Memorandum of Understanding on the 'Early Harvest' Implementation of the Greater Mekong Subregion Cross-Border Transport Facilitation Agreement

The Governments of the Kingdom of Cambodia, the People's Republic of China, the Lao People's Democratic Republic, the Republic of the Union of Myanmar, the Kingdom of Thailand, and the Socialist Republic of Viet Nam as Contracting Parties (hereinafter referred to as "*the Contracting Parties*") to the GMS Cross-Border Transport Facilitation Agreement (hereinafter referred to as "*the Agreement*"), originally signed by the Governments of the Lao People's Democratic Republic, the Kingdom of Thailand, and the Socialist Republic of Viet Nam at Vientiane on 26 November 1999, amended at Yangon on 29 November 2001, acceded to by the Kingdom of Cambodia at Yangon on 29 November 2001, acceded to by the People's Republic of China at Phnom Penh on 3 November 2002, and acceded to by the Republic of the Union of Myanmar at Dali City on 19 September 2003, and amended at Phnom Penh on 30 April 2004,

Recognizing that the reduction of nonphysical barriers to transport and trade is key to increasing the benefits of improved connectivity among our countries, and cognizant of the importance of intraregional trade, tourism, and investments in boosting economic growth and improving standards of living in the GMS, we remain committed to fast tracking and streamlining transport and trade facilitation measures between our countries through pragmatic, realistic, and results-oriented transport and trade facilitation initiatives,

Welcoming the steps taken bilaterally and plurilaterally between and among our countries to engage in cooperative arrangements to facilitate cross-border transport with respect to bilateral/trilateral traffic rights agreements and memoranda of understanding on the Initial Implementation of the CBTA,

Acknowledging the singular potential of the CBTA to establish an efficient subregional transport market and to achieve these aims, including through simplification and harmonization of legislation, regulations, procedures and requirements relating to cross-border transport, the reduction of the procedures and formalities required for cross-border traffic, and the elimination of documents and formal requirements that are superfluous,

Noting that ratification of the Agreement and its Annexes and Protocols was completed by all Contracting Parties in 2015,

Recalling the view of the Joint Committee Retreat held in Bangkok, Thailand on 14 July 2016, that amendments to the Agreement are required to allow for its full implementation,

Referring to the unanimous consent expressed at the same Joint Committee Retreat to consider such amendments at its future meetings, and to launch the issuance of GMS Road Transport Permits under CBTA Protocol 3 between and among the Kingdom of Cambodia, the People's Republic of China, the Lao People's Democratic Republic, the Kingdom of Thailand, and the Socialist Republic of Viet Nam as a CBTA 'early harvest' in 2017, based on the current CBTA provisions (including, but not limited to, definitions of terms, admittance of road vehicles in other Contracting Parties, vehicle registration, technical requirements, recognition of technical inspection certificates, compulsory third party vehicle insurance, driving permits, temporary importation of motor vehicles, exchange of commercial traffic rights, and miscellaneous provisions) unless otherwise stated herein, with a transitional period for the Republic of the Union of Myanmar until 1 January 2019, and

Recalling that, according to the CBTA texts, Contracting Parties to the Agreement shall not be precluded from granting greater facilities by unilateral national arrangements.

Have agreed as follows:

1. To commence the issuance and distribution by the Contracting Parties to the Agreement of up to 500 GMS Road Transport Permits per Contracting Party, based on Protocol 3 of the CBTA, and the mutual recognition and acceptance of these Permits between and among the Contracting Parties from the date of entry into force of this Memorandum of Understanding.

2. To apply the other provisions of CBTA Protocol 3, including those under Article 5, with respect to the type and number of Permits issued, with the original Permit to be kept on board the vehicle at all times during cross-border transport operations.

3. To apply the GMS Road Transport Permit format for each Contracting Party as approved at the 3 April 2008 Customs Sub-committee Meeting, and attached in Annex 1 of this Memorandum of Understanding. For the purposes of the 'early harvest' implementation, these Permits shall be non-transferable between transport operators, and non-transferable among vehicles.

4. To communicate, every 3 months, updated national registers of licensed road transport operators holding Permits for cross-border road transport operations to the Joint Committee via the appointed NTFC focal points for dissemination to the other Contracting Parties, subject to annual review and modification, as appropriate, in line with Articles 2 and 5 of Protocol 3, using the model register format endorsed at the Fifth Joint Committee Meeting.

5. To operationalise the GMS CBTA regime for the temporary importation of motor vehicles, based on Article 18 of the Agreement, granting temporary admission without the payment of import duties and import taxes, without depositing a Customs guarantee bond, and free of import prohibitions and restrictions, and with simplified arrangements for the 'early harvest' under Annex 8 of the Agreement as follows:

    a. Motor vehicles temporarily imported into the territory of a Contracting Party acting as Host Country shall carry a Temporary Admission Document (TAD).

b. The TAD shall be issued by the competent authority or its authorized agency of the motor vehicle's Home Country. Each Contracting Party shall nominate its competent authority (*e.g.* Ministry of Transport, Customs Department, or NTFC) or its authorized agency, and inform the other Contracting Parties of its nomination through the Joint Committee. The Contracting Parties shall mutually recognize the bodies nominated as the competent authorities for the issuance of TADs.

c. The TAD may cover multiple temporary admissions into the territories of Contracting Parties and shall be discharged upon exit and entry. It shall be retained by the motor vehicle operator and kept on board the vehicle at all times during cross-border transport operations.

d. The format, appearance, layout, and printing specifications of the TAD shall follow the motor vehicle TAD template endorsed at the Fifth Joint Committee Meeting in the English language, and attached in Annex 2 of this Memorandum of Understanding (with parallel use of the Contracting Parties' respective national languages), printed in 500 numbered examples per Contracting Party.

e. Each TAD shall remain valid for a 12-month period (subject to extension by the competent issuing authority) as long as the motor vehicle to which it refers complies with the technical standards of the Host Country, and is used in conjunction with a valid GMS Road Transport Permit issued to the motor vehicle operator concerned.

f. An exit endorsement (stamp and signature of the Host Country Customs authorities tasked with controlling TADs at the border) entered in the TAD within a time period not exceeding 30 days from the date of entry, shall have the effect of evidencing the re-exportation of the motor vehicle. Satisfactory alternative evidence of re-exportation may have the same effect. Provided the GMS Road Transport Permit and TAD are valid on the date of entry to a Host Country, they shall remain valid until the return of the motor vehicle to its Home Country.

g. The motor vehicle operator shall be directly liable to pay, to the Host Country Customs authorities, the import duties, taxes, fines and interest, where applicable and if in contravention of this Memorandum of Understanding, under the customs laws and regulations in the Host Country in respect of any irregularity (*e.g.* breach of customs laws and regulations, or lack of timely re-exportation of the motor vehicle) in connection with the temporary admission of the motor vehicle. In case the Customs authority of the Host Country establishes an irregularity, the motor vehicle operator shall pay the duties, taxes, fines and interest due to the Customs authority of the Host Country not later than 30 days commencing from notification. The Host Country Customs authority shall refund to the motor vehicle operator the amount received upon the established absence of any irregularity, without delay, provided that the motor vehicle operator shall claim such refund within the period of time specified by national laws/regulations.

h. The competent authorities of the Contracting Parties (including the NTFCs, TAD issuing authorities, and Customs) shall render assistance to each other in accordance with their national legislation with respect to enquiries, investigation of irregularities, and/or recovery of import duties, taxes, fines and interest, where applicable, in connection with cross-border transport operations under the CBTA 'early harvest' implementation.

i. The Contracting Parties shall have the right to exclude temporarily or permanently from the CBTA 'early harvest' implementation any motor vehicle operator guilty of a serious offense against their laws/regulations applicable to the cross-border movement of motor vehicles, if in contravention of this Memorandum of Understanding. The competent authorities of the Contracting Parties shall notify this exclusion immediately to all other Contracting Parties, which shall notify, as required, their TAD issuing bodies and other competent authorities.

6. To operationalise the GMS CBTA container Customs regime, in the spirit of Article 18 of the Agreement, granting temporary admission to containers, in a manner akin to that agreed for motor vehicles, without the payment of import duties and import taxes, without depositing a Customs guarantee bond and free of import prohibitions and restrictions, without the requirement of a container TAD, and with simplified arrangements for the 'early harvest' under Annex 14 of the Agreement as follows:

   a. For the purposes of the 'early harvest' container Customs regime, a container means a transport equipment device of 20ft or 40ft in length that is fully or partially closed to constitute a compartment intended for containing goods, of a permanent nature and consequently strong enough to be suitable for repeated use, specially designed to facilitate the carriage of goods by one or more modes of transport, without intermediate (un/re)loading of the goods, designed for ready handling, particularly when being transferred from one mode of transport to another, and designed for easy filling and emptying.

   b. The container operator is entitled either to use this 'early harvest' container Customs regime, or to comply with existing Host Country and other relevant Customs procedures if the latter are more trade facilitative in nature (*i.e.* application of this regime shall not preclude the Contracting Parties from granting greater facilities by unilateral national arrangements).

   c. Subject to re-exportation and the other conditions laid down herewith, Contracting Parties shall grant temporary admission to their territories of containers originating from other Contracting Parties, where they are owned or operated by persons registered in the other Contracting Parties, without the payment of import duties and import taxes, without depositing a Customs guarantee bond, free of import prohibitions and restrictions, and without the requirement of a container TAD. Accessories, equipment, and spare parts, in reasonable quantities for the repair of the containers, shall also be exempted from import duties and taxes, and temporarily admitted without the deposit of a Customs guarantee bond.

d. The marking of containers shall be done in the manner described in the Attachment to Annex 14 of the CBTA. Containers shall leave the territory of the Host Country in the same general state, except for wear and tear, within a period not exceeding 30 days from the date of entry.

e. Proof of re-exportation of the container shall flow from the Customs declaration document presented by the container operator to the Customs authorities of the Host Country at the time of re-exportation. Satisfactory alternative evidence of re-exportation may have the same effect.

f. A temporarily admitted container that has been heavily damaged in an accident shall be exempted from the obligation of re-exportation, provided: (i) the import duties and taxes have been paid to the Host Country Customs authority; or (ii) it has been abandoned to and accepted by the Host Country Customs authorities; or (iii) it has been destroyed under official Host Country supervision at the expense of the person or entity which has temporarily entered it and any salvaged parts have either re-exited or paid import taxes and duties for.

g. The container operator shall be directly liable to pay, to the Host Country Customs authorities, the import duties, taxes, fines and interest, where applicable and if in contravention of this Memorandum of Understanding, under the customs laws and regulations in the Host Country in respect of any irregularity (*e.g.* breach of customs laws and regulations, or lack of timely re-exportation of the container) in connection with the temporary admission of the container. In case the Customs authority of the Host Country establishes an irregularity, the container operator shall pay the duties, taxes, fines and interest due to the Customs authority of the Host Country not later than 30 days commencing from notification. The Host Country Customs authority shall refund to the container operator the amount received upon the established absence of any irregularity, without delay, provided that the container operator shall claim such refund within the period of time specified by national laws/regulations.

h. The competent authorities of the Contracting Parties (including the NTFCs, TAD issuing authorities, and/or Customs) shall render assistance to each other in accordance with their national legislation with respect to enquiries, investigation of irregularities, and/or recovery of import duties, taxes, fines and interest, where applicable, in connection with cross-border transport operations under the CBTA 'early harvest' implementation.

i. The Contracting Parties shall have the right to exclude temporarily or permanently from the CBTA 'early harvest' implementation any container operator guilty of a serious offense against their laws/regulations applicable to the cross-border movement of containers, if in contravention of this Memorandum of Understanding. The competent authorities of the Contracting Parties shall notify this exclusion immediately to all other Contracting Parties, which shall notify, as required, their competent authorities.

7. The provisions of this Memorandum of Understanding may be repealed and/or amended subject to the unanimous consent of the Contracting Parties via the Joint Committee.

8. This Memorandum of Understanding shall enter into force upon signature by the members of the Joint Committee as the authorised representatives of the Contracting Parties, and remain valid for a 12-month period, starting on the date of last signature. The period of validity may be extended by unanimous consent of the Joint Committee.

9. Each Contracting Party may temporarily suspend the application of the Agreement, including the provisions of this Memorandum of Understanding, with immediate effect in the case of emergencies affecting its national safety. The Contracting Party shall inform the other Contracting Parties as soon as possible of such suspension, which shall end as soon as the situation returns to normal.

10. Any dispute between or among two or more Contracting Parties on the interpretation or application of the Agreement or of this Memorandum of Understanding shall be settled directly or by amicable negotiation in the Joint Committee.

IN WITNESS WHEREOF, we the undersigned, being duly authorized, have signed this Memorandum of Understanding.

Done in six (6) originals in the English language.

For the Royal Government of Cambodia

H.E. Sun Chanthol
Senior Minister, Minister of Public Works and Transport
Signed in Phnom Penh, Cambodia on 16 / 6 / 2017

For the Government of the People's Republic of China

H.E. Liu Xiaoming
Vice-Minister of Transport
Signed in Ha Noi, Viet Nam on 25 / 5 /2017

For the Government of the Lao People's Democratic Republic

H.E.Dr Bounchanh Sinthavong
Minister of Public Works and Transport
Signed in Vientiane, Lao PDR on 12 / 3 /2018

For the Government of the Republic of the Union of Myanmar

H.E. Thant Sin Maung
Minister of Transport and Communications
Signed in Nay Pyi Taw, Myanmar on 27 / 6 /2017

For the Government of the Kingdom of Thailand

H.E. Arkhom Termpittayapaisith
Minister of Transport
Signed in Ha Noi, Viet Nam on 25 / 5 /2017

For the Government of the Socialist Republic of Viet Nam

H.E. NGUYEN VAN THE
MINISTER OF TRANSPORT

Signed in Ha Noi, Viet Nam on 29 / 12 / 2017