

COVER NOTE

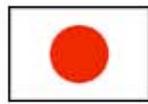
TERMS OF REFERENCE WORKING GROUP ON ELECTRONIC COMMERCE REGIONAL COMPREHENSIVE ECONOMIC PARTNERSHIP

1. On 8 February 2015, an Electronic Commerce Experts Meeting (the Meeting) was held in Bangkok, Thailand, in the margins of the 7th Regional Comprehensive Economic Partnership (RCEP) Trade Negotiating Committee (TNC).
2. The Meeting was attended by representatives of all RCEP Participating Countries (RPCs), except Lao PDR and Myanmar. The ASEAN Secretariat was also represented at the Meeting. The Meeting was facilitated by Malaysia as ASEAN facilitator and Japan as AFP facilitator. The Meeting agreed that to achieve a modern, comprehensive, high quality and mutually beneficial agreement, RCEP should include provisions to support and encourage electronic commerce. The Meeting also agreed to recommend the establishment of a Working Group on Electronic Commerce (WGEC) to the TNC.
3. On 10 February 2015, the TNC considered the Meeting's SOD, including the recommendation to establish a WGEC. The TNC reached the following conclusions:
 - a. The TNC commended the productive discussions among the experts and welcomed the inputs provided to TNC, without prejudice, in its consideration on how to address e-Commerce within the RCEP framework. The TNC considered the recommendation of the e-Commerce experts to establish a Working Group on e-Commerce. The TNC also welcomed Japan's offer to hold a workshop on legal frameworks related to e-commerce on the sideline of the 8th round of the RCEP negotiations in Kyoto in June 2015.
 - b. Recalling the objective of the RCEP to achieve a modern, comprehensive, high-quality and mutually beneficial economic partnership agreement among the ASEAN Member States and ASEAN's FTA Partners, the TNC reiterated the importance and potential of e-commerce to economic development and enhanced global value chains (GVC) participation, including for the Small and Medium Enterprises (SMEs). The TNC also highlighted the need to seek balance between commercial interests and legitimate public policy and regulatory objectives. Further, the TNC noted the different levels of regulatory capacity and readiness among the RPCs with regard to e-commerce.
 - c. Most RPCs welcomed the recommendation to establish a Working Group on e-Commerce while a few RPCs were of the view that domestic consultation is needed.
 - d. The TNC agreed to task the e-Commerce experts group to work intersessionally towards drafting a Terms of Reference (TOR) for the proposed WGEC, including a Work Plan of Activities. The draft TOR will be submitted to the TNC in advance of the 8th round of negotiations and a



decision will be taken by the TNC at the 8th round whether or not to transform the experts group into a Working Group. The TNC requested the ASEAN Secretariat to facilitate the intersessional work to be undertaken by the e-Commerce experts, including information exchange and the possibility of hosting an e-Commerce Experts' Meeting before the 8th round.

4. Attached are the proposed Terms of Reference for the establishment and operation of a WGECE (**ANNEX**).
5. It is noted that other RCEP Working Groups are guided by a 'Scoping Paper'. It is intended that the attached Terms of Reference serve the same purpose as a 'Scoping Paper'.



ANNEX

DRAFT TERMS OF REFERENCE WORKING GROUP ON ELECTRONIC COMMERCE REGIONAL COMPREHENSIVE ECONOMIC PARTNERSHIP

Consistent with the *Guiding Principles and Objectives for Negotiating the Regional Comprehensive Economic Partnership* (hereinafter referred to as the “Guiding Principles”), adopted by the Ministers on 30 August 2012 in Siem Reap, Cambodia and endorsed by the Leaders on 20 November 2012 in Phnom Penh, Cambodia (ANNEX A), the Working Group on Electronic Commerce (WGEC) will be guided by the following:

A. Objectives

1. Electronic commerce negotiations will, in a positive and pragmatic manner, aim to:
 - I. support and encourage the use of electronic commerce in RCEP Participating Countries (RPCs), with a view to furthering the objectives of expanding trade in goods, trade in services, and investments among RPCs;
 - II. contribute to greater participation by small and medium size enterprises in global value chains;
 - III. enhance public confidence in conducting cross-border online business transactions amongst RPCs;
 - IV. achieve an appropriate balance of commercial interests and public policy interests; and
 - V. assist in the development of regulatory frameworks and the capacity of electronic commerce regulators in RPCs through appropriate cooperation activities.
2. Taking into consideration the different levels of development of RPCs, electronic commerce provisions under RCEP will include appropriate forms of flexibility including provision for special and differential treatment, plus additional flexibility to the least-developed ASEAN Member States consistent with the existing ASEAN+1 FTAs, as applicable.

B. Composition and Chairmanship

3. The WGEC will consist of officials, where possible, with relevant sectoral experience (hereinafter referred to as “Lead Negotiators”) representing each of the ASEAN Member States, Australia, China, India, Japan, Korea and New Zealand.



4. The WGEC will be chaired by a Lead Negotiator appointed by the ASEAN Member States, working in conjunction with a Lead Negotiator appointed on a rotational basis by the ASEAN FTA Partners. Their role will be to jointly ensure the effective and impartial management of the meetings, with a view to facilitating consensus among RPCs.

C. Scope of Work

5. Negotiations will be guided by these Terms of Reference and, where necessary, any other papers to be developed during the course of negotiations.

6. The negotiations will explore relevant elements for possible inclusion in RCEP. Some of these elements for consideration and deliberations, without prejudice, are as follows:

I. General Provisions

- Cooperation
- Electronic Supply of Services

II. Trade Facilitation

- Paperless Trading
- Electronic Signature and Digital Certification

III. Creating a Conducive Environment for Electronic Commerce

- Online Consumer Protection
- Online Personal Data Protection
- Unsolicited Commercial E-mail
- Domestic Regulatory Frameworks
- Customs Duties
- Non-Discriminatory Treatment of Digital Products

IV. Promoting Cross Border Electronic Commerce

- Prohibition on Requirements Concerning the Location of Computing Facilities
- Prohibition on Requirements Concerning the Disclosure of Source Code
- Cross-Border Transfer of Information by Electronic Means

7. Negotiations will also consider the possible inclusion of other elements as the need arises and deemed appropriate by the RPCs.



8. Negotiations will take into account electronic commerce developments in other regional or multilateral trade forums when considering the scope and coverage of electronic commerce elements in RCEP.
9. Negotiations will consider the appropriate form for the inclusion of electronic commerce provisions in the RCEP Agreement, including through a dedicated chapter or an annex to an associated chapter.

D. Meeting Schedule

10. The TNC will determine the schedule of WGEC meetings and related activities (**Annex B**).
11. The WGEC negotiations will be conducted in parallel with TNC meetings to ensure a comprehensive and balanced outcome. However, where the TNC determines it to be necessary, WGEC meetings could be scheduled immediately prior to TNC and other relevant RCEP meetings to avoid scheduling conflicts.
12. Where the TNC determines it to be necessary, WGEC inter-sessional meetings could be scheduled to advance negotiations.
13. The ASEAN Secretariat will support the inter-sessional exchange of information and negotiating text, and also provide secretariat support for each WGEC meeting.

E. Decision-making

14. Decisions of the WGEC will be made through consensus amongst the RPCs.
15. Decisions of the WGEC may be made inter-sessionally through electronic communication among the RPCs.

F. Reporting Mechanism

16. The WGEC will report the progress and outcome of the electronic commerce negotiations to the TNC.

G. Treatment of Documents

17. All documents exchanged in the e-commerce negotiations will be treated as "For RCEP official use only", unless decided otherwise.

H. Amendment

18. These terms of reference can be amended as and when necessary by the TNC.