No. 27473

AUSTRALIA
and
THAILAND

Protocol concerning the financing of a railway project in Thailand (with schedules and appendices). Signed at Canberra on 31 August 1989

Authentic text: English.

Registered by Australia on 30 July 1990.

AUSTRALIE
et
THAÏLANDE

Protocole relatif au financement d'un projet de chemin de fer en Thaïlande (avec annexes et appendices). Signé à Canberra le 31 août 1989

Texte authentique : anglais.

Enregistré par l'Australie le 30 juillet 1990.

PROTOCOL[1] BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THAILAND CONCERNING THE FINANCING OF A RAILWAY PROJECT IN THAILAND

The Government of Australia and the Government of the Kingdom of Thailand in order to finance a State Railway of Thailand signalling and centralised traffic control project, have agreed as follows:

1. *Amount and Use of the Finance*

(1) The Government of Australia through the Australian Trade Commission (AUSTRADE) and the Australian Internationl Development Assistance Bureau (AIDAB) shall extend to the Government of the Kingdom of Thailand funds to a maximum amount equivalent to sixty five million two hundred and four thousand Australian Dollars (A$65,204,000) in support of a State Railway of Thailand (SRT) signalling and centralised traffic control project (the Project).

(2) The funds shall be used for the procurement of Australian goods and services and to meet local costs of the Project in accordance with this Protocol and the contract which has been entered into between the SRT and Westinghouse Brake and Signal Company (Australia) Limited (the Contractor) for the carrying out of the Project (the Contract).

(3) The funds shall be provided as follows:

(a) *Export Credit Loan Funds*

A loan from AUSTRADE, trading as Export Finance and Insurance Corporation, in United States Dollars equivalent to forty-six million eight hundred and thirty-three thousand Australian Dollars (A$46,833,000).

(b) *Grant Funds*

A grant of Official Development Assistance (ODA) funds from AIDAB of eighteen million three hundred and seventy-one thousand Australian Dollars (A$18,371,000) under the Development Import Finance Facility, subject to the Contractor having signed a Development Import Finance Facility (DIFF) agreement with AIDAB, and to the Contract having come into effect. These funds are in addition to ODA provided to the Government of the Kingdom of Thailand under the AIDAB Bilateral Program.

As a condition of the provision of such grant funds, AIDAB requires that the Contractor provide a guarantee to AIDAB in support of the advance payment by AIDAB of A$6.52 million representing 10 percent of the value of the Contract (the Advance Payment Guarantee). The Advance Payment Guarantee shall provide for its value to reduce by an amount equal to 10 percent of the sum certified in each interim certificate issued pursuant to the Contract. The Guarantee shall continue in force until the full amount advanced has been performed under the Contract. The Advance Payment Guarantee shall supersede any guarantee in respect of advance payments for the foreign currency component of the Contract to which SRT may otherwise be entitled under the Contract.

[1] Came into force on 31 August 1989 by signature, in accordance with paragraph 5.

2. *Availability of the Finance*

(1) (*a*) Moneys due to the Contractor under the Contract shall first be met from grant funds.

(*b*) The grant funds shall be drawn upon by 1 December 1989.

(*c*) The Australian Government, shall pay grant funds directly to the Contractor.

(2) (*a*) After the coming into effect of an agreement (Credit Agreement) between the SRT acting for the Government of the Kingdom of Thailand (the Borrower) and AUSTRADE, trading as EFIC, acting for the Government of Australia (EFIC), relating to the export credit loan and after all grant funds have been used, moneys due to the Contractor under the Contract shall be met from export credit loan funds.

(*b*) The Australian Government, as and when authorised by the SRT, shall pay export credit loan funds directly to the Contractor.

(*c*) The export credit loan funds shall only be available for a period of four years from the coming into effect of the Credit Agreement.

3. *Terms and Conditions of the Export Credit Loan*

(1) The Credit Agreement shall be in the terms set out in Schedule A.

(2) In particular:

(*a*) The export credit loan shall be denominated in United States Dollars and shall be at a fixed interest rate of 9.10 per cent per annum.

(*b*) The loan shall be repaid in twenty equal semi-annual payments over ten years commencing 15 July 1994.

(*c*) Interest on the loan shall be computed as from the date of loan drawdown and shall be paid half-yearly.

(*d*) The following fees and charges shall be the responsibility of the Borrower:

(i) *Establishment fee*. 0.3 per cent of the export credit loan amount payable at the time the Credit Agreement is executed;

(ii) *Commitment fee*. 0.25 per cent per annum on undrawn loan balances payable six-monthly in arrears, effective from date that the Credit Agreement is executed.

(*e*) The repayment of principal and interest on the loan shall be net of all taxes and other public charges levied in Thailand.

(3) A guarantee of repayment of the loan in the terms set out in Schedule B shall be provided by the Ministry of Finance, acting for the Government of the Kingdom of Thailand.

(4) The parties hereto undertake and agree that both the Credit Agreement and the guarantee shall be executed by 1 December 1989.

4. *Eligible Goods and Services*

At least 70 per cent of the grant funds and of the export credit loan funds shall be used in payment for goods and services of Australian origin according to their eligible contract value as defined by the Government of Australia.

5. *Entry into Force*

This Protocol shall enter into force on the date of signature.

IN WITNESS WHEREOF the undersigned, duly authorised for this purpose by their respective Governments, have signed this Protocol.

DONE at Canberra this 31st day of August 1989 in duplicate in the English language,

For the Government of Australia:

[*Signed — Signé*][1]

For the Government of the Kingdom of Thailand:

[*Signed — Signé*][2]

[1] Signed by John N. Button — Signé par John N. Button.
[2] Signed by Subin Pinkayan — Signé par Subin Pinkayan.

SCHEDULE A

THIS CREDIT AGREEMENT is made . . . . 1989 between EXPORT FINANCE AND INSURANCE CORPORATION ("EFIC") being a trading name of Australian Trade Commission a statutory corporation of the Commonwealth of Australia of 22 Pitt Street, Sydney, New South Wales, Australia, of the one part; and STATE RAILWAY OF THAILAND ("the Borrower") of the other part.

Whereas

A. Westinghouse Brake and Signal Company (Australia) Limited ("the Supplier") has entered into or proposes to enter into a contract ("the Contract") with the Borrower to supply the Borrower with railway signalling equipment and a centralised traffic control system;

B. The Supplier and the Borrower have requested EFIC to assist in financing the Contract;

C. The Australian International Development Assistance Bureau ("AIDAB") has agreed to make available an aid grant ("the DIFF Grant") to the Kingdom of Thailand to assist the Borrower partially to finance the price payable under the Contract in an amount not exceeding A$18,371,000 in accordance with the offer from the Australian Government dated . . . . to . . . .;

Therefore, in consideration of the mutual promises set out below it is agreed as follows:

Article A. INTERPRETATION

1. In this Credit Agreement, including the Appendices hereto, unless the contrary intention appears:

"Account No. 1" means the bank account of EFIC designated 5013204051 at the Commonwealth Bank of Australia, 299 Park Avenue, New York City, New York 10171 or such other account as EFIC may notify in writing to the Borrower.

"Account No. 2" means such bank account as EFIC may notify in writing to the Borrower from time to time.

"AIDAB" means the Australian International Development Assistance Bureau.

"Appropriate Interest Rate" means, in respect of an amount overdue under this Agreement, a rate of interest which is 2% per annum above LIBOR for the duration of each Interest Period during which the amount is overdue.

"Authorised Officer of the Borrower" means a person described in a Borrower's Authorisation received by EFIC which has not been countermanded in writing to EFIC.

"Authorised Officer of EFIC" means the General Manager, Finance Insurance and Project Group for the time being of the Australian Trade Commission or any other person for the time being authorised in writing to the Borrower by him or by EFIC.

"Authorised Officer of the Supplier" means a person described in a Supplier's Authorisation received by EFIC which has not been countermanded in writing to EFIC.

"Borrower's Authorisation" means a document completed and signed by the Borrower in or to the effect of the form in Appendix 4 and containing a specimen of the usual signature of each Authorised Officer of the Borrower.

"Business Day" means a day on which dealings in U.S. dollars are carried on in the London Interbank market and on which banks are open for domestic and foreign exchange business in London, England and New York City, United States of America and Sydney, Australia.

"Charges" means all amounts payable pursuant to Article E1 and E2.

"Contract" means the contract made or to be made by the Supplier to supply the Borrower with railway signalling equipment and a centralised traffic control system.