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The Standing Committee, during its second session, agreed to prepare a draft model agreement for the bilateral and plurilateral exchange of trade-related data and documents. The initial proposals on the draft model agreement were presented at the ad-hoc session of the Standing Committee held on 23 and 24 January 2024.

This document[1] contains a revised version of the draft model agreement. The participants of the Standing Committee may wish to give feedback on this draft and discuss any possible work in the future.

[1] The document is prepared by Mr. Sung Heun Ha.

A draft model agreement for a Mutual Recognition of electronic trade data and documents

I. Introduction

The global landscape of trade is rapidly evolving, with increasing reliance on electronic means for document exchange and transaction facilitation. In this context, mutual recognition plays a pivotal role in enabling smooth and efficient cross-border electronic trade. Mutual recognition is defined as the reciprocal acknowledgment of the validity of trade-related data and documents in electronic form exchanged between two or more countries. This definition clarifies the concept and underscores its importance in facilitating cross-border electronic trade. The primary need for mutual recognition arises from the desire to facilitate the exchange of trade-related data and documents electronically across borders. This is particularly important, considering that different countries may have varying technological approaches and legal jurisdictions. Mutual recognition aims to overcome barriers and ensure interoperability between different systems and jurisdictions. Mutual recognition can lead to several benefits, including enhanced efficiency, transparency, and reliability in cross-border trade. By providing a structured legal, organizational and technical framework for electronic trade data and document exchange, mutual recognition can streamline processes and reduce administrative burdens for businesses and governments alike.

While paper documents are widely accepted and recognized, the legal validity of electronic trade-related documents exchanged across different jurisdictions is not guaranteed. This creates challenges in ensuring the legal significance of electronic interactions, both within a single jurisdiction and across borders. When economic operators engage in paperless trade across borders, they face obstacles because differences in national infrastructures, legislation, and technologies create barriers to seamless electronic transactions. To address these challenges, reciprocal recognition of the validity of electronic trade-related documents and data across jurisdictions is needed. This would enable parties in different jurisdictions to trust and accept electronic documents as they do paper documents.

A mutual recognition framework is proposed as a solution to give the same legal effect to cross-jurisdictional electronic transactions as physical transactions. Such a framework would allow parties in different jurisdictions to exchange and recognize valid electronic documents, considering aspects such as identity, authentication, and authorization.

In this respect, mutual recognition is crucial in facilitating cross-border electronic trade and addressing the challenges and obstacles associated with the transition from paper-based to paperless trade. Harmonized approaches and frameworks are needed to ensure the legal validity and trustworthiness of electronic documents in international trade.

II. Why mutual recognition is important but challenging?

Trade documents created for specific purposes within one work domain often need to be accessed and utilized in other domains for different purposes. This indicates the interconnectedness and interdependency of various trade-related processes and their associated documents. This cross-functional nature of trade documents adds complexity to the process of digitization. It implies that simply converting paper documents into electronic formats may not be sufficient, as the digital versions need to serve multiple functions across different domains. The complexity arising from the cross-functional nature of trade documents presents challenges in achieving mutual recognition of electronic messages used across multiple areas. Mutual recognition requires establishing common standards, protocols, and frameworks that are recognized and accepted across various domains and jurisdictions.

Collaborative efforts and harmonization among the parties of Framework Agreement are essential to realizing mutual recognition's full potential in enabling seamless and efficient cross-border electronic trade. The proposed mutual recognition model agreement aims to establish a structured framework that facilitates trust and interoperability among involved parties, ensuring electronic trade-related transactions' reliability and legal validity.

III. The critical components for successful mutual recognition arrangement

The following nine critical components for essential for mutual recognition arrangement. Each of these components plays a vital role in shaping the mutual recognition model agreement/arrangement, ensuring its effectiveness, legitimacy, and practical implementation.

1. International or Regional Organization: This component establishes the overarching authority or entity responsible for governing the rules or providing principles for the mutual recognition scheme. It ensures consistency and standardization across borders or regions.
2. Ownership of Recognition Requirements: This component clarifies who owns or defines the recognition requirements. It could be individual countries, regulatory bodies, industry associations, or other entities involved in the mutual recognition process.
3. Mutual or Multilateral Implementation Bodies: These bodies are responsible for implementing the mutual recognition scheme or guidelines. They ensure that the agreed-upon principles are effectively implemented.
4. Object of Recognition: This component specifies what exactly is being recognized through the mutual recognition scheme. It could include products, services, certifications, standards, or other aspects relevant to cross-border trade or cooperation.
5. Legal Instrument or Guideline: This outlines the formal agreement or guideline set by the participating entities. It provides the legal framework for the mutual recognition process and ensures compliance with relevant laws and regulations.

6. Execution Method for Recognition: This component describes how the recognition process is carried out in practice. It may include procedures for assessing, verifying, and validating the recognized entities or products.
7. Mechanism to Maintain Trust: Ensuring trust among participants is crucial for the success of a mutual recognition scheme. This component involves establishing mechanisms to address issues such as data security, confidentiality, dispute resolution, and compliance monitoring or audit.
8. Scope: This component defines the scope of the mutual recognition arrangement, specifying whether it is primarily for official control purposes (e.g., regulatory compliance) or for facilitating private transactions (e.g., trade agreements and certifications).
9. Technical Standards or Guidelines: Technical standards or guidelines provide the framework for ensuring compatibility and interoperability among the recognized entities or products. They may include specifications for testing methods, quality assurance processes, or performance criteria.

IV. A proposed structure for a draft Mutual Recognition Model Agreement on the Four Corner Model (Single Window to Single Window)

This structured outline provides a comprehensive framework for drafting a Mutual Recognition Model Agreement, ensuring that all key components are clearly addressed and organized. Each section can be further elaborated with specific details and provisions as needed.

The Four Corner Model, corresponding to Single Window to Single Window, is built on the premise of trusted service providers, or 'Single Windows,' for both the importer and the exporter (or any other trade-related agencies involved in sending and receiving trade-related data and documents). The model is called the Four Corner Model because it involves four key parties: the sending party, the sending party's Single Window, the receiving party, and the receiving party's Single Window (see Table 1)

Table 1. Provisions of draft agreement

Draft provisions	Example
1. Introduction or Preamble Brief overview of the purpose and objectives of the agreement.	

Draft provisions	Example
2. Definitions Define key terms and concepts used throughout the agreement to ensure clarity and consistency.	2. Definition • Addressee: Refers to the intended recipient of a data message or electronic document, excluding intermediaries involved in the transmission process. • Adopted Protocol(s): Specifies the accepted methods for exchanging data messages or electronic documents, based on agreed-upon standards for presentation and structuring. These protocols are identified in the Technical Annex. • Acknowledgement Receipt: Denotes the acknowledgment of receipt of a data message or electronic document, indicating that it has been successfully received by the intended recipient. • Electronic Document: Defines a document generated in digital form by an information system, capable of transmission and storage within or between information systems. • Data Log: Refers to the complete document of information exchanged between parties and between parties and the originator/addressee. It includes message content, timestamps, and digital signatures, if applicable. • Originator: Represents the person or entity who sends or generates a data message or electronic document, excluding intermediaries involved in the transmission process. • Parties: Refers to the entities that are parties to the agreement. "Party" denotes any individual entity within the context of the agreement. • Receiving Party: Describes a party that receives a data message or electronic document sent by another party. • Sending Party: Describes a party that sends a data message or electronic document to another party. • Technical Annex: Refers to the technical annex attached to the agreement, outlining specifications agreed upon by the parties for certain technical and procedural requirements.

Draft provisions	Example
3. Scope and Technical Annex Clearly define the scope of the agreement, including the types of recognition covered. The Technical Annex sets forth specifications agreed upon by the parties for certain technical and procedural requirements. These specifications likely include details related to a data format, encryption standards, authentication methods, transmission protocols, and other technical aspects necessary for ensuring the secure and effective exchange of electronic data messages or documents.	3. Scope and Technical Annex • The purpose of this Agreement is to establish an appropriate and effective framework for the facilitation of cross-border trade data and documents exchange and mutual recognition among the Parties • This Agreement governs the electronic transfer of Data Messages or Electronic Documents between the Parties and the implementation of related support procedures by the Parties. Except as expressly provided, this Agreement does not govern any other relationships between the Parties in the context of which the Data Messages or Electronic Document are communicated. • The Parties agree to adhere to the Technical Annex attached hereto, which sets forth the specifications agreed upon by the Parties for certain technical and procedural requirements.

Draft provisions	Example
4. Communications and Operations Outline procedures and protocols for communication and operational activities related to the mutual recognition process.	4. Communications and Operations • The Parties agree to communicate Data Messages or Electronic Documents in accordance with the Adopted Protocol(s) established for the electronic transmission of Data Messages or Electronic Documents between the Parties • Each Party shall implement, test and maintain their respective equipment, software and services necessary to effectively and reliably transmit and receive Data Messages or Electronic Documents. • The Parties shall specify in the Technical Annex the methods of communication, including the requirements for telecommunication or the use of the third party. • A link or protocol failure detected by a Party shall be notified to the designated representatives of the Party responsible for the link or protocol for resolution. The Party responsible for resolving the link or protocol failure shall endeavor to rectify the said failure as soon as possible.
5. Mutual Recognition Describe the mechanisms and procedures for mutual recognition of electronic trade-related data and documents.	5. Mutual Recognition • Parties agree that the legal validity of communicated data messages or electronic documents is equal to that of paper messages or documents. • Parties reserve the right to verify the authenticity of communicated data messages or electronic documents according to their domestic laws.
6. Security of Data: Specify measures for ensuring the security and confidentiality of data exchanged under the mutual recognition scheme.	6. Security of Data: • Parties must take appropriate steps and establish procedures to ensure the security, confidentiality, and integrity of data messages, electronic documents, and data logs. • Parties must maintain the confidentiality of any data message or electronic document containing confidential information as designated by the originator or sending party.
7. Transmission and Authenticity of Message: Define requirements for the transmission and authentication of messages exchanged between parties.	7. Transmission and Authenticity of Message: • Data messages or electronic documents must identify the originator, sending party, receiving party, and addressee(s) and include means of verifying authenticity. • Upon receipt, the receiving party must authenticate the message according to procedures in the Technical Annex

Draft provisions	Example
8. Integrity of Messages: Establish procedures for maintaining the integrity of messages and preventing unauthorized alterations.	8. Integrity of Messages: • Each Party, being a Sending Party, shall, to its best endeavours, ensure that all Data Messages or Electronic Documents are complete, accurate, and secure against being altered in the course of transmission initiated by it. • Where there is evidence that a Data Message or Electronic Record has been corrupted, altered or contains any technical errors or if any Data Message or Electronic Record is identified or capable of being identified as incorrect, the Receiving Party shall give prompt notice to the Sending Party of the altered, corrupted or erroneous message or record, if such notice is required or provided for in the Technical Annex. The latter shall (i) acknowledge its receipt of said notice to the former and (ii) thereafter promptly notify the Originator that the message or record was altered, corrupted, or erroneous and has not been delivered to the Addressee.
9. Confirmation of Receipt of Messages: Outline procedures for confirming the receipt of messages to ensure accountability and reliability.	9. Confirmation of Receipt of Messages: • Where provided in the Technical Annex, receiving parties must ensure the automatic acknowledgment of receipt of data messages or electronic documents. • Acknowledgment receipts must follow specified procedures and formats and be sent without unreasonable delay within the time period as stipulated in the Technical Annex.
10. Data Ownership Clarify the ownership rights and responsibilities associated with the data exchanged under the mutual recognition scheme.	Data Ownership: • The Parties agree that all Data Messages or Electronic Documents sent by the Originator shall belong to the Originator until it is duly received or deemed to have been received by the Addressee, and thereupon, the Data Messages or Electronic Documents shall belong to the Originator and Addressee jointly.
11. Audit Define procedures for conducting audits to verify compliance with the agreement and technical standards	11. Audit: • Parties may impose reasonable audit requirements on each other to ensure compliance with terms and conditions. • Relevant parties must comply with audit requirements, provide necessary assistance and documents, and rectify any non-compliance found. • Without prejudice to any remedies available to the other Parties, the relevant Party shall also use its best endeavors to rectify any non-compliance or problems found by the auditors.

Draft provisions	Example
12. Amendment Procedures Detail the process for making amendments to the agreement, including approval mechanisms and notification requirements.	12. Amendment Procedures: • Parties may amend the agreement and related documents, technical and procedural requirements, rules, and policies according to specified procedures. • Amendments are valid only if agreed upon in writing and signed by the Parties.

13. Notices:
Specifies methods and timelines for sending notices or other forms of communication between parties.
	13. Notices
	• All notices required to be given by a Party to any other Party under this Agreement shall be in writing, delivered by hand, or sent by registered post with return acknowledgment to the address of the addressee as set out in this Agreement or to such other address as the addressee may from time to time have notified for the purpose of this clause or sent by electronic means of message transmission producing hard copy read-out, and shall be deemed to have been received:
	  • if sent by registered post: 3 business days after posting, exclusive of the day of posting;
	  • if delivered by hand: on the day of delivery
	  • if sent by electronic means: at the time of transmission, if transmitted during business hours of the receiving instrument and if not during business hours, one hour after the commencement of the next working day following the day of transmission.

14. Funding Address funding mechanisms and responsibilities for supporting the operation and maintenance of the mutual recognition scheme.	14. Funding: • For the activities carried out under this Agreement, unless agreed otherwise, each Party will be responsible for its own expenses and will provide resources adequate to carry out its own commitments in relation to the activities hereto
15. Others Address miscellaneous provisions such as liabilities, intellectual property rights, and force majeure events.	

Draft provisions	Example
Technical Annex The Technical Annex includes the adopted protocol for messages and comprises various documents specifying message processing, interconnection, and document specifications. Technical Annex may include recommendations from the Mutual Recognition Arrangement (MRA) Committee regarding technical standards and guidelines.	Technical Annex The Technical Annex comprises of the following documents: • Message Processing Specification • Interconnection Specification • Document Specification