

Frequently Asked Questions (FAQ) on the Framework Agreement on Facilitation of Cross- border Paperless Trade in Asia and the Pacific

November 2016

(version 0.2)

Note: This FAQ to the Framework Agreement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific (FA) has been prepared to assist officials and other stakeholders interested in the FA to quickly grasp its origin and key features. It is based on discussions and inputs from officials and experts who have been involved throughout stages of development of the treaty. The FAQ is an informal document and its content should not be used to support any particular legal interpretation of the provisions contained in the FA. The FAQ will be regularly updated. For any questions, please contact the ESCAP Secretariat at lim6@un.org and duvaly@un.org.

United Nations ESCAP

Contents

1. Why was the Framework Agreement on the Facilitation of Cross-border Paperless Trade in Asia and the Pacific (FA) prepared?	3
2. Why the agreement at regional level?	4
3. Does the FA duplicate the efforts of other regional initiatives such as APEC and ASEAN?	4
4. What are the benefits of the FA to my country?	5
5. How was the text of the FA developed?	6
6. Which agency should play a leading role in cross-border paperless trade facilitation? ..	7
7. What does the text of the FA contain?	8
8. What is the nature of the FA?	8
9. To what areas is the FA applied?	9
10. What are key features of the FA?	9
11. What is the relationship between the FA and the WTO Agreement on Trade Facilitation?	9
12. What is the relevance of the FA to Least Developed Countries (LDCs) and Land-Locked Developing Countries (LLDCs)?	10
13. What are the obligations of parties?	11
14. What are conditions for entry into force of the FA?	11
15. What actions would follow after entry into force?	11
16. What would be covered in the action plan?	12
17. What is the timeline to achieve cross-border paperless trade in Asia-Pacific?	12
18. If I become a party, do I have to exchange electronic data and information with all other parties?	12
19. How will my country benefit from becoming a party at an early stage?	12
20. What are possible negative impacts of the FA?	13
21. Do I need to fulfill technical and legal requirements to become a party to the FA?... 13	
22. Who would sign the FA from my country?	13

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

The potential benefits from conducting trade transactions on the basis of electronic rather than paper-based data and documentation were recognized by a number of Asian and Pacific countries, who began implementing paperless trade systems from the late 1990s and early 2000s. The economic gains from early implementation of such systems have been significant, as in the cases of the Republic of Korea¹ and Singapore².

To date, most of the paperless trade systems in the region have focused on facilitating information exchange between stakeholders domestically. However, facilitating international trade inherently requires trade information to flow also across borders along international supply chains, not only among domestic stakeholders. As a result, the flow of electronic trade information generated domestically encounters both technical and legal barriers beyond the border, requiring traders to maintain conventional paper-based trade practices, thus reducing the overall benefits and return on investment from paperless trade systems.

The need to find effective ways to address these technical and legal barriers to cross-border paperless trade has been raised regularly and increasingly by both public and private stakeholders in the region, in particular since the High-level Symposium on Building Regional Capacity for Paperless Trade, which was jointly organized by ESCAP and the Economic Commission for Europe on 24 and 25 March 2009. Ultimately, several ESCAP member States decided to sponsor a draft resolution on the matter. The Commission subsequently adopted the resolution 68/3³ on 23 May 2012. Implementation of the resolution led to the drafting of a regional arrangement on cross-border paperless trade.

Definition of cross-border paperless trade

“Trade taking place on the basis of electronic communications, including exchange of trade-related data and documents in electronic form across borders”

** Differences between “Paperless Trade” and “e-commerce”*

E-commerce is a generic term used to denote exchanging relevant information and data electronically among parties for business purpose. When e-commerce is applied to specific business domain, it is called e-procurement, e-tourism, e-customs, e-government, e-parliament, etc. When e-commerce is applied to international trade, it is called paperless trade, or e-trade. The word ‘commerce’ can generally give an implication of commercial activities, but in the context of e-commerce, it is used inclusive of both commercial and non-commercial activities. In more strict sense, the term “electronic business” or “e-business” is a more accurate generic term to denote “exchanging relevant information and data electronically among parties for business purpose. In practice, the terms “e-commerce” and

¹ See <http://unnex.unescap.org/pub/brief3.pdf>

² See <http://unnex.unescap.org/pub/brief2.pdf>

³ See <https://www.unescap.org/sites/default/files/ESCAP-Resolution-68-3.pdf>

“e-business” are used interchangeably, with the term ‘e-commerce’ being more widely and commonly recognized.

2. Why the agreement at regional level?

The Asia Pacific region is home to world leaders of paperless trade (such as Singapore and Republic of Korea). Many Asian countries have been working towards the realization of paperless trade. There are some bilateral (e.g., cross-border exchange of electronic certificate of origin between Republic of Korea and Taiwan Province of China) and subregional (e.g., ASEAN Single Window) cross-border paperless trade initiatives in the region. An arrangement made at regional level would have the advantage of providing an overarching regional-level framework to facilitate the interoperability of existing and emerging bilateral and subregional cross-border paperless trade initiatives⁴. This would more effectively support intraregional trade, as mandated by ESCAP Resolution 68/3.

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

The answer is NO. The FA differs in its nature and coverage from other regional initiatives as follows:

(1) Asia Pacific Economic Cooperation (APEC)

- ✓ There is no initiative within APEC to develop a regional agreement in the area of cross-border paperless trade⁵. The FA is a binding UN treaty.
- ✓ APEC activities are conducted on the basis of non-binding commitment. Most activities in APEC are conducted for advocacy of certain issues in the form of workshops, seminars, symposiums, studies, etc. by specific fora. While those forms of promotional activities are valuable, they have limits in producing a concrete implementation action. The FA establishes an intergovernmental platform where interested member states can take proactive implementation action jointly.
- ✓ APEC covers only 21 economies (five of them being in America), while the FA is open to 53 member states in Asia and the Pacific region.

(2) Association of Southeast Asian Nations (ASEAN)

- ✓ ASEAN has a specific intergovernmental agreement on implementing the ASEAN Single Window (ASW). However, implementation scope is limited to its members, 10

⁴ See reviews of relevant initiatives at <https://www.unescap.org/publications/enhancing-regional-connectivity-towards-regional-arrangement-facilitation-cross-border>

⁵ One APEC study recognizes importance of intergovernmental coordination and mentions that the “implementation of ECO [Electronic Certificate of Origin] also needs the international cooperation and coordination among the economies.” See <https://www.apec.org/Publications/2012/11/Study-on-the-Readiness-of-ECO-Implementation-in-Cross-Border-Trade-in-APEC-Region>

countries in Southeast Asia. The FA is open to 53 member states in Asia and the Pacific region.

- ✓ The ASW is focused on the implementation of a specific mechanism, a Single Window. The FA does not focus on development of a certain system but provides a framework for member States to create an enabling environment for cross-border trade data exchange.
- ✓ To ensure complementarity and prevent any possible duplication, officials and experts involved in the development of ASW had been invited to participate in the whole process of developing the FA.

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

ESCAP member states who will choose to become party to the FA can expect the following benefits⁶, inter alia:

- ✓ Ready access to potential counterpart countries for negotiation on cross-border data exchange, thus avoiding numerous bi-lateral approaches and reducing the work involved in the preparation of bi-lateral or subregional arrangements.
- ✓ Improvement in paperless trade readiness at national level and the acceleration of progress towards a paperless trade environment on the basis of demonstrated political will.
- ✓ The opportunity to make national paperless trade practices interoperable and better prepared to engage in cross-border trade data exchange, in particular through structured and regular sharing of lessons.
- ✓ Direct participation in the development of pragmatic solutions for the cross-border exchange of trade documents. This can increase the possibility of becoming early adopter/implementer, which would potentially boost trade competitiveness.
- ✓ Reduction of overall investment costs and maximization of return from investments in paperless trade systems, resulting from concurrent development of national paperless trade systems and environment for cross-border trade data exchange.
- ✓ Reduced trade transaction time and costs.
- ✓ Improved levels of compliance by traders to regulatory requirements in international trade.

⁶ For study findings on benefits of cross-border paperless trade, see <http://www.unescap.org/resources/estimating-benefits-cross-border-paperless-trade>

- ✓ Greater advantage for Small and Medium-sized Enterprise (SMEs), an essential but disadvantaged group of traders in every country, by reducing the time and manpower required for fulfilling paper based practices.
- ✓ Reduction of paperwork for trade associated with a growing number of FTAs through electronic exchange of data and documents, such as certificates of origin.

5. How was the text of the FA developed?

The draft regional arrangement was developed as part of implementing the ESCAP resolution 68/3 entitled *Enabling paperless trade and the cross-border recognition of electronic data and documents for inclusive and sustainable intraregional trade facilitation*.

Adopted by ESCAP members in May 2012, the resolution intends to enable paperless trade and the cross-border recognition of electronic data and documents as a means of promoting inclusive and sustainable intraregional trade facilitation.

The resolution invites member States to work towards the development of regional arrangements on the facilitation of cross-border paperless trade. It also requests the ESCAP secretariat to support and facilitate the process for the development of regional arrangements on the facilitation of cross-border paperless trade. Furthermore it calls for continuing and further strengthening the secretariat's support for capacity-building activities related to trade facilitation and paperless trade.

The draft text of a regional arrangement on the facilitation of cross-border paperless trade was developed in 2012-2013 through:

- ✓ A regional study on feasibility and potential options⁷,
- ✓ Expert reviews (2 expert group meetings), and
- ✓ Member consultations (3 subregional meetings and one regional meeting).

A report on the implementation results was made to the third session of the Committee on Trade and Investment (CTI) held on 20-22 November 2013⁸. The CTI noted the progress made on the implementation and supported the desire of member States for a regional arrangement on the facilitation of cross-border paperless trade. The CTI agreed to move forward with the negotiation of the arrangement and, taking note of the need for further discussion, requested the secretariat to organize another member consultation in the form of an ad hoc intergovernmental meeting prior to the seventieth session of the Commission in

⁷ See <https://www.unescap.org/publications/enhancing-regional-connectivity-towards-regional-arrangement-facilitation-cross-border>

⁸ See the report of the Third Session of the Committee on Trade and Investment at <https://unnxt.unescap.org/sites/default/files/10e.pdf>

order to incorporate relevant revisions to the existing draft.

The Ad Hoc Intergovernmental Meeting on a Regional Arrangement for the Facilitation of Cross-border Paperless Trade⁹, held on 22-24 April 2014, further revised the draft text of a regional arrangement on the facilitation of cross-border paperless trade. The Meeting could not reach a consensus on finalizing the draft text and decided to establish the Interim Intergovernmental Steering Group on Cross-border Paperless Trade Facilitation, which was endorsed by the Commission at its seventieth session in August 2014 in the form of another Commission resolution 70/6.¹⁰ The Terms of Reference (ToR) of the Interim Intergovernmental Steering Group specifies that the Group is to:

- 1) further improve the draft text of the regional arrangement as a potential intergovernmental agreement,
- 2) prepare a draft roadmap for the implementation of substantive provisions in the draft text, and
- 3) other functions as agreed by the Steering Group.

In accordance with its ToR¹¹, the Steering Group had convened once a year as decided by its first meeting to conduct its duties. In its first meeting held on 1-3 April 2015¹², the Steering Group decided to create legal and technical working groups under it to expedite delivery of its mandated tasks. Through official nomination process, more than 50 officials and experts were nominated and participated as members of the working groups from more than 23 seats of Governments of ESCAP members. The two working groups regularly convened for negotiation through both virtual and physical meetings since their inception in September 2015, including four physical meetings and numerous virtual meetings.

The Steering Group, held on 23-25 March 2016, finalized the text of the regional arrangement as the Framework Agreement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific (FA). The ESCAP Commission, at its 72nd session on 15 - 19 May 2016, adopted the FA as the Commission resolution 72/4.

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

Paperless trade facilitation is a cross-sectoral matter that requires involvement of all the regulatory agencies related to trade facilitation as well as private sectors. Which agency

⁹ See http://www.un.org/ga/search/view_doc.asp?symbol=E/ESCAP/PTA/IGM.1/2

¹⁰ See http://www.un.org/ga/search/view_doc.asp?symbol=E/ESCAP/RES/70/6

¹¹ See the Terms of Reference at :

<https://www.unescap.org/sites/default/files/TOR%20of%20Interim%20Intergovernmental%20Steering%20Group%20on%20CPTF.pdf>

¹² See <http://www.unescap.org/events/first-meeting-intergovernmental-steering-group-cross-border-paperless-trade-facilitation>

should lead on this depends on national circumstances of each country. More important thing is not which agency is to lead, but whichever agency leads, such agency should play a proper coordination role and ensure involvement of all the related regulatory agency in the process as well as incorporating requirements of private sectors.

7. What does the text of the FA contain?

It contains a preamble and 25 articles. The preamble provides the background and rationale for this arrangement. Articles 1 to 16 are substantive clauses, covering objective, scope, definitions, general principles and other action-oriented measures as follows:

Article 1: Objective

Article 2: Scope

Article 3: Definitions

Article 4: Interpretation

Article 5: General principles

Article 6: National Policy Framework, Enabling Domestic Legal Environment and Paperless Trade Committee

Article 7: Facilitation of Cross-border Paperless Trade and Development of national Single Window(s)

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

Article 10: Relation with Other Legal Instruments Enabling Cross-Border Paperless Trade

Article 11: Institutional Arrangements

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

Article 16: Other agreements in force

Articles 17 to 25 are final clauses, specifying standard provisions typical of a UN treaty as follows:

Article 17: Dispute Resolution

Article 18: Procedure for Signing and Becoming a Party

Article 19: Entry into Force

Article 20: Procedures for Amending the Framework Agreement

Article 21: Reservations

Article 22: Withdrawal

Article 23: Suspension of validity

Article 24: Limits to the application

Article 25: Depositary

8. What is the nature of the FA?

The FA is a UN treaty text and is a ***voluntary agreement, i.e.,*** each ESCAP member state will decide for itself if and when to become a party. The primary focus of the FA is ***facilitation*** of cross-border paperless trade, not cross-border paperless trade transaction itself. Therefore,

most provisions center on measures for promoting cross-border paperless trade, not on detailed and specific mechanism for engaging in cross-border paperless trade. In line with this focus, most provisions are *best endeavor* in nature.

9. To what areas is the FA applied?

The FA intends to facilitate cross-border trade data exchange related to regulatory processes such as Government-to-Government (G2G) and Government-to-Business (G2B). Pure Business-to-Business (B2B) processes are out of scope of the FA. However, some B2B documents are required to be submitted as attachments to regulatory documents. Since it is more efficient to make all the related data and documents electronic, rather than having part of data/documents remain paper-based, those B2B documents may be considered under application scope of the FA.

10. What are key features of the FA?

The FA has the following key features:

- ✓ A set of key principles to promote connectivity and trade facilitation, including functional equivalence, promotion of interoperability, improved trade facilitation and regulatory compliance, and cooperation between public and private sectors
- ✓ A multi-layered institutional arrangement as an operating platform: a Council at high level as a decision-making body; a Standing Committee at senior official level as an operative body; and Working Groups, at expert level, as substantive supportive bodies.
- ✓ A comprehensive action plan: the purpose of the action plan is to set a practical activity plan to address legal and technical issues in cross-border paperless trade on a consensus basis. This action plan will be developed by the Standing Committee and Working Groups. The collective implementation of the action plan is expected to result in the emergence of practical standardized solutions and protocols for cross-border paperless trade. It would also include development of technical and legal measures, detailed actions for designing pilot projects and subsequent actual projects, capacity building support and information and experience sharing activities among members, etc.

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

The FA, with its wholly ICT-based trade facilitation provisions, is complementary to the WTO Agreement on Trade Facilitation (TFA). ESCAP resolution 70/6 specifically emphasizes this and notes that the “work of the interim steering group on cross-border paperless trade facilitation would not duplicate but complement the work being done in

relation to the implementation of the World Trade Organization Trade Facilitation Agreement”.

Implementing the FA supports ESCAP member States in easily meeting the requirements of many provisions of the WTO TFA, inter alia, Formalities connected with importation and exportation and transit (Article 10), Release and clearance of goods (Art. 7), Border agency cooperation (Art. 8).

The WTO TFA focuses on conventional trade facilitation measures such as publication and availability of information, advance ruling, fees and charges, release and clearance of goods. It has a provision on a Single Window at national level, either paper-based or electronic, not targeted at cross-border paperless trade.

The FA, on the other hand, is wholly dedicated to facilitation of paperless trade, in particular cross-border. Though both the WTO TFA and the FA have provisions on a Single Window, there is no conflict between the two. The Single Window provision of the WTO TFA in fact specifies that “Members shall, to the extent possible and practical, use information technology to support the single window”. Implementing the regional arrangement is therefore expected to help ESCAP member states to easily meet the Single Window requirements of the WTO TFA.

12. What is the relevance of the FA to Least Developed Countries (LDCs) and Land-Locked Developing Countries (LLDCs)?

LDCs usually lack human, institutional and financial resources for paperless trade. The FA features strong capacity building support provisions, which can enhance access to technical assistance opportunities in cross-border paperless trade. With its mechanism on sharing of lessons, it provides LDCs ready access to learning from and bench-marking other first movers in the region. With its pilot project mechanism, it provides an opportunity to engage in practical experiences in paperless trade implementation, instead of going through redundant trial and error processes.

LLDCs have a geographical disadvantage in conducting trade transactions. The FA could facilitate transit processes, reducing time and costs for LLDCs. For example, if both an LLDC and its neighboring transit country are parties to the FA, transit related information between them could be exchanged electronically.

LDCs and LLDCs in the region are in early stages of implementing paperless trade. Many of them already have in place policies for advancing automation and paperless trade. Therefore, becoming a party to the FA will only help implement those related policies and provide an opportunity to make their national paperless trade systems interoperable in cross-border paperless trade, accelerating their international readiness and improving their trade environment.

13. What are the obligations of parties?

Major obligations for Member States who become parties to the FA would include:

- ✓ Mostly best endeavor in implementing substantive provisions of the FA in line with the key principles featured in it.
- ✓ Participation in the bodies of the institutional arrangement of the FA, including the Council (annual), Standing Committee (at least once a year), and Working Groups (at least twice a year).
- ✓ Participation in developing and implementing collective actions to be agreed upon by the Council.
- ✓ Development and implementation of individual action (self-specified) at national level to improve domestic paperless trade environment.
- ✓ Sharing of lessons learnt, participation in pilot projects and provision of technical assistance on a voluntary basis.

14. What are conditions for entry into force of the FA?

The FA specifies that it would officially enter into force 90 days after the fifth member State deposits its instruments of ratification, acceptance, approval, or accession, i.e., after at least five member States consent to be bound by the FA. The depositary of the FA is the Secretary General of the United Nations.

A member State can become a party either by signature followed by ratification, acceptance, approval, or by accession. For details on the procedure to becoming a party, please refer to the UN Treaty Handbook, in particular pages 5 – 10. Model Instruments of full powers, ratification, acceptance, approval or accession, and reservation and declaration can be found in the annexes of the UN Treaty Handbook.

The UN Treaty Handbook is available at:
<https://treaties.un.org/doc/source/publications/THB/English.pdf>

15. What actions would follow after entry into force?

The secretariat would start preparing readiness checklists, a draft action plan and other relevant templates to facilitate implementation before it enters into force, based on the draft road map to be prepared by the Interim Intergovernmental Steering Group on Cross-border Paperless Trade Facilitation. Within 6 - 12 months of entry into force, the secretariat, in consultation with the parties, would prepare and organize a first Paperless Trade Council and Standing Committee meetings. The Standing Committee meeting would be represented/participated in by senior officials, usually at the level of director general or

deputy director general, of the 5 or more parties involved, while the Paperless Trade Council would be represented by high-level officials.

The agenda of the initial Paperless Trade Council meeting would include adoption of its terms of reference and rules of procedure as well as for the Standing Committee, consideration on the formation of Working Groups, plan for preparing action plans, etc.

16. What would be covered in the action plan?

The action plan would cover, inter alia, the following matters:

- ✓ Timeline and tasks for implementation (roadmap)
- ✓ Readiness assessment checklist
- ✓ Development of capacity building programme
- ✓ Schedule for collective and individual actions
- ✓ Pilot projects development and implementation plan
- ✓ Development of technical and legal guides
- ✓ Mechanism for sharing of lessons
- ✓ List of identified target trade transaction areas, requiring cross-border information/data exchange, such as certificate of origin, sanitary and phyto-sanitary certificate, Customs declaration, etc.

17. What is the timeline to achieve cross-border paperless trade in Asia-Pacific?

Development of a cross-border paperless trade is a continuous and long-term process with a time horizon of two decades or more. The FA is aimed at providing a platform for committed parties to make faster progress towards cross-border paperless trade.

18. If I become a party, do I have to exchange electronic data and information with all other parties?

No. The FA does not include such a binding provision, as it is a facilitation agreement. Hence, it aims at making cross-border exchange of electronic data and documents among parties legally and technically possible - but not legally mandatory.

19. How will my country benefit from becoming a party at an early stage?

Those countries that join the FA early will benefit from first mover advantage. Parties to the FA will, in principle, make faster progress towards electronic exchange and recognition of electronic trade documents, reducing trade cost and time with each other and gaining a competitive advantage. In addition, becoming a party to the FA will provide momentum for a

country to move towards a national paperless trade environment, as exemplified in the case of ASEAN Single Window commitment. See also Q 4.

20. What are possible negative impacts of the FA?

None. With its flexible best endeavor provisions, practical cooperation mechanisms and capacity building support, all the participating member states are expected to benefit regardless of their current level of paperless trade readiness.

21. Do I need to fulfill technical and legal requirements to become a party to the FA?

No. All the technical and legal particulars for facilitating cross-border paperless data exchange among the parties will be decided by consensus among the parties after its entry into force and through the institutional arrangements specified in the FA. See also Q 17.

22. Who would sign the FA from my country?

Head of State, Head of Government, Minister for Foreign Affairs can sign the FA. Anyone other than a Head of State, Head of Government, or Minister for Foreign Affairs would need to have full powers to sign the Agreement. Model Instruments of full powers can be found in the annexes of the UN Treaty Handbook. The UN Treaty Handbook is available at: <https://treaties.un.org/doc/source/publications/THB/English.pdf>

For any further questions, please contact:

Mr. Yann Duval

Chief, Trade Facilitation Unit

Trade and Investment Division

Email: duvaly@un.org

or,

Mr. Sangwon Lim

Economic Affairs Officer, Trade Facilitation Unit

Trade and Investment Division

Email: lim6@un.org