UNITED NATIONS ESCAP
Economic and Social Commission for Asia and the Pacific

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

❖ Dates: 5 – 6 November 2015

❖ Venue: CR-4, UNCC, Bangkok

1. The meeting, which brought together 42 nominated participants and 12 regional experts and observers, was opened with remarks from Mr. Mikhail Maslov, chair of the Interim Intergovernmental Steering Group on Cross-border Paperless Trade Facilitation.

2. The meeting adopted the tentative annotated agenda without any modifications.

3. Chairs of the Legal Working Group (LWG) and the Technical Working Group (TWG) respectively reported progress made in improving the draft text of regional arrangement and preparing a draft road map during interim period since the first meeting. The chair of the LWG informed the meeting that the LWG members exchanged comments on the version of the draft text for its improvement and conducted an exercise on preliminary legal gap analysis. The chair of the TWG reported that it held two virtual meetings during the interim period and also had an informal session in the morning of 4 November 2015 to follow up on pending tasks.

4. The meeting invited Russian participants to make a presentation of a white paper it had prepared on Transboundary Trust Space (TTS) in a joint LWG/TWG session. In-depth discussions were held to better understand and clarify the TTS concept.

5. The meeting proceeded with the breakout sessions of the Legal Working Group (LWG) and the Technical Working Group (TWG), respectively focusing on improving the draft text and preparing a draft road map (See Annexes 2 and 3 for details on activities conducted by each working group).

6. The LWG and LTG reconvened in a joint plenary session and heard the reports from chairs of each working group on progress made in their respective tasks during breakout sessions. The meeting agreed that substantial progress had been made on several key articles of the draft text of the agreement.

7. The meeting confirmed the dates and venue for the third physical meeting of the working groups in the last week of March 2016 (28-30 March 2016), United Nations Conference Centre (UNCC), Bangkok, back-to-back with the second meeting of Interim Intergovernmental Steering Group on Cross-border Paperless Trade Facilitation (31 March – 1 April 2016). The secretariat would inform members of exact dates of both meetings later.

8. To enable finalization of draft text of regional arrangement by the second meeting of Interim Intergovernmental Steering Group on Cross-border Paperless Trade Facilitation, the LWG decided to consider possibility of having an interim physical meeting in January 2016 through online consultation among members using the group mail. The TWG decided to continue having regular virtual meetings at two- or three-week intervals, without any interim physical meeting, until the third physical meeting. The secretariat would prepare proposed dates and time for virtual meetings of the TWG during interim period.

9. The meeting was closed with remarks from 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. Draft Text of the Regional Arrangement for the Facilitation of Cross-border Paperless Trade: Post 2nd Meeting of LTWG Version (Separate)

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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 first meeting

   (d) Update on progress made by the Technical Working Group in preparing a draft road map since the first 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) Confirmation of dates and venue for the 3rd physical meeting

   (b) Interim virtual work plan until the 3rd physical meeting

   (c) Any other business

6. Closing.

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

1) The Legal Working Group (LWG) continued its work on improving the current draft text of the regional arrangement for the facilitation of cross-border paperless trade.

2) On Preamble, the LWG reviewed China's proposal to add "to advance regional integration, promote connectivity, and" in paragraph 2. Discussion centered on value of adding such wording in the preamble in the context of the current regional arrangement as well as purpose of preamble. In this connection, active discussion was also made on virtue of adding new wording on those provisions where consensus was reached at previous stage. There was general agreement that, while every working group members should actively refrain from proposing changes to text and provisions earlier agreed, the working group would try to accommodate such changes when possible and relevant. Members of the LWG were not sure and confident about necessity and value-addition of incorporating China's proposed wording on regional connectivity, especially under current situation that the Preamble is mostly finalized. In this connection, China agreed to propose a separate additional preambular paragraph rather than incorporate words to existing para 2. The meeting requested China to submit the proposal using the LWG group mail as soon as possible.

3) On Article 3(a), discussion focused on improving clarity on definition of paperless trade in the context of purpose and scope of the current regional arrangement. Suggestions for its improvement included adding the word 'cross-border" to paperless trade, replacing the word "cross-border" with 'international", among others. The LWG agreed to exclude the word «international» from para 3 (b) of article 3 of the draft text of the [Framework] Agreement, and also agreed to combine definitions 3(b) and 3(a) of article 3 into one, with further elaboration using the LWG group mail as necessary.

4) The concept of Transboundary Trust Space (TTS) was discussed at length and was presented by Russia as a way to achieve mutual recognition of each other's technology. The concept of 'trusted third party' (TTP) was introduced to the participants as one of the possible models of implementation of a TTS. Members of LWG discussed how TTP could be implemented. Some participants highlighted that the issue of mutual recognition under the agreement referred not only to the mutual recognition of electronic signatures but also to the way the data was transmitted and the quality and reliability of the data itself. Some participants inquired of how would take responsibility for security of the data under such an arrangement. It was explained that TTP allowed the States to maintain their sovereign rights and States would be responsible for the TTP partner. The more stable the TTP the

more stable the legal transactions between the parties. Members of the LWG requested explanations of the new concepts in written form. There was general consensus that the [framework] agreement should not contain specific implementation models or technologies, as those would have to be agreed by parties to the agreement through development of separate protocols.

5) On Article 3(j) bis "Transboundary Trust Space" and ter "Electronically Interacting Parties", the meeting agreed to delete them on the condition that a new general principle on "Promotion of transboundary trust environment" is incorporated in Article 5 (Also refer to discussions on Articles 5 and 8).

6) On Article 5, the meeting, also based on general international practice, reached a consensus to not define general principles in the text of the Agreement but to explain the principles in the explanoatory note of the Agreement instead. Accordingly, it decided to delete explanatory wording on 5(a), (b) and (c), simply reading as "Functional equivalence", "Non-discrimination of the use of electronic communications" and "Technology neutrality." The meeting decided to incorporate "Promotion of transboundary trust environment" in Article 5, on the condition that related wording on TTS in Article 3 and 8 were to be deleted. The meeting revised the Explanatory Note to provide explanation of this and other principles, with additional elaborations and clarifications to be made through LWG group mail. While general consensus was achieved on this matter, Japan made a specific reservation on the new principle and it was agreed that it would update the group on its suggestions soon through LWG group mail (Also refer to discussions on Articles 3 and 8).

7) On Article 8, the meeting agreed to delete wording on the TTS on the condition that "Promotion of transboundary trust environment" is incorporated in Article 5 (Also refer to discussions on Articles 3 and 5).

8) On Article 17, the meeting agreed to delete Cambodia's proposal of linking the Council's role to dispute resolution; regarding Russia's proposal to delete paragraphs 2 – 5, no decision was made.

9) On Article 18, the meeting briefly discussed mechanisms for signing, ratifying and accession for the purpose of clarification. LWG were reminded that this provision – as well as other final clauses of the agreement – reflect standard and commonly accepted procedures associated with international treaties and agreements.

10) On Article 19, the meeting revisited the optimal number for entry into force of the current regional arrangement, comparing benefits of having high and low numbers for its entry into force. The meeting decided to leave it to the Steering Group to decide.

11) On Article 20, the meeting briefly discussed current pending wording in bracket "present and voting" as well as "by a two-thirds majority of the Parties", but decided to further discuss them.

12) On Article 21, the meeting discussed value of having a provision on reservations in light of nature of the current regional arrangement, and decided to continue discussion on it to reach a consensus.

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

1) The Technical Working Group (TWG) focused its discussion on Transboundary Trust Space (TTS) proposed by the Russian participants. Through extended hours of discussion, the participants tried to better understand its concept and possible implementation mechanism, as well as its possible incorporation into the draft text of regional arrangement.

2) In connection to the TTS and its linkage to the draft text of regional arrangement, the TWG formed a small task team, comprising of Russian participants, Mr. Sung Heun Ha from the Republic of Korea and Mr. Tahseen Khan from India, and delegated the team to come up with a proposal for the TWG to consider. The small task team had an intensive discussion to build a consensus within it with extensive hours of interaction.

3) The small task team reached a consensus on how to account for Russia's TTS proposal into the draft text of regional arrangement for the TWG's consideration as follows: (1) Insert "Improving transboundary trust environment" or similar wording in Article 5 as a general principle, (2) Revise Article 8 to read as "The Parties [shall (replace with 'may': Pakistan)] provide for mutual recognition of trade-related data and documents in electronic form originating from other Parties.", and (3) Incorporate definitions for transboundary trust environment with further improvement.

4) The TWG decided to further elaborate on proposed changes during interim period until the third physical meeting, in coordination with the LWG. Members of the TWG would have national consultations on the consensus text and propose better wording as needed.

5) The TWG invited three regional experts, who were currently conducting studies for ESCAP on issues related to the tasks of the TWG, to present their interim findings as follows:

    a) Mr. Seung Hyun Cha on "Status and lessons learnt in Customs-to-Customs (C2C) cross-border paperless data exchange for paperless trade facilitation"

    b) Mr. Peter Stokes on "Enabling cross-border data exchange among Single Windows"

    c) Mr. Tahseen Khan on "Facilitating transition from paper-based to paper-less and paperless cross-border data exchange environment"

6) Upon listening to the presentations, the TWG had time to ask questions and listen to answers from the presenters. The secretariat informed the meeting that the study outcomes would be shared to the members of the TWG through group mail as they were finalized.

7) Further building on discussions and interactions made during an informal session in the morning of 4 November 2015, the TWG invited Mr. Sung Heun Ha to present his initial work on cross-border paperless trade reference map. The participants agreed to provide their suggestions for its improvement, upon receiving it through the TWG group mail.

8) The secretariat introduced what should be included in an international standard implementation strategy. The secretariat would prepare a template for completing the strategy and circulate it to the members of the TWG for its development.

9) The secretariat introduced initial terms of references for the Council and the Standing Committee. The secretariat would circulate it to the members of the TWG for review and further improvement.

10) For virtual meetings during interim period until the third physical meeting, the TWG would continue having regular virtual meetings with two or three week internal. In this connection, the secretariat would prepare proposed dates and time for virtual meetings of the TWG during interim period.

11) The TWG decided dates and venue for its third physical meeting to be in the last week of March 2016 (28 – 30 March 2016), United Nations Conference Centre (UNCC), Bangkok, back-to-back with the second meeting of Interim Intergovernmental Steering Group on Cross-border Paperless Trade Facilitation.