

PROTOCOL 2: CHARGES CONCERNING TRANSIT TRAFFIC

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 Protocol")

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 (n) of the Agreement to the effect that Protocols contain 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 Article 8 of the Agreement, calling for this Protocol to provide technical details,

HAVE AGREED AS FOLLOWS:

Article 1: General Provisions

(a) Definitions

For the purpose of this Protocol, the following meanings shall apply to the underlined terms:

- (i) Charges: any charges, fees, tolls, taxes, or other levies imposed on transport operations, except customs duties.
- (ii) Cross-Border Traffic: interstate traffic and transit traffic.
- (iii) Interstate Traffic: inbound and outbound traffic between two Contracting Parties.
- (iv) Transit Traffic: traffic across the territory of a Contracting Party, when the passage through that territory is only a portion of a complete journey starting and ending in other Contracting Parties.
- (v) Nondiscrimination: equal treatment in objectively the same circumstances, without undue preferential treatment.

(b) Scope of Application

This Protocol will apply to cross-border traffic.

Article 2: Nondiscrimination

- (a) Without prejudice to existing bilateral agreements governing special border zones, which provide preferential treatment, the Host Country shall, with regard to the levying of charges, not discriminate:
 - (i) among other grounds, on the basis of nationality of the transport operator, the place of registration of the vehicle, or the origin or destination of the transport operation; and
 - (ii) in particular, between cross-border traffic and its domestic traffic.
- (b) However, the least developed Contracting Parties (determined on the basis of the United Nations' designation of least developed countries) may apply preferential toll rates and other charges to the vehicles registered within their territories, when undertaking domestic transport.

Article 3: Transparency

- (a) The Contracting Parties shall exchange information on charges on cross-border traffic in accordance with Article 31 of the Agreement and Article 7 of Annex 4 to the Agreement.

- (b) Each Contracting Party shall communicate to the National Transport Facilitation Committees of the other Contracting Parties any subsequent amendment of the cross-border traffic charges regime at least 15 days prior to its taking effect.

Article 4: Legality

The Contracting Parties shall take the necessary measures so that:

- (a) all charges are levied on a legal basis only;
- (b) only legally authorized authorities are entitled to collect the charges;
- (c) authenticated receipts are issued upon payment of the charges;
- (d) any unauthorized collection of charges is prohibited and punished according to national law or regulations, or made a criminal offense; and
- (e) victims of unauthorized collection of charges can file a complaint.

Article 5: Efficiency in the Collection of Charges

The Contracting Parties shall prevent the collection of charges from interfering with the facilitation of cross-border transport, e.g., by combining it to the extent possible with other border clearance procedures, as called for by Articles 4 and 35 of the Agreement and Annex 4 to the Agreement.

Article 6: Permissible Charges

- (a) The Contracting Parties may levy the following charges on cross-border traffic, subject to the conditions set out in this Protocol:
 - (i) Tolls: direct charges for the use of road sections, bridges, tunnels, and ferries;
 - (ii) Charges for excess weight, where permissible under the national law and/or regulations of the Host Country;
 - (iii) Charges for administrative expenses;
 - (iv) Charges for the use of other facilities or services;
 - (v) Taxes on fuel purchased in the Host Country; and
 - (vi) Road maintenance charges (to the extent not included in the charges mentioned above).
- (b) The Contracting Parties shall refrain from levying any charges on cross-border traffic other than those listed above.

Article 7: Fuel Taxes

- (a) The Host Country may collect its fuel tax from vehicles engaged in cross-border traffic refueling within its territory.
- (b) The Host Country shall exempt in its territory, from its fuel tax, the fuel contained in the ordinary/original supply tanks of vehicles engaged in cross-border traffic in its territory.
- (c) The Contracting Parties shall however ensure that no vehicles engaged in cross-border traffic (both transit and interstate) be compelled to refuel before leaving their territories.

Article 8: Road Maintenance Fees

The road maintenance fees levied by the Host Country on vehicles engaged in cross-border traffic (both transit and interstate) shall be commensurate to the road maintenance fees levied by the Host Country on its domestic vehicles. The road maintenance fee charged by the Host Country on vehicles engaged in cross-border traffic (both transit and interstate) may be based on the ratio of the length of their scheduled stay in its territory to the period covered by the road maintenance fee charged on its domestic vehicles.

Article 9: Amendment

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

Article 10: Ratification or Acceptance

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

Article 11: Entry into Force

The Protocol will enter into force on the date 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 Protocol, if any.

Article 12: Conforming National Law

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

Article 13: Reservations

No reservation to the Protocol shall be permitted.

Article 14: Suspension of the Protocol

Each Contracting Party may temporarily suspend wholly or partly the application of the Protocol 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 15: Relationship with the Agreement

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

Article 16: Dispute Settlement

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

Article 17: Denunciation

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

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

Done at Kunming on 5 July 2005 in six originals in the English language.

Signed:

For the Royal Government of Cambodia

(SGD) His Excellency Sun Chantol
Minister of Public Works and Transport

For the Government of the People's Republic of China

(SGD) His Excellency Zhang Chunxian
Minister of Communications

For the Government of the Lao People's Democratic Republic

(SGD) His Excellency Somphong Mongkhonvilay
Minister to Prime Minister's Office

For the Government of the Union of Myanmar

(SGD) His Excellency Soe Tha
Minister of National Planning and Economic Development

For the Government of the Kingdom of Thailand

(SGD) His Excellency Suriya Jungrungreangkit
Minister of Transport

For the Government of the Socialist Republic of Viet Nam

(SGD) His Excellency Pham The Minh
Vice Minister of Transport