

Quick Guide to the Draft Text of a Regional Arrangement on the Facilitation of Cross-border Paperless Trade

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(version 1)

Note: This quick guide to the draft regional arrangement on the facilitation of cross-border paperless trade has been prepared in the form of a series of frequently asked questions (FAQ) to assist officials and other stakeholders interested in the initiative to quickly grasp its origin and key features. It is based on discussions and inputs from officials and experts who have been involved in the early stages of development of the draft arrangement. The Guide is an informal document and its content should not be used to support any particular legal interpretation of the provisions contained in the draft arrangement. The Guide will be updated as the draft text evolves and new questions and inputs are received. For any questions, please contact the ESCAP Secretariat at lim6@un.org.

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1. Why was the draft text of a regional Arrangement on Facilitation of Cross-border Paperless Trade prepared?

Recognizing the potential benefits from conducting trade transactions on the basis of electronic rather than paper-based data and documentation, a number of Asian and Pacific countries began implementing paperless trade systems from the late 1990s and early 2000s. Economic gains from early implementation of such systems have been significant, as is the cases with the Republic of Korea and Singapore.

However, most of the paperless trade systems in the region have been focused on facilitating information exchange between stakeholders domestically, while facilitating international trade inherently requires trade information to flow across borders along international supply chains. As a result, the flow of electronic trade information generated domestically encounters both technical and legal barriers beyond the border, requiring traders to maintain conventional paper-based trade practices and reducing the overall benefits and return on investment from paperless trade systems.

The need to find effective ways to address these barriers has been regularly and increasingly raised by both public and private stakeholders in the region, in particular since the High-level Symposium on Building Regional Capacity for Paperless Trade, which was jointly organized by ESCAP and the Economic Commission for Europe on 24 and 25 March 2009. Several ESCAP member States ultimately decided to sponsor a draft resolution on the matter. The Commission subsequently adopted resolution 68/3 on 23 May 2012. Implementation of the resolution led to the drafting of a regional arrangement on cross-border paperless trade.

Definition of cross-border paperless trade

“Trade taking place on the basis of electronic communications, including exchange of trade-related data and documents in electronic form across borders”

2. Why an arrangement at regional level?

Asia and the Pacific region is home to World champions of paperless trade (such as Singapore and Republic of Korea). Many Asian countries have been working towards realization of paperless trade. There are some bilateral (e.g., cross-border exchange of electronic certificate of origin between Republic of Korea and Taiwan Province of China) and subregional (e.g., ASEAN Single Window) cross-border paperless trade initiatives in the region. An arrangement made at regional level can have the advantage of providing an overarching regional-level framework to facilitate interoperability of existing and emerging bilateral and subregional cross-border paperless trade initiatives and more effectively support intraregional trade, as mandated by ESCAP Resolution 68/3.

3. What are the benefits of the regional arrangement to my country?

ESCAP member states who will choose to become party to the regional arrangement can expect the following benefits, inter alia:

- ✓ Ready access to negotiation with potential counterpart countries for cross-border data exchange, avoiding numerous bi-lateral approaches to other members and reducing work for preparation of bi-lateral or subregional arrangements.
- ✓ Improvement in paperless trade readiness at national level and acceleration of progress towards a paperless trade environment on the basis of demonstrated political will.
- ✓ Opportunity to align national paperless trade practices to cross-border trade data exchange for interoperability, in particular through structured and regular sharing of lessons.
- ✓ Direct participation in the development of pragmatic solutions for the cross-border exchange of trade documents, making it possible to become early adopter/implementer, potentially boosting trade competitiveness.
- ✓ Ensuring that the continuous development of the national paperless trade environment is fully supportive of cross-border exchange, reducing overall investment costs and maximizing return from investments in paperless trade systems.
- ✓ Reduced trade transaction costs and time.
- ✓ Higher levels of compliance to regulatory requirements.
- ✓ Higher advantage for Small and Medium-sized Enterprise (SMEs), a dynamic group of traders in every country, by reducing the time and manpower employed in fulfilling paper based requirements.
- ✓ Reduction of paperwork for trade under increasing number of FTAs through electronic exchange of data and documents like the certificates of origin.

4. How was the draft text of a regional Arrangement on Facilitation of Cross-border Paperless Trade prepared?

The draft regional arrangement was developed as part of implementing the ESCAP resolution 68/3, entitled *Enabling paperless trade and the cross-border recognition of electronic data and documents for inclusive and sustainable intraregional trade facilitation*.

Adopted by ESCAP members in May 2012, it intends to enable paperless trade and the cross-border recognition of electronic data and documents for inclusive and sustainable intraregional trade facilitation.

It invites member States to work towards the development of regional arrangements on the facilitation of cross-border paperless trade. It also requests the ESCAP secretariat to support and facilitate the process for the development of regional arrangements on the facilitation of cross-border paperless trade, and continue and further strengthen the secretariat's support for capacity-building activities related to trade facilitation and paperless trade.

The draft text of a regional arrangement on the facilitation of cross-border paperless trade was developed in 2012-2013 through:

- ✓ a regional study on feasibility and potential options,
- ✓ expert reviews (2 expert group meetings), and
- ✓ member consultations (3 subregional meetings and one regional meeting).

A report on the implementation results was made to the third session of the Committee on Trade and Investment (CTI) held on 20-22 November 2013. The CTI noted the progress made on the implementation and supported the desire of member States for a regional arrangement on the facilitation of cross-border paperless trade. The CTI agreed to move forward with negotiation of the arrangement and, taking note of the need for further discussion, requested the secretariat to organize another member consultation in the form of an ad hoc intergovernmental meeting prior to the seventieth session of the Commission in order to incorporate relevant revisions to the existing draft.

Accordingly, the draft text of a regional arrangement on the facilitation of cross-border paperless trade is to be further revised at the Ad Hoc Intergovernmental Meeting on a Regional Arrangement for the Facilitation of Cross-border Paperless Trade on 22-24 April 2014.

5. What does the draft text of the Regional Arrangement contain?

It contains a preamble and 25 articles. The preamble provides the background and rationale for this arrangement. Articles 1 to 16 are substantive clauses, covering objective, scope, definitions, general principles and other action-oriented measures as follows:

- Article 1: Objective
- Article 2: Scope
- Article 3: Definitions
- Article 4: Interpretation
- Article 5: General principles

Article 6: National Policy Framework, Enabling Domestic Legal Environment and Paperless Trade Committee
 Article 7: Facilitation of Cross-border Paperless Trade and Development of national Single Window(s)
 Article 8: Cross-border Mutual Recognition of Trade-related Data and Documents in Electronic Form
 Article 9: International Standards for Exchange of Trade-related Data and Documents in Electronic Form
 Article 10: Relation with Other Legal Instruments Enabling Cross-Border Paperless Trade
 Article 11: Legal Liability Framework
 Article 12: Institutional Arrangements
 Article 13: Action Plan
 Article 14: Pilot Projects and Sharing of Lessons Learned
 Article 15: Capacity Building
 Article 16: Implementation of Agreement [Framework Agreement]

Articles 17 to 25 are final clauses, specifying standard provisions typical of a UN treaty as follows:

Article 17: Dispute Resolution
 Article 18: Procedure for Signing and Becoming a Party
 Article 19: Entry into Force
 Article 20: Procedures for Amending the Agreement [Framework Agreement]
 Article 21: Reservations
 Article 22: Withdrawal
 Article 23: Suspension of validity
 Article 24: Limits to the application
 Article 25: Depositary

6. What is the nature of the draft Regional Arrangement?

The draft regional arrangement is a UN treaty text and is a *voluntary agreement, i.e.*, once the text has been finalized, each ESCAP member state will decide for itself if and when to become a party. The primary focus of the draft text of the regional arrangement is *facilitation* of cross-border paperless trade, not cross-border paperless trade itself. Therefore, most provisions center on measures facilitating cross-border paperless trade, not on detailed prescription on how to engage in cross-border paperless trade. In line with this focus, most provisions are *best endeavor* in nature.

7. What are key features of the draft Regional Arrangement?

The regional arrangement has the following key features:

- ✓ A set of key principles to promote connectivity and trade facilitation: technology neutrality, functional equivalence, non-discrimination of the use of electronic

communications, promotion of interoperability, improved trade facilitation and regulatory compliance, and cooperation between public and private sectors

- ✓ A multi-layered institutional arrangement as an operating platform: a Council at ministerial level as a decision-making body; a Standing Committee at senior official level as an operative body; and Working Groups, at expert level, as substantive supportive bodies.
- ✓ A comprehensive action plan: the purpose of the action plan is to set a practical activity plan to address legal and technical issues in cross-border paperless trade on a consensus basis. This action plan will be developed by the Standing Committee and Working Groups. The collective implementation of the action plan is expected to result in the emergence of practical standardized solutions and protocols for cross-border paperless trade. Action plan would include development of technical and legal measures, detailed actions for designing pilot projects and subsequent actual projects, capacity building support and information and experience sharing activities among members, etc.

8. What is the relationship between the regional arrangement and the WTO Trade Facilitation Agreement?

The draft text of regional arrangement, with its wholly ICT-based trade facilitation provisions, is complementary to the WTO Trade Facilitation Agreement (TFA). Implementing the draft regional arrangement supports ESCAP member states in easily meeting requirements of many provisions of the WTO TFA, inter alia, Article 10: Formalities connected with importation and exportation and transit, Release and clearance of goods (Art. 7), Border agency cooperation (Art. 8).

The WTO TFA focuses on conventional trade facilitation measures such as publication and availability of information, advance ruling, fees and charges, release and clearance of goods. It has a provision on a Single Window at national level, either paper-based or electronic, not targeted at cross-border paperless trade.

The regional arrangement, on the other hand, is wholly dedicated to facilitation of paperless trade, in particular cross-border. Though both the WTO TFA and the draft text of regional arrangement have provisions on a Single Window, there is no conflict between the two. The Single Window provision of the WTO TFA in fact specifies that “Members shall, to the extent possible and practical, use information technology to support the single window”. Implementing the regional arrangement is therefore expected to help ESCAP member states to easily meet the Single Window requirements of the WTO TFA.

9. What is the relevance of the Regional Arrangement for Least Developed Countries (LDCs) and Land-Locked Developing Countries (LLDCs)?

LDCs usually lack human, institutional and financial resources for paperless trade. The draft Regional Arrangement features strong capacity building support provisions which can enhance access to technical assistance opportunities in cross-border paperless trade. With its mechanism on sharing of lessons, it provides LDCs ready access to learning from and benchmarking other first movers in the region. With its pilot project mechanism, it provides an opportunity to engage in practical experiences in paperless trade implementation, instead of going through redundant trial and error process.

LLDCs have a geographical disadvantage in conducting trade transactions. The regional arrangement could facilitate transit process, reducing time and costs for LLDCs. For example, if both an LLDC and its neighboring transit country are parties to the regional arrangement, transit related information between them could be exchanged electronically.

LDCs and LLDCs in the region are in early stage of implementing paperless trade. Many of them already have in place policies for advancing automation and paperless trade. Therefore, becoming party to this arrangement will only help implement those related policies and provide an opportunity to build their national paperless trade systems interoperable in cross-border paperless trade, accelerating their international readiness and improving their trade environment.

10. What are the obligations of parties?

Major obligations for Member States who become parties to the Regional Arrangement would include:

- ✓ Best endeavor in implementing substantive provisions of the Arrangement in line with the key principles featured in it.
- ✓ Participation in the bodies of the institutional arrangement of the Regional Arrangement, including the Council (annual), Steering Committee (at least once a year), and Working Groups (at least twice a year).
- ✓ Participation in developing and implementing collective actions to be agreed by the Council.
- ✓ Development and implementation of individual action (self-specified) at national level to improve domestic paperless trade environment.
- ✓ Sharing of lessons learnt, participation in pilot projects and provision of technical assistance on a voluntary basis.

11. What are conditions for entry into force of the Regional Arrangement?

The current draft specifies that the Arrangement would officially enter into force 90 days after the fifth member state deposits its instruments of ratification, acceptance, approval, i.e., after at least five member states consent to be bound by the Arrangement. The depositary of the Arrangement is the Secretary General of the United Nations.

A Member State can become a party either by signature (before the Arrangement enters into force) or by accession (after the Arrangement enters into force). In all cases, becoming a party involves signing, ratifying and depositing their instruments of ratification, acceptance, approval.

12. What actions would follow after entry into force?

The secretariat would start preparing readiness checklists, a draft action plan and other relevant templates to facilitate implementation as soon as the text of the Regional Arrangement is finalized and before it enters into force. Within 6 months of entry into force, the secretariat, in consultation with the parties, would prepare and organize a first Steering Committee Meeting. The Steering Committee Meeting would be represented/participated by senior officials, usually at the level of director general or deputy director general, of the 5 or more parties involved.

The agenda of the Initial Steering Committee Meeting would include review and consideration of draft action plan prepared by the secretariat, consideration on formation of Working Groups, and tentative date and agenda for an initial Council meeting. Before the first Council meeting, the Steering Committee would prepare a comprehensive action plan, to be adopted by the Council, with support of working groups and the secretariat.

13. What would be covered in the action plan?

The action plan would cover, inter alia, the following matters:

- ✓ Timeline and tasks for implementation (roadmap)
- ✓ Readiness Assessment checklist
- ✓ Development of capacity building programme
- ✓ Schedule for collective and individual actions
- ✓ Pilot projects development and implementation plan
- ✓ Development of technical and legal guides

- ✓ Mechanism for sharing of lessons
- ✓ List of identified target trade transaction areas, requiring cross-border information/data exchange, such as certificate of origin, sanitary and phyto-sanitary certificate, Customs declaration, etc.

14. What is the timeline to achieve cross-border paperless trade in Asia-Pacific?

Development of a cross-border paperless trade is a continuous and long-term process with a time horizon of two decades or more. The regional arrangement is aimed at providing a platform for committed parties to make faster progress towards cross-border paperless trade.

15. If I become a party, do I have to exchange electronic data and information with all other parties?

No. The draft text of regional arrangement does not include such a binding provision, as it is a facilitation agreement, i.e., it aims at making cross-border exchange of electronic data and documents among parties legally and technically possible - but not legally mandatory.

16. How will my country benefit from becoming a party at an early stage?

Those countries that join the arrangement early will benefit from first mover advantage - parties to the regional arrangement will in principle make faster progress towards electronic exchange and recognition of electronic trade documents, reducing trade cost and time with each other and gaining a competitive advantage. In addition, becoming a party to the regional arrangement will provide a momentum for a country to move towards national paperless trade environment, as exemplified in the case of ASEAN Single Window commitment.

17. What are possible negative impacts of this arrangement?

None. With its flexible best endeavor provisions, practical cooperation mechanisms and capacity building support, all the participating member states are expected to benefit regardless of their current level of paperless trade readiness.

18. Do I need to fulfill technical and legal requirements to become a party to the regional arrangement?

No. All the technical and legal particulars for facilitating cross-border paperless data

exchange among the parties will be decided by consensus among the parties after entry into force of the arrangement and through the institutional arrangements specified in the regional arrangement.

19. Who would sign the arrangement from my country?

The signatory of the arrangement for a particular country would normally be at the ministerial level but is likely to vary from country to country depending on who has responsibility or authority for paperless trade matters and the internal ratification process of the arrangement.

For any further questions, please contact:

Mr. Yann Duval

Chief, Trade Facilitation Unit

Trade and Investment Division

Email: duvaly@un.org

or,

Mr. Sangwon Lim

Economic Affairs Officer, Trade Facilitation Unit

Trade and Investment Division

Email: lim6@un.org