

# Agreement [Framework Agreement] on Facilitation of Cross-border Paperless Trade for the Asia Pacific Region

(Draft as of 25 October 2013)

*The ESCAP Member States who are parties to this Agreement [Framework Agreement] (hereinafter referred to as "the Parties"),*

**Conscious** of the importance of trade as an engine of growth and development and the need to increase the efficiency of international trade transactions to maintain and enhance 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;

**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 (SMEs) to more effectively participate in international trade and enhance their competitiveness;

**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 is not sufficient 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; and,

**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 Agreement [Framework 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/or other paperless trade systems, for the purpose of making international trade transactions more efficient and transparent while improving regulatory compliance.

### **Article 2: Scope**

This Agreement [Framework Agreement] applies to paperless trade between the Parties.

### **Article 3: Definitions**

For the purpose of this Agreement [Framework 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, transit and related services.
- 3) **“Electronic communication”** means any communication that the parties make by means of data messages.
- 4) **“Data message”** means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange.
- 5) **“Trade-related data”** means data contained in or transmitted in connection with a trade-related document.
- 6) **“Trade-related documents”** means documents, both commercial and regulatory, required in completing commercial transactions.
- 7) **“Commercial transactions”** mean transactions relating to the sale of goods between parties whose places of business are in different territories.
- 8) **“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.
- 9) **“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.
- 10) **“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 Agreement [Framework 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**

1. This Agreement [Framework Agreement] shall be guided by the following general principles:

- 1) Technology neutrality: legislation should neither impose nor discriminate in favor of the use of a particular type of technology to achieve its objectives
- 2) Functional equivalence: functions of paper-based requirements should be analyzed to determine how those functions could be fulfilled through electronic means.
- 3) Non-discrimination of the use of electronic communications
- 4) Promotion of Interoperability
- 5) Improved trade facilitation and regulatory compliance
- 6) Cooperation between public and private sectors

2. 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: National Policy Framework, Enabling Domestic Legal Environment and Paperless Trade Committee**

1. The Parties may [shall endeavor 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 endeavor 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 Paperless Trade Committee, comprised of relevant representatives of government and private sector parties, in accordance to their domestic environment. The 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. 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 Paperless Trade Committee for the purpose of this Agreement [Framework Agreement].

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

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 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 general principles provided in this Agreement [Framework Agreement].

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

1. 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.
2. The substantially equivalent level of reliability would be agreed among the Parties through the institutional arrangement established under this Agreement [Framework Agreement].

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

1. The Parties shall endeavor to apply international standards and guidelines to ensure regional and global interoperability in paperless trade.
2. The Parties are strongly encouraged 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 take into account, and whenever possible adopt, available 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, 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 arrangement established under this Agreement [Framework Agreement].

## **Article 11: Legal Liability Framework**

The Parties shall endeavor 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.

## **Article 12: Institutional Arrangements**

1. The United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) shall, for the purposes of this Agreement [Framework 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 a 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 Agreement [Framework Agreement] and submit its recommendations for review to the Council. 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], the

Standing Committee may establish working groups comprising relevant technical or legal experts, which shall report to the Standing Committee on the implementation of the related Action Plan under this Agreement [Framework Agreement].

4. The ESCAP shall be designated as the Secretariat of the Agreement [Framework Agreement]. It shall also be the Secretariat to the bodies established under this Agreement [Framework Agreement]. It shall provide support in coordinating, reviewing, and supervising the implementation of this Agreement [Framework Agreement] as well as in all related matters.

### **Article 13: 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 Agreement [Framework Agreement].

2. The action plan shall incorporate a roadmap for operationalization of cross-border paperless trade, including adoption of international standards, implementations of pilot projects and capacity building for the purpose of this Agreement [Framework 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.

### **Article 14: 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, in particular among Customs and other regulatory agencies. The Parties shall collaborate on such pilot projects through the institutional arrangement established under this Agreement [Framework Agreement].

2. The Parties shall report, on a voluntary basis, to the Standing Committee on progress of pilot projects to facilitate 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 this Agreement [Framework Agreement], to the extent possible and as appropriate, in an effort to promote paperless trade implementation throughout the region and beyond.

### **Article 15: Capacity Building**

1. The Parties shall cooperate to provide technical support and assistance to each other in order to facilitate the implementation of this Agreement [Framework Agreement]. Technical assistance shall be provided through various mechanisms including a “request and offer” approach to facilitate exchanges of skills and best practices.
2. The Parties may collaborate on capacity building through the institutional arrangement established under this Agreement [Framework Agreement].
3. Special consideration shall be given, whenever possible, by the Parties to requests from Least Developed Countries for technical assistance and cooperation arrangement designed to assist them in developing their paperless trade capacity with the other Parties and in taking full advantage of the potential benefits of this Agreement [Framework Agreement].
4. The Parties may invite development partners for more effective technical and financial assistance in the implementation of this Agreement [Framework Agreement].

### **Article 16: Implementation of Agreement [Framework Agreement]**

1. Each Party shall endeavour to implement the provisions of this Agreement [Framework 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 based on assessment of readiness of the Parties.

**Article 17 Dispute Resolution**

1. Any dispute that may arise among the Parties regarding the interpretation and application of this Agreement [Framework 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 18: Procedure for Signing and Becoming a Party**

1. The Agreement [Framework 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 Agreement [Framework 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 19: Entry into Force**

1. The Agreement [Framework Agreement] shall enter into force on the ninetieth day following the date on which the Governments of at least five (5) Parties have consented to be bound by the Agreement [Framework Agreement] pursuant to Article 18, 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 Agreement [Framework Agreement] have been met, the Agreement [Framework Agreement] shall enter into force for that Party ninety (90) days after the date of its deposit of the said instrument.

### **Article 20: Procedures for Amending the Agreement [Framework Agreement]**

1. The text of the Agreement [Framework Agreement] may be amended by the procedure specified in this Article.

2. Amendments to the Agreement [Framework 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 21: Reservations**

Reservations may not be made with respect to any of the provisions of the Agreement [Framework Agreement].

#### **Article 22: Withdrawal**

Any Party may withdraw from the Agreement [Framework Agreement] by written notification addressed to the Secretary-General of the United Nations. The withdrawal shall take effect twelve (12) months after the date of receipt by the Secretary-General of such notification.

#### **Article 23: Suspension of validity**

The operation of the Agreement [Framework Agreement] shall be suspended if the number of Parties becomes less than five (5) for any period of twelve (12) consecutive months. In such a situation the Secretariat shall notify the Parties. The provisions of the Agreement [Framework Agreement] shall again become operative if the number of Parties reaches five (5).

#### **Article 24: Limits to the application**

Nothing in the Agreement [Framework Agreement] shall be construed as preventing a Party from taking such action, compatible with the provisions of the Charter of the United Nations and limited to the exigencies of the situation, as it considers necessary for its external or internal security.

**Article 25: Depositary**

The Secretary-General of the United Nations shall be designated the depositary of the Agreement [Framework Agreement].

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

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

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