

Basic Gap Analysis Legal Checklist Questionnaire

Following is a core set of legal issues related to development of both the National Single Window (NSW) and the International Single Window. Please note that in reviewing the questions raised in this checklist, there may be various sources of “national law” in a State’s legal regime including legislative acts, decrees, regulations, etc. But the critical element to be considered here is whether that law is binding on all stakeholders (including government agencies, Single Window operators, commercial enterprises, etc.) that are or may become parties to a transaction involving an NSW or cross-border transactions between NSWs.

		Yes	No
A. <u>Enabling the Single Window</u>			
1.	Has the NSW been firmly established in national law?		
2.	Have electronic commerce transactions, including the use of electronic documents and messaging been authorized for public, private, and commercial transactions?		
3.	Does the national law(s) authorizing electronic commerce provide for the functional equivalence of paper and electronic documents and messages?		
4.	Does national law provide for the acceptance of electronic documents and/or messages in lieu of paper documents in your country’s judicial system, that is, the acceptance by the courts and other administrative processes of electronic evidence as the equivalence of paper evidence?		
5.	Does national law authorize the NSW to engage in electronic cross-border transmission of customs data to other NSWs?		
6.	Are there any legal restrictions on the types of customs transactions that may be conducted electronically and/or on a cross-border basis?		
B. <u>Data Protection and Information Security</u>			
1.	Are there legally binding laws or regulations that require the protection of data in electronic form?		
2.	Are there laws or regulations generally that require the protection of confidential information, such as trade data and/or business information, whether in paper or electronic format?		
3.	Are there privacy laws protecting personally identifiable information about individuals?		
4.	Are there regulations and policies that establish the level of information security and related procedures in the NSW and within all government agencies that may have access to the NSW, for example, through “information security agreements”?		
C. <u>Access to and Sharing NSW Data</u>			
1.	Do national laws and/or regulations authorize government agencies to access NSW data?		
2.	Are government agencies authorized by law and/or regulations to share customs and trade data and information with the NSW and other government agencies?		
3.	Are private sector entities authorized in law or by regulation to access the NSW?		

D. <u>Identification, Authentication and Authorization</u>		
1.	Are there binding legal regulations establishing clear procedures for the identification, authentication and authorization of users (both operators and end-users) to access the NSW?	
2.	Are there mutually agreed upon binding regulations for the identification, authentication and authorization for users of the ASW and NSW participating in cross-border transactions?	
3.	Have procedures been established (for example, Memoranda of Understanding between government agencies) for the identification, authentication, and authorization of employees of different government agencies who may access the NSW?	
E. <u>Electronic Signatures and Certification Authorities – Mutual Recognition</u>		
1.	Are there national laws or regulations providing requirements for the use of electronic signatures (including digital signatures)?	
2.	Do such laws or regulations embody the principle of “technology neutrality”?	
3.	Do any existing national laws or regulations establish conditions or requirements for the use or acceptance of electronic signatures and/or certification authorities from other countries in cross-border electronic transactions?	
4.	Are there any treaty obligations or mutual recognition agreement with other countries pertaining to electronic signatures in different countries?	
F. <u>Data Quality Regulations</u>		
1.	Are there regulations governing responsibilities for entering data into the NSW and the subsequent processing of this data within the NSW?	
2.	Have audit trails been established that provide for the means of identification, authentication and authorization and proper logging and recording mechanisms for individuals and organizations responsible for entering and processing information within the NSW?	
G. <u>Legal Liability and Dispute Resolution</u>		
1.	Are mechanisms in place for determining legal liability for damages when inaccurate, incomplete, or incorrect data has been entered into the NSW?	
2.	Have regulations been implemented to establish personal jurisdiction over individuals and organizations in cross-border transactions?	
3.	In situations where disputes arise between NSWs or between NSWs and the ASW, for example, where service level obligations are not met, have dispute resolution mechanism been established to resolve these disputes?	
4.	Similarly, where disputes arise between an NSW and NSW operators and/or users of an NSW, have dispute resolution mechanisms been established?	
5.	Is there national legislation providing for alternative dispute resolution processes that could be applied to the NSW and/or in the cross-border environment?	
H. <u>Data Retention and Electronic Archiving</u>		
1.	Are there laws or regulations regarding data retention and electronic archiving?	
2.	In the cross-border environment, are there national laws and/or regulations ensuring that data utilized by the NSW will be retained so as to meet judicial requirements in the event of future disputes?	

I. <u>Intellectual Property Rights and Data Base Ownership</u>			
1.	Have intellectual property laws been enacted?		
2.	Do national laws or regulations established ownership of trade data that is collected by Customs Administrations		
3.	Are the specific ownership rights been established in national law for private sector trading entities?		
4.	Are there regulations or laws that affect the intellectual property rights that may exist in cross-border transactions, for example, data or information received in the NSW?		
5.	Are procedures in place to deal with intellectual property rights related to hardware, firmware, and/or software that may be developed for the NSW operations particularly where private sector providers or private sector SW facility operators are involved?		
J. <u>Competition Law Issues</u>			
1.	Are there Member-State obligations regarding competition as a result of international treaties or agreements, for example under Articles V, VIII and X of GATT?		
2.	Are there national competition laws (e.g., Antitrust laws) that could have some effect on the NSW or cross-border transactions through it?		