

INTER-AMERICAN JURIDICAL REPORT.

ELECTRONIC WAREHOUSE RECEIPTS FOR AGRICULTURAL PRODUCTS

The topic of electronic warehouse receipts for agricultural products was included on the agenda of the Inter-American Juridical Committee at its 81st Regular 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 Electronic Warehouse Receipts" (CJI/doc.437/13). For the Committee's 84th regular session in March 2014, the rapporteur presented a report together with preliminary draft Principles "Electronic Warehouse Receipts" (CJI/doc.452/14). For the 86th regular session in March 2015, the 87th regular session in August, 2015, and the 88th regular session in April, 2016, the rapporteur presented reports on the work related to this topic that has been undertaken by other organizations (CJI/doc.475/15, CJI/doc.483/15 and CJI/doc.497/16, respectively).

Background: Throughout the Americas, producers in the agricultural sector, especially those at the small and medium-sized end of the scale, too often lack ready access to credit. In many countries in the region, these producers often have no choice but to sell their produce immediately upon harvest. As a result, they lose the potential benefits that would come from greater flexibility in marketing. Warehouse receipt systems "enable producers to delay the sale of their products until after harvest when prices are generally more favourable."¹ Such systems also enable producers to access credit by borrowing against the products in storage. An effective and efficient warehouse receipts system can therefore contribute directly to economic growth and development where it is needed the most.

But an effective warehouse receipt system requires *both* a reliable network of physical infrastructure (modern warehouses) and a legal regime for warehouse receipts that inspires confidence among lenders.

As explained in some detail in the earlier documents noted above, warehouse receipts are not widely used today in Latin America as a source of financing. One reason appears to be the lack of a modern and harmonized approach to the relevant law. This situation inspired the rapporteur to investigate the topic, particularly with a view towards the development of draft legislation that might encourage a shift towards *electronic* warehouse receipts which are also *negotiable* (i.e., available for use as security for credit), given the benefits that would be associated with such arrangements.

¹ Food and Agriculture Organization of the United Nations, European Bank for Reconstruction and Development, 2014. Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends. P. viii.

Accordingly, research was undertaken by the Department of International Law under the direction of the rapporteur that confirmed the highly technical and complex nature of this subject. As explained in previous reports, consultations were initiated with various organizations that are also engaged in related work, including the United Nations Commission on International Trade Law (UNCITRAL) Working Group IV on Electronic Commerce concerning its ongoing work towards a draft Model Law on Electronic Transferable Records; Food and Agriculture Organization of the United Nations and the European Bank for Reconstruction and Development (2014), *Designing Warehouse Receipt Legislation: Regulatory Options and Recent Trends*; World Bank Group (2016), *A Guide to Warehouse Receipt Financing Reform: Legislative Reform*; International Institute for the Unification of Private Law (UNIDROIT), FAO and International Fund for Agricultural Development (IFAD) (2015), *Legal Guide on Contract Farming* (as to its possible relevance) and the National Law Centre for Inter-American Free Trade (NATLAW), which has been working towards a draft model law for warehouse receipts that would cover both paper-based and electronic format.

These consultations suggest not only that there is growing awareness of the importance of the subject worldwide but also that there does not yet appear to be a sufficient understanding of the issues or consensus on an agreed approach that would support development of model substantive legislation that is “medium neutral”(i.e., applicable to both paper-based and electronic format). Accordingly, the following set of draft principles is offered in the hope they may serve: (1) as an initial step to underscore for OAS Member States the importance of warehouse legislation reform, and (2) as a means of promoting developments in this area without precluding future work on model legislation for electronic warehouse receipts, if and when appropriate circumstances should materialize.

While these principles may have application to a wider range of goods, the focus of this effort has been on warehouse receipts for *agricultural* products, in order to promote access to credit among those producers, both large and small, in that financially underserved sector.

Recommendation:

Adoption of the attached draft principles.

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