NB 495

ANNEX 13b: CRITERIA FOR LICENSING OF MULTIMODAL TRANSPORT OPERATORS FOR CROSS-BORDER TRANSPORT OPERATIONS

To the Agreement between and among the Governments of the Kingdom of Cambodia, the People's Republic of China, the Lao People's Democratic Republic, the Union of Myanmar, the Kingdom of Thailand, and the Socialist Republic of Viet Nam for Facilitation of Cross-Border Transport of Goods and People (hereinafter referred to as "the Annex")

The Governments of the Kingdom of Cambodia, the People's Republic of China, the Lao People's Democratic Republic, the Union of Myanmar, the Kingdom of Thailand, and the Socialist Republic of Viet Nam (hereinafter referred to as "the Contracting Parties"),

Referring to the Agreement between and among the Governments of the Lao People's Democratic Republic, the Kingdom of Thailand, and the Socialist Republic of Viet Nam for the Facilitation of Cross-Border Transport of Goods and People, originally signed 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 Union of Myanmar at Dali City on 19 September 2003, and amended at Phnom Penh on 30 April 2004 (hereinafter referred to as "the Agreement"),

Referring to Articles 3(b) and (n) of the Agreement to the effect that Annexes and Protocols contain technical details or time- and/or site-specific variable elements and that they form an integral part of the Agreement and are equally binding,

Referring to Article 36 of the Agreement, as amended, per which the Agreement may be signed and ratified or accepted and enter into force separately from the Annexes and Protocols,

Referring to the Ninth GMS Ministerial Conference held in Manila in January 2000, the Seventh Meeting of the Subregional Transport Forum held in Ho Chi Minh City in August 2002, and the 11th GMS Ministerial Conference held in Phnom Penh in September 2002, where the Governments agreed to a work program to finalize the Agreement and its Annexes and Protocols by 2005, and

Referring to Articles 34(b) of the Agreement, calling for this Annex to provide technical details,

HAVE AGREED AS FOLLOWS:

Article 1: Introduction

(a) "International multimodal transport" means the carriage of goods by at least two different modes of transport on the basis of a multimodal transport contract from a place in one country at which the goods are taken in charge by the multimodal transport operator to a place designated for delivery situated in a different country. The operations of pick-up and delivery of goods carried out in the performance of a unimodal transport contract, as defined in such contract, shall not be considered as international multimodal transport.

(b) "Multimodal transport operator" means any person who, on his/her own behalf or through another person acting on his/her behalf, concludes a multimodal transport contract and who acts as a principal, not as an agent of or on behalf of the consignor or of the carriers participating in the multimodal transport operations, and who assumes responsibility for the performance of the contract.

(c) Multimodal Transport Operators who perform international multimodal transport operations shall fulfill all conditions laid down in this Annex.

Article 2: Basic Eligibility

(a) Multimodal Transport Operators shall be licensed by, and/or registered with, the national Competent Authority(ies) in their Home Country to perform international multimodal transport operations provided they meet the minimum conditions set out in Articles 3, 4, and 5 of this Annex.

(b) If the Multimodal Transport Operator is not a physical but a legal person or if the owner of the transport enterprise does not fulfill the conditions himself/herself, the person who is in charge of the permanent and effective management of the enterprise must fulfill the conditions with respect to reliability and professional competence.

(c) A Multimodal Transport Operator that no longer meets the requirements shall be divested of his/her license and/or registration.

(d) A Multimodal Transport Operator must meet other eligibility requirements as prescribed by the relevant national laws and regulations of the Home Country.

(e) The licensing and/or registration and right to operate as a Multimodal Transport Operator does not affect the licensing requirements and operating conditions for actual unimodal transport operations.

(f) The Competent Authority of the Home Country shall grant, refuse, or suspend an application for a Multimodal Operator license and/or registration within a period not exceeding 60 calendar days from the date of application. Any such decision shall be documented in writing.

Article 3: Reliability

The multimodal Transport Operator must not have been:

(a) convicted for serious breaches of the criminal law, the commercial law, or the labor law,

(b) divested from the capacity to exercise the profession of Transport Operator as a sanction for breach of applicable transport regulation, or

(c) declared bankrupt unless the rights, competency, privileges, or financial solvency of the Transport Operator have been restored or rehabilitated, as appropriate, according to the laws or regulations of the Home Country of the Transport Operator.

Article 4: Professional Competence

The Home Country Contracting Party shall verify and make sure of the Multimodal Transport Operator's ability for sound economic management, supply of quality service, fair competition, and safe operation of the transport enterprise. For that purpose the Contracting Party shall require the Multimodal Transport Operator to be proficient in the field of multimodal transport, particularly in the following:

(a) legal matters (e.g., contracts, carriage contracts and carrier liability, multimodal transport contracts, companies, accounting, labor law, fiscal law);

(b) transport operation management (e.g., cost and price calculation, payment and financing methods, price regulation, insurance, transport intermediaries, management techniques, marketing);

(c) conditions and requirements on access to the market, if any (e.g., access to the profession, transport documents, fair competition/anti-dumping);

(d) technical matters relating to transport operations (e.g., sizes and weights of vehicles or craft, choice of vehicle or craft, loading and unloading of vehicle and craft, carriage of dangerous and perishable goods, principles of environmental protection in transport operations); and

(e) safety and security measures.

Article 5: Financial Solvency

(a) The Multimodal Transport Operator shall own sufficient financial means to guarantee the proper functioning and management of the transport operation enterprise.

(b) For the purpose of assessing the Multimodal Transport Operator's solvency, the following elements may be taken into account: the Multimodal Transport Operator's balance sheet, assets, bank account credit, capacity to obtain loans, bank guarantees obtained, and liability insurance cover.

(c) The Multimodal Transport Operator shall maintain minimum assets equivalent to Special Drawing Rights (SDR) 80,000 or provide an equivalent guarantee;

(d) The Multimodal Transport Operator must carry insurance covering the Operator's contractual liability.

Article 6: Communication

The Contracting Parties shall periodically communicate their updated register of Multimodal Transport Operators to the Joint Committee for dissemination to the other Contracting Parties, as appropriate.

Article 7: Amendment

Any Contracting Party may propose amendments to the Annex via the Joint Committee. Such amendments shall be subject to the unanimous consent of the Contracting Parties.

Article 8: Ratification or Acceptance

The Annex is subject to ratification or acceptance of the Governments of the Contracting Parties. The same applies to an amendment to the Annex, if any.

Article 9: Entry into Force

The Annex will enter into force on the day that at least two Contracting Parties have ratified or accepted it, and will become effective only among the Contracting Parties that have ratified or accepted it. The same applies to an amendment to the Annex, if any.

Article 10: Conforming National Law

Where necessary, the Contracting Parties undertake to conform their relevant national legislation with the contents of the Annex.

Article 11: Reservations

No reservation to the Annex shall be permitted.

Article 12: Suspension of the Annex

Each Contracting Party may temporarily suspend wholly or partly the application of the Annex with immediate effect in the case of emergencies affecting its national safety. The Contracting Party will inform the other Contracting Parties as soon as possible of such suspension, which will end as soon as the situation returns to normal.

Article 13: Relationship with the Agreement

As a measure to implement the principles laid down in the Agreement, the Annex cannot depart from or be contrary to these principles. In case of incompatibility between the Annex and the Agreement, the latter shall prevail. In case of incompatibility between the Annex and another annex or protocol, such incompatibility shall be interpreted in light of the Agreement.

Article 14: Dispute Settlement

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

Article 15: Denunciation

Once entered into force, the Annex cannot be denounced separately from the Agreement.

In witness whereof, the undersigned, being duly authorized, have signed this Annex.

Done at Vientiane on 16 December 2004 in six originals in the English language.

Signed:

For the Royal Government of Cambodia

.....

His Excellency Khy Tainglim
Senior Minister and Minister In-charge of GMS

For the Government of the People's Republic of China

.....

His Excellency Liao Xiaojun
Vice Minister of Finance

For the Government of the Lao People's Democratic Republic

.....

His Excellency Sommad Pholsena
Vice Minister of Communication, Transport, Post and Construction

For the Government of the Union of Myanmar

.....

His Excellency Soe Tha
Minister for National Planning and Economic Development

For the Government of the Kingdom of Thailand

.....

His Excellency Nikorn Chamnong
Deputy Minister of Transport

For the Government of the Socialist Republic of Viet Nam

.....

His Excellency Tran Dinh Khien
Vice Minister of Planning and Investment