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Ad Hoc Intergovernmental Meeting on a Regional Arrangement
for the Facilitation of Cross-border Paperless Trade

Bangkok, 22-24 April 2014

Report of the Ad Hoc Intergovernmental Meeting on a Regional Arrangement for the Facilitation of Cross- border Paperless Trade

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I. Matters calling for action by the Commission or brought to its attention

A. Draft agreement/framework agreement/framework arrangement on facilitation of cross-border paperless trade in Asia and the Pacific

After discussing and revising the draft agreement/framework agreement/framework arrangement on facilitation of cross-border paperless trade in Asia and the Pacific, which appears below, the Meeting requests the Commission to endorse the establishment of an interim intergovernmental steering group on cross-border paperless trade facilitation.

Draft agreement/framework agreement/framework arrangement on facilitation of cross-border paperless trade in Asia and the Pacific

The Parties to the present 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 the 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,

Recognizing the conclusion of the negotiation of the Agreement on Trade Facilitation at the ninth Ministerial Conference of the World Trade Organization and the importance of the implementation of the Agreement,

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 to more effectively participate in international trade and enhance their competitiveness,

Mindful of the different levels of economic as well as information and communications technology development of the Parties,

Acknowledging that the availability of information and communications technology and related physical infrastructure is not sufficient in some countries to ensure sustainable business development,

Noting the necessity to establish an enabling legal environment in order to maximize the benefits associated with cross-border paperless trade,

Desirous of formulating 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 the present 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**

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

Article 3 **Definitions**

For the purpose of the present Agreement [Framework Agreement]:

- (a) “Paperless trade” means trade taking place on the basis of electronic communications, including exchange of trade-related data and documents in electronic form;
- (b) “Trade” means international trade in goods, including their import, export, transit and related services;
- (c) “Electronic communication” means any communication that the parties make by means of data messages;
- (d) “Data message” means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange;
- (e) “Trade-related data” means data contained in or transmitted in connection with a trade-related document;
- (f) “Trade-related documents” means documents, both commercial and regulatory, required in completing commercial transactions;
- (g) “Commercial transactions” means transactions relating to the sale of goods between parties whose places of business are in different territories;
- (h) “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;

(i) “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 fulfil all import, export, and transit-related regulatory requirements;

(j) “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

Any interpretation of the present Agreement [Framework Agreement] must have due regard for the general principles on which it is based, for its international character and for the need to promote uniformity in its application.

Article 5 General principles

1. With recognition of the right to regulate, the present Agreement [Framework Agreement] shall be guided by the following general principles:

(a) Functional equivalence: functions of paper-based requirements should be analysed to determine how those functions could be fulfilled through electronic means;

(b) Promotion of interoperability;

(c) Improved trade facilitation and regulatory compliance;

(d) Cooperation between the public and private sectors;

[(e) The principle of interoperability presumes technical and technological compatibility of information systems, including the ability to exchange data in commonly used electronic formats, as well as stability. Interoperable systems should possess and maintain the capacity to enrol new participants — both from within and outside the country — enabling them to start operating the system quickly.

(f) Reliability of infrastructure, which applies common safety requirements for all of the participants. (Russian Federation)]

2. The Parties agree that implementing national legislation and regulations that apply these principles to the exchange of trade-related data and documents [including those for pre-shipment transboundary data exchange (India)] 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 shall endeavour 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 endeavour 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 committee, comprised of relevant representatives of government and private sector parties, in accordance with their domestic environment. The 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 committee for the purpose of the present Agreement [Framework Agreement].

Article 7

Facilitation of cross-border paperless trade and development of single windows

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 single window systems and use them for cross-border paperless trade. In developing single window systems or upgrading existing ones, the Parties are encouraged to make them consistent with the general principles provided in the present 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 on the basis of a substantially equivalent level of reliability. To this extent, the Parties may constitute a technical group among themselves with the existing focal points.

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

Article 9

International standards for exchange of trade-related data and documents in electronic form

1. The Parties shall endeavour to apply international standards and guidelines in order to ensure regional and global interoperability in paperless trade and develop safe and secure communication protocols for the exchange of data.

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, where appropriate, take into account, and whenever possible adopt, available and accepted 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.¹ (delete: Islamic Republic of Iran and Republic of Korea)]

2. 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. The relevant provisions of international law, regional and international regulations, and best practices shall be decided on by the institutional arrangement established under the present Agreement [Framework Agreement].

Article 11 **Legal liability framework**

The Parties shall endeavour 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. [The data utilization by member customs administrations and other government agencies should adhere to the principles of commercial secrecy, should prohibit unauthorized access and should allow for remedial provisions, including compensation for any commercial losses. The necessary legal protection from liability for member customs administrations should also be incorporated. (India and Islamic Republic of Iran)]

Article 12 **Institutional arrangements**

1. The United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) shall, for the purposes of the present 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 Paperless Trade Council shall be supported by a standing committee, which shall supervise and coordinate the implementation of the present Agreement [Framework Agreement] and submit its recommendations to the Council for review. 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 the present Agreement [Framework Agreement].

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

¹ General Assembly resolution 60/21, annex.

Article 13

Action plan

1. The Standing Committee, under the supervision of the Paperless Trade Council, shall develop a comprehensive action plan, which shall include all concrete actions and measures with clear targets and implementation timelines necessary for creating a consistent, transparent and predictable environment for the implementation of the present Agreement [Framework Agreement], including the implementation schedules of the respective Parties. The Parties shall implement the action plan in accordance with the schedule, and the implementation status of each Party shall be reported to the Standing Committee.

2. The action plan shall incorporate a road map for the operationalization of cross-border paperless trade, including the adoption of international standards, implementation of pilot projects and capacity-building related to the present 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 endeavour 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 the present Agreement [Framework Agreement].

2. The Parties may report to the Standing Committee on the progress of pilot projects to facilitate the 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 the present 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 [may (Bangladesh and Islamic Republic of Iran)] cooperate to provide technical support and assistance to each other in order to facilitate the implementation of the present 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 the present Agreement [Framework Agreement].

3. Special consideration shall be given by the Parties to requests from least developed and landlocked developing countries for technical assistance and cooperation arrangements designed to assist them in developing their paperless trade capacity and in taking full advantage of the potential benefits of the present Agreement [Framework Agreement].

4. The Parties may invite development partners for more effective technical and financial assistance in the implementation of the present Agreement [Framework Agreement].

Article 16

Implementation of the present Agreement [Framework Agreement]

1. Each Party shall endeavour to implement the provisions of the present Agreement [Framework Agreement] by creating a legally enabling environment and developing the necessary technical infrastructure to facilitate the cross-border exchange of trade-related data and documents in electronic form. The Parties recognize that the least developed and landlocked developing countries may need technical and financial assistance to develop technical infrastructure and to create a legally enabling environment, which are essential for facilitating the cross-border exchange of trade-related data and documents in electronic form.

2. An implementation schedule for each Party shall be developed as part of the action plan based on an assessment of the readiness of the Parties.

Article 17

Dispute resolution

1. Any dispute that may arise among the Parties regarding the interpretation and application of the present Agreement [Framework Agreement] shall be settled by means of negotiation or consultation among the Parties concerned.

2. In the event that the Parties to a dispute involving the present Agreement [Framework Agreement] 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 such a referral.

3. The dispute shall be submitted to one or more conciliators selected by the Parties involved in the dispute. If the Parties to the dispute fail to agree on [make (Japan)] the choice of a conciliator or conciliators within three (3) months after the request for conciliation, any of those Parties may request the Secretary-General of the United Nations 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

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