Framework Agreement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific
- An update -

Trade Facilitation Unit
Trade, Investment and Innovation Division
United Nations Economic and Social Commission for Asia and the Pacific
INTERNATIONAL TRADE AND DEVELOPMENT

20. Framework Agreement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific

Bangkok, 19 May 2016

Not yet in force: in accordance with article 19, the Agreement shall enter into force ninety (90) days after the date on which the Governments of at least five (5) ESCAP member States have deposited their instruments of ratification, acceptance, approval or accession to the present Agreement pursuant to article 18, paragraphs 2 and 3.

Text: Certified true copy


Note: The above Agreement was adopted on 19 May 2016 by resolution 72/4 during the seventy-second session of the United Nations Economic and Social Commission for Asia and the Pacific.
CUTTING-EDGE UN TREATY TO FACILITATE CROSS-BORDER PAPERLESS TRADE IN ASIA AND THE PACIFIC

The new UN treaty entitled Framework Agreement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific is expected to both build upon and support existing initiatives, also providing a new tool and “digital” complement for better implementation of the WTO Agreement on Trade Facilitation and facilitate cross-border e-commerce.

Developed and developing countries are increasingly using technological innovations to facilitate the exchange of information between traders and regulatory authorities domestically, investing in single window and other paperless trade systems. The lack of appropriate legal and technical frameworks enabling the recognition of trade-related electronic data and documents across borders often means, however, that international implementation of the WTO Agreement on Trade Facilitation and facilitate cross-border e-commerce. Implementation of cross-border paperless trade measures can potentially increase Asia-Pacific exports annually by US$ 36 billion up to US$ 257 billion. In tandem, the time required to export would fall between 24% and 44%, and the direct costs between 17% and 31%, depending on the reform scenario considered. Furthermore, the total

(a) A common set of general principles, based on which paperless trade systems could be implemented;

(b) A dedicated intergovernmental platform to exchange best practices, and to facilitate capacity-building and technical assistance;

(c) The opportunity to multilaterally develop, adopt and implement more specific and
New UN treaty to facilitate paperless trade in Asia and the Pacific to support Trade Facilitation Agreement implementation

01.10.2016

A new UN treaty, entitled Framework Agreement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific, will open for signature on 1 October 2016. It is expected to provide countries of Asia and the Pacific with a new tool and "digital" complement for better implementation of the WTO Trade Facilitation Agreement (TFA) and the development of cross-border e-commerce. Grounded on a common set of general principles and a dedicated intergovernmental platform, the regional treaty will provide Parties with enhanced opportunities to exchange and harmonize practices, build each other's capacity, and multilaterally develop, adopt and implement more specific and detailed technical and/or legal protocols needed to achieve safe and secure cross-border paperless trade. Implementation will build upon existing international standards as well as ongoing bilateral and subregional initiatives, such as the ASEAN Single Window.

In May 2012, Member States of the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) adopted a Resolution on Enabling Paperless
20.10.16 – Single window service providers across South-east and East Asia express support for the Framework Agreement
17.10.16 - Agreement on cross-border paperless trade in Asia and the Pacific may simplify trade of Eurasian Economic Union members with other countries in the region
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Paperless Trade (e-trade)?

- **Paperless Trade**
  Conduct of trade activities on the basis of electronic rather than paper documents, *e.g.* electronic Customs declaration, electronic cert. of origin (application of e-commerce to international trade domain)

- **Paperless Trade Systems**
  Legal/regulatory and technical frameworks in which paperless trade transactions take place *e.g.* electronic Single Window facility, e-port management systems, Framework Act on Electronic Transaction (in RoK)
Benefits of Paperless Trade

**Government**

- Effective & Efficient Deployment of Resources
- Correct Revenue Yield
- Improved Trader Compliance
- Enhanced Security
- Increased Integrity & Transparency

**Traders**

- Cutting Costs through Reducing Delays
- Faster Clearance & Release
- Predictable Application and Explanation of Rules
- Effective & Efficient Deployment of Resources
- Increased Transparency
Cross-border flow of information in need of further facilitation
United Nations Regional Commissions
Global Survey on Trade Facilitation and Paperless Trade Implementation

Report and Data

Africa
Asia and the Pacific
Latin America and the Caribbean
Western Asia

Global Report
Countries Report

unnext.unescap.org/UNTFSurvey2015.asp
Implementation very heterogeneous across the region
TF and Paperless Trade Implementation in Asia-Pacific: 2015 Survey Highlights

Transparency measures most implemented; Cross-border paperless trade measures least implemented

Note: Blue dots show regional average implementation level of individual measures within each group. Red line shows average regional implementation level by groups of measures.

Source: unnext.unescap.org/UNTFSurvey2015.asp
Challenges to moving forward on cross-border paperless trade

- Adoption of common International Standards
- Harmonization of legal frameworks
- Capacity gaps among the parties (infrastructure & HR)
- Cooperation between public and private sectors
- Lack of intergovernmental coordination mechanism
Framework Agreement on the Facilitation of Cross-Border Paperless Trade in Asia and the Pacific - Overview

- A new UN Treaty
  - Open to interested (53) ESCAP member states (voluntary) to become parties
  - Opened for signature on 1 October 2016 at UN Headquarters, New York

- Objective
  To facilitate cross-border paperless trade (data exchange) among willing ESCAP member states by providing a dedicated intergovernmental framework to develop legal and technical solutions

- Complementary to the WTO Trade Facilitation Agreement as well as (sub)regional efforts

- 4 year step-by-step development process (ESCAP resolutions 68/3, 70/6, 72/4)
  - Over 30 countries directly involved in finalizing the treaty text in March 2016
Framework Agreement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific: Contents

Preamble
Articles 1 to 16: Substantive clauses
Article 1: Objective
Article 2: Scope
Article 3: Definitions
Article 4: Interpretation
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Article 8: Cross-border Mutual Recognition of Trade-related Data and Documents in Electronic Form
Article 9: International Standards for Exchange of Trade-related Data and Documents in Electronic Form
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Article 12: Action Plan
Article 13: Pilot Projects and Sharing of Lessons Learned
Article 14: Capacity Building
Article 15: Implementation of the present Framework Agreement
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Articles 17 to 25: Final clauses
Framework Agreement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific: Benefits

- **Region-wide multilateral intergovernmental platform**
  Builds upon existing bilateral/subregional initiatives; Supports WTO TFA implementation; Forster harmonization and minimize necessity for numerous bilateral/subregional intergovernmental approach;

- **Strong capacity building programme**
  Inclusive imitative, open to Asia-Pacific countries at all levels of development; Strong emphasis on knowledge sharing and CB/TA among parties

- **Pilot projects**
  Allow parties to adjust their systems before engaging in actual cross-border trade data exchange

- **Action Plan**
  Allow parties with different implementation level to set actions based on their respective readiness

- **Mutual recognition**
  Commit to the goal, while allowing flexibility in how to materialize the goal
Estimating the Benefits of Cross-Border Paperless Trade

**ABSTRACT**

This report estimates the possible economic benefits—export gains, and cost savings—from partial or full implementation of cross-border paperless trade facilitation measures. Simulation results suggest that cross-border paperless trade has significant potential to reduce trade costs and boost trade in the Asia-Pacific region. Moreover, there is every reason to believe that these are low-end estimates of the possible economic gains from reform, due to the way in which the simulations are set up on a technical level, and the fact that they focus on implementation of cross-border measures only. In reality, paperless trade is typically implemented on a broader basis, which would tend to increase the level of export gains and cost savings reported here.

Annual regional export gains:
- $36 bn (for partial implementation) to $257 bn (full implementation)

Export time reduction: 24% to 44%

Export cost reduction: 17% to 31%

Total direct cost savings across all trade: $1bn to $7bn annually

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Framework Agreement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific: Key Provisions

Article 1: Objective
The objective of the present Framework Agreement is to promote cross-border paperless trade by enabling the exchange and mutual recognition of trade-related data and documents in electronic form and facilitating interoperability among national and subregional single windows and/or other paperless trade systems, for the purpose of making international trade transactions more efficient and transparent while improving regulatory compliance.
Art. 5: General principles

- Non-discrimination of the use of Electronic communications
- Technological neutrality
- Promotion of interoperability
- Functional Equivalence
- Improving transboundary trust environment
- Cooperation between the public and private sectors
- Improved trade facilitation and regulatory compliance
- General Principles
Overview of provisions: Key provisions

Cross-border Mutual Recognition

Article 8

Article 11

Article 14

Article 13

... Article 12

Capacity Building

Pilot Projects and Sharing of Lessons Learned

Institutional Arrangements

Action Plan
Overview of provisions: Cross-border mutual recognition

Article 8
Cross-border mutual recognition of trade-related data and documents in electronic form

1. The Parties shall provide for mutual recognition of trade-related data and documents in electronic form originating from other Parties on the basis of a substantially equivalent level of reliability.

2. The substantially equivalent level of reliability would be mutually agreed upon among the Parties through the institutional arrangement established under the present Framework Agreement.

3. The Parties may enter into bilateral and multilateral arrangements to operationalize cross-border mutual recognition of trade-related data and documents in electronic form, in a manner consistent with the principle of the transboundary trust environment and all the other general principles, provided that the provisions of these bilateral and multilateral arrangements do not contradict the present Framework Agreement.
Article 11
Institutional arrangements

1. The United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) shall, for the purposes of the present Framework Agreement, establish a paperless trade council comprising one (1) high-level nominee from each Party. The Council shall meet upon request but at least once a year.

2. In the performance of its functions, the Paperless Trade Council shall be supported by a standing committee, which shall supervise and coordinate the implementation of the present Framework Agreement and submit its recommendations to the Council for review. The Standing Committee shall be composed of senior representatives of each Party and will meet at least once a year.

3. For the purposes of implementing the present Framework Agreement, the Standing Committee may establish working groups which shall report to the Standing Committee on the implementation of the related action plan under the present Framework Agreement.
Overview of provisions: Institutional arrangements (Cont’d)

4. The ESCAP secretariat shall be designated the secretariat of the present Framework Agreement and shall also be the secretariat of the bodies established under the present Framework Agreement. It shall provide support in coordinating, reviewing and supervising the implementation of the present Framework Agreement and in all related matters.

5. The Council shall, by a two-thirds majority vote, adopt such rules of procedure as may be required for the performance of its functions, including for the Standing Committee and the Working Groups. Except as otherwise provided for in the present Framework Agreement, decisions by the Council shall be taken by a majority of votes cast by members present and voting, provided that at least two thirds of the participating States are present.

6. The Council and the Standing Committee may, under their competence determined in the rules of procedure, adopt protocols on specific legal, technical and organizational matters. The requirements for entry into force of any protocol shall be established in that instrument.
1. The Standing Committee, under the supervision of the Paperless Trade Council, shall develop a comprehensive action plan, which shall include all concrete actions and measures with clear targets and implementation timelines necessary for creating a consistent, transparent and predictable environment for the implementation of the present Framework Agreement, including the implementation schedules of the respective Parties. The Parties shall implement the action plan in accordance with the schedule, and the implementation status of each Party shall be reported to the Standing Committee.

2. The implementation schedule for each Party shall be developed as part of the action plan based on a self-assessment of their readiness.
Article 13
Pilot projects and sharing of lessons learned

1. The Parties shall endeavour to initiate and launch pilot projects on cross-border exchange of trade-related data and documents in electronic form, in particular among customs and other regulatory agencies. The Parties shall collaborate on such pilot projects through the institutional arrangements established under the present Framework Agreement.

2. The Parties shall report to the Standing Committee on the progress of pilot projects to facilitate the sharing of experience and lessons learned and to establish a collection of best practices for interoperability of cross-border exchange of trade-related data and documents in electronic form. The exchange of experience and lessons learned would extend beyond the Parties to the present Framework Agreement, to the extent possible and as appropriate, in an effort to promote paperless trade implementation throughout the region and beyond.
Overview of provisions: Capacity building

Article 14
Capacity-building

1. The Parties may cooperate to provide technical support and assistance to each other in order to facilitate the implementation of the present Framework Agreement.

2. The Parties may collaborate on capacity-building through the institutional arrangements established under the present Framework Agreement.

3. The Parties shall give special consideration to requests from least developed and landlocked developing countries for technical assistance and cooperation arrangements designed to assist them in developing their paperless trade capacity and in taking full advantage of the potential benefits of the present Framework Agreement.

4. The Parties may invite development partners for more effective technical and financial assistance in the implementation of the present Framework Agreement.
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Article 18
Procedure for signing and becoming a Party

1. The present Framework Agreement shall be open for signature by ESCAP member States at United Nations Headquarters in New York from 1 October 2016 to 30 September 2017.

2. ESCAP member States may become Parties to the present Framework Agreement by:
   (a) Signature, followed by ratification, acceptance or approval; or
   (b) Accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument with the Secretary-General of the United Nations.
Procedure for Becoming a Party: Signature, followed by ratification, acceptance or approval

- The **Head of State, Head of Government or Minister for Foreign Affairs** may sign a treaty on behalf of the State without an instrument of full powers.

- Most multilateral treaties expressly provide for States to express their consent to be bound by signature subject to ratification, acceptance or approval. Providing for signature subject to ratification allows States time to seek approval for the treaty at the domestic level and to enact any legislation necessary to implement the treaty domestically, prior to undertaking the legal obligations under the treaty at the international level.

A person other than the Head of State, Head of Government or Minister for Foreign Affairs may sign a treaty only if that person possesses a valid instrument of full powers.

Form of instrument of full powers
1. The instrument of full powers must be signed by one of the three above-mentioned authorities and must unambiguously empower a specified person to sign the treaty.
2. Full powers are usually limited to one specific treaty and must indicate the title of the treaty.
3. Full powers must state the full name and title of the representative authorized to sign.
4. Date and place of signature must be indicated.
5. Official seal (Optional)
Procedure for Becoming a Party: Model instrument of full power for signing

FULL POWERS

I, [name and title of the Head of State, Head of Government or Minister for Foreign Affairs].

HEREBY AUTHORIZE [name and title] to [sign *, ratify, denounce, effect the following declaration in respect of, etc.] the [title and date of treaty, convention, agreement, etc.] on behalf of the Government of [name of State].

Done at [place] on [date].

[Signature]
Procedure for Becoming a Party: Procedural flow for signing a treaty

Is the treaty open for signature by the State wishing to sign?

- NO
  - The State cannot sign but may be able to accede to the treaty.

- YES
  - Is the proposed signatory the Head of State, Head of Government or Minister for Foreign Affairs of the State?
    - NO
      - Prepare instrument of full powers in accordance with annex 3 for the proposed signatory.
      - Deliver a copy of instrument of full powers by e-mail or fax to the Treaty Section for review, preferably, where appropriate, including a translation into English or French.
    - YES
      - Make an appointment with the Treaty Section for signature.
      - Attend the appointment:
        - Present the original instrument of full powers.
        - Sign the treaty.

Generally, there is no time limit within which a State is requested to ratify a treaty which it has signed. Upon entry into force of the treaty for a State, that State becomes legally bound under the treaty.

Acceptance or approval of a treaty following signature has the same legal effect as ratification, and the same rules apply, unless the treaty provides otherwise.

Procedure for Becoming a Party: Model instrument of ratification, Acceptance or Approval

[RATIFICATION / ACCEPTANCE / APPROVAL]

WHEREAS the [title of treaty, convention, agreement, etc.] was [concluded, adopted, opened for signature, etc.] at [place] on [date].

AND WHEREAS the said [treaty, convention, agreement, etc.] has been signed on behalf of the Government of [name of State] on [date].

NOW THEREFORE I, [name and title of the Head of State, Head of Government or Minister for Foreign Affairs] declare that the Government of [name of State] having considered the above-mentioned [treaty, convention, agreement, etc.], [ratifies, accepts, approves] the same and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF, I have signed this instrument of [ratification, acceptance, approval] at [place] on [date].

[Signature]
A State may generally express its consent to be bound by a treaty by depositing an instrument of accession with the depositary (see article 15 of the Vienna Convention 1969).

Accession has the same legal effect as ratification, acceptance or approval. However, unlike ratification, acceptance or approval, which are preceded by signature to create binding legal obligations under international law, accession requires only one step, namely, the deposit of an instrument of accession.
ACCESSION

WHEREAS the [title of treaty, convention, agreement, etc.] was [concluded, adopted, opened for signature, etc.] at [place] on [date],

NOW THEREFORE I, [name and title of the Head of State, Head of Government or Minister for Foreign Affairs] declare that the Government of [name of State], having considered the above-mentioned [treaty, convention, agreement, etc.], accedes to the same and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF, I have signed this instrument of accession at [place] on [date].

[Signature]
Procedure for Becoming a Party: Procedural flow for ratifying, accepting, approving or acceding to a treaty

1. Prepare instrument of ratification, acceptance or approval (as applicable) in accordance with annex 4.
2. E-mail or fax a copy of the instrument for review, preferably including a translation into English or French, where appropriate.
3. Deliver the original instrument by hand or mail to the Treaty Section.
4. If the instrument is e-mailed or faxed to the Treaty Section for immediate deposit, deliver the original instrument to the Treaty Section as soon as possible thereafter.

Has the State already signed the treaty?

Is the treaty open for accession by the State (without prior signature)?

The State cannot accede to the treaty.

1. Prepare instrument of accession in accordance with annex 5.
2. E-mail or fax to the Treaty Section, preferably including a translation into English or French, where appropriate.
3. Deliver the original instrument by hand or mail to the Treaty Section.
4. If the instrument is e-mailed or faxed to the Treaty Section for immediate deposit, deliver the original instrument to the Treaty Section as soon as possible thereafter.

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1. Why was the Framework Agreement on the Facilitation of Cross-border Paperless Trade in Asia and the Pacific (FA) prepared?

2. Why the agreement at regional level?

3. Does the FA duplicate the efforts of other regional initiatives such as APEC and ASEAN?

4. What are the benefits of the FA to my country?

5. How was the text of the FA developed?

6. Which agency should play a leading role in cross-border paperless trade facilitation?

7. What does the text of the FA contain?

8. What is the nature of the FA?

9. To what areas is the FA applied?

10. What are key features of the FA?

11. What is the relationship between the FA and the WTO Agreement on Trade Facilitation?

More information: FAQ on the FA

12. What is the relevance of the FA to Least Developed Countries (LDCs) and Land-Locked Developing Countries (LLDCs)?
13. What are the obligations of parties?
14. What are conditions for entry into force of the FA?
15. What actions would follow after entry into force?
16. What would be covered in the action plan?
17. What is the timeline to achieve cross-border paperless trade in Asia-Pacific?
18. If I become a party, do I have to exchange electronic data and information with all other parties?
19. How will my country benefit from becoming a party at an early stage?
20. What are possible negative impacts of the FA?
21. Do I need to fulfill technical and legal requirements to become a party to the FA?
22. Who would sign the FA from my country?
More information: Webpage on the FA

Thank you

www.unescap.org/our-work/trade-investment/trade-facilitation

unnex.unescap.org

http://communities.unescap.org/cross-border-paperless-trade-facilitation
Figure 12: State of implementation of “paperless trade” measures in Asia-Pacific economies (in %)

Source: unnext.unescap.org/UNTFSurvey2015.asp
Figure 14: State of implementation of “cross-border paperless trade” measures in Asia-Pacific economies (in %)

Source: unnext.unescap.org/UNTFSurvey2015.asp
Towards “Next Generation” TF [and cross-border e-commerce] in Asia-Pacific

Figure 20: Moving up the trade facilitation ladder towards seamless international supply chains

Implementation of TF as a step-by-step process...

Note: the figure shows cumulative trade facilitation implementation scores of Asia-Pacific sub-regions for five groups of trade facilitation measures included in the survey. Full implementation of all measures = 100.

unnext.unescap.org/UNTFSurvey2015.asp