Comparative study on the transport facilitation provisions of GMS CBTA and ASEAN Agreements (AFAFGIT and AFAFIST)

Sengsavang PHANDANOUVONG
sphandanouvong@yahoo.com
Transport Techniques and Environment
Department of Transport (DOT)
Ministry of Public Works and Transport (MPWT), Lao PDR
Contents

I. Introduction

II. Background

III. Comparison of Scope and Coverage of ASEAN Agreements (AFAFGIT & AFAFIST) and GMS CBTA

IV. Conclusion and Recommendations
I. Introduction

• The Greater Mekong Sub-region (GMS) cooperation
  - Enhancement of economic integration between and among GMS member countries (Cambodia, China (non-ASEAN member), Lao PDR, Myanmar, Thailand and Viet Nam)
  
  • The GMS Cross-border Transport Agreement (GMS CBTA/ CBTA)
    - key component to facilitate the cross-border transport and trade to fully support the Sub-region economic cooperation.

• The South East Asia Association (ASEAN) economic cooperation
  - Single market and production base for the free flow of goods, services, investment and skilled labor in the region.
  
  • The ASEAN Framework Agreement on the Facilitation of Goods in Transit (AFAFGIT) and the ASEAN Framework Agreement on the Facilitation of Inter-state Transport (AFAFIST) as ASEAN Agreements
    - facilitation of inter-state transport and goods in transit between and among ASEAN member states (Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam) to support the full implementation of the ASEAN Free Trade Area (AFTA) and integrate the region’s economies.
Both the GMS CBTA and the ASEAN Agreements are to facilitate cross-border transport, including transit transport for the movement of goods, people and vehicles between the member states.

- A better technical understanding of to what extent such commonalities and differences in particular could help providing support to accelerate the implementation of these agreements.

Main issues:
- to compare the provisions of the GMS CBTA and the ASEAN Agreements (AFAFGIT, AFAFIST) and try to identify their main commonalities and differences;
- to focus on the initial implementation Cross-Border Transport Agreement (CBTA) as a show case for a further possible common practice.
II. Background

• **GMS CBTA or CBTA**
  - signed and entered into force with its ratification by all 6 GMS member countries (GMCs) (Cambodia, Lao PDR, Myanmar, Thailand and Viet Nam) in 1999 and 2003 respectively.
  - ratified all CBTA’s 20 annexes and protocols by four GMCs, while the two GMCs are at various stages of ratification.
  - initiated by the 6 GMCs in response to the merging necessity to strengthen the related software to compliment large scale investment in physical infrastructure in the GMS in order to achieve the benefits of greater economic connectivity.

• **AFAFGIT and AFAFIST/ASEAN Agreements**
  - The AFAFGIT was signed in 1998 by all 10 ASEAN Member Countries (AMCs) namely Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam; and it was ratified and entered into force in 2000.
  - The provisions of the AFAFGIT shall apply to transit transport. The inter-state transport shall be agreed up on by all the contracting parties, and the contracting parties shall enter into negotiations and expeditiously conclude a separate ASEAN Framework Agreement on the Facilitation of Inter-State Transport (AFAFIST).

  - The AFAFIST was signed in 2009 by the ASEAN Transport Ministers.
  - This Agreement shall enter into force upon the thirtieth day after the deposit of the second Instrument of Ratification or Acceptance, and shall be effective only among the Contracting Parties who have ratified or accepted it. The AFAFGIT consists of 9 protocols, but not all protocols have been finalized (6 protocols finalized and signed by 10AMCs)
II. Background (Cont.)

Infrastructure Connectivity/ASEAN Highway and GMS Corridors Network
II. Background (Cont.)

- GMS CBTA and ASEAN Agreements (AFAFGIT and AFAFIST) Relationship with other International Instruments.
- GATT 1994 “Freedom on Transit”
- WTO, WHO, WCO
- UNESCAP Resolutions 48/11
- CMR 1956
II. Background (Cont.)

A conceptual integrated land transport GMS-6 and ASEAN-10 countries;
(GMS-6+ ASEAN-10 ≈ ASEAN + China)
III. Comparison of Scope and Coverage of ASEAN Agreements (AFAFGGIT & AFAFIST) and GMS CBTA

• Comparison of the main provisions of the GMS CBTA and AFAFGGIT and AFAFIST

Similarity provisions:

- A common legal and organizational framework; /Simplified CMR
- Conditions of transport (cabotage is not covered);
- Designated routes, corridors, front posts/border crossings, and facilities, (ASEAN High Way/AH, and GMS Corridors “AH3=NSEC, EWEC=AH16, AH12, AH11=CEC “);
- A regional transit management system (freedom of movement of goods, including efficient customs transit arrangement/facilitation of border crossing formalities, efficient transport transit arrangement);
- A harmonized tariff nomenclature, and harmonized documents;
- Mutual assistance and enforcement system;
- Institutional arrangements;
- Compliance with national laws and regulations; and
- Implementation arrangements
III. Comparison of Scope and Coverage of ASEAN Agreements (AFAFGIT & AFAFIST) and GMS CBTA (Cont.)

- Comparison of the main provisions of the GMS CBTA; and AFAFGIT and AFAFIST Different provisions:

<table>
<thead>
<tr>
<th>GMS CBTA</th>
<th>ASEAN Agreements (AFAFGIT and AFAFIST)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Scope of application</strong></td>
<td><strong>-Two legal instruments with common protocols, and more widen range application of facilitation of goods in-transit for the ASEAN region</strong></td>
</tr>
<tr>
<td>-A single legal instrument, with its supplemented annexes and protocols for facilitation cross-border transport of goods and people in the sub-region.</td>
<td></td>
</tr>
<tr>
<td><strong>Transport conditions and road transport traffic</strong></td>
<td><strong>-AFMGIT, 60 vehicles per contracting party, and 500 vehicles for AFAFIST respectively, passenger not covered;</strong></td>
</tr>
<tr>
<td>-500 vehicles per contracting party, for goods. For passenger, not specified; -Specified on facilitation of cross-borders for goods and people, mainly by road, including Road and Bridge Design and Construction Standards &amp; Specifications, and covered more detailed technical provisions</td>
<td>- Focus on inter-state transport of goods only by both road and rail</td>
</tr>
</tbody>
</table>
### Comparison of supplement documents as technical provision of the CBTA & ASEAN Agreements

<table>
<thead>
<tr>
<th>Annexes and Protocols</th>
<th>GMS CBTA</th>
<th>ASEAN Agreements (AFAFGIT/AFAFIST)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Similarities</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Protocol 1 Designation of Corridors, Routes and Points of Entry &amp; Exit Border Crossings <em>(Ratified)</em></td>
<td></td>
<td>Protocol 1 Designation of Transit Transport Routes and Facilities <em>(Signed, but not all ratified)</em></td>
</tr>
<tr>
<td>Annex 12 Border Crossing and Transit Facilitation and Services <em>(Ratified)</em></td>
<td></td>
<td>Protocol 2 Designation of Frontier Posts*(not finalized)*</td>
</tr>
<tr>
<td>Annex 4 Facilitation of Frontier-Crossing Formalities <em>(Signed, but not all ratified)</em></td>
<td></td>
<td>Protocol 7 Customs Transit System <em>(not finalized)</em></td>
</tr>
<tr>
<td>Annex 6 Transit and Inland Clearance Customs Regime <em>(Signed, but not all ratified)</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annex 8 Temporary Importation of Motor Vehicle <em>(Signed, but not all ratified)</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annex 14 Container Customs Regime <em>(Signed, but not all ratified)</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annex 15 Commodity Classifications Systems <em>(Ratified)</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annex 1 Carriage of Dangerous Goods <em>(Signed, but not all ratified)</em></td>
<td></td>
<td>Protocol 9 Dangerous Goods <em>(Signed, but not all ratified)</em></td>
</tr>
<tr>
<td>Annex 3 Carriage of Perishable Goods <em>(Ratified)</em></td>
<td></td>
<td>Protocol 8 Sanitary and Phytosanitary Measures</td>
</tr>
<tr>
<td>Protocol 3 Frequency and Capacity of Services <em>(500 permits)</em> <em>(Signed, but not all ratified)</em></td>
<td></td>
<td>Protocol 3 Types and Quantity of Road Vehicles <em>(60 permits)</em> <em>(Ratified)</em></td>
</tr>
<tr>
<td>Annex 10 Conditions of Transport <em>(Ratified)</em></td>
<td></td>
<td>Protocol 4 Technical Requirements of vehicles <em>(Ratified)</em></td>
</tr>
<tr>
<td>Annex 2 Registration of Vehicles in international traffic <em>(Ratified)</em></td>
<td></td>
<td>Protocol 5 ASEAN Scheme of Compulsory Motor Vehicle Insurance <em>(Ratified)</em></td>
</tr>
<tr>
<td><strong>Differences</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annex 5 Cross-Border Movement of People <em>(Signed, but not all ratified)</em></td>
<td></td>
<td>Protocol 6 Railways Border and Interchange Stations <em>(not finalized)</em></td>
</tr>
<tr>
<td>Annex 7 Road Traffic Regulation and Signage <em>(Rated)</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annex 9 Criteria for Licensing of Transport Operators for Cross-Border <em>(Rated)</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annex 11 Road and Bridge Design and Construction Standards &amp; Specifications <em>(Rated)</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annex 13a Multimodal Carrier Liability Regime <em>(Signed, but not all ratified)</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annex 13b Criteria for Licensing of Multimodal Transport Operators for Cross-Border Transport Operations <em>(Signed, but not all ratified)</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annex 16 Criteria for Driving Licenses <em>(Rated)</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Protocol 2 Charges Concerning Transit Traffic <em>(Rated)</em></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Comparison of the implementation arrangements

<table>
<thead>
<tr>
<th>Implementation Arrangements</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>GMS CBTA</strong></td>
</tr>
<tr>
<td>MOU/Bilateral, Trilateral</td>
</tr>
<tr>
<td>- MOU on initial implementation of the CBTA (IICBTA) at Dansavanh (LAO)-Lao Bao (VN) border checkpoint signed in 2005.</td>
</tr>
<tr>
<td>- MOU on IICBTA at Savannakhet (LAO)-Mukdahan (T) border checkpoint signed in 2005.</td>
</tr>
<tr>
<td>- MOU on IICBTA at Hekou (PRC)-Lao Cai (VN) border checkpoint signed in 2007.</td>
</tr>
<tr>
<td>- MOU on IICBTA at Dansavanh (LAO)-Lao Bao (VN), and Savannakhet (LAO)-Mukdahan (T) border checkpoint signed in 2007</td>
</tr>
</tbody>
</table>

- Any amendments, shall be regarded as an integral part of these Agreements;
- The contracting parties undertake to conform their relevant national legislation with the contents of these agreements, as well as nondiscrimination; and
- The host contracting party may temporarily or permanently deny access to its territory to a person, driver, transport operator, means of transport that has infringed national laws and regulations or this Agreement.
Cross-Border Transport Agreement (CBTA) Focus

- Facilitate cross-border movement of people (multi-entry visa, recognition of driver license)
- Exchange of traffic rights
- Requirements for admittance of road vehicles
- Facilitate cross-border formalities
- Facilitate cross-border movement of goods
- Institutional Arrangements
Facilitation of Border – Crossing Formalities

(1) **Single-window Inspection (SWI):**

one in-one out

All Inspections / Controls (People / Vehicles / Goods) is to be carried out - Jointly and Simultaneously

(2) **Single-Stop Inspection (SSI):**

one in-one out

Two national Authorities carry out Inspection - Jointly and Simultaneously at an inbound frontier control post
Facilitation of Border – Crossing Formalities

Coordination and Cooperation at the Border-Crossing Pairs:

1. Working Hours

2. Procedures and Forms for Clearance
   (thru streamlined and harmonized docs e.g., customs, immigration & quarantine declaration forms)

3. Advanced Exchange of Information
R9 opened March 2004/ (a section of 58 km rehabilitation and upgrading in the process and to be completed by 2015, others looking for funding)

Da Nang Port Completed in 2004

Hai Van Tunnel opened in Jun 2005

Second Mekong Bridge opened on 20 December 2006

Tripartite on IICBTA signed on 2007 and opened on 11 June 2009

Widening completed in 2007

MOU for IICBTA finalized

IICBTA commenced on 20 December 2006

IICBTA started on 30 June 2005

Customs Facility @ Danesavan was completed in 2010

Road opened in 2008

Development of East West Corridor

Implementation CBT(A(ICBTA)

MOU for IICBTA finalised
Implementation CBTA (ICBTA):
Institutional Mechanism

ADB RETA Support

Subregional

National

ADB RETA Support

Ministerial Joint Committee

subcommittees

Transport

Customs

Immigration

Quarantine

Guaranteeing Organization

(Final draft by ADB)
ICBTA on the Customs Transit and Temporary Admission System (GMS CTS)

Model of the structure of the GMS CTS
**ICBTA at Dansavanh- Laobao Border Checkpoint**

The Pilot Implementation CBTA at Dansavanh- Laobao Border Checkpoint is in line with MOU on IICBTA signed 25 March 2005 (Four Steps of Single Stop Inspection (SSI) & Single Window Inspection (SWI)).

Combined Targeted Average Border Crossing Clearance Times for the IV Steps of SW/SSI @ Dansavanh-Laobao Crossing Points

<table>
<thead>
<tr>
<th></th>
<th>Existing (Before ICBTA)</th>
<th>Step 1</th>
<th>Step 2</th>
<th>Step 3</th>
<th>Step 4</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Commercial Vehicle</strong></td>
<td>Plan</td>
<td>&lt;=240</td>
<td>120</td>
<td>60</td>
<td>45</td>
</tr>
<tr>
<td></td>
<td>Actual (After ICBTA)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Non-commercial Vehicle</strong></td>
<td>Plan</td>
<td>60</td>
<td>45</td>
<td>30</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td>Actual (After ICBTA)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- Only Step I has been Implemented (*CCA at Dansavanh, which supported by Japan Government under the Japan ASEAN Integration Fund (JAIF) is completed (2011) to support a full ICBTA at Dansavanh-Laobao).*

- 2 Sides have agreed to implement directly Step IV instead.
Step I: Joint Customs Inspection in Common Control Area (CCA) at Country of Entry

Legend:
C- Customs; Q-Quarantine; I-Immigration; L-Lao PDR; V-Viet Nam
Step II: Joint Customs Inspection in Common Control Area (CCA) and Clearance/Processing of Customs Documents at Country of Entry

Legend:
C- Customs; Q- Quarantine; I- Immigration; L- Lao PDR; V- Viet Nam
Step III: Joint Customs and Quarantine Inspection in Common Control Area (CCA) and Clearance/Processing of Customs and Quarantine Documents at Country of Entry

Legend:
C - Customs; Q - Quarantine; I - Immigration; L - Lao PDR; V - Viet Nam

Live animals will be inspected jointly at the Country of Exit.
Step IV: Single Window and Single Stop: Joint Customs and Quarantine Inspection in Common Control Area (CCA) and Clearance/Processing of Customs, Quarantine, and Immigration Documents at Country of Entry

Legend:
C-Customs; Q-Quarantine; I-Immigration; L-Lao PDR; V-Viet Nam

Live animals will be inspected jointly at the Country of Exit.
(2) **ICBTA at Savannakhet - Border Checkpoint**

- The CBTA Pilot Implementation at Savannakhet- Mukdahan Border Checkpoint is in line with MOU on IICBTA signed 4 July 2005

Combined Targeted Border Crossing Average Clearance Times (excluding queuing time) for the Two Steps of Single Stop Inspection at the Mukdahan-Savannakhet Border Crossing Points (in minutes)

<table>
<thead>
<tr>
<th></th>
<th>Existing (Before ICBTA)</th>
<th>Step 1</th>
<th>Step 2</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Commercial Vehicle</strong></td>
<td>Plan &lt;=360</td>
<td>240</td>
<td>30</td>
</tr>
<tr>
<td></td>
<td><strong>Actual</strong> (After ICBTA)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Non-commercial Vehicle</strong></td>
<td>Plan 60</td>
<td>40</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td><strong>Actual</strong> (After ICBTA)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- SWI & SSI not yet fully implemented even CCA at Savannakhet, Lao Side has been completed since 2007, due to relevant Thai law.
Step 1 The Parties to the MOU shall adopt minimal inspection of outgoing goods, and informal performance in foreign territory by customs and quarantine authorities of the Country of exit, as required, in the CCA of the Country of entry, commencing on 31 Dec. 2005.
Step 2. Full implementation of performance in foreign territory; subject to the approval of respective laws allowing performance in foreign territory by the respective Governments *expected to take place during the period 2006-2007*

Live animals will be inspected jointly in the Country of Exit.
IV. Conclusion and recommendations

- This paper has provided key principal commonalities and differences of main the provisions of the GMS CBTA, and ASEAN Agreements (AFAFGIT and AFAFIST), and their supplemented legal instruments through the comparison analysis. Both GMS CBTA and ASEAN Agreements focus on the cross-border and transit transport facilitation between and among the Contacting Parties and the main agreements that contain the UNESCAP Resolution 48/11, the recommendations and guidance related under the GMS program and ASEAN, GATT 1994, and other relevant international conventions on goods in transit, especially the simplified CMR related particularly the condition of transportation, and the liability and guarantee measures. Both countries in the sub/region have also taken steps bilaterally and multilaterally to engage in cooperative arrangements to facilitate land transport.
- Therefore, in principal, the overall provisions of these agreements are overlapped, however, their annexes and protocols; and MOU contain technical details and specific implementation arrangement by agreeable consensus of all contracting members through negotiation process.
- The findings from this comparative study between GMS CBTA and ASEAN Agreements are obviously that GMS CBTA defines on transportation of both goods and people across the Greater Mekong Subregion (GMS) and its harmonized legal instruments have been more progress e.g., Annexes, Protocols, bilateral and trilateral MOU, Guaranteed Organisation on CTS, amendment of the MOU. Neither GMS CBTA nor ASEAN Agreements are not fully implemented due to not yet ratified all annexes and protocols, particularly the supplement documents related to the customs.
IV. Conclusion and recommendations (Cont.)

- It can be observed that a main cause of the delay on ratification or acceptance annexes and protocols from the complexity of undertaken to conform the relevant national legislation with the contents of the signed supplement documents (annexes or protocols) of the agreements.
- In order to expeditiously implement these agreements the following key commonalities can possibly considered as priority:
  - Full ratification or acceptance all annexes or protocols;
  - The overlapped designation of main transit transport routes e.g. EWEC and AH No 16; and NSEC and AH No 3 (linking between China and non ASEAN countries), including necessity facilities and specified rest areas, harmonized standard on road signs and adequate way for other modes of transport e.g. non-motorized transport for the benefit of safety;
  - Specified dryports as logistics hub for the landlocked member country in the designated routes to accommodated to the seaports, and integration with all modes, trains in particular;
  - The conditions of transport, as well as the exchange of traffic right;
  - The customs transit system (CTS), and the carrier liability regime; and
  - Implementation related bilateral and Multilateral agreements on transport and trade facilitation for the transformation from transport corridor to logistics and economic corridor.
- Revitalize initiatives on customs transit, undertake and assessment on how existing systems/mechanisms can complement ASEAN transit initiatives and conduct country consultations on how to move forward, Revised and completed institutional mechanism at central, local and border level
- Develop a sustainable knowledge portal and information exchange hub for Trade and Transport Facilitation.
Thank you for your kind attention!