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COMMITTEE ON TRADE

Centre for Trade Facilitation and Electronic Business (UN/CEFACT)

Twelfth session
Geneva, 22 - 24 May 2006

REPORT OF THE TWELFTH SESSION

1. The United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) held its twelfth session in Geneva from 22 to 24 May 2006, under the chairmanship of Mr. Stuart Feder.¹

Participants and observers

2. Participants in the meeting included representatives of the following countries: Australia, Austria, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, the Czech Republic, Denmark, Finland, France, Germany, India, Italy, Japan, Mongolia, the Netherlands, Norway, Korea (Republic of), Republic of Moldova, Senegal, Spain, Sweden, Turkey, Ukraine, the United Kingdom, the United States of America, Uzbekistan and Viet Nam.

3. The following intergovernmental organizations participated: International Telecommunication Union, Bank for International Settlements, and European Organization for Nuclear Research.

¹ *Note: Decisions taken during this meeting are shown in boldface type*

4. The following non-governmental organizations participated: International Association of Ports and Harbours and the International Organization for Standardization.

5. Observers at the invitation of the secretariat included representatives of the following organizations: Institute for Information Industry, EC/EDI Committee, Global Standards 1 (GS1), Organization for the Advancement of Structured Information Standards (OASIS), International Multimodal Transport Association, Society for Worldwide Interbank Financial Telecommunication (S.W.I.F.T.) and World Wide Web Consortium.

Opening

6. The Director of the Trade Development and Timber Division of the United Nations Economic Commission for Europe (UNECE) opened the meeting. The Deputy Executive Secretary of the UNECE welcomed the participants on behalf of the Executive Secretary. He emphasized the role of the new partnerships that had been created as a result of the reorganization of the Commission. Standard-setting, including the work of UN/CEFACT, remained well appreciated among the member States and these were looking forward to new recommendations and supported their implementation in the less advantaged member States.

Item 1 – Adoption of the agenda

7. The Chairman announced last-minute changes in some document numbers and additional submissions made by member States and suggested addressing items 3 and 7, as well as items 4 and 5 jointly.

Decision 06-01:

The agenda was adopted with the changes as announced by the Chairman.

Item 2 – Matters arising from the sixty-first session of the Economic Commission for Europe

8. The Director gave a short presentation on the UNECE reform, which had been concluded in 2005. UN/CEFACT's new parent body was the Committee on Trade, whose goal was to contribute to the creation of an open, rule-based predictable and non-discriminatory trading system supported by its three subsidiary bodies: a) simple, transparent, effective processes for global commerce (UN/CEFACT); b) predictable, transparent and harmonized regulatory environment for commerce and business (WP.6) and c) clear commercial quality standards to support trade in agricultural produce (WP.7).

Decision 06-02:

The Plenary took note of the results of the UNECE reform.

Items 3 and 7 – UN/CEFACT in a changing international environment

9. The Chairman introduced the new structure of the plenary session where active participation of the member States, different business sectors and the international Standard Development Organizations (SDOs) were being sought in order to strengthen the stakeholders' input into the UN/CEFACT programme of work.

Decision 06-03:

The Plenary took note of the report of the Chairman.

Items 4 and 5 – Stakeholders sessions

10. Three stakeholders sessions were organized to discuss the views, needs and approaches of: the member States, business sectors using international trade standards and recommendations, and the SDOs.

(a) Countries

11. In the country stakeholder session, member States' expressed the need for interoperable, intersectoral standards that help to create information links between different national government agencies (e.g. in an e-government framework) and with the private sector. These standards should allow the convergence of the multiple existing national standards. Many countries found it crucial that these standards could be adapted to national requirements and could be used in an affordable manner, especially by small and medium sized enterprises (SMEs). Some member States noted their willingness to consider funding of UN/CEFACT products and services to foster their development and implementation. Communications should be improved among the plenary delegations and the participants in the UN/CEFACT permanent groups and forums.

12. For the member States, the Centre must provide transparent and understandable processes that:

- generate standards in a timely way,
- can receive and process external input,
- provide cross-sectoral coordination and harmonization, and
- have well-defined relationships with other standards development organizations.

13. The member States acknowledged the broad spectrum of stakeholders and their different needs. These needs can be organized to respond to the requirements of:

- government policy makers,
- government agencies that use the standards,
- businesses that use the standards,
- businesses that sell services based on the standards, and
- intermediary organizations such as Automotive Industry Action Group (AIAG), GS1, and S.W.I.F.T.

(b) Sectors

14. The sector discussions emphasized the need for complete and consistent sets of implementable standards. In addition, a neutral platform for convergence of the approaches of the different standard-setting organizations was proposed. UN/CEFACT should also be considered as an organization that provides technical support to other bodies, especially WTO.

15. Speeding-up the delivery of standards, along with early implementations was considered important. Engaging SMEs and taking into account their specific needs was seen as crucial. The project management approach to the development of the standards is key and will require cross-sectoral coordination. Sector delegations and member States stressed the need for additional resources.

(c) Standards Development Organizations

16. In the discussions on the role of UN/CEFACT in the international standard-setting community, it was concluded that there was a growing recognition of the value of UN/CEFACT's common semantic framework.

17. A strengthened coordination approach was seen necessary in order to avoid duplication of work among SDOs and to improve allocation of resources, possibly through informal mechanisms, which could be established in order to improve communications among the different SDO initiatives and with stakeholders.

Decision 06-04:

The Plenary adopted the conclusions made at the stakeholders' sessions and requested these to be incorporated into the Programme of Work and published on the UN/CEFACT website.

Item 6 – Towards an integrated strategy for UN/CEFACT

18. The Centre had approved its mission statement as early as in 1996 but it was only in 2001 that it started developing a trade facilitation and electronic business strategy, which it completed and approved in 2005. The Bureau had nevertheless felt that there was a need to integrate the programme of work and its strategic goals with those of its parent body, the UNECE Committee on Trade, including the United Nations Millennium Development Goals.

19. For this purpose, the Bureau had analysed the work being done in the five permanent groups and their working groups. Based on the analysis, it proposed an Integrated Strategy, focusing on three principal work areas: a) facilitating national and international trade transactions and working towards the elimination of constraints; b) engaging all stakeholders in an open dialogue for the development of tools and instruments; and c) improving the ability of business, trade and administrative organizations to exchange products and relevant information and services effectively.

20. The delegations found the strategy document well prepared but reminded the Bureau that it should be seen as a document in process requiring regular monitoring and updates in pace with advancing the programme of work. Information flows between the groups, member States, other stakeholders and the secretariat should be improved to make sure that informed management decisions could be made.

21. The delegations requested the secretariat to place the strategy, together with other fundamental documents, on the UN/CEFACT website.

Decision 06-05:

The Plenary adopted the integrated UN/CEFACT strategy and requested the Bureau and the Forum Management Group (FMG) to implement it.

Decision 06-06:

The secretariat together with the Bureau and the Information Content Management Group (ICG) were requested to prepare a financial resource plan for the UN/CEFACT Registry including the necessary technical documentation and submit it for intersessional approval.

Item 8 – Review of the activities of the UN/CEFACT Forum

22. The seventh UN/CEFACT Forum, held in Lyon, France 26 – 30 September 2005, had attracted 220 attendees. The most important output had been the publishing of the first UN/CEFACT Core Components Library. In addition, working groups on agriculture and e-Government had been established under the International Trade and Business Processes Group (TBG).

23. The eighth UN/CEFACT Forum had been held in Vancouver, Canada 13 – 17 March 2006, with over 230 delegates in attendance. The Forum had extended the Core Components Library and a verification team had been established for the implementation of a registry project.

24. The Applied Technologies Group (ATG) was working on transformation rules from the Unified Modelling Language (UML) to UN/EDIFACT and from UML to the Extensible Markup Language (XML) design rules and it had submitted to the Plenary for approval the Technical Specification for UN/CEFACT XML Naming and Design Rules (NDR) after successful completion of the Open Development Process (ODP). The Group had processed 145 Data Maintenance Requests (DMR) for the D.05B UN/EDIFACT Directory and 112 for the D.06A UN/EDIFACT Directory. ATG had held inter-forum meetings in Kongsberg, Norway in June 2005 and in Wollongong, Australia in January 2006.

25. The ICG had approved the Requirements Specifications Mapping (RSM) and finished the UN/CEFACT Registry Specification for release for ODP. The Group had also initiated a UN/CEFACT Registry Proof-of-Concept. An Advanced Code List Migration Project for the regular publication of a single XML based version of all UN/CEFACT maintained code lists was under way.

26. The Group had also revised and approved code list updates to the following UNECE Recommendations:

- Revision 4 of Recommendation 20 – Units of Measure used in International Trade
- Revision 5 of Recommendation 21 – Types of Cargo, Packages and Packaging Materials
- Revision 2 of Recommendation 23 - Freight Cost Code
- Update 2/2005 of UN/LOCODE (a biannual update based on Recommendation 16 - Codes for Trade and Transport Locations)

27. The Legal Group had been reconstituted during the Forum in Lyon. With new management, the Group was working on legal aspects of the work of the permanent groups.

28. The TBG had been working on a number of Business Requirements Specifications, including cross-industry ordering, cross industry e-catalogue, steel industry ordering, international forwarding transport framework (IFTM), project schedule and cost performance management, contract financial execution management, accounting entry, waste tracking, data plot sheet (DAPLOS) and animal passports. The Group was also planning for the harmonisation and integration of UBL trade and transport messages starting with Invoice and Remittance advice.

29. The Group was also reviewing Recommendations 6, 11 and 12 and a joint transport and environment effort was under way on pre-harmonization for dangerous goods.

30. The new e-Government working group was establishing a programme of work with items such as legal archiving, exchanges between tax and social security authorities and phytosanitary certificates.

31. The TMG was organizing a meeting on inter-organization collaboration with S.W.I.F.T. in mid June 2006. The Group was submitting the next version (2.0.3) of the OASIS Business Process Specification Schema (BPSS) standard to the ISO Technical Committee 154 for approval as ISO/DTS 15000-6. Subsequently, UN/CEFACT and OASIS would announce BPSS 3.0 as a joint effort.

32. The Group had the second working draft of the UN/CEFACT Modelling Methodology (UMM) Base and UMM Foundation Module ready for Step 5 of the ODP. The Business Collaboration Specification Schema (BCSS) had been launched and considerable progress had been made in a joint project with ICG and ATG to define a UML profile for UMM and evaluate interoperability among various UML tools. The draft version 1.0 of the BCSS draft specification had been released for Step 4 of the ODP. The Core Component Technical Specification (CCTS) version 2.2 had also been released for Step 4.

33. The next Forum was scheduled for 2 – 6 October 2006 in New Delhi, India, at the invitation of the Government of India and support by the Vice Chair, Mr. Tahseen A. Khan. The Spring Forum in 2007 was still open. Future Forums were envisaged in Europe in September 2007 and the United States in March 2008.

Decision 06-07:

The Plenary took note of the FMG and Group reports.

Decision 06-08:

The Plenary confirmed the election of Mr Usva Kuusiholma as the Chair of the Legal Group.

Item 9 – Reports of the Rapporteurs

34. The Rapporteur for Asia reported on his work with standard-setting organizations in the Asia-Pacific region. A number of technical meetings, workshops and symposia had been organized, supported both by the Asia Pacific Council for Trade Facilitation and Electronic Business (AFACT), UN/CEFACT and some other international organizations. These meetings included a Capacity Building Workshop on the use of UNeDocs for the implementation of Single Windows entitled 'Workshop on International Standards to Stimulate Paperless Trade' which was held in Kuala Lumpur, 19 – 23 February 2006, with over 80 participants from 19 countries covering Asia, Europe and Africa.

35. The 23rd meeting of AFACT had been held in Hanoi, 24 – 27 October 2005, with 60 participants from 12 member economies and two associate members, followed by a meeting of the Steering Group in Lahore, Pakistan on 10 and 11 April 2006. The following AFACT meeting would be held in Karachi, 7 – 10 August 2006. The Government of Pakistan had expressed its intention to host a UN/CEFACT Forum meeting in the future.

36. The Regional Rapporteur had also collaborated with the ebXML (e-Business) Asia Committee (eAC) and the Pan Asian eCommerce Alliance (PAA). The Association of South East Asian Nations (ASEAN) had advanced the single window concept among its membership. The e-ASEAN Working Group (EAWG) had been dissolved in 2005 and integrated into the activities of the telecommunications working group. Asia Pacific Economic Cooperation (APEC) had invited UN/CEFACT to cooperate on paperless trade.

37. The Standards Liaison Rapporteur made a presentation on his work. Many of the points raised had already been included in the discussion paper that the Rapporteur, together with the Bureau, had prepared for the Stakeholders Session on standards development organizations.

Decision 06-09:

The Plenary took note of the reports of the Asian Rapporteur (ECE/TRADE/CEFACT/2006/8) and the Standards Liaison Rapporteur.

Item 10 – Review of the programme of work

38. The secretariat presented the programme of work (ECE/TRADE/CEFACT/2006/9), which the Bureau and the FMG had revised and complemented. A revised list of projects was presented in addendum 1 and a draft proposal for the programme of work for 2007 – 2008 in addendum 2. The Bureau had prepared the documents with a view to integrating the programme of work with the newly adopted UN/CEFACT strategy (ECE/TRADE/CEFACT/2006/5).

Decision 06-10:

The Plenary approved the Programme of Work (ECE/TRADE/CEFACT/2006/9 with Addenda 1 and 2) and requested the secretariat to submit these to the first session of the UNECE Committee on Trade for approval and subsequent submission to the UNECE Executive Committee for confirmation.

Item 11 – Approval of recommendations

39. The secretariat presented a document that contained a consolidated documents set. It included a list of the procedures of UN/CEFACT, all directories, methodological documents, extended mark-up language (XML) standards, approved UN/CEFACT business requirements specifications and UN/CEFACT recommendations. This reference document would be placed on the UN/CEFACT website at http://www.unece.org/cefact/cf_docs.htm and it would serve as a formal reference list of fundamental background documents for all UN/CEFACT work.

40. The Chairman of the TBG presented the Technical Specification for XML naming and design rules (ECE/TRADE/CEFACT/2006 and Corrigendum 1) which the FMG had submitted to the Plenary for approval after a successful completion of the Open Development Process.

Decision 06-11:

The Plenary approved the Consolidated Documents Set (ECE/TRADE/CEFACT/2006/10 and Corrigendum 1) and the Technical Specification for XML naming and design rules (ECE/TRADE/CEFACT/2006/13 and Corrigendum 1).

Item 12 – Organizational matters

41. The Bureau presented for approval the updated intersessional approval process for the Plenary. The review period had been reduced to two months from the date when the document at hand would first be published on the UN/CEFACT website.

42. The Bureau had prepared its rules of procedure for approval. It covered the code of conduct for Bureau members and a provision for the approval of press releases and related statements would be developed later.

43. The Bureau had also updated the terms of reference of regional rapporteurs. As part of the revision, the Bureau suggested transferring the tasks of the Standards Liaison Rapporteur and Legal Rapporteur to assigned Bureau members.

44. The FMG informed the Plenary of the current status of updating the Open Development Process. The FMG had submitted a draft for information to the delegations as requested by the delegations at the 11th UN/CEFACT Plenary. The FMG would submit the final updated text to the Bureau for forwarding the ODP to an intersessional approval process.

45. The representative of Switzerland enquired as to whether the addenda to the Mandate and Terms of Reference of UN/CEFACT (TRADE/R.650/Rev.4 Addenda 1 – 4) should be confirmed by the Committee on Trade as opposed to UN/CEFACT, as the Committee had originally approved these. The secretariat was requested to look into the matter and inform the Bureau accordingly.

46. The Bureau made a presentation on the status of the Intellectual Property Rights (IPR). The 11th Plenary had approved the principles of an IPR policy and set up a Special Contact Group (SCG) to prepare a policy for approval. The Group, in cooperation with the secretariat, the Bureau and the United Nations Office of Legal Affairs had completed the intellectual property rights policy that was presented to the Plenary for approval (ECE/TRADE/CEFACT/2006/11 and its explanatory note in Addendum 1).

47. The delegation of France congratulated the Bureau on having found a pragmatic solution to the IPR issue. It supported the advisory group mechanism and moved that the policy should be adopted. It also requested that the Plenary regularly review the application of the policy.

Decision 06-12:

The Plenary approved:

- **TRADE/R.650/Add.2 “Rules of Procedure of the Bureau” and requested the Bureau to finish the Annexes**
- **TRADE/R.650/Add.3 “Terms of Reference of Rapporteurs”**
- **TRADE/R.650/Add.4 “Intersessional approval process”**

The Plenary extended the term of office of the Standards Liaison Rapporteur by one year to allow the Bureau to transfer the functions to the Bureau.

The tasks of the Legal Rapporteur will be assigned to a Bureau member.

The Plenary took note of the current status of update of the UN/CEFACT Open Development Process (TRADE/R.650/Rev.4/Add.1) and requested the FMG and the Bureau to finish the process description as soon as possible and submit it for intersessional approval.

The Plenary requested the Bureau and the secretariat to seek the approval of the UNECE Committee on Trade and subsequently to inform the UNECE Executive Committee of the final status of the Mandate and Terms of Reference of UN/CEFACT as laid down in document TRADE/R.650/Rev.4 and its addenda.

The Plenary approved the UN/CEFACT Intellectual Property Rights Policy as laid down in document ECE/TRADE/CEFACT/2006/11 (also in Annex 1) and took note of document Add.1.

Item 13 - Elections

Decision 06-13:

The Plenary elected Mr. Mike Doran (CERN), Mr. T A Khan (India), Mr. Mark Palmer (United States) and Ms. Christina Rahlén (Sweden) as vice chairs for a term 2006 – 2008.

The term of office of the Standard Liaison Rapporteur, Mr. François Vuilleumier, was extended by one year, until the Plenary in 2007.

The Plenary elected Mr. Ibrahima Nour Eddine Diagne (Senegal) as Rapporteur for Africa for 2006 – 2008.

The election of Mr. Usva Kuusiholma as Chair of the Legal Group was confirmed.

The Plenary confirmed the two additional TBG members in the FMG for 2006 – 2008.

Item 14 – Adoption of decisions

Decision 06-14:

The Plenary approved the decisions made at the twelfth UN/CEFACT Plenary session and requested the secretariat to circulate these to the Heads of Delegation. The Plenary requested the secretariat to prepare the report of the twelfth session for intersessional approval as soon as possible.

The Plenary decided provisionally to hold the thirteenth UN/CEFACT session 11 – 13 June 2007. After consultations with the United Nations secretariat and Conference Services, the 13th Plenary will be held the 14 – 16 May 2007.

Annex 1

UN/CEFACT Intellectual Property Rights Policy

At its 2005 session, the UN/CEFACT Plenary approved the principles of its Intellectual Property Rights Policy (as found in document TRADE/CEFACT/2005/MISC.3, and ECE/TRADE/CEFACT/2006/11). The Plenary also asked the Special Contact Group, in cooperation with the Bureau, to prepare a document for clearance with the UN Office of Legal Affairs (see Decision 05-12 in document TRADE/CEFACT/2005/37). The Bureau and the Special Contact Group, with the UNECE secretariat, have followed these instructions and clearance for the attached document was received from the UN Office of Legal Affairs (OLA) on 15 May 2006 after several exchanges of information on the wording. This document reflects and adheres to the principles approved at the 2005 Plenary. The OLA has also requested the inclusion of a disclaimer “in the publication, on the website and in connection with any other presentation” of UN/CEFACT outputs covered by the IPR policy. The text of this disclaimer can be found in annex to this document.

I. Royalty-Free Goals for UN/CEFACT Specifications

1. In order to promote the widest adoption of Specifications, UN/CEFACT seeks to issue Specifications that can generally be implemented without fees or restrictions. Subject to the conditions of this IPR Policy (the “Policy”), UN/CEFACT will generally not approve a Specification if it is aware that Essential Intellectual Property Rights (IPR) exist that are not available without fees or restrictions.

II. Definitions

2. A “**Participant**” is an individual, association, organization, corporation, other entity or Affiliate of such an entity, or an agency of government, that has formally joined a UN/CEFACT Forum Group. “Participant” is the legal entity on whose behalf an Authorized Individual acts.

3. “**Affiliate**” is any entity other than a government, which directly or indirectly controls, is controlled by, or is under common control with, another entity, so long as such control exists. In the event that such control ceases to exist, such Affiliate will be deemed to have withdrawn from UN/CEFACT, and the withdrawal implications set forth in Section 3(b)(ii) of this Policy will apply. For purposes of this definition, with respect to a business entity, control means direct or indirect beneficial ownership of or the right to exercise (i) greater than fifty percent (50%) of the voting stock or equity in an entity; or (ii) greater than fifty percent (50%) of the ownership interest representing the right to make the decisions for the subject entity in the event that there is no voting stock or equity

4. An “**Authorized Individual**” is an individual designated by a Participant to represent and bind that Participant with respect to the obligations set forth by UN/CEFACT's policies, such as this Policy, the Open Development Process and TRADE/R.650/Rev.4.

5. “**Contributing Non-Participant**” is an “invited expert” to UN/CEFACT who might be called in for their particular expertise. These Contributing Non-Participants must agree to the terms of this Policy and the rules of UN/CEFACT in general. Specifically, the disclosure and waiver obligations set forth in this policy apply equally to Contributing Non-Participants as well

as Participants. A government agency may only be bound by the terms of this Policy as a Participant through an Authorized Individual, designated in writing. A government agency or representative can never be deemed a Contributing Non-Participant under the terms of this Policy.

6. **"IPR"** or **"Intellectual Property Rights"** includes patents, copyrights, trademarks, utility models, invention registrations, database rights, moral rights, and data rights.

7. **"Essential IPR"** means any and all IPR in any jurisdiction in the world that would necessarily be infringed by implementation of a Specification because there are no commercially acceptable, non-infringing alternatives for implementing the Specification. The availability of a commercially acceptable non-infringing alternative shall be judged according to the state of the art when a Development Milestone (set forth in Section 4(d)) relating to the IPR occurs. Essential IPR shall not include rights in any enabling technologies that may be necessary to implement or use a Specification, such as technology related to the underlying hardware, operating system, middleware, or business processes.

8. **"Specification"** as used in this Policy encompasses all Technical Specifications, Working Draft Technical Specifications, Final Technical Specifications, Recommendations, final UN/CEFACT Recommendations, as those terms are used in R650 and the ODP (<http://www.disa.org/cefact-groups/atg/docs/developmntprocess.cfm>), and any other formal documents and drafts that are materially involved in the Specification development process.

9. **"Open Development Process" or "ODP"** is the process by which UN/CEFACT Technical Specifications and Recommendations are developed, approved, published and maintained.

10. **"Contribution"** is any material submitted to a UN/CEFACT Forum Group by a Participant or Authorized Individual. This material must be submitted in writing or by electronic means, whether through an in-person meeting or through any electronic conference or mailing list maintained by UN/CEFACT and which is or was proposed for inclusion in a UN/CEFACT Recommendation as defined in this Policy. This definition includes general feedback from Participants and Authorized Individuals.

11. **"Forum Group"** is the group of Participants that has been approved by the UN/CEFACT Plenary to undertake a long-term work program.

12. **"Forum Management Group"** is the body responsible for management of the Forum Groups and harmonization of work programs, among other things (See TRADE/R.650/Rev.4 for a more complete description).

III. Participant Waiver Obligations

13. The following obligations apply to all Participants and Contributing Non-Participants.

a) Waiver Obligation

14. Subject to Section 3(b), as a condition of participating in UN/CEFACT, each Participant agrees to waive its rights to enforce its Essential IPR against any party implementing a Specification from any Forum Group of which Participant was a member or made a Contribution. The Participant's waiver of its rights to enforce Essential IPR against any party

implementing the Specification extends only to the actual implementation of the Specification; Participant does not waive its rights to enforce its Essential IPR as to any applications or uses of its Essential IPR other than the actual implementation of a Specification.

15. If a Specification requires an implementation in its entirety, then the waiver extends only to such implementations, but if the Specification allows implementations in part, then the waiver extends to such portions.

b) Waiver Exception

16. The Waiver Obligation of this Policy does not apply to either:

- i) Participant's Essential IPR that is properly and timely disclosed in accordance with the requirements of this Policy and the Open Development Process, provided that the Participant disclosing such Essential IPR expressly and timely elects not to waive its rights, again in accordance with the requirements of this Policy and the Open Development Process; or
- ii) any new material added to a Specification after a Participant formally withdraws from that Specification's Forum Group in a writing to the Chair. The Waiver Obligation will continue to apply to any Contributions made to the Specification by the Participant after withdrawal.

c) Waiver Term

17. With respect to patents or any other IPR with a limited term, the term of such waiver shall be for the life of the patent or other IPR in question. With respect to any other IPR, the waiver shall be perpetual. Notwithstanding any other terms of this Policy, the waiver obligation applicable to a particular Specification does not apply to any Participant with respect to any party that is asserting a claim that an implementation of that Specification infringes that party's IPR.

IV. Disclosure

a) Disclosure Obligations

18. Disclosure is required only where the Participant elects not to waive its right to enforce its Essential IPR under the Waiver Obligations of this Policy and instead elects to follow the Exception Handling procedures of this Policy. In order not to waive the Participant's rights to enforce its Essential IPR, the Authorized Individual must disclose the Essential IPR on or prior to the **first** Development Milestone that arises after the Authorized Individual first has actual knowledge of the Essential IPR. This disclosure obligation applies to Participants only with respect to Forum Groups in which the Participant is a member or to which the Participant provides a Contribution.

19. An Authorized Individual's failure to disclose in accordance with Section 4 of this Policy automatically results in the Participant's waiver of its right to enforce the applicable Essential IPR as set forth in Section 3. The waiver extends to the enforcement of all future Essential IPR that originates from its waived Essential IPR. For example, should an Authorized Individual fail to disclose a known Essential pending patent claim prior to a first Development Milestone, the

Authorized Individual may not then disclose a patent claim that originated from the undisclosed pending claim prior to a future Development Milestone.

20. There is no requirement that the Authorized Individual perform a patent search or any analysis of the relationship between the patents that the Participant holds and the Specification in question. However, notwithstanding any other terms of this Policy, the right to enforce any Essential IPR that has not been disclosed prior to five days after the final technical specification release Development Milestone (Section 4(d)(vi)) will be waived by the Participant pursuant to Section 3 of this Policy, whether or not the Authorized Individual has actual knowledge of that Essential IPR.

21. Once the Authorized Individual discloses specific Essential IPR with respect to a Specification following the rules laid out in this Policy, the Participant is relieved from its obligation to continue to disclose that Essential IPR at additional Development Milestones unless the nature of the Essential IPR has changed (e.g., a claim is approved or a patent application has issued).

b) Disclosure Statement Contents

22. Disclosure statements must be sent to the Chair of the Forum Group in question and the Forum Management Group and include in writing:

- i) an identification of the portion of the Specification that the Participant believes infringes the Participant's Essential IPR;
- ii) a specific identification of the Participant's Essential IPR as specified in Section 4(c);
- iii) a signed statement from the Authorized Individual, binding on the Participant, indicating that the Participant does not agree to waive its rights to enforce the disclosed Essential IPR, and elects to implicate the Exception Handling procedures of this Policy.

c) Specific Identification of Essential IPR

- i) For copyrights, the specific identification includes a disclosure of any formal registration numbers or information; or in the case of an unregistered copyright, a copy of the copyrighted material and an explanation of Participant's entitlement to legal rights in the material.
- ii) For trademarks, such specific identification includes a disclosure of any formal registration numbers or information; or in the case of an unregistered trademark, a description of the mark and an explanation of Participant's entitlement to legal rights in the mark.
- iii) For issued patents, the specific identification includes the patent number and an identification of specific claims. Any patent claims not specifically identified, even if included in otherwise disclosed patents, are waived pursuant to the Waiver Obligations of this Policy.
- iv) For laid-open or published patent applications, or for allowed claims in any patent application, the specific identification includes the disclosure and identification of specific claims. Any patent claims originating from published or allowed claims that

are not specifically identified, even if included in otherwise disclosed patents, are waived pursuant to the Waiver Obligations of this Policy.

- v) For any pending claims in an unpublished patent application, the specific identification includes only the disclosure of the existence of such claims. Any patent claims originating from pending claims not specifically identified, even if included in otherwise disclosed patents, are waived pursuant to the Waiver Obligations of this Policy.

d) Timing of Disclosure: Development Milestones

23. Authorized Individuals are obligated to disclose IPR in accordance with this Policy at the following times (Development Milestones):

- i) at the time of making a Contribution containing the Essential IPR;
- ii) within 30 days after joining a newly established or operating working group;
- iii) 30 days after the publication of the first working draft (step 3 of the ODP);
- iv) 30 days after the publication of each subsequent working draft (steps 4, 5, and 6 of the ODP);
- v) 30 days after the end of the public review period (step 5 of the ODP);
- vi) 5 days after final technical specification release (step 7 of the ODP).

e) Disclosures to Be Publicly Available

24. Essential IPR disclosure information for each Specification will be made public along with each public Working Draft issued by the Forum Group. No later than 10 days following each Development Milestone, the Working Draft will be updated to include a list of all specifically identified Essential IPR disclosed, and all Exception Handling procedures implicated, by any and all Participants pursuant to this Policy.

V. Intellectual Property Ownership

25. No right related to IPR of a Participant will be deemed waived except as expressly set forth in this Policy. Further, each Participant in each UN/CEFACT Group approved by the UN/CEFACT Plenary will retain ownership of all rights in IPR that such entity owned prior to participation and that may vest in the course of participation. Except as specifically set forth in this Policy, Participants and Contributing Non-Participants do not grant any waivers, or otherwise limit their rights in or to, their Contributions, Essential IPR, or any other IPR.

VI. Exception Handling

a) IPAG Formation

26. In the event that an Authorized Individual or Participant, following the disclosure and waiver exception procedures outlined in this Policy, informs UN/CEFACT that they will not waive their rights to enforce particular Essential IPR, an Intellectual Property Advisory Group (IPAG) will be launched by the Plenary Bureau, in coordination with the Forum Management Group, to resolve the conflict. The IPAG is an ad-hoc group constituted specifically in relation to the Forum Group with the IPR conflict. An IPAG may also be formed without such a disclosure if the Plenary Bureau and the Forum Management Group determine that an IPAG could help avoid anticipated IPR problems. During the time that the IPAG is operating, the Forum Group may continue its technical work within the bounds of its charter.

b) IPAG Composition

27. The IPAG is composed of:

- two Vice-chairs of the Plenary;
- Chair and Vice-chair of the Forum Management Group;
- relevant Forum Group Chair(s); and
- others suggested by the Forum Management Group or the Plenary Bureau.

28. Members of the IPAG should be authorized to represent their organization's views on IPR licensing issues. Any member of the IPAG may also be represented by legal counsel, though this is not required.

c) IPAG Procedures

i) IPAG Formation Timing

29. Within 30 days after being launched by the Plenary, an IPAG will be convened by the Forum Group Chair, in coordination with the Forum Management Group and the Plenary Bureau and based on a charter developed initially by this group and following the requirements listed in this Policy.

ii) IPAG Charter Requirements

30. The charter should include:

- clear goals for the IPAG, especially a statement of the question(s) the IPAG is to answer;
- duration;
- confidentiality obligations; and
- determination of the publication of the IPAG charter, IPAG deliberations, and IPAG conclusions.

31. The IPAG charter must specify deadlines for completion of individual work items it takes on. The IPAG, once convened, may propose changes to its charter as appropriate, to be accepted based on consensus of the IPAG participants. The Plenary Bureau will choose a member of the IPAG to serve as Chair.

d) IPAG Conclusion

i) Possible IPAG Conclusions

32. After appropriate consultation, the IPAG may conclude:

- the initial concern has been resolved with no need to change the Specification;
- the Forum Group should be instructed to consider designing around the identified Essential IPR;
- the IPAG needs further information;
- the Forum Group should terminate its activity on this subject;
- the Specification, if issued, should be rescinded; or
- alternative solutions should be considered. In such a case, the IPAG shall consult with the UN in relation to such alternative solutions, concerning any relevant UN regulations, rules and policies.

VII. Warranties and Indemnities

a) Every Participant warrants that to the best of its Authorized Individual's knowledge, and without investigation, no third party contends that the Participant's Contributions infringe that third party's intellectual property.

b) THERE ARE NO OTHER WARRANTIES OR INDEMNITIES MADE BY THE PARTICIPANTS OR UN/CEFACT, AND UN/CEFACT AND PARTICIPANTS HEREBY DISCLAIM ANY IMPLIED OR EXPRESS WARRANTIES.

c) UN/CEFACT does not take a position as to the validity or scope of any Essential IPR or any other rights that might be claimed to relate to the implementation of a Specification. UN/CEFACT makes no representation that it has made any independent investigation or effort to identify or evaluate any such rights.

VIII. Confidentiality

33. UN/CEFACT and the Participant have no duty of confidentiality with respect to any information transferred between them. No Contribution that is subject to any requirement of confidentiality or any restriction on its dissemination will be considered in any part of the UN/CEFACT Open Development Process, and there must be no assumption of any confidentiality obligation with respect to any such Contribution. No submission of any kind should be made on the basis of an assumed confidentiality obligation or restriction on dissolution.

IX. Disclaimer

34. This following disclaimer shall be included in the publication, on the website and in any other form of presentation, of UN/CEFACT outputs covered by the IPR policy.

- "UN/CEFACT draws attention to the possibility that the practice or implementation of its outputs (which include but are not limited to Recommendations, norms, standards, guidelines and technical specifications) may involve the use of a claimed intellectual property right.
 - "Each output is based on the contributions of participants in the UN/CEFACT process, who have agreed to waive enforcement of their intellectual property rights pursuant to the UN/CEFACT IPR Policy (document ECE/TRADE/CEFACT/2006/11 available at <http://www.unece.org/cefact/> or from the UNECE secretariat). UN/CEFACT takes no position concerning the evidence, validity or applicability of any claimed intellectual property right or any other right that might be claimed by any third parties related to the implementation of its outputs. UN/CEFACT makes no representation that it has made any investigation or effort to evaluate any such rights.
 - "Implementers of UN/CEFACT outputs are cautioned that any third party intellectual property rights claims related to their use of a UN/CEFACT output will be their responsibility and are urged to ensure that their use of UN/CEFACT outputs does not infringe on an intellectual property right of a third party."
 - "UN/CEFACT does not accept any liability for any possible infringement of a claimed intellectual property right or any other right that might be claimed to relate to the implementation of any of its outputs."
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