

REPORT OF THE THIRD MEETING OF LEGAL AND TECHNICAL WORKING GROUPS OF THE INTERIM INTERGOVERNMENTAL STEERING GROUP ON CROSS-BORDER PAPERLESS TRADE FACILITATION

❖ Dates: 21 – 23 March 2016

❖ Venue: CR-4, UNCC, Bangkok

1. The meeting, which brought together 72 nominated participants and 3 regional experts, was opened with remarks by Mr. YoungHwan Kim, chair of the Legal Working Group of the Interim Intergovernmental Steering Group on Cross-border Paperless Trade Facilitation.
2. The meeting adopted the tentative annotated agenda without any modifications.
3. The secretariat made a presentation on the process taken and progress made by the Legal and Technical Working Groups in carrying out their mandated tasks since the Interim Intergovernmental Steering Group on Cross-border Paperless Trade Facilitation decided their establishment in April 2015. Chairs of the Legal Working Group (LWG) and the Technical Working Group (TWG) reported respectively on the progress made in improving the draft text of regional arrangement and preparation of a draft road map during interim period since the second meeting. The chair of the LWG informed the meeting that the members of LWG had made good progress in reaching consensus on many of the provisions in the draft text during the January 2016 meeting. The chair of the TWG had reported that the TWG had held six virtual meetings during the interim period and had concrete progress in delivering a few tasks.
4. The joint session of the meeting was followed by breakout sessions of the LWG and the TWG, which would focus on improving the draft text and preparing a draft road map respectively (See Annexes 2 and 3 for details on activities conducted and decisions made by each working group).

5. The LWG and TWG reconvened in a joint plenary session and heard the reports from chairs of each working group on progress made on their respective tasks during the breakout sessions. The chair of the LWG reported that the LWG reached consensus on finalization of the draft text and presented the proposed amendments¹ to the current draft text, which had been based on consensus of the LWG for submission to the upcoming 2nd Steering Group meeting. The chair of the TWG highlighted the major achievements of the TWG, including concrete progress in tasks such as technical gap checklist and international standards implementation framework.
6. The secretariat informed the meeting of the next steps after the Steering Group finalized the draft text. The next steps would include adoption of the finalized text by the Commission during its seventy second session on 19-23 May 2016 and subsequent preparation of the adopted text as a UN treaty by the UN Office of Legal Affairs (OLA). It was noted that the treaty could be open for signature in the fourth quarter of 2016 with possible arrangement of a signing ceremony. The meeting agreed that the LWG and the TWG would continue carrying out their mandated tasks and focus on preparing a draft road map, until the next meeting of the Steering Group, tentatively scheduled to be in April 2017. The two working groups would mainly use virtual means (group mail and online meeting) with necessary support from the secretariat in conducting their tasks. It was further noted that the working groups would hold at least one physical meeting until the next meeting of the Steering Group.
7. The meeting was closed with remarks by Mr. Mikhail Maslov, chair of the Interim Intergovernmental Steering Group on Cross-border Paperless Trade Facilitation.

Annexes: 1. Final Agenda

2. Main activities and decisions of the Legal Working Group
3. Main activities and decisions of the Technical Working Group
4. Final List of participants
5. Text of the Regional Arrangement for the Facilitation of Cross-border Paperless Trade Finalized by the 2nd meeting of the Steering Group (Separate)

¹ See http://www.unescap.org/sites/default/files/pre-ods/CEPTAISG2_CRP1.pdf

ANNEX 1. FINAL AGENDA

1. Opening of the Meeting
 - (a) Opening remarks
 - (b) Adoption of the agenda
 - (c) Update on progress made by the Legal Working Group in improving the draft text of regional agreement since the second meeting, including its January 2016 meeting
 - (d) Update on progress made by the Technical Working Group in preparing a draft road map since the second meeting
2. Working group breakout session
3. Review of progress made in improving the draft text of regional agreement
4. Review of progress made in preparing a draft road map
5. Other matters
 - (a) Discussion on future work plan, including reporting to the Steering Group
 - (b) Any other business
6. Closing.

ANNEX 2. MAIN ACTIVITIES AND DECISIONS OF THE LEGAL WORKING GROUP

- 1) The Legal Working Group (LWG) continued its negotiation on the current draft text of the regional arrangement for the facilitation of cross-border paperless trade and reached consensus on its finalization.
- 2) The LWG proceeded to discuss the draft text article by article, starting with final clauses covering Article 17 to 25, and covering Title, Preamble and substantive clauses.
- 3) The LWG agreed to delete the brackets from “Framework”, making the title as *Framework Agreement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific*. The brackets were removed from “Framework Agreement” in other articles of the agreement.
- 4) On Article 3: Definition, the LWG agreed to replace the word ‘sale of’ with the words ‘trade in’ in paragraph (f) of Article 3, in order to harmonize this with the language of the paragraph (a) of Article 3.
- 5) On Article 5: General Principles, the LWG accepted an editorial change made on wording of Article 5(c) from previous “Technology neutrality” to “Technological neutrality” to align it with the wording in the benchmarked reference (United Nations Convention on the Use of Electronic Communications in International Contracts)
- 6) On Article 6: National policy framework, enabling domestic legal environment and paperless trade committee, the LWG agreed to replace the words “domestic legal environment” with “national legislation” and insert “in particular addressing the functions of the national operators for cross-border paperless trade” in paragraph 2.
- 7) On Article 8: Cross-border mutual recognition of trade-related data and documents in electronic form, the LWG agreed to delete the word ‘may’ and retain the word ‘shall’ in paragraph 1. The LWG also agreed to include paragraph 3 with an addition of wording “provided that the provisions of these bilateral and multilateral arrangements will not contradict the present agreement.”
- 8) On Article 9: International standards for exchange of trade-related data and documents in electronic form, the LWG agreed to delete words ‘regional and global’ and replace the words ‘communications protocols’ with the words ‘means of communication’ in paragraph 1.

- 9) On Article 10: Relation with other legal instruments enabling cross-border paperless trade, the LWG revised paragraph 1 to read as “The Parties may, where appropriate, adopt relevant international legal instruments concluded by United Nations bodies and other international organizations.” Changes include replacing the word “shall” with “may”, adding the words “take into account, and”, replacing the words “available and accepted” with “relevant” and replacing “made by relevant” with “concluded by”. The LWG also agreed to an editorial change of merging two sentences in paragraph 1 to read as “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, as identified by the institutional arrangement established under the present Framework Agreement.
- 10) Following extensive discussions and continuing concerns on the possible misinterpretation of Article 11: Legal liability framework, the LWG agreed to delete it in connection with insertion of a new phrase in paragraph 2 of Article 6 (Refer to revision in Article 6) and adjust the numbers of subsequent articles accordingly.
- 11) On Article 12: Institutional arrangements, the LWG agreed to delete the words “and Executive Secretary of ESCAP” from paragraph 1 of Article 12 to align the revision to change the representation level from “ministerial level” to “high-level”. The LWG also agreed to insert a new paragraph 6 in Article 12 to replace Article 16 bis, which reads as “The Council and the Standing Committee may, in their competence determined in the rules of procedure, adopt protocols on specific legal, technical and organizational matters. The requirements for entry into force of any protocol shall be established in that instrument.”
- 12) On Article 13: Action plan, the LWG agreed to delete the bracketed words “endeavor to”.
- 13) The LWG agreed to delete Article 16 bis, in accordance with the decision to include the new Article 12.6.
- 14) On Article 19: Entry into force, the LWG agreed to five (5) as the number of member States for entry into force in paragraph 1, as members of the LWG preferred five (5) more to eight (8) in the survey. The LWG also agreed to replace “consent to be bound” by “deposited their instruments of ratification, acceptance, approval and accession to”, in accordance with recommendation from the Office of Legal Affairs.

- 15) On Article 20: Procedures for amending the Framework Agreement, the LWG decided to delete the bracket on paragraph 4 of Article 20. The LWG agreed to replace the existing provision of paragraph 5 with proposed opt-out option text from the Office of Legal Affairs. The LWG also agreed on the time period of “3 months” for entry into force of amendment.
- 16) On Article 23: Suspension of Validity, the LWG agreed on five (5) as number of Parties for the suspension of validity, in alignment with the decision made in Article 19.
- 17) The delegation from Japan stated their concerns and reservations to articles of the draft text, in particular articles 5, 6, 8 and 11, noting that some articles and concepts were not compatible with their domestic legal system, and are not clear regarding legal status and interpretation. However, the delegation stated that they would not prevent it from finalization of the present agreement.
- 18) The LWG also discussed the nature of the explanatory note. It was stated that whilst the explanatory note is not part of the treaty text, the secretariat would work together with the LWG following the meeting to incorporate the various definitions and explanations for the relevant articles of the text for further deliberations by the working groups and the Steering Group.
- 19) On other matters, there was a discussion on programme budget implications of the agreement. The Secretariat informed that the Secretariat support to the agreement did not imply additional regular budget as the agreement and trade facilitation and paperless trade matters are already part of the work programme on trade and investment. The Secretariat however called on Members States to consider provider extra budgetary resources to support implementation and related capacity building.

ANNEX 3. MAIN ACTIVITIES AND DECISIONS OF THE TECHNICAL WORKING GROUP

- 1) The Technical Working Group (TWG), chaired by Mr. Wahid as one of vice-chairs in the absence of the chair, started with review of progress made in delivering TWG tasks so far. The secretariat introduced overall progress of TWG tasks. The TWG decided to collectively review all the draft documents developed so far for better understanding of them on the first day, before breaking into three subgroups on the second day.
- 2) In the morning session of the second day, the TWG broke into three subgroups under the coordination of three vice-chairs (Mr. Anikin, Mr. Kim and Mr. Wahid). Each subgroup focused on tasks to be coordinated by respective vice-chairs. For the task of developing a technical gap checklist (under coordination by the absent vice-chair), Mr. Wahid volunteered to work on the task under his subgroup. In the afternoon session of the second day, the TWG convened together and invited vice-chairs to report outcomes of each subgroup for detailed discussion.
- 3) Subgroup 1 under the coordination of Mr. Anikin worked on mutual recognition requirements. In this connection, Russian group of experts shared their initial contribution, two draft documents titled “Legal Aspects of Improving the Transboundary Trust Environment Between the Member States of the United Nations Economic and Social Commission for Asia and the Pacific (UN ESCAP)” and “The definition of the criteria concerning the requirements to offer a substantially equivalent level of reliability of trade-related data in electronic form,” with members of the TWG. Russian group of experts requested members of the TWG to review the two documents and share any comments or feedback by the end of April 2016. In developing a common approach to mutual recognition mechanism, in particular developing model memorandum of understanding or service level agreement, the TWG would start with collecting and analyzing existing samples from the ESCAP member States. In this connection, China and Republic of Korea agreed to share their examples by the end of April 2016
- 4) Subgroup 2 under the coordination of Mr. Kim worked on development of three technical guides [(1) Guide on how to develop or upgrade paperless trade systems consistently with the general principles, (2) Guide to help facilitate concurrent implementation of national and cross-border paperless trade systems, and (3) Different implementation options/mechanisms for paperless trade systems in an interoperable manner] based on a study report produced by a regional expert. The TWG decided to

merge guides (2) and (3) by making the guide (3) an annex to the guide (2), in consideration of relatively small scope of the guide (3) and its relevance to the guide (2). Upon receiving initial draft from Mr. Kim, members of the TWG would share their comments by the end of April 2016. Subgroup 2 also discussed further improving the template for cross-border paperless trade reference map; members of the TWG would be requested to review and make comments by the end of April 2016, upon receiving the further revised template.

- 5) Subgroup 3 under the coordination of Mr. Wahid worked on three tasks: international standards implementation strategy, technical gap checklist and template for collective and individual action plan. The TWG decided to change the title of the document as international standards implementation framework and keep annexes on relevant international standards and standard bodies as references; the TWG also decided to start filling annexes with relevant standards and standard bodies, including the Internet Engineering Task Force (IETF). The TWG found the draft technical gap checklist quite comprehensive and decided to proceed with fine-tuning of the document for further improvement. For the development of template for action plan, the TWG reviewed one example of individual action plan for paperless trade in the Asia Pacific Economic Cooperation (APEC) and decided to start with collecting country examples for analysis; the members of the TWG were requested to share their national action plan examples by the end of April 2016.
- 6) For the capacity building strategy, Mr. Kim (one of vice-chairs) shared ROK Customs' national approach by introducing its capacity building programme. China expressed its willingness to contribute to development of capacity building strategy and programmes.
- 7) For future work plan, the TWG decided to continue its tasks through virtual interaction using group mail and monthly virtual meeting. In this connection, the secretariat was requested to set tentative schedule for monthly virtual meeting and circulate it to members of the TWG. The secretariat was

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