Agreement Amending Development Credit Agreement

(Inland Water Transport Rehabilitation Project)

BETWEEN

PEOPLE'S REPUBLIC OF BANGLADESH

AND

INTERNATIONAL DEVELOPMENT ASSOCIATION

DATED OCTOBER 17, 1975
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DATED OCTOBER 17, 1975
DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated October 17, 1975, between PEOPLE'S REPUBLIC OF BANGLADESH (hereinafter called the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (hereinafter called the Association).

WHEREAS (A) The Borrower and the Association entered into a Development Credit Agreement on August 10, 1973 (hereinafter called the Original Development Credit Agreement) for the Inland Water Transport Rehabilitation Project described therein; and

(B) The Borrower and the Association wish to amend the Original Development Credit Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

Definitions

Section 1.01. (a) Wherever used in this Agreement, unless the context otherwise requires, the several terms defined in the General Conditions, in the Preamble to this Agreement and in the Original Development Credit Agreement have the respective meanings therein set forth.

(b) Section 1.02 of the Original Development Credit Agreement is amended by adding the following definitions:

"(e) "BSC" means the Bangladesh Shipping Corporation, a public corporation established by Presidential Order No. 10 of 1972.

(f) "ERL" means Eastern Refinery Limited, a company established under the Companies Act, 1913, and placed under the control of the Bangladesh Minerals, Oil and Gas Corporation pursuant to Presidential Order No. 27 of 1972, as amended, and wholly owned by the Borrower."

ARTICLE II

The Credit

Section 2.01. Section 2.01 of the Original Development Credit Agreement is hereby amended to read as follows:
"Section 2.01. The Association agrees to lend to the Borrower, on the terms and conditions in the Development Credit Agreement set forth or referred to, an amount in various currencies equivalent to eight million seven hundred thousand dollars ($8,700,000)."

Section 2.02. Section 2.03 of the Original Development Credit Agreement is hereby amended to read as follows:

"Section 2.03. The Closing Date shall be June 30, 1978 or such later date as shall be agreed between the Borrower and the Association."

ARTICLE III

Execution of the Project

Section 3.01. The following new Article shall be added to the Original Development Credit Agreement:

"ARTICLE IX

Additional Provisions Relating to Part B of the Project

Section 9.01. (a) The Borrower shall carry out Part B of the Project through BSC, CPT and ERL as indicated in Schedule 2 to this Agreement.

(b) Implementation of Part B of the Project shall be the responsibility of a suitably qualified and experienced project director. The project director will be empowered to issue instructions to ensure the prompt and effective implementation of Part B of the Project to project officers in BSC, CPT and ERL with appropriate qualifications and experience, who shall be responsible for ensuring the implementation of each organization’s part of the Project. The project director shall also be responsible for employing the consultants described in Section 9.02 hereof and shall have access to funds for paying such consultants.

(c) A steering committee shall be established and shall meet as and when required to make policy decisions concerning Part B of the Project and to review at least quarterly the progress of its implementation. The steering committee shall be chaired by the Secretary of the Ministry of Shipping, Inland Water Transport and Civil Aviation and shall include the project director, the chief executives of BSC, CPT and ERL and representatives of the Borrower’s Planning Commission, the Project Implementation Bureau in the President’s Secretariat and the Bangladesh Minerals, Oil and Gas Corporation."
Section 9.02. In order to assist the Borrower in carrying out Part B of the Project, the Borrower shall employ engineering consultants whose qualifications, experience and terms and conditions of employment shall be satisfactory to the Association. The duties of such consultants shall include the following: (a) advising and assisting in the selection, procurement and alteration of tankers; (b) reviewing and, if required, revising designs for the oil mooring jetty; (c) advising on the location of pumping facilities; (d) supervision of construction of oil mooring jetty and of alteration of tankers and (e) establishing operating procedures and assisting in initial operation of Part B of the Project.

Section 9.03. (a) The Borrower undertakes to cause the tankers to be financed out of the proceeds of the Credit to be insured against all hazards for their useful lives, and for such insurance any indemnity shall be payable in a currency freely usable by the Borrower to replace or repair such tankers.

(b) The Borrower (i) shall cause BSC to maintain the tankers during their useful lives in accordance with the standards of a recognized international ship classification society, (ii) shall maintain or cause to be maintained all other components of Part B of the Project in accordance with sound engineering practices, and (iii) shall insure the availability of all foreign exchange required for these purposes.

Section 9.04. The Borrower shall lend the proceeds of the Credit withdrawn for Part B of the Project (except for amounts withdrawn for the consultants described in Section 9.02 hereof) to BSC, CPT and ERL at not less than eight per cent simple interest per annum pursuant to agreements satisfactory to the Association. The Borrower shall not amend, waive, abrogate or assign any such agreement or any provision thereof without the Association's prior consent.

Section 9.05. (a) BSC and ERL shall pay CPT port charges in respect of operations resulting from Part B of the Project at the rates in force from time to time and, in addition (b) BSC shall charge ERL in respect of such operations amounts sufficient to cover (i) BSC's actual costs of operations (including maintenance) plus fifteen per cent of such costs for overhead and profit and (ii) repayments of principal of, and interest on, the loan referred to in Section 9.04 hereof.

Section 3.02. Section 3.03 of the Original Development Credit Agreement is hereby deleted.
ARTICLE IV
Amendments to Schedules to
Original Development Credit Agreement

Section 4.01. Schedule 1 to the Original Development Credit Agreement is hereby amended by replacing paragraphs 1 and 2 thereof with the following:

"1. The table below sets forth Categories of items to be financed out of the proceeds of the Credit and the allocation of amounts of the Credit to each Category and the percentages of expenditures for items so to be financed in each Category:

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount of the Credit Allocated (Expressed in Dollar Equivalent)</th>
<th>% of Expenditures to be Financed</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) For BIWTC:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) Spare Parts for Fleet</td>
<td>750,000</td>
<td>100% of foreign expenditures</td>
</tr>
<tr>
<td>(b) Tools and Equipment for Repair Yards</td>
<td>750,000</td>
<td>100% of foreign expenditures</td>
</tr>
<tr>
<td>(2) For BESC:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Spare Parts, Tools and Equipment</td>
<td>750,000</td>
<td>100% of foreign expenditures</td>
</tr>
<tr>
<td>(3) For CPT:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Spare Parts for Port Equipment</td>
<td>200,000</td>
<td>100% of foreign expenditures</td>
</tr>
<tr>
<td>(4) For BIWTA:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) Spare Parts for Fleet and Port Equipment</td>
<td>102,500</td>
<td>100% of foreign expenditures</td>
</tr>
<tr>
<td>Category</td>
<td>Amount of the Credit Allocated (Expressed in Dollar Equivalent)</td>
<td>% of Expenditures to be Financed</td>
</tr>
<tr>
<td>----------</td>
<td>---------------------------------------------------------------</td>
<td>----------------------------------</td>
</tr>
<tr>
<td>(b) Survey Equipment</td>
<td>97,500</td>
<td>100% of foreign expenditures</td>
</tr>
<tr>
<td>(5) For Part B of the Project:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) Two used Tankers (up to 20,000 dwt each) and Alterations thereto</td>
<td>3,205,000</td>
<td>100% of foreign expenditures</td>
</tr>
<tr>
<td>(b) Equipment and Materials for Oil Jetty</td>
<td>805,000</td>
<td>100% of foreign expenditures or 100% of ex-factory cost</td>
</tr>
<tr>
<td>(c) Pipes and Fittings for Pipeline</td>
<td>337,000</td>
<td>100% of foreign expenditures</td>
</tr>
<tr>
<td>(d) Spare Parts</td>
<td>370,000</td>
<td>100% of foreign expenditures</td>
</tr>
<tr>
<td>(e) Consultants</td>
<td>216,000</td>
<td>100% of foreign expenditures</td>
</tr>
<tr>
<td>(6) Unallocated</td>
<td>1,117,000</td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td>8,700,000</td>
<td></td>
</tr>
</tbody>
</table>

"2. (a) For the purposes of this Schedule, the term "foreign expenditures" means expenditures in the currency of any country other than the Borrower and for goods and services supplied from the territory of any country other than the Borrower.

(b) Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of:
expenditures prior to August 10, 1973, except that withdrawals may be made in respect of Category (5)(e) on account of expenditures incurred after May 15, 1973; and

(ii) payments for taxes imposed directly under the laws of the Borrower or laws in effect in its territories on goods or services, or on the importation, manufacture, procurement or supply thereof.

Section 4.02. Part B of the Description of the Project and the last sentence of Schedule 2 to the Original Development Credit Agreement are hereby amended to read as follows:

"Part B: Procurement and installation, by the agencies indicated below, of the facilities described below and operation of such facilities for at least ten years to deliver oil arriving at Chittagong port to ERL.

(a) Procurement of two used tankers (up to 20,000 dwt each) having a remaining useful life of at least ten years and alteration and fitting thereof with all necessary equipment for lighterage, including fenders (BSC).

(b) Installation of a new oil jetty in the Karnafuli River (CPT).

(c) Installation of pipeline connections on and from such jetty to ERL's main pipeline system (ERL).

(d) Procurement of necessary spare parts for the above (BSC, CPT and ERL).

(e) Provision of consultants' services to implement the foregoing (project director described in Section 9.01(b) hereof).

* * * * * * *

The procurement and installation of Project facilities is expected to be completed by December 31, 1977.

Section 4.03. Schedule 3 to the Original Development Credit Agreement is hereby amended by deleting the portion thereof relating to Part B of the Project and substituting the following:
"Part B of the Project

A. General Procedures

1. Except as provided in Part A.2 hereof, goods, works and services shall be procured under contracts to be awarded in accordance with procedures consistent with those set forth in the "Guidelines for Procurement under World Bank Loans and IDA Credits" published by the Bank in April 1972, as revised in October 1972 (hereinafter called the Guidelines), on the basis of international competitive bidding.

2. (a) Contracts for procurement of used tankers shall be awarded on the basis of quotations obtained for suitable vessels from international ship brokers after account has been taken of the condition of the tankers, costs of alterations and other relevant factors; such contracts shall not be awarded until the Association has notified the Borrower or BSC that it has no objection to the proposed award.

(b) Contracts for alterations to tankers shall be awarded after competitive quotations have been obtained from at least three qualified contractors.

(c) Civil works in connection with the oil jetty and pipeline connection (i) may be carried out by CPT and ERL, respectively, by force account or (ii) may be done under contracts awarded pursuant to local competitive bidding procedures acceptable to the Association.

(d) Proprietary spare parts shall be procured in accordance with procedures acceptable to the Association.

B. Evaluation and Comparison of Bids for Goods; Preference for Domestic Manufacturers

1. For the purpose of evaluation and comparison of bids for the supply of goods: (i) bidders shall be required to state in their bid the c.i.f. (port of entry) price for imported goods, or the ex-factory price for domestically-manufactured goods; (ii) customs duties and other import taxes on imported goods, and sales and similar taxes on domestically-supplied goods, shall be excluded; and (iii) the cost to the Borrower of inland freight and other expenditures incidental to the delivery of goods to the place of their use or installation shall be included.

2. Goods manufactured in Bangladesh may be granted a margin of preference in accordance with, and subject to, the following provisions:
(a) All bidding documents for the procurement of goods shall clearly indicate any preference which will be granted, the information required to establish the eligibility of a bid for such preference and the following methods and stages that will be followed in the evaluation and comparison of bids.

(b) After evaluation, responsive bids will be classified in one of the following three groups:

1. **Group A**: bids offering goods manufactured in Bangladesh if the bidder shall have established to the satisfaction of the Borrower and the Association that the manufacturing cost of such goods includes a value added in Bangladesh equal to at least 20% of the ex-factory bid price of such goods.

2. **Group B**: all other bids offering goods manufactured in Bangladesh.

3. **Group C**: bids offering any other goods.

(c) All evaluated bids in each group shall be first compared among themselves, excluding any customs duties and other import taxes on goods to be imported and any sales or similar taxes on goods to be supplied domestically, to determine the lowest evaluated bid of each group. Such lowest evaluated bids shall then be compared with each other, and if, as a result of this comparison, a bid from group A or group B is the lowest, it shall be selected for the award.

(d) If, as a result of the comparison under paragraph (c) above, the lowest bid is a bid from group C, all group C bids shall be further compared with the lowest evaluated bid from group A after adding to the c.i.f. bid price of the imported goods offered in each group C bid, for the purpose of this further comparison only, an amount equal to (i) the amount of customs duties and other import taxes which a non-exempt importer would have to pay for the importation of the goods offered in such group C bid, or (ii) 15% of the c.i.f. bid price of such goods if said customs duties and taxes exceed 15% of such price. If the group A bid in such further comparison is the lowest, it shall be selected for the award; if not, the bid from group C which as a result of the comparison under paragraph (c) is the lowest evaluated bid shall be selected.

C. Review of Procurement Decisions by the Association

1. Review of invitations to bid and of proposed awards and final contracts.
(a) With respect to all contracts, other than those referred to in paragraph A.2 of this Schedule, estimated to cost the equivalent of $100,000 or more, before bids are invited the Borrower shall furnish to the Association, for its comments, the text of the invitations to bid and the specifications and other bidding documents, together with a description of the advertising procedures to be followed for the bidding, and shall make such modifications in the said documents or procedures as the Association shall reasonably request. Any further modification to the bidding documents shall require the Association's concurrence before it is issued to the prospective bidders.

(b) With respect to all such contracts and contracts for tankers and alterations thereto, after bids or quotations have been received and evaluated, the Borrower shall, before a final decision on the award is made, inform the Association of the name of the party to which it intends to award the contract and the reasons for the intended award and shall furnish to the Association, in sufficient time for its review, a detailed report, by the consultants referred to in Section 9.02 hereof on the evaluation and comparison of the bids or quotations received, together with the recommendation for award of the said consultants and such other information as the Association shall reasonably request. The Association shall, if it determines that the intended award would be inconsistent with the Guidelines or this Schedule, promptly inform the Borrower and state the reasons for such determination.

(c) The terms and conditions of the contract shall not, without the Association's concurrence, substantially differ from those on which bids were asked or quotations invited.

(d) Two conformed copies of the contract shall be furnished to the Association promptly after its execution and prior to the submission to the Association of the first application for withdrawal of funds from the Credit Account in respect of such contract.

2. With respect to each contract to be financed out of the proceeds of the Credit and not governed by the preceding paragraph, the Borrower shall furnish to the Association, promptly after its execution and prior to the submission to the Association of the first application for withdrawal of funds from the Credit Account in respect of such contract, two conformed copies of such contract, together with the analysis of bids, recommendations for award and such other information as the Association shall reasonably request. The Association shall, if it determines that the award of the contract was not consistent with the Guidelines or this Schedule, promptly inform the Borrower and state the reasons for such determination."
ARTICLE V

Effectiveness of Amending Agreement;
Relation to Original Development Credit Agreement

Section 5.01. (a) This Agreement shall not become effective until:

(i) Evidence satisfactory to the Association shall have been furnished to the Association that the execution and delivery of this Agreement on behalf of the Borrower have been duly authorized or ratified by all necessary governmental action, including an opinion or opinions satisfactory to the Association of counsel acceptable to the Association showing that this Amending Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, the Borrower and is legally binding upon the Borrower in accordance with its terms;

(ii) The project director and project officers described in Section 9.01(b) of the Development Credit Agreement, as amended, have been appointed and empowered as required by such Section;

(iii) The consultants described in Section 9.02 of the Development Credit Agreement, as amended, have been appointed;

(iv) The Borrower's National Economic Council has approved the Project Evaluation Proforma for the investment program described in Section 4.02 of this Agreement; and

(v) The Borrower has entered into agreements satisfactory to the Association with each of BSC, CPT and ERL providing for onlending of the proceeds of the Credit as required by Section 9.04 and the carrying out of those portions of the Project for which each of them is responsible.

(b) If this Amending Agreement shall not have become effective by January 19, 1976, all obligations of the parties hereunder shall terminate, unless the Association, after consideration of the reasons for the delay, shall establish a later date for purposes of this paragraph. The Association shall promptly notify the Borrower of such later date.

Section 5.02. If, and to the extent that, in respect of Part B of the Project, any provision of the Original Development Credit Agreement is inconsistent with any provision of, or added by, this Amending Agreement, the latter shall prevail.
IN WITNESS WHEREOF, the parties hereto, acting through their representatives thereunto duly authorized, have caused this Agreement to be signed in their respective names in the District of Columbia, United States of America, as of the day and year first above written.

PEOPLE'S REPUBLIC OF BANGLADESH

By /s/ M. R. Siddiqui

Authorized Representative
on behalf of the President

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Ernest Stern

Regional Vice President
South Asia