

Research on legal regulation of cross-border paperless trade facilitation in China

Jiaqi Li

Anhui University of Finance and Economics, Bengbu 233000, China

Abstract

The Framework Agreement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific entered into force on February 21, 2021, helping China's pattern of "implementing a high level of opening up to the outside world and opening up a new situation of win-win cooperation". To promote the high-level development of trade, increase trade opportunities and improve international trade competitiveness in the form of paperless trade facilitation is worthy of deep study in our country. The lack of "single window" construction, the need to improve data security, and the lack of deepening regional trade coordination and cooperation have hindered the paperless process of cross-border trade. In view of this, it is necessary to strengthen the top-level design of the legal policy framework for paperless trade facilitation, unify cross-border data exchange standards, promote electronic data interconnection and cross-border mutual recognition, and strengthen regional coordination and cooperation in paperless trade to boost China's high level of opening up.

Keywords

Cross borders, Paperless trade, Trade facilitation, Single window.

1. Introduction

Modern information technology, especially the development of e-commerce and e-government technology, brings international trade into the information age. Information technology has promoted the development of international trade to the direction of "paperless trade", and also opened up a new path for the sustainable development of international trade. "Cross-border paperless trade" means trade in goods, including the import, export, transit of goods and related services, on the basis of electronic communications, including the exchange of trade data and documents in electronic form. Through the exchange of electronic information and the mutual recognition of legal effects, the "single window" between traders and other electronic trading systems can be better compatible, thus significantly reducing trade time and costs, and improving the efficiency and transparency of international trade. Many of the reductions in global trade costs over the past decade have been achieved through trade liberalization, such as the elimination or reduction of tariffs. [1] However, in 2015, ESCAP research found that tariff costs accounted for only 2%-3% of countries' trade costs, while natural causes such as geographical factors (transportation distance, inland location, etc.), cultural differences, language barriers, etc., accounted for 20%-21% of trade costs, while policy-related non-tariff barriers accounted for 76%-78% of trade costs. It can be seen that improving the level of trade facilitation, including enhancing the transparency of import and export trade policies, promoting the formatting of trade documents and documents, strengthening cooperation among trade authorities, enhancing transit trade facilitation, and adopting digital measures, is the key to reducing trade costs and promoting smooth trade.

2. Development and current status of legal regulations for cross-border paperless trade facilitation

2.1. Development process and status quo of international cross-border paperless trade facilitation

2.1.1. APEC Action blueprint and strategic phase

The APEC Blueprint for Action on E-commerce, adopted at the Kuala Lumpur Ministerial Meeting in 1998, sets the goal of paperless cross-border trade in the Asia-Pacific region, that is, full paperless trade among developed and developing APEC members by 2005 and 2010, respectively. By 2020, a comprehensive paperless trade facilitation trade environment will be established in the entire Asia-Pacific region to achieve compatibility and common cross-border electronic data information exchange, reduce paper documents in cross-border goods transport, cross-border trade management, cargo customs declaration, cross-border goods docking and settlement, and ultimately achieve the comprehensive paperless trade facilitation cross-border business environment in the Asia-Pacific region as envisioned in the Action blueprint. At the 16th APEC Ministerial Conference held in 2004, in order to further achieve the facilitation of cross-border paperless trade, a more detailed action framework and time plan was proposed and the "APEC Cross-border Paperless Trade Action Strategy" was published.

2.1.2. WTO Trade Facilitation Agreement phase

From the current multilateral treaties signed by countries, the World Trade Organization's Trade Facilitation Agreement covers various aspects of overall trade facilitation, and TFA is the only key multilateral treaty on paperless trade facilitation. However, in terms of its specific content, there is no detailed and systematic provision of a dedicated chapter on paperless trade, nor is there a definition of paperless trade facilitation, and it is only a small part of Article 7 "Release and clearance of goods" and article 10 "Procedures related to import, export and transit" scattered in Part I of the TFA[2].

2.1.3. Escap Framework Agreement phase

The first comprehensive regulation on the facilitation of cross-border paperless trade is the Framework Agreement negotiations initiated by ESCAP in 2015, with nearly 30 countries including China, South Korea, Russia, India and Indonesia participating in the negotiations. After various consultations and exchanges of views, the Framework Agreement was adopted on May 19, 2016, and the first comprehensive regulation on the facilitation of cross-border paperless trade was carried out. China signed the Framework Agreement on August 29, 2017, and it will enter into force on February 21, 2021 after undergoing domestic approval procedures.

2.2. Development process and current situation of cross-border paperless trade facilitation in China

In 2012, based on classified customs clearance, China's customs promoted the paperless reform process of customs clearance operations, replaced paper transmission with electronic data exchange and transmission, streamlined the types of documents, improved the progress of document networking data review and other measures, and improved the paperless reform mode and process of customs clearance operations. In order to standardize the customs clearance mode of paperless trade, the Standard of Electronic Scanning File Format for Paperless Customs Declaration Documents for Customs Clearance and the Certificate of Deposit Access Standard for Paperless Enterprises for Customs Clearance were published by the General Administration of Customs in 2013. In 2014, China's customs recognized that paperless documents in the form of electronic data have the same legal effect as paper documents. In order to realize the "single window" connectivity of countries along the Belt and Road, the

General Administration of Customs issued the "Action Plan for Promoting Customs Clearance Cooperation along the Belt and Road" (2018-2020). In addition, in order to further deepen cross-border trade cooperation among countries along the main routes of the Belt and Road, the 16 Measures for the construction of the "Belt and Road" Customs Service clearly indicates that customs and other port management departments should promote the exchange of information, mutual recognition of supervision and mutual law enforcement assistance among port management departments in cross-border trade. Promote the internationalization of "single window" construction, the sharing of electronic port management platform, and the simplification and unification of digital document standards and formats. With the entry into force of the Framework Agreement, the facilitation of cross-border paperless trade has entered a stage of leap-forward development[3]. The Framework Agreement mainly involves the formulation of the corresponding policy framework for creating a paperless trade facilitation environment, promoting the construction of a "single window" system, deeply simplifying and harmonizing data such as electronic trade documents and documents, promoting cross-border mutual recognition of electronic data, harmonizing international exchange standards for electronic documents and documents, capacity building, exchange and cooperation, and action plans for the paperless trade facilitation process And so on. The continuous deepening and implementation of the Framework Agreement will realize the continuous convenience of cross-border exchange and mutual recognition of regional data documents and documents, and at the same time, multi-level compatibility with the paperless trade system of national and regional "single window" and other countries. A business environment that facilitates paperless trade needs to be supported by a highly compatible system of cross-border cooperation, which in turn increases the transparency and speed of cross-border or international trade. The entry into force of the Framework Agreement is not only conducive to the construction of the Belt and Road, but also conducive to the connectivity of economic development in the Asia-Pacific region and the continuous economic prosperity of the Asia-Pacific region[4].

At present, the process of paperless trade facilitation is in the stage of steady development in China, and the free trade area supported by The State Council provides a strong practical foundation and construction experience for paperless trade facilitation in China. The relevant provisions of free trade zones on paperless trade electronic data exchange and transmission, electronic registration, cross-border e-commerce, and single window have helped facilitate paperless trade. The "pilot first, in promotion" model and a new round of blockchain, 5G technology, cloud computing and other emerging technologies will promote the formation of a unified paperless trade environment across the country.

3. Problems in legal regulation of cross-border paperless trade facilitation in China

3.1. Development process and status quo of international cross-border paperless trade facilitation

"Single window" means a mechanism that allows parties involved in a trade to electronically submit data and documents at a single access point for the purpose of fulfilling all import, export and transit related regulatory requirements. In short, the "single window" is to provide an electronic physical connection in the process of import and export of goods or customs clearance and transit, for the submission or processing of goods in the international trade in goods clearance release documents "port". This "port" is controlled and managed by different agencies according to the differences in the management of countries. In general, the "single window" is the public service platform born under the background of modern Internet technology, through which to achieve the reduction of trade barriers, the most always for the cross-border trade of countries to provide great convenience. Since the "Framework

Agreement" has just come into effect in China, the construction of "single window" has also provided some convenience for China's cross-border trade and optimized the import and export procedures of goods, but there are certain obstacles in the actual construction process. First of all, we have not established a paperless Trade Committee in accordance with Article 6 of the Framework Agreement. The Agreement explicitly requires States Parties to implement their obligations by developing a national policy framework to facilitate paperless trade in accordance with Article 6. The management of paperless trade facilitation by a unified department is beneficial to the organization and efficiency of management. However, as far as China's current management model is concerned, the coordination between the corresponding government management departments, transnational trade operators, enterprises, etc., including the customs and tax departments of import and export trade disposal management will be a major challenge to the construction of "single window". Second, different electronic data standards make it difficult to share data sharing channels. Recommendation 33 of the United Nations Centre for Trade Facilitation and Electronic Commerce, Recommendation and Guidance on the Establishment of a Single Window, and Recommendation 34, Simplification and Standardization of International Trade Data, recommend that the construction of a single window should use standardized data elements, only in this way can reduce the review time of relevant departments in electronic data transmission. To realize the rapid exchange and processing of electronic documents[5]. At present, the "single window" in most places has carried out data element transmission according to national standards, but a few localities or departments have not been unified. In addition, affected by the inability to unify electronic data elements, electronic data sharing channels can not be interexchanged, and business processes and data formats in cross-border paperless trade are not compatible, affecting import and export and customs clearance speed. Finally, the security and confidentiality of data such as electronic signatures and electronic payments need to be strengthened. Cross-border paperless trade through a "single window" involves many aspects such as whether the data file transmission is private and safe, whether the electronic signature and authentication are real and effective, and whether the electronic file query is accurate and transparent. This process is a major test of information data security[6].

3.2. Regional coordination and cooperation capacity for cross-border paperless trade is insufficient

International paperless trade facilitation In the development environment, although the paperless trade in developed countries is mature, developing countries are mostly in the development or embryonic stage. The overall situation of mixed good and bad results in the regional coordination and cooperation ability of cross-border paperless trade to be improved. It is mainly reflected in the following three aspects:

3.2.1. No cross-border paperless trade facilitation cooperation mechanism has been established

The difference in the level of paperless trade among countries is the main reason that hinders the process of paperless trade. The economic cooperation mechanism established between countries contains the paperless trade facilitation itself to some extent, so the two belong to the state of integration rather than differentiation. This has also led to paperless trade facilitation being ignored by countries as an important link in trade, and no specific cross-border paperless trade facilitation cooperation mechanism has been established. However, the reduction of non-tariff trade barriers greatly requires paperless trade facilitation mechanisms, so the two should be built separately to effectively reduce trade costs.

3.2.2. Lack of provisions to facilitate and implement paperless trade across borders

Facilitation provisions on paperless trade clearance facilitation provisions, "single window" automation provisions, customs cooperation and exchange of information provisions and other

facilitation provisions will greatly facilitate the process of paperless trade. These provisions generally cover the import and export of goods and customs clearance related to procedural documents, electronic documents and bills, taxes, laws and regulations. The provisions of the "single window" for automating the exchange of trade information cover the administration of customs clearance or transit by government agencies related to paperless trade or the costs associated with it; Fees and charges on or in connection with the import, export or transit of government agencies; Rules, laws, regulations and administrative rules related to the origin of goods; Restrictions on import and export and punishment procedures for violation of transit laws and regulations; Inspection and quarantine and other regulatory procedures. The absence of these corresponding specific provisions has affected the process of cross-border paperless trade.

3.2.3. The multi-country liaison mechanism is immature

APEC's push to go paperless in regional trade and the TFA's fragmented trade and customs clearance provisions are the main drivers of the cross-border paperless trade facilitation process pending the entry into force of the Framework Agreement. The remaining influential treaties are mainly scattered among bilateral agreements concluded between States. Information asymmetry in trade is the main reason that affects the efficiency of customs clearance and clearance, and it is precisely because of the existence of poor information in cross-border trade that the efficiency of national customs in cargo clearance is affected. Because there is no relevant paperless trade committee set up in accordance with the content of the Framework Agreement, the multinational liaison mechanism to promote the paperless trade facilitation process has not been fully established, and the consultation place to facilitate national governments and cross-border traders has not been set up. The lack of contact points and consultation points makes it difficult to achieve paperless "information exchange, mutual recognition of supervision and mutual assistance in law enforcement" in cross-border trade.

4. Suggestions on legal regulation of cross-border paperless trade facilitation in China

4.1. Improve the capacity building of "single window"

Paperless trade facilitation In the development environment, although paperless trade in developed countries is mature, developing countries are mostly in the development or embryonic stage. The overall situation of mixed good and bad results in the regional coordination and cooperation ability of cross-border paperless trade to be improved. The construction of "single window" can be improved from three aspects: First, in order to implement the "Framework Agreement" that has entered into force in China, a paperless trade committee should be established in accordance with the requirements of the agreement or the "single window" construction should be arranged by the General Administration of Customs based on the current customs system framework. Under Article 6 of the Framework Agreement, each Party may establish, on the basis of its domestic system, a national committee led by the Government or composed of representatives of the relevant private sector, or rely on similar domestic bodies to carry out the responsibilities of the national Committee of the Agreement without having to establish a separate committee. China can set up a separate paperless trade committee according to the actual situation, through the management of the committee, docking and coordination of the various business departments that need to pass through the customs clearance of goods. In order to further deepen the "three mutual" customs clearance mode of "information exchange, mutual recognition of supervision and mutual assistance in law enforcement", the Paperless Trade Committee should take the lead in carrying out relevant exchanges and cooperation between the customs, taxation, maritime, public security and other departments, and build a new operating system belonging to paperless trade facilitation to

realize the interconnection of cargo customs clearance. Since China's customs has also undertaken the related business of paperless trade facilitation before, it is well aware of the electronic data exchange in paperless trade facilitation, so the construction and management of the "single window" is also the only choice for the General Administration of Customs. Led by relevant units or working groups within the General Administration of Customs, promote the exchange of trade data and documents in electronic form, promote cross-border mutual recognition and compatibility of data, and ultimately create a domestic legal environment for paperless trade facilitation. Second, seek truth from facts and choose the overall mode of "single window". Flexible selection of the three "single window" overall mode of international trade will be conducive to achieving the unification of electronic data standards and the sharing and interoperability of data flow channels in paperless trade facilitation. Recommendation No. 33 "Recommendations and Guidelines for the Establishment of a Single Window" put forward three models of "single jurisdiction", "single self-service system" and "automatic data processing system", but domestic scholars more translated them as "single institution", "single system" and "public platform" model. In the process of "single window" construction, China chooses the third "public platform" mode, which has obtained remarkable achievements in Shanghai Pilot Free Trade Zone. However, from the development process of "single window", it can be seen that under the mode of public platform, the efficiency of data interaction and sharing is not high, and it is still difficult to meet the final demand of paperless trade facilitation. We can learn from the "single system" model adopted by the United States, that is, a public processing platform for international trade electronic data that collects, integrates and distributes goods import and export customs clearance to achieve one-stop system processing. In terms of data element standards, the overall reform should be placed on the relevant departments involved in the import and export customs clearance management of goods, and promote the work of data element standards for the corresponding cargo customs clearance. The items declared and related data need to be further simplified, and a unified international standard data element set should be adopted to ensure the commonality of electronic data, constantly reduce the difficulty of electronic data sharing or exchange, and eventually gradually promote the "single window" of mutual docking between China and international customs. Third, it is necessary to implement the "Electronic Signature Law" and "E-commerce Law", publicize the problem responsibility division and dispute settlement mechanism to cross-border paperless trade operators and enterprises, and strengthen the security protection of electronic information and data in the process of paperless trade facilitation. The security of electronic signature is directly related to the legitimacy of cross-border trade of goods. If electronic signature is suspected of being illegal, the legitimacy of cross-border contract of goods will be questioned, and it will be difficult to guarantee the performance of the contract. Such a scenario would undoubtedly also greatly reduce the efficiency of cross-border trade. The security in the process of electronic document transmission is related to the speed of import and export of goods and customs clearance, ensuring the security of electronic document transmission, the authenticity of electronic signature and certification, and the accuracy and transparency of document inquiry are crucial to paperless trade.

4.2. Strengthen regional trade facilitation cooperation mechanisms

4.2.1. Improve regional trade facilitation cooperation mechanisms

The regional economic concept of "The Belt and Road" covers two conceptual regions, one is the division of physical geographical regions such as South Asia, Southeast Asia and the Middle East; One is the national economic cooperation areas such as the European Union, the Eurasian Economic Union, ASEAN, etc. Expanding and strengthening regional trade facilitation cooperation is the "Belt and Road" economic cooperation and regional trade facilitation cooperation focus. At present, China participates in the regional economic cooperation

mechanisms such as Shanghai Cooperation Organization, Asia-Pacific Economic Cooperation, China-Asean Free Trade Area, Regional Comprehensive Economic Partnership Agreement and so on. China is focusing on the construction of the "Belt and Road" economic circle, so the international trade docking and cooperation of paperless trade can rely on the "Belt and Road". China's promotion of paperless trade facilitation cooperation process can be started from three aspects. First, the Framework Agreement of ESCAP should be firmly implemented. The Framework Agreement and the Trade Facilitation Agreement are the key documents of the paperless trade facilitation process, and the contracting parties should constantly adjust the relevant domestic specific construction mechanisms to benchmark the international and realize the data flow of cross-border trade. Second, the cooperation between regional economic unions or economic cooperation mechanisms needs to be further strengthened, and the customs clearance capacity building, electronic data exchange and mutual recognition efficiency construction, and "single window" platform construction involved in the construction of paperless trade facilitation need to be implemented by regional economies or economic unions. Third, we should actively cooperate with other regional economic organizations to expand the scope of "Belt and Road" trade facilitation and reverse the paperless trade facilitation process. For example, actively cooperate with South Asia, West Asia, Central and Eastern Europe and other regions to expand the scope of cooperation in paperless trade facilitation.

4.2.2. Specific cooperation terms need to be further implemented

First, it is possible to formulate cooperation and information exchange provisions on paperless trade facilitation. In terms of cooperation on paperless trade facilitation, customs specific provisions for the import, export and clearance of goods can be formulated to facilitate cross-border paperless trade. Including some paperless trade operation training, electronic information exchange, simplified customs clearance electronic procedures standards, recommendations for the application of global common documents and standards. The exchange of information about customs clearance operations can include customs legislation and corresponding procedures, the port of origin and the port of destination, electronic information authentication such as cargo transportation information, the value of the declaration project and the corresponding tariff treatment, the latest release of relevant departments and the current effective law enforcement technology and other information sharing. Second, single window and automation provisions can be formulated. Single window and automation are not so much stipulated in regional or cross-border multinational trade agreements, but more stipulated in customs chapters, paperless trade clauses, or e-commerce. We can learn from the single window and automation provisions in the Thai-Japan Free Trade Agreement and the Thai-Australia Free Trade Agreement to speed up customs clearance, simplify electronic data mutual recognition and processing procedures, and accelerate paperless trade facilitation.

4.2.3. Build a multi-country liaison mechanism

Information asymmetry is one of the important factors leading to the low customs clearance efficiency of cross-border trade countries. Therefore, continuous improvement of information symmetry and continuous strengthening of information cooperation will help improve the transparency of customs clearance affairs of various countries. As required by the Framework Agreement, countries can establish corresponding paperless trade committees and points of contact and consultation that need to be communicated with other countries. An efficient and convenient information communication and liaison platform will help facilitate cross-border paperless trade. In addition, in order to achieve "mutual recognition of regulations", the Paperless Trade Committee is an important platform to achieve cooperation and exchange with cross-border customs clearance. Under the mechanism of mutual recognition of supervision,

customs clearance information is exchanged through data, so that goods and articles that have been inspected by one country do not need to be checked again when they are transported to the customs of another country, and the purpose of rapid passage is realized at once. "Mutual recognition of supervision" requires a highly transparent information sharing system, quality and safety certification system and other measures. It can be led by the Paperless Trade Committee to achieve bilateral talks and seek multinational talks and cooperation on the basis of mutual recognition of cross-border customs clearance supervision between the two countries. China can take the initiative to promote cooperation in this field, provide public goods such as the "Mutual Recognition of Regulations Implementation Agreement", and build a multi-country liaison and supervision mechanism for paperless trade facilitation.

5. Conclusion

Non-tariff trade barriers account for a significant portion of trade costs, and paperless trade facilitation will help eliminate most of them. Continuously improve the construction of "single window", implement the specific content of the Framework Agreement, select the appropriate "single window" mode, and strengthen the security supervision of cross-border electronic data flow, so as to promote the continuous improvement of paperless trade facilitation. The continuous improvement of legal mechanisms and the improvement of regional trade cooperation mechanisms are key measures to promote the paperless trade facilitation process. At present, the development level of paperless trade facilitation among regional countries is uneven, and regional cooperation and dialogue mechanisms should be strengthened to promote the paperless trade facilitation process from bilateral, multilateral, regional and other levels. It has helped China's cross-border trade flourish in the post-epidemic era.

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