

**1980 SUPPLEMENTARY AGREEMENT TO THE BASIC AGREEMENT
ON ASEAN INDUSTRIAL PROJECT: ASEAN UREA PROJECT
(MALAYSIA)**

Signed in Kuala Lumpur, Malaysia on 6th March 1980

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1980 SUPPLEMENTARY AGREEMENT TO THE BASIC AGREEMENT ON ASEAN INDUSTRIAL PROJECT: ASEAN UREA PROJECT (MALAYSIA)

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AN AGREEMENT made the 6th day of March 1980 BETWEEN the Government of Malaysia (hereinafter referred to as Malaysia) of the first part, and the Governments of Indonesia, the Philippines, Singapore and Thailand (here-after referred to as the Parties) as the second part.

WHEREAS at the Meeting of the ASEAN Heads of Government in Bali on 23-24 February 1976, it was agreed that certain projects be established as ASEAN Industrial Projects;

WHEREAS at the Second Meeting of the ASEAN Economic Ministers 1 Kuala Lumpur on 8-9 March 1976, it was decided that Indonesia and Malaysia shall each be allocated a urea project t, be designated as an ASEAN Urea Project, provided that the Parties are satisfied with the viability of such project;

AND WHEREAS the Seventh Meeting of the ASEAN Economic Ministers convened at Kuala Lumpur on 14-16 December 1978 agreed that the ASEAN Urea Project (Malaysia) is viable on certain conditions hereinafter stated and to accept it as an ASEAN Industrial Project;

NOW THEREFORE, Malaysia and the Parties hereby agree as follows:

ARTICLE 1 JOINT VENTURE AGREEMENT

The shareholder entity designated by each ASEAN country shall negotiate and conclude, as soon as possible, a Joint Venture Agreement acceptable to Malaysia and the Parties, for the setting up of an ASEAN Urea Project in Malaysia. Such Joint Venture Agreement shall set out among others:

- (a) The name and capital structure of the Joint Venture company;
- (b) Constitution of the Board of Directors of the Joint Venture company;
- (c) Protection of minority interests;
- (d) Scope of the project and its financing.

ARTICLE 2 GAS PRICE

Malaysia shall provide adequate supply of natural gas as fuel and feed-stock for use by the Project at a price of US\$0.70 per million BTU delivered to project plant, which price commencing from 1 January 1979, shall be subject to an escalation rate of not more than seven per cent (7%) per annum based on

the simple average of the actual rates of price increases in the immediately preceding calendar year of the following:

Thirty-three and one third per cent (33 1/3%) Miri Light Crude.

Thirty-three and one third per cent (33 1/3%) Kuwait Crude.

Thirty-three and one third per cent (33 1/3%) Medium Fuel Oil (Shell Pulau Bukom Posting).

with the provision that the escalation shall not apply during the period when the prevailing world market price of urea is lower than the minimum (floor) price. In any calendar quarter where the prevailing world market price of urea is lower than the minimum (floor) price, then the gas price shall be revised to that level prevailing at the end of the immediately preceding calendar year and further escalation shall not take place until the world market price of urea in a subsequent quarter moves above the minimum (floor) price.

ARTICLE 3 MARKET SUPPORT

1. In order to ensure the success of the Project, Malaysia and the Parties agree that offtaking of product shall be arranged in accordance with the Preferential Trading Arrangements among ASEAN Member States.
2. To ensure the success of the Project, Malaysia and the Parties hereto agree that subject to Article 3.4, the Project shall have priority right to supply the Malaysian domestic market and the available ASEAN markets. For this purpose, "available ASEAN markets" means:
 - (a) the markets in the Philippines and Thailand after considering their own domestic production of urea.
 - (b) the market in Indonesia if there is insufficient production of urea in Indonesia.
3. As and when an ASEAN Urea Project in Indonesia is established and becomes operational, the ASEAN Urea Projects in Indonesia and Malaysia shall share equally the available ASEAN markets excluding the market in Indonesia. In the event there is surplus production from the ASEAN Urea Project in Malaysia, Malaysia shall guarantee to absorb the surplus production at the agreed formula price by supplying its own domestic market and the markets outside ASEAN countries or both so as to maintain the plant production rate as indicated in the feasibility study report as finally accepted, having due regard to the technical constraints which may be experienced by the project plant.
4. Subject to the provision of paragraph 2 of this Article, Malaysia and the Parties agree that at the appropriate time each year the host country shall invite ASEAN Member States to state their annual urea requirements from which the minimum urea offtake by the ASEAN Member States shall be computed and agreed upon.
5. Malaysia and the Parties also agree that the ASEAN Urea Project (Malaysia), in conjunction with the ASEAN Urea Project (Indonesia), shall take into consideration the possibility of supplying urea to ASEAN member countries in a manner that would enable the host country, the two Projects and the purchasing ASEAN member entries to benefit from the most cost-

efficient supply and transport arrangements of urea without altering the agreed market sharing arrangements.

ARTICLE 4 PRICING

1. Floor and ceiling prices shall be determined in accordance with the principles outlined in Article 11, paragraph 6 of the Basic Agreement on ASEAN Industrial Projects.
2. The minimum (floor) price shall be fixed so as to yield a project internal Rate of Return on Investment of eight percent (8%) after tax. The maximum (ceiling) price shall be fixed so as to Yield a project Internal Rate of Return on Investment of twenty per cent (20%) after tax. There shall be one free-on-board (f.o.b.) selling price of urea at any one point in time to ASEAN Member States from the ASEAN Urea Projects in Indonesia and Malaysia, provided that the prevailing market price falls within the constraints of each projects floor and ceiling limits.
3. Pursuant to Article 11, paragraph 6 (c) of the Basic Agreement on ASEAN Industrial Projects, the cost of production shall be that actually experienced by the Project for the period during which floor and ceiling prices would be in effect. This production cost shall reflect conditions existing at the time with respect to cost of supplies materials, labour, wages and all other elements of production costs as are actually being experienced by the Project.

ARTICLE 5 FIRMLY PLANNED NATIONAL PROJECTS

The Philippines reserves the right to pursue the establishment of a 1,000 MTPD urea plant scheduled to be on stream by July 1983. Indonesia reserves the right to establish a 1,725 MTPD urea plant in West Java scheduled to be on stream by the end of 1978 and a 1,725 MTPD urea plant in East Kalimantan scheduled to be on stream by mid-1981.

ARTICLE 6 AMENDMENTS

All articles of this Agreement may be modified through amendments to this Agreement to be agreed upon by consensus. All amendment shall become effective upon acceptance by all ASEAN Member States.

ARTICLE 7 ENTRY INTO FORCE

1. This Agreement shall enter into force on the thirtieth (30th) day after the deposit of the fifth Instrument of Ratification.
2. This Agreement may not be signed with reservation nor shall reservations be admitted at the time ratification.
3. This Agreement shall be deposited with the Secretary-General of the ASEAN Secretariat who shall promptly furnish a certified copy thereof to each Contracting State.
4. Each Contracting State shall deposit its Instrument of Ratification with the Secretary- General of the ASEAN Secretariat who shall promptly inform each Contracting State of such deposit.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Supplementary Agreement to the Basic Agreement on the ASEAN Industrial Projects – ASEAN Urea Project (Malaysia).

DONE at Kuala Lumpur, in six originals in the English language this March 6, 1980.

For the Government of the Republic of Indonesia: **DR MOCHTAR KUSUMAATMADJA**, Minister for Foreign Affairs

For the Government of Malaysia: **TENGGU AHMAD RITHAUDDEEN**, Minister of Foreign Affairs

For the Government of the Republic of Philippines: **CARLOS P. ROMULO**, Foreign Minister

For the Government of the Republic of Singapore: **S. RAJARATNAM**, Minister for Foreign Affairs

For the Government of the Kingdom of Thailand: **UPADIT PACHARIYANGKUN**, Minister of Foreign Affairs