

1987 REVISED BASIC AGREEMENT ON ASEAN INDUSTRIAL JOINT VENTURES

Signed in Manila, Philippines on 15th December 1987

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The Governments of Brunei Darussalam, the Republic of Indonesia, Malaysia, the Republic of the Philippines, the Republic of Singapore and the Kingdom of Thailand;

MINDFUL of the Declaration of ASEAN Concord signed in Bali, Indonesia on 24 February 1976, which provides that Member Countries shall take cooperative actions in their national and regional development programmes, utilizing as far as possible the resources available in the ASEAN region to broaden the complementarity of their respective economies;

REAFFIRMING their desire to collaborate for the acceleration of economic growth in the region, to promote the greater utilization of their agriculture and industries, the expansion of their trade and improvement of their economic infrastructure for the mutual benefit of their people;

CONVINCED that the consolidation of markets among ASEAN countries can support meaningful industrial joint ventures which shall greatly contribute to strengthening and broadening the base of industrial sectors of their respective economics, promoting the greater utilization of their industries and expansion of their trade;

NOTING the suggestions on industrial joint ventures which have been advanced by the ASEAN Chambers of Commerce and Industry (ASEAN - CCI), and the confidence demonstrated by the ASEAN - CCI in the viability of ASEAN industrial joint ventures;

AFFIRMING that in the economics of the ASEAN countries, the private sector shall continue to be encouraged to play the major role in most of the economic activities, including industry and trade;

DESIRING to provide the guidelines and institutional framework within which the ASEAN Governmental machinery and the private sector, through the ASEAN - CCI, may collaborate to identify opportunities, formulate programmes and design projects for pursuing industrial joint ventures on the basis of mutual and equitable benefits for the member countries and increased industrial production for the region as a whole;

DO HEREBY AGREE to pursue ASEAN industrial Joint Ventures as stipulated by the following provisions:

ARTICLE I GENERAL PROVISIONS

- 1) An Industrial Joint Venture (AIJV) product is any processed or manufactured product which is included in the final list of AIJV products referred to in Article 11, paragraph 3 or in the AIJV Products List (APL) drawn up and approved by the ASEAN Committee on Industry, Minerals and Energy (COIME) in accordance with Article 11 Paragraph 9.
- 2) An AIJV product may be an existing product or a new product;
 - a) An existing product is one which is being processed or manufactured in any of the participating countries at the time of its inclusion in the final list.

- b) Any product not covered by the definition of an existing product is a new product.
- 3) An AIJV is any entity which:
- a) produces an AIJV product in any of the participating countries;
 - b) has equity participation from nationals of at least two participating countries;
 - c) satisfies the equity ownership provisions specified in paragraph 5 of this Article and the minimum 5 per cent equity contribution from nationals of each participating country.
- 4) With respect to a particular AIJV product, a participating country is an ASEAN member country which has indicated its intention to participate by way of providing tariff preference as well as the other privileges provided for in Article III hereof. An ASEAN member country which has not indicated its intention to so participate is a non-participating country with respect to that particular AIJV product.
- 5) A minimum ASEAN equity ownership of 51 per cent shall be required for any proposed AIJV. In respect of projects for which AIJV status has been applied for before 31 December 1990 and subsequently approved, the applicable minimum ASEAN equity ownership shall be 40 per cent. The minimum ASEAN equity shall not apply to an entity in any of the following cases:
- a) where the participating countries in a proposed AIJV product agree to a higher equity participation by non-ASEAN investors,
 - b) where more than 50 per cent of the product produced by such entity will be exported to non-ASEAN markets;
 - c) where the product is already being produced by an entity in a participating country prior to its inclusion in the final list; or
 - d) where an entity has already been approved by a participating country to produce that product prior to the inclusion of the product in the final list.
- 6) The investors in an AIJV shall be free to locate their projects in any of the participating countries.
- 7) The approval by the ASEAN Economic Ministers (AEM) or COIME, as delegated by AEM, of the final list or the APL carries with it the pre-commitment to extend a minimum ninety (90) per cent margin of tariff preference to AIJV products by participating countries as provided for in Article III paragraphs I and 6.
- 8) Non-participating countries in an AIJV product shall waive tariff preferences extended under Article III subject to the conditions therein stated.
- 9) Any tariff preferences extended by non-participating countries among themselves for AIJV products shall be in accordance with the provisions of Chapter 11, Article 8, paragraph 2 of the Agreement on ASEAN Preferential Trading Arrangements (PTA).

ARTICLE II

INSTITUTIONAL ARRANGEMENTS FOR APPROVAL OF AIJV PRODUCTS

- 1) The Committee on Industry, Minerals and Energy (COIME) shall invite nominations for AIJV products from the ASEAN - CCI and ASEAN member countries. All nominations for existing AIJV products shall be accompanied by details of existing production facilities, such as ownership, location and production capacities. These shall be compiled at a COIME meeting into a tentative list of AIJV products.
- 2) ASEAN member countries shall examine such tentative list and indicate to COIME at subsequent meeting, the products in which a member would like to participate and declare any existing production facilities they have for such products. Those products for which at least two ASEAN member countries have indicated their intention to participate shall be included in the final list showing the participating member countries.
- 3) The final list shall be submitted to the AEM or COIME as delegated by AEM for approval and thereafter be made available to the ASEAN-CCI and national Chambers of Commerce and Industry in ASEAN member countries.
- 4) For new AIJV products, interested parties shall be given six months from the date the final list is approved to obtain approval from the appropriate government agencies to produce such products.
- 5) At the end of the stipulated six-month period, all participating countries shall inform COIME of those applications for the production of new AIJV products for which approval has been granted. Any product for which approval has not been granted within the stipulated six-month period shall be automatically deleted from the list.
- 6) COIME shall inform all member countries of those new AIJV products for which approval has been granted.
- 7) For existing AIJV products, interested parties shall seek their respective governments' confirmation that their entities qualify as AIJVs under this Agreement, after the inclusion of their AIJV products in the final list.
- 8) For existing AIJV products, all participating countries shall inform COIME of entities that have qualified as AIJVs under this Agreement.
- 9) In addition to the above institutional arrangements, the following are hereby provided:
 - a) Each ASEAN member country shall draw up a list of AIJV products which it shall support and approve in principle for AIJV status. Such country lists of AIJV products could include products not locally produced in the respective countries and products with export potential.
 - b) From these lists, COIME will draw up an AIJV Products List which shall consist of those products for which at least two member countries have expressed support, and which shall so indicate the participating member countries. To this list COIME shall add other potential AIJVs. This list shall be made available to the ASEAN-CCI and national Chambers of Commerce and Industry in ASEAN member countries and shall be updated every six months.

- c) Any AIJV application submitted to COIME on any of the products in the APL is automatically confirmed as an approved AIJV and the proponent company automatically acquires an AIJV status subject only to compliance with the AIJV requirement as provided under Article 1, paragraph 3 hereof.
- 10) COIME shall issue a certification in favor of the AIJV certifying its entitlement to the privileges under the Basic Agreement on ASEAN Industrial Joint Ventures (BAAIJV). Such certification shall also specify the date on which the tariff preference and all the privileges available to the AIJV shall take effect.

ARTICLE III

PRIVILEGES AND OBLIGATIONS UNDER THE ASEAN INDUSTRIAL JOINT VENTURE PROGRAMME

NEW AIJV PRODUCTS

- 1) Where an application for the production of an AIJV product has been approved by any participating country, and due notification thereof has been given to COIME all participating countries shall extend a minimum margin of tariff preference of 90 per cent for that AIJV product within 90 days of its commercial production.
- 2) The tariff preference described in Article III paragraph 1 shall apply, during the initial four-year period, only to AIJVs in participating countries. The four-year period shall commence from the actual date of commercial production of the AIJV product or upon expiry of 30 months from the date of approval of the inclusion of that product in the final list or in the APL, whichever is earlier.
- 3)
 - a) Non-participating countries shall initially waive their rights under Chapter 11, Article 8, paragraph 2 of the ASEAN Preferential Trading Arrangements (PTA) for the first four years. The maximum waiver period for non-participating countries shall be 8 years. However, at any time after the first four years, a non-participating country can enjoy the MOP granted by participating countries as soon as it extends the same MOP itself. If a non-participating country does not wish to grant such MOP, then the waiver period shall be extended beyond the first four years for as long as the non-participating country maintains this position subject to a maximum waiver period of 8 years. Non-participating countries need not extend a margin of preference to participating countries on AIJV products.
 - b) Non-participating countries which so desire, and upon notification and concurrence of COIME, may become participating countries at any time and shall extend the same margin of tariff preference for that AIJV product.
 - c) Participating countries shall waive their rights under Chapter 11, Article 8 paragraph - of the ASEAN PTA for the first four years in respect of entities which are not AIJVs but produce the same products within their countries.
 - d) After the waiver period for an AIJV product, any entity in any member country which produces that AIJV product, irrespective of whether it qualifies as an AIJV or not, shall enjoy the same margin of tariff preference in the participating countries for that AIJV product.
- 4) In the event that there is only one approved project for a new AIJV product by the end of the stipulated six-month period, the participating countries shall grant to that AIJV exclusivity privileges. Exclusivity privileges shall continue for a period of three years commencing from the actual date of commercial production of the AIJV product or upon the expiry of 30 months from

the date of inclusion of the product in the final list or APL, whichever is earlier. In the event that there is more than one approved project for a new AIJV product, exclusivity privileges shall not be granted.

- 5) Exclusivity privileges in this Agreement shall mean that during the exclusivity period three years, the participating countries cannot set up new production facilities for the same product, other than the approved project, unless 75 per cent of its production is for export to non- ASEAN countries. A production facility is deemed to have been set up when it is in commercial production.

EXISTING AIJV PRODUCTS

- 6) The participating countries shall extend to an existing AIJV product the same tariff preference as provided for in Article III paragraph 1 within 90 days from the date of inclusion of that product in the final list or APL.
- 7) The tariff preference described in Article III, paragraph 6 shall apply, during the initial four-year period, only to AIJVs in participating Countries. The four-year period shall commence from the actual date of implementation of tariff preference.
- 8) a) Non-participating countries shall initially waive their rights under Chapter II, Article 8, paragraph - of the ASEAN PTA for the first four- years. The maximum waiver period for non-participating countries shall be eight years. However, at any time after the first four years, a non-participating country can enjoy the MOP granted by participating countries as soon as it extends the same MOP itself. If a non-participating country does not wish to grant such MOP, then the waiver period shall be extended beyond the first four years for as long as the non-participating country maintains this position subject to a maximum waiver period of eight years. Non-participating countries need not countries on AIJV products.
- b) Non-participating countries, which so desire and upon notification and concurrence of COIME, may become participating countries at any time and shall extend the same margin of tariff preference for that AIJV product.
- c) Participating countries shall waive their opts under Chapter II, Article 8, paragraph 2 of the ASEAN PTA for the first four years in respect of entities which are not AIJVs but produce the same products within their countries.
- d) After the waiver period for an AIJV product, any entity in any member country which produces that AIJV product, irrespective of whether it qualifies as an AIJV or not, shall enjoy the same margin of tariff preference in the participating countries for that AIJV product.
- 9) Existing AIJV products shall not be granted exclusivity privileges, other Privileges and Obligations Applicable to Both New and Existing Products
- 10) If an AIJV product is a component for the manufacture of any product in the participating countries which have local-content programmes, that AIJV product shall be granted local-content accreditation in such participating countries.
- 11) Protection will be accorded by participating countries in cases of dumping, unfair trade practices or any other form of unreasonable pricing of products similar to the AIJV product from sources outside the participating countries, which affects the viability of the AIJV project, on the basis that AIJV projects would be considered as if located in all participating countries. The mechanisms of implementation will be negotiated by the participating countries.

- 12) Participating countries shall not lower the tariff rates applicable to products similar to the. AIJV product below the level prevailing at the time of approval for a four-year period from start of commercial operations.
- 13) In respect of any AIJV product on which there is a prevailing zero duty, the binding of such a duty shall be regarded as fulfilling the requirement of extending the minimum 90% margin of preference.

ARTICLE IV SUPERVISION AND REVIEW OF THE ASEAN INDUSTRIAL JOINT VENTURE PROGRAMME

COIME shall supervise the implementation of this Agreement and shall draw up rules and regulations for such implementation. All decisions of COIME shall be taken by consensus.

ARTICLE V REPEALING PROVISION

Upon its entry into force, this Agreement shall supersede the Basic Agreement on ASEAN Industrial Joint Ventures dated 7 November 1983 and the Supplementary Agreements to the Basic Agreement on ASEAN Industrial Joint Ventures dated 7th November 1983 and 16th June 1987 respectively.

ARTICLE VI MISCELLANEOUS AND FINAL PROVISIONS

- 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) All articles of this Agreement may be modified through amendments to this Agreement agreed upon by consensus. All amendments shall become effective upon acceptance by all Member Countries.
- 4) This Agreement shall be deposited with the Secretary-General of the ASEAN Secretariat who shall promptly furnish a certified copy thereof to each Member Country.
- 5) Each Member Country shall deposit its Instrument of Ratification with the Secretary-General of the ASEAN Secretariat who shall promptly inform each Member Country of such deposit.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments have signed this Revised Basic Agreement on ASEAN Industrial Joint Ventures.

DONE in Manila, Philippines this fifteenth day of December Nineteenth Hundred Eighty Seven in one original copy in the English Language.

For the Government of Brunei Darussalam
H. R. H. PRINCE MOHAMED BOLKIAH
Minister for Foreign Affairs

For the Government of the Republic of Indonesia
DR. MOCHTAR KUSUMA-ATMADJA
Minister of Foreign Affairs

For the Government of Malaysia
DATO' HAJI ABU HASSAN HAJI OMAR
Minister of Foreign Affairs

For the Government of the Philippines
RAUL S. MANGLAPUS
Secretary of Foreign Affairs

For the Government of the Republic of Singapore
S. DHANABALAN
Minister for Foreign Affairs

For the Government of the Kingdom of Thailand
AIR CHIEF MARSHAL SIDDHI SAVETSILA
Minister of Foreign Affairs