

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

¹ General Assembly resolution 60/21, annex.

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 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.