

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

- ❖ Dates: 9 – 11 September 2015
- ❖ Venue: CR-4, UNCC, Bangkok

1. The meeting, which brought together 39 nominated participants and 15 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 and Ms. Susan Stone, Director, Trade and Investment Division, United Nations ESCAP.

2. The secretariat made a presentation on “Introduction to Interim Intergovernmental Steering Group and mandated tasks to the Working Groups”, including the background and progress made since the adoption of the Commission resolution 68/3 in May 2013 and subsequent resolution 70/6 in August 2014 in their implementation and mandated tasks of the working groups from its terms of reference.¹

3. All the participants, nominated participants as well as invited regional experts, introduced themselves, including their name, organization and work responsibilities.

4. The meeting elected officers of the working groups as follows:

Position	Legal Working Group	Technical Working Group
Chair	Mr. Alexander Plakhov Legal Advisor Ministry of Economic Development Russian Federation	Mr. Satya Prasad Sahu Commissioner (IT and Single Window) Central Board of Exercise & Customs Government of India

¹ http://www.unescap.org/sites/default/files/Intro%20to%20IISG%20and%20Tasks_by%20ESCAP%20secretariat.pdf

<p>Vice-chairs</p>	<p>Ms. Anice Joseph Chandra, Director, Department of Commerce, Ministry of Commerce and Industry Government of India</p>	<p>1. Mr. Sung Sig Kim Assistant Director for Single Window implementation, data exchange project Korea Customs Service</p> <p>2. Mr. Sergei Nikolaevich Anikin Deputy Head, Information Technology General Department Federal Customs Service Russian Federation</p> <p>3. Mr. Umar Wahid Executive Secretary, National Trade and Transport Facilitation Committee, Ministry of Commerce Pakistan</p> <p>4. Mr. G.H.G. Athula Lankadeva Deputy Director of Customs (ICT) Sri Lanka Customs</p>
---------------------------	--	---

5. The meeting adopted the agenda without any changes.

6. The secretariat introduced the main issues to be discussed during the working groups. Following this, the meeting briefly reviewed the current draft text of regional arrangement. Experts from the Russian Federation delegation made a presentation on “Transboundary Trust Space (TTS)”.²

7. During the joint plenary session of the meeting the secretariat provided a brief introduction of the structure and substance of the draft road map, which was followed by a review of its content.

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

² http://www.unescap.org/sites/default/files/First%20LTWG_TTS%20by%20Russian%20Federation.pdf

9. During the combined plenary session, after the breakout session by each working groups, the meeting heard the reports from chairs of each working group on progress made in their mandated tasks of improving the draft text and preparing a draft road map.

10. The meeting confirmed the dates and venue for the second physical meeting of the working groups as 5-6 November 2015, United Nations Conference Centre (UNCC), Bangkok. The secretariat also informed the meeting that there would be a capacity building workshop on cross-border paperless trade facilitation from 13:00 – 17:00 on 4 November as a back-to-back event. The secretariat recommended members of the working groups to join the workshop, considering its relevance. Furthermore, it was also suggested that each working group might consider having additional meeting session in the morning of 4 November, if they find it necessary and valuable.

11. The LWG, noting the complexity of negotiating the draft text of regional arrangement through virtual meeting, decided to use group mail to share relevant information and references until the next round of negotiation in the second physical meeting. The TWG decided to have a few virtual meetings until the second physical meeting. The TWG requested the secretariat to prepare proposed dates and time for virtual meeting, taking into account the difference in time zones of the members.

12. 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

ANNEX 1. FINAL AGENDA

1. Opening of the Meeting
 - (a) Opening remarks
 - (b) Introduction to Interim Intergovernmental Steering Group and mandated tasks to the Working Groups
 - (c) Self-introduction of participants
 - (d) Election of officers
 - (e) Adoption of the agenda
2. Review of the current draft text of regional arrangement
3. Review of an initial draft road map
4. Working group breakout session
5. Review of progress made in improving the draft text of regional arrangement
6. Review of progress made in preparing a draft road map
7. Other matters
 - (a) Confirmation of dates and venue for the 2nd physical meeting
 - (b) Interim virtual work plan until the 2nd physical meeting
 - (c) Any other business
8. Closing.

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

- 1) The Legal Working Group (LWG) focused its work on improving the current draft text of the regional arrangement for the facilitation of cross-border paperless trade.
- 2) On the title of the regional arrangement, it was agreed to use the word “Agreement” instead of “Arrangement”, considering the treaty nature of the draft text and international practice. On the word “Framework”, it was decided that this would be revisited upon completion of the draft text, in particular after settling the issue of “Protocols” [Art.16bis]. The current title stands as “[Framework] Agreement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific”
- 3) In the paragraph “Noting the necessity to establish an enabling legal environment [based on uniform standards] in order to maximize the benefits associated with cross-border paperless trade” in the preamble, the words “based on uniform standards” in bracket were deleted to avoid any possible confusion and misinterpretation on its meaning.
- 4) In Article 2, the proposed word “cross-border” was added and the proposed words “and legal entities, which are under the jurisdiction of the Parties” were deleted, make it reads as “The present [Framework] Agreement applies to cross-border paperless trade between the Parties”.
- 5) In Article 3, the word “cross-border” was added to the term “paperless trade” in accordance with a decision in Article 2. The proposed word “their” in front of “related services” was deleted.
- 6) Article 4 was agreed but one working group member requested more information on its purpose or history, which the secretariat agreed to provide at the next meeting.
- 7) In article 5, following decisions were made
 - a. Regarding Para. 1, the proposed wording “With recognition of the right to regulate” was deleted.
 - b. Considering their relevance and close inter-relation with “functional equivalence”, “non-discrimination of the use of electronic communications” and “technology neutrality” were added and all three principles were put in bracket, pending further discussion on how to best define them in the text.
 - c. For proposed wording on interoperability and reliability of infrastructure, it was decided to revisit them after settling on “Transboundary Trust Space”

- d. Regarding Para.2, the wording “including those for pre-shipment transboundary data exchange” was deleted.
- 8) Article 6 Para.2, the words “in conformity with” were replaced by “taking into consideration”.
- 9) Regarding Article 8 Para. 1, active discussion was made on use of wording “shall” or “shall endeavour” on provision of mutual recognition, with no consensus reached as it was decided that the wording used would be determined by what was included in the latter part of the paragraph. One suggestion was made on splitting provision into the “what” and the “how”. On the issue of requirements for mutual recognition, the decision was to revisit it at the next physical meeting, considering that it was first time that the concept of “TTS” was introduced and members would need time to review it.
- 10) Regarding Article 9 Para. 1, it was highlighted that the intention of this provision was to promote use of already adopted international standards and guidelines. Tentative list of such international standards and guidelines would be developed as part of preparing a draft road map. Para. 1 was revised as “The Parties shall endeavour to apply international standards and guidelines in order to ensure regional and global interoperability in paperless trade and to develop safe, secure and reliable communications protocols for the exchange of data.” In para. 2, the words “are strongly encouraged” were replaced by “will endeavor.”
- 11) In Article 10 Para. 1, the wording “such as the United Nations Convention on the Use of Electronic Communications in International Contracts” was deleted.
- 12) For Article 11, much discussion was made on sensitivity involved on the issue of legal liability. Several members expressed reservations on this provision from their national perspectives. In this context, new wording “including to protect commercial secrecy and without prejudice to national laws” was proposed as alternative to the text on Customs administration, for further consideration. It was noted that “principles of commercial secrecy” were undefined. The existing words in bracket on Customs administration was proposed to be moved to the Explanatory Note. The LWG will revisit this provision in the next physical meeting with suggestions.
- 13) Article 12 Para.1, much discussion was made on representation level for the Council, with no consensus reached. “ministerial-level” and “high-level” are still considered. Some suggested that it may be possible to retain both terms in the text, by specifying that “high-level” would need to have written proof of decision-making authority. For Para. 3, the words specifying type of working groups

were deleted. Referencing to the provision in the Asia Pacific Trade Agreement (APTA), additional paragraph specifying decision-making procedure for the Council was introduced, reading as “The Council shall, by a two-thirds majority votes adopt such rules of procedure as may be required for the performance of its functions, for the Standing Committee and the Working Groups. Except as otherwise provided for in this Agreement, decisions by the Council shall be taken by a majority of votes cast by members present and voting, provided that at least two thirds of the Participating States are present.”

- 14) Regarding Article 13 Para.1, discussion was made on making the implementation of action plan as a mandatory or best endeavor provision, with no consensus reached. Regarding Para. 2, the existing texts were deleted and replaced by new wording reads as “The implementation schedule for each Party shall be developed as part of the action plan based on a self-assessment of their readiness.”
- 15) Regarding Article 14, consensus was reached to use “shall” on reporting the progress of pilot projects.
- 16) Regarding Article 15, the wording on technical assistance mechanism (second sentence of Para. 1) was deleted.
- 17) Article 16 was decided to be kept with deletion of Para. 2.
- 18) Regarding Article 16 bis Protocols, the LWG requested the secretariat to prepare two alternative texts for this provision: – one version of this provision would consider the draft text of the regional arrangement as a framework agreement providing a basis for developing related protocols as separate legal instruments, or an alternative version of the provision that enables the development and adoption of related protocols as part of the regional arrangement through the institutional arrangement specified in the agreement. The LWG will revisit this provision in the next meeting with alternative provisions to be prepared by the secretariat.
- 19) The LWG did not have enough time to review final clauses as well as Article 16 ter (Other agreement in force), which would be visited in the second physical meeting.
- 20) Upon listening to the presentation on “Transboundary Trust Space (TTS)” made by Russian experts, the members of the LWG had discussion on it, including issues on certification, relationship with UNCITRAL legal instruments, possible sanction on non-compliance with the TTS, etc.

- 21) The LWG decided to conduct a preliminary legal gap analysis using the existing UNNExT legal guide. The secretariat was requested to prepare a preliminary checklist for circulation to members for their exercise before the second physical meeting in November 2015.
- 22) Several members volunteered to develop alternative text of selected Articles for which consensus was yet lacking. The secretariat would assign specific articles to the volunteers when sending compilation of comments received on the revised draft text of the regional agreement.
- 23) The LWG agreed that all members would reflect and send comments on the revised draft text of the regional agreement to the Secretariat no later than 9 October, with the Secretariat compiling the comments and circulating them to all members by 16 October for further review and preparation of alternative consensus text by volunteers.

预览已结束，完整报告链接和二维码如下：

https://www.yunbaogao.cn/report/index?reportId=5_4054

