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# DOCUMENTATION

## Basic Agreement on ASEAN Industrial Joint Ventures (BAAIJV)

(initialled by the ASEAN Economics Ministers at the 14th AEM Meeting on 13 NOV 82 in Singapore and signed by the ASEAN Foreign Ministers on 7 NOV 83 in Jakarta)

### 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 in 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;

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- 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.

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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 government's 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 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.

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

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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 countries 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 into force on the thirtieth (30th) day after the deposit of the fifth Instrument of Ratification.

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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.

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# Supplementary Agreement to Amend the Basic Agreement on ASEAN Industrial Joint Ventures (BAAIJV)

(Signed by the ASEAN Foreign Ministers on 7 NOV 83 in Jakarta)

The parties have agreed as follows:

1. That the term "three year period" referred to in paragraphs 2 and 7 of Article III of the Agreement be amended to read as "four year period". The amended version of paragraphs 2 and 7 of Article III of the Agreement is to read as follows:

"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 the AEM approved the inclusion of that product in the final list, whichever is earlier.

The tariff preferences 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 preferences."

2. That paragraphs 3 and 8 of Article III of the Agreement be amended to read as follows:

"Non-participating countries shall waive their rights under Chapter II, Article 8 paragraph 2 of the ASEAN PTA for the four year period. Non-participating countries need not extend a margin of preference to participating countries on AIJV products. 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.

Participating countries shall waive their right under Chapter II, Article 8 paragraph 2 of the ASEAN PTA for the four year period in respect of entities which are not AIJVs but produce the same products within their countries. After the four year 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 margin of tariff preference in the participating countries for that particular AIJV product."

3. That this Supplementary Agreement shall come into force on the date on which it shall receive the approval of the Contracting Parties.

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# Primer on the Basic Agreement on ASEAN Industrial Joint Ventures (BAAIJV)

Prepared by the  
Philippine ASEAN Council in cooperation with the  
COIME Interim Technical Secretariat  
Ministry of Trade & Industry  
Republic of the Philippines, 1982.

## 1. What is the BAAIJV?

The Basic Agreement on ASEAN Industrial Joint Ventures (BAAIJV) provides the guidelines and institutional framework within which the ASEAN Governments 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.

## 2. What is the purpose of the BAAIJV?

The BAAIJV aims to effectively consolidate the markets of the ASEAN member countries to support meaningful industrial joint ventures which can greatly contribute to strengthening and broadening the base of industrial sectors of the region, promoting greater utilization of industries and expanding trade in ASEAN.

## 3. How is effective consolidation of markets achieved?

Effective consolidation of markets is achieved by granting products of ASEAN industrial joint ventures (AIJVs) preferred access to the markets of participating member countries. Such preferred access is achieved by way of tariff preferences, a minimum of 50 per cent margin, extended by participating countries exclusively on AIJV products for a period of three years and in certain cases, by exclusivity privileges for new products.

## 4. Is there a minimum number of member countries that have to participate in sharing their markets for AIJV products?

Yes. At least two ASEAN countries can participate in an AIJV product principally by way of extending the minimum 50 per cent margin of tariff preference for that product. While more

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participating countries would be desirable, the provision on the participation of at least two member countries provides greater flexibility.

5. What are the other advantages of the BAAIJV?

In addition to effectively consolidating markets, the other advantage of the BAAIJV is the opportunity for investors to pool their resources to establish economically scaled production facilities in any of the participating countries.

This opportunity is built into the equity structure of an AIJV as well as the principle of free selection of AIJV site within any of the participating countries. It also results from the opportunity of a regional market for AIJV products.

6. What is an AIJV product?

An ASEAN Industrial Joint Venture (AIJV) product is any product included in the final list of AIJV products approved by the ASEAN Economic Ministers (AEM). It may be an existing product which is being processed or manufactured in any of the participating countries at the time of its inclusion in the final list, or it could be a new product.

7. What are the privileges enjoyed by AIJV products?

a) Whether a new product or an existing product, an AIJV product is qualified for a minimum margin of tariff preference of 50 percent extended by the participating countries for a period of three years. This period shall start:

- i. in the case of a new AIJV product, from the date of commercial production of that product, or upon expiry of 30 months from the date the AEM approved the product's inclusion in the final list, whichever is earlier; and
- ii. in the case of an existing AIJV product, from the actual date of implementation of the tariff preference.

b) Some new AIJV products enjoy exclusivity privileges.

8. Which AIJV products are entitled to exclusivity privileges?

Exclusivity privileges are granted only to a new AIJV product for which there is only one approved project throughout all the participating countries. Such privileges mean that the participating countries are limited from setting up new production facilities for a similar product, other than the approved AIJV project, unless 75 percent of its production is for export to non-ASEAN markets.

Exclusivity privileges shall continue for a period of three years from the start of commercial production, or upon expiry of 30 months from the date the AEM approves the inclusion of that product in the final list, whichever is earlier.

9. Are there minimum equity requirements in setting up AIJVs?

Yes. A minimum ASEAN equity ownership of 51 percent is required for any proposed AIJV. However, such requirement does not apply in 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 percent of the product produced by the AIJV will be exported to non-ASEAN-markets;



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- c) Where the product is already being produced in a participating country prior to its inclusion in the final list of AIJV products approved by the ASEAN Economic Ministers (AEM); and
  - 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.

10. What are the institutional arrangements for approval of AIJV products?

These are specified in Article II of the BAAIJV as follows:

- a) 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 capacities. These shall be compiled at a COIME meeting into a tentative list of AIJV products.
- b) ASEAN Member countries shall examine such tentative lists 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.
- c) 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.
- d) 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.
- e) 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.
- f) COIME shall inform all member countries of those new AIJV products for which approval has been granted.
- g) For existing AIJV products, interested parties shall seek their respective government's 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.
- h) For existing AIJV products, all participating countries shall inform COIME of entities that have qualified as AIJVs under the BAAIJV.

11. Are there suggestions on how to go about making proposals to produce AIJV products?

The following suggestions are made:

- a) Before submitting any proposal for an AIJV product, intending investors are advised to consult extensively with their private sector counterparts in the ASEAN region, particularly through the ASEAN-CCI, as well as with their respective national governments. Such consultations would facilitate negotiations in COIME for the product's inclusion in the tentative list and subsequently the final list of AIJV products to be approved by the AEM.
- b) Intending investors should, as much as possible, propose "packages" of AIJV products whose production facilities can be located in the different member countries whose

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markets are desired to be shared. This should facilitate obtaining agreement of the member countries to participate in an AIJV product by making their markets accessible through tariff preferences.

- c) In the selection of products to be proposed, significant premium is given by the member countries on exports to non-ASEAN markets. This should enable the AIJV project to attain improved economies of scale as well as to earn foreign exchange which would make it more welcome as an AIJV project.
- d) Cross-investments by ASEAN nationals in a proposed AIJV would be desirable, and should facilitate the gaining of preferential access to the markets of the participating countries.

12. What happens if non-participating countries extend among themselves tariff preferences for AIJV products?

Such tariff preferences shall be similarly enjoyed by all ASEAN countries. Non-participating countries, however, shall waive their rights to enjoy tariff preferences given by participating countries to AIJV products.

13. If a country has a project on any of the products listed in the final list of AIJV products, does this project have exclusive rights to this project?

No exclusivity privileges will be granted if an AIJV product is an existing product, or a new product with more than one approved project.

14. If two countries with existing plants apply for one AIJV product, will they be granted exclusivity?

“Existing AIJV products shall not be granted exclusivity privileges.”

15. Do exclusivity privileges apply to the host country or to the company?

Exclusivity privileges are granted to the company of the approved AIJV product. However, the obligation to limit the setting up of similar projects is with respect to the participating countries.

16. What happens to the AIJV product after three years of tariff preferences?

“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 preferences.”

**(Editor’s Note:** The three-year tariff preference period was subsequently amended to four years.)