

No. 17552

**SWITZERLAND
and
BANGLADESH**

Agreement on a development loan of 20 million Swiss francs (with protocol). Signed at Berne on 18 March 1975

Authentic texts: French and English.

Registered by Switzerland on 15 February 1979.

**SUISSE
et
BANGLADESH**

Accord concernant un prêt d'aide financière de 20 millions de francs suisses (avec protocole). Signé à Berne le 18 mars 1975

Textes authentiques : français et anglais.

Enregistré par la Suisse le 15 février 1979.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE SWISS CONFEDERATION AND THE PEOPLE'S REPUBLIC OF BANGLADESH ON A DEVELOPMENT LOAN OF 20 MILLION SWISS FRANCS TO THE PEOPLE'S REPUBLIC OF BANGLADESH

The Government of the Swiss Confederation and the People's Republic of Bangladesh,

Having regard to the friendly relations between the two countries,

Desirous of strengthening these relations through closer cooperation in the field of development,

Intending to promote the economic development of Bangladesh,

Have agreed as follows:

Article 1. The Government of the Swiss Confederation (hereafter called the Lender) shall make a development loan of 20 million Swiss francs (twenty million Swiss francs) to the People's Republic of Bangladesh (hereafter called the Borrower) in the framework of a co-financing of the urea fertilizer plant at Ashuganj (hereafter called the Project) with the participation of the International Development Association (IDA), of the Asian Development Bank (ADB) and other bilateral Lenders and at the conditions set forth below.

Article 2. This loan shall be used to finance the foreign exchange costs of imported goods and services for the Project as agreed between the Lender and the Borrower.

Article 3. The Lender shall put the loan at the disposal of the Borrower on the terms of the covenants of the annexed Protocol of Execution which constitutes an integral part of this Agreement.

The Borrower shall relend the proceeds of the loan to the Ashuganj Fertilizer and Chemical Company Limited (hereafter called the Company) which is to carry out the Project, at conditions satisfactory to the Lender.

Article 4. The Borrower shall pay interest at the rate of 0.75 per cent (three quarters of one per cent) per annum on the amount of the loan proportionately to its utilization.

Interest payments fall due on 30 June and 31 December of each successive year, beginning at the close of the 6 monthly period during which the first payment has been made by the Lender.

Article 5. The Borrower shall repay the loan in 80 half-yearly instalments of 250,000 Swiss francs (two hundred and fifty thousand Swiss francs) each, due each 30 June and 31 December of successive years, to begin on December 31, 1985.

If the loan is not fully utilized in accordance with the provisions of article 9 below, a revised schedule of repayment shall be established by mutual agreement.

¹ Came into force on 20 April 1976, the date on which the Contracting Parties notified each other of the completion of the required constitutional formalities, in accordance with article 13.

The Borrower reserves the option to refund prematurely, integrally or partially, its debt to the Lender.

Article 6. Interest payments and repayments of principal on the loan shall be made in free and effective Swiss francs to the Swiss National Bank for the account of the Swiss Confederation.

Article 7. The Borrower shall exempt the Lender from fiscal levies and taxes and duties of whatever kind on (or with regard to) the loan and interests thereon unless the contracting parties otherwise agree.

Article 8. Except as the parties to this Agreement may otherwise agree, the purchase of goods and services required for the Project and to be financed out of the loan shall be made on the basis of international competitive bidding.

The conditions laid down under section III of the Protocol of Execution shall apply to all supply contracts to be financed out of the loan.

Article 9. The Borrower may draw on the loan to make payments on contracts related to the Project over a period of seven years from the entry into force of this Agreement or until such date as agreed between the parties to this Agreement.

Article 10. Disputes as to the interpretation or application of the provisions of this Agreement which shall not have been settled in a satisfactory way by means of diplomatic negotiations within a period of six months shall, upon the request of either party to this Agreement, be submitted to an arbitral tribunal of three members. Each party to this Agreement shall appoint one arbitrator. These two arbitrators shall nominate a third arbitrator as Chairman who shall be a national of a third State.

If either party to this Agreement has not appointed its arbitrator and has not complied with the request of the other party to this Agreement to make that appointment within two months, the arbitrator shall be appointed upon the request of such other party to this Agreement by the President of the International Court of Justice.

If both arbitrators cannot come to an agreement about the choice of a third arbitrator (Chairman), within two months after their appointment, the latter shall be appointed upon the request of either party to this Agreement by the President of the International Court of Justice.

If, in the cases specified under paragraphs 2 and 3 of this article, the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either party to this Agreement, the appointment shall be made by the Vice-President, and if the latter is prevented or if he is a national of either party to this Agreement, the appointment shall be made by the next senior Judge of the Court who is not a national of either party to this Agreement.

Unless otherwise agreed by the parties to this Agreement the tribunal shall determine its procedure and venue of arbitration.

The decisions of the tribunal shall be conclusive and binding upon the parties to this Agreement.

Article 11. The Borrower may, by notice to the Lender, cancel any amount of the loan which the Borrower shall not have withdrawn.

In the event of default by the Borrower in the fulfilment of any commitment or obligation under this Agreement or under any other Agreement of the co-lenders, the Lender may suspend, in whole or in part, the right of the Borrower to make withdrawals from the loan.

If the default which entitled the Lender to suspend the Borrower's right to draw against the loan persists beyond a period of sixty days after the Lender's notice to the Borrower of the suspension, the Lender may at any time claim immediate repayment of all withdrawals made from the loan.

Article 12. Any notices, requests or agreements under this Agreement shall be made in writing to the authorities mentioned under section VI of the annexed Protocol of Execution.

Article 13. This Agreement shall come into force on the day when both parties will have notified each other that the constitutional requirements, if any, for the entry into force of the Agreement have been fulfilled, provided that all the agreements between the Borrower and the other Co-Lenders with respect to the financing of the Project shall have entered into force.

DONE at Berne, on 18 March, 1975, in two originals in English and two originals in French, both texts being equally authoritative.

For the Government
of the Swiss Confederation:

[Signed — Signé]¹

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

[Signed — Signé]²

PROTOCOL OF EXECUTION TO THE AGREEMENT BETWEEN THE GOVERNMENT OF THE SWISS CONFEDERATION AND THE PEOPLE'S REPUBLIC OF BANGLADESH ON A DEVELOPMENT LOAN TO THE PEOPLE'S REPUBLIC OF BANGLADESH

With reference to the Agreement signed today between the Government of the Swiss Confederation and the People's Republic of Bangladesh on a development loan of 20 million Swiss francs to the People's Republic of Bangladesh, the two parties to the Agreement have agreed as follows:

I. USE OF THE LOAN

The loan shall be used to finance goods and services related to the goods for the construction, commissioning and operation of the Project and all appropriate ancillary facilities thereof.

II. DESCRIPTION OF THE PROJECT TO BE FINANCED OUT OF THE LOAN

1. An urea plant having a rated capacity of 1,600 metric tons per day.
2. An intermediate ammonia production plant having a rated capacity of approximately 925 metric tons per day.
3. Staff housing and common facilities.

¹ Signed by K. Jacobi — Signé par K. Jacobi.

² Signed by H. R. Choudhury — Signé par H. R. Choudhury.

III. PROCUREMENT PROCEDURES AS TO GOODS FINANCED OUT OF THE LOAN

a) With respect to contracts with a foreign currency component of 25,000 US dollars equivalent or less the Borrower shall use procurement arrangements in accordance with its usual business practices. The Borrower shall transmit to the Lender two copies of the signed contracts.

b) With respect to contracts with a foreign currency component in excess of 25,000 US dollars equivalent but less than 200,000 US dollars equivalent the Borrower shall transmit to the Lender two copies of the signed contract promptly after the signature of any such contract and also a report regarding the basis on which the contract was awarded after international competitive bidding as well as any other material relevant thereto as the Lender may reasonably request.

c) With respect to contracts with a foreign currency component of 200,000 US dollars equivalent or more:

- i) Before bids are invited, the Borrower shall transmit to the Lender for its comments the text of the invitations to bid and the specifications and other bidding documents, together with a description of the advertising procedure to be followed for the bidding and shall make such modifications in the said documents or procedure as the Lender may reasonably request. Any substantive modification to the bidding documents by the Borrower shall require the Lender's concurrence before such modification is issued to the prospective bidders.
- ii) After bids have been received and evaluated, and before a final decision on the award is made, the Borrower shall inform the Lender of the name of the bidder to whom it intends to award the contract and shall transmit to the Lender in sufficient time for its review, a detailed report on the evaluation and comparison of the bids received together with the recommendations for award and the reason for the intended award.

The Lender shall promptly inform the Borrower whether it has any objection to the award and shall state the reasons for any objections it may have. If the contract should be awarded over the Lender's reasonable objection or if its terms and conditions should, without the Lender's concurrence, materially differ from those on which bids were asked, no expenditure thereunder shall be financed out of the proceeds of the loan.

- iii) Two copies of the signed contract shall be transmitted to the Lender promptly after its signature and prior to the first withdrawal of funds from the loan in respect of any such contract.

IV. CONSULTATION PROCEDURE

The parties to the Agreement shall cooperate fully to ensure that the purpose of the loan will be accomplished. To that end the parties to the Agreement shall from time to time, at the request of either party to the Agreement:

- Exchange views through their representatives with regard to the performance of their respective obligations under this Agreement, the administration and operation in respect of the Project and other matters related to the purpose of the loan;
- Transmit to the other party to the Agreement all such information as it shall reasonably request with regard to the general situation of the loan and the execution of the Project.

The Borrower shall in particular enable the representatives of the Lender to inspect the Project and the goods financed out of the proceeds of the loan. The Lender

may also inspect all relevant records and documents thereof for a period of 5 years from the date of completion of the Project.

The Borrower shall afford all reasonable opportunity for representatives of the Lender to visit any part out of the Project for purposes related to the loan.

The parties to the Agreement shall promptly inform each other of any condition which interferes with, or threatens to interfere with, the accomplishment of the purpose of the loan, the maintenance or the services thereof of the performance by either of them or its obligations under the Agreement.

V. OPENING OF THE CREDIT AND PAYMENT PROCEDURES

Immediately after the Agreement has entered into force, the Swiss Confederation shall open, with the Swiss National Bank in Zurich, an account denominated "Bangladesh development loan — Ashuganj Fertilizer and Chemical Company Limited (AFCC)" in favour of the Company. The Company shall authorize its Managing Director to operate the account. This account will be credited in four annual instalments, the first instalment of 2 million Swiss francs (two million Swiss francs) immediately after the entry into force of the Agreement, the second instalment of 8 million Swiss francs (eight million Swiss francs) one year after the date of the first instalment, the third instalment of 7 million Swiss francs (seven million Swiss francs) two years after the date of the first instalment and the fourth instalment of 3 million Swiss francs (three million Swiss francs) three years after the date of the first instalment.

The Swiss National Bank, on the request of the Managing Director of the Company or his authorized representative, shall, when making payments from this account under the terms of the contracts executed in accordance with section III above, to suppliers in countries other than Switzerland, convert the Swiss francs into other currencies or shall authorize another Swiss Bank to do so.

VI. AUTHORITIES IN CHARGE OF THE IMPLEMENTATION OF THE AGREEMENT

The Division of Commerce of the Federal Department of Public Economy, Berne (cable address: Commerce, Berne), on the side of the Swiss Confederation and the Ministry of Planning (Planning Commission), Secretariat, Dacca, Bangladesh (cable address: Parikalpana, Dacca) on the side of the People's Republic of Bangladesh, will be responsible for the implementation of the Agreement.

This Protocol is an integral part of the Agreement between the Government of the Swiss Confederation and the People's Republic of Bangladesh on a development loan of 20 million Swiss francs to the People's Republic of Bangladesh signed today.

DONE at Berne, on 18 March, 1975, in two originals in English and two originals in French, both texts being equally authoritative.

For the Government
of the Swiss Confederation:

[Signed — Signé]¹

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

[Signed — Signé]²

¹ Signed by K. Jacobi — Signé par K. Jacobi.

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