

**2009 MEMORANDUM OF UNDERSTANDING BETWEEN THE
ASSOCIATION OF SOUTHEAST ASIAN NATIONS AND THE
GOVERNMENT OF AUSTRALIA ON THE SECOND PHASE OF THE
ASEAN AUSTRALIA DEVELOPMENT COOPERATION PROGRAMME**

Signed in Phuket, Thailand on 23 July 2009

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Signed in Phuket, Thailand on 23 July 2009

The Government of Australia (hereinafter referred to as “Australia”) of the one part and the Association of Southeast Asian Nations (hereinafter referred to as “ASEAN”) which comprises 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 Viet Nam being Member States of the other part;

RECOGNISING the benefits derived by Australia and ASEAN 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 and the ASEAN Australia Development Cooperation Program (hereinafter referred to as “AADCP”);

APPRECIATING the high-regard in which AADCP is held by ASEAN;

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

DESIRING to support the continued 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 Phase II (hereinafter referred to as “AADCP II”) resources are used to tackle those development challenges that are truly regional in nature and which require regional solutions;

DESIRING to support ASEAN’s Economic Community Blueprint that identifies four key objectives (or pillars) underpinning economic integration: a single market and production base; a highly competitive economic region; equitable economic development; and full integration into the global economy;

NOTING that the AADCP II Program Design Framework Document of 24 January 2008 defines the objectives of the AADCP II and provides an overview of the AADCP II in terms of its strategy, components and their relationships, and that the development of the AADCP II Program Design Framework Document, which is an ongoing effort that reflects progress in each major component of the AADCP II, should not contradict this MOU;

RECOGNISING that ASEAN and Australia have made commitments to gender equality and that the implementation of the AADCP II is to be consistent with ASEAN’s 1988 Declaration on the Advancement of Women in ASEAN and the Australian Agency for International Development’s (hereinafter referred to as “AusAID”) commitments to promoting gender equality through the Australian aid program;

NOTING that 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, and the Socialist Republic of Viet Nam have assigned the Kingdom of Thailand as the current country coordinator of ASEAN-Australia to sign this Memorandum on behalf of ASEAN, subject to the provisions of Section XI;

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

have reached the following UNDERSTANDINGS:

SECTION I – DEFINITIONS

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 Australia and ASEAN which comprises 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 Viet Nam.
2. “Activity” means any 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 II; and any other form of assistance, reportable as Official Development Assistance (hereinafter referred to as “ODA”) under the Organisation For Economic Cooperation and Development (hereinafter referred to as “OECD”) Development Assistance Committee (hereinafter referred to as “DAC”) guidelines as may be determined by Australia and ASEAN.
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 II and who have been properly endorsed by the Parties as Australian personnel for such project or activity. This phrase, however, will not be construed to include citizens and/or permanent residents of a Member State of ASEAN who may be participating in a project or activity under the AADCP II being hosted by such Member State.

(b) “ASEAN Personnel” refers to citizens and/or permanent residents of a Member State of ASEAN or citizens and /or permanent residents of countries other than ASEAN Member States concerned who are working on a project or activity under the AADCP II and who have been properly endorsed by the Parties as ASEAN personnel for such project or activity.
4. “Services and project supplies” are defined as follows:
 - (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 II, the cost of which is funded from the contribution of Australia to the activity; and
 - (b) “ASEAN services and project supplies” means any equipment, vehicles, materials, and other goods and services supplied for the execution of development activities under the AADCP II, 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 (hereinafter referred to as “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, but are not limited to, research, studies, surveys, workshops/seminars/conferences, and exchange programs.

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.

SECTION II – GOALS AND OBJECTIVES

1. The Parties will pursue the following goals and objectives of the AADCP II.

2. The overall objective of AADCP II is to support ASEAN to implement its economic integration policies and priorities, in line with the ASEAN Economic Community (hereinafter referred to as "AEC") Blueprint.

3. The three main 'component' objectives are:

(a) To strengthen the ASEAN Secretariat's institutional capacity to facilitate and support ASEAN integration and community building efforts.

(b) To provide timely and high quality economic research and policy advice on priority regional economic integration issues.

(c) To support regional mechanisms and capacity for the implementation of selected high priority AEC Blueprint activities at the national level.

SECTION III – AADCP II CONTENT

1. It is proposed that AADCP II will run from the date of entry into effect of this MOU through to December 2015 (7 years duration), and thus be aligned with the strategic timeline for implementation of the AEC Blueprint.

2. The content of the AADCP II will be based around the three component objectives (Section II:3) that will contribute to the overall program goal and objective.

3. The program will consist of three main stages:

(a) Stage 1: Inception, transition and initial program planning (6 months);

(b) Stage 2: Implementation, independent review of performance and re-design as required (3 years); and

(c) Stage 3: Implementation, review of performance and consideration of future programming implications (3 years and 6 months).

SECTION IV – MANAGEMENT AND ADMINISTRATION

1. The primary decision making and coordination body regarding the use of AADCP II resources will be the Joint Planning and Review Committee (hereinafter referred to as “JPRC”).
2. The JPRC will meet up to twice a year to:
 - (a) review and approve AADCP II Annual Plans and budgets; and
 - (b) conduct a mid-year review of progress in implementing each Annual Plan.
3. Membership of the Committee will include nominated representatives from:
 - (a) Australia’s ASEAN Country Coordinator (Co- chair);
 - (b) AusAID (Co-chair);
 - (c) ASEAN Secretariat; and
 - (d) ASEAN Member States, including ASEAN’s Senior Economic Officials Meeting (SEOM) and other Senior Officials from other relevant ASEAN Sectoral Ministerial Bodies.
4. The primary responsibilities of the JPRC will be to:
 - (a) support efficient and effective management of AADCP II resources including by focusing on promoting aid effectiveness principles, efficient and effective management of AADCP II resources, and a results-based approach to performance monitoring and reporting;
 - (b) ensure both ASEAN and Australian priorities are reflected in the strategic direction of AADCP II supported activities;
 - (c) review and endorse the strategic direction of each AADCP II Annual Plan and budget;
 - (d) review the progress made in implementing each annual plan and, as appropriate, help resolve implementation problems and re-direct the attention of the Project Management Team referred to in Section IV, paragraph 5;
 - (e) assess AADCP II effectiveness in contributing to AEC Blueprint implementation; and
 - (f) promote and support effective coordination with other dialogue partners of ASEAN.
5. A Program Management Team (hereinafter referred to as “PMT”) as defined under the mutually arranged AADCP II Program Design Framework Document (PDF) comprising nominated ASEAN Secretariat representatives and the AusAID Program Director will be established. ASEAN Secretariat representatives shall work closely with ASEAN Senior Economic Officials’ Meeting (hereinafter referred to as “SEOM”) and other relevant ASEAN bodies to ensure that the programs/activities to be implemented under the AADCP II would be in line with ASEAN’s main integration priorities.
6. The PMT will meet regularly (as needed) and will have operational responsibility for overseeing:
 - (a) the programming of AADCP II resources including the identification of priorities and coordination with other donor funded initiatives to avoid overlap and enhance complementarity;
 - (b) the design of project proposals for AADCP II funding;

- (c) the implementation of appropriate project appraisal/quality assurance processes prior to project implementation;
- (d) the mobilisation of the required resources for program/project implementation, including ensuring that tendering/contracting procedures are efficiently and effectively managed;
- (e) the ongoing monitoring of program/project implementation, including quality assurance of program/project activities and outputs;
- (f) the preparation of AADCP II six-monthly progress reports and annual plans for submission to the JPRC;
- (g) the implementation of ASEAN Secretariat institutional capacity building strategies; and
- (h) the promotion of effective teamwork, problem solving and results- focused working approaches.

7. Day to day management will be with the AusAID Program Director and a nominated ASEAN Secretariat Representative (supported by the Program Planning and Monitoring Support Unit) who will be primarily responsible for:

- (a) preparing consolidated AADCP II Annual Plans and budgets, and six-monthly reports;
- (b) authorising the commitment of expenditures from the relevant Trust Funds (for programs/projects and staffing/management support) in line with the scope of approved projects and workplans;
- (c) monitoring the overall progress of AADCP II implementation and the achievement of results;
- (d) promoting donor coordination including investigating and pursuing options for the establishment of a common-pool funding mechanism;
- (e) providing secretariat support to the JPRC;
- (f) maintaining a central database of all AADCP II funded initiatives; and
- (g) producing appropriate information materials on AADCP II and promoting the program's visibility.

8. The AusAID Program Director will also have responsibility for ensuring that AusAID specific financial and aid effectiveness reporting requirements are met, and that Australian funds are released into the ASEAN Secretariat trust funds referred to in Section VI, paragraph 4, in a timely manner once the required approvals and accounting/acquittal requirements have been met.

SECTION V – MONITORING AND EVALUATION

1. Monitoring and Evaluation will be jointly undertaken by ASEAN Secretariat and AusAID. The proposed approach to monitoring and evaluation will entail:

- (a) primarily working with and through ASEAN / ASEAN Secretariat monitoring and review systems, providing capacity building support where required;

- (b) supporting the collection and use of information at 3 main levels, namely:
 - Macro economic indicators of economic integration;
 - Meso-level indicators of progress in implementing the AEC Blueprint; and
 - Micro-level indicators of AADCP II funded program/ project implementation including delivery of outputs and use of resources.
- (c) conducting periodic 'contribution analysis' activities, in order to assess the ongoing relevance, efficiency and effectiveness of AADCP II support; and
- (d) coordinating and harmonising with the monitoring and evaluation activities of other key dialogue partners of ASEAN where possible.

2. Activities funded under AADCP II will use gender analysis in their development and will aim to include measures to promote greater equality between men and women in their design. Monitoring the progress and evaluating the success of activities will include assessing their contributions to promoting gender equality and their impact on both men and women.

SECTION VI – FUNDING AND FINANCIAL ORGANISATION

1. Australia and the ASEAN Secretariat will exert their best efforts to ensure that funding disbursed under AADCP II will amount to AUD 57 million, disbursed over the life of the MOU for AADCP II, subject to its annual Australian Parliamentary appropriations.
2. Indicative estimates for each component objective will be as follows:
 - (a) strengthened ASEAN Secretariat institutional capacity to facilitate and support ASEAN integration and community building efforts – AUD 8 million
 - (b) economic research and policy proposals – AUD 10 million
 - (c) AEC implementation – AUD 22 million
 - (d) staffing and management support – AUD 17 million
3. Financial disbursement estimates for component objectives under the AADCP II will merely serve as indicative planning figures and will not be considered as absolute financial commitments.
4. Two trust funds, managed by the ASEAN Secretariat, will be used to finance AADCP II initiatives. Procedures for managing the trust funds will be mutually arranged between AusAID and the ASEAN Secretariat and be in line with established ASEAN Secretariat Trust Fund procedures as documented in the ASEAN Project Management Manual. In accordance with ASEAN Secretariat practices, the trust funds will be regularly audited and information shared with AusAID. Opportunities to pool Australian funds with other donors and harmonise approaches will be explored and, where feasible, implemented over the course of this MOU.

SECTION VII – INTELLECTUAL PROPERTY RIGHTS

1. Project arrangements among participating parties for subsequent specific AADCP II 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 II projects or activities according to the existing legislation and regulations of each participating party.

2. The participating parties will be entitled to any intellectual property rights arising out of the AADCP II 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 propriety work of each participating party;
- (d) the facilities provided by each participating party;
- (e) legal considerations; and
- (f) such other relevant considerations as the Parties participating in a relevant Project may mutually decide upon.

3. Project implementation arrangements will include provision for the checking for and protection against infringement of intellectual property rights of third parties.

4. AusAID will waive any right, title or interest it may have with respect to intellectual property arising out of AADCP II 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 II 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.

SECTION VIII – PRIVILEGES OF THE AUSTRALIAN AND ASEAN PERSONNEL INVOLVED IN THE AADCP II AND TERMS AND CONDITIONS GOVERNING AUSTRALIAN AND ASEAN PROGRAM SUPPLIES

1. The privileges that Australian personnel may enjoy in the implementation of AADCP II and the terms and conditions governing Australian program supplies will be subject to the terms of any applicable treaty or bilateral development cooperation memorandum of understanding and the relevant Government policies, rules, regulations and practices of the ASEAN Member States hosting a particular activity under the AADCP II, details of which will be mutually decided by Australia and the ASEAN Member States concerned and set out in an Exchange of Letters between Australia and those ASEAN Member States.

2. The privileges that the ASEAN personnel may enjoy in the implementation of AADCP II and the terms and conditions governing ASEAN program supplies will be similarly subject to the terms of any applicable treaty or bilateral development cooperation memorandum of understanding and the relevant Government policies, rules, regulations and practices of the ASEAN Member States hosting a particular activity under the AADCP II.

3. In the course of negotiating an Exchange of Letters under paragraph 1 of this Section, the relevant ASEAN Member State will consider the need to:

- (a) exempt Australia program 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 under their jurisdiction, including any necessary storage costs at the first port of discharge of the Australia program supplies in the relevant ASEAN Member States' territory; and
- (d) enable their expeditious transport to the site of the program activity.

4. In the course of negotiating an Exchange of Notes under paragraph 2 of this Section, Australia will consider the need to:

- (a) exempt ASEAN program 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 program supplies in Australian territory; and
- (d) enable their expeditious transport to the site of the program activity.

SECTION IX – GENERAL PROVISIONS

1. The cooperation provided under this MOU will be in addition to any existing bilateral arrangements between Australia and individual Member States of ASEAN.

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 AADCP II may be held between the parties.

3. This MOU (or any amendment to it) does not constitute or create (and is not intended to create) obligations under international or domestic law and will not give rise to legal process and will not be deemed to constitute or create any legally binding or enforceable obligations (expressed or implied).

SECTION X – AMENDMENTS

1. This MOU can be reviewed or amended at any time by mutual written consent of the Parties. Such amendments shall enter into effect on such a date as may be determined by the Parties and shall form an integral part of this MOU.

SECTION XI – DATE OF EFFECT

1. This MOU will take effect on the date that it has been signed by Australia and the Kingdom of Thailand (on behalf of ASEAN).

2. This MOU will be effective until 31 December 2015.
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 activities initiated before such termination or expiration.

SECTION 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 Australia and ASEAN, have signed this MOU.

Signed in Phuket, Thailand, this Twenty-Third Day of July in the Year Two Thousand and Nine in two originals.

For ASEAN:

H.E. MR. KASIT PIROMYA

Minister of Foreign Affairs of the Kingdom of
Thailand

For Australia:

THE HON STEPHEN SMITH MP

Minister for Foreign Affairs