

January 09, 1988

**LOAN FACILITY AGREEMENT BETWEEN INSTITUTO DE CREDITO
OFICIAL OF THE KINGDOM OF SPAIN AND THE NATIONAL
DEVELOPMENT COMPANY OF THE REPUBLIC OF THIS
PHILIPPINES**

(Sgd.) **MA. LOURDES F. REBUENO**
Manager, Treasury Dept.
NATIONAL DEVELOPMENT COMPANY

DEFINITIONS

AGREEMENT ACCOUNT shall refer to the account opened in the name of the National Development Company (hereinafter "NDC") by Instituto de Credito Oficial (hereinafter ICO) in the books of the latter with an initial balance for the amount of the "Loan Facility" granted to NDC for the purpose of said "Account" being to record the flow arising from the fulfilment of the financial commitments acquired by the parties to the "Agreement". Hereinafter, it shall be understood that the references made to the Account are references to the Agreement: Account .

BUSINESS DAY shall refer to the day on which commercial banks are open and operational in Madrid and New York.

CESCE shall refer to the Compania Espanola de Seguros de Credito a la Exportacion.

CODE shall refer to the secret number provided by "ICO". Said "Code" shall appear at the head of all applications, communications, notices and notifications made telex as Provided for under the "Agreement" .

COMMERCIAL CONTRACT shall refer to the contract signed by the Spanish exporter and the Philippines importer, whereby the transaction to be financed by the Loan Facility is established.

CURRENCY AGREED UPON AND US DOLLARS shall refer to the means of payment agreed upon by the parties to the Agreement" for the payment of the loan facility granted, said currency to be used by "NDC" both in the payment of interest and commitment fee and in the repayment of principal.

DESIGNATED SPANISH BANK shall refer; to the commercial bank whose head office shall be in Spain, appointed by "NDC" as the payer of payment orders or of "Documentry Credits" made available thereat.

DOCUMENTARY CREDIT shall refer to the credit made available at the "designated Spanish Bank" by the Philippines importer who shall instruct said bank to pay the Spanish exporter against the presentation of documents which constitute proof of the intended transaction, financed as provided for under the "Agreement".

ICO shall refer to Institute de Credito Oficial, body appointed by the Government of the Kingdom of Spain act as financial agent thereof purposes of signing and enforcing/ the "Agreement" .

LOAN FACILITY shall refer' to the full amount granted by the Spanish Cabinet of Ministers to the Republic of the Philippines which may draw thereon, through "NDC in accordance with the terms laid down under the "Agreement".

LOAN FACILITY AGREEMENT shall refer to the agreement signed by Instituto de Credito Oficial of the Kingdom of Spain" and "NDC" of the Republic of the Philippines whereby a loan facility is established for the purpose of financing the commercial transactions or otherwise for the Republic of the Philippines. It shall be understood that the references made to the "Agreement" are references to the Loan Facility Agreement".

NDC shall refer to the National Development Company of the Republic of the Philippines, the body appointed by its Government to act as Financial Agent thereof for the purposes of signing and enforcing the "Loan Facility".

In Manila, on the one part Mr. Manuel Lorente Martinez, Chief, Aid Development Fund Department, acting in accordance with the powers, which he declares in force and sufficient,0 conferred by the President of Instituto de Credito Oficial of Spain, by virtue of Article 14 of the Law 13/1971 of June 19, and on the other part Mr. Antonio A. Henson, Director General, National Development Company, acting in accordance with the powers, which he declares in force and sufficient, conferred by Mrs. Corazon C. Aquino, President of the Republic of the Philippines,

DO HEREBY STATE

1. That the Government of the Kingdom of Spain by virtue of the spirit of friendship and cooperation reflected in its relations with the Government of the Republic of the Philippines, has, on July 10,1987, granted to the above mentioned Republic a "Loan Facility" for an. amount of up to US dollars 10,000,000 (TEN MILLION) to be charged to the Fondo de Ayuda al Desarrollo (Development Aid Fund).

2. That for the implementation of the aforementioned "Loan Facility" the Government of the Kingdom of Spain has appointed Instituto de Credito (hereinafter "ICO") as its Financial Agent and that the Government of the Republic of the Philippines has appointed the National Development Company (hereinafter "NDC" .) as its Financial Agent.

That this "Loan Facility" shall be a tied loan and shall be applied to finance the Spanish export for goods and services either as an individual transaction or as part of any investment projects to be determined pursuant to Clause Three of this agreement.

The signatories hereto, on behalf of their respective Institutions and in pursuance of the instructions handed down by their respective Governments .

HAVE HEREBY AGREED AS FOLLOWS:

CLAUSE ONE.- Conditions Precedent and Effectiveness of this Agreement.

1. The coming into force of this Agreement is contingent upon the receipt by "ICO" of the documents stated below, in the form and. of the content it shall deem satisfactory:

A) One copy of the Resolution of the Government of the Republic of the Philippines appointing NDC as the financial agent who shall act on its

behalf for the purpose of signing and enforcing this "Agreement".

B) Specimen signatures of the persons authorised to sign and to enforce this "Agreement" or whatsoever other documents pertinent hereto.

C) Evidence of whatsoever other authorisations, consents or permissions required by the authorities of the of the Philippines for for the fulfilment or enforcement hereof.

D) Certification from the Department of Justice of the Republic of the Philippines as proof of fulfillment of all the authorisations concerning the signing and enforcement hereof' as required' by its internal legal regulations.

E) Agreement of "ICO" and "NDC" of the specific eligible capital goods exports and/or investment projects to be financed by this ".Loan'Facility".

"ICO" shall, in the form laid down under Clause Eighteen below, notify "NDC" both of the receipt of all the documents stated above and of the resultant coming into force of this "Agreement" .

This "Agreement" shall remain in force until all the commitments arising herefrom shall have been concluded for both parties.

CLAUSE TWO.- Amount of the Loan Facility.

1. "ICO" acting in the name and on behalf of the Government of the Kingdom of Spain makes available a "Loan Facility" amounting to a maximum of US dollars 10,000,000 (TEN MILLION UNITED STATES DOLLARS) in favour of "NDC" which is acting in the name and on behalf of the Government of the Philippienes.

2. For the purposes of paragraph 1) above, ICO shall open in its books a special account entitled Agreement Account 9/1/1983 (hereinirter the "Account") with an initial maximum balance of US dollars 10,000,000 (TEN MILLION UNITED STATES.DOLLARS). "NDC" shall open in its books the pertinent equivalent account.

CLAUSE THREE.- Allocation of Goods.

The specific capital goods exports and/or investment projects to be financed by this Loan Facility, including reallocations from the unutilized portion of cancelled transactions shall be approved by the mutual agreement of "ICO" and "NDC" upon the request of the latter.

The above mentioned request shall be made within a period of 12 months as of the coming into force of this Loan Facility Agreement .

"ICO" shall notify "NDC" of the approval of the transactions by the Spanish Ministry of Economy and Finance (Ministerio de Economia y Hacienda), upon presentation of the commercial contract or in the absence thereof, whatsoever other document in substitution of same.

CLAUSE FOUR.- Drawdown Period.

1. The maximum period during which Loan Facility drawdowns may be applied for shall be twelve (12) months as from the date of approval of the capital goods for exports a'nd/or investment projects as stated under Clause Three above.

However, the parties hereto may, by mutual agreement, extend the above mentioned period provided that the application shall have been made to ICO thirty (30) days before the expiry date of the drawdown period in the form set forth under Clause Eighteen below and in accordance with the specimen application set forth under Annex I hereto attached.

2. Notwithstanding the provision made in the foregoing paragraph, the drawdown period shall be automatically extended to the date provided for under the "Commercial Contract" or, in the absence thereof, under whatsoever other documents that may substitute same.

3. That portion of the "Loan Facility" which undrawn after the drawdown period or, if applicable, the extension thereof, shall be automatically deemed as cancelled.

CLAUSE FIVE.- Drawdown Arrangements

1. Concerning the supply of goods.

"NDC" shall issue payment orders or shall open documentary credits in favour of the Spanish exporter at the designated Spanish Bank appointed by the former.

In addition, it shall authorize "ICO", in the way laid down under Clause Eighteen below and in accordance with the specimen, set forth under Annex II hereto attached, to repay the "Designated Spanish Bank", the payer of the "Documentary Credit" or payment order, the amounts paid by the latter to the Spanish exporters under the documents stated above.

Such repayments shall be carried out only after a solemn binding statement shall have been made by the Designated Spanish Bank that each and all of the terms of the "Documentary Credit" or "Payment Order" have been fulfilled.

2. Concerning the supply of services.

"NDC" shall directly issue payment orders to "ICO" in the form laid down under Clause Eighteen below and in accordance with the specimen set forth under Annex III hereto attached, in favour of the Spanish companies that supply the services. Such payment orders shall be accompanied by documentary proof which shall consist of an assessed, certified list stating the services rendered and the "Commercial Contract" or whatsoever other documents as may substitute same. The payment orders shall be numbered consecutively and shall bear the amount, the name and address of the Spanish exporter, the account number and the bank at which the payment is to be carried out, the payment item and other particulars, as may be required. One payment order shall be issued for each payee.

3. Concerning advanced payment.

Advanced payments shall be made by payment orders directly to "ICO" issued by "NDC" as laid down under Clause Eighteen below and in accordance with the specimen set forth under Annex IV hereto attached, in favour of those Spanish exporters that shall have exported the goods or performed the services.

The payment orders shall specify the amount of the advanced payment in strict accordance with that established under the "Commercial Contract" or under whatsoever other document as may substitute same. In addition thereto, the

payment orders shall specify the address of the Spanish exporter, the account number and the bank accepting such payments on behalf of the Spanish exporter.

4. "NDC" shall expressly authorize "ICO" to debit the Account in US dollars for the amounts arising from the payment orders indicated under paragraphs 1, 2 and 3 above.

5. With the sole requirement to the effect that "ICO" shall account for the payment to the Spanish exporters, "NDC" expressly relieves "ICO" of any liability whatsoever as regards the [transactions and/or projects/ commercial or otherwise, underlying the payment orders, "NDC" further undertakes to repay such amounts in the period established in Clause Eight below, regardless of the purpose of the commercial transactions or the circumstances arising therefrom.

6. In any case, for the purposes of making drawdowns, it shall be an indispensable requirement that "NDC" shall have no payments due and outstanding on its part, whether principal, interest, commitment fee or whatsoever other item arising from this or any other Agreement entered by "ICO" and "NDC".

CLAUSE SIX.- Interest

The amounts drawn under this "Loan Facility" shall accrue interest in favour of "ICO" as follows:

In the case of a commercial transaction to be totally financed by this "Loan Facility" at a rate of 2% per annum/ falling due every 6 months from the date of payment to the date of repayment thereof.

In the case of a commercial transaction to be partially financed by this "Loan Facility", the interest rate shall be determined: on a case by case basis in accordance with the OECD consensus.

CLAUSE SEVEN.- Commitment Fee.

The amounts undrawn during the drawdown period shall carry an annual commitment fee of 0,25% per cent per annum during a period commencing 3 months after the effectiveness of this "Agreement" up to the close of the period established under Clause Four hereof. The commitment fee shall be reckoned considering the number of days actually elapsed and shall be based on a year of 360 days.

CLAUSE EIGHT.- Repayment.

In the case of a commercial transaction to be totally financed by this "Loan Facility", the total amount drawn from the "Account" shall be repaid in 25 years inclusive of a 5 year grace period by 41 half yearly equal instalments, the first instalment shall fall due 60 months after the weighted mean of drawdown dates.

In the case of a commercial transaction to be partially financed by this "Loan Facility", the repayment shall be determined on a case by case basis in accordance with the OECD consensus.

At the close of the drawdown period, "ICO" shall draw up the appropriate repayment chart which it shall submit to "NDC" for approval. "NDC" shall convey its remarks to "ICO" within a period of thirty days. Should there be no reply once the