

SECOND NEGOTIATION MEETING, KUNMING, PRC, 13–18 MARCH 2005

I. Introduction

1. The Second Negotiation Meeting (the Meeting) on the Annexes and Protocols (Stage 3) of the Greater Mekong Subregion (GMS) Cross-Border Transport Agreement (the Agreement) was held in Kunming, Yunnan Province, People's Republic of China (PRC), on 13–18 March 2005. The Meeting was jointly organized by the Ministry of Communications of the PRC, the People's Government of Yunnan Province, and the Asian Development Bank (ADB). The objective of the Meeting was to discuss and reach agreement on some Annexes and Protocols in Stage 3. The Meeting Program is attached as Appendix 1.

2. The participants of the Meeting consisted of delegations from the Kingdom of Cambodia, the People's Republic of China, the Lao People's Democratic Republic (Lao PDR), the Union of Myanmar, the Kingdom of Thailand, and the Socialist Republic of Viet Nam. ADB staff and consultants (the ADB Team) facilitated the Meeting and served as resource persons. The list of participants is attached as Appendix 2.

II. Opening Session

3. H.E. Liu Caiming, Assistant Governor, People's Government of Yunnan Province, PRC, opened the Meeting and welcomed the participants. He noted that the Agreement is an inevitable outcome and requirement of deepening GMS economic cooperation. He further noted that agreement on the Stage 3 Annexes and Protocols will lay the foundation for the success of the Second GMS Summit to be held in Kunming, PRC, on 4–5 July 2005.

4. In his Opening Statement, Mr. Yushu Feng, Senior Regional Cooperation Economist, ADB, stated that the finalization and signing of some Stage 3 annexes and protocols at the Second GMS Summit on 4–5 July 2005 will demonstrate the GMS countries' continuing commitment to the GMS cooperation program. He further noted that the Agreement is a flagship of the GMS Economic Cooperation Program and a model for other regional cooperation programs.

III. Business Arrangements

5. The Meeting was held in plenary sessions including an opening session, and sessions on Annex 5: Cross-Border Movement of People, Annex 10: Conditions of Transport, Protocol 2: Charges Concerning Transit Traffic, Protocol 3: Frequency and Capacity of Services and Issuance of Quotas and Permits, and Annex 6: Transit and Inland Customs Clearance Regime. The sessions were chaired by Mr. Li Guangling, Deputy Director General, Department of International Cooperation, Ministry of Communications, PRC, and co-chaired by Mr. Yushu Feng and Mr. Ronald Butiong, Programs Specialist (GMS), ADB.

IV. Negotiation of Stage 3 Annexes and Protocols

6. The Meeting negotiated the draft of the following annexes as shown in the table below.

Annex	Location of Revised/Final Draft
Annex 3: Carriage of Perishable Goods	Appendix 3 (Final Draft)
Annex 5: Cross-Border Movement of People	Appendix 4 (Final Draft)
Annex 10: Conditions of Transport	Appendix 5 (Final Draft)
Protocol 2: Charges Concerning Transit Traffic	Appendix 6 (Final Draft)
Protocol 3: Frequency and Capacity of Services and Issuance of Quotas and Permits	Appendix 7 (Revised Draft)
Annex 6: Transit and Inland Customs Clearance Regime	Appendix 8 (Revised Draft)

7. As shown in the above table, the Meeting agreed on the final drafts of the following four annexes/protocols: (i) Annex 3: Carriage of Perishable Goods, (ii) Annex 5: Cross-Border Movement of People, (iii) Annex 10: Conditions of Transport, and (iv) Protocol 2: Charges Concerning Transit Traffic. The Meeting agreed that internal preparations for the finalization of these annexes/protocols would be undertaken in each country as soon as possible in order to ensure that these are ready for signing at the Second GMS Summit to be held in Kunming, Yunnan Province, PRC, on 4–5 July 2005. To ensure the accuracy of the documents to be signed and consistent with previous practice, it was agreed that the heads of the negotiation teams will be present to initial the documents prior to signing on 5 July 2005.

8. As agreed by the Meeting, in Parts II and III of the Final Draft of Annex 3 on the Carriage of Perishable Goods the word “shall” has been replaced by “should” to reflect the recommendatory nature of the standards.

9. Regarding Annex 5, the ADB Team agreed to provide, no later than 8 April 2005, further “order of magnitude” technical substantiation of the agreed limitation of carrier liability in the case of death or personal injury.

10. The Meeting noted that the liability of the consignor vis-à-vis the carrier will not be covered by Annex 10. Also regarding Annex 10, the Meeting noted that the ADB Team will circulate, no later than 8 April 2005, a model consignment note (the Attachment to the Annex) to the GMS countries for review.

11. The Meeting discussed two options for Protocol 3: Frequency and Capacity of Services and Issuance of Quotas and Permits: (i) a regulated approach (Step 1 according to Article 23 of the Agreement) and (ii) a liberal market forces driven approach (Step 2 according to Article 23 of the Agreement). The Meeting agreed that the first option, based on a regulated approach, be taken as a basis for negotiation. Issues raised by the Meeting included (i) whether a “vehicle passport” is required and (ii) whether the Contracting Parties may levy (cost-related) charges for road transport permits. The Meeting agreed to provide the ADB Team with their comments in writing no later than 29 April 2005.

12. The Meeting was presented with a revised draft of Annex 6: Transit and Inland Customs Clearance Regime. As background, the Meeting was informed of the completion of National Workshops on Issuing and Guaranteeing Organizations in relation to Annexes 6, 8, and 14, in all GMS countries, including workshops in Bangkok (December 2004), Hanoi (January 2005), Beijing (March 2005), Yangon (March 2005), Phnom Penh (March 2005),

and Vientiane (March 2005). The workshops provided the necessary input for refinement of the two articles of these annexes on issuing and guaranteeing organizations, e.g., to establish alternative modalities, with the particular modalities to be decided by MOU between country pairs, similar to the approach in Article 4 of Annex 4: Facilitation of Frontier Crossing Formalities. The ADB Team will provide a consolidated report summarizing the six country workshops, no later than 15 April 2005. The Meeting took note of a proposed workshop to be hosted by the General Administration of China Customs and ADB on issues related to Annex 6, as well as Annex 8: Temporary Importation of Motor Vehicles, and Annex 14: Container Customs Regime, to be undertaken in the latter half of July 2005.

V. Other Matters

13. The Meeting noted the status of ratification of the Stage 1 and 2 Annexes and Protocols for each of the six GMS governments.¹ Most or all of the GMS countries are likely to have ratified the Stage 1 and 2 Annexes and Protocols by December 2005. In addition to standard notification procedures for ratification of international agreements where Contracting Parties notify each other through diplomatic channels, the Meeting agreed that GMS governments will inform ADB of their ratification of the annexes and protocols, which in turn will advise the National Transport Facilitation Committees of the other GMS countries.

14. The Meeting agreed to explore the establishment of a depository and registration of the Agreement, its amendments, annexes, and protocols with the Secretariat of the United Nations (UN) in accordance with Article 102 of the UN Charter, which may increase the stature of the Agreement. The Meeting agreed that an amendment of the Agreement be formulated for this purpose. In this regard, the ADB Team will circulate an options paper on this subject drawing upon the Vienna Convention on the Law of Treaties, no later than 29 April 2005.

15. The Meeting noted that the Second GMS Summit could provide a strong political mandate for the facilitation of cross-border transport of goods and people in the GMS. In this regard, the Meeting agreed to request the Task Force for the Second GMS Summit to consider incorporating in the Joint Summit Declaration that ratification of current and future signed annexes and protocols be expedited, and national laws and regulations be conformed to the Agreement and its Annexes and Protocols.²

16. A Meeting in lieu of Fact-Finding on Preparation of a Regional Technical Assistance (RETA) for Implementing the GMS Agreement to Facilitate the Cross-Border Transport of Goods and People – Phase II was held on 16 March 2005 (Appendix 9). The RETA will assist the National Transport Facilitation Committees (NTFCs, chaired by a vice minister or equivalent) of the GMS countries and the Joint Committee (involving representatives of the respective NTFCs) in the implementation of the Agreement through a number of measures to ensure the sustainability of the Agreement. The ADB Team was requested to proceed expeditiously with the proposed RETA to assure that it could be approved before the Second GMS Summit on 4–5 July 2005, to support the initial implementation of the Agreement.

¹ Cambodia and the PRC expect ratification of the Stage 1 and Stage 2 annexes and protocols by the end of 2005, Lao PDR has already ratified the Stage 1 annexes/protocols and expects ratification of the Stage 2 annexes by June 2005, Myanmar expects ratification of the Stage 1 annexes/protocols by September 2005 and the Stage 2 annexes by the end of 2005, Thailand reported that ratification of Stage 1 and 2 annexes/protocol is in progress, and Viet Nam has already ratified the Stage 1 annexes/protocols and expects ratification of the Stage 2 Annexes by May 2005.

² E.g., the promulgation or amendment of laws and regulations in some GMS countries to allow the extraterritorial performance of duties by Competent Authorities as called for in Article 4(b) of the Agreement.

17. The Meeting agreed that the Third Negotiation Meeting on Annexes and Protocols (Stage 3) will be held in Yangon, Myanmar during the second or third week of August 2005. The Meeting warmly welcomed the kind offer of Myanmar to host the meeting.

VI. Adoption of Summary of Proceedings

18. The Meeting adopted the Summary of Proceedings on 18 March 2005 in Kunming, Yunnan Province, PRC.

VII. Acknowledgements

19. The GMS countries and the ADB Team expressed their sincere thanks and appreciation to the PRC, in particular, the Ministry of Communications and the People's Government of Yunnan Province, for the warm hospitality and excellent arrangements provided to the Second Negotiation Meeting on Annexes and Protocols (Stage 3) of the GMS Cross-Border Transport Agreement.

THIRD NEGOTIATION MEETING, YANGON, MYANMAR, 23–26 AUGUST 2005³

I. Introduction

1. The Third Negotiation Meeting (the Meeting) on the Annexes and Protocols (Stage 3) of the Greater Mekong Subregion (GMS) Cross-Border Transport Agreement (CBTA) was held in Yangon, Myanmar, on 23–26 August 2005. The Meeting was jointly organized by the Ministry of Rail Transportation of the Union of Myanmar and the Asian Development Bank (ADB).

2. The objective of the Meeting was to discuss and reach agreement on the remaining four Annexes and Protocols in Stage 3. The Meeting Program is attached as Appendix 1.

3. The participants of the Meeting consisted of delegations from the Kingdom of Cambodia, the People's Republic of China (PRC), the Lao People's Democratic Republic (Lao PDR), the Union of Myanmar, the Kingdom of Thailand, and the Socialist Republic of Viet Nam. ADB staff and consultants (the ADB Team) facilitated the Meeting and served as resource persons. The list of participants is attached as Appendix 2.

II. Opening Session

4. H.E. Thura U Thaug Lwin, Deputy Minister, Ministry of Rail Transportation, Union of Myanmar, opened the Meeting and welcomed the participants. He observed that since the initiation of the GMS Program in 1992, physical subregional linkages have been developed and the countries have increasingly opened their economies, which has involved an emphasis on regulatory and institutional issues. He noted that since 1996, ADB has provided a series of technical assistance (TA) projects leading to the CBTA, which entered into force on 31 December 2003. He further stated that at the Second GMS Summit, held at Kunming, PRC, in July 2005, the Leaders were encouraged by the considerable progress in negotiations of the annexes and protocols of the CBTA and reaffirmed their commitment to “move with speed and purpose” to implement the CBTA at an increasing number of border crossings.

5. In his Opening Statement, Mr. Yushu Feng, Senior Regional Cooperation Economist, ADB, congratulated the countries on their signing of four annexes and protocols as well as three memoranda of understanding (MOUs) for initial implementation, on 5 July 2005 at the Second GMS Summit. He noted that the Meeting is a follow-up to the Summit, as the Leaders instructed that the remaining annexes and protocols should be finalized by the end of this year. He also stated that ADB is in the process of preparing a TA paper to continue ADB's assistance for the implementation of the CBTA.

III. Business Arrangements

6. The Meeting was held in plenary sessions including an opening session, and sessions on Annex 6: Transit and Inland Customs Clearance Regime, Protocol 3: Frequency and Capacity of Services and Issuance of Quotas and Permits, Annex 8: Temporary Importation of Motor Vehicles, and Annex 14: Container Customs Regime. The sessions on Annexes 6, 8, and 14 were chaired by Colonel Khin Maung Linn, Director General, Customs Department, Ministry of Finance and Revenue, Union of

³ Editor's Note: Appendices listed in this summary of proceedings are not included in this publication

Myanmar, while the sessions on Protocol 3 were chaired by Mr. Aung Myint, Director, Road Transport Administration Department, Ministry of Rail Transportation, Union of Myanmar. Mr. Yushu Feng, ADB, co-chaired all sessions.

IV. Negotiation of Stage 3 Annexes and Protocols

7. Colonel Khin Maung Linn opened the negotiation sessions, recalling the GMS countries' action plan to finalize the negotiation and signing of the annexes and protocols in three stages from 2003 to 2005, and noting that three annexes and one protocol remain to be finalized and signed. With the deadline for achievement of the action plan drawing near, he urged the parties to reach consensus on the remaining annexes and protocols. Dr. Kristiaan Bernauw, ADB Consultant, then made a short, introductory presentation on customs transit issues in the GMS, as a "warm up" for the negotiations (of Annexes 6, 8, and 14), which was followed by a question-and-answer session.

- (a) The Meeting then negotiated the draft of the following annexes/protocol as shown in the table below:

Annex	Location of Revised Draft
Annex 6: Transit and Customs Inland Clearance Regime	Appendix 3 (Revised Draft)
Protocol 3: Frequency and Capacity of Services and Issuance of Quotas and Permits	Appendix 4 (Revised Draft)
Annex 8: Temporary Importation of Motor Vehicles	Appendix 5 (Revised Draft)
Annex 14: Container Customs Regime	To be redrafted

- (b) The Meeting agreed in principle on Annex 6: Transit and Inland Customs Clearance Regime, including Article 9 on Issuing and Guaranteeing Organizations and Article 10 on Liability of the Issuing/Guaranteeing Organization, drawing upon the findings of national workshops on issuing and guaranteeing organizations held in all GMS Countries from December 2004 to March 2005.
- (c) One matter regarding Annex 6 relates to the draft of Article 9(a), which sets out a guideline for the maximum amount of security to be provided by the guaranteeing organization; since the amount of security depends on the trade volume through the territory of a given customs administration, it was tentatively proposed that the security to be provided be limited to 30% of the potentially chargeable customs duties and taxes on the average weekly cross-border cargo volume,⁴ through the border crossings identified in Protocol 1 of the CBTA, between country pairs; the Meeting agreed that the ADB Team would reconsider this guideline in light of international practice. Another matter regarding Annex 6 relates to the draft of Article 10(g), which proposes that the liability of the issuing/guaranteeing organization be limited to the SDR (Special Drawing Rights) equivalent of US\$50,000,⁵ based on the precedent of the Customs Convention on the International Transport of Goods Under the Cover of TIR Carnets (the TIR Convention; Geneva, 1975). A further matter regarding Annex 6 relates to draft Article 4(e), which states that Contracting Parties where electronic [advance] clearance customs procedures are in force, in accordance with Article 4(d) of the CBTA,

⁴ Based on a European Union precedent.

⁵ Equivalent to SDR 34,032 as of 25 August 2005.

Article 8 of Annex 4, and Article 7 of Annex 12, shall take appropriate measures to facilitate transport operators in complying with their electronic procedures. Also, a new paragraph in the preamble was proposed to indicate that Annex 6 should be regarded as a step toward eventual accession of the GMS countries to the TIR Convention, called for by Resolution 48/11 of the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP). In view of these and other matters, the ADB Team will prepare a revised draft of Annex 6, no later than 7 October 2005.

- (d) Following brief introductory (“warm up”) presentations by Mr. Aung Myint and Mr. Bernauw, the Meeting next negotiated Protocol 3: Frequency and Capacity of Services and Issuance of Quotas and Permits, following the regulated approach (Step 1 according to Article 23 of the CBTA) agreed at the Second Negotiation Meeting on Stage 3 Annexes and Protocols in March 2005, held in Kunming, PRC. The Meeting agreed on an approach involving a multilateral GMS road transport permit issued by the National Transport Facilitation Committee of the Home Country and entitling transport operators to perform cross-border transport operations into the territories of other Contracting Parties. The ADB Team tentatively proposed 200 GMS road transport permits for cargo transport and 50 permits for non-scheduled passenger transport per Contracting Party; however, it was agreed that the ADB Team would analyze demand data being compiled by ADB TA 6195-REG: GMS Transport Sector Strategy Study, to endeavor to provide figures with a more rational basis, no later than 7 October 2005. In addition, the ADB Team tentatively proposed that Protocol 3 will cease to be effective after having been in force for five years, after which it would be replaced by the free market system as described in Step 2 in Article 23 of the CBTA. The ADB Team will prepare a revised draft of Protocol 3, no later than 7 October 2005
- (e) The Meeting negotiated a revised draft of Annex 8: Temporary Importation of Motor Vehicles, reflecting related provisions of the revised draft of Annex 6 negotiated by the Meeting. The Meeting clarified that the Scope of Application of the CBTA, as set in Article 2(a), covers not only commercially operated vehicles but also non-commercially operated vehicles. The Meeting discussed whether the Temporary Admission Document should cover the temporary entry into one other Contracting Party’s territory only or should be designed to cover trips into more than one other Contracting Party’s territory; the ADB Team clarified that the number of trips traversing more than one other Contracting Party’s territory may not justify the complication because in most cases only a small part of such document’s capacity would be used. Also, the Meeting discussed terminology (e.g., admission, importation, or entry) and agreed that the ADB Team will reconsider appropriate terminology based on relevant international conventions. Further, the Meeting requested the ADB Team to assess the appropriate magnitude of liability of the issuing and guaranteeing organization per Temporary Admission Document, no later than 7 October 2005; on a preliminary basis, the ADB Team mentioned a figure of US\$6,000 equivalent in SDR. Finally, each country made a brief of presentation proposing specific items in Annex 8 requiring revision. In view of the foregoing, the ADB Team will prepare a revised draft of Annex 8, no later than 7 October 2005.

- (f) The Meeting commenced preliminary negotiations of Annex 14: Container Customs Regime with each country stating its views. The ADB Team will prepare a revised draft of this Annex, reflecting related provisions of the revised drafts of Annexes of 6 and 8, no later than 7 October 2005, to facilitate negotiation of this Annex at the next meeting.
- (g) The Meeting agreed that Annexes 6, 8, and 14 should be aligned to the maximum extent possible. It was also agreed that the ADB Team would provide complete draft attachments to Annexes 6, 8, and 14, and Protocol 3, when preparing the inputs to the next negotiation meeting.
- (h) In summary, the inputs to be provided by the ADB Team, no later than 7 October 2005, include the following:
 - (i) regarding Annex 6, reconsideration of the maximum amount of security to be provided by the guaranteeing organization (the ADB Team tentatively proposed that the security to be provided be limited to 30% of the potentially chargeable customs duties and taxes on the average weekly cross-border cargo volume, through the border crossings identified in Protocol 1 of the CBTA, between country pairs);
 - (ii) regarding Protocol 3, analysis of demand data being compiled by ADB TA 6195-REG: GMS Transport Sector Strategy Study, to provide figures with a more rational basis for the number of permits as required by Protocol 3 (figures of 200 for cargo transport permits and 50 for non-scheduled passenger transport permits were tentatively proposed by ADB Team);
 - (iii) regarding Annex 8, assessment of the appropriate magnitude of liability of the issuing and guaranteeing organization per Temporary Admission Document in Annex 8 (a figure of US\$6,000 equivalent in SDR was mentioned by the ADB Team); and
 - (iv) preparation of revised drafts of Annex 6, 8, and 14, including attachments.

The Meeting agreed that the GMS countries would provide the ADB Team with their comments on the above inputs no later than 21 October 2005.

V. Other Matters

8. The Meeting noted that the Second GMS Summit provided a strong political mandate for the facilitation of cross-border transport of goods and people in the GMS. The Leaders were “encouraged by the considerable progress in negotiating the annexes and protocols of the Cross-Border Transport Agreement and commencement of its implementation” and reaffirmed their commitment “to move with speed and purpose to implement the Agreement at an increasing number of border crossings.” The Leaders also committed the GMS countries to “take all necessary domestic measures to ensure that the Agreement can be implemented starting in 2006.”⁶

⁶ Second GMS Summit of Leaders, “Kunming Declaration,” 4–5 July 2005, para 16.

9. Taking note of the Leaders' mandate, the respective GMS countries agreed to intensify efforts for the ratification of the Stage 1 and 2 Annexes and Protocols. Also pursuant to the Leaders' mandate, the Meeting agreed to resolve all pending issues on the Stage 3 Annexes and Protocols at the next negotiation meeting. For this purpose, the Meeting agreed that the Fourth Negotiation Meeting on Annexes and Protocols (Stage 3) will be held in Lao PDR, during the first week of November 2005.

10. The Meeting noted that a fact-finding mission for preparation of a Regional Technical Assistance (RETA) for Implementing the Agreement for Facilitation of the Cross-Border Transport of Goods and People – Phase II will be undertaken by Mr. Feng, ADB, during the first two weeks of September 2005. The RETA will assist the National Transport Facilitation Committees of the GMS countries and the Joint Committee in the implementation of the Agreement through a number of measures to ensure the sustainability of the Agreement.

11. The Meeting noted the proposal of the PRC that since Guangxi Zhuang Autonomous Region has formally joined the GMS, the route from Nanning to Hanoi via Youyiguan, including the associated border crossing points, should be added to Protocol 1 as quickly as possible. The delegation of Viet Nam stated that it will report the proposal to its higher authorities.

VI. Adoption of Summary of Proceedings

12. The Meeting adopted the Summary of Proceedings on 26 August 2005 in Yangon, Myanmar.

VII. Acknowledgements

13. The GMS Countries and the ADB Team expressed their sincere thanks and appreciation to the Union of Myanmar, in particular, the Ministry of Rail Transportation, for the warm hospitality and excellent arrangements it provided for the Third Negotiation Meeting on Annexes and Protocols (Stage 3) of the GMS Cross-Border Transport Agreement.