



Economic and Social Commission for Asia and the Pacific

First Meeting of the Interim Intergovernmental Steering Group
 on Cross-border Paperless Trade Facilitation

Bangkok, 1-3 April 2015

Report of the First Meeting of the Interim Intergovernmental Steering Group on Cross-border Paperless Trade Facilitation

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I. Matters calling for action by the Commission or brought to its attention

A. Operation of the Interim Intergovernmental Steering Group on Cross-border Paperless Trade Facilitation

The Interim Intergovernmental Steering Group on Cross-border Paperless Trade Facilitation (Steering Group) decided to meet in person on an annual basis. In addition, it decided to create two working groups under it, with the following terms of reference.

1. Names

The two working groups under the Steering Group shall be called the Legal Working Group and Technical Working Group.

2. Membership

Officials and/or experts nominated by the national focal points on implementation of Commission resolution 68/3 or by the Governments of ESCAP members and associate members.

3. Functions

The Legal Working Group and Technical Working Group shall further improve the draft text of the regional arrangement as a potential intergovernmental agreement, prepare a draft road map for the implementation of substantive provisions in the draft text and perform any other tasks directed by the Steering Group.

1. The Legal Working Group shall carry out the following duties:

- (a) To lead overall revision of the draft text of the regional arrangement;
- (b) To review and revise legal provisions in the draft text of the regional arrangement;
- (c) To prepare the legal provisions of the draft road map;
- (d) To carry out any other tasks assigned to it by the Steering Group.

2. The Technical Working Group shall carry out the following duties:

- (a) To take responsibility for preparing the draft road map for the implementation of substantive provisions in the draft text;
- (b) To review and revise technical provisions in the draft text of the regional arrangement;
- (c) To prepare the technical provisions in the draft road map;
- (d) To carry out any other tasks assigned to it by the Steering Group.

4. Mode of operation

1. The Legal Working Group and Technical Working Group shall have both physical and virtual meetings, with at least two physical meetings between each of the meetings of the Steering Group. In each physical meeting, the Legal Working Group and Technical Working Group shall have joint sessions to coordinate their respective work.

2. The Legal Working Group and Technical Working Group may each elect a Chair and Vice-Chair(s).
3. Participation in the meetings of the Legal Working Group and Technical Working Group will be on a self-financed basis.
4. To the extent possible, physical meetings shall be held in conjunction with other main ESCAP events related to trade.
5. The Legal Working Group and Technical Working Group may invite relevant regional experts, including experts of the United Nations Network of Experts for Paperless Trade in Asia and the Pacific (UNNExT), to assist in carrying out their duties.
6. The Legal Working Group and Technical Working Group shall cease to exist once they have completed their duties.
7. All the meetings will be conducted in English only.
8. The decisions of the Legal Working Group and Technical Working Group shall be made on a consensus basis.

5. Reporting

The Legal Working Group and Technical Working Group shall report progress made in conducting their duties to each meeting of the Steering Group.

6. Secretariat

The Trade Facilitation Unit of the ESCAP secretariat shall serve as the secretariat of the Legal Working Group and Technical Working Group.

B. Improvement of the draft text of the regional arrangement for the facilitation of cross-border paperless trade

The Meeting discussed, incorporating all the proposals made by the representatives, and improved the draft Agreement/Framework Agreement/Framework Arrangement on Facilitation of Cross-border Paperless Trade, which appears below.

Draft Agreement/Framework Agreement/Framework Arrangement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific [Alternative 1: “Framework Agreement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific” - Republic of Korea and Russian Federation; alternative 2: “Regional Arrangement for Facilitation of Paperless Trade” - Pakistan]

The Parties to the present Agreement/Framework Agreement/Framework Arrangement (hereinafter referred to as “the Parties”),

Conscious of the importance of trade as an engine of growth and development and the need to increase the efficiency of international trade transactions to maintain and enhance the competitiveness of the region,

Recognizing that paperless trade makes international trade more efficient and transparent while improving regulatory compliance, particularly if trade-related data and documents in electronic form are exchanged across borders,

Noting that the trade and supply chain security initiatives under implementation in major export markets will make it increasingly necessary for all actors in the international supply chain to exchange data and documents electronically,

Considering the fact that many countries of the Asia-Pacific region are currently engaged in implementing electronic systems at the national level to expedite processing of trade-related data and documents,

Also considering the fact that countries of the Asia-Pacific region increasingly include provisions for electronic exchange of information in their trade agreements,

Recognizing the conclusion of the negotiation of the Agreement on Trade Facilitation at the ninth Ministerial Conference of the World Trade Organization and the importance of the implementation of the Agreement,

Aware that facilitating mutual recognition and exchange of trade-related data and documents in electronic form between landlocked and transit countries would significantly reduce transit time and costs, and enhance trade and development opportunities for the landlocked countries,

Also aware that facilitating exchange of trade-related data and documents in electronic form would particularly enable small and medium-sized enterprises to more effectively participate in international trade and enhance their competitiveness,

Mindful of the different levels of economic as well as information and communications technology development of the Parties,

Acknowledging that the availability of information and communications technology and related physical infrastructure is not sufficient in some countries to ensure sustainable business development,

Noting the necessity to establish an enabling legal environment [based on uniform standards (insert: the United Nations Commission on International Trade Law (UNCITRAL))] in order to maximize the benefits associated with cross-border paperless trade,

Desirous of formulating a legal framework to deepen and broaden cooperation in cross-border paperless trade facilitation among the Parties and to chart the future developments in this area,

Hereby *agree* as follows:

Article 1

Objective

The objective of the present Agreement/Framework Agreement/Framework Arrangement is to promote cross-border paperless trade by enabling 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.

Article 2

Scope

The present Agreement/Framework Agreement/Framework Arrangement applies to [cross-border (insert: Cambodia)] paperless trade between the Parties [and legal entities, which are under the jurisdiction of the Parties. (insert: Russian Federation)]

Article 3

Definitions

For the purpose of the present Agreement/Framework Agreement/Framework Arrangement:

(a) “Paperless trade” means trade taking place on the basis of electronic communications, including exchange of trade-related data and documents in electronic form; [replace “Paperless trade” with “Cross-border paperless trade” or add a definition of “cross-border” (Bangladesh and Thailand)]

(b) “Trade” means international trade in goods, including their import, export, transit and [their (insert: Pakistan)] related services;

(c) “Electronic communication” means any communication that the parties make by means of data messages;

(d) “Data message” means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange;

(e) “Trade-related data” means data contained in or transmitted in connection with a trade-related document;

(f) “Trade-related documents” means documents, both commercial and regulatory, required in completing commercial transactions;

(g) “Commercial transactions” means transactions relating to the sale of goods between parties whose places of business are in different territories;

(h) “Mutual recognition” means reciprocal recognition of the validity of trade-related data and documents in electronic form exchanged across borders between two or more countries;

(i) “Single window” means a facility that allows parties involved in a trade transaction to electronically lodge data and documents with a single entry point to fulfil all import, export, and transit-related regulatory requirements;

(j) “Interoperability” means the ability of two or more systems or components to exchange information and to use the information that has been exchanged;

[(j) bis “Transboundary trust space” means a combination of legal, organizational and technical conditions recommended by relevant specialized United Nations agencies (departments) and international organizations with the aim of ensuring trust (confidence in authenticity) in the international exchange of electronic documents and data between electronically interacting parties (subjects); (insert: Russian Federation)]

[(j) ter “Electronically interacting parties (subjects)” means the entirety of public authorities, physical and legal persons interacting within relations arising from forming, sending, transmitting, receiving, storage and using electronic documents and data. (insert: Russian Federation)]

(k) [add “Request and offer”: Russian Federation]

Article 4
Interpretation

Any interpretation of the present Agreement/Framework Agreement/Framework Arrangement must have due regard for the general principles on which it is based, for its international character and for the need to promote uniformity in its application.

Article 5
General principles

1. [With recognition of the right to regulate (delete: Russian Federation)], the present Agreement/Framework Agreement/Framework Arrangement shall be guided by the following general principles:

(a) Functional equivalence: functions of paper-based requirements should be analysed to determine how those functions could be fulfilled through electronic means; [non-discrimination; and technology neutrality; (add: UNCITRAL)]

(b) Promotion of interoperability;

(c) Improved trade facilitation and regulatory compliance;

(d) Cooperation between the public and private sectors;

[(e) Principle of interoperability presumes technical and technological compatibility of information systems, including the ability to exchange data in commonly used electronic formats, as well as stability. Interoperable systems should possess and maintain the capacity to enrol new participants – both from within and outside the country – enabling them to start operating the system quickly.

(f) Reliability of infrastructure, which applies common safety requirements for all of the participants. (Russian Federation)]

2. The Parties agree that implementing national legislation and regulations that apply these principles to the exchange of trade-related data and documents [including those for pre-shipment transboundary data exchange (India)] in electronic form will establish common levels of trust and increase interoperability.

Article 6
National policy framework, enabling domestic legal environment and paperless trade committee

1. The Parties shall endeavour to establish a national policy framework for paperless trade, which may define targets and implementation strategies, allocate resources, and a legislative framework.

2. The Parties shall endeavour to create an enabling domestic legal environment for paperless trade in conformity with international standards and best practices.

3. The Parties may establish a national committee, comprised of relevant representatives of government and private sector parties, in accordance with their domestic environment. The committee will promote a legally enabling domestic environment for exchange of trade-related data and documents in electronic form as well as facilitate interoperability of cross-border paperless trade. The Parties may alternatively rely on a similar body already functioning domestically in lieu of establishing a separate committee and may

designate that body, or an appropriate organizational unit or working group within it, as the national committee for the purpose of the present Agreement/Framework Agreement/Framework Arrangement.

Article 7

Facilitation of cross-border paperless trade and development of single windows

1. The Parties shall endeavour to facilitate cross-border paperless trade by enabling exchange of trade-related data and documents in electronic form, utilizing the existing systems in operation or creating new systems.
2. The Parties are encouraged to develop their single window systems and use them for cross-border paperless trade. In developing single window systems or upgrading existing ones, the Parties are encouraged to make them consistent with the general principles provided in the present Agreement/Framework Agreement/Framework Arrangement.

Article 8

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

1. The Parties [shall (may: Pakistan)] 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 (replace with “of the formation of a transboundary trust space for subjects of electronic interaction”: Russian Federation and Pakistan)]; [keep brackets pending review: (Japan and India)]. [To this extent, the Parties may constitute a technical group among themselves with the existing focal points (delete: India)].
2. [The substantially equivalent level of reliability would be mutually agreed upon among the Parties through the institutional arrangement established under the present Agreement/Framework Agreement/Framework Arrangement (replace with “The requirements for building, development, operating and performance of an audit of the transboundary trust space are prepared by the corresponding working groups of the Parties and adopted by the Paperless Trade Council”: Russian Federation).]

Article 9

International standards for exchange of trade-related data and documents in electronic form

1. The Parties shall endeavour to apply [international standards and guidelines in order to ensure regional and global interoperability in paperless trade (replace with “other international agreements between Parties including international standards and guidelines to support regional and global interoperability in paperless trade and to elaborate secure and reliable communications protocols”: Russian Federation)] [adopted by the Parties (insert: Cambodia)] and develop safe and secure communication protocols for the exchange of data.
2. The Parties [are strongly encouraged (replace with “will endeavour”: Russian Federation)] to become involved in the development of international standards and best practices related to cross-border paperless trade.

Article 10

Relation with other legal instruments enabling cross-border paperless trade

1. The Parties shall, where appropriate, take into account, and whenever possible adopt, available and accepted international legal instruments made by relevant United Nations bodies and other international organizations[, such as the United Nations Convention on the Use of Electronic Communications in International Contracts (delete: Republic of Korea, Islamic Republic of Iran, China, India and Japan)].¹

2. The Parties shall endeavour to ensure that the cross-border exchange of trade-related data and documents in electronic form is consistent with international law as well as regional and international regulations and best practices. The relevant provisions of international law, regional and international regulations, and best practices shall be decided on by the institutional arrangement established under the present Agreement/Framework Agreement/Framework Arrangement.

Article 11

Legal liability framework

The Parties shall endeavour to establish an adequate legal and regulatory framework to address specific liability and enforcement issues that may arise in relation to the cross-border exchange of trade-related data and documents in electronic form. [The data utilization by member customs administrations and other government agencies should adhere to the principles of commercial secrecy, should prohibit unauthorized access and should allow for remedial provisions, including compensation for any commercial losses. The necessary legal protection from liability for member customs administrations should also be incorporated. (India and Islamic Republic of Iran); (Russian Federation reserves position)]

Article 12

Institutional arrangements

1. The United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) shall, for the purposes of the present Agreement/Framework Agreement/Framework Arrangement, establish a paperless trade council comprising one (1) [ministerial-level nominee (replace with “high-level nominee”: Russian Federation and Pakistan; India would like to retain)] from each Party and the Executive Secretary of ESCAP. The Council shall meet once a year [or upon request (insert: Cambodia, India and Russian Federation)].

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 Agreement/Framework Agreement/Framework Arrangement 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 Agreement/Framework Agreement/Framework Arrangement, the Standing Committee may establish [technical, legal, dispute resolution (Cambodia and India)] working groups [comprising relevant technical or legal experts (delete: Cambodia and India)] which shall report to the Standing Committee on the implementation of the

¹ General Assembly resolution 60/21, annex.

related action plan under the present Agreement/Framework Agreement/Framework Arrangement.

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

[5. The Parties shall inform the ESCAP secretariat through the diplomatic channels of their representatives in the Council, Standing Committee and working groups. (insert: Russian Federation)]

[6. (Russian Federation suggests description of decision-making procedures in the Council, the Standing Committee and the working groups be specified in the article.)]

Article 13

Action plan

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 Agreement/Framework Agreement/Framework Arrangement 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 action plan shall incorporate a road map for the operationalization of cross-border paperless trade, including the adoption of international standards, implementation of pilot projects and capacity-building related to the present Agreement/Framework Agreement/Framework Arrangement. It should also incorporate a mechanism for the assessment of existing legal frameworks and technological gaps and for their further improvement in order to enable paperless trade.

Article 14

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 arrangement established under the present Agreement/Framework Agreement/Framework Arrangement.

2. The Parties [may (replace with “shall”: Russian Federation)] 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 Agreement/Framework Agreement/Framework Arrangement, to the extent

possible and as appropriate, in an effort to promote paperless trade implementation throughout the region and beyond.

Article 15
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 Agreement/Framework Agreement/Framework Arrangement. [Technical assistance [shall (Japan: may)] be provided through various mechanisms, including a “request and offer” approach, to facilitate exchanges of skills and best practices. (delete: Pakistan)]
2. The Parties may collaborate on capacity-building through the institutional arrangement established under the present Agreement/Framework Agreement/Framework Arrangement.
3. Special consideration shall be given by the Parties 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 Agreement/Framework Agreement/Framework Arrangement.
4. The Parties may invite development partners for more effective technical and financial assistance in the implementation of the present Agreement/Framework Agreement/Framework Arrangement.

Article 16 [delete, or delete and move necessary text into other relevant articles: Republic of Korea]

Implementation of the present Agreement/Framework Agreement/Framework Arrangement

1. Each Party shall endeavour to implement the provisions of the present Agreement/Framework Agreement/Framework Arrangement by creating a legally enabling environment and developing the necessary technical infrastructure to facilitate the cross-border exchange of trade-related data and documents in electronic form. The Parties recognize that the least developed and landlocked developing countries may need technical and financial assistance to develop technical infrastructure and to create a legally enabling environment, which are essential for facilitating the cross-border exchange of trade-related data and documents in electronic form.
2. [An implementation schedule[s for each Party (delete: Cambodia)] shall be developed as part of the action plan based on an assessment of the readiness of the Parties. (delete: Russian Federation)]

[Article 16 bis
Protocols

1. The Parties may, at any regular meeting of the Council, adopt relevant technical or legal protocols to the present Agreement/Framework Agreement/Framework Arrangement.
2. The text of any proposed protocol shall be communicated to the Parties by the secretariat at least six months before such a session.
3. The requirements for the entry into force of any protocol shall be established by that instrument.

4. Only Parties to the present Agreement/Framework Agreement/Framework Arrangement may be parties to a protocol.

5. Decisions under any protocol shall be taken only by the parties to the protocol concerned (insert: Republic of Korea and Russian Federation)].

**[Article xx
Other agreements in force**

This Agreement or any action taken thereto shall not affect the rights and obligations of the Contracting Parties under any existing agreements or international conventions to which they are also contracting parties (insert: Thailand, Russian Federation and India)].

**Article 17
Dispute resolution**

1. Any dispute that may arise among the Parties regarding the interpretation and application of the present Agreement/Framework Agreement/Framework Arrangement shall be settled by means of negotiation or consultation among the Parties concerned [supported by the institutional arrangement in article 12. (insert: Cambodia)]

[2. In the event that the Parties (replace with “Parties that are parties”: Japan) to a dispute involving the present Agreement/Framework Agreement/Framework Arrangement are unable to settle it by negotiation or consultation, the Parties shall be referred to conciliation if any of the Parties to the dispute requests such a referral. (delete: Russian Federation)]

3. [The dispute shall be submitted to one or more conciliators selected by the Parties (replace with “Parties that are parties”: Japan) involved in (to: Japan) the dispute. If the Parties to the dispute fail to agree on [make (Japan)] the choice of a conciliator or conciliators within three (3) months after the request for conciliation, any of those Parties may request the Secretary-General of the United Nations to appoint a single conciliator to whom the dispute shall be submitted. (delete: Russian Federation)]

4. [The recommendation of the conciliator or conciliators appointed, while not binding in character, shall become the basis of renewed consideration by the Parties to the dispute. (delete: Russian Federation)]

5. [By mutual consent, the Parties to the dispute may decide in advance to accept the recommendation of the conciliator or conciliators as binding. (delete: Russian Federation)]

6. The provisions of the present article shall not be construed as excluding other measures for the settlement of disputes mutually agreed among the Parties to the dispute.

7. Any State may, at the time of depositing its instrument of ratification, acceptance, approval or accession, deposit a reservation stating that it does not consider itself bound by the provisions of the present article relating to conciliation. Other Parties shall not be bound by the provisions of the present article relating to conciliation with respect to any Party which has deposited such a reservation.

Article 18
Procedure for signing and becoming a Party

1. The present Agreement/Framework Agreement/Framework Arrangement shall be open for signature by States members of the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP member States) at _____, on _____, and thereafter at United Nations Headquarters in New York from _____ to _____

2. The ESCAP member States referred to in paragraph 1 above may become Parties to the present Agreement/Framework Agreement/Framework Arrangement by:

- (a) Signature subject to 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.

Article 19
Entry into force

1. The present Agreement/Framework Agreement/Framework Arrangement shall enter into force ninety (90) days after the date on which the Governments of at least five (5) (India suggests higher number) ESCAP member States have consented to be bound by the Agreement/Framework Agreement/Framework Arrangement pursuant to article 18, paragraphs 2 and 3.

2. For each ESCAP member State that deposits its instrument of ratification, acceptance, approval or accession after the date upon which the conditions for the entry into force of the present Agreement/Framework Agreement/Framework Arrangement have been met, the Agreement/Framework Agreement/Framework Arrangement shall enter into force for that Party ninety (90) days after the date of its deposit of the said instrument.

Article 20
Procedures for amending the Agreement [Framework Agreement]

1. The text of the present Agreement/Framework Agreement/Framework Arrangement may be amended by the procedure specified in the present article.

2. Amendments to the present Agreement/Framework Agreement/Framework Arrangement may be proposed by any Party.

3. The text of any proposed amendment shall be circulated to all members of the Paperless Trade Council by the secretariat at least sixty (60) days before the Council meeting at which it is proposed for adoption.

4. An amendment shall be adopted by the Paperless Trade Council by a two-thirds majority of the Parties [present and voting. (proposed deleting: Pakistan and India)] The amendment as adopted shall be communicated by the secretariat to the Secretary-General of the United Nations, who shall circulate it to all Parties for acceptance.

5. An amendment adopted in accordance with paragraph 4 of the present article shall enter into force twelve (12) months after it has been accepted by two thirds of the number of Parties at the time of its adoption [acceptance]. The amendment shall enter into force with respect to all Parties to the Agreement/Framework Agreement/Framework Arrangement except those which, before the twelve-month period specified above, declare that they do not accept the amendment. Any Party that has declared that it does not accept an amendment adopted in accordance with paragraph 4 may at any time thereafter deposit an instrument of acceptance of such amendment with the Secretary-General of the United Nations. The amendment shall enter into force for that Party twelve (12) months after the date of deposit of the said instrument.

Article 21
Reservations

Reservations may not be made with respect to any of the provisions of the present Agreement/Framework Agreement/Framework Arrangement, except as provided in article 17, paragraph 7 [replace with “The Parties may have the option of expressing a reservation to any of the articles within a time frame not extending beyond a reasonable mutually accepted period.” (insert: Pakistan)]

Article 22
Withdrawal

Any Party may withdraw from the present Agreement/Framework Agreement/Framework Arrangement by written notification addressed to the Secretary-General of the United Nations. The withdrawal shall take effect twelve (12) months after the date of receipt by the Secretary-General of such notification.

Article 23
Suspension of validity

The operation of the present Agreement/Framework Agreement/Framework Arrangement shall be suspended if the number of Parties becomes less than five (5) for any period of twelve (12) consecutive months. In such a situation, the secretariat shall notify the Parties. The provisions of the Agreement/Framework Agreement/Framework Arrangement shall again become operative if the number of Parties reaches five (5). (Align the number in accordance with the decision on article 19: India)

Article 24
Limits to the application

Nothing in the present Agreement/Framework Agreement/Framework Arrangement shall be construed as preventing a Party from taking such action, compatible with the provisions of the Charter of the United Nations and limited to the exigencies of the situation, as it considers necessary for its external or internal security.

Article 25
Depositary

The Secretary-General of the United Nations shall be designated the depositary of the present Agreement/Framework Agreement/Framework Arrangement.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed the present Agreement/Framework Agreement/Framework Arrangement,

OPENED for signature on the _____ at _____, in a single copy in the Chinese, English and Russian languages, the three texts being equally authentic.

C. Preparation of a draft road map for the implementation of substantive provisions in the draft text of the regional arrangement

The Meeting took note of the note prepared by the secretariat as well as suggestions made by regional experts in the expert panel session, and delegated the task of preparing a draft road map to the two working groups under it, for review at its second meeting.

II. Summary of proceedings

A. Update on the implementation of Commission resolutions 68/3 and 70/6 (Agenda item 2)

1. The Meeting had before it the document entitled “Update on the implementation of Commission resolutions 68/3 and 70/6” (E/ESCAP/PTA/IISG(1)/1). The Chief of the Trade Facilitation Unit introduced the document.

2. The Meeting noted the progress made in implementing Commission resolutions 68/3 and 70/6.

3. Statements were made by representatives of the following countries: India; Iran (Islamic Republic of); Nepal; Republic of Korea; and Russian Federation. The representative of the World Trade Organization (WTO) also made a statement.

4. The representative of the Republic of Korea complimented the work done by the secretariat in implementing the resolutions. Referring to the trust fund created in 2013, the representative also noted that his country would try to continue to support it.

5. The representative of WTO provided an update on the status of implementing the WTO Trade Facilitation Agreement and noted the clear complementarity between the Agreement and the present text of the regional arrangement, highlighting that implementing the regional arrangement would make it easier for ESCAP members to meet the obligations under the Agreement.

6. The representative of Nepal highlighted the importance of including provisions to accommodate capacity gaps of least developed countries and landlocked developing countries in the regional arrangement under development and suggested that the text of the WTO Trade Facilitation Agreement could be a useful reference in that regard.

7. The representative of the Islamic Republic of Iran sought clarification on the voluntary nature of the present draft text of the regional arrangement. The secretariat explained that signing and ratification would be voluntary, as each member State would have to decide for itself whether and when to become a Party to the agreement once the draft text of the regional arrangement was finalized and open for signature.

8. The representative of the Russian Federation highlighted the importance of including a commitment to a certain level of implementation in the regional arrangement to achieve cross-border mutual recognition of electronic trade data and documents.

9. The representative of India, noting the complementarity between the WTO Trade Facilitation Agreement and the present regional arrangement, highlighted the importance of focusing on information and communications technology (ICT) applications in the regional arrangement, in particular development of specific protocols for cross-border electronic exchange of data and documents as part of its implementation.

B. Discussion on operation of the Steering Group

(Agenda item 3)

10. The secretariat briefly introduced the terms of reference of the Interim Intergovernmental Steering Group on Cross-border Paperless Trade Facilitation.

11. Statements were made by representatives of the following countries: China; Iran (Islamic Republic of); Nepal; and Republic of Korea.

12. In the light of the potential challenges of holding frequent and virtual meetings, the Meeting agreed to hold the meeting of the Steering Group physically once a year. Owing to the legal and technical expertise required in conducting its mandated tasks, the Meeting also agreed to create two working groups under it, one covering legal issues and the other dealing with technical aspects.

13. The Meeting highlighted the benefits of organizing the meeting of the Steering Group in conjunction with major meetings of ESCAP. It also proposed to organize at least some of the meetings of the working groups back-to-back with the meetings of the Steering Group.

14. The Meeting also agreed to conduct meetings of the Steering Group only in English, considering the resource limitations and the highly technical nature of the deliberations.

C. Improvement of the draft text of the regional arrangement for the facilitation of cross-border paperless trade

(Agenda item 4)

15. The Meeting had before it the following documents: (a) "Draft text of the regional arrangement for the facilitation of cross-border paperless trade" (E/ESCAP/PTA/IISG(1)/WP.1); (b) "Proposed amendments to the draft text of the regional arrangement for the facilitation of cross-border paperless trade" (E/ESCAP/PTA/IISG(1)/CRP.1); (c) an addendum to "Proposed amendments to the draft text of the regional arrangement for the facilitation of cross-border paperless trade" (E/ESCAP/PTA/IISG(1)/CRP.1/Add.1); and (d) "Explanatory note to the draft text of the regional arrangement for the facilitation of cross-border paperless trade" (E/ESCAP/PTA/IISG(1)/CRP.2).

16. The secretariat presented the major changes made to the draft text of the regional arrangement at the Ad Hoc Intergovernmental Meeting on a Regional Arrangement for the Facilitation of Cross-border Paperless Trade, which was held in Bangkok from 22 to 25 April 2014.

17. The Meeting invited three regional experts to share their perspectives on the importance and role of key general principles related to cross-border paperless trade and e-commerce. The experts elaborated on non-discrimination of electronic communication, technology neutrality, functional equivalence and promotion of interoperability. The ensuing discussion focused on the definition of interoperability and prerequisites to achieving interoperability.

18. With reference to the proposed amendments distributed in advance, introductory statements were made by representatives of the Republic of Korea. In addition, representatives of the following countries made statements: China; Pakistan; Russian Federation; and Thailand.

19. In the process of negotiating the draft text of the regional arrangement, statements, proposals and interventions were made by representatives of the following countries: Afghanistan; Bangladesh; Cambodia; China; India; Iran (Islamic Republic of); Japan; Nepal; Pakistan; Philippines; Republic of Korea; Russian Federation; Samoa; and Thailand. Representatives from the Office of Legal Affairs and the United Nations Commission on International Trade Law (UNCITRAL) also made statements and proposals.

20. The Meeting reviewed the draft text paragraph by paragraph. The following revisions and suggestions were made:²

1. Preamble

21. Additional wording of “based on uniform standards” was proposed to be added after “Noting the necessity to establish an enabling legal environment” in the eleventh paragraph of the preamble.

2. Substantive clauses

22. In article 2, a proposal was made to specify the application scope by adding “cross-border” before the word “paperless trade”. It was also proposed that “and legal entities, which are under the jurisdiction of the Parties” after the word “Parties” be inserted.

23. In article 3, a proposal was made to additionally define “cross-border” or replace the definition of “paperless trade” with “cross-border paperless trade”, taking into account the cross-border context of the present regional arrangement. In that connection, the Meeting also discussed the distinction between paperless trade and electronic commerce. Regarding the definition of “Trade”, the word “their” was proposed to be placed before “related services”. Proposals were also made to insert definitions of “Trans-boundary trust space” and “Electronically interacting Parties (subjects)”.

24. In article 5, the Meeting deliberated on removing the phrase “With recognition of the right to regulate”.

25. In article 6, the Meeting discussed the need to clarify paragraph 2. The representative of UNCITRAL suggested having all three principles, non-discrimination of electronic communication, technology neutrality and functional equivalence, or just making a reference to them in the draft text, as a solution.

² Proposals and suggestions for changes are specified in the draft text, as appears in section I.B.

26. In article 8, a proposal was made to replace the phrase “substantially equivalent level of reliability” with the concept of “transboundary trust space”. The Meeting agreed to deliberate further on that proposed change.

27. In article 9, specific proposals were made to improve the wording of “international standards and guidelines”, based on the view that the current text was vague.

28. In article 10.1, some delegates proposed deleting the words “such as the United Nations Convention on the Use of Electronic Communications in International Contracts”.

29. In article 12, the Meeting discussed the representation level of officials to the Paperless Trade Council with a proposed alternate wording. In connection with article 17, a change of wording was proposed to add dispute resolution role to the function of the Standing Committee. In addition, suggestions were made to specify nomination and decision-making processes for the institutional bodies specified in the article.

30. In article 14.2, the Meeting discussed the merit of replacing the word “may” with “shall” with regard to reporting responsibility of the parties on pilot projects.

31. In article 15.1, the Meeting agreed to replace the word “shall” with “may”; and also discussed possibly deleting the sentence on technical assistance provision mechanism. For article 15.3, a proposal was made to replace the word “shall” with “may”. The Meeting also discussed the need to clarify such terms as “request and offer” and “special consideration”.

32. In article 16, the Meeting discussed the value addition of that article, and the possibility of deleting part or all of it. The Meeting agreed that the flexibilities implied by article 16.2 through linking implementation with the level of readiness of individual parties should be retained, possibly by incorporating that text into article 12 or another relevant article.

33. The Meeting agreed to add two additional articles in substantive clauses, one on protocols to make it a framework agreement, and the other on allowing obligation indemnity to other international conventions.

3. Final clauses

34. In article 17, the Meeting had an extensive discussion on dispute resolution mechanisms, including deletion of most of its provisions for the benefit of simplicity and linking it to the duties of the institutional bodies in article 12. The representative of the Office of Legal Affairs provided guidance on questions pertaining to dispute resolution mechanisms and indicated that that deletion of some provisions in the article would be feasible.

35. In article 19, the Meeting discussed the appropriate number of members for the entry into force of the present regional arrangement. The Meeting agreed to further assess the best number by referring to other relevant treaties, in particular those managed by ESCAP.

36. In article 20.4, the Meeting discussed decision-making on amendments, with a proposal to improve the wording. In article 20.5, the Meeting agreed to add “number of” before “Parties” in the third line.

37. In article 21, the Meeting discussed the possibility of giving more flexibility on the right to reserve.

38. In article 23, a proposal is made to adjust the number, depending on the decision made with regard to article 19.

39. The Meeting agreed to delegate further deliberation on proposals and suggestions for further improvement of the draft text of the present regional arrangement to the two working groups under it.

D. Preparation of a draft road map for the implementation of substantive provisions in the draft text of the regional arrangement
(Agenda item 5)

40. The Meeting had before it a note by the secretariat entitled “Preparation of a draft road map for the implementation of substantive provisions in the draft text of the regional arrangement for the facilitation of cross-border paperless trade” (E/ESCAP/PTA/IISG(1)/2). The secretariat introduced the main points of the note to the Meeting, including a preliminary list of tasks and issues for consideration.

41. The Meeting invited three regional experts to share their views on how to prepare a draft road map. They elaborated on potential cross-border paperless trade processes, private-sector perspectives and cross-border mutual recognition, based on discussions that had taken place in the Capacity-building Workshop on Cross-border Paperless Trade Facilitation, which had been organized on 31 March 2015 as a back-to-back event. They replied to questions from the floor on their presentations. The Meeting noted their recommendations for subsequent consideration by its working groups.

42. The Russian Federation indicated that the note prepared for this agenda item provided a very clear and comprehensive list of actions and tasks that should form the basis of the draft implementation road map.

E. Other matters
(Agenda item 6)

43. The Meeting requested the Chair to continue his functions until the next meeting of the Steering Group so as to ensure continuity of discussions.

44. The Meeting approved the terms of reference, as appears above, of its two working groups and requested the secretariat to initiate a process for operating them, including inviting ESCAP members and associate members to nominate potential candidates to serve on them in April 2015. The Meeting agreed to organize physical meetings of the working groups back-to-back with major ESCAP events on trade and trade facilitation, including the Asia-Pacific Trade Facilitation Forum 2015, the fourth session of the Committee on Trade and Investment and the second meeting of the Steering Group.

45. The Meeting requested the secretariat to select tentative dates for the next meeting, taking into account the schedule of future meetings of other relevant international organizations so as to avoid possible clashes, and to inform ESCAP members and associate members accordingly.

F. Adoption of the report of the Meeting
(Agenda item 7)

46. The Meeting adopted the present report on 3 April 2015.

III. Organization of the session

A. Opening, duration and organization

47. The First Meeting of the Interim Intergovernmental Steering Group on Cross-border Paperless Trade Facilitation was held in Bangkok from 1 to 3 April 2015.

48. The officer in charge of the Trade and Investment Division of ESCAP made an opening statement.

B. Attendance

49. The session was attended by representatives of the following ESCAP member States: Afghanistan; Armenia; Australia; Bangladesh; Bhutan; Cambodia; China; India; Iran (Islamic Republic of); Japan; Lao People's Democratic Republic; Maldives; Mongolia; Myanmar; Nepal; New Zealand; Pakistan; Papua New Guinea; Philippines; Republic of Korea; Russian Federation; Samoa; Sri Lanka; Tajikistan; Thailand; Uzbekistan; and Viet Nam.

50. The representative of Peru attended the Meeting as a permanent observer to ESCAP.

51. The session was also attended by representatives of the following United Nations bodies: Office of Legal Affairs, United Nations Headquarters,³ and United Nations Commission on International Trade Law.

52. The following intergovernmental organizations were represented: World Customs Organization; and World Trade Organization.

53. Three observers and three resource persons also attended.⁴

C. Election of officers

54. The following officers were elected:

Chair: Mr. Mikhail Maslov (Russian Federation)

Vice-Chairs: Mr. Yusuf Riza (Maldives)
Mr. Dae-Hyun Kim (Republic of Korea)

D. Agenda

55. The Meeting adopted the following agenda:

1. Opening of the Meeting:
 - (a) Opening address;
 - (b) Election of officers;
 - (c) Adoption of the agenda.
2. Update on the implementation of Commission resolutions 68/3 and 70/6.

³ By videoconference link.

⁴ See E/ESCAP/PTA/IISG(1)/INF/2.

3. Discussion on operation of the Steering Group.
4. Improvement of the draft text of the regional arrangement for the facilitation of cross-border paperless trade.
5. Preparation of a draft road map for the implementation of substantive provisions in the draft text of the regional arrangement.
6. Other matters.
7. Adoption of the report of the Meeting.

Annex

List of documents

Document symbol	Document title	Agenda item
<i>General series</i>		
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