More than six years after the start of the East Asian Financial Crisis, the role of the market in maintaining financial stability in this region is still under debate. What should be appropriate adjustments on this issue? See related article on Page 3.
Role of the Market in Maintaining Financial Stability: Finding Appropriate Adjustments*

Chalongphob Sussangkarn**

Six years after the East Asian financial crisis that started in Thailand, the role of the market in maintaining financial stability is still an issue under a great deal of debate. It is also an issue of enormously important current policy relevance. Asia is being told that exchange rates should be more flexible as reflected in the recent Group of Seven statement; “...we emphasize that more flexibility in exchange rates is desirable for major economies or economic areas to promote smooth and widespread adjustments in the international financial system, based on market mechanisms.”1 This suggests that exchange rates should be more market determined, and it is alleged that this will promote smooth adjustments in the international financial system. However, with bad experiences of large financial volatilities prior to and during the crisis, economies in East Asia are still reluctant to allow the full play of market forces to determine exchange rates. Just as the large depreciation of currencies during the crisis brought economic havoc to the crisis affected economies through balance sheet effects, so the large appreciations which may result from market driven exchange rates are likely to create tremendous strains on the export-led economies of East Asia.

While the economies of East Asia are wary of the instabilities that may arise from currency markets, they are at the same time actively working to create another market. This is the Asian Bond Market, and this market is meant to increase financial stability in the region. The aim is to create an active and deep Asian Bond Market in order to be an effective source of long-term financing in the region. Prior to the crisis, most economies in the region with saving deficits had to rely on short-term foreign borrowing, and this, together with mismanagement by the domestic authorities, was a very important factor that led to the crisis. So the idea of the Asian Bond Market is to provide a means to lengthen the debt maturity structure of deficit economies in the future and lessen instabilities from volatile capital flows.

The very different perspectives concerning the two markets discussed above, i.e., associating currency markets with great instabilities and the Asian Bond market with greater stability, should indicate that the role of so-called “markets” in maintaining financial stability is not a black or white issue. Even ignoring the fact that different people will have different opinions about whether a full play of market forces in a particular type of market will increase or decrease financial stability, a particular individual can also regard different markets as having different impacts on financial stability; some markets may be associated with greater instability while others with greater stability.

In addition, a market cannot be considered independently of the rules and regulations or policies that are imposed on activities in that market. So the question is not simply about comparing the situation where a market is free to operate without significant management by the authorities versus one where management and control of the market, such as price controls, are substantial. There is a whole range of degree of control that can be imposed on the market, and it may even be the case that the most effective functioning of a particular market for financial stability is neither at the extreme ends of fully free operation or rigid regulation and control of the market. Somewhere in the middle might be the best. On the other hand, if badly designed, the rules and regulations that are imposed on a market may actually have unintended incentive structures and lead to perverse consequences of instabilities and even crises.2

As an economist, I fully appreciate the crucial role of markets. Economists are taught about the magical role of markets and price signals in leading the economy to an efficient outcome (the invisible hand). Past failures of centrally planned economies illustrate the importance of markets even more. Of course, we also learn about such things as externalities and market failures, especially in a world of imperfect information and incomplete markets. And we also learn about how some markets can be rather unstable by nature, for example the hog cycle. The recent financial crises also illustrate that financial markets can be particularly volatile and risky,
especially if badly managed. Examples of inappropriate regulations leading to the creation of systemic risks and market failures can be found. For example, the provisioning requirements under the Basel Capital Accord call for less provisioning for short-term loans to non-OECD banks and private sector compared to that for long-term loans. This makes sense when viewed in the partial context of a single lender, as during the maturity of a short-term loan there is less time for adverse changes to the borrower or the economy of the borrow. However, this rule then leads to an explosion of short-term lending to emerging markets. Given that most emerging market authorities still have significant gaps in management capacities, the vast amount of short-term borrowing increases systemic risks to the whole economy. The recent crises show how painful the situation can get for both borrowers and lenders if these systemic risks become so large as to lead to a financial crisis. Thus, these types of situations where there could be hidden externalities and market failures need to be carefully studied, monitored and managed.

I think that financial markets are by nature more volatile than markets for real goods and services. This is because they tend to be more influenced by psychological factors compared to the latter markets. Even in goods markets, when psychology comes into play in a dominant way, such as in times of panic, instabilities can result, for example, hoarding in anticipation of shortages such as from an expected war.5 In financial markets, vast amount of trading go on everyday, especially with the development of information technology, but the fundamental anchors to the values in these markets tend to be so-called “long-term economic fundamentals,” whether of companies or of economies. These economic fundamentals are also less certain, and are open to various interpretations, so psychological factors also come into play in the judgment of economic fundamentals. How often has one heard an argument being used by analysts to explain increases in stock or currency prices at one point in time, and exactly the same argument used to explain declines in prices at another point in time.

Where psychological factors come into play, markets tend to be volatile. In fact, a whole field of research arose a couple of decades ago, the field of Behavioral Finance, because empirical evidences suggest that financial (stock) markets are more volatile than can be explained by the Efficient Market Theory (see Shiller 2002).4 This new field of research is quite useful for the study of phenomenon such as bubbles and the like. Even in goods markets, when psychology comes into play, one can reach a point where the market exhibits multiple equilibria and one is in the process of shifting from one equilibrium to another. In recent years, modeling markets with multiple equilibria seems to be a very popular game in graduate schools, and there are multiple equilibria models explaining all kinds of economic phenomena, including financial crises. I think that this explosion of interest in multiple equilibria models reflects a shifting of view from that which tends to regard the economic system as being basically stable to one which sees potential instabilities in many aspects of economic life. If there are multiple equilibria, then given sufficiently large changes in the environment affecting the market, one can reach a point where the equilibrium shifts from one to another one far away. There will then be major instabilities as the market moves from one equilibrium to another. This is similar to situations captured by the so-called catastrophe theory in mathematics.5 The economic costs of the shift in equilibrium can be enormous. We can witness this from costs that economies that went through the financial crisis had to face, assuming that the crisis was indeed some form of a shift to a new equilibrium in a multiple equilibria situation.6

The view that the world is potentially very volatile, particular as it concerns financial markets, is not unrealistic. In fact, with all the talk about reforming the international financial architecture, it seems that very little effective measures have been carried out that have made financial markets less volatile and that reduced the risks of economies getting into financial crises.7 Economies continue to get into crises in a seemingly unending progression.

Finally, going back to where this note started, the need for currency flexibility (particularly in East Asia) in order to correct the current global financial imbalances. First, it has to be admitted that there are currently enormous imbalances in the system. East Asia, which already holds well above half of the world’s foreign reserves is continuing to accumulate reserves at unprecedented rates. At the end of 2001, Japan’s foreign reserves amounted to about US$ 402 billion, while that for China was about US$ 220 billion. By the end of September 2003, Japan’s reserves had increased to about US$ 605 billion with China having about US$ 365 billion, and both continue to increase. In total, Japan and China have together about US$ 1 trillion in combined reserves. Including the other East Asian economies, the region controls a combined total of well above US$ 1.5 trillion, which is almost 60 percent of the world’s foreign reserves. At the same time, the region is continuing to have a current account surplus of about US$ 200 billion a year, so reserves will continue to accumulate as economies try to prevent their currencies from appreciating too much or to maintain their fixed exchange rates.

The current imbalance is not simply imbalanced in East Asia. It is part of a fundamental imbalance in the world’s economic and financial system. The opposite side of the coin to the surpluses and reserve accumulations in East Asia is the vast amount of US$ being pumped into the world financial system as a result of the huge US budget and current account deficit. East Asia is simply recycling back the US$ by re-lending to the US (mainly), and this serves to maintain the dollar’s value (or at least does not let it fall too much).

What makes matter worse is that in the current global financial architecture, there is really no fundamental anchor to the value of currencies.
Currencies are just paper, and not backed up by anything. Further, there are no clear rules as to how the system and economies should adjust if imbalances arise.\(^8\) In the old days of the Gold Standard, the link between domestic money supply and the reserves provided an element of automatic adjustment that could prevent extreme imbalances from arising. In the US$-gold standard, the US$ was fully guaranteed to be convertible into gold at a fixed exchange rate, and this provided the discipline for the US not to have huge deficits, otherwise there would simply be too much US$ in circulation for it to be feasible to maintain the exchange guarantee with gold. Of course, like a bank, the system can only work with sufficient confidence in the system. If everyone wanted to actually change US$ into gold the system would collapse, which was what precisely happened in the early 1970s.

Because currencies in the current system are simply paper, my view is that the current imbalances are not sustainable. Going on as before, more and more paper (US$) will be pumped into the system. As long as people (or governments) are willing to hold these papers, and therefore back up their values, the system can go on. However, the situation will become more and more artificial, and eventually there will be a real danger that the whole thing will just collapse. Like a rubber band that is being stretched more and more, the longer we continue to stretch it, the limit will eventually be reached. And when it snaps there will be catastrophe, just like going over the edge in catastrophe theory, or moving to a new equilibrium in a situation with multiple equilibria.

How to proceed? Well, clearly, simply demanding that some economy (China?) or group of economies adopt more flexible and market based exchange rates is not really addressing the fundamental problem with the current global financial system. One might turn around and put the burden of adjustment on the economy that has been pumping out more and more paper (the US), as getting rid of over-expenditure in the US will certainly be reflected in less surpluses in East Asia.\(^9\)

The problem is that the imbalances inherent in the current situation are already very large, as witnessed by the rapid accumulation of reserves in Japan and China, i.e., the elastic band is already significantly stretched. Because the current global financial system has no clear rules for adjustments, imbalances have therefore been allowed to build up. With current imbalances, unleashing the full force of the currency markets in the hope of bringing about a smooth transition to a new equilibrium is just wishful thinking. Given the inherently volatile nature of currency markets, and the existing imbalances, unleashing the full force of the currency markets is most likely to bring about chaos and economic crises.

Economies in East Asia are also competitive with each other, so any sustainable currency movements will require coordinated efforts. I believe that it is now quite essential for East Asian economies to discuss and implement concrete exchange rate coordination mechanisms, and implicitly reserves management strategies, in order to bring about a smooth adjustment to the current imbalances in the global financial system as a group. Going on in a business as usual fashion is very dangerous as was earlier indicated. Given that most of the world’s reserves are controlled by East Asian economies, it should be East Asia that makes pronouncements about how the world’s financial system should be evolving. Decisions on how these huge financial resources are managed have the potential to stabilize or greatly destabilize the global financial system. It is therefore imperative that a serious dialogue be initiated within the region. Finding appropriate adjustments to the current imbalances should be the next major task of the ASEAN+3 group.

In the long-run, of course, economies need to seriously think about real reforms of the international financial architecture. On this, East Asian economies must also have a great deal of input, given the amount of resources under their control. The role of the US$ will need to be re-examined, together with the significant reliance by East Asian economies on the US market as an important engine of growth, as this imposes important constraints on exchange rate adjustments. The EU’s attention is currently occupied by its eastward expansion. Over the next few years, the US may also become more and more diverted by the north-south integration of the Free Trade Area of the Americas (FTAA). Therefore, East Asia needs to actively work toward greater economic integration in the region. Progress is happening every year, and East Asian Leaders appear to realize the importance of pushing ahead on this front. This is very important, as a sustainable adjustment of the kind of imbalances that East Asia has with the US at present will surely require much less reliance on the US market for the region’s growth compared to the situation at present.

**ENDNOTES**

3. Of course, there are special types of markets where cycles rather than stability may be the norm, such as the example of the hog cycle alluded to earlier.


8 This is particularly true with respect to the US.

Shipping Cartels: What Can We Do about Them?*

Deunden Nikomborirak **

INTRODUCTION

The recovery of the Thai economy since the 1997 Asian financial crisis has relied heavily on the country’s ability to boost exports. Shipments by sea accounted for a hefty 94 percent of the transnational shipment of goods, or over 130 million tonnes, in the year 2000. Only 10.4 percent of this amount was transported by Thai ships. The heavy reliance on foreign shipping lines leaves Thailand vulnerable to collusive practices – price fixing – on the part of major foreign lines that are beyond the reach of domestic legal jurisdiction. Sudden price hikes and arbitrary ancillary charges are the most common examples of the abuse of a superior bargaining power by international liner conferences. Many empirical studies have shown that the presence of shipping cartels contributes to higher freight rates. In particular, Fink et al. (2001) showed that private anti-competitive practices were responsible for high rates, more so than government policy restrictions that are the subject of WTO negotiations. Since transport costs were estimated to be equivalent to 8.3 percent of the value of developing countries’ goods transported1 in 1997,2 elevated rates have a marked impact on the competitiveness of developing countries’ exports.

These practices have been denounced by shippers worldwide, as well as by international organizations such as the World Bank, the United Nations Conference on Trade and Development (UNCTAD) and the Organisation for Economic Co-operation and Development (OECD). Yet, liner conferences seem to have the blessing of the major industrial countries and areas such as the United States, Japan and the European Union by providing antitrust exemptions for the industry. This “exportation” of shipping cartels has been sustained at the cost of shippers worldwide.

The Thai government recognizes the exposure of Thai exporters to foreign liner conferences and has been promoting a national shipping company and the registration of Thai vessels. However, these efforts have been mostly in vain. This paper seeks to examine and assess the various options facing the government as well as shippers in countering the formidable market power of liner conferences. It will consider the possibility of cooperation between government and private associations at the regional level. At the same time, the possibility of addressing the issue in WTO – either in the sector-specific negotiations in the General Agreement on Trade in Services (GATS) or in the competition policy agenda – will also be examined.

1. LINER SHIPPING: A 130-YEAR HISTORY OF INTERNATIONAL CARTELS

Liner shipping refers to containerized shipping services that are provided on a regularly scheduled basis to pre-determined ports. It is distinct from bulk shipping services that carry non-containerized raw materials in bulk form such as crude and refined oil, grain, coal, cement or liquefied gas, and that are provided only on demand by individual shippers on non-scheduled routes. While bulk shipping is generally believed to be a fairly competitive market (WTO 1998), liner shipping has been involved in cartel-like price-fixing and capacity-allocating arrangements since the 1870s. At that time, the invention of fast steamships led to cut-throat competition in the market that threatened the survival of both the less efficient traditional sailing ship operators and the new entrants that faced large fixed costs. In order to stop the destructive price competition, shipping operators entered into formal agreements – known as the conference system – that entailed common pricing and capacity allocation.

Based on this particular historical experience, the operation of liner conferences has been exempted from anti-trust provisions and scrutiny in most parts of the world. In the United States and Canada, the exemption was specified in the 1916 Shipping Act, while in other societies such as Japan, Australia and the European Union, the shipping industry is included in the list of “block exemptions” (an exemption that applies to an

---

** Dr. Deunden is Research Director for Economic Governance, Sectoral Economics Program, TDRI.

The author would like to thank Mr. Paiboon Ponsuwanna, President of the Frozen Foods Association and the Secretary General of the Thai National Shippers Council, for providing very useful and insightful information on the industry and practices of shipping lines.
entire industry) in the respective national anti-trust laws. In the case of the United States, freight rates charged by conference members need to be filed with and approved by the Federal Maritime Commission (FMC), the sector-specific regulatory body. These rates are open to the public. Any discounts that were not specified in the submitted schedules used to be subject to fines by the FMC. Oddly, the regulatory body helped to monitor the cartel to ensure that members did not “chisel.” This particular price-monitoring scheme was supposedly devised in order to prevent conference members from offering more preferential rates for larger shippers with greater bargaining power, placing smaller shippers at a competitive disadvantage. However, it is not clear whether the genuine underlying intention of the government cartel support was to protect the interest of shippers or that of the shipping lines and the industry.

The anti-trust exemption granted to shipping conferences has been controversial and constantly criticized. The rationale for maintaining the cartels, as forwarded by international shipping lines, is as follows:

- Uncoordinated capacity allocation among different routes can lead to low capacity utilization and thus, high-costs, or a reduction of scheduled services. Conferences will thus ensure optimal capacity allocation and therefore, low cost, and the availability of regular and predictable services.
- Unbalanced trade flows on certain routes may lead to excess capacity on the returning leg that can be very costly. Conferences can ensure the availability of capacity and less exaggerated price fluctuations in the face of demand/supply imbalances.
- Destructive competition will in the end lead to a highly concentrated market. Conferences, by allowing carriers to earn a compensatory rate of return on their investment, can ensure the sustainability of a less concentrated market.

These conferences, and various other types of agreements among shipping lines, are still in operation (see Box 1). Currently, there are approximately 150 liner conferences operating throughout the world, with membership ranging anywhere from two to 40 separate lines (OECD 2002). Many more other types of agreements and arrangements are also in place. Available data indicate that liner conferences’ share of the market is approximately 60 percent of the TEU (20-foot equivalent units) capacity in the major trades. However, their shares may be much higher on specific routes, in particular, those between the United States and Asian countries.

These arrangements are continuously under review in OECD member countries. Although no countries have moved to eliminate these exemptions, various measures have been taken to weaken the collusive power of these liner conferences, in particular in the United States. For example, in 1984 the United States passed the Shipping Act, which allowed members of the conferences to offer legally discounted rates as long as these rates were made public and other carriers were notified.4

---

**Box 1 Other Forms of Liner Shipping Organizations**

**Capacity stabilization and discussion agreements**

Stabilization agreements attempt to control freight rates and regulate capacity through a binding agreement covering all or most operators of the trade in the region. Such arrangements can be made among conference members or between conference members and non-conference members. Discussion agreements, on the contrary, are similar arrangements but agreements are non-binding. It should be noted that treatment of agreements between conference and non-conference lines are treated differently across countries. In Australia, Japan, New Zealand, Norway and the United States, such agreements are also exempted from anti-trust laws. In the case of the European Union, however, such agreements do not benefit from the block exemption and are closely scrutinized by competition authorities.

**Consortium**

Consortia are agreements/arrangements between shipping companies aimed primarily at rationalizing container shipping services in order to benefit jointly from economies of scale. Unlike conferences, consortia do not involve the setting of uniform or common freight rates. Again, the treatment of such consortia under competition policy is diverse across countries. In Australia, Canada, Japan, Mexico, New Zealand, and the United States, such agreements are also exempted from anti-trust laws. In the case of the European Union, a consortium with market share below a threshold level may benefit from the group exemption.

**Examples of conferences/agreements**

- Transpacific Stabilization Agreement
- Philippines/Europe Conference
- Far Eastern Freight Conference
- Far East/South Asia/Middle East Conference
- Europe/Indonesian Freight Conference
- Japan/Philippines Freight Conference
- Mediterranean Far East Conference

**Strategic global alliances**

These agreements are aimed at operational integration in order to benefit from economies of scale. These cover the employment and utilization of vessels, joint vessel route assignments, itineraries, sailing schedules, the type of vessels to be employed, additions and withdrawal of capacity, port rotations, use of joint terminals, pooling of containers and establishment of container stations, vessel feeder routes and coordination of inland services where permitted. An agreement may also entail restrictions on the use of third-party carriers without prior consent of members and may include penalties in case of breach of contract.
While such measures did lead to a general reduction in prices, according to the FMC (1989), the public filing and advanced notice requirement remain as obstacles to an independent and flexible pricing policy. As a result, the United States passed the Ocean Shipping Reform Act (OSRA) in 1998 with the aim of weakening the conferences’ power. The law did away with the filing and notice requirements and allowed individual carriers to enter into confidential contracts with individual shippers. As a result, most agreements are privately negotiated. According to OECD (2002), only 10 percent of the United States-Europe traffic is negotiated strictly under conference terms.

This same Act also stipulates that all conferences must be open, in that carriers are able to enter or exit at any point in time without penalty as long as a notice is provided in advance (normally 10 days before the intended action).

Despite the weakening strength of the conferences as a result of regulatory reform combined with the entry of lower-cost newer shipping lines, in particularly those from China, South Korea, Singapore and Taiwan, the shipping industry is still far from being competitive. Pricing determined by bilateral negotiations between the lines and the particular shipper remains opaque and potentially discriminatory. Moreover, various ancillary charges are often applied, such as terminal handling charges (THC), bunker fuel adjustment factor, and currency adjustment factor; these are designed to transfer all risks to shippers without any clear formula and without supervision of a regulatory body.

These rationales are currently being questioned, however. For example, a study on Competition Policy in Liner Shipping by OECD (2002) found that better quality service and lower prices were associated with a decline in conference power rather than price-fixing and capacity-allocating arrangements. That paper recommended to members that the anti-trust exemptions for price-fixing and rate discussions be removed. Similarly, a World Bank study (Fink 2001) found private anti-competitive practices to be the major obstacle impeding international trade. The study proposes that the current round of service negotiations at WTO should seek to discipline such undesirable restrictive practices.

2. THE GLOBAL SHIPPING LINE SECTOR

The shipping line sector is one that has seen increasing concentration over the years. Several mergers have taken place in recent years including Maersk (Denmark) and Sealand (United States), P&O (United Kingdom) and NedLloyd (Netherlands), while Neptune Orient Lines (Singapore) has taken over the American President Line (United States) and Hanjin (South Korea) has taken over DSR-Senator Line (Germany), which earlier took over the United States shipping line, Senator. In the year 2001, the top 20 liner operators accounted for 72 percent of world container capacity in terms of TEU; the five largest operators account for 34 percent of the fully containerized fleet capacity as can be seen in OECD (2002). The top five lines are from Denmark (Maersk Sealand), the United Kingdom (P&O NedLloyd), Switzerland (Mediterranean Shipping Co.), Singapore (American President Line) and Taiwan (Evergreen) as shown in Graph 1. Japan, South Korea and China also have several top-20 shipping lines. It is interesting to note that since the 1980s, United States owners have gradually divested their interest in the shipping industry by selling off lines to foreign players in the market. Today, none of the top-20 lines is controlled by individuals or legal entities in the United States.

The increase in concentration in the shipping industry can be attributed to the substantial increase in the average size of vessels in order to exploit economies of scale and the average scale of operation. With increasingly larger capacity, greater network organization is required to sustain high-capacity utilization. This implies that a hub-and-spoke structure (such as that found in the airline industry) will become increasingly prominent. This, in turn, will lead to more mergers, consortia or alliances.

3. THE ASSOCIATION OF SOUTH EAST ASIAN NATIONS (ASEAN) SHIPPING INDUSTRY

Despite the fact that certain ASEAN countries, i.e., Indonesia and the Philippines, are island-states and that the Southeast Asian region contributed approximately 15 percent of the world container traffic during the period 1990–1997, except for Singapore, no ASEAN country operates a shipping line of an international scale. Consequently, regional trade has become highly dependent on foreign shipping operators. Exporters and importers are thus fully exposed to the collusive practices of shipping lines that are beyond the reach of domestic competition law and policy. What options do ASEAN governments have to minimize such exposure?

The immediate solution that comes to mind for most governments is to promote home-grown shipping operators that will not only minimize exposure to foreign lines, but will also save the country a significant amount of foreign exchange spent each year on the international transport of goods. Many countries consider the shipping industry to be a target for industrial promotion and thus provide various types of tax incentives and, sometimes, subsidies. In many cases, a state-owned shipping operator is established in the hope that state initiation will spur private interests and participation in the future.

The second alternative is for the shippers to bind together to establish bargaining power that can counter the formidable strength of shipping lines. Indeed, there are as many national and regional shippers’ associations as there are shipping conferences. However, owing to the sheer number of shippers as opposed to the number of shipping lines, these associations have had a difficult time in coordinating their moves to apply counter-pressure on liner conferences.
Graph 1 Top-20 Liner Operators (TEUs)

The third alternative is to have the issue addressed in WTO. There are two channels through which the concern can be addressed. The first is through the maritime sector negotiation in GATS; the second is through the competition policy agenda under the subject of international hard-core cartels that are currently being discussed in the Working Group on the Interaction between Trade and Competition Policy (WGTCP).

Indeed, these alternatives are not exclusive of one another. A government may choose to move in all three fronts in parallel. The following sections will discuss each of these alternatives in more detail.

4. GOVERNMENT POLICY TO PROMOTE LOCAL SHIPPING INDUSTRY

To promote a domestic shipping industry, most governments resort to two main options. One is to promote national shipping lines and the other is to promote the registry of foreign shipping lines in the hope that there will be certain technological “spin-offs” as a result of local equity, management and employment participation.

To encourage a domestic shipping industry, the government often resorts to tax incentives, and less commonly, subsidies, for private investment in shipping. However, government financial assistance to international shipping lines may be in vain since a shipping line can choose to register its business anywhere in the world. This is known as a “de-flagging” process. For example, a Thai shipping line may choose to register in Singapore instead of Thailand in order to enjoy the permanent corporate income tax exemption offered by the Government of Singapore.

Fierce competition for international shipping line registry is due to the fact that every country wants a share of these lines’ income as well as the employment (shipping crews) that they generate. Shipping lines often choose to register in developing countries in order to enjoy cheaper labor used in manning ships. At the same time, countries, including those in ASEAN, compete to offer tax incentives. Competition is so strong that certain countries, such as Singapore and Malaysia, offer permanent corporate tax exemption for shipping businesses in addition to an array of other tax exemptions such as those related to import duties, value-added tax, and income tax for shipping crews, among others (see Table 1). Indeed, the brutal global competition for shipping registry has been to the benefit of shipping lines at the expense of host countries.
### Table 1 Exempt from Tax Offered to Registered Shipping Companies in the ASEAN5

<table>
<thead>
<tr>
<th></th>
<th>Import tax</th>
<th>Corporate income tax</th>
<th>Personal income tax</th>
<th>Other tax</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Thailand</strong></td>
<td>Exempt from import duty (Board of Investment (BOI) law). Exempt from import tax for ships up to 1,000 gross tons.</td>
<td>Exempt from tax for eight years.</td>
<td>Exempt from tax for crews who work on a Thai ship that operates internationally.</td>
<td>(1) Exempt from tax on ship leasing; (2) Exempt from income tax on proceeds from sale of used ships or compensation from an insurance company; (3) Exempt from income tax on the portion of income put aside for the planned purchase of ships; (4) Facilitation of speedier VAT refund.</td>
</tr>
<tr>
<td><strong>Singapore</strong></td>
<td>Exempt.</td>
<td>Exempt.</td>
<td>Exempt from tax on dividends from shares in shipping line companies registered in Singapore. Exempt from income tax for crews who work on a Singaporean ship that operates internationally, but on the condition that most of the work is outside Singapore.</td>
<td>(1) Exempt from tax on the value-added of a ship when it is sold; (2) Exempt from tax on ship rentals if ships are leased from domestic company; a special rate applies when the ship is leased from overseas; (3) Exempt from corporate income tax; (4) Exempt from VAT on proceeds generated from asset sales; (5) Exempt from tax on freight for a company based in Singapore.</td>
</tr>
<tr>
<td><strong>Malaysia</strong></td>
<td>Exempt.</td>
<td>Exempt.</td>
<td>Exempt from tax on dividend from holding shares in shipping company registered in Malaysia. Exempt from tax for crews who work on a Malaysian ship that operates shipping line internationally.</td>
<td>(1) Exempt from tax on the value-added of a ship when it is sold; (2) Exempt from tax on ship rentals, if ships are leased from a domestic company; (3) Exempt from corporate income tax; (4) Exempt from tax on freight for a company based in Malaysia; (5) Accelerated depreciation of 60 percent allowed for the first year and 40 percent for the second year.</td>
</tr>
<tr>
<td><strong>Indonesia</strong></td>
<td>Exempt from customs tax and commercial tax for machines and tools imported from other countries.</td>
<td>None.</td>
<td>Exempt from tax for crews who work on an Indonesian ship, with special rates of between US$47.88 and $191.52 per year depending on responsibility and number of family members.</td>
<td>n.a.</td>
</tr>
<tr>
<td><strong>Philippines</strong></td>
<td>Exempt from import duty for BOI member. Exempt from duty and import tax for machines and tools used in ship maintenance in a dock registered with the Maritime Industry Authority.</td>
<td>None.</td>
<td>Exempt from tax for crews, with special rate of 5–10 percent of revenue.</td>
<td>n.a.</td>
</tr>
</tbody>
</table>

**Note:** n.a. means not available.


---

Competition for shipping registry has not only eroded the potential collection of tax from these lines, but also any other gains associated with local private sector equity and management participation that could lead to a transfer of know-how. Again, fierce competition has led to the elimination of any kind of condition that a host country might place on the shipping line. These include domestic equity share, the employment of local nationals and the purchase of requirements. As can be seen in Table 2, Singapore imposes no equity or employment restrictions on shipping lines that choose to register in Singapore. Moreover, Singapore allows a line to flag its ships from anywhere in the world. By contrast, Thai regulations require registered ships to undergo local inspection. This is known as a “closed registry” as opposed to “open registry” where no requirements whatsoever are imposed.

Thailand has not competed effectively in this system. Many Thai shipping lines have chosen to register in Singapore in order to take advantage of tax and other privileges. The government, however, insists on having a national shipping line in order to retain some of the valuable foreign exchange spent annually on sea transport. The Thai Maritime Navigation Company (TMNC), a state-owned enterprise, enjoys a captive state market. According to the law, government agencies are
### Table 2 Conditions Placed on Foreign Liners Registering in the ASEAN5

<table>
<thead>
<tr>
<th>Type of business</th>
<th>Foreign equity</th>
<th>Employment</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Thailand</strong></td>
<td>Must be a limited company or a public limited company established under Thai law.</td>
<td>Foreign equity must be not more than 49 percent of registered equity. Number of foreign shareholders must be less than half the total shareholders. These conditions do not apply to branch offices.</td>
</tr>
<tr>
<td><strong>Singapore</strong></td>
<td>Must be a limited company or a public limited company established under Singaporean law.</td>
<td>No restrictions.</td>
</tr>
<tr>
<td><strong>Malaysia</strong></td>
<td>Must be a company established under Malaysian law. Head office must be in Malaysia. Majority of management must be in Malaysia.</td>
<td>The majority of directors on the board and shareholders must be Malaysians.</td>
</tr>
<tr>
<td><strong>Indonesia</strong></td>
<td>Must be a company established under Indonesian law. Size of ship must be no less than 20 cubic metres or 7 gross tons.</td>
<td>Foreign equity must be no more than 49 percent of registered equity.</td>
</tr>
<tr>
<td><strong>Philippines</strong></td>
<td>Must be a company or an association established under Philippine law. Size of ship must be more than 15 gross tons.</td>
<td>Foreign equity must be no more than 40 percent of registered equity.</td>
</tr>
</tbody>
</table>

Note: n.a. means not available.


required to seek shipping services from TMNC unless the price quoted by the state enterprise is more than 10 percent higher than that quoted by the lowest bidder. In practice, however, bidding is rare; more often than not, TMNC gets the job. The worst part of the story is that TMNC itself does not own any vessel. Like any other freight forwarder, it simply acts as a broker and buys space on foreign lines, which defeats the purpose of having a local shipping company, i.e., to lessen dependence of foreign carriers.

To conclude, competing for the registry of foreign shipping companies is a “no-win game” for any country. The foot-lose shipping lines will always find a better deal elsewhere, while a host country is likely to gain next-to-nothing in playing host except for a few unskilled jobs aboard the ships. The option of setting up a government-owned shipping company or subsidizing a domestic shipping line is also no panacea. The shipping business is not only capital-intensive, but also knowledge- and network-intensive. Moreover, the business has evolved over time to become even more complex.

According to a study by OECD (2002), the average size of vessels has increased significantly, which means that maintaining high-capacity utilization is becoming a major challenge. The scale and scope of operations has also expanded. We have witnessed numerous mergers among lines, and this trend is on-going. Also, owing to increasing sophistication and the rising bargaining power of large shippers, such as Wal-Mart, lines have had to become increasingly more involved in logistics and the land transport leg to ensure punctual door-to-door delivery. This means that many lines have become multimodal transport operators with their own local land transport network. These are not easy tasks. Thus, not every country can be among the top 50 in terms of shipping lines. Even the United States has chosen to leave this extremely complex industry; instead, its investors deal with the cartels. That is why we have seen a series of regulatory reform measures in the maritime sector in the United States. After all, that country has no shipping lines left to protect and, consequently, it has shifted its policy fully in favor of its own shippers.

For a small country such as Thailand that cannot compare with the United States, the possibility of a success story in this industry is nil. Thus, it is time for the Thai Government, like the United States Government, to forget about having a domestic shipping line and focus instead on protecting the interests of its own shippers that are not as well endowed with bargaining power as Wal-Mart and other large multinationals. Before we proceed to discuss the role of the government, it would be appropriate first to examine the role of shippers in trying to protect their own interests.

### 5. THE ROLE OF NATIONAL SHIPPERS COUNCILS AND THE ROLE OF THE FEDERATION OF ASEAN SHIPPERS COUNCIL (FASC)

We have seen examples in which shippers in Hong Kong have united in refusing to pay THC (ancillary charges at the harbor, such as craning and forklift). In the end, lines agreed to absorb half the
charge. Compared with shippers in Hong Kong and Japan, Thai shippers pay relatively high THC in that they have to absorb all harbor charges that once had been included in freight rates. However, not all shippers pay the same THC. Prices are always subject to negotiation in the shipping business. The more bargaining power one has, the lower are the charges.

To the author’s knowledge, there is only one trade association in Thailand that has been able to unite in order to counter the market power of shipping lines; that is the Thai Frozen Food Association, which has been in operation for decades. As a block, the Association was able to obtain preferential freight rates and bargain with the lines so that THC is waived. The success story of this group should prompt similar initiatives from other trade associations. Unfortunately, other attempts have failed. This is mainly because large players in the industry are often unwilling to “sacrifice” their competitive edge over smaller players with less bargaining strength and thus they face higher freight rates. In other words, the lines’ practice of offering different “rebates” for different shippers of various size enables them to play the game of “divide and rule.” Larger shippers are content with the deal they have secured, and thus are unwilling to make an effort to help smaller shippers that may be their competitors in the market. Without large shippers, smaller shippers by themselves can never hope to build up sufficient bargaining power to counter the lines.

With obstacles in coordination even at the national level, there is little hope for a regional arrangement. While FASC addresses the cartels’ concern and urges governments to pass regulations, there is little that members coming from such diverse backgrounds can do. Nevertheless, the Federation does represent a voice that shipping lines and governments will have to take into consideration.

6. REGULATION OF INTERNATIONAL SHIPPING LINES

Although international shipping lines are beyond the reach of domestic anti-trust regulations because they are not registered in Thailand, it is still possible to regulate certain aspects of their services, but not their freight rates since that could easily lead to market distortions. Moreover, unreasonable rates may prompt shipping lines to terminate services altogether. To better balance the negotiating power between domestic shippers and international shipping companies, the government may pass regulations that require international lines to consult the national shippers’ council or association before they increase prices.

Thailand drafted a maritime bill, which stipulates that adequate notice must be given to the local regulatory agency and that shipping lines must negotiate with shippers before any rate increase. According to the bill, shipping lines would be allowed to increase freight rates, but must give the Office of Maritime Promotion Commission (OMPC) 90 days’ notice along with reasons supporting the increase before it could be implemented. If the state did not seek 15 days’ notice, the new rates could be enforced. If negotiations between the two parties fail to reach an agreement, an arbitration committee made up of impartial outsiders would be formed and its decisions would be final. Unfortunately, the new government that came into power in 2001 took no interest in the subject. Consequently, the draft bill did not make it to the legislative process that would have enacted it into law.

A similar law is being considered by Malaysia. This particular move, i.e., to clamp down on unilateral abrupt rate increases, has been adopted in many other countries including Japan, Australia, and South Korea. In the case of Hong Kong, the government has intervened to force a 10-month freeze on THC. It should be noted that these additional charges, such as THC, currency adjustment factor charges and bunker fuel adjustment factor charges, are not regulated by the FMC. Thus, there has been little transparency and accountability involved in setting these charges.

7. WTO

Maritime transport has always been a relatively liberalized service. Unlike in the air transport sector, in shipping services rarely is any exclusivity offered to “national flag carriers” on international routes. Also, the frequency and the capacity of ships calling at the ports are not restricted. Fierce competition for registry of international lines, as discussed previously, has dissolved many policy restrictions in terms of foreign equity, employment of foreign nationals and even technical and safety standards. The only remaining restrictions involve cabotage policy, which often applies only to domestic shipping services, and the exclusivity of national flags in the case of government cargoes. In short, the issues governing the shipping industry are concerned more with “fair trade” than “free trade.”

The issue of “fair competition” in services can be found in Article IX of GATS, which has little substance. Members are required only to provide non-confidential information and consultations concerning alleged restrictive practices upon the request of the affected member country. To date, this provision has been exploited only once, i.e., by the United States against Belgium, concerning access of Ameritech, a United States telecom firm, to a license to publish commercial directories.

While provisions in the general obligations may be weak, sector-specific commitments, such as those in the telecom sector, may include competitive safeguards. The “Reference Paper” of the Agreement on Basic Telecommunications of 1997 contains a general commitment of members to prevent suppliers – unilaterally or collectively – from engaging in or sustaining anti-competitive practices. However, this provision is designed to guarantee foreign access to local markets, rather than establish international competition rules.
The competition policy agenda that is currently being discussed in the WGTCp focuses exclusively on three specific issues, one of which is international cartels. The following sections provide more detail about each of these channels through which concerns about shipping cartels can be addressed.

7.1 Maritime Transport Services

The results of the Uruguay Round, while incorporated in the schedules of commitment in maritime transport of each member, also contain an annex to GATS on negotiations in maritime transport and a ministerial decision to prolong maritime transport negotiations until June 30, 1996, well after the closing of the Round in 1994. In effect, the Negotiating Group on Maritime Transport Services was established. That Group decided to suspend the negotiations until the commencement of the next Round. The failure to reach an agreement results from the refusal of the United States to negotiate on the ground that commitments offered by the other parties were too insignificant to effect real changes in the industry. However, the 32 members (counting the European Union as one member) that participated in the negotiations agreed to abstain from imposing any additional restrictions.

Maritime sector negotiations have concentrated narrowly on “market access” issues. There is a need to deal with anti-competitive practices undertaken by various forms of maritime cartels prevalent in the industry. Large societies with significant bargaining power, such as the United States, the European Union and Japan, can probably tackle the problem on their own, despite “extra-territoriality problems,” in order to stem the power of the conferences and to protect the interests of their shippers. Smaller states, such as Thailand, however, with limited enforcement capacity and weak bargaining power, can be in a more difficult position and may need to rely on international rules to enforce competition disciplines in the sector.

Therefore, it is recommended that ASEAN nations, along with developing country allies, should demand that the “block exemption” provided for shipping cartels be removed from national competition laws. In cases where the law is intentionally not enforced, the foreign consumers affected should be provided with the right to challenge the anti-competitive practices of lines in the national courts of countries whose citizens own or control these shipping lines. This type of provision is found in the WTO rules on intellectual property and government procurement (Mattoo and Subramanian 1997). Developing countries should make this issue a “prerequisite” to entering into negotiations on maritime services in GATS in the next Round.

7.2 Competition Policy Agenda

Trade and competition policy is considered to be one of the “Singapore Issues.” That is, it is one of the issues born out of the Ministerial Conference in Singapore in December 1996. The ministers attending that meeting decided to set up the WGTCp, the task of which is only exploratory, with a focus on considering various issues and concerns raised by members relating to the field. The WGTCp will not negotiate new rules or commitments. The ministers made it clear that no decision had been reached on whether there would be negotiations in the future, and that any discussions could not develop into negotiations without a clear consensus decision.

Developing countries are apprehensive about the competition policy agenda, however. They are suspicious, rightly, that the issue will be about market access rather than ensuring fair trade. Since most developed countries have a well-established competition law in place, market access appears to be developed countries’ agenda to ensure access to developing countries’ markets without such laws. Thus, developing countries must tread carefully. They believe that there are currently large gaps in the establishment of competition law, policies and institutions among member countries so that any negotiation will not be feasible. Therefore, it is necessary to narrow these gaps. That is, capacity-building will be a prerequisite to consideration for negotiation in the next round. Consequently, the Doha Ministerial Declaration specified key issues to be addressed before the Fifth WTO Ministerial Conference in November 2003 (as can be seen in the underlined text in Box 2).

Following the Declaration, the WGTCp identified three issues to be discussed in three separate meetings in 2002: (1) technical assistance and capacity-building, (2) international hard-core cartels and multilateral cooperation, and (3) core principles in the enforcement of competition law. The discussions on cartels directly concern shipping cartels, as well as other manufacturing cartels. The main issues of concern in the discussion on this topic include the definition of a hard-core cartel, the implications for domestic competition laws and policy, and the scope of cooperation in fighting such cartels.

It is interesting to note that paragraph 25 of the Doha Ministerial Conference states that cooperation is to be voluntary rather than mandatory. This appears to be quite odd in that WTO, unlike other forums such as APEC (Asian-Pacific Economic Cooperation), is known for its “binding” commitments.

It is recommended that ASEAN countries, and hopefully other developing countries, join together in proposing an international trade rule that would prohibit hard-core cartels, much like other fair-trade rules including those on dumping, subsidies, and the violation of intellectual property rights. This option, however, is complicated and is likely to meet strong resistance from major industrialized countries that have an interest in protecting their own transnational corporations. However, such an approach would be the most effective means in stamping out cartels that have not yet been considered in the WTO discussions.
8. CONCLUSION

The shipping line business is complex, requiring massive investment in a fleet of sufficient size, the establishment of a land transport network, and expertise in logistics. Big lines are getting bigger, while smaller ones seem to be disappearing from the picture altogether. There is little or no justification for countries with no capabilities or qualifications to attempt to establish a domestic line. Since such a line would have very little chance of becoming competitive at the international level and would only be a burden for the government to impose costly measures, such as subsidies and privileges, to keep it alive.

Instead, the government should focus on protecting its own shippers from potential abuse of market power by international shipping cartels. It may consider passing regulations that require lines to notify and consult shippers before any rate increase. At the same time, it should put effort into having the issue addressed by WTO, either in the maritime service negotiations or in competition policy. After all, the WTO’s Doha Development Agenda is about developing countries. The blatant anti-competitive practices on the part of liner conferences have been sustained at the expense of shippers from developing countries with little bargaining strength. It is time that we put serious effort into establishing “fair” competition as opposed to “free” competition (market access) at that multilateral forum.

ENDNOTES

1 The figure for developed countries is significantly lower at 4.2 percent. This can be explained by larger volumes, more efficient transportation, and the higher value goods shipped.
2 WTO (1998, 3).
3 For example, after the 1997 Asian financial crisis (starting in July), Thailand’s imports dropped significantly, while exports benefited from a weaker baht. As a result, there was a shortage in the supply of outbound shipping capacity, while inbound capacity was excessive. This led to a large increase in shipping costs for exporters and a decline in costs for importers.
4 Before that, a conference member could not offer discounts to shippers unless specified in the agreement.
6 The trade balance deficit figure for shipping shown in the national balance of payments account understates the actual extent of foreign exchange loss. This is because most Thai businesses prefer f.o.b. arrangements when exporting and c.i.f. arrangements when importing. In that way, they need not deal with transport costs.
7 Other issues included are trade and investment, transparency of government procurement and trade facilitation.
8 The definition of “hard core” is not yet conclusive. OECD’s definition includes price- and quantity-fixing, bid-rigging and market allocation.

An interim strategy would be to stick to the existing framework and demand “mandatory” obligations to provide assistance in law enforcement. That is, competition authorities of countries whose citizens own or control the multinationals involved in a cartel must supply non-confidential information available upon request. Failure to do so would subject the cartel to a dispute resolution mechanism. Indeed, this proposal was forwarded by Thailand in the second Working Group Meeting in June 2002, but was strongly opposed by both the United States and the European Union. Other developing countries, in particular those without a competition authority and law, were not supportive for fear of being bogged down by requests advanced by developed countries. In this regard, many implementing details still have to be worked out.
It is also interesting to note that obligations under trade and investment are to be binding. Making investment obligations binding and competition discipline voluntary raises a question concerning whether the interests of the host country and the foreign investors are properly balanced. That is, does this imply that foreign investors have the right to access the domestic market and pursue anti-competitive practices without any recourse?

REFERENCES


1. BACKGROUND

Currently, many factories located in Thailand rely on the supply of raw materials and intermediate inputs such as parts and components from Malaysia. Among them are automobile, electrical appliance, electronics and machinery factories located in Chon Buri, Rayong, Ayutthaya, and Pathum Thani, among others.

These factories have encountered many problems in importing raw materials and intermediate input by road from Malaysia. First, the tariffs on certain imported goods, particularly, automobile parts, remain very high. Second, stringent government laws and regulations concerning road transport, i.e., restrictions on the nationality of drivers, specification of the vehicle and cross-border provisions on transport services, have limited the supply of transport services across the border. Third, cumbersome customs procedures render the importation of goods excessively time-consuming and costly. Fourth, poor road conditions and the risk of flooding on certain parts of the main route on the Thai side of the border make the transport of goods by road prone to delays and damage. These elements affect the cost of production and hence the competitiveness of Thai industries in the global market.

Against this background, this study has been undertaken to review the relevant domestic laws and regulations, bilateral agreements as well as multilateral and regional agreements governing trade and transport. The study examines and assesses the customs procedures and formalities at the border, applicable tariff rates and regimes, as well as the domestic rules and regulations concerning the provision of transport services across the border. The review is based on available secondary data as well as primary data obtained from field surveys and interviews with the government officials concerned, experts from international organizations such as UN/ESCAP and the businesses concerned. The study provides recommendations for achieving smoother transport of goods from Malaysia to factories in Thailand and thus reducing the cost of transport, thereby making Thai products more competitive in the global market.

The scope of this study, however, does not cover issues such as exports from Thailand to Malaysia, international transport using modes other than roads, and goods in transit from Malaysia through Thailand to neighboring Association of Southeast Asian Nations (ASEAN) countries and southern China.

2. STAKEHOLDERS’ VIEWS ON CROSS-BORDER (INTERSTATE) TRANSPORT OF GOODS BY ROAD BETWEEN THAILAND AND MALAYSIA

2.1 Bilateral and Multilateral Agreements on Transport and Trade

Bilateral agreements regarding cross-border freight transport between Thailand and Malaysia currently in effect are:

1. Memorandum of Understanding (MoU) between Thailand and Malaysia on the Movement in Transit of Perishable Goods by Road from Thailand through Malaysia to Singapore, 1979;


Those that are in the process of ratification or drafting are:
1. Agreement on the Recognition of Commercial Vehicle Inspection Certificates for Goods Vehicles and Public Service Vehicles Issued by ASEAN Member Countries;
2. ASEAN Framework Agreement on the Facilitation of Goods in Transit;
3. ASEAN Framework Agreement on the Facilitation of Inter-State Transport; and
4. ASEAN Framework Agreement on Multimodal Transport.

The ratification of a regional agreement on cross-border transport of goods in the near future is unlikely owing to the presence of large discrepancies in the level of development of members’ transport infrastructure and economic structure. International organizations such as UN/ESCAP and the Asian Development Bank (ADB) have examined the nature of the problems and suggested possible solutions. Several seminars and workshops as well as training sessions have been organized. Occasionally, these organization also provide sources of funding for infrastructure projects. The most recent seminars/workshops are:

2. Transit Transport Issues in Landlocked and Transit Developing Countries, UN/ESCAP, Bangkok, April 2003; and

UN/ESCAP promotes accession to seven conventions concerning international land transport as listed in its resolution 48/11 on road and rail transport modes in relation to facilitation measures. It has been suggested that ASEAN member countries consider becoming signatories to the conventions. They are:

1. Convention on Road Traffic;
2. Convention on Road Signs and Signals;
3. Customs Convention on the International Transport of Goods under Cover of the Transit and Inland Clearance Customs Regime (TIR) Carnets (TIR Convention);
4. Customs Convention on the Temporary Importation of Commercial Road Vehicles;
5. International Convention on the Harmonization of Frontier Control of Goods;
6. Convention on the Contract for the International Carriage of Goods by Road (CMR); and

Similarly, ADB promotes accession to the Greater Mekong Subregion (GMS) Cross-border Agreement between Cambodia, China, Laos, Myanmar, Thailand and Vietnam. As a result, the six GMS countries are negotiating the annexes and the protocol of the Agreement, which is expected to be finalized and signed by 2005.

Thailand has always supported and recognized the importance of bilateral and regional agreements in the transport of goods and has achieved the following milestones:

1. Thailand has drafted a multimodal transport act that complies with the ASEAN Framework Agreement on Multimodal Transport. The Agreement is the result of ASEAN members having recognized:

   - That international multimodal transport is one means of facilitating the expansion of international trade among ASEAN countries as well as between member countries and third countries;
   - The need to stimulate the development of smooth, economic and efficient multimodal transport services adequate to the requirements of international trade;
   - The desirability of adopting certain rules relating to the carriage of goods by international multimodal transport contracts, including provisions concerning the liability of multimodal transport operators; and
   - The need to create a balance of interests between users and suppliers of international transport services.

The draft law has already been approved by the Council of State and the Cabinet. It is currently under deliberation in the Parliament.

2. The Ministry of Transport and Communications is in the process of amending existing laws in order to comply with the draft agreement on the recognition of commercial vehicle inspection certificates for goods vehicles and public service vehicles. By virtue of recognition of the certificate, any commercial vehicle intended to be brought into and used in Thailand would not be required to undergo inspection, as generally would be required by Thai law, if the vehicle bears a valid certificate.

3. The Ministry of Transport and Communications has taken the lead in drafting the ASEAN framework agreement on the facilitation of inter-state transport. The draft agreement takes into consideration the seven international conventions promoted by UN/ESCAP as well as the GMS agreement promoted by ADB. An official signing of this agreement was originally set for October 2001, but was postponed possibly to early 2004. Thailand, Malaysia and other ASEAN countries would benefit from the agreement by having a free flow of vehicles within the region together with a more efficient, cost-effective, and reliable transport system.

b) On Trade
Trade between Thailand and Malaysia is governed by the Common Effective Preferential Tariff (CEPT) Scheme under the ASEAN Free Trade Area (AFTA), which was aimed at lowering intraregional duties on all products to 0-5 percent in the year 2003. The date has passed and tariffs on all products, barring those on the sensitive lists and a few non-compliance cases, have been reduced. As a result, ASEAN has moved closer to becoming a single market. Trade with Malaysia has also surged.

The development of an industrial zone in the Malaysian city of Alor Setar near the Thai border bodes well for cross-border trade in goods. Owing to their sheer proximity, the factories located in Alor Setar are likely to source raw materials and intermediate inputs, or even labor from Thailand. Despite the relatively bright trade prospects, two factors still pose obstacles to trade along the southern border with Malaysia, as raised by some of those interviewed for the study.

First, while tariff rates have fallen significantly according to the CEPT Scheme, major problems remain in the classification of imported goods. The classification is harmonized up to the 6-digit level, while products are classified at the 9-digit level. Therefore, there may be discrepancies between customs authorities on the classification code of a particular product and thus, a different import duty may apply. It is thus urgent that both Thailand and Malaysia undertake efforts to harmonize their tariff classification of the products that are traded.

Second, imports of perishable goods are subject to increasingly strict sanitary and phyto-sanitary standards (SPS). These increasingly higher standards have hampered the vibrant trade along the border. For example, for their daily consumption residents in several provinces along the Malaysian border import fresh seafood, and fruit and vegetables from the adjoining provinces in Thailand. It is proposed that Thailand and Malaysia draft an “agreement on trade along the border” that would allow for relaxed SPS standards for perishable goods that are for private consumption. These goods can be easily distinguished from goods imported for commercial purposes to distant customers, as they are often transported in small quantities on pick-up trucks.

2.2 Policy-related Issues on Trade Protection and Interests

Domestic policies as well as bilateral and regional agreements are important factors affecting the development of transport between Thailand and Malaysia. Indeed, the greater the trade privileges, which may include tariffs and quotas, and the lower the other non-trade barriers, the greater is the flow of goods across borders. On the contrary, the more protection the government provides for local businesses, the smaller is the volume of trade. The following are the key determinants of (a) the volume of trade and (b) the transport of goods across the Thai-Malaysia border.

a) Tariffs

As Thailand and Malaysia are both members of ASEAN, the applicable tariff rates for bilateral trade are governed by the AFTA’s CEPT Scheme. As of January 2003, tariff rates on all products were lowered to the 0-5 percent range, except for those included on the list of sensitive products, which includes mainly agricultural products. Indeed, the lowering of the regional tariff rates has helped to boost intra-ASEAN trade and attract overseas investment.

While commitments made under the CEPT Scheme are binding, non-compliance under the AFTA agreement is not subject to a dispute settlement mechanism, as would be the case in the WTO. As a result, certain members sometimes renge on their commitments to lower tariffs on sensitive products, such as automotive products from Malaysia.

Automobiles and automobile parts do not appear on the list of sensitive products of either Malaysia or Thailand. Thus, the current tariff rates, which range between 5 and 42 percent for Thailand and 0 and 42 percent for Malaysia, were scheduled to be lowered to the bound rates of 20 percent in January 2001 and 0-5 percent in January 2003. However, Malaysia refused to lower its tariff rates in 2001 and in 2003. In order to extend protection for its local automobile parts companies, Malaysia asked that the introduction of the lower rates be postponed until January 2005. Since tariff privileges are reciprocal, automotive products exported from Malaysia to other member countries are thus denied lower tariffs. As a result, the applicable tariff rates on automobile parts between Thailand and Malaysia are the most-favored-nation (MFN) rates, i.e., rates that apply to non-members of ASEAN. For the Thai automobile industry, the MFN rates range between 5 and 42 percent on parts, and are 33 percent on all imported parts.

As tariff privileges under the CEPT Scheme were not forthcoming, automobile manufacturers have resorted to applying similar privileges accorded under the ASEAN Industrial Cooperation Scheme (AICO), which promotes specialization and industrial complementation by sourcing raw materials and intermediate inputs within the region. The applicable tariff rate under that scheme is 5 percent. However, to apply for AICO privileges, a manufacturer would have to obtain approval from the relevant industry’s group under the Federation of Thai Industries (FTI), Ministry of Industry, Ministry of Commerce and the Customs Department, which makes the whole process cumbersome compared with CEPT privileges, which are readily available. Finally, each new imported product requires a Certificate of Eligibility (COE).

It should be noted that completely knocked down (CKD) automobiles are treated differently in different countries. In the Philippines and Indonesia, CKDs are considered “a single product” that qualify for 5 percent duty under the CEPT Scheme. In Thailand, CKDs are considered a “package of different automotive parts,” each of which is subject to different tariff rates. Also, as
imported CKDs often consist of varying parts or a mix of different parts, they are considered new products that would require a COE. The certificate is issued by the ASEAN Secretariat, which does not have the required resources to ensure prompt service. Owing to the delay in obtaining such certificates, importers sometimes would have to pay the non-preferential flat tariff rate for CKDs of 33 percent, which is the average of the different tariff rates on different parts.

As for Thailand, it has always been very protective of its relatively uncompetitive palm oil industry. Since Malaysia refused to lower tariffs on automotive parts in 2001 and 2003, Thailand refused to lower its tariff rate on palm oil from 20 percent to 0-5 percent by the CEPT deadline. Consequently, large-scale smuggling of palm oil takes place along the Thai-Malaysian border, which prompts border inspection.

b) Transport of Goods in Transit

While the transport of goods in transit by road from Thailand through Malaysia to Singapore is generally prohibited, a MoU between Thailand and Malaysia allows the transport of perishable goods in transit in quantities of up to 30,000 tons a year based on a first-come-first-served basis. Several restrictions apply, however. Only a handful of transport companies are eligible for the privilege; the driver must be a Malaysian national and the goods in transit must be transported only on a specified route. Each year, the allocated quota is filled in November or December after which the transit of perishable goods from Thailand to Singapore via Malaysia would come to a complete halt. There is no clear record of the actual volume of goods transported under the MoU. Data are collected by the Malaysian authority only. Thailand asked for an increase in the quota to 60,000 metric tons a year, but there has not been any attempt to estimate the size of the potential demand under such a quota.

c) Other Trade Protection Measures

Malaysia imposes several regulatory rules on road transport that serves to protect local businesses. All vehicles operating on the Malaysian border must be registered and insured locally. Thai importers/exporters have complained that this requirement imposes unnecessarily high costs, because registration and insurance costs in Malaysia are relatively high.

2.3 Customs Procedures and Documentation

Current customs procedures still rely mainly on printed documentation as the Electronic Data Interchange (EDI) still does not function fully. As a result, documentation remains one of the major elements of customs procedures. Indeed, much of the delay at customs at the border arises from documentation problems. Other factors, such as random inspections and the availability of the officers concerned to solve problems on the spot, also contribute to the speed of clearance.

Goods crossing the border must go through customs on both sides, each taking two to three hours. The type of information that must be provided is almost identical. However, the Thai customs declaration forms are more complicated than the Malaysian forms. A typical customs procedure would require the following documents: (a) one of nine different customs declaration forms depending on the mode of transport and the type of the goods being imported; (b) 11 different forms/documents related to relevant import duties and the payments of those duties; and (c) six forms/documents related to tariff privileges or tax returns. As there is an extensive overlap of information provided to the authorities on both sides of the border, much time could be saved if the documents submitted to these authorities could be shared. Moreover, if customs clearance on each side of the border could be undertaken jointly, the savings in time would be even greater.

Random customs checks are another major time-consuming procedure. Moreover, such checks can lead to contamination or damage. However, large importers and exporters with a good track record may apply for “gold card” status that would subject them to less frequent random checks. However, all cargoes are subject to random inspection at any point in time.

As for EDI, it still relies on the manual entry of data. The data can be filled in at the customs office; alternatively, the importer/exporter may out-source the job. The data entry normally takes as much time as the traditional procedure. The only advantage is that the importers/exporters, rather than the customs officers, are responsible for the data entry. Also, computerized data are more easily managed and analyzed.

Differences in standard practices across customs officers and customs offices sometimes render customs procedures unpredictable and inconsistent. This may lead to confusion for those used to dealing with a specific customs officer. For example, the customs procedures at the Laem Chabang port are relatively fast and simple when compared with those along the Thai-Malaysian border. Also, the unavailability of officers from the authorities concerned, such as the Office of the Food and Drug Administration and the Department of Livestock Development, makes customs procedures much more time-consuming as customs officials must seek advice from the authorities in Bangkok.

2.4 Equipment and Facilities at Border Checkpoints

There are currently five customs offices or customs houses along the Thai-Malaysian border, but only three handle containers: Sadao, Padang Besar and Betong. Most goods pass through two checkpoints, at Padang Besar, which has both road and railroad crossings, and at Sadao, which has a road crossing only. Both checkpoints are congested and lack the necessary facilities to facilitate speedy inspection and clearance.
Of all the border checkpoints in Thailand, the highest volume of goods passes through customs at Sadao. This is because, according to Malaysian regulations, trucks that carry perishable goods in transit must operate only on designated routes and must enter Malaysia only at the Sadao checkpoint. The customs offices on both sides of the Sadao crossing are 10 kilometers apart, however, which causes inconvenience. At Padang Besar, the Thai customs office is closer (about 5 km) to its Malaysian counterpart. This particular crossing point is 30 km from the North-South Expressway in Malaysia and 15 km from Highway No. 4 in Thailand.

Both customs offices experience congestion owing to the limited space available to them and they lack the required equipment to unload and reload goods and containers at the border. In most cases, trucking companies have to bring their own equipment for that purpose. It should be noted that only trucks that are registered in both Thailand and Malaysia and carry two license plates are able to operate on both sides of the border. However, such trucks must restrict their operations to the border areas where they facilitate border trade.

The computer system at the Customs Department in Bangkok and at the checkpoint areas is limited in capacity. It cannot handle the large volume of information submitted from various sources, resulting in data congestion and delays. Therefore, customs brokers find little use in upgrading their own computer system as long as the system used by the Customs Department and its offices remains archaic.

2.5 International Road Vehicles and Road Network

a) International Road Network

As mentioned previously, only trucks that are registered in both countries are allowed to operate on both sides of the border. According to the Land Transport Act, only those who hold a permit to operate a transport company in Thailand are allowed to register commercial vehicles. Trucks registered in Thailand are not allowed into Malaysia, except for pick-up trucks facilitating along-the-border trade. Similarly, if one wants to register commercial vehicles in Malaysia one must obtain a permit to operate a transport company. According to Malaysian law, only Malays are eligible to provide transport services in Malaysia. As a result, many joint ventures between Thai and Malaysian entrepreneurs have been formed in order to be able to secure permits to provide transport services on both sides of the border. However, without a bilateral agreement that would allow commercial vehicles to operate freely in both territories, the scope of operation of such vehicles is confined to border areas only. As a result, the availability of two-license trucks is very limited, so much so that importers/exporters sometimes have no choice but to resort to use single-license trucks; cargoes carried on such trucks must be unloaded and reloaded at the border.

b) Road Network

As shown in Figure 1, trucks that are permitted to carry goods in transit must enter Malaysia through the Sadao checkpoint only and use the designated route only, which is the Asian Highway No. 2, a toll expressway. This results in heavy traffic at the Sadao customs checkpoint. Also, the access road to that checkpoint, which is extremely narrow with vendors’ stalls on both sides of the road, worsens the congestion. Moreover, Highway No. 4, the main route from Hat Yai to the Sadao border checkpoint, is in urgent need of a major re-paving as its surface has been heavily damaged by over-loaded trucks carrying minerals.

The transport of goods from the border to factories in Bangkok and its vicinity must pass through two customs checkpoints at Thung Song and Chumphon. The customs procedures at each point take approximately 10 minutes.

Highway No. 410 from Yala to the border at Betong is another route that connects southern Thailand with northern Malaysia. The road is very winding for almost its entire stretch, rendering it unsuitable for cargo transport. As a result, traffic on this particular route remains relatively light. There is a possibility of opening an alternative checkpoint at Krabang in order to provide an alternative route to Kedah province. The road between Yala and Krabang is more accessible as it is not winding and conveniently connects Pattani with Penang seaport via Yala.

2.6 Organization, Human Resources and Governance

a) Organization

As many government authorities are involved in customs procedures, it is necessary to introduce a “one-stop service” in order to minimize the required documents and shorten the procedures. For example, offices handling immigration, customs, export procedures, the clearance of transporting goods in transit should be in the same place and use unified forms for common information when possible.

On this matter, Malaysia seems to be more advanced than its Thai counterpart. To begin with, fewer government authorities are involved with customs procedures in Malaysia. Hence, officers from various authorities are readily available at the customs checkpoints to solve documentation and other problems. The Thai authorities still face problems related to limited budget and the lack of coordination among relevant authorities to ensure efficient and speedy procedures. For example, an imported product may be subject to independent random checks by different authorities that do not share information. Further, the lack of coordination between the authority responsible for cost
evaluation and that responsible for the issuance of a
certificate of origin can cause delay and confusion. This
can prove extremely wasteful in terms of time lost and
damage to the product examined.

Figure 1 Road Network from Malaysia and Southern Thailand to Bangkok
b) Human Resources

Certain government offices that provide public services face a shortage of staff. For example, the Sadao customs office has only 60 employees who processed daily in 2002 more than 1,440 cars and trucks and 6,130 passengers. The overwhelming workload has led to delays and, occasionally, errors. For example, the number registered on the documents issued by the Customs Department is sometimes different from that submitted by the business or customs brokers via EDI.

c) Governance

There are several channels by which the private sector may voice its concerns and take part in policy formulation. To begin with, private sector businesses organize themselves into many groups: for example, the Provincial Chambers of Commerce, the Thai International Freight Forwarders Association (TIFFA), and FTI. Representatives from such groups are often on various government committees at both the central and the provincial levels, including the Multimodal Transport Committee, which was formed by the Cabinet in December 1993 to support the development of efficient multimodal transport services and operators of international standard. The Committee is chaired by the Minister of Transport and Communications and consists of 18 members selected from public and private enterprises.

In previous years, many issues were discussed and some agreements reached between the public and private sectors; for example:

- An increase in permissible truck loading;
- Less restricted areas and more time for trucks operating in cities;
- Recognizing semi-trailers carrying the ISO containers;
- Adopting the EDI system for customs clearance;
- Reducing the value-added tax (VAT) rate and imposing no withholding tax for transport operators;
- Supplying the transport industry with qualified manpower by establishing educational and training programs in universities and supporting similar programs undertaken by private enterprises;
- Providing customs clearance services at some inland clearance/container depots (ICD), industrial estates, and ports of private enterprises; and
- Developing transport infrastructure, i.e., roads, railways, waterways, terminals, ports, airports, pipelines, etc., in consultation with stakeholders of the transport industry.

2.7 Information and Communications Technology

As mentioned previously, the current EDI system is not yet fully computerized in that all information still has to be entered manually into computers. Nevertheless, the digitized information that can be submitted electronically enables customs officials to review completed customs declaration forms in advance and thus makes it possible for businesses to cut the time spent preparing customs declaration forms from half a day to only 10-15 minutes. The system also eliminates the need for customs evaluation in accordance with the “green-line” system under which authorized agents can proceed with the payment of duties and the clearance of imports. The “red-line” system, however, requires manual evaluation of duties by customs officers prior to making the payment.

The first step is to enter the required information into the computer and send the completed form to the Customs Department, which would then check whether the information provided is correct, and complete and return the completed form to the sender. The sender then prints out the declaration form and submits it along with other supporting documents. The filling and submission of the customs declaration form through the EDI system can be contracted to customs brokers or private services currently numbering approximately 1,200. This would cost 50 baht plus the service fee charged by the particular customs broker. Alternatively, one may choose to access the EDI system at the customs office at the border. This costs 70 baht per customs declaration. To install one’s own system would cost 200,000 baht plus the Custom Department’s service charge of 50 baht per customs declaration.

Once the import duties are settled, all documents and cargoes require clearance by the customs officers regardless of whether the procedure is conducted through EDI or manually. In this regard, practices across customs offices vary widely. For example, the customs office at the Laem Chabang port has clear and efficient procedures when compared with those at the Sadao and Padang Besar border crossings, which often undergo frequent random checks. Most businesses interviewed are of the view that, as EDI aims to have the entire customs procedure computerized, all human interventions should thus be eliminated. While the need to conduct random checks is recognized given the prevalence of illegal smuggling of various goods along the border, random checks should be computerized rather than subject to an officer’s discretion.

2.8 Transport Competition and Cost

a) Competition

There are presently approximately 10 transport companies that provide trucking services across borders. These include the following companies:

1. Tiong Nam Transport (Thailand) Co., Ltd.
2. Mahachai Transport Service Co., Ltd.
3. Hadyai Pongsiri Co., Ltd.
4. EH Utara Co., Ltd.
5. GODIS Transport Co., Ltd.
6. TNTT Logistics Co., Ltd.
7. NYK (TESCO) Co., Ltd.
8. Hi-Tech Nittsu (Thailand) Co., Ltd.

There are also over 250 companies registered with the Thai Freight Transport Association; they operate over 40,000 trucks nationwide. As can be seen, the industry is highly competitive. One should also note that competition from other modes of transport, i.e., rail, air and sea, is also prevalent.

Currently, many manufacturers with factories located in the central part of Thailand rely on raw materials or intermediate inputs from Malaysia. These include the automobile, electrical appliance and electronics industries. However, the value and the volume of such imports are not high. For example, in the year 2002, the Automobile Manufacturing Co. (1) imported auto parts worth 14 billion baht; of that amount, parts worth only 820 million baht or 5.5 percent of the total were imported from Malaysia. Similarly, in the same year, the Electrical Appliances Co. and the Electronics Co. imported intermediate parts worth 7,055 million and 10,714 million baht respectively. Imports of such goods from Malaysia contributed only 12.6 percent and 0.12 percent of the total import values respectively.

Each industry may choose different modes of transport according to the nature of the imported products. For example, the electronics industry prefers air transport for light-weight but high-value items. On the contrary, the automobile and electrical appliance industries normally prefer less expensive land and sea transport. The relative advantages and disadvantages of each mode of transport can be summarized as follows:

**Advantages of Road Transport**

1. There is no need to store goods since services are available on demand, i.e., a non-fixed schedule. Importers can also store ordered products at the manufacturers’ warehouses free of charge.
2. The lead time is shorter at approximately three to five days compared with seven to 10 days for transport by sea for a distance of approximately 2,000 km.
3. Door-to-door services eliminate double handling and thus are more convenient.
4. Customs procedures are less complicated than those applicable to sea transport.

**Disadvantages of Road Transport**

1. Road transport is subject to higher risk of product damage as the accident rate is significantly higher than that of sea transport. Despite the fact that transported goods are insured, the unavailability of intermediate supplies can easily affect the production line.

2. It is prone to frequent floods that cut off road access in the southern part of Thailand. However, ships are also subject to the effects of monsoon storms as well.

3. The issuance of Form D (Certificate of Origin) by the Malaysian authorities often requires two to three days. Therefore, if a truck arrives early at the border checkpoint, it will not be able to proceed until the form has been issued.

4. In cases when there are clearance problems, supporting documents must be sent by air from Bangkok or other destinations to Hat Yai airport in Songkhla. Although there are many flights every day from Bangkok to Songkhla, two hours of lead time before departure is required for the documents to be sent.

5. Goods transported by road are subject to inspection at the customs checkpoints on both sides of the border. Once a container’s seal is broken, the goods are susceptible to tampering and theft. On the contrary, goods transported by rail or sea are inspected at the Lat Krabang or private ICDs or at the industrial estates of origin, which are closer to the production sites when compared with the southern border checkpoint.

**b) Cost**

The official cost of customs procedures is approximately 295 baht per customs declaration form. This cost can be broken down as follows: customs declaration form, 40 baht; overtime charge (for inspector), 150 baht; overtime charge (for administration), 100 baht; and document-binding, 5 baht. However, the actual cost can be significantly higher. The higher actual cost may be attributed to complicated procedures at the customs border checkpoints, procedures that are time-consuming. Many small- and medium-sized enterprises therefore prefer to contract the procedures to customs brokers and freight forwarders in order to avoid the cumbersome procedures and instead pay a service fee. The total cost of transporting a 40-foot container from the Sadao or Padang Besar border checkpoints to Bangkok, a distance of 1,000-1,200 km, is approximately 30,000 baht, inclusive of the cost of customs procedures.

Customs procedures are supposed to be completed within one hour, but in practice as mentioned previously, two to three hours are required.
3. CONCLUSIONS AND RECOMMENDATIONS

3.1 Conclusions

According to a literature review, field surveys and interviews, the following conclusions can be made with respect to the state of transportation between the Thai and Malaysian borders:

1. Various regional agreements to facilitate the cross-border transport of goods, as mentioned in section 2.1, have not yet been ratified and thus are not yet effective. The only agreements that are in effect are the MoU concerning the Movement in Transit of Perishable Goods by Road from Thailand through Malaysia to Singapore and the Agreement on the Recognition of Domestic Driving Licenses Issued by ASEAN Countries.

2. Certain ASEAN members have not yet complied with their tariff obligations. For example, Malaysia refused to lower the applied tariff rates on the import of auto parts according to the CEPT. Indonesia and the Philippines also have refused to lower the applied rates on sugar imports and have moved sugar to the sensitive list in 2001. As a result, automobile manufacturers must instead resort to tariff privileges under the AICO Scheme, which is more cumbersome.

3. The value of goods transported across borders between Thailand and four neighboring countries, namely Cambodia, Laos, Malaysia and Myanmar, has been growing at an average rate of 18.7 percent during the period 1998-2002, worth an average of 211.6 billion baht in 2002. Bilateral trade with Malaysia contributes the largest share at 61 percent.

4. Major imports by road from Malaysia include electrical appliances, machinery, plastics and chemicals, and auto parts. Approximately 96 percent of these goods enter Thailand through the Sadao and Pedang Besar checkpoints.

5. Despite continuous efforts in simplifying customs forms and procedures, an average cargo still takes two to three hours to clear customs and the actual cost still exceeds several fold the official cost of around 300 baht per customs declaration form.

6. The EDI system was introduced during the past five years. Approximately 70 percent of cross-border shipments are conducted through the EDI system, i.e., 80 percent of exports and 60 percent of imports.

7. In keeping with international standards and practices, the available officials at the border checkpoints consist of those performing customs, immigration and quarantine (medical quarantine, plant protection and animal quarantine) functions. Officials from other related authorities, such as the Land Transport Department and the Provincial Commercial Office, are located in the capital of the province.

8. As for governance, there are several forums at which private stakeholders may present and discuss among themselves and with government officials problems and solutions with regard to cross-border trade and transportation. These include, for example, the Provincial Chambers of Commerce, the Thai Freight Transport Association, TIFFA, FTI and the Multimodal Transport Committee under the Ministry of Transport and Communications.

9. The border checkpoints on both sides experience severe congestion owing to the limited space available and the lack of necessary equipment to facilitate speedier inspections.

10. The condition of the roads and highways on the Thai side is satisfactory as they comply with international standards. The main highway from the border to Bangkok, which is approximately 1,000 km in length, is a four-lane divided highway. Unlike the North-South Expressway in Malaysia, the Thai highway is toll-free.

11. The transportation industry in Thailand is highly competitive with many service providers and various modes of transport (rail, road, sea and air). At the same time, the volume of bilateral trade between Malaysia and Thailand via cross-border trade is still low at 46 percent of the total trade in 2002, although it has been increasing every year.

3.2 Recommendations

1. Give priority to the drafting and ratification of ASEAN agreements related to transport and trade. At the same time, work on amending domestic laws and regulations to ensure compliance with such agreements so that once these agreements have been completed and ratified, they can have an immediate effect.

2. Follow closely the draft multimodal transportation act, which is in the legislative pipeline. At the same time, preparatory work in support of the proposed law needs to be advanced. This includes the building of a da-
tabase on multimodal operators and the
amendment of existing laws in order to sup-
port the official registration of multimodal
transport operators, the official multimodal
transport documents and carriers or opera-
tors’ liabilities. Government policies in
promoting the consolidation of small trans-
port operators to improve efficiency and
competitiveness will also need to be formu-
lated. Finally, the scope of the duties and the
responsibilities of the Multimodal Transport
Committee will have to be defined in col-
laboration with the National Transport
Facilitation Committee under the ADB-GMS
Program and the National Transit Transport
Coordination Committee under the ASEAN
Framework Agreement for Transit Transport.

3. Define clear carrier liabilities for land trans-
port. Current liabilities of trucking operators
are determined vaguely by the Civil Code.
On this matter, Thailand may choose to de-
fine liabilities that are in line with the CMR
Convention, while taking into consideration
the local economic, legal and institutional
environment as well as private and public in-
terests.

4. Promote road safety and environmental pro-
tection by conforming in substance to
international conventions and agreements,
i.e., the Convention on Road Traffic 1968,
the Convention on Road Signs and Signals
1968, and the European Agreement concern-
ing the International Carriage of Dangerous
Goods by Road 1957, and completing
agreements with ASEAN member countries
on the working hours of drivers as well as
vehicle specifications and emission-control
standards to prevent pollution. The pro-
motion of such instruments would pave the way
for the recognition of international trucks
with single registration to operate in Thai-
lard, Malaysia and other ASEAN countries.
Thus, a change of trucks and a transfer of a
container from one truck to another at border
checkpoints could be avoided. Besides, the
safety and environment issues relate directly
to social benefits and sustainable economic
growth of the country.

5. Encourage occasional regional seminars and
workshops where the government officials
concerned with border inspections from
member ASEAN countries would participate
in order to promote the exchange of informa-
tion and foster greater cooperation in order to
follow international best practices.

6. Develop a “single-stop customs inspection”
with Malaysian authorities that would entail:

- Harmonized customs inspection procedures
- Shared facilities
- Mutual assistance in inspection, etc.

Such an arrangement would be more
feasible if there were joint border check-
points. However, should the checkpoints on
both sides be distant, then arrangements must
be made so that officials would be able to en-
ter each other’s premises in order to jointly
perform their duties.

7. Initiate discussions with the responsible Ma-
laysian authorities concerning the possibility
of developing common documents/forms that could be used jointly by the au-
thorities on both sides of the border. This is
feasible because the information requested by
both sides is almost identical.

8. Initiate discussions with responsible Malay-
sian authorities concerning the possibility of
speeding up the issuance of Form D (Certifi-
cate of Origin).

9. Urgently improve the current EDI system by
(a) further expanding the coverage of EDI
applications for all import and export activi-
ties; (b) continuing to automate customs
transactions in order to minimize delays and
errors in border procedures and (c) upgrade
computers and the size and quality of Internet
connections.

10. Improve the database system to support the
business and management processes of plan-
ing, implementing, monitoring, evaluation
and control.

11. Extend the operating hours of border check-
points experiencing heavy traffic. It is
proposed that the Pedang Besar border be
open until midnight and the Sadao border be
open 24 hours a day.

12. Ensure that a sufficient number of officers is
available to handle the workload at the bor-
der and that their skills and experience are
comparable with those in Bangkok. Training
will be required so that officials will be able
to keep up with the changing environment
and conditions.

13. Rotate officers performing duties at various
border checkpoints in order to ensure harmo-
nized standards and practices in customs
inspection and clearance.

14. Ensure that all officers concerned are present
at the border checkpoints in order to facilitate
“single-window inspection.” These should
include customs officers, immigration offi-
cers, quarantine officers, food and drugs
officers as well as representatives of the Land
Transport Department of the Ministry of
Transport and Communications, and the Department of International Trade of the Ministry of Commerce.

15. For imports from Malaysia destined for Bangkok and vicinity, serious consideration should be given to the possibility of arranging for a customs clearance point that is closer to the point of destination, for example, at a nearby ICD or at an industrial park/estate where custom officers are posted. This would minimize the risk of damage and tampering with transported goods that might occur between the border checkpoint and the point of destination. It would also facilitate speedier clearance as problems that may arise could be easily solved by the consignee, customs broker or the concerned government authorities whose offices are located in Bangkok.

16. Give urgency to the construction of the new Sadao customs and immigration checkpoint proposed by the Customs Department. The new checkpoint would occupy approximately 304 acres of land. The allocated budget for the initial phase is 590 million baht. The construction is expected to be completed in the year 2005. Thailand should also discuss with Malaysia the possibility of joining the Sadao customs and immigration office with its counterpart in the Bukit Kaye Hitam checkpoint that is to be constructed directly across from the new site on the Malaysia border. A “joint border checkpoint” could help to minimize clearance time, as explained previously.

17. Ensure the availability of essential equipment, such as weighing scales for trucks, container fork-lifts and closed-circuit video cameras, at the border checkpoints. An x-ray machine that can scan and identify goods stored in sealed containers would eliminate the need for physical inspection and thus, help to speed up inspection and minimize damage from inspection.

18. Undertake major repairs of the following roads: (a) the main highway between Hat Yai and Sadao, which is 50 km in length; (b) the Hua Hin bypass, 45 km in length and (c) the section between Samut Sakhon and the Bangkok Outer Ring Road, 30 km in length. It is also urgent to construct the remaining 21-km stretch on the southern side of the Bangkok Outer Ring Road in order to complete the loop. In the long run, construction of a tolled motorway along the International Asian Highway that cuts through Thailand would help to support a greater volume of trade between the two countries as well as promote the transport of goods in transit in the future.