

**COOPERATION ARRANGEMENT
BETWEEN THE ASSOCIATION OF SOUTHEAST ASIAN
NATIONS SECRETARIAT
AND THE COMMONWEALTH OF AUSTRALIA
REPRESENTED BY THE AUSTRALIAN AGENCY FOR
INTERNATIONAL DEVELOPMENT
ON THE ASEAN AUSTRALIA NEW ZEALAND FREE
TRADE AREA ECONOMIC COOPERATION SUPPORT
PROGRAM**

1. The Commonwealth of Australia represented by the Australian Agency for International Development ("AusAID") and the Association of Southeast Asian Nations (ASEAN) Secretariat, hereinafter also collectively referred to as the "Parties", or individually as "Party" have reached the following understanding on the ASEAN Australia New Zealand Free Trade Area (AANZFTA) Economic Cooperation Support Program ("AECSP", also referred to herein as "Program").

Term of the Cooperation Arrangement

2. This Cooperation Arrangement is deemed to have commenced on the date it is signed by both Parties and continues until 30 June 2014 or earlier termination under this Cooperation Arrangement.
3. This Cooperation Arrangement may be amended by an Exchange of Letters between the Parties.
4. This Cooperation Arrangement does not need to be amended following any changes to the AECSP Design Document.

Notices

5. The Parties' addresses are the addresses set out below unless otherwise advised by either Party at a later date.
6. Any notice, request or consent required or permitted to be given or made pursuant to this Cooperation Arrangement will be in writing. Correspondence will be addressed and sent by registered mail, or facsimile to the relevant Party as follows:

- a. **ASEAN Secretariat**

Deputy Secretary-General of ASEAN for ASEAN
Economic Community
ASEAN Secretariat
70 A Jl. Sisingamangaraja
Jakarta 12110 Indonesia

Tel: +62 21 7243372
Fax: +62 21 7398234

- b. **AusAID**

Assistant Director General
Asia Regional Branch
Australian Agency for International Development
GPO Box 887
Canberra ACT 2601 Australia

Tel: +61 2 62064009
Fax: +61 2 62064036

Background

7. The Purpose of this Cooperation Arrangement is to set out the principles that will govern the Program.

8. The Parties will pursue the following overall objective of the Program:

The overall objective is to support the ASEAN Secretariat in servicing the AANZFTA Joint Committee and its subsidiary bodies and to assist Parties to the AANZFTA Agreement in the implementation of the AANZFTA so that the full benefits of the AANZFTA are realised.

Management and Administration

9. The Parties will carry out the Program in accordance with the last mutually agreed AECSP Design Document (Attachment A) and the terms and conditions of this Cooperation Arrangement. The AECSP Design Document can be amended if agreed in writing by the Parties.
10. Each Party will advise the other immediately of any difficulties or delays in the implementation of the Program.
11. The AANZFTA Joint Committee (FTA Joint Committee) established under the AANZFTA Agreement will review Program performance, provide strategic direction to the Program, and approve AECSP Annual Plans and associated budgets. The FTA Joint Committee consists of the AANZFTA Officials nominated by each Party to the AANZFTA Agreement.
12. The ASEAN Secretariat, as the Implementing Partner, will have the responsibility for the management and supervision of the Program and will keep AusAID informed of the progress of the Program.
13. The Assistant Director of the External Economic Relations Division (EERD), under the supervision of

the Director of the Market Integration Directorate will oversee the programming, design, implementation, monitoring and review of AECSP resources. The AANZFTA Support Unit will provide support to the Assistant Director, EERD.

14. Proposals for significant changes to the Program will be subject to review and approval by the Joint Committee in writing prior to such changes being incorporated into the Program. If any changes occur which in the opinion of either Party may impair the development objectives of the Program, AusAID and the ASEAN Secretariat will consult on measures to resolve the problem and suggest possible courses of action.
15. In the event that there is no resolution to the above problem, AusAID may modify or terminate its financial contribution to the Program, subject to the settlement from AusAID funds of all those of the Program's outstanding obligations which have been necessarily and reasonably incurred by the ASEAN Secretariat and which are properly chargeable to AusAID; always provided that the total amount paid by AusAID will not exceed AUD19,000,000 (excluding any GST that may be applicable).

Reporting Requirements

16. The ASEAN Secretariat with the support of the AANZFTA Support Unit will provide to the FTA Joint Committee, subject to the FTA Joint Committee's decision, and AusAID the following reports prepared in accordance with the ASEAN Secretariat's accounting and reporting procedures, taking into account also AusAID's information requirements:

- a. relevant information pertaining to the utilisation of the Contribution (refer to paragraph 22) including monitoring and evaluation information at six-monthly intervals. This will include an interim report as at 30 June, received not later than 31 July of each year.
- b. Annual Reports not later than 31 March of each year. This will include:
 - i. an annual certified financial statement for all AECSP funded activities for the preceding calendar year¹;
 - ii. analytical reporting on the implementation and progress of activities for the preceding calendar year and the delivery of results; and
 - iii. annual workplans and budgets for proposed AANZFTA Support Unit activities and ECWP projects.
- c. a Program Completion Report within sixty (60) days after the date of completion or termination of the Program. The report will be prepared in accordance with AusAID and ASEAN reporting requirements and will include:
 - i. a final certified financial statement; and
 - ii. evaluation of Program performance against objectives with an assessment of the impact on target groups.

All reports to AusAID will be signed by the ASEAN Secretariat's Head of the Market Integration Directorate

¹ Generally this would be provided following the annual scheduled Audit of AECSP funds. See paragraph 36.

or his/her designate, indicating that the reports are an accurate reflection of activities undertaken, in accordance with the AECSP Design Document and the Terms of this Cooperation Arrangement. Financial reports will also be subject to the requirements of paragraph 33.

17. The ASEAN Secretariat will facilitate access by AusAID representatives to all relevant Program sites and documentation, with the concurrence of participating Governments.

Monitoring and Evaluation

18. Monitoring and Evaluation will be jointly undertaken by the ASEAN Secretariat and AusAID. The proposed approach to monitoring and evaluation will entail:
 - a. primarily working with and through ASEAN Secretariat monitoring and review systems, and providing capacity building support where required;
 - b. supporting the collection and use of information at two main levels, namely:
 - i. indicators of progress in implementing the AANZFTA Agreement;
 - ii. indicators of AECSP funded program/project implementation including delivery of outputs and use of resources under:
 - a) the Economic Cooperation Work Program (ECWP), and
 - b) the AANZFTA Support Unit;

- c. conducting periodic 'contribution analysis' activities, in order to assess the ongoing relevance, efficiency and effectiveness of AECSP support;
 - d. complying with fuller details of reporting requirements which will be outlined in the monitoring and evaluation system to be developed during the first quarter 2010; and
 - e. coordinating and harmonising with the monitoring and evaluation activities of other key dialogue partners where possible.
19. Beyond formal monitoring and reporting requirements, the Parties will keep each other informed of key issues, problems or progress that may impact on the implementation of the Program as they arise.
20. The ASEAN Secretariat will participate in, and support the design and implementation of, specific monitoring studies identified as being necessary by the Assistant Director, EERD, to help effectively monitor Program implementation and the achievement of results, and as endorsed by the FTA Joint Committee.
21. An Independent Review of the Program funded under this Cooperation Arrangement will be undertaken in Year 3 of Program implementation. The Terms of Reference for this review will be developed jointly by the ASEAN Secretariat and AusAID, and approved by the FTA Joint Committee. The independent members of the review team will be contracted directly by AusAID, including the review Team Leader.

Funding and Financial Organisation

22. AusAID will provide the ASEAN Secretariat with a contribution of an amount up to AUD19,000,000 (referred to as the "Contribution") to implement the Program as described in the AECSP Design Document, and as described and updated in future AECSP Annual Plans and budgets to be approved by the FTA Joint Committee.
23. Funds made available by Australia will be used exclusively for the purposes of the Program for which they are intended and in accordance with the AECSP Design Document. All expenditure must be in accordance with the specifications of FTA Joint Committee approvals of the annual plans and budgets. ECWP activities can only be funded under this Cooperation Arrangement where Australia is involved in the activity in accordance with Chapter 12, Article 4(1)(c) of the AANZFTA Agreement. Use of Australian funds must be consistent with guidelines for Official Development Assistance (ODA) eligibility as described by the Organisation for Economic Cooperation and Development (OECD) Development Assistance Committee (DAC).
24. Funding will contribute to delivering two primary components as indicated in the financing table below:

AECSP Components		Funding AUD
AECSP Program Elements	AANZFTA Support Unit	Up to \$3,800,000
	ECWP Projects	Up to \$15,200,000
TOTAL: Up to		\$19,000,000

25. The Contribution will be administered by the ASEAN Secretariat in accordance with its financial rules and procedures, applying its normal procedures for the execution of its programs and projects.
26. ASEAN, through the ASEAN Secretariat, will provide contributions in kind to AECSP primarily through the provision of facilities, office space, basic utilities and services of the ASEAN Secretariat staff.
27. The ASEAN Secretariat will initiate discussions with AusAID on disbursement of funds if major deviations from approved plans and budgets are foreseen. If necessary, AusAID may at any time request the ASEAN Secretariat to withhold disbursement of funds:
 - a. if major deviations from approved plans and budgets occur;
 - b. if the main Program objectives are at risk;
 - c. if reports are not delivered as required by this Cooperation Arrangement; or
 - d. if AusAID considers that the Program develops in a manner inconsistent with the objectives in any other important respect.

Before taking such a decision, AusAID will initiate discussions with the ASEAN Secretariat.

28. The ASEAN Secretariat will establish two new AECSP bank accounts, one for the 'AANZFTA Support Unit' costs and the other for 'AANZFTA ECWP Projects'. The accounts cannot be pre-existing accounts. The bank accounts must be with an authorised deposit-taking institution that is authorised to carry on banking business, and is prudentially regulated.

29. The accounts will be managed in line with established ASEAN Secretariat financial rules and procedures, including the ASEAN Project Management Manual (APMM) and the requirement for two authorised signatories for the release of funds for payments. The ASEAN Secretariat must keep proper and detailed accounts, records and asset registers along with adequate Activity Management Records providing clear audit trails in relation to expenditure under this Cooperation Arrangement. The accounts and records must be held by the ASEAN Secretariat for the term of this Cooperation Arrangement and for a period of seven (7) years from the date of expiry or termination of this Arrangement.
30. All project-related staff to be hired for or by the AANZFTA Support Unit will be recruited and managed in line with established ASEAN Secretariat staff rules and regulations, including the APMM.
31. AusAID funds will be released in tranches into the two ASEAN Secretariat managed bank/trust accounts on at least an annual basis, based on cash flow estimates contained in each AECSP Annual Plan for: (i) AANZFTA Support Unit expenditure, and (ii) ECWP projects. Tranches will be payable subject to the acquittal of 80% of previous funds. A request for fund replenishment can nevertheless be made at any time for consideration by AusAID. Release of funds will be triggered by requests from the ASEAN Secretariat and channelled through the AANZFTA Support Unit Program Coordinator to the Program Manager, AusAID.
32. A preliminary release of funding for the first six (6) months of AANZFTA Support Unit operation has been made available following the approval of a preliminary six month budget by an informal meeting of the FTA Joint Committee in December 2009. Adjustments to the

annual tranche will be made on formal approval of annual budgets at the first FTA Joint Committee Meeting, scheduled to be held in May 2010.

33. Six-monthly finance reports/acquittals will be provided to AusAID detailing expenditure and commitments of the Contribution under both the AANZFTA Support Unit and the ECWP accounts, regardless of how often tranches are made. Expenditure and commitments will be shown against Key Result Areas as outlined in the AECSP Design Document. The reports will be signed by the ASEAN Secretariat's Head of Finance and Budget Division, indicating that the funds being acquitted have been expended in accordance with the Terms of this Cooperation Arrangement.
34. The ASEAN Secretariat will acknowledge in writing to AusAID receipt of the funds immediately on their receipt.
35. Any interest income earned on the cash balance of the Contribution will be used in accordance with the ASEAN Secretariat financial rules and procedures, including the APMM, and only applied for purposes for which they are intended in accordance with AECSP Design Document.
36. AECSP bank accounts will be audited on an annual basis by a licensed independent professional auditing firm. The annual audit process will be initiated by the ASEAN Secretariat's Finance and Budget Division. A copy of the Audit will be shared with AusAID.
37. The rationale for payments or withdrawals from either/both bank accounts must be documented in writing through normal ASEAN Secretariat processes and approved by Assistant Director, EERD prior to sign-off by the signatories.

38. If requested by AusAID, the ASEAN Secretariat will provide an acquittal, certified by the Head of the Finance and Budget Division, of funds spent to date against the budget for the Program.
39. The ASEAN Secretariat will, if required by AusAID, permit AusAID to monitor or evaluate the Program and/or use of the funds. AusAID will give the ASEAN Secretariat at least two (2) weeks notice of its intentions prior to commencing such a review. In that event, the ASEAN Secretariat will cooperate fully with any request for assistance pursuant to any such review.
40. The ASEAN Secretariat will acknowledge AusAID funding where appropriate and advise AusAID in advance of matters relating to publicity and media relations.
41. The FTA Joint Committee will review the financial expenditure and commitment details against budget and as required, will authorise the re-allocation of resources between AECSP components, and between projects within these components. Either Party may decide to withhold or cancel any payments made pursuant to this Cooperation Arrangement should the Contribution not be utilised as outlined in the AECSP Design Document or under the terms of this Arrangement.
42. The ASEAN Secretariat will return to AusAID any undisbursed or unaccounted portion of the Contribution within six (6) months of expiration of this Cooperation Arrangement, unless otherwise determined by both Parties.

Intellectual Property Rights

43. The ownership of the intellectual property rights in any material created through AECSP ("AECSP Material") will be vested on creation jointly in the ASEAN Secretariat, the Commonwealth of Australia and the Commonwealth of New Zealand. This Cooperation Arrangement will not affect the ownership of intellectual property rights in any material created otherwise than through AECSP, including pre-existing material incorporated into AECSP Material.

Procurement

44. The procurement of goods and services for the Program will be carried out in accordance with the APMM incorporating relevant regulations, rules, directives and international competitive bidding when applicable. The ASEAN Secretariat will inform AusAID of any proposed changes to the APMM that may impact procurement related to the Program and the application of those changes to the Program are to be mutually agreed.
45. The APMM will not be applicable where the FTA Joint Committee has specifically approved an Australian Government agency as the supplier. In this case the supplier and the ASEAN Secretariat will enter into a mutually agreed arrangement for the provision of the goods and services.
46. The ASEAN Secretariat must not use the Funds to acquire any asset, apart from those detailed and approved by the FTA Joint Committee in annual plans and budgets. Subject to the requirements of this clause, the ASEAN Secretariat will own the assets acquired with the Funds unless otherwise agreed by the Parties.

47. Where funds are used to procure goods, the ASEAN Secretariat must ensure in its procurement of the goods that:
- a. the goods to be procured are of a satisfactory quality;
 - b. the price paid for goods procured represents value for money;
 - c. there is open and effective competition in the purchasing process to the extent practicable;
 - d. a professional approach is reflected in the purchasing process including ethical behaviour and fair dealing; and
 - e. a Register of AECSP Assets is maintained showing date of receipt of the asset, cost, purchase/payment documentation date and reference number, a description and identification number and location of the asset. The Register will be reconciled with the Program assets at least every twelve (12) months and the results of that reconciliation included in the Annual Reports required in clause titled 'Reports' in this Cooperation Arrangement.
48. Australian suppliers of goods and services will be given the same opportunities as other suppliers to bid for tenders available under the Program. Australian Government agencies will be considered as suppliers of services, where they are identified as having the requisite knowledge and skills to effectively provide such services. Local and regional suppliers of goods and services will also be encouraged to submit bids.

COMPLIANCE WITH LAWS, GUIDELINES AND POLICIES

49. The ASEAN Secretariat and its Personnel will have regard to and comply with ASEAN Secretariat guidelines and policies.
50. The ASEAN Secretariat will endeavour to ensure that:
- a. individuals or organisations involved in implementing AECSP activities are in no way linked, directly or indirectly, to organisations and individuals associated with terrorism; and
 - b. Funds provided under this Cooperation Arrangement are not used in any way to provide direct or indirect support or resources to organisations and individuals associated with terrorism.
51. If, during the course of this Cooperation Arrangement, the ASEAN Secretariat discovers any link whatsoever with any organisation or individual listed on a Relevant List² it must inform AusAID immediately.
52. The ASEAN Secretariat agrees that:
- a. The ASEAN Secretariat and its employees, agents, representatives or its subcontractors must not engage in any Fraudulent Activity.³ The ASEAN Secretariat is responsible for preventing and detecting Fraud; and

² Where "Relevant List" means the lists of terrorist organisations made under Division 102 of the *Criminal Code Act 1995* (Cth) and the *Charter of the United Nations Act 1945* posted at:

<http://www.nationalsecurity.gov.au/agd/www/nationalsecurity.nsf/AllDocs/95FB057CA3DECF30CA256FAB001F7FBD?Open> Document and

http://www.dfat.gov.au/icat/UNSC_financial_sanctions.html#3

³ Where "Fraudulent Activity", "Fraud" or "Fraudulent" means dishonestly obtaining a benefit by deception or other means.

- b. The ASEAN Secretariat must report promptly in writing to AusAID any detected, suspected, or attempted Fraudulent Activity involving the AECSP.

Termination of Cooperation Arrangement

- 53. Either Party may terminate this Cooperation Arrangement at any time by giving the other Party six (6) months advance notice in writing. Unless otherwise decided by the Parties, any termination or expiration of this Cooperation Arrangement will not affect the financial commitments and/or activities initiated under the Program prior to such termination or expiration.
- 54. In the event that a notice to terminate is given by either Party the ASEAN Secretariat will:
 - a. immediately and forthwith do everything possible to prevent and mitigate all losses, costs and expenses arising in consequence of the termination of this Cooperation Arrangement and will in a prompt and orderly manner cease expenditure of any uncommitted Funds of the Activity;
 - b. refund any uncommitted part of any tranche or funds already paid by AusAID, together with any uncommitted or unspent interest, within thirty (30) days of the date of the notice to terminate; and
 - c. provide an independently audited statement of expenditure of the Funds within thirty (30) days of the date of the notice to terminate, signed by the ASEAN Secretariat's Head of Finance and Budget Division.

Settlement of Disputes

55. The Parties will use all reasonable efforts in good faith to resolve any disputes which arise between them in connection with this Cooperation Arrangement.
56. This Cooperation Arrangement does not create legal relations.

Signed By

In witness whereof, the undersigned, being duly authorised thereto, have signed this Cooperation Arrangement in duplicate.

Dated this *9th* day of *April* 2010

The ASEAN Secretariat



S. PUSHPANATHAN
Deputy Secretary-General of ASEAN

Commonwealth of Australia represented by the
Australian Agency for International Development
(AusAID)

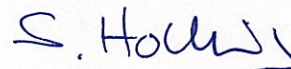


PETER BAXTER
Acting Director General
Australian Agency for International Development

In the presence of:



Witness Signature
Baldeep Bhullar
Second Secretary,
Witness Name and Position
Ministry of Foreign Affairs
and Trade,
Brunei Darussalam



Witness Signature
Sue Hollins
Executive Assistant
AusAID, Canberra
Witness Name and Position