

GLOBAL TRADE AND FINANCE SERIES

PAPERLESS TRADE

Opportunities, Challenges and Solutions

By Emmanuel T. Laryea

Kluwer Law International

Paperless Trade

Opportunities, Challenges, and Solutions

By

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Paperless Trade

Opportunities, Challenges, and Solutions

Global Trade and Finance Series

VOLUME 1

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The Global Trade and Finance Series

Christopher Columbus sailed forth to the New World, virtually without maps, without bills of lading, but with a lot of courage and some luck. His initial foray into paperless barter trade set an interesting precedent as he helped join the old world to the new, which in turn ushered in decades of dynamic ever expanding trade in goods and services. One of the most pressing issues facing humanity today is the growing gap between rich and poor nations, Europe and USA versus much of the rest of the world. This is exemplified by the lack of economic development in Sub-Saharan Africa, parts of Asia and Latin America.

Trade promotes prosperity. More specifically trade creates additional jobs, both in the exporting and importing nations. History teaches us that nations that engage with the rest of the world through trade prosper, while those that seek self-sufficiency decline.

Prosperity and security are also correlated. The linkage is not as strong as that between trade and prosperity, but nonetheless periods of global prosperity correlate broadly with periods of relative global peace.

Ever freer and fairer trade is our best hope for a more prosperous and safer world. After the events of the 11th of September 2001, the dynamic of trade is needed more than ever before to help ensure a safer world.

Financial flows likewise enhance growth and development. However the Asian economic crisis that commenced in 1997 and other recent crises have shown that global capital flows need to be well managed if they are to be welfare enhancing. The fluidity of global capital can make it a destabilising force as readily as it can be a force for good.

This series of monographs, edited by Professor Ross Buckley, will tackle such issues. I am delighted to be asked to write this introduction to the series, for the issues it will address are particularly pressing at this time.

Globalisation has increased global trade and financial flows and offers the promise of greater growth. Arrayed against globalisation, however, is an increasingly vociferous crowd of voices calling for greater fairness and equity in its effects, and closer management of the process. Globalisation, particularly in the area of freer and fairer trade, offers tremendous prospects to all peoples, particularly the poor. However it is a process that we need to manage more effectively so that the benefits are more evenly shared than has to date been the case. This is a ride upon which we will need to bring everyone; otherwise none may be able to make it. Trade barriers, capital controls and other impediments to growth remain in the armoury of national

governments, and populist politicians will employ them if the public outcry against globalisation reaches the point that such measures become a route to political power.

The challenge facing humanity today is to structure the global trading and financial regimes so they work ever more effectively, and spread the benefits of their operations ever more widely and fairly, than has been the case to date. Each monograph in this series will, in some way, engage with this great undertaking. In turn, each will help point the way to a more secure world with a more broadly based paradigm of world economic growth.

The Hon Tim Fischer
‘Peppers’
Boree Creek
New South Wales, Australia
April, 2002
Deputy Prime Minister and
Minister for Trade of Australia, 1996–1999.

Foreword

Throughout the long history of international trade, getting the documents that prove title to the goods to the destination before the goods has always proved problematic. For this reason, centuries ago, the practice developed of issuing bills of lading in sets of three so that the bills might be sent by different means in the hope that at least one would precede the goods.

This is also the reason waybills have largely superseded bills of lading on shorter sea voyages – modern vessels can move goods so quickly over shortish distances that it is better to forsake the advantages of negotiability offered by a bill of lading so that a waybill can accompany the goods.

The dematerialisation of trade documents will resolve these problems. Shipping documents will be able to be transmitted instantaneously. The savings in costs and potential increases in efficiency will be substantial.

Work on overcoming the legal and practical impediments to the complete dematerialisation of trade documents is well advanced in the developed world. Yet poorer countries still face massive challenges in adapting to a world in which dematerialised trade documents will be the norm.

The challenge for the developed countries is to bring the poorer countries along with us. At a time when the breadth of the gulf between rich and poor nations is already destabilising the planet, we cannot afford to allow it to widen further – and widen it will if the developed world moves to digitised trade documentation and the poorer parts of the developing world cannot.

In this ground-breaking work, Laryea identifies and analyses the three major obstacles to the complete global dematerialisation of trade documentation:

1. Legal systems that do not support electronic documents and uphold their validity and enforceability.
2. The perception that electronic documents are somehow less secure than their paper counterparts.
3. The major practical problems facing the poorer less developed countries, particularly unreliable electricity supplies, lack of the needed hardware to support digitised documentation and lack of trained personnel to support and maintain the hardware and software.

Laryea proposes a range of solutions to each of these problems. Much work has been done in developed countries on the development of new laws to

support electronic commerce and the dematerialisation of transactions traditionally implemented on paper. This work analyses the measures adopted in Australia, US and UK and suggests a model for developing countries.

The book then addresses squarely the security concerns surrounding electronic documentation and shows them to be quite unfounded. No system is entirely secure. Paper documents can, and do, fall into the wrong hands. Documents, and signatures, can be, and are, forged. Yet many people insist on electronic systems being completely and utterly secure before they will countenance a move to them. Laryea establishes that with modern encryption technology, electronic documentation is today considerably more secure than paper and thus deserves adoption on this ground. The test for use should be whether electronic documents are more secure than the available alternatives – not whether they are totally secure.

Finally, and most significantly, Laryea addresses the practical problems facing the poorer developing countries and proposes three potential solutions to those problems:

1. Maintenance of a dual system under which electronic and paper documentation will operate concurrently.
2. Use of Third Party Facilitators to convert electronic documents to paper ones, and vice versa.
3. Building the relevant technical infrastructure of low-tech countries.

The challenges facing the poorer nations of the world are already many and massive. Their exclusion from the more efficient trading practices dematerialisation will offer would be yet another obstacle to economic growth.

We can ignore the problem, allow it to grow, and further impoverish the most impoverished regions of the planet. Or we can tackle the problem head on. Laryea's work provides a blueprint for how to do so.

Professor Ross Buckley
Executive Director
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June, 2002

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- 'Dematerialisation of Insurance Documents in International Trade Transactions: A Need for Legislative Reform' (2000) 23(1) *UNSW Law Journal* 78–104.
- 'Paperless Shipping Documents: An Australian Perspective' (2000) 25(1) *Tulane Maritime Law Journal* 255–298.
- 'Payment for Paperless Trade: Are There Viable Alternatives to the Documentary Credit?' (2001) 33(1) *Law & Policy in International Business* 3–49.

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Emmanuel T. Laryea
Melbourne, Australia
June 2002

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