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**Implementation of a Customs  
Transit System in the Greater  
Mekong Subregion:  
The role of the private sector**

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# Summary

The Greater Mekong Subregion Program is a multi-billion dollar<sup>1</sup> development project, launched with the assistance of the Asian Development Bank (ADB) in 1992. It brings together 6 states of the Mekong river basin with a common goal of growth and prosperity through economic co-operation. The development of economic corridors is a major trade and transport facilitation (TTF) initiative under the GMS Program. This project requires both the development of physical infrastructure and supporting legal framework. The most important legal instrument within this framework is currently the Cross Border Transport Agreement (CBTA). The CBTA came into force in 2003, but as of December 2010 full implementation was still to materialize. One of the major implementation constraints is the inadequate participation of the private sector.

This paper focuses on the participation of transport associations in the Customs Transit System (CTS), an essential TTF component of the CBTA, with the aim to learn how the private sector can contribute to the implementation of the CBTA. The participation of transport associations has been examined and assessed in their roles as issuing/guaranteeing organizations and representatives of the transport industry. The paper concludes with an explanation for the limited effectiveness of private stakeholder participation. These reasons include the widely diverging organizational capabilities of the associations, the lack of a competitive procurement process, significant financial risk, inadequate participation, as well as a lacking sense ownership, economic incentive and trust. The associations are currently not actively working as a united front to find solutions to the implementation difficulties of the CTS. Due to the above factors, a more active participation of the transport associations does not seem to be a viable solution to the implementation of the CTS. Interestingly, this paper also finds that inadequate participation by the private sector is not one of the root causes of non-implementation.

This paper aspires to demonstrate that the effective and timely implementation of a multilateral agreement is contingent on inclusive consultation, sufficient participation and capacity-building, both during and well *prior* to the implementation stage. This would help to ensure that the private, as well as other stakeholders do not find themselves unable and/or unwilling to actively work for the implementation of the agreement.

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<sup>1</sup> As of 2009, the cost of GMS projects was estimated at 11 billion USD. See *Aid for Trade in Asia and the Pacific: An Update. Report to the Second Global Review on Aid for Trade*, ADB, 2009.

# Sammanfattning

Greater Mekong Subregion programmet är ett flera miljarder dollars utvecklingsprojekt som inleddes med stöd av den asiatiska utvecklingsbanken (ADB) 1992. Det sammanför sex stater i Mekongs avrinningsområde med ett gemensamt mål för tillväxt och välstånd genom ekonomiskt samarbete. Utvecklingen av ekonomiska korridorer är ett huvudinitiativ för främjandet av transport och handel (TTF) inom GMS programmet. Detta initiativ kräver både utveckling av fysisk infrastruktur och nödvändiga regelverk. Det viktigaste rättsliga instrumentet inom detta regelverk är för närvarande den gränsöverskridande transportavtalet (CBTA). CBTA trädde i kraft 2003 men så sent som i december 2010 hade avtalet fortfarande inte implementerats fullt ut. Ett av de stora implementeringshinder är det otillräckliga deltagandet av den privata sektorn i implementeringen.

Denna uppsats fokuserar på den roll som nationella transportföreningar spelar inom Customs Transit systemet (CTS) som är en viktig handelsfrämjande komponent av CBTA. Syftet är att lära sig hur den privata sektorn kan bidra till implementeringen av CBTA. Transportföreningarnas bidrag kommer att undersökas och bedömas inom ramen för deras roll som utfärdande/garanterande organisationer samt som företrädare för transportbranschen. Uppsatsen slutförs med hjälp av en rad förklaringar till föredagsdeltagandets begränsade effektivitet i CTS. Dessa förklaringar omfattar vitt skilda organisatoriska förmågor föreningarna emellan, bristen på en konkurrensutsatt upphandling, betydande finansiella risker, otillräcklig delaktighet, en svag ägandekänsla avseende projektet, samt otillräckligt med ekonomiska incitament och förtroende för varandra. Föreningarna arbetar för närvarande inte aktivt som en enad front för att hitta lösningar på svårigheterna vid implementeringen av CTS. På grund av ovanstående faktorer, verkar ett mer aktivt deltagande av transportföreningarna inte vara en möjlig lösning till implementeringen av CTS. Intressant nog finner denna uppsats också att bristen på medverkan från den privata sektorn inte är en av grundorsakerna till icke-implementeringen av CTS eller CBTA.

Denna uppsats strävar efter att visa att en effektiv och tidslämplig implementering av ett multilateralt avtal är beroende av omfattande samråd med alla intressenter, tillräcklig delaktighet samt kapacitetsuppbyggnad under så väl som innan implementeringsstadiet. En sådan process skulle bidra till att man inte hamnar i ett läge där den privata sektorn (eller andra intressenter) varken kan eller vill arbeta aktivt för implementeringen av avtalet.

# Preface

In the spring of 2010, I attended a course in “Law and Development” as part of my law degree at Lund University in Sweden. This course explored the correlation between legal assistance to developing countries and poverty reduction. It inspired me to seek out a particular example of such assistance and in this way get a practical understanding for the interplay between law and development. The Cross Border Transport Agreement (CBTA) struck me as a particularly fascinating example. The CBTA encompasses 6 South-East Asian economies at widely diverging stages of economic development, in an ambitious attempt to facilitate transport and trade through legal assistance.

In October 2010 I traveled to South-East Asia for three months to conduct the research for this paper. I spent a month in Bangkok, Vientiane and Hanoi respectively, conducting personal interviews with senior officials at the Asian Development Bank, Ministries of Transport and Finance, and private sector stakeholders. It would not be an exaggeration to call this a life-changing journey. Professionally, it opened my eyes to an entirely different set of problems than I had expected. I started out with a conviction that legal instruments could contribute to increased trade and economic growth, which would lead to development and, ultimately, to the reduction of poverty in a region, which in terms of per capita income remains the poorest in the world<sup>2</sup>. However, I realized that, no matter its sophistication, a legal agreement will not be able to contribute to the realization of the above goals without a proper consultation with and participation of the key stakeholders at all levels. I still believe that law is one of the necessary keys to development, but it will not open any doors if it attempts to briskly apply a set of rules, which aren’t fully adjusted to the context of the relevant countries, and does so without the support of some of the key stakeholders.

On a personal level, this project has expanded my boundaries in understanding different people and cultures. I have sat in the offices of high-ranking customs officials, diplomatically traversing the difficult issues of legal implementation; I’ve been befriended Buddhist monks; lived for a month with a wonderful Thai family; and found a good friend and role-model in a Lao woman, who has lost both her husband and mother in the course of one year, but was still the happiest and kindest person I’ve met in a while. Finally, this journey has not been easy and it has made me that much stronger. I know now that I can adapt to anything from a 27 hour bus journey across the border from Lao PDR to Vietnam; to finding an army of ants feasting on my muesli in the morning; to sleeping on a thin mattress on

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<sup>2</sup> Region here refers to the Lower Mekong Basin, encompassing Vietnam, Cambodia, Lao PDR and Thailand. With the exception of Thailand, nominal income per capita ranges from 354 USD in Vietnam to 254 USD in Cambodia. In Lao PDR, Cambodia, and Vietnam between 33 and 40 % continue to live below the poverty line. See <http://www.unwac.org/mekongproject.php>.

the floor in a rented apartment with very thin walls and a very large and particularly fierce neighbor's dog, barking through the night.

First of all, I would like to thank the Swedish International Development Co-operation Agency (SIDA) for awarding me the "Minor Field Studies" scholarship. The research for this paper would not have been possible without their financial assistance. I would also like to thank everyone, who took the time to sit down for an interview with me or otherwise provided their support with this project. Particular thanks must go to Mr. Barend Frielink and Mr. Yushu Feng at the Asian Development Bank and Mr. Phurisit Changsiripun at the Board of Trade of Thailand.

I would also like to extend a personal thanks to my mother and father, who have given me strength and inspiration throughout the entire course of this project. Everyone else, who has read this paper or otherwise provided their support – thank you.

Last, but not least, I would like to express my gratitude to my thesis supervisor, Lars-Göran Malmberg, for his patience and support.

Sincerely,

Anna Tarnovskaya

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Phnom Penh, Cambodia

# Abbreviations

ADB	Asian Development Bank
ATA Carnet	Admission Temporaire Carnet
BoT	Board of Trade of Thailand
CBTA	Agreement for Facilitation of Cross-border Transport of Goods and People
CTAD	Container Temporary Admission Document
CTS	Customs Transit System
EWEC	East-West Economic Corridor
GATT	General Agreement on Tariffs and Trade
GMS	Greater Mekong Subregion
IRU	International Road Transport Union
LIFFA	Lao International Freight Forwarder's Association
MVTAD	Motor Vehicle Temporary Admission Document
NSEC	North-South Economic Corridor
NTFC	National Transport Facilitation Committee
NTTFC	National Trade and Transport Facilitation Committee
Org	Organization
PPP	Public-private partnership
SEZ	Special Economic Zone
SDR	Special Drawing Right
TICCD	Transit and Inland Customs Clearance Document
TIR	Transports Internationaux Routiers
TTF	Transport and trade facilitation
UNECE	United Nations Economic Commission for Europe

VATA Vietnam Automobile Transportation Association

WCO World Customs Organization

# 1 Introduction

## 1.1 Background

The Greater Mekong Sub-region (GMS) comprises of the People's Republic of China, the Union of Myanmar, the Kingdom of Cambodia, the Lao People's Democratic Republic, the Kingdom of Thailand and the Socialist Republic of Vietnam. Since 1992 these countries have engaged in a program of economic co-operation with an aim to facilitate cross-border transport and trade. The GMS Program, supported by the Asian Development Bank (ADB) and other development organizations, focuses on the implementation of sub-regional projects in transport, trade facilitation, energy, telecommunications, agriculture, human resource development, tourism, investment and environment sectors. 83% of GMS infrastructure projects, amounting to circa US \$ 9.13 billion, are in the road transport sector.<sup>3</sup>

In 1998 at the 8<sup>th</sup> Ministerial Meeting, the GMS countries adopted the Economic Corridor Approach in order to accelerate economic co-operation in the sub-region. Physical infrastructure alone was not considered sufficient to facilitate transport and trade. Hence, the scope of the GMS Program was broadened from transport corridors to economic corridors, i.e. "well defined geographical area(s) where infrastructure development is linked with the development of production and trade potentials through systematic interventions based on a clear economic rationale".<sup>4</sup> The GMS ministers proclaimed that economic corridors "linking the sub-region to major markets...will serve as centers for enterprise development...and over the longer term...build on the potential of the sub-region as a land bridge serving the People's Republic of China (PRC), Southeast Asia, South Asia and East Asia".<sup>5</sup> Moreover, the Economic Corridor Approach would help to integrate the remote and landlocked regions of the GMS with the more well-off areas.<sup>6</sup> The North-South Economic Corridor (NSEC), Southern Economic Corridor and East-West Economic Corridor (EWEC) together form a priority project<sup>7</sup> under the Economic Corridor Approach.<sup>8</sup> Together,

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<sup>3</sup> *Sector Assistance Program Evaluation for the Transport and Trade Facilitation Sector in the Greater Mekong Subregion—Time to Shift Gears*, ADB, 2008, p. 1.

<sup>4</sup> *Ibid*, p. 14.

<sup>5</sup> *Strategy and Action Plan for the Greater Mekong Subregion North-South Economic Corridor*, ADB, 2010, p.3.

<sup>6</sup> *Ibid*.

<sup>7</sup> The three transport corridors together form one of 27 infrastructure projects under the Economic Corridor Approach. The other projects include national and provincial roads, as well as trans-boundary highways connecting the economic corridors, see *Challenges and Opportunities of the Implementation of Cross Border Transport Agreement in the Greater Mekong Sub-region*, Khanal, Bhoj Raj, 2008, p. 4.

<sup>8</sup> *Overview of the GMS Program and Economic Corridor Development*, Goswami, Arjun, Asian Development Bank, 2009, p.11ff; *Strategy and Action Plan for the Greater Mekong Subregion North-South Economic Corridor*, ADB, 2010, p. 3.

these corridors are expected to serve about 320 million people and an area of 2.6 million sq km.<sup>9</sup>

The EWEC is a 1,320 km continuous land route between the Andaman Sea and the South China Sea through Myanmar, Thailand, Vietnam and Lao PDR<sup>10</sup>. The corridor area contains a significant number of people living below the poverty line. Moreover, the population of the provinces along the corridor constitutes a considerable percentage of each country's total population. The vision of the EWEC is to bring prosperity and well-being to the peoples of the area by:

- enhancing the movement of goods and people through the corridor,
- fostering private sector development,
- facilitating trade and investment, and
- reducing poverty through e.g. development of rural areas, higher earnings for low-income groups, greater employment opportunities.<sup>11</sup>

The full development of the EWEC is expected to more than double Da Nang's<sup>12</sup> GDP by 2025 and raise that of Savannakhet (Laos) by 70%.<sup>13</sup> The EWEC aims to achieve these goals through focused action in the following sectors: Infrastructure, Trade and Transport Facilitation (TTF), Investment and Special Economic Zones, Private Sector Development, Agriculture, Power & Telecomm and Tourism.<sup>14</sup>

The “hardware”, i.e. infrastructure, element of the EWEC is supported by a “software” part - the Agreement for Facilitation of Cross-border Transport of Goods and People (CBTA). The CBTA aims to address the non-physical barriers to cross-border trade and is as such the most significant transport and trade facilitation initiative in the GMS to date. The CBTA was signed during the years 1999-2003<sup>15</sup> by the contracting parties with the assistance of the ADB and entered into force on the 31<sup>st</sup> of December 2003 upon ratification. The multilateral instrument comprises of one framework

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<sup>9</sup> *Trade Facilitation Policy Gap Analysis on Cross Border Transport Agreement (CBTA) in the Greater Mekong Sub-region*, Policy Dialogue Proceedings, 2008, p. 3.

<sup>10</sup> See the route of the EWEC on the “Map of GMS Economic Corridors”, in the attachments to this paper.

<sup>11</sup> *Strategy and Action Plan for the Greater Mekong Subregion East-West Economic Corridor*, ADB, 2010, p.13, 34, 36, 72-73.

<sup>12</sup> Port city on the South Central coast of Vietnam.

<sup>13</sup> *Strategy and Action Plan for the Greater Mekong Subregion East-West Economic Corridor*, ADB, 2010, p. 22.

<sup>14</sup> *Ibid*, p. 13, 34, 36, 72-73.

<sup>15</sup> The CBTA was originally a trilateral agreement between Lao PDR, Thailand and Vietnam, Cambodia acceded on 29 November, 2001, China PRC on 3 November, 2002 and Myanmar on 19 September, 2003. See Agreement Between and Among the Governments of the Lao People's Democratic Republic, the Kingdom of Thailand, and the Socialist Republic of Vietnam for Facilitation of Cross-Border Transport of Goods and People (CBTA), 1999; Documents of Accession: <http://www.adb.org/GMS/Cross-Border/accessions-amendments.asp>.

agreement and 20 annexes and protocols.<sup>16</sup> It covers all aspects of cross-border transport, e.g. cross-border movement of goods and people, customs inspection, border crossing formalities, exchange of traffic rights, requirements for admittance of road vehicles and institutional arrangements.<sup>17</sup>

The CBTA could not be implemented directly after its entry into force in 2003, because its annexes and protocols have not yet been signed and/or ratified.<sup>18</sup> At the 8<sup>th</sup> Meeting of the GMS Transport Forum in 2004 the GMS countries agreed to suspend the further ratification of annexes and protocols and start the initial implementation of the Agreement at specific border crossing points on a pilot basis. According to the ADB, “full implementation of the Agreement and its annexes and protocols is (*was*) expected by 2007/2008”.<sup>19</sup>

However, this deadline has not been met due to a number of factors constraining the implementation process.<sup>20</sup> According to the ADB, these include:

- incorporation of the CBTA, its annexes and protocols into national laws/regulations,
- conflict between the CBTA and existing Bilateral Agreements,
- insufficient engagement and technical capacity of customs officials,
- inadequate “ownership”<sup>21</sup> and limited institutional capacity at central and local government levels, and
- inadequate participation by the private sector.<sup>22</sup>

The incomplete implementation of the CBTA poses serious problems for the cross-border movement of goods and people and constitutes one of the main remaining bottlenecks to the facilitation of trade in the subregion. The promotion and facilitation of trade is in turn imperative for achieving the goals under the Economic Corridor Approach, i.e. to reduce poverty,

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<sup>16</sup> Annexes contain technical details to the Agreement. Protocols contain variable elements regarding time or site. See list of Annexes and Protocols: <http://www.adb.org/GMS/Cross-Border/annex.asp>.

<sup>17</sup> Agreement Between and Among the Governments of the Lao People’s Democratic Republic, the Kingdom of Thailand, and the Socialist Republic of Vietnam for Facilitation of Cross-Border Transport of Goods and People (CBTA), 1999.

<sup>18</sup> There are 20 annexes and protocols to the CBTA, all of which have been signed by all GMS countries in 2007. All annexes and protocols were ratified by Cambodia, PRC, Laos and Vietnam in 2008. As of October, 2010, Thailand has ratified 11 annexes, while information on Myanmar is not available. See *Status on Annex & Protocol Ratification per GMS Country*, October, 2010 [received from the Thai Department of Land Transport].

<sup>19</sup> <http://www.adb.org/GMS/Cross-Border/>.

<sup>20</sup> The target date for full CBTA implementation has been moved to 2012, according to *Implementation of GMS Cross-Border Transport Agreement (CBTA)*, Feng, Yushu, ADB, 2010, p. 5.

<sup>21</sup> Here used in the meaning - sense of ownership.

<sup>22</sup> *Implementation of GMS Cross-Border Transport Agreement (CBTA)*, Feng, Yushu, ADB, 2010, p. 10; *Technical Assistance: Implementation of the Greater Mekong Subregion Cross-Border Transport Agreement*, ADB, 2006, p. 2.

empower the private sector, create jobs, ensure a more equitable income distribution and improve the living situations of the peoples of the region.<sup>23</sup>

## 1.2 Purpose

The topic of this study is the participation of the private sector in the implementation of the CBTA. The focus will lie on the role of the private sector in the implementation of the Customs Transit System (CTS), as regulated in the CBTA.

The purpose of this thesis is to learn how private stakeholders can contribute to the implementation of the CBTA Agreement. This will be achieved by 1) examining their functions in a specific transport and trade facilitation initiative, as well as 2) explaining and assessing the current level of participation.

Active participation of the private sector has been identified as a positive and needed input in enhancing trade and transport facilitation, which is one of the main objectives of the CBTA. As such, it is one of the strategic goals in the development of the GMS economic corridors.<sup>24</sup>

Currently, “the most significant”<sup>25</sup> role played by the private sector in the CBTA is through the Public-Private Partnership (PPP) on Operation of the GMS CTS. The CTS is “an integrated solution for the urgent need for transport and trade facilitation”<sup>26</sup> and thus “essential for the CBTA’s objectives”<sup>27</sup>. It is modeled on the TIR (Transports Internationaux Routiers), an international customs transit system, which is also operated through a PPP. In comparison, the CTS is a very new system. Pilot operation commenced on the East-West Economic Corridor (EWEC) on 11 June, 2009.<sup>28</sup> Due to the novelty of the system, the role of the private sector

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<sup>23</sup> *Technical Assistance: Implementation of the Greater Mekong Subregion Cross-Border Transport Agreement*, Asian Development Bank, 2006, p. 1; *Sector Assistance Program Evaluation for the Transport and Trade Facilitation Sector in the Greater Mekong Subregion – Time To Shift Gears*, ADB, 2008, p. ii.; *Strategy and Action Plan for the Greater Mekong Subregion East-West Economic Corridor*, ADB, 2010, p. 30-34; *Cross Border Transport Agreement and Trade Facilitation in GMS*, Ding, Lingling, ADB, 2007, p. 8; *Strategy and Action Plan for the Greater Mekong Subregion Southern Economic Corridor*, ADB, 2010, p. 45; *Strategy and Action Plan for the Greater Mekong Subregion North-South Economic Corridor*, ADB, 2010, p. 13.

<sup>24</sup> *Implementation of GMS Cross-Border Transport Agreement (CBTA)*, Feng, Yushu, ADB, 2010, p. 10.

<sup>25</sup> Interviews with Yushu Feng, ADB, 5 October and 27 October, 2010.

<sup>26</sup> *Implementation of GMS Cross-Border Transport Agreement (CBTA)*, Feng, Yushu, ADB, 2010, p. 13.

<sup>27</sup> *Greater Mekong Subregion Customs Transit System (CTS)*, Feng, Yushu, ADB [Brochure received from Yushu Feng, October, 2010], p. 1.

<sup>28</sup> *Implementation of GMS Cross-Border Transport Agreement (CBTA)*, Feng, Yushu, Asian Development Bank, 2010, p. 5, 13.

in the operation of the CTS has not yet been studied in depth by the ADB, governments, or academic researchers.

The primary target audiences of this thesis are private and public sector actors, as well as development organizations in the GMS. These include both actors, who are:

- involved the implementation of the CTS on the EWEC,
- involved in the implementation of the CTS on other economic corridors, and
- involved in other areas of CBTA implementation, where a stronger involvement from the private sector is needed.

The lessons learned about private sector engagement in the GMS may also be applicable in other developing regions. Therefore, the secondary target groups are stakeholders in other countries, who are engaging or seek to engage the private sector in the implementation of customs transit systems or other transport/trade facilitation initiatives.

### **1.3 Research design and methods**

On one hand, the research problem at hand is relatively structured. As mentioned above, the CTS is a version of the TIR, adjusted to meet the GMS reality. The nature of private sector involvement in the operation of the TIR is well understood. The criteria for a successful role of private stakeholders in PPPs have also been studied extensively. Therefore, a descriptive research design will be used to examine the role of the private sector in the CTS, with TIR providing the contextual background. However, this paper will use an explanatory research design will be used to explain and assess the current level of private sector participation in the CTS.<sup>29</sup>

Many of the issues that arise at the implementation stage of cross-border agreements are outside the legal realm. Therefore, a combination of research methods from legal and business disciplines will be used. The main resources used are primary and secondary empirical data, and the Cross Border Transport Agreement (CBTA). Apart from the CBTA, other primary sources of international law include the TIR Convention and the General Agreement on Tariffs and Trade (GATT). Legal and business literature, ADB reports and the internet have also been used.

Empirical data has been collected through personal semi-structured interviews with the main stakeholders involved in the implementation of the CTS. These are transport associations/organizations, Customs Departments, Transport Departments and the ADB. From the private sector there are 3 transport associations/organizations involved in the PPP on CTS – the

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<sup>29</sup> *Research methods in Business Studies*, Ghauri, Pervez, Gronhaug, Kjell, 2010, p. 54-72.

Board of Trade (BoT) in Thailand, the Lao International Freight Forwarder's Association (LIFFA) in Lao PDR, and the Vietnam Automobile Association (VATA) in Vietnam. The interviews with these associations/organizations provided primary data on their role in the CTS. Interviews conducted at the ADB<sup>30</sup>, Transport Departments and Customs Departments in each country constituted important sources of secondary information on the role of the private sector: ADB - as the broker of the PPP and the main financial supporter of the GMS sub-regional projects since 1992; Customs Departments - as the public partners; and Transport Departments - as the ministries heading the National Transport Facilitation Committees (NTFCs) that are responsible for CBTA implementation in each country. Secondary data helped to gain a background understanding, fill in the potential blanks and cross-reference information provided by the associations.<sup>31</sup>

## 1.4 Delimitations

The involvement of private sector stakeholders is considered to be a crucial factor in the implementation of international transit regimes, like the CTS.<sup>32</sup> However, this alone will not guarantee the systems success. The effectiveness of the private sector participation is often dependant on e.g. the actions of other stakeholders, as well as on the contextual setting. While contextual factors will figure in the explanation and assessment of the current role the private sector, the scope of this paper does not allow for an in-depth examination.

Moreover, customs transit is only one, albeit significant, component of trade facilitation. Full transport and trade facilitation (TTF) requires the implementation of a variety of additional procedures, other than those involved in customs transit. Such procedures include e.g. visas, insurance, police controls, as well as the quality of both transport services and infrastructure. Therefore, it is not feasible within the scope of this study to examine and assess the role of the private sector in TTF under the CBTA, as a whole.<sup>33</sup>

Finally, the method used in this paper is not appropriate for considering the criminal records of the guaranteeing organizations in 5.1.2. This limitation is not considered to significantly affect the conclusions of this paper.

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<sup>30</sup> Two interviews on 5 October and 27 October, 2010, were conducted with Yushu Feng, Senior Economist, Thailand Resident Mission, ADB. Yushu Feng is the ADB expert on legal issues with connection to the CBTA. Moreover, on 4 November, 2010, a video conference was organized with Pradeep Srivastava, Senior Regional Cooperation Specialist, ADB.

<sup>31</sup> *Research methods in Business Studies*, Ghauri, Pervez, Gronhaug, Kjell, 2010, p. 90-134.

<sup>32</sup> *Transit and the special case of landlocked countries*, Arvis, Jean Francois, *Customs Modernization Handbook*, De Wulf, Luc, and Sokol, B. Jose, 2005, p. 243-264.

<sup>33</sup> *Ibid*, p. 244.

Neither will the passenger transport sector be discussed. Even though it is part of the road transport industry, it is not relevant for the topic of this thesis, because the EWEC currently only supports transport of goods.

## **1.5 Disposition**

This paper will begin with an introduction to the general principles of customs transit and how these principles are applied in the TIR. The TIR's structure and the role of the private sector in the system will be described in Section 2.

Section 3 will introduce the reader to the CTS in the Greater Mekong Subregion – its legal framework, concepts of transit and temporary admission, main implementation difficulties and their causes. A discussion of the difficulties and causes is necessary in order to be able to assess the private stakeholders' contribution to their resolution and explain their ability/inability to do so.

Section 4 will examine the role of the private sector in the CTS as issuing and guaranteeing organizations, on one hand, and as the representative of the transport industry in a wider sense, on the other hand.

Section 5 will identify the factors, responsible for the current level of private sector participation in the CTS and offer an assessment of its involvement to date.

Section 6 will present the conclusion of the paper.

# 2 Customs Transit in the world

## 2.1 General principles

Custom transit provisions are codified through a number of international instruments. The most important of the latter are the General Agreement on Tariffs and Trade (GATT), the World Customs Organization (WCO) Revised Kyoto Convention and the 1982 Geneva Convention on the harmonization of frontier control of goods. Although there is a wide variation of customs regimes applied in different countries, a summary of the key provisions and principles is provided below.<sup>34</sup>

There are two types of transit – international and national. International transit occurs when cargo crosses national borders, while national transit refers to the transportation of goods within national territory e.g. from first point of entry in the country to an inland container depot or dry port. In respect of both types of transit, customs transit provisions permit the transportation of goods from one customs office to another without payment of import duties, domestic consumption taxes and other charges normally due on imports, with the exception of charges for transportation and those commensurate with administrative expenses. Moreover, transit cargo is normally exempted from technical standards control, as well as unnecessary restrictions and delays e.g. escort of goods.<sup>35</sup>

The customs transit regulations mentioned above are based on the destination principle of taxation, which states that indirect taxes should only be levied in the country of consumption. The underpinnings of customs transit are: 1) sealing of the cargo shipment at the initial point of departure, 2) provision of financial security to customs in the country/countries of transit in order to guarantee the payment of duties, taxes and any other charges, which are normally due on importation, and 3) use of an efficient tracking system (electronic or paper) that can ensure that transit goods have left the country, so that the security can be released without delay.<sup>36</sup>

The security is the transit country's safeguard against the loss of revenue. It covers the amount of duties, taxes and other charges, which may become due if e.g. goods intended for transit are instead consumed in the domestic market and the operator does not make the necessary payments to the customs authorities. The security must be provided by the principal, who can be the owner of the goods, but is most often the representative of the owner i.e. the transport operator. The principal can choose the form of security – e.g. security can be provided through a bank in the form of a bond

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<sup>34</sup> *Transit and the special case of landlocked countries*, Arvis, Jean Francois, *Customs Modernization Handbook*, De Wulf, Luc, and Sokol, B. Jose, 2005, p. 243-264.

<sup>35</sup> *Ibid*; Article 5 (3) General Agreement on Tariffs and Trade (GATT).

<sup>36</sup> *Transit and the special case of landlocked countries*, Arvis, Jean Francois, *Customs Modernization Handbook*, De Wulf, Luc, and Sokol, B. Jose, 2005, p. 243-264.

or bank guarantee, or in the form of insurance by an insurance company. In these cases, the bank and the insurance company act as guarantors i.e. legal persons, who undertake joint or separate liability with the principal<sup>37</sup> for due duties and taxes. The customs will return the security to the principal after the goods exit the national customs territory.<sup>38</sup>

## 2.2 TIR

### 2.2.1 Structure

In some instances, national transit procedures have evolved into international transit regimes. There are many regional transit arrangements, but currently the TIR is the only global customs transit system. It is considered as “best practice”<sup>39</sup> in the field of customs transit.<sup>40</sup>

The legal basis for the TIR is the TIR Convention, adopted under the auspices of the United National Economic Commission for Europe in 1975 and in force since 1978. The TIR has a wide geographical coverage, with 68 Contracting Parties to the Convention. The system has proved to be extremely successful, with around 3 million TIR Carnets issued per year.<sup>41</sup>

National transit procedures and controls, applied repeatedly in each country of transit, lead to significant delays and expenses and thus act as an impediment to international transport. It is in this context that TIR was devised as an attempt to minimize interference and financial burdens on transit goods, while providing revenue protection for the states, through which the goods were transported. As such it can be considered as a succession to national customs procedures.<sup>42</sup>

Goods carried under the TIR procedure between the territories of Contracting Parties or within the territory of a Contracting Party, from a customs office of departure to a customs office of destination, shall be exempt from the payment or deposit of import or export duties and taxes at

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<sup>37</sup> To be exact, the guarantor is severally or jointly liable with the debtor, but the latter is in most cases the principal. It must also be kept in mind that the principal can choose to act as his own guarantor. See *Transit and the special case of landlocked countries*, Arvis, Jean Francois, *Customs Modernization Handbook*, De Wulf, Luc, and Sokol, B. Jose, 2005, p. 250.

<sup>38</sup> Ibid, p. 243-264.

<sup>39</sup> Ibid, p. 254.

<sup>40</sup> Ibid, p. 243-264.

<sup>41</sup> <http://www.iru.org>; *TIR Handbook – Customs Convention on the International Transport of Goods Under Cover of TIR Carnets*, Economic Commission for Europe (UNECE), 2010, p. 1;

<sup>42</sup> Ibid; *TIR Handbook – Customs Convention on the International Transport of Goods Under Cover of TIR Carnets*, Economic Commission for Europe (UNECE), 2010, p. 5, 102ff.

customs offices en route (Article 2, Article 4). TIR allows for multimodal transportation, i.e. by road, rail, inland waterway and maritime transport.<sup>43</sup>

The TIR is based on six principles: 1) goods should be transported in secure vehicles or containers, 2) the import duties and taxes should be covered by an international guarantee, 3) a TIR Carnet, an internationally accepted customs control document, should accompany the goods in transit, 4) customs control measures carried out in the country of departure should be accepted by countries in transit and destination, meaning that goods will general not be physically inspected en route, 5) access to the TIR for national issuing and guaranteeing associations and transport operators shall be authorized by competent national authorities, and 6) traceability and risk management should be provided through an electronic control system<sup>44</sup> for TIR Carnets.<sup>45</sup>

## 2.2.2 The role of the private sector

### 2.2.2.1 As a guarantor

One of the main roles of the private sector in the TIR is through the international guarantee system. A national transport association in each country, which is a Contracting Party to the TIR Convention, is jointly and severally liable with the person for whom the sum is due for the payment of duties and taxes, incurred due to an irregularity in a TIR transport operation. The guarantee covers duties and taxes incurred by both member national operators, operating under TIR Carnets issued by the association itself, and foreign hauliers operating under TIR Carnets issued by associations in other countries. In this way, the guaranteeing associations in all Contracting Parties form a guarantee chain. The amount that can be claimed from each national association is set at a recommended maximum of \$ US 50,000. The guarantee and TIR Carnet are only required for goods, i.e. not for the vehicle or container (Article 15).<sup>46</sup>

Each national association must be authorized by the respective Contracting Party to issue TIR Carnets and act as a guarantor, (Article 6). The minimum requirements are – proven existence as a transport association for at least

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<sup>43</sup> As long as one part of the journey is performed by road. See <http://www.iru.org>.

<sup>44</sup> The SAFE TIR system allows customs to check whether goods in transit under cover of a TIR Carnet have indeed left the territory of the country. See <http://www.iru.org>.

<sup>45</sup> <http://www.iru.org>; *TIR Handbook – Customs Convention on the International Transport of Goods Under Cover of TIR Carnets*, Economic Commission for Europe (UNECE), 2010, p. 7.

<sup>46</sup> *The TIR Customs transit regime: Main principles, scope, functioning and actors involved*, Bouten, Artur, United Nations Economic Commission for Europe, 2001, p. 105; *Transit and the special case of landlocked countries*, Arvis, Jean Francois, *Customs Modernization Handbook*, De Wulf, Luc, and Sokol, B. Jose, 2005, p. 255; *TIR Handbook – Customs Convention On The International Transport of Goods Under Cover of TIR Carnets*, Economic Commission for Europe (UNECE), 2010, p. 8-9.

one year, sound financial standing, organizational capabilities, proven knowledge of the Convention, and absence of serious or repeated offences against Customs or tax legislation (Annex 9, Article 1 (a-d)). Each association signs a contract of commitment with the national customs authorities, undertaking to pay the duties and taxes due under national customs laws and regulations. Moreover, each association is required to demonstrate to the authorities the existence of a global insurance contract, concluded between international global insurers on one hand and each member association of the International Road Transport Union (IRU) on the other. The IRU is a non-governmental organization representing the entire road transport industry worldwide. The insurance contract shall cover the totality of the member association's liabilities (Article 1 f v)).<sup>47</sup>

If an irregularity occurs, the custom authorities will first claim the payment of outstanding duties and taxes from the operator, who is directly liable. If payment cannot be secured this way, the customs will claim payment from the guaranteeing associations in the country where the irregularity occurred. This way the claim is settled within one country using national law. If applicable, the guaranteeing association may claim the deposit or bank guarantee put down by the principal. When payment concerns a TIR Carnet issued by an association in another country, the association that initially incurred liability will apply through the IRU for reimbursement.<sup>48</sup>

The effective organization and management of the international guarantee network is the responsibility of the IRU. The IRU has a global contract with a financial insurance institution, which backs the international guarantee chain. The IRU also has other responsibilities, which include – procuring the acceptance of the national associations into the international guarantee system, as well as establishing and managing an electronic control system for TIR Carnets (Annex 10).<sup>49</sup>

### **2.2.2.2 As the representative of the road transport industry**

The transport associations are representative bodies of their national road transport industry. They can offer professional training and a range of information services to their members. This helps the operators save time, effort and money. Moreover, the associations are involved in dedicated campaigning for their members' best interests.

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<sup>47</sup> *TIR Handbook – Customs Convention on the International Transport of Goods Under Cover of TIR Carnets*, Economic Commission for Europe (UNECE), 2010, p. 8-9, 28-29.

<sup>48</sup> *Ibid*, p. 28-29.

<sup>49</sup> Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), 1975, p. 49-50; *Nature, Structure and Functioning of the TIR Guarantee System & Risk Management*, Tanase, Virginia, 2003, p. 7; *TIR Handbook – Customs Convention on the International Transport of Goods Under Cover of TIR Carnets*, Economic Commission for Europe (UNECE), 2010, p. 29.

Information services can include guidance on operational and legal issues, updates on current issues faced by the industries and advice on keeping the business aligned with industry best practice.<sup>50</sup> Both consulate/advisory assistance and capacity-building training contribute to the development of international road transport.<sup>51</sup>

The role of the associations as campaigners is very important. Through the campaigns, the associations act as the industry's advocate, voicing the needs and views of their members and defending their interests at both at the national and international levels. In a broader application, campaigning can help to counter structural imbalances within the industry through e.g. pooling.<sup>52</sup> Campaigns can be undertaken on numerous issues, such as raising the profile of the industry among people, improving the trading environment for the road hauliers and helping politicians understand the importance of logistics to the economy. Campaigns often take the form of lobbying with the aim to influence relevant legislation.<sup>53</sup>

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<sup>50</sup> UK Freight Transport Association (FTA), <http://www.fta.co.uk>.

<sup>51</sup> The Association of International Road Carriers (BAMAP), <http://www.bairc.org/>.

<sup>52</sup> *Role of Road Transport Associations and the IRU – PPP in Road Transport*, Krausz, Peter, UNECE Workshop on “Enhancing National Capacity for the Facilitation of Interregional Transport along the Euro-Asian Transport Links, 2007, p. 5, 13.

<sup>53</sup> Irish Road Haulage Association, <http://www.irha.ie/>; Road Haulage Association Ltd., <http://www.rhaonline.co.uk>; UK Freight Transport Association (FTA), <http://www.fta.co.uk/>; The Association of International Road Carriers (BAMAP), <http://www.bairc.org/>.

# 3 Customs Transit in the Greater Mekong Subregion

## 3.1 Legal framework

The CTS is provided for within Articles 7 (b), 18 and 34 (c) of the CBTA. The CTS provides customs procedures for a) transit of goods, b) temporary admission of motor vehicles transporting goods, and c) temporary admission of containers used to transport goods. The technical details are included in the corresponding Annexes: Annex 6 “Transit and Inland Customs Clearance Regime”, Annex 8 “Temporary Importation of Motor Vehicles” and Annex 14 “Container Customs Regime”.<sup>54</sup>

The CTS is intrinsically linked to the provisions on the Exchange of Commercial Traffic Rights (Part VI of CBTA), i.e. only those operators that have a right to carry out transport under the CBTA can enjoy the CTS. Traffic rights may be exercised by operators holding an operating license (Article 21; Annex 9) and a GMS Road Transport Permit<sup>55</sup> (Article 23). The exercise of traffic rights is permitted solely along the routes and through the points of entry and exit, which are authorized in Protocol 1 (Article 20). Each contracting party can issue up to 500 GMS Transport Permits (Protocol 3, Article 5 (c)).<sup>56</sup>

At the moment, the CTS cannot be implemented in full accordance with the above annexes, as the latter have not been ratified by each of the contracting parties. Therefore, interim agreements have been concluded as transitional measures for the initial implementation of the CTS. Two main sets of interim agreements were signed in 2009. One is between three of the six authorized national transport associations<sup>57</sup>, and the other between each association and its respective customs authority in Thailand, Laos and Vietnam.<sup>58</sup>

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<sup>54</sup> CBTA Agreement, 1999.

<sup>55</sup> The GMS Road Transport Permit will be referred to as Permit hereafter.

<sup>56</sup> Another important measure is the agreement on a guarantee network, signed in October, 2008, by the 6 authorized national transport associations in the GMS countries. See *Stocktaking of progress in achieving the action plan of the second Greater Mekong Subregion (GMS) Cross-Border Transport Agreement (CBTA) Joint Committee*, ADB, 2010, p. 6; CBTA Agreement, 1999.

<sup>57</sup> Interim Agreement between and among the Issuing/Guaranteeing Organizations/Institutions of the Lao People’s Democratic Republic, the Kingdom of Thailand and the Socialist Republic of Vietnam on the Customs Transit and Temporary Admission System (CTS) for Implementation of the GMS Cross-Border Transport Agreement (CBTA) along the East West Economic Corridor (EWEC), 1 June, 2009, Thailand. Hereafter referred to as “Interim CTS Agreement”.

<sup>58</sup> *Implementation of GMS Cross-Border Transport Agreement (CBTA)*, Feng, Yushu, Asian Development Bank, 2010, p. 7.

The operation of the CTS is based on a Public-Private Partnership between the customs authorities, on one hand, and authorized issuing and guaranteeing organizations, on the other. As previously mentioned, these organizations are the BoT, LIFFA and VATA.<sup>59</sup>

## 3.2 Transit

Under the regime of Annex 6, transit cargo is exempt vis-à-vis the host<sup>60</sup> country from import duties and taxes. The latter become payable first upon the entry to the country of destination. Transit goods are also exempt from certain customs formalities, namely: routine physical customs inspection en route, bond deposit as a guarantee for customs duties and taxes, and customs escorts in the national territory. While border agencies (customs, immigration, quarantine and other) retain the right to apply full controls by way of exception<sup>61</sup>, cargo carried in accordance with Annex 6 will generally only be subjected to documentation checks, external inspection and control of cargo compartment by the customs authorities en route. (Annex 6, Article 2).<sup>62</sup>

The enjoyment of the above exemptions is subject to certain conditions. To begin with, the means of transportation, i.e. motor vehicles and containers, must satisfy certain technical standards as regards construction/design (Annex 6, Article 3 (a)). Furthermore, the container should be sealed by the Customs Authority office of departure and must generally remain sealed throughout the duration of the transport operation (Annex 6, Article 3 (b)). The transport operator must also carry a Transit and Inland Customs Clearance Document – TICCD, throughout the entire course of the operation. The document is to be completed for each consignment and is valid for only one journey along a pre-determined route. The journey shall

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<sup>59</sup> Agreement on Guarantee Network between Cambodian International Freight Forwarders Association (CIFFA), China Road Transport Association (CRTA), Lao International Freight Forwarder's Association (LIFFA), Myanmar International Freight Forwarders Association (MIFFA), Board of Trade of Thailand (BoT), and Vietnam Automobile Transport Association (VATA), 2008. See also *Stocktaking of progress in achieving the action plan of the second Greater Mekong Subregion (GMS) Cross-Border Transport Agreement (CBTA) Joint Committee*, ADB, 2010, p. 6.

<sup>60</sup> A host country is a country where transport is being performed (Article 3 (h) CBTA). The CBTA makes a distinction between host country and transit country. Transit country is defined as a country through which territory traffic in transit passes (Article 3 (t) CBTA). However, for the purpose of explaining the CTS system, the two terms are used interchangeably with the same meaning. On the other hand, the term home country refers to the country of establishment, and for vehicles – the country of registration (Article 3 (g) CBTA).

<sup>61</sup> E.g. in situations of high risk or where there is suspicion of irregularity. See *Operations Manual: Greater Mekong Subregion (GMS) Cross Border Transport Agreement (CBTA) Customs Transit and Temporary Admission System (CTS)*, ADB, 2009, p. 6.

<sup>62</sup> CBTA Agreement, 2009; *Operations Manual: Greater Mekong Subregion (GMS) Cross Border Transport Agreement (CBTA) Customs Transit and Temporary Admission System (CTS)*, ADB, 2009, p. 7.

commence within a minimum of 6 months from the date of issue of the document and terminate within 30 days from the entry of the vehicle/container into the territory of a contracting party (Annex 6, Article 4 (h), Article 7).<sup>63</sup>

### 3.3 Temporary admission

While “transit” refers to cargo, “temporary admission” in the context of the CTS refers to motor vehicles<sup>64</sup> and containers<sup>65</sup>, which move the cargo. Similar to cargo, the transporting vehicle and container are normally subject to import duties and taxes.<sup>66</sup> However, temporary admitted vehicles and containers are to be generally exempted from the payment of such duties and taxes, as well as free of other prohibitions, on the condition of their re-exportation in the same general state as upon entry into the territory of the contracting party (Annex 8, Annex 14, Article 2 and Article 3). Motor vehicles that are temporarily imported into the territory of the Contracting Party shall carry a Motor Vehicle Temporary Admission Document (MVTAD)<sup>67</sup>, while containers shall be accompanied by a Container Temporary Admission Document (CTAD). The MVTAD and CTAD are required for each “round trip” i.e. from an entry point in the home country to the destination and from the destination to an exit point in the home country. These documents can be used to transit one or more country. Like the TICCD, the MVTAD and CTAD are valid on a pre-determined itinerary, for a minimum of 6 months commencing from the date of issue (Annex 6, Article 7; Annex 14, Article 8).<sup>68</sup>

### 3.4 Implementation difficulties

Even though the CTS officially came into operation on EWEC among Thailand, Vietnam and Laos in 2009<sup>69</sup>, as of December 2010<sup>70</sup> transit

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<sup>63</sup> CBTA Agreement, 1999.

<sup>64</sup> For definition of motor vehicle see CBTA, Annex 8, Article 1 (a) (ii).

<sup>65</sup> For definition of container see CBTA, Annex 14, Article 1 (a) (i).

<sup>66</sup> *Operations Manual: Greater Mekong Subregion (GMS) Cross Border Transport Agreement (CBTA) Customs Transit and Temporary Admission System (CTS)*, Asian Development Bank, 2009, p. 7.

<sup>67</sup> Apart from the vehicle, the MVTAD encompasses fuel in the supply tank, accessories such as CD players and radios and other articles that form the normal equipment of the vehicle see CBTA, Annex 8, Article 2 (b). These would normally be subject to duties and taxes at the time of import.

<sup>68</sup> CBTA Agreement, 1999.

<sup>69</sup> *Implementation of GMS Cross-Border Transport Agreement (CBTA)*, Feng, Yushu, Asian Development Bank, 2010, p. 11.

<sup>70</sup> I.e. at the time this paper was written.

operations could still not be conducted on the EWEC under the CBTA framework.<sup>71</sup>

There is a general agreement between the CTS stakeholders that the fact that “no one wants to use the CTS”<sup>72</sup> i.e. lack of demand, is the main reason why the CTS “doesn’t work”<sup>73</sup>. At the moment there are “really few trucks from Thailand that need to go to Danang”<sup>74</sup> and no Vietnamese operators have expressed an interest to go to Thailand.<sup>75</sup>

### 3.4.1 The causes of low demand

The various causes of insufficient demand are presented below.

#### 3.4.1.1 The Route

The current opinion of the stakeholders in the CTS is that the EWEC is “leading from nowhere to nowhere”<sup>76</sup>. One stakeholder draws the conclusion that “the CBTA does not mean anything on this route”<sup>77</sup>. There are a number of reasons for this.

- Myanmar

At the moment the CTS regime encompasses the EWEC from Danang in Vietnam to Mae Sot in Thailand. The initial implementation of the CBTA has not yet commenced on the Mae Sot-Myawaddy border (see Supplement A), meaning that transport operations under the CBTA cannot be carried out on the section of the EWEC going through Myanmar.<sup>78</sup> “You sever a course you know!” exclaims a representative from the Thai Customs Department.<sup>79</sup>

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<sup>71</sup> Interviews with BoT, 12 October and 22 October, 2010; group meeting and one-to-one interview with LIFFA, 3 November and 18 November, 2010; group meeting with VATA, 15 December, 2010.

<sup>72</sup> Interview with General Department of Vietnam Customs, 23 December, 2010.

<sup>73</sup> Ibid; See also group meeting and one-to-one interview with LIFFA, 3 November and 18 November, 2010; group meeting with VATA, 15 December, 2010; interviews with BoT, 12 October and 22 October, 2010; group meeting and one-to-one interview with the Lao Department of Transport, 17 November, 2010; interview with Thai Land Transport Department, 11 October and 22 October, 2010; interview with Vietnamese Ministry of Transport, 6 December, 2010; group meeting and one-to-one interview with Lao Customs Department, 3 November and 17 November, 2010; interview with Thai Customs Department, 20 October, 2010; video conference with Pradeep Srivastava, ADB, 4 November, 2010; interviews with Yushu Feng, ADB, 5 October and 27 October, 2010.

<sup>74</sup> Interviews with BoT, 12 October and 22 October, 2010.

<sup>75</sup> Group meeting with VATA, 15 December, 2010.

<sup>76</sup> Video conference with Pradeep Srivastava, ADB, 4 November, 2010; interviews with Yushu Feng, ADB, 5 October and 27 October, 2010.

<sup>77</sup> Group meeting with VATA, 15 December, 2010.

<sup>78</sup> Interviews with BoT, 12 October and 22 October, 2010; video conference with Pradeep Srivastava, ADB, 4 November, 2010; interviews with Yushu Feng, ADB, 5 October and 27 October, 2010.

<sup>79</sup> Interview with Thai Customs Department, 20 October, 2010.

- Spider roads are not allowed

It follows from Protocol 1 that transport operations on the EWEC may only be conducted between the designated points on the route. At the moment these are “Mae Sot – Phitsanulor – Khon Kaen – Kalasin – Mukdahan – Savannakhet – Dansvanh – Lao Bao – Dong Ha – Hue – Danang”. Moreover, the operators must use the designated border crossings, i.e. “Mukdahan-Savannakhet” (Thailand-Lao PDR) and “Dansavanh-Lao Bao” (Lao PDR-Vietnam). Since the exchange of traffic rights only covers the EWEC itself, “you have to go along this road...you cannot go anywhere else”<sup>80</sup>. So, in order to deliver goods to a factory off the main road an operator would have to transload his goods into another vehicle, which must be registered in the host country’s territory. The transloading would have to be done at a designated border checkpoint in connection with the necessary customs procedures for the cargo.<sup>81</sup> Due to the above, EWEC is considered to be “a very rigid route”<sup>82</sup>.

- Commercial potential

The Ministries of Transport and Customs Departments of the three countries have a similar opinion as regards the commercial potential of the EWEC.<sup>83</sup> The EWEC is “not appropriate”<sup>84</sup>, because most of the provinces along the road produce predominately agricultural products. Therefore, the potential for trade between these provinces is “not high”.<sup>85</sup> A representative from the Thai Land Transport Department explains that “most of the goods go to Hanoi, to Ho Chi Minh city, not to Danang. But now, we can only arrive to Danang”<sup>86</sup>. Similarly, the demand for cargo transport from Vietnam is to Bangkok, not Mae Sot. The operators’ demand is to a large extent derived from the exporters’ and importers’ demand and the latter are not very interested in the EWEC.<sup>87</sup>

### 3.4.1.2 Bilateral Road Transport Agreements

As previously mentioned, the CTS and the GMS Permit are intrinsically linked i.e. in order to carry cargo under the CBTA system a transport

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<sup>80</sup> Interviews with BoT, 12 October and 22 October, 2010. See also interviews with Yushu Feng, ADB, 5 October and 27 October, 2010.

<sup>81</sup> Interviews with BoT, 12 October and 22 October, 2010; interview with Thai Land Transport Department, 11 October and 22 October, 2010.

<sup>82</sup> Video conference with Pradeep Srivastava, ADB, 4 November, 2010.

<sup>83</sup> Interview with Vietnamese Ministry of Transport, 6 December, 2010; interview with Thai Customs Department, 20 October, 2010.

<sup>84</sup> Interviews with Thai Land Transport Department, 11 October and 22 October, 2010.

<sup>85</sup> Interview with Vietnamese Ministry of Transport, 6 December, 2010. See also interview with General Department of Vietnam Customs, 23 December, 2010.

<sup>86</sup> Interview with Thai Land Transport Department, 11 October and 22 October, 2011.

<sup>87</sup> Group meeting and one-to-one interview with Lao Customs Department, 3 November and 17 November, 2010; interview with General Department of Vietnam Customs, 23 December, 2010.

operator must hold both a Permit and the necessary CTS documents. In this way, the demand for the CTS is influenced by the demand for the GMS Permit.

At the moment, two bilateral agreements regulate the road transport of goods between Thailand, Lao PDR and Vietnam, offering an alternative to the GMS Permit system under the CBTA. These are – “The Agreement between the Government of the Kingdom of Thailand and the Government of the Lao People’s Democratic Republic on Road Transport” (1999)<sup>88</sup>, and “The Road Transport Agreement between the Government of the Lao People’s Democratic Republic and the Government of the Socialist Republic of Vietnam” (1996)<sup>89</sup>.

Each Agreement grants the contracting parties the right to transport goods between each other, as well as the right to transport goods in transit through each other’s territories without transshipment. This means that a vehicle registered in Thailand can carry goods into Lao PDR without transloading them into a Lao registered vehicle at the border, and vice versa. Likewise, a Vietnamese vehicle can transport cargo into Laos without transloading, and vice versa.

Any transport operator who fulfills the necessary requirement can obtain a Road Passport from the local road authority. With this document he can carry out transport operations under the bilateral agreements. The cost of the Passport for one vehicle is less than 5 dollars<sup>90</sup> and it is normally valid for one year.<sup>91</sup>

Similar to the CBTA, the operator cannot go outside the routes specified in the Agreement.<sup>92</sup> However, the bilateral agreements designate many more international road transport routes and international border crossing points than the CBTA.<sup>93</sup> The bilateral agreement between Lao PDR and Thailand designates 5 such border crossing points<sup>94</sup> and 17 different route combinations<sup>95</sup>; the bilateral agreement between Laos and Vietnam designates 11 international border crossing points and does not specify any

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<sup>88</sup> Amended in 2001.

<sup>89</sup> Amended in 2009.

<sup>90</sup> In Thailand, the exact cost of the Passport is 20 baht. In Vietnam – around 2.5 dollars. See interview with Thai Land Transport Department, 11 October and 22 October, 2010; interview with Vietnamese Ministry of Transport, 6 December, 2010.

<sup>91</sup> Interview with Thai Land Transport Department, 11 October and 22 October, 2010; group meeting and one-to-one interview with the Lao Department of Transport, 3 November and 17 November, 2010; interview with Vietnamese Ministry of Transport, 6 December, 2010.

<sup>92</sup> Group meeting and one-to-one interview with the Lao Department of Transport, 3 November and 17 November, 2010.

<sup>93</sup> Group meeting with VATA, 15 December, 2010.

<sup>94</sup> Subsidiary Agreement Specifying Road Transport Arrangements between the Government of the Kingdom of Thailand and the Government of The Lao People’s Democratic Republic, 2001, Article 2.

<sup>95</sup> Ibid, Article 8.

specific routes.<sup>96</sup> Moreover, unlike the CBTA, the bilateral agreements place no limit on the number of vehicles that can perform transport operations between the countries.

Due to the existing bilateral agreements, Thai “operators don’t need the CBTA, if they just want to go to Laos”.<sup>97</sup> VATA is also “sure that Vietnamese trucks are not interested in using the GMS CBTA if they want to transport their cargo between the two countries [Vietnam and Lao PDR]”.<sup>98</sup> Operators “might”<sup>99</sup> need the CBTA if they want to transport cargo from Vietnam to Thailand and vice versa. However, even this is questionable. If the destination of the cargo is Hanoi, the cargo would have to be transloaded at the border<sup>100</sup>, because Hanoi is not one of the designated destinations under Protocol 1 and there is no bilateral transport agreement between Thailand and Vietnam. Therefore, if the cargo is destined to any location in Vietnam other than Hue or Danang (designated destinations under the CBTA), the operator would likely still use the Thailand-Laos Bilateral Road Agreement to carry the goods to the Thai-Lao or Lao-Vietnam border and then transship them onto a Vietnamese vehicle, which may in turn use the Laos-Vietnam bilateral agreement to deliver the goods to their destination.<sup>101</sup> In the words of a representative from the Land Transport Department of Thailand, “if the agreement allows to use the truck direct to Hanoi – then the GMS Road Transport Permit is better”.<sup>102</sup> However, this is currently not allowed.<sup>103</sup> The situation is the same regarding transportation from Vietnam to Thailand – Vietnamese transport operators that need to deliver goods anywhere else in Thailand than Mae Sot, Phitsanulor, Khon Kaen, Kalasin or Mukdahan would have to transload them into a Thai truck at a customs office on the way. All in all, even though the bilateral agreements have their disadvantages, they are “much less restrictive”<sup>104</sup> than the CBTA, which raises doubts if the latter will be able to compete.<sup>105</sup>

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<sup>96</sup> Interview with Vietnamese Ministry of Transport, 6 December, 2010.

<sup>97</sup> Interviews with Thai Land Transport Department, 11 October and 22 October, 2010.

<sup>98</sup> Group meeting with VATA, 15 December, 2010.

<sup>99</sup> Interviews with BoT, 12 October and 22 October, 2010.

<sup>100</sup> If the operator was using the CBTA, he could transload at the custom offices in Hue and Danang (designated destinations), as well as at Lao Bao. However, according to the Land Transport Department of Thailand the operator would in most cases transload the cargo at Lao Bao, as the cost of transshipment would be lower there. See interview with Thai Land Transport Department, 11 October and 22 October, 2010.

<sup>101</sup> Interview with Vietnamese Ministry of Transport, 6 December, 2010.

<sup>102</sup> Interviews with Thai Land Transport Department, 11 October and 22 October, 2010. It must be noted that, in Thailand 228 Permits for a total of 228 trucks, owned by 11 Thai companies have been issued by the Thai Land Transport Department (as of October, 2010). However, according the Land Transport Department, most of the operators that have applied for the GMS Permit want to transport cargo to Hanoi or China. While this cannot be done using the EWEC, the operators want to secure a Permit for themselves in case the situation changes.

<sup>103</sup> Interviews with BoT, 12 October and 22 October, 2010.

<sup>104</sup> Video conference with Pradeep Srivastava, ADB, 4 November, 2010.

<sup>105</sup> Group meeting with VATA, 15 December, 2010.

Still, for Thai and Vietnamese operators there still may be cases where using the CBTA is more advantageous i.e. less costly, than using the bilateral agreements. However, it is hard to imagine why Lao transport operators would want to use the GMS Permit.<sup>106</sup> According to the Lao Transport Department “the Lao transport operators can go to Thailand and Vietnam by bilateral”<sup>107</sup>. Therefore, there is “no meaning for the cross border operation [under the CBTA] at all.”<sup>108</sup> Neither the Lao Transport and Customs Departments nor LIFFA see what benefit Laos can get from the CTS, if the Lao operators do not take part in the system.<sup>109</sup> The result may be that Laos ends up “only do[ing] customs clearance” and “when IT will replace [the current procedures], Laos [will have] nothing to do”.<sup>110</sup> For these reasons, the Lao stakeholders “don’t care very much about”<sup>111</sup> the CTS and have “no incentive to provide a really good transit route”.<sup>112</sup>

At the moment, the prevailing view among the CTS stakeholders is that the bilateral agreements are “better”<sup>113</sup>, “very easy”<sup>114</sup> to use and “very cheap”<sup>115</sup>. Today “most of the transport operators use the bilateral road transport”<sup>116</sup> agreements for the transportation of cargo between Thailand, Vietnam and Laos. The cost of transshipment and the fact that the issuance of GMS Permit is free are not enough to change this trend.<sup>117</sup>

### 3.4.1.3 Laos-Thailand-Vietnam Logistics

As mentioned above Lao PDR has bilateral transport agreements with both Thailand and Vietnam. Even though the bilateral agreements allow the Lao vehicles to transport cargo to a multitude of destinations in Thailand and Vietnam, in practice most Lao operators only carry it to the border or a town right next to the border. Then Thai and Vietnamese vehicles, respectively, carry them further to the final destination. Since such “one way transport is

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<sup>106</sup> Interview with Thai Land Transport Department, 11 October and 22 October, 2010.

<sup>107</sup> Group meeting and one-to-one interview with the Lao Department of Transport, 3 November and 17 November, 2010.

<sup>108</sup> Group meeting and one-to-one interview with the Lao Department of Transport, 3 November and 17 November, 2010.

<sup>109</sup> Ibid; group meeting and one-to-one interview with LIFFA, 3 November and 18 November, 2010; group meeting and one-to-one interview with Lao Customs Department, 3 November and 17 November, 2010; video conference with Pradeep Srivastava, ADB, 4 November, 2010.

<sup>110</sup> Group meeting and one-to-one interview with LIFFA, 3 November and 18 November, 2010.

<sup>111</sup> Group meeting and one-to-one interview with the Lao Department of Transport, 3 November and 17 November, 2010.

<sup>112</sup> Video conference with Pradeep Srivastava, ADB, 4 November, 2010.

<sup>113</sup> Interview with Thai Land Transport Department, 11 October and 22 October, 2010.

<sup>114</sup> Interview with Vietnamese Ministry of Transport, 6 December, 2010.

<sup>115</sup> Group meeting with VATA, 15 December, 2010.

<sup>116</sup> Interview with Vietnamese Ministry of Transport, 6 December, 2010. See also interview with General Department of Vietnam Customs, 23 December, 2010.

<sup>117</sup> Interview with Vietnamese Ministry of Transport, 6 December, 2010; interview with Thai Land Transport Department, 11 October and 22 October, 2010.

costly and not efficient”<sup>118</sup>, Lao operators currently mainly provide transport services domestically, with “not even one Lao transport operator go[ing] to Bangkok with their own truck”.<sup>119</sup>

There are a number of possible reasons for this situation. One is the difference in scale between the three economies, leading to “very asymmetric levels”<sup>120</sup> of the transport industries. Transport operators and freight forwarding companies are dependant on export and import volumes of cargo. Since the volumes of export goods from Laos are small, most goods are transported as loose cargo i.e. not containerized, and consolidated by Thai freight forwarders in e.g. Nongkhai.<sup>121</sup>

The limit of scale also means that the Lao trucking industry is composed of small to medium enterprises, which are less efficient than their Thai counterparts. The Thai operators are more experienced and the Thai trucking fleet much larger.<sup>122</sup> The low capacity of the Lao transport operators, in respect of quantity and quality, means that very few Lao trucks perform transport operations through Vietnam and Thai territory.<sup>123</sup>

On the other hand, LIFFA argues that “even [if] you have very new trucks, still you go there full but return empty. You go for nothing.”<sup>124</sup> LIFFA is referring to the issue of goods management, which is indeed a problem.<sup>125</sup> According to LIFFA, it is very difficult for Lao operators, which have delivered goods to the agreed destination in Thailand, to find cargo for the return haul – “Who will provide the goods there? You cannot stay one month there to look for the goods”.<sup>126</sup> Instead, the goods are carried to Laos almost exclusively by Thai vehicles. According to the representative from LIFFA, this difficulty is connected to the policy of the provincial authorities in Thailand. Another explanation is the transport operators’ lack of an

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<sup>118</sup> Group meeting and one-to-one interview with the Lao Department of Transport, 3 November and 17 November, 2010.

<sup>119</sup> Group meeting and one-to-one interview with LIFFA, 3 November and 18 November, 2010.

<sup>120</sup> Video conference with Pradeep Srivastava, ADB, 4 November, 2010.

<sup>121</sup> *Laos DTIS: Aide Memoire of Main Mission*, Integrated Framework of Trade-Related Technical Assistance to Least Developed Countries (IF), 2005, p. 17, 18.

<sup>122</sup> Interview with Thai Customs Department, 20 October, 2010; *Managing risk and security: The Safeguard of Long-Term Success for Logistics Service Providers*, Stephan, M. Wagner, Bode, Christoph, 2009, p. 94-102.

<sup>123</sup> Group meeting with VATA, 15 December, 2010; group meeting and one-to-one interview with Lao Customs Department, 3 November and 17 November, 2010; *Situation of Transport and Logistics in Lao PDR*, Vongkhanty, Khampheng, Societe Mixte De Transport Co., Ltd, 2010, p. 14. Societe Mixte De Transport (SMT) is a leading provider of freight forwarding services in Laos.

<sup>124</sup> Group meeting and one-to-one interview with LIFFA, 3 November and 18 November, 2010.

<sup>125</sup> *Managing risk and security: The Safeguard of Long-Term Success for Logistics Service Providers*, Stephan, M. Wagner, Bode, Christoph, 2009, p. 94-102.

<sup>126</sup> Group meeting and one-to-one interview with LIFFA, 3 November and 18 November, 2010.

effective system for booking import cargo for the backhaul.<sup>127</sup> The situation with return loads from Vietnam is similar – according to VATA, it is “impossible for them [Lao operators] to get the truck loaded both ways”.<sup>128</sup>

There are also legal restrictions on Lao transit trade through Thailand.<sup>129</sup> The transit cargo must be transloaded into Thai trucks in Nongkhai province, which then carry it further to the Bangkok port, from where it is shipped to the final destination.<sup>130</sup>

According to LIFFA and the Lao Transport Department, the Thai and Vietnamese operators face fewer obstacles in carrying the cargo from the origin in Thailand/Vietnam directly to the destinations in Laos, using only one vehicle. They are also better able than Lao operators to acquire goods for the return load.<sup>131</sup> In respect of Vietnamese trucks, this is confirmed by VATA.<sup>132</sup> However, according to Wagner and Bode, some Thai trucks are in fact being forced by LIFFA to transload the cargo at Thanaleng dry port near Vientiane into Lao trucks, which then carry the goods to their inland destination.<sup>133</sup>

A logistics issue faced to some extent by the operators of all three countries is the difficulty of driving in a foreign traffic system. The operators are generally less familiar with the routes in the other countries, than those in their own. Moreover, the traffic in Thailand is on the right hand side, while in Laos and Vietnam the left hand side is followed. In addition, the traffic flow in Vietnam is much higher than in the other countries and the risk of accident is greater. Due to traffic safety issues, the Thai operators currently use a combination of Lao truck and Vietnamese truck to deliver cargo to Vietnam.<sup>134</sup> Lao operators prefer to drive on Vietnamese roads.<sup>135</sup>

To sum up, the issues that deter the operators from performing transit transport under the bilateral agreements will also deter them from carrying out operations under the CBTA. For example, the Lao operators do not

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<sup>127</sup> *Laos DTIS: Aide Memoire of Main Mission*, Integrated Framework of Trade-Related Technical Assistance to Least Developed Countries (IF), 2005, p. 19.

<sup>128</sup> Group meeting with VATA, 15 December, 2010. See also interview with General Department of Vietnam Customs, 23 December, 2010.

<sup>129</sup> *Laos DTIS: Aide Memoire of Main Mission*, Integrated Framework of Trade-Related Technical Assistance to Least Developed Countries (IF), 2005, p. 20.

<sup>130</sup> *Trade & Transport Facilitation Issues with Thailand*, Banomyong, Ruth, Thammasat Business School, 2005, p. 18; *Laos Country Report*, Lao International Freight Forwarder's Association, 2010, p. 8-10.

<sup>131</sup> Group meeting and one-to-one interview with LIFFA, 3 November and 18 November, 2010; group meeting and one-to-one interview with the Lao Department of Transport, 3 November and 17 November, 2010.

<sup>132</sup> Group meeting with VATA, 15 December, 2010.

<sup>133</sup> *Managing risk and security: The Safeguard of Long-Term Success for Logistics Service Providers*, Stephan, M. Wagner, Bode, Christoph, 2009, p. 94-102.

<sup>134</sup> Group meeting and one-to-one interview with Lao Customs Department, 3 November and 17 November, 2010.

<sup>135</sup> *Laos DTIS: Aide Memoire of Main Mission*, Integrated Framework of Trade-Related Technical Assistance to Least Developed Countries (IF), 2005, p. 19.

transport the cargo all the way to the destination in Thailand or Vietnam themselves as it is, but depend on Vietnamese and Thai operators. The CBTA does not solve this problem. These issues limit the incentive to apply for the GMS Permit and the CTS.

#### **3.4.1.4 Financial**

According to the Thai Customs Department, the deposit that the operators must put down with the BoT is too high. It raises the cost of transportation and deters many operators from using the CTS.<sup>136</sup>

BoT has set the deposit at 1 million baht, around 30 000 USD. Usually the deposit is made through a bank guarantee, which is arranged for a minimum of 1 year.<sup>137</sup> LIFFA and VATA have yet to set the deposit amount. According to LIFFA, the deposit might be 5 000 USD for an operator, transiting only one country. If two countries are transited, the operator would have to deposit 10 000 USD with LIFFA. VATA is thinking of requesting around 1 000 USD per truck, but stated that the size of the deposit will depend on the number of vehicles that will join the CTS.<sup>138</sup>

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<sup>136</sup> Interview with Thai Customs Department, 20 October, 2010.

<sup>137</sup> The size of the deposit is not conditional on the amount of trucks, owned by the transport operator, i.e. a company that has been issued 50 sets of CTS documents for 50 trucks would have to pay the same deposit as a company having 3 CTS sets for 3 trucks. See interviews with BoT, 12 October and 22 October, 2010.

<sup>138</sup> Group meeting and one-to-one interview with LIFFA, 3 November and 18 November, 2010; group meeting with VATA, 15 December, 2010.

# 4 The role of the private sector

## 4.1 As issuing and guaranteeing organizations

### 4.1.1 According the CBTA

The CTS requires each contacting party to authorize a national organization/institution to act as an issuer/guarantor i.e. to issue the TICCD, MVTAD and CTAD documents and through these documents provide guarantees for cargo/vehicles/containers in transit/temporary admission through the territory of the host country (Annex 6, Article 4 (c), Article 9; Annex 8, Article 9; Annex 14, Article 10).<sup>139</sup>

By providing a guarantee the national organization/institution assumes joint and several liability with the transport operator vis-à-vis the custom authorities of the host country for the payment of import/export duties, taxes and interest on the good/vehicle and/or container. Liability may arise if an operator incurs the above mentioned dues, as a result of irregularities in the transport operation (Annex 6, Annex 8, Article 10 (a); Annex 14, Article 11 (a)). Irregularities may include: missing, altered or interfered with goods/vehicles or containers; transshipment of transit goods into a different mode of transport; broken/missing customs seals on the cargo compartment; change of itinerary; over-stay of permitted temporary admission times; and loss/alteration/lack of timely discharge of CTS documents. In such situations, it is presumed that the goods were consumed in the domestic market of the country, through which the goods were being transported. However, if the goods/container/vehicle is destroyed or damaged beyond repair<sup>140</sup> due to an accident, they are not considered to have entered the domestic market. They will therefore not be subject to local duties and taxes, meaning that liability for the guaranteeing organization will not arise. Otherwise, the liability of the guaranteeing organization is limited to 35 000 SDR<sup>141</sup> per TICCD, 20 000 SDR per MVTAD and 300 SDR per CTAD

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<sup>139</sup> CBTA Agreement, 1999.

<sup>140</sup> If the goods/vehicle/container are partially recoverable, the transit journey may be continued after the necessary endorsements and re-sealing, when appropriate, by the customs agency. See *Operations Manual: Greater Mekong Subregion (GMS) Cross Border Transport Agreement (CBTA) Customs Transit and Temporary Admission System (CTS)*, ADB, 2009.

<sup>141</sup> SDR stands for Special Drawing Right and is a unit of account defined by the International Monetary Fund (IMF). In accordance with the method of valuation applied by the IMF for the conversion of SDR into national currencies, 1 SDR= 1.537940 USD on 13 December, 2010. See [http://www.imf.org/external/np/fin/data/rms\\_five.aspx](http://www.imf.org/external/np/fin/data/rms_five.aspx).

(Annex 6, Article 10 (g); Annex 8, Article 10 (f); Annex 14, Article 11 (f)).<sup>142</sup>

When circumstances give rise to a loss of duties and tax, the host country customs authority may claim the due amount from the transport operator, who is directly liable to it. However, a home country organization must in any case, and not later than 30 days commencing from notification, deposit the due amount with the host country's customs authority. The organization is entitled to claim reimbursement for this sum from the member operator in question (Annex 6, Article 10 (c), (d), (f); Annex 8, Article 10 (b), (c), (e); Annex 14, Article 11 (b), (c), (e)).<sup>143</sup>

According to Annexes 6 and 8 (Article 11) and Annex 14 (Article 12), the guaranteeing organization must secure its guarantee obligation to the customs authority by means of: a cash deposit, deposit of a bond, maintaining assets in each host country, representation by its counterpart guaranteeing organization in the host country or through a combination of these means. The maximum total amount of the security to be provided is 110 600 SDR – with 70 000 SDR relating to transit cargo, 40 000 SDR for temporarily admitted vehicles, and 600 SDR for containers. This amount must be replenished, if partly or totally consumed.<sup>144</sup>

#### **4.1.2 According to the Interim Agreement between the associations**

Articles 5-10 of the Interim CTS Agreement between BoT, LIFFA and VATA<sup>145</sup> specify the following duties of the organizations:

- Selection of transport operators

The organizations are to monitor the qualifications and suitability of their members for transport operations under the CBTA CTS. Before issuing the CTS documents, the organizations must make sure that the operators hold a valid transport license, as well as a GMS Transport Permit, and have not committed serious and/or repeated offences against domestic customs procedures and/or the CTS regime.

- Mutual representation of organizations with customs

The organization in the host country shall act as a representative of the home country organization vis-à-vis the host country's customs in a series

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<sup>142</sup> CBTA Agreement, 1999; *Operations Manual: Greater Mekong Subregion (GMS) Cross Border Transport Agreement (CBTA) Customs Transit and Temporary Admission System (CTS)*, ADB, 2009, p. 22, 42, 62, 66.

<sup>143</sup> CBTA Agreement, 1999.

<sup>144</sup> Ibid.

<sup>145</sup> "Interim CTS Agreement", 2009.

of matters. The latter include: signing the Interim CTS Agreement with the host country customs on behalf of the home country organization; providing evidence for discharge of TICCD/MVTAD/CTAD documents, exit of goods/vehicle/container from the host country and for the absence of irregularities; relaying the host country customs' request for payment to the home country's organization and the transport operator; arranging for payment/refund between the host country's customs and the home country organization/operator in case a direct money transfer is not permissible under domestic customs law; settling disputes with the host country's customs, and exchanging of information.

- Arranging for security

The home country organization is liable for payment of duties, taxes and interest, incurred by the home country transport operator vis-à-vis the host country's customs authorities. Even though the amount is due to customs, it can be processed via the host country organization when direct payment is not permissible under the applicable customs law.

The home country organization shall provide a security to guarantee the payment of the above amount. This security shall be either in the form of a bank guarantee or a bank deposit. The bank guarantee is to be of the demand guarantee type, i.e. unconditional and irrevocable. The guarantee/deposit is to be issued/deposited, respectively, to a bank established in the host country. The cumulative amount of the guarantee is set at 55 300 SDR (35 000/TICCD + 20 000/MVTAD + 300/CTAD)<sup>146</sup>. This amount shall be reviewed every third year, and replenished in a timely manner if partly or totally consumed by a liability.

At the home country organization's request the host country organization must also arrange for security in its own country. This security will provide a last resort measure. Namely, host country's customs will only be entitled to execute it, if they do not receive payment from the home organization for lost taxes and duties within 30 calendar days, commencing from notification. In this case, the host organization has a right to collect the same amount from the security deposited by the home country organization.

- Assistance of organizations and transport operators

The organizations should assist each other and their transport operators in all matters concerning the performance of transport operations under the CBTA. In particular, the host country organization may on behalf of the home organization issue new CTS documents (TICCD and, likely, CTAD) to a transport operator for goods in the host country, e.g. for the purpose of

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<sup>146</sup> See Section 4.1.1 of this paper.

the return trip. In such a case, the home country organization will be liable vis-à-vis the host country's customs authorities.<sup>147</sup>

- Reimbursement of expenses and liability of damages

The host country organization shall represent the home country organization in an effective and timely manner. In case of any default or later performance, the host country organization will be liable to the home country organization for the damages incurred.

However, the expenses borne by the host country organization in relation to the arrangements for bank guarantees and transfer of payments shall be forthwith reimbursed by the home country organization. In addition, BoT and VATA have taken upon themselves to compensate LIFFA's operational expenses, given Lao PDR's status of Least Developed Country.

### 4.1.3 The differences

As can be gathered from the description above, the formulation of the CTS regime under the Interim Agreement differs in a number of significant ways from that prescribed in Annexes 6, 8 and 14 of the CBTA. The two most important differences are 1) Mutual representation, i.e. under the provisional system neither the guaranteeing organization nor the transport operator deal directly with a foreign country's customs authority, or vice versa. Instead, claims are processed and other matters resolved via that country's local guaranteeing organization<sup>148</sup>; 2) According to the Interim CTS Agreement, the security (110 600 SDR, according to the CBTA Annexes) has been decreased to the liability amount (55 300 SDR, according to the CBTA).

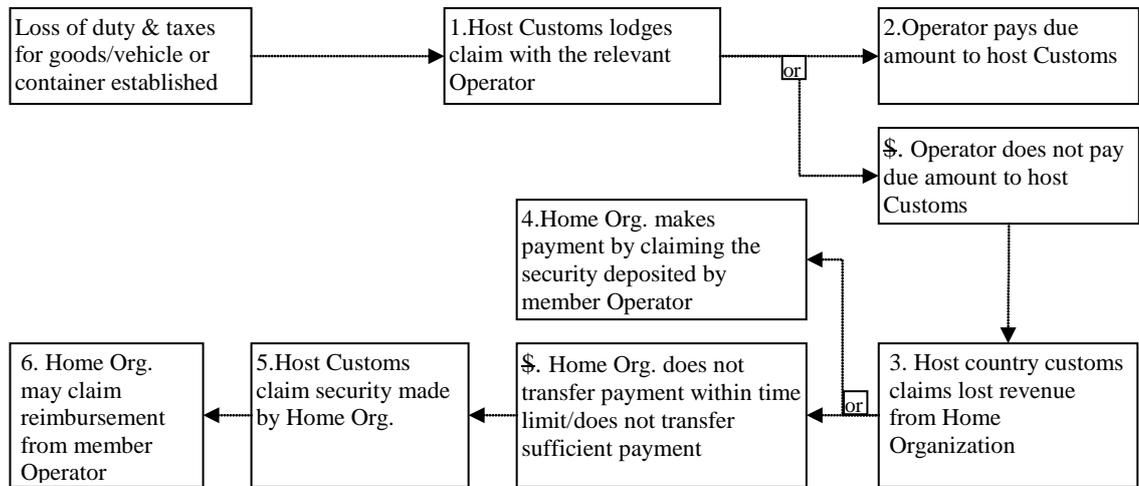
Below is a visual comparison of the claims process as it is regulated in the Annexes (Diagram 1) and as it is formulated in the Interim CTS Agreement (Diagram 2). Then, a practical example of the current claim process is given.

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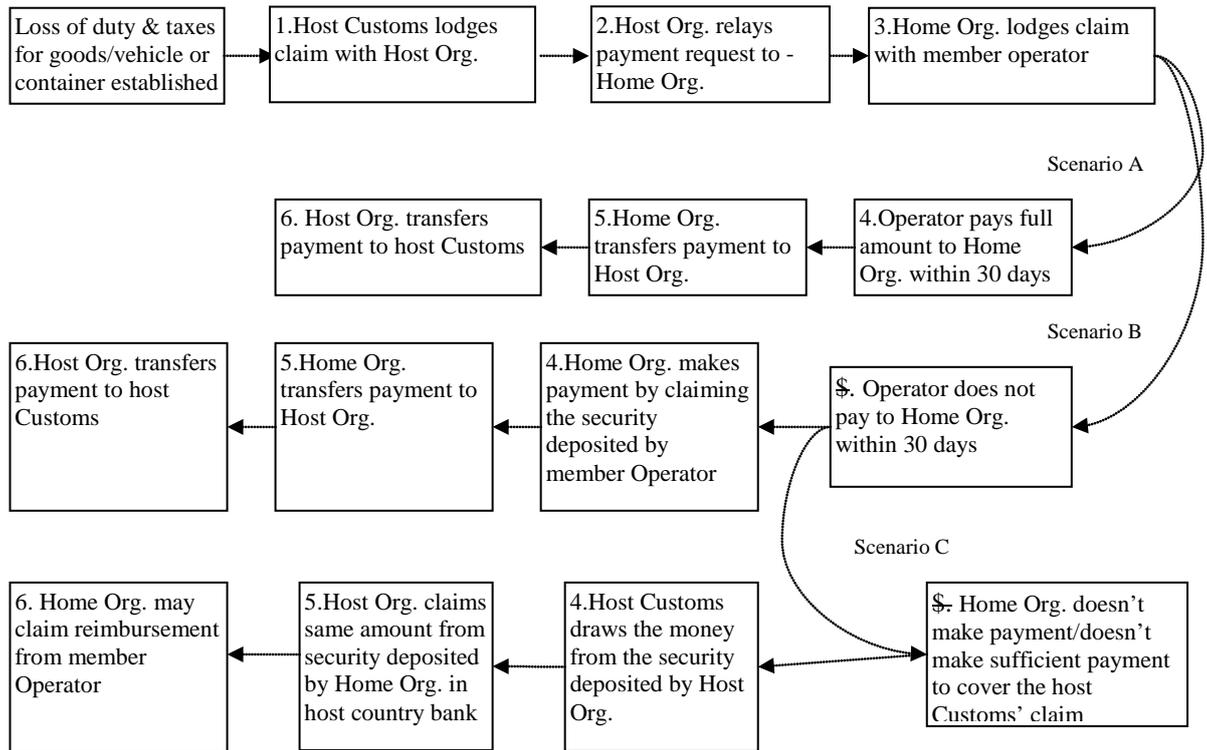
<sup>147</sup> *Operations Manual: Greater Mekong Subregion (GMS) Cross Border Transport Agreement (CBTA) Customs Transit and Temporary Admission System (CTS)*, ADB, 2009, p. 60.

<sup>148</sup> E.g. if BoT needs to process a payment to Lao Customs, it will make the transfer via LIFFA; and if Lao Customs needs to make a refund to BoT, it will also process the money with LIFFA's assistance.

**Diagram 1** – The claim process according to the CBTA <sup>149</sup>



**Diagram 2** – Claim process according to Interim CTS Agreement



An example: A Vietnamese transport operator, Nguyen, is transporting goods from Danang in Vietnam to Mae Sot in Thailand along the EWEC. After having traveled more than 540 km, the operator decides to take a

<sup>149</sup> Org. stands for Organization

break near the small Laotian town of Xeno. He parks his truck at the side of the road. When he arrives at the Lao border with Thailand a while later, the customs notice that half of the original goods seems to have been replaced by handcrafted baskets. They also suspect that the GPS from the vehicle is missing.

First, the appropriate local authority <sup>150</sup> – here Lao customs authorities, must inspect the goods, vehicle and container against the TICCD/MVTAD and CTAD documents in order to establish whether duties and taxes have become payable to Laos (host country, where the incident occurred) in accordance with national legislation. In this situation the customs establish a loss of duty and taxes on the goods and vehicle. Then, customs proceed to identify and document all missing goods, complete and sign the “Transit Incident Report” (a document attached to the TICCD, MVTAD and CTAD), classify and value all goods in accordance with national customs and tax laws and finally prepare a claim in relation to lost revenue.

Then, customs would contact LIFFA (the host country guaranteeing organization) and lodge a claim for the determined amount (see 1 in Diagram 2 and Scenarios A, B and C on the following page). LIFFA must make the payment within 30 days of receiving the claim. First, LIFFA must notify VATA (the home country guaranteeing organization) of the claim (see 2 in Diagram 2 and Scenarios A, B, C). Upon getting the notification, VATA will contact Nguyen and request him to pay the due amount to LIFFA (see 3 in Diagram 2 and Scenarios A, B, C). Afterwards, the situation can develop according to three main scenarios, presented on the next page.

Scenario A: Nguyen pays the money to VATA (4) and VATA transfers the amount to LIFFA (5). Then LIFFA transfers it Lao Customs (6).<sup>151</sup>

Scenario B: If Nguyen does not pay within 30 days, VATA will claim the due amount from the security deposited by Nguyen (4). The money will then be transferred to LIFFA (5), which will transfer it further to the Lao Customs (6).

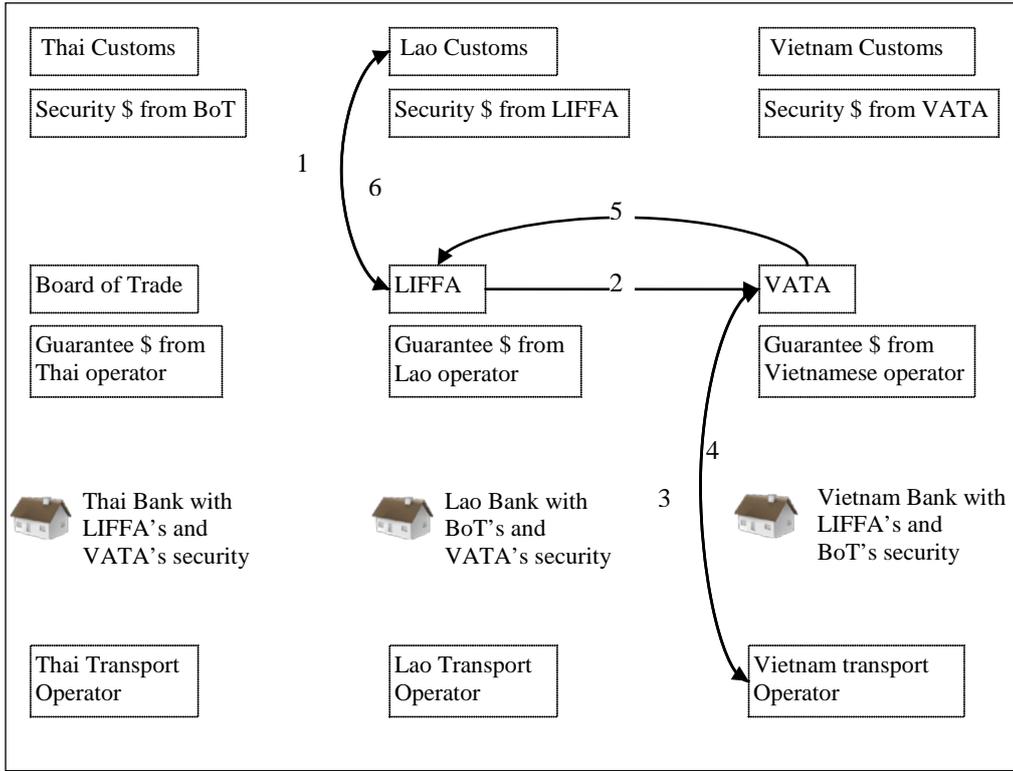
Scenario C: VATA fails to reimburse/fully reimburse Lao Customs within 30 days. Lao Customs will then consume the security provided to them by LIFFA (4). To compensate this loss, LIFFA will collect the same amount from the security lodged by VATA in Laos (5). So, if VATA has provided security through a cash deposit in a Laotian bank, LIFFA will consume the due amount from the total amount on the account. Nguyen might have to reimburse VATA for the amount consumed by Lao Customs (6).

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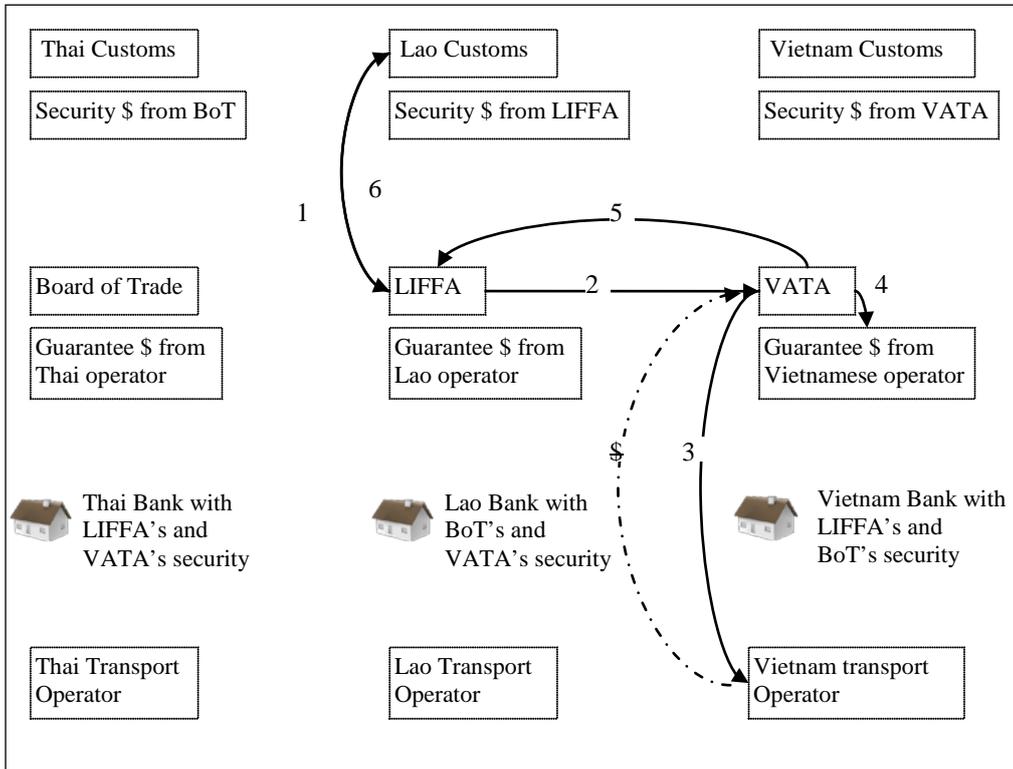
<sup>150</sup> Police, Internal Security, Customs office etc. See *Operations Manual: Greater Mekong Subregion (GMS) Cross Border Transport Agreement (CBTA) Customs Transit and Temporary Admission System (CTS)*, Asian Development Bank, 2009, p. 44.

<sup>151</sup> The numbering below refers to Scenarios A, B, and C.

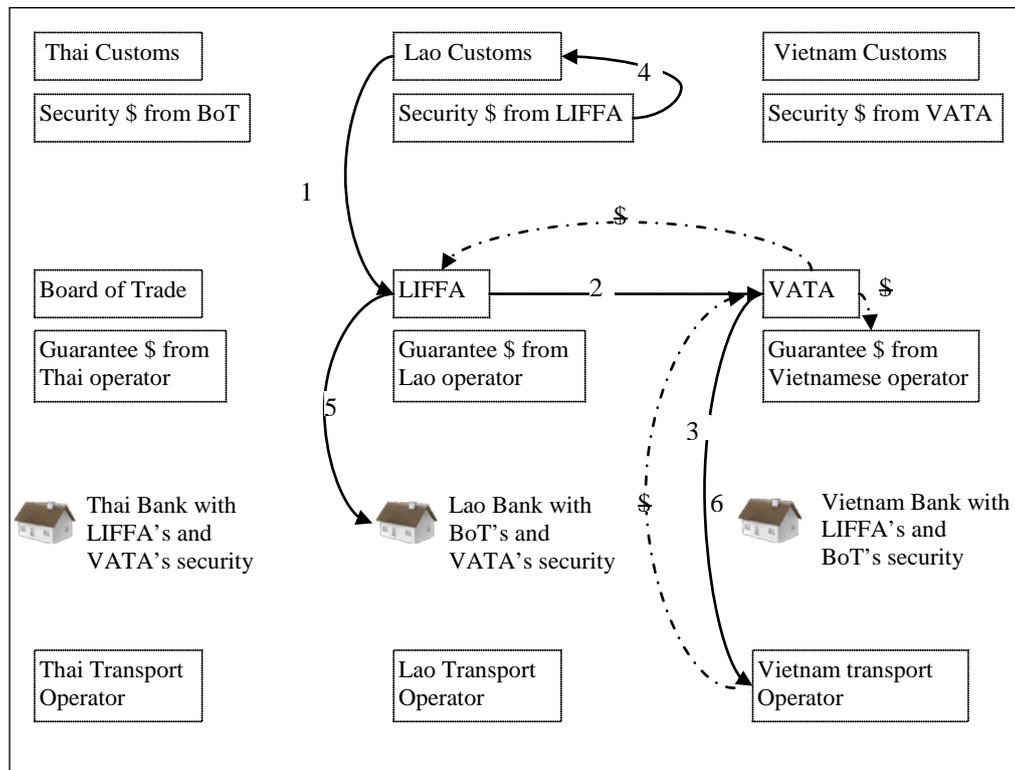
### Scenario A



### Scenario B



## Scenario C



### 4.1.4 Status Quo

Below is an account of the status quo in CTS implementation, with focus on the role of the issuing and guaranteeing organizations.

- **Issuing CTS documents**

The BoT has issued CTS documents to two transport operators, out of the 11 operators holding a GMS Permit.<sup>152</sup> Transport operators, holding a Permit, are eligible to apply for CTS documents at the BoT, after they become members of the organization. VATA is ready to issue the documents, but “no operators have yet applied” for them.<sup>153</sup> However, LIFFA is not ready, since the documents have not been translated into Lao and no applications for the documents have yet been received as of the time of the interview.<sup>154</sup> All in all, “the CTS is not being used at all”.<sup>155</sup>

<sup>152</sup> As of June 2011 [e-mail from BoT].

<sup>153</sup> Group meeting with VATA, 15 December, 2010.

<sup>154</sup> Ibid; group meeting and one-to-one interview with LIFFA, 3 November and 18 November, 2010. Only VATA has translated the documents into the national language.

<sup>155</sup> Video conference with Pradeep Srivastava, ADB, 4 November, 2010.

## ▪ Arranging for securities

Even when all guaranteeing organizations are ready to issue the CTS documents, the CTS cannot become operational until 1) each of the three organizations has arranged for the security in the host countries e.g. BoT in Laos and Vietnam and so on, and 2) each of the organizations have arranged for the security vis-à-vis their home customs authority.

### 1) Security in host countries

At the moment none of the guaranteeing organizations have arranged for the security in the host countries. Only the BoT is willing to deposit the money, but is waiting for the green light from LIFFA and VATA – “their side is not ready, only I am ready to go”.<sup>156</sup> Both LIFFA and VATA have stated that they are not ready to make the deposit, even though the necessary amount of money is available. Neither LIFFA nor VATA can predict when this security can be arranged.<sup>157</sup>

LIFFA and VATA’s reluctance stems from the lack of demand for the CTS. VATA stated that it “would like to wait until the transport operators start applying for the CTS documents” – “if we put the money in the bank without clients, we will have a loss of interest”.<sup>158</sup> On top of the problem of demand, VATA is also experiencing foreign currency difficulties. According to VATA it is “difficult” to get the Vietnamese bank’s approval to open a USD account and to get permission to buy dollars from the government, which makes the process of depositing money in the host countries lengthy and difficult.<sup>159</sup>

### 2) Security vis-à-vis the home country authorities

Only BoT has arranged for the security vis-à-vis the home customs authority (here, Thailand). The security amounts to 1 million baht.<sup>160</sup> VATA has the necessary amount and is planning to deposit it in a bank in Vietnam, which will then be able to issue a counter bank guarantee to the Vietnamese customs on VATA’s behalf. However, the money has not yet been deposited due to ongoing negotiations with the bank.<sup>161</sup> Lastly, LIFFA has not deposited any money with the Lao customs.<sup>162</sup> Neither is it planning to do so in the future.<sup>163</sup>

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<sup>156</sup> Interviews with BoT, 12 October and 22 October, 2010.

<sup>157</sup> Group meeting with VATA, 15 December, 2010; group meeting and one-to-one interview with LIFFA, 3 November and 18 November, 2010.

<sup>158</sup> Group meeting with VATA, 15 December, 2010.

<sup>159</sup> Ibid; interview with General Department of Vietnam Customs, 23 December, 2010.

<sup>160</sup> Interviews with BoT, 12 October and 22 October, 2010.

<sup>161</sup> Group meeting with VATA, 15 December, 2010.

<sup>162</sup> Group meeting and one-to-one interview with Lao Customs Department, 3 November and 17 November, 2010.

<sup>163</sup> Group meeting and one-to-one interview with LIFFA, 3 November and 18 November, 2010.

## 4.2 As the representative of the transport industry

According to the ADB, the “the public sector has done maximum already”<sup>164</sup> in order to contribute to the implementation of the CTS. At this point “the private sector, the guarantee organizations, should do something”.<sup>165</sup> As mentioned previously, apart from acting as issuing and guaranteeing organizations, the other ways in which private sector stakeholders can potentially be involved in a TIR or TIR-like customs transit system are through providing information, training and campaigning. Below is an account of the current and potential ways, in which the organizations can contribute to the implementation of the CTS by working for the interests of their members.

### 4.2.1 Campaigning

#### 4.2.1.1 Lobbying

The BoT has been lobbying<sup>166</sup> the Thai government and ADB “real hard”<sup>167</sup> for the extension of the EWEC and the allowance of spider roads. The BoT has specifically consulted its members to ask what should be done in order for them to start using the system. The BoT has also lobbied the government for the removal of the 500 truck limit on the issuance of GMS Permits.<sup>168</sup>

LIFFA has made proposals to the government to a) simplify the documents, b) consider altering the EWEC route, and c) establish an SEZ in Savannakhet. LIFFA stressed that “the contracting parties [the governments] have to sit down again and discuss – “What are the causes [to] the CTS not being implemented?””.<sup>169</sup> LIFFA also proposed that the transport operators in Vietnam, Laos and Thailand should join together in an association with an agreement to share the benefits of cross-border transport. According to LIFFA the governments should actively support the private sector in this matter by “convinc[ing] the businesses to share the market together” and eliminating the restrictions to effective supply chains.<sup>170</sup>

VATA has put forward the following solutions a) more support from ADB to help understand the counter bank guarantee, b) extending the EWEC to

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<sup>164</sup> Interviews with Yushu Feng, ADB, 5 October and 27 October, 2010.

<sup>165</sup> Ibid.

<sup>166</sup> Lobbying is here defined as “open actions/campaigns”. The BoT has stressed that it proposes its ideas very publicly through meetings, joined by CBTA stakeholders.

<sup>167</sup> Interviews with BoT, 12 October and 22 October, 2010.

<sup>168</sup> Ibid.

<sup>169</sup> Group meeting and one-to-one interview with LIFFA, 3 November and 18 November, 2010.

<sup>170</sup> Ibid.

Hanoi/Haiphong, c) reducing the current amount of securities, and d) adding the CTS guarantee system into the existing bilateral agreements.<sup>171</sup>

#### 4.2.1.2 Pooling the transport industry

According to the Thai Land Transport Department, the operators from Thailand, Laos and Vietnam “have to join hands with each other”<sup>172</sup> and “be [as] one”.<sup>173</sup>

The pooling of the GMS transport sector can be achieved if the transport associations actively co-operate with each other to channel the voices of the operators in different countries. Pooling would have a number of positive effects. First, it would make the transport sector more “dynamic”.<sup>174</sup> The voices of the operators would be heard louder, making it easier for the public sector stakeholders to evaluate their concerns and provide assistance, when needed.<sup>175</sup> Second, greater co-operation between the associations could help solve the problem of goods management. By co-operating with each other, operators could more easily “find the [way] to exchange the goods”.<sup>176</sup> Third, pooling could ensure mutual benefit for the CTS from the operators of each country. Mutual benefit is “the key part of the success of the CTS”.<sup>177</sup> It will continue to be a potent issue if the EWEC is extended to Hanoi and Bangkok. The extension is predicted to increase the Thai and Vietnamese operators’ demand, with less benefit to gain for the Lao.<sup>178</sup>

#### 4.2.2 Information services and training

Information could be provided on such topics as strategies for better domestic cargo consolidation and ways to address the issue of goods management.<sup>179</sup> Possible strategies can include the development of consolidation facilities, mergers between companies and a better database to facilitate the exchange of information. Better cargo consolidation could help address the problem of scale faced by the Lao economy, by making it possible to increase the size of individual shipments from Laos. More efficient approaches to goods management could solve the problem of backhaul cargo, which would benefit the operators in all three countries. In

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<sup>171</sup> Group meeting with VATA, 15 December, 2010.

<sup>172</sup> Interview with Thai Land Transport Department, 11 October and 22 October, 2010.

<sup>173</sup> Interview with Thai Customs Department, 20 October, 2010.

<sup>174</sup> Group meeting and one-to-one interview with the Lao Department of Transport, 3 November and 17 November, 2010.

<sup>175</sup> Ibid.

<sup>176</sup> Ibid.

<sup>177</sup> Interviews with Yushu Feng, ADB, 5 October and 27 October, 2010.

<sup>178</sup> *Role of Road Transport Associations and the IRU – PPP in Road Transport*, Krausz, Peter, UNECE Workshop on “Enhancing National Capacity for the Facilitation of Interregional Transport along the Euro-Asian Transport Links”, 2007, p. 5.

<sup>179</sup> Ibid.

the context of Laos, assistance could also be provided on such issues as investing in new trucks and increasing the trucking fleet size.<sup>180</sup>

Capacity building trainings could be held to develop the skills of the operators and freight forwarders, educate them in the use of modern logistics utilizing systems and help freight forwarders increase their range of services.<sup>181</sup>

The provision of information and capacity building are most important in the context of Laos. As previously mentioned, the number of Lao trucks potentially interested in undertaking transit transport along the EWEC is considerably more limited compared to Thailand and Vietnam, due to issues such as the scale of the Lao economy, capacity, poor management of goods and legal restrictions. Information services and capacity building for the Lao transport industry could contribute to the resolution of these issues.<sup>182</sup> LIFFA's potential role as the provider of these services is thus significant.

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<sup>180</sup> *Laos DTIS: Aide Memoire of Main Mission, Integrated Framework of Trade-Related Technical Assistance to Least Developed Countries (IF)*, 2005, p. 19-22.

<sup>181</sup> *Ibid.*

<sup>182</sup> *Ibid.*

# 5 Assessment

## 5.1 Explanatory Factors

In order to assess the role of the BoT, LIFFA and VATA in the implementation of the CTS, one must first consider a number of relevant factors. These factors also offer explanations for the current level of the associations' participation in the CTS.

The factors have been divided into organizational and structural. Under organizational factors, some of the minimum requirements for authorization as a guaranteeing organization will be considered. The main requirements under the TIR system will be used as a benchmark. Structural factors refer to such requirements for a well-functioning PPP, which have direct relevance for the performance of the private sector in a partnership. The most important conditions have been chosen after a review of the relevant literature.<sup>183</sup>

### 5.1.2 Organizational

#### 5.1.2.1 Existence as representative of the transport sector

The BoT was formally known as the Trade Council, which was a private sector trade association, created in 1955. In 1966 the government promulgated the Chamber of Commerce Act B.E. 2509, under which the Trade Council was renamed to be the Board of Trade of Thailand. LIFFA was set up by the Lao Ministry of Transport in 2003 to manage and control the freight transport industry, with emphasis on transit transport operations.<sup>184</sup>

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<sup>183</sup> *Guidebook on Promoting Good Governance in Public-Private Partnerships*, United Nations Economic Commission For Europe, 2008; *Public-Private Partnerships: Principles of Policy and Finance*, Yescombe, E.R., 2007; *Guidebook on Promoting Good Governance in Public-Private Partnerships*, United Nations Economic Commission For Europe, 2008; *Public Private Partnerships: The Challenges and Opportunities for Delivering Public Services in the 21st Century*, Bovis, Christopher, European Public Private Partnership Law Review, 2010; *Guidelines For Successful Public-Private Partnerships*, European Commission, 2003; *Public-private partnerships (PPP) – towards sustainable industrial growth. Key issues in the implementation of PPPs*, CARIRI, 2010; *Transit and the special case of landlocked countries*, Arvis, Jean Francois, *Customs Modernization Handbook*, De Wulf, Luc, and Sokol, B. Jose, 2005; *Public-Private Partnerships in Trade and Transport Facilitation*, GFP, 2005; *Creating An Efficient Environment For Trade And Transport, Guidelines To Recommendation No. 4 National Trade Facilitation Bodies*, United Nations Economic Commission For Europe (UNECE), 2000; *Southern Africa Transport Network: Comparative Transit Transport Cost Analysis*, RAISE, 2001.

<sup>184</sup> *Trade & Transport Facilitation in Laos*, Department of Transport of the Lao PDR, 2005, p. 26.

Any companies and partnerships, registered as juristic persons and engaged in trading, industrial, financial or any other economic activities can become members of the BoT.<sup>185</sup> At the moment BoT has around 4 000 members. In comparison, LIFFA has 22 members, all of whom are freight forwarders.<sup>186</sup> VATA's members number 800 and are mainly transport operators.<sup>187</sup>

### 5.1.2.2 Experience

In addition to having a longer proven existence as an association representing the interests of the transport sector, the BoT also has more experience than LIFFA and VATA in handling customs transit procedures. Namely, the BoT has over 10 years of experience in issuing the ATA Carnet Document, an international customs document regarding a temporary import of goods into the country, and in guaranteeing the export of these goods vis-à-vis the Thai Customs.<sup>188</sup>

Moreover, the BoT is a much larger organization than LIFFA and VATA and offers a wide variety of services. The services offered, apart from the CTS, include the issuance of ATA Carnet and issuance of "Certificates of Standards of Products", performance of duties in trade arbitration for members and businesses that have trade disputes, trainings/seminars and internet membership.<sup>189</sup>

### 5.1.2.3 Financial capabilities

Due to its size and variety of services offered to its members, BoT can easily collect the amount necessary for securities through self-financing. While BoT considers the amount to be "quite low"<sup>190</sup>, VATA maintains that although the money could be collected through self-financing, the total security is "too high"<sup>191</sup> and should be reduced. VATA's attitude in this matter depends at least in part on its weaker financial standing, as compared with BoT. Lastly, LIFFA plans to arrange for the securities by collecting deposits from its member operators. Given their stronger financial standing, the BoT and VATA are able to compensate some of LIFFA's other operational expenses.<sup>192</sup>

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<sup>185</sup> *By-Laws of Board of Trade of Thailand*, 2005.

<sup>186</sup> Group meeting and one-to-one interview with LIFFA, 3 November and 18 November, 2010; *Laos Country Report*, Lao International Freight Forwarder's Association, 2010, p. 8-10.

<sup>187</sup> Group meeting with VATA, 15 December, 2010.

<sup>188</sup> *The Thai Chamber of Commerce, Board of Trade of Thailand*, Information Brochure.

<sup>189</sup> *Ibid.*

<sup>190</sup> Interviews with BoT, 12 October and 22 October, 2010.

<sup>191</sup> Group meeting with VATA, 15 December, 2010.

<sup>192</sup> "Interim CTS Agreement", 2009.

#### 5.1.2.4 Knowledge

Given the role played by the private organizations as issuers and guarantors in the CTS, it is important that they “deeply understand”<sup>193</sup> the workings of the CTS. However, out of the interviewed CTS stakeholders, the biggest gaps in understanding were found among the guaranteeing organizations. For example, VATA is having difficulties in understanding the process of arranging for security vis-à-vis the Vietnam Customs. According to VATA, the counter bank guarantee is a “new model” and “difficult to understand”.<sup>194</sup> VATA also mentions that it has received a machine from the ADB, meant to facilitate the implementation of the CTS, but is not sure what purpose the machine is intended to fill.<sup>195</sup> Due to the multilateral nature of the CTS, a stakeholder’s insufficient understanding of an issue quickly results in general confusion. “Everyone says something different”<sup>196</sup>, which makes it all the more difficult to implement the CTS correctly. For instance, LIFFA and VATA disagree on whether LIFFA will need to arrange for security with the Lao Customs. While VATA is wondering when this will be done, LIFFA is convinced that there is no need for it to begin with.<sup>197</sup>

#### 5.1.3 Structural

As previously mentioned, the operation of the CTS is based on a Public-Private Partnership. A PPP is difficult to define, due to the large variety of PPP models. However, the UN definition can provide some guidance. PPPs are defined as “innovative methods used by the public sector to contract with the private sector, who bring their capital and their ability to deliver projects on time and to budget, while the public sector retains the responsibility to provide these services to the public in a way that benefits the public and delivers economic development and an improvement in the quality of life”.<sup>198</sup> The guidelines for an effective role of the private sector in PPPs have been set forth in the doctrine.<sup>199</sup> A number of these have been chosen for discussion in the context of the CTS.

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<sup>193</sup> Group meeting and one-to-one interview with LIFFA, 3 November and 18 November, 2010. See also group meeting and one-to-one interview with Lao Customs Department, 3 November and 17 November, 2010.

<sup>194</sup> Group meeting with VATA, 15 December, 2010.

<sup>195</sup> Ibid.

<sup>196</sup> Ibid.

<sup>197</sup> Ibid; group meeting and one-to-one interview with LIFFA, 3 November and 18 November, 2010.

<sup>198</sup> *Guidebook on Promoting Good Governance in Public-Private Partnerships*, United Nations Economic Commission for Europe, 2008, p. 1.

<sup>199</sup> See footnote 183.

### 5.1.3.1 Procurement

The procurement process is “at the core of the PPP process”.<sup>200</sup> Good governance<sup>201</sup> is a very important component of this process. That is to say, procurement must be transparent i.e. open, and efficient. Moreover, it should provide value for money. Value for money in a PPP is created when the cost of providing the Facility (here: CTS) is lowered by transferring certain risks from the public party to the private party, which is better at managing them.<sup>202</sup> It is generally accepted that value for money “is best produced through competitive tension between bidders, and therefore the procurement process must be such as to maintain this tension for as long as possible”.<sup>203</sup>

The procurement procedure may be open, selective or limited. The open procedure allows anyone to bid, while in a selective procedure the public sector party may apply a pre-qualification procedure to reduce the number of potential bidders. In a limited procedure, the public authority approaches the bidders directly, rather than putting the project out to tender. According to Yescombe, a limited procedure is “unlikely to be appropriate for a PPP”.<sup>204</sup>

During the first stage of the bidding process the project is advertised in the press, interested bidders are provided with information about the requirements of the project and are invited to demonstrate the qualifications needed to undertake it. At a minimum, such qualifications include experience e.g. through prior undertaking of similar projects, as well as financial capacity. Then, the final candidate is chosen by comparative analysis of his offer to other offers, on the basis of publicly available award criteria.<sup>205</sup>

The CBTA does not clearly list the criteria for the selection of the issuing and guaranteeing organization. Annexes 6, 8 and 14 merely state that the

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<sup>200</sup> *Public-Private Partnerships: Principles of Policy and Finance*, Yescombe, E.R., 2007, p. 77.

<sup>201</sup> Good governance in PPPs generally refers to institutional quality and the effectiveness, with which policy is translated into successful implementation. Principles of good governance include: transparency, participation, decency, accountability, fairness, efficiency, sustainable development. See *Guidebook on Promoting Good Governance in Public-Private Partnerships*, United Nations Economic Commission For Europe, 2008, p. 17.

<sup>202</sup> *Public-Private Partnerships: Principles of Policy and Finance*, Yescombe, E.R., 2007, p. 59; *Public Private Partnerships: The Challenges and Opportunities for Delivering Public Services in the 21st Century*, Bovis, Christopher, European Public Private Partnership Law Review, 2010, p. 11.

<sup>203</sup> *Public-Private Partnerships: Principles of Policy and Finance*, Yescombe, E.R., 2007, p. 62ff; *Guidelines for Successful Public-Private Partnerships*, European Commission, 2003, p. 5, 8; *Public Private Partnerships: The Challenges and Opportunities for Delivering Public Services in the 21st Century*, Bovis, Christopher, European Public Private Partnership Law Review, 2010, p.11, 12, 14.

<sup>204</sup> *Public-Private Partnerships: Principles of Policy and Finance*, Yescombe, E.R., 2007, p. 77

<sup>205</sup> *Ibid*, p. 74-80.

BoT, LIFFA and VATA must be authorized by their respective contracting parties.<sup>206</sup>

The process of selection in Thailand is described in the following way by the Thai Customs Department. A letter was sent to a number of Thai transport associations inviting them to participate in a meeting on the CTS. However, few of them expressed interest in acting as issuing and guaranteeing organizations. Many had insufficient experience in the field and others were too small to handle the financial side of the CTS. Thus, they “never volunteered to be the guarantor”.<sup>207</sup> According to Thai Customs, the BoT was the only one that expressed a strong interest in carrying out the task.<sup>208</sup>

In Vietnam, the Ministry of Transport introduced VATA to customs, which after consideration approved VATA as the guaranteeing organization.<sup>209</sup>

When asked about the selection process in Laos, LIFFA replied that “each country has to identify which organization should respond for the CTS” and “Lao PDR has appointed LIFFA”<sup>210</sup>.

### 5.1.3.2 Participation

Participation is another issue with specific relevance to the private sector, where good governance is important. Participation refers to the degree of involvement of key stakeholders. For example, it is vital that the start of the project is preceded by a considerable consultation, including consultation on legislation. Mechanisms for consultation must also be available thereafter, so that the public and private sectors can discuss their concerns and resolve conflicts. There are different mechanisms for consultation. A National Trade and Transport Facilitation Committee (NTTFC) is one of the recognized frameworks for public-private co-operation. NTTFCs provide a platform for the private and public stakeholders to regularly exchange information, making it easier to identify the shortfalls and take appropriate action.<sup>211</sup>

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<sup>206</sup> CBTA Agreement, 1999.

<sup>207</sup> Interview with Thai Customs Department, 20 October, 2010.

<sup>208</sup> Ibid.

<sup>209</sup> Interview with Vietnamese Ministry of Transport, 6 December, 2010.

<sup>210</sup> Group meeting and one-to-one interview with LIFFA, 3 November and 18 November, 2010.

<sup>211</sup> *Public-private partnerships (PPP) – towards sustainable industrial growth. Key issues in the implementation of PPPs*, CARIRI, 2010, p.25; *Role of Road Transport Associations and the IRU – PPP in Road Transport*, Krausz, Peter, UNECE Workshop on “Enhancing National Capacity for the Facilitation of Interregional Transport along the Euro-Asian Transport Links”, 2007, p. 6; *Guidebook on Promoting Good Governance in Public-Private Partnerships*, United Nations Economic Commission For Europe, 2008, p. 13-20; *Transit and the special case of landlocked countries*, Arvis, Jean Francois, *Customs Modernization Handbook*, De Wulf, Luc, and Sokol, B. Jose, 2005, p. 264; *Public-Private Partnerships in Trade and Transport Facilitation*, GFP, 2005, p. 2; *Creating An Efficient Environment For Trade And Transport, Guidelines To Recommendation No. 4 National Trade Facilitation Bodies*, United Nations Economic Commission For Europe (UNECE),

As regards the CTS, the Annexes 6, 8 and 14 had already been signed when BoT, LIFFA and VATA got involved.<sup>212</sup> According to BoT, “ADB just decided the CTS System and gave [it] to us to use”.<sup>213</sup> After the Annexes were signed, the organizations became involved in negotiations on how to implement the CTS. These negotiations spanned over the period of 2 years and resulted in the signing of the interim agreements on CTS. However, it must be noted that the aim of the negotiations was not to alter the core structure of the CTS, but to merely adjust it in a few aspects so that it could be implemented, pending Thailand’s ratification of Annexes 6, 8 and 14. This means that the CTS was in essence decided before the organizations got involved.

The main dialogue between the public and private sectors on the CTS takes place within the NTFC of each country and during Joint Committee meetings of the chairmen of each NTFC. The NTFC is the main body responsible for implementing the CBTA, and consists of members of the private and public sectors, with the number of the latter dominating.<sup>214</sup>

### 5.1.3.3 Commitment

The private sector must be committed to achieving the objectives of the project under the PPP. Commitment must be supported by appropriate incentive.<sup>215</sup>

All three organizations show commitment in working towards implementing the CTS. “This project is one of the flagship projects of the GMS. So that’s why it seems I have to help the government to make [it] work.”<sup>216</sup> VATA emphasized that it has worked “hard” to gather the money<sup>217</sup> for the securities. LIFFA also expressed commitment to making it work, under the condition that Laos too can share in the benefits of the CTS. According to the BoT, “we have to get involved”, because the customs “chose BoT” and “gave the responsibility to us”.<sup>218</sup>

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2000, p. 7; *Southern Africa Transport Network: Comparative Transit Transport Cost Analysis*, RAISE, 2001, p. 140.

<sup>212</sup> Interviews with BoT, 12 October and 22 October, 2010; group meeting and one-to-one interview with LIFFA, 3 November and 18 November, 2010; group meeting with VATA, 15 December, 2010.

<sup>213</sup> Interviews with BoT, 12 October and 22 October, 2010.

<sup>214</sup> Interviews with Yushu Feng, ADB, 5 October and 27 October, 2010.

<sup>215</sup> *Public-Private Partnerships in Trade and Transport Facilitation*, GFP, 2005, p. 2; *Southern Africa Transport Network: Comparative Transit Transport Cost Analysis*, RAISE, 2001, p. 140, 144; *Public-private partnerships (PPP) – towards sustainable industrial growth. Key issues in the implementation of PPPs*, CARIRI, 2010, p. 22; *Public Private Partnerships: The Challenges and Opportunities for Delivering Public Services in the 21st Century*, Bovis, Christopher, *European Public Private Partnership Law Review*, 2010, p. 14.

<sup>216</sup> Interviews with BoT, 12 October and 22 October, 2010.

<sup>217</sup> Group meeting with VATA, 15 December, 2010.

<sup>218</sup> Interviews with BoT, 12 October and 22 October, 2010.

However, generally the commitment of the organization to implement the system appears to stem from a feeling of obligation towards the government, rather than from economic incentive. “I think we don’t get so much money from this CTS system”, says the representative from BoT.<sup>219</sup>

#### 5.1.3.4 Sense of ownership

A sense of ownership is considered as one of the essential success factors in a PPP and generally in trade and transport facilitation initiatives, involving multiple stakeholders. The reason is that it contributes to a stakeholder’s commitment and is a driver for direct participation in the project.<sup>220</sup>

As regards the CTS, the sense of ownership among the organizations is generally weak. According to VATA, the CTS was “a government decision”<sup>221</sup> and a representative from LIFFA says that his association had to get involved, because it was appointed. The attitude of the BoT is similar. The representative from BoT refers to the CTS as “an ADB idea” and explains that “the private sector had to get involved because the CBTA says it has to”.<sup>222</sup>

#### 5.1.3.5 Trust

“Transit cannot work without a certain amount of trust between customs and the private sector”.<sup>223</sup> Trust is considered a pre-condition to a well-functioning PPP.<sup>224</sup> The degree of trust among the stakeholders of the CTS appears to be low. “We don’t trust each other really” states the BoT. “If we trust each other, maybe we don’t have to put guarantee in the other country”.<sup>225</sup>

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<sup>219</sup> Interview with BoT, 12 October and 22 October, 2010.

<sup>220</sup> *Transit and the special case of landlocked countries*, Arvis, Jean Francois, *Customs Modernization Handbook*, De Wulf, Luc, and Sokol, B. Jose, 2005, p. 262; *Public-Private Partnerships in Trade and Transport Facilitation*, GFP, 2005, p. 3.

<sup>221</sup> Group meeting with VATA, 15 December, 2010.

<sup>222</sup> Interviews with BoT, 12 October and 22 October, 2010.

<sup>223</sup> *Transit and the special case of landlocked countries*, Arvis, Jean Francois, *Customs Modernization Handbook*, De Wulf, Luc, and Sokol, B. Jose, 2005, p. 263.

<sup>224</sup> *Public-Private Partnerships in Trade and Transport Facilitation*, GFP, 2005, p. 2; *Public-private partnerships (PPP) – towards sustainable industrial growth. Key issues in the implementation of PPPs*, CARIRI, 2010, p. 30.

<sup>225</sup> Interviews with BoT, 12 October and 22 October, 2010.

## 5.2 Assessment of the role of the BoT, LIFFA and VATA as issuing and guaranteeing organizations

The experience of the organizations in customs transit, as well as their size, financial capabilities, and understanding vary significantly. BoT is clearly more experienced and larger, as well as having more resources and knowledge of the CTS. LIFFA and VATA, having less experience, also have more difficulties in understanding the CTS. Moreover, as the financially weaker organizations, VATA and LIFFA, especially the latter, have a harder time securing the money for the securities. Such divergence between the organizations in combination with their mutual dependence complicates their task as issuing and guaranteeing organizations in the PPP on CTS.

It can also be questioned whether risk taken on by the organizations in the PPP is justifiable. It is widely accepted<sup>226</sup> that a transparent and competitive procurement process can help to ensure that the risks transferred to the private party are not too difficult for the latter to bear. However, in the context of the CTS, the procurement of BoT as the issuing and guaranteeing organization appears to have been more open and efficient, as compared to the process in Laos and Vietnam.

In the PPP on CTS, the guaranteeing organizations bare many risks. Two significant risks are the demand and liability risks.<sup>227</sup> Generally, the private party accepts the demand risk if there is likely to be consistent usage of the facility. However, in the case of the CTS, it appears that the usage projection may have been overestimated. The representative from the Vietnamese Ministry of Transport gives the following characteristic to the EWEC - “When we studied, [we] estimate this corridor has high potential for development. Maybe we overestimated the potential in the study. I think it is maybe a mistake”.<sup>228</sup> Fueled by the optimism of the public sector, the guaranteeing organizations appear to also have taken an overly optimistic view of the potential traffic flows on the EWEC. However, it is likely that the optimism of the public authorities would not have a similar influence on the organizations in a more open and efficient procurement process, where the project and its risks were critically discussed with other prospective bidders.<sup>229</sup>

The demand risk borne by the organizations is also increased by external factors. That is to say that demand for the CTS is not only dependant on the CTS itself, but on the willingness of the stakeholders to use the CBTA

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<sup>226</sup> See footnote nr. 183.

<sup>227</sup> Other risks taken on by the organizations include liability risk, political risks, foreign currency transfer and availability.

<sup>228</sup> Interview with Vietnamese Ministry of Transport, 6 December, 2010.

<sup>229</sup> *Public-Private Partnerships: Principles of Policy and Finance*, Yescombe, E.R., 2007, p. 18-10, 229, 245-248, 264-265.

framework in general e.g. whether the GMS Permit or bilateral agreements are preferred by the operators, and whether the customs at the borders are proficient in the CTS and able to provide smooth transit procedures etc.<sup>230</sup>

The second significant risk borne by the guaranteeing organizations is the liability risk. Liability under the CTS covers goods, vehicle and container up to the amount of around 85 048 USD.<sup>231</sup> This is in fact more than the maximum liability under TIR, which only covers the cargo. At the same time, the CTS lacks an insurance system, which can be found in the TIR system.<sup>232</sup> At the moment, only the BoT has started negotiating with a Thai insurance company. However, no agreement has been reached yet. The company is reluctant to get involved. This is understandable, given as insurance companies in developing countries can often be unwilling to provide coverage for security in situations where traffic flow is uncertain.<sup>233</sup>

A result of an inadequately large risk transfer may be that the private party has to build in a large risk premium into the pricing of the service, e.g. through setting a high deposit for the transport operators.<sup>234</sup> A high deposit would hamper demand for the service.<sup>235</sup> In the worst case scenario, a too demanding transfer of risks to the private party may result in the financial failure of a PPP. According to Yescombe, examples of financial failure are situations where financial support is required or when the agreement has to be renegotiated.<sup>236</sup> The extension of the EWEC may increase the demand on the road, but it is in fact a renegotiation of the CBTA Agreement, seen as a necessary step to decrease the demand risk.

In addition to bearing a large risk and not being equally capable of handling it, the organizations have a low sense of ownership of the CTS. This is to an extent explained by the fact that the organizations were not involved in the construction of the CTS and CBTA from the start. This, in turn, helps to explain the gaps in knowledge among the organizations.

Finally, the lack of trust makes the role of the guaranteeing organizations all the more difficult to carry out. The liability of the organizations under the CTS does not cover the sums incurred by foreign operators in the same way as under the TIR. If a foreign operator is involved in an irregularity, payment will be sought from the operator's organization overseas. Only if

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<sup>230</sup> Ibid, p. 247.

<sup>231</sup> 1 SDR= 1.537940 USD on 13 December, 2010.

<sup>232</sup> Video conference with Pradeep Srivastava, ADB, 4 November, 2010.

<sup>233</sup> *Nature, Structure and Functioning of the TIR Guarantee System & Risk Management*, Tanase, Virginia, 2003, p. 7; *Transit and the special case of landlocked countries*, Arvis, Jean Francois, *Customs Modernization Handbook*, De Wulf, Luc, and Sokol, B. Jose, 2005, p. 243-264.

<sup>234</sup> *Public-Private Partnerships: Principles of Policy and Finance*, Yescombe, E.R., 2007, p. 18-19, 243.

<sup>235</sup> Interviews with Yushu Feng, ADB, 5 October and 27 October, 2010; interview with Thai Customs Department, 20 October, 2010; video conference with Pradeep Srivastava, ADB, 4 November, 2010.

<sup>236</sup> *Public-Private Partnerships: Principles of Policy and Finance*, Yescombe, E.R., 2007, p. 264-265.

payment cannot be secured in this way, will the guaranteeing organization become liable for the amount to the national customs authorities. In this case, the result is similar to the procedure under TIR – the organization in the country of irregularity covers the foreign operator’s debt. The difference is that in the case of the CTS this is a last resort measure. Perhaps, if there was more trust, the system could work differently. At the moment the fact that the foreign operator’s debt is not covered directly by the guaranteeing organization means that the coverage of each irregularity becomes a lengthy and complicated process (see Diagram 2). “It’s too many steps”<sup>237</sup>, the BoT points out.

### **5.3 Assessment of the role of the BoT, LIFFA and VATA as the representatives of the transport sector**

Each of the organizations has proposed various solutions for CTS implementation. On this basis, one can say that the organizations are working towards the interests of their members. However, generally speaking, their function as representatives for the transport industry could be more effective. The fact is that the effectiveness of lobbying and other activities, which the organizations may undertake as representatives of the transport sector, is limited by some of the same factors, which hamper the BoT, LIFFA and VATA in their role as issuing/guaranteeing organizations. These limitations are: understanding of the CTS system and of the factors causing implementation difficulties; commitment based on appropriate incentive; organizational factors; a sense of ownership; and trust.

A lack of understanding and ownership may explain the general lack of critical thinking among the organizations. Neither of the organizations seems to have critically assessed the CTS. For instance, they have not questioned the design or potential of the EWEC route – “it’s a requirement of the CBTA”.<sup>238</sup> The organizations are unable to defend the choice of CTS as compared to other systems for customs transit, such as the TIR or the European Common Transit.<sup>239</sup> The representative from BoT admits that he “doesn’t really know about the TIR Carnet”.<sup>240</sup> LIFFA has not questioned the choice of the CTS either, as “this is already decided by the authorities of each country”.<sup>241</sup> Moreover, not all the organizations have critically

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<sup>237</sup> Interviews with BoT, 12 October and 22 October, 2010.

<sup>238</sup> Ibid; see also group meeting with VATA, 15 December, 2010.

<sup>239</sup> Ibid; group meeting and one-to-one interview with LIFFA, 3 November and 18 November, 2010; group meeting with VATA, 15 December, 2010.

<sup>240</sup> Interviews with BoT, 12 October and 22 October, 2010.

<sup>241</sup> Group meeting and one-to-one interview with LIFFA, 3 November and 18 November, 2010.

assessed their role in the CTS. While BoT and VATA can explain why they were chosen as guaranteeing organizations, LIFFA cannot.<sup>242</sup>

Given the lack of critical thinking, it is not surprising that most of the solutions proposed by the guaranteeing organizations are irrelevant or unrealistic. The relevant solutions include the extension/alteration of the EWEC route, creation of spider roads, development of a SEZ and establishment of a transport association. The reason is that these solutions address the main problem of CTS implementation – demand.<sup>243</sup> An example of an irrelevant solution is the incorporation of the CTS into bilateral agreements. Finally, while proposals such as more support from ADB and reduction of the security amounts could be beneficial towards the functioning of the CTS, they will not be able to put it into operation.

The extension of the EWEC is the solution that has received most attention. Out of the three organizations, the BoT is the most active in lobbying for this extension, which is almost certainly the best solution for the problem of low demand on the EWEC. If the EWEC is extended, it will run from Hanoi and Haiphong in Vietnam to the Laem Chabang port and Bangkok in Thailand. Since there is clear market demand from Japanese businesses for export/import using this particular route, the extension is likely to be “very good for transport”.<sup>244</sup> It would increase the general commercial potential of the route and could motivate the operators to use the GMS Permit and CTS, instead of the bilateral agreements. Although VATA, like the BoT, brings up the extension of the EWEC as a solution, it appears to be less active in propagating for it. In Vietnam, this initiative appears to be championed by a number of Japanese companies<sup>245</sup> and the Vietnamese Ministry of Transport, rather than by VATA. LIFFA does not bring up the extension as a solution, because it does not believe that an extension would bring benefit to the Lao operators.<sup>246</sup>

Overall, the organizations are not working as a united front towards any of the above solutions. Neither are they working together in an organized effort to pool the transport sector. They are unlikely to be capable or willing to do so due to the above mentioned factors. This is particularly unfortunate, given that fact that the “CTS depends on the good co-operation among the guaranteeing organizations”.<sup>247</sup>

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<sup>242</sup> Ibid.

<sup>243</sup> Interviews with Yushu Feng, ADB, 5 October and 27 October, 2010; video conference with Pradeep Srivastava, ADB, 4 November, 2010.

<sup>244</sup> Interview with Vietnamese Ministry of Transport, 6 December, 2010.

<sup>245</sup> Ibid. The Japanese companies around Hanoi and Haiphong in Vietnam number around 2000. They are involved in the business of assembling electronic equipment and would like to find an easier and faster way to transport the necessary components from BKK to Hanoi or Haifon for assembly. According to the Vietnamese Ministry of Transport, the companies’ demand for extension of the EWEC is “very high”, because sea transport from BKK to Hanoi/Haiphong “will take about 7 days” while “travel by road only 48 hours”.

<sup>246</sup> Group meeting and one-to-one interview with LIFFA, 3 November and 18 November, 2010.

<sup>247</sup> Interviews with Yushu Feng, ADB, 5 October and 27 October, 2010.

The organizations' lack of capacity stems to a large extent from the fact that out of the three organizations, only BoT can be considered to represent the road transport industry. LIFFA's members only include freight forwarders, and VATA's – only transport operators. This factor limits, by definition, the ability of the associations to organize the transport industry in their countries.<sup>248</sup> At the same time, the lack of trust and a weak sense of ownership may hamper the willingness of the organizations to independently/jointly and actively work towards the implementation of the CTS, even if there is economic incentive to do so.

An additional explanation for the overall lukewarm campaigning activity could possibly also be explained by the fact that the private sector does not see itself equally involved in CBTA implementation through the NTFC. The guaranteeing organizations associate the NTFC with the government sector.<sup>249</sup>

Without sufficient understanding of the difficulties, without ownership and incentive, the organizations are unlikely to become more active in providing the necessary information and training to their members, in a concentrated effort towards the implementation of the CTS. While information and training is greatly needed in Laos, LIFFA is the organization that is least enthusiastic about the CTS. Moreover, LIFFA's members only number 22, which also limits its ability to inform and train the transport sector as a whole.

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<sup>248</sup> Freight transport by road involves a number of actors, the main ones being freight forwarders, carriers (transport operators), and customs brokers. It is difficult to give a precise definition of a business involved in transport, because e.g. freight forwarding may be combined with the transportation of goods within one company.

<sup>249</sup> Interviews with BoT, 12 October and 22 October, 2010; group meeting and one-to-one interview with LIFFA, 3 November and 18 November, 2010; group meeting with VATA, 15 December, 2010.

## 6 Conclusion

The BoT, LIFFA and VATA act as issuing and guaranteeing organizations in the CTS. Firstly, the organizations are responsible for the issuance of CTS documents to eligible transport operators, who intend to perform transit transport on the EWEC. Secondly, the organizations act as guarantors and are as such jointly and severally liable to a specified amount with the operator for taxes and duties, incurred due to irregularities in transit operations. In this most essential aspect, their role is similar to that played by transport associations in the TIR system. However, an in-depth study of the CTS reveals significant differences in the role of the private sector as issuing and guaranteeing organizations. The main differences are the functions of the organizations in the claim process.

Overall, the BoT, LIFFA and VATA are currently struggling in their roles as issuers/guarantors. The CTS is not being used by transport operators, the most important factor being that the demand for the EWEC route is extremely limited. For this reason, the organizations are finding it difficult to put down the necessary securities in the host countries, as well as vis-à-vis their home customs authorities. As a result, the CTS cannot become operational.

As representatives of the transport industry, the potentially important functions of the organizations are through campaigning, and the provision of information services and training. This paper finds that the organizations could be more effective in carrying out these functions. Moreover, they are unlikely to have the capacity or will to become more active, unless significant changes are made to the structure of the CBTA. The full implementation of the CTS will not be possible, unless the private stakeholders start acting as a united front towards the realization of this goal.

According to Yushu Feng, the key legal expert on CTS implementation, the CTS cannot be successful without private sector participation.<sup>250</sup> Therefore, it is crucial to identify the factors, which must be in place, in order for the private sector stakeholders to carry out their roles effectively. Firstly, this paper finds that the organizational divergence between the organizations in combination with their mutual dependence significantly complicates their tasks as issuers/guarantors. These same organizational factors, as well as insufficient compliance with the criteria for a successful private sector role in a PPP, explain the limited effectiveness of the associations in their role as representatives of the transport industry. This thesis finds that the root cause of the non-implementation of the CTS is low demand for the system, not inadequate participation of the private sector. However, had the above organizational and structural factors not been a problem, the transport associations would have been much more likely to do an independent

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<sup>250</sup> Interviews with Yushu Feng, ADB, 5 October and 27 October, 2010.

analysis of the system before agreeing to participate. This would have helped to avoid the current predicament – a sophisticated system for transport and trade facilitation, which transport operators do not want to use.

It is clear that the fulfillment of the above organizational and structural conditions is not a guarantee for an effective private sector participation in the implementation of a customs transit system. Implementation difficulties may also be caused by certain contextual factors, which might be very difficult for the private sector to control. These have not been examined in depth in this paper, but will be briefly discussed below.

In the context of the CTS contextual factors include the situation in Myanmar, foreign currency issues, different traffic systems in the three countries, general capacity and cultural issues. For example, while the opening of the port to port route could be a solution for the lack of demand, no one can tell if or when Myanmar will join in the implementation of the CBTA.<sup>251</sup> A general lack of capacity among the organizations can also be contextually explained. Namely, a certain level of development of the local financial infrastructure is an accepted requirement for a functioning guarantee system.<sup>252</sup> Last, but not least, it must be added that building PPPs, within which the public and private partners collaborate efficiently, is difficult in countries where the public and private sectors are on unequal footing.

A particularly important contextual factor is the maturity and organization of the transport sector. A mature and organized transport sector is considered to significantly facilitate the overall function of a guarantee system, given that customs transit works significantly better with formal and modern operators, as well as up to date data equipment.<sup>253</sup> When the level of maturity and organization is low, the scope for a guaranteeing organization to spread risk to the end users of the service is limited. As a result, more risk has to be borne by the organizations themselves, which is disadvantageous, especially in risky projects like the CTS on EWEC.<sup>254</sup> Moreover, if the transport sector is not well integrated, the task of choosing a transport association, which qualifies for the role of issuing and guaranteeing organization, becomes increasingly difficult. This may explain why LIFFA was chosen, despite its comparatively weaker standing in all of the considered organizational aspects.

According to Yushu Feng, the public sector has already put in enough effort into the implementation of the CTS. While this paper does not examine the roles of the public sector stakeholders, I would like to question Mr. Feng's

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<sup>251</sup> Interview with Thai Customs Department, 20 October, 2010; interview with Thai Land Transport Department, 11 October and 22 October, 2010.

<sup>252</sup> *Public-Private Partnerships in Trade and Transport Facilitation*, GFP, 2005, p. 5.

<sup>253</sup> *Transit and the special case of landlocked countries*, Arvis, Jean Francois, *Customs Modernization Handbook*, De Wulf, Luc, and Sokol, B. Jose, 2005, p. 264.

<sup>254</sup> *Public Private Partnerships: The Challenges and Opportunities for Delivering Public Services in the 21st Century*, Bovis, Christopher, *European Public Private Partnership Law Review*, 2010, p.6.

statement. It must be stressed that a PPP places greater responsibility on the public sector, than if the latter had chosen to provide the service through other channels than a PPP. For example, it is the responsibility of the public sector to provide an efficient and open procurement and ensure that an adequate opportunity for participation is offered to the stakeholders. It is also up to the government to enter into a partnership with a private sector stakeholder, who is sufficiently qualified to carry out the task at hand. The fulfillment of these responsibilities can help ensure that the PPP is built on trust, necessary incentive, and ownership.<sup>255</sup>

In my opinion, the government's responsibility in a PPP is even greater, when a competitive procurement is not possible, due to an underdeveloped private sector. The public sector should make sure that a proper cost-benefit analysis of the project is made, prior to involving the private sector. Moreover, it should whenever possible involve the private stakeholders in the design of the project. This would lead to a lengthier process, but could provide important insights and avoid a situation where the private partner is presented with a ready-made solution to transport and trade facilitation. Questions that could be discussed with the transport association are e.g. – How does the TIR work in detail and is it in fact the right model to be used as a basis for a GMS customs transit system? Can the private sector handle the risk, caused by the lack of an insurance scheme in the CTS, as compared to TIR? While TIR is considered to be best practice in the field of customs transit, it is not necessarily the obvious alternative to be used as a basis in developing countries.<sup>256</sup> Moreover, participation can ensure that the private partners recognize the importance of their roles in the project and see a benefit for themselves in its implementation. For example, at the moment the BoT believes that its participation is not necessary for a well functioning customs transit system.<sup>257</sup> This is counter-productive to an active role in the implementation of the CTS.

The relevant development partners should assist the government in the above tasks, whenever possible. This is particularly important in respect of the initial cost-benefit analysis, carried out to estimate a planned project's economic potential. All factors that may limit the project's success must be carefully studied, so that the government is not presented with an overly optimistic view of the project's potential. The development partner must also provide consistent support to the private stakeholders in the implementation of the project. In the context of the CTS, there is a clear need for this. All three transport associations have expressed a need for more assistance with the operation of the CTS, for example through more meetings among themselves, as well as with other stakeholders.<sup>258</sup>

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<sup>255</sup> *Guidebook on Promoting Good Governance in Public-Private Partnerships*, United Nations Economic Commission for Europe, 2008, p. 9.

<sup>256</sup> *Transit and the special case of landlocked countries*, Arvis, Jean Francois, *Customs Modernization Handbook*, De Wulf, Luc, and Sokol, B. Jose, 2005, p. 243-264.

<sup>257</sup> "The Thai customs can do better than us", says the representative from BoT. See interviews with BoT, 12 October and 22 October, 2010.

<sup>258</sup> "I think it is too hard for us to get it done. We need some help" – interviews with BoT, 12 October and 22 October, 2010.

The CBTA on the whole is regarded as a difficult agreement and the CTS has been referred to as a very new type of activity.<sup>259</sup> The development partners must set aside the needed time, so that the involved stakeholders have a chance to consider and evaluate the advantages and disadvantages of the project. Moreover, the standards must be set a level that reflects the capacity of the stakeholders in each country involved. Otherwise, it may be too difficult to implement the project and the stakeholders would also be less committed to do so.<sup>260</sup> For instance, there is still a hint of preference for bilateral agreements at the Lao Transport Department.<sup>261</sup>

In conclusion, this paper does not aim to criticize the structure of the CTS or the PPP, by which it is operated. The complexity of building a well-functioning customs transit system with an involved private sector in a developing region is enormous. However, the research has revealed some worrying gaps, underlying the CTS and the PPP on which it is based, which possibly hinder an effective private sector involvement by definition. None of the interviewed persons could give an in-depth answer to the following question – What is the economic potential of the EWEC? i.e. Why was the particular port-to-port route from Mawlamyang to Danang chosen? There are serious doubts, whether or not any country would actually use this particular port-to-port connection.<sup>262</sup>

Another worrying question is – how will Laos benefit from the implementation of the CTS on EWEC? Currently, Lao stakeholders have no reasons to show enthusiasm about the project, as they see no benefit for themselves in its implementation. Vietnam and Thailand are the main potential users and beneficiaries of the system, whether the EWEC is extended to Hanoi/Bangkok or even if it becomes operational port-to-port. The CTS guarantee system depends on active co-operation of the private sector organizations, which is only possible if there is a mutual benefit to be gained from the system. The government, private sector and development stakeholders must work together to ensure that the benefits of the CTS are equally distributed.

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<sup>259</sup> Interview with Vietnamese Ministry of Transport, 6 December, 2010; group meeting with VATA, 15 December, 2010.

<sup>260</sup> Group meeting and one-to-one interview with Lao Customs Department, 3 November and 17 November, 2010.

<sup>261</sup> “Maybe if we can talk together it’s better than if we have to generalize in the 6 countries” - group meeting and one-to-one interview with the Lao Department of Transport, 3 November and 17 November, 2010.

<sup>262</sup> Group meeting with Barry Cable, ADB Transport Consultant, 3 November, 2010.

# List of interviewed persons<sup>263</sup>

## **The Kingdom of Thailand**

Yushu Feng, Senior Economist, Thailand Resident Mission, Asian Development Bank (First interview – 5 October, 2010, Second interview – 27 October, 2010).

Phacharang Praprutitum, Transport Technical Officer, International Transport Affairs Division, Department of Land Transport, Thailand (11 October, 2010).

Nonglak Wongsuksiridacha, Director of International Transport Affairs Division, Department of Land Transport, Thailand (22 October, 2010).

Jidapha Thongkum, ATA Carnet Officer, Board of Trade of Thailand; Tajchai Panich, The Registrar of the Thai Commercial Arbitration Office and Manager of Legal and Business Registration Division, Board of Trade of Thailand; and Phurisit Changsiripun, International Coordinator, Board of Trade of Thailand (First interview – 12 October, 2010, Second interview – 22 October, 2010).<sup>264</sup>

Seth Luprasit, Customs Technical Officer, Customs Department, Ministry of Finance, Thailand (20 October, 2010).

## **The Lao People's Democratic Republic**

Group meeting between Vichit Sadettan, Secretary, Lao International Freight Forwarder's Association; Barry Cable, ADB Transport Consultant; Bouaphet Sayasane, Deputy Director General, Department of Transport, Ministry of Public Works and Transport; Prachith Sayavong, President of Lao International Freight Forwarder's Association and Managing Director of Societe Mixte De Transport Co., Ltd; and representative from Lao Customs Department, Ministry of Finance (3 November 2010).

Pradeep Srivastava, Senior Regional Cooperation Specialist, Asian Development Bank (4 November, 2010)

Bouaphet Sayasane, Deputy Director General, Department of Transport, Ministry of Public Works and Transport, Lao PDR (17 November, 2010).

Prachit Sayavong, President of Lao International Freight Forwarder's Association, Ministry of Public Works & Transport (18 November, 2010).

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<sup>263</sup> This list includes one-to-one interviews and group meetings.

<sup>264</sup> The second interview was one-to-one interview with Phurisit Changsiripun.

Mr. Phouthanikone Khennavong, Deputy Director of International Cooperation Division, Customs Department, Ministry of Finance, Lao PDR (17 November, 2010).

### **The Socialist Republic of Vietnam**

Group meeting between Phung Thi Hoa, International Coordinator, Vietnam Automobile Transportation Association; Nguyen Van Thanh, Permanent Vice Chairman, Vietnam Automobile Transportation Association; and Barry Cable, ADB Transport Consultant (15 December, 2010).

Nguyen Van Thach, Deputy Director General, International Cooperation Department, Ministry of Transport, Vietnam (6 December, 2010)

Nguyen Viet Nga, Senior Official, International Cooperation Department, General Department of Vietnam Customs, Ministry of Finance, Vietnam (23 December, 2010).

M. Tuong Cong Sinh, Customs Officer, General Department of Vietnam Customs, Ministry of Finance, Vietnam (23 December, 2010).

# Map of GMS Economic Corridors



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