

**1994 MEMORANDUM OF UNDERSTANDING BETWEEN THE
GOVERNMENT OF THE MEMBER COUNTRIES OF THE
ASSOCIATION OF SOUTHEAST ASIAN NATIONS AND THE
GOVERNMENT OF AUSTRALIA ON THE ASEAN-AUSTRALIA
ECONOMIC COOPERATION PROGRAMME PHASE III**

Adopted in Bangkok, Thailand on 27 July 1994

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The Governments of Brunei Darussalam, the Republic of Indonesia, Malaysia, the Republic of the Philippines, the Republic of Singapore and the Kingdom of Thailand, being member countries of the Association of Southeast Asian Nations (hereinafter referred to as "ASEAN") of the one part and the Government of Australia (hereinafter referred to as "Australia") of the other part;

RECOGNISING the mutual benefits derived by ASEAN and Australia through the establishment in 1974 of the ASEAN-Australia Economic Cooperation Program (hereinafter referred to as "AAECP") and the considerable achievements of Phases I and II of the AAACP;

NOTING the significant contribution of the AAACP to the strengthening of ties and continuing links of friendship between member countries of ASEAN and Australia;

RECOGNISING the growing economic linkages between ASEAN and Australia as being a reflection of the maturing relationship and an expression of interdependence of the region's economies;

DESIRING to encourage economic linkages between ASEAN and Australia across a broad range of key priority sectors and to gradually broaden the AAACP to accommodate the wider economic and political interaction in the region; and

WISHING to provide a more effective administration of the AAACP;

HAVE REACHED THE FOLLOWING UNDERSTANDINGS:

**ARTICLE I
FOR THE PURPOSE OF THIS MEMORANDUM**

1. "The Parties" mean the Governments of Brunei Darussalam, the Republic of Indonesia, Malaysia, the Republic of the Philippines, the Republic of Singapore and the Kingdom of Thailand collectively, being member countries of ASEAN and the Government of Australia.
2. "Activity" means any discrete unit of development cooperation which may include any one or more of the following forms of cooperation; the sending of missions to ASEAN to study and analyse opportunities for Australian cooperation; the assignment of Australian experts, advisers and other specialists to ASEAN in connection with project activities; the provision of human resources, facilities, postage, communications, equipment, materials, goods and services provided by Australia and/or any ASEAN participating Government required for the successful execution of development projects under the AAACP; and any other form of assistance, reportable as Official Development Assistance (ODA) under the Organisation for Economic Cooperation and Development (OECD) Development Assistance Committee (DAC) guidelines as may be determined by ASEAN and Australia.

3. (a) "Australian personnel" refers to citizens and/or permanent residents of Australia or citizens and/or permanent residents of countries other than Australia who are working on a project or activity under the AAECF and who have been properly endorsed by Australia for such project or activity. This phrase, however, will not be construed to include citizens and/or permanent residents of a member country of ASEAN who may be participating in a project or activity under the AAECF being hosted by such member country; and

(b) "ASEAN Personnel" refers to citizens and/or permanent residents of a member country of ASEAN or citizens and/or permanent residents of countries other than ASEAN member countries concerned who are working on a project or activity under the AAECF and who have been properly endorsed by ASEAN member countries for such project or activity.
4. (a) "Australian services and project supplies" means equipment, vehicles, materials, and other goods and services supplied for the execution of development activities under the AAECF, the cost of which is funded from the contribution of the Government of Australia to the activity; and

(b) "ASEAN services and project supplies" means equipment, vehicles, materials, and other goods and services supplied for the execution of development activities under the AAECF, the cost of which is funded by any ASEAN participating Government.
5. "Dependants" means the spouse, and dependant minor children of a member of the Australian or ASEAN personnel, as the case may be, or any other person recognised by the Parties as a dependant of a member of the Australian or ASEAN personnel as the case may be.
6. "Human Resources Development (HRD)" refers to all activities which will seek to enhance ASEAN's human and institutional resource capacities at the regional and national levels, including training and development in the economic and non-economic areas, transfer of technology and know-how. HRD activities may include research, studies, surveys, workshops/seminars/conferences, exchange programs, etc.
7. "Project" means a self-contained activity based on a mutually approved design and involving the provision of Australian and ASEAN services and project supplies.

ARTICLE II

GOALS AND OBJECTIVES

1. The Parties will pursue the following goals and objectives of the AAECF:

The AAECF will aim to facilitate broad based economic cooperation between ASEAN and Australia, contributing to the interaction of the economies of the Parties and based on the concept of mutual benefit and building on the successes of earlier phases.

Science and Technology and Human Resource Development will continue as the common coordinating themes of the program. Specifically, the AAECF will:

- (a) Promote linkages between economic sectors of the Parties, encouraging involvement by Private, Research, Academic and the Government sectors in all countries;
- (b) Promote activities which have a regional focus;
- (c) Promote activities which demonstrate a harmonisation of the priorities and capacities of both ASEAN and the Australian economies;

- (d) Promote the integration of applied science and technology, agro-based industries and HRD activities, and foster their commercialisation;
- (e) Promote regional environmental cooperation, the facilitation of preparatory activities advancing two way trade and investment, people contact and institutional linkages; and
- (f) Promote activities which are consistent with the policies of ASEAN member countries and Australia.

ARTICLE III PROGRAM CONTENT

1. The content of the AAACP Phase III will reflect the broadened objectives of the Program through the establishment of two distinct streams:
 - (a) A dedicated Projects Stream, focusing on technology transfer projects (including through applied research and development); and
 - (b) A dedicated Linkages Stream in the priority sectors, which will be the major facilitator for private sector involvement and networking.
2. Under the Projects Stream, six long-term projects of up to four years duration will be funded. The contributions in funds or in kind by all Parties to project activities will be fully detailed in project designs.
3. Under the Linkages Stream, short-term discrete activities will be funded. Cost-sharing arrangements between ASEAN-Australia industry and activity beneficiaries will be designed to reflect the mutual benefit and commercial objectives.
4. The objectives, priority sectors, eligible activities, activity duration and level of support, as well as cost sharing, eligibility of applicants and selection guidelines have been agreed and set out in the "AAACP Linkages Stream Guidelines".

ARTICLE IV MANAGEMENT AND ADMINISTRATION

1. A Joint Planning Committee (hereinafter referred to as "JPC"), directly responsible to the ASEAN-Australia Forum (hereinafter referred to as "Forum"), will be responsible for policy consideration and formulation under the AAACP.
2. The Terms of Reference of the JPC will be:
 - (a) To recommend to the Forum the program for Phase III of the AAACP on the basis of the recommendations of the Joint Planning Committee Sub-Committee (hereinafter referred to as "JPC-SC");
 - (b) To approve indicative sectoral planning allocations for the AAACP Phase III (Projects and Linkages Streams);
 - (c) To make periodic evaluation of the performance of the AAACP and recommend to ASEAN and Australia, through appropriate channels, the necessary modifications thereto; and

- (d) To meet annually prior to the Forum or as and when necessary.
3. The JPC will be composed of the following:
- (a) A representative each from the government designated from time to time as the ASEAN Country Coordinator for Australia (hereinafter referred to as "the ASEAN Country Coordinator") and Australia who will act as Co-Chairpersons respectively;
 - (b) One representative from each country of ASEAN, one representative from the ASEAN Secretariat and one representative from the Australian International Development Assistance Bureau (hereinafter referred to as "AIDAB") who will act as members; and
 - (c) Upon determination by the JPC, representatives from relevant ASEAN Committees and Australia, as well as a representative of the ASEAN-Australia Business Council,
4. A JPC-SC directly responsible to the JPC, will be convened to coordinate the implementation of AAECF Phase III, and monitor AAECF progress between meetings of the JPC.
5. The Terms of Reference of the JPC-SC will be to develop and recommend to the JPC a four-year program for the AAECF on the basis of the joint ASEAN-Australia Position Paper on the future of the AAECF, and in view thereof to:
- (a) Assist and advise relevant ASEAN and Australian Committees in identifying and developing activities for further consideration under the AAECF Phase III, including the development of selection criteria for the Projects Stream, and guidelines for the Linkages Stream;
 - (b) Recommend to the JPC indicative sectoral planning figures for the AAECF Phase III (Projects and Linkages Streams);
 - (c) Examine and determine which project outlines/expressions of interest should proceed to the design stage;
 - (d) Recommend, for JPC approval, those projects for funding under the AAECF Phase III;
 - (e) Approve proposals under the AAECF Phase III Linkages stream;
 - (f) Monitor AAECF Phase III progress between JPC meetings; and
 - (g) Approve appropriate changes in the projects (under the Projects Stream), including budget and future development, recommended to the JPCSC by the Project Coordination Committee (hereinafter referred to as the PCC).
6. The JPC-SC will comprise the following members;
- (a) A representative each from the ASEAN Country Coordinator and Australia who will act as Co-Chairpersons, respectively;
 - (b) A senior representative/s from each of the ASEAN member countries who has/have direct responsibility for ASEAN matters and policy formulation;
 - (c) A representative of the ASEAN Secretariat;
 - (d) Two AIDAB representatives; and

- (e) The JPC-SC may call on extra advisory representation from ASEAN member countries or Australia if technical expertise were required at a particular meeting.
7. The JPC-SC Co-Chairperson will be directly responsible to the JPC and will present a consolidated report of the activities of the JPC-SC to the JPC.
 8. The JPC-SC shall meet at least twice a year. Further consultation may be undertaken using modern communication technology.
 9. Costs associated with JPC and JPC-SC meetings will be met under the AAACP and by the ASEAN Secretariat AAACP Trust Account.
 10. Management of each of the six long term technical cooperation projects funded under the Projects Stream will be vested in a PCC which reports to the JPC-SC. Composition of the PCC may vary according to the nature of the project but will include at least one representative of the following:
 - (a) The ASEAN Secretariat;
 - (b) AIDAB;
 - (c) The Australian Project Manager/Adviser;
 - (d) The appropriate ASEAN Committee(s); and
 - (e) The ASEAN Project Coordinator.
 11. The PCC will meet, as required, generally once or twice a year. The PCC's terms of reference are to:
 - (a) Plan implementation of the project in accordance with the approved Project Design Document;
 - (b) Review progress in the project;
 - (c) Maintain an assets register of equipment purchased under the project;
 - (d) Recommend to the JPC-SC any appropriate changes in the project including budget and future development; and
 - (e) Undertake such other functions as may be directed by the JPC.
 12. Activities under the Linkages Stream will be managed jointly by ASEAN and Australia. Applications will be completed on a standard AAACP Linkages Stream application form available from Australian Embassies and High Commissions in ASEAN member countries, ASEAN National Secretariats in ASEAN member countries, or AIDAB offices in Australia and submitted to the AAACP Linkages Stream Secretariat for initial screening against the selection criteria.
 13. Applications will be appraised and prioritised by a Joint Linkages Stream Appraisal Panel (hereinafter to be referred to as JLSAP), which will meet at least twice a year. Membership of the JLSAP will include at least one person representative of each of the following:

- (a) The ASEAN Secretariat;
 - (b) AIDAB;
 - (c) The ASEAN and/or Australian private sector;
 - (d) An-ASEAN and/or Australian academic institution or research organisation; and
 - (e) The ASEAN and/or Australian public sector.
14. There will be a total of eight members of the JLSAP and it will be co-chaired by the representatives of the ASEAN Secretariat and AIDAB. Representatives will be drawn from key economic sectors such as environmental management, transportation, biotechnology, telecommunications and information technologies, agriculture/agribusiness and human resources development.
15. The JLSAP will make recommendations in respect of each Linkages Stream application for consideration and decision by the JPC-SC.

ARTICLE V PROJECTS AND ACTIVITIES

1. Projects and Linkages Stream activities to be conducted under the AAECF will focus on enhancement of trade and investment opportunities between ASEAN and Australia, with science and technology and HRD as common coordinating themes of the program.
2. The process of identifying, developing and submitting projects and activities under the AAECF will conform with both the ASEAN and AIDAB procedures and machinery.
3. The AAECF Projects Stream will be limited to the implementation of six large projects in order to provide cost-effective use of funds. The commercial potential of proposed projects will be maximised.
4. The implementation of each approved project under the AAECF Phase III Projects Stream will be initiated by an Exchange of Notes between the ASEAN Country Coordinator and the Australian Government.

ARTICLE VI FUNDING AND FINANCIAL ORGANISATION

1. The Government of Australia will exert its best efforts to ensure that the funding on the AAECF Phase III will be maintained at A\$8 million per annum in real terms as of Financial Year 1992-93 subject to its annual Parliamentary appropriations.
2. Financial disbursement estimates for projects and activities under the AAECF Phase III will merely serve as indicative planning figures and will not be considered as absolute financial commitments.

ARTICLE VII INTELLECTUAL PROPERTY RIGHTS

1. Project arrangements among participating parties for subsequent specific AAECF projects and activities will provide for the protection of the prior existing intellectual property rights and the protection of any intellectual property rights arising out of the AAECF projects or activities.
2. The participating parties will be entitled to any intellectual property arising out of the AAECF projects or activities, in accordance with the provisions specified in the implementing arrangements which will take into account:
 - (a) The intellectual contributions of each participating party;
 - (b) The financial contributions of each participating party;
 - (c) The contributions of pre-existing intellectual property, materials, research effort and proprietary work of each participating party;
 - (d) The facilities provided by each participating party;
 - (e) Legal considerations; and
 - (f) Such other relevant considerations as the participating parties may agree upon.
3. Project implementation arrangements will include provision for the checking for and protection against infringement of intellectual property rights of third parties.
4. The Australian International Development Assistance Bureau (AIDAB) will waive any right, title or interest it may have with respect to intellectual property arising out of AAECF projects but does not have the power to, and therefore cannot, waive the intellectual property rights of any other Australian Government departments or agencies or any company, authority or organisation which may be involved in an AAECF project. In appropriate circumstances, AIDAB will endeavour to obtain assignments of right, title and interest in intellectual property from other Australian Government departments or agencies or companies, authorities and organisations to enable the scope of the waiver to be broadened.
5. Nothing in this Memorandum will prejudice the rights and obligation of each party under any existing or future international or multilateral agreement related to the protection of intellectual property.

ARTICLE VIII PRIVILEGES OF THE AUSTRALIAN AND ASEAN PERSONNEL INVOLVED IN AAECF PROJECTS AND TERMS AND CONDITIONS GOVERNING AUSTRALIAN AND ASEAN PROJECT SUPPLIES

1. The privileges that Australian personnel may enjoy in the implementation of the AAECF projects and the terms and conditions governing Australian project supplies will be subject to the terms of any applicable treaty and the relevant Government policies, rules, regulations and practices of the ASEAN member countries hosting a particular project or activity under the AAECF, details of which will be mutually decided by Australia and the ASEAN member countries concerned and set out in an Exchange of Notes between that ASEAN member country and Australia.

2. The privileges that the ASEAN personnel may enjoy in the implementation of the AAECF projects and the terms and conditions governing ASEAN project supplies will similarly be subject to the terms of any applicable treaty and the relevant Government policies, rules, regulations and practices of Australia, details of which will be mutually decided by Australia and the ASEAN member countries concerned and set out in an Exchange of Notes between the ASEAN member country and Australia.
3. In the course of negotiating an Exchange of Notes under paragraph 1 of this article, the relevant ASEAN member country will consider the need to:
 - (a) Exempt Australian project supplies from payment of taxes, levies, duties, fees and other charges (or otherwise assume responsibility for the payment of such taxes, levies, duties, fees and charges);
 - (b) Expedite their clearance through customs;
 - (c) Facilitate their movement by providing appropriate customs and wharfage facilities including any necessary storage costs at the first port of discharge of the Australian project supplies in the relevant ASEAN member's territory; and
 - (d) Enable their expeditious transport to the site of the project.
4. In the course of negotiating an Exchange of Notes under paragraph 2 of this article the Australian Government will consider the need to:
 - (a) Exempt ASEAN project supplies from payment of taxes, levies, duties, fees and other charges (or otherwise assume responsibility for the payment of such taxes, levies, duties, fees and charges);
 - (b) Expedite their clearance through customs;
 - (c) Facilitate their movement by providing appropriate customs and wharfage facilities including any necessary storage costs at the first port of discharge of the ASEAN project supplies in Australian territory; and
 - (d) Enable their expeditious transport to the site of the project.

ARTICLE IX GENERAL PROVISIONS

1. The cooperation provided under this Memorandum of Understanding (hereinafter referred to as "MOU") will be in addition to any existing bilateral arrangements between the individual member countries of ASEAN and Australia.
2. The Parties will resolve, in the spirit of cooperation and mutual trust, any and all difficulties which may arise under this MOU. Upon the request of one of the Parties, mutual consultations on matters of interest in relation to the AAECF may be held between the Parties.

ARTICLE X AMENDMENTS

1. This MOU may be amended by an Exchange of Notes between the Parties.

ARTICLE XI ENTRY INTO EFFECT

1. This MOU will enter into effect on signature of both Parties and will be effective until 30 June 1998.
2. Each Party may terminate this MOU at any time by giving to the other Party six-months advance notice in writing through normal diplomatic channels except that any termination or expiration of this MOU will neither affect the financial commitments nor any projects and activities initiated before such termination or expiration.

ARTICLE XII EXTENSION

1. This MOU may be extended by an Exchange of Notes between the Parties.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by Australia and ASEAN, have signed this MOU.

Signed in Bangkok, Thailand on this Twenty Seventh day of July, One Thousand Nine Hundred and Ninety Four in two originals.

For ASEAN:

H.E. DR. SURIN PITSUWAN

Deputy Minister of Foreign Affairs,
Acting Minister of Foreign Affairs of Thailand

For Australia:

SENATOR THE HON. GARETH EVANS QC

Minister for Foreign Affairs