

Chapter 4

Institutional Arrangements

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Chapter 4

Institutional Arrangements

4.1. Introduction

Institutional arrangements to facilitate cross-border trade and transport are indispensable components of transport or economic corridors across national borders, such as the Greater Mekong Subregion (GMS) economic corridors and the Trilateral Highway (TLH). A road to an international border checkpoint is usually connected to the nationwide road network of the neighbouring country. A road segment looks like a line but is one of many links in a network of roads, connected to other road segments at nodes, i.e. junctions or intersections. Road infrastructure is a necessary condition for defining an economic corridor but not a sufficient condition, because a road segment in an economic corridor could connect to anywhere and, therefore, the economic corridor is indefinite unless its scope is defined by adequate institutional arrangements. The GMS Cross-Border Transport Agreement (CBTA) is a typical example of such institutional arrangements, clearly defining the scope of economic corridors by limiting the routes and the scope of cross-border transport. For example, a truck from Thailand registered under the Initial Implementation of the CBTA (II-CBTA) can enter Myanmar and go up to the Thilawa special economic zone (SEZ) only along the designated route of the GMS East–West Economic Corridor. The truck has to enter Myanmar at Mae Sot at the Myawaddy border, and go through Kawkaeik, Thaton, Bago, and then to the Thilawa SEZ. It cannot go to Patheingyi or Kyaukpadaung, for example, because they are off the designated GMS economic corridors. In this way, the GMS–CBTA defines the scope of GMS economic corridors.

The same goes for the TLH. Although the original alignment of the TLH is limited to a 1,360-kilometer (km) section between Moreh and Mae Sot, the road connects to anywhere in India, Myanmar, Thailand, and other countries. The scope of the TLH needs to be defined by an institutional arrangement for cross-border transport facilitation, which prescribes terminal points, border checkpoints, and routes eligible for the TLH. For contracting parties, the scope and designated route for cross-border transport reflect how much they open their domestic markets for land logistic services by granting traffic rights to other contracting parties. Reaching

agreement on this issue is indeed difficult, as the experience of the GMS–CBTA suggests. The II–CBTA between Thailand and Myanmar, which is a simplified version of the GMS–CBTA, started in March 2020, more than a quarter century since the 4th Ministerial Conference on GMS on 15–16 September 1994, when the contracting parties first agreed to establish an institutional mechanism for cross-border transport (Ishida, 2020). In addition to dealing with various technical difficulties, the contracting parties need to find a resolution acceptable to all. For example, if India allows Myanmar trucks to enter its territory only up to Moreh, according to the original alignment of the TLH, Myanmar may hesitate to allow trucks from India to enter farther to Mandalay. The II–CBTA between Thailand and Myanmar allows trucks from Thailand to go up to the Thilawa SEZ and Myanmar trucks to go up to Leam Chabang. This arrangement may balance the benefits to both. The principle of reciprocity matters.

The remainder of this chapter is organised as follows. Subsection 4.2 discusses the current status of institutional arrangements for transport facilitation and the viewpoints of India, Myanmar, Thailand, the Lao People's Democratic Republic (Lao PDR), and Viet Nam, and highlights several policy issues for consideration. Subsection 4.3 compares the Motor Vehicles Agreement for the Regulation of Passenger, Personal and Cargo Vehicular Traffic between Bangladesh, Bhutan, India, and Nepal (BBIN–MVA) and the GMS–CBTA as a potential template for institutional arrangements for transport facilitation for the TLH, including possible eastward extension to Lao PDR, Cambodia, and Viet Nam. Subsection 4.4 discusses several policy options.

4.2. Diverse and Competing Perspectives

This subsection discusses the status of institutional arrangements for transport facilitation and the viewpoints of India, Myanmar, Thailand, Lao PDR, and Viet Nam, and highlights several policy issues for consideration. Considering the nature of international negotiations, it would be naïve to expect the existence of a single best solution that equally satisfies all contracting parties. A resolution acceptable to all contracting parties will be reached only because of multiple and effective negotiations. Issues related to institutional arrangements for cross-border transport facilitation will be discussed from the perspective of each country. The countries are diverse and sometimes competing. This chapter streamlines these complex issues and sets policy agendas for consideration instead of trying to find a specific solution.

(1) Overview¹

India, Myanmar, and Thailand have significantly enhanced physical connectivity along the TLH because of the development and upgrading of road infrastructure. Institutional arrangements for cross-border transport, however, have yet to be resolved.

Contracting parties of the GMS–CBTA, including Myanmar and Thailand, completed the ratification process in 2015, more than 20 years since the initial discussion in September 1994. During that time, some parts of the CBTA had become outdated and needed to be revised, and the GMS transport ministers agreed in 2016 to launch the Early Harvest implementation of the CBTA (EH–CBTA) and to complete the revision process. The II–CBTA between Thailand and Myanmar took effect with a memorandum of understanding (MoU) signed in March 2019. Under the II–CBTA, trucks from Thailand are now allowed to enter Myanmar to Thilawa and Myanmar trucks can go directly to Leam Chabang.

Despite the high aspirations of the GMS–CBTA, it has not been fully implemented.² The reasons for delay include (i) security concerns at border areas, including the risk of smuggling; (ii) difficulties in harmonising related rules and regulations such as right- and left-hand drive and insurance; (iii) protectionist motives for domestic logistic service providers (LSPs); (iv) unwillingness of LSPs to expand their business deep into neighbouring countries; and (v) low demand, particularly for long-haul transport, which is assumed in the design of the GMS–CBTA as transit transport.³

On 15 June 2015, India signed the BBIN–MVA with three other countries, which, except for Bhutan, have been drafting the enabling MoU to implement the BBIN–MVA (Government of India, 2020).⁴ India has proposed, although not yet publicly, a transport facilitation agreement based on the BBIN–MVA to Myanmar and Thailand to adopt for the TLH. India has not received a response from either country.

¹ This subsection is based on Ishida (2020).

² Transport facilitation agreements in the Association of Southeast Asian Nations (ASEAN) have also stalled because of the difficulty of reaching agreement on transit transport in general and customs transit in particular. Even after spending more than 2 decades from initial conceptualisation, ASEAN’s transport facilitation agreements

³ Our small sample survey shows that demand for cross-border transport is not high amongst LSPs.

⁴ After signing the agreement, Bhutan announced that ‘it would not be able to ratify the BBIN–MVA for time being and asked the other stakeholders to go ahead with the deal without it. Bhutan fears vehicular pollution and environmental degradation if trucks from neighbouring countries are given access through its territories’. See Gupta (2020) and *The Hindu* (2017).

(2) India⁵

A trilateral motor vehicle agreement (MVA) is crucial for the TLH. The TLH–MVA will be important to facilitate trade, economic cooperation, and people-to-people contact through enhanced regional connectivity, including through easing of regional cross-border road transport. Without an MVA, the TLH would be non-operational. In general, MVA protocols allow safe and secure movement of vehicles along the TLH. Three countries have to reach consensus and reaffirm their understanding that the TLH–MVA safeguards the rights and obligations of all parties under other international agreements, such as the World Trade Organization Trade Facilitation Agreement (WTO–TFA) and bilateral and regional agreements.

However, progress in negotiation of the TLH–MVA between India, Myanmar, and Thailand has been slow. Given that they have ratified the WTO TFA, they may resume MVA negotiation at the earliest opportunity and complete the negotiation before the TLH starts operating. In many areas, the WTO–TFA and TLH–MVA are interrelated.

Table 4.1 Implementation Status of the World Trade Organization Trade Facilitation Agreement Commitments

	Date of acceptance	Date of latest notification	Current rate of implementation commitments				Rate of remaining implementation commitments to be applied		Yet to be designated
			Current rate	Category A	Category B	Category C	Category B	Category C	
India	22-Apr-2016	14-Mar-2018	72.3%	72.3%	0.0%	0.0%	27.7%	0.0%	0.0%
Myanmar	16-Dec-2015	21-Feb-2020	5.5%	5.5%	0.0%	0.0%	9.2%	85.3%	0.0%
Thailand	05-Oct-2015	22-Feb-2018	97.1%	91.6%	5.5%	0.0%	2.9%	0.0%	0.0%
Cambodia	12-Feb-2016	13-Aug-2017	73.5%	60.9%	8.4%	4.2%	10.9%	15.5%	0.0%
Lao PDR	29-Sep-2015	13-Feb-2020	21.0%	21.0%	0.0%	0.0%	11.8%	67.2%	0.0%
Viet Nam	15-Dec-2015	16-Nov-2018	26.5%	26.5%	0.0%	0.0%	48.7%	24.8%	0.0%
China	04-Sep-2015	15-Jan-2020	100.0%	94.5%	5.5%	0.0%	0.0%	0.0%	0.0%

Notes: Developing and least developed country (LDC) members can request more time and capacity-building support to implement the agreement. To benefit from these flexibilities, they must categorise all measures into the following: A: developing members will implement the measure by 22 February 2017 and LDCs by 22 February 2018; B: members will need additional time to implement the measure; and C: members will need additional time and capacity-building support to implement the measure.

Source: World Trade Organization Trade Facilitation Agreement Database (www.tfadatabase.org) (accessed 2 March 2020).

⁵ This subsection is based on De et al. (2020), reflecting India's perspectives.

India designated 72.3% of commitments as category A and Thailand 97.1%; both countries have already implemented them. As of 2 March 2020, the remaining commitments for India were 27.7% in category B and for Thailand 2.9%. In contrast, Myanmar's progress in implementing the WTO-TFA has been slow (Table 4.): unimplemented commitments make up 94.5%, of which 85.3% are designated category C, implying that Myanmar needs more time, technical assistance, and capacity building to implement the WTO-FTA. India and Thailand may offer adequate technical assistance and capacity building to Myanmar whilst implementing the TLH-MVA. For India and Thailand, technical assistance to Myanmar will also serve WTO-TFA obligations. To effectively implement the technical assistance, India's National Committee for Trade Facilitation may be engaged to design a technical assistance strategy.

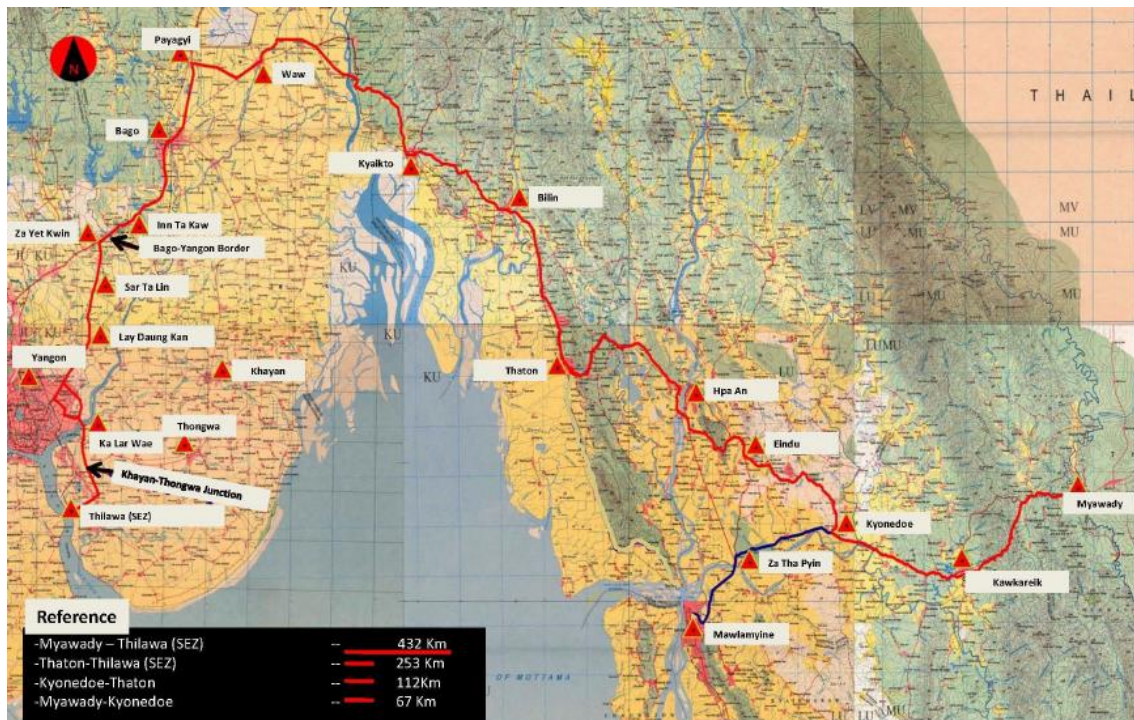
(3) Myanmar and Thailand⁶

At the seventh meeting on the GMS-CBTA in Siem Reap, Cambodia on 13 March 2019, the Joint Committee for the GMS-CBTA agreed to extend the EH-CBTA until 31 May 2021. Myanmar will join in implementing the EH-CBTA through the II-CBTA with neighbouring countries during the grace period extended until 1 June 2021. The first step for Myanmar was the MoU with Thailand on the II-CBTA at the border of Myawaddy and Mae Sot, signed on 13 March 2019. The MoU prescribes to start with each party issuing 100 transport permits, and incorporates an expanded route network encompassing Yangon and Thilawa in Myanmar, Bangkok and Laem Chabang in Thailand, and the Myawaddy-Mae Sot border-crossing point (GMS, 2019).

An addendum to the II-CBTA MoU was signed on the same day, prescribing that (i) the Mae Sot-Myawaddy border-crossing points shall include the First Thai-Myanmar Friendship Bridge and the Second Thai-Myanmar Friendship Bridge at Myawaddy-Wan Takhian Tai; (ii) other existing transport operations shall be integrated under the MoU within 18 months, subject to the total number of permits issued by each party, up to 500 or other number mutually agreed by both parties, sufficient to meet market demand, through signature of an addendum to the MoU; (iii) the designation of routes and points of entry and exit together with the abovementioned extension of the designated route (Figure 4.).

⁶ This subsection is based on Banomyong (2020) and MSR (2020).

Figure 4.1. Designated Route in Myanmar for the Initial Implementation of the Cross-Border Transport Agreement between Thailand and Myanmar



Source: 'Addendum to the Memorandum of Understanding on the Initial Implementation of the Agreement between and among the Governments of the Kingdom of Cambodia, the People's Republic of China, the Lao People's Democratic Republic, the Republic of the Union of Myanmar, the Kingdom of Thailand, and the Socialist Republic of Viet Nam for the Facilitation of Cross-Border Transport of Goods and People at Myawaddy, the Republic of the Union of Myanmar and Mae Sot, Kingdom of Thailand', 13 March 2019.

The list of companies eligible to participate in the II-CBTA was fixed by exchange of official letters dated 21 October 2019 (Table 4.2). The II-CBTA is ready to be operationalised. Authorised vehicles from each side will be able to cross the border and be granted a permit to stay in the other country for 30 days. Cargo trucks from Myanmar can cross the Mae Sot checkpoint to two destinations: Laem Chabang Port, Chon Buri; and the border province of Mukdahan. Vehicles from Thailand can carry goods from the Mae Sot checkpoint all the way to the Thilawa SEZ on the outskirts of Yangon as a result of the extension of the terminal point from Myawaddy to the Thilawa SEZ agreed in the MoU addendum. This will help Thailand and Myanmar companies save time and transport costs and facilitate exports via cross-border trade.

Thailand's truckers and LSPs are not that keen on this arrangement as they prefer to exchange truck tractors at the border (Banomyong, 2020). This sentiment is echoed by some Myanmar providers as local providers prefer their most expensive assets to remain in their country and only trailers moved from origin to destination. However, Thailand has already issued 100 permits to 15 logistic companies and Myanmar 27 to 5.

Table 4.2. Qualified Companies for Cargo Transport under the Initial Implementation of the Cross-Border Transport Agreement

Name of Company	Location	No. of permits
1. Hercules Logistics	Mandalay	5
2. Yangon MK Group Transportation	Yangon	5
3. Resource Group Logistics	Yangon	5
4. Loyal Link	Yangon	10
5. Ni Ni (Myawadi) Trading	Yangon	2
Myanmar Total:		27
1. Sirisomboonsub	Tak	8
2. Aruna Transport	Bangkok	4
3. Three Trans (1995)	Rayong	8
4. CTI Distribution	Bangkok	7
5. J&J Logistics System	Ayutthaya	5
6. Sicha Transport	Bangkok	7
7. Samseau Transport	Tak	7
8. One Transport	Bangkok	5
9. Pongrawe Co., Ltd.	Bangkok	7
10. Nittsu Logistics (Thailand)	Ayutthaya	7
11. Mon Transport Co., Ltd.	Bangkok	7
12. Tongputtana Lot., Part.	Tak	7
13. Meechok Transport	Nakhon Ratchasima	7
14. Puechphol Suwannapoom	Tak	7
15. Pongsiri Logistics	Songkhla	7
Thailand Total:		100

Note: As of 21 October 2019.

Source: Ministry of Transport, Thailand, and Ministry of Transport and Communications, Myanmar.

Representatives of the Myanmar Container Trucking Association said that local logistics firms and experts are cautious about the new CBTA between Myanmar and Thailand. The association chair commented, '[The II-CBTA] will allow them to drive into each other's countries without having to unload their cargoes at the border point. Thailand wants to be able to travel up to Thilawa in the future as many Japanese manufacturers have production sites in Thailand. But this is something to be considered since Myanmar will also need to protect its logistic companies'. The chair of the Myanmar International Freight Forwarders Association pointed out the importance of reciprocity: 'Myanmar side will also have to do their part in allowing Thai vehicles to use routes other than that agreed upon. We are now able to go to Laem Chabang only since Thai vehicles are only allowed to go to Thilawa' (MSR, 2020).

Stakeholders in Myanmar think the II-CBTA would benefit Thailand more because there are far more imports from Thailand to Myanmar than in the other direction. In addition, local logistic companies will not be utilised as Thailand logistic companies can carry goods directly to the Thilawa SEZ.

(4) Lao People's Democratic Republic

Lao PDR is landlocked and engaging with its neighbours is of crucial importance. The country has engaged with its neighbours bilaterally as well as under various multilateral frameworks such as the Association of Southeast Asian Nations (ASEAN); the GMS Economic Cooperation Program; the grouping known as CLMV (Cambodia, Lao PDR, Myanmar, and Viet Nam); and others. Transport facilitation to allow cross-border movement of vehicles is key to transforming the country from landlocked to land-linked, and opens great opportunities to accelerate economic development.

Despite prolonged efforts since the 1990s, however, transport facilitation arrangements under multilateral frameworks such as ASEAN and the GMS have not been fully operationalised. Instead, Lao PDR has taken advantage of bilateral agreements with all its neighbours except Myanmar since the 1990s. The bilateral agreement on road transport with China was concluded in 1994, followed by comparable agreements with Viet Nam (1996), Cambodia (1999), and Thailand (1999).

Lao PDR shares a 238 km border with Myanmar marked by the Mekong River. In the absence of a road link, a road transport agreement was not necessary. The opening of the Lao-Myanmar

Friendship Bridge on 11 May 2015 changed the landscape. Lao PDR sent an official letter to start negotiation, still ongoing, on the bilateral land transport agreement. In Keng Lap, the Myanmar side of the bridge, the Ministry of Commerce provides customs-related services. However, Xieng Kok, the Lao PDR side, has no customs services. From the viewpoint of Lao PDR, there should be no formal international trade with Myanmar across the bridge without an official agreement on road transport.

The II-CBTA is meant to implement single-window inspections (SWIs) and single-stop inspections (SSIs) stipulated in its Annex 4 (Facilitation of Frontier Crossing Formalities) (Ishida, 2020). The borders designated for II-CBTA programmes are the Lao Bao (Viet Nam)–Densavanh (Lao PDR) border and the Savannakhet (Lao PDR)–Mukdahan (Thailand) border in the East–West Economic Corridor, the Poipet (Cambodia)–Aranyarathet (Thailand) border, the Moc Bai (Viet Nam)–Bavet (Cambodia) border in the Southern Economic Corridor, and the Hekou (Yunnan, China)–Lao Cai (Viet Nam) border in the North–South Economic Corridor. A series of MoUs were concluded by the contracting parties in 2005–2007. The implementation deadlines were stipulated step by step but were not met except for the single-stop physical customs inspection, which was conducted at the Lao Bao–Densavanh border as the first of four steps (Ishida, 2013).⁷

The II-CBTA has been implemented at the Lao Bao–Densavanh border since 6 February 2015. SSIs are conducted in the following way. First, officers of customs, immigration, and quarantine (CIQ) of Lao PDR and Viet Nam are separated into two groups in each country. Second, one Lao PDR group and one Viet Nam group stay at their own borders. One group from each country crosses the border. Third, Lao PDR CIQ officials on the Viet Nam side conduct procedures for exporting and exiting, and Viet Nam CIQ officials on the Viet Nam side conduct procedures for importing and entering. In the same way, Viet Nam CIQ officials on the Lao PDR side conduct procedures for exporting and exiting, and Lao PDR CIQ officials on the Lao PDR side conduct procedures for importing and entering. For example, if a truck transports goods from Lao PDR to Viet Nam, the CIQ inspections are exempted on the Lao PDR side. The truck has to be inspected for exporting and importing and for exiting and entering simultaneously on the Viet Nam side. SSI is conducted for immigration. For instance, when travellers move from Lao PDR to Viet Nam, they meet Lao PDR and Viet Nam immigration officers sitting side by side. First, the travellers

⁷ The II-CBTA between Thailand and Myanmar is the second case.

hand their passports to the Lao PDR officer, who checks and stamps the passports. The Lao PDR officer hands the passports to the Viet Nam officer, who checks and stamps the passports and hands them back to the travellers if there are no problems.

(5) **Viet Nam**⁸

Viet Nam signed the GMS–CBTA in Vientiane, Lao PDR on 26 November 1999 and ratified all its annexes and protocols by 2009 (ADB, 2011). This agreement is an important institutional mechanism for Viet Nam to reduce non-physical barriers and facilitate the cross-border movement of goods and people. The agreement covers many areas, including transport, customs, health inspection (sanitary and phytosanitary measures and quarantine), and immigration. The implementation of the GMS–CBTA has not progressed well because of differences in national laws and regulations amongst country members and infrastructure gaps.

Although Viet Nam and Lao PDR are signatories to the GMS–CBTA, its implementation has been mainly undertaken at the Lao Bao–Dansavanh border checkpoint. The procedures for cross-border transport at the Tay Trang border gate are still applied in accordance with previous bilateral agreements between Viet Nam and Lao PDR rather than the GMS–CBTA: (i) agreement on road motorised vehicle facilitation between Viet Nam and Lao PDR, signed on 23 April 2009; (ii) protocol of the implementation of (i), signed on 15 September 2010; and (iii) Circular No.88/2014/TT-BGTVT on guidance on implementing certain articles of (i) and its protocol.

The GMS–CBTA is designed to foster the cross-border movement of goods, vehicles, and people by eliminating obstacles at the border and simplifying procedures. However, vehicles and people crossing the border are required to show documentation. For instance, at Tay Trang border checkpoint, vehicles and drivers from Viet Nam and other countries seeking entry or exit must present (i) a passport or laissez-passer or border identity card, (ii) vehicle driving license, (iii) vehicle registration certificate, (iv) cross-border transport permit, (v) freight or passenger transport permit (if any), (vi) vehicle technical safety and environment protection certificate, (vii) vehicle insurance certificate (if any), and (viii) quarantine certificate.

According to the bilateral agreement, vehicles crossing any border between Viet Nam and Lao PDR are required to carry a GMS cross-border transport permit issued by governing agencies from either side. Viet Nam governing agencies that have the right to issue cross-border transport

⁸ This subsection is based on Nguyen et al. (2020).

permits include the Directorate for Roads and the provincial Department of Transport. Lao PDR governing agencies are the Ministry of Public Works and Transport, Department of Transport, the provincial Department of Public Works and Transport, and relevant agencies. A GMS cross-border transport permit includes basic information: (i) issuing authority, (ii) beneficiary of permit, (iii) period of validity, and (iv) vehicle registration number.

An MoU on the EH–CBTA, signed in March 2018, allows each GMS country to issue up to 500 GMS road transport permits and temporary admission documents per country for goods and passenger vehicles registered, owned, and/or operated in their territories, giving foreign freight trucks permission to enter other countries without trans-shipment. However, transport operators seem uninterested in exercising the traffic rights stipulated in the MoU. In Viet Nam, only four companies and 25 vehicles were registered in accordance with the EH–CBTA MoU as of April 2019 (Nguyen et al. 2020).

Cross-border trade between Viet Nam and Lao PDR is stipulated in the Agreement on the Transit of Goods between Viet Nam and Lao PDR, signed in 2009 (amended in 2017). The procedures for cross-border trade are set out in the abovementioned documentation. The agreement guides the Tay Trang Customs Sub-Department in creating the most convenient conditions for the transit of goods.

Of the 15 border checkpoints between Viet Nam and Lao PDR, the Lao Bao–Dansavanh border checkpoint appears to be the most active in implementing the CBTA. The checkpoint has fast-track lanes, SSI, and SWI. Thanks to SSI, customs clearance has decreased from 1.5 hours to 15 minutes. The Tay Trang–Pang Hok border gate, however, has no fast-track lane or SSI or SWI because of the slow implementation of the CBTA.

The bottlenecks of the institutional arrangement for transport and trade facilitation at the Tay Trang–Pang Hok border checkpoint are as follows:

- (i) Poor infrastructure. The SSI and SWI are easily carried out at the Lao Bao–Dansavanh, Lao Cai–Hekou, and Moc Bai–Bavet border checkpoints thanks to good infrastructure and the short distance between the border checkpoints. Implementing SSI and SWI at the Tay Trang–Pang Hok border checkpoint, however, is difficult, costly, and time-consuming because of its poor infrastructure and the long distance between the Tay Trang and Pang Hok border gates (6 km).
- (ii) Weak coordination and collaboration on CBTA implementation amongst agencies, especially

between the Tay Trang Customs Sub-Department and the Dien Bien Department of Transport. According to Dien Bien Department of Transport officials, the department, one of the main agencies responsible for issuing Viet Nam–Lao PDR cross-border transport permits for vehicles, is not assigned to implement the CBTA.

4.3. BBIN–MVA and GMS–CBTA⁹

(1) Similarities

The BBIN–MVA and the GMS–CBTA have much in common:

- (a) The BBIN–MVA stipulates that, on the admission of entry of vehicles registered in other contracting parties, ‘all the vehicles of a Contracting Party will require a permit for plying through the other Contracting Party(ies) and the permit will be issued in compliance of all the technical requirements...’ (Article III [1]). The GMS–CBTA stipulates that ‘the Contracting Parties shall admit Vehicles registered by another Contracting Party to enter their territory’ (Article 11). The articles are similar even though their tones are different. Both agreements admit the transport of people and goods. Under the BBIN–MVA, transport permits for regular passenger transport, regular cargo transport, personal vehicles other than regular passenger transport, and non-regular passenger vehicles are issued upon request of a registered operator’s filling in forms A, B, C, and D, respectively. Under the GMS–CBTA, the permits for scheduled and non-scheduled passenger and cargo transport are issued in accordance with Article 4, Protocol 3. Under the BBIN–MVA, the transport permit for regular or scheduled transport is for multiple entries, valid for 1 year, and renewable every year (Article III [7]). The validity of the GMS–CBTA is stipulated for 1 year (Article 4 of Protocol 3). Multiple visas under the BBIN–MVA are issued for crew members (Article V) and under the GMS–CBTA for people engaged in transport operation (Article 5). The BBIN–MVA prescribes that ‘sector and the details of route, route maps, location of permitted rest or recreation places, tolls and check posts ... will be specified in the Protocol in the format as at Annexure-I’ (Article III [8]). Under the GMS–CBTA, Protocol 1 defines permissible routes, and points of entry and exit for cross-border transport of goods and people (Article 20) and lists the permissible corridors, routes,

⁹ This subsection is based on Ishida (2020).

and border crossings in its attachment.

- (b) The BBIN–MVA requests cross-border transport drivers to carry several documents (Article IV [2]) and requires ‘a valid registration certificate’. The GMS–CBTA states that ‘every motor vehicle in cross-border traffic shall carry a valid certificate of registration’ (Article 5 of Annex 2). The registration certificate bears information such as the issuing authority, the owner or holder of the certificate, and the technical requirements of a vehicle. The serial numbers of the chassis and engine are technical requirements in the registration certificate of the GMS–CBTA and in the permit for each trip under the BBIN–MVA. The BBIN–MVA requires a valid transport permit (Article IV [2]) and the GMS–CBTA requires a GMS road transport permit (Article 1 of Protocol 3). The BBIN–MVA requires the crew to have pre-verified passports and the passengers internationally recognised valid travel documents such as a valid driving license and a valid insurance policy (vii, Article IV [2]). Under the GMS–CBTA, those crossing the border require a valid travel document (Article 2 of Annex 5); a driving permit (Article 17); and compulsory third-party motor vehicle liability insurance (Article 16).
- (c) Article VI of the BBIN–MVA enumerates restrictions and follows the principle of cabotage: vehicles registered by one contracting party are not permitted to transport local passengers and goods within the territory of other contracting parties. Cabotage does not prohibit picking up passengers or goods in the transporter’s own territory and transporting them to the territory of other contracting parties, or picking up passengers or goods in the territory of other contracting parties and transporting them to the transporter’s own territory. Under the GMS–CBTA, cabotage shall only be permitted on the basis of a special authorisation from the host country, in step with free market forces (Article 19).
- (d) The BBIN–MVA prescribes fees and charges: ‘all fees and charges of issue of permit for the vehicle of one Contracting Party will be levied only at the entry point of another Contracting Party’ (Article VII [3]), and provisions of internal laws or agreements will be applied to taxation and fees for cross-border procedures (Article VII [1]). Under the GMS–CBTA, ‘only legally authorised authorities are entitled to collect the charges’ (Article 4 of Protocol 2). Under the BBIN–MVA, ‘no additional charges such as octroi or local taxes will be levied on transportation of passenger vehicles’ (Article VII [4]). Under the GMS–CBTA, ‘any unauthorised collection of charges is prohibited’ (Article 4 of Protocol 2).

- (e) Under the BBIN–MVA, temporary admission of vehicles into their own territory and baggage carried by the crew are free from customs duty (Article VII [2, 4]). The GMS–CBTA stipulates temporary admission to motor vehicles and spare parts without payment of import duties and taxes (Article 18) and provides further detailed rules (Annex 8). The BBIN–MVA prescribes fees and charges: ‘the standard accessories of the vehicles, essential spares, fuel and oils contained in its supply tanks before entering in another contracting party should be exempted from duties and taxes’ (Article VII [2]). The GMS–CBTA stipulates that ‘the accessories, toolkit, and other articles that form normal equipment of the vehicle and the fuel in the ordinary/original supply tanks and the lubricants, maintenance supplies, and spare parts shall be exempted from import duties and taxes’ (Article 2 of Annex 8).
- (f) The BBIN–MVA stipulates road signs and signals and compliance with traffic laws (Article VIII) and that ‘the designated authorities of the Contracting Parties will provide international road signs along the specified routes’ (Article VIII [1]). The GMS–CBTA also stipulates that ‘the contracting parties to undertake gradually bring the traffic signs and signals on their territory’ (Article 26); vehicles of one contracting party must observe traffic laws in the territories of other contracting parties (Article VIII [2]); and people, transport operators, and vehicles must comply with the laws and regulations of the host country (Article 30).
- (g) Under the BBIN–MVA, authorised officers of customs and of land and dry ports have the right to inspect and search vehicles operating in their territory (Article X). The GMS–CBTA is intended to reduce cross-border barriers (Article 4).
- (h) Under the BBIN–MVA, ‘in case of over-stay in any Contracting Party due to vehicle breakdown, accident, repair works or other unforeseen circumstances including natural calamities or disasters, a member of the driving crew will notify to the competent authority of that Contracting Party for the required period’ (Article IX). The GMS–CBTA, covers vehicles in transit transport operation (Article 8 of Annex 6); temporarily admitted vehicles (Article 8 of Annex 8); and temporarily admitted containers (Article 9 of Annex 14). The articles stipulate that ‘the Host Country Customs Authorities will grant extension’ in case the transport operator is unable to timely complete the transport operation in the territory of the host country and the operator requests an extension. The articles also stipulate the exemption of re-exportation of the vehicle in case of loss or destruction en route and the change of itinerary in case the transport operator is compelled to abandon the designated route due to force

majeure.

- (i) Under the BBIN–MVA rules on insurance, non-regular and regular passenger transport and regular cargo vehicles must have an insurance policy (Article XI [1, 2]). Non-regular passenger transport will be insured against ‘at least third-party loss, in all the Contracting Party(ies) where the vehicle is allowed to ply’ (Article XI [1]). The GMS–CBTA prescribes that ‘motor vehicles traveling to the territory of other Contracting Parties shall comply with the compulsory third-party motor vehicle liability insurance required in the Host Country’ (Article 16).
- (j) Under the BBIN–MVA rules on business facilitation, transport operators of other contracting parties are permitted to open branch offices or appoint agents (Article XII [1]). Authorised operators will obtain work permits for their employees deployed to a branch office in another contracting party. Authorised operators are permitted to open bank accounts in other contracting parties (Article XII [2]). The GMS–CBTA prescribes that ‘the Host Country shall grant permission to Transport Operators engaged in cross-border transport to establish representative offices for the purpose of facilitating their traffic operations’ (Article 22), but does not permit representative offices to obtain work permits or open bank accounts. However, permission might be reinforced by other laws and/or regulations in the host country. The GMS–CBTA has rules on supporting other contracting parties’ vehicles that may be disabled on the roads and requests the host country to provide all possible assistance and to notify the competent authorities of the home country as soon as possible in case of a road traffic accident (Article 33).
- (k) The BBIN–MVA prescribes the applicability of local laws (Article XIV) and rules that ‘(t)he National Laws of the respective Contracting Parties will govern matters other than those in this agreement’ (Article XIV [2]). Under the GMS–CBTA, ‘People, Transport Operators and Vehicles shall comply with the laws and regulations in force in the territory of the Host Country’ (Article 30). The BBIN–MVA rules that ‘(t)he Contracting Parties will cooperate effectively with one another to prevent infringement and circumvention of the laws, rules and regulations of their respective countries in regard to matters relating to the movement of vehicles’ (Article XIV [3]). The GMS–CBTA stipulates that ‘(t)he Host Country may temporarily or permanently deny access to its territory to a person, a driver, a Transport Operator, or a Vehicle that has infringed the provision of the Agreement or its national laws

and regulations’ (Article 30). The BBIN–MVA will not affect the rights and obligations arising from other international commitments of the contracting parties and the existing bilateral agreements or arrangements between the contracting parties (Article XIV [4, 5]). The CBTA stipulates that ‘(t)he Agreement or any actions 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’ (Article 41).

(2) Major Differences

The BBIN–MVA and the GMS–CBTA differ in length of history, fundamental tone, and cooperative regimes. Only the existence and non-existence of rules on transit facilities will be discussed in this sub-section:

- (a) The numbers of articles and annexes are much different. The GMS–CBTA has 44 articles in the main agreement and 20 annexes and protocols with a total of 407 articles (Ishida 2013, Table 1), including overlapping articles in multiple annexes and protocols. The BBIN–MVA has only 17 articles and 3 annexes.
- (b) The periods from discussion to signing and/or ratification are much different. The GMS–CBTA was discussed under the GMS Economic Cooperation Program. Member countries started discussing the need for ‘software’ for a transport system to eliminate the barriers to cross-border transport at the 4th Ministerial Conference on 15–16 September 1994. The six countries signed the main agreement, 17 annexes, and 3 protocols, and ratified the main agreement on 17 September 2003. All the annexes and protocols were ratified by all six countries in 2015. Discussions and negotiations took 20 years. The draft of the BBIN–MVA, however, was proposed by the Government of India to the South Asian Association for Regional Cooperation Summit in November 2014, but it was not signed because of Pakistan’s reservations. The draft was signed at the transport ministerial meeting of Bangladesh, Bhutan, India, and Nepal on 15 June 2015 (Government of India, 2015). From the proposition to the signing took about 7 months. However, the agenda of ‘trade, connectivity and transit’ and of ‘water resource management and power/hydropower trade and grid connectivity’ had been discussed by the inter-governmental Joint Working Group of the BBIN (Hassan 2016: 16).¹⁰

¹⁰ Hassan (2016) did not mention the time it took to start discussing the agenda but it must have been between 1997 and 2014. In 1997, Bangladesh’s proposal to establish the South Asian Growth Quadrangle, composed of BBIN member countries, was recognised at the Ninth Summit of the South Asia Association

The discussion on the GMS–CBTA, however, was longer and deeper.

- (c) Because the starting point for negotiation of the GMS–CBTA was to eliminate cross-border barriers, its tone was not regulatory but liberalising, unlike the BBIN–MVA. Many GMS–CBTA clauses request the contracting parties to liberalise something with the stronger auxiliary ‘shall’. The BBIN–MVA has a regulatory tone but does not use the auxiliary ‘shall’. Instead, it uses ‘will’, except in Article XVII, which stipulates, ‘Each Contracting Party shall keep an original of this Agreement’. For instance, the BBIN–MVA stipulates that authorised officers such as customs, police, and security officers have the right to inspect and search vehicles operating in their territories (Article X [1]). Such an article is not unusual and can be found in other laws, regulations, and agreements related to cross-border transport facilitation. The GMS–CBTA, however, stipulates that ‘the Contracting Parties shall gradually adopt the following measures in order to simplify and expedite border formalities in accordance with Annex 4’ and lists SWI and SSI (Article 4).
- (d) Regarding the cooperative regime for deliberation and negotiation, the GMS–CBTA requests, using ‘will’, the contracting parties to establish a permanent national transport facilitation committee (NTFC) and the representatives of the NTFCs to form together a joint committee (Articles 28 and 29, main agreement). The BBIN–MVA does not prescribe such an organisational regime.
- (e) The GMS–CBTA prescribes rules on transit transport (Articles 7 and 8; and Annex 6). The BBIN–MVA does not prescribe detailed rules on transit facilities, including the exemption of customs inspection and customs payments in middle countries as long as cross-border cargoes are sealed. The BBIN–MVA refers, however, to ‘transit’ in some articles: for instance, ‘transit or in the destination Contracting Parties’ (Article IV [7]) and ‘transit fees’ (Article VII [4]). The BBIN–MVA may not prescribe the exemption of customs inspection and customs payments in middle countries, but it refers to ‘transit fees’. Bangladesh, for example, receives transit fees from transport operators of other contracting parties (Sharmeen, 2017). The GMS–CBTA, however, does not directly refer to transit fees and stipulates that ‘the Host Country shall, with regard to the levying the charges, not discriminate’ (Article 2[a] of Protocol 2). But the GMS–CBTA prescribes that ‘the least developed Contracting Parties (determined

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on the basis of the United Nations' designation of least developed countries [LDCs]) may apply preferential toll rates and other charges to the vehicles registered within their territories, when undertaking domestic transport' (Article 2[b] of Protocol 2). For instance, if a motor vehicle registered in Thailand transports goods to Viet Nam by way of Lao PDR or Cambodia, Lao PDR and Cambodia can charge that motor vehicle but not charge domestic transport operators. If a motor vehicle registered in Lao PDR transports goods to Laem Chabang Port in Thailand for export to Europe, Thailand shall not charge transit fees as far as Thailand does not charge domestic transport operators.

(3) Technical Differences

The BBIN–MVA and the GMS–CBTA have technical differences:

(a) The GMS–CBTA prescribes that 'each Contracting Party shall be entitled to issue up to 500 permits' for cargo and non-scheduled passenger transportation and '(t)his arrangement shall be subject to annual review and modification by the Joint Committee' (Article 5 of Protocol 3). The BBIN–MVA, however, does not specify the maximum number of permits (Article III) but stipulates that '(c)ontracting Parties will decide on the number of cargo and personal vehicles and volume of traffic under this Agreement through consultation and agreement' (Article VI [6]). The BBIN–MVA further prescribes that 'installation of a tracking system on motor vehicles as well as containers at the cost of entering vehicle/container will be introduced within two years from the signing agreement' (Article III [13]). The GMS–CBTA stipulates that 'the Contracting Parties will endeavour to keep up with technical developments and to implement at their earliest convenience modern and advanced border crossing techniques such as: machine reading of passports, X-ray machine for goods and container inspection, automatic vehicle identification (license plate readers), and bar code readers for other documents' (Article 7 of Annex 12). However, a tracking system on motor vehicles and containers is not listed here.

(b) For cross-border transport, the BBIN–MVA requires a list of passengers and their nationalities; a way bill and list of personal goods and/or articles in possession of the crew; and the registration certificate, transport permit, travel documents of the crew, and insurance policy (Article IV). The GMS–CBTA does not require these documents. Article IV [2] of the BBIN–MVA and Article 17 of the GMS–CBTA require contracting parties to recognise driving

licenses issued by other contracting parties on a reciprocal basis. The driving licenses stipulated in the GMS–CBTA are based on the Agreement on the Recognition of Domestic Driving Licenses issued by ASEAN Countries, signed in Kuala Lumpur on 9 July 1985. The BBIN–MVA requires a conductor, helper, and cleaner of a regular passenger or cargo transport vehicle to hold a valid certificate, while the GMS–CBTA does not have such a detailed rule. The BBIN–MVA requires at least one member of the crew to be able to communicate in English or in a language understood (Article IV). The GMS–CBTA assumes such a rule because identification marks, registration certificates, and registration plates and the particulars must be in English (Article 3 of Annex 2).

(c) The BBIN–MVA stipulates restrictions. Major repair work is prohibited in another contracting party except in the event of accidents and break down (Article VI [3]). Vehicles requiring urgent repair are allowed to have repairs done at nearby equipped workshops in the other contracting party and, in case of accidents, all consequential repairs may also be permitted in the contracting party where the accident occurred (Article VI [4]). The BBIN–MVA regulates legal proceedings against the driver of the vehicle in case of an accident in accordance with laws of the contracting party where the accident occurred (Article VI [5]). The GMS–CBTA does not have similar regulations. In case of a road traffic accident, the GMS–CBTA requests the host country to provide all possible assistance and notify the competent authorities of the home country as soon as possible (Article 33). The BBIN–MVA stipulates that ‘(t)he Border Check Posts, Land Ports/Dry Ports and Land Customs Stations of the concerned Contracting Party(ies) will endorse entry/exit particulars of the vehicles on the permit’ (Article VI [7]). The GMS–CBTA does not specify who endorses the entry or exit particulars but it does specify the customs officer, and the immigration or quarantine officer, as authorised to conduct SSI (Article 5 of Annex 4).

(d) On fees and charges, the BBIN–MVA prescribes that ‘a Customs subgroup having participation from all the Contracting Parties will be set up to formulate the required Customs and other procedures and safeguards with regard to entry and exit of vehicles’ (Article VII [7]). The GMS–CBTA, however, does not stipulate forming a customs subgroup.

(e) Both agreements require vehicles transporting goods to the territory of the other contracting parties to have an insurance policy at least against third-party loss (Article XI, BBIN–MVA; Article 16, main agreement, GMS–CBTA). The BBIN–MVA prescribes the provision of facilities

by appropriate authorities of each contracting party to the insurance company of the other contracting parties to carry out all necessary steps such as survey, assessment, investigation, settlement of claims, and remittance in connection with such operation (Article XI [3]). The BBIN–MVA also stipulates that such appropriate authorities will extend assistance for expeditious settlement of the claims and provide facilities to the persons concerned in the event of an accident resulting in damage to a third party’s property or loss of life or injuries to third parties (Article XI [4]). The GMS–CBTA does not facilitate insurance companies in other contracting parties.

(f) On the movement of goods, the BBIN–MVA refers to the ‘applicability of local laws’ and prescribes that ‘(t)he Contracting Parties agree not to permit the movement of goods which are either prohibited or restricted under the prevailing laws and regulations of the respective countries, and any negative/sensitive list agreed upon by the Contracting Parties’ (Article XIV [1]). The GMS–CBTA stipulates that dangerous goods (Annex 1) and perishable goods (Annex 3) should be moved in different ways. The agreement shall not apply to the transport of dangerous goods (Annex 1), while the cross-border transport of the dangerous goods is exceptionally admitted on a case-by-case basis if the contracting permit follows the European Agreement Concerning the International Carriage of Dangerous Goods by Road and the UN Recommendations on the Transport of Dangerous Goods – Model Regulations (Article 10). The GMS–CBTA also states that ‘(t)he transport of Perishable Goods, as defined in Annex 3, shall be granted a priority regime for border crossing clearance formalities, set out in Annex 3, so that they may not be unduly delayed’ (Article 10). Annex 3 stipulates the rules on how to treat live animals, perishable foodstuffs, and other perishable commodities with appropriate temperature, humidity, safety, hygiene, and space requirements.

(4) Other Technical Differences

A comparison of the BBIN–MVA and the GMS–CBTA shows that the agreements have many common and similar articles and not many technical differences. However, there are a number of technical differences. The GMS–CBTA has detailed annexes such as Road and Bridge Design, Construction, and Specifications (Annex 11) and Commodity Classification System (Annex 15). Several rules prescribed in one sentence of the articles of the BBIN–MVA are stipulated as an annex or a protocol of the GMS–CBTA: e.g. Carriage of Dangerous Goods (Annex 1), Carriage of Perishable Goods (Annex 3), Road Traffic Regulation and Signage (Annex 7), Temporary

Importation of Motor Vehicles (Annex 8), and Criteria for Driving Licenses (Annex 16). Enumerating all such technical differences is not realistic and it would be better to enumerate only the essential ones.

First, the GMS–CBTA provides Temporary Importation of Motor Vehicles (Annex 8) for motor vehicles and Container Customs Regime (Annex 14) for containers, but the annexes contain almost identical sentences. The EH–CBTA articles have the same sentences for motor vehicles and for containers. The BBIN–MVA, however, stipulates rules on motor vehicles but not on containers, except with respect to the installation of a tracking system (Article VI [7]).

The GMS–CBTA stipulates rules on multimodal transport in Multimodal Carrier Liability (Annex 13a) and Criteria for Licensing of Multimodal Transport Operators for Cross-border Transport Operators (Annex 13b). Annex 13a stipulates liabilities of multimodal transport operators and of consignors in its attachment, and Annex 13b stipulates the eligibility of multimodal transport operators. The composition of these annexes is similar to that of Conditions of Transport (Annex 10) and Criteria for Licensing of Transport Operators for Cross-border Transport Operations (Annex 9). The BBIN–MVA does not stipulate such rules for multimodal transport.

The GMS–CBTA stipulates the priority for border-crossing formalities: (i) passengers with higher priorities or sick passengers; (ii) perishable goods, including fresh food; (iii) live animals; and (iv) other merchandise (Article 9 of Annex 4). However, when border crossers are, upon medical examination, found to be infected with contagious disease endangering public health, the competent authority (i) may deny access to the territory or repel foreign individuals if their health condition enables them to travel, and advise them to return to their home country; (ii) if their health condition does not enable them to travel, shall offer them appropriate medical care and treatment in isolation or quarantine; and (iii) shall notify promptly the World Health Organization via appropriate channels in accordance with the applicable rules (Article 3 [d] of Annex 5).

4.4. Conclusion

No transport facilitation agreement covers the three member countries of the TLH.

The BBIN–MVA was signed on 15 June 2015 and Bangladesh, India, and Nepal are preparing to

implement it (Government of India, 2020).¹¹ India has proposed, although not yet publicly, a transport facilitation agreement based on the BBIN–MVA to Myanmar and Thailand to adopt for the TLH. India has not received a response from either.

Contracting parties of the GMS–CBTA, including Myanmar and Thailand, completed the ratification process in 2015, which took more than 20 years since initial discussions in September 1994. During that time, some parts of the GMS–CBTA became outdated and needed to be revised, and the GMS transport ministers agreed in 2016 to launch the EH–CBTA and to complete the revision process. The II–CBTA between Thailand and Myanmar took effect with an MoU signed in March 2019. Under the II–CBTA, trucks from Thailand are now allowed to enter the territory of Myanmar to Thilawa and Myanmar trucks can go directly to Leam Chabang.

Despite the high aspirations of the GMS–CBTA, it has not been fully implemented even after 2 decades of continuous efforts. The reasons for delay include (i) security concerns at border areas, including the risk of smuggling; (ii) difficulties in harmonising related rules and regulations such as right- and left-hand drive and insurance; (iii) protectionist motives for domestic LSPs; (iv) unwillingness of LSPs to expand their business deep into neighbouring countries; and (v) low demand, particularly for long-haul transport, which is assumed in the design of the GMS–CBTA as transit transport.¹² During the process of deepening economic integration in ASEAN and surrounding regions, manufacturing activities have been fragmented into several production blocks, and some were relocated to neighbouring countries with better-fit location advantages for the production blocks (ERIA, 2010). As a result, cross-border trade of raw materials, parts, and final products has increased, accompanied inseparably by demand for more frequent cross-border transport. Whilst negotiating the GMS–CBTA, GMS countries enabled cross-border transport by using bilateral agreements with their neighbours. Although such a combined use of bilateral agreements may not be the best solution to meet increasing demand for cross-border transport, it has worked well enough as a second-best solution. Pragmatically, a feasible second-best solution is often better than an unfeasible best solution.

A recommendation is to set up a high-powered committee to facilitate cross-border transport and trade. The committee may be modelled after the Joint Committee under the GMS–CBTA,

¹¹ Bhutan temporarily withdrew from the agreement in 2017 because of fear of an influx of vehicles from other countries impacting its own transporters and degradation of environment (The Hindu, 2017).

¹² Our small sample survey shows that demand for cross-border transport is not high amongst LSPs.

which is formed by representatives of NTFCs of member countries.¹³ Thailand and Myanmar have already established NTFCs and have the capacity to represent themselves in the committee. To take advantage of the existing framework, it is recommended that India organise a national committee corresponding to an NTFC to represent the country during negotiation and implementation.

Whilst comparing the pros and cons of multiple options for transport facilitation arrangements, such as the BBIN–MVA and the GMS–CBTA, it is recommended as a first step to start using bilateral agreements, particularly by forging a bilateral cross-border transport agreement between India and Myanmar, as the II–CBTA between Myanmar and Thailand is already in operation.

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¹³ 'Agreement between and amongst the Governments of the Lao People's Democratic Republic, the Kingdom of Thailand, and the Socialist Republic of Viet Nam for the Facilitation of Cross-Border Transport of Goods and People' stipulates the establishment of NTFCs and the formation (Article 28) of the Joint Committee (Article 29). See ADB (2011) for the original text of the agreement.

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