

No. 14521

**UNITED STATES OF AMERICA
and
BANGLADESH**

**Loan Agreement for the Ashuganj fertilizer project (with
annex and related letter). Signed at Dacca on 12 February
1975**

Authentic text: English.

Registered by the United States of America on 31 December 1975.

**ÉTATS-UNIS D'AMÉRIQUE
et
BANGLADESH**

**Accord relatif à l'octroi d'un prêt pour l'implantation d'une
usine d'engrais à Ashuganj (avec annexe et lettre
connexe). Signé à Dacca le 12 février 1975**

Texte authentique : anglais.

Enregistré par les États-Unis d'Amérique le 31 décembre 1975.

LOAN AGREEMENT¹ BETWEEN THE PEOPLE'S REPUBLIC OF BANGLADESH AND THE UNITED STATES OF AMERICA FOR THE ASHUGANJ FERTILIZER PROJECT

Dated: February 12, 1975

A.I.D. Loan No. 388-T-003

LOAN AGREEMENT dated February 12, 1975, between the GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH ("Government") and the UNITED STATES OF AMERICA acting through the AGENCY FOR INTERNATIONAL DEVELOPMENT ("A.I.D.").

Article I. THE LOAN

Section 1.01. THE LOAN. Subject to the terms and conditions of this Agreement, A.I.D. hereby agrees to lend to the Government pursuant to the Foreign Assistance Act of 1961, as amended, an amount not to exceed Thirty Million United States Dollars (\$30,000,000) ("the Loan") to assist the Government in carrying out the Project referred to in Section 1.02 ("Project"). The Loan shall be used exclusively to finance the foreign exchange costs of goods and services required for the Project. The aggregate amount of disbursements under the Loan is hereinafter referred to as "Principal". The commodities and services authorized to be financed hereunder are hereinafter referred to as "Eligible Items". A.I.D. may decline to finance any Eligible Item when, in its judgment, said financing would be inconsistent with the purpose of the Loan or in violation of the legislation or regulations governing A.I.D.

Section 1.02. THE PROJECT. The Project, to be carried out with resources of the Government together with resources made available to the Government by the International Development Association, the Federal Republic of Germany, the Government of Switzerland, the United Kingdom of Great Britain and Northern Ireland, Iran, the Asian Development Bank (collectively referred to herein as "Other Lenders") and the United States of America, all of which will be made available to the Ashuganj Fertilizer and Chemical Company Limited ("AFCC"), shall be the construction and operation of a urea fertilizer plant and all appropriate ancillary facilities at Ashuganj, Comilla, Bangladesh, together with the provision of management and consultants' services and training, all as described in more detail in the Project Description attached hereto as Annex I. Said Annex I is a part of this Agreement and may, within the terms of this Agreement, be modified in writing by the parties hereto.

Section 1.03. ALLOCATION OF LOAN PROCEEDS. The allocation of the proceeds of the Loan among the expenditures on the Project, the goods to be financed from such proceeds and the methods and procedures for procurement of such goods shall be determined by agreement between the Government and A.I.D.

Article II. DEFINITIONS

Section 2.01. Wherever used in the Loan Agreement the following terms have the following meanings:

(a) "BFCCPC" means the Bangladesh Fertilizer, Chemical and Pharmaceutical Corporation, a corporation established and operating under the laws of the Government and wholly owned by the Government;

¹ Came into force on 12 February 1975 by signature.

- (b) "AFCC" means the Ashuganj Fertilizer and Chemical Company, Limited;
- (c) "Project Agreement" means the agreement between A.I.D. and AFCC, referred to in Section 4.02 (b) of this Loan Agreement;
- (d) "Financing Agreement" means the agreement between the Government and AFCC referred to in Section 4.02(c) of this Loan Agreement;
- (e) "TGTDC" means the Titas Gas Transmission and Distribution Company Limited, a company established and operating under the laws of Bangladesh and wholly owned by the Government;
- (f) "Plant" means the Plant described in Annex I to this Agreement;
- (g) "Gas Supply Agreement" means the agreement between AFCC and TGTDC for the supply of natural gas required for the operation of the Plant and for the construction of a pipeline to the site of the Plant;
- (h) "Commercial Operation Date" means the date of the first day as of which the Plant has produced eighty percent of its rated urea capacity (in the aggregate for a sixty-day period without allowance for shutdown for maintenance) for a period of sixty consecutive days;
- (i) "Other Lenders" means those financiers listed in Section 4.02(a) and, except as A.I.D. shall otherwise agree, any other international or governmental institution (other than the Government or an agency of the Government) which makes funds available to the Government or AFCC for purposes of the Project;
- (j) "Other Loan Agreements" means the various agreements between the Government and the Other Lenders whereby the Other Lenders have agreed to make available funds to the Government or AFCC for the purposes of the Project; and
- (k) "Foreign Currency" means any currency other than the currency of the country of the Government.

Article III. LOAN TERMS

Section 3.01. INTEREST. The Government shall pay interest to A.I.D. which shall accrue at the rate of two percent (2%) per annum for ten (10) years following the date of the first disbursement hereunder and at the rate of three percent (3%) per annum thereafter on the outstanding balance of Principal and on any due and unpaid interest thereon. Interest on the outstanding balance shall accrue from the date of each respective disbursement (as such date is defined in Section 8.04) and shall be computed on the basis of a 365-day year. Interest shall be payable semi-annually. The first payment of interest shall be due and payable no later than six (6) months after the first disbursement hereunder, on a date to be specified by A.I.D.

Section 3.02. REPAYMENT. The Government shall repay the Principal to A.I.D. within forty (40) years from the date of the first disbursement hereunder in sixty-one (61) approximately equal semi-annual installments of Principal and Interest. The first installment of Principal shall be payable nine and one-half (9½) years after the date on which the first interest payment is due in accordance with Section 3.01. A.I.D. shall provide the Government with an amortization schedule in accordance with this Section after the final disbursement under the Loan.

Section 3.03. APPLICATION, CURRENCY, AND PLACE OF PAYMENT. All payments of Interest and Principal hereunder shall be made in United States Dollars and shall be applied first to the payment of interest due and then to the repayment of Principal. Except as A.I.D. may otherwise specify in writing, all such payments shall be made to the Controller, Agency for International Development, Washington, D.C., U.S.A., and shall be deemed made when received by the Office of the Controller.

Section 3.04. PREPAYMENT. Upon payment of all interest and refunds then due, the Government may prepay, without penalty, all or any part of the Principal. Any such prepayment shall be applied to the installments of Principal in the inverse order of their maturity.

Section 3.05. RENEGOTIATION OF THE TERMS OF THE LOAN. The Government agrees to negotiate with A.I.D., at such time or times as A.I.D. may request an acceleration of the repayment of the Loan in the event that there is any significant improvement in the internal and external economic and financial position and prospects of the country of the Government (taking into consideration the relative capital requirements of Bangladesh).

Article IV. CONDITIONS PRECEDENT TO DISBURSEMENT

Section 4.01. INITIAL CONDITIONS PRECEDENT TO DISBURSEMENT. Within forty-five (45) days after signing of this Agreement, or such other time as A.I.D. may agree to in writing, the Government shall furnish to A.I.D. in form and substance satisfactory to A.I.D.:

- (a) An opinion of the Ministry of Law of Bangladesh or other counsel acceptable to A.I.D. that this Agreement has been duly authorized or ratified by and executed on behalf of the Government, and that it constitutes a valid and legally binding obligation of the Government;
- (b) Evidence of the authority of the person or persons who will act as the representative or representatives of the Government as specified in Section 10.03 and a specimen signature of each such person certified as to its authenticity by either the person rendering the legal opinion required by sub-section (a) above or the person who has executed this Agreement for the Government.

Section 4.02. ADDITIONAL CONDITIONS PRECEDENT TO DISBURSEMENT. Prior to the first disbursement or to the issuance of the first letter of commitment under the Loan, the Government shall, except as A.I.D. may agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D.:

- (a) Evidence that the Government has entered into agreements satisfactory to A.I.D. with the Other Lenders for financing of the Project in the following amounts:

<i>Other Lenders</i>	<i>Amount</i>
International Development Association	US \$33 Million
United Kingdom of Great Britain and Northern Ireland	£Stg 8 Million
Federal Republic of Germany	DM 30 Million
Government of Switzerland	SFr 20 Million
Iran	US \$12.4 Million
Asian Development Bank	US \$30 Million

and that all conditions precedent to the effectiveness of the agreement with the International Development Association have been met;

- (b) Evidence that the Project Agreement executed on behalf of AFCC shall have been duly authorized or ratified by all necessary corporate, administrative and governmental action;
- (c) Evidence that the Financing Agreement shall have been duly executed and delivered on behalf of the Government and AFCC and shall have become fully effective and binding on such parties in accordance with its terms, subject only to the effectiveness of the Loan Agreement;
- (d) Evidence that the Gas Supply Agreement shall have been duly executed and delivered and shall have become fully effective and binding on the parties thereto;

- (e) Evidence that the Government shall have dedicated and made available for the operation of the Plant not less than eight billion cubic meters of the natural gas reserves of the Titas gas field;
- (f) Evidence that AFCC shall have acquired all lands and properties and all rights, easements, privileges and approvals pertaining to such lands and properties as shall be necessary or appropriate to enable AFCC to undertake the construction of the Plant;
- (g) Evidence that BFCPC shall have executed a proper and valid assignment to AFCC of its rights and obligations under any contracts which relate to the Project (including the contracts for Plant site preparation and for technical advisors to prepare plans for Project implementation) and BFCPC and AFCC shall have completed a financial settlement satisfactory to A.I.D. whereby all due and proper financial disbursements or liabilities made or incurred by BFCPC in respect of the formation of AFCC and the initial preparatory action in respect of the Project shall have been reimbursed to BFCPC;
- (h) Evidence that the Managing Director of AFCC shall have been duly appointed and his authority to act pursuant to Section 5.02 (a) of the Project Agreement shall have been established;
- (i) Evidence that AFCC shall have made arrangements satisfactory to A.I.D. to obtain the services of the consultants referred to in Section 2.03 (a) of the Project Agreement;
- (j) Evidence that the Government has taken action satisfactory to A.I.D. to insure (1) issuance of necessary import licenses and (2) provision of foreign exchange (including the timely availability thereof) in appropriate amounts to assure that continuity of the operation of the Plant and of other Government owned fertilizer plants is not interrupted due to the unavailability of spare parts and stores within the country of the Government;
- (k) Evidence that the Government has taken action satisfactory to A.I.D. to facilitate the entry of goods for the Project into Bangladesh and their delivery to the Plant site with respect to payment of customs duties through procedures designed to ensure immediate release of such goods from customs;
- (l) Evidence that the Government has taken action satisfactory to A.I.D. to facilitate delivery of imported goods required for the Project to the Plant site with respect to inland water transportation by use of appropriate cargo vessels in a timely manner;
- (m) Evidence that the Government has taken action satisfactory to A.I.D. to assure the prompt approval of Project-related contract documentation and actions within the Government;
- (n) Evidence that adequate management capability and personnel have been secured for AFCC, that the Directors thereof are persons of appropriate experience and qualifications and that the Managing Director is a highly competent executive with demonstrated management capability in managing large operations or companies;
- (o) Evidence that as of the date on which all other conditions precedent contained in this Section are fulfilled with the exception of sub-paragraph (a) of this Section, AFCC is in compliance with its obligations pursuant to the contract with Vinnell Corporation for site preparation;
- (p) Evidence that the Government has developed, satisfactory to A.I.D., the scope and detail of the study referred to in Section 5.05 (a) hereof;
- (q) A budget, approved by the Government, showing planned expenditures for goods and services (disaggregating personnel covered) beginning with the date of commencement of AFCC's business and ending with the anticipated Commercial Operation Date, broken down by months for the first twelve (12) months and by years

thereafter and showing the proportions of all such expenditures expected to be made in currency other than that of the Government.

Section 4.03. TERMINAL DATES FOR MEETING CONDITIONS PRECEDENT TO DISBURSEMENT. (a) If all of the conditions specified in Section 4.01 shall not have been met within forty-five (45) days from the date of this Agreement, or such later date as A.I.D. may agree to in writing, A.I.D., at its option, may terminate this Agreement by giving written notice to the Government. Upon giving of such notice, this Agreement and all obligations of the parties thereunder shall terminate;

(b) Except as A.I.D. may otherwise agree in writing, if all of the conditions specified in Section 4.02 have not been satisfied on or before March 31, 1975, A.I.D., at its option, may terminate this Agreement by giving written notice to the Government. Upon giving of such notice, this Agreement and all obligations of the parties hereunder shall terminate.

Section 4.04. NOTIFICATION OF MEETING CONDITIONS PRECEDENT TO DISBURSEMENT. A.I.D. shall notify the Government upon determination by A.I.D. that the conditions precedent to disbursement specified in Sections 4.01 and 4.02 have been met.

Article V. COVENANTS

Section 5.01. COVENANTS. The Government, in consideration of this Loan, hereby covenants and warrants that:

(a) The Government shall cause AFCC to carry out the Project and to manage and operate the Plant with due diligence and efficiency, and in conformity with sound administrative, financial, engineering and industrial practices applicable from time to time to the fertilizer industry, and shall not take or permit any action which would interfere with AFCC's obligations under the Project Agreement.

(b) The Government shall make available or cause to be made available to AFCC, promptly as needed, and on terms and conditions acceptable to A.I.D., the land, funds, facilities, services, personnel and other resources which are required, in addition to the proceeds of the Loan and the funds made available by the Other Lenders, for the carrying out of the Project and the operation of the Plant. For purposes of this Section no prior concurrence is contemplated and A.I.D. shall not deem unacceptable any term or condition of the employment of personnel which is in accordance with the laws and regulations of the Government.

(c) The Government will cause AFCC to operate as an independent business entity on strictly commercial principles and will permit AFCC to manage its own activities, business and affairs, all pursuant to the authority and terms of its Memorandum and Articles of Association.

(d) The Government shall ensure that the activities of its departments and agencies with respect to the carrying out of the Project and the operation of the Plant are conducted and coordinated in such a way as will ensure the due and proper implementation of the Project.

(e) The Government and A.I.D. shall cooperate fully to assure that the Project will be accomplished. To this end, the Government and A.I.D. shall from time to time, at the request of either party, exchange views through their representatives with regard to the progress of the Project, the performance of the Government of its obligations under this Agreement, the performance of contractors and suppliers engaged in the Project, and other matters relating to the Project.

(f) (i) The Government in connection with obtaining the Loan, or taking any action under or with respect to this Agreement, has not paid, and will not pay or agree to pay, nor to the best of its knowledge has there been paid nor will there be paid or

agreed to be paid by any person or entity, commissions, fees or other payments of any kind, except as regular compensation for bona fide professional, technical, or comparable services. The Government shall promptly report to A.I.D. any payment or agreement to pay for such bona fide professional, technical, or comparable services to which it is a party, or of which it has knowledge (indicating whether such payment has been made or is to be made on a contingent basis), and if the amount of any such payment is deemed unreasonable by A.I.D., the same shall be adjusted in a manner satisfactory to A.I.D.

(ii) No payments have been or will be received by the Government, or any official of the Government, in connection with the procurement of goods and services financed hereunder, except fees, taxes or similar payments legally established in Bangladesh.

(g) The Government has disclosed to A.I.D. all circumstances which may materially affect the Project or the discharge of the Government's obligations under this Agreement and will inform A.I.D. of any conditions which interfere, or which it is reasonable to believe will interfere, with the Project or the discharge of the Government's obligations under this Agreement.

Section 5.02. TERMS OF RELENDING. (a) The Government shall make the proceeds of the Loan, together with funds made available for purposes of the Project by the Other Lenders and all other funds required for the Project, available to AFCC under a Financing Agreement upon terms and conditions satisfactory to A.I.D. Except as A.I.D. shall otherwise agree, the funds to be made available by A.I.D. and the Other Lenders shall be relented to AFCC on, *inter alia*, the following terms and conditions:

- (i) interest at the rate of ten percent (10%) per year;
- (ii) equal semi-annual repayments of principal and interest over a ten-year period following a five-year grace period as to principal; and
- (iii) acceptance of the foreign exchange risk by AFCC with respect to outstanding amounts.

Funds made available to AFCC by the Government from other resources shall be provided to AFCC in exchange for its shares; provided, however, that on and after the Commercial Operation Date such funds may be relented by the Government on terms and conditions, including those set forth in (i)–(iii) above, which are satisfactory to A.I.D., to the extent that AFCC's debt-equity ratio would not be more than 1.5:1 subsequent to such relending.

(b) The Government shall cause AFCC to apply the proceeds of the Loan to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement and the Project Agreement.

Section 5.03. FINANCING AGREEMENT. (a) The Government shall exercise its rights under the Financing Agreement in such a manner as to protect the interests of the Government and A.I.D. and to accomplish the purposes of the Loan.

(b) No rights or obligations under the Financing Agreement shall be assigned, amended, abrogated or waived by the Government without the prior concurrence of A.I.D.

Section 5.04. FUNDS AND OTHER RESOURCES TO BE PROVIDED BY GOVERNMENT. The Government herein agrees to provide promptly as needed all funds, including both local and foreign currencies, in addition to the Loan, and all other resources required for the punctual and effective carrying out of the Project.

Section 5.05. FERTILIZER MARKETING AND DISTRIBUTION. The Government shall, promptly and to the satisfaction of A.I.D., take all necessary measures to build up and maintain through the Bangladesh Agricultural Development Corporation (BADC) or otherwise, an effective and economic marketing and distribution organization for fertilizer produced in Bangladesh and to promote the sale of such fertilizer at prices determined in accordance with sound commercial practice and consistent with the terms of the Project Agreement. To this end, the Government shall:

- (a) carry out or cause to be carried out a fertilizer distribution and marketing study, the scope and detail of which shall be acceptable to A.I.D., whereby institutional and procedural improvements in the marketing and distribution of fertilizer and an investment program for effecting capital improvements will be formulated. Such study shall, except as A.I.D. shall otherwise agree, be completed not later than June 30, 1975; and
- (b) within two months after the completion of such study, furnish A.I.D. with its proposals for a program to improve fertilizer distribution and marketing and, after consultation with A.I.D. concerning such proposals, implement a program acceptable to A.I.D. to improve fertilizer distribution and marketing in sufficient time to ensure the efficient distribution and marketing of fertilizer produced by the Plant.

Section 5.06. EXISTING FERTILIZER PLANTS. (a) The Government shall take, or cause to be taken, the action required to improve production of the existing fertilizer plants at Ghorasal, Chittagong and Fenchuganj to a reasonable level, taking into account the views of A.I.D. on this subject.

(b) The Government shall employ, or cause to be employed, a consultant whose primary responsibility will be to assist BFCPC and AFCC in establishing by June 30, 1976, or such later date as A.I.D. may agree in writing, a uniform system of inventory control for spare parts and consumable stores required for the operation of fertilizer plants by BFCPC and for the operation of the Plant by AFCC.

Section 5.07. NATURAL GAS SUPPLY. The Government shall take, or cause to be taken, such action as is required to ensure that:

- (a) not less than eight billion cubic meters of the natural gas reserves of the Titas gas field are dedicated and made available to AFCC for the operation of the Plant; and
- (b) TGTDC shall supply AFCC with the natural gas required for the operation of the Plant and shall complete construction of a natural gas pipeline to the Plant from the existing Titas-Ashuganj pipeline by not later than June 30, 1977, or such later date as A.I.D. may agree in writing, in accordance with the provisions of the Gas Supply Agreement.

Section 5.08. ELECTRIC POWER SUPPLY. If an electrical power generating facility of sufficient capacity to supply the entire needs of the Plant is not included within the Plant, the Government shall cause the Bangladesh Power Development Board and AFCC to enter into a contract, on terms and conditions satisfactory to A.I.D., not later than December 31, 1975, for the long-term supply of the electrical power necessary for the operation of the Plant, and the Government shall exert its best efforts to assist the Bangladesh Power Development Board in carrying out its obligations under such contract.

Section 5.09. LIENS. It is the mutual intention of the Government and A.I.D. that no other external debt owed a creditor other than A.I.D. shall enjoy any priority over the Loan by way of a lien on governmental assets. To that end, the Government undertakes that, except as A.I.D. shall otherwise agree in writing, if any lien shall be created on any assets of the Government as security for any external debt, such lien will *ipso facto* equally and ratably secure the payment of the Principal of, and services charges and other charges on, the Loan, and that in the creation of any such lien express provision will be made to that effect; provided, however, that the foregoing provisions of this Section shall not apply to: (i) any lien created on property, at the time of purchase thereof, solely as security for the payment of the purchase price of such property; or (ii) any lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after its use. The term "assets of the Government" as used in this Section includes assets of the Government and assets of any agency of the Government, including the Bangladesh Bank and any other institution performing the functions of a central bank for the Government.

Section 5.10. CHANGE IN MANAGEMENT OF AFCC. Prior to making any change in the position of the Chairman or Managing Director of AFCC, the Government shall inform A.I.D. of its proposal to make such nomination, furnishing such information as to the qualifications and experience of the proposed nominee as A.I.D. shall reasonably request and shall afford A.I.D. sufficient opportunity to consult with the Government prior to making such nomination.

Section 5.11. INVESTMENT GUARANTY PROJECT APPROVAL BY GOVERNMENT. The Government agrees that the contracts to be financed under this Agreement may be insured by the Overseas Private Investment Corporation, an agency of the United States of America.

Article VI. RECORDS, REPORTS AND INSPECTION

Section 6.01. MAINTENANCE AND AUDIT OF RECORDS. The Government shall cause to be maintained, in accordance with sound accounting principles and practices consistently applied, books and records relating both to the Project and to the Loan. Such books and records shall, without limitation, be adequate to show:

- (a) the receipt and use made of goods and services acquired for the Project with funds disbursed pursuant to this Agreement with A.I.D. and agreements with Other Lenders;
- (b) the nature and extent of solicitations of prospective suppliers of goods and services acquired;
- (c) the basis of the award of contracts and orders to successful bidders; and
- (d) the progress of the Project.

Such books and records shall be regularly audited, in accordance with standard Government auditing procedures, and shall, except as A.I.D. may otherwise agree in writing, be maintained for three (3) years after the date of the final disbursement hereunder.

Section 6.02. REPORTS. (a) The Government shall furnish or cause to be furnished to A.I.D. all such information as A.I.D. shall reasonable request concerning (i) the Loan and the expenditure of the proceeds and maintenance of the service thereof; (ii) the goods financed out of the proceeds of the Loan; (iii) the Project and the Plant; (iv) the administration, operations and financial condition of AFCC, and any agencies of the Government responsible for carrying out the Project or any part thereof or the operation of the Plant; (v) financial and economic conditions in the country of the Government and the international balance of payments position of the Government; (vi) the policies of the Government concerning fertilizer supply, credit, marketing and use within its country; and (vii) other matters relating to the purposes of the Loan.

(b) The Government shall promptly notify A.I.D. of any conditions which may interfere with carrying out the Project.

Section 6.03. INSPECTIONS. The authorized representatives of A.I.D. shall have the right at all reasonable times to observe the operation of the Project and inspect the utilization of all goods and services financed hereunder, and the Government's books, records, and other documents relating to the project, the Loan and the Financing Agreement. The Government shall cooperate with A.I.D. to facilitate such inspections and shall permit representatives of A.I.D. to visit any part of the country of the Government for any purpose related to the Loan.

Article VII. PROCUREMENT

Section 7.01. PROCUREMENT FROM THE UNITED STATES AND CODE 941 COUNTRIES. Except as A.I.D. may otherwise agree in writing, disbursements made pursuant to Sections 8.01 and 8.02 shall be used exclusively to finance the procurement for the Project of goods and services, and marine insurance, having both their source and origin

in the United States of America or countries included in Code 941 of the *A.I.D. Geographic Code Book* as in effect at the time of such procurement.

Section 7.02. ELIGIBILITY DATES. Except as A.I.D. may otherwise agree in writing, no goods or services may be financed under the Loan which are procured pursuant to orders or contracts firmly placed or entered into prior to the signing of this Agreement, provided however, that the site preparation contract with Vinnell Corporation and site preparation supervision contract with James Chemical Engineering shall be eligible for financing even though entered into prior to such signing.

Section 7.03. APPROVAL OF CONTRACTS AND OTHER DOCUMENTS. Except as A.I.D. may otherwise agree in writing, all bid documents and documents related to the solicitation of proposals related to Eligible Items shall be approved by A.I.D. in writing prior to their issuance. Except as A.I.D. may otherwise specify in Implementation Letters, all contracts or amendments thereto shall be approved by A.I.D. in writing prior to their execution.

Section 7.04. SHIPPING AND INSURANCE. (a) Goods financed under the Loan shall be transported to Bangladesh on flag carriers of any country included in Code 935 of the *A.I.D. Geographic Code Book* as in effect at the time of shipment, provided,

- (i) At least fifty percent (50%) of the gross tonnage of all commodities (computed separately for dry bulk carriers, dry cargo liners and tankers) financed hereunder which may be transported on ocean vessels shall be transported on privately-owned United States-flag commercial vessels.
- (ii) Additionally, at least fifty percent (50%) of the gross freight revenue generated by all shipments financed hereunder and transported to Bangladesh on dry cargo liners shall be paid to or for the benefit of privately-owned United States-flag commercial vessels.
- (iii) Compliance with the requirements of (i) and (ii) above must be achieved with respect to cargo transported from U.S. ports and also to cargo transported from non-U.S. ports, computed separately.
- (iv) Within ninety (90) days following the end of each calendar quarter, or such other period as A.I.D. may specify in writing, the Government shall furnish A.I.D. with a statement, in form and substance satisfactory to A.I.D., reporting on compliance with the requirements of this Section.
- (v) No such goods may be transported on any ocean vessel (or aircraft) which A.I.D., in a notice to the Government, has designated as ineligible to carry A.I.D.-financed goods or which has been chartered for the carriage of A.I.D.-financed goods unless such charter has been approved by A.I.D.

(b) If, in connection with the placement of marine insurance on shipments to be financed hereunder the Government, by statute, decree, rule, or regulation, favors any marine insurance company of any country over any marine insurance company authorized to do business in any state of the United States of America, goods procured from the United States and financed under the Loan shall, during the continuance of such discrimination, be insured against marine risk in the United States of America with a company or companies authorized to do a marine insurance business in any state of the United States of America.

(c) The Government shall insure, or cause to be insured, all goods financed under the Loan against risks incident to their transit to the point of their use. Such insurance shall be issued upon terms and conditions consistent with sound commercial practice, shall insure the full value of the goods, and shall be payable in the currency in which such goods were financed. Any indemnification received by the Government under such insurance shall be used to replace or repair any material damage or any loss of the goods insured or shall be used to reimburse the Government for the replacement or repair of

such goods. Any such replacements shall have both their source and origin in countries included in Code 941 of the *A.I.D. Geographic Code Book* unless A.I.D. shall otherwise agree in writing and shall be otherwise subject to the provisions of this Agreement.

Section 7.05 UTILIZATION OF GOODS AND SERVICES. (a) Eligible Items shall be used exclusively for the Project, except as A.I.D. may otherwise agree in writing.

(b) Except as A.I.D. may otherwise agree in writing, no Eligible Items shall be used to promote or assist any foreign aid project or activity associated with or financed by any country not included in Code 935 of the *A.I.D. Geographic Code Book* as in effect at the time of such use.

Section 7.06. REASONABLE PRICE. No more than reasonable prices shall be paid for any Eligible Items. Such items shall be procured on a fair and, except for professional services, on a competitive basis in accordance with procedures therefor prescribed in Implementation Letters.

Section 7.07. NOTIFICATION TO POTENTIAL SUPPLIERS. In order that all United States firms shall have the opportunity to participate in furnishing Eligible Items, the Government shall furnish to A.I.D. appropriate information with regard thereto at such time as A.I.D. may request in Implementation Letters.

Section 7.08. INFORMATION AND MARKING. The Government will cooperate with A.I.D. in its efforts to disseminate information concerning the Project and shall comply with such reasonable instructions with respect to the marking of Eligible Items as A.I.D. may issue from time to time.

Article VIII. DISBURSEMENTS

Section 8.01. DISBURSEMENT FOR FOREIGN EXCHANGE COSTS—LETTERS OF COMMITMENT TO UNITED STATES BANKS. Upon satisfaction of conditions precedent, the Government may, from time to time, request A.I.D. to issue Letters of Commitment for specified amounts to one or more United States banks, satisfactory to A.I.D., committing A.I.D. to reimburse such bank or banks for payments made by them to contractors or suppliers, through the use of Letters of Credit or otherwise, for the foreign exchange costs of Eligible Items procured for the Project in accordance with the terms and conditions of this Agreement. Payment by a bank to a contractor or supplier will be made by the bank upon presentation of such supporting documentation as A.I.D. may prescribe in Implementation Letters. Banking charges incurred in connection with Letters of Commitment and Letters of Credit shall be for the account of the Government and may be financed under the Loan. In the case of payments due to United States suppliers of goods and of services related thereto, and such other Eligible Items as A.I.D. may agree in writing, A.I.D. may at its option, issue Letters of Commitment directly to suppliers committing A.I.D. to make payments directly to them of amounts due under contracts between AFCC and such suppliers. Payments to such suppliers will be made upon presentation of such supporting documentation as A.I.D. may prescribe in Implementation Letters.

Section 8.02. REIMBURSEMENT FOR FOREIGN EXCHANGE COSTS. Upon satisfaction of conditions precedent, A.I.D. may promptly reimburse the Government for the foreign exchange costs of Eligible Items in accordance with the terms and conditions of this Agreement upon receipt of requests for reimbursement submitted from time to time by the Government accompanied by such supporting documentation as A.I.D. may prescribe in Implementation Letters. Banking charges incurred by the Government in connection with Letters of Credit, and such other banking charges as A.I.D. and the Government may agree in writing, may be financed under the Loan.

Section 8.03. OTHER FORMS OF DISBURSEMENT. Disbursements of the Loan may also be made through such other means as the Government and A.I.D. may agree in writing.

Section 8.04. DATE OF DISBURSEMENT. Disbursements by A.I.D. shall be deemed to occur in the case of disbursements pursuant to Sections 8.01, 8.02 and 8.03 on the date on which A.I.D. makes a disbursement to the Government, to its designee, or to a banking institution pursuant to a Letter of Commitment.

Section 8.05. ISSUANCE OF LETTERS OF COMMITMENT. Unless otherwise agreed in writing by A.I.D. the terminal date for issuance of Letters of Commitment is August 31, 1977 and no Letter of Credit may be established having an expiration date later than February 28, 1979.

Section 8.06. TERMINAL DATE FOR DISBURSEMENT. Except as A.I.D. may otherwise agree in writing, no disbursement shall be made under Section 8.03 or against documentation received by A.I.D. described in Section 8.01 and 8.02 after February 28, 1979. A.I.D. at its option, may at any time or times after such date reduce the Loan by all or any part thereof for which Letters of Commitment have not been issued.

Article IX. CANCELLATION, SUSPENSION AND ACCELERATION

Section 9.01. CANCELLATION BY THE GOVERNMENT. The Government may, upon mutual agreement between the parties, by written notice to A.I.D. cancel any part of the Loan (i) which, prior to the giving of such notice, A.I.D. has not disbursed or committed itself to disburse, or (ii) which has not then been utilized through the issuance of irrevocable Letters of Credit or through bank payments made other than under irrevocable Letters of Credit.

Section 9.02. EVENTS OF DEFAULT; ACCELERATION. If any one or more of the following events ("Events of Default") shall occur:

- (a) The Government shall have failed to pay when due any interest or installment of Principal required under this Agreement;
- (b) The Government shall have failed to comply with any other provision of this Agreement;
- (c) The Government shall have failed to pay when due any interest or any installment of Principal or any other payment required under any other loan agreement, any guaranty agreement, or any other agreement between the Government or any of its agencies and A.I.D. or any of its predecessor agencies;
- (d) A default shall have occurred in the performance by the Government of any of its obligations under the Financing Agreement;
- (e) A default shall have occurred in the performance by AFCC of any of its obligations under the Project Agreement or under the Financing Agreement;
- (f) AFCC's Memorandum and Articles of Association, or any provision thereof, shall have been amended without prior consent of A.I.D. in any manner which in the reasonable opinion of A.I.D. would have material adverse effect upon the carrying out of the Project or the operation of the Plant in accordance with the Project Agreement;
- (g) Without prior consent of A.I.D., the Government or any other authority having jurisdiction shall have taken any action for the dissolution or disestablishment of AFCC or for the suspension of its operations;
- (h) Without prior consent of A.I.D., the Government shall have transferred, or permitted to be transferred, shares of AFCC, or the rights appertaining thereto, to any person (except a director of AFCC holding such shares as a nominee of the Government), association or other entity;
- (i) A loan from any of the Other Lenders shall have become eligible, at the option of any of the Other Lenders, for suspension or termination prior to its agreed maturity date or a default shall have occurred in the performance of any obligation of the Government pursuant to any of the other loan agreements or in the performance of

any obligation of AFCC pursuant to any other agreement concerning the Project with any of the Other Lenders;

- (j) AFCC shall have become unable to pay its debts as they mature, or any action or proceeding shall be taken by AFCC or others whereby any of its property or assets shall or may be distributed among or administered for the benefit of its creditors;
- (k) Any situation shall have arisen which interferes, or threatens to interfere, with the supply of gas required for the Plant in accordance with the terms of the Gas Supply Agreement; or
- (l) AFCC shall have created, acquired or taken over a subsidiary or any other entity, if such creation, acquisition or taking over would, in the reasonable opinion of A.I.D., adversely affect the conduct of AFCC's business, AFCC's financial condition, the efficiency of AFCC's management and personnel, the carrying out of the Project or the operation of the Plant; then A.I.D., in addition to the remedies provided hereunder may, at its option, give the Government notice of the existence of the default, and, unless the Event of Default is cured within sixty (60) days:
 - (i) such unrepaid Principal and any accrued interest hereunder shall be due and payable immediately; and
 - (ii) the amount of any further disbursements made under then outstanding irrevocable Letters of Credit or otherwise shall become due and payable as soon as made.

Section 9.03. SUSPENSION OF DISBURSEMENTS. In the event that at any time:

- (a) An Event of Default has occurred;
- (b) An event occurs that A.I.D. determines to be an extraordinary situation that makes it improbable either that the purposes of the Loan will be attained or that the Government will be able to perform its obligations under this Agreement;
- (c) Any disbursement would be in violation of the legislation governing A.I.D.; or
- (d) The Government shall have failed to pay when due any interest or any installment of Principal or any other payment required under any other loan agreement, any guaranty agreement or any other agreement with the Government of the United States or any of its agencies, then A.I.D. in addition to the remedies provided elsewhere herein may at its option:
 - (i) Suspend or cancel outstanding commitment documents to the extent that they have not been utilized through the issuance of irrevocable Letters of Credit or through bank payments made other than under irrevocable Letters of Credit; in which event A.I.D. shall give notice to the Government promptly thereafter;
 - (ii) Decline to make disbursements other than under outstanding commitment documents;
 - (iii) Decline to issue additional commitment documents; and
 - (iv) At A.I.D.'s expense, direct that title to goods financed under the Loan shall be transferred to A.I.D. if the goods are from a source outside the country of the Government, are in a deliverable state and have not been offloaded in ports of entry of the country of the Government. Any disbursement made under the Loan with respect to such transferred goods shall be deducted from Principal.

Section 9.04. CANCELLATION BY A.I.D. Following any suspension of disbursements pursuant to Section 9.03, if the cause or causes for such suspension of disbursements shall not have been eliminated or corrected within sixty (60) days from the date of such suspension, A.I.D. may, at its option, at any time or times thereafter, cancel all or any part of the Loan that is not then either disbursed or subject to irrevocable Letters of Credit.

Section 9.05. CONTINUED EFFECTIVENESS OF AGREEMENT. Unless A.I.D. otherwise agrees in writing, notwithstanding any cancellation (by A.I.D. or the Government),

suspension of disbursement or acceleration of repayment, the provisions of this Agreement shall continue in full force and effect until the payment in full of all Principal and any accrued interest hereunder.

Section 9.06. REFUNDS. (a) In the case of any disbursements not supported by valid documentation in accordance with the terms of this Agreement, or of any disbursement not made or used in accordance with the terms of this Agreement, A.I.D., notwithstanding the availability or exercise of any of the other remedies provided for under this Agreement may require the Government to refund such amount in United States Dollars to A.I.D. within ninety (90) days after receipt of a request therefor. At the option of A.I.D. such amount may be made available for financing with respect to the Project or may be applied to the installment of Principal in the inverse order of their maturity. Notwithstanding any other provision in this Agreement, A.I.D.'s rights to require a refund with respect to any disbursement under the Loan shall continue for five (5) years following the date of such disbursement.

(b) In the event that A.I.D. receives a refund from any contractor, supplier, or banking institution, or from any other third party connected with the Loan, with respect to goods or services financed under the Loan, and such refund related to an unreasonable price for goods or services, or to goods that did not conform with specifications, or to services that were inadequate, A.I.D. shall permit the Government to reuse such refunds if the terminal date for disbursements under Section 8.06 has not passed and there is sufficient time for the Government to utilize the funds before such terminal date. In the event that the terminal date for disbursement has passed or there is not sufficient time to utilize the funds before the terminal date, the refund shall be applied to the installments of Principal in the inverse order of their maturity.

Section 9.07. EXPENSES OF COLLECTION. All reasonable costs incurred by A.I.D., other than salaries of its staff, in connection with the collection of any refund or in connection with amounts due A.I.D. by reason of the occurrence of any of the events specified in Section 9.02 may be charged to the Government and reimbursed to A.I.D. in such manner as A.I.D. may specify.

Section 9.08. NON-WAIVER OF REMEDIES. No delay in exercising or omission to exercise any right, power, or remedy accruing to A.I.D. under this Agreement shall be construed as a waiver of any such rights, powers or remedies.

Article X. MISCELLANEOUS

Section 10.01. TAXATION. This Agreement, and the Loan shall be free from, and the Principal and interest shall be paid without deduction for and be free from, any taxation or fees imposed under the laws in effect within the country of the Government. To the extent that any Eligible Items financed hereunder are not exempt from identifiable taxes, tariffs, duties and other levies imposed under laws in effect within Bangladesh, the same shall not be paid with funds provided under the Loan.

Section 10.02. COMMUNICATIONS. Any notice, request or communication given, made or sent by the Government or A.I.D. pursuant to the Agreement shall be in writing and shall be deemed to have been duly given, made or sent to the party to which it is addressed when it shall be delivered by hand or by mail, telegram, cable, or radiogram to such other party at the following address:

To the Government

Mail Address: Secretary
Ministry of Planning
Bangladesh Secretariat
Dacca, Bangladesh

Cable Address: Plancom

A.I.D.

Mail Address: USAID Mission/Bangladesh
American Embassy
Adamjee Court
P.O. Box 323, Ramna
Dacca-2, Bangladesh

Cable Address: Usaid

Other addresses may be substituted for the above upon giving a notice as provided herein. All notices, requests, communications and documents submitted to A.I.D. hereunder shall be in English, except as A.I.D. may otherwise agree in writing.

Section 10.03. REPRESENTATIVES. For all purposes relative to this Agreement, the Government will be represented by the individual holding or acting in the office of the Secretary, Ministry of Planning, and A.I.D. will be represented by the individual holding or acting in the Office of Director, USAID Mission/Bangladesh. Such individuals shall have the authority to designate by written notice additional representatives. In the event of any replacement or other designation of a representative hereunder, the Government shall submit a statement of the representative's name and specimen signature in form and substance satisfactory to A.I.D. Until receipt by A.I.D. of written notice of revocation of the authority of any of the duly authorized representatives of the Government designated pursuant to this Section, it may accept the signature of any such representative or representatives as conclusive evidence that any action effected by such instrument is duly authorized.

Section 10.04. IMPLEMENTATION LETTERS. A.I.D. may from time to time issue Implementation Letters that will prescribe the procedures applicable hereunder in connection with the implementation of the provisions of this Agreement.

Section 10.05. TERMINATION UPON FULL PAYMENT. Upon payment in full of the Principal and of any accrued interest, this Agreement and all obligations of the Government and A.I.D. under this Loan Agreement shall terminate.

Section 10.06. PROMISSORY NOTES. At such time or times as A.I.D. may request, the Government shall issue promissory notes or such other evidences of indebtedness with respect to the Loan, in such form, containing such terms and supported by such legal opinions as A.I.D. may reasonably require, provided, the terms of such promissory notes or other evidences of indebtedness shall not vary from the terms and conditions contained in this Loan Agreement.

IN WITNESS WHEREOF the Government of the People's Republic of Bangladesh and the Agency for International Development, each acting through its respective duly authorized representative, have caused this Agreement to be signed in their name and delivered as of the date and year first above written.

For the President
of the People's Republic of Bangladesh:

[Signed]

By: M. SYEDUZZAMAN

Title: Secretary
Ministry of Planning

For the United States of America:

[Signed]

By: DAVIS E. BOSTER

Title: Ambassador

ANNEX I
DESCRIPTION OF THE PROJECT

The Project consists of the design, construction, commissioning and initial operation of a new ammonia/urea fertilizer plant (the Plant) at Ashuganj on the eastern bank of the Meghna River in the Comilla District of Bangladesh, and includes the following:

1. Preparation of the site for the Plant.
2. Designing, procurement of equipment (and chemicals and catalysts for initial operation) for, and constructing:
 - (a) an intermediate ammonia unit with a designed production capacity of approximately 925 metric tons per day;
 - (b) a urea unit with a designed production capacity of 1,600 metric tons of prilled urea per day; and
 - (c) utilities, offsites and supporting facilities for the ammonia and urea units.
3. Construction of a staff housing colony, including common facilities, for personnel to be employed in the management and operation of the Plant.
4. Provision of construction equipment.
5. Engagement of a Technical Advisor to assist and advise AFCC in construction and commissioning of the Plant.
6. Engagement of a Management Advisor to provide experts to assist and advise AFCC during the construction, commissioning and initial operation of the Plant.
7. Training of AFCC personnel to manage and operate the Plant.

The Project shall be deemed to have been completed as of the date that both of the following events have occurred: (i) the general contractor referred to in the Project Agreement shall have certified to AFCC and to A.I.D. that the Plant has met the performance tests specified in the contract between the general contractor and AFCC, and (ii) the Plant has produced urea at the rate of eighty percent (80%) of its rated urea capacity (in the aggregate for a sixty (60) day period without allowance for shutdown for maintenance) for a period of sixty (60) consecutive days. The Project is expected to be completed by August 31, 1978.

Financing for the Project is being provided by several countries or institutions including the Government of Bangladesh. Total funds made available have in some cases been allocated to specific items required for the Project. In the case of A.I.D., Eligible Items shall be, subject to modification by A.I.D. in writing, within the following description:

1. Ammonia Storage Refrigeration and Bottling.
2. Condensate Stripper, Water Treatment and Cooling Towers.
3. Sewer and Effluent Treatment.
4. Construction Equipment.
5. Boats and Vehicles.
6. Bagging.
7. Bag Lining Machine.
8. Vinnell Site Preparation Contract.
9. James Chemical Engineering Contract for Supervision of Site Preparation.

RELATED LETTER

GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH
MINISTRY OF PLANNING
(PLANNING COMMISSION)
DACCA
Mr. M. Syeduzzaman
Secretary

February 12, 1975

Sub.: AID Loan No. 388-T-003
for Ashuganj Fertilizer Project

Dear Mr. Toner,

During negotiations for this Loan, AID and several others of the financing partners expressed their concern that subsidies in Bangladesh on the prices of finished fertilizer should be eliminated.

In the discussions, the Government of Bangladesh reminded the financing partners that the Government had, since adoption of its first Five Year Plan (1973/74-1977/78) been committed to a policy of phased reduction of subsidies in fertilizer prices. The Government also reminded the financing partners that the Bangladesh delegation to the meeting of the Bangladesh Aid Group in Paris on October 24 and 25, 1974 had told participants that in view of the higher yields and prices of foodgrains, making production remunerative, the Government intends to continue its policy of reducing subsidies.

This letter will confirm that a progressive reduction of subsidies on agricultural inputs, including fertilizer, remains the policy of the Government of Bangladesh. Of course, our ability to pursue this policy as rapidly as possible will depend on movements in international prices which it is impossible to predict at this time.

In these circumstances, accepting the legitimate concern of the financing partners on this issue, the Government also agrees to review periodically with AID the Government's progress in implementing this policy.

Yours sincerely,

[Signed]
M. SYEDUZZAMAN
Secretary

Mr. Joseph S. Toner
Director
USAID Mission/Bangladesh
American Embassy
Dacca-2, Bangladesh