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CREDIT NUMBER 969 WAF

# Development Credit Agreement

(Project Preparation Credit)

between

BANQUE OUEST AFRICAINE DE DEVELOPPEMENT

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated

January 25, 1980



DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated *January 25*, 1980, between BANQUE OUEST AFRICAINE DE DEVELOPPEMENT (hereinafter called the Borrower), a regional development bank established by and operating under an agreement entered into on November 14, 1973 by the governments of the several states which are signatories thereto, and INTERNATIONAL DEVELOPMENT ASSOCIATION (hereinafter called the Association).

ARTICLE I

General Conditions; Definitions

Section 1.01. The parties to this Agreement accept all the provisions of the General Conditions Applicable to Development Credit Agreements of the Association, dated March 15, 1974, with the same force and effect as if they were fully set forth herein, subject, however, to the modifications thereof set forth in Schedule 2 to this Agreement (said General Conditions Applicable to Development Credit Agreements of the Association, as so modified, being hereinafter called the General Conditions).

Section 1.02. Wherever used in this Agreement, unless the context otherwise requires, the several terms defined in the General Conditions and in the Preamble to this Agreement have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) "Regional Company" means a joint stock corporation incorporated under the laws of one of the Member States with, as its shareholders:

- (i) two or more states, of which at least one shall be and remain from time to time a Member State; if not all states are Member States, at least one other state shall be contiguous to a Member State and all other states not contiguous to a Member State, if any, shall be contiguous to the state contiguous to the Member State; or
- (ii) two or more persons of different nationality, of whom at least one shall have the nationality of a Member State; if not all persons are nationals of Member States, then at least one shall have the

nationality of a state contiguous to a Member State, and all other persons, if any, shall have the nationality of states contiguous to the state contiguous to the Member State; or

- (iii) one or more states and one or more persons, provided that in such case among the shareholders at least two nationalities, of which at least one shall be that of a Member State, shall be represented; if not all nationalities so represented are of Members States, then at least one other nationality shall be of a state contiguous to a Member State and all other nationalities shall be of states contiguous to the state contiguous to a Member State;

(b) "Regional Arrangement" means an agreement concluded either directly or through their agencies and instrumentalities between at least two states, of which at least one shall be and remain from time to time a Member State - if not all states are Member States, at least one other state shall be contiguous to a Member State and all other states not contiguous to a Member State, if any, shall be contiguous to the state contiguous to the Member State - for the purpose of carrying out and coordinating the implementation of a Regional Project;

(c) "Member States" means the member states of the Union Monétaire Ouest Africaine, insofar as they are members-shareholders of the Borrower;

(d) "Regional Project" means a project meeting the criteria for eligibility specified in Section 2.02 (b) of this Agreement and to be carried out in at least two states of which at least one shall be and remain from time to time a Member State:

- (i) by a Regional Company; or
- (ii) through a Regional Arrangement; or
- (iii) by any suitable entity agreed upon from time to time between the Borrower and the Association;

(e) "Regional Project Study" means feasibility and engineering studies including the preparation of bidding documents, the cost of which is financed out of the proceeds of the Credit, carried out or to be carried out for the preparation and development of a Regional Project;

(f) "Beneficiary" means the Regional Company, the agency or instrumentality designated in a Regional Arrangement, or the entity referred to in Section 1.02 (d) (iii) of this Development Credit Agreement carrying out the Regional Project Study; and

(g) "Statuts" means the Borrower's Articles of Agreement as amended and modified from time to time.

## ARTICLE II

### The Credit

Section 2.01. The Association agrees to lend to the Borrower, on the terms and conditions in the Development Credit Agreement set forth or referred to, an amount in various currencies equivalent to three million dollars (\$3,000,000).

Section 2.02. (a) Subject to the provisions of paragraphs (b) and (c) hereof, the Borrower shall be entitled to withdraw from the Credit Account in accordance with the provisions of Schedule 1 to this Agreement, as such Schedule may be amended from time to time by agreement between the Borrower and the Association, to finance the reasonable cost of services required for the Regional Project Study in respect of which the withdrawal is requested.

(b) Except as the Borrower and the Association shall from time to time otherwise agree, no withdrawal shall be made in respect of a Regional Project Study unless the Borrower has submitted to the Association for its approval, prior to making a first request for withdrawal from the Credit Account in respect of such Regional Project Study:

(i) evidence satisfactory to the Association that:

(A) the Regional Project contributes to the integrated economic development of at least two states of which at least one shall be a Member State; and

(B) the Regional Project enters the scope of activities of the Borrower and the Borrower has the means to implement the Regional Project; and

(ii) the date specified in Section 2.03 (a) of this Development Credit Agreement.

(c) Except as the Borrower and the Association shall from time to time otherwise agree, no withdrawal shall be made in respect of a Regional Project Study unless the Borrower has submitted to the Association for its review and comments, prior to making a first request for withdrawal from the Credit Account in respect of such Regional Project Study:

- (i) a summary description of the Regional Project, and a description of the Regional Project Study including its terms of reference, its estimated cost (including a description of the foreign exchange expenditures proposed to be financed out of the proceeds of the Credit); and
- (ii) the methods and procedures by which the Regional Project Study will be carried out, including the qualifications, terms of reference and terms and conditions of employment of experts, specialists and consultants.

Section 2.03. Except as the Association and the Borrower shall otherwise agree:

(a) if by the date agreed upon for this purpose between the Borrower and the Association:

- (i) a loan shall have been granted by the Borrower for the purpose of assisting in the financing of the Regional Project for the preparation of which the Regional Project Study was undertaken (or any portion of such Regional Project) then the full amount of the foreign currencies withdrawn for the financing of such Regional Project Study and outstanding shall be repaid to the Borrower, with interest thereon (such interest being equal to or more than 8% per annum), by means of a withdrawal of the proceeds of such loan in accordance with the provisions of the loan agreement, as soon as such agreement shall have become effective;
- (ii) no loan shall have been granted, or if the loan agreement providing for such loan shall have been terminated without becoming effective, the full amount of the foreign currencies withdrawn for the

financing of such Regional Project Study and outstanding shall be charged to the Borrower's resources and this amount shall be credited to the separate account referred to in Section 2.03 (b); and

(b) all amounts repaid to the Borrower pursuant to sub-paragraph (a) (i) of this Section, whether principal or interest, shall be credited by the Borrower to a separate account, the amounts in such account to be made available exclusively for the financing of other regional project studies.

Section 2.04. The Closing Date shall be June 30, 1983 or such later date as the Association shall establish. The Association shall promptly notify the Borrower of such later date.

Section 2.05. The Borrower shall pay to the Association a service charge at the rate of three-fourths of one per cent ( $3/4$  of 1%) per annum on the principal amount of the Credit withdrawn and outstanding from time to time.

Section 2.06. Service charges shall be payable semiannually on June 1 and December 1 in each year.

Section 2.07. The Borrower shall repay the principal amount of the Credit in semiannual installments payable on each December 1 and June 1 commencing June 1, 1990, and ending December 1, 2029, each installment to and including the installment payable on December 1, 1999, to be one-half of one per cent ( $1/2$  of 1%) of such principal amount, and each installment thereafter to be one and one-half per cent ( $1-1/2\%$ ) of such principal amount.

Section 2.08. The currency of the Republic of France is hereby specified for the purposes of Section 4.02 of the General Conditions.

### ARTICLE III

#### The Project - Management and Operations of the Borrower

Section 3.01. (a) The purpose of the Project is to provide the Borrower with resources in order to assist the Borrower in developing to an advanced stage, through the carrying out of feasibility and engineering studies, specific Regional Projects, all in furtherance of the Borrower's corporate purposes.

(b) The Borrower shall carry out the Project and conduct its operations and affairs in accordance with sound financial standards and practices, with qualified management and personnel, and in accordance with its Statuts and lending policies.

Section 3.02. (a) The Borrower undertakes that, unless the Association shall otherwise agree, any Regional Project Study shall be agreed to on terms whereby the Borrower shall obtain, by written contract with the Beneficiary or through other appropriate legal means, rights adequate to protect the interests of the Borrower and the Association, including the right to: (i) require that the Regional Project Study be carried out with due diligence and efficiency, and in accordance with appropriate technical, financial and managerial standards and adequate records be maintained; (ii) require that (A) the services to be financed out of the proceeds of the Credit shall be procured at a reasonable price, account being taken also of other relevant factors such as their quality and the competence of the parties rendering them and (B) such services shall be used exclusively in the carrying out of the Regional Project Study; (iii) require that the Beneficiary shall take out and maintain with responsible insurers such insurance, against such risks and in such amounts, as shall be consistent with appropriate practice; (iv) obtain all such information as the Association or the Borrower shall reasonably request relating to the carrying out of the Regional Project Study by the Beneficiary and to its administration, operations and financial condition; and (v) suspend or terminate the right to the use of the proceeds of the Credit upon failure by the Beneficiary to perform its obligations under the agreement with the Borrower.

(b) The Borrower shall exercise its rights in relation to each Regional Project Study in such manner as to: (i) protect the interests of the Borrower and the Association; (ii) comply with its obligations under this Development Credit Agreement; and (iii) achieve the purposes of the Regional Project.

Section 3.03. If and when deemed necessary by the Borrower and the Association in order to assist the Borrower in supervising the technical aspects of feasibility and engineering studies included in Regional Project Studies, the Borrower shall employ technical consultants whose qualifications, experience, terms of reference and terms and conditions of employment shall be satisfactory to the Association.

Section 3.04. (a) The Borrower shall furnish to the Association all such information as the Association shall reasonably



request concerning the expenditure of the proceeds of the Credit, the Project, the Regional Projects, the Regional Project Studies and the Beneficiaries.

(b) Without limitation to the provisions of Sections 3.02 and 3.03 and of paragraph (a) of this Section, the Borrower:

- (i) shall furnish to the Association a copy of each contract to be concluded with a Beneficiary pursuant to Section 3.02 (a) of this Development Credit Agreement or with the consultants referred to in Section 3.03 of this Development Credit Agreement sufficiently in advance of signature of such contracts so as to allow the Association a reasonable time to review said contracts;
- (ii) shall furnish to the Association for its comments, each semester until twelve months following the last withdrawal from the Credit Account, a report on the progress of the execution of the Project and of each Regional Project Study; and
- (iii) shall monitor the studies carried out by the experts, specialists and consultants mentioned in Section 2.02 (c) (ii) of this Development Credit Agreement and shall furnish the Association, at regular intervals, status reports on such studies.

(c) Within twelve months following the last withdrawal from the Credit Account, the Borrower shall prepare and furnish to the Association a report, of such scope and in such detail as the Association shall reasonably request, on the execution and initial operation of the Project and of each Regional Project Study, their cost and the benefits derived and to be derived from them, the performance by the Borrower and the Association of their respective obligations under the Development Credit Agreement and the accomplishment of the purposes of the Credit.

Section 3.05. The Borrower shall duly perform all its obligations under agreements under which funds have been lent or otherwise put at the disposal of the Borrower for relending, investment or management. The Borrower shall promptly inform the Association of any action which would have the effect of assigning, amending, abrogating or waiving any material provision of any such agreement.

## ARTICLE IV

### Financial Covenants

Section 4.01. The Borrower shall maintain records adequate to record the progress of the Project and of each Regional Project Study (including the cost thereof) and to reflect in accordance with consistently maintained sound accounting practices the operations and financial condition of the Borrower.

Section 4.02. (a) The Borrower shall: (i) have its accounts and financial statements (balance sheets, statements of income and expenses and related statements) for each fiscal year audited in accordance with sound auditing principles consistently applied, by independent auditors acceptable to the Association; (ii) furnish to the Association, 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 audited and (B) the report of such audit by said auditors, of such scope and in such detail as the Association shall have reasonably requested; and (iii) furnish to the Association such other information concerning the accounts and financial statements of the Borrower and the audit thereof as the Association shall from time to time reasonably request.

(b) Without limitation to the provisions of sub-paragraph (a) of this Section, the Borrower shall furnish to the Association quarterly, until six months after the last withdrawal from the Credit Account, quarterly financial statements including without limitation, information on loans or credits approved, amounts committed and disbursements made, repayments and arrears in repayment of loans or credits and the Borrower's resource position.

Section 4.03. Except as the Association and the Borrower shall otherwise agree, the Borrower shall not incur or permit any subsidiary to incur any debt if, after the incurring of such debt, the consolidated debt of the Borrower and all its subsidiaries then incurred and outstanding would exceed the consolidated capital and surplus of the Borrower and all its subsidiaries. For the purpose of this Section:

(a) The term "debt" means any debt incurred by the Borrower or any subsidiary maturing more than one year after the date on which it is originally incurred, including debt assumed or guaranteed by the Borrower or by a subsidiary.

(b) Wherever reference is made in this Section to the incurring of debt, such reference shall include any modification of the terms of payment of such debt. Debt shall be deemed to be incurred (i) under a loan contract or agreement on the date and to the extent the loan is drawn down pursuant to such loan contract or agreement and (ii) under a guarantee agreement, on the date the agreement providing for such guarantee has been entered into but only to the extent the guaranteed debt is outstanding.

(c) Whenever in connection with this Section it shall be necessary to value in terms of the currency of the Member States debt payable in foreign currency, such valuation shall be made at the prevailing lawful rate of exchange at which such foreign currency is, at the time of such valuation, obtainable in the Member States for the purposes of servicing such debt.

(d) The term "consolidated debt of the Borrower and all its subsidiaries" means the total amount of debt of the Borrower and all its subsidiaries excluding debt owed by the Borrower to any subsidiary or by any subsidiary to the Borrower or to any other subsidiary.

(e) The term "consolidated capital and surplus of the Borrower and all its subsidiaries" means the aggregate of (i) the total unimpaired paid-in capital, surplus and free reserves of the Borrower and of all its subsidiaries after excluding therefrom such amounts as shall represent equity interests of the Borrower in any subsidiary, or of any such subsidiary in the Borrower or in any other subsidiary, and (ii) such amount of any loan or credit which the Association may determine to be included in the consolidated capital and surplus of the Borrower.

Section 4.04. The Borrower shall not make any repayment in advance of maturity in respect of any outstanding debt of the Borrower which, in the judgment of the Association, would materially affect the Borrower's ability to meet its financial obligations.

Section 4.05. The Borrower shall take such steps satisfactory to the Association as shall be necessary to protect itself against risk of loss resulting from changes in the rates of exchange between the currencies used in its lending and borrowing operations.

Section 4.06. The Association and the Borrower shall from time to time, at the request of either party, exchange views through their representatives with regard to the administration, operations and financial condition of the Borrower and its subsidiaries, and the Borrower shall furnish to the Association all such information as the Association shall reasonably request concerning the administration, operations and financial condition of the Borrower and its subsidiaries.

Section 4.07. The Borrower shall enable the Association's representatives to inspect the records referred to in Section 4.01 of this Development Credit Agreement and any relevant documents.

#### ARTICLE V

##### Remedies of the Bank

Section 5.01. For the purpose of Section 6.02 of the General Conditions the following additional events are specified pursuant to paragraph (h) thereof:

(a) any part of the principal amount of any loan or credit to the Borrower having an original maturity of one year or more shall, in accordance with its terms, have become due and payable in advance of maturity as provided in the relative contractual instruments, or any security for any such loan or credit shall have become enforceable;

(b) a change shall have been made in the Statuts which, in the opinion of the Association, materially and adversely affects the financial condition or operations of the Borrower;

(c) a default shall occur in the performance of any obligation on the part of the Borrower under any other loan or credit agreement between the Association and the Borrower or under any bond or similar instrument delivered pursuant to any such agreement; and

(d) a subsidiary or any other entity shall have been created or acquired or taken over by the Borrower, if such creation, acquisition or taking over would adversely affect the conduct of the Borrower's business or the Borrower's financial situation or the efficiency of the Borrower's management and personnel or the carrying out of the Project.

Section 5.02. For the purposes of Section 7.01 of the General Conditions the following additional events are specified pursuant to paragraph (d) thereof:

(a) the event specified in paragraph (a) or paragraph (b) or paragraph (c) of Section 5.01 shall occur; and

(b) the event specified in paragraph (d) of Section 5.01 shall occur and shall continue for a period of sixty days after notice thereof shall have been given by the Association to the Borrower.

#### ARTICLE VI

##### Termination

Section 6.01. The date *April 29, 1980* is hereby specified for the purposes of Section 12.04 of the General Conditions.

Section 6.02. The obligations of the Borrower under Article IV of this Agreement shall cease and determine on the date on which the Development Credit Agreement shall terminate or on a date 10 years after the date of this Agreement, whichever shall be the earlier.

#### ARTICLE VII

##### Representatives of the Borrower; Addresses

Section 7.01. The Président of the Borrower is designated as representative of the Borrower for the purposes of Section 11.03 of the General Conditions.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Borrower:

Banque Ouest Africaine de Développement  
B. P. 1172  
Lomé  
République Togolaise

Cable address:

BOAD

Telex:

5289 BOAD

For the Association:

International Development Association  
1818 H Street, N.W.  
Washington, D.C. 20433

Cable address:

INDEVAS  
Washington, D.C.

Telex:

440098 (ITT)  
248423 (RCA) or  
64145 (WUI)

IN WITNESS WHEREOF, the parties hereto, acting through their representatives thereunto duly authorized, 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.

BANQUE OUEST AFRICAINE DE DEVELOPPEMENT

By 

Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By 

Regional Vice President  
Western Africa

SCHEDULE 1

Withdrawal of the Proceeds of the Credit

1. The table below sets forth the Categories of imported items to be financed out of the proceeds of the Credit and the allocation of amounts of the Credit to each Category:

<u>Category</u>	<u>Amount of the Credit Allocated (Expressed in Dollar Equivalent)</u>	<u>% of Expenditures to be Financed</u>
(1) Regional Project Studies	2,900,000	85%
(2) Consultants' services to the Borrower	100,000	85%
Total	3,000,000	

2. The disbursement percentages have been calculated in compliance with the policy of the Association that no proceeds of the Credit shall be disbursed on account of payments for taxes levied by, or in the territory of, the Member States on goods or services, or on the importation, manufacture, procurement or supply thereof; to that end, if the amount of any such taxes levied on or in respect of any item to be financed out of the proceeds of the Credit decreases or increases, the Association may, by notice to the Borrower, increase or decrease the disbursement percentage then applicable to such item as required to be consistent with the aforementioned policy of the Association.

3. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of:

(a) payments made for expenditures prior to the date of this Agreement; and

(b) payments for taxes levied by, or in the territory of, the Member States on goods or services, or on the importation, manufacture, procurement or supply thereof.

4. Notwithstanding the allocation of an amount of the Credit set forth in the second column of the table in paragraph 1 above, if the Association has reasonably estimated that the amount of the Credit then allocated to any Category will be insufficient to finance all expenditures in that Category, the Association may, by notice to the Borrower, reallocate to such Category, to the extent required to meet such estimated shortfall, proceeds of the Credit which are then allocated to another Category and which in the opinion of the Association are not needed to meet other expenditures.

5. If the Association shall have reasonably determined that the procurement of any item in any Category is inconsistent with the procedures set forth or referred to in this Agreement, no expenditures for such item shall be financed out of the proceeds of the Credit and the Association may, without in any way restricting or limiting any other right, power or remedy of the Association under the Development Credit Agreement, by notice to the Borrower, cancel such amount of the Credit as, in the Association's reasonable opinion, represents the amount of such expenditures which would otherwise have been eligible for financing out of the proceeds of the Credit.



## SCHEDULE 2

For the purposes of this Development Credit Agreement, the provisions of the General Conditions are modified as follows:

(1) The words "to its members" in the first sentence of Section 1.01 are deleted.

(2) Paragraph 5 of Section 2.01 is deleted and replaced by the following new paragraph:

"5. The term "Borrower" means the party to the Development Credit Agreement to which the Credit is granted."

(3) The words "in the currency of the Borrower" in Section 4.01 are deleted and replaced by the words "in the currency of the Member States".

(4) The words "the Borrower" in Section 4.06 (b) are deleted and replaced by the words "the Member States".

(5) Sub-paragraph (e) of Section 6.02 is deleted and replaced by the following new sub-paragraph:

"(e) Any one or more of the Member States: (i) shall have been suspended from membership in or ceased to be a member of the Association; or (ii) shall have ceased to be a member of the International Monetary Fund".

(6) Section 8.01 is deleted and replaced by the following Section:

"Section 8.01. Taxes. (a) The principal of, and other charges on, the Credit shall be paid without deduction for, and free from, any taxes levied by, or in the territories of, the Member States.

(b) The Development Credit Agreement, and any other agreement to which these General Conditions shall be made applicable, shall be free from any taxes levied by, or in the territory of, the Member States on or in connection with the execution, delivery or registration thereof."

(7) Sub-paragraph (c) of Section 9.01 is deleted and replaced by the following sub-paragraph:

"(c) The Borrower shall take all action necessary or useful to afford all reasonable opportunity for accredited representatives of the Association to visit any part of the territories of the Member States for purposes related to the Credit."

(8) Section 9.02 is deleted and replaced by the following Section:

"Section 9.02. Financial and Economic Data. The Borrower shall furnish to the Association all such information as the Association shall reasonably request with respect to financial and economic conditions in the territories of the Member States as well as with respect to itself, its subdivisions and any entity owned or controlled, or operating for the account or benefit of the Borrower."

(9) The word "governmental" in sub-paragraph (a) of Section 12.01 is deleted and replaced by the word "corporate".