

## **Arrangement/Agreement on Facilitation of Cross-border Paperless Trade for the Asia Pacific Region**

(Draft as of 14 June 2013; for discussion)

*The ESCAP Members who are parties to this Arrangement/Agreement*  
(hereinafter referred to as "the 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 paperless trade enhances the expansion of trade opportunities and makes international trade transactions 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 national electronic Single Window systems to expedite processing of trade-related data and 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 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.

**Mindful** of the different levels of economic, and Information and Communication Technology (ICT) development of the 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 the 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 in electronic form and facilitating interoperability among national and subregional Single Windows and other paperless trade systems.

#### **Article 2: Scope**

This Arrangement/Agreement applies to paperless trade between the Parties.

#### **Article 3: Definitions**

For the purpose of this Arrangement/Agreement:

- 1) "Paperless Trade" means trade taking place on the basis of electronic communications, including exchange of trade-related data and documents in electronic form.
- 2) "Trade" means international trade in goods, including their import, export and transit.

- 3) “Electronic communication” means any communication that the parties make by means of data messages.
- 4) “Trade-related Data” means data contained in or transmitted in connection with a trade-related document.
- 5) “Trade-related Documents” means documents, both commercial and regulatory, required in completing commercial transactions.
- 6) “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.
- 7) “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.
- 8) “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**

In the interpretation of this Arrangement/Agreement, regard is to be had to the general principles on which it is based, to its international character and to the need to promote uniformity in its application.

#### **Article 5: General Principles**

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

1. Technology neutrality
2. Functional equivalence
3. Non-discrimination of the use of electronic communications
4. Promotion of Interoperability
5. Improved trade facilitation and regulatory compliance
6. Partnership between public and private sectors

The Parties agree that implementing national legislation and regulation that applies these principles to exchange of trade-related data and documents in electronic form will establish common levels of trust and increase interoperability.

## **Article 6: Facilitation of Cross-border Paperless Trade and Development of national Single Window(s)**

1. The Parties shall endeavour/undertake 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 national Single Window systems and use them for cross-border paperless trade. In developing national Single Window systems, the Parties are encouraged to make them consistent with the principles and guidance provided in this Arrangement/Agreement.

## **Article 7: National Paperless Trade Committee**

1. The Parties shall endeavour to establish National Paperless Trade Committee, comprised of relevant representatives of government and private sector parties including representatives from trade, logistics service providers, port and airport authorities, IT service providers, customs and other regulatory agencies that participate in export, import and transit functions. The National Paperless Trade 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.
2. The Parties may rely on a similar organization already functioning domestically in lieu of establishing a separate committee and may designate that organization, or an appropriate organizational unit or working group within that organization, as the National Paperless Trade Committee for the purpose of this Arrangement/Agreement..

## **Article 8: National Policy Framework**

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.

### **Article 9: Enabling Domestic Legal Environment**

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

### **Article 10: Cross-border Mutual Recognition of Trade-related Data and Documents in Electronic Form**

The Parties shall provide for mutual recognition of trade-related data and documents in electronic form originating from other Parties based on substantially equivalent level of reliability.

### **Article 11: International Standards for Exchange of Trade-related Data and Documents in Electronic Form**

The Parties shall endeavor to apply international standards to ensure regional and global interoperability in paperless trade..

### **Article 12: Relation with Other Legal Instruments Enabling Cross-Border Paperless Trade**

1. The Parties shall endeavor to become a party to the United Nations Convention on the Use of Electronic Communications in International Contracts, 2005.
2. The Parties shall endeavour to ensure that cross-border exchange of trade-related data and documents in electronic form are consistent with regional and international law, regulations and best practices. List of relevant regional and international law, regulations and best practices shall be decided by the institutional arrangements (Article 14) of this Arrangement/Agreement.

### **Article 13: Legal Liability Framework**

The Parties shall endeavor to establish an adequate legal and regulatory environment 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 14: Institutional Arrangements**

1. The United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) shall, for the purposes of this Arrangement/Agreement, establish a Paperless Trade Council comprising one (1) ministerial-level nominee from each Party and the Executive Secretary of ESCAP. The Council shall meet once every two years..

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 ESCAP shall be designated as 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 15: 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 11) as well as the implementations of the pilot projects (Article 16), operationalization of cross-border paperless trade and capacity building (Article 17) for the purpose of this Arrangement/Agreement. 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 (Articles 9, 10, 12, 13 and 18).

#### **Article 16: Pilot Projects and Sharing of Lessons Learned**

1. The Parties shall endeavor to initiate and launch pilot projects on cross-border exchange of trade-related data and documents in electronic form. The Parties shall collaborate on such pilot projects through the institutional mechanism established under this Arrangement/Agreement.
2. The Parties shall report to the Standing Committee 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 exchange of trade-related data and documents in electronic form. 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 17: Capacity Building**

The Parties shall cooperate to provide technical support and assistance to each other in order to facilitate the implementation of this Arrangement/Agreement.

#### **Article 18: Implementation of Arrangement/Agreement**

1. Each Party shall endeavour to implement the provisions of this Arrangement/Agreement by creating a legally enabling environment and developing necessary technical infrastructure to facilitate cross-border exchange of trade-related data and documents in electronic form..
- 2, Implementation schedule for each Party shall be developed as part of the action plan (Article 15) based on assessment of readiness of the Parties.

**Article 19: Dispute Resolution**

1. Any dispute that may arise among the 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 ESCAP 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 20: Procedure for Signing and Becoming a Party**

1. The Arrangement/Agreement shall be open for signature by 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 ESCAP Members 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 21: 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) Parties have consented to be bound by the Arrangement/Agreement pursuant to Article 20, paragraphs 2 and 3.

2. For each 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 Party ninety (90) days after the date of its deposit of the said instrument.

#### **Article 22: 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 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 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 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 Party twelve (12) months after the date of deposit of the said instrument.

#### **Article 23: Reservations**

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

#### **Article 24: Withdrawal**

Any 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 25: Suspension of validity**

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

#### **Article 26: 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 27: 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.

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