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**Possible future work on electronic commerce –
Recommendations for future work of Working Group IV
(Electronic Commerce) submitted by the
United States of America^{*}**

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^{*} The late submission of the document reflects the date on which the recommendations were communicated to the Secretariat.



I. Introduction

1. In preparation for the forty-second session of UNCITRAL, the Government of the United States of America submitted to the Secretariat recommendations relating to possible future work on electronic commerce as well as a proposal on electronic transferable records and a proposal on online dispute resolutions. The submissions are reproduced, respectively, in documents A/CN.9/681, A/CN.9/681/Add.1 and A/CN.9/681/Add.2, in the form in which they were received by the Secretariat.

II. Recommendations for future work of Working Group IV (Electronic Commerce)

2. We welcome the Note by the Secretariat (A/CN.9/678) re “Possible future work on electronic commerce” and have set out our recommendations in two parts, (1) the first recommending a further study by the Secretariat to expand the work already authorized as noted in document A/CN.9/678 Item II, “single windows in international trade”, and (2) the second to also recommend a new study on the feasibility of work on electronic dispute resolution. In addition, (3) we are prepared to support further work on the “Comprehensive reference document” on the basis of further elaboration of what topics would be considered and an outline of issues on recommended topics so that an appropriate selection may be made for such work.

3. With regard to Item II, we note that the Commission has previously authorized work to be undertaken in connection with development of structured electronic messaging to support trade in import-export goods, with respect to such matters as electronic customs procedures, managing the flow of shipping, insurance, financing and release of goods, and related matters under the framework of proposed “Single Window” systems. Included in the proposal before the Commission was the related proposal of the United States to seek progress on legal infrastructure for transferability of goods in transit by electronic means. These topics were presented in the context of work underway at several international bodies, primarily the recent “Single Window” project at the World Customs Organization (WCO), as well as related work at organizations such as UNECE, UNESCAP, ASEAN and others. The Note by the Secretariat for the 41st session in July 2008 (A/CN.9/655) remains a very useful survey of the types of issues raised by “Single Window” projects.

4. At the time, it was anticipated that Working Group IV would initiate its activity in response to progress on the Single Window at WCO. That work remains at a preliminary stage, and the time schedule for that is yet to be finally determined. Therefore, based on consultations, we recommend that the Secretariat be authorized to:

(1) Continue its monitoring of progress at WCO so as to assess whether WCO’s framework project can be examined in detail at a meeting of the Working Group in spring 2010;

(2) Assess general electronic commerce issues relating to “Single Window” developments which may benefit other bodies or countries seeking to implement such systems;

(3) Assess whether preparation of legal standards may be achievable on electronic transferability of rights to goods in transit, in or outside of a “Single Window” system, including assessment of the legal issues attendant to transferability systems such as the previous European-based Bolero system and other such initiatives; and

(4) Assess whether preparation of legal standards may be achievable on electronic documents for bills of lading, letters of credit, insurance and other trade in and transportation of goods.

5. For purposes of these assessments, reference should be made to the previous United States proposal circulated at the 41st session of the Commission as documentation relevant to the WCO Single Window project on transferability of rights by electronic means (A/CN.9/XLI/CRP.4, 19 June 2008). That proposal is now resubmitted for reference at the 42nd session (A/CN.9/681/Add.1). In addition to WCO-related documentation, documentation and projects concluded or under way at bodies such as the UNECE’s CEFAC, UNESCAP, ASEAN, UNCTAD and others should be consulted. Regional projects on electronic commerce such as OAS work at CIDIP-VII on electronic registries would also be relevant. This assessment should involve experts from Working Group III (Transportation) in view of the provisions related to electronic documents contained in the recent United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea to be known as the “Rotterdam Rules”.

6. In addition, the United States supports the suggestions by the Secretariat in Item III of document A/CN.9/678 with regard to the “comprehensive reference document on legal issues relating to electronic commerce”. A selection of which topics should be pursued for such a survey should be made by the Commission and could be properly focused by presentation by the Secretariat of brief outlines of topics and issues therein to be covered, possibly starting with selected topics from document A/CN.9/604 presented at the meeting of the Plenary Session.

7. The United States recommends that these studies and background information be authorized to be prepared by the Secretariat subject to availability of staff resources. The third recommendation by the United States concerning feasibility of work on electronic dispute resolution is set out in an adjoining document.
