



**MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENTS OF
BRUNEI DARUSSALAM, INDONESIA, MALAYSIA AND THE PHILIPPINES
ON TRANSIT AND INTER-STATE TRANSPORT OF GOODS**

The Governments of Brunei Darussalam, Indonesia, Malaysia and the Philippines, hereinafter referred to individually as the "Participating Party" and collectively as "the Participating Parties", having subscribed to the establishment of Brunei Darussalam, Indonesia, Malaysia and the Philippines – East ASEAN Growth Area (BIMP-EAGA),

DESIRING to promote, develop and enhance trade and investment among BIMP-EAGA;

RECALLING the decision of the Third BIMP-EAGA Summit held at Cebu City in the Philippines on 12 January 2007 to further facilitate cross-border movement of people and goods through adoption of sub-regional interstate transport and transit transport agreements;

RECALLING also the decision of the Fourth BIMP-EAGA Summit held in Singapore on 19 November 2007 to undertake specific measures to pilot-test the ASEAN Framework Agreement on the Facilitation of Goods in Transit in BIMP-EAGA by 2008;

REITERATING the objective of the BIMP-EAGA Roadmap to Development 2006-2010 to establish border arrangements that will facilitate flow of goods and people and reduce transport costs within BIMP-EAGA;

REAFFIRMING that an efficient and integrated transport system is key in hastening the establishment of the ASEAN Economic Community by 2015;

AGREEING that further strengthening of BIMP-EAGA transport agenda will contribute towards acceleration of ASEAN economic integration;

RECOGNIZING that advancing the transport linkages, including roll-on/roll-off services are pivotal towards promoting trade in BIMP-EAGA;

Without prejudice to any ongoing territorial claims between Participating Parties, existing agreements, national laws, policies and regulations, the Participating Parties have hereby agreed to the following:

1. OBJECTIVE

The objective of this Memorandum of Understanding is to facilitate inter-state transport of goods and transportation of goods in transit between and among the Participating Parties as well as to promote multimodal transport.

2. DEFINITION OF TERMS

For the purpose of this Memorandum of Understanding, the following meanings shall apply to the underlined terms:

Cabotage: The carriage of goods loaded in the territory of a Participating Party for unloading at a place within the territory of the same Participating Party.

Competent Authority: Agency or agencies of the respective Participating Parties responsible for regulating transport-related activities.

Dangerous Goods: Those substances and articles which may affect the interest of environment, health, safety, and national security.

Designated Points of Entry and Exit: Designated points of entry and exit to be determined in accordance with Paragraph 6.1 of this Memorandum of Understanding

Designated Ports of Entry and Exit for Roll-on/Roll-off Vessels: Designated ports of entry and exit for roll-on/roll-off vessels to be determined in accordance with Paragraph 6.1 of this Memorandum of Understanding

Designated Routes: Designated transit and inter-state transport routes to be determined in accordance with Paragraph 6.1 of this Memorandum of Understanding

Home Country: For Transport Operators, the country of establishment; and for means of transport, the country of registration.

Host Country: The country where transport operation is performed.

Inter-state Transport: Transport of goods and the movement of means of transport into and/or from Participating Parties.

Means of Transport: Road vehicles as specified in Protocol 3 of the ASEAN Framework Agreement on the Facilitation of the Goods in Transit, including those on-board roll-on/roll-off vessels.

Multimodal Transport: Transportation which combines two or more modes of transport such as air, road, rail or sea.

Perishable Goods: Fresh, chilled or frozen fish, crustacean, mollusks, fruits, vegetables, meat or poultry, dairy and dairy products, eggs and egg products and swine and pork products.

Third Countries: Countries that are not Participating Parties to this Memorandum of Understanding.

Transit Country: The country of a Participating Party through which traffic in transit passes.

Transit Transport: Transit of goods and means of transport across the territory of one or more Participating Parties, when the passage across such territory or territories, with or without transshipment, warehousing, breaking bulk or change in the mode of transport, is only a portion of a complete journey beginning and terminating beyond the frontier of one or more Participating Parties across whose territory the traffic passes.

Transit Vehicles: The means of transport performing transit transport operation.

Transport Crew: People engaged in transport operation, i.e., drivers and crew who are on board the means of transport.

Transport Operator: Licensed legal entity which carries goods by means of transport for hire and/or financial reward.

Unladen Journey: A portion of transport operation where no goods are being carried on board the means of transport.

3. SCOPE OF APPLICATION

3.1 This Memorandum of Understanding shall apply to transit and inter-state transport of goods by means of transport between and among the territories of the Participating Parties and/or in transit through the territory of another Participating Party that are:

3.1.1. Carried out by transport operators for hire and/or financial reward established in the country of a Participating Party in accordance with its laws and holding a license to undertake carriage of goods; and

3.1.2. Using means of transport registered in the Participating Party where the transport operator is established; or

3.1.3. Using vehicles hired by a transport operator not registered in the Participating Party where the transport operator is established but registered in another Participating Party.

3.2. Paragraph 3.1 of this Memorandum of Understanding shall also apply to unladen journey and transport crew.

4. ADMITTANCE OF VEHICLES INTO THE TERRITORY OF OTHER PARTICIPATING PARTIES

4.1. Identification Marks, Certificate of Registration and Registration Plate

Vehicles in cross-border traffic shall be registered in their Home Country. They shall bear identification marks (trademark of manufacturer, chassis and engine serial number), carry a valid certificate of registration issued by the Competent Authority of its Home Country and display their registration number on a plate in the rear and the front. Each Participating Party shall recognize the vehicle registration certificate and registration plate issued by the Competent Authority of the other Participating Parties.

4.2. Technical Conditions

4.2.1. Vehicles travelling to the territory of other Participating Parties must comply with the road safety requirements and equipment safety and emissions standards laid down in the Transit Country and Host Country. They must also comply with the technical standards on weights, axle loads, and dimensions in force in the Transit Country and Host Country.

4.2.2. Operation of right and left hand-drive road vehicles is allowed provided that special permit for such operation is obtained from the Transit Country and Host Country;

4.2.3. The age of the vehicles should not exceed fifteen (15) years and be certified by the Competent Authority of the Home Country.

4.3. Technical Inspection Certificates

Vehicles travelling to the territory of other Participating Parties shall be road worthy. The Home Country is responsible for the supervision of the roadworthiness of the vehicles in its territory, based on which it will issue a technical inspection certificate. The other Participating Parties will recognize such technical inspection certificate in accordance with the Agreement on the Recognition of Commercial Vehicle Inspection Certificates for Goods Vehicles and Public Services Vehicles Issued by ASEAN Member Countries signed at Singapore on 10 September 1998.

4.4. Compulsory Third-Party Motor Vehicle Liability Insurance

Vehicles travelling to the territory of other Participating Parties shall comply with the compulsory third-party motor vehicle liability insurance required in the Transit Country and Host Country so as to be adequately insured against death or bodily injuries and/or property damages arising from road traffic accidents in the territories of the other Participating Parties.

4.5. Driving Licenses

The Participating Parties shall recognize driving licenses issued by all other Participating Parties in accordance with the Agreement on the Recognition of Domestic Driving Licenses issued by ASEAN Countries signed at Kuala Lumpur in Malaysia on 9 July 1985.

4.6. Vehicle Permit

Vehicles travelling to the territory of other Participating Parties shall be required to secure a vehicle permit from the Host Country and Home Country, and where applicable from the Transit Country. Such permit should be valid for one (1) year. The number of permits issued shall be determined by market forces for transport services.

4.7. Body Marking, Advertisements and Sticker on the Vehicle

Only company's name, country, approved routes and the permit/license and tourism advertisement approved by the Home Country are allowed on the body of the vehicles. Any use by the Transport Operators of the Home Country of any name, logo and/or emblem of any of other Participating Parties shall have prior written approval by the other relevant Participating Parties.

4.8. Immigration requirement

4.8.1. The Transport Crew shall possess a valid passport or international travel document in lieu of the passport and shall meet the visa requirements of the **Transit Country and Host Country**, unless exempted in accordance with bilateral or regional agreement or **Transit Country and Host Country** laws and regulations.

4.8.2. The Participating Parties shall exempt citizens of any other Participating Parties holding valid passports from visa requirement for a period of stay from the date of entry as determined by the Participating Parties in accordance with the ASEAN Framework Agreement on Visa Exemption signed at Kuala Lumpur in Malaysia on 25 July 2006.

5. TRAFFIC RIGHTS AND MARKET ACCESS

5.1. Transport Operators established in one Participating Party may undertake the following transport operations:

5.1.1. Transit Transport in accordance with the ASEAN Framework Agreement on the Facilitation of Goods in Transit signed at Hanoi in Viet Nam on 16 December 1998;

5.1.2. Load and unload third countries' goods destined for or coming from Participating Parties in accordance with the ASEAN Framework Agreement on the Facilitation of Goods in Transit signed at Hanoi in Viet Nam on 16 December 1998;

5.1.3. Transport of goods into and/or from the territories of other Participating Parties in accordance with the ASEAN Framework Agreement on the Facilitation of Inter-State Transport signed at Manila in Philippines on 4 November 2008; and

5.1.4. Load and unload goods destined for or coming from other Participating Parties in accordance with the ASEAN Framework Agreement on the Facilitation of Inter-State Transport signed at Manila in Philippines on 4 November 2008.

5.2. Notwithstanding Paragraph 5.1, the number of transit and inter-state transport vehicles under this Memorandum of Understanding shall be further negotiated and agreed between the Participating Parties based on market forces.

5.3. Transit vehicles, including those on unladen journey, should be given free access during transit.

5.4. Cabotage shall only be permitted upon special authorization from the Host Country.

6. DESIGNATION OF POINTS AND PORTS OF ENTRY AND EXIT AND TRANSIT AND INTER-STATE ROUTES

6.1 Immediately after the signing of the Memorandum of Understanding, the Participating Parties shall enter into negotiations on the designated points and ports of entry and exit, inter-state transport and transit transport routes and the standard operating procedures for the implementation of this Memorandum of Understanding.

6.2 The list of transit transport routes as specified in the Annex of Protocol 1: Designation of Transit Transport Routes and Facilities, under the ASEAN Framework Agreement on Facilitation of Goods in Transit, signed at Bangkok in Thailand on 8 February 2007, shall be used as a basis for the negotiations of the designated inter-state transport and transit transport routes for the purpose of this Memorandum of Understanding.

6.3 The agreed points and ports of entry and exit, inter-state transport and transit transport routes shall be annexed to this Memorandum of Understanding and shall form an integral part of this Memorandum of Understanding.

7. OTHER OBLIGATIONS ON ROAD SAFETY STANDARDS

The Participating Parties shall ensure that the Transport Operators:

- 7.1. take all measures to ensure that the transport services provided are in compliance with the road safety standards in force under the laws of the Transit Country and Host Country; and
- 7.2. have two (2) drivers for a stretch of 300 kilometers or more, or a driving duration of four (4) hours or more to prevent driver fatigue.

8. REPRESENTATIVE OFFICES

Subject to national laws, regulations and policies, the Transit Country and/or Host Country may require Transport Operators to:

- 8.1. establish representative office(s) or appoint agent(s) in the Transit Country and Host Country; and
- 8.2. hire local resident(s) of the Transit Country and Host Country at such representative office(s).

9. MULTIMODAL TRANSPORT

All Participating Parties shall in a timely manner ratify and implement the ASEAN Framework Agreement on Multimodal Transport¹ signed at Vientiane in Lao PDR on 17 November 2005 to ensure that an efficient, integrated and reliable international transport logistics services industry is in place to support and spearhead transit and inter-state transport of goods in BIMP-EAGA.

10. TRANSPORT PRICING

The transport price shall be best determined by market forces and mutual agreement by Transport Operators. The Participating Parties shall ensure that Transport Operators refrain from any measures or practices that tend to distort free and fair competition.

11. FACILITATION OF BORDER CROSSING FORMALITIES

¹ The ASEAN Framework Agreement on Multimodal Transport will enter into force after two ASEAN Member Countries have ratified it. It shall become effective among the Member Countries that have ratified it.

11.1 The Participating Parties shall facilitate and secure transit and interstate traffic through the simplification, streamlining and harmonization of customs import, export and transit procedures as well as sanitary and phytosanitary measures at the designated entry and exit points in accordance with existing regional agreements and international standards and best practices;

11.2 The Participating Parties shall endeavor to:

11.2.1 Establish in-land ports/depots at control points, where appropriate;

11.2.2 Ensure that adequate manpower resources are made available for speedy completion and clearance of frontier formalities, such as immigration, customs, health and foreign exchange controls;

11.2.3 Coordinate working hours of adjacent posts; and

11.2.4 Provide adequate parking space for containers and for vehicles awaiting goods clearance, and other necessary facilities and infrastructure.

12. CARRIAGE OF DANGEROUS AND PROHIBITED/RESTRICTED GOODS

12.1 Carriage of dangerous goods as specified in Protocol 9 to the ASEAN Framework Agreement on the Facilitation of Goods in Transit, shall not be permitted under this Memorandum of Understanding, unless there is a special permit of the Participating Party in whose territory the transport is undertaken.

12.2 Carriage of prohibited and/or restricted goods as specified in Protocol 7 to the ASEAN Framework Agreement on the Facilitation of Goods in Transit, shall not be permitted under this Memorandum of Understanding.

13. CARRIAGE OF PERISHABLE GOODS

Subject to national laws, policies and regulations of the Transit Country and Host Country, carriage of perishable goods for the intention of trade/business shall be permitted under this Memorandum of Understanding.

14. SAFETY AND SECURITY

All Participating Parties shall ensure the safety and security of the transport crew, goods and means of transport, through coordination and cooperation among the authorities concerned and to render all necessary assistance in the event of accidents, casualties or deaths.

15. RELATIONSHIP WITH OTHER AGREEMENTS

This Memorandum of Understanding shall be read together with existing land, air and sea transport memoranda of understanding and/or agreements between and among the Participating Parties and any amendments thereto.

16. CONSULTATIONS

16.1. In the ASEAN spirit of solidarity and cooperation, the Participating Parties shall consult each other from time to time in ensuring the full implementation of this Memorandum of Understanding.

16.2. The National Transit Transport Coordinating Committee, established under Article 29 of the ASEAN Framework Agreement on the Facilitation of Goods in Transit signed at Hanoi in Viet Nam on 16 December 1998, of each Participating Party shall also be responsible for the coordination and implementation of this Memorandum of Understanding.²

17. REVIEW AND AMENDMENT

17.1. This Memorandum of Understanding may be revised, modified or amended by the Participating Parties as and when needed to ensure its effective implementation.

17.2. A Participating Party may request in writing any revision, modification or amendment of all or any part of this Memorandum of Understanding. Such revision, modification or amendment shall be mutually agreed upon in written form by all the Participating Parties, and shall form an integral part of this Memorandum of Understanding. Such revision, modification or amendment shall enter into force on such date as may be agreed upon in writing by all the Participating

² To date all ASEAN Member Countries have established their respective National Transit Transport Coordinating Committee.

Parties. Any revision, modification or amendment shall not prejudice the rights and obligations arising from or based on this Memorandum of Understanding before or up to the date of such revision, modification or amendment.

18. SETTLEMENT OF DISPUTES

Any disputes or differences arising out of the interpretation or implementation or application of the provisions of this Memorandum of Understanding shall be settled amicably through consultation or negotiation between the Participating Parties.

19. ENTRY INTO FORCE AND DURATION

This Memorandum of Understanding shall enter into force on the date of its signing and shall remain in force until terminated.

20. WITHDRAWAL

Any Participating Party may withdraw from this Memorandum of Understanding by written notification to all the other Participating Parties at least six (6) months prior to such withdrawal. If a Participating Party withdraws, this Memorandum of Understanding shall remain in force for the remaining Participating Parties.

21. TERMINATION


21.1. This Memorandum of Understanding shall remain in force until all of the Participating Parties, or the remaining Participating Parties, if any Participating Party has withdrawn from this Memorandum of Understanding in accordance with Article 20, agree to terminate the same in writing.

21.2. This Memorandum of Understanding shall automatically terminate where three (3) of the Participating Parties has withdrawn from this Memorandum of Understanding in accordance with Article 20.


In witness whereof, the undersigned, being duly authorized to sign by their respective Governments, have signed this Memorandum of Understanding.

Done at Manado, North Sulawesi in Indonesia on 25 June in 2009.

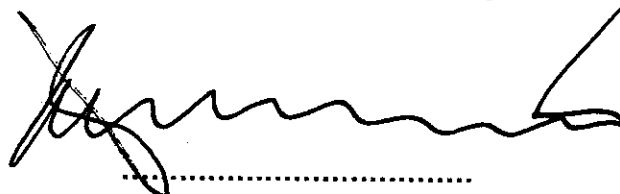
For the Government of Brunei Darussalam


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PEHIN DATO ABU BAKAR APONG
Minister of Communications

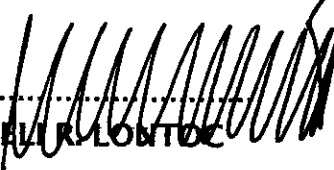
For the Government of Republic of Indonesia


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JUSMAN SYAFII DJAMAL
Minister for Transportation

For the Government of Malaysia


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DATUK ABDUL RAHIM BAKRI
Deputy Minister of Transport

For the Government of the Philippines


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ANNEL R. LONTOC

Undersecretary of the Department of Transportation and Communications