

**2002 MEMORANDUM OF UNDERSTANDING BETWEEN THE
GOVERNMENTS OF THE MEMBER COUNTRIES OF THE
ASSOCIATION OF SOUTHEAST ASIAN NATIONS AND THE
GOVERNMENT OF AUSTRALIA ON THE ASEAN - AUSTRALIA
DEVELOPMENT COOPERATION PROGRAMME**

Signed in Bandar Seri Begawan, Brunei Darussalam on 2 August 2002

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The Governments of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand, and the Socialist Republic of Vietnam, 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 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, II and III of the AAECP;

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

RECOGNISING the expansion of ASEAN membership to include Vietnam, Laos, Myanmar and Cambodia has significantly altered the development challenges facing ASEAN;

DESIRING to support the evolution of a more substantive and systematic process of intra-ASEAN development cooperation, through which ASEAN is strengthened as a regional group;

DESIRING to ensure that the ASEAN-Australia Development Cooperation Program (hereinafter referred to as "AADCP") resources are used to tackle those development challenges which are truly regional in nature and which require regional solutions;

NOTING that the AADCP Framework Document of 9 June 2000 defines the mission of the AADCP and provides an overview of the AADCP in terms of its strategy, components and their relationships, and that the development of the AADCP Framework Document, which is an ongoing effort that reflects progress in each major component of the AADCP, should not contradict this MOU;

NOTING that ASEAN has assigned Brunei Darussalam to sign this Memorandum, subject to the provisions of Article XI;

WISHING to limit the administrative resource requirements of the management of AADCP;

HAVE REACHED THE FOLLOWING UNDERSTANDINGS:

ARTICLE I

For the Purpose of this Memorandum of Understanding (hereinafter referred to as this "MOU"), these terms will have the following meaning:

1. "The Parties" mean the Governments of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand, and the Socialist Republic of Vietnam 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 and ASEAN experts, advisers and other specialists to ASEAN in connection with project or program 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 and programs under the AADCP; 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 AADCP 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 AADCP 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 AADCP 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 AADCP, 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 AADCP, 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.
8. "Program" means a grouping of self-contained activities, contributing to the achievement of an overarching program goal, 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 AADCP.
2. The AADCP aims to promote sustainable development within ASEAN, by assisting ASEAN tackle priority regional development challenges, through regional cooperation.
3. The objectives of AADCP are:
 - (a) To strengthen and promote regional cooperation on economic and social development, specifically:
 - in areas of regional macro-economic and financial cooperation and economic integration;
 - through technical assistance and capacity building measures to further enhance ASEAN Free Trade Area - Closer Economic Relations (AFTA-CER) linkages:
 - including investment facilitation; and
 - standards and conformance activities;
 - through regional measures to strengthen social policy formulation and systems; and
 - through measures that would hasten the implementation of the eASEAN Initiative.
 - (b) To strengthen regional institutional capacities:
 - this would include strengthening both regional institutions and national institutions associated with regional cooperation.
 - (c) To strengthen science, technology and environmental cooperation in the region by:
 - enabling ASEAN Member Countries to engage more effectively in ASEAN science, technology and environmental regional cooperation agreements; and
 - extending science, technology and environmental cooperation to the new ASEAN Member Countries.

- (d) To expedite the new Member Countries' economic integration into ASEAN by supporting their participation in ASEAN cooperation programs and regional schemes.

ARTICLE III

AADCP CONTENT

1. The content of the AADCP will reflect its overarching objectives through the establishment of three distinct elements:
 - (a) A Program Stream;
 - (b) A Regional Partnerships Scheme; and
 - (c) A Regional Economic Policy Support Facility.
2. The Program Stream aims to promote development within ASEAN, through regional cooperation, in two areas: ASEAN economic integration and ASEAN competitiveness. It aims to achieve this by funding two long-term programs of development cooperation activities; each program being of up to five years in duration. The contributions of funds or in kind resources by all Parties to project activities will be fully detailed in program designs. Both programs will be managed by one Australian Managing Contractor.
3. The Regional Partnerships Scheme (hereinafter referred to as the "Scheme") aims to assist ASEAN tackle regional development challenges, by supporting the development initiatives of the ASEAN and Australian communities, through a program of cooperative and jointly implemented small to medium scale activities. The Scheme is expected to have a duration of five years.
4. The Scheme will have three elements:
 - (a) The first element will provide support for a range of relatively short-term, small-scale cooperative and jointly implemented development activities initiated by the ASEAN and Australian Communities. The Scheme will involve an element of cost-sharing with Scheme applicants.
 - (b) The second element will provide administrative support for AADCP as a whole. These are expected to include the dissemination of general information on AADCP (including broader AADCP-related lessons learned and logistical arrangements for AADCP meetings).
 - (c) The third element will support program monitoring and review processes of the Regional Partnerships Scheme to contribute to enhanced program quality, accountability and responsiveness.
5. A range of operational parameters for the Scheme, including eligibility criteria and selection guidelines, have been agreed to and are set out in detail in a "AADCP Regional Partnerships Scheme Project Application and Selection Guidelines" document which has been produced as part of the output from the Regional Partnerships Scheme design mission. Management assistance to the Scheme will be provided by a single Australian Managing Contractor.

6. The Regional Economic Policy Support Facility (hereinafter referred to as the "Facility") aims to strengthen the capacity of the ASEAN Secretariat in providing short and long-term regional economic policy advice to ASEAN, and in so doing support the ASEAN Secretariat in meeting its official mandate. It will do this by providing funding and the administrative resources necessary to enable ASEAN and Australian experts to be contracted to produce policy reports on ASEAN regional economic issues. The findings of these reports will be disseminated through appropriate means that will target ASEAN ministers and officials from relevant ASEAN bodies and from ASEAN Member Countries. It is expected that the Facility will receive support under AADCP for five years. Management assistance for the Facility will be provided by a single Australian Managing Contractor.

ARTICLE IV MANAGEMENT AND ADMINISTRATION

1. A Joint Planning Committee (hereinafter referred to as "JPC"), which will advise the ASEAN-Australia Forum of its activities (hereinafter referred to as "Forum"), will be responsible for policy consideration and formulation under the AADCP.
2. The Terms of Reference of the JPC will be;
 - (a) To monitor the operation of all elements of AADCP;
 - (b) To make periodic evaluation of the performance of the AADCP and recommend to ASEAN and Australia, through appropriate channels, the necessary modifications thereto; and
 - (c) To meet annually prior to the Forum, or as and when necessary.
3. The JPC will be composed of the following:
 - (a) A representative from the Government designated 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 Agency for International Development (hereinafter referred to as "AusAID") who will act as members;
 - (c) The Chairperson of each AADCP Program Stream Project Coordinating Committee (hereinafter referred to as "PCC");
 - (d) The Co-Chairs of the Joint Selection and Review Panel of the AADCP Regional Partnerships Scheme;
 - (e) The Co-Chairs of the Research Priorities Committee of the AADCP Regional Economic Policy Support Facility; and
 - (f) Upon determination by the JPC, representatives from other relevant ASEAN Committees and Australia.

4. ASEAN costs associated with JPC meetings will be met from funds to be made available under a component of the AADCP Regional Partnerships Scheme.
5. Each development cooperation program funded under the Program Stream will be managed by its own PCC, which will report to the JPC. Composition of each PCC may vary according to the nature of each program, but will include at least one representative of the following:
 - (a) The ASEAN Secretariat;
 - (b) AusAID;
 - (c) The Australian Program Director/Adviser; and
 - (d) Appropriate ASEAN Committees.
6. Each PCC will meet, as required, generally once or twice a year. Each PCC's terms of reference are to be spelt out in detail in the relevant program design document. However, in general terms each PCC will be expected to:
 - (a) Plan implementation of the project in accordance with the approved Program Design Document;
 - (b) Review the progress and performance of the relevant Program Stream program, and report on this to the JPC;
 - (c) Recommend to the JPC any appropriate changes in the relevant Program Stream program, including budget and future development options; and
 - (d) Undertake such other functions as may be directed by the JPC.
7. The Regional Partnerships Scheme will be governed by a joint ASEAN-Australia panel called the Joint Selection and Review Panel (hereinafter to be referred to as "the Panel"). The services of an Australian Managing Contractor will be required to assist the Panel in management of the Scheme. Activities funded under the Scheme will be implemented and managed by the applicants. Applications will be completed on a standard AADCP Regional Partnerships Scheme "application form which will be available from Australian Embassies and High Commissions in ASEAN Member Countries, the ASEAN Secretariat, ASEAN National Secretariats in ASEAN Member Countries, AusAID offices in Australia, the Australian Managing Contractor for the Regional Partnerships Scheme and electronically from an AADCP internet site (to be developed). Applications will be submitted to the Australian Managing Contractor for initial screening against the selection criteria.
8. The Panel will appraise applications and make decisions as to which activities will be supported. The Panel will meet at least three times a year. The Panel is expected to report on all elements of the operation of the Scheme to the JPC. Membership of the Panel is specified in the design document for the Regional Partnerships Scheme, and will include the following:
 - (a) A representative from the ASEAN Secretariat (co-chair);
 - (b) A representative from AusAID (co-chair); and
 - (c) Two Project Design/Institutional Specialists.

9. The Panel may call on additional ASEAN and Australian expertise from time to time as appropriate.
10. The Regional Economic Policy Support Facility will be managed on a day to day basis by the ASEAN Secretariat, with the assistance of the Australian Managing Contractor. The ASEAN Secretariat will appoint an ASEAN Secretariat official to act as the Convenor of the Facility. The ASEAN Secretariat will also appoint a Deputy-Convenor to assist the Convenor and liaise with an Australian Managing Contractor on operational and administrative issues.
11. The Facility's research program will be determined by a joint ASEAN-Australia Research Priorities Committee (RPC). The Committee will be responsible for setting both the broad research parameters of the Facility as well as making decisions with respect to distinct research activities on a needs-basis. The Committee will also be required to brief the JPC on the operations of the Facility as required.
12. The composition of the RPC is specified in the design document for the Facility, and includes the following:
 - (a) a representative from the ASEAN Secretariat (co-chair);
 - (b) a representative from AusAID (co-chair);
 - (c) a representative from the current Chair of the ASEAN Senior Economic Officials Meeting (SEOM);
 - (d) a representative from the Australian Managing Contractor, who will attend RFC meetings as a resource person; and
 - (e) other relevant ASEAN bodies, as may be necessary.
13. The RPC may, from time to time, request representatives from other ASEAN committees to provide inputs on the projects to be undertaken.
14. It is expected that approximately half way through the life of AADCP a joint ASEAN-Australia mid-term review of its effectiveness will be conducted.

ARTICLE V PROJECTS AND ACTIVITIES

1. The process of identifying, developing and submitting projects and activities under the AADCP will conform with both the ASEAN and AusAID procedures and machinery.
2. The AADCP Program Stream will be limited to the implementation of two significant programs in order to provide cost-effective use of funds.
3. The implementation of each element of AADCP 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 funding disbursed under AADCP will amount to \$45 million, disbursed over the life of the MOU for AADCP, subject to its annual Parliamentary appropriations.
2. Financial disbursement estimates for projects and activities under the AADCP 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 AADCP 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 AADCP projects or activities.
2. The participating parties will be entitled to any intellectual property arising out of the AADCP 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 Agency for International Development (AusAID) will waive any right, title or interest it may have with respect to intellectual property arising out of AADCP 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 AADCP project. In appropriate circumstances, AusAID 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 MOU will prejudice the rights and obligations 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 AADCP PROJECTS AND TERMS AND CONDITIONS GOVERNING AUSTRALIAN AND ASEAN PROJECT SUPPLIES

1. The privileges that Australian personnel may enjoy in the implementation of the AADCP 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 AADCP, 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 ASEAN personnel may enjoy in the implementation of the AADCP 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 any 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 any 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 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 AADCP may be held between the Parties.

ARTICLE X AMENDMENTS

This MOU may be amended by an Exchange of Notes between the Parties. Such amendment may, in some instances, be subject to a Party's domestic legal requirements.

ARTICLE XI ENTRY INTO EFFECT

1. This MOU will take effect from the first day of the month following the date on which the Parties have notified each other of the completion of the procedures necessary for entry into force.
2. This MOU will be effective until 30 June 2008.
3. Any differences arising in the interpretation of the provisions of this MOU will be settled through consultations among the Parties.
4. 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 affect neither the financial commitments nor any projects and activities initiated before such termination or expiration.

ARTICLE XII EXTENSION

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

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

Signed in Bandar Seri Begawan, Brunei Darussalam on this first day of August, Two Thousand and Two in two originals.

For ASEAN:
Mohamed Bolkiah
Minister of Foreign Affairs of Brunei Darussalam

For Australia:
The Hon Alexander Downer MP
Minister for Foreign Affairs