

ELECTRONIC WAREHOUSE RECEIPTS FOR AGRICULTURAL PRODUCTS

(Presented by Dr. David P. Stewart)

The subject of a proposed model law on electronic warehouse receipts relating to the transportation of agricultural products was first raised in the Inter-American Juridical Committee at its 81st Session in Rio de Janeiro in August 2012. For the Committee's 82nd regular session in March 2013, the rapporteur for this topic, Dr. David P. Stewart, presented a preliminary discussion in the document entitled "Electronic warehouse receipts for agricultural products" (CJI/doc.427/13). At its 83rd regular session in August 2013, the Committee considered a first draft of a document titled "Proposed Principles for Establishing an Electronic Warehouse Receipts System" (CJI/doc.437/13). For the Committee's 84th regular session in March 2014, the Rapporteur presented a report together with preliminary draft Principles for Electronic Warehouse Receipts for Agricultural Products (CJI/doc.452/14). For the 86th regular session in March, 2015 and the 87th regular session in August, 2015, the rapporteur presented reports on the work related to this topic that has been undertaken by other organizations (CJI/doc.475/15 and CJI/doc.483/15).

During the last of these aforementioned meetings in August 2015, a presentation was made by Dr. Carlos Di Sciullo, an expert in this topic from the Ministry of Agriculture in Argentina. He explained the use of the dual document system, which has been described in the above-noted documents, and how this system operates in practice in several countries of Latin America as well as his own. Dr. Sciullo also spoke about the scope of a draft law in his country, which is aimed at, among other things, updating the Argentine system. Noting the complexity of the issues involved and the challenges to be faced in the adoption of electronic mechanisms, such as acceptance of electronic notifications, he recommended that the study focus on the granting of authorizations to issue these instruments.

Background: The background to this topic was set out in some detail in the earlier documents noted above. In brief, throughout Latin America, warehouse receipts are under-utilized as a financial instrument in gaining access to credit. A warehouse receipt is a document of title that represents the (agricultural) goods that a producer deposits in a warehouse. In theory, the holder of the receipt (in most cases the depositor, *i.e.*, the producer or farmer) should be able to obtain credit

secured against that warehouse receipt. However, at this point in time warehouse receipts are not widely used in Latin America as a source of financing.

Research undertaken to date (primarily by Dr. Tramhel of the Department of International Law) has confirmed the highly technical and complex nature of this subject. As explained in the previous report, further consultations and meetings with experts in the field will be required to advance the draft principles that have been presented to this Committee and to ensure consistency with other OAS projects in other related topics (such as secured transactions) and by other organizations on related topics (such as the work by UNCITRAL on electronic transferable records). As the necessary resources to allow such meetings are not available at this time, it was recommended that consideration be given to the establishment by the secretariat of a closed website to enable exchanges with experts in the form of a “virtual” online discussion group. This website should be launched very shortly. Meanwhile, work to identify and invite appropriate experts in the topic in the Americas remains ongoing. The National Law Center for Inter-American Free Trade has been undertaking extensive research on this topic for some time and is in the process of completing its commentary on the preliminary draft principles mentioned above, which would be included among the documents to be posted to the website for online discussion.

Recommendations

The potential value of a draft set of principles or model law on electronic warehouse receipts for our hemisphere remains clear. Accordingly, taking into account the work that has been undertaken to date, as well as the need for additional research and consultations, the Rapporteur recommends that:

- the topic of electronic warehouse receipts for agricultural products remain on the agenda;
- the secretariat complete its work to post the draft principles to a closed website and begin “virtual” online consultation and other consultations with experts as may be possible; and
- further consideration of the proposed draft be deferred until substantive consultations with appropriate experts have taken place.

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