

Background Papers **6**

Rules on Cross-border Movement of Vehicles for the Trilateral Highway

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July 2020

This chapter should be cited as

Ishida, M. (2020), 'Rules on Cross-border Movement of Vehicles for the Trilateral Highway, in *The India-Myanmar-Thailand Trilateral Highway and Its Possible Eastward Extension to Lao PDR, Cambodia, and Viet Nam: Challenges and Opportunities-Background Papers*. ERIA Research Project Report FY2020 no.02b, Jakarta: ERIA, pp.B6-1--26.

Rules on Cross-border Movement of Vehicles for the Trilateral Highway

Background paper

Masami Ishida

1. Introduction

The history of the Trilateral Highway (TLH), which connects India, Myanmar, and Thailand, is longer than might be expected. On 6 April 2002, at a meeting in Yangon, the three countries agreed to develop a highway between Mae Sot in Thailand and Moreh in India in 2 years (*First Post*, 2014; Institute of Developing Economies, 2003).

Work on the highway did not even start 'in 2 years'. Before the agreement, however, the first Thai–Myanmar Friendship Bridge over the Moei River, between Mae Sot in Thailand and Myawaddy in Myanmar, was opened on 15 August 1997. The two countries had to overcome several hurdles:

- (1) Social unrest spread because of the conflict between the Karen National Union (KNU) and the Armed Forces of Myanmar in the borderlands.
- (2) The section of National Highway No. 8 in Myanmar, between Thingan Nyinaung and Kawkareik, which was developed by the United Kingdom during the colonial period, was too narrow for two cars to pass each other.
- (3) The vehicle weight on the first Friendship Bridge was limited to 25 tons, which meant that a heavy truck had to trans-ship the cargo to a small truck before crossing. Later, the rule was changed to limit to five the number of trucks crossing the bridge simultaneously.

The first issue was improved with the peace agreement between the KNU and the Armed Forces of Myanmar on 7 February 2012 (*The Myanmar Times*, 2012). On 28 August 2013, the Government of Myanmar opened the Myawaddy border to foreign visitors and opened

three other borders with Thailand (*The Myanmar Times*, 2013). The second issue was resolved by the opening of a two-lane road on 30 August 2015, built with the assistance of the Government of Thailand. The third issue improved with the official opening on 30 October 2019 of the second Thai–Myanmar Friendship Bridge, suitable for heavy vehicles, connecting Mae Sot, Tak Province in Thailand with Myawaddy, Kayin State in Myanmar (*The Myanmar Times*, 2019).

Before the TLH agreement, in March 1993, the Government of India started to support Myanmar in constructing the 160-kilometre Tamu–Kalewa–Kalemyo road, which was completed on 13 February 2001 (*The Hindu*, 2001). The Government of India continued to maintain the Tamu–Kalewa–Kalemyo road until 2009 at which time the road’s development was put on hold. When India’s Prime Minister Manmohan Singh visited Myanmar on 27–29 May 2012 and met with Myanmar’s President Thein Sein, they agreed, on request of the Myanmar government, to build 71 bridges in the Tamu–Kyigone–Kalewa road section of the TLH. India’s Border Road Organization, however, could not start assistance quickly because of a shortage of human resources. India’s Prime Minister Shri Narendra Modi approved the construction of 69 bridges on 11 September 2015 (Government of India, 2015; Singh, 2012).¹ The border between Tamu in Myanmar and Moreh in India was upgraded to an international checkpoint in August 2018 in accordance with the Land Border Crossing Agreement between India and Myanmar, signed on May 11 2018 (*The Hindu*, 2018).

In this way, the border gates between Thailand and Myanmar and between Myanmar and India have become international entry and exit checkpoints, and the road infrastructure in surrounding areas has been developed. The rules on cross-border movement of vehicles, however, have yet to be dissolved. A cross-border transport agreement (CBTA) between Thailand and Myanmar has been prepared as part of the Greater Mekong Subregion (GMS) Economic Cooperation Program CBTA (GMS–CBTA), which includes Cambodia; Lao People's Democratic Republic (Lao PDR); Myanmar; Thailand; Viet Nam; and Yunnan Province and Guangxi Zhuang Autonomous Region, China.² India signed the Motor Vehicles Agreement

¹ Two bridges were constructed by the Myanmar government.

² The Association of Southeast Asian Nations (ASEAN) concluded the ASEAN Framework Agreement on Facilitation of Goods in Transit in 1998 and the ASEAN Framework Agreement on the Facilitation of Inter-State Transport in 2009. This paper, however, does not examine them because some related protocols have not been signed.

for the Regulation of Passenger, Personal and Cargo Vehicular Traffic between Bangladesh, Bhutan, India and Nepal (BBIN–MVA) with three other countries on 15 June 2015. Which rules and what kinds of rules should be applied to the TLH? This paper intends to answer this question.

The next section reviews the literature. The third compares the articles of the GMS–CBTA and the BBIN–MVA. The fourth introduces simplified versions of the GMS–CBTA, the Initial Implementation of the CBTA (II-CBTA), and Early Harvest Implementation of the CBTA (EH–CBTA). The fifth recommends policy to coordinate the two agreements and apply them to the TLH. The sixth summarises the paper and shows challenges and prospects.

2. Literature Review

It is necessary to review the literature on the TLH, the GMS–CBTA, and the BBIN–MVA.

One of the most-quoted papers on the TLH is Kimura, Kudo, and Umezaki (2011). It is the first chapter of the Comprehensive Asian Development Plan II, compiled by the Economic Research Institute for ASEAN and East Asia (ERIA). This paper, however, treats not only the TLH but also other infrastructure development projects such as the Mekong–India Economic Corridor and the Myanmar–China Economic Corridor. ERIA Study Team (2020), the parent paper for several background papers, including this one, focuses on the TLH, including the eastward extension to Cambodia, Lao PDR, and Viet Nam. The eastward extension is based on a proposal by India’s Prime Minister Modi at the 14th India–Association of Southeast Asian Nations (ASEAN) Summit at Vientiane on 8 September 2016. Bana and Yohme (2017) report this event in detail, stress the geopolitical significance of the TLH, and treat the project as India’s window to Thailand, Cambodia, Lao PDR, Myanmar, and Viet Nam.

Not a few papers touch briefly on the GMS–CBTA (Krongkaew, 2004; Nguyen et.al, 2016). Papers that depict the whole picture of the GMS–CBTA, however, are not many. Ishida (2013) covers its history, the background of all the articles, and the details on the II-CBTA. Ishida (2012) focuses on the issues of the border control regimes, based on interviews with government officials at border checkpoints in Thailand, Cambodia, Lao PDR, and Viet Nam. Ishida (2014) compares the GMS–CBTA and the ASEAN framework agreements. These

papers, however, do not mention the EH–CBTA because they were presented before all the countries ratified all the annexes and protocols in 2015. This paper introduces the Early Harvest programme in the fifth section.

More papers discuss the BBIN–MVA. For instance, Das (2016) depicts international relations of the BBIN, including cross-border hydropower trade between Nepal and Bhutan, and India, and discusses the BBIN–MVA in detail. Hassan (2016) shows the history, objectives, and prospects of BBIN connectivity. Sharmeen (2017) evaluates the BBIN–MVA based on interviews with researchers, policymakers, and sector experts in Bangladesh. Hassan (2016) and Sharmeen (2017) are Bangladeshi, but Hassan (2016) stresses the benefits of the BBIN–MVA, especially for Bhutan and Nepal, while Sharmeen (2017), a member of the National Core Committee of Transit of Bangladesh, evaluates the transit fees charged by Bangladesh as too low and believes that it is not ready to provide extensive service to its neighbours, considering its poor infrastructure. Accessibility to the Port of Chittagong is key for neighbouring countries and North-East India.

Few papers have compared the GMS and the BBIN and none has deeply compared the GMS–CBTA and BBIN–MVA. This paper compares the articles of the two agreements and answers the research question in the previous section.

3. Comparison of the GMS–CBTA and the BBIN–MVA

3.1 Major Differences

The length of history, fundamental tones, and cooperative regimes of the BBIN–MVA and the GMS–CBTA will be compared first. Technical issues will be compared later, but only the existence or non-existence of rules on transit facilities will be discussed in this sub-section.

Numbers of articles and annexes. The GMS–CBTA has 44 articles in the main agreement, 17 annexes, and 3 protocols, with a total of 407 articles (Table) (Ishida, 2013), although the annexes and protocols have overlapping articles. The BBIN–MVA has 17 articles and 3 annexes.

Period from discussion to signing and/or ratification. The GMS–CBTA falls under the framework of the GMS Economic Cooperation Program. At the 4th Ministerial Conference on 15–16 September 1994, the member countries started to discuss the need for ‘software’ for a transport system to eliminate the barriers to cross-border transport. 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 more than 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 was not signed because Pakistan had reservations. The draft was signed at the transport ministerial meeting of Bangladesh, Bhutan, India, and Nepal on 15 June 2015 (Government of India, 2015). It took only 7 months from proposal to signing. However, agendas of trade, connectivity, and transit, and of water resource management and power and hydropower trade and grid connectivity (Hassan, 2016) had been discussed under an inter-governmental Joint Working Group of the BBIN.³ Yet, the GMS–CBTA discussion was longer and deeper.

Tone. Because the starting point for the negotiation of the GMS–CBTA was the elimination of cross-border barriers, its tone is not regulatory but liberalising compared with the BBIN–MVA. Many clauses of the GMS–CBTA request the contracting parties to liberalise something with the stronger auxiliary ‘shall’. The BBIN–MVA has a regulatory tone but does not include the auxiliary ‘shall’; 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 customs, police, and security agency officers have the right to inspect and to search vehicles operating in their territories (Sub-article [1], Article X). Similar articles 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 the single-window inspection and the single-stop inspection (Article 4, main agreement).

³ Hassan (2016) does 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 for Regional Corporation at Male.

Cooperative regime for deliberation and negotiation. The GMS–CBTA requests, using ‘will’, the contracting parties to each establish their own 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.

Rules on transit transport. The GMS–CBTA prescribes a rule on transit transport (Articles 7 and 8, main agreement; 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 to ‘transit’ in some articles: for instance, ‘transit or in the destination Contracting Parties’ (Sub-article [7], Article IV) and ‘transit fees’ (Sub-article [4], Article VII). It may be agreed that Bangladesh can receive transit fees from transport operators of other contracting parties (Sharmeen, 2017). The GMS–CBTA does not directly refer to transit fees and stipulates that ‘the Host Country shall, with regard to the levying the charges, not discriminate’ (Sub-article [a], Article 2, Protocol 2). However, ‘the least developed Contracting Parties (determined 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 (Sub-article [b], Article 2, Protocol 2). In practice, for instance, if a motor vehicle registered in Thailand transports goods to Viet Nam by way of Lao PDR or Cambodia, then Lao PDR and Cambodia can collect transit fees from that motor vehicle whilst not charging domestic transport operators. If a motor vehicle registered in Lao PDR transports goods to Laem Chabang Port in Thailand for export to Europe, however, Thailand shall not charge transit fees as long as Thailand does not charge domestic transport operators.

3.2 Similarities

Even though such major differences exist between the BBIN–MVA and the GMS–CBTA, both agreements have many common or similar articles. They are enumerated following the order of the BBIN–MVA’s articles.

- 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...’ (Sub-article [1], Article III). The GMS–CBTA stipulates that ‘the Contracting Parties shall admit Vehicles registered by another Contracting Party to enter their territory’ (Article 11, main agreement). 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 (Sub-article [7], Article III). The validity of the GMS–CBTA is stipulated for 1 year (Article 4, 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’ (Sub-article [8], Article III). 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, main agreement) and lists the permissible corridors, routes, and border crossings in its attachment.
- b) The BBIN–MVA requests cross-border transport drivers to carry several documents (Sub-article [2], Article IV) 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, 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 (Sub-Article 2, Article IV) and the GMS–CBTA requires a GMS road transport permit (Article 1, 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, Sub-article [2], Article IV). Under the GMS–CBTA, those crossing the border require a valid travel document (Article 2, Annex 5); a driving permit (Article 17, main agreement); and compulsory third-party motor vehicle liability insurance (Article 16, main agreement).

- 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, main agreement).
- d) Article VII of 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’(Sub-article [3]), and provisions of internal laws or agreements will be applied to taxation and fees for cross-border procedures (Sub-article [1]). Under the GMS–CBTA, ‘only legally authorised authorities are entitled to collect the charges’ (Article 4, Protocol 2). Under the BBIN–MVA, ‘no additional charges such as octroi or local taxes will be levied on transport of passenger vehicles’ (Sub-decree [4]). Under the GMS–CBTA, ‘any unauthorised collection of charges is prohibited’ (Article 4, 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 (Sub-articles [2] and [4], Article VII). The GMS–CBTA stipulates temporary admission to motor vehicles and spare parts without payment of import duties and taxes (Article 18, main agreement) and provides further detailed rules (Annex 8). Article VII of 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' (Sub-article [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, 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' (Sub-article [1], Article VIII). The GMS–CBTA also stipulates that 'the contracting parties to undertake gradually bring the traffic signs and signals on their territory' (Article 26, main agreement); vehicles of one contracting party must observe traffic laws in the territories of other contracting parties (Sub-article [2], Article VIII); and people, transport operators, and vehicles must comply with the laws and regulations of the host country (Article 30, main agreement).
- 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, main agreement) .
- 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, Annex 6); temporarily admitted vehicles (Article 8, Annex 8); and temporarily admitted containers (Article 9, 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 (Sub-articles [1] and [2], Article XI). Non-regular passenger transport will be insured at least against

third-party loss in all the Contracting Parties where the vehicle is allowed to ply' (Sub-article [1], Article XI). 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, main agreement).

- j) Under the BBIN-MVA rules on business facilitation, transport operators of other contracting parties are permitted to open branch offices or appoint agents (Sub-article [1], Article XII). 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 (Sub-article [2], Article XII). 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, main agreement), 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 (Sub-article [3]) 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, main agreement).
- k) The BBIN-MVA prescribes the applicability of local laws (Article XIV) and rules that 'the National Laws of the respective Contracting Parties will govern matters other than those in this agreement' (Sub-article 2, Article XIV). 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, main agreement). The BBIN-MVA rules that 'the 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' (Sub-article [3], Article XIV). The GMS-CBTA stipulates that 'the Host Country may temporarily or permanently deny access to its territory to a person, a driver, a Transport Operator, or a Vehicle that has infringe the provision of the Agreement or its national laws and regulations' (Article 30). The article does not rule the

cooperation for the infringement but the GMS–CBTA has regulations to avoid such infringements. 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 (Sub-articles [4] and [5], Article XIV). The CBTA stipulates that ‘ the 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, main agreement).

3.3 Technical Differences Following the Order of the BBIN–MVA Articles

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

- a) Both fix the number of vehicles for specific purposes (Article III, BBIN–MVA; Article 20, main agreement, GMS–CBTA). 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 ‘the arrangement shall be subject to annual review and modification by the Joint Committee’ (Article 5, Protocol 3). The BBIN–MVA, however, does not specify a number for the quota (Article III) but stipulates that ‘Contracting Parties will decide on the number of cargo and personal vehicles and volume of traffic under this Agreement through consultation and agreement’ (Article VI). The BBIN–MVA 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 2 years from the signing agreement’ (Sub-article [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, ... , bar code readers for other documents’. However, a tracking system on motor vehicles and containers is not included amongst ‘modern and advanced border crossing techniques’ (Article 7, Annex 12).
- 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. Both agreements require contracting parties to recognise driving licenses issued by other contracting parties on a reciprocal basis (Sub-article [2], Article IV, BBIN–MVA; Article 17, main agreement, GMS–CBTA). 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, 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 (Sub-article [3], Article VI). 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 (Sub-article [4], Article VI). 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 (Sub-article [5], Article VI). 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, main agreement). The BBIN–MVA stipulates that ‘the border check posts, land ports/dry ports and land customs stations of the Contracting Party(ies) will also endorse entry/exit particulars of the vehicles on the transport permit’ (Sub-article [7], Article VI). The GMS–CBTA does not specify who endorses the entry or exit particulars but it does specify that it ‘can be achieved ... by the respective competent authorities’ to conduct single-window and single-stop inspections (Article 4 and Article 5, Annex 4). The ‘competent authorities’ here are supposed to be CIQ inspectors and not inspectors of ‘land ports/dry ports’.

- 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’ (Sub-article [7], Article VII). 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 (Sub-article [3], Article XI). 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 (Sub-article [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 ‘the 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’ (Sub-article [1], Article XIV). 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, main agreement). The GMS–CBTA also states that ‘the 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, main agreement). 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.

3.4 Other Technical Differences

A comparison of the BBIN–MVA and the GMS–CBTA following the order of the BBIN–MVA’s articles shows that the agreements have many common and similar articles and not many technical differences. A comparison of the agreements following the order of the GMS–CBTA’s main agreement’s articles, however, shows innumerable 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 (Sub-article [7], Article VI).

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) sick passengers, (and all) passengers; (ii) perishable goods, including fresh food; (iii) live animals; and (iv) other merchandise (Article 9, 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 (Sub-article [d], Article 3, Annex 5).

4. Simplified Version of the GMS–CBTA

4.1 Initial Implementation of the GMS–CBTA

The scope of the GMS–CBTA is much broader than that of other similar facilitation agreements in Asia and the rules of the GMS–CBTA are stipulated in detail, which is to its advantage. However, it took 21 years from the initial discussion in September 1994 to ratification of all the annexes and protocols by all members in 2015. The negotiation of the drafting of some specific annexes and protocols required much time. The last ones signed were Transit and Inland Customs Clearance (Annex 6), Temporary Importation of Motor Vehicles (Annex 8), Container Customs Regime (Annex 14), and Frequency and Capacity of Services and the Issuance of Quotas and Permits (Protocol 3) (Table). The II-CBTA is a trial to implement the GMS–CBTA, with the annexes and protocols already signed at specific major borders (Ishida, 2013).

More concretely, the II-CBTA is a programme to implement single-window and single-stop inspections stipulated in Facilitation of Frontier Crossing Formalities (Annex 4). The borders designated for the II-CBTA programmes are Lao Bao (Viet Nam)–Densavanh (Lao PDR) and Savannakhet (Lao PDR)–Mukdahan (Thailand) in the East–West Economic Corridor, Poipet (Cambodia)–Aranya Prathet (Thailand) and Moc Bai (Viet Nam)–Bavet (Cambodia) in the Southern Economic Corridor, and Hekou (Yunnan)–Lao Cai (Viet Nam) in the North–South

Economic Corridor. Memorandums of understanding (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).⁴

The II-CBTA has been implemented at the Lao Bao–Densavanh border since 6 February 2015. Single-stop inspections 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. Second, one Lao PDR group and one Viet Nam group stay at their own borders; another 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. Single-stop inspection 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 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.

4.2 Early Harvest Implementation of the CBTA

After all six countries' ratification process in 2015, the government officials of the GMS contracting parties recognised that some parts of the GMS–CBTA had become outdated. At the Joint Committee Retreat on 14 July 2016, all the contracting parties consented unanimously that amendments to the GMS–CBTA should be required for its full implementation and agreed to issue and distribute 500 GMS road transport permits per

⁴ The II-CBTA between Thailand and Myanmar took effect with an MoU signed in March 2019 between the two governments. With the adoption of the II-CBTA, trucks from Thailand are now allowed to enter Myanmar to Thilawa and Myanmar trucks can go directly to Laem Chabang Port (ERIA Study Team, 2020).

contracting party. The articles of the GMS–CBTA have been amended with support from the Australian Agency for International Development as ‘CBTA 2.0’. At the GMS Summit on 31 March 2018, all six contracting parties signed the MoU on the EH–CBTA. Under the MoU, the EH–CBTA would be implemented starting 1 June 2018, except in Myanmar, where it would start from 2020.

Under the EH–CBTA, a competent organisation in each contracting party issues 500 GMS road transport permits to domestic transport operators in the country. Then the transport operators holding the permits request a competent organisation to issue a temporary admission document (TAD). The TAD may cover multiple temporary admissions into the territories of other contracting parties, along designated routes, valid for 12 months (subject to extension by the competent authority). The competent organisation issuing the GMS transport permit and the TAD are the same in Cambodia, Lao PDR, Viet Nam, and Yunnan and Guangxi, but separate in Myanmar and Thailand.

Two points might be confusing. The first is that the GMS road transport permit referred to in the EH–CBTA MoU corresponds to a valid certificate of registration referred to in the GMS–CBTA (Article 5, Annex 2). The second is that the TAD mentioned in the EH–CBTA MoU corresponds to the GMS road transport permit mentioned in the GMS–CBTA (Article 1, Protocol 3). The word ‘permit’ is used for ‘registration certificate’ instead of ‘GMS road transport permit’ in the EH–CBTA MoU.

5. Designing Agreements for the Trilateral Highway and for Greater Harmonisation

Let us go back to the research question stated in introduction: Which and what kinds of rules should be applied to the TLH? First, starting to negotiate to create a full-fledged transport agreement such as another CBTA is not realistic. We should not spend another 20 years in negotiation. A review of simplified agreements such as the II-CBTA and the EH-CBTA was attempted because implementing a simplified agreement as soon as possible is realistic, even though it might be temporary. Thus, the first step should be to prepare a simplified agreement on the TLH acceptable to Thailand, Myanmar, and India. At the same time, greater harmonisation should be negotiated between the four BBIN-MVA members and six GMS-CBTA members, keeping in mind that the CBTA 2.0 is being designed. Yet, harmonising the differences between the BBIN-MVA and the GMS-CBTA can guide future harmonisation. The following sub-sections explain a design for a simplified transport agreement and harmonisation of the BBIN-MVA and the GMS-CBTA.

5.1 A Simplified Agreement for the Trilateral Highway

The EH-CBTA MoU is a much simplified version of the GMS-CBTA, with 10 articles, 2 of which are on the temporary admission of motor vehicles and of containers (not stated as articles in the MoU but treated as articles, hereafter), which have 9 sub-articles. Neither the EH-CBTA nor the BBIN-MVA stipulate the rule on transit facilities, including exemption of tariff and inspection at border gates in transit countries. The simplest arrangement is for a TLH MoU, at least for Myanmar and India, to follow the stipulations of the EH-CBTA, whilst the rules of the GMS-CBTA remain effective for Thailand and Myanmar, and the BBIN-MVA for India.

To be usable for the TLH countries, the BBIN-MVA registration certificate (Article IV) and the EH-CBTA GMS road transport permit (Article 1) can be treated in the same way. These certificates are registered for each vehicle by the competent authority of the contracting parties. The EH-CBTA stipulates that 500 road transport permits may be issued (Article 1), whilst the BBIN-MVA stipulates that the number of registration certificates is to be fixed between contracting parties by type of vehicle and by route (Sub-article [10], Article III). The TLH MoU should stipulate a quota of 500 permits of all types if the Government of India

approves. If it does not, India could lose opportunities to acquire traffic rights for 500 vehicles. The planned highway in Myanmar between Tamu and Myawaddy and the eastward extension between Tamu and Keng Lap (a border with Lao PDR) should be designated in an MoU protocol. The word 'permit' used in the EH-CBTA should be 'registration certificate' in the TLH MoU to make the distinction clear.

The BBIN-MVA's 'permit' (Article III) and the EH-CBTA's TAD (Article 5) may be treated in the same way. 'Permit' should be 'admission' in the TLH MoU. Admissions are used for each cross-border trip and issued by competent authorities. Temporary admission free from customs duty is also applied under the BBIN-MVA (Sub-article [5], Article VII). The validity of the temporary admission is stipulated at 1 year (Sub-article (7), Article III, BBIN-MVA) or 12 months (Sub-article [e], Article 5, EH-CBTA), and multiple entries are admitted for regular passengers and cargo transport (Sub-article [7], Article III, BBIN-MVA; and Sub-article [c], Article 5, EH-CBTA). One trip under the EH-CBTA is 30 days (Sub-article [f], Article 5). While the BBIN-MVA does not stipulate the length of stay for regular passenger and cargo transport, it stipulates 30 days for non-regular passenger vehicles (Sub-article [6], Article III). Stipulating 30 days would be acceptable in the TLH MoU. The BBIN-MVA stipulates that an admission is countersigned by the competent authority of the other contracting parties (Sub-article [9], Article III). This process is expected to be omitted in the TLH MoU, with an article added stipulating the rejection of a driver or transport operator who has infringed the provisions of the agreement or national laws (Article 30, main agreement, GMS-CBTA).

Finally, the BBIN-MVA requires drivers of cross-border vehicles to carry the following documents (Sub-article [2], Article IV):

- (1) pre-verified passports of the crew with multiple visas (Article V, BBIN-MVA; Article 5, main agreement, and Sub-article [b], Article 2, Annex 5, GMS-CBTA);
- (2) a valid cross-border driver's license (Sub-article [2], Article IV, BBIN-MVA; Article 17, GMS-CBTA main agreement);
- (3) a valid registration certificate (see above);
- (4) a valid temporary admission document (see above);

- (5) a valid insurance policy (Sub-article [2], Article IV, and Sub-article [2], Article XI, BBIN–MVA; Article 16, main agreement, and Article 6, Annex 9, GMS–CBTA); and
- (6) a list of personal goods and articles possessed by the crew (Sub-article [2], Article IV, BBIN–MVA).

A valid pollution-under-control certificate (Sub-article [2], Article IV, BBIN–MVA) and/or emission condition (Article 13, main agreement, GMS–CBTA) should be included in the registration certificate. A valid certificate of fitness (Sub-article [2], Article IV, BBIN–MVA) and/or technical requirements (Article 13, main agreement, and Annex 2, GMS–CBTA) should be included in the registration certificate. A passenger list in case of regular and non-regular passenger transport, an internationally recognised valid travel document, a waybill of the cargo, and destinations are not stipulated in the GMS–CBTA as requirements. The adoption of these documents should be discussed amongst the three countries.

In the EH–CBTA, sub-articles for motor vehicles and containers are regulated separately. Because the sub-articles overlap, however, nine articles stipulated for containers should be deleted and one article explaining that these rules also apply to containers added.

It should be discussed whether or not facilities of the II-CBTA or single-window and single-stop inspection of the GMS–CBTA should be adopted for the border between Tamu in Myanmar and Moreh in India.

5.2 For Greater Harmonisation

BBIN–MVA and GMS–CBTA articles should be harmonised.

5.2.1 Harmonisation of Major Differences

The Joint Committee and the NTFCs that comprise it, as stipulated in the GMS–CBTA, are not mentioned in the BBIN–MVA. Establishing such a committee for India and for other BBIN countries and forming a joint committee would be favourable. The National Core Committee of Transit has been organised in Bangladesh (Sharmeen, 2017). If other countries form such committees and add articles from the National Core Committee of Transit and the Joint Committee to the TLH MoU, the BBIN–MVA and the harmonised agreement should be effective.

The differences in the rules on transit facilities and transit fees could be controversial. The GMS–CBTA stipulates the exemption of tariffs and inspections in transit countries, while the BBIN–MVA admits payment of transit fees by transport operators in other contracting parties. The GMS–CBTA admits charging of levies by LDCs to transport operators of other contracting parties even though domestic transport operators are free from levies. Confining the coverage to the TLH, Myanmar can receive transit fees from transport operators of India and Thailand, as long as Myanmar is designated as an LDC by the United Nations. For the greater harmonised agreement, Bhutan, Nepal, and Bangladesh are designated as LDCs, so they can receive fees from transport operators of other contracting parties. As most LDCs in Southeast Asia and South Asia are expected to graduate from LDC status in the 2020s, the effectiveness of applying the exceptional rules of the GMS–CBTA and the necessity of applying new rules should be discussed.

5.2.2 Technical Differences

Quota of 500 vehicles. India is expected to fix the quota at 500 vehicles for the TLH. For the greater harmonised agreement, the BBIN members are requested to discuss whether or not they will adopt the quota of 500 vehicles.

Documents required to cross borders. Countries should discuss what documents are required for the TLH and the greater harmonised agreement, for example, whether or not to include a passenger list, a waybill, and a list of crew members' personal goods and articles. The contracting parties of the GMS–CBTA must accept domestic driving licenses, based on the Agreement on the Recognition of Domestic Driving Licenses issued by the ASEAN members. If all the contracting parties reciprocally recognise domestic driving licenses, this issue can be dissolved. The BBIN–MVA requests valid certificates for the crew conductor, helper, and cleaner while the GMS–CBTA does not. Negotiations including all the contracting parties are needed for the TLH and the greater harmonised agreement. Certificates seem to be less important than driving licenses.

Repair work. The BBIN–MVA prohibits repair work by transport operators of other contracting parties, except in the case of accidents, whilst the GMS–CBTA does not. If the Government of India allows transport operators of Thailand and Myanmar to repair their vehicles in India, for instance, other BBIN contracting parties might raise claims. Thus,

between Myanmar and India, application of the same rule enables dissolution as far as such application does not extend to relations between Thailand and Myanmar. Removing this rule from the BBIN–MVA could also enable dissolution.

Entry and exit permits. The GMS–CBTA does not stipulate rules giving authorities power to permit entry and exit of transport operators of other contracting parties to land or dry ports. Trucks from Thailand, however, are now allowed to enter Myanmar to Thilawa Dry Port and Myanmar trucks can go directly to Laem Chabang Port (ERIA Study Team, 2020). This rule might be applied to the TLH and is effective for bonded transport. Such bonded transport, however, is possible by stationing customs officers in the land or dry port and might require the amendment of domestic laws and regulations. The application of the rule should be optional for each GMS–CBTA contracting party.

Insurance companies. The BBIN–MVA facilitates other contracting parties’ insurance companies to carry out survey, assessment, investigation, and settlement of claims, and remittance, whilst the GMS–CBTA does not prescribe such rules. This issue depends on the laws and regulations of each country, and whether to accept such a rule or not should be optional for each GMS–CBTA contracting party.

Movement of dangerous and perishable goods. The main agreement of the GMS–CBTA and the rules of the BBIN–MVA do not contradict each other on the transport of dangerous goods. The GMS–CBTA main agreement shall not apply to the transport of dangerous goods, whilst Annex 1 of the GMS–CBTA allows their transport under several conditions. Prohibiting the transport of dangerous goods, therefore, is easily acceptable. Detailed rules of transport of perishable goods are recommended for examination by BBIN members because most commodities exchanged over borders are agricultural products.

5.2.3 Other Differences

Rules for motor vehicles and for containers. The GMS–CBTA stipulates separate rules for temporary importation using motor vehicles and containers. However, most of the articles are overlapping. It is not necessary to separate the rules for motor vehicles and for containers in the agreements on the TLH and in the greater harmonised agreement.

Rules on multimodal transport. The GMS–CBTA prescribes rules on multimodal transport whilst the BBIN–MVA does not. In the BBIN–MVA, connectivity of the four countries is especially important for landlocked North-East India, Nepal, and Bhutan to connect to the ports of Bangladesh, so multimodal transport is significant. The GMS–CBTA stipulates the liabilities of multimodal transport operators and consigners for transport contracts (Annex 13a, Annex 10) and the eligibility of multimodal transport operators (Annex 13b, Annex 9). It is not indispensable to stipulate rules on liabilities and eligibility of transport operators through a CBTA.

Border-crossing formalities. The GMS–CBTA has rules on priority for border-crossing because of frequent congestion at borders when vehicles wait for inspection. Such rules are also necessary to handle treatment of passengers infected with contagious disease endangering public health, especially with the outbreak of COVID-19. It is highly recommended that the BBIN–MVA adopt such rules.

6. Concluding Remarks

Two cross-border vehicle agreements apply to the contracting parties of the TLH. India is a contracting party to the BBIN–MVA, and Myanmar and Thailand are contracting parties to the GMS–CBTA. The two agreements must be harmonised. This paper clarifies their similarities and differences. They have more similarities than differences, which is cause for optimism. The success of harmonisation, however, depends on the positive attitudes of the negotiating countries. This paper recommends ways to dissolve the differences, but based mainly on a comparison of the articles and not yet on interviews with stakeholders. Subjective interpretations of the articles cannot be excluded. To meet future challenges, deeper interpretations of the articles based on interviews with stakeholders are required.

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**Table: Main Agreement, Annexes, and Protocols of the Greater Mekong Subregion
Cross-Border Transport Agreement and Number of Articles**

Annexes and Protocols	Date of Signing	Number of Articles
Main Agreement	17 Sep 2003	44
A1. Carriage of Dangerous Goods	16 Dec 2004	12
A2. Registration of Vehicles in International Traffic	30 Apr 2004	18
A3. Carriage of Perishable Goods	5 Jul 2005	34
A4. Facilitation of Frontier Crossing Formalities	30 Apr 2004	21
A5. Cross-border Movement of People	5 Jul 2005	27
A6. Transit and Inland Customs Clearance Regime	20 Mar 2007	22
A7. Road Traffic Regulation and Signage	30 Apr 2004	13
A8. Temporary Importation of Motor Vehicles	20 Mar 2007	21
A9. Criteria for Licensing of Transport Operators for Cross-border Transport Operations	16 Dec 2004	15
A10. Conditions of Transport	5 Jul 2005	20
A11. Road and Bridge Design, Construction, and Specifications	30 Apr 2004	21
A12. Border Crossing and Transit Facilities and Services	30 Apr 2004	16
A13a. Multimodal Carrier Liability Regime	30 Apr 2004	11
A13b. Criteria for the Licensing of Multimodal Transport Operators for Cross-border Transport Operations	16 Dec 2004	15
A14. Container Customs Regime	20 Mar 2007	23
A15. Commodity Classification System	30 Apr 2004	15
A16. Criteria for Driver's Licenses	16 Dec 2004	13
P1. Designation of Corridors, Routes, and Points of Entry and Exit (Border Crossings)	30 Apr 2004	12
P2. Charges Concerning Transit Traffic	5 Jul 2005	17
P3. Frequency and Capacity of Services and the Issuance of Quotas and Permits	20 Mar 2007	17
Total Number of Articles		407

Source: Ishida (2013).