BILATERAL

MEMORANDUM OF UNDERSTANDING BETWEEN THE EUROPEAN COMMUNITY AND THE DEPARTMENT OF TRADE AND INDUSTRY OF THE PHILIPPINES ON THE EC – PHILIPPINES ECONOMIC CO-OPERATION PROGRAMME ON...

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The Commission of the European Communities, hereinafter referred to as "THE COMMISSION", acting for and on behalf of the European Community, hereinafter referred to as "THE COMMUNITY"

of the one part, and

the Department of Trade and Industry represented by Secretary C. B. Bautista, acting for and on behalf of the Republic of the Philippines, and hereinafter referred to as "THE PHILIPPINES"

of the other part,

HAVE AGREED AS FOLLOWS :

The Programme referred to in Article 1 below shall be executed and financed out of the budget resources of THE COMMUNITY in accordance with the provisions set out in this Memorandum. The technical, legal, and administrative framework within which the Programme referred to in Article 1 below shall be implemented is set out in the General Conditions annexed hereto, as supplemented by the terms of the Technical and Administrative Provisions, which apply specifically to the Programme and prevail over the General Conditions in the event of conflict. Any reference in the General Conditions to the Project is meant to be to the Programme. The leading implementing organisation in the Philippines will be the Department of Trade and Industry, Bureau of Product Standards.

ARTICLE 1
ATURE AND SUBJECT

As part of its 1996 economic co-operation, THE COMMUNITY shall contribute, by way of grant, towards the financing of the following Programme :

> Programme Number: ALA/96/24
>
> Title: EC - Philippines Economic Co-operation Programme on standards, quality and conformity assessment
>
> hereinafter referred to as "THE PROGRAMME".

ARTICLE 2
COMMITMENT OF THE COMMUNITY

The commitment of THE COMMUNITY is fixed at 2.665 Mecu (two million six hundred and sixty five thousand ecu), hereinafter referred to as "THE EC GRANT".

ARTICLE 3
ADDRESSES

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Correspondence relating to the performance of this Memorandum, stating the PROGRAMME'S number and title, shall be addressed to the following:

for THE COMMUNITY :

Commission of the European Communities,
Directorate-General for External Relations, DG IB
Ruedela Loi 200, B -1049
Brussels, Belgium.

Telex: 21877 COMEU B

Facsimile: (32.2)296.72.41

for THE PHILIPPINES :

Bureau of Product Standards
Department of Trade and Industry
361 Sen. Gil Puyat Avenue
Makati City, Philippines

Telephone n° (632) 8904965

Facsimil: (632) 8904926
(632)8905131

ARTICLE 4
NUMBER OF COPIES

This Memorandum is drawn up in the English language in three copies each being equally valid.

ARTICLE 5
ENTRY INTO FORCE

This Memorandum shall enter into force on the date that it has been signed by both parties. The Annexes shall be deemed an integral part of this Memorandum.

This commitment is subject to an expiry date, after which any balance of funds remaining available under THE EC GRANT shall be automatically cancelled. THE COMMISSION may however, depending on the circumstances, agree to an appropriate extension of this expiry date.

For the present Programme, the expiry date of THE EC GRANT is hereby set at 31 December 2000 (Thirty-first December Two thousand).

Done at Brussels

this 19-01- 1998 day of

Done in Makati City

this 12th day of February 1998

(Sgd.)
THE COMMUNITY

Manuel MARIN GONZALEZ

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(Sgd.)
THE PHILIPPINES

WITNESSES

ANNEX I
GENERAL CONDITIONS

FOR THE IMPLEMENTATION OF OPERATIONS OF ECONOMIC CO-OPERATION

TITLE 1 FINANCING OF PROGRAMME

ARTICLE 1
COMMITMENT OF THE COMMUNITY

The commitment of the European Community (hereinafter referred to as THE COMMUNITY) shall determine the limit within which commitment and execution of payments shall be carried out, within the framework of duly approved contracts and estimates.

ARTICLE 2
COMMITMENT OF THE PARTNER COUNTRY

Where programme execution depends on implementation of THE PARTNER, as laid down in Annex II, the support of the EC, in accordance with the provisions laid down in Annex II. shall be conditional upon performance of the obligations incumbent on THE PARTNER.

TITLE II CONTRACTS

ARTICLE 3
CONTRACTS UNDER EC FINANCING SHALL BE DRAWN UP, NEGOTIATED AND CONCLUDED BY THE COMMISSION.

TITLE III EXECUTION OF CONTRACTS

ARTICLE 4
ESTABLISHMENT AND RIGHT OF INSTALLATION

Natural and legal persons taking part in contracts shall benefit, under all equal conditions, from a provisional right of residence and installation if the nature of the contract so justifies.

Natural and legal persons who have established themselves for the purpose of executing the services shall enjoy the absolute freedom, if they so desire, to re-export materials imported by them into the state of THE PARTNER for the purpose of execution.

The privileges, immunities and facilities of EC experts assigned to THE PROGRAMME will be similar to those that are normally granted to World Bank technical assistance personnel.

ARTICLE 5
TAX REGULATIONS

Taxes, customs and import duties shall be excluded from the financing of THE COMMUNITY.

TITLE IV COLLABORATION BETWEEN THE COMMISSION AND THE PARTNER

ARTICLE 6
FOLLOW UP OF EXECUTION

THE COMMUNITY shall have the right to send its own agents or duly authorised representatives to carry out any technical or financial mission or audit that it considered necessary to follow the execution of THE PROGRAMME financed with the EC contribution. The modality of implementation and reporting throughout the period of the programme execution and after completion thereof will follow the provisions laid down in Annex II.

TITLE V GENERAL AND FINAL PROVISIONS

ARTICLE 7
RENUNCIATION BY THE PARTNER

THE PARTNER may, with the agreement of THE COMMISSION, renounce in whole or in part the execution of THE PROGRAMME. An exchange of letters shall set out the details of the said renunciation.

ARTICLE 8
AMENDMENT

Any amendment to the programme must be agreed between the parties hereto and shall only be adopted after the exchange of letters between the parties.

ANNEX II
TECHNICAL AND ADMINISTRATIVE PROVISIONS

Partners :: Programme's participants in the Republic of the Philippines and the European Community

Programme Title : EC - Philippines Economic Co-operation Programme on standards, quality and conformity assessment

Programme Number : ALA/96/24

TECHNICAL AND ADMINISTRATIVE PROVISIONS

Title: EC/Philippines economic co-operation programme on standards, quality and conformity assessment.

Country: Philippines

Reference: ALA/96/24

Total Cost: 3.27 MECU

EC Contribution: 2.665 MECU

Type of financing: Joint co-financing

Budget Line B7-301

I. SUMMARY

The programme is designed to enhance commercial exchanges between the EU and the Philippines, and to facilitate further economic co-operation, by the adoption of compatible structures, standards and conformity assessment procedures. The proposed programme aims at the strengthening of the quality infrastructure and ^t

encouraging the exchange of good quality practices between economic sectors of the EU and Philippines, contributing to the development of long term relations,

A separate regional programme labelled "EC/ASEAN regional economic co-operation programme on standards, quality and conformity" complements the present one between the EC and the Philippines. The aim of the EC/ASEAN programme is to assist in the development of an ASEAN internal market with free movement of goods and open to international trade.

II. BACKGROUND

The EC started implementation of its first co-operation with ASEAN countries in the field of standards and conformity assessment in 1989, with ISQAP, the Industrial Standards and Quality Assurance Programme,

At the end of the programme, June 1994, an independent evaluation took place. It stressed the importance of a continued co-operation with ASEAN in this field and the utility of underlining the economic interest of such a cooperation in the future. The evaluation recommended to target more balanced relations which take into account the ASEAN as well as the EU interests and to build stable relations between the public and private sectors of both regions.

The design and content of this EC/Filipino programme takes into account these, considerations as well as the needs expressed by the interested parties (public and private sectors) of the Philippines and of the European Union, which have been consulted for its preparation.

III. OBJECTIVES

The general objective of the economic co-operation programme is to enhance commercial exchanges between the EU and the Philippines, through standardisation, conformity assessment procedures and quality structures and practices.

The programme will contribute to the achievement of economic goals of mutual interest. It will be aimed at:

strengthening of National quality organisations and practices, compatible with the EU ones and with the ASEAN regional approach, paving the way towards Memoranda of Understanding between EU and Filipino organisations;

promoting an extended dialogue between interested economic sectors of the EU and the Philippines on quality best practices;

creating stable and long term relations between institutions and private sector organisations of the EU and the Philippines.

IV PROGRAMME DESCRIPTION

IV.1 LOCATION, BENEFICIARY AND SCHEDULE

The programme will operate in the Philippines and in the European Union. The beneficiaries are the programme's participants and partners in these two regions. The programme is planned to be implemented over a period of three years.

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IV.2 PROGRAMME CONTENT

The major aim is to facilitate trade between the EU and the Philippines. The programme will subdivide between institutional strengthening activities on the one hand and industry to industry activities on the other.

IV.2.1 INSTITUTIONAL STRENGTHENING

The aim of this sub-component is to assist develop EU similar quality structures, to exchange best practices and build long term dialogue with EU, MSTQ counterparts; this in turn, will pave the way for mutual recognition agreements and further growth in trade.

The major areas of assistance on which the programme will focus are :

Study visits / Technical Exchange

These will aim to share information and consolidate the relationship between Filipino institutions and their EU counterparts. This will be achieved through :

Participation in conferences and meetings

Attendance at Technical Symposia

Discussions with national standards bodies and metrology, testing auditing and certifying institutions

Visits to European technical institutions such as EOTC, CEN, EAL and National EU institutions, etc.

Technical Assistance

These activities will be aimed at specific tasks designed to transfer know-how and strengthen the existing organisational structures and procedures within the National Standards Body and other key institutions such as standards development and dissemination; product testing schemes, systems certification / laboratory accreditation and other quality functions.

The process of harmonisation of directives and technical regulations is one of the crucial areas for the removal of technical barriers to trade and the free circulation of goods between the EU and the Philippines. The objective of these activities will be to assist in the understanding of the legal requirements with the EU directives and regulations as well as the role played by European and National standards.

Training

In order to make sure that the "quality infrastructure" works effectively, training components will be designed to provide training for the effective operation of the institutional structures.

Training courses will be organised to meet a variety of needs ranging from training of trainers, joint assessments by both EU and Filipino institutions, training of auditors and laboratory management technicians.

IV.2.2. INDUSTRY TO INDUSTRY: PROMOTION OF QUALITY ASSURANCE

The aim of this sub-component is to facilitate the promotion of quality assurance practices within the industry and the private sector. Among other things, it will include ;

Study visits / Technical Exchange

Missions by European academic sector seeking standards and quality linkages through exchange programmes, designing and developing appropriate curricula etc., wherever possible working in tandem with industry sectors.

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Sectoral industrial missions to facilitate understanding of the regulatory approach and share best quality practices.

Technical Assistance:

Implementation of pilot scheme, such as the "twining" of EU/ Filipino companies, for the provision of assistance in the areas of quality management. Pilot schemes will seek to provide assistance to given industrial sectors.

Promotion of the use of EU quality tools, such as the European Quality Award and also within industry sectors, via symposia in which representatives from standardisation institutes, selected European business organisations (e.g. trade associations, chambers of commerce), and relevant Government departments will participate.

Awareness and education campaigns in order to promote good management and quality practice and to provide Filipino businesses with clear information regarding the trading principles in the EU. The production of suitable information material on specific experiences and success stories to achieve a multiplier effect of the cooperation.

IV.3 PROGRAMME CRITERIA

The programme criteria have been discussed with Filipino representatives and agreed upon. Proposed first year activities will be established through an inception phase at the start of the programme and regularly updated. Activities then suggested for programme work plans, will be in agreement with the following criteria:

Maintain compatibility between Filipino infrastructures and practices and EU models;

Link economic criteria into the work plan: activities must facilitate trade growth, investment and joint-ventures;

Cover the full technical field (regulation and standardisation, conformity assessment, metrology, accreditation, industrial quality management, training and education);

Maintain coherence between regional and national progress;

Emphasise lasting structures and institutional links with corresponding EU/Filipino organisations, encouraging activities leading to Memoranda of Understanding;

Target activities with visible impact on the quality of the lives of Filipino citizens or on their economic progress;

Relate activities to broader international obligations of both sides for trade liberalisation, in particular the WTO and TBT code;

Select activities with provision for bench marking.

IV.4 INFORMATION DISSEMINATION

Ensuring effective information flow to relevant parties - both authorities and businessmen in the Philippines and in the EU - will be critical to the success of this programme. The in-depth analyses of the legislative frameworks would be disseminated in a similar way. In addition to encouraging as wide a participation as possible in the activities of the programme through pre-event publicity, broad distribution of the results among these groups should create a multiplier effect. Ongoing information activities would also include :

- regular newsletter
- press releases and conferences.
- co-ordination, whenever necessary, with EU member States' similar activities.

V. BUDGET AND FINANCING

V.1. ESTIMATION OF PROGRAMME COSTS (in thousand ECU)

EC/Filipino programme cost

3 270 ->

Institutional component

1 932

study visits

180

technical assistance

1 252

training

500

Industry to industry component

1 093

study visits

391

technical assistance

702

Contingencies

245

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V.2. FINANCING

In the framework of the EC/Filipino economic co-operation, the necessary activities to achieve the programme goals will be financed on a cost sharing basis. The estimated cost of the technical assistance for the programme (administration of the programme, not included) is of 3 270 000 ECU. In addition, programme implementation may require capital investment in facilities upgrading or new equipment, making up for total programme budget.

The EC contribution of maximum 2 665 000 ECU or maximum of 80 % of total programme budget, can finance EU experts needed for the technical assistance and training, as well as a small contribution for essential equipment that might be needed in the training components. The EC can finance EU staffing for the programme management structure in Europe and in the Philippines.

Filipino counterparts, either public or private, will contribute with at least 20% of total programme budget. This contribution can finance Filipino experts and local travelling, operating costs, organisation of seminars and contracting of local facilities. As well, any Filipino investment necessary for upgrading quality related infrastructures to bring them up to international standards. Contributions from the Philippines to the programme can also be made in-kind.

For study visits and training of Filipino participants in Europe, travelling costs between the EU. and the Philippines, can be financed by Filipino counterparts. Travelling in Europe, a contribution to subsistence costs in the form of a flat rate and possible fares for the utilisation of facilities as well as training, can be financed by the EC.

VI IMPLEMENTATION ARRANGEMENTS

The programme management structure is composed of the Filipino Consultative Committee for Standards and Quality and the Programme Management Committee. The structure is supported by the Programme Secretariat Unit, located in Europe and the Filipino antenna of the EC/ASEAN Programme Management Unit, located in ASEAN.

The main components of the management structure are:

> Programme Management Committees. There will be one PMC meeting in the Philippines every year and have the overall responsibility for ensuring that the respective programme objectives are met and work-plans approved. The PMC will be composed of a representation of the EC, the government of Philippines and the Filipino Bureau of Product Standards. The programme co-directors and implementing agencies will take part in the meetings. As observers, the meeting may be attended by other EU and Filipino MSTQ and industrial organisations. The meeting will be chaired by an EC representative;
>
> Programme Secretariat Unit. Located in Europe will be entrusted to an EU organisation or consortium selected through tender and will be managed by a European co-director. The PSU will be mainly responsible for preparing work-plans and terms of reference of the assistance to be provided by the programme, as well as delivering and/or contracting the appropriate EU expertise. It will liaise with the appropriate European organisations at the supranational, national and local levels so as to facilitate long term relations with the ASEAN counterparts. It will liaise with the various EU interested parties in the programme and will ensure that the principle of mutual interest is followed in the day to day operation;
>
> Filipino antenna of the EC/ASEAN Programme Management Unit, The complementary EC/ASEAN regional economic co-operation programme on standards, quality and conformity will be provided with a Programme Management Unit, located in ASEAN and managed by an ASEAN co-director, which will be supported by the EU co-director

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> This PMU will have an antenna in the Philippines composed of a Filipino co-director and an EU co-director. The antenna will mainly co-ordinate activities in the Philippines, monitoring progress on the field and providing administrative support. It will liaise with the Filipino consultative committee which channels the requests from the various interested parties in the programme. It will contract local experts and facilities according to EC standard procedures.

The Community disbursements for the implementation of the programme activities will be executed after verification of the conformity of the expenses with the needs established in the work programme and in accordance with the availability of annual budgetary appropriations.

VII. PROCUREMENT PROCEDURES

An EU organisation or consortium in charge of administering programme implementation, will be selected through EC tendering procedure. European expertise made available for programme implementation shall be contracted according to standard EC procedure.

Any equipment to be paid under the programme will be procared by international tender, prudent shopping or direct agreement in accordance to EC rules and programme specific requirements. (See annexes 1, 2, 3).

Table 1
SERVICE CONTRACTS CONCLUDED EXTERNALLY FOR A NON-MEMBER COUNTRY

Value of contract (x)
(in ecus)

x<12 000

12 000<x<70 000

70 000<x<137 000"

Eligibility Community, recipient country Community, recipient country Community, recipient country

Procedure Direct agreement Principle: negotiated procedure Variant: framework contract if duration less than 6 months Principle: restricted invitation to tender with publication in local press Variant: framework contract if duration less than 6 months

Number of firms consulted or invited to tender 1 or more Principle: minimum 3 Variant: framework contract if duration less than 6 months Principle: shortlist minimum of 5 firms.
Variant: framework contract if duration less than 6 months

Approval of invitation to tender file Contracting authority * Contracting authority with agreement of delegation Principle: IB-E/2

Assessment of tenders Contracting authority Contract award committee with agreement of delegation, as observer Contract award committee with participation of delegation, as observer

Award decision Contracting authority Contracting authority with agreement of delegation Delegation if contract to go to lowest bidder. Otherwise: IB-E/2

Contract Contract signed by contracting authority Contract signed by contracting authority Variant: contract signed by IB-E/2 Principle: contract signed by contracting authority Variant: contract signed by IB-E/2

Table 2

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SUPPLY CONTRACTS CONCLUDED LOCALLY FOR A NON-MEMBER COUNTRY

Value of contract x)
(tn ecus)

x<5 000

5 000 <x< 25 000

25 000 <i< 137 000

x > 137 000

Origin No rules on origin Community, recipient country, eligible countries Community, recipient country, eligible countries Community, recipient country, eligible countries

Procedure Direct contract Direct contract Principle: open invitation to tender -publication in local press. Variant (with prior agreement of headquarters): restricted invitation to tender International invitation to tender - publication in OJ and local press

Number of firms consulted or invited to tender 1 or more at least 3 Principle: open Variant: minimum of 5 firms, at least 2 from Community Open

Dispatch of invitation to tender

/

/

File sent to delegation File sent to delegation

Approval of Invitation to tender file

/

/

Delegation Commission approval required (headquarters)

Assessment of tenders Contracting authority. Contracting authority. Assessment committee on which delegation is entitled to sit, as observer Assessment committee with participation of delegation

Award decision Contracting authority Contracting authority Delegation: if proposed coniiactor is lowest bidder and amount is not in excess of budget limits. Otherwise: headquarters Headquarters

Contract Order signed by contracting authority Copy and supporting documents filed Contract signed by contracting authority Copy and supporting documents filed Contract signed by contracting authority, then by contractor. Contract signed by contracting authority endorsed by Commission (headquarters), then by contractor.

· Elegible countries: MEDA Regulation, Article 8 (1): Mediterranean partners.
ALA Regulation, Article 13: developing countries, case by case. Exceptionally, others.

Table 3
WORKS CONTRACTS CONCLUDED LOCALLY FOR A NON-MEMBER COUNTRY

Value of contract (x) (in ecus)

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x<100 000

100 000 <x< 500 000

500000 <x< 5 000000

x > 5 000 000

Procedure Direct contract Restricted invitation to tender Invitation to tender - publication in local press International invitation to tender -publication in OJ and local press.

Number of firms consulted or invited to tender at least 3 at least 5 Open Open

Dispatch of invitation to tender file

/

File sent to delegation File sent to delegation File sent to delegation

Approval of invitation to tender file

/

Commission approval required (delegation) Commission approval required (delegation) Commission approval required (headquarters)

Assessment of tenders Contracting authority. Assessment committee on which delegation is entitled to sit, as observer Assessment committee on which delegation is entitled to sit, as observer Assessment committee with delegation participation

Award decision Contracting authority. Delegation Delegation: if proposed contractor is lowest bidder and amount is not in excess of budget limits. Otherwise; headquarters. Headquarters

Contract Order signed by contracting authority Copy and supporting documents filed. Contract signed by contracting authority Copy and supporting documents filed. Contract signed by contracting authority, then by contractor Contract signed by contracting authority, endorsed by Commission (headquarters), then by contractor.

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[*] Delegations, project management units or recipients.

[* *] ECU 137 000 or more: contract concluded by headquarters (see Annex III).

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