Draft Text of the Regional Arrangement for the Facilitation of Cross-border Paperless Trade

(Working Draft with Explanatory Note for Negotiation by the Legal and Technical Working Groups)

(Draft Post 1st LTWG Meeting Version)

The current draft text is the one featured in the report of the *First Meeting of the Intergovernmental Steering Group on Cross-Border Paperless Trade Facilitation*. It is formatted below in such a way to facilitate discussions of the Legal and Technical working groups, by providing the current draft text in the left column, and corresponding Secretariat notes on the right reflecting decisions and/or discussions in previous meeting(s). The Annex to this document contains a provision-by-provision explanatory note of the draft text.

Current Draft Text	Secretariat Notes
Title [Framework] Agreement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific	Working Groups further discuss and reach a consensus on keeping or deleting the word "Framework" in connection with the decision on new Article bis Protocols.
Preamble The Parties to the present [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 [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 [Framework] Agreement applies to cross-border paperless trade between the Parties	
Article 3 Definitions For the purpose of the present [Framework] Agreement: (a) "Cross-border 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; [(j) bis "Transboundary trust space" means a combination of legal, organizational and technical conditions recommended by relevant specialized United Nations agencies (departments) and international organizations with the aim of ensuring trust (confidence in authenticity) in the international exchange of electronic documents and data between electronically interacting parties (subjects); (insert: Russian Federation)] [(j) ter "Electronically interacting parties (subjects)" means the entirety of public authorities, physical and legal persons interacting within relations arising from forming, sending, transmitting, receiving, storage and using electronic documents and data. (insert: Russian Federation)]	Working groups continue considering addition of the newly proposed two definitions of "Transboundary trust space" and "Electronically interacting parties", before deciding on their inclusion.
Article 4 Interpretation Any interpretation of the present [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. The present [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) non-discrimination of the use of electronic communications: the principle requiring that there should be no disparity of treatment between electronic communications and paper documents. Information should not be denied validity or enforceability solely because it is in the form of an electronic communication; (c) technology neutrality: the principle that legislation of the Parties should neither impose nor discriminate in favour of the use of a particular type of technology to achieve its objectives]. (d) Promotion of interoperability; (e) Improved trade facilitation and regulatory compliance; (f) Cooperation between the public and private sectors; [(g) Principle of interoperability	Working groups further work on “non-discrimination”, “technology neutrality” and “functional equivalence” on their definitions and fitting into the current Article.

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. (h) 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 in electronic form will establish common levels of trust and increase interoperability.	Working groups continue reviewing the proposed (g) and (h) for their inclusion, removal, or movement to a different part.
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 taking into consideration 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 [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 [Framework] Agreement.	
Article 8 Cross-border mutual recognition of trade-related data and documents in electronic form 1. The Parties [shall (replace with 'may': Pakistan)] 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 (replace with "of the formation of a transboundary trust space for subjects of electronic interaction": Russian Federation and Pakistan)]; [keep brackets pending review: (Japan and India)]. [To this extent, the Parties may constitute a technical group among themselves with the existing focal points (delete: India)].	Working groups review paras. 1 and 2 regarding the provisions on "substantially equivalent level of reliability" and "transboundary trust space", and discuss possible revision [Also refer to Article 3].
2. [The substantially equivalent level of reliability would be mutually agreed upon among the Parties through the institutional arrangement established under the present [Framework] Agreement (replace with "The requirements for building, development, operating and performance of an audit of the transboundary trust space are prepared by the corresponding working groups of the Parties and adopted by the Paperless Trade Council": Russian Federation).]	Working groups review necessity of the sentence "To this extent, the Parties may constitute a technical group among themselves with the existing focal points", and consider deleting it.
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 to develop safe, secure and reliable communications protocols for the exchange of data. 2. The Parties will endeavour 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 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 [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, [including to protect commercial secrecy and without prejudice to national laws.] [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, Islamic Republic of Iran); (Russian Federation reserves position)**]**	Working Groups, in particular the Legal Working Group, further discuss on this provision, including reviewing the proposed changes, and decides on improved texts.
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 [Framework] Agreement, establish a paperless trade council comprising one (1) ministerial-level nominee (replace with "high-level nominee": Russian Federation, Pakistan; India would like to retain)] from each Party and the Executive Secretary of ESCAP. The Council shall meet once a year [or upon request (insert:	Working Groups continue reviewing wording on representation level for the Council [Note: Ministerial level includes full minister, vice-minister and deputy minister]. Working Groups review and decide on addition of words "or upon request" on meeting frequency.

Cambodia, India, Russian Federation)]. 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 [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 [Framework] Agreement, the Standing Committee may establish working groups 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 AgreementIt shall also be the secretariat of the bodies established under the present [Framework] Agreement. It shall provide support in coordinating, reviewing and supervising the implementation of the present [Framework] Agreement and in all related matters. 5. The Council shall, by a two-thirds majority votes adopt such rules of procedure as may be required for the performance of its	Example of text from APTA for revised Article 5: Article 18: The Committee shall, by a two-thirds majority votes adopt such rules of procedure as may be required for the performance of its functions Except as otherwise provided for in this Agreement, decisions by the Committee 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. The Committee shall communicate with third countries and international organizations in matters relating to the interpretation and operation of this Agreement, and may request the technical advice and the co-operation of national and international organizations. Article 19: The Committee shall, by a two-thirds majority votes adopt such rules of procedure as may be required for the performance of its functions Except as otherwise provided for in this Agreement, decisions by the Committee shall be taken by a

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.	majority of votes cast by members present and voting, provided that at least two thirds of the Participating States are present. The Committee shall communicate with third countries and international organizations in matters relating to the interpretation and operation of this Agreement, and may request the technical advice and the co-operation of national and international organizations.
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 [Framework] Agreement including the implementation schedules of the respective Parties. The Parties shall [endeavour to] 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 implementation schedule for each Party shall be developed as part of the action plan based on a self-assessment of their readiness.	Working Groups decide on use of either “shall” or “shall endeavor” for implementation of the action plan.
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 [Framework] Agreement. 2. The Parties shall 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 [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 may cooperate to provide technical support and assistance to each other in order to facilitate the implementation of the present [Framework] Agreement. 2. The Parties may collaborate on capacity-building through the institutional arrangement established under the present [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 [Framework] Agreement. 4. The Parties may invite development partners for more effective technical and financial assistance in the implementation of the present [Framework] Agreement.	Working Groups discuss and specify meaning of "special consideration" in para. 3
Article 16 **Implementation of the present [Framework] Agreement** Each Party shall endeavour to implement the provisions of the present [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.	

[Article 16 bis Protocols 1. The Parties may, at any regular meeting of the Council, adopt relevant technical or legal protocols to the present [Framework] Agreement. 2. The text of any proposed protocol shall be communicated to the Parties by the secretariat at least six months before such a session. 3. The requirements for the entry into force of any protocol shall be established by that instrument. 4. Only Parties to the present [Framework] Agreement. 5. Decisions under any protocol shall be taken only by the parties to the protocol concerned (insert: Republic of Korea and Russian Federation).]	Working groups decide on article number for this article, in consideration of its most suitable place in relation to other articles [Note: the secretariat views it suitable as new Article 12 (current article 12 and subsequent ones becoming 13, 14 and so on), considering importance of this new article and value of putting it adjacent to (right before) other important ones such as institutional arrangements and action plan]. Working groups also consider revising it with alternative wording for enabling developing and adopting related protocols by the current regional arrangement through its own institutional arrangement.
Article 16 ter Other agreements in force This Agreement or any action taken thereto shall not affect the rights and obligations of the Contracting Parties under any existing agreements or International Conventions to which they are also Contracting parties (insert: Thailand, Russian Federation and India).	Working Groups decide on article number for this article, in consideration of its most suitable place in relation to other articles [Note: it can possibly fit into one new paragraph in the current Article 10 with revision of its title, or it can be placed right before current Article 17 on dispute resolution]. [The word "Contracting" should be deleted to make it consistent with other provisions in the current draft text].
Article 17 Dispute resolution	

1. Any dispute that may arise among the Parties regarding the interpretation and application of the present [Framework] Agreement shall be settled by means of negotiation or consultation among the Parties concerned [supported by the institutional arrangement in article 12. (insert: Cambodia)]	Working Groups consider adding supportive role of the institutional arrangement in dispute resolution.
[2. In the event that the Parties (replace with "Parties that are parties": Japan) to a dispute involving the present [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. (delete: Russian Federation)] 3. [The dispute shall be submitted to one or more conciliators selected by the Parties (replace with "Parties that are parties": Japan) involved in (to: Japan) 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. (delete: Russian Federation)] 4. [The recommendation of the conciliator or conciliators appointed, while not binding in character, shall become the basis of renewed	Working Groups, in particular the Legal Working Group, review feasibility of deleting paras. 2 -5 as proposed.

consideration by the Parties to the dispute. (delete: Russian Federation)] 5. [By mutual consent, the Parties to the dispute may decide in advance to accept the recommendation of the conciliator or conciliators as binding. (delete: Russian Federation)] 6. The provisions of the present article shall not be construed as excluding other measures for the settlement of disputes mutually agreed among the Parties to the dispute. 7. Any State may, at the time of depositing its instrument of ratification, acceptance, approval or accession, deposit a reservation stating that it does not consider itself bound by the provisions of the present article relating to conciliation. Other Parties shall not be bound by the provisions of the present article relating to conciliation with respect to any Party which has deposited such a reservation.	
Article 18 Procedure for signing and becoming a Party 1. The present [Framework] Agreement shall be open for signature by States members of the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP member States) at _____, on _____, and thereafter at United Nations Headquarters in New York	

from _____ to _____ 2. The ESCAP member States referred to in paragraph 1 above may become Parties to the present [Framework] Agreement by: (a) Signature subject to ratification, acceptance or approval; or (b) Accession. 3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument with the Secretary-General of the United Nations.	
Article 19 Entry into force 1. The present [Framework] Agreement shall enter into force ninety (90) days after the date on which the Governments of at least five (5) (India suggests higher number) ESCAP member States have consented to be bound by the [Framework] Agreement pursuant to article 18, paragraphs 2 and 3. 2. For each ESCAP member State that deposits its instrument of ratification, acceptance, approval or accession after the date upon which the conditions for the entry into force of the present [Framework] Agreement have been met, the [Framework] Agreement shall enter into force for that Party	Working Groups review on the most practical number, including current 5, for entry into force. [OLA mentioned that it varies from treaty to treaty, but the minimum is 2 for a UN Treaty]. [Three ESCAP transport-related treaties: 8].

ninety (90) days after the date of its deposit of the said instrument.	
Article 20 Procedures for amending the [Framework] Agreement 1. The text of the present [Framework] Agreement may be amended by the procedure specified in the present article. 2. Amendments to the present [Framework] Agreement may be proposed by any Party. 3. The text of any proposed amendment shall be circulated to all members of the Paperless Trade Council by the secretariat at least sixty (60) days before the Council meeting at which it is proposed for adoption. 4. An amendment shall be adopted by the Paperless Trade Council by a two-thirds majority of the Parties [present and voting. (proposed deleting: Pakistan and India)] 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 number of Parties at the time of its adoption [acceptance]. The amendment shall enter into force with	Working Groups consider deleting “present and voting” in para. 4, after reviewing its implication.

respect to all Parties to the [Framework] Agreement except those which, before the twelve-month period specified above, declare that they do not accept the amendment. Any Party that has declared that it does not accept an amendment adopted in accordance with paragraph 4 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 present [Framework] Agreement, except as provided in article 17, paragraph 7 [replace with "The Parties may have the option of expressing a reservation to any of the articles within a time frame not extending beyond a reasonable mutually accepted period." (insert: Pakistan)]	Working Groups, in particular the Legal Working Group, review the proposed change. (Note: current wording is alignment with provisions in other three transport-related intergovernmental agreements of ESCAP)
Article 22 Withdrawal Any Party may withdraw from the present [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 present [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 [Framework] Agreement shall again become operative if the number of Parties reaches five (5). (Align the number in accordance with the decision on article 19: India)	Working Groups consider revising the number (5), in accordance with a decision made in Article 9.
Article 24 Limits to the application Nothing in the present [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 present [Framework] Agreement. IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed the present [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.	

Annex: Explanatory note to the draft text of the regional arrangement for the facilitation of cross-border paperless trade

This note updates the Explanatory note circulated at the First Steering Group Meeting.[1] It has been prepared to assist ESCAP members in reviewing and negotiating the draft text of the regional arrangement for the facilitation of cross-border paperless trade, by clarifying relevant technical and legal terms and topics referred to in the various articles of the draft text. Explanations on articles, including their background and basis, when available, are provided under the relevant article number and title of the existing draft text. This note is not intended to become part of the text of the regional arrangement.

Preamble

1. With reference to the term "ESCAP member States", the full list of 53 ESCAP member States can be found at www.unescap.org/about/member-states.

Article 1

Objective

2. The term "subregional" used in Article 1 is generally in alignment with the United Nations geoscheme, devised by the United Nations Statistics Division. In this geoscheme, Asia comprises five subregions: Central Asia; Eastern Asia; Southern Asia; South-Eastern Asia; and Western Asia. In this context, the membership of ESCAP covers all except Western Asia but also covers the Pacific subregion.

3. In the context of this [Framework] Agreement, any economic community comprising more than two countries, such as a customs union, may also be considered a subregion. With the contexts given above, the term "subregional" as used in Article 1 conforms to the definition of "subregion" given in the Oxford English Dictionary: "a division or part of a region".

Article 3

Definitions

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[1] See: http://www.unescap.org/sites/default/files/PTA%20IISG%281%29%20CRP2_Explanatory%20note%20to%20the%20draft%20text.pdf

4. For those terms whose definitions are taken, in part or as a whole, from other sources, original sources are provided. In addition, definitions of and/or explanations on additional terms are provided for the clarity of understanding on some terms listed in Article 3.

5. The definition of the term "trade" is given in order to draw attention to two elements: (a) the international character of trade, meaning that the [Framework] Agreement does not cover domestic (internal) trade, and the scope of the [Framework] Agreement is limited to "trade between the Parties" (ref. Article 2); and (b) the focus of the [Framework] Agreement on trade in goods, meaning that the [Framework] Agreement does not cover other forms of commercial activity, such as leasing, construction of industrial works, engineering, licensing or investment.

6. "International trade" means sales of goods originating from a Party and destined for another Party. The term "international trade" specifies that the provisions of the [Framework] Agreement will apply to trade in goods originating from a Party and destined for another Party. Such an approach is used in the framework of the World Trade Organization (WTO) and in regional trade agreements.

7. "Goods" means any commodity included in the nomenclature governed by the International Convention on the Harmonized Commodity Description and Coding System[2] except goods bought for personal, family or household use. With this definition of goods, the [Framework] Agreement excludes transactions with consumers. However, any Parties to the [Framework] Agreement that would like to have consumer transactions covered may do so voluntarily by making additional arrangements separately. Any commodity not included in the nomenclature governed by the Convention can be covered by the [Framework] Agreement through an additional agreement among the Parties.

8. The meaning of "transit" is paraphrased from Article V of the General Agreement on Tariffs and Trade (GATT).[3] Transit means the passage of goods across the territory of a Party, with or without trans-shipment, warehousing, breaking bulk, or change in the mode of transport, when such passage is carried out to or from the territory of any other Party. Customs transit is defined by Specific Annex E of the revised Kyoto Convention on the Simplification and Harmonization of Customs Procedures[4] as the customs procedure under which goods are transported under customs control (and without imposing customs duties) from one customs office to another; the national transit operations included in this definition of customs transit are out of the scope of this [Framework] Agreement. As to transit, it is understood that the provisions of the [Framework] Agreement will apply

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[2] United Nations, *Treaty Series*, vol. 1503, No. 25910.

[3] United Nations, *Treaty Series*, vol. 55, No. 814.

[4] United Nations, *Treaty Series*, vol. 2370, No. 13561.

between Parties, one of which is the party of transit and the other is the party from whose territory goods arrive in the party of transit (first option) or the party to whose territory goods go from the party of transit (second option).

9. "Related services" means all services associated with international trade (sales of goods), including payment, insurance, carriage, trans-shipment and warehousing.

10. The definition of "electronic communication" is wholly adopted from the United Nations Convention on the Use of Electronic Communications in International Contracts,[5] in particular Article 4 (b).

11. The definition of "data message" is wholly adopted from Article 2 (a) of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce[6] and Article 4 (c) of the United Nations Convention on the Use of Electronic Communications in International Contracts, with the exclusion of the words "electronic mail, telegram, telex or telecopy".

12. Regarding the term "data and documents in electronic form", it should be understood that, in contrast to paper documents and data presented within such paper documents, a document in electronic form can be either an electronic message or an electronic document. What distinguishes an electronic message from an electronic document is whether an information system can process the information contained within it or not; an information system can interpret and process the former but not the latter. Examples of electronic messages include electronic data interchange (EDI) or Extensible Markup Language (XML) messages, the information within which can be interpreted and processed by an information system. Examples of an electronic document are Microsoft Word files, image files and portable document format (PDF) files, which require human intervention before the information contained within them can be interpreted or processed.

13. In the term "commercial transactions", the notion of "place of business" is taken from Article 10 of the United Nations Convention on Contracts for the International Sale of Goods.[7] The notion of "transactions relating to sales of goods" should be interpreted as excluding transactions related to supply of services.

14. "Mutual recognition" is established by the Parties agreeing that different national requirements are equivalent and mutually acceptable in order to fulfil the requirements of domestic legislation in a specific field. Each Party to the [Framework] Agreement would

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[5] General Assembly resolution 60/21, annex.

[6] General Assembly resolution 51/162, annex.

[7] United Nations, *Treaty Series*, vol. 1489, No. 25567.

be required to recognize the validity of any trade-related data and documents received in electronic form from another Party and vice versa.

15. The definition of "single window" is partly adopted from Economic Commission for Europe (ECE) Recommendation No. 33.[8] Some modification has been made from the definition given in ECE Recommendation No. 33 to suit the objective and scope of this [Framework] Agreement. For the purpose of reference, the definition of this term in ECE Recommendation No. 33 is "a facility that allows parties involved in trade and transport to lodge standardized information and documents with a single entry point to fulfil all import, export, and transit-related regulatory requirements. If information is electronic, then individual data elements should only be submitted once."

16. The definition of "interoperability" is wholly adopted from the *IEEE Standard Computer Dictionary: A Compilation of IEEE Standard Computer Glossaries*.[9]

Article 4

Interpretation

17. The aim of Article 4 is to increase the level of uniformity in the interpretation and implementation of the [Framework] Agreement. The source of inspiration for the paragraph is Article 7 of the United Nations Convention on Contracts for the International Sale of Goods.

Article 5

General principles

18. "Technology neutrality" is a principle that legislation should neither impose nor discriminate in favour of the use of a particular type of technology to achieve its objectives.

19. "Functional equivalence" is a principle that encourages an analysis of the functions of paper documents and determining how those functions could be fulfilled through electronic means. Using the functional equivalence approach involves singling out basic functions of paper-based documents with a view to articulating criteria which, once met

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[8] Economic Commission for Europe, United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT), *Recommendations and Guidelines on establishing a Single Window to enhance the efficient exchange of information between trade and government, Recommendation No. 33* (United Nations publication, Sales No. 05.II.E.9).

[9] New York: Institute of Electrical and Electronics Engineers, 1990.

by electronic communications, would enable such electronic communications to enjoy the same level of legal recognition as corresponding paper documents performing the same function. Each Party shall give the same treatment to data and documents received in electronic form as to data and information received in paper documents.

20. "Non-discrimination of the use of electronic communications" is a principle requiring that there should be no disparity of treatment between electronic communications and paper documents. Information should not be denied validity or enforceability solely because it is in the form of an electronic communication.

21. The principle of "promotion of interoperability" encourages the Parties to work towards ensuring that their paperless trade systems, including single windows, are interoperable for the purpose of cross-border data exchange. Thus, these systems would be enabled to provide and receive trade-related data and documents in electronic form to and from the paperless trade systems of other Parties.

22. The principle of "improved trade facilitation and regulatory compliance" is meant to ensure that cross-border paperless trade mechanisms to be developed by the Parties under the [Framework] Agreement contribute to a higher level of transparency, predictability and efficiency in the trade in goods (that is, trade facilitation), as well as enhanced regulatory compliance through better risk assessment and integrity of data and documents.

23. The principle of "cooperation between the public and private sectors" calls for the Parties to ensure cooperation in implementing the [Framework] Agreement; joint efforts between the public and private sectors, based on shared perspectives, would result in shared benefits and bring about a balance between the needs of trade facilitation and regulatory compliance.

Article 6

National policy framework, enabling domestic legal environment and paperless trade committee

24. Electronic communications afford the possibility of connecting anywhere anytime and are unfettered by physical borders. Having different parameters for domestic and international electronic transactions creates obstacles to the broadest use of electronic communication. Hence, it is highly recommended that the same legislation be adopted for both domestic and international transactions.

25. For paperless trade to be conducted in the best possible manner, trade-related data and documents in electronic form should ideally be subject to the same requirements for use in domestic or international trade as paper documents. Otherwise, traders would have to

comply with different requirements, which would include cases in which the final destination of the goods is not clear at the beginning of the transaction.

26. Article 6 is aimed at creating an enabling domestic legal environment fully aligned with the international one. The use of international standards in the domestic legal and regulatory environment ensures that domestic legal and regulatory requirements will not hinder cross-border paperless trade. Examples of recommended international standards and best practices include the UNCITRAL Model Law on Electronic Commerce, the UNCITRAL Model Law on Electronic Signatures,[10] the *Guidelines on the Protection of Privacy and Transborder Flows of Personal Data* of the Organisation for Economic Co-operation and Development (OECD),[11] and the Asia-Pacific Economic Cooperation (APEC) *Data Privacy Framework*.[12]

27. Representatives of government and private sector parties participating in a national paperless trade committee would include representatives from trade, logistics service providers, port and airport authorities, IT service providers, national standard bodies, customs and other regulatory agencies that participate in export, import and transit functions. The scope of participation should be decided by each Party depending on national rules, regulations and environment.

Article 8

Cross-border mutual recognition of trade-related data and documents in electronic form

28. At an operational level, additional technical agreements (such as memorandums of understanding and service level agreements) between public and/or private parties would be necessary to implement this provision practically. It is also desirable to have commonly accepted standards for interoperability; countries whose electronic signature/information technology laws are based on UNCITRAL model laws have many commonalities, and such commonalities can facilitate mutual or multilateral agreements.

29. Various forms of electronic signatures, such as digital signatures, biometrics-based signatures, clickable "I Agree" boxes and signature images, are being used for authentication of documents in electronic form. However, legal recognition of such forms differs from one country to another. Digital signatures, based on asymmetric key cryptography, are a type of commonly used and legally recognized form of electronic

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[10] General Assembly resolution 56/80, annex.

[11] See http://www.oecd.org/sti/ieconomy/2013-oecd-privacy-guidelines.pdf.

[12] Singapore: APEC Secretariat, 2005. Available from http://www.apec.org/Groups/ Committee-on-Trade-and-Investment/~/media/Files/Groups/ECSG/05_ecsg _privacyframewk.ashx.

signature. A document is digitally signed using a "private key", which is in the sole possession of the signing entity and verified using a corresponding "public key". The public key for an entity is certified by a certifying authority, which issues a Digital Signature Certificate (DSC) after carrying out necessary verification, and acts as a trust anchor.[13] In most countries, documents signed using a DSC issued by a licensed certifying authority are legally recognized. However, a certifying authority recognized in one country may not be recognized in the other, which creates problems in cross-border paperless transactions. Hence, it is desirable that certifying authorities or trust anchors should have cross-border legal recognition.

30. The criterion of "a substantially equivalent level of reliability" is taken from Article 12, paragraph 3, of the UNCITRAL Model Law on Electronic Signatures.[10] This means that data and documents will be recognized when they offer a level of reliability similar, though not identical, to that of the recognizing parties. The "substantially equivalent level of reliability" should be mutually agreed by the Parties. Examples of factors that may be considered in assessing the level of reliability are as follows:

    (a) Existence of financial and human resources and assets of the trust anchors;

    (b) Trustworthiness of the hardware and software systems used;

    (c) Security and vulnerabilities of the algorithms and/or mechanisms used for signing;

    (d) Procedures for processing signature certificates, applications for the certificates and retention of relevant records;

    (e) Availability of information to subscribers and/or relying parties;

    (f) Regularity and extent of audits by an independent body.

Article 9

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

31. "International standards" in this [Framework] Agreement refer to standards developed by international standards organizations or bodies and which have been widely adopted as good practices. Examples of such international standards include the International Organization for Standardization country code standard (ISO 3166), the United Nations Code for Trade and Transport Locations (UN/LOCODE), the United Nations Trade Data

[13] See ECE/TRADE/C/CEFACT/2010/14, Sect. 3.

Element Directory (UNTDED), Codes for Units of Measure used in International Trade (UNECE Recommendation No. 20)[14] and the United Nations Electronic Data Interchange for Administration, Commerce and Transport (UN/EDIFACT).

32. For exchange of trade-related data and documents in electronic form, the Parties may use common international standards. The standards to be applied and the data and documents in electronic form to be exchanged need to be discussed and mutually agreed upon by the Parties during the implementation of the [Framework] Agreement, after its entry into force.

33. As part of ensuring interoperability and enhancing mutual recognition of trade-related data and documents in electronic form, the Parties would collaborate on international standard implementation strategies through the institutional arrangement established under this [Framework] Agreement. International standard implementation strategies are primarily concerned with, though not limited to, technical standards.

Article 10

Relation with other legal instruments enabling cross-border paperless trade

34. The [Framework] Agreement is meant to operate in a complex legal environment, in which a number of international legal texts and other legislative and regulatory standards are already present. The [Framework] Agreement is aimed at interacting with them and actually promotes further harmonization of the law on electronic transactions.

35. In paragraph 1 of Article 10, the Parties are called upon to take into account and adopt available international legal instruments, for example the United Nations Convention on the Use of Electronic Communications in International Contracts, a treaty that contains the most modern restatement of electronic transactions law, with respect to both general principles and operational rules.

36. Paragraph 2 of Article 10 is a blanket provision referring to all applicable international standards, regional or global. Those will include, for instance, guidelines on privacy and data retention, intellectual property treaties and other texts that have not yet been elaborated.

Article 11

Legal liability framework

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[14] Revision 6 (CEFACT/ICG/2009/IC011). Available from www.unece.org/fileadmin/ DAM/cefact/recommendations/rec20/ Rec20_Rev6e_2009.pdf.

37. The [Framework] Agreement is not aimed at modifying the liability regime (or, more generally, the legal regime) of the entities involved in paperless trade, including customs authorities, in particular. In most cases, the legal regime of those entities does not change on the basis of the medium used for submission of a document. Thus, the liability for an incorrect customs declaration, for instance, will remain the same regardless of the medium used.

38. However, the very nature of paperless trade may give rise to additional liabilities. Such liabilities may arise in connection with information processing and data protection. For instance, damage may result from the corruption of data during its transmission. In that case, it might be necessary to deal with the matter of the liability regime and its limitations.

Article 12

Institutional arrangements

39. In the performance of their functions, working groups under the Standing Committee may establish liaison with relevant regional and global entities involved in facilitation of cross-border data exchange for cooperation and avoidance of possible duplication of efforts.

40. The secretariat's support in the implementation of the [Framework] Agreement would consist of the following:

    (a) Administrative support for meetings of institutions at all levels, including the Council, the Standing Committee and working groups;

    (b) Support to the activities of institutions at all levels, including the Council, the Standing Committee and working groups;

    (c) Support to the development and implementation of action plans, pilot projects and capacity-building programmes;

    (d) Maintenance of relevant databases and references;

    (e) Coordination of cooperation between the Parties and development partners in capacity-building, including financial and technical assistance;

    (f) Mobilization of internal and external resources;

    (g) Any other matters necessary for implementing the [Framework] Agreement.

Article 13

Action plan

41. The action plan would comprise both collective and individual action plans. A collective action plan is a regional-level action plan developed and adopted by the Standing Committee for joint implementation among all the Parties. An individual action plan is a national action plan developed and implemented by each Party and shared with other Parties through the Standing Committee.

42. The action plan would include a mechanism to review and assess the readiness of the Parties and any gaps in policy, legal and technical frameworks, whose primary purpose is to facilitate the participatory process and not to engage in measurement (comparisons between Parties), so that subsequent actions, in particular capacity-building programmes, can be designed to support the Parties effectively.

43. An action plan, in particular the capacity-building component, may be customized at the national, subregional and regional levels, considering the different levels of awareness and preparedness of different Parties and subregions.

Article 14

Pilot projects and sharing of lessons learned

44. Under its institutional arrangement, the [Framework] Agreement would develop technical and legal reference frameworks to be used for pilot projects, and for actual projects, whenever possible. Such reference frameworks include model memorandums of understanding for arranging bilateral/multilateral exchanges of cross-border data, implementation models/scenarios, mutual recognition protocols, authentication procedures and lists of technical standards to be used.

45. Lessons learned and the results of successful pilot projects would be used to develop actual projects for live cross-border paperless trade to be included in action plans.

Article 15

Capacity-building

46. The secretariat would provide necessary support to the Parties in implementing the capacity-building provisions of the [Framework] Agreement, including the coordination of cooperation with development partners in financial and technical assistance.

[Article 16 bis

Protocols

47. A benchmarking reference for this article is Article 17 of the UN Framework Convention on Climate Change[15]. The Article is provided for reference as follows:

Article 17 Protocols 1. The Conference of the Parties may, at any ordinary session, adopt protocols to the Convention. 2. The text of any proposed protocol shall be communicated to the Parties by the secretariat at least six months before such as session. 3. The requirements for the entry into force of any protocol shall be established by that instrument 4. Only Parties to the Convention may be Parties to a protocol. 5. Decisions under any protocol shall be taken only by the Parties to the protocol concerned.

Article xx

Other agreements in force

48. Other treaties contain this provision to ensure that a party is not affected in their bindings to other treaties by becoming a party to another treaty. One example would be Article 32 of the ASEAN Framework Agreement on the Facilitation of Goods in Transit[16].

Article 32 **Other Agreements in Force** This Agreement or any action taken thereto shall not affect the rights and obligations of the Contracting Parties under any existing agreements or International Conventions to which they are also Contracting parties.

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[15] See: https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXVII-7&chapter=27&Temp=mtdsg3&lang=en

[16] See: http://www.asean.org/communities/asean-economic-community/item/asean-framework-agreement-on-the-facilitation-of-goods-in-transit-2