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on Cross-border Paperless Trade Facilitation

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Item 3 of the provisional agenda*

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

Draft text of the regional arrangement for the facilitation of cross-border paperless trade**

Summary

The present draft text of the regional arrangement for the facilitation of cross-border paperless trade in Asia and the Pacific incorporates decisions made during the meeting of the Legal Working Group of the Interim Intergovernmental Steering Group on Cross-border Paperless Trade Facilitation, which was held in Bangkok from 19 to 21 January 2016.

The draft text consists of: (a) a preamble; (b) substantive clauses; and (c) final clauses. The Steering Group is invited to further review, negotiate and possibly finalize the text.

[Framework] Agreement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific

The Parties to the present [Framework] Agreement (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,

Noting that unimpeded trade plays a crucial role in promoting comprehensive connectivity, which will lead to trade creation and new growth in 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,

* E/ESCAP/PTA/IISG(2)/L.1.

** The present document was submitted late owing to the need to include the outcome of negotiations during the meeting of the Legal Working Group of the Interim Intergovernmental Steering Group on Cross-border Paperless Trade Facilitation, held in Bangkok from 19 to 21 January 2016.

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,

Considering also 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,

Aware also 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 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 [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.

Article 2
Scope

The present [Framework] Agreement applies to cross-border paperless trade between the Parties.

Article 3

Definitions

For the purpose of the present [Framework] Agreement:

- (a) “Cross-border paperless trade” means trade in goods, including their import, export, transit and related services, taking place on the basis of electronic communications, including exchange of trade-related data and documents in electronic form;
- (b) “Electronic communication” means any communication that the parties involved in trade make by means of data messages;
- (c) “Data message” means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange;
- (d) “Trade-related data” means data contained in or transmitted in connection with a trade-related document;
- (e) “Trade-related documents” means documents, both commercial and regulatory, required in completing commercial transactions;
- (f) “Commercial transactions” means transactions relating to the sale of goods between parties whose places of business are in different territories;
- (g) “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;
- (h) “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;
- (i) “Interoperability” means the ability of two or more systems or components to exchange information and to use the information that has been exchanged.

Article 4

Interpretation

Any interpretation of the present [Framework] Agreement 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. The present [Framework] Agreement shall be guided by the following general principles:
 - (a) Functional equivalence;
 - (b) Non-discrimination of the use of electronic communications;
 - (c) Technological neutrality;
 - (d) Promotion of interoperability;
 - (e) Improved trade facilitation and regulatory compliance;
 - (f) Cooperation between the public and private sectors;
 - (g) Improving transboundary trust environment.

2. The Parties agree that implementing national legislation and regulations that apply these principles to the exchange of trade-related data and documents 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 and allocate resources, and a legislative framework.

2. The Parties shall endeavour to create an enabling domestic legal environment for paperless trade, taking into consideration international standards and best practices.

3. The Parties may establish a national committee, comprising 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 [Framework] Agreement.

Article 7

Facilitation of cross-border paperless trade and development of single-window systems

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 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 [Framework] Agreement.

Article 8

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

1. The Parties shall [may] 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.]

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 and to develop safe, secure and reliable communications protocols for the exchange of data.
2. The Parties shall endeavour to become involved in the development of international standards and best practices related to cross-border paperless trade.

Article 10**Relation to 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.
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 [Framework] Agreement.

Article 11**Legal liability framework**

The Parties shall endeavor [are encouraged] to establish an adequate legal and regulatory framework [national legislation] 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.

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 [Framework] Agreement, establish a paperless trade council comprising one (1) high-level nominee from each Party and the Executive Secretary of ESCAP. 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 [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.

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 this [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.

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 [Framework] Agreement, including the implementation schedules of the respective Parties. The Parties shall [endeavour to] 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 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 [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.

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 [Framework] Agreement.

2. The Parties may collaborate on capacity-building through the institutional arrangement 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.

Article 16
Implementation of the present [Framework] Agreement

Each Party shall endeavour to implement the provisions of the present [Framework] Agreement 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 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.

[Article 16 bis
Protocol

1. The Parties shall, at any regular meeting of the Council, adopt relevant technical or legal protocols to the present [Framework] Agreement.

2. The text of any proposed protocol shall be communicated to the Parties by the secretariat at least six (6) 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 [Framework] Agreement may be parties to a protocol.

5. Decisions under any protocol shall be taken only by the parties to the protocol concerned.]

Article [XX]
Other agreements in force

The present [Framework] Agreement or any action taken under it shall not affect the rights and obligations of the Parties under any existing agreements or international conventions to which they are also parties.

Article 17
Dispute resolution

1. Any dispute that may arise among the Parties regarding the interpretation and application of the present [Framework] Agreement shall be settled by means of negotiation or consultation among the Parties concerned.

2. In the event that the Parties involved in a dispute relating to the present [Framework] Agreement are unable to settle it by negotiation or consultation, they shall be referred for conciliation if any of them requests such a referral.

3. The dispute shall be submitted to one or more conciliators selected by the Parties involved in the dispute. If the Parties involved in the dispute fail to agree on the choice of a conciliator or conciliators within three (3) months of 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.

4. The recommendation of the conciliator or conciliators appointed, while not binding in character, shall become the basis of renewed consideration by the Parties involved in the dispute.

5. By mutual consent, the Parties involved in the dispute may decide in advance to accept the recommendation of the conciliator or conciliators as binding.

6. The provisions of the present article shall not be construed as excluding other measures for the settlement of disputes mutually agreed between the Parties involved in 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 [Framework] Agreement shall be open for signature by ESCAP member States at _____, on _____, and thereafter at United Nations Headquarters in New York from _____ to _____.

2. ESCAP member States may become Parties to the present [Framework] Agreement 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 [Framework] Agreement shall enter into force ninety (90) days after the date on which the Governments of at least [five (5)] ESCAP member States have consented to be bound by the [Framework] Agreement 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 [Framework] Agreement have been met, the [Framework] Agreement 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 [Framework] Agreement

1. The text of the present [Framework] Agreement may be amended by the procedure specified in the present article.
2. Amendments to the present [Framework] Agreement 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 a two-thirds majority of the Parties present and voting at the meeting of the Paperless Trade Council.] 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 Parties at the time of its adoption. The amendment shall enter into force with respect to all Parties to the [Framework] Agreement except those which, before the expiry of the 12-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 [Framework] Agreement, except as provided in article 17, paragraph 7.

Article 22
Withdrawal

Any Party may withdraw from the present [Framework] Agreement 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 [Framework] Agreement 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 [Framework] Agreement shall again become operative if the number of Parties reaches [five (5)].

Article 24
Limits to the application

Nothing in the present [Framework] Agreement 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 [Framework] Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed the present [Framework] Agreement,

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