

1982 SUPPLEMENTARY AGREEMENT TO THE BASIC AGREEMENT ON ASEAN INDUSTRIAL PROJECTS FOR THE ASEAN COPPER FABRICATION PROJECT (PHILIPPINES)

An AGREEMENT made on the ____ day of ____ 1982 between the Government of the Philippines (hereinafter referred to as Philippines) of the first part, and the Governments of Indonesia, Malaysia, Singapore and Thailand (hereinafter referred to as the Parties) of the second part;

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

WHEREAS at the Eleventh Meeting of the ASEAN Economic Ministers in Jakarta, Indonesia, on 29-30 May 1981, it was decided that the Philippines shall be allocated a copper fabrication project to be designated as ASEAN Copper Fabrication Project (Philippines) provided that the Parties are satisfied with the viability of such Project;

And WHEREAS the Twelfth Meeting of the ASEAN Economic Ministers in Kuala Lumpur, Malaysia, on 14-16 January 1982 agreed that the ASEAN Copper Fabrication Project (Philippines) was viable on certain conditions hereinafter stated and adopted it as an ASEAN Industrial Project;

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

ARTICLE 1 JOINT VENTURE AGREEMENT

The shareholder entity designated by each member country shall negotiate and conclude, as soon as possible, a Joint Venture Agreement acceptable to the Philippines and the Parties, for the setting up of an ASEAN Copper Fabrication Project in the Philippines. 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;
- c. Protection of minority interests; and
- d. Scope of the Project and its financing.

ARTICLE 2 PRICE OF COPPER CATHODES

The Philippines shall ensure an adequate supply of copper cathodes to the project at a price comparable to the London Metal Exchange or any similar commodities market acceptable to the Parties.

ARTICLE 3 PRODUCTION CAPACITY

The ASEAN Copper Fabrication Project (Philippines) shall have a capacity of 100,000 MTPY which includes 20,000 MTPY intended for non-ASEAN markets. The copper fabrication plant shall produce the following products: rods, bars and sections, tubes, plates and sheets, and wire rods.

ARTICLE 4 MARKET SUPPORT

1. In order to ensure the success of the Project, the Philippines and the Parties agree that offtaking of products shall be arranged in accordance with the ASEAN Preferential Trading Arrangements among ASEAN member states.
2. The Philippines and the Parties hereto agree that the Project shall be given first priority in supplying the Philippine market, and the available ASEAN markets for rods, bars and sections, tubes, plates and sheets. For this purpose, "available ASEAN markets" shall mean the markets of Indonesia, Malaysia, Singapore and Thailand, net of their domestic production.
3. Subject to the provisions of the preceding paragraph, the Philippines and the Parties agree that at the appropriate time each year, the host country shall invite ASEAN member states to state their annual requirements of rods, bars and sections, tubes, plates and sheets from which the minimum offtake by the ASEAN member states shall be computed and agreed upon.
4. The Philippines guarantees to absorb the difference between the 80,000 tons (100,000 tons less 20,000 tons for non-ASEAN markets) and the available ASEAN markets having due regard to the technical constraints which may be experienced by the project plant. The Parties hereto are not obliged to absorb any unsold part of the 20,000 tons intended for the non-ASEAN markets.

ARTICLE 5 PRICING

1. Floor and ceiling prices shall be determined in accordance with the principle outlined in Article 11, paragraph 6 of the Basic Agreement on ASEAN Industrial Projects.
2. The minimum (floor) price for each product shall be fixed so as to yield a project internal rate of return on investment of 8% after tax. The maximum (ceiling) price for each product shall be fixed so as to yield a project internal rate of return on investment of 20% after tax.
3. There shall be one free-on-board (fob) selling price for each product of the project as stipulated in Article 11, paragraph 2 of the Basic Agreement on ASEAN Industrial Projects.
4. 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 experienced by the Project.

ARTICLE 6 FIRMLY PLANNED NATIONAL PROJECTS

Indonesia reserves the right to increase its existing domestic capacity up to 40,000 MTPY licensed to its copper fabrication industry. Malaysia reserves the right to establish a similar firmly planned project with a capacity of 35,000 MTPY intended to meet its own domestic requirements.

ARTICLE 7 AMENDMENTS

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

ARTICLE 8 ENTRY INTO FORCE

1. This Agreement shall enter into force on the thirtieth day after deposit of the Fifth Instrument of Ratification.
2. This Agreement may not be signed with reservation nor shall reservations be admitted at the time of 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 ASEAN Industrial Projects for the ASEAN Copper Fabrication Project (Philippines).

Done in _____ this _____ day of _____ in a single copy in the English Language.