

# 1991 SUPPLEMENTARY AGREEMENT TO THE BASIC AGREEMENT ON ASEAN INDUSTRIAL PROJECTS - ASEAN POTASH MINING PROJECT (THAILAND)

*Adopted in Kuala Lumpur, Malaysia on 20<sup>th</sup> July 1991*

**An Agreement** made the 20th day of July, 1991 between the Government of the Kingdom of Thailand (hereinafter referred to as Thailand) of the first part, and the Governments of Brunei Darussalam, Indonesia, Malaysia, Philippines and Singapore (hereinafter 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;

**And Whereas** the 21st Meeting of the ASEAN Economic Ministers convened at Bandar Seri Begawan on 30 November-1 December 1989 agreed that the ASEAN Potash Mining Project (Thailand) (hereinafter referred to as the Project) is viable on certain conditions hereinafter stated and to accept it as an ASEAN Industrial Project;

**Now Therefore**, Thailand 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 Thailand and the Parties, for the setting up of the Project in Thailand. 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 MARKET SUPPORT

1. In order to ensure the success of the Project, Thailand and the Parties agree that off taking of product shall be arranged in accordance with the Preferential Trading Arrangements among ASEAN Member States.
2. To ensure the success of the Project, Thailand and the Parties hereto agree that, subject to Article 2 paragraph 4 below, the Project shall have priority right to supply the Thailand domestic

market and the available ASEAN markets. For this purpose, "available ASEAN markets" means:

- (a) the markets in Indonesia, Malaysia and Brunei Darussalam;
  - (b) the market of the Philippines, net of domestic requirements supplied at a concessional price under existing and temporary bilateral agreement between the Philippines and a non-ASEAN country.
3. In the event there is surplus production from the Project, Thailand shall guarantee to absorb the surplus production at the agreed formula price by supplying its own domestic market and markets outside ASEAN countries or both so as to maintain the plant production rates as indicated in the feasibility report as finally accepted, having due regard to the technical constraints which may be experienced by the Project plant.
  4. Subject to the provisions of Article 2, paragraph 2 above, Thailand and the Parties agree that at the appropriate time each year the host country shall invite ASEAN Member States to state their annual potash requirements from which the minimum potash offtake by the ASEAN Member States shall be computed and agreed upon.
  5. Thailand and the Parties also agree that the Project shall take into consideration the possibility of supplying potash to ASEAN Member States in a manner that would enable the host country, the Project and the purchasing ASEAN Member States to benefit from the most cost-efficient supply and transport arrangements for potash sales and deliveries.

### **ARTICLE 3 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 the Project's Internal Rate of Return on Investment of eight per cent (8%) after tax. The maximum (ceiling) price shall be fixed so as to yield the Project's 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 for potash at any one point in time to ASEAN Member States from the Project, provided that the prevailing market price falls within the constraint of the Project's 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 the floor and ceiling prices would be in effect. This production cost shall reflect conditions existing at the time with respect to costs of supplies, materials, labour, wages and all other elements of production costs as are actually being experienced by the Project.

## ARTICLE 4 AMENDMENTS

All Articles of 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 5 ENTRY INTO FORCE

1. This Agreement shall enter into force on the thirtieth (30th) day after the deposit of the sixth 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 States.
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 Potash Mining Project (Thailand).

Done at Kuala Lumpur in seven originals in the English Language this 20 July 1991.

For the Government of Brunei Darussalam:

[signed]

Minister of Foreign Affairs

For the Government of the Republic of Indonesia:

[signed]

Minister for Foreign Affairs

For the Government of Malaysia:

[signed]

Minister of Foreign Affairs

For the Government of the Republic of Philippines:

[signed]

Secretary for Foreign Affairs

For the Government of the Republic of Singapore:

[signed]

Minister for Foreign Affairs

For the Government of the Kingdom of Thailand:

[signed]

Minister of Foreign Affairs