

1983 BASIC AGREEMENT ON ASEAN INDUSTRIAL JOINT VENTURES

Signed in Jakarta, Indonesia on 7 November 1983

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The Governments of 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 action 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 the 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 can greatly contribute to strengthening and broadening the base of the industrial sectors of their respective economies, promoting the greater utilization of their industries and expansion of their trade;

NOTING the suggestion 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 economies 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 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 ASEAN INDUSTRIAL JOINT VENTURE (AIJV) product is any processed or manufactured product which is included in the final list of AIJV products approved by the ASEAN Economic Ministers (AEM) and referred to in Article II, paragraph 3.
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.
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 preferences as provided for Article III for that AIJV product in the final list approved by the AEM. 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 except that this requirement 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 AEM of the final list carries with it the pre-commitment to extend a minimum 50 per cent margin of tariff preference to AIJV products by participating countries as provided for in Article III paragraphs 1 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 II 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 a subsequent meeting, the products in which they 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 of AIJV products, showing the participating member countries.
3. The final list shall be submitted to the 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 by the AEM 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 approved by the AEM.
8. For existing AIJV products, all participating countries shall inform COIME of entities that have qualified as AIJVs under this Agreement.

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 50 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 three year period, only to AIJVs in participating countries. The three year period shall commence from the actual date of commercial production of the AIJV product, or upon expiry of 30 months from the date the AEM approved the inclusion of that product in the final list, whichever is earlier.
3. Non-participating countries shall waive their rights under Chapter II, Article 8, paragraph 2 of the ASEAN PTA for the three year period. Participating countries shall also similarly waive their rights, during the three year period, in respect of entities which are not AIJVs within their countries but produce the same AIJV products. At the end of the initial three year period for given AIJV product, non-participating countries shall be deemed to be participating countries and shall extend the same margin of tariff preference for that AIJV product. Furthermore, after the initial three year period, any entity in any ASEAN member country which produces the same

AIJV product irrespective of whether or not it qualifies as an AIJV, shall enjoy the same margin of tariff preference.

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 commence from the actual date of commercial production of the AIJV product or upon the expiry of 30 months from the date the AEM approved the inclusion of that product in the final list, 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 of 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 preferences as provided for in Article III paragraph 1 within 90 days from the date the AEM approves the inclusion of that product in the final list.
7. The tariff preferences described in Article III paragraph 6 shall apply, during the initial three year period, only to AIJVs in participating countries. The three year period shall commence, from the actual date of implementation of tariff preferences.
8. Non-participating countries shall waive their rights under Chapter II, Article 8, paragraph 2 of the ASEAN PTA for the three year period. Participating countries shall also similarly waive their rights, during the three year period, in respect of entities which are not AIJVs within their country but produce the same AIJV products. At the end of the initial three year period for a given AIJV product, non-participating countries shall be deemed to be participating countries and shall extend the same margin of tariff preference for, that AIJV product. Furthermore, after the initial three year period, any entity in any ASEAN member country which produces the same AIJV product, irrespective of whether or not it qualifies as an AIJV, shall enjoy the same margin of tariff preference.
9. Existing AIJV products shall not be granted exclusivity privileges.

ARTICLE IV SUPERVISION AND REVIEW OF 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 MISCELLANEOUS AND FINAL PROVISIONS

1. This Agreement shall enter to 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 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 authorised thereto by their respective Governments have signed this Basic Agreement on ASEAN Industrial Joint Ventures.

DONE in Jakarta this seventh day of November 1983 in a single copy in the English language.

For the Government of the Republic of Indonesia:

[Signed]

Foreign Minister of the Republic of Indonesia

For the Government of Malaysia:

[Signed]

Foreign Minister of Malaysia

For the Government of the Republic of the Philippines:

[Signed]

Acting Foreign Minister of the Republic of the Philippines

For the Government of the Republic of Singapore:

[Signed]

Foreign Minister of the Republic of Singapore

For the Government of the Kingdom of Thailand:

[Signed]

Foreign Minister of the Kingdom of Thailand