. It shall take into due consideration international standards of data protection.
7. Mutual recognition of trusted digital identity systems can be temporarily paused or altogether suspended if government identity issuance systems and processes are compromised or destroyed/corrupted. The Parties endeavour to assess alternatives or other mechanisms which can be available.
8. Nothing shall prevent a Party from adopting or maintaining measures inconsistent with the points above to achieve a legitimate public policy objective.
9. Authenticating a legal entity’s identity is only a first step towards paperless trade. A second step would involve using the system for authorization and provision of trade documents such as licences and certificates. The parties may want to consider including language along the following lines in their RTA in addition to the provisions listed above.

ARTICLE 2: ENSURING TRUSTED DIGITALLY SIGNED TRADE DOCUMENTS

1. The Parties recognize the importance of ensuring that digitally signed trade documents are issued by an authorized agent, that they have not been tampered with and that only authorized entities have access to them.
2. The Parties mutually agree which public authorities or other organizations are authorized to sign trade documents, submit transactions, and issue such documents. These public authorities need to be identified as trustworthy by all Parties.
3. Regarding trade documents, the Parties mutually agree to accept e-signatures that are considered to have equivalent legal effect of a handwritten signature according to one Party's law unless a Party can demonstrate a reasonable doubt concerning the trustworthiness of the e-signature.
4. An agent in the importing country can verify that the exporting agent which has digitally signed the trade document is an authorized issuer of a specific document under the exporting country's jurisdiction.

ARTICLE 3: COOPERATION

1. The Parties shall endeavour to maintain a dialogue on regulatory issues raised by trusted digital identity schemes. In particular, they shall endeavour:
 - (a) To exchange information and good practices on:
 - (i) The functioning and management of trusted digital identity schemes;
 - (ii) Policies, regulations, enforcement and compliance regarding how IT systems are secured.
 - (b) To cooperate to address legislative, regulatory and technical barriers as soon as practically feasible.
2. The Parties will work together to assist SMEs to fully participate in such schemes.
3. The Parties affirm the importance of actively participating in relevant forums, including multilateral forums, to promote the development of trusted digital identity schemes and issuance of trusted digitally signed trade documents.

Consideration should also be given to including similar provisions in other trade agreements, starting with the new set of rules being developed in the context of the WTO Joint Initiative on E-commerce.

ENDNOTES

1. Based on <https://www.unescap.org/sites/default/files/86%20Final-Team%20Hanna%20Norberg-Sweden.pdf>.
2. A digital identifier is one or more attributes that uniquely characterize an entity in a specific context. It is used as the key by the parties to agree on the entity being represented (ISO/IEC 29115:2013).