Over the last several years, numerous multilateral and regional Intergovernmental Organizations (IGOs), including the UN, the World Customs Organization (WCO), the Association of South East Asian Nations (ASEAN) as well as individual countries, have been engaged in work on a variety of e-Commerce, Paperless Trade, electronic Single Window legal issues, and cross-border e-transactional and commercial law matters. To some degree, this work has moved towards the mantra of “trade facilitation.” While commonly considered to be related to standards and guidelines for the exchange of goods and services across borders (e.g., WTO, WCO, NAFTA, etc.), trade facilitation can also be seen as a term referring to the more commercial aspects of trade depending on the particular organization using it.

With the recent adoption of the WTO’s Trade Facilitation Agreement (TFA) more countries are likely to move to the broader use of electronic transactions (information and communications technologies or ICT) to meet various WTO commitments. For example, Article X of the TFA suggests that member-states should implement National Single Windows (NSW). Other Articles recommend the use of ICT methods for trade.

The work in these international organizations may implicate a variety of commercial law issues. Thus, it may be helpful for interested ABA Sections to consider how these developments may impact, whether from an overall U.S. viewpoint or simply a global perspective, commerce, trade, foreign direct and indirect investment, security, and related areas.

For example, would the work being done in different fora lead to divergence in the overall global electronic commerce legal framework for trade that would increase costs for U.S. businesses? While many suggest that the UNCITRAL work on electronic commerce has set a baseline for an enabling legal environment, the applications utilizing electronic transactions may need to be reviewed to consider whether a harmonized approach is emerging or whether different legal approaches may thwart these efforts.

Following are a sampling of some of the projects currently underway in various UN and other IGOs that we may wish to explore. To the extent possible, links to the underlying work mentioned are provided. It should be noted that this is intended as a beginning review and not an in depth analysis. Perhaps the question that might be raised is whether there needs to be more analysis of specific efforts and whether the interested ABA Sections can address some of the more important issues identified.

By way of methodology, we have simply listed the various organizations and noted their recent and ongoing work programs that may be relevant to some of the concerns or issues noted above.

1. **UN Commission on International Trade Law (UNCITRAL)**

UNCITRAL, of course, is the core UN General Assembly body responsible for international
trade law, i.e., international commercial law. Its Working Group IV (Electronic Commerce) has
developed two electronic commerce Model Laws and the UN Electronic Communications
Convention. Currently, Working Group IV is engaged in work related to Electronic
Transferable Records (ETR). This effort may be particularly helpful in the emerging
international goal of “paperless trade” particularly as this relates to commercial transactions.

2. **UN Centre for Trade Facilitation and Electronic Business (UN/CEFACT)**

UN/CEFACT has been active in a variety of areas including the development of UN
Recommendations related to the international Single Window. The definition of a Single Window
provided in its 2006 Recommendation 33 has become a recognized international standard that
many States have followed. This Recommendation defines a Single Window as:

*Within the context of this Recommendation, a Single Window is defined as a facility that
allows parties involved in trade and transport to lodge standardized information and
documents with a single entry point to fulfill (sic) all import, export, and transit-related
regulatory requirements. If information is electronic, then individual data elements
should only be submitted once.*

While it is possible for a country to establish a paper-based Single Window, most countries
pursuing Single Window development have moved towards implementing an electronic Single
Window.

In 2010 UN/CEFACT adopted Recommendation 35 -- *Establishing a Legal Framework for
International Trade Single Window.* This text (and particularly its ANNEX II) has provided
general guidance to many countries in establishing the legal framework for their National Single
Windows (NSW). And, in the case of the regional Single Window legal framework for the
Association of South East Asian Nations (ASEAN) Single Window, Recommendation 35 played
an important role in the deliberations of the ASEAN Single Window Legal Working Group.

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2 Since its creation by the UN General Assembly, the Commission has focused primarily on international
commercial law as a mechanism to promote trade as opposed to concepts of trade law, such as reduction of trade
barriers, etc. Transnational commercial law in various forms, such as conventions, model laws, rules, guidelines,
etc., has been the essence of UNCITRAL’s work program over the years.

3 The Electronic Communications Convention’s formal name is the UN Convention for the Use of Electronic
Communications in International Contracts. These texts as well as an extensive Explanatory Note on the legal issues
related to the international use of electronic authentication and signature methods, are available at

4 The working documents including draft provisions on electronic transferable records are available at
50th Session (November 10-14) is also available here.

5 Some documents related to the development of UN/CEFACT Recommendations mentioned here are as yet
unavailable.

6 Recommendation 33 – Establishing A Single Window To Enhance The Efficient Exchange Of Information
Between Trade And Government is available at http://www.unece.org/cefact/recommendations/rec_index.html. All
UN/CEFACT Recommendations are available here as well.

7 Available at http://www.unece.org/cefact/recommendations/rec_index.html.
Further, UN/CEFACT approved a Revision to its Recommendation 14 – Authentication of Trade Documents in 2013. This Recommendation focuses on a variety of methods for authenticating trade documents.  

Finally, there are two projects underway at UN/CEFACT that may be relevant to our work. The first is a draft Recommendation 36 – *Single Window Interoperability*. The Recommendation focuses on ways that countries can adapt their NSW to be ‘interoperable’ with other NSWs established by their trading partners. Much of the work on this draft Recommendation is oriented towards technical developments. And since Recommendation 35 included guidance on the legal issues related cross-border trade, it is anticipated that the legal issues addressed in the new Recommendation 36 will be based on those in Recommendation 35. UN/CEFACT is planning a Colloquium on draft Recommendation 36 in February 2015 in Geneva.

A second project that is underway and may be relevant to our work is entitled, *Recommendation No. ___ for Ensuring Legally Significant Trusted Trans-Boundary Electronic Interaction*. As more information becomes available, it will be provided to the group. This Recommendation appears to take, however, a fairly regulatory approach to cross-border electronic trade transactions.

### 3. **UN Economic Commission for Asia and the Pacific (UNESCAP)**

UNESCAP has been very active in the trade facilitation/paperless trade/single window area for the last several years. In the Single Window domain, for example, it published “Electronic Single Window Legal Issues: A Capacity Building Guide” and has used this Guide extensively for training and capacity building among its member states.

A draft *Regional Agreement/Framework Agreement for Paperless Trade in Asia and the Pacific* is currently under development at ESCAP. The Commission adopted Resolution 68/3 in 2012 calling for development of what is essentially a treaty among UNESCAP member states (i.e., those who ratify the Agreement) to develop paperless trade models that are electronic-based. These include Single Window model and other cross-border trading arrangements. Of particular interest may be the provisions that call for the electronic exchange of not only regulatory documents, but also commercial documents. This might include the exchange of commercial documents that may provide for the electronic transferability of rights in goods.

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8. The original 1979 version of this Recommendation was entitled, “Authentication of Trade Documents By Means Other Than a Signature.”

9. The work at CEFACIT may be an example of an area where ABA involvement may be helpful in order to avoid, as far as possible, the possibility for inconsistent approaches to cross-border electronic commerce rules.

10. RA problems body decisions, mandate to accept others’ DM....


12. Versions of the draft Regional Agreement and an Explanatory Note prepared by the ESCAP Secretariat are available at http://unnext.unescap.org/reso683.asp, with the most recent versions of the documents at the bottom of this page.

13. The stated goal of this Resolution is “Enabling paperless trade and the cross-border recognition of electronic data and documents for inclusive and sustainable intraregional trade facilitation.” This Resolution may be downloaded at http://unnext.unescap.org/reso683.asp, along with a variety of related documents.

14. UNESCAP has 53 Member States (including the U.S.) and 9 Associate Member States.

15. See discussion above on the current UNCITRAL Working Group IV work program.
At its April 2014 Ad Hoc Intergovernmental Meeting (IGM), delegates recommended that the UNESCAP Commission create an Intergovernmental Steering Group (IGSG) to continue work on the text of the Agreement. The Commission approved this recommendation at its August Plenary and the first meeting of the IGSG is scheduled for April 1-3, 2015.16

Also, the Secretariat along with the UN Network of Experts for Paperless Trade and Transport in Asia and the Pacific (UNNExT) is working developing model provisions on paperless trade to be included in Free Trade Agreements and Regional Trade Agreements. Finally, an expert group meeting was held last September to begin discussions related to the technical and legal aspects of paperless transit facilitation.17 More information on this development will be provided as it becomes available.

4. Association of South East Asian Nations (ASEAN)

Since 2005 ASEAN has been working to develop both the technical and legal frameworks for a regional Single Window referred to as the ASEAN Single Window (ASW). So far, the ASEAN Member States have adopted:

- The Agreement to Establish and Implement the ASEAN Single Window (2005), referred to as the ASEAN Single Window Agreement (ASW);18 and,
- The Protocol to Establish and Implement the ASEAN Single Window (2006).19

The ASW Agreement focuses on the broad considerations to be taken into account in developing the ASW as part of ASEAN’s overall goals for regional economic integration. The Protocol is directed primarily towards the technical development aspects of the ASW although it does contain some direction for legal framework development. Additionally, this Protocol creates the ASW Steering Committee to oversee development of the ASW. The ASW Steering Committee created a Technical Working Group (TWG) and a Legal and Regulatory Working Group (LWG).

Over the past five years, the LWG has worked though a variety of legal issues for establishing the overall legal environment in which the ASW as well as National Single Windows (NSW) would operate. UN/CEFACT Recommendation 35, the UNCITRAL Model Law on Electronic Commerce, and the UN Electronic Communications Convention heavily influenced the LWG’s work program. The LWG has finalized a Protocol On The Legal Framework To Implement The ASEAN Single Window (PLF). This Protocol provides the legal requirements for operating the ASW and in several Articles (e.g., information security requirements) creates specific mandates for the legal framework of Member States’ NSWs.

When adopted by the ASEAN Member States, the PLF may represent one of the first, if not the first, multilateral Single Window Agreement to be implemented. It is expected that this text will be adopted in the next several months and that the ASW, in a modified form, will be implemented by July 2015.

16 The Resolution 70/6 approving the IGM is available at http://unnext.unescap.org/steergroup.asp, along with the Terms of Reference for the new IGSG.
17 See, http://www.unescap.org/events/expert-group-meeting-paperless-transit-facilitation
5. World Customs Organization (WCO)

The WCO has engaged with UN/CEFACT, UNCITRAL, and the WTO on a variety of projects related to the use of ICT in the Single Window and other trade facilitation areas. For example, it established with UNCITRAL the WCO-UNCITRAL Joint Legal Task Force on the International Single Window in Coordinated Border Management. It works regularly with UN/CEFACT on various Single Window projects particularly for technical development. It is also engaged with UNCITRAL Working Group IV and Working Group I on Micro, Small and Medium-Sized Enterprises.

After several years of study, the WCO is in the process of implementing its Globally Networked Customs20 (GNC) project. This effort represents initial steps for creating systems that enable Customs Administrations to exchange various types of regulatory data electronically. Currently, it is encouraging pilot projects based on bilateral and multilateral agreements between its 179 member states. GNC includes a legal “toolkit” that provides guidance to Members seeking to implement GNC.

In 2012, the WCO Council adopted a Recommendation on the Dematerialization of Supporting Documents.21 This Recommendation strongly promotes the use of electronic data messaging not only by Customs Administrations but also by UN and other international organization and the private sector for enhancing trade facilitation. Finally, the WCO’s two volume Compendium of How to create a Single Window Environment include guidance in one chapter on addressing legal issues.22

6. Other Related Developments

These are only a sampling of the work being done in international organizations related to electronic commerce, paperless trade, and the Single Window. There are others. For example, the European Commission is working towards creating a Single Window model for the EU23 although it’s still in the developmental stage. The Asia Pacific Economic Cooperation organization (APEC) has several projects underway in its Electronic Commerce Steering Group (ECSG), its Sub-Committee on Customs Procedures (SCCP) and a Supply Chain project that is under the APEC Committee on Trade and Investment, in which the U.S. Trade Representative is heavily involved.

Extensive Electronic Single Window development work is moving forward in many Sub Saharan African countries. Additionally, the African Union had proposed a draft Convention on the

23 In the EU, there is extensive use of private sector Port Community Systems, which aggregate data for traders and shippers for submission to regulatory authorities.
Establishment of a Legal Framework Conducive to Cyber Security in Africa. Although the draft Convention’s title suggests Cybersecurity is the key focus, Part I deals extensively with e-Commerce issues and Part II deals with data security, privacy, permitted use of collected data, etc. Finally, work in organizations such as the South African Development Community (SADC) and the South African Customs Union (SACU) are also working towards electronic Single Window development.

In Latin America and the Caribbean, more countries are moving towards paperless trade models, particularly the Single Window. Considerable work in this area has been done by the Latin American and Caribbean Economic System (SELA), which is a regional intergovernmental organization, which is a group of 28 Latin American and Caribbean countries. Additionally, at least one member of the Caribbean Community (CARICOM) has implemented an electronic Single Window and several others are in the process of doing so. The CARICOM Secretariat is also involved in the efforts to expand the use of the electronic Single Window and, possibly, to consider a regional Single Window. Additionally, the Organization of American States (OAS) has undertaken a variety of projects dealing with electronic commerce legal issues.

Finally, it is worth noting that progress on the U.S. Single Window is moving forward. Earlier this year, President Obama signed Executive Order 13659 – Streamlining the Export/Import Process for America’s Businesses. This Executive Order mandates that the U.S. Single Window, know as the International Trade Data System (ITDS) and which is part of U.S. Customs and Border Protection’s Automated Commercial Environment, be operational by December 31, 2016.

In the U.S. Single Window environment there are approximately 47 Federal agencies that will be connected electronically through the Single Window. One interesting legal issue here is whether some agencies may be restricted in participating in a totally electronic system. Such a situation might arise, for example, where treaty obligations require that paper documents be utilized be used in import and/or export processes. It may not be clear that such obligations can be addressed using E-SIGN. However, the UN Electronic Communications Convention might provide an avenue for dealing with this issue by making a Declaration under Article 19 to the effect that the U.S. implementation of the Convention would apply to such other treaties and the communications required by it. However, the U.S. would need to ratify the ECC.

What may be found in all of the above are a number of cross-cutting commercial and trade law issues that may need to be addressed. Relevant ABA Sections may wish to have an impact on emerging transactional law issues at the international level by engaging on these issues.