

Draft Text of Arrangement/Agreement on Facilitation of Cross-border Paperless Trade for the Asia – Pacific Region

The ESCAP Member States who are parties to this Arrangement/Agreement (hereinafter referred to as "Contracting Parties"),

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

Recognizing that electronic commerce enhances the expansion of trade opportunities, and the importance of avoiding barriers to its use and development, the need to promote uniformity in the application of international standards and to aim for interoperability of paperless trade systems,

Also recognizing the potential of paperless trade in making international trade transactions more efficient and transparent,

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 national electronic Single Window systems to expedite processing of trade documents;

Also considering the fact that many countries of the Asia-Pacific region have significant provisions for exchange of information electronically in their Free Trade Agreements;

Aware that the benefits from these and related paperless trade systems would be greatly enhanced if the electronic documents generated by them could be used across borders;

Also aware that facilitating the cross-border recognition and electronic exchange of trade documents between landlocked and transit countries would significantly reduce transit time and enhance trade and development opportunities for the landlocked countries.

Mindful of the different levels of economic, and information and communication technology development of Contracting Parties;

Acknowledging that the availability of ICT and related physical infrastructure are not enough in some countries to ensure sustainable business development.

Further noting the necessity to establish an enabling legal environment in order to maximize the benefits associated with cross border paperless trade.

Desiring to formulate a legal framework to deepen and broaden cooperation in cross-border paperless trade facilitation among Contracting Parties and to chart the future developments in this area;

Hereby *agree* as follows:

Article 1: Objective

The objective of this Arrangement/Agreement is to promote cross-border paperless trade by enabling exchange and mutual recognition of trade-related data and documents and ensuring interoperability among National Single Windows and other paperless trade systems.

Article 2: Scope

This Arrangement/Agreement applies to Contracting Parties and provides for paperless exchange of trade-related data and documents in the course of international trade including import, export and transit trade.

Article 3: Definitions

For the purpose of this Arrangement/Agreement:

1. Paperless Trade means trade taking place on the basis of dematerialized commercial and regulatory documents instead of paper documents.

2. Mutual Recognition means reciprocal recognition of the legal validity of documents exchanged in electronic form across borders between two or more countries. Mutual recognition is established by the Contracting Parties agreeing that different national requirements are equal and respectively interchangeable in order to fulfill the requirements of the domestic legislation in a specific field.
3. 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 fulfill all import, export, and transit-related regulatory requirements.
4. Trade-related Documents means documents, both commercial and regulatory, required to complete commercial transactions.
5. Commercial transactions means transactions of buying and selling products and services between governments, between governments and businesses, between businesses, as well as between businesses and consumers and between governments and consumers.
6. Trade-related Data means data contained in or transmitted in connection with a trade-related electronic document.
7. Data message means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange.

Any term not otherwise defined in this Arrangement/Agreement are to be interpreted according to the definitions provided by the United Nations Convention on the Use of Electronic Communications in International Contracts, 2005, UNCITRAL Model Law on Electronic Commerce 1996 with additional article 5*bis* adopted in 1998 and UNCITRAL Model Law on Electronic Signatures, 2001 as well as the general principles listed in this Arrangement/Agreement.

Article 4: General Principles

This Arrangement/Agreement shall be guided by the following general principles:

1. Technological neutrality is the principle that legislation should not impose nor discriminate in favor of the use of a particular type of technology to achieve its objectives.
2. Functional equivalence is a principle that encourages an analysis of the functions of paper-based requirements and determining how those functions could be fulfilled through electronic means. Using the functional equivalence approach involves singling out basic functions of paper-based form requirements, with a view to providing criteria which, once they are met by electronic communications, enable such electronic communications to enjoy the same level of legal recognition as corresponding paper documents performing the same function.

3. Non-discrimination is a principle demanding that there should be no disparity of treatment between electronic communications and paper documents. Information should not be denied validity or enforceability on the sole ground that it is in the form of an electronic communication.

4. Functional Interoperability is based on the principle of functional equivalence; this concept refers to legal recognition of trade-related documents across borders within the legislative and regulatory framework of a Contracting Party.

Contracting Parties agree that implementing legislation that applies these principles to electronic exchanges of trade-related data and documents will establish common levels of trust and increase interoperability.

Article 5: Facilitation of Cross-border Paperless Trade and Development of National Single Window

1. The Contracting Parties shall endeavour/undertake to facilitate cross-border paperless trade enabling electronic transfer of trade-related data and documents, making use of the existing systems in operation.

2. The Contracting Parties shall endeavour/undertake to develop their National Single Window systems.

Article 6: National Paperless Trade Committees

Contracting Parties shall endeavour/undertake to establish National Paperless Trade Committee, comprised of relevant representatives of government and private sector parties including representatives from trade, logistics, port and airport authorities, IT service providers, customs agencies, and other government agencies that participate in export, import and transit functions. The Contracting Parties may rely on a similar organization already functioning domestically in lieu of establishing a separate committee and may designate an existing organization or working group within that organization, as the National Paperless Trade Committee for the purpose of this Arrangement/Agreement. The National Paperless Trade Committee will try to promote a legally enabling domestic environment for electronic exchange of trade-related data and documents as well as facilitate interoperability of cross-border paperless trade information flows.

Article 7: National Policy Framework

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

Article 8: Enabling Domestic Legal Environment

Contracting Parties shall endeavour/undertake to create appropriate legal and regulatory framework for paperless trade including but not limited to laws on electronic submission of documents, electronic signatures including digital signatures, user and message authentication, and electronic evidence regulation governing admissibility of electronic information in domestic courts.

Article 9: Cross-border Legal Recognition of Trade-related Electronic Documents

1. The Contracting Parties shall endeavour/undertake to provide for legal recognition of trade-related data and documents across borders when developing their cross-border paperless trade legal frameworks, with particular emphasis on functional equivalence.
2. The Contracting Parties shall endeavor to enact legislation explicitly authorizing and giving full legal equivalence to cross-border trade-related document exchanges and containing provisions for mutual recognition.

Article 10: Adoption of International Paperless Trade Standards for Exchange of Trade-related Data and Documents

1. The Contracting Parties shall endeavor to apply international standards to ensure regional and eventually global interoperability.
2. For electronic exchange of trade-related data and documents, the Contracting Parties may use common international standards, including UNEDIFACT, XML standards or any improved versions of these. The standard to be used and the data elements to be exchanged shall be mutually agreed upon among Contracting Parties and communicated to the Secretariat.
3. The Contracting Parties may use data mapping software for mapping of data exchanged using global standards and data recorded in the format in their existing systems.

Article 11: Unique Consignment Identifier

The Contracting Parties shall endeavour/undertake to use any one of the international standards available for uniquely identifying a consignment for ease of tracking the consignment and for easy correlation of the trade-related data and documents associated with it.

Article 12: International Standard Implementation

The Contracting Parties shall endeavor to ensure legal interoperability and enhance mutual recognition of paperless trade-related data and documents. The Contracting Parties shall collaborate on

international standard implementation strategies through the institutional mechanism established under this Arrangement/Agreement.

Article 13: International Standard Development

The Contracting Parties shall, to the extent possible, become involved in the development of international data standards and best practices.

Article 14: United Nations Convention on the Use of Electronic Communication in International Contracts

The Contracting Parties shall endeavor to become a party to the United Nations Convention on the Use of Electronic Communication in International Contracts.

Article 15: Privacy, Data protection, and Protection of Intellectual Property Rights in Cross-border Data Exchange

1. Contracting Parties shall endeavour/undertake that protection of personal and commercial data in cross-border trade-related information exchanges be consistent with regional and international regulations and best practices.

2. Contracting Parties are encouraged to consider participating in international agreements governing intellectual property rights, such as the World Intellectual Property Organization (WIPO) Copyright Treaty and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) as administered by the WTO.

Article 16: Legal Liability framework

1. The Contracting Parties acknowledge that liability and enforcement issues may arise in cross-border paperless trade-related data and document exchanges, especially in connection with information processing and protection, as well as the use of inaccurate, incomplete, or incorrect data.

2. The Contracting Parties shall endeavour to establish a framework for national and international legal recourse, possible indemnities for damages, and liability limits to facilitate cross-border paperless trade-related information flows.

Article 17: Alternative Dispute Resolution

Contracting Parties are encouraged to consider setting up alternative dispute resolution (ADR) mechanisms in order to expedite dispute resolution between the various parties involved in a cross-border paperless trade transaction.

Article 18: Institutional Arrangements

1. The United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) shall, for the purposes of this Arrangement/Agreement, establish a Paperless Trade Council comprising one (1) ministerial-level nominee from each Contracting Party and the Executive Secretary of ESCAP. The Council shall meet once every two year.
2. In the performance of its functions, the Council shall be supported by the Standing Committee, which shall supervise and coordinate the implementation of this Arrangement/Agreement and submit its recommendations for review to the Council. The Standing Committee shall be composed of representatives of relevant government agencies and/or the National Paperless Trade Committees and will meet at least once a year.
3. For the purposes of implementing the Arrangement/Agreement, the Standing Committee may establish working groups comprising relevant technical or legal experts, which shall report to the Standing Committee on the implementation of this Arrangement/Agreement and the related Action Plan.
4. The United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) shall be designated the Secretariat of the Arrangement/Agreement. It shall also be the Secretariat to the bodies established under this Arrangement/Agreement. It shall provide support in coordinating, reviewing, and supervising the implementation of this Arrangement/Agreement as well as in all related manners.

Article 19: Action Plan

1. The Standing Committee, under the supervision of the Council, shall develop and implement a comprehensive action plan, which sets out all concrete actions and measures with clear targets and timelines of implementation necessary for creating a consistent, transparent, and predictable environment for the implementation of this Arrangement/Agreement.
2. The action plan shall incorporate a roadmap for the implementation of international standards (Article 12) as well as the implementations of the pilot projects initiative (Article 20) and capacity building (Article 21) for the purpose of this Arrangement/Agreement.

Article 20: Pilot Projects and Sharing of Lessons Learned

1. The Contracting Parties shall endeavor to initiate and launch pilot projects on cross-border paperless trade-related data and documents exchanges, with an initial focus on exchanging unit of trade-related information electronically. Contracting Parties shall collaborate on such pilot projects through the institutional mechanism established under this Arrangement/Agreement.

2. The Contracting Parties commit to report on progress of pilot projects to facilitate sharing of experience and lessons learned in order to establish a collection of best practices for interoperability of cross-border paperless trade-related data and document exchanges. The exchange of experience and lessons learned would extend beyond the parties to this Arrangement/Agreement, in an effort to promote paperless trade implementation throughout the region and beyond.

Article 21: Capacity Building

1. Contracting Parties commit to cooperate, including by providing technical support and assistance, in order to facilitate the implementation of this Arrangement/Agreement. Technical assistance shall be mainly provided through a “request and offer” system, which shall facilitate exchanges of skills and best practices. Contracting Parties may collaborate on capacity building through the institutional mechanism established under this Arrangement/Agreement.

2. Contracting Parties may invite development partners such as ADB, World Bank, other United Nations Agencies, etc. for more effective technical and financial assistance in the implementation of this Arrangement/Agreement.

Article 22: Dispute Resolution

1. Any dispute that may arise among Contracting Parties regarding the interpretation and application of this Arrangement/Agreement shall be settled by an agreement among the parties concerned.

2. In the case that the parties to the dispute 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 a referral.

3. The dispute shall be submitted to one or more conciliators selected by mutual agreement between the parties to the dispute. If the parties to the dispute fail to agree on the choice of a conciliator or conciliators within three (3) months after the request for conciliation, any of those parties may request the Executive Secretary of UNESCAP 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 to the dispute.

5. By mutual agreement, the parties to the dispute may agree in advance to accept the recommendation of the conciliator or conciliators as binding.

6. The provisions of this article shall not be construed to exclude other measures for the settlement of disputes mutually agreed between the parties to the dispute.

Article 23: Procedure for Signing and Becoming a Contracting Party

1. The Arrangement/Agreement shall be open for signature by States which are members of the United Nations Economic and Social Commission for Asia and the Pacific at, on, and thereafter at the United Nations Headquarters in New York from

..... to

2. Those States may become Parties to the Arrangement/Agreement by:

a) Signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or

b) Accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument in good and due form with the Secretary-General of the United Nations.

Article 24: Entry into Force

1. The Arrangement/Agreement shall enter into force on the ninetieth day following the date on which the Governments of at least eight (8) Contracting Parties have consented to be bound by the Arrangement/Agreement pursuant to Article 23, paragraphs 2 and 3.

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

3. Each Contracting Party shall endeavour to implement the provisions of this Arrangement/Agreement by creating a legally enabling environment and creating necessary technical infrastructure to facilitate cross-border paperless exchange of trade-related data and documents within a period of five years from the date of entry into force of this Arrangement/Agreement. Any Contracting Party needing assistance in capacity building may seek extension of time beyond five years for implementation of the Arrangement/Agreement from the Council.

Article 25: Procedures for Amending the Arrangement/Agreement

1. The text of the Arrangement/Agreement may be amended by the procedure specified in this Article.
2. Amendments to the Arrangement/Agreement may be proposed by any Contracting Party.
3. The text of any proposed amendment shall be circulated to all members of the Council by the Secretariat at least forty-five (45) days before the Council meeting at which it is proposed for adoption.
4. An amendment shall be adopted by the Council by a two-thirds majority of the Contracting Parties present and voting. 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 Contracting Parties. The amendment shall enter into force with respect to all Parties except those which, before it enters into force, declare that they do not accept the amendment. Any Party that has declared that it does not accept an amendment adopted in accordance with this paragraph 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 Contracting Party twelve (12) months after the date of deposit of the said instrument.
6. An amendment accepted in accordance with paragraph 5 of the present Article shall enter into force for all Contracting Parties three (3) months after the expiry of the period of six (6) months referred to in paragraph 5 of the present Article.

Article 26: Reservations

Reservations may not be made with respect to any of the provisions of the Arrangement/Agreement.

Article 27: Withdrawal

Any Contracting Party may withdraw from the Arrangement/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 28: Suspension of validity

The operation of the Arrangement/Agreement shall be suspended if the number of Contracting Parties becomes less than eight (8) for any period of twelve (12) consecutive months. In such a situation the Secretariat shall notify the Contracting Parties. The provisions of the Arrangement/Agreement shall again become operative if the number of Contracting Parties reaches eight (8).

Article 29: Limits to the application

Nothing in the Arrangement/Agreement shall be construed as preventing a Contracting 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 30: Depositary

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

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

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