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COMPARATIVE STUDY OF TRANSPORT FACILITATION ISSUES IN ASEAN TRANSPORT FACILITATION AGREEMENTS AND GREATER MEKONG SUBREGION CROSS BORDER TRANSPORT AGREEMENT

Chackrit DUANGPHAstra¹

1 Chulalongkorn Business School, Chulalongkorn University, Thailand;
chackrit@cbs.chula.ac.th

Handling Editor:

Adjunct Research Professor Dr. Shayut PAVAPANUNKUL UMSi, Indonesia
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Abstract

Member countries of ASEAN and Greater Mekong Subregion are required to adjust their regulations to the committed international agreements on transport facilitation to reduce logistics cost and time consumed during the cross-border carriage of goods. This article compared major transport facilitation agreements ratified by ASEAN and Greater Mekong Subregion countries including ASEAN Framework Agreement on Multimodal Transport Agreement, ASEAN Framework Agreement on Facilitation of Goods in Transit, ASEAN Framework Agreement on the Facilitation of Inter-State Transport and Greater Mekong Subregion Cross Border Transport Agreement, identified commonalities, differences, and overlapping issues, and to recommend the approaches to build an effective legal regime and business practices to enhance regional cross border transport connectivity.

Keywords: Transport Facilitation, ASEAN, Greater Mekong Subregion, Cross Border Transport

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Introduction

Transport facilitation issues have become a core concern of governments and business organizations involved in international trade and logistics, where supply and regulatory constraints can be major obstacles to trade and prevent growth (World Bank, 2010; Batista, 2012; Economic and Social Commission for Asia and the Pacific, 2014, 2022). The capability to deliver goods across border enable countries to extend the trade participation from domestic markets to regional and global supply chain. The facilitation of international transport is crucial for countries that desire to exploit globalization's new opportunities for development in global economy but, at the same, countries have faced challenges in developing operational connectivity over land throughout the region due to physical and regulatory constraints. Effectiveness of transport facilitation has also affected business's decisions about which markets to enter, which suppliers to procure from, and which country to establish in. International goods carriage mostly undertaken by multimodal transportation which defined as the carriage of goods by two or more modes of transport (Economic and Social Commission for Asia and the Pacific, 2004). Efficient operations of transport modes and interfaced facilities through lowering physical barriers and institutional interferences, and simplifying regulations is necessary for improving international transport operations (De Castro, 1996; Batista, 2012; Asian Development Bank, 2022). The growth of international trade facilitation, cross border, transshipment and transit transport over land has fueled by the advent of containerization which enable a product to be delivered from the door of origin to the door of its destination has also accelerated the utilization of multimodal transport integrating maritime, railways, and road in international carriage (Guibin, 1999).

In case of the Association of Southeast Asian Nations (ASEAN) comprising ten countries in Southeast Asia, transport facilitation and logistics connectivity improvement are recognized as key elements to support the operationalization of regional trade and investment integration. Although member countries in ASEAN are already physically connected by well-established transport infrastructure and border crossing facilities, most roads, railways, and internal waterways have not yet opened to foreign vehicles to travel beyond the distance limit permitted by individual country. This difficulty causes goods and passengers have to be transferred near borders or designated ports and results in inefficient, unreliable and high cost of transportation and consequently discourages investment and trade and makes higher market prices of products. With a view to minimize the interruption of international transport connectivity within the region, all member countries in ASEAN has adopted a series of key agreements to facilitate cross border transportation activities including the ASEAN Framework Agreement on Multimodal Transport (AFAMT), the ASEAN Framework Agreement on Facilitation of Goods in Transit (AFAFGIT), and the ASEAN Framework Agreement on the Facilitation of Inter-State Transport (AFAFIST) while some of member countries comprising Cambodia, Lao PDR, Myanmar, Thailand, Vietnam, and the People's Republic of China (PRC) also ratified the subregional agreement on transport facilitation "Greater Mekong Subregion Cross Border Transport Agreement (GMS CBTA)" to facilitate the cross border transportation of goods and people between contracting countries, simplify and harmonize regulations and requirements related to cross border transport, and promote multimodal transportation.

As there are many regional and subregional agreements related to transport facilitation ratified by ASEAN countries, especially Cambodia, Lao PDR, Myanmar, and Thailand which are member of both ASEAN and GMS, a major problem addressed in this research is to identify commonalities, different, overlapping issues and challenges of the selected countries in implementing such agreements. This article then sets out to compare these relevant agreements and recommend suitable approaches to develop effective regulatory measures to promote regional trade and transport connectivity.

Research Methodology

In order to reach the objectives, this paper used the qualitative approach through documentary survey, comparative approach to compare legal text, interviews of experts, and organizing a focus group comprising participants from relevant government authorities, and transport and logistics associations in Cambodia, Lao PDR, Myanmar, and Thailand involving in cross border trade and international transit of goods which outlined as follows:

- 1) Exploring background, concept, and legal provisions of transport facilitation agreements undertaken by member countries in ASEAN and GMS by using documentary review from websites of ASEAN association, Asian Development Bank, United Nations, ASEAN member countries website, books, journals, and newspaper.
- 2) Analyzing issues related to transport facilitation by conducting the interview of relevant participants which can be divided into four groups: (1) representatives from transport, trade, and customs authorities, (2) representatives from logistics service providers, (3) representatives from international trade, transport, and logistics associations, and (4) technical experts from Cambodia, Lao PDR, Vietnam, and Thailand. The sample groups were selected by purposive sampling to be the key informants. The study selected structured interview based on open-ended questions which were concluded from transport facilitation toolkit containing issues related to international and border cooperation, regulation of transport and logistics services, customs clearance of goods and transport vehicle, transport infrastructure, development of logistics zone, quality of logistics services, and trade facilitation initiatives.
- 3) Verifying information by dissemination summary of interview's results in the focus groups and allowing the group to verify information, show opinions, and try to reach common conclusions and recommendations to improve regional transport facilitation and connectivity.

Research Results

ASEAN Framework Agreement on Multimodal Transport

There is an increasing demand for end-to-end handling of carriage of goods by multimodal transport which has driven the growth of multimodal transport services. A well-integrated multimodal transport framework is imperative for ASEAN countries to take full advantage of development opportunities and for further regional economic integration. This will enable ASEAN to leverage its location at the crossroads of North Asia and South Asia to grow ASEAN's strategic significant in Asia. The ASEAN Framework Agreement on Multimodal Transport (AFAMT) was built in consistent with the United Nations Conference on Trade Development Convention on International Multimodal Transport of Goods to (a) promote the development of smooth, economic, and efficient multimodal transport services adequate to the requirements of international trade, (b) adopt rules relating to the carriage of goods by international multimodal transport contracts, including provisions concerning the liability of multimodal transport operators, and (c) create a balance of interests between users and suppliers of international transport services. The AFAMT incorporated key elements related to transport facilitation encompassing the recognition of multimodal transport document, the issuance of multimodal transport operator registration certificate by national competent authority body, the liability of multimodal transport operator, the liability of consignor, and the commitment of member countries to promote the national competent authority in individual country to facilitate the carriage of international goods by various modes of transport.

ASEAN Framework Agreement on Facilitation of Goods in Transit

Landlocked countries and coastal countries having poor international transport infrastructure and limited accessibility to shipping lines have to rely on neighboring coastal countries to complete the transactions of international trade. In case of ASEAN, a landlocked country like Lao PDR and the north and northeast regions of Myanmar has limited access to international maritime transport and have to use ports of their neighboring coastal countries for receiving

transit consignments and transporting them to their home countries. For example, products of Lao PDR imported from and exported to European and North American markets have to rely on Bangkok port and Laem Chabang Port in Thailand or Haiphong Port of Vietnam and need to transport goods by road passing through territories of Thailand or Vietnam. Likewise, export products from Thailand to middle or northern part of Vietnam are required to transit through Lao PDR. The transit trade generates economic activity for country of origin, country of destination, and transiting countries. To effectively convey the region's transit trade, the ASEAN Framework Agreement on the Facilitation of Goods in Transit (AFAFGIT) was crafted to (a) facilitate transportation of goods in transit and support regional trading bloc, (b) simplify and harmonize transport, trade and customs regulation to improve goods in transit, and (c) establish an effective transit transport system in the region. The member countries are obligated to accord the principle of Most Favored Nation Treatment to transit transport and National Treatment to product transited through territory. The AFAFGIT has highlighted measures related to transport facilitation including granting the right of transit transport, allowing goods carried in sealed road vehicles and their container to be exempted from customs examination at customs office enroute, identifying designation of transit transport routes and frontier facilities at border points, accelerating the cooperation on joint examination and clearance of transit goods at the agreeable frontier facilities, permitting transit transport vehicle and harmonizing road transport permit requirement, recognizing truck driving licenses, harmonizing and simplifying customs procedures, and establishing customs transit system.

ASEAN Framework Agreement on Facilitation of Inter-State Transport

The ASEAN Framework Agreement on the Facilitation of Inter-State Transport (AFAFIST) was principally constructed in duplication of the AFAFGIT except that it will emphasize upon the facilitation of inter-state carriage of goods between neighboring countries. ASEAN member countries which are contracting parties shall accord the principle of Most Favored Nation Treatment to inter-state transport between territories of any other contracting parties and simplify all interstate transport procedures and requirements in ASEAN as well as make all regulations related transit transport publicly available. However, the scope of application of this Agreement is not apply to domestic carriage between two points within the same country. There are ongoing initiatives to develop other bilateral land transport agreements but needing more time to reach agreeable solutions on key issues like on restrictive traffic quota, traffic routes, right of an empty or loaded foreign registered vehicle to enter into territory to carry goods in the return trip, customs and security clearance of vehicles and drivers, safety and other standard equipment required to be installed in vehicle, and harmonization on legal and administrative systems. Up to date, only two member countries including Lao PDR and Thailand has reached agreement and started implementing the bilateral inter-state transportation in compliance to AFAFIST since 2011 which allows cross border transport of goods carried on trucks can channel through multiple bilateral border checkpoints such as Nong Khai and Vientiane, Mukdahan and Savannakhet, Nakhon Phanom and Khammouane, Chiang Khong and Bokeo, and Chong Mek and Wantao.

Greater Mekong Subregion Cross Border Transport Facilitation Agreement

Greater Mekong Subregion Cross Border Transport Facilitation Agreement (GMS CBTA) was ratified by Cambodia, Lao PDR, Myanmar, Thailand, Vietnam and China PRC and aimed at (a) facilitating cross border transportation between contracting parties; (b) simplifying and harmonizing regulations related to cross border transport, and (c) promoting multimodal transport. Like AFAFIST, the scope of application of GMS CBTA does not extend to apply to domestic carriage between two points within the same country.

GMS CBTA has outlined measure related to transport facilitation encompassing facilitating border crossing formalities, giving visa and immigration privileges to facilitate the entry and exit of drivers engaging in cross border transport operations, granting commercial traffic right

for permitted transport operators and approved vehicles, recognizing technical conditions of road vehicles, addressing the need to maintain compulsory liability insurance, and allowing free competition on international road freight rate setting. To accelerate the implementation of the agreement, member countries set out several economic corridors to connect inter-state and in-transit goods along cities in the corridors. Among the most active corridors that government of member countries have developed good infrastructure including (a) North-South Economic Corridor (China, Lao PDR, and Thailand); (b) Eastern Economic Corridor (China and Vietnam); (c) East-West Economic Corridor (Vietnam, Lao PDR, Thailand, and Myanmar); (d) Central Economic Corridor (China, Lao PDR, Cambodia); and (g) Norther Economic Corridor (China and Myanmar) (Asian Development Bank, 2018).

Comparative Analysis of Related ASEAN Transport Facilitation Agreements and GMS CBTA

In overall, ASEAN Transport Facilitation Agreements and GMS CBTA have shared common goals which are aiming to improve the efficiency of management of procedures and controls, information flows, and documentation related to the movement of goods across national borders to reduce associated burdens, costs of transaction processes, and time while safeguarding national security, safety, and public order concerns. The preamble and objectives of selected ASEAN and GMS agreements usually contains the affirmation of political will of the participations to cooperate towards the achievement of the strategic goals therein.

In general, GMS CBTA covers wider scope of provisions of transport facilitation compared to the others by incorporated major provisions taken from AFAMT, AFAFGIT, and AFAFIST. GMS CBTA is a pioneering landmark accord, which consolidates, a single legal instrument, all of the key nonphysical measures for efficient cross border land transport. The CBTA includes mechanisms that enable (a) vehicles (on designated open routes), drivers (without mutual recognition of driving licenses and visa facilitation), and goods (with regimes for dangerous and perishable goods) to cross national borders through the GMS road transport permit system, (b) avoidance of costly transshipment through a customs transit and temporary importation system and guarantee system for goods, vehicles, and containers, (c) the reduction of time spent at borders, through single window inspection, joint inspection between authorities of two bordered countries, information and communication systems for information exchange, risk management, and advance information for clearance, and (d) increases in the number of border checkpoints implementing the GMS CBTA in order to maximize its networks effect and economies of scale. When fully implemented, the GMS CBTA will improve the efficiency of transport services by facilitating cross border transport, complement economic corridors and physical infrastructure and investment, and create a more favorable environment for cross border trade, investment, and tourism. In addition, GMS CBTA has provided a linkage to multimodal transportation by supporting the contracting parties to promote multimodal transport operation via (a) application of uniform multimodal transport liability regime, (b) laying down a minimum qualification for multimodal transport operator, (c) liability of multimodal transport operator and responsibility of multimodal transport operator to compensate for loss resulting from damage or loss of goods and unacceptable delay in delivery, and (d) a special container customs regime.

By gathering information from the interview, all informants from private and academic sectors commonly agreed that an important area that must be addressed to government is not only celebrating of the signing transport facilitation agreements but also need to introduce the new or adjust existing regulations to follow commitment made in the agreements to accelerate the implementation, especially issues related to multimodal transportation. Up to date, only Myanmar, Thailand, and Vietnam have introduced domestic legislation in consistent with Agreement on Multimodal Transport. As a result, it is needed to accelerate the other member countries to implement the signed Agreement to help improve the operationalization of

transport facilitation in the whole region. Also, another implication that is worth noting is the general transportation under GMS CBTA mainly concentrated on cross border road transportation which might not purely fit into definition and scope of international multimodal transport which shall apply to carriage of goods by at least two different modes of transport on the basis of a multimodal transport contract from a place in one country at which to goods are taken in charge by the multimodal transport operator to a place designated or delivered situated in a different country.

Conclusion and Suggestions

In conclusion, the provision related to transport facilitation issues in GMS CBTA and ASEAN agreements are generally compliment, GMS CBTA has also provided a linkage to multimodal transportation by supporting the contracting parties to promote multimodal transport operation via (a) application of uniform multimodal transport liability regime, (b) laying down a minimum qualification for multimodal transport operator, and (c) a special container customs regime. In addition, GMS CBTA clearly elaborate qualification required to apply for registered multimodal transport operators including the demonstration of reliability, professional competence, and financial solvency whilst, comparing with ASEAN agreements, GMS CBTA has not explicitly established guidelines of depositing database of region's multimodal transport operator database, relationship with international agreements in bilateral, regional, and multimodal level, responsibility of competent national authority to coordinate with joint committee.

Apart from comparative analysis of ASEAN and GMS transport facilitation agreements, by gathering information from the surveys, it was discovered that challenges currently faced by public and private stakeholders in managing connectivity in ASEAN and GMS connectivity that needed to be solved could be listed as follows: (a) lack of sharing correct and updated information on customs, trade, and transport regulations amongst authorities, logistics service providers, and shippers; especially this is concern raised by traders, importers, exporters, and logistics service providers from all countries participating the survey; (b) relatively slow progress made in implementing framework agreement agreed at regional level such as GMS CBTA, Multimodal transport, Goods in Transit, Inter State Transport, Single Window, and Trade Liberalization taking into account of existing complex structure of ASEAN bodies responsible for particular issues; (c) various existing data system and infrastructure platforms of each country may prevent the integration of ASEAN single window, especially in the case of Cambodia, Lao PDR, and Myanmar; (d) lack of awareness and understanding of ASEAN Economic Community in some ASEAN countries; (e) relatively high cost and long-time consumed to move goods and passenger across border; (f) imbalanced traffic along international road corridors, especially this incident will become crucial in the case of international carriage of goods by between Thailand and neighboring countries which Thai truck have to carry almost empty truck in return; (g) shortage of qualified logistics manpower especially at operational level such as truck drivers, fleet management and freight control supervisors; (h) lack of common coverage of motor vehicle third party liability insurance scheme in the region, and (i) no international agreement in relation to carriage of dangerous goods by road such as petroleum products and gas.

To alleviate the above obstacles, the public and private organizations in ASEAN and GMS to consider developing the following initiatives: (a) promote better understanding of AEC amongst government and private stakeholders, including freight logistics and passenger logistics enterprises and SME; (b) establishing logistics and trade facilitation as critical issues for joint trade and logistics commission between countries sharing borders; (c) acceleration of the implementation of signed transport and logistics agreement; (d) promote the establishment of standardization of vehicles, logistics and customs procedures and required documentation,

and qualification of selected logistics service operators; (e) joint alliance is needed to prevent imbalanced international land traffic along international road corridors; (f) more spending is needed to improve facilities at customs check points such as depot, one stop service center for customs, trade, quarantines, and immigration, handling system as well as speedy approval of relevant authorities; (g) producing qualified logistics manpower and trainers and promoting national/region's pride of logistics profession to meet growing region's demand for logistics; (h) consider the inclusion of logistics service provider in national and regional level committee to introduce more practical logistics measures; and (i) review the need for non-tariff barriers. There are many still remains to be done to improve trade facilitation and multimodal transportation in ASEAN and GMS and more challenges are expected to integrate ASEAN into one economic community.

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Data Availability Statement: The raw data supporting the conclusions of this article will be made available by the authors, without undue reservation.

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