Frequently Asked Questions (FAQ) on the Draft Text of the Regional Arrangement on the Facilitation of Cross-border Paperless Trade

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(version 1.6)

Note: This FAQ to the draft regional arrangement on the facilitation of cross-border paperless trade has been prepared to assist officials and other stakeholders interested in the initiative to quickly grasp its origin and key features. It is based on discussions and inputs from officials and experts who have been involved throughout stages of development of the draft arrangement. The FAQ is an informal document and its content should not be used to support any particular legal interpretation of the provisions contained in the draft regional arrangement. The FAQ will be updated as the draft text evolves and new questions and inputs are received. For any questions, please contact the ESCAP Secretariat at $\lim 6$ un.org.

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1. Why was the draft text of a regional arrangement on Facilitation of Crossborder Paperless Trade prepared?

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

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

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

Definition of cross-border paperless trade

"Trade taking place on the basis of electronic communications, including exchange of traderelated data and documents in electronic form across borders"

* Differences between "Paperless Trade" and "e-commerce"

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

¹ See http://unnext.unescap.org/pub/brief3.pdf

² See http://unnext.unescap.org/pub/brief2.pdf

³ See http://unnext.unescap.org/escap-reso683.pdf

"e-business" are used interchangeably, with the term 'e-commerce' being more widely and commonly recognized.

2. Why an arrangement at regional level?

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

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

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

(1) Asia Pacific Economic Cooperation (APEC)

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

⁴ See reviews of relevant initiatives at http://unnext.unescap.org/tipub2684.pdf

⁵ One APEC study recognizes importance of intergovernmental coordination and mentions that the "implementation of ECO [Electronic Certificate of Origin] also needs the international cooperation and coordination among the economies." See http://publication-detail.php?pub id=1339

- ✓ ASEAN has a specific intergovernmental agreement on implementing the ASEAN Single Window (ASW). However, implementation scope is limited to its members, 10 countries in Southeast Asia. The regional arrangement is open to 53 member states in Asia and the Pacific region.
- ✓ The ASW is focused on the implementation of a specific mechanism, a Single Window. The regional arrangement does not focus on development of a certain system but provides a framework for member States to create an enabling environment for cross-border trade data exchange.
- ✓ To ensure complementarity and prevent any possible duplication, officials and experts involved in the development of ASW are invited to participate in the whole process of developing the regional arrangement.

4. What are the benefits of the regional arrangement to my country?

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

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

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

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

5. How was the draft text of a regional arrangement on Facilitation of Crossborder Paperless Trade prepared?

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

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

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

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

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

A report on the implementation⁸ results was made to the third session of the Committee on Trade and Investment (CTI) held on 20-22 November 2013⁹. The CTI noted the progress made on the implementation and supported the desire of member States for a regional

⁷ See http://unnext.unescap.org/tipub2684.pdf

⁸ For all the details on implementation of the resolution 68/3, please visit http://unnext.unescap.org/reso683.asp

⁹ See the report of the Third Session of the Committee on Trade and Investment at http://unnext.unescap.org/10e.pdf

arrangement on the facilitation of cross-border paperless trade. The CTI agreed to move forward with the negotiation of the arrangement and, taking note of the need for further discussion, requested the secretariat to organize another member consultation in the form of an ad hoc intergovernmental meeting prior to the seventieth session of the Commission in order to incorporate relevant revisions to the existing draft.

6. What is the current status of the draft text of a regional arrangement on Facilitation of Cross-border Paperless Trade? What would be the next step to finalize it?

The Ad Hoc Intergovernmental Meeting on a Regional Arrangement for the Facilitation of Cross-border Paperless Trade¹⁰, held on 22-24 April 2014, further revised the draft text of a regional arrangement on the facilitation of cross-border paperless trade. The Meeting could not reach a consensus on finalizing the draft text and decided to establish the Interim Intergovernmental Steering Group on Cross-border Paperless Trade Facilitation, which was endorsed by the Commission at its seventieth session in August 2014 in the form of another Commission resolution 70/6. ¹¹ The Terms of Reference (ToR) of the Interim Intergovernmental Steering Group specifies that the Group is to:

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

In accordance with its ToR¹², the Steering Group would meet every six month or as decided by its first meeting to conduct its duties. The first meeting of Interim Intergovernmental Steering Group on Cross-border Paperless Trade Facilitation will be held on 1-3 April 2015¹³. Participation in the activities of the Steering Group, including meetings, is open to the national focal points for the implementation of Commission resolution 68/3 from ESCAP members or official nominees of seats of Governments of ESCAP members. See also Q 14.

¹⁰ See http://www.un.org/ga/search/view_doc.asp?symbol=E/ESCAP/PTA/IGM.1/2

¹¹ See http://www.un.org/ga/search/view_doc.asp?symbol=E/ESCAP/RES/70/6

¹² See the Terms of Reference at:

http://www.unescap.org/sites/default/files/TOR%200f%20Interim%20Intergovernmental%20Steering%20Group%20on%20CPTF.pdf

¹³ See http://www.unescap.org/events/first-meeting-intergovernmental-steering-group-cross-border-paperless-trade-facilitation

7. Which agency should play a leading role in cross-border paperless trade facilitation, and who should participate in the Interim Intergovernmental Steering Group on Cross-border Paperless Trade Facilitation?

Paperless trade facilitation is a cross-sectoral matter that requires involvement of all the regulatory agencies related to trade facilitation as well as private sectors. Which agency should lead on this depends on national circumstances of each country. More important thing is not which agency is to lead, but whichever agency leads, such agency should play a proper coordination role and ensure involvement of all the related regulatory agency in the process as well as incorporating requirements of private sectors. By the same token, each government should encourage participation of all the related agencies to the work of the Steering Group, at least collect inputs of different agencies at national level and share them to the meetings of the Steering Group.

8. What does the draft text of the regional arrangement contain?

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

Article 1: Objective

Article 2: Scope

Article 3: Definitions

Article 4: Interpretation

Article 5: General principles

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

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

Article 8: Cross-border Mutual Recognition of Trade-related Data and Documents in Electronic Form

Article 9: International Standards for Exchange of Trade-related Data and Documents in Electro nic Form

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

Article 11: Legal Liability Framework

Article 12: Institutional Arrangements

Article 13: Action Plan

Article 14: Pilot Projects and Sharing of Lessons Learned

Article 15: Capacity Building

Article 16: Implementation of Agreement/Framework Agreement/Framework Arrangement

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

Article 17: Dispute Resolution

Article 18: Procedure for Signing and Becoming a Party

Article 19: Entry into Force

Article 20: Procedures for Amending the Agreement/Framework Agreement/Framework Arrange ment

Article 21: Reservations Article 22: Withdrawal

Article 23: Suspension of validity Article 24: Limits to the application

Article 25: Depositary

9. What is the nature of the draft regional arrangement?

The draft regional arrangement is a UN treaty text and is a *voluntary agreement*, *i.e.*, once the text has been finalized, each ESCAP member state will decide for itself if and when to become a party. The primary focus of the draft text of the regional arrangement is *facilitation* of cross-border paperless trade, <u>not cross-border paperless trade transaction itself.</u> Therefore, most provisions center on measures for promoting cross-border paperless trade, not on detailed and specific mechanism for engaging in cross-border paperless trade. In line with this focus, most provisions are *best endeavor* in nature.

10. What areas is the draft regional arrangement applied?

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

11. What are key features of the draft regional arrangement?

The regional arrangement has the following key features:

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

capacity building support and information and experience sharing activities among members, etc.

12. What is the relationship between the regional arrangement and the WTO Agreement on Trade Facilitation?

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

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

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

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

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

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

LLDCs have a geographical disadvantage in conducting trade transactions. The regional arrangement could facilitate transit processes, reducing time and costs for LLDCs. For example, if both an LLDC and its neighboring transit country are parties to the regional

arrangement, transit related information between them could be exchanged electronically.

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

14. What are the obligations of parties?

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

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

15. What are conditions for entry into force of the regional arrangement?

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

A member State can become a party either by signature (before the arrangement enters into force) or by accession (after the arrangement enters into force). In all cases, becoming a party involves signing, ratifying and depositing their instruments of ratification, acceptance, approval.

16. What actions would follow after entry into force?

The secretariat would start preparing readiness checklists, a draft action plan and other

relevant templates to facilitate implementation as soon as the text of the regional arrangement is finalized and before it enters into force, based on the draft road map to be prepared by the Interim Intergovernmental Steering Group on Cross-border Paperless Trade Facilitation. Within 6 months of entry into force, the secretariat, in consultation with the parties, would prepare and organize a first Standing Committee meeting. The Standing Committee meeting would be represented/participated in by senior officials, usually at the level of director general or deputy director general, of the 5 or more parties involved.

The agenda of the initial Standing Committee meeting would include a review and consideration of draft action plan prepared by the secretariat, consideration on the formation of Working Groups, and a tentative date and agenda for an initial Council meeting. Before the first Council meeting, the Standing Committee would prepare a comprehensive action plan, to be adopted by the Council, with the support of working groups and the secretariat.

17. What would be covered in the action plan?

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

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

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

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

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

No. The draft text of regional arrangement does not include such a binding provision, as it is a facilitation agreement. Hence, it aims at making cross-border exchange of electronic data

and documents among parties legally and technically possible - but not legally mandatory.

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

Those countries that join the arrangement early will benefit from first mover advantage. Parties to the regional arrangement will, in principle, make faster progress towards electronic exchange and recognition of electronic trade documents, reducing trade cost and time with each other and gaining a competitive advantage. In addition, becoming a party to the regional arrangement will provide momentum for a country to move towards a national paperless trade environment, as exemplified in the case of ASEAN Single Window commitment. See also Q 4.

21. What are possible negative impacts of this arrangement?

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

22. Do I need to fulfill technical and legal requirements to become a party to the regional arrangement?

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

23. Who would sign the arrangement from my country?

The signatory of the arrangement for a particular country would normally be at the ministerial level, but this is likely to vary from country to country depending on who has responsibility or authority for paperless trade matters and the internal ratification process of the arrangement.

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