

New Thinking in the UK, Commonwealth Advantage and the Electronic Trade Documents Bill

By Lord Waverley

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Whilst it is undeniable that we are all going through challenging times in the UK, there is recognition in certain quarters that we cannot carry on in ways of old; and that innovation and thinking outside the box have become the imperatives. Now is the time to venture forth with fresh ideas and new concepts.

Determining the purposeful role and contribution of government is a necessary start, with government ideally understanding what its principal role should be; and I venture that of being an enabler, creating a conducive environment, but then stepping aside to let professionals run with the ball. I leave the dire questions on tax levels, the levelling-up strategy, the planning approvals environment, housing needs and general social conditions and focus for the moment on international trade and export promotion. Trade is often derided but is an integral component, as is the relentless need to attract inward investment to enable funding of essential infrastructure.

The BREXIT debate rumbles on with the new administration reflecting on the best model for our relationship with the European Union, with the Norwegian or Swiss models being scrutinised. Hardline Brexiters are seemingly holding firm with the possibility of further acrimonious internal political debate being reopened. That is in no-one's interest. There is a sense of exasperation by the business community that politicians are over-complicating the whole question, and that friendly frictionless bilateral relations are all that counts in the national interest. Pragmatic initiatives are on the horizon. One of the essential ingredients to make progress with the global trading community is to combine innovation, build efficiency and create sustainability and to do so by putting the jigsaw into place, if you will. Currently there are excellent different components that could usefully be harnessed into a unified approach; however, none is dependent on the other.

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I point to three initiatives. The first lends itself well as the Commonwealth is fertile ground given the commonality of common law and language, which should be viewed as the bedrock of a Global Britain. It is a free trade agreement template initially targeting Commonwealth member states, excluding the two that are members of the EU as they are responsible to internal protocols, that can be adjusted by country to address any specific anomalies. I was originally approached some time back by a well-meaning US interest to stitch together a US/Commonwealth agreement, including the UK, of course, that would unlock the UK/US circumstance, given that the bilateral free trade agreement is moribund. This Commonwealth approach would consist of making a template of what is expected to be covered in a trade agreement with language options built in.

The launch of the Institute for Free Trade (IFT) analysis on a model commonwealth free trade agreement (FTA) last month. The “core” deal can be added to or subtracted from in order to meet the individual requirements of each commonwealth nation. The designers have crafted an agreement which can serve the needs of every Commonwealth nation from India to the Solomon Islands.

The “Commonwealth Advantage” reflects cultural and historic ties, complementary geostrategic interests as well as compatible legal and administrative systems. Accepting as equivalent health, sanitary and phytosanitary standards which aim at equivalent levels of evidence-based protection (defined by the UN Codex Alimentarius) will also liberate Commonwealth agricultural products for free global export. The variety and heterogeneity of the nations of the Commonwealth will lower food prices year-round at a time of inflation, as well as offering developing countries the opportunity to compete in profitable developed markets around the world.

This “trade, not aid” approach has arguably been the driving force behind decades of growth in free trading nations such as Taiwan, South Korea, Singapore, and post-war Japan, as well as export-driven success stories China and Indonesia. Unfortunately, many Commonwealth nations have faced large tariff and non-tariff barriers to trade, denying developing nations the income to improve domestic value-chains and leaving them particularly reliant on foreign aid, and geopolitical rivals such as the PRC, for their development objectives. These areas are the bedrock of modern trade agreements, and serve the growing opportunities in internet, in research and development, as well as financing of infrastructure projects within the Commonwealth.

While these deep trade agreements are to the advantage of smaller commonwealth nations, who would likely have no opportunity to negotiate such a degree of cooperation with larger Commonwealth nations such as the UK until “priority” talks with the US, India and others are completed, there are some important benefits for larger nations, too. Having modern trade agreements with a diverse set of economies, complete with an implementation of electronic trade documents and digital trade provisions, creates an immense dataset vital both to supply-chain management, private sector investment as well as governmental industrial strategy.

Flexibility would allow nations to reap the benefits of agreement where they find it, on an opt-in basis, rather than negotiate themselves into a stalemate by withholding agreement until everything is agreed; a moment which may never arrive.

The second is a dedicated, big-data analytics platform be made readily available to encompass advanced data analytics and modelling for foreign trade data relating to supply chains to consolidate multiple datasets already used by the International Trade Council. These datasets, with additional overlays into a single database, could be used for analysis of markets and supply chains, forecasting and predicting market behaviour. This would enable corporates to validate their supply chains, understand market pricing, monitor competitors, forecast the market and would allow governments seeking to assist their exporters to find new markets, identify priority investment FDI targets and model future market demand, growth, customers and suppliers. The good offices of the International Trade Council are making this available resulting from its agreement with 39 countries that will be packaged electronically and presented via newly branded ADAM; Advanced Data analytics & Modelling for Foreign Trade data.

Thirdly, and this brings me to a major piece of legislation that has started its parliamentary passage in the United Kingdom. The magic of the Electronic Trade Documents Bill is that it is all the more beneficial for being an enabler process, free for the world to join up to—just follow the provisions. If the answer to today’s ails is in the timing, this initiative hits the spot with the legal enactment necessary to a more competitive world for the benefit of all.

Allowing businesses to use electronic trade documents when buying and selling internationally, making it easier, cheaper, faster and more secure for them to trade, to remove an obstacle to progress and to pave the way for international trade and trade law to be brought up to date is the objective.

Passing this law would be a victory for global trade and for the United Nations, as the legislative work is led through the UN Model Law on Electronic Transferable Records—MLETR. By allowing electronic documents and physical documents to be used in parallel, the transition to paperless trade can be made an evolutionary process where the adoption of electronic trade documents will take place when different stakeholders in trade and trade finance are ready to take the step to paperless trade.

Radical change in removing paper-based trading documents will make for a faster, lower-cost, more resilient and more liquid world of trading, leading towards transparent digital supply chain management. It will be especially good for small businesses. While not all problems can be solved at once, recognising a practical step-by-step approach to solve one would be an excellent beginning.

This will allow for the use in electronic form of certain trade documents, such as bills of lading and bills of exchange, which currently must be on paper and physically possessed. The Bill is not mandatory: it is a permissive and facilitative piece of legislation and although only small in content, its impact will be huge. It will help to boost the UK's international trade, already worth more than £1.4 trillion, by providing benefits to UK businesses over the next 10 years of £1.1 billion.

Business-to-business documents such as bills of lading, which are contracts between parties involved in shipping goods, and bills of exchange, which are used to help importers and exporters complete transactions, currently must be paper-based. Digital trade documents will be put on the same legal footing as their paper-based equivalents, giving UK businesses more choice and flexibility in how they trade.

The provisions cannot be overstated. Whether it is lowering transaction costs associated with trade by reducing resourcing and operational costs and increasing productivity; whether it is increasing efficiency and encouraging business growth by facilitating the development of digital products and services; whether it is delivering environmental benefits through a reduction in paper documents and emissions from couriering the paper documents; or, critically, whether it is increasing the security, transparency, traceability and transactional data of the flows of goods and finance—the Bill has the potential to revolutionise UK businesses' ability to trade across borders and lay the foundations for the future digitisation of global trade approach and ambitions.

Improving logistical flow that will address the impediment to the speed of payments, and the current need to move paper to discharge goods and receive payments, bringing more opportunities as we align with the MLETR and benefit from digital trade corridors and individual country compliance. This will allow for documents that carry value and promises to be drawn up and signed in digital form, provided that the system or document fulfils the listed requirements.

A number of trade documents with which domestic and cross-border trade would become significantly more efficient and affordable for all are listed, but small and medium-sized entities would benefit the most. This will create significant opportunities for smaller importers

and exporters globally, one reason being that the law of England and Wales is often used when parties have difficulties agreeing on the jurisdiction in which to settle disputes.

The following are issues that need to be reconciled: that international digital identities and digital signatory laws are sufficiently harmonised; that international freight tracking systems with a lack of interoperability is a hurdle that needs to be overcome and that legal entity identifiers are accepted universally.

Significant work is being done and progress is being made in these areas by industry organisations, but this needs to be supported by Governments to pave the way for international harmonisation and adoption. It will be a balancing act to create international standards in such a way that creates legal certainty on the one hand without hampering further adoption of new technologies or innovation on the other.

The United Nations Model Law on Electronic Transferable Records is a very well-designed framework, balancing the need for commercial certainty, relying on current and internationally well-harmonised substantive laws, with allowing for electronic trade documents, providing that the provisions in the MLETR are met.

The Bill does not change the function of the instruments listed. All the safety mechanisms these instruments have and cater for remain intact. Allowing them to be in electronic format means that they will become more efficient and significantly safer. I underline, however, that the Bill does not address the quality of signatures or how to establish identities, other than to say that they need to be “reliable”. The European Union has a list of trusted digital signature sites and for trade it is important that different parties can use simple verification processes to trust the documents coming from another party, but it is up to the contracting parties to define the method to ensure reliability.

What is reliable today, however, will differ tomorrow as new technology evolves. Legislation that is principles-based rather than technically prescriptive is more favourable. The adoption of the EU regulation for eID and other electronic trust services has been slow in cross-border trade, the main reason being that these have not been readily available and easily accessible as technical solutions. The result has been paper-based trade rather than electronic. Although not perfect, in some cases a lower standard is the stepping-stone for adoption, especially in cross-border dealings, provided that the parties have agreed on where to settle disputes.

These are early days, with much to do but no time to lose. All that I have drawn attention to however is the beginning of an exciting journey that ticks the boxes and I commend it accordingly.