

Simplified Trade System Public Consultation

ACCI Submission

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Executive Summary

The Simplified Trade System agenda – established to drive economic growth and make cross border trade more efficient – is a vital piece of microeconomic reform and in ensuring that Australian trading businesses are internationally competitive. It is therefore crucial that Australia makes progress on this agenda.

ACCI has been a long-term supporter of reforms to deliver streamlined, efficient and cost-effective reforms for the benefit of import and export businesses.

Australia's investment into the Simplified Trade System to date has been substantial, with \$414 million allocated to 'STS related reforms' since the 2020-21 budget.¹

It is less clear that funding is translating into the outcomes that businesses need.

That Australia is 106th in the world in the World Bank Ease of Doing Business rankings in terms of trade across borders is proof positive of the urgent need to act to address our competitiveness.

The Simplified Trade Summit in June 2023 demonstrated the substantial good will that remains for the Simplified Trade System agenda. However, action – not just good will – is vital if we are to arrest our sluggish international competitiveness and justify taxpayers' investment.

While the scale of regulatory reform and system change is substantial, other countries are demonstrating how progress can be made. In the period since the Simplified Trade System Implementation Taskforce has been established, for example, the United Kingdom has undertaken research into, legislated and now brought into force its Electronic Trade Documents Bill as a basis for moving towards paperless trade in alignment with the international standard, the Model Law on Electronic Transferable Records (MLETR). This reform is estimated to bring around AUD \$2 billion over the next decade.² By contrast, Australia remains on the starting blocks.

More of the same is unlikely to yield different outcomes. A step change is needed to deliver the business-friendly reforms and productivity agenda of the Simplified Trade System, both in what is done and how it is done.

In this submission ACCI does not seek to repeat the input previously provided in [our February 2022 submission to the Simplified Trade System Implementation Taskforce](#). Rather, it provides recommendations in relation to the subjects outlined in the consultation paper and seeks to offer some constructive considerations that could assist in moving the agenda forward.

Business must be at the core of the Simplified Trade System.

Business remains hopeful that the Simplified Trade System will deliver outcomes to benefit business, but Government must step forward to deliver a coordinated and ambitious set of reforms and to establish the regulatory settings to reverse our stagnant progress and start making progress towards the efficient and cost-effective trade to underpin our competitiveness.

It is beyond time for us to commit to an ambitious set of reform and set a timetable for their delivery.

¹ Australian Parliament, Foreign Affairs, Defence and Trade 2023-24 Budget Estimates, 2 June 2023, page 43 (https://www.aph.gov.au/-/media/Estimates/fadt/bud2324/Hansards/4_020623_DFAT_PROOF.pdf?la=en&hash=ECCAB5B0BDBD34ACF82C1AC7CE6135553C8207A) (accessed 26 July 2023).

² Media release, Nigel Huddleston MP and Paul Scully MP, 'UK economy to receive £1 billion boost through innovative trade digitalisation act' (<https://www.gov.uk/government/news/uk-economy-to-receive-1-billion-boost-through-innovative-trade-digitalisation-act>) (accessed 26 July 2023).

About ACCI

The Australian Chamber of Commerce and Industry represents hundreds of thousands of businesses in every state and territory and across all industries. Ranging from small and medium enterprises to the largest companies, our network employs millions of people in over 4000,000 Australian businesses.

ACCI strives to make Australia the best place in the world to do business – so that Australians have the jobs, living standards and opportunities to which they aspire.

ACCI is the voice of Australian business, both domestically and internationally.

ACCI is the exclusive Australian partner of the International Chamber of Commerce, Business at OECD, International Organisation of Employers, and regional organisations such as the Indian Ocean Rim Business Forum and the Confederation of Asia Pacific Chambers of Commerce and Industry. These international partnerships mean that ACCI has a seat at the table where decision-making is occurring, including through the ICC's engagement with the World Customs Organization and the World Trade Organization.

Taken together, our international partnerships and deep connections to Australian business offer a unique perspective on both the domestic trade landscape and international developments.

This submission benefits immensely from the work of ACCI's partners at the International Chamber of Commerce and its flagship ICC Digital Standards Initiative.

A complex issue, but action is necessary

The complex nature of reform in the cross-border trade environment have been well-noted not only in Australia but internationally.

It is widely acknowledged that Australia's trade ecosystem is beset by 145 ICT cross-border trade systems, 30 separate government agencies and over 200 cross-border trade regulations.³

Visually represented, the cross-border trade journey maps over 24 metres in length.

These challenges are no doubt compounded by the dynamic nature of changing technologies, international standards, negotiations and commitments, and domestic legislative settings. In an Australian context, additional regulatory overlays from state and territory governments may also complicate reform attempts.

However, after two years and funding approaching half a billion dollars in investment from taxpayers, the conversation must move on from studying the problem to implementing a solution.

Incrementalism has its own costs, in terms of businesses continuing to operate in sub-optimal regulatory settings as other jurisdictions move ahead, leaving Australian businesses at a competitive disadvantage. The United Kingdom's adoption of MLETR referred to earlier provides a case in point.

While trade can readily be understood as a flow of products across borders, the International Chamber of Commerce Digital Standards Initiative rightly points out that there are in fact three interconnected flows in a transaction:

“In international trade, many participants interact along a network of supply chains. Physical movements of goods are superimposed by the flow of financial resources. Both flows – the physical and the financial supply chain – are underpinned by many interwoven information flows – the information supply chain.”⁴

This submission suggests concrete steps that can be taken to shift the dial on these flows and the reform process, creating a bias towards action.

Committing to particular workstreams and putting in place processes to consider the detailed design challenges entailed in that workstream through co-design with industry will be fundamental to making that progress and high-quality outcomes aligned with the needs of non-government stakeholders. Failure to do so may mean that key decisions and technical questions will go unexamined, leading to suboptimal policy-making and a failure to extract full value for money with the government's investment.

³ Consultation paper, page 5.

⁴ International Chamber of Commerce Digital Standards Initiative, Trust in Trade: Verifiable Trust – A foundational digital layer underpinning the physical, financial, and information supply chain (https://www.dsi.iccwbo.org/files/ugd/8e49a6_5a75a77950d7474da772bf9cfc2d985b.pdf) (accessed 26 July 2023).

Framing the question – the high-level vision statement

Question 1 seeks input regarding the latest high-level vision for the future of cross border trade policy.

It is unclear what role the high-level vision statement outlined in the consultation is designed to perform, and therefore to provide comment on its effectiveness.

While appreciating the high-level vision as an attempt to outline the roles of all institutional stakeholders with which the STS Implementation Taskforce engages, the connection of it to concrete and actionable workstreams continues to be missing.

If such a vision statement is of value, further refinements are necessary.

To the extent that there is value in producing a vision statement, any such statement should be clearer that the ultimate objective of the Simplified Trade System is to deliver more efficient and streamlined government services for businesses and other non-government stakeholders. At present, whilst businesses feature as a beneficiary of the process as outlined in paragraph 2 of the statement and user needs are acknowledged in the final paragraph, the interests of businesses appear at best to be one of a number of stakeholder interests. The vision should be clearer about the primacy of end users.

Furthermore, the productivity and economic dividends of making reform appear to be lost in the latest vision statement. This is a missed opportunity to reinforce the necessity of an ambitious reform program.

Although it will undoubtedly take time to progress to the end-state envisioned in this statement, ACCI would be concerned if a vision statement of ‘iterative and sustained regulatory, digital and data reforms’ was not backed by an ambitious set of concrete workstreams, backed by time-limited plans and sound project management to achieve them.

Arguably, the existing text displayed on the Simplified Trade System Implementation Taskforce is more effective in placing the end users and the Australian economy at the forefront of the Simplified Trade System agenda. It reads:

The STS is a major whole-of-government microeconomic reform that is intended to streamline Australia’s trade regulations, modernise trade-related ICT systems and simplify trade processes.

The STS will:

- *boost economic growth by making cross border trade more efficient*
- *improve trade system resilience with modern and globally competitive trade practices and systems*
- *increase the effectiveness and efficiency of government border security and biosecurity controls*
- *simplify and streamline trade processes for Australian businesses.*

The STS will simplify Australia’s cross-border trade by:

- *making trade rules and processes simpler and easier to comply with across multiple government agencies*

- *providing more integrated trade-related services*
- *increasing digitisation and data sharing*
- *ensuring continued strong border and biosecurity protections.*

The STS incorporates global best practice and lessons from Australia's major trading partners. It takes a national approach by aligning with and leveraging trade initiatives led by states and territories.⁵

Recommendation 1: The high-level vision statement should be amended to make clear the primacy of improving Australia's trade ecosystem for the benefit of non-government end users and recognise the Simplified Trade System's ambitious reform agenda to support Australia's economic growth.

⁵ Simplified Trade System Implementation Taskforce, Simplifying Trade for Business (<https://www.simplifiedtrade.gov.au/simplified-trade-system/simplifying-trade-business>) (accessed 26 July 2023).

Committing to progress – concrete decisions to move the agenda forward

As noted in the previous section, industry is eager to see businesses feel the benefits of the Simplified Trade System agenda as soon as possible. While ACCI welcomes the favourable indications through the consultation paper that various matters are under consideration, concrete decisions to pursue key workstreams are necessary.

Enabling paperless trade

ACCI welcomes the inclusion of the Model Law on Electronic Transferable Records (MLETR) as a question in this consultation paper, and its acknowledgement of the advocacy of the International Chamber of Commerce.

Its inclusion indicates positive acceptance of the recommendation in [ACCI's February 2022 submission](#) to the STS Implementation Taskforce, which recommended updating Australia's electronic transactions legislation in alignment with modern international standards by adopting the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Transferable Records (MLETR). ACCI's 2022 submission echoes its April 2021 submission to the Joint Standing Committee on Trade and Investment Growth's Inquiry into the Prudential Regulation of Investment in Australia's Export Industries.⁶

What are Electronic Transferable Records and why do they matter?

As noted in the consultation paper, "The MLETR provides a legal framework to confirm the functional equivalence of electronic transferable records, specifically, to address the issues arising from the proprietary rights attached to these documents."⁷

Electronic transferable records are the electronic equivalents of paper-based transferable documents or instruments such as bills of lading, bills of exchange, promissory notes and warehouse receipts 'that entitle the holder to claim the performance of the obligation indicated therein and that allow the transfer of the claim to that performance by transferring possession of the document or instrument'.⁸

By clarifying the status of electronic transferable records and underlying legal concepts, adoption of or alignment with MLETR can provide legal certainty to supply chain participants and drive the uptake of paperless trade. The fact that it permits reuse of data offers potential efficiency gains for end users and participants in the supply chain, and the technology neutral nature of the regulation, offer additional benefits.⁹

⁶ Australian Chamber of Commerce and Industry, Submission to the Joint Standing Committee on Trade and Investment Growth, <https://www.aph.gov.au/DocumentStore.ashx?id=1fc71278-b0a2-4eb5-b671-5e2ab809a7a7&subId=706799>.

⁷ Consultation paper, page 6.

⁸ United Nations Commission on International Trade Law, UNCITRAL Model Law on Electronic Transferable Records, (https://uncitral.un.org/en/texts/ecommerce/modellaw/electronic_transferable_records) (accessed 26 July 2023).

⁹ United Nations Commission on International Trade Law, UNCITRAL Model Law on Electronic Transferable Records, pages 15, 23 (https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/mletr_ebook_e.pdf) (accessed 26 July 2023).

This year’s consultation paper seeks information about business experience, number of documents exchanged and time expense in relation to the use of paper-based and electronic records in cross-border trade.¹⁰

While it is a valid question to seek to understand the quantum of saving to be achieved, ACCI urges caution against allowing these questions to slow progress when international analyses have already demonstrated substantial benefits.

In passing its Electronic Trade Documents Act, the United Kingdom Government estimates the benefits at £1.14 billion (roughly AUD \$2.1 billion) over the next decade.¹¹ The United Kingdom’s impact assessment of the Bill is available online.¹²

As noted in the consultation paper, ‘according to the World Bank, it takes an average of 43 hours to complete documentary and border compliance processes for a typical Australian shipment by sea.’¹³

Australia has already made commitments

The Model Law on Electronic Transferable Records is not unknown to Australian policy-makers. Rather, Australia has participated in a range of international negotiations and fora in which adoption or alignment with the Model Law on Electronic Transferable Records has been considered.

In addition to being one of three co-convenors of the Joint Initiative on E-commerce currently under negotiation at the World Trade Organization,¹⁴ we note the following references in agreements and statements to which Australia has been a party:

Figure. Table of Australian engagements regarding paperless trade and MLETR topics

<p>Singapore Australia Digital Economy Agreement Article 8 – Domestic Electronic Transactions Framework</p>	<p>2. Each Party shall maintain a legal framework governing electronic transactions consistent with the principles of the UNCITRAL Model Law on Electronic Commerce (1996) or the United Nations Convention on the Use of Electronic Communications in International Contracts, done at New York on November 23, 2005.</p> <p>...</p> <p>4. The Parties recognise the importance of developing mechanisms to facilitate the use of electronic transferrable records. To this end, in developing such mechanisms, the Parties shall endeavour to take into account, as appropriate, relevant model legislative texts developed and adopted by international bodies, such as the UNCITRAL Model Law on Electronic Transferable Records (2017).</p>
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¹⁰ Consultation paper, page 6.

¹¹ Media release, Nigel Huddleston MP and Paul Scully MP, ‘UK economy to receive £1 billion boost through innovative trade digitalisation act’ (<https://www.gov.uk/government/news/uk-economy-to-receive-1-billion-boost-through-innovative-trade-digitalisation-act>) (accessed 26 July 2023).

¹² United Kingdom Government, Impact Assessment of the Electronic Trade Documents Bill (<https://www.gov.uk/government/publications/electronic-trade-documents-bill-impact-assessment/impact-assessment-of-the-electronic-trade-documents-bill>) (accessed 26 July 2023).

¹³ Consultation paper, page 2.

¹⁴ World Trade Organization, Joint Initiative on E-commerce (https://www.wto.org/english/tratop_e/ecom_e/joint_statement_e.htm#participation) (accessed 26 July 2023).

<p>Australia-United Kingdom Free Trade Agreement Article 14.4 - Domestic Electronic Transactions Framework</p>	<p>1. Each Party shall maintain a legal framework governing electronic transactions consistent with the principles of the UNCITRAL Model Law on Electronic Commerce 1996 done at New York on 12 June 1996 or the United Nations Convention on the Use of Electronic Communications in International Contracts done at New York on 23 November 2005.</p> <p>2. Each Party shall endeavour to:</p> <p>(a) avoid any unnecessary regulatory burden on electronic transactions; and</p> <p>(b) facilitate input by interested persons in the development of its legal framework for electronic transactions.</p> <p>3. The Parties recognise the importance of developing mechanisms to facilitate the use of electronic transferable records. To this end, in developing such mechanisms, the Parties shall endeavour to take into account, as appropriate, relevant model legislative texts developed and adopted by international bodies, such as the UNCITRAL Model Law on Electronic Transferable Records 2017 done at New York on 13 July 2017.</p>
<p>G7 United Kingdom 2021 - G7 Digital and Technology Track Frame for G7 Collaboration on Electronic Transferable Records</p>	<p>Note: While Australia attended as an invited guest, the document states “This Annex has been endorsed by the Republic of Korea and Australia.”</p> <p>1. Address Domestic Legal Barriers</p> <ul style="list-style-type: none"> ● We will work to PROMOTE the adoption of legal frameworks compatible with the principles of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Transferable Records 2017. This will be done with the acknowledgement that different domestic systems will require different legal solutions. Laws enabling electronic transferable records should be technology neutral, future proof and applicable to all transferable records
<p>2023 Commonwealth Trade Ministers Meeting Outcome Statement</p>	<p>37. We agreed to establish a Legal Reform and Digitalisation Working Group under the Connectivity Agenda’s Business-to-Business Cluster, with the support of other clusters within the Commonwealth Connectivity Agenda, to assist Commonwealth members in moving towards paperless trade.</p>

Despite these favourable negotiations and commitments, the likelihood of domestic adoption is not yet established, with another domestic agency - the Attorney-General’s Department - responsible for considering the adoption of MLETR into Australian law.

The ICC Digital Standards Initiative’s MLETR Progress Tracker places Australia behind the lead pack.¹⁵

It is time for Australian commitments to be backed by domestic implementation.

¹⁵ International Chamber of Commerce Digital Standards Initiative, MLETR Progress Tracker, https://www.dsi.iccwbo.org/files/uqdl/8e49a6_c49ba4c8768854604b7ac5758529fc148.pdf (accessed 13 July 2023).

Recommendation 2: Government should definitively commit in-principle to the adoption of or alignment with the Model Law on Electronic Transferable Records and commence a time-limited process to achieve this outcome.

Once an in-principle decision is made to proceed with adoption of or alignment with MLETR, international experiences should be leveraged to accelerate the reform process.

Whilst appreciating that the Australian context is unique, we are aided by the substantial body of international examples where progress has been made in their own unique circumstances. The International Chamber of Commerce's Digital Standards Initiative's website contains links to examples of the laws that have adopted, with or without amendment, the MLETR into domestic law in Bahrain, Singapore, the Abu Dhabi Global Market, Belize, Kiribati, Paraguay and Papua New Guinea.¹⁶

The International Chamber of Commerce Digital Standards Initiative has produced a guide document to assist in consideration of the reform of domestic law, entitled 'Creating a Modern Digital Trade Ecosystem: Practical Guide to Legal Reform to Enable Electronic Transferable Records and Optimise Cross-Border Trade'.¹⁷ This guide notes that the typical experience of jurisdictions is that this legislative change can be achieved 'from project inception through to passage of legislation in parliament' within an 18 month period.¹⁸

As a concrete example, the chronology of the UK's Electronic Trade Documents Bill is instructive about how such a reform process could proceed and a timeframe in which it can be achieved:

*In 2021, the Law Commission consulted on the legal status of electronic trade documents and how it could be reformed. The Commission's recommendations were published in March 2022 and the Electronic Trade Documents Bill was subsequently announced in the Queen's Speech in May 2022. It was introduced to the House of Lords on 12 October 2022 and is currently awaiting consideration by the lower house in a Second Reading Committee (an approach typically only applied to non-controversial draft legislation), due to take place on Monday 12 June 2023. We expect this Bill to make swift progress through Parliament and receive Royal Assent in the current parliamentary session.*¹⁹

The Bill received Royal Assent on 20 July 2023.²⁰

Beyond the timeframes for a reform process, the UK Law Commission's report provides a clear indication of the type of process and relevant considerations to go through in undertaking the legal reform in the Australian context, which shares a similar legal system.²¹

Timely initiation of a similar detailed consultation would enable relevant considerations to be analysed in the Australian context, consistent with typical Australian legal reform processes and beyond the matters that are canvassed through the present consultation paper.

¹⁶ International Chamber of Commerce Digital Standards Initiative, <https://www.dsi.iccwbo.org/policymakers> (accessed 13 July 2023).

¹⁷ International Chamber of Commerce Digital Standards Initiative, Creating a Modern Digital Trade Ecosystem: Practical Guide to Legal Reform to Enable Electronic Transferable Records and Optimise Cross-Border Trade, https://www.dsi.iccwbo.org/files/ugd/0b6be5_0934506fada643a197d5f727413c4389.pdf?index=true (accessed 13 July 2023).

¹⁸ International Chamber of Commerce Digital Standards Initiative, Creating a Modern Digital Trade Ecosystem: Practical Guide to Legal Reform to Enable Electronic Transferable Records and Optimise Cross-Border Trade, https://www.dsi.iccwbo.org/files/ugd/0b6be5_0934506fada643a197d5f727413c4389.pdf?index=true, page 5 (accessed 13 July 2023).

¹⁹ Weronika Dorociak and Michael Biltoo, Electronic Trade Documents Bill: briefing note (<https://kennedyslaw.com/en/thought-leadership/article/2023/electronic-trade-documents-bill-briefing-note/>) (accessed 13 July 2023).

²⁰ UK Parliament, Electronic Trade Documents Bill (<https://bills.parliament.uk/bills/3344/stages>) (accessed 26 July 2023).

²¹ UK Law Commission, Electronic Trade Documents: Report and bill (Law Com No 405) (<https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2022/03/Electronic-Trade-Documents-final-report-ACCESSIBLE-1.pdf>) (accessed 26 July 2023) (26 July 2023).

It is unclear why such a process could not be followed in Australia, with the Attorney-General's Department the responsible agency for conducting consultations, with suitable arrangements formalised for effective alignment with the work of the Simplified Trade System Implementation Taskforce.

Given the ability to leverage existing international examples, an 18 month timeframe to legislate does not seem unrealistic.

Only such a commitment will demonstrate that Australia is serious about enabling paperless trade and implementing its international commitments.

Recommendation 3: Leverage the learnings of international counterparts – including the International Chamber of Commerce and the UK parliament – to chart a concrete plan to achieve legal reform within 18 months.

Establishing a Single Trade Window

Under the Trade Facilitation Agreement, which Australia cosponsored at the World Trade Organization,²² Australia is committed to establishing a single window to provide a more streamlined user experience for trading businesses.

Relevantly, Article 10(4) of the Trade Facilitation Agreement provides as follows:²³

4 Single Window

4.1 Members shall endeavour to establish or maintain a single window, enabling traders to submit documentation and/or data requirements for importation, exportation, or transit of goods through a single entry point to the participating authorities or agencies. After the examination by the participating authorities or agencies of the documentation and/or data, the results shall be notified to the applicants through the single window in a timely manner.

4.2 In cases where documentation and/or data requirements have already been received through the single window, the same documentation and/or data requirements shall not be requested by participating authorities or agencies except in urgent circumstances and other limited exceptions which are made public.

4.3 Members shall notify the Committee of the details of operation of the single window.

4.4 Members shall, to the extent possible and practicable, use information technology to support the single window.

However, while the Trade Facilitation Agreement entered into force in 2017, Australia's progress towards the rationalisation of trade services remains incomplete.

This is not for want of interest or analysis by government, which have been prepared over many years and by a range of government bodies, for example:

- The 2016 International Single Window Study commissioned by the Department of Immigration and Border Protection;
- The 2016 Domestic Single Window Study commissioned by the Australian Business Register; and
- The Department of Home Affairs' Border Permits Review, commissioned in 2019 but not released to the public.²⁴

Notwithstanding these studies, Australia's latest update of February 2020 to the World Customs Organization on the Single Window Interactive Map – Trade Facilitation Measures suggests that implementation of Australia's single window environment is in '[e]arly planning stages'.²⁵

Whilst pages 8 and 9 of the consultation paper set out the rationale to pursue a Trade Single Window, business seeks a clear and unequivocal indication from the Simplified Trade System Implementation Taskforce that the Trade Single Window is proceeding.

²² DFAT, Trade Facilitation Agreement (<https://www.dfat.gov.au/trade/organisations/wto/tfa/trade-facilitation-agreement>) (accessed 26 July 2023).

²³ World Trade Organization, Agreement on Trade Facilitation (https://www.wto.org/english/docs_e/legal_e/tfa-nov14_e.htm) (accessed 26 July 2023).

²⁴ The former two studies do not appear to be available online at this time, although they are referenced in Charles Sturt University Centre for Customs and Excise Studies, Review of Australia's Progress Towards Implementation of the Single Window Concept, page 9 https://static.s123-cdn-static-d.com/uploads/3635447/normal_638ecc4805534.pdf (accessed 26 July 2023); The Border Permits Review terms of reference continue to be available at <https://www.homeaffairs.gov.au/help-and-support/how-to-engage-us/consultations/border-permits-review>.

²⁵ World Customs Organization, Reform and Modernization-Monitoring Activities and Projects (RAMMAP) and Single Window Interactive Map (SWIM), single window interactive map – trade facilitation measures (<https://rammap-swim.wcoomd.org/#>) (accessed 26 July 2023).

Clarity about the precise funding allocation that has been made towards this end to date would be beneficial.

Recommendation 4: Government should act without further delay to commit unequivocally to the implementation of a Single Trade Window.

Even following an in-principle commitment to deliver a Single Trade Window, the complexity and range of significant decision points necessary to actually implement a Single Window have long been noted.

For example, in January 2018, Charles Sturt University's Centre for Customs and Excise Studies released a research paper, entitled *Review of Australia's Progress Towards Implementation of the Single Window Concept*. It noted the importance of scope, timeline, budget and system architecture decisions being made open to the public.²⁶

However, even before answering these design questions, the World Customs Organization recommends attention be paid up-front to the foundational questions underpinning the project and how it is to be achieved. This includes the formalisation of a project mandate for the project and designation of a lead agency responsible for its realisation.

ACCI urges urgent consideration be given to answer the questions of mandate and the identification of a lead agency. Unless these matters are given urgent and serious consideration, business will be sceptical of continued efforts to pursue a Single Trade Window with integration of existing government services and the likelihood of value for money being achieved with any government investment.

ACCI commends the following passages on each of these issues, taken from the World Customs Organization's publication 'How to Build a Single Window Environment',²⁷ for consideration.

With respect to the mandate of the project, the World Customs Organization recommends:

The mandate on a Single Window gives the official instruction or direction to proceed with its development. The mandate gives legitimacy to the adoption of certain clear policies and well - defined objectives, the establishment of new organization structures and the assignment (including reassignment) of technical financial and regulatory authority to achieve these objectives. The mandate has to be political since only the political leadership can support the far-reaching decisions that need to be taken to support the Single Window initiative.

The mandate can either be an Executive Order, a Decree, or an Act/Resolution by the appropriate legislative body. The mandate has to be legally valid and administratively sound. Broadly, the mandate for a Single Window initiative comprises the following:

- Statement of object & purposes
- Definition of terms used
- Activities/services covered by the Single Window concept
- Establishment of the Lead Agency organization and the identification of partner organizations/ CBRAs:
- Legal definition of the Lead Agency entity

²⁶ Charles Sturt University Centre for Customs and Excise Studies, *Review of Australia's Progress Towards Implementation of the Single Window Concept*, page 11 (https://static.s123-cdn-static-d.com/uploads/3635447/normal_638ecc4805534.pdf) (accessed 26 July 2023).

²⁷ Available at wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/single-window/sw-compendium-supplement-edition.pdf?la=en.

- Financial dispensation for the Lead Agency & operating philosophy
- Lead Agency organization & consultative structures
- Powers vested to each of the identified organizations, including the Lead Agency to:
 - Approve projects
 - Recommend changes to legislation
 - Set service standards
 - Adopt changes to business processes
 - Adopt interoperability standards
 - Evaluate and review project implementation
 - Handle disputes.
- Date of applicability
- Schedules for the implementation of the Single Window Initiative:

When the mandate is not clear, there is a danger that default organization structures, existing delegation of authority and resources and existing modes of operation will prevail, and this could cause difficulties in the realignment of business processes that is necessary for Single Window development. The extent to which the mandate can be explicit would vary according to the political and administrative cultures.²⁸

With respect to the need of a lead agency for the project, the World Customs Organization publication notes the following:

The Single Window environment needs a Lead Agency in order to co-ordinate decision making and to orchestrate the border management activities across multiple agencies. The Lead Agency has to be driven by consultative and inclusive process of decision making. While the precise outcome of this process will be reflected in the governance structures created under the mandate, the actual configuration will require four key aspects of the proposed structure: (i) The extent to which it is an operator or an orchestrator (ii) The degree of organizational re-structuring and re-allocation of powers envisaged (iii) The legal characteristics of the operating entity (iv) The involvement of private agencies in the decision making and operational structures²⁹

Unless such a lead agency is identified and empowered, business will be sceptical that a coordinated, whole-of-government effort is being pursued.

Recommendation 5: To give the implementation of a Single Trade Window the greatest chance of progress, government should undertake a public process to define the project's mandate and determine the lead agency responsible for its realisation.

²⁸ World Customs Organization, How to Build a Single Window Environment (Supplement Edition), page 18 (available at wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/single-window/sw-compendium-supplement-edition.pdf?la=en).

²⁹ World Customs Organization, How to Build a Single Window Environment (Supplement Edition), page 18 (available at wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/single-window/sw-compendium-supplement-edition.pdf?la=en).

Alignment of Data Standards and Data Sharing

Cross-Border Trade Data Sharing Framework

ACCI supports regulatory arrangements that will deliver benefits for end users by enabling 'tell us once' data collection from businesses, subject to rigorous protection of privacy and commercial-in-confidence information, and the provision of appropriate oversight arrangements.

Further clarification on the following assistance should be provided before the proposed Framework could be adopted, such as:

- What is the legal effect of the Framework?
- Noting the ability to change the Framework with ministerial approval, which Minister would this be? Would there be parliamentary oversight of such changes (by way of legislative amendment or disallowable instrument, for example)?
- What would be regarded as 'significant' changes that require Ministerial approval? What changes would be considered to fall short of requiring ministerial changes and what process and approval would be required for changes falling short of being 'significant' changes?
- What are the legal consequences of any transgressions of the Framework?
- What, if any limitations, will be in place with respect to the sharing or use of data collected under previous versions of the Framework?
- Noting the intention to share data 'by default' subject to various exceptions, what transparency mechanisms are envisaged to ensure that these judgements are subject to public oversight?
- What are the 'defined statutory functions' of each applicable receiving agency, and what safeguards are in place to ensure that data so provided 'will' rather than 'can' be used in support of those functions? This is particularly pertinent in circumstances where regulatory agencies possess potentially coercive powers.
- Whilst appreciating the value of trade data to support policy-making, what legislative framework will be in place to prevent the sharing of commercial-in-confidence information in public fora, noting that the Australian Bureau of Statistics' disclosure of data is governed by the Census and Statistics Act 1905 and the Census and Statistics (Information Release and Access) Determination 2018?

Recommendation 6: ACCI supports reforms to support enhanced government data-sharing to support the transition to a 'tell-us-once' model of data collection under a Single Trade Window.

However, further clarification of the proposed Cross-Border Trade Data Sharing Framework is necessary prior to adoption.

Data Sharing as a Basis for the Single Trade Window

Data sharing will be foundational to the achievement of the Simplified Trade System, replacing existing duplicative data entry processes.

To meet the Government's ambition to achieve 'tell-us-once' experience for business,³⁰ close engagement with business and other stakeholders will be required to ensure that commercial usages and applicable international standards are factored in by government early at the project planning phase and so that common data elements between commercial documents can be identified and leveraged to minimise duplicative data entry by businesses.

If the full benefits of 'tell-us-once' trade administration are to be met, government must also ensure match this commitment by a commitment not to request additional data points beyond those necessary to achieve the requirements of the commercial transaction (to facilitate trade) and meet bona fide compliance requirements. If additional data collections are undertaken and/or duplicative data elements remain, the risk is that Australia's single window would lose the efficiency of 'tell-us-once' and instead become 'tell-us-everything-once' trade administration.

The International Chamber of Commerce's Digital Standards Initiative has been closely engaged in identifying common data elements in trade documents and providing practical recommendations to drive alignment. If it has not considered this resource already, the Simplified Trade System Implementation Taskforce should consider the findings and recommendations of the ICC Digital Standards Initiative's March 2023 report, *Key Trade Documents and Data Elements: Digital Standards Analysis and Recommendations* focused on bills of lading, certificates of origin, commercial invoices, customs declarations, insurance certificates, packing lists and warehouse receipts.³¹ Likewise, the International Chamber of Commerce Digital Standards Initiative and World Trade Organization's 2022 collaboration, the 'Standards Toolkit for Cross-border Paperless Trade', undertakes a similar standards mapping exercise across the trade ecosystem.³²

While the above resources do not replace the need for domestic stakeholder engagement - co-design with business and other non-government users will be crucial to ensure that design decisions are consistent with commercial practices and international standards - such resources provide a free starting point that can be leveraged to accelerate government's progress.

Fit and Proper Person Tests

The proliferation of divergent domestic agency requirements with respect to the conduct of Fit and Proper Person tests is emblematic of the current lack of coordination between trade-related agencies in Australia.

In parallel with continued work with respect to alignment of other trade data referred to previously, alignment of Fit and Proper Person Tests can serve as a valuable case study in the ability of agencies mentioned in the consultation paper – DAFF, ABF and ATO - to collaborate and resolve discrepancies in a timely manner.

³⁰ Consultation paper, page 9.

³¹ International Chamber of Commerce Digital Standards Initiative, *Key Trade Documents and Data Elements: Digital standards analysis and recommendations*, https://www.dsi.iccwbo.org/_files/ugd/8e49a6_2d93b2f219cf404ab91bafd028e31fcc.pdf (accessed 21 July 2023).

³² International Chamber of Commerce and World Trade Organization (Hannah Nguyen and Emmanuelle Ganne), *Standards Toolkit for Cross-border Paperless Trade: Accelerating Trade Digitalisation through the Use of Standards* (https://www.wto.org/english/res_e/booksp_e/standtoolkit22_e.pdf) (accessed 26 July 2023).

Failure to achieve this outcome in a timely manner would provide a further indication that more profound changes to governance arrangements of the Simplified Trade System are required.

Agencies could enhance transparency and stakeholder confidence by publishing their timetable and progress on the Simplified Trade System Implementation Taskforce website on a regular (preferably monthly) basis.

Recommendation 7: Fit and Proper Person tests provide a valuable case study in the ability of regulatory agencies to cooperate in the interests of progressing the Simplified Trade System agenda.

Reaffirming previous recommendations

Although these matters have not been the subject of questions in the present consultation paper, ACCI takes this opportunity to reiterate two previous recommendations for reconsideration given developments since.

The Productivity Commission's Trade and Assistance Review released in July 2023 once again highlights the 'nuisance costs' of Australia's border tariff regime on importers.³³ Collecting \$1.8 billion in revenue and but imposing compliance costs of between \$1.2-\$3.6 billion on Australian businesses (including in relation to imports that contribute to domestic productivity), ACCI's existing recommendations to abolish tariffs and redraft the Excise Act, Tariffs Act and Customs Act bears repeating. With 18 preferential trade agreements now in place and nearly 90% of imports entering Australia duty-free in 2021-22, and as this figure continuing to grow with each newly-concluded free trade agreement, the case in favour of taking action will continue to grow. Such a measure would be consistent with the Simplified Trade System's ambition to be a 'major whole-of-government microeconomic reform' that boosts economic growth, makes trade more efficient and simplifies and streamlines trade processes for businesses.³⁴ Such a change would not compromise the other regulatory objective noted by the Simplified Trade System – namely of strong border and biosecurity protections – and would instead permit border agencies to focus their efforts on monitoring and enforcing those protections or adopting new measures to provide for efficient trade facilitation, rather than enforcing an economically inefficient set of border controls.³⁵

ACCI has long called for efforts to be made to better harmonise the rules of origin governing access to the benefits of our free trade agreements. While the conclusion of agreements offering new opportunities for Australian businesses is to be welcomed, the so-called 'noodle bowl' of trade agreements is becoming increasingly complex. ACCI has undertaken a substantial review of many of Australia's preferential trade agreements which demonstrates the divergent requirements under each agreement, including those under negotiation. Close engagement with industry and end users is essential to engender the confidence that will aid businesses to expand their involvement in international trade.

³³ Productivity Commission, Trade and Assistance Review 2021-22, page 5 (<https://www.pc.gov.au/ongoing/trade-assistance/2021-22/tar-2021-22.pdf>) (accessed 26 July 2023).

³⁴ Simplified Trade System Implementation Taskforce, Simplifying Trade for Business (<https://www.simplifiedtrade.gov.au/simplified-trade-system/simplifying-trade-business>) (accessed 26 July 2023).

³⁵ Ibid.

Equipping the STS to make progress – change in approach

ACCI is eager for an ambitious Simplified Trade System reform agenda to progress and be realised.

Two years on from the establishment of the Simplified Trade System Implementation Taskforce, it is timely to offer some practical suggestions of how the Simplified Trade System agenda could better meet the expectations of stakeholders and equip the Simplified Trade System for success as the project proceeds.

Recommendation 8: Assist business to be an effective co-design partner for government by undertaking a stocktake of existing achievements and workstreams and making more information publicly accessible.

As acknowledged in the consultation paper, “Business is at the centre of the STS agenda and effective business co-design and engagement is critical to its success.”

Greater clarity regarding the works underway and planned would assist business to more effectively participate in the co-design process.

Of the \$414 million allocated to ‘STS-related reforms’ since the 2020-21 budget,³⁶ for instance, it would be valuable to understand what projects or activities have been funded, the scope of those activities and the lead agency responsible for delivery, the next action to be undertaken in relation to that workstream, the anticipated delivery date of that workstream and the mechanism, agency and contact person through which non-government insights are most fruitfully contributed.

At present, there does not appear to be a public website that outlines the precise workstreams underway or planned for future action. This does not meet business expectations.

This would assist business to participate by contributing commercial insights on the pertinent questions under consideration in relation to each Simplified Trade System reform and help avoid consultation fatigue.

Reviews of previous trade-related reforms have highlighted the need for effective consultation and co-design with industry, which should serve as a cautionary tale for policy-makers.³⁷

While the number of businesses consulted is not itself a guarantee of sufficient and high quality consultation, it is far from clear that 127 businesses, 33 industry associations, direct user research workshops, roundtables, public forums and bilateral engagements is a sufficient level of engagement and that engagement is well-targeted to identify and inform implementation on concrete policy issues. As

³⁶ Australian Parliament, Foreign Affairs, Defence and Trade 2023-24 Budget Estimates, 2 June 2023, page 43 (https://www.aph.gov.au/-/media/Estimates/fadt/bud2324/Hansards/4_020623_DFAT_PROOF.pdf?la=en&hash=ECCAB5B0BDBD34ACF82C1AC7CE6135553C8207A) (accessed 26 July 2023).

³⁷ Australian National Audit Office, Customs’ Cargo Management Re-engineering Project (Audit Report No.24 2006–07), page 19 (available at <https://www.anao.gov.au/work/performance-audit/customs-cargo-management-re-engineering-project>).

noted on the Simplified Trade System Implementation Taskforce's website, there are in excess of 200,000 trading businesses in Australia.³⁸

Recommendation 9: Clarify the role of the Simplified Trade System Implementation Taskforce so that there is clearer accountability for outcomes of the Simplified Trade System reforms.

Ensuring that promoting trade and enhancing Australia's trade competitiveness remain the foremost considerations driving the Simplified Trade System is crucial. From this perspective, housing the Simplified Trade System Implementation Taskforce within Austrade – whose purpose is “to deliver quality trade and investment services to businesses and policy advice to government to grow Australia's prosperity” – is to be welcomed.³⁹

Alignment of effort by government is essential in achieving reform of the magnitude envisioned by the Simplified Trade System agenda. Unfortunately, it is not clear that the Simplified Trade System Implementation Taskforce has been equipped to successfully undertake this ambitious agenda.

Of the \$414 million allocated to 'STS-related reforms' since the 2020-21 budget, just 14 per cent of the overall allocated budget (\$58.7 million) has been allocated to the Simplified Trade System Implementation Taskforce itself.⁴⁰

While the Simplified Trade System Implementation Taskforce reports directly to the Trade Minister,⁴¹ it is an open question whether there is suitable alignment between funding and resourcing for projects and accountability mechanisms that can realistically lead to an alignment of effort and coordinated delivery of an integrated whole.

As acknowledged in the World Customs Organization's compendium on How to Build a Single Window Environment:

“... Single Window is a problem that straddles across traditional departmental boundaries. Each ministry/department is under separate political oversight, supported further by a network of organizations that have diverse stakeholder interests. Each department will have its own budgeted government programs that its bureaucracies administer. Interest groups create and maintain their respective hard-fought turfs.”⁴²

In the absence of a public website providing this information, evidence given to Senate Estimates is the best source of information about the progress achieved by the Simplified Trade System to date:

Mr Brugeaud: The STS reforms are progressing to plan. As we provided in previous evidence, the task force has delivered baseline of current cross-border trade regulations, processes, systems as well as the data sharing that underpins that. We have supported the delivery of a

³⁸ Australian Government, Simplified Trade System Implementation Taskforce, <https://www.simplifiedtrade.gov.au/simplified-trade-system/simplifying-trade-business>.

³⁹ Australian Trade and Investment Commission, Portfolio Budget Statement 2023-24, page 71 (available at <https://www.austrade.gov.au/ArticleDocuments/10756/austrade-entity-resources-and-planned-performance-statement-2023-2024.pdf.aspx?Embed=Y>) (accessed 14 July 2023).

⁴⁰ Australian Parliament, Foreign Affairs, Defence and Trade 2023-24 Budget Estimates, 2 June 2023, page 43 (https://www.aph.gov.au/-/media/Estimates/fadt/bud2324/Hansards/4_020623_DFAT_PROOF.pdf?la=en&hash=ECCAB5B0BDBD34ACF82C1AC7CE6135553C8207A) (accessed 26 July 2023).

⁴¹ Australian Government, Simplified Trade System Implementation Taskforce, <https://www.simplifiedtrade.gov.au/about-us>

⁴² World Customs Organization, How to Build a Single Window Environment (Supplement Edition), page 10 (available at wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/single-window/sw-compendium-supplement-edition.pdf?la=en).

range of business focused programs: a trade information service delivered by Austrade, the biosecurity self-service booking portal through department of agriculture, realtime operational status information on the integrated cargo system from the Australian Border Force, and some updated customs procedures for abandoned and illicit goods, which were previously inconsistent. A number of other measures are underway in terms of traceability, which is so important to our agricultural program of work; digital services to take farmers to market; a digital verification platform, which is being used for electronic exchange of certificates of origin with Singapore, as a test country; and improving cross-border alignment in terms of aligning fit and proper person checks, of which there are 12, between the department of agriculture, Border Force and the ATO.⁴³

Leaving the allocation of funding to one side, this does not instil confidence that the various government agencies are combining functionality into an integrated Single Trade Window or a concerted Simplified Trade System agenda overall.

The World Customs Organization's recommendations with respect to the need for an explicit reform mandate – quoted in the above section regarding the Single Trade Window – would seem to be equally applicable to the Simplified Trade System agenda.

Increased transparency for spending, workstreams and responsibility is non-negotiable; however, it will be important that appropriate administrative arrangements are in place to make more timely progress on the agenda generally and as new workstreams progress.

Unless some change is made, policy-makers should not be surprised if the Simplified Trade System Implementation Taskforce is unable to meet the expectations made of it.

Recommendation 10: Leverage the learnings of international counterparts and Australian non-government partners – including the International Chamber of Commerce – to chart a concrete plan for legal reform.

The Simplified Trade System agenda retains strong good will from Australian industry participants, who have long understood the necessity of modernising trade's system to deliver more internationally-competitive trade facilitation not only for them, but for the benefit of the Australian economy.

In addition to good will, non-government participants offer on-the-ground experience and expertise on relevant topics. As demonstrated throughout this submission, ACCI's partner organisation the International Chamber of Commerce is one such source of expertise, which is making contributions to advancing trade modernisation - and addressing many of the same questions Australia now confronts – in jurisdictions worldwide.

To date, ACCI's consultation has largely been conducted under the auspices of the National Committee for Trade Facilitation, with engagement from STS Industry Advisory Council and the Head of the Simplified Trade System Implementation Taskforce somewhat limited.

⁴³ Australian Parliament, Foreign Affairs, Defence and Trade 2023-24 Budget Estimates, 2 June 2023, page 42 (https://www.aph.gov.au/-/media/Estimates/fadt/bud2324/Hansards/4_020623_DFAT_PROOF.pdf?la=en&hash=ECCAB5B0BDBD34ACF82C1AC7CE6135553C8207A) (accessed 26 July 2023)..

Engaging industry to make progress on the STS Agenda is like pushing on an open door, and ACCI as the largest and most representative business organisation in Australia stands ready to assist. We encourage government to engage.

Conclusion

Business is eager to see the process shift from studying the problem to implementing solutions to the issues that are most impacting them.

Two years on and with over \$400 million allocated, it is time to see concrete benefits for non-government stakeholders.

ACCI is seeking reassurance that there is a plan – and structures in place – to overcome analysis paralysis and achieve the integrated reforms and ambitious agenda expected of the Simplified Trade System.

In this submission, ACCI has set out concrete steps that can be taken to provide this reassurance.

ACCI Members

State and Territory Chambers



Industry Associations





**Australian
Chamber of Commerce
and Industry**