

CONFORMED COPY

LOAN NUMBER 3552-CHA

(Shanghai Port Restructuring and Development Project)

between

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

and

SHANGHAI PORT AUTHORITY

Dated January 14, 1993

LOAN NUMBER 3552-CHA

PROJECT AGREEMENT

AGREEMENT, dated January 14, 1993, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank) and SHANGHAI PORT AUTHORITY (SPA).

WHEREAS: (A) by the Loan Agreement of even date herewith between People's Republic of China (the Borrower) and the Bank, the Bank has agreed to make available to the Borrower an amount in various currencies equivalent to one hundred fifty million dollars (\$150,000,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that SPA agree to undertake such obligations toward the Bank as are set forth in this Agreement;

(B) by subsidiary loan agreements to be entered into between the Borrower and Shanghai Municipality (SM), and between SM and SPA, the proceeds of the loan provided for under the Loan Agreement will be relented to SPA on the terms and conditions set forth in said Subsidiary Loan Agreements; and

WHEREAS: SPA, in consideration of the Bank's entering into the Loan Agreement with the Borrower, has agreed to undertake the obligations set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

Definitions

Section 1.01. Unless the context otherwise requires, the several terms defined in the Loan Agreement and the General Conditions (as so defined) have the respective meanings therein set forth.

ARTICLE II

Execution of the Project

Section 2.01. (a) SPA declares its commitment to the objectives of the Project as set forth in Schedule 2 to the Loan Agreement, and, to this end, shall carry out the Project with due diligence and efficiency and in conformity with appropriate administrative, financial, and engineering practices, and shall provide, or cause to be provided, promptly as needed, the funds, facilities, services and other resources required for the Project.

(b) Without limitation upon the provisions of paragraph (a) of this Section and except as the Bank and SPA shall otherwise agree, SPA shall carry out the Project in accordance with the Implementation Program set forth in Schedule 2 to this Agreement.

Section 2.02. Except as the Bank shall otherwise agree, procurement of goods, works and consultants' services required for the Project and to be financed out of the proceeds of the Loan shall be governed by the provisions of Schedule 1 to this Agreement.

Section 2.03. SPA shall carry out the obligations set forth in Sections 9.04, 9.05, 9.06, 9.07, 9.08 and 9.09 of the General Conditions (relating, respectively, to insurance, use of goods and services, plans and schedules, records and reports, maintenance and land acquisition) in respect of the Project Agreement.

Section 2.04. SPA shall duly perform all its obligations under the Subsidiary Loan Agreement with SM. Except as the Bank shall otherwise agree, SPA shall not take or concur in any action which would have the effect of amending, abrogating, assigning or waiving the Subsidiary Loan Agreement or any provision thereof.

Section 2.05. (a) SPA shall, at the request of the Bank, exchange views with the Bank with regard to progress of the Project, the performance of its obligations under this Agreement and under the Subsidiary Loan Agreement with SM, and other matters relating to the purposes of the Loan.

(b) SPA shall promptly inform the Bank of any condition which interferes or threatens to interfere with the progress of the Project, the accomplishment of the purposes of Loan, or the performance by SPA of its obligations under this Agreement and under the Subsidiary Loan Agreement with SM.

ARTICLE III

Management and Operations of SPA

Section 3.01. SPA shall carry on its operations and conduct its affairs in accordance with sound administrative, financial and engineering practices under the supervision of qualified and experienced management assisted by competent staff in adequate numbers.

Section 3.02. SPA shall at all times operate and maintain its plant, machinery, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound administrative, financial and engineering practices.

Section 3.03. SPA shall take out and maintain with responsible insurers, or make

other provision satisfactory to the Bank for, insurance against such risks and in such amounts as shall be consistent with appropriate practice.

ARTICLE IV

Financial Covenants

Section 4.01. (a) SPA shall maintain records and accounts adequate to reflect in accordance with sound accounting practices its operations and financial condition.

(b) SPA shall:

(i) have its records, accounts and financial statements (balance sheets, statements) for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Bank;

(ii) furnish to the Bank as soon as available, but in any case not later than six months after the end of each such year: (A) certified copies of its financial statements for such year as so audited; and (B) the report of such audit by said auditors of such scope and in such detail as the Bank shall have reasonably requested; and

(iii) furnish to the Bank such other information concerning said records, accounts and financial statements as well as the audit thereof, as the Bank shall from time to time reasonably request.

Section 4.02 (a) Except as the Bank shall otherwise agree, SPA shall not incur any debt unless a reasonable forecast of revenues and expenditures of SPA shows that the projected internal cash generation of SPA for each fiscal year during the term of the debt to be incurred shall be at least 1.4 times for the fiscal year 1993 and 2.5 thereafter, of the estimated debt service requirements of SPA in such year on all its debt including the debt to be incurred.

(b) For the purposes of this Section:

(i) the term "debt" means any indebtedness of SPA maturing by its terms more than one year after the date on which it is originally incurred;

(ii) debt shall be deemed to be incurred: (A) under a loan contract or other instrument providing for such debt or for the agreement or modification of its terms of payment, on the date of such contract, agreement or instrument; and (B) under a guarantee agreement, on the date the agreement providing for such guarantee has been entered into;

(iii) the term "internal cash generation of SPA" means the difference between:

(A) the sum of revenues from all sources related to operations and net non-operating income; and

(B) the sum of all expenses related to operations, including administration, adequate maintenance, taxes and payments in lieu of such taxes, but excluding provision for depreciation, other non-cash operating charges and interest and other charges on debt;

(iv) the term "net non-operating income" means the difference between:

(A) revenues from all sources other than those related to operations; and

(B) expenses, including taxes and payments in lieu of taxes, incurred in the generation of revenues in (A) above;

(v) the term "debt service requirements" means the aggregate amount of repayments (including sinking fund payments, if any) of, and interest and other charges on, debt;

(vi) the term "reasonable forecast" means a forecast prepared by SPA not earlier than twelve months prior to the incurrence of the debt in question, which both the Bank and SPA accept as reasonable and as to which the Bank has notified SPA of its acceptability, provided that no event has occurred since such notification which has, or may reasonably be expected in the future to have, a material adverse effect on the financial condition or future operating results of SPA; and

(vii) whenever, for the purposes of this Section, it shall be necessary to value, in terms of currency of the Borrower, debt payable in another currency, such valuation shall be made on the basis of the prevailing lawful rate of exchange at which such other currency is, at the time of such valuation, obtainable for the purpose of servicing such debt, or, in the absence of such rate, on the basis of a rate of exchange acceptable to the Bank.

Section 4.03. (a) Except as the Bank shall otherwise agree, SPA shall maintain, for each of its fiscal years after its fiscal year ending on December 31, 1992, a ratio of total working expenses to total operating revenues not higher than 61%.

(b) Before November 15 in each of its fiscal years, SPA shall, on the basis of forecasts prepared by SPA and satisfactory to the Bank, review whether it would meet the requirements set forth in paragraph (a) in respect of such year and the next following fiscal year, and shall furnish to the Bank the results of such review upon its completion.

(c) If any such review shows that SPA would not meet the requirements set forth in paragraph (a) for SPA's fiscal years covered by such review, SPA shall promptly take all necessary measures (including, without limitation, adjustments of the structure or levels of its rates) in order to meet such requirements.

(d) For the purposes of this Section:

(i) The term "total working expenses" means all expenses related to operations, including administration, and adequate maintenance, but excluding depreciation and interest and other charges on debt; and

(ii) The term "total operating revenues" means revenues from all sources related to operations, less sales taxes.

Section 4.04. (a) Except as the Bank shall otherwise agree, SPA shall from time to time take, or cause to be taken, all such measures (including, without limitation, adjustments of the levels of its rates) as shall be required to produce:

(i) for each of its fiscal years from 1993, net operating revenues equivalent to not less than the sum of: (a) its total operating expenses; and (b) the amount by which its financial obligations exceed the provision for depreciation and any other non-cash operating expenses; and

(ii) net operating profit after tax equivalent to not less than 20% in 1993 and 45% thereafter, of its annual investment program.

(b) For the purposes of this Section:

(i) The term "net operating revenues" means the sum of revenues from all sources related to operations, less sales taxes, total operating expenses and financial obligations.

(ii) The term "total operating expenses" means the sum of all expenses related to operations, including maintenance, administration, and depreciation.

(iii) The term "financial obligations" means interest and other charges on debt, repayment of loans (including sinking fund payments, if any), all taxes or payments in lieu of taxes, allocations to special funds and other cash distributions of surplus (including mandatory transfers to the Borrower), and any other cash outflows (other than capital expenditures) related to operations.

(iv) The term "net operating profit" means total operating revenues minus: (A) total operating expenses; and (B) financial obligations.

(v) The term "annual investment program" means forecast capital expenditure for the year.

ARTICLE V

Effective Date; Termination; Cancellation and Suspension

Section 5.01. This Agreement shall come into force and effect on the date upon which the Loan Agreement becomes effective.

Section 5.02. This Agreement and all obligations of the Bank and of SPA thereunder shall terminate on the date on which the Loan Agreement shall terminate in accordance with its terms, and the Bank shall promptly notify SPA thereof.

Section 5.03. All the provisions of this Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the General Conditions.

ARTICLE VI

Miscellaneous Provisions

Section 6.01. Any notice or request required or permitted to be given or made under this Agreement and any agreement between the parties contemplated by this Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand or by mail, telegram, cable, telex or radiogram to the party to which it is required or permitted to be given or made at such party's address hereinafter specified or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For the Bank:

International Bank for
Reconstruction and Development
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address:

INTBAFRAD
Washington, D.C.

Telex:

248423 (RCA)
82987 (FTCC)
64145 (WUI) or
197688 (TRT)

For SPA:

Shanghai Port Authority
13 Zhongshan Road (E.1)
Shanghai
People's Republic of China

Cable address:

3966

Telex:

33023 SHACO CN

Section 6.02. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement on behalf of SPA may be taken or executed by Director or such other person or persons as Director shall designate in writing, and SPA shall furnish to the Bank sufficient evidence of the authority and the authenticated specimen signature of each such person.

Section 6.03. This Agreement may be executed in several counterparts, each of which shall be an original, and all collectively but one instrument.

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in the District of Columbia, United States of America, as of the day and year first above written.

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

Bu /s/ Gautam S. Kaji

Regional Vice President
East Asia and Pacific

SHANGHAI PORT AUTHORITY

By /s/ Zhu Qizhen

Authorized Representative

SCHEDULE 1

Procurement and Consultants' Services

Section I: Procurement of Goods and Works

Part A: International Competitive Bidding

1. Except as provided in Part D hereof, goods and works shall be procured under contracts awarded in accordance with procedures consistent with those set forth in Sections I and II of the "Guidelines for Procurement under IBRD Loans and IDA Credits" published by the Bank in May 1992 (the Guidelines).

2. Bidders for civil works shall be prequalified as provided in paragraph 2.10 of the Guidelines.

3. To the extent practicable, contracts for goods shall be grouped into bid packages.

Part B: Preference for Domestic Manufacturers

In the procurement of goods in accordance with the procedures described in Part A.1 hereof, goods manufactured in China may be granted a margin of preference in accordance with, and subject to, the provisions of paragraphs 2.55 and 2.56 of the Guidelines and paragraphs 1 through 4 of Appendix 2 thereto.

Part C: Preference for Domestic Contractors

In the procurement of works in accordance with the procedures described in Part A.1 hereof, SPA may grant a margin of preference to domestic contractors in China in

accordance with, and subject to, the provisions of paragraphs 2.55 and 2.56 of the Guidelines and paragraph 5 of Appendix 2 thereto.

Part D: Other Procurement Procedures

1. Except as provided in paragraph 2 hereof, items or groups of items for equipment, estimated to cost less than the equivalent of \$300,000 per contract, up to an aggregate amount equivalent to \$3,000,000, may be procured under contracts awarded on the basis of competitive bidding, advertised locally, in accordance with procedures satisfactory to the Bank.

2. Items or groups of items for equipment, estimated to cost less than the equivalent of \$200,000 per contract, up to an aggregate amount equivalent to \$3,000,000, may be procured under contracts awarded on the basis of comparison of price quotations obtained from at least three suppliers eligible under the Guidelines, in accordance with procedures acceptable to the Bank.

Part E: Review by the Bank of Procurement Decisions

1. Review of prequalification:

With respect to the prequalification of bidders as provided in Part A.2 hereof, the procedures set forth in paragraph 1 of Appendix 1 to the Guidelines shall apply.

2. Review of invitations to bid and of proposed awards and final contracts:

(a) With respect to each contract for goods and works estimated to cost the equivalent of \$300,000 or more, the procedures set forth in paragraphs 2 and 4 of Appendix 1 to the Guidelines shall apply. When payments for such contract are to be made out of the Special Account, such procedures shall be modified to ensure that the two conformed copies of the contract required to be furnished to the Bank pursuant to said paragraph 2 (d) shall be furnished to the Bank prior to the making of the first payment out of the Special Account in respect of such contract.

(b) With respect to each contract not governed by the preceding paragraph, the procedures set forth in paragraphs 3 and 4 of Appendix 1 to the Guidelines shall apply. When payments for such contract are to be made out of the Special Account, such procedures shall be modified to ensure that the two conformed copies of the contract together with the other information required to be furnished to the Bank pursuant to said paragraph 3 shall be furnished to the Bank as part of the evidence to be furnished pursuant to paragraph 4 of Schedule 4 to the Loan Agreement.

(c) The provisions of the preceding subparagraph (b) shall not apply to contracts on account of which withdrawals from the Loan Account are to be made on the basis of statements of expenditure.

3. The figure of 15% is hereby specified for purposes of paragraph 4 of Appendix 1 to the Guidelines.

Section II: Employment of Consultants

In order to assist SPA in carrying out the Project, SPA shall employ consultants whose qualifications, experience and terms and conditions of employment shall be satisfactory to the Bank. Such consultants shall be selected in accordance with principles and procedures satisfactory to the Bank on the basis of the "Guidelines for the Use of Consultants by World Bank Borrowers and by The World Bank as Executing Agency" published by the Bank in August 1981.

SCHEDULE 2

Implementation Program

1. SPA shall, by October 31, 1994, undertake and complete a cargo unitization study to identify measures to encourage unitization of general cargo in order to improve efficiency in Shanghai Port, in accordance with terms of reference agreed with the Bank.

2. SPA shall: (a) by December 31, 1994, undertake and complete a feasibility study for shifting bulk fertilizer handling to the Waigaoqiao terminal to be constructed under Part A.1 of the Project;

(b) provide to the Bank by December 31, 1995, a plan of action, acceptable to the Bank, to shift bulk fertilizer handling away from the Shanghai city center; and

(c) thereafter carry out such plan of action.

3. Taking into consideration the results of the port costing and management information system study being carried out by the Borrower's Ministry of Communications under the Ningbo and Shanghai Ports Project financed by World Bank Loan No. 3006-CHA, SPA shall:

(a) by December 31, 1994, install computer based port costing and management information system (PCMIS) in Shanghai Port using the latest operating and financial data; and

(b) by June 30, 1995, restructure tariffs and appropriately adjust tariff levels in consultation with the Bank.

4. SPA shall: (a) carry out a corporate financial action plan, agreed with the Bank, with a view to achieving the financial and operating performance targets laid down therein;

(b) send selected managers for training in corporate planning techniques to foreign ports;

(c) by June 30, 1994, prepare, with the aid of a consultant, and send to the Bank a proposal for a corporate planning system; and

(d) by June 30, 1995, implement the said corporate planning system in consultation with the Bank.

5. SPA shall carry out training under Part B.3 of the Project as described in Schedule 2 to the Loan Agreement in accordance with a program satisfactory to the Bank.

6. SPA shall: (a) carry out all measures necessary or appropriate to mitigate any negative environmental impact of the Project; and

(b) implement the mitigative measures, operate appropriate environmental protection facilities and monitor compliance with the Borrower's national and Shanghai's municipal environmental laws and regulations, all in accordance with the Environmental Impact Assessment Report for the Shanghai Port Restructuring and Development Project.

